

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

IN THE MATTER OF	:	
CENTRAL FALLS DETENTION FACILITY CORPORATION	:	
Employer	:	CASE NO.: EE-3700
- AND -	:	
TEAMSTERS, LOCAL 251	:	
AFSCME, AFL-CIO	:	
Petitioner	:	

AMENDED
DECISION AND DIRECTION OF ELECTION

The above entitled matter came on to be heard on a Petition by Employees for Investigation and Certification of Representatives” (hereinafter “Petition”) filed by TEAMSTERS, Local 251 (hereinafter “Petitioner”) on September 5, 2007 wherein the Petitioner sought to represent the following employees: “Correctional Officers; Registered Nurses; Licensed Practical Nurses; Medical Technicians; Medical Assistants; Medical Records Clerk; Mail Clerk; Janitor; Inmate Accounts Clerk; Accounts Payable Clerk; Maintenance; Assistant Records Clerk; Administrative Clerk; Counselors; Training Officers; Health & Safety Officers; and Key and Tool Officers.” The Petition was accompanied by signature cards, which if verified, were sufficient in number to warrant the conducting of an election. All signature cards which had been submitted were verified on August 15, 2008 and, as indicated, were of sufficient number to warrant the conducting of an election.

The Board’s Investigative Agent conducted an informal hearing on the Petition on August 28, 2007 which was attended by representatives of both the Employees and the Employer. At that time, the parties indicated that no agreement could be reached to create a bargaining unit of all the positions sought. Formal evidentiary hearings on the Petition were held on November 8, 2007 and February 7, 2008. Both the Employer and the Union were represented and afforded a full and fair opportunity to examine and cross

examine witnesses and to submit documentary evidence in support of their respective positions.

On August 28, 2008 this Board issued its Decision and Order for a directed election. On or about September 29, 2008, the Employer filed an appeal of the Board's Decision and Direction of Election with the Superior Court. On October 7, 2008, the Employer filed a "Motion to Resolve a Dispute as to Voting Eligibility." On October 9, 2008, the Union filed an objection to the Employer's motion. On October 14, 2008, the Board met to deliberate the motion and objection and voted to amend its original decision to clarify the eligibility of said employees for voting purposes and to extend the administrative timeframe to conduct the election by an additional 30 days.

FACTUAL BACKGROUND

The factual backdrop of this case is somewhat unusual and warrants some discussion. The Employer in this case, the Central Falls Detention Facility Corporation (hereinafter "CFDFC") is public corporation created by the Rhode Island General Assembly, P.L. 1991, cg. 421 (codified at R.I.G.L. 45-54-1 et seq.) The CFDFC has a completely separate legal existence from the City of Central Falls. R.I.G.L. 45-54-1 (a). The function of the CFDFC is to provide detention services for both the Federal and State detained prisoners on behalf of Federal and State authorities.

From its inception until July 2007, the CFDFC contracted with Cornell Corrections of Rhode Island, Inc., ("Cornell") a private corporation, to operate the detention facility on a day-to-day basis. During those sixteen years, two different Unions sought and received authorization from the National Labor Relations Board to represent three (3) separate bargaining units. The first unit certified by NLRB in September 1997 was the correctional officers unit, which was represented by the Rhode Island Private Correctional Officers Unit ("RIPCO"). During the time of private operation by Cornell, RIPCO, negotiated three successive agreements, the last of which expired on April 1, 2007. In August 1999, the NLRB certified Teamster Local 251 as the exclusive bargaining representative for "all full-time and regular part-time counselors, administrative

clerks, A/P clerks, records assistant, clerk/typist, HR assistant, and janitor.” This unit has also been referred to through-out the proceedings herein as the “Administrative Unit.” The Teamsters successfully negotiated three (3) successive agreements for the Administrative Unit. The last agreement has an expiration date of November 23, 2008. Finally, in January 2002, the Teamsters also were certified to represent a unit comprised of “all full-time and regular part-time registered nurses, licensed practical nurses, and medical records clerks employed at the CFDFC.” This unit has been referred to through-out the proceedings herein as the “Medical Unit.” The Teamsters negotiated two (2) contracts for the Medical Unit, with the last contract having an expiration date of April 30, 2009.

