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

CASE NOS. ULP-4525
ULP-4526

WOONSOCKET SCHOOL COMMITTEE

DECISION AND ORDER

The above-entitled matters come before the Rhode Island State Labor Relations Board (hereinafter Board) on an Unfair Labor Practice Complaint (hereinafter Complaint) issued by the Board against the Woonsocket School Committee (hereinafter Respondent based upon two (2) Unfair Labor Practice Charges (hereinafter Charges) filed on October 23, 1991, by Woonsocket Teachers' Guild, Local 951, American Federation of Teachers (hereinafter Union).

Following the filing of the Charges, an informal conference was held on January 23, 1992, between representatives of the Union and Respondent with an Agent of the Board in relation to both Charges.[2] When the informal conference failed to resolve the Charges, the Board issued the instant Complaint on August 14, 1992 wherein it alleged in Paragraph 3 of the Complaint:

"3. That the Employer has violated 28-7 of the General Laws of the State of Rhode Island by unilaterally eliminating and/or abolishing teacher positions, without prior negotiations with the Complainant, including but not limited to the following: art, music, home economics, industrial arts, foreign language, department heads, gifted and talented, diagnostic prescriptive

[1] The Union represents two (2) bargaining units and has two (2) Collective Bargaining Contracts with the Respondent. The Charge in ULP-4525 relates to the unit representing teachers and the Charge in ULP-4526 relates to the unit representing paraprofessionals. Both Charges alleged violation of R.I.G.L. 28-7-13 in that the Respondent abolished certain positions without negotiations with the Union which, if substantiated, would be a violation of R.I.G.L. 28-7-13 (6) and (10).

[2] Both the Union and the Respondent agreed that since both Charges were of similar nature, that they be consolidated into a single case.

teachers, coaches, extra-curricular activities, library technician, technical assistant and TV Coordinator".[3]

A formal hearing, in this matter, was held on December 9, 1992. The Brief of the Respondent was received by the Board on January 27, 1993, the Union elected not to file a Brief.

In arriving at the Decision and Order herein, the Board has reviewed the transcript and exhibits and has reviewed the Respondent's Brief.

DISCUSSION

The evidence in this case clearly established that the Respondent was suffering from a severe financial crisis in the spring of 1991 when it was preparing and putting together its proposed budget for the 1991-1992 fiscal year. It is clear that prior to May 1, 1991, the Respondent was faced with a proposed reduction in State Aid to Education of approximately eighteen (18%) percent. Such a drastic reduction would have a profound impact upon the Respondent in relation to the services it was called upon to supply.

As of April 24, 1991, the Respondent had prepared what it termed "FY92 Budget Reductions" (Union Exhibit 1). This document contained a listing of positions to be eliminated abolished); reductions in full to part-time positions, reduction in numerous fringe benefits and services. The total projected savings "Salary & Fringe" benefits was $1,425,893.00. Coupled with these reductions was a proposed reduction in Purchased Services Supplies, Fixed Charges, Capital Outlay, Grant Positions and savings to be effected by the closing of one school in the amount $589,817.00. In total the projected savings would be $2,015,710.00

The proposed written "FY92 Budget Reductions" proposal was submitted to the Respondent for action at its meeting of May 1,

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[3] All of the listed positions with the exception of library technicians, technical assistants and TV Coordinator belong to the teaching unit in Case No. ULP-4525 and the above three (3) belong to the paraprofessional unit in Case No. ULP-4526.

At the meeting of May 1, 1991, the proposed "FY92 Budget Reductions" with some reductions and additions was unanimously approved by the Respondent (Unit Exhibit 2 - An excerpt of the Respondent's Meeting Minutes for the May 1, 1991, meeting)

It is undisputed that no negotiations between the Union and the Respondent took place with respect to the abolishment of positions and reduction of some full-time to part-time positions as forth in said "FY92 Budget Reductions", prior to the May 1, 1991, meeting of the Respondent.

Following the May 1, 1991, meeting, the Union and the Respondent did hold meetings in June of 1991 in an attempt to avoid the abolishment of a substantial number of positions. It was hoped that such could be accomplished by the Union's voluntarily eliminating or deferring contractually mandated salary increases which were provided for under the then existing Collective Bargaining Agreements. Those attempts were unsuccessful and on June 26, 1991, the Respondent again voted to abolish the positions and reduce some positions from full-time to part-time. In July 1991, the personnel affected were so notified. Meetings continued to take place thereafter with the ultimate result being that the Union agreed to salary adjustments resulting in the saving of most all of the positions previously abolished by the Respondent.

Against this background, the Union argues that there was an obligation upon the Respondent to bargain with it over the "FY92 Budget Reductions" insofar as it related to the abolishment of positions in the bargaining units and in the reduction of some positions from full-time to part-time. This was especially so since the Respondent, had in fact, on May 1, 1991, adopted the "FY92 Budget Reductions" which provided for the abolishment of positions and reduction of some positions from full-time to part-time as specified in the Charges filed on October 23, 1991.

