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- 5652
STATE OF RHODE ISLAND, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT	:	

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 November 27, 2002, and filed on November 29, 2002, by RI Council 94, AFSCME, Local 2881 (hereinafter "Union").

The Charge alleged:

1) The Department of Environmental Management is utilizing "seasonal" employees well beyond the seasonal period and has them performing bargaining unit work.
2) The Department has failed to negotiate with the Union regarding the "seasonal" employees.

Following the filing of the Charge, an informal conference was held on December 20, 2002, between representatives of the Union and Employer and an Agent of the Board. The informal conference failed to resolve the Charge and the Board issued the instant Complaint on February 12, 2003. The Employer filed its Answer to the Complaint on February 26, 2003. A formal hearing on this matter was originally scheduled for April 3, 2003, but was continued to May 1, 2003 at the request of the Union and the consent of the Employer. On May 1, 2003, at the commencement of the formal hearing, the Employer filed a Motion to Dismiss. The Board reserved judgment on the Motion and proceeded to conduct the hearing.

SUMMARY OF FACTS

The facts in this case were essentially undisputed by the parties. Each year, the Employer hires several hundred employees to work in various hourly rate positions throughout the State of Rhode Island's recreational facilities. These positions include mosquito technicians, fee collectors, student researchers, park rangers, groundskeepers, laborers, life guards, campground

clerks, and golf course laborers, among others. Each year, the Employer seeks and receives budgetary approval to fill the positions. Approximately 25-30 percent of the previous year's employees return to these yearly positions. For example, lifeguards will often fill the position for four (4) years in a row, while in college. Some employees have been returning for several years. The testimony revealed that one employee, Robert D'Ercole, an Operations and Revenue Manager at a golf course, has been re-appointed to his position for more than fifteen (15) consecutive years. Some of the positions start work as early as April and may be employed as late as December, but a great many of the positions are limited to the summer months. No employee is guaranteed to be re-hired from year to year, and all are "at will" employees during their employment. The employees are paid an hourly rate and do not receive any benefits.

DISCUSSION

The threshold issue in this matter is whether the Board has subject matter jurisdiction. The Employer argues that this Board is precluded from asserting subject matter jurisdiction because the Union has filed a grievance on the same set of facts, seeking the same relief, and that 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 272 (R.I. 2002) divests the Board of subject matter jurisdiction in this case.

The Union argues that, although it did file a grievance on the issue of seasonal employees, the relief sought in that proceeding, and in the present proceeding is not the same. In the grievance, (Union Exhibit #5), the Union sought to rescind the employment of seasonal employees and to receive payment to the Local for lost wages and benefits. In the present proceeding, the Union essentially seeks a ruling that the Board's definition of "seasonal employee", as set forth in the rules and regulations at 1.01.24 should be interpreted to mean that state employees working more than one calendar season are "multi-seasonal", not seasonal; and therefore are eligible for collective bargaining. Although the Union's grievance was based on the same set of facts, this Board finds that the relief sought is sufficiently distinct so as to not deprive this Board of subject matter jurisdiction.[1]

[1] In making this determination, the Board is cognizant that the parties have engaged in previous disputes regarding this subject, and the Board is essentially treating the complaint as a request for declaratory judgment on the definition of "seasonal employee".

COLLECTIVE BARGINING BY STATE EMPLOYEES

State employees are generally able to engage in collective bargaining. However, "casual employees" and "seasonal employees" are specifically excluded by statute, from engaging in collective bargaining. *See* R.I.G.L. 36-11-1 (a). "Seasonal employees" are defined by statute, as "those persons employed in positions which are part of an annual job employment program". R.I.G.L. 36-11-1.1 (2). Therefore, the next issue for the Board is simply whether or not the employees in question are part of an "annual job employment program". If so, then the Board's inquiry must end, and the charge must be dismissed. Although there is no statutory definition of "annual job employment program", the Board believes that the practices described by the Employer in this case (as set forth above in the summary of facts) describe an "annual job employment program".

THE BOARD'S REGULATORY DEFINITION OF SEASONAL EMPLOYEE

The Board's rules and regulations define a seasonal employee as:

> "Those persons employed to perform work on a seasonal basis of not more than sixteen (16) weeks, or who are part of an annual job employment program.
>
> "In connection with this definition, 'seasonal basis' shall also mean employment which depends upon, or varies with the seasons of the year (winter, spring, summer and fall) or is dependent upon a particular and regular employment."

As noted by the Employer in its brief, the Board's definition, which is written in the disjunctive, is merely a convenient combination of the statutory definition for municipal seasonal employees (16 weeks) and state seasonal employees (annual job employment program). The Board has no authority to expand the statutory definition of state "seasonal employees" and has not done so within section 1.01.24.

The Board finds that the testimony and the documentary evidence in this case clearly established that the Employer has run an "annual job employment program" for over twenty (20) years, and that the positions set forth in Joint Exhibit #1 are included within the annual job employment program. Therefore, by statutory definition, these employees are ineligible for collective bargaining. While the Board is not unsympathetic to the Union's argument that employees who work for up to eight (8) months at a time (and who return year after year) should be allowed to engage in collective bargaining, these arguments are best saved for the Rhode Island General Assembly, the only forum with the lawful authority to provide relief to the present situation.

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 and 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 December 20, 2002 between representatives of the Union and Employer and an Agent of the Board. A formal hearing was held on May 1, 2003.

4) The Employer operates an annual job employment program. Included within that program are the positions of: mosquito technicians, fee collectors, student researchers, park rangers, groundskeepers, laborers, life guards, campground clerks, and golf course laborers, among others.

CONCLUSIONS OF LAW

1) The Board has subject matter jurisdiction to hear the within Complaint.

2) State employees who are employed as part of an annual job employment program are "seasonal employees" pursuant to R.I.G.L. 36-11-1.1 (2) and, as such, are excluded from collective bargaining as a matter of law.

ORDER

1) The Employer's Motion to Dismiss based on subject matter jurisdiction is denied.

2) 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 (Dissent)

Joseph V. Mulvey, Member (Dissent)

Gerald S. Goldstein, Member

Ellen L. Jordan, Member

John R. Capobianco, Member (Dissent)

Elizabeth S. Dolan, Member

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

Dated: MARCH 23, 2004

By: Robyn H. Golden, Acting Administrator