

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 MHRH	CASE NO: ULP-5706
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**DECISION AND ORDER**

**TRAVEL OF CASE**

The above entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board"), as a Unfair Labor Practice Complaint (hereinafter "Complaint"), issued by the Board against the State of Rhode Island, Department of Mental Health, Retardation and Hospitals (MHRH), (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated December 17, 2003, and filed on December 22, 2003, by RI Council 94, AFSCME, AFL-CIO Local 1350 (hereinafter "Union").

The Charge alleged violations of R.I.G.L. 28-7-13, Subsections 3, 6, 7, and 10:

"The State of RI, namely the Department of MHRH, is engaged in an Unfair Labor Practice by forcing Institution Attendants (Psyc.) to do the work of Mental Health Workers by having Forensic female patients living in the regular Psychiatric Unit wards, which adversely affects the working conditions of the Institution Attendants (Psyc.)

Following the filing of the Charge, an informal conference was held on January 12, 2004. Thereafter, the Board reviewed the matter and determined that it needed more information to determine whether a complaint should issue. The Board issued its Complaint on August 12, 2004, alleging: "The Employer violated RIGL 28-7-13 (6), (7) and (10) when it constructively required Institution Attendants to perform the work of Mental Health Workers by allowing forensic female patients to live in regular psychiatric unit wards." A formal hearing was conducted by the Board on June 7, 2005. Representatives from both the Union and the Employer were in attendance and had full opportunity to present

evidence and to examine and cross-examine witnesses. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony and evidence presented and arguments contained within the post hearing briefs.

### FACTUAL SUMMARY

As part of its duties, the Department of MHRH houses both male and female psychiatric patients at the Eleanor Slater Hospital which is a long term care facility comprised of both medical and psychiatric services. The psychiatric service treats patients with chronic and severe mental illness, as well as the Forensic Service, which treats criminal defendants.

Under the Forensic statute, R.I.G.L. 40.1-5.3-1 et seq., the hospital provides psychiatric care and treatment to criminal defendants who are not competent to stand trial (R.I.G.L. 40.1-5.3-3) or not guilty by reason of insanity (R.I.G.L. 40.1-5.3-4) and to inmates in the Adult Correctional Institute ("ACI") awaiting trial or serving a sentence which requires "specialized psychiatric treatment" in a hospital setting. (R.I.G.L. 40.1-5.3-6 to 40.1-5.3-9)

The majority of "forensic" patients treated in the Forensic Service are admitted for restoration of their competence to stand trial. The patient (defendant) is then treated with a goal of trying to restore health to a point where the defendant may stand trial. When that occurs, the defendant is discharged from the hospital. The "Forensic Unit" houses only male patients and is staffed by employees holding the title of Mental Health Worker (hereinafter "MHW").<sup>1</sup>

A great many of the patients treated in the hospital's psychiatric service are not forensic patients, but are "civil" patients treated pursuant to the state's

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<sup>1</sup> Mental Health Worker: Paygrade 20A

General Definition of Class: This is an advanced paraprofessional class in the direct patient care hierarchy. Work involves providing direct care and treatment to severely and chronically mentally disabled patients in a secure forensic treatment setting. It involves promoting the therapeutic milieu while exercising custody and supervision of forensic patients consistent with nursing care and treatment plans; performs related work in a forensic setting as required.

Education and Experience:

Education: Such as may have been gained through: possession of an Associates Degree or equivalent from an accredited college or university in Behavioral Science, ability to read, write and speak English.

Experience: Such as may have been gained through: one year of employment in a private or public hospital or clinical program involving participation in the care, custody, treatment and rehabilitation of severely and chronically mentally disabled persons.

Mental Health Statute. The civil patients are housed within seven (7) units located in the Adolph Meyer (hereinafter "AM") Building. The civil units are locked, although patients can earn privileges which allow the patients to leave the units at certain times. The civil units are staffed by employees in the job classification "Institutional Attendant, Psychiatric" (hereinafter IAP").<sup>2</sup> In addition to the civil patients being housed within AM, one unit, AM-8, houses female forensic patients. The female Forensic Unit is staffed by IAP's, not MHW's.

