

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2A-2/10/84

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK,

Respondent,

-and-

CASE NO. U-7183

PHILIP GOLDRICH,

Charging Party.

In the Matter of

UNITED FEDERATION OF TEACHERS,

Respondent,

-and-

CASE NO. U-7159

PHILIP GOLDRICH,

Charging Party.

PHILIP GOLDRICH, pro se

BOARD DECISION AND ORDER

On December 9, 1983, the Director of Public Employment Practices and Representation (Director) dismissed a charge filed by Philip Goldrich against the Board of Education of the City School District of the City of New York (District) which alleges that the District had violated various provisions of its collective bargaining agreement with the United Federation of Teachers (UFT). According to Goldrich, the contract violations first occurred in December 1981 and January 1982, when the Adult Basic Education/High School Equivalency Services

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Unit of the District (Unit) relieved him of two assignments and gave him two other assignments he did not want. Goldrich further alleges that the collective bargaining agreement was again violated in September and October 1983 when he was not appointed to fill a vacancy in one of the positions from which he had been relieved a year and a half earlier. Among the alleged contract violations was the Unit's insistence that Goldrich be licensed to perform the assignments he sought as a condition for being given such assignments.

The Director dismissed this charge on the ground that it merely alleged contract violations, and that §205.5(d) of the Taylor Law declares that "the Board shall not have authority to enforce an agreement between an employer and an employee organization"

On December 13, 1983, the Director dismissed a second charge filed by Goldrich relating to the same circumstances. This charge alleges that UFT did not support his objection to the District's actions. The Director read the charge as focusing on the conduct of the Unit in December 1981 and January 1982 and he dismissed it on the ground that it was not timely.^{1/} He also determined that the charge did not

^{1/}Goldrich had been given an opportunity to expand and clarify his charge. In doing so he merely alleged that UFT had violated §209-a.2(b), as well as §209-a.2(a), in that its conduct denied him his right to negotiate. The Director correctly determined that this allegation did not set forth a violation of the Taylor Law as that law does not afford individuals any right to negotiate. State of New York, 13 PERB ¶3063 (1980).

set forth a violation of the duty of fair representation as interpreted by this Board in City School District of the City of New York, 15 PERB ¶3074 (1982), in that it did not allege facts showing that UFT's refusal to support Goldrich was improperly motivated or that it was the result of gross negligence or irresponsible conduct.

As explained by Goldrich's exceptions, we now understand his charge to complain that UFT refused to support him in September and October 1983 when he sought reassignment to one of the positions from which he had previously been removed. Accordingly, the charge is not untimely. However, we affirm the decision of the Director dismissing the charge on the Director's alternative grounds. The charge does not allege facts indicating that UFT was improperly motivated or that its refusal to support Goldrich for reassignment was a result of gross negligence or irresponsible conduct. On the contrary, Goldrich informs us in his exceptions that the relevant language of the collective bargaining agreement is ambiguous and that the UFT representative interpreted it as giving the District the right to act as it did. We have recently held that a union need not endorse the grievance of a unit employee when its interpretation of its collective bargaining agreement does not support the employee's position. Nanuet (Bergerman), 17 PERB ¶3005 (1984).

NOW, THEREFORE, WE ORDER that the charges herein be, and
they hereby are, dismissed.

DATED: February 10, 1984
Albany, New York

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

#2B-2/10/84

In the Matter of

DUTCHESS COMMUNITY COLLEGE,

Respondent,

-and-

CASE NO. U-6602

FRANCINE ROSEN,

Charging Party.

RUDOLPH P. RUSSO, ESQ., for the Respondent

RICHARD B. WOLF, ESQ., for the Charging Party

BOARD DECISION AND ORDER

This matter comes to the Board on the exceptions of the charging party, Francine Rosen (Rosen), to the hearing officer's decision dismissing her improper practice charge against Dutchess Community College (College) on the ground that the College is not a public employer within the meaning of §201.6(a)(iii) of the Act insofar as her employment at the College's so-called "IBM French School" is concerned. Because he dismissed the charge on jurisdictional grounds, the hearing officer did not reach the merits of the charge, although the matter was fully litigated at a hearing. Thus, the sole issue presented to the Board by the exceptions and the College's response is whether the College is a public employer (and Rosen is a public employee) under the particular circumstances set forth in the record.

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FACTS

Rosen is employed by the College to teach French to degree candidates as a part-time adjunct lecturer. She is also employed by the College to teach French on a part-time basis at the "IBM French School". The charge alleges that the College reduced Rosen's course load and salary as an adjunct lecturer at the College's main campus in an attempt to interfere with her and others' organizational rights as employees at the College's "IBM French School".

Since 1980, the College has entered into a series of virtually identical yearly contracts with International Business Machines Corporation (IBM) to provide what the contract refers to as "an educational program for IBM France employees' children". Under the contract, the College undertakes to "conduct a program of courses" and to provide fully-equipped classrooms, instructors, and normal classroom materials. The contract provides that all personnel used by the College for this program will be employees of the College, and the College will be "solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and Social Security), Worker's Compensation, disability benefits and the like". Under the contract, only IBM can decide who the student participants will be. IBM pays a fee to the College which is intended to reimburse the College for the full cost of the program, including personnel, equipment, building lease, maintenance, utility and administrative costs.

The program provides pre-college (both primary and secondary) level education to the children of French nationals employed by IBM France working in the United States, and enrollment is limited to such children. Curricula for each grade are designed by IBM and the French Ministry of Education. Individual subjects are taught from a syllabus prepared by the French Ministry of Education. Classes are held at the College's Martha Lawrence Extension site in a building leased by the College from a local school district. Other extension programs of the College are also conducted at this site. The charging party has been an instructor in this program since 1980 pursuant to yearly employment contracts with the College and has been paid for her services by the College. The College provides and has provided special programs for employees of private companies pursuant to contract.

