STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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| In the Matter of | #2A-2/12/82 |
| PUBLIC EMPLOYEES FEDERATION, Respondent, | BOARD DECISION AND ORDER |
| -and- | CASE NO. U-4767 |
| DAVID KAHN, Charging Party. | |

JAMES R. SANDNER, ESQ. (JANIS LEVART BARQUIST, ESQ., of Counsel), for Respondent

STUART A. ROSENFELDT, ESQ., for Charging Party

The matter comes to us on the exceptions of David Kahn to a hearing officer's decision dismissing his charge that the New York State Public Employees Federation (PEF) did not give him adequate notice of its agency shop fee refund procedure. PEF printed a notice of this procedure in its eight-page tabloid-sized newsletter which is sent to all unit employees. The notice appeared on page 5 in large bold-face letters under the heading "Policy on Agency Fee--Dues Refund".

Although Kahn received the newsletter, he did not open it, but followed his normal practice of throwing out all communications from PEF, unread.[1/] He regards the newsletter as a propaganda organ of PEF which he is not required to read. In his first amended charge, he asserted that the only adequate notice would be an individual certified letter with a contents notation on the

1/ PEF offered to accept a late filing of a refund application from Kahn when he told them that he had not read the newsletter, but he declined the offer.

outside of the envelope.

The hearing officer dismissed the charge on the ground that the notice actually provided was not unreasonable. In his exceptions to the dismissal, Kahn argues that inasmuch as PEF requires the filing of a demand for refund to be by certified mail, it is not unreasonable for it to be required to use the same procedure in notifying agency shop fee payers about the refund procedure. He further argues that there is no legitimate state or union interest in requiring agency shop fee payers to read the PEF newsletter as a condition for receiving a refund and that such a requirement compels him to participate in the affairs of PEF. Thus, the exceptions present the question whether the inclusion of a notice of an agency shop fee refund procedure in an inside page of a union newsletter that is sent to all unit members including agency shop fee payers constitutes sufficient notice to agency fee payers as required by Section 208.3 of the Taylor Law.[2/]

A person who chooses not to become a member of a union, but is required to pay an agency shop fee may be regarded as having little interest in reports of the daily affairs of the union. It would be unreasonable to expect such a person, in the normal course, to read the union newsletter if he is given no indication at first glance that it contains material of particular interest to him. The heading "Policy on Agency Fee--Dues Refund" would have been sufficient to notify Kahn, or any person paying an agency shop fee to PEF, that the newsletter contained material of

[2/] Among other things, Kahn supports his position with a constitutional argument based upon his reading of Mullane v. Central Hanover Bank and Trust Company, 339 U.S. 306 (1950). As we find merit to the charge on other grounds, it is unnecessary for us to discuss the constitutional issues.

particular interest to him had that heading appeared conspicuously on the face of the newsletter. Without such a conspicuous means of arousing his attention, the inclusion of the notice in PEF's newsletter was not sufficient compliance with its §208.3 obligation.

We reject Kahn's contention that PEF must use certified mail to notify unit employees who pay an agency shop fee of its refund procedure. Our acceptance of certified mail as a reasonable method when required by a union for the filing of refund demands does not mean that we deem it a necessary method for notification to employees of the refund procedure. What is required is that PEF's notification of its agency shop refund procedure is likely to be read by persons who pay an agency shop fee. A conspicuous informative heading on the cover of any notice sent to such persons by regular mail is sufficient to make it likely that they will read it.3/

Accordingly, we determine that PEF violated §209-a.2(a) of the Taylor Law in that it communicated its agency shop refund procedure to persons paying an agency shop fee merely by providing a notice on an inside page of its newsletter, and

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3/ See UUP and Eson, 11 PERB ¶3074 (1978) at p. 3114 where we approved a revised refund procedure and required that notice of it be given by regular mail.

WE ORDER the Public Employees Federation

1. to accept a late filing from Kahn for the 1979-1980 fiscal year;[4/]
2. for the 1981-1982 fiscal year, and for all subsequent fiscal years, to provide timely notice of its refund procedure to all persons paying an agency shop fee by a mailing which contains a conspicuous identification of the notice on its face.

