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State of New York Public Employment Relations Board Decisions from March 28, 1989

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from March 28, 1989

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CHAUTAUQUA COUNTY EMPLOYEES UNIT 6300,
CHAUTAUQUA COUNTY LOCAL 807, CSEA, INC.,
LOCAL 1000, AFSCME, AFL-CIO,

Charging Party,

-and-

CASE NO. U-9087

COUNTY OF CHAUTAUQUA,

Respondent.

LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER & JAMES
(RONALD L. JAROS, ESQ., of Counsel), for Charging
Party

ROBERT M. LAUGHLIN, COUNTY ATTORNEY (MICHAEL J.
SULLIVAN, ESQ., of Counsel), for Respondent

BOARD DECISION AND ORDER

This matter comes to us on a single exception of the County of Chautauqua (County) to an Administrative Law Judge (ALJ) decision which upheld an improper practice charge filed by the Chautauqua County Employees Unit 6300, Chautauqua County Local 807, CSEA, Inc., Local 1000, AFSCME, AFL-CIO (CSEA). The charge alleges that the County violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) by failing to negotiate in good faith^{1/} and by unilaterally subcontracting bargaining unit work prior to the conclusion

^{1/}The County does not except to the ALJ's finding that it failed to negotiate in good faith. Therefore, we do not address it herein.

of the negotiating process. In particular, the charge alleges, and the ALJ found, that after making the decision to contract out certain laundry services on or about May 2, 1986, the County, on or about August 8, 1986, subcontracted a ~~portion of the laundry services exclusively performed by~~ bargaining unit employees at the Chautauqua County Home (Home), a nursing facility operated by the County. Both the decision to subcontract and the execution of a contract occurred during the negotiating process and prior to a legislative determination, which was issued on or about November 12, 1986.

The County's exception is as follows:

The County faced a compelling reason to act unilaterally at the time it acted, despite various extensions in time prior to the implementation. The administrative law judge was misled by confusion over the time requirements due to a three-year construction schedule. The need to replace boilers as part of a three-year capital project created a compelling circumstance which required immediate action - thus the subcontract.

In reaching her determination, the ALJ considered the County's defense that its unilateral action concerning a mandatory subject of bargaining was justified by compelling circumstances. In doing so, the ALJ relied upon evidence which establishes that the County sought to realize savings in its operational costs by replacing its boiler system, which, in turn, would lower repair costs and increase fuel

efficiency. The evidence further establishes that its decision to replace its heating system required the County to make a determination concerning whether, and to what extent, it would continue to perform laundry services in-house, since ~~continuation of these services would necessitate some~~ modification and additional cost in the installation of the new heating system. No evidence was presented to establish that the existing system was not functional or that the need for the new heating system was imminent. The testimony showed only that the system was old, required frequent repair, and was not as cost effective as more modern systems.

The ALJ found that the monetary savings sought by the County to be realized by early implementation of its decision to subcontract laundry services did not constitute a compelling reason for unilateral action prior to the conclusion of the negotiating process otherwise required by the Act.^{2/} In so finding, the ALJ considered that although the County made the decision, on May 2, 1986, to contract out laundry services, and entered into such a contract on August 8, 1986, allegedly in order to enable it to install a new heating system during 1987, the heating system was not in fact installed until 1988, contradicting the County's assertion that its May 1986 decision was essential to the construction schedule it had previously established and

^{2/}See County of Genesee, 18 PERB ¶3016 (1985).

needed to follow, and with which it could not allow negotiations to interfere.

Although the County's exception asserts that "[T]he need to replace boilers. . . created a compelling circumstance which required immediate action . . .", it points to no record evidence which might prove a need to replace boilers at the time originally scheduled, in support of this assertion.

Having failed to establish an operational need to take unilateral action, the County's compelling need defense rests entirely upon economic savings, which the ALJ found, and we agree, does not by itself rise to the level of compelling need as we have defined it.^{3/}

We find that the ALJ properly rejected the County's compelling need^{4/} defense to the unilateral action charge and that the decision finding a violation of §209-a.1(d) of the

^{3/}The ALJ properly concluded, based upon prior decisions of this Board, that economic reasons do not constitute compelling need sufficient to avoid obligations under the Act (Rush-Henrietta CSD, 21 PERB ¶3023 (1988) (appeal pending); Webster CSD, 20 PERB ¶3064 (1987), conf'd, ___ A.D.2d ___ (4th Dep't Feb. 9, 1989); Saratoga Springs School District, 11 PERB ¶3037 (1978), conf'd, 68 A.D.2d 202, 12 PERB ¶7008 (3d Dep't 1979), motion for leave to appeal denied, 47 N.Y.2d 711, 12 PERB ¶7012 (1979)).

