STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-2/3/81

In the Matter of

VILLAGE OF SPRING VALLEY POLICEMEN'S BENEVOLENT ASSOCIATION,

Respondent,

-and-

VILLAGE OF SPRING VALLEY,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-4856

ARTHUR MOSKOFF, ESQ., for Charging Party

DRANOFF, DAVIS, KRUSE, RESNICK & FIELDS (RAYMOND KRUSE, ESQ., of Counsel), for Respondent

The charge herein was filed by the Village of Spring Valley (Village). It alleges that the Village of Spring Valley Policemen's Benevolent Association (PBA) violated its duty to negotiate in good faith. The Village charges that PBA has:

1. Made unreasonable demands for the express purpose of frustrating negotiations and forcing the dispute into arbitration; and

2. Presented nonmandatory subjects to the arbitrator.

The hearing officer dismissed the charge and the matter comes to us on the exceptions of the Village.

The hearing officer requested an offer of proof from the Village in support of its allegation that PBA was attempting to frustrate negotiations in order to compel arbitration. The Village responded that it was prepared to prove that in past negotiations PBA had submitted demands which it knew to be unacceptable and which were designed to be dropped after those demands

6719

forced the dispute into arbitration. Moreover, in the instant negotiations, according to the Village, PBA discarded some of its demands after its petition for arbitration and the charge herein was filed.

The hearing officer determined that, even with the offer of proof, the charge does not set forth a violation and she did not hold a hearing. In support of its exceptions, the Village argues that the refusal of the hearing officer to hold a hearing was reversible error.

We affirm the ruling of the hearing officer. Rule 204.1 (b)(3) of this Board provides that a charge shall contain a statement of the facts constituting the violation. Instead of alleging facts here, the Village merely alleged a conclusion. When given an opportunity to present an offer of proof which should state the facts, it restated its conclusion, albeit in somewhat more detail. The restatement, however, did not constitute a statement of facts which would compel a hearing.

In her decision, the hearing officer rejected the Village's allegation that four demands of PBA were for nonmandatory subjects of negotiation. The Village now asserts in its exceptions that the hearing officer was in error with respect to each of the four demands.

Of the four demands in question, one deals with personal leave and another with sick leave. In its exceptions and supporting memorandum, the Village acknowledges that this Board has already determined that similar demands constitute mandatory subjects of negotiation and it makes no attempt to distinguish the demands herein from the similar demands that have been ruled upon

6/20

Neither does the Village make any argument that the prior decisions of this Board should be overruled. Its contention that the demands for personal leave and sick leave are not mandatory subjects of negotiation is simply not supported. Accordingly, we affirm the decision of the hearing officer with respect to these two demands.

The two other demands of PBA require a more specific response. In one of the demands, it asks for premium pay to compensate police officers for particular risks or difficulties encountered in the course of their work. For example, it asks for premium pay of $90 per shift to be divided among the police officers assigned to the shift whenever the number of uniformed officers assigned to the shift falls below six. It also asks for premium pay of $5.00 per shift for an officer who is not provided with a portable radio in sufficient working order to reach headquarters and for an officer who is assigned a vehicle without power windows. The hearing officer noted that demands for premium pay have been held by this Board to constitute mandatory subjects of negotiation.[1]

In addressing these decisions, the Village argues that the demand herein is not a legitimate one for premium pay, but is rather an improper one for a penalty to be imposed upon the Village when it exercises its managerial prerogatives. The proposition of law advanced by the Village is that a demand is improper if it sets up a system of penalties primarily designed to prohibit the public employer from exercising its statutory responsibilities even if, on its face, the demand is for premium pay.

6721

---

1 See Town of Haverstraw, 11 PERB ¶3109 (1978) and IAFF Local 189, 11 PERB ¶3087 (1978).

This proposition of law is correct,[2] but there is no evidence in the record that makes it applicable here. All premium pay provisions impose some costs upon an employer and thus discourage some conduct. It does not follow, however, that these provisions constitute penalties. For a premium pay provision to be deemed a penalty, it must be shown that the provision bears no reasonable relationship to a particular hazard or to other circumstances affecting working conditions which it is designed to compensate. There is no such showing in the record before us.

