STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. · SUPERIOR COURT

STATE OF RHODE ISLAND	:	
	:	
v.	:	C.A. NO. 82-5091
	:	
STATE LABOR RELATIONS BOARD	:	
	:	

D E C I S I O N

ALMEIDA, J. This action is before the Court on petitioner's request for a declaratory judgment and injunctive relief. The petitioner is the State of Rhode Island, which argues that it is the employer, with the authority to agree to a consent election. The respondent is the Rhode Island State Labor Relations Board and the members thereof. The controversy centers around an attempt by employees of the Secretary of State's office to organize collectively. The representative of the Secretary of State executed an agreement with the representatives of the petitioning employees providing for a

Consent Election, as it is popularly known. The election was scheduled to take place on December 22, 1982, with the sole question to be voted on being: "Do you desire to be represented for the purpose of collective bargaining by Council 94, A.F.S.C.M.E., Local 2884?" Prior to the scheduled date of the election, the Chief Executive Officer of the state - through his attorney - filed a motion with the State Labor Relations Board which alleged that the "employer" had not executed the "Agreement for Consent Election". The employer section of that Consent Agreement was signed by Leonard Clingham, the representative of the Secretary of State The petitioner (State of Rhode Island) contends that Mr. Clingham was not authorized to sign the Consent Agreement since that authority is reserved for the "Chief Executive or his designee" by R.I.G.L. 1956 (1969 Reenactment) § 36-11-1(c). In a "Decision and Order" dated December 21, 1982, the State Labor Relations Board denied the petitioner's motion to stay a consent election. The Superior Court subsequently issued a temporary restraining order, and this action is presently before the Court after an in-chamber conference at which the parties agreed to submit memoranda.

Looking first at petitioner's request for declaratory relief, it should be noted that such actions are brought pursuant to R.I.G.L. 1956 (1969 Reenactment) § 9-30-1

et seq. [Uniform Declaratory Judgments Act]. The main purpose of this act is to facilitate the termination of controversies. Fireman's Fund Inc. Co. v. E.W. Burman, Inc., R.I. , 391 A.2d 99 (1978). Separate prayers for injunctive relief may be joined with a demand for declaratory relief in the same action. Duffy v. Mollo, R.I. , 400 A.2d 263 (1979).

The question of whether or not the authority to consent to a union election of employees in the Secretary of State's office is vested in the Secretary or in the Chief Executive has never been addressed by the courts of this state. Basically, two chapters of the General Laws come into play: R.I.G.L. 1956 (1969 Reenactment) § 36-11-1 et seq. [Organization of State Employees] and R.I.G.L. 1956 (1979 Reenactment) § 28-7-1 et seq. [Labor Relations Act]. By comparing the development of the pertinent sections in those two chapters, it can be seen that G.L. § 36-11-1 should control in this case.

The first recognition of the right of state employees to organize and bargain collectively was embodied in P.L. 1958, ch. 178, § 1 [G.L. § 36-1-1(a)]. In 1966, the section was amended by P.L. 1966, ch. 147, § 1. This amendment exempted the State Police from the employees entitled to organize and added subsections (b) and (c), which read as follows:

"(b) Said representatives of state employees are hereby granted the right to negotiate with state officials (appointed, elected, or possessing classified status) on such matters pertaining to wages, hours and working conditions as are within such officials' budgetary control.

(c) State officials (appointed, elected or possessing classified status) are hereby authorized and required to recognize an organization designated by state employees for the purpose of collective bargaining as the collective bargaining agency for its members."

G.L. § 36-11-1 was next amended in 1970 (P.L. 1970, ch. 116, § 1—State Police exemption changed).

In 1972 the amendment which is most pertinent to the case at hand was enacted. Subsections (b) and (c) of G.L. § 36-11-1 were amended to vest the Chief Executive with the authority to negotiate with an authorized collective bargaining agency. The changes were as follows:

"(b) Said representatives of state employees are hereby granted the right to negotiate with ~~state officials~~ the chief executive or his designee (appointed, elected or possessing classified status) on ~~such~~ matters pertaining to wages, hours and working conditions ~~as are within such officials' budgetary control~~.

