

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2C-7/16/74

BOARD OF EDUCATION OF THE CITY OF NEW YORK, :

Employer, :

-and- : Case No. C-1069

UNITED FEDERATION OF TEACHERS, LOCAL 2, NYSUT, :

AFT, NEA, AFL-CIO, :

Petitioner. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that UNITED FEDERATION OF TEACHERS, LOCAL 2, NYSUT, AFT, NEA, AFL-CIO

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit:

Included: All employees in the title of supervisor of school safety.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with UNITED FEDERATION OF TEACHERS, LOCAL 2, NYSUT, AFT, NEA, AFL-CIO

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 16th day of July, 1974.

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2D-7/16/74

TOWN OF BABYLON, :

Employer, :

-and-

LOCAL 100, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, : CASE No. C-0955

Petitioner, :

-and-

LOCAL 237, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, :

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 LOCAL 237, INTERNATIONAL BROTHERHOOD OF TEAMSTERS has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit:

Included: auto serviceman  
automotive equipment operator  
automotive mechanic  
building inspector  
building inspector, senior  
carpenter  
cleaner  
cement finisher  
custodial worker  
dog warden  
dog warden, senior  
draftsman  
draftsman, senior  
driver-messenger  
electrician  
engineering aide  
engineering aide, senior  
engineering aide, principal  
engineering inspector  
engineering inspector, senior  
fire prevention inspector  
fire prevention inspector, senior  
foreman  
foreman, custodial  
foreman, field  
foreman, highway

Unit:

Included: foreman, highway construction  
foreman, laborer  
foreman, maintenance  
heavy equipment operator  
head groundsman  
housing inspector  
laborer  
laborer, dog shelter-kennelman  
lead man  
maintenance man  
maintenance-custodial  
matron  
motor equipment operator  
painter  
plumbing inspector  
radio operator  
recreation aide-senior citizens  
recreation leader  
recreation specialist  
scale house operator  
sewer plant operator  
stock clerk  
store keeper  
watchman  
water plant operator

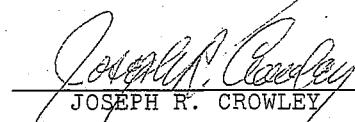
Excluded: General highway foreman, plant foreman, chief of security maintenance supervisor, chief building inspector, deputy building inspector, seasonal employees and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with LOCAL 237, INTERNATIONAL BROTHERHOOD OF TEAMSTERS and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 16th day of July 1974.



ROBERT D. HELSBY, CHAIRMAN



JOSEPH R. CROWLEY



FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-7/16/74

In the Matter of

HARRISON ASSOCIATION OF TEACHERS

Upon the Charge of Violation of Section  
210.1 of the Civil Service Law,

BOARD DECISION

-and-

AND ORDER

In the Matter of

BOARD OF EDUCATION, HARRISON CENTRAL  
SCHOOL DISTRICT,

CASE NOS. D-0084

&

U-0980

Respondent,

-and-

HARRISON ASSOCIATION OF TEACHERS,

Charging Party.

This matter comes to us on exceptions of the Harrison Association of Teachers to a hearing officer's determination that the Board of Education of the Harrison Central School District did not commit an improper practice or engage in extremely provoking conduct when bypassing the Association and making an offer directly to individual striking teachers. No exceptions were filed to other parts of the hearing officer's decision by either the Association or the Board of Education. These included determinations that:

1. The Harrison Association of Teachers violated CSL §210.1 by engaging in a strike and that it did not attempt to prevent the strike nor to shorten it except to the extent that it was willing to participate in negotiations to reach a settlement.

3407

2. The strike extended over 21 school days from September 5, 1973 through October 5, 1973 inclusive; on each of the days approximately 200 of 260 schoolteachers were absent and the strike interrupted the educational process within the school district.
3. The Board of Education delegated sufficient authority to its negotiator to satisfy its obligation to negotiate in good faith.
4. Although there may have been some misunderstanding on what the Board of Education's negotiator proposed on September 25, 1973, the Board of Education did not renege on any such proposal.
5. The Board of Education and its representatives did not engage in "surface bargaining", that is, going through the motions of negotiations while not intending to reach an agreement.
6. The Board of Education violated CSL §209-a.1(d) by refusing to negotiate in good faith when it delayed in responding to the Association's original request to open negotiations that had been made on November 1, 1972 until January 9, 1973 when it first appointed its negotiator.