^{4/}Compelling need has been construed by this Board as constituting a demonstrated emergency, as to which all other options have been exhausted. See Wappingers CSD, 19 PERB ¶3037 (1986); New York City Transit Authority, 19 PERB ¶3043 (1986); Addison CSD, 16 PERB ¶3099 (1983).

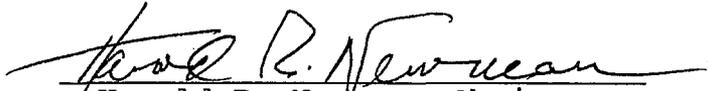
Act should be and hereby is affirmed.

IT IS THEREFORE ORDERED that the County:

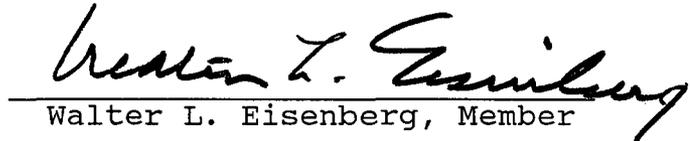
1. Cease and desist from unilaterally subcontracting the exclusive work of employees within the bargaining unit represented by CSEA to nonunit personnel;
2. Restore all laundry service unit work to unit employees; in the event it is impossible to restore unit work, make comparable work available to all displaced employees without loss of work to any current unit employee, or pay unit employees all lost wages and benefits until such unit work becomes available;
3. Pay unit members any lost wages or benefits suffered as a result of subcontracting unit laundry service work, plus interest at the legal rate, less interim earnings;
4. Negotiate in good faith with CSEA concerning the terms and conditions of employment of unit employees; and

5. Sign and post the attached notice at all locations customarily used to communicate with unit employees.

DATED: ~~March 28, 1989~~
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 of the County of Chautauqua in the unit represented by the Chautauqua County Employees Unit 6300, Chautauqua County Local 807, CSEA, Inc., Local 1000, AFSCME, AFL-CIO, that the County of Chautauqua:

1. Will not unilaterally subcontract the exclusive work of employees within the bargaining unit represented by CSEA to nonunit personnel;
2. Will restore all laundry service unit work to unit employees; in the event it is impossible to restore unit work, make comparable work available to all displaced employees without loss of work to any current unit employee, or pay unit employees all lost wages and benefits until such unit work becomes available;
3. Will pay unit members any lost wages or benefits suffered as a result of subcontracting unit laundry service work, plus interest at the legal rate, less interim earnings; and
4. Will negotiate in good faith with CSEA concerning the terms and conditions of employment of unit employees.

COUNTY OF CHAUTAUQUA

Dated

By
(Representative) (Title)

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

YATES COUNTY DEPUTY SHERIFF'S ASSOCIATION,

Charging Party,

-and-

CASE NO. U-9676

COUNTY OF YATES,

Respondent.

GAGE, GAGE, VAN HORN & ROESCH, ESQS. (WALTER C.
GAGE, ESQ., of Counsel), for Charging Party

ROBERT C. FOSTER, ESQ., for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the County of Yates (County) to an Administrative Law Judge (ALJ) decision which held that the County violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) by unilaterally changing the amount of the required co-payment from \$2.00 to \$5.00 under a prescription drug rider to the medical insurance plan applicable to employees represented by the Yates County Deputy Sheriff's Association (Association).

On the basis of a stipulated record, the ALJ found that the County had provided unit employees with Blue Cross/Blue Shield (BC/BS) health insurance coverage since 1953. Since 1976, collective bargaining agreements entered into between the parties have included the following language concerning health insurance:

At the written request of any employee, the County shall pay one hundred (100) per cent of such employee's Blue Cross and Blue Shield medical insurance, for individual or family coverage, whichever is requested, provided such insurance is ~~carried through the Yates County Blue Cross and Blue Shield group contract.~~

In August 1976, the County unilaterally instituted a prescription drug rider, which included a \$2.00 employee co-payment requirement, to the BC/BS coverage being provided to unit employees. The rider and co-payment continued in effect until July 1, 1987, when, pursuant to notification of an increase from BC/BS, the co-payment was increased from \$2.00 to \$5.00.

The County's exceptions assert that, although the prescription drug rider benefit is not referenced in the collective bargaining agreement between the parties, it is an integral part of the standard health insurance plan provided by the County and is a "standard part of the policy". However, no evidentiary basis is provided for this assertion, nor is there any record evidence to support the County's claim that, whether the prescription drug rider was in fact a part of the standard policy or not, it was treated as such by the parties. Furthermore, the stipulated record states that "[t]he \$2.00 prescription co-payment rider was unilaterally implemented by the County in August 1976 in conjunction with its unilateral provision to the unit of a prescription rider to the [BC/BS] coverage" (emphases added).