(c) ~~State officials~~ The chief executive or his designee (appointed, elected or possessing classified status) is hereby authorized and required to recognize an organization designated by state employees for the purpose of collective bargaining as the collective bargaining agency for its members."

P.L. 1972, ch. 277, § 1. Finally in 1980 G.L. § 36-11-1 was amended to exclude "casual employees or seasonal employees" from the group vested with the right to organize collectively. P.L. 1980, ch. 536, § 1.

It can be seen from the development of G.L. § 36-11-1 that the effect of the 1972 amendment was to withdraw the authority to negotiate from "state officials" and to vest "the chief executive or his designee" with that authority. The explanation by the Legislative Council of H 5354 (which became P.L. 1972, ch. 277) affirms this conclusion and states as follows: "This act requires the chief executive or his designee to bargain with representatives of state employees . . ."

The language of G.L. § 36-11-1 is clear and unequivocal, and "[w]here the language of a statute is free from ambiguity and expresses a clear and sensible meaning, such meaning is presumed to be intended by the Legislature and the statute must be interpreted literally." North Providence School Committee v. Rhode Island Labor Relations Board, R.I. , 408 A.2d 928 at 929 (1979) [citation omitted]. Thus, it seems clear that the authority to negotiate and, a fortiori, to consent to an election in the capacity of an employer belongs to the chief executive.

This conclusion is buttressed by reviewing the legislative history of Title 28, Chapter 7 of the General Laws. That chapter served as the basis for the reasoning of the Labor Relations Board, as that reasoning is set forth in their "Decision and Order" of 12/21/82 (Case No. EE-3298).

In its discussion of the case, the Board addressed two questions: (1) Do these employees have a right to organize and bargain collectively? (2) Is the Secretary of State the "employer"? The answer to the first question, as the Board noted, "is an unequivocal yes". Decision and Order of the State Labor Relations Board at 4 [citing R.I.G.L. § 36-11-1(a)]. The Board chose to frame the second question in the following manner: "whether the Secretary of State is an 'Employer' within the meaning of R.I.G.L. § 28-7-3(2)."[1] This reliance on Title 28, Chapter 7 is misplaced in light of the exemption provisions of R.I.G.L. 1956 (1979 Reenactment) § 28-7-45(a). That section makes it clear that Chapter 7 of Title 28 does not control in respect to all questions which involve state employees. R.I.G.L. § 28-7-45(a) states in pertinent part that "[t]he provisions of this chapter shall not apply . . . except as provided in chapter 11 of title 36 as to employees of the state."

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1. R.I.G.L. 1956 (1979 Reenactment) § 28-7-3(2) is the "definitions" section of the Rhode Island State Labor Relations Act. This section defines employer in a broad sense.

In reviewing the legislative history of G.L. § 28-7-45 it can be seen that the exclusion of state employees was part of the original act:

> "Sec. 16. Application of act. The provisions of this act shall not apply to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the national labor relations act or the federal railway labor act or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations." [Emphasis added]

P.L. 1941, ch. 1066, § 16. The above section was codified as G.L. § 28-7-45, and was amended in 1965 (P.L. 1965, ch. 75, § 1), twice in 1966 (P.L. 1966, ch. 60, § 1; P.L. 1966, ch. 147, § 3), and twice again in 1972 (P.L. 1972, ch. 196, § 1; P.L. 1972, ch. 296, § 1). The above cited amendments added and deleted groups from the employees exempt from the chapter, but none of these amendments affected the state employees exemption. Thus, the exclusion of state employees from the scope of the Labor Relations Act existed from the inception of that statute. The fact that the legislature intended G.L. § 36-11-1 to control when state employees were involved is apparent not only from the express language of that section and from the exemption contained in G.L. § 28-7-45(a) but is also verified by the fact that the

legislature chose to include an amendment of § 28-7-45(a) in the same chapter of the Public Laws which amended G.L. § 36-11-1 (see, P.L. 1966, ch. 147, §§ 1, 2 and 3). This juxtaposition of the two sections highlights the fact that they should be read harmoniously, and the Court should favor the section which will carry out the legislature's intent.[2] Thus, G.L. § 36-11-1 must control when state employees are attempting to organize collectively.