### POSITION OF THE PARTIES

The Union argues that the placement of more than three female forensic patients in the "AM" ward requires the Employer to negotiate with the Union because the placement of this many forensic patients creates changes to the working conditions of the IAP's and that those changes must be negotiated. The Union also argues that the evidence shows that MHW's are the appropriate class of employees for Forensic patients and that because the IAP's do not have the same level of training as MHW's, it is a danger to the IAP's to have them in crowded Forensic Units. The Union argues that when it negotiated an Agreement with the Employer in 2001 relative to MHW's, the parties had reviewed a five year history of the female Forensic Unit which showed that at no time were there more than three (3) female forensic patients at the hospital. Thus, the Union argues that the Employer's refusal to negotiate staffing levels on the AM-8 ward, when the female forensic populations spikes, creates an imminent health and safety risk to staff. The Union also argues that this Board has already determined that the issue of staffing is negotiable in relation to the Forensic Unit, citing ULP-4550, State of Rhode Island, Department of MHRH, Forensic Unit, decided November 3, 1993. The Union also argues that the Rhode Island Superior Court also recognized the inherent dangers of placing patients from the Forensic Unit

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<sup>2</sup> Institution Attendants: Psychiatric Paygrade 14

General Statement of Duties: To provide direct care and treatment to severely and chronically mentally disabled patients and exercise custody and supervision of such patients consistent with nursing care and treatment plans; to perform related work as required.

Education and Experience: Such as may have been gained through: completion of eight school grades.

Special Requirements: At the time of appointment, must be registered as a Nursing Assistant by the Rhode Island Department of Health per the General Laws of Rhode Island and must maintain such registration as a condition of employment.

onto the Civil Wards, citing Rhode Island Council 94, Local 1350 v Kathleen Spangler, PC No. 2005-2181 (2005).

The Employer argues that there have been no changes to the working conditions of the IAP's and therefore, no negotiation with the Union is necessary. Moreover, the Employer argues that the parties did in fact negotiate in 2001 and created an Agreement that replaced a prior long standing ("T-4") Agreement on the issue of staffing. No violation of that Agreement has occurred according to the Employer. Finally, the Employer argues that the Board's decision in ULP 4550, State of Rhode Island, Department of MHRH, Forensic Unit, is not controlling because that decision was specifically issued in regards to the Forensic Unit, not the Civil Unit.

### **DISCUSSION**

The essence of the Union's charge in this case is that the placement of female forensic patients in the civil patient ward of AM-8 constructively forces the IAP's to be doing the work of MHW's without negotiation in violation of the law. The Union asserts that placing IAP's in such a situation, (when there are spikes in female forensic admissions) creates changes to the working conditions of IAP's which must be negotiated. The Union argues that this Board's 1993 decision in ULP-4550 is instructive in this case.

The Employer dismisses the Union's correlation of these facts to the decision in ULP-4550, because that decision specifically spoke to the working conditions on the Forensic Unit, not the Civil Unit. The Employer also argues that in that case, there had been a reduction in staffing, which has not occurred in this case, and therefore, ULP-4550 is not instructive.

The Board does not necessarily agree that ULP-4550 is not instructive. While the facts in that case do differ from the facts herein, the general concept is the same. In ULP-4550, the Board found as matter of fact that the Forensic Unit housed inmates with severe emotional and psychiatric problems who in many cases, present a clear danger to employees working in the unit. The Board found that the Employer, therefore, had a duty to negotiate with and engage in collective bargaining in relation to staffing issues at the Forensic Unit.

In this case, the Employer itself argued that there are no real differences between the psychiatric conditions and/or treatment of civil patients and forensic patients; and that the placement of patients in one treatment setting verses the other, is predicated largely on how the individual came into the system to begin with. That being the case, the Board does not see how it could distinguish ULP-4550 from the facts presented in this case. The Employer was ordered to negotiate the terms and condition of employment when dealing with the forensic patients. If the civil patients are, in essence, no different than the forensic patients, then negotiation of the working conditions for employees who care for the civil and or forensic patients is also required.

Although the Employer has argued that the parties did negotiate an Agreement in 2001, the record also reflects that when the Agreement was negotiated in 2001, the parties had also done a review of the records of female forensic admissions in advance thereof. The review established that there were perhaps a few dozen occasions when the Employer had been required to open a separate female Forensic Unit, based on the parties T-4 Agreement. The Union presented the testimony of Jack Palazzo, its Business Agent and formerly a long-time employee of the Department. He testified that when the parties were looking to eliminate the T-4 Agreement, they did so because the Agreement didn't adequately deal with current conditions. He stated that the parties realized that going back almost five (5) years, there were hardly any occasions when the female forensic population rose above three (3) patients. After executing the 2001 Agreement however, there were several spikes in the female forensic population which then led to the Union's request for further negotiations. In essence, the Union argues that the underlying conditions of the Agreement had not been changed and that the change requires additional negotiations.

