

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-8/19/75

In the Matter of

CITY OF NEW YORK

Respondent,

- and -

THE UNIFORMED FIREFIGHTERS ASSOCIATION,
LOCAL 94, I.A.F.F., AFL-CIO,

Charging Party.

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BOARD DECISION AND ORDER

CASE NO. U-1351

This case comes to us on the exceptions of the City of New York (City) from a decision of a hearing officer finding that the City had refused to negotiate in good faith with the Uniformed Firefighters Association, Local 94, I.A.F.F., AFL-CIO (UFA) in violation of CSL Section 209-a.1(d) in that it refused to execute a negotiated collective agreement and had insisted that the agreement contain terms other than those agreed upon. The hearing officer had recommended,

"that the City be ordered to negotiate in good faith, this order contemplating that the City shall cease and desist from reneging upon its agreements with UFA concerning parking, insurance, mealtime and productivity as set forth above and that the City execute a final contract with UFA which will embody provisions consistent with the parties' own agreements reached during negotiations."

THE ISSUES

1/

The City's exceptions specify forty-four alleged errors in the hearing officer's decision and recommended order. To some extent the forty-four exceptions are repetitive and a few deal with matters of no consequence, such as exception No. 2, which correctly notes that the names of some individuals were misspelled in the hearing officer's decision. The critical exceptions are

1/ The exceptions appear to allege 45 errors, but No. 18 has been omitted.

those dealing with:

1. The hearing officer's finding that an agreement was reached on July 16 and 17 with respect to parking, insurance, mealtime and productivity and his findings regarding the specifics of those agreements; and
2. The hearing officer's determination that where their testimony conflicted, the testimony of Mr. Richard L. O'Hara, an attorney and witness on behalf of UFA, was more credible than the testimony of City witnesses; and
3. The hearing officer's recommended order that the City execute its agreement with UFA. (The order is allegedly ultra vires the power of PERB.)

The duty to negotiate contemplates that the parties execute written contracts embodying the fruits of their negotiations. Civil Service Law Section 204.2 requires public employers "to negotiate and enter into written agreements" with recognized and certified employee organizations covering terms and conditions of employment. Having reviewed the record, read the briefs and heard the oral arguments of the parties, we confirm the determination of the hearing officer that the City violated CSL Section 209-a.1(d) by refusing to execute a negotiated collective agreement, and by insisting that the agreement contain terms other than those agreed upon.

Except for the three categories of exceptions enumerated above which we discuss herein, we endorse the findings of fact and conclusions of law of the hearing officer for the reasons specified in his decision.

PARKING, INSURANCE, MEALTIME - FACTS AND DISPUTES

As part of the ground rules, the parties agreed that they would engage in package bargaining. This is a procedure by which item-by-item agreements of both sides are not binding unless and until there is a complete contract. The parties also agreed that the benefits specified in the prior contract would continue except

2/
as modified in the new contract.

The parties participated in intensive negotiations on July 15 and 16, 1974 continuing into the early morning of July 17. On the first of these days the parties reached an agreement on a wage increase. The union accepted a proposal of Mr. Cavanaugh, First Deputy Mayor of the City, for a two-year package consisting of 8% one year and 6% the following year (R. 19). Four other issues remained open at that time and are of concern to us now. They involved parking, insurance, mealtime and productivity. The disputes involving the first three are sufficiently similar for us to consider them simultaneously. The parties reached agreements in principle on all three, but could not resolve the details because data and/or resource personnel were unavailable to the City negotiators at the time. However, having agreed upon a wage increase, the major concern of the parties was to put it into effect as soon as possible. 3/ Accordingly, the parties resolved to conclude their agreement for the purposes of satisfying the requirements of package bargaining with agreement in principle on the three issues, with the details to be worked out thereafter. (This is a conclusion of the hearing officer to which the City takes exception, but which we find to be supported by the evidence.)

The issue in dispute concerning parking was the unavailability of adequate parking for firefighters in the vicinity of the fire houses. Under

2/ Mr. O'Hara testified (at R. 130):

"We both took the position that commitments made in and of themselves were not binding unless the whole deal was put together, and that once the deal was put together we'd have all of our old benefits as provided in the contract come forward except as modified or changed by the new agreement."

