10-4-1985

State of New York Public Employment Relations Board Decisions from October 4, 1985

New York State Public Employment Relations Board

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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

COUNTY OF CLINTON and SHERIFF OF COUNTY OF CLINTON,

Joint Employer,

-and-

CASE NO. C-2940

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Petitioner.

THEALAN ASSOCIATES, INC. (Anthony P. Di Rocco, of Counsel), for Joint Employer

JOHN D. CORCORAN, CSEA, INC., for Petitioner

BOARD DECISION, ORDER AND CERTIFICATION

The petition herein was filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, (CSEA). It is to represent a unit of deputy sheriffs employed by the County of Clinton (County) and the Sheriff of Clinton County as a joint employer. At present, the deputies are in a negotiating unit that includes all county employees. That unit is represented by CSEA. It has been in existence since 1967, and there is no record evidence of any conflict of interest between the county employees and the employees of the joint employer.

Another employee organization had petitioned to represent the deputies in 1975. Relying upon Town of Smithtown, 8 PERB ¶3015 (1975), the Director of Public

Employment Practices and Representation (Director) dismissed that petition because of an absence of evidence that CSEA's representation of the existing unit had been anything but effective, which supported the proposition that the unit was appropriate.[1/] That decision was not appealed to the Board.

Notwithstanding similar evidence relating to the issue of the effectiveness of past representation, the Director granted the petition herein. He did so because this Board issued two decisions in 1981, County of Orange, 14 PERB ¶3012, and County of Schenectady, 14 PERB ¶3013 which held that a petition to sever employees of a joint employer from those employed by one of the members of the joint employer in its independent capacity should be granted.

In addition to finding the Orange and Schenectady County cases dispositive of the question whether the existing unit should be fragmented, the Director found that given such fragmentation, the unit sought by the petition is appropriate. He also found that CSEA had submitted sufficient evidence to establish its majority status in that unit.

The matter now comes to us on the exceptions of the joint employer. It asks us to overrule the Orange and

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[1/] County of Clinton and the Clinton County Sheriff's Department, 8 PERB ¶4044 (1975)

Schenectady County decisions, and not fragment the current unit. It does not challenge the Director's findings that if the current unit must be fragmented then CSEA has established its majority status in an appropriate unit.

The basis of the Orange and Schenectady County decisions is the second standard for unit definition set forth in §207.1 of the Taylor Law. It provides:

> (b) the officials of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority or the legislative body with respect to, the terms and conditions of employment upon which the employees desire to negotiate; . . . .

Inasmuch as the County and the joint employer are distinct public employers, we found that there were no common officials of the two public employers at the level of the unit. Thus, absent the continuing willingness of both public employers to delegate authority to a single group of officials, this standard would not be met. As the public employers could, therefore, compel the termination of the unit during any open period, we held that the employees must be given the same opportunity.

The thrust of the joint employer's argument is that we went too far in Orange and Schenectady. While it recognizes that the multi-employer structure of the existing unit raises potential problems under the second statutory standard, it contends that this should be put on the scales

and weighed against the concerns for community of interest and administrative convenience that are reflected by the first and third statutory standards.[2/]

We are not persuaded by this argument. The second standard is of a different character than the other two. The first community of interest standard clearly contemplates that a range of possible units would satisfy it. Accordingly, it must be evaluated on a relative basis. This is done by placing its implications in balance with the implications of the third standard. As noted by the joint employer in its brief, that standard "takes into consideration the administrative convenience of the employer and perhaps suggests that an excessive number of units might be undesirable".[3/] Thus, by its nature, it, too, contemplates a range of unit possibilities, with administrative convenience balanced against community of interest when the two standards point in opposite directions.

The second standard is different. Where the employees all work for the same public employer, it can always be satisfied because the employer can always create a matching

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[2/]They provide: "(a) the definition of the unit shall correspond to a community of interest among the employees to be included in the unit;" and "(c) the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public."

[3/]Joint employer's brief to the ALJ, p.4. See also, 4 NYCRR Appendix 4, p.203.

labor relations structure for itself. Accordingly, it is a variable factor to the extent that the public employer's current labor relations structure might have to be changed. But where there is a multi-employer unit, it can never be satisfied because there are no officials of the separate governments who function at the level of the unit with respect to the unit as a whole.

The joint employer next contends that the Orange and Schenectady decisions must be overruled even if those decisions were correct when issued. For this proposition, it relies upon the enactment of §209-a.1(e) of the Taylor Law after the Orange and Schenectady decisions were issued. The last contract executed by the joint employer and CSEA continued a clause entitled "Recognition of Bargaining Unit", and the joint employer argues that §209-a.1(e) prevents it from refusing to negotiate on the basis of that unit, regardless of any decision of this Board changing that unit.

We are not persuaded by this argument. Section 209-a.1(e) of the Taylor Law is concerned with contractual benefits. Here, we are concerned with the status of an employee organization rather than benefits. A union's right to negotiate an agreement[4/] and to enjoy rights under

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[4/] See §204.2, §208.1(a) and §209-a.1(d) of the Taylor Law.

the terms of an agreement[5/] derive from its status as a recognized or certified employee organization. Where there is a dispute between a public employer and an employee organization as to the status of an employee organization, it is for this Board to resolve that question.[6/]

Public policy dictates the same conclusion as does our analysis of the statute. An alternative conclusion would mean that by negotiating a recognition clause, in successive agreements, a public employer and union could effectively prevent unit employees from changing their representative.

NOW, THEREFORE, (1) IT IS ORDERED that the exceptions herein be, and they hereby are, dismissed.[7/]

5/See Fraternal Order of State Troopers, 5 PERB ¶3060 (1972), aff'd PBA v. Helsby, 6 PERB ¶7001 (Alb. Co. 1973).

6/See §200(c), §205.5(a) and (b) of the Taylor Law and §201.3 of our Rules of Procedure.

7/The joint employer also argued that this case should be distinguished from County of Orange and County of Schenectady because its deputy sheriffs perform correction officer duties almost exclusively. The relevance of this argument is that this Board has followed "an almost uniform practice of establishing separate units for policemen." City of Amsterdam, 10 PERB ¶3031 (1977), Village of Skaneateles, 16 PERB ¶3070 (1983). A second relevance is that "civil deputies", i.e. those who effect service of process, etc., are personal employees of the sheriff who appoints them rather than civil servants. This, too, points to a potential conflict of interest with other employees.

These arguments would only be relevant if we had overruled the holding of County of Orange and County of Schenectady that the second statutory standard compels a granting of the petition. Accordingly, they are not addressed.

(2) A representation proceeding having been conducted in this matter, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in this Board by the Taylor Law,

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the joint employer, County of Clinton and Sheriff of County of Clinton, in the unit described below as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Correction Officer, Deputy Sheriff, Deputy Sheriff Sergeant, Deputy Sheriff Lieutenant, Matron Dispatcher, Cook, Senior Clerk, Typist, Senior Account Clerk-Stenographer.

Excluded: Sheriff, Undersheriff and all other employees;

(3) IT IS ORDERED that the joint employer shall negotiate collectively with the Civil Service Employees Association, Inc. 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: October 4, 1985
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

QUEENSBURY UNION FREE SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2947

MILDRED E. CAMPP, et al.,

Petitioners,

-and-

QUEENSBURY SCHOOL NON-TEACHING EMPLOYEES ASSOCIATION, NYSUT,

Intervenor.

CAFFRY, PONTIFF, STEWART, RHODES and JUDGE, P.C. (J. LAWRENCE PALTROWITZ, ESQ., of Counsel), for Employer

MILDRED E. CAMPP, for Petitioners

LEON LIEBERMAN, NYSUT, for Intervenor

BOARD DECISION AND ORDER

The Queensbury Union Free School District (District) and the Queensbury School Non-Teaching Employees Association, NYSUT (Association), were parties to a collective bargaining agreement that expired on June 30, 1984. No successor agreement had been reached as of May 30, 1985, at which time Mildred E. Campp and other non-teaching employees

(petitioners) of the District filed a petition to decertify the Association as the agent for the negotiating unit that it represented. The Association opposed the petition and argued that it must be dismissed because it was not timely filed. The Director of Public Employment Practices and Representation (Director) rejected this argument and ordered an election in the negotiating unit. The matter now comes to us on the exceptions of the Association to the decision of the Director.

The authority, if any, for the filing of the petition on May 30, 1985, is §201.3(e) of this Board's Rules of Procedure. When the petition was filed, it provided, in relevant part:

> A petition for certification or decertification may be filed by an employee organization other than the recognized or certified employee organization, if no new agreement is negotiated, 120 days subsequent to the expiration of a written agreement between the public employer and the recognized or certified employee organization.... Thereafter, such a petition may be filed until a new agreement is executed.

