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New York State Public Employment Relations  
Board (PERB)

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1-30-1986

# State of New York Public Employment Relations Board Decisions from January 30, 1986

New York State Public Employment Relations Board

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# State of New York Public Employment Relations Board Decisions from January 30, 1986

**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  
TOWN OF BROOKHAVEN,

Respondent,

-and-

CASE NO. U-8291

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TOWN OF BROOKHAVEN WHITE AND BLUE  
COLLAR UNITS, CIVIL SERVICE EMPLOYEES  
ASSOCIATION,

Charging Party.

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COOPER & SAPIR, P.C. (DAVID M. COHEN, ESQ., of  
Counsel), for Respondent

ROEMER & FEATHERSTONHAUGH, P.C. (WILLIAM M.  
WALLENS, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

The charge herein was filed by the Town of Brookhaven White and Blue Collar Units, Civil Service Employees Association (CSEA). It alleges that the Town of Brookhaven (Town) refused to negotiate with it with respect to employees in two units which it represents. The Town admits its refusal to negotiate with respect to the two units but justifies that refusal on the ground that there is a question concerning representation regarding these two units which is pending before this Board's Director of Public Employment Practices and Representation. An Administrative Law Judge (ALJ) found a violation in the instant matter and the Town filed exceptions.

10127

FACTS

There are three negotiating units of employees of the Town of Brookhaven, one for blue-collar employees, a second for white-collar employees and a third for employees of the Highway Department. All three units have been represented by CSEA. The collective bargaining agreements covering all three units expired on December 31, 1985.

On May 29, 1985, an independent employee organization filed a timely petition to decertify CSEA in the highway unit and for its own certification in that unit.<sup>1/</sup> The Town opposes that petition on the ground that the unit of Highway Department employees<sup>2/</sup> is inappropriate. It first took this position at the pre-hearing conference in the representation case when it asserted that all three units should be combined, or, in the alternative, the highway and blue-collar units should be combined. The pre-hearing conference was held after the time when the Town could have filed a petition for investigation of a question concerning the representation of public employees.<sup>3/</sup>

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<sup>1/</sup>A second petition was filed that day to represent the blue-collar unit. It was withdrawn on June 18, 1985.

<sup>2/</sup>There have been extensive hearings in the representation case. Those hearings have been completed and briefs have been submitted. The matter is now awaiting a decision of the Director of Public Employment Practices and Representation.

<sup>3/</sup>See Rules of Procedure §201.3, and Greece CSD, 18 PERB ¶3033 (1985).

On July 29 and August 23, 1985, CSEA demanded that the Town commence negotiations in the blue- and white-collar units. The Town refused to do so on August 26, 1985. This refusal precipitated the instant charge.

#### DISCUSSION

The ALJ gave two reasons for finding an improper practice. The first is that while the petition before the Board was sufficient to raise a unit question with respect to the highway unit, it was not sufficient to do so with respect to the blue-collar or white-collar units. Thus, according to the ALJ, the Town is obligated to negotiate with CSEA with respect to those units notwithstanding the challenge to their appropriateness raised by the Town's position in the highway unit case. The ALJ also indicated that he would have reached the same decision even if the Town had filed a timely petition. He concluded that the mere filing of a representation petition by an employer would, in the absence of rival union claims, be insufficient to relieve the employer of its obligation to bargain. According to the ALJ, such relief would only come if and when this Board orders an election. He finds support for this position in the NLRB's overruling of Shea Chemical Corporation, 42 LRRM 1486 (1958), by RCA del Caribe, Inc., 110 LRRM 1369 (1982).

We reach the same ultimate conclusion as did the ALJ, but on

different grounds.<sup>4/</sup> The period during which a petition raising questions of the appropriateness of any of the three units could have been brought was May 1985. Notwithstanding its position that the three separate units were inappropriate, the Town filed no petition during that period. Thus, no timely question concerning the appropriateness of any of the three units was raised.

A representation petition which merely raises a question of majority status within a unit does not place into question the appropriateness of that unit. Here, the only petition, which was filed by the independent employee organization, merely raised a question of majority status. It follows that a public employer may not diminish or delay its bargaining obligation on the ground that a unit is not appropriate unless either it makes a timely challenge to the appropriateness of the unit or that appropriateness has been placed in question by the timely petition of another party. Accordingly, there is no pending question concerning the representation rights of CSEA in the blue-collar and white-collar units.<sup>5/</sup>

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<sup>4/</sup>We note that in County of Rockland, 10 PERB ¶3098 (1977), we reached the same position as the NLRB did in Shea Chemical Corporation. We find no reason to reconsider our position at this time.

