

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

NEWPORT SCHOOL DEPARTMENT

CASE NO. ULP-4488

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 Newport School Department (hereinafter Respondent) based upon an Unfair Labor Practice Charge (hereinafter Charge) filed on May 16, 1991, by Rhode Island Council 94, American Federation of State, County and Municipal Employees, Local 841 (hereinafter Union). The Charge alleged the Respondent with:

"Violation of R.I. General Laws 28-7-13, Paragraphs 6 and other applicable paragraphs.

The School Department created a Position and Failed to Negotiate the wages, hours and conditions of employment".

Following the filing of the Charge, the Board, in writing, notified the Respondent and the Union that an informal conference would be held on June 11, 1991, to obtain a preliminary statement as to all sides of the case.

On June 11, 1991, the informal conference was held with an Agent of the Board with representatives of the Respondent and Union present.

When the informal conference failed to resolve the Charge, the Board issued the instant Complaint on November 6, 1991. Paragraph 3 of the Complaint alleges as follows:

"3. That the School Department created a position and failed to negotiate the wages, hours and conditions of employment, in violation of R.I. General Laws 28-7-13, Paragraphs 6 and other applicable paragraphs".

No Answer to the Complaint was filed.¹

A Formal Hearing in this matter was scheduled for May 11, 1992. At the May 11, 1992, Formal Hearing, the Union and Respondent notified the Board that they felt they were close to a resolution of the problem and requested that the matter be held in abeyance and in the event the matter was not resolved, they would request a date for a Formal Hearing. When the Board had not heard from either the Union or the Respondent by January 13, 1993, as to whether the matter had been resolved or there was need for a Formal Hearing, the Board inquired of the parties as to the status of the matter. After learning that the matter had not been resolved, the Board scheduled a Formal Hearing for March 31, 1993. The Formal Hearing took place on March 31, 1993, with representatives of the Union and Respondent present. At the conclusion of the Formal Hearing, the parties indicated their desire to file written Briefs. The Brief of the Union was received by the Board on May 28, 1993, and that of the Respondent on June 1, 1993.

In arriving at the Decision and Order herein, the Board has reviewed the testimony, the exhibits and the Briefs filed herein.

DISCUSSION

Prior to April 29, 1991, there were within the Business Office of the Respondent two (2) positions classified as "Grant Programs Bookkeeper" as well as three (3) other positions, i.e. one certified payroll bookkeeper, one non-certified payroll bookkeeper and one secretary bookkeeper. The duties of the two (2) "Grant Programs Bookkeeper" was to process the grants as they came in. As said by Susan Silva (one (1) of the two (2) "Grant Programs Bookkeepers") at Pages 8 and 9 of the Transcript:

¹ Under Section 10 of the General Rules and Regulations of the Board, effective June 1, 1943, "Upon failure of the Respondent to file an Answer within the five (5) days specified in Section 24 of said General Rules and Regulations, the Board may proceed to hold a hearing at the time and place specified in the notice of hearing, and may make its findings of fact and enter its order upon the testimony so taken".

"I process the grants as they came in. I prepared the budget for them, I did financial reports, cash requests, process direct payments, purchase orders, work with the payroll and benefits in each grant".

In the spring of 1991, and prior to April 29, 1991, the Respondent was in the process of preparing a budget for its 1991-1992 fiscal year and was looking at the Business Office and considering a realignment of positions. According to the testimony of the Director of Administrative Services (hereinafter referred to as Mr. Brown):

"...in light of the fact that the grant programs office was no longer in existence, the separate functioning of accounting procedures and business procedures for that office needed to be looked at with scrutiny. It was at that time that I so indicated to the two people who did have those positions that we were looking very seriously at those positions. Nothing was cast in concrete, and nothing was in writing at that particular time; it was still an exploratory, (sic) and the final decision rests with the Newport School Committee at the time they adopted their budget. The accounts payable bookkeeper position was an attempt to streamline that office, the business office, as opposed to the grant programs office, in that now we would no longer be duplicating the same services that were being provided by two separate positions". (Transcript Page 25)

At Pages 25 and 26 of the Transcript, Mr. Brown testified as follows:

"The grant programs bookkeeper worked only on grant programs. Those would be funds that were received by the Newport School Department from outside funding sources other than those generated through the local tax revenues. They could be federal sources, state sources or they could be private foundation sources of funding. The accounts payable bookkeeper would be a position that would pay all bills, whether they were bills to be paid from local sources through the local school department budget, or through funding sources, whether it be state, federal or a private foundation funding source. The reason why it could not be done before is because of the separate purchasing, accounting procedures that we had. With the new accounting system that we have, it is just a difference between one keystroke on the computer as to what the funding source would be rather than having to maintain separate accounts and files for grant programs".

