

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-5491
	:	
-AND-	:	
	:	
STATE OF RHODE ISLAND, DEPARTMENT OF LABOR AND TRAINING	:	

DECISION AND ORDER OF DISMISSAL

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") on an Unfair Labor Charge (hereinafter "Charge") dated August 31, 2000, and filed on September 5, 2000, by Rhode Island Council 94, AFSCME, AFL-CIO, Local 2869 (hereinafter "Union").

The Charge alleged:

"Violation of Section 28-7-13

Paragraphs 11

1. The Department of Labor and Training has not implemented an arbitration award #11 390 00111 98 dated March 22, 2000. "

Following the filing of the Charge, an informal conference was held on November 1, 2000, between representatives of the Union and Respondent and an Agent of the Board. The informal conference failed to resolve the Charge, and the Board issued the instant Complaint on June 6, 2001. The Employer filed its Answer to the Complaint on June 13, 2001, denying the allegations contained in paragraphs 3 and 4 of the Complaint. On July 6, 2001, the Employer filed an Amended Answer, asserting affirmative defenses, and a Motion for Production of Documents and Other Information. On July 11, 2001, the Board denied the Employer's Motion for Documents on the grounds that the Board's investigative reports are protected from disclosure pursuant to R. I. G. L. 42-46-5 (2) and 38-2-2 (11). On August 10, 2001, the Employer filed a Motion to Dismiss, alleging that the Employer had implemented the arbitration award; and that any remaining questions concerning the duties of the employees within these positions requires interpretation of the collective bargaining agreement, and, as such, is a matter outside the jurisdiction of this Board. A formal hearing on this matter was held on August 14, 2001. Upon conclusion of the hearing, both the Employer and the Union submitted written briefs. In arriving at the Decision and Order of Dismissal herein, the Board has reviewed and considered the testimony and evidence presented, and arguments contained within the post hearing briefs.

FACTUAL SUMMARY

In March, 2000, the Employer and the Union entered into a "Stipulated Arbitration Award" to settle a grievance that had been filed pursuant to the parties' collective bargaining agreement. This Stipulated Award provided that the Employer would place the two grievants, Danett M. Butler and Ann M. Breton, into the job classification of Labor Standards Examiner, and that each of the grievants would be paid retro-active pay for their placement into the Labor Standards Examiner position as of the first pay period of February, 1999. In addition, the grievants' seniority dates for these positions would be February, 1998. As a part of the stipulated agreement, both grievants were required to withdraw complaints they had filed before the Rhode Island Human Rights Commission.

Although the Employer was slow in implementing the award, both grievants, at the time of the formal hearing, had in fact been given the classification of Labor Standards Examiner, been paid their back pay, and had their seniority positions adjusted. Neither grievant, however, had been actually assigned the duties of the position of Labor Standards Examiner. Ms. Breton continued to perform the duties of a Fiscal Clerk, and Ms. Butler continued to perform the duties of a Reconciliation Clerk. The positions of Fiscal Clerk and Reconciliation Clerk are lower classified positions than the Labor Standards Examiner.

POSITION OF THE PARTIES

The Union contends that, although certain aspects of the award have been implemented, the assignment of the duties of the position of Labor Standards Examiner to the grievants is an essential element or component of the award.

The Employer contends that it retains the sole discretion in determining the duties of its employees. Furthermore, the Employer argues that the issue of the duties of these employees was never part of the Charge, Complaint, or part of the case, until the formal hearing. The Employer notes that the duties which have been assigned to these two employees are those of a lesser classification, and is permitted by the parties' contract and the RI Merit System Law. Finally, the Employer argues that this is an issue for arbitration and is not an Unfair Labor Practice, because the award has been implemented.

DISCUSSION

As set forth above, at the time of the formal hearing in this case, the Employer had implemented the award by placing the employees into the classification of Labor Standards

Examiner, by awarding their back pay, and by adjusting their seniority positions. The award, on its face, requires these to be done. Whether or not the stipulated award also contemplated, or implied, that these employees would be guaranteed the right to perform the duties of the position is not an issue for this Board. This matter would be appropriately addressed in another forum.

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) Following the filing of the Charge, an informal conference was held on November 1, 2000 between representatives of the Union and Respondent and an Agent of the Board.
- 4) The informal conference failed to resolve the Charge, and the Board issued the instant Complaint on June 6, 2001. The Employer filed its Answer to the Complaint on June 13, 2001, and an Amended Answer on July 6, 2001, denying the allegations contained in paragraphs 3 and 4 of the Complaint.
- 5) At the time of the Board's formal hearing, the grievants had, in fact, been given the classification of Labor Standards Examiner, been paid their back pay, and had their seniority positions adjusted.
- 6) Neither grievant, however, had actually been assigned the duties of the position of Labor Standards Examiner. Ms. Breton continued to perform the duties of a Fiscal Clerk, and Ms. Butler continued to perform the duties of a Reconciliation Clerk. The positions of Fiscal Clerk and Reconciliation Clerk are lower classified positions than the Labor Standards Examiner.

CONCLUSIONS OF LAW

- 1) 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 (11).

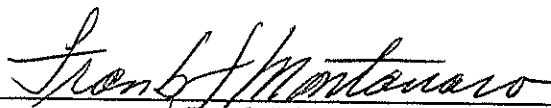
ORDER

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

RHODE ISLAND STATE LABOR RELATIONS BOARD



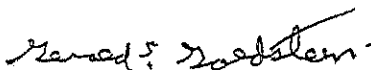
Walter J. Lanni, Chairman



Frank J. Montanaro, Member



Joseph V. Mulvey, Member



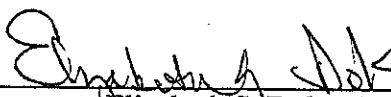
Gerald S. Goldstein, Member



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: June 18, 2002

By: 
Joan N. Brousseau, Administrator