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-6159
WEST WARWICK HOUSING AUTHORITY	:	

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 West Warwick Housing Authority (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated April 10, 2015, and filed April 14, 2015 by RI Council 94, AFSCME, AFL-CIO, Local 2045 (hereinafter "Union").

The Charge alleged:

> At 9:41 p.m. on April 9, 2015, Attorney Gregory Piccirilli, Attorney for the West Warwick Housing Authority emailed Ann Marie Petrozzi, Local 2045 Vice President and Alexis Lyman, Senior Staff Representative for Local 2045. The email stated that their presence was requested at an 8:30 a.m. meeting on April 10, 2015 to address a potential insubordination issue. At 7:26 a.m. on April 10, 2015, Ms. Petrozzi replied that she was unavailable due to the short notice. At 7:48 a.m. on April 10, 2015, Ms. Lyman responded that she was unavailable at 8:30 a.m. but would be available as of 10:30 a.m. Ms. Coates, the member to be questioned, asked if the meeting could lead to discipline. She was informed it could. She requested Ms. Lyman to be her representative and wanted to wait for her arrival. Attorney Piccirilli informed Ms. Coates that was unacceptable as she does not have the right to dictate the timing of the meeting. Attorney Piccirilli then directed another employee to be present for the meeting with Ms. Coates. Attorney Piccirilli denied Ms. Coates' exercise of her right to representation by unreasonably refusing to wait two (2) hours for Ms. Lyman to be present. In addition, Attorney Piccirilli is interfering with the administration of the Local when he directed another employee to be present for the meeting.

Following the filing of the Charge, the parties each submitted written position statements as part of the Board's informal hearing process. On May 21, 2015 the Board issued a Complaint alleging:

(1) That the Employer violated R.I.G.L. 28-7-13 (3) and (10) when it refused to permit an employee to have adequate Union representation at a meeting the employee reasonably believed could lead to discipline.

(2) That the Employer violated R.I.G.L. 28-7-13 (3) and (10) when it interfered with the Union's administration by dictating the presence of another employee and Union member that was not a Union representative, at a meeting which was reasonably believed to lead to discipline.

(3) That the Employer violated R.I.G.L. 28-7-13 (3) and (10) when it suspended Rose-Marie Coates after she told the Employer's representative that her rights to have her choice of representation were being violated by the Employer.

The Employer filed its Answer and a Motion to Dismiss on May 28, 2015. The Union objected to the Employer's motion to dismiss on June 5, 2015. A formal hearing was conducted on August 18, 2015. 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 September 25, 2015 and by the Employer on September 28, 2015. 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

Rose Marie Coates was employed as a Receptionist and Acting Housing Specialist by the Employer for approximately three (3) years. At 9:41 pm on April 9, 2015, Attorney Gregory Piccirilli, Attorney for the West Warwick Housing Authority, emailed Ann Marie Petrozzi, Local 2045 Vice President, and Alexis Lyman, Senior Staff Representative for Local 2045. The email stated that their presence was requested at an 8:30 a.m. meeting on April 10, 2015, to address a potential insubordination issue.[1] (Union Exhibit #2) At 7:26 a.m. on April 10, 2015, Ms. Petrozzi replied that she was unavailable because she had that day off and could not rearrange her schedule due to the short notice. At 7:40 a.m., Attorney Piccirilli replied to Ms. Petrozzi, copying Ms. Lyman and Mr. Shawn Riley (the Local President) and stated: "Unfortunately, this must go forward this morning. (Union Exhibit #3) There needs to be someone there from the Union representing the employee." At 7:48 a.m. on April 10, 2015, Ms. Lyman responded that she was unavailable at 8:30 a.m., but that she could be available by 10:30 a.m. At 8:27 a.m., Attorney Piccirrili emailed Attorney Lyman and copied Ms. Petrozzi and Mr. Riley and stated: "As I stated before this matter must be addressed this morning at 8:30." (Union Exhibit #4)

On her way into work on the morning of April 10, 2015, Ms. Coates was directed by her supervisor, Katie Fagan, to report to an alternate work location. Upon her arrival, Ms. Coates, who at this time was unaware of any issue, was advised by her Employer's attorney, Mr. Greg Piccirilli, that there was going to be a meeting at 8:30 a.m. Ms. Coates asked Attorney Piccirrili if the meeting was one that was going to lead to discipline and he indicated that it was.

[1] The email did not identify the employee by name.

(TR. pgs. 11-12) Thereupon, Ms. Coates asked to have her representative Alexis Lyman [2] in the room as her Union representative. Attorney Piccirilli denied that request and advised Ms. Coates that he had arranged for Shawn Riley, the Union President, to be present. Ultimately, Mr. Riley did not appear, and instead Mr. Piccirilli directed another employee, Andrew Nestor, to come into the meeting. Mr. Nestor, although a fellow Union member, was not a Union steward or officer and was not present in the meeting in a representative capacity. (TR. pg. 13) Ms. Coates testified that when she finally entered the meeting, she stated that she wanted Alexis Lyman as her Union representative and that she was being denied her rights. Ms. Coates testified that before she could finish her sentence, Attorney Piccirilli told her that she was suspended immediately and that she must turn in her keys and computer codes and to leave the premises. He further told Ms. Coates that he would be writing a letter as to what discipline she was receiving. (TR. pgs. 14-15)

Subsequent to the meeting, Ms. Coates advised Attorney Lyman of her suspension and Attorney Lyman sent an email to Attorney Piccirilli requesting the grounds for the suspension. Attorney Piccirilli responded via email shortly thereafter, and stated that Ms. Coates was advised that a letter would be sent by the following Monday to Ms. Coates and Union setting forth the reasons for and extent of the discipline. (Union exhibit #5) On Monday, April 13, 2015, Ms. Coates was served by a Constable at her home with the letter that indicated that she had been suspended for insubordination, which occurred on April 9th and that Ms. Fagan (Acting Director) was recommending the termination of Ms. Coates' employment. The letter further indicated that a hearing would take place at a special meeting of the West Warwick Housing Authority, to be held the following evening, April 14th, at 5:00 p.m. (Employer's Exhibit #2)

Shawn Riley, the Union President, testified that Attorney Piccirilli called him approximately between 8:30 a.m. and 8:45 a.m. on the morning of April 10, 2015 and asked him to attend a meeting at the Housing Authority office concerning Ms. Coates. Mr. Riley stated that he would come. Subsequent to that call, Mr. Riley spoke with Attorney Lyman. After speaking with Attorney Lyman, Mr. Riley called Mr. Piccirilli back and advised him that Attorney Lyman had indicated that Ms. Coates would prefer to have Attorney. Lyman present, as her designated Union representative. During this call, Mr. Riley told Mr. Piccirilli that he would not be coming to attend the meeting.[3]

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[2] Ms. Lyman is also a licensed attorney and will be referred to as such herein.

[3] The testimony established that the Union had previously determined that it would split representation matters between Attorney Lyman (to handle the Housing Authority employees) and Mr. Riley (handing the Town of West Warwick employees.) This division of labor within the Union was not communicated to the Town or Housing Authority.

The Employer presented testimony from Ms. Kathleen Fagan, the Acting Director for the West Warwick Housing Authority. [4] Ms. Fagan testified that there were Union members attempting to run the front office and tell the Administration what it could and could not do, based upon the Union contract. She further testified that there were many issues and errors in connection with rent calculations and utility calculations that were causing problems with HUD. (TR. pg. 62) She further testified that Union members were not cooperative with her attempts to address these problems. She described a "final" incident as "the straw that broke the camel's back" and as being the incident, which caused her to suspend Ms. Coates and recommend her termination. She states that on the afternoon of April 9th, a prospective tenant came into the Housing Authority office with the hopes of seeing an apartment to lease. Ms. Fagan testified:

> "I offered to go show the apartment. She said, 'no, you can't show the apartment, you are not Union.' And I said, 'If you go show the apartment, I'll answer the telephone.' 'No. you can't answer the telephone because that's a Union job.' So, she said, 'you see, this is the problem in the office; it is that no one is hiring more Union workers and office workers and management, we can't give in and let management start doing Union work.' So, at that moment, it just became a very bad situation. This was all in earshot of a tenant, a potential tenant who was turned away because we didn't have the adequate Union staff to be there. So, it was that day, actually it was that night I was driving home from Hartford, it was quite late when I finally got in touch with Greg about meeting Rose-Marie about being out of the office because it really, it was impeding the work, you know, that we were trying to do in the office. I found her very intimidating, I found her very threatening and we had other staff members who felt the same way." (TR. pgs. 63-64)

> She further stated that she had made the determination to suspend Ms. Coates on Thursday evening, prior to the meeting on Friday morning. Ms. Fagan stated that she did not want Ms. Coates in the office and that she was concerned about what Ms. Coates would be doing in the office that morning. Ms. Fagan stated that "she spent a lot of time emailing the Union all the happenings of the office and I just did not want her in the office." (TR. pgs. 65-66)

Ms. Fagan also testified that when she first began working for the Housing Authority, she found the records to be in a "disastrous" condition. She also testified that she attempted unsuccessfully to locate records to ascertain whether the Collective Bargaining Agreement ("CBA") between the Housing Authority and the Union had ever been submitted to HUD for approval. Notwithstanding her failure to find any documents, the Employer continued to administer pay and benefits according to the CBA. Ms. Fagan also testified that although she knew that there

[4] Ms. Fagan is actually employed by D & V Mainsail, a company hired by the West Warwick Housing Authority to bring the Housing Authority out of "troubled" status with the federal Housing and Urban Development ("HUD") agency.

was a question as to whether the CBA had been approved by HUD, she did not notify the Union of this issue. (TR. pgs. 78-79)

POSITION OF THE PARTIES

The Union argues that the meeting scheduled for the morning of Friday April 10, 2015 was investigatory in nature regarding a "serious issue of potential insubordination" and that the Employer denied Ms. Coates her right to choose her representative for an investigatory meeting, in violation of her "Weingarten" rights. Additionally, the Union argues that the Employer interfered with the Union's administration when the Employer called a specific Union representative in for Ms. Coates' representation; and then further substituted that individual for a Union member who was not a Union representative. The Union argues that the parties have a valid CBA and that it is bad faith for the Employer to assert otherwise, nearly three (3) years after the same was negotiated between the parties. Finally, the Union argues that the election-of-remedies doctrine does not preclude the current action.

The Employer has filed a Motion to Dismiss the Complaint and argues: (1) The meeting on the morning of April 10, 2015 was not an investigatory meeting and, therefore, Ms. Coates had no right to Union representation. (2) Even if Ms. Coates had a right to Union representation at the meeting, she did not have the right to choose Ms. Lyman who was not available at the time of the meeting. (3) Ms. Coates was not suspended for asking for her Union representative. Rather, she was suspended because Ms. Fagan didn't want her in the building anymore and wanted to fire her for her previous misconduct.

WEINGARTEN RIGHTS

We begin this discussion with a brief review of "Weingarten" rights; the rights of Union members to have a Union representative present at an investigatory interview which is reasonably believed by the employee to lead to discipline. NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975).[5] In order for Weingarten rights to be applicable and to attach, the following are conditions must be present: (1) There must be a meeting at which an interview is to be conducted. (2) The meeting is one which the employee reasonably believes could lead to discipline. (3) The employee must request Union representation. "The determination of whether an employee has a reasonable expectation that an investigatory interview might result in discipline is made in accordance with an objective standard and does not involve an inquiry into the employee's state of mind." NLRA Law & Practice, 5.07 (4) (b) (ii) citing Weingarten.

[5] The Rhode Island State Labor Relations Board first adopted the concept of Weingarten rights in its decision in ULP-3439, Warwick School Committee (Decided January 15, 1979).

Once an employee makes a valid request for a Union representative, the burden is on the Employer to (1) grant the request, (2) discontinue the interview, or (3) offer the employee the choice of a meeting without a representative or of no meeting at all. United States Postal Service, 241 NLRB 141 (1979) also see Consolidated Freightways Corp, 264 NLRB 541, 542 (1982), Washoe Medical Center, 348 NLRB 361 (2006). An employee is generally entitled, absent extenuating circumstances, to the Union representation of his or her choice. Anheuser Busch, Inc. v NLRB 338 F.3d 267, (4th Cir. 2003).[6] Employees entitled to a Weingarten representative is also entitled to an opportunity to consult with that representative prior to the interview. Pacific Tel & Tel. Co., 262 NLRB 1048 (1982), *enforced* 711 F.2d 134, (9th Cir. 1983) Additionally, the Employer must give the employee or representative a general statement concerning the subject matter of the proposed meeting before the employee consults with his or her representative. The nature of the misconduct must be identified. Id at 1049.

