

STATE OF RHODE ISLAND
BEFORE THE STATE LABOR RELATIONS BOARD

In the MATTER of	:	
	:	
STATE OF RHODE ISLAND, SECRETARY OF	:	
STATE'S OFFICE	:	
	:	
- and -	:	CASE NO. EE-3298
	:	
COUNCIL 94, AFSCME, Local 2884	:	

D E C I S I O N

- and -

O R D E R

The above matter came on for hearing on December 17, 1982 on a Motion to Stay a Consent Election scheduled for December 22, 1982. The Motion was filed by Attorney John J. Turano on behalf of the State of Rhode Island. A full stenographic hearing was held with all parties being given an opportunity to present evidence and to be heard.

The gist of Attorney Turano's Motion was that the Agreement for Consent Election dated December 8, 1982, had not been executed by the "Employer". He argued and presented an Affidavit signed by Angelo E. Azzinaro, Assistant Director of Administration/ Division of Employee Relations. The thrust of the Affidavit was that pursuant to Title 36, Chapter 11, Section 1 (c):

"The chief executive or his designee (appointed, elected or possessing classified status) is hereby authorized and required to recognize an organization designated by state employees for the purpose of collective bargaining as the collective bargaining agency for its members."

He argued that the Consent Election Agreement should have been signed by Mr. Azzinaro or someone delegated from his office. He did not contend that the employees in question did not have the

right to organize and bargain collectively. Rather, he admitted that under 36-11-1(a):

"State employees, except for casual employees or seasonal employees shall have the right to organize and designate representatives of their own choosing for the purpose of collective bargaining with respect to wages, hours and other conditions of employment: State employees, as used herein, shall include employees and members of the department of state police below the rank of lieutenant."

these employees did have the statutory right to organize and bargain collectively.

The background of this case is as follows.

BACKGROUND OF CASE

On November 23, 1982, a Petition by Employees for Investigation and Certification of Representatives pursuant to Section 28-7-16, G.L., 1956, Entitled State Labor Relations Act was filed with the Offices of the State Labor Relations Board (a Representation or Election Petition, commonly so called). Once this petition was filed, the procedures required by the Rhode Island State Labor Relations Act, Rhode Island General Laws 28-7-1, et seq, concerning the investigation and conduction of an election were set in motion.

For example, appropriate letters were sent to all interested parties, including Mr. Angelo E. Azzinaro, Assistant Director, Department of Administration, advising them to appear at Rhode Island State Labor Relations Board on Wednesday, December 8, 1982 at 10:00 a.m. for an informal conference in connection with the petition that had been filed. A copy of the election petition accompanied these letters to Secretary of State Burns and to Mr. Azzinaro.

The December 8th hearing was conducted and the only parties that were present were Mr. Clingham, representing the Secretary of State and representatives of the petitioning union. Neither Mr. Azzinaro nor anyone from his staff appeared at that time.

As a result of this informal hearing, the parties executed the Agreement for Consent Election on December 8, 1982 and mutually agreed that the appropriate unit shall be the following:

"Clerks, Secretaries, excluding Deputy Secretary of State, Law Revision Officer, State Librarian of the Secretary of States Office."

The time and date of election, as indicated above was set for Wednesday, December 22, 1982, between the hours of 11:00 a.m. - 12 noon, with the sole question to be voted on at that particular time as follows: "Do you desire to be represented for the purpose of collective bargaining by COUNCIL 94, AFSCME, Local 2884."

This Consent Election would be held pursuant to the General Rules and Regulations of the Rhode Island State Labor Relations Board, Article II, Section 10.

Thereupon, on December 13, 1982, in accordance with the Rules and Regulations of the Rhode Island State Labor Relations Board, the Board's investigators concluded that there was a sufficient showing of interest with respect to the Cards of Interest to warrant the conduction of the election on December 22, 1982.

Thus, this election would have been conducted without further ado, except for the question that was raised concerning the authority of Mr. Clingham to sign the Agreement for Consent Election---this question being raised by Mr. Turano's Motion to Stay the Election.

