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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. SUPERIOR COURT

WARREN SCHOOL COMMITTEE

V. C.A. No. 88-2179

RHODE ISLAND STATE LABOR RELATIONS BOARD AND NEA/WARREN

D E C I S I O N

PEDERZANI, J. This matter is before the Court on appeal by the Warren School Committee (hereinafter the Committee) pursuant to R.I.G.L. 1956 (1986 Reenactment) § 28-7-29 seeking to vacate a decision of the Rhode Island Labor Relations Board (hereinafter the SLRB). The SLRB concluded that the Committee had not fully complied with the arbitrator's award dated March 19, 1989 and that its failure to comply constituted an unfair labor practice pursuant to § 28-7-13(11). The SLRB ordered the Committee to fully comply with the order forthwith.

FACTS

The travel and pertinent facts of the case are as follows. The Committee is a municipal corporation entrusted with the care, management, control and custody of the public school estate of the Town of Warren, Rhode Island. NEA/Warren is a labor organization which has been certified by the

SLRB as the exclusive bargaining agent for certified teachers employed in the Warren School System. The Committee and NEA/Warren, pursuant to the School Teacher's Arbitration Act, entered into a collective bargaining agreement encompassing the period of September 1, 1982 through August 31, 1985. Since no new collective bargaining agreement had been reached by August 30, 1985, the parties decided to holdover the old 1982-1985 agreement until such time as a new agreement could be executed.

A dispute arose regarding Article VII, Section C of the 1982-1985 agreement. Specifically, the dispute centered around whether the teachers would obtain the total number of 'release time days' provided for in the 1982-1985 agreement. Article VII, Section C provided for 15 'release time days'.

Article VII, Section C of the agreement provides:

> The parties agree to schedule time for inservice and/or curriculum planning, classroom preparation, and parent conferences. The presently scheduled time for the foregoing purpose shall be on Thursdays. The number of release time days shall be fifteen (15). These days are to be scheduled by mutual agreement of both parties at the time the school calendar is prepared.

In order for NEA/Warren to avail itself of these 'release time days', it was necessary to have the Superintendent request them in writing and state with particularity the purpose for the release time. The reason being, the Rhode Island Commissioner of Education since 1981 has taken the position that 'release time days' based solely on collective bargaining agreements will only be honored if requests for the same are made in writing by the Superintendent, and if such writing contains detailed and explicit plans for the use of the days.

For the school years 1981 through 1985 the Committee fully complied with the requirements of both the agreement and the Commissioner's

regulations. Requests for the 'release time days' were routinely granted during this period.

On December 30, 1984 the Committee proposed a change in Article VII, Section C of the collective bargaining agreement. It proposed that 'release time days' be granted on a 'needs be' basis. The proposal, however, was never incorporated into the agreement.

Subsequent to the Committee's proposed change and during the 1985-86 school year, no request was made by the Superintendent for 'release time days' nor was any detailed explanation for the purpose of these days provided. There was only reference to the fact that 'release time days' were based solely on the collective bargaining agreement - a circumstance that the Commissioner of Education previously made known he refused to honor absent a detailed written request by the Superintendent. (The practical effect of the actions taken by the Committee in not properly following request procedure has been to unilaterally implement its proposed change in the collective bargaining agreement.)

As a result of not being granted the 'release time days' NEA/Warren properly filed a grievance pursuant to the grievance procedure contained in the collective bargaining agreement. The grievance was not resolved. Consequently, NEA/Warren submitted the issue to arbitration. The parties selected Parker Denaco as arbitrator. On March 19, 1986 Arbitrator Denaco rendered an award sustaining the grievance.

The award recognized a violation of Article VII, Section C of the agreement. Arbitrator Denaco ordered the Committee to agree to ten (10) additional 'release time days' in order that the total number of 'release time days' provided for in the agreement would be met. To the extent that the total number of 'release time days' were not accorded to the members of the

bargaining unit, Arbitrator Denaco also ordered that they be financially compensated for any deficiency less than that number. Implicit in the award is the understanding that the Committee will exert its "best effort" to secure the additional 'release time days'. The arbitration award reads as follows:

> Based on the foregoing, the arbitrator finds and awards as follows:
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> (1) There has been a violation of Article VII, Section C, of the collective bargaining agreement.
>
> (2) The parties will meet forthwith to agree on up to ten (10) additional release time days for the 1985-86 school year.
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> (3) To the extent the appropriate members of the bargaining unit are not accorded the full fifteen (15) release time days referenced in Article VII, Section C, of the collective bargaining unit, they shall be entitled to compensation for any deficiency less than that number, said compensation to be calculated consistent with the method enumerated on page 21, above. (Arbitrator's opinion and award pp. 20-22).

On October 15, 1987 NEA/Warren filed an Unfair Labor Practice Charge with the SLRB alleging that the Committee had not implemented the arbitration award of March 19, 1986 in violation of § 28-7-13(11). This section reads in pertinent part:

> It shall be an unfair Labor practice for an employer; . . . (11) to fail to implement an arbitrator's award unless there is a stay of its implementation by a court of competent jurisdiction or upon the removal of any such stay.

On April 18, 1988 the SLRB rendered a decision which found that the Committee failed to implement the award and ordered it to comply with the award forthwith. The SLRB stated:

> (1) The petitioner has proved by a fair preponderance of credible evidence that the respondent has not fully complied with the arbitrator's award dated March 19, 1986; and (2) The failure to fully comply with all of the terms of the arbitrator's award is an unfair labor practice which is prohibited by the pertinent provision of Rhode Island General Laws § 28-7-13(11).