The remaining demand is that the Village match U.S. savings bonds purchased by unit employees for their own benefit, up to $225 per year. In her decision, the hearing officer determined that the savings bonds that would be thus provided to unit employees would constitute compensation and is, therefore, a mandatory subject of negotiation. She based this decision on Town of Haverstraw, 12 PERB ¶3064 (1979), aff'd Haverstraw v. Newman, 75 AD2d 874 (2nd Dept., 1980), 13 PERB ¶7006. In Haverstraw, we held that legal insurance, like health insurance or group life insurance, is a form of compensation and that a union may seek such compensation in negotiations even though the risks protected against by the insurance are not job related. We ruled that the form of compensation sought is not relevant to its status as a mandatory subject of negotiation.

---

2 Lynnbrook PBA, 10 PERB ¶3067 (1977), appealed on other grounds and affirmed Lynbrook v. PERB, 64 AD2d 902 (2nd Dept., 1978), 11 PERB ¶7012, aff'd 48 NY2d 398 (1979), 12 PERB ¶7021.

6122

In support of its exceptions, the Village argues that PBA's demand "is not a mandatory subject of negotiation [but] is prohibited by the Constitution as a gift...." This argument does not properly comprehend the nature of collective negotiations. In collective negotiations employees seek various forms of compensation in return for the services that they perform. Some forms of payment, other than salaries, might constitute gifts were they provided gratuitously and not for services rendered. When provided pursuant to a collectively negotiated contract and in return for services rendered to the employer, there is consideration for the payments and they constitute compensation. Inland Steel Co. v. NLRB, 170 F2d 247 (1948), cert. den. on this issue, 336 US 960. While the form of compensation sought by PBA here is unusual, it is for PBA to decide whether to seek it instead of some more common benefit. The Village may, of course, object during negotiations to the benefit sought by PBA, but that goes to its substance and not to its negotiability.

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

DATED: Albany, New York
February 3, 1981

Harold R. Newman

Harold R. Newman, Chairman

Ida Klaus

Ida Klaus, Member

6723

David C. Randles

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2B-2/3/81
PORT JERVIS TEACHERS ASSOCIATION, Respondent,	BOARD DECISION AND ORDER
-and-	CASE NO. U-4728
JOHN THOMAS McANDREW, CHARGING PARTY.	

JAMES SANDNER, ESQ. (NANCY HOFFMAN, ESQ., of Counsel), for Respondent

JOHN THOMAS McANDREW, pro se

In January 1978, John Thomas McAndrew applied for a sabbatical for the 1978-79 school year. His application was denied by his employer, the Port Jervis City School District (District) in March, 1978. McAndrew protested the action of the District by filing a grievance, which was denied. The Port Jervis Teachers Association (Association) then served a demand for arbitration upon the District and a hearing was scheduled for May 29, 1979. That hearing was cancelled on May 24, 1979 by the Association when it settled the grievance to its own satisfaction. The settlement granted McAndrew a sabbatical leave for the 1979-80 school year. This did not satisfy McAndrew, who complained that the settlement did not make him whole.

At the mid-June meeting of the Association, its president advised McAndrew that it had no objection to his carrying his grievance further on his own. On June 4, 1979, however, the Association, through a New York State United Teachers Field Rep-

resentative, had taken a different position in a letter to the American Arbitration Association (AAA) confirming the withdrawal of the demand for arbitration. In that letter it noted that McAndrew was dissatisfied with the cancellation of the arbitration and that he was seeking to pursue arbitration on his own. It asserted that McAndrew had no right to proceed to arbitration "without, at least, the concurrence of the Port Jervis Teachers Association".

McAndrew did not receive a copy of this letter until January 30, 1980. He did, however, receive a copy of a second letter sent by the Association to the AAA on June 29, 1979. This brief letter, a copy of which was sent by the AAA to McAndrew, stated: "As the initiator of the demand for arbitration on behalf of the union, I hereby withdraw the demand for arbitration" because, "the dispute has been remedied to the satisfaction of the union; i.e., the grievant was granted the sabbatical leave he sought". In reaction to that letter, McAndrew wrote to the AAA on July 7, 1979 that he wished to pursue the arbitration and a hearing was scheduled to consider whether the dispute was arbitrable.

