

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-

UNIVERSITY OF RHODE ISLAND

CASE NO: ULP-5238

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 University of Rhode Island (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated February 28, 1997 and filed on March 5, 1997 by the University of Rhode Island Chapter of the American Association of University Professors (hereinafter "Union").

The Charge alleged:

The above named employer violated R.I.G.L. 28-7-13 (6) and R.I.G.L. 28-7-13 (10) by:

- (a) refusing to bargain collectively with URI/AAUP over assignment of bargaining unit work to non-bargaining unit member, Roberta Doran;
- (b) refusing to bargain collectively with URI/AAUP over salary and benefits paid to Roberta Doran for performance of bargaining unit work.

Following the filing of the Charge, an informal conference was held on April 23, 1997 between representatives of the Union and Respondent and an Agent of the Board. When the informal conference failed to resolve the Charge, the Board issued the instant Complaint on October 6, 1998. On November 13, 1998, the Association of Clerical-Technical/National Education Association (ACT/NEA) (hereinafter "Intervenor") filed a Motion to Intervene. On November 19, 1998, the Board denied the Motion to Intervene, and on November 20, 1998, notified the Intervenor of said denial by letter.

The Employer filed its answer to the complaint on October 30, 1998, denying the allegations contained in paragraphs 3 and 4 of the complaint.

A formal hearing on this matter was held on May 20, 1999. At the hearing, the Employer made a verbal Motion to Dismiss claiming three grounds therefore: (1) That the

case was moot; (2) The "Election of Remedies" doctrine; and (3) Lack of jurisdiction pursuant to R.I.G.L. 28-7-13 (6).

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. On December 30, 1996, AAUP member Janice Sieburth retired from her position as Head Librarian at the University of Rhode Island Pell Marine Science Library. At the time of her retirement, Ms. Sieburth was a member of the AAUP. On or about January 2, 1997, Roberta Doran was appointed to oversee day-to-day operations of the Pell Library for the period January 2, 1997 through June 30, 1997. On January 14, 1997, the Employer, by and through Michael Vocino, Interim Dean, sent Ms. Doran a letter confirming this appointment and offered \$5,000.00 in compensation for these extra duties. (See Union Exhibit #2) At the time of her appointment, Ms. Doran was not a member of AAUP, but was a member of ACT/NEA.

The Union presented the testimony of Mr. David C. Maslyn, the University Archivist and head of Special Collections. (TR. p. 14) At the time of this incident in late 1996, he was the Interim Director and Chair of Public Services and his duties included supervising at the Pell Library. (TR. p. 14) Mr. Maslyn testified that there was an approved job description for the position of Head Librarian of the Pell Library and he identified Union Exhibit #1 as the same. (TR. p. 15) He testified that this job description was voted upon and approved at a meeting of the Public Services Department faculty. (TR. p. 17) On cross examination, Mr. Maslyn acknowledged that job descriptions are also forwarded to the dean for his or her approval, but that he was unaware whether the dean had ever approved this particular job description. (TR. p. 21)

The Union also presented the testimony of its Executive Director, Ms. Suzanne Taylor. She testified that when she learned that someone other than a bargaining unit member had been performing Ms. Sieburth's former duties, she wrote to Provost Beverly Swan. (TR. p. 25) (See Union Exhibit # 3) Thereafter, Ms. Taylor met with Provost Swan, but was unable to come to an agreement over the issue. (TR. p. 26) Ms. Taylor

ultimately filed a grievance over the issue. (Union Exhibit # 4). Finally, Ms. Taylor testified that the Employer did not ever agree to bargain over the salary and benefits that were paid to Ms. Doran in her performance of bargaining unit work, formerly performed by Ms. Sieburth. (TR. p. 40)

