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

IN THE MATTER OF	:	
RHODE ISLAND TURNPIKE & BRIDGE AUTHORITY	:	
-AND-	:	CASE NO: EE- 3682
UNITED SERVICE AND ALLIED WORKERS OF RHODE ISLAND	:	
-AND-	:	
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 134	:	

DECISION AND ORDER OF DISMISSAL

The above entitled matter came before the Board on a Motion to Dismiss and Objection to the Motion to Dismiss filed in connection with a "Petition by Employees for Investigation and Certification of Representatives," (hereinafter "Petition") filed on April 25, 2005 by the United Service and Allied Workers of Rhode Island (hereinafter "Petitioner"). On April 26, 2005, the Rhode Island Turnpike and Bridge Authority (hereinafter "Employer") filed a letter of objection to the petition. On May 20, 2005, the Employer filed a Motion to Dismiss the petition. In addition to the Motion by the Employer, a second Motion to Dismiss the petition, together with a Memorandum of Law in Support Thereof, was filed by the Service Employees International Union, Local 134 (hereinafter "Incumbent Union"). Also on May 20, 2005 the Board's Agent conducted an informal hearing among all the parties, pursuant to R.I.G.L. 28-7-9 (d). On May 27, 2005, the Petitioner submitted its Memorandum of Law in Opposition to the Employer and Incumbent Union's Motion to Dismiss. On June 14, 2004, after reviewing all of the foregoing documents, the Board unanimously voted to grant the Employer's and Incumbent Union's Motion to Dismiss.

DISCUSSION

Because this case represents the first opportunity to address the concept of a "contract bar doctrine" since the Board amended its rules and relations, the Board has elected to file a more detailed Decision and Order of Dismissal in this matter than would normally be issued at this stage of the proceedings.

All of the parties in this case set forth essentially the same set of facts in their pleadings; they simply differ on how those factual circumstances should be treated by the Board. The Employer and the Incumbent Union are parties to a collective bargaining agreement ("CBA") with an effective date of July 1, 2002 and a scheduled ending date of July 30, 2005. In September 2004, the Employer and the Incumbent began negotiating a new contract. On January 25, 2005 terms for a new three year contract were tentatively agreed upon at the bargaining table. On January 26, 2005, the Board of Directors of the Authority voted to accept the negotiated terms. On January 28, 2005, the rank and file membership of the Incumbent Union voted on and ratified the terms of the new contract which significantly altered the terms of the employees' health care coverage. On February 1, 2005, the employees began to receive the benefits of the newly bargained health plan. On March 16, 2005, the Employer and Incumbent Union executed the new contract. A little over a month later, the within petition was filed.

The Petitioner asserted two arguments in its memo to the Board: (1) The NLRB's premature extension doctrine prohibits a new collective bargaining agreement from cutting off the "open period" during which a rival union may file an election petition; and (2) a new collective bargaining agreement does not act as a contract bar where it has not yet taken effect. The Incumbent Union and the Employer both argue that the agreement, which was ratified by both the employees and the Employer and which was signed on March 16, 2005, serves to operate as a "contract bar" to a new petition because the agreement meets all the criteria set forth by this Board under its rules and regulations, namely Section 8.06.1 (d). For all of the following reasons, the Board agrees with the Employer

and Incumbent Union in this case and rules that the new agreement ratified in March 2005, does serve as a contract bar to the within petition.

First, the Petitioner's reliance on the NLRB's "doctrines" in this matter is misplaced. This Board is not *bound* by policy, precedent or doctrines of the NLRB. This Board will often look to federal labor law and to NLRB policies for *guidance* in determining how to handle a particular matter, especially when this Board has not already adopted either a regulatory approach or a Board policy. In this case, the Board has both statutory and regulatory guidance to use in addressing this type of petition.

R.I.G.L. 28-7-9 (b) (2) provides: "The Board *shall not* consider a petition for representation whenever it appears that a collective bargaining agreement is in existence provided, that the board *may* consider a petition within a thirty (30) day period immediately proceeding sixty (60) days prior to the expiration of the collective bargaining agreement." (Emphasis added herein)

In determining under what circumstances the Board exercises its discretionary powers during the window period, the Board has adopted Rule 8.06.1 (d) which provides: No election for decertification may be conducted when there exists a collective bargaining agreement; provided however, that the Board *may* consider such petition within a thirty (30) day period immediately preceding sixty (60) days prior to the execution of such collective bargaining agreement. To serve as a "bar" to decertification, the contract *must*: (1) Be in writing and be signed by the employer and the labor organization; (2) Address substantial terms and conditions of employment; and (3) Exist for a definite duration. (Emphasis added herein)

In this case, the Incumbent argues that the parties have lawfully extended their collective bargaining agreement and that since the new contract has already been partially implemented, the contract must bar the petition. Although it reaches the same ultimate conclusion, the basis for the Employer's argument is different. The Employer argues that because the Employer and Incumbent agreed early to enter into a new contract, that the statutory window period for representation was not in fact "opened" and was in effect circumvented by the

actions of the parties. The Petitioner responds to these arguments in the following manner:

