

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 - 6078
	:	
FOSTER/GLOUCESTER REGIONAL	:	
SCHOOL COMMITTEE	:	
	:	

DECISION AND ORDER OF DISMISSAL (AFTER REMAND)

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 Foster/Gloucester Regional School Committee (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated February 6, 2012, and filed February 7, 2012 by the NEA/Ponagansett/ NEARI (hereinafter "Union").

The Charge alleged:

"On or about August 11, 2011, the Employer unilaterally implemented terms and conditions (change in the terms governing the position of Department Chairperson) that had not been agreed to by the parties, while the parties were engaged in collective bargaining, without first having reached impasse and without exhausting the statutory dispute mechanisms".

Following the filing of the Charge, there were a series of withdrawal and entries of appearance for various legal counsels for the Employer. Finally, on February 29, 2012 and March 7, 2012, the Union and the Employer each submitted a written position statement as part of the Board's informal hearing process. On April 10, 2012, the Board issued a Complaint mirroring the initial charge. The Employer did not initially file a response to the Complaint, but did request various postponements of the formal hearing. In November 2012, the Union requested that the matter be placed into abeyance status while it tried to settle the matter with the Employer. In February 2013, the Employer's most recent legal counsel discovered that no Answer had been filed in the case and requested an extension of time within which to file. The

request was granted and the Employer filed its Answer on March 4, 2014, denying the allegations in the Complaint and asserting affirmative defenses, including an election-of-remedies defense and a deferral defense.

On March 12, 2013, the Employer filed a Motion to Dismiss for lack of subject matter jurisdiction pursuant to the “election-of-remedies” doctrine. On March 28, 2013, the Union filed a Memorandum of Objection to the Motion. On May 31, 2013, the Union filed an amended Memorandum in Opposition to the Motion to Dismiss. On June 5, 2013, the Employer filed its reply to the Union’s amended Memorandum. On July 11, 2013, the Board met to review the pleadings in the case and voted to dismiss the case for lack of subject matter jurisdiction. On July 25, 2013, the Board’s Administrator issued a letter to the parties reporting the Board’s July 11, 2013 vote.

On August 23, 2013, the Union appealed the Board’s dismissal order to the Rhode Island Superior Court; in part, on the grounds that the Board did not issue a written Decision and Order, with findings of fact and conclusions of law. The Employer was named as a Defendant as well. The Employer filed an Answer to the Complaint on May 20, 2014, the Union, as Plaintiff, filed a Motion for Remand for the purposes of requiring the Board to issue a written Decision and Order. Both the Board and the Employer consented to the remand Motion and the Court issued an Order on July 16, 2014.

RELEVANT FACTS

The factual backdrop of this matter appears to be largely undisputed. It is the legal effect of these facts that the parties dispute. The parties’ Collective Bargaining Agreement expired on June 30, 2009 and they were locked in long-drawn-out, contentious negotiations for a successor CBA. During the pendency of the negotiations, the issue of new appointments for Department Chairs at the high school arose. On September 19, 2011, the Union filed a grievance with the Employer on behalf of Mr. Christopher Sprito who was not reappointed that fall to the position of Chair of the Mathematics Department.¹ A copy of the grievance was attached to the Employer’s Motion as Exhibit A. As a remedy in that grievance, the Union sought: “to make the grievant whole including but not limited to immediate reinstatement, back pay,

¹ Mr. Spirito was the only Department Chair to not be reappointed.

retirement contributions and any other benefits.” On October 13, 2011, the Union filed a second grievance on Mr. Spirito’s behalf relating to his duties as non-Department Chair. There, the Union sought: “To make the grievant whole, including but not limited to immediate reinstatement, back pay (remainder of department head stipend balance), cover pay for each duty that was performed, per diem pay for 5th class being taught, retirement contribution, and any other benefits.”

On December 19, 2011, the Employer participated in an arbitration hearing for an unrelated grievance, which was filed after the grievances referenced in this case.

On February 7, 2012, the Union filed the within Unfair Labor Practice Charge, alleging a unilateral change (while in negotiations) in the position of Department Chairperson. As a remedy, the Union sought: “cease and desist, restore status quo ante, and make adversely affected members whole.”

On March 28, 2012, the parties reached an Agreement for a successor CBA for the period July 1, 2011 through June 30, 2014. The Agreement was retroactive to the expiration date of the predecessor agreement. On June 22, 2012, the Foster/ Gloucester School Superintendent sent a memo to the Union requesting that the October 14, 2011 grievance be taken out of abeyance and be either processed or withdrawn. On July 9, 2012, the Union withdrew the September 19, 2011 grievance.

DISCUSSION

The Employer argues that the fact that the Union filed two (2) separate grievances on the issue of the Department Chair appointments seeking substantially the same relief precludes the Union from filing an Unfair Labor Practice Charge over the same facts and seeking substantially the same relief. The Employer relies upon Department of Environmental Management v Labor Relations Board, 799 A.2d 274, (R.I. 2002) and Cipolla v R.I. College Board of Governors for Higher Education, 742 A.2d 277, 281 (R.I. 1999) and argues that the only question for the Board is whether the Union sought “essentially” the same remedy twice, prior to filing the Unfair Labor Practice Charge. If so, then the Union has “elected” its remedy and it should pursue that remedy to its conclusion. The Employer also cited Board precedent, including: ULP-5872, RISLRB V Dept. of Health, October 13, 2009, ULP 5464 RISLRB v State of R.I. Dept. of Labor & Training, Feb 13, 2003.

The Union argues that at the time that it filed the within Unfair Labor Practice Charge, this was the only lawful forum available to it to seek redress. The Union argues that since the parties' contract had long since expired, there was no grievance mechanism "available", so there can be no election. Coventry Fire District v Rhode Island State Labor Relations Board, WL 2883170 (R.I. Super. Ct.) 178 L.R.R.M. (BNA) 2501. The Union further argues that the Employer knows that it could not be compelled to process grievances after the expiration of the contract. The Union also cites Providence Teachers v Providence School Board, 689 A.2d 388, 392-393 (R. I. 1997) and several Superior Court decisions.

However, as the Employer highlights, even though a CBA has expired, there is nothing that prohibits the parties from voluntarily utilizing the grievance process contained in the expired CBA. In this case, the Employer argued in its initial memo that during the period of time in which negotiations were pending for a successor CBA, the Union filed more than twenty-one (21) grievances, which the Employer processed. The Union never addressed or disputed this claim in either of its memos. However, there were two (2) documents attached to the Employer's Memorandum, which support the fact that the Employer was willing to continue processing grievances. The first is a copy of an arbitration award dated in July 2012 for a grievance that was filed in September 2010 (the Bissell grievance).² The second document is the June 2012 memo from the Superintendent to the Union requesting that the Union either withdraw the October 2011 grievance or take it out of abeyance and process it. These documents support a finding that the Employer was indeed still agreeing to process grievances under the expired CBA. Thus, the grievance remedy was indeed available to the Union, which commenced the process and then abandoned the same. These facts fit squarely within the doctrine of the election-of-remedies as that doctrine has evolved and is currently interpreted in the Rhode Island Courts. Since the Union has elected its remedy by filing two (2) grievances, this Board does not have subject matter jurisdiction to hear the within Complaint and the same must be dismissed.

² The Union did acknowledge in its memo that the Bissell award existed.

FINDINGS OF FACT

- 1) The Foster/ Gloucester 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) The Parties' Collective Bargaining Agreement expired on June 30, 2009. During the pendency of the negotiations, the issue of new appointments for Department Chairs at the high school arose.
- 4) On September 19, 2011, the Union filed a grievance with the Employer on behalf of Mr. Christopher Sprito who was not reappointed that fall to the position of Chair of the Mathematics Department. As a remedy in that grievance, the Union sought: "to make the grievant whole including but not limited to immediate reinstatement, back pay, retirement contributions and any other benefits."
- 5) On October 13, 2011, the Union filed a second grievance on Mr. Spirito's behalf relating to his duties as non-Department Chair. There, the Union sought: "To make the grievant whole, including but not limited to immediate reinstatement, back pay (remainder of department head stipend balance), cover pay for each duty that was performed, per diem pay for 5th class being taught, retirement contribution, and any other benefits."
- 6) On December 19, 2011, the Employer participated in an arbitration hearing for an unrelated grievance, which was filed after the grievances referenced in this case.
- 7) On February 7, 2012, the Union filed the within Unfair Labor Practice Charge, alleging a unilateral change (while in negotiations) in the position of Department Chairperson. As a remedy, the Union sought: "cease and desist, restore status quo ante, and make adversely affected members whole."
- 8) On March 28, 2012, the parties reached an Agreement for a successor CBA for the period July 1, 2011 through June 30, 2014. The Agreement was retroactive to the expiration date of the predecessor Agreement.

- 9) On June 22, 2012, the Foster/ Gloucester School Superintendent sent a memo to the Union requesting that the October 14, 2011 grievance be taken out of abeyance status and be either processed or withdrawn.
- 10) On July 9, 2012, the Union withdrew the September 19, 2011 grievance.
- 11) The relief sought in both grievances and the Unfair Labor Practice Charge are essentially the same.

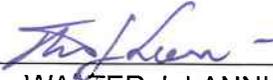
CONCLUSION OF LAW

- 1) The Complaint is barred by the Doctrine of Election-Of-Remedies and must be dismissed.

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



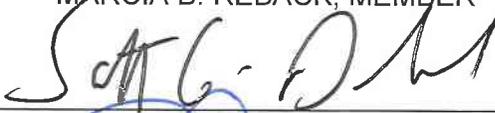
FRANK MONTANARO, MEMBER



ELIZABETH S. DOLAN, MEMBER



MARCIA B. REBACK, MEMBER



SCOTT G. DUHAMEL, MEMBER

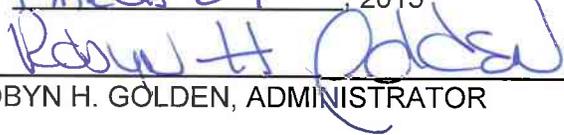


BRUCE A. WOLPERT, MEMBER

PEDER A. SCHAEFER WAS NOT PRESENT TO SIGN THE DECISION AND ORDER AS WRITTEN.

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

Dated: MARCH 24, 2015

By: 
ROBYN H. GOLDEN, ADMINISTRATOR