With respect to the matter raised by the Association's exceptions, we first note that it raises no issue of extreme provocation. The alleged circumstances that gave rise to the exception occurred more than two weeks after the strike began. We also confirm the determination of the hearing officer that the Board of

Education did not commit an improper practice in bypassing the Association and making an offer directly to individual striking teachers. Although we find that the hearing officer misstated the date on which the Board of Education put into writing the statement:

"It is the unanimous decision of the Board of Ed that any or all teachers may return to work under the terms of the 1972-1973 contract and the board will continue to negotiate on all matters.

J. Salvatore"

that misstatement of the date is not material. The material circumstances are that, while a teacher strike was in progress, the Board of Education held a special public meeting concerning the strike, during the course of which someone in the audience asked if the teachers could return to work under the old contract. The above-quoted language was the affirmative response of the Board. The issuance of such a statement at a public meeting was not, under the circumstances, a violation of the Board of Education's duty to negotiate in good faith.

ACCORDINGLY, we confirm the determinations of the hearing officer, and

WE ORDER that:

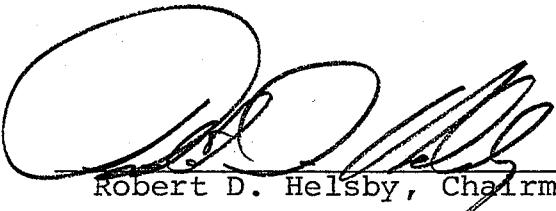
1. The Board of Education, Harrison Central School District cease and desist from unduly delaying responses to proper requests for negotiation meetings, and
2. Affirmatively, in future negotiations, meet at reasonable times for the purpose of negotiating an agreement.

3409

3. In all other respects the improper practice charge filed by the Harrison Association of Teachers should be, and hereby is, dismissed.

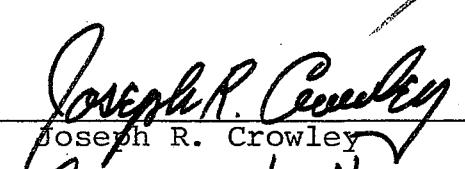
IT IS FURTHER ORDERED that the rights of the Harrison Association of Teachers to membership dues deduction pursuant to §208.1(b) of the Civil Service Law on behalf of its members shall be forfeited for a period of twelve (12) months commencing on the first practicable date and said rights shall not be restored until the Harrison Association of Teachers pledges that it will not strike, as required by the provisions of Civil Service Law §210.3(g).

Dated: Albany, New York  
July 16, 1974



Robert D. Helsby, Chairman

Joseph R. Crowley



Joseph R. Crowley

Fred L. Denson



Fred L. Denson

2460

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-7/16/74

In the Matter of

BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, :

Respondent, : BOARD DECISION  
AND ORDER.

- and -

PROFESSIONAL STAFF CONGRESS-CUNY, : Case No. U-0514

Charging Party. :

The Professional Staff Congress-CUNY (PSC) filed, on May 1, 1972, an improper practice charge against the Board of Higher Education of the City of New York (BHE). The charge alleged a violation of §209-a.1(d) of the Public Employees' Fair Employment Act (Act). The gravamen of the charge was that the BHE unilaterally froze, on April 24, 1972, all salary increments to be effective on and after September 1, 1972. At the first day of hearing, the PSC amended its charge to allege a violation of §209-a.1(a). The PSC alleged that an announcement of the unilateral freeze of salaries on April 24, 1972 was an interference, restraint and coercion of employees' rights. After the hearing, the hearing officer found no predisposition on the part of the BHE to evade its duty to negotiate in good faith and dismissed the §209-a.1(d) charge. The hearing officer, however, concluded that the BHE did violate §209-a.1(a).

PSC filed exceptions to the dismissal of the §209-a.1(d) charge and the BHE filed exceptions to the finding of a §209-a.1(a) violation. We have considered the exceptions filed by PSC and find them lacking in merit and affirm the dismissal of the §209-a.1(d) charge.

3441

We find merit in the exceptions filed by BHE and reverse the hearing officer's finding of a violation.

STATEMENT OF FACTS

In January, 1969 this Board certified the Legislative Conference (LC) as the negotiating representative of the tenured faculty members of the BHE and certified the United Federation of College Teachers (UFCT) as the negotiating representative of the lecturers employed by BHE. In 1971, UFCT filed a petition with this Board seeking to combine the two units into a single unit. In this proceeding LC sought to maintain the existing two units, while the BHE contended that there should be three units. In April 1972, while the representation proceeding was pending, LC and UFCT merged into a new entity, namely, PSC. Following this merger and on April 17, the UFCT moved that PSC be substituted as petitioner in the pending proceedings and, upon the granting of this motion, both the UFCT and LC withdrew from the proceedings. Further, on April 17, PSC requested that BHE grant it recognition in a combined unit.

On April 20, the BHE forwarded a petition to this Board wherein it formally requested that there be three units.

