

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of	:	#2A-10/6/81
HANNIBAL CENTRAL SCHOOL DISTRICT,	:	
Respondent,	:	<u>BOARD DECISION</u>
- and -	:	<u>AND ORDER</u>
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,	:	<u>CASE NO. U-5138</u>
LOCAL 1000, AFSCME, AFL-CIO,	:	
Charging Party.	:	

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MICHAEL SALERNO, for Respondent

ROEMER AND FEATHERSTONHAUGH, ESQS.  
(MICHAEL J. SMITH, ESQ., of Counsel),  
for Charging Party

Since July 1, 1971, collective bargaining agreements between the Hannibal Central School District (District) and the Hannibal Cafeteria and Bus Driver Association of the Civil Service Employees Association, Local 1000, AFSCME, AFL-CIO (CSEA) have set a rate for compensation for the extra work performed by bus drivers who wash buses. Until September 1980, the extra compensation assignment would be given to the first of the bus drivers who volunteered for it. In the normal course of events, that assignment would have come to Joyce Cummings for the 1980-81 school year.

While preparing its budget for 1980-81, the District determined that it could save \$10,000 each year by not heating the storage area of its garage, the place where the buses had been washed. It therefore decided to leave that area unheated and to have the buses washed in the mechanics' bays when they were not otherwise in use. Concluding that this would not be

convenient for the drivers, the District unilaterally decided to assign the washing of the buses to the mechanics, who are non-unit employees.

CSEA requested the District to discuss the matter, but the District never responded to the request and, after the change was put into effect, CSEA charged the District with violation of its duty to negotiate in good faith. The hearing officer found merit in the charge and he ordered the District to restore the status quo, to make Cummings whole for the loss of income that she suffered and to negotiate in good faith with CSEA.

The matter now comes to us on the exceptions of the District to the hearing officer's decision. It states that the hearing officer erred in finding that the washing of buses was unit work, in failing to take into account the economic necessity for its action and in failing to find that the drivers were unavailable to wash the buses at the time when they could be washed in the mechanics' bays.

In support of the first point, the District argues that the 10-year practice of setting a contractual extra-compensation rate for drivers who wash buses does not make it unit work. In this connection, it points out that the parties' successive agreements had also set a wage rate for substitute drivers, who, it is conceded, are not in the unit.

We affirm the hearing officer's conclusion that the washing of buses was unit work. The contract reference to substitute drivers was not related to extra-compensation work, and it did not affect the bus washing provision. Moreover, we note that the contractual reference to substitute drivers had been deleted from the agreement by the time that the District took its unilateral <sup>1/</sup> action.

The District's second point must be rejected as a matter of law. The desire to effect a financial saving does not justify a public employer in making a unilateral change in the terms and conditions of employment of its employees. Buffalo Board of Education, 4 PERB ¶3090 (1971).

Finally, we reject the District's third point because there is no basis in the record for a conclusion that the drivers would be unavailable to perform the extra work.

NOW, THEREFORE, WE AFFIRM the decision of the hearing officer, and

WE ORDER the District:

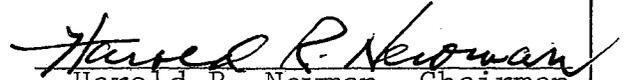
1. to compensate Cummings, at the hourly rate set forth in the parties' 1980-81 memorandum of agreement for the number of hours spent by the mechanics washing buses;
2. to offer the return of the bus washing duties to Cummings and, if she declines to accept

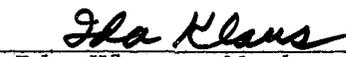
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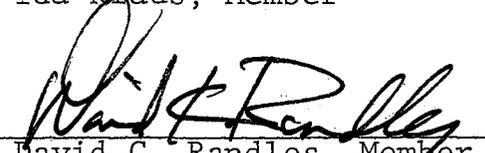
<sup>1/</sup> The July 1, 1980 to June 30, 1981 agreement, which was effective on November 13, 1979, deleted the references to substitute drivers.

- them, to the first bus driver that volunteers;
3. to negotiate in good faith with CSEA in any future decision to remove bus washing duties from unit employees.

