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

IN THE MATTER OF	
RHODE ISLAND STATE LABOR RELATIONS BOARD	
- AND -	CASE NO. ULP-4383
EAST PROVIDENCE SCHOOL DEPARTMENT	

DECISION
- AND -
ORDER

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter Board) on an Unfair Labor Practice Complaint (hereinafter Complaint) issued by the Board against the East Providence School Department (hereinafter Respondent) predicated upon an Unfair Labor Practice Charge (hereinafter Charge) filed on February 16, 1990, by Rhode Island Council 94, American Federation of State, County and Municipal Employees on behalf of its Local 2969 (hereinafter Local 2969).

The Charge, in substance, alleged that the Respondent had committed an Unfair Labor Practice in violation of R.I.G.L. 28-7-13 (7) and (10) by the Respondent's refusal to process a Grievance.

Following the filing of the Charge, an informal conference was held on May 1, 1990, between representatives of Local 2969 and the Respondent. When the informal conference failed to resolve the alleged Charge, the Board issued the instant Complaint alleging, in substance, a violation of R.I.G.L. 28-7-13 (7) and (10). A formal hearing on the Complaint was held on

November 21, 1990, and the Respondent filed its Brief on December 17, 1990, and Local 2969 filed its Brief on May 3, 1991.

The oral testimony and documentary evidence established that on September 2, 1976, the Board in Case #EE3154 Certified Council 70, American Federation of State, County and Municipal Employees (the predecessor to Council 94, American Federation of State, County and Municipal Employees, Local 2969) as the sole and exclusive bargaining agent for a unit composed of: "...all Janitorial and Maintenance Personnel, employed by the City of East Providence School Committee", for the purpose of collective bargaining with respect to rates of pay, hours of employment and other conditions of employment.

The Collective Bargaining Agreement in effect between Local 2969 and the Respondent contained the following Recognition Clause:

> "1.1 The employer hereby recognizes the Union as the sole and exclusive bargaining agent for all employees within the bargaining unit as defined by the State Labor Relations Board in Case #EE3154, with respect to rates of pay, hours of employment and other conditions of employment".

On or about April 24, 1989, Glenn E. Moniz (hereinafter Moniz) was hired by the Respondent as a custodian. The evidence of this hiring is contained in a document issued by the Respondent entitled "Certification For Payroll" (Respondent's Exhibit #1). This "Certification For Payroll" listed Glenn E. Moniz as an employee in the position of "Day-By-Day Substitute Custodian" at a pay rate of "$5.00 per hour" and contained thereon the signature of John V. DeGoes (Superintendent of Schools) and Dr. Isadore Ramos (Assistant Superintendent for Personnel). Moniz began work on May 8, 1989, and worked on a continuous basis from that date to December 27, 1989, filling in

for other janitorial and custodian employees who were unavailable for one reason or another. The hours Moniz worked during any one week varied. Of the thirty-two (32) weeks during which Moniz worked for the Respondent, twenty-eight (28) of those weeks he worked twenty (20) hours or more. All of the work was of a janitorial or custodian nature and similar to the work performed by regular, full and/or part-time janitorial and custodian employees. The work performed by Moniz was performed at several school locations. During his period of employment, Moniz did not receive Blue Cross, Delta Dental, Life Insurance as provided in the Collective Bargaining Agreement nor did he receive vacation days or holiday pay or any other benefits provided by the Collective Bargaining Agreement[1] nor were union dues deducted from his pay as was required for other employees. Moniz received only the $5.00 per week pay set out in the "Certification For Payroll".

On December 27, 1989, Moniz was advised that he was to train another person to take his job and he was, in fact, laid off at the end of the work day on December 27, 1989.

On January 16, 1990, Moniz filed an Official Grievance wherein he alleged that: "The East Providence School Department is in violation of Article VIII and all other applicable articles and sections of the contract. I was told that there was no more work available and was placed on lay off but I was not allowed to exercise my seniority rights under the contract". As remedy, Moniz requested that: "I be allowed to exercise my seniority and

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1. The Collective Bargaining Agreement provided for a probationary period of ninety (90) days for new employees during which time the Respondent had the "unquestioned right to discharge" any such new employee.

bump a junior employee and the School Department be ordered to make me whole retroactive to the day I was placed on lay off".

To the Grievance, the Superintendent of School, John V. DeGoes, responded on January 23, 1990, advising that Moniz had been hired as a day-to-day substitute to serve in the place of absent employees and had never been hired as a regular employee and as a result thereof he had "...no standing in that local (i.e. Local 2969) and any Grievance on his behalf lacks standing and validity" (matter in parenthesis added). On that basis, the Superintendent refused to hear or process the Grievance. It was this refusal that lead to the filing of the Charge in this matter and to the ultimate issuance of the Complaint herein.

The Respondent argues that Moniz was only a "day-to-day substitute" and not entitled to the benefits of the Collective Bargaining Agreement. The Respondent further asserts that the hiring of day-to-day substitutes had been a longstanding practice and one necessary for the day-to-day operation of the schools.

In the posture of this case, it becomes the Board's duty to determine whether or not Moniz was an employee of the Respondent so as to be entitled to exercise whatever rights he might have pursuant to the Collective Bargaining Agreement between Local 2969 and the Respondent.

The Board Certification of September 2, 1976, included within the bargaining unit "...all Janitorial and Maintenance Personnel". This Certification makes no distinction as to full or part-time employees nor did it provide for the exclusion of personnel who are hired on a substitute basis.

