

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2A-6/30/77
ST. LAWRENCE COUNTY,	:	
	:	
Respondent,	:	<u>BOARD DECISION AND ORDER</u>
	:	
-and-	:	<u>CASE NO. U-2529</u>
	:	
ST. LAWRENCE COUNTY CHAPTER OF THE CIVIL	:	
SERVICE EMPLOYEES ASSOCIATION,	:	
	:	
Charging Party.	:	

The charge herein was filed by the St. Lawrence County Chapter of the Civil Service Employees Association (CSEA) on February 4, 1977. It alleges that St. Lawrence County (County) committed an improper practice in violation of §209-a.1 of the Public Employees' Fair Employment Act (Act) in that it unilaterally changed the terms and conditions of employment of employees in the unit represented by CSEA. The alleged unilateral change relates to the health insurance program that covers unit employees.

The parties entered into a stipulation on May 11, 1977 which, among other things, requested that the charge be processed under §204.4 of our Rules. This procedure, which is applicable to disputes primarily involving a disagreement as to the scope of negotiations under the Act, dispenses with a hearing officer's decision in the interest of an expedited determination by this Board. The relevant facts are:

1. Since 1969 "negotiations regarding the health insurance program for County employees has related solely to payment of premiums."
2. The parties entered into an agreement on February 27, 1976 which runs through December 31, 1977. Article XIX, Section 4 of that

¹ Quotations are from the stipulation of the parties.

agreement provides a salary reopener for the calendar year 1977.

3. "On October 13, 1976 the County advised the CSEA of the proposed change in the health insurance plan to be effective as of December 1, 1976....CSEA requested negotiations regarding the proposed change in the health insurance programs. The County responded that a change in health insurance programs was a management prerogative and covered by Section IV of the 1976-77 Contract (Joint Exhibit 1). Thereafter, the County Legislature adopted a resolution changing the health insurance program effective December 1. The change was to substitute a group health insurance program for a New York State Governmental Employees Health Insurance Plan."

DISCUSSION

The charging party has submitted no brief in support of its position. The County submitted a brief which states its position that past negotiations concerning health insurance were restricted to the kinds of benefit coverage and left to the employer the designation of the insurance carrier. According to the County, it was not obligated, in any event, to negotiate over a demand regarding the choice of insurance carrier during the life of a contract that provided for a reopening only on salary. Finally, it alleges that the Group Health Insurance program that it selected provides even greater benefits than the New York State Government Employees Insurance Plan that it dropped, and it attempts to document this allegation.

The sole issue is one of contract interpretation. The parties have negotiated and continue to be bound by an agreement which, among other things, covers the subject of health insurance. Whether that agreement reserved to the County, as it contends, the right to designate the insurance carrier, or whether it did not, as the CSEA contends, is a question that should be resolved through the grievance mechanism that the parties have set up to interpret their contract. It is not the responsibility of this Board to do so in these circumstances. Accordingly, we dismiss the charge. In reaching this conclusion, we are persuaded by the dissenting opinion in the decision in Matter of the

Town of Orangetown, 8 PERB ¶13042 (1975) at page 3072. The dissent states:

"I do not find that this Board has been granted broad jurisdiction to interpret a collective agreement. Admittedly there may be occasions when it is necessary for this Board to interpret provisions of an agreement, but to the limited extent of determining whether there has been a statutory violation, for example, to determine whether an employee organization has waived its right to negotiate on a particular subject so as to permit unilateral action by an employer³....


[I]n a situation where the employer refuses to implement an express provision in the contract, or does so in a manner which the employee organization feels is not in accordance with the provision in the contract, what would be involved is a pure contractual question and the enforcement of the contract as such, and thus outside the jurisdiction of this Board. In brief, when an employer's obligation to act or not to act is wholly contractual, the enforcement of such obligation should be dealt with either by arbitration (if the parties had so agreed) or by a plenary action.

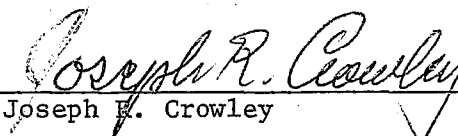
3 Cf NLRB v. C & C Plywood, 335 U.S. 421."

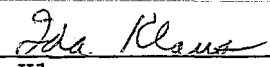
This Board now adopts the dissenting opinion in the Orangetown case. We do not find that this is one of the "occasions when it is necessary for this Board" to interpret the provision in question.

NOW, THEREFORE, the decision herein is hereby dismissed.

