

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-5842
STATE OF RHODE ISLAND, DEPARTMENT :
OF LABOR AND TRAINING :

DECISION AND ORDER OF DISMISSAL

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 State of Rhode Island, Department of Labor and Training (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated and filed on March 1, 2007 by the Rhode Island Council 94, AFSCME, AFL-CIO, Local 2869, Department of Labor (hereinafter "Union").

The Charge alleged violations of R.I.G.L. 28-7-13 (1), (3), and (10) as follows:

Employee (Barbara Truver) informed and complained to Union leadership about a Non-Union employee (Vivian Alves) Operation Control Manager, performing bargaining unit work. Employee was called to a meeting on February 9, 2007 by management. No Union representatives were present. Management accused the employee of wrongdoing by complaining about issue to the Union. This constitutes interference with the administration of the Collective Bargaining agreement. Employee also has had job duties changed and her Supervisor changed and a new supervisor was appointed as a result of exercising her collective bargaining rights.

Following the filing of the Charge, an informal conference was held on April 9, 2007, with representatives of the Union and the Employer present. The Employer filed a Motion to Dismiss on April 12, 2007. On June 25, 2007, the Board issued its Complaint, alleging that the Employer violated R.I.G.L. 28-7-13 (10) when it attempted to intimidate an employee who had exercised her rights under the CBA. On June 29, 2007, the Employer filed its Answer to the Complaint. The matter was heard formally on September 27, 2007.

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.

SUMMARY of FACTS & TESTIMONY

Within the Department of Labor & Training, there exists a unit called the Elevator Unit. The personnel within this unit include: John Shaw, Administrator; Vivian Alves, Chief of Operations, Department of Labor & Training; Barbara Truver, Employment & Training Assistant-Elevator Unit; Virtus Haywood, Chief Elevator Inspector; Jim Larisa, Assistant Administrator; and Elaine Albanese. In 2004, Mr. Haywood was absent from work for several months due to illness. During his absence, the Elevator Unit needed to get all the work covered and found that there were a number of situations and procedures in the department that were antiquated and needed to be modernized. As a result of these discoveries, the unit began meeting weekly and sometimes more often to work on problems, discuss how things could be improved and what could be done to update and modernize the systems. The meetings continued through 2006 when the unit began working towards on-line services for licensing of mechanics, apprentices, and authorized inspectors.

Ms. Alves was out of work for several months in 2006 due to illness and returned to work in September. At that time, Ms. Alves and other members of the Elevator Unit began to work closely with Ms. Jeanne Palmieri, a computer programmer, with RI.gov to get the database on-line. Ms. Alves indicated that she would meet weekly with Ms. Palmieri, either in person or over the phone. During October, November, and December of 2006, Ms. Alves and the Elevator Unit were working "full-speed" to get the license renewals on-line for the upcoming summer. A determination was made that the first thing to go "on-line" would be licenses, which was Ms. Truver's area of responsibility and expertise. Ms. Alves testified that in order for her work with Ms. Palmieri to go smoothly, Ms. Alves needed to have a full understanding of the existing computer programs and database for licensing within the unit. Ms. Alves testified that in order to gain the full understanding necessary, she needed to get into the database and

undertake some of the routine tasks because there was no way of just saying "well, tell me how it's done." (TR. pg. 32) Ms. Alves testified that while conducting her research of how the systems worked, she did do some weekly billings. As a result of Ms. Alves doing some of this work, Ms Truver apparently complained to the Union that Ms. Alves was performing bargaining unit work. The Union representative brought the complaint to Ms. Kathy Serrecchia, who relayed the complaint to Ms. Alves. Ms. Alves testified that she explained to Ms. Serrecchia what she was doing, and that she was nearly finished with what she needed. Ms. Alves testified that she finished up, and then took vacation for approximately three weeks. Upon her return, she continued working towards getting the programs to go on-line.

In February 2007, Ms. Palmieri told Ms. Alves that there were a number of problems within the database, and that Ms. Palmieri did not want anyone working on the database until she had the opportunity to review and correct the problems. Ms. Alves reported this discussion to Mr. John Shaw, her Supervisor, who responded that Ms. Alves should call a meeting of the entire Elevator Unit to try to get to the bottom of some of the problems. On February 6, 2007, Ms. Alves convened just such a meeting of the personnel of the Elevator Unit to discuss problems with the elevator inspectors' licensing database. (The Union claims that this meeting was called in retaliation for Ms. Truver's complaint to the Union about Ms. Alves allegedly performing the Union work.) Ms. Alves testified that she convened the meeting to "get everybody off the system" and to see why there were certain problems with the licensing. The persons in attendance at the meeting were: Ms. Alves; John Shaw, Administrator; Barbara Truver, Employment & Training Assistant-Elevator Unit; Virtus Haywood, Chief Elevator Inspector; Jim Larisa, Assistant Administrator; and Elaine Albanese, Assistant Administrative Officer.

