

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-  
STATE OF RHODE ISLAND  
DEPARTMENT OF LABOR AND TRAINING

CASE NO: ULP-5464

**ORDER OF DISMISSAL**

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 Labor & Training (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge"), dated May 10, 2000, and filed on May 12, 2000, by RI Council 94, AFSCME, AFL-CIO Local 2869, (hereinafter "Union").

The Charge alleged: Violation of 28-7-13                      Paragraphs 3, 5, 6, and 10

- 1) The Department of Labor and Training was (sic) contracted with consultants to perform work which is normally performed by bargaining unit employees at the Donley Center.
- 2) The Department did not bargain with the collective bargaining agent to have consultants perform bargaining unit work.

Following the filing of the Charge, an informal conference was held on August 9, 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 February 19, 2001. The Employer filed its Answer to the Complaint on February 27, 2001 and an Amended Answer and Request for Production of Documents on July 24, 2001.

Formal hearings on this matter were held on June 12, 2001 and October 11, 2001. Upon conclusion of the hearing, both the Employer and the Union submitted written briefs and supplemental briefs. Although briefs were originally due on November 9, 2001, the date to file

was extended by agreement of the parties and the consent of the Board. The Employer filed its brief on February 7, 2002, and the Union filed its brief on March 19, 2002.<sup>1</sup>

On May 7, 2002, the Board met and made an initial determination on this matter. 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, 799 A. 2d 274, (R.I. 2002). 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 Union filed its supplemental response on November 6, 2002, and requested that the Board hold this matter in abeyance pending the outcome of a pending arbitration. The Employer filed its supplemental brief on November 7, 2002 seeking a dismissal of the case because the matter had proceeded to arbitration.

#### **CONCLUSION OF LAW**

1) Pursuant to the Rhode Island Supreme Court's decision in State of Rhode Island, Department of Environmental Management v Rhode Island State Labor Relations Board, 799 A. 2d 274, (R.I. 2002), because the unfair labor practice charge seeks essentially the same remedy as that sought in arbitration, the within complaint is barred by the election of remedies doctrine.

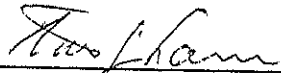
#### **ORDER**

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

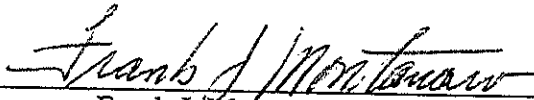
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<sup>1</sup> In its brief, the Union referenced the fact that a grievance arbitration was pending on the same subject matter as the within complaint. (Brief, p. 4)

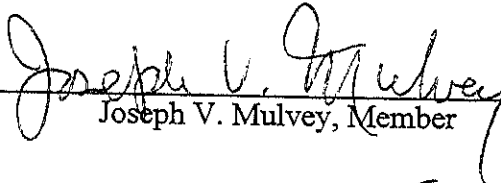
RHODE ISLAND STATE LABOR RELATIONS BOARD



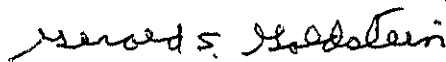
Walter J. Lanni, Chairman



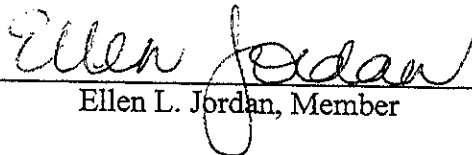
Frank J. Montanaro, Member



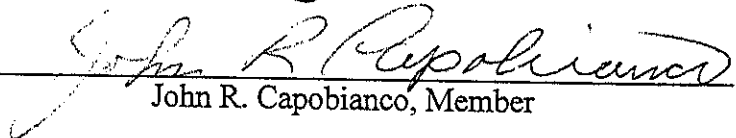
Joseph V. Mulvey, Member



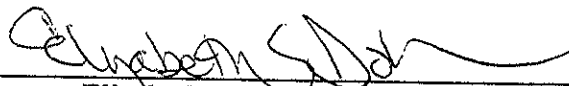
Gerald S. Goldstein, Member



Ellen L. Jordan, Member



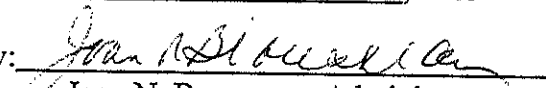
John R. Capobianco, Member



Elizabeth S. Dolan, Member

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

Dated: February 13, 2003

By:   
Joan N. Brousseau, Administrator