HEARING OFFICER DECISION

Noting that a "public employer" includes "...a school district or any governmental entity operating a public school, college or university..." (CSL §201.6[a][iii]), the hearing officer found that the College was not "operating a public school, college or university" at the IBM French School. He concluded that the College was acting as "a provider of exclusively private educational services" under contract with a private entity. He relied on the fact that enrollment was limited to children of IBM France employees, and curricula and syllabi were prescribed by the French Ministry of Education and

on testimony to the effect that neither the State Education Department nor any other agency of the State exercised jurisdiction over this operation.

DISCUSSION

For the reasons hereinafter stated, we reverse the hearing officer's decision.

It is undisputed that Dutchess Community College is a "community college" as defined in §6301 of the Education Law and was established and is operated pursuant to the provisions of Article 126 of the Education Law.^{1/} As such, it is primarily funded by the State of New York, Dutchess County, and student tuition (Ed. Law §6304). There is no dispute that, as such, the College is a "public employer" within the meaning of the Act. There is also no dispute that the College conducts the subject operation; it is performed under its supervision, with its employees, in its building. The employment relationship that this Board is concerned with is exclusively between the College and the persons employed by it. Nevertheless, the

^{1/}A community college is established pursuant to the provisions of Article 126 of the Education Law to provide "two-year post secondary programs pursuant to regulations prescribed by the state university trustees and receiving financial assistance from the state therefor" (Ed. Law §6301.2). Community colleges so established "shall provide two-year programs of post high school nature combining general education with technical education relating to the occupational needs of the community or area in which the college is located and those of the state and the nation generally. Special courses and extension work may be provided for part-time students." (Ed Law §6303.1)

hearing officer analyzed the jurisdictional question by examining solely the nature of the program conducted by the College at the "IBM French School". He concluded that this operation is "private" and since the Act's definition refers to the operation of a "public" school, the College cannot be considered a public employer with regard to this particular operation.

We do not accept the hearing officer's analysis. He has apparently found it necessary to apply the statutory definition to every separate function of an entity which is admittedly a public employer. We do not so construe the statute. There being no dispute that the College, as an institution, is a "public employer" within the meaning of the Taylor Law and that the charging party is a "person holding a position by appointment or employment in the service of" the College (CSL §201.7[a]), it is not material--for the purpose of determining this Board's jurisdiction--whether the IBM program conducted by the College is regarded as "public" or "private". A public employer is no less a public employer because it may provide a "private" service. Once it is determined that the entity meets the definition of "public employer", jurisdiction is established as to all functions it performs. (See State of New York (Insurance Department Liquidation Bureau), 17 PERB ¶3003) The decision of the Court of Appeals in New York Public Library v. PERB, 37 NY2d 752, 8 PERB ¶7013 (1975), does not require a different result. That decision dealt with the issue of whether the institution as an entity was a public employer; the test articulated in that case relates to

the status of the entity. That test need not be applied to every separate function an entity, which is admittedly a public employer, may perform at any given time.

Furthermore, we do not agree that the operation in question is an "exclusively private educational service", as found by the hearing officer. The Education Law authorizes the College to provide "special courses and extension work". (Education Law §6303.1) We think it is more consistent with applicable statutes to characterize this operation as simply an example of this public function. Furthermore, to the extent that it might be inferred from the hearing officer's decision that the College in this respect is operating a private "school", we find no basis in this record - other than the use of the term by the parties - to find it to be a "school" within the meaning of CSL §201.6(a)(iii) of the Act. The parties themselves have not purported to create a "school". What the College provides pursuant to its contract with IBM is simply and precisely what they describe in their contract, i.e. an educational program, not unlike other special educational programs it has provided pursuant to contracts with other private companies. In our view, for the purposes of the Taylor Law, such educational programs are no more than an aspect of the extension services the College is authorized by statute to provide.

Since this operation is an educational program offered by the College, we find it to be a service provided by a "governmental entity operating a public...college...." As the

College is a public employer when it provides this program, the persons employed by the College in this program are public employees.

NOW, THEREFORE, WE ORDER that this proceeding be remanded to the hearing officer to issue a decision and recommended order on the merits of the charge.

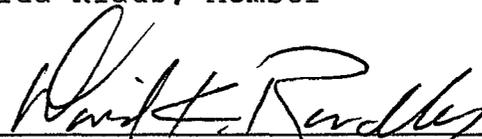
DATED: February 10, 1984
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2C-2/10/84

SOUTH HUNTINGTON UNITED AIDES,

Respondent,

-and-

CASE NO. U-6716

AUDREY S. DEERFIELD,

Charging Party.

DOLORES SCHIRMER, for Respondent

JOSEPH BULGATZ, ESQ., for Charging Party

BOARD DECISION AND ORDER

In the charge herein, Audrey S. Deerfield alleges that the South Huntington United Aides (Union) violated its duty of fair representation by refusing to demand that the South Huntington School District (District) reopen negotiations for the purpose of considering a proposal that it provide her with a stipend for screening new children for a comprehensive kindergarten program. The hearing officer determined that the Union's refusal to make such a demand did not constitute a violation of its duty of fair representation, and the matter now comes to us on Deerfield's exceptions.

The Union first organized the teacher aides in 1979. Deerfield had then been a teacher aide for 16 years; she had been screening kindergarten applicants for nine years and had received a stipend for this work. She did not inform the Union that she was receiving a stipend and it was not considered

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during the ensuing negotiations.^{1/} These negotiations produced an agreement which allocated no stipend for Deerfield's "screening" assignment and contained a "zipper clause" which, according to the District, precludes such a stipend.^{2/}

Deerfield then complained to Schirmer, a field representative for the New York State United Teachers, and the person who negotiated the agreement on behalf of the Union. Schirmer assured Deerfield that the Union would not stand on the contract language for the purpose of preventing her receipt of the stipend. Moreover, Schirmer tried to persuade the District to restore the stipend, but she was not successful.

