

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-10/31/74

In the Matter of :  
MINEOLA UNION FREE SCHOOL DISTRICT, :  
Employer, :  
- and - :  
MINEOLA ASSOCIATION OF PROFESSIONAL SUPERVISORS, :  
Petitioner, : CASE NO. C-1025  
- and - :  
MINEOLA TEACHERS ASSOCIATION, :  
Intervenor, :  
- and - :  
ASSOCIATION OF MINEOLA SCHOOL ADMINISTRATORS, :  
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 ASSOCIATION OF MINEOLA SCHOOL ADMINISTRATORS 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:

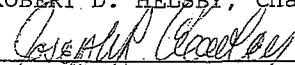
Included: Building principals, assistant building principals, business manager, assistant superintendent for personnel, superintendent of building and grounds, senior high school department chairman, director of physical education, director of music, administrative assistant for vocational-industrial education, administrative assistant, director of nurses and communications coordinator.


Excluded: Assistant superintendent for curriculum instruction and all other employees of employer.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with ASSOCIATION OF MINEOLA SCHOOL ADMINISTRATORS 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 31st day of October, 1974.

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-10/31/74

In the Matter of the Application of the  
CITY SCHOOL DISTRICT OF THE CITY OF SYRACUSE

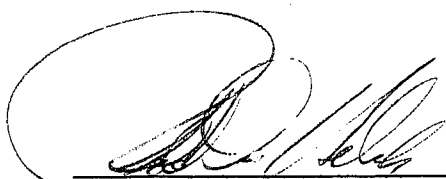
Docket No. S-0039


for a Determination pursuant to Section 212  
of the Civil Service Law.


At a meeting of the Public Employment Relations Board held on the 31st day of October, 1974, and after consideration of the application of the City School District of the City of Syracuse made pursuant to Section 212 of the Civil Service Law for a determination that its School District Employee Negotiations Policy adopted by resolution on January 16, 1968, as last amended by resolution adopted on August 20, 1974, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board, it is

ORDERED, that said application be and the same hereby is approved upon the determination of the Board that the resolution aforementioned, as amended, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board.

Dated, Albany, New York  
October 31, 1974

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

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STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
OFFICE OF EMPLOYEE RELATIONS  
STATE CAPITOL  
ALBANY 12224

#3A-10/31/74

HOWARD A. RUBENSTEIN  
COUNSEL

AREA CODE 518  
474-4090

July 8, 1974

Jerome Lefkowitz, Esq.  
Deputy Chairman  
Public Employment Relations Board  
50 Wolf Road  
Albany, New York

Dear Mr. Lefkowitz:

This will confirm our telephone conversation on July 2, 1974 at which time I informed you of a pending arbitration proceeding between the State of New York and the Civil Service Employees Association, Inc., as the representative of Review Physicians employed in the Department of Social Services, Bureau of Disability Determinations.

The Review Physicians seek to obtain the benefits of the salary provision contained in the 1970-72 collective agreement between the State and the Civil Service Employees Association, Inc.. They contend that they are included within the Professional, Scientific and Technical Services Negotiating Unit established by the Public Employment Relations Board in 1969 and thus are entitled to all negotiated salary increases.

The State, on the other hand, has consistently treated these physicians as not being within the Professional, Scientific and Technical Services Negotiating Unit, and accordingly has not granted them such contractual benefit.

The State's position is premised upon its understanding that the Public Employment Relations Board has not included within any of the negotiated units it established for State employees any person who is excluded from coverage of the Attendance Rules because of his part-time status (4 N.Y.C.R.R. §26.1(b)).

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As you recollect, the Director of Representation in his decision regarding the uniting of State employees (1 PERB 4070) excluded from any of the units determined to be most appropriate "...employees holding positions determined to be 'part-time' as that term is used in 4 N.Y.C.R.R. §26.1(b)..." (1 PERB 4081, 4082, 4083). The Board in its unit decision (1 PERB 3226) thereafter adopted the Director's recommendation and also excluded from any of the negotiating units it determined to be most appropriate those part-time employees excluded from Attendance Rules coverage by subdivision (b) of such rules (4 N.Y.C.R.R. 26.1(b)).

