

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-5354
	:	
-AND-	:	
	:	
RHODE ISLAND COLLEGE	:	
	:	

**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 Rhode Island College (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated August 18, 1998, and filed on August 19, 1998, by RI Council 94, AFSCME, AFL-CIO Local 2879 ( hereinafter "Union").

The Charge alleged:

Violation of Section 28-7-13

Paragraphs (3), (6), (10), and (11)

The State of Rhode Island through its agent, namely Rhode Island College, did in fact commit an Unfair Labor Practice by refusing to negotiate changes in working conditions in the student payroll office and by allowing non bargaining unit workers to do bargaining unit work and by violating an arbitration award in which the state was successful.

Following the filing of the Charge, an informal conference was held on October 21, 1998, 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 March 2, 2000. The Employer filed its Answer to the Complaint on May 12, 2000, together with a Motion to Dismiss. The Union filed an Objection to the Employer's Motion to Dismiss on May 19, 2000. Thereafter, the matter was held in abeyance by request and agreement of the parties. In March of 2001, after an inquiry was made by the Board, the Union requested that the matter be re-activated.

A formal hearing on this matter was held on May 1, 2001. 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.

## SUMMARY OF FACTS AND TESTIMONY

This dispute centers on the processing of the "student payroll" at Rhode Island College. The Union presented the testimony of Ms. Nancy Peters, a Personnel Aide in the Career Development Center at Rhode Island College since January, 1998. Ms. Peters testified that, prior to this position, she worked full time as a "Personnel Aide" in the Accounting Office from 1989 to 1996, supervising and administering the student payroll. (TR. p. 10-11) In addition to Ms. Peters, in the student payroll office, there was also a part-time Senior Word Processing Typist, Ms. Christine Kent. Ms. Peters testified that the student payroll was divided into two types; the academic year payroll and the summer payroll. (TR. p. 11) In 1996, Ms. Peters voluntarily transferred to another department and was eventually replaced by a Ms. Sandra Hevey. (TR. p. 14)

Ms. Kent testified that from August of 1989 to June of 1998, she worked twenty (20) hours per week in the Accounting Office doing the student payroll with Nancy Peters. (TR. p. 17)<sup>1</sup> Ms. Kent testified that she worked with Ms. Peters until her departure in 1996, and then she worked with Ms. Hevey until Ms. Hevey's departure in January of 1998. From January of 1998 to Ms. Kent's voluntary departure in June of 1998, she handled the student payroll herself, although she may have had some student help during that time frame. (TR. p. 18) Ms. Kent testified that, in addition to the student payroll, the accounting office also handled an "on campus" payroll and a special monthly payroll, but that she only worked on the student payroll. (TR. p. 21)

The Union also presented the testimony of Belmyra Peters, the Union President. (hereinafter referred to as "President Peters", to distinguish her from Ms. Nancy Peters) She testified that, as part of her duties as Union President, she attempts to monitor bargaining unit work. (TR. p. 22) She testified that, in May 1997, a Vacancy Notice for a "Supervising Pre-Audit Clerk" was posted and that, after some time, the posting was rescinded. (Union Exhibit #3) President Peters testified that neither Ms. Nancy Peters' position nor Ms. Kent's position were posted as vacancies or filled with replacement members for the bargaining unit. (TR. p. 25) President Peters also identified Union Exhibit #4, which is a "draft" job description for a Payroll

---

<sup>1</sup> Ms. Kent was technically employed by the Department of Human Resources as an "intermittent" but was assigned to the Accounting/ Payroll Office.

