

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2A-4/28/75
:
NIAGARA FALLS UNIFORMED FIREFIGHTERS :
ASSOCIATION, AFL-CIO, LOCAL 714, : BOARD DECISION
:
Respondent, :
:
- and - : CASE NO. U-1512
:
CITY OF NIAGARA FALLS, :
:
Charging Party. :

The charge herein was filed by the City of Niagara Falls (the city) on February 25, 1975. It alleges that the Niagara Falls Uniformed Firefighters Association, AFL-CIO, Local 714 (the association) committed an improper practice in violation of CSL §209-a.2(b) by insisting on submitting nonmandatory subjects of negotiations to arbitration.

On March 6, 1975, the city and the association entered into a stipulation in which they specified the demands of the association that the city alleges to be nonmandatory subjects of negotiation and which the association insists upon submitting to arbitration; relevant background facts were also set forth in the stipulation. Indicating that the dispute was one that raises questions concerning scope of negotiations, the parties jointly requested this Board to accord expedited treatment to the matter as provided in §§205.6 and 204.4 of our Rules of Procedure (Rules). The request was granted. Thereafter the parties sent us memoranda of law.

THE DEMANDS

The negotiability and arbitrability of two of the association's demands are at issue in this proceeding. They are

#19 - That Article VII, Section 3-G be changed in accordance with proposed overtime distribution plan of Union.

#24 - That the contract be amended to include a new article containing the content of the letter of intent relative to minimum manning with a guarantee of 40 men for each platoon and with pay to be changed to time and a half instead of straight time for such overtime work.

Section 3-G of Article VII of the 1973 agreement, which is referred to in demand #19, establishes a procedure for the allocation of overtime. ^{1/} The proposed change in the overtime distribution plan calls for incorporation of the following clause into Section 3-G of Article VII.

"Call-in would be for rank, i.e., should a Deputy, Battalion Chief or Captain call in sick and the manning level is reduced to ^{2/} 40 men, no one will be called in. If, however, a Firefighter calls in sick on the same platoon and reduces the manning level to 39 men, then the highest ranking officer will be called in.

^{1/} "The distribution of overtime for ordinary staffing problems shall be administered by the Fire Chief or his designee according to the following policy:

A separate seniority list shall be kept by the Fire Chief in his office of all ranks. Overtime will be distributed to those qualified individuals in order of seniority as shown on the seniority lists who are not on duty. This record shall show the date of call and the response from each person called as to whether the overtime was refused or if the individual member could not be reached. If the member refuses, he will automatically be by-passed until a complete cycle of the seniority list has been made. A separate list of seniority shall be maintained for all ranks using the same above system."

^{2/} This part of the demand is unclear. Perhaps the words "fewer than" have been omitted.

Demand #24 was designed to incorporate the substance of a letter of intent that had been executed by the city and the association.^{3/} It, too, called for the maintenance of 40 man platoons.

APPLICABLE DECISIONS

The basic proposition of law applicable to scope of negotiations decisions was articulated by us in Matter of the City School District of the City of New Rochelle, 4 PERB 3704 during 1971. In that case we said (at page 3706):

"A public employer exists to provide certain services to its constituents, be it police protection, sanitation or, as in the case of the employer herein, education. Of necessity, the public employer, acting through its executive body, must determine the manner and means by which such services are to be rendered and the extent thereof, subject to the approval or disapproval of the public so served, as manifested in the electoral process. Decisions of a public employer with respect to the carrying out of its mission, such as a decision to eliminate or curtail a service, are matters that a public employer should not be compelled to negotiate with its employees."

Even more to the point is our decision in Matter of City of White Plains, 5 PERB 3013 (1972). In that case, we dealt with

^{3/} The letter was sent by the association on June 20, 1973 and accepted by the city on June 22, 1973. It provides, in part:

"That all line personnel being members of the Bargaining Unit, will work at straight time rates to maintain a 40 man manning level per platoon. This provision is solely for the purpose of insuring that there is a minimum force of 40 men per platoon on duty during the term of this Contract at all times, and shall not be used for the purpose of avoiding higher rates of pay for overtime work as contained herein."

both the question of the number of firefighters who may be required to be on duty on any particular shift and the number of firefighters who may be required to man a particular piece of equipment. As to the first, we said (at page 3015):

"It is the city alone which must determine the number of firemen it must have on duty at any given time. It cannot be compelled to negotiate with respect to this matter."

