

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-
NEWPORT SCHOOL COMMITTEE

CASE NO: ULP-5769

DECISION AND ORDER

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 Newport School Committee (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated August 26, 2005, and filed on August 29, 2005, by the Teachers' Association of Newport NEARI/NEA.

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

"The bargaining unit position entitled Dean of Students at Rogers high School has been abolished by the Newport School Committee on or about July 2005. Many of the duties have been given to the Assistant Principal at Rogers High School, a non-bargaining unit position.

The School Committee abolished the Dean's position and transferred the bargaining unit duties to a non-bargaining unit employee."

Following the filing of the Charge, an informal conference was held on September 29, 2005, in accordance with R.I.G.L. 28-7-9. At the time of the informal hearing, the Union's representative asked to amend the Union's charge to include "...Many of the duties have been given to the Assistant Principal at Rogers High School, as well as the Behavioral Management Specialist, which is a non-certified position." (Amendment underlined) The Employer's representative objected to the Amendment of the Charge at the time of the informal hearing. On October 20, 2005, the Board issued its Complaint alleging: "The Employer violated RIGL 28-7-13 (6) and (10) when, without prior bargaining, it unilaterally

assigned bargaining unit work to non-bargaining unit employees.” The Employer filed an Answer on October 27, 2005. The Board heard the matter formally on January 24, 2006, and on March 28, 2006. Representatives from the Union and the Employer were present and had full opportunity to examine and cross-examine witnesses and to submit documentary evidence. Upon conclusion of the formal hearing, the parties were directed to submit written briefs. Both the Employer and the Union filed their briefs on May 10, 2006. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony, evidence, oral arguments, and written briefs submitted by the parties.

FACTUAL SUMMARY

Prior to September 2005, Rogers High School was historically staffed with two positions entitled “Dean of Students.” These two (2) Deans were responsible for the administration of student discipline for grades 9-12, with each Dean taking two (2) of the grades. In June 2005, one of the Deans retired, resulting in a vacancy. On June 22, 2005, the Newport School Committee posted the vacant Dean’s position. On or about July 8, 2005, the School Committee hired a new Superintendent who shortly, thereafter recommended to the School Committee that it not fill the vacant Dean’s position. The School Committee concurred with the recommendation and they transferred the work of disciplining one (1) of the two (2) grades to the other Dean. The discipline for ninth grade students was assigned in September 2005, to Assistant Principal Mario Andrade, who continued to perform this work right through the date of the formal hearing in this matter. The school also utilizes the services of a “Behavior Management Specialist, Mr. Frank Newsome, who is employed by the Newport Child and Family Services Agency.

DISCUSSION

The Union’s position is that the responsibility for the assignment of discipline of the ninth grade students to Assistant Principal Andrade and to Behavior Management Specialist, Frank Newsome, is the assignment of bargaining unit work to non-bargaining unit personnel. The Union also argues

that the Employer abolished a bargaining unit position without negotiating and that it is the work of this abolished position that is being assigned outside the bargaining unit.

The Employer argues that the School Committee, faced with severe budgetary constraints and declining enrollment at Rogers High School, committed no unfair labor practice when it decided not to fill a vacant "Dean of Students" position. The Employer argues that all the administrative staff, as well as teachers, are responsible for the discipline of students and that therefore, this is not exclusively bargaining unit work. The Employer argues that having the Assistant Principal perform disciplinary work, is a management right to make a valid economic decision, and does not constitute an unfair labor practice.

In support of its case, the Union presented the testimony of Ms. Beryl Johnston, Dean of Students at Rogers High School, and an employee of thirty-five (35) years in the Newport School System. Ms. Johnston testified that for as long as she has been employed by the Newport School System, there have been two Deans of Students at the high school. In June 2005, Madeline Collins-Teeterman retired from her position as Dean of Students and the vacancy created by her retirement was posted on June 22, 2005. (Union Exhibit #1) As posted, the general duties of the position were described as follows:

"To assist the Principal and Assistant Principals with the overall management of student behavior, discipline, and activities in assigned grades. Duties include implementation of the school discipline code and acting as a resource person for teachers on student management issues."

The job description goes on to list eighteen (18) specific responsibilities describing in greater detail, all the disciplinary functions of the position, in addition to a few other administrative functions such as, attending after school activities, assisting in coordinating student transportation, monitoring student parking, and student absences in relation to field trips and vacations.

