

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-
THE TOWN OF PORTSMOUTH

CASE NO: ULP-6056

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 Portsmouth (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated and filed July 25, 2011 by National Association of Government Employees, Local 280 (hereinafter "Union").

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

"That during negotiations with the Town for a successor collective bargaining agreement, the Town of Portsmouth through its Town Administrator, Robert Driscoll, represented to the Union that in consideration of certain concessions by the Union regarding pension benefits, the Town would hire additional bargaining unit members. That the Union relied upon those representations and entered into a successor agreement that included pension concessions, which was ratified by the Town. Thereafter, the Town Council not only refused to hire additional employees, but failed to fill two vacancies in the bargaining unit. By its actions, the Town has not bargained in good faith."

Following the filing of the Charge, the Union submitted its written statement on August 12, 2011; and the Town filed its response on August 19, 2011. After the informal process had concluded the Board reviewed the matter and issued a Complaint on November 8, 2011. The Employer failed to file any answer and the matter was set down for formal hearing on November 22, 2011.

Representatives from the Union and the Employer were present at the hearing and had full opportunity to examine and cross-examine witnesses and to submit documentary evidence. No post-hearing Briefs were ordered or filed. In arriving at the

Decision and Order herein, the Board has reviewed and considered the testimony, evidence and the parties' oral arguments.

DISCUSSION

On February 28, 2012, a Motion was made by Frank Montanaro and seconded by John Capobianco to uphold the Complaint. Walter Lanni voted in favor of the Motion. Ellen Jordan, Elizabeth Dolan, and Gerald Goldstein opposed the Motion. Motion failed. Subsequently, a Motion was made by Ellen Jordan and seconded by Elizabeth Dolan to dismiss the Complaint. Gerald Goldstein voted in favor of the Motion. Frank Montanaro, John Capobianco, and Walter Lanni opposed the Motion. Motions failed based on procedural grounds.

In this case, the Board finds itself once again in the position of having a deadlocked Board for the purposes of voting, due to a vacancy on the Board.¹The vote of the Board is deadlocked on the substantive issue of whether the Employer has committed an unfair labor practice. Unfortunately, the Board has no mechanism to deal with 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 dismiss the charge on substantive grounds, the Board has no choice but to dismiss the within matter on procedural grounds. Thus, the Complaint is being dismissed solely due to the inability of Motions to sustain sufficient votes for passage.

FINDINGS OF FACT

- 1) The Town of Portsmouth 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.

¹ While this result was once rare, deadlocked votes have become fairly common since the vacancy of the seventh position, due to death of a Board Member, in January 2009. This position was never filled and remains vacant.

CONCLUSION OF LAW

- 1) Since neither a Motion to uphold the Complaint nor a Motion to dismiss the Complaint on substantive grounds has carried, the within matter must be dismissed solely on procedural grounds, without prejudice, for further proceedings when a seventh Board Member is appointed.

ORDER

- 1) The within matter is hereby dismissed, without prejudice, to the possibility of further proceedings upon the appointment of a seventh Board Member.

RHODE ISLAND STATE LABOR RELATIONS BOARD



WALTER J. LANNI, CHAIRMAN



FRANK MONTANARO, MEMBER



JOHN CAPOBIANCO, MEMBER



GERALD GOLDSTEIN, MEMBER



ELLEN L. JORDAN, MEMBER



ELIZABETH S. DOLAN, MEMBER

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

Dated: December 19, 2012

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

