

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-5700
	:	
-AND-	:	
	:	
STATE OF RHODE ISLAND	:	
DEPARTMENT OF LABOR & TRAINING	:	

DECISION AND ORDER OF DISMISSAL

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 Labor and Training (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated October 31, 2003 and filed on November 3, 2003 by the R.I. Council 94, AFSCME, Local 2869 (hereinafter "Union").

The Charge alleged: Violation of 28-7-13 subsections (3) (5) (6) and (10)

"Department of Labor and Training did not bargain in good faith with the Collective Bargaining Representatives concerning the transfer of an employee from the Department of Labor and Training to the Public Utilities Commission."

Following the filing of the Charge, an informal conference was held on November 26, 2003. The Board issued its Complaint on February 25, 2004. The Employer filed its answer on March 2, 2004 denying the allegations therein and asserting several affirmative defenses. On May 26, 2004, the Employer filed a Motion to Dismiss the Complaint. A formal hearing on this matter was held shortly thereafter on June 3, 2004. Upon conclusion of the formal hearing, the Chairman ordered briefs filed within thirty (30) days from the receipt of the transcript. The parties requested and were granted several extensions of time to

submit the briefs. The Employer filed its brief on September 3, 2004, and the Union filed its brief on September 2, 2004.

FACTUAL SUMMARY

William Innelli had been employed by the State of Rhode Island as a Metrologist Inspector within the Department of Labor & Training since 1982. A Metrologist Inspector's duties include the enforcement of state laws and regulations pertaining to weights and measures. (Union Exhibit #1) Mr. Iannelli testified that as part of his duties when employed at the Department of Labor & Training ("DLT"), he inspected taxicab meters. In October, 2003, Mr. Iannelli received notification that his position of Metrologist Inspector had been transferred from the Department of Labor & Training to the Public Utilities Commission ("PUC"). As a result, Mr. Iannelli's work location and hours of work were changed. In addition, Mr. Iannelli no longer performed all the same types of work at the PUC that he did at the DLT.

Pursuant to R.I.G.L. 39-14-1 et seq., the PUC is vested with the authority for regulating taxicabs. Prior to 2003, the PUC had requested that the DLT perform taxicab meter inspections. During 2003, the legislature transferred the authority for the testing of metering devices used in the sale of electricity, water and gas from the DLT to the PUC. That same year, the PUC decided to take back responsibility for the inspections of taxicabs. As a result of these legislative changes and departmental reorganizations, the State Budget Office removed one FTE (full-time equivalent) position of Metrologist Inspector from the DLT and transferred it to the PUC. Since Mr. Iannelli was the only Metrologist Inspector on staff at the DLT (the other FTE position was not filled), he was transferred to the PUC to perform inspections.

When he was employed at the DLT, Mr. Iannelli was a member of Council 94, which had a collective bargaining agreement ("CBA") in place with the employer. Article 11.13 of the CBA provided in pertinent part: "The Union recognizes the State's right to reorganize." Article 11.13 sets forth a detailed set of parameters which shall be followed by the parties when a reorganization is necessitated by an Executive Order or legislation."

DISCUSSION

The Union argues that the State trampled on Mr. Iannelli's rights when it transferred him from the DLT to the PUC with very little advance warning or notification. The Union argues that the State did not follow the procedures set forth in Article 11.13 of the CBA. In addition, the Union also argues in its brief that the State transferred bargaining unit work out of the bargaining unit without negotiations.

The State argues that the instant charge of unfair labor practice must fail because the parties have already negotiated a procedure for employee transfers, and that the same has been incorporated into the parties' contract as Article 11.13. Thus, the State argues that the resolution of this dispute lies with the grievance-arbitration process set forth in the contract.

The State's argument is correct. There can be no question that the actions complained of sound in contract violations, specifically, the employee transfer process set forth in Article 11.13. It appears from the evidence in the record that the State did violate the provisions of Article 11.13, but this Board is not empowered to make such a finding of fact, nor to convert what is clearly an allegation of a contract violation into an unfair labor practice. The Union's other argument that bargaining unit work was transferred without authority is not properly before the Board, as the same was not alleged in the original charge to the Board nor was the Board's complaint issued on that basis. The Board hereby grants the State's Motion to Dismiss the Complaint in this matter

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) Pursuant to R.I.G.L. 39-14-1 et seq., the PUC is vested with the authority for regulating taxicabs. Prior to 2003, the PUC had requested that the DLT perform taxicab meter inspections.
- 4) During 2003, the legislature transferred the authority for the testing of metering devices used in the sale of electricity, water, and gas from the DLT to the PUC. That same year, the PUC decided to take back responsibility for the inspections of taxicabs.
- 5) As a result of these legislative changes and departmental reorganizations, the State Budget Office removed one FTE (full-time equivalent) position of Metrologist Inspector from the DTL and transferred it to the PUC. Since Mr. Iannelli was the only Metrologist Inspector on staff at the DLT (the other FTE position was not filled), he was transferred to the PUC to perform inspections.
- 6) Council 94 and the State of Rhode Island are parties to a collective bargaining agreement. Article 11.13 of the agreement provided in pertinent part: "The Union recognizes the State's right to reorganize."
- 7) Article 11.13 sets forth a detailed set of parameters which shall be followed by the parties when a "reorganization is necessitated by an Executive Order or legislation."

CONCLUSIONS OF LAW

- 1) The resolution of the dispute set forth in this Complaint is governed by the parties' collective bargaining agreement and presents no unfair labor practice.

ORDER

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

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni

Walter J. Lanni, Chairman

Frank J. Montanaro

Frank J. Montanaro, Member

Joseph V. Mulvey

Joseph V. Mulvey, Member

Gerald S. Goldstein

Gerald S. Goldstein, Member

Ellen L. Jordan

Ellen L. Jordan, Member

John R. Capobianco

John R. Capobianco, Member

Elizabeth S. Dolan

Elizabeth S. Dolan, Member

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

Dated: FEBRUARY 10, 2005

By: Robyn H. Golden
Robyn H. Golden, Acting Administrator

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