STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-11/8/74

In the Matter of	
COUNTY OF ORANGE, Employer,	BOARD DECISION
-and-	ON OBJECTIONS TO THE
SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, Petitioner,	CONDUCT OF ELECTION
-and-	AND CONDUCT AFFECTING
THE COUNTY EMPLOYEES' UNIT, ORANGE COUNTY CHAPTER, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., Intervenor.	RESULTS OF ELECTION
	CASE NO. C-1097

An election was held on June 7, 1974 and the vote, after resolution of some of the challenges by the Director, was: Civil Service Employees Association - 624; Service Employees International Union - 540; none - 20; unresolved challenges [1] - 35. Thereafter SEIU filed objections to the conduct of the election and to conduct affecting the results of the election.

Following a thorough investigation, we issued an interim decision (7 PERB 3076) dismissing several of the objections as not being supported by the evidence and dismissing other objections because the conduct complained of was not violative of the law.[2] We did find one violation, to wit, that notice of the election was neither posted nor circulated among the employees of the County at Montgomery Airport. Noting that twelve eligible voters worked at the airport and that five of them voted, we indicated that this failure to notify

---

1 These challenges were not resolved because they would not have been dispositive of the election.

2 In the interim decision and in our decision in Matter of Ulster County (7 PERB 3072) we declined to set aside elections for the reason that CSEA had distributed among employees facsimiles of PERB's sample ballot that had been altered to indicate a vote for CSEA. Although we disapproved of the partisan use of the PERB forms and documents, we were not persuaded that any reasonable voters were misled by the distribution of the altered sample ballot into believing that PERB endorsed CSEA. We did state, in the Ulster County decision, that we planned to promulgate a rule prohibiting the future use of altered sample ballots. Since that time such a proposed rule was drafted and submitted for consideration at a public hearing. The rule would have mandated the setting aside of any election in which the winning party had distributed to employees PERB election materials that had been altered. The reaction persuades us that the proposed rule was too rigid and that its adoption might occasion more difficulties than it would resolve. Accordingly, the proposed rule was withdrawn. We, nevertheless, reiterate our disapproval of the partisan use of PERB documents, but will continue to deal with the problem on a case-by-case basis.

voters might be de minimus and not justify setting aside the election, but we withheld judgment on the point pending the resolution of other objections that could not have been resolved on the basis of the investigation. The remaining objections alleged failure of the County to post notice of the election as required and its discriminatory denial to SEIU of access to County premises for campaign purposes. The objections relating to posting of notices involved the DPW Garage in Newburgh and the Motor Vehicle Department in Goshen. The objections relating to the allegedly discriminatory denial of access involved the question of whether a nondiscriminatory access policy had been adopted by the County and was communicated to the employee organizations and to all department heads; it also involved the question of whether, in fact, there had been a discriminatory denial of access to SEIU at four locations -- the Orange County Community College garage, the Infirmary in the Social Services Building, the 1887 Building of the Health Department, and the DPW Maintenance Garage at Newburgh.

On October 11, 1974 the hearing officer submitted to us a report containing his resolution of factual issues. That report was clarified by the addition of two sentences on October 20, 1974.[3]

The hearing officer's findings of fact were:

1. There was no failure to post notice of the election at the DPW Garage at Newburgh.
2. There was no failure to post notice of the election at the Motor Vehicle Department at Goshen.
3. SEIU was not discriminatorily denied access to the 1887 Building of the Health Department.
4. Neither was it discriminatorily denied access at the DPW Maintenance Garage in Newburgh on June 4, 1974, as alleged.

On the other hand, he found that SEIU was discriminatorily denied access to:

1. the Social Services Building on June 4, 1974;
2. the Social Services Building prior to June 5, 1974;
3. the Community College garage on May 29, 1974.

---

3 A copy of that report, as clarified, is attached to this decision.

Moreover, he found that, although the County had adopted a policy of nondiscriminatory access for both CSEA and SEIU by mid-May 1974, this policy was not communicated to department heads until June 4, 1974. He further found that although the County intended to disclose its policy concerning access only in response to direct request by each employee organization, the manner in which the County disclosed its policy was discriminatory. CSEA had asked for access during the week following May 15, 1974 and was advised of the rules concerning access. When, during a telephone conversation on May 29, 1974, which was over a week later, SEIU sought access, the County's immediate response was not to provide the information that had already been given to CSEA, but rather to advise SEIU that it would call a conference to be attended by both CSEA and SEIU, at which the County policy regarding access would be explained. Thus far the evidence is not disputed and, by itself, this circumstance constitutes serious discrimination against SEIU. What happened later during that telephone conversation is in dispute. The County asserts that, in response to SEIU's insistance it did explain its rules concerning access on May 29, 1974. For its part, SEIU asserts that it was not advised of the rules concerning access until a letter was mailed to it on June 4, 1974. In resolving this conflict, the hearing officer stated:

> "I do not find that Sobo or other county officials deliberately misled and discriminated against SEIU. A more likely explanation of the facts is that, in the confusion of communications, Sobo did not transmit information that he intended to."

In any event, the hearing officer found that "SEIU did not get the message regarding access on May 29".

With considerable reluctance, we now decide to set aside the election and to conduct a new election among employees of the County of Orange. Our reluctance reflects a conviction that CSEA did not behave improperly and that the mistakes of the County were not occasioned by malice against SEIU or other employee organizations. Nevertheless, we find that the opportunity given to SEIU to campaign among employees of the County on County premises during non-working time was less than equal to the opportunity afforded to CSEA. In their briefs, CSEA and the County have argued that the denial of access, if any, was de minimus and that, in any event, SEIU should not be permitted to complain about denial of access after the election because it did not do so in the days preceding the election. Clearly, the first argument must be rejected. There

is no way of knowing how many, if any, county employees in this close election were not exposed to the SEIU campaign by reason of the denial to SEIU of access or how many, if any, of such employees might have voted differently had they been so exposed. Neither do we find that by reason of its failure to complain to PERB or to the employer during the one-week period between its request for access and the time that it was granted, immediately before the election, SEIU has waived its right to object to the election on the basis of that denial of access.

We determine that the withholding of access from SEIU may have deprived employees of the County of Orange free choice in electing an employee organization to represent them and we, therefore, conclude that a new election is necessary. In doing so, we express a concern that the election and its aftermath have delayed certification of an employee organization for too long a period of time. It is urgent that the election be held as quickly as possible so that negotiations may commence.

NOW, THEREFORE, WE ORDER that the election among employees of Orange County conducted on June 7, 1974 be set aside and that a new election be held forthwith.

Dated: Albany, New York
November 8, 1974

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-11/8/74

In the Matter of the	:	Case No. D-0090
WESTBURY TEACHERS ASSOCIATION	:	BOARD DECISION & ORDER
Upon the Charge of Violation of Section 210.1 of the Civil Service Law.	:	
	:	

On September 25, 1974, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Westbury Teachers Association had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the Westbury Union Free School District No. 1, Towns of Hempstead and North Hempstead, for three days, September 6, 9 and 10, 1974.

The Westbury Teachers Association agreed not to contest the charge. It therefore did not file an answer and thus admitted the allegations of the charge. The Westbury Teachers Association joined with the Charging Party in recommending a penalty of loss of dues checkoff privileges for 40% of its annual dues or the equivalent of approximately five months' suspension if the school district deducted such dues in equal monthly installments. In fact, the annual dues of the Westbury Teachers Association are deducted in five equal installments, three in November, 1974 and two in December, 1974.

On the basis of the charge unanswered, we determine that the recommended penalty is a reasonable one.

We find that the Westbury Teachers Association violated CSL §210. in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Westbury Teachers Association be forfeited commencing December 1, 1974 and that no further dues be deducted on its behalf for a period of time during which 40% of its annual dues would otherwise have been collected. Thereafter, no dues shall be deducted on its behalf by the Westbury Union Free School District No. 1 until the Westbury Teachers Association affirms that it no longer asserts the right to strike against any goverment as required by the provisions of CSL §210.3(g).

Dated: Albany, New York
November 8, 1974

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

3557

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-11/8/74

In the Matter of the	:	Case No. D-0091
EAST MEADOW TEACHERS ASSOCIATION	:	BOARD DECISION & ORDER
Upon the Charge of Violation of Section 210.1 of the Civil Service Law.	:	
	:	

On October 2, 1974, Martin L. Barr, Counsel to this Board filed a charge alleging that the East Meadow Teachers Association had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the East Meadow Union Free School District No. 3, Town of Hempstead on September 3, 4, 5, 6, 9 and 10, 1974.

The East Meadow Teachers Association submitted an answer to the charge constituting a general denial and including affirmative defenses, but on October 21, 1974, it withdrew the answer following discussions with the charging party. Simultaneous with withdrawing its answer and thereby admitting the allegations of the charge, the East Meadow Teachers Association joined the Charging Party in recommending a penalty of loss of dues checkoff privileges of 50% of its annual dues or the equivalent of six months suspension if the school district deducted such dues in twelve equal monthly installments. In fact, the annual dues of the East Meadow Teachers Association are deducted in ten equal installments, one each month during the months of October 1974 through May 1975, and two in the month of June, 1975.

On the basis of the charge unanswered, we determine that the recommended penalty is a reasonable one.

