

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-5731
:
DEPARTMENT OF HUMAN SERVICES/ :
RHODE ISLAND VETERANS' HOME :

DECISION AND ORDER OF DISMISSAL

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 Human Services, Rhode Island Veterans' Home (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated September 20, 2004 and filed on September 24, 2004 by the United Nurses and Allied Professionals, Local 5019 (hereinafter "Union").

The Charge alleged violations of R.I.G.L. 3 and 10.

- 1) On or about July 21, 2004, the Employer, through Mr. Kirchner and Mr. Camara intimidated and interfered with Union official, Adrienne Camara, in the conduct of Union business.
- 2) On or about September 15, 2004, the Employer, through Mr. Kirchner, inappropriately confronted union official, Adrienne Camara, in an overly loud, confrontational and rude manner.

Following the filing of the Charge, an informal conference was held on October 13, 2004. The Board issued its Complaint on January 27, 2005. The Employer filed its answer to the complaint on February 3, 2004, denying the allegations therein. A formal hearing was conducted by the Board on June 16, 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.

SUMMARY OF TESTIMONY

Adrienne Camara is a Union official with United Nurses and Allied Professionals, Local 5019, and has been a long time employee of the Veteran's Home. Ms. Camara testified that during the last week of March, 2004, the Veteran's Home posted vacancy notices for three registered nurse positions, one on the day shift, one on the evening shift, and one on the night shift. (TR. p. 12) Mr. Eddie Medeiros, another long term employee, bid on the opening for the day shift and was awarded the position. Mr. Medeiros started work on or around May 16, 2004. On that same day, Ms. Camara noticed a second new R.N., Ms. Laurie Ways, was now working the dayshift, even though only one vacancy had been posted. (TR. p. 13) Ms. Camara testified that she immediately went to speak with the Director of Nurses, Ms. Jan Marcoff about how it came to be that there were now two new R.N. positions being filled when there was only a posting for one vacancy. (TR. p. 14) Ms. Camara testified that Ms. Markoff advised her that the second position had been posted, but that she couldn't put her hands on a copy of the posting right at that moment. Subsequently, Ms. Camara repeatedly requested that she be provided with a copy of the posting. (TR. p. 15) Finally, after all efforts to secure a copy of the vacancy posting had failed, on July 20, 2004, Ms. Camara filed a grievance, asking that the position being held by Ms. Ways be reposted, and that all subsequent vacancies be posted in accordance with the contract. (TR. p. 16).

The following day, Ms. Camara spoke to Ms. Ways and told her that the union had filed a grievance over Ways' position. Ms. Camara testified that she spoke to Ms. Ways directly, because she didn't want Ways to hear it through the rumor mill. Ms. Camara testified that Ms. Ways was nervous, but cordial about the grievance. Later that day, Ms. Ways stopped Ms. Camara in the hallway to ask what would happen to Ways' job. Ms. Camara stated that Ms. Ways was concerned over losing the job on the day shift because she had a daughter at home that a shift change would impact. (TR. p. 17-18) Later that same day, Ms. Camara spoke briefly again with Ms. Ways and told her not to worry and that they'd work something out.

The following day, Ms. Camara was called to a meeting with management representatives and was advised to bring a union representative with her. Ms. Camara testified, that in that meeting she was advised that the grievance over the posting would not be processed; that Ms. Camara should not have spoken to Ms. Ways about the grievance so many times; and that management couldn't have Camara "badgering and intimidating staff" because the morale was already so bad, that the Veteran's Home was already having trouble keeping the existing staff.

On cross-examination, Ms. Camara acknowledged that she had not been hampered in her ability to file a grievance over the posting.

The Employer presented the testimony of Mr. William Camara, the Chief of Health Systems at the Veterans' Home, where he oversees medical and nursing issues, including personnel investigations and disciplinary matters. (TR. p. 33) Mr. Camara testified that on or about July 21, 2004, Ms. Ways called him in tears and asked if she could come in to see him. He told Ms. Ways to come right up to his office. Ms. Ways told Mr. Camara that she was concerned about losing her job because the Union representative, Ms. Camara, had spoken with her three times during the day concerning the grievance over the posting problems. Mr. Camara testified that he calmed Ms. Ways down and told her not to worry; and that he would speak to the folks in Human Resources to straighten out the matter. (TR. pgs. 41- 42)

Mr. Camara also stated that he did call a meeting with Ms. Camara and other management employees the next day and did advise Ms. Camara to bring union representation with her. He stated that at the beginning of the meeting, that the purpose of the meeting was *not* for disciplinary action, but rather to discuss the fact that Ms. Ways was visibly upset to tears about her job and that he was concerned about staff morale. (TR. p. 44) Mr. Camara stated that the meeting with Ms. Camara was very cordial and calm, and that it was basically designed to "set everyone at ease." He stated that he "absolutely" did not make any comments or statements that he believed were intimidating or coercive towards Ms. Camara. (TR. p. 46)

The Employer also presented the testimony of Mr. David Kirchner, the Administrator for the Veterans' Home. He testified that he was present at the July 21, 2004 meeting with Ms. Camara and her union representative. Mr. Kirchner characterized the meeting as one designed to settle down the situation with Ms. Ways and was not called or conducted as a disciplinary meeting relative to Ms. Camara. Mr. Kirchner specifically denied hearing anyone at that meeting tell Ms. Camara that she should not have filed the grievance over the vacancy posting. (TR. p. 55) Mr. Kirchner stated that since staffing is such a serious concern at the Veterans' Home, the management took Ms. Ways' concerns and crying over her job very seriously; and that management very much wanted to settle the dispute to keep staff. (TR. p 56) Mr. Kirchner testified that when they called Ms. Camara into the office, he wasn't sure if she knew how upset Ms. Ways actually was over the situation and he wanted to see if there wasn't some other way to handle the situation. Mr. Kirchner thought that it was "overkill" for Ms. Camara to have discussed the issue three times in one day with Ms. Ways.