According to the Association, a petition for decertification may not be filed by individual employees under this section of our Rules, but only under §201.3(d), which permits the filing of a petition

> within thirty days before the expiration, under section 208.2 of the Act, of the period of unchallenged representation status accorded a recognized or certified employee organization.

As a petition under §201.3(d) would not have been timely on May 30, 1985, the Association asserts that the petition herein should have been dismissed.

In rejecting this argument, the Director stated, "Although the Intervenor's interpretation is consistent with a literal reading of Rule 201.3(e), that was not, and could not have been the Rule's purpose." In support of its exceptions, the Association argues that the Director erred in his interpretation of both the Rule and its purpose.

Having considered the Association's arguments, and both the language and the purpose of the Rule, we find merit in the Association's contention that the Director did not apply the Rule correctly. As we stated in Greece Central School District, 18 PERB ¶3033 (1985), a petition under §201.3(e) of our Rules "may only be filed by an employee organization other than the one that was recognized or certified" (emphasis in original). Accordingly, we reverse the decision of the Director and determine that the petition herein is not timely.[1/]

[1/]Having made this determination, it is not necessary to reach the question presented by the Association's exception directed to the purpose of the Rule. We do note, however, that we agree with the Director that a petition for decertification filed by unit employees and supported by a 30% showing of interest should be entertained under Rule 201.3(e). Accordingly, at our meeting of September 10, 1985, we so amended our Rules of Procedure.

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

DATED: October 4, 1985
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF HEMPSTEAD,

CASE NO. S-0003

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

BOARD DECISION AND ORDER

In its Decision and Order dated August 13, 1985, this Board concluded in part:

> NOW, THEREFORE, WE ORDER that the determination of this Board dated April 11, 1968,[1/] approving the enactment establishing a local PERB for the Town of Hempstead be, and the same is hereby, suspended subject to reinstatement upon application and demonstration by the Hempstead local PERB that the continuing implementation of its local provisions and procedures is substantially equivalent to those governing this Board;

[1/] 1 PERB ¶395

The order also indicated that unless the application for reinstatement was filed by September 6, 1985, our determination of April 11, 1968 would be rescinded without further notice.

The Town Attorney of the Town of Hempstead, by letter dated September 3, 1985, requested reinstatement of our

determination dated April 11, 1968. The letter was accompanied by our questionnaire completed to reflect that the Hempstead local PERB now has a full complement of board members. Also, none of the responses raise any issue concerning the substantial equivalency requirement affecting the continuing implementation of the local provisions and procedures.

ACCORDINGLY, WE ORDER that the determination of this Board dated April 11, 1968, approving the enactment establishing a local PERB for the Town of Hempstead and suspended by our order dated August 13, 1985, be, and the same is hereby, reinstated provided that the continuing implementation of its local provisions and procedures remains substantially equivalent to those governing this Board.

DATED: October 4, 1985
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CITY OF UTICA BOARD OF WATER SUPPLY,

Employer,

-and-

CASE NO. C-2939

UTICA WATER BOARD UNIT, CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 1000, AFSCME, AFL-CIO,

Petitioner,

-and-

LOCAL 182, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

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 182, International Brotherhood of Teamsters 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 full-time permanent employees.

Excluded: All temporary employees, General Manager, employees represented by Management Employees Association and managerial/confidential employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Local 182, International Brotherhood of Teamsters 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: October 4, 1985
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF HERKIMER and SHERIFF OF HERKIMER COUNTY,

Joint Employer,

-and-

CASE NO. C-2931

HERKIMER COUNTY DEPUTY SHERIFF'S ASSOCIATION,

Petitioner,

-and-

HERKIMER COUNTY SHERIFF'S DEPARTMENT UNIT OF TEAMSTERS LOCAL NO. 182, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

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 Herkimer County Deputy Sheriff's 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: Deputy/Sergeant, Deputy/Assistant Sergeant, Deputy, Matron/Correctional Officer, Cook, part-time deputies, and part-time cooks.

Excluded: Sheriff, Undersheriff, Chief Deputy Sheriff-Jail/Captain, Chief Clerk, Clerk, Physician, Maintenance Man/Part-time Printer.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Herkimer County Deputy Sheriff's Association 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: October 4, 1985
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

EAST RAMAPO CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2964

SUBSTITUTE TEACHERS ASSOCIATION OF EAST RAMAPO,

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 Substitute Teachers Association of East Ramapo 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).

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Substitute Teachers Association of East Ramapo 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: October 4, 1985
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

Walter L. Eisenberg, Member