

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-5687
	:	
TOWN OF WARREN	:	

DECISION AND ORDER

TRAVEL OF CASE

The above entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") as an Unfair Labor Practice Complaint (hereinafter "Complaint") issued by the Board against the Town of Warren (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated and filed on September 22, 2003 by the International Brotherhood of Police Officers ("IBPO") Local 470, (hereinafter "Union").

The Charge alleged a violation of R.I.G.L. 28-7-13 (6):

"The Employer has refused to recognize the IBPO Local 470 as the exclusive bargaining representative for Thomas D. Gordon, Chief of Police."

Following the filing of the Charge, an informal conference was held on November 19, 2003. On January 9, 2004, the Board issued its complaint. A formal hearing was originally scheduled for April 24, 2004. Due to several scheduling conflicts, the parties requested several continuances and the formal hearing was finally conducted before the Board on September 1, 2005 where both the Union and the Employer were presented with the opportunity to examine and cross-examine witnesses and to present documentary evidence. In arriving at the Decision and Order herein, the Board has reviewed and considered the transcript, exhibits and post hearing briefs.

FACTUAL SUMMARY

The facts on this case are substantially not in dispute. The Town of Warren Police Officers have been organized and represented by a Union since February 1969, pursuant to the Board's certification of representatives in Case No. EE-1836. That certification includes as members of the bargaining unit, "all police officers up to and including chief."

On May 17, 1993, the Board issued a second "Certification of Representatives" to the International Brotherhood of Police Officers which recognized the Union as the certified bargaining representative for "all regular full time police officers as defined in Title 28-9.2-3 of the General Laws of the State of Rhode Island, 1956, as amended. At the time of the Union's certification in 1993, the Chief of Police was Mr. Robert Pare, who was and remained a member of the bargaining unit until his retirement sometime in 1994.

On or about March 7, 1995, the Employer entered into a private employment agreement with Thomas B. Perrotto, as Police Chief, for the period March 7, 1995 through June 30, 1998. (Employer Exhibit # 3) Section 9A of this employment agreement provides: "Employee hereby acknowledges that under state law, a Police Chief is considered to be a member of the Police Department's Collective Bargaining Unit. Employee agrees to terminate any and all association with said Collective Bargaining Unit, and waive all association and benefits thereto." Chief Perrotto did not serve out the entire period set forth under his contract and retired early, after the death of his wife.

On or about September 22, 1997, the Employer entered into another private employment agreement with Ely G. Barkett, as Police Chief, for the period September 22, 1997 through September 30, 2000. (Employer Exhibit # 4) Section 10A of this employment agreement provides: "Employee hereby acknowledges that under state law, a Police Chief is considered to be a member of the Police Department's Collective Bargaining Unit. Employee agrees to terminate any and all association with said Collective Bargaining Unit, and waive all association and benefits thereto." Section 1 of that employment agreement

states: in accordance with the Town Code, the position is not part of the union contract.

On or about October 14, 1997, *after* executing the aforementioned contract with Chief Barkett, the Employer enacted an amendment to the Town's Code of Ordinances, identified as Section 16-4, which provided that "the police chief shall not be a member of the union which represents the bargaining unit of the Warren Police Department, but may enter into an employment contract with the Town of Warren at the discretion of the town council." (Employer Exhibit # 2) The record before the Board contains no evidence or indication that the Union was notified or made aware of the existence of Section 16-4 of the Town Code.

On or about January 18, 2001, the Employer entered into another private employment agreement with Thomas D. Gordon, as Police Chief, for the period January 18, 2001 through January 1, 2004. (Employer Exhibit # 5) ¹ Section 9A of this employment agreement provides: "Employee hereby acknowledges that under state law, a Police Chief is considered to be a member of the Police Department's Collective Bargaining Unit. Employee agrees to terminate any and all association with said Collective Bargaining Unit, and waive all association and benefits thereto."