Based upon the foregoing, we concur with the ALJ's findings that the prescription drug rider was a benefit provided as a matter of past practice by the County, and was not a matter covered by the parties' collective bargaining agreement; that the ~~increase in the co-payment from \$2.00 to \$5.00 is a mandatory~~ subject of bargaining; that the County has failed to meet its burden of proving that the prescription drug rider is encompassed within and is a part of the standard BC/BS insurance policy;^{1/} and that the County unilaterally, albeit pursuant to a change in the offering by BC/BS,^{2/} increased the amount of the employee's co-payment from \$2.00 to \$5.00, altering the benefit it had established by past practice.

The County's exceptions are, accordingly, denied and the ALJ

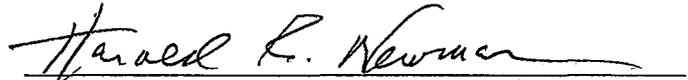
^{1/}Compare Unatego CSD, 20 PERB ¶3004, at 3011 (1987), conf'd sub nom. Unatego Non-Teaching Ass'n. v. PERB, 134 A.D. 2d 62, 21 PERB ¶7002 (3rd Dep't 1987), motion for leave to appeal denied, 71 N.Y. 2d 805, 21 PERB ¶7010 (1988), in which this Board found, on facts specific to that case, that "the past practice established by the District was its participation in the State Employees Health Insurance Plan, whatever the specific benefits, costs and administrative machinery that plan happened to entail. The charging parties have presented nothing to us which would warrant the conclusion that the specific benefits and administrative machinery available through the Statewide Plan and the GHI option on December 31, 1985, should be considered the past practice for the purposes of this case." We accordingly there found no unilateral change in terms and conditions of employment when the District changed from a GHI Plan to the Empire Plan.

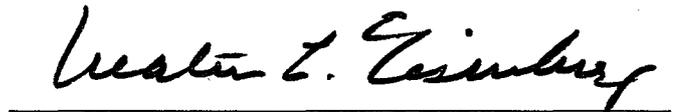
^{2/}The ALJ found as fact that the \$2.00 co-payment had not been entirely eliminated from the offerings of BC/BS and accordingly found that impossibility of continued provision of the benefit was not a defense to the duty to negotiate which otherwise exist. These findings are not the subject of exceptions and are thus not now before us.

decision finding that the County violated §209-a.1(d) of the Act is affirmed. The County is hereby ordered to:

1. Immediately make available to unit employees the BC/BS \$2.00 co-payment prescription drug rider, or an equal benefit, as it existed prior to July 1, 1987;
2. ~~Make unit employees whole for any loss or diminution in benefits caused by the elimination of said drug rider and the substitution of the \$5.00 co-payment prescription drug rider;~~
3. Negotiate in good faith with the Association regarding the terms and conditions of employment of unit employees; and
4. Sign and post notice in the form attached at all locations normally used for communication to employees in the unit.

DATED: March 28, 1989
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 in the unit represented by the Yates County Deputy Sheriff's Association that the County of Yates :

1. Will immediately make available to unit employees the Blue Cross/Blue Shield \$2.00 co-payment prescription drug rider, or an equal benefit, as it existed prior to July 1, 1987;

2. Will make unit employees whole for any loss or diminution in benefits caused by the elimination of said rider and the substitution of the \$5.00 co-payment prescription drug rider; and

3. Will negotiate in good faith with the Association regarding the terms and conditions of employment of unit employees.

.....COUNTY OF YATES.....

Dated

By
(Representative) (Title)

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SCHENECTADY POLICE BENEVOLENT
ASSOCIATION,

Charging Party,

-and-

CASE NO. U-10242

CITY OF SCHENECTADY,

Respondent.

GRASSO & GRASSO, ESQS. (JANE K. FININ, ESQ., of
Counsel), for Charging Party

BUCHYN, O'HARE & WERNER, ESQS. (JOSEPH BUCHYN, ESQ.,
of Counsel), for Respondent

BOARD DECISION AND ORDER

The City of Schenectady (City) excepts to an Administrative Law Judge (ALJ) decision which found that the City violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it refused to negotiate certain demands made by the Schenectady Police Benevolent Association (PBA). The City, in defense of its refusal to negotiate, asserts that because the parties have proceeded to interest arbitration pursuant to §209.4 of the Act, its duty to bargain concerning language for a successor agreement to the parties' expired agreement has ceased. The City also argues that, in any event, the demands made by the PBA are nonmandatory.

