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State of New York Public Employment Relations Board Decisions from June 1, 1984

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from June 1, 1984

Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-6/1/84

In the Matter of

CHURCHVILLE-CHILI CENTRAL SCHOOL DISTRICT,

Respondent,

-and-

CASE NO. U-7180

CHURCHVILLE-CHILI EDUCATION ASSOCIATION,

Charging Party.

CHRISTOPHER J. KELLY, for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Churchville-Chili Education Association (Association) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing its charge that the Churchville-Chili Central School District (District) violated the Taylor Law by unilaterally creating two new extra-compensation

positions, establishing the initial amount of the extra compensation and appointing two individuals to fill the positions rather than seeking volunteers. The Director dismissed the charge on the ground that none of the alleged unilateral actions constituted a mandatory subject of negotiation.

In its exceptions, the Association argues that the Director failed to give due consideration to the fact that the Association and the District were negotiating with respect to the two positions at the time when the unilateral action was taken. It contends that the District's creation and filling of the two positions, albeit normally a management prerogative, must be seen as intimidating and coercing unit employees in the pursuit of their negotiating demands. The Association contends that the coincidence of the District's unilateral action and the negotiations, and the absence of a demonstrated need to take that action at that time evidenced an intention to coerce and intimidate the employees and their representatives.

We do not agree. The record does not support this assertion. Accordingly, we affirm the decision of the Director dismissing the charge.

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: June 1, 1984
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2B-6/1/84

CITY OF SARATOGA SPRINGS,

Respondent,

-and-

CASE NO. U-7163

CITY OF SARATOGA SPRINGS FIRE FIGHTERS UNION, LOCAL 343, IAFF, AFL-CIO,

Charging Party.

THEALAN ASSOCIATES, INC. (JOSEPH T. KELLY), for Respondent

GRASSO & GRASSO, ESQS. (JANE K. FININ, Esq. of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the City of Saratoga Springs Fire Fighters Union, Local 343, IAFF, AFL-CIO (Fire Fighters), to the decision of an Administrative Law Judge (ALJ) dismissing its charge that the City of Saratoga Springs (City) violated §209-a.1(a), (c) and (d) of the Taylor Law. The conduct complained about is that the City introduced three new demands into negotiations more than a year after negotiations commenced.

The ALJ dismissed the charge on two grounds. The first was that notwithstanding the length of time after their commencement, the negotiations were not yet at impasse when

the City introduced the new demands. Thus, according to the ALJ, the City had been free to expand its proposals in the course of negotiations, absent evidence that its conduct was designed to frustrate an agreement, and there was no such evidence. The second ground was that the introduction of the new demands was related to two recently issued arbitration awards which would have justified the new demands even if there had been an impasse.

In support of its exceptions dealing with the first ground, the Fire Fighters merely focus upon the one-year hiatus between the first negotiating session and the City's new proposals. There were, however, only two other negotiating sessions. Negotiations were then suspended while the parties awaited the decision of this Board in a scope of negotiations case brought by a Fire Fighter charge.[1/] We therefore affirm the ALJ's finding that there is no evidence establishing that the City lacked a sincere desire to reach agreement.[2/] Further, as the parties had not reached impasse,[3/] the City's expansion of demands was not a per se violation of its duty to negotiate in good faith.

1/ See City of Saratoga Springs, 16 PERB ¶3058 (1983).

2/ See Columbia County, 10 PERB ¶3047 (1977), aff'g. 10 PERB 4513 (1977); Town of Southampton, 2 PERB ¶3011 (1969).

3/ In City of Newburgh, 15 PERB ¶3116 (1981), p. 3180, we defined impasse as: "[A] situation in which there was no reasonable expectation that further negotiations would be fruitful without third party assistance. . .".

Addressing the second ground for the ALJ's decision, the Fire Fighters argue that the new demands were not directed to the subject matter of the arbitration awards. The facts do not support this argument. The first award dealt with the right of certain employees to accumulated sick leave. The first new demand was for a waiver of the contractual benefits of these employees. In the course of resolving the first grievance, the arbitrator interpreted the contract with respect to the manner in which sick leave is accumulated. The second new demand deals with this issue. The second arbitration award reversed restrictions imposed by the City on the trading of days off. This is the subject of the third demand. These awards are a significant change in circumstances and they permit a corresponding change in the City's negotiating posture.[4/]

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: June 1, 1984
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

[4/] Peekskill City School District, 16 PERB ¶3075 (1983).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2C-6/1/84

STATE OF NEW YORK (DEPARTMENT OF CORRECTIONAL SERVICES),

Respondent,

-and-

CASE NO. U-6025

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 655,

Charging Party.

