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- CITY OF WARWICK WARWICK PUBLIC LIBRARY	CASE NO: ULP-5777

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 City of Warwick, Warwick Public Library (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated November 1, 2005 and filed on November 3, 2005, by the RI Federation of Teachers and Health Professionals, AFT, AFL-CIO

The Charge alleged violations of R.I.G.L. 28-7-13 (3), (5), (6), and (10) as follows:

> "Between July and September of 2005, the Employer reneged on a card check agreement, and an agreement on the composition of the bargaining unit. The Employer threatened employees with retaliation for protected Union activity, and made promises to employees for withdrawal of their support for the Union organizing effort."

Following the filing of the Charge, an informal conference was held on December 2, 2005, in accordance with R.I.G.L. 28-7-9. On December 14, 2005, the Board issued its Complaint alleging:

> "3. The Employer violated R.I.G.L. 28-7-13 (6) and (10) when, between July and September of 2005, the Employer reneged on a card check agreement. "
>
> "4. The Employer violated R.I.G.L. 28-7-13 (3), (5) and (10) when it threatened employees with retaliation for protected Union activity, and made promises to employees for withdrawal of their support for the Union organizing effort."

The Employer filed an Answer to the Complaint on December 19, 2005. The Board heard the matter formally on February 7, 2006 and on May 23, 2006.

Representatives from the Union and the Employer were present and had full opportunity to examine and cross-examine witnesses, as well as 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 July 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

The dispute in this matter arose within the scope of an organizing effort by the Union seeking to represent the librarians at the Warwick Public Library during the spring and summer of 2006. On March 23, 2006, the Union wrote to the Employer as follows:

> "This is to inform you that an overwhelming majority of librarians at the Warwick Public Library have designated the Rhode Island Federation of Teachers and Health Professionals (RIFTHP) as their exclusive representative for the purpose of collective bargaining in respect to rates of pay, wages, hours, and other terms and conditions of employment. We therefore ask that the Library voluntarily consent to recognize the RIFTHP as the collective bargaining representative of librarians at the library, and to join the RIFTHP in requesting the Rhode Island State Labor Relations Board to certify the RIFTHP as the librarians' exclusive bargaining agent. The proposed bargaining unit consists of all full-time librarians. We stand ready to demonstrate our majority status by submitting signed authorization cards to a mutually selected impartial person. We would appreciate a prompt reply." (Union Exhibit #1) "

In the middle of April 2005, the Union contacted the Library Director to see if he had received the Union's March 23rd correspondence. The Director, Mr. Pearce, referred the Union to the City Solicitor who in turn referred the Union to the Assistant City Solicitor, Ms. Diana Pearson. On May 5, 2005, the Attorney Pearson wrote to Michael Mullane, Field Representative for the Union, as follows:

> "Please be advised that I am in receipt of your correspondence to the Warwick Public Library of 3/23/05, regarding the librarian's (sic) request that RIFTHP be there (sic) exclusive representative for collective bargaining. The City Solicitor, John Earle, has requested that I handle this matter on behalf of the City. As such, I would ask that you contact me at your convenience so that we may discuss an impartial person to review the signed authorization cards, and any other matters you wish to discuss. I look forward to hearing from you."

The Union responded to Ms. Pearson and the parties agreed to have Mr. John Venditto serve as the neutral third party to verify the signed authorization cards. The cards stated:

> "I hereby join with my co-workers at the Warwick Public Library in organizing a Union to better our working conditions and to improve our economic standing. I voluntarily designate the Rhode Island Federation of Teachers and Health Professionals, AFT, AFL-CIO to be my exclusive representative in collective bargaining over wages, hours, and other conditions of employment."

On June 1, 2005, the signed authorization cards were verified by a neutral third party, Mr. John Venditto, mutually selected by the Union and Employer, and in the presence of representatives of both the Employer and Union. Upon conclusion of the verification process, Mr. Venditto signed the following signed statement which was in Mr. Mullane's handwriting (prepared in the presence of Attorney Pearson, Mr. Venditto, and Mr. Pearce):

"On June 1, 2005, I, John Venditto, the duly accepted neutral, did verify the employees' signed authorization cards designating the Rhode Island Federation of Teachers and Professionals as their exclusive representative in collective bargaining over wages, hours, and other conditions of employment."

