



statutory prohibition in Section 210.1 to include a "threat to strike". The Legislature of this State was not unaware of this distinction, for in Section 211 the term "threaten" is included as a basis of seeking an injunction to enjoin a strike, and the term "threat" or "threaten" is not included in Section 210.1. Rather, we find the statutory scheme as intended by the Legislature to be that strikes or concerted stoppages or slowdowns by public employees are prohibited, and that, if a strike occurs, any employee organization that caused, instigated, encouraged or condoned such strike shall have violated the statutory prohibition. Further, the term "condone", as used in Section 210.1, would indicate that the action which is to be condoned has occurred. Therefore, we do not find that a threat of a strike by an employee organization constitutes a violation of Section 210.1.

This is not to say, however, that the threat of a strike by an employee organization is to be countenanced as proper strategy in the negotiating process.<sup>2</sup> Prior considerations by this Board of strike threats made by an employee organization have largely been confined to the question of whether the making of a strike threat precludes an employee organization from asserting the partial defense of extreme provocation. We have concluded that it does not. As this Board stated In Matter of Yonkers Federation of Teachers, 5 PERB 3071,

"Certainly there are circumstances in which a union may threaten to strike during the course of negotiations and may eventually do so under circumstances consistent with a finding of extreme provocation."<sup>3</sup>

<sup>2</sup> In the Matter of Bethpage Federation of Teachers, 2 PERB 3325.

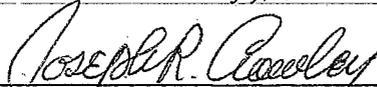
<sup>3</sup> cf. Board of Education, UFSD #4, Town of Rye, 6 PERB 3044.

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

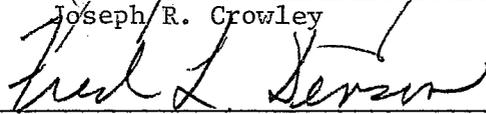
Dated: Albany, New York  
April 11, 1975



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson



case (U-1167) was brought by District Council 37, AFSCME, AFL-CIO (DC 37). It alleges that Respondent committed an improper practice in violation of CSL Sections 209-a.1(a) and (c) by issuance of that memorandum to the heads of all City departments and agencies. The second case (U-1178) was brought by the Communication Workers of America, AFL-CIO (CWA). It complains of the same conduct and alleges that such conduct was violative of CSL Sections 209-a.1(a), (b), (c) and (d).

(Footnote 1 continued)

2. personnel in the managerial welfare fund.
3. all personnel in the following agencies.
  - a) Mayor's Executive Offices
  - b) Department of Personnel
  - c) Office of Collective Bargaining
  - d) Labor Law Complaint Section of the Comptroller's Office
  - e) Bureau of the Budget
  - f) Office of Labor Relations
4. personnel in titles specifically excluded from collective bargaining by the Office of Collective Bargaining not listed above. Affected titles in this category are primarily in the uniformed forces. If you have any questions concerning this area please contact the Office of Labor Relations.

In addition, please send a list to the Office of Labor Relations, 250 Broadway, New York, New York 10007 (Attention: Neil D. Lipton, General Counsel) of personnel currently in titles otherwise covered by collective bargaining but who perform the following functions:

- A) labor relations -
- B) collective bargaining agreement administration -
- C) personnel administration -
- D) confidential -

No action beyond listing personnel and transmitting the list to the Office of Labor Relations is to be taken with respect to these categories A), B), C) and D) until receipt of further advice from the Office of Labor Relations."

The hearing officer substantiated the DC 37 charge on the basis of his finding that the memorandum had been relied upon by Respondent's Department of Personnel to deprive employees of rights vouchsafed to them by the Taylor Law. Respondent has filed exceptions to this part of his decision and DC 37 has filed crossexceptions. He determined that the mere issuance of the memorandum was not sufficient to establish a violation of the Taylor Law and, finding no action taken against members of CWA in reliance upon such memorandum, he dismissed CWA's charge. CWA has filed exceptions to this part of the hearing officer's determination.

Respondent's exceptions are:

1. The violation, if any, was de minimus in that it affected only two employees and it should be overlooked.
2. If this Board insists upon finding a violation, such violation should be restricted to the Department of Personnel because it was only that department which acted in reliance upon the memorandum.
3. The hearing officer's proposed order is inappropriate as no remedy is required, the matter being insubstantial to begin with has become academic.

DC 37's crossexceptions are directed to the proposed remedy "that Respondent be ordered to cease and desist from unilaterally implementing its own determination that employees within a negotiating unit represented by DC 37 are managerial and/or confidential within the meaning of the Act and the New York Collective Bargaining Law". The crossexceptions urge upon this Board the further remedy of a direction that Respondent rescind the memorandum, that notice of rescission should be communicated to all departments, agencies and other persons who received copies of that memorandum, and that appropriate notices be posted at all affected departments and agencies.

CWA's exceptions assert:

1. The mere issuance of the memorandum was a violation of the Taylor Law, having a chilling effect upon organizational activities of CWA and being inherently destructive of employee and union rights.

2. The hearing officer's finding that the memorandum was designed for internal use only was not supported by the evidence.
3. Publication of information about the memorandum in The Chief, a weekly newspaper published for civil service employees, should be attributed to New York City.
4. Although the record contains evidence of only two people who were directly affected by the memorandum, the absence of evidence concerning other such people does not justify the hearing officer's finding that knowledge of the issuance of the memorandum was de minimus.
5. It agrees with DC 37's crossexceptions that the proposed remedy is inadequate.

#### DISCUSSION

Having reviewed the evidence and heard the arguments of the parties, we substantiate the charges of both DC 37 and CWA to the extent that they allege that Respondent committed an improper practice in violation of CSL Section 209-a.1(a). The issuance of Interpretive Memorandum No. 12 was wrong. It constituted a unilateral determination by Respondent that certain persons who belong to DC 37 and others who belong to CWA were managerial or confidential personnel and thus excluded from certain rights provided by the Taylor Law. CSL Section 201.7 and Section 270 of the Revised Consolidated Rules of OCB provide that for the employees in question only the Office of Collective Bargaining could make that determination.<sup>2</sup>

Respondent correctly states the law when it argues that the issuance of the memorandum was not an improper practice in violation of CSL Section 209-a.1 so long as the memorandum remained a confidential communication disclosed only to

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<sup>2</sup> Respondent had applied to OCB during December 1972 for a determination that such employees be declared managerial or confidential, but no determination had been made by OCB as of April 19, 1974 when the memorandum was issued. It is our conclusion, however, that frustration at the delay did not justify Respondent's unilateral action.

the management cadre of Respondent. However, the memorandum was not designed to be a confidential communication. By its terms it assigned immediate responsibility to heads of departments and agencies to impose some restrictions upon the rights of representation of specified employees. Thus, Respondent's Department of Personnel was acting in accordance with the memorandum when it instructed two of its employees to refrain from engaging in union activities.

At least one employee was shown the memorandum by her supervisor when she was instructed that she would not be able to participate in union meetings or belong to a union. At that moment the memorandum ceased to be an internal communication and became a published document.<sup>3</sup> Respondent committed an improper practice in violation of Section 209-a.1(a) when it thus published the inappropriate memorandum; the purpose of that memorandum was "to interfere with, restrain or coerce public employees [who had not been determined to be managerial or confidential] in the exercise of their rights guaranteed in [CSL] section two hundred two for the purpose of depriving them of such rights".<sup>4</sup>

Once the memorandum became a public document, the violation was established and that violation is applicable to all employees who were subject to immediate action pursuant to the memorandum, thus substantiating the charges of both DC 37 and CWA under CSL Section 209-a.1(a). We find no violation of other paragraphs of CSL Section 209-a.1. As regards the CWA charge, there is no basis whatsoever for finding any such violation. As regards the DC 37 charge, the

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<sup>3</sup> We accept the hearing officer's finding that publication in The Chief of an article discussing the contents of the memorandum should not be attributed to Respondent.

