

SUPERIOR COURT
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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, Sc.

SUPERIOR COURT

COUNCIL 94, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO

M. P. NO. 12570

RHODE ISLAND STATE LABOR RELATIONS
BOARD, PROVIDENCE SCHOOL CUSTODIANS'
ASSOCIATION, AND SCHOOL COMMITTEE

D E C I S I O N

GALLANT, J. This matter is before the Court pursuant to
Rhode Island General Laws, 1956 (1977 Reenactment) §42-35-15
on an appeal by Council 94 from a decision by the Rhode Island
State Labor Relations Board in Case No. EE-3195, dated
March 7, 1978. In that decision, the Board concluded that the
petition for election filed by the Providence School Custodians'

Association was a timely petition and it directed that an election be held.

The parties are in substantial agreement on the facts. Council 94, and its predecessor, was the certified bargaining agent for the custodians employed by the Providence School Department, having been certified by the State Labor Relations Board on June 7, 1967. Thereafter, from the date of said certification, up to and including August 31, 1977, the plaintiff had bargained for and entered into successive collective bargaining agreements with the Department. The contract covering the period September 1, 1975 through August 31 is the agreement at issue in this proceeding.

Prior to its expiration on August 31, 1977, the School Committee adopted a resolution extending the contract 60 days. As of August 31, 1977 and thereafter Council 94 and the School Committee negotiated in an attempt to reach an agreement

On November 6, 1977, the union rejected the employer's proposals by vote of its membership. On November 11, 1977 a second tentative agreement was reached. This agreement ratified by the union membership on November 20, 1977 and approved by the School Committee on December 15, 1977. It

given retroactive application from August 31, 1977

In the meantime, upon hearing through the media that negotiations had broken down, the Custodians' Association filed a petition with the State Labor Relations Board on November 4, 1977 ultimately seeking an election

On December 30, 1977 the Board held a hearing on the Association's petition for election. At that hearing, the plaintiff argued that the Custodians Association was not a "labor organization" as defined by Rhode Island General Laws, 1956 (1968 Reenactment) §28-7-3. It argued further that by virtue of Article XXII of the contract, the contract remained in effect while the parties were negotiating and therefore

"Contract Bar Rule" precluded the Board from entertaining the petition. The Custodians Association argued that negotiations had not been going on and that as of November 4, 1977 no contract had existed. In essence, the Board dismissed plaintiff's first objection and limited the hearing to the question of the timeliness of the petition.

On March 7, 1978 the Board rendered its decision in favor of the Custodians' Association and entered an order directing that an election be conducted. From this decision the petitioner has appealed

In ruling on this appeal, the Court's scope of review is set forth in §42-35-15. Subsection (g) provides 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."

After carefully examining the record in this case the Court is of the opinion that the administrative findings and conclusions of the State Labor Relations Board are arbitrary and for the reasons which follow its decision will be reversed and the case remanded to the Board

Policy number 3 of the General Policies of the State Labor Relations Board provides that the Board will not

entertain a petition filed by an individual or a labor organization while there is a valid contract existing between an employer and a labor organization. This is usually referred to as the "Contract Bar Rule." An exception exists in that a petition for an election may be filed while there is a valid contract in existence if the petition is filed between sixty and ninety days prior to the expiration of the contract.

The record is clear that the Custodians' Association did not petition the Board within the 60-90 period prior to the expiration date of the contract in question. Therefore, its petition could be entertained by the Board only if there was no other valid contract in existence when the Custodians' Association filed its petition on November 4, 1977. Thus, the existence of a valid contract was a key issue to be determined by the Board. The Board was obviously aware of this when it said at page 4 of its Decision:

"We believe that three key elements are decisive as far as our decision is concerned. They are as follows:

(1) The fact that there are between 280 and 291 members of the unit seeking to be represented.

(2) The fact that the previous contract had not been extended subsequent to 10/31/77.

(3) The fact that no new contract had been executed prior to the filing of the instant petition."

The Board was of the opinion that the second third elements were important because they showed "a time frame in which there was no extension of the old contract, nor the execution of a new one." Therefore, they concluded "there was nothing to bar the filing of a representation petition on November 4, 1977." Board's Decision p. 5

Additionally, it is clear that the Board made no findings as to the issue which would bear most directly on this conclusion.

after the date when the contract would otherwise terminate while the parties voluntarily engaged in negotiations. The key questions, therefore, were whether Article XXII was a valid contract extension provision, and if it was, whether or not the parties were engaged in voluntary negotiations on November 4, 1977.