DATED: Albany, New York
June 30, 1977


Robert D. Helsby, Chairman


Joseph R. Crowley


Ida Klaus

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
CITY OF YONKERS,

Respondent,

-and-

UNIFORMED FIRE OFFICERS ASSOCIATION OF THE
PAID FIRE DEPARTMENT OF THE CITY OF YONKERS,

Charging Party.

#2B-6/30/77

BOARD DECISION AND ORDER

CASE NO. U-2074

This matter comes to us on exceptions of both the Uniformed Fire Officers Association of the Paid Fire Department of the City of Yonkers (charging party herein) and the City of Yonkers (respondent herein) to a decision of a hearing officer. That decision found merit in some of the charges made by the charging party and dismissed others. The charge alleged that respondent violated §209-a.1(a), (c) and (d) of the Public Employees' Fair Employment Act (Act)¹ in that it acted unilaterally in each of the following five respects, herein referred to as separate parts of the basic charge:

1. restructured fire officer 1976 vacation schedules so as to reduce by nearly 55% the number of officers eligible to take their vacations during the prime summer vacation periods;
2. discontinued the practice of paying time-and-one-half to officers required to work overtime in order to replace members of the association's executive board released for association business;

¹ These sections of the Act provide that "...it shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed in section two hundred and two for the purpose of depriving them of such rights;...(c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization; or (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees."

3. discontinued the practice of releasing the association's vice president to replace its president when the latter takes his vacation, and paying time-and-one-half to officers called in to replace the vice president so released;
4. terminated the payment of five hours overtime to the officer assigned by the association to carry out its contractual responsibility for calling in officers for "extra-duty assignments" in accordance with an equitable schedule designed by the association;
5. terminated replacement at time-and-one-half of the officer in charge of respondent's communication division when that officer is released for association business.

The hearing officer determined that the evidence did not sustain a violation of either §209-a.1(a) or (c) with respect to any of the five parts of the charge because respondent's action was not intended to deprive public employees of rights guaranteed by §202 of the Act or to encourage or discourage membership in or participation in the activities of any employee organization. He dismissed Part 1; sustained Part 2; dismissed some aspects of Part 3 and sustained others; sustained Part 4; and dismissed Part 5.

After the hearing officer issued his decision and recommended order, charging party made a motion to reopen the record with respect to that aspect of Part 3 of the charge that was dismissed so that it could introduce additional evidence. We denied the motion, saying (at 10 PERB ¶13020, p. 3043 [1977]),

"Charging party had an opportunity to seek to introduce evidence that was in its possession before the hearing was closed, but it did not attempt to do so."

Thereafter, the parties submitted briefs in support of their respective positions and reply briefs in response to each other's exceptions.

Having reviewed the record and considered the arguments of the parties, we affirm the determinations of the hearing officer, though we do not adopt the basis in one instance, as pointed out below.

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FACTS

All five parts of this charge deal with changes in past practice with respect to unit employees that were made by respondent unilaterally. They relate either to vacation time or to the payment of overtime in circumstances not specifically covered in the parties' collectively negotiated agreement in effect at the time. These changes were made as part of an effort to reduce respondent's expenses in the face of a financial emergency.² The charging party contends that respondent's refusal to continue the extra-contractual benefits constituted a unilateral change in terms and conditions of employment which could only be achieved through joint negotiations required by the Act. The primary defense of respondent is that all the changes related to non-mandatory subjects of negotiation and that, therefore, it was under no duty to negotiate with charging party regarding them. Its secondary defense is that its actions were justified by the financial emergency.

DISCUSSION

The financial emergency does not excuse respondent from its duty to negotiate. This is stated explicitly in §2-a, subd. 3, of the Yonkers Financial Emergency Act. That statute imposes restrictions upon the obligations that respondent may incur in the future (see §7, subd. 1.e), but it does not relieve it of any current financial obligations.

The defense that this charge deals with non-mandatory subjects of negotiation must be evaluated with respect to each part of the charge.

² That financial emergency has been recognized by the State Legislature. Section 2-a of Chapter 871 of the Laws of 1975, entitled, The New York State Financial Emergency Act of the City of Yonkers provides:
"The legislature hereby finds and declares that a state of financial emergency exists within the city of Yonkers."

Part 1 (Vacation Time)

The calendar year is divided into eighteen periods during which vacations are to be taken. Both before and after January 1, 1976, unit employees could select their vacation periods on a seniority basis. Before 1976 a disproportionately large number of employees were permitted to select vacations to be taken during the most desirable summer months. For 1976, however, respondent required that an equal number of unit employees take vacation during each of the eighteen vacation periods. This has reduced substantially the number of unit employees who can be on vacation during the prime vacation periods; it has also reduced the number of extra-duty assignments of other employees that were formerly required to assure a full complement of unit employees during the prime vacation period.

