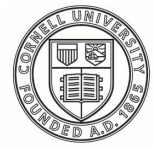

4-21-1977

State of New York Public Employment Relations Board Decisions from April 21, 1977

New York State Public Employment Relations Board

State of New York Public Employment Relations Board Decisions from April 21, 1977

Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2A-4/21/77
CITY OF AMSTERDAM, Employer,	BOARD DECISION AND ORDER
- and -	
AMSTERDAM POLICE BENEVOLENT ASSOCIATION, INC., Petitioner,	CASE No. C-1369
- and -	
TEAMSTERS UNION, LOCAL 294, Intervenor.	

The matter herein comes to us on exceptions of both the Amsterdam Police Benevolent Association, Inc. (petitioner) and Teamsters Union, Local 294 (intervenor) from a decision of the Director of Public Employment Practices and Representation (Director) finding that an existing unit of all employees of the Public Safety Department of the City of Amsterdam (City) other than chiefs and deputy chiefs, continues to be appropriate and ordering an election in such unit in which both petitioner and intervenor would be permitted to participate. The existing unit of employees of the Public Safety Department is comprised of both policemen and firefighters. It has existed since 1967, when it was defined by the City in the course of recognizing the intervenor. Since then, several successive agreements have been negotiated on behalf of the unit employees. Petitioner, which is seeking a separate unit of policemen, had petitioned to decertify the intervenor in the existing unit on the theory that it is inappropriate.

In its exceptions, petitioner argues that the Director was in error in concluding that there is a sufficient community of interest between police-

men and firefighters to permit continuation of the existing unit. The intervenor endorses the conclusion of the Director that the evidence establishes a community of interest between policemen and firefighters. It has excepted, however, to the ordering of an election in which petitioner would be permitted to participate. The reasons given by its exceptions apply only in the event that we confirm the Director's determination that the existing unit should be continued.

We find merit in petitioner's exceptions. Accordingly, it is unnecessary for us to reach the questions posed by the intervenor's exceptions.

In reaching his conclusion that the single Public Safety Department unit should be continued, the Director relied upon the history of negotiations by intervenor on behalf of that unit. He determined that police had been afforded significant and effective participation in negotiations and that the special concerns of the policemen were neither subordinated nor sacrificed to the interests of the firefighters, who were the more numerous group. He further found that the internal structure of the intervenor was designed to protect the interests of both firefighters and policemen in the preparation and negotiation of demands. Finally, he found that no consideration of administrative convenience was involved in whether there should be separate units for firefighters and policemen or a combined unit of Public Safety Department employees.

We reject his conclusion that there was no issue of administrative convenience. There is testimony by the City Mayor, who is also its Commissioner of Public Safety, that the administrative efficiency of the City would be improved if the policemen and firefighters were assigned to separate units and that he preferred separation for that reason. The Director disregarded this testimony because the Common Council of the City, which is its legislative body, endorsed continuation of the existing unit. For purposes

of collective negotiations, however, it is the Mayor, and not the Common Council, who speaks for the City (see CSL §201.12). Thus, we find relevant our decision in Matter of Sullivan County, 7 PERB ¶3069, in which the Board majority relied upon the stated position of the employer in determining that its administrative convenience would be better served by a particular unit structure. In that case, we determined that the combination of two factors -- a community of interest of the employees seeking separation and the administrative convenience of the employer -- justified the division of a single negotiating unit into two separate units. We find both factors present here as well.

We are also mindful of an almost uniform practice of establishing separate units for policemen and firefighters.[1] Apart from historical reasons, this practice derives from a recognition that policemen and firefighters are not only fundamentally different from everyone else, but also that they are different from each other in ways that affect the essence of their labor relations. Some of these differences have been described by William F. Danielson, an author of several articles on municipal personnel services and Director of Personnel of the City of Berkeley, California. In Personnel Report No. 641 of the Public Personnel Association, he wrote:

> "...The duties, functions, and responsibilities of police work are basically dissimilar from fire work.
>
> "The policeman deals almost wholly in human relations while the work of a fireman is largely restricted to the suppression and prevention of fire. The fire service is a highly specialized protective service devoted entirely to the single aspect of protection of life and property through prevention and control of fire. The police service is concerned with the broad spectrum of human rights, public order, and the protection of life and property."

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1 We note, for example, the 1976 amendment adding subdivision 6 to Parks and Recreation Law §13.17. It mandates a separate negotiating unit for all noncommissioned policemen of the Long Island State Park and Recreation Commission, the Niagara Frontier Park and Recreation Commission, and the Palisades Interstate Park Commission.