At the other end of the spectrum, if the purpose of the meeting is not investigatory, but is called merely to communicate a disciplinary decision that already has been made, then no such representative need be provided, even if requested. Baton Rouge Water Works, 246 NLRB 995 (1995). See also, Success Village Apartments, 347 NLRB 1065, 1071 (2006). An employee's request for Union representation may not be the basis for discipline. El Dupont de Nemours, 289 NLRB 627, 630, (1998).

DISCUSSION

In the present case, the Employer raises a defense to the charges that the meeting in question was not an investigatory meeting, but rather was called only for the purposes of advising Ms. Coates about a final decision to issue discipline. The Employer, therefore, argues that the meeting was not investigatory and no Weingarten rights attached.

Therefore, the first issue we address is whether or not the meeting scheduled for the morning of April 10, 2015 was originally designed to be investigatory in nature and whether the employee in question reasonably believed could lead to discipline. We believe that the answer both of these inquiries is affirmative. The original email sent by Mr. Piccirilli has the words "employee discipline" in the subject line. In addition, in the substance of the email, Mr. Piccirilli states: "there was a serious issue of potential insubordination, which occurred today at the housing authority. Kate and I request that someone from the Union be present at 8:30 tomorrow

[6] The Anheuser Busch decision is a departure from the earlier, more hard and fast rule that when a requested representative is not available for reasons for which the Employer is not responsible, the Employer is not obligated to postpone the interview and is not obliged to identify or secure alternate representation. Pacific Gas Co. 253 NLRB 1143 (1981) Anheuser Busch also seems to veer from the earlier decision Coca Cola Bottling Co., 227 NLRB 1276 (1977) that an Employer is not required to wait for a particular representative, if there are other available representatives.

morning at Kate's office to meet with us and the employee in question to address the situation." (Union exhibit #5) In addition, a second email states that "there needs to be someone there from the Union representing the employee." (Union Exhibit #3)

In our opinion, the construction of this email leads us to the conclusion that the meeting was indeed originally scheduled to meet with and interview Ms. Coates about her actions of "potential insubordination" and that is why the Employer understood that Union representation would be necessary when meeting with the employee. Why state that there was an issue of "potential insubordination" if in fact the Employer had come to believe that there was in fact insubordination and that in fact the Employer had already made a determination to suspend? Under those circumstances, why would the Employer call a Union representative to see if he could attend the meeting and when that failed, order a different Union member (not a representative) to attend the meeting? Why insist quite emphatically that the Union needs to have someone there representing the employee? If the decision to issue discipline in the form of a suspension had already been made, then why wouldn't the Employer simply send that notification to the Union and state that there would be a meeting to issue the decided upon discipline?

In addition, on the morning of the 10th, Ms. Coates herself inquired of Mr. Piccirilli if the meeting could lead to discipline and he said yes. If the decision to discipline had already been made by the Employer, we would think that Mr. Piccirilli would have taken that opportunity to tell Ms. Coates that the meeting was being held to inform her that discipline was issuing and to what degree. Instead, the Employer, after refusing to wait for Attorney Lyman, enlisted a random employee, who happened to be a member of the Union, into the meeting. If this was not to be an investigatory meeting to which Weingarten rights attached, then why did the Employer go to the effort of hauling in the nearest Union member, after learning that two (2) officials (Petrozzi and Lyman) were not available and the third (Riley) was not coming? We, therefore, believe and find that the evidence supports the Union's position that the meeting on the morning of April 10th was indeed called as an investigatory meeting.

The Employer also argues that since the Employer never actually asked any questions of Ms. Coates, then this could not have been an investigatory interview. We do not agree with this contention. When asked, Mr. Piccirilli specifically told Ms. Coates that the meeting could lead to discipline. She then stated that she wanted Union representation. It was at that point in time that the Employer should have exercised one of its options: (1) Grant the request, (2) Deny the request and stop the meeting, or (3) Offer the employee the choice of a meeting without a representative or no meeting at all. Additionally, Ms. Coates should have been advised of the nature of the charge

against her so she could possibly converse with a Union representative before entering the meeting.

