

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of

CAREER SYSTEMS DEVELOPMENT
CORPORATION

and

MAINE EDUCATION ASSOCIATION

Case 1-CA-46727

MOTION FOR SUMMARY JUDGMENT

Pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board (hereinafter “the Board”), the Charging Party in the above matter, Maine Education Association (hereinafter “Union”), moves for summary judgment with respect to the allegations in the Complaint and Notice of Hearing (hereinafter “the Complaint”) in the above matter.

In support thereof, the Union alleges:

- 1) On March 25, 2011 the Union filed the attached Charge in case 1-CA-46727 (Attachment A) and on June 16, 2011, the Union filed the First Amended Charge (Attachment B).
- 2) On June 30, 2011 Rosemary Pye, Regional Director of the First Region of the Board, issued the Complaint and Notice of Hearing (Attachment C).
- 3) By letter dated July 12, 2011, Career Systems Development Corporation (hereinafter “Respondent”) filed its Answer to the Complaint and Notice of Hearing (Attachment D).
- 4) Pursuant to the Complaint and Notice of Hearing, this matter is set for hearing before an administrative law judge on September 26, 2011 in Boston, Massachusetts.

5) However, based upon the formal papers and pleadings (Attachments A through D), it is clear that the Respondent has admitted almost all material¹ allegations, that further delay in reinstating the laid off and transferred employees should not be further delayed, and that the matter is ripe for summary judgment. Specifically:

COMPLAINT ALLEGATION

RESPONDENT'S ANSWER

1(a) and (b): allegations concerning the filing of the Charge and Amended Charge

Admitted.

2: Respondent is a Delaware corporation which operates a Jobs Corps training center in Limestone, Maine

Admitted.

3(a) and (b): At its Limestone operation Respondent annually receives gross revenue of at least \$1 million and goods valued in excess of \$5,000 directly from points outside the State of Maine.

Admitted.

4: Respondent is an employer engaged in commerce.

Admitted.

5: The Union is a labor organization.

Admitted.

6: The following individuals are supervisors within the meaning of the Act: Jeff Stinson – Human Resources Manager, Kristie Moir – Center Director, Tina LePage², - Career Development Director.

Admitted in part; denied in part. It is denied that Tina LePage held the position of Career Development Director during all materials times. The balance of the allegations contained in Paragraph 6 are admitted.

7: The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Admitted.

All full-time and regular part-time state-licensed instructors employed by Respondent at its Loring Job Corp Center but excluding all non-licensed instructors, administrators, office clerical, managers, guards, and

¹ Respondent admits all but two of the alleged unilateral changes, and the two denied, in Paragraphs 12 and 14, are the least consequential of the alleged changes. The Union would prefer to forgo those two allegations, rather than have their pendency delay the speedy resolution of the rest of the admitted violations.

² The Complaint makes no allegation that LePage committed any specific act.

supervisors as defined in the Act.

8: On January 5, 2011, a representation election was conducted among the employees in the Unit and, on January 11, 2011, the Union was certified as the exclusive collective-bargaining representative of the Unit.

Admitted.

9: At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

Admitted.

10: On about March 11, 2011, Respondent laid off the following four Unit employees: Bryan Cook, Roland Cyr, Carole Belanger-Bittle, and Darren Dumont³.

Admitted in part; denied in part. It is denied that Darren Dumont was laid off on March 11, 2011. The balance of the allegations contained in Paragraph 10 are admitted. It is averred that Darren Dumont was transferred on March 11, 2011, from the position of Medical Assistance Instructor into the position of CAN Instructor.

11: Since about March 2011, Respondent has required members of the Unit to work from 7:45 am to 4:45 pm rather than the previously required 7:30 am to 4:30 pm.

Denied as stated. It is averred that the required hours have always been 7:45 am to 4:45 pm, however, prior to January 2011, the required hours were not always enforced.

12: Since about March 2011, Respondent has changed the minimum TABE score required for students to enroll in the GED classes taught by members of the Unit.

Denied

13: Since about March 30, 2011, Respondent has required members of the Unit to accept additional duties regarding changes to student schedules.

Admitted.

14: Since about March 2011, Respondent has required members of the Unit to attend additional meetings during what had previously been their lesson preparation time.

Denied.

³ Improperly stated as "Durmont" in the Complaint and Answer.

15: The subjects set forth above in paragraphs 10 through 14 relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

The allegations contained in Paragraph 15 are conclusions of law to which a response is not required. To the extent that a response is deemed to be required, it is admitted that the subjects set forth in Paragraphs 10 through 14 relate to wages, hours, and other terms and conditions of employment, but it is denied that all of those subjects are mandatory subjects for the purposes of collective bargaining.

16: Respondent engaged in the conduct described above in paragraphs 10 through 14 without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to the changes.