The Employer's final witness was Edward Hynes, the Associate Director of Human Resources for the Department of Human Services. He testified that the Veteran's Home has a chronic shortage of nurses and that there is always, "one hundred percent of the time", vacancies for registered nurses. (TR. p. 61) Mr. Hynes stated that, while there in fact was a problem with the original posting because it didn't list the number of vacancies, it was really a harmless error and that the Department agreed to and did re-post the vacancy notice.

DISCUSSION

The Employer's representatives in this case testified quite candidly that there are chronic staffing shortages for RN positions at the Veterans' Home and that management is very concerned about employee morale, in part, because low employee morale affects patient care. Mr. Hynes testified that there was virtually no real risk that Ms. Ways would lose her job or be moved off her shift in spite of the vacancy posting error, because there was such a shortage of nurses. In fact, he stated that when the position was re-posted, no one else from within the facility bid on the position.

The Employer in this case was approached by an employee in tears concerned over losing her job because of a snafu in the posting of the position some months earlier. Based upon the testimony concerning staffing shortages, it certainly seems to the Board that it would be prudent to immediately address this employee's concern by speaking to the person who told Ms. Ways that her job could be in jeopardy. Both of the Employer's witnesses testified that it was made clear at the beginning of the meeting with Ms. Camara, that the purpose of the meeting was not for disciplinary action.

Although Ms. Camara testified that she was told at the July 21, 2004 meeting that the grievance would not be processed, Mr. Camara does not recall discussion about the grievance, but that the matter should be handled by Human Resources. Mr. Kirchner testified that he did not hear anyone make any statement that the grievance was not going to be processed. The record before the Board is not clear whether the grievance was officially "processed" through various steps, but the record does indicate that the remedy sought by Ms. Camara was achieved; that is the position was re-posted. These facts do not sustain a charge of interference with union business or intimidation. This case appears to the Board to be one of miscommunication and perhaps a personality conflict, but is not based upon an unfair labor practices and therefore the Board hereby dismisses the complaint.

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) On or about July 20, 2004, Union representative Adrienne Camara filed a grievance over the lack of a proper posting for an R.N. vacancy which had been filled by a new, outside employee, Laurie Ways.

- 4) After filing the grievance, Ms. Camara sought out Ms. Ways to advise about the same face-to-face, so that Ms. Ways would not have to hear about it through the rumor mill. Ms. Camara and Ms. Ways spoke a total of three separate times about the matter, all on the same day.
- 5) Subsequent to these three conversations Ms. Ways was reduced to tears for fear of losing her job and she sought the advice of Mr. Camara, the Chief of Health Systems at the Veterans' Home.
- 6) Mr. Camara called a meeting for the following day with Ms. Camara, her union representative, the Director of Nursing, and the Administrator of the facility, to discuss Ms. Ways' concerns over losing her job.
- 7) The meeting was not called for disciplinary action, nor was any disciplinary action taken against Mrs. Camara.
- 8) The Employer at some subsequent point did repost the position, as demanded in the grievance, and Ms. Ways retained her position.

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. 28-7-3 (3).

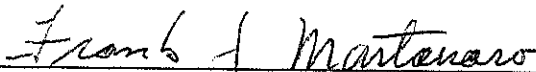
ORDER

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

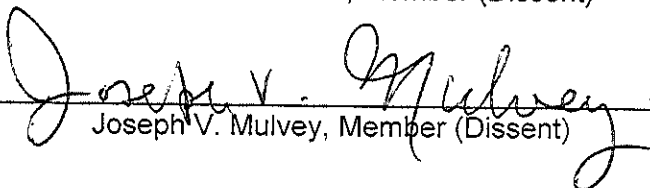
RHODE ISLAND STATE LABOR RELATIONS BOARD



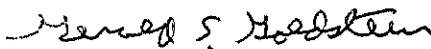
Walter J. Lanni, Chairman



Frank J. Montanaro, Member (Dissent)



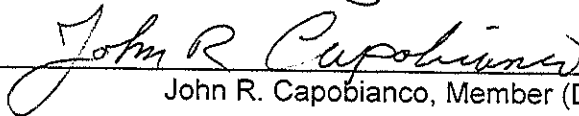
Joseph V. Mulvey, Member (Dissent)



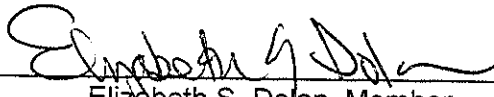
Gerald S. Goldstein, Member



Ellen L. Jordan, Member



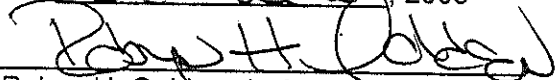
John R. Capobianco, Member (Dissent)



Elizabeth S. Dolan, Member

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

Dated: SEPTEMBER 15, 2005

By: 
Robyn H. Golden, Acting Administrator

ULP-5731

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DEPARTMENT OF HUMAN SERVICES/
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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. 5731 dated 9-15-05,
may appeal the same to the Rhode Island Superior Court by filing a complaint
within thirty (30) days after 9-15-05.

Reference is hereby made to the appellate procedures set forth in R.I.G.L.
28-7-31.

Dated: SEPTEMBER 15, 2005

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

ULP-5731