^{1/}As noted by Deerfield:

[T]he District's then Director of the Comprehensive Kindergarten Program advised Deerfield not to disclose the subject of the Screening Pay to the Union and represented that she would be protected if she did so.

Acting in reliance on this advice and representation, Deerfield never mentioned the Screening Pay to the Union, and, as a result, no demand concerning that subject was made by the Union in bargaining, and the agreement produced by the parties did not deal with it.

^{2/}The zipper clause provides:

This Agreement contains the entire agreement between the parties.

No past practice, rule, policy or regulation shall be deemed to be a part of this Agreement unless specifically incorporated herein.

Upon the advice of her attorney, Deerfield told Schirmer that, the zipper clause notwithstanding, the Union could demand negotiations on matters not covered in the agreement, and her stipend was such a matter. She then asked the Union to make such a demand.

Schirmer refused to do so and gave two reasons for her position. The first was that the Union had no obligation to Deerfield to make such a demand in that she had not called the problem to its attention at the appropriate time, which is when it was originally formulating its negotiation posture. The second was that the Union would be violating a responsibility to the District if it did so because it had entered into an agreement with the District in "good faith" and a subsequent demand for a stipend for Deerfield would constitute "bad faith".

In her exceptions Deerfield concedes that the Union could, in the exercise of its discretion, have refused to demand payment of her stipend, but she asserts that the Union did not do so. Instead, according to Deerfield, the Union's refusal to make that demand was based upon an erroneous interpretation of the collective bargaining agreement as precluding such negotiations as evidenced by its reliance upon the legal concepts: "good faith" and "bad faith". This error of law was, according to Deerfield, occasioned by the "gross negligence" of the Union's failure to consult its attorneys. Thus, Deerfield contends, the Union's refusal to make the demand constitutes a violation of the duty of fair representation.

We reject this argument. Deerfield's attempt to interpret the Union's position as being based upon legal rather than policy considerations is not persuasive. The Union's first justification for not seeking to reopen negotiations on Deerfield's behalf was that she was not deserving of such unusual consideration because she had not informed it of her stipend in advance of the original negotiations. Furthermore, Schirmer's use of the terminology "good faith" and "bad faith" does not mean that she believed that the Union could not make the demand; it is equally consistent with the view that she believed that it would not be in keeping with the spirit of the prior negotiations for the Union to do so.

In any event, we would dismiss the charge even if Schirmer's statement were interpreted as bowing to legal compulsion. Whether or not the zipper clause precluded negotiations on a demand for Deerfield's stipend would depend upon the parties' intent in negotiating that clause. Under such circumstances, it would not be gross negligence for Schirmer, the person who negotiated the agreement, to rely upon her own understanding of the parties' intent rather than to consult an attorney for an opinion as to what the clause might mean.^{3/}

^{3/}See Nanuet (Bergerman), 17 PERB ¶3005 (1984), in which we found that a union did not commit an improper practice when it relied upon its negotiator's interpretation of a collective bargaining agreement to the detriment of a unit employee, even though similar language in a collective bargaining agreement involving other parties had been interpreted differently by an arbitrator.

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

DATED: February 10, 1984
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
NEWFIELD CENTRAL SCHOOL DISTRICT,
Respondent,

#2D-2/10/84

-and-

CASE NO. U-6592

NEWFIELD TEACHERS ASSOCIATION,
LOCAL 2810, NYSUT, AFT, AFL-CIO,
Charging Party.

BOND, SCHOENECK & KING, ESQS. (R. DANIEL BORDONI, ESQ.,
of Counsel), for Respondent

MARILYN NORDINE, for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Newfield Teachers Association, Local 2810, NYSUT, AFT, AFL-CIO (Association) to a decision of the hearing officer which dismissed its charge in its entirety. The charge alleged that the Newfield Central School District (District) had violated §209-a.1(a), (b), (c) and (d) of the Act when it unilaterally changed its rate of premium contribution for retirees' health insurance and

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subsequently failed to negotiate in good faith. No hearing was held, and no stipulation of facts was entered into. The hearing officer rendered his decision on the basis of undisputed material facts contained in the pleadings and subsequent correspondence.

Those undisputed facts can be summarized as follows.

On September 14, 1982, the Superintendent of the District notified the President of the Association that the Board of Education had adopted:

. . .the following policy governing health insurance for retirees:

- (a) The health insurance premium paid by the District for retirees will be frozen at the rate the Board is paying at the time of the employee's retirement. For those already retired, the maximum rate of contribution will be the rate paid as of September 1, 1982.

On September 17, 1982, the President of the Association wrote to the Superintendent, stating in part:

This change is contrary to the negotiated Agreement and to the practice of many years standing under the Agreement.

He demanded that the District commence negotiations upon this issue. On September 29, 1982, the Superintendent wrote back stating that since the Association does not represent retirees, the District will not negotiate regarding them. The letter states, however:

The Board of Education will discuss with you or your representatives the effect of such a policy on current employees. It is their understanding that policy as it affects current employees is one which could be negotiated.

In a letter dated October 26, 1982 to the representative of the Association, the Superintendent stated, in part:

The Board of Education did state that they are willing to negotiate the effect of their policy on current employees.

Thereafter, representatives of the District and the Association met on January 4, 1983, during which meeting the District's negotiator made certain statements which prompted the Association to claim that the District was negotiating in bad faith. The District, in its answer, denied that its agent refused to negotiate in good faith.

At all relevant times, the parties were under a contract covering the period from July 1, 1981 to June 30, 1983. The health insurance clause of that contract (Article XIV) provides that the Board of Education will participate in the New York State Health Insurance Program or its equivalent and provide "100% coverage of both the family plan and the individual plan." The contract also contains the following: "Both parties agree that no negotiable items which have been discussed in reaching the most current agreement will be reopened during the

duration of that agreement except by mutual consent."

