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State of New York Public Employment Relations Board Decisions from October 27, 1987

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from October 27, 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

In the Matter of

COUNTY OF PUTNAM

CASE NO. E-1242

Upon the Application for Designation of
Persons as Managerial or Confidential.

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Petitioner,

-and-

CASE NO. CP-109

COUNTY OF PUTNAM,

Employer.

WILLIAM D. SPAIN, JR., ESQ., PUTNAM COUNTY ATTORNEY
(THOMAS F. PURCELL, ESQ., DEPUTY COUNTY ATTORNEY), for
County of Putnam

MARJORIE E. KAROWE, ESQ., GENERAL COUNSEL, CSEA LAW
DEPARTMENT, for Civil Service Employees Association,
Inc.

BOARD DECISION AND ORDER

These matters come to us on the exceptions of the County of Putnam (County) to a decision of the Director of Public Employment Practices and Representation, dated May 28, 1987, determining that Dotty Kraus, Fiscal Technician, and Betty Barrett, Coordinator of Special Projects, are not managerial employees as defined by §201.7(a) of the Public Employees' Fair Employment Act (Act). Having so determined,

the Director, upon stipulation of the parties and a finding of a community of interest, determined that the two positions should appropriately be placed in the unit represented by the Civil Service Employees Association, Inc. (CSEA).

The two positions are both newly established. The County filed an application in Case No. E-1242 seeking their designation as managerial. CSEA filed a petition in Case No. CP-109 seeking clarification or placement of the two positions within its unit.

Both Kraus and Barrett work in the Putnam County Office for the Aging and report to William Huestis, that office's Executive Director. As Fiscal Technician for the office, Kraus is responsible for drafting grant proposals seeking State and Federal monies to fund various programs administered by the office. Such proposals must meet the State and Federal guidelines. Each proposal is reviewed by the Executive Director prior to submission. She also participates in the preparation of the budget of the office.

Barrett administers the office's Energy Conservation Program, which helps the elderly meet their energy needs. She reviews applications to determine eligibility and energy needs. She also instructs applicants in the completion of their applications. The Executive Director seeks her assistance for special projects. She also prepares grant applications. Huestis testified that he has utilized a

"management team" approach in his office. Both Kraus and Barrett have been part of his "management team".

The County sought managerial designations solely upon the asserted policy-making responsibilities of Kraus and Barrett, there being no evidence that either employee performs any duties in the areas of negotiations, or contract or personnel administration. The Director determined that the duties of Kraus and Barrett do not warrant designation of their positions as managerial.

In its exceptions, the County urges that the evidence establishes that both employees hold high-level positions having substantial discretionary responsibilities relating to the operation of their department. The County also urges that we give greater weight to the team management concept which is in place in the County's Office for the Aging.

DISCUSSION

At issue is the meaning of the phrase "formulate policy" as that term is used in §201.7(a) of the Act.^{1/} In City of Binghamton, 12 PERB ¶3099, at p. 3185 (1979), we stated:

^{1/}"Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment."

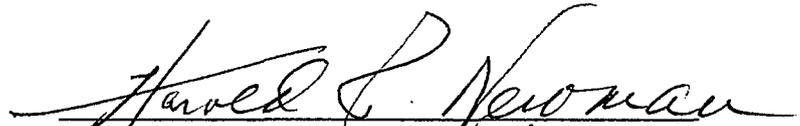
To formulate policy is to participate with regularity in the essential process involving the determination of the goals and objectives of the government involved, and of the methods for accomplishing those goals and objectives that have a substantial impact upon the affairs and the constituency of the government. The formulation of policy does not extend to ~~the determination of methods of operation~~ that are merely of a technical nature.

In applying this statutory standard, only those employees who have a direct and powerful influence on policy formulation at the highest level will be determined managerial under the formulation of policy criterion. In our view, the record does not indicate that Kraus and Barrett participate in the determination of the goals and objectives of the County at the highest level. While they have some discretionary responsibilities, their work must be viewed as determining methods of operation of a technical nature. While these two employees may be viewed by the Director of the office as part of his management team, that method of operation does not provide a basis for a managerial designation as that term is defined by the Act.