Manager, which was prepared in April 1998, after Ms. Nancy Peters had transferred out of the student payroll office. President Peters testified that, when she reviewed this "draft" job description, she had several concerns, which she voiced to Mr. Robert Tetreault. (TR. p. 28) President Peters stated that the Union did not have a problem with a Payroll Manager that would supervise the work in the payroll office, but the Union did not want a supervisor actually doing the work of processing the payrolls, which the Union considered bargaining unit work. (TR. p. 29) President Peters testified that, subsequent to these discussions with Mr. Tetreault, the College published a revised job description for Payroll Manager, which had the previously offending words eliminated and assigned the position to the RISCA union, which is a supervisory unit. The Payroll Manager's position was filled by Ms. Christine Wood. (TR. p. 30-31) President Peters also testified that, although she had frequently requested that the Employer's representatives discuss the payroll office's reorganization with her, as to the effect on bargaining unit work, they would not discuss the same with her. (TR. p. 32)

On cross examination, President Peters testified that she and Jack Palazzo, the Union's Business Agent, met with Mr. Tetreault on several occasions to discuss the Payroll Manager's position, and that the changes to the draft Payroll Manager's job description took place. (TR. p. 36) President Peters testified that, during those meetings, Mr. Tetreault told her that the accounting/payroll office wanted to reorganize; and that the union then sent letters notifying the College that, if it wanted to re-organize the department, there had to be negotiations, in accordance with Article 11.13 of the contract. (TR. p. 36) President Peters also testified that, at the time she filed her charge of unfair labor practice alleging that non-bargaining unit members were performing bargaining unit work, she was referring to a Melissa Souza and a student named "Jason". President Peters also testified that the Union did not have a problem with the Payroll Manager becoming familiar with the operations, as long as she was supervising, and that she understood that, to become familiar with the work, the Payroll Manager would have to perform the work for a while. President Peters stated her concern was that the supervisor was continuing to perform the bargaining unit work, and the College never replaced the bargaining unit workers. (TR. p. 47)

The Employer presented the testimony of Thomas Bradley, the Assistant Controller for Rhode Island College, who is responsible for the Accounting Office and Payroll. (TR. p. 54) He

testified that there is one payroll office at the College, which administers four separate payrolls: the bi-weekly, student academic year, student summer and the special monthly. (TR. p. 57) He testified that the staffing level for the payroll office has fluctuated, but has generally had three (3) to five (5) employees at any one time. (TR. p. 59) He testified that he made a decision to reorganize the payroll office for several reasons, but that a major reason was to accommodate a major software change that was going to affect the entire campus. (TR. p. 60) He also stated that the College realized it ought to have a more professional level person in charge of the payroll office, like URI and other institutions. (TR. p. 61) He also stated that he did not want the student payroll to operate as a separate unit, and that he wanted all the payroll in one unit to run it more efficiently. (TR. p. 61) Mr. Bradley also testified that changes to the payroll office were, in fact, implemented: the conversion to the new software took place, the office operates as a cohesive unit and is more efficient, and the office is supervised by the Payroll Manager, as anticipated. (TR. p. 7) In addition to the Payroll Manager, there are three (3) other employees working in the payroll office, who are all members of the Union. (TR. p. 71) He also testified that none of the employees in the payroll office have filed grievances regarding their working conditions and that, in his opinion, they are all happy working there. (TR. p. 75)

On cross examination, Mr. Bradley confirmed that from 1989 to January of 1998, there were two (2) bargaining unit members doing the work for the student payroll, one (1) full-time employee and one (1) part-time employee. (TR. p. 76) He acknowledged that, during the summer of 1998, Melissa Souza, a member of another bargaining unit, performed work on the student payroll. (TR. p. 78) Mr. Bradley also acknowledged that the Union's concern regarding the Payroll Manager was that the Manager not be performing the function of processing the payroll, but be limited to supervising. (TR. p. 79) He also admitted that it was his intent to have the Payroll Manager perform some of the duties of processing the student payroll. (TR. p. 80) He testified that it was his desire to reorganize the office, and that the same had been accomplished. (TR. p. 80) Mr. Bradley acknowledged that the payroll positions, which had been vacated by Ms. Hevey and Ms. Kent, were not re-filled. (TR. p. 82). Mr. Bradley admitted that President Peters had asked him who was going to be doing the bargaining unit work in the student payroll office, but that he did not tell her whether bargaining unit workers would be employed. (TR. p. 83) He testified that it was his intent to have the Payroll Manager do that payroll for a short

time. (TR. p.83) Mr. Bradley admitted that, when President Peters complained about the draft job description, the College agreed, and she was told, that the Payroll Manager would not be doing Council 94 bargaining unit work. (TR. p. 84) He then stated that it was his intention for the Payroll Manager to not be a purely supervisory role and that, when bargaining unit people were out, he would expect the Manager to roll up his or her sleeves and do the work. (TR. p. 84) Mr. Bradley acknowledged that the reason there were no bargaining unit members available to do student payroll work in August of 1998 is because the bargaining unit position had not been re-posted, and that it was the College's intent to let the new Payroll Manager "get a full understanding" of what the office did. (TR. p. 85) Mr. Bradley also admitted that the Payroll Manger presently performs work that was previously performed by bargaining unit members.

On re-direct examination, Mr. Bradley stated that the Council 94 people who work in the payroll office, at the present time, are working in higher classifications than previously. (TR. p. 87) He stated that the payroll office now works as a cohesive unit and that the workers can all cover for each other. (TR. p. 88) He stated that the prior set-up, in which only one (1) person was doing the student payroll, was inefficient. (TR. p. 89)

#### POSITION OF THE PARTIES

The Employer argues that, since there existed a collective bargaining agreement in effect at all times pertinent to this case, the issues raised are properly referable to the grievance/arbitration process set forth in that contract, and that the Board has no jurisdiction to hear this matter. The Employer also argues that the broad Management Rights Clause, in the contract, gives the Employer the right to re-organize the payroll office without negotiating anything with the Union because the Union, by agreeing to this clause, has waived its right to bargain. The Employer also argues that there has been no adverse impact to any bargaining unit members: no shifts were changed, no one was laid off, no one was demoted or terminated; and in fact, no employee has filed a grievance. Finally, the Employer argues that its motives in reorganizing the payroll office were for well conceived business reasons and were not motivated by union animus.

The Union claims that the Employer is intentionally and systematically failing to fill bargaining unit positions to do necessary bargaining unit work, and that the targeting of these Union positions for elimination is similar to the tactics described in Case No. ULP-4905. The

Union also argues that, when the Employer re-drafted the job description for the Payroll Manager, it essentially did so only to placate the Union, but that there was never any intention of making sure that the bargaining unit work would continue to be performed exclusively by bargaining unit members. The Union argues that this is evidence of union-animus and bad faith.

### DISCUSSION

Jurisdiction: This Board has also consistently and repeatedly noted that a specific set of facts may give rise to both an unfair labor practice charge and a contract violation. It has also been the Board's long standing position that the Board may consider an unfair labor practice charge even if a grievance has been filed and/or processed to arbitration. With the recent Rhode Island Supreme Court's decision in State of Rhode Island, Department of Environmental Management vs the Rhode Island State Labor Relations Board and Council 94, \_\_\_ A.2d \_\_\_, (R.I. 2002), the Board's ability to hear unfair labor practice complaints when a grievance has been filed has been sharply curtailed. In this case however, no grievance was filed by the Union. Therefore, there exists no bar to the Board's jurisdiction to hear this matter, or to issue an appropriate remedy, if the Board finds that a violation has occurred. Therefore, the Employer's Motion to Dismiss on jurisdictional grounds is hereby denied.

This case presents the question of whether a bargaining obligation arose when the Employer re-organized its payroll office; and if so, whether or not that bargaining obligation was satisfied. This Board has consistently held that an Employer's use of non-bargaining unit personnel for bargaining unit work, without prior negotiations with the Union is a violation of R.I.G.L. 28-7-13 (6) and (10). (See the Board's Decisions and Orders in ULP-<sup>4574</sup>~~2574~~, ULP-4566, ULP-4913, and ULP-4905)

In this case, the Employer has argued that several provisions within the parties' contract permits it to engage the services of non-bargaining unit members to perform the processing of the student payroll. Moreover, the Employer argues that if these provisions have been violated, the parties have an agreed upon dispute resolution mechanism -- the grievance arbitration procedure.

Section 38 of the contract provides: "Work normally performed within an established bargaining unit shall not be performed by any employee outside said bargaining unit, except in an emergency situation." In this case, the evidence established that after the departure of Ms.

Hevey and Ms. Kent in 1998, the student payroll work was indeed performed by non-bargaining unit members, including Melissa Souza, Ms. Christine Wood, and Ms. Kathleen Gonsalves. Although the Union expressed its concerns about the language of the job description for the Payroll Manager and managed to get it changed, after several discussions with the Employer's representative, Mr. Bradley testified that it was always his intention to have the Payroll Manager perform some of this work. He also acknowledged that the Union was told that the Payroll Manager would not be performing the student payroll. (TR. p. 84) In any event, it is undisputed that non-bargaining unit members are performing work for the student payroll, which is bargaining unit work. Therefore, in addition to what appears to be a contract violation, it would appear that the Employer was acting, either deliberately in bad faith, or negligently, in sending mixed messages to the Union on the status of the future performance of the work for the student payroll.<sup>2</sup> This deliberate misleading of the Union is bad faith bargaining and interferes with and undermines the collective bargaining process, in violation of R.I.G.L. 28-7-13 (6) and (10).

#### 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) From at least 1989 to January of 1998, the student payroll as Rhode Island College was processed exclusively by two (2) Union members, one (1) full time and one (1) part time. In 1998, both employees voluntarily transferred to new positions. Neither one of these positions was posted as a vacancy nor filled with a replacement bargaining unit member.
- 4) In 1998, the Employer decided to re-organize the payroll office, and created the position of Payroll Manager, a position not covered by the complaining union.
- 5) The Union complained about the proposed job description, in that it would provide for the Payroll Manager to perform work that had previously been performed by members of the Union. After discussions with the Union, the Employer agreed to change the job description.

---

<sup>2</sup> The Board does not make any actual finding that the contract was violated.

However, Mr. Bradley, the Assistant Controller, never intended to comply with the revised job specifications, and always intended to have the Payroll Manager performing some of the functions previously done by the Union members.

- 6) The Union positions were not refilled, thereby leading to attrition in the bargaining unit.
- 7) The bargaining unit work performed by the departed union members is presently done, in part, by other members of the bargaining unit who have received promotions and, in part, by the Payroll Manager.

#### CONCLUSIONS 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's Motion to Dismiss is denied, as the Board has jurisdiction in this matter.
- 2) The Employer is hereby ordered to cease and desist from having non-bargaining unit members perform bargaining unit work until it bargains, in good faith, with the Union, either to agreement or impasse.

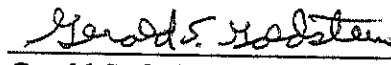


RHODE ISLAND STATE LABOR RELATIONS BOARD

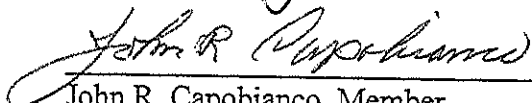
  
\_\_\_\_\_  
Walter J. Lanni, Chairman

  
\_\_\_\_\_  
Frank J. Montanaro, Member

  
\_\_\_\_\_  
Joseph V. Mulvey, Member

  
\_\_\_\_\_  
Gerald S. Goldstein, Member

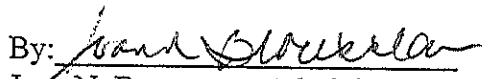
  
\_\_\_\_\_  
Ellen L. Jordan, Member

  
\_\_\_\_\_  
John R. Capobianco, Member

  
\_\_\_\_\_  
Elizabeth S. Dolan, Member

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

Dated: September 12, 2002

By:   
Joan N. Brousseau, Administrator