DATED: February 10, 1982
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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[4/] We note that it has already offered to do so and that Kahn has refused that offer. His rejection does not constitute a waiver to have a late filing accepted because he might reasonably have believed that he could not have accepted the offer without yielding his right to prosecute the improper practice charge herein.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-2/12/82

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| In the Matter of | |
| BOCES III, SUFFOLK COUNTY, | BOARD DECISION & ORDER |
| Employer, | |
| -and- | |
| BOCES III FACULTY ASSOCIATION, NYSUT, AFT, AFL-CIO, | Case No. C-2169 |
| Petitioner. | |

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

MARTIN FEINBERG, for Petitioner

This matter comes to us on the exceptions of BOCES III, Suffolk County (BOCES) to a decision of the Director of Public Employment Practices and Representation (Director) that continuing education instructors employed by BOCES constitute an appropriate negotiating unit. The basis of the Director's decision was his conclusion that the continuing education instructors are public employees but that they do not share a community of interest with the teachers who teach in BOCES' primary educational program. The Director found that the continuing education instructors and BOCES' regular teachers teach in separate educational programs catering to distinct student bodies but that they have different terms and conditions of, and qualifications for, employment. There have been no exceptions to these findings or to the Director's conclusion that the two

groups of teachers do not share a community of interest.

In support of its exceptions, BOCES argues that the Director erred in not concluding that the continuing education instructors are casual employees who lack the regular and continuing employment relationship required for public employee status under §201.7 of the Taylor Law. Most of these instructors work but a few hours a week for a period of time that is less than a school year.

The test for ascertaining whether employees who do not work a full year have a sufficient relationship to their public employer for public employee status under §201.7 of the Taylor Law was first articulated in State of New York, 5 PERB ¶3022 (1972) which dealt with seasonal employment. It is a three-part test: such public employment is covered by the Taylor Law if the employees in an occupational title work at least six weeks a year, at least 20 hours a week and at least 60% of them return for at least two successive years. This rule has been consistently applied for the last ten years. The only exception to it is the recognition expressed by the Board in State of New York, supra, that the 20-hour-a-week requirement "might not apply to teachers, especially in institutions of higher education."

The record before us shows that the average continuing education instructor is employed by BOCES to work 26 days a year over a 26-week period.[1/] During that time, most continuing education

1/ BOCES offers its continuing education program for 130 days over two 13-week periods. Two-thirds of the continuing education instructors teach during both semesters, one day each week.

instructors work 3 1/2 hours a week. Of the 115 continuing education instructors who worked for BOCES in the 1977-78 school year, 72 returned the following school year for a return rate of 62%. The return rate for the following two years was 60% and 64% respectively.

The test specified in State of New York, supra, which was developed for seasonal employment, is not directly applicable to the case before us. It is, nevertheless, a useful starting place for our analysis. Applying it, we conclude that the work performed by the continuing education instructors for BOCES meets the first and third parts of the test. However, it may not meet the second part dealing with hours of work. Although we recognized from the beginning that the normal 20-hour-per-week work requirement might not apply to teachers, we have never had an occasion to consider how much less time teachers may work each week and still be deemed employees within the meaning of §201.7 of the Taylor Law.

We need not decide whether, standing alone, teachers who work only 3 1/2 hours a week are casual employees and thereby excluded from Taylor Law coverage. There are additional factors here that compel that exclusion. This is so even though the Taylor Law covers all-year employees who may work a shorter workweek than is required for the coverage of seasonal employees. The significant factors before us are that continuing education instructors do not teach in the primary educational program of BOCES; that they teach only 3 1/2 hours a week in schools other than institutions of higher education; and that they teach only on one-fifth of the days when school is in session. This is

insufficient to establish the regular and continuing employment relationship required for public employee status under the Taylor Law.

In concluding that the continuing education instructors employed by BOCES are casual employees who are not covered by the Taylor Law, we recognize that some of them do work in excess of 3 1/2 hours a week and that some do work more than 26 days a year. However, as indicated in State of New York, 5 PERB ¶3039 (1972) at page 3068, "[T]he test which we impose relates to the occupational title, rather than to individual employees."

