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-5832
CITY OF EAST PROVIDENCE	:	

DECISION AND ORDER OF DISMISSAL

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 City of East Providence (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated January 11, 2007 and filed on January 12, 2007 by the USW, on behalf of its Local 15509 (hereinafter "Union").

The Charge alleged violations of R.I.G.L. 28-7-13 (10) as follows:

> The City is refusing to apply the previously agreed upon resolution to a seniority-based transfer issue. In 2002, the desired settlement was reached with a previous City Manager. By acting in bad faith and continuing to refuse, in 2006 and 2007, to honor the settlement, the City undermines the grievance process and the entire relationship between the City and Local Union.

By letter dated January 30, 2007, the Union requested to amend its charge to include violations of Subsections (3) and (6) of R.I.G.L. 28-7-13. Following the filing of the Charge and requested amendment, the Employer submitted a written Answer to the Unfair Labor Practice Charge, as well as a Motion to Dismiss and Memorandum in Support of Motion to Dismiss. An informal conference was held on February 12, 2007, as which the Union submitted a written Rebuttal to Respondent's Motion to Dismiss. On March 21, 2007, the Board issued its Complaint. The matter was heard formally on June 5, 2007. Representatives from both the Union and the Employer were in attendance and had full opportunity to present evidence and to examine and cross-examine witnesses.

FACTUAL SUMMARY

On or about August 8, 2006, the Union filed a grievance in behalf of Joseph Tavares, a laborer within the City of East Providence's Parks and Recreation Department. The grievance was processed in accordance with the parties' contractual grievance procedure steps, with meetings being held on October 23, 2006 and November 3, 3006. (Union exhibits #5 and #4) Subsequent to these steps, which proved unsatisfactory to the Union, it filed a Demand for Arbitration on December 22, 2006. On January 12, 2007, the Union filed the within Unfair Labor Practice Charge with the Board. Only after learning that this Board had issued a Complaint in the matter, the Union then withdrew its Demand for Arbitration. Thereafter, the Employer filed a written Motion to Dismiss and a Memorandum in Support of the Motion. The Union filed an objection and after discussion, the Board denied the Motion, *without prejudice*

POSITION OF THE PARTIES

The Union's position in this case, as argued in its brief, is that the topic of the underlying Tavares grievance is not the issue before the board for disposition and therefore, the Doctrine of Election-Of-Remedies in simply not applicable. The Union argues that after the Tavares grievance had been filed and processed through the initial grievance steps, representatives of the City, Raymond Benoit and Joseph Crook, indicated that if the Union could prove that the City had previously agreed to a particular settlement, then the City would honor that agreement. [1] The Union then argues that after it produced a 2002 grievance settlement the City refused to "honor" its oral agreement to settle based upon 2002 grievance settlement.

In support of its position, the Union presented testimony from its President Louis Couto who stated: "We all talked about it for a while and I said, 'We believe that it's been settled in the past, there's so many things that go on at one time, and we believe it's been settled in the past and we were looking for the same outcome basically. As it got to the second step in the grievance process, it was presented to us that if we could provide some documentation that we could

[1] Mr. Couto testified that both he and Mr. Scott Cook (for the Union) and Mr. Ray Benoit and Mr. Joseph Crook (for the City) were the parties to this conversation.

support our claim, the City would essentially live with it.'" (TR. p. 27). The Union also presented testimony from Mr. Scott Cook who testified on this issue as follows: "At the meeting, the union argued that Joe Tavares should be allowed to transfer over to Parks because of seniority. When it was denied, we said that this had been grieved before, and we feel that based on that grievance, he should be allowed. They said that if we could produce the document, then they would honor what the document said." (TR. p. 56-57)

The City argues that the Doctrine of Election-Of-Remedies is dispositive of the issue before the Board and that the charge should be dismissed because of the Union's election to file a grievance and then process the grievance all the way to arbitration. In the alternative, the City argues that it complied with the terms of the parties' Collective Bargaining Agreement when it did not transfer Mr. Tavares. The City refutes the Union's interpretation of the significance of the 2002 grievance and argues that there was no Memorandum of Understanding or Memorandum of Agreement was entered into between the parties to amend contract language (pertaining to transfers). The City states: We are left to speculate as to the reasons why the former City Manager settled that grievance."

DISCUSSION

The threshold issue that must be addressed in this matter is the nature of the original charge and the Complaint issued as a result of that charge. The charge alleged: "The City is refusing to apply the previously agreed upon resolution to a seniority based transfer issue. In 2002, the desired settlement was reached with a previous City Manager. By acting in bad faith and continuing to refuse, in 2006 and 2007, to honor the settlement, the City undermines the grievance process and the entire relationship between the City and Local Union. More specifically, Joe Tavares was refused a transfer that his seniority entitled him to. The grievance number is 05-06 and it was filed on 8/8/06. Repeated attempts to resolve this internally have been unsuccessful, despite this issue having been resolved in 2002 by grievance 02-2 dated 3/12/02."

