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-6142
CITY OF PAWTUCKET	:	

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 City of Pawtucket (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated July 7, 2014, and filed July 8, 2014 by the Pawtucket Fraternal Order of Police, (FOP) Lodge 4 (hereinafter "Union").

The Charge alleged:

> "The CBA for the period of July 1, 2012 through June 30, 2013 expired on June 30, 2013. In an attempt to reach an agreement with respect to the CBA for the period of July 1, 2013 through June 30, 2014, the FOP and the City engaged in the collective bargaining process pursuant to the Municipal Police Arbitration Act (Title 28, Chapter 9.2) for the 2013-2014 CBA. The parties were unable to come to a final resolution with respect to that 2013-2014 CBA and as a result, the parties requested that the American Arbitration Association appoint the neutral arbitrator to serve as the chairperson of the Arbitration Board, pursuant to R.I.G.L. 28-9.2-7 and 8. Prior to the American Arbitration Association appointing the so-called neutral arbitrator, the parties agreed that Arbitrator Michael Ryan could serve in that position. The matter is scheduled to go to arbitration commencing on September 30, 2014. One proposal of the City in connection with the 2013-2014 CBA was to modify certain pension benefits set forth in Article XVIII of the current CBA. The proposal in question was not agreed upon by the parties and is one of the proposals that will have to be agreed upon at the upcoming arbitration proceedings. Notwithstanding the fact that no agreement was reached with respect to the City's proposal regarding pensions, as well as the fact that the matter will ultimately have to be decided by the arbitration panel that has been selected to hear this interest arbitration, the City unilaterally instituted a portion of the proposal by implementing a freeze with respect to the cost-of-living adjustments beginning on July 1, 2014 and supposedly ending on June 30, 2017.
>
> That unilateral decision of the City is in violation of R.I.G.L. 28-7-13, subsections (5), (6) and (10). Moreover, the City's action is in direct contravention of this Board's decision in Rhode Island State Labor Relations Board and Warwick School Committee, Case No. ULP-4647

(Decided November 10, 1992). In that case, this Board concluded that a public sector employer's implementation of bargaining proposals is per se an unfair labor practice. See Id. At 17 In that same ruling, the Board concluded that the parties were to abide by and comply with the terms of the expired CBA until a successor contract was entered into."

Following the filing of the Charge, the parties each submitted a written position statement as part of the Board's informal hearing process. On September 11, 2014, the Board issued a Complaint alleging: (1) That the Employer has violated R.I.G.L. 28-7-13 (6) (10) and (10) when, after the expiration of a Collective Bargaining Agreement and during bargaining for a successor agreement, it unilaterally implemented a contract proposal, without exhausting all statutory procedures.

The Employer filed its Answer on September 18, 2014 and the matter was set down for formal hearing, which was held on October 7, 2014. Representatives from the Union and the Employer were present at the hearings and had full opportunity to examine and cross-examine witnesses and to submit documentary evidence. Post-hearing briefs were filed by the Union on November 12, 2014 and by the Employer on November 21, 2014. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony, evidence, oral arguments and written briefs submitted by the parties.

SUMMARY OF FACTS AND TESTIMONY

The facts in this matter are essentially uncontested. The Union and Employer are long-time collective bargaining partners, pursuant to the authority set forth in Chapter 9.2 of Title 28 of the Rhode Island General Laws, the "Municipal Police Arbitration Act." The most recently bargained and executed CBA covered the period of July 1, 2012 - June 30, 2013, but was not signed until February 24, 2014. Article XVIII of the 2012-2013 CBA describes the pension benefits afforded to the Employer's Police Officers. Section 10 of Article XVIII details a "Retirement Escalator", which provided for a cost-of-living-allowance (COLA) each July 1st. (See Union Exhibit #1) On January 7, 2013, the Union requested the Employer to enter into collective bargaining negotiations for the 2013-2014 CBA. However, bargaining for the 2013-2014 contract did not begin until after the 2012-2013 contract was concluded in February 2014. On February 27, 2014, the parties executed a set of ground rules for the 2013-2014 CBA negotiations. (See Union Exhibit #2 and #3) As part of its proposals, the Employer

submitted a request to completely change Section 10 of Article XVIII, to incorporate terms that were set forth in an *unexecuted* Memorandum of Agreement between the Employer and the Police and Fire Unions, Pawtucket Lodge No. 4, FOP and IAFF Local 1261, respectively. (See Union Exhibit #4, City Proposal #15) On March 26, 2014, the Union invoked its statutory right under R.I.G.L. 28-9.2-7-8 to proceed to interest arbitration by submitting a written request to the American Arbitration Association ("AAA"). (Union Exhibit #5)