NOW, THEREFORE, WE REVERSE the decision of the Director, and

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

DATED, Albany, New York
February 12, 1982

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

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| In the Matter of<br>CITY OF LACKAWANNA,<br>Respondent,<br>-and-<br>COUNCIL 66, AFSCME, AFL-CIO, AND ITS AFFILIATED LOCAL 450,<br>Charging Party. | #2C-2/12/82<br>BOARD DECISION AND ORDER<br>CASE NO. U-5372 |

NORMAN A. LeBLANC, JR., ESQ., for Respondent

JOEL M. POCH, ESQ., for Charging Party

This matter comes to us on the exceptions of the City of Lackawanna (City) to a hearing officer's decision that it violated its duty to negotiate in good faith with Council 66, AFSCME, AFL-CIO, and its affiliated Local 450 (AFSCME) by unilaterally subcontracting its Community Development Grant Program (Program) to the Lackawanna Community Development Corporation (Corporation).[1/]

On December 15, 1980, the City's legislature adopted a resolution in which it agreed to enter into a contract with the Corporation pursuant to which the Corporation would become managing agent of the Program. In January the City employees who had worked on the Program were notified of the anticipated change. No official notice was given to AFSCME until March 10, 1981. AFSCME then sought, and the City agreed to, negotiations on the

1/ Other specifications of the charge and of a related charge (U-5235), which was simultaneously heard at a consolidated hearing, including an allegation that the City had refused to negotiate the impact of the subcontract, were either dismissed by the hearing officer or withdrawn by AFSCME. AFSCME has not filed any exceptions to the dismissal of the other specifications of its charges.

impact of the change. The City entered into a binding contract with the Corporation on April 10, 1981, and the affected positions were eliminated by the City effective April 12, 1981. Three of the four terminated employees were then hired by the Corporation to perform the same functions that they had performed for the City.

In its brief to the hearing officer, the City had argued that the decision to contract out the service was a management prerogative. Relying upon Saratoga Springs CSD, 11 PERB ¶3037 (1978), aff'd Saratoga Springs CSD v. PERB, 68 AD2d 202 (3d Dept., 1979), 12 PERB ¶7008, aff'd 47 NY2d 711 (1979), 12 PERB ¶7012, the hearing officer properly rejected this argument. The City does not repeat this argument before us. It now argues that the affected employees had not been in the unit represented by the union on December 15, 1980, the date when it reached the decision to subcontract the work. This is based upon allegations of fact that are not in the record.[2/] According to the City, they did not become unit employees until January 1, 1981. Therefore, it argues that it was not obligated to negotiate the subject of subcontracting on December 15 because the subcontract did not involve unit work at

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[2/] The City states in its brief:

> "The record in this proceeding fails to reveal one very salient fact, which obviously was not considered by the Hearing Officer. . . .
>
> [T]he City would be hard pressed to argue against the Hearing Officer's decision if these affected employees had been members of the AFSCME prior to the adoption of the resolution by the Council on December 15, 1980. However, by virtue of the fact that these employees did not become members of the bargaining unit until a date subsequent to the adoption of the resolution, it is respectfully submitted that the City of Lackawanna had no obligation to negotiate with AFSCME regarding the impact of its basic decision to subcontract the program."

that time. Even if the City may be heard to raise this argument at this time, we would find no merit in it. The additional evidence submitted by the City makes it clear that at least three of the four affected employees were in the unit by January 1, 1981.[3/] On that date the City became obligated to negotiate with AFSCME about the subject of subcontracting the work performed by these employees. As the City did not enter into a binding contract with the corporation until after January 1, 1981, it violated its duty to negotiate with AFSCME about its decision to subcontract.[4/]

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

WE ORDER the City of Lackawanna to

1. Offer reinstatement under their prior terms and conditions of employment to those employees who were in the negotiating unit represented by AFSCME on April 10, 1981 and were terminated as a result of the April 10, 1981 agreement between the City and the Corporation, together with any losses of wages or benefits that they may have suffered by reason of such agreement, and

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[3/] The record does not show when, if ever, the fourth employee, Maloney, was in the unit.

[4/] Cf, Deer Park UFSD, 14 PERB ¶3028 (1981).

