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

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| **IN THE MATTER OF** | |
| RHODE ISLAND STATE LABOR RELATIONS BOARD | |
| -AND- | CASE NO: ULP-6086 |
| ** RHODE ISLAND BOARD OF GOVERNORS FOR HIGHER EDUCATION | |

## 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 Rhode Island Board of Governors for Higher Education (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated and filed on May 8, 2012 by University of Rhode Island Chapter of the American Association of University Professors (AAUP) (hereinafter "Union").

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

1) URI/AAUP and BOG are parties to a collective bargaining agreement ("CBA") for the period July 1, 2008 to June 30, 2011.

2) On March 15, 2011, Frank Annunziato, Executive Director of URI/AAUP sent a letter to URI President David Dooley, requesting that negotiations commence for a successor agreement. Exhibit A. Commissioner Raymond DiPasquale, Assistant Vice President Anne Marie Coleman, Vice Provost Clifford Katz and AAUP President Wendy Roworth were also sent copies of the letter.

3) On June 6, 2011, the URI/AAUP negotiating team and the BOG's negotiating team commenced negotiations.

4) At the June 6th meeting, the parties signed "Negotiation Ground Rules." Exhibit B. Ground Rule # 5 provides: "[e]ach negotiating team shall have the authority to enter into a tentative agreement." Anne Marie Coleman signed the rules on behalf of BOG and Frank Annunziato signed on behalf of URI/AAUP.

5) On August 26, 2011, the parties exchanged initial proposals. They held numerous negotiating sessions between August 26, 2011 and February 2, 2012.

6) On February 2, 2012, the parties reached a Tentative Agreement on all terms and conditions.

7) On March 15, 2012, Annunziato and Coleman signed the Tentative Agreement. Exhibit C. The Tentative Agreement was subject to ratification by URI/AAUP and BOG. It provides for a three year contract, retroactive to

July 1, 2011, and expiring on June 30, 2014. Among other things, the Agreement provides 3% wage increases each year, retroactive to July 1, 2011.

8) BOG specifically authorized Anne Marie Coleman to make this proposal and sign the Tentative Agreement on behalf of BOG.

9) On March 19, 2012, URI/AAUP ratified the Tentative Agreement.

10) On March 19, 2012, BOG was scheduled to also ratify the Tentative Agreement, but did not.

11) On April 2, 2012, the BIG again scheduled a meeting to ratify the Tentative Agreement. However on March 30, 2012, BOG cancelled the meeting and refused to ratify the Tentative Agreement.

12) According to news reports, Governor Lincoln Chaffee "halt[ed]" the ratification of the Tentative Agreement. Exhibit D. He does not approve the BOG's negotiation of the 3% raises. Governor Chaffee does not have the authority to prevent BOG from ratifying the Tentative Agreement.

13) On May 7, 2012, BOG rejected the Tentative Agreement that it previously authorized.

14) Pursuant to R.I.G.L. §§ 16-59-1 and 16-59-4, BOG has authority to negotiate and ratify contracts with employees at the three state colleges. BOG delegated its authority to negotiating team that included Coleman. BOG authorized Coleman and the rest of its team to agree to specific terms and conditions in the Tentative Agreement.

15) BOG's refusal to ratify the Tentative Agreement that it previously authorized is a refusal to bargain in good faith. Therefore, SLRB should issue an order requiring the BOG to ratify the Tentative Agreement.

Following the filing of the Charge, the parties each submitted written position statements, on June 6, 2012, as part of the Board's informal hearing process. The Board issued its Complaint on September 5, 2012 and charged the Employer with an unfair labor practice, as follows: "The Employer violated R.I.G.L. 28-7-13 (10) when it failed to consider and take a ratification vote on a Tentative Agreement in a timely manner after its Chief Negotiator had reached the Tentative Agreement."

On September 24, 2012, the Union filed a motion to amend the Complaint, to conform to the precise allegations made in the original charge. The Employer filed a written objection to the motion. The Board considered the motion on at its meeting on October 9, 2012 and denied the same. The Union also filed a Motion for Leave to Take Discovery, to which the Employer objected. The Board granted this motion. Depositions were taken by the Union on January 15, 2013 and February 11, 2013. At the formal hearing held on February 19, 2013, 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, both the Union and the Employer submitted written briefs. 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.

The Board voted preliminarily on July 31, 2013 to uphold the charge and find an unfair labor practice and referred the matter to legal counsel for drafting. The Board voted on January 14, 2014 to issue the final decision and order, as soon as practicable, after final administrative processing.

