STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	
YONKERS FEDERATION OF TEACHERS	BOARD DECISION
Upon the Charge of Violation of Section 210.1 of the Civil Service Law.	AND ORDER
	CASE NO. D-0153

JAMES R. SANDNER, ESQ., (DAVID M. STEIN, ESQ., of Counsel) for Respondent

ARTHUR J. DORAN, ESQ., for Charging Party

On October 17, 1977, the chief legal officer of the Yonkers City School District (District) filed a charge against the Yonkers Federation of Teachers (Federation) alleging that it had engaged in an illegal fifteen day strike on September 7, 8, 9, 12, 15, 16, 19, 20, 21, 23, 26, 27, 28, 29 and 30, 1977. The Federation conceded the absences which were the basis for the charge, but it denied that those absences constituted a strike. It asserted that a more appropriate characterization of the absences would be a "constructive lock-out" because the District engaged in conduct which "extinguished" the employees' duty to report to work.

The hearing officer concluded that no principle of "constructive lock-out" exists within the meaning of the Taylor Law. If employees who are required to report to work, he found, concertedly refuse to do so, they are on strike. This, according to the hearing officer, is what occurred. On the other hand, upon examining the conduct of the District that the Federation asserted was a "constructive lock-out", the hearing officer con-

cluded that the District had engaged in such acts of extreme provocation as to detract from the responsibility of the Federation for the strike. Among the circumstances upon which he based his conclusion were the District's entering into individual agreements with teachers in which the teachers waived their rights to submit certain contract grievances, taunting statements attributable to the District, and a disclosed policy of the District of achieving its bargaining goals either through negotiations or through unilateral action. Summarizing the District's conduct, the hearing officer said that they "had the intended effect of, and did indeed, exacerbate already strained tensions and anxieties."

The Federation filed a brief in which it took issue with the report and recommendations of the hearing officer. The District did not file a brief. In its brief, the Federation argues that the hearing officer erred in that he failed to find a "constructive lock-out". It also argues that the hearing officer erred in finding that the fifteen-day interruption of services impacted upon the welfare of the community.[1] Assuming a determination that it

---

1] The Federation makes two further contentions: that the hearing officer committed error by refusing to issue subpoenas duces tecum for minutes of Board of Education executive sessions for the period January 1977 to October 1977, where the Federation was a subject of discussion; and that it was denied due process because there was a change of hearing officers during the course of the proceeding and the hearing officer who wrote the report could not adequately assess the credibility of witnesses he did not see. The factual basis for this latter contention is that the hearing officer who was originally assigned resigned during the course of the three-day hearing. We find no merit in either contention.

The Federation was not prejudiced by the refusal of the hearing officer to seek issuance by this Board of subpoenas duces tecum on its behalf. Even assuming that it was entitled to the subpoenas, it could have obtained them from a court pur-

struck, the Federation asserts that in assessing a penalty, this Board should take into account the conduct of the Federation subsequent to the strike. Those events, according to the Federation, reflect a return to harmonious labor relations as evidenced by the negotiation of a successor agreement without any untoward incidents.

DISCUSSION

We affirm the decision of the hearing officer rejecting the Federation's argument that there was no strike because the absences were attributable to a "constructive lock-out". The Federation's argument is that conduct of a public employer may be so provocative as to justify a strike by a union. The legislative history of the Taylor Law refutes this argument and makes clear that an employee organization is not relieved of its responsibility for a strike by reason of an employer's conduct.[2]

We also affirm the hearing officer's conclusion that the strike impacted upon the welfare of the community. The record shows that normal student attendance on the days when the strike occurred would have been about 24,000 out of a total of 26,000

FN1 (cont'd)
suant to CPLR §§2302 and 2307. Thus, at most, it was merely inconvenienced. The change of hearing officer also did not violate any rights of the Federation. Section 206.6(b)(1) of the Rules of this Board specifically authorizes such a substitution of hearing officers. Moreover, the hearing officer's report reveals no reliance upon controverted testimony given before his predecessor, and thus, no need to resolve credibility questions involving such testimony.

2] As originally enacted in 1967, §210.3(e) of the Taylor Law stated that an employer's acts of extreme provocation are a factor to be considered in determining whether an employee organization had violated its statutory duty not to strike. In 1969, the statute was amended (L.1969,c.28, §8) to delete the reference to extreme provocation from §210.3(e) and to insert it in §210.3(f). The effect of this amendment was to make clear that extreme provocation should not be considered as a defense to a strike, but is relevant only to the extent of the penalty.

students. Instead, on those days, it was only about 10,000. Of the approximately 1,500 regular teachers who should have attended, only 50 to 60 came to work each day of the strike. These teachers were supplemented by between 300 to 350 per diem substitutes. Obviously, the District was unable to provide its mandated services to the community during the period of the strike.