On October 7, 1979, McAndrew asked the Executive Committee of the Association to support him at the hearing and, on October 17, 1979, the Association responded that it would not do so. The Association president wrote that as far as the Association was concerned the matter had been resolved when McAndrew was granted the sabbatical leave. He acknowledged telling McAndrew that he had no objection to McAndrew pursuing the arbitration on his own,

but subsequently he was told that the contract did not authorize McAndrew to do so. He further indicated that if McAndrew were to contest the Association's interpretation of the contract by challenging it at the arbitration hearing, he would have to do so at his own expense.

The matter came before the arbitrator on January 30, 1980, and the arbitrator dismissed McAndrew's claim. He did not reach the question whether McAndrew, as an individual, could have invoked arbitration. His dismissal was based upon his conclusion that McAndrew sought to be substituted for the Association in the arbitration and that he could not do so because the Association's withdrawal had terminated the proceeding which it had initiated.

At the arbitration hearing, the District had submitted the Association's letter of June 4, 1979 to the arbitrator in support of its position that the arbitration proceeding had been terminated by the Association. McAndrew asserts that he had not seen this letter before and that, after reading it, he understood for the first time that the Association and the District had made an improper "deal" to sacrifice his interests. About three months after the arbitration hearing, he filed the charge herein which alleges that the Association violated its duty of fair representation to him by conspiring with the District to settle his grievance on terms that were not favorable to him. The Association moved to dismiss the charge on the ground that it was not timely.[1] It argued that McAndrew was aware of all the circumstances relat-

---

1 Section 204.1(a) of our Rules permits an improper practice charge within four months of the conduct complained about.

ing to its refusal to bring his grievance to arbitration in July, 1979. The hearing officer agreed with the Association and dismissed the charge. The matter now comes to us on the exceptions of McAndrew.

Having reviewed the record,[2] we affirm the decision of the hearing officer. The Association's letter of June 4, 1979 to the AAA, which first came to McAndrew's attention on January 30, 1980, provided him with no new information relevant to his charge. He knew by July 7, 1979, at the latest, that the Association was withdrawing its demand for arbitration because it deemed the District's granting him a sabbatical leave in 1979-80 to be a satisfactory resolution of the grievance. The only other piece of information contained in the Association's letter of June 4, 1979 was that the Association did not think that McAndrew had a contractual right to arbitrate his grievance on his own and that it objected to his doing so. This information was communicated to McAndrew by the Association in its letter of October 17, 1979.

The charge that the Association violated its duty of fair representation to McAndrew was not filed within four months of his receipt of the Association's letter of October 17, 1979 and is, therefore, not timely. Accordingly,

---

2 No hearing was held. The record consists of documents -- mostly letters. McAndrew was given the opportunity to object to the consideration of any of these documents not submitted by him, and he offered no objection.

6/4/07

WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: Albany, New York
February 3, 1981

Harold R. Newman

Harold R. Newman, Chairman

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

6128

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATION BOARD

In the Matter of : #3A-2/3/81

ALLEGANY CENTRAL SCHOOL DISTRICT,
Employer,
-and- : Case No. C-2143

ALLEGANY EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION, NYEA/NEA,
-and- Petitioner,

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
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 Allegany Educational Support Personnel Association, NYEA/NEA

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 noninst tional employees.

Excluded: All employees in the negotiating unit currently represented by the Allegany Central School Teachers' Association; all certified personnel and all classified civil service supervisory, administrative, and managerial employees; School Lunch Manager; Head Mechanic; Head Custodian; Secretary to the Superintendent; Account Clerk/ Board Treasurer; Secretaries to the Building Principals and all employees hired on a temporary (less than six "6" months) or on a casual basis.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Allegany Educational Support Personnel Association, NYEA/NEA

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 2nd day of February, 1981
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

6729

PERB 58.3