STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF RHODE ISLAND STATE LABOR RELATIONS BOARD -AND- RHODE ISLAND AIRPORT CORPORATION	CASE NO: ULP-5704

DECISION AND ORDER OF DISMISSAL

TRAVEL OF CASE

The above entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") as a Unfair Labor Practice Complaint (hereinafter "Complaint") issued by the Board against the Rhode Island Airport Corporation, (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") filed on December 16, 2003 by Rhode Island Council 94, AFSCME AFL-CIO (hereinafter "Union").

The Charge alleged violations of R.I.G.L. 28-7-13 (6) and (10):

> The Rhode Island Airport Corporation has not bargained in good faith with the Union regarding the fire and rescue employees.

Following the filing of the Charge, an informal conference was held on January 16, 2004. Thereafter, the parties requested that the matter be placed into abeyance to see whether it could be settled. A second informal hearing was held on November 17, 2004. The Board issued its Complaint on January 27, 2005 and charged the Employer with a failure to bargain in good faith concerning the potential upgrade of firefighter positions. The Employer filed its answer to the complaint on February 18, 2005, denying the allegations therein. A formal hearing was conducted by the Board on May 5, 2005. Representatives from both the Union and the Employer were in attendance and had full opportunity to present evidence and to examine and cross-examine witnesses. In arriving at the Decision and Order of Dismissal herein, the Board has reviewed and considered the testimony and evidence presented and arguments contained within the post hearing briefs.

FACTUAL SUMMARY

The facts presented in this case are essentially not in dispute. The Employer and the Union have had a continuous collective bargaining relationship for many years and are parties to a collective bargaining agreement ("CBA") dated July 1, 2001 through June 30, 2006. In this matter, the Union represents the crewmembers of the Airport Rescue and Firefighting Department ("ARFF"). As would be expected, the CBA contains a detailed salary schedule for all employee classifications represented by the bargaining unit, including the ARFF employees. In addition, the CBA also contains a section entitled "Classification Study" which provided in pertinent part: "As a result of these negotiations, the Corporation agrees to form an internal committee of two management and two union representatives to evaluate the wages paid to all job classifications, with priority to those classifications not upgraded as a result of these negotiations." (Employer Exhibit #4)

In early 2002, pursuant to the Union's request, the "Wage Committee" conducted a pay grade review for members of the Employer's Police Department. Upon conclusion of the study, the Wage Committee recommended a pay increase for the Police Department employees. The Union was not satisfied with the amount of the recommended increase and requested that additional consideration be given to the Sergeants and Lieutenants in the Police Department. After additional review, the Employer agreed to further upgrade these leadership positions.

Once the Police Department review had been concluded, the Union then proceeded to request a review by the Wage Committee for the ARFF. On March 22, 2002, Paul Reeve, the Director of Human Resources and a member of the Wage Committee responded in writing to the Union's inquiry regarding a wage review for the firefighters. Mr. Reeve advised the Union that the basis for changing the pay grades for the Police Department was a result of a thorough survey of over thirty-five (35) Rhode Island Municipal Police Departments. Mr. Reeve's letter stated in pertinent part:

> "The ARFF unit could expedite a review of their pay-grades if they conducted a survey in a manner similar to that done by our Police Department. I would encourage those in ARFF who are most interested to review the survey done by the Police Department for the format and content of that survey. It did exclude surveying benefits which was an oversight and should be included in any survey done. ***If such a survey results in similar findings as the Police Department, adjustments may be considered, and parity might very well be the result Please don't hesitate to contact me if I can be of any help in structuring and conducting a survey which is a critical element in this review process.*** (Emphasis added herein) (Union Exhibit #2)