2. Negotiate in good faith with AFSCME concerning terms and conditions of employment.

DATED: February 11, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-2/12/82

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| In the Matter of<br><br>WYANDANCH TEACHERS ASSOCIATION,<br><br>Upon the Charge of Violation of Section 210.1 of the Civil Service Law. | BOARD DECISION AND ORDER<br><br>CASE NO. D-0187 |

ROBERT D. CLEARFIELD, ESQ., for Respondent

MARTIN L. BARR, ESQ. (RICHARD A. CURRERI, ESQ., of Counsel), for Charging Party

PACKMAN, OSHRIN AND BLOCK, ESQS. (ALAN D. OSHRIN, ESQ., of Counsel), for Employer

On March 6, 1980, Counsel to the Public Employment Relations Board (Counsel) charged the Wyandanch Teachers Association (Association) with violating §210.1 of the Taylor Law by engaging in a 41-day strike between September 17 and November 16, 1979 against the Wyandanch Union Free School District (Employer). At the hearing which was held on July 1, 1980, January 27, 1981 and February 26, 1981, the Association conceded that it engaged in the 41-day strike as charged, but it alleged that its responsibility for the strike was diminished by acts of extreme provocation attributable to the employer. The allegation was rejected by the hearing officer.[1/] The matter now comes to us on the report and recommendations of the hearing officer and the exceptions of the Association. In its exceptions, it argues that the hearing officer denied it a sufficient opportunity to prove extreme provocation.

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[1/] In her report and recommendations, the hearing officer also made findings regarding the impact of the strike and the financial resources of the Association. There were no exceptions to any of these findings.

Counsel completed its case on January 27, 1981. At that point, the Association sought to call the attorney for the Employer, who is also the Employer's negotiator, as its own witness. The hearing officer did not permit the Association to do so at that time on the ground that the Employer's attorney had no advance notice that he would be called as a witness and, therefore, did not have an opportunity to bring an attorney to represent him. The hearing was, therefore, adjourned until February 26, 1981, at which time the Employer's attorney testified pursuant to subpoena.

Before adjourning the hearing on January 27, the hearing officer gave the Association an opportunity to call its other witnesses. The Association declined to do so on the ground that its strategy required the testimony of the Employer's attorney to be heard first. After the Employer's attorney completed his testimony on February 26, the Association sought to call witnesses who had been available on January 27, but the hearing officer did not permit it to do so because it had not availed itself of the earlier opportunity.

Ordinarily a hearing officer may control the order of proof to be submitted at a hearing. Here, however, we conclude that the Association may have been prejudiced because the hearing officer did not advise the Association in clear and unambiguous terms on January 27 that, if it did not call its other witnesses, it would be precluded from calling them on a later date.

ACCORDINGLY, WE REMAND this matter to the hearing officer to permit the Association to call the witnesses it sought to present on February 26, 1981, and to issue a further report and recommendation.

DATED: February 10, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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| In the Matter of | #2E-2/12/82 |
| PROFESSIONAL STAFF CONGRESS, CITY UNIVERSITY OF NEW YORK, Respondent, | BOARD DECISION AND ORDER |
| -and- | |
| ARNOLD ROTHSTEIN, Charging Party. | CASE NO. U-4859 |

JAMES R. SANDNER, ESQ. (JAMES C. MEAGHER, ESQ. AND RICHARD E. CASAGRANDE, Esq., of Counsel), for Respondent

ARNOLD ROTHSTEIN, pro se

This matter comes to us on the exceptions of the Professional Staff Congress, City University of New York (PSC) to a hearing officer's decision that it violated §209-a.2(a) of the Taylor Law by not furnishing Arnold Rothstein, a unit employee who pays PSC an agency shop fee, with financial information explaining its determination of the amount it refunded to him for the 1978-79 fiscal year at the time when it provided the refund.[1/] Among other things, the remedial order of the hearing officer requires PSC to refund all agency shop fee monies deducted from Rothstein's salary during the 1978-79 fiscal year with interest at the rate of six percent per annum and to amend its refund procedure within 30 days or forfeit its right to agency shop fees.

1/ The hearing officer's decision also dealt with case U-4860 in which Rothstein charged PSC with refunding an insufficient amount of money. The hearing officer dismissed the charge pursuant to the authority of Hampton Bays Teachers Association, 14 PERB ¶3018. Rothstein took no exception to that part of the decision.

PSC specifies six bases for its exceptions: (1) This Board lacks subject matter jurisdiction. (2) PSC was not obligated to provide financial information to Rothstein explaining its determination of the amount of the refund, because Rothstein never requested such information. (3) Rothstein was not entitled to such information because he had previously decided not to utilize the union's appellate procedures. (4) The filing of the charge herein was premature in that Rothstein should have exhausted the internal appellate procedures offered by PSC before being permitted to file the charge. (5) The order of the hearing officer requiring PSC to refund Rothstein's agency shop fees plus interest thereon is unwarranted. (6) The order of the hearing officer requiring PSC to amend its refund procedure is unwarranted.

