

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-5868
:
MIDDLETOWN SCHOOL COMMITTEE :

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 Middletown School Committee (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated August 2, 2007 and filed on August 6, 2007 by the NEA Middletown/NEARI/NEA (hereinafter "Union").

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

The Employer made unilateral changes in the working conditions for bargaining unit members and refused to bargain in good faith over the changes.

Following the filing of the Charge, an informal conference was scheduled to held on September 19, 2007, and was rescheduled to November 14, 2007. By letter dated October 23, 2007, from Attorney Katherine J. McAllister, representatives of the Union and the Employer agreed to submit a statement of facts to the Board in place of the informal hearing. On December 31, 2007, the Board issued its Complaint, alleging that the Employer violated R.I.G.L. 28-7-13 (6) and (10) when it failed and refused to bargain in good faith over the impact from changes to working conditions for bargaining unit members when it changed the bargaining unit position of Department Head and replaced it with Director. On March 6, 2007, the Employer filed its Answer to the Complaint. The matter was heard formally on May 22, 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.

SUMMARY OF FACTS AND TESTIMONY

During the 2006-2007 school year, a "Leadership Reorganization Committee" (hereinafter "LRC") was formed at the Middletown High School. The Committee members included members of the Faculty, High School Administrators and Central Administrators. The purpose of the Committee was to examine the high school's organizational structure from a pedagogical instructional point of view and to make recommendations to the School Committee.

Although these meetings were not convened for the purposes of collective bargaining, all of the teachers on the Committee were members of the bargaining unit, including the vice president of the Union. Approximately fourteen (14) meetings took place between October 2006 and January 2007. In addition to this Committee, the School Committee also hired a "Consultant" to review the same issues who issued recommendations to the School Committee that were in conflict with the teacher/administrators Committee recommendations.

In early 2007, the reorganizational Committee made a presentation to the School Board. In February, the Consultant issued his opinion, which differed from that of the reorganization Committee. On March 13, 2007, the Union president, Ms. Lisa Wood, acting in her representative capacity, sent an email to the Chair of the School Committee, Mr. Michael Crowley, expressing some of her concerns.¹

Ms. Wood testified that she did not receive a response to this email and it became increasingly clear to her that the Administration's plan was to adopt the Consultant's Recommendations and that the work of the Committee would not be further considered.

On June 7, 2007, Ms. Rosemary Kraeger, Middletown Schools Superintendent, sent Ms. Wood an email, trying to set up a meeting to discuss the "parameters of salary, work year, and case load" for the high school

¹ The Union's state representative is Patrick Crowley; thus, we will refer to the Crowleys by their full names so that this decision is clear.

reorganization. Ms. Kraeger asked Ms. Wood for available dates and times. (Employer exhibit # 9) Ms. Wood responded on June 8, 2007 and inquired as to whether the upcoming Thursday would work. Ms. Kraeger responded that this would not be the best date, due to other commitments and inquired for additional dates. (Joint Exhibit #3) The record is not clear as to whether Ms. Wood responded to this particular inquiry.

On June 20, 2007, Ms. Kraeger sent another email to Ms. Wood looking for meeting dates. (Employer exhibit # 10) On Monday, June 25, 2007, Ms. Kraeger sent a third email, this time with a list of six (6) dates from late June into early July. Ms. Kraeger also emphasized the importance of meeting as quickly as possible, so that the positions could be posted. (Employer #11) On Tuesday, June 26, 2007, Ms. Kraeger tried for the fourth time to get a response from Ms. Wood on the dates to meet concerning the terms and conditions of employment for the reorganized positions. (Employer #12) On June 29, 2007, Ms. Kraeger resorted to a formal letter on stationary to Ms. Wood indicating that that as a result of Ms. Wood's failure to respond, Ms. Kraeger was moving forward with advertising and filling the positions, as of July 6, 2007. Ms. Kraeger also indicated, however, that she stands "prepared to meet with you at any mutually convenient time to discuss this matter. (Employer's exhibit #13) On Friday July 6, 2007, Ms. Kraeger sent Ms. Wood an email with attached job descriptions for the positions. In this email, Ms. Kraeger, again, states that she stands willing to discuss the job descriptions with Ms. Wood (Employer exhibit # 14). On July 7, 2007, the job descriptions were posted on the School Spring website. The job descriptions, as posted, contained no salary or working hour's information.

