

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD



News

George Fowler Resigns From PERB Board

George H. Fowler, a member of the State Public Employment Relations Board since its inception five years ago, has submitted his resignation to Governor Rockefeller effective August 31.

Mr. Fowler, who has been active in state government since 1959, will continue to serve in the public employment relations field on the university level.

He was named as one of the original three members of the State PERB on June 21, 1967 for a term ending May 31, 1973. He had resigned as chairman of the State Commission for Human Rights to accept this appointment. Prior to this, he had served from 1959 to 1961 as Deputy Industrial Commissioner of Labor in charge of the New York office.

In a resolution adopted by the Board, Dr. Helsby and Professor Crowley thanked Mr. Fowler for his dedicated service during the five difficult formative years of the Board. They expressed appreciation for his "sensitive understanding of the negotiations process which he shared with the Board and which has often assisted the Board in the adoption of sound policies and in the alleviation and resolution of labor relations conflicts throughout the State."

State Employees Face Elections

State employees will vote in two separate elections this fall to select negotiating representatives.

In a State Police election ballots were mailed on September 18 and will be counted at PERB headquarters in

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TAYLOR LAW-FIVE YEARS OLD

The Taylor Law reached a milestone on September 1 when it effectively completed five years since the enactment of the Law in 1967. In that period of time, the law has gone through a few major and some minor changes and a considerable body of experience has been accumulated by public employees, employers, employee organizations and the Public Employment Relations Board which administers the law.

Some 900,000 state and local public employees now exert their rights under the Law. Included in this number are about 280,000 professional or non-professional employees of boards of education and 175,000 local government employees.

In the five years, more than 12,000 agreements have been negotiated, over 70% without the need for third party assistance. While the number of multi-year contracts has been increasing slowly, the norm is still the one year-contract.

Through June 30, 1972, PERB closed 2,650 impasses — 54% at the mediation stage. Of the nearly 1,200 cases closed by fact-finding, 25% were closed through mediation by the fact-finder; the parties accepted the fact-finder's recommendations in 32% of the cases, and additional negotiations based on the report and recommendations occurred in 42% of the cases closed.

Again through June 30, there had been 144 work stoppages varying from one-shift demonstrations to a few with substantial impact. Most of the stoppages occurred in the initial years, a pattern often noted in states passing similar laws. Strikes since have been relatively minimal in terms of number of strikes, employees involved, and lost time.

Some 1,100 public employees negotiate with various employee organizations representing 2,500 negotiating units. In the five year period, PERB has received 835 petitions for the establishment of negotiating units, has conducted 196 elections and processed 628 improper practice charges.

Public Library, New York City Designated Joint Employer

New York Public Library employees have been found by PERB to be public employees for labor relations purposes, and at the same time the Library and the City of New York were designated as a joint employer.

As a result, the State PERB dismissed a charge by a library employee alleging that the Library violated the Taylor Law by its intention to deduct agency shop payments on behalf of District Council #37, American Federation of State, County and Municipal Employees, AFL-CIO.

The first issue faced by PERB in this allegation was whether or not the library is subject to the provisions of the Taylor Law. While the union and the library stipulated that the library is "legally independent of the City", the City of New York called for a determination that it is a "joint public

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Teacher Increases Less Than Last Year

Early September indications, based on 145 teacher contracts filed with PERB, show an average salary increase of 3.4% for teachers throughout New York State. Base salaries also were up 3.5% bringing them to \$7,787.

In 32 suburban settlements, the average increase was 4.7% with a new base of \$8,867, while the 113 upstate settlements indicated an average increase of 3.1% with a new base of \$7,481.

In comparison, increases last year were higher as 122 statewide settlements showed base salaries up 5.3%.

A check of the settlements indicates that 20 school districts either dropped the salary grid concept with automatic increments or retained the 1971-72 salary schedule for new hires only. Present teachers in the districts receive an amount which covers both the old increment and an increase in salary.

The average salary schedule increase is computed on the basis of the change in the salary schedule at the first, seventh, and highest consecutive step on the Bachelors, Bachelors plus 30, and Bachelors plus 60 salary schedules. Increments are not included in the computation.

PERB Publication Available

Volume 5 of the "Official Decisions, Opinions & Related Matters" of PERB is now available from Publishers Service Co. The volume may be obtained for \$50. Contact the publisher at 75 Varick St., New York, N.Y. 10013.

PERB NEWS

New York State

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Contract Written In Challenge Period No Bar To Representation Petition

When is a contract a contract? This is the question dealt with in a recent challenge to the representation rights of school aides in Plainview — Old Bethpage Central School District #4.

The Plainview-Old Bethpage Federation of Teachers, Local 1401, AFT, AFL-CIO sought to decertify Local 237 of the Teamsters as the exclusive negotiating representative of the aides.

At issue was whether the Federation's petition was timely or whether, as contended by IBT, it was barred by a contract between the school district and IBT allegedly entered into nine days prior to the filing of the petition.