The Respondent argues that the actual abolishment of positions did not take place until June 26, 1991, and that prior to that date, meetings (i.e. collective bargaining negotiations) between Union and the Respondent took place and that negotiations

continued throughout the summer of 1991 ultimately culminating in the restoration of most of the abolished positions. The Respondent further argues that it is not obligated to bargain with the Union over program eliminations resulting from budget constraints and in this regard cites the cases of Maywood Board of Education v. Maywood Education Association, 168 NJ Super. 45, 401 A2d 711, (1979); West Hartford Education Association v. DeCourcy, 162 Conn. 566, 295 A2d 526 (1972) and Dunellen Board of Education v. Dunellen Education Association, 64 NJ 17, 311 A2d 737 (1973).

R.I.G.L. 28-9.3-1, dealing with Arbitration of School Teacher Disputes, in part provides that:

"It is hereby declared to be the public policy of this state to accord to certify public school teachers the right to organize, to be represented, to negotiate professionally and to bargain on a collective basis with school committees covering hours, salary, working conditions and other terms of professional employment".

R.I.G.L. 28-9.3-2 also provides in pertinent part that:

"The certified teacher in the public school system in any city, town or regional school district, shall have the right to negotiate professionally and to bargain collectively with their respective school committees and to be represented by an association or labor organization in such negotiations or collective bargaining concerning hours, salary, working conditions and all other terms and conditions of professional employment...".

R.I.G.L. 28-9.3-4 in part provides that:

"An unfair labor practice charge may be complained of by either bargaining agent or the school committee to the state labor relations board which shall deal with such complaint in the manner provided in chapter 7 of this title." [4]

The following quotes deal with employees in Case No. ULP-4526.

R.I.G.L. 28-9.4-1 in part 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 defines a municipal employer to include a school board and in R.I.G.L. 28-9.4-3 provides that:

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[4] The foregoing three (3) statutory references deal with the employees in Case No. ULP-4525.

"The municipal employees of any municipal employer in any city, town or regional school district, shall have the right to negotiate and to bargain collectively with their respective municipal employers and to be represented by an employee organization in such negotiation or collective bargaining concerning hours, salary, working conditions and all other terms and conditions of employment".

R.I.G.L. 28-9.4-5 also provides in pertinent part that:

"Failure to negotiate or bargain in good faith may be complained of by either the negotiating or bargaining agent or the municipal employer to the state labor relations board which shall deal with such complaint in the manner provided in chapter 28-7 of this title".

From the foregoing, the Board has jurisdiction over the Charges and the Complaint herein was validly issued pursuant to the foregoing statutory provisions.

It is also clear to the Board that negotiations, pursuant to the foregoing statutory provisions, relate to a broad range of subjects, as evidence by the use of the phrase "...working conditions and all other terms and conditions of employment" (Underlining added)

The elimination of positions and reduction of some from full-time to part-time would of necessity impact upon the bargaining representative (in this case the Union). As of April 24, 1991, the Respondent had prepared the document entitled "FY92 Budget Reductions". This document clearly spelled out the positions to be abolished or reduced to part-time and was in fact adopted by the Respondent on May 1, 1991, without any prior negotiations with the Union. While meetings, even if they be negotiations, took place thereafter and up to June 26, 1991, the action of June 26, 1991, had the same effect as the action of May 1, 1991. The Respondent, in its Brief on Page 2, refers to the action of the Respondent on May 1, 1991, as a "...budget reduction option" (Underlining in original). There is nothing in "FY92 Budget Reductions" to indicate that it was an option nor was there any such reference in the Meeting Minutes of the Respondent for the meeting of May 1 1991, which would so indicate. As of May 2, 1991, the positions listed in "FY92 Budget Reductions" had been abolished and/or reduced to part-time. It was a fait accompli and was done without any negotiations, consultations or meetings with the Union. As

viewed by the Board, what transpired after May 1, 1991, cannot change the fact that up to that point, the Respondent had not only not bargained in good faith with the Union, it hadn't bargained at all. Had negotiations taken place prior to May 1, 1991, it is at least conceivable that a resolution of the abolishment of positions or in some cases the reduction thereof from full to part-time might have been accomplished. However, regardless of the possible results, there should have been negotiations with the Union prior to the adoption of the "FY92 Budget Reductions" in relation to the abolishment and/or reduction in some positions from full-time to part-time.