In his decision, the hearing officer determined:

1. That as to retirees who might be affected by the District's change of policy, there was no obligation to negotiate with the Association;
2. That as to current employees who might be affected by the change of policy, the issue was exclusively one of contract violation, a dispute which is not subject to the jurisdiction of this Board; and
3. That there was no need to consider whether events at the one meeting satisfied the statutory standard to negotiate in good faith, since the subject dealt with was covered by the contract, and there could be no finding that the parties' contract contained an indisputably clear reopener clause. In so holding, the hearing officer relied upon Levittown UFSD, 13 PERB ¶3014 (1980) and State of New York, 13 PERB ¶3106 (1980).

In its exceptions, the Association primarily complains that the Association was not given an opportunity to present facts in support of its allegations. The Association asserts, in particular, that it was not given an opportunity to present facts that would show: that the

District negotiated in bad faith with regard to current employees; that a unit member retired during the contract term; whether or not there was indeed a breach of the contract; and whether or not there was a reopener agreed to by the parties. In its exceptions, the Association also charges the hearing officer with "extreme prejudice" toward it and with accepting "facts" from the respondent without giving it the opportunity to refute them.

As to the allegations of extreme prejudice by the hearing officer, the Association was asked to submit an affidavit in support of such claim. An affidavit was submitted. We conclude, however, that it describes only the fact-finding method of the hearing officer, which does not evidence any prejudice on his part.

DISCUSSION

We affirm the hearing officer's dismissal of the charging party's conclusory allegation that the District violated §209-a.1(a), (b) and (c) of the Act. No facts appear in the charge or this record to support this claim.

With regard to the alleged violation of §209-a.1(d), however, we conclude that the matter should be remanded to afford the Association and the District an opportunity to present more fully their respective positions. We do so because we determine that, in the absence of a hearing

record or stipulated facts, this charge cannot properly be dismissed on the basis of the undisputed facts presently before us.

In our view, this case deals with the obligation of the District to continue or to negotiate the level of payment of health insurance premiums with respect to current employees who might retire during the term of the contract covering the period July 1, 1981 to June 30, 1983.^{1/} Such a benefit is a mandatory subject of negotiation.^{2/} Whether or not any person actually retired within that time frame is not controlling as to the District's obligation to negotiate. The question before us is not one of impact negotiations, but the obligation to negotiate the subject itself.

^{1/}To the extent that the District's change of policy affected former employees who retired prior to the inception of the contract, there could not be a violation of §209-a.1(d) and the charge, to the extent that it relates to such persons, was properly dismissed by the hearing officer. (Troy UFFA, Local 2304, 10 PERB ¶3015 (1977); City of Oneida PBA, 15 PERB ¶3096 (1982)).

^{2/}Lynbrook PBA, 10 PERB ¶3067 (1977), rev'd in part, Incorporated Village of Lynbrook v. PERB, 64 AD2d 902, 11 PERB ¶7012 (1978), reinstated 48 NY2d 398, 12 PERB ¶7021 (1979).

It would appear that the District unilaterally adopted a change of policy which affected current employees, and that the Association demanded negotiations with respect to such employees. It is not clear whether the District agreed to such negotiations, but it is clear that the District agreed to meet with the Association. The charge alleges that the District did not negotiate in good faith at such meeting.

Two significant questions are raised by the facts as we presently know them, both of which were dealt with by the hearing officer in his decision. He recognized that if the subject in controversy was covered by the parties' contract, the action of the District might be no more than a breach of the contract and the Association's charge no more than an effort to obtain this Board's enforcement of the contract, a remedy which we cannot grant. He found that the subject was covered by the parties' contract and that the charge sought only the enforcement of that contract. He also recognized that, if the subject in controversy was covered by the contract, any allegation of bad faith negotiations occurring during the life of the contract with respect to that subject would not be entertained by this Board unless the parties have clearly agreed to further negotiations of the subject. Believing

that our past decisions hold that such agreement to further negotiations could only be evidenced by an indisputable "reopener" clause in the parties' contract, and finding no such clause in this contract, he held that we had no power to consider allegations of "bad faith" negotiations arising from the meeting between the parties.

We disagree with the hearing officer's disposition of these issues.

On the basis of the facts presently before us, we cannot hold that the parties' contract covers the subject of the dispute. While health insurance is dealt with in the contract, there is nothing specifically included concerning the right, if any, to continued payments of premiums after retirement on behalf of current employees who may retire during the life of the contract. This benefit can be of some significance and ought not to be inferred where there is no language in the contract specifically referring to it. In our view, it is also significant that neither party, in the charge or in the answer, appears to rely upon the contract to support its position.^{3/}

^{3/}We do not consider significant at this point the Association's reference to the contract in one of its letters to the District.

It should be understood, however, that the parties in this proceeding may present further evidence relating to the negotiating history of this contract which may reveal an understanding not apparent on the face of the contract or a conscious waiver by the Association of its continuing right to negotiate on the subject of coverage after retirement. We do not believe it is appropriate at this time to leave the charging party with an "arguable" or "potential" breach of contract action when there is nothing presently before us which suggests any basis for such action.

It is also necessary to comment on the hearing officer's disposition of the other issue presented by these facts. Even assuming that the parties' contract covers the subject of insurance benefits after retirement for current employees, we cannot accept the hearing officer's decision with regard to that aspect of the charge alleging bad faith negotiations at the meeting in January. We have previously held that where a charging party relies on contract language to support its right to good faith negotiations during the life of a contract with respect to a subject covered by that contract, we will only entertain such charge if the parties have agreed to an indisputable reopener clause in their contract (State of New York, 13 PERB ¶3106 (1980)). While we have declined, therefore, to interpret the meaning of disputed contract

language for this purpose, we have recently held that where there is no dispute between the parties that they have agreed upon a relevant reopener, we shall entertain the improper practice charge (Hunter-Tannersville, 16 PERB ¶3109 (1983)).