As to the second, we said (at page 3016):

"Unlike the circumstances in the West Irondequoit case in which teachers' interest was limited to workload, the interests of the firefighters in this case also involves safety. We do not mean to imply that the firefighters' demands are proper in order to protect them; that determination is for the negotiators. But it is clear that there is a relationship between the number of firefighters who man a piece of equipment and their safety. We believe that the demand that a minimum number of firefighters be on duty at all times with each engine and each truck constitutes a mandatory subject of negotiation."

DISCUSSION

The city argues that the instant demand comes within our reasoning at page 3015 of the White Plains decision, the issue being whether it is required to have at least 40 firefighters on duty at each shift. The language of the demand supports this interpretation. Moreover, the association in its brief argues that notwithstanding the number of pieces of equipment in use at any given time, the number of firefighters on duty on each shift has important safety implications and is therefore a mandatory subject of negotiations. On the other hand, a review of the relevant factual background indicates that the demand that each platoon be manned by 40 firefighters was reached by calculations

relating to the number of pieces of equipment in use. As of January 1, 1973, the city reduced the number of pieces of apparatus from eight engines and four trucks to seven engines and three trucks, one of which is a snorkle truck. Since the execution of the letter of intent, manning procedures (which demand #24 is intended^{4/} to perpetuate) have been as follows:

7 engines	4 men each	total of 28
Truck (snorkle)	4 men	" " 4
2 trucks	3 men each	" " 6
General officers	2 men	" " 2

Minimum number of men per platoon 40

A problem is posed by the two quotations from the White Plains decision. An employee organization concerned about the number of employees assigned to a shift might seek to attain its objective by demanding such a number of employees on each piece of equipment as to yield the desired number of employees per shift. The demand for a minimum number of employees per piece of apparatus might be a subterfuge and not reflect a concern about safety. The number of firefighters demanded for each piece of equipment might be so high as to render the safety implications *de minimus*^{5/}. This does not appear to be the case in the instant situation. Here the demand is calculated on the basis of three or four firefighters

4/ The association argues that the letter of intent was a binding agreement while the city argues that it was not. For our purposes, the dispute is irrelevant. If the demands constitute a mandatory subject of negotiations, they may go to arbitration whether or not there was a previous agreement. If they do not constitute a mandatory subject of negotiations, a previous agreement would not make them negotiable, Matter of Board of Education of the City of New York, 5 PERB 3094 (1972).

5/ In occupations such as firefighting, there are always some safety implications involved in manning levels, even in the manning level of a platoon. At some point, however, the predominant concern is no longer safety but becomes level of service, which is a question of public policy.

to a piece of equipment. In the White Plains case, we determined the demand that five employees be assigned to a piece of equipment is a mandatory subject of negotiations.

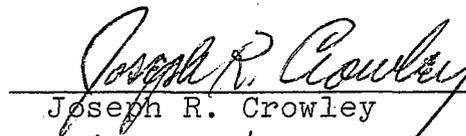
Accordingly, we now determine that, to the extent that demands #19 and #24 are that four firefighters be assigned to each engine and the snorkle and that three firefighters be assigned to the other trucks, they constitute mandatory subjects of negotiations to the extent that they raise questions of safety, but that they are not mandatory subjects of negotiations to the extent that they would require a minimum number of employees assigned to a shift or platoon regardless of the apparatus that the city chooses to use.

NOW, THEREFORE, WE ORDER that the association cease and desist from seeking to arbitrate a demand that a specific number of firefighters be assigned to a platoon.

Dated: April 28, 1975
Albany, New York



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2B-4/28/75
OFFICE OF COURT ADMINISTRATION OF THE STATE OF NEW YORK,	:	
Respondent,	:	<u>BOARD DECISION AND ORDER</u>
- and -	:	
EMANUEL TROTNER,	:	<u>CASE NO. U-1166</u>
Charging Party.	:	

This matter comes to us on the exceptions of the charging party, Emanuel Trotner, to the hearing officer's dismissal of his charge. The charge, which was filed on May 6, 1974, alleged that the respondent, Office of Court Administration of the State of New York, had discriminated against Mr. Trotner in violation of CSL §209-a.1(c) in that it failed to appoint him to the position of Court Clerk I because of his union activities. More particularly, Mr. Trotner charged that Mr. Joseph Goldstein, who serves as the administrative head of the unit charged with carrying out the administration of the Nassau County courts, had discriminated against him because of his union activities.

