STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-3/19/76

In the Matter of

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

Respondent,

-and-

DIANE KEENE,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-1539

This matter comes to us on the exceptions of Diane Keene (charging party) to the determination of a hearing officer issued on November 10, 1975 dismissing her charge. The charge which was filed on March 18, 1975 alleged that the Board of Education of the City School District of the City of New York (respondent) violated CSL Section 209-a.1(a) and (c) by terminating her employment as a regular substitute teacher in the Infants' Home of Brooklyn "based soley on [her] activity in the union [United Federation of Teachers]."

FACTS

On September 16, 1974, shortly after the start of the 1974-75 school year respondent assumed responsibility for operation of the educational program of the Infants' Home of Brooklyn (Home), a voluntary psychiatric day treatment center serving severely emotionally disturbed children between the ages of 5 and 9. At the time it had four teachers. Three of them, Mrs. Keene among them, were on eligible lists of the respondent; the fourth was given an emergency listing inspection. All four were retained by

respondent and two other teachers were employed. None of the teachers enjoyed tenure, either under the Education Law or under contract between respondent and UFT.

The principal, Mr. Irving Rosenzweig was responsible for four other centers in addition to the school at the Home. On average he had 2 1/2 days a week available to spend at the school at the Home. Accordingly, he decided to establish the position of "Head Teacher" at the Home. This position contemplated a person who would spend most of her time teaching, but would also assume certain administrative responsibilities. Inasmuch as the six authorized teaching positions at the Home were filled, the appointment of a "Head Teacher" required either the promotion of one of the six teachers or the replacement of one of them by a teacher from the outside. The latter course was chosen and Mrs. Keene was replaced.

Mrs. Keene had been de facto leader of the teachers with respect to union matters. This was known to Mr. Rosenzweig, who was the person who made the effective recommendation that she be terminated. There is evidence in the record that Mr. Rosenzweig was motivated by anti-union animus in reaching the decision to terminate Mrs. Keene. This evidence is in conflict with other evidence that indicates that anti-union animus was not a factor in his decision. There is also evidence that Mrs. Keene was only a marginally effective teacher of emotionally disturbed children.

The hearing officer resolved all requestions of credibility against Mrs. Keene and determined that her termination was not tainted by anti-union animus. It is to this determination that the charging party filed her exceptions.

DISCUSSION

We have reviewed the record and the arguments of the parties. The evidence in the record is sufficient to raise a suspicion of anti-union animus on the part of Mr. Rosenzweig. Such suspicion, however, is allayed by other evidence in the record. At several critical points there is a conflict in the evidence. In all such instances the hearing officer resolved the questions of credibility in favor of the respondent and against the charging party. We find no reason to disturb these resolutions of credibility.

In some instances the facts established by uncontradicted testimony may be interpreted in one or two ways. One would be indicative of anti-union animus on the part of Mr. Rosenzweig, the other not. In all such instances the hearing officer accepted Mr. Rosenzweig's explanation of those events. His explanations satisfied the hearing officer that there had been no anti-union animus involved in the termination of Mrs. Keene. These conclusions of fact of the hearing officer are consistent with the evidence and we find no reason to overturn them. Absent a finding of anti-union animus as a factor in the termination of Mrs. Keene, the charge falls.

CONCLUSION

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

ACCORDINGLY, the charge herein should be and it hereby is dismissed in its entirety.

Dated: New York, New York
March 19, 1976

Robert D. Helsby, Chairman

Joseph R. Crowley

Joseph R. Crowley

Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-3/19/76

In the Matter of

COUNTY OF ERIE (EDWARD J. MEYER MEMORIAL HOSPITAL),

Employer,

- and -

BUFFALO HOUSE STAFF ASSOCIATION,

Petitioner,

- and -

ERIE COUNTY CHAPTER OF THE CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Intervenor.

BOARD DECISION AND ORDER

Case No. C-1240

The Buffalo House Staff Association (petitioner) seeks to be certified as the exclusive negotiating representative of the interns and residents employed by the County of Erie at the Edward J. Meyer Memorial Hospital (employer). The interns and residents are presently included in the employer's white collar unit. That unit is represented by the Erie County Chapter of the Civil Service Employees Association, Inc. (intervenor) which has intervened in this proceeding and opposes the petition. At the time of the petition there were about 5,100 employees in the white collar unit, of which approximately 35 are interns and 140 residents. The internships are of one year duration, while residencies vary from one to six years.