On July 10, 2007, Ms. Wood emailed Ms. Kraeger with two (2) dates to meet, July 24, 2007 or August 2, 2007. (Employer's exhibit #16) Ms. Kraeger agreed to July 24, 2007. (Employer's exhibit #16) The parties did meet on July 24, 2007. In the meantime, the School Committee took the advice of its Consultant and on July 12, 2007, approved the first reading of the job descriptions known as "directors."

On July 24, 2007, the Employer and Union representatives finally conducted a face-to-face meeting. Present at the meeting were: Attorney Richard Updegrave and Ms. Kraeger representing the Employer and; Ms. Wood, Patrick Crowley, Cathleen McLeish, and Tom Alose, representing the Union. The meeting was brief, lasting less than one-half hour. Ms. Wood testified that at this meeting, the Union was informed that Department Head positions do not exist any more. Ms. Wood did not recall whether the job descriptions were available for review at that meeting or any documents pertaining to pay. Ms. Wood testified that her recollection was that Mr. Patrick Crowley had asked the employer's representatives to "pull the postings." Upon conclusion of that meeting, the parties agreed to meet again on August 2, 2007.

On July 26, 2007, Ms. Kraeger wrote to Ms. Wood and advised Ms. Wood that Ms. Kraeger would send out additional information to the professional staff regarding the pay, teaching load and work year. She identified that "per Appendix I, Directors will be paid the K-12 Director's rate, work 190 days, and per the contract, teach not more than 60% of a regular load." (Employer #17) Ms. Kraeger also indicated in that letter that the specific wording of the job descriptions remained a prerogative of management rights, which were outside the working conditions articulated in the contract. (Employer #17) The Union did not respond to Ms. Kraeger's statement that she intended to send out additional information concerning the pay rate workload.

On July 30, 2007, Ms. Kraeger issued a Superintendent's Update which contained the following statement:

"Clarification on the Director positions at Middletown High School (Director of Proficiency Based Graduation, Director of Applied and Fine Arts, Director of Math & Science, Director of Humanities and Academic Dean)...these positions per Appendix I, Directors will be paid the K-12 Director's rate, work 190 days, and per the contract, teach not more than 60% of a regular load." (Employer's exhibit #18)

On July 31, 2007, Ms. Kraeger sent an email to Patrick Crowley and others indicating that the meeting which had been scheduled for August 2, 2007 had to be re-scheduled due to the unavailability of two (2) parties and inquiring whether August 8, 2007 was acceptable. After a few more emails, Patrick Crowley

responds to Attorney Updegrave and states that the Union will “show up at the Oliphant building as planned”, meaning on the originally scheduled date of Aug. 2. Patrick Crowley and Mr. Updegrave trade a few more emails. Patrick Crowley and Employer's representatives do in fact show up at the Oliphant building on August 2, 2009, at the originally scheduled time, after having been told that the Superintendent needed to reschedule the meeting. On August 8, 2007, the Superintendent and Patrick Crowley engage in a new round of increasingly testy emails. In one of these emails, Patrick Crowley informs Ms. Kraeger that the Union has filed the within Unfair Labor Practice Charge.

POSITION OF THE PARTIES

The Union argues that the School Committee's actions in regards to the reorganization of the leadership at the High School was entirely unilateral and that the Union had no say whatsoever. The Union also claims that it had no advance knowledge as to the nature or scope of the “high school reorganization plan.” According to the Union, the Superintendent never informed the Union that she had prepared job descriptions for the position of Director. The Superintendent posted the job descriptions on SchoolSpring, an on-line “help wanted” site, and according to the Union, rebuffed the Union's request that the postings be removed. According to the Union, the Director positions were filled at the beginning of the 2007-2008 school year and the Employer unilaterally implemented conditions of employment (pay, work year, and work load).

