

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-5515
	:	
-AND-	:	
	:	
CITY OF WOONSOCKET	:	

DECISION AND ORDER OF DISMISSAL

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") on an Unfair Labor Practice Charge (hereinafter "Charge") dated December 1, 2000 and filed on December 4, 2000 by the Woonsocket Local 404, IBPO (hereinafter "Union").

The Charge alleged:

"That the Employer violated 28-7-12 and 28-7-13 (6) and (10) of the Rhode Island Labor Relations Act when it failed to promote Glen Hebert."

Following the filing of the Charge, an informal conference was held on February 14, 2001 between representatives of the Union and Respondent and an Agent of the Board. The informal conference failed to resolve the Charge, and the Board issued the instant Complaint on October 12, 2001. The Employer filed its Answer to the Complaint on October 19, 2001, denying the allegations contained in paragraphs 3 and 4 of the Complaint. A formal hearing on this matter was held on February 7, 2002. Upon conclusion of the hearing, both the Employer and the Union submitted written briefs. In arriving at the Decision and Order of Dismissal herein, the Board has reviewed and considered the testimony and evidence presented, and arguments contained within the post hearing briefs.

POSITION OF THE PARTIES

The Union alleges that the Employer has failed to promote Sgt. Glen Hebert to the position of Lieutenant as a result of Sgt. Hebert's exercise of protected rights in filing numerous grievances and giving testimony before the Rhode Island State Labor Relations Board.

The Employer contends that the Union has completely failed in establishing its case for several reasons, but the primary reason is that the Union (and the alleged aggrieved party, Sgt.

Hebert) concede that the City was following the contract when it promoted others to the position of Lieutenant, and did not promote Sgt. Hebert.

FACTUAL SUMMARY

The Employer and the Union are parties to a collective bargaining agreement, and have had a number of contracts over the years. Sgt. Hebert has been employed by the Police Department for approximately 18 years.¹ During that time, he has filed approximately 17 grievances against the Employer for its failure to follow the parties' contract. Some of those grievances have been only his own, and some have been "class action" grievances. Five of these grievances relate to the same subject; Sgt. Hebert being passed over for overtime for dispatching. He has been successful in winning many of these grievances. Sgt. Hebert acknowledged that, by filing these various grievances, he wanted the contract to be followed.

In making promotions within the Department, the Employer follows the process established by the parties' collective bargaining agreement. (Employer's Exhibit #1) The promotional list relevant to this case was in effect from July of 1998 through July of 2000. In making a promotion, the City can choose from the top three candidates. A candidate cannot be passed over more than twice for a promotion. Officers seeking promotion must participate in the promotional testing process, which includes an oral component (conducted by persons not employed by the City of Woonsocket), and a written examination. Sgt. Hebert's score on the oral component was 82.91, and his score on the written examination was 73. These scores earned Sgt. Hebert the seventh slot on the promotional list. During the time that this promotional list was in effect, the City made five promotions from the list. All five of these candidates scored higher than Sgt. Hebert, and were ranked higher on the promotional list.

DISCUSSION

Sgt. Hebert has never even been reached on the list for promotion, let alone been by-passed. Sgt. Hebert agrees that the City is following the collective bargaining agreement in conducting these promotions. However, he alleges that he is not being promoted because of his long-standing history of union activity. He claims that he has been told by other officers that if he drops all his grievances, he'll get promoted. Not surprisingly, he produced no corroborating testimony or evidence on this allegation.

¹ During Sgt. Hebert's tenure with the Department, there have been six Police Chiefs that have served the Department

Sgt. Hebert's actions in filing grievances against the City for perceived contract violations is certainly his right, and this Board certainly makes no adverse inference against him trying to protect his rights under a collective bargaining agreement. However, this Board does find it particularly galling that Sgt. Hebert seeks the processes of this Board to challenge the City, when he agrees that the City is following the contract in making departmental promotions. Sgt. Hebert's failure to be promoted cannot be blamed on the City, and the City has not committed any Unfair Labor Practice in failing to promote Sgt. Hebert, to date.

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 and protection, and, as such, is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.
- 3) Following the filing of the Charge, an informal conference was held on February 14, 2001, between representatives of the Union and Respondent and an Agent of the Board.
- 4) The informal conference failed to resolve the Charge, and the Board issued the instant Complaint on October 12, 2001. The Employer filed its Answer to the Complaint on October 19, 2001, denying the allegations contained in paragraphs 3 and 4 of the Complaint.
- 5) Sgt. Hebert has been employed by the Police Department for approximately 18 years. During that time, he has filed approximately 17 grievances against the Employer for its failure to follow the parties' contract.
- 6) Officers seeking promotion must participate in the promotional testing process, which includes an oral component (conducted by persons not employed by the City of Woonsocket), and a written examination.
- 7) In making promotions within the Police Department, the Employer can choose from the top three candidates on the promotional list. A candidate cannot be passed over more than twice for a promotion.
- 8) Sgt. Hebert's score on the oral component of the promotional exam was 82.91, and his score on the written examination was 73. These scores earned Sgt. Hebert the seventh slot on the promotional list.

- 9) During the time that this promotional list was in effect, the City made five promotions from the list. All five of these candidates scored higher than Sgt. Hebert, and were ranked higher on the promotional list.
- 10) Sgt. Hebert testified that the City was following the contract when it made these promotions.

CONCLUSIONS OF LAW

- 1) 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 (8).
- 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 (10).

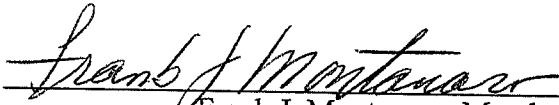
ORDER

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

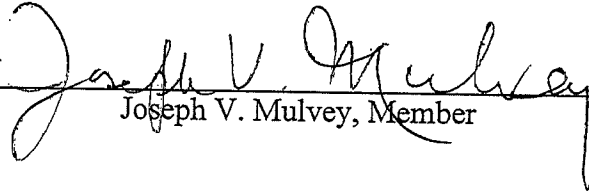
RHODE ISLAND STATE LABOR RELATIONS BOARD



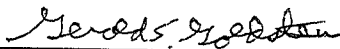
Walter J. Lanni, Chairman



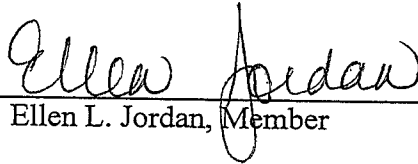
Frank J. Montanaro, Member



Joseph V. Mulvey, Member



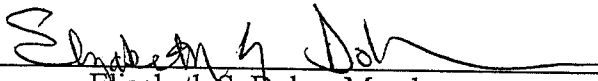
Gerald S. Goldstein, Member



Ellen L. Jordan, Member



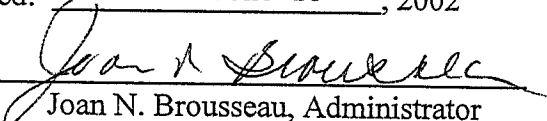
John R. Capobianco, Member



Elizabeth S. Dolan, Member

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

Dated: June 18., 2002

By: 
Joan N. Brousseau, Administrator