Thereafter, Mr. Mullane requested through Attorney Pearson, that the Library Board of Trustees sign a letter consenting to submit the recognition to the Labor Board for *certification*. On or about June 22, 2005, the Library Board of Trustees met and decided to merely acknowledge the verification of signatures. The Board of Trustees issued a letter to Attorney Pearson on or about July 8, 2005 which stated:

> "The Board of Trustees of the Warwick Public Library acknowledges that on June 1, 2005, signatures regarding a showing on interest were verified by duly accepted neutral party, John Venditto, Arbitrator."

On July 19, 2005, the Union filed a petition for election. On August 15, 2005, an informal hearing was held by the Labor Board's Administrator, at which time the Employer objected to the inclusion of the positions within the proposed bargaining unit. That same day, after the informal hearing had been concluded, the Employer met with the Union President and offered to change the librarians' classification to "classified exempt" (which provides more job security to the

employees) and an annual sick leave cash-in benefit. Mr. Mullane, the Union representative, was not invited to, nor apprised of, this meeting between the Employer and the Union President. On August 30, 2005, the librarians met with the Employer's representatives to review the ramifications of changing their classification status. On September 8, 2005, the librarians voted to accept the classification change and decided not to proceed with Unionization efforts. Consequently, on September 30, 2005, the Union withdrew its election petition.

POSITION OF THE PARTIES

In this case, the Union argues that the Employer and Union had agreed on both a bargaining unit and a method for determining majority status, via card check, by a mutually agreeable neutral party, and that the Employer ultimately reneged on this card check agreement, in violation of law. The Union argues that its letter dated March 23, 2005 makes it absolutely clear that the purpose of the card check was not merely that there was a showing of interest by employees for unionization (described as a "soft card" check), but that a majority of the employees, had in fact designated the Union as its exclusive representative (a "hard card" check). Thus, in agreeing to the card check to begin with, the Union argues that the Employer, since it did not object to the composition of the bargaining unit or the card check itself, had in fact agreed to the results which flow from the card check, i.e., voluntary recognition. The Union argues that after the card check had been performed, the Employer conducted an illegal campaign to threaten, coerce and intimidate employees, and then made changes to their working conditions in violation of the exclusivity granted to the Union by the results of the card check.

The City argues that it never agreed to voluntary recognition, either implicitly or explicitly. The City also argues that the law requires more than a mere acknowledgment of signatures to engage in voluntary recognition and that the Employer and Union must voluntarily agree on mutually acceptable and permissible means to establish Union majority status if there is not an election, since an election is the preferred method. The City argues that any "allegation of

reneging" on a card check is irrelevant, because more was required of the Employer to establish voluntary recognition of the Union.

In regard to the retaliation allegation, the City argues that there is absolutely no evidence of threats or harassing communications, nor was there any retaliatory steps taken against any employees. Finally, the City argues that the Union's request for a bargaining order is not permissible, because bargaining only comes after a Union is certified to represent employees and the Union in this case has withdrawn the election petition.

DISCUSSION

This case presents the issue of whether the Employer engaged in a "voluntary recognition" of the Union through a card check and, if so, whether the Employer subsequently wrongfully revoked its recognition in violation of law. The Board does not recall any cases in recent years that have dealt with the issue of "card checks" and its effect on the recognition process. Thus, this case presents an opportunity to spend some time on the issue.

Collective bargaining representative status, can be accomplished either through Board-certified elections or by other Acts which constitute either involuntary or voluntary recognition by Employers.[1] Under federal law, an Employer should not be found guilty of an unfair labor practice solely upon the basis of its refusal to accept evidence of majority status, other than the results of a Board conducted election. Linden Lumber Div., Summers & Co., v NLRB, 419 U.S. 301 (1973). [2] An Employer generally has the right to a Board election to *determine majority status* and absent a clear agreement to forego that right, an Employer does not commit an unfair labor practice by insisting upon an election. Jefferson Smurfit Corporation, 331 NLRB 80 (2000).