Paul E. Klein, PERB's Director of Public Employment Practices and Representation, found the petition timely inasmuch as the contract was first reduced to writing and executed during the 30-day challenge period.

He pointed out that a written contract entered into during the 30-day challenge period "cannot constitute a bar to a representation petition filed at any time during those 30 days. A contrary result would permit an incumbent employee organization with the concurrence of the employer to, for example, deprive an outside organization of all but one day of the intended 30-day period for challenge. In order to permit the essential degree of stability and certainty in the labor relations sphere, I hold that a contract entered into during a 30-day open period will be determined, for purposes of contract bar, to be a premature extension rather than a bar to the filing of a petition."

Mr. Klein also held that an oral contract cannot serve as a bar to the filing of a representation petition, only a written contract can do this.

Pay Board Reduces Negotiated Increases, Allows Some Exceptions

Negotiated increases for some public employee units in Pennsylvania and New York City have been reduced by the Pay Board to the standard for annual boosts of 5.5%. Some exceptions were allowed, however.

In one case in Pennsylvania involving increases for nine units, the Pay Board reduced all wage boosts except for conservation and liquor law enforcement officers. The negotiated wage settlements among the nine ranged from 6 to 10%, an excess over the standard according to the Pay Board, not justified by the parties and not allowable.

With regard to the fish and game law and liquor law enforcement employee units, the Board approved an additional 2.5% increase, making it 8%, because of the tradeoff of overtime and shift differentials.

In New York City, an exception was authorized on a three year contract between the city and District Council 37, American Federation of State, County and Municipal Employees representing 14,000 social service employees. Although the contract was signed before the wage control program went into effect, the Pay Board looked into deferred increases which were over the standard and found that a wage adjustment of 7% in the second year of the agreement would not be unreasonably inconsistent with Pay Board criteria.

Public Library, NYC

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employer with the respondent library.”

In a majority decision, the PERB Board based its conclusion of joint employership on such facts as: some 80% of the library's \$24.6 million income is derived, directly or indirectly, from public funds, most from New York City; a similar fiscal year; determination by City's line item budget of number of employees for which City will reimburse (two-thirds of full-time staff); acceptance of City's job classifications; City financed retirement benefits; the high degree of control by the City of purpose for which funds may be applied and the measure of their application; and the extensive integration of the library's employee relations program into the employee relations program of the City.

Not Public Employees

In a concurring opinion, Board member Joseph R. Crowley also called for dismissal of the charge but on the basis that the library employees are not public employees for labor relations purposes. He rejected the conclusion that the library is a government subject to the Taylor Law and that the City and the library are a joint employer. He found the stipulation by the library and the union “well founded in the Law” and that the library did not meet the statutory definition in the Taylor Law of “government” or “public employer”.

PERB referred the question of whether the deduction of the union dues constitutes an improper practice to New York City's Board of Collective Bargaining which has jurisdiction over New York City public employee issues. The State Board called attention, however, to a prior PERB decision that an agency shop requirement violates the Taylor Law.

Penalty Without Hearing Unconstitutional, Judge Says

Notwithstanding previous rulings by the New York State Court of Appeals and the U.S. Supreme Court upholding the constitutionality of Section 210.2 of the Taylor Law, a Supreme Court judge has found the imposition of penalties on striking employees without a full hearing violates constitutional due process requirements.

The ruling by Justice Harold J. Hughes, Jr. centered on penalties being levied by the State of New York against employees involved in the Easter weekend strike. The Judge concluded that the provisions of the Law permitting the public employer to impose prior to a hearing the loss of two days pay for each day on strike violate constitutional due process.

Under his determination, the State is required to give notice of charges and provide an opportunity for a hearing before imposing the penalty. The ruling applies only to those penalized employees who filed objections to the penalties.

POLICE FRINGE BENEFITS, SALARY REPORTS AVAILABLE

Patrolmen in villages and towns throughout New York State receive entrance level salaries ranging from \$5,200 in an upstate village to \$10,735 on Long Island. Salary data as well as fringe benefits are included in two surveys by PERB's Research Office.

The salary report, the second released in 1972, includes information on police personnel in 38 villages with over 5,000 population, 13 villages under 5,000 population, 18 towns, the City of Little Falls, Suffolk County and the police district of Port Washington. It provides data on wages, longevity pay and shift differentials for the ranks of patrolman, sergeant, and lieutenant. Some 1973 data also is included.

The fringe benefit study covers 59 cities, 3 counties, and the New York State Police. It includes data on health insurance, disability benefits, retirement plans, sick, personal, bereavement, and union leave, vacation, holidays, work-week and overtime policies, uniform policies, out-of-title work, tuition assistance and termination pay and benefits.

Both surveys may be obtained from the Research Office, PERB, 50 Wolf Road, Albany, N.Y. 12205.

School Strikes Increase Throughout United States

An increasing number of school strikes were noted throughout the country this fall compared with last year. Some 63 districts in 10 states reported work stoppages in early September, while 44 experienced some walkouts in the beginning of the school year in 1971.