DATED: Albany, New York  
October 6, 1981

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
NEW YORK CITY TRANSIT AUTHORITY, MANHATTAN & : #2B-10/6/81  
BRONX SURFACE TRANSIT OPERATING AUTHORITY, and :  
METROPOLITAN TRANSPORTATION AUTHORITY, :  
Respondents, : CASE NO. U-4638  
-and- :  
LOCAL 100, TRANSPORT WORKERS UNION OF AMERICA, :  
Charging Party. :

In the Matter of :  
NEW YORK CITY TRANSIT AUTHORITY and METROPOLITAN :  
TRANSPORTATION AUTHORITY, :  
Respondents, : CASE NO. U-4691  
-and- :  
LOCALS 1056 and 726 AMALGAMATED TRANSIT UNION, :  
AFL-CIO, :  
Charging Party. :

In the Matter of :  
LOCAL 100, TRANSPORT WORKERS UNION OF AMERICA, :  
AFL-CIO, a/k/a LOCAL 100, TWU or TRANSPORT :  
WORKERS UNION OF GREATER NEW YORK, : CASE NO. D-0190  
Respondent, :  
upon the Charge of Violation of Section 210.1 :  
of the Civil Service Law. :

In the Matter of :  
AMALGAMATED TRANSIT UNION, AFL-CIO, LOCAL 726, :  
Respondent, : CASE NO. D-0191  
upon the Charge of Violation of Section 210.1 :  
of the Civil Service Law. :

In the Matter of :  
AMALGAMATED TRANSIT UNION, AFL-CIO, LOCAL 1056, :  
Respondent, : CASE NO. D-0192  
upon the Charge of Violation of Section 210.1 :  
of the Civil Service Law. :

BOARD DECISION AND ORDER

7106

We have before us five related cases that were consolidated for hearing and decision. In the first case (U-4638), Local 100 of the Transport Workers Union of America (TWU) charged the New York City Transit Authority and the Manhattan and Bronx Surface Operating Authority with refusing to negotiate in good faith with respect to an agreement to succeed the one which expired on March 31, 1980. The second case (U-4691) was commenced by a charge filed by Locals 726 and 1056 of the Amalgamated Transit Union, AFL-CIO (collectively, ATU) against the New York City Transit Authority.<sup>1/</sup> (The respondents in the two improper practice cases are collectively referred to herein as the employers.) The three strike charges (D-0190, D-0191, and D-0192) were filed by Counsel to this Board and allege that TWU and the two locals of ATU had engaged in, caused and instigated, encouraged and condoned an eleven-day strike against the employers from April 1 through April 11, 1980. The action of TWU affected the entire subway system of New York City and some bus routes. The action of ATU affected other bus routes. Among other things, TWU and ATU argued in defense of their conduct that their responsibility for the strike was diminished by the employers' acts of extreme provocation. The alleged acts of extreme provocation were the same alleged acts upon which TWU and ATU base their improper

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<sup>1/</sup> Both employee organizations also charged the Metropolitan Transportation Authority with violation of its duty to negotiate in good faith. This part of the charges was dismissed on the ground that the Metropolitan Transportation Authority was not the public employer of any of the employees in the TWU or ATU units. This determination of the Hearing Officer has not been challenged in any exceptions that have been brought to this Board.

practice charges.

The hearing officer found that the evidence sustained the three strike charges, but that it did not sustain either of the improper practice charges. He further found that the "strike had a most severe and crippling impact upon the public health, safety and welfare of the community, and the Authorities did not engage in any acts of extreme provocation such as to detract from the responsibility of the three unions for the strike."

The matter has now come to us on the exceptions of TWU and ATU. They admit that they engaged in the strike as charged,<sup>2/</sup> but they argue that there is no evidence of a willful violation of §210.1 of the Taylor Law because an attempt to prevent the strike would have been futile and would have led to a loss of organizational control by the leadership of the employee organizations which would have made it more difficult to settle the strike. In this connection, TWU points out that John Lawe, its president, was eventually able to, and did, stop the strike even without the support of the majority of his executive committee.<sup>3/</sup>

<sup>2/</sup> Based upon the language of the hearing officer's decision which stated that the employee organizations "engaged" in the strike and not that they "engaged in, caused, instigated, encouraged and condoned the strike", the employee organizations also argue that the violation is not punishable by forfeiture of dues and agency shop fees. There is no legal foundation for this argument. Moreover, the evidence indicates that the employee organizations did cause, instigate, encourage and condone the strike, as well as engage in it.

