STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2A-11/14/84

SUFFOLK COUNTY BOARD OF COOPERATIVE EDUCATIONAL SERVICES, SECOND SUPERVISORY DISTRICT,

Respondent,

-and-

CASE NO. U-7354

BOCES II TEACHERS ASSOCIATION,

Charging Party.

In the Matter of

SUFFOLK COUNTY BOARD OF COOPERATIVE EDUCATIONAL SERVICES, SECOND SUPERVISORY DISTRICT,

Respondent,

-and-

CASE NO. U-7359

BOCES II TEACHER AIDES AND TEACHER ASSISTANTS UNIT,

Charging Party.

THEALAN ASSOCIATES, (JOSEPH A. IGOE), for Respondent.

MARTIN FEINBERG, for Charging Party.

BOARD DECISION AND ORDER

The first charge (U-7354) was filed by BOCES II Teachers Association (Teachers Association) on March 5, 1984. The

second charge (U-7359) was filed on the same day by BOCES II Teacher Aides and Teacher Assistants Unit (Aides/Assistants Association). The charges are identical in that both complain that Suffolk County Board of Cooperative Educational Services, Second Supervisory District (BOCES) violated §209-a.1(d) of the Taylor Law in that it refused to negotiate the impact of a unilateral change it made concerning the manner in which it reported accumulated sick leave to employees in the two units. The Administrative Law Judge (ALJ) therefore consolidated the two charges for decision.

BOCES' contract with the Teachers Association provided that sick leave could be accumulated up to a maximum of 190 days; its contract with the Aides/Assistants Association provided for an accumulation of sick leave up to 180 days. Notwithstanding these limitations, BOCES' reports to employees had previously listed sick leave accumulations in excess of the contractual maximums.

On August 3, 1983, BOCES announced that it would no longer report sick leave in excess of the contractual maximums. After this change was put into effect, the two associations sought to negotiate both the change and its

impact. The parties met in December 1983, but on January 12, 1984, BOCES notified the associations that it considered itself under no obligation to negotiate either the change or the impact and it refused to do so. This precipitated the charges herein.

The ALJ found that any complaint relating to the change itself was time-barred. However, he concluded that BOCES' refusal to negotiate the impact of the change was a violation of the Taylor Law. The matter now comes to us on BOCES' exceptions to the latter part of his decision.

We find it hard to conceive of an impact proposal that would have any meaning. Indeed, the associations tried to suggest one in their brief to the ALJ but they were unsuccessful. Their "proposal" merely hypothesized that BOCES had misinterpreted the contracts, which, they argue, permit sick leave in excess of the contractual maximums provided that the excess time is liquidated before the end of the school year.

This alleged proposal merely raises a question of contract interpretation over which this Board has no jurisdiction. However, as noted by the ALJ, BOCES did not reject any actual proposals; rather, it indicated its unwillingness to negotiate impact before giving the

associations an opportunity to submit any proposals. In this it was unduly hasty, and the ALJ correctly found a violation of the Taylor Law. The violation, however, appears to have no substantive consequence.

NOW, THEREFORE, WE ORDER BOCES to cease and desist from refusing to negotiate the impact of its unilateral change in the manner in which it reports sick leave accumulations.[1/]

DATED: November 14, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

1/Given the nature of the violation, we do not direct BOCES to post any notice of this order.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2B-11/14/84

COUNTY OF ONEIDA and ONEIDA COUNTY SHERIFF,

Joint Employer,

-and-

CASE NO. C-2773

ONEIDA COUNTY DEPUTY SHERIFF'S BENEVOLENT ASSOCIATION,

Petitioner,

-and-

TEAMSTERS LOCAL NO. 182,

Intervenor.

BARBARA PRATT, for Joint Employer

JAMES KERNAN, ESQ., for Petitioner

ROCCO A. DE PERNO, ESQ., for Intervenor

BOARD DECISION AND ORDER

On May 4, 1984, the Oneida County Deputy Sheriff's Benevolent Association (Petitioner) filed a petition seeking to decertify Teamsters Local No. 182 (Intervenor) and to be certified as the exclusive bargaining agent for a unit of employees of the County of Oneida and the Oneida County Sheriff (Joint Employer).

The matter now comes to us on the exceptions of the Intervenor to a decision of the Director of Public Employment

Practices and Representation (Director) ordering an election between it and the Petitioner. The bases of the exceptions are allegations that the petition is invalid because it was executed by a person who was not authorized to do so, and that there was a contract bar to the filing of the petition.

The petition was executed by David R. Townsend, who is identified as being the Petitioner's president. It was accompanied by a statement, executed by nine of the thirteen members of Petitioner's Board of Directors, authorizing Townsend to file the petition. The Intervenor argues, however, that Townsend was not properly elected to the presidency of the Petitioner in that the election did not meet the standards of the Not-For-Profit Corporation Law. The Director found this argument irrelevant to PERB's jurisdiction over the petition.