We reject the Federation's argument that we should take into account its conduct subsequent to the strike as a factor in determining the penalty that should be imposed for a strike. Under the terms of the statute (§210.3[f]) it is relevant only to the restoration of dues deduction and agency fee payment privileges that have been ordered suspended for an indefinite period of time. 3]

The evidence supports the hearing officer's determination that the Federation's responsibility for the strike was diminished by the District's acts of extreme provocation. The record reveals

---

3] The Federation's reliance on City of New York v. DeLury (Special Term, N.Y.Co., July 3, 1970, 75 LRRM 2275) is not here controlling. There are important differences between the two proceedings. In DeLury the union was seeking remission of part of the dues checkoff suspension which was one part of a penalty that had been assessed at an earlier time after other parts of the penalty had already been satisfied. Here, the Federation is seeking consideration of its post strike conduct in advance of the assessment of any penalty. Also, in DeLury, the court found it significant that the employer and the union were "in accord" in seeking remission of further penalties because of their joint judgment that imposition of the remainder of the penalty would incapacitate the union from making positive contributions to the "continuation of existing harmonious labor relations between the parties...." Having determined that the circumstances substantiated the "accord" of the parties, the court granted a conditional modification of its prior order which assessed the full penalty. The situation here is not comparable.

a pattern of conduct on the District's part that, by May 1977, clearly signalled its unwillingness to make serious efforts to engage in negotiations and achieve a settlement. That conduct was marked by unreasonable delays which prevented the institution of fruitful negotiations. At the same time, the District exacerbated the frustrations of the bargaining process by passing resolutions clearly expressing its intention to make unilateral changes in such significant terms and conditions of employment as sabbatical leaves, maternity leaves and seniority. The District's announced disposition to act on its own persisted through the ensuing months. On the evening before the scheduled opening of school in September, it informed the Federation's negotiators that returning teachers would be faced with unilaterally imposed changes announced earlier as well as the reduction of teacher preparation time and of released time for the Federation's president. It also announced the elimination of grievance arbitration.

The strike, which began on the day following those announcements, was clearly provoked by them and by other conduct of the district. Although the District faced serious financial difficulties, those circumstances cannot excuse its conduct. Nevertheless, the District's provocative conduct did not justify the strike. The Federation's only lawful recourse against the District's improprieties was through the procedures of the Taylor Law. However, we do consider the District's conduct in determining the extent of the penalty to be assessed against the Federation.

We now consider the appropriate penalties which we deem necessary to effectuate the statutory policies. This is not the first strike by the Federation. In 1972 it engaged in an eight-day strike and, as a consequence, it lost its dues check-off privileges for twelve months.[4] Ordinarily, we would impose a loss of dues check-off and agency shop fee privileges for an indefinite period as a penalty for a second strike. Consistent with past decisions and under the circumstances here, we would have determined that a minimum period of eighteen months during which the employee organization would not be permitted to apply for reinstatement of the privileges is reasonable and consistent with the statute. Because of the District's acts of extreme provocation which detract from the Federation's responsibility for the strike, we do not impose a penalty for an indefinite period or for so long a time as eighteen months. We determine that the forfeiture of dues deduction and agency shop fee privileges for a fixed period of nine months is reasonable under the circumstances and that it will effectuate the purposes of §210 of the statute.

NOW, THEREFORE, WE ORDER that the District cease deducting dues or agency shop fee payments on behalf of the Federation for a period of nine months,[5] commencing

---

4] See Yonkers Federation of Teachers, 5 PERB ¶3042 (1972).

5] If dues and agency shop fee payments are not deducted uniformly each payroll throughout the year, then no further deductions shall be made for a period during which 75% of the annual deductions would otherwise be made on behalf of the Federation.

on the first practicable date after this decision. Thereafter, no dues or agency shop fee payments will be deducted on its behalf until the Federation affirms that it no longer asserts the right to strike against any government, as required by §210.3(g) of the Taylor Law.