On January 2003, Ralph W. Ezovski, a Union representative, wrote to Michael Abruzzi, Town Manager, concerning Chief Gordon's status. (Employer Exhibit #9) In June 2003, the Union filed a unit clarification request with the Board. After an informal hearing conducted on July 22, 2003, the Board, through its Administrator, notified both the Union and the Employer that because of the Board's certification in Case No. EE-3535 and R.I.G.L. 28-9.2-3, to remove the Chief of Police from the certification would require a tri-party agreement between the Employer, Union, and the sitting Chief; and that the agreement would only apply to the individual holding the Chief's position at the time of the agreement.

On July 23, 2003, Sergeant Joseph DaSilva, President of the Union, sent a demand for bargaining to the Employer. No bargaining took place and on

¹ The Employer stopped deducting Thomas Gordon's union dues immediately upon his appointment as Police Chief in 2001 and has not deducted any union dues from Chief Gordon's pay since 2001.

September 22, 2003 the union filed its charge of unfair labor practice. On about January 9, 2004, this Board issued the instant complaint.

Nine (9) days later, on or about January 18, 2004, the Employer entered into a second private employment agreement with Thomas D. Gordon, as Police Chief, for the period January 18, 2004 through January 1, 2007.²

DISCUSSION

The Union argues that since the Board's certification of the bargaining representative in 1993, the Employer has made no effort to officially remove the Chief's position from the recognition clause of the collective bargaining agreement, despite several opportunities to do so. The Union also argues, that even if the Board were to find that there was some type of "loose agreement" to permit Chief Perrotto and Chief Barkett from the bargaining unit during their tenure as Chief of the Department, absolutely no agreement was made with the Union, "loose" or otherwise, to permit Chief Gordon to be excluded from the bargaining unit.

The Employer readily acknowledges that it made no effort to bargain with the Union over the exclusion of Chief Gordon and makes several arguments in its defense, primarily upon the basis that by the time the Union requested bargaining, the position of Chief was already irrevocably out of the bargaining unit. The Employer also argues that the Union should be "estopped" from asserting that the position of Police Chief is member of the bargaining unit.

The Employer relies upon the Rhode Island Supreme Court's decision in Galucci v Brindamour, 477 A.2d 110, (R.I. 1984), Town of Lincoln v Lincoln Lodge, 660 A.2d 710 (R.I.1995), F.O.P. v Town of Westerly, 659 A.2d 1104 (R.I.1995) and this Board's decision in ULP 5096, City of Pawtucket /Police Department for its defense that it has no duty to bargain with the Union in this matter. The Board believes that while instructive on some issues, none of these cases are dispositive of the issue presented in this case.

² Section 9A of this agreement is the same as contained in Gordon's first agreement.

In Galucci v Brindamour, 477 A.2d 110, (R.I. 1984), the Court examined the statutory right of collective bargaining afforded by the Rhode Island General Assembly to “all the policemen of the city or town police department” and stated:

“...the statutory right set forth was designed for the benefit of three parties. First, the collective bargaining agent was clearly given the right to bargain on behalf of all policemen after having been chosen by a majority of such policemen to do so. Second, any person who came within the definition of ‘policeman’ was given the right to be represented by such bargaining agent. Third, the town derived the benefit of the statute as a whole on achieving stability and tranquility in its police department.” Id at 619.

Although the Employer argues that the case is the same as the Galucci matter, this Board notes that there are significant factual differences between the two cases. In Galucci, a retiring Police Chief who had not been a member of the union during his tenure as Chief sought the payment of unused sick, vacation and personal time that he would have been permitted to receive, if he had remained a member of the bargaining unit. In Galucci, despite the Board’s certification of the union as the representative of all members of the department from patrolman up to and including chief, each collective bargaining agreement negotiated between the town and the union specifically exempted the chief from the unit. The Court in Galucci stated that the question before it was whether the parties for whose benefit this statute was enacted have the power to waive those benefits by entering into a contract that specifically excludes the chief. Id at 618. The Court held waiver was permissible; and in the facts presented under Galucci, held that the plaintiff (Galucci), the brotherhood (union) and the town both explicitly and implicitly, over a significant period of time have chosen to waive the inclusion of the chief of police in the collective bargaining contract and that they freely and voluntarily chose to forego whatever benefit may have flowed to each of the three as a result of including the chief in the bargaining unit. Id at 619.³