<sup>3/</sup> Pursuant to its internal procedures, an affirmative vote of a majority of the TWU Executive Board is required before ratification of a proposed agreement can be sought from the membership. Lawe submitted the proposed agreement to the membership and called the men back to work with only a tie vote by the Executive Board.

The employee organizations also argue that the hearing officer erred in his finding that the responsibility for the strike was not diminished by the employers' acts of extreme provocation and that the employers did not violate their duty to negotiate in good faith. The alleged circumstances which the employee organizations characterize as extreme provocation and bad faith negotiations are: (1) Richard Ravitch, the head of the employers and their chief negotiator, was not a free agent during negotiations; rather, he acted as an agent of the Governor of New York State and of the Mayor of New York City. According to the employee organizations, the Mayor had no desire to reach an agreement in the Transit negotiations because of his concern that such an agreement would set an undesirable economic pattern for negotiations with the municipal unions. (2) Ravitch did not make any formal offer until March 30, 1980 which was just before the strike deadline, and even then he did not make his best offer. (3) The employers made a provocative change in sick leave procedures just before the strike deadline, which was revoked because of the anger it aroused. The details of the change are not stated in the record. (4) The employers insisted upon "give-backs", which they knew, or should have known, would preclude settlement.

Finally, the employee organizations argue that if this Board finds that they violated §210.1 of the Taylor Law, it should consider the implication of forfeiture of dues and agency shop fee deduction privileges upon their ability to fulfill their responsibility of representing unit employees in the negotiation

and administration of collective bargaining agreements. In contemplation of a finding of a strike violation, ATU further argues that the impact of its strike upon the health, safety and welfare of the community was much less than the strike of TWU. It points out that their strike was limited to certain bus routes.

FACTS

The hearing officer found that the record contained no proof that Ravitch negotiated in bad faith or that the Mayor of New York exercised any improper influence over him. He did not address the role of the Governor and we find the record bare of evidence that the Governor interfered with the negotiating process. The hearing officer further found that the employee organizations insisted upon a settlement that would follow the pattern of the 1980 Long Island Railroad settlement and that they struck because the employer did not agree.

According to the hearing officer, the absence of a formal offer before March 30 was not improper. There had been a series of informal offers prior to that time but the negotiators for all parties felt that it was tactically wise not to formalize the situation until then. The formal offer was made in accordance with the negotiations schedule, but it was rejected and no counter-offer was made. With the rejection of the proposal, the strike started in conformity with TWU's long-standing "no contract - no work" policy without the need of any formal authoriza-

tion by the executive committees of any of the employee organizations.<sup>4/</sup>

The sick leave directive of the employers did not, according to the hearing officer, constitute extreme provocation. He noted that there was not enough information in the record to indicate that it even was a contributing cause of the strike, or to support a conclusion that the employers' conduct in this regard was improper.<sup>5/</sup>

The hearing officer found that during the strike, the employee organizations provided the manpower to protect the property and equipment of the employers. Addressing the statutory concern about the impact of strikes upon the public health, safety and welfare of the community, the hearing officer determined that the strike was exceedingly costly in money and that it posed a danger by limiting the public's access to hospitals and clinics.<sup>6/</sup>

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<sup>4/</sup> When TWU struck, so did ATU and when TWU ended its strike, ATU did so too.

<sup>5/</sup> The hearing officer also pointed out that the improper practice charges did not allege any violation in this connection and that an amendment to do so would not have been timely.

<sup>6/</sup> He stated:

"The strike gravely limited the public's access to such institutions as hospitals and clinics. It caused a marked decline in student attendance. The Authorities lost millions of dollars in operating revenues. The City of New York was burdened with additional costs for fire, transit and police protection, and it lost approximately one million dollars per day in sales tax revenues and perhaps half that amount per day in income tax revenues. It would appear to be a fair estimate that it also caused private sector production losses of \$100,000,000 per day."