<sup>4</sup> During oral argument, Respondent declined to offer any alternative explanation for its issuance of the memorandum.

hearing officer found evidence of discrimination necessary to establish a "(c)" violation in that two employees were denied time off from work because of the memorandum. This action and its effect was de minimus. Not so, however, the "(a)" violation. Although applied to only two employees, the City's memorandum was potentially applicable to a far greater number. Publication of such a memorandum has a chilling effect upon the exercise of protected rights by other persons who are potentially affected by it.

We note that within a week or two after the two employees of the Department of Personnel were advised that they could not participate in union activity they were told that they could resume such activities. Nevertheless, it does not appear that the memorandum was rescinded. Accordingly, we are persuaded by DC 37 and CWA that the remedy should be broader than the one proposed by the hearing officer.

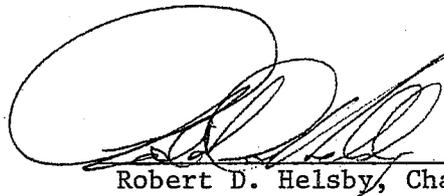
NOW, THEREFORE, WE ORDER that Respondent cease and desist from unilaterally implementing its own determination that employees within an existing negotiating unit are managerial and/or confidential within the meaning of the Act and the New York City Collective Bargaining Law.

IT IS FURTHER ORDERED that Respondent rescind Interpretive Memorandum No. 12, issued on April 19, 1974, and issue a copy of the instruction rescinding such memorandum to all persons who were issued that memorandum, and to DC 37 and CWA.

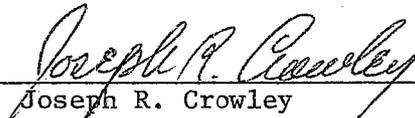
IT IS FURTHER ORDERED that Respondent conspicuously post an appropriate notice, which is supplied herewith, at locations ordinarily used by it to communicate to

- employees in (a) Mayor's Executive Offices,  
(b) Department of Personnel,  
(c) Office of Collective Bargaining,  
(d) Labor Law Complaint Section of the Comptroller's Office,  
(e) Bureau of Budget, and  
(f) Office of Labor Relations.

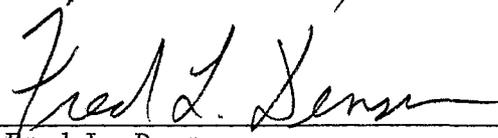
Dated: Albany, New York  
April 11, 1975



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

APPENDIX

# NOTICE TO ALL EMPLOYEES

PURSUANT TO  
THE DECISION AND ORDER OF THE  
NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

## NEW YORK STATE PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify our employees that:

We will cease and desist from unilaterally implementing our own determination that employees within an existing negotiating unit are managerial and/or confidential within the meaning of the Act and the New York City Collective Bargaining Law.

We will rescind Interpretive Memorandum No. 12, issued on April 19, 1974, and issue a copy of the instruction rescinding such memorandum to all persons who were issued that memorandum, and to DC 37 and CWA.

CITY OF NEW YORK

Employer

Dated .....

By .....

(Representative)

(Title)

*This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered defaced, or covered by any other material.*

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-4/11/75

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In the Matter of : Case No. D-0101  
BELLMORE-MERRICK UNITED SECONDARY TEACHERS, :  
LOCAL 3043 OF THE AMERICAN FEDERATION OF : BOARD DECISION  
TEACHERS, NYSUT : & ORDER  
upon the Charge of Violation of Section 210.1 :  
of the Civil Service Law. :

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On December 13, 1974, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Bellmore-Merrick United Secondary Teachers, Local 3043 of the American Federation of Teachers, NYSUT, had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the Bellmore-Merrick Central High School District on October 3, 4, 7, 8, 9, 10 and 11, 1974.

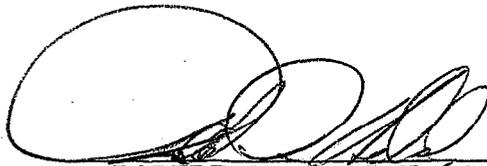
The Bellmore-Merrick United Secondary Teachers, Local 3043 of the American Federation of Teachers, NYSUT, submitted an answer to the charge constituting a general denial and including affirmative defenses, but on March 20, 1975, it withdrew the answer following discussions with the charging party, thereby admitting the allegations of the charge. The Bellmore-Merrick United Secondary Teachers, Local 3043 of the American Federation of Teachers, NYSUT, joined the Charging Party in recommending a penalty of loss of dues checkoff privileges for 60% of its annual dues.

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

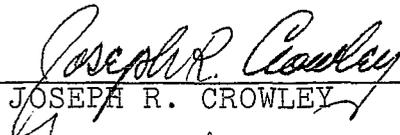
We find that the Bellmore-Merrick United Secondary Teachers, Local 3043 of the American Federation of Teachers, NYSUT, violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Bellmore-Merrick United Secondary Teachers, Local 3043 of the American Federation of Teachers, NYSUT, be suspended, commencing on the first practicable date, so that no further dues be deducted by the Bellmore-Merrick Central High School District on its behalf for a period of time during which 60% of its annual dues would otherwise be deducted. Thereafter, no dues shall be deducted on its behalf by the Bellmore-Merrick Central High School District until the Bellmore-Merrick United Secondary Teachers, Local 3043 of the American Federation of Teachers, NYSUT, 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  
April 11, 1975



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-4/11/75

In the Matter of  
ROME BOARD OF EDUCATION,  
Employer,  
-and-  
ROME CUSTODIAL AND MAINTENANCE EMPLOYEES  
ASSOCIATION,  
Petitioner,  
-and-  
ASSOCIATED EMPLOYEES OF THE BOARD OF EDUCATION  
UNIT OF SERVICE EMPLOYEES INTERNATIONAL UNION --  
LOCAL 200, AFL-CIO,  
Intervenor.

Case No. C-1147

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 ASSOCIATED EMPLOYEES OF THE BOARD OF EDUCATION UNIT OF SERVICE EMPLOYEES INTERNATIONAL UNION - LOCAL 200, 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 maintenance and custodial employees, including head custodians, custodians, building maintenance mechanics, grounds maintenance mechanics, painters, motor vehicle operators, bus driver-mechanics, and laborers.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with ASSOCIATED EMPLOYEES OF THE BOARD OF EDUCATION UNIT OF SERVICE EMPLOYEES INTERNATIONAL UNION - LOCAL 200, 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 11th day of April , 19 75 .

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF  
BOARD OF COOPERATIVE EDUCATIONAL SERVICES SOLE SUPERVISORY DISTRICT :  
BROOME, DELAWARE-TIOGA COUNTIES, : #2E-4/11/75  
Employer, :  
-and-  
OFFICE PERSONNEL OF BROOME-TIOGA BOCES, : Case Nos. C-1172 &  
Petitioner, : C-1190  
-and-  
CIVIL SERVICE EMPLOYEES ASSOCIATION of :  
the BROOME-DELAWARE-TIOGA B.O.C.E.S. :  
NYSUT :  
-and- Petitioner, :  
CIVIL SERVICE EMPLOYEES ASSOCIATION, :  
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 Civil Service Employees 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.

