STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-1/30/76

In the Matter of	
BROOKHAVEN-COMSEWOGUE UNION FREE SCHOOL DISTRICT, Respondent,	
-and-	BOARD DECISION & ORDER
PORT JEFFERSON STATION TEACHER MONITORS ASSOCIATION, Charging Party.	CASE NO. U-1173

On May 16, 1974, the Port Jefferson Station Teacher Monitors Association (Association) filed a charge alleging that the Brookhaven-Comsewogue Union Free School District (School District) violated CSL §§209-a.1(a), (b) and (c). The charge recited four specific improprieties of discrimination against the Association and its president, Wilma Bayer, all occurring between March 26, 1974 and April 19, 1974.

On February 3, 1975, respondent notified the School District that it would seek to amend the charge to add the allegation "that on or about September 6, 1974, Mrs. Wilma Bayer, President of the Port Jefferson Teacher-Monitor Association, was informed that she had been fired by the District." The hearing officer rejected the amendment on the ground that it was not timely in that the action complained about in it transpired more than four months prior to the proposed amendment.[1]

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1 The actual motion to amend the charge was made at the outset of a hearing on April 15, 1975.
Section 204.1(a) of the Rules of Procedure restricts the filing of a charge to "...within four months" from the date "...a public employer or its agents ...has engaged in, or is engaging in, an improper practice...."
Regardless of whether the April 15, 1975 date or the February 3, 1975 date is deemed critical, the attempt to amend occurred more than four months after the conduct complained about.

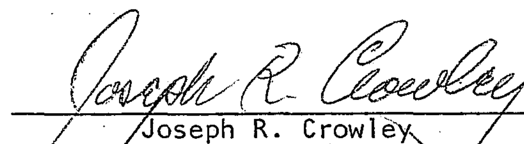
The Association indicated that "unless the above decision is reversed by PERB's board, the issues involved in the charge as originally filed on May 16, 1974 are moot." Thus, they declined to prosecute the balance of their charge and filed exceptions to the decision of the hearing officer dismissing it. Those exceptions are conclusory in form. In essence, the Association argues that both the four circumstances specified in the original charge and the discharge of Bayer are all part of a single sequence of discriminatory conduct and, therefore, the amendment does not recite a new cause of action that is subject to the four month limitation. We disagree. For the reasons set forth in his decision, we confirm the hearing officer's findings of fact and conclusions of law.

Accordingly,

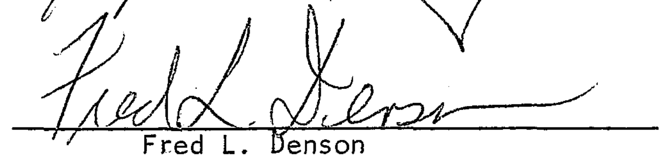
WE ORDER that the charge herein should be, and hereby is, dismissed in its entirety.

Dated: Albany, New York
January 30, 1976

Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-1/30/76

In the Matter of SOMERS FACULTY ASSOCIATION, Respondent, -and- SOMERS CENTRAL SCHOOL DISTRICT, Charging Party.	:	BOARD DECISION & ORDER CASE NO. U-1883

This case comes to us directly upon a stipulation by the Somers Central School District (School District) and the Somers Faculty Association (Association) requesting an expedited determination under §204.4 of our Rules, applicable to scope of negotiations disputes. The charge as originally filed by the School District alleged that the Association had violated CSL §209-a.2(b) in that it improperly insisted upon the negotiation of several non-mandatory subjects of negotiation. Appended to the stipulation was a copy of the Association's demands. Twenty-six of those were insisted upon by the Association over the objections of the School District that they were not mandatory subjects of negotiations. They are Demands Nos. 4, 5, 6, 7, 8, 14, 17, 18, 19, 21, 22, 24a, b, d, 25, 26, 27, 32, 33, 37, 38, 43, 45, 46 and 47. Both parties submitted their briefs by December 15, 1975. In its brief, the Association withdrew Demand Nos. 6, 17, 22, 26 and 47. It also sought to amend Demand Nos. 4, 5, 8, 14, 43, 45 and 46.