Under these circumstances, it is clear that the meeting was called, assembled and after Ms. Coates invoked her right to representation the first time, the meeting began. The fact that the meeting was abruptly terminated before Attorney Piccirilli asked any questions, because Ms. Coates persisted in her efforts to have Union representation, is of no moment. By continuing the meeting, one which the Employer had already advised could lead to discipline, in the absence of requested Union representation, and in the absence of providing a choice to the employee, is a violation of R.I.G.L. 28-7-12 (3) and (10).[7]

The second charge against the Employer is that it violated R.I.G.L. 28-7-13 (3) and (10) when it interfered with the Union's administration by dictating the presence of another employee and Union member that was not a Union representative, at a meeting which was reasonably believed to lead to discipline. We have already established that it was the Employer who told Ms. Coates that the meeting could lead to discipline, so her belief that it would lead to discipline is well-grounded. The Employer has readily admitted and acknowledged that it determined who the Union "representation" was going to be that morning. The Employer selected a random employee to essentially act as a witness to what was being said; and told Ms. Coates that this was her representation. We cannot imagine a clearer cut act of interference with the administration of the Union than for an Employer to "appoint" a random employee as a Union representative. As such, we find that the Employer did indeed violate 28-7-13 (3) and (10).

TIMING OF THE SUSPENSION & MANNER OF DELIVERY

The final charge that we address is whether the Employer violated R.I.G.L. 28-7-13 (3) and (10) when it summarily suspended Rose-Marie Coates after she told the Employer's representative that her rights to have her choice of representation were being violated by the Employer. The Employer claims that the final decision to issue a suspension was made prior to the meeting on the morning of April 10 and that Ms. Coates was, therefore, not entitled to any Union representation at that meeting. This claim, made after the events that took place, ignores the objective facts in place at the time.

The Employer sent the night time email on April 9th to the Union, looking for representation at a meeting for 8:30 a.m. the next morning. When the Employer received word from Ms. Petrozzi that she was not available, the Employer then added another known Union official to the email

[7] Because Ms. Coates was forced into a meeting in which she was advised by her Employer could reasonably lead to discipline, without Union representation, in violation of her rights, we resist the occasion to opine on whether the requested two (2) hour delay for Ms. Coates preferred Union representative would be permissible under a post Anheuser Busch analysis. However, it provides the parties and the Board with food for thought for future cases.

correspondence and placed a call to him. Ms. Coates asked if the meeting could be delayed until 10:30 to allow Attorney Lyman to represent her. Ms. Coates was told that she was not going to dictate the way the meeting was going to run and that *they were going to proceed with the meeting.* (TR. pg. 13) Additionally, the Employer then pulled Mr. Nestor, a Union member, but not a Union representative, into the meeting. After being told that the meeting would not be delayed, Ms. Coates went back to her own office to call Attorney Lyman. A few minutes later, she was told to return to the meeting immediately. She did so. When she arrived, she asked Attorney Piccirilli, again, whether the meeting would lead to discipline and he answered in the affirmative. She then stated that she wanted Attorney Lyman as her representative and Attorney Piccirilli stated that Attorney Lyman was not coming. Ms. Coates began to reply to him indicating that he was violating her rights. She testified that she was cut-off before she could finish her sentence and was told that she was suspended and that she had to turn in her keys and computer codes and to leave the premises. Again, we cannot help but note that if the *final* decision to suspend had been made the night before, then why all the insistence by the Employer on Union representation at the morning meeting? No representation would be required at a meeting where the sole purpose is to simply advise the employee that discipline has been decided upon. As stated previously, if a final decision to issue discipline had already been made, why wouldn't the Employer simply state in the email that Ms. Coates was going to be suspended that morning?

The Employer argues that because the actual suspension letter makes no reference to the meeting on the morning of April 10th that there is no evidence to support a finding that the decision to suspend was in response to Ms. Coates' insistence on Union representation. We do not agree with such a contention. We would not expect any such suspension letter, issued after the hasty verbal suspension, to provide a "smoking gun" within the letter. Conversely, we find no support for the Union's contention that the delay over the weekend in issuing the official suspension letter supports a finding that the grounds contained therein were not the original basis for calling the meeting to begin with. We agree that the Employer would need time to craft and issue an official letter of suspension, but do wonder why the letter had not been written the evening before, if the decision to issue the suspension was final and binding before the meeting.