In these decisions, we dealt only with claims based on contract language. We did not hold that the parties could only evidence their agreement to negotiate on a covered subject by clear language in their contract. Notwithstanding their contract, the parties are always free to mutually agree at any time during the life of their contract to negotiate further over a covered subject. Thus, the hearing officer was in error in relying solely on the language of the contract when the charge herein alleges that the District agreed to the Association's demand to negotiate regarding the effect of its action on current employees. While we agree with his view that nothing in the contract indicates an agreement to reopen, the conduct of the parties after the District's policy announcement might warrant a different conclusion as to the Association's right to good faith negotiations. Thus, even if it were ultimately determined that the subject in controversy was indeed covered by the contract, it may be that the District did agree to negotiate on the subject. What took place at the meeting would then be relevant to a proper decision.

ACCORDINGLY, WE ORDER that this matter be remanded for further proceedings not inconsistent with this decision.

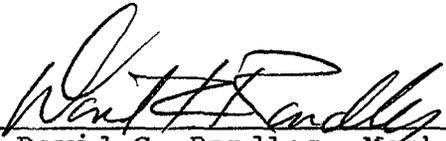
DATED: February 10, 1984
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2E-2/10/84

ODESSA-MONTOUR CENTRAL SCHOOL
DISTRICT,

Respondent,

-and-

CASE NO. U-6768

ODESSA-MONTOUR TEACHERS' ASSOCIATION,

Charging Party.

RONALD C. HOUGHTALING, for Respondent,

JOHN B. SCHAMEL, for Charging Party

BOARD DECISION AND ORDER

This matter comes to the Board on the exceptions of the Odessa-Montour Teachers' Association (Association) to the decision of the hearing officer dismissing its charge against the Odessa-Montour Central School District (District) alleging a violation of §209-a.1(a), (c) and (d) of the Act.

In essence, the Association claims that in retaliation for its introduction into evidence at an arbitration hearing of certain unfavorable original evaluations of Association President Burris, which had been subsequently revised in his favor, the District caused to be placed in Burris' personnel file an original unfavorable 1980 evaluation. The Association claims that this "alteration" of the personnel file was intended to "punish" Burris because of activities protected by the Act.

FACTS

Burriss was evaluated in June 1980. The Superintendent sustained his grievance as to the evaluation and directed a reevaluation. He did not order removal of the original evaluation. The principal upgraded the original, back-dated it and placed it in the file.

Burriss was evaluated in June 1982. Again, after grievance, the Superintendent directed a reevaluation and ordered the original evaluation "removed and expunged".

At an arbitration hearing on March 17, 1983 on another matter, the Association sought to show the District's animus toward Burriss, by introducing the original and upgraded 1980 evaluations, and the original 1982 evaluation. The District objected. During the ensuing discussion, Lewis, an assistant to the Superintendent, was overheard to whisper to his colleagues, "Let's put it back into the file and let them grieve it."

On March 23, 1983, the unfavorable original 1980 evaluation was discovered by Burriss to be in his personnel file. The Association filed a grievance claiming that the District improperly placed the original 1980 evaluation in Burriss' personnel file. At the hearing before the Superintendent on this grievance, Lewis asserted that both the original 1980 evaluation and the upgraded version should

always have been in the file. He also asserted that, because of other proceedings relating to Burris, "there was a lot of involvement in the files" and no proper logging system existed to ascertain who placed the evaluation in the file. The Superintendent ordered the original 1980 evaluation removed from the file. On April 15, 1983, the Association filed the instant charge.

HEARING OFFICER'S DECISION

The hearing officer dismissed the charge. He rejected, as beyond PERB's jurisdiction, the Association's claim that the action with regard to the 1980 evaluation contravened a 1980 settlement agreement, in violation of §209-a.1(d) of the Act. He found that the record does not establish that the District interfered with the employee's or organization's right to present grievances or discriminated against Burris because of his exercise of his grievance rights or because of the manner of presentation of his grievance at the arbitration hearing. With respect to Lewis' remark, he noted that, if made regarding the 1982 evaluation, that evaluation was not put in the file, and that, if directed to the 1980 evaluation, there was an acceptable reason for returning it to the file since it had never been formally ordered removed or expunged. In effect, he found that the Association had not established that the evaluation was placed in the file to "punish" or to "retaliate" for conduct at the hearing.

Therefore, the placement of the evaluation in the file did not violate either §209-a.1(a) or (c) of the Act.

EXCEPTIONS

In its exceptions, the Association argues that the record warrants a holding that the original 1980 evaluation was placed in the file in retaliation for the Association's presentation at the arbitration hearing and that such retaliation constituted interference with the exercise of protected rights and discrimination against Burris. The Association objects specifically to several of the hearing officer's conclusions. To the extent that the exceptions are material, they are dealt with in our discussion.

DISCUSSION

The sole issue before us is: Does the record support a finding that the District interfered with, restrained or coerced Burris or the Association or discriminated against Burris by placing the original 1980 evaluation in Burris' file for the purpose of retaliating against the Association and Burris for the manner in which the Association's case was presented at an arbitration hearing?

To conclude that it does, we must make certain key findings of fact, for which there is either no direct evidence or no unambiguous evidence:

1. That at no time from the disposition of the 1980 grievance until after the arbitration hearing was the

original 1980 evaluation in the personnel file. - There is no direct evidence of this fact. The Association relies on ambiguous and unpersuasive collateral evidence relating to events at another hearing on March 9, 1983.

2. That the original 1980 evaluation was placed in the file after March 17, 1983. - There is no direct evidence as to when it was placed in the file. Needless to say, if it was placed in the file before the arbitration hearing, the charging party's case would fail.

