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-5048
-AND-	:	
STATE OF RHODE ISLAND	:	

DECISION AND ORDER OF DISMISSAL

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 State of Rhode Island (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated July 25, 1995, and filed on July 27, 1995, by the Rhode Island Laborers' District Council on behalf of Local Union 808, LIUNA (hereinafter "Union").

The Charge alleged:

> "The State of Rhode Island, by and through its Agents, Governor Lincoln Almond and Gayl Doster, on July 20, 1995 unilaterally announced the termination of the 'Court Clerks Incentive Pay'. Said action is codified on the attached documents.
>
> Prior to said termination, the State of Rhode Island by and through its Agents, Robert Harrall and Gayl Doster and Allan W. Drachman, agreed to a continuation of the 'status quo' in accordance to (sic) our Collective Bargaining Agreement.
>
> This unilateral change in a term and condition of employment evidences the failure to negotiate and bargain in good faith in violation of §28-7-13 (6) and interfers (sic), restrains or coerces employees represented by the charging party in the exercise of rights guaranteed by the Rhode Island Labor Relations Act, in violation of §28-7-13 (10)."

Following the filing of the Charge, an informal conference was held on August 30, 1995 between representatives of the Union and Respondent and an Agent of the Board. On May 2, 1997, the parties requested the Board to hold this matter in abeyance while collateral federal court litigation was pursued. On March 3, 1998, the case was reactivated at the request of the Union, and the Board issued its Complaint on May 5, 1998. The Employer filed its Answer to the Complaint on May 12, 1998, denying the allegations contained in paragraphs 3 and 4 of the Complaint.

A formal hearing on this matter was held on September 15, 1998. Upon conclusion of the hearing, the Board ordered the Employer and the Union to submit written briefs or a written

agreement to hold the matter in abeyance while advancing settlement negotiations. The briefing schedule was continued several times, by request, from November 16, 1998 to September 15, 2000. By January, 2001, when no briefs had been filed by either party, the Board's Administrator requested a status report. By letter dated January 10, 2001, the Union advised the Board that the parties had once again agreed to hold the matter in abeyance. On July 31, 2001, the Union again requested that the matter be reactivated. Another round of briefing schedules and postponements took place. Finally, on January 2, 2002, the Board received the Employer's brief. The Union filed its brief on January 14, 2002. In arriving at the Decision and Order of Dismissal herein, the Board has reviewed and considered the testimony and evidence presented, and arguments contained within the post hearing briefs.

FACTUAL SUMMARY

The Employer and the Union have had a collective bargaining relationship since the early 1980's and have been signatories to several collective bargaining agreements (hereinafter "CBA") during this timeframe. The CBA of import, in this case, is the one dated May 4, 1993, with an effective date of July 1, 1992 to June 30, 1995. The CBA contained a provision concerning educational incentive payments for persons employed as Court Clerks. The financial incentive included an annual payment of ten percent (10%) of base pay for persons who held an Associate's Degree in the field of Court Administration or Law Enforcement. For persons holding a Bachelor's Degree, the annual incentive payment was sixteen percent (16%) of base pay. This incentive provision was modeled upon a Rhode Island statute, R.I.G.L. 8-4.1-1, authorizing these incentive payments. The CBA also contained the following provision that dealt with the termination of the collective bargaining agreement:

"TERMINATION OF AGREEMENT

34.1 This Agreement shall be effective as of the date of the signing of this Agreement and shall remain in full force and effect until the 30th day of June, 1995. This Agreement shall be automatically renewed from year to year after the 30th day of June, 1995, unless either party shall notify the other in writing ninety (90) days prior to the anniversary date that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin not later than sixty (60) days prior to the termination date. This Agreement shall remain in full force and be effective during the period of negotiations and until notice of termination of this Agreement to the other party.

34.2 In the event that either party desires to terminate this Agreement, written notice must be given to the other party not less than ten (10) days prior to the termination date."