On January 17, 2014, the Board reconvened to further discuss the drafted decision and order as it pertained to the remedy.

## FACTUAL SUMMARY

The Employer and Union were parties to a Collective Bargaining Agreement for the period of July 1, 2008 to June 30, 2011. On March 15, 2011, Frank Annunziato, Executive Director of the Union, sent a letter to URI president Dr. David Dooley, requesting that negotiations commence for a successor Collective Bargaining Agreement. On June 6, 2011, the parties commenced bargaining and executed a document entitled "Negotiation Ground Rules" which provided in pertinent part: "each negotiating team shall have the authority to enter into a tentative agreement." (Union Exhibit 3) Anne Marie Coleman signed the rules on behalf of the Employer and Frank Annunziato signed on behalf of the Union. On August 26, 2011, the parties exchanged initial proposals and subsequently met to negotiate on several occasions. On February 2, 2012, the parties reached a Tentative Agreement on all terms and conditions. On March 15, 2012, both Coleman and Annunziato signed the Tentative Agreement, which was then subject to ratification by both the Employer and the Union. On March 19, 2012, after a day-long information and voting session, the members of the Union ratified the Agreement. The BOG was scheduled to undertake a ratification vote on the evening of March 19, 2012, but postponed the same to April 2, 2012. The April meeting was subsequently canceled by Board Chair, Lorne Adrain, because he did not feel that the Board's administrative staff had

presented adequate information for the Board to make an educated decision on the proposed Agreement. (CITE to Depo) On May 7, 2012, the BOG voted to reject the Tentative Agreement.

**SUMMARY OF TESTIMONY**

On January 15, 2013, the Union deposed Lorne Adrain, Chair of the Board of Governors. Mr. Adrain testified that the BOG gave Anne Marie Coleman (its Chief Negotiator) "parameters" within which to work while negotiating for the BOG. (Adrain Depo, pgs. 12-13) He further testified that the BOG had authorized Ms. Coleman to offer the following terms to the Union: three (3) percent raises for fiscal years 2012, 2013, and 2014, an increase in the employee's contribution to health care costs, and a new form of post-tenure review for faculty. (Adrain Depo. pg. 14) Mr. Adrain testified that when the BOG first considered the proposed Tentative Agreement, members were concerned that there was no "redlined" version of the contract and "they had no clear description of the fundamental economics of the contract -- for the full term of that proposed contract and that they had no clear understanding of what the impact might be on tuition." (Adrain Depo. pg. 17) Nevertheless, Mr. Adrain testified that the Tentative Agreement that Ms. Coleman submitted was indeed within the scope of guidance given to her by the BOG (Adrain Depo. pgs. 18, 21) Mr. Adrain acknowledged that in essence, once the Tentative Agreement was presented, the BOG decided to revisit the terms that it had previously authorized. He also admitted that he did not think that the BOG had "given a lot of thought to...all the variables that might affect tuition in advance of or during the course of formulating the guidance" the BOG gave to Ms. Coleman. (Adrain Depo. pg. 22) Upon further examination, Mr. Adrain admitted that the real issue of concern was the annual salary increases and not the health care premium increase or the faculty review issue. (Adrain Depo. pgs. 23-24)

Mr. Adrain testified that between March 2012 and May 2012, he had conversations with at least two (2) other Board members, Eva Mancuso and Mike Tikoian, concerning the terms of the contract. In addition to discussions with Board members, Mr. Adrain also met with Richard Licht, the Director of

Administration for the State of Rhode Island, as well as with Governor Lincoln Chafee, to discuss the state's economic climate and the importance of this contract as it pertained to other state employee negotiations. (Adrain Depo. pgs. 30-31) Mr. Adrain further testified that the other Board members also met privately with Mr. Licht and Governor Chaffee. (Adrain Depo. pgs. 33-35) According to Mr. Adrain's recollection, Mr. Licht did not tell Board members how to vote, but he did want them to understand the dire economic financial circumstances of the state and the impact that this contract was going to have on all other contractual negotiations. (Adrain Depo. pgs. 36, 37, 38) Adrain testified that Mr. Licht stated that the state was in very difficult economic circumstances that "necessitated looking at every opportunity to control and/or reduce costs because the revenue situation was not strong." (Adrain Depo. pg. 38) Mr. Adrain did not recall much else about this meeting, including: (1) specifically what Mr. Licht said about this contract's impact on other state contracts; (2) whether any Board Members present asked any questions of Mr. Licht; (3) whether URI faculty salaries are funded from general revenue like other state contracts; (4) whether any other Board members reacted audibly to Mr. Licht's statements; (5) whether Mr. Licht referred to any written notes when speaking to the group; (6) the date of Mr. Adrain's second meeting with Mr. Licht. (Adrain Depo. pgs. 40-43)