The Employer argues that the high school reorganization was a well-publicized, open effort, which spanned the course of several months and there were several bargaining unit members who served on the original LRC. The Employer also argues that it has continuously acknowledged its obligation to negotiate terms and conditions of employment for the Director positions, but that the Union simply has not cooperated in meeting with the Employer. The Employer argues that the evidenced established that all during June 2007, Ms. Kraeger attempted to meet with Ms. Wood to discuss the working conditions, but that the Union failed to respond to repeated inquiries. It was not until Ms. Kraeger informed the Union that she had no choice but to post job descriptions (to comply

with posting requirements set forth in the parties CBA) that the Union finally responded. Even then, the Superintendent's communications indicated a willingness and desire to meet. (Employer exhibits 10, 11, 12, 13)

The Employer argues that the Union thwarted the Employer's attempts to bargain in good faith because the within Unfair Labor Practice Charge was filed before any bargaining session could be scheduled to a mutually satisfactory date. In addition, the Employer argues that it is within its management rights to layoff the existing Department Heads and to create job descriptions for Director positions. The Employer further argues that the evidence establishes that the Employer has been ready, willing, and able to meet with the Union to discuss the terms and conditions of employment, but that when the parties were not able to meet to negotiate, the Employer had to move forward with at least temporary measures in place so that the positions could be filled for the 2007-2008 school year. Finally, the Employer argues that the evidence simply does not support the Union's allegation that it knew nothing about the high school reorganization until the last minute, especially because the Union's Vice President served on the LRC.

DISCUSSION

The preponderance of the evidence on this case establishes that the process of the high school reorganization was lengthy and open. While Union officials may not have received an "invitation" in their capacity as Union officials, to participate in the reorganization efforts, key Union members were well aware of the process and actively participated as members of the Reorganization Committee. In addition, the evidence established that the prior tenured Department Heads all received layoff notices as early as March 2007. The School Committee publicly adopted a budget early in 2007, which contained the Director positions. Thus, for the Union to suggest that it had no notice of the School Committee's intentions is disingenuous, at best.

In addition, the evidence also established that Ms. Kraeger began attempts to meet with the Union to discuss the Director positions, as early as the beginning of June 2007. Ms. Wood replied on one occasion in June, on Friday

June 8, 2007 at 7:15pm. In this e-mail, Ms. Wood suggested Thursday, June 14, 2007 at 3:00pm. On June 10, 2007, Ms. Kraeger requested additional dates from Ms. Wood, *but Ms. Wood did not respond*. On June 20th, Ms. Kraeger tried again, at 5:37 pm via email; once again, *no response from Ms. Wood*. On Monday, June 25, 2007, Ms. Kraeger forwarded a list of six (6) proposed dates to Ms. Wood so that the parties could meet to discuss the high school reorganization. On the 26, 2007, Ms. Kraeger tried again; *no response was forthcoming from Ms. Wood*. On June 29, 2007, Ms. Kraeger finally wrote a formal letter on stationary notifying the Union that due to its failure to respond, Ms. Kraeger was going to move forward with posting the positions. However, Ms. Kraeger's correspondence also make is clear that she was prepared to meet with Ms. Wood at any mutually convenient time to discuss. (See Employer Exhibit #13) On cross-examination, Ms. Wood acknowledged that she failed to provide any additional dates to Ms. Kraeger, but blamed her lack of response on the fact that there were a lot of things happening at the time.

The Board finds the Union's lack of response during this time frame to be unacceptable under the circumstances presented. Both parties were aware of the reorganization and the need to resolve the issue prior to the start of the new school year. In order to accomplish that in a timely manner, and be in compliance with existing posting requirements, Ms. Kraeger repeatedly attempted in good faith to engage in bargaining. The Union either ignored or did not prioritize those requests and consequently waived its rights to bargain, at least as to the posting of the job descriptions, with the suggested salary ranges. The Employer acknowledged that the salary and terms were issues to be negotiated, but also indicated that it needed a starting point for the posting. Since the Union simply failed to respond within critical time frames, it cannot later complain about the results of its own delays.

Subsequent to the postings, the parties were actually able to finally meet, but covered little ground on the issue. Upon the conclusion of this meeting on July 24, 2007, the parties scheduled another meeting for August 2, 2007. On July 31, 2007 the Employer notified the Union that it needed to reschedule the

Aug 2 date because its attorney was unable to attend. Despite this reasonable need for a continuance, the Union decided that the need for a continuance was a ruse and that the Employer had already made up its mind about the outstanding issues. The Union adopted a confrontational posture and “showed up” for a meeting which it knew was not going to take place. By adopting such posturing, after its own lengthy refusal to even respond to a request for dates, is petulant, at best, and an exercise in bad faith, at worst. The Union further compounds this action by prematurely filing an unfair labor practice and refusing to bargain. Under these circumstances, the Union is not entitled to any relief from this Board and none shall issue. The Unfair Labor Practice Charge and Complaint are hereby dismissed.

