STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2A-5/22/81
NEW YORK STATE NURSES ASSOCIATION, Respondent,	BOARD DECISION AND ORDER
-and-	CASE NO. U-4807
COUNTY OF ONONDAGA, Charging Party.	

HARDER AND SILBER (JEFFREY DANA GILLEN, ESQ., of Counsel), for Respondent

ROBERT J. ROSSI, ESQ. (D. JEFFREY GOSCH, ESQ., of Counsel), for Charging Party

This matter comes to us on the exceptions of the New York State Nurses Association (Association) to a hearing officer's decision that it violated its duty to negotiate in good faith by refusing to execute a contract with the County of Onondaga (County) to which it had agreed.

The representatives of the Association and the County met on February 18, 1980 to conclude an agreement covering the period of January 1, 1980 to June 30, 1982. At that meeting, the parties reviewed a draft "line by line", noted changes to be made, and signed the document. Later that day, the Association held a ratification vote on the draft and then notified the County that it had been ratified. Thereafter, at a meeting attended by representatives of the Association, the County Legislature approved the draft agreement and retroactive wage payments were made pursuant to it.[1/]

1/ Although not referred to by the hearing officer, the record establishes this last fact.

Subsequently, the parties agreed that there was one error in the draft and the error was corrected. The agreement was then prepared in final form by the County and, on April 17, the County submitted it to the Association for final execution. The Association refused to execute the document on the stated ground that it did not accurately reflect the agreement of the parties. The Association acknowledges that the document accurately reflects the draft that it signed on February 18, 1980, except for the one agreed-upon change, but it asserts that the document does not reflect the agreement of the parties on four issues. The Association alleges that, in signing and ratifying the draft on February 18, it was relying upon oral assurances made by the County's representative that changes would be made regarding the four issues.

Representatives of the County testified that no such oral assurances were made, and the hearing officer credited their testimony. Other than the contested testimony of the Association's witnesses, there is no evidence to support its position. No relevant reservations were noted on the draft that was signed on February 18. Neither is there any evidence that anticipated changes were discussed at the time of ratification by the Association or the approval by the County Legislature.

NOW, THEREFORE, WE AFFIRM the findings of fact of the hearing officer and her conclusions of law, and

WE ORDER the Association to execute the agreement submitted to it by the County

on April 17, 1980, forthwith.

DATED: Albany, New York
May 21, 1981

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 STATE OF NEW YORK & PUBLIC EMPLOYEES FEDERATION, AFL-CIO, Respondents, -and- FRANK S. ROBINSON, et al., Charging Parties.	#2B-5/22/81 BOARD DECISION AND ORDER CASE NO. U-4605
In the Matter of STATE OF NEW YORK & PUBLIC EMPLOYEES FEDERATION, AFL-CIO, Respondents, -and- LAWRENCE SKINNER, et al., Charging Parties.	CASE NO. U-4673

JOSEPH M. BRESS, ESQ., for Respondent, State

ARNOLD W. PROSKIN, P.C., (CLAUDIA McKENNA, ESQ., of Counsel) for Respondent, PEF

FRANK ROBINSON, pro se, (J. MICHAEL HARRISON, EDWARD D. COHEN and ROBERT D. REED, of Counsel)

LAWRENCE C. SKINNER, pro se

This matter comes to us on the exceptions of Frank S. Robinson and Lawrence C. Skinner to a hearing officer's decision dismissing their charges against the State of New York (State) and the Public Employees Federation, AFL-CIO (PEF). Robinson and Skinner are State employees in the negotiating unit represented by PEF. Their charges, which are identical, complain that PEF violated its duty of fair representation by withdrawing a meritorious improper practice charge against the State in which it complained

that the State had unilaterally discontinued a past practice when the State and PEF were negotiating a successor agreement and by substituting for that meritorious improper practice charge a contract grievance which was transparently without merit. They further complain that PEF compromised that grievance by agreeing to indemnify the State should the arbitrator deny retroactive salaries already paid to former employees. The charges against the State allege that it coerced PEF into withdrawing the earlier improper practice charge, thus "procuring PEF's agreement to follow an inapplicable grievance procedure". The charge alleged further that the State coerced PEF into agreeing to indemnify it for payments to former State employees.

The benefit of concern to Robinson and Skinner was a right to convert unused vacation days into money. That right had been specified in the agreement covering unit employees which expired on March 31, 1979. On June 18, 1979, while the State and PEF were in negotiations for a successor agreement, the State announced that it would no longer pay unit employees for unused vacation time. It also indicated that it would no longer give PEF stewards and agents leave time as required by the expired agreement. These changes occasioned the improper practice charge, filed by PEF on July 25, 1979, to which the charges herein have reference.

On December 7, 1979, a new contract between the State and PEF was approved. That contract, which was retroactive to April 1, 1979, provided for retroactive salary increases scheduled to be paid on February 27 and March 5, 1980, but it did not continue the provision for converting vacation time into money. In connection with the negotiation of the new contract,

the State and PEF also negotiated a settlement of the improper practice charge. That settlement provided that the State would grant leave to the PEF stewards and PEF would drop its charge that the State had unilaterally discontinued paying for unused vacation time. It was also agreed that PEF would file a grievance in place of the withdrawn improper practice charge.