We need not determine whether these differences between firefighters and policemen, in themselves, would justify establishing a separate unit for each group of employees, given a past history of a joint unit in which the interests of both groups have been fairly represented in negotiations and contract administration and no problem of administrative convenience of the employer is present. This factor of administrative convenience, together with the strong prevailing practice of having separate units for policemen, persuades us to grant the instant petition.

NOW, THEREFORE, we determine that there shall be two units of employees in the Public Safety Department of the City of Amsterdam, as follows:

UNIT I - Included: All policemen within the Public Safety Department

Excluded: The chiefs and deputy chiefs

UNIT II - Included: All firefighters within the Public Safety Department

Excluded: The chiefs and deputy chiefs.

IT IS ORDERED THAT, within seven days from the date of receipt of this decision, the City submit to the Director of Public Employment Practices and Representation, as well as to the petitioner and intervenor, an alphabetized list of the employees in each of the negotiating units set forth above who were employed on the payroll date immediately preceding the date of this decision;

and

IT IS FURTHER ORDERED that an election be held under the supervision of the Director in each of the above negotiating units and that the petitioner and intervenor advise

the Director in writing and within seven days from the date of receipt of this decision, whether it seeks to represent the employees in Unit I and/or Unit II above.

Dated: Albany, New York
April 21, 1977

Robert D. Helsby, Chairman

Joseph R. Crowley

Ida Klaus

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2B-4/21/77
INCORPORATED VILLAGE OF CENTRE ISLAND, Respondent,	BOARD DECISION AND ORDER
-and-	CASE NO. U-2277
CENTRE ISLAND POLICE BENEVOLENT ASSOCIATION, Charging Party.	

This matter comes to us on the exceptions of the Centre Island Police Benevolent Association (charging party) from a hearing officer's decision dismissing its charge against the Village of Centre Island (respondent) arising from its termination of Michael F. Trelfa. Trelfa had been hired by the respondent as a police officer on September 1, 1972,and was terminated on July 8, 1976,when the respondent's Board of Trustees decided to reduce the size of its police force from five to four officers. Although three of the remaining police officers had been hired after Trelfa, they received credit for military service so that Trelfa had the least seniority on the force.

Trelfa had been the charging party's president and chief negotiator from January to July 8, 1976. He had instituted two lawsuits against the respondent and had criticized respondent in an interview that was reported in a local newspaper.

In support of its charge, the charging party argued that the respondent's force reduction was made only to get rid of Trelfa because of his protected activities. Trelfa testified that at the conclusion of negotiations on May 22, 1976, Police Commissioner Stern had told him, "You better watch it. You're going to negotiate yourself right out of a job". For its part,the respondent contends that the decision to eliminate one position from the police force was

made solely to balance its budget during its 1976-77 fiscal year.

The hearing officer was not persuaded by the charging party's presentation. He reasoned that the statement attributed to the Police Commissioner was ambiguous,

> "It could be an expression of animus against Trelfa or the charging party or it could be simply a reflection of Stern's concern about the cost of the charging party's negotiating demands (footnote omitted)!"

The hearing officer was more impressed by the fact that,

> "[W]hile the trustees voted in June to recommend certain reductions in personnel expense, including the elimination of one position in the police department, three new trustees were elected on July 1. The new board, which did not include Stern, voted to accept the recommended reductions on July 8.7/
>
> 7/ The reduction in expenses was not limited to the police department but affected all but one of respondent's employees."

In its exceptions, the charging party argues, as it did before the hearing officer, that:

1. Police Commissioner Stern's remark was a threat to Trelfa;
2. The decision to terminate Trelfa was not the result of any financial crisis; but
3. That decision was a consequence of Trelfa's activities on behalf of the charging party.

Having reviewed the record, we affirm the hearing officer's decision. The record establishes that the respondent was under severe budgetary pressure, which was brought to a head by criticism from the New York State Department of Audit and Control. It supports the hearing officer's conclusion that the elimination of a position in the Police Department, which was but one of several economies that were adopted by the respondent at the same time, was motivated by financial concerns only.

Accordingly, WE ORDER that the improper practice charge herein be, and it hereby is, dismissed.

DATED: Albany, New York
April 21, 1977

Robert D. Helsby, Chairman

Joseph R. Crowley

Ida Klaus

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	
HARTSDALE FIRE DISTRICT,	#2C-4/21/77
Employer,	BOARD DECISION & ORDER
- and -	
HARTSDALE PAID OFFICERS ASSOCIATION,	
Petitioner,	CASE No. C-1378
- and -	
HARTSDALE PAID FIREMEN'S BENEVOLENT ASSOCIATION, INC., Local 1761, IAFF,	
Intervenor.	