The Employer presented the testimony of Mr. Blair Lord, the Vice Provost for Academic Affairs. Mr. Lord testified that in this capacity, he was partially responsible for supervising Ms. Sieburth and that she was also partially supervised by the Interim Dean of University Libraries. (TR. p. 42) He testified that when Ms. Sieburth announced her retirement, the Vice Provost for Informational Services determined that a reorganization was necessitated. (TR. p. 44) A job description for a new position was created and approved, and ultimately that non-union position was filled by the appointment of Eleanor Huling on December 7, 1997. (TR. p. 45)

Mr. Lord further testified that Union Exhibit #1 was a draft job description prepared by Ms. Sieburth. He denied that the job description was ever accepted by the University as an approved job description. (TR. p. 46-47) Mr. Lord stated that the extra \$5,000.00 compensation paid to Ms. Doran was for administrative duties, such as locking the doors and other supervision matters. (TR. p. 47) On cross-examination, Mr. Lord admitted that some of the administrative duties performed by Ms. Sieburth were in fact performed by Ms. Doran during her interim appointment. (TR. p. 48) Mr. Lord candidly acknowledged that there was no bargaining in connection with the reconfiguration of the position vacated by Ms. Sieburth. (TR. p. 49-50)

POSITION OF THE PARTIES

The Union argues that the Employer unilaterally eliminated the bargaining unit position of Head Librarian, and then assigned those duties to a non-bargaining unit member. The Union also complains that the Employer unilaterally established the salary, terms and conditions of employment of the new position (Director of Marine Information Services) without bargaining. The Union argues that the Employer does not dispute the relevant facts of the case and that the Union has established an unfair labor practice, as a matter of law. As a remedy, the Union seeks a cease and desist order and an award of \$5,000.00 to be paid to the AAUP member or members who should have been appointed to perform the duties performed by Ms. Sieburth.

The Employer denies categorically that it was an unfair labor practice to have Roberta Doran, who was working at all times within her classification of a librarian, oversee the Pell Library. The Employer also argues that even if it had engaged in an unfair labor practice which it denied, then such practices ceased on December 7, 1997 when the new position of "Director, Marine Sciences Information Services" was filled, and thus, the case is moot. Finally, the Employer argues that because the Union had filed a grievance concerning this issue, but did not pursue it to arbitration, then the Union is barred from proceeding before the Board on the doctrines of res judicata and election of remedies.¹ The Employer also argues that the Board does not have jurisdiction to hear the complaint essentially because Roberta Doran was a member of a bargaining unit.

DISCUSSION

There can be no question that the undisputed facts in this case clearly set forth a prima facie case of an unfair labor practice. The evidence established that the position of Head Librarian at the University of Rhode Island Pell Marine Science Library was a position represented by the complaining union. The Employer admitted quite candidly that it did not bargain with the Union when it assigned duties formerly performed by the Head Librarian to a non-bargaining unit member, and when it unilaterally set the compensation package for the interim appointment. This Board has consistently and repeatedly held that such acts are clearly an unfair labor practice and again makes the same finding herein.

In its defense, the Employer made an oral motion to dismiss on several grounds at the formal hearing. The Employer argued that this case was moot since Roberta Doran is no longer performing the duties that were once part of the now retired member of the bargaining unit. The Board rejects this argument as self-serving and overly simplistic, at best. Furthermore, such an attitude, does not even remotely resemble a professional approach to labor relations management. This Board does not accept such an argument, even when factually true, as grounds for dismissal of a case.

The Employer also argued that the Union is barred from proceeding before the Board because it had also initially filed a grievance under the contract. This Board has

¹ The Board assumes that the Employer's reference to "election of *memories*" at page 3 of its brief, is in actuality a reference to the doctrine of election of *remedies* and the Board shall treat the phrase as such.

repeatedly held that a particular set of facts may give rise to both a contract violation and a violation under the Rhode Island State Labor Relations Act (hereinafter "Act"). This Board is clearly without jurisdiction to hear an allegation of contract violation, and a grievance hearing officer or an arbitrator is without jurisdiction to determine if there has been a violation of the Act. Conversely, charges of unfair labor practices are within the sole and exclusive jurisdiction of this Board, not a grievance hearing officer or an arbitrator. This Board has not and will not start now to decline its jurisdiction to hear an alleged violation of the Labor Relations Act, just because a party may also allege a cause of action in a different forum. To do so would be a clear violation of the Board's statutory responsibility.