According to Mr. Adrain, he and Mr. Licht met a second time, date uncertain, but in fairly close proximity to the Board of Governor's May meeting. (Adrain Depo. pg. 43) The purpose of this second meeting was for Mr. Adrain to describe the contract proposals in detail and Mr. Adrain's logic for his support of the proposals; however, Mr. Adrain could not recall the "details" of this conversation either. (Adrain Depo. pg. 44) Adrain did recall the meeting, but only "generally", in that he had some "summaries" prepared of each of the contracts with which he was prepared to "argue" in support of the proposed contracts. Mr. Adrain did not recall what Mr. Licht said at this meeting, but Adrain did acknowledge that Mr. Licht stated that it was still the Governor's view that the Board should not support ratification of the Tentative Agreement. (Adrain Depo.

pg. 45) In addition to the communications with Mr. Licht, a Mr. Stephen Hourahan, from the Governor's office, also was in fairly regular communication with Mr. Adrain; and while the topic of the contract came up from time to time, Mr. Adrain did not recall the specifics or retails of these conversations. Id.

On further examination, Mr. Adrain testified that it was his recollection that he completed the financial summaries of the proposed contracts on the Thursday or Friday before the Monday, May 7th meeting of the Board. (Adrain Depo. pg. 48) While Mr. Adrain would not concede that Mr. Licht was "lobbying the Board", Mr. Adrian did agree that the Governor's office had expressed the position that the contract should not be ratified. Id.

On February 11, 2013, the Union took the deposition testimony of Eva-Marie Mancuso-Feeney, a member of the Board of Governors. Ms. Mancuso testified that as of January 1, 2013, the Board of Governors and the Board of Regents had been merged into one (1) new Board, entitled, the Board of Education. At the time of her testimony, Ms. Mancuso had been nominated, but not confirmed, to serve on the new Board of Education. (Mancuso Depo. pg. 6) Ms. Mancuso testified that although she was a member of the Board of Governors when contract negotiations were taking place, she did not participate in those negotiations. (Mancuso Depo. pg. 8) Ms. Mancuso testified that she did not recall any specific conversations with Anne Marie Coleman about what latitude, if any, Ms. Coleman had to make proposals to or accept proposals from the Union, within the scope of negotiations. (Mancuso Depo. pg. 9) Ms. Mancuso did know that Ms. Coleman had signed a Tentative Agreement with the Union and the broad parameters of the document. Id.

Ms. Mancuso testified that she was not aware, in advance, that the matter of a tentative proposal would be presented or discussed at the regular Board Meeting in March 2012. She stated that shortly into the presentation, she started a "brouhaha" by expressing her concerns that it was too difficult to understand the proposed changes to the contract, because they were only working with a one (1) page bulleted summary of the changes. Ms. Mancuso expressed that she did not feel comfortable discussing or reviewing changes to a document when

she did not have both documents together. She also testified that this was not the first time that she had expressed concerns about the method by which legal papers were presented to the Board. (Mancuso Depo. pgs. 16-17) Ms. Mancuso testified that after she expressed her concerns, no vote on the changes was taken and the meeting was adjourned. (Mancuso Depo. pg. 17) Ms. Mancuso also testified that it was not just the absence of a redlined agreement that concerned her; she also wanted information on the financial implications of the contract, including the post-tenure language and whether it had been vetted in the negotiating committee. (Mancuso Depo. pg. 18) Ms. Mancuso also wanted to know how the proposed co-share compared to other state employees. She said:

> "What we were trying to do, again, being a new board, we had 14 contracts and labor agreements and there was always the feeling that if Employee A was sitting next to Employee B and Employee C and all three of them had different contracts with different terms in them, how can we get those contracts, meld them together, so it was a part of a bigger strategy that just AAUP in terms of the analysis that I was doing." (Mancuso Depo. pg. 20)

