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

CASE NO: ULP-5269

-AND-

R.I. ECONOMIC DEVELOPMENT CORPORATION

DECISION AND ORDER OF DISMISSAL

TRAVEL OF CASE

The above entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") on an Unfair Labor Practice Complaint (hereinafter "Complaint") issued by the Board against the Rhode Island Economic Development Corporation/Rhode Island Port Authority-Quonset Facility (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated June 5, 1997 and filed on June 9, 1997 by the Rhode Island Laborers' District Council on behalf of Local Union 808, (hereinafter "Union").

The Charge alleged

> The Employer suspended without reason or cause Mr. Kevin Rogers who has been a Union Activist in the formation of a bargaining unit within said facility. We feel that this act violates 28-7-13 (1), (3), (8) and (10).

Following the filing of the Charge, an informal conference was held on July 15, 1997 between representatives of the Union and Respondent and an Agent of the Board. When the informal conference failed to resolve the Charge, the Board issued the instant Complaint on December 14, 1998. The Employer filed its answer to the complaint on December 18, 1998, denying the allegations contained in paragraphs three and four of the complaint and asserting six affirmative defenses.

A formal hearing on this matter was held on April 29, 1999. Upon conclusion of the hearing, both the Employer and the Union submitted written briefs. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony and evidence presented and arguments contained within the post hearing briefs.

FACTUAL SUMMARY

On June 5, 1997. Mr. Kevin Rogers, an eighteen and one half year veteran with the Employer (and its predecessor) was terminated from employment by the Employer's General Manager, Mr. George A. Prete. Mr. Prete reached his decision to terminate Mr. Rogers' employment, after he received a recommendation for the same from Ronald Patalano, the Assistant General Manager of Operations at the Employer's Quonset/ Davisville facility.

SUMMARY OF TESTIMONY

The Union presented the testimony of Mr. Kevin Rogers, who was an eighteen year employee of the Employer prior to his termination in June, 1997. Mr. Rogers testified that he held the position of Maintenance Foreman for approximately three years prior to his termination and that he supervised approximately twelve other employees. (TR. p. 5-6) He admitted that during his eighteen years, he had been disciplined for not following the chain of command, for insubordination and for drinking during a workday lunch hour. (TR. p. 6, 7, 15)

He also testified that he had been involved in Union organizing with the Rhode Island Laborers' Local 808 since approximately 1995. (TR. p. 7) Mr. Rogers' union activities consisted of signing a card [of interest], attending meetings with Union representatives, attending a free dinner and occasionally declaring that certain situations in the workplace were examples of reasons why the employees should have union representation. (TR. p. 11, 13, 20) Mr. Rogers also testified that his immediate supervisor, Mr. Jack Sprengel, knew of Mr. Rogers' union interests. Mr. Rogers claimed that Mr. Sprengel once inquired as to the amount of union dues that would be expected. Mr. Rogers could recall no specific dates in which he had conversations with Mr. Sprengel concerning the union, but that such conversations took place during the course of his last year of employment. (TR. p 13-14) Mr. Rogers also candidly admitted, on five separate occasions during cross examination, that Mr. Sprengel never made any threatening comments about Mr. Rogers' union activities. (TR. p. 13, lines 16 and 21; p. 21, line 7 and p. 22, lines 3 and 10). Relative to his own job performance during his final year of employment, Mr. Rogers testified that Mr. Sprengel never discussed the way that Mr.

Rogers communicated to and with his subordinate employees. (TR. p. 23) Upon the conclusion of Mr. Rogers' testimony, the Union rested its case.

The Employer called four witnesses in support of its defense; Mr. Jack Sprengel, the Chief of Operations; Mr. Ron Patalano, the Assistant General Manager of Operations, Mr. Steven Noel, a Mechanics Helper and Mr. Paul Haroian, formerly a laborer.