The failure of the Board to deal directly with this issue is not easily understood. They have upheld contract extension provisions based on negotiations, and have determined

that the "Contract Bar Rule" does bar the filing of representation petitions during the period of negotiations

In State of Rhode Island, Institute of Mental Health and 1199 R. I. a Sub-Division of the National Union of Hospital and Health Care Employees a Division of RWDS, AFL-CIO,
Case No. EE-3170, March 23, 1977, the Rhode Island Labor Relations Board dealt with the following contractual language: "This agreement shall remain in full force and be effective during the period of negotiations and until notice of termination of this agreement is provided to the other party in the manner set forth in the following paragraph." The Board, in that decision, said at page 1: "It is clear, and the transcript reflects, that no notice of termination was given in this case so that the contract remained in effect not only on the date of the filing on December 8, 1976 but until it was succeeded by a new negotiated agreement which ran retroactively from January 1, 1976 to December 31, 1978."

While the contract provisions in the instant case differ from those in Case No. EE-3170, the Board's prior decision indicates at least the viability of the plaintiff's argument and it should have been given careful consideration

The Board, however, appears to have arbitrarily discounted the possible effect of Article XXII. In so doing the Board erred.

Had the Board considered the contract extension issue it might then have reached the question of whether or not the parties were engaged in voluntary negotiations on November 4, 1977. It was undisputed that on the date Custodians' Association filed its petition, a mediator had become involved in the negotiations. At the hearing before the Board, the Association argued that this was not in its purest sense "negotiation" and, therefore, Article XXII of the old contract did not act as a bar. While the Court is of the opinion that mediation, as it was employed in this case, was merely the intervention of a third party in the negotiation process, a process which did in fact enable the parties to reach an agreement prior to the Board hearing, the Board itself made no finding on this critical issue. Because it chose not to address the Contract Extension issue it did not reach the question of negotiations.

To the Court's mind the fact that there was no further express extension of the old contract beyond the sixty (60) days, nor execution of a new contract as of November 4, 1977

not, by itself, enable the Board to conclude, as it did, there was nothing to bar the filing of the petition. The Board's reliance on these factors alone was misplaced.

Had the old contract continued to exist by virtue of Article XXII, this would have been a bar to the filing of the petition. Thus this issue should have been and must now be resolved before the timeliness of the petition can properly be determined.

Another aspect of the Board's decision does not withstand review. At the outset of the hearing, the plaintiff only asserted the "Contract Bar Rule" but also argued that petition was not properly filed by a "labor organization" as defined by Rhode Island General Laws, §28-7-3. The Board, however, resolved this issue by saying "I don't think the Board has too much problem with that particular aspect of it. The

is extremely broad on that Transcript p. 3. Later in the hearing the Board again dismissed this issue based on opinion that "The law is wide open." Transcript p. 9.

Rhode Island General Laws, 1956 (1968 Reenactment) §28-7-3(5) defines a labor organization:

"The term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection and which is not a company union as defined herein."

The Court would agree that there is no obligation for the Board to consider whether an organization meets the statutory requirements for a "labor organization" absent an objection on the point, i.e., the Teamsters should not be required to prove that it is a bona fide labor organization each time it files a petition. When an objection is made on this ground, however, it is incumbent on the Board to take evidence on the issue, or at least refer to a case in which evidence was taken and such a finding was made. An opinion that the law may be "broad" or "wide open" on the question does not answer questions as to whether or not the organization is constituted in whole or in part, for collective bargaining, or for dealing with employers concerning certain specific matters, and is not a company union.

The Board was obviously aware of the necessity of making such a finding notwithstanding the comments of its members. Its finding of fact on this matter conformed word for word with the statute. Thus it found that the "Providence

School Custodians' Association is a labor organization which exists and is constituted for the purpose in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection. Regardless of how broadly that wording can be read, nothing in the record enabled the Board to reach this conclusion. There was no evidence whatsoever concerning the origins or purpose of Custodians' Association. In making this finding the Board acted arbitrarily.

For the foregoing reasons the decision of State Labor Relations Board is hereby reversed and the case is remanded with directions that the Board take evidence and make findings on the issues discussed herein.

Counsel will prepare and submit for the approval of this Court an order in conformity with this decision.