Our review of the contract demands in dispute and of the positions of the parties left us with questions, the answers to which were necessary to resolve the scope of negotiations dispute. Accordingly, we directed the parties to present oral argument on January 16, 1976 and notified them in advance of some of the questions we intended to ask. At the oral argument,

the School District moved for the rejection of so much of the Association's brief as purported to withdraw or amend demands set forth in the stipulation. We denied the motion insofar as it related to the withdrawal of demands. Expedited determinations pursuant to §204.4 of our Rules are not designed to ascertain fault or guilt. They are in the nature of declaratory determinations and are designed to facilitate the negotiations process. The withdrawal of a demand makes academic scope of negotiations issues concerning such demands. We granted the motion, however, insofar as it related to the amendment of demands. The amendment of demands at that late stage of the negotiations process was tantamount to the formulation of new demands. Because of an agreement between the parties cutting off the time for new demands, this was inappropriate. The Association was given additional time until January 23, 1976 in which to brief the original Demand Nos. 4, 5, 8, 14, 43, 45 and 46. It did not do so. We now deal with the substantive issues framed by the demands in dispute.

Demand No. 4 - "Specials in Kindergarten (music, art, library, physical education) will be provided for a minimum of 125 minutes per week."

This is not a mandatory subject of negotiations. It is a demand that each student have a specified amount of time with teaching specialists. This goes to the mission of the public employer and is a management prerogative (Matter of Yorktown Faculty Association, 7 PERB 3051 [1974])

Demand No. 5 - "Teacher aides will do all non-teaching duties and will be provided with a detailed job description."

This is not a mandatory subject of negotiations, as worded. Teacher aides are not in the negotiating unit represented by the Association. Thus, the Association has no standing with respect to their job duties.

Demand No. 7 - "Building time schedules will be revised so that pre junior high students will be dismissed by 2:30 P.M."

This is not a mandatory subject of negotiations, as worded. The instructional time of students is a matter of educational policy and a management prerogative.

Demand No. 8 - "Maximum class load specified for different levels and disciplines. If this load is exceeded, a new teacher will be hired."

This is not a mandatory subject of negotiations. It appears to be a demand to limit class size. Such demands are not mandatory subjects of negotiations (Matter of West Irondequoit Board of Education, 4 PERB 3725 [1971], aff'd 35 NY 2d 46 [1974]). Not all demands relating to class size are management prerogatives. In the Yorktown case, supra, we found that a workload formula that included class size as one of several elements was a mandatory subject of negotiations. The demand in the instant case seems to be directly related to class size and thus covered by West Irondequoit rather than Yorktown.

Demand No. 14 - "When the teacher makes his choice of available substitutes, that substitute will be hired."

This is not a mandatory subject of negotiations. It is a management prerogative for a government to offer employment to whomsoever it wishes subject to the appropriate requirements of the Civil Service and Education laws.

Demand No. 18 - "Negative comments will be made by administrators to teachers only in private situations."

This is a mandatory subject of negotiations. It is a procedural one involving employee discipline. In Matter of City of Albany and Albany Police Officers Union, 7 PERB 3132 (1974) we held (at p. 3134) that "discipline and discharge is, however, a mandatory subject of negotiations so long as the proposal does not deny employees an opportunity to utilize CSL §§75 and 76."

Demand No. 19 - "Regardless of the cause of any pupil difficulty no teacher or class is ever required to tolerate any act of gross misconduct, including flagrant discourtesy, abusive and vile language, acts of violence and deliberate insubordination. The teacher

> has the right to remove any pupil whose behavior repeatedly disrupts the learning atmosphere of the class. The pupil shall not be readmitted until the teacher has conferred with the principal or assistant principal involved. The pupil shall not be returned to the same class until the teacher and administrator have discussed the basis on which improvement can be expected. If it is mutually agreed that the pupil's behavior cannot be expected to improve another placement will be provided."

This is a mandatory subject of negotiations, subject to the limitations set forth below. Certainly it is a term and condition of employment of teachers whether or not they may be subject to gross misconduct and flagrant discourtesy. A fortiari teachers may negotiate over means to insulate themselves from acts of violence from their students. The means proposed in the demand to accomplish this, however, raises questions. Negotiations for a procedure by which disruptive students are temporarily removed from the classroom and sent to higher school authority is appropriate as are negotiations for such a procedure that would require teacher-administration conferences before such a student is returned to class. A demand that might preclude a student's return to the classroom would not be a mandatory subject of negotiations. At least in part, the feasibility of such a demand would depend upon the availability of alternatives for the education of such a student and the question of the availability and reasonableness of such alternatives is a management prerogative. The demand conditions the permanent removal of the student upon agreement between the teacher and the administrator. Thus no student may be permanently removed from class without administration approval. The demand does not exceed the standard for mandatory negotiations.