We affirm the determination of the Director for the reasons set forth therein. Whether or not Townsend was properly elected president of Petitioner under the Not-For-Profit Corporation Law may, or may not, be relevant to the question of whether he could file a petition in his capacity as president,[1/] but, in any event, Townsend was authorized by a majority of the Board of Directors to file

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1/There is no requirement in the Taylor Law that a union must be incorporated for its petition to be processed, nor that the president of the local file the petition.

the petition. Accordingly, it was properly accepted by the Director.[2/]

With respect to the Intervenor's contract bar argument, it is clear that as of the date when the petition was filed, no new agreement had been executed by the Intervenor and the Joint Employer to succeed the contract which had expired on December 31, 1983. The Intervenor argues, however, that under §201.3(e) of PERB's Rules, a petition may be filed, if no new agreement is "negotiated" 120 days subsequent to the expiration of the contract. The Intervenor claims that the Joint Employer and it had negotiated to the point where an agreement had been reached and ratified, but not executed before the petition was filed; it contends that this satisfies our requirements for a "contract bar."

We reject this argument. In City of Amsterdam, 13 PERB ¶3083 (1980), we held (at p. 3133):

> The phrase, "an agreement is negotiated" means "an agreement is concluded." For the purpose of contract bar, an agreement is concluded when it is executed. (footnote omitted)

As we here previously noted, there was no executed agreement when the petition was filed.

[2/] If a majority of the Petitioner's members do not support the filing of the petition, they will have the opportunity of demonstrating their position by denying it their support in the election ordered by the Director.

NOW, THEREFORE, WE ORDER that an election by secret ballot be held under the supervision of the Director among the employees in the unit described in his decision who were employed on the payroll date immediately preceding the date of this decision.

IT IS FURTHER ORDERED that the Joint Employer shall submit to the Director, as well as to the Petitioner and Intervenor, within 15 days from the date of receipt of this decision, an alphabetized list of all employees in the unit as set forth in the Director's decision who were employed on the payroll date immediately preceding the date of this decision.

DATED: November 14, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#3A-11/14/84

SHERBURNE-EARLVILLE CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2818

SHERBURNE-EARLVILLE ADMINISTRATORS ASSOCIATION,

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 Sherburne-Earlville Administrators Association 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: All building principals.

Excluded: All other employees.

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Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Sherburne-Earlville Administrators Association 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: November 14, 1984
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

David C. Randles

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#3B-11/14/84

AKRON CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2725

AKRON FACULTY ASSOCIATION, NYSUT,

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 Akron Faculty Association, NYSUT 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: All professional, certified personnel.

Excluded: Superintendent of Schools, Administrative Assistant for the Supervision and Maintenance of Buildings and Grounds and Director of Health, Physical Education and Recreation, School Business Administrator, the Junior-Senior High

School Building Principal, the Elementary School Building Principal, the Assistant Junior-Senior High Principal, the Assistant Elementary Principal, and the Director of Guidance and Public Personnel Services.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Akron Faculty Association, NYSUT 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: November 14, 1984
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

David C. Randles

David C. Randles, Member

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#3C-11/14/84

CITY OF TONAWANDA,

Employer,

-and-

CASE NO. C-2823

CITY OF TONAWANDA EMPLOYEES ASSOCIATION,

Petitioner,

-and-

AFSCME, LOCAL #2014, AFL-CIO,

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 City of Tonawanda Employees Association has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All hourly and salaried employees currently represented by AFSCME, Local #2014, including but not limited to: Water Pump Operators, Filter Plant Operators, Sewage Plant Operators, Lift Station Operators, Clerk Typist (Water Dept.), Senior Account Clerk (Water & DPW), Foreman, Group Leader B, Water Maint. Man I, Water Maint. Man II, Senior Recreation Maint. Man, Recreation Maint. Man, Recreation Maint. Man II, Park Maint. Man I, Parks Maint. Man II, Sr. Automotive Mechanic, Automotive Mechanic I, Automotive Mechanic II, Motor Equipment Operator, Payloader, Dump Operator, Heavy Equipment Operator, Street Sweeper Operator, Back-Hoe Operator, Snow Plow Driver, Truck Driver Laborer, Laborer (All Departments), Sanitation Laborer, Tree Trimmer I, Tree Trimmer II, Signal Maint. Man, Incinerator Operator, Cleaners (City Hall), Custodian (City Hall), Group Leader A.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the City of Tonawanda Employees Association and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: November 14, 1984
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

David C. Randles

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#3D-11/14/84

COMSEWOGUE UNION FREE SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2810

COMSEWOGUE PART-TIME UNIT, SUFFOLK EDUCATIONAL LOCAL 870, CSEA,

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 Comsewogue Part-time Unit, Suffolk Educational Local 870, CSEA 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: Part-time attendance aide, clerical aide, food service worker, playground aide, project partner (teacher aide), recipe for reading (teacher aide), and teacher aide.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Comsewogue Part-time Unit, Suffolk Educational Local 870, CSEA and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: November 14, 1984
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

David C. Randles

David C. Randles, Member