

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-1/14/83

In the Matter of
UNITED FEDERATION OF TEACHERS, LOCAL 2,
Respondent,

-and-

CASE NO. U-5517

FRED GREENBERG,
Charging Party.

JAMES R. SANDNER, ESQ. (PAUL H. JANIS, ESQ.,
of Counsel), for Respondent

FOARD & ROSOFF, ESQS. (DAVID M. ROSOFF, ESQ.,
of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Fred Greenberg to a hearing officer's decision dismissing his charge that United Federation of Teachers, Local 2 (UFT) violated its duty to represent him fairly. UFT represents a unit of teachers employed by the City School District of the City of New York (District) and Greenberg is such a teacher.

As particularized by Greenberg, the charge alleges that UFT failed to support him adequately in connection with problems that he had with the District. It specifies five instances of such alleged inadequacy. The record shows that in each instance UFT denied him the service he requested.

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The hearing officer determined, however, that in each of the five instances, Greenberg was seeking services from UFT which UFT does not provide to others and which the Taylor Law does not obligate it to provide.

~~The charge also specifies two instances in which UFT~~
did not afford Greenberg services in connection with problems that did not involve the District. One was that it did not protect him against an assault by the step-parent of a student. The other was that it did not protect him against the disappearance of property he left in his desk. With respect to these instances, too, the hearing officer determined that Greenberg was seeking services from UFT which UFT does not provide to others and which the Taylor Law does not obligate it to provide.

Finally, the charge alleges that by refusing to submit its denial of those requested services to a review procedure made available through the American Federation of Teachers, UFT's parent organization, UFT had committed an independent violation. The hearing officer ruled at the hearing that this allegation could not set forth an independent violation under the charge before her because the event complained about occurred after the charge was filed.

Greenberg's exceptions complain that the hearing officer excluded testimony which would have shown that UFT is zealous in the protection of the rights of unit employees whom it favors but ignores the rights of those in disfavor,

and that, in any event, the evidence supports his charge.^{1/}

The hearing ran three days with the testimony covering 356 pages. While Greenberg was not given complete freedom to present his testimony in the order in which he wished to do so, he was given more than sufficient opportunity to present his case. Notwithstanding the latitude given to him, the hearing officer found that his testimony often dealt with irrelevant matters and that it did not establish any of the specifications of his charge. Having reviewed the record, we determine that she committed no prejudicial

^{1/}Greenberg's exceptions make three other arguments. They argue that the hearing officer refused to consolidate the instant charge with a later charge filed by Greenberg and that the hearing officer did not permit him to prove the close relationship between UFT and NYSUT. As to the first of these, we note that the factual basis of the later charge, which was dismissed for failure to set forth a prima facie case, was not related to the instant charge. Accordingly, it could not have been an abuse of discretion for the hearing officer to refuse to consolidate them. As to the second, we conclude that the relationship between UFT and NYSUT was not relevant to the basis of the hearing officer's decision.

Finally, Greenberg argues that in dismissing that part of his charge which alleged UFT refused to represent him in an improper practice case where he filed the charge pro se, the hearing officer failed to consider his allegation that UFT "did not offer an alternative remedy". However, the record contains no evidence in support of this allegation. Therefore, on the record before her, the hearing officer could well have understood that Greenberg had narrowed his complaint to UFT's refusal to prosecute the improper practice charge. Accordingly, she did not err by ignoring the unsubstantiated allegation.

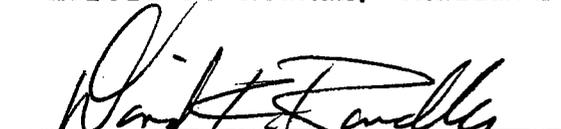
error in her conduct of the hearing and we affirm her findings of fact and conclusions of law.