The Committee appealed this decision on May 3, 1988 pursuant to § 28-7-29, Warren School Committee v. Rhode Island State Labor Relations Board and NEA/Warren, C.A. No. 88-2179. The Committee requested that this Court vacate both the decision and order of the SLRB. The Committee cites § 42-35-15(g) 1-6 as its basis for appeal.

LAW

In reviewing an agency decision, this Court is bound by the standard of review set out in the Administrative Procedures Act R.I.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:
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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.

DISCUSSION

The Court may not substitute its judgment for that of the agency 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 supportive of the findings of fact made by the agency, then those findings are conclusive on the reviewing court. Leviton Mfg. Co. v. Lillibridge, 120 R.I. 283, 387 A.2d 1034 (1978).

A review of the SLRB's findings of fact illustrates it found that Committee had not implemented the arbitration award. The findings of fact state: (1) "The School Committee has refused and continues to refuse to implement an Arbitrators Award in violation of the Act." (paragraph 3); (2) "Certain portions of the arbitration award have been complied with. Other portions of the arbitration award have not been complied with." (paragraphs 9-10); and (3) "There has not been full compliance of the arbitration award of Parker Denaco dated March 19, 1986." (paragraph 11).

In addition, a review of the findings illustrates the SLRB found that the Committee had not obtained a stay of the arbitration award from a court of competent jurisdiction. It further found that the Committee's Motion to Vacate the arbitrator's award, C.A. No. 86-1811 - which was filed prior to the Unfair Labor Practice Charge and which contained a request for a stay never acted upon by the court. As such, no stay was ever issued. findings of fact state: "Although an answer was filed on behalf of the respondent, the court has not acted upon the merits of the complaint that was filled out, as of the date of the decision of this board in this case, there has been no order from the Superior Court vacating the Arbitration Award." (paragraph 8).[1]

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[1] On February 8, 1989 the Committee filed a Motion to Consolidate case No. C.A. 86-1811 and the case at bar, C.A. No. 88-2179, based on the fact that the issues in both cases are essentially the same. This motion was never acted upon. The motion judge, however, indicated his reluctance to consolidate the two cases.

The plaintiff has speciously attempted to present both cases for decision. This Court will not address the Motion to Vacate since it was never joined with the agency appeal and is therefore not properly before this Court. R.I.G.L. § 28-9-18(B) requires that an arbitrator's award be implemented or judicially stayed before a motion to vacate an award can be entertained. The Committee's Motion to Vacate will not be addressed until such time as it conforms to procedural mandate set forth in this section.

Therefore, the issue before this Court is whether the SLRB erred in holding that the Committee committed an Unfair Labor Practice under § 28-7-13(11) when it found that the arbitration award of March 19, 1986 had not been implemented or judicially stayed. In resolving this issue the Court must determine whether the record discloses any competent evidence which supports the findings of fact of the SLRB and whether substantial rights of the Committee have been prejudiced by the SLRB's conclusions of law. See supra § 42-35-15(g).

It is the finding of this Court that the record discloses competent evidence which supports the SLRB's findings of fact. An admission by Mr. Piccirilli, counsel for the Committee, in the official transcript taken before the SLRB on February 24, 1988 competently supports the finding that the arbitration award of Parker Denaco dated March 19, 1986 was not implemented. He stated:

> The evidence that has been presented before you is clear, that certain portions of the award were complied with and that certain portions of the award have not been complied with. (Emphasis added, SLRB Tr., pg. 33)

The record also discloses competent evidence which supports the finding that members of the bargaining unit were not compensated when they were not accorded the full fifteen (15) 'release time days', as required by paragraph three (3) of the arbitration award.

> Mr. Liquori: Were members of the bargaining unit paid compensation pursuant to that paragraph?
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> Mr. Duperron: No, they were not
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> (SLRB TR., Pg. 8).

Moreover, the record discloses that the request for a judicial stay in C.A. No. 86-1811 was never granted due to the fact that no action was taken on the Committee's Motion to Vacate

> Mr. Liquori: I think we can also agree that there has been no stay issued by the Superior Court in this case, is that correct Mr. Piccirilli?
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> Mr. Piccirilli: That's correct
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> * * *
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> Mr. Piccirilli: . . . . There was a prayer by the Warren School Committee that a stay be issued sustaining the implementation of the award. That was never acted upon.
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> Mr. Liquori: Anything else we can agree on?
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> (SLRB Tr., Pg. 5-6)

The record discloses there was an admission by the Committee that all of the provisions of the arbitrator's award were not fully implemented. In addition the record discloses that no judicial stay was granted regarding the implementation of the award. The language of § 28-7-13 is clear, it shall be an unfair labor practice for an employer to fail to implement an arbitration award unless there is a judicial stay from a court of competent jurisdiction. Therefore, this Court finds that the record contains competent evidence to support the conclusion of the SLRB that the Committee committed an unfair labor practice pursuant to § 28-7-13(11 in not implementing the arbitrator's award and in failing to obtain a judicial stay of the same

The evidence supports that the findings, inferences, conclusions and decisions of the SLRB are not clearly erroneous in view of the probative and substantial evidence of the whole record, nor are they arbitrary or capricious or characterized by an abuse of or unwarranted discretion. There exists no violation or excess authority of constitutional or statutory provisions, errors of law or unlawful procedure.

It is the ruling of this Court that the prayers of NEA/Warren be granted. Full compliance with Parker Denaco's arbitration award is ordered forthwith.