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6-6-2007

State of New York Public Employment Relations Board Decisions from June 6, 2007

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from June 6, 2007

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

THE CITY OF NEW YORK

Petitioner/Employer

CASE NO. DR-119

Upon a Petition for Declaratory Ruling

PROSKAUER ROSE LLP (M. DAVID ZURNDORFER, NEIL H. ABRAMSON and DANIEL ALTCHER, of counsel), and MAYRA BELL, ESQ. for Petitioner/Employer

GLEASON, DUNN, WALSH & O'SHEA (RONALD G. DUNN of counsel) and MICHAEL T. MURRAY, ESQ. for Police Benevolent Association of the City of New York, Inc.

O'DONNELL, SCHWARTZ, GLANSTEIN & LILLY, LLP. (JOEL C. GLANSTEIN, of counsel) for Lieutenants Benevolent Association

JOHN M. CROTTY, ESQ., for New York State Union of Police Associations

GREENBERG BURZICHELLI GREENBERG P.C. (HARRY GREENBERG, of counsel), for Captains Endowment Association, Inc.

DAVIS & HERSH, LLP (DAVID A. DAVIS, of counsel), for the Suffolk County Police Conference

INTERIM BOARD DECISION AND ORDER

On December 6, 2006, the City of New York (City) filed a declaratory ruling petition, pursuant to PERB's Rules of Procedure (Rules) §210.1, that, as amended, sought a determination regarding whether seven demands made by the Police Benevolent Association of the City of New York, Inc. (hereinafter PBA) in its interest arbitration petition constitute non-mandatory subjects of collective bargaining. Thereafter, the PBA filed a response to the City's petition for a declaratory ruling.

On May 3, 2007, Administrative Law Judge Philip L. Maier issued a

Recommended Declaratory Ruling and Decision concluding that two of the PBA's seven demands were properly submitted to interest arbitration and that the remaining five demands were not properly submitted. Both the PBA and the City have filed exceptions to the Recommended Ruling and Decision pursuant to Rule §210.3. Following the filing of exceptions, four employee organizations have filed separate motions with the Board requesting leave to appear as *amici curiae* regarding various issues raised in the pending exceptions. Neither the City nor the PBA have opposed the motions.

DISCUSSION

Although PERB's Rules and Regulations do not set forth an explicit procedure regarding applications by parties who wish to seek leave to submit an *amicus curiae* brief, the Board has historically granted motions by parties seeking such relief and in some cases has invited *amicus* briefs relating to particular pending legal issues.¹ Nevertheless, the lack of a codified system regarding *amicus* status may have deterred organizations in the past, without a specific invitation from the Board, from making appropriate applications for leave with the Board.

The participation by *amici curiae* can have the positive impact of enhancing the deliberations by highlighting particular legal points and explaining the potential impact of the Board's ultimate determination.² In particular, such participation can be a constructive tool for insuring an examination of the State-

¹ See, *Greenburgh No 11 Union Free Sch Dist*, 32 PERB ¶3024 (1999); *Patchogue-Medford Union Free Sch Dist*, 30 PERB ¶3041 (1997); *Johnstown Police Benevolent Assn*, 25 PERB ¶3085 (1992); *Arlington Central Sch Dist*, 25 PERB ¶3001 (1992).

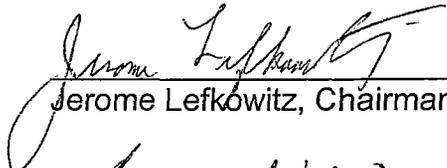
² *Niesig v Team I et al.*, 76 NY 2d 363, 375-376 (1990).

wide implications regarding the resolution of a particular issue under the Taylor Law. At the same time, the submission of an *amicus* brief that merely regurgitates the arguments and points of law by a party before the Board will not generally enhance deliberations. Instead, such briefs can result in unnecessary delays in the issuance of a final Board decision and may constitute an unneeded administrative burden.

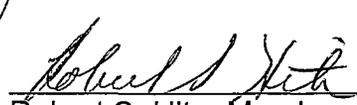
Based on the foregoing, the separate motions by the Lieutenants Benevolent Association, the New York State Union of Police Associations, the Captains Endowment Association, Inc. and the Suffolk County Police Conference for leave to file *amicus* briefs are hereby granted on the condition that such briefs identify applicable law or arguments that might otherwise escape the Board's consideration and state how those arguments are relevant to the Board's disposition of the exceptions.

IT IS, THEREFORE, ORDERED that an original and four copies of the *amici* briefs may be filed with the Board within five working days following receipt of this decision with proof service on the City and the PBA. The City and the PBA shall have seven working days upon receipt of the *amici* briefs to file supplemental briefs with the Board limited exclusively to responding to arguments raised in the *amici* briefs.

DATED: June 6, 2007
Albany, New York



Jerome Lefkowitz, Chairman



Robert S. Hite, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF WEBB ADMINISTRATORS' ASSOCIATION,

Petitioner,

-and-

CASE NO. C-5648

TOWN OF WEBB UNION FREE 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 Town of Webb Administrators' Association 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.

Included: K-12 Building Principal, Chairperson for Committee on Special Education, Head Custodian, Transportation Supervisor and Cafeteria Manager.

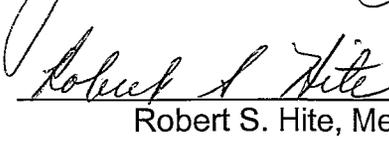
Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Town of Webb Administrators' Association. 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: June 6, 2007
Albany, New York



Jerome Lefkowitz, Chairman



Robert S. Hite, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

**INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 17,**

Petitioner,

-and-

CASE NO. C-5655

TOWN OF CONCORD,

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,

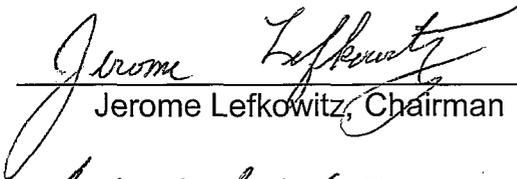
IT IS HEREBY CERTIFIED that the International Union of Operating Engineers, Local 17 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

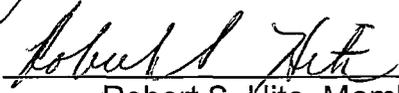
Included: All full-time motor equipment operators employed in the Town of Concord Highway Department.

Excluded: Highway Superintendent, Deputy Highway Superintendent, Crew Chief and confidential employees as defined by law.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the International Union of Operating Engineers, Local 17. 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: June 6, 2007
Albany, New York


Jerome Lefkowitz, Chairman


Robert S. Hite, Member