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New York State Public Employment Relations  
Board (PERB)

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12-12-1985

# State of New York Public Employment Relations Board Decisions from December 12, 1985

New York State Public Employment Relations Board

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# State of New York Public Employment Relations Board Decisions from December 12, 1985

**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

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In the Matter of

HONEOYE CENTRAL SCHOOL DISTRICT,

Respondent,

-and-

CASE NO. U-8323

HONEOYE CENTRAL SCHOOL CIVIL SERVICE  
EMPLOYEES ASSOCIATION-NYSUT/AFT,

Charging Party.

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PETER PIRNIE, for Respondent

WESLEY G. MARSH, for Charging Party

BOARD DECISION AND ORDER

The charge herein was filed by the Honeoye Central School Civil Service Employees Association-NYSUT/AFT (Association). It alleges that the Honeoye Central School District (District) violated §§209-a.1(d) and (e) of the Taylor Law when, on July 9, 1985, it refused to pay retroactive wages to five employees as required by the parties' collective bargaining agreement covering the period July 1, 1984 through June 30, 1986. The charge further alleges that, on September 23, 1985, the District violated the collective bargaining agreement by refusing to process a

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grievance complaining about the failure to pay the retroactive wages after denying the grievance at the second step, i.e., dismissal by the superintendent.

The Director of Public Employment Practices and Representation (Director) dismissed the charge on the ground that it merely alleged violations of the parties' collective bargaining agreement and that this Board has no

authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice.<sup>1/</sup>

Excepting to the decision of the Director, the Association argues that the papers it submitted in support of its charge show that "the District claimed that the agreement grieved was not in effect." Thus, according to the Association, either the District has repudiated an agreement, thereby violating §209-a.1(d) of the Taylor Law, or, if the District's proposition that there is no agreement is correct, it has violated §209-a.1(e) by refusing to comply with the provisions of the parties' prior agreement. It further argues that this Board should assert jurisdiction.

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<sup>1/</sup>Section 205.5(d) of the Taylor Law.

because the grievance procedure provided by the parties' collective bargaining agreement does not terminate in compulsory binding arbitration.

Having reviewed the papers submitted by the Association, we affirm the determination of the Director that they do not allege facts which may constitute an improper practice. Both the alleged rights of the five employees to retroactive pay and of the Association to process the grievance beyond the second step derive from the parties' collective bargaining agreement; there is no independent statutory right involved. It is therefore clear that the Association is attempting to invoke this Board's jurisdiction to enforce an agreement with respect to conduct that would not otherwise constitute an improper practice. The Association's papers also show that the District did not repudiate the collective bargaining agreement but advanced defenses under it. It claimed that the employees involved were not entitled to retroactive pay because they had resigned before the agreement was executed and that their exclusion had been noted at that time. It further claimed that, by the terms of the agreement, the Association was not entitled to carry the grievance to the third step because it had waived such right by failing to pursue the grievance at the second step. It not only cited contract language to support this procedural claim, but also did so to support the proposition that the grievance was without merit.

Without inquiring into the merits of the District's contract defenses, we note that both the Association's alleged rights asserted in the charge and the District's reasons for denying those alleged rights are based upon the parties' collective bargaining agreement. Accordingly, there is no basis either for the Association's allegation that the District has repudiated the agreement in violation of §209-a.1(d), or its alternative proposition that there is no agreement and that the District's conduct is therefore violative of §209-a.1(e).<sup>2/</sup> Under these circumstances, it is irrelevant that the grievance procedure in the parties' collective bargaining agreement does not terminate in binding arbitration. As noted by us in St. Lawrence County, 10 PERB ¶3058, at 3103 (1977):


[W]hen an employer's obligation to act or not to act is wholly contractual, the enforcement of such obligation should be dealt with either by arbitration (if the parties had so agreed) or by a plenary action.

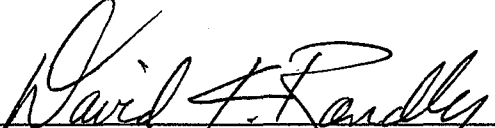
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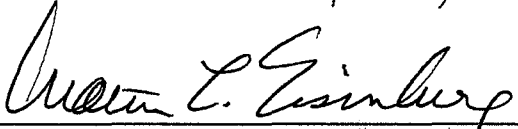
<sup>2/</sup>We further note that the charged violation of §209-a.1(e) must be dismissed in any event because the Association's papers do not allege that the District has failed to comply with any specific provision of an allegedly expired agreement of the parties. Indeed, they make no reference to an expired agreement.

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

DATED: December 12, 1985  
Albany, New York

  
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Harold R. Newman, Chairman

  
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David C. Randles, Member

  
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Walter L. Eisenberg, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Application of the

COUNTY OF NASSAU

DOCKET NO.

S-0002

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

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BOARD DECISION AND ORDER

Pursuant to §212 of the Civil Service Law, the County of Nassau has submitted an application by which it seeks a determination that its Ordinance No. 549-1981, as amended on October 7, 1985 by Ordinance No. 418-1985, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State.


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

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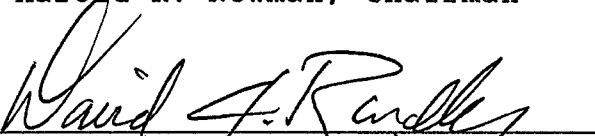


ORDERED that the application of the County of Nassau be,  
and it hereby is, approved.

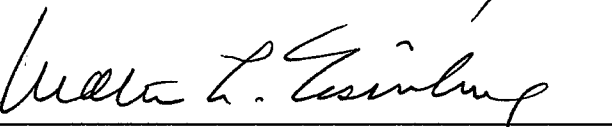
DATED: December 12, 1985  
Albany, New York



Harold R. Newman, Chairman



David C. Randles, Member



Walter L. Eisenberg, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

STATE OF NEW YORK (DIVISION OF  
MILITARY AND NAVAL AFFAIRS),

Employer.

-and-

CASE NO. C-2900

TEAMSTERS LOCAL 294, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner,

-and-

CSEA, LOCAL 1000, AFSCME, AFL-CIO,

Intervenor.

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BOARD DECISION ON MOTION

On December 3, 1984, the State of New York (State) posted a notice that it had recognized CSEA, Local 1000, AFSCME, AFL-CIO (CSEA) as the representative of a unit of 760 employees of its Division of Military and Naval Affairs (DMNA). On December 31, 1984, Teamsters Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (IBT) filed a petition to decertify CSEA in that unit, and for its own certification as the exclusive negotiating representative for a portion of it. The unit it seeks consists of 77 employees of DMNA holding the positions Armory Superintendent I, II and III, Maintenance Supervisor I, II and III, and Assistant Armory

Superintendent. After a hearing the Director of Public Employment Practices and Representation (Director) determined that most of these positions should be excluded from the unit represented by CSEA.<sup>1/</sup>

The matter now comes to us on the motion of CSEA for permission to file an appeal of that decision of the Director which it properly characterizes as an "interim" decision.<sup>2/</sup>

CSEA argues that its motion should be granted because the pendency of this proceeding is delaying negotiations with respect to employees in its negotiating unit who have not been removed from that unit by the Director. It further asserts that the motion should be granted because "there is a great likelihood on the merits that PERB will reverse the decision of the Director." In its response to the motion, IBT has written that it "has no objection to the Motion for Permission to Appeal." The State has filed no papers in response to the

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<sup>1/</sup>He excluded all but the positions of Maintenance Supervisor I located in Camp Smith, Maintenance Supervisor II and Assistant Armory Superintendent. As to the latter two, he declined to make any ruling because the positions are vacant and there are no plans to fill them.

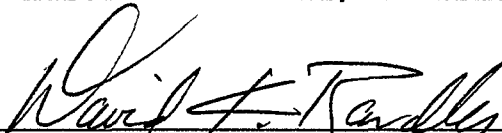
<sup>2/</sup>It is an interim decision because it does not finally determine the question of the unit placement of the positions which the Director has removed from CSEA's unit. The Director has not yet determined whether the positions removed from the CSEA unit constitute a separate unit by themselves or whether they would be more properly represented in a unit that includes other employees of the State.

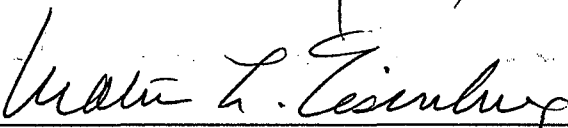
motion. It has, however, sent a letter in which it indicated its own intention to appeal the decision of the Director.

Having read the record and considered the positions of the parties, we hereby grant CSEA's motion.<sup>3/</sup>

DATED: December 12, 1985  
Albany, New York

  
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Harold R. Newman, Chairman

  
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David C. Randles, Member

  
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Walter L. Eisenberg, Member

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<sup>3/</sup>Exceptions to the Director's Interim Order will be deemed timely if filed with this Board and served upon the other parties by December 27, 1985. Subsequent filings shall be as set forth in §201.12 of our Rules.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
JERICHO UNION FREE SCHOOL DISTRICT,  
Employer,

-and-

CASE NO. C-2966

JERICHO TEACHERS ASSOCIATION,  
Petitioner,

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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 Jericho Teachers 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: All employees employed in the title of  
tutor.

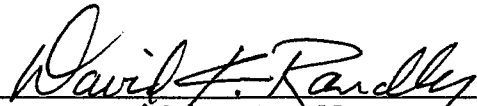
Excluded: All other employees

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Jericho Teachers 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.

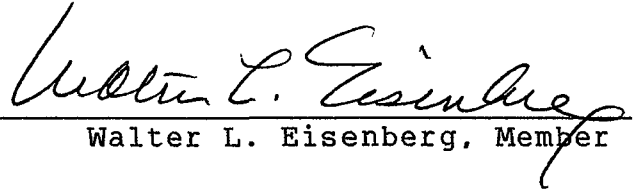
DATED: December 12, 1985  
Albany, New York



Harold R. Newman, Chairman



David C. Randles, Member



Walter L. Eisenberg, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

COUNTY OF ERIE and SHERIFF OF ERIE  
COUNTY,

Employer,

-and-

CASE NO. C-2920

TEAMSTERS LOCAL 264, I.B.T.,

Petitioner,

-and-

COUNCIL 66 and LOCAL 2060, AFSCME,  
AFL-CIO,

Intervenor.

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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 Teamsters Local 264, I.B.T. 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: Criminal Division Titles: Captain, Detective Deputy, Senior Detective - Narcotics, Lieutenant, Sergeant, Undercover Narcotics Deputy, Lieutenant (Arson), Detective Deputy (Arson), Deputy Sheriff-Criminal, Deputy Sheriff-Criminal (Seneca Speaking), Deputy Sheriff-Criminal (Spanish Speaking), Senior Account Clerk (Sheriff), Principal Clerk (Sheriff), Account Clerk Typist (Sheriff), Senior Clerk (Sheriff 55-B), Senior Clerk Stenographer (Sheriff), Senior Clerk Typist (Sheriff), Clerk Stenographer (Sheriff), Clerk Typist (Sheriff), Laborer (Sheriff), Supervising Auto Mechanic (Sheriff).

Civil & Courts Division Titles: Accountant (Sheriff), Chief Deputy - Civil, Assistant Chief Deputy - Civil, Principal Court Deputy, Lieutenant - Criminal Court, Sergeant - Criminal Court, Deputy Sheriff - Officer, Sergeant - Civil, Deputy Sheriff - Civil, Clerk Stenographer (Civil), Clerk Typist (Civil), Account Clerk Typist - Civil, Assistant Bookkeeper - Civil, Chief Account Clerk - Civil, Court Officer (Sheriff), Court Attendant (Sheriff), Security Director - Courts, Dispatcher (Sheriff).

Holding Center Titles: Training Instructor (HC), Administrative Assistant (HC), Lieutenant (HC), Sergeant (HC), Deputy Sheriff - Officer, Deputy Sheriff - Officer (Spanish Speaking), Cook - Manager (HC), Head Nurse (HC), Nursing Supervisor (HC), Holding Center Medical Aide, Assistant Cook (HC), Kitchen Helper (HC), Maintenance Worker - Sheriff, Laborer - Sheriff, Cleaner (HC), Registered Nurse (HC), Cook (HC), Account Clerk Typist (HC) (55-B), Account Clerk Typist (HC), Clerk Stenographer (HC).

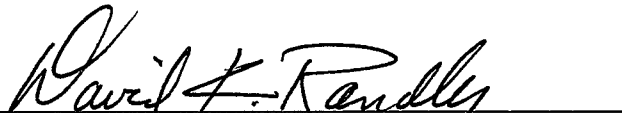
Excluded: Sheriff, Undersheriff, Administrative Coordinator Sheriff, Secretary - Sheriff, Chief Deputy Sheriff, Chief of Investigatory Services, Chief Deputy Narcotics, Superintendent (HC), 1st Assistant Superintendent (HC), Assistant Superintendent (HC).

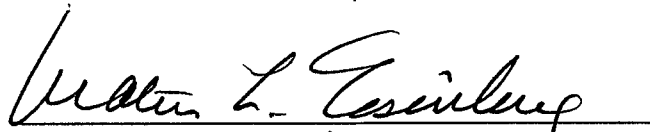


Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 264, I.B.T. and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: December 12, 1985  
Albany, New York

  
Harold R. Newman, Chairman

  
David C. Randles, Member

  
Walter L. Eisenberg, Member