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-5251

-AND-
STATE OF RHODE ISLAND
DEPARTMENT OF CORRECTIONS

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 State of Rhode Island, Department of Corrections (hereinafter Employer) based upon an Unfair Labor Practice Charge (hereinafter Charge) dated April 19, 1997 and filed on April 23, 1997 by the Rhode Island Brotherhood of Correctional Officers, (hereinafter Union).

The Charge alleged:

> The employer has violated Title 28, Chapter 7, Section 13 (5), (6), and (10) by dealing unilaterally with bargaining unit members concerning changes in health care coverage thereby by-passing the exclusive bargaining agent, Rhode Island Brotherhood of Correctional Officer.

Following the filing of the Charge, an informal conference was held on May 16, 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 November 5, 1998. The Employer failed to file a written answer in this matter.

A formal hearing on this matter was held on March 4, 1999. Upon conclusion of the hearing, both the Employer and the Union submitted written briefs, after requesting several extensions of time. The Union's brief was filed on August 4, 1999; and the Employer's brief was filed on August 11, 1999. 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

In the fall of 1995, the Employer decided to consider the development of alternate health care insurance programs for all state employees, including those in the complaining Union. (TR. p. 18) The Employer established a labor management task force to oversee the development of the program and invited all Union Presidents to attend. (TR. p. 19, 22)

On April 30, 1996, the Employer sent a letter terminating the collective bargaining agreement with the Union upon its expiration in June of 1996. The parties commenced protracted negotiations, thereafter, which ultimately lasted several years. In the interim, the Employer did complete its health care development proposals and forwarded the summaries of the various proposals to all union leaders. In November of 1996, Request for Proposals (RFPs) were issued by the Employer, and new insurance carriers were selected by February 1997. Enrollment in the new health care plans began in April 1997. (TR. p. 22-23)

As part of the enrollment process, a letter from the Governor of the State of Rhode Island was distributed to all State employees in March 1997, informing employees of the materials they would receive concerning the new health care plans. (Joint Exhibit #6) All employees subsequently received a newsletter that discussed health care and other employee benefits programs, answered common questions and discussed the process for telephonic enrollment in the plan. (Joint Exhibit #3) On April 23, 1997, the Union filed its charge with the Board, alleging that the Employer had committed an unfair labor practice by dealing unilaterally with bargaining unit members concerning changes in health care coverage.

POSITION OF THE PARTIES

In its brief, the Union moves far beyond its initial charge of bypassing the Union and makes three alternative arguments. First, the Union argues that the Employer committed an unfair labor practice by implementing the changes to the health care plans without first bargaining to impasse. The Union also argues that an Employer commits an unfair labor practice when its approach to negotiations emphasizes the futility of negotiating, and then the Employer conducts a communication program to "sell" its proposal directly to the bargaining unit members, by-passing the bargaining agent. Finally, the Union also argues that the Employer commits an unfair labor practice by entering into individual contracts with bargaining unit employees.

The Employer first argues that the only issue before the Board is whether or not the Employer committed an unfair labor practice by 'unilaterally dealing with bargaining unit members" and by passing the Union. The Employer argues that all of the other issues raised at the hearing and by the Union's brief are not before the Board because the Union's charge was never amended, and the Board never issued an amended Complaint on those issues. The Employer also argues that there was no evidence presented to support a charge that the Employer has taken any actions to "discourage membership in any labor organization by discrimination in regard to any term or conditions of employment".

The Employer also argues that pursuant to R.I.G.L. 36-12-2 (Joint Exhibit #1), it has the authority and obligation to purchase health insurance benefits for all of its employees. In conjunction with this obligation, the Employer argues that it is not forbidden from speaking or contacting any or all of the State's employees. The Employer argues that, as long as its communications do not constitute "direct dealing" because the information contained therein had previously been submitted to the unions; the language used in the communications was objective and non-coercive and assured the employees the continued availability of their present health plans. The Employer further argues that R.I.G.L. 28-7-12 provides in part that "nothing contained in this chapter shall be interpreted to prevent employers and employees from conferring with each other at any time. Finally, the State argues that "by not refusing to immediately proceed to impasse arbitration, the Union waived any argument that the State unilaterally implemented benefits over which it was required to bargain.

DISCUSSION

The Employer correctly points out that the charge and Complaint issued in this case were limited to the sole allegation that the Employer has violated R.I.G.L. 28-7-13 (5) (6) and (10) by dealing unilaterally with bargaining unit members concerning changes in health care coverage, thereby by-passing the exclusive bargaining agent.

Rule 23 of the Board's Rules and Regulations permits the Board's attorney to amend a Complaint, upon due notice to the parties, at any time prior to the issuance of the Board's final Decision and Order. If this were a case where the parties both argued and presented evidence on an issue which was not charged, the Board would be inclined to amend the Complaint to conform to the evidence. However, in this case, the Employer claims that had it had prior notice of the

additional allegations, it would have presented the testimony of another witness. In such a case, amendment of the Complaint after the conclusion of the formal hearing and briefs, without a request by one of the parties, would seem to be over-reaching on the part of the Board. Therefore, the Board finds that it would be prejudicial to the Employer to permit an amendment of the Complaint after the conclusion of the formal hearing, and the Board will decline to do so.

