STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2A-8/5/81
VESTAL CENTRAL SCHOOL DISTRICT, Respondent,	BOARD DECISION AND ORDER
-and-	CASE NO. U-4349
VESTAL TEACHERS ASSOCIATION, Charging Party.	

HOGAN AND SARZYNSKI, for Respondent

JOHN B. SCHAMEL, for Charging Party

This matter comes to us on the exceptions of the Vestal Central School District (District) to a hearing officer's decision that it violated §209-a.1(a) and (c) of the Taylor Law by refusing to provide sick pay to four employees who were absent on December 5, 1979.[1] At the time of the absence, the four employees, Ron Gibbs, Jim Kinne, Gene Tambascio and Wayne Philipson, were on the negotiating team of the Vestal Teachers Association (Association) and were attempting to negotiate an agreement with the District to succeed one that had expired on June 30, 1979. A negotiating session which started on December 4 1979 at 4:00 p.m. ended at 1:00 a.m. on December 5. The Association's negotiating team then went to the Association's

1 The hearing officer's decision dismissed other specifications of the charge of the Vestal Teachers Association. The Association has not filed exceptions to these parts of the hearing officer's decision and we do not reach any of the issues presented by them.

headquarters and prepared materials to be distributed to the teachers. At 2:00 a.m., Gibbs, Tambascio, Kinne and Philipson telephoned the District's answering service to say that they were ill and would not attend school that day. Notwithstanding their absence from work on December 5, 1979, the four employees appeared at a negotiating session at 4:00 p.m. that afternoon. Subsequently, they were denied sick leave for their absence from school on December 5, 1979, the effect of which was that they received no pay for that day.

The expired contract provided that "all sick leave is subject to the approval of the Superintendent and satisfactory proof of illness must be submitted when requested". In practice, the District rarely requested proof of illness before approving sick leave and had never previously done so when the request for sick leave was only for a single day. It had also never denied a request for sick leave without first giving the employee requesting the leave an opportunity to submit proof of illness.

In the instant case, the District, for the first time, denied the four employees sick leave without even first requesting proof of illness. The four employees filed a grievance, complaining about denial of sick leave. At the second step of the grievance procedure, the District's representative indicated that it might have been appropriate to solicit proof of illness from the four employees before ruling on their request for sick leave and that it might reconsider its action if the four employees now submitted proof that they had been ill. The grievants did not avail themselves of this opportunity on the ground that the contract and past practice required the District to request proof of illness

before making its initial decision and the grievance was denied.[2]

The hearing officer determined that the District's departure from its normal practice of granting a single day's sick leave to an absent employee without question interfered with the organizational rights of the four employees and discriminated against them. The District's exceptions challenge this conclusion. In support of its exceptions, the District argues that the past practice cited by the hearing officer is irrelevant because the circumstances involved in the instant case are unique. Here, it had sufficient information to form a belief that the four employees were not sick, but merely tired because of their negotiation efforts. The request for sick leave was therefore a request that it subsidize those negotiation efforts.

Having reviewed the record, we affirm the decision of the hearing officer. While the District has given a reasonable explanation of why it did not grant the four employees sick leave without first requesting proof of illness, it has given no explanation why it denied the sick leave without first giving them an opportunity to submit proof of the alleged illness. Parsons, the Assistant Superintendent of the District's schools and the person who denied the request for sick leave, testified that he had no direct knowledge that the four negotiators were not sick and, in fact, acknowledged that they could have been. He further testified that he met the four negotiators later on the day of the alleged illness, but that he chose not to ask them if they had really been ill.

2 The grievance did not go to arbitration. The District was not required to submit the grievance to arbitration because the contract clause providing for arbitration did not survive the expiration of the parties' agreement.

On these facts, we conclude that the unique circumstances which actually occasioned the District's departure from past practice in the instant case was not the District's certainty that the four employees were, in fact, well on December 5, 1979. On the contrary, knowing of their exhausting activities the previous evening, the District could not have been certain that they did not feel ill. What was certain was that the District knew that the four employees were engaged in negotiations on behalf of the Association. By denying them sick leave without even first asking them to justify their applications, the District penalized these employees for participating in the activities of the Association, thereby discriminating against them and interfering with the exercise of their statutory rights. Accordingly, it violated §209-a.1(a) and (c) of the Taylor Law.

NOW, THEREFORE, WE ORDER the Vestal School District:

1. To cease and desist from interfering with, restraining or coercing public employees in the exercise of rights granted in Section 202 of the Act.
2. To cease and desist from discriminating against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of any employee organization.
3. To reimburse Gibbs, Kinne, Tambascio and Philipson the amount withheld from their pay for December 5, 1979, together with interest at the rate of 3%.

4. To conspicuously post the attached notice at all work locations in places normally used to communicate with its employees.

DATED: Albany, New York
August 6, 1981

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify our employees that the Vestal Central School District:

1. will not interfere with, restrain or coerce public employees in the exercise of rights protected by §202 of the Act;

2. will not discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of any employee organization;

3. will reimburse Ron Gibbs, Jim Kinne, Gene Tambascio and Wayne Philipson the amount withheld from their pay for December 5, 1979, together with interest at the rate of 3%.

Vestal Central School District
Employer

Dated..... By.....
(Representative) (Title)

7016

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altere defaced, or covered by any other material.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
CITY OF GLOVERSVILLE,	:	#3A-8/5/81
Employer,	:	
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,	:	Case No. C-2263
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 the Civil Service Employees Association, Inc., Local 1000, 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: Light equipment operator, medium equipment operator, auto mechanic-step II, street maintenance foreman, laborer-step II, mechanic-step II, working foreman, heavy equipment operator-step II, clerk-highway dept., account clerk-typist-engineer's ofc., building inspector, housing inspector, custodian-head custodian, laborer-step I, laborer-step III, auto mechanic-step I, heavy equipment operator-step I.

Excluded: All other city employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, 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 6th day of August, 1981
Albany, New York

Ida Klaus
Ida Klaus, Member

David C. Randles, Member

PERB 58.3

7017