

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-5391
: :
-AND- :
: :
MIDDLETOWN SCHOOL DISTRICT :
:

ORDER OF DENIAL

of

RESPONDENT'S MOTIONS TO DISMISS AND /OR STAY

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 Middletown School District (hereinafter "Respondent") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated April 13, 1999 and filed on April 14, 1999 by NEA/ Middletown / NEARI, (hereinafter "Union").

The Charge alleged:

The Middletown School Committee has interfered with the existence of the certified bargaining agent, has sought to avoid bargaining unit status for bargaining unit work, has contracted out to non-bargaining unit employees bargaining unit work, and has otherwise sought to undermine the certified bargaining agent by contracting with Newport County Mental Health to provide a social worker to provide school social worker services to Middletown School Department, in violation of RIGL 28-7-13 (3), (5), (6), (10).

Following the filing of the Charge, an informal conference was held on May 21, 1999 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 April 10, 2000. The matter was then set down for formal hearing scheduled for June 15, 2000. At the request of the parties, the formal hearing was continued to October 31, 2000. On October 25, 2000, the Respondent filed its answer to the complaint denying the allegations contained in paragraphs 3 and 4 of the complaint and asserting four (4) affirmative defenses.¹ The Employer also filed a "Motion to Dismiss or Stay". The Respondent also submitted a decision from the Office of the Commissioner of Education issued on October 17, 2000. In addition, the

¹ It should be noted that the Employer's answer should have been filed months earlier. However, since there has been no objection filed by the Charging Party as to the timeliness of the Employer's answer, the Board will deem such objection to be waived and shall not default the Respondent for its untimely answer.

Respondent also filed an "Access to Public Records Request". On October 26, 2000, the Board's Administrator responded to the "Public Records Request", in writing and forwarded all public records of the case to the Respondent's legal counsel.

On October 31, 2000, at the commencement of the formal hearing, the Union filed a written objection to the Respondent's Motion to Dismiss or Stay. Also at the commencement of the formal hearing, the Respondent filed a second written Motion to Dismiss, setting forth a multitude of additional affirmative defenses/objections. At that time, the Chairman of the Board ruled that the formal hearing would continue, but that the Board would issue a determination on the Respondent's Motions prior to the parties filing briefs and the Board ruling on the substance of the case.

DISCUSSION

In its first Motion to Dismiss, the Respondent primarily claims that the Board lacks jurisdiction to hear the case because the Rhode Island Department of Education has taken jurisdiction, rendered an opinion, and that the matter is to next be reviewed by the Board of Regents for Elementary & Secondary Education.

Although this Board regularly fields a similar complaint from other Respondents, those situations usually arise when the Charging Party has also filed a grievance which is progressing through the arbitration process, pursuant to a collective bargaining agreement. In those cases, the Respondent often supposedly seeks a "deferral" of the matter to arbitration, but in actuality, alleges that the Board lacks jurisdiction to hear the case. In those cases, the Board has repeatedly held that it will not defer or decline to exercise its jurisdiction over charges of unfair labor practices brought under the Rhode Island State Labor Relations Act. Indeed, the Board has exclusive subject matter jurisdiction to hear such claims and a refusal by the Board to review such a matter would be a derelict abdication of its statutory duties. This Board has no intention of engaging in such an irresponsible activity.

In this case, the claim of lack of jurisdiction comes, not because the matter is in arbitration, but because another state agency has jurisdiction to hear some aspect of the dispute between the parties. Just as the Labor Board cannot hear matters under the jurisdiction of the Rhode Island Department of Education, that agency likewise has no jurisdiction to hear matters arising under the State Labor Relations Act. Each body has subject matter jurisdiction of the

dispute, separately and independently from each other. There is no restriction that bars an aggrieved party from seeking redress in any or all appropriate forums. By way of analogy, when an individual gets stopped in Rhode Island for drunk driving, that person is subject to action in several different venues. First, the local or state police can charge under state criminal statutes, and the person can be prosecuted in the criminal court system. In addition, that person is also subject to the jurisdiction of the traffic court and sometimes the local municipal court. Court proceedings in two or three separate courts, arising from one incident, are permissible and common.

Another example of multiple-agency jurisdiction arises under the Code of Ethics. When the Rhode Island Ethics Commission makes a determination under its jurisdiction, it specifically mentions in each of its decisions that its determination was made solely pursuant to the Ethics statutes. It advises the inquiring person or body that it makes no determinations under home rule charters or other state statutes. For instance, it recently determined that there was no ethics violation for a Narragansett Town Council member to simultaneously accept a position as a full-time paid teacher in the Town of Narragansett.² In that case however, the Town Charter forbade elected officials from being employed by the Town. There can be no question that both the Ethics Commission and the Town Council had jurisdiction to deal with the issue and that each could make a decision independent from and perhaps opposite to what the other body decided.

Therefore, for all of the foregoing reasons, the Board claims its rightful jurisdiction to hear matters arising under the State Labor Relations Act and finds that it has lawful authority to hear this matter. Accordingly, the Motion to Dismiss for lack of jurisdiction is denied.

In its second motion to dismiss, the Respondent adopts a shot-gun approach in attacking the Board's Rules and Regulations as fatally defective. The Respondent claims that since the Board is presently in the process of drafting amended rules and regulations, this matter should be passed or stayed. The Respondent cites no lawful authority to suggest that an administrative agency must stay or pass matters when updating regulations, because there is no such authority. R.I.G.L. 28-7-9 provides that the Board shall have the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of the Rhode Island State Labor Relations Act. The Board finds no merit in the suggestion that it

² In Re: Suzanne P. Miller (Advisory cite omitted.)

throw the baby out with the bath water while the rules and regulations are updated and amended, and it specifically declines to do so.

The Respondent also claims that the Respondent has been denied basic fairness by providing no pre-hearing discovery. The Respondent is again referred to the Rhode Island Superior Courts decision in State of Rhode Island v Rhode Island State Labor Relations Board et al, CA No. 98-1467, Sheehan, J.³

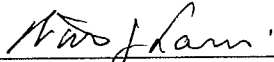
The Board's Rules and Regulations were first enacted in 1943 and have served the parties, the Board, the employers and the employees of the State of Rhode Island well for over a half a century. Therefore, the Board shall not dismiss the complaint for any of the reasons/objections set forth in the Respondent's Motions to Dismiss.

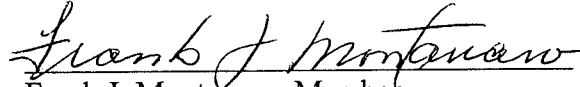
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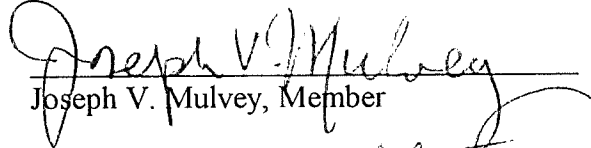
- 1) The Motions to Dismiss and/or Stay are hereby denied.

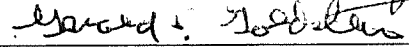
³ Previously provided to Respondent.

RHODE ISLAND STATE LABOR RELATIONS BOARD

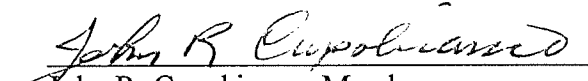

Walter J. Lanni, Chairman

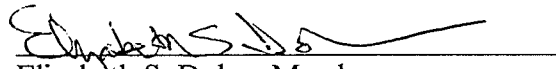

Frank J. Montanaro, Member


Joseph V. Mulvey, Member


Gerald S. Goldstein, Member

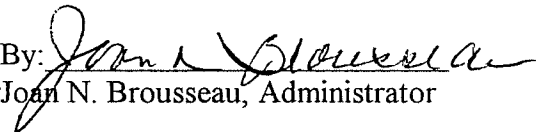

Ellen L. Jordan, Member


John R. Capobianco, Member


Elizabeth S. Dolan, Member

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

Dated: February 6, 2001

By: 
Joan N. Brousseau, Administrator