STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-9/5/74

In the Matter of	
PLAINEDGE UNION FREE SCHOOL DISTRICT, Respondent,	BOARD DECISION AND ORDER
-and-	
PLAINEDGE FEDERATION OF TEACHERS, Charging Party.	CASE NO. U-1101

This matter comes to us on exceptions filed by the Plainedge Union Free School District (District) to a decision and recommended order of a hearing officer who found that it had modified its health leave policy unilaterally in violation of its duty to negotiate in good faith (CSL §209-a.1(d)). The hearing officer recommended that the District be ordered to cease and desist from unilaterally modifying the policy and procedures to be followed in granting such leave to the employees in the negotiating unit represented by the Plainedge Federation of Teachers (Federation). Neither exceptions nor cross-exceptions were filed by the Federation.

Upon review of the record, we have ascertained that the facts are as set forth in the hearing officer's decision. We restate only those necessary to indicate the nature of the problem. The District had adopted a health leave policy on April 6, 1967 which, as amended on May 13, 1968, continued until January 10, 1974. On December 13, 1973 the Federation was advised by the Acting Superintendent of the District that it proposed to alter

its health leave policy at its December meeting. At the request of the Federation the matter was tabled until the January meeting and a copy of the proposed revision was sent to the Federation. The Federation did not communicate with the Acting Superintendent about the matter during the following three weeks (which period included the Christmas recess), but the proposed change was discussed at a meeting of the Executive Board of the Federation on January 8, 1974. On January 9, 1974 it received a copy of the agenda for the January 10 meeting of the District's board which included consideration of the revised health leave policy and it called the president of the District's board to request further tabling of the matter in order to allow time for negotiations concerning the proposed revisions. The District's board rejected the request and at its meeting of January 10 unilaterally changed its health leave policy.

The District's seven exceptions set forth the legal issues before us --

1. The District asserts that the record lacks substantial evidence to support the hearing officer's findings of fact.

Having reviewed the record, we reject this exception and confirm the hearing officer's findings of fact.

2. The District argues that it acted under a claim of contractual privilege and that its violation, if any, was of the contract and should, therefore, be remedied within the framework of the contract's grievance procedure.

The Taylor Law declares that a public employer is required "to negotiate with and enter into written agreements with employee organizations that represent its

employees in determining terms and conditions of employment" (CSL §204) and that its refusal to negotiate in good faith about changes in terms and conditions of employment is an improper employer practice (CSL §209-a.1(d)). Health leave policy is a term and condition of employment that may not be altered unilaterally by a public employer. One of the questions before the hearing officer was whether the change made on January 10, 1974 was such a prohibited unilateral change. If the right to make such a change had been reserved to the District by the contract, then it was not. The implications of the contract were, therefore, significant to the resolution of the statutory issue before the hearing officer. He had two alternatives -- either he could have deferred to the contract grievance procedure for resolution of questions involving the implications of the contract or he could have resolved the question himself inasmuch as it was a material element of a question that was within his competence and his jurisdiction. He chose the latter course. In doing so, he followed our practice in not deferring to a grievance procedure that lacks the finality of binding arbitration (Matter of Board of Education of the City of New York, 6 PERB 3022 [1973]).

3. The District controverts the authority of the hearing officer to interpret provisions of the contract that it claims to have authorized its unilateral change in the health leave policy.

We reject this position for the reasons set forth in number 2, above.

4. The District objects that, by refusing to defer to advisory arbitration, PERB would be imposing binding arbitration upon the parties and that we lack authority to do so.

> Whether or not the parties choose to authorize an arbitrator to dispose of disputes between them concerning contractual interpretation is for the parties. The statute authorizes PERB to ascertain whether or not an employer has unilaterally altered terms and conditions of employment. On occasion -- as here -- questions of contract interpretation and of unilateral changes of terms and conditions of employment are related. It is our practice to defer to an arbitrator who may dispose of the issue, but not to one whose powers are advisory. Our practice does not require the parties to adopt binding arbitration. Even where we defer to arbitration, we do not do so unreservedly; rather, we retain jurisdiction to consider questions such as whether the issues raised by the improper practice charge were fully litigated in the arbitration, whether the arbitration proceedings were tainted by unfairness or serious procedural irregularities, and whether the determination of the arbitrator was not repugnant to the purposes and policies of the Taylor Law (Matter of New York City Transit Authority, 4 PERB 3669 [1971]).

