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7-24-1987

## State of New York Public Employment Relations Board Decisions from July 24, 1987

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from July 24, 1987

### 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  
STATE OF NEW YORK,

Respondent,

-and-

JEFFREY J. SATZ,

CASE NOS. U-9293  
and U-9299

Charging Party.

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JOSEPH M. BRESS, ESQ., for Respondent

JEFFREY J. SATZ, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Jeffrey J. Satz (Charging Party) to the dismissal by the Director of Public Employment Practices and Representation (Director) of two charges filed against the State of New York (State) which alleged that the Department of Labor, in concert with the Department of Civil Service, violated §209-a.1(a), (c) and (d) of the Public Employees' Fair Employment Act (Act). The dismissal was based upon the Director's determination that the charges were deficient, in that they failed to state a cause of action which, even if proven, would constitute a violation of the Act.

FACTS

Charging Party filed improper practice charges against the New York State Department of Labor and New York State Department of Civil Service, in his own name, asserting that

the Respondent, over a period of years, failed to reclassify manpower programs coordinators, while creating a "New Missions" program, which has as its purpose the recruitment and retention of minority employees in the Department of Labor. Charging Party asserts that, as a result of the combination of these two developments, he, as well as other persons similarly situated, are subject to layoff in violation of their seniority rights.

Charging Party asserts that during the course of numerous labor/management meetings management representatives stated their intention to file a request for reclassification of manpower programs coordinators, but that the request was delayed in response to pressure from groups interested in affirmative action by the Department of Labor. Although Charging Party makes the allegation that he is being discriminated against to discourage his participation in the activities of his employee organization, he asserts no facts to support the claim. The charges, insofar as they allege violations of §209-a.1(a) and (c) were, accordingly, dismissed by the Director.

As to that portion of the charges alleging a violation of §209-a.1(d) of the Act, the Director dismissed the charge upon the ground that the Charging Party named himself in his individual capacity, and that only an employee organization, and not an individual, has standing to file a charge pursuant

to §209-a.1(d). In his exceptions, the Charging Party asserts that he holds certain official positions within his employee organization, the Public Employees Federation (PEF), but does not assert that he has the authority to act on behalf of his employee organization with respect to the filing of charges with this Board, or that he was acting as the agent of PEF at the time the charges were originally filed.

#### DISCUSSION

Although Charging Party asserts that he is a PEF steward, Division Council Leader and Executive Board Member, he does not assert that he has actual or apparent authority, by virtue of those official capacities, to act as PEF's agent or representative for the purpose of filing improper practice charges with this Board. In the absence of any claim that the Public Employees Federation is the charging party in fact, we find that the Director correctly dismissed so much of the charges as alleged a violation of §209-a.1(d) of the Act.<sup>1/</sup>

As to the allegations of violation of §209-a.1(a) and (c) of the Act, we agree with the Director that the charges essentially allege a job preference for minority persons in violation of Charging Party's seniority rights under the collective bargaining agreement between PEF and the State of

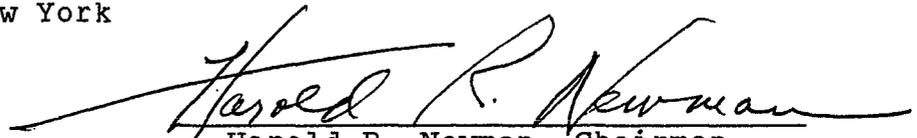
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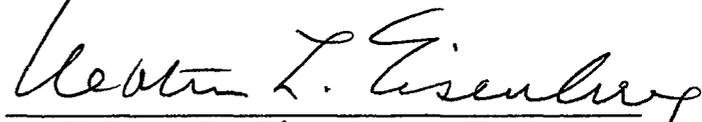
<sup>1/</sup>Brunswick CSD, 19 PERB ¶3063 (1986).

New York. We agree with the Director that breach of contract allegations do not fall within PERB's jurisdiction pursuant to §205.5(d), and we further agree that this Board is without jurisdiction of the charges insofar as they may relate to unlawful racial discrimination or preference. Additionally, Charging Party's assertion that his layoff would deprive his union constituents of his representation does not set forth a claim under either §209-a.1(a) or (c) of the Act. Finally, since he makes no factual allegations that the failure to timely reclassify the manpower programs coordinator series and the institution of the New Missions program were done for the purpose of effectuating his layoff because of anti-union animus, Charging Party's claim must be dismissed in this regard as well.

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

DATED: July 24, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
COUNTY OF NASSAU (POLICE DEPARTMENT),  
Respondent,

-and-

CASE NO. U-9108

PATROLMEN'S BENEVOLENT ASSOCIATION OF  
THE POLICE DEPARTMENT OF THE COUNTY OF  
NASSAU, INC.,

Charging Party.