We have held that an employee organization violates its duty of fair representation if it denies a service to a unit employee and its decision to deny that service is improperly motivated, irresponsible or grossly negligent. (Brighton Transportation Association, 10 PERB ¶3090 [1977]). UFT's decisions not to provide Greenberg with any of the services which were the subject of the charge herein were deliberately made and could not involve negligence. On the record before us, we find no evidence that these decisions were improperly motivated or irresponsible.

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

DATED: January 14, 1983
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-1/14/83

In the Matter of

NEW YORK STATE BRIDGE AUTHORITY

CASE NO. E-0846

Upon the Application for Designation of
Persons as Managerial or Confidential.

ISADORE SHAPIRO, ESQ., for Employer

ROEMER AND FEATHERSTONHAUGH, ESQS. (WILLIAM M.
WALLENS, ESQ., of Counsel), for Intervenor

BOARD DECISION AND ORDER

The New York State Bridge Authority (Authority) operates five bridges across the Hudson River. Each bridge has a bridge manager and an assistant bridge manager. The Authority also has 100 employees who collect tolls and maintain the bridges. On April 30, 1982, the Authority applied for the designation of the five bridge managers and five assistant bridge managers as managerial. The Civil Service Employees Association, Inc. (CSEA), which represents the employees of the Authority, opposed the application.

In support of its application, the Authority submitted the job descriptions for the bridge manager and assistant bridge manager positions. Among other things, the job description for the bridge manager position provides for meetings with the executive director and deputy executive director "for the purpose of formulating policy with reference to all bridges" The job description also

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provides that the manager will

assist the Authority in contract negotiations for employees under his supervision and in addition will sit as representative of the Authority during labor-management sessions.

Representatives of the Authority and CSEA apparently reached an agreement at the conference as to the work that is actually performed by the bridge managers and assistant bridge managers. A statement of the duties actually performed was prepared by the trial examiner and sent to counsel for both parties. She indicated that unless the parties wished to submit additional evidence or to challenge the facts set forth in her statement of duties, those facts would constitute the record. The statement was accepted by the Authority.

Based upon the information contained in the trial examiner's statement, the Director of Public Employment Practices and Representation (Director) concluded that the functions performed by the bridge managers are not managerial within the meaning of the Taylor Law. It followed, according to the Director, that the assistant managers were not managerial.

The matter now comes to us on the exceptions of the Authority. In support of its exceptions, the Authority argues that the Director erred by relying solely upon the facts specified in the trial examiner's statement of duties. It contends that he should also have considered the

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job descriptions which were appended to the application. While it concedes that some of the duties contained in the job descriptions were not actually performed, it argues that it could reasonably require the managers and assistant managers to perform all those duties and would have done so but for the fact that they are in the CSEA unit. CSEA responds that by agreeing that the trial examiner's statement of duties contained all the relevant facts, the Authority waived reliance upon the job descriptions.

We do not find that the job descriptions cited by the Authority add anything significant to the information contained in the trial examiner's statement. The statement sets forth that which the managers and assistant managers actually do. To the extent that the job descriptions set forth additional duties, those duties were not actually performed but were within the range of duties that might have been assigned. The record, however, does not show that these potentially additional duties would constitute a managerial, rather than a supervisory, function.

The job descriptions refer to formulation of policy by the managers, but that term does not appear to have the same meaning in that document as it does in the Taylor Law. In its brief, the Authority argues that the bridge managers formulate policy because they have considerable discretion in "determining the methods, means and personnel by which

the business of the Authority is carried out". We have held, however, that for Taylor Law purposes:

To formulate policy is to participate with regularity in the essential process involving the determination of the goals and objectives of the government involved, and of the methods for accomplishing those goals and objectives that have a substantial impact upon the affairs and the constituency of the government. The formulation of policy does not extend to the determination of methods of operation that are merely of a technical nature. Binghamton, 12 PERB ¶3099 at p. 3185 (1979).

Nothing in the record, including the job descriptions, suggests such a role for the bridge manager.