JOSEPH M. BRESS, ESQ. (ROBERT E. WATERS, ESQ., of Counsel), for Respondent

ROEMER AND FEATHERSTONHAUGH, ESQS. (RICHARD L. BURSTEIN, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Civil Service Employees Association, Inc., Local 655 (CSEA) to a hearing officer's decision dismissing its charge that on January 11, 1982, the State of New York (Department of Correctional Services) (State) unilaterally adopted new procedures on January 11, 1982 to control sick leave abuse.

The State and CSEA were parties to a collective bargaining agreement which was in effect on January 11, 1982 and which covered both sick leave and discipline. The State issued a memorandum on that day describing a new "Attendance Improvement Program" in the Department of Correctional Services and stated that it would be implemented statewide. The memorandum set

forth as attendance policy: compliance with existing Department of Correctional Services directives, that employees would report absence or lateness to their supervisors, that supervisors would use a new form for recording such absences, and that employees who are absent excessively would have to submit a physician's certification, be subject to home visitation and return calls, would not be permitted to use other forms of leave where sick leave has been exhausted and would be denied approval for secondary employment. These provisions were made applicable by the memorandum to those employees who had been absent twelve or more times during the period of October 1, 1980 to October 1, 1981.

The memorandum also prescribed procedures to be followed by supervisors in dealing with suspected abuses of sick leave. These include counseling and culminate in disciplinary action. According to the hearing officer, the comprehensive coverage of sick leave and discipline in the parties' collective bargaining agreement deprived the Board of jurisdiction over the charge, the State's unilateral action, if any, constituting a breach of contract.[1/]

[1/]The hearing officer dismissed the charge on the merits. As we affirm the dismissal on jurisdictional grounds, we do not consider the exceptions directed to that part of the hearing officer's decision.

In support of its exceptions, CSEA argues that the collective bargaining agreement does not deal with the particulars of the change, that it is not charging a violation of the contract and that the State is not asserting an explicit contractual right to have made the changes. In response, the State argues that the hearing officer correctly determined that the subject matter was covered by the parties' agreement.

Having reviewed the record, we find that the collective bargaining agreement in effect on January 11, 1982 thoroughly covered sick leave and other forms of leaves of absence and, with respect to sick leave, incorporates by reference applicable provisions of the Civil Service Rules and Regulations. That agreement also covered the subject of discipline comprehensively. Article 43 of that agreement stated that it is "the entire agreement between the State and CSEA, terminates all prior agreements and understanding and concludes all collective negotiations during its term." In addition, the parties had established a detailed grievance and arbitration procedure. CSEA complains that the State has imposed a disciplinary procedure which is not permissible under the parties' agreement. This is a question of contract interpretation which is beyond the jurisdiction of this Board.[2/]

[2/]Section 205.5(d) of the Taylor Law and St. Lawrence County, 10 PERB ¶3058 (1977).

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: June 1, 1984
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-6/1/84

In the Matter of

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

CASE NO. E-0714

Upon the Application for Designation of Persons as Managerial or Confidential.

MARC Z. KRAMER, ESQ. and SUSAN H. MORRIS, ESQ., for New York City Board of Education

BRUCE K. BRYANT, ESQ., for Council of Supervisors and Administrators

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Council of Supervisors and Administrators of the City of New York (CSA) to a decision of the Acting Director of Public Employment Practices and Representation (Acting Director) designating Harvey Weintraub and Gerald Brooks respectively as managerial and confidential employees of the City School District of the City of New York (City District).[1/]

[1/] The application herein was for the designation of 14 positions as managerial and confidential. No exceptions were filed to the Acting Director's disposition of 12 of the 14 positions covered by the application.

Weintraub is the Director of Curriculum for Community School District 19 (Community District). The Acting Director found that Weintraub's responsibilities in connection with the curriculum of the Community District included regular participation in the essential process involving the determination of the goals and objectives of the City District and the methods for accomplishing those goals and objectives. He concluded that these responsibilities constitute the formulation of policy.[2/]

CSA argues that the Acting Director erred because the Chancellor of the City District promulgates curriculum requirements for the entire city school system and the City District Superintendent makes the final decision in

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[2/] In City of Binghamton, 12 PERB ¶3099, at 3185 (1979), we said:

> To formulate policy is to participate with regularity in the essential process involving the determination of the goals and objectives of the government involved, and of the methods for accomplishing those goals and objectives that have a substantial impact upon the affairs and the constituency of the government.

curriculum matters not determined by the Chancellor.

Having reviewed the record, we find that the Community District has considerable discretion in establishing the goals and objectives for each of its classes and that the City District Superintendent relies heavily on Weintraub in exercising this discretion. Accordingly, we affirm the determination of the Acting Director that Weintraub is a managerial employee.

