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- GREENVILLE WATER DISTRICT	CASE NO: ULP- 5804

DECISION AND ORDER

TRAVEL OF CASE

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board"), on an Unfair Labor Charge (hereinafter "Charge"), dated June 9, 2006, and filed on June 12, 2006, by Teamsters Local Union No. 251 (hereinafter "Union").

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

> "On or about April 24, 2006, the Union and Employer reached agreement on all material terms of a successor collective bargaining agreement. Since on or about April 24, 2006, employer has failed and refused to execute or otherwise become bound by the terms of the successor agreement. By the foregoing, Employer has failed to bargain in good faith."

Following the filing of the Charge, an informal conference was held on July 6, 2006, between representatives of the Union and Employer and an Agent of the Board. The informal conference failed to resolve the Charge and the Board issued its Complaint on September 8, 2006, alleging:

> "The Employer violated R.I.G.L. 28-7-13 (6) and (10) when the Employer failed and refused to execute a negotiated Collective Bargaining Agreement and, thereby, failed to bargain in good faith."

The Employer filed its Answer to the Complaint on September 18, 2006. A formal hearing on this matter was originally scheduled for October 3, 2006, but was continued to October 12, 2006 at the request of the Union. Upon conclusion of the hearing, the parties argued orally and no written briefs were required by the Board.

SUMMARY OF FACTS

The facts in this case are not in dispute. The Union has been the certified bargaining representative for three (3) Greenville Water District employees since approximately 1981. (Union Exhibit # 1 - Certification Case No. 3287) It is agreed by the Union and Employer that throughout that time frame, the parties have enjoyed good and peaceful labor relations. (TR. pgs. 3-4) In early 2006, the parties began negotiations for a successor collective bargaining agreement for the agreement that was set to expire on March 31, 2006. The Union submitted its written proposal to the Employer on February 17, 2006. (Union Exhibit #3; TR. pgs 8-9) The Union had proposed a five percent (5%) increase in wages and no co-share for health insurance premium. On February 24, 2006, the Employer responded in writing to the Union, rejecting the bulk of the Union's proposals and submitted several counterproposals to the Union for its consideration. (Union Exhibit # 4) This communication was accompanied by a letter from the Employer's attorney and designated negotiator. The letter stated, "I am writing to you on behalf of the Greenville Water District with our counterproposal. Please examine these proposals and we will meet with regard to further negotiation when I return after March 20, 2006." The key issues on which the parties did not agree were not surprisingly, wages and health insurance premium cost sharing. The Employer's counterproposal offered two and one half percent (2.5%) wage increases per year for the two technical employees and a designated dollar increase for the executive secretary/clerk typist. The Employer was also seeking a ten percent (10%) premium co-share for the health insurance.[1] After receiving the Employer's counterproposal, the Union's representative called the Employer and stated that he believed the proposal would be unacceptable to the employees because of the health insurance premium co-pay. The Union members, subsequently, voted to reject the proposals and the rejection was verbally communicated to the Employer's representative.

Thereafter, on April 18, 2006, the Employer submitted a second written counterproposal to the Union, together with a cover letter discussing the attached proposal. (Union Exhibit # 5) This proposal changed from the Employer's first proposal

only in regards to the health insurance co-pays. This proposal sought contribution towards the cost of health insurance as follows:

(1) Commencing in 2006, two (2%) percent of the rate increase;

(2) Commencing in 2007, three (3%) percent of the rate increase;

(3) Commencing in 2008, four (4%) percent of the rate increase.

After receiving the Employer's offer, the Union submitted it to the Union membership which approved and accepted the offer. The Union's representative called the Employer's representative to accept the offer. In that conversation, after accepting the contract, the Union representative inquired about the possibility of the employees keeping the "boot money" which was slated to be eliminated under the accepted contract. (TR. p. 14, lines 18-22 and p. 22, lines 16-20)

April 26, 2006, the Employer's representative wrote to the Union and stated:

> "When the Union did not accept the package as proposed in its entirety, the offer was withdrawn. I must now sit down with the Personnel Committee to discuss a new offer to the Union. Let's hope that we will be able to conclude this session of negotiations quickly."

