STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-6/16/75

In the Matter of	
GREAT NECK UNION FREE SCHOOL DISTRICT, Respondent,	BOARD DECISION AND ORDER
-and-	CASE NO. U-1253
JACOB JULIUS and GRACE SHAKIN, Charging Parties.	

This matter comes to us upon exceptions filed by Jacob Julius and Grace Shakin (charging parties herein) from a decision by a hearing officer dismissing their charge against the Great Neck Union Free School District (respondent herein) that it refused to reemploy them as teachers in respondent's Adult Basic Education Program because they were attempting to organize teachers for the purpose of collective negotiations, such charge stating a violation of Civil Service Law Section 209-a.1(a)(b)(c). The charge had been filed on August 1, 1974. It followed a notice to the charging parties on June 15, 1974 that they would not be reemployed as teachers in the Adult Basic Education Program for the school year, 1974-75.

The hearing officer found that respondent was aware that there had been organizational activities on behalf of the Great Neck Teachers Association at the time when it notified the charging parties that they would not be reemployed for the following year. With respect to charging party Grace Shakin, however, he found that no one in a supervisory capacity for respondent was aware, prior to June 15, 1974, that she was active in those organizing activities. Accordingly, he dismissed the charge with respect to her on the ground that it was not established that she was denied reemployment because of her organizational activities. No exceptions were filed to this part of the hearing officer's decision.

With respect to charging party Jacob Julius, the hearing officer found that respondent was aware of his organizational activities prior to June 15, 1974. However, he rejected the charge on the basis of his conclusion that the evidence did not establish anti-association animus. Moreover, he found that there had been longstanding dissatisfaction with Jacob Julius' performance, which had been communicated to him during the previous year. At that time he was reemployed because of his seniority and in the hope that his performance would improve. The hearing officer concluded that respondent decided not to reemploy Jacob Julius for 1975-76 when its supervisors determined that his performance continued to be inadequate. The charging parties have excepted to this part of the decision. In doing so, they argue that Julius was neither observed nor evaluated during the 1974-75 school year. Upon review of the evidence, we determine that he was observed and evaluated during the school year even though these observations and evaluations were not called to his attention. As the hearing officer said, "Even assuming that good management practices called for bringing the matter to his attention, poor management practice does not establish animus."

We affirm the findings of fact and conclusions of law of the hearing officer.

NOW, THEREFORE, WE ORDER that the charge herein is dismissed in its entirety.

Dated: June 16, 1975
New York, New York

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-6/16/75

IN THE MATTER OF

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 200, AFL-CIO and WATERVILLE CENTRAL SCHOOL DIVISION OF SERVICE EMPLOYEES INTERNATIONAL UNION

Upon the Charge of Violation of Section 210.1 of the Civil Service Law.

BOARD DECISION AND ORDER

Case No. D-0089

This case comes to us on exceptions of Service Employees International Union, Local 200, AFL-CIO, respondent herein[1] and by cross-exceptions of Martin L. Barr, counsel to this Board, charging party herein.

The hearing officer, in a report dated April 16, 1975, has determined that:

1. employees of the Waterville Central School District who were in a unit represented by Local 200 had engaged in a strike on March 27 and 28, 1974;
2. Charles Duffy, Business Representative of Local 200 and its chief negotiator in the instant case, advised the employees not to strike and had made reasonable efforts to persuade them to return to work;
3. forty-three members out of the negotiating unit of fifty-two non-instructional employees were absent from work without authorization on the days of the strike. These included officers of the Waterville Central School Division of Local 200. Some of these officers of the Division participated in picketing activities and led the strike;
4. representatives of the Waterville Central School District engaged in such acts of extreme provocation as to detract from the responsibility of the joint respondent for the strike;
5. union dues of employees are paid directly to Local 200. No fixed amount or percentage of these dues is returned to the Division, but from time to time unspecified amounts are provided to Division by respondent for special events.

1 The Waterville Central School Division of Service Employees International Union was also a named respondent but the thrust of the exceptions relate to Local 200.

The hearing officer recommended that we establish a percentage amount of the dues payable to Local 200 that is attributable to the Division (such as 1/8 or 1/4 of the total dues deduction), and that we order forfeiture of such percentage of dues for an appropriate period of time.

