STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PORT JERVIS TEACHERS ASSOCIATION,
AFT, No. 2939,

Respondent,

-and-

CASE NO. U-8029

JOHN McANDREW,

Charging Party.

JOHN McANDREW, pro se

BOARD DECISION AND ORDER

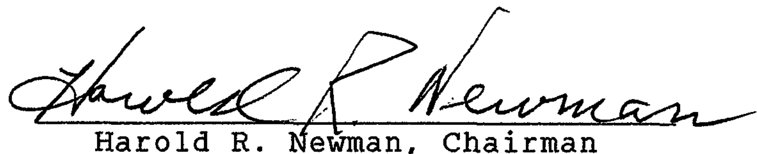
This matter comes to us on the exceptions of John McAndrew to a decision of the Director of Public Employment Practices and Representation (Director) dismissing his charge. The charge complains that the Port Jervis Teachers Association, AFT, No. 2939 (Association) violated §209-a.2(a) of the Taylor Law in that it conducted an election of officers improperly.[1/] The Director dismissed the charge on the ground that this Board does not have subject matter jurisdiction over complaints involving the internal functions of an employee organization.

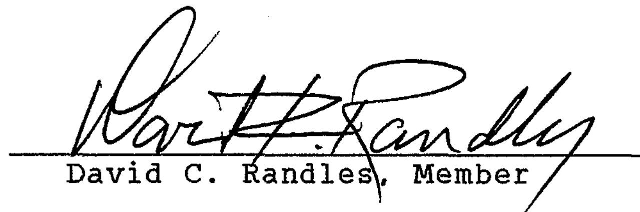
1/ Among other things, it complains that improper procedures were used in soliciting nominations and in certifying the results of the election. It also complains that an improper ballot was used.

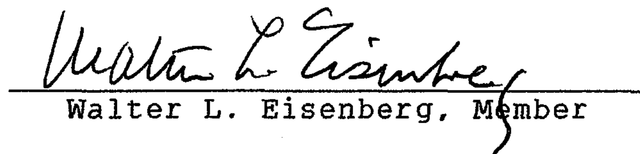
In his exceptions, McAndrew argues that the Director erred in his conclusion that this Board does not have subject matter jurisdiction over the charge. His argument in support of this position, however, is not persuasive.[2/]

Accordingly, we affirm the decision of the Director and we order that the charge herein be, and it hereby is, dismissed.

DATED: June 18, 1985
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member

2/ Among other things, McAndrew's charge alleges that the election processes utilized by the Association do not meet the standards set by the Landrum-Griffin Act. This apparently refers to Title IV of the Federal Labor-Management Reporting and Disclosure Act of 1959. Subject matter jurisdiction over this statute is vested in the U.S. Labor Department and not in the National Labor Relations Board, which administers the National Labor Relations Act. The Taylor Law generally parallels the National Labor Relations Act and the jurisdiction of this Board, like that of the National Labor Relations Board, does not extend to internal union affairs. See United Federation of Teachers (Dembicer), 9 PERB ¶3018 (1976). Compare NLRB v. Allis-Chalmers Mfg. Co., 338 U.S. 175 (1967).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CAYUGA-ONONDAGA BOARD OF COOPERATIVE EDUCATIONAL SERVICES,

Employer,

-and-

CASE NO. C-2922

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME/AFL-CIO,

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,

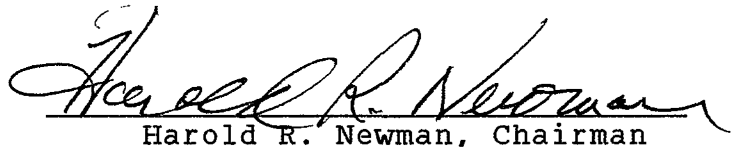
IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME/AFL-CIO has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Regularly employed full-time and regularly employed part-time teacher aides.

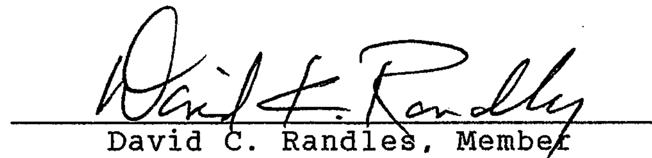
Excluded: Casual, temporary and substitute employees, teaching assistants and all other administrative, supervisory, instructional and noninstructional employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME/AFL-CIO 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.

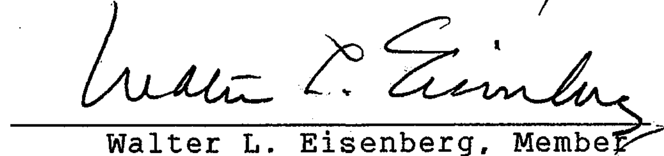
DATED: June 18, 1985
Albany, New York



Harold R. Newman, Chairman



David C. Randles, Member



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

INCORPORATED VILLAGE OF OYSTER BAY COVE,

Employer,

-and-

CASE NO. C-2770

OYSTER BAY COVE POLICE ORGANIZATION,

Petitioner,

-and-

OYSTER BAY COVE POLICEMEN'S
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,

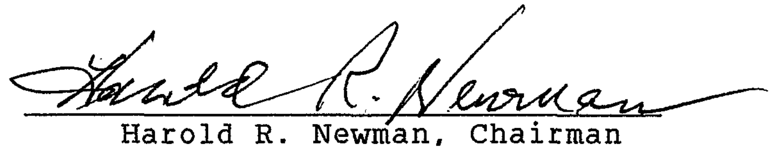
IT IS HEREBY CERTIFIED that the Oyster Bay Cove Police Organization has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Full-time police officers.

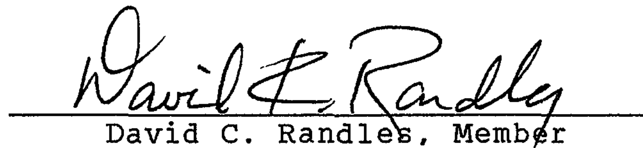
Excluded: Chief of Police, part-time police officers, and all other employees

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Oyster Bay Cove Police Organization 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.

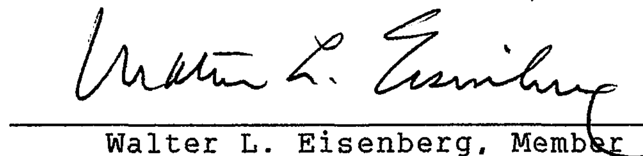
DATED: June 18, 1985
Albany, New York



Harold R. Newman, Chairman



David C. Randles, Member



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

AFSCME LOCAL 1000 CSEA, OTSEGO
COUNTY LOCAL and COUNTY OF OTSEGO,

Respondents,

-and-

CASE NO. U-7709

CAMILLA S. OBERMEYER,

Charging Party.

ROEMER & FEATHERSTONHAUGH, P.C. (MICHAEL J. SMITH, ESQ., of Counsel), for Respondent CSEA

BOOKOUT, WINSOR & COCCOMA, P.C. (MICHAEL COCCOMA, ESQ., of Counsel), for Respondent County of Otsego

W. DENNIS DUGGAN, ESQ., for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Camilla S. Obermeyer to a decision of an Administrative Law Judge (ALJ) dismissing her charge against both the County of Otsego (County) and AFSCME Local 1000 CSEA, Otsego County Local (CSEA). Obermeyer had been hired by the County on July 20, 1983, as a temporary supervising nurse at a County facility known as the Meadows Infirmary, and she held that position until she was fired on May 29, 1984. She contends that the County fired her because she complained about patient abuse

by a subordinate employee. She also asserts that CSEA violated its duty of fair representation in not filing a grievance on her behalf seeking redress for the discharge.

The ALJ dismissed the specification against the County on the ground that this Board has no subject matter jurisdiction over issues of patient care. He dismissed the specification against CSEA on the ground that Obermeyer failed to show that CSEA's inaction was improperly motivated, irresponsible or grossly negligent.

With respect to the first specification, Obermeyer contends that the record indicates that she was fired because she presented "grievances" to the County which affected working conditions and which it "did not want to hear". This argument is not supported by the record. The relevant evidence consists of Obermeyer's testimony. It merely shows that two subordinate employees complained to Obermeyer that a third employee was harrassing patients. She carried this complaint to the administrators of the County Infirmary and was fired thereafter.

There is no indication that Obermeyer's complaints to the Infirmary administrators dealt with terms or conditions of employment or that her termination was related to rights protected by the Taylor Law. The control of patient abuse is a management prerogative and not a term or condition of employment. We therefore affirm the decision of the ALJ dismissing this specification of the charge.

The specification of the charge complaining about CSEA turns on the question of whether CSEA had to treat Obermeyer as a permanent employee of the County. The parties' agreement provides Civil Service Law §75 protections for most unit employees, but not for temporary employees.[1] A temporary employee is defined by the agreement as "a person hired for a period not exceeding three (3) months . . .", provided that such an appointment may be extended in accordance with Civil Service Law §64.[2]

Obermeyer contends that by virtue of holding her position eleven months, she had attained permanent status within the meaning of the collective bargaining agreement, and that she was, therefore, entitled to job security. CSEA disagrees. It asserts that the agreement merely incorporated the statutory provisions, and that under Civil Service Law §64, a temporary employee does not become permanent by virtue of holding a position for more than three months. The ALJ found this to be a reasonable position and not indicative of improper motivation, irresponsibility or gross negligence. We affirm this finding.

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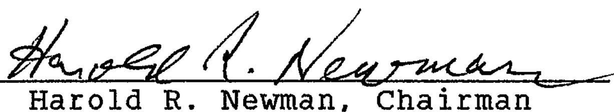
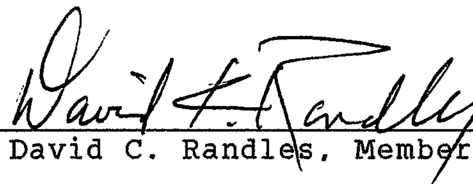
[1]Also excluded are probationary, provisional and part-time employees.

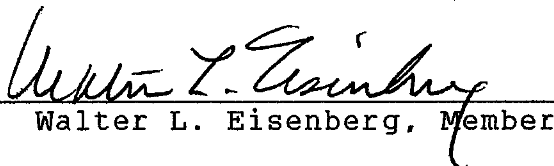
[2]This sets statutory standards for temporary employment.

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

DATED: June 18, 1985
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member