Ms. Johnston testified that prior to Dean Teeterman-Collins' retirement, she and Ms. Johnston each bore responsibility for the discipline of two (2) grades at the high school. Discipline could consist of meting out a punishment after receiving a report or referral by a teacher, maintaining "law and order" in the

cafeteria and hallways, monitoring and maintaining overall supervision. (TR. 1/24/06 p. 16) According to Ms. Johnston's testimony, prior to Dean Collins-Teeterman's retirement, Mr. Andrade's involvement in student discipline was significantly less than during the 2005-2006 school year. Although Mr. Andrade would bring in a referral or mete out a discipline, either Dean Johnston or Dean Collins-Teeterman would see that it was carried out. (TR. 1/24/06 pgs. 25-26) After Dean Collins-Teeterman's retirement, Mr. Andrade took over the majority of the disciplinary duties for the ninth grade.¹ Dean Johnston also testified that Mr. Newsome has been active in the disciplining of many of the younger students, even though his name does not appear on the disciplinary reports. (TR. 1/24/06 pgs. 26-27) She also testified that although Mr. Newsome had actually signed some of the referrals earlier in the school year, he has stopped doing so. (TR. 1/24/06 p. 28) Dean Johnston testified that prior to the 2005-2006 school year, Mr. Newsom would make recommendations for discipline, but during the 2005-2006 school year, she had personally observed him meting out detentions for insubordination and disrespect. (TR. 1/24/06 p. 34) She indicated that on several occasions, even through the date of the hearing, students will report having been sent to Dean's detention by Mr. Newsome. (TR. 1/24/06 p. 35) On cross-examination, she stated that although Mr. Newsome had occasionally issued discipline when there were two (2) Deans, his role increased at the beginning of the 2005-2006 school year, and then decreased to approximately the same level as when there were two (2) Deans.

The Union also called Mario Andrade as an adverse witness in its case-in-chief. Mr. Andrade serves as the Assistant Principal of Rogers High School and has been employed as such since July 2004. The general duties of the position of Assistant Principal are set forth in the job description as: "To assist the principal in providing high quality administration and leadership at Rogers High School." (Union Exhibit #5) The description also lists twenty-three (23) specific responsibilities. Responsibility #16 states: "Assists in maintaining discipline

¹ Starting in September 2005, Dean Johnston took on the disciplinary responsibility for a third grade, leaving her with grades 10, 11, and 12.

throughout the student body, deal with special cases as necessary and acts as liaison between the Deans and the principal.”

Mr. Andrade testified that during his first year as Assistant Principal, when there were two (2) Deans, he would deal primarily with the students who were assigned to the behavior support program and the worst case offenders. (TR. 1/24/06 pgs. 49-50) The routine disciplinary matters were assigned to the Deans. Commencing with the 2005-2006 school year, Mr. Andrade took over the primary responsibility for discipline for the ninth grade students, in addition to his other duties. (TR. 1/24/06 pgs. 50-51) On cross-examination, Mr. Andrade acknowledged that this discipline would have previously been performed by a Dean. (TR. 1/24/06 p. 77) Mr. Andrade also characterized Mr. Newsome’s involvement with the students as “dealing with managing their behavior” and not meting out discipline. (TR. 1/24/06 p. 68)

However, when Mr. Newsome testified on direct examination, he candidly admitted that he had meted out discipline directly to some students in the 2005-2006 school year. (TR. 3/28/06 p. 91-92) Mr. Newsome agreed that he had sent some students to Dean’s detention. (TR. 3/28/06 p. 93) He further testified that he had also signed referral slips at the beginning of the 2005-06 school year, but that he stopped when so advised by either Mr. Andrade or Ms. DiCenso (Principal) in either late September or early October of 2005.

In reviewing this matter, the Board members have struggled a bit over whether the discipline of students is considered as exclusive bargaining unit work, or whether this work is also non-bargaining unit work, as it pertains to the Assistant Principal. The Employer raises these issues, in essence, as its primary defense, querying, “is there a magic level at which the performance of those duties becomes a violation of law?” Before reaching that thornier question, we turn to the much clearer and easier question of whether or not the Employer violated the law when it permitted a behavior management specialist, employed by a third party, to issue discipline to students? We answer this question in the affirmative. The Employer did not submit any job specifications for the title of Behavior Management Specialist, probably because the position is not one that

is maintained by the employer. The testimony of the Employer's witnesses was illuminating on this point. The Assistant Principal testified that Mr. Newsome's role is to "manage behaviors" and that he does not issue discipline. However, Mr. Newsome readily and candidly admitted that he has and does issue discipline to students, although he insists that now he must get an approval from either Dean Johnston or Assistant Principal Andrade. Yet, Dean Johnston stated, without rebuttal, that students have reported to her at detention, stating that Mr. Newsome had sent them. The Employer suggests in its written brief to the Board that if Mr. Newsome had issued discipline, that practice ended in the fall of 2005. The Board is not persuaded by that argument, in light of Dean Johnston's testimony. Therefore, the Board finds that the issuance of discipline by Mr. Newsome to students at Roger High School is a violation against the prohibition of assigning bargaining unit work to non-bargaining unit personnel, without prior bargaining, in violation of R.I.G.L. 28-7-13 (6) and (10).

