Filed November 21, 2000

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC SUPERIOR COURT

TIVERTON SCHOOL COMMITTEE :

v. : C.A. No. 00-3624

RHODE ISLAND STATE LABOR RELATIONS BOARD :

DECISION

GIBNEY, J. Before the Court is an appeal by the Tiverton School Committee (Committee) from a decision of the Rhode Island State Labor Relations Board (Board), finding that the Tiverton School Department (Department) was a "municipal employer" and that a certain eleven part-time teacher aides employed by the Department were "municipal employees." The Board directed an election among the teacher aides for purposes of determining whether they wished to be represented for collective bargaining purposes. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

Facts/Travel

On January 10, 2000, the Rhode Island Council 94, AFSCME, AFL-CIO (Union) filed a "Petition by Employees for Investigation and Certification of Representatives" (Petition) with the Board, seeking to represent eleven part-time teacher aides working for the Department. Accompanying the Petition were signature cards, verified by the Board on January 26, 2000, and found to be sufficient in number to warrant the conducting of an election.

On February 16, 2000, an informal hearing was conducted by an Investigative Agent of the Board to determine whether the Union and the Department could agree to a consent election.

No agreement was reached at this informal hearing, and a formal hearing was scheduled for March 7, 2000.

At the informal hearing, the Department objected to the certification of the proposed bargaining unit. The Department argued that it is excluded from the definition of "municipal employer," pursuant to R.I.G.L § 28-9.4-2 and that pursuant to § 28-9.4-2(b)(7), the teacher aides are excluded from the definition of "municipal employees." As a result of these exclusions, the Department contended that pursuant to § 28-9.4 et seq., the teacher aides are not eligible to organize for purposes of collective bargaining.

Standard of Review

The review of a decision of the Board by this Court is controlled by R.I.G.L. § 42-35-15(g), which provides for review of a contested agency decision:

> "(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

When reviewing a decision of an agency, a justice of the Superior Court may not substitute his or her judgment for that of the agency board on issues of fact or as to the credibility of testifying witnesses, Mercantum Farm Corp. v. Dutra, 572 A.2d 286, 288 (R.I. 1990) (citing Leviton Mfg. Co. v. Lillibridge, 120 R.I. 283, 291, 387 A.2d 1034, 1038 (1978)); Center for

Behavioral Health, Rhode Island, Inc. v. Barros, 710 A.2d 680, 684 (R.I. 1998), where substantial evidence exists on the record to support the board's findings. Baker v. Department of Employment and Training Board of Review, 637 A.2d 360, 366 (R.I. 1994) (citing DePetrillo v. Department of Employment Security, 623 A.2d 31, 34 (R.I. 1993); Whitelaw v. Board of Review, Department of Employment Security, 95 R.I. 154, 156, 185 A.2d 104, 105 (1962)). Findings of fact by an agency board "are, in the absence of fraud, conclusive upon this court if in the record there is any competent legal evidence from which those findings could properly be made." Mercantum Farm, 572 A.2d at 288 (citing Leviton, 120 R.I. at 287, 387 A.2d at 1036-37). Legally competent evidence is "marked 'by the presence of 'some' or 'any' evidence supporting the agency's findings.'" State v. Rhode Island State Labor Relations Board, 694 A.2d 24, 28 (R.I. 1997) (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)).

"Municipal Employer," under § 28-9.4-2

Section 28-9.4-2(c) defines a "municipal employer" as "any political subdivision of the state, including any town, city, borough, district, school board, housing authority, or other authority established by law, and any person or persons designated by the municipal employer to act in its interest in dealing with municipal employees." Likewise, "municipal employees" are defined by § 28-9.4-2(b) as "any employee of a municipal employer, whether or not in the classified service of the municipal employer[.]" As a delineated exception to this definition, § 28-9.4-2(b)(7) exempts "employees of authorities except housing authorities not under direct management by a municipality who work less than [20] hours per week." The definition of "municipal employee" is important, because § 28-9.4-3 gives "municipal employees" the right to bargain collectively.

The Committee argues that the teacher aides are excepted from the definition of "municipal employees" by § 28-9.4-2(b)(7), because they are employees of an authority not under direct management by a municipality and work less than 20 hours per week. Committee notes that R.I.G.L. § 16-2-9 gives the Department all managerial responsibilities over the Tiverton schools. The Committee analogizes the case at bar to our Supreme Court's holding in Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board, 694 A.2d 1185 (R.I. 1997). In that case, the court held that a free public library was under its trustees' direct management, and not under the direct management of the municipality in which it was located, even though the municipality financially supported the library. As such, the court held that the part-time workers at the library were excluded by § 28-9.4-2(b)(7) from the definition of "municipal employees" and were not allowed to organize. Id. at 1192.

At issue is whether under § 28-9.4-2, the teacher aides are considered employees of an "authority . . . not under direct management by a municipality." See § 28-9.4-2(b)(7). Court's function in construing statutes is "to determine and effectuate the Legislature's intent and to attribute to the enactment the meaning most consistent with its policies or obvious purposes." Local 400, International Federation of Technical and Professional Engineers v. Rhode Island State Labor Relations Bd., 747 A.2d 1002, 1004 (R.I. 2000) (citations omitted). "It is well settled that when the language of a statute is clear and unambiguous, [the court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." Rhode Island Temps, Inc. v. Department of Labor and Training, Bd. of Review, 2000 WL 502606 (R.I. 2000) (per curium) (citations omitted).

As noted above, towns, cities, boroughs, districts, school boards, housing authorities, or other authorities established by law are specifically delineated as municipal employers. Section 28-9.4-2(c). This Court agrees with the Board's determination that "the exclusion from collective bargaining for employees working less than twenty hours per week is clearly limited to 'employees of authorities except housing authorities not under direct management by a municipality.'" Decision at 3. Unlike the trustees of a public library, which is not specifically mentioned in § 28-9.4-2(c) as being a "municipal employer," a school board is defined as a "municipal employer." Thus, while the trustees of a public library would fit under the category of "other authority established by law," a school board, having been specifically delineated in subsection (c) as a municipal employer, would not. Therefore, pursuant to the plain language of § 28-9.4-2(b)(7)&(c), the Board's concluding that the teacher aides in question are not excluded from the definition of "municipal employees" does not constitute an error of law.

Conclusion

After a review of the entire record this Court finds that the Board's decision is supported by substantial, reliable and probative evidence of record and is not affected by error of law. Substantial rights of the Committee have not been prejudiced. Accordingly, the Decision of the Board is affirmed.

Counsel shall submit an appropriate order for entry.