STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-1/23/75

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| In the Matter of<br>ROSLYN UNION FREE SCHOOL DISTRICT,<br>Charging Party,<br>-and-<br>ROSLYN TEACHERS ASSOCIATION,<br>Respondent, | BOARD DECISION AND ORDER<br><br>CASE NO. U-1042 |
| -and-<br>In the Matter of<br>ROSLYN UNION FREE SCHOOL DISTRICT,<br>Respondent,<br>-and-<br>ROSLYN TEACHERS ASSOCIATION,<br>Charging Party. | CASE NO. U-1108 |

This matter comes before us on exceptions filed by the Roslyn Union Free School District (the District) to the decision of the hearing officer in one of two cases (U-1042) that were consolidated for hearing and determination. That case was initiated on December 19, 1973 by the District when it filed a charge alleging that the Roslyn Teachers Association (RTA) violated CSL§§209-a.2 (a) and (b) by (1) filing and prosecuting a grievance over sabbatical leaves to two department chairmen and (2) making coercive statements to the two department chairmen and others relating to the sabbatical leaves. The second case (U-1108) was filed by RTA on February 22, 1974 and alleged that the District had committed an improper practice in violation of CSL§§209-a.1(a) and (b) by filing its charge in case U-1042.

The hearing officer rejected both charges. He rejected charge U-1108 on the theory that "the mere filing of an improper practice charge cannot, per se constitute a violation of the Act."; he further found that the evidence did not support a conclusion that the District's purpose in bringing the charge was to deprive employees of their rights guaranteed in CSL §202. No exceptions were taken to that part of the hearing officer's decision and therefore it is not before us.

The circumstance underlying the charge in U-1042 is that the Roslyn Administrators and Supervisors Association (RASA) filed a petition on November 30, 1972 for certification as negotiating representative of the department chairmen employed in the District's high school. Until that time, the department chairmen had been included in the RTA unit. Simultaneously, in accordance with the procedure contained in the agreement covering the pre-existing RTA unit, sabbatical leaves were awarded to four employees, including two who were high school department chairmen. On June 13, 1973, the Director of Public Employment Practices and Representation issued his decision in the representation proceeding and found that high school department chairmen should be removed from the RTA teachers' unit and included in the administrators' unit. An election was scheduled for and held on September 17, 1973 between RTA and RASA to determine the negotiating representative for the administrators' unit. On October 26 this Board certified the winner, RASA.

On August 26, 1973, which was after the unit determination but before the election, RTA filed a grievance alleging a violation of the 1971-73 contract between the parties complaining that the award of sabbaticals to the two department chairmen under that agreement was inappropriate because, on the basis of facts which existed at the time when the award was made, department chairmen had been determined not to be within the unit. There was some discussion between RTA leaders and the two department chairmen concerning the appropriateness of their receiving sabbaticals under the RTA agreement, but

they were not informed of the filing of the grievance. In part the District argued that the evidence established that RTA's motivation in filing the grievance was to apply improper pressure in connection with the forthcoming election. It also argued that because of the proximate relationship between the date of the filing of the grievance and the date of the election, RTA's action in filing the grievance was so inherently destructive of employee rights that no unlawful motive on the part of RTA was required.

The hearing officer was not persuaded by the evidence in the first instance nor by the proposition in the second. He concluded that the grievance was filed by RTA in order to protect the interests of those employees who were continued in its unit who might be deprived of sabbaticals because of the award of sabbaticals to the two department chairmen.

Having reviewed the record, we conclude that the findings of the hearing officer should be adopted. Of the two department chairmen who received the sabbatical leaves, one was unaware that the grievance had been filed on August 26; the testimony of the other does not indicate that she was aware the grievance had been filed. Further, Mr. Sparhuber, a member of the administrators' unit and chairman of the sabbatical leave committee was unaware that a grievance had been filed in August and further did not know that the grievance had been filed as of October; he testified that the filing of the grievance was not a factor in the election.

We also adopt the determination of the hearing officer that RTA did not attempt to coerce the two department chairmen and others with relation to the sabbatical leaves. One of the two testified that her impression following a conversation with the president of RTA was that RTA was endeavoring to retain sabbatical leaves for employees within its unit but she could not say that it was endeavoring to take away her leave. Unquestionably there was a concern on the part of both department chairmen that they might lose their sabbatical leaves if department chairmen became members of the administrators' unit. This

danger was mentioned to them by Sparhuber. His comments cannot, however, be attributed to RTA. We do not find in the record support for the conclusion that RTA utilized the grievance procedure or made coercive statements for the purpose of depriving the two department chairmen of the free exercise of statutory rights.