Demand No. 21 - "Any teacher evaluation form used by the district is subject to SFA approval."

This is a mandatory subject of negotiations. On its face it is limited to consideration of procedures by which teachers are evaluated and we have held that procedures for evaluation of teachers are a mandatory subject of negotiations in Matter of Monroe-Woodbury, 3 PERB 3104 (1970). The School

District disputes the negotiability of this demand on the assumption that it goes beyond procedures and extends to criteria upon which teachers should be evaluated. That, of course, is not a mandatory subject of negotiations, but this interpretation of the demand is not apparent on its face.

Demand No. 23 - "Delete the phrase 'upon the recommendation of the Superintendent' and change the word 'may' to 'will'.
"B-1 will read 'Full credit for all school teaching experience to a maximum of eight years'."

This is a mandatory subject of negotiations. What is involved is an amendment of Article XI of the previous contract relating to prior service credit on the salary schedule. As such, it is a demand for increased wages.

Demand No. 24.a - "Reduction in force:
"All positions currently held by teachers in the SFA bargaining unit will be maintained unless there is a reduction in the district's total student enrollment."

This is not a mandatory subject of negotiations. It is a demand that current manning levels be maintained. The maintenance of manning levels is a management prerogative (Matter of City of White Plains, 5 PERB 3013 [1972]).

Demand No. 24.b - "Seniority
"1. The District recognizes and agrees that all provisions of law pertaining to seniority must be appied to all teachers.
"2. In the event that a teacher's position is eliminated, the teacher shall have the right to continued employment in any available position for which the teacher has adequate preparation and is legally employable regardless of the tenure area of such position or the tenure area in which the teacher was previously employed. Such continued employment shall be at the salary and fringe benefit level for which the teacher is entitled.
"A. If no other position is available, a laid-off teacher shall have preference for future available positions in reverse order of lay-off (last laid-off, first re-hired) for any position for which the teacher is legally employable. Teachers so re-hired shall retain all time credited toward tenure.
"B. The District further agrees that:
1. Released teachers shall be eligible for severance pay equal to accumulated sick leave or one semester's salary, whichever is greater.

2. The District shall pay the full cost, for a period of one year, of all medical and fringe benefits for released teachers on the same basis as such benefits are provided to employed teachers.
3. Released teachers shall accrue seniority during lay-off.
4. Released teachers shall receive preferential treatment for employment as regular or per-diem substitutes.
5. Laid-off teachers shall be eligible for re-training, at District expense, to qualify for positions in the District.
6. A corps of 6 permanent substitute teachers shall be organized from the 6 most senior teachers laid off.

This demand, entitled "Seniority", is a series of separate demands. Many of the specific items are dealt with in Education Law §2510 and other statutes. In some instances the demand merely requires compliance with statute. We have held that the inclusion in an agreement of statutory requirements is redundant and is, therefore, not a mandatory subject of negotiations (Matter of Village of Scarsdale, 8 PERB 3134 [1974]). Moreover, to the extent that the demands are in conflict with statute, they are also not mandatory subjects of negotiations.

Several elements of Demand 24.b, however, do not involve matters covered by statute and are mandatory subjects of negotiations. These are 24.b.2.B.1, 2, 4, 5 and 6. The first of these is for severance pay and the second is for continued provision of medical and other fringe benefits to teachers who are laid off for a period of one year after severance; 4 and 6 would give laid-off teachers, who in any event have a continuing nexus of employment by reason of preference for reemployment under Education Law §2510.3, preferential opportunities for employment as substitutes; 5 would provide laid-off teachers with retraining to qualify them for other positions with the school district.

24.b.2.B.3 would have released teachers accrue seniority during the period of lay-off. To the extent that such seniority is for pay purposes, it is a mandatory subject of negotiations. To the extent that such seniority is for tenure or other matters covered by statute, it is not.

