

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-  
WARWICK SCHOOL COMMITTEE

CASE NO: ULP-5854

**DECISION AND FINAL ORDER OF FAILURE TO CONCLUDE  
ON SUBSTANTIVE GROUNDS**

**TRAVEL OF CASE**

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") on an Unfair Labor Practice Complaint (hereinafter "Complaint") issued by the Board against the Warwick School Committee (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated April 14, 2007 and filed on May 18, 2007 by the Warwick Independent School Employees Union ("WISE" (hereinafter "Union")).

The Charge alleged a multitude of violations. Following the filing of the Charge, in lieu of an informal hearing, the parties submitted written position statements. The Board issued its Complaint on February 18, 2008, charging the Employer as follows: <sup>1</sup>

- 1) That the Employer violated R.I.G.L. 28-7-13 (6) when it failed to respond in a timely and substantiating, meaningful manner to the Union's legitimate requests of March 2, 2007 for information; thus, violating the duty to bargain in good faith.
- 2) That the Employer violated R.I.G.L. 28-7-13 (6) and (10) when on March 2, 2007, David Small, the Director of Buildings and Grounds, engaged in threatening and intimidating conduct against a member of the Union's contact bargaining team.
- 3) That the Employer violated R.I.G.L. 28-7-13 (6) and (10) when on March 27, 2007 the Employer made false, misleading or

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<sup>1</sup> ULP 5853 was also issued this day and was consolidated with this action for processing and hearing purposes.

coercive statements, with the intent and effect of holding the Union in a false light, in violation of the duty to bargain in good faith.

The Employer filed its Answer to the Complaint on March 6, 2008. Formal hearings on this matter were held on August 7, 2008, January 27, 2009, January 29, 2009 and February 3, 2009. Upon conclusion of the hearing, both the Employer and the Union submitted post-hearing Briefs on April 9, 2009. Representatives of both the Union and the Employer were present and had full opportunity to introduce testimonial and documentary evidence. In attempting to arrive at a Decision and Order on the substance of the Employer's complaint, the Board has reviewed and considered the testimony, evidence, oral arguments and written Briefs.

At the monthly Board meeting of May 21, 2009, a Motion was made by Board Member, Ellen Jordan, and seconded by Board member Elizabeth Dolan, to dismiss the Charge filed in this matter. Members Ellen Jordan, Elizabeth Dolan, and Gerald Goldstein voted in favor of the Motion. Members Frank Montanaro, Walter Lanni, and John Capobianco voted against the Motion. Motion failed. At the monthly Board meeting of September 17, 2009, the matter was reconsidered. A Motion was then made by Board Member Frank Montanaro and seconded by Board Member Ellen Jordan to uphold the Charge filed in this matter. Members Frank Montanaro, Walter Lanni, and John Capobianco voted in favor of the Motion. Members Ellen Jordan, Elizabeth Dolan, and Gerald Goldstein voted against the Motion. Motion failed.

### **DISCUSSION**

In this case, the Board finds itself in the rare position of having a deadlocked Board for the purposes of voting, due to the death of the seventh Board Member during the processing of these proceedings.<sup>2</sup> The vote of the Board is deadlocked on the substantive issue of the allegation of Unfair Labor Practice. Unfortunately, the Board has no mechanism to deal with the rare instance of deadlocked opposing Motions. The Board's enabling Act does not provide for alternate Members who can be utilized for breaking tie votes. Thus,

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<sup>2</sup> See ULP 5673, Coventry Fire District and Local 3240, IAFF, AFL-CIO.

without a majority to support either a Motion to uphold the Charge or a Motion to dismiss the Charge for substantive grounds, the Board has no choice but to dismiss the within matter on procedural grounds. Thus, the Complaint is being dismissed due to the inability of Motions to sustain sufficient votes for passage.

#### **FINDINGS OF FACT**

- 1) The Warwick School 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 May 18, 2007 the Union filed a Charge with the Board alleging Unfair Labor Practices.
- 4) The Charge was processed and on February 18, 2008, the Board issued its Complaint.
- 5) Consolidated formal hearings were held on this Complaint, as well as in Case No. ULP-5853, on several dates, for which the parties had a full and fair opportunity to present their respective positions.
- 6) On May 21, 2009 and again on September 17, 2009, the Board considered the matter and was unable to arrive at anything other than a deadlocked vote.

#### **CONCLUSIONS OF LAW**

- 1) Since neither a Motion to Uphold a Charge of Unfair Labor Practice nor a Motion to Dismiss the Complaint for cause has carried, the within matter must be dismissed on procedural grounds.

#### **ORDER**

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

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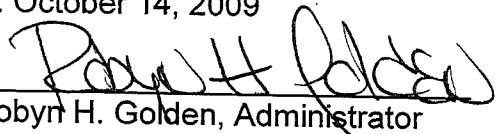
NOTICE OF RIGHT TO APPEAL AGENCY DECISION  
PURSUANT TO R.I.G.L. 42-35-12

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of Case No. ULP-5854 dated **October 14, 2009**, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **October 14, 2009**.

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

Dated: October 14, 2009

By:

  
Robyn H. Golden, Administrator

RHODE ISLAND STATE LABOR RELATIONS BOARD

*Walter J. Lanni*

Walter J. Lanni, Chairman

*Frank J. Montanaro*

Frank J. Montanaro, Member

*Gerald S. Goldstein*

Gerald S. Goldstein, Member

*Ellen L. Jordan*

Ellen L. Jordan, Member

*John R. Capobianco*

John R. Capobianco, Member

*Elizabeth S. Dolan*

Elizabeth S. Dolan, Member

Entered as an Order of the  
Rhode Island State Labor Relations Board

Dated: October 14, 2009

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