The information about the financial resources that he reported shows that the employee organizations have substantial net worth or revenues.<sup>7/</sup> Although not reported by the hearing officer we note that TWU was fined \$650,000.00 for criminal contempt of court by reason of the strike, and that the ATU locals were fined \$35,000.00 each.

#### DISCUSSION

Having reviewed the record, we affirm the material findings of fact and the conclusions of the hearing officer, and we determine that he committed no prejudicial error in his conduct of the hearing. Accordingly, we dismiss the two improper practice charges and impose a forfeiture of the dues and agency shop fee deduction privileges of the employee organizations.

In determining the duration of that forfeiture, we consider the criteria specified in the Taylor Law. The first criterion relates to the extent of willful defiance of the strike prohibition. In this context, we note that §210.3(e) of the Taylor Law raises the questions "whether the employee organization called the strike or tried to prevent it, and .... whether the employee organization made or was making good faith efforts to terminate the strike." In the case of TWU, there was a good faith effort to terminate the strike. Lawe stopped the strike as soon as he was able to obtain support of a substantial number, albeit, not a majority, of his executive board.

<sup>7/</sup> He stated:

"Each of the unions has dues check-off; TWU and ATU 726 at the rate of \$3.00 per week, ATU 1056 at \$3.44 per week. TWU has a net worth in excess of \$4,000,000; ATU 1056, a net worth in excess of \$165,000; and while no net worth was obtained for ATU 726, it has annual revenues from dues of approximately \$130,000."

The second statutory criterion is the impact of the strike upon the health, safety and welfare of the community. As indicated by the hearing officer, the impact was substantial. The instant strike was more costly for the community than any other strike in the history of the Taylor Law and the traffic jams that it caused constituted a health and safety hazard. On the other hand, notwithstanding their strike, the employee organizations joined with the employers in protecting the employers' property and equipment against vandalism.

We also note that the impact of the loss of the bus services provided by employees in the ATU units was less severe than the loss of subway service. This is not, however, a basis for a significant distinction between ATU and TWU. There was a single strike which was jointly engaged in by the three employee organizations, and the impact of the strike upon the community was cumulative.

The contempt of court fines of \$650,000, \$35,000 and \$35,000 imposed upon TWU and the two ATU locals respectively are presumed to have some impact upon the ability of the three employee organizations to represent unit employees in the negotiation and administration of collective bargaining agreements. However, given the net worth of the three organizations of \$4,000,000, \$165,000 and \$130,000 respectively, we cannot presume that the impact is excessive. Moreover, the record evidence forms no basis for reaching a conclusion as to the impact of a forfeiture of any specific duration of the dues and agency shop fee deduction.

privileges of the three employee organizations.<sup>8/</sup>

In consideration of the criteria specified in the statute and the evidence in the record, including the efforts of the president of TWU to end the strike, the lesser impact of the interruption of bus services provided by employees in the ATU units than the interruption of subway services throughout the City and fines imposed upon the employee organizations, we determine that a forfeiture of dues and agency shop fee deduction privileges of eighteen (18) months is appropriate for each of the employee organizations.

NOW, THEREFORE, WE ORDER THAT:

1. The charges in U-4638 and U-4691 be and they hereby are, DISMISSED.
2. That the dues deduction and agency shop fee privileges, if any, of Local 100 of the Transport Workers Union of America and Locals 726 and 1056 of the Amalgamated Transit Union, AFL-CIO be forfeited commencing on the first practicable date and continuing thereafter for a period of eighteen (18) months. Thereafter, no dues or agency shop fees shall be deducted on the behalf of any of the employee organizations until each affirms that it no longer

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<sup>8/</sup>As indicated in New York State Inspection, Security and Law Enforcement Employees, DC 82, 14 PERB ¶3069 (1981), the impact of the forfeiture penalty may require reconsideration of that penalty if, after having made an effort to do so by reasonably available alternative methods, an employee organization is not able to collect sufficient dues to insure proper representation of unit employees.

asserts the right to strike against any govern-  
ment, as required by the provisions of CSL  
§210.3(g).

