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## 1997 Survey of Rhode Island Law: Cases: Employment Law

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**Employment Law.** *Bunch v. Board of Review, Rhode Island Department of Employment and Training*, 690 A.2d 335 (R.I. 1997). When reviewing an administrative-agency finding, the court may not substitute its judgment where competent evidence existed to support the agency's finding. The Rhode Island Training School for Youth (RITS) superintendent's drug-possession charge is competent evidence of job-related misconduct to support the board of review's denial of unemployment benefits.

#### FACTS AND TRAVEL

The Department of Children, Youth and Families (DCYF) employed C. Mae Bunch (Bunch) as superintendent of the RITS.<sup>1</sup> On February 5, 1994, Bunch summoned the West Warwick police to her home because she thought she heard an intruder in her basement.<sup>2</sup> The police found Bunch clutching a machete and appearing to be nervous and emotional.<sup>3</sup> Officers searched the bottom level of the house, but did not find any signs of an intruder.<sup>4</sup> Bunch then asked the police to search the rest of her house. While conducting the search, one officer found drug paraphernalia and a white powder in the master bedroom. The officer read Bunch her *Miranda* rights and brought her to the police station. Later, the police released Bunch, advising her of possible further criminal action pending toxicology tests on the white powder.<sup>5</sup>

That evening, Bunch called Linda D'Amario Rossi, DCYF's director and Bunch's supervisor.<sup>6</sup> Bunch told Rossi that the police responded to her home, but did not mention the other events.<sup>7</sup> A member of the West Warwick police later told Rossi about the discovery made at Bunch's home. The next evening, police responded to another call from Bunch. Officers found her holding a two-inch by four-inch piece of wood, claiming that an intruder was in her

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1. See *Bunch v. Board of Review, Rhode Island Dept. of Employment and Training*, 690 A.2d 335, 335 (R.I. 1997).

2. See *id.*

3. See *id.* at 335-36.

4. See *id.* at 336.

5. See *id.*

6. See *id.*

7. See *id.*

home.<sup>8</sup> The police conducted a search and again found no sign of an intruder.<sup>9</sup>

Toxicology tests proved that the white substance found in Bunch's home was cocaine.<sup>10</sup> Police issued an arrest warrant, and criminal charges were filed against Bunch.<sup>11</sup> Bunch was placed on administrative leave.<sup>12</sup> After an administrative meeting, she was fired from her job. On February 18, 1994, Bunch applied for unemployment compensation. That claim was denied. Bunch appealed the denial to the board of review.<sup>13</sup> The referee found that Rossi had discharged Bunch for proven misconduct, including "willful and wanton disregard of the standards of behavior which the employer had the right to expect."<sup>14</sup> Bunch "violated the obligations and duties of her position with substantial disregard of the employer's interests by making misleading and incorrect statements to [Rossi]."<sup>15</sup>

The board of review affirmed the referee's decision, with one member dissenting.<sup>16</sup> In Rhode Island District Court, the trial judge reversed the board's decision, finding "that no evidence of job-related misconduct existed."<sup>17</sup> The judge held that the criminal charges did not relate to Bunch's official duties. Therefore, the state should not disqualify her from collecting unemployment compensation.<sup>18</sup>

#### BACKGROUND

A judge may only reverse the findings of an administrative agency where the conclusions and findings of fact are "totally devoid of competent evidentiary support in the record."<sup>19</sup> Section 42-

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8. *See id.* In addition, Bunch claimed that her neighbors were not speaking to her, the police had "bugged" her phones, and they were out "to get" her. *Id.*

9. *See id.*

10. *See id.*

11. *See id.*

12. *See id.*

13. *See id.*

14. *Id.*

15. *Id.*

16. *See id.*

17. *See id.*

18. *See id.* at 336-37. Bunch was later found guilty of cocaine possession and was sentenced to two years probation. Tracy Brenton, *Bunch Paid Improperly*, *Court Rules*, Prov. J. Bull. Mar. 2, 1997, at B1.

19. *Id.* at 337.

35-15 of the Rhode Island General Laws governs judicial review of administrative-agency decisions. This section reads in part:

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, in[ter]-ferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error or law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.<sup>20</sup>

Under section 28-44-18 of the Rhode Island General Laws, an employee "who has been discharged for proved misconduct connected with his or her work shall thereby become ineligible for benefits."<sup>21</sup> The Rhode Island Supreme Court defined misconduct under section 28-44-18 in *Turner v. Department of Employment Security, Board of Review*.<sup>22</sup>

Turner was a fire inspector who had been selling fire-door approval tags to builders who then attached them to unapproved doors.<sup>23</sup> He was charged with two misdemeanors, obtaining money under false pretenses and failing to fulfill the duties of his office conscientiously.<sup>24</sup> On March 15, 1977, the Rhode Island District Court found Turner guilty of both counts.<sup>25</sup> Turner appealed this conviction. On May 13, 1977, he pleaded *nolo contendere* to both counts.<sup>26</sup>

20. R.I. Gen. Laws § 42-35-15 (1993).

21. R.I. Gen. Laws § 28-44-18 (1995).

22. 479 A.2d 740 (R.I. 1984).

23. *See id.* at 740-41.