Thereafter, PEF filed a grievance in which it complained about the State's withdrawal of the vacation conversion benefit. The State took the position with PEF that because the benefits sought in the grievance were not available under the newly-reached agreement, it had no obligation to pay retroactive salary increases to the employees if the grievance were won by PEF. The State also announced that it would withhold payment of the scheduled retroactive salary increases until the grievance was resolved. PEF thereupon authorized the State to withhold payment of the retroactive salary increases to employees who had left the State's employment until the grievance was decided. PEF also agreed to indemnify the State for any monies otherwise not recoverable from former State employees should the arbitrator rule that the State had not been obligated to pay such retroactive salary increases.

Following a prehearing conference on the instant improper practice charge, the hearing officer determined that the facts, as alleged, did not set forth a violation by the State and, accordingly, the State was not made a party to this proceeding. After a hearing, he determined that the conduct of PEF did not constitute an improper practice and he dismissed the charges in their entirety.

In their exceptions, Robinson and Skinner argue that the

hearing officer erred in that he failed to find that they had vested rights which had been compromised by PEF when it withdrew the earlier improper practice case. Robinson's exceptions also argue that his charge contained a sufficient allegation of coercion on the part of the State and that the hearing officer erred in that he failed to hold a hearing on this part of the charge. In support of this part of the charge, he argues that the State's threat to withhold retroactive salary increases was coercive and that it was the reason why PEF made the indemnification offer.

Having reviewed the record and considered the arguments of the charging parties, we affirm the findings of fact and conclusions of law of the hearing officer. The withdrawal of the improper practice charge of July 25, 1979 was not improper. The hearing officer correctly noted that this withdrawal did not deprive unit employees of any vested right, but only of a cause of action which was subject to various defenses. Moreover, as noted by the charge itself, the withdrawal was negotiated between the State and PEF and its timing indicates that the negotiation was related to the main negotiations for the final contract between the parties. As early as 1974, we ruled that an employee organization does not violate its duty of fair representation when it reaches an agreement in negotiations that is more favorable to some unit employees than it is to others. Plainview-Old Bethpage Central School District 7 PERB ¶3058[1]. The duty of

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1 As we noted, however, in Plainview-Old Bethpage, an employee organization may not discriminate against unit members in negotiations merely because the unit members did not belong to the employee organization. It is not alleged, and the record does not indicate that this happened here.

fair representation is no more compromised when, as part of the negotiations for a new contract and in exchange for other reasonable benefits, the Association withdraws a charge alleging that the public employer had violated its duty to negotiate in good faith as to benefits affecting some employees. The conclusion of final negotiations affords the parties an opportune time to cooperate in achieving stable and harmonious relations by resolving all outstanding disputes. This is what occurred in the instant situation.

There is also no reason to deem improper the offer of PEF to reimburse the State for unrecoverable payments to former employees, should the arbitrator decide that the increases need not have been made in the first instance. That offer was reasonably related to PEF's legitimate objective of expediting retroactive salary increases to all unit employees.

Finally, we affirm the decision of the hearing officer that the conduct of the State both in connection with the settlement of the improper practice charge of July 25, 1979, and the procedural arrangements to expedite retroactive salary increases were not coercive. In the first instance, the State was advancing its negotiation position. In the second instance, it was protecting itself against the possibility of an unnecessary, and yet unrecoverable, expenditure.

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

DATED: Albany, New York
May 22, 1981

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	#2C-5/22/81
NASSAU COUNTY BOARD OF COOPERATIVE EDUCATIONAL SERVICES,	BOARD DECISION AND ORDER
Respondent,	CASE NO. U-4441
- and -	
NASSAU COUNTY CHAPTER, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,	
Charging Party.	

INGERMAN, SMITH, GREENBERG, & GROSS (JOHN H. GROSS, ESQ., of Counsel), for Respondent

RICHARD M. GABA, ESQ. (BARRY PEEK, ESQ., of Counsel), for Charging Party

This matter comes to us on the exceptions of the Nassau County Chapter, Civil Service Employees Association, Inc. (CSEA) to a hearing officer's decision dismissing its charge that the Nassau County Board of Cooperative Educational Services (BOCES) violated §209-a.1(d) of the Taylor Law by unilaterally altering a term and condition of employment of employees in the unit represented by CSEA in that it terminated three employees not in order of seniority.[1]

The record shows that the positions of the three employees, Robert Fury, Michael Mancini and Robert Jackowsky, were abolished on November 30, 1979, and that their employment was terminated

[1] The hearing officer found merit in so much of the charge as alleged that BOCES improperly made deductions from the wages of the three terminated employees for the replacement of tools that they had lost. No exceptions have been filed to this part of the hearing officer's decision and we, therefore, do not consider it.

on that date. It also shows that Fury, Mancini and Jackowsky were not the least senior employees of BOCES at that time. However, the hearing officer found that the discharges of Fury, Mancini and Jackowsky did not constitute a change in the terms and conditions of employment of unit employees because the job security of unit employees had not been solely conditioned upon seniority.