This matter comes to us on the exceptions of the Hartsdale Fire District (employer) to a decision of the Director of Public Employment Practices and Representation (Director) that there should be a negotiating unit of Deputy Fire Chiefs and Captains. The decision was made after a hearing on a petition from the Hartsdale Paid Officers Association (petitioner) seeking such unit. At that hearing the employer had contended that the unit sought by petitioner was inappropriate. According to the employer, the appropriate unit is the existing one, consisting of the four deputy fire chiefs, the four captains and the twenty-eight firefighters. In oral argument the employer took the position that it did not oppose a separate unit for the deputy fire chiefs. The Hartsdale Paid Firemen's Benevolent Association, Inc., Local 1761, IAFF (intervenor) had supported the employer's position that the existing unit is the most appropriate one but it withdrew its objection to a separate unit of officers and did not participate in the appeal from the Director's decision.

In its brief, and at the oral argument, the employer has argued that the record does not support several of the Director's findings of fact and

that his conclusions of law are in error. Having reviewed the record, we determine that the evidence does support the Director's findings of fact. We also affirm his conclusions of law.

The employer contends that the captains do not have sufficient supervisory authority to justify their being placed in a negotiating unit other than that of the firefighters. The thrust of its argument is that the captains do not have a major role in the administration of agreements or in personnel administration. This argument would be relevant if the issue before us were whether captains should be excluded from any representation rights under Civil Service Law §201.7 by virtue of their being managerial employees. However, it carries little weight regarding the question of whether the captains and firefighters should be placed in separate negotiating units.

There is no question that deputy fire chiefs and firefighters should be in separate units. Once two units are established, the employer's so-called administrative convenience argument in support of a single unit would, in any event, no longer be material. The remaining question is whether the captains have the greater community of interest with the deputy fire chiefs or with the firefighters. On the record herein, it is clear that the greater community of interest is between captains and deputy fire chiefs.

Accordingly, we affirm the Director's decision and determine that there should be a negotiating unit of employees of the employer as follows:

INCLUDED: Deputy fire chiefs and captains;

EXCLUDED: All other employees;

further, it is

ORDERED that an election by secret ballot shall be held under the supervision of the Director among the employees in the unit determined above to be appropriate who were employed on the payroll date immediately preceding the date of this decision; and it is further

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

DATED: Albany, New York
April 21, 1977

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

IDA KLAUS

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2D-4/21/77
CAPTAIN'S ENDOWMENT ASSOCIATION, Respondent,	BOARD DECISION AND ORDER
-and-	CASE NO. U-2218
CAPTAIN MARTIN WALSH, NEW YORK CITY POLICE DEPARTMENT, Charging Party.	

This matter comes to us upon the exceptions of the charging party, Captain Martin Walsh, of the New York City Police Department, from a hearing officer's decision dismissing his charge on the ground that it was not timely. That charge alleged that the Captain's Endowment Association (respondent) had failed to represent him fairly, in violation of Civil Service Law §209-a.2(a), "when it declined to prosecute an adverse grievance decision to arbitration". It was filed on July 20, 1976. The hearing officer determined that a decision not to prosecute Walsh's grievance to arbitration had been made by respondent on November 12, 1976, that it was communicated to him later that day, and that the charge was filed more than four months after Walsh became aware of the allegedly wrongful conduct (see Rules §204.1(a)(1)). The hearing officer also determined that the untimeliness of Walsh's charge was not cured in May 1976 when, at his request, respondent again considered arbitration and decided that it would not take the grievance to arbitration.

Walsh has filed exceptions to this determination. He also raises the failure of the hearing officer to deal with his allegation that respondent's attorney was under an affirmative duty to advise him that an improper practice charge against respondent could be filed with PERB by him individually. The nature and extent of the obligation owed by an attorney qua attorney retained

by an employee organization to a member of that employee organization is a question involving professional responsibilities to be resolved in another forum, and we note that Walsh has commenced such a proceeding.

As to the question of timeliness, there is clear conflict between the testimony of Walsh and of Philip J. Foran, respondent's president. Foran testified that on November 12, 1975 respondent's board of trustees held a regular monthly meeting at which they decided not to further participate in Walsh's grievance. Foran also testified that, at the end of the meeting, he told Walsh of the adverse decision of the respondent's board of trustees. On the other hand, Walsh testified that Foran had not told him that a definitive decision had been reached concerning his grievance; rather, according to Walsh, he was given to understand that the matter was discussed and tabled.

To make a factual finding in the face of a direct conflict in testimony is always difficult. Walsh argues that certain circumstances compel a conclusion that he was telling the truth and that Foran was not. On the other hand, there are circumstances reported in the record which would tend to substantiate Foran's testimony. The hearing officer wrote:

> "[T]his matter requires, as between Walsh and Foran, a credibility resolution. I accept Foran's testimony based upon his demeanor as a witness and his clearer and fuller recall of events."

