

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-5770
:
TOWN OF MIDDLETOWN :

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 Middletown (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") filed on September 13, 2005, by the Middletown Municipal Employees' Association/ NEARI.

The Charge alleged violations of R.I.G.L. 28-7-13 (3), (5), (6), (8) and (10) as follows:

"Beginning on or about August 15, 2005 and continuing to present, the Town of Middletown or its agents have violated the above cited paragraphs when they interfered, restrained, and coerced the leadership and members of the Middletown Municipal Employees' Association/NEARI's right to engage in concerted activities, including dealing with employers concerning terms or conditions of employment such as the processing of grievances and otherwise policing their Collective Bargaining Agreement, when they: 1) Demanded that the Union President Pam Gould report to work on her scheduled vacation day, August 15, 2005, to discuss her attendance at the August 3, 2005 RISLRB Informal Hearing on ULP-5767; 2) On or about 8/16/05, threatened to charge the President of the Union with insubordination for declining to report to work to attend said August 15, 2005 meeting; 3) Unilaterally and capriciously deducted wages from President Pam Gould and Vice President Dawn Thurman's August 19, 2005 payroll check for the bi-weekly pay period ending August 12, 2005; 4) Denied duly elected union officers right to attend meetings to investigate and/or settle grievances, including, but not limited to, August 15, 2005, September 7, 2005 and September 8, 2005; 5) Threatened to dock President and Vice President's wages again unless they sign a unilaterally written Memorandum of Agreement; Said Employer's actions have resulted in a chilling effect among the members of the bargaining unit in the exercising of their rights guaranteed by 28-7-12."

Following the filing of the Charge, two informal conferences were held; one on October 3, 2005, and the other on January 18, 2006, in accordance with R.I.G.L. 28-7-9. On April 3, 2006, the Board issued its Complaint alleging:

"3. The Employer, violated R.I.G.L. 28-7-13 (10) when it demanded that the Union President, Pam Gould, report to work on her scheduled vacation day, August 15, 2005, to discuss her attendance at the August 3, 2005 RI State Labor Relations Board Informal Hearing on ULP-5767.

"4. The Employer, violated R.I.G.L. 28-7-13 (10) when, on or about August 16, 2005, it threatened to charge the President of the Union with insubordination for declining to report to work to attend said August 15, 2005 meeting.

"5. The Employer Violated R.I.G.L. 28-7-13 (3) and (10) when it unilaterally threatened to dock President and Vice President's wages again unless they sign a unilaterally written Memorandum of Agreement. Said Employer's actions have resulted in a chilling effect among the members of the bargaining unit in the exercising of their rights guaranteed by 28-7-12."

The Employer filed an Answer on April 10, 2006. The Board heard the matter formally on May 25, 2006. Representatives from the Union and the Employer were present and had full opportunity to examine and cross-examine witnesses and to submit documentary evidence. Upon conclusion of the formal hearing, the parties were directed to submit written briefs. The Employer's brief was filed on July 13, 2006; and the Union filed its brief on July 14, 2006. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony, oral arguments, and written briefs submitted by the parties.

FACTUAL SUMMARY

The dispute in this matter originates with actions taking place after an informal hearing held by this Board's Administrator on August 3, 2005 in regards to a separate matter. The Union's President, Ms. Pam Gould, and Vice President, Ms. Dawn Thurman, both attended the informal hearing, which had been convened pursuant to law, to review the allegations in an unfair labor practice charge filed by the Union. At that hearing, the Union and Employer reached resolution of those charges and the Union officials then returned to the workplace for the remainder of their workday.

On August 15, 2005, Ms. Gould, who was on an approved vacation day, received a telephone call from Ms. Lynn Dible, the Town's Human Resources Director. Ms. Dible informed Ms. Gould that the Town Administrator, Mr. Gerald Kempen, had requested a meeting with Ms. Gould for later that afternoon to discuss an issue concerning payroll. Ms. Gould initially agreed to come in from her vacation day and attend the meeting as requested. However, after hanging

up with Ms. Dible, Ms. Gould consulted with the Union's Business Agent, Mr. Jerome Egan, to discuss the matter. Mr. Egan told Ms. Gould not to come in from a vacation day and that he would handle the matter for her.

Later that afternoon, a meeting at Town Hall did in fact take place, as scheduled. Attendees included Mr. Kempen, Mr. Egan, Ms. Thurman, Ms. Mary Beth Silvia, the Union Secretary-Treasurer and Ms. Dible.¹ The meeting was, by all accounts, brief and contentious, and no clear statement of the issue or resolution thereof, was issued.

The next day, Ms. Gould came back to work. Not one Town Official approached her concerning the meeting which had been held the day before. On that day, however, Ms. Silvia overheard a "speaker-phone" conversation between the Town's Labor Attorney, and Mr. Shawn Brown, the Town's Finance Director, and Ms. Dible, in which the attorney stated: "I am assuming Shawn, that what the Town did was fine, that she did not show up for the meeting and that is grounds for insubordination." This speaker-phone conversation took place inside Mr. Brown's office, with the door open, at a decibel loud enough to be heard outside Mr. Brown's office.²

On August 17th, Mr. Brown asked Ms. Gould if she would get Dawn Thurman and sit down with him, Lynne Dible, and Bill Shorey, the Tax Assessor (Dawn Thurman's boss). At that meeting, which took place in the Council Chambers, Mr. Brown inquired as to whether or not Ms. Gould or Ms. Thurman minded filling out "leave slips" prior to attending any other union business in the future. Ms. Gould indicated that they would not have a problem doing that. Mr. Brown stated that he would put together a Memorandum of Agreement and Ms. Gould replied that before she signed the memorandum, she would want to run it past the Union's Business Agent. The meeting concluded and Ms. Gould prepared to leave the building because she had the rest of the day off. As she was leaving, she heard Mr. Brown ask Dawn Thurman to come to his office with Lynn Dible. When she heard this request, Ms. Gould asked whether they needed

¹ Ms. Dible was not present at the start of the meeting.

² The evidence in the record on whether Ms. Dible was present for this meeting is conflicting. Ms. Dible said she didn't recall this conversation but did not deny that it took place.

her for the meeting because she had not yet departed.³ Ms. Gould did enter into the office, at which time both she and Ms. Thurman were advised that when paychecks came out that week, both paychecks would be short because some of their hours had been docked; but that a second check would also be issued that same day, restoring the docked pay. Mr. Brown also stated that he was going to get in trouble for restoring the funds, but that he was doing it anyway. Ms. Gould became very angry and departed the meeting, without waiting to hear why her pay had been docked. Mr. Brown explained to Ms. Thurman that their pay was being docked for their attendance at the August 3rd informal hearing at the Labor Board. Ms. Thurman stated that Ms. Gould had the right, under their contract, to attend the Labor Board meeting and that Ms. Thurman had discharged compensatory time for her attendance. Each employee did receive a check for the docked time on the same day as their regular paychecks.

DISCUSSION

The Union argues that the facts of this case support a finding of an Unfair Labor Practice, because the dispute could have been so easily avoided by the Town Administrator simply asking, or having Ms. Dible ask, the two employees about the discharge of their time on their time sheets. The Union notes that although Town officials were notified in advance of the employees' attendance at the August 3rd Labor Board hearing, no one ever challenged their right or duty to be there, or how they planned to "discharge" the time on their time sheets. The Union also notes that no one ever challenged the employees at the hearing or at anytime after the hearing. Thus, the Union argues that the Employer's entire scope of conduct in regards to this matter was intended to intimidate, coerce, or harass the Union officials.

The Employer argues that there is a complete lack of evidence to support the complaint in this matter. The Employer argues that Ms. Gould was not ordered to report to work on her day off (August 15, 2005), that the Town did not threaten to charge Ms. Gould with insubordination for declining to report to work;

³ At this point, Mr. Shorey, Ms. Thurman's boss, had already departed the area.

and the record is devoid of evidence that the Town unilaterally threatened to dock wages unless the Union officials signed a memorandum of agreement.