The ALJ held that, with the exception of one demand (which is not at issue before us, because it is not the subject of exceptions), the demands made by the PBA are mandatory, and further held that, notwithstanding the pendency of an interest arbitration proceeding, the City is under a continuing duty to negotiate mandatory subjects of negotiation, unless waived.

In its exceptions, the City alleges numerous errors of fact and law and requests dismissal of the charge.

Facts

The sequence of events leading up to the instant charge is long and complicated, having begun with the expiration of the parties' agreement on December 31, 1985. On that date, the City presented demands to the PBA for a successor agreement. The City's proposal was to delete numerous sections of the parties' prior agreement, which it then listed on the last page of its 14-page proposal as "Non-Mandatory Items". The parties apparently engaged in negotiations during 1986, declaring impasse and proceeding through mediation during the latter part of the year. In late December 1986, the PBA filed a petition for interest arbitration with this Board. Immediately thereafter, on January 8, 1987, the City filed an improper practice charge, objecting to the arbitrability of those PBA demands identified in its December 31, 1985 proposal. The PBA

subsequently withdrew its interest arbitration petition, and the Director of Public Employment Practices and Representation (Director) dismissed the City's charge (Case No. U-9180) upon the ground that it was moot (20 PERB ¶4517 [1987]).

The City thereafter filed its own interest arbitration petition on March 9, 1987. The petition included demands for new contract language, continuation of some existing contract language, and deletion of those articles set forth in the City's December 31, 1985 list of "Non-Mandatory Items." Thereafter, on or about June 22, 1987, the City filed an improper practice charge against the PBA, asserting its violation of §209-a.1(d) of the Act by its insistence upon pursuing at interest arbitration demands which the City maintained were nonmandatory. That charge, Case No. U-9509, resulted in an ALJ decision (20 PERB ¶4636 [1987]), which was affirmed by this Board (21 PERB ¶3022 [1988]). In that case, several of the PBA's demands were found to be nonmandatory and thus not properly before the interest arbitration panel. At the pre-hearing conference in that matter, however, the PBA sought to revise its demands to delete the allegedly nonmandatory material. The City objected to any revision, asserting a right to a determination upon the language of the demands submitted by the PBA to interest arbitration. The ALJ sustained the objection, a ruling which we affirmed, upon

the ground that the City was entitled to a determination on the PBA's submitted demands. The Board made no determination, however, concerning whether the PBA could submit further or revised demands to the City on these matters.

Following the Board's affirmance in Case No. U-9509, which held several of the demands challenged by the City to be nonmandatory, the PBA submitted revised demands on the same subjects to the City for negotiation. The City rejected the demand to negotiate and the instant charge ensued.

Exceptions

Among its exceptions, the City asserts that the ALJ erroneously concluded as a matter of fact that the first notice which the PBA had of the City's claim that the at-issue demands were nonmandatory was on or about June 22, 1987, when the City filed improper practice charge Case No. U-9509. The record, in fact, establishes that the City made known to the PBA its view that the at-issue articles were nonmandatory on at least two occasions well before the interest arbitration process actually got underway. These two occasions were on December 31, 1985, when the City originally submitted its proposals for a successor agreement and identified the at-issue articles in its "Non-Mandatory Items" list and when it filed its improper practice charge on January 8, 1987, in response the PBA's subsequently withdrawn

interest arbitration petition. Between the withdrawal of the interest arbitration petition and March 9, 1987, when the City filed its own interest arbitration petition, the parties were still engaged in negotiations.

~~Based upon the foregoing evidence, we grant so much of~~
the City's exception as asserts that the decision below incorrectly found that the PBA was unaware of the City's position concerning the allegedly nonmandatory items until June 22, 1987, when the City filed its post-interest arbitration petition improper practice charge. The effect of this finding on the outcome of the case is discussed infra.

The City also excepts to the ALJ finding that the PBA "sought to amend its demands" in Case No. U-9509 by deleting language it believed was being challenged by the City. The City asserts that the demands made by the PBA at the pre-hearing conference in Case No. U-9509 and submitted in writing thereafter were "new", basing its assertion, in part, upon a finding made by us in 21 PERB ¶3022, at footnote 2, where we stated

The ALJ found the proposed changes to constitute substantive changes in the PBA's negotiating demands rather than mere clarifications of those demands. We agree with this finding.

The City misconstrues our findings in this regard. While the demands offered by the PBA contain substantive revisions, they cannot be construed as raising new or

different subjects of bargaining, as would be the case if a party sought to withdraw a demand concerning one subject and substitute for it a demand on an entirely different subject which had not previously been negotiated. Indeed, the City does not appear to suggest that the parties did not engage in negotiations concerning interrogations, schedules and tours of duty, procedures for determining participation in professional, educational and training courses, and the other matters which were the subject of Case No. U-9509. The demands offered by the PBA at and after the pre-hearing conference in that matter, and in the matter now before us, are fairly characterized as substantive revisions of existing demands.

Notwithstanding the City's claim that the PBA is barred by the doctrines of collateral estoppel and/or res judicata from presenting revised demands to it, our earlier holding was limited to a determination that the PBA was not entitled as a matter of right to alter its demands because the alterations which it proposed were substantive in nature and not mere clarifications. To reach the opposite conclusion would render moot the improper practice charge which the City had filed and upon which it sought a determination that the Act had been violated and relieve PBA of all responsibility for its prior conduct. This approach is inappropriate to the enforcement and administration of the Act.

The issue now between the parties is a different one: whether, following a finding that demands submitted to interest arbitration are nonmandatory, a party may correct the found deficiencies and seek negotiations on those matters during the ~~period of time when the interest arbitration proceeding is~~ pending. Because we did not reach that issue in the prior case, the City's claims of collateral estoppel and res judicata must fail.

We affirm the ALJ's determination, on the specific facts of this case, that the City violated §209-a.1(d) of the Act when it refused to negotiate the PBA's revised demands due to the pendency of interest arbitration proceedings. We do so notwithstanding our finding that the PBA indeed was aware of, and had the opportunity to alter, language in its demands which the City correctly contended was nonmandatory. In this regard, the fact that the City, at the outset of negotiations, made known its view that certain articles in the prior collective bargaining agreement contained nonmandatory language is of little moment.^{1/} Of more significance is the fact that the PBA was placed on notice in January 1987, of the City's objection to

^{1/}We have often stated the view that negotiations which are broad in scope are to be encouraged, and that parties should even be encouraged to negotiate subjects which have been held to be nonmandatory if it is in their interest to do so. To that end, it is not until the final stages of the dispute resolution processes provided by the Act that an improper practice charge concerning insistence upon nonmandatory subjects will lie. See, e.g., Peekskill CSD, 16 PERB ¶3075 (1983); Monroe-Woodbury CSD, 10 PERB ¶3029 (1977).

the assertedly nonmandatory language by the filing of the improper practice charge in Case No. U-9180. However, the PBA had no procedure available to it at that time to seek a Board determination concerning the negotiability of the demands asserted by the City to be nonmandatory.^{2/} Thus, the only way in which the PBA could have avoided the instant situation of seeking negotiation following the filing of an interest arbitration petition on demands which have been revised to conform with this Board's findings, would have been to simply accede to the City's assertions that the language was nonmandatory prior to interest arbitration. Such a result is unreasonable and is not required by the Act, notwithstanding the clear policy in favor of focused negotiations and the finality in the resolution of labor disputes.

This result is contemplated by earlier decisions of this Board, such as Croton Police Association, 16 PERB ¶3100, 3167 (1983), where we stated:

As noted by the hearing officer, however, the direction that the Association withdraw the at-issue demands from arbitration does not preclude it from demanding negotiation thereon and in the event of impasse, to bring those demands to arbitration.

^{2/}Effective May 7, 1987, we enacted rules authorizing the filing of declaratory ruling petitions, to enable either party to raise scope of bargaining questions under the Act (Part 210, Rules of Procedure). This procedure was not, however, available to the PBA between the declaration of impasse and submission of the City's interest arbitration petition, which occurred on or about March 9, 1987.

See also Town of Amherst, 13 PERB ¶3010, 3014 (1980), where we stated:

Finally, we agree with the hearing officer that, inasmuch as the amended demands approved by us may not have been negotiated by the parties in that form, the Club pursued a proper course, consistent with the policies of our statute, in first requesting the Town to negotiate the two demands, as amended, before submission to the arbitration panel. [footnote - See Town of Haverstraw, 9 PERB ¶3063. If, after such opportunity for negotiations, the parties are unable to agree, the items should be referred to the previously designated arbitration panel for final disposition.]

