STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of COUNTY OF SUFFOLK, Respondent, -and- SUFFOLK COUNTY PATROLMEN'S BENEVOLENT ASSOCIATION, Charging Party, -and- CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., SUFFOLK COUNTY CHAPTER, Charging Party.	#2A-11/19/76 BOARD DECISION AND ORDER CASE NOS. U-1962 U-1991

One of the charges herein (U-1962) was filed by the Suffolk County Patrolmen's Benevolent Association (PBA) on December 31, 1975. It alleges that the County of Suffolk (County) violated CSL §209-a.1(a) and (d) by reason of its refusal, subsequent to the expiration of a collectively negotiated agreement, to pay salary increments based on years of service. The second charge (U-1991) was filed by the Suffolk County Chapter of the Civil Service Employees Association, Inc. (CSEA) on January 29, 1976. It, too, alleges that the County violated CSL §209-a.1(a) and (d) by reason of its failure, subsequent to the expiration of a collectively negotiated agreement, to pay increments based on years of service. In both cases, the agreement expired on December 31, 1975.[1/] The County admitted that the incremental salary increases were not paid, but it denied that it was obligated to do so.

1/ The circumstances in the matter before us were also the basis of a lawsuit in which the charging parties sought to compel the County to pay increments as a matter of contract law. The Appellate Division, Second Department, decided the case against the charging parties on the grounds that the dispute raised statutory, and not contractual, issues and was subject to the exclusive jurisdiction of this Board (Matter of Corbin v. County of Suffolk, ___AD2d___; 9 PERB ¶7527 [1976]).

The charges were consolidated and the hearing officer issued his decision on July 28, 1976 dismissing both charges. The basis for his determination was his finding that, upon the expiration of prior contracts, the County had not paid increments because "the amount, timing and retroactivity of their payment has always been subject to the outcome of the negotiating process." Having found that the charging parties "could not have expected an automatic increase after the contract expired since this had never occurred in the past", he concluded that the Civil Service Law did not require the County to pay increments prior to the completion of negotiations upon the expiration of the agreement on December 31, 1975.

Both PBA and CSEA have filed exceptions to the hearing officer's decision, in support of which they submitted written and oral arguments. In substance, the exceptions challenge the hearing officer's findings of fact and conclusions of law. They protest his admission of exhibits introduced by the County and his reliance upon yet another exhibit . The exhibits that charging parties say should not have been admitted were County Exhibits 1 and 2, which are PBA negotiations proposals relating to increments. Inasmuch as the hearing officer did not rely upon these exhibits for his decision and we, too, find them not to be significant, we reject the exceptions directed to their admission without evaluating the evidentiary issue.[2/] The exhibit that charging parties contend was improperly relied upon is County Exhibit 4. It is a letter sent by the county executive to the president of PBA on December 18, 1975,[3/] which states, in part:

2/ In any event, the charging parties' briefs do not persuade us that the exhibits were "incompetent."

3/ An identical letter was sent to the president of CSEA on the same day. It is CSEA Exhibit B.

> "In accordance with the established past practice of the County, all terms and conditions presently provided in the existing P.B.A. Collective Bargaining Agreement will be continued without interruption until the present negotiations are successfully concluded. All monetary items of the present contract shall be frozen at the prevailing 1975 rates. This includes, but is not limited to, salary, longevity, night differential, rotating shift differential and termination benefits." [emphasis supplied]

Charging parties' objection is that the letter is self-serving and, therefore, not reliable proof that the County had an established past practice of not providing increments upon the expiration of an agreement. While taken alone that letter may, indeed, lack persuasive force with respect to what happened in earlier years, it is supported by County Exhibits 5, 12 A and 12 B, which indicate that identical letters were sent to PBA on December 26, 1973 and to CSEA on December 20, 1974, and that a letter to the same effect was sent to CSEA on January 5, 1972. Moreover, CSEA Exhibit H is a table that shows that, upon the expiration of agreements after January 1, 1970, increments were not paid until the payroll periods commencing March 29, 1971; April 24, 1972, January 29, 1973;[4/] and May 8, 1975, respectively, at which times they were paid retroactively to January 1 of that year. In each instance, payment was made only after the new agreement had been approved by resolution of the County Legislature.

