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State of New York Public Employment Relations Board Decisions from April 17, 1986

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

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

Respondent,

-and-

CASE NO. U-7937

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Charging Party.

THOMAS P. RYAN, ESQ. (RAYMOND F. O'BRIEN, ESQ., of Counsel), for Respondent

COHN, GLICKSTEIN & LURIE, ESQS. (ROY N. WATANABE, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

The charge herein was filed by the Communications Workers of America, AFL-CIO (CWA). It complains that the Board of Education of the City School District of the City of New York (District) acted in violation of §209-a.1(a), (d) and (e) of the Taylor Law in that it unilaterally imposed certain background reporting obligations upon unit employees.

The material facts are the same as those addressed by us in 19 PERB ¶3015 (1986), a decision dealing with parallel charges brought by four other employee organizations which represent employees of the District. Relying upon our decision in the earlier cases, the Administrative Law

Judge (ALJ) determined that the District violated §209-a.1(d) but not §209-a.1(a) and (e). The matter now comes to us on the exception of both parties.

The District argues that the ALJ erred in finding any violation. In support of this argument, it contends that this Board lacks jurisdiction over the charge, that the charge was not timely and that the imposition of the background report obligation was a management prerogative. These contentions were all addressed and rejected by us in the earlier decision. We reject them again for the reasons set forth in that decision.

CWA has filed exceptions to so much of the ALJ's decision as dismissed its allegation that the District's conduct violated §209-a.1(e) of the Taylor Law. It asserts that the District refused to continue the provisions of Article I (3) of the parties' expired agreement even though no successor agreement had been negotiated.

Article I (3) provides:

> Nothing contained herein shall be construed to prevent any Board official from meeting with any employee organization representing employees in the unit covered by this Agreement for the purpose of hearing the views and proposals of its members, except that, as to matters presented by such organization which are proper subjects of collective bargaining, the Union shall be informed of the meeting and, as to those matters, any changes or modifications shall be made only through negotiation with the Union.

The ALJ found that this language might mean that the District was obligated to negotiate changes involving proper subjects of negotiation with CWA, which interpretation underlies the charge. However, the ALJ found that it might also mean that the District was authorized to meet with employee organizations other than CWA so long as the matter under discussion did not involve a proper subject of negotiation, in which event it could only meet with CWA, but that this contract provision imposed no duty that it meet with any organization. Finding no evidence in the record to support CWA's interpretation of the clause, the ALJ dismissed this specification of the charge.

CWA argues that the ALJ should have deferred the matter to arbitration or should have taken evidence on the meaning of the contract provision. We reject this argument. CWA bore the burden of establishing the merits of its charge. The record shows that it was given a full opportunity to do so. It cannot now be heard to say that the ALJ erred because the record does not support this specification of the charge. Moreover, there was no error in declining to defer the matter to arbitration, the ALJ not having been requested to do so.

NOW, THEREFORE, WE AFFIRM the decision of the ALJ, and WE ORDER the District to:

1. Immediately rescind and cease enforcement or implementation of Chancellor's Regulation C-115 and

any questionnaires, forms or other documents issued or interviews scheduled pursuant thereto;

2. Immediately remove and destroy all reports or other documents submitted by unit employees pursuant to Chancellor's Regulation C-115 from any files kept or maintained by the District or any of its agents, provided, however, that the District may retain information to the extent that such information is required pursuant to Education Law §2590-g(13).

3. Negotiate in good faith with CWA with respect to the terms and conditions of employment of unit employees consistent with its duty under the Act;

4. Sign and post notice in the form attached at all locations at which any affected unit employees work in places ordinarily used to post notices of information to such unit employees.

DATED: April 17, 1986
Albany, New York

Harold R. Newman, Chairman

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 negotiating unit represented by the Communications Workers of America, AFL-CIO (CWA) that we will:

1. Immediately rescind and cease enforcement or implementation of Chancellor's Regulation C-115 and any questionnaires, forms, or other documents issued or interviews scheduled pursuant thereto;

2. Immediately remove and destroy all reports or other documents submitted by unit employees pursuant to Chancellor's Regulation C-115 from any files kept or maintained by us or any of our agents, provided, however, that we may retain information to the extent that such information is required pursuant to Education Law §2590-g(13);

3. Negotiate in good faith with CWA with respect to the terms and conditions of employment of unit employees consistent with our duty under the Act.

Board of Education of the City School District of the City of New York

Dated..... **By**.....
(Representative) **(Title)**

10337

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.