24. *See id.* at 741.

25. *See id.*

26. *See id.*

In March of 1997, Turner resigned "under threat of dismissal."<sup>27</sup> Turner was turned down for unemployment benefits by the director of the Department of Employment Security for Misconduct under section 28-44-18. The referee and the board of review upheld the decision, and the Rhode Island District Court affirmed.<sup>28</sup>

Turner appealed to the Rhode Island Supreme Court. The issue was whether Turner's plea of *nolo contendere* was sufficient competent evidence for the board of review to disqualify him from collecting unemployment benefits.<sup>29</sup> The court found the fire inspector's actions to be job-related misconduct.<sup>30</sup> The court upheld the district court's definition, which stated in part:

Misconduct . . . is limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his [or her] employee, . . . or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.<sup>31</sup>

The court also said that when deciding whether to grant benefits, the board "should have the broadest range of evidence before it and not be constrained by the judicial or Administrative Procedures Act evidentiary rules."<sup>32</sup>

Later, in *St. Pius X Parish Corp. v. Murray*,<sup>33</sup> the supreme court said that "there is no requirement that an employee's actions rise to the level of criminal conduct present in *Turner* before becoming statutory misconduct."<sup>34</sup> In *Technic, Inc. v. Rhode Island Department of Employment and Training*,<sup>35</sup> Technic had discharged the claimant for what his employer called proven misconduct. The president of the company testified that the "claimant was discharged following a long history of tardiness, drug-related problems, a habit of sleeping on the job, and evidence that he had stolen slivers of gold from the workplace."<sup>36</sup> The vice-president tes-

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27. *Id.*

28. *See id.*

29. *See id.* at 742.

30. *See id.* at 741-42.

31. *Id.* (quoting *Boynton Cab Co. v. Neubeck*, 296 N.W. 636 (Wis. 1941)).

32. *Id.* at 743.

33. 557 A.2d 1214 (R.I. 1989).

34. *Id.* at 1218.

35. 669 A.2d 1156 (R.I. 1996).

36. *Id.* at 1157.

tified that the claimant sold drugs to another employee and that 600 ounces of gold were missing from the claimant's work area although the company was unable to prove that the claimant stole the gold.<sup>37</sup>

The referee found that Technic fired the claimant because of the missing 600 ounces of gold.<sup>38</sup> Since Technic did not have sufficient evidence to prove that the claimant stole the gold, the claimant was not fired for misconduct under section 28-44-18.<sup>39</sup> Both the board and the Rhode Island District Court affirmed the referee's decision.<sup>40</sup>

The Rhode Island Supreme Court reversed and held the decision of the board to be clearly erroneous.<sup>41</sup> The court found Technic had "presented uncontroverted and unrefuted evidence of the claimant's sale of marijuana and his theft of slivers of gold, independent of the missing 600 ounces of gold, whereas the claimant offered no evidence to refute the petitioner's case against him."<sup>42</sup> The court stated that the record contained "evidence of proven misconduct sufficient to support claimant's discharge for misconduct."<sup>43</sup>

#### ANALYSIS AND HOLDING

In *Bunch*, relying heavily on the nature of Bunch's position, the Rhode Island Supreme Court pointed to evidence showing that the criminal charges against Bunch were job-related conduct. The court stated that Bunch held a position of "high visibility and great responsibility."<sup>44</sup> DCYF entrusted her with the care of juveniles, many of whom were in the training school because of drug-related offenses.<sup>45</sup> Her ability to carry out the duties of her job "not only was impaired, but was totally extinguished by such conduct."<sup>46</sup>

In addition, Bunch "had an obligation to maintain standards of conduct at the very least in compliance with the criminal law

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37. *See id.* at 1158.

38. *See id.*

39. *See id.*

40. *See id.*

41. *See id.* at 1160.

42. *Id.*

43. *Id.* at 1159.

44. *Bunch*, 690 A.2d at 337.

45. *See id.* at 337-38.

46. *Id.* at 338.

both on and off the job.”<sup>47</sup> Rossi “had the right to expect from the claimant a reasonable standard of obedience to the criminal law both on and off the premises of her employment.”<sup>48</sup> Illegal-drug possession was a violation of this standard of conduct Rossi had a right to expect.<sup>49</sup>

The court concluded that “the District Court judge substituted his judgment for that of the board of review in drawing the inference from all the relatively undisputed facts that the claimants conduct was not job-related.”<sup>50</sup> Competent evidence existed that Bunch’s conduct was job-related misconduct.<sup>51</sup> The court quashed the judgment and remanded the case to the district court.<sup>52</sup>

#### CONCLUSION

In *Turner*, the claimant’s misconduct occurred within the context of his job and was directly contrary to his position. In *Technic*, the claimant’s illegal conduct took place while he was working. The court in *Bunch* extended misconduct to include conduct which occurred outside the workplace.

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47. *Id.* at 337.

48. *Id.* at 338.

49. *See id.* at 337.

50. *Id.*

51. *See id.* at 338.

52. *See id.* Although the supreme court held the denial of unemployment compensation was proper, the state is unable to collect the \$8,400.00 Bunch had already received because of existing law. *Brenton*, *supra* note 18, at B1.