It is well-settled under federal law that a Union's majority status, in a voluntary recognition situation, may be established by authorization cards which have been signed by employees and examined by either the Employer or a third

[1] Although it may be preferable for parties to avail themselves of the election process right from the beginning of an organizational effort, the parties are not required to do so. The parties can certainly agree to less than an election to establish majority status and forego the benefits of certification.

[2] But see, footnote 10 of the majority opinion, where the Supreme Court distinguished the facts in Linden from those in Snow & Sons, 1354 NLRB 709 (1961) enf'd 308 F.2d 687 (1962)

party. Jerr-Dann Corp., 237 NLRB 302 (1978), enforced 601 F.2d.575, (3d. Cir. 1979). In order to be counted in support of the Union's majority status, the card must clearly designate the Union as the exclusive bargaining representative of the employee, and not just indicate that the employee is interested in an election. Authentication of signatures may happen in a variety of ways, but is most often accomplished by a comparison of the cards to known signatures of the employees.

An Employer may be found to have committed an unfair labor practice when it first agrees to a card check to determine majority status and then continues to refuse to recognize the Union or bargain with it. Snow & Sons, 1354 NLRB 709 (1961) enf'd 308 F.2d 687 (1962). In Snow, after first doubting the Union's majority status, the Employer agreed to a card check, with a local minister serving as the neutral. After the card check revealed a majority status for the Union, the Employer, although not questioning the accuracy of the results or the propriety of the card check, continued to refuse to recognize the Union. The NLRB found that there was no reason to invalidate the card check and found that the Employer had no reasonable doubt as to the Union's majority status. Thus, the Board held that where an Employer holds no reasonable doubt, either with respect to the appropriateness of the proposed unit or the Union's representative status, and then seeks a board-directed election without valid grounds, results in the Employer refusing to bargain in good faith, in violation of law. Once an Employer recognizes the Union, no matter how informally, the Employer is bound by its recognition and may no longer seek an election. NLRB v Lyon Ryan Ford, 647 F2d 745, 750 (7th Cir.), cert denied, 454 U.S. 894 (1981).

In this case, the Employer argues that although the Union asked the City to voluntarily consent to it being recognized as the bargaining agent, no such consent was ever given by the City. The Employer admits that it did agree to have the signatures verified, but that the City did not subsequently agree to join the Union in requesting the Board to certify the bargaining unit. The City argues that its' "specific actions and definite inactions to requests by RIFTHP clearly indicate that the City did not voluntarily agree to recognize the agent." The

Employer also argues that the law requires "more than card review to establish voluntary recognition." In support of its argument, the City cites Jefferson Smurfit Corp., 333 NLRB 809 (2000), arguing that the law requires more than card review to establish voluntary recognition and that the Employer and Union must voluntarily agree on mutually acceptable and legally permissible means to establish Union majority status. In that case, the Union submitted a letter to the Employer indicating that if the Employer had any doubt as to the Union's majority status, the Union was prepared to submit the cards "now" for the Employer's inspection. The Union repeated the offer orally at a meeting the same day. The Employer read the letter, examined the cards and made copies of them, and told the Union that he would consult with Legal Counsel. Later that day, the Employer refused to recognize the Union for the requested unit. In finding that the Employer had not committed an unfair labor practice, the NLRB held that an Employer has no obligation to accept a card count as a proof of majority status, absent a clear agreement to do so. Id at 809.

In this case, there can be no question that the cards presented by the Union and signed by the employees, clearly designate the Union as the employees' exclusive bargaining representative and make no mention of seeking an election to prove majority status. Indeed, the Union's transmittal letter indicates that it was offering to submit the authorization cards to a third party to "demonstrate our majority status." Upon receipt of the Union's notification of alleged majority status, offer to prove majority status and request for further action, the Employer took its time in providing an answer to the Union. However, in early May 2005, the Employer, though its Attorney, finally responded and accepted the Union's offer of a card check and asked the Union to be in contact to "discuss an impartial person to review the signed authorization cards" and any other matters the Union wished to discuss. It is critical to note that the Employer's response does not challenge the authenticity of the cards, the meaning or purpose of the cards, nor does it issue any challenge to the composition of the proposed bargaining unit. If the Employer had any objections to establishing the Union's majority status via a card check instead of going to a Board election, this

would have been the time to raise those issues. Instead, the card check was performed by a mutually acceptable, third-party neutral, on June 1, 2005 and no challenges were issued by the Employer as to the propriety of the check or the results flowing therefrom.