R.I.G.L. 28-9.4-1 provides that:

> "It is hereby declared to be the public policy of this state to accord to municipal employees, as hereinafter defined, the right to organize, to be

represented, to negotiate, and to bargain on a collective basis with municipal employers, as hereinafter defined, covering hours, salary, working conditions and other terms of employment;...".

R.I.G.L. 28-9.4-2 (b) defines municipal employee as follows:

"(b) 'Municipal Employee' means any employee of a municipal employer, whether or not in the classified service of the municipal employer, except:

1. Elected officials and administrative officials;

2. Board and commission members;

3. Certified teachers, police officers and firefighters;

4. 'Confidential' and 'Supervisory' employees;

5. 'Casual' employees, meaning those persons hired for an ocassional period to perform special jobs or functions;

6. 'Seasonal' employees, meaning those persons employed to perform work on a seasonal basis of not more than sixteen (16) weeks, or who are part of an annual job employment program;

7. Employees of authorities except housing authorities not under direct management by a municipality who work less than twenty (20) hours per week. The state labor relations board shall, whenever requested to do so, in each instance, determine who are supervisory, administrative, confidential, casual and seasonal employees."

As the Board views the statutory language above quoted, unless Moniz is specifically exempted from the provisions thereof, he was an employee of the Respondent. Clearly, he was:

1. neither an elected official nor an administrative official;

2. a board or commission member;

3. not a certified teacher, police officer or firefighter;

4. neither a confidential nor supervisory employee;

5. not a casual employee hired for an ocassional period to perform a special job or function;

6. not a seasonal employee; nor

7. not the employee of any authority.

The evidence established that Moniz was hired as a custodian for an indefinite period of time to perform regular custodial and janitorial duties performed by other full-time employees within the bargaining unit.

From an examination of the entire record, the Board concludes that Moniz was an employee of the Respondent and was within the bargaining unit represented by Local 2969 and that the Respondent's refusal to process Moniz's Grievance was a violation of R.I.G.L. 28-7-13 (7) and (10).

Whether or not Moniz had seniority rights to bump a junior employee is not before the Board and the Board declines to make any judgment thereon.

Based upon the entire record, the Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Local 2969 is a labor organization within the meaning of the Rhode Island State Labor Relations Act.

2. Local 2969 is the duly established sole and exclusive bargaining representative for "all Janitorial and Maintenance Personnel" employed by the Respondent with respect to rates of pay, hours of employment and all other conditions of employment.

3. There was in existence, at the time of the filing of the Charge herein and the issuance of the Complaint herein, a valid Collective Bargaining Agreement between Local 2969 and the Respondent.

4. The said Collective Bargaining Agreement between Local 2969 and the Respondent contained a Recognition Clause, which recognized Local 2969 as the sole and exclusive bargaining agent for all employees within the bargaining unit as defined by the Board in Case #EE3154.

5. Glenn E. Moniz was hired on April 24, 1989, as an employee of the Respondent to perform janitorial and custodial services of like nature to that performed by other full-time janitorial and custodial employees employed by the Respondent.

6. Glenn E. Moniz, was an employee of the Respondent and performed janitorial and custodial services for the Respondent on a continuous basis between the period May 8, 1989, and December 27, 1989.

7. Glenn E. Moniz was terminated from his employment with the Respondent, by the Respondent or its agent, on December 27, 1989.

8. Glenn E. Moniz was not allowed to exercise any seniority rights which he might have obtained during his period of employment so as to bump a junior employee and remain in the employment of the Respondent.

9. Glenn E. Moniz on January 16, 1990, filed a Grievance wherein he alleged a violation of his right to exercise his alleged seniority right so as to bump a junior employee by the refusal of the Respondent to permit him to do so.

10. The Respondent on January 23, 1990, refused to process Glenn E. Moniz's Grievance of January 16, 1990, on the basis that

he was not an employee covered by the Collective Bargaining Agreement in effect between Local 2969 and the Respondent.

CONCLUSIONS OF LAW

1. Local 2969 has proven by a fair preponderance of the credible evidence that it was the duly Certified Collective Bargaining Representative for all Janitorial and Maintenance Personnel employed by the Respondent.

2. Local 2969 has proven by a fair preponderance of the credible evidence that Glenn E. Moniz was an employee of the Respondent employed in the performance of bargaining unit work during the period May 8, 1989, to and including December 27, 1989.

3. Local 2969 has proven by a fair preponderance of the credible evidence that the Respondent did not terminate the employment of Glenn E. Moniz within the ninety (90) day period following his employment on May 8, 1989.

4. Local 2969 has proven by a fair preponderance of the credible evidence that Glenn E. Moniz filed a Grievance on January 16, 1990, and that the Respondent on January 23, 1990, refused to discuss or process such Grievance and that said refusal constituted an Unfair Labor Practice in violation of R.I.G.L. 28-7-13 (7) and (10).

ORDER

In order to effectuate the purposes and polices of the Rhode Island State Labor Relations Act, the Respondent is:

1. Directed to rehire Glenn E. Moniz to perform janitorial and custodial services within thirty (30) days of the date hereof.

2. Directed to pay to Glenn E. Moniz back pay in an amount determined by averaging his weekly pay during the period May 8, 1989, to December 27, 1989, and applying said average to each week between December 27, 1989, and the date of reinstatement.

RHODE ISLAND STATE LABOR REALTIONS BOARD

Joseph V. Mulvey, Chairman

Raymond Petrarca

Frank J. Montanaro

Entered as Order of the
Rhode Island State Labor Relations Board

DATED: September 9, 1992.

BY: Donna M. Geoffroy