This Court declares that the Secretary of State and/or his representative did not have the authority to consent to a union certification election. The agreement executed by Mr. Clingham is therefore void.

Having established that it is the Chief Executive who has the authority to negotiate with collective bargaining representatives, the issue becomes the propriety of injunctive relief in the case at hand.

In order to qualify for injunctive relief, a party must satisfy certain standards. First, the party must make a reasonable showing that it is likely to prevail on the merits.

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2. See, David v. Cranston Print Works Company, 86 R.I. 196, 133 A.2d 784 (1957): [Where each of irreconcilable provisions was contained in the same act, and were enacted into law at the same time, a court should give effect to that provision which would most effectively carry out the legislative intent and purpose.]

Gilbane Building Co. v. Cianci, 117 R.I. 317, 366 A.2d 154 (1976). The party must also demonstrate that it will be irreparably harmed if relief is not granted, and the Court must balance the equities, that is, weigh the hardships to either side while examining the practicality of imposing the desired relief. Rhode Island Turnpike & Bridge Authority v. Cohen, R.I. , 433 A.2d 179 (1981). Finally, the party must show that he has no adequate remedy at law. In respect to the above standards, the previous discussion of the count for declaratory judgment demonstrates that the petitioner has made a strong showing of a likelihood of prevailing on the merits.

The question of what constitutes irreparable harm is a factual determination, which should be made on the basis of the particular circumstances of each case. School Committee of Pawtucket v. Pawtucket Teachers' Alliance Local No. 930, 117 R.I. 203, 365 A.2d 499 (1976). The respondent, State Labor Relations Board, argues in their brief that the petitioner has failed to satisfy the requirements of irreparable harm and inadequacy of a legal remedy. The petitioner maintains that it will suffer such injury, noting that:

> ". . . if the election is held, the Governor will be deprived of an opportunity for a hearing on the appropriateness of the bargaining unit and on which positions should be excluded therefrom. Furthermore, in order to obtain such a hearing, the Governor would be forced to refuse to bargain, be found guilty of an unfair labor practice and appeal to Superior Court." (Brief for Petitioner at 8.)

Thus, the imminent harm which would be suffered by the petitioner is the loss of the opportunity to exercise the authority granted to him by the legislature in R.I.G.L. § 36-11-1(c). It is the opinion of this Court that such injury amounts to irreparable harm, and that the petitioner has satisfied this standard.

Respondent also argues that the state has an adequate remedy at law, that being the right to have a final order of the Labor Relations Board reviewed by this Court. Respondent maintains that appeal at this time is interlocutory in nature,[3] and that the petitioner must wait until a final decision is promulgated by the Board before a timely review may be brought pursuant to R.I.G.L. 1956 (1979 Reenactment)

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3. Respondent relies on the case of McGee v. Local No. 682, 70 R.I. 200, 28 A.2d 303 (1944), for the proposition that "a certification proceeding is interlocutory in nature and not a final decision of the Board, and consequently, not appealable." Brief for respondents at 4. The McGee case involved an automatic renewal under an existing contract. There was no question as to who was the "employer" under the contract. The McGee case supports the proposition that this Court has the jurisdiction to review a Board decision which is based on an error of law: ". . . There is no doubt that according to the

§ 28-7-29. However, review under G.L. § 28-7-29 is premised on the existence of an unfair labor practice. The controversy in the case at hand does not center around "unfair labor practices", but instead the real issue is who is the employer for the purpose of entering into a consent election agreement. Thus, as in the case of Leedom v. Kyne, 358 U.S. 183 (1958),[4] this Court is not reviewing a decision of the Board made within its jurisdiction, but is instead finding that the Board did not proceed appropriately when it determined that the consent agreement was validly executed. The action by this Court is thus intended to strike down an order of the Labor Relations Board, which was contrary to the specific grant of authority to the Chief Executive by the legislature in G.L. § 36-11-1(c). For this reason the requirement of finality need not be satisfied, since the nature of this action is not synonymous with judicial review, as it traditionally occurs within the context of administrative appeals.

