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State of New York Public Employment Relations Board Decisions from July 29, 1986

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from July 29, 1986

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
WILLIAMSON CENTRAL SCHOOL DISTRICT,
Respondent,

-and-

CASE NOS. U-8350

WILLIAMSON FACULTY ASSOCIATION, NYSUT,
AFT, AFL-CIO,
Charging Party.

In the Matter of
WILLIAMSON FACULTY ASSOCIATION, NYSUT
AFT, AFL-CIO,
Respondent,

-and-

CASE NO. U-8393

WILLIAMSON CENTRAL SCHOOL DISTRICT,
Charging Party.

STANTON & VANDER BYL, ESQS. (WAYNE A.
VANDER BYL, ESQ., of Counsel), for Williamson
Central School District

RUBEN A. CIRILLO, for Williamson Faculty Association,
NYSUT, AFT, AFL-CIO

BOARD DECISION AND ORDER

The matter herein was commenced by opposing charges filed by the Williamson Central School District (District) and the Williamson Faculty Association, NYSUT, AFT, AFL-CIO (Association). At issue is the second year of a two-year

contract covering the 1984-85 and 1985-86 school years. Each party complains that the other refused to execute a collective bargaining agreement as negotiated, and demanded the execution of a document which was not the agreement reached.

FACTS

One of the major objectives of the District in negotiations was to abolish the "conventional salary schedule" and to replace it with an alternative schedule called a "matrix compensation plan". That plan called for only three incremental steps for teachers with Bachelors degrees and another three incremental steps for teachers with Masters degrees. A mediator proposed such a compensation structure but the Association responded that it would have difficulty selling it to its membership.

Mediation did not produce an agreement and the dispute went to fact-finding. At this point, the District proposed 7.6% for the first year of a two-year contract, and 8.8% for the second year. It also sought its matrix compensation plan. The Association urged a one-year contract with a 10% increase for on-step employees and the retention of the conventional salary schedule. The fact-finder recommended a one-year contract with a 6.5% raise. He explained that his reason for recommending less than the District had offered was that the offer was tied to the elimination of the salary schedule, and he was not recommending its elimination.

The District accepted the recommendation but the Association rejected it, and the parties resumed negotiations. In these negotiations the Association sought a multi-year agreement based on the conventional salary schedule while the District continued to offer a multi-year agreement that would eliminate the conventional salary schedule. After several such negotiating sessions the parties met with a conciliator on January 8, 1985. At the conclusion of this meeting, the parties prepared a memorandum of agreement which provided for a two-year term, the salary increase for the first year being 8% and for the second year 8.8%.

The relevant language of that memorandum is as follows:

84-85	8% on base \$2000 for each teacher off step
85-86	8.8% across the board percent to be calculated on base salary plus hours for each teacher B.A. \$13,500 M.A. \$14,625 Any needed adjustments will be over and above the 8.8%

* * *

All other items as agreed to in each session. Memorandum is subject to agreement on final language and salary schedules for 1984-85 and 1985-86.

The parties next met on January 14 to discuss preparation of a formal contract. They reviewed all issues, including the salary increases, and the Association representative told the District representative to prepare the salary schedules. The District representative did so

and mailed it to the Association representative, who received it on January 23, 1985. Between that date and March 1, the representatives of the parties "had a number of telephone conversations concerning the details of the contract." On March 1, the District representative mailed the Association representative what was intended to be a final draft of the contract.

On March 14, 1985, the Association representative informed the District representative that the Association had problems with the last page of the contract. This contained the 1985-86 Matrix Compensation Plan. He asked the District to eliminate it, saying that it was unnecessary because both parties had agreed that "everybody would be getting 8.8%". The District refused to eliminate the schedule.

Despite some further negotiations the parties did not reach an agreement on the language of a salary schedule and they filed the charges herein.

There are three possible conclusions:

1. The parties reached an agreement on all items which includes the matrix compensation plan, in which event there is merit in the District's charge and none in the charge of the Association.
2. The parties reached an agreement which did not include the matrix compensation plan, in which

event there is merit in the Association's charge and none in the District's charge.

3. There was no meeting of the minds, each party having had a different understanding of the agreement at the time when the memorandum of agreement was executed, in which event both charges should be dismissed.

There is nothing in the record that expressly states what the parties intended when they executed the memorandum of agreement, but on the basis of circumstantial evidence, the Administrative Law Judge (ALJ) reached the first of these conclusions. Accordingly, she dismissed the Association's charge and found that it violated §209-a.2(b) of the Taylor Law. This matter now comes to us on the Association's exceptions.

DISCUSSION

The first basis of the ALJ's decision is the chronology of events. The Association's representative received a copy of the proposed contract including the matrix compensation plan on January 23, 1985, and there is no evidence that he complained about it before March 14, 1985, even though the representatives of the parties had a number of telephone conversations concerning the details of the contract during this period. The Association argues that the evidence that there were such telephone conversations implies further

discussion about the matrix compensation plan, and that we should understand those discussions to constitute complaints. The record before us does not support this argument.

The second basis of the ALJ's decision is a finding of an implicit admission. When the Association's representative complained about the matrix compensation plan on March 14, 1985, he informed the District's representative that the people were upset by the description of the plan even though the parties understood what it meant. He asked the District to eliminate the schedule embodying the plan because it wouldn't make any difference. The ALJ found that this dialogue implied that the Association had agreed to the change represented by the draft contract prepared by the District and was only objecting to a clear statement of that change.

