

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-8/1/78

In the Matter of

HOOSIC VALLEY CENTRAL SCHOOL DISTRICT,

Respondent,

-and-

HOOSIC VALLEY TEACHERS ASSOCIATION, LOCAL 2735,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-2977

For Respondent:

Robert A. Smith, Esq.
54 Second Street
Troy, New York 12180

For Charging Party:

Martin W. Leukhardt,
NYSUT Field Rep.
80 Wolf Road
Albany, New York 12205

This matter comes to us on the exceptions of the Hoosic Valley Central School District (respondent) to a hearing officer's decision that it violated its duty to negotiate in good faith with the Hoosic Valley Teachers Association, Local 2735 (charging party), in that it unilaterally altered the grievance procedure contained in an expired agreement at a time when no genuine deadlock had been reached in negotiations for a successor agreement. The hearing officer relied on our decision in Port Chester-Rye Union Free School District, 10 PERB ¶3079 (1977). He determined that, while respondent was not obligated to follow the (fourth) arbitration step of the preexisting contractual grievance procedure, it had refused to follow the three pre-arbitration agency-level steps of that

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contractual grievance procedure in the processing of a grievance.¹ It offered an alternative procedure, which charging party refused to accept.

1 Other than the charge itself, the entire record by which we are governed consists of a stipulation between the parties, as follows:

"On or about October 28, 1977, the Hoosic Valley Teachers Association, by its authorized representatives, submitted to the Hoosic Valley Central School District a certain grievance for processing in accordance with the grievance procedure set forth in the 1975-1977 agreement between the parties. The District, citing the expiration of the agreement on July 1, 1977, declined to process the submitted grievance under the procedure specified in the agreement. The District did, however, offer to process such grievance in accordance with the procedure set forth under Article 16 of the General Municipal Law. The Association declined to accept the alternative procedure suggested by the District and filed an improper practice charge with this Board, seeking as relief the following:

1. that the District be directed to 'cease and desist from unilaterally acting on terms and conditions of employment';
2. that the District be directed to 'cease and desist from interfering with the rights of public employees and the recognized bargaining agent pursuant to the ACT';
3. that the District be directed to 'bargain in good faith with the duly recognized representative of said employees until a successor to the 1975-1977 collective bargaining agreement is reached'; and
4. that the District 'return to the status quo with respect to the processing of grievances as provided for in the 1975-1977 agreement'.

It is hereby stipulated and agreed by and between the parties hereto, by their duly authorized representatives, that the foregoing statement of facts shall constitute the facts for consideration in PERB Case No. U-2977.

January 25, 1978

HOOSIC VALLEY TEACHERS ASSOCIATION

BY: (signed)
MARTIN W. LEUKHARDT
Field Representative
NYSUT

HOOSIC VALLEY CENTRAL SCHOOL DISTRICT

BY: (signed)
ROBERT A. SMITH, ESQ.
Attorney for the District"

In its exceptions, respondent contends that it was under no obligation to follow the precise grievance procedures set forth in an agreement that had expired four months previously. It further contends that it satisfied its obligations to the charging party by offering to process grievances in accordance with the terms of Article 16 of the General Municipal Law ² because those terms are substantially similar to those of the grievance procedure in the ³ expired contract.

We affirm the decision of the hearing officer. As we said in Enlarged City School District of Troy, 11 PERB ¶13056:

"Before an employer may make a unilateral change in terms and conditions of employment of its employees, it must exhaust all available opportunities and efforts to do so through negotiations until a genuine deadlock occurs."

Here, the record establishes that, during the course of negotiations for a successor agreement, respondent made a unilateral change in the preexisting grievance procedure, which is a term and condition of employment. The proposition that during a contract pre-deadlock hiatus an employer is not bound by the specified terms of the grievance procedure of the expired agreement is without merit. Similarly, the claim that the General Municipal Law grievance procedure did not constitute a change from the contractual procedure is not persuasive. The Law

² This statute, which antedated the Taylor Law, requires public employers to establish grievance procedures. It prescribes basic standards and principles for such a grievance procedure and requires each government to file a copy of its grievance procedure with the State Civil Service Commission. It is still applicable where not superseded by grievance procedures established by collective negotiations. We do not interpret it to apply during the interim period of negotiations for a successor to an agreement which contained a prescribed grievance procedure.

