

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-5955
	:	
RHODE ISLAND BOARD OF GOVERNORS	:	
FOR HIGHER EDUCATION	:	
	:	
-AND-	:	
	:	
URI/AAUP FULL-TIME FACULTY	:	

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**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 Rhode Island Board of Governors for Higher Education (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated January 12, 2009, and filed on January 13, 2009 by the URI/AAUP Part Time Faculty United (PTFU) (hereinafter "Union.").

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

The URI/AAUP Part-Time Faculty United (PTFU) Negotiating Team entered into formal negotiations with the University of RI Administration/RI Board of Governors for Higher Education on May 13, 2008. When the parties first started, it was agreed by both parties that all contract proposals would be submitted no later than July 2, 2008. The PTFU met this deadline. This, the URI/BOG has had our complete set of proposals since July 2, 2008. Included among the items submitted by the PTFU is a discreet proposal dealing specifically with the issue of the number of courses a part-time faculty member may teach per semester at URI. This proposal, submitted by the PTFU, has not yet been negotiated or resolved at the table by the PTFU and URI/BOG negotiating teams. The PTFU negotiating team has recently learned that URI administrators (including University of Rhode Island/BOG chief negotiator in the these negotiations, Anne Marie Coleman), is currently unilaterally instituting a "new policy" relative to the teaching load for URI's part-time faculty. This activity is occurring completely outside the formally and legally recognized contract negotiation process. In brief, they are changing policy without negotiations.

In lieu of the informal conference, the parties submitted written position statements. On May 8, 2009, the Board issued its Complaint alleging: "The Employer violated RIGL 28-7-13 (6) and (10) when it unilaterally implemented changes in terms and conditions of employment (number of courses taught) during negotiations for an initial contract, after a specific proposal on this issue had been submitted by the Union." The Employer filed its response to the Complaint on May 15, 2009 and included both an answer and a Motion to Dismiss. On June 1, 2009, the URI/AAUP Full-Time Faculty filed a Motion to Intervene in the case. The Board granted the Motion to Intervene on August 18, 2009.

Formal hearings on this matter were held on September 29, 2009 and May 6, 2010.<sup>1</sup> Upon conclusion of the September 29<sup>th</sup> hearing, the Union rested its case. On April 27, 2010, the parties filed "hard copies" of Motions that the parties had previously exchanged via email amongst themselves. The PTFU filed a Motion to Re-open its case-in-chief and the Employer and Intervenor both filed Objections to the Motion. The Employer also filed a Motion to Dismiss. At the commencement of the second formal hearing on May 6, 2010, the Board heard oral argument on the Motion to Re-open and the Chair denied the Motion. Representatives from the Union and the Employer were present at both of the hearings and had full opportunity to examine and cross-examine witnesses and to submit documentary evidence. Upon conclusion of the formal hearing, the Chair indicated that she was not going to rule on the Motion to Dismiss at the hearing and that she wanted the full Board to make that determination, after a review of the transcripts. The Employer rested its case upon the conclusion of the May 6, 2010 hearing.

## DISCUSSION

The complaining Union in this matter was certified by this Board on October 17, 2007 to represent "All per-course faculty employed by the Employer at all University of Rhode Island campuses teaching a total of six (6) credits during two (2) academic years, commencing 2005-2006, but excluding the

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<sup>1</sup> The second hearing had been postponed at the request of the parties.

President, the Provost, Vice Provosts, Assistant Provosts, Vice Presidents, Assistant Vice Presidents, Associate Vice Presidents, Deans, Associate Deans, Non-Union Directors, Confidential employees and all others excluded by the Act.” (Employer’s Exhibit #1) It is notable that this Certification was issued via a Consent Election. The Intervening Union has been certified for many years and represents URI’s full-time and continuing part-time faculty, including “lecturers” which are defined as “individuals who are appointed to limited period teaching assignments of not less than one academic year’s duration which are general revenue funded. In order for a “lecturer” to be included within the Intervenor’s bargaining unit, he or she must have been appointed to at least two (2) consecutive limited period teaching assignments, each of at least one academic or calendar duration, as applicable, which assignments include the teaching of at least three (3) courses and nine (9) credits each semester.” (Employer’s Exhibit # 2)

The complainant alleges that after it had placed a contract proposal on the table to permit the part time faculty to teach three (3) courses, that Respondent initiated a “new policy” that prohibited the part-time faculty from teaching more than three (3) courses. The Respondent argues that the “policy” which restricts the teaching of more than two (2) courses by part-time faculty members has been a practice which has been in place for many years, in recognition of the definition of “lecturer”, as set forth in the Intervening Union’s (AAUP) long-standing contracts. As such, the Employer argues that there was no “new policy” unilaterally enacted during contract negotiations with the PTFU. In addition, the Employer argues that it has not failed to engage in negotiations or the collective bargaining process and that the process is on-going now with both mediation and interest arbitration. Finally the Employer argues that there are simply no facts developed in the record to support a charge that the Employer is interfering with the Employees’ rights to engage in collective bargaining.