Confirming the hearing officer's finding of fact, we also confirm his conclusion of law that the County did not violate §209-a.1 of the Taylor Law. In Matter of Troy City School District, 9 PERB ¶3039, we stated that the statutory duty to continue to pay increments after the expiration of an agreement, but prior to the negotiation of a successor, derives from the reasonable expectation generated by a continual past practice of having paid them under similar circumstances. In Matter of Massapequa Union Free School District, 8 PERB ¶3022 (1975) we dismissed a similar charge that a public employer had failed to maintain the status quo, while under a continuing duty to negotiate, by its failure to pay increments. Our

4/ For 1973-74 there was a two-year contract.

conclusion there was based on a finding of fact that "increments are not automatic and not part of any status quo continuation of any expired contract". On the same finding of fact in this case, we reach the same conclusion of law.

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

Dated: Albany, New York
November 19, 1976

Robert D. Helsby, Chairman

Joseph R. Crowley

Ida Klaus

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-11/19/76

BOARD

DECISION ON MOTION FOR REARGUMENT AND RECONSIDERATION

CASE NO. D-0116

In the Matter of

UNITED FEDERATION OF TEACHERS, LOCAL 2, NYSUT, AFT, AFL-CIO,

Upon the Charge of Violation of Section 210.1 of the Civil Service Law.

The United Federation of Teachers, Local 2, NYSUT, AFT, AFL-CIO (UFT), has filed a motion for reargument and reconsideration of the decision that we issued finding that it violated CSL §210.1 by conducting a five-day strike against the Board of Education of the City School District of the City of New York and ordering that its dues deduction privileges be forfeited for an indefinite period of time. In support of its motion to reargue and reconsider, the UFT has submitted an affidavit and a brief. The basis of the motion as set forth in these papers is that our decision was "an unauthorized and illegal act" because "it denies the UFT equal protection of the laws as granted by the Federal and State Constitutions". The papers request a stay of our order pending decision on the motion.

UFT's papers argue that the provisions and procedures of the New York City Collective Bargaining Law (Local Law No. 53 of 1967, as amended) are not substantially equivalent to the provisions and procedures of the Taylor Law in that employee organizations covered by the New York City Law are not subject to the forfeiture of dues deduction privileges by New York City's Office of Collective Bargaining for engaging in a strike. It further argues that this Board has acquiesced in a consistently discriminatory application of this aspect

of the statute by reason of its failure to bring a court action for declaratory judgment to end such disparate treatment. The action contemplated by UFT is one authorized by CSL §212.2 to declare the provisions and procedures of the New York City Collective Bargaining Law and the continuing implementation thereof not to be substantially equivalent to the provisions and procedures set forth in the Taylor Law. Such a determination might invalidate the City Law in its entirety.

The disparity in the treatment of striking employee organizations subject to the jurisdiction of New York City's Office of Collective Bargaining is known to us. Indeed, as UFT notes in its papers, it was commented upon in our decision in this case. In our comments we wrote,

> "This inequity is not a basis for imposing a lesser penalty herein for the statute does not give us this discretion; rather, we feel compelled to bring this inequity to the attention of the Legislature for whatever remedy it considers appropriate."

Whether the disparate treatment, albeit a possible deficiency regarding substantial equivalency, raises constitutional questions under the equal protection clauses of the Federal and State Constitutions is a matter for the courts, and not for this Board.

We have spoken publicly about the disparate treatment of striking employee organizations under our jurisdiction and under the jurisdiction of OCB prior to our UFT decision last month. In Chapter 24 of the Laws of 1969, the State Legislature required the City of New York and this Board to submit reports to it concerning the steps that should be taken to bring the New York City Collective Bargaining Law into substantial equivalence with the State Law. That enactment contemplated legislative corrections and not a court action to declare the New York City Law "not to be substantially equivalent to the provisions and procedures set forth in this Article." We deem a legislative

approach preferable to a judicial one because the possible invalidation of all parts of the New York City Collective Bargaining Law would be a severe blow to the stability of public employee relations in the City. That legislative corrections were contemplated by L. 1969, c.24 is clear from the fact that many of the matters reported upon by the City of New York and by this Board were the subject of amendments of the Taylor Law and/or the New York City Collective Bargaining Law. The language of the statute itself distinguishes not only between New York City's Office of Collective Bargaining and PERB, but also between the Office of Collective Bargaining and mini-PERBs. Most relevant, the New York City Collective Bargaining Law is not subject to prior approval by this Board, but local laws establishing other mini-PERBs are subject to such prior approval.

