

**STATE OF RHODE ISLAND  
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-6287
	:	
PAWTUCKET SCHOOL DEPARTMENT	:	
	:	

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**DECISION AND FINAL ORDER OF FAILURE TO CONCLUDE  
ON SUBSTANTIVE GROUNDS**

**TRAVEL OF THE CASE**

The above-captioned 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 Pawtucket School Department (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated September 17, 2020 and filed on the same date by the Rhode Island Council 94, AFSCME, AFL-CIO, Local 1352 (hereinafter "Union").

The Charge alleged as follows:

The parties recently signed a MOA which, inter alia, permitted the temporary assignment of Teacher Assistants (TA's) through a bid process. Following the bid, management informed the Union President that the TA's would be "monitoring" students in classrooms without teachers being physically present, such as during teachers' break periods. TA's have never worked with students without the presence of a teacher or other in-person supervisor, and RIDE regulations have explicitly prohibited this. This constitutes a material change in working conditions without negotiation with the Union. When the Union reached out to meet with management to resolve this issue, management was unwilling to change the practice.

Following the filing of the Charge, each party submitted written position statements and responses as part of the Board's informal hearing process. On October 20, 2020, the Board issued its Complaint, alleging the Employer violated R.I.G.L. § 28-7-13 (6) and (10) when, through its representative, the Employer (1) unilaterally changed terms and conditions of employment by assigning Teacher Assistants to monitor classrooms without a Teacher or supervisor present in the classroom; and (2) failed to bargain in good faith with the Union regarding the unilateral change in terms and conditions of employment for Teacher Assistants as implemented by the Employer. Formal hearings were held before the Board on December 8, 2020 and March 2, 2021 at which time both parties were given

the opportunity to present and cross-examine witnesses and submit exhibits. Post-hearing briefs were filed by the Employer and the Union on April 12, 2021.

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 on April 15, 2021. A motion was made and seconded to uphold the Complaint. Unfortunately, a motion to uphold the Complaint was not sustained. The vote was 3 to 3 on the motion.

### **DISCUSSION**

The essence of Petitioner's claim was that the duties of the Teacher Assistants (TA's) were unilaterally changed by the Employer when it required the TA's to monitor students in classrooms without the presence of a certified teacher or other supervisor in the classroom. The Union asserted that the Employer refused to alter its position regarding this change and, therefore, failed to bargain in good faith with the Union. In contrast, the Employer claimed that the monitoring of students by the TA's was squarely within the Teacher Assistant job description and that there was no unilateral change. The Employer further asserted that it met with the Union on at least two (2) separate occasions to discuss the Union's concerns and was scheduled to meet for a third (3<sup>rd</sup>) time when the Union abruptly decided to cancel the scheduled meeting and, instead, filed the instant Unfair Labor Practice Charge now before this Board.

There is little doubt that the duties, responsibilities and/or general work assignments of bargaining unit members fall directly within the concept of a mandatory subject of bargaining. See *Essex Valley Visiting Nurses Association*, 343 NLRB No. 92 (2004); *Rhode Island State Labor Relations Board and Middletown School Department*, ULP-6257 (2020). There can be no legitimate argument that the changing or modifying of an employee's work duties or assignment goes to the essence of the working terms and conditions of the employee or group of employees, provided the change is not immaterial, insubstantial or insignificant. See *Ead Motors*, 346 NLRB 1060 (2006). Thus, when an Employer seeks to make changes to the duties of bargaining unit members it is first required to engage the bargaining representative of the employees in discussions regarding the proposed changes. In the present case, the parties did not dispute the fact that the Union requested, and the Employer agreed, to meet and confer regarding what the Union believed to be significant and material changes to the duties of the TA's, i.e.; that the TA's would be required to monitor students in the classroom without the physical presence of either a teacher or other supervisor. There was also no dispute in the testimony before the Board that at least two (2) meetings between the Union and the Employer were held on September 16 and 17, 2020 to discuss the Union's concerns. There was also no dispute that the parties had agreed, after completing their morning meeting on September 17, 2020, to schedule a third (3<sup>rd</sup>) meeting for the afternoon of September 17, 2020. However, this third (3<sup>rd</sup>) meeting never occurred as the Union notified the Employer that it had decided not to participate in further discussions.

