

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-5567
	:	
RHODE ISLAND BROTHERHOOD OF	:	
CORRECTIONAL OFFICERS	:	

DECISION AND ORDER OF DISMISSAL

TRAVEL OF CASE

The above entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") as an Unfair Labor Practice Complaint (hereinafter "Complaint") issued by the Board against the Rhode Island Brotherhood of Correctional Officers, (hereinafter "Union") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated September 27, 2001 and filed on October 1, 2001 by the State of Rhode Island, Department of Administration (hereinafter "Employer").

The Charge alleged:

"The Union has violated Title 28, Chapter 7, Section 13.1 (2) in that the Union has failed, refused and continues to refuse to reduce the agreement that resulted from negotiations to a written signed contract pursuant to Title 39, Chapter 11, Section 7."

Following the filing of the Charge, an informal conference was held on October 10, 2001. On October 25, 2001, the Board reviewed the matter and determined that a complaint would issue and so notified the parties. The Board subsequently issued its complaint on March 7, 2002, when there was sufficient space available on the Board's docket to hear the matter. Subsequently, the parties submitted a set of stipulated facts and exhibits, and initially waived the formal hearings in this matter. Although the record is not clear on when, the Union commenced litigation against the State of Rhode Island in the Rhode

Island Federal District Court. The Board decided to hold this case in abeyance until that matter had been finally adjudicated.¹

Due to an administrative mishap, the within matter was erroneously dismissed by the Board on June 23, 2004, together with ULP 5560, a companion case which the Union had filed against the State. After the erroneous dismissal was discovered, the Board reviewed the matter on October 12, 2004 and set the matter down for formal hearing on February 1, 2005. Due to a scheduling conflict, the Union requested a continuance of the formal hearing. The matter was further continued at the request of the Union (with the consent of the Employer) due to a scheduling conflict. The matter was heard formally on June 23, 2005. Neither side presented any witnesses, but the parties did submit additional stipulated facts. On or about September 9, 2005, the Employer filed a motion to amend the Board's complaint, pursuant to Rule 9.01.4 and 9.01.8, on the basis of a scrivener's error contained in the Board's original complaint. In arriving at the Decision and Order of Dismissal herein, the Board has reviewed and considered the stipulated facts and arguments contained within the parties' briefs.

FACTUAL SUMMARY

Some of the underlying facts in this case date back as far as 1996, thus sadly highlighting the perils and difficulties that can and do arise within public sector collective bargaining in the State of Rhode Island. From July 1, 1994 – June 30, 1996, the Employer and the Union were parties to a collective bargaining agreement (hereinafter "CBA"). Article 38.10 of that CBA contained an educational incentive plan which provided for increases above base salary ranging from 5% to 15%, depending upon the educational level attained by the employee. Negotiations for a successor CBA (to be effective July 1996) began in May 1996 and continued until the matter was submitted to a tri-partite interest arbitration panel in March 1999.² On June 30, 2000, Arbitrator William Croasdale

¹ By letter dated August 14, 2003, the State notified the Board that the matter had been decided by the Rhode Island District Court, but subsequently appealed to the First Circuit Court of Appeals. On June 1, 2004, the State notified the Board that the Court of Appeals had issued a decision on the appeal.

² Kenneth Rivard served as the Union's representative, John J. Turano, Esquire served as the Employer's representative and William Croasdale served as the Neutral Arbitrator.

issued the panel's decision which he had authored.³ In that decision, he stated: "there should be no change in the current language while the MacMillan Award remains on appeal."⁴ Subsequent to the Croasdale decision, the parties then commenced negotiations for a successor collective bargaining agreement for the period of July 1, 2000 through June 30, 2003. According to the Amended Stipulated Facts submitted by the parties, the parties reached a tentative agreement on the 2000-2003 contract on September 12, 2000; and the union ratified the agreement on September 20, 2001. "Under its terms the 1994-1996 agreement, as modified by the Croasdale award and the tentative agreement itself, was continued in full force and effect. This agreement is in effect until June 30, 2003." (Stipulated Facts #6)

On August 22, 2001, the Union wrote to the Employer stating:

"It is the Brotherhood's position that the educational incentive provisions contained in Article 38 of the 1994-96 agreement must be incorporated into the successor agreement in accordance with the interest arbitrator's award. It is the Union's understanding of the State's position that it will execute a completed contract document only if the present statutory version of the educational incentive program is incorporated into the agreement in place of the existing article. If that assessment of the State's position is accurate it would be appreciated if you would so advise in order that the Brotherhood may take the required steps to insure execution of a completed contract." (Appendix K to Stipulated Facts)

On August 30, 2001, the Employer responded to the above communication indicating that it was the State's position that to execute a contract with educational benefits in excess of those provided for in R.I.G.L. 42-56.1-1 et seq. would be unlawful. The State indicated that it was "willing to sign the Collective Bargaining Agreement that conforms to the General Laws of the State if Rhode Island." (Appendix J to Stipulated Facts) Shortly thereafter, both parties filed charges of unfair labor practices.

³ This award covered the contract period that expired the very same day as the date of the award, June 30, 2000.

⁴ The MacMillan Award referenced by the Croasdale Award was a grievance arbitration award dated June 9, 1999 in American Arbitration Association case number 11E 390 00265 98. In this award, Arbitrator MacMillan held that a grievance filed by the Union on February 4, 1997, in regards to the educational incentive program was not either procedurally or substantively arbitrable.

DISCUSSION

The Union took the position in this proceeding that since the Croasdale award stated that no change be made to the contract language for educational incentives while the appeal of the MacMillan award was pending, the Employer was guilty of an unfair labor practice for its refusal to execute an agreement which kept the 1994-1996 educational incentive contract language intact.⁵ The Union also argues that this matter has become moot because the complaint involves an agreement covering a period that has long since passed. The Union argues that "whether or not the parties have signed a contract relating to a period more than two years in the past is irrelevant both in law and in practice." (9/6/05 Brief, p. 3)

The Employer, citing a multitude of federal labor cases, argues that the Union has simply refused to sign a negotiated labor contract and must be found to have committed an unfair labor practice because a refusal to sign a negotiated agreement is the equivalent to a refusal to bargain. The Employer also argues that the matter is not moot and that if the Board should so find, such a decision would "reward indolence" and would send a signal that "should a party stall long enough, the Board will excuse the matter on the basis that a new contract will soon take place."

As argued by the Employer, there can be no question that once the terms of a collective bargaining agreement have been finalized, it is an unfair labor practice to refuse to sign the agreement and that such a refusal is the equivalent of a refusal to bargain. Additionally, this Board cannot state categorically that once a contract period has passed, that a matter automatically becomes moot. To make such a pronouncement could in fact lead to deliberate foot dragging and delaying tactics, conducted solely to drag a matter past the expiration of a contract. What the Board must examine in this case is whether or not the Union had any justification for refusing to sign the proffered agreement at that time that it refused to do so.

⁵ This position ignores the fact that this Board failed to issue a complaint against the Employer on this charge

In this case, the parties have stipulated that "Appendix C" to the stipulated facts constituted the "Tentative Agreement" between the parties. This document states: "1) Except as further modified by this TA, the Contract between the parties effective as of January 1, 1994 and expiring June 30, 1996, as modified by the Croasdale Interest Arbitration Award dated June 30, 2000, shall continue in full force and effect. This "TA" shall supersede any conflicting provisions of the Contract and that Award, and is subject to ratification. Except where retroactivity is specified in the "TA", changes required by the "TA" shall be prospective following the date of ratification." (Appendix C, p. 1)