3. That Lewis' remark was retaliatory in nature and reflected the motive for putting the original 1980 evaluation in the file. - This is the main foundation of the Association's case. The hearing officer concluded that, even if the evaluation was placed in the file after the arbitration hearing, the reason for doing so was not retaliatory in nature, and that Lewis' remark need not be viewed as malicious. We are concerned here solely with the motive for the return of the 1980 evaluation to the file. We determine that the hearing officer's conclusion, that a concern to "complete the material in the file" was a more likely motive than any other, is supported by the record.

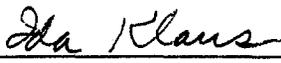
Accordingly, we conclude that the record does not support a finding that the District acted in violation of §209-a.1(a) or (c). We affirm the hearing officer's decision.

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

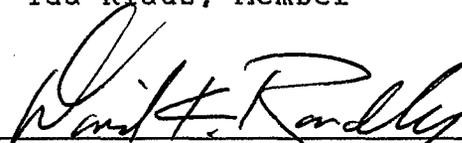
DATED: February 10, 1984
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
COUNTY OF NASSAU (POLICE DEPARTMENT),

#2E-2/10/84

Respondent,

-and-

CASE NO. U-6721

ALLEN UNTERWEISER,

Charging Party.

BEE & DeANGELIS, ESQS., for Respondent

AXELROD, CORNACHIO, FAMIGHETTI & CAPETOLA, ESQS.
(MICHAEL C. AXELROD, ESQ., of Counsel), for
Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Alan Unterweiser to a hearing officer's decision dismissing his charge. A trustee and delegate of the Patrolmen's Benevolent Association of the Police Department of the County of Nassau, Inc. (PBA), he complained that the Nassau County Police Department (County) transferred him from car patrol to foot patrol because of his activities on behalf of PBA. The charge was dismissed by the hearing officer on motion of the County upon the completion of Unterweiser's case on the ground that Unterweiser had not introduced evidence to establish that his transfer was improperly motivated.

CHARGING PARTY'S CASE

Unterweiser, along with twelve other police officers, including two other PBA delegates, was first transferred from car patrol to foot patrol in January 1983. The transfers were occasioned by the disbanding of the Police Department's Crime Deterrent Patrol, members of which were reassigned to car patrol, displacing Unterweiser and the other twelve officers. The decision as to which officers were reassigned was made by Precinct Commander Smith and appears to have been based upon their productivity on car patrol. In his role as PBA delegate, Unterweiser had several "run-ins" with Smith.

Unterweiser and the two PBA delegates filed grievances protesting their reassignment. At Step 1, Smith rejected the grievance and it was appealed to the Chief of Patrol in accordance with the collective bargaining agreement. However, even before the grievance was presented to the Chief of Patrol, instructions came from "headquarters" that Unterweiser and the two PBA delegates be restored to car patrol and that Smith be transferred to another precinct.

The new Precinct Commander, Jorgensen, told Unterweiser and the two PBA delegates that they would have to improve their productivity or they would be taken off car patrol notwithstanding their union positions. Unterweiser's productivity did improve over the next several weeks, but the record does not indicate the extent of the improvement. In any event, in February 1983 Unterweiser was again transferred to

foot patrol; the other two PBA officials were not. This transfer was directed by "headquarters" and was not in accordance with normal procedures pursuant to which transfers are initiated by the Precinct Commander. The record does not indicate who in "headquarters" initiated the transfer or whether the people who did so knew of Unterweiser's increased productivity. There is no evidence that Smith played a role in the second transfer.

DISCUSSION

Unterweiser makes two arguments in support of his exceptions. The first is that, by granting the motion, the hearing officer relieved the County of the need to introduce its witnesses and thereby improperly deprived him of an opportunity to establish his case by cross-examining the County's witnesses. This argument is insufficient as a matter of law. The duty to make a prima facie case rests with charging party alone.

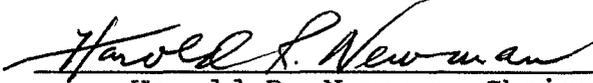
Unterweiser's second argument is that he did make a prima facie case by introducing evidence which, directly or by inference, shows that "headquarters" was motivated by animus against him for his union activity when it ordered the second transfer. He relies on the following aspects of the evidence in support of the argument: Unterweiser's PBA position was probably known at "headquarters", at least by whoever it was who ordered his earlier reassignment to car patrol and the

similar reassignment of the two other PBA officials, that upon his restoration to car patrol, he was told that he would retain that assignment if his productivity improved and his productivity did improve. Yet, he was then ordered transferred by someone at "headquarters" notwithstanding normal procedures calling for transfers to be made at the initiation of the Precinct Commander. He was given no reason for his transfer.

In our view, a motion made to a hearing officer to dismiss a charge after the presentation of charging party's evidence should not be granted without careful deliberation. In considering such a motion, a hearing officer must assume the truth of all of charging party's evidence and give the charging party the benefit of all reasonable inferences that could be drawn from those assumed facts. We would reverse a hearing officer's decision to grant such a motion unless we could conclude that the evidence produced by the charging party, including all reasonable inferences therefrom, is plainly insufficient even in the absence of any rebuttal by the respondent to warrant a finding that the charge should be sustained. After careful consideration of the evidence produced by the charging party herein, we conclude that it is insufficient to warrant a finding that he was singled out by "headquarters" for reassignment in February 1983 because of his union activity - an essential element of his charge. Accordingly, we affirm the hearing officer and dismiss the charge.

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

DATED: February 10, 1984
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2G-2/10/84

NASSAU COUNTY BOARD OF COOPERATIVE
EDUCATIONAL SERVICES,

Respondent,

-and-

CASE NO. U-6636

NASSAU BOCES CENTRAL COUNCIL OF
TEACHERS,

Charging Party.

