

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

NYS PUBLIC EMPLOYMENT
RELATIONS BOARD
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In the Matter of
ITHACA POLICE BENEVOLENT
ASSOCIATION, INC.,

OFFICE OF THE CHAIR

Petitioner,

-against-

CITY OF ITHACA,

Employer-Respondent.

**BRIEF OF *AMICUS CURIAE* IN SUPPORT OF EXCEPTIONS
NEW YORK STATE PROFESSIONAL FIRE FIGHTERS ASSOCIATION**

Case No.: IA2014-002

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PRELIMINARY STATEMENT

The New York State Professional Fire Fighters Association (“NYSPFFA”) respectfully submits this memorandum of Law *Amicus Curiae* in support of Petitioner, the Ithaca Police Benevolent Association, Inc. (“PBA”), to point out additional concerns that the decision of the New York State Public Employment Relations Board (“Board”) has raised by ruling as it did in its decision and order dated November 15, 2016 (the “Order”) and the following letter ruling of Kevin B. Flanigan, Director of Office of Conciliation, dated December 23, 2016 (“Letter Ruling”). The decisions made in the Order and Letter Ruling have severe and stunting implications for all unions in New York State, not just the parties involved in the matter at hand. The Order and subsequent Letter Ruling could have long-reaching, long term procedural concerns: 1. They infringe upon the employee organization’s obligation to maintain the status quo under Section 209-a.2(b) of The Taylor Act (“Act”), and 2. Set precedent for employers to follow the same procedures as the City of Ithaca did in order to prove that the employer satisfactorily negotiated a specific time period and to preclude the employee organization from continuing to negotiate said time period; and 3. Stifles the willingness of parties and most importantly employers to negotiate and therefore weakens the spirit and purpose of the Act.

This brief will focus on the holding that the PBA is not eligible to pursue interest arbitration for changes in terms for the period January 1, 2012 through December 31, 2013 (“Period”).

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The NYSPPFA will not recite a separate statement of facts, except as hereinafter specifically cited within the text of its brief, but will defer instead to the facts submitted by PBA and as set forth in the Record before this Board.

ARGUMENT

Frequently sighted and relied upon as precedent in the Order, upon which the Letter Ruling is based, is the decision in *City of Yonkers*. (46 PERB 3027 (2013)). In said case, and therefore in the Order, two long-held principles continued to be upheld. First, an employer still does not have the right to proceed to interest arbitration without the employee organization's consent. Secondly, the appropriate procedure for seeking a determination as to whether a party has violated its duty to negotiate in good faith and, therefore, can be held to have terminated its opportunity to negotiate a certain two year period following expiration of a parties' agreement, is through the filing of an improper practice charge pursuant to Section 209-a of The Taylor Act ("Act").

Pursuant to the facts of the matter involved, the City did not have consent when it proceeded to interest arbitration. Since it did not have consent, in accordance with the above outlined principles, it needed to show that the employee organization committed an improper practice per Section 209-a of the Act. The Order clearly states that neither party committed an improper practice (U-34078, p. 10). Accordingly, the City did not prove that the PBA committed an improper practice. Yet, surprisingly, the Order held that the City had exhausted its negotiation efforts for the Period without citing any legal basis to. Thus, the PBA is robbed of the opportunity to negotiate said Period despite the fact that an improper practice against it could not be proven. There is not authority under the statute that allows the Board to conclude that the employee organization could not arbitrate for this two year period. To hold otherwise would ignore the public policy and purpose of the Taylor Law.

Further, even if authority existed to preclude the organization to arbitrate for a two year period, the determination that the Board made is nevertheless inconsistent with the findings in *Matter of Yonkers*, as there was no successful improper practice charge by the City. (*Supra*)

The NYSPFFA and other unions in the State of New York must derive from the Order and subsequent Letter Ruling, that all an employer would need to do to use 209(4) of the Act as a sword to cut off a certain period subject to negotiation, would be to follow the above procedure, regardless of whether or not

the improper practice charge had validity or not. Instead of permitting the PBA from using Section 209(4) of the Act as a shield from certain loss, as is the preferred method of the Board, as stated in the Order (U-34078, p. 11), it is being used as a means by the employer to bring a swift end to all negotiations with the additional benefit of not having to renegotiate a certain period.

The Order and resulting Letter Ruling serve to punish the employee organization for trying to maintain a status quo under Section 209-a.2(b) of the Act. This is in violation of Section 209(4) of the Act.

Further, they set forth a precedent and a procedure for employers to follow in order to prove that the employer satisfactorily negotiated a specific period and to further preclude the employee organization from continuing to negotiate. The employer will be assured to know that, by default, employee organization will be held to have violated its duty to negotiate in good faith and lose the right to renegotiate the two year period following the expiration of the parties' agreement.

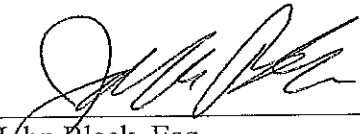
The Board failed to base its conclusion on actual factual proof of improper practice on the part of the employee organization nor did the Board clearly establish any other reason to prevent further negotiation or arbitration for the Period. Instead it purely based its conclusion on the fact that the employer followed a long standing procedure. It is also illogical when a determination is made that "neither party has acted wrongfully and yet the process designed to achieve finality was thwarted..." (see p. 10 of Board Decision and Order of November 15, 2016). What was "thwarted" was the PBA's right to arbitration or to otherwise negotiate contractual terms for the Period. "To hold otherwise would ignore the public policy and purpose of the Taylor Law 'to promote harmonious and cooperative relationships between government and its employees and to protect the public by assuring... the orderly and uninterrupted operations and functions of government'" (Niagara County v. Newman, 1984, 104 A.D.2d 1; Section 200 Civil Service Law).

The conclusions reached in the Order and Letter Ruling will only result in the stifling of willingness of employers to negotiate. This will weaken the spirit and purpose of the Act and be an immediate detriment to employee organizations who do not concede to agree to interest arbitration when petitioned by the employer.

CONCLUSION

For the foregoing reasons, this Board should deny the Letter Ruling of Director of Conciliation in as far as the PBA was held to be ineligible to pursue interest arbitration for changes in terms for the Period.

Dated: Albany, New York
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