Brooks is the Director of Education Recruitment for the City District, in which role he recruits supervisory employees. The Acting Director determined that this responsibility is neither managerial nor confidential. On the other hand, Brooks regularly attends the weekly cabinet meetings of the Division of Personnel. Among the matters that have been discussed at these meetings are potential layoffs of employees and staff reorganization. This, according to the Acting Director, is sufficient for Brooks' designation as confidential.

CSA points out that it is rare for matters such as staff reorganization or employee layoffs to be discussed at the weekly cabinet meetings. Accordingly, it argues that Brook's attendance at the meetings is not a

sufficient basis for his designation as confidential. We note, however, that such discussions are held at those meetings whenever the occasion arises.

CSA also argues that the Acting Director erred in stating that Brooks serves under the Executive Director of the City District's Division of Personnel, who is conceded to be a managerial employee. It asserts that he works for Tames, the Deputy Director, with respect to whom there is no concession that he is managerial. The purported relevance of this distinction is that §201.7 of the Taylor Law provides that a person may be designated confidential only if he assists and acts in a confidential capacity to a managerial employee. We find, however, that regardless of whom Brooks reports to as a regular matter, he acts in a confidential capacity to Executive Director Aquilone when he attends the cabinet meetings. Accordingly, we affirm the determination of the Acting Director designating Brooks as confidential.

NOW, THEREFORE, WE ORDER:

1. that Harvey Weintraub be, and he hereby is, designated a managerial employee.

2. that Gerald Brooks be, and he hereby is, designated a confidential employee.

DATED: June 1, 1984
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2E-6/1/84

STATE OF NEW YORK (CRAIG DEVELOPMENTAL CENTER),

Respondent,

-and-

CASE NO. U-6554

CRAIG COLONY, LOCAL 405, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Charging Party.

JOSEPH M. BRESS, ESQ., (RICHARD J. DAUTNER, ESQ. of Counsel), for Respondent

JAMES T. HANCOCK, ESQ. and ROEMER AND FEATHERSTONHAUGH, ESQS. (STEPHEN J. WILEY, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Craig Colony, Local 405, Civil Service Employees Association, Inc., (CSEA) to an Administrative Law Judge (ALJ) decision dismissing its charge against the State of New York (Craig Developmental Center) (State). The charge alleges that the State violated §209-a.1(b) and (c) of the Taylor Law in that the Craig Developmental Center, a State institution, commenced disciplinary action against Clarence Herington, the Local CSEA president, because he had published statements that criticized the Center. The hearing was originally scheduled for August 24, 1983. Both Herington

and another CSEA witness, James Dunlop, failed to appear at the hearing, and neither called in advance to advise that they would not attend.

The ALJ took the testimony of Charles Bird, a CSEA field representative who services the employees of the Craig Center. He testified that Herington had issued a newspaper advertisement, published on September 5, 1982, which was highly critical of the Center's community residence program. He further testified that managerial employees at the Center had known of the article before it was published and had indicated their unhappiness with it. Bird then testified that Herington was placed on administrative leave on September 1, 1982, and was subsequently brought up on both disciplinary and criminal charges which alleged patient abuse.

The ALJ determined that Bird was not personally familiar with many of the events about which he testified and she concluded that Bird's testimony was not sufficient to sustain the charge.

Some time after the hearing, the ALJ received affidavits from Herington and Dunlop explaining their absences. Dunlop's affidavit stated that he was unable to attend because of eye surgery on August 11, 1983. Herington claimed medical problems and then,

inconsistently, stated that he had been confused about his departure time and had missed his ride to the hearing.

The ALJ scheduled a second day of hearing for December 28, 1983. Once again, without prior notification to the ALJ or to the State, neither Herington nor Dunlop appeared. A third witness called by charging party also failed to appear. Dunlop and Herington subsequently submitted affidavits explaining their absences. Dunlop claimed that his prior eye problems were still bothering him and that he also suffered from back problems. Herington stated that he could not attend because of a chimney fire at his home four days earlier, because his wife was ill, and because he had no means of transportation. He further stated that the pending criminal charges had so unnerved him as to have interfered with his notifying the ALJ, CSEA or the State that he would not attend.

The ALJ refused to schedule a third day of hearing and issued her decision on the basis of Bird's testimony at the first hearing. Charging party now argues that the ALJ erred in not scheduling a third hearing and in not finding Bird's testimony, standing alone, sufficient to substantiate the charge. The State has submitted a brief in support of the ALJ's decision.