In this case, the recognition clause at all times pertinent provides for inclusion of “all permanent police officers” and neither the Union nor the Employer has ever sought to change the recognition cause. This recognition clause was the same when there was no argument that Chief [Robert Pare] was

³ Galucci therefore was not permitted payment for the sick, vacation and personal time that would have been payable to him had he remained a member of the bargaining unit.

included in the bargaining unit. Additionally, each of the employment agreements executed by later Chiefs, Perrotto, Barkett and Gordon, all acknowledge and reaffirm that state law permits them the right to participate in collective bargaining. (See Employer's exhibits 3, 4, and 5) In each of those agreements, the Chief must actually and affirmatively waive his rights to engage in collective bargaining. If the Employer truly believed that no Chief could be permitted to engage in collective bargaining in the future as a result of the Union's alleged "waiver" of the Chief's inclusion, why would the Employer insist upon such a provision within the Chief's contract?

The Employer also cites the Rhode Island Supreme Court's decisions in F.O.P. v Town of Westerly, 659 A.2d 1104 (R.I.1995) and Town of Lincoln v Lincoln Lodge, 660 A.2d 710 (R.I.1995) as a basis for its arguments that certification of a bargaining unit does not preclude removal of a chief from a bargaining unit.⁴ In FOP v Westerly, the Supreme Court was reviewing whether or not an interest arbitration panel had the authority to exclude the chief, captains and lieutenants from the bargaining unit and held that the interest arbitration panel had all the same authority as the parties [union and town] had themselves during negotiations. Id at 1106. The Court noted that the Master Agreement in effect between the parties at the pertinent time specifically accepted the chief, captains and lieutenants. The Court also went on to discuss its reasons for upholding the arbitration panel's exclusion of the chief, captains and lieutenants from the collective bargaining unit, as appropriately excluding managerial and supervisory personnel.

In Town of Lincoln v Lincoln Lodge, 660 A.2d 710 (R.I.1995), the Court addressed several certified questions submitted to it by the Superior Court, including the question of whether or not R.I.G.L. 28-9.2-3 and 28-9.2-5 [under the Municipal Police Arbitration Act] violated the Rhode Island Constitution, Article 3, Sections 7 and 8⁵ and whether or not the position of chief of police should be excluded from Lincoln Lodge's bargaining unit on the basis of public policy. The

⁴ The Board agrees that its certifications do not serve as an absolute preclusion to removal; the Board notes that under its rules and regulations, there is a process by which parties can achieve this very result.

⁵ Which directed the general assembly to create a nonpartisan ethics commission.

Court concluded that the inclusion of police chiefs as members of local town and city police bargaining units afforded by 28-9.2-3 and 28-9.2-5 does not create a *per se* violation of Article 3, Section 7 of the Rhode Island Constitution. The Court went on to hold that the general assembly's inclusion of police chiefs as members of local bargaining units must be evaluated "in light of a particular chief's powers, responsibilities, policy making authority and the extent of that chief's actual involvement in negotiations." *Id* at 716.

Based upon the Court's decisions in Galucci, FOP v Westerly, and Town of Lincoln v Lincoln Lodge, there can be no question that Chiefs of Police [and other positions determined to be managerial or supervisory] within the various municipalities can be excluded from the collective bargaining unit, despite this Board's perfunctory certification of units with all police officers, including chief,⁶ provided the parties have all waived the inclusion of the position in question, or have permitted the determination of that question to be submitted to interest arbitration. Alternatively, the Employer has the right to seek the removal of a position from a duly certified collective bargaining unit through the Board's processes and rules and regulations, specifically Section 8.05.