Ms. Mancuso testified that Chairman Adrain directed Ms. Coleman to come up with a better presentation of the proposed Agreement. Ms. Mancuso testified that the matter was next presented at the May 2012 meeting and that her concerns about the proposed language for post-tenure review had still not been addressed. (Mancuso Depo. pgs. 21-23) Ms. Mancuso further testified that this language was not a "deal-breaker" for her as far as the contract, but that it was Dr. Dooley's testimony that adoption of the contract would result in a tuition increase at the University of Rhode Island in 2014. She stated that Dr. Dooley was on speaker-phone during the meeting and that he stated that after the last meeting, he and the provost had "crunched the numbers" and determined that the University could not absorb the proposed increase in wages, without raising tuition. Ms. Mancuso testified that she, Amy Beretta, and Mike Tikoian (all on the Facility and Finance Committee) had already previously decided that they were going to have a "proclamation" that they were not raising tuition again. She also testified that the three (3) of them previously had a meeting with Dr. Dooley and Lorne Adrain, and Dr. Dooley had indicated that he thought the University could absorb the wage increase without a tuition increase. (Mancuso Depo. pg. 29)

But, when Dr. Dooley called into the May meeting, he stated that the University could not absorb the wage increase without raising tuition after all. (Mancuso Depo. pgs. 28, 30)

Ms. Mancuso also testified that prior to the May Board Meeting, she met with Mr. Licht on Thursday, May 3, 2012 at 1:00 p.m. Mr. Adrain and Joe White (another Board member) also attended the meeting. Ms. Mancuso stated that no one else, except the four (4) of them, attended that meeting. (Mancuso Depo. pg. 32) She testified that Mr. Licht was careful to stay away from trying to influence them on how to vote on the contract, but that he did want to discuss the State's general economy and that he spoke about confidential economic indicators that were due to be released to the public the following week. (Mancuso Depo. pg. 36) Ms. Mancuso did not recall anything that either Mr. Adrain or Mr. White may have said at this meeting. Id. She testified that Mr. Licht did not express any concerns about granting a general increase of three (3) percent to URI and the impact that might have on negotiations with other Unions. Id. Ms. Mancuso testified that was not her concern anyway; she was only concerned as to whether URI could absorb the pay increase without a resultant tuition increase. (Mancuso Depo. pg. 38) Ms. Mancuso also testified that she did not have any conversations with the Governor on this subject. (Mancuso Depo. pg. 39)

At the formal hearing on February 19, 2013, the Union presented testimony from Frank Annunziato, the principal spokesman and Chief Negotiator for the Union. He testified that the Union and University had been parties to a Collective Bargaining Agreement for many years and that in March 2011, the Union notified the University that it wished to bargain for a successive Collective Bargaining Agreement. (TR. 2/19/13 pg. 17) Negotiations commenced in June 2011, at which time the parties executed a set of "ground rules." (TR. 2/19/13 pgs. 18-19) The spokesperson representing the Board of Governors was Anne Marie Coleman who represented that she had the authority to bargain on behalf of the Board. Mr. Annunziato testified that he had been negotiating contracts at the University, with Ms. Coleman, since 2001, and had negotiated a

half dozen or so contracts; all in which Ms. Coleman, also, indicated that she had bargaining authority. Following bargaining, the parties reached a Tentative Agreement in February 2012, which was reduced to writing by Ms. Coleman in March 2012. (TR. 2/19/13 pg. 20-21) Mr. Annunziato testified that he and Ms. Coleman agreed that the ratification would take place by both parties on the same day; and Mr. Annunziato scheduled an all-day faculty ratification session for the same day as the Board of Governor's scheduled evening meeting, so that the Board would know the result of the Union's ratification vote. (TR. 2/19/13 pgs. 22-23) Mr. Annunziato learned that the Board of Governors did not take a vote on the contract, as expected on March 19, 2012, and that its April 2, 2012 meeting was cancelled about a week before. Mr. Annunziato also testified that while the Board did not ratify the proposed contract or any other contracts at the May meeting, that the Board did subsequently ratify the proposed Agreement for the Graduate Assistants Union, which was also presented as a Tentative Agreement.

On cross-examination, Mr. Annunziato acknowledged that he signed the negotiation ground rules and that he understood that the contract was subject to ratification on both sides. Mr. Annunziato also testified that while the Union members did vote to approve the contract, that there were a surprising number of "no" votes from the membership. (TR. 2/19/13 pg. 30) On redirect examination, Mr. Annunziato testified emphatically that Ms. Coleman represented to him that she had authority from the Board of Governors to engage in negotiations on its behalf. (TR. 2/19/13 pgs. 35-36)

At the formal hearing, the Employer presented witness testimony from Mr. Adrain. He testified that the Board did not vote on the proposed Tentative Agreement at its March 2012 meeting as anticipated. Mr. Adrain testified "there were several forms of information lacking in the opinion of a number of Members of the Board; one was a redline comparison of a new contract proposal versus the existing proposal, and the other rather major missing element was a clear description of the fundamental economics of the proposal." (TR. 2/19/13 pg. 43) The Board scheduled another meeting in April to take up the ratification vote.

That meeting was cancelled. According to Mr. Adrain, it was cancelled because the presentation of the proposals was not in a form that the Board would understand. He also testified that he did not believe that they had sufficient information, which was appropriately prepared for the Board to believe that it was an appropriate and good Agreement. (TR. 2/19/13 pg. 44) He further testified that he had worked very, very hard with staff for a month to put together information that he felt made the case and appropriately, clearly and succinctly described the contract and the economic implications and so on. So, by the May 2012 meeting, Mr. Adrain felt that the Board had sufficient information to undertake a vote. (TR. 2/19/13 pg. 45)

On cross examination, Mr. Adrain acknowledged that Ms. Coleman was in fact the authorized spokesperson for the Board of Governors for collective bargaining with the Union, and in fact, only she executed the ground rules for negotiations not Mr. Adrain or any other member of the Board. (TR. 2/19/13 pg. 47) Mr. Adrain further acknowledged that Ms. Coleman in fact had the authority to make a proposal to the Union for a wage increase of three percent (3%) for each year of the contract. Id. Mr. Adrain also testified that it was his belief that despite the fact that the Board had authorized Ms. Coleman to offer the wage terms, that when it came to ratification, the Board could in fact vote down its own proposal. (TR. 2/19/13 pgs. 49-50) On further cross, Mr. Adrain testified that he did not recall if there was an actual vote to delay voting on the ratification, but that if there was a vote, it would be reflected in the minutes of the meeting. (TR. 2/19/13 pgs. 50-51) Mr. Adrain stated that the lack of the redlined version of the contract and clear description of the fundamental economics of the contract were both obstacles to the Board proceeding with a ratification vote at its March meeting as originally planned. (TR. 2/19/13 pg. 53) Mr. Adrain testified that subsequent to the March meeting, he worked intensely with the staff to develop material that he felt was adequate to describe the fundamental economics of the contract.

On further cross-examination, Mr. Adrain acknowledged that there were members of the public present at the March meeting to protest the effect that the

proposed Agreements would have on tuition. (TR. 2/19/13 pg. 54) Mr. Adrain also testified that it was his understanding that the Governor was concerned about the impact that the approval of these contracts would have on negotiations with other state employee Unions. Id. Mr. Adrain testified that he felt it was important for the Board members to be fully briefed on the total context and details of the proposed contract, and the pros and cons, so that each Board member could feel confident and be fully informed in order to vote the contract up or down. When asked why he did not think that this was important back in June or July of 2011 when negotiations began, Mr. Adrain candidly stated that he did not think that any of the Board members "knew enough" in June or July 2011 to fully appreciate the nature of contract negotiations because they were all brand new to the Board at that time. (TR. 2/19/13 pg. 57) He testified that all the while that contract negotiations were ongoing, the Board members were on a learning curve and that over this timeframe, he came to have a better understanding of the Board's responsibilities. Id. Mr. Adrain also testified that he came to appreciate the fact that the Board's professional staff was not presenting information in the format that the Board members needed to vote on the matter. Mr. Adrain also testified that as a result of the information that was developed that when it came right down to it, the Board did not believe that the Agreement should in fact contain the wage proposals that had been previously authorized and that the Board had the ability to reject its own contract proposals at the end of the day. (TR. 2/19/13 pgs. 59-60)

**DISCUSSION**

The Union urges this Board, pursuant to Board Rule 9.02.8., to amend its Complaint in this case to state that the BOG committed an unfair labor practice when it refused to ratify the Tentative Agreement that it previously authorized. The Union, also, urges the Board to order ratification of the Tentative Agreement as the remedy for this unfair labor practice. In support of its arguments, the Union cites to the following cases: N.L.R.B. v Alterman Transportation Lines, Inc. F.2d 212, 221 (5th Cir. 1979); N.L.R.B. v Industrial Wire Products Corp. 455 F.2d 673

(9th Cir,. 1972); Valley Cent. Emergency Veterinary Hosp. & Am. Fed'n of State, County and Mun. Employees, Local 488, AFL-CIO, 349 NLRB 1126 (2007).

The Employer argues that it did not commit an unfair labor practice by postponing its ratification vote for nearly two (2) months or when it declined to ratify the Tentative Agreement because neither the ground rules nor the Tentative Agreement call for a vote within any specific time frame. The Employer also argues that since it retained the right to vote for ratification, then it cannot be faulted for failing to ratify. In addition, the Employer argues that the Board is without authority to order to ratify the Agreement.