ACCORDINGLY, WE AFFIRM the decision of the Director in all respects and ORDER that the County of Putnam's application in Case No. E-1242 be, and it hereby is, dismissed in its entirety, and that the petition of the Civil Service Employees Association, Inc.

in Case No. CP-109 be, and it hereby is,
granted, and the two positions should be,
and are, appropriately placed in CSEA's
unit.

DATED: October 27, 1987
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
WAVERLY ASSOCIATION OF SUPPORT PERSONNEL,
Charging Party,

-and-

CASE NO. U-8998

WAVERLY CENTRAL SCHOOL DISTRICT,
Respondent.

JOHN B. SCHAMEL for Charging Party

R. WHITNEY MITCHELL for Respondent

BOARD DECISION AND ORDER

This matter comes to us on both the exceptions of the Waverly Central School District (District) and the cross-exceptions of the Waverly Association of Support Personnel (WASP) to the decision of an Administrative Law Judge (ALJ) which found that the District had violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) by unilaterally denying one employee (Edith Robbins, a bus driver) an unpaid leave of absence with benefits, but dismissing the charge in all other respects.

The District's exceptions assert that the record fails to support the findings of the ALJ that Robbins had requested a leave of absence without pay but with fringe benefits, and

that the request was denied by the District. The District alleges, therefore, that no unilateral change in Robbins' terms and conditions of employment occurred, and that the charge should have been dismissed in its entirety.

WASP also filed exceptions to the ALJ decision, asserting that the ALJ erred in finding that after July 31, 1986, when the parties executed a new agreement, no violation of the Act could have occurred since the new agreement covered the issue of leaves without pay. WASP alleges that the July 31 agreement neither covers the subject of leaves without pay with benefits, nor evidences a waiver of the right to negotiate such leaves; that the ALJ should have found that another employee (Sandra Dean, also a bus driver) requested and was improperly denied leave without pay with benefits after July 31; and that the ALJ erred in failing to afford monetary relief to Robbins, based upon the finding that Robbins was improperly denied such leave prior to July 31.

The record establishes that a practice had indeed existed of granting leave without pay with benefits to employees of the District upon request. The record further establishes that in June and July 1986, negotiations were underway between the District and WASP, during which the issue of leave without pay was negotiated. It is also clear that on July 31, 1986 an agreement was reached between the

parties which established a new leave without pay provision. The leave without pay provision is without benefits, and limits the number of days to be granted, giving the Superintendent authority to approve absences of up to five days, and vesting authority to grant leaves of absence for longer periods in the Board of Education. In either event, these leaves without pay are to be without benefits, pursuant to the specific language of Article 9 of the parties' new agreement.

We concur with the finding of the ALJ that the new collective bargaining agreement, effective July 31, 1986, covered the subject of leaves without pay, and that any failure to grant leaves without pay for any length of time, with or without benefits, following the July 31 agreement does not constitute a violation of §209-a.1(d) of the Act. The charge was properly dismissed, therefore, insofar as it alleged that Dean was denied such leave with benefits in September 1986, following the effective date of the new agreement.

We further find that the record establishes by a preponderance of the evidence that a unilateral change in terms and conditions of employment with respect to the granting of leaves without pay with benefits occurred prior to July 31, and with particular reference to Robbins.

The District claims that, prior to July 31, Robbins did not make a request for a leave without pay, that there was no

denial of such a request, and therefore that no change in terms and conditions of employment occurred. However, the record supports the finding that such a leave was requested by Robbins and denied by George Porter, the District's Business Administrator and former Acting Superintendent of Schools, in a conversation occurring in mid-July, 1986.^{1/}

There is no claim that Porter did not have the authority to grant or deny such leave requests, particularly in the absence of the Head Bus Driver, to whom such requests were normally addressed.