3/ Mr. Cavanaugh testified (at R. 1003):

"I made one statement that I remember, that I was very anxious to get the men paid; that I felt that the men were suffering because of cost of living."

consideration were techniques to make available more on-street parking. The City could not resolve this issue without consulting with knowledgeable people, including the Traffic Commissioner, who were not present at the time (R. 131). The insurance issue derived from a complaint that firefighters were paying thirty-six dollars for two thousand dollars worth of insurance coverage and this was deemed to be too expensive. Mr. Cavanagh undertook to consult with the City Actuary in order to ascertain whether a better insurance program could be obtained (R. 394). Shortly after the meeting the UFA submitted its version of the agreements on parking and insurance. On August 28, 1974 the City submitted its version of the agreements. The two sets of proposed language are as follows:

UFA VERSION

"There shall be established a joint committee consisting of Mr. Vizzini and Mr. Cavanagh to study the matter of the provision of on-street parking at fire fighting facilities and also to study the matter of the \$2,000 compulsory life insurance policy presently held by all active and retired firefighters looking to improvement of the premium level and/or the benefit level."

CITY VERSION

"There shall be established a joint committee consisting of a representative of the U.F.A. and a representative of the City to study the matter of the provision of on-street parking at fire fighting facilities and also to study the matter of compulsory life insurance policy presently held by all active and retired fire-fighters looking to improvement of the premium level and/or the benefit level. This Article shall not be subject to the grievance procedure and arbitration."

There are only two differences in the two proposals: (1) UFA identifies Mr. Vizzini, the president of UFA and Mr. Cavanagh as the members of the committee to resolve the details regarding the parking and insurance, while the City language refers to a joint committee of unnamed representatives of UFA and the City; (2) The City language specifies that the work of the joint committee is not subject to the grievance procedures and arbitration, while the UFA language is silent on this. The UFA did not contemplate that the work of the joint committee would be subject to grievance or arbitration even without the explicit exclusion and it accepts the City's specific preclusion. Thus, the

only matter at issue is the specification of Vizzini and Cavanagh as the members of the committees.

The issue concerning mealtime and its resolution is similar. The parties agreed that each fireman would receive one-half hour meal period on each tour effective October 1, 1974, but were uncertain as to how to implement this meal period. Of primary concern to the City was the maintenance of a sufficient complement of firemen to answer calls. This involved a determination of the type of alarm that would require a firefighter to interrupt his mealtime. The details could not be resolved during negotiations because of the absence of a key resource person. As in the case of parking and insurance, each side drafted its own version of the agreement:

UFA VERSION

"A. Each fireman shall receive one half-hour meal period in each tour effective October 1, 1974. Implementation to be worked out by a committee of Mr. Vizzini and Mr. Cavanagh prior to October 1, 1974.

B. The scheduling of and the conditions under which the meal period will be provided shall be set forth as an addendum to this agreement."

CITY VERSION

"A. Each fireman shall receive one half-hour meal period in each tour effective October 1, 1974.

B. Implementation shall be first worked out by a committee of a representative of the U.F.A. and a representative of the City prior to October 1, 1974. This subsection shall not be subject to the grievance procedure or arbitration.

C. The scheduling of and the conditions under which the meal period will be provided which results from agreement of the committee established pursuant to subsection B hereof, shall be set forth as an addendum to this Agreement."

Once again, the two distinctions between the two versions are (1) the specification by UFA of Vizzini and Cavanagh as the committee to resolve the implementation question and the absence of any such specification in the City language and (2) the specification in the City version that the mechanics of the implementation were not subject to grievance or arbitration and the absence of such a specification in the UFA version. As in the case of parking and insurance, the UFA does not question the accuracy of the City version regarding grievance or

arbitration, leaving only the issue of the specification of Vizzini and Cavanagh as the committee.

PARKING, INSURANCE, MEALTIME - CONCLUSIONS

In all three instances the hearing officer resolved the issues in favor of the UFA's version on the basis of his resolution of credibility issues.^{4/} It is the posture of the City that Deputy Mayor Cavanagh could not have intended to accept responsibility for the resolution of technical issues involving parking, insurance and mealtime inasmuch as he lacked the technical expertise. Any implication that he may have assumed that responsibility during negotiations was explained by Mr. Cavanagh (at R. 929) as follows:

"You have got to look at it this way: I am the First Deputy Mayor. I have a staff of about 126 people. When I talk, 'me', I talk collectively me. I can't do everything myself. I would always put people onto things and put people in touch with things."