We have dealt with most of the issues raised by the exceptions in UUP (Barry), 13 PERB ¶3090 (1980), affirmed UUP v. Newman, ___App. Div. 2d___ (3rd Dept., 1982), 15 PERB ¶7001. In that case too we asserted jurisdiction over a charge that a union did not inform a person paying an agency shop fee of the basis for its determination as to the amount of the refund. The allegation that we lacked jurisdiction was expressly rejected by the Appellate Division.

While the charging party in UUP (Barry) had requested itemized financial information explaining the refund, our order directed the union to furnish all individuals who apply for and receive refunds, and not just those who requested it, an itemized audited statement of the basis of its determination of the amount of the

refund. That order proceeded from the premise that a union's duty to furnish information flows, not from a request for information, but from its statutory duty to provide the refund. In our view, the statutory obligation to make a refund necessarily carries with it the simultaneous companion duty to explain how the amount of the refund was determined.

The third and fourth bases of PSC's exceptions both presume that a person receiving an agency shop fee refund must exhaust the appellate procedures offered by a union before the conduct of the union may be challenged in an administrative or judicial tribunal. We have already held in UUP (Barry) that the exhaustion of a union's internal appellate procedures is not a prerequisite to the filing of an improper practice charge alleging that requisite financial information has not been furnished. We now hold that whether or not an individual receiving an agency shop fee refund intends to utilize the union's internal appellate procedure to challenge the amount of the refund has no bearing on his right to receive financial information explaining the amount of the refund.

We agree with PSC that the hearing officer should not have ordered it to refund all agency shop fees paid by Rothstein during the 1978-79 fiscal year. We did not impose such an obligation in UUP (Barry). The hearing officer reasoned that a remedy which went beyond the one provided by us in UUP (Barry) was appropriate here because the violation herein took place after the hearing officer's decision in UUP (Barry) and other similar cases. Thus, according to the hearing officer, PSC was on notice of what was

required of it, and its violation was, therefore, more serious than that of the union in UUP (Barry). PSC correctly points out, however, that no decision of this Board had been issued on the particular question presented here as of the time when it furnished the refund to Rothstein without providing him with the financial information.

In Westbury Teachers Association, 14 PERB ¶3063 (1981), a union violated an obligation first made clear in our UUP (Barry) decision after the violation in question occurred. We rejected the hearing officer's order that the right of the union in that case to collect agency shop fees be suspended immediately, and ordered instead that the suspension be conditioned upon the union's not providing charging party with the requisite financial information within 30 days of our decision. The same order is appropriate in the instant case.

Finally, we agree with PSC that the hearing officer should not have ordered it to amend its refund procedure. In Middle Country Teachers Association, 15 PERB ¶3004 (1982), we determined that it is unnecessary for a union to amend its agency shop fee refund procedure to accord with our finding because our order directly imposes upon the union the requisite refund procedures.

NOW, THEREFORE, WE ORDER the PSC:

1. Within 30 days to furnish Arnold Rothstein with an itemized, audited statement of its receipts and disbursements and those of any of its affiliates receiving any portion of their revenues from the Professional Staff

Congress' agency shop fees or dues, such statement to indicate the basis of the determination of the amount of refund, including identification of those disbursements of the PSC or its affiliates that are refundable and those that are not. Should it fail to do so, it shall

a. cease and desist from collecting any agency shop fees from him until such time as it furnishes such a statement, and

b. return to him all agency shop fee monies deducted from his salary during the 1978-79 fiscal year with interest at the rate of six percent per annum from the date of each deduction.

2. At the time of any future refund or notice that a refund will not be made, to furnish to all objectors an itemized, audited statement of its receipts and expenditures and those of any of its affiliates which receive, either directly or indirectly, any portion of its revenues from agency fees, together with the basis of its determination of the amount of the refund, including identification of those disbursements determined by it and its affiliates to be refundable and those determined not to be refundable.

3. To post a copy of the notice attached hereto on all bulletin boards regularly used by it to communicate with unit employees.

DATED: February 11, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

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** all unit employees that:

We will, at the time of making all future refunds to agency fee payers, furnish to such persons, together with those refunds, an itemized, audited statement of the Professional Staff Congress' receipts and disbursements and those of its affiliates receiving any portion of their revenues from agency fees or dues, such statement to indicate the basis of the determination of the amount of refund, including identification of those disbursements of the Professional Staff Congress and its affiliates that are refundable and those that are not.

PROFESSIONAL STAFF CONGRESS
Employee Organization

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

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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| In the Matter of<br><br>STATE OF NEW YORK (DIVISION OF STATE POLICE),<br><br>Employer,<br><br>-and-<br><br>FRATERNAL ORDER OF NEW YORK STATE TROOPERS, INC.,<br><br>Petitioner,<br><br>-and-<br><br>POLICE BENEVOLENT ASSOCIATION OF THE NEW YORK STATE POLICE, INC.,<br><br>Intervenor. | #2F-2/12/82<br><br>BOARD DECISION AND ORDER<br><br>CASE NO. C-2297 |

JOSEPH M. BRESS, ESQ., for Employer

SCHURR & BURNS, P.C. (RICHARD OWEN BURNS, ESQ., of Counsel), for Petitioner

HINMAN, STRAUB, PIGORS & MANNING, P.C. (BERNARD J. MALONE, ESQ., of Counsel), for Intervenor

This proceeding was commenced by the Fraternal Order of New York State Troopers, Inc. (Fraternal Order) which filed a petition to represent an existing unit of troopers employed by the Division of State Police of the State of New York (State). The petition was opposed by the Police Benevolent Association of the New York State Police, Inc. (PBA) which was the certified representative of the troopers. The matter now comes to us on the exceptions of PBA to the dismissal by the Director of Public Employment Practices and Representation (Director) of what

purport to be objections affecting the results of an election in which 983 troopers voted for representation by the Fraternal Order and 660 for PBA. The conduct complained about in PBA's objections concerns the showing of interest submitted by the Fraternal Order in support of its petition.

The showing of interest accompanying the Fraternal Order's petition consisted of individual authorization cards and a membership listing of unit employees who had authorized the State to deduct dues on behalf of the Fraternal Order. The individual authorization cards alone were not numerically sufficient to satisfy the requirement of a 30 percent showing of interest and PBA asserted that the evidence of current membership in the Fraternal Order as represented by the dues deduction authorizations should not be considered by the Director.

The basis of the objection to the consideration of the dues deduction authorizations was an agreement entered into by representatives of the Fraternal Order and PBA on November 6, 1980. By that agreement, PBA consented to the State's deducting membership dues and insurance premiums on behalf of the Fraternal Order in return for the Fraternal Order's promise that, if it were certified, it would permit the State to continue to deduct dues and insurance premiums on behalf of PBA. A further condition for PBA's consent to the deductions was that the Fraternal Order would not use its membership lists as a basis for supporting any challenge to the representation rights of PBA.

According to PBA, the Fraternal Order's commitment not to use its membership lists as part of a showing of interest precluded the Director from considering those lists for that purpose. The Director rejected this contention on the ground that PERB was not a party to the agreement between PBA and the Fraternal Order and was not bound by it. He was, therefore, obliged to apply §201.4 of the Rules of this Board which specifies that evidence of current membership is acceptable proof of a showing of interest.[1/] He directed the holding of the election which was won by the Fraternal Order. PBA then filed the objections to the conduct affecting the results of the election which are the basis of the exceptions before us. As those objections merely allege that the Fraternal Order breached its agreement with PBA of November 6, 1980, by submitting its membership lists as part of its showing of interest, the Director dismissed them on the ground that he had already ruled on the matter.

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1/ PBA also brought a proceeding under CPLR Article 78 to enjoin this Board from processing the petition because the Fraternal Order had submitted an improper showing of interest. The proceeding was dismissed on the ground that the relief sought was judicial review of a preliminary determination made by PERB in the course of a representation proceeding and was, therefore, premature. PBA v. Fraternal Order and PERB, 14 PERB ¶7024 (Sup. Ct. Alb. Co., 1981).

PBA's exceptions are directed to a determination of the Director that the Fraternal Order's showing of interest was sufficient. It argues that we should reject the Director's determination notwithstanding Section 201.4(c) of our Rules.[2/] In support of this argument it contends that the Director's error in accepting the showing of interest is that it was insufficient as a matter of law rather than numerically insufficient and that only a determination that a showing of interest is numerically sufficient is a ministerial act which is not reviewed by this Board.

We do not agree with the distinction made by PBA. A similar situation was presented to us in Yonkers CSD, 10 PERB ¶3100 (1977). There, the incumbent union alleged that the petitioner solicited its showing of interest in violation of agreed upon access rules, and it argued that the showing of interest was, therefore, insufficient as a matter of law. The Director rejected the incumbent's argument, and we refused to consider the matter when the incumbent brought it to us by its exceptions. We based our refusal upon Rule 201.4(c) and the policy underlying that Rule. Articulating that policy we said:

> "The requirement of a showing of interest is to permit this Board to screen out those cases in which there is no showing of a substantial support of the petitioner by the employees, so that public funds will not be needlessly expended in the investigation and processing of those cases. It

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2/ Section 201.4(c) provides: "[T]he determination by the Director as to the timeliness of a showing of interest and of its numerical sufficiency is a ministerial act and will not be reviewed by the Board."

is not designed to protect an incumbent employee organization . . .". 3/

We find that policy applicable here.

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

DATED: February 12, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

3/ Even if we were to review the Director's ruling on the showing of interest, we would affirm that ruling because Section 201.4(b) of our Rules requires the Director to consider evidence of current membership as proof of a showing of interest. Lakeland CSD, 12 PERB ¶3017 (1979)

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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| In the Matter of | : | |
| STATE OF NEW YORK (DIVISION OF STATE POLICE), | : | #3A-2/12/82 |
| Employer, | : | |
| - and - | | |
| FRATERNAL ORDER OF NEW YORK STATE TROOPERS, INC., | : | Case No. C-2297 |
| Petitioner, | : | |
| - and - | | |
| POLICE BENEVOLENT ASSOCIATION OF THE NEW YORK STATE POLICE, 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

FRATERNAL ORDER OF NEW YORK STATE TROOPERS, INC.

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: Troopers

Excluded: All other employees

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

FRATERNAL ORDER OF NEW YORK STATE TROOPERS, INC.

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 12th day of February, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

PERB 58.3

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIC BOARD

| | | |
|---|---|---|
| In the Matter of<br>VILLAGE OF EAST AURORA,<br>Employer,<br>- and -<br>EAST AURORA QUAKER CLUB POLICE BENEVOLENT ASSOCIATION,<br>Petitioner,<br>- and -<br>CIVIL SERVICE EMPLOYEES ASSOCIATION,<br>Intervenor. | : | #3B-2/12/82<br><br>Case No. C-2316 |

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 East Aurora Quaker Club Police Benevolent Association

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 probationary patrolmen, patrolmen and lieutenants.

Excluded: Chief of Police, Captains and all other employees of the Village.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the East Aurora Quaker Club Police Benevolent 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 10th day of February , 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

PERB 58.3

7342

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATI[illegible] BOARD

| | |
|---|---|
| In the Matter of | #3C-2/12/82 |
| NEW YORK CITY TRANSIT AUTHORITY, Employer, | |
| -and- | Case No. C-2336 |
| TERMINAL EMPLOYEES LOCAL 832, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, 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 Terminal Employees Local 832, 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 full-time senior buyers, buyers and assistant buyers.

Excluded: Supervising buyers and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Terminal Employees Local 832, 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 10th day of February, 1982
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

PERB 58.3

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BETHPAGE WATER DISTRICT,

Employer,

-and-

LOCAL 342, LONG ISLAND PUBLIC SERVICE EMPLOYEES, UNITED MARINE DIVISION, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Petitioner.

#3D-2/12/82

Case No. C-2310

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 342, Long Island Public Service Employees, United Marine Division, International Longshoremen's Association, 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: clerk, business machine operator, water servicer, meter reader, laborer.

Excluded: superintendent, water service supervisor, and all elected officials.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 342, Long Island Public Service Employees, United Marine Division, International Longshoremen's Association, 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 10th day of February, 1982
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

PERB 58.3

7344

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

| | | |
|---|---|---|
| In the Matter of | : | #2E-2/12/82 |
| BINGHAMTON HOUSING AUTHORITY, | : | |
| Employer, | : | Case No. C-2289 |
| -and- | : | |
| PLUMBERS AND PIPE FITTERS LOCAL UNION 112, | : | |
| 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 Plumbers and Pipe Fitters Local Union 112

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: maintenance mechanic and maintenance mechanic helper.

Excluded: supervisor, senior maintenance mechanic and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Plumbers and Pipe Fitters Local Union 112

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 12th day of February, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member