The evidence in this case established that the parties agreed to a set of "Negotiation Ground Rules." (Union Exhibit # 3) Ground rule # 5 states: "Each negotiating team shall have the authority to enter into a tentative agreement. As each item is agreed upon, it will be initialed by the respective chairpersons of both sides. All agreements are tentative until a total tentative agreement is reached." Ground rule # 6 states: "When a total tentative agreement is reached, the contract package shall be subject to ratification by the Board of Governors and the AAUP bargaining unit."

Thus, on its face, the agreed upon set of ground rules clearly reserve to each party the ultimate right to ratify the total Tentative Agreement. It is well settled, under Rhode Island law, that when a public Employer reserves a right of ratification, the exercise of the same is lawful and a Tentative Agreement that is not ratified is not binding or enforceable. Providence Teachers Union v Providence School Board, 689 A.2d 384, 384-396. (R.I. 1996), Providence City Council v Cianci, 650 A.2d 499, 502 (R.I. 1994). Also see Warwick Teachers Union Local 915 v Warwick School Committee, 624 A.2d 849, 851 n.1 (R.I. 1993). The ground rules in this case do not require either party to articulate their reasons for voting against the proposed contract. Indeed, with the Union, that would be very difficult in that a Union member is not required to expose or "defend" his or her vote on a contract. The same holds true for the Employer, provided the vote is taken in good faith. It is with these significant limitations that we review the Employer's conduct.

In this case, the parties reached a Tentative Agreement and agreed as to the timing of the ratification vote; presumably each acting in good faith and with authority. The Union held its vote and despite some votes against the proposed contract, the members ultimately approved the same. The Employer was scheduled to vote on the matter the same evening. This was scheduled in this way so that the Employer would know whether the Union had accepted the contract. No vote however, was taken. Board Member Mancuso testified that she was not able to understand the proposals in the manner they were presented by the BOG's staff because there was no redlined version of the contract, just bulleted proposals. In addition, she was concerned about whether or not the cost of the contract would cause tuition to rise. While there apparently was not a vote to delay the matter, a consensus was reached that there needed to be a different presentation of the contract proposal and much more information was necessary in order for the Board to ascertain if the proposals were economically sound. The vote did not take place until nearly two (2) months later, despite the fact that the Employer had provided parameters to its Negotiator, which she did not exceed in arriving at the Tentative Agreement.

The BOG's eventual vote was five (5) in favor of ratification and seven (7) opposed. The evidence revealed that at least one (1) Board member (Mancuso) voted against the proposed contract because it would have required a tuition increase against which she was adamantly opposed. The evidence also showed that the necessity of a tuition increase was not known to the Board members until very late in the process and that the University's President, Dr. Dooley, had initially thought that a tuition increase could be avoided. This Board is hard pressed to find that Ms. Mancuso's rationale for voting the contract down, because it would result in a tuition increase, is evidence of an improper motive for her voting. Indeed, as a member of a Board that has affordable higher education as its mission, it is not surprising that she or any other Board member would vote to defeat a contract that was going to raise tuition yet again.

The real problem here is that the Board members should have educated themselves far, far earlier on the collective bargaining process that was taking

place; and the possible impacts of authorizing a Negotiator with contractual parameters. The time to do its homework was before the Board authorized proposals and got the Union to agree to them. In this case, all the Employer accomplished was a colossal waste of everyone's time, money and energy and the creation of a hostile bargaining climate that apparently exists to this day.

The Union urges us to find that this case is similar to the circumstances set forth in N.L.R.B. v Alterman Transportation Lines, Inc. F.2d 212, 221 (5th Cir. 1979) where the Court of Appeals upheld a finding that the President of the company had committed an unfair labor practice by sitting idly by while his representative negotiated with the Union for nearly two (2) years, and under the guise of exercising a reserved right of ratification, rejected in large part the results of those negotiations. In this case, the Court held that actions taken pursuant to a reserved right of ratification must be closely examined to determine if those actions are consistent with the requirements of good faith bargaining. Id at 221. The Court also held that while Negotiators need not be vested with authority to enter into binding contracts, the Employer must treat negotiation sessions something more than a mere exchange of ideas. Id. The Court also held that if an Employer's President is the only person with authority to commit the Employer and the only person with sufficient knowledge of the Employer's business and unique needs to formulate the Employer's position, then it is incumbent upon him to at least brief his bargaining Negotiators and maintain some supervision over the proposals made and the agreement reached. Id at 227.