Demand No. 24.d - "No professional work presently performed by members of the teacher bargaining unit shall be performed by a non-member of the unit or sub-contracted to any other party without the express written consent of the Association."

This is a mandatory subject of negotiations. The demand does not contemplate the School District changing its basic mode or method of operation or the nature or extent of services that it renders to its constituency. A decision to do this would be a management prerogative (New Rochelle, 4 PERB 3704). It relates only to a situation in which the School District might, out of a desire to cut costs, cause one group of employees to be replaced by another group that would perform the same services. In determining that this is a mandatory subject of negotiations we are impressed by the reasoning of the U. S. Supreme Court in Fiberboard Paper Products Corp. v. NLRB, 379 U.S. 203 (1964). In that case the court held that the subcontracting of work which resulted in the replacement of employees in the bargaining unit by those of an independent contractor to do the same work under similar conditions of employment was a mandatory subject of negotiations.

Prior to this decision, we have not dealt with the question of whether subcontracting for economic reasons was a mandatory subject of negotiations. In Matter of Half Hollow Hills Community Library, 6 PERB 3082 (1973) we determined that it was an unlawful, discriminatory and coercive practice for a public employer to subcontract work for the purpose of frustrating the organization of employees. In that decision we indicated that a public employer could contract that work for economic reasons but left open the question of whether it was first required to negotiate about such action.

In County of Rensselaer, 8 PERB 3064 (1975) we found that a public employer did not fail to negotiate in good faith when it contracted out work for economic reasons because the employee organization had not sought to negotiate about the matter. Two of our other decisions bear upon subcontracting. In Matter of Oswego City School District, 5 PERB 3023 (1972) we determined that a public employer could not cut the work year - and thus the annual wages of some of its employees unilaterally - where there was no intention to curtail or limit services to the public. In Northport UFSD, 9 PERB ¶3003(1976) we dealt with the question of whether an employer could assign unit work to non-union employees. We said:

> "A public employer may unilaterally determine to curtail the services that it offers its constituency, even if such a decision impacts upon terms and conditions of its employees....Where, however, there is no real intention to curtail or limit services to the public, a decision of the employer that impacts upon terms and conditions of employment is itself subject to mandatory negotiations."[1]

We see subcontracting as being a technique that can be used by management to undermine its agreement and/or its duty to reach agreement on other terms and conditions of employment. Thus the decision to contract unit work is inextricably bound to the other mandatory terms and conditions of employment.

Demand No. 25 - "Administrative supervisory personnel and non-members of SFA are not eligible for extra pay positions."

This is not a mandatory subject of negotiations. The Association is the exclusive representative of all employees in this negotiating unit, while the demand would restrict the benefit only to members. Such a demand is contrary to the Association's duty to represent all employees within its unit fairly. Moreover, it is not clear on the face of the demand that the extra pay positions to which it refers all involve unit work.

1. Chairman Helsby dissented in Northport, but on grounds not relevant to the issue of subcontracting.

Demand No. 27 - "Work beyond the regular school calendar will be paid at the rate of 1/180 of the base pay per diem."

This is a mandatory subject of negotiations. It is a demand for wages.

Demand No. 32 - "In each building a committee will be set up composed of the SFA Building Representatives, three teachers, the Principal and the Assistant Principal, if there is one. They will meet once a month or more often if necessary to discuss problems of mutual concern to the parties. The committees will be entitled Building Consultation Committee."

This is not a mandatory subject of negotiations. A demand for the creation of a joint teacher-administration committee to meet periodically for the purpose of discussing matters of mutual concern is a mandatory subject of negotiations to the extent that the matters to be considered by the committee are terms and conditions of employment. As worded, this demand is not sufficiently explicit. Moreover, it would specify the administration representatives who would serve on the committee. The Association cannot do this. It can only demand that the administration representatives on the joint committee are given appropriate authority.

Demand No. 33 - "A Board-Teacher Consultation Committee will be set up. At least three times a year, this committee will meet to discuss problems of concern to the parties. The committee will consist of the Board of Education and the executive committee of the SFA."

This is not a mandatory subject of negotiations. As noted with respect to Demand No. 32, the Association may not specify who should represent the employer or consultation committees. A demand that would require participation of members of the Board of Education of the School District is particularly inappropriate, as the Board of Education is the legislative body within the meaning of the Taylor Law.