In this case, the Board finds itself once again in the position of having a deadlocked Board for the purposes of voting, as a result of the absence of a Board member at the monthly Board meeting. The vote of the Board is deadlocked on the substantive issue of the allegation of an Unfair Labor Practice. Board Members Stan Israel, Scott Duhamel and Derek Silva argued that the Employer's action, in unilaterally changing the duties of TA's by requiring them to monitor in-person students during virtual itinerant classes, was a material change to the working terms and conditions of the TA's. Members Israel, Silva and Duhamel also argued that the Employer did not engage in good faith negotiations with the Union over the unilateral change. As such, Members Israel, Silva and Duhamel asserted that the Employer's conduct constituted an unfair labor practice. However, Board Chairman Walter Lanni and Board Members Aronda Kirby and Harry Winthrop argued that there was no material or substantial change to anyone in the bargaining unit. They also noted that even if there had been a change as claimed by the Union, the Employer did, in fact, meet with the Union, discuss the Union's concerns over the in-person monitoring of students during virtual itinerant classes and even agreed to revise the itinerant schedule to include a type of "buddy" system with two (2) TA's in the classroom. Chairman Lanni, with Members Kirby and Winthrop in agreement, pointed out that instead of following up with this potential solution to the problem raised by the Union, the Union made its own determination not to participate in the next scheduled negotiation session. Chairman Lanni and Members Kirby and Winthrop argued that it takes two (2) parties to be at the table for negotiations to occur; and that by walking away from further scheduled negotiations the Union had forfeited its right to legitimately argue that the Employer had failed to bargain with it in good faith.

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 means that the Complaint has not been upheld and the allegations raised in the Complaint have failed, as a result of a 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 Pawtucket School Department is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
2. Rhode Island Council 94, AFSCME, AFL-CIO, Local 1352 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 September 17, 2020, the Union filed a Charge with the Board alleging Unfair Labor Practices.
4. The Charge was processed and on October 20, 2020, the Board issued its Complaint.
5. Formal hearings were held on December 8, 2020 and March 2, 2021 and the parties had a full and fair opportunity to present their respective positions.
6. On April 15, 2021, the Board considered the matter and was unable to arrive at anything other than a deadlocked vote.

#### **CONCLUSIONS OF LAW**

1. Since neither the Motion to uphold the Complaint nor a Motion to dismiss the Complaint on substantive grounds has carried, as a result of a 3 to 3 tie vote, the within matter must be dismissed solely on procedural grounds, without prejudice, and the within matter must be dismissed.

#### **ORDER**

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

RHODE ISLAND STATE LABOR RELATIONS BOARD

*/s/ Walter J. Lanni*

Walter J. Lanni, Chairman (Dissent)

*/s/ Scott G. Duhamel*

Scott G. Duhamel, Member

*/s/ Aronda R. Kirby*

Aronda R. Kirby, Member (Dissent)

*/s/ Derek M. Silva*

Derek M. Silva, Member

*/s/ Harry F. Winthrop*

Harry F. Winthrop, Member (Dissent)

*/s/ Stan Israel*

Stan Israel, Member

**BOARD MEMBER, KENNETH CHIAVARINI, WAS ABSENT FOR SIGNING OF THE  
DECISION & ORDER**

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

Dated: May 24, 2021

By: /s/ Lisa L. Ribezzo  
Lisa L. Ribezzo, Agent

ULP- 6287

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-6287
	:	
PAWTUCKET SCHOOL DEPARTMENT	:	
	:	

**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-6287, dated May 24, 2021, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **May 24, 2021**.

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

Dated: May 24, 2021

By: */S/ Lisa L. Ribezzo*  
Lisa L. Ribezzo, Agent