Ms. Fagan's testimony made it clear that she was exasperated with Ms. Coates' zealous Union stances concerning bargaining unit work and Ms. Coates insistence on Union representation at the meeting on the 10th. Ms. Fagan's demeanor on the witness stand demonstrated an attitude that conveyed her justification over her exasperation with all the Union talk. Other than some testimony concerning the records being in disarray when she arrived in the

position[8], Ms. Fagan's testimony centered on her dissatisfaction at Ms. Coates' proclamations concerning Union rights.

Ms. Fagan testified that she felt "intimidated" by Ms. Coates, but in so testifying, only referenced Ms. Coates' zealousness over her instance concerning the scope of bargaining unit work and the extent of her emailing to the Union. We do not believe the after-the-fact testimony at the hearing wherein she agreed to a leading question that asked her if she had made a final decision on the evening of April 9th to suspend and to recommend termination. Based upon Ms. Fagan's demeanor and her evident low opinion on the zealousness of Ms. Coates' Union activity, we do believe that there is a fair likelihood that Ms. Coates would have eventually been suspended had the meeting proceeded that morning with a Union representative.

We further believe that Ms. Fagan was relying upon the Employer's attorney to advise her accordingly on the problem and that it was Attorney Piccirilli who actually made the abrupt decision to suspend Ms. Coates in the middle of her sentence concerning her perceived Union rights. In our opinion, such an abrupt termination of the meeting and the declaration of her suspension in that manner supports an inference that the Employer had had just about enough of Ms. Coates' insistence on her Union rights and simply decided on the spot to issue the suspension, in violation of R.I.G.L. 28-7-12(3) and (10).

THE "NON-UNION" DEFENSE

In its case, the Employer alleged that there was no Collective Bargaining Agreement in place or that the Union legally represented Ms. Coates. In support of this argument, the Employer relies upon the original bargaining unit certification of 1973 (Employer's Exhibit #1) and a pre-amble clause in the Collective Bargaining Agreement which states: "This agreement between the West Warwick Housing Authority and the Rhode Island Council 94, AFSCME, AFL-CIO is conditional upon the approval of the U.S. Department of Housing and Urban Development. Should this contract not be approved by H.U.D., both parties will seek, in good faith, to have a determination in the appropriate forum." (Union Exhibit #1)

The Employer argues that Ms. Coates position was never properly accreted to the bargaining unit and that her position is "arguably managerial" and not appropriate for inclusion within the bargaining unit and that "had the Union sought to accrete the position, a hearing would have been conducted to determine whether the position was managerial and therefore excludable from the bargaining unit."

[8] The problems were not identified as being caused by Ms. Coates. Indeed, there was testimony concerning the departure of other employees since Ms. Fagan's arrival which implied that they were responsible for the problems.

The original certification for the bargaining unit issued on March 14, 1973 and included the titles of Maintenance and Maintenance Foremen, excluding all others. There is no evidence in the record as to when other positions were added to the bargaining unit. We will note that until this Board adopted Rules and Regulations concerning the contested accretion of employees to bargaining units, it was common practice in Rhode Island for the parties to simply agree on adding titles to bargaining units and then to Collective Bargaining Agreements. In the present case, the Collective Bargaining Agreement in evidence demonstrates that at least as of July 27, 2012, the following titles were agreed upon as being included within the bargaining unit: Sr. Housing Specialist, Housing Specialist and Receptionist. Additionally, the parties agreed on July 27, 2012 to amend the "recognition" clause of the agreement to state: "the Bargaining Unit shall consist of all employees excluding the Executive Director and the Assistant Executive Director and Resident Service Coordinator and part-time employees who work less than twenty (20) hours per week are excluded from the bargaining unit." We note that the bargaining agreement in evidence covered the period through December 31, 2014 and that the parties are in mediation for a successor agreement. In the absence of any evidence to the contrary, it is clear that the parties themselves agreed that the positions of receptionist and housing specialist are included within the bargaining unit. The Employer stipulated that it has been adhering to the terms of the contract and paid the salaries set forth therein. We believe, therefore, that there is adequate competent evidence in the record to support the Union's position that Ms. Coates was indeed a member of the bargaining unit. To the extent that the Employer now believes that the positions of Receptionist or Housing Specialist are "arguably managerial", it is up to the Employer to file an appropriate petition with the Board to remove the position(s) from the bargaining unit.