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act, the findings of the board as to facts, if supported by competent evidence, are conclusive. But a finding of fact by the board, which is not supported by competent evidence or which is based upon an error of law, has no such binding effect. In such circumstances the superior court has jurisdiction to determine the true merits of the case and to modify or set aside, in whole or in part, the decision and order of the board." 70 R.I. at 211. In the case at hand the Board's finding that the Secretary of State is the "employer" is based on an error of law, stemming from the Board's misinterpretation of the relevant statutory provisions. Thus, this Court has jurisdiction to determine the merits of the case.

4. 79 S.Ct. 180, 3 L.Ed.2d 210. See, Brief for Petitioner at 6, 7.

Finally, the balance of equities favors the petitioner's cause, and the preliminary injunction is, therefore granted.

Both the respondent and Council 94, American Federation of State, County and Municipal Employees, AFL-CIO (hereinafter called AFSCME), put forth other arguments which this Court will briefly address. Respondent alleges that this Court does not have jurisdiction to issue a restraining order in respect to a representation election. As stated in their brief:

> ". . . Rhode Island General Laws 28-7-14, 28-7-15, 28-7-16 and 28-7-17 clearly confers exclusive jurisdiction with respect to the conducting of elections to the Rhode Island State Labor Relations Board." (Brief for Respondent at 3).

The Board has failed to cite any authority for the proposition that this Court lacks the jurisdiction to enjoin representation elections. The above cited sections of the General Laws do not exclude judicial activity in this area.

It should be noted that the injunction is an equitable remedy, the issuance of which is lodged in the sound discretion of the trial court, which is exercised in accord with recognized principles of equity. Schomer v. Shilepsky, 169 Conn. 186, 363 A.2d 128 (1975); 42 Am.Jur.2d Injunctions § 2 (1969). See also, DeNucci v. Pezza, 114 R.I. 123, 329

A.2d 807 (1974). In this state, the Superior Court is vested with exclusive original jurisdiction of suits and proceedings of an equitable character. R.I.G.L. 1956 (1969 Reenactment) § 8-2-13. While some labor disputes are indeed subject to the anti-injunction provisions of R.I.G.L. 1956 (1979 Reenactment) § 38-10-2, this law does not apply to disputes between the state or its political subdivisions and their employees. City of Pawtucket v. Pawtucket Teachers' Alliance, 87 R.I. 364, 141 A.2d 624 (1958). See also, School Committee v. Westerly Teachers Ass'n, 111 R.I. 96, 299 A.2d 441 (1973). Thus, this Court sees no merit in respondent's assertion that it lacks jurisdiction to issue an injunction in the case at hand.

Respondent State Labor Relations Board's second argument - that there has been no showing of irreparable harm - was addressed above, when this Court found that denial of the Chief Executive's vested authority to negotiate with collective bargaining representatives amounted to irreparable harm, and that an appeal pursuant to G.L. § 28-7-29 is not appropriate in this case.

Finally, the Board's assertion contained in paragraph 2 of the Conclusion, that the petitioner lacks standing, has no merit in light of the fact that petitioner has suffered an injury in fact as a result of respondent's actions. Rhode Island Opthamological Society v. Cannon, 113 R.I. 16,

317 A.2d 124 (1974). The injury was the Board's denial of the Chief Executive's opportunity to exercise a vested right.

Council 94 (AFSCME) has put forth four arguments in support of respondent's position. First, AFSCME argues that irreparable harm has not been established by the petitioner. AFSCME distinguishes between the Board's power to conduct an election and its authority to certify the results of an election, stating that legal consequences flow only from the certification process. The union argues that the state is attempting to enjoin the election and not the certification process. This distinction is not useful in light of this Court's finding that the Chief Executive has the authority to consent to an election under G.L. § 36-11-1(c). Thus, the union's argument that the state may simply choose to refuse to bargain after certification has occurred misses the point that the harm suffered by petitioner is the denial of the right to negotiate, pursuant to G.L. § 36-11-1(c). The grant of authority contained in that section by necessity implies the right to consent to an election.