If it becomes necessary to utilize the dues and  
agency shop fee deduction process for the purpose  
of paying the whole or any part of a fine imposed  
by order of a Court as a penalty in a contempt  
action arising out of the strike herein, the  
suspension of the dues and agency shop fee deduc-  
tion privileges ordered hereby may be interrupted  
or postponed for such period as shall be suffi-  
cient to comply with such order of the Court,  
whereupon the suspension ordered hereby shall  
be resumed or initiated as the case may be.

DATED: Albany, New York  
October 5, 1981

  
Harold R. Newman, Chairman

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2C-10/6/81
ROME CITY HOSPITAL AND MURPHY MEMORIAL HOSPITAL,	:	<u>BOARD DECISION AND</u>
Respondent,	:	<u>ORDER</u>
-and-	:	<u>CASE NO. U-5153</u>
ROME HOSPITAL NURSING SERVICE ASSOCIATION,	:	
Charging Party.	:	

JAMES KELLY, for Respondent

BLITMAN AND KING, ESQS. (JAMES R. LaVAUTE, ESQ., of Counsel), for Charging Party

The charge herein was filed by the Rome Hospital Nursing Service Association (Association). It alleges that the Rome City Hospital and Murphy Memorial Hospital (Hospital) violated its duty to negotiate in good faith by unilaterally changing the terms and conditions of employees represented by the Association after the expiration of the parties' collective bargaining agreement and at a time while it was obligated to negotiate a successor agreement. More specifically, the Association complains that after the expiration of two year agreements on December 31, 1980,<sup>1/</sup> the Hospital withheld the step increment in pay customarily granted in the first paycheck of each calendar year.

Relying upon the decision of the Court of Appeals in Rockland County BOCES, 41 NY2d 753 (1977), 10 PERB ¶7010, the hearing officer determined that the conduct of the Hospital did not

<sup>1/</sup>The charge was filed on behalf of two distinct units of employees represented by the Association.

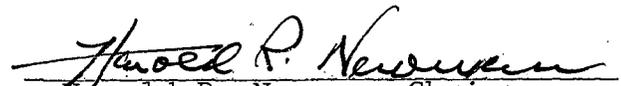
violate its duty to negotiate in good faith because the Court held that a public employer need not provide increments during the negotiations for an agreement that is to succeed one which had expired. The Association brings this matter to us on exceptions in which it asserts that the hearing officer erred in his application of Rockland County BOCES because the increments in this case had been earned by service under the expired collective bargaining agreement.

We find the opinion of the Court of Appeals in Rockland County BOCES to be applicable in the present case. The increments in Rockland County BOCES were intended to be salary increases in recognition of prior service for the employer which, like the service here, was performed while the prior collective bargaining agreement was in effect.

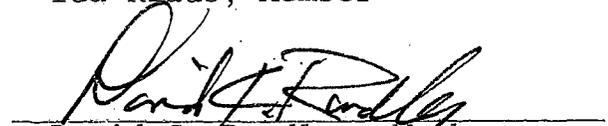
NOW, THEREFORE, WE AFFIRM the hearing officer's decision,  
and

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

DATED: Albany, New York  
October 5, 1981

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-10/6/81

In the Matter of

CATSKILL REGIONAL OFF-TRACK BETTING  
CORPORATION,

BOARD DECISION  
ON MOTION

Employer,

-and-

Case No. C-1870

LOCAL 32-E, SERVICE EMPLOYEES INTERNATIONAL  
UNION, AFL-CIO,

Petitioner.

In the Matter of

CATSKILL REGIONAL OFF-TRACK BETTING  
CORPORATION,

Case No. U-5333

Respondent,

-and-

LOCAL 32-E, SERVICE EMPLOYEES INTERNATIONAL  
UNION, AFL-CIO,

Charging Party.

Local 32-E, Service Employees International Union, AFL-CIO (Local 32-E) has filed exceptions to the decision of the Director of Public Employment Practices and Representation in a representation case (C-1870), and to the decision of the hearing officer in an improper practice case (U-5333). These matters come to us on the motions of Catskill Regional Off-Track Betting Corporation (OTB) to dismiss the exceptions in both cases on the ground that the exceptions were not timely filed. As the material circumstances are the same in both cases, we consolidate them for decision.