This "TA" does not specifically mention the issue of educational incentives. However, on page 6 of the "TA" under section V, Litigation, both parties agreed "not to appeal the Croasdale Interest Arbitration Award" which had provided for no change to the contract language while the Macmillan Award appeal was pending. Additionally, under the "Litigation" section, the State agreed to withdraw without prejudice a declaratory judgment action, identified only as C.A. No. 98-6030, and with prejudice C.A. No. 00-3948. Curiously enough, there is no mention at all of the "MacMillan Award" which is specifically referenced by the "Croasdale Award." Since the parties in this matter did not present any testimony on this issue, the record before the Board is silent as to why the "MacMillan Award" was not dealt with under this section of the "TA". Perhaps it was an oversight or perhaps it was not dealt with because each party was aware of this discrepancy and chose not to address the matter for their own tactical reasons. In any event, there can be no question that during the fall of 2001 when this matter was commenced, the TA incorporated the Croasdale award, which by its own terms provided that the contract language for educational incentives would not be changed while the MacMillan award appeal was pending.⁶ Therefore, the Board finds that the Union certainly had valid grounds, supported by competent documentary evidence to believe that the parties had not come to agreement on the terms of the CBA. Thus, the Union was justified in refusing to sign the labor agreement. In fact, both parties were justified in their refusals to

⁶ The Board notes that although the Union has admitted to not vigorously pursuing this appeal, the State certainly had/had remedies available to it within the litigation process to dispose of the MacMillan litigation once and for all.

sign either version of the final agreement because of the problems created by the Croasdale award and the lack of finality of the MacMillan award.

The Board notes that although the conduct of parties subsequent to the filing of an unfair labor practice charge does not relieve a charged party from a finding of unfair labor practice, the conduct may be examined to assess the credibility and good faith basis for actions taken leading up to a charge of unfair labor practice. In this case, the Employer argues that the Union's actions have been contumacious. With this the Board simply cannot agree. The Board is aware that litigation is a costly and often high-stakes avenue for all parties to undertake, with no guarantee of results. In this case, the Employer claims that the Union has merely been "stalling" all these years and should not be rewarded for being dilatory. However, the record reflects that the Union filed a multi-count complaint in the Rhode Island Federal District Court and pursued that matter not only to trial at the District Court level, but through an appeal at the First Circuit Court of Appeals. The Board believes that this later action supports a finding that the Union was acting in good faith when it refused to sign the agreement proffered by the State in 2001. Indeed, the Board has already ruled that the Croasdale Award (which both parties agreed not to appeal) set the stage for this very dispute and that neither party committed an unfair labor practice when refusing to sign the "agreement."⁷

The employer also argues that the ultimate disposition of the MacMillan award can and will have no impact on the statutory change to educational benefits. That may well be true, although this Board has no authority to opine on that matter. To the extent that the parties are seemingly dissatisfied with the results of not appealing the Croasdale award (which leaves the educational benefits language intact while the MacMillan award is pending on appeal) it would seem to the Board that the parties should take whatever steps are necessary to finally dispose of that case.

⁷ The Board notes that although Arbitrator Croasdale stated that both state labor law and the MacMillan award determine that Article 38.10 must be deleted because it is in conflict with R.I.G.L. 42-56.1-1, he also then goes on to rule that "there should be no change in current language while the MacMillan award remains on appeal."

What impact the disposition of federal court action has had on the MacMillan award is not an issue for this Board to decide. Moreover, the issue of mootness is not one, which can be decided at this time on the facts presented in this case, and the Board declines to make any ruling on this issue of mootness.

FINDINGS OF FACT

- 1) The Complainant 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) The Amended Stipulation of Facts, attached as Exhibit A to this Decision and Order of Dismissal is incorporated herein and a part hereof.
- 4) The MacMillan award, as of September 2005, was still on appeal in the Rhode Island Superior Court.

CONCLUSIONS OF LAW

- 1) The Employer has not proven by a fair preponderance of the credible evidence that the Union committed a violation of R.I.G.L. 28-7-13.1 (2).

ORDER

- 1) The Employer's motion to amend the complaint is granted.
- 2) The Unfair Labor Practice Charge and Complaint in this matter are hereby dismissed.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lann
Walter J. Lann, Chairman

Frank J. Montanaro
Frank J. Montanaro, Member

Joseph V. Mulvey
Joseph V. Mulvey, Member

Ellen L. Jordan
Ellen L. Jordan, Member (Dissent)

John R. Capobianco
John R. Capobianco, Member

Elizabeth S. Dolan
Elizabeth S. Dolan, Member (Dissent)

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

Dated: 3-14, 2006

By: ROBYN H. GOLDEN RHG
Robyn H. Golden, Administrator