The hearing officer found that the UFA's language had been agreed upon. This finding is supported by the evidence. The UFA was entitled to rely upon the dictionary meaning of Mr. Cavanagh's "me" unless his understanding of the collective 'me' had been communicated to them. The resolution of such an issue does not go to the question of what language was agreed upon; it involves interpretation of contract language and thus is particularly appropriate for the contractual grievance procedure and arbitration. In any event, it does not appear to us that the language of the agreement as recorded by UFA requires Deputy Mayor Cavanagh to serve as the City's representative on the committees without technical support. What the UFA sought and obtained an agreement for was not Mr. Cavanagh's participation on the committees as the City's technical expert, but rather for his authority on those committees. They were anxious for the City to be represented at a sufficiently high level of responsibility to

^{4/} During the course of the hearing, the hearing officer indicated that he was giving particular attention to the demeanor of witnesses in order to better ascertain their credibility (R. 74).

increase the likelihood of an agreement, should it be necessary for some one ^{5/} individual to pressure the City's technicians.

PRODUCTIVITY

There were a number of indications during the hearing that the dispute between the parties regarding productivity is the most significant issue in the ^{6/} case. Deputy Mayor Cavanagh insisted that the contract had to contain productivity language satisfactory to it in order to justify the cost of the settlement. A representative of the Uniformed Sanitationmen's Association, who was present during negotiations, proposed that productivity language that was included in the settlement between the Transit Authority and the Transit Workers' Union might be appropriate. With some modifications, this language was accepted by both parties. (This is the conclusion of the hearing officer. It is contested by the City, but we find that it is supported by the evidence.) The Transit Authority language was distributed by Mr. Hediger, Deputy City Director of Labor Relations, at the request of the City negotiating team (R. 551, 552) and was accepted by UFA (R. 52). Fire Commissioner O'Hagan then raised objections alleging that the proposed language would diminish his managerial prerogatives. It seems clear that this would be the effect of the Transit Authority language.

5/ For example, with respect to mealtime, Mr. O'Hara testified (at R. 387):

"The Deputy Mayor said that he, one, was not sufficiently versed that evening in firematics to make a determination whether we were right, the Commissioner was right or whether he could slice it some place in between, so he needed time. He also said he needed time to lean on the Commissioner a little bit because the Commissioner was taking a very formalistic approach and he needed time to ease him into a more acceptable - a position that would be more acceptable to us. And if he had this time and opportunity to work on a one-to-one basis with Mr. Vizzini, he assured us that we would reach an agreement."

6/ Mr. O'Hara testified (at R. 212) that, in a discussion with Mr. Cavanagh on October 4 concerning the mealtime and parking issues, Mr. Cavanagh said,

"Let's work out the productivity language, let's get that behind us, and we might not have any problems with the other thing."

On the other hand, it would establish a procedure -- including arbitration -- for the resolution of productivity issues that would be binding upon the UFA, whereas the then-existing procedure permitted the UFA to resist the Commissioner's exercise of his managerial prerogatives. In any event, Commissioner O'Hagan's objections precipitated further negotiations. These further negotiations produced a revision of the Transit Authority language that ^{7/} was accepted by both parties. On July 29 and August 28, respectively, UFA and the City submitted their respective versions of the agreement on productivity.

UFA VERSION

"It is agreed:

1. The parties are determined to and will cooperate in working towards achieving as promptly as possible the most efficient and economical utilization of work forces and facilities. The (Joint Committee) Committees will review production practices and procedures, including work programming, practices and procedures affecting the training and utilization of employees, adequacy of materials, tools, facilities available to employees, work loads and productivity of employees, and other practices, procedures or circumstances which affect the safe, and economical and efficient operation.

CITY VERSION

"It is agreed that the parties are determined to and will cooperate in working towards achieving as promptly as possible the most efficient and economical utilization of work forces and facilities. Toward that end, a Joint Committee will be established for the Fire Department. The Joint Committee will review proposals brought to it by the City regarding production practices and procedures, including work programming, practices and procedures affecting the training and utilization of employees, work loads and productivity of employees and other practices, procedures or circumstances which affect economical and efficient operation.

The Department and the Union will cooperate in the prompt effectuation of the recommendations of the Joint Committee. The Joint Committee shall consist of two

7/ Mr. O'Hara testified (at R. 80-82):

"Mr. Cavanagh said that he didn't really feel that the problem was that grave and it was simply a question of editing and straightening out this language so that it would be acceptable to all. He, thereupon, embarked in his hand to make corrections.... He asked me if I was afraid of arbitration, and I replied I was not. He also explained that he had to do some of these things in part to ameliorate the Fire Commissioner and yet still work toward achieving an agreement with the Union. We now both took the opportunity to look over the document as edited by Mr. Cavanagh. I indicated it was satisfactory to me, that the language was still sufficiently intact with the editing to accomplish what I wanted and he indicated the language was good for him."