This case is vastly different than the Alterman where the President showed up to bargaining sessions only after two (2) years of bargaining and sought to undue all prior Tentative Agreements by relying on his reserved right of ratification. Even through the Alterman Court found that there was an unreasonable reliance on the ratification clause to justify actions, the Court also made the following statement, which can assist in explaining why Tentative Agreements are not necessarily final and binding, as the Union argues herein:

> "Nor do we think that agreements reached during the course of bargaining are necessarily final and binding on both parties. The

> sight of the forest can be lost among the trees as individual articles are separately bargained during the course of protracted negotiations and the reopening of negotiations in individual articles tentatively agreed to is entirely legitimate and desirable when later developments disclose a problem that was previously unseen or the improvidence of an earlier concession. The reservation of right of ratification can perform a similar function, as it gives the Employer one last chance to see how individual articles hang together and to evaluate the contract as a whole."

Id. Citing to Capitol Transit Co., 1953 106 N.L.R.B. 169.

The Union also cites N.L.R.B. v Industrial Wire Products Corp. 455 F.2d 673 (9th Cir,. 1972) a case where the Employer (the President of the company) had refused to execute a written contract incorporating the terms of a written agreement (stipulation) and instead offered a document entitled "suggested language for an agreement (not a proposal) with differing contract term and conditions than had been previously agreed upon." This was not the first time that the company had repudiated previous Tentative Agreements in the course of negotiations. The Court found that the evidence in the case clearly supported the Board's finding that the manner, in which the company participated in the negotiations at issue, manifested an unwillingness to bargain in good faith. Id at 678. This is not the case here at all. Here, there was one Tentative Agreement reached that was submitted to the BOG for ratification and which was rejected. A reservation of ratification is to permit the parties that one (1) final look at the entire agreement. In this Board's opinion, concurrent with the reservation of the right of ratification is the obligation to conduct the ratification vote in a *timely* manner.

When an Employer authorizes its Negotiator to make offers and accept offers for a Tentative Agreement, we *expect* the Employer to know the impact of its own offers when it makes them. In this case, the evidence established that instead of begin prepared to act on the Tentative Agreement that its Negotiator bargained, the BOG essentially started at scratch and then worked intensely for two (2) months to make an understandable presentation on the impacts of the proposal. BOG Chair, Lorne Adrain, testified that he worked very intensely with the staff over the course of nearly two (2) months after the March meeting, to put together an understandable presentation. While it is great that Mr. Adrain worked

so closely with the staff, the problem is that this work simply came *many* months too late. How is it possible that the Board did not know this information when it authorized its Negotiator to agree to particular raises? How did the Board know if it was going to be able to afford what it was offering? This is simply an unacceptable situation and is an exercise of bad faith bargaining. To delay the ratification vote for nearly two (2) months for this reason is, also, not indicative of good faith bargaining and is more indicative of deliberate delay tactics. The Board should have been ready to vote once the Tentative Agreement was reached. We find that it was an unfair labor practice for the BOG to not be ready to vote on its own proposals.

The Union has argued that the BOG really had no choice and that because there was a Tentative Agreement, the BOG was required to vote affirmatively to ratify. The Board does not agree with this proposition. While we do not agree with Chairman Adrain's position that the BOG could have rejected the proposed agreement for any reason whatsoever, the testimony, herein, established that Dr. Dooley initially thought that the wage increases could be provided without tuition increases; but after crunching the numbers, told the Board that a tuition increase would be necessary in 2014. As stated previously, this is an adequate reason for the Board members to have second thoughts about the wisdom of the proposal. The record only reflects the thought process of two (2) voting members, Adrain, who voted in favor of the Agreement and Mancuso, who voted against, because of the tuition increase. Mancuso did testify that there were two (2) other Board Members who were committed to avoiding any tuition increase. The record is devoid of any information on why the other members of the BOG voted against the Agreement and we will not speculate here.

In any event, we do not find that it is appropriate to amend our Complaint because a rational explanation has been provided as to why at least some of the BOG members were not in favor of ratification, despite the Tentative Agreement. We do believe, however, that the Board's failure to conduct a timely ratification vote was indeed an unfair labor practice, for the reasons stated above. As a

remedy, therefore, the Employer is ordered to cease and desist from costing out its proposals after authorizing its Negotiator to offer the same and to recommence good faith bargaining with the Union herein, for a successor Collective Bargaining Agreement.