We also conclude that the City's exception which alleges that this Board lacks jurisdiction over the instant improper practice charge because of the pendency of the interest arbitration proceeding must be denied. As the ALJ found, this Board has exclusive nondelegable jurisdiction to hear and decide improper practice charges, and such jurisdiction will not be transferred to an arbitration panel or elsewhere. (See Act §205.5(d).) In the instant case, the issues sought by the PBA to be negotiated are not issues which are currently (or even properly) before the interest arbitration panel at this time. Under the particular circumstances of this case, the City may not refuse to bargain the at-issue revised demands. The parties are reminded, however, that, in view of the availability since May 1987 of a procedure for filing a petition for a declaratory ruling, a greater opportunity (and responsibility) may lie with both parties to adjudicate the duty to bargain their respective demands before the interest

arbitration stage is reached, so as to avoid the necessity for delay in the achievement of finality contemplated by interest arbitration.

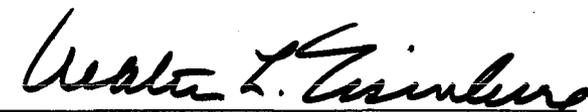
We have reviewed the remaining exceptions filed by the City, which primarily relate to the ALJ's findings that the PBA's revised demands are mandatory subjects of bargaining. For the reasons set forth in that decision which are deemed to be incorporated herein, we find the City's exceptions to be unpersuasive. The ALJ decision is accordingly affirmed and IT IS HEREBY ORDERED that the City of Schenectady:

1. Negotiate in good faith with the PBA with respect to the demands here found to be mandatory subjects of negotiation; and
2. Execute and post the attached notice at all locations ordinarily used by it to communicate information to unit employees.

DATED: March 28, 1989
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 Schenectady Police Benevolent Association that the City of Schenectady will negotiate in good faith with the Schenectady Police Benevolent Association with respect to the demands here found to be mandatory subjects of negotiation.

City of Schenectady

Dated

By
(Representative) (Title)

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

SUFFOLK COUNTY ASSOCIATION OF
MUNICIPAL EMPLOYEES, INC.,

Charging Party,

-and-

CASE NO. U-9211

COUNTY OF SUFFOLK,

Respondent.

ROGERS & CARTIER, P.C., for Charging Party

RAINS & POGREBIN, P.C., for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the County of Suffolk (County) to an Administrative Law Judge (ALJ) decision which found that the County violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when, on or about January 9, 1987, it issued a memorandum prohibiting employees in its Real Estate Department from engaging in outside employment with any real estate firm, title company, appraisal consultant, or to otherwise sell real estate, and requiring the surrender of real estate licenses held by Real Estate Department employees to the County. The Suffolk County Association of Municipal Employees, Inc. (Association) asserts that the January 9, 1987 memorandum reflects a unilateral change in terms and conditions of employment, while the County asserts that the memorandum does not reflect

a change, because it merely reflects existing County law and policy under its Code of Ethics. Alternatively, the County asserts that if a change was made in the extent to which outside employment is prohibited, the change constitutes a ~~management prerogative dictated by ethical considerations.~~

The ALJ found that the Suffolk County Charter, at §A30-1 thereof, prohibits conflicts of interest.^{1/} This County Code of Ethics is administered and interpreted by a Board of Ethics which renders advisory opinions on request.

In December 1984, the Board of Ethics issued an advisory opinion which provides, in part, as follows:

The Board believes that for any employee, in his or her outside employment, to deal in a professional manner, or to provide information regarding any property in which the County may or does have an interest violates §A30-1.a of the Code of Ethics (sic) and must not continue.

The ALJ found, among other things, that the January 9, 1987 memorandum issued by the County reflects a unilateral change in terms and conditions of employment only if it exceeded the scope of the Board of Ethics opinion, which

^{1/}Section A30-1, Suffolk County Charter, prohibits employees of the County from being interested, directly or indirectly, in any contract or business or professional dealings with the County, acting as attorney, agent, broker, representative or employee in business or professional dealings with the County for any person or corporation in which they have a direct or indirect interest; and engaging in any private employment or rendering of services for private interest when such employment or service creates a conflict or impairs the proper discharge of their official duties.

prohibits involvement in property transaction in which the County "may or does" have an interest and which represents the current practice. The ALJ concluded that the language of the Board of Ethics opinion is properly construed as requiring, as a condition of prohibition, the existence of an actually identifiable interest in property, and that the County's blanket prohibition against engagement by its Real Estate Department employees in any outside employment involving private real estate transactions exceeds the scope of the Board of Ethics opinion and the requirements of the Code of Ethics, as interpreted by that Board, and constituted a change which had to be negotiated. The ALJ further found that no independent public policy had been established which would justify the exclusion from negotiations of the issue of outside employment which exceeds the scope of the County law and interpretive advisory opinions thereof, and accordingly concluded that the County unilaterally altered terms and conditions of employment by prohibiting all outside employment of Real Estate Department employees, in violation of §209-a.1(d) of the Act.

