



Objection to the Employer's motion on January 7, 2007.<sup>1</sup> At the formal hearing on January 10, 2008, 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 Union filed its brief on February 21, 2008 and the Employer filed its brief on February 25, 2008. 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. In addition, the Board also relies on its prior decision in ULP 5744, City of Cranston and the Rhode Island Superior Court's recent affirmation of that decision. See City of Cranston v Rhode Island State Labor Relations Board, PC 07-2109, J. Vogel, July 14, 2008.

### **FACTUAL SUMMARY**

The facts in this case are not in dispute. In April 2007, two (2) employees filed grievances challenging the Employer's placement of a warning letter in their personnel file relative to the employees' use of sick time. (Joint Exhibit #1) In response to the warning letters, the Union filed grievances on behalf of the two (2) affected employees. The Union subsequently sought payroll records from the Employer for the "personnel within the Physical Plant/Maintenance Department at the Flanagan Campus and the Knight Campus." More specifically, the Union sought the "time sheets of all Physical Plant/Maintenance employees for the time period of April 10, 2008 to present."<sup>2</sup> (See Joint Exhibit #2) Upon receipt of the Union's request, Ms. Sheri Norton, the Director of Human Resources, inquired of Legal Counsel as to whether the requested time sheets could be released, as requested. Legal counsel opined that the time sheets could not be released, due a variety of reasons, including: Public Access to Records Act, the Health Insurance Portability and Accountability Act of 1996 (HIPPA), 42, U.S.C. 1320 et seq., XVIII (E) of the parties' Collective Bargaining Agreement, the relevance of the Union's discovery request and the purported burden that would be placed upon the Employer to redact names from the requested time sheets.<sup>3</sup> The Employer insisted that before it could provide the requested copies, the Union

<sup>1</sup> The Employer did not ever file an actual Answer to the Complaint.

<sup>2</sup> This request was made on Tuesday, April 10, 2007.

<sup>3</sup> "Redacting the forms would be a long and time consuming process." Employer's brief, p. 9

would need to produce a release from each and every employee whose time sheets would be released under this request. The Union countered that it was not obligated to provide such releases and the two (2) parties continued to argue over the issue in a series of letters and emails through the month of May 2007. (Attached as exhibits to Employer's Motion to Dismiss) At the informal hearing before the Board's Administrator, the Union apparently offered to permit the Employer to redact potentially sensitive and conclusively sensitive information such as name and social security number from the requested time sheets. The Employer continued to assert that it would be a violation of law and contract to release the information.

### **POSITION OF THE PARTIES**

The Union has indicated that it sought the requested time sheets in connection with the two (2) grievances, in order to determine whether the Employer was subjecting the two (2) grievants to disparate treatment. Counsel for the Union explained to the Board that if the requested information had been provided to the Union, it would have then compiled a spreadsheet of the information and made a determination as to whether the grievances would be advanced. Moreover, the Union would have been able to form an opinion as to whether disparate treatment was being employed against the two (2) employees. The Union asserts that the requested information is certainly reasonably necessary to process the grievances and to represent its members.

The Employer argued that the information sought was not relevant to the Union's case, and was "sensitive", "confidential" information. The Employer claims that the parties have negotiated a process for the release of information contained in employee personnel files; and that it would release the information immediately, if only the Union would comply with the negotiated process for such release. The Employer also argues that compiling the requested information would be "extremely cumbersome", but that the Employer had arranged for technical support to provide the information once the Union provided the releases. (TR. P. 15, lines 14-22)

## DISCUSSION

At the outset, the Board is constrained to view the Employers' defense in this case as more than a bit overblown. The Employer claims that the documentation of employee attendance on time sheets is tantamount to the collection of "confidential" data, which must be afforded the widest scope of privacy protections. (Employer Brief, p.2-3) (Also see TR. P. 12, lines 23-24, and P. 13, lines 1-7) The Employer also claimed that the characterization of the data requested by the Union as "time sheets" was "subterfuge" and that the requested information is part of the personnel file. (TR. P. 13, lines 19-20) However, Joint Exhibit #2 clearly indicates that it was seeking "time sheets" of a certain category of employees. At the formal hearing, the number of included employees was estimated at 35-40.