5. The District contends that the failure of the Federation to advise it of its objections to the change in the health leave policy before the day of that change constituted acquiescence therein.

> We agree with the conclusion of the hearing officer that the conduct of the Federation did not constitute a waiver of its right to negotiations over the change.

6. The District claims that the hearing officer misinterpreted the management rights clause of the contract (Article XI) when he rejected its claim of contractual right to alter its health leave policy.

> The hearing officer noted correctly that, by its terms the management rights clause did not authorize the District to alter policies or procedures that "substantially affect the wages, hours, or terms and conditions of employment of the teaching staff."; he also reasoned correctly that this language contradicts the employer's claim of contractual right.

7. Finally the District complains that the proposed order that it "cease and desist from unilaterally modifying the policy and procedures to be followed in granting such leave to employees in the negotiating unit represented by the Federation" is confusing in that "It is not clear...whether it refers to the health leave policy prior to or after January 10, 1974 or whether it relates to prospective changes thereof."

We agree, and we clarify the order. Inasmuch as the unilateral change that was effected on January 10, 1974 was a violation of the District's obligation to negotiate before changing terms and conditions of employment, the order contemplates the restoration of health leave policy as it existed prior to January 10, 1974 and its continuation thereafter until changed in accordance with procedures set forth in Civil Service Law §209.

NOW, THEREFORE, WE DETERMINE that the conduct of the District in unilaterally revising its health leave policy constitutes a violation of CSL §209-a.1(d), and

WE ORDER the District to negotiate in good faith over changes in its health leave policy, this order contemplating that the District will cease and desist from unilaterally modifying its health leave policy or applying the pro-

visions of the health leave policy that it unilaterally imposed on January 10, 1974.

Dated: New York, N.Y.
September 5, 1974

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
LOCKPORT MEMORIAL HOSPITAL, Employer,	:	#2B-9/5/74
- and -	:	
NIAGARA COUNTY CHAPTER, CSEA, Petitioner,	:	Case Nos. C-1078 & C-1101
- and -	:	
NEW YORK STATE NURSES ASSOCIATION, Petitioner.	:	

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that NEW YORK STATE NURSES ASSOCIATION

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

Unit:

Included: Every full-time & part-time licensed registered professional nurse or person authorized to practice as a registered professional nurse employed by the Lockport Memorial Hospital.

Excluded: All seasonal, emergency & temporary registered professional nurses, Supervisors, Supervisors-Relief, Director of In Service Education, Asst. Dir. of Nurses, Dir. of Nurses and all other employees of the Lockport Memorial Hospital.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with NEW YORK STATE NURSES ASSOCIATION

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

Signed on the 5th day of September , 1974 .

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

PERB 58 (2-68)

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-9/5/74

In the Matter of the Application of the :

INCORPORATED VILLAGE OF VALLEY STREAM :

For a Determination pursuant to Section 212 of the Civil Service Law. : Docket No. S-0009A

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At a meeting of the Public Employment Relations Board held on the 5th day of September, 1974, and after consideration of the application of the Incorporated Village of Valley Stream made pursuant to Section 212 of the Civil Service Law for a determination that the Board of Trustees' Resolution of November 15, 1971 as last amended by Resolution of August 12, 1974 is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board, it is

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

Dated: New York, New York
September 5, 1974

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

#2D-9/5/74

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Application of the COUNTY OF WESTCHESTER for a Determination pursuant to Section 212 of the Civil Service Law.	:	Docket No. S-0037

At a meeting of the Public Employment Relations Board held on the 5th day of September, 1974, and after consideration of the application of the County of Westchester made pursuant to Section 212 of the Civil Service Law for a determination that Act No. 84-1967 as last amended by Act No. 40-1974 is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board, it is

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

Dated: New York, New York
September 5, 1974

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson