

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD**

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IN THE MATTER OF	:	
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RHODE ISLAND STATE LABOR RELATIONS BOARD	:	
	:	
-AND-	:	CASE NO: ULP-5894
	:	
BURRILLVILLE SCHOOL COMMITTEE	:	

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**DECISION AND ORDER**

**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 Burrillville School Committee (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated December 7, 2007, and filed on December 10, 2007, by the Burrillville Teachers' Association, National Education Association of Rhode Island (NEARI) (hereinafter "Union.").

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

"On November 8<sup>th</sup>, 2007, the Employer attempted to interrogate and obstruct a Union representative in duties protected by the Act."

Following the filing of the Charge, an informal conference was held on March 3, 2008, in accordance with R.I.G.L. 28-7-9. On March 21, 2008 the Board issued its Complaint alleging: "The Employer violated RIGL 28-7-13 (3) and (10) when it's agent, Cynthia Dunham, interfered with and intimidated Nancy Inzer in her efforts to exercise protected activities." The Employer filed its answer denying the charges on March 26, 2008.

The matter was set down for formal hearing on May 20, 2008, but was rescheduled by the Board to June 12, 2008. The matter was then postponed on two (2) additional occasions upon request of the Union and the consent of the Employer.

The hearing was finally held on March 3, 2009, at which time, 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 April 10, 2009 and the Employer filed its Brief on April 13, 2009. 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.

### **SUMMARY OF FACTS & TESTIMONY**

Early in the 2007-2008 school year, two (2) fourth grade teachers at the Steere Farm Elementary School, Karen King and Lauren Guilbault, began receiving multiple complaints from parents concerning the performance of their children's Special Education Teacher (referred to in these proceedings as "Teacher X"). Ms. King and Ms. Guilbault referred the parents to the Principal of the school, Ms. Cynthia Dunham. In addition, Ms. King and Ms. Guilbault also expressed their concerns to the Ms. Dunham. As a result, Ms. Dunham met with Teacher X twenty-two (22) different times between September and October, to rectify the problems. By October, Ms. Dunham decided to place Teacher X on a "prescriptive plan" and directed Ms. King and Ms. Guilbault to begin maintaining a record or log of Teacher X's activities while in their respective classrooms. According to Ms. King, the log was supposed to note when Teacher X arrived and departed from the classroom, what Teacher X did while in the class, and which students were worked with. (TR. p. 12) Both Ms. King and Ms. Guilbault maintained the logs as directed for approximately a week's time after which they both voiced their concerns over this activity to their Union building representative, Ms. Nancy Inzer.<sup>1</sup> Ms. Inzer advised the teachers that they should not be monitoring the work of another teacher because it was surveillance and it was the Principal's job to monitor the work of teachers. Ms. Inzer further advised them to speak with Principal Dunham about their concerns. Both Ms. King and

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<sup>1</sup> Ms. Inzer's regular teaching assignments included both the Steere Farm School and Callahan School.

Ms. Guilbault separately spoke with Ms. Dunham who agreed that they could stop maintaining the log of Teacher X. During her meeting with Ms. Guilbault, Ms. Dunham inquired as to who told her to stop maintaining the log. Ms. Guilbault told Ms. Dunham that it was Ms. Inzer who told them to stop the log. (TR. p. 91) After learning this information, Ms. Dunham discussed the issue with the Superintendent of Schools, Mr. Welford. Ms. Dunham also decided that she should speak with Ms. Inzer. (TR. p. 93)

It is the events of November 8, 2007 when Ms. Dunham did speak with Ms. Inzer about this issue that gives rise to the complaint herein. Both Ms. Inzer and Ms. Dunham gave differing accounts of what happened. Ms. Inzer testified that she received a call from Ms. Dunham's secretary indicating that Ms. Dunham was on her way over to speak with her. When Ms. Dunham inquired of the secretary as to the nature of the meeting, the secretary said that she did not know. (TR. p. 52) Ms. Dunham arrived at about 11:15 AM and met with Ms. Inzer in her art classroom. Only the two (2) women were present for this meeting. Ms. Inzer testified that Ms. Dunham asked her repeatedly whether she had advised Ms. King and Ms. Guilbault to stop writing the log about Teacher X. Ms. Inzer stated that she replied "not in so many words" and explained to Ms. Dunham how frustrated the teachers were. Ms. Inzer testified that Ms. Dunham then stated that if Ms. Inzer had in fact told the teachers to stop maintaining the log, then "Mr. Welford [the Superintendent] would be considering her insubordinate." Ms. Inzer testified that she was very "taken aback" by Ms. Dunham's comment because she [Inzer] felt that she had been cooperative. Ms. Inzer testified that she believed that Ms. Dunham was going to speak with Mr. Welford and that after Ms. Dunham left, Ms. Inzer was flustered to the point that she immediately tried to call the Vice President of the Union, Nancy Hodys. After not being able to reach Ms. Hodys, Ms. Inzer called another Union representative, Michael Clifford and advised him that she was very upset by the statement that she would be considered insubordinate for doing her job. (TR. p. 58) On cross-examination, Ms. Inzer verified that she was not ultimately reprimanded as a result of this meeting and that to the best of her knowledge no adverse information had been

placed in her personnel file. Ms. Inzer further clarified that she told Ms. Dunham that she had advised the teachers that they needed to get back to the business of teaching and that it was up to the administration to deal with Teacher X. (TR. p. 64)

Ms. Dunham testified that on November 8, 2008, she had her secretary call Ms. Inzer at the Callahan School to see if Ms. Inzer would meet with Ms. Dunham during Ms. Inzer's break. Ms. Inzer agreed to meet with Ms. Dunham. Ms. Dunham testified that on her way over to the Callahan School, she received an urgent call concerning a problem with Teacher X which required Ms. Dunham to return to Steere Street School. After addressing the issue, Ms. Dunham got back in her vehicle to resume her trip to meet with Ms. Inzer. As a result, Ms. Dunham was late, but Ms. Dunham and Ms. Inzer did have a Brief meeting in Ms. Inzer's classroom at the Callahan School. Ms. Dunham described the meeting as "cordial" and that when she left she thought it was a "great meeting." (TR. p. 96) Ms. Dunham stated that she did not think that she had asked Ms. Inzer three (3) times who told the teachers to stop maintaining the log, *but that if she had*, it was because she was concerned to find out whether the directive to stop writing in the logs had its genesis with Ms. Inzer. *Id.* Ms. Dunham testified that it was hard for her to believe that it was Ms. Inzer who had told the teachers to stop the log, because Ms. Inzer had been so "cooperative" to that point. Ms. Dunham testified that Ms. Inzer told her in that meeting that the teachers were really upset and crying about the situation with Teacher X and that they were feeling at wit's end over how to deal with Teacher X. Ms. Dunham did indicate that she told Ms. Inzer that she would be "speaking with" Mr. Welford about their conversation. (TR. p. 96) Both Ms. Dunham and Ms. Inzer indicated that upon the conclusion of their meeting, Mr. Brissette, the Principal of Callahan School, arrived at the door to Ms. Inzer's room. Mr. Brissette did not overhear any of the conversation between the women.

The Union also presented the testimony of Michael Clifford, the Union's Treasurer. Mr. Clifford reported having received a phone call on November 8, 2008 from Nancy Inzer, who told him that she had just been called to a meeting at the Callahan School, but that it was the Steere Street School Principal that came to meet with her. Ms. Inzer told him that she had been asked about her involvement and advice to two (2) Steere Farm teachers; and that she had been threatened by Principal Dunham three (3) times with the fact that the Superintendent might find her to be insubordinate for her advice. Mr. Clifford testified that he has known Ms. Inzer since high school (many years) and that she was normally a very calm person who keeps her feelings inward, but that on this day, she was "extremely frazzled" and "upset."

### DISCUSSION

The Union argues that the Employer has committed an unfair labor practice when its agent, Cynthia Dunham, interfered with and intimidated Nancy Inzer in her efforts to exercise protected activities. The Employer argues that Ms. Dunham did not commit an unfair labor practice when she met with Ms. Inzer, because no threat was made, but that even if it had been made, it would not rise to the level of an unfair labor practice (citing the Board's decision in ULP 5845, December 28, 2006, *Rhode Island State Labor Relations Board and the Town of Middletown.*) The Employer also argues that since there was no witness to the meeting between the two (2) women, the Board must rely on conflicting recollections.

While it is true that the two women differ to a fair degree in their recollection of the meeting at Callahan School, the Board notes that Ms. Dunham specifically stated that the purpose of the meeting was to "ascertain where that information had come from, whether it was from Nancy Inzer or the Union." (TR. p. 111) When asked what "information was that", Ms. Dunham replied, "that the teachers not write down anything in their classroom." (TR. p. 111) On redirect examination, Ms. Dunham stated: "I was trying to ascertain exactly whether it

was Nancy who asked the teachers not to keep a log or record what they were doing or was it the Union. Because I had no contact with the board, the Union Board, about this at all, only Nancy Inzer and Patrick Crowley.” (TR. pgs. 115-116) On re-cross examination, Ms. Dunham was asked whether the reason for her meeting with Ms. Inzer was to “ascertain whether the advice regarding the logs came directly from Inzer or from what you call the Union”. Her reply was affirmative. Immediately following this question, Ms. Dunham was asked, “was that the only reason for the meeting” to which she also replied in the affirmative. (TR. p. 117) However, earlier in her testimony, she was asked on cross-examination, “what prompted you on November 8 to initiate a meeting with Ms. Inzer”, Ms. Dunham replied: “because I was concerned that the teachers were having a really hard time at that point.” (TR. p. 110)

This conflict in Ms. Dunham’s testimony is troubling. In her earlier testimony, she states that she is concerned for the teachers who were having a really hard time at that point and that is the reason she meets with Nancy Inzer on a day that Ms. Inzer is actually working at a different school. Ms. Dunham then later admits that the only reason for the meeting with Nancy Inzer, while she is at work in another school, is to ascertain who is telling the teachers not to maintain the logs on Teacher X. Earlier testimony from Ms. King established the fact that Ms. Dunham had already told the teachers that it was “fine” if they did not want to continue the logs and that Ms. Dunham understood that the teachers were not comfortable with reporting on other teachers. So, if Ms. Dunham was truly “fine” with the fact that the teachers did not want to maintain a log on Teacher X, then what could it possibly matter who had told them that it was not their job to report on another teacher? Why would it be so important to track down Nancy Inzer while she’s teaching at another school to ask her this question, especially when she works in the same building with Ms. Dunham three (3) days a week? If it was “fine” with Mrs. Dunham that the teachers do not maintain the log, what was the all-fired rush to ask Nancy Inzer directly if she was the source of that advice? Ms. Dunham’s testimony is conflicting and to the Board, she was unfortunately, less than credible.

The facts set forth before the Board indicates that Teacher X's performance (or lack thereof) was understandably a huge source of frustration and consternation for the fourth grade teachers, parents, and for Ms. Dunham who met with Teacher X on twenty-two (22) occasions between September and October 2007. The fourth grade teachers had complained repeatedly to Ms. Dunham who finally asked the teachers to record Teacher X's activities in their classrooms. Ms. Dunham indicated that she did this because she was trying to solve the problem and that she couldn't possibly be in the fourth grade all the time. The Board is sympathetic to Ms. Dunham's dilemma with Teacher X; twenty-two meetings in such a short time is clearly a large amount of time devoted to one staff member. It is clear from Ms. Dunham's testimony that she felt the Union was being cooperative, up and until the point that the teachers said they could not keep a log on a fellow teacher. Indeed, Ms. Dunham had described Ms. Inzer as previously being "fantastic." (TR. p. 94)

The reasonable inference from this factual backdrop and the conflicting testimony at hearing is that it was not at all "fine" with Ms. Dunham that the Union told the teachers not to maintain an activity log on Teacher X. Indeed, it apparently bothered Ms. Dunham so much that she sought out Ms. Inzer while she was working at another school. Adding fuel to the fire, that day, was the fact that while Ms. Dunham was on her way to see Ms. Inzer about the Teacher X issue, Ms. Dunham was called back to the school to deal with a problem having to do with none other than Teacher X! Undeterred by that interruption, Ms. Dunham got back in her car and traveled to Callahan School to conduct her interrogation of Ms. Inzer.

It was during this meeting when she's trying to ascertain who advised the teachers not to maintain the log on Teacher X that Ms. Inzer says that Ms. Dunham asked her the same question three (3) different times. Ms. Dunham says she did not recall asking Ms. Inzer the same question three (3) times, but that if she did, it was because she was concerned about the genesis of the advice. (TR. p. 96) On cross-examination, Ms. Dunham admitted that although

she had previously testified that she had not asked Ms. Inzer three times, she actually might have. (TR. p. 112) Ms. Inzer testified that Ms. Dunham told her in this meeting that if Ms. Inzer had in fact told the teachers to stop maintaining the log, then Mr. Welford [the Superintendent] would be considering her to be insubordinate. When asked if she made this statement, Ms. Dunham denied using the word "insubordinate" but did acknowledge that she said she would be reporting the information ascertained in the meeting to the superintendent. While there was no one else in the room to corroborate the exact words used, there is testimony in the record about what Ms. Inzer did immediately following the meeting. Ms. Inzer testified that she immediately called Mike Clifford, the Union Treasurer, and relayed the information, to him, that she might be accused of insubordination. Mr. Clifford testified that he received a phone call from an "extremely frazzled" and "upset" Nancy Inzer, a person whom he had known for decades to be a "calm" and "inward" person. If the meeting was as Ms. Dunham described and all she asked, one time, was whether Nancy Inzer had advised the teachers to stop maintaining the log on Teacher X, what would cause Ms. Inzer to become extremely frazzled and upset enough to call another Union representative? The Board finds that that the combination of these facts, together with Ms. Inzer's credible testimony gives rise to a finding of fact that Ms. Dunham did interrogate Ms. Inzer about protected activity and then threatened her with insubordination. The fact that Ms Dunham did not follow through on her threat is of no import, because it is likely that upon reflection, she thought better of that course of action.

Union officials have the obligation, as well as the right to advise their members about terms and conditions of employment and they have the right to be free from intimidation and harassment while undertaking these activities. Threatening an employee with accusations of "insubordination" because that employee has engaged in protected conduct, is a clear unfair labor practice. In this case, the Board finds that that is exactly what had happened here. The Employer argued that even if Ms. Dunham had threatened Ms. Inzer with insubordination, that this was permissible because she did not follow through



with it. In support of this position, the Employer relies upon this Board's decision in ULP 5770, *Town of Middletown*, decided December 26, 2006. In *Town of Middletown*, the Board found an unfair labor practice when representatives of the Employer conducted a speaker phone conversation within deliberate earshot of an employee. In that conversation, the town officials and its labor attorney were having a conversation, 24 hours after an employee had (permissibly) failed to show for a meeting and the labor attorney was overheard saying that the employee's failure to show up for the meeting was grounds for insubordination. Under the circumstances presented in that case, the Board found that the conduct of this meeting, via speaker-phone and within earshot of other employees, less than 24 hours after a contentious meeting in which a female employee did not show up, was calculated to produce fear and intimidation in those overhearing the conversation.<sup>2</sup> The Board found the speaker-phone conversation rose to the level of a veiled threat and was prohibited because the employee had exercised her right to send a Union Representative to the meeting instead of attending herself.

In the same case, the Union had also alleged that the Employer also threatened to dock the pay of two (2) employees unless they signed a particular Memorandum of Agreement, resolving a dispute. As the facts unfolded, however, there was no threat to the employees that their pay would be docked unless they signed an Agreement. By the time the employer had called the employees to a meeting, the employee had already docked and restored pay, prior to the meeting to discuss a Memorandum of Agreement. Thus, the activity had occurred and been corrected, before the employees knew anything about it. The Board stated that while this approach was "less than ideal and caused more problems, the Board could not find that the employees had been threatened with having their pay docked unless they signed a Memorandum of Agreement. Most importantly, not one (1) witness in that case testified that the return of the employees' wages was conditioned upon the employees' execution of the Memorandum of Agreement, as the charge had alleged.

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<sup>2</sup> We also noted that there was no evidence that the labor attorney, who was on the speaker phone with town officials, knew that the subject employee was within earshot of this conversation.

In this case however, we have an employee who has testified, emphatically, that she was threatened with a charge of insubordination for having acted in a Union capacity when advising teachers. We also have testimony from this same employee in which she stated that upon conclusion of the meeting, she immediately called her Union representative and relayed the events of the meeting to him. She testified that she was "taken aback" and "upset." We also have testimony from a Union official that this employee did call him and was "extremely frazzled" and "upset." From these facts, the Board has made a credibility determination that Ms. Inzer was, in fact, threatened with insubordination for having advised the teachers against keeping a log on Teacher X.

#### **FINDINGS OF FACT**

- 1) The Burrillville School Committee 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) Nancy Inzer works at two (2) elementary schools in Burrillville, Steere Farm and Callahan, as an art teacher. She is also a building representative for the Union at Steere Farm.
- 4) In October of 2007, two (2) fourth grade teachers sought advice from Ms. Inzer concerning the fact that they were having a huge problem with a Special Education Teacher and that at the direction of the Principal, Ms. Cynthia Dunham, they had been maintaining a log of this teacher for approximately a week. The two (2) teachers were upset, stressed, and wanted to know what they should do about the log. Ms. Inzer advised them that monitoring teachers was the principal's job and that they needed to get back to the business of teaching. Based upon that advice, both teachers advised the Principal that they no longer wanted to maintain a log on the Special Education Teacher.

The Principal asked the teachers who told them that they should stop maintaining the log and the teachers told her that it was Ms. Inzer.

- 5) On November 8, 2007, Ms. Dunham called a meeting with Ms. Inzer while Ms. Inzer was working over at the Callahan School. On her way over to the meeting, Ms. Dunham was called back to Steere Farm to deal with a problem pertaining to the Special Education Teacher. After addressing the issue, Ms. Dunham resumed her journey to Callahan School to meet with Ms. Inzer.
- 6) During the meeting, Ms. Dunham repeatedly inquired of Ms. Inzer whether it was she who told the two (2) teachers to stop maintaining the log on the special education teacher. Ms. Dunham also told Ms. Inzer that if it was her, that the superintendent would be finding her to be insubordinate.
- 7) Upon conclusion of the meeting, Ms. Inzer was very upset and called Michael Clifford, a Union representative and related to him what had occurred in the meeting. Mr. Clifford stated that he had known Ms. Inzer for decades and that she was normally a calm and inward person, but that on this day she was extremely frazzled and upset.
- 8) No disciplinary actions were ever brought against Ms. Inzer for advising the teachers about what to do about the Special Education Teacher.

#### **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 (3) and (10).

#### **ORDER**

- 1) The Employer is hereby ordered to issue a written apology to Ms. Inzer.
- 2) The Employer is hereby ordered to cease and desist from threatening employees with "insubordination" for exercising their rights to engage in protected activity.
- 3) The Employer is also required to post a copy of this Decision and Order on the employee bulletin boards for a period of thirty (30) days from the date of receipt.



RHODE ISLAND STATE LABOR RELATIONS BOARD

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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 9 2009

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