On August 1, 2007, after not extending the contract with Cornell Corrections, Inc., the CFDFC assumed control of the facility for the day-to day operations of the Donald Wyatt Detention Facility. On September 5, 2007, Teamsters Local 251 filed the within petition.

DISCUSSION

The Union in this case seeks to implement one wall-to-wall unit, rather than to maintain the three (3) separate units that have been historically in place. The Union argues that while the Correctional Officers had to be segregated in a separate unit while under the auspices of NLRB, Rhode Island State Labor Law does not require that Correctional Officers be placed in a separate unit. The Union further argues that all the employees share a community of interest which permits them to be placed within the same bargaining unit. Finally, the Union argues that none of the positions have any supervisory duties that would render them ineligible for collective bargaining.

The Employer objects to the wall-to-wall unit and argues that there is no real reason to ignore the historical bargaining make-up and history of the three (3) separate units. The Employer argues that because the employees at CFDFC work in three (3) distinct and separate units, that they do not share a community of interest. Moreover, the Employer argues that the Union has not met its burden of establishing that the historical units are no longer appropriate. Finally, the

Employer argues that the registered nurses and medical technologists are supervisory and do not belong in any bargaining unit. In the alternative, even if the Board found that these two (2) types of employees are not supervisory, they certainly qualify as “professional” and should be afforded the option of choosing whether they desire to be included within a rank and file type bargaining unit.

The Employer presented extensive testimony and documentary evidence in support of its position that the employees sought do not share a community of interest. The Union did not present any witness testimony in support of its petition.

As the evidence began to unfold in this case, it became clear to the Board that at the time that CFDFC assumed control of the day-to-day operations of the Donald Wyatt Detention Facility, from Cornell Corrections Inc, (August 1, 2007), only one (1) of the existing Collective Bargaining Agreements for the three (3) Units had expired; the Collective Bargaining Agreement covering the Correctional Officer Unit. The other two (2) bargaining units, the Administrative Unit and the Medical Unit, both had intact Collective Bargaining Agreements on the date of the transfer. In fact, neither of the expirations dates of those two (2) contracts has come up at the time of this decision. Although it has not been stated as much in the proceedings before us, it appears to this Board, that there has been an assumption on both parties' parts that these Collective Bargaining Agreements (for the Administrative Unit and the Medical Unit) somehow became null and void upon the transfer of the operations of the facility from the private corporation to the public corporation.

Neither party in this matter has directly stated their positions on the status of the bargaining units. In this case, it appears to the Board, that based upon the testimony and exhibits, and also by a Motion For Declaratory Ruling filed by the Employer seeking to implement raises for the Administrative Unit and Medical Unit employees, during this election petition, that the labor contracts in existence at the time CFDFC took over the day-to-day operations, are no longer being honored. Indeed, an Affidavit executed by Warden Wayne T. Salisbury, Jr., which was attached to the petition for declaratory ruling, clearly states that pay raises in

the Administrative Unit's contract did not take place in November 2007, as scheduled. In addition, the Affidavit establishes that the Employer notified both Administrative Unit and Medical Unit employees that no raises could be provided during the pendency of this petition.

To say that we find this very surprising would be an understatement. Although, this Board does not believe that we have ever had the occasion to discuss the issue of "Successor Employers", which in this case is further complicated due to the transfer of jurisdiction from NLRB to this Board, R.I.G.L. 27-7-9.1 provides a level of protection for the employees employed by companies that undertake a "business combination transaction."

28-7-19.1 Mergers and Consolidations of Companies. –

(a) No business combination transaction shall result in the termination or impairment of the provisions of any labor contract covering persons engaged in employment in the state negotiated by a labor organization or by a collective bargaining agent or other representative. Notwithstanding a business combination transaction, the labor contract shall continue in effect until its termination date or until otherwise agreed by the parties to the contract or their legal successors.