The joint respondent specifies eight exceptions as follows:

1. The hearing officer should not have permitted amendment of the charge to allege that Local 200 had a primary - rather than a derivative - responsibility for the strike.
2. The hearing officer should have commented upon certain events that transpired during March, 1974.
3. The record lacks sufficient evidence with respect to the alleged disruption of services.
4. The hearing officer erred in finding that Local 200 had received dues deduction payments prior to the strike.
5. The hearing officer erred in finding that the Division was an agent of or affiliated with Local 200.
6. The hearing officer should not have proposed that a percentage of the dues deduction attributable to the Division be forfeited.
7. The hearing officer should not have recommended any penalty.
8. The hearing officer erred in finding that the strike had any impact on public welfare.

For its part, the charging party excepted to the findings that Local 200's responsibility for the strike was diminished by its institutional structure by which it operates through divisions. Consequently, charging party takes exception to the recommendations of the hearing officer that would impose a diminished penalty upon Local 200 by reason of its institutional structure.

FACTS

The facts are more fully set forth in the hearing officer's report and recommendations. We repeat those facts that are relevant to dispose of the two critical issues[2]: (1) responsibility of Local 200 for the actions of the Division, and (2) extreme provocation.

With respect to the first issue, the facts are:

a. Local 200 has been certified as the exclusive negotiating representative for all non-instructional employees of the Waterville Central School since April 16, 1973.

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2 We confirm the hearing officer's rulings and determinations regarding all other matters and we find no need to discuss them.

b. Local 200 functions under a written constitution and consists of an unlimited number of divisions representing various sections of it. The operations of a division are governed by Local 200's constitution.

c. One such division of Local 200 is the Waterville Central School Division. It has a membership of approximately 52 individuals, all of whom are employed by the Waterville Central School District.

d. Pursuant to contract, the Waterville Central School District provides that dues deductions shall be paid by the employer to Local 200.

e. Negotiations for that contract were conducted by Charles Duffy, business representative of Local 200.

f. After a factfinding report had been issued but before an agreement had been concluded, Mr. Duffy, on March 25, 1974 advised the employer's negotiator "I am finding it very hard at this time to keep the people from walking off the job".

g. On March 23 and 26, 1974, Mr. Duffy advised the employees represented by Local 200 that no strike was countenanced by it and that a strike would be violative of the Taylor Law.

h. The strike was led by officers of Local 200's Waterville Central School Division. Forty-three of the 52 members of the Division were absent from work without authorization on the two days of the strike.

With respect to the second issue, the facts are:

a) As of March 5, 1974, after an excessively long time following conclusion of a factfinding hearing (January 24, 1974), no factfinding report had been rendered.

b) Frank Haggerty, President of the employer's board of education promised the employees represented by respondent that the board of education would act upon any factfinding report immediately upon receipt of it. This circumstance was anxiously desired by the employees.

c) On March 13, 1974 the factfinder's report was distributed and the employer's negotiator promised to report the school board's reaction to the joint respondent as soon as it was determined.

d) The school board met to consider the factfinder's recommendations on March 16, 1974 and agreed to accept it except for the portion dealing with the wages of bus drivers. (The board of education also indicated that it would prefer a two-year contract). This was not communicated to the joint respondent.

e) In response to an inquiry two days later regarding the board of education's position, the employer's negotiator replied he would provide information as soon as he got it.

f) On the following day, the school board's negotiator informed the joint respondent that employer's supervising principal (not its board of education) had rejected the factfinder's recommendations because he wanted a two-year contract which meant that the wages for the second year would still have to be negotiated.

g) The members of Local 200 who worked for the Waterville Central School District were upset both at the substance of the supervising principal's proposals and with the breach of the commitment to them that the board of education would consider and report to them as to its reactions to the factfinder's report immediately after receiving it. This upset was communicated to the employer's negotiator on March 23, 1974.

h) The employer's negotiator said he would try to arrange a meeting between Mr. Duffy and the board of education on March 26, but he was unable to do so.

i) The strike commenced on March 27.

CONCLUSIONS

We conclude that Local 200 is responsible for the actions of the Waterville Central School Division and its members. An employee organization may speak or act through its leaders or through its members, although in some instances one may repudiate the words or actions of the other. In the instant case, the Waterville Central School Division of respondent and Charles Duffy constituted the sole presence of Local 200 in the Waterville Central School District. It had no other presence in the Waterville School District apart from them. The Division, its leaders and most of its members engaged in a strike even though Local 200's business representative advised them not to strike and told them the strike had not been approved by Local 200. We do not differentiate between the Division, its officers and members and Local 200. While there is such a thing as a "wildcat strike" by union members which may not be imputed to their union, such is not the case when a majority of the employees who constitute a union's presence participate in the strike. In Waterville Central School District most of the employees represented by Local 200 struck and the striking employees were the union.

Nevertheless, we do consider the posture of Local 200's business representative as bearing upon the extent to which the strike constituted a wilful defiance of CSL Section 210.1. In consideration of his posture and of the impact and duration of the strike, we would ordinarily order that with respect to employees of the Waterville Central School District represented by it the dues deduction privilege of Local 200 be forfeited for three months. This, however, brings us to the issue of extreme provocation.

We accept the hearing officer's conclusion that representatives of the employer engaged in acts of extreme provocation so as to detract from the joint respondent's responsibility for the strike. Although we are distressed at the misrepresentation of the employer's negotiator regarding the acceptance of most of the factfinder's report by its board of education, we do not find that this constituted extreme provocation. The joint respondent could not have been extremely provoked by what it did not know, and it did not know of this misrepresentation until after the strike began. On the other hand, we conclude that Local 200's members employed by Waterville Central School District were extremely provoked at not receiving the report of the reactions of the school board to the factfinder's report.

Ordinarly there would be no obligation on the part of a school board to consider a factfinder's report at that stage or to communicate to the employees their reaction to it. The negotiating scheme contained in the Taylor Law provides only for a reaction by the school district's chief executive officer at that stage of negotiations. Two circumstances, in concert, make this situation unique: (1) the employer knew that the joint respondent's members were frustrated at the unduly long wait for the factfinder's report; and (2) the school board had promised the employees that it would consider the report and inform them of its conclusions. The withholding of this information from the employees was extremely provoking.

NOW, THEREFORE, WE DETERMINE that the joint respondent violated CSL Section 210.1, but we do not order that its dues deduction privileges be forfeited as a result thereof.

Dated: New York, New York
June 16, 1975

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF RENSSELAER,
Respondent,

and

RENSSELAER COUNTY UNIT OF THE RENSSELAER COUNTY CHAPTER OF THE C.S.E.A., INC.,
Charging Party.

#2C-6/16/75

BOARD DECISION AND ORDER

Case No. U-1379

This matter comes to us upon exceptions of the Rensselaer County Unit of the Rensselaer County Chapter of the C.S.E.A., Inc. (CSEA), Charging Party, to a decision of a hearing officer dismissing the charge that the County of Rensselaer violated CSL Section 209-a.1(d) in that it unilaterally altered terms and conditions of employment. Specifically, the charge alleges that the County unilaterally decided on or about October 11, 1974 to contract out substantially all of the services then performed by employees of the Rensselaer County Department of Health Laboratory, thereby eliminating some unit positions and causing the termination of some unit employees.

The hearing officer dealt with two issues, one procedural and one substantive. The procedural issue involved the timeliness of the charge, and the hearing officer found it to be timely. The substantive issue dealt with by the hearing officer was whether a decision of a public employer to contract out services is a mandatory subject of negotiations. The hearing officer determined that it was not and for that reason she dismissed the charge. In doing so she relied upon our decision In the Matter of Board of Trustees, Half Hollow Hills Community Library, 6 PERB 3082 [1973].

In its exceptions, CSEA alleges that the hearing officer's reliance upon our decision in Half Hollow Hills was misplaced because that case dealt with the issue of subcontracting only by way of dictum. CSEA's exceptions argued further that the dictum in Half Hollow Hills should not be followed because it is inconsistent with decisions of the National Labor Relations Board and of the employment relations boards of other states (some of which decisions dealt with the public sector). Moreover, CSEA argues that the intent and language of the Taylor Law compel a conclusion that a public employer's decision to subcontract is a mandatory subject of negotiations.

DISCUSSION

We affirm the decision of the hearing officer, but not the ground relied upon. CSEA is correct in arguing that this Board has not yet decided the issue of whether the decision to subcontract unit work is a mandatory subject of negotiations, or more particularly, the circumstances under which it may or may not be a mandatory subject of negotiations. The hearing officer recognized that the Half Hollow Hills decision dealt with the issues only in dictum but she felt obliged to apply that dictum. We find that decision not to be controlling here. In that

case, an employee organization was seeking to be recognized by the employer. The Board found that the purpose of the subcontracting was to thwart union organization and that the claim of economic justification was pretextual. Thus the question of whether the decision was a mandatory subject of negotiations did not arise and could not, for there was neither a negotiating relationship nor even a certified or recognized employee organization.

Further, we need not reach the issue in this decision for we agree with and adopt the finding of the hearing officer that "In any event CSEA, on notice of the County's intention to subcontract, did not request negotiations with regard either to the decision or its impact."

The president of the employee organization, Lazarony, was informed in July 1974 that the employer was considering the possibility of closing the laboratory and contracting the work out. Lazarony testified when he was told of the possibility of closing the laboratory that he felt it would be a foolish thing to do but that he did not contact any county official about it. Lazarony attended a meeting of the laboratory staff on October 11, 1974 at which time Dr. Eadie, Health Commissioner, announced that the laboratory would be closed on January 1, 1975 and the work thereafter would be performed by an outside laboratory. After the October 11th meeting[1/], Lazarony had a telephone conversation with County Executive Murphy and in the course of discussing another subject, Lazarony "mentioned the fact that we had been notified of the laboratory closing. I was very distraught. I thought there should be some talk about it. We went on to the subject of the first item of discussion. There was no real conversation involved." He did not contact Murphy again on the subject of the laboratory. Also after the October 11th meeting, Lazarony had a conversation with Sinnott, the County's Assistant for Labor Relations in which he discussed other matters, and as to the laboratory, "it was just a comment on my part that I felt the County was making a very serious mistake and there should be more planning and talking about it". Subsequent to October 11, 1974 he met several times with the Director and Assistant Director of the Laboratories to discuss the economics involved in the change of operations and those discussions resulted from a request by representatives of CSEA legal staff whom Lazarony had consulted to obtain more information.

There is no evidence in the record that Lazarony or anyone else on behalf of the charging party requested negotiations about the decision. His only reference to the closure in conversations with the County Executive and his Assistant for Labor Relations were side comments. Lazarony, in an effort to overcome this lack, testified that on October 11 he thought

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1/ Lazarony testified later in the hearing that his conversation with County Executive Murphy may have taken place prior to October 11.

the decision was "fait accompli". However, the record clearly establishes that in July he knew the possible closure of the laboratory was under consideration and he made no request for negotiation nor registered any protest.

Assuming an obligation on the part of the employer to negotiate this decision to subcontract with the charging party, such obligation would only arise upon the request by the charging party to negotiate on such decision (Schenectady County Community College, 6 PERB 3055 [1973]). In this case, we have an employee organization filing a charge that the employer failed to negotiate, but a record that is devoid of any indication that the employer was requested to negotiate. Absent such a request, the charge herein cannot be sustained.

The charge therefore is dismissed in its entirety.

Dated: June 16, 1975
New York, New York

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

FRANKFORT-SCHUYLER TEACHERS ASSOCIATION and the NEW YORK STATE TEACHERS ASSOCIATION :

Upon the Charge of Violation of Section 210.1 of the Civil Service Law. :

#2D-6/16/75

BOARD DECISION AND ORDER

Case No. D-0060

This matter comes to us on the application of the New York State United Teachers, Inc., as successor to New York State Teachers Association for restoration of its dues deduction privileges which had been suspended indefinitely on November 10, 1972. At that time, we determined that New York State Teachers Association had violated CSL Section 210.1 by encouraging and condoning a strike by the teachers of the Frankfort-Schulyer Central School District #2 and that it had violated CSL Section 210.1 on three previous occasions. We ordered that with respect to teachers employed by such school district its dues deduction privileges should be suspended indefinitely "provided that the New York State Teachers Association may apply to this Board for the restoration of such dues deduction privileges any time after December 1, 1973, such application to be accompanied by an affidavit that it no longer asserts the right to strike against any government and that it has not engaged in, caused, instigated, encouraged or condoned a strike against any government during the preceding twelve months."

On May 30, 1975, New York State United Teachers, Inc. applied for the restoration of its dues deduction privileges at the Frankfort-Schuyler Central School District #2 and it submitted an affirmation that it does not assert the right to strike against any government and it further affirms that it has not engaged in, caused, instigated, encouraged or condoned a strike against any government during the preceding twelve months.

NOW, THEREFORE, WE ORDER that the indefinite suspension of the dues deduction privileges of the New York State United Teachers, Inc. be and hereby is terminated.

DATED: June 16, 1975
New York, New York

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson