

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-5494
:
-AND- :
:
TOWN OF MIDDLETOWN :
:

ORDER OF DISMISSAL

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 Middletown (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated September 11, 2000, and filed on September 14, 2000 by Local 534, International Brotherhood of Police Officers, (hereinafter "Union").

The Charge alleged:

"On 05-19-2000 Sgt. Terlisner received a letter from Chief William Burns accusing him of dangerous conduct for using a Police Dept. Motorcycle along with another Police Sergeant of the Middletown Police Dept., because they drove them on the interstate Highways.

Both officers are Supervisors and are qualified to ride the motorcycles. Because they drove them on the highways, they were both given letters and removed from the use of motorcycles. There was no investigation or Policies and Procedures violated.

On 06-19-2000 Sgt. Terlisner filed a grievance and when brought to the Chief, he stated to Lt. Campagna (Union Pres.) that Sgt. Terlisner will never ride the motorcycles again. The second officer involved has since been allowed to ride motorcycles and because Sgt. Terlisner has a grievance filed, he is being discriminated against which we feel is a violation of Title 28-7-13, (6), (10), and 28-7-12.

Chief Burns allows this same type of behavior by other officers of this dept. who are junior to Sergeant Terlisner and less experienced on these type of motorcycles. The current policy for the use of these motorcycles is violated on other occasions after Sergeant Terlisner was reprimanded."

Following the filing of the Charge, an informal conference was held on October 23, 2000, between representatives of the Union and Respondent and an Agent of the Board. On May 16, 2001, the parties agreed to hold the charge in abeyance pending a possible resolution. On October 25, 2001, the Union notified the Board that the parties were unable to resolve the matter and asked that the matter be reactivated. On November 13, 2001, the Board issued the instant Complaint. The Employer filed its Answer to the Complaint on November 20, 2001.

A formal hearing on this matter was held on April 16, 2002. 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.

SUMMARY OF FACTS & TESTIMONY

On May 17, 2000, Sergeant Joseph O'Toole and Sergeant Robert Terlisner, both of the Middletown Police Department, reported to Rhode Island Traffic Court in Providence, Rhode Island, as part of their duties. Sergeants O'Toole and Terlisner both traveled to Providence via Middletown Police Department motorcycles. Neither O'Toole nor Terlisner obtained permission from a supervisor, nor notified a supervisor that they were taking the motorcycles to Providence. After being advised that the department's motorcycles had been seen in Providence, the Police Chief ordered the shift supervisor, Lt. Campagna, to conduct an investigation into the apparent unauthorized use of the motorcycles. Upon conclusion of the investigation, the Chief determined that both O'Toole and Terlisner had violated the department's motorcycle use regulations, and the Chief notified both O'Toole and Terlisner, in writing, that they were barred from using the motorcycles until further notice.¹

On May 20, 2000, Sergeant O'Toole went to see the Chief and promised to abide by the department's motorcycle regulations in the future. Sergeant O'Toole also apologized, in writing, to the Chief, and the Chief restored Sergeant O'Toole's motorcycle privileges immediately thereafter.

Sergeant Terlisner, however, refused to meet with the Chief on the subject, refused to apologize for his behavior, and refused to promise to abide by the department's motorcycle regulations in the future. Instead, on or about June 19, 2000, Sergeant Terlisner filed a grievance alleging, in part, that the action taken against him was unwarranted and seeking removal of the Chief's letter from his personnel file.² During the pendency of the grievance, the Union learned that Sergeant O'Toole's motorcycle privileges had been restored. Thereafter, the Union President, Lt. Campagna, met with the Chief in an unsuccessful attempt to resolve Terlisner's

¹ These letters were not placed in O'Toole's or Terlisner's personnel files and neither O'Toole nor Terlisner lost any pay as a result of their inability to use the motorcycles.

² Sergeant O'Toole did not file any grievances concerning the motorcycle incident.

grievance and to get Terlisner's motorcycle privileges restored. On September 14, 2000, the Union filed the instant charge of unfair labor practice.

POSITION OF THE PARTIES

The Union argues that the only difference between the restoration of motorcycle privileges for the two errant sergeants is that the Chief refused to restore Terlisner's privileges because he filed a grievance over the matter. The Union argues that the Chief demanded a private meeting with Sergeant Terlisner, with no Union representation allowed, and when Sergeant Terlisner refused, the Chief retaliated by refusing to restore Terlisner's motorcycle privileges. Therefore, the Union believes that the Employer violated R.I.G.L. 28-7-13 (6) and (10), by retaliating or discriminating against Sergeant Terlisner for engaging in protected activities, including the right to file a grievance and the right to have union representation.

The Employer argues that the Union has failed to establish a prima facie case of retaliation, because the Employer had legitimate, non-discriminatory reasons for removing Sergeant Terlisner's motorcycle privileges.

DISCUSSION

The evidence, in this case, clearly established that both O'Toole and Terlisner had their motorcycle privileges removed by the Police Chief nearly immediately after taking two motorcycles to Traffic Court in Providence. The evidence also shows that the Chief took this action after directing Lt. Campagna to investigate why the motorcycles were in Providence and how they came to be there. Lt. Campagna testified that he, as the Shift Supervisor, did not know that O'Toole and Terlisner had taken the motorcycles.

Both the Chief and Lt. Campagna testified that all O'Toole and Terlisner needed to do to be restored to motorcycle status was to speak to the Chief and agree to abide by department regulations in the future. (TR. p. 21, 46, 48) O'Toole elected to meet with the Chief immediately after receiving the written notification that his motorcycle privileges had been removed. During that meeting, Sergeant O'Toole apparently voluntarily apologized to the Chief for his behavior and promised to follow motorcycles regulations in the future. (TR. p. 58) Immediately thereafter, the Chief restored O'Toole's motorcycle privileges.

The restoration of Terlisner's motorcycle privileges proved to be a far more drawn out process. Sergeant Terlisner would not meet with the Chief to discuss the issue, and the Chief

would not restore Terlisner's privileges until Terlisner agreed to abide by the Department's regulations. In early July 2000, Terlisner filed a grievance over the Chief's actions in removing Terlisner's motorcycle privileges. Lt. Campagna testified that when he brought the grievance to the Chief, the Chief became upset and stated "I was going to let him ride the motorcycles, but now he's not going to ride them". (TR. p. 10, 25) Lt. Campagna also testified, however, that the Chief's position, both before and after the grievance, was that if Terlisner would just talk to the Chief about the matter, Terlisner's motorcycle privileges would be restored. (TR. p. 24-26) Ultimately, Terlisner's grievance was settled just prior to a scheduled arbitration in May, 2001. Terlisner agreed to obey the department's motorcycle regulations, and the Chief immediately restored Terlisner's privileges.

The first issue to be discussed in this matter is the Board's jurisdiction to hear this case, in light of the Rhode Island Supreme Court's decision in State of Rhode Island, Department of Environmental Management v. Rhode Island State Labor Relations Board, M. P. No. 2000-372. We address this issue because there seems to be some confusion within the labor community as to this case's applicability to the Board's jurisdiction. We find that the D.E.M. case has no bearing on this matter because the charge filed by the Union, in this case, alleges retaliation against Sergeant Terlisner for his act of filing a grievance over previously being removed from motorcycle status. This is not a case where the grievance and the unfair labor practice arise from the same set of common facts, and the grievant/claimant are seeking essentially the same remedy from both an arbitrator and this Board. Indeed, in this case, the grievance was filed prior to the alleged act of unfair labor practice. Additionally, the evidence in the record suggests that Sergeant Terlisner's grievance sought restoration of his motorcycle privileges. The relief requested from the Board is a cease and desist order from engaging in unfair labor practices. Therefore, there exists no bar to the Board's jurisdiction over the matter presently before it.

The Union's jurisdictional victory in this case, however, is short-lived. The timing of the grievance in this case, while helpful in preserving the jurisdiction of the Board to hear a charge of unfair labor practice, is fatal to the charge itself. As noted by the Employer, at page 13 of its brief, the Chief took the alleged adverse action (removal of Terlisner's motorcycle privilege) on May 19, 2000, two days after the incident and after an internal investigation. The Chief consistently maintained a position that all Sergeant Terlisner had to do to get his motorcycle

privileges restored was to speak with the Chief and agree to follow regulations in the future. Sergeant O'Toole did speak to the Chief almost immediately, and his privileges were restored. Sergeant Terlisner, however, "dug in" and refused to speak to the Chief about the incident. Several weeks later, Terlisner filed his grievance. Clearly, the adverse action against Terlisner's motorcycle privileges took place well in advance of Terlisner's exercise of protected activity in filing his grievance.

Although the Chief's response to Lt. Campagna, when the grievance was filed, is suggestive of petulance, it does not rise to the level of retaliatory action, because no action was taken. The fact of the matter is that the Chief did not have to change his mind concerning Terlisner's motorcycle status, grievance or not.³ Moreover, and more importantly, the Chief's demands remained consistent both before and after the grievance, and once Terlisner finally agreed to abide by the department's motorcycle regulations, he had his privileges restored. As noted by the Employer, the only difference between Terlisner and O'Toole was the amount of time each spent off motorcycle status, and that Terlisner was in control of that issue the whole time. The charge of unfair labor practice, therefore, cannot be sustained in regards to the retaliation allegation.

The union also alleged and argued that the Chief demanded that Terlisner meet with the Chief alone, without Union representation. Assuming *arguendo* that this meeting was one for which Terlisner would have the right to Union representation, the evidence in this case did not support the charge. Lt. Campagna did not testify that the Chief made any such statement. The Chief testified that, although he wanted to meet with Sergeant Terlisner personally, he assumed that Lt. Campagna or someone from the Union would be with Sergeant Terlisner. The fact that Sergeant O'Toole went to speak to the Chief without Union representation is not responsive to the question of whether or not the Sergeants were directed by the Chief to meet with him without Union representation. Whether or not there was an honest misunderstanding regarding the Chief's request to meet with the Sergeants, or whether the Chief actually made such a demand cannot be established from the evidence in this record. Therefore, the Union did not sustain its burden, and the Board finds no unfair labor practice existed in this regard either.

³ Indeed, had he relented and allowed Terlisner to return to motorcycle status without speaking to the Chief as requested, perhaps the Chief would have been exposing himself to a grievance from O'Toole, who complied with the Chief's request.

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) On May 17, 2000, Sergeant Joseph O'Toole and Sergeant Robert Terlisner, both traveled to Traffic Court in Providence on Middletown Police Department motorcycles, without having previously notified the shift supervisor or having obtained permission to take the motorcycles.
- 4) On May 19, 2000, the Police Chief notified both O'Toole and Terlisner, in writing, that they were barred from using the motorcycles until further notice.
- 5) On May 20, 2000, Sergeant O'Toole went to see the Chief and promised to abide by the department's motorcycle regulations in the future. Sergeant O'Toole also apologized, in writing, to the Chief; and the Chief restored Sergeant O'Toole's motorcycle privileges immediately thereafter.
- 6) On or about June 19, 2000, Sergeant Terlisner filed a grievance alleging, in part, that the action taken against him was unwarranted, and seeking removal of the Chief's letter from his personnel file.
- 7) During the pendency of the grievance, the Union learned that Sergeant O'Toole's motorcycle privileges had been restored. Thereafter, the Union President, Lt. Campagna, met with the Chief in an unsuccessful attempt to resolve Terlisner's grievance, and to get Terlisner's motorcycle privileges restored.
- 8) On September 14, 2000, the Union filed the instant charge of unfair labor practice.
- 9) Lt. Campagna also testified, however, that the Chief's position, both before and after the grievance, was that if Terlisner would just talk to the Chief about the matter, Terlisner's motorcycle privileges would be restored.

10) Terlisner's grievance was settled just prior to a scheduled arbitration in May, 2001. Terlisner agreed to obey the department's motorcycle regulations, and the Chief immediately restored Terlisner's privileges.

11) There was no evidence, in the record, to support the allegation that the Chief had demanded that either O'Toole or Terlisner meet with him without Union representation.

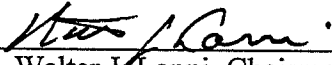
CONCLUSIONS OF LAW

- 1) The Board has subject matter jurisdiction to hear the within matter.
- 2) The Union has not proven, by a fair preponderance of the credible evidence, that the Employer has committed a violation of R.I.G.L. 28-7-13 (6) or (10).

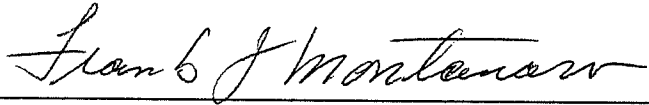
ORDER

- 1) The Unfair Labor Practice Charge and Complaint in this matter are hereby dismissed.

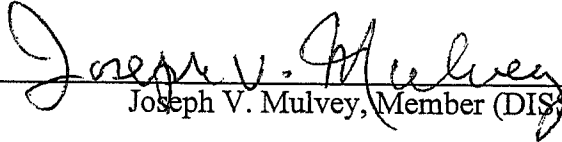
RHODE ISLAND STATE LABOR RELATIONS BOARD




Walter J. Lanni, Chairman



Frank J. Montanaro, Member (DISSENT)



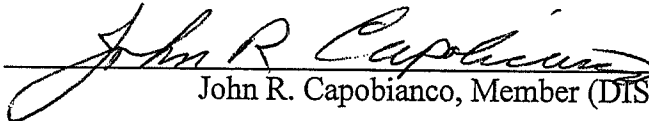
Joseph V. Mulvey, Member (DISSENT)



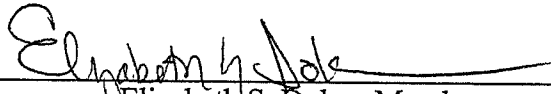
Gerald S. Goldstein, Member



Ellen L. Jordan, Member



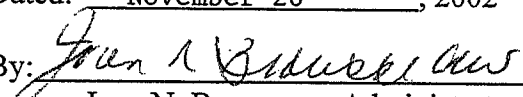
John R. Capobianco, Member (DISSENT)



Elizabeth S. Dolan, Member

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

Dated: November 20, 2002

By: 
Joan N. Brousseau, Administrator