

**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 :
-AND- :
CITY OF CENTRAL FALLS :
_____ :

CASE NO. ULP-5394

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 City of Central Falls (hereinafter Employer) based upon an Unfair Labor Practice Charge (hereinafter Charge) dated May 10, 1999; and filed on May 11, 1999, by RI Council 94, AFSCME, AFL-CIO, Local 1627 (hereinafter Union).

The Charge alleged:

"Violation of Section 28-7-13 Paragraphs (3), (4), (5), (8) and (10)

The City has engaged in intimidation and coercion by eliminating job duties and reducing hours of work, thereby reducing wages of an employee who the Union is seeking to represent."

Following the filing of the Charge, an informal conference was held on June 23, 1999, between representatives of the Union and Employer and an Agent of the Board. When the informal conference failed to resolve the Charge, the Board issued the instant Complaint on April 12, 2000. The Employer failed to file any Answer to the Complaint.

A formal hearing on this matter was originally scheduled by the Board for June 27, 2000, but was rescheduled to October 3, 2000, at the request of the Employer's counsel due to a scheduling conflict. Upon conclusion of the hearing, both the Employer and the Union submitted written briefs. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony and evidence presented, and arguments contained within the post-hearing briefs.

FACTUAL SUMMARY

In February or so of 1997, the City of Central Falls prepared a summary of a position entitled "Animal Control Officer/Parking Monitor" (Union Exhibit #1). The summary set forth the rate of pay (\$9.00 per hour), [forty (40) hours per week, for fifty (50) weeks per Fiscal Year],

and other terms and conditions of employment, including a "position limitation" clause, which stated:

"THIS POSITION IS CURRENTLY FUNDED WITH CITY REVENUE. THERE IS NO GUARANTEE THAT FUNDS WILL REGULARLY BE APPROPRIATED TO SUPPORT THIS POSITION."

In May or June of 1997, Mr. Daniel J. Desmarais was appointed to this position, and served without incident until early 1999. On February 25, 1999, the Union sent a letter to the Board seeking to accrete the "Animal Control Officer/Parking Monitor" position to the bargaining unit certified in Case No. EE-3262 (Union Exhibit #2). On May 10, 1999, the Employer issued a memorandum separating the position, and indicating that police officers would be assuming the "Parking Monitor" duties, and that Mr. Desmarais would be performing only the "Animal Control Officer" duties (Union Exhibit #4). On May 11, 1999, the Union filed its Charge of Unfair Labor Practice with the Board. On July 26, 1999, the Chief of the City's Police Department issued a memo indicating that commencing Friday, July 30, 1999, Mr. Desmarais would again begin working a forty (40) hour work-week, with his work day divided into two halves, one-half as "Animal Control Officer" and one-half as "Parking Monitor".

POSITION OF THE PARTIES

The Union argues that the Employer's reduction of Mr. Desmarais' hours and duties as "Parking Monitor" occurred as a direct result of Mr. Desmarais having expressed an interest in joining the Union, and the Union's filing of the request to accrete Mr. Desmarais' position. The Union argues that the evidence established, that the City was not acting under a legitimate business purpose, and that it retaliated against Mr. Desmarais for wanting to join the Union. The Union further argues that the City ultimately realized that it had violated the State Labor Relations Act, and then restored Mr. Desmarais to a full, forty (40) hour work-week. The Union seeks to have Mr. Desmarais made whole, and to be compensated for his loss of hours between May 10, 1999, and July 30, 1999.

The Employer denies that its representative, Mr. Bradford Southworth, ever had any conversation with Mr. Desmarais concerning Mr. Desmarais' interest in joining the Union. The Employer also argues that the reason that it reduced Mr. Desmarais' position is because it was more cost-effective to have the Police Department perform the functions of the "Parking Monitor," and that the reason that the position was restored was because the Mayor compromised with the City Council during budget negotiations. The Employer also steadfastly maintains that

the position of "Animal Control Officer/Parking Monitor" was actually two (2) part-time positions, each with twenty (20) hours of work per week.

DISCUSSION

This Board has previously held that it will look to Federal labor law for guidance on dealing with claims of alleged discrimination (see ULP-4905, State of Rhode Island, Department of Labor & Training). Under the National Labor Relations Act, the Board looks to two principal factors in cases where an Employer's layoffs are alleged to be discriminatory:

- 1) The employer's alleged justification for the layoff.
- 2) Examination of the process for selecting those who are to be laid off.

Under the first part of the inquiry, if an Employer claims a business reason for the layoff, the factual basis for such a claim will be examined. Even if a layoff is necessary for business reasons, an employer is not permitted to rid itself of union supporters.

In this case, the Employer claimed that Mr. Desmarais' hours were cut for sound business reasons, in that the position was not bringing in sufficient budgetary revenue (TR. p. 7). Moreover, to the extent that "Parking Monitor" duties would continue to be needed, the same could be handled by the City's police officers. The City argues that the Mayor proposed the reduction of this position in his budget to the City Council, but that it was the City Council that insisted the position be kept (TR. p. 8). Additionally, the City argues that the fact that it did not file any objection when the Union filed its request to accrete the position is reliable, credible evidence that supports the inference that the City didn't have any objection to the accretion of the *two (2)* part-time positions of "Animal Control Officer" and "Parking Monitor".

The first issue that this Board needs to address is whether or not it finds the position in question is, in fact, two (2) part-time positions or one (1) full-time position performing the duties of two (2) positions. The evidence established that, in the past, the City had treated these two positions separately. Mayor Lee Matthews testified that the position of "Parking Monitor" didn't exist for five (5) years prior to 1996. The Mayor also testified that the City historically had trouble getting quality employees for the "Animal Control Officer" because it was a part-time position, and only had twenty (20) hours of work per week. The Mayor claims that during the interview process with Mr. Desmarais, the City clearly stated that he was applying for two (2) part-time positions (TR. p. 13). Mr. Desmarais testified that, although there was a discussion on this issue, he was told that it was really a forty (40) hour per week job, but that he would be responsible for the duties of both the separately funded "Animal Control Officer" and "Parking

Monitor." Mr. Desmarais also testified, on cross-examination, that he was told that he would not necessarily be working twenty (20) hours per position, because he would have to be on call at night for the "Animal Control Officer" duties (TR. p. 66). Mr. Desmarais also testified, on cross-examination, that "there was never a question of part-time and part-time... They stated that they were getting two uses out of me for one job, 40 hours. They were getting more than a dog officer." (TR. p. 67).

The documentary evidence regarding the status of this position consists of the job posting describing the "conditions of employment" (Union Exhibit #1), and the City's job descriptions and Budget for Fiscal Year 1999-2000 (Employer's Exhibits #1, #2, and #3). The job posting clearly describes *one (1)* position with a dual name - "Animal Control Officer/Parking Monitor". Nowhere on this document is there even a suggestion that the posting is for *two (2)* part-time positions. Page 11 of the City's budget shows that the "Parking Monitor's" duties (called the "Parking Violation Officer" in the budget) were funded through Fiscal Year 1998-1999 at \$10,712.00. The budget also shows that the duties of the "Animal Control Officer" were funded for 1998-1999 for \$10,712.00. In addition, Union Exhibit #4 (a memo from Bradford Southworth) indicates that as of May 7, 1999, "the subject position" will be separated.

It is the Board's opinion that the evidence supports an inference that there were two (2) separate positions, but that the inference is rebutted by both Mr. Desmarais' testimony and Union Exhibit #1. The Board interprets the budget as merely being the funding mechanism for the duties of the various departments, and not as evidence that there existed two (2) separate, part-time positions. Therefore, the Board concludes that the position of "Animal Control Officer/Parking Monitor", at least from the time Mr. Desmarais was employed, was one (1) full-time position that covered the duties of what had previously been two (2) part-time positions.

The next issue to discuss is whether or not there was reliable, credible evidence in the record to establish, not only that Mr. Desmarais expressed an interest in joining the Union, but that the Employer then took steps to unlawfully interfere with Mr. Desmarais' choice to pursue union representation. Mr. Desmarais testified that in February or March of 1999, he went to Mr. Bradford Southworth, the Employer's Personnel Consultant, to feel him out on the possibility of Mr. Desmarais joining a union to secure similar employment benefits as other employees (TR. p. 62-64). Mr. Southworth testified that "he did not recall" any such conversations (TR. p. 54). Mr. Desmarais, however, remembered the time of year, and specifically recalled two

conversations taking place on the same day, presumably separated by a conversation between Mr. Southworth and the Mayor. He was also very specific in his testimony, mentioning that he wanted to be brought into line with "dog officers" from other cities and towns. (TR. p. 62-64). The Board finds this testimony credible and reliable, and there was not sufficient evidence submitted to persuade the Board to find otherwise. Therefore, the Board will make a finding of fact that Mr. Desmarais did have two such conversations with Mr. Southworth, about possibly joining the Union.

Having found that the Employer was on notice that Mr. Desmarais was interested in joining a union, the Board's inquiry is now whether or not the Employer unlawfully interfered with that endeavor, or unlawfully retaliated against Mr. Desmarais for his efforts to join the Union. The answer to this question lies in a careful weighing of the facts set forth in evidence.

The Union filed its petition to accrete the position in late February of 1999. The Employer argues that the fact that it did not file an objection to the petition to accrete should be interpreted by the Board as evidence that the Employer didn't have any objection to these two (2) positions being accreted to the bargaining unit. In other cases, the Board might be inclined to agree that the lack of such a filing might reasonably support such an inference. However, the Board is not prepared to make such a leap with this particular Employer. The Board's files are replete with instances of this particular Employer failing to respond to filings, or to show at scheduled hearings. In fact, the Employer failed to file an Answer to the charges in this very case, yet clearly contested the same. This Employer has a clear pattern of not responding to Complaints made against it before this Board. Therefore, the Board will not infer a non-objection to the petition to accrete because of the Employer's failure to formally file an objection in that case.

Having disposed of that issue, the Board next turns its attention to the real crux of this case, that is, the Employers' alleged justification for the reduction of job duties, hours and wages. The Employer argues that the position wasn't generating sufficient revenue to pay for itself; and therefore, this was merely a business decision made for sound reasons. The Mayor testified that, because of a problem with marking tires effectively during the winter weather, the revenue generated was not as great as had been expected, and that was why he proposed eliminating the position (TR. p. 16, 27, 39). However, when asked, the Mayor did not know how much money the position did generate. He suggested that there was no way for him to know, from the budget

in evidence, how much was generated by police officers. In contrast, Mr. Desmarais testified that he was required, by the Police Chief, to submit monthly reports and an annual report, which indicated that as of the end of the last year he worked, the parking violations generated approximately \$28,000.00, and the animal control violations brought in about \$2,000.00 (TR. p. 61). On cross-examination, Mr. Desmarais testified that he would receive monthly printouts, which would show the amounts that were ungenerated, and that there were only two (2) thirty-five dollar (\$35.00) tickets that had to be taken back (TR. p. 73). He also indicated that, although he did not know how much money was brought in from tickets written by police officers, he did know that the average officer wrote between three (3) and ten (10) tickets a month to his seventy-five (75) to one hundred (100). This "tally" was hung up on a bulletin board every month, except for the last six (6) months of his employment (TR. p. 74).

The evidence and unrebutted testimony establish that the position of "Animal Control Officer/Parking Monitor", during Mr. Desmarais last year of employment, generated approximately thirty thousand (\$30,000.00) dollars in revenue. His salary was funded, through two different departments at slightly more than twenty-one thousand (\$21,000.00) dollars. Clearly, the position was "paying" for itself. That, however, in and of itself, does not persuade the Board that the City was engaging in discrimination by reducing the position. The Mayor proffered additional business reasons as to why the position should be reduced or eliminated. He mentioned that police officers could just as easily do the job, that parking violations weren't such a great public relations issue, and that the winter months just didn't generate revenue. The Board believes that on a "go forward" basis, for Fiscal Year 1999-2000, the Mayor's proffered business reasons for eliminating the position have some credibility.

However, Mr. Desmarais' position was fully funded through the end of the Fiscal Year-to wit, June 30th. His hours were reduced just as the weather began to warm up when, according to the Mayor's testimony, most of the parking violation revenues occur. The Board has trouble reconciling as legitimate the May 7th elimination of the "Parking Monitor" duties in light of the foregoing reasons. It would only seem to make sense that if the position was going to be eliminated prospectively on July 1st, that the City would want to take advantage of the warm weather while it still had a fully funded employee to perform these functions. Moreover, the Board is troubled that the Mayor seemed completely in the dark as to how much money was actually generated by Mr. Desmarais. If the position wasn't paying for itself, and the decision

was purely an economic decision as argued, then the Board would have expected someone other than Mr. Desmarais to be very well versed in the figures from these functions. The Board finds, in light of all the foregoing, that the Employer's proffered business reason rings hollow, and that the evidence supports a clear inference that the Employer was motivated by other, impermissible factors in choosing to eliminate the "Parking Monitor" duties.

The Board will also note that, in this case, the Mayor's testimony was inconsistent and vague at times. Mr. Southworth's testimony was likewise vague. Mr. Desmarais' testimony, in contrast, was specific, direct and credible. He testified candidly that, although he thought he enjoyed a pretty good relationship with both Mr. Southworth and the Mayor, and that no one specifically threatened his job, he felt very intimidated "inside" by his two February conversations with Mr. Southworth. He was concerned enough about his job to tell the Union representative that he was unsure whether he wanted to proceed. It was only when the Union official advised him that the Employer's conduct is regulated, that Mr. Desmarais felt comfortable enough to go forward. It is this testimony that is most persuasive to the Board to sustain the charges against the Employer. The Board notes that it is rare indeed to get the "smoking gun" in intimidation and/or discrimination cases. However, untoward motives can be inferred from conduct. The Board believes that, for all of the foregoing reasons, the evidence supports the Charge that the Employer, in this case, engaged in unlawful labor practices, in violation of R.I.G.L. 28-7-13 (5), (8), and (10), and this Board so finds.