At its request, and over the objections of OTB, we granted an extension of time to Local 32-E to file exceptions in both matters because Counsel to Local 32-E had obligations which made it difficult for him to file the exceptions within the time required by our rules. We informed Local 32-E that its exceptions would ~~"be timely if postmarked no later than September 11, 1981."~~

The exceptions which Local 32-E filed with us were postmarked September 11, 1981.<sup>1/</sup> From OTB's motion papers, it appears that the service of the exceptions was postmarked September 15, 1981. This is, in effect, conceded by Local 32-E; its response to the motion merely states that "the exceptions and briefs mailed to PERB were postmarked on September 11, 1981." (Emphasis supplied)

Section 201.12(a) of the Rules of this Board provides that copies of exceptions in representation cases shall be served upon all other parties at the same time that they are filed with this Board. Rule 204.10(a) contains a parallel provision for improper practice cases. Rule 201.12(d) provides that this Board may extend the time during which to request an extension of time because of extraordinary circumstances. A parallel provision for

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<sup>1/</sup> Section 204.10(a) of our Rules provides that exceptions in an improper practice case shall be accompanied by proof of service upon all other parties. Local 32-E's exceptions were not accompanied by any proof of service upon OTB.

improper practice cases is found in Rule 204.12. Local 32-E has not requested such an extension of time and has not alleged any extraordinary circumstances which might excuse the delay or justify the granting of an extension.

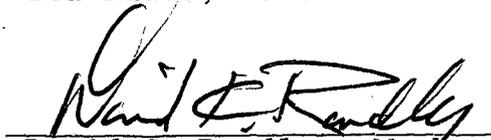
We have consistently applied the timeliness provisions of our rules strictly when an affected party to a proceeding has urged us to do so.<sup>2/</sup> As the service of the exceptions was not in compliance with our rules, we will grant OTB's motion.

NOW, THEREFORE, WE ORDER that the exceptions herein be, and they hereby are, DISMISSED.

DATED: Albany, New York  
October 6, 1981

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

<sup>2/</sup> See, for example, Putnam County, 8 PERB ¶3055 (1975); Nyack Union Free School District, 10 PERB ¶3053 (1977); Onondaga Community College, 11 PERB ¶3008 (1978); Westbury Union Free School District, 12 PERB ¶3107 (1979); United Federation of Teachers, 13 PERB ¶3101 (1980).

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of : #2E-10/6/81  
: BOARD DECISION ON  
UNITED FEDERATION OF TEACHERS, : MOTION  
LOCAL 2, NYSUT, AFT, AFL-CIO, :  
upon the Charge of Violation of Section : CASE NO. D-0116  
210.1 of the Civil Service Law. :  
:

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This matter now comes to us on a motion made by the United Federation of Teachers, Local 2, NYSUT, AFT, AFL-CIO (Federation) on April 30, 1981. It moves this Board for an Order remitting the order of this Board that was previously issued in this matter on October 8, 1976 (9 PERB ¶3071) which directed the forfeiture of the Federation's dues deduction privileges. One basis of the motion is that the Federation has behaved responsibly since the strike for which the forfeiture was imposed and that this responsible behavior has been, and continues to be, vital to the stability of New York City. A second basis of the motion is that the forfeiture imposed on the Federation will hurt it disproportionately to forfeitures of an equal duration that have been imposed upon other employee organizations "because of factors connected with its size and geographic and political diversity of the Employer." Finally, it asserts that the dues checkoff forfeiture would threaten its solvency, thereby rendering it incapable of providing necessary services to unit employees.

The motion is opposed by the Corporation Counsel of the City of New York, the Charging Party in this proceeding. It argues that there is no authority in law for the reconsideration of a

dues checkoff forfeiture and that, in any event, it should not be reconsidered because this Board's action has been upheld by the United States District Court for the Southern District (Shanker v. Helsby \_\_\_\_ F.SUPP. \_\_\_\_ [March 18, 1981], 14 PERB ¶7009). Aside from its procedural objections to the Federation's motion, the Charging Party asserts that the Federation has merely restated arguments that were already considered by this Board in its decision of October 8, 1976 and that it has presented no new facts in connection with those arguments.

