

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-6234
	:	
THE RHODE ISLAND COUNCIL ON	:	
POST SECONDARY EDUCATION and	:	
THE UNIVERSITY OF RHODE ISLAND	:	

DECISION AND ORDER OF DISMISSAL

TRAVEL OF CASE

The above entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter “Board”) on an Unfair Labor Practice Complaint (hereinafter “Complaint”), issued by the Board against the Rhode Island Council on Post-Secondary Education, (hereinafter “Employer”) based upon an Unfair Labor Practice Charge (hereinafter “Charge”) dated December 10, 2018 and filed on the same date by the URI Chapter – American Association of University Professors (hereinafter “AAUP”).

The charge alleged as follows:

Since on or about November 7, 2018, Respondent unilaterally implemented a “premium parking” policy, which offers paid parking to faculty and staff, and directly communicated this policy to bargaining unit members.

Respondent’s policy was initially made, rejected and withdrawn in recently concluded collective bargaining. After reaching agreement on all other terms and conditions of employment, Respondent implemented the same policy unilaterally.

The policy represents a substantial and material change in working conditions because parking under this policy would be available only for a fee, thereby setting a fee-for-benefit precedent.

The policy represents bad faith bargaining because it was directly communicated with members rather than through the Union.

Respondent failed to provide notice or an opportunity to bargain concerning the mechanics of implementation. Respondent unilaterally determined how spaces would be apportioned among various drivers, pricing, waiting lists, selection lottery, carry over from year-to-year, daily rates, etc.

Following the filing of the Charge, each party submitted written position statements and responses as part of the Board’s informal hearing process. On February 5, 2019, the Board issued its Complaint, alleging the Employer violated R.I.G.L. §28-7-13(6) and (10) when, on or about November 7, 2018, the Employer (1) unilaterally implemented a “premium parking” policy without providing the Union with notice or an opportunity to bargain over the contents, substance, or implementation of the policy; (2) engaged in

direct dealing with the Union's membership by communicating directly with members of the bargaining unit, instead of through the Union, regarding the implementation of a "premium parking" policy that impacts terms and conditions of employment for bargaining unit members. The Board scheduled a formal hearing for this matter, which was held on April 16, 2019. Representatives from the Union and the Employer were present at the hearing and had full opportunity to examine and cross-examine witnesses and to submit documentary evidence. Post-hearing briefs and reply briefs were submitted by both parties.

The Board has reviewed and considered the testimony and the arguments contained within the transcript of the hearing as well as the post-hearing briefs submitted by the parties. The Board reviewed the matter at its meeting in June 2019. A Motion was made and seconded to uphold the Complaint. Unfortunately, due to a vacancy on the Board, a Motion to uphold the charge was not sustained. The vote was 3 to 3 on the Motion.

DISCUSSION

The essence of Petitioner's claims was that parking was a mandatory subject of bargaining. Petitioner alleged that URI, by unilaterally offering "premium parking" to bargaining unit members after negotiations for a new Collective Bargaining Agreement had been completed, and a proposal by URI in negotiations for "premium parking" had been rejected by Petitioner's negotiating committee and had ultimately been withdrawn by URI from negotiations, amounted to bad faith bargaining, a refusal to bargain regarding a mandatory subject of bargaining and unlawful unilateral change in terms and conditions of employment to the detriment of the bargaining unit. In reviewing Petitioner's allegations, the Board continues its longstanding position that parking is a mandatory subject of bargaining. See *Rhode Island State Labor Relations Board and State of Rhode Island, Department of Labor & Training*, ULP-5283. However, as the Board noted in *Rhode Island State Labor Relations Board and Town of North Kingstown*, ULP-5485, it is well settled that

even when there exists a mandatory subject for bargaining, unilateral changes to such a term or condition of employment, to be illegal, must be measured against existing rules to see whether there is a significant, substantial and material impact on employees' terms and conditions of employment. If changes by an employer lack such an impact, then no bargaining is required. *Rust Craft Broadcasting*, 225 NLRB 327 (1976), *United Technologies Corp.*, 278 NLRB 306, 308 (1986), *Peerless Food Products*, 236 NLRB 161 (1978).