Demand No. 37 - "Personal leave without pay will be granted upon request and will not be considered an interruption of continuous service."

The first clause of the demand is a mandatory subject of negotiations. The previous agreement provides for a maximum of three days' personal leave without reason upon three days notice, except in an energency. The demand is for the enhancement of a term and condition of employment. The implcations of the clause that personal leave not be considered an interruption of continuous service is not clear. It may touch upon questions of tenure that are not mandatory subjects of negotiations.

Demand No. 38 - "Leave with pay for sickness in family."

This is a mandatory subject of negotiations.

Demand No. 43 - "Changes in, or additions to current programs, curricula, methods and schedules must be decided by those teachers who are directly involved and/or affected by the changes."

This is not a mandatory subject of negotiations. It is designed to give the Association a role in making decisions relating to the nature and extent of services provided by the School District to its constituency (Matter of City School District of City of New Rochelle, 4 PERB 3704 [1974]).

Demand No. 45 - "Educational Policies Advisory Committee. Change Article XIV to read as follows: Section B-'The Board will notify the Association when a change in or an addition to policy is being considered. Formal adoption of said change or addition will not occur for at least twenty (20) days after such notice has been received by the association.'
Section C-No change in first sentence. Thereafter, change to read as follows: 'Accordingly, an Educational Committee shall be created comprised of four members to be appointed by the Board and four members to be appointed by the Association from among the teaching staff.

1. The Educational Committee shall commence its activity within thirty (30)days after the date of this agreement and shall act within the scope of the activities set forth above. It shall meet no less than once monthly from September through June.

2. The members of the Educational Committee may use such voluntary consultants as they may deem necessary to advise them in their work.
3. The chairmanship of the committee shall rotate among all the members of the committee, alternating between a member appointed by the Board and a member appointed by the Association. The first chairman for the school year shall be determined jointly by the Chief School Administrator and the President of the Association, or their designated representatives, on the basis of lot, flip-of-the-coin, or similar manner, early enough in the school year to permit the first designated chairman enough time to call the first meeting.
4. A secretary shall be provided the committee from among the clerical staff of the school district. The secretary will prepare minutes of each meeting which are approved by the member who chaired that meeting and the member who will be chairing the meeting following. Copies of the minutes will be posted by the secretary on the office bulletin board in each building.

Section D-Policy recommendations approved by a simple majority of the Educational Committee shall be forwarded to the Board and to the Association simultaneously. The Board, in recognition of the purposes of the Educational Committee and in acknowledgment of the efforts of the members of the Educational Committee, agrees to take formal action on adopting or rejecting a recommendation from the Educational Committee no later than ninety (90) days after receiving said recommendation.'"

This is not a mandatory subject of negotiations. It would establish education committees and is designed to give the teachers a role in the formulation of educational policy.

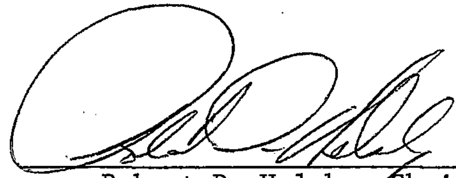
Demand No. 46 - "All students, during their final year in any building, will spend one school day in orientation to the building to which they will transfer. Such orientation will occur in the latter building, and take place before their schedules for the next year are decided."

This is not a mandatory subject of negotiations. It deals with terms and conditions of study for students and not terms and conditions of employment for teachers.

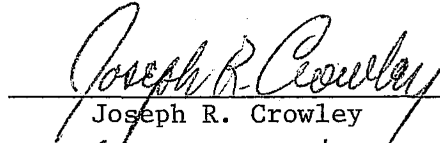
NOW, THEREFORE, in view of the above conclusions of law, we dismiss the charge with respect to those matters considered herein that we determined to be mandatory subjects of negotiations, and with respect to those matters that we determined not to be mandatory subjects of negotiations,[2]

WE ORDER the Somers Faculty Association to negotiate in good faith with the School District.[3]

Dated: January 30, 1976
Albany, New York



Robert D. Helsby, Chairman



Joseph R. Crowley

Fred L. Denson

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2 The charge falls with respect to mandatory subjects of negotiations as there is a duty to bargain over them.