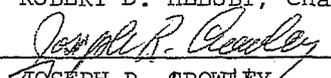
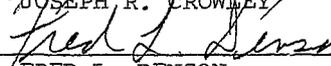
Unit: Included: All non-instructional employees including Secretarial & Clerical Personnel, Data Processing Personnel, Operation & Maintenance Personnel, full time salaried personnel including audio visual technician and regularly employed hourly paid employees (Teacher aides).

Excluded: Administration, managerial & confidential secretaries.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Civil Service Employees 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 11th day of April , 1975 .

  
ROBERT D. HELSEY, Chairman  
  
JOSEPH R. CROWLEY  
  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2F-4/11/75  
:   
TOWN OF ORCHARD PARK, :   
:   
Employer, :   
-and- : Case No. C-1215  
:   
CIVIL SERVICE EMPLOYEES ASSOCIATION, :   
INC., :   
:   
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 Civil Service Employees Association, Inc.

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:

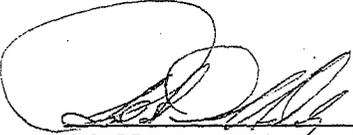
Included: All Highway Department employees.

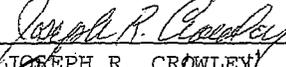
Excluded: Highway superintendent, deputy highway superintendent and all other employees.

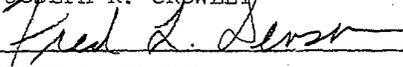
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Civil Service Employees Association, Inc.

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 11th day of April , 1975 .

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF

#2G-4/11/75

BOARD OF COOPERATIVE EDUCATIONAL  
SERVICES OF ROCKLAND COUNTY,

Employer,

-and-

Case No. C-1170

ROCKLAND COUNTY CHAPTER, C.S.E.A., INC.;

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 Rockland County Chapter, C.S.E.A., Inc.,

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:

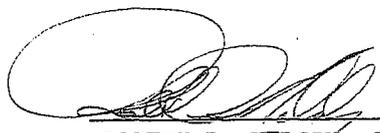
Included: All employees in noncertified positions.

Excluded: Public Information Specialist.

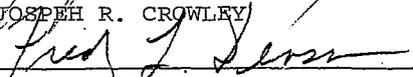
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Rockland County Chapter, C.S.E.A., Inc.,

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 11th day of April, 1975.

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF : #2H-4/11/75  
GUILDERLAND CENTRAL SCHOOL DISTRICT, :  
Employer-Petitioner, :  
-and- : Case No. C-1181  
GUILDERLAND CENTRAL TEACHERS :  
ASSOCIATION, :  
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 Guilderland Central Teachers 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: All department chairmen, teacher leaders at the middle school, and district coordinators; exclusive of department chairman for individualized programs.

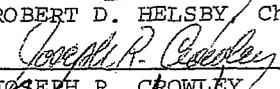
Excluded: Department chairman for individualized programs and all other employees.

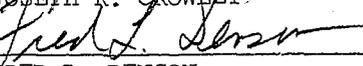
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Guilderland Central Teachers Association,

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 11th day of April , 19 75 .

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2I-4/11/75  
VILLAGE OF SPRING VALLEY, :  
Employer, :  
-and- : Case No. C-1204  
SPRING VALLEY UNIT, ROCKLAND COUNTY :  
CHAPTER, CIVIL SERVICE EMPLOYEES :  
ASSOCIATION, INC., :  
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 SPRING VALLEY UNIT, ROCKLAND COUNTY CHAPTER, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.

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:

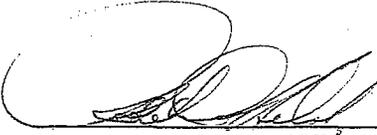
Included: All village employees.

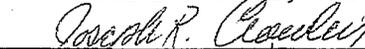
Excluded: Uniformed police force, employees of the Department of Public Works currently covered by a labor agreement including blue collar workers employed therein, department heads, school crossing guards, crossing guards, recreation director, legislative aide, executive assistant to mayor, village attorney, assistant village attorney, village clerk-treasurer, assessor, seasonal and temporary employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with SPRING VALLEY UNIT, ROCKLAND COUNTY CHAPTER, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.

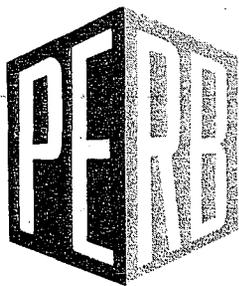
and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 11th day of April , 19 75.

  
ROBERT D. HELSEY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON



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## **ANNUAL REPORT EDITION**

### **1972**

#### **NEGOTIATING EXPERIENCE**

2,800 contracts  
2,000-70% settled without third party assistance  
839-30% brought to PERB for assistance

#### **Of 839 brought to the Board**

605 Schools  
234 Other governments

#### **Of 828 cases closed during 1972**

About 42% (349) settled by mediation  
About 57% (468) went to fact-finding

#### **Of 468 cases going to fact-finding**

36% Settled by mediation during fact-finding  
25% Report accepted  
39% Report modified before settlement

#### **REPRESENTATION**

145 Petitions received  
15 Director's decisions  
8 Board decisions  
36 Board certifications  
90 Petitions withdrawn  
44 Elections involving 115,975 employees

#### **IMPROPER PRACTICES**

80 Cases pending at beginning of year  
297 Charges filed  
21 Board decisions  
245 Charges settled by agreement  
111 Cases pending at end of year

#### **MANAGEMENT/CONFIDENTIAL**

87 Cases pending at beginning of year  
44 Applications received  
26 Director's decisions  
5 Board decisions  
75 Withdrawn after conference  
31 Cases pending at end of year

#### **WORK STOPPAGES**

25 Strikes by employees  
14,200 Employees involved  
55,000 Man-days idle  
0.023% Percentage of Estimated Working Time  
23 Board decisions on dues forfeiture

### **1973**

#### **NEGOTIATING EXPERIENCE**

2,500 contracts  
1,750-70% settled without third-party assistance  
743-30% brought to PERB for assistance

#### **Of 743 brought to PERB**

528 Schools  
215 Other governments

#### **Of 801 cases closed during 1973**

About 54% (433) settled by mediation  
About 45% (358) went to fact-finding

#### **Of 358 cases going to fact-finding**

28% Settled by mediation during fact-finding  
30% Report accepted  
42% Report modified before settlement

#### **REPRESENTATION**

128 Petitions received  
19 Director's decisions  
10 Board decisions  
47 Board certifications  
78 Petitions withdrawn  
46 Elections involving 7,799 employees

#### **IMPROPER PRACTICES**

111 Cases pending at beginning of year  
307 Charges filed  
38 Board decisions  
280 Charges settled by agreement  
100 Cases pending at end of year

#### **MANAGEMENT/CONFIDENTIAL**

31 Cases pending at beginning of year  
48 Applications received  
34 Director's decisions  
7 Board decisions  
16 Withdrawn after conference  
23 Cases pending at end of year

#### **WORK STOPPAGES**

18 Strikes  
6,370 Employees involved  
27,106 Man-days idle  
0.012% Percentage of Estimated Working Time  
14 Board decisions on dues forfeiture

### **1974**

#### **NEGOTIATING EXPERIENCE**

2,600 Contracts  
1,800-70% settled without third-party assistance  
788-30% brought to PERB for assistance

#### **Of 788 brought to PERB**

493 Schools  
295 Other Governments

#### **Of 711 Cases Closed during 1974**

About 46% (325) settled by mediation  
About 54% (381) went to fact-finding

#### **Of 381 Cases going to fact-finding**

35% Settled by mediation during fact-finding  
34% Report accepted  
31% Report modified before settlement

#### **REPRESENTATION**

160 Petitions received  
33 Director's decisions  
12 Board decisions  
49 Board certifications  
72 Petitions withdrawn  
41 Elections involving 13,728 employees

#### **IMPROPER PRACTICES**

100 Cases pending at beginning of year  
352 Charges filed  
40 Hearing officer decisions  
30 Board decisions  
296 Charges settled by agreement  
129 Cases pending at end of year

#### **MANAGEMENT/CONFIDENTIAL**

23 Cases pending at beginning of year  
33 Applications received  
21 Director's decisions  
0 Board decisions (No Appeals to Board)  
20 Withdrawn after conference  
15 Cases pending at end of year

#### **WORK STOPPAGES**

\*16 Strikes  
4,100 Employees involved  
19,300 Man-days idle  
0.01% Percentage of Estimated Working Time Lost  
11 Board decisions on dues forfeiture

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\*Does not include a 3-day strike of approximately 6,000 custodial workers under contract with the New York City Board of Education whose status as public employees is the subject of litigation.

# 1974 - A Year of Change

During 1974 significant changes were made in the Taylor Law for the resolution of contract disputes. Indeed, the modifications brought to certain disputes the use, for the first time, of binding arbitration.

The Legislature enacted two major amendments, which were signed into law by Governor Wilson. One relates to the resolution of deadlocked negotiations in disputes affecting employees in school districts; the other provides for compulsory arbitration as the final step in police and firefighter disputes.

## SCHOOL DISTRICT DISPUTE SETTLEMENT PROCEDURE

The amendment modifying impasse procedures in school districts abolishes the legislative hearing and gives to PERB a continuing responsibility to assist the parties in achieving agreement in the event fact-finding fails to resolve the dispute.

This change reflects the unanimous recommendations of a Task Force appointed by Governor Wilson and comprising representatives of the New York State United Teachers, the New York State Council of School Administrators, the New York State School Boards' Association, the State Department of Education, the Public Employment Relations Board, the Office of the Governor and both the Senate and Assembly.

The abolition of the legislative hearing has required substantially more time and effort in post fact-finding conciliation this year. A variety of techniques are being utilized by PERB's Conciliation Office to obtain final agreement including reassignment of fact finders to explore with the parties problems which led to the rejection of the factfinding report with the aim of gaining ultimate acceptance through modification of the report.

These techniques also include such things as assignment of a mediator whose narrow parameters of responsibility essentially involved setting up the logistics for further meetings between the parties; setting ground rules for

meetings with the parties by a conciliation panel, and convening meetings in various forms. It is planned to continue to apply these and a variety of other procedures to bring the most intractable disputes to final conclusion.

## POLICE/FIREFIGHTER ARBITRATION

The other major amendment provides for arbitration of contract terms in police and firefighter disputes and for the first time modified the direction of the Taylor Law by introducing binding contract arbitration. These measures provide for submission to an arbitration panel of a dispute involving members of any organized fire or police force or department of a county, city (except New York City), town, village or a fire or police district, if it is not resolved within ten days after submission of a fact finder's report. The law, implemented on an experimental basis, took effect on July 1, 1974 and expires June 30, 1977.

The effect of the amendment is difficult to evaluate at this time because of litigation which has arisen over the constitutionality of the statute. By year's end, 11 cases had been brought to PERB under this section, but only one arbitration panel issued an award. Action in the other cases has been delayed by court orders and a challenge to the constitutionality of the arbitration provision. This is expected to be resolved by the State Court of Appeals early in 1975.

One of the first actions following enactment of this amendment was a ruling by PERB that deputy sheriffs are not covered by these new procedures. The issue arose when the Erie County deputy sheriffs sought to invoke the new procedures; in addition, many counties, sheriffs and employee organizations representing deputy sheriffs expressed concern as to whether the language of this section was applicable to sheriffs' departments. PERB based its conclusion on its reading of the law and its understanding of the legislative intent in ruling that the term "organized police force or police department" did not apply to deputy sheriffs.

## OTHER AMENDMENTS TO THE TAYLOR LAW

In addition to the amendments mentioned above, the other amendments enacted by the Legislature involve the management/confidential section of the Law. One dealt with the designation as managerial of assistant district attorneys and law school graduates employed in titles that promote to assistant district attorneys. This amendment, signed into law on May 6, excludes these employees from protected rights of representation and negotiation.

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Robert D. Helsby, *Chairman*  
Joseph R. Crowley  
Fred L. Denson  
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Muriel Gibbons, *Editor*

The other amendment constituted a legislative declaration of the line between managerial employees within the Fire Department of the City of New York.

## RULES OF PROCEDURE

PERB's Rules for administering the Taylor Law were revised during the year to reflect the changes brought about by the new amendments to the Law and necessary updating of existing rules. Public hearings were held in Valhalla, Albany and Rochester during August and the amended Rules were promulgated on October 1.

In addition to major changes involving school and police/firefighter negotiations, two new sections were added to the Rules of Procedure. One detailed procedures for voluntary grievance arbitration and the other explained PERB's policy with regard to the new Freedom of Information law and access to the Board's records.

PERB's Rules of Procedure with regard to the processing of representation petitions were amended significantly, effective March 1, 1974. A new provision was added to provide for the simultaneous submission of a verified declaration of authenticity by the petitioning organization.

Further, with regard to the submission of a showing of interest, the evidence must now be submitted simultaneous with the filing of the petition and, if in the form of authorization or designation cards, must be alphabetized and the original cards must be submitted.

Another change involved extending the protected period for the employer and incumbent employee organization to negotiate a successor agreement.

## DISPUTE SETTLEMENT

In last year's report, it was stated, "In labor relations, whether public or private, it is felt that the best agreement is one which results from genuine bargaining by the parties without third party intervention." Obviously, this is so, and it is with this fact in mind that PERB has sought to encourage labor and management to make every effort to obtain agreements on their own. Certainly there will inevitably be situations that do require the intervention of the third party neutral, but again mediated settlements have been encouraged rather than those which extend responsibility for suggesting or mandating contract terms to a third party.

Thus, PERB continues to settle a substantial number of cases at the first step, mediation. Out of 788 impasses brought to PERB in 1974, 325 settled at this first step. In addition, 134 disputes were settled by fact finders who, with the consent of the parties, mediated the outstanding

issues without resort to formal fact-finding. The remaining cases were either settled by acceptance of the fact finder's report or by post fact-finding conciliation.

The 788 impasses brought to PERB during 1974 represent an increase of 45 over the previous year. The demands on PERB's conciliation staff and members of the Panel of Mediators and Fact Finders were greater than even this difference suggests. Each impasse situation is "ad hoc" and has its own unique characteristics. Those that require post fact-finding conciliation are especially demanding on the skills of the mediators and require frequent innovation to resolve. Inevitably, the demands on staff and panel time far exceed the nominal difference reflected in the total impasse figures for 1973 and 1974. A total of 1,138 assignments were made for mediation, fact-finding and post fact-finding conciliation, of which 254 were handled by PERB staff.

