

STATE OF RHODE ISLAND

BEFORE THE STATE LABOR RELATIONS BOARD

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In the MATTER of	:	
WARWICK SCHOOL COMMITTEE	Employer	:
- and -	:	CASE NO. ULP-3439
WARWICK INDEPENDENT SCHOOL EMPLOYEES	:	
UNION	Petitioner	:

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D E C I S I O N

- and -

O R D E R

Pursuant to the filing of an unfair labor charge on May 11, 1978, by the Warwick Independent School Employees Union and the information obtained at an informal hearing conducted on June 26, 1978, the Rhode Island State Labor Relations Board, on June 29, 1978, issued a Complaint against the Warwick School Committee alleging that the Respondent (the Warwick School Committee) had denied union representation to employees who were the subject of interviews which the employee reasonably believed may result in disciplinary action. Thereafter, counsel for the Warwick School Committee filed an Answer to the Complaint which stated the usual admissions, denials and, in addition thereto, filed a Third Defense which specifically stated as follows:

"The Warwick School Committee objects to the joinder of several complainants in a simple action where the claims of said complainants do not arise out of the same transaction, occurrence, or series of transactions or occurrences."

The Respondent, Warwick School Committee further requested that the Rhode Island State Labor Relations Board issue an Order dismissing the Complaint.

For the purpose of brevity, the Rhode Island State Labor Relations Board will hereinafter be referred to as the Board; the Warwick Independent School Employees Union will hereinafter be designated as the Union and the Warwick School Committee will hereinafter be known as the Employer.

The Board wishes to inform all parties that the basis for their determination in this case is restricted exclusively to the testimony of the witnesses who were present at the formal hearing, and who were subject to cross-examination by counsel for the Employer as well as the documentary evidence introduced by the parties. The Board will not consider the testimony of Mrs. Krasner relative to a Mr. Trotter, Mr. Maurice Moody or Mr. David Hart, since the Employer and its counsel were not afforded the opportunity to cross-examine the above named individuals referred to in Mrs. Krasner's testimony given at the formal hearing. In view of this reservation, we find no merit in the Employer's Answer to the Complaint, and especially the ground entitled Third Defense referred to above and its request that the Complaint be dismissed.

A detailed recitation of all of the facts surrounding the incidents involving Edward Gordon, Charlotte Guevremont, Dorothy Anderson, Beatrice Prior and Michael Fiorillo is unnecessary since the transcript is replete with their testimony under both direct and cross-examination.

At the formal hearing, the attorney for the Employer stipulated that the Union was the duly elected and certified bargaining representative for the individuals who are the subject matter of this case, and counsel for the Union stipulated that

Mr. John Dolan, Head Custodian at Pilgrim High School was not a supervisor, and was a member of the collective bargaining unit which represents the individuals involved herein.

For ease of comprehension, it must be kept in mind that Mr. Robert Knox is the Supervisor of Custodians for all of the schools in the City of Warwick, Mr. Frank Zannini is the Director of Buildings and Grounds for the Warwick School Department and Mr. John Venditto is the Assistant Superintendent for Personnel and Labor Relations.

Although the transcript does not suggest that Mr. John Knox has the authority to recommend hiring, firing or other disciplinary measures relative to employees, it is patently clear that Mr. Frank Zannini is empowered to and has, in the past, made recommendations to Mr. Venditto as a result of interviews with the personnel who are members of this bargaining unit relative to discharge or other disciplinary measures. Mr. John Venditto was asked the following question:

"Mr. Venditto, I want to be sure I understand what your policy is. If in your opinion discharge or discipline is not an imminent factor, then Union representation is not permitted, is that correct?"

His answer to that question was, "That's right." The following question was then asked: "Then, do I also take it, if you haven't made such a decision, but are conducting an investigation to determine whether or not discipline is warranted, you still do not permit union representation?"

His answer, "If the occasion would arise that warranted an investigation, I would not."

In summary, Mr. Venditto stated that he reserved the right to discipline to himself and that he relied on facts provided by his subordinates, namely, people like Mr. Zannini and Mr. Knox, and that prior to taking disciplinary action, he did not initiate a new investigation, but he would investigate further.

It is also important to remember that under cross-examination, Mr. Frank Zannini, Director of Buildings and Grounds for the School Department of the City of Warwick, stated that when there is a lack of satisfaction from the lower echelon supervisors, with the work of an employee, he usually sends the supervisor back to talk with the man and they continue the dialogue. In answer to a direct question relative to the circumstances in which he talks directly to the employee, Mr. Zannini answered as follows:

"When there are severe breaches of conditions, or there's a problem that involved the Superintendent, School Committee people, parents and so forth, I am required to investigate."

The Board has carefully studied the testimony of each of the employees involved as well as the serious nature of their alleged conduct, and the tense atmosphere prevailing between the Union and the Employer at the time the incidents occurred. In addition, the Board has carefully analyzed the testimony of Mr. Zannini and Mr. John Venditto relative to their managerial authority and Mr. Venditto's refusal to permit union representation other than at interviews conducted at his level.

After a careful reading and study of the decision in the case of N.L.R.B. vs. Weingarten - 88LRRM-2689 and its application to the five individuals involved in this case, the Board makes the following Findings of Fact.

