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	:	CASE NO: ULP-5484
-AND-	:	
TOWN OF BARRINGTON	:	

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 Town of Barrington (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated July 18, 2000 and filed on August 3, 2000 by Local Union 14845 United Steelworkers of America, (hereinafter "Union").

The Charge alleged:

> "The Town of Barrington by its actions is in violation of the Collective Bargaining Agreement between the parties, and its without question guilty of an Unfair Labor Charge/Practice. We state this on the grounds that the Town of Barrington by its actions of not reimbursing an employee for all lost earning, that was granted to him after an arbitrators decision, that found no just cause for the 4 day suspension. Without question, this violated the CBA and RI State Labor Relations Act 28-7-13 Section (6) (10) and Section (11).

The charge was then amended to specify the following specific arbitrators' awards: Arnold Zacko Award- 5/19/00, Gary Altman Award - June 28, 2000, Robert O'Brien Award - July 24, 2000.

Following the filing of the Charge, an informal conference was held on September 11, 2000 between representatives of the Union and Respondent and an Agent of the Board. The informal conference failed to resolve the Charge. The Board considered the matter on September 26, 2000 and determined that it would issue a Complaint on the charge. The Board notified the parties by letter dated December 18, 2000 that it would be issuing a Complaint in this matter and it subsequently did so on January 24, 2001. The Employer filed its Answer to the Complaint on February 7, 2001, denying the allegations contained in paragraphs 3 and 4 of the Complaint and asserting its affirmative defense.

A formal hearing was originally scheduled for February 20, 2001 but was rescheduled to May 24, 2001. On May 16, 2001, the Employer filed a Motion to Stay the Board's proceedings on the grounds that there was collateral litigation pending in the Superior Court that would determine the validity of the arbitrators' awards in question. On May 21, 2001, the Union filed its objection to the Employer's Motion to Stay. On May 22, 2001, the Board met to consider the motion and denied the same. Consequently, the formal hearing took place as scheduled on May 24, 2001. Upon conclusion of the hearing, both the Employer and the Union submitted written briefs and reply briefs. The Employer filed its brief on July 3, 2001 and the Union filed its brief on July 9, 2001. On July 16, 20001, the Employer filed a motion to strike a portion of the Union's brief and the Union objected to the same on July 26, 2001. On August 28, 2001, the matter came before the Board for its consideration. The Board unanimously found that the Employer committed an unfair labor practice by failing to implement the arbitration awards without a stay of the awards having been issued by a court of competent jurisdiction. The Board also decided to deny the Employer's motion to strike the union's brief in that it had no bearing on the Board's decision and order. The matter was then referred to the Board's legal counsel for drafting a decision consistent with the terms of the Board's decision. 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. By signing this decision and order below, each member of the Board hereby affirms that he or she was either present at the formal hearing in this matter or reviewed the entire administrative record, including the transcript, prior to rendering his or her decision in this matter.

FACTUAL SUMMARY

The factual background of the issues presented in this case is relatively straightforward. As a result of three separate incidents and pursuant to three separate proceedings, the Employer suspended three individual employees for various incidents. In each case, the Union grieved the suspension, pursuant to the collective bargaining agreement, through the final step of binding arbitration. In each case, separate arbitrators ruled that, although disciplinary action was

warranted, the suspensions were too severe; and in each case, the discipline was reduced. In each case, the arbitrator issued an award that included an order to pay lost wages.[1]

Thereafter, the Employer did not contact the Union to advise it of the Employer's intentions regarding implementation of the awards. However, the evidence in this case established that the Employer removed the original disciplinary letter from the personnel files of each of the three affected employees and placed a copy of the pertinent arbitration award in the respective employees' personnel folders. (See testimony of Mr. Dennis Phelan at pages 45, 46 and 49 of the transcript) The Employer has not issued any back pay to any of the affected employees.

POSITION OF THE PARTIES

The Employer readily admits that it has not implemented a portion of each arbitration award, but defends its actions by relying upon language contained within Article 14, Section 4 of the collective bargaining agreement which states:

> "The arbitrator hereunder shall be without power to alter, amend, add to or detract from the language of this Agreement, or to hold ex-parte hearings. The decision of the arbitrator shall be made public and shall be binding upon the municipal employees in such appropriate bargaining unit and their representative and the municipal employer on all matters not involving the expenditure of money."

The Employer argues that the above referenced provision of the CBA is dispositive, and that the Employer is therefore free to disregard the portions of the arbitrators' awards that order back pay. The Employer argues that the language of Article 14, Section 4 is unambiguous, and that the parties intent to limit the binding effect of grievance arbitration awards in this manner is clear from the language used and the placement of the provision within the grievance and arbitration procedure of the CBA. Therefore, the Employer argues that the Arbitrator's decision as it relates to the order of back pay is merely "advisory in nature", and the Town is free to comply or not comply, at its discretion. The Employer maintains that, in order for this Board to determine whether the Employer has failed to implement an arbitrator's award requires this Board to analyze the actions required under the award itself. The Employer asserts that, since the portion of the awards dealing with the expenditure of money is only advisory in nature, and since it

[1] On May 19, 2000, Arbitrator Arnold Zacko issued an award of four days lost wages. On July 24, 2000, Arbitrator Robert O'Brien issued an award of six days lost wages. On June 28, 2000, Arbitrator Gary Altman issued an award of thirteen days lost wages.

otherwise implemented the awards, the Employer cannot be found to have committed any unfair labor practice.

The Union claims that the Employer's position regarding the binding nature of the award has no bearing on this case because an employer commits an unfair labor practice whenever it fails to implement an arbitration award absent a stay. The Union also argues that the Employer has failed to act in good faith with regard to the implementation of the arbitration awards, and that the same constitutes a breach of the duty to bargain in good faith, and its duty to refrain from coercing employees in the exercise of their protected rights. The Union states that the Employer failed to even mention this "affirmative defense" in two of the arbitration proceedings, and although it was mentioned in the third, the arbitrator's award still contained the award of back pay. The Union also argues that it was a violation of the duty to bargain in good faith when, after the awards were made, the Town never notified the Union that the Town had no intention of paying back pay. The Union also urges the Board to amend its Complaint to incorporate the Union's original charge of violations of subsections 6 and 10 of R.I.G.L. 28-7-13, as originally alleged in the Union's charge.

DISCUSSION

The parties have each set forth differing versions of the meaning and intent of Section 14, Article 4. The Union argues that, because the language is taken from the Municipal Arbitration Act, the language is intended only for use within the scope of interest arbitration matters and the expenditure of great sums of money. Additionally, the Union argues that, if the Board agreed with the Employer's interpretation of this provision, such an interpretation would lead to absurd results. Finally, the Union argues that the "reimbursement of wages is not akin to the 'expenditure' of funds." The Union notes that, at the time of the suspensions at issue, the Town had already duly appropriated the three employees' wages from Town funds, and that the arbitrators awards did not order the Town to make any new expenditures of funds because these wages were already accounted for in the Town's budget.

The relevant statute in issue in this case is R. I. G. L. 28-7-13 (11), which provides that it shall be an unfair labor practice: "To fail to implement an arbitrator's award unless there is a stay of its implementation by a court of competent jurisdiction or upon the removal of the stay." Therefore, the only affirmative defense to implementation is the existence of a stay by a court of

competent jurisdiction. The Board has been advised by both parties that there exists collateral litigation in the Superior Court by the Union seeking affirmation of the award. As noted in the Union's brief, the Board has consistently held that, if an employer believes it has a valid reason for not complying with an arbitrator's award, the employer should make that argument to a judge pursuant to a motion for stay. In this case, the Employer has apparently chosen not to make such an argument, and no stay has been issued. Regardless of whether or not the Employer has sought a stay from the Superior Court, all parties agree that no court has issued a stay. Moreover, all parties agree that the three arbitration awards contain a direction to issue back pay to three employees, and that the same has not been done. The Board believes that pursuant to statute, these facts conclusively end the Board's ability to excuse the Employer for its actions of failing to implement the award.

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) The Employer suspended three individual employees for various incidents. In each case, the Union grieved the suspension pursuant to the collective bargaining agreement, through the final step of binding arbitration. In each case, separate arbitrators ruled that although disciplinary action was warranted, the suspensions were too severe; and in each case, the discipline was reduced. In each case, the arbitrator issued an award that included an order to pay lost wages.
4) Thereafter, the Employer removed the original disciplinary letter from the personnel files of each of the three affected employees and placed a copy of the pertinent arbitration award in the respective employees' personnel folders. The Employer has not issued any back pay to any of the affected employees.
5) In November 2000, the Union filed an action in the Superior Court seeking to confirm the arbitrators awards.

6) Neither the Superior Court nor any other court has issued a stay of the arbitration awards.

CONCLUSIONS 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 (11) .

ORDER

1) The Employer's motion to strike a portion of the Union's brief is denied.

2) The Employer is hereby ordered to implement the arbitrators awards, which ordered the payment of lost wages, by paying said wages within thirty days from the date of this Decision and Order.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank J. Montanaro, Member

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: December 11, 2001

By: _____
Joan N. Brousseau, Administrator