Based upon the foregoing, we find that the record supports the ALJ's finding that Robbins requested and was denied a leave of absence without pay with fringe benefits prior to the execution of a new agreement between the parties and that this denial altered the practice concerning such leave that was in effect prior to the new agreement. It is well established that the granting of leaves of absence without pay with benefits is mandatorily negotiable.^{2/}

^{1/}The respondent's exceptions are solely based upon a conversation between Robbins and Walter Cain, the Superintendent, which took place immediately following the Robbins and Porter conversation and fail to take note of Robbins' specific request to Porter.

^{2/}City of Albany, 7 PERB ¶3078 (1974).

Accordingly, we find that a unilateral change in terms and conditions of employment took place, in violation of §209-a.1(d) of the Act.^{3/}

WASP alleges that the ALJ erred in failing to afford monetary relief to Robbins, in light of the finding that a violation of §209-a.1(d) of the Act took place with respect to her leave request. However, the burden of proving damages rests upon the charging party, and the record fails to establish any entitlement to monetary relief. This is so because there is no evidence that the leave time requested by Robbins was for a period preceding July 31, when the parties' new agreement was negotiated. The decision of the ALJ is, accordingly, affirmed in this regard also.

We have considered the remaining exceptions raised by each of the parties and these are denied based upon the reasoning set forth in the ALJ decision.

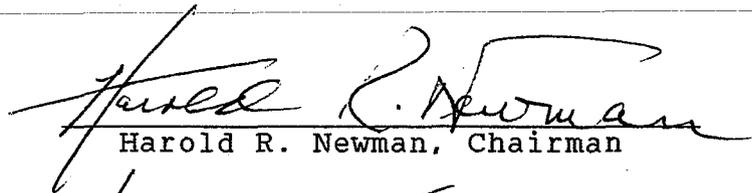
Based upon the foregoing, the ALJ decision is affirmed in its entirety, and it is hereby ORDERED that:

1. The District cease and desist from refusing to negotiate in good faith with WASP concerning terms and conditions of employment; and

^{3/}Wappingers CSD, 18 PERB ¶3039 (1985).

2. The District sign and post the attached notice at all locations customarily used to post communications to unit members.

DATED: October 27, 1987
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

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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 unit represented by the Waverly Association of Support Personnel that the Waverly Central School District:

1. Will negotiate in good faith with the Waverly Association of Support Personnel concerning terms and conditions of employment.

WAVERLY CENTRAL SCHOOL DISTRICT

Dated

By
(Representative) (Title)

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JOANNE ROONEY,

Charging Party,

-and-

CASE NO. U-9143

CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., LOCAL 102,

Respondent.

ROY J. LESTER, ESQ., for Charging Party

MARJORIE E. KAROWE, ESQ., for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Joanne Rooney (charging party) to a decision of the Administrative Law Judge (ALJ) which dismissed her charge alleging that the Civil Service Employees Association, Inc., Local 102 (CSEA) violated §209-a.2(a) and (b) of the Public Employees' Fair Employment Act (Act) when it refused to process a grievance she had filed against her employer. The parties submitted the matter for decision on a stipulated record.

FACTS

The charging party was a seasonal employee of the Long Island State Park and Recreation Commission. Her position

is included within the Operational Services Unit of the State of New York and was subject to the provisions of the collective bargaining agreement between the State of New York and CSEA applicable to that unit. On August 17, 1986, she was discharged from her position. She retained an attorney, who filed a grievance on her behalf. The employer rejected the grievance because, among other reasons, the grievance procedure under the State-CSEA collective bargaining agreement is not available to seasonal employees. That agreement provides that the disciplinary grievance procedure applies, among others, to employees who "have completed at least one year continuous service in the State classified service".

After the grievance was rejected by the employer, the charging party, through her attorney, asked CSEA to represent her at later stages of the grievance procedure. CSEA advised her attorney that it could not represent the charging party since the grievance procedure was not available to seasonal employees such as she.