Subsequent to its receipt of this communication, the Union did conduct a survey of Rhode Island Municipal Fire Departments and submitted the data to the Wage Committee for its review. The Committee disagreed that the survey should have included comparison data from Municipal Fire Departments because of the differing functions of a Municipal Fire Department from an Airport Fire Department. The Wage Committee then endeavored to obtain what it felt would be more relevant information from airports comparable to T.F. Green. Melvin Einhorn, the current Human Resources Director, testified that the Committee undertook a review of the pay structure and duties of fire fighting departments at eight to ten other airports. (TR. p. 64) The Committee then had five or six meetings with the Union to review and discuss the Committee's findings. The meetings were apparently heated because the parties fundamentally disagreed as to what type of firefighting department was comparable. Ultimately, the Wage Committee determined that it would not be recommending any pay increase for the ARFF members. The Union then appealed to the Executive Director who, after reviewing the matter himself, came to the same conclusion as the Wage Committee. On May 23, 2003, Mr. Einhorm issued a one sentence letter to the Union which stated: "Following a series of meetings with District 94, RIAC Union Officers to review survey material, market conditions and hearing suggestions for a re-grading of three classifications of firefighters, we find no basis to make a change."

DISCUSSION

As mentioned previously, the parties in this matter have had a valid collective bargaining agreement in place which covers the issue of firefighter wages. In addition, the CBA also contains a so-called "zipper clause", which states:

> The Airport Corporation and the Union acknowledge that this agreement represents the result of collective bargaining negotiations between the said parties conducted under and in accordance with the provisions of the Labor Relations Act and constitutes the entire agreement between the parties for the duration of the life of said agreement; each party waiving the right to bargain collectively with each other with reference to any subject matter, issue or thing; whether specifically covered herein or wholly omitted herefrom and irrespective of whether said subject was mentioned or discussed during the negotiations preceding the execution of this agreement." (Employer Exhibit #2, Article 45 of CBA)

Notwithstanding the aforementioned zipper clause, the Employer did create and participate in a wage review of several groups of its employees, including the firefighters. In conjunction with that wage review, the Employer's then Director of Human Resources, Paul Reeve, suggested that the Union might be able to expedite the review if it provided a wage and benefits "survey" for the Wage Committee to review. In his memo to the Union dated March 22, 2002, Mr. Reeve specifically advised and encouraged the Union to contact him concerning the parameters of the survey, stating that the survey would be a "critical element" in the review process. Despite this entreaty, the Union forged ahead and prepared a simple wage comparison survey of Municipal Fire Departments located within the State of Rhode Island. This survey was rejected by the Employer because of non-comparability reasons, in part because municipal firefighters are primarily engaged to fight structural fires and provide medical rescue services and because the ARFF unit has a 24 hour shift, which few, if any, of the Municipalities have. The ARFF firefighters do not regularly battle structure fires, nor do they provide medical rescue services. In addition, despite Mr. Reeve's instruction, the survey did not include information on benefits such as retirement or health insurance.

Even though the Union's survey was not acceptable to the Employer for those reasons, the Wage Committee then undertook survey efforts of its own in an attempt to compare the airport firefighters to other airport firefighters. Mr. Einhorn testified that the Wage Committee surveyed a number of similar sized airports across the country and tried to compare airports where the duties of the employees were similar; in some airports, the personnel perform dual functions as both police and firefighters, while at T.F.Green, those functions are performed by different departments. In addition to the wage information, the Committee also considered the bargaining unit's existing benefits, especially retirement. In this case, the ARFF unit has a number of long-term employees who were previously with the Department of Transportation, prior to the creation of the Airport Corporation. These employees participate in the State Retirement System, at a greater cost to the Employer, than the pension plan for other airport corporation employees. Finally, Mr. Einhorn testified that the recommendations for pay increases for police officers was made prior to the terrorist attacks of September 11, 2001, which resulted in a significant decrease in air travel, which in turn decreased revenues for the Airport Corporation significantly. After considering all these factors and after meeting several times with the Union, the Wage Committee made a determination not to recommend a wage increase for the ARFF unit at that point in time.

