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-5853
WARWICK SCHOOL COMMITTEE	:	

DECISION AND FINAL ORDER OF FAILURE TO CONCLUDE ON SUBSTANTIVE GROUNDS

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 Warwick School Committee (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated April 14, 2007 and filed on May 18, 2007 by the Warwick Independent School Employees Union ("WISE" (hereinafter "Union").

The Charge alleged:

> "On or about March 27, 2007, without reasonable prior notice to or discussion with Petitioner, the Respondent made public statements announcing its plans/intentions to cut certain positions covered by the CBA between the parties, with severe potential impact on WISE Union members. The Respondent has violated its duty to discuss the impact these potential cuts may have on the Petitioner and more specifically, ignored its agreement to do so, as confirmed by the parties' settlement of a recent arbitration matter, requiring it to do so within specific timeframes. Such conduct has the effect of coercing and intimidating Union members in the exercise of their protected rights, and undermining the Union in its legitimate representational function."

Following the filing of the Charge, in lieu of an informal hearing, the parties submitted written position statements. The Board issued its Complaint on February 18, 2008.[1] The Employer filed its Answer to the Complaint on March 6, 2008. Formal hearings on this matter were held on August 7, 2008, January 27, 2009,

[1] ULP 5854 was also issued this day and was consolidated with this action for processing and hearing purposes.

January 29, 2009 and February 3, 2009. Upon conclusion of the hearings, both the Employer and the Union submitted post-hearing Briefs on April 9, 2009. Representatives of both the Union and the Employer were present and had full opportunity to introduce testimonial and documentary evidence. In attempting to arrive at a Decision and Order on the substance of the Employer's Complaint, the Board has reviewed and considered the testimony, evidence, oral arguments, and written Briefs.

At the monthly Board meeting of May 21, 2009, a Motion was made by Board Member, Ellen Jordan, and seconded by Board member Elizabeth Dolan, to dismiss the Charge filed in this matter. Members Ellen Jordan, Elizabeth Dolan, and Gerald Goldstein voted in favor of the Motion. Members Frank Montanaro, Walter Lanni, and John Capobianco voted against the Motion. Motion failed. At the monthly Board meeting of September 17, 2009, the matter was reconsidered. A Motion was then made by Board Member Frank Montanaro and seconded by Board Member Ellen Jordan to uphold the Charge filed in this matter. Members Frank Montanaro, Walter Lanni, and John Capobianco voted in favor of the Motion. Members Ellen Jordan, Elizabeth Dolan, and Gerald Goldstein voted against the Motion. Motion failed.

DISCUSSION

In this case, the Board finds itself in the rare position of having a deadlocked Board for the purposes of voting, due to the death of the seventh Board Member during the processing of these proceedings.[2] The vote of the Board is deadlocked on the substantive issue of the allegation of Unfair Labor Practice. Unfortunately, the Board has no mechanism to deal with the rare instance of deadlocked opposing Motions. The Board's enabling Act does not provide for alternate Members who can be utilized for breaking tie votes. Thus, without a majority to support either a Motion to uphold the Charge or a Motion to dismiss the Charge for substantive grounds, the Board has no choice but to dismiss the within matter on procedural grounds. Thus, the Complaint is being dismissed due to the inability of Motions to sustain sufficient votes for passage.

FINDINGS OF FACT

1) The Warwick School is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.

[2] See ULP 5673, Coventry Fire District and Local 3240, IAFF, AFL-CIO.

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) On May 18, 2007 the Union filed a Charge with the Board alleging Unfair Labor Practices.

4) The Charge was processed and on February 18, 2008, the Board issued its Complaint.

5) Consolidated formal hearings were held on this Complaint, as well as in Case No. ULP-5854, on several dates, for which the parties had a full and fair opportunity to present their respective positions.

6) On May 21, 2009 and again on September 17, 2009, the Board considered the matter and was unable to arrive at anything other than a deadlocked vote.

CONCLUSIONS OF LAW

1) Since neither a Motion to Uphold a Charge of Unfair Labor Practice nor a Motion to Dismiss the Complaint for cause has carried, the within matter must be dismissed on procedural grounds.

ORDER

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

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IN THE MATTER OF RHODE ISLAND STATE LABOR RELATIONS BOARD -AND- WARWICK SCHOOL COMMITTEE	CASE NO: ULP-5853

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 Case No. ULP-5853 dated **October 14, 2009**, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **October 14, 2009**.

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-29.

Dated: October 14, 2009

By: _____
Robyn H. Golden, Administrator

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank J. Montanaro, Member

Gerald S. Goldstein, Member

Ellen L. Jordan, Member

John R. Capobianco, Member

Elizabeth S. Dolan, Member

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

Dated: October 14, 2009

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

ULP-5853