The PTFU presented the testimony of Ms. Dorothy Donnelly, the Chief Negotiator for the PTFU. Ms. Donnelly testified that negotiations for a contract began in March 2008 and at that time and for approximately 15-20 years

preceding, the “practice” at URI had been that part-time faculty members were permitted to teach up to three (3) courses, if they were interested and if courses were available. (TR. 9/29/09 p. 14) Ms. Donnelly testified that on or about June 27, 2009, the PTFU submitted a proposal of the contract, Article 9, §9.5 – Appointments, to the Employer for consideration. (Union Exhibit #1) Ms. Donnelly further testified that sometime thereafter, she received an email from Barbara A. Silliman which was forwarding a letter from Katherine Quina, the Interim Associate Dean at the Feinstein College of Continuing Education (URI). In Ms. Quina’s letter, which was addressed to “FCCE Instructors”, she included the following paragraph:

Limits on per-course teaching: the Provost’s office is now enforcing a rule that has been in place but not enforced, for several years. Part-time instructors (those not regular employees of URI) are limited to a TOTAL of TWO courses (normally 6-8 credits total) per semester at URI, across campuses and day/evening time slots. If you are scheduled to teach more than two (2) sections/courses, please contact me immediately with the courses you are scheduled to teach. I may be able to arrange an exemption for the spring, but need to know immediately. If you wait until classes start, it may be too late! In the fall, expect these limits to be more strictly enforced, and exemptions will be very difficult to justify.”

Ms. Donnelly further testified that the Employer had not raised the issue of limiting the course loads of the PTFU in negotiations and that some bargaining unit members were impacted by the change. She stated that some bargaining unit members had their third course taken away from them. (TR. 9/29/09 p. 24)

On cross-examination, Ms. Donnelly testified that she did not agree that the language of the certification for the PTFU bargaining unit was accurate and that it meant “part-time” faculty, which was an all-inclusive term for “per-course”, “adjunct”, and “contingent” teachers. (TR. 9/29/09 p. 27) Ms. Donnelly stated that she believed the difference between the AAUP lecturers and the PTFU employees was the fact that lecturers are appointed for a calendar or academic year and not by semester and that the PTFU employees are employed on a

semester-by-semester basis. She further indicated that the contract proposal sought a minimum of three (3) courses, to be offered to the PTFU. (TR 9/29/09 p. 40) On further cross, Ms. Donnelly indicated that the PTFU maintains a position that URI has waived its right to enforce any previously adopted policy limiting course loads to two courses, because URI has not historically enforced such a policy. Ms. Donnelly also stated that she had received another email from Katherine Quina that stated that a two-course policy was being implemented by Anne Marie Coleman and another gentleman at URI. (TR 9/29/09 p. 44) The PTFU did not produce a copy of this email from Katherine Quina, or a written copy of any "policy" promulgated by any University official concerning the limitation of courses. In addition, while Ms. Donnelly stated that approximately 50 members of her bargaining unit had been adversely impacted, she produced no documentary evidence to that effect.

In its defense, the Employer submitted four (4) excerpts from Collective Bargaining Agreements between the AAUP and URI covering the period of 1997-2007, which establish the position of "lecturer" as one having a minimum course load of three (3) courses. The Employer argued that the policy or practice of limited part-time faculty to two courses was a long standing policy or practice that pre-dated the creation of the PTFU and was in deference to the fact that once the three (3) course limit was reached, that would qualify the employee as a lecturer. The Intervenor was concerned that a three (3) course minimum in the PTFU contract might adversely affect the "lecturers" in the AAUP.

On cross-examination by the Intervenor, Ms. Donnelly indicated that he had previously received a second email that told her that a new policy was being implemented to limit part-time teachers to two (2) courses. However, she did not have a copy of that email to enter into the record as evidence. (TR. 9/29/09 p. 59)

Upon conclusion of the September 29<sup>th</sup> hearing, the PTFU rested its case- in-chief. On April 27, 2010, the PTFU filed a Motion to Re-open its case and at the commencement of the May 6, 2010 hearing, the Motion to Re-open was denied. The Employer was then given an opportunity to argue its Motion to

Dismiss, which had been filed prior to the hearing. The balance of the May 6<sup>th</sup> hearing was devoted to legal argument, but no new witness testimony.

The burden of proof in a ULP case lies with the charging party. In this case, the PTFU put on one witness and entered two (2) exhibits into the record. The one document that the Union entered concerning existing course loads was an email which forwarded a letter written by Dr. Katherine Quina to Feinstein College Faculty, advising them that the Provost was now enforcing a policy *that had been in place for several years*. Ms. Quina did not testify and the charging party was not able to produce a copy of any policy that allowed part-time faculty members (other than lecturers) to teach a minimum of three (3) courses. There was no other evidence entered into the record concerning the numbers of courses taught by any specific part-time faculty members for any particular period of time. There was no copy of the supposed new policy entered into the record. There was only very generalized statements made by Ms. Donnelly on the historical nature of teaching loads. Conversely, the Employer established that as far back as at least 1997, URI has had a contract that covers "lecturers", those faculty members that teach a minimum of three (3) courses for specified period of time before becoming eligible for membership in the AAUP union. The Employer asserts that these contracts are evidence of its long standing position to treat three-course teachers in a specific manner and that it was not something that was derived during the negotiations with PTFU. Under all of these circumstances and the paucity of evidence in support of the charge, the Board finds that there is insufficient evidence to support the charge of unfair labor practice and the same is hereby dismissed.