UFA VERSION (cont'd)

2. The Department and the Union will cooperate in the prompt effectuation of the recommendations of the joint committee. (The Joint Committee shall consist of) The City shall be represented by (two designees of the Fire Commissioner of the City of New York), and two (designees) representatives of the (Uniformed Firefighters Association) Union.

3. Should a (the Joint) committee fail to agree on a recommendation within thirty days after a matter, within the scope and purpose of this agreement, is submitted to it in writing by either party, then either party may, upon written notice to the other party, submit such matter to the Impartial Chairman, whose decision shall be final and binding."

It is now the posture of the City that it never reached any agreement concerning productivity. Mr. Cavanagh testified (at R. 921) that there had not been an agreement beyond general principles which would have to be developed further by technicians. He also testified (at R. 997) that he had always understood that productivity issues would be resolved by a city-wide productivity council and that he communicated this understanding to UFA on July 16 (R. 1009). The hearing officer, however, credited the testimony of Mr. O'Hara (at R. 182) that the concept of a citywide productivity council was not raised until after September 18. He also credited the UFA version of the events of July 15-17 as yielding an agreement on productivity. The very existence of a City version of such an agreement is persuasive that the City negotiators thought that an agreement on productivity had been reached. Finally, the hearing officer credited the UFA version of the agreement.

Finding an agreement upon productivity language for a new contract still leaves one important problem concerning productivity. To what extent did

CITY'S VERSION (cont'd)

designees of the City and two designees of the Uniformed Firefighters Association.

Should the Joint Committee fail to agree on a recommendation within thirty days after a matter, within the scope and purpose of this Agreement, is submitted to it in writing by the City, then the City may, upon written notice to the Union, submit such matter to a mutually agreed upon arbitrator who is expert in the subject matter in dispute and whose decision shall be final and binding."

the new productivity language replace language in the prior agreement? It is the posture of UFA and accepted by the hearing officer that the new productivity language replaces Article XXVII-A, Section 4(d) on the theory that the superseded language is directly and completely contradicted by the new agreement. The record, however, indicates that there was no explicit agreement to eliminate Article XXVII-A, Section 4(d) (R. 195) and the City states that there was no such implicit agreement either. It argues that such Section 4(d) relates to the weighted response index, which has continuing significance under the contract and that "the weighted response index doesn't necessarily mean productivity."^{8/} Again we confront an issue involving the interpretation of the parties' agreement, rather than a question of what language was agreed upon. A new productivity provision was agreed upon, but there was no agreement to delete old Article XXVII-A, Section 4(d), the continuing relevance of which is under challenge. Questions including the continuing implications of the old language in the light of the new can be resolved by the grievance procedure, including arbitration.

It is not surprising that the agreement has left open questions that may have to be resolved by arbitration. This has occurred in past negotiations between the City and the UFA.^{9/} Moreover, New York City and UFA are not unique in reaching agreements that leave gaps and include ambiguities

8/ Testimony of Hediger at R. 625

9/ Commissioner O'Hagan testified (at R. 864):

"[I]n the seven to eight years I have been involved as a principle representative of the Fire Department in labor negotiations, I find that one of the failings of the whole process has been that when we do come to a point where I think we have an agreement, the agreement is never spelled out precisely. And we have spent, as you know, the last several years trying to arbitrate what we have agreed to. Even when it is put in final language and in every instance where it hasn't been in final language. If you say to me, is it incongruous we didn't have final language on productivity and the next day Cavanagh stated there was a settlement, I don't find it incongruous. I would assume in his mind, he found we were in the wake of coming up to conclusive language."

that may have to be resolved by arbitration. Professor Archibald Cox, in Law and the National Labor Policy, U.C.L.A. Institute of Industrial Relations, Monograph No. 5, Feb. 1960, pp 79-80, has written about the collective agreements and the role of arbitration in their administration as follows:

"The resulting contract is essentially an instrument of government, not merely an instrument of exchange. 'The trade agreement thus becomes, as it were, the industrial constitution of the enterprise, setting forth the broad general principles upon which the relationship of employer and employee is to be conducted.' (NLRB v. Highland Park Mfg. Co.)

One cannot reduce all the rules governing a community like an industrial plant [or a public agency] to fifteen or even fifty pages. The institutional characteristics and governmental nature of the collective bargaining process demand a common law of the shop which implements and furnishes the context of the agreement.....

