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 - 6178
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 February 3, 2016, and filed February 5, 2016 by RI Council 94, AFSCME, AFL-CIO (hereinafter "Union").

The Charge alleged:

> "The Housing Authority is dominating, interfering, and discouraging membership by unilaterally stopping the dues deduction from employee payroll checks and informing members that there is no Union."

Following the filing of the Charge, the parties each submitted written position statements on February 19, 2016, as part of the Board's informal hearing process. On March 30, 2016, the Board issued its Complaint, alleging: "The Employer violated R.I.G.L. § 28-7-13 (3) (5) and (10) when it unilaterally stopped withholding Union dues from employee payrolls; and by informing employees that the Union was defunct as of February 15, 2016.

The Employer filed its Answer denying the charges on April 1, 2016. A formal hearing was conducted on May 12, 2016. 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 parties on June 8, 2016. 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 parties to this dispute have been collective bargaining partners since 1973. The most recent executed Collective Bargaining Agreement was for the period January 1, 2012 through December 31, 2014. (Union Exhibit # 2) The Union presented witness testimony from Alexis Lyman, its Senior Staff Representative. She testified that in January 2014, she requested negotiations for a successor Collective Bargaining Agreement. Bargaining began in April, 2014 and continued monthly through approximately the end of 2014 (TR. pg. 7) Towards the latter part of 2014, the Housing Authority was called before the West Warwick Town Council for questioning where it was revealed that HUD (Housing & Urban Development, a Federal Agency) was requiring a reorganization of the Housing Authority. Id.

In December, 2014, there was a change in legal counsel for the Authority. On May 26, 2015, the Housing Authority's attorney sent Ms. Lyman a letter stating:

> "At its meeting on May 21, 2015, the Commissioners of the West Warwick Housing Authority voted to cease recognizing the grievance arbitration provisions of the Collective Bargaining Agreement with Local 2045. As such, the Authority will no longer be hearing, and no longer participate in any arbitration pursuant to that contract." (Union Exhibit # 3)

On August 11, 2015, the Union filed for mediation with the Rhode Island Department of Labor & Training ("DLT"). The DLT appointed John J. Harrington, Esq. as Mediator/Arbitrator. (Union Exhibit # 5) Ms. Lyman and Mr. Harrington exchanged phone calls in September 2015, but did not connect. Ms. Lyman was on leave from her position from October 2015 through January 2016. When she returned to work, she again contacted Mr. Harrington. (TR. pg. 13) The mediation was put on hold due to other proceedings. Id.

On cross-examination, Ms. Lyman indicated that it was the Union's position that the Employer should be deducting dues from the paychecks of all the positions identified in the Collective Bargaining Agreement, including: Maintenance Foreman, Maintenance Mechanic Aid, Sr. Housing Specialist, Housing Specialist, and Receptionist. (Also see Amended Recognition Clause, Paragraph 1.2 of the CBA, in Union Exhibit # 2) At the time of the hearing, Ms. Lyman did not know which of these positions were in existence, but stated that the work was bargaining-unit work. She testified that the Union requested information from the Employer as to who was employed, but that the Union did not receive

an answer. She further testified that after the dues were stopped, she did contact one (1) employee, Andrew Nestor, to confirm that the dues were stopped unilaterally. (TR. pg. 18) Ms. Lyman did not ask Mr. Nestor to pay the dues directly to the Union. (TR. pg. 19) Ms. Lyman also stated that the Union had not been in contact with any other employees because the Union did not know who was working there or in what capacity.

On cross-examination, Ms. Lyman indicated that the Union had a written authorization on file for dues deduction for Mr. Nestor, but was not sure of the date. (TR. pg. 21) When asked if the Union had other authorizations on file, she stated that it does not, because the Union did not have contact information for anyone else currently employed by the Housing Authority. (TR. p 22) On re-direct examination, Ms. Lyman stated that Article 2 of the CBA addresses the issue of dues remittance and provides:

> "The Employer agrees to the continuance of a Union Check-off system, whereby Union dues and or/Union service charges will be withheld from the employees' pay at source. Such withholdings are to be transmitted by check at intervals of no greater length than thirty-one (31) days, made to the order of "Rhode Island Council 94" and accompanied by a list of employees paid."

