

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- :  
THE TOWN OF WEST WARWICK :

CASE NO. ULP-5399

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 Town of West Warwick (hereinafter Employer) based upon an Unfair Labor Practice Charge (hereinafter Charge) dated May 25, 1999 and filed on May 26, 1999 by RI Council 94, AFSCME, AFL-CIO, Local 2045 (hereinafter Union).

The Charge alleged:

"Violation of Section 28-7-13                              Paragraphs 3, 6, and 10

The Town of West Warwick is committing a violation of the State Labor Relations Act by unilaterally changing provisions in the Collective Bargaining Agreement without negotiating with the Union."

Following the filing of the Charge, an informal conference was held on June 30, 1999, between representatives of the Union and Employer and an Agent of the Board. When the informal conference failed to resolve the Charge, the Board issued the instant Complaint on May 19, 2000, which provided in pertinent part:

"The Employer has violated RIGL 28-7-13 (6) and (10) by changing the terms and conditions of employment by unilaterally eliminating a so called 'Cafeteria Benefits Plan' without negotiating said change with the exclusive bargaining agent."

The Employer filed its Answer to the Complaint on June 6, 2000. A formal hearing on this matter was originally scheduled by the Board for August 8, 2000, but was continued at the request of the parties to November 30, 2000. 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 Union and the Employer have been parties to a collective bargaining agreement (hereinafter CBA) for many years. The CBA has two sections relating to the provision of health care benefits: Article 27.5 and Article 28.1.

Article 27.5 provides:

"Any employee hired after March 1, 1980 shall not have double coverage under Blue Cross where both husband and wife work for the Town."

Article 28.1 is the so-called "Cafeteria Plan", which permits an employee to select a cash alternative to health insurance.

On July 2, 1998, Mr. David Clayton, the Acting Town Manager, issued a memorandum to all Town employees advising them that the Town offers a Cafeteria Plan, and that any employee wishing to elect that option must do so within the first month of the fiscal year (Joint Exhibit #1). At least two employees, Deborah Tellier and Paula Lemoi, elected the Cafeteria option and selected cash benefits (see Joint Exhibits #2 and #3). The Cafeteria Plan waiver form indicated that when the employee waived total family coverage, that employee's cash benefit would be \$69.03 per week. On January 22, 1999, Mr. Wolfgang Bauer, the new permanent Town Manager, issued a memorandum outlining the error of the previous calculation and indicated that, as of April 1, 1999, the Town's policy would be amended to include a new calculation of \$14.85 cash benefit per week, instead of \$69.03 (Joint Exhibit #4). On April 8, 1999, Mr. Bauer issued another memorandum to the Town's employees (Joint Exhibit #5). This memorandum advised employees that, as of July 1, 1999, the Town would no longer provide Cafeteria benefits to any employee already covered under a Town provided health insurance policy (Joint Exhibit #6).

On April 30, 1999, the Union notified Mr. Bauer that the issue of the Cafeteria Plan benefit is a negotiable item, and that any attempt to change the provisions of the Cafeteria Plan benefits prior to negotiations would be illegal (Joint Exhibit #7). On May 6, 1999, Mr. Bauer responded to the Union with a letter indicating that all the Town was doing was enforcing Section 27.5 of the CBA. Thereafter, on June 9, 1999, Mr. Bauer wrote to Paula Lemoi and Colleen Izzi, notifying them that they were no longer eligible for Cafeteria Plan benefits because their husbands both worked for the Town (Joint Exhibits #9 and #10). Thereafter, the Union filed grievances on this issue and began to pursue the grievances through the negotiated dispute resolution procedure.

## POSITION OF THE PARTIES

The Union argues that health care benefits are a mandatory subject of bargaining, and that the Town has a bargaining obligation, prior to making any changes to the provision of health care benefits. The Union argues that the contract does not give the Town the unfettered discretion to terminate the Cafeteria Plan once it has been implemented. The Union also argues that the undisputed evidence established that the Employer unilaterally terminated a contractual benefit. The Union seeks relief in the form of a cease and desist order to the Town, and an order for monetary damages.

The Employer argues that the matter before the Board is one of contract interpretation and is appropriate for arbitration, but is not an Unfair Labor Practice. The Employer relies heavily upon Article 27.5 of the contract which provides,

"Any employee hired after March 1, 1980 shall not have double coverage under Blue Cross where both husband and wife work for the Town."

The Employer argues that the plain language of Article 28 (Cafeteria Plan) has to be read in conjunction with the terms of Article 27.5. The Employer argues that all it has done is interpret the CBA, and applied its interpretation. The remedy as to whether or not the Town's interpretation is correct is through the grievance arbitration procedure.

## DISCUSSION

The case before the Board is an issue pertaining to the interpretation of the CBA. The parties, in their briefs, both argue the meaning of Article 27.5, in conjunction with Article 28. This Board does not have jurisdiction to interpret the CBA. Such is the function of an arbitrator. The Employer correctly points out that the issues of health benefits and the Cafeteria Plan are in the CBA. How those articles function in relation to each other is not within the jurisdiction of this Board. Moreover, the evidence established that there has been no elimination of health benefits to any employee. The only elimination that has occurred is the reduction of the cash payments under the Cafeteria Plan. The Employer argues that the plain language of the contract permits the elimination of the cash benefits, and the Union disagrees. The resolution of this dispute would require an interpretation of the CBA; and therefore, the matter does not lie within the purview of this Board, and the Complaint issued against the Employer is hereby dismissed.

## 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 Union and the Employer have been parties to a collective bargaining agreement (hereinafter CBA) for many years. The CBA has two sections relating to the provision of health care benefits: Article 27.5 and Article 28.1. Article 27.5 provides:

"Any employee hired after March 1, 1980 shall not have double coverage under Blue Cross where both husband and wife work for the Town."

Article 28.1 is the so-called "Cafeteria Plan", which permits an employee to select a cash alternative to health insurance.
- 4) On July 2, 1998, Mr. David Clayton, the Acting Town Manager, issued a memorandum to all Town employees advising them that the Town offers a Cafeteria Plan, and that any employee wishing to elect that option must do so within the first month of the fiscal year. The Cafeteria Plan waiver form indicated that when the employee waived total family coverage, that employee's cash benefit would be \$69.03 per week. At least two employees, Deborah Tellier and Paula Lemoi, elected the Cafeteria option and selected cash benefits.
- 5) On January 22, 1999, Mr. Wolfgang Bauer, the new permanent Town Manager, issued a memorandum outlining the error of the previous calculation, and indicated that, as of April 1, 1999, the Town's policy would be amended to include a new calculation of \$14.85 cash benefit per week, instead of \$69.03.
- 6) On April 8, 1999, Mr. Bauer issued another memorandum to the Town's employees.
- 7) This memorandum advised employees that, as of July 1, 1999, the Town would no longer provide Cafeteria Plan benefits to any employee already covered under a Town provided health insurance policy.
- 8) On April 30, 1999, the Union notified Mr. Bauer that the issue of the Cafeteria Plan benefits is a negotiable item, and that any attempt to change the provisions of the Cafeteria Plan benefits prior to negotiations would be illegal.

- 9) On May 6, 1999, Mr. Bauer responded to the Union with a letter indicating that all the Town was doing was enforcing Section 27.5 of the CBA. Thereafter, on June 9, 1999, Mr. Bauer wrote to Paula Lemoi and Colleen Izzi, notifying them that they were no longer eligible for Cafeteria Plan benefits because their husbands both worked for the Town.
- 10) Thereafter, the Union filed grievances on this issue, and began to pursue the grievances through the negotiated dispute resolution procedure.

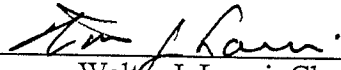
#### CONCLUSION OF LAW

- 1) The issue before the Board requires an interpretation of the parties' collective bargaining agreement, something which is outside the jurisdiction of the Board.
- 2) The Union has not proven, by 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.

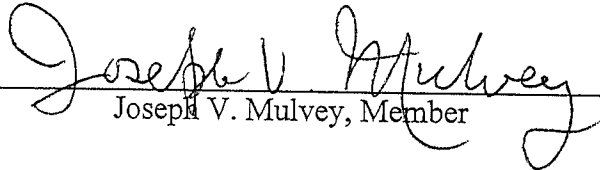
RHODE ISLAND STATE LABOR RELATIONS BOARD



Walter J. Lanni, Chairman




Frank J. Montanaro, Member



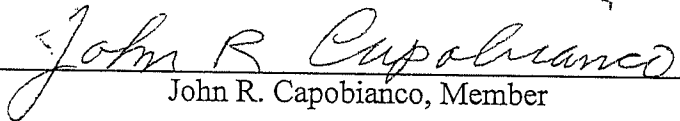
Joseph V. Mulvey, Member



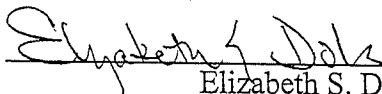
Gerald S. Goldstein, Member



Ellen L. Jordan, Member



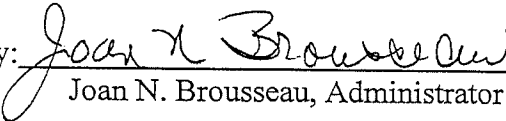
John R. Capobianco, Member



Elizabeth S. Dolan, Member

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

Dated: July 26, 2001

By:   
Joan N. Brousseau, Administrator