The generalities, the deliberate ambiguities, the gaps, the unforeseen contingencies, and the need for a rule even though the agreement is silent all require a creativeness in contract administration....."

RESOLUTION OF CREDIBILITY ISSUES

Several of the City's exceptions are directed at findings of the hearing officer that testimony of O'Hara's was more credible than was conflicting testimony of the City's witnesses. The City contends that the hearing officer did not make credibility findings based on demeanor and, citing Poinsett Lumber and Manufacturing Co., 147 NLRB No. 156 (1964), urges that we give little weight to those findings. It further contends that the logic of the circumstances contradicts O'Hara's testimony and supports that of the City's witnesses.

Consideration of the hearing officer's decision persuades us that he did, in fact, base his determinations regarding the credibility of witnesses upon their demeanor; thus, we deem ourselves bound by his findings in this regard (Matter of Fashion Institute of Technology v. Helsby, 44 App.Div. 2d 550, [First Dept.]; 7 PERB 7008 [1974]). Moreover, even absent the hearing officer's

resolution of credibility issues, our reading of the record would have led us to the same conclusion as the hearing officer. A few references to testimony and to related circumstances:

1. Cavanagh testified that he had contemplated a citywide productivity council as early as July 16 and had communicated this to UFA, and yet there is no mention of such citywide council in the City's version of the agreement submitted on August 28. The City's language speaks of a joint productivity committee consisting only of two designees of the City and two designees of UFA. Moreover, there was no reference to a citywide productivity council in the City's summary of all points of agreement that was prepared by Hediger (R. 700 and Charging Party's Exhibit 3).
2. During cross-examination of Hediger regarding the events concluding the negotiating session on the morning of July 17, he reluctantly conceded that the parties expressed pleasure. At first he explained the expressions of pleasure as being occasioned by the ending of the meeting, but subsequently conceded (at R. 739):

"I am sure that both sides expressed pleasure that they had what both sides believed to be a resolution of collective bargaining negotiations."

3. Perhaps the most persuasive circumstance that an agreement was reached is that the City announced the reaching of an agreement at a City Hall ceremony later on the morning of July 17. At that ceremony Cavanagh read, on behalf of the Mayor who was ill, the following press release:

"I am pleased to announce that a contract settlement has been negotiated with the members of the Uniformed Firemens Association and the Sanitation Workers.

The proposed contracts have been agreed to after a tough bargaining session which was carried out in the best traditions of collective bargaining....

"On the basis of the details reported to me, I believe we have an equitable settlement which strikes a balance between the serious fiscal constrictions of the City and the ability of our employees to cope with the high cost of living which has been escalating rapidly over the past several years...."

Commissioner O'Hagan, testifying about that press conference (R. 857) said that he didn't hear anybody discuss settlement, "I was a spear carrier that day. I was left out on the veranda while those discussions took place inside."

Deputy Mayor Cavanagh also had only hazy recollections of the press conference.
10/

THE REMEDY RECOMMENDED BY THE HEARING OFFICER

The hearing officer's decision and recommended order was issued on March 27, 1975. Several weeks later, on May 7, 1975, the New York State Court of Appeals issued its decision in Jefferson County v. PERB, 36 N.Y. 2d 534. In that decision the Court of Appeals determined that where PERB finds that an employer has failed to negotiate in good faith in violation of CSL Section 209-a.1(d) by unilaterally changing terms and conditions of employment, all PERB is statutorily empowered to do is to order the employer to negotiate in good faith. Although the Appellate Division had agreed that a unilateral alteration of terms and conditions of employment does constitute a failure to negotiate in good faith, it and the Court of Appeals found "that the scheme of the Taylor Law 'does not embrace enforcement by PERB in this situation, as to which the parties may have their rights determined by court action.' (44 AD 2d 894)".

10/ The uncertainty of Cavanagh regarding the events preceding and during the press conference is demonstrated at R. 968 - 973, culminating in the following testimony at R. 972:

"Q. Do you have any recollection of what transpired at the press conference?

A. No.

Q. None whatsoever?

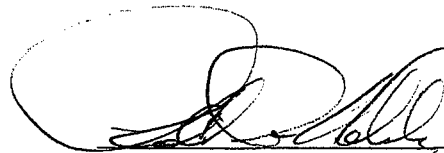
A. No."