The Employer also argues that this Board's prior determination in ULP-5096, City of Pawtucket /Police Department is dispositive of the issue before the Board in this matter. In Pawtucket, the Board had the occasion to determine whether or not the City of Pawtucket had committed an unfair labor practice in entering into a private employment agreement with its Chief of Police, Richard DeLyon. The Union, in that matter, had argued that notwithstanding the Chief's personal resignation from the Union, the position of Chief was never removed from the collective bargaining agreement; and therefore, the City had no right to bargain directly with the Chief. The City of Pawtucket, while acknowledging that it did not bargain with the union, argued that it did not have to do so because the Union had waived the Chief's bargaining unit status. In finding for the Employer, this Board held that since the Union had issued an

⁶ See Town of Lincoln v Lincoln Lodge, 660, A.2d 710, 720 (R.I. 1995) where the Court rules that the Rhode Island State Labor Relations Board has no unilateral power to exclude or include chiefs from any bargaining unit it so certifies and that the certification of a bargaining unit including a police chief is merely a perfunctory execution of the General Assembly's express directives.

ultimatum [of three choices] to Chief DeLyon, which included the option of resigning from the Union, the Union had implicitly agreed to whatever choice Chief DeLyon might make. The Board also specifically held, "in order to reverse the status quo, agreement by all three parties is necessary." The Board also specifically reserved and did not answer the question of whether or not subsequent holders of the position of chief will become members of the bargaining unit.⁷

In this case, the Employer presented the testimony of Anthony DeSisto, the Town of Warren's Solicitor from 1992 through 2004. Mr. DeSisto testified that when the Town of Warren was seeking to appoint Chief Perrotto in 1994 or 1995, that Mr. DeSisto discussed the matter with Richard Gallo, the Union's representative. (TR. p. 43) Mr. DeSisto testified that Mr. Gallo told DeSisto on two separate occasions that the Union would not object to the chief opting out of the Union and signing a separate employment contract. (TR. pgs. 45, 46) Mr. DeSisto also testified that he did not confirm these conversations with Mr. Gallo in writing because he felt the parties enjoyed a good relationship and that there were very few things he ever put in writing. (TR. p. 47)⁸

Mr. DeSisto also testified that during the term of Chief Perrotto's and Chief Barkett's tenure as Chiefs of the Department, no one from the union ever demanded that they [Perrotto and Barkett] be included within the bargaining unit. (TR. p. 53) Mr. DeSisto further testified that when Chief Gordon was appointed in January 2001, no one from the union made any request that Chief Gordon be included within the bargaining unit. (TR. p. 53) Mr. DeSisto acknowledged that in early January 2003, he became aware of an inquiry made by Ralph W. Ezovski, a Union representative, concerning Chief Gordon's status as a member of the local. (Employer Exhibit #9)

⁷ Thus, the Pawtucket case and the Galucci case were similar in that they both dealt with the issue of a "tri-party agreement" and a specifically named Chief. Neither of these cases dealt with the issue of whether not a decision by one Chief can be binding upon another individual Chief.

⁸ It should be noted that Mr. Gallo was not presented as a witness in this matter and the only evidence of these conversations between Mr. DeSisto and Mr. Gallo is hearsay. This recognition should not be construed as the Board having any difficulty with Mr. DeSisto's credibility. Rather, it is mentioned to highlight the difficulty of making oral agreements that never get reduced to writing and the fact that the Board finds this to be a poor practice.

Mr. DeSisto acknowledged that at no time during his term as Solicitor, did the Town ever file a petition with this Board to remove the Chief from the bargaining unit. (TR. p 60) He also acknowledged that during his years as Solicitor, the Town never sought to amend the recognition clause of the collective bargaining agreement to exclude the Chief. (TR. p 61) Mr. DeSisto also testified that when Chief Barkett was appointed, neither he nor anyone from the Town contacted anyone from the Union to secure an agreement to exclude Chief Barkett from the bargaining unit. (TR. p 61) Additionally, no effort was made to contact the Union when Chief Gordon was appointed. (TR. p 61)

The Employer also argues that the Chief's agreement is required for him to be returned to the collective bargaining unit and that since the Chief does not so agree, then the position cannot be returned. Despite this argument, the Employer also argues an agreement to allow one chief to opt out of the agreement extends to future chiefs and that that it is not the individual chief who is able to make the choice.

These two inconsistent positions highlight the difficulty of the whole concept of "tri-party" agreements. However, the Supreme Court's holding in Galucci made it clear that the statutory rights provided for in R.I.G.L. 28-9.2-3 and 28-9.2-5 were designed for the benefit of *three* parties: the collective bargaining agent, any employee within the definition of policeman, and the municipality.

It seems to the Board that the Court's two subsequent decisions in FOP v Westerly and Town of Lincoln v Lincoln Lodge make it clear that unless a municipality can establish that its position of Police Chief is managerial or supervisory, then the inclusion of the Chief into the bargaining unit is permissible. What the Court does not address is the mechanism for such a determination, other than agreement or within the scope of interest arbitration.⁹ There is a third mechanism which provides an avenue for this very determination and that is a petition to this Board pursuant to Section 8.05 of the Board's Rules and Regulations seeking the removal of the position from the bargaining unit.

⁹ The Board notes that neither party apparently sought to amend the recognition clause during any of the years in which contracts were renegotiated during the tenure of Chief Perrotto, Chief Barrett or Chief Gordon.

The final argument that the Board addresses is the Employer's argument that the Union has essentially "waived" its right to represent the Police Chief. The Employer posits this argument as an estoppel argument. Under labor law, the right of a party to demand bargaining during the term of an agreement can be waived. A waiver may arise from the express terms of a contract, from the failure of a party to request negotiations when informed of prospective changes, or may be inferred from the history of the parties negotiations. "Because a waiver of the rights and obligations to bargain entails a diminution of statutory rights, neither the Board nor the Courts will infer a waiver absent clear and unmistakable evidence that the parties intended that result." NLRA: Law & Practice 12:04 (9). Metropolitan Edison Co. v NLRB, 460 U.S. 693, 708 (1983).

No waiver will be found on a Union's failure to act (as alleged herein) unless the Employer has given notice of its planned conduct and afforded a reasonable opportunity for bargaining. Associated Milk Products, Inc., 300 NLRB 561, (1990)

In this case, the unrebutted testimony is that Anthony DeSisto, as Warren Town Solicitor and Richard Gallo, as Union representative, orally agreed sometime in 1994 or 1995 that Chief Perrotto would be allowed to "opt out of the union and sign an employment agreement." (TR. p. 44) Mr. Gallo is alleged to have said "Our position is, our attitude is if he wants to do that, that's his business and we won't object." (TR. p. 45) It is undisputed that this "agreement" was not reduced to writing. It is also undisputed that both parties apparently upheld their ends of the oral agreement and permitted Chief Perrotto to "opt out" of the union.

However, after Chief Perrotto retired and the Town was preparing to appoint a new Chief, the Town did not notify the Union of its intent to have the new Chief "opt out" of the bargaining unit. In fact, Solicitor DeSisto testified that although the then Town Manager, Michael Hartman, inquired as to whether or not the Union needed to be contacted on the new Chief's contract, Solicitor DeSisto advised him that contacting the union was not necessary. Similarly, no effort was made to contact the Union in 2001 when the Town appointed Chief

Gordon. Thus, the uncontroverted testimony is that the Employer did not notify the Union of its planned conduct as it pertained to any of the appointments of Chief, subsequent to Chief Perrotto. Therefore, as a matter of law, the Union cannot have been deemed to have waived its right to bargain regarding the terms and conditions of employment for the position of Police Chief. This is especially true because the Employer was clearly aware of the right of the police chief to be included within the collective bargaining agreement, evidenced by the fact that the Employer demanded and received written waivers from the Police Chiefs.

That is not to say however, that the Employer's position in this case is not without some merit, at least until the Board Administrator's letter of July 2003. The evidence and stipulations in this matter established that none of the Chiefs, after Chief Pare, either paid union dues or were members of the collective bargaining unit. Additionally, neither party sought to amend the recognition clause of the bargaining agreement. There was no evidence that the union expressed any opinion on the bargaining unit status of the Police Chief until January 2003. Both parties bear some responsibility for the fact that there was never any agreement reduced to writing concerning the position of Police Chief, and the "opting out" that was being exercised by Chiefs Barrett and Chief Gordon, at least until January 2003. There was no evidence presented to the Board as to why the Employer did not respond to the Union's inquiry in January 2003 as to the status of the Chief.¹⁰ Perhaps the Employer did not find the inquiry to be serious given the fact that there was a lot of posturing at the time, relative to various grievances.