ACCORDINGLY, WE ORDER that the charge in Case No. U-1042 should be, and hereby is dismissed in its entirety.

Dated: January 23, 1975
Albany, New York

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-1/23/75

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| In the Matter of the | |
| POLICE ASSOCIATION OF NEW ROCHELLE, NEW YORK, INC. | BOARD DECISION |
| Upon the Charge of Violation of Section 210.1 of the Civil Service Law. | AND ORDER |
| | CASE NO. D-0094 |

On October 21, 1974 the City of New Rochelle (City) filed a charge alleging that the Police Association of New Rochelle, New York, Inc. (Police Association) had violated Civil Service Law Section 210.1 when a strike occurred on October 20, 1974 in that it "failed to demonstrate a good faith effort to prevent or to terminate the strike action that occurred on that date."

The Police Association submitted an answer on October 30, 1974 in which it denied responsibility for the strike. That answer was withdrawn on December 14, 1974, at which time both the City and the Police Association joined in a recommendation that the dues checkoff privileges of the Police Association not be suspended for more than four (4) months.

Before transmitting the parties' recommendation to this Board, the hearing officer -- with the consent of the parties -- conducted an investigation to ascertain the relevant facts. The facts as reported by him and acknowledged by both parties are that:

1. The police force of the City consists of approximately 190 to 200 employees, all of whom are in one unit which is represented by the Police Association.

2. A contract between the City and the Police Association had expired on July 1, 1974 and, although negotiations for a successor agreement commenced in March 1974, no settlement had been reached by October 20, 1974.

3. The alleged strike action on October 20, 1974 was a "sick-out". The "sick-out" involved the absence from work on that day of 44 of the 57 police officers scheduled to work. The City first became aware of the "sick-out"shortly after midnight on October 20 when 16 of the 20 officers scheduled to work the first shift from midnight to 8:00 a.m. called in sick.

4. At 2:30 a.m. the police commissioner of the City telephoned patrolman John Meaney, president of the Police Association, who was away for the weekend at a resort in the Catskill Mountains. Meaney curtailed his weekend vacation and returned to New Rochelle at approximately 6:00 a.m. He called a meeting of the Police Association's Executive Board at 7:00 a.m. and, together with several other officers of the Police Association, he telephoned and visited members of the Association and urged them to report to work.

5. The "sick-out" terminated at the end of the third shift on October 20, 1974 and there was a normal complement at work commencing with the first tour of duty on Monday, October 21, 1974.

6. During the period of the "sick-out" the City was able to provide coverage for routine police patrols by holding over some employees at the end of their regular tour of duty and calling others in to work at an earlier starting time. Among the employees who were requested to work overtime, and did so, were two officers of the Association. Because no emergencies occurred on that day, the City was able to provide adequate police protection to the community.

7. On the morning of October 20, the city physician visited the homes of several of the absent and allegedly ill employees between 9:00 a.m. and noon and ascertained that they were not suffering from the symptoms which allegedly had prevented their reporting for work the previous evening. By subsequent inves-

tigation, the City determined that 41 of the absent employees had been on strike.[1]

The facts in this case indicate that the majority of the police officers scheduled to work on October 20, 1974 engaged in a strike. Although the evidence does not establish that the strike was called by the leadership of the Police Association, neither does the evidence indicate that it was a wildcat strike. In the absence of specific evidence on the point, and in view of the withdrawal of the Police Association's answer and its consent to the imposition of some penalty, we determine that the Police Association has violated subdivision 1 of CSL Section 210. In Matter of Rochester Police Locust Club, 3 PERB 3606, we said at pages 3609 - 3610:

> "[T]his board must take notice of the fact that this was a strike by policemen. Respondent argues that the impact of the strike was 'not acute', ....The fact that the City of Rochester was fortunate enough to escape without any serious damage to its public health, safety, and welfare cannot be attributed to the membership of the Locust Club. The withholding of services by public employees to coerce concessions at the negotiating table can have no more potential for serious consequences than it has with police."

We now reemphasize the particular abhorrence of the Taylor Law for strikes by policemen. Nevertheless, in assessing a penalty we note the efforts made by Police Association president Meaney and other Police Association officers to terminate the strike. We further note that officers of the Police Association who were requested to work during the period of the strike did so. On the basis of the report of investigation and the charge unanswered, we determine that the recommended penalty of suspension of dues deduction privileges for four (4) months is a reasonable one.