#### **FINDINGS OF FACT**

- 1) The RI Board of Governors for Higher Education 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) The Intervening Union represents the Full-Time Faculty at URI which has contract provisions dealing with teaching course loads.
- 4) The PTFU was certified by the Board on October 17, 2007 to represent: “All per course faculty employed by the Employer at all University of Rhode Island campuses teaching a total of six (6) credits during two (2) academic years, commencing 2005-2006, but excluding the President, the Provost, Vice Provosts, Assistant Provosts, Vice Presidents, Assistant Vice Presidents, Associate Vice Presidents, Deans, Associate Deans, Non-Union Directors, Confidential employees and all others excluded by the Act.”
- 5) The Intervening AAUP Union has been certified for many years and represents URI’s full-time and continuing part-time faculty, including “lecturers” which are defined as “individuals who are appointed to limited period teaching assignments of not less than one academic year’s duration which are general revenue funded. In order for a “lecturer” to be included within the Intervenor’s bargaining unit, he or she must have been appointed to at least two consecutive limited period teaching assignments, each of at least one academic or calendar duration, as applicable, which assignments include the teaching of at least three (3) courses and nine (9) credits each semester.”
- 6) On or about June 27, 2009, Ms. Donnelly testified that on or about June 27, 2009, the PTFU submitted a proposal of the contract, Article 9, §9.5 – Appointments, to the Employer, which sought a minimum of three (3) courses for all part-time faculty who wanted them. (Union Exhibit #1)
- 7) In January 2009, Ms. Donnelly received an email from Barbara A. Silliman which was forwarding a letter from Katherine Quina, the Interim Associate Dean at the Feinstein College of Continuing Education (URI). Ms. Quina’s letter, which was addressed to “FCCE Instructors” stated in pertinent part: “Limits on per-course teaching: the Provost’s office is now enforcing a rule that has been in place but not enforced, for several years. Part-time instructors (those not regular employees of URI) are limited to a TOTAL of

TWO courses (normally 6-8 credits total) per semester at URI, across campuses and day/evening time slots. If you are scheduled to teach more than two (2) sections/courses, please contact me immediately with the courses you are scheduled to teach. I may be able to arrange an exemption for the spring, but need to know immediately. If you wait until classes start, it may be too late! In the fall, expect these limits to be more strictly enforced, and exemptions will be very difficult to justify.”

- 8) Ms. Donnelly testified that the Employer had not raised the issue of limiting the course loads of the PTFU in negotiations and that some bargaining unit members were impacted by the change. She stated that some bargaining unit members had their third courses taken away from them. No documentary evidence was submitted to support this allegation.
- 9) On cross examination, Ms. Donnelly indicated that the PTFU maintains a position that URI has waived its right to enforce any previously adopted policy limiting course loads to two (2) courses, because URI has not historically enforced such a policy.
- 10) The PTFU did not produce a copy of any University policy.
- 11) The Employer submitted four (4) excerpts from collective bargaining agreements between the AAUP and URI covering the period of 1997-2007, which establish the position of “lecturer” as one having a minimum course load of three (3) courses. The Employer argued that the policy or practice of limited part-time faculty to two (2) courses was a long standing policy or practice that pre-dated the creation of the PTFU and was in deference to the fact that once the three (3) course limit was reached, that would qualify the employee as a lecturer.
- 12) On cross-examination by the Intervenor, Ms. Donnelly indicated that she had previously received a second email that told her that a new policy was being implemented to limit part-time teachers to two (2) courses. However, she did not have a copy of that email to enter into the record as evidence.



### CONCLUSIONS OF LAW

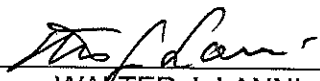
- 1) The Intervening Union has a substantial interest in the outcome of the proceedings and is a proper party to the proceedings.
- 2) The Union has not established by a fair preponderance of the credible evidence in the record that a violation of R.I.G.L. 28-7-13 (6) or (10) has been committed.

### ORDER

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



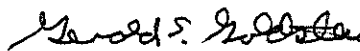
RHODE ISLAND STATE LABOR RELATIONS BOARD



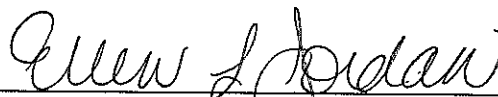
WALTER J. LANNI, CHAIRMAN



FRANK MONTANARO, MEMBER



GERALD S. GOLDSTEIN, MEMBER



ELLEN L. JORDAN, MEMBER



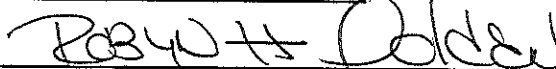
JOHN R. CAPOBIANCO, MEMBER



ELIZABETH S. DOLAN, MEMBER

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

Dated: OCTOBER 12 2011

By:   
ROBYN H. GOLDEN, ADMINISTRATOR