The Director of Representation determined that the proposed unit would not be appropriate in that it would separate the interns

and residents from the other doctors employed by the employer.[1/] The Director reasoned that all doctors should be in the same unit because they share a common bond - the practice of medicine.[2/]

The petitioner has filed exceptions to the Director's determinations. These exceptions specify seven objections to the Director's determination, each of which is directed to his conclusion that interns and residents do not have a separate community of interest because they share a community of interest with other physicians. The employer and the intervenor both support the Director's conclusions, and the employer has submitted a response to each of the petitioner's specific exceptions. All three parties have submitted briefs and presented oral arguments.

Having read the record and considered the arguments of the parties, we reject the conclusion reached by the Director and determine that interns and residents have a separate community of interest and thus should have a separate negotiating unit.

The interns and residents, as distinguished from other employees in the white collar unit, (including the attending physicians), are a hybrid group. They are present at the hospital in a dual capacity, both as employees and as students - in which capacity they are required by state and professional certification bodies to spend specific periods of time in certain areas or specialties. These requirements are not negotiable to the extent that they are fixed by authorities beyond the employer. Moreover,

---

1/ The other doctors are attending physicians. They are doctors who have completed their education and are fully licensed or certified in their respective specialties.

2/ The Director did not reach the point of deciding that a unit limited to doctors but including all doctors would be appropriate.

there may be educational requirements imposed by the employer in its capacity as teacher of the interns and residents that are also beyond the scope of the Taylor Law. There are, however, duties which are within the control of the employer and within the scope of negotiations.[3/]

Contrary to the dissent of member Denson, we find, as set forth infra, the terms and conditions of employment of the interns and residents to be fundamentally different from other groups of employees in the unit. The record makes clear that the interns and residents have disparate interests at the negotiating table. The subjects, such as hours, overtime or holidays, as negotiated for the white collar union by the intervenor in response to the needs and desires of the thousands of employees in the unit, would have little if any application to interns and residents.[4/] Further, the interns and residents are each employed under a one year contract and are subject to the provisions of the House Staff Manual. These circumstances are of no concern to the intervenor, and, in fact,

---

3/ For discussions of a dual role of interns and residents as both students and employees, see Matter of Regents of the University of Michigan, 1971, Michigan Employment Relations Commission Lab. Op. 270 (1971) affirmed by the Michigan Supreme Court in Regents of the University of Michigan v. MERC, 204 NW 2d 218, 82 LRRM 2909 (1973) which said (at 82 LRRM 2914) " [T]he scope of bargaining by the Association may be limited as the subject matter falls clearly within the educational sphere." Similar discussions may be found in cases involving voluntary hospitals located in New York State. See Brooklyn Eye and Ear Hospital, 32 SLRB No. 21 (1969) and Matter of Long Island College Hospital, 33 SLRB No. 32 (1970). In each of these three cases a separate unit was designated for interns and residents.

4/ Interns and residents work 80 to 90 hours per week while others in the unit work 40 hours. Overtime and holiday provisions do not apply to interns and residents.

have not been the subject of negotiations between the employer and the intervenor.

Thus, it would seem clear that the terms and conditions of employment of the interns and residents are unique because of both the educative factors and differences in negotiating interests from other employees in the white collar unit, and they should not be included in a unit with other employees.

The conclusion of the Director that, if there were to be a separate unit of some doctors, it should encompass all doctors, including attending physicians, fails to recognize that physicians who have completed their training do not share the unique dual status of interns and residents. Further, as demonstrated in the record, the hours of interns and residents and their overall obligations to the employer are so different from those of attending physicians as to constitute a distinct community of interest and to preclude their inclusion in a single unit.

This leaves one additional problem. The record indicates that in addition to the 35 interns and 140 residents on the staff of the Edward J. Meyer Memorial Hospital, there are nine residents in Pathology on the staff of the County Laboratory. The petition seeks to exclude these nine residents from the unit of interns and residents on the theory that the locus of control of the terms and conditions of employment of the majority of the interns and residents rests with the Director of the hospital and that he has no responsibility for the Pathology residents. On the record before us, we determine that the locus of control of the terms and conditions of employment of all the interns and residents rests with the County administration. Thus there is no reason why all the interns and residents should not be in a single negotiating

unit. Moreover, having determined that the predominant community of interest among interns and residents on the staff of the Meyer Memorial Hospital is their dual status of employees and students, and the fact that the Pathology residents have the same dual status, we now determine that all interns and residents employed by the County enjoy a single and distinct community of interest.