As argued by the Employer, the Board finds that there was absolutely no evidence submitted to support a finding that the Employer's actions in any way discouraged membership in the Union, and that it would be pure speculation for the Board to so hold. Therefore, the Board finds that the Union failed to establish, by a fair preponderance of the credible evidence, that the Employer committed a violation of R.I.G.L. 28-7-13 (5).

The next issue to dispose of is whether the Employer refused to bargain collectively with the Union concerning the issue of health insurance benefits. Joint Exhibit #5 established that the Employer put the Union on notice that the Employer was under the impression that the state health plan revisions were "not going to be a problem with RIBCO." Joint Exhibit #5 concluded by indicating that if RIBCO did, in fact, have a problem with the health care changes going forward, then the Employer would have to consider submitting the contract dispute to interest arbitration, with a view towards completing the same prior to July 1, 1997. The Employer asked the Union to call concerning the issue. There was no evidence submitted to indicate whether the Union ever responded to this communication, in any way, other than to file its Unfair Labor Practice charge in late April, 1997. At this point, the Union had an obligation to either request bargaining, or to inform the Employer that it wished to pursue interest arbitration. Apparently, the Union did neither, and instead filed the charge of Unfair Labor Practice. In the Board's opinion, the Union's failure to request bargaining on this issue, when invited by the Employer to do so, constitutes a waiver of its right to insist upon bargaining to impasse, prior to the implementation of the new health care plans.

Finally, the most relevant argument of all, to be discussed, is the allegation that the Employer impermissibly by-passed the Union and engaged in direct dealing with union members. The Union argues that the Employer's actions had the effect on union members that it would be futile to negotiate the matter and that the process of collective bargaining may be dispensed with. The Union states "arguably, the effect of the items accompanying the letter

[Joint exhibit # 6] outlining plan options was to underscore the futility of negotiating because the deal was already done." (See Union brief p. 6) However, not one Union member testified on this issue, whatsoever. No one testified that they had no choice and that the "deal was done." To the contrary, the first sentence of the letter from the Governor starts out with the recognition that the State has an obligation to negotiate with the various Unions. The letter says, in pertinent part: "I am pleased to announce that the State's employee unions seem to be well on their way to ratifying several new medical plans." The letter concludes by stating, "with your support, we will be successful in meeting both objective." The tone of the Governor's letter cannot, in good faith, be characterized as over-reaching, threatening or coercive. In the absence of any evidence to the contrary, the Board takes the Governor's statements at face value, as an acknowledgment of the ongoing collective bargaining process obligation, a factual reporting of the status of the health care plans and the Governor's preference for employee acceptance. The same does not constitute an Unfair Labor Practice.

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) In the fall of 1995, the Employer decided to consider the development of alternate health care insurance programs for all State employees, including those in the complaining Union. The Employer established a labor management task force to oversee the development of the program and invited all Union Presidents to attend.

4) On April 30, 1996, the Employer sent a letter terminating the collective bargaining agreement with the Union upon its expiration in June of 1996. The parties commenced protracted negotiations, thereafter, which ultimately lasted several years. In the interim, the Employer did complete its health care development proposals and forwarded the summaries of the various proposals to all Union leaders. In November 1996, Request for Proposals (RFPs)

were issued by the Employer, and new insurance carriers were selected by February 1997. Enrollment in the new health care plans began in April 1997.

5) As part of the enrollment process, a letter from the Governor of the State of Rhode Island was distributed to all State employees in March 1997, informing employees of the materials they would receive concerning the new health care plans. All employees subsequently received a newsletter that discussed health care and other employee benefits programs, answered common questions and discussed the process for telephonic enrollment in the plan.

6) On April 9, 1997, the Employer sent a memo to the Union notifying it that, prior to an agitated call that day by Ken Rivard, Union Grievance Chair, the Employer thought that the Union was on board with the health care changes. The memo concluded by indicating that if the Union did, in fact, have a problem with the health care changes going forward, then the Employer would have to consider submitting the contract dispute to interest arbitration, with a view towards completing the same prior to July 1, 1997. The Employer asked the Union to call concerning the issue.

7) Without otherwise responding to the Employer's April 9, 1997 memorandum, the Union, on April 23, 1997, filed its charge with the Board, alleging that the Employer had committed an Unfair Labor Practice by dealing unilaterally with bargaining unit members concerning changes in health care coverage.

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 (5).

2) 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).

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 (10).

ORDER

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

Elizabeth S. Dolan, Member

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

Dated: May 1, 2001

By: _____
Joan N. Brousseau, Administrator