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-5411
STATE OF RHODE ISLAND	:	

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 (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge"), dated July 29, 1999, and filed on July 30, 1999, by RI Council 94, AFSCME, AFL-CIO, all Locals (hereinafter "Union").

The Charge alleged:

> Violation of 28-7-13 Paragraphs 2,3,6 and 10
> The State of Rhode Island, namely the Personnel Administrator did in fact commit an Unfair Labor Practice by changing the terms and conditions of employment when it unilaterally changed the weights of the exams for Social Case Worker and Case Supervisor in violation of its own Personnel Code and without notification or negotiation with the Union. This act grossly affects members of Council 94 in all departments and being of the nature of this charge is exclusionary.

Following the filing of the Charge, an informal conference was held on August 25, 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 22, 2000. The Board's Complaint alleged that the Employer "violated R.I.G.L. 28-7-13 (6) and (10) by changing the terms and conditions of employment by unilaterally changing the weights of exams for Social Case Worker and Case Supervisor without first negotiating the same with the exclusive bargaining agent and by failing to hear the Union's appeals."

The Employer filed its Answer to the Complaint on or about September 18, 2000, denying the allegations contained in paragraphs 3 and 4 of the Complaint and asserting four (4) affirmative defenses. The Employer filed a Motion to Dismiss on October 3, 2000. A formal hearing on this matter was held on October 5, 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 Employer conducts competitive employment testing, in order to establish lists of available individuals for employment opportunities. The Personnel Rules and Regulations for the Employer set forth guidelines and requirements for the examination/promotion process. Tests may be either written or oral, and the scoring process may also take into account an applicant's education and experience. The Personnel Rules require the Employer to give public notice of the examinations. The public notice must contain certain information, including the relative weights given to each portion of the testing procedure.

In 1999, a decision was made to conduct civil service examinations for two classifications; "social caseworker" and "casework supervisor". An official announcement of the examination was published in early February, 1999. Approximately 1400 applications for exams were received. Of the applicants who were State employees, some were union members and some were not. After the applications were received, examination dates were set for April 24, 1999, and May 1, 1999, as well as a makeup date of May 15, 1999. The posted examination weight for the Social Caseworker was 100% written. The posted examination weights for the Casework Supervisor were based on 80% written and 20% education and experience.

After the examinations were announced, there was additional discussion among the Employer's representatives concerning the need for these positions to be filled with persons who had interactive skills. In order to measure those skills, it was determined that the examinations should have an oral component as well. However, the final decision to add the oral component to the examinations was not made until Wednesday, April 21, 1999, just three days prior to the first scheduled examination date of April 24, 1999. Thus, while the Employer had previously changed announcement exam weights (for other positions), it had done so prior to anyone being scheduled to take the examination and was not previously faced with this particular dilemma. There was discussion concerning the practicality of attempting to contact 300 people by telephone or by mail in time for the examination. Ultimately, it was decided that the examinees would be notified upon their exit from the written examination. Each examinee was given a notice upon his or her completion of the written examination, indicating that the weighting

percentage had changed, and that there would also be an oral component to the selection process. On April 26, 1999, the Employer sent notices to 1700 locations, describing how the examination weights had been changed. In addition, the Employer notified the balance of the examinees as they left the exam sessions held on May 1, 1999, and May 15, 1999. Upon conclusion of the written examinations, the Employer conducted oral interviews with approximately 700 applicants. The final tabulated results from the examination process were distributed to the examinees on October 14, 1999.

POSITION OF THE PARTIES

The Union contends that the Employer's actions directly impacted whether or not Council 94 bargaining unit employees ever received, or did not receive, a position based upon the examination score. The Union also contends that, although the Employer has the right to establish examination weights, the right to unilaterally change weights once established is restricted by the provisions of the collective bargaining agreement, the Personnel Rules, and the Merit System Law. The union seeks a re-scoring of the examinations at the advertised weight of 100%.

The Employer argues first, that the Union did not introduce any evidence regarding the Employer's alleged failure to hear the Union's appeals filed with the Personnel Appeals Board. The Employer also argues that it has the sole right to determine examination weights, and has no duty to bargain over either the weights initially assigned or any changes that may be made thereafter. The Employer also argues that the examination weights of civil service examinations have nothing to do with the terms and conditions of employment for the members of the Union. The Employer also argues that the vast majority of the caseworker positions were not included within the complaining union's bargaining unit; and that for these individuals, an appointment to the position of social case worker would be a promotion; and a promotion to a position outside the bargaining unit is not a mandatory subject for bargaining. Finally, the Employer argues that the appropriate forum for dissatisfaction with the examination process is by an appeal to the Administrator of Adjudication, pursuant to R.I.G.L. 36-4-40.1.

DISCUSSION

The Employer is correct in its statement that the Union presented no evidence regarding the Employer's alleged refusal to hear appeals; and therefore, that portion of the Complaint is hereby dismissed.