As for the Assistant Principal's issuance of discipline, the Board recognizes and understands that all the administrative and teaching staff has some role in the disciplinary process and that to some extent, the administration of discipline constitutes both bargaining unit and non-bargaining unit work. The question is, at what point does the disciplinary process necessarily require the involvement of the Assistant Principal and thus cease to be bargaining unit work. A majority of the Board believes the answer to this question is found within the job descriptions for Dean of Students (Union Exhibit #1) and Assistant Principal (Union Exhibit #5) and in the testimony of Dean Johnston who testified as to the thirty-five (35) year history of this issue at Rogers High School.

In reviewing the job descriptions, it becomes exceedingly clear that the Dean of Students is in essence the front-line, primary disciplinarian of the school. This position's disciplinary responsibilities include the obligations to:

- 1) Advise and administer discipline to all students who are referred/assigned to the Dean.
- 2) Consistently enforce school rules and regulations with respect to the student handbook, federal and state laws and regulations, and student rights, including regulations under the IDEA involving discipline for students with special needs.

- 3) Monitor daily attendance and dismissal of students, making necessary telephone calls, meeting with parents, referring truancy cases to proper authorities, and taking necessary steps to reduce absenteeism rates.
- 4) Establish and maintain a quarterly recognition program.
- 5) Compile, maintain, and analyze student discipline information via the student information management system and participate in manifestation determination meetings as part of the IEP team.
- 6) Keep accurate documentation regarding all students who are referred to the Dean or who have attendance or tardiness problems.
- 7) Refer all serious disciplinary and attendance problems, in writing, to the principal and/or designee.
- 8) Assign students to and conduct detention.
- 9) Coordinate behavior management efforts with Student Activity Center counselor, and, where appropriate, identify available resources and make appropriate referrals.
- 10) Keep informed relative to effective disciplinary programs and practices through research, literature, courses, and workshops, providing teachers with assistance, information, and in-service training on effective student management techniques.
- 11) Assist in coordinating student transportation and enforce bus discipline.
- 12) Assist the principal in revising the student/parent handbook and recommend revisions in school disciplinary guidelines and procedures.
- 13) Monitor student absences related to filed trips, vacations, co-curricular activities, and alert administration and/or guidance about excessive absenteeism.

There are a few other items on the job description pertaining to student parking and fire drills, but it is abundantly clear that the Dean of Students is the school disciplinarian. This job description provides sufficient direction and insight as to the interaction of the Dean and Assistant Principal for disciplinary issues. The Dean is required to "refer all serious disciplinary and attendance problems to the Principal or designee." How can the Dean do this for ninth graders when the Assistant Principal has taken over as the chief disciplinarian for those students? The only interaction that the Dean now has is when she occasionally fills in for Mr. Andrade. There can be no question then that the Assistant Principal is doing the work of the Dean.

The Assistant Principal's job description makes it very clear that this position assumes a policy and oversight role in disciplinary matters and that the position is intended to function as a liaison between the Dean of Students and the Principal. Of the twenty-three (23) specific items of responsibility set forth on this job description, only two of them mention discipline in any way, numbers (3) and (16) which are:

(3) Reviews and recommends revisions for secondary school disciplinary guidelines.

(16) Assists in maintaining discipline throughout the student body, deals with special cases as necessary, and acts as liaison between the Deans and the principal.

In addition to the job descriptions, which detail quite clearly the distinctive role of the Assistant Principal as the disciplinarian for the "repeat" or "serious" offenders, the Board heard the testimony of Dean Johnston, who stated, without any rebuttal, that for the thirty-five (35) years that she has been associated with the Newport School System, there have been two (2) Deans of Students. The Employer argued that a declining student population, coupled with budgetary problems, necessitated the reduction of positions and that the appropriate time to eliminate the position was when Ms. Collins-Teeterman retired. This Board does not get to second guess the wisdom or appropriateness of the Employer's management decision to not fill a vacancy, but we do weigh in on the impact to bargaining unit members. In this case, the facts and documentary evidence establish that the primary responsibility of discipline for students at the High School has been and is vested with the Dean of Students. The frontline discipline of students is primarily a bargaining unit function. This is not to say that the Principal or Assistant Principal could not discipline a student on the spot when observing poor behavior or violation of school rules. Some level of common sense is easily employed in this situation. However, the referral of routine student discipline to the Assistant Principal in the first instance, other than to the Dean of Students, without prior bargaining, constitutes the assignment of bargaining unit work to non-bargaining unit personnel, in violation of R.I.G.L. 28-7-13 (6) and (10).