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[1] An Art. 78 proceeding brought by the Police Association to challenge this determination is pending.

WE ORDER that the dues deduction privileges of the Police Association of New Rochelle, New York, Inc. be forfeited for a period of four (4) months commencing on the first practicable date. Thereafter, no dues shall be collected on its behalf by the City of New Rochelle until the Police Association of New Rochelle, New York, Inc. affirms that it no longer asserts the right to strike against any government as required by the provisions of Civil Service Law Section 210.3(g).

Dated: Albany, New York
January 23, 1975

Robert D. Helsby, Chairman

Joseph R. Crowley

Joseph R. Crowley

Fred L. Denson

Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD #2C-1/23/75

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| In the Matter of the | Case No. D-0100 |
| PORT JEFFERSON TEACHERS ASSOCIATION, INC. | BOARD DECISION & ORDER |
| upon the Charge of Violation of Section 210.1 of the Civil Service Law. | |

On November 27, 1974, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Port Jefferson Teachers Association, Inc. had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the Port Jefferson Union Free School District No. 12 on October 21, 22, 23, 24, 25, 28, 29, 30, 31 and November 1, 1974.

The Port Jefferson Teachers Association, Inc. agreed not to contest the charge. It therefore did not file an answer and thus admitted the allegations of the charge. The Port Jefferson Teachers Association, Inc. joined with the Charging Party in recommending a penalty of loss of dues checkoff privileges for 90% of the annual dues that would otherwise be deducted during the twelve month period commencing on the date of this order.

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

We find that the Port Jefferson Teachers Association, Inc. violated §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Port Jefferson Teachers Association, Inc. be suspended, commencing on the first practicable date, so that the employer shall not deduct more than 10% of the annual dues during the twelve month period commencing this 23d day of January, 1975. Thereafter no dues shall be deducted on behalf of the Port Jefferson Teachers Association, Inc. by the Port Jefferson Union Free School District No 12 until the Port Jefferson Teachers Association, Inc. affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

Dated, January 23, 1975
Albany, New York

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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| IN THE MATTER OF | | |
| COUNTY OF CAYUGA, | : | #2D-1/23/75 |
| Employer, | : | |
| -and- | : | |
| NEW YORK STATE NURSES ASSOCIATION, | : | Case No. C-1086 |
| 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 New York State Nurses Association,

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: Every full-time and regularly scheduled part-time (works one-half or more of normal work week) licensed registered professional nurse employed by the County of Cayuga as a Registered Professional Nurse, Public Health Nurse, Supervising Psychiatric Nurse, and Supervising Public Health Nurse.

Excluded: Nursing Coordinator (Mental Health), Director of Patient Services (Public Health), and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with New York State Nurses Association,

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 23rd day of January , 1975 .

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

PERB 58(2-68)

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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| In the Matter of<br>MALVERNE UNION FREE SCHOOL DISTRICT,<br>Petitioner - Employer. | #2E-1/23/75<br>BOARD ORDER<br>CASE NO. C-1164 |

On December 23, 1974 the Director of Public Employment Practices and Representation issued a decision in the above matter finding that the petition timely filed by the Malverne Union Free School District (the employer) to decertify the Malverne Clerical Unit of the Nassau Chapter, Civil Service Employees Association, Inc., as negotiating representative should be granted for lack of opposition. No exceptions having been filed to the decision,

IT IS ORDERED that Malverne Clerical Unit of the Nassau Chapter, Civil Service Employees Association, Inc., be and hereby is decertified as the negotiating representative of the following unit of employees of the employer:

Included: All clerical staff including senior stenographers, stenographers, senior typist-clerks, typist-clerks, stenographic secretaries, senior clerks, clerks, senior telephone operators, telephone operator, principal account clerk, account clerk.

Excluded: All other employees.

Dated: January 23, 1975
Albany, New York

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD #2F-1/23/75

| In the Matter of the Petition of | Case No. |
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| NASSAU CHAPTER CIVIL SERVICE EMPLOYEES ASSOCIATION | I-0026 |
| to review the Implementation of the Provisions and Procedures enacted by the County of Nassau pursuant to Section 212 of the Civil Service Law. | |

On November 18, 1974, the Nassau Chapter CSEA filed a petition pursuant to Section 203.8 of this Board's Rules of Procedure. The petition alleges that the Rules of Procedure of the Nassau 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 of Procedure by said Board are not substantially equivalent to the Rules of Procedure of the New York State Public Employment Relations Board and Article 14 of the Civil Service Law.