Similarly, on the record before us, we cannot find that the reference in the job description to the assistance that a manager should give to the Authority in contract negotiations contemplates any more than that which was referred to in the trial examiner's statement - the mere making of recommendations to the Authority at a time when it formulated its negotiation posture. The Director properly determined that this was not sufficient involvement in negotiations to constitute a managerial activity.

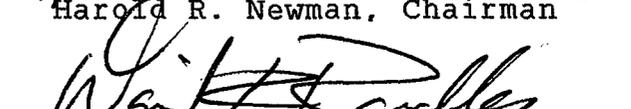
The reference in the job description to the managers' participation in labor-management sessions is also without significance in the absence of evidence concerning the jurisdiction of the labor-management committees. Indeed, such committees often deal with matters that are not mandatory subjects of negotiation and are of a mundane

nature which would not demonstrate that participants therein were exercising a "major role in the administration of agreements or in personnel administration".

The Authority's brief suggests that its management functions are centralized and that the managerial functions are exercised by the Executive Director and his Deputy. This is consistent with the evidence before us which shows the responsibilities of the bridge managers to be supervisory.

NOW, THEREFORE, WE AFFIRM the decision of the Director,
and
WE ORDER that the application herein
be, and it hereby is, dismissed.

DATED: January 14, 1983
Albany, New York


Harold R. Newman, Chairman

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-1/14/83

In the Matter of

ELBA CENTRAL SCHOOL DISTRICT,

Respondent,

CASE NO. U-5512

-and-

ELBA NON-TEACHING ASSOCIATION,

Charging Party.

HARRIS, BEACH, WILCOX, RUBIN & LEVEY, ESQS.
(A. TERRY VAN HOUTEN, ESQ., of Counsel),
for Respondent

SMITH & DOERR, ESQS. (LEE SMITH, ESQ., of
Counsel), for Charging Party

BOARD DECISION AND ORDER

The Elba Non-Teaching Association (Association) filed a charge alleging that it represents bus drivers employed by the Elba Central School District (District)^{1/} and that the District unilaterally decided to subcontract its bus services. The hearing officer found merit in the charge. The matter now comes to us on the exceptions of the District to the hearing officer's decision.

^{1/}The Association and the District have entered into at least four multi-year collective bargaining agreements which specify the terms and conditions of employment of the bus drivers, cafeteria workers and clerical employees.

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The District does not deny that it decided unilaterally to subcontract its bus services to the Genesee Bus Company. It defends that unilateral action by arguing that the Association is not an employee organization and therefore ~~has no Taylor Law right to negotiate on behalf of the bus~~ drivers. It argues further that even if the Association has any right to negotiate on behalf of the bus drivers, it waived its right to negotiate the subcontracting issue.

Both these arguments were presented to the hearing officer who determined that the evidence did not support the positions of the District. In support of its exceptions, the District argues that the hearing officer erred in his conclusions. It also argues that in reciting the evidence upon which he based his conclusions, the hearing officer overlooked evidence that supports its contention that the Association waived any right it may have had to negotiate the decision to subcontract bus services. This refers to evidence that in 1979 the District announced that it was considering subcontracting its cafeteria services. After the 1979 announcement, the cafeteria workers discussed the matter with representatives of the District which led to arrangements between the parties modifying the manner in which food services were provided. This, in turn, persuaded the District not to subcontract its cafeteria services.

The District contends that the Association's experience regarding the contemplated subcontracting of the cafeteria services two years earlier was sufficient to put it on notice that it could have negotiated the decision to subcontract bus services. Thus, according to the District, the Association's failure to make appropriate negotiation proposals in the month that followed its notice of intention to subcontract demonstrated a lack of interest in negotiating.