DATED: New York, New York
May 2, 1980

Ida Klaus, Member

David C. Randles, Member

Chairman Newman did not participate.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Application of the :	
COUNTY OF NASSAU :	BOARD DECISION AND ORDER
for a determination pursuant to Section 212 of the Civil Service Law. :	DOCKET NO. S-0002

At a meeting of the Public Employment Relations Board held on the 11th day of April, 1980, and after consideration of the application of the County of Nassau made pursuant to Section 212 of the Civil Service Law for a determination that its Ordinance No. 74-A-1978 as last amended by Ordinance 379-A-1979 is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board, it is

ORDERED, that said application be and the same hereby is approved upon the determination of the Board that the Ordinance aforementioned, as amended, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board.

DATED: May 1, 1980
New York, New York

Harold R. Newman
HAROLD R. NEWMAN, Chairman

Ida Klaus
IDA KLAUS, Member

David C. Randles
DAVID C. RANDLES, Member

6268

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the AMALGAMATED TRANSIT UNION, DIVISION 1342, Respondent, upon the Charge of Violation of Section 210.1 of the Civil Service Law.	BOARD DECISION AND ORDER CASE NO. D-0175

BARLOW, ROSENTHAL, SIEGEL, MUENKEL & WOLF
(JAY N. ROSENTHAL, ESQ., of Counsel) for
Respondent

ANTHONY CAGLIOSTRO, ESQ., for Charging Party

This matter comes to us on the charge of Counsel to the Board (charging party) that the Amalgamated Transit Union, Division 1342 (respondent), violated §210.1 of the Taylor Law in that it caused, instigated, encouraged, condoned and engaged in a strike against the Niagara Frontier Transportation Authority (Authority) on December 14 and 15, 1978. A hearing was held on April 30, 1979, after which the hearing officer reported her conclusion that the employees of the Authority had struck on December 14 and 15, 1978, but that the strike was not attributable to respondent. In its brief to us, respondent asserts that the record evidence supports the conclusions of the hearing officer. Charging party, however, has submitted a brief in which he argues that the hearing officer misinterpreted the record evidence which, he contends, establishes respondent's responsibility for the strike.

6269

FACTS

The record shows that, as of December 14, 1978, the Authority and respondent were in negotiations for an agreement that would succeed one that had expired on August 1, 1978. Two

tentative agreements had been recommended by respondent's Executive Board, but rejected by its membership. The second rejection occurred at a membership meeting on December 12, 1978. At the meeting held on December 13, 1978, the night before the strike, and at other earlier meetings, members had attempted to raise the question of a strike, but respondent's president ruled such discussions out of order.

At the start of the first shift on December 14, picket lines were set up at most work locations, and most employees absented themselves from work. There were 637 and 619 unit employees absent from work on December 14 and 15, 1978, respectively. This amounted to more than 90% of the normal complement of unit employees. Among the absentees were members of respondent's Executive Board. Ten of these employees had regular assignments, which they did not perform on these days. Of these, three claimed that they were excused from their regular assignments, but the record does not support their claim. A fourth reported for work, but did not perform his regular assignment after being told not to do so by respondent's president. A fifth claimed that he was excused from performing his own job because he was trying to get other employees to come to work. The record, however, shows that he was told by his superior to leave because he was transacting business on behalf of respondent instead of working. The other leaders of respondent who did not work alleged that they were engaged in "union business" or that they were concerned about crossing the picket line.

Respondent's president described the strike as a "wildcat" and stated that it was not authorized. He, and some members of the Executive Board, visited some of the work locations and made statements that reflected an awareness that the strike was illegal, but they did not direct employees to return to work. Another of respondent's leaders offered to conduct a vote on whether the men wished to cross the picket line.

Respondent's president directed members of the Executive Board to report to respondent's headquarters to be available to receive service of a temporary restraining order which would require them to instruct respondent's membership to return to work. This direction was obeyed and was offered as an excuse for the absence of the directors from work on December 15. Once the temporary restraining order was received, the president conducted a vote among the membership of the Executive Board and the Officers. Pursuant to that vote, they instructed the employees to return to work, and the employees did so.

DISCUSSION

On these facts, we conclude that there was a strike on December 14 and 15, 1978. We do not find sufficient evidence to support a conclusion that respondent caused or instigated the strike. However, once it commenced, the conduct of respondent's president and directors establishes that respondent condoned the strike. The unauthorized absence of so many of the directors is highly significant. Their action constituted an example for the

rank and file members and they followed it. We also note that the strike ended pursuant to a vote of respondent's leaders and their direction to the employees to return to work. This plainly indicates their control of the situation. That such a vote was not held at the earliest possible moment, but was taken only after receipt of the restraining order reflects a condonation of the strike. Even if the leadership believed that an earlier direction to end the strike might not have persuaded a recalcitrant membership, which had twice rejected leadership supported agreements, their failure to exert any significant forceful efforts to terminate the strike before receipt of the restraining order constituted a breach of their obligations and a condonation of the strike.