The testimony is clear, from that of Mr. Brown and that of Mr. Frank Coleman, the President of the Union that in April of 1991, no negotiations between the Union and the Respondent took place prior to April 29, 1991, concerning the elimination of the two (2) positions of "Grant Programs Bookkeeper"; the creation of the new position of "Accounts Payable Bookkeeper" or of the wages or

working conditions applicable to said position of "Accounts Payable Bookkeeper".

It is clear that by April 29, 1991, the Respondent had created the position of "Accounts Payable Bookkeeper" for the posting for that position on April 29, 1991, is entitled "Announcement of Vacancy".² Clearly, that position had been created for if not there would be no vacancy to fill. In addition, the within posting under "TERMS OF EMPLOYMENT" stated "Salary and benefits ** on FPO Payroll Clerk and Bookkeeper Scale in accordance with contract for Support Staff. (Underlining in original posting notice).³ In any event, there had been no negotiations or even discussions with the Union as to the appropriate salary to apply to the position of "Accounts Payable Bookkeeper".

The existing Collective Bargaining Agreement, in effect on April 29, 1991, covered the period July 1, 1989, through June 30, 1991. (Respondent Exhibit 1). Article I, Section 1, entitled "Union Recognition" provides in subparagraph (a) that:

"The Employer recognizes the Union as sole and exclusive bargaining agent for the purpose of establishing salaries, wages, hours and all other conditions of employment for all employees in the bargaining unit". (Underlining added)

Further, the posting notice of April 29, 1991, set the hours of work as "Twelve months, 8:00 a.m. to 4:00 p.m. daily with one hour for lunch". It is clear without contradiction, that no negotiations took place between the Union and the Respondent as to the hours of work prior to the posting of April 29, 1991.

As part justification for the failure to negotiate, the Respondent refers to Article XV of the Collective Bargaining Agreement (i.e. Collective Bargaining Agreement in effect July 1,

² Union Exhibit 1 is a copy of the posting for the vacant position of "Accounts Payable Bookkeeper".

³ Mr. Brown explained that Union Exhibit 1 was a "Revision (A)" of the original posting. The original posting had referenced simply to the salary schedule for Support Staff in the existing Collective Bargaining Agreement between the Union and the Respondent. According to Mr. Brown, this error was called to his attention by representatives of the Union.

1988 through June 30, 1991) which provided for the establishment of a "Comparable Worth and Pay Equity Committee". Said Article XV provides as follows:

"ARTICLE XV

COMPARABLE WORTH AND PAY EQUITY COMMITTEE

The School Department and Union agree to the formation of a comparable worth and pay equity committee. This committee will be comprised of five (5) members, with two (2) selected by the union and two (2) selected by the school department and the fifth member mutually agreed upon by the four members selected. This committee will study the entire issue of comparable worth and pay equity. It will submit its findings and recommendations to the school department no later than September 1, 1989. The school department and the union agree to re-open contract negotiations on September 1, 1989 to discuss the committee's findings and negotiate the recommendations". (Underlining in original).

There was no evidence that the Comparable Worth and Pay Equity Committee was in existence prior to April 29, 1991.

The Collective Bargaining Agreement between the Union and the Respondent covering the period July 1, 1991, through June 30, 1994, contains the following:

"ARTICLE 46

JOB EVALUATION COMMITTEE

The School Department and the Union agree to the formation of a committee composed of four (4) members, with two (2) selected by the Union and two (2) selected by the School Department. This committee by agreement shall appoint a fifth neutral member who shall be used only if the four member committee reach an impasse on any issue before them.

The committee shall meet every six months in the months of July and January.

This committee shall be responsible for evaluating existing jobs in the event of a change in duties, responsibilities or skill requirements and shall be responsible for the slotting of any new positions that are added to the bargaining unit in the future. The committee shall meet to evaluate these new positions as needed.