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) In February or so of 1997, the City of Central Falls prepared a summary of a position entitled "Animal Control Officer/Parking Monitor" (Union Exhibit #1). The summary set forth the rate of pay (\$9.00 per hour), [forty (40) hours per week for fifty (50) weeks per Fiscal Year], and other terms and conditions of employment, including a "position limitation" clause which stated:

"THIS POSITION IS CURRENTLY FUNDED WITH CITY REVENUE. THERE IS NO GUARANTEE THAT FUNDS WILL REGULARLY BE APPROPRIATED TO SUPPORT THIS POSITION."

- 4) In May or June of 1997, Mr. Daniel J. Desmarais was appointed to this position, and served without incident until early 1999. On February 25, 1999, the Union sent a letter to the Board seeking to accrete the "Animal Control Officer/Parking Monitor" position to the bargaining unit certified in Case No. EE-3262 (Union Exhibit #2).
- 5) On May 10, 1999 the Employer issued a memorandum separating the position, and indicating the police officers would be assuming the "Parking Monitor" duties, and that Mr. Desmarais would be performing only the "Animal Control Officer" duties. On May 11, 1999, the Union filed its Charge of Unfair Labor Practice with the Board.
- 6) On July 26, 1999, the Chief of the City's Police Department issued a memo indicating that, commencing Friday, July 30, 1999, Mr. Desmarais would again begin working a forty (40) hour work-week, with his work day divided into two (2) halves, one-half as "Animal Control Officer" and one-half as "Parking Monitor".
- 7) The position of "Animal Control Officer/Parking Monitor", at least for the time Mr. Desmarais was employed, was one (1) full-time position that covered the duties of what had previously been two (2) part-time positions.
- 8) On a day in February 1999, Mr. Desmarais had two (2) conversations with Mr. Southworth about possibly joining the Union. During the second conversation, Mr. Southworth indicated to Mr. Desmarais that it would not be a good idea to try and join the Union, and that there would be problems.
- 9) The Mayor did not know how much money the position of "Animal Control Officer/Parking Monitor" generated.
- 10) Mr. Desmarais was required by the Police Chief to submit monthly reports and an annual report which indicated that, at the end of the last year he worked, the parking violations generated approximately twenty-eight thousand (\$28,000.00) dollars, and the animal control violations brought in about two thousand (\$2,000.00) dollars (TR. p. 61).
- 11) Mr. Desmarais wrote seventy-five (75) to one hundred (100) tickets per month to the average officers' three (3) to ten (10) tickets per month. This "tally" was hung up on a bulletin board every month, except for the last six (6) months of Mr. Desmarais' employment.

- 12) Mr. Desmarais' position was fully funded through the end of the Fiscal Year 1999. His hours were reduced just as the weather began to warm up, when most of the parking violation revenues occur.

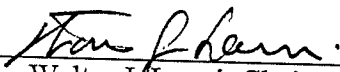
CONCLUSION OF LAW

- 1) 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 (5), (8), and (10).

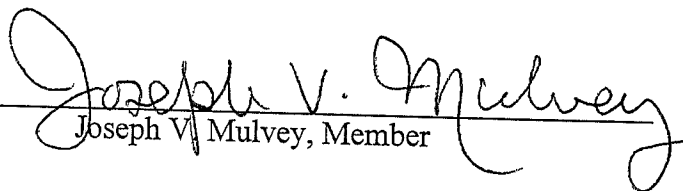
ORDER

- 1) The Employer is hereby ordered to pay to Mr. Daniel J. Desmarais the difference between what he earned and forty (40) hours for each of the weeks that his hours were reduced.
- 2) The Employer is hereby ordered to post a copy of this Decision and Order, for a period of thirty (30) calendar days, on all employee bulletin boards.

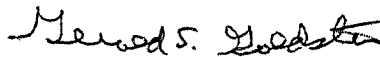
RHODE ISLAND STATE LABOR RELATIONS BOARD



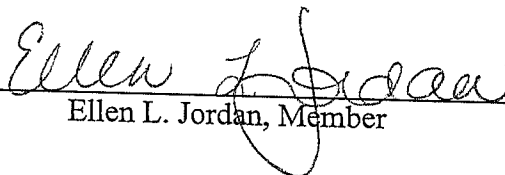
Walter J. Lanni, Chairman



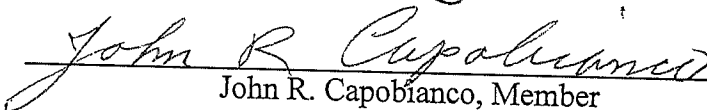
Joseph V. Mulvey, Member



Gerald S. Goldstein, Member



Ellen L. Jordan, Member




John R. Capobianco, Member



Elizabeth S. Dolan, Member

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

Dated: July 27, 2001

By: 
Joan N. Brousseau, Administrator