The first issue to address is the allegation that the Employer demanded that Ms. Gould report to work on her day off to discuss her attendance at the August 3, 2005 RI State Labor Relations Board informal hearing on ULP-5767. Ms. Gould testified that she received a call from Ms. Dible, indicating that Mr. Kemper wanted Ms. Gould to meet with her and with Ms. Dible, that day, to discuss "time off" because it was a payroll week and they needed to meet. Ms. Gould testified that she was trying to get Ms. Dible to advise her as to what the meeting would be about and inquired whether it had anything to do with the Labor Board hearing on August 3rd. Ms. Dible acknowledged that the meeting would be related to the August 3rd hearing, but would not say anything more over the phone. In her testimony, Ms. Dible acknowledged that after her review of the payroll (which had been approved by the two employee's Department Heads) she was concerned about whether the Union contract permitted two employees to attend meetings, whether Labor Board hearings were covered by the contract, and the fact that neither employee had discharged any time off on their time sheets for the August 3rd hearing. She stated that she took this concern to Mr. Kempen who asked her to call Ms. Gould in to discuss the issue. Although Ms. Gould initially agreed to report to work, she was actually on a pre-approved vacation day and changed her mind after speaking to the Union's Business Agent. Ms. Gould did not attend the meeting, but other Union officials, including the Business Agent, showed up for the meeting. Upon learning that Ms. Gould was not attending, Mr. Kempen then sought out Ms. Dible and brought her into the meeting to relay her conversation with Ms. Gould. It is undisputed that the meeting became contentious and ended quickly without any discussion of the issue. Ms. Gould's testimony in regards to this issue made it clear that although she had some concerns about reporting to work as requested, that she initially agreed to do so. She did not testify that she felt she had no choice in the matter. In fact, she stated, "she was leaving the campground anyway, so I will just come in that day." When she decided that she did not want to attend, she did not call

Ms. Dible, but called the Union's Secretary-Treasurer, and asked her to inform Ms. Dible that Ms. Gould would, in fact, not be attending the meeting. Although the poor outcome of the August 15th meeting and the activity of the Town officials on August 16th suggest that the Employer was miffed at Ms. Gould's refusal to attend, this later conduct does not transform the request into a demand to appear. Therefore, the Board hereby dismisses the charges set forth in Paragraph three (3) of the Board's complaint.

The next issue for the Board to consider is whether the Employer threatened to charge the President of the Union with insubordination for declining to report to work to attend said August 15, 2005 meeting. On August 16th, less than twenty-four (24) hours after this aborted meeting, which Ms. Gould declined to attend, she and other employees overheard a speaker-phone conversation being conducted between Mr. Brown, Ms. Dible and the Town's Labor Attorney.⁴ In this conversation, the Town's attorney stated, "I am assuming Shawn, that what the Town did was fine, that she did not show up for the meeting, and that is grounds for insubordination." It is true that that the witness did not hear any names associated with this "she" who had failed to show for the meeting, which according to the attorney, was grounds for "insubordination." However, this Board finds that the conducting of such a discussion over the speaker-phone, with the office door open, less than twenty-four (24) hours after an employee failed to show for a meeting, gives rise to a reasonable inference that the conversation was either in fact in regards to Ms. Gould or was intended to make Ms. Gould believe that it was in regards to her. The Board finds it hard to come to any other conclusion other than the employees involved in that speaker phone conversation, including a seasoned Human Resources Director, intended for it to be overheard by others. Although Ms. Dible disclaims any recollection of that particular conversation, both Ms. Gould and Ms. Thurman identified her as being present. The Board finds Ms. Thurman's testimony and Ms. Gould's testimony on the issue of this speaker-phone conversation to be credible and as such, draws an adverse inference as to the intent of the Employer in conducting this speaker-

⁴ There is no evidence in the record as to whether or not the Town's Attorney knew that the conversation was being conducted via speaker phone or that it could be overheard by other nearby employees.

phone conversation in that manner. The Board believes that the conduct of this meeting, via speaker-phone and within earshot of other employees, less than twenty-four (24) hours after a contentious meeting in which a female employee did not show up, was calculated to produce fear and intimidation in those overhearing the conversation. The Board also characterizes this "conversation", which came a day after a meeting had become contentious and ended abruptly, essentially as a veiled threat, and was intended for Ms. Gould to believe that she may face a charge of insubordination. This is especially disturbing because the Employer knew that although Ms. Gould did not show up for the meeting the day before, she called to say that she had changed her mind about coming (on her day off) but that she was sending other Union officials to cover the meeting for her. Moreover, Ms. Gould had absolutely no obligation to come in on a vacation day and took steps to have the appropriate coverage at the meeting because the Employer had expressed such urgency for the meeting. Therefore, this Board finds that the Employer did commit a violation of R.I.G.L. 28-7-13 (10) by making an implied threat against an employee, by intending the employee to believe that she was possibly facing a charge of insubordination, after she had sent Union officials to the meeting instead of her attending.

