

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF
CHARIHO REGIONAL SCHOOL DISTRICT
Employer

- AND -

Case No. EE-3629

LOCAL 328, UNITED FOOD AND
COMMERCIAL WORKERS UNION, AFL-CIO
Petitioner

DECISION AND ORDER OF DISMISSAL

The above entitled matter came on to be heard on a "Petition by Employees for Investigation and Certification of Representatives" (hereinafter "Petition") filed by Local 328, United Food and Commercial Workers Union, AFL-CIO (hereinafter "Petitioner") on December 17, 1999, wherein the Petitioner sought to represent: "All certified substitute teachers employed by the Chariho Regional School District, excluding all certified teachers represented by the Chariho Teachers Association and all other employees." The Petition was accompanied by signature cards which, if verified, were sufficient in number to warrant the conducting of an election. All signature cards, except one, which had been submitted were verified by January 18, 2000 and, as indicated, were of sufficient number to warrant the conducting of an election.

An informal hearing on the Petition was conducted by the Board's Investigative Agent on January 26, 2000 which was attended by representatives of both the Employees and the Employer and representatives from the National Education Association (hereinafter "NEA") which represents the full time certified teachers in the Chariho Regional School District. No consent agreement for representation could be reached and the matter was set down for formal hearing which was held on April 4, 2000. Upon conclusion of the formal hearing, a briefing schedule was established. The Petitioner filed its brief on May 12, 2000 and the Respondent Employer filed its brief on May 15, 2000. On August 24, 2000, the Board received a Motion to Reopen Hearing from an Attorney not previously involved in the case. The Board, through its Agent, notified the Attorney that the motion was being dismissed, without prejudice, to re-file after the prior representative withdrew and the new Attorney filed an appearance. The Board's Agent also notified that such motions are subject to Rule 56 of the Board's Rules and

Regulations. Although the Board did receive a withdrawal of appearance from the first representative, the second Attorney did not re-file the Motion, and the Board reached its determination without any further consideration of the Motion to Reopen.

POSITION OF THE PARTIES

The Petitioner acknowledges that R.I.G.L. 28-9.3-2 grants "certified teachers in the public school system" the right to bargain collectively; and that R. .G.L. 28-9.3-3 provides that "the association or labor organization selected by the certified public school teachers...shall be recognized...as the sole and exclusive negotiating or bargaining agent for all of the public school teachers of the city, town or regional school district..." (Emphasis added). Yet, the Petitioner argues that since the NEA has failed to include the certified substitute teachers within its negotiated contract with the Chariho Regional School District, that the State Labor Relations Act should be read so as to permit the Petitioner to represent the substitute teachers.

The Respondent School District argues that the Board is without jurisdiction to entertain the Petition on the grounds that all certified teachers (including substitutes) are now represented by the Chariho Teachers Association, presently called NEA-Chariho. The Respondent argues that pursuant to NEA's certification dated November 23, 1966, NEA Chariho must be recognized as the sole and exclusive bargaining agent for all of the public school teachers in the district. The Respondent also argues that part time or substitute teachers are statutorily included within the definition of certified teachers set forth in Chapter 9.3 of Title 28. The Respondent further argues that once an organization is selected by the certified teachers in a district, the Labor Board is required to certify the same as the exclusive negotiating or bargaining representative. Further, said certification shall remain in full force and effect unless and until recognition of the labor organization is withdrawn or changes by vote the certified public school teachers after a duly conducted election. The Respondent argues that since that process has not occurred in this case the Board is without the jurisdiction to issue a new certification. Finally, the Respondent argues that the Chariho substitute teachers, although not entitled to all the benefits of the collective bargaining agreement, have been and still are entitled to representation by NEA-Chariho.

DISCUSSION

The facts in this case are undisputed, so an extensive review of the testimony is not necessary. There are approximately 60 certified substitute school teachers who are employed on

an as-needed basis. Some of them work very frequently, some of them rarely work in the district. They are paid on a per diem basis at the rate of sixty (60) dollars and do not receive any benefits such as health care, holiday pay, vacation pay or retirement benefits. Once a substitute has been working for 20 days in the same classroom, he or she is then paid at an increased per diem which is based upon the normal salary for a step one teacher. None of the subs are required to work only for Chariho; they are free to accept assignments from whatever school district they want.