Mr. Sprengel testified that on May 28, 1997, he received a telephone call that one of the employees (later identified as Mr. Steven Noel) at the Maintenance Department was very upset and wanted to talk to him because he had been threatened by Mr. Rogers. Mr. Sprengel returned to the maintenance shop, picked up Mr. Noel, who was upset and shaking, and spoke with him. (TR. p 30) After hearing Mr. Noel's complaint, Mr. Sprengel brought Mr. Noel to see the next in the chain of command, Mr. Ron Patalano. (TR. p. 31)

Mr. Patalano testified that when Mr. Sprengel and Mr. Noel came in to see him, he asked Michelle Gerard, the Human Resources Manager to participate in the conversation. (TR. p. 53) During this interview, Mr. Noel stated that Mr. Rogers had threatened him by saying that Mr. Noel should apply for another job, even if it was less pay, because otherwise, Rogers "would have his [Noel's] ass" if he came back to the maintenance department. Mr. Patalano also testified that Mr. Noel complained that Mr. Rogers frequently made derogatory, harassing comments concerning Mr. Noel's weight. (TR. p. 54) When asked if there were other employees who had witnessed some of the incidents, Mr. Noel identified four other employees. At that point, Mr. Patalano and the General Manager, Mr. George Prete, decided that these four employees should be questioned about their knowledge of Mr. Rogers' behavior. (TR. p. 55) Mr. Patalano testified that all of these employees corroborated allegations that Mr. Rogers was very demeaning in his handling of people and that he commented on their physical appearances and characteristics and their mental capacity. (TR. p. 55) One of the employees was specifically concerned about possible physical retribution and would therefore not sign any statement about Mr. Rogers' actions. (TR. p. 56) Two of these four employees did agree to give written statements which were introduced as Employer's Exhibits 1 and 2. Mr. Patalano also testified that when he handed Mr. Rogers the letter of termination, Mr.

Rogers did inquire as to the identity of the individuals who had made the allegations and that Mr. Patalano refused to identify the employees. (TR. p. 61)

On cross examination, Mr. Patalano testified that although he was aware that the Union had filed a petition in August 1996, he had no knowledge of whether Mr. Rogers had ever signed a card of interest or that Mr. Rogers personally supported the drive. (TR. p. 71-72) Further, Mr. Patalano was not aware whether or not Mr. Rogers' replacement, Mr. Randy Main, was a union supporter. (TR. p 73) In addition, Mr. Patalano testified that Mr. Sprengel never told him that Mr. Rogers was a union supporter. (TR. p. 73) Mr. Patalano testified that he made the decision to recommend termination to Mr. Prete based upon Mr. Rogers' actions, as revealed by the investigation and the comments contained in the written statements submitted by Mr. Noel and Mr. Haroian. (TR. p. 74)

Mr. Noel testified that he spoke to Mr. Sprengel about Mr. Rogers on May 28, 1997 because he had finally decided that something must be done about Mr. Rogers' demeanor. (TR. p. 83) Mr. Noel testified that more or less, on a day-to-day basis, Mr. Rogers would make derogatory comments about him such as "are you incompetent", can't do that", or comments about his weight. (TR. p. 83) He further testified that he gave a written statement to management about his complaints, upon request, but that he wrote the statement without any assistance from anyone else. (TR. p. 85) Mr. testified that he was so upset about the situation that he suffered an asthma attack and was ready to leave. (TR. p. 86) He also testified that he felt pushed past a point, and that after 18 years, he couldn't take it anymore. (TR. p. 86) Mr. Noel testified that Mr. Rogers made comments about his weight such as: " Let him do this. He'll sink this."; "Don't let him step on that"; "He'll break the seats in the truck"; "Put him in the back of the truck if you get stuck in the snow. He's good for balance.". Mr. Noel testified that although he had never filed a formal complaint against Mr. Rogers in the prior eighteen years, he had complained verbally to other supervisors. (TR. p. 90)

Mr. Haroian testified that he also complained to his supervisors about Mr. Rogers' demeanor towards him. (TR. p. 92) Mr. Haroian stated that he told Mr. Sprengel that he did not want to be "screamed at", that he wanted to be treated as an adult and fairly, as other employees were. He also testified that it was a coincidence that he and Mr. Noel

happened to complain about Mr. Rogers at the same time and that he had no knowledge of Mr. Noel's complaint at the time he made his own complaint. (TR. p. 95)

POSITION OF THE PARTIES

The Union argues that there was no legitimate business reason or explanation for Mr. Rogers' termination and that he was terminated for his activities as a "union activist". The Union claims that Mr. Rogers' union activities were well known to his immediate supervisor. The Union claims that the timing of Mr. Rogers' dismissal supports an inference that he was fired for union activity, and that it was unfair for the Employer to terminate Mr. Rogers without at least confronting him with the allegations first, and hearing his side of the story. In support of its position, the Union submitted a copy of Mr. Rogers' most recent employee evaluation dated October 31, 1996, and the lack of written evidence documenting that Mr. Rogers had ever been counseled for any abusiveness towards his subordinates.

The Employer argues that the Employer's termination of Mr. Rogers was justified, in that the employee handbook prohibits "threatening violence" in the workplace and "threatening, intimidating, harassing, or coercing anyone while on company time or premises". The Employer argues that the evidence clearly established that Mr. Rogers; conduct toward fellow employees Steve Noel and Paul Haroian was particularly egregious. The Employer argues that the Union has failed to produce any evidence that the high ranking members of management actually responsible for Mr. Rogers' termination knew of any union activity by Mr. Rogers. Finally, the Employer argues that the formal hearing held by the Board in this matter, was not "timely" and therefore the complaint should be dismissed.

DISCUSSION

The first issue that the Board shall discuss is the Employer's claim that the complaint must be dismissed because the Board did not hold a formal hearing within sixty (60) days from the date that the Union filed its charge. The Board has long held that the timeframe for holding such a formal hearing is directory. This position has been recently affirmed and upheld by the Rhode Island Superior Court. State of Rhode Island, Department of Administration v Rhode Island State Labor Relations Board, PC 97-4890,

J. Cresto. In so holding, Judge Cresto stated that the "provisions of 28-7-9 (b)(5) are clearly meant to 'secure order, system and dispatch', citing Providence Teachers Union v. McGovern, 113 R.I. 169, 319 A.2d 358 (1974). Further, the Court found, "there is no language demonstrating an intent to make compliance a prerequisite to action or which serves to invalidate a tardy hearing". Therefore, to the extent that the Employer's argument could be considered as a motion to dismiss the complaint for the failure to hold a formal hearing within sixty days of the date of the charge, the same is denied.

The next issue is whether or not the Union has established that the Employer's termination of Mr. Rogers violates the provisions of the Rhode Island State Labor Relations Act, hereinafter "Act". The Act protects employees in the exercise of concerted efforts and activities and the right of employees to self organization. The right of employees to form, join or assist labor organizations and to bargain collectively with representatives of their own choosing, shall be free from interference, restraint, or coercion from an employer. The Union has alleged violations of subsections (1), (3) (8) and (10) of R.I.G.L. 28-7-13

According to Mr. Rogers' testimony, union organizational activity within this work site had been taking place on and off, unsuccessfully, for a period of three or four years. The evidence established that Mr. Rogers had signed a card of interest, attended some meetings with a gentleman named "Frank" and attended a free dinner. The evidence also established that Mr. Rogers' supervisor, Jack Sprengel, was aware of Mr. Rogers' interest in the union, but that he had never made any negative or threatening remarks about Mr. Rogers' interest in the union or about the concept of a union in general. Mr. Rogers would occasionally make comments out loud in the shop concerning the need for a union, but Mr. Sprengel did not generally engage in conversation with Mr. Rogers regarding that issue. In fact, Mr. Rogers was asked five separate times during the course of his testimony as to whether or not Mr. Sprengel ever threatened him for his union activities and Mr. Rogers candidly admitted that no such threats were ever issued. Mr. Patalano testified that he had no knowledge of Mr. Rogers' personal involvement with the Union. This testimony was unrebutted. The only person higher in the chain of command at that time was Mr. George Prete who, at the time of the hearing, was no longer employed by the Employer. Consequently, neither party presented any evidence, either