Ms. Truver was the primary person dealing with licensing issues and therefore, was asked about a number of licensing issues at the meeting. Ms. Alves testified that Ms. Truver was getting irritated at the questions. At one point, Ms. Truver indicated that she would have checked her computer to get the

answers to questions. Ms. Alves testified that Ms. Truver left the room with papers in her hand [to check her computer] and returned in approximately thirty (30) seconds and said in a loud voice: "I'm sick of you people" and then flung the papers she had been holding onto a nearby table. The papers then fell to the floor, and Ms. Truver retreated from the doorway. Although Ms. Truver denies having made this statement or speaking in a loud tone of voice, other witnesses [Mr. Haywood, and Mr. Larisa] testified that Ms. Truver behaved exactly as Ms. Alves had described. Ms. Truver stated that when she came back from her computer, she told the group that she was upset and that she was tired of having the burden placed on her alone. She stated that she did not yell, but did raise her voice. She also stated that she put the papers down on the table. Ms. Truver alleges that during this meeting, Mr. Shaw yelled at Ms. Alves and told her to do "Union work." Ms. Truver also claims that during the meeting, Ms. Alves raised her voice, said that things "were a mess", and made the statement that "you went to the Union" and "you didn't want me to do Union work." This testimony was not corroborated by any of the other witnesses.

DISCUSSION

The Union has charged that this meeting was a "management meeting" and that Ms. Truver was accused of wrongdoing at the meeting. The Union also claims that there were no other Union officials present at the meeting and that this amounts to interference with an employee's right to bring a matter to the Union and also an attempt to intimidate and coerce a Union member. The Union also claimed that after this meeting, Ms. Truver was punished by having her Supervisor changed and work removed from her. (These later charges seem to have been abandoned by the Union which did not mention them in its 1.5 page post hearing "brief.")

The Employer argues that the February meeting was not a management meeting, but was simply a regular staff meeting of the Elevator Unit, convened to mutually discuss the problems with getting the licensing database working correctly so that the department could get the database on-line by the June deadline. In fact, four (4) of the six (6) people present were Council 94 members,

according to the Employer. The Employer argues that the Board should not even hear this matter because the Union also filed grievances on the same set of facts and that the grievances have been denied. Therefore, in accordance with the Doctrine of Election-of-Remedies, the Board is deprived of jurisdiction to hear the Union's charge. (The Union does not respond to this charge in its brief.) The Employer also argues that the only person who acted inappropriately and unprofessionally that day was Ms. Truver. The Employer denies that there was any retaliation for Ms. Truver's earlier complaint about Ms. Alves allegedly performing Union work and that while Ms. Truver was directed to report to Mr. Larisa for one day that this was because the database was going to be "down" for the day while the programmer was working on it.

Prior to the formal hearing, the Employer filed a Motion to Dismiss based upon the Election-of-Remedies Doctrine, in that the Union had filed a grievance on the matter and was awaiting a decision. Due to the difficulty of ascertaining the validity of such a defense at the informal level, the Board denied the Employer's motion without prejudice. By the time the matter proceeded to formal hearing, a grievance decision had apparently been rendered. We say "apparently" because a copy of the grievance decision along with a companion grievance were filed as appendices to the Employer's brief. These documents were never introduced as evidence at the hearing and as such, the Board is prohibited from considering them in its deliberations. This is unfortunate because they do seem to support the Employer's defense that the within charge should be dismissed based upon the Doctrine of Election-of-Remedies. However, as an Administrative Agency, the Board cannot simply unilaterally accept evidence after a hearing on a matter.

Turning then to the merits of the case, the Board finds that the evidence in the record as a whole supports a finding that the meeting on February 6, 2007 was not a "management meeting" called for the purposes of retaliating against Ms. Truver for her complaint about Ms. Alves doing Union work. Ms. Alves, Mr. Larisa, and Mr. Haywood all testified that this was simply a staff meeting called to work on licensing and database problems within the Elevator Unit. Both Mr.

Larisa and Mr. Haywood corroborated Ms. Alves' testimony that it was Ms. Truver who lost her cool at the meeting by stating "I'm sick of you people" and by throwing papers at a table in the room. Mr. Larisa testified that the papers flew and landed right next to him and that he picked them up and put them on a table. (TR. pg. 56)

Mr. Haywood testified that after Ms. Truver threw the papers, everyone was looking at each other "like, what was that"? Mr. Haywood also indicated that the papers went "right beside Elaine Albanese's head." When asked whether the issue of the Union was brought up at the meeting, Mr. Haywood replied: "I don't think it had any relevance about this particular issue, it was more of, well, you're asking me - Vivian did say, 'you're asking me for help now when you before you did say that you didn't want me to do this.'" When questioned whether it was Vivian who brought up the Union matter - Mr. Haywood stated that he didn't recall who brought it up. Mr. Haywood agreed that essentially what was said [by Ms. Alves] was "you're overworked now, but you previously complained about me doing bargaining unit work." This single statement, which is true, does not amount to retaliation to a Union member about exercising rights. The statement seems to be an obvious summation of Ms. Truver's complaint. She was complaining about being completely overburdened, and Ms. Alves simply reminded her that it was she who had complained about someone doing "her" work a few months earlier.