#### FINDINGS OF FACT

1. The Employer, the Warwick School Committee is a duly constituted committee within the City of Warwick, a Municipal Corporation, duly organized under the Constitution and the General Laws of Rhode Island, with its headquarters located at 34 Warwick Lake Avenue, Warwick, Rhode Island.

2. That it was stipulated by the parties and the Board hereby finds that the Warwick Independent School Employees Union 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.

3. The Warwick Independent School Employees Union is the sole and exclusive bargaining agent for all non-teaching personnel excluding supervisors employed by the Warwick School Department, as defined by the Act.

4. That the Employer's Motion to dismiss the Complaint is hereby denied and dismissed.

5. That the Rhode Island State Labor Relations Act, and more specifically, Title 28, Chapter 7, Section 12, affords to employees the same protection and rights guaranteed to employees under the jurisdiction of the National Labor Management Relations Act.

6. The Board finds that the ruling set forth in the Decision of the case of the N.L.R.B. vs. W. Weingarten Inc., 88 LRRM-2689 is binding upon the Board and its determination of this matter.

7. That the present and past policy established and implemented by the Employer herein, namely, the Warwick School Committee, has been to consistently deny union representation to employees until the investigation or interviews reach the office of Mr. John Venditto, the Assistant Superintendent for Personnel and Labor Relations.

8. Implementation of this policy by a management representative conducting an investigatory interview wherein the

employee being interviewed reasonably believes that such interview will result in disciplinary action, constitutes a violation of the provisions of the Rhode Island General Laws; Title 28; Chapter 7; Section 13 by denying to those employees the rights guaranteed to them by the Rhode Island General Laws, Title 28, Chapter 7, Section 12.

9. That the circumstances surrounding the interview of Edward Gordon by Mr. Frank Zannini and others constituted a situation in which the employee had reasonable grounds to believe that the investigation would result in disciplinary action.

10. That the circumstances surrounding the interview of Mr. Michael Fiorillo by Mr. Zannini and others constituted a situation in which the employee had reasonable grounds to believe that the investigation or interview would result in disciplinary action.

11. That in the matter relative to Charlotte Guevremont, Beatrice Prior and Dorothy Anderson, the Board finds that in view of the tense situation and the seriousness of the maids refusal or resentment to carry out orders given to them by their superior, as well as the deviation from the normal practice relative to submission to their immediate supervisor of a certification from the doctor that they were ill on the day that they took off from work, constituted a situation in which each of the above named individuals had reasonable grounds to believe that the investigation or interview with Mr. Robert Knox, Supervisor of Custodians, would result in disciplinary action being taken against them.

12. That the Warwick School Committee has an obligation and duty to allow union representations, when requested by the individual employee, at any investigation or interview which is of such a serious nature as to be conducted by Mr. Frank Zannini, Director of Buildings and Grounds.

13. That the Warwick School Committee has an obligation and duty to permit union representation, when requested by the employee, at all interviews conducted by Mr. Robert Knox which result in the members of this bargaining unit being required to deviate from the normal requirements relative to absences from work for the period of one day.

14. That the refusal of the Warwick School Committee to permit union representation at the interview or investigations carried out by Mr. Zannini and/or Mr. Knox relative to each of the employees named above constituted an unfair labor practice in violation of Title 28, Chapter 7, Section 13 of the General Laws of the State of Rhode Island, as amended, namely, the Rhode Island State Labor Relations Act.

#### CONCLUSIONS OF LAW

That the failure of the Warwick School Committee to permit union representation, when requested by the employee involved, at interviews or investigations under such circumstances or situations that the employee reasonably believes the investigation or interview will result in disciplinary action, is an act prohibited within the meaning and language of the Rhode Island State Labor Relations Act and is an unfair labor practice.

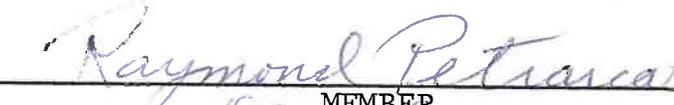
#### ORDER

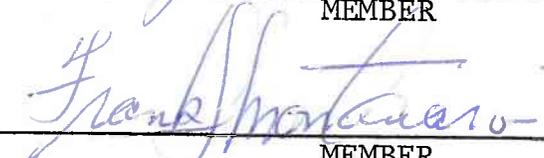
WHEREFORE, for the foregoing reasons, it is the Order of this Board that the Warwick School Committee, upon request of

the employee involved for union representation, in all matters in which the employee could reasonably believe that the interview or investigation will result in disciplinary action, must permit the employee to be afforded union representation.

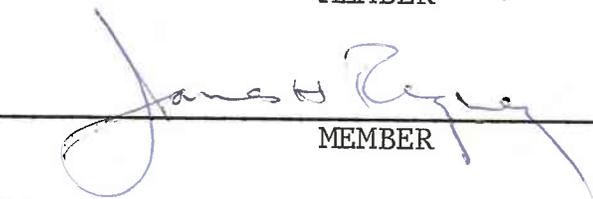
RHODE ISLAND STATE LABOR RELATIONS BOARD

  
CHAIRMAN

  
MEMBER

  
MEMBER

  
MEMBER

  
MEMBER

Entered as Order of the  
Rhode Island State  
Labor Relations Board

DATED: January 15, 1979

BY:   
ADMINISTRATOR