11-29-1984

State of New York Public Employment Relations Board Decisions from November 29, 1984

New York State Public Employment Relations Board

State of New York Public Employment Relations Board Decisions from November 29, 1984

Keywords

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED FEDERATION OF TEACHERS,
LOCAL 2, NYSUT, AFT, AFL-CIO,

Respondent,

-and-

CASE NO. U-6352

DONALD J. BARNETT,

Charging Party.

JAMES R. SANDNER, ESQ. (JANIS LEVART BARQUIST, ESQ., RICHARD CASAGRANDE, ESQ., and JEFFREY KARP, ESQ., of Counsel), for Respondent

DONALD J. BARNETT, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the United Federation of Teachers, Local 2, NYSUT, AFT, AFL-CIO (UFT) to a hearing officer's decision. The hearing officer found a violation of the UFT's duty of fair representation in that it informed Donald J. Barnett, a unit employee, that, because he was not a member of UFT, it would not represent him in

§3020-a hearings[1] and improper practice proceedings during the period when its entitlement to agency shop fee payments was suspended for having engaged in a strike.[2]

UFT's exceptions make five arguments:

1. Education Law §3020-a is not covered by the duty of fair representation in that it is a statutory benefit which is not related to the negotiation or enforcement of a collective bargaining agreement.
2. The hearing officer erred in concluding that its refusal to represent nonmembers in improper practice cases was related to their not being members.
3. The charge was moot in that there were no §3020-a cases involving Barnett pending during the time frame covered by it. Moreover, UFT does not provide legal services to anyone, and the New York State United Teachers (NYSUT), which does so on UFT's behalf, is not a party to the proceeding.
4. The charge is barred by res judicata in that Barnett has brought many other charges against UFT and the charge herein is subsumed under those.

---

[1] Education Law §3020-a provides for hearing procedures when disciplinary penalties are imposed upon tenured teachers.

[2] Inasmuch as there is no evidence that any such representation was actually sought or rejected, the hearing officer's proposed remedy was limited to a cease and desist order and a notice to be mailed to Barnett.

5. Barnett had no standing to file the charge because at the time when he filed it UFT's agency shop fee privileges had been reinstated and the alleged discrimination against nonmembers had ceased.

We reject each of these arguments. A union which has been recognized or certified as the exclusive representative of a negotiating unit does not have a fundamental statutory duty to represent anyone in its unit in administrative or judicial proceedings involving matters other than collective negotiations, the enforcement of negotiated agreements and the resolution of grievances. That, however, is not the issue before us. The ALJ determined that UFT's decision not to represent Barnett was discriminatory, being based upon his nonmembership in that organization. Whether or not UFT is obligated to represent unit members in §3020-a hearings and improper practice proceedings generally is irrelevant; it may not discriminate between members and nonmembers, but must represent them equally with respect to all job-related benefits.[3/] We find that employee discipline, as

---

[3/] UFT (Barnett), 17 PERB ¶3023 (1984), UFT (Barnett), 14 PERB ¶3017 (1981). We have also held that substantial economic benefits provided by a union to its members must also be extended to agency fee payers. UUP (Eson), 12 PERB ¶3117 (1979). UUP v. Newman, 80 A.D.2d 23, 14 PERB ¶7011 (3rd Dept. 1981), lv. to app. den., 54 N.Y.2d 611, 14 PERB ¶7026 (1981).

addressed by §3020-a., and the improper practices addressed by §209-a.1(a) and (c) of the Taylor Law, both relate to important job related benefits.

Having reviewed the record, we affirm the decision of the hearing officer that an agent of UFT informed Barnett that he was not entitled to legal representation by its attorneys because, among other things, "[t]he membership records of UFT show that you are not a member at this time . . . ."

It is irrelevant that Barnett may not have been in need of legal representation at the time when UFT's agent told him that he was disqualified for it. The mere announcement of such discriminatory disqualification is coercive of a public employee's exercise of his right to refrain from joining an employee organization.[4/] Similarly, it is irrelevant that NYSUT, an affiliate of UFT, and not UFT itself employs the attorneys who represent UFT members in some improper practice cases and §3020-a hearings. Such representation is afforded by NYSUT attorneys on behalf of UFT. Thus, they and NYSUT are, for this purpose, agents of UFT within the meaning of §209-a.2 of the Taylor Law.