Although there may be no duty to bargain over the method for weighting and scoring the civil service examinations, the process by which existing bargaining unit members are to be included impacts the terms and conditions of their employment. As such, the impact to the bargaining unit is a mandatory subject for bargaining. When a position is posted, existing bargaining unit members have to decide whether or not they will apply for the opening. The weighting of the examination, as posted, is something upon which the bargaining unit members should be able to rely when making their decision to apply and/or take the examination. In this case, the Employer argues that because the weight of the written examination went from 100% to 40% (Social Case Worker) and 80% to 30% (Casework Supervisor), bargaining unit members could only be helped by the change, since they would likely be "over prepared". This conclusion misses the point of whether or not the change would have impacted a bargaining unit member's decision to even apply for the examination. There are undoubtedly employees who do not generally fair well on written examinations, for whatever reason, and thus decided not to apply to take the examination. However, with the written examination weights being lowered so significantly, and with the inclusion of oral interviews, and inclusion of one's education and experience as factors in the selection process, bargaining unit members who would not ordinarily apply for the positions may well have changed their posture and attempted the process. The problem is that, because the weights were changed after the posting, and notice of the same was not re-published, anyone else who would have decided to apply based upon the new criteria, was foreclosed of that opportunity. Thus, such actions impact a bargaining unit member's right to take promotional examinations.

This Board believes that the Employer's actions in deciding to forge ahead with the examinations with the new weighting system, without first negotiating with the Employer's affected unions constitutes, an unfair labor practice under R.I.G.L. 28-7-13 (10). By this, we do not mean that the Employer should have negotiated either the initial weights or the amended weights of the examination process; this Board believes that such a decision is solely within the

Employer's jurisdiction. We simply mean that, once the decision was made to change the weights, the Employer should have called on the Unions whose members were participating to see if they had any objection to proceeding without re-noticing the application/examination process with the new weights. It may well be that the Unions would have had no objection, or could have agreed upon an appropriate solution, had they been notified of the problem in advance of the examination. The issue is simply one of communication, at the appropriate time.

As a remedy, the Union seeks an order for the Employer to re-score the applicants based upon the original posted examination weight of 100% for the written exam. This Board declines to issue such an order because it would not serve the substantial interests of the parties, at this point in time, and because the Board believes that the Employer's efforts to notify the examination participants of the changes mitigates the Employer's culpability under the facts presented.

The Board stresses that the totality of the circumstances in this case only marginally amounts to an unfair labor practice, but believes that the Employer's actions did, in fact, slightly crossover the limits of acceptable conduct. The Employer can resolve this type of problem, in the future, by simply notifying the affected unions of a change in the examination process and seek their input as to the resolution of the same. Therefore, the Employer is ordered to contact and negotiate changes to the examination process with the exclusive bargaining agents of employees who are scheduled to take an examination, if the examination weights are changed at any time after posting the notice of examination.

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 February, 1999, the Employer posted civil service examination notices for two positions: "social caseworker" and "casework supervisor". The posted examination weight for the

social caseworker was 100% written. The posted examination weights for the casework supervisor were based on 80% written and 20% education and experience.

4) Approximately 1400 applications for exams were received. After the applications were received, examination dates were set for April 24, 1999, and May 1, 1999, as well as a makeup date of May 15, 1999.

5) After the examinations were announced, the Employer changed the weights for the exams. The weights for the social caseworker were changed to 40% written, 40% oral, and 20% education and experience. The weights for the casework supervisor were changed to 30% written, 40% oral, and 30% education and experience.

6) The Employer did not notify examinees scheduled for the April 24, 1999 exam of the changes to the examination weights until after they left the examination room.

7) As for the May 1 and May 15 examinees, the Employer mailed notices to 1700 locations, although the record is not clear whether the examinees received written notice in the mail. The examinees were notified, in writing, upon their exit from the examination, as were the examinees on April 24, 1999.

8) Upon conclusion of the written examinations, the Employer conducted oral interviews with approximately 700 applicants. The final tabulated results from the examination process were distributed to the examinees on October 14, 1999.

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 (10).

ORDER

1) The Employer's Motion to Dismiss is denied.

2) The Employer is hereby ordered to negotiate with the union prior to the conducting of civil service examinations, regarding the scheduling and conducting of said examinations (not the examination weights), if and when the examination weights have been changed after the position has been put out to public notice, unless a re-posting and re-application process follows the re-weighting.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank J. Montanaro, Member

Joseph V. Mulvey, Member

Gerald S. Goldstein, Member (Dissent)

Ellen L. Jordan, Member (Dissent)

John R. Capobianco, Member

Elizabeth S. Dolan, Member (Dissent)

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

Dated: March 6, 2002

By: _____
Joan N. Brousseau, Administrator