The Employer did not dispute the Union's allegation that the number of female forensic patients spiked after the execution of the 2001 Agreement. In fact, the Employer's own Exhibit #1 documented the spikes in population. The Board notes that although the parties agreed that the new Agreement "superseded" the T-4 Agreement and all issues related thereto, the Agreement

was silent as to what would happen if there were a change in the underlying assumptions upon which the Agreement was based. Therefore, the Board finds that since the Employer's own evidence establishes a change in the underlying working conditions (number of patients at any one time), that the Employer is obligated to negotiate with the Union concerning the impact to the employees' terms and conditions of employment resulting from the change in female forensic population levels.

#### **FINDINGS OF FACT**

- 1) The State of Rhode Island, Department of MHRH 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 Eleanor Slater Hospital houses and treats patients with chronic and severe mental illness and includes a Forensic Service which treats criminal defendants.
- 4) Under the Forensic statute, R.I.G.L. 40.1-5.3-1 et seq., the hospital provides psychiatric care and treatment to criminal defendants who are not competent to stand trial (R.I.G.L. 40.1-5.3-3) or not guilty by reason of insanity (R.I.G.L. 40.1-5.3-4) and to inmates in the Adult Correctional Institute ("ACI") awaiting trial or serving a sentence which requires "specialized psychiatric treatment" in a hospital setting. (R.I.G.L. 40.1-5.3-6 to 40.1-5.3-9)
- 5) The male Forensic Unit is housed separately in a secure facility and the male patients are attended to by Mental Health Workers (MHW's).
- 6) The civil patients are housed within seven (7) units located in the Adolph Meyer Building. The Civil Units are staffed by employees in the job classification "Institutional Attendant, Psychiatric" (IAP's). In addition to the civil patients being housed within Adolph Meyer, one unit, AM-8, houses

female *forensic* patients. The female Forensic Unit is staffed by IAP's, not MHW's.

- 7) In 2001, the Union and Employer negotiated a staffing Agreement which replaced a previous Agreement known as the "T-4" Agreement. At the time the 2001 Agreement was negotiated, the female forensic population rarely exceeded three (3) patients.
- 8) After the 2001 Agreement, in 2003, the female forensic population spiked on several occasions prompting the Union to request negotiations over staffing levels.
- 9) The Employer refused to negotiate with the Union.

#### **CONCLUSIONS OF LAW**

- 1) The Union has proven by a fair preponderance of the credible evidence that the Employer has committed a violation of R.I.G.L. 28-7-13 (6) and (10).

#### **ORDER**

- 1) The Employer is hereby ordered to bargain in good faith over the impact to the terms and conditions of employment resulting from increased levels of female forensic patients when the population exceeds three (3) patients.

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RHODE ISLAND STATE LABOR  
RELATIONS BOARD

-AND-

DEPARTMENT OF MENTAL  
HEALTH, RETARDATION &  
HOSPITALS

CASE NO: ULP-5706

**NOTICE OF RIGHT TO APPEAL AGENCY DECISION  
PURSUANT TO R.I.G.L. 42-35-12**

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of ULP No. 5706 dated 12-28-06, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after 12-28-06.

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-29.

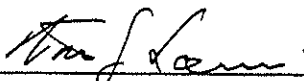
Dated: 12-28, 2006

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

ULP- 5706



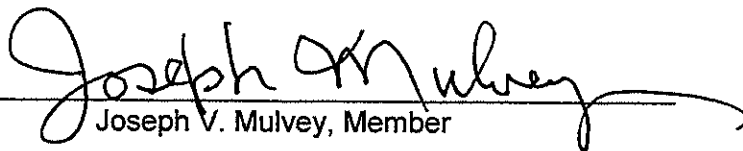
RHODE ISLAND STATE LABOR RELATIONS BOARD



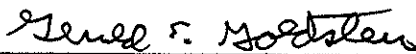
Walter J. Lanni, Chairman



Frank J. Montanaro, Member



Joseph V. Mulvey, Member



Gerald S. Goldstein, Member



Ellen L. Jordan, Member (Dissent)



John R. Capobianco, Member



Elizabeth S. Dolan, Member (Dissent)

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

Dated: 12-28 2006

By:   
Robyn H. Golden, Administrator

ULP-5706