We agree with the ALJ's determination that no public policy has been established which exceeds the scope of the County Charter and interpretive opinions issued by the Board

of Ethics.^{2/} However, it is our determination that the language of the Board of Ethics opinion, establishing that County employees may not engage in real estate transactions in which the County "may or does have an interest" is ~~properly construed as prohibiting engagement in transactions~~ in which the County does or may reasonably have an interest. It is not necessary, under this construction, for the County to establish the existence of a specific identifiable interest in a specific parcel of property in which the County employee might be involved in the course of his or her outside employment, but the County must establish that a reasonable potential exists that the County will have an interest in the property in the future.

Under ordinary circumstances, the County's assertion that it may have an interest in each and every parcel of property located within the County of Suffolk, and possibly even outside of it in adjoining Nassau County, would far exceed the scope of reasonableness. However, the uncontroverted testimony establishes that, not only does the County annually acquire approximately 7,000 parcels of property through nonpayment of taxes and through condemnation proceedings and other governmental purposes, but it has

^{2/} Board of Education of the City School District of the City of New York, 19 PERB ¶3015 (1986), conf'd, Board of Education of the City School District of the City of New York v. PERB, 21 PERB ¶7001 (Sup. Ct. Alb. Cty. 1988) (appeal pending, A.D. 3d Dept).

recently engaged in significant new acquisition programs. The first of these, begun in 1986, involves a \$60 million acquisition program to purchase open space properties. Additionally, in 1987, the County enacted a bond issue for approximately \$571 million to enable the County to acquire, by various methods, environmentally sensitive property within the County. In order to accomplish these acquisitions, a not-for-profit corporation acting on behalf of the County is involved in structuring exchanges of property, including some exchanges both outside the County of Suffolk, as well as within the County. This acquisition program will result in the acquisition for the County of approximately 32,000 acres of environmentally sensitive properties, sometimes as the result of exchange of open space, industrial, or possibly residential, properties. On the basis of this testimony, it appears that the County may reasonably have an interest in acquiring not only environmentally sensitive property, but any and all types of property as a means to the acquisition of environmentally sensitive property. Under these circumstances, and for the duration of these two special acquisition programs, any and all property within the County may reasonably come within the ambit of properties in which the County has an interest.

Based upon this specific and particularized factual situation, it is our determination that the blanket

prohibition against engagement in real estate transactions in the course of outside employment by its Real Estate Department employees falls within the existing prohibition against outside employment in relation to properties in which the County may or does have an interest and thus does not give rise to a unilateral change in terms and conditions of employment. To this extent, the ALJ's decision is reversed.

Notwithstanding the foregoing holding, it is our determination that, as found by the ALJ, the seizure by the County of Real Estate Department employees' real estate licenses violates §209-a.1(d) of the Act. This is so because the seizure of licenses, while an expedient means of enforcing the Code of Ethics, is not the only means available to the County to achieve such enforcement and, as held by the ALJ, exceeds the scope of implementation of existing Code provisions, by imposing a new restriction.

IT IS THEREFORE ORDERED that the County:

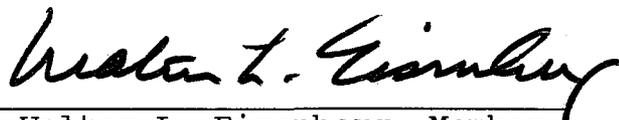
1. Immediately rescind and cease enforcement or implementation of so much of its memorandum of January 9, 1987 as directs the surrender of real estate licenses to the Commissioner of the Department of Real Estate;
2. Immediately release and return all real estate licenses surrendered pursuant thereto by any employee to the County or

its agents, whether under the direct or indirect control of the County or its agents;

3. Negotiate in good faith with the Association with respect to the terms and conditions of employment of unit employees consistent with its duty under the Act; and
4. Sign and post a 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 employees.

DATED: March 28, 1989
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 unit represented by the Suffolk County Association of Municipal Employees, Inc., that the County of Suffolk:

1. Will immediately rescind and cease enforcement or implementation of so much of its memorandum of January 9, 1987 as directs the surrender of real estate licenses to the Commissioner of the Department of Real Estate;
2. Will immediately release and return all real estate licenses surrendered pursuant thereto by an employee to the County or its agents, whether under the direct or indirect control of the County or its agents; and
3. Will negotiate in good faith with the Association with respect to the terms and conditions of employment of unit employees consistent with its duty under the Act.

COUNTY OF SUFFOLK

Dated

By
(Representative) (Title)

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

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION NO. 529,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Petitioner,

-and-

CASE NO. C-3395

TOWN OF VETERAN,

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 Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 529, 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 the representative of the employees in such unit who are members^{1/} of

^{1/} Because of the absence of agreement to "exclusivity" by the Town, the right of representation is on a members only basis.