Following the reasoning of the Court of Appeals, although in the instant case the nature of the employer's failure to negotiate in good faith is its violation of CSL Section 209-a.1(d) as well as the explicit requirement of CSL Section 204.2 by refusing to execute an agreement that it had reached, PERB's authority is likewise limited to ordering the employer to negotiate in good faith. Presumably, if the City does not comply with the order by meeting its obligation to execute the agreement that it reached, the parties herein may also have their rights determined by court action.

NOW, THEREFORE, in view of the above findings of fact, conclusions of law, and in view of the specific violation of the Act that we have found to have occurred,

WE ORDER the City of New York to negotiate in good faith with the
Uniformed Firefighters Association.

Dated: Albany, New York
August 19, 1975



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF

RENSSELAER COUNTY,

#2B- 8/19/75

-and-

Employer,

LOCAL 200, SERVICE EMPLOYEES'

INTERNATIONAL UNION, AFL-CIO,

C-1246 &

Case Nos. C-1247

-and-

Petitioner,

RENSSELAER COUNTY UNIT OF THE
RENSSELAER COUNTY CHAPTER OF THE CIVIL :
SERVICE EMPLOYEES ASSOCIATION, INC.,

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 Rensselaer County Unit of the Rensselaer County Chapter of the Civil Service Employees Association, Inc., has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: See Attachment page 2 hereof.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Rensselaer County Unit of the Rensselaer County Chapter of the Civil Service Employees Association, Inc., 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 19th day of August, 1975.


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON

Attachment

Included: All employees of the County.

Excluded: Elected and appointed officials, department heads, personnel employed at Hudson Valley Community College other than classified employees, CETA personnel, deputy sheriffs, seasonal, part time employees employed less than twenty hours per week and the employees serving in the following positions: Legislator, Administrative Assistant to Chairman, Clerk of the Legislature, Deputy Clerk of the Legislature, Legislative Assistant to Majority, Legislative Assistant to Minority, Confidential Secretaries, Judge of County Court, Confidential Law Assistant, Confidential Secretary, Judge of Family Court, Clerk of the Court, Clerk to the Judge, Judge of Surrogate Court, Chief Clerk, Deputy Clerk, Confidential Secretary, District Attorney, 1st Assistant District Attorney, Assistant District Attorney, Confidential Secretary, County Treasurer, Deputy County Treasurer, Confidential Secretary, County Clerk, Deputy County Clerk, Confidential Secretary, Sheriff, Undersheriff, Confidential Secretary, Commissioner of Jurors, Deputy Commissioner of Jurors, Commissioner of Civil Service, Executive Secretary, Commissioner of Board of Elections, Administrator, Commissioner of Sewers, Commissioner of Health, Confidential Secretary, Medical Director, Dental Director, Public Health Lab Director, Director of Environmental Health, Director of Public Health Nursing, Director of Tuberculosis Control, Commissioner of Mental Health, Clinic Director, Secretary to Director, Commissioner of Social Services, Director of Social Services, Director of Administrative Services, Administrative Assistant, Executive Director Van Rensselaer Manor, Senior Stenographer (Secretary to Executive Director), Secretary to Commissioner, Commissioner of Youth Bureau, Administrative Assistant, Secretary to Commissioner, Director of Bureau of Youth Services, Director of Drug Education and Prevention, Director of Bureau of Detention Services, Coordinator of Aging Services, Aging Services Director, Aging Services Assistant, County Attorney, Assistant County Attorney, Confidential Secretary, County Auditor, Confidential Secretary, Purchasing Agent, Confidential Secretary, Budget Director, Confidential Secretary, Highway Superintendent, Deputy Highway Superintendent, Confidential Secretary, Public Defender, Assistant Public Defender, Confidential Secretary, Director of Probation, Director of Civil Defense, Director of Emergency Employment Agency, Director of Veteran Affairs, Superintendent of Buildings, Fire Coordinator, Sealer of Weights and Measures, Director of Planning.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

#2C#8/19/75

Employer,

-and-

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

Case No. C-1176

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 United Federation of Teachers, Local 2, NYSUT, NEA, AFT, AFL-CIO

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

Unit:

Included: Teacher aide, educational associate, educational assistant, auxiliary trainer and bi-lingual professional assistant.

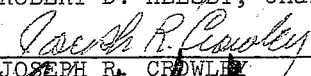
Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with United Federation of Teachers, Local 2, NYSUT, NEA, AFT, AFL-CIO

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 19th day of August, 19 75.