The hearing officer found that the evidence did not establish that Mr. Goldstein had an anti-union bias. Mr. Trotner has three bases for his exceptions to this finding:

1. The finding is not supported by the competent evidence.
2. The hearing officer admitted incompetent evidence which was prejudicial to Mr. Trotner.
3. The hearing officer relied upon such incompetent evidence.

Board - U-1166

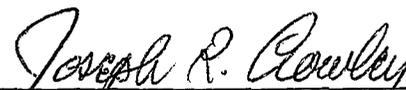
The exceptions urge us to set aside the hearing officer's decision and schedule a new hearing.

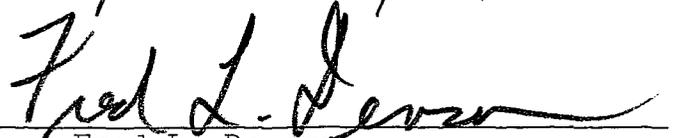
Exceptions such as these, which raise no questions of interpretation of law but challenge the conduct of a hearing, require a careful review of the record. We have reviewed the record carefully and have ascertained that it supports the hearing officer's determination. We further conclude that the hearing officer committed no reversible error in the admission of testimony. The testimony objected to by Mr. Trotner because "[w]hile unresponsive to the charge of anti-union animus it sought to discredit Trotner's qualification..." was relevant to respondent's defense that it had lawful reasons for its failure to promote Trotner. The evidence establishes that Mr. Goldstein was dissatisfied with Mr. Trotner's performance, but there is nothing in the record to support the charge that this dissatisfaction was occasioned by an anti-union bias or that Mr. Trotner's union activity was a reason for his being denied a promotion.

NOW, THEREFORE, WE ORDER that the charge be, and hereby is, dismissed in its entirety.

Dated: April 28, 1975
Albany, New York


Robert D. Helsby, Chairman


Joseph R. Crowley


Fred L. Denson

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF :
HOOSICK FALLS CENTRAL SCHOOL, : #2C-4/28/75
Employer, :
-and- : CASE NO. C-1217
LOCAL 200, SERVICE EMPLOYEES' INTERNATIONAL :
UNION, AFL-CIO, :
Petitioner. :
:

BOARD DECISION

On February 13, 1975, Local 200, Service Employees' International Union, AFL-CIO (the petitioner) filed, in accordance with the Rules of Procedure of the New York State Public Employment Relations Board, a timely petition for certification as the exclusive negotiating representative of certain employees employed by the Hoosick Falls Central School.

At the informal conference, the parties executed a Consent Agreement which was approved by the Director of Public Employment Practices and Representation on March 14, 1975. The negotiating unit stipulated to therein was as follows:

Included: Account Clerk, attendance officer, custodial worker, custodian, laundry worker, typist, bus driver, bus driver/mechanic, bus driver/cleaner, bus driver/pt, substitute bus driver (average of 1 day per wk over a 10 wk period), cook, ass't. cook, food service worker, food service worker/pt, school monitor and bus mechanic.

Excluded: Clerk, senior stenographer, account clerk/treasurer, dental hygienist, census taker, custodial helper/pt, Sup't. Bldgs. & Grds, bus driver/supervisor, cook manager, substitute food service worker, tax collector and all other employees of the employer.

Pursuant to the Consent Agreement, a secret ballot election was held on April 10, 1975. The results of this election indicate that a majority of the eligible voters in the stipulated unit who

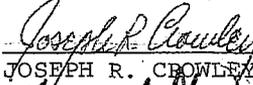
cast valid ballots do not desire to be represented for purposes
1] of collective negotiations by the petitioner.

THEREFORE, IT IS ORDERED that the instant petition should
be, and hereby is, dismissed.

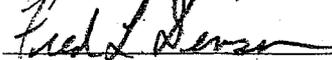
Dated: Albany, New York
April 28, 1975



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



FRED L. DENSON

1] There were 19 ballots cast in favor of representation by
the petitioner, 41 against representation by the petitioner
and 1 challenged ballot.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-4/28/75

In the Matter of the Application of the : Docket No. #
COUNTY OF NASSAU : S-0002
for a determination pursuant to Section 212 :
of the Civil Service Law. :

At a meeting of the Public Employment Relations Board held the 25th day of April, 1975, and after consideration of the application of the County of Nassau made pursuant to Section 212 of the Civil Service Law for a determination that its Ordinance No. 228-1967 as last amended by Ordinance No. 315-1974 is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board, it is

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

Dated, Albany, New York
April 28, 1975



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



FRED L. DENSON

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