

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

TOWN OF BRISTOL

V

NO. 85-5600

RHODE ISLAND LABOR
RELATIONS BOARD, ET AL

D E C I S I O N

GRANDE, J. This matter is before the court on the plaintiff's appeal pursuant to G.L. 1956 (1979 Reenactment) § 28-7-29 seeking to revise a decision of the Rhode Island State Labor Relations Board.

The facts are as follows. The plaintiff-employer, Town of Bristol (The Town), is a municipal corporation duly organized under the Constitution and General Laws of the State of Rhode Island. The defendant United Steelworkers of America, Local 14852-A (the Local) was certified as the collective bargaining representative for all clerks and secretaries employed at the Town Hall in Bristol excluding clerks and secretaries employed by the Police Department, on September 8, 1975.

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position of Secretary to the Town Administrator was included within the terms of said certification and has been included in the bargaining unit from such date until July 1, 1985 when the Town petitioned the Rhode Island State Labor Relations Board (the Board) to remove the secretarial position from the bargaining unit on the grounds of confidentiality. The Town made a similar request on July 29, 1985

The collective bargaining agreement in effect at the time was due to expire on June 30, 1985 but was extended until such time as a new one could be reached. In early June, George Oliver, the administrative assistant to the Town Administrator had had a discussion with Dennis Labao, the President of the Local regarding the confidentiality of the secretary's position and the need to declassify such position from the bargaining unit

Despite this discussion the issue was never raised during the formal negotiations that preceded the new collective bargaining agreement. That agreement was reached on August 21, 1985 and the secretary's position was included in the bargaining unit. The agreement also did not include a provision excluding the position until such time as the Board clarified it.

Hearings regarding the Town's petition were held before the Board on September 18, 1985 and October 24, 1985. The Board decided on December 19, 1985 that the position was a confidential one which eventually must be excluded from the bargaining unit, citing R.I.G.L. § 28-7-9(c). The Board held that this new statutory enactment, while allowing a unit clarification petition to be filed at anytime, did not "necessarily imply that once a position is clarified ... that it must immediately come out of

the bargaining unit. There is no irreparable harm shown which would require the Board to act otherwise." (Board Decision and Order page 3.

Thus, the Board ordered that the position not be excluded from bargaining unit until such time as the present collective bargaining contract expires

The Town of Bristol has appealed this portion of the Board's Decision and Order and requests this Court to modify them so as to require immediate exclusion of the secretary's position from the bargaining unit represented by the Local

In reviewing an agency decision, this Court is bound by the standard of review set out in the Administrative Procedures Act G.L. 1956 (1985 Cum. Supp.) § 42-35-15(g) which reads as follows:

(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:

(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.

Thus, the court does not substitute its judgment as to the weight of the evidence on questions of fact, and must affirm the decision of the agency unless its findings are clearly erroneous. Guarino v. Department

of Social Welfare, R.I. 410 A.2d 425 (1980). If the record discloses any competent evidence supporting the findings of fact made by the agency, then those findings are conclusive on review. Leviton Mfg. Co. v. Lillibridge, 120 R.I. 283, 387 A.2d 1034 (1978)

The primary issue in this case is the interpretation of G.L. § 28-7-9(c) of the State Labor Relations Act which provides as follows:

"(c) A petition for unit clarification may be filed at any time with the board by (1) an exclusive bargaining agent, or (2) the applicable municipality, or (3) the state where appropriate."

Prior to the enactment of this statute, the Board only allowed unit clarifications to be filed within the 60 to 90 day period prior to the expiration of a collective bargaining agreement.

The plaintiff argues that the statute allows the Board to hear a unit clarification petition at any time and exclude the position in question from the bargaining unit immediately. The plaintiff also claims that the Legislature has made a judgment that such mid-term unit clarifications are not disruptive of the collective bargaining relationship in the public sector.

The defendant argues that to allow the immediate exclusion of such a position would defeat one of the basic purposes of the State Labor Relations Act: to create an atmosphere of harmony between the respective parties so as to encourage them to bargain collectively.

The defendant claims that this policy coincides with that of the National Labor Relations Board (NLRB) which has stated that "[i]t is well established that, during the term of the contract, unit clarification is not

appropriate for upsetting an agreement or established practice of a union and employer with respect to the unit placement of employees." Massachusetts Teachers Association, 236 NLRB No. 180 (1978). Accord, Wallace-Murray Corporation, Schwitzer Division, 192 NLRB No. 160 (1971).

Construction of statutory language such as this is controlled by the intent of the Legislature which must be determined from an examination of the language and purpose of the statute. Paola v. Commercial Union Assurance Companies, R.I. 461 A.2d 935, 937 (1983). An interpretive regulation issued by an agency charged with administration of the statute will ordinarily be given great weight. Statewise Multiple Listing Service v. Norberg, 120 R.I. 937, 392 A.2d 371, 373 (1978). It may not, however, encroach upon the legislative province by altering or amending the scope of the statute. Id. Where the provisions of a statute are unclear or subject to more than one reasonable interpretation, the construction given by the agency is entitled to weight and deference as long as that construction is not clearly erroneous or unauthorized. Gallison v. Bristol School Committee, R.I. 493 A.2d 164 (1985).

In the case before the court, the statute is subject to more than one interpretation. However, the court must agree with the Board that although § 28-7-9(c) does allow a unit clarification petition to be filed at anytime during the life of a certification, it does not necessarily imply that once that position is clarified (in this case declared confidential) it must immediately come out of the bargaining unit.

The court also agrees that there is no irreparable harm done to the Town by allowing this position to remain in the bargaining unit until the expiration of the present bargaining agreement, where this position has been

so included for the past ten years, the duties of the position have not changed since the last agreement and the position was included in the latest collective bargaining agreement.

This Court will not read into the statute the requirement that the position be removed immediately. Thus, the Board fulfilled its obligation by hearing the petition and was within its authority in keeping with its past practice of not removing the position until such time as the present contract expires. In doing this, the Board has acted to preserve the atmosphere of harmony that is the goal of the Rhode Island State Labor Relations Act by not allowing either party to circumvent or undermine the collective bargaining process.

Therefore, this Court is unable to conclude that the Board violated the statutory provision or that its decision was arbitrary or capricious.

The request of the Town is denied. The Decision and Order of the Rhode Island State Labor Relations Board is affirmed. An order shall be presented for entry within two weeks.