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

JAMES R. SANDNER, ESQ., for Charging Party

BOARD DECISION AND ORDER

The charge herein was filed by Nassau BOCES Central Council of Teachers (Council). It alleges that the Nassau County Board of Cooperative Educational Services (BOCES) violated §209-a.1(e) of the Taylor Law on December 21, 1982, and on two occasions thereafter, when it announced that it was unwilling to allow the processing of three grievances to arbitration. The grievances alleged violations by BOCES of the parties' collective bargaining agreement that occurred after the expiration of that agreement and after the

effective date of §209-a.1(e).^{1/}

FACTS

BOCES and the Council had been parties to an agreement which expired on June 30, 1982. The agreement identified two types of grievances as "A" and "B". A type "A" grievance, for which the agreement provided binding arbitration, was defined as:

any claim, grievance or dispute arising out of or relating to the meaning, interpretation or application of the agreement. (emphasis supplied)

A type "B" grievance, for which the agreement provided advisory arbitration, was defined as:

[any] complaint by a grievant that such grievant has been treated unfairly or inequitably by reason of any act or condition, which is contrary to the policies of BOCES, or that such grievant has been inequitably treated contrary to established practices affecting working conditions.

Section 209-a.1(e) became effective on July 29, 1982. It requires public employers "to continue all the terms of an expired agreement until a new agreement is negotiated" No new agreement had been negotiated either as of December 10 and 20, 1982, which is when the three grievances,

^{1/}There is no allegation in the charge that the conduct of BOCES complained about in the three grievances also violates §209-a.1(e).

all type "A", were filed, or as of the later dates when BOCES stated that it would not allow grievances to be processed to arbitration. The hearing officer determined that BOCES' refusal to allow the grievances to be processed to arbitration violated §209-a.1(e). He ordered BOCES to "cease and desist from refusing to continue the binding arbitration provisions of its expired agreement with charging party."

The Council had filed an unrelated type "A" grievance on October 6, 1982, which also complained about conduct of BOCES occurring after the effective date of §209-a.1(e). When the Council demanded arbitration of that grievance, BOCES made a motion before Special Term, Nassau County, pursuant to CPLR 7503 for a judgment staying arbitration. The court stayed the arbitration of that grievance in an order issued after the charge herein was filed, holding:

When a collective bargaining agreement expires in accordance with its terms prior to the filing of a grievance thereunder, such grievance is not arbitrable since there is no agreement in effect A party cannot be compelled to arbitrate a dispute not covered by the arbitration agreement"
Nassau Co. BOCES v. Nassau BOCES Central Council of Teachers, (unreported).

The court's opinion stated that the enactment of §209-a.1(e) does not extend an arbitration provision contained in a collective bargaining agreement which expired before the statutory amendment became effective.

We dealt with the implications of the effective date of §209-a.1(e), upon the obligation, pursuant to that statute, to abide by the terms of an expired collective bargaining agreement during the interim between agreements in Cobleskill Central School District, 16 PERB ¶3057 (1983), aff'd Cobleskill Central School District v. Newman, 16 PERB ¶7023 (Sup. Ct., Albany Co., 1983). We stated there:

The statute does not extend the life of the expired agreement; it declares that the obligation created by that agreement must, however, continue to apply during that interim. Thus, any obligation of the employer that would have become operative at a particular time during the life of the expired agreement must now apply upon the advent of such particular time during the hiatus period. For purposes of determining whether a violation occurred, the time when the agreement expired is therefore not significant. What is significant is the particular time when the public employer refused to continue its terms.

The hearing officer found merit in the Council's charge. In doing so, he first relied upon our decision in Cobleskill for his conclusion that, after §209-a.1(e) took effect, BOCES was required to abide by the terms of its already expired agreement with the Council, until a new agreement was negotiated. As one of the terms of the expired agreement was binding arbitration, he determined that BOCES had refused to abide by that term.

DISCUSSION

BOCES presents two arguments in support of its exceptions. The first, focusing on the Nassau County BOCES court case, contends that the decision of the Nassau County court holding arbitration to be unavailable is res judicata of the issue before us. BOCES claims this to be so because the same parties and the same issue are present in both proceedings. That issue, it says, is whether BOCES is obligated to arbitrate grievances under the terms of an expired agreement.

We find this argument to be without merit. While the same parties litigated the question whether they were bound to arbitrate disputes under the expired agreement in both the court and the instant proceedings, the cases do not involve the same cause of action. The cause of action in the court case was a contractual one; the issue, which arose under CPLR 7503, was whether there was a valid agreement to arbitrate. The court decided that there was no agreement and that the enactment of §209-a.1(e) did not create one. The cause of action in the proceeding before us is statutory. The issue here is whether the terms of the agreement providing for binding arbitration must be continued by virtue of the enactment of §209-a.1(e). The issue before us involves a possible improper practice over which this Board exercises "exclusive nondelegable

jurisdiction"^{2/} A similar distinction between statutory and contractual obligations was drawn by the Court of Appeals in SLRB v. Holland Laundry, 294 NY 480 (1940). It held, inter alia, that a lower court decision in a civil action which exonerated an employer of conduct that might constitute an unfair labor practice under the State Labor Relations Act did not preclude the Board from reaching a contrary conclusion because the Board was concerned with the protection of public rights while the lower court was concerned with the protection of private rights.

BOCES' second argument is that the hearing officer misunderstood its position as being that arbitration, as such, is not a term of the old contract which continues. On the contrary, it acknowledges that arbitration clauses do continue after the expiration of an agreement. It further contends that the hearing officer failed to consider its real argument, which was that it was not required to arbitrate the specific grievance under the arbitration clause of the expired agreement.

^{2/}Section 205.5(d) of the Taylor Law. BOCES' analysis would not only compel a conclusion that the Court decided an issue over which it lacked jurisdiction, but also that the Council could not settle a grievance after a court determined that it was not arbitrable pursuant to agreement for fear that by letting the court decision stand unappealed, it could not seek to arbitrate other grievances pursuant to statute.

In support of this argument, BOCES first notes that the arbitrability of a grievance is normally subject to challenge in court. It asserts that, in considering such a challenge, the court would apply the standards set forth in Superintendent of Schools of Liverpool, 42 NY2d 509, 10 PERB ¶7535 (1977), as narrowed by Liverpool's progeny, to ascertain whether there is an agreement to arbitrate the particular grievance in question. BOCES then argues that in determining whether a public employer violated the terms of an expired agreement by refusing to arbitrate a grievance, we must consider the public employer's Liverpool defenses. Finally, it argues that the language of the arbitration clause in the expired agreement establishes a Liverpool defense which the hearing officer ignored.

We agree with BOCES that this Board should not find a public employer in violation of §209-a.1(e) by reason of its refusal to arbitrate a grievance when that refusal is based upon a valid reason for refusing to allow arbitration. Accordingly, we must now consider whether BOCES' reason for refusing to allow arbitration of the three grievances is valid.

The only defense to the charge which BOCES asserts is that the arbitration is limited to disputes arising out of the parties' agreement. Thus, it says, while §209-a.1(e) may continue arbitration in principle, an arbitrator would have no jurisdiction over the three grievances because they allege violations of the terms of the agreement as extended by

statute, and not to violations of the agreement itself. BOCES finds support for this distinction in our Cobleskill decision where we said:

The statute does not extend the life of the expired agreement; it declares that the obligation created by that agreement must, however, continue

In effect, BOCES is arguing that, for type "A" grievances, it had negotiated an arbitration clause which contains an implicit "sunset" provision that renders it inapplicable to grievances arising after the expiration of the agreement. Pursuant to this reasoning, only a broad arbitration clause that applied to all disputes involving terms and conditions of employment, such as its type "B" grievance procedure, would apply after the expiration of the agreement.

We reject this argument, finding that it constitutes too narrow a reading of §209-a.1(e), the parties' agreement and our decision in Cobleskill. The legislative intent reflected in the language of §209-a.1(e) is that the contractual relationships embodied in a collective bargaining agreement shall continue until a new collective bargaining agreement is negotiated. In effect, the Legislature has concluded that a unilateral disturbance of these relationships by a public employer is destructive of the harmony and cooperation that the Taylor Law promotes.^{3/}

^{3/}See §200 of the Taylor Law.

Here, the contractual relationship that existed under the expired collective bargaining agreement included the arbitration of contract grievances. Had the parties included a "sunset" clause in their agreement which explicitly made the grievance arbitration inapplicable after the contract's expiration, the subsequent refusal of BOCES to arbitrate grievances would not be unilateral, and therefore not destructive of the statutorily promoted harmony and cooperation. The agreement, however, contains no such "sunset" clause. Moreover, it defines a type "A" grievance as involving not only a claim for the application of the agreement, but also for its interpretation. Accordingly, BOCES' narrow interpretation of the contract language which established type "A" grievances would give it a meaning that we find not to have been in the contemplation of the parties.

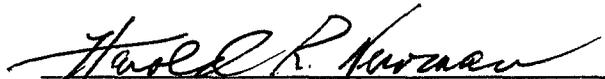
Accordingly, we conclude that the parties' expired agreement established both substantive obligations and an arbitral procedure to interpret those obligations. We find no basis in the record for concluding that the arbitral procedure was intended to expire before the substantive obligations. Accordingly, we determine that §209-a.1(e) compels BOCES to allow the processing of the three grievances to arbitration.

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

WE ORDER BOCES to:

1. Cease and desist from refusing to continue the binding arbitration provision of its expired agreement with charging party;
2. Post a notice in the form attached at all locations normally used to post notices of information to unit employees.

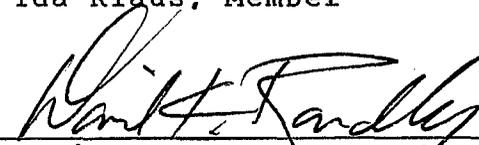
DATED: February 10, 1984
Albany, New York



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 employees in the unit represented by the Nassau BOCES Central Council of Teachers (Council) that the Nassau County Board of Cooperative Educational Services will continue the binding arbitration provisions of its contract with the Council that expired on June 30, 1982.

NASSAU COUNTY BOCES

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.

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
VILLAGE OF SLOATSBURG,

#3A-2/10/84

Employer,

-and-

CASE NO. C-2680

NEW YORK STATE FEDERATION OF POLICE,
INC.,

Petitioner,

-and-

ROCKLAND COUNTY PATROLMENS BENEVOLENT
ASSOCIATION,

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 the New York State Federation of Police, 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: All full time police officers
 Excluded: Chief of Police and all other
 employees

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the New York State Federation of Police, Inc., and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: February 10, 1984
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
CITY OF WHITE PLAINS,

#3B-2/10/84

Employer-Petitioner,

-and-

CASE NO. C-2545

PROFESSIONAL FIRE FIGHTERS ASSOCIATION,
LOCAL 274, IAFF,

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,

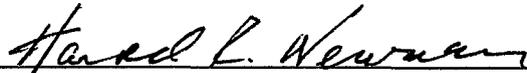
IT IS HEREBY CERTIFIED that the Professional Fire Fighters Association, Local 274, IAFF, has been designated and selected by a majority of the employees of the above named employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Deputy Chiefs
 Excluded: All other employees

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Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Professional Fire Fighters Association, Local 274, IAFF, and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

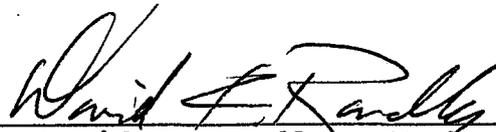
DATED: February 10, 1984
Albany, New York



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
TOWN OF SOUTHEAST,

#3C-2/10/84

Employer,

-and-

CASE NO. C-2682

LOCAL 456 INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

Petitioner.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Local 456 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 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.

