

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-5865  
LITTLE COMPTON SCHOOL DEPARTMENT :

**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 Little Compton School Department (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated July 10, 2007 and filed on July 16, 2007 by the Little Compton Educational Support Personnel/NEARI (hereinafter "Union").

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

The Little Compton School Committee has hired Non-Union workers to do bargaining unit work, specifically painting and cleaning.

Following the filing of the Charge, an informal hearing was held on October 17, 2007. On December 4, 2007, the Board issued its Complaint. The Employer's Answer to the Complaint was dated December 12, 2007. The matter was heard formally on February 28, 2008. 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. Both the Employer and the Union submitted their briefs on April 17, 2008.

**FACTUAL SUMMARY AND DISCUSSION**

In the spring of 2007, the Superintendent of Schools in Little Compton, Mr. Harold Devine, began to make arrangements for some much needed painting for the Town's school building- the Wilbur & McMahon School. Prior to posting any

“help wanted” ads, Mr. Devine met with the local Union President, Mr. John Osborne, to see if the Union had any objection to Mr. Devine “posting” the painting work. At the time of the hearing, Mr. Osborne had been employed as a custodian for approximately nineteen (19) years. He testified that during those nineteen (19) years, he had done painting “sporadically” and that other custodians had also engaged in painting. On cross-examination, he acknowledged that over the nineteen (19) years, he has also seen “outside painters” painting both the inside and outside of the school building. He has also seen carpenters and plumbers from “outside” the bargaining unit performing work within the school building. In addition, during the latter part of the Summer of 2007, another member of the bargaining unit, a paraprofessional, was brought in to help finish up the custodial work before the commencement of the new school year.

Mr. Osborne testified that he did meet with Mr. Devine upon Mr. Devine’s request. Mr. Osborne testified that he told Mr. Devine that while Mr. Osborne did not personally object to the hiring of outside painters, he thought that the Union would have a problem with it. After that meeting, Mr. Devine provided Mr. Osborne with a copy of the job description for the summer painting work, which reflected a rate of pay of \$7.10 per hour. Either Mr. Osborne or his son, the Head Custodian, advised the Superintendent that the pay rate should be amended to \$7.40, which was the minimum wage for Rhode Island. The advertisement was amended and then placed in the newspaper for publication on June 7, 2007 and June 14, 2007.

On June 8, 2007, Mr. Osborne saw Mr. Devine in a hallway and told Mr. Devine, “by the way, Cranston has a problem with the painters.” The reference to “Cranston” meant the NEARI main office. However, after this one comment, neither “Cranston” nor the local Union had any further discussions during the rest of the month of June with Mr. Devine. On or about June 27, 2007, Mr. Devine hired two (2) painters who began work on or about July 2, 2007. On July 10, 2007, Mr. Devine received correspondence from Jane Argentieri, the Union’s “Cranston” representative dated June 29, 2007. (Union Exhibit #2) The

letter indicated that the painting positions should have been posted with a rate of pay of \$14.73 for Union members. Mr. Devine wrote back to Ms. Argentieri on July 10, 2007 and stated his disagreement with Ms. Argentieri's position.<sup>1</sup> The "outside" painters continued to paint; one through July and the other through August. No custodian had hours reduced as a result of the "outside" painters.

In this case, the issue before the Board is whether or not the job of painting is exclusively bargaining unit work. In the event that it is, then prior bargaining with the Union would have been necessary to post the positions at less than the rate set forth in the collective bargaining agreement. If the work was not exclusively bargaining unit work, then the Employer would be free to post the positions in the manner that it did.

The evidence in this case supports a finding that the painting was *not* exclusively bargaining unit work. There are apparently no written accepted job descriptions for the custodian positions; thus, none were submitted into evidence. The testimony established that while the custodians had done some painting over the years, some painting had also been done by "outside" painters. Based upon these facts, the Board finds that there is evidence to support a finding that painting was not exclusively bargaining unit work. Therefore, the Employer did not violate R.I.G.L. 28-7-13 (3) (6) or (10) when it hired "outside" painters during the Summer of 2007.

#### **FINDINGS OF FACT**

- 1) The Town of Little Compton 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.

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<sup>1</sup> It should be noted also that the "Cranston" office of the Union was on notice of the Town's intention to hire outside painters no later than June 8<sup>th</sup>. Yet, Ms. Argentieri's letter to the Union objecting to the practice was not written for three more weeks. During that time frame, the Employer had advertised, interviewed, and then hired the two (2) Summer painters.

- 3) The Superintendent of Schools discussed the potential use of "outside" painters with local Union officials in May 2007. On June 8<sup>th</sup>, the Union President told the Superintendent during a chance hallway encounter, that "Cranston" [the parent Union's main office] objected to the use of the outside painters.
- 4) Advertising for the painters ran on June 7, 2007 and June 14, 2007.
- 5) The Superintendent hired two (2) painters on or about June 27, 2007.
- 6) Ms. Argentieri wrote to the Superintendent about the Union's objection on June 29, 2007, but the letter was not received until July 10, 2007.
- 7) The painters commenced work on or about July 2, 2007. One left the position after a few weeks and the other remained employed until the end of Summer.
- 8) The custodians in the Little Compton School Department do not have written job descriptions that identify painting as a job duty.
- 9) The Little Compton School Department has used "outside" painters on other occasions over the past nineteen (19) years.

#### **CONCLUSIONS OF LAW**

- 1) Painting is not exclusively bargaining unit work.
- 2) 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 (3) (6) or (10).

#### **ORDER**

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



RHODE ISLAND STATE LABOR RELATIONS BOARD

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

Dated: SEPTEMBER 17, 2008

By: *Robyn H. Golden*  
ROBYN H. GOLDEN, ADMINISTRATOR