AFSCME further argues that the United States Supreme Court in the cases of American Federation of Labor v. N.L.R.B., 308 U.S. 401 (1940) and its companion, N.L.R.B. v. I.B.E.W., 308 U.S. 413 (1940), mandates the procedure that the employer must refuse to bargain and litigate the representation question

aspart of the unfair labor practice proceeding. The union also submits that those cases stand for the proposition that a Board order directing that an election be held may not be enjoined. However, a review of those cases makes it clear that the court did not address a situation where the Board's actions were contrary to a statutorily imposed directive, i.e., that the Chief Executive shall be empowered to negotiate with the collective bargaining representative. As the Supreme Court noted in A.F. of L. v. N.L.R.B.:

> "The single issue which we are now called on to decide is whether the certification by the Board is an 'order' which, by related provisions of the statute, is made reviewable upon petition to the Court of Appeals for the District or in an appropriate case to a circuit court of appeals. The question is distinct from another much argued at the Bar, whether petitioners are precluded by the provisions of the Wagner Act from maintaining an independent suit in a district court to set aside the Board's action because contrary to the statute, and because it inflicts on petitioners an actionable injury otherwise irreparable." 308 U.S. at 404.

In the instant case, the Board's recognition of the Secretary of State as the "employer" contravenes G.L. § 36-11-1(c). Thus it is clear that both A.F. of L. and I.B.E.W. are not controlling, given the facts in the case at hand.

AFSCME's second argument is that petitioner has an adequate remedy at law, i.e., review pursuant to G.L.

§ 28-7-29 or alternatively under G.L. 1956 (1977 Reenactment) § 42-35-15 [the Administrative Procedures Act]. As stated above, the nature of this action is not exactly a review of an administrative adjudication, but is instead a declaration of the rights of the parties under the relevant statutes. Thus, Warren Education Association v. Lapan, 103 R.I. 163, 235 A.2d 866 (1967) is inapposite, and petitioner may proceed with this action.

The union's third argument is that indispensable parties have not been joined. AFSCME argues that Council 94 and the Secretary of State's office are the sole signatories to the consent agreement, and that these two "contracting parties" must be joined in any action which will affect their interests. The error in this argument lies in the fact that this is not an action in contract, but is instead an action for declaratory relief which centers around the rights of the Chief Executive under G.L. § 36-11-1(c). The purported contract between the Union and the Secretary of State's office is irrelevant, insofar as this action is concerned with the authority to negotiate with the collective bargaining representative.

Finally, AFSCME asserts that this Court lacks the jurisdiction to render a judgment since, pursuant to R.I.G.L. 1956 (1977 Reenactment) § 42-9-6 the Office of the Attorney General,

and that office alone, is authorized to represent all officers of the state. Therefore, AFSCME argues both parties to this action should be represented by the same counsel. Furthermore the union views this as an interagency problem which should be settled by administrative action. A close reading of G.L. § 42-9-6 reveals that the obligation of the Attorney General to represent state officials arises "whenever requested" by such officials. Since there has been no such request in this case, there is no real conflict. Likewise, petitioner has satisfied the standards for injunctive and declaratory relief, and thus this case is appropriately before the Court

In summary, the petitioner's request for a declaration that the Chief Executive is the only party authorized to execute a consent agreement, as employer, is hereby granted. Petitoner's request for a preliminary injunction restraining an election until the Chief Executive or his designee has authorized such an election is hereby granted.