On April 16, 2014, the AAA assigned hearing dates for the parties' interest arbitration, beginning on September 30, 2014. (Union Exhibit #6) On April 25, 2014, the Employer sent out a letter to "Retired Former Members and Beneficiaries" of the Pawtucket Police and Fire Departments. In that letter, the Employer notified retirees that commencing July 1, 2014, the City intended to implement a three-year COLA freeze. (Union Exhibit #7)

The testimony at hearing established that in addition to current retirees of the Police and Fire Departments, the Employer intended the COLA freeze to apply to any current employee and member of the Union who chose to retire before July 1, 2014. In fact, two (2) officers retired in the spring/early summer of 2014 (before July 1, 2014) and did not receive a COLA. (TR pgs. 28-30 and pgs. 60-61)

POSITION OF THE PARTIES

In its Brief, the Employer advances three arguments: (1) That the unfair labor practice charge is based upon an alleged violation of the CBA, so the Labor Board does not have jurisdiction to hear the case. (2) The Employer's action in "temporarily" suspending the COLAs for retired Police Officers did not alter or amend the CBA. (3) The temporary suspension of the COLAs was necessary to comply with the Employer's pension Funding Improvement Plan (FIP) and to stabilize the fiscal condition of the pension plan as required by law.

The Union argues that the Employer's action in issuing the edict of change for the pension plan COLAs absolutely effectuated a unilateral change to the Collective Bargaining Agreement, which affects current employees. The Union argues that the Employer simply implemented that which it could not secure at the bargaining table and that such unilateral action is per se an unfair labor practice.

DISCUSSION

We begin our discussion by reviewing this Board's long-established position concerning the status of terms and conditions of employment for public sector employees, after the expiration of a prior Collective Bargaining Agreement. Twenty-two (22) years ago, this Board decided Case No ULP-4647, SLRB v Warwick School Committee. That case examined the issue of unilateral implementation of terms and conditions of employment imposed by a School Committee, during the negotiations of a successor CBA.[1] This Board held: "We conclude that unilateral departure from the terms of an expired contract, prior to the exhaustion of all available statutory dispute resolution procedures, violates the obligation under R.I.G.L. 28-7-13 to bargain collectively. (ULP-4647, Decision pg.10) In that case, this Board discussed the significant differences between private sector disputes and public sector disputes. We noted that the School Committee had urged the Board to adopt the federal model for dealing with *private sector disputes,* which would allow the Employer to unilaterally impose terms upon the reaching of an impasse in negotiations for a successor CBA, without regard to the distinct character of *public sector* bargaining. We declined to do so and instead joined with other jurisdictions - notably New York, Triborough Bridge & Tunnel Authority, 5 PERB 4505, Aff'd 5 PERB 3037 (1972); California, Moreno Valley Unified School District v PERB, 142 Cal. App. 3rd, 1991 Cal. Rptr. 60 (1983); and Oregon, Wasco County v AFSCME Local No 2752, 30 Oregon App. 863, 569 P.2d 15 (1977), opinion following remand, 46 Ore. App. 859, 613 P.2d 1067 (1980), that had rejected the same approach. (ULP 5647, Decision pg. 11)

In our discussion in ULP-4647, we noted that the private sector model of collective bargaining contemplated the use of economic warfare.

> "In the private sector, unlike the public sector, it is anticipated, in fact customary that a Union will exercise its right to strike for the purpose of obtaining leverage at the bargaining table. The threat of a strike, and the strike itself, are legitimate economic weapons. Section 13 of the National Labor Relations Act, 29 U.S.C. 163 provides, in relevant part, that the NLRA shall not 'be construed so as to interfere with or impede or diminish in any way, the right to strike.' Private sector theory embraces the position that the strike weapon 'supports the principles of the collective bargaining system' by balancing the power of labor and management. *NLRB v Erie Resistor Corp*, 373 U.S. 221, 235 (1963)." (ULP-5647, Decision pg. 12)

[1] Prior ULP-4647, which found the Warwick School Committee had committed an unfair labor practice by refusing to execute a negotiated agreement, was overturned by the Superior Court on the basis that the negotiators for the School Committee lacked actual authority to bind the Committee.

In ULP-4647, we went on to discuss the fact that Rhode Island, to the contrary, adopts a different model for public sector bargaining, within the context of collective bargaining for teachers. The same discussion that was applicable then to teachers continues to be applicable to the public employees at issue in this case, Police Officers. The public policies in the Municipal Police Arbitration Act are set forth at R.I.G.L. 28-9.2-2, which is printed in full, to provide a fuller backdrop to understanding the Board's ultimate decision in this case.

§ 28-9.1-2. Statement of Policy

(a) The protection of the public health, safety, and welfare demands that full-time Police Officers of any paid police department in any city or town not be accorded the right to strike or engage in any work stoppage or slowdown. This necessary prohibition does not require the denial to these municipal employees of other well recognized rights of labor such as the right to organize, to be represented by an organization of their choice, and the right to bargain collectively concerning wages, rates of pay, and other terms and conditions of employment.

(b) It is declared to be the public policy of this state to accord to full-time Police Officers of any paid police department in any city or town all of the rights of labor other than the right to strike or engage in any work stoppage or slowdown. To provide for the exercise of these rights, a method of arbitration of disputes is established.

(c) The establishment of this method of arbitration shall not in any way, be deemed to be a recognition by the state of compulsory arbitration as a superior method of settling labor disputes between employees who possess the right to strike and their employers, but rather is solely a recognition of the necessity to provide some alternative mode of settling disputes where employees must, as a matter of public policy, be denied the usual right to strike

In Rhode Island, our legislative leaders have determined that strikes by public employees, in this case, Police Officers, are quite simply unacceptable. That prohibition appears in the MPAA as set forth above, but derives in part from the findings set forth in the State Labor Relations Act that strikes, lockouts, and other forms of industrial strife and unrest are inimical to the public safety and welfare, and frequently endanger the public health. R.I.G.L. 28-7-2 (b)

We wrote in ULP-4647 that "among commentators," there is unanimity of opinion that the private sector model is not transferable to public sector. The articles mentioned were all authored well after the establishment of the MPAA. It appears then, that Rhode Island was clearly on the forefront of the labor relations models by recognizing very early on that for reasons of public policy and safety, Police Officers should be denied the right to strike. This Board continues to embrace and appreciate the wisdom of those who realized this factor early on and who did not attempt to include private

sector elements of "warfare" into the public sector collective bargaining model. The continuing prohibition of strikes, which makes sense, must be balanced for the employees who do not have the right to strike. The "legislative denial of the right to strike should not be allowed to reduce collective bargaining to collective begging." (ULP-4647, Decision pg.16) The Employer's counterbalancing prohibited activity is "self-help" in the form of unilaterally imposing terms and conditions of employment. As stated by the Court in Moreno Valley Unified School District v PERB, 142 Cal. App. 3rd, 1991 Cal. Rptr. 60 (1983): "Unilateral imposition of terms by an Employer signals an end to the mutual dispute resolution process regarding those terms. The Employer loses any incentive to participate in the dispute resolution process because it has imposed terms it deems satisfactory." Id. In deciding ULP-4647, we wrote:

> "We join those jurisdictions which hold that an employer's implementation of bargaining proposals is per se an unfair labor practice. In *Wasco County,* 569 P.2d 15, aff'd, 613 P.2d 1067, the Court of Appeals of Oregon approved a SLRB decision squarely on point. There, the employer implemented the Union's wage proposal prior to exhaustion of dispute resolution procedures. Citing the SLRB decision, the Court acknowledged the dichotomy between federal and state impasse resolution procedures, even though Oregon employees have a limited right to strike. It seems to us the case is even more compelling when public employees have no right to strike whatsoever. See also, *Gresham Grade Teachers v Gresham Grade School*, 630 P.2d 1304 (Ore. 1981).
>
> We observe that this rule will likely have a stabilizing impact on labor relations. Neither party will be subject to a term or condition of employment that it had not previously agreed to. We believe that this will contribute to the maintenance of good relations...between teaching personnel and school committees. G.L. 28-9.3-1. "