The full time certified teachers of Chariho are represented by the NEA of Rhode Island. It is undisputed that the NEA does not bargain in the same fashion for the substitute teachers. In fact, the recognition clause of the Chariho School District/NEA Chariho collective bargaining agreement provides in pertinent part: "The Committee hereby recognizes the NEA Chariho as the exclusive representative of all certified teaching personnel of the Chariho Regional School System engaged in teaching duties, specifically excluding therefrom the superintendent...and per diem teachers." The substitutes are specifically exempted from the collective bargaining process, except to the extent that when a substitute has attained long term status, he or she becomes eligible for certain benefits under the NEA's contract.

The Petitioner argues that the substitute teachers are being treated like second class citizens and the NEA's treatment of the substitutes is grossly unfair. The Board is inclined to agree with the Petitioner's statement. However, as stated by the Respondent, this complaint only attacks the *quality* or *quantity* of NEA's representation. (See Respondent's brief, p. 1) Unfortunately, the Board is without jurisdiction to grant the type of relief being requested in this case; that is, to certify a second labor organization as the sole and exclusive bargaining agent for less than all the certified teachers in a school district. The law is clear; only one labor organization is permitted to be certified as the sole and exclusive bargaining agent for all certified public school teachers.

Why NEA-Chariho has not chosen to include the substitute teachers in its recognition clause of its collective bargaining agreement is not part of the record before this Board, as NEA failed to intervene in the case. The predicament of the substitute teachers in Chariho is sad indeed. They appear to have been abandoned for the most part by the very organization that is

certified to represent them. However, this Board is unfortunately powerless to grant relief in this case; such relief is only available through other means.

FINDINGS OF FACT

- 1) The Respondent, Chariho Regional School District, is a body corporate and politic, created by an act of the General Assembly of the State of Rhode Island under Public Law 1986, Chapter 286, as amended.
- 2) The Respondent, Chariho Regional School District, is a public school system. Its certified teachers are permitted to organize pursuant to Chapter 9.3 of Title 28 of the General Laws of Rhode Island.
- 3) The Petitioner 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 and as such is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.
- 4) NEA-Chariho is certified by the Rhode Island State Labor Relations Board to represent all the certified teachers in the Chariho Regional School District.
- 5) NEA-Chariho, although an interested party, did not intervene in this proceeding.

CONCLUSIONS OF LAW

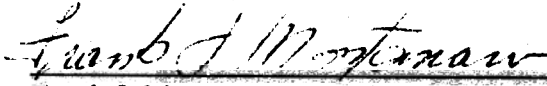
- 1) R.I.G.L. 28-9.3-3 does not permit more than one labor organization to be named as an exclusive bargaining agent for certified teachers within the same school district.
- 2) The Rhode Island State Labor Relations Board is without jurisdiction to grant relief to parties who may be underrepresented by their exclusive bargaining agent.

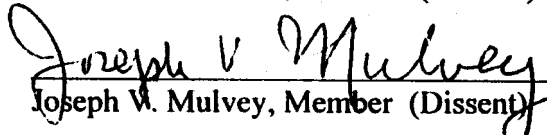
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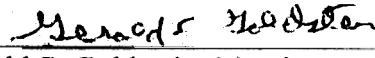
- 1) The Petition for Investigation and Certification of Representatives filed by Local 328, United Food and Commercial Workers Union, AFL-CIO in this matter is hereby dismissed.

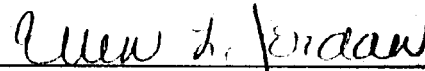
RHODE ISLAND STATE LABOR RELATIONS BOARD

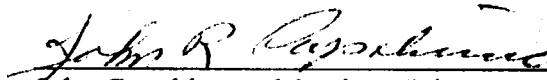

Walter J. Lafni, Chairman


Frank J. Montanaro, Member (Dissent)


Joseph V. Mulvey, Member (Dissent)


Gerald S. Goldstein, Member

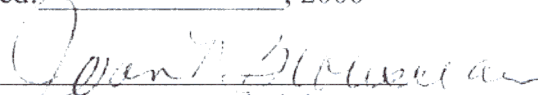

Ellen L. Jordan, Member


John Capobianco, Member (Dissent)


Elizabeth F. Dolan, Member

Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: December 7, 2000

By: 
Joan N. Brousseau, Administrator

v