PERB's conciliation staff at year's end found itself approaching a new calendar year with substantial challenges ahead as negotiations take place in a period of sharp inflationary pressures on employees and the governments which employ them.

### MEDIATION, FACT FINDING, AND CONCILIATION ASSIGNMENTS January 1, 1974 to December 31, 1974

Mediation	636
Staff	235
Panel	401
Fact Finding	433
Without Prior Mediation	140
After Mediation	293
Conciliation	69
Staff	19
Panel	50
<b>Total Assignments</b>	<b>1138</b>

### Grievance Arbitration

There was a rise in grievance or "rights" arbitration cases during the year. In 1973 there were 148 cases of grievance arbitration heard by PERB arbitration panelists; in 1974 the number rose to 179. Formal rules for grievance arbitration were promulgated by PERB. The availability of experienced arbitrators is an invaluable service to the parties in contract administration. (While PERB makes available persons on panel with expert arbitration experience, the parties are required to pay all related costs.)

**ANALYSIS OF PERB'S  
DISPUTE SETTLEMENT ASSISTANCE  
A Comparison of 1974 and 1973**

	1974	1973
A. Total Cases Open	954	935
During the Period		
Total Closed During Period	711	801
Closed as Percent of Open	74.5%	85.7%
B. Method of Closing Cases:		
Mediation	325 (45.7%) <sup>1</sup>	433 (54.1%) <sup>2</sup>
Fact-Finding	381 (53.6%)	358 (44.7%)
Closed for Other Reasons	5 (0.7%)	10 (1.2%)
C. Closed by Fact-Finding	381 (100.0%)	358 (100.0%)
Report Accepted	128 (33.6%)	106 (29.6%)
No Report Issued	134 (35.2%)	100 (27.9%)
Report Modified	119 (31.2%)	152 (42.5%)

<sup>1</sup>Includes 2 cases closed "Prior to Mediation".

<sup>2</sup>Includes 5 cases closed "Prior to Mediation".

## IMPROPER PRACTICES

There was nearly a 15 per cent increase in the number of improper practice charges filed with PERB during 1974 over the previous year. Among decisions resulting from some of the charges were several significant ones dealing with such issues as maintenance of the **status quo**, duty to negotiate, collegiality, and mandatory and non-mandatory subjects of negotiations.

As in previous years, PERB staff was instrumental in settling or having withdrawn about 90 per cent of the charges filed without requiring a decision by the Board.

In one case of note, **City of Yonkers**, PERB noted an apparent misunderstanding concerning an employer's duty to maintain the **status quo** as set forth in the **Triborough** case. The Board made it clear that the **Triborough** obligation is statutory and not contractual. Thus, the existence of obligation to maintain the **status quo** is not dependent upon a contract or concerned with whether or not any particular contractual provisions survive the expiration date of the contract. The latter is a matter for the court or for an arbitrator, while PERB's primary concern is the unilateral change of an existing term and condition of employment whether derived from a contract or past practice.

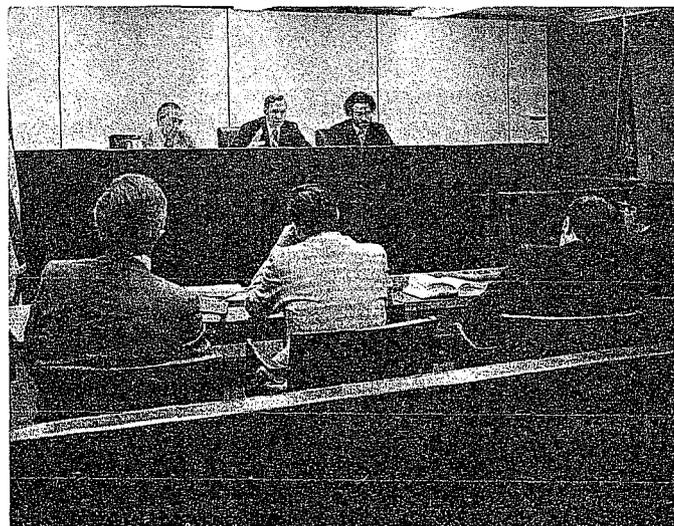
In a subsequent case, **Massapequa**, PERB noted that its "Triborough doctrine" is a long standing policy followed

in the private sector. The Board indicated that under the National Labor Relations Act, an employer may not cancel insurance plans, eliminate holidays, vacations, sick leave or cut wages to bring economic pressure on employees to accept the employer's offer or to abandon the employees' demands. PERB further pointed out that in a decision of the Supreme Court of the United States the rights of employees to such benefits as severance pay, vacation pay, and pension benefits do not automatically terminate upon the expiration of the agreement establishing them and the employer is bound to honor them beyond the term of the contract.

Here, the employer had voluntarily recognized the employee organization and when shortly thereafter the organization sought to negotiate, the employer had violated its duty to negotiate in good faith, PERB rejected the employer's assertion that its earlier conduct should be excused since it subsequently claimed (more than a year after initial recognition) that the unit had become inappropriate.

In **New York State Thruway Authority** the employer's fiscal year was a calendar year (January 1 — December 31). It and the negotiating agent entered into a contract which expired on June 30, 1974 but had not achieved a successor agreement. In finding that a petition filed on

June 20, 1974 was timely, PERB found that the contract expired on December 31, 1973 since the language of Section 208.2 of the Taylor Law indicates a legislative preference that public sector labor agreements ought to be coextensive with the employer's fiscal year. PERB then



Board Members (left to right) Joseph R. Crowley, Robert D. Helsby, Chairman, and Fred L. Denson listen to oral argument in an improper labor practice case.

indicated that the "unchallenged representation status" of the incumbent negotiating agent should be extended beyond December 31 to permit it to negotiate a successor contract. However, PERB made clear that such status does not continue indefinitely and that the negotiating agent's failure to reach a successor agreement exposes it to challenge at some appropriate time.

PERB noted an ancillary question — specifically how long the additional period of protected status should be. This was the subject of a public hearing which led to the promulgation of Section 201.3(e) of the Rules. (This is discussed elsewhere in the report.)

When, in point of time, does a "new agreement" bar a petition? In **Farmingdale**, PERB determined that an exchange of letters indicating acceptance of a fact finder's recommendation did not constitute a contract bar. PERB affirmed the finding of the Director that there should not be a need to resort to extraneous facts to determine whether a particular document is a finalized contract that can serve as a bar. The Board concluded that a contract bar requires nothing less than a written and final agreement.

Concerning the reciprocal duty of both parties to "negotiate in good faith", PERB determined in **Yorktown** that insistence upon negotiating a non-mandatory item during fact-finding was violative of the employee organization's duty and, in **City of Yonkers**, that the employer's two month delay in responding to a salary proposal (the last open item) was likewise improper. "Collegiality" was a unique subject presented to PERB. In **Board of Higher Education of the City of New York** the issue concerned the composition of an employee evaluation committee and particularly whether students could be given voting rights concerning faculty reappointment, tenure and promotion. Pointing to the historical absence of students from such committees, the employee organization sought to negotiate a specific contractual prohibition of student participation. However, PERB found that this was not a mandatory subject of negotiations and distinguished between the role of faculty as employees and the role of faculty as a participant in university governance.

As of the close of 1974, the following check list of subjects of negotiations have been found to be mandatory or non-mandatory:

## I. DESIGNATED BY PERB

### Mandatory

Arbitration as last step of disciplinary proceedings against tenured teachers (Huntington 5 PERB 7507)  
Change in Conference Hours (Jamestown 6 PERB 3075)  
Compulsory Retirement (Harrison 6 PERB 3017)

- \*Department Rules and Regulations (Albany U 1369)
- \*Discipline and Discharge (Albany U 1369)
- \*Dismissal of probationary employee, decision and procedures for accomplishment (Albany U 1369)
- \*Establishment of Labor-Management and Joint Safety Committees (Albany U 1369 and 1371)
- \*Exclusivity of Representation (Albany U 1369 and 1371)
- \*Extra Work Outside Regular Hours of Duty (Albany U 1369)
- \*Impact of employer's decision to abolish positions claimed to exist by employee organization (North Babylon 7 PERB 3027)
- Impact of modification of class size (West Irondequoit 4 PERB 3070)
- Impact of professional development plan which would constitute a basis for an annual evaluation and for reappointment (Schenectady County Community College 6 PERB 3027)
- Impact on unit members of reduction in work force (New Rochelle 4 PERB 3704)
- Job duties of unit employees (West Irondequoit 4 PERB 3070)
- Length of work year (Oswego 4 PERB 4520)
- Manpower requirements when related to safety (White Plains 5 PERB 3008)
- \*Paid Leave (Albany U1369)
- \*Paid Time Off for Union Activities (Albany U1369)
- \*Parity (to extent demand for reopener and for subsequent negotiations) (Albany U1371)
- Parking fees at work locations controlled by the employer (New York State 6 PERB 3005)
- Procedures for evaluating probationary or untenured teachers (Monroe-Woodbury 3 PERB 3104)
- \*Procedures Relating to Layoff (Albany U1369)
- \*Promotional procedures for unit employees (West Irondequoit 4 PERB 3070)
- \*Reallocation of job grades (New Rochelle 7 PERB 3021)
- Reimbursement for job-related personal property damage (Huntington 5 PERB 7507)
- Reimbursement of tuition for graduate courses (Huntington 5 PERB 7507)
- \*Retirement for Eligible Employees (Albany U1369 and 1371)
- Sabbatical Leave (East Meadow 4 PERB 3018)
- \*Seniority (Albany U1371)
- Special salary increment in last year of service before retirement (Huntington 5 PERB 7507)
- \*Time to Process Grievance Without Loss of Pay (Albany U1369 and 1371)
- Tours of duty, except that employer may unilaterally determine the number of employees it requires to be on duty at specified periods of time (White Plains 5 PERB 3008)
- \*Unpaid Leave of Absence for Union Activity (Albany U1369 and 1371)
- Wages and Hours (The Taylor Law)
- \*Workload (Yorktown 7 PERB 3030)
- \*Work Schedules (Albany U1371)
- \*Zipper Clause (Albany U1369)

### Non-Mandatory

- Agency shop (Monroe Woodbury 3 PERB 3104)
- Budget cuts and resultant economically motivated decision to reduce work force (New Rochelle 4 PERB 3060)
- \*Call in off-duty personnel precluding reassignment of on-duty personnel (Albany U1371)
- \*Composition of committees to evaluate faculty (City University 7 PERB 3028)
- Demand that each student have specific number of contact periods with teaching specialists (Yorktown 7 PERB 3060)
- \*Demand for greater role in the formulation of policy relating to student guidance in high schools (Yorktown 7 PERB 3060)
- Demand that supervisor be of a specified rank or grade (White Plains 5 PERB 3008)
- \*Demand for union to have greater role in making decisions relating to development of curriculum, the evaluation of principals, the assignment of paraprofessionals and other educational matters (Yorktown 7 PERB 3060)
- Demand that work force not be reduced except by attrition or disciplinary charge for cause (White Plains 5 PERB 3008)
- \*Elimination of jobs (Albany U1369)

- \*Employer intercession to obtain work from other employers at extra compensation (Albany U1369)
  - \*Equipping of police car with shotgun (Albany U1369)
  - \*Filling of vacancies within 30 days (Albany U 1371)
  - Initial employment qualifications (Rochester 4 PERB 3058)
  - Insistence upon consideration by a fact finder of non-mandatory subjects of negotiation (Yorktown 7 PERB 3030)
  - Maintenance of membership (Erie County 5 PERB 3021)
  - \*Numerical limitations on class size (West Irondequoit 4 PERB 3070)
  - Overall policies and mission of government (New Rochelle 4 PERB 3060)
  - \*Parity (Albany U1371)
  - \*Pistol permits (Albany U1369)
  - \*Political activities (Albany U1369)
  - Promotional policy for job titles not within the negotiating unit (Monroe-Woodbury 3 PERB 3104)
  - \*Promotion and filling vacancies in competitive class (Albany U1369)
  - Residency requirements (Rochester 4 PERB 3058)
  - \*Retirement and Social Security benefits for ineligible employees (Albany U1369)
  - Seminar or conference designed to enrich the professional staff at which attendance is not compulsory (Gates-Chili 6 PERB 3065)
- \*Cases decided in 1974

## II. DESIGNATED BY COURT

### Mandatory

- Cash payment for accumulated unused sick leave — **Teacher Association, Central High School District #3 v. Board**, 34 A.D. 2d 351
- Incentive Pay Plan — **North Hempstead School District and Carle Place Teachers**, 6 PERB 7510
- Medical, dental and life insurance benefit payments by employer to a union administered welfare fund — **Local 456 IBT v. Town of Cortland**, 68 Misc.2d 645
- Sick Leave Bank — **Syracuse** 7 PERB 7513

### REPRESENTATION

There was an increase of approximately 25 per cent in the number of representation petitions filed in 1974 compared to 1973, 160 in 1974 to 128 in 1973.

The "timeliness" of petitions was litigated frequently. In **Hempstead and New York City Board of Education**, PERB was faced with the "timeliness" of an employer's unilateral restructuring of an established negotiating unit. In **Hempstead**, PERB stated that

"(a) recognition properly granted by an employer may not be withdrawn at the whim of the employer, but may only be withdrawn if the employer at an appropriate time has objective evidence that the employee organization no longer represents an appropriate unit or enjoys majority status, or if the employer invokes the processes of this Board by way of a petition for decertification or certification."

That an employer is not "free to abandon" its recognition at any time also was pointed out by PERB in **New York City Board of Education**.

The spectrum of other decisions decided by PERB include the distinction between "supervisors" and "managerial" persons, **Metropolitan Suburban Bus Authority**, school nurse/clerk grouped with professional rather than non-professional personnel, **Putnam Valley**, and a separate unit for public works employees resulting from their unique working conditions, history of negotiations and claim of administrative convenience, **Sullivan County**. Those of the Director which were not appealed to the Board include: continuing academic and non-academic professional university employees in the same unit, **State University**; grouping deans and head teachers with supervisors rather than teachers, **Lakeland**; the "managerial characteristics" of certain directors precluding their placement in any unit, **County of Genesee**, and that library aides were, despite their young age, "public employees," **Pearl River**.

### Elections

In 1974 PERB conducted 41 elections (38 in-person and 3 mail ballot elections). Voter participation in these elections last year was 75 per cent, involving 10,357 out of 13,728 eligible voters.

There were objections raised as to the activities of the parties in several elections. In **Ulster**, PERB determined that for an in-person election the employer was not required to furnish a list of employee addresses to one employee organization so long as it did not discriminate among other competing employee organizations. The Board also made clear that "... the employer's right of free speech entitles it and its representatives (supervisors wearing campaign buttons) to express an opinion, provided it is done in a non-coercive manner" and, further, that the distribution of an altered PERB "sample ballot" would not, under the circumstances of that case, mislead a "reasonable" voter to believe that PERB "endorsed" one employee organization over the other.