In 1994, the Rhode Island General Assembly amended R.I.G.L. 8-4.1-1 et seq, and reduced the annual incentive payments for Associate's Degrees to $2,000.00 and for Bachelor's Degrees to $3,200.00. (Effective date July 5, 1994) The amendment also provided:

> "This act shall not take effect for any existing court clerks or administrators presently receiving an incentive pay under chapter 8-4.1 until the expiration of any collective bargaining agreement in existence on the date of passage of this section. However, upon the expiration of the collective bargaining agreement which is in effect at the time of the passage of this act, this act shall apply to all existing clerks receiving an incentive under chapter 8-4.1."

In January 1995, the Union notified the Employer that it wished to extend the Agreement and commence negotiations for changes to some of the provisions. (Joint Exhibit #4) The Employer responded by sending a letter stating that it too wished to renegotiate certain provisions of the agreement. (Joint Exhibit #5) Thereafter, by letter dated June 20, 1995, postmarked June 21, 1995, and sent by certified mail, the Employer notified the Union that the Employer wished to terminate the agreement on June 30, 1995. (Joint Exhibit #6) The Union responded to the Employer's June 20th letter by letter dated June 30, 1995, and declared that: "The terms and conditions of employment, codified in our Collective Bargaining Agreements and established by the practices of the parties, must continue in full force and effect." (Joint Exhibit #7) The Employer, through its representative, responded to the Union by letter dated July 12, 1995, which stated: "We are aware of the obligations imposed by State law regarding maintenance of the status quo during negotiations. The State intends to abide by that law and looks forward to continuing our amicable relationship." (Joint Exhibit #8) On or about July 20, 1995, the Employer reduced the Court Clerks' incentive payments to the amount set forth in the statute, as amended in 1994. The within Unfair Labor Practice action was commenced immediately thereafter, on July 25, 1995. The Union also filed suit in the Rhode Island Federal District Court alleging that the 1994 amendments to R.I.G.L. 8-4.1 et seq. were unconstitutional. In a decision dated August 22, 1997, Senior District Court Judge Francis J. Boyle ruled that the amendments were constitutional. This decision was affirmed by the United States Court of Appeals for the First Circuit on May 27, 1998.

POSITION OF THE PARTIES

The Union argues here that the matter before the Federal Courts does not impact the issues before this Board and argues: (1) that the Employer improperly terminated its agreement with the Union; (2) the Employer bargained in bad faith; and (3) the Employer unilaterally

implemented the reduction in the Court Clerk's incentive pay, in violation of Rhode Island law. (See Union brief, p. 6) In support of these positions, the Union argues that the incentive pay provisions of the CBA, which also dealt with Master's Degrees in Public Administration, and expanded the list of qualifying degrees, evidenced an intent to provide for a more comprehensive educational pay program than was originally provided for within the statute. The Union also argues that the incentive pay statutes may be understood as being subordinate to collective bargaining, pursuant to R.I.G.L. 28-7-44.

The Union essentially argues that because the State's June 20, 1995 letter was not mailed until the 21st, the parties' CBA did not expire, but continued in full force and effect beyond June 30, 1995. The Union argues that the Employer's July 12, 1995 letter evidenced the Employer's agreement to this supposition. Finally, as a result, the Union argues that the 1994 amendments did not become effective on the scheduled expiration date of June 30, 1995. The Union essentially argues that the old contract did not terminate until the new contract was finally signed in February, 1998. Thus, the Union argues that the Clerks are entitled to incentive pay for the period of July 25, 1995 to February, 1998.

The Employer argues that the Board lacks subject matter jurisdiction over this dispute, because it has no authority to impose a bargaining obligation upon an Employer when the legislature enacts a statute that effects the collective bargaining agreement. The Employer argues that its officials, who are charged with the responsibility of negotiating wages and other terms and conditions of employment, have no authority to negotiate any provisions that conflict with state statutes. (citing Vose v RIBCO, 587 A.2d 913, 915 (RI 1991), State of Rhode Island v Rhode Island Alliance of Social Service Employees, Local 580 SEIU, 747 A.2d 465, 469 (RI 2000)) The Employer also argues that Article 17.2 of the CBA incorporates the provisions of the incentive pay statute (and consequently the amendments) with the following language: "There is hereby established an incentive pay program in accordance with the provisions of RIGL §8-4.1-1 et seq." (See Employer's Brief p. 5)

The Employer does not argue that it failed to negotiate over the Court Clerks Incentive Pay Program. In addition to arguing that it had no authority to bargain on this issue because of legislative action, the Employer also argues that the Union never requested negotiations on this

topic, or made any proposal, either formal or informal, even after the Federal Court case had been decided.