ELECTION-OF-REMEDIES

Finally, the Employer claims in its Motion to Dismiss that the Union has filed for arbitration and that therefore the Board is barred from hearing the matter under the Election-of-Remedies Doctrine. Attached to the motion is a copy of a Demand for Arbitration, which seeks as its remedy" "rescind termination and to be made whole." The charge of unfair labor practice seeks "order the West Warwick Housing Authority to revoke the suspension that Ms. Coates received at the meeting, cease and desist on violating members rights, cease and desist in domineering and interfering on the administration of the Local and further relief as the Board deems just." The arbitration demand does not seek a reversal of the suspension or any of the other relief requested under the charge of unfair labor practice. Therefore, we find that the Election-of-Remedies Doctrine does not preclude the Board from hearing and deciding this matter.

REMEDY

As mentioned above, as relief for the violations herein, the Union seeks an order for the West Warwick Housing Authority to revoke the suspension that Ms. Coates received at the meeting, cease and desist on violating members rights, cease and desist in domineering and interfering on the administration of the Local and further relief as the Board deems just." The NLRB has held that when the reason for a suspension and subsequent discharge are inextricably linked to an employee's exercise of Weingarten rights, a "make-whole" remedy is appropriate. Ralph's Grocery, 361 NLRB 9, (2014)

In this case, not only has the Union *not* requested a make-whole remedy (because it has requested the sa.m.e in arbitration) we find that the verbal suspension issued on Friday April 10th was likely to be inevitable, had the meeting continued. Although we do find that the suspension on the morning of the 10th was inextricably linked to Ms. Coates' exercise of Weingarten rights, we do *not* believe that to be the case for the subsequent written letter of suspension. Furthermore, since the Housing Authority Board and not Ms. Fagan, made the determination to terminate Ms. Coates' employment, we cannot find that action was inextricably linked to Ms. Coates' assertion of her rights. As such, this is not an appropriate case for a make-whole remedy.

We do not opine on whether Ms. Coates' conduct on the afternoon of April 9th was insubordinate for it is not within our realm to do so. We do believe though that Ms. Fagan found Ms. Coates' conduct to be insubordinate and that is why she reached out to legal counsel and asked for the meeting on the morning of the 10th. As stated previously, we believe that had the meeting continued on the morning of the 10th, it is more likely than not that the suspension would have been eventually issued as a result of Ms. Fagan's perception of Ms. Coates' conduct on the 9th. Therefore, we are going to reverse the suspension only for the period of time between the morning of April 10th and the 13th when Ms. Coates received the written letter outlining the Employer's reasoning pertaining to the events of April 9th. As a practical matter, we understand that there may be little impact to either party as a result of this order in that Ms. Coates apparently did not lose any pay until the 14th. We also issue other relief as set forth in the Order herein.

FINDINGS OF FACT

1) The West Warwick Housing Authority 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) Rose Marie Coates was employed as a Receptionist and Acting Housing Specialist by the Employer for approximately three years.

4) At 9:41 pm on April 9, 2015, Attorney Gregory Piccirilli, Attorney for the West Warwick Housing Authority emailed Ann Marie Petrozzi, Local 2045 Vice President, and Alexis Lyman, Senior Staff Representative for Local 2045. The email stated that their presence was requested at an 8:30 A.M. meeting on April 10, 2015, to address a potential insubordination issue.

5) At 7:26 a.m. on April 10, 2015, Ms. Petrozzi replied that she was unavailable because she had that day off and could not rearrange her schedule due to the short notice.

6) At 7:40 a.m., Attorney Piccirilli replied to Ms. Petrozzi, copying Ms. Lyman and Mr. Shawn Riley (the Local President) and stated: "Unfortunately, this must go forward this morning. (Union Exhibit #3) There needs to be someone there from the Union representing the employee."

7) At 7:48 a.m. on April 10, 2015, Ms. Lyman responded that she was unavailable at 8:30 A.M. but that she could be available by 10:30 a.m.