In another case, **Orange**, PERB found merit in the objections raised and for the first time under the Taylor Law ordered that a new election be held. In this matter, the employer had, without any discriminatory intent, disclosed its "access" policy to one of two competing employee organizations which, as PERB found, caused a "disparity" since only one side had an opportunity to campaign on the employer's premises while the other didn't.

## Management/Confidential

During 1974 most disagreements involving management/confidential designations were resolved by the parties after assistance from PERB. Among a few matters which required litigation, it was determined by the Director that a fire chief, as the employer's "top" uniformed officer was managerial, **City of White Plains**, as was a school district's business manager who assisted directly in both "the preparation for and conduct of collective negotiations", **Mineola**.

PERB reaffirmed its right under the Law to determine management/confidential matters in the **Hempstead** case involving school principals. In this case, PERB decided that principals were not managerial employees within the meaning of the Taylor Law pointing out that it is not the application of the employer that terminates the coverage by the Taylor Law of employees or the status of the organization that represents such employees. Rather, it is the determination by PERB on that application. This decision was appealed to the courts and the determination by the Court of Appeals, which confirmed the PERB decision, is discussed in a later section of this report.

## THE TAYLOR LAW IN THE COURTS

Major questions concerning scope of negotiations under the Taylor Law and PERB's role in defining what's negotiable were resolved by the Court of Appeals in its decision in **West Irondequoit Teachers Assn. v. Helsby, et al.** That court upheld PERB's determination that class size is a matter of educational policy and not a mandatory subject of negotiations. The court agreed with PERB's view that the duty to negotiate terms and conditions of employment did not require a public employer to negotiate basic policy decisions, including those involving its mission and the quality and level of service to be provided. The court said that the task of a reviewing court is merely to see whether PERB's determination was legally permissible and not to substitute its interpretation of the law for that of PERB.

Apparently applying that same test of judicial review, the Court of Appeals unanimously confirmed, without

opinion, PERB's decision that the principals in the Hempstead School District are not managerial employees within the meaning of the Taylor Law, **Board of Education, Hempstead Public Schools v. Helsby, et al.** In upholding PERB's determination, the Court of Appeals rejected the arguments of the school district that the

criteria used by PERB violated the standards set forth in Section 201.7 of the Taylor Law and the public policy of the State. In another proceeding, the Court of Appeals denied leave to appeal the decision of the Appellate Division upholding PERB's determination that prisoners in State penal institutions are not public employees under the Taylor Law.

The scope of judicial review and enforcement of PERB's orders in improper practice cases have been the subjects of a number of court proceedings during 1974. In an enforcement proceeding brought against the City of White Plains, PERB sought an order enforcing its directive to the City to negotiate with its firefighters on the subject of tours of duty. Albany County Supreme Court had previously granted such an order but the City appealed, arguing that the enforcement order was improperly granted. The Appellate Division, Third Department, affirmed the lower court's order without opinion. PERB also sought an order enforcing PERB's order directing the sheriff of Ulster County to execute a written contract embodying the agreement PERB found had been reached between the parties. Albany County Supreme Court concluded that such action was within the power of PERB to order and granted enforcement.

In another enforcement proceeding, begun in 1974 and completed in early 1975, brought against the Buffalo Board of Education, the Appellate Division, Fourth Department, held that PERB's remedy to correct a violation by the

Board of Education of Section 209-a.1(a) was a reasonable exercise of its authority and granted enforcement. PERB, after finding that the Board of Education's unilateral change of the civil service status of its employees and methods of determining wages constituted such a violation, ordered the Board of Education to restore the **status quo ante** and compensate employees for any wages lost as a result of the change in method of compensation. Additionally, the Court concluded that under Section 213 of the Taylor Law, a court may not consider the merits of PERB's determination where the enforcement proceeding is instituted more than 30 days after the determination, which is the statutory time limit within which the Board of Education could have instituted an Article 78 proceeding to review the determination.

On the other hand, the same court that decided the Buffalo Board of Education case rendered an opinion in **Jefferson County Board of Supervisors v. PERB**, limiting PERB's power to fashion a remedy for violation of Section 209-a. 1(d) (refusal to negotiate). That court held that while PERB properly found that the employer's refusal to pay certain increments called for in its contract with an employee organization violated its Taylor Law duty to negotiate in good faith, as well as being a breach of contract, PERB could not order payment of the increments where only a 209-a. 1(d) violation is found. PERB has appealed this decision to the Court of Appeals.

In a proceeding to review a finding that an employer had violated its duty to negotiate in good faith after granting recognition to an employee organization, the Appellate Division, Fourth Department, reversed PERB after concluding that the evidence was insufficient to support PERB's determination that a town board had, by acquiescence in the actions of its supervisor, granted **de facto** recognition to the employee organization. The court concluded that the conduct of the Town Board after purported recognition by the Town Supervisor was not sufficient for recognition purposes under the Taylor Law. The court nevertheless remanded the matter to PERB for further consideration of an appropriate remedy for other improper practices found by PERB to have been committed by the employer which the court agreed were supported by substantial evidence, **Town of Clay v. Helsby, et al.**

In an opinion analyzing the definitions of "public employer" under the Act, the Appellate Division, First Department, reversed a determination of PERB that the New York Public Library is a joint public employer with the City of New York and therefore subject to the prohibition against agreeing to an agency shop. The court concluded that the New York Public Library is not a public employer nor a joint public employer within the meaning of the Taylor Law. PERB has appealed this decision to the Court of Appeals, **New York Public Library, et al. v. PERB.**

In a proceeding brought in the federal courts, an organization representing certain State employees challenged PERB's 1969 unit decision in the State representation case as being in violation of their rights under the Fifth and Fourteenth amendments to the U.S. Constitution. The federal district court dismissed the proceeding as untimely and as barred by res judicata. The court also held that there is no federally recognized right on behalf of dissenting employees, dissatisfied with the bargaining unit certified by a labor board, to be allowed their own individual bargaining unit, **Ferrato, et al. v.**

**Wilson, et al and PERB.** This decision was affirmed by the Circuit Court of Appeals.

The enactment by the Legislature establishing binding arbitration as the last step of the conciliation procedures available to police and firefighters in New York State has generated a number of lawsuits challenging the constitutionality of the statutes. As of the end of 1974, the Cities of Amsterdam, Corning, Buffalo and Ogdensburg and the Village of Johnson City had all instituted such actions. The judge hearing the Amsterdam case concluded that the laws imposing binding arbitration were unconstitutional. However, the judges in the Corning and Buffalo cases each rendered opinions holding the statutes constitutional. The Amsterdam case was appealed by PERB directly to the Court of Appeals where the matter is presently pending.

In a decision by the Court of Appeals on a case in which PERB was not a party, that court upheld the constitutionality of the individual penalty provisions of the Taylor Law. The court had previously so held but reconsidered the matter after the U.S. Supreme Court remanded the case. The court concluded that the procedures set forth in Section 210 of the Taylor Law relating to notice, hearing, penalties and judicial review afford required due process protection to the public employees affected. In another case, (to which PERB was not a party) the Court of Appeals reinforced the public policy in favor of arbitration of contract grievances.