On May 4, 2006, the Union wrote back as follows:

> "In response to your letter dated April 26, 2006, you mentioned that your proposal given to me was rejected in its entirety. When I called you, I said 'the proposal was accepted'; however I expressed my concern that you chose not to reimburse the men their boot money by removing it from the collective bargaining agreement. I then asked you to reconsider that because of the safety and well-being of the men. The cost of the reimbursement would be a mere $200.00 a year and a total of $600.00 for the three (3) year agreement. Now, your April 26, 2006 letter informs me that your offer has been withdrawn and that your (sic) going back to the Personnel Committee to discuss a new offer to the Union. Please be advised that I am very concerned about the direction that these negotiations are going in."

The Employer responded to this letter on May 26, 2006 by writing:

> "I am responding to your letter of May 4, 2006. In that letter you acknowledge that we withdrew our offer on the telephone and confirmed it by letter dated April 26, 2006. Your offer to accept the offer was not communicated in writing until May 4, 2006. By that time the offer had been withdrawn. You and I in the past have had this understanding that our Boards respectively had to confirm our offers. In the past I have made my proposals in writing and I have only received one counterproposal from you in writing. I request that your counterproposals be in writing. I have enclosed the offer of the Board which has been authorized by them for me to offer to you the proposal which is included with this letter. If you have a counterproposal, please communicate in writing."

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[1] The proposal also sought the elimination of a $100.00 contribution towards the purchase of work boots and a gift certificate for a Thanksgiving turkey.

Along with this letter, the Employer forwarded its new proposal which increased the contribution sought for health insurance premium co-shares from its April 18, 2006 offer to the following:

1) Commencing in 2006, three (3%) percent of the health service cost;

2) Commencing in 2007, four (4%) percent of the health service cost;

3) Commencing in 2008, five (5%) percent of the health service cost.

POSITION OF THE PARTIES

In this case, the Union argues that the Employer has failed to bargain in good faith because it has repudiated the Union's verbal acceptance of the Employer's April 18, 2006 proposals for a successor collective bargaining agreement. The Union characterizes its additional request for the "boot money" after accepting the contract as "not an uncommon thing" to hear in negotiations. (TR. p. 25) The Union submits that there is absolutely no evidence to dispute the Union's clear acceptance of the Employer's offer. The Union seeks an order requiring the Employer to implement the contract pursuant to the terms that it offered to the Union and which the Union accepted.

The Employer admits that it has not implemented the proposals it offered on April 18, 2006 and proffers two affirmative defenses to its failure to do so: (1) The Employer argues that its offer had not been ratified by its Board of Directors and therefore, was not binding; (2) The Employer withdrew its April 18, 2006 offer prior to acceptance by the Union.

DISCUSSION

This case presents an opportunity to review the basic requirement of the duty to act in good faith when engaging in collective bargaining. We also take this opportunity to review the issue of "ratification" of a tentative agreement. The topic of "ratification" usually arises when the parties have ostensibly reached a "tentative agreement." Subsequent to the tentative agreement, one of the parties either refuses to execute a written agreement or declares that the negotiations have not yet concluded; and refuses to implement the tentative agreement on the grounds that the negotiators did not have the authority to bind its respective party or that the contract was not "ratified."

The "ratification" problem arises with both Unions and Employers. The Rhode Island Supreme Court has held that where a city charter requires council ratification of all collective bargaining agreements, efforts by the City's Mayor to require financing or funding of a bargaining agreement that has not been so ratified, must fail. Providence City Council v Cianci, 650 A.2d 499, (RI 1994). When a city ordinance requires ratification of collective bargaining agreements, a contract is not final and binding until so ratified. Rhode Island Laborer's District Council v City of Providence, 796 A.2d 443, (R.I. 2002)

In this case, although the Employer raised the issue of ratification as a defense to its failure to implement, no documentary evidence, such as a charter or ordinance, was submitted in support of this defense. The Employer seemed to argue that it was simply entitled to re-review its offer after it had been made to the Union. The Board finds no merit to this position, especially since the Water District has apparently not promulgated any ordinance or regulation to that effect. What is particularly troubling to the Board in this case is the assertion by the Employer's negotiator that the initial package that he submitted to the Union was without the authority of the Employer. (TR. p. 28)