The Respondent further argues that prior Arbitration Awards (Respondent's Exhibits 1, 2, and 3) support its position. Respondent's Exhibit 1 was an arbitration proceeding in relation to an alleged violation of the then existing Collective Bargaining Agreement as the result of the elimination of the positions of "Teachers of Gifted and Talented" and "Diagnostic Prescriptive Teacher" where such duties were performed by others outside the bargaining unit. This matter involved such issues as subcontracting of work wherein the Arbitrator found no contractual violation. The issue in that case did not involve the obligation to bargain.

Respondent's Exhibit 2 is an Arbitration Award involving the interpretation of specific contractual provisions in relation to transfers and once again, the issue did not involve the obligation to bargain

Respondent's Exhibit 3 again was an Arbitration Award which involved the abolishment of an extra-curricular position, one known as Financial Manager (formerly Faculty Manager The Arbitrator found that the management rights clause of that Collective Bargaining Agreement was broad enough to allow the school committee to abolish the position and that there were no other contractual provisions limiting such right. Once again, the issue raised in this case was not addressed.

Additionally, the Respondent, in support of its position, relies upon the cases of Dunellen Board of Education v. Dunellen Education, supra; Council of New Jersey State College Locals v. State Board of Higher Education, 436 A2d 1152 (NJ 1981); Maywood Board of Education v. Maywood Education Association, supra, and West Hartford Education Association v. DeCourcy, et al, supra. In the Board's reading of the three 3) New Jersey cases, they were decided upon the particular statutory provisions applicable in New Jersey at the time those cases arose. The Board is not persuaded to apply the results of the New Jersey cases to the situation in this case. As to the West Hartford Education Association Case supra, the Board would note that it did not deal with the issue presented in this case but dealt with other issues which the Court disposed of in accordance with the statutory provisions of Connecticut and case law developed thereunder.

In this case, the Board concludes that the Respondent violated R.I.G.L. 28-7-13 6) and (10) by failure to negotiate with the Union prior to the approval on May 1, 1991, of the abolishment of positions and in the reduction of some positions from full-time to part-time.

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 purpose, 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. Prior to April 24, 1991, the Respondent and the Union were both aware of an impending reduction in State Aid to Education in the projected range of eighteen (18%) percent.

4. Without negotiations with the Union, the Respondent prepared a written document entitled "FY92 Budget Reductions" wherein it eliminated ten (10) positions (effecting substantially

more than ten (10) employees) and reduced many employees from full-time to part-time and proposed the reorganization and redistribution of numerous employees

5. The "FY92 Budget Reductions" was presented to the Respondent's full Committee on May 1, 1991

6. The Respondent on May 1, 1991, unanimously adopted the "FY92 Budget Reductions" with some adjustments which did not impact on the abolishment of the positions set forth in the "FY92 Budget Reductions".

7. The School Committee on May 1, 1991, unanimously adopted the "FY92 Budget Reductions" wherein numerous positions were reduced from full-time to part-time.

8. The action of the Respondent on May 1, 1991, in adopting the "FY92 Budget Reductions", without negotiations, with the Union, constituted a refusal to bargain in violation of R.I.G.L. 28-7-13 (6) and (10).

9. While negotiations did take place in June 1991 between representatives of the Union and the Respondent, they were unsuccessful in resolving the abolishment of the positions or in the reduction of the full-time to part-time positions for many employees covered by the Collective Bargaining Agreement

10. On June 26, 1991, the Respondent affirmed its position to abolish the positions and reduce the number of full-time to part-time as set forth in the "FY92 Budget Reductions" previously approved on May 1, 1991

11. On July 11, 1991, notice of terminations was sent to those employees affected.

12. Negotiations did take place during the summer of 1991 which ultimately resulted in the elimination of only a few positions including TV Coordinator, Library Technicians (7 1/2 positions), Gifted and Talented Teacher, Diagnostic and Prescriptive Teachers (3 plus positions) and certain department heads and elementary education (3 positions)

13. The negotiations that took place after May 1, 1991, did void the failure of the Respondent to negotiate prior to May 1, 1991.

CONCLUSIONS OF LAW

1. The Union has proven by a fair preponderance of the credible evidence that the Respondent's failure to negotiate relating to the abolishment of certain positions in both bargaining units and the reduction from full-time to part-time of a number of employee positions prior to May 1, 1991, constituted a violation of R.I.G.L. 28-7-13 (6) and (10).

ORDER

1. The Respondent shall cease and desist from refusal to bargain with the Union concerning the abolishment of positions.

2. The Respondent shall cease and desist from refusal to bargain with the Union concerning the reduction of employees from full-time employees to part-time employees.

3. The Respondent is directed, within sixty (60) days of the date hereof, to negotiate with the Union concerning the positions abolished and those reduced from full-time to part-time for the school year 1991 to 1992.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Joseph V. Mulvey, Chairman

Raymond Petrarca, Member

Frank J. Montanaro, Member

Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: November 3, 1993

Donna M. Geoffroy
AGENT OF THE BOARD