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. BENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
COUNTY OF COLUMBIA AND COLUMBIA : #2D-8/19/75
COUNTY SHERIFF, :
-and- Joint Employer, : Case No. C-1253
COLUMBIA COUNTY DEPUTY SHERIFF'S :
BENEVOLENT 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 Columbia County Deputy Sheriff's Benevolent Association

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

Unit:

Included: All full-time Deputy Sheriffs including Matron, Jailers, Communications Men, Road Patrol and Cook.

Excluded: Sheriff, Under Sheriff and Chief Jailer.

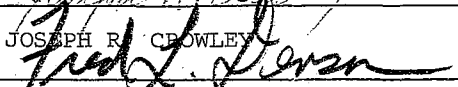
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Columbia County Deputy Sheriff's Benevolent Association

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 19th day of August , 1975 .


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
TOWN OF PITCAIRN, : #2E-8/19/75
Employer-Petitioner, :
-and- : CASE NO. C-1256
TRUCK DRIVERS AND HELPERS LOCAL :
UNION NO. 687, INTERNATIONAL BROTHERHOOD :
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN :
AND HELPERS OF AMERICA, :
Intervenor. :

BOARD ORDER

On July 10, 1975 the Director of Public Employment Practices and Representation issued a decision in the above matter finding that the petition timely filed by the Town of Pitcairn (employer-petitioner) to decertify the Truck Drivers and Helpers Local Union No. 687, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as negotiating representative should be granted for lack of opposition. No exceptions having been filed to the decision,

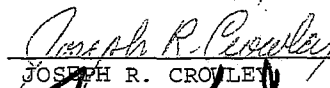
IT IS ORDERED that the Truck Drivers and Helpers Local Union No. 687, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, be and hereby is decertified as the negotiating representative of the following unit of employees of the employer:

Included: All employees of the Highway Department.

Excluded: All other employees of the employer, and elected officials.

Dated: Albany, New York
August 19, 1975


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
TOWN OF PERINTON, : #2F-8/19/75
Petitioner-Employer, :
-and- : CASE NO. C-1236
MONROE COUNTY CHAPTER, CIVIL SERVICE :
EMPLOYEES ASSOCIATION, INC., :
Intervenor. :

BOARD ORDER

On May 6, 1975, the Town of Perinton (employer) filed, in accordance with the Rules of Procedure of the New York State Public Employment Relations Board, a representation petition to decertify the Monroe County Chapter, Civil Service Employees Association, Inc., (CSEA) on the ground that CSEA no longer
1] represents a majority of the unit employees. Seeking to prove its majority status, CSEA entered into a Consent Agreement pursuant to which a secret ballot election was held under the supervision of the Director on June 25, 1975. The results of the election indicate that a majority of the eligible employees no longer desire to be represented for purposes of
2] collective negotiations by the CSEA.

1] CSEA was previously certified by the Board as the negotiating agent of certain highway department employees of the employer (7 PERB 3123 (1974)).

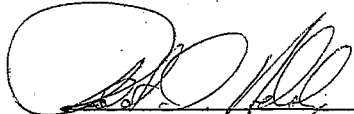
2] To the question whether or not the employees desired to be represented for purposes of collective negotiations by the CSEA, 10 voted "Yes", 15 voted "No" and one ballot was challenged.

THEREFORE, IT IS ORDERED that the Monroe County Chapter, Civil Service Employees Association, Inc., be and hereby is, decertified as the negotiating representative of the following unit of employees of the employer:


Included: All employees of the Town of Perinton Highway Department in the job titles of Motor Equipment Operator, Mechanic and Laborer.

Excluded: Superintendent, Foreman, Assistant Foreman, part time employees and all other employees of the Town of Perinton.

Dated: Albany, New York
August 19, 1975


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
 : #2G-8/19/75
COUNTY OF ALBANY AND THE ALBANY COUNTY :
SEWER DISTRICT, :
 :
Joint Employer, :
 :
-and- : CASE NO. C-1257
 :
AFSCME, COUNCIL 66, AFL-CIO, :
 :
Petitioner. :
 :

BOARD DECISION AND ORDER

On June 9, 1975, AFSCME, Council 66, AFL-CIO (petitioner) filed, in accordance with the Rules of Procedure of the New York State Public Employment Relations Board, a timely petition for certification as the exclusive negotiating representative of certain employees employed by the County of Albany and the Albany County Sewer District. Thereafter, the parties entered into a consent agreement in which they stipulated to the following as the appropriate negotiating unit:

Included: All employees of the joint employer.

Excluded: Executive Director, Superintendent of Operations, Chief Process Operator, Personnel Director, Assistant Personnel Director, Process Control Engineer, Administrative Maintenance Superintendent and Instrumentation Superintendent.