The first offer for contract proposals was submitted in writing by the Union on February 17, 2006. The Employer responded on February 24, 2006 with a document entitled: "Greenville Water District's Proposals between Teamster's local Union 251 and Greenville Water District." The document went on to identify its contents as being the "proposed changes" for the collective bargaining agreement between the above named parties which expires on March 31, 2006. (See Union Exhibit # 4) Nowhere in that document did it indicate that the offer lacked any authority or was subject to Board ratification. Indeed, the clear indication is that this document represented the Employer's "proposed changes." When asked by Board member Capobianco what would have happened if the Union had simply accepted this first proposal, the negotiator replied that he would have had to bring it to the Employer for ratification. (TR. p. 28, lines 15-20) A written offer was transmitted to the Union, with a cover letter from the Employer's attorney and negotiator which described the document as "our counterproposal." To later disavow authority to make such a counterproposal, without

any prior indication to the Union that the "counterproposal" was "conditional", "tentative", or "qualified" in any manner, or not authorized by the Employer, is to this Board, indefensible. In this Board's considered opinion, a fundamental element of the duty of good faith is to act and commensurate with known or disclosed authority for negotiations. In the event that authority is not present for making offers, the same should be communicated in no uncertain terms to the other party. Therefore, the Board finds that the Employer's conduct constitutes bad faith and consequently, a violation of R.I.G.L. 28-7-13 (6) and (10).

In addition to bad faith negotiations, the Board is also concerned with the Employer's attempt to repudiate the accepted contract. The Union representative's testimony on the issue of the boot money was contradicted. He stated that he told the Employer's representative that "we accepted the contract unanimously. There was some concern with the boot money, could you do me a favor and see if they can keep their boot money, but the contract was accepted." (TR. p. 14, lines 18-22) The Employer did not refute this statement at the hearing. Instead, the Employer took the position that since the Union did not communicate its acceptance of the counterproposal in writing prior to the Employer's April 26th written attempt to withdraw the agreement, that the Employer's "offer" (such as it was) was not seasonably accepted by the Union. If the parties had written ground rules that required all communications of offer/acceptance to be in writing, then the Employer would have been on much more solid ground with this position. However, not only were there no written grounds rules dictating such a requirement, the parties themselves had already engaged in verbal negotiations without protest. After the Employer's first counterproposal dated February 24, 2006 was rejected verbally by the Union, the Employer did not insist that the Union submit its rejection in writing. Nor did the Employer wait for any written communication prior to submitting its second written counterproposal to the Union on April 18, 2006. Therefore, the Employer's later attempt to require the Union's acceptance in writing, prior to the Employer's attempted withdrawal dated May 4, 2006, is ineffectual.

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 and protection, and as such, is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.

3) Following the filing of the Charge, an informal conference was held on July 6, 2006 between representatives of the Union and Employer and an Agent of the Board. A formal hearing was held on October 12, 2006.

4) The Union submitted its first written contract proposal to the Employer on February 17, 2006. (Union Exhibit #3) On February 24, 2006, the Employer responded in writing to the Union, rejecting the bulk of the Union's proposals and submitted several counterproposals to the Union for its consideration.

5) Neither the Employer's February 24, 2006 communication nor its enclosed "counter proposal" contained any indication of it being "tentative" or subject to later ratification.

6) The Union verbally rejected the counterproposal and the Employer submitted second counter proposal on April 18, 2006.

7) Neither the Employer's April 18, 2006 communication nor its enclosed "counter proposal" contained any indication of it being "tentative" or subject to later ratification.

8) Sometime after April 18, 2006 and prior to April 26, 2006, the Union members voted to accept the Employer's April 18, 2006 counterproposal and on April 26, 2006, the Union transmitted its acceptance verbally to the Employer's negotiator. During the telephone conversation in which the Union accepted the April 18th offer, the Union's representative did ask whether the Employer's representative would do him "a favor" and see if the "boot money", which was slated for elimination under the contract, could be saved.

9) On April 26, 2006, the Employer wrote the Union and stated that when the Union did not accept the package as proposed in its entirety, the offer was withdrawn.

10) On May 4, 2006, the Union wrote to the Employer expressing concern over the status of the negotiations.

11) On May 26, 2006, the Employer wrote to the Union and again claimed that its previous offer of April 18, 2006 had been withdrawn. The Employer also submitted a new counterproposal which was accompanied by a letter stating that the Board had in fact authorized the enclosed offer.

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 implement the counterproposal it made on April 18, 2006 and execute a written contract embodying those terms within thirty (30) days from the date of this decision and order.

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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. 5804 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- 5804

RHODE ISLAND STATE LABOR RELATIONS BOARD

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ENTERED AS AN ORDER OF THE
RHODE ISLAND STATE LABOR RELATIONS BOARD

Dated: JANUARY 12, 2007

By: _____
ROBYN H. GOLDEN, ADMINISTRATOR

ULP-5804