FINDINGS OF FACT

- 1) The Newport School Committee 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) Prior to September 2005, Rogers High School was historically staffed with two (2) positions entitled “Dean of Students.” These two (2) Deans were responsible for the administration of student discipline for grades 9-12, with each Dean taking two (2) of the grades.
- 4) In June 2005, one of the Deans retired, resulting in a vacancy. On June 22, 2005, the Newport School Committee posted the vacant Dean’s position. On or about July 8, 2005, the School Committee hired a new Superintendent who shortly thereafter, recommended to the School Committee that it not fill the vacant Dean’s position. The School Committee concurred with the recommendation and transferred the work of disciplining one (1) of the two (2) grades to the other Dean. The discipline for ninth grade students was assigned in September 2005 to Assistant Principal Mario Andrade, who continued to perform this work right through the date of the formal hearing in this matter.
- 5) The job description for the Dean of Students contains more than a dozen references to disciplinary functions.
- 6) The position of Dean of Students is the primary disciplinarian for Rogers High School.
- 7) Frank Newsome is employed as Behavior Management Specialist, by Child and Family Services, and works in the Rogers High School. In the course of his work, Mr. Newsome has meted out discipline to students and signed referral slips.
- 8) The primary responsibility for the discipline of ninth grade students was assigned to the Assistant Principal in September 2005. Prior to this year, the Dean of Students handled the ninth grade discipline.

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) when it assigned bargaining unit work to non-bargaining unit personnel by permitting the Behavior Management Specialist to mete out discipline to students at Rogers High School.
- 2) 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) when it assigned bargaining unit work to non-bargaining unit personnel by assigning the primary role of discipline of ninth grade students to the Assistant Principal and not the Dean of Students.

ORDER

- 1) The Employer is ordered to cease and desist from permitting the Behavior Management Specialist to mete out discipline to students at Rogers High School.
- 2) The Employer is ordered to cease and desist from having the Assistant Principal perform the primary role of discipline of the ninth grade students.
- 3) The Employer is ordered to transfer the primary role of discipline, of ninth grade students, back to bargaining unit personnel.

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NEWPORT SCHOOL COMMITTEE

CASE NO: ULP-5769

**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. 5769 dated 3-26-07, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after 3-26-07.

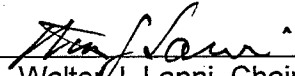
Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-29.

Dated: MARCH 26, 2007

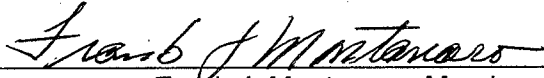
By: Robyn H. Golden
Robyn H. Golden, Administrator

ULP- 5769

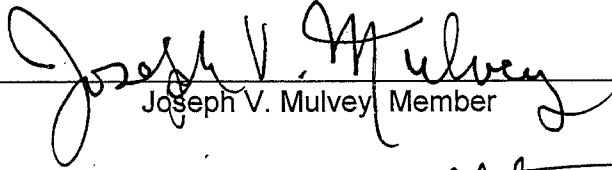
RHODE ISLAND STATE LABOR RELATIONS BOARD



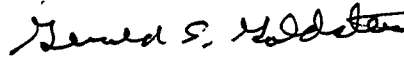
Walter J. Lanni, Chairman



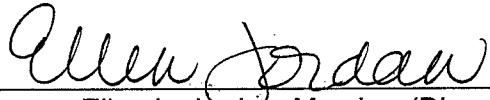
Frank J. Montanaro, Member



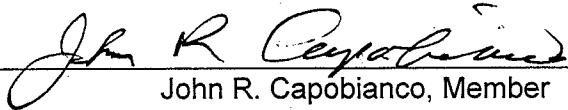
Joseph V. Mulvey, Member



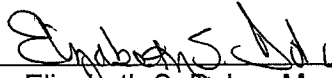
Gerald S. Goldstein, Member (Dissent)



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: MARCH 26, 2007

By: 
Robyn H. Golden, Administrator

ULP-5769