The ALJ dismissed the charge in its entirety. He determined that there were no facts in the record to support a claim that CSEA's treatment of her grievance was irresponsible, grossly negligent or improperly motivated. He also determined that, insofar as the charge might raise a claim that the contract provision limiting the availability of the grievance procedure to those employees with one year

of continuous service violated the Act, the charge should be dismissed since agreement to contract terms more favorable to some employees than to others is not a per se violation of the Act. Finally, he held that individual unit members lack standing to prosecute an alleged violation of §209-a.2(b) of the Act.

In her exceptions, the charging party argues that the ALJ erred in finding that she sought CSEA's representation only after her grievance had been filed and denied at the early stages of the grievance procedure. She also urges that the one year of continuous service requirement in the State-CSEA contract discriminated against her and was a violation of CSEA's duty of fair representation.

DISCUSSION

We construe the charge as alleging that CSEA violated its duty of fair representation 1) by refusing to process a grievance on behalf of the charging party regarding her discharge, or 2) by negotiating a contract with the State containing a disciplinary grievance procedure which was not available to seasonal employees, i.e., employees who have not been employed for at least one year of continuous service.

We affirm the ALJ's holding that CSEA did not breach its duty of fair representation when it refused to process charging party's grievance. The record amply supports the ALJ's finding that the charging party did not request CSEA to

represent her in the filing and initial processing of the grievance.^{1/} After the grievance had been denied at the early stages of the grievance procedure, however, CSEA was asked, and declined, to process the grievance further. CSEA advised the charging party that, as a seasonal employee, she had no right under the contract to utilize the grievance procedure. There is no basis in this record to dispute that interpretation of the contract. The record is clear that CSEA investigated the grievance, reached a reasonable judgment that the contract language did not support the grievance and promptly so notified the charging party. There is no evidence in this record that CSEA's conduct was irresponsible, grossly negligent or improperly motivated.^{2/}

Charging party's alternative allegation, and the main thrust of her exceptions, is that by negotiating a contract with the State containing a disciplinary grievance procedure that was not available to seasonal employees, CSEA violated its duty of fair representation. Charging party asserts that, by agreeing to deny seasonal employees the protection

^{1/}Accordingly, we reject charging party's exception addressed to this finding.

^{2/}Faculty Association of Hudson Valley Community College, 15 PERB ¶3080 (1982); Civil Service Employees' Association (Kandel), 13 PERB ¶3049 (1980); Brighton Transportation Association, 10 PERB ¶3090 (1977).

of the grievance procedure, CSEA has unfairly discriminated against her in violation of §209-a.2(a).^{3/}

We have previously held that the duty of fair representation does not preclude an employee organization from reaching agreements in negotiations that are more favorable to some unit employees than to others.^{4/} The bargaining agent must be given broad discretion in balancing the interests of the unit. It would, however, be a breach of its duty of fair representation if such agreements were the result of irresponsible, grossly negligent or improperly motivated conduct.^{5/} There is no evidence in this stipulated record of such conduct. Rather, the evidence supports the conclusion that the inclusion in the contract of a requirement of one year's continuous employment as a prerequisite to the use of the contractual disciplinary

^{3/}To the extent that the charge herein can also be construed as alleging that CSEA failed in its duty to bargain in good faith in violation of §209-a.2(b) of the Act, by virtue of its agreement to exclude seasonal employees from the grievance procedure, the ALJ properly dismissed that aspect of the charge. Individual unit members lack standing to prosecute such a violation. United Federation of Teachers (Goldrich), 17 PERB ¶3015 (1984); State of New York (Robinson), 13 PERB ¶3063 (1980).