DISCUSSION

The Board finds itself in an unusual situation in this particular case; both parties have argued the meaning of different provisions of their CBA, without either party arguing that this is a matter of contract interpretation, referable to the grievance/arbitration process. The Board recognizes, however, that there are times when the Board must, in fact, refer to a contract and make some interpretation in order to rule on matters within its jurisdiction.

In its brief, the Union cites the Rhode Island Supreme Court's decision in Warwick School Committee v Teacher's Union, 613 A.2d 1273, 1276 (1992) which held "if a dispute should arise between the parties concerning the effect of the failure to enter into a new agreement and whether or not the terms and conditions of an expired agreement should be controlling pending the negotiation and execution of a new agreement, the tribunal to make such a determination is the State Labor Relations Board." This is one of those rare occasions.

In this case, the Union argues that "collective bargaining agreements between unions and government continue in effect until a successor agreement is reached." The Union also argues that, because the Employer did not send a timely notice of its intent to terminate the contract under 34.2 of the CBA, then the existing contract (and the incentive pay) remains in effect until the new contract is signed in February, 1998.

The key issue then is whether or not the parties' CBA "expired". Although the agreement's effective date runs from July 1, 1992 through June 30, 1995, the end date can be extended. The operative language of the agreement that addresses this issue is found in section 34.1. Although this section is not a model of clear drafting, it does provide for *automatic* renewals from year to year, *unless* either party gives notice, at least ninety days prior to the termination date, that it desires to modify the Agreement. In this case, the Union and the Employer both put each other on notice in January, *thus eliminating the automatic renewal* after June 30, 1995.

Section 34.1 also provides: "This Agreement shall remain in full force and be effective during the period of negotiations and until notice of termination of this Agreement to the other party." This provision is clearly intended to encompass situations where the parties have not

reached agreement by the stated expiration date of the contract, in order to provide stable labor relations in non-contract periods. Indeed, this sentence does not even become operative unless and until negotiations have extended beyond the expiration of the contract. However, in our opinion, this section does *not* reinstate the automatic renewal provision. Therefore, since the automatic renewal was mutually eliminated, the contract was scheduled to expire on June 30, 1995. The only reason that the contract did not expire on June 30, 1995 is because the parties had been in negotiations, and the ten (10) day waiting period for termination, under Section 34.2, had not passed.

Under Section 34.2, written notice of termination must be given to the other party not less than ten (10) days prior to the termination date. This section does not differentiate between notices of termination prior to the expiration of the contract or after the expiration of the contract. Any notice sent with less than the required notice would be defective. Such is the case herein. Since the Employer identified its desired termination date as June 30, 1995, its notice to the Union, in order to be timely "given", should have been "given" no later than June 20, 1995. In this case, although the letter was dated June 20, it was post marked June 21 and was received on June 22, 1995.

There are several obvious questions regarding the effect of the defective notice upon the affirmative termination of the contract. Is the written notice discounted altogether? Does the party who desires to terminate have to re-notice the other party? Is the termination date extended until 10 days after notice was "given"? Is notice "given" when placed in the mail or when received by the other party?