Having reviewed the record, we affirm the hearing officer's findings of fact and conclusions of law. The Association was an employee organization which had a Taylor Law right to negotiate the District's decision to subcontract its bus services. The record evidence cited by the hearing officer makes this clear. It is also clear that the Association did not waive its right to negotiate the District's decision to subcontract its bus services. The evidence cited by the District does not compel a contrary conclusion. In CSEA v. Newman, 88 AD2d 685, 15 PERB ¶7011 (3rd Dept. 1982), appeal dismissed for want of a final determination, 57 NY2d 775, 15 PERB ¶7020 (1982), the Appellate Division rejected an argument that an employee organization's failure to file a demand constituted a waiver of its right to negotiate the subject. The Court said (at p. 686):

A waiver is "the intentional relinquishment of a known right with both knowledge of its existence and an intention to relinquish it" [citations omitted]. Such a waiver must be clear, unmistakable and without ambiguity. This record contains no evidence of an explicit, unmistakable, unambiguous waiver of CSEA's right to negotiate. CSEA's failure to demand negotiations may have been inexplicable, but it should not be construed as a waiver. Respondent improperly imputed to CSEA the intent to waive its right to negotiate by virtue of its failure to demand negotiations.

This holding is dispositive of the District's argument that the Association waived its right to negotiate the decision to subcontract bus services.

NOW, THEREFORE, WE ORDER the District to:

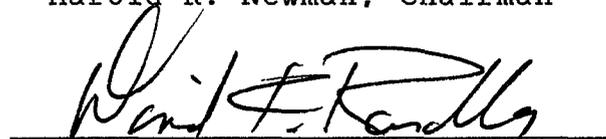
1. Forthwith offer reinstatement under their prior terms and conditions of employment to those employees terminated as a result of the contract with the Genesee Bus Company, together with any loss of wages or benefits that they may have suffered by reason of such contract;
2. Negotiate in good faith with the Association concerning the terms and conditions of employment of the reinstated employees since July 1, 1981;^{2/}

^{2/}The Association-District 1980-81 contract expired on the effective date of the termination of the bus drivers. The successor contract contains no reference to bus drivers.

3. Post copies of the Notice attached hereto in all locations normally used to communicate with unit employees.

DATED: January 14, 1983
Albany, New York


Harold R. Newman, Chairman


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 employees represented by the Elba Non-Teaching Association that the Elba Central School District will:

1. Forthwith offer reinstatement under their prior terms and conditions of employment to those employees terminated as a result of the contract with the Genesee Bus Company, together with any loss of wages or benefits that they may have suffered by reason of such contract, and
2. Negotiate in good faith with the Association concerning the terms and conditions of employment of the reinstated employees since July 1, 1981.

..... Elba Central School District

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

#2D-1/14/83

In the Matter of

QUEENS BOROUGH PUBLIC LIBRARY,

Respondent,

CASE NO. U-3908

-and-

QUEENS BOROUGH PUBLIC LIBRARY GUILD,
LOCAL 1321, DISTRICT COUNCIL 37,
AFSCME, AFL-CIO,

Charging Party.

JACKSON, LEWIS, SCHNITZLER & KRUPMAN, ESQS.
(ANTHONY H. ATLAS, ESQ. and KAREN Y. TERAGAWA,
ESQ., of Counsel), for Respondent

BEVERLY GROSS, ESQ. (IRVING H. GLASGOW, ESQ.,
of Counsel), for Charging Party

BOARD DECISION AND ORDER

The matter comes to us on the exceptions of the Queens Borough Public Library (Queens Borough) to a hearing officer's decision that, in 1978, it unilaterally eliminated two floating bonus holidays which had been enjoyed by employees represented by Queens Borough Public Library Guild, Local 1321, District Council 37, AFSCME, AFL-CIO (Guild). Queens Borough acknowledges that it made the unilateral change but it argues that the Guild waived

whatever right it may have had to negotiate the matter.^{1/}

In part, Queens Borough relies upon the fact that an impasse panel of New York City's Office of Collective Bargaining ruled that after 1977, negotiations concerning ~~the bonus holidays should take place at the city-wide~~ level. At the time of the impasse panel award, Queens Borough was a participant in city-wide negotiations, in which it was represented by the City. The Guild was represented in those negotiations by District Council 37. Before the 1978 negotiations commenced, Queens Borough exercised its right to withdraw from the city-wide negotiations. It, nevertheless, argues that the Guild waived its right to negotiate the subject of the bonus holidays because that subject was not raised at the city-wide negotiations. In justification of this position, it asserts that, pursuant to the impasse panel award, the subject had to be negotiated at the city-wide negotiations or not at all. However, by reason of its withdrawal from