If the committee finds that there has been a change in duties, responsibilities or skill requirements then said committee shall be responsible for placing the job in the appropriate pay grade and classification".

There is no evidence in this case that any actions of the Union, subsequent to May 16, 1991, the date of the filing of the Charge herein, negated the Charge.

While it may be, as the Respondent admitted, that the violation herein is a technical one, the fact is that the

Respondent, not only abolished two (2) positions⁴ and created a new one and set forth the hours and salary of the new position without negotiations with the Union which is the sole and exclusive bargaining representative.

For all of the foregoing, the Board finds that the Respondent violated R.I.G.L. 28-7-13 (6) and (10).

FINDINGS OF FACT

1. The Union is a labor organization within the meaning of the Rhode Island State Labor Relations Act which exists and is constituted for the purposes, in whole or in part, of collective bargaining relative to wages, rates of pay, hours, working conditions and other terms and conditions of employment.

2. The Respondent is an Employer within the meaning of the Rhode Island State Labor Relations Act.

3. On April 29, 1991, there was in existence a valid Collective Bargaining Agreement between the Union and the Respondent wherein in Article I, Section 1 (a), the Respondent recognized the Union: "...as sole and exclusive bargaining agent for the purpose of establishing salaries, wages, hours and all other conditions of employment for all employees in the bargaining unit".

4. The Respondent, without negotiations with the Union, unilaterally, prior to April 29, 1991, created the position of "Accounts Payable Bookkeeper".

5. The Respondent, without the consent of the Union, posted a written "Announcement of Vacancy" for the newly created position of "Accounts Payable Bookkeeper".

6. The Respondent, without negotiations with the Union, established the hours of work for the position of "Accounts Payable Bookkeeper".

⁴ While not specifically a part of the Charge herein, such abolishment in and of itself is a violation of R.I.G.L. 28-7-13 (6); See Barrington School Committee v. Rhode Island State Labor Relations Board, __ RI __, 388 A2d 1369 (1978); Providence Teachers' Union v. Providence School Committee, __ RI __, 412 A2d 926 (1980).

7. The Respondent, without negotiations with the Union, established the salary and benefits of the position of "Accounts Payable Bookkeeper".

8. The elimination of the two (2) positions of "Grant Programs Bookkeeper" was a mandatory subject of collective bargaining.

9. The unilateral elimination of the two (2) positions of "Grant Programs Bookkeeper" was a violation of R.I.G.L. 28-7-13 (6) and (10).

CONCLUSIONS OF LAW

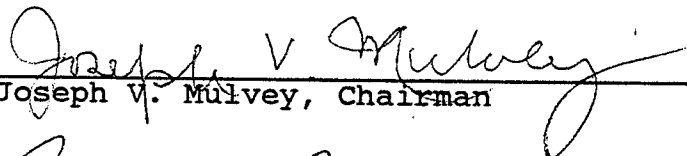
1. The Union has proven by a fair preponderance of the credible evidence that the creation of the position of "Accounts Payable Bookkeeper" and the unilateral setting of the hours, salary and benefits for said position, without negotiations with the Union, the sole and exclusive representative of the employees in the bargaining unit, was a violation of R.I.G.L. 28-7-13 (6) and (10).

ORDER

1. The Respondent is Ordered and Directed to engage in collective bargaining with the Union involving salaries, hours of work and other benefits for the position of "Accounts Payable Bookkeeper", within sixty (60) days of the date hereof.


2. The Respondent is Ordered and Directed to cease and desist, in the future, from setting of salaries, hours of work and benefits for newly created positions without negotiating the same with the Union and/or in accordance with the terms of any existing Collective Bargaining Agreement between the Union and the Respondent.

RHODE ISLAND STATE LABOR RELATIONS BOARD


Joseph V. Mulvey, Chairman

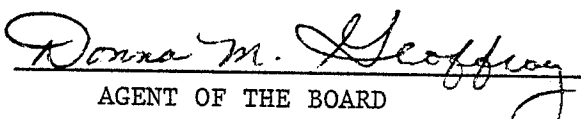

Raymond Petrarca, Member


Glenn H. Edgecomb, Member


Daniel L. Beardsley, Jr., Member

Entered as Order of the
Rhode Island State Labor Relations Board

Dated: December 21, 1993

By: 
AGENT OF THE BOARD