We find that in order for notice to be "given," it must be received by the other party. In this case, the testimony established that notice was received on June 22, 1995. We also find that, notwithstanding any stated date of termination by the Employer within the written notice, termination of the agreement would not be effective for 10 days thereafter. In this case then, the effective termination date would be July 2, 1995. Therefore, even if the "expiration" of the contract (as contemplated by the statute) could be extended by ongoing negotiations, the agreement was terminated under section 34.2 no later than July 2, 1995. The evidence established that the Employer did not reduce the benefits, in accordance with the amended statute, until July 20, 1995. Thus there was no unilateral action. Moreover, since the revised

statute became operative upon the expiration of the contract, there was nothing left to negotiate concerning the Court Clerks' incentive pay -- the legislature had already spoken.

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 State Labor Relations Act.

3) The Employer and the Union have had a collective bargaining relationship since the early 1980's and have been signatories to several collective bargaining agreements (hereinafter "CBA") during this timeframe.

4) The CBA of import, in this case, is the one dated May 4, 1993, with an effective date of July 1, 1992 to June 30, 1995.

5) The CBA contained a provision concerning educational incentive payments for persons employed as Court Clerks. The financial incentive included an annual payment of ten percent (10%) of base pay for persons who held an Associate's Degree in the field of Court Administration or Law Enforcement. For persons holding a Bachelor's Degree, the annual incentive payment was sixteen percent (16%) of base pay. This incentive provision was modeled upon a Rhode Island statute, R.I.G.L. 8-4.1-1, authorizing these incentive payments.

6) The CBA also contained a provision that dealt with the termination of the Collective Bargaining Agreement, which required a ten (10) day notice to the other party.

7) In 1994, the Rhode Island General Assembly amended R.I.G.L. 8-4.1-1 et seq, and reduced the annual incentive payments for Associate's Degrees to $2,000.00 and for Bachelor's Degrees to $3,200.00. (Effective date July 5, 1994) The amendment also provided: "This act shall not take effect for any existing court clerks or administrators presently receiving an incentive pay under chapter 8-4.1 until the expiration of any collective bargaining agreement in existence on the date of passage of this section. However, upon the expiration of the collective bargaining agreement which is in effect at the time of the passage of this act, this act shall apply to all existing clerks receiving an incentive under chapter 8-4.1."

8) In January 1995, the Union notified the Employer that it wished to extend the Agreement and commence negotiations for changes to some of the provisions. (Joint Exhibit #4) The Employer responded by sending a letter stating that it too wished to renegotiate certain provisions of the agreement. (Joint Exhibit #5)

9) Thereafter, by letter dated June 20, 1995, postmarked June 21, 1995, and sent by certified mail, the Employer notified the Union that the Employer wished to terminate the agreement on June 30, 1995. (Joint Exhibit #6)

10) The Union responded to the Employer's June 20th letter by letter dated June 30, 1995, and declared that: "The terms and conditions of employment, codified in our Collective Bargaining Agreements and established by the practices of the parties, must continue in full force and effect." (Joint Exhibit #7)

11) The Employer, through its representative, responded to the Union by letter dated July 12, 1995, which stated: "We are aware of the obligations imposed by state law regarding maintenance of the status quo during negotiations. The State intends to abide by that law and looks forward to continuing our amicable relationship." (Joint Exhibit #8)

12) On or about July 20, 1995, the Employer reduced the Court Clerks' incentive payments to the amount set forth in the statute, as amended in 1994.

13) The notice of termination of the contract was defective, in that it was not received, by the Union, 10 days prior to the stated expiration date in the letter of notification. The collective bargaining agreement does not address what happens if notice of termination is defective.

14) The CBA expired on June 30, 1995.

15) The terms of the agreement were continued, however, for another two days, until the 10-day notice period for termination had been satisfied.

16) The Employer did not reduce the incentive payments until mid-late July, 1995, and was acting in accordance with a state statute when it did reduce the payments.

CONCLUSIONS OF LAW

1) 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 (6) or (10)

ORDER

1) The Unfair Labor Practice Charge and Complaint in this matter are hereby dismissed.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank J. Montanaro, Member

Joseph V. Mulvey, Member

Gerald S. Goldstein, Member

Ellen L. Jordan, Member

John R. Capobianco, Member

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

Dated: August 23, 2002

By: Joan N. Brousseau, Administrator