In any event, when the Union filed its request for unit clarification in June 2003, the Employer should have thought about adopting a new approach for dealing with this issue. Certainly, once the Employer was in receipt of the Administrator's letter regarding the necessity of a tri-party agreement to remove the current Chief, the response should have been different. The Employer should have immediately filed a petition to exclude the position if no agreement could be reached with the Union. Therefore, the Employer's subsequent failure to bargain

¹⁰ The Board notes that this inquiry came a few short months after the parties had entered into a collective bargaining agreement for the period September 2002- September 2005.

with the Union, after such a request, was a refusal to bargain, which constitutes a violation of R.I.G.L. 28-7-13 (6).¹¹

As for a remedy, the Union has requested an order directing the Employer to cease and desist from refusing to bargain regarding the position of Chief of Police. The Board hereby grants such an order prospectively from the date of July 22, 2003, for implementation no earlier than July 1, 2005, the expiration of the collective bargaining agreement. This limitation is an acknowledgment that the collective bargaining agreements between the parties have historically not included information concerning the Police Chief's salary and did not do so in the 2002-2005 contract. To permit the Union to reopen that particular contract under the circumstances presented is not appropriate. In its brief, the Union has not specifically sought an order from this Board regarding the retroactive payment of Union dues via payroll deduction for the period of January 2001 through June 2005 from Chief Gordon, [as claimed in Union Exhibit #2]. Even if that request had been officially clarified, the Board would decline to order such an award under the circumstances presented.

FINDINGS OF FACT

- 1) The Complainant is a "Union" 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 Respondent is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
- 4) The Town of Warren Police Officers have been organized and represented by a Union since February 1969, pursuant to the Board's certification of representatives in Case No 1836. That certification includes as members of the bargaining unit, "all police officers up to and including chief."

¹¹ Not only did the Employer refuse to bargain, it entered into an employment agreement with the Chief, nine days after this Board issued the within complaint.

- 5) On May 17, 1993, the Board issued a "Certification of Representatives" to the International Brotherhood of Police Officers which recognized the Union as the certified bargaining representative for "all regular full time police officers as defined in Title 28-9.2-3 of the General Laws of the State of Rhode Island, 1956, as amended.
- 6) At the time of the Union's certification in 1993, the Chief of Police was Mr. Robert Pare, who was and remained a member of the bargaining unit until his retirement.
- 7) On or about October 14, 1997, the Employer enacted an amendment to the Town's Code of Ordinances, identified as Section 16-4, which provided that "the police chief shall not be a member of the union which represents the bargaining unit of the Warren Police Department, but may enter into an employment contract with the Town of Warren at the discretion of the town council." (Employer Exhibit # 2)
- 8) The record before the Board contains no evidence or indication that the Union was notified or made aware of the existence of Section 16-4 of the Town Code.
- 9) On or about March 7, 1995, the Employer entered into a private employment agreement with Thomas B. Perrotto, as Police Chief, for the period March 7, 1995 through June 30, 1998. (Employer Exhibit # 3) Section 9A of this employment agreement provides: "Employee hereby acknowledges that under state law, a Police Chief is considered to be a member of the Police Department's Collective Bargaining Unit. Employee agrees to terminate any and all association with said Collective Bargaining Unit, and waive all association and benefits thereto." Chief Perrotto did not serve out the entire period set forth under his contract and retired early, after the death of his wife.
- 10) The Union was not a party or signatory to the Perrotto contract.
- 11) On or about September 22, 1997, the Employer entered into another private employment agreement with Ely G. Barkett, as Police Chief, for the period September 22, 1997 through September 30, 2000. (Employer Exhibit # 4) Section 10A of this employment agreement provides: "Employee hereby

acknowledges that under state law, a Police Chief is considered to be a member of the Police Department's Collective Bargaining Unit. Employee agrees to terminate any and all association with said Collective Bargaining Unit, and waive all association and benefits thereto."