Town of North Kingstown, ULP-5485, at page 10

In the case before the Board, parking is not covered or even mentioned anywhere within the four corners of the Collective Bargaining Agreement, a fact to which the parties stipulated. For a bargaining obligation to arise with respect to a mandatory subject, Petitioner must be able to demonstrate that some harm has occurred to at least one (1) bargaining unit member.

Consequently, the Board finds itself once again in the position of having a deadlocked Board for the purposes of voting, due to a vacancy on the Board. The vote of the Board is deadlocked on the substantive issue of the allegation of an Unfair Labor Practice. Board Members Marcia Reback, Scott Duhamel, and Derek Silva argued that URI's action in establishing the paid parking lot impacted wages and fringe benefits of bargaining unit members, because the University was tying the parking fee to salary increases. As such, Members Reback, Siva and Duhamel asserted that URI's conduct constituted an unfair labor practice. Board Chairman Walter Lanni and Board Members Aronda Kirby and Kenneth Chiavarini argued that there was no material or substantial change to anyone in the bargaining unit. Members Lanni, Kirby and Chiavarini pointed out that the testimony presented indicates that there was no one in the bargaining unit that had chosen to use the paid parking lot; and that the University has a management right to have a paid parking lot, notwithstanding the fact that they also have unpaid parking. Again, they argued, if there is no material and substantial change, there is no unfair labor practice.

Unfortunately, the Board has no mechanism to deal with deadlocked votes. The Board's enabling Act does not provide for alternate members who can be utilized for breaking tied votes. Thus, without a majority to support the motion to uphold the charge, the Board has no choice but to dismiss the within matter.

Finally, the Board makes clear that a tie vote among its Members, as occurred in this case, means that the Complaint has not been upheld and the allegations raised in the Complaint have been denied, as there is no majority consensus on the issue presented to the Board. As explained in *Roberts Rules of Order*, a tie vote on the question presented means the Motion is lost (see *Roberts Rules of Order*, Ch. VIII). In the instant case, the Board vote was 3 to 3, meaning the Motion to uphold the Complaint was defeated.

FINDINGS OF FACT

1. The Council on Post-Secondary Education is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
2. The AAUP is a labor organization, which exists and is constituted for the purpose, in whole or in part, for 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. On December 10, 2018, the Union filed a Charge with the Board alleging Unfair Labor Practices.
4. The Charge was processed and on February 5, 2019, the Board issued its Complaint.
5. A formal hearing was held on April 16, 2019 and the parties had a full and fair opportunity to present their respective positions.
6. On June 25, 2019, the Board considered the matter and was unable to arrive at anything other than a deadlocked vote.

CONCLUSIONS OF LAW

1. Since the Motion to uphold a charge of an Unfair Labor Practice was defeated, as a result of a 3 to 3 tie vote, the within matter must be dismissed.

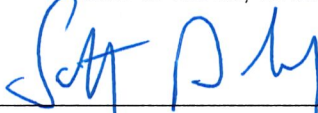
ORDER

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

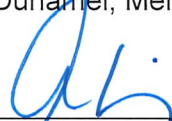
RHODE ISLAND STATE LABOR RELATIONS BOARD



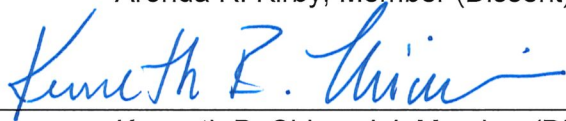
Walter J. Lanni, Chairman (Dissent)



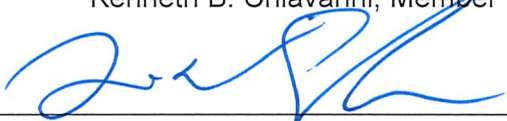
Scott G. Duhamel, Member



Aronda R. Kirby, Member (Dissent)



Kenneth B. Chiavarini, Member (Dissent)



Derek M. Silva, Member

**BOARD MEMBER, MARCIA B. REBACK, PASSED PRIOR TO SIGNING AS WRITTEN.
MARCIA B. REBACK VOTED TO UPHOLD THIS MATTER.**

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

Dated: October 8, 2019

By: 
Robyn H. Golden, Administrator

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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-6234, dated October 8, 2019, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **October 8, 2019**.

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

Dated: October 8, 2019

By: 
Robyn H. Golden, Administrator