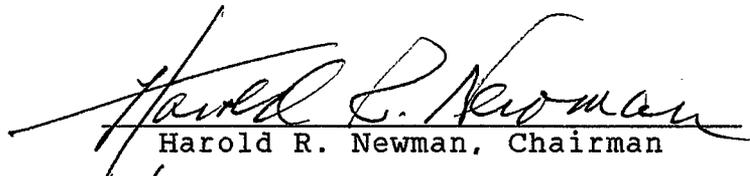
^{4/}United Federation of Teachers (Kauder), 18 PERB ¶3048 (1985); State of New York, 14 PERB ¶3043 (1981); Plainview-Old Bethpage CSD, 7 PERB ¶3058 (1974).

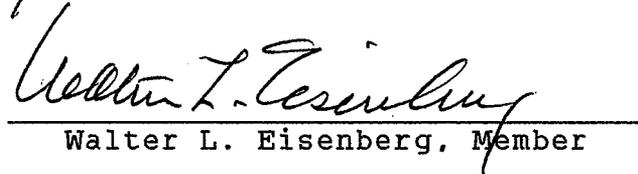
^{5/}See Plainview-Old Bethpage CSD, supra.

grievance procedure was the result of the normal give and take of good faith negotiations. Accordingly, we determine that CSEA did not breach its duty of fair representation.

NOW, THEREFORE, WE AFFIRM the decision of the ALJ and ORDER that the charge be, and it hereby is, dismissed in its entirety.

DATED: October 27, 1987
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

DOWNSVILLE TEACHERS' ASSOCIATION,
NEA/NY,

Charging Party,

-and-

CASE NO. U-8933

DOWNSVILLE CENTRAL SCHOOL DISTRICT,

Respondent.

ROBERT E. CLEARFIELD, ESQ. (JANET AXELROD, ESQ., of
Counsel), for Charging Party

ANTHONY MASSAR, for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Downsville Central School District (District) from an Administrative Law Judge's (ALJ) decision which found that the District had violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) by refusing to negotiate a demand made by the Downsville Teachers' Association, NEA/NY (Association) that the District apply for Excellence-In-Teaching (E.I.T.) funds, consisting of State monies made available to school districts solely for the purpose of improving teachers' salaries. The ALJ found that the decision to

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apply for E.I.T funds is a mandatory subject of negotiation, and that the District had refused to negotiate the application for such funds with the Association, following the Association's demand that it do so. That the District made a unilateral determination not to apply for E.I.T. funds is not in dispute.

By decision dated October 13, 1987, this Board, in Elmira City School District, 20 PERB ¶3054 (1987), held that the decision to apply for E.I.T. funds is indeed a mandatory subject of negotiation upon the following grounds: first, the decision to apply for E.I.T. funding (which is specifically and exclusively intended for improvement in teacher salaries) directly and materially affects terms and conditions of teachers' employment; second, the New York State Legislature, in enacting §3602(27)(a) of the Education Law to authorize E.I.T. funds, expressed no intent to exclude the subject of applying for E.I.T. funding from bargaining; and, finally, because the application for E.I.T. funds does not relate primarily to the employer's mission, there is no articulated public policy which weighs in favor of declaring the decision to apply for such funds to constitute a management prerogative, notwithstanding its effect on terms and conditions of employment.

Our decision in Elmira City School District is dispositive of the issue of whether the duty to negotiate the application for E.I.T. funding is mandatory. Accordingly, we deny the District's exceptions relating to the ALJ's finding that such a duty exists.

The remainder of the District's exceptions relate to the question of whether the Association made a demand to negotiate the application decision and whether the District rejected such demand.

The ALJ found that the Association met its burden of proving that it made a demand to negotiate the application of E.I.T. funds, based upon two related communications. The first communication consisted of a brief conversation between the Association's President, Arthur Merrill, and District Superintendent Weston Hyde in April 1986, when Merrill stated to Hyde that "we would have to look at E.I.T. funds, this was another issue we were going to have to discuss and negotiate." Hyde's response was that he "was waiting [for] the guidelines from the Commissioner [of Education] before we could proceed with any further discussion."