We determine that the change in the number of fire officers who may take a vacation at any one time was not a violation of respondent's duty to negotiate. The situation here is similar to one considered by us in Matter of City of White Plains, 5 PERB ¶13008 (1972). In that case, we determined that (at page 3015):

"It is the City alone which must determine the number of firemen it must have on duty at any given time. It cannot be compelled to negotiate with respect to this matter.... Within the framework which the City may impose unilaterally that a specified number of Fire Fighters must be on duty at specified times, the City is obligated to negotiate over the tours of duty of the Fire Fighters within its employ."

Applying that reasoning to the instant situation, respondent may determine the number of unit employees that it must have on duty during each of the vacation periods. Within that framework, it is obligated to negotiate over the order in which vacation preferences may be granted. Those vacation preferences had been and continued to be determined on the basis of seniority.

Thus, there was no improper unilateral determination of a negotiable subject.³

Part 2 (Replacements' Payment Rate)

This part of the charge is not concerned with manning levels or with whether unit employees should be called in to replace members of charging party's executive board who are released for association business. Its sole concern is compensation to be paid to employees who are called in. Compensation, including premium pay for special assignments, is a mandatory subject of negotiation, and a unilateral change by a public employer of a past practice of granting such premium pay is a violation of its duty to negotiate.

Part 3 (Replacement of President)

The first aspect of this part of the charge is that charging party's vice president was denied time off to engage in association business when charging party's president was on vacation. On July 24, 1975, charging party was advised that respondent would not continue the practice of giving the vice president such time off "next year". According to the charging party, this new policy became operative on January 1, 1976, the start of the "next year". The record contains no evidence that charging party's vice president ever sought or was denied time off to replace the president when the latter was on vacation; thus, the only event contained in the record that might be the basis of a charge occurred on July 24, 1975, when the respondent announced its

³ The hearing officer made the same determination that we do, but for different reasons. He determined that the agreement then in force gave respondent a contractual right to change vacation periods in the case of financial emergency. Having resolved that part of the charge in favor of respondent on other grounds, we do not reach the question of contract interpretation.

intention to change the policy. No act of any significance occurred on January 1, 1976, or between then and April 1, 1976. The hearing officer determined that the charge was not timely. We agree.

The second aspect of this part of the charge is that when charging party's vice president was granted time off during the closing weeks of 1975 to replace its president, the unit employees who were assigned to replace the vice president were not paid at time-and-a-half, contrary to past practice. As we have already said in our discussion of Part 2 of the charge, the rate at which an employee is paid is a term and condition of employment, and a public employer may not alter a practice of paying at time-and-a-half without prior negotiation pursuant to §209 of the Act.

Part 4 (Payment for "Extra Duty" Calls)

Respondent contends that it is under no obligation to pay the officer appointed by charging party to call in unit employees on "extra-duty" assignments. Its reason is that the contract assigns to charging party the responsibility for allocating "extra-duty" assignments among unit employees and that the officer who makes these assignments is merely carrying out an assignment made by charging party.

The hearing officer correctly determined that the collective agreement provides for charging party to perform a function on behalf of respondent in designating unit employees who should be called in for "extra-duty" assignments. Thus, he concluded that payments to the officer appointed by the association to make such assignments was "compensation for work performed on behalf of the respondent". We agree with the hearing officer that compensation for this assignment was a term and condition of that extra work on behalf of respondent.

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Part 5 (Replacement of Communications Officer)

Whether or not respondent requires the services of a communications officer is within its prerogative as management to determine. (Matter of City School District of the City of New Rochelle, 4 PERB ¶13060, and Matter of City of White Plains, supra). Respondent violated no duty when it determined unilaterally that it would not replace the communications officer while he was engaged in association business. Charging party argues, however, that because the communications officer was interrupted several times while attending association meetings to take telephone calls regarding problems in the communications division, respondent interfered with his contractual rights of participation in association affairs. The hearing officer rejected this argument, saying that the interruptions were de minimus and that they did not amount to a unilateral change in the negotiated terms and conditions of employment. Charging party contends that no violation of its right can be viewed as de minimus. It says that it must be free to charge a violation, even for a minor infraction, because if it waits for the improper conduct to become more serious, it may find that its time to file a charge has passed. We agree that even a minor infraction will support an improper practice charge; however, we do not agree that an occasional phone call to an employee who is at home on time off, or away on vacation, or attending an association meeting constitutes an improper interference with that employee's right to enjoy or properly utilize his time off.