Accordingly, we find that respondent violated §210.1 of the Taylor Law.

Ordinarily for a first strike lasting two days affecting the welfare of the community, but not its health or safety, we would have imposed a penalty of six months' forfeiture of dues checkoff and agency shop fee privileges.[1] Because respondent condoned the strike but did not cause it, we find that a penalty of four months' duration is reasonable and will effectuate the policies of the statute.

1] See, e.g., Mayville Central School Unit of the Civil Service Employees Association, 5 PERB ¶3009 (1972), and Frankfort-Schuyler Teachers Association, 5 PERB ¶3062 (1972).

NOW, THEREFORE, WE ORDER that the Niagara Frontier Transportation Authority cease deducting dues or agency shop fee payments on behalf of the Amalgamated Transit Union, Division 1342 for a period of four months, commencing on the first practicable day after the date of this decision. Thereafter, no dues or agency shop fee payments shall be deducted on its behalf by the Authority until the union affirms that it no longer asserts the right to strike against any government, as required by §210.3(g) of the Taylor Law.

DATED: New York, New York
May 1, 1980

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

6273

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
GATES-CHILI CENTRAL SCHOOL DISTRICT,	:	
Respondent,	:	BOARD DECISION AND ORDER
-and-	:	
GATES-CHILI TEACHERS ASSOCIATION,	:	
Charging Party,	:	CASE NO. U-3885
-and-	:	
GATES-CHILI EDUCATORS ASSOCIATION,	:	
Intervenor.	:	

RAYMOND E. MORRIS, ESQ., for Respondent
GILBERT BIANCUCCI, for Charging Party
PAUL E. KLEIN, ESQ., for Intervenor

The charge herein was filed by the Gates-Chili Teachers Association (Association), which is the duly recognized negotiating representative of the teachers employed by the Gates-Chili Central School District (District). The charge is that the District committed an improper practice when it allowed a competing employee organization, the Gates-Chili Educators Association (GCEA), access to mailboxes and other facilities of the District, over the objection of the Association.[1/] No hearing was held since the parties agreed to submit the case on stipulated facts. In addition to the facts set forth in this paragraph, the only other

1/ GCEA was permited to intervene in the proceeding.

stipulated facts are: "At a hearing, the employer would offer testimony that GCEA's access prior to the filing of the charge consisted of notice of an income tax seminar by a 'tax person' not a member of GCEA, the tax seminar, and a GCEA newsletter."

The hearing officer dismissed the charge. She found that (1) this Board's decisions in Cheektowaga-Maryvale Union Free School District[2/] and Great Neck Union Free School District[3/] did not support the contention that the employer may not grant access privileges to an unrecognized competing organization at any time other than proximate to the challenge period, (2) Civil Service Law §208.2 did not bar the employer's permission for the distribution of information to public employees by an outside employee organization, at least in the absence of evidence of improper motivation on the part of the District to circumvent its obligations to the Association, and (3) any claim of a contract right to exclusivity of access is beyond this Board's jurisdiction. The matter comes to us on the exceptions of the Association to the decision of the hearing officer.

2/ 11 PERB ¶3080 (1978), affirmed Maryvale Educators Association v. Newman, 70 App. Div. 2d 758 (Third Dept., 1979), 12 PERB ¶7009, motion for leave to appeal denied, 48 NY2d 605 (1979), 12 PERB ¶7018.

3/ 11 PERB ¶3079 (1978).

DISCUSSION

In support of its exceptions, the Association argues that this Board's Cheektowaga-Maryvale and Great Neck decisions held that a public employer must deny access privileges for all purposes to an unrecognized competing organization at all times not proximate to the challenge period. No such holding was required by the facts of those cases. They were brought by unrecognized employee organizations which charged public employers with improperly favoring the duly recognized employee organization by denying the outside organizations equal access to teachers and mailboxes for the purpose of soliciting support and membership in the organization. Taken together, those two decisions hold that a public employer is under no Taylor Law duty to permit an unrecognized competing employee organization such access to teachers and teacher mailboxes at a time which is remote from the period when the outside organization can petition for certification, but that the competing organization must be permitted such access when the time for filing of a petition is proximate. This case, therefore, is one of first impression for this Board in that it presents for the first time the question of the nature of the employer's obligation under the statute toward a recognized employee organization as to the use of its facilities by an outside employee organization for any purpose at times other than the challenge period.

6276

A recognized employee organization's right to "unchallenged representation status" (CSL §208.2) reflects a basic policy of the Act to accord a period of stability to the employer-union relationship. The representative freely chosen by a majority of the employees in the negotiating unit has a right to a period of

quiet enjoyment of its status as their agent for recognized labor relations purposes. Among other things, this means that the employer may not improperly deal with or support another employee organization. An employer, therefore, is not free to grant whatever access privileges it chooses to an unrecognized competing organization during the period of unchallenged representation status. Such privileges could be used for purposes which would undermine the status of the recognized representative and, thus, improperly interfere with the employees' right to choose their own representative.

The Association has chosen to submit its case on the barest of records. The facts in this record do not permit us to find that the access actually permitted to GCEA by the District was of such a nature or for such a purpose as to constitute improper interference with the status and rights of the Association and the employees it represents. All we have before us is a single instance of permitting an entity, which happens to be another employee organization, to sponsor a "tax seminar" held on the District's premises and allowing it simply to communicate notice of that seminar through the school mailboxes. We know nothing further about the purposes of the "tax seminar" or about the circumstances under which it took place at that time.4/ We are constrained, therefore, to hold that, on this record, there is insufficient evidence of improper conduct by the District.

4/ We do not pass upon the propriety of permitting the distribution of the GCEA newsletter, since the contents thereof were not placed in evidence.

The Association also argues that the terms of its contract with the District give it a right to exclusive access of any kind to the teachers of the District. This is a question of contract enforcement which is not a proper one for this Board to consider. St. Lawrence County, 10 PERB ¶3058 (1977); CSL §205.5(d).

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

DATED: May 1, 1980
New York, 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 COUNTY OF NASSAU, Respondent, -and- NASSAU CHAPTER, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., Charging Party.	BOARD DECISION ON MOTION CASE NO. U-3511

EDWARD G. McCABE, ESQ. (JACK OLCHIN, ESQ., of Counsel), for Respondent

RICHARD M. GABA, ESQ., for Charging Party

This matter comes to us on the Motion of the Nassau Chapter of the Civil Service Employees Association, Inc. (charging party) to dismiss exceptions filed by the County of Nassau to a hearing officer decision that the County had committed an improper practice. The basis of the motion is that the exceptions were not timely filed.

On September 4, 1979, the hearing officer issued a decision in which he determined that the County of Nassau had improperly increased the number of working hours and working days of certain of its employees and he ordered the County to "restore and revert to the shift schedule in effect prior to July 14, 1978 and...recompense, at the overtime rate, its employees who have worked in excess of the working week established by the former schedule."

Section 204.10 of the Rules of this Board provide that an aggrieved party can file exceptions to the decision of a hearing officer within fifteen working days of its receipt of the decision. The Nassau County Attorney filed exceptions with the Board and served a copy of the exceptions upon the charging party. He alleges that he did so on September 25, 1979, by depositing in a United States mail box envelopes addressed to this Board and to the charging party which contained the exceptions. By November 1, 1979, the County Attorney knew that the exceptions had not been delivered either to this Board or to the charging party. Nevertheless, the County did not file and serve substitute papers until March 24, 1980. In explanation of this delay, the County Attorney states that he was very busy between the time he was informed that the exceptions had not been delivered and November 30, 1979, when he went on vacation. Moreover, shortly after his return from vacation, the County Attorney became ill and was absent from work until approximately ten days before the exceptions were finally filed.

The County's explanation for its late filing is not acceptable. The delay between the time when the County Attorney was informed that the exceptions were not received and the time when he left on vacation was, in itself, more than fifteen working days. Moreover, the County Attorney's vacation is not a circumstance which would justify the County's failure to file and serve its exceptions within the required time limits.[1]

---

[1] See Westbury Union Free School District, 12 PERB ¶3107 (1979).

Accordingly, we grant the Motion of the charging party and WE ORDER that the exceptions herein be, and they hereby are, DISMISSED. [2]

DATED: New York, New York
May 2, 1980

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

[2] The effect of this order is that Section 204.14(b) of our Rules of Procedure imposes the decision and recommended order of the hearing officer.