Thereafter, on May 8, 1986, Merrill wrote the following memorandum to Hyde and the Board of Education:

On behalf of the Downsville Teachers' Association I request that negotiations be opened to determine payment of "Excellence-In-Teaching" (categorical aid) to the faculty of Downsville Central School.

We would be available to meet at the earliest possible mutually agreeable date to initiate the negotiations.

Although, on May 8, the Board of Education met at its regularly scheduled meeting and reviewed the memorandum from Merrill, the memorandum was before the Board for information purposes only, and not for any action. Accordingly, no response was made at that meeting to Merrill's demand for negotiations.

Thereafter, on June 13, 1986, Hyde issued a written response to Merrill's May 8 demand for negotiations, as follows:

The Board of Education last evening gave further consideration to your request on behalf of the Downsville Teachers Association to open negotiations regarding the distribution of the "Excellence-In-Teaching" monies. The Board decided that it will not make application for this money.

I will be most happy to sit down with you and discuss, in detail, the reasons for this decision. Please see me at your earliest convenience so that we might establish a mutually agreeable time for this to occur.

We concur with the finding of the ALJ that Merrill's May 8 letter is reasonably read as a demand to negotiate the whole issue of E.I.T. funds, encompassing within it a demand to negotiate both the application for and the distribution of such funds. If, as contended by the District, the Association had sought only to negotiate the distribution of

funds, Merrill's May 8 demand would have been not only premature (since no decision whether to apply for the funds at all had yet been made), but would have been superfluous as well, since an affirmative statutory duty is placed upon school districts to engage in separate negotiations with teacher representatives for the distribution of funds which have been received. A demand for negotiation of the distribution by the teacher representatives would not, therefore, be required.

To the extent that the District asserts that the May 8 demand was unclear and ambiguous, it had some responsibility to express its uncertainty as to the scope of the demand to the Association, so as to afford the Association the opportunity to clarify the demand, before taking any unilateral action in relation to the subject of "E.I.T. funds", which is clearly covered by the demand. We do not construe the failure of the Association President, at the May 8 Board of Education meeting, to further describe and delineate his demand as fatal to the Association's claim since there is no evidence that he was asked to clarify the demand, and since the demand was accepted for informational purposes only and not for any action at that time. Furthermore, such clarification would normally take place in the context of negotiating sessions rather than in the context of a public Board of Education hearing so that the

Association's failure to volunteer clarification of the demand in that context was not unreasonable.

Based upon the foregoing, we find that the Downsville Central School District violated §209-a.1(d) of the Act when, by memorandum dated June 13, 1986 it rejected the

Association's demand that the District negotiate whether to apply for E.I.T. funding, and the decision of the ALJ is accordingly affirmed.^{1/}

In light of our findings, it is not necessary for us to reach or decide the District's remaining exceptions.

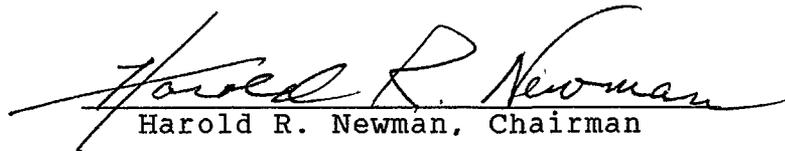
IT IS THEREFORE ORDERED that the Downsville Central School District:

1. Forthwith negotiate in good faith with the Downsville Teachers' Association, NEA/NY a decision to apply for the State aid apportionment provided by Education Law, §3602 (27) for the 1986-87 school year, and, upon demand, for subsequent school years for which such funding is available;

^{1/}The fact that, subsequent to the District's violation of the Act, an improper practice charge was filed which, as we find, mischaracterizes Merrill's demand to negotiate as a demand to "separately negotiate distribution", does not preclude the exercise of our own judgment as to the scope of the demand, and does not, contrary to the District's claim, constitute an admission of Merrill's intent to limit his demand, since it was prepared and submitted by another Association representative.

