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-5577

-AND-

JOHNSTON SCHOOL COMMITTEE

DECISION AND ORDER

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 Johnston School Committee (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated November 1, 2001, and filed on November 2, 2001, by Johnston Federation of Teachers, Local 1702, AFT, AFL-CIO (hereinafter "Union").

The Charge alleged:

> "The Johnston School Committee and its agents unilaterally enacted an "Internet Use Policy", which altered the terms and conditions of the contract with the certified bargaining agent, Johnston Federation of Teachers. Further, the School Committee has directed members of the bargaining unit to sign this policy. R.I.G.L. 28-7-13 (3), (6), (10)."

Following the filing of the Charge, an informal conference was held on November 28, 2001, 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 April 29, 2002. The Employer filed its Answer to the Complaint on May 2, 2002. A formal hearing on this matter was held on May 28, 2002. Upon conclusion of the hearing, the Employer submitted a written brief on July 22, 2002. The Union did not file a brief.

FACTUAL SUMMARY & POSITIONS OF THE PARTIES

The facts in this case are not in dispute. Sometime during September 2001, the Employer issued an "Internet Use Policy" without prior bargaining with the Union.

The Union argues that, to the extent the policy affects the regulation of use of computers by the bargaining unit members, then those terms and conditions of the policy that affect bargaining unit members must be negotiated prior to implementation. In addition, the Union

complains that, to require the teachers to sign the policy, as a condition of use of the Internet at school, is to create a separate, stand-alone contract, which is tantamount to direct dealing with the bargaining unit members and circumvention of the exclusive bargaining agent.

The Employer asserts that it had no obligation to engage in bargaining with the Union because the policy created no change that was within the province of mandatory bargaining. The Employer argues that, because the policy was aimed primarily at ensuring student safety, and its implementation was pursuant to the Children's Online Protection Act, then the implementation of the policy fell within the unique powers and duties of a school committee that cannot be bargained away. The Employer also represented that the policy was a requirement for the School District to receive discount rate Internet access from RINET. Finally, in response to the charge of direct dealing, the Employer argues that the requirement for teachers to sign the policy is simply to obtain an acknowledgement that the teachers have received the policy. (TR. p. 16)

DISCUSSION

The question in this case is whether or not the policy, which was implemented by the Employer, implicates any mandatory subject for bargaining. If so, the failure of the Employer to engage in bargaining prior to unilateral implementation is an unfair labor practice.[1]

At the formal hearing, the Employer's Attorney quoted from the Child Pornography Prevention Act, 47 USC 254 as follows:

> "An elementary or secondary school having computers with Internet access may not receive services at discount rates unless the school, school board, local educational agency, or other authority with responsibility for administration of the school submits to the Commission a certification that an ***Internet Safety Policy*** has been adopted and implemented for the school." (Emphasis added herein)

It would appear, from the evidence submitted, that RINET is charged with ensuring that all entities which receive Internet access at the reduced rate comply with the federal requirement for an Internet Safety Policy. The Employer also has to certify that it has "complied with the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254 (h) and (l)." (See Employer Exhibit #3)

In order for the Johnston Schools to offer Internet access, at no cost, through RINET, the School must also agree to "filter" Internet content. The RINET Internet Content Filtering Plan

[1] See the Board's prior decisions in ULP-4851, Town of East Greenwich; ULP-4552, State of Rhode Island, Department of Environmental Management; ULP-4772, Town of Bristol.

(Joint Exhibit #1) sets forth the roles and responsibilities for RINET staff and the staff at the participating school systems and libraries. That document provides, in pertinent part:

"To effectively use our filtering service, the responsible staff at our member sites ***should***: (emphasis added)

- Supervise students' access to filtered computers.
- Disseminate widely and enforce rigorously an Appropriate Use Policy for staff and students.
- Guard filtered computers and network resources against inappropriate compromise of filtering measures (e.g. workstation logging, regular audits).
  Educate officials, parents, patrons, and other stakeholders about the challenges that content filtering entails."

Joint Exhibit #2, the Internet Use Policy which the Employer implemented, contains the following statements:

- "If a user violates any of these provisions, his or her privilege to use the Internet will be terminated and future access could possibly be denied. In a case where codes of conduct or laws are broken, further consequences may follow." (Page 1)

- "The signature(s) at the end of this document are legally binding and indicate that the parties who signed have read the terms and conditions carefully and understand their content." (Page 1)

- "It is expected that staff and faculty members in Johnston Public Schools will use the Internet for research and/or instructional purposes... Employee violations of the Internet Use Policy will be handled in accordance with law, school policy, or collective bargaining agreements, as applicable." (Page 2)

  "Report incidences of computer network misuse and abuse to the Information Services Office." (Page 2)

- "User: I understand and will abide by Johnston Public Schools' Internet Use Policy. I further understand that any violation of this policy may constitute disciplinary action or criminal offense." (Page 4)

The Employer has argued that its "Internet Use Policy" was much more of a question of educational policy, which is not a subject for bargaining in the first instance. In addition, the Employer argues that, to order the Employer to bargain regarding the implementation of the policy would violate the "well-established principle that a public agency cannot bargain away its statutory powers and duties". (Employer's brief page 8)

The Employer submitted a report/recommendations authored by the Commission on Online Protection Act. (Employer Exhibit #1) On page 2 of the exhibit, the Commission sets forth its <u>recommendation</u> for the adoption of an Internet Use Policy. It provides:

> **"Recommendation: Government and Industry Should Effectively Promote Acceptable Use Polices.** Acceptable use policies refer to stated parameters for use of online systems. They are a non-technological technology or method for protecting children online. Government at all levels and industry should encourage parents and public institutions that offer access to online resources to adopt such policies. Just as we

provide children with firm rules for crossing the street and guidelines for dealing with a variety of unfamiliar situations, we need to provide them with rules and guidelines to facilitate their online learning experiences as well as their safety.