[4/] UFT (Barnett), 15 PERB ¶3103 (1982); Auburn Administrators Assn., 11 PERB ¶3086 (1978).

We find no basis for UFT's fourth argument, that Barnett's charge is barred by reason of his having brought many charges against it in the past. None of his past charges made the complaint herein. Neither did any of them make a complaint that was so closely related to the complaint herein as to subsume the instant complaint thereunder.

Finally, we reject UFT's argument that Barnett's charge was barred, as moot, because it was made after UFT had reinstated a prior practice of providing legal representation to nonmembers. This change was acknowledged by the hearing officer and was considered by him in fashioning an appropriate remedy. It does not, however, go to the timeliness of the charge, as the charge was brought within four months of the violation alleged therein.

NOW, THEREFORE, WE ORDER UFT to:

1. Cease and desist from interfering with, restraining or coercing public employees in the exercise of their rights under the Act by advising nonmembers that as nonmembers they are not entitled to the same representation afforded to members by UFT or its statewide affiliate in employment related matters.

2. Notify Barnett, by letter mailed by certified mail, that it will not interfere with, restrain or coerce him in the exercise of his rights under the Act by advising him that he is not entitled to representation by UFT, or its statewide affiliate in employment related matters in which its members receive such representation or by denying him such representation.

DATED: November 29, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PUBLIC EMPLOYMENT RELATIONS BOARD,

Respondent,

-and- CASE NO. U-7762

THOMAS C. BARRY,

Charging Party.

BOARD DECISION AND ORDER

The charge herein was filed by Thomas C. Barry. It alleges that this Board acted improperly in issuing its supplementary decision in Cases U-7449 and U-7482 (17 PERB ¶3101 [1984]) which withdrew an order issued at an earlier stage in our consideration of the two cases.

The Director of Public Employment Practices and Representation (Director) dismissed the charge on two grounds. The first is that there is no statutory basis for filing a charge against this Board as it is neither an employer nor an agent of an employer, nor a union or an agent of a union.[1/] The second is that the charge

---

1/See §209-a of the Taylor Law which declares certain conduct of public employers, their agents, employee organizations and their agents to constitute improper practices.

constitutes a collateral attack on this Board's decision in other cases, and that decision can only be challenged in a direct appeal at the appropriate time.[2/]

Barry's exceptions and his arguments in support thereof afford no basis for reversal of the decision of the Director.

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

DATED: November 29, 1984
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

David C. Randles
David C. Randles, Member

[2/]See §213 of the Taylor Law which provides an exclusive procedure for the review of Board decisions.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED UNIVERSITY PROFESSIONS,

Respondent,

-and- CASE NO. U-7652

THOMAS C. BARRY,

Charging Party.

THOMAS C. BARRY, Charging Party, pro se.

BOARD DECISION AND ORDER

The charge herein was filed by Thomas C. Barry. It alleges that United University Professions (UUP) violated §209-a.2(a) of the Taylor Law in that it would not furnish him with a list of unit employees who pay agency shop fees.[1/] Barry asserts that he requires the information he seeks in order to protect his right, assured by §202 of the Taylor Law, to refrain from participating in UUP. He explains that this information will facilitate his arranging for representation at the internal appellate steps afforded

---

1/The statute provides: "It shall be an improper practice for an employee organization or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of the rights granted in section two hundred two, or to cause, or attempt to cause, a public employer to do so...."

by UUP for challenging its agency shop fee refund determinations.

The Director dismissed the charge on two grounds. First, he determined that UUP is under no general duty to provide the information sought by Barry. Second, he determined that the charge does not allege discriminatory treatment of nonmembers.

We affirm the decision of the Director as we have held in our decision in UFT (Barnett) issued today (17 PERB ¶3113), a union's fundamental statutory duty of fair representation extends only to matters involving collective negotiations, the administration of collective agreements and the processing of grievances. With respect to other matters, the duty of fair representation merely prohibits discriminatory practices.

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

DATED: November 29, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

#2D-11/29/84

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF NORTH CASTLE (Water and Sewer Department),

Employer,

-and-

CASE NO. C-2793

RALPH LIZARDI, et al.,

Petitioners,

-and-

TOWN OF NORTH CASTLE, UNIT II, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Intervenor.

DONALD E. ADAMS, THOMAS DE VESTA, RALPH LIZARDI, and SAL MISITI, Petitioners, pro se.