On re-cross, Ms. Lyman testified that at the time the CBA was executed in 2012, she did not know who the unionized employees were, because she was not employed by Council 94 at that time. At time of the hearing, Ms. Lyman knew the identity of only one employee, Andrew Nestor. (TR. pg. 24) Ms. Lyman acknowledged that employees are not required to become Union members, but that they may pay the Union an Agency Fee instead. (TR. pg. 25) She indicated that because the Union has not been provided with information on any new employees, the Union has not been able to contact them. (TR. pg. 25-26)

The Union also presented testimony from Oanh Bui-Torres, the Union's Controller. Ms. Torres testified that she sent out the annual dues letter (Union Exhibit #6) to the Housing Authority in January, 2016. She testified that she received no dues remittance in 2016, but did not call the Employer, because she knew that Ms. Lyman was handling the matter. On cross-examination, Ms. Torres stated that remittance was received by the Union through 2015 for two (2) employees and that the December statement of remittance identifies those employees as Andrew Nestor and Patricia Raposa. (TR. pg. 33) Ms. Torres also testified that she sends out annual letters to employees who do not desire to be members of the Union but who are required to pay an Agency Fee.

The Employer presented testimony from Marc Starling, the Executive Director for the Housing Authority since August, 2015. Mr. Starling acknowledged that the Housing Authority stopped deducting dues from employees at the beginning of 2016. He acknowledged that at the time he stopped the dues deductions, there were two (2) employees who were having dues taken out, Andrew Nestor and Patricia Raposa. (TR. pg. 38) Mr. Nestor was employed within the Maintenance Department and Ms. Raposa had recently been promoted from Housing Specialist to Public Housing Manager. (TR. pg. 39) Mr. Starling stated that there was a question as to whether or not Ms. Raposa should be in or was in the Union after her promotion. Indeed, he stated that there was some question as to whether she was supposed to be in the Union even before her promotion. (TR. pg. 39) He stated that he advised Ms. Raposa that the new position was non-Union and paid more. He also stated that he told Ms. Raposa that they were "going to start working things out to try and not do the Union dues for her." As for Mr. Nestor, Mr. Starling testified that he had a conversation "to let him know that as of the new calendar year, we'd no longer be deducting Union dues, if he wanted to send his dues directly, that would be directly on him based on there not being a contract."

On cross examination, Mr. Starling repeated his assertion that "it was not clear" if Ms. Raposa's new title was actually covered (by the CBA). He further stated:

> "But as far as assuming who was in the Union and who was not in the Union, well, like with anything, there was a lot of stuff going back and forth and I didn't make no assumptions. It was based at the time Paychecks was doing our payroll, so this was stuff that preceded me and that's why I was talking to the two individuals that had their Union dues taken out, and they came to me at one point in time when I came here in regards to it." (TR. pg. 42)

POSITION OF THE PARTIES

The Union argues that the facts are not in dispute and that the Employer has readily acknowledged that it unilaterally ceased deducting Union dues. Because the Employer did not seek to change the dues provision (Article 2.1) during negotiations, then Article 40.2 of the CBA, provides that this Article remains in full force and effect. The Union argues that this is clearly an unlawful unilateral change.

The Employer argues that it has no contractual obligation to deduct dues and that it has no statutory duty to deduct dues because the Union has not satisfied the requirements of R.I.G.L. § 28-14-3, which requires the employers to deduct dues only

when a majority of Union members request, in writing, that such dues be deducted. The Employer also argues that the Board should take judicial notice of a pending decertification petition, EE-2068, wherein, two (2) of three (3) maintenance employees signed decertification cards.

DISCUSSION

Unfortunately, this case is not the first disputed matter between these same parties to come before the Board in recent times.[1] In addition to the prior finding of unfair labor practice, there is also a decertification petition pending, so labor peace is difficult to find at this agency.