3 The Association's duty to negotiate in good faith over non-mandatory subjects of negotiations contemplates their withdrawing such demands from factfinding.

#2C-1/30/76

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	Case No. D-0125
NYACK TEACHERS ASSOCIATION	:	BOARD DECISION & ORDER
Upon the Charge of violation of Section 210.1 of the Civil Service Law.	:	

On November 25, 1975, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Nyack Teachers Association had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a 28-day strike against the Nyack Union Free School District during the period October 14, 1975 through November 21, 1975. This is the second instance involving a strike violation charged against the teachers employed by this school district (see 5 PERB 3108).

The Nyack Teachers Association filed an answer which, inter alia, denied the material allegations of the charge. However, it thereafter agreed to withdraw its answer and thus admit all of the allegations of the charge. The Nyack Teachers Association joined the Charging Party in recommending a penalty of indefinite suspension of respondent's dues checkoff privileges provided, however, that the Nyack Teachers Association may apply to this Board after August 15, 1977 for restoration of such dues deduction privileges upon fulfillment of the conditions of our

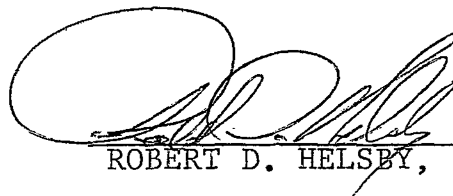
Order, hereinafter set forth.

On the basis of the charge unanswered, we determine that the recommended penalty is a reasonable one.

We find that the Nyack Teachers Association violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Nyack Teachers Association be suspended indefinitely, commencing on the first practicable date, provided that the Nyack Teachers Association may apply to this Board at any time after August 15, 1977 for the restoration of such dues deduction privileges, such application to be on notice to all interested parties and supported by proof of good faith compliance with subdivision one of Section 210 of the Civil Service Law since the violation herein found, such proof to include, for example, the successful negotiation, without a violation of said subdivision, of a contract covering the employees in the unit affected by the violation, and accompanied by an affirmation that it no longer asserts the right to strike against any government as required by the provisions of Civil Service Law §210.3(g).

Dated: Albany, New York
January 30, 1976



ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

#2D-1/30/76

YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of NYACK ASSOCIATION OF EDUCATIONAL SECRETARIES Upon the Charge of Violation of Section 210.1 of the Civil Service Law.	: : :	Case No. D-0126 BOARD DECISION & ORDER

On November 25, 1975, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Nyack Association of Educational Secretaries had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a 27-day strike against the Nyack Union Free School District during the period October 15, 1975 through November 21, 1975.

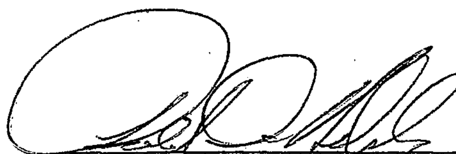
The Nyack Association of Educational Secretaries did not file an answer to the charge and thus admitted its allegations. The Nyack Association of Educational Secretaries joined the Charging Party in recommending a penalty of loss of dues checkoff privileges for one year. The annual dues of the Nyack Association of Educational Secretaries are deducted from six consecutive biweekly pay checks starting with the first pay check in October of each school year.

On the basis of the charge unanswered, we determine that the recommended penalty is a reasonable one, this being the first strike by this respondent.

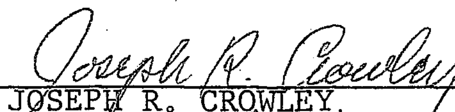
We find that the Nyack Association of Educational Secretaries violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Nyack Association of Educational Secretaries be suspended, commencing with the start of the 1976-1977 school year and continuing through the end of that year. Thereafter, no dues shall be deducted on its behalf by the Nyack Union Free School District until the Nyack Association of Educational Secretaries affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

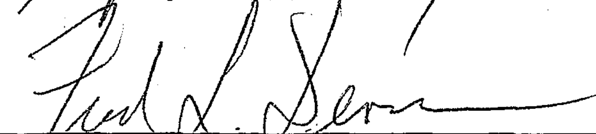
Dated: Albany, New York
January 30, 1976



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



FRED L. DENSON

#2E-1/30/76

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LOCAL No. 650, AFSCME, AFL-CIO,

Respondent,

- and -

CITY OF BUFFALO,

Charging Party.

BOARD DECISION AND ORDER

Case No. U-1920

On December 10, 1975 the City of Buffalo (Buffalo) commenced a proceeding for a determination that two demands asserted in negotiations by Local 650, AFSCME, AFL-CIO (AFSCME) were not mandatory subjects of negotiation.[1] It sought an expedited determination of a scope of negotiations question under §204.4 of our Rules. At the request of Buffalo, the matter before us was expanded to include the question of whether revision of the City's residency requirements is a mandatory subject of negotiations.

On December 26, 1975 Buffalo submitted a memorandum of law on the three demands in question. AFSCME submitted its memorandum of law on the three demands on January 7, 1976.

1. The nature of such a proceeding is actually an improper practice charge, Buffalo alleging that AFSCME refused to negotiate in good faith in violation of CSL §209-a.2(b) by insisting upon the negotiation of matters that do not constitute mandatory subjects of negotiation (See Matter of Yorktown Faculty Association, 7 PERB 3051 [1974]).

Demand No. 1 - Contracting and Subcontracting of Public Work. "During the term of this agreement, the employer shall not contract-out or subcontract any public work performed by employees covered by this agreement that would mean the displacement of any employee covered by this agreement."

This is a mandatory subject of negotiation. The demand does not contemplate Buffalo changing its basic mode or method of operation nor the nature or extent of services that it renders to its constituency. A demand to do this would be a management prerogative (Matter of New Rochelle City School District, 4 PERB 3704). It relates only to a situation in which Buffalo might, out of a desire to cut costs, cause one group of employees to be replaced by another group that would perform the same services. We see subcontracting as being a technique that can be used by management to undermine its agreement and/or its duty to reach agreement on other terms and conditions of employment. Thus the decision to contract unit work is inextricably bound to the other mandatory terms and conditions of employment. Our reasoning is more fully expressed in Matter of Somers Faculty Association issued today.

Demand No. 2 - Residency "Residency requirements and/or restrictions shall not apply to any employees, that have been employed prior to July 1, 1975, except for appointment via promotion."

This is a mandatory subject of negotiation. Buffalo relies upon our decision in Association of Central Office Administrators, 4 PERB 3703. The charge of the City School District of Rochester complained that the Association of Central Office Administrators improperly refused to negotiate with it over its demand that

prospective employees and employees being promoted would agree to live within city limits unless the board of education were to grant permission to such an employee to live outside of the city. The City School District further proposed that existing employees would report to the board of education regarding their intention to live outside the school district and that the board of education would not unreasonably withhold permission to them to do so. The hearing officer determined (4 PERB 4597) the demand was not a mandatory subject of negotiation because a residency requirement was a qualification for employment and not a condition of employment. She said (at p. 4600):

> "...the employer, having decided that its educational mission can best be served if certified administrative employees reside within the geographic confines of the school district in which they work, may accomplish its goal by resolution."

Thus, she recommended that the charge be dismissed.

No exceptions having been taken from the hearing officer's decision and recommended order, we affirmed that decision and dismissed the charge.[2]

In a sense, we are considering the question of residency requirements for the first time. In doing so, we agree with the ruling of the hearing officer in the Association of Central Office Administrators' case. A decision of whether or not to

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2. Under the Rules in force at that time, a hearing officer's decision and recommended order was not final even if no exceptions were filed.

offer employment only to prospective employees who meet a residency requirement is a management prerogative. To the extent, however, that her decision and our affirmation of it constituted a determination that an employer may unilaterally impose a residency requirement upon persons who are already employees of Buffalo, we reverse ourselves.[3]

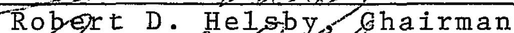
Demand No. 3 - Change in the Work Force-Job Security Clause "Job Security - During the life of this agreement, any employee presently working in any classified civil service position covered by this bargaining unit, will continue to be employed during the length of this agreement."

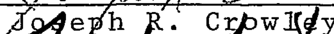
This is not a mandatory subject of negotiation. We have held in many decisions that it is a management prerogative to curtail or limit the services it provides to its constituency. We find it unnecessary to review those decisions now.