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BEE, DE ANGELIS & EISMAN, ESQS. (PETER A. BEE, ESQ.  
of Counsel), for Respondent

AXELROD, CORNACHIO & FAMIGHETTI, ESQS. (MICHAEL C.  
AXELROD, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Charging Party, Patrolmen's Benevolent Association of the Police Department of the County of Nassau, Inc. (PBA) to the dismissal of its charge against the County of Nassau (Police Department) (County), which alleged that the County had violated §209-a.1(a), (b), (c) and (d) of the Taylor Law. The Administrative Law Judge (ALJ) dismissed the charge prior to hearing upon the ground that it failed to set forth allegations which, even if proven, would constitute a violation of the Taylor Law.

PBA filed a three-count charge against the County, on or about December 8, 1986. Thereafter, it requested withdrawal of Count "A" of the charge and the request was granted. As to Counts "B" and "C", the ALJ, following the pre-hearing conference, summarized the multi-page Details of Charges, without objection, as follows:

As to Count B, the gravamen of the charge is that the County unilaterally changed the description of duties it provides to the [New York State Policemen's and Firemen's] Retirement System regarding injured officers who have applied for disability retirement, in that it previously provided a description outlining duties of police officers generally, whereas it now provides a description of the "light duty" assignment to which the injured officer has been "permanently assigned" as a result of the injury. As a result, it is asserted, many applications for disability retirement which had routinely been granted are now being rejected. It is also alleged that the County has refused a demand to negotiate the contents of said "job descriptions." The right of the County to reassign injured officers to "restricted" or "light" duty is not at issue.

Under Count C, it is alleged that the County has abused the internal procedures it utilizes to determine whether, under §207-c of the General Municipal Law, an injured officer is to be certified to return to duty, and has ordered such return to duty prematurely, causing detriment to the terms and conditions of employment of the affected officers. (January 13, 1987 letter from ALJ Toomey to parties.)

The ALJ found that, as to Count B, the employer has the management prerogative to determine its method of complying with requirements placed upon it by outside agencies and its determination is accordingly not mandatorily negotiable. The ALJ therefore dismissed Count B of the charge in this regard.

As to Count C, the ALJ also found that the County has the right to determine how it will conduct its own investigation of employees on sick leave and who will be ordered to return to work, so long as employee participation is not required. The ALJ points out in his decision that "it is not alleged that the County changed existing procedures which involved employees, or that it refused to negotiate alternate procedures or the impact of the in-issue actions." (Footnote 2 [sic] of ALJ decision.)

In its exceptions, PBA characterizes Count B as a charge which alleges "a unilateral change in the description of job duties provided to the New York State Policemen's and Firemen's Retirement System for disability retirement purposes", and characterizes Count C as alleging, as violative of the Act, the actions of the employer in "unilaterally ordering an injured police officer to return to duty prior to when they otherwise are advised by their personal physician . . . ." (Exception No. 2 to ALJ decision.)

In essence, Count B asserts that the County may not alter the description of duties provided to the Retirement System without negotiation with PBA. PBA does not assert that the County does not have a duty to provide a description of job duties to the Retirement System, nor does it assert that the descriptions provided by the County are

inaccurate. It simply asserts that the County's previous practice was to provide a copy of the general job description for police officers in connection with disability retirement applications, while the current practice is to describe the actual "light" duties being performed by the specific police officer whose disability retirement application is under consideration. Presumably, the police officer-applicant has the opportunity to correct inadequacies or inaccuracies in the description of duties performed to the Retirement System as part of his/her application as well as under the hearing and review procedures of the Retirement System.

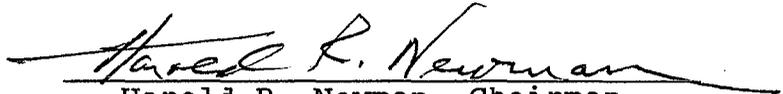
We find that the ALJ properly concluded that the County has no duty to negotiate with the PBA concerning the submissions which it makes to the New York State Policemen's and Firemen's Retirement System, this matter being within the prerogatives of management.

As to Count C, the charge, as clarified, contains no allegation that the County has changed its procedure for determining when, and under what circumstances, an injured police officer should be required to return to duty, but contends that the County is more stringently applying its procedures than it has in the past. It is well settled, as found by the ALJ, that a public employer has the right unilaterally to implement internal procedures to

insure compliance with attendance rules, where employee participation is not required. To the extent that an employer resorts to procedures already in place to insure compliance with, for example, attendance requirements, the employer is exercising a management prerogative, and has no duty to negotiate on this subject.<sup>1/</sup>

Having fully considered the exceptions of the Charging Party to the dismissal of the charge, we nevertheless conclude that the decision of the Administrative Law Judge should be affirmed, and WE THEREFORE ORDER that the charge be, and it hereby is, dismissed in its entirety.

DATED: July 24, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

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<sup>1/</sup>County of Nassau, 18 PERB ¶4597 (1985) and cases cited therein.