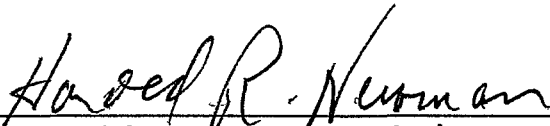
<sup>5/</sup>For a possible effect of a decision in the representation proceeding that the Highway Unit should be combined with the blue- and white-collar units, see Great Neck Board of Education, 4 PERB ¶3017 (1971).

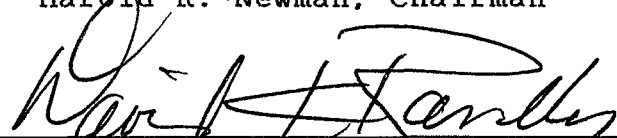
The Town's refusal to negotiate with CSEA with respect to the blue-collar and white-collar units is therefore a violation of §209-a.1(d) of the Taylor Law.

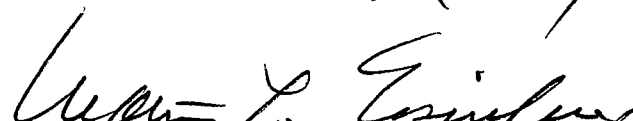
NOW, THEREFORE, WE ORDER the Town of Brookhaven to:

1. Cease and desist from refusing to meet with CSEA for the purpose of collective negotiations;
2. Negotiate in good faith with CSEA; and
3. Post the attached Notice at all locations ordinarily used to communicate with employees in its blue-collar and white-collar units.

DATED: January 30, 1986  
Albany, New York

  
\_\_\_\_\_  
Harold R. Newman, Chairman

  
\_\_\_\_\_  
David C. Randles, Member

  
\_\_\_\_\_  
Walter L. Eisenberg, Member

APPENDIX

# NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE

PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE

PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees in the blue-collar and white-collar units that the Town of Brookhaven will not refuse to meet with CSEA for the purposes of collective negotiations for the white-collar and blue-collar units, and that the Town of Brookhaven will negotiate in good faith with CSEA.

TOWN OF BROOKHAVEN

Dated .....

By .....  
(Representative) (Title)

10132

*This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.*



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of

BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK and  
UNITED FEDERATION OF TEACHERS, LOCAL 2,  
AFT, AFL-CIO,

Respondents,

-and-

CASE NO. U-8318

SHELDON SETH HAAS,

Charging Party.

---

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

Respondent,

-and-

CASE NO. U-8324

SHELDON SETH HAAS,

Charging Party.

---

SHELDON SETH HAAS, pro se

BOARD DECISION AND ORDER

On September 30, 1985, Sheldon Seth Haas filed a charge (U-8318) against the Board of Education of the City School District of the City of New York (Employer) and the United Federation of Teachers, Local 2, AFT, AFL-CIO (Union). The charge alleges that both the Employer and the Union violated their respective statutory duties to negotiate in good faith in

that the Employer substituted the City of New York (City) for itself in its negotiations with the Union and that the Union accepted such substitution and engaged in negotiations with the City rather than with the Employer.<sup>1/</sup>

On October 1, 1985, Haas filed a second charge (U-8324).

This one only complains about the Union. It alleges that the Union violated its duty to negotiate in good faith in that it failed to raise 16 specified issues in the course of its negotiations with the Employer and/or the City, or in the interest arbitration that was invoked in connection with such negotiations. Both charges were dismissed by the Acting Director of Public Employment Practices and Representation (Acting Director)<sup>2/</sup> on the ground that an individual has no standing to charge either a union or a public employer with violation of the duty to negotiate in good faith. The matter now comes to us on Haas' exceptions to the decision of the Acting Director.

We affirm the decision of the Acting Director. The Taylor Law affords certain rights and protections to public employees.

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<sup>1/</sup>Among other things, Haas alleges that the substitution of the City of New York for the Employer constitutes a violation of Education Law §2590-g.6.