Also see Public Sector Impasse Resolution Procedures, Charles B. Craver, 60 Chi.-Kent L. Rev. 779 (1984). We have re-affirmed the position we took in *Warwick School Committee* in ULP 6088, *SLRB v Town of North Kingstown*, 2013 and ULP 6071, *SLRB v Town of North Kingstown, 2014*. The Rhode Island Supreme Court has also recently reaffirmed that the Labor Board is the appropriate body to ascertain what terms and conditions of employment are in effect after the expiration of a collective bargaining agreement. *Town of North Kingstown v International Association of Fire Fighters, ____ A.3d____, 2015. Citation omitted.*

In this case, the parties had entered into a one (1) year CBA for the fiscal year 2012-2013, but did not execute the same until February 2014, which was after the Union's request for bargaining for the 2013-2014 Contract. The Union had invoked the

required statutory resolution of binding interest arbitration, as required under the MPAA, when the Employer unilaterally implemented changes to the COLAs. This change was effectuated by the Employer without exhaustion of the statutory dispute resolutions mechanisms and is, therefore, a per se unfair labor practice.

In its defense, the Employer in this case claims that it has not made any changes that affect "employees", so that it has done nothing impermissible. The Employer admits that it indeed changed the COLAs by freezing the same, but that it is not a change to the CBA because the impact is not felt by employees, only "retirees", who are no longer employees and therefore, not represented by the Union. According to the Employer, "no active Police Officers and thus, no members of the bargaining unit represented by the Union, were affected by the COLA freeze because no active members are entitled to receive a COLA." (Brief pg. 3) The Employer argues, therefore, that it had the absolute right to change COLAs without notifying the Union or engaging in any collective bargaining. We find the Employer's argument in this issue to be specious and disingenuous for the reasons set forth below.

1) THE ISSUE OF PENSIONS IS A MANDATORY SUBJECT FOR BARGAINING AND UNILATERAL CHANGE IS IMPERMISSIBLE.

It is well-settled in this jurisdiction that the issue of pensions is a term or condition of employment and as such, is a mandatory subject for bargaining. *City of East Providence v. Local 850, International Association of Firefighters,* 117 R.I. 329, 335, 366 A.2d 1151, 1154 (1976). Additionally, the issue of a cost of living allowance (COLA) is also an issue that is bargainable and may be submitted to interest arbitration. *Local 472, International Brotherhood of Police Officers v. Town of East Greenwich,* 635 A.2d 269 (R.I.1993) "Interest arbitration panels have the authority to determine conditions of employment, including the provisions of an employee pension plan." *Fraternal Order of Police, Westerly Lodge No. 10 v. Town of Westerly,* 659 A.2d 1104, 1105 (R.I. 1995) (*Westerly Lodge No. 10*). Accordingly, the Firefighter Arbitration Act grants arbitration panels the power to render decisions amending current firefighters' pension plans. *Id. Arena v. City of Providence*, 919 A.2d 379 (R.I. 2007). The Firefighter Arbitration Act (FFAA) and the Municipal Police Arbitration Acts (MPAA) have virtually identical provisions in them.

In this case, the 2012-2013 CBA (effective July 1, 2012 - June 30, 2013) contained a detailed pension benefits provision in Article XVIII. (Union Exhibit #1) Section 8 of Article XVIII entitled "Employee's[2] Pension Contribution" states:

"For the benefits provided in this Article XVIII, each employee covered by this Agreement shall, commencing on July 1, 1998, have deducted from his weekly salary an amount equal to seven and one-half percent (7.5%) of his normal weekly salary which shall be applied by the City toward the pension benefits provided under Article XVIII. Commencing on January 1, 2012, the pension contribution shall be a 'pre-tax contribution' meaning the contribution shall be made before federal and state taxes are deducted."

Section 10 of Article XVIII entitled "Retirement Escalator" provides:

"Employees retiring after July 1, 1988, shall on July 1 each year, receive an increase in their retirement allowance in accordance with the following chart.

Date of Retirement	Date First Entitled to Increase	% of Retirement Escalator
Post 7/1/88	7/1/89	1%
Post 7/1/89	7/1/90	1.5%
Post 7/1/94	7/1/95	1.75%
Post 7/1/96	7/1/97	2%
Post 7/1/98	7/1/99	3%

The percentage increases listed above shall be compounded on July 1 each year and remain in effect for the life of the retired employee and/or his or her spouse. The cost to implement such annual increase shall be paid by the City."

Thus, there can simply be no argument that the parties had agreed that the employees would contribute a certain sum of their weekly compensation as a pension contribution in exchange for the future benefits of Article XVIII. Additionally, it is clear that the contributions to the pension system would take place while they were actively employed as Police Officers, in anticipation of deriving future pension benefits, including the retirement escalator or COLA, as described in Section 10.

The Employer unilaterally decided to prospectively change the terms of the future pension benefit described in Section 10 by freezing the escalator for a period of three (3) years, July 1, 2014 to June 30, 2017, for retirees with pensions of $30,000.00 or more. The Employer confirmed that it intended to freeze the otherwise expected COLA

[2] Underlining of the word "employee" added herein and used for emphasis in this section of the Board's decision.

not only for persons who were already retirees as of the time the letter was issued but also for current employees who either retired during the 2013-2014 contract year or who would do so after the issuance of the April 2012 letter. The record established that there were two (2) such employees who retired during the 2013-2014 contract year, Roy Clary and Robert Winsor.

Thus, employees/future retirees (Union members) who were having 7.5% of their pay deducted as a pension contribution for a full panoply of future pension benefits, had these future benefits reduced by Employer fiat and not through the auspices of collective bargaining. Indeed, neither the Union, nor any of the employees (future retirees) were even copied on the letter the Employer issued on April 25, 2014. This action is in violation of that necessary status quo ante that is required for peaceful labor relations, as set forth above.

2) THE COMPLAINT IN THIS MATTER IS NOT BASED UPON AN ALLEGED VIOLATION OF THE CONTRACT AND THE BOARD HAS JURISDICTION OVER THIS MATTER.

In its Brief at page 4, the Employer recites several alleged provisions of the CBA, three (3) of which are not in evidence - the Preamble, Article I, and Article XVI. The only provision of the CBA entered into evidence is Article XVIII as set forth in Union Exhibit #1.[3] Thus, the Board will not give any weight to any argument that cites contract provisions, which are not in evidence. Additionally, the Complaint in this matter makes it abundantly clear that the Employer is not being charged with a "contract violation"; rather, it is being charged with the unilateral implementation of a contract proposal, after the expiration of a CBA and during bargaining for a successor agreement, without exhausting all statutory requirements.

The Employer also argues that because the Union has submitted the matter of the successor 2013-2014 CBA to interest arbitration, then the Board does not have jurisdiction to decide the issue of an unfair labor practice alleging a unilateral change to the terms and conditions of employment. The Employer argues that the exclusive remedy for resolving disputes under the Municipal Police Arbitration Act is the submission of those issues to interest arbitration. What the City fails to grasp is that the Union is *not* asking this Board to adjudicate what the terms of Article XVIII will

[3] The Employer did not submit any documentary evidence in support of its position.

eventually be under the 2013-2014 CBA. The Union is rightfully concerned with the terms and conditions of employment during the time frame between the expiration of the 2012-2013 CBA and the implementation of the yet-to-be-determined 2013-2014 CBA, in light of the letter that was issued by the City during the existence of the 2012-2013 CBA. This is an issue that falls squarely within the Board's jurisdiction. *Warwick Sch. Comm. v. Warwick Teachers' Union, Local 915*, 613 A.2d 1273 (R.I. 1992)

The Employer also cites *Lime Rock Fire District v Rhode Island State Labor Relations Board,* 673 A.2d 51 (R.I. 1996) as support for its argument that the Board is without jurisdiction to hear this matter. The facts in this case, however, are nothing like those in *Lime Rock*. There, during contract negotiations for a successor CBA, the Union refused to return to the bargaining table and filed an Unfair Labor Practice Charge against the Employer for bad faith bargaining and did not submit the matter in dispute to interest arbitration. Here, the Union invoked interest arbitration and while that matter was pending the Employer unilaterally implemented a contract proposal that it was trying to achieve in negotiations and presumably would be trying to achieve in the future interest arbitration proceeding.

3) THE EMPLOYER'S CLAIMED DEFENSE THAT IT "HAD NO CHOICE" BUT TO TAKE THE ACTION IT DID, IS WITHOUT MERIT.

The Employer argues that it had no choice but to take the action it did due to a convergence of several factors including reductions in state aid, inability to secure concessions from labor organizations, "skyrocketing" liabilities to retirees with compounding COLAs and the requirements of "pension reform legislation" under R.I.G.L. 45-65-6. The Employer, in essence, asks to be excused for its unilateral actions because of economic crisis.

In this vein, the Employer makes several claims in its Brief concerning the status of the "health" of the City and its pension plans; none of which are in the record before the Board. The Employer offered no documentary evidence in support of any of its assertions. In addition, a plain reading of the requirements of R.I.G.L 45-65-6 shows that the state was requiring municipalities to conduct actuarial valuation studies for their pension plans and, if the study showed that a municipality's plan was in "critical" status, to provide notification of this status to participants, beneficiaries, the Governor, the

State's General Treasurer, the Director of Revenue and the Auditor General. In addition, the municipality was required to devise a "funding improvement plan" to the pension study commission. The statute does not direct municipalities to halt COLAs or to take or include any specific steps within its funding improvement plan. The Employer has cited no statute or case law to support its theory that a municipality that finds its finances stressed may simply take whatever unilateral actions it deems necessary; when the parties are in between CBA's and in the interest arbitration pipeline. Indeed, we would dare say that no such precedent exists, which is why it has not been presented by the Employer. As such, we find the Employer's argument wholly insufficient to justify its actions in this case.

FINDINGS OF FACT

1) The City of Pawtucket 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) The Union and Employer are long-time collective bargaining partners, pursuant to the authority set forth in Chapter 9.2 of Title 28 of the Rhode Island General Laws, the "Municipal Police Arbitration Act." The most recently bargained and executed CBA covered the period of July 1, 2012 - June 30, 2013, but was not signed until February 24, 2014.
4) Article XVIII of the 2012-2013 CBA describes the pension benefits afforded to the Employer's Police Officers. Section 10 of Article XVIII details a "Retirement Escalator" which provided for a cost-of-living-allowance (COLA) each July 1st. (See Union Exhibit #1)
5) On January 7, 2013, the Union requested the Employer to enter into collective bargaining negotiations for the 2013-2014 CBA. However, bargaining for the 2013-2014 contract did not begin until after the 2012-2013 contract was concluded in February 2014.

6) As part of its proposals, the Employer submitted a request to completely change Section 10 of Article XVIII, to incorporate terms that were set forth in an *unexecuted* Memorandum of Agreement between the City and the police and fire Unions, Pawtucket Lodge No. 4, FOP and IAFF Local 1261, respectively.

7) On March 26, 2014, the Union invoked its statutory right under R.I.G.L. 28-9.2-7 to proceed to interest arbitration by submitting a written request to the American Arbitration Association ("AAA"). (Union Exhibit #5)

8) On April 16, 2014, the AAA assigned hearing dates for the parties' interest arbitration, beginning on September 30, 2014. (Union Exhibit #6) On April 25, 2014, the Employer sent out a letter to "retired former members and beneficiaries" of the Pawtucket Police and Fire departments. In that letter, the Employer notified retirees that commencing July 1, 2014, the Employer intended to implement a three (3) year COLA freeze.

9) The testimony at hearing established that in addition to current retirees of the Police and Fire Departments, the Employer intended the COLA freeze to apply to any current employee and member of the Union who chose to retire before July 1, 2014. In fact, two (2) officers retired in the spring/early summer of 2014 (before July 1, 2014) and did not receive COLAs. (TR pgs. 28-30 and pgs. 60-61)

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 (6) and (10) by unilaterally implementing a contract proposal during negotiations.