6281

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of EAST IRONDEQUOIT CENTRAL SCHOOL DISTRICT, Respondent, -and- ASSOCIATION OF EAST IRONDEQUOIT ADMINISTRATORS, Charging Party.	BOARD DECISION AND ORDER CASE NO. U-4144

RALPH A. HORTON, ESQ., for Respondent

HINMAN, STRAUB, PIGORS & MANNING (BARTLEY J. COSTELLO, III, ESQ., of Counsel), for Charging Party

This matter comes to us on the exceptions of the East Irondequoit Central School District (Respondent) to a hearing officer's decision that it violated its duty to negotiate in good faith with the Association of East Irondequoit Administrators (Charging Party). For twenty years, administrators employed by Respondent who are now in a negotiating unit represented by Charging Party had worked an 11-month schedule. On June 18, 1979, Respondent's school board adopted a resolution which provided for a 10-month work schedule. The resolution stated:

> "RESOLVED, That, effective July 1, 1979, elementary principals be placed on a 10-month work schedule. Payment for work performed during recess or vacation periods during the 1979-80 school year will be made on the basis of 1/200th of adjusted 1978-79 salary; and
>
> BE IT FURTHER RESOLVED, That the Superintendent of Schools be authorized to determine the need for work assignments beyond the 10-month schedule, subject to Board of Education approval."

The new schedule took effect on July 1, 1979, the day following the expiration of the last agreement between the parties. At the time when the resolution was passed, the parties were in negotiations for an agreement to succeed the one that was expiring.

Respondent, in its exceptions, concedes that it unilaterally changed the work year of some of its administrators while it was in negotiations for an agreement covering the terms and conditions of employment of those administrators. It argues, however, that the unilateral change was consistent with its Taylor Law obligations because the curtailment of working time was in the nature of a partial layoff of the administrative employees and, thus, in accordance with New Rochelle, 4 PERB ¶3060 (1971). That argument had been presented to and was rejected by the hearing officer. She determined that the amount of work assigned to the affected administrators had not been significantly curtailed by Respondent's unilateral action. The administrators were required to do substantially the same services and amount of work as before, although some of their assignments were rescheduled. Thus, according to the hearing officer, the applicable rule is stated in City of Oswego, 5 PERB ¶3011 (1972), aff'd Oswego School District v. Helsby, 42 App.Div. 2d 262 (3rd Dept., 1973) and not New Rochelle, supra.

In Oswego, as here, in order to reduce their compensation, a school district curtailed the work year of administrators without intending to limit the services performed by them. The court said (at pages 264 and 265):

> "The length of the work year is a function of hours of work and thus a 'term of employment'.... The employer's decision in the instant case does not fall into the concept of a basic policy decision but is simply a unilateral decision to change the hours and wages of the school administrators without negotiation."

Having reviewed the record and considered the arguments of the parties, we affirm the hearing officer's findings of fact and conclusions of law.

NOW, THEREFORE, WE ORDER Respondent to restore the 11-month work schedule of the affected administrative employees and to compensate such employees for any loss of salary and other benefits.

DATED: New York, New York
May 2, 1980

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Application of the :	
COUNTY OF DELAWARE :	BOARD DECISION AND ORDER
for a determination pursuant to Section 212 of the Civil Service Law. :	DOCKET NO. S-0057

At a meeting of the Public Employment Relations Board held on the 2nd day of May, 1980, and after consideration of the application of the County of Delaware made pursuant to Section 212 of the Civil Service Law for a determination that its Resolution No. 42, dated June 12, 1969, as last amended by Resolution No. 102, dated April 9, 1980 is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board, it is

ORDERED, that said application be and the same hereby is approved upon the determination of the Board that the Resolution aforementioned, as amended, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board.

DATED: New York, New York
May 2, 1980

Harold R. Newman
HAROLD R. NEWMAN, Chairman

Ida Klaus
IDA KLAUS, Member

David C. Randles
DAVID C. RANDLES, Member

6285

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIO BOARD

In the Matter of

BOARD OF EDUCATION, CORNING CITY SCHOOL DISTRICT,

Employer,

-and

CORNING CITY SCHOOL DISTRICT EDUCATIONAL ADMINISTRATORS/SUPERVISORS ASSOCIATION,

Petitioner.

Case No. C-1929

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 Corning City School District Educational Administrators/Supervisors 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: Principals, Assistant Principals, Supervisor of Building & Grounds, Supervisor of School Lunch Program, Director of Physical Education, Supervisor of Pupil Personnel Services, Supervisor of Transportation, Assistant Director of Head Start.

Excluded: All others.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Corning City School District Educational Administrators/Supervisors Association

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 1st day of May, 1980
New York, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

6286