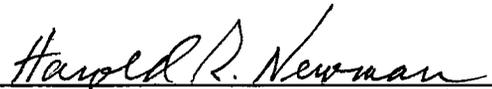
the Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 529, International Brotherhood of Teamsters for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Laborers, truck drivers, equipment operators, mechanics and deputy highway superintendent.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 529, International Brotherhood of Teamsters. 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: March 28, 1989
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL UNION NO. 316,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF
AMERICA, AFL-CIO,

Petitioner,

-and-

CASE NO. C-3438

VILLAGE OF LIVERPOOL,

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,

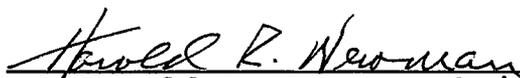
IT IS HEREBY CERTIFIED that the Teamsters Local Union No. 316, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Motor Equipment Operator I, Maintenance Worker I, Maintenance Worker II and Laborer.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local Union No. 316, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 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: March 28, 1989
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL 687,

Petitioner,

-and-

CASE NO. C-3441

TOWN OF ELLISBURG,

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 Teamsters Local 687 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: Truck drivers, motor equipment operators, heavy equipment operators, mechanics, and laborers, employed in the highway department.

Excluded: Highway superintendent, part-time, seasonal, casual employees and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 687. 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: March 28, 1989
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HEMPSTEAD BUILDINGS & GROUNDS ASSOCIATION,

Petitioner,

-and-

CASE NO. C-3447

HEMPSTEAD UNION FREE SCHOOL DISTRICT,

Employer,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, NASSAU LOCAL 830,
HEMPSTEAD UNIT,

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 Civil Service Employees Association, Inc., Local 1000, AFSCME, Nassau Local 830, Hempstead Unit 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 custodial and maintenance personnel.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME, Nassau Local 830, Hempstead Unit. 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: March 28, 1989
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MICHAEL SPILKEN and DEIRDRE BARRY,

Petitioners,

-and-

CASE NO. C-3465

MONTICELLO CENTRAL SCHOOL DISTRICT,

Employer,

-and-

SCHOOL AND LIBRARY EMPLOYEES LOCAL UNION
NO. 74, SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding^{1/} 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 School and Library Employees Local Union No. 74, Service Employees International Union, AFL-CIO has been designated and selected by a majority of the

^{1/} The proceeding was instituted by a petition seeking decertification of the intervenor as negotiating agent.

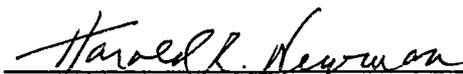
employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time and part-time bus drivers, mechanics, mechanic helpers, head mechanics, dispatchers and inventory/mechanical clerks.

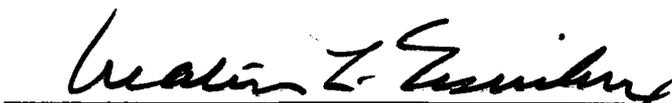
Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the School and Library Employees Local Union No. 74, Service Employees International Union, 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: March 28, 1989
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HYDE PARK CENTRAL SCHOOL DISTRICT
UNITED EMPLOYEES, NEA/NY, NEA,

Petitioner,

-and-

CASE NO. C-3466

HYDE PARK CENTRAL SCHOOL DISTRICT,

Employer,

-and-

HYDE PARK SECRETARIAL AND CLERICAL UNIT,
DUTCHESS COUNTY, LOCAL 867, CIVIL SERVICE
EMPLOYEES ASSOCIATION, LOCAL 1000, AFSCME,
AFL-CIO,

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 Hyde Park Central School District United Employees, NEA/NY, NEA 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.

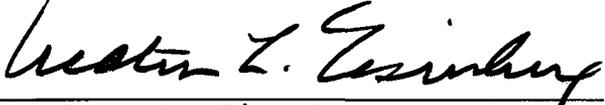
Unit: Included: All secretarial and clerical employees as well as teaching assistants and teaching aides and monitors.

Excluded: ~~Secretary to the Business Administrator, Secretary to the Assistant Superintendent for Curriculum & Instruction, Secretary to the Superintendent of Schools, Administrative Assistant to the Superintendent of Schools, Secretary to the Supervisor of Transportation, Secretary to the Supervisor of Buildings and Grounds, Secretary to the Director of Pupil Personnel Services, and all other employees.~~

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Hyde Park Central School District United Employees, NEA/NY, NEA. 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: March 28, 1989
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member