NOW, THEREFORE, respondent is ordered to negotiate in good faith with respect to:

1. Its discontinuance of the practice of paying time-and-one-half to officers required to work overtime in order to replace members on charging party's executive board released for association business.
 2. Its discontinuance of the practice of paying time-and-one-half to officers called in to replace charging party's vice president when
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he is released to replace its president.

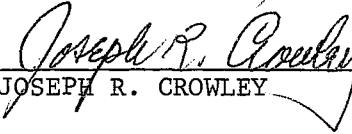
3. Its termination of payment of five hours overtime to the officer assigned by charging party to carry out its contractual responsibility for calling in officers for "extra-duty assignments" in accordance with an equitable schedule designed by charging party;

All other parts of the charge are dismissed.

Dated: Albany, New York
June 30, 1977



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



IDA KLAUS

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-6/30/77

In the Matter of	:	
YONKERS BOARD OF EDUCATION,	:	
Respondent,	:	<u>BOARD DECISION AND ORDER</u>
- and -	:	
YONKERS FEDERATION OF TEACHERS,	:	<u>CASE No. U-2364</u>
Charging Party.	:	

This matter comes to us on the exceptions of the Yonkers Federation of Teachers, charging party herein, from the decision of the hearing officer dismissing its charge. That charge alleges that the Board of Education of the City of Yonkers, respondent herein, committed an improper practice in violation of §§209-a.1(a), (b), (c) and (d) of the Public Employees' Fair Employment Act (Act).¹ Specifically, the charge alleges that Mr. John Romano and other members of the board vilified the charging party and, more particularly, its president, Walter Tice, for implementing the current collectively negotiated agreement and exerted pressure on them to relinquish benefits specified in that agreement.

The hearing officer found that Mr. Romano had subjected Mr. Tice to verbal abuse at several of respondent's public meetings held between June 29,

¹ These sections of the Taylor Law provide that "...it shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed in section two hundred and two for the purpose of depriving them of such rights; (b) to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of such rights; (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization; or (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees."

1976 and January 13, 1977.² The City of Yonkers was then facing a financial emergency³ and respondent, which receives its funds from the City of Yonkers, was seeking relief from obligations imposed by its collective agreement with the charging party.

The hearing officer dismissed the charge. He determined that there was no basis for it with respect to §209-a.1(a) because charging party "failed to sustain its burden of proof that they [the statements] were made for the purpose of depriving Tice or any employee of his rights guaranteed in §202, a necessary element to establish a violation of §209-a.1(a)". He rejected so much of the charge as alleged a violation of §209-a.1(b) because he found "nothing in the record to suggest that Romano's statements had the effect of improperly influencing or dominating the YFT [charging party]." He dismissed the charge insofar as it alleged a violation of §209-a.1(c), finding that

- 2 Among the statements made by Mr. Romano were that there was hostility between charging party and the people of Yonkers because of charging party's refusal to help in the financial crisis and that the charging party did not represent the teachers in Yonkers. He stated that "the union had the city in chains" and asked, "Why don't the teachers roll back their salaries and save the city?" He also said that "he had talked to some teachers and that he didn't really believe that the union represented the teachers in Yonkers". He misstated Mr. Tice's name as "mice, lice or whatever it is", and complained that Mr. Tice worked only two periods a day under the released time provisions of the agreement. This was a misstatement of facts; the agreement required Mr. Tice to work three periods per day. Other comments included, "Teachers managed to increase their pensions by \$1.5 million... they took care of themselves and not the kids", and "Mr. Tice, you are an insult to Yonkers." At the meeting on January 13, 1977, Mr. Romano made it clear that his criticism of Mr. Tice was directed at his role as a union leader and not as a teacher or an individual.
- 3 That financial emergency has been recognized by the State Legislature. Section 2-a of Chapter 871 of the Laws of 1975, entitled, The New York State Financial Emergency Act of the City of Yonkers provides: "The legislature hereby finds and declares that a state of financial emergency exists within the City of Yonkers."

"there is no proof of any act of discrimination against Tice or any other employee for the purpose of discouraging membership or participation in the activities of YFT [charging party]." With respect to the allegation that respondent refused to negotiate in good faith in violation of §209-a.1(d) of the Act, he determined that the only circumstance at issue was whether respondent has unilaterally changed the terms and conditions of employment by denying Mr. Tice an opportunity to make comments at board meetings as he was permitted to do pursuant to the agreement. On this matter, he found that Mr. Tice's opportunities to make comments were not restricted unduly, saying: "When he was cut off, it was merely a natural consequence of a turbulent meeting at which the chairman was attempting to restore order."