Finally, the ALJ found circumstantial support for her conclusion in the amount of the salary increase agreed upon. The District had proposed an 8.8% salary increase in the second year of a two-year contract as a quid pro quo for the matrix compensation plan, and the memorandum of agreement called for an 8.8% increase in the second year.

The Association argues that the ALJ erred in her conclusion of fact that the parties did not agree to continue the old salary schedule. In addition to the

inferences it would have us draw from the parties' telephone conversations between January 23 and March 21, it finds significance in the statement contained in the memorandum that it "is subject to agreement on final language and salary schedules for 1984-85 and 1985-86" (emphasis supplied). It asserts that the term "salary schedules" was never used by the parties to refer to anything other than the conventional salary schedule and therefore that it could not mean the matrix compensation plan.

This argument is not compelling. We do not understand the term "salary schedules" to have been used by the parties as a term of art for the conventional salary schedule. On the contrary, we find it equally applicable to the matrix compensation plan.^{1/}

NOW, THEREFORE, WE AFFIRM the decision of the ALJ, and

WE ORDER that the charge of the Association (U-8350) be, and it hereby is, dismissed.

WE FURTHER ORDER the Association to:

1. cease and desist from refusing to execute the collective bargaining

^{1/}The record contains no direct evidence on this point, but paragraph 16 of the parties' stipulation refers to the matrix compensation plan as "the new schedule", with the implication that this usage came from the Association's representative.

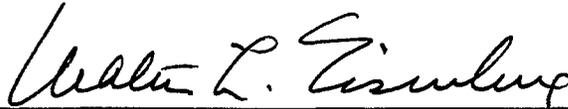
agreement submitted to it by the
Williamson Central School District
for signature;

2. execute upon request a collective bargaining agreement containing the matrix compensation plan for 1985-86;
3. negotiate in good faith with the Williamson Central School District;
4. sign and post notice in the form attached at all locations where written communications to unit employees are ordinarily posted.

DATED: July 29, 1986
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member



Jerome Lefkowitz, Member

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 of the Williamson Central School District within the negotiating unit represented by the Williamson Faculty Association, NYSUT, AFT, AFL-CIO that the Williamson Faculty Association, NYSUT, AFT, AFL-CIO:

1. will not refuse to execute the collective bargaining agreement submitted to it by the Williamson Central School District for signature;
2. will execute upon request a collective bargaining agreement containing the matrix compensation plan for 1985-86;
3. will negotiate in good faith with the Williamson Central School District.

Williamson Faculty Association,
NYSUT, AFT, AFL-CIO

Dated

By
(Representative) (Title)

10506

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

OYSTER BAY WATER DISTRICT,

Employer,

-and-

CASE NO. C-3051

LOCAL 282, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

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 Local 282, 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: Pump operators, service employees,
water servicemen, maintenance foreman,
water plant operators, and clericals.

Excluded: Supervisors, managers, guards and
account clerk acting as confidential
business manager.

10507

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 282, 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: July 29, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

VILLAGE OF CHATEAUGAY,

Employer,

-and-

CASE NO. C-3068

TEAMSTERS LOCAL 687, IBT,

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,

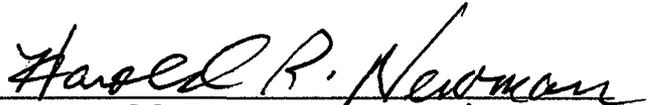
IT IS HEREBY CERTIFIED that Teamsters Local 687, IBT has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time and part-time employees of the Highway Department in the following titles: Truck Driver, Motor Equipment Operator, Heavy Equipment Operator and Laborer.

Excluded: Highway Superintendent, Clerk-Treasurer and Elected Officials.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Teamsters Local 687, 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: July 29, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
VILLAGE OF RED HOOK,

Employer,

-and-

CASE NO. C-3070

UNITED FEDERATION OF POLICE OFFICERS,
INC.,

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,

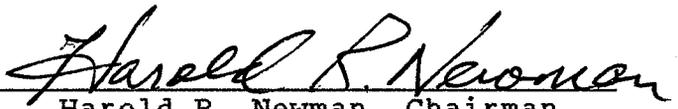
IT IS HEREBY CERTIFIED that the United Federation of Police Officers, Inc. has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

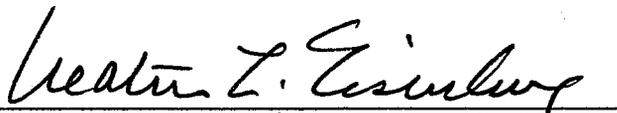
Unit: Included: All full-time and part-time police officers, police matrons and sergeants

Excluded: All other employees of the employer.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Federation of Police Officers, Inc. 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: July 29, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
COUNTY OF WASHINGTON,

Employer,

-and-

CASE NO. C-3071

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

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 Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America 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 and part-time employees employed at the Pleasant Valley Infirmary in the following titles: licensed practical nurse, infirmary aide, cook, food service helper, cleaner, typist, watchman, building maintenance mechanic, building maintenance helper, senior account clerk, account clerk.

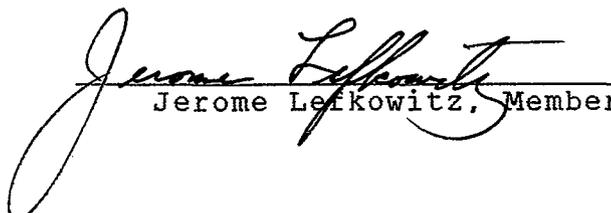
Excluded: Caseworker, seasonal employees, principal account clerk (supervisor of accounting department) and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America 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: July 29, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Leikowitz, Member

10514