We begin our review of this matter with Article 40.2 of the most recent CBA, which states in pertinent part: "In the event such notice shall be given, articles or sections so stated shall be terminated and all other articles or sections not under negotiations shall remain in full force and effect during the period of negotiations." The Union alleges that the Employer did not seek to change the dues provisions of the CBA in negotiations and therefore, its actions in stopping dues deduction after December 2015 is an unfair labor practice because it amounts to a unilateral change. We note for the record that neither of the bargaining requests for the successor Collective Bargaining Agreement, for either party, were submitted into the record. In the absence of further evidence, the record could not support a finding that Employer did not seek to change the dues as part of the negotiations. However, since the Employer continued the deductions right through 2015 for the remaining bargaining unit employees, we believe that a fair inference is permissible to establish that the Employer did not seek to change that provision of the contract in negotiations. If the Employer had sought that change, the dues deductions would have stopped a year earlier. Moreover, in the spring of 2015, the Employer sent a letter stating that it had affirmatively voted to not recognize the grievance/arbitration provisions of the contract. The letter made no mention of the dues provisions. Additionally, the Union inquired of the Employer as to what provisions of the contract were purportedly terminated and the Employer replied that it was the grievance/arbitration provisions. (See Union Exhibit #5) The Employer made no mention

[1] ULP 6159, Decision issued December 2, 2015, which was recently affirmed in a decision issued by Justice Gallo of the Rhode Island Superior Court. KC 2015-1242.

of the dues provisions. Finally, we have direct testimony from the Employer's Executive Director, as to why the dues deductions were stopped, and it was not because the Employer claimed a right to do so because it had sought that change in negotiations. The Executive Director candidly admitted that it simply decided to stop at the end of 2015 for one employee, Andrew Nestor. For the second employee, Ms. Raposa, the Employer offered her a non-Union position with better pay. So, the Employer just simply stopped the dues deductions. Since the Employer had previously agreed contractually that this provision would continue through negotiations for a successor CBA, it is a per se unfair labor practice to undertake a unilateral change during the pendency of contract negotiations.

The Employer argues that it has no statutory obligation to deduct dues because the Union did not prove that it has written authorization from Union members to deduct dues. The Employer cites to R.I.G.L. § 28-14-3 for its position.

§ 28-14-3. Deduction and payment of Union dues

> "Whenever a majority of the members of the duly certified collective bargaining unit in any place of employment requests, in writing, from their employer that their Union dues be deducted from their salary, the dues shall be deducted and remitted together with a list of the members whose dues have been deducted and the amount so deducted to the treasurer of the labor Union designated by the employee in the request. The deductions shall be taken out according to appropriate payroll periods."

As we read this statute, it seems clear to us that it is not incumbent upon the Union to "prove" to this Board that employees desire to have their dues deducted. This statute clearly places the burden on the Employer to comply with its employees' requests to deduct Union dues and transmit to the Union treasurer. Although we suspect that Union dues deductions have been taking place for decades, the evidence in the record establishes, at minimum, that it was taking place since the beginning of the last CBA and continued for a year beyond the stated expiration of the written CBA. Moreover, the wording of that contractual provision, gives rise to the reasonable inference that this was a prior practice. We refer specifically to the language that states: "The Employer agrees to the continuance of a Union Check-off system, whereby, Union dues and/or Union service charges will be withheld from the employees' pay at source." If the practice had not been occurring prior to this last contract, the word "continuation" would not be

necessary in this provision. We find, therefore, that the Employer's unilateral actions to cease withholding dues within the successor bargaining period for current bargaining unit employees constitutes unlawful, illegal activity.

That having been said, the record is not clear as to how many employees are currently holding bargaining unit positions. There is very little information in the record as to which positions listed in Article 36 of the CBA (Union Exhibit # 2) still exist and are currently filled. The positions listed in the CBA are: Maintenance Foreman, Maintenance Mechanic Aid, Sr. Housing Specialist, Housing Specialist, and Receptionist.

