

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

---

IN THE MATTER OF	:	
WEST WARWICK HOUSING AUTHORITY	:	
-AND-	:	CASE NO: EE-2068
RI COUNCIL 94, AFSCME, AFL-CIO	:	

---

**DECISION AND ORDER OF DISMISSAL**

**TRAVEL OF CASE**

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") as a Petition for Decertification of a Certified Bargaining Representative, pursuant to R.I.G.L. 28-7-16 RI State Labor Relations Act (hereinafter "Petition") filed by the West Warwick Housing Authority (hereinafter "Employer") on November 9, 2015. On December 17, 2015, the Board's Agent verified the cards of interest submitted with the Petition; and on January 13, 2016 conducted an Informal Conference with the Employer and RI Council 94, AFSCME AFL-CIO (hereinafter "Union").

The Board originally scheduled a formal hearing for March 22, 2016 which was later rescheduled to and conducted on April 28, 2016. Thereafter, the parties filed post-hearing motions, objections, briefs and reply briefs. On August 16, 2016 the Board voted to reopen the proceedings for additional information and a second formal hearing was conducted on October 27, 2016. At the conclusion of that Hearing, the Board ordered the Board's Agent to conduct a further investigation of the scope of the bargaining unit at issue in this matter. The Board also ordered the parties to file briefs. On February 14, 2017, the Board's Agent issued an Investigative Report. On or about March 20, 2017, the Employer filed a response to the Agent's report, but the Union did not file a response. In arriving at the Decision and Order herein, the Board has reviewed and considered the investigative reports, testimony, evidence and written briefs submitted by the parties.

## DISCUSSION

Section 8.03 of the Board's General Rules and Regulations outlines the process for decertification of a certified bargaining representative. Pursuant to Rule 8.03.2(c), "No election for decertification may be conducted when there exists a Collective Bargaining Agreement, provided that the Board may consider such petition within a thirty (30) day period immediately preceding sixty (60) days prior to the expiration of such Collective Bargaining Agreement."<sup>1</sup> This rule codifies the *contract bar doctrine* and the *window period exception* to the contract bar doctrine.

Section 8.03.2(d) further provides the requirements for a written contract to act as a "bar" to a decertification petition:

To serve as a bar to decertification, the contract must:

- 1) Be in writing and be signed by the Employer and the labor organization;
- 2) Address substantial terms and conditions of employment; and
- 3) Exist for a definite duration.<sup>2</sup>

The parties to this proceeding have been collective bargaining partners since 1973 (Joint Exhibit #1). The most recently executed Collective Bargaining Agreement was facially for the period January 1, 2012 through December 31, 2014 (Respondent Exhibit #5, hereinafter "CBA"). The Board finds that the January 1, 2012 through December 31, 2014 contract meets all the criteria set forth in Board Rule 8.03.2 (d) and, therefore, acts as a bar to any decertification petition that is filed, except during that contract's window period. The window period for the January 1, 2012 through December 31, 2014 contract (the thirty (30) day period immediately preceding sixty (60) days prior to the expiration of the January 1, 2012 through December 31, 2014 CBA) was October 2, 2014 through October 31, 2014. The petition herein was not filed until November 9, 2015. So, for January 1, 2012 through December 31, 2014, contract, the petition was clearly not filed within the window period and cannot be considered for that term.

---

<sup>1</sup> RISLRB General Rules and Regulations Section 8.03.2(c).

<sup>2</sup> RISLRB General Rules and Regulations Section 8.03.2(d)

This analysis does not end the Board's inquiry because the petition was filed in November, 2015. Therefore, the questions for the Board to decide are:

1) Whether there was a contract in effect for any period of time after December 31, 2014 that could act as a "bar" to a decertification petition?

2) If there is a contract sufficient to act as a bar, was the petition timely filed during the window period that acts as an exception to the contract bar doctrine?

The January 1, 2012 through December 31, 2014 contract expired by its own terms on December 31, 2014, *unless* certain conditions as set forth in the CBA were met. Specifically the CBA provided as follows:

**ARTICLE 40**  
**TERMINATION OF AGREEMENT**

40.1 This contract shall take effect . . . and shall remaining effect until December 31, 2014. This contract shall be automatically renewed yearly thereafter unless either party shall give written notice to the other one hundred-twenty (120) days prior to its expiration that it desires to negotiate changes in the contract.

40.2 In the event such notice shall be given, articles or sections so stated shall be terminated and all other articles or sections not under negotiations shall remain in full force and effect during the period of negotiations.<sup>3</sup>

Union witness Alexis Lyman testified that in January 2014, she requested negotiations for a successor Collective Bargaining Agreement.<sup>4</sup> She further testified that negotiations for the successor CBA continued up to December, 2014, and then the Union filed for mediation. Therefore, under Article 40 of the January 1, 2012 through December 31, 2014 contract, all articles not under negotiation, remain in full force and effect after December 31, 2014 through the period of negotiations. We find, therefore, that the January 1, 2012 through December 31, 2014 contract, executed by the parties for a definite term and which addressed substantial terms and conditions of employment, continued by operation of the contract for an additional contract year, with the exception of those terms which were under negotiations.