However, in April the BHE proposed a procedure whereby the employees, in a secret ballot, would determine the unit question as well as the selection of a negotiating agent. This proposal was accepted by PSC on May 4, 1972. The representation election as proposed by the BHE was held on June 7, and on June 16, PSC was certified by this Board as the negotiating agent of a single unit of the instructional staff of the BHE.

Meanwhile, on April 13, 1972, the Collective Bargaining Committee of the BHE prepared a resolution, which read as follows:

3412

"Notwithstanding the indicated annual salary, hourly and/or semester hour rates shown in this report to be effective on September 1, 1972 and/or January 1, 1973 for both initial appointments and as incremented, in cases of reappointments to instructional staff titles, *BHE approval is authorized only to the extent of the appropriate salary and/or rate legally and contractually payable as of August 31, 1972.*

These provisions shall be deemed to be applicable to all 1972-73 appointments and reappointments contained in the Chancellor's Reports and previously approved by the BHE." (emphasis added)

The stated purpose of this resolution was that the BHE should not be committed to specific salary schedules for September 1, 1972 in the light of pending negotiations. The Collective Bargaining Committee of the BHE recommended this resolution to the BHE, which adopted it at its next meeting on April 24, 1972. This resolution was not widely distributed, but only to those who normally receive copies of the minutes of the BHE. On May 1, 1972 PSC filed its improper practice charge. On May 5, 1972 PSC, in its official newspaper, published a front page story with the headline, "Increment Cuts Fought By PSC". Thereafter, on May 11, 1972, the BHE distributed a flyer to the entire instructional staff which reads as follows:

*"Its a Fact On April 24, 1972 a resolution, in which no faculty member was financially hurt, was placed before the Board of Higher Education by the Honorable David Ashe solely in his capacity as Chairman of the Board Committee which had previously adopted it. All that the resolution does is avoid complication and error by insuring Board of Higher Education approval of recommended appointments, reappointments and promotion for the academic year 1972-73. No increment was frozen. No salary was frozen.*

The Current contractual salary scales expire with the LC/UFCT agreements on August 31, 1972. New salaries will have to be negotiated. The forthcoming negotiated salaries will obtain during the next contract period. Logically, it is impossible for the Board of Higher Education to approve salary figures when no one knows what they will be. Not one person has suffered any financial loss as a result of the Board's resolution--nor will anyone." (emphasis in the original)

DISCUSSION

The hearing officer found that the promulgation of the April 24 resolution and the filing of a "redundant" representation petition on April 20 was an attempt on the part of the BHE to coerce the employee members of PSC to accept the BHE's position for three units, thus unlawfully interfering with, restraining and coercing employees in the exercise of their protected rights in violation of §209-a.1(a). The hearing officer found that the purport of the BHE's conduct was, "If you want a salary increase as of September 1st, you better agree to my three unit position." We do not feel that the evidence in this record supports the conclusion of the hearing officer nor that the above was the purport of the BHE's conduct. The hearing officer's conclusion would have validity only if the purpose of BHE's filing the petition on April 20 was to delay the unit determination and thus, in turn, delay the onset of negotiations. The record does not support a finding that such was the purpose or intent of BHE in filing said petition. Rather, the record supports a finding that in April the overall conduct of BHE was to expedite not delay the resolution of the representation question. In filing the petition, the BHE requested an immediate election and implemented this request by seeking the adoption of a procedure whereby the unit question could be resolved in the election.

As to the April 24 resolution itself, a fair reading would be that the BHE declined at that time to commit itself to a payment of a future increment pending negotiations. It was not a refusal to pay any increment that may become due on September 1 or thereafter. This construction of the resolution is buttressed by the flyer distributed by BHE on May 11

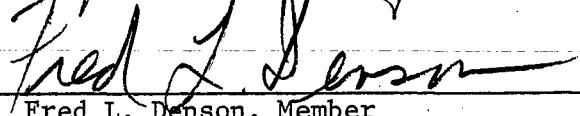
wherein it set forth the purpose and intent of the resolution as described above and wherein the employees were assured that "No increment was frozen. No salary was frozen."

Finally, it does not appear that the record would support a finding that BHE acted for "the purpose of depriving [public employees] of [§202]  
rights", an essential element in a §209-a.1(a) violation.<sup>1</sup>

The charge is therefore dismissed in its entirety.

DATED: Albany, New York  
July 16, 1974

  
Joseph R. Crowley, Member

  
Fred L. Denson, Member

1 We note that it is possible to find a violation of §209-a.1(a) by determining that conduct is inherently destructive of employee rights granted by the Act, but the facts in the instant case do not support such a finding.