(b) As used in this section, the following words, unless the context clearly required otherwise, have the following meanings:

(1) "Business combination transaction" means any merger or consolidation, any sale, lease, exchange, or other disposition, in one transaction or a series of transactions, whether of all or substantially all the property and assets, including its good will, of the business operations that are the subject of the labor contract referred to in subsection (a) of this section or any transfer of a controlling interest in the business operations;

(2) "Employment" means an individual's entire service, if the service is localized in the state. Service is deemed to be localized in the state if:

(A) The service is performed entirely within the state; or

(B) The service is performed both within and without the state but the service performed without the state is incidental to the individual's service within the state;

(ii) Employment shall include an individual's service, performed within and without the state, if the service is not localized in any state, but some of the service is performed in the state; and

(B) The individual's base of operation is in the state; or

(C) If there is no base operations, then the place for which the service is directed or controlled is in the state; or

(D) The individual's base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in the state.

(c) In the event that any employee is denied or fails to receive wage, benefits, or wage supplements as a result of a violation of this section, the employee shall have available civil and other remedies available at law or equity. The department of labor and training may take any and all appropriate actions to enforce the provisions of this section, including, but not limited to, injunctions, cease and desist orders, and other penalties provided by law.

(d) Recovery pursuant to a violation of this section shall be applicable to secure recovery against the merged, consolidated, or resulting corporation or other successor employer, notwithstanding anything contained in this section or elsewhere to the contrary.

(e) This section is enacted in order to protect the employment interests of all persons engaged in employment in the state under existing labor contracts and shall be liberally construed in every case in order to achieve that purpose.

The Board is troubled by the employees' situation presented by this case. We believe that the transfer of the day-to-day business operations of this facility from the private Cornell Corporation Inc. to the CFDFC qualifies as a "business combination transaction" as set forth in R.I.G.L. 28-7-19.1 as either (1) a disposition of the business operations that are the subject of three (3) labor contracts referred or (2) as a transfer of a controlling interest in the business operations of the Donald Wyatt Detention Facility. In either case, the employees of the facility are entitled to protections afforded by their labor contracts until the termination date of the contracts *or until otherwise agreed by the parties to the contract or their legal successors*. In this case, according to the evidence, there is a labor contract which is supposed to be in effect for the "Administrative Unit" until November 23, 2008 and another labor contract in effect for the Medical Unit until April 30, 2009. The Board does not believe that the parties have agreed that the employees are no longer entitled to the protections offered by their labor contracts. Indeed, there was certainly no documentary evidence to that effect submitted in this case.

That being the case, then the window periods for both of those contracts has not yet arrived. Labor contracts are supposed to provide stability not only for Unions and Employers, but for the *employees* who are being collectively represented. Not only are the Union and the Employer entitled to rely on a contract, but so are the employees. In this case, the Board acknowledges that the change of jurisdictional authority from Federal Law to State Law, may have thrown the parties [Employer and Union] a curve ball; it is the Board's obligation

to protect the employees who put their faith in the collective bargaining process. They are entitled to the protections of their labor contracts, which they presumably ratified with the understanding that they would provide some level of stability to the terms and conditions of their employment at the Donald Wyatt Detention Facility.

Therefore, since this Board finds no evidence in this case that the Administrative Unit and Medical Unit employees of the Donald Wyatt Detention Facility agreed to abandon their rights under their collective bargaining agreements (due to expire November 23, 2008 and April 30, 2009) that the protections afforded by those contracts are still in full force and effect. The CFDFC has become the successor Employer and must honor the terms of those agreements. Likewise, the Union cannot seek to represent employees unless it does so within the window period or unless the employees are no longer represented. In this case, neither party has indicated what happened to the Rhode Island Private Correctional Officers Union. It certainly did not attempt to intervene in this matter, so the Board assumes that it is no longer interested in representing the correctional officers at the Donald Wyatt Detention Facility.

Therefore, while the within petition to create a wall-to-wall unit shall be denied, due to the ineligibility of the Administrative Unit and Medical Unit, there is no reason why an election cannot be held for the Correctional Officers Unit. The Employer certainly did not suggest in any way, shape, or form that there was a reason to exclude the Correctional Officers from representation. To the extent that any Correctional Officer positions were excluded from collective bargaining under Federal Law, the same shall exclusions shall be applicable herein for the initial election. Should there be some reason for the make-up of the Correctional Officers' Unit to be different under State Law, the Board would later entertain petitions to either accrete or exclude positions, as the case may be. Therefore, a Direction of Election shall be ordered in this case, only as to the Correctional Officers.

FINDINGS OF FACT

- 1.) The Employer in this case, the Central Falls Detention Facility Corporation (hereinafter "CFDFC") is public corporation created by the Rhode Island General Assembly, P.L. 1991, cg. 421 (codified at R.I.G.L. 45-54-1 et.seq.)
- 2.) The CFDFC has a completely separate legal existence from the City of Central Falls. R.I.G.L. 45-54-1 (a). The function of the CFDFC is to provide detention services for both the Federal and State detained prisoners on behalf of Federal and State authorities.
- 3.) From its inception until July 2007, the CFDFC contracted with Cornell Corrections of Rhode Island, Inc., ("Cornell") a private corporation, to operate the detention facility on a day-to-day basis.
- 4.) During those sixteen (16) years, two different Unions sought and received authorization from the National Labor Relations Board to represent three (3) separate bargaining units. The first unit certified by NLRB in September 1997 was the Correctional Officers Unit, which was represented by the Rhode Island Private Correctional Officers Unit ("RIPCO"). During the time of private operation by Cornell, RIPCO negotiated three (3) successive agreements, the last of which expired on April 1, 2007.
- 5.) In August 1999, the NLRB certified Teamster Local 251 as the exclusive bargaining representative for an Administrative Unit comprised of "all full-time and regular part-time counselors, administrative clerks, A/P clerks, records assistant, clerk/typist, HR assistant, and janitor." The Teamsters successfully negotiated three successive agreements for this unit; the last agreement has an expiration date of November 23, 2008.
- 6.) In January 2002, the Teamsters also were certified to represent a "Medical Unit" comprised of "all full-time and regular part-time registered nurses, licensed practical nurses and medical records clerks employed at the CFDFC". The Teamsters negotiated two (2) contracts for the Medical Unit, with the last contract having an expiration date of April 30, 2009.

7.) On August 1, 2007, after not extending the contract with Cornell Corrections, Inc., the CFDFC assumed control of the facility for the day-to day operations of the Donald Wyatt Detention Facility.

CONCLUSIONS OF LAW

- 1) The transfer of the day-to-day business operations of the Donald Wyatt Detention Facility from the private Cornell Corporation Inc. to the Central Falls Detention Facility Corporation qualifies as a “business combination transaction” as set forth in R.I.G.L. 28-7-19.1.
- 2.) The Administrative Unit employees and Medical Unit employees of the Donald Wyatt Detention Facility are entitled to the protections offered by their labor contracts, which by their own terms, have not yet expired.
- 3) The Correctional Officer Unit employees share a community of interest and constitute an appropriate unit for collective bargaining.
- 4) The Correctional Officer Unit employees who have either terminated their employment since September 5, 2007 or who have been or have become Sergeants since September 5, 2007, are not eligible to vote.
- 5) The employees currently employed as Correctional Officers who were Correctional Officer Trainees as of September 5, 2007, are not eligible to vote.
- 6) The employees currently employed as Correctional Officer Trainees are not eligible to vote.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the Rhode Island State Labor Relations Board by the Rhode Island Labor Relations Act, it is hereby:

DIRECTED that an election by secret ballot shall be conducted by November 26, 2008, under the supervision of the Board or its agents, at a time, place and during hours to be fixed by the Board, among the Correctional Officer Unit employees employed by the Central Falls Detention Facility Corporation who were employed on September 5, 2007, as further defined in Paragraphs 1-6 inclusive under “Conclusions of Law” above, to determine whether they wish to

be represented, for the purposes of collective bargaining, as provided for in the Act, by Teamsters, Local 251 or by no labor organization.

ENTERED INTO PURSUANT TO AN AMENDED ORDER OF THE RHODE ISLAND STATE LABOR RELATIONS BOARD:

Dated: OCTOBER 14, 2008
By: 
ROBYN H. GOLDEN, ADMINISTRATOR

EE-3700