> The Employer and Incumbent argue that the new agreement bars the filing of an election petition by a rival union because the agreement was negotiated in good faith and ratified by the union membership prior to the open period. They [Employer and Incumbent] "further contend that where the parties negotiate a new contract prior to the expiration of the existing one, the 'open period' under the existing contract is cut off and does not occur until 90 days prior to the expiration of a new contract. This is so, they argue, because the Legislature, in enacting 28-7-9 (b) (2), cannot possibly have intended to allow a bargaining unit to walk away from a contract that it just voted to accept.' Unfortunately for the Employer and the Incumbent Union, that is precisely what the NLRB's premature extension doctrine allows." *Petitioner's brief p. 4 [unnumbered]*

The Board finds that the arguments of both the Employer and the Petitioner are incorrect; the parties to the CBA cannot take action that deprives the Board of its statutory right to consider petitions filed within the statutory window period, nor does the window period allow a bargaining unit to simply "walk away" from a contract that it just voted to accept. Indeed, the Board is statutorily mandated to promote and encourage the State's public policy for stability of collective bargaining relationships and labor peace, not to encourage parties to repudiate or "walk away" from newly adopted [or even long ago adopted] labor agreements. [1]

The Petitioner argues that the fact that certain provisions of the "new contract" pertaining to health care have taken effect prior to the July 1, 2005 inception date indicates only that the existing contract has been modified, not that an entirely "new contract" governs the terms and conditions of employment. The Petitioner also argues that the "the Employer's contention that a contract ratified on January 28, 2005 but not effective until July 1, 2005 bars the filing of an election petition is without merit." The Petitioner's argument that the existence of the new contract cannot bar the *filing* of an election petition is correct. *Petitioner's brief p. 5 [unnumbered]* Indeed, the Board has already ruled that the parties cannot circumvent either the statutory rights of the Board to consider a petition or the Board's rules concerning the consideration of the petition as filed.

[1] The Board believes that the NLRB's premature extension doctrine in one in which the NLRB has reserved the right to examine the facts and circumstances of extended labor agreements to see whether there is a true agreement [for the benefit of the employees] or whether the agreement is merely a "sham" or "ruse" between the incumbent union and the employer, to avoid petitions by rival organizations.

In this case, the Board finds that the within petition was indeed timely filed in the correct "window period" and may be considered by the Board.

In this case, *all the parties*, the Petitioning Union, the Incumbent Union and the Employer have represented that the Employer and Incumbent signed a new three year agreement with an effective date of July 1, 2005 through June 30, 2008, after a four month negotiating period. Thus, conditions 1 and 3 of the Board's Rule 8.06.1 (d) are satisfied. The only question remaining then is whether the agreement contains substantial terms and conditions of employment. Both the Employer and the Incumbent Union have represented in their pleadings that negotiations for a successor contract commenced in September 2004 (the Petitioning Union also acknowledged this fact). The Incumbent also represents that the new agreement contains all the terms and conditions of employment which were bargained in good faith and also notes that this new agreement has already been partially implemented as of February 2005, via the terms of the new and innovative health care provisions.

The Petitioner does not argue that the "new contract" is illusory, a sham or in any way covers less than all the terms and conditions of employment. The Petitioner's sole argument seems to be that parties to a collective bargaining agreement should never be allowed to negotiate successor agreements prior to a window period in order to allow rival unions to file petitions for representation. Such a position seems, to the Board, to turn the notion of labor stability and peace on its head. This Board is required to and tries to do all it can to foster labor peace and stable labor relations in the State of Rhode Island. In this case, the parties to an existing agreement took the time and energy to negotiate a contract in good faith prior to the expiration, apparently motivated in part by an effort to deal with health care provisions. The parties were successful in their negotiations and entered into an agreement which provides, in the words of the Employer, a "sophisticated and innovative plan that requires the Authority to subsidize medical services deductible for each covered employee." The Board notes that a "sophisticated and innovative plan" which *fully subsidizes employees* is no small feat in this day and age of contentious health care coverage issues.

Thus, it is the Board's opinion that all three conditions of Rule 8.06.1 (d) have been satisfied in this case. Therefore, the Board holds that the new contract executed by the Employer and the Incumbent Union, under the circumstances in this case acts as a bar to the conduction of any new election at this time.

CONCLUSIONS OF LAW

1) The window period for filing en election petition in this case was not tolled by the execution of a successor collective bargaining agreement as executed on March 16, 2005 and the Board may consider the petition filed in this case.

2) The agreement executed by the Employer and the Incumbent Union satisfies the requirements of Rule 8.06.1 (d) of the Board's Rules and Regulations and shall act as a contract bar to the conduction of a representation election at this time.

ORDER

1) The Motions to Dismiss filed by the Employer and the Incumbent Union are hereby granted.

2) The Petition filed by the United Service and Allied Workers of Rhode Island for Certification of Representation is hereby dismissed.

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NOTICE OF RIGHT TO APPEAL AGENCY DECISION
PURSUANT TO R.I.G.L. 42-35-12

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of EE- 3682 dated 8-17-05, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after 8-17-05.

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-31.

Dated: August 17, 2005

By: Robyn H. Golden
Robyn H. Golden, Acting Administrator

RHODE ISLAND STATE LABOR RELATIONS BOARD

WALTER J. LANNI, CHAIRMAN

FRANK J. MONTANARO, MEMBER

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GERALD S. GOLDSTEIN, MEMBER

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JOHN R. CAPOBIANCO, MEMBER

ELIZABETH S. DOLAN, MEMBER

ENTERED AS AN ORDER OF THE
RHODE ISLAND STATE LABOR RELATIONS BOARD

Dated: AUGUST 17, 2005

By: _____
ROBYN H. GOLDEN, ACTING ADMINISTRATOR

EE-3682