The Union presented the testimony of Robert Antonson, the Union's Grievance Chairperson. Mr. Antonson explained that as an employee, he fills out a time card for every two (2) week period and for each day, he would indicate the number of hours worked or the number of hours attributed to sick time ("S"), vacation ("V"), personal ("P") and so on. If an employee is out sick, the nature of the problem or illness is not disclosed on the time sheet; there is just a reporting of the numbers of hours out so that the leave may be deducted from the proper accounts. Mr. Antonson explained that once an employee signs the time sheet, a supervisor signs it and then retains one copy in the local department records. The original is forwarded to "payroll" where it is processed and filed. The local record is stored in an unlocked file cabinet.

Mr. Antonson also explained the process of seeking time off and testified that once a leave request (vacation, or personal) has been approved, that information is placed on a calendar within the department for everyone to see. When someone calls out sick, that information gets reflected on the time cards. He testified that it is no secret when someone is out of work, whether because the employee is sick or on vacation, personal time, or is on a bereavement leave. (TR. P. 28)

Mr. Antonson further testified that approximately three (3) years earlier he had previously requested time sheets in connection with an overtime grievance and had no problem receiving the records from Ms. Norton's predecessor, Ms. Gold. (TR. Pgs. 33-34) Mr. Antonson stated that once the time sheets were produced in the overtime grievance, the Union was fairly able to withdraw its grievance as being without merit. (TR. P. 34, lines 7-14) Mr. Antonson also explained that there were many other occasions when the Union had requested time sheets and had no problems in obtaining the same from Ms. Gold. (TR. P. 34, lines 15-24 and P. 35. lines 1-13.) In fact, he described the Union's prior access to the time cards as "common practice." (TR. P. 35, lines 12-13) Mr. Antonson further testified that when he was granted access to review time sheets, he was never required to obtain a prior consent from any other employee. (TR. P. 37, lines 12-18)

In City of Cranston v Rhode Island State Labor Relations Board, PC 07-2109, July 14, 2008, Justice Vogel noted that the Rhode Island courts often turn to Federal labor law for guidance in determining labor issues. In ruling on a very similar case, she quoted from federal law as follows:

"The duty to bargain collectively, imposed upon an employer by § 8(a)(5) of the National Labor Relations Act [29 U.S.C. §§ 151-158], includes a duty to provide relevant information needed by a labor union for the proper performance of its duties as the employees' bargaining representative." Detroit Edison v. National Labor Relations Board, 440U.S. 301, 303 (1979). That is because "[t]he right to bargain collectively would be little more than a hollow promise if a bargaining agent did not have the concomitant right to muster the information needed to conduct that bargaining effectively." Providence Hospital v. National Labor Relations Board, 93 F.3d 1012, 1016 (1st Cir. 1996).

Her opinion continued:

However, "[a] union's bare assertion that it needs information to process a grievance does not automatically oblige the employer to supply all the information in the manner requested." Detroit Edison, 440 U.S. 301 at 314. "The duty to supply information . . . turns upon 'the circumstances of the particular case.'" *Id.* Furthermore, "[a] breach of this duty constitutes an unfair labor practice . . ." Providence Hospital, 93 F.3d at 1016. However, "an employer's commitment to, or genuine need for, confidentiality sometimes can constitute an appropriate reason for keeping documents—even documents that are potentially relevant to the collective bargaining process—out of a union's hands." *Id.* at 1020. In situations where confidentiality is an issue, "the Board must carefully balance the employer's need for privacy against a union's need to make informed decisions in its

capacity as the employees' bargaining representative." Id. Due to the fact that "confidentiality is in the nature of an affirmative defense, it is the employer's burden to demonstrate that the requested information is shielded by a legitimate privacy claim." Id. Furthermore, "to permit the requisite balancing, the employer must advance its claim of confidentiality in its response to the union's information request." Id. That way, "the parties have a fair opportunity to confront the problem head-on and bargain for a partial disclosure that will satisfy the legitimate concerns of both sides." Id. The Court considers three factors when determining whether confidential information may be released. See *New Jersey Bell Telephone Company v. National Labor Relations Board*, 720 F.2d 789, 791 (3rd Cir. 1983). Those factors are "(1) the sensitive nature of the information sought; (2) the minimal burden that a requirement of employee consent would impose on the union; and (3) the lack of evidence that the employer had fabricated concern for employee confidentiality only to frustrate the union in the discharge of its responsibilities." Id. Furthermore, "any possible impairment of the union's function in processing grievances is more than justified by the interests served in conditioning disclosure on the consent of the very employees whose grievances are being processed." Id.