Having reviewed the record, we affirm the decision of the ALJ that the evidence in the record is not sufficient to

sustain the charge. Section 209-a.1(b) of the Taylor Law prohibits a public employer from dominating or interefering with the administration of an employee organization. The record is devoid of any such evidence. Section 209-a.1(c) prohibits a public employer from discriminating against an employee for the purpose of encouraging or discouraging employee participation in a union. While Bird's testimony indicates that representatives of the State were displeased with actions taken by Herington on behalf of CSEA, his testimony does not persuade us that such displeasure was the reason for the State's initiation of disciplinary charges against Herington. On the contrary, the record discloses a reasonable basis for the employer to believe that Herington was implicated in serious misconduct which occasioned the initiation of the disciplinary charges.[1/]

We also affirm the action of the ALJ in not scheduling a third day of hearing after Herington and Dunlop failed, without prior notice, to appear at two scheduled days of hearing. Their excuses disclose no convincing justification for their failure to attend. As the charging party, CSEA is responsible for the attendance of its own witnesses.[2/]

1/ Dundee CSD, 16 PERB ¶3011 (1983).

2/ Board of Education of the City School District of the City of New York, 16 PERB ¶3067 (1983).

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: June 1, 1984
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2F-6/1/84

In the Matter of the Application of the

COUNTY OF SUFFOLK

DOCKET NO.
S-0006

for a determination pursuant to Section 212 of the Civil Service Law.

BOARD DECISION AND ORDER

Pursuant to §212 of the Civil Service Law, the County of Suffolk has submitted an application by which it seeks a determination that its Local Law. No. 4-1978, as amended by Local Law No. 8-1984 (adopting Resolution No. 305-1984), is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State. Specifically, the amendment brings the County's local law into conformity with Chapter 409 of the Laws of 1983, which extended the Taylor Law's interest arbitration provisions for an additional two years.

Having reviewed the application and having determined that the ordinance aforementioned, as amended, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State, it is

ORDERED that the application of the County of Suffolk be, and it hereby is, approved.

DATED: June 1, 1984
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of #3A-6/1/84

WEST GENESEE CENTRAL SCHOOL DISTRICT,

Employer,

-and- CASE NO. C-2697

WEST GENESEE SUBSTITUTE TEACHERS
ASSOCIATION, NYSUT/AFT,

Petitioner,

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the West Genesee Substitute Teachers Association, NYSUT/AFT has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Per diem substitute teachers who have received a reasonable assurance of continuing employment as referenced in Civil Service Law, Section 201.7(d), and per diem substitute teachers who, while not receiving such reasonable

assurance, are employed as per diem substitute teachers by the West Genesee Central School District during the school year.

Excluded: Per diem substitute teachers who, having received a reasonable assurance of continuing employment as referenced in Civil Service Law, Section 201.7(d), notify the West Genesee Central School District that they do not wish to be employed as per diem substitute teachers during the school year, and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the West Genesee Substitute Teachers Association, NYSUT/AFT and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: June 1, 1984
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#3B-6/1/84

TOWN OF HUNTINGTON,

Employer,

-and-

CASE NO. C-2578

LOCAL 342, LONG ISLAND PUBLIC SERVICE EMPLOYEES, UNITED MARINE DIVISION, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Petitioner,

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Local 342, Long Island Public Service Employees, United Marine Division, International Longshoremen's Association, AFL-CIO has been designated and selected by a majority of the employees of the above named employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All supervisory employees, including, but not limited to, labor foreman I, II, and III; auto mechanic foreman II

and III; incinerator plant foreman; sanitation site foreman; golf course manager; grounds maintenance foreman; senior bay constable; senior dog warden; senior sewerage plant operator; refuse manager; beach manager; senior citizens site manager; secretary to the planning board; assistant to comptroller; superintendent of the Dix Hills Water District, executive assistant of the Dix Hills Water District; secretary to highway superintendent; and senior citizens director.

Excluded: All summer/casual employees and all other employees of the employer.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 342, Long Island Public Service Employees, United Marine Division, International Longshoremen's Association, AFL-CIO and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: June 1, 1984
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#3C-6/1/84

LONG BEACH PUBLIC LIBRARY (ALLARD K. LOWENSTEIN PUBLIC LIBRARY),

Employer,

-and-

CASE NO. C-2721

PAULINE NAGER,

Petitioner,

-and-

LOCAL 1671, COUNCIL 66, AFSCME, AFL-CIO,

Intervenor.

-and-

ALLARD K. LOWENSTEIN PUBLIC LIBRARY EMPLOYEES ASSOCIATION,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Allard K. Lowenstein Public Library Employees Association has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as

their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit:	Included:	Full-time and regular part-time employees, including Librarians, Clerical employees and Custodians.
	Excluded:	Director, Assistant Director, Administrative Assistant to the Director, Pages, Staff of the Board of Trustees and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Allard K. Lowenstein Public Library Employees Association and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: June 1, 1984
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member