Charging party submitted a brief and presented oral argument in support of its exceptions. Respondent submitted no brief and did not participate in the oral argument.

We affirm the hearing officer's decision, which is supported by the record. However, the issues raised by those parts of the charge that allege a violation of §209-a.1(a) and (d) of the Taylor Law raise a more complicated question of law. The question is whether Mr. Romano's statements constituted an interference by the public employer with the rights guaranteed by the Taylor Law.

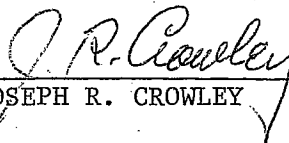
While we find Mr. Romano's statements to be questionable, they do not constitute a violation of §209-a.1 by the board as the public employer. In any event, the making of those statements was not conducive to harmonious labor relations between respondent and the charging party and did violence to the public policy specified in §200 of the Taylor Law.

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

Dated: Albany, New York
June 30, 1977



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



IDA KLAUS

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-6/30/77

In the Matter of :

FRONTIER CENTRAL SCHOOLS, :

Employer, :

- and -

FRONTIER SERVICE EMPLOYEES ASSOCIATION, :

CASE NO. C-1476

Petitioner. :

BOARD DECISION

On February 24, 1977, the Frontier Service Employees Association (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition for certification as the exclusive negotiating representative of certain employees employed by the Frontier Central School District.

The parties executed a consent agreement which was approved by the Director of Public Employment Practices and Representation on May 20, 1977. The negotiating unit stipulated to therein was as follows:

INCLUDED: All non-instructional employees.

EXCLUDED: Supervisor of Buildings & Grounds, Supervisor of Transportation, District Clerk/Supervising Clerk, Assistant Supervising Clerk, Head Custodian, Head Bus Driver, Head Maintenceman, Head Groundsman, Auto Mechanic Foreman, School Lunch Manager, District Treasurer, Secretary to the Superintendent, Secretary to the Assistant Superintendent.

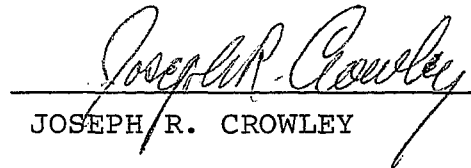
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Pursuant to the consent agreement, a secret ballot election was held on June 9, 1977. The results of this election indicate that the majority of eligible voters in the stipulated unit who cast valid ballots do not desire to be represented for purposes of collective negotiations by the petitioner. ^{1/}


Dated: Albany, New York
This 30th day of June, 1977



ROBERT D. HELSBY, CHAIRMAN



JOSEPH R. CROWLEY



IDA KLAUS

^{1/} There were 103 ballots cast in favor of representation by the petitioner and 162 ballots against representation by the petitioner.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
CITY OF AMSTERDAM, : #2E-6/30/77
- and - Employer, :
AMSTERDAM POLICE BENEVOLENT ASSOC- :
IATION, INC., : CASE NO. C-1369
- and - Petitioner, :
TEAMSTERS UNION, LOCAL 294, :
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 the Teamsters Union, Local 294

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 firefighters within the Public Safety Department.


EXCLUDED: The chiefs and deputy chiefs.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with the Teamsters Union, Local 294


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 June, 1977.


Robert D. Helsby, Chairman


Joseph R. Crowley

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Ida Klaus

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
VOORHEESVILLE CENTRAL SCHOOL : #2F-6/30/77
DISTRICT, :
Employer, :
- and - : CASE NO. C-1498 .
UNITED EMPLOYEES OF VOORHEESVILLE :
UNION, NYSUT, AFT, 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 the United Employees of Voorheesville Union, NYSUT, AFT, AFL-CIO

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

Unit: INCLUDED: All full time and regular part time classified employees including automobile mechanics, building maintenance helpers, bus drivers, bus drivers-custodial workers, cook-manager, custodians, custodian workers, food services helpers, groundsmen, head custodians, clerks, senior clerks, principal clerks, school monitors, school nurses, senior automobile mechanics, senior account clerk, stenographer, senior stenographers, senior typists, teacher aides, typists, watchmen.

EXCLUDED: All other employees.

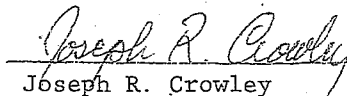
Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with the United Employees of Voorheesville Union, NYSUT, AFT, AFL-CIO

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


Signed on the 30th day of June , 1977 .



Robert D. Helsby, Chairman



Joseph R. Crowley



Ida Klaus