In support of its exceptions, CSEA argues that the hearing officer erred in determining that the job security of unit employees had not been solely conditioned upon seniority. We find the record evidence supports the determination of the hearing officer.

Accordingly, we affirm the hearing officer's findings of fact and conclusions of law; and

WE ORDER that the exceptions herein be, and they hereby are, dismissed.

DATED: Albany, New York
May 22, 1981

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	#2D-5/22/81
BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK AND UNITED FEDERATION OF TEACHERS,	BOARD DECISION ON MOTION
Respondents,	
-and-	Case No. U-4387
RICHARD BEHRENS,	
Charging Party.	

On April 24, 1981, we issued a decision dismissing the exceptions of Richard Behrens on the ground that the exceptions were not timely filed. Behrens has now made a motion for reconsideration of our decision. The papers he submitted in support of his motion do not address the issue of the untimeliness of his exceptions, which was the basis of our decision.[1/]

NOW, THEREFORE, the motion is denied.

Dated Albany, New York
May 22, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

1/ Among other things, Behrens asserts that the conduct of respondent herein is of an ongoing and continuous nature, and, therefore, the question of timeliness is not relevant. This argument is directed to the timeliness of his charge, but not to the timeliness of his exceptions, which is the basis on which his exceptions were dismissed.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2E-5/22/81
BOARD OF COOPERATIVE EDUCATIONAL SERVICES, CORTLAND-MADISON COUNTIES, Employer-Petitioner,	
-and-	BOARD DECISION AND ORDER
LOCAL 812, CORTLAND-MADISON BOCES UNIT OF CSEA, INC., Intervenor.	CASE NO. C-2183

On November 26, 1980 the Board of Cooperative Educational Services, Cortland-Madison Counties (employer) filed a timely petition for decertification of Local 812, Cortland-Madison BOCES Unit of CSEA, Inc.(CSEA), the current negotiating representative for employees in the following unit:

Included: *All full-time employees of the the Department of Buildings and Grounds, including cleaners, custodians, receiving clerk and maintenance personnel and all office, secretarial, clerical employees, teacher aides, health aides, cafeteria aide, bus driver/ cleaner, A.V. technician, film inspector, printer photographer, and offset press operator.*

Excluded: *Superintendent of Buildings and Grounds, secretary to the executive office and secretary to the Assistant Superintendent.*

By stipulation, a secret ballot election was held on May 7, 1981. The results of this election show that the majority of eligible employees in the unit who cast valid ballots no longer desire to be represented for purposes of collective negotiations by the intervenor.[1/]

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1/ Of the 37 ballots cast, 2 were for representation and 34 against representation. The challenged ballot was not sufficient to affect the results of the election.

THEREFORE, IT IS ORDERED that the intervenor be, and it hereby is, decertified as the negotiating agent for the unit.

Dated: Albany, New York
May 22, 1981

Harold Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

EAST SYRACUSE-MINOA CENTRAL SCHOOL DISTRICT,

Employer,

-and-

EAST SYRACUSE-MINOA CLERICAL ASSOCIATION, NYSUT,

Petitioner,

-and-

COUNCIL OF NON-INSTRUCTIONAL PERSONNEL,

Intervenor.

#3A-5/22/81

Case No. C-1994

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 East Syracuse-Minoa Clerical Association, NYSUT

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 clerical employees and teacher aides.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with East Syracuse-Minoa Clerical Association, NYSUT

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 22nd day of May, 19 81

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

PERB 58.4

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF CHAUTAUQUA AND SHERIFF,

Joint Employer,

-and-

CHAUTAUQUA COUNTY SHERIFF'S EMPLOYEES ASSOCIATION,

Petitioner.

#3B-5/22/81

Case No. C-2072

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

Chautauqua County Sheriff's Employees 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 exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Deputy Sheriff, Deputy Sheriff-Sergeant, Jail Guard, Cook/Matron, Dispatcher, Identification/Photography Specialist, Civil Deputy, Senior Jail Guard, Deputy Sheriff-Lieutenant, Deputy Sheriff-Jail Supervisor.

Excluded: Sheriff, Under-Sheriff, Court Officers, Attendants, Clerk-Typist.

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

Chautauqua County Sheriff's Employees 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 22nd day of May, 1981
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

PERB 58.4

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STATE OF NEW YO[illegible]
PUBLIC EMPLOYMENT RELAT[illegible]NS BOARD

In the Matter of	:	#3C-5/22/81
VILLAGE OF NASSAU,	:	
Employer,	:	
-and-	:	Case No. C-2140
NASSAU POLICE OFFICER'S 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 Nassau Police Officer's 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 exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time and part-time police officers

Excluded: Chief of Police.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Nassau Police Officer's 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 22nd day of May , 1981
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

PERB 58.4

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