In addition, because we find that the Employer's conduct in not knowing what its own proposals were going to cost before making the offer to the Union and then requiring extensive time for this very purpose, after a Tentative Agreement had been reached, is egregious, we are also ordering the Employer to pay the Union's costs, including any attorney's fees it may have incurred, as a result of its failure to take the ratification vote on March 19, 2011, including the costs of prosecuting this unfair labor practice charge.

## 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) URI/AAUP and BOG were parties to a Collective Bargaining Agreement ("CBA") for the period July 1, 2008 to June 30, 2011.

4) On March 15, 2011, Frank Annunziato, Executive Director of URI/AAUP sent a letter to URI President, David Dooley, requesting that negotiations commence for a successor Agreement.

5) On June 6, 2011, the URI/AAUP negotiating team and the BOG's negotiating team commenced negotiations.

6) At the June 6th meeting, the parties signed "Negotiation Ground Rules." Exhibit B. Ground Rule # 5 provides: "[e]ach negotiating team shall have the authority to enter into a tentative agreement." Anne Marie Coleman signed the rules on behalf of BOG and Frank Annunziato signed on behalf of URI/AAUP.

7) On August 26, 2011, the parties exchanged initial proposals. They held numerous negotiating sessions between August 26, 2011 and February 2, 2012.

8) On February 2, 2012, the parties reached a Tentative Agreement on all terms and conditions.

9) On March 15, 2012, Annunziato and Coleman signed the Tentative Agreement. The Tentative Agreement was subject to ratification by URI/AAUP and BOG. It provides for a three (3) year contract, retroactive to July 1, 2011, and expiring on June 30, 2014. Among other things, the Agreement provides three percent (3%) wage increases each year, retroactive to July 1, 2011.

10) BOG specifically authorized Anne Marie Coleman to make this proposal and sign the Tentative Agreement on behalf of BOG.

11) On March 19, 2012, URI/AAUP ratified the Tentative Agreement.

12) On March 19, 2012, BOG was scheduled to take a vote on ratification of the Tentative Agreement, but did not do so.

13) On April 2, 2012, the BIG again scheduled a meeting to ratify the Tentative Agreement. However, on March 30, 2012, BOG cancelled the meeting.

14) On May 7, 2012, at the BOG meeting, Dr. David Dooley advised the BOG that he had crunched the numbers since the meeting in March and that he believed that the proposed Agreement would cause a tuition increase in 2014.

15) On May 7, 2012, the BOG voted seven (7) to five (5) against ratification of the proposed Agreement.

## CONLUSIONS 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 (10).

## ORDER

1) The Employer is hereby ordered to cease and desist from costing out its proposals after authorizing its Negotiator to offer the same and to recommence good faith bargaining with the Union, herein, for a successor Collective Bargaining Agreement.

2) The Employer is hereby ordered to pay the Union's costs, including any attorney's fees it may have incurred, as a result of its failure to take the ratification vote on March 19, 2012, including the costs of prosecuting this unfair labor practice charge.

3) The Employer is hereby ordered to post a copy of the Decision and Order on all common area bulletin boards within the Department for a period of no less than sixty (60) days.

** **NOTE:** Subsequent to the submission of the Unfair Labor Practice Charge, the RI Board of Governors for Higher Education had been disbanded; thus, the Board was reconstituted as the Rhode Island Board of Education.

RHODE ISLAND STATE LABOR RELATIONS BOARD

WALTER J. LANNI, CHAIRMAN

FRANK MONTANARO, MEMBER

GERALD S. GOLDSTEIN, MEMBER

MARCIA B. REBACK, MEMBER

SCOTT G. DUHAMEL, MEMBER

**BOARD MEMBER BRUCE A. WOLPERT DID NOT PARTICIPATE IN THIS MATTER.**

**ELIZABETH S. DOLAN WAS NOT PRESENT TO SIGN THE DECISION AND ORDER AS WRITTEN ON JANUARY 17, 2014; HOWEVER, BOARD MEMBER DOLAN DID VOTE TO SIGN AS WRITTEN AS A DISSENT VOTE ON JANUARY 14, 2014.**

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

Dated: JANUARY 21, 2014

By: _____
ROBYN H. GOLDEN, ADMINISTRATOR

ULP- 6086

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-6086 |
| RHODE ISLAND BOARD OF GOVERNORS FOR HIGHER EDUCATION | : | |

**NOTICE OF RIGHT TO APPEAL AGENCY DECISION PURSUANT TO R.I.G.L. 42-35-12**

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of Case No. ULP-6086, dated January 21, 2014, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **January 21, 2014**.

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-29.

Dated: January 21, 2014

By: _____
Robyn H. Golden, Administrator