It appears that the Union's argument in this case is primarily based upon the fact that the police received wage increases (substantial increases in the case of Lieutenants) and the ARFF unit received no wage increase after substantial efforts were made by the Wage Committee to consider this matter. The Union alleges, therefore, that the Employer engaged in bad faith bargaining. This Board cannot make that leap. There is no question that the Employer did participate in extensive efforts to review the wage issue.[1] As is often the case, despite the efforts of both parties, no agreement could be reached. The fact that parties do not ultimately agree does not automatically convert the situation to an Unfair Labor Practice. The Board is satisfied that the efforts of the Wage

[1] The Board does not reach the issue of whether or not the Employer was required to engage in bargaining during the life of the contract, given the interplay of Article 45, Alteration of Agreement, of the CBA and the Classification Study" language, because the Employer clearly did engage in bargaining.

committee in conducting a second survey and reviewing the employees' benefits package were well intentioned and do not support the Union's allegation of an Unfair Labor Practice. [2]

FINDINGS OF FACT

1) The Respondent is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
2) The Union 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; and, as such, is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.
3) The Employer and the Union have had a continuous collective bargaining relationship for many years and are parties to a collective bargaining agreement ("CBA") dated July 1, 2001 through June 30, 2006. The CBA contained a section entitled "Classification Study" which provided in pertinent part: "As a result of these negotiations, the Corporation agrees to form an internal committee of two management and two union representatives to evaluate the wages paid to all job classifications, with priority to those classifications not upgraded as a result of these negotiations."
4) In early 2002, the Wage Committee formed pursuant to the "Classification Study" provision of the CBA; which recommended a pay increase for the police department employees, after a survey of other police departments and negotiations between the parties.
5) Once the Police Department review had been concluded, the Union then proceeded to request a review by the Wage Committee for the ARFF. On March 22, 2002, the Director of Human Resources advised the Union to conduct a survey of wage and benefits in order to expedite the Wage Committee's review of the upgrade request. That letter stated in pertinent part: If such a survey results in similar findings as the Police Department,

[2] It is unclear from the record whether the Union's Executive Director, Dennis Grilli, was fully apprised of the Employer's efforts when he filed the charge on behalf of the local Union, since the official communication to the Union penned by the Employer's Executive Director left much to be desired, in terms of any attempt to cushion the blow of the decision.

adjustments may be considered, and parity might very well be the result. Please don't hesitate to contact me if I can be of any help in structuring and conducting a survey which is a critical element in this review process.

6) The Union then conducted a survey of Rhode Island municipal paid fire departments and submitted the data to the Wage Committee for its review. The Union did not consult with the Employer as to structure of the survey, as advised by the Mr. Reeve.

7) The Wage Committee disagreed on the fact that the survey compared municipal fire fighters because they are primarily engaged in fighting structural fires. The Employer's representative on the Wage Committee felt that a comparison to other airport firefighting crews was more appropriate and proceeded to conduct that survey on their own. The Committee then had five or six meetings with the Union to review and discuss the Committee's findings.

8) Ultimately, the Wage Committee determined that it would not be recommending any pay increase for the ARFF members. The Union then appealed to the Executive Director who, after reviewing the matter himself, came to the same conclusion as the Wage Committee.

9) On May 23, 2003, Mr. Einhorm issued a one sentence letter to the Union which stated: "Following a series of meetings with District 94, RIAC Union Officers to review survey material, market conditions and hearing suggestions for a re-grading of three classifications of firefighters, we find no basis to make a change."

CONCLUSIONS OF LAW

1) The Union has not proven by a fair preponderance of the credible evidence that the Employer has committed a violation of R.I.G.L. 28-7-13 (6) or (10).

ORDER

1) The Unfair Labor Practice Charge and Complaint in this matter are hereby dismissed.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Joseph V. Mulvey, Member (Dissent)

Gerald S. Goldstein, Member

Ellen L. Jordan, Member

John R. Capobianco, Member (Dissent)

Elizabeth S. Dolan, Member

Frank Montanaro, Board Member, recused himself from participating in this matter.

Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: DECEMBER 22, 2005

By:
Robyn H. Golden, Acting Administrator

ULP-5704

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF	:	
RHODE ISLAND STATE LABOR RELATIONS BOARD	:	
-AND-	:	CASE NO: ULP-5704
RI AIRPORT CORPORATION	:	

NOTICE OF RIGHT TO APPEAL AGENCY DECISION
PURSUANT TO R.I.G.L. 42-35-12

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of ULP No. 5704 dated 12-22-05, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after 12-22-05.

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-31.

Dated: December 22, 2005

By: Robyn H. Golden
Robyn H. Golden, Acting Administrator

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