Your confirmation of the exclusion of part-time employees not covered by the Attendance Rules from any of the negotiating units established by the Public Employment Relations Board is necessary at this time because it appears that grievants may be under the impression that the Public Employment Relations Board included all part-time physicians within the Professional, Scientific and Technical Services negotiating unit notwithstanding the fact that they may not meet the requirements of Attendance Rules §26.1 (b) (4 N.Y.C.R.R. 26.1 (b)).

Further, it is my understanding that it is the exclusive responsibility of the Public Employment Relations Board to resolve questions concerning representation which are presented to it for resolution in the context of a representation proceeding and that only the Public Employment Relations Board, subject to judicial review, may clarify its certification orders which set forth job titles included within or excluded from a particular negotiating unit. (See In the Matter of Arbitration, Putnam Valley School District 75 Misc. 2d 374 (Sup.Ct. Dutchess Co.) (1973)).

Your confirmation of the matters I have raised in this letter will, I believe, assist the parties in the resolution of the issues presently pending before the arbitrator.

Sincerely,

  
Howard A. Rubenstein



STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
OFFICE OF EMPLOYEE RELATIONS

#3B-10/31/74

NEW YORK PUBLIC EMPLOYMENT  
RELATIONS BOARD  
STATE CAPITOL  
ALBANY 12224

HOWARD A. RUBENSTEIN  
COUNSEL

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SEP 24 1974

AREA CODE 518  
474-4090

September 20, 1974

CHAIRMAN'S OFFICE

Dr. Robert D. Helsby  
Chairman  
Public Employment Relations Board  
50 Wolf Road  
Albany, New York

Re: Case No. C-0002

Dear Dr. Helsby:

On July 8, 1974, I wrote to Jerome Lefkowitz advising him of a question which had arisen in a grievance arbitration, pending before Professor Thomas Christensen, to which the State was (and is) a party. I requested an advisory opinion from him, on behalf of the Board, clarifying a portion of the Board's Decision in Matter of State of New York (Case No. C-0002). I had hoped that Mr. Lefkowitz's response would assist in the resolution of the arbitration but, unfortunately, neither counsel for the grievants nor the Arbitrator was prepared to accept as definitive Mr. Lefkowitz's opinion regarding the meaning and intent of the Board Decision.

Accordingly, I must now request that the Board, itself, consider the matter to which I directed Mr. Lefkowitz's attention in my letter of July 8.

Specifically, it is our understanding that persons serving the State as part-time "review physicians" in the Department of Social Services, Bureau of Disability Determinations, which persons are not subject to the State's Attendance Rules because of their "part-time" status as that term is defined in 4 NYCRR §26.1(b), occupy a title outside the Professional, Scientific and Technical Services Negotiating Unit (or any other State negotiating unit) as determined by the Board. As I indicated to Mr. Lefkowitz in my letter to him of July 8,

"the State's position is premised upon its understanding that the Public Employment Relations Board has not included within any of the negotiated units it established for State employees any person who is excluded from coverage of the attendance rules because of his part-time status (4 NYCRR §26.1(b))."

September 20, 1974

Our position is based upon the fact that PERB's Director of Representation, in his decision regarding the uniting of State employees (1 PERB 4070), excluded from all of the units determined to be appropriate "...employees holding positions determined to be 'part-time' as that term is used in 4 NYCRR §26.1(b)...." (1 PERB 4081, 4082, 4083). The Board, in its unit decision (1 PERB 3226) thereafter adopted the Director's recommendation and excluded part-time employees from all of the negotiating units it determined to be appropriate.

The grievants in the arbitration proceeding to which I referred earlier argue, however, that their job title -- "physician, part-time" -- is a title specifically included within the Professional, Scientific and Technical Services Negotiating Unit (1 PERB 3379) and that employees in this part-time title are included within this negotiating unit irrespective of whether they meet the criteria for coverage under the Attendance Rules as part-time employees.

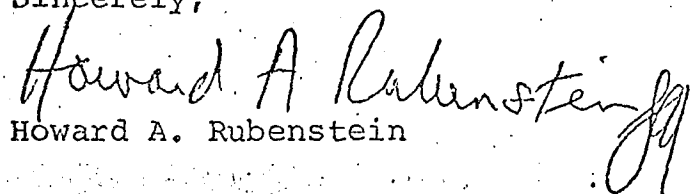
In order to clarify this question I would, at this time, move the Board for an order clarifying its decision in Matter of State of New York (Case No. C-0002) and would request that this letter be considered a motion for that purpose.

In order to assist the Board, I am enclosing herewith for your consideration copies of my letter to Mr. Lefkowitz dated July 8 and Mr. Lefkowitz's response to me dated July 9.

I have asked Mr. Ellis to join me in this motion to you to clarify the Board's intent. As of this time, however, he is unwilling to do so. I have therefore taken it upon myself to present this issue to you ex parte.

I am prepared to participate in any oral argument which the Board may feel necessary or appropriate or to submit a brief to it regarding the issue I have raised should the Board so require.

Sincerely,

  
Howard A. Rubenstein

cc: Mr. John M. Carey  
Thomas G. S. Christensen, Esq.  
Jonas Ellis, Esq.



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
50 WOLF ROAD  
ALBANY, NEW YORK 12205

#3C-10/31/74

BOARD MEMBERS

ROBERT D. HELSBY  
CHAIRMAN

JOSEPH R. CROWLEY  
FRED L. DENSON

October 31, 1974

Howard A. Rubenstein, Esq.  
Counsel  
Office of Employee Relations  
Room 245  
State Capitol  
Albany, New York 12224

Jonas Ellis, Esq.  
Ellis & Ellis  
230 Park Avenue  
New York, New York 10017

RE: Review Physicians

Gentlemen:

I am writing in response to a written request from Howard Rubenstein that was sent to me on September 20, 1974. That request solicits an opinion from the Public Employment Relations Board clarifying a portion of its decision in Matter of State of New York (Case No. C-0002) indicating whether part-time Review Physicians in the Department of Social Services, Bureau of Disability Determinations, whose status is part-time as that term is defined in 4 NYCRR §26.1(b) are excluded from the Professional, Scientific and Technical Services Unit. The same inquiry had previously been addressed to Mr. Jerome Lefkowitz, Deputy Chairman of the Board and, on July 9, 1974 he wrote a letter to Mr. Rubenstein in which he analyzed the Board decision and concluded that the part-time Review Physicians were not included in the unit. Mr. Rubenstein's letter of September 20, 1974 indicated that the question was before an arbitrator and that neither the arbitrator nor Mr. Ellis were prepared to accept as definitive the opinion of Mr. Lefkowitz.

On September 30, 1974, which was before we had an opportunity to consider the inquiry, he transmitted a letter to him from Mr. Ellis requesting us to withhold consideration of it so as to permit him to discuss the matter with his client. Mr. Rubenstein joined in that request. Yesterday Mr. Rubenstein advised the Board by telephone that Mr. Ellis no longer requests the Board to withhold the issuance of its opinion in this matter. Accordingly, we now respond to Mr. Rubenstein's inquiry.

We concur in the opinion of Mr. Lefkowitz and conclude that those Review Physicians whose normal conditions of employment do not meet the attendance standards of 4 NYCRR §26.1(b) are excluded from the Professional, Scientific and Technical Services Unit. The minutes of the meeting of the Board today record consideration of Mr. Rubenstein's question by the full Board and its conclusion. A copy of an excerpt of the minutes is transmitted herewith.

Very truly yours,

Robert D. Helsby

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Enc.

Excerpt from

Minutes of the Meeting of the Public Employment Relations Board

October 31, 1974

4. A.

"In response to an inquiry from Howard A. Rubenstein, Counsel to the Office of Employee Relations of the State of New York, the Board determined that, in its decision In the Matter of the State of New York, 2 PERB ¶3044, it excluded from the Professional, Scientific and Technical Services Unit those Review Physicians whose normal conditions of employment did not meet the attendance standards of 4 NYCRR §26.1(b)."