Thereafter, the Union continued to request the Employer to submit a letter acknowledging this voluntary recognition so that this Board could issue its certification. The Employer took this request as an invitation to have a second bite at the apple and refused to submit the kind of letter sought by the Union. Instead, the Employer submitted a letter which attempted to convert majority status which had been proven by the Union on June 1, 2005, into a "showing of interest." This letter completely ignores the fact that the authorization cards, which had been verified by a mutually-selected third party, clearly designated the Union as the employees' collective bargaining representative. The term "showing of interest" is a term of art and is reserved for situations where majority status has not already been proven.

The Employer apparently wholly fails to understand that the purpose of the card check, in this case, was clearly and unequivocally offered as a means to establish proof of majority status and that the Employer clearly and unequivocally accepted and participated in this method of establishing majority status. Once this was accomplished, the Union was established as the bargaining agent for the employees. Thus, the Employer, in agreeing to a card check to prove majority status, engaged in voluntary recognition and waived its right to have an election to prove the Union's majority status. The Union, having offered to prove its majority status and having done so, without objection, was therefore, voluntarily recognized by the Employer as the exclusive bargaining agent for these employees. The Employer's blatant attempt to simply ignore the results of the card check, which proved the Union's majority status is simply inexcusable bad faith dealing, violates R.I.G.L. 28-7-13 (10).[3]

[3] The Board notes, however, that the Union's failure to immediately insist upon negotiations once the card check had determined its majority status, provided an opportunity for the Employer to foot-drag and to undermine the employees' perceived necessity for representation in the first place. Had the Union immediately filed an Unfair Labor Practice Charge when faced with the Employer's apparent disregard for its majority status, the Board could have prevented the Employer's direct dealing which ultimately undermined the employees' "need" for representation.

The second issue to be determined in this case is whether the Employer threatened employees with retaliation for protected Union activity, and made promises to employees for withdrawal of their support for the Union organizing effort. The Union presented the testimony of Douglas A. Pearce, the Library Director. He testified that after the informal hearing, he had direct meetings with Niles Madsen, the Union President in which "attempted to explain to them" what had been explained to him as to the "likely posture of the city with regard to the newly formed bargaining unit. (TR. 2/7/06 pgs. 17-18) Mr. Pearce told the Union that "everything would be on the table", and that since there was no prior contract, every condition of employment and benefits would be subject to negotiation. (TR. 2/7/06 p. 18) Mr. Pearce also told Mr. Madsen that the librarians could stand to lose their pensions. (TR. 2/7/06 pgs.18-19) Although he admitted to communicating that the employees could be worse off after Unionizing, Mr. Pearce did not recall ever stating that the City was going to play "super hard-ball." Mr. Pearce did acknowledge that he was conveying the message that he had been instructed to convey by "City Officials." (TR. 2/7/06 p. 25) Mr. Pearce also acknowledged that he transmitted an offer to the librarians that they consider exploring the possibility of changing their employment status with the city from unclassified to classified, thus, providing a greater level of employment security. (TR. 2/7/06 pgs. 25-26) He stated however, that this offer was never a "quid pro quo' that would require the librarians to drop their Unionization efforts. (TR. 2/7/06 p. 26)

On cross examination, Mr. Pearce stated that he believed the discussions concerning the librarians' benefits and classification status among "city officials"[4] took place after the authorization cards were verified by Mr. Venditto. (TR. 2/7/06 p. 33) Mr. Pearce also stated that Attorney Pearson and Mr. Oscar Shelton (the City's Personnel Director) met with the librarians after the August 15th informal hearing. (TR. 2/7/06 p. 45)

Under most other circumstances, the Board would have ordered negotiations, or even a bargaining order, as part of its remedy for the Employer's violation. However, in this case, it is clear that such an order would be futile in that the Union has now lost the employees' support and has withdrawn the representation petition.