The final issue for the Board to consider is whether or not the Employer unilaterally threatened to dock the President and Vice President's wages again unless they sign a unilaterally written Memorandum of Agreement. The testimony adduced at hearing clearly established that by the time the topic of a "Memorandum of Agreement" was first discussed on the afternoon of August 17th, the pay of the employees had already been reduced by Ms. Dible, at Mr. Kempen's direction on August 15th. The testimony also clearly established that there were two separate meetings that took place on the afternoon of August 17th. Present at the first meeting were Ms. Dible, Mr. Brown (Ms. Gould's supervisor), Ms. Gould, Mr. Shorey (Ms. Thurman's supervisor) and Ms. Thurman. Ms. Gould testified that at this first meeting, Mr. Brown stated that he wanted to resolve the issue and also wanted to know whether the Union officials would be willing to sign a memorandum of agreement on how to deal with the

issue of documenting time off for union business in the future. Ms. Thurman also testified that Mr. Brown had stated that he wanted to resolve the outstanding issues so that everyone could get back to work. Ms. Thurman testified that she was not entirely clear as to what Mr. Brown was referring to; she asked for further clarification, and then, because her boss was in this meeting, she assumed that it had something to do with her. She testified that Mr. Shorey said that he'd gotten a hold of a memo, that he couldn't discuss the memo and that he thought "it" had been taken care of. Ms. Thurman testified that upon conclusion of the meeting, she wasn't entirely clear as to the concerns of Ms. Dible, Mr. Brown or Mr. Shorey.

The record also establishes that upon the adjournment of this first meeting, all the employees departed and she returned to her work station and began to work. Ms. Thurman testified that she received a call from Mr. Brown asking her to report to his office. When she arrived, Ms. Dible and Mr. Brown were present. Ms. Gould entered the room immediately thereafter. It was at this meeting that the two employees were informed that their regular paycheck would be docked for seven hours for attending the August 3rd labor board hearing. Upon hearing this news, Ms. Gould became very angry and stormed out of the room. Ms. Thurman remained behind and was then advised that the docked pay was being restored and that they would each receive a separate check on payday for the missing funds.

It seems to the Board that if the Employer really wanted to resolve the issue and get everyone back to work, that the entire issue of the docking and its reversal would have and should have been discussed at the first meeting when Mr. Shorey was present. The Employer did not provide any explanation as to why there was need for two meetings. Additionally, only Ms. Thurman was asked to return to Mr. Brown's office. Ms. Gould basically invited herself into the meeting. The Board does not understand why this approach was adopted and the Employer offered no explanation. Although this approach clearly is less than ideal and caused more problems, the Board cannot find that the employees in this case were threatened with having their pay docked unless they signed a

written memorandum of agreement. The pay was docked in advance of the meeting and the employees were told during the meeting that the pay was being restored. Not one witness testified that the return of the wages was conditioned upon the employees' execution of the memorandum of agreement. Indeed, the record reflects that the pay was restored and that the memorandum of agreement has never been executed. Therefore, the Board dismisses the charges set forth in Paragraph five (5) of the Board's Complaint.

FINDINGS OF FACT

- 1) The Town of Middletown 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 August 3, 2005 the Union's President, Ms. Pam Gould and Vice President, Ms. Dawn Thurman, both attended the informal hearing, which had been convened pursuant to law to review the allegations in an unfair labor practice charge filed by the Union. Both prior to and after the meeting, neither employee's attendance at that meeting was questioned in any way, until the payroll was being submitted for that pay period.
- 4) On August 15, 2005, Ms. Gould, who was on an approved vacation day, received a telephone call from Ms. Lynn Dible, the Town's Human Resources Director. Ms. Dible informed Ms. Gould that the Town Administrator, Mr. Gerald Kempen, had requested a meeting with Ms. Gould for later that afternoon to discuss an issue concerning payroll.
- 5) Although Ms. Gould initially agreed to attend the meeting, she changed her mind and sent other Union officials instead. Ms. Gould did not notify Ms. Dible directly that she had changed her mind about attending the meeting, but called a co-worker and fellow union official and asked here to inform Ms. Dible.