There is nothing in the record that would compel us to disturb this credibility resolution; in such a case, the finding of the hearing officer, as a trier of the fact, should be given the greatest weight. Moreover, we agree that Walsh's request to respondent for reconsideration of its decision not to take the grievance to arbitration does not effectively revive the charge. The reaffirmation of the Decision in May raised no new factual or legal issues.

ACCORDINGLY, we affirm the decision of the hearing officer, and WE ORDER that the charge herein be, and it hereby is, dismissed in its entirety.

DATED: Albany, New York
April 21, 1977

Robert D. Helsby, Chairman

Joseph R. Crowley

Ida Klaus

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of SPENCERPORT TEACHERS ASSOCIATION, Upon the Charge of Violation of Section 210.1 of the Civil Service Law.	#2E-4/21/77 BOARD DECISION AND ORDER Case No. D-0121

This matter comes to us on the application of the Spencerport Teachers Association for restoration of its dues deduction privileges which had been suspended indefinitely on December 19, 1975. At that time, we determined that said Association had violated Civil Service Law §210.1 by engaging in a strike against the Spencerport Central School District on October 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31 and November 3, 1975. We ordered that its dues deduction privileges should be suspended indefinitely "provided that the Spencerport Teachers Association may apply to this Board at any time after March 31, 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 1 of §210.of the Civil Service Law since the violation herein found, 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)."

The Spencerport Teachers Association has submitted an affirmation that it does not assert the right to strike against any government and we have ascertained that it has not engaged in, caused, instigated, encouraged, condoned or threatened a strike against the

Spencerport Central School District since the date of the above-stated violation.

NOW, THEREFORE, WE ORDER that the indefinite suspension of the dues deduction privileges of the Spencerport Teachers Association be and hereby is terminated.

DATED: Albany, New York
April 21, 1977

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

IDA KLAUS

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

GREAT NECK UNION FREE SCHOOL DISTRICT,

Employer,

- and -

GREAT NECK PARAPROFESSIONALS ASSOCIATION, Affiliated with GREAT NECK TEACHERS ASSOCIATION, NYSUT, NEA, AFT, AFL-CIO,

Petitioner.

#2F-4/21/77

CASE NO. C-1341

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 Great Neck Paraprofessionals 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: All instructional aides, non-instructional aides, cafeteria aides, clerical aides, and all aides in state or federally funded programs.

Excluded: All other employees of the employer.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Great Neck Paraprofessionals 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 21 day of April, 1977.

Robert D. Helsby, Chairman

Joseph R. Crowley

Ida Klaus

4699

PERB .58
(10-75)

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2G-4/21/77
CITY OF CORNING, Employer, -and- CRYSTAL CITY POLICE BENEVOLENT ASSOCIATION, INC., Petitioner, -and- CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., Intervenor.	CASE NO. C-1443

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 Crystal City Police Benevolent Association, Inc.

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: Police Officers, Lieutenants, Captain

Excluded: Chief

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with the Crystal City Police Benevolent Association, Inc.

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 21 day of April , 1977 .

Robert D. Helsby, Chairman

Joseph R. Crowley

4700

Ida Klaus

PERB 58
(10-75)

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

METROPOLITAN TRANSPORTATION AUTHORITY,

Employer,

- and -

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO,

Petitioner.

#2H-4/21/77

Case No. C-1455

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 Transport Workers Union of America, 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 representative for the purpose of collective negotiations and the settlement of grievances.

Unit: See Attached Rider

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Transport Workers Union of America, 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 21 day of April , 1977 .

Robert D. Helsby, Chairman

Joseph R. Crowley

Ida Klaus

PERB 58.1(2-68)

4701

UNIT

Included: All employees, employed at the employer's offices and facilities located at Stewart and Republic Airports in the following titles:

1. Controller (Tower)
2. Procurement Specialist
3. Storekeeper
4. Senior Customer Service Agent
5. Maintenance Technician
6. Maintenance Technician-Carpenter
7. Maintenance Technician-Painter
8. Electrician
9. Vehicle Mechanic
10. B. & G. Maintainer
11. Senior B. & G. Maintainer
12. B. & G. Maintenance Technician
13. Utility Systems Maintainer
14. Assistant Fire Chief
15. Rescueman/AFS
16. Line Serviceman
17. Senior Line Serviceman
18. Maintenance Scheduler
19. Engineering Technician

Excluded: Stewart and Republic Airport employees in the following titles:

1. Airport Financial Controller
2. Airport Engineer
3. Manager of Engineering
4. Chief Tower Controller

and also clerical, accounting, managerial, confidential and all other employees of the employer.