<sup>2/</sup>The charges were dismissed by the Acting Director on his own motion without the Employer or the Union having been made a party to the proceedings. See §204.2 of the Rules of this Board.

These are specified in §§202 and 203 of the statute and comprise the right of employees to organize, and to be represented in the negotiation of agreements and the administration of grievances arising thereunder. Violation of these rights by public employers or employee organizations constitute violations of §209-a.1(a), (b) and (c) and §209-a.2(a) of the Taylor Law respectively.

Recognized and certified employee organizations are also granted rights under the Taylor Law. Most significantly, §204 of the statute grants them the right to engage in collective negotiations with the appropriate public employer. In order to assure that public employers negotiate with recognized or certified employee organizations, §209-a.1(d) of the Taylor Law provides that it is improper for a public employer to refuse to do so.<sup>3/</sup> Correlative with the right of recognized or certified employee organizations to negotiate with the appropriate public employer is the right of the appropriate public employer to negotiate with such employee organizations. This right is protected by §209-a.2(b).


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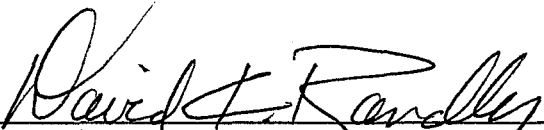
<sup>3/</sup>Section 209-a.1(e), which requires public employers to continue the terms of an expired agreement until a new agreement is negotiated, protects the rights of employee organizations; we have not yet had the opportunity to consider whether it also protects any individual rights, but Administrative Law Judges have held that it does not. Clarkstown CSD, 17 PERB ¶4600 (1984); Port Jervis CSD, 18 PERB ¶4560 (1985).

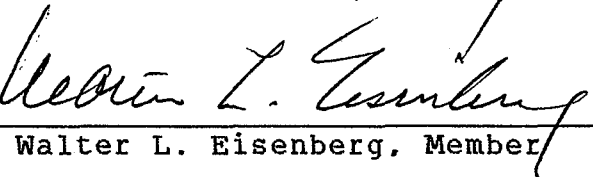
As noted by us in State of New York, 13 PERB ¶3063 (1980), the obligation that recognized or certified employee organizations and the appropriate public employers owe to each other to negotiate in good faith is exclusive; neither one owes such a duty to an individual public employee and no public employee has standing to bring a charge alleging a violation of the duty to negotiate in good faith.<sup>4/</sup> Accordingly, we affirm the decision of the Acting Director.

NOW, THEREFORE, WE ORDER that the charges herein be, and they hereby are, dismissed.

DATED: January 30, 1986  
Albany, New York

  
Harold R. Newman, Chairman

  
David C. Randles, Member

  
Walter L. Eisenberg, Member

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<sup>4/</sup>Although, in State of New York, the charging party alleged a collusive arrangement by the employer and the union, this was held not to provide the basis of a charge alleging a violation of the duty to negotiate in good faith. We did note that there are other avenues of relief available under the Taylor Law with respect to such conduct. For example, a union may be charged, under §209-a.2(a), with violating its duty of fair representation. Similarly, a collusive arrangement might violate §209-a.1(b).

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
CITY OF BUFFALO,

Respondent,

~~and~~

CASE NO. U-8017

AMERICAN FEDERATION OF STATE, COUNTY,  
AND MUNICIPAL EMPLOYEES, LOCAL 650,

Charging Party.

---

BOARD DECISION ON MOTION

We have before us a motion of the City of Buffalo, the respondent herein, to "remand this case to the Administrative Law Judge in order that new evidence might be taken . . . ." It has also indicated its intention of seeking review of the merits of the decision of the Administrative Law Judge. The American Federation of State, County, and Municipal Employees, Local 650, the charging party herein, has filed a response in opposition to the motion.

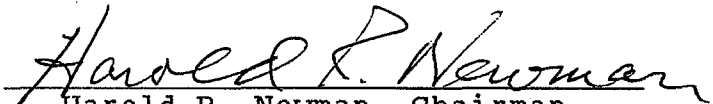
The new evidence which the respondent seeks to introduce would, at most, have some relevance to the remedial order. This might be so if this Board affirms the decision of the Administrative Law Judge which found the

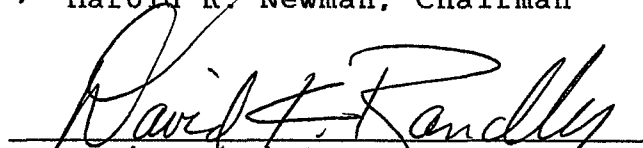
respondent to have violated §209-a.1(d) and (e) of the Taylor Law. In order to avoid delay of possible review of the merits of the Administrative Law Judge's decision, we deny the motion.<sup>1/</sup>

NOW, THEREFORE, WE ORDER that the motion herein be,

and it hereby is, denied.