BOARD DECISION AND ORDER

The Town of North Castle, Unit II, Civil Service Employees Association, Inc. (CSEA), represents a unit of 24 employees of the Town of North Castle (Town). The petition is by the four employees (Petitioners) in the Water and Sewer Department of the Town who seek to decertify CSEA on the ground that they are not properly included in the CSEA unit. They do not seek certification in any alternative unit.

The Director of Public Employment Practices and Representation (Director) dismissed the petition on the

ground that the petition was not supported by a showing of interest of at least 30% of the employees in the existing unit.[1/]

Under our Rules of Procedure (§201.3[d]), a petition for decertification must be accompanied by a showing of interest of 30% of the employees in the existing unit.[2/] No such showing of interest was submitted, and the petition is therefore deficient.

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

DATED: November 29, 1984
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

David C. Randles
David C. Randles, Member

1/The Director also dismissed the petition on the ground that it was not accompanied by a declaration of the authenticity of the showing of interest. Petitioners assert that no declaration of authenticity is required here. We do not find it necessary to reach this question.

2/For a petition for certification, a showing of interest of 30% of the employees in an alternative unit alleged to be appropriate would suffice.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

The Petition of Organization of Staff Analysts to Review Decision No. B-22-84 of the Board of Collective Bargaining of the City of New York.

Case No. N-0002

BOARD ACTION

Pursuant to the provisions of §205.5(d) of the Civil Service Law, the Organization of Staff Analysts (OSA) filed a petition on November 8, 1984, requesting this Board to review Decision No. B-22-84 of the Board of Collective Bargaining of the City of New York (BCB) (Docket No. BCB-686-84). In that decision, the BCB dismissed an improper practice petition filed by the OSA against the City of New York. In doing so, the BCB considered and decided a question of law which has not heretofore been presented to us. The BCB formulated the question as follows:

> Does the City of New York violate NYCCBL sections 1173-4.2a(1) and (3) if it reclassifies or reassigns some of the employees in the staff analyst series during the pendency of a representation case in which the City's position is that all of the subject employees are ineligible for collective bargaining because they are managerial or confidential?1/

1/Essentially the same question under the Taylor Law appears to be raised by an improper practice charge filed with this Board by the OSA against the New York City Board of Education (Case U-7479). That charge is presently pending before an Administrative Law Judge.

The jurisdiction granted to this Board under Civil Service Law §205.5(d) to review decisions of the BCB may be asserted to assure that the improper practice provisions of the New York City Collective Bargaining Law are applied so that they be consistent with the substantive application of the Taylor Law by this Board. We therefore assert jurisdiction over the BCB decision for the purpose of considering the substantive determination.[2/]

ACTION TAKEN: Jurisdiction asserted.

DATED: November 28, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

2/We do not assert jurisdiction over alleged procedural improprieties. These are properly matters to be considered on judicial review of the BCB decision.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NASSAU COUNTY REGIONAL OFF-TRACK BETTING CORPORATION,

Employer,

-and-

CASE NO. C-2783

LOCAL 858, IBT,

Petitioner,

-and-

CSEA, LOCAL 830, NASSAU OTB UNIT,

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 Local 858, IBT 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: All employees of Nassau County Regional Off-Track Betting Corporation.

Excluded: President, Vice-President of Corporate Affairs and Administration, Executive Director of Corporate Affairs and Administration, Executive Director of Public Relations and Advertising, Vice-President of Operations, General Counsel, Deputy General Counsel, Comptroller, Treasurer, Executive Director of Labor and Facilities, Corporate Assistant, Personnel Administrator, Executive Director of Branch Operations, Assistant Executive Director of Branch Operations, Regional Director, Secretary Exempt, Corporate Research Aide, Manager of Technical Control, and all other individuals occupying job titles ruled at any time to be managerial or confidential by the New York State Public Employment Relations Law or a Court of Law.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 858, IBT and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: November 29, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ROME CITY SCHOOL DISTRICT,

Employer,

-and- CASE NO. C-2811

ROME TEACHERS ASSOCIATION, NYSUT/AFT/ 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 the Rome Teachers Association, NYSUT/AFT/AFL-CIO 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: All per diem substitute teachers who have a reasonable assurance of continuing employment as referred to in §201.7(d) of the Civil Service Law.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Rome Teachers Association, NYSUT/AFT/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 above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: November 29, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member