

STATE OF RHODE ISLAND

BEFORE THE STATE LABOR RELATIONS BOARD

In the MATTER of	:	
PROVIDENCE SCHOOL COMMITTEE	:	
- and -	:	CASE NO. EE-3195
THE PROVIDENCE SCHOOL	:	
CUSTODIANS ASSOCIATION	:	

D E C I S I O N

- and -

O R D E R

The above matter came on for further hearing on July 18, 1979 on a remand from Mr. Justice Gallant with directions to the Rhode Island State Labor Relations Board to take evidence on two issues; namely, as to whether the facts were sufficient to support the Board's prior findings, that the Providence School Custodians Association was a bonafide labor organization within the meaning of the Rhode Island State Labor Relations Act, and also whether, by the provisions of Article XXII, the old contract was still in full force and effect, thus constituting a bar to the petition that had been filed.

It is clear from the testimony and the affidavit that was produced, that there did exist an organization by the name of the Providence School Custodians Association and that this organization existed for the purpose of bargaining, on a collective basis, with the municipal employer concerning all those items customarily associated with a collective bargaining representative. It also appears that this organization came into-being on February 17, 1977. Consequently, it would appear that the Petitioner has proven, beyond doubt, that it was a bonafide labor organization as defined and contemplated by the Rhode Island General Laws 28-7-3.

With respect to the second issue; namely, whether the provisions of the old contract were automatically renewed when the parties were in the process of negotiating, the following is clear; and we might say, that this Board did not address itself to this particular issue in depth during the prior hearings.

The transcript shows that the parties were in negotiations subsequent to August 31, 1977, with reference to their attempt to execute a new collective bargaining agreement.

Reference to Article XXII provides for the continuance of the contract after the date when the contract would otherwise terminate as long as the parties voluntarily engage in negotiations. Certainly the language contained therein is not unique to this particular contract but exists in the vast majority of contracts executed in the public sector. Consequently, the Board finds that it is a valid contract extension provision and is not violative of any collective bargaining law or public policy.

Passing on to the more crucial question; namely, as to whether the parties were engaged in voluntary negotiations on November 4, 1977, the transcript further discloses that the parties had obtained the services of a mediator during the course of their attempt to execute a new contract. As indicated in our previous Decision, although mediation is not, in its purest sense, negotiation, it is part of the collective bargaining process through which the parties deemed it necessary to resort to such procedure to effectuate their ultimate goal of hammering out the provisions of a new contract. In effect, mediation is the intervention of a neutral third party into the negotiating process and, as such, the Board is of the opinion that, not only did the provisions of Article XXII apply as an extension of the old contract, but that, in reviewing the testimony in depth, the parties were engaged in the negotiations process on November 4, 1977, when the new petition was filed by the petitioner.

the foregoing reasons, the Board finds that the petition that was filed was not a timely petition because it was not filed within the 60-90 day period prior to the expiration of the old contract which, by its terms, would expire August 31, 1977. We also find that, in as much as this is in contradiction to the result obtained in our prior Decision, the election that was held subsequent to our first Decision must be rendered null and void.

On the basis of the foregoing, we make the following Findings of Fact.

#### FINDINGS OF FACT

The Providence School Committee is a duly constituted committee within the City of Providence, a municipal corporation, duly organized under the Constitution and the General Laws of Rhode Island, with its headquarters located at 150 Washington Street, Providence, Rhode Island.

The Providence School Custodians Association is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection.

Council 94, AFSCME, AFL-CIO is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection.

4. Council 94, AFSCME AFL-CIO is certified as the exclusive bargaining representative.

5. That Council 94 and its predecessor were the certified bargaining agents for the custodians employed in the Providence School Department, being so certified by this Board June 7, 1967.

6. That from said June 7, 1967 up to and including August 31, 1977, Council 94 and its predecessor and the Providence School Committee had always bargained concerning terms and conditions of

employment pursuant to Rhode Island General Laws 29-9.4, and in fact, entered into and executed collective bargaining agreements covering that particular time frame

7. That on or about September 1, 1973, Council 94 and the Providence School Committee entered into a two year collective bargaining agreement which was to expire on August 31, 1975

8. That sometime subsequent to September 1, 1975 a collective bargaining agreement was signed between the Providence School Committee and Council 94 retroactive to September 1, 1975, expiring on August 31, 1977.

9. That during the 120 day period prior to the expiration of the current collective bargaining agreement, namely, the agreement expiring August 31, 1977, the Employer was served with due and sufficient notice pursuant to the Statute by Council 94 requesting bargaining for a successor contract.

10. That the provisions of the old contract contained Article XXII which, by its terms, extended the life of the old contract as long as negotiations for a new contract voluntarily continued.

11. That negotiations for a new contract voluntarily continued at least until November 4, 1977.

12. That the mediation process was resorted to on November 4, 1977 by the parties.

13. That the mediations process is a part of the negotiation process.

14. That the parties were in voluntary negotiations on the date that the Petitioner filed a petition; namely, November 4, 1977.

15. That the provisions of Article XXII of the old contract were in full force and effect on the date of the filing.

16. That the petition that was filed on November 4, 1977 is not a timely petition.

17. That the Petitioner's petition, to have been timely, should have been filed within the 60-90 day period prior to August 31, 1977.

#### CONCLUSIONS OF LAW

1. That the petition filed by the Petitioner on November 4, 1977, is not a timely petition and is barred by the Contract Bar Rule, which provides that a petition, to be timely, must be filed within the 60-90 day period prior to the expiration of the existing contract; or, in the case of municipal employees covered by the Rhode Island State Labor Relations Act, within the 120-180 day period prior to the expiration of said contract.

That the results of the election conducted by the Rhode Island State Labor Relations Board, dated September 22, 1978, be declared null and void.

3. That the incumbent union; namely, Council 94, continue to represent the employees in the bargaining unit for the purposes of collective bargaining and that the certification heretofore issued to them is to continue in full force and effect to effectuate that purpose

#### ORDER

1. That the petition filed by the Petitioner in the instant case be dismissed with prejudice.

That the results of the election conducted by the Rhode Island State Labor Relations Board, dated September 22, 1978, be declared null and void

3. That the incumbent union; namely, Council 94, continue to represent the employees in the bargaining unit for the purpose of collective bargaining and that the certification heretofore issued to them continue in full force and effect to effectuate that purpose.

RHODE ISLAND STATE LABOR RELATIONS BOARD

S/ SAMUEL J. AZZINARO  
CHAIRMAN

S/ RAYMOND PETRARCA  
MEMBER

S/ FRANK MONTANARO  
MEMBER

S/ GLENN EDGECOMB  
MEMBER

Entered as Order of the  
Rhode Island State Labor  
Relations Board

DATED: AUGUST 31, 1979

BY: S/ JOHN H. WINTER  
ADMINISTRATOR