DISCUSSION OF CASE

The first question to be answered is whether the employees in question do, in fact, have a right to organize and bargain collectively. The answer to this question is an unequivocal yes. Rhode Island General Laws 36-11-1(a) clearly confers to State Employees the right to organize and bargain collectively, irrespective of when the petition is filed. There are no time constraints contained in 36-11-1 to indicate that a petition filed in the waning hours of an incumbent Secretary of State's term of office is not a valid petition.

Secondly, the Board must decide whether the Secretary of State is an "Employer" within the meaning of Rhode Island General Laws 28-7-3 (2). That Section reads as follows:

"The term 'employer' includes any person acting on behalf of or in the interest of an employer, directly or indirectly, with or without his knowledge, but a labor organization or any officer or agent thereof shall only be considered an employer with respect to individuals employed by such organization."

When one reads Rhode Island General Laws 28-7-3 (2) in context with Rhode Island General Laws 42-8-1, 42-8-15 and 42-8-17, it is clear to this Board that the Secretary of State's Office is a constitutionally autonomous office with the power to hire and fire its own employees. For example, 42-8-15 reads as follows:

"42-8-15. Deputies and employees.--The secretary of state shall appoint a first deputy secretary of state, a second deputy secretary of state, an assistant in charge of archives and other necessary employees. Such employees shall perform the duties required by this chapter and such other duties as may be specified by the secretary of state; provided, however, that the secretary of state is hereby authorized to appoint, in cases of emergency, an acting deputy to act for the period of such emergency only, who shall have such power and authority as above provided."

If, as Mr. Turano argues, the employer is Mr. Azzinaro or someone else in the Department of Administration's chain of command, it would mean that the right to hire and fire people in the Secretary of State's Office would vest in the Department of Administration. This would fly in the face of the Rhode Island Constitution, which sets up four General State Offices and contradicts the language of the aforementioned sections.

Rhode Island General Laws 42-8-17 reads as follows:

"42-8-17. Payment of employees.--The general assembly shall annually appropriate such sum as it may deem necessary for the purposes of §§ 42-8-15 and 42-8-16, and the state controller is hereby authorized and directed to draw his orders upon the general treasurer for the payment of said sum, or so much thereof as may from time to time be required, upon receipt by him of proper vouchers approved by the secretary of state."

This section mandates upon the General Assembly the necessity to appropriate certain sums of money in order to allow the Secretary of State to carry out his constitutional duties. It says nothing regarding the necessity of the Secretary of State to look to the Department of Administration for the hiring of employees or other essential services or materials or budgetary requests for the proper carrying out of this General State Office.

The Board does not believe that the section of Rhode Island General Laws cited by Mr. Turano is sufficient to overcome the compelling statutory and constitutional language referable to the Secretary of State's Office.


Neither has this Board any evidence before it to show that Mr. Clingham was not vested with the authority to sign a Consent Agreement on behalf of the employer. Rather, it appears he was clothed with the necessary authority to execute the Consent Agreement that was, in fact, executed.

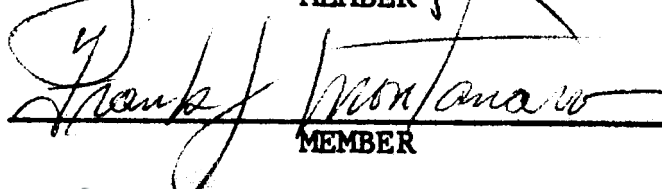
Consequently, in view of the fact that the Board feels that the evidence clearly shows that the Employer, in this case, is the Secretary of State; and since Attorney Clingham signed the Agreement for a Consent Election with the petitioning union, there is nothing before this Board to warrant a stay of the Board's conduction of the election slated for December 22, 1982.


ORDER

WHEREFORE, the Motion to Stay the Election is denied.

RHODE ISLAND STATE LABOR RELATIONS BOARD

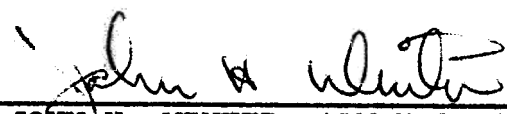

MEMBER


MEMBER


MEMBER

Entered as ORDER of
the Rhode Island State
Labor Relations Board

DATED: December 21, 1982

BY: 
JOHN H. WINTER, ADMINISTRATOR