Included in our report was a criticism of the New York City Collective Bargaining Law for its failure to provide a procedure for determining whether an employee organization should lose its dues deduction privileges by reason of engaging in an illegal strike.[1] The State Legislature chose not to deal with

---

1 On this matter, the report stated:

> "One matter not covered by the Mayor in his report involves the procedure for determining whether an employee organization should lose its check-off privileges by reason of engaging in an illegal strike. If an employee organization subject to the jurisdiction of PERB is charged with engaging in a strike, PERB hears the charge and, in appropriate cases, orders the forfeiture of dues deduction privileges. When an employee organization under OCB engages in a strike, there is no procedure for curtailing its check-off privileges unless the strike persists long enough for a court injunction to be issued and violated. Only then may the court which has jurisdiction over the contempt proceeding prohibit the check-off. As a measure of substantial equivalency to the Taylor Law, PERB has required of all other mini-PERBs that, in the event there is no contempt proceeding, they determine whether a striking employee organization should lose its check-off privilege. OCB does not now possess such authority. Accordingly, we recommend that the responsibility of PERB to determine whether, and for how long, dues deduction privileges should be forfeited should be the same with respect to employee organizations subject to the jurisdiction of OCB as it is with respect to employee organizations subject to the jurisdiction of PERB. Indeed, much can be said for a single state-wide application of this provision so as to achieve uniformity."

this matter. This was not the result of oversight. The UFT memorandum correctly notes that in 1972 a Joint Legislative Committee remarked that the application of the dues checkoff penalty is not uniform throughout the State (New York State Joint Legislative Committee on the Taylor Law 1971-72 Report, Legislative Document No. 25, at page 20). Moreover, in 1972 a bill designed to remedy this disparity was reported in both Houses of the State Legislature, but was defeated on the floor of the Assembly (S-9372; A-11311).

The UFT motion for reargument and reconsideration and the papers in support thereof raise no issue of fact or law of which we were not aware at the time of our decision. The UFT arguments were considered and rejected.

ACCORDINGLY, the motion for reargument and reconsideration is denied.

Dated: Albany, New York
November 19, 1976

Robert D. Helsby, Chairman

Joseph R. Crowley

Ida Klause did not participate in the consideration of, or decision in, this matter.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2C-11/19/76
ERIE COUNTY WATER AUTHORITY, Employer, -and- ERIE COUNTY WATER AUTHORITY UNIT (BLUE) ERIE COUNTY CHAPTER, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., Petitioner, -and- AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO, Intervenor.	Case No. C-1408

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 the AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, 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 hourly rated production and maintenance employees on the Distribution Dept. and Stores payroll, including pump operators, water treatment plant operators, water plant helpers, meter repairmen, skilled laborers, laborers, janitor, charwoman, meter readers, stock clerk, dispatcher, bill collector, and trainees, including provisionals and employees on probation but excluding temporary employees.

Excluded: All office, professional and supervisory employees engineers, executives, chemist-chief water treatment plant operator, assistant chemists-water treatment plant operators, senior pump operator, supervising water maintenance foreman, meter repair foreman, water maintenance foreman, water service foreman, and senior meter readers.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, 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 19th day of November, 1976.

ROBERT D. HELSBY, CHAIRMAN

JOSEPH R. CROWLEY

IDA KLAUS

PERB 58(2-68)

4487

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF	#2D-11/19/76
STATE OF NEW YORK (OFFICE OF PARKS AND RECREATION), Employer,	
-and-	Case No. C-1406
NEW YORK STATE PARKWAY POLICE BENEVOLENT 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 NEW YORK STATE PARKWAY POLICE BENEVOLENT 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 representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Members below the rank of lieutenant at the police forces of the Long Island State Park and Recreation Commission, the Niagara Frontier Park and Recreation Commission and the Palisades Interstate Park Commission.

Excluded: All others.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with NEW YORK STATE PARKWAY POLICE BENEVOLENT 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 19th day of November, 1976.

ROBERT D. HELSBY, CHAIRMAN

JOSEPH R. CROWLEY

IDA KLAUS

PERB 58.1(2-68)