ORDER

1) The Employer is hereby ordered to cease and desist from implementing the COLA freeze, as it pertains to current bargaining unit members who may retire prior to the execution of a new Collective Bargaining Agreement for the years subsequent to 2012-2013.

2) The Employer is hereby ordered to maintain all the terms and conditions of employment set forth in the 2012-2013 CBA, including all post-employment benefits described therein, until such time as a new CBA has been either negotiated or litigated to finality.

3) The Employer is ordered to cease applying the unilateral change to now-retired Police Officers, Roy Clary and Robert Winsor, both of whom were in employment status when the City enacted the unilateral change to the pension benefits afforded under Article XVIII of the CBA.

4) The Employer is ordered to make now-retired Police Officers, Roy Clary and Robert Winsor, whole by paying them a 3% COLA, effective July 1, 2014, together with interest at the rate of 12% per annum.

5) The Employer is hereby ordered to publish this Decision and Order on all common area bulletin boards within its municipal buildings and on its website for a period of no less than sixty (60) days, and to e-mail a copy of this decision to current employees of the Police Department who are members of the Union. The Employer shall also mail a copy of this decision to every member of the Union who retired since February 24, 2014.

RI State Labor Relations Board

Case # ULP-6142

City of Pawtucket and Pawtucket Fraternal Order of Police

Dissenting Opinion

The Pawtucket FOP has claimed an unfair labor practice because two of its members were party to a labor contact which provided for 3% annual COLAs upon retirement. These members retired during the duration of the contract and were not granted annual COLAs which had been suspended for three years for all police retirees.

The Labor Board by majority vote on December 16, 2014 affirmed the unfair labor practice.

We dissent from this opinion for the following reasons:

- None of the affected parties (the two for which the claim was made or any other retiree) are members of the bargaining unit. They ceased to be members of the bargaining unit when they retired. Any claim against the city on the suspension of COLAs should be made to Superior Court by the retiree group and not by an active employee collective bargaining unit to the State Labor Relations Board. Mr. Penza for the plaintiffs was questioned as to whether the retirees were going to contest the suspension. His response was "Not Yet" (page 40 of the transcript). My (our) response is "Why not". It was the retirees who were affected, not the active employees.
- Section 45-65-6 of the RI General Laws requires that each municipality with a locally administered pension plan in critical status shall submit a "…reasonable alternative funding improvement plan to emerge from critical status." The City of Pawtucket prepared, submitted, and executed such a plan in compliance with state law. Failure to submit a plan would have authorized the general treasurer of the state in accordance with Section 45-65-7 of the General Laws to "…to withhold moneys due to the municipality

from the state for any purpose other than education…" The City of Pawtucket complied with state law and now another arm of state government seeks to penalize the city for compliance. We argue that the Retirement Security Act Provisions referenced above supersede the Labor Relations provisions upon which the complaint was founded.

We also dissent with the remedy:

The majority of the Labor Board held that the remedy for the violation should be restoration of the COLAs for the two affected former employees. Pension trust funds are held in trust by the Pawtucket Pension Board, not the City. We argue that the Labor Board has no authority to impose a remedy on an independent fiduciary Board established by Sections 11-25 to 11-36 of the City of Pawtucket Code of Ordinances.

Respectfully Submitted,

Peder A. Schaefer

Date: 1/6/2016

Elizabeth S. Dolan

Date January 5 2015

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank J. Montanaro, Member

Elizabeth S. Dolan, Member (Dissent)

Marcia B. Reback, Member

Scott G. Duhamel, Member

Bruce A. Wolpert, Member

Board Members Elizabeth S. Dolan and Peder A. Schaefer submitted a Dissent in this matter (attached hereto)

Board Member Peder A. Schaefer was absent to sign as written.

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

Dated: MARCH 30, 2015

By: _____
Robyn H. Golden, Administrator

ULP- 6142

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-6142
CITY OF PAWTUCKET	:	

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 Case No. ULP-6142, dated March 30, 3015, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **March 30, 2015**.

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

Dated: March 30, 3015

By: _____
Robyn H. Golden, Administrator