## STRIKES

There were 16 strikes during 1974 of which 12 were of five days or less duration. The remainder reached a maximum of 6 to 12 days. There were less than 4,100 employees of the slightly more than one million public employees in the state involved in these strikes.

### STATE AND LOCAL GOVERNMENT WORK STOPPAGES SELECTED STATES IN RANK ORDER 1973

Rank	Number of Strikes	Number of Workers Involved	% of Workers Involved <sup>1/2</sup>	Man-days Idle	% Estimated Working Time <sup>3</sup>				
1	Michigan	73 Michigan	46,900	Hawaii	19.60%	Pennsylvania	652,800	Hawaii	0.784%
2	Pennsylvania	65 Pennsylvania	30,700	Rhode Island	14.46	Michigan	642,600	Michigan	.676
3	Ohio	44 Illinois	28,900	Michigan	12.33	Illinois	309,300	Pennsylvania	.583
4	Illinois	32 Ohio	22,100	Wisconsin	8.09	NEW YORK	117,600	Rhode Island	.404
5	Wisconsin	24 Wisconsin	16,100	Delaware	7.48	Ohio	97,200	Illinois	.269
6	New Jersey	18 Hawaii	7,900	Pennsylvania	6.85	Missouri	83,700	Missouri	.172
7	NEW YORK	16 Rhode Island	5,800	Illinois	6.28	Hawaii	79,000	Delaware	.120
8	California	13 Missouri	4,700	Ohio	5.19	Wisconsin	59,300	Wisconsin	.119
9	Georgia	7 California	4,400	New Mexico	2.47	New Jersey	48,300	Ohio	.091
10	Washington	7 New Jersey	4,000	Missouri	2.41	Rhode Island	40,500	New Jersey	.065
11	Indiana	7 NEW YORK	3,000	Connecticut	1.47	California	35,100	NEW YORK	.050
12	Rhode Island	6 Texas	2,300	New Jersey	1.34	Indiana	9,900	Alaska	.044

Source: U.S. Department of Labor, Bureau of Labor Statistics, not yet published data

<sup>1/1</sup> Based on number of full-time equivalent State and local government employees, October 1972.

Source: U.S. Bureau of Census, 1972 Census of Governments Vol 3 (No.2) Table 11, p.22

<sup>1/2</sup> New York ranked 28th among states with .32% of its government workers involved in work stoppages.

<sup>1/3</sup> Computed using standard 250 working days.

During 1974 the Office of Counsel issued 13 charges against employee organizations for violation of the Taylor Law strike-prohibition. Another charge was issued by a chief legal officer, as is authorized by the Taylor Law. Counsel's office investigated four other apparent strikes but there was insufficient evidence to warrant a charge against an employee organization. The Board rendered decisions in 11 such strike proceedings assessing penalties ranging up to one year's forfeiture of dues deduction privileges. Several of the penalties assessed were as the result of a "settlement" procedure authorized by the Board. Under such procedure, Counsel to the Board is authorized to recommend to the Board a penalty previously agreed to by the employee organization subject to the organization's admission of responsibility for the strike. Such a recommendation, however, is subject to Board approval. If the Board rejects the recommendation, the employee organization is permitted to withdraw its admission of responsibility without prejudice and a full hearing is conducted on the charges.

## MINI-PERBs

During the past year the "Mini-PERB" in the Town of Harrison was terminated by that local government. Of the 34 such PERBs approved by the State PERB since 1967, only 15 now exist. During the year the State Board considered and dismissed two petitions alleging that determinations of Mini-PERBs were not in substantial compliance with the requirements of the Taylor Law. Both involved rules relating to showings of interest.

## RESEARCH

PERB's statutory responsibilities in the research area include compiling data on and acting as a clearinghouse with respect to wages, fringe benefits and related conditions of employment: to undertake special studies from time to time with respect to problems arising from the administration of the law, and to monitor recent settlement trends.

Various wage and fringe benefit reports have emerged over the years. These reports, updated annually, provide current wage and /or fringe benefits data. The wage reports now go beyond so-called "hard occupations", e.g., policemen, firefighters, nurses, and include "soft occupations" — duties associated with job titles which may vary significantly from employee to employee — by clustering groups of clerical, blue collar, and school district non-instructional occupations.

Until late 1974, PERB has only analyzed current teacher settlements. Basic trends were reported in **PERB News** from time to time and in detail to mediators and fact finders on a periodic basis. Reporting of current settlements has been limited in the past because of the

relative shortness of the negotiating season — teacher negotiations generally extend over six months. Current settlements are now reported in **PERB News** monthly as space permits. If additional resources become available, trend data on state and local settlements will be reported periodically. Public employment constitutes about one-sixth of total employment nationally, but no current systematic settlement data are regularly reported with respect to this sector.

The following reports were published:

**Wages and Salaries.** Police (city, town, and village), firefighters, deputy sheriffs, nurses (county), probation officers (county), blue collar (county), clerical (county), and non-instructional employees of school districts (by region).

**Fringe Benefits.** Policemen, firemen, and county employees including sheriffs and medical personnel. Fringe benefits reports on non-instructional school personnel are revised every other year.

**Other.** New York State Employees — salaries, fringe benefits, and related practices; New York State Community Colleges — salaries, fringe benefits, and related practices; and Transit Authorities — wages and fringe benefits.

These reports are updated periodically, usually at the conclusion of the applicable negotiating cycle, so that revised data are available at the beginning of or early in the next cycle. When new developments or trends are detected, special reports are sometimes prepared or ongoing reports are revised to incorporate such new developments.

Wage and salary reports normally summarize pay schedules. Fringe benefit reports provide data on retirement plans, health insurance, sick and other leave benefits, vacation and holiday policies, and other benefits.

Data are furnished to both neutrals and advocates in preparation for and during the course of negotiations upon direct inquiry. Such information plus the data for most reports are compiled from contract files. An attempt is made to collect in timely fashion all public sector labor contracts. These files are open to the public and are used extensively by labor and management representatives as well as members of the academic community with an interest in public sector labor relations.

## THE PUBLIC'S RIGHT TO KNOW

PERB continues to make information and data available on the Taylor Law and its administration. This is done in a variety of ways — through the monthly newsletter, **PERB News**, news releases, a number of specialized publications and the conducting of seminars and meetings throughout the state.

These efforts were broadened in a new section of PERB's Rules of Procedure dealing with the recently enacted Freedom of Information Law. This new law was enacted by the 1974 Legislature and became effective on September 1.

Revised editions of the three basic guides to the Law — the **Taylor Law, Rules of Procedure, and What Is the Taylor Law — And How Does It Work?** were widely circulated during the year. Volume 7 of **Official Decisions, Opinions and Related Matters** was available during the year and provided complete text of Board decisions and other major decisions. A cumulative index to Volumes 1-6 was completed in 1974. PERB staff assisted in the preparation of a booklet, **Practices & Procedures Under the Taylor Law: A Practical Guide in Narrative Form**, which was published by the New York State School of

Industrial and Labor Relations at Cornell University.

Several seminars were sponsored by PERB in cooperation with the Industrial and Labor Relations School, in an effort to provide information on new developments in labor relations for members of PERB's Panel of Mediators and Fact finders. A special two-day symposium on "Public Sector Bargaining" studied issues and problems confronting negotiators in educational bargaining situations. The meeting brought together several hundred negotiators representing employee organizations and employers in public schools and higher education and covered such topics as job security, management rights, salary systems, evaluation of faculty, co-existence of collective bargaining and university governance, and the role of third party neutrals.

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