In this case, as in *City of Cranston* (ULP 5744), the Employer has in fact issued a blanket prohibition against the release of employee time sheets, even in a redacted form. The Employer insists that its refusal to release the information is grounded in a contractual provision of the Collective Bargaining Agreement which requires permission from employees for the union representatives to access their personnel files. However, the records sought are clearly payroll records which, according to the testimony of Sheri Norton, the Director of Human Resources, are stored in the college's payroll office on the second floor of the community college of Rhode Island Knight Campus. (TR. Pgs. 49, 51) The individual departments maintain the second copy of the form. Ms. Norton did not have any idea how long the departmental records are maintained by each department. (TR. p. 52) Ms. Norton testified that the "personnel records" are maintained in the Human Resources Department on a separate floor of the same campus building.

The Employer has seemingly gone to great lengths to distort the true nature of the records being sought and has even attempted to misrepresent the nature of the request to the Board. The Union simply asked for "time sheets", yet the Employer argues that the Union requested "records reflecting the discharge of sick time and medical documentation (underlining in the original).

(See Employer's brief, P. 7) Whether the Employer agrees with the fact that Employees have exercised their rights under the parties collective bargaining agreement, the Union has a right to obtain records which reasonable relate to the Union's representation of these claims. The request for copies of time sheets (even redacted, if the Employer so chose) is more than reasonable for the Union when it is investigating whether or not the pursuit of the grievances is appropriate. The time sheets simply contain an employee's name and notation as to how their time is discharged on a given day. These are a form of attendance records and simply do not contain any sensitive or confidential information. If an employee is out sick, the time is simply recorded as "S." There is no information on the time sheet as to the nature of the illness, or any other sensitive or confidential information. Whether the Union then seeks additional discovery, and in what form, is simply not before the Board in this case.

Therefore, under the facts presented, this Board finds no reasonable basis for the denial of the Union's request for the time sheets. Accordingly, the Board finds that the denial constitutes an Unfair Labor Practice. As a remedy, the Employer is hereby ordered to provide the Union with the requested information within thirty (30) days of this order.

#### **FINDINGS OF FACT**

- 1) The State of Rhode/Community College of Rhode Island 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) In order to represent two (2) employees who had filed grievances, the Union requested time sheets for Physical Plant/Maintenance Department at the Flanagan Campus and the Knight Campuses for the period April 2006 to May 2007.

- 4) The records sought contain an employee's name and an accounting of work time for a two (2) week pay-period. The records will simply contain the number of hours each day that the employee was present, or was out sick, took a personal day, or was on bereavement leave or vacation.
- 5) Once an employee signs the time sheet, a supervisor signs it and then retains one copy in the local department records. The original is forwarded to "payroll" where it is processed and filed. The local record is stored in an unlocked file cabinet.
- 6) The Union previously had the occasions to request time sheets and the same were provided without any claim of confidentiality. In fact, Mr. Antonson described the Union's prior access to the time cards as "common practice." (TR. P. 35, lines 12-13) Mr. Antonson further testified that when he was granted access to review time sheets, he was never required to obtain a prior consent from any other employee. (TR. P. 37, lines 12-18).
- 7) The Union's request was repeatedly denied by the Employer.

#### **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 release the requested time sheets and may do so in a redacted form, by eliminating the employee's name and social security number, if it so chooses. The record must be provided to the Union within thirty (30) days from the date of this order.



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-

STATE OF RHODE ISLAND  
COMMUNITY COLLEGE OF RHODE ISLAND :

: CASE NO: ULP-5848


**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. 5848** dated **March 31, 2009**, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **March 31, 2009**.

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

Dated: March 31, 2009


By:

  
Robyn H. Golden, Administrator

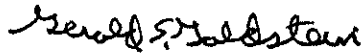
RHODE ISLAND STATE LABOR RELATIONS BOARD



WALTER J. LANNI, CHAIRMAN



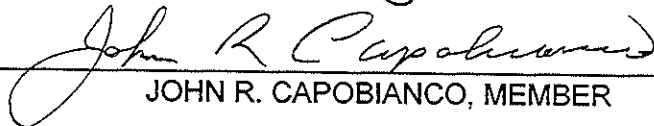
FRANK J. MONTANARO, MEMBER



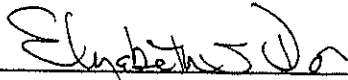
GERALD S. GOLDSTEIN, MEMBER



ELLEN L. JORDAN, MEMBER



JOHN R. CAPOBIANCO, MEMBER



ELIZABETH S. DOLAN, MEMBER

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

Dated: MARCH 31, 2009

By:   
ROBYN H. GOLDEN, ADMINISTRATOR