^{1/}It also argues that this Board has no jurisdiction over it because it is not a public employer. That argument was rejected by us at 13 PERB ¶3056 (1980). Queens Borough's appeal from that decision was dismissed by the Appellate Division as premature. Queens Borough Public Library v. PERB, 83 AD2d 637, 14 PERB ¶7022 (2d Dept., 1981).

coverage under the New York City Collective Bargaining Law, it could no longer have made a demand concerning this subject in those negotiations. Thus, according to Queens Borough, the Guild should have seen to it that District Council 37 raised the issue on its behalf.

The hearing officer ruled that this argument misconstrued the impasse panel award. He found that the award merely changed the locus of bargaining from unit negotiations to city-wide negotiations. It did not convert Queens Borough's obligation to make a demand to change the status quo into a Guild obligation to make a demand to maintain the status quo. We affirm this analysis of the hearing officer. We also note that just as Queens Borough's withdrawal from coverage under the New York City Collective Bargaining Law deprived it of a right to make demands at the city-wide negotiations, that withdrawal also insulated it from having to respond to demands made of it in those negotiations. This, in turn, relieved the Guild of any obligation it might have had to make demands of Queens Borough at those negotiations.

Queens Borough's second argument is based upon the fact that it had eliminated floating bonus holidays unilaterally in 1974, 1975 and 1976. It argues that this past conduct was sufficient to put the Guild on notice that it would again eliminate the holidays in 1978. This, according to

Queens Borough, imposed a burden upon the Guild to demand their continuation during negotiations. The Guild did not do so and, therefore, according to Queens Borough, it waived its right to such negotiations. In support of this argument, Queens Borough cites State of New York (SUNYA), 13 PERB ¶3044 (1980), in which we held that under similar circumstances, CSEA waived its right to negotiate the unilateral elimination of a holiday by the State.

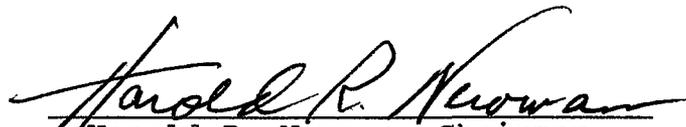
The Guild argues that Queens Borough's unilateral actions in 1974-76 did not constitute notice that it would again act unilaterally in 1978 because the Office of Collective Bargaining impasse panel compelled it to compensate the employees for the holidays lost in those years. This is a persuasive argument, but even more significant is the reversal of State of New York (SUNYA) by the Appellate Division. CSEA v. Newman, 88 AD2d 685, 15 PERB ¶7011 (3rd Dept. 1982), appeal dismissed for want of a final determination, 57 NY2d 775, 15 PERB ¶7020 (1982). The Appellate Division held that when a public employer acts unilaterally, the failure of the employee organization to demand negotiations cannot be deemed a waiver.

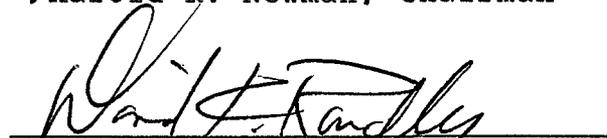
NOW, THEREFORE, WE AFFIRM the decision of the hearing officer, and

WE ORDER Queens Borough, at its option, either to award all eligible employees

the bonus days in kind or to liquidate the entitlement of employees to bonus days by cash payments in accordance with the terms of the collective bargaining agreement in effect at the time of the violation. If Queens Borough elects to award bonus days in kind, such days may be taken by the employees at any time, subject to such administrative limitations as existed in the past.^{2/}

DATED: January 14, 1983
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member

^{2/}We do not order Queens Borough to negotiate in good faith with respect to bonus days because it has negotiated this matter with the Guild for the years subsequent to 1978.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2E-1/14/83

In the Matter of

UNITED FEDERATION OF TEACHERS,
LOCAL 2, AFT, AFL-CIO,

Respondent,

CASE NO. U-6262

-and-

HARVEY M. ELENTUCK,

Charging Party.