We recognize that the record in this matter does not identify which provisions of the January 1, 2012 through December 31, 2014 contract were under the extended

---

<sup>3</sup> Exhibit # 5, p.28.

<sup>4</sup> Hr'g Tr., p. 21.

negotiations for a subsequent agreement. While such information would have provided additional clarity, we do not find the lack of its submission fatal to the finding of a contract sufficient to act as a bar to a decertification petition. Respondent Exhibit #5 clearly addresses substantial terms and conditions of employment; and the provisions therein are the ones extended unless under negotiation. In a recent decision between these two (2) parties on the same contract, this Board found sufficient evidence to rule that no changes were proposed to the Union dues provisions. We hereby take judicial notice of that decision, ULP 6178 West Warwick Housing Authority, issued September 19, 2016. Therefore, at least one substantial term and condition of employment, the deduction of Union dues, continued after December 31, 2014. As such, we find the requirements of Rule 8.02.3 (d) have been met.

Having found a contract sufficient to act as a contract bar to a decertification petition for the period January 1, 2015 through December 31, 2015, we next turn to whether the decertification petition filed on November 9, 2015 was timely filed. We interpret Article 40.2 of the CBA as meaning that the articles and sections remaining in full force and effect continue from year to year. Accordingly, during each year of negotiations, a new window period arises from October 2 through October 31. In this case, the decertification petition was filed on November 9<sup>th</sup>, clearly outside the window period of October 2 through 31. Therefore, the Board must dismiss the Petition as untimely filed.

#### **FINDINGS OF FACT**

1. The West Warwick Housing Authority 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. The most recent executed Collective Bargaining Agreement between the parties was for the period January 1, 2012 through December 31, 2014.

4. By operation of Article 40.2 of the parties' Collective Bargaining Agreement, all provisions of the January 1, 2012 through December 31, 2014 contract not under negotiation, continue in full force and effect from year to year.
5. A window period for the contract year January 1, 2015 through December 31, 2015 existed from October 2, 2015 through October 31, 2015.
6. A window period will open each year from October 2, 2015 through October 31, 2015 during negotiations for a successor Collective Bargaining Agreement.
7. On November 9, 2015, the Employer filed a Petition for Decertification of a Certified Bargaining Representative Pursuant to R.I.G.L. 28-7-16 RI State Labor Relations Act.
8. November 9, 2015 is not within the thirty (30) day period immediately preceding sixty (60) days prior to the expiration of the terms of the Collective Bargaining Agreement that was continued in full force and effect, pursuant to the Union's request for negotiations for a successor Collective Bargaining Agreement.

#### **CONCLUSIONS OF LAW**

1. A contract sufficient to meet the terms of Board Rule 8.03.2(d) exists for the period January 1, 2015 through December 31, 2015, and acts as a bar to the filing of a decertification petition, except within a window period defined as the a thirty (30) day period immediately preceding sixty (60) days prior to the expiration of such Collective Bargaining Agreement.
2. November 9, 2015 does not fall within the thirty (30) day period immediately preceding sixty (60) days prior to the expiration of such Collective Bargaining Agreement.
3. The petition for decertification was not timely filed.

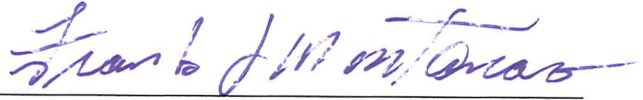
#### **ORDER**

The Petition for Decertification of a Certified Bargaining Representative Pursuant to R.I.G.L. 28-7-16 RI State Labor Relations Act is hereby dismissed.

RHODE ISLAND STATE LABOR RELATIONS BOARD



WALTER J. LANNI, CHAIRMAN



FRANK J. MONTANARO, MEMBER



MARCIA B. REBACK, MEMBER



SCOTT G. DUHAMEL, MEMBER

  
ARONDA R. KIRBY, MEMBER

  
ALBERTO APONTE CARDONA, MEMBER

ENTERED AS AN ORDER OF THE  
RHODE ISLAND STATE LABOR RELATIONS BOARD

Dated: June 6, 2017

By:   
ROBYN H. GOLDEN, ADMINISTRATOR

EE-2068

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF

WEST WARWICK HOUSING AUTHORITY

-AND-

RI COUNCIL 94, AFSCME, AFL-CIO

CASE NO: EE-2068

**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. EE-2068 dated June 6, 2017 may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **June 6, 2017**.

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

Dated: **June 6, 2017**

By:



Robyn H. Golden, Administrator