

COURT OF APPEALS OF NEW YORK

Professional Staff Congress-City University of New York v. New York State Public Employment Relations Board et al.

7 N.Y.3d 458, 857 N.E.2d 1108, 824 N.Y.S.2d 577 (N.Y. 2006) · Decided October 17, 2006

SUMMARY

The New York Court of Appeals held that a collective bargaining agreement provision waiving the union's right to negotiate certain policies remained effective after the agreement expired while the parties negotiated a successor agreement. The court deferred to PERB's determination that the waiver formed part of the status quo under Civil Service Law § 209-a (1) (e), and therefore CUNY's refusal to negotiate changes to its intellectual property policy was not an improper practice. The court reversed the Appellate Division and dismissed the petition.

CASE DETAILS

COURT	Court of Appeals of New York
WRITING FOR THE COURT	Grafteo, J.; Chief Judge Kaye; Judge Ciparick; Judge Rosenblatt; Judge Read; Judge R.S. Smith
JURISDICTION	New York
DECIDED	October 17, 2006
DISPOSITION	reversed
PROCEDURAL POSTURE	CPLR article 78 proceeding challenging PERB's dismissal of an improper-practice charge alleging that CUNY unlawfully refused to bargain over changes to its intellectual property policy after expiration of the parties' collective bargaining agreement. The Appellate Division annulled PERB's determination; the Court of Appeals granted leave to appeal, reversed, and dismissed the petition.
STANDARD OF REVIEW	PERB's resolution of an improper-practice charge is reviewed for abuse of discretion, with deference to PERB's special knowledge and expertise in defining the status quo following expiration of a collective bargaining agreement.
PRECEDENTIAL VALUE	published and precedential
PARTIES	New York State Public Employment Relations Board, City University of New York v. Professional Staff Congress-City University of New York

TOPICS

collective bargaining labor law unfair labor practices administrative law judicial review of agency action

PRACTICE AREAS

labor law employment law administrative law administrative procedure

QUESTIONS PRESENTED

1. Whether article 2 of the parties' collective bargaining agreement clearly and unmistakably waived PSC's right to demand bargaining over CUNY's intellectual property policy.
2. Whether the article 2 waiver continued in effect after expiration of the collective bargaining agreement during the period in which the parties negotiated a successor agreement.
3. Whether PERB abused its discretion in determining that CUNY's reliance on the continuing waiver did not constitute an improper practice under Civil Service Law § 209-a (1) (d).

HOLDINGS

1. Article 2 clearly and unambiguously waived PSC's right to demand collective bargaining concerning matters not addressed in the CBA, including CUNY's intellectual property policy.
2. The article 2 waiver remained in effect during the status quo period after expiration of the CBA while the parties negotiated a successor agreement.
3. PERB did not abuse its discretion; CUNY's reliance on the continuing article 2 waiver was not an improper practice, and PERB's determination was reinstated.

KEY QUOTATIONS

“A waiver is the intentional relinquishment of a known right with both knowledge of its existence and an intention to relinquish it Such a waiver must be clear, unmistakable and without ambiguity” (466)

“The article 2 waiver is itself a mandatory subject of negotiation and the union is free to seek alteration or elimination of that language through the collective bargaining process.” (469)

“Since it is subject to the give and take of collective bargaining, the article 2 waiver is no more likely than any other term of the parties' CBA to continue in perpetuity.” (469)

FACTUAL BACKGROUND

PSC represented approximately 17,000 CUNY instructional and administrative employees under a series of collective bargaining agreements. CUNY had maintained an intellectual property policy since 1972, but the policy was never collectively bargained or incorporated into a CBA. Article 2 of the CBAs authorized CUNY to alter policies concerning terms or conditions of employment, after notice and an opportunity to consult, without PSC's consent unless the action conflicted with a stated CBA term. After the 2000–2002 CBA expired, CUNY amended the intellectual property policy without bargaining, relying on the article 2 waiver.

PROCEDURAL HISTORY

PSC filed an improper-practice charge with PERB under Civil Service Law § 209-a (1) (d), alleging that CUNY violated its duty to bargain in good faith by refusing to negotiate changes to its intellectual property policy. The ALJ found that PSC had waived bargaining rights concerning the policy but held that the waiver expired when the CBA expired. PERB modified that determination, concluding that the waiver continued during the status quo period and dismissing the charge. The Appellate Division annulled PERB's determination, and the Court of Appeals reversed and reinstated PERB's dismissal.

DISPOSITION

reversed

REMAND INSTRUCTIONS

None. The Court of Appeals directed that the order of the Appellate Division be reversed, with costs, and the petition dismissed.

CASES CITED

- Matter of Poughkeepsie Professional Firefighters' Assn., Local 596, IAFF, AFLCIO-CLC v. New York State Public Employment Relations Board, 6 N.Y.3d 514 (2006)
- Matter of Town of Southampton v. New York State Public Employment Relations Board, 2 N.Y.3d 513 (2004)
- Matter of Civil Serv. Empls. Assn. v. Newman, 88 A.D.2d 685 (3d Dep't 1982), aff'd, 61 N.Y.2d 1001 (1984)
- Matter of Board of Coop. Educ. Servs. Sole Supervisory Dist., Onondaga & Madison Counties v. New York State Public Employment Relations Board, 82 A.D.2d 691 (3d Dep't 1981)
- Matter of Triborough Bridge & Tunnel Auth. (District Council 37 & Local 1396), 5 PERB ¶ 3037 (1972)
- Matter of Livingston, Steuben, Wyoming BOCES [Livingston, Steuben, Wyoming BOCES Teachers Assn.], 8 PERB ¶ 3019 (1975)
- Matter of Board of Coop. Educ. Servs. of Rockland County v. New York State Public Employment Relations Board, 41 N.Y.2d 753 (1977)
- Matter of Somers Cent. School Dist. [Somers Faculty Assn.], 9 PERB ¶ 3061 (1976)
- Matter of Village of Valley Stream [Local 342, Long Is. Pub. Serv. Empls. Union], 6 PERB ¶ 3076 (1973)
- Matter of Waterford Teachers Assn. [Waterford-Halfmoon Union Free School Dist.], 27 PERB ¶ 3070 (1994)
- Matter of Sachem Cent. Teachers Assn. [Sachem Cent. School Dist.], 21 PERB ¶ 3021 (1988)
- Matter of Police Benevolent Assn. of Police Dept. of County of Nassau [County of Nassau (Nassau County Police Dept.)], 30 PERB ¶ 4717 (1997)
- Matter of Goodman [Barnard Coll.—Commissioner of Labor], 95 N.Y.2d 15 (2000)