

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 NO: ULP-4942

-AND-
EXETER-WEST GREENWICH
REGIONAL SCHOOL

DECISION AND ORDER

TRAVEL OF CASE

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 Exeter-West Greenwich Regional School (hereinafter Employer) based upon an Unfair Labor Practice Charge (hereinafter Charge) dated and filed on January 12, 1995 by R.I. Council 94, AFSCME AFL-CIO, (hereinafter Union).

The Charge alleged:

Violation of Section 28-7-13

Paragraphs 5,7,8 and 10 and any other provision that may apply.

The Exeter/West Greenwich Schools has violated the above cited paragraphs by deciding to hear grievances in Open Session before the School Committee on January 10, 1995.

Following the filing of the Charge, an informal conference was held on January 27, 1995 between representatives of the Union and Respondent and an Agent of the Board. The informal conference failed to resolve the Charge. The matter was then held in abeyance by the request of the parties until July 15, 1998 wherein the Union requested the Board to move forward with the charge. On July 20, 1998, the Board issued the instant Complaint. The Employer failed to file an answer to the Complaint, but did file a motion to dismiss which was received by the Board on August 10, 1998.

A formal hearing on this matter was held on August 13, 1998. At that time, the Union verbally objected to the Employer's motion to dismiss. Upon conclusion of the hearing, both the Employer and the Union submitted written briefs. In arriving at the

Decision and Order herein, the Board has reviewed and considered the testimony and evidence presented and arguments contained within the post hearing briefs.

FACTUAL SUMMARY

The facts in this case are undisputed. The Employer and the Union were parties to a collective bargaining agreement (hereinafter "CBA") for the period from September 1, 1994 to August 31, 1997. (See Employer Exhibit #2) On November 30, 1994, the Union filed a step 1 class action grievance with the Employer. (See Union exhibit #1) On December 28, 1994, the Union submitted a written request to the Employer to "have hearing before the School Committee in accordance with Article 20, Section 20.2 (d)". (See Union exhibit # 2) On January 10, 1995, the School Committee met and voted to hear the grievance in open session that evening. The Union would not agree to present the grievance in open session and left without participating in any discussions. The Employer conducted the hearing without the Union and decided the grievance in the Union's favor.

POSITION OF THE PARTIES

The Union alleges that the action of the School Committee to hear the grievance in "open session" was a unilateral action and was not the product of negotiations, as required by law. The Employer sets forth several arguments in its defense. It first argues that since the grievance was decided in the Union's favor, then the Union hasn't suffered any damages and the complaint must be dismissed. The Employer also argues that grievances must be held in open session as a matter a law because grievance hearings do not fall under any of the exceptions to the open meetings law. The Employer also argues that since the contract between the parties is silent on whether the grievances shall be heard in open or closed session, then the Employer can make that decision under its management rights provision of the contract.

DISCUSSION

This case is not the first in which the Board has been required to deal with the tension created between the "Open Meetings Law" and the State Labor Relations Act.¹ Furthermore, this issue has also been litigated in our Superior Court in an action for declaratory and injunctive relief in the case of Woonsocket School Committee v Woonsocket Teacher's Guild, et al, PC 92-4734. In that case, the Superior Court held:

"...that all grievance proceedings pursuant to collective bargaining agreement (regardless of whether they concern job performance, character or physical or mental health) so as to fit within the exemption from the open meetings requirement embodied in 42-46-5 (a) (1) are 'sessions pertaining to collective bargaining' within the meaning of section 42-46-5 (a) (2) that may be closed to the public. Thus the open meetings law does not require the Woonsocket School Committee to hear teacher grievances that are not otherwise exempt pursuant to section 42-46-5 (a) (1) in open meetings. The open meetings law permits such grievances to be heard in open or closed sessions."

In light of the Superior Court's foregoing judgment, this Board rejects the Employer's argument that the grievance proceedings do not fall under any of the exemptions to the open meeting law and must be held in public. We also reject the Employer's argument that the Union suffered no damages because the grievance was decided in its favor by the Employer. The question of damages in this complaint flows from the allegation that a unilateral decision has been made by one party, without engaging in collective bargaining. The actual substantive matter of the underlying grievance and its disposition is irrelevant to whether or not the collective bargaining process and the parties' labor relations have been damaged by alleged unilateral actions.

The decision in this case comes down to the issue of whether the parties have negotiated whether grievances may be held in open session and whether or not this issue is one that is within the province of the management rights clause reserved to the Employer. In our decision in ULP 4811, RISLRB and Newport School Committee, decided April 29, 1998, this Board held that the "issue of holding grievance hearings in open or closed session is a substantive component of the grievance-arbitration procedure and as such is a mandatory subject for bargaining." Therefore, before any change may be implemented in

¹ See ULP 4120- RISLRB and Smithfield School Committee; ULP 4676-RISLRB and the Town of Narragansett; ULP-4734- RISLRB and Woonsocket School Committee; ULP-4811- RISLRB and Newport School Committee.

the procedure for conducting grievance hearings, the same must be negotiated by the parties.

