

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-5439
	:	
-AND-	:	
STATE OF RHODE ISLAND	:	
DEPARTMENT OF CORRECTIONS	:	

DECISION AND ORDER OF DIMISSAL

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, Department of Corrections (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge"), dated December 10, 1999, and filed on December 14, 1999, by the Rhode Island Brotherhood of Correctional Officers (hereinafter "Union").

The Charge alleged:

The employer has violated Title 28, Chapter 7, Section 13 (6), 13 (10) of the RI General Laws by failing and refusing to bargain collectively with the RI Brotherhood of Correctional Officers as the certified representative of Pharmacy employees at the Adult Correctional Institutions concerning the contracting out of pharmacy services effective on or about 11/1/99.

Following the filing of the Charge, an informal conference was held on January 10, 2000, 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 September 10, 2000. The Employer filed its Answer to the Complaint on October 2, 2000.

A formal hearing on this matter was held on April 26, 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.

FACTUAL SUMMARY

In 1999, the Employer determined that significant problems with the provision of pharmaceuticals within the Correctional facilities must be corrected. The Employer determined that a significant portion of its problems were due to the inefficiency and expense of purchasing

medications in bulk from the State's "Central Pharmacy". In June, 1999, the Employer solicited bids, in replacement of the Central Pharmacy. In August, 1999, the Union learned of the bid process, and contacted Dr. Ann Spaulding, the Medical Director for the Department of Corrections. She advised the Union that the Employer had no intention of eliminating any jobs.

The bid was awarded, and the new company began providing medications to the pharmacy. At that time, there were two bargaining unit members working at the pharmacy; Ms. Karen Reilly (a pharmacy aide), and a Pharmacist. There were also a number of employees provided by an outside agency. Ms. Reilly testified that, after the new supplier was in place, the pharmacy lost all of the outside contract employees, none of whom were represented by the Union. She also testified that her salary remained the same, and that she remained employed at 35 hours per week. She also testified that she no longer worked overtime, which she acknowledged was "gravy". (TR. p. 15)

Ms. Reilly also testified that the Pharmacist left about a year after the implementation of the new supplier, and that the Pharmacist's position was not refilled. (TR. p. 10) She also testified that the nature of her work changed; and that, as a result, she lost her status as a "Technician" because she no longer works under a Pharmacist. (TR. p. 14) She also testified that since she no longer works under a Pharmacist, she cannot apply for promotion to a newly created class of position called "Pharmacy Aide II".

The Employer presented the testimony of Dr. Ann Spaulding, Medical Director of the Department of Corrections. She testified about the significant problems the Department was having concerning the cost of pharmaceuticals, and the method of delivery of pharmacy services, and the decision to go out to bid for a new supplier. (TR. p. 29-35) She also testified that she discussed this issue with her boss, Jeff Laurie, and was assured that the Department would not be destroying positions of State employees. (TR. p. 38) She also testified that, when the Pharmacist resigned, he only gave the Department a two (2) week notice. She also testified that the Department did not attempt to re-fill this particular position because it knew that the Central Services Pharmacy had been unable to fill a Pharmacist vacancy for over six months, despite multiple postings and newspaper ads. (TR. p. 42) She acknowledged that, after the Pharmacist left, the Department changed the method of operation of the "pharmacy" so that a Pharmacist was then no longer necessary. (TR. p. 45)

POSITION OF THE PARTIES

The Union argues that the Employer's decision to subcontract the Pharmacy Services resulted in impacts to bargaining unit members, and that the Employer must therefore engage in "effects" bargaining prior to the implementation of the decision. The Union also argues that the effects, in this case, were essentially pre-determined by the nature of the decision, and that the results (pharmacist quitting and pharmacy aide losing licensing) were inevitable.

The Employer argues that the issue before the Board is one that is "referable to the grievance and arbitration process" under the terms of the collective bargaining agreement; that the Employer had the right to take the action it did because of the Management Rights Clause and Zipper Clause in the contract; that the Employer's actions were permissible because the Director of the prison has broad statutory powers to run the prison; that the Union waived any right to bargain; and that there exists no duty to bargain over purely economic decisions.

DISCUSSION

Although the Union likens this fact pattern to that in ULP-5123, in which this Board recognized the distinction between "decisional" bargaining and "impact" bargaining, and declared the same to be applicable to controversies arising under Section 13 (6) and 13.1 (1) of the Rhode Island State Labor Relations Act, this Board sees a significant difference between the fact patterns of these two cases.

In ULP-5123, the Employer decided to eliminate "posts" as a cost cutting measure. In that case, the Union established that when posts are abolished, there are unresolved workload questions concerning combining of the duties of the abolished posts with existing posts, the impact in institutional security and employee safety, the placement of officers in new posts, their seniority rights, and the impact on the affected officers' shift hours, days off, and building assignments.

In this case however, the evidence established that the Employer did not target, or intend for there to be a reduction in the work force of bargaining unit members. Both Mr. Rivard and Dr. Spaulding testified that there were discussions on this very issue, and that the Employer did not intend to eliminate positions. The "Request for Proposals" (attached to the Union's brief) supports Dr. Spaulding's testimony. Page 5 of the RFP specifically states: "The existing pharmacy staff (one pharmacist and one technician) will distribute the medications to the

dispensaries.” Page 7 of the RFP provides: “All pharmacy services will be coordinated through the DOC Pharmacy, which is overseen by the Medical Program Director. The vendor will provide training for DOC staff relating to their procedures and policies.” (underlining added herein) Finally, on page 14, the RFP states: “The State of Rhode Island reserves the right to terminate the contract in 90 days upon written notice by either party without cause. With cause, the RIDOC reserves the right to terminate within 10 working days.”

While the Board still embraces the concept and applicability of “effects bargaining,” there are limits to this issue. This Board finds that, in order for the Employer to be bound to engage in additional “effects bargaining,” there must be a reasonable expectation that there is, in fact, going to be an “effect” upon bargaining unit members. When an Employer takes affirmative steps to preserve union positions, acknowledges the same to Union officials, issues an RFP that acknowledges and incorporates the existing union positions, and does not take affirmative steps to eliminate positions, it is not reasonable to expect that there is going to be an impact or effect over which bargaining must take place.

In this case, the so-called “inevitability” of the Pharmacist’s departure did not take place until after the new supplier had been in place for over a year. Therefore, it doesn’t seem fair to characterize this possibility as inevitable at all. Moreover, the eventual change to the elimination of the necessity of a Pharmacist seems very clearly to be the result of market forces regarding the supply and demand for the Pharmacists, at the salary rate offered by the State of Rhode Island. As to the “overtime” for the Pharmacy Technician position, it hardly seems appropriate, when there is no guarantee for overtime as the result of “decisional” bargaining (the adoption of a contract), to make the same available through “effects” bargaining. Finally, although there was some testimony as to Ms. Reilly’s not being eligible to be promoted to a Pharmacy Aide II position, there was no evidence on this matter. Moreover, it was unclear whether the Pharmacy Aide II positions (described as “new” by the witness) even existed at the time this RFP was designed, bid on, or implemented. The concept of “effects bargaining” could hardly be considered to include the preservation of a possibility to be promoted to positions that do not even exist. This type of “effect” is far too tenuous and remote to be considered as a fair topic for consideration. “Effects” bargaining should be limited to those topics/issues that are reasonably

foreseeable to be a possible effect flowing from a "decision". This case does not meet that standard.

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 1999, after determining that significant problems with the provision of pharmaceuticals within the Correctional facilities must be corrected, the Employer solicited bids in replacement of the Central Pharmacy.
- 4) Dr. Ann Spaulding, the Medical Director for the Department of Corrections, advised the Union that the Employer had no intention of eliminating any jobs.
- 5) After the bid was awarded, both bargaining unit members (Pharmacist and Pharmacy Technician) retained their positions, rates of pay, and hours of work. The Pharmacy Technician did not receive overtime any longer. After a little more than one year, the Pharmacist left his position, giving two weeks notice to the Employer. The Pharmacist's position was not refilled.
- 6) The Employer did not attempt to re-fill this particular position because it knew that the Central Services Pharmacy had been unable to fill a Pharmacist vacancy for over six months, despite multiple postings and newspaper ads.
- 7) After the Pharmacist left, the Employer changed the method of operation of the "pharmacy" so that a Pharmacist was then no longer necessary.
- 8) It was not reasonably foreseeable or inevitable that the Pharmacist would leave this position, or that a change to the method of operation of the facility as a Pharmacy would be necessary.
- 9) Effects bargaining is not required in order to preserve "overtime" when "overtime" is not guaranteed by "decisional" bargaining.

CONCLUSIONS OF LAW

- 1) In order for an Employer to be bound to engage in additional "effects" bargaining, there must be a reasonable expectation that there is, in fact, going to be an "effect" upon bargaining unit members.
- 2) The Union has not 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) or (10).

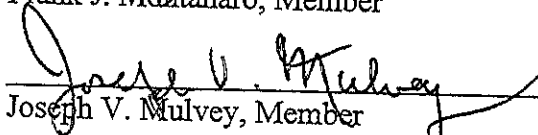
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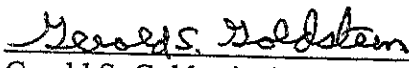
- 1) The Unfair Labor Practice Charge and Complaint in this matter are hereby dismissed.

RHODE ISLAND STATE LABOR RELATIONS BOARD

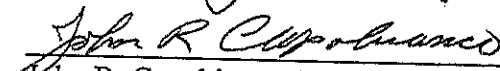

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Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: April 29, 2002

By: 
Joan N. Brousseau, Administrator