

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-	:	CASE NO: ULP-5673
	:	
THE INTERNATIONAL ASSOCIATION	:	
OF FIREFIGHTERS, LOCAL 3240	:	

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 International Association of Firefighters, Local 3240 (hereinafter “Union”) based upon an Unfair Labor Practice Charge (hereinafter “Charge”) dated and filed on June 3, 2003 by the Coventry Fire District (hereinafter “Employer”).

The Charge alleged:

“The parties concluded negotiations for a first contract on December 9, 2002. The parties agreed on all issues and executed a tentative agreement that was to become a final agreement upon ratification by the District Board of Engineers. The union reviewed the text of the final agreement and asked for corrections of errors in the text. All errors were corrected. The Fire District sent the Union, through IAFF representative Andrew Baynes, the final contract for signature on December 30, 2002. Since that time, the Union has failed and refused to sign to collective bargaining agreement. This constitutes a violation of the duty to bargain in good faith.”

Following the filing of the Charge, an informal conference was held on May 14, 2003. The Board issued its Complaint on June 12, 2003. The Union filed its Answer to the Complaint on June 16, 2003. Formal hearings on this matter were held on August 21, 2003. Upon conclusion of the hearing, post-hearing briefs were submitted by both the Employer and the Union. In attempting to arrive at a Decision and Order on the substance of the Employer’s complaint, the Board has reviewed and considered the testimony, evidence, oral arguments and written briefs. Unfortunately, the vote of the Board is deadlocked on the substantive issue of the allegation of unfair labor practice. Thus, the complaint is being dismissed due to the inability of motions to sustain sufficient votes for passage.

DISCUSSION

In this case, the Board finds itself in the rare position of having a deadlocked Board for the purposes of voting, due to the recusal of one Board member prior to the commencement of these proceedings. Unfortunately, the Board has no mechanism to deal with the rare instance of deadlocked opposing motions. The Board's enabling act does not provide for alternate members who can be utilized for breaking tie votes. Thus, without a majority to support either a motion to uphold the charge or a motion to dismiss the charge for substantive grounds, the Board has no choice but to dismiss the within matter on procedural grounds. In doing so however, the Board is not prevented from making some factual findings, which are set forth below.

FINDINGS OF FACT

- 1) The Coventry Fire District 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 or about May 30, 2002 and June 12, 2002, the Union and the Employer entered into an agreement whereby the Employer would recognize the union as the exclusive bargaining agent for its paid professional full-time active firefighters, up to and including the rank of captains and its full-time active paid dispatchers. This agreement also contained "ground rules" for subsequent contract negotiations.
- 4) In return, the Union agreed to effect the withdrawal and dismissal with prejudice all pending charges against the Employer brought by or on behalf of the Union, including but not limited to Rhode Island State Labor Relations Board Case No EE-3448, Case No ULP 5611 and Case No ULP-5600.
- 5) The Union and the Employer commenced collective bargaining negotiations.
- 6) On December 9, 2003, the parties negotiated for several hours. At the conclusion of this session, the parties initialed a document entitled "Tentative Agreement."
- 7) On December 10, 2002, the taxpayers of the Coventry Fire District ratified the tentative agreement.
- 8) Thereafter, the parties began to disagree as to whether a binding contract had been formed.

- 9) A final collective bargaining agreement has not been executed by both the Union and the Employer.
- 10) In May 2003, the Union filed a demand for interest arbitration with the American Arbitration Association, Case No.: 11 390 01177 03.
- 11) On June 23, 2003, a Rhode Island Superior Court Justice granted the Coventry Fire District's motion, pursuant to R.I.G.L. 28-9-13 (2), for a stay of the interest arbitration proceedings.
- 12) On or about September 5, 2004, another Rhode Island Superior Court Justice denied the motion for stay of interest arbitration.
- 13) At the time the formal hearings before this Board concluded, the interest arbitration proceeding had not yet been conducted.
- 14) At the Board's meeting on March 23, 2004 a motion was made by Board member Joseph Mulvey and seconded by Board member John Capobianco to dismiss the charge filed in this matter. Members Mulvey, Capobianco and Walter Lanni voted in favor of the motion. Members Elizabeth Dolan, Ellen Jordan and Gerald Goldstein opposed the motion. The motion failed. A motion was made by Elizabeth Dolan and seconded by Ellen Jordan to uphold the charge and order the Union to negotiate the collective bargaining agreement with the Employer. Members Dolan, Jordan and Goldstein voted in favor of the motion. Members Mulvey, Lanni, Capobianco opposed the motion. The motion failed.

CONCLUSIONS OF LAW

- 1) Since neither a motion to uphold a charge of unfair labor practice nor a motion to dismiss the complaint for cause has carried, the within matter must be dismissed on procedural grounds.

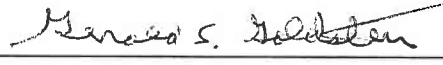
ORDER

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

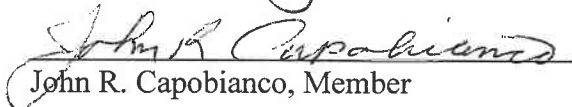
RHODE ISLAND STATE LABOR RELATIONS BOARD

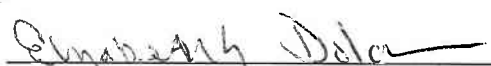

Walter J. Lanni, Chairman


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: 10-14, 2004

By: 
Robyn H. Golden, Acting Administrator

Note: Frank J. Montanaro, Member has recused himself from participation in this matter.

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AMENDED NOTICE

**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 ULP No. 5673 dated **10/14/04**, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **10/14/04**.

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-31.

Dated: 10-14, 2004
By: Robyn H. Golden
Robyn H. Golden, Acting Administrator