DATED: January 30, 1986  
Albany, New York

  
Harold R. Newman, Chairman

  
David C. Randles, Member

  
Walter L. Eisenberg, Member

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<sup>1/</sup>In doing so, we leave open the possibility that the additional information may be solicited by this Board at some later date in connection with the fashioning of an appropriate remedy or considered by us in the enforcement of a remedial order.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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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.

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BOARD DECISION AND ORDER

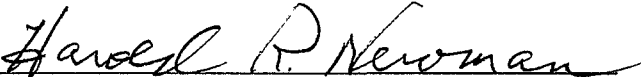
Pursuant to §212 of the Civil Service Law, the County of Suffolk has submitted an application by which it seeks a determination that its Local Law No. 4-1978, as amended on December 12, 1985 by Local Law No. 39-1985, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State. Specifically, the amendment brings the County's local law into conformity with Chapter 275 of the Laws of 1985, which extended the Taylor Law's interest arbitration provisions for an additional two years.

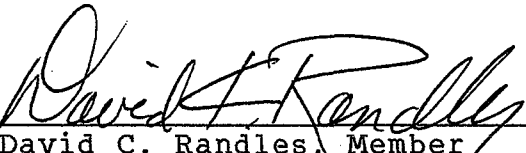
Having reviewed the application and having determined that the subject Local Law, as amended, is substantially equivalent to the provisions and procedures set forth in

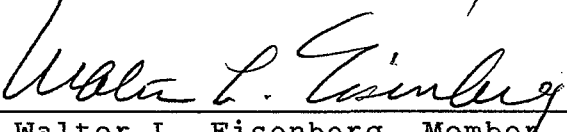
Article 14 of the Civil Service Law with respect to the State, it is

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

DATED: January 30, 1986  
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  
INCORPORATED VILLAGE OF WILLISTON PARK,  
Employer,

-and-

CASE NO. C-2992

LOCAL UNION 808, I.B.T.,  
Petitioner,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION,  
INC.,  
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 Union 808, 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.

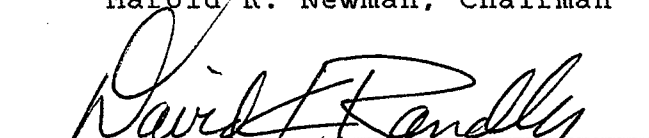
Unit: Included: Laborers, Motor Equipment Operators,  
Maintenance Man, Water Plant Operator,  
Water Serviceman, Clerk.

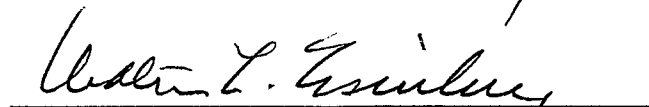
Excluded: All other employees.

~~Further, IT IS ORDERED~~ that the above named public employer shall negotiate collectively with Local Union 808, 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: January 30, 1986  
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

GUILDERLAND CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2997

GUILDERLAND CENTRAL SCHOOL DISTRICT  
EMPLOYEES ASSOCIATION, NEA/NY,

Petitioner,

-and-

GUILDERLAND CENTRAL SCHOOL DISTRICT  
UNIT OF THE CIVIL SERVICE 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 Guilderland Central School District Employees Association, NEA/NY 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 transportation, maintenance,  
custodial and cafeteria employees.

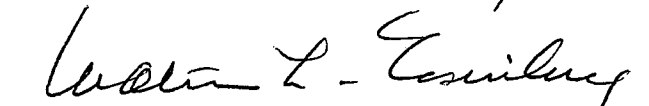
Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Guilderland Central School District Employees Association, NEA/NY 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: January 30, 1986  
Albany, New York

  
Harold R. Newman, Chairman

  
David C. Randles, Member

  
Walter L. Eisenberg, Member