8) At 8:27 a.m., Attorney Piccirrili emailed Attorney Lyman and copied Ms. Petrozzi and Mr. Riley and stated: "As I stated before this matter must be addressed this morning at 8:30." (Union Exhibit #4)

9) On her way into work on the morning of April 10, 2015, Ms. Coates was directed by her supervisor, Katie Fagan, to report to an alternate work location. Upon her arrival, Ms. Coates, who at this time was unaware of any issue, was advised by her Employer's attorney, Mr. Greg Piccirilli, that there was going to be a meeting at 8:30 a.m.

10) Ms. Coates asked Attorney Piccirrili if the meeting was one that was going to lead to discipline and he indicated that it was. Ms. Coates requested to have her representative Alexis Lyman in the room as her Union representative. Attorney Piccirilli denied that request and advised Ms. Coates that he had arranged for Shawn Riley, the Union President, to be present.

11) Ultimately, Mr. Riley did not appear and instead, Mr. Piccirilli directed another employee, Andrew Nestor, to come into the meeting. Mr. Nestor, although a fellow Union member, was not a Union steward or officer and was not present in the meeting in a representative capacity.

12) Ms. Coates testified that when she finally entered the meeting, she stated that she wanted Alexis Lyman as her Union representative and that she was being denied her rights. Before Ms. Coates could finish her sentence, Attorney Piccirilli told her that she was suspended immediately and that she must turn in her keys and computer codes and to leave the premises. He further told Ms. Coates that he would be writing a letter as to what discipline she was receiving.

13) On Monday, April 13, 2015, Ms. Coates was served by a Constable at her home with the letter that indicated that she had been suspended for insubordination, which occurred on April 9th

and that Ms. Fagan (Acting Director) was recommending the termination of Ms. Coates' employment. The letter further indicated that a hearing would take place at a special meeting of the West Warwick Housing Authority, to be held the following evening, April 14th, at 7:00 pm.

14) Ms. Fagan testified that there were Union members attempting to run the front office and tell the administration what it could and could not do, based upon the Union contract. She described an incident that occurred on April 9th where Ms. Coates had insisted that answering the telephone and showing apartments were essentially exclusively bargaining unit.

15) Ms. Fagan's demeanor on the witness stand supports an inference that she wanted Ms. Coates disciplined, in part, for her Union advocacy.

CONCLUSIONS OF LAW

1) The April 10, 2015 meeting was called as an investigatory meeting which could lead to employee discipline and was one where Weingarten rights attached.

2) The Union has proven by a fair preponderance of the credible evidence that an employee properly exercised her rights under Weingarten by requesting Union representation at a meeting the employee reasonably believed could lead to discipline.

3) 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 (3) and (10) when it refused to allow an employee to have adequate Union representation at a meeting the employee reasonably believed could lead to discipline.

(4) The Union has proven by a fair preponderance of the credible evidence that the Employer violated R.I.G.L. 28-7-13 (3) and (10) when it interfered with the Union's administration by dictating the presence of another employee and Union member that was not a Union representative, at a meeting which was reasonably believed to lead to discipline.

(5) The Union has proven by a fair preponderance of the credible evidence that the Employer violated R.I.G.L. 28-7-13 (3) and (10) when it suspended Rose-Marie Coates immediately upon her advising the Employer's representative that her rights to have her choice of representation were being violated by the Employer.

ORDER

1) The Employer's Motion to Dismiss is denied.

2) The Employer is ordered to hereby cease and desist from interfering with the administration of the Union by directing what Union member will provide lawful Union representation.

3) The Employer is hereby ordered to note in Ms. Coates' personnel file that the suspension issued on Friday April 10th was reversed by this Board until such time as Ms. Coates received the written letter of suspension on April 13, 2015.

4) The Employer is hereby ordered to post a copy of this decision within its office workspace for a period of no less than sixty (60) days.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank J. Montanaro, Member

Marcia B. Reback, Member

Scott G. Duhamel, Member

Aronda R. Kirby, Member (Dissent)

Harry F. Winthrop, Member (Dissent)

BOARD MEMBER, ALBERTO APONTE CARDONA, WAS ABSENT FOR THE SIGNING OF THE DECISION AND ORDER.

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

Dated: December 2, 2015

By: _____
Robyn H. Golden, Administrator

ULP- 6159

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-6159
WEST WARWICK HOUSING AUTHORITY	:	

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-6159, dated December 2, 2015, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **December 2, 2015**.

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

Dated: December 2, 2015

By: _____
Robyn H. Golden, Administrator