NOW, THEREFORE, in view of the above conclusions of law we dismiss the charges with respect to those matters herein that we determined to be mandatory subjects of negotiation, and with respect to those matters that we determined not to be mandatory subjects of negotiation,[4]

WE ORDER Local No. 650, AFSCME, AFL-CIO to negotiate in good faith with the City of Buffalo.[5]

Dated: January 30, 1976
Albany, New York


Robert D. Helsby, Chairman


Joseph R. Crowley

Fred L. Denson

3. The demand does not require us to reach the question of whether an employer can require that employees whose initial appointment was conditioned upon meeting a residency requirement can be

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3 con. required by the employer unilaterally to continue to meet that residency requirement throughout the duration of their employment.

4. The charge falls with respect to mandatory subjects of negotiation as there is a duty to bargain over them.

5. AFSCME's duty to negotiate in good faith over non-mandatory subjects of negotiations contemplates their withdrawing such demands from factfinding.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2F-1/30/76

In the Matter of PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC., Charging Party, -and- CITY OF NEW YORK, Respondent.	BOARD INTERIM DECISION CASE NO. U-1723

On January 15, 1976 the hearing officer in this matter issued his Decision and Recommended Order. That decision found the City of New York (City) in violation of its duty to negotiate in good faith with the Patrolmen's Benevolent Association of the City of New York, Inc. (PBA) by reason of its refusal to negotiate over matters that he determined to be mandatory subjects of negotiation. The hearing officer also found that the City had violated its duty to negotiate in good faith in that it failed to furnish appropriate information to PBA and that it engaged in "surface bargaining". One element of the PBA's charge against the City was dismissed by the hearing officer. That element was an allegation "that the City acted prematurely, and thus improperly, in declaring impasse". Thereupon, the hearing officer recommended "that the City be ordered to negotiate in good faith."

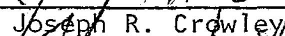
Both the City and PBA have excepted to the hearing officer's decision, the City to that part of the decision finding that it violated its duty to negotiate in good faith in three particulars, and PBA to that part of the decision finding that the declaration of impasse was not premature and thus not a violation.

This matter comes to us in the context of long negotiations between the parties, several aspects of which were litigated before New York City's Board of Collective Bargaining and one aspect of which was litigated in court. The dispute is presently before an Impasse Panel under the New York City Collective Bargaining Law. The parties are eager for a quick resolution of the dispute before us, and we hereby undertake to render a decision as quickly as we can consistent with our consideration of the complex issues involved. There also appears to be some question as to the implications of the hearing officers' recommended order for the continuation of the work of the Impasse Panel. Inasmuch as it had been contemplated, prior to the issuance of the hearing officer's decision, that the Impasse Panel would be meeting within this thirty-day period, we deal with that question in this interim decision. This interim ruling takes the hearing officer's Decision and Recommended Order at face value and implies neither approval nor disapproval of any aspect of it.

For the question with which we now deal, the two significant parts of the hearing officer's Decision and Recommended Order are his dismissal of that portion of the charge that sought a determination that declaration of impasse was premature and his Recommended Order that the City be directed to negotiate in good faith. The term "negotiations" under the Taylor Law contemplates not only face-to-face bargaining, but the full range of conciliation procedures under CSL §209 and under parallel provisions of local laws enacted pursuant to CSL §212. Thus the proposed order, in the light of the determination that the declaration of impasse was not premature, is consistent with the Impasse Panel proceeding while the matter is pending before us.

Dated: Albany, New York
January 30, 1976

Robert D. Helsby, Chairman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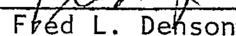

Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS ..D

In the Matter of

HUNTINGTON MANOR FIRE DISTRICT,

Employer,

-and-

HUNTINGTON MANOR EMPLOYEES GROUP,

Petitioner.

#2G-1/30/76

CASE NO. C-1243

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 Huntington Manor Employees Group

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: Custodian-dispatcher, inspector-custodian, and head custodian.

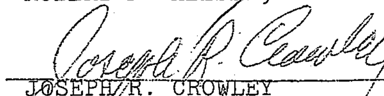
Excluded: All other employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Huntington Manor Employees Group

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 30th day of January , 1976.

ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY

FRED L. DENSON

PERB 58
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