

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-	:	CASE NO: ULP-5405
	:	
CITY OF CENTRAL FALLS	:	

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 City of Central Falls (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge"), dated July 1, 1999, and filed on July 6, 1999, by RI Council 94, AFSCME, AFL-CIO, Local 1627 (hereinafter "Union").

The Charge alleged:

Violation of Section 28-7-13 Paragraphs 3, 3A, 4, 5, 6, and 10

The City has refused to bargain with the Union concerning job abolishments, creation of jobs and privatization of job(s).

Following the filing of the Charge, an informal conference was held on August 25, 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 May 22, 2000. The complaint alleged:

"The Employer has violated R.I.G.L. 28-7-13 (6) and (10) by refusing and/or failing to bargain in good faith with the exclusive bargaining agent concerning job abolishments, privatization of jobs and creation of alternative positions."

The Employer failed to file an Answer in this case. Formal hearings were held on August 15, 2000, and April 5, 2001. Upon conclusion of the hearing, both the Employer and the Union submitted written briefs. The Union filed its brief on September 28, 2001, and the Employer filed its brief on October 1, 2001. After the briefs had been submitted, the Board made its determination and referred the case to legal counsel for preparation of a Decision and Order.

However, during the pendency of the writing of the Decision and Order, the Rhode Island Supreme Court issued its decision in State of Rhode Island, Department of Environmental

Management v Rhode Island State Labor Relations Board, 799A.2d 274, 2002 (hereinafter “DEM”). As a result of this case, the Board decided on August 13, 2002, to request supplemental briefs from the parties, as to the impact, if any, that the DEM case has on the instant matter. The parties filed their supplemental briefs on October 11, 2002.

After reviewing the supplemental briefs and the transcripts of the formal hearings, the Board then requested the parties to further clarify an issue by submitting a written response to the Board. Upon receipt of said written response, the Board set the matter down for decision.

FACTUAL SUMMARY

On June 14, 1999, the Employer issued lay-off or job abolishment notices to three (3) of its employees: Ronald Dussault, a Minimum Housing Inspector; Sherald Tait, a Clerk-Floater; and Paul Casto, a Janitor in City Hall. (Union Exhibits 1A, 1B, and 1C) The lay-offs were effective June 30, 1999. On June 16, 1999, the Union filed grievances on behalf of all three (3) employees. All three (3) grievances claimed that: “Management is in violation of the Agreement in that grievant is being terminated without just cause;” and requested, as the remedy, that the grievants “be made whole”.

On June 17, 1999, the first step grievance hearing was held, and on June 21, and June 24, 1999, the City issued letters denying all three (3) grievances. (See post-hearing documents submitted by City at request of the Board.) None of the three (3) grievances were processed through to arbitration. (See post-hearing letter submitted by the Union, at request of the Board.)

The Union filed its charge of Unfair Labor Practice with this Board on July 1, 1999. The remedy sought from this Board by the Union, in this matter, includes reinstatement with back pay and posting; and if the affected employees were either unable or unwilling to reclaim their former positions, then the Union sought the alternative remedy of having the City post and fill the positions within a reasonable amount of time.

DISCUSSION

The Rhode Island Supreme Court’s decision in the DEM case (*supra*) has severely impacted the jurisdiction of this Board to hear charges of Unfair Labor Practices when the grievance-arbitration process has been invoked by the Union. By its decision, the Court clearly eliminated the ability of a party to pursue remedies for a violation of the contract and statutory remedies for unfair labor practices, when the remedy sought is “essentially the same”. Therefore, in cases where both a charge of unfair labor practice and a grievance have been filed, the Board

must review the requested relief, in each instance, and determine whether that relief is “essentially the same”. If so, then the Board has no choice but to dismiss the matter, because of the holding set forth in DEM.

The Union argues, in its supplemental brief, that this case can and should be distinguished from DEM because the Union, in this case, did not claim any contractual violations in its charge to the Board. The Board finds these facts to be a distinction without a difference, in that, while the Union in DEM did claim a contractual violation in its charge; the Board’s complaint, when issued to the Employer, did not speak to any contractual issues. Moreover, the DEM Court, while referencing the contractual claim, based its decision on the similarity of the remedies sought by the Union.

In this case, the Union sought a “make whole” remedy for the three (3) employees from the grievance process and seeks “reinstatement and back pay” from this Board. The Board can find no distinction between these two requests, because in order to make an employee whole under the grievance process would necessarily include a reinstatement and issuance of back pay. Therefore, however harsh a result as this may be, the Board has no choice but to dismiss the instant matter, because the expansion of the “election of remedies” doctrine by the Rhode Island Supreme Court in DEM dictates such a result.

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 June 14, 1999, the Employer issued lay-off or job abolishment notices to three (3) of its employees: Ronald Dussault, a Minimum Housing Inspector; Sherald Tait, a Clerk-Floater; and Paul Casto, a Janitor in City Hall. The lay-offs were effective June 30, 1999.
- 4) On June 16, 1999, the Union filed grievances on behalf of all three (3) employees. All three (3) grievances claimed that: “Management is in violation of the Agreement in that grievant is being terminated without just cause”; and requested, as the remedy, that the grievants “be made whole”.

- 5) On June 17, 1999, the first step grievance hearing was held; and on June 21, and June 24, 1999, the City issued letters denying all three (3) grievances. None of the three (3) grievances were processed through to arbitration.
- 6) The Union filed its charge of Unfair Labor Practice with this Board on July 1, 1999. The remedy sought from this Board by the Union, in this matter, includes reinstatement with back pay and posting; and if the affected employees were either unable or unwilling to reclaim their former positions, then the Union sought the alternative remedy of having the City post and fill the positions within a reasonable amount of time.
- 7) The remedy sought by the Union, from the grievance process and from this Unfair Labor Practice proceeding, are essentially the same.

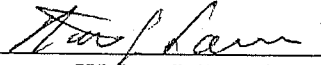
CONCLUSIONS OF LAW

- 1) The Board does not have subject matter jurisdiction to hear the within Complaint.

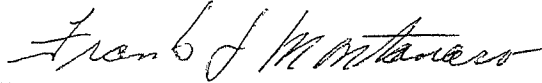
ORDER

- 1) The Unfair Labor Practice Charge and Complaint in this matter are hereby dismissed.

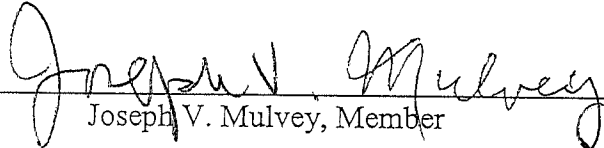
RHODE ISLAND STATE LABOR RELATIONS BOARD



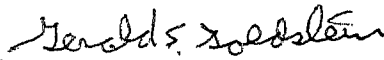
Walter J. Lanni, Chairman



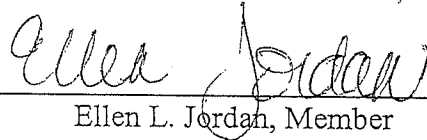
Frank J. Montanaro, Member



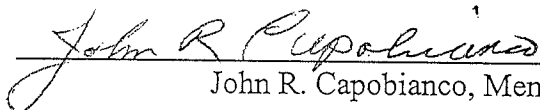
Joseph V. Mulvey, Member



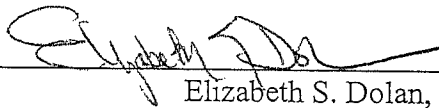
Gerald S. Goldstein, Member



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: August 12, 2003

By: 
Joan N. Brousseau, Administrator