- 12) The Union was not a party or signatory to the Barkett contract. The Town did not contact the union prior to the execution of this agreement.
- 13) On or about January 18, 2001, the Employer entered into another private employment agreement with Thomas D. Gordon, as Police Chief, for the period January 18, 2001 through January 1, 2004. (Employer Exhibit # 5) Section 9A of this employment agreement provides: "Employee hereby acknowledges that under state law, a Police Chief is considered to be a member of the Police Department's Collective Bargaining Unit. Employee agrees to terminate any and all association with said Collective Bargaining Unit, and waive all association and benefits thereto."
- 14) The Union was not a party or signatory to the Gordon contract. The Town did not contact the union prior to the execution of this agreement.
- 15) On or about January 18, 2004, the Employer entered into another private employment agreement with Thomas D. Gordon, as Police Chief, for the period January 18, 2004 through January 1, 2007. Section 9A of this agreement is the same as contained in Gordon's first agreement. This second agreement was entered into nine (9) days after this Board issued the instant complaint.
- 16) The Employer stopped deducting Thomas Gordon's union dues immediately upon his appointment as Police Chief in 2001 and has not deducted any union dues from Chief Gordon's pay since 2001.
- 17) The Union was aware that Chief Perrotto, Chief Barrett and Chief Gordon (initially) opted out of the collective bargaining unit and the Union did not demand until 2003 that the Chief be included in the bargaining unit. The Union was also aware that no union dues were being paid by any of these three chiefs.

- 18) The Employer stipulated that at no time while Lt. Achilli was President of the Union, did the Employer request any authorization from the union to exclude the Chief from the bargaining unit.
- 19) Chief Gordon has not paid Union dues since his appointment as Chief in January 2001.
- 20) None of the collective bargaining agreements from 1974 to the present time include any salary information for the position of Chief of Police.

CONCLUSIONS OF LAW

- 1) The Union has proven by a fair preponderance of the credible evidence that the Employer committed a violation of R.I.G.L. 28-7-13 (6).
- 2) The Union did not waive its right to bargain concerning the terms and conditions of employment for the Chief of Police.

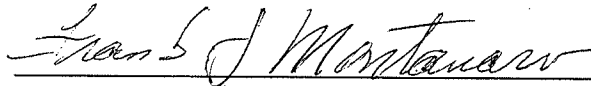
ORDER

- 1) The Employer is hereby ordered to recognize the Union as the exclusive bargaining representative for the Chief of Police.
- 2) The Employer is hereby ordered to cease and desist from refusing to bargain with the Union regarding the position of Chief of Police.

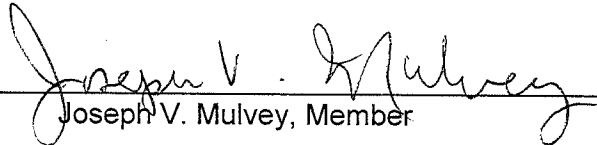
RHODE ISLAND STATE LABOR RELATIONS BOARD



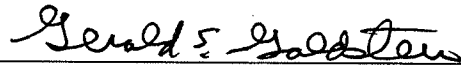
Walter J. Lanni, Chairman



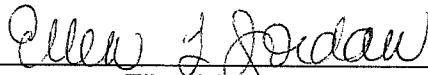
Frank Montanaro, Member



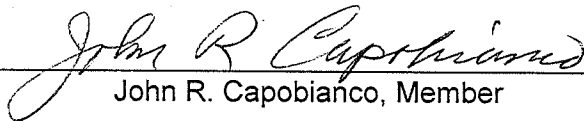
Joseph V. Mulvey, Member



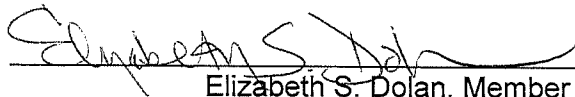
Gerald S. Goldstein, Member (Dissent)



Ellen L. Jordan, Member (Dissent)



John R. Capobianco, Member



Elizabeth S. Dolan, Member (Dissent)

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

Dated: 3-14, 2006

By: ROBYN H. GOLDEN
Robyn H. Golden, Administrator

ULP-5687