2. Sign and post the attached notice at all work locations ordinarily used to communicate with unit employees.

DATED: October 27, 1987
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, 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 represented by the Downsville Teachers' Association, NEA/NY, that the Downsville Central School District:

- (1) Will forthwith negotiate in good faith with the Downsville Teachers' Association, NEA/NY, a decision to apply for the State aid apportionment pursuant to Education Law, 3602(27) for the 1986-87 school year, and, upon demand, for subsequent years for which such funding is available.

.....
DOWNSVILLE CENTRAL SCHOOL DISTRICT

Dated

By
(Representative) (Title)

11284

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

SOUTHERN ADIRONDACK SUBSTITUTE TEACHER
ALLIANCE, NYSUT, AFT, AFL-CIO,

Petitioner,

-and-

CASE NO. C-3187

HADLEY-LUZERNE CENTRAL SCHOOL DISTRICT,

Employer.

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 Southern Adirondack Substitute Teacher Alliance, NYSUT, AFT, AFL-CIO, 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.

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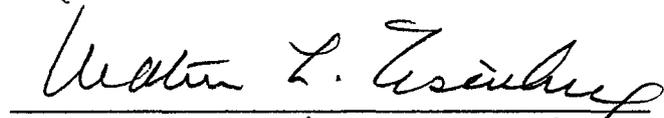
Unit: Included: All per diem substitute teachers and nurses issued a notice of reasonable assurance of continuing employment by the employer as defined in §201.7(d) of the Public Employees' Fair Employment Act (Act).

Excluded: All other employees of the employer.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Southern Adirondack Substitute Teacher Alliance, NYSUT, AFT, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: October 27, 1987
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PINE BUSH CENTRAL SCHOOL DISTRICT,

Employer/Petitioner,

-and-

CASE NO. C-3143

SCHOOL AND LIBRARY EMPLOYEES UNION,
LOCAL #74, SERVICE EMPLOYEES INTER-
NATIONAL UNION, AFL-CIO,

Intervenor.

BOARD DECISION AND ORDER

On November 7, 1986, the Pine Bush Central School District (District) filed a petition seeking to fragment certain supervisory employees (central kitchen cook-managers) from a bargaining unit of 38 cafeteria workers represented by the School and Library Employees Union, Local #74, Service Employees International Union, AFL-CIO (SEIU), which opposed the petition. By decision of the Director of Public Employment Practices and Representation (Director), dated April 3, 1987, the petition was granted,^{1/} the parties' stipulating that if fragmentation were granted, there should be a supervisory unit defined as follows:

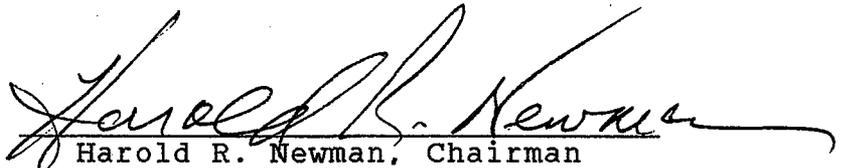
Included: Central kitchen cook-managers

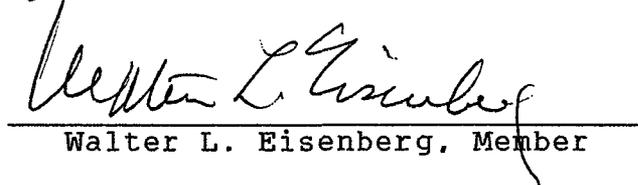
Excluded: All other employees.

^{1/} 20 PERB ¶4030 (1987). Neither party has appealed this decision.

Inasmuch as SEIU indicated a desire to represent such a unit, the Director allowed it to intervene and conducted a secret mail-ballot election among the employees in the stipulated unit on September 28, 1987. The two ballots cast rejected representation by SEIU. Accordingly, SEIU can not be certified as the bargaining agent for the above described supervisory unit and the question concerning representation raised by its intervention is dismissed.

DATED: October 27, 1987
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member