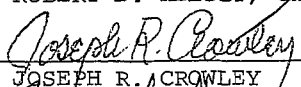
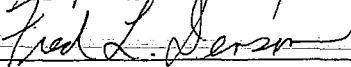
The consent agreement was approved by the Director of Public Employment Practices and Representation on July 16, 1975.

Pursuant to the consent agreement, a secret ballot election was held on July 31, 1975. The results of this election indicate that a majority of the eligible voters in the stipulated unit who cast ballots do not desire to be represented for purposes of

collective negotiations by the petitioner.^{4]}

THEREFORE, IT IS ORDERED that the petition should be, and hereby is, dismissed.

Dated: Albany, New York
August 19, 1975


ROBERT D. HELSBY, Chairman
JOSEPH R. CROWLEY
FRED L. DENSON

1] Of the 69 employees participating in the election, 33 voted in favor of and 36 voted against representation by the petitioner.

MEMORANDUM

August 15, 1975

TO: PERB

FROM: Martin Barr #3A-8/19/75

RE: Case No. I-0028; Petition to review the Implementation of Local Government Provisions and Procedures; AFSCME and the County of Suffolk

On July 3, 1975, the American Federation of State, County and Municipal Employees, AFL-CIO, filed a petition with this Board pursuant to PERB Rule §203.8 and §212 of the Civil Service Law, requesting review of the implementation of local government provisions and procedures by the Suffolk County Mini-PERB and Suffolk County.

The petition alleges that the procedures employed by the Suffolk County PERB are not substantially equivalent to those required by the Taylor Law and the rules and regulations of this Board. More specifically, the petition alleges that the Suffolk County PERB has not impartially applied its rules of procedure in evaluating and dealing with petitioner's petition for de-certification filed with the Suffolk County PERB. The petition alleges that Lou V. Tempera, Suffolk County Commissioner of Labor, is acting as an agent of the Suffolk County PERB in the certification proceeding and the overlapping of his functions as a representative of the employer and an agent of the local PERB renders the local PERB unable to impartially process petitioner's petition in a manner substantially equivalent to that required by the Taylor Law. The petition alleges that proof of employee showings of interest were handled by Mr. Tempera and other employees of Suffolk County and that the confidentiality of such showing of interest was, therefore, not maintained by the Suffolk County PERB. Various additional documents have been submitted by the petitioner which purport to evidence Mr. Tempera's activities on behalf of the Suffolk County PERB.

On August 11, 1975, the Suffolk County PERB filed an "answer" to the charge generally denying the allegations of the petition and generally asserting that the procedures of the Suffolk County PERB in the handling of the petition for certification and the showing of interest were substantially equivalent.

August 15, 1975

On March 27, 1968 this Board approved Local Law No. 7 of 1967 as amended by Local Law No. 5 of 1968, as being substantially equivalent. The local legislation, as approved, contains two provisions which are relevant to consideration of this petition. A portion of Section 4(a), as amended, of the local law reads as follows:

"The board in the performance of its functions and the exercise of its powers under this local law, shall be free of any and all supervision, direction or control by the Board of Supervisors, or any officer, board, department or agency of Suffolk County. The Commissioner of Labor shall serve in an advisory capacity to the Board.

Section 4(e) of the local law reads as follows:

"The board shall request and obtain the assistance of the Commissioner of Labor and his department and personnel in the performance of such personal services for the board as may be necessary for the board to execute its duties and responsibilities hereunder."

In short, the present local law provides that the Suffolk County PERB shall be free of all supervision, direction or control by County officials, but authorizes "assistance" by the Commissioner of Labor in the performance of services by the Mini-PERB. Assuming at this time the propriety of such enactments, it would appear that the issue raised by the instant petition is whether the conduct of the Suffolk County Commissioner of Labor represents more than "assistance" and has become indeed supervision and control. An obvious additional question is whether any "assistance" by the Suffolk County Commissioner of Labor in a representation proceeding is proper.

The issues raised by this petition are unique insofar as implementation petitions filed against Mini-PERBs are concerned. It is my conclusion that a hearing on this petition is essential before PERB can properly determine the issues raised. This would be the first such hearing in an implementation proceeding.

The Office of Counsel has been designated by PERB to investigate such petitions. It would be appropriate therefore, and I so recommend, that a member of Counsel's staff be designated to conduct such a hearing pursuant to the provisions of §203.8 of the Board's Rules of Procedure and furnish the Board with a report and recommendations at the conclusion of such hearing.