direct or circumstantial, that Mr. Prete was aware of Mr. Rogers' union interest and activity or that such activity was the motivating factor behind Mr. Prete's final decision to terminate Mr. Rogers from employment

Moreover, the record is replete with evidence that Mr. Rogers routinely engaged in derogatory and demeaning behavior aimed directly at his subordinates. The evidence also established such behavior demoralized several of the employees to the point that they experienced physical and emotional reactions. What is most telling to this Board however, is the fact that Mr. Rogers never refuted any of the allegations made by either Mr. Noel or Mr. Haroian. Mr. Rogers never denied making the various comments that were attributed to him. His only comment about these allegations was: "We worked in a close-knit shop. We joked around, and that's the way we vented our frustrations. Now, if it was offending to somebody, it should have been brought forward to me." This statement seems to summarize the Union's real position; that Mr. Rogers was never given the opportunity to be confronted with allegations or to be able to respond before his termination. Whether the Employer's method of "investigation" or its determination to terminate Mr. Rogers meets the standards set forth in the Employer's own "handbook" or whether it evidences good management skills is not the issue before this Board. This Board is required to determine whether the evidence established that Mr. Rogers was terminated in retaliation for his union activity, as alleged, and we conclude that he was not.

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) Kevin Rogers had eighteen years of service with the employer, and was a maintenance foreman in his final three years of service. During his years of service, Mr. Rogers was disciplined at least three times; once for drinking during work hours, once for "jumping the chain of command" and once for insubordination.

4) During 1995, Mr. Rogers was involved with a union organizational drive. During the drive, Mr. Rogers signed a union card, attended meetings and a dinner, and made comments in the workplace about the need for a union.

5) Mr. Rogers' immediate supervisor was Jack Sprengel. Although Mr. Sprengel did hear Mr. Rogers speak about the need for a union, Mr. Sprengel did not engage in conversation concerning the union, nor did Mr. Sprengel ever threaten Mr. Rogers for his union activity or interest.

6) On May 28, 1997, Mr. Steven Noel lodged a formal complaint against Mr. Rogers with Mr. Sprengel. Mr. Noel alleged that Mr. Rogers had threatened Mr. Noel's job and that Mr. Rogers had made innumerable derogatory comments about and to Mr. Noel over the years.

7) Mr. Sprengel brought the matter to the attention of his supervisor, Mr. Patalano and the two of them then launched an internal investigation into the matter. They questioned several other employees who all corroborated Mr. Noel's complaints. Some of these other employees also had complaints and concerns of their own. Two of these employees gave written statements.

8) The Employer has a written employee handbook that describes conduct that may lead to disciplinary action, including termination of employment. This code of conduct prohibits "threatening, intimidating, harassing or coercing anyone while on company time" and "fighting or threatening violence" in the workplace.

9) The Employer determined that Mr. Rogers' conduct violated the standards it expects of its employees and terminated Mr. Rogers from employment.

10) Mr. Patalano had no knowledge of Mr. Rogers' interest in or participation with union activity. Mr. Patalano made a recommendation his supervisor, Mr. George Prete, that Mr. Rogers should be terminated.

11) Mr. Prete terminated Mr. Rogers from employment. The record is devoid of any evidence regarding Mr. Prete's knowledge or lack of knowledge of Mr. Rogers' union activity or interest.

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 (1), (3), (8) 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

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

Dated: May 17, 2000

By:
Joan N. Brousseau, Administrator