The Board's complaint, which was based upon the charge, alleges: "The Employer violated R.I.G.L. 28-7-13 (6) and (10) by failing to implement and honor

a previously negotiated grievance settlement." Unfortunately, the presentation to the Board in this case, focused on several related, but extraneous issues. The Union tried to expand upon the Board's charge by alleging that an oral contract to implement the 2002 settlement for the 2006 grievance was created in the fall of 2006. The Union's case relied on an assumption that the 2002 settlement was dispositive of the 2006 grievance and then bootstrapped that assumption into a bad faith claim that the City reneged on a 2006 oral agreement to implement the 2002 settlement. The City's position focused primarily upon the content of the underlying grievance and the Union's election to utilize the grievance process for resolution. The City's approach also focused on changes which have been made in the parties' current CBA which resolves this issue (hopefully) once and for all.

The issue for the Board to decide is simply whether the City violated R.I.G.L. 28-7-13 (6) and (10) by failing to implement and honor a previously negotiated grievance settlement. In order to make that determination, the Board must look to the previously negotiated settlement agreement. This document was presented as Union Exhibit # 3. This document indicates that two Water and Highway Department employees, Louie Cabral and Joe Tavares, filed a grievance alleging: "These two employees were denied transfers to the vacancy at Pierce Stadium. Seniority should be given first choice. Vacancy was never posted for this job, but an employee with less seniority filled this position." The relief sought by the grievance was: "To post the job and seniority to be given first choice as stated in contract." This grievance was initially denied in the first two steps of the grievance process. At the second step, it states: "Grievance denied. Job offered to senior laborer in Parks and Recreation Dept." At the next step, the City Manager settled the grievance and wrote: "Job to be offered to Senior Laborer." There is simply no evidence in the record produced before this Board that the City failed to offer the 2002 job to the senior laborer, after the grievance was settled.

The true intent of the Union's position developed at the hearing and in its brief, is that the 2002 settlement acts as a global settlement of all future transfer disputes for laborers and that the same should be settled on the basis of

seniority. This position is not only a quantum leap from what, in the Board's opinion, is actually contained in the 2002 grievance resolution; it exceeds the scope of the charge and subsequent complaint issued by this Board. This position requires the Board to speculate upon the basis of the City Manager's decision in 2002 to settle the case. In addition, it requires the Board to assume that the parties intended that the resolution of an individual grievance was intended to serve as a class action settlement of future grievances of a similar nature. The Board has absolutely no authority to engage in such unwarranted re-writing of a grievance settlement and declines to do so.

Even if the Union's allegation and the Board's charge could be understood to charge the City with a repudiation of an oral agreement, which we specifically deny, the evidence before the Board did not establish such a charge. When the Union presented Exhibit #3 to the City officials, they simply did not agree with the Union's interpretation of the significance (or lack thereof) of this document. The City's position was presented to the Union via two documents: (1) A memorandum from Joseph Crook, Parks & Recreation Director and Raymond Benoit, Human Resources Director, to Luis Couto, Union President, dated October 23, 2006 (Union Exhibit # 5) and (2) A memorandum from Richard M. Brown, City Manager to Lou Couto, Union President, dated November 3, 2006 (Union Exhibit # 4). The City officials communicated that they believed that the 2002 settlement was applicable to that particular grievance only and that the prior settlement did not constitute precedence or past practice. The failure of the City to agree with the Union's interpretation of the meaning of the 2002 settlement is not evidence of bad faith constituting an unfair labor practice. The charge and subsequent Complaint of unfair labor practice is therefore dismissed.

FINDINGS OF FACT

1) The City of East Providence 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) In 2002, former City Manager Paul Lemont, resolved a grievance filed by Joseph Tavares and Louis Cabral, by stating: "Job to be offered to senior laborer." No memorandum of agreement was entered into by the City and Union relative to future resolution of seniority disputes between laborers.

4) On or about August 8, 2006, the Union filed a grievance in behalf of Joseph Tavares, a laborer within the City of East Providence's Parks and Recreation Department. The grievance was processed in accordance with the parties' contractual grievance procedure steps, with meetings being held on October 23, 2006 and November 3, 3006. (Union exhibits #5 and #4)

5) Subsequent to these steps, which proved unsatisfactory to the Union, it filed a Demand for Arbitration on December 22, 2006.

6) On January 12, 2007, the Union filed the within Unfair Labor Practice Charge with the Board. Only after learning that this Board had issued a complaint in the matter, the Union then withdrew its Demand for Arbitration.

CONCLUSION OF LAW

1) The Union has not proven, by a fair preponderance of the credible evidence, that the Employer 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.

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- CITY OF EAST PROVIDENCE	CASE NO: ULP- 5832

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. 5832 dated May 2, 2008, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **May 2, 2008**.

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

Dated: May 2, 2008

By: Robyn H. Golden

Robyn H. Golden, Administrator

RHODE ISLAND STATE LABOR RELATIONS BOARD

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ELIZABETH S. DOLAN, MEMBER

BOARD MEMBER, JOSEPH MULVEY, DID NOT PARTICIPATE IN THIS MATTER.

ENTERED AS AN ORDER OF THE
RHODE ISLAND STATE LABOR RELATIONS BOARD

Dated: MAY 2, 2008

By: _____
ROBYN H. GOLDEN, ADMINISTRATOR