

LITTLE MEDEIROS KINDER
BULMAN & WHITNEY PC



Attorneys

Christopher H. Little *
Matthew F. Medeiros *
Daniel K. Kinder *
John E. Bulman *
Christopher C. Whitney *
Sara A. Rapport *
Scott K. Pomeroy *
Laura J. Bottaro *
Michael D. Williams *
R. Thomas Dunn *
Justin S. DuClos *

John D. Deacon, Jr. *
Michael W. Carroll *
Thomas M. Madden *
Of Counsel

William R. Powers III
(1931-1998)

Thomas C. Keeney
(1946-1999)

*Also admitted in
Massachusetts

September 22, 2008

Ms. Robyn H. Golden
Administrator
Rhode Island State Labor Relations Board
1511 Pontiac Avenue
Building #73, 2nd Floor
Cranston, RI 02920

Re: East Providence Education Association & East Providence School Committee

Dear Ms. Golden:

Enclosed please find an Unfair Labor Practice Charge Pursuant to R.I.G.L. 28-7-13.1 of the Rhode Island Labor Relations Act.

Very truly yours,

Daniel K. Kinder

Enclosure

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STATE OF RHODE ISLAND
RI STATE LABOR RELATIONS BOARD

DO NOT WRITE IN THIS SPACE	
Case No. ULP-	Date Filed

IN THE MATTER OF
East Providence Education Association/NEARI

-AND-
East Providence School Committee

RESPONDENT

COMPLAINANT

UNFAIR LABOR PRACTICE CHARGE
PURSUANT TO R.I.G.L. 28-7-13 / 28-7-13(1)
RI STATE LABOR RELATIONS ACT

FILE AN ORIGINAL, SIGNED IN BLUE INK, WITH THE BOARD. THIS FORM MUST BE TYPED

1. Charge filed by or on behalf of (check one): Individual Employee Organization Employer
If the box titled 'Individual' is checked and the person is represented by a labor organization, in accordance with the Board's Rules and Regulations, Section 9.01.1: The Complainant "shall attach to the Charge an Affidavit which attests to the Labor Organization's refusal to file."

2. Name of Employer: East Providence School Department
Address: 80 Burnside Avenue, East Providence, RI 02915-3295
Representative (if known): _____ Telephone Number: _____

3. Name of Employee Organization: East Providence Education Association/NEARI
Address: c/o Jeannette Woolley, NEARI, 99 Bald Hill Road, Cranston, RI 02920
Telephone Number: 401-463-9630 Facsimile: 401-463-5337 Email: jwoolley@nea.org

4. This charge is filed against: EMPLOYER EMPLOYEE ORGANIZATION

5. State the applicable section or sections of the Act which are alleged to be violated. **Failure to specify appropriate subsection(s) may result in dismissal of charge.**
The above named **Employer** has engaged or is engaging in Unfair Labor Practice(s) within the meaning of RIGL 28-7-13 Subsection(s) _____.

OR

The above named **Employee Organization** has engaged or is engaging in Unfair Labor Practice(s) within the meaning of RIGL 28-7-13.1 Subsection(s) (1) and (2).

6. Summary of basis of Charge. Be specific as to names, dates, addresses, etc.
(Attach additional sheets if necessary.)

See attached.

7. Without limiting your rights to later amend your remedial request, please explain what remedy you seek.
Order that the Union cease and desist from its bad faith bargaining, that it negotiate in good faith and that it pay for all damages following its unlawful conduct.

PETITIONER Daniel K. Kinder DATE: September 22, 2008
SIGNATURE
Name: Daniel K. Kinder Title: Attorney
Address: Little Medeiros Kinder Bulman & Whitney, P.C., 72 Pine Street, Providence, RI 02903
Telephone: 401-272-8080 Facsimile: 401-272-8195 Email: dkinder@lmkbw.com

#6. On August 14, 2008, the East Providence Education Association (“EPEA”) affiliated with National Education Association Rhode Island (“NEARI”) commenced negotiations with the East Providence School Committee. Each side submitted proposed ground rules to the other. EPEA requested time to consult with its NEARI representative before responding. The School Committee’s representative said they understood, and another meeting was scheduled for August 25.

EPEA cancelled the meeting scheduled for August 25.

EPEA would not agree to another meeting until September 8.

On September 8, the parties’ bargaining committees met again to discuss ground rules. The Union presented a new set of proposed ground rules, different from its first proposal, but not compromising any of its positions.

The School Committee responded to each of the Union’s proposed ground rules, accepting four, and offering modifications to the other two.

The Union did not respond to each of the School Committee’s proposals, instead asserting that resolutions “could be worked out” on most issues, but not on two.