[4] Mayor Avedesian, Attorney Diana Pearce, Ms. Drought and Mr. Perrone.

The Union also presented the testimony of Niles Madsen, the former Union President, who testified pursuant to a witness subpoena. Although Mr. Madsen did not recall the words "super hardball" being used by Mr. Pearce in discussions held by City officials and librarians, he did recall that the crossing guard contract was used as an example of what might happen to the librarians in a Union negotiated contract. (TR. 2/7/06 p. 55) Mr. Madsen reported this information to the Union membership and indicated that this was "bad news", but denied that the City officials leveled any threats. (TR. 2/7/06 p. 56) To the contrary, Mr. Madsen testified that he inquired of Mr. Pearce as to whether there would be any retaliation against the librarians for their organizing efforts and that Mr. Pearce assured him there would not be. (TR. 2/7/06 p. 56) Mr. Madsen specifically testified that there was never any threat of job security, loss of jobs, or being retaliated against in their jobs. (TR. 2/7/06 p. 56) After his meeting with Mr. Pearce, Mr. Madsen encouraged the other librarians to abandon their quest for a Union and he resigned as President of the local. (TR. 2/7/06 p. 59) Finally, in early September, the librarians, after meeting with City officials, voted to accept the City's offer to change their classification status.

The complaint in this case charges the Employer with threatening employees with retaliation for protected Union activity, and making promises to employees for withdrawal of their support for the Union organizing effort. Although there can be no question that the Employer changed the librarians' classification status and provided them with a sick leave benefit that they have not previously enjoyed, the testimony did not reveal any instances of retaliatory conduct against employees as alleged. Therefore, the Board finds that this particular charge must be dismissed.

FINDINGS OF FACT

1) The Warwick Public Library 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 March 23, 2006, the Union wrote to the Employer informing it that an overwhelming majority of the librarians had designated the Union as their exclusive representative for the purpose of collective bargaining in respect to rates of pay, wages, hours, and other terms and conditions of employment and offering to prove the Union's majority status via a card check.

4) On May 5, 2005, the Employer responded in writing to the Union's inquiry, and accepted the Union's offer to prove its majority status via card check, and asked the Union to make contact to discuss an impartial person to review the signed authorization cards.

5) On June 1, 2005, the authorization cards were verified by a neutral third party mutually selected by the Union and Employer and in the presence of representatives from both the Employer and Union.

6) On July 8, 2005, the Employer acknowledged, in writing, that the signatures on the cards had been verified by a duly accepted neutral third party.

7) On July 19, 2005, the Union filed a petition for election.

8) On August 15, 2005, an informal hearing was held by the Board's Administrator, at which time the Employer objected to the inclusion of three (3) positions within the proposed bargaining unit. That same day, after the informal hearing had been concluded, the Employer met with the Union President and offered to change the librarians' classification to "classified exempt" (which provides more job security to the employees) and an annual sick leave cash-in benefit.

9) On August 30, 2005, the librarians met with the Employer's representatives to review the ramifications of changing their classification status.

10) On September 8, 2005, the librarians voted to accept the classification change and decided not to proceed with Unionization efforts.

11) On September 30, 2005, the Union withdrew its election petition.

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 (3), (5), (6), and (10).

ORDER

1) The Employer is hereby ordered to post a copy of this decision and order on all employee bulletin boards for a period not less than ninety days. The decision shall be posted within three business days of receipt thereof.
2) The Employer is also ordered to supply a copy of this decision to each of its employees, to be delivered with their next paychecks.
3) The Employer is ordered to cease and desist from refusing to recognize exclusive bargaining agents after agreeing to card checks to determine majority status.

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- CITY OF WARWICK WARWICK PUBLIC LIBRARY	CASE NO: ULP-5777

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. 5777 dated 1-12-07, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after 1-12-07.

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

Dated: JANUARY 12, 2007

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

ULP- 5777

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: JANUARY 12, 2007

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

ULP-5777