The Employer's final argument, as best as the Board can understand it, is that the Board is without jurisdiction to hear the complaint because the person filling the vacated position was a member of a bargaining unit. This argument is without merit and in no way warrants a dismissal.

As a remedy to the Employer's unfair labor practices in this case, the Union seeks an award of money damages in the amount of \$5,000.00, the amount paid to Ms. Doran during her interim six month appointment. The Union argues that a cease and desist order by itself is an insufficient deterrent to the Employer and that without the award of money damages, the Employer has no real incentive to not commit these types of unfair labor practices.

Unfortunately, there is no evidence in the record as to what member(s) of the bargaining unit would have otherwise been eligible to perform the duties that were assigned to Ms. Doran. Had this evidence been set forth, the Board may very well have been persuaded to make an award of back pay, under the particular factual circumstances in this case. However, the Board does not believe that an award of "damages" awarded to the Union is an appropriate remedy, and the Board declines to make such an award. The Board agrees that a straight cease and desist order, in and of itself, may not be sufficient to deter the Employer in the future. The Employer should understand however, that if this Board finds in the future that the Employer has again engaged in another blatant disregard

of the duty to negotiate with the exclusive bargaining agent over bargaining unit work, the Board will issue a much harsher penalty than is being issued herein.²

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) On December 30, 1996, AAUP member Janice Sieburth retired from her position as Head Librarian at the University of Rhode Island Pell Marine Science Library. At the time of her retirement, Ms. Sieburth was a member of the AAUP.
- 4) On or about January 2, 1997, Roberta Doran was appointed to oversee day-to-day operations of the Pell Library for the period January 2, 1997 through June 30, 1997. On January 14, 1997, the Employer, by and through Michael Vocino, Interim Dean, sent Ms. Doran a letter confirming this appointment and offered \$5,000.00 in compensation for these extra duties. At the time of her appointment, Ms. Doran was not a member of AAUP, but was a member of ACT/NEA.
- 5) The Employer admitted that there was no bargaining in connection with the reconfiguration or filling of the position vacated by Ms. Sieburth.
- 6) Bargaining unit work was assigned to non-bargaining unit members, without negotiations with the exclusive bargaining agent.

CONCLUSION OF LAW

- 1) 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 (6) and (10).

ORDER

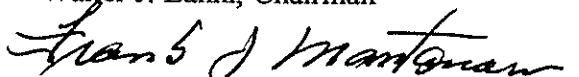
- 1) The Employer is hereby ordered to cease and desist from refusing to bargain collectively with URI/AAUP or any other certified bargaining agent over assignment of bargaining unit work to non-bargaining unit members.

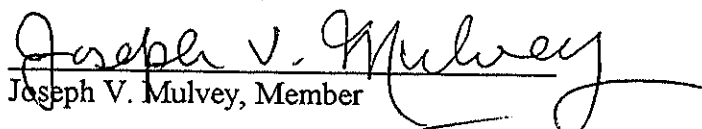
² It seems hard to believe that the Employer's high ranking officials of Vice Provost of Academic Affairs is unaware of its statutory duty to bargain with certified bargaining agents.

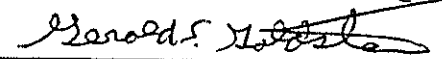
- 2) The Employer shall, within five (5) days of receipt of this Decision and Order, post a copy of same in the University of Rhode Island Pell Marine Science Library and other conspicuous locations with bulletin boards for a period of 30 days.

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 Capobianco, Member


Elizabeth S. Dolan, Member

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

Dated: August 25, 2000

By: 
Joan Brousseau, Administrator