The evidence in the record established that as of May 29, 2015, there were four (4) employees who had Union dues deducted: Andrew Nestor, Patricia Reposa, Charles Shapazian and Deborah Tellier. (See Union Exhibit # 7) By June 12, 2015, Ms. Tellier's name no longer appears as a member having dues deducted; and by June 26, 2015, Mr. Shapazian no longer appears on a list of employees having dues deducted. There is no information in the record as to either Ms. Tellier's or Mr. Shapazian's titles; or whether their positions were ever filled. Mr. Starling testified that the position of receptionist is currently vacant. (The record reflects that Rosemary Coates had held the position of receptionist at one time.) (TR. pg. 16)

Thus, we cannot issue a corrective order that specifies the name of the affected employees. Therefore, we will simply state that if any of the positions of Maintenance Foreman, Maintenance Mechanic Aid, Sr. Housing Specialist, Housing Specialist, and Receptionist, are currently occupied by employees, then the Employer is ordered to deduct Union dues from their paychecks, commencing immediately. As to back dues that is owed to the Union, we decline to order those sums to be deducted retroactively. In the alternative, we direct the Employer to provide the Union with the names and contact information of every employee that holds one of the aforementioned titles.

FINDINGS OF FACT

1) The Town of West Warwick 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 parties to this dispute have been collective bargaining partners since 1973. The most recent executed Collective Bargaining Agreement was for the period January 1, 2012 through December 31, 2014.

4) Positions covered by the CBA include: Maintenance Foreman, Maintenance Mechanic Aid, Sr. Housing Specialist, Housing Specialist, and Receptionist.

5) The Union requested negotiations for a successor Collective Bargaining Agreement in January, 2014. Bargaining began in April, 2014 and continued monthly through approximately the end of 2014.

6) On May 26, 2015, the Housing Authority's attorney sent Ms. Lyman a letter stating: "At its meeting on May 21, 2015, the Commissioners of the West Warwick Housing Authority voted to cease recognizing the grievance arbitration provisions of the Collective Bargaining Agreement with Local 2045. As such, the Authority will no longer be hearing, and no longer participate in any grievances arbitration pursuant to that contract."

7) On August 11, 2015, the Union filed for mediation with the Rhode Island Department of Labor & Training ("DLT").The DLT appointed John J. Harrington, Esq. as Mediator/ Arbitrator.

8) The mediation is currently being held in abeyance, pending the outcome of a decertification petition.

9) The record reflects that there is one (1) employee, Andrew Nestor, who is still employed in the same bargaining unit position and who used to have his Union dues deducted from his pay. The other employee that used to have Union dues taken out of her pay, Patricia Raposa, was promoted sometime late in 2015 to a position identified by the Employer as a non-Union position.

10) Neither the Union nor the Employer has ever filed a unit clarification petition on any positions at the West Warwick Housing Authority.

11) Article 2 of the last operative CBA contained language *continuing* the practice of deducting Union dues from employee pay.

12) Article 40.2 of the most recent CBA states in pertinent part: "In the event such notice shall be given, articles or sections so stated shall be terminated and all other articles or sections not under negotiations shall remain in full force and effect during the period of negotiations."

13) Marc Starling, the Executive Director for the Housing Authority since August, 2015 acknowledged that the Housing Authority unilaterally stopped deducting dues from employees at the beginning of 2016.

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 (3) (5) and (10)

ORDER

1) The Employer is hereby ordered to provide the Union with the name and contact information of every employee at the West Warwick Housing Authority holding the position of Maintenance Foreman, Maintenance Mechanic Aid, Sr. Housing Specialist, Housing Specialist, and Receptionist.

2) The Employer is hereby ordered to immediately resume collecting Union dues from the pay of any employee holding the title of Maintenance Foreman, Maintenance Mechanic Aid, Sr. Housing Specialist, Housing Specialist, and Receptionist and remit those funds to the Union, in the same frequency as was done in 2015 and prior years.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

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Harry F. Winthrop, Member (Dissent)

Alberto Aponte Cardona, Esq., Member

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

Dated: September 19, 2016

By: _____
Robyn H. Golden, Administrator

ULP- 6178

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-6178
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-6178, dated September 19, 2016, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **September 19, 2016**.

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

Dated: September 19, 2016

By: Robyn H Golden
Robyn H. Golden, Administrator