Admitted in part; denied in part. With respect to the conduct described in Paragraphs 10 through 14 that Respondent has admitted, it is admitted that such conduct was engaged in without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to the changes. The balance of the allegations contained in Paragraph 16 are denied.

17: By the conduct described above in paragraph 16, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(5) and (1) of the Act.

Denied.

18: The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Denied.

Based upon the above, the Respondent has admitted that it is an employer, and the Union is a labor organization within the meaning of the National Labor Relations Act; that it is engaged

in and affects interstate commerce, and that the Union represents a unit of employees at the Loring location.

The Respondent has admitted that:

(10) it laid off or transferred four bargaining unit employees without prior notice to the Union and without affording the Union an opportunity to bargain with respect to those changes;

(11) while Respondent asserts “that the required hours have always been 7:45 am to 4:45 pm, however, prior to January 2011 [the time of the Union’s certification], the required hours were not always enforced”.

(13) since March 2011, it has required members of the Unit to accept additional duties regarding changes to student schedules, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to those changes;

(15) the allegedly unlawful actions admitted by Respondent all relate to wages, hours, and other terms and conditions of employment; and

(16) the allegedly unlawful actions admitted by Respondent were done without prior notice to the Union and without affording the Union an opportunity to bargain with respect to those changes.

The Respondent denies the allegation in Paragraph 15 which states that the subjects of Respondent’s admitted unilateral changes, in matters which Respondent admits to be wages, hours, and other terms and conditions of employment of the Unit, are mandatory subjects for the purposes of collective bargaining. This isolated denial is only a denial of the legal conclusion that “wages, hours, and other terms and conditions of employment” are “mandatory subjects of bargaining”. Since the statute and decades of law supply that legal conclusion, Respondent’s denial is insufficient to withstand summary judgment.

The Respondent denies the allegation in Paragraph 17 and 18 which assert the legal conclusions that Respondent’s admitted unilateral changes, in matters which Respondent admits to be wages, hours, and other terms and conditions of employment of the Unit, restrain employees in the exercise of their Section 7 rights, violate Section 8(a)(5) of the Act, and affect commerce within the meaning of the Act. Again, these are only denials of the legal conclusion

asserted in the Complaint, and the statute and decades of law supply those legal conclusions. Hence, Respondent's denials must be deemed insufficient to withstand summary judgment.

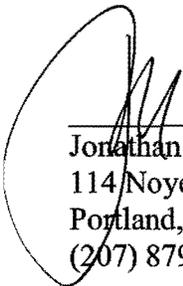
Respondent's factual admissions in Paragraphs 1 through 11, 13, and 15 through 16 are sufficient for the Board to issue a decision finding that the Respondent has engaged in the activities, and violated the Act, as alleged in Paragraphs 1 through 11, 13, and 15 through 18 of the Complaint.

WHEREFORE the Union moves that the Executive Secretary of the Board in Washington, DC promptly submit this motion to the Board for consideration; that the Board issue a notice to Respondent to show cause why the motion should not be granted; and that the Board, in considering this motion, determine that, with respect to those paragraphs 1 through 10, 11 in part, 13, and 15 through 18, should be granted, as there is no genuine issue of fact to be tried.

The Union further moves that the Board affirm the assertion in the Regional Director's Complaint with respect to the appropriate procedures for fully implementing the backpay aspects of the presumptively-valid remedies for the unfair labor practices, as set forth on Page 3 of the Complaint, and that the Board issue an appropriate order granting the Union relief upon the unfair labor charges as amended.

Respectfully submitted,

Date: July 22, 2011



Jonathan S. R. Beal
114 Noyes St | PO Box 1400
Portland, ME 04104
(207) 879-1556

Attorney for Union
Maine Education Association

CERTIFICATE OF SERVICE

I, Jonathan S. R. Beal, hereby certify that on July 22, 2011, I caused to be served an original and 8 copies of the attached Motion for Summary Judgment with the Executive Secretary of the National Labor Relations Board at the following address:

1099 14th St NW # 7500
Washington D.C., DC 20005

I simultaneously sent copies by certified mail to:

Jeff Stinson, Senior Vice President
Human Resources
Career Systems Development Corporation
36 Montana Road
Limestone, ME 04750-6107
Certified No. 7003 2260 0005 0885 7762

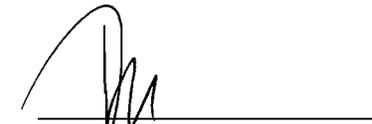
Jeffrey L. Braff, Esq.
Cozen O'Connor
The Atrium 3rd Floor
1900 Market Street
Philadelphia, PA 19102-2066
Certified No. 7003 2260 0005 0885 7779

With a courtesy copy by first class mail to:

Rosemary Pye, Regional Director, Region One, Boston

Dan Allen, Maine Education Association, Caribou, ME

Date: July 22, 2011



Jonathan S. R. Beal
114 Noyes St | PO Box 1400
Portland, ME 04104
(207) 879-1556