The first of those issues was School Committee’s proposal that negotiations be held in a public place, open to the public and the press, and that they be televised. That proposal read:

“Negotiations will be conducted in the Council Chambers at East Providence City Hall and will be open to public and media observation. A spot shall be reserved for live or filmed access by Cox Television’s public access channel. A section of approximately 10 seats shall be reserved for the media, 10 seats for members of the East Providence Education Association, and 10 seats for members of School Administration . All other seats shall be filled by the general public on a first to arrive, first to be seated basis. Occupancy shall be limited to the number of seats in the chambers – no standing. Total silence shall be maintained by all present except for members of the two negotiating teams. Any comment, declaration, question, sound or remark by any other person present shall be grounds for immediate expulsion.”

EPEA’s opposing proposal read:

“All negotiation sessions shall be closed to the public and press.”¹

The School Committee’s (“SC”) representative explained (as he had done at the prior meeting) that the School Committee felt that the public had not been well served by prior negotiations that were held in secret. It is the public’s money that is being spent, and the public has a right to know what is being discussed.

¹ The Union’s September 8 proposal did not specify the “press,” but the spokesperson rejected the SC’s suggestion that the press be permitted to attend.

The NEARI representative said that this would not be good for negotiations as negotiators would “play to the audience” and make speeches rather than bargaining.

The SC responded that it would negotiate in good faith whether meetings were open or closed. The schools are in a crisis situation, and the SC seeks an agreement with the Union that will help to save the schools.

NEARI/EPEA responded that the SC’s proposal would create a “circus atmosphere.”

The SC responded that its proposal would not permit that, but also said that the SC would not insist on its proposal to impasse. It wanted nothing to get in the way of prompt negotiations, as there was a lot of work to do. It would not, however, agree to the Union’s proposal that all discussions be held in secret.

The SC suggested that the parties agree to closed negotiations, but reserve two seats in the back of the room for members of the press. The Union refused this proposal, and offered no compromise.

The Union’s second strong objection was to this SC proposal:

“The new contract will not be considered in effect until the EPEA ratifies the agreement and both the School Committee and the City Council ratify the agreement.”

The Union, in contrast, insisted on this proposal:

“The final agreement is subject to ratification by the EPEA and the School Committee.”

The SC explained that its proposal conformed to law, and that it was required by law to submit any collective bargaining agreement it reached to the City Council for final approval. Thus the Union’s proposal would require the SC to agree to something it could not agree to under the governing law.

The Union replied that its lawyers did not agree that such a law existed. The vote of the citizens of East Providence, the Union said, was merely a non-binding referendum, and the legislature had refused to enact the new City Charter provision.

The SC responded that it did not have the facts, but simply had been told this was the law. If it is in the Charter, then the Union can go to court to challenge it if it wishes to do so, but until the law is declared void by the courts, the SC must obey the law. Because the SC had not researched the law, it suggested that the parties meet again in a couple of days, or the next day, and in the meantime the SC’s lawyers would determine whether the Union’s understanding of the law was correct. If it was, then the SC told the Union it did not want or need its proposed ground rule on Council ratification. The SC also suggested that the Union’s lawyer communicate with the SC’s attorney so as to explain the Union’s position.

The SC also told the Union it was prepared to negotiate without ground rules on either of the subjects, or with no ground rules at all. The Union replied that it wanted ground rules.

The Union said that it could not meet again that week, or at any time until September 19.

At the September 19 meeting, the SC explained that it had researched the status of the Charter provision, and that the Charter was lawfully amended to require Council approval of labor contracts negotiated by the School Department. The SC representative said that he understood the arguments the Union might make that the Charter provision was not substantively lawful and so was void, and the arguments the City might make to the contrary, but as long as this was a part of the City Charter, it was a law that the SC felt obliged to obey. Therefore, it could not agree to a ground rule that was contrary to the law.

The SC also repeated its position with respect to the Union's insistence that negotiations be held in secret.

The NEARI representative again said its lawyers disagreed that the Charter provision was binding. The SC's attorney said that the NEARI attorneys had never mentioned that to him, thought they had been in discussions with him about other issues only two days earlier. In any event, the SC could not agree to a ground rule that required it to defy the law.

The SC also said, again, that it would neither insist on its proposed ground rules on open negotiations, nor agree to the Union's proposal for secret negotiations.

Again, it urged the Union to move forward to negotiate without any ground rules on these subjects. The Union refused.

Instead, the Union preconditioned bargaining for a new contract on the SC's agreement to both these proposed ground rules, and said it would discuss nothing until a mediator was present.

The Union has breached its duty to bargain in good faith, and in so doing has violated the Rhode Island Labor Relations Act, Sections 28-7-13.1(1) and (2).

The Union has engaged in regressive bargaining, contrary to law.

The Union has insisted to impasse on agreement on an unlawful provision, contrary to law.

The Union has failed and refused to meet at reasonable times, contrary to law.

The Union has refused to bargain, contrary to law.

The Union has failed and refused to make a good faith effort to reach agreement, contrary to law.

The Union has unlawfully set preconditions on bargaining, contrary to law.

The SC requests that the Board order the Union to cease and desist from its unlawful conduct, including bad faith bargaining, and that the SC be awarded a remedy for all damages flowing from the Union's unlawful conduct.

O:\DKK\EPSCULPs\Text of Charge re Ground Rules, etc..doc