We find that the East Meadow Teachers Association violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the East Meadow Teachers Association be suspended for a period commencing in March 1975 and that no further dues be deducted on its behalf for a period of time during which 50% of its annual dues would otherwise have been deducted for the current school year. Thereafter, no dues shall be deducted on its behalf by the East Meadow Union Free School District until the East Meadow Teachers Association affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

Dated: Albany, New York
November 8, 1974

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

3559

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD #2D-11/8/74

In the Matter of the Petition of the	:	
WESTCHESTER CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.	:	Case No. I-0025
to Review the Implementation of the Provisions and Procedures enacted by the County of Westchester pursuant to Section 212 of the Civil Service Law.	:	
	:	

On August 5, 1974, the Westchester Civil Service Employees Association, Inc. (CSEA) filed a petition (Case No. I-0025) pursuant to Section 203.8 of this Board's Rules of Procedure. The petition alleges that the Rules of Procedure of the Westchester County Public Employment Relations Board relating to the filing of a showing of interest in support of a decertification petition and the implementation of such Rules by the Westchester County Public Employment Relations Board are not substantially equivalent to the Rules of Procedure of the New York State Public Employment Relations Board.

FACTS

The petitioner has been, since 1968, the recognized representative under Article 14 of the Civil Service Law of a unit of Westchester County employees, including correction and probation

officers employed by the County. On June 25, 1973, the Westchester County Law Enforcement Officers Association filed a petition for certification and decertification seeking to become the certified representative of a unit of employees consisting of the aforesaid correction and probation officers. In that proceeding, a showing of interest was submitted by the petitioner therein. Although it appears that the designation cards constituting the showing of interest, most of which were executed in May, 1973, were not filed simultaneously with the petition, this fact was not objected to by CSEA in that proceeding. After proceedings had before it in that case, the Westchester County Public Employment Relations Board, by a decision and order dated May 2, 1974, dismissed the petition on the grounds that the petition was not timely filed and that the petitioner was not an employee organization within the definition of the local act, which definition is the same as that contained in Article 14 of the Civil Service Law.

On May 20, 1974, the Westchester County Correction and Probation Officers Association, Inc. (CPOA) filed a petition for certification and decertification with the Westchester County Public Employment Relations Board, seeking to become the certified representative of the unit consisting of the aforesaid correction and probation officers. The petitioner alleged in its petition that it was the successor in interest to the Westchester County Law Enforement Officers Association, whose petition had been dismissed

as aforestated, and requested that the showing of interest of its predecessor be made a part of the petition. CSEA and the County, at an informal conference conducted by the Westchester County Public Employment Relations Board with all the parties on June 14, 1974, objected to the utilization of the prior designation cards. CPOA thereafter, on July 2, 1974, at a formal hearing held by the Westchester County Public Employment Relations Board offered into evidence as proof of showing of interest, designation cards executed in June 1974. CSEA objected to this offer on the ground that the cards were not filed simultaneously with the petition. The Westchester County Public Employment Relations Board accepted the designation cards into evidence.[1/]

DISCUSSION

The petitioner herein urges that the Rules of Procedure of the Westchester County Public Employment Relations Board and their implementation by said Board are not substantially equivalent to the Rules of the New York State Public Employment Relations Board because the Westchester County Public Employment Relations Board's

---

1/ The Westchester County Public Employment Relations Board in its answer to CSEA's petition herein notes that it has not yet passed upon the validity of these designation cards nor determined what weight, if any, it will give to these cards. The answer points out that the local board fully intends to consider all matters in the proceeding before it, including CSEA's motion with respect to these cards, upon which it reserved decision at the hearing, prior to rendering its decision in the proceeding before it. The local board apparently misconstrues the purpose of a requirement of a showing of interest. The primary purpose of the requirement of a showing of interest is "to avoid needless dissipation of PERB's resources on frivolous representation claims" (Suffolk Chapter CSEA v. Helsby, 63 Misc. 2d 403, 404). It follows that the sufficiency of the showing of interest should be ascertained by the board prior to requiring the parties to proceed to hearing.

Rules of Procedure do not require that a showing of interest be filed simultaneously with a petition for certification, and the Board accepted the filing of such a showing of interest, as set forth above, after the filing of the petition. The position of the Westchester County Public Employment Relations Board is that the lack of this requirement in its Rules and its actions in the proceeding before it in connection therewith cannot be the basis for a conclusion that its Rules and their implementation are not substantially equivalent to Article 14 of the Civil Service Law and the Rules of this Board. In this regard, the Westchester County Public Employment Relations Board points out that this Board's Rules of Procedure, prior to March 1, 1974, did not require that a showing of interest be filed simultaneously with the petition. The question, therefore, as framed by the parties, is whether the Westchester County Public Employment Relations Board, by not conforming to this Board's change in practice, is not implementing its provisions and procedures in a manner substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law and this Board's Rules.