FINDINGS OF FACT

- 1) The Middletown School Committee 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) During the 2006-2007 school year, a “Leadership Reorganization Committee” (hereinafter “LRC”) was formed at the Middletown High School. The Committee members included members of the faculty, High School Administrators and Central Administrators. The purpose of the Committee was to examine the high school’s organizational structure from a pedagogical instructional point of view and to make recommendations to the School Committee.
- 4) Although these meetings were not convened for the purposes of collective bargaining, all of the teachers on the Committee were members of the bargaining unit, including the vice president of the union. Approximately fourteen (14) meetings took place between October 2006 and January 2007. In addition to this Committee, the School Committee also hired a “Consultant”

to review the same issues who issued recommendations to the School Committee that were in conflict with the teacher/administrators Committee recommendations.

- 5) On June 7, 2008, Ms. Rosemary Kraeger, Middletown Schools Superintendent, sent Ms. Wood an email, trying to set up a meeting to discuss the "parameters of salary, work year and case load" for the high school reorganization. Ms. Kraeger asked Ms. Wood for available dates and times. Ms. Wood responded on June 8, 2007 and inquired as to whether the upcoming Thursday would work. Ms. Kraeger responded that this would not be the best date, due to other commitments and inquired for additional dates.
- 6) On June 20, 2007, Ms. Kraeger sent another email to Ms. Wood looking for meeting dates. On Monday, June 25, 2007, Ms. Kraeger sent a third email, this time with a list of six (6) dates from late June into early July. Ms. Kraeger also emphasized the importance of meeting as quickly as possible, so that the positions could be posted. On Tuesday, June 26, 2007, Ms. Kraeger tried for the fourth time to get a response from Ms. Wood on the dates to meet concerning the terms and conditions of employment for the reorganized positions. (Employer #12)
- 7) On June 29, 2007, Ms. Kraeger resorted to a formal letter on stationary to Ms. Wood indicating that that as a result of Ms. Wood's failure to respond, Ms. Kraeger was moving forward with advertising and filling the positions, as of July 6, 2007. Ms. Kraeger also indicated, however, that she stands "prepared to meet with you at any mutually convenient time to discuss this matter. (Employer's exhibit #13)
- 8) On Friday July 6, 2007, Ms. Kraeger sent Ms. Wood an email with attached job descriptions for the positions. In this email, she again states that she stands willing to discuss the job descriptions with Ms. Wood
- 9) On July 7, 2007, the job descriptions were posted on the School Spring website. The job descriptions as posted contained no salary or working hours information.

- 10) On July 10, 2007, Ms. Wood emailed Ms. Kraeger with two (2) dates to meet, July 24, 2007 or August 2, 2007. (Employer's exhibit #16) Ms. Kraeger agreed to July 24, 2007. The parties did meet on July 24, 2007. In the meantime, the School Committee took the advice of its Consultant and on July 12, 2007, approved the first reading of the job descriptions known as "directors."
- 11) On July 24, 2007, the Employer and Union representatives finally conducted a face-to-face meeting. Upon conclusion of that meeting, the parties agreed to meet again on August 2, 2007.
- 12) On July 31, 2007 Ms. Kraeger sent an email to Patrick Crowley and others indicating that the meeting which had been scheduled for August 2, 2007 had to be re-scheduled due to the unavailability of two (2) parties and inquiring whether August 8, 2007 was acceptable. After a few more emails, Patrick Crowley responds to Attorney Updegrave and states that the Union will "show up at the Oliphant building as planned", meaning on the originally scheduled date of August 2, 2007.
- 13) On August 8, 2007, Patrick Crowley informs Ms. Kraeger that the Union has filed the within Unfair Labor Practice Charge.
- 14) No bargaining took place after the July 24, 2008.

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 (6) and (10).

ORDER

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

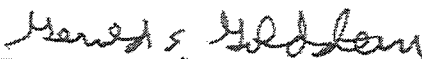
RHODE ISLAND STATE LABOR RELATIONS BOARD



Walter J. Lanni, Chairman



Frank J. Montanaro, Member (Dissent)



Gerald S. Goldstein, Member



Ellen L. Jordan, Member



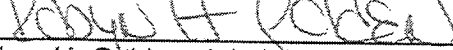
John R. Capobianco, Member (Dissent)



Elizabeth S. Dolan, Member

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

Dated: MARCH 27, 2009

By: 
Robyn H. Golden, Administrator