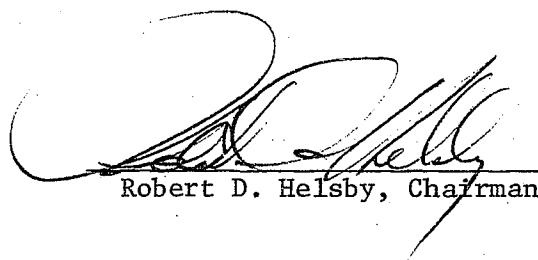
DISSENTING OPINION OF CHAIRMAN HELSBY

I disagree with the decision of my associates. The differences between them and the hearing officer derive from interpretations of the evidence and conclusions of fact based upon that evidence, rather than upon conclusions of law. Interpretation of evidence involves the evaluation of testimony of witnesses. The hearing officer to whom the evidence was submitted is better able to evaluate it than are members of the Board. There are occasions when the evidence preponderates so greatly on one side as to require a rejection of a contrary evaluation of it. This is not the case here.

As regards the hearing officer's conclusions of fact, I believe that my associates have misinterpreted the significance of the filing of the April 20 petition by the Board of Higher Education (BHE). The issues presented by that petition were already before this Board; the petition was therefore redundant. My associates, however, reason that the filing of that petition would be indicative of a violation of CSL §209-a.1(a) only if it were designed to delay negotiations, and they find that such was not the case. This analysis misses the point. The April 20 petition ends with a request that this Board, "hold mail ballot elections in the three units... as soon as possible so that any required collective negotiations can start during the University's 1972 summer recess." This resolution was not designed to occasion delay, but rather to emphasize that unless elections were held in the three units sought by BHE -- that is, unless the PSC withdrew its opposition to the three units -- there would not be an election in time to permit negotiations during the 1972 summer recess. Together with

the BHE resolution that it would not pay increments in September unless it were contractually obligated to do so, the redundant petition communicated a threat to the employees that unless they dropped their unit position they would lose their increments.

I would affirm the hearing officer's finding of a violation of CSL §209-a.1(a) and would confirm his decision and recommended order.



Robert D. Helsby, Chairman

2417

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2C-7/16/74

BOARD OF EDUCATION OF THE CITY OF NEW YORK, :

Employer, :

-and- : Case No. C-1069

UNITED FEDERATION OF TEACHERS, LOCAL 2, NYSUT, :

AFT, NEA, AFL-CIO, :

Petitioner. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that UNITED FEDERATION OF TEACHERS, LOCAL 2, NYSUT, AFT, NEA, AFL-CIO

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit:

Included: All employees in the title of supervisor of school safety.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with UNITED FEDERATION OF TEACHERS, LOCAL 2, NYSUT, AFT, NEA, AFL-CIO

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 16th day of July, 1974.

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2D-7/16/74

TOWN OF BABYLON, :

Employer, :

-and-

LOCAL 100, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, : CASE No. C-0955

Petitioner, :

-and-

LOCAL 237, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, :

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 LOCAL 237, INTERNATIONAL BROTHERHOOD OF TEAMSTERS has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit:

Included: auto serviceman  
automotive equipment operator  
automotive mechanic  
building inspector  
building inspector, senior  
carpenter  
cleaner  
cement finisher  
custodial worker  
dog warden  
dog warden, senior  
draftsman  
draftsman, senior  
driver-messenger  
electrician  
engineering aide  
engineering aide, senior  
engineering aide, principal  
engineering inspector  
engineering inspector, senior  
fire prevention inspector  
fire prevention inspector, senior  
foreman  
foreman, custodial  
foreman, field  
foreman, highway

Unit:

Included: foreman, highway construction  
foreman, laborer  
foreman, maintenance  
heavy equipment operator  
head groundsman  
housing inspector  
laborer  
laborer, dog shelter-kennelman  
lead man  
maintenance man  
maintenance-custodial  
matron  
motor equipment operator  
painter  
plumbing inspector  
radio operator  
recreation aide-senior citizens  
recreation leader  
recreation specialist  
scale house operator  
sewer plant operator  
stock clerk  
store keeper  
watchman  
water plant operator

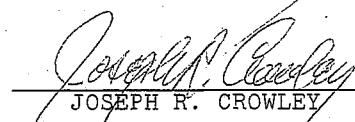
Excluded: General highway foreman, plant foreman, chief of security maintenance supervisor, chief building inspector, deputy building inspector, seasonal employees and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with LOCAL 237, INTERNATIONAL BROTHERHOOD OF TEAMSTERS and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 16th day of July 1974.



ROBERT D. HELSBY, CHAIRMAN



JOSEPH R. CROWLEY



FRED L. DENSON