³ An additional exception of respondent is that the hearing officer went beyond the stipulation of the parties to the files of this agency and consulted the report of the factfinder in the negotiations dispute between respondent and charging party. The hearing officer relied upon the factfinder's report for the conclusion that the parties had not negotiated over changes in the grievance procedure. Because of our decision on other aspects of this case, we do not find it necessary to consider whether the hearing officer was authorized to take notice of the factfinder's report.

merely provides a framework for a grievance procedure and not the specifics of one. Nor is the statute available to an employer during the period of ongoing negotiations following the expiration of an agreement containing a prescribed grievance procedure.⁴ Even if respondent had intended the procedure that it instituted to be the same as that of the expired agreement, it could nevertheless not have made the substantive judgment on its own as to their identical nature while negotiations were still pending and no genuine deadlock had been reached.⁵ In any event, we must conclude that respondent contemplated that there would in fact be significant differences between the two procedures, for it would not have declined to process a grievance under the one while offering to do so only under the other. If those differences were significant to respondent, they were also significant to the charging party.

Where, as here, a charging party establishes that an employer has made unilateral changes in terms and conditions of employment, it is the responsibility of respondent to establish that there was a genuine deadlock at the time and that it had exhausted all available opportunities and efforts to effect such changes through negotiations. The record here does not establish such a clear inability to reach agreement.

NOW, THEREFORE, we determine that the Hoosic Valley Central School District violated its duty to negotiate in good faith with the Hoosic Valley Teachers Association, Local 2735,

⁴ Port Chester-Rye Union Free School District, 10 PERB ¶3079 (1977)

⁵ There is, in any event, serious doubt as to whether respondent did in fact intend to pursue the General Municipal Law in view of its failure to abide by the filing requirement of that Law. See fn. 2, supra.

and

WE ORDER it to cease and desist from refusing to process grievances pursuant to the first three steps of the procedures contained in the 1975-1977 agreement.

DATED: Albany, New York
August 2, 1978

Harold R. Newman

Harold R. Newman, Chairman

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
BOARD OF EDUCATION OF THE CITY SCHOOL : #2B-8/1/78
DISTRICT OF THE CITY OF NEW YORK, :
Employer, :
-and- : CASE NO. C-1671
UNITED FEDERATION OF TEACHERS, LOCAL 2, :
AFT, AFL-CIO, :
Petitioner, :
-and- :
DISTRICT COUNCIL 37, AFSCME, AFL-CIO, :
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
District Council 37, AFSCME, AFL-CIO *

has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Members of the monitoring task force.

Excluded: All other employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with
District Council 37, AFSCME, 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 1st day of August, 1978
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

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* THIS REPLACES THE CERTIFICATION ISSUED IN ERROR ON JULY 11, 1978.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
CITY OF ALBANY, : #2C-8/1/78
Employer, :
-and- : CASE NO. C-1660
SECURITY AND LAW ENFORCEMENT EMPLOYEES, :
COUNCIL 82, AFSCME, AFL-CIO, :
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 Security and Law Enforcement Employees, Council 82, AFSCME, AFL-CIO

has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All sergeants and lieutenants of the employer's police department.

Excluded: All other employees of the employer.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Security and Law Enforcement Employees, Council 82, AFSCME, 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 1st day of August, 1978
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
PLAINVIEW WATER DISTRICT,
Employer,
-and-
LOCAL 237, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,
Petitioner.

#2D-8/1/78
CASE NO. C-1681

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

Local 237, International Brotherhood of Teamsters has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All current employees of the employer.

Excluded: Three commissioners, superintendent, one water service supervisor, one stenographer, and one business machine operator.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with

Local 237, International Brotherhood of Teamsters 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 1st day of August, 1978
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
WEST GENESEE CENTRAL SCHOOL DISTRICT, : #2E-8/1/78
Employer, :
-and- :
WEST GENESEE UNITED TEACHER AIDES : Case No. C-1635
AND ASSISTANTS ASSOCIATION, :
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

West Genesee United Teacher Aides and Assistants 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 representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Teacher Aides and Teaching Assistants.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with

West Genesee United Teacher Aides and Assistants 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 1st day of August, 1978.
Albany, New York

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Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK, :

#2F-8/1/78

Employer, :

CASE NO. C-1670

-and- :

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

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

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

has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Directors and assistant directors of drug abuse programs.

Excluded: All other employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with

UNITED FEDERATION OF TEACHERS, LOCAL 2, AFT, 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 1st day of August, 1978
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

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