Accordingly, we reverse the decision of the Director and we determine that there shall be a unit consisting of the following employees of the County:

Included: All interns and residents employed by the County.

Excluded: All other employees of the County.

IT IS ORDERED that an election by secret ballot shall be held under the supervision of the Director among the employees in the negotiating unit set forth above who were on the payroll immediately preceding the date of this decision; and

IT IS FURTHER ORDERED that the County shall submit to the Director, as well as to the petitioner and the intervenor, within seven days from the date of receipt of this decision, an alphabetized listing of the employees in the negotiating unit set forth above who were employees on the payroll date immediately preceding the date of this decision.

Dated at New York, New York
This 19 day of March, 1976

ROBERT D. HELSBY, CHAIRMAN

JOSEPH R. CROWLEY, MEMBER

OPINION OF MEMBER FRED L.DENSON DISSENTING

I disagree with the majority and would not grant separate unit status to the petitioner. A condition precedent to permitting fragmentation of an existing unit is a showing that the members of the proposed unit have either used or attempted to use the machinery of the existing unit. The record indicates that the petitioner has failed to meet these prerequisites in that few, if any, members of the proposed unit have previously participated or attempted to participate in any of the intervenor's endeavors. Nor has any intern or resident ever filed a grievance or submitted any ideas on contract proposals even though forms were made available for this purpose to all unit personnel by intervenor. Prior to filing the instant petition, most interns and residents expressed minimal interest in union activities; were not dues paying members; paid little, if any, attention to intervenor's bulletin boards; did not know that there was an existing contract; and could not identify intervenor's officers or stewards. Additionally, it is noted that the existing unit was recognized by the County in 1968. The record does not indicate that any objection was forthcoming from any intern or resident at the time of the creation of the unit; nor has any intern or resident attempted to use the auspices of intervenor during the interim period from the time of recognition to the time of the instant petition.

While at first blush it may appear that intervenor has totally neglected this faction of the unit, the record indicates that the opposite is true. More specifically, the testimony of a former intervenor president revealed that he had requested a meeting with the Buffalo House Staff Association to explain intervenor to its members and to acquire their ideas and concerns but never received a response to his inquiry.

As mentioned in my Smithtown dissent (8 PERB 3016, 3017), the burden properly belongs to the party seeking fragmentation to establish a need for a separate unit in accordance with the criteria set forth in Section 207 of the Act unless the existing unit is composed of groups of employees whose working conditions are so fundamentally different to create a presumption of inappropriateness (e.g. blue collar and white collar personnel). Under the latter circumstance, the burden of proof is placed upon the party seeking retention of the unit to show that the existing unit is appropriate and meets the criteria of Section 207. While the working conditions of interns and residents differ from many other groups of employees in the unit, they are not so fundamentally different to justify a shifting of this burden to the parties seeking retention of the unit.[1/] Most bargaining units are comprised of diverse groups of employees having interests

---

1/ The majority notes areas of disparate interests between interns and residents and other members of the bargaining unit. It seems that many of these areas are encompassed by the present agreement and are subject to the grievance procedure contained therein.

which are common to other groups in the bargaining unit as well as interests which are special or unique to a particular group. Admittedly, the interns and residents do have unique interests; however, their commonality of interest with the remaining groups comprising the unit far outweigh their own unique interests. I am unable to detect any significant impairment of the negotiation process which would be detrimental to any unique interest of interns and residents,but can only ascertain that meaningful and effective negotiations have taken place on behalf of interns and residents as well as other groups included within the bargaining unit through the present representative.

Over the past two years the Buffalo House Staff Association has extensively engaged in organizational activities in several hospitals in the Buffalo area. In examining the objectives of the Buffalo House Staff Association, I note that two of its primary missions are to "obtain a uniform working contract throughout Buffalo" for interns and residents and to implement innovative ideas regarding medicine and medical standards (e.g. patient care, PSRO, etc.). To meet these goals, it has petitioned the National Labor Relations Board to be the exclusive bargaining agent for interns and residents in at least three other hospitals in the Buffalo area. It is significantly noted that the uniting standards applied by the National Labor Relations Board are somewhat different from those used by PERB 2/

4263

2/ Crowley "Resolution of Representation Status Disputes Under the Taylor Law", 37 Fordham L. Rev. 517 (1969); 2 PERB 8079.

and the fact that they may in the future enjoy separate unit status in other hospitals is of no moment.