The evidence in this case established that there were very few grievances that reached the School Committee level. However, just a few months earlier, in October 1994, two grievances did in fact reach the School Committee level. At that time the School Committee heard both grievances in closed session. According to the testimony of Superintendent Robert Hicks, the School Committee questioned at the October 1994 meeting whether it was appropriate to have the grievance hearings in closed session. The Committee asked Mr. Hicks to contact the District's attorney for an opinion on whether the grievances may rightfully be held in closed session. (See generally TR. p. 53-58) Between the months of October 1994 and January 1995, the School Committee did not notify the Union that it was researching this matter or thinking of holding grievances in open session. (TR. p 55 and 57) The Union was advised at 9:30 pm on January 10, 1995 when it appeared for the grievance hearing, that the Committee would not be going into closed executive session for the grievance hearing and that it intended to hear the grievance immediately, in open session.

Although the parties testified that there were few grievances that reached the School Committee level, those grievances were held in closed session. Furthermore, the fact that the School Committee asked the Superintendent to obtain a legal opinion before implementing any change is persuasive to this Board that the School Committee was acknowledging that the procedure to that point had been to hold the meetings in closed session. Therefore, the grievance procedure as previously conducted by the parties, was changed from closed meetings to open meetings. The Employer admits that it did not negotiate this change to the procedure with the Union. This type of unilateral action is prohibited; there must be negotiations prior to any change in any mandatory subject for bargaining.

FINDINGS OF FACT

- 1) The Respondent is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
- 2) The 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 and as such is a "Labor Organization" within the meaning of the Rhode Island Labor Relations Act.

- 3) The Employer and the Union are parties to a collective bargaining agreement covering the period from September 1, 1994 to dated August 31, 1997.
- 4) On November 30, 1994, the Union filed a step 1 class action grievance with the Employer.
- 5) On December 28, 1994, the Union submitted a written request to the Employer to "have hearing before the School Committee in accordance with Article 20, Section 20.2 (d)".
- 6) On October 11, 1994 the Employer heard two grievances in closed session. That night the Employer directed the Superintendent to obtain a legal opinion on whether the grievances could properly be held in closed session in light of the Open Meetings Laws.
- 7) Between October 1994 and January 1995, the Superintendent obtained the requested legal opinion and presented the same to the Employer on January 10, 1995.
- 8) On January 10, 1995, the Employer met and decided to hear a class action grievance in open session that evening.
- 9) The Employer did not advise the Union in advance that it planned to hear the grievance in open session.
- 10) The Union first learned of the Employer's decision to hear the grievance in open session at 9:30 pm on January 10, 1995. The Union refused to take part in the hearing which was conducted that evening in open session.

CONCLUSIONS OF LAW

- 1) The issue of holding grievance hearings in open or closed session is a substantive component of the grievance procedure and as such, is a mandatory subject for bargaining.
- 2) The Employer failed to bargain collectively with the Union before implementing a change to the grievance procedure. The Union has proven by a fair preponderance of


the credible evidence that the Employer has committed a violation of R.I.G.L. 28-7-13 (7) and (10).

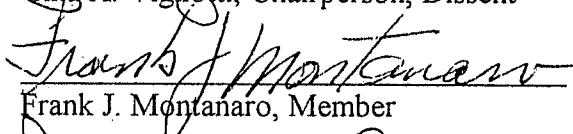
- 3) The Union has not proven by a fair preponderance of the credible evidence that the Employer has committed a violation of R.I.G.L. 28-7-13 (5) or (8).

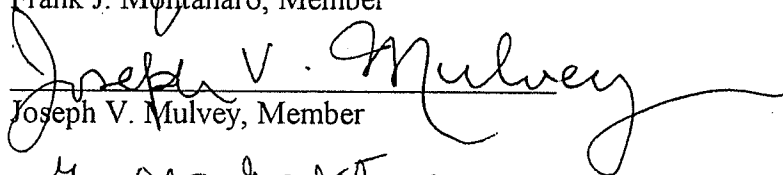
ORDER

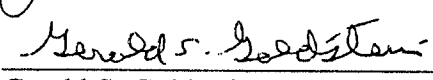
- 1) The Employer's Motion to Dismiss is denied.
- 2) The Employer is hereby ordered to cease and desist from holding grievances in Open Session until the Employer has negotiated this procedure in good faith with the Union.

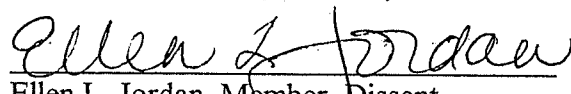
RHODE ISLAND STATE LABOR RELATIONS BOARD



Gina A. Vigliotti, Chairperson, Dissent

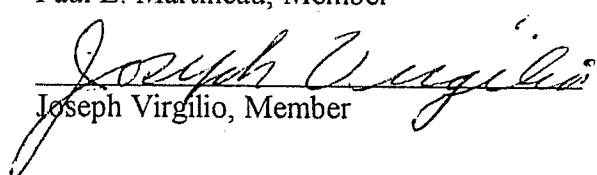

Frank J. Montanaro, Member


Joseph V. Mulvey, Member


Gerald S. Goldstein, Member, Dissent

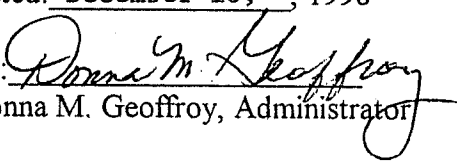

Ellen L. Jordan, Member, Dissent


Paul E. Martineau, Member


Joseph Virgilio, Member

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

Dated: December 18, 1998

By: 
Donna M. Geoffroy, Administrator