#### HISTORY OF THE PROCEEDINGS

On October 10, 1975, the Charging Party alleged that the Federation had engaged in an illegal 5-day strike between September 9 and September 16, 1975. After a hearing, this Board determined that the Federation had struck as alleged and the strike was the third by the Federation. However, the Federation's responsibility for one of the prior strikes was diminished by acts of extreme provocation attributable to the Employer.

It was conceded by the Charging Party, and found by this Board, that the Federation had made sacrifices for the benefit of the employer since the strike and that these sacrifices had contributed to the stability of labor relations in New York City and to the City's recovery from its fiscal crisis. This Board also found that a dues deduction forfeiture would have an unusually harsh impact on the Federation's financial resources. These circumstances were all taken into consideration by this Board in fixing the duration of the forfeiture. The result was

a three-tiered forfeiture. The dues deduction privilege was forfeited for an indefinite period of time, but the Federation was authorized to apply for its reinstatement at any time after the lapse of two years from the effective date of the forfeiture upon an affirmation that it no longer asserted the right to strike against any government and an indication that it no longer adhered to a "no contract, no work" policy. Moreover, the Federation was authorized to apply, after the expiration of only 14 months, for a suspension of the balance of the forfeiture upon the same conditions that it could apply 10 months later for the full restoration of its dues deduction privileges.

The forfeiture ordered by this Board was not effectuated as of the time of the motion herein. Two months after the order of this Board, the Federation commenced an action in the U.S. District Court in the Southern District of New York in which it asserted that the penalty violated the Equal Protection Clause of the 14th Amendment of the U.S. Constitution in that dues checkoff forfeiture penalties had been imposed upon unions subject to the jurisdiction of this Board but not upon unions subject to the jurisdiction of the New York City Office of Collective Bargaining. This matter was not finally resolved by the Federal District Court until after the Federation made the motion herein.<sup>1/</sup>

7123

<sup>1/</sup> The Federal Court originally granted a preliminary injunction on an opinion that indicated its belief that there was merit in the complaint. This Board appealed the preliminary injunction to the 2d Circuit, but withdrew the appeal in 1978, and moved to reopen the District Court's decision. Pre-trial discovery proceedings were then held before a magistrate and a trial followed. On March 18 of this year, the District Court rendered a decision holding that the Taylor Law and its application by this Board did not violate the Equal Protection Clause of the U.S. Constitution and it dismissed the Federation's complaint. The Federation moved for reargument, but on May 11, 1981, its motion was denied.

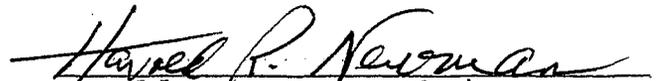
DISCUSSION

We deny the Federation's motion. The good behavior of the Federation subsequent to the strike and the importance of that behavior for the stability of New York City is of the same character as the conduct subsequent to the strike already considered by us in determining the duration of the Federation's dues checkoff forfeiture. The further arguments of the Federation are related to its financial resources. In large part, these, too, were considered by this Board in determining the duration of its dues checkoff forfeiture. To the extent that these arguments go beyond the evidence that was before this Board in 1976, they are based upon conjecture.

As indicated by us in New York State Inspection, Security and Law Enforcement Employees, DC 82, 14 PERB ¶3069 (1981), this Board may, under appropriate circumstances, reconsider the duration of a dues deduction forfeiture by reason of circumstances which show that the forfeiture, having been imposed, has prevented the employee organization from performing its statutory duty of representing unit employees in the negotiation and administration of collective bargaining agreements. The duration of the forfeiture may not, however, be reconsidered until the forfeiture has been imposed and the employee organization, having made an effort to do so by reasonably available alternative methods, is unable to collect sufficient dues to insure proper representation of the unit employees. To the extent that the Federation's motion raises such an issue, it is premature.

NOW, THEREFORE, WE ORDER that the motion herein be and  
it hereby is DENIED.

DATED: October 5, 1981  
Albany, New York

  
Harold R. Newman, Chairman

  
David C. Randles, Member