- 6) A meeting was convened late in the afternoon of August 15th between the Town Administrator and Union officials. The meeting was brief and contentious and no substantive discussions took place.
- 7) The Town Administrator, either before or after the brief meeting on August 15th, directed Ms. Dible to dock the paychecks of the two employees who attended the August 3rd labor board hearing.
- 8) On August 16th, after returning from her vacation day, Ms. Gould was not approached directly by any Town Official in regard to either the urgent payroll issue or her failure to show up for the brief meeting on August 15th.
- 9) On August 16th, the Town Finance Director, Ms. Dible and the Town's Labor Attorney conducted a speaker-phone discussion with the office door left open and within earshot of Ms. Gould and other co-workers. The Town's attorney was overheard saying: "I am assuming Shawn, that what the Town did was fine, that she did not show up for the meeting, and that is grounds for insubordination."
- 10) On August 17th, the Finance Director, Mr. Shawn Brown, convened a meeting with Ms. Dible, Ms. Gould, Ms. Dawn Thurman and her supervisor, Mr. Bill Shorey. At this meeting, Mr. Brown inquired as to whether Ms. Gould and Ms. Thurman would be agreeable to signing a Memorandum of Agreement concerning the future discharge of "time off for union business." That meeting concluded amicably.
- 11) Immediately following the conclusion of this August 17th meeting, Mr. Brown called Ms. Thurman and asked her to report to his office. When she arrived, Mr. Brown and Ms. Dible were both present. Ms. Gould then joined the meeting. At this second meeting, Ms. Gould and Ms. Thurman were both informed that their paychecks for that week would be docked seven (7) hours pay for their attendance at the August 3rd labor board hearing. Upon hearing this news, Ms. Gould became very angry and stormed out of the meeting. Ms. Thurman remained behind and was informed that despite the docking of her pay in her regular paycheck, Mr. Brown had decided to make both of

them whole, and informed her that both employees would receive a second check for the lost monies.

- 12) Both Ms. Gould and Ms. Thurman did receive the two (2) paychecks on the regular payday that week.
- 13) The Union did not execute the proffered Memorandum of Agreement.

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 (10).

ORDER

- 1) The Employer is hereby ordered to Cease and Desist and to refrain from taking such actions in the future.
- 2) The Employer is hereby ordered to post a copy of this Decision and Order on all employee bulletin boards for a period for thirty (30) days after receipt.

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-

TOWN OF MIDDLETOWN

CASE NO: ULP-5770

**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. 5770 dated 12/28/06, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after 12/28/06.

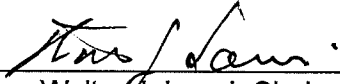
Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-29.

Dated: 12-28, 2006

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

ULP- 5770

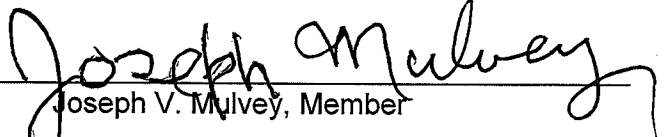
RHODE ISLAND STATE LABOR RELATIONS BOARD



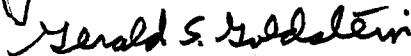
Walter J. Lanni, Chairman



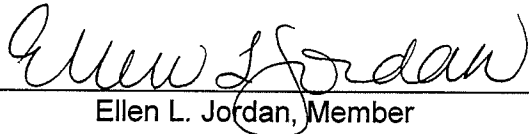
Frank Montanaro, Member



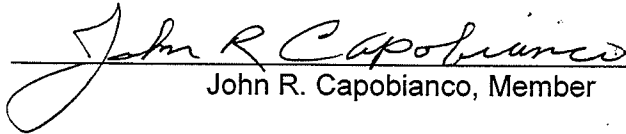
Joseph V. Mulvey, Member



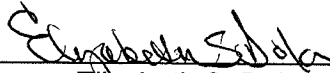
Gerald S. Goldstein, Member (Dissent)



Ellen L. Jordan, Member



John R. Capobianco, Member



Elizabeth S. Dolan, Member

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

Dated: 12-28, 2006

By: 
Robyn H. Golden, Administrator

ULP-5770