I am troubled by the fact that interns and residents at Meyer have remained almost totally oblivious to their organizational and representation rights for approximately six years as evidenced by their almost complete disregard of the existing contract and its grievance procedure to remedy apparent violations of their contractual rights. If these contractual rights or Section 209-a statutory rights would have been exercised in the past with futility, I would be more amenable to consider finding the proposed unit appropriate. However, I find that the ineffectiveness of intervenor, if any, is attributable to the failure of the interns and residents to properly use that which is already available to it. Thus, I am inevitably led to the conclusion that the petition should be dismissed.

Dated: New York, New York
March 19, 1976

Fred L. Denson

FRED L. DENSON

#2C-3/19/76

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the	:	Case No. D-0127
ALEXANDER UNITED TEACHERS ASSOCIATION	:	
upon the Charge of Violation of Section 210.1 of the Civil Service Law.	:	BOARD DECISION & ORDER
	:	

On January 27, 1976, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Alexander United Teachers Association had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a seven day strike against the Alexander Central School District on January 8, 9, 12, 13, 14, 15 and 16, 1976.

The Alexander United Teachers Association agreed not to file an answer and thus admitted the allegations of the charge. The Alexander United Teachers Association joined the Charging Party in recommending a penalty of a loss of dues checkoff privileges for 60% of its annual dues. The annual dues of the Alexander United Teachers Association are deducted in equal installments during the ten month period from September through June.

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

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

WE ORDER that the dues deduction privileges of the Alexander United Teachers Association be suspended, commencing with the first pay check in April, 1976, and continuing through November, 1976, or for such period of time during which 60% of its annual dues would otherwise be deducted. Thereafter, no dues shall be deducted on its behalf by the Alexander Central School District until the Alexander United Teachers Association 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
March 19, 1976

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF	:	
PLAINVIEW-OLD BETHPAGE CENTRAL SCHOOL DISTRICT,	:	#2D-3/19/76
Employer,	:	
-and-	:	CASE NO. C-1309
CIVIL SERVICE EMPLOYEES ASSOCIATION,	:	
Petitioner,	:	
-and-	:	
LOCAL 237, TEAMSTERS, 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 Local 237, Teamsters

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 buildings and grounds personnel including matrons, custodians, groundskeepers, night custodians in-charge, mail and supply clerks, A.V. technicians, maintenance men, assistant head custodians - junior and senior high schools, head custodians - elementary, junior and senior high schools, and T.V. technicians.

Excluded: All other employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Local 237, Teamsters

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 19 day of March, 19 76.

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

4267

PERB 58
(10-75)

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2E-3/19/76

IN THE MATTER OF :

TOWN OF IRONDEQUOIT, :

Employer, :

-and- : Case No. C-1343

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 71-71A, AFL-CIO, :

Petitioner. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that International Union of Operating Engineers, Local 71-71A, 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: All disposal plant employees including plant operators, laborers and truck drivers.

Excluded: Superintendent of Sanitation, general foreman, and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with International Union of Operating Engineers, Local 71-71A, 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 19 day of March , 1976 .

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

PERB 58(2-68)

4268

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2F-3/19/76

IN THE MATTER OF :

NORTH BABYLON UNION FREE SCHOOL DISTRICT, :

Employer, :

-and- :

LOCAL 237, TEAMSTERS, :

Petitioner, : CASE NO. C-1329

-and- :

CUSTODIAN, CUSTODIAN-BUS DRIVER UNIT, SUFFOLK COUNTY CHAPTER, CSEA, 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 Local 237, Teamsters

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 bus dispatchers, custodians, custodian bus drivers, school bus drivers, maintenance helpers, groundsmen, auto mechanics, motor equipment operators, custodial workers; all part-time school bus drivers, custodial workers, watchmen.

Excluded: All other employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Local 237, Teamsters

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 March, 19 76.

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

4269

FRED L. DENSON

PERB 58
(10-75)

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF	:	#2G-3/19/76
CITY OF BINGHAMTON, Employer,	:	
-and-	:	
TRI-CITY AREA FOREMAN AND SUPERVISORY EMPLOYEES, LOCAL 675, AFSCME, COUNCIL 66, Petitioner,	:	Case No. C-1275
-and-	:	
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 826, 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 Tri-City Area Foreman and Supervisory Employees, Local 675, AFSCME, Council 66,

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: Park maintenance foremen, signal foremen, street maintenance foremen, sanitation foremen, water maintenance foremen, sewer maintenance foremen, and general equipment foremen.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Tri-City Area Foreman and Supervisory Employees, Local 675, AFSCME, Council 66,

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 March, 1976.

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

PERB 58(2-68)

4270