HARVEY M. ELENTUCK, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Harvey M. Elentuck to a decision of the Director of Public Employment Practices and Representation (Director) dismissing his charge against United Federation of Teachers, Local 2, AFT, AFL-CIO (UFT) on the ground that the facts as alleged did not constitute a violation. The charge alleges that UFT refused to grieve an action of Elentuck's employer denying him an incremental wage increase after Elentuck's principal gave him an unsatisfactory rating. The basis for UFT's refusal was that it never grieves such cases.

The charge shows that Elentuck, a teacher employed by the New York City School District (District), was denied a salary increment because his school principal gave him an unsatisfactory rating. Relying upon UFT's agreement with

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the District which provides that all regularly appointed teachers will advance to the next step, Elentuck claims that he too should have received an increment. Elentuck's papers indicate that under the regulations of the District's Chancellor, a teacher receiving an unsatisfactory rating by the superintendent is not eligible for increments. Without specifically challenging the Chancellor's regulations as being in violation of the contract, Elentuck contends that the unsatisfactory rating which he received from his principal is not covered by the regulation.^{1/}

Elentuck asked UFT to grieve the denial of the increment, but UFT refused. In refusing, UFT informed Elentuck that it never files a grievance in a case such as this. Elentuck does not challenge UFT's statement,^{2/} but he argues that such a blanket refusal by UFT constitutes gross negligence in that it leaves "several hundred teachers

^{1/}The charge does not allege that Elentuck asked UFT to represent him in an appeal from the unsatisfactory rating. This Board has found that UFT represents unit employees at such hearings. See UFT (Barnett), 14 PERB ¶3017 (1981).

^{2/}Based upon a newspaper report, Elentuck alleges that a salary reduction imposed upon another teacher because that teacher received a poor evaluation was restored with the help of his employee organization. On its face, that allegation concerns a teacher employed by a different school district and represented by a different employee organization. The allegation is therefore irrelevant to the matter before us because it does not indicate that UFT discriminated against Elentuck.

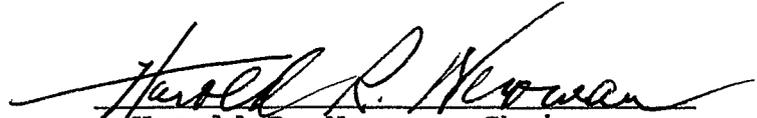
[a] year . . . unjustly financially penalized as I was, and still the UFT has done nothing to recover the money for the members"

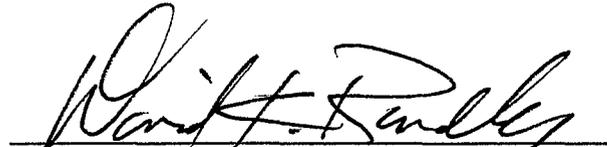
We affirm the decision of the Director. This Board has held that a union violates its duty of fair representation if it is improperly motivated, grossly negligent or irresponsible in withholding a service from a unit employee. Brighton Transportation Association, 10 PERB ¶3090 (1977).^{3/} On the face of the charge, UFT's conduct was not improperly motivated, i.e. it was not discriminatory. It was also not negligent, UFT having made a considered decision not to take the grievance. The only basis for the charge therefore would be that UFT's conduct was irresponsible. However, the language of the contract should be understood in the light of the past practice that only employees rated as satisfactory get increments. UFT's blanket refusal to take such grievances suggests an implicit, if not an explicit, agreement with the District permitting the District to withhold increments from teachers who are rated unsatisfactory by their principals. It is not irresponsible for UFT to enter into such an agreement.