- Acceptable use policies ***should be voluntarily implemented*** by public institutions that offer access to online resources. An acceptable use policy should disclose to parents what safeguards will be in place in the school and library setting that are designed to permit users to have educational experiences consistent with local or family values." (Emphasis added herein)

In determining whether or not the Employer had a duty to bargain, in this case, the Board first examines whether or not the policy affected a topic of mandatory bargaining. In this case, the policy itself clearly implicates employee discipline. In fact, it goes even further than employee discipline, and suggests that "any violation" may constitute a "criminal offense". The policy also provides: "in a case where codes of conduct or laws are broken, further consequences may follow". What exactly does this mean? Who makes these findings? Is there an investigation/hearing? If so, why isn't it mentioned? This policy is long on rhetoric and "feel good" language, but short on procedural protections or due process for the "accused". In this day and age, such a policy may, in fact, make a parent or governmental agency feel warm and fuzzy about its efforts to fight pornography and protect children. The Employer's claim that this is just an "educational policy" rings hollow when its employees' basic property rights in their jobs are being implicated without representation. Requiring an Employer to bargain over the implementation of a policy, the violation of which could negatively impact a person's employment, in no way impacts or "bargains away" the Employer's statutory powers or duties.

Moreover, while it is true that COPA requires that an Internet Safety Policy be adopted and RINET requires the use of a filtering device, the Employer's own evidence, in this case, recommends that the particular Internet policies be voluntarily implemented, (likely because when all parties "buy into" a policy, it is more likely to be effective). There is clearly wide discretionary latitude in the type of language that should or must be incorporated into "Internet Safety Policies" and "Internet Acceptable Use Polices" (which, to this Board seems to suggest two types of policies). This Board can find no reason why the safety of children would be compromised, in any way, by having a policy that has been partially bargained, as it pertains to the terms and conditions of employment of the teachers.

As to the claim that the policy constitutes a separate "stand alone contract", the Board has considered this issue carefully. While there are any number of forms or documents that teachers

must sign, which are incidental to their employment, the form in this case rises to a different level. On its face, the policy states that the signatures are "legally binding". This is not the normal type of form that represented employees are required to sign, absent bargaining. In addition, this type of language is clearly not just an "acknowledgement" that the teachers have received a copy of the policy, as argued by the Employer. Based upon all of the foregoing, the Board finds that the Employer did indeed commit a violation of R.I.G.L. 28-7-13 (6) and (10).

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) Sometime during September 2001, the Employer issued an "Internet Use Policy" without prior bargaining with the Union.
4) 47 USC 254 prohibits schools from receiving Internet access at discount rates without first certifying that the school has adopted and implemented an Internet Safety Policy. In Rhode Island, RINET is charged with ensuring that all entities which receive Internet access at the reduced rate comply with the federal requirement for an Internet Safety Policy.
5) In order for the Johnston Schools to offer Internet access, at no cost, through RINET, the School must also agree to "filter" Internet content. The RINET Internet Content Filtering Plan (Joint Exhibit #1) sets forth the roles and responsibilities for RINET staff, and the staff at the participating school systems and libraries. That document provides advice and suggests discretionary measures for its members to effectively use the filtering service.
6) The Employer's policy, which was not bargained with the Union, contains the following language:

> "If a user violates any of these provisions, his or her privilege to use the Internet will be terminated and future access could possibly be denied. In a case where codes of conduct or laws are broken, further consequences may follow." (Page 1)
>
> "The signature(s) at the end of this document are legally binding and indicate that the parties who signed have read the terms and conditions carefully and understand their content." (Page1)

"It is expected that staff and faculty members in Johnston Public Schools will use the Internet for research and/or instructional purposes... Employee violations of the Internet Use Policy will be handled in accordance with law, school policy, or collective bargaining agreements, as applicable." (Page 2)

"Report incidences of computer network misuse and abuse to the Information Services Office." (Page 2)

"User: I understand and will abide by Johnston Public Schools' Internet Use Policy. I further understand that any violation of this policy may constitute disciplinary action or criminal offense." (Page 4)

CONCLUSIONS OF LAW

1) The "Internet Use Policy", as enacted by the Employer, affects employee discipline, a mandatory subject for bargaining.

2) The "Internet Use Policy", to the extent that it is a "legally binding" contract upon the employees who sign the policy, constitutes direct dealing with employees, as it pertains to discipline, a mandatory subject for bargaining.

3) The Union has 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) and (10).

ORDER

1) The Employer is hereby directed to cease and desist use of this particular Internet Use Policy as it pertains to its employees, and is directed to bargain, in good faith, with the Union concerning the policy as it affects the terms and conditions of employment of the employees. The Employer is not directed to cease and desist in using this particular policy with the students entrusted to its care, custody and control.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank J. Montanaro, Member

Joseph N. Mulvey, Member

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Jordan, Member

John R. Capobianco, Member

Elizabeth S. Dolan, Member

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

Dated: December 11, 2002

By: Joan N. Brousseau, Administrator