Ms. Truver herself acknowledged being frustrated and upset. She denied yelling, but acknowledged that she raised her voice and that her voice was cracking. She claims that she put the papers down on the table and that she did not throw them. However, several other staff members present at the meeting indicated that Ms. Truver indeed tossed or threw the papers.

Moreover, there is simply no support in the record for the Union's allegation that Ms. Truver had work removed and was assigned a new Supervisor. At the hearing, Mr. Larisa testified that he assigned Mr. Truver to report to him for a one day period - while the computer system was down. Ms. Truver did not rebut this testimony at hearing. In fact, the Union failed to elicit any

testimony from Ms. Truver about what happened after she stormed out of the meeting.

The Board finds, therefore, that the evidence in hearing simply fails to support a charge that the meeting held on February 6, 2007 was a "management meeting" or that the Employer tried to "intimidate" or "coerce" an employee who had exercised rights under this chapter. The Board believes the facts herein support a finding that Ms. Truver was embarrassed to be reminded that she had complained about Ms. Alves doing her work when she was then complaining of being overworked, and that she simply lost her professional cool in the meeting. There is no evidence whatsoever to support the Union's charge and the Complaint herein is hereby dismissed.

FINDINGS OF FACT

- 1) The State of Rhode Island, Department of Labor and Training 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) From 2004 through 2007, the staff in the Elevator Unit in the Department of Labor & Training had been meeting to discuss problems and solutions to work issues. The unit was working towards going "on-line" with licensing.
- 4) In the late fall of 2006, Ms. Barbara Truver, Employment & Training Assistant-Elevator Unit, complained to her Union that Ms. Vivian Alves, a management employee, was performing Ms. Truver's bargaining unit work.
- 5) In February 6, 2007, Ms. Vivian Alves called a meeting of the Elevator Unit with her Supervisor, Mr. John Shaw. Also present at the meeting were Barbara Truver; Virtus Haywood, Chief Elevator Inspector; Jim Larisa, Assistant Administrator; and Elaine Albanese.

- 6) At that meeting, when Ms. Truver complained about being overworked, Ms. Alves reminded Ms. Truver that she had previously complained about Ms. Alves performing Ms. Truver's work.
- 7) During the meeting, Ms. Truver left the room to retrieve information from her workplace and returned approximately thirty (30) seconds later. Ms. Truver then threw some papers at a table in the meeting room and stated in a raised tone and cracking voice: "I'm sick of you people." Ms. Truver did not return to the meeting.
- 8) After the meeting, Mr. Larisa found Ms. Truver and told her to report to him for the remainder of the day.
- 9) Ms. Truver filed a grievance with the Union concerning the events that took place during and after the February 6, 2007 meeting.

CONCLUSION OF LAW

- 1) The Union has not proven, by a fair preponderance of the credible evidence, that the Employer committed a violation of R.I.G.L. 28-7-13 (10).

ORDER

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

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IN THE MATTER OF
RHODE ISLAND STATE LABOR
RELATIONS BOARD
-AND-
STATE OF RHODE ISLAND, DEPARTMENT
OF LABOR AND TRAINING

CASE NO: ULP-5842

**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. 5842 dated **September 18, 2008**, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **September 18, 2008**.

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

Dated: September 18, 2008

By:

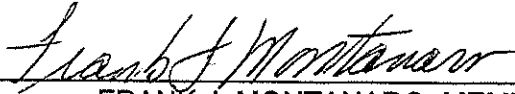

Robyn H. Golden, Administrator

ULP-5842

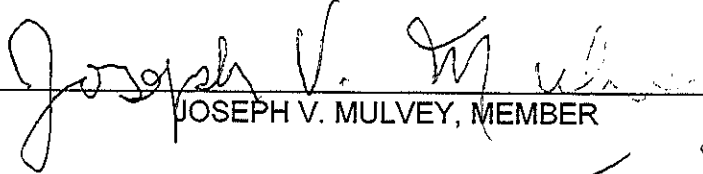
RHODE ISLAND STATE LABOR RELATIONS BOARD



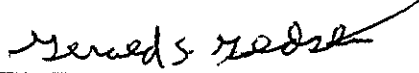
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ELIZABETH S. DOLAN, MEMBER

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

Dated: SEPTEMBER 10, 2008

By: 
ROBYN H. GOLDEN, ADMINISTRATOR