Pennsylvania had the greatest number with 22, followed by 12 in Illinois, nine in Michigan and eight in Rhode Island. New York State had six walkouts in early September.

Employee Elections

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Albany October 5.

On the ballot are the Fraternal Order of State Troopers, Local 1908, American Federation of State, County and Municipal Employees, AFL-CIO; the Police Benevolent Association, and “no representation”. PBA has been representing the unit for the past several years.

Included in the unit are troopers, corporals, sergeants, technical, zone, first, chief technical and staff sergeants, investigators, senior investigators and investigative specialists.

CSEA is facing a challenge in two of the units of general employees, the Institutional Services Unit and the Professional, Scientific and Technical Unit.

At press time, no date had been set for the election.

PERB DECISIONS

REPRESENTATION

Director

Local 200, Service Employees' International Union, AFL-CIO for maintenance laborers and mechanics of Albany Housing Authority. Sufficient evidence for certification without election. 8/11/72.

County of Rensselaer — Rensselaer County Probation Officers Association and Civil Service Employees Association, Inc. Howard A. Rubenstein, Assistant Director of Representation, dismissed petition for separate unit of probation officers. 8/14/72.

Plainview-Old Bethpage Public Schools, Town of Oyster Bay — Plainview-Old Bethpage Federation of Teachers, Local 1401, AFT, AFL-CIO, and Local 237, International Brotherhood of Teamsters. Unit: school aides. Election ordered. 8/24/72. (See page 3).

Amityville Reading Teachers Association for all part-time reading teachers in Amityville Public Schools. Sufficient showing of interest to warrant certification without election. 9/11/72.

Board

Amityville Public Schools — Amityville Reading Teachers Association. Unit of all part-time reading teachers established. Election ordered. 8/17/72.

New York City Transit Authority — Rank and File Committee for a Democratic Union within the New York City Transit Authority and Local 100, Transport Workers Union of America, AFL-CIO. Decertification petition dismissed as not timely and lacking required 30% showing of interest. 8/31/72.

Suffolk County Water Authority — Utility Workers Union of America, AFL-CIO. Dismissal of union petition to represent all engineering department personnel. Majority of voters voted against representation. 9/14/72.

Certification

Local 200, Service Employees' International Union, AFL-CIO for maintenance laborers and mechanics in the Albany Housing Authority. Without election. 9/14/72.

Elmira City Unit, Chemung County Chapter, Civil Service Employees Association for all employees holding a position by appointment or employment in the City of Elmira. Election 8/18/72. Decision 9/14/72.

IMPROPER PRACTICES

Hearing Officer

City of Lockport — The Hickory Club Police Benevolent Association, Inc. Charge that the City refused to execute a negotiated agreement. Howard A. Rubenstein recommended that City be ordered to execute a contract containing proposals of fact-finder as set forth in report of December 24, 1970. 8/8/72.

Central School District #5, Towns of Huntington and Babylon — Half Hollow Hills Teachers Association, Inc. Charge that the school district denied tenure to a teacher because of union activity. Harvey Milowe recommended dismissal of the charge. 8/14/72.

City of Mount Vernon — Local 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Charge that City refused to negotiate terms and conditions of employment for calendar 1972. Cole H. Pilcher recommended that City be ordered to negotiate in good faith on demand for 1972. 9/6/72.

Board

The New York Public Library, Astor, Lenox and Tilden Foundations — Richard M. Brower and District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO and New York Public Library Guild Local 1930. Charge that Library intended to deduct agency shop payments. Board found Library and New York City a joint employer; referred improper practice to NYC Board of Collective Bargaining. 8/31/72. (See page 1)

Union Free School District #11, Town of Greenburgh — Greenburgh #11 Federation of Teachers, Local 1532 AFT, AFL-CIO. Charge that district failed to negotiate in good faith. District ordered to negotiate in good faith economic terms and conditions of employment. 8/31/72.

Harborfields Central School District #6, Huntington — Harborfields Teachers Association, Inc. Charge that school district refused to negotiate in good faith. Dismissed. 9/14/72.

STRIKE

Hearing Officer

Nyack Teachers Association. Harvey Milowe found the Association in violation of the Law and recommended penalty reflect limited nature and extent of a 1-day strike, the absence of any impact on public health and safety and absence of extreme provocation. 9/8/72.

Board

Yonkers Federation of Teachers, Local 860, AFT, AFL-CIO. 12 months dues forfeiture for 8-day walkout by teachers in Yonkers City School District. 8/17/72.

Greenburgh #11, Federation of Teachers, Local 1532, AFT, AFL-CIO. Dues forfeiture limited to 6 months because of extreme provocation by employer, Childrens Village, Inc. 8/31/72.

Local 200, SEIU. Record did not prove that union encouraged or condoned the strike. Dismissed. 9/14/72.

Hudson Teachers Association and New York State Teachers Association. 9 months dues deduction loss for both organizations for 8 day strike in Hudson City School District. 9/14/72.

PERB Newsletter

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