However, although not specifically raised by the parties, there is another question with which we must deal. While this Board's Rules prior to March 1, 1974, did not require a showing of interest to be filed simultaneously with the petition, they have specifically, since late 1971, required that the evidence of

showing of interest be dated no later than the filing date of the petition. Furthermore, the practice of this Board since the inception of representation proceedings before it, has been to require that the evidence of showing of interest be dated no later than the filing date of the petition. The local board's rules are silent as well with regard to the dating of the showing of interest. We are thus also faced with the question of whether this difference in practice by the Westchester County Public Employment Relations Board requires us to hold that the Westchester County Public Employment Relations Board's Rules of Procedure, as implemented in the proceeding before it which is the subject of this proceeding, are not substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law and this Board's Rules of Procedure.

In considering these questions, we believe it would be helpful to restate certain principles enunciated by us in the Matter of the Petition of Nassau Chapter, Civil Service Employees Association to review the Implementation of the Provisions and Procedures enacted by the County of Nassau pursuant to Section 212 of the Civil Service Law, 6 PERB 3099. In that case we stated, at page 3102:

> The Taylor Law empowers both the state and local boards to establish procedures to resolve representation disputes. Such procedures must include some fixed period of when a challenge to the representation status of the employee organization may be made. A fixed period is essential to stability since all concerned must know

> with certainty when challenges to existing relationships may be made. The time when such challenge may be permitted must, on the one hand, protect the period of unchallenged representation status and, on the other, afford a sufficient period for processing and determination of the representation question and a reasonable period thereafter for meaningful negotiations with the employer. We have by rule fixed the 30 days prior to the expiration of the period of unchallenged representation status as the time when representation proceeding may be instituted. In doing so we did not determine that that 30-day period was mandated by the Taylor Law. In fact, initially our own rules provided for a 45 day period. We do not think a challenge period reasonably in excess of 45 days would be repugnant to the Act, if a local board believed that additional time for the determination of representation questions was necessary. We also believe that the filing period might properly be fixed for some reasonable time immediately after the expiration of the period of unchallenged representation status, provided expeditious determinations can be assured. In short we recognize the authority of a local board to establish a timeliness rule in representation proceedings that might extend a reasonable time on either side of the date fixed by the statute for termination of the period of unchallenged representation status.

In the Nassau case, we concluded that the acceptance for filing by the local board of petitions for certification more than three months after the expiration of the period of unchallenged representation status of the encumbent employee organization and while that organization was engaged in negotiating a new contract, upset the manifest need for stability in labor relations intended

by Section 208 of the Civil Service Law. This Board accordingly concluded that the local board was not implementing its local provisions and procedures in a manner substantially equivalent to the Act and this Board's Rules. In the instant case, applying the same principles, we feel we must reach an opposite conclusion. As we stated in the Nassau case and other cases,[2/] Section 212 of the Civil Service Law contemplates flexibility in local procedures and discretion upon the part of local boards so long as no essential element intended by the Act, such as the above noted stability, is destroyed. As we also noted in the Nassau case, time limitations varying from ours in representation proceedings, so long as they do not destroy this stability, are permissible, including a time limitation which would authorize the filing of the petition for certification and/or decertification during "some reasonable time immediately after the expiration of the period of unchallenged representation status, provided expeditious determinations can be assured!" The facts in the instant case show that a timely petition was filed on May 20, 1974, and designation cards as evidence of showing of interest were gathered in June, 1974 and filed on July 2, 1974, at the formal hearing scheduled for that date. It thus appears that the relevant events took place within the reasonable period of time between the filing of the petition and the

---

[2/] See e.g., AFSCME, Council 66, 4 PERB 3715; Monroe County Chapter, CSEA, Inc., 5 PERB 3120.

first hearing date, and did not impede the proceeding. Accordingly, we cannot conclude that the Rules of Procedure of the Westchester County Public Employment Relations Board and their implementation in the situation before us are not substantially equivalent to the provisions and procedures set forth in the Act and our Rules.

IT IS THEREFORE ORDERED that the petition be and the same hereby is dismissed.

Dated, Albany, New York
November 8, 1974

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

3567

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD #2E-11/8/74

In the Matter of the Application of the	:	Docket No. S-0011
COUNTY OF TOMPKINS	:	
For a Determination pursuant to Section 212 of the Civil Service Law.	:	
	:	

At a meeting of the Public Employment Relations Board held on the 8th day of November, 1974, and after consideration of the application of the County of Tompkins made pursuant to Section 212 of the Civil Service Law for a determination that its Resolution No. 320 of 1969 as last amended by Resulution No. 186 of September 9, 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
November 8, 1974

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED. L. DENSON