^{3/}See also Vaca v. Sipes, 386 US 161 (1967); Ruzicka v. General Motors, 523 F2d 306 (1975).

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

DATED: January 14, 1983
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#3A-1/14/83

In the Matter of :

HALF HOLLOW HILLS CENTRAL SCHOOL
DISTRICT, :

Employer, :

-and- :

LOCAL 144, DIVISION 100, S.E.I.U.,
AFL-CIO, :

Petitioner, :

-and- :

TEAMSTERS, LOCAL 237, :

Intervenor. :

Case No. C-2502

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 Teamsters, Local 237 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.

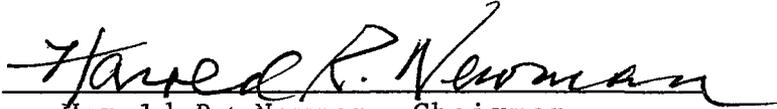
Unit: Included: Head Cook, Food Service Worker, Driver.

Excluded: All other employees.

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Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Teamsters, Local 237 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.

DATED: January 14, 1983
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member

I, Harold R. Newman, Chairman, Public Employment Relations Board, hereby certify that at a regularly scheduled meeting of the Public Employment Relations Board, held on January 14, 1983 at Albany, New York, such Board, pursuant to the authority vested in it by Article 14 of the Civil Service Law, unanimously adopted the attached amendments to Part 201 of its Rules, 4 NYCRR, Chapter VII, to become effective immediately upon filing with the Secretary of State.

A notice of proposed agency action was published in the Register on December 15, 1982. No other prior notice of this action was required by statute.

DATE: January 17, 1983



HAROLD R. NEWMAN
Chairman

Section 201.2 of the Rules of the Public Employment Relations Board (4 NYCRR, Chapter VII) is hereby amended by relettering subdivision (b) to be subdivision (c) and by adding thereto a new subdivision to be subdivision (b) to read as follows:

(b) Notwithstanding sections 201.3 and 201.4 of these Rules, a petition may be filed by a public employer or a recognized or certified employee organization to clarify whether a new or substantially altered position is encompassed within the scope of an existing unit, or to determine the unit placement of a new or substantially altered position. The filing and processing of the petition shall be in accordance with sections 201.5(c), 201.7(a) and (d), 201.8, 201.9 (a)-(f), and 201.11 of these Rules. In determining the unit placement of any new or substantially altered position, the Director shall consider whether the placement would be consistent with the criteria set forth in section 207 of the Act. The Director may decline to make any clarification or placement not otherwise consistent with the purposes or policies of the Act. Exceptions to any determination of the

Director may be filed pursuant to section 201.12 of these Rules.

The title of Section 201.5 of such Rules is hereby amended to read as follows:

Contents of Petition for Certification; Contents of
Petition for Decertification; Contents of Petition to Clarify Existing
Unit or to Determine Unit Placement of New or Substantially Altered
Positions.

Section 201.5 of such Rules is hereby amended by adding thereto a new subdivision (c) to read as follows:

(c) Petitions filed pursuant to section 201.2(b) shall contain the following:

- (1) The name, affiliation, if any, and address of the recognized or certified employee organization.
- (2) The name and address of the public employer involved.
- (3) A description of any affected existing negotiating unit, a copy of any applicable certification or recognition, and the date thereof.

(4) The number of employees in the existing unit and in the unit proposed in the petition.

(5) The job description and classification of each new or substantially altered position and the date of its establishment.

(6) The name and address of any other employee organization which claims to represent the new or substantially altered position.

(7) A copy of any contract affecting the new or substantially altered position.

(8) A statement by the petitioner setting forth the details of the desired clarification or placement and the reasons therefor.