FACTS

On May 30, 1974, the Committee of Interns and Residents (CIR) filed a petition for certification and decertification seeking to become the certified representative of a unit of employees consisting of approximately 207 house staff officers - interns, residents and fellows - employed at the Nassau County Medical Center. The petitioner herein has been the certified representative of these employees together with other county employees in a broader unit. The employees involved in the instant proceeding

have a relatively short duration of employment, one to three years, although in some cases the period may be as long as seven years.[1/] Also, there is a rather large turnover of these employees on June 30 of each year.

The CIR did not submit proof of showing of interest at the time it filed its petition (May 30, 1974), which appears to be the last day on which such petition could have been filed. Rather, it submitted the proof of showing of interest, when requested, at the first hearing held by the Nassau County Public Employment Relations Board, on September 27, 1974. It appears that 122 designation cards were submitted to establish the showing of interest. They were dated as follows:

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| April | - 9 |
| May, 1974 | - 3 |
| July, 1974 | - 92 |
| August, 1974 | - 15 |
| September, 1974 | - 3 |

Thus, it was not until July 1974 that the CIR obtained the 30% showing of interest required by the rules of the Nassau County Public Employment Relations Board.

The petitioner herein moved the Nassau County Public Employment Relations Board to dismiss the petition of the CIR for the same reasons, inter alia, as set forth below, that it filed the petition herein. The Nassau County PERB reserved decision on the motion and CSEA thereafter filed the instant petition.

1/ These facts have not yet been fully developed in the proceedings before the Nassau County Public Employment Relations Board, which has not completed its hearings.

## DISCUSSION

Since March 1, 1974, Section 201.4 of this Board's Rules of Procedure has required that in representation proceedings before this Board, proof of showing of interest and a declaration of authenticity of the showing of interest must be filed simultaneously with the petition. Prior to March 1, 1974, this Board's Rules of Procedure did not require the showing of interest to be submitted simultaneously with the petition; nor did they require a declaration of authenticity. The rules of the Nassau County Public Employment Relations Board do not require filing of the showing of interest simultaneously with the petition and do not require a declaration of authenticity.

The petitioner herein contends that because of the differences between the procedures of this Board and the Nassau County Public Employment Relations Board, the latter 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 of Procedure.

This Board, in the Matter of the Petition of the Westchester Civil Service Employees Assn., Inc., Case No. I-0025, was presented with the identical claim concerning the timeliness of the filing of a showing of interest presented by this case. For the reasons set forth in our decision in that case, issued on November 8, 1974, dismissing that petition, this claim of the petitioner herein is rejected.

The petitioner's claim that the Nassau County Public Employment Relations Board's rules and their implementation are not substantially equivalent to this Board's rules and Article 14 of the Civil Service Law because the Nassau County Public Employment Relations Board does not require that a proof of showing of interest be accompanied by a declaration of authenticity, is also rejected. After approximately seven years of experience in conducting a large number of representation proceedings, this Board decided that the procedures it was utilizing to check the validity of designation cards and other evidence of showing of interest, were not sufficient, particularly in light of this Board's heavy caseload, to protect the integrity of its procedures. Accordingly, this Board promulgated Rule 201.4 of its Rules of Procedure, effective March 1, 1974, requiring that a responsible officer or agent of the employee organization file simultaneously with the proof of showing of interest, a sworn declaration of authenticity of such showing of interest. It does not follow that because PERB has promulgated this rule to assist it in preserving the integrity of its procedures, all local Public Employment Relations Boards, regardless of their caseload or other safeguards taken by them, must adopt such a rule in order to protect the integrity of their procedures. As we noted in Matter of the Petition of Local 23, International Brotherhood of Teamsters, Case No. I-0007, 2 PERB 3263:

We do not interpret the Taylor Law as requiring every local board established pursuant to the provisions of §212 to conduct its representation proceedings in a manner identical with the procedures adopted by this Board. Diversity of experience and flexibility of procedures are one of the keynotes of that part of the Taylor Law which provides for the establishment of local boards to consider disputes under their jurisdiction.

In view of the foregoing, it is ordered that the petition be and the same hereby is dismissed.

Dated, Albany, New York
January 23, 1975

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON