

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
CITY OF NEW ROCHELLE,

Respondent,

-and-

UNIFORMED FIRE FIGHTERS ASSOCIATION,
INC., LOCAL 273, I.A.F.F.,

Charging Party.

#2A-10/24/75

CASE NO. U-1709

In the Matter of

UNIFORMED FIRE FIGHTERS ASSOCIATION,
INC., Local 273, I.A.F.F.,

Respondent,

-and-

CITY OF NEW ROCHELLE,

Charging Party.

CASE NO. U-1786

BOARD DECISION
AND ORDER.

On July 25, 1975, the Uniformed Fire Fighters Association, Inc., Local 273, I.A.F.F. (Local 273) filed its charge in Case No. U-1709. The charge alleged that the City of New Rochelle (City) violated CSL §§209-a.1(a), (c), and (d) in that it insisted upon the enforcement of a clause of a collectively negotiated agreement that had expired, which clause did not deal with a mandatory subject of negotiations; and that it improperly insisted that the clause be carried into the successor agreement. The clause in question was the third paragraph of Article II of the expired agreement

the continuation of that clause which did not constitute a mandatory subject of negotiations. Local 273 responded to that charge in its brief by saying that it "expresses no opinion in this Memorandum, either as to the desirability of the clause to which the City objects, nor to whether that provision constitutes a mandatory subject of bargaining."

On October 7, 1975, the parties entered into a stipulation of facts, jointly requested that the cases be afforded expedited treatment under §204.4 of our Rules, and agreed to submit briefs in support of their respective positions on or before October 10, 1975. We granted the request that the matters be expedited, and we received briefs from both parties by October 8, 1975. The stipulation sets forth the language of Articles I and II of the expired agreement. It also sets forth that during negotiations for a successor contract, Local 273 demanded the elimination of the last paragraph of Article II, and the City refused to delete that paragraph; while the City demanded the elimination of the second paragraph of Article II, and Local 273 refused to delete that paragraph unless the City would agree to delete the following paragraph. Except for the impasse involving the two disputed paragraphs of Article II, the parties have reached agreement on a new contract to expire December 31, 1975. Unless resolved by PERB, the issue involving the two disputed paragraphs will be a factor in negotiations for a contract to succeed the one that would expire on December 31, 1975.

between Local 273 and the City.^{1]} Article II is entitled "Recognition." Its third paragraph specified that deputy fire chiefs--who, pursuant to Article I of the agreement, were included in the bargaining unit--could not participate in negotiations on behalf of Local 273. In its answer, the City alleged that the paragraph in question had been a qualification upon its recognition of Local 273.

On September 16, 1975, the City filed its charge in Case No. U-1786. That charge dealt with the second paragraph of Article II of the expired contract. It alleged that Local 273 violated CSL §§209-a.2(a) and (b) in that it improperly insisted upon

1] Article II is set forth in its entirety:

"Recognition

The EMPLOYER recognized the UNION as the exclusive bargaining agent for all of the employees in the bargaining unit and such recognition shall remain in full force and effect during the entire term of this AGREEMENT.

The parties hereto agree that the EMPLOYER shall have the right to consult with, seek advice from and otherwise communicate with deputy fire chiefs at any time or times and on any and all matters except those set forth in the collective agreement.

The parties hereto further agree that deputy chiefs are not to be members of any team or committee bargaining for the UNION in any bargaining sessions nor are they to be spokesmen for or representatives of the UNION or any of its members in matters relating to fire Union-City problems."

In addition to the information contained in the stipulation, we take administrative notice of a representation case pending before this Agency. In that case, the Deputy Fire Chiefs Taylor Law Committee is attempting to exclude deputy fire chiefs from the unit represented by Local 273 and to be certified as the representative of deputy fire chiefs. Local 273 has intervened in that case. For the present, the negotiating unit represented by Local 273 is as set forth in Article I of the expired agreement between Local 273 and the City. That unit includes deputy fire chiefs.^{2]}

Discussion

The charges in the instant case deal with the relationship of deputy fire chiefs to the City and to Local 273. For the purpose of the charges, it is essential to emphasize that such deputy fire chiefs are in the unit represented by Local 273; it is irrelevant that a pending representation case may result in their future removal from the unit now represented by Local 273. Given the present inclusion of deputy fire chiefs in the unit, both the second and third paragraphs contain materials that are not mandatory subjects of negotiations.

2] Article I is set forth in its entirety -

"Article I

Bargaining Unit

The EMPLOYER recognized that the bargaining unit consists of all regular full time employees of the EMPLOYER who are fire fighters, fire lieutenants, fire captains and deputy fire chiefs and includes, in addition to the foregoing, the superintendent of maintenance."

The second paragraph prohibits the employer from consulting with deputy fire chiefs on matters that are set forth in the collective agreement. This is a redundant provision. It is a violation of CSL §209-a.1(d) for an employer to consult with individual employees who are in a negotiating unit concerning matters set forth in the collective agreement that covers them.^{3]} An employer cannot be compelled to negotiate for the inclusion of a redundant provision in its agreement; thus, Local 273's insistence upon the retention of Article II in the successor contract is a violation of CSL §209-a.2(b) (see Matter of Yorktown Faculty Association, 7 PERB 3051 [1974]).

The City's insistence upon paragraph 3 of Article II with its prohibition against deputy fire chiefs serving on Local 273's bargaining team would also constitute an improper practice unless unusual circumstances require a different conclusion. The City alleges that the representation rights enjoyed by Local 273 are limited by a qualification that was contained in its recognition. The nature of that qualification, according to the City, is that a group of employees within the negotiating unit, to wit, deputy fire chiefs, would not be allowed to serve on the union's bargaining team. The City reasons that if Local 273 were dissatisfied with the qualified recognition it could have sought an unqualified representation status by petitioning this Board for certification and that its acceptance of the qualified

3] Matter of Board of Education, City of Buffalo and District Council of Buffalo and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, 6 PERB 3093, and Matter of Board of Education, City of Buffalo and Buffalo Building Trades Council of Board of Education Employees, 6 PERB 3095 (1973). Enforcement was denied by the Supreme Court in PERB v. Board of Education of the City of Buffalo, 7 PERB 7002 (1974), but that decision was reversed by the Appellate Division, 4th Department, which confirmed the PERB order, 46 App. Div. 2d 509 (1975).

recognition constituted a waiver of the rights of deputy fire chiefs to serve on negotiating committees so long as the status of Local 273 continues to derive from that recognition. This proposition raises the interesting question of whether the rights of persons within a negotiating unit to participate fully in the affairs of their negotiating representative can be restricted by an employer, an employee organization, or both acting jointly. We do not reach that question now. The only evidence of such a qualification that is before us is the language of Article II of the prior agreement which is entitled "Recognition". Giving particular emphasis to its first paragraph, we do not read the article as constituting a qualification upon the recognition of Local 273; rather, we read it as an unqualified recognition, with the third paragraph setting forth a restriction on the right of deputy fire chiefs to serve on Local 273's negotiating team. We determine that the City's insistence upon the retention of this paragraph is a violation of CSL §209-a.1(d).^{4]}

NOW, THEREFORE, in view of the above finding of fact and conclusions of law and in view of the matters we have determined not to be mandatory subjects of negotiations,

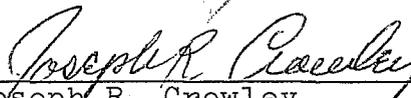
4] Ordinarily we would find that a public employer's insistence that a class of employees within a negotiating unit be denied the right of serving on the negotiating team of their representative is also a violation of CSL §209-a.1(a); however, such a conclusion is inappropriate where, as here, the matter comes before us on the joint request of the parties to resolve a disagreement as to the scope of negotiations under the Act.

WE ORDER both the City of New Rochelle and the Uniformed
Fire Fighters Association, Inc., Local 273, I.A.F.F.
to negotiate in good faith with each other.

Dated: Albany, New York
October 24, 1975



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-10/24/75

In the Matter of
VILLAGE OF ARDSLEY,

Employer,

-and-

LOCAL 456, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN and
HELPERS OF AMERICA,

Petitioner.

CASE NO. C-1274

BOARD DECISION

On August 8, 1975, Local 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition for certification as the exclusive representative of certain employees employed by the Village of Ardsley.

At the informal conference, the parties executed a consent agreement which was approved by the Director of Public Employment Practices and Representation on September 10, 1975. The negotiating unit stipulated to therein was as follows:

Included: All full-time village employees.

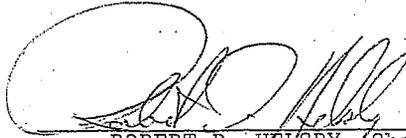
Excluded: Policemen, elected officials, village manager, village treasurer, building inspector, general foreman, foreman, librarian, clerk-stenographer and all other employees.

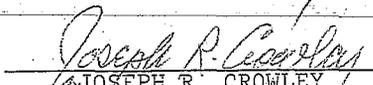
Pursuant to the consent agreement, a secret ballot election was held on October 10, 1975. The results of this election indicate that the majority of the eligible voters in the stipulated unit who cast valid ballots do not desire to be represented for purposes of collective negotiations by the petitioner.

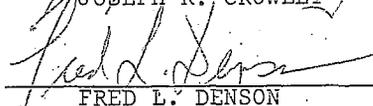
1] There were five ballots cast in favor of representation by the petitioner and five against representation by the petitioner.

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

Dated: Albany, New York
October 24, 1975


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON