

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

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IN THE MATTER OF :  
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RHODE ISLAND STATE LABOR :  
RELATIONS BOARD :  
:   
-AND- : CASE NO. ULP-6198  
:   
TOWN OF NORTH PROVIDENCE :  
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**DECISION AND ORDER**

**TRAVEL OF CASE**

The above entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board"), as an Unfair Labor Practice Complaint (hereinafter "Complaint"), issued by the Board against the Town of North Providence (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated and filed on January 23, 2017 by Elizabeth lafrate, an individual (hereinafter "Petitioner").<sup>1</sup>

The Charge alleged:

On January 12, 2017, the Union had an arbitration scheduled on behalf of Ms. lafrate alleging that the Town failed to post a position of Deputy Tax Assessor, which Ms. lafrate is seeking to fill, as she is currently performing that work out of rank. The Union also has pending a grievance for June of 2017, alleging that Ms. lafrate should be paid the Deputy Tax Assessor pay based upon her out of rank work.

The day before the January 12, 2017 hearing, the Mayor gave Ms. lafrate a pre-suspension letter, threatening to suspend her from employment based upon an allegation that she had been rude to a disabled citizen in the Tax Assessor's Office.

This letter required Ms. lafrate to attend a pre-suspension hearing on the next day, at precisely the time the arbitration was to start. At the hearing, the Mayor's Chief of Staff indicated that the alleged incident occurred over one (1) month previously, in December 2016, and that the Mayor was going to impose a five (5) day suspension.

Ron Coia, on behalf of Ms. lafrate, denied she engaged in such conduct, that it seemed unfair to wait one (1) month to confront her with this allegation, and to do so on the date of her arbitration. Moreover, even were such conduct to have occurred, at most a reprimand would be appropriate given the concept of progressive discipline, as Ms. lafrate has never been disciplined in her over twenty-five (25) years of employment with the Town.

The arbitration then commenced after a considerable delay, and was continued as the hearing could not be completed that day.

Immediately after the hearing, Ms. lafrate's boss directed her to a meeting with himself and the Mayor's Chief of Staff. Ms. lafrate was not allowed to bring a Union representative. In this meeting, Ms. lafrate was told that she would be suspended for five (5) days without pay based on the alleged December incident, but that the Town would make the suspension with pay if she dropped the grievances. Ms. lafrate declined to agree.

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<sup>1</sup> The Charge was brought pursuant to § 9.01.1 of the Board's Rules and Regulations and accompanied by an Affidavit of Elizabeth lafrate, representing that she is a member of Local 1033 of the Laborers' International Union of North America (LIUNA), that she asked her Union and it refused to file an unfair labor charge against her Employer on her behalf.

The actions of the Mayor and his Chief of Staff in making up a fictitious citizens complaint, waiting over one (1) month to inform Ms. lafrate of the allegations, handing her a letter one day before the January 12, 2017 arbitration, and attempting to extort her into dropping her grievances in exchange for more lenient treatment, is a clear attempt to interfere with her legitimate right to access the grievance/arbitration provisions of her Union's Collective Bargaining Agreement, and her right to Weingarten representation.

Following the filing of the Charge, each party submitted written position statements and responses as part of the Board's informal hearing process. On February 16, 2017, the Petitioner filed a Motion to Disqualify the Employer's Attorney and on February 20, 2017 the Employer responded with an Objection to the Motion to Disqualify and Motion to Disqualify the Petitioner's Attorney. At its Board meeting on February 23, 2017, the Board denied both Motions to Disqualify. On March 1, 2017 the Board issued its Complaint, alleging that the Employer violated R.I.G.L. § 28-7-13 (8) when it imposed discipline on Elizabeth lafrate in retaliation against her for filing multiple grievances. The Board conducted formal hearings on April 25, 2017, May 30, 2017, and June 8, 2017. Both the Petitioner and the Employer were present at all the hearings and had full opportunity to present documentary evidence and to examine and cross-examine witnesses. The Petitioner filed a post-hearing brief on July 14, 2017 and the Employer filed its post-hearing brief on July 14, 2017. On October 10, 2017, in accordance with § 9.02.8<sup>2</sup> of the Board's Rules and Regulations, the Board issued its Amended Complaint, alleging that the Employer violated R.I.G.L. § 28-7-13 (8) and (10) when it imposed discipline on Elizabeth lafrate in retaliation against her for filing multiple grievances.<sup>3</sup> The Employer did not file an Answer to the Amended Complaint or request any additional hearings thereon. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony, evidence and written briefs submitted by the parties.

### **INTRODUCTION**

The Petitioner, Ms. lafrate, has been employed by the Town of North Providence for twenty-nine (29) years and has held the position of Clerk in the Tax Assessor's office since June 2, 2014. (TR. pgs. 15, 19) It is uncontroverted that she is a competent employee. In addition, Ms. lafrate is a member of Local 1033 of the Laborers' International Union of North America (LIUNA) (TR. pg. 179). Over the course of her employment, Ms. lafrate has been the subject of numerous grievances and arbitration matters, filed on her behalf, by her Union (TR. pgs. 16, 20, 31) (Joint Exhibits "Jt. Ex." 4, 7, 8, 11) At the time she filed the within charge, at least two (2) of her grievances were pending, one (1) of which was scheduled for an arbitration hearing on January 12, 2017. (TR. pg. 21) (Jt. Ex. 6, 11, 12)

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<sup>2</sup> RI State Labor Relations Board Rules and Regulations § 9.02.8 provides as follows: "In the discretion of the Board, the Board's Administrator or its Agent may amend the complaint upon due notice to all parties, at any time before the issuance of the final decision and order. . . ."]

<sup>3</sup> The Amended Complaint added subsection R.I.G.L. §28-7-13 (10) to the complaint, to conform to the evidence adduced at hearing.

At issue in this case is a phone call that allegedly took place on Friday, December 9, 2016 at approximately 3:30 pm between Ms. Iafrate and Ms. Allyn Reynolds, a Providence resident, who called the North Providence tax assessor's office to remedy a motor vehicle tax issue. According to Ms. Iafrate's testimony, she has no recollection of any such phone call. (TR. pgs. 21-22, 27, 50). However, Mr. Thomas Kane, the North Providence Tax Assessor and Ms. Iafrate's supervisor, testified that he overheard Ms. Iafrate on the phone and that the call was not going "in a professional manner." (TR. pgs. 88, 133) He claimed that Ms. Iafrate's tone was "frustrated and condescending towards the taxpayer" and that he eventually had her transfer the call to him for resolution. (Id.) After Mr. Kane concluded the call with Ms. Reynolds, he did not speak to Ms. Iafrate about her telephone demeanor, either that afternoon or at any time thereafter. Mr. Kane testified that during the call, Ms. Reynolds said she was going to write a letter of complaint. On December 15, 2016, Mr. Kane drove to Ms. Reynold's home to pick up her complaint letter. Mr. Kane provided a copy of the letter to the Town's Mayor, Charles Lombardi. At some point thereafter, Mr. Richard Fossa, the Mayor's Chief of Staff, spoke with Attorney Ron Coia, the Business Agent for Local 1033, and informed him that there was a complaint concerning Ms. Iafrate's conduct and that there would likely be some discipline forthcoming.

Late in the afternoon of January 11, 2017, Ms. Iafrate was called into Mr. Kane's office for a brief meeting with Mr. Kane and Mr. Fossa. At this meeting, Ms. Iafrate was provided with a copy of the December 12, 2016 complaint letter from Ms. Reynolds. Ms. Iafrate was informed that she was going to be subject to discipline and that a pre-suspension hearing had been scheduled for 10:00 am the following day. Ms. Iafrate alleged that during this meeting Mr. Fossa told her that she has filed too many grievances and that if she had dropped the arbitration (also scheduled for the next day) the disciplinary issue would have gone away. Upon the conclusion of the pre-suspension hearing, the Employer suspended Ms. Iafrate without pay for a period of five (5) days. Ms. Iafrate filed her charge with this Board on January 23, 2017, after unsuccessfully requesting assistance from Local 1033.

#### **POSITION OF THE PARTIES**

The Petitioner's position in this case is that the discipline imposed on Elizabeth Iafrate by Town of North Providence in January 2017, a suspension without pay for five (5) days, was in retaliation against her for the filing of multiple grievances. Such conduct by the Town of North Providence constitutes an unfair labor practice in violation of R.I.G.L. §28-7-13.

The Town's position is that it did not engage in any acts that have violated R.I.G.L. §28-7-13. The Town contends that its decision to suspend Ms. lafrate was based on job-related misconduct that occurred in December 2016 and was unrelated to her grievance-filing history.

### **SUMMARY OF RELEVANT TESTIMONY & FACTS**

#### **Elizabeth lafrate:**

Ms. lafrate testified that she had no knowledge that there was any issue about the alleged phone call with Ms. Reynolds until the afternoon of January 11, 2017 at 3:30 pm, when she was called into Mr. Kane's office to meet with him and Mr. Fossa, and was handed a Notice for Pre-Suspension Hearing for the next morning at 10 am. (TR. pgs. 21-23, 27) (JT. Ex. 2) When Ms. lafrate asked what the pre-suspension hearing was for, Mr. Fossa answered, "for that customer that you talked to." When Ms. lafrate said she had no idea what they were talking about, Mr. Fossa said: "Ronnie Coia didn't tell you about it"? She advised that she had no knowledge of the matter. (TR. pgs. 21- 22)<sup>4</sup> When Ms. lafrate asked why there was a pre-suspension hearing, Mr. Fossa replied, "Well, Liz, you know, all these grievances and arbitrations." (TR. pg. 24) Ms. lafrate then asked what grievances and arbitrations had to do with a customer complaint? Mr. Fossa responded, "Liz, we have many reasons to fire you..." When Ms. lafrate questioned the possibility of suspension, Mr. Fossa stated, "Well Liz, you know, all these grievances and arbitrations . . . we have all these grievance and arbitrations." (TR. pg. 24) Mr. Fossa said, "If you dropped this grievance [referring to the one scheduled for arbitration the next day] this would have went away." It was at this meeting, on January 11, 2017 that Ms. lafrate was shown the letter from Ms. Reynolds for the first time. (TR. pgs. 25-26).

Ms. lafrate testified that at the pre-suspension hearing she expressed that she "had no recollection of speaking with her [Ms. Reynolds], but I know that I would never swear, be rude, scream at any customer in twenty-nine (29) years, nor has any supervisor ever had to take the phone away from me because I was belligerent to the customer."(TR. pg. 50) On re-direct examination, in rebutting testimony by Ms. Reynolds, Ms. lafrate denied ever having called any taxpayer a "deadbeat", denied telling people that they have to pay their bills" or telling people that she "doesn't make mistakes", as was alleged during these hearings, by Ms. Reynolds. (TR. pg. 263) Further, Ms. lafrate testified that the office protocol for tax abatements for motor vehicles is to either take a message for the Tax Assessor or transfer the call, with the clear implication that she would not have engaged in such a phone call substantively. (TR. pg. 264)

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<sup>4</sup> Mr. Coia was not present at this January 11, 2017 meeting nor did Mr. Fossa indicate that Ms. lafrate should have a Union representative with her. (TR. pg. 25) Ms. lafrate testified that she called Mr. Coia during that meeting and believed he knew nothing about the pre-suspension hearing. (TR. pgs. 21, 26)

Critically, Ms. lafrate testified that at her pre-suspension hearing on January 12, 2017, no one from the Town ever claimed that she had made any of the three (3) specific statements, which Ms. Reynolds claimed in these proceedings: calling Ms. Reynolds a “deadbeat”, or saying that “people have to pay their bills” or that she “doesn’t make mistakes.” (TR. pg. 264) Ms. lafrate said that no one ever told her about the complaint or showed her the letter until the afternoon of January 11, 2017.

Although it was Ms. lafrate’s testimony that she had no disciplinary records in her personnel file (TR. pgs. 29-30), later testimony suggested there was at least some disciplinary history. Ms. lafrate testified that she was unaware of an Employee Warning Report in her file, which stemmed from an incident in November 2016, but she did not deny the incident. In fact, she testified that the incident involved the manner in which she spoke to Mr. Kane, in front of others in the office on a specific occasion. She testified that the day after this verbal exchange occurred, he called her into his office to address it with her but she never was told that Mr. Kane was placing a written employee warning in her personnel file. (TR. pgs. 265-267) There were also a series of other older documents in the file which touched on conduct issues, but Ms. lafrate testified that she had not seen most of them and disputed whether they constituted “discipline.”

**Allyn Reynolds:**

Ms. Reynolds testified at the third hearing, on June 8, 2017. She stated that she had called the Town Hall on December 9, 2016 to resolve a problem with a tax bill that she had received for the first time from the Town of North Providence. She explained that the dividing line between the City of Providence and the Town of North Providence runs through her driveway and that her house was not located in North Providence. She stated that she initially called the Tax Collector’s office, but that her call was transferred to the Assessor’s office where she spoke with someone who initially refused to provide her name, but who later identified herself as “Liz.” (TR. pgs. 246-247). Ms. Reynolds claimed that the conversation became heated and that Liz told her that “people have to pay their bills, even if you don’t like it, you have to pay your bills.” (TR. pg. 247) Ms. Reynolds characterized Ms. lafrate’s tone of voice as “harsh” and the volume of Liz’s voice as “screeching.” Ms. Reynolds testified that Ms. lafrate yelled at her and insulted her by calling her a “deadbeat.” (TR. pg. 248) In her direct examination, she also alleged that she advised Ms. lafrate that because Ms. Reynolds lived in Providence, there was obviously a mistake and she just wanted to correct it. Ms. Reynolds claims that Ms. lafrate retorted that “we don’t make mistakes.” (TR. pg. 249) Finally, she stated that she heard someone “holler: put that phone, that call into my office.” (Id.) When the call was transferred, she spoke with Mr. Kane who apologized profusely and said he would resolve the issue.

Ms. Reynolds acknowledged that she wrote a letter to Mr. Kane on December 12, 2016 and stated that after she sent it, she received a communication from the Mayor, hand delivered to her by a police officer, asking her to call him immediately. (TR. pg. 253) She immediately called, but had to leave a voice message. The Mayor returned her call the same day and they spoke about her letter. Ms. Reynolds testified that in this conversation she told the Mayor that Ms. Iafrate had called her a "deadbeat." (TR. pg. 256) She also told the Mayor that Ms. Iafrate had said that "people have to pay their bills" and "we don't make mistakes." (TR. pgs. 256-257)

Ms. Reynolds further testified that at a later date, she attended a meeting at the North Providence Town Hall with the Mayor, Mr. Fossa, Attorney Ragosta, Lynda Labbadia, and Mr. Kane. Ms. Reynolds testified that at this meeting, she repeated the things that Ms. Iafrate had allegedly said, including: (1) calling her a "deadbeat"; (2) "we don't make mistakes"; and three (3) "people have to pay their bills." (TR. pg. 259) Finally, Ms. Reynolds claimed to have reported these three (3) statements to Mr. Kane on the day that he came to her house to pick up her letter. (TR. pgs. 261-262)

**Thomas Kane:**

On direct examination, Mr. Kane testified that he overheard Ms. Iafrate's call with Ms. Reynolds and described Ms. Iafrate's voice as loud and frustrated. (TR. pg. 89)

"I don't know if I can recall specific words or phrases that she said, but the overall tone of the conversation didn't meet my standards or what I would expect, you know, any other clerk in the office to speak. Her tone was elevated, it was loud, she sounded frustrated while she was speaking to Ms. Reynolds, and it wasn't progressing to a solution. It just kept getting worse and worse and worse. So, at that point I said you know, this call really needs to be handled differently and I asked to have it transferred to my phone." (TR. pgs. 89, 129-130)

Mr. Kane testified that he took the call and spoke to Ms. Allyn Reynolds, who he learned was a Providence resident. Ms. Reynolds was upset by both the phone call and the fact that she received a tax bill from the Town of North Providence. She was trying to resolve the error since she did not reside in North Providence. Mr. Kane told her that he would try to resolve the tax problem. (TR. pg. 91) Mr. Kane testified that he was unable to recall anything specific, any specific phrases, that Ms. Iafrate said during the December 9th phone call. (TR. pgs. 133, 134.) He recollected only her "tone and the manner in which she was speaking." (TR. pg. 133)

According to Mr. Kane, this phone call occurred at the end of the work day on Friday, December 9, 2016 and he did not tell anyone in Town about it that day. (TR. pgs. 95-96). On December 12, 2016, Mr. Kane contacted the Rhode Island Division of Motor Vehicles and resolved Ms. Reynold's tax problem. (TR. pg. 94). When he called Ms. Reynolds to advise her of the resolution, she said she was going to be writing a letter about the call she had with Ms. Iafrate on December 9, 2016. Mr. Kane then notified both Mr. Fossa, and Mayor Lombardi about "a

possible issue with a citizen” and the potential of an incoming letter of complaint. (TR. pgs. 96-98) Mr. Kane did not, however, address Ms. Iafrate about the incident or the expected letter. Mr. Kane testified that Mr. Fossa wanted “to wait and see what was going to be in the letter before addressing the situation. ... we wanted to have all of the information, we wanted to have all the facts before we just went and addressed the situation.” (TR. pgs. 98-99)

Mr. Kane received the letter from Ms. Reynolds on December 15, 2016 when he personally picked the letter up from her at her home. (TR. pgs. 87, 103) Mr. Kane testified that Ms. Reynolds’s letter did not include anything that was different from what she had discussed with him on December 9, 2016. He then delivered the letter to Mayor Lombardi and discussed it with him. (TR. pg. 123) According to Mr. Kane, the Mayor, “wanted to know the details and he wanted to make sure that this letter was accurate.” (TR. pg. 124). Mr. Kane testified that he described the phone call to the Mayor. He described Ms. Iafrate as sounding agitated, unprofessional, louder than normal and condescending. He said it was just not an appropriate way to address a taxpayer and not handled in a professional courteous, respectful manner.” (TR. pgs. 125-126). At that time, Mayor Lombardi indicated to Mr. Kane that some type of discipline would most likely result from this complaint. (TR. pg.128) Mr. Kane also testified that on “December 15, 2016 or maybe a day or two after,” he called Mr. Ronald Coia, President of the Rhode Island Laborers’ District Council and Business Manager of Local 1033, at the Union office and told him about the phone call between Ms. Iafrate and Ms. Reynolds.

During direct examination, Mr. Kane was asked: “do you recall Mr. Fossa talking at all about grievances and arbitrations that Ms. Iafrate was involved in during this [January 11] meeting”? Mr. Kane, answered: “It could have been mentioned. I can’t recall any specifics . . . I mean, it could have been said. You know, I’m not sure.” (TR. pg. 108)

**Ronald Coia:**

Mr. Coia, President of the Rhode Island Laborers’ District Council and Business Manager of Local 1033, testified that he learned about Mrs. Reynold’s complaint letter from Mr. Fossa (TR. pg. 183) Mr. Fossa provided a “generalized description about the call” and told him that Ms. Iafrate was “unprofessional on the phone.” (TR. pg. 183) Mr. Fossa also told him that he was deferring addressing the matter until after the Christmas/New Year Holiday. Mr. Coia decided that he too could wait until after the holidays to address the matter with Ms. Iafrate and did not discuss the complaint or letter with Ms. Iafrate at that time. (TR. pgs. 183-184) Mr. Coia testified that no one from the Town ever said to him or made any statement that the five (5) day suspension was in any way connected to her grievance filing activity. (TR. pg. 190) However, he found the

suspension for five days without pay was excessive, without citing any prior progressive discipline.” (TR. pgs. 190-191)

**Richard Fossa:**

Mr. Fossa testified that he first became aware of the complaint involving Ms. Iafrate when he saw the letter from Ms. Reynolds in mid-December. (TR. pgs. 63-64) He couldn't really recall who showed it to him, but he remembers the Mayor asking him, "Can you believe it"? Mr. Fossa testified that if it had been up to him, he would have terminated Ms. Iafrate because he believed that Ms. Iafrate had a record of these things happening, regardless of where she worked in the Town. (TR. pgs. 64-66, 73) He acknowledged that he called a meeting with Mr. Kane and Ms. Iafrate on the afternoon of January 11, 2017 to deliver Ms. Iafrate's Notice of Pre-Suspension Hearing. He further acknowledged that it was not until delivering the pre-suspension letter on January 11, 2017, that he first addressed Ms. Iafrate directly regarding the alleged incident, but he maintained that he told Mr. Coia about it. (TR. pgs. 66-68) Mr. Fossa testified that at that January 11, 2017 meeting, "she denied everything and anything about that call and about Mr. Coia." (TR. pg. 68) When asked about whether he, "mentioned something about having a stack of grievances and arbitrations," Mr. Fossa first testified, "I don't recall that at all" and but then upon further questioning said, "I might have said that." (TR. pg. 69)<sup>5</sup> Mr. Fossa also admitted having told Ms. Iafrate that there were plenty of reasons to fire her. (TR. pg. 70) When asked if he ever told Ms. Iafrate that if she dropped her various grievances and arbitrations that the suspension would go away, Mr. Fossa said he couldn't recall. (Id.)

Mr. Fossa testified that his recollection of Ms. Reynolds's letter was that Ms. Iafrate was yelling at her and not speaking the way a public servant ought to be speaking. When questioned about the delay in addressing the incident with Ms. Iafrate, Mr. Fossa stated, "we didn't pursue it because of the Christmas season" and he claimed this decision as his own. (TR. pg. 76) Mr. Fossa stated that he agreed with the Town's statement of facts in the case where Ms. Iafrate is described as a "malcontent" and stated that she's not happy wherever she goes and there is trouble that follows her wherever she goes. (TR. pg. 78)

**Charles Lombardi:**

Mayor Charles Lombardi confirmed that he learned of the December 9, 2016 phone call from Mr. Kane or Mr. Fossa. Mr. Kane told him about the call and that he should expect a letter. (TR. pg. 138) Mayor Lombardi received Ms. Reynolds letter on December 1, 2016 and did not conduct any further investigation about what happened at that time. He asserted that he accepted

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<sup>5</sup> Mr. Fossa's change in testimony came immediately on the heels of Ms. Iafrate's counsel suggesting that there was a tape recording of that meeting.



everything in that letter as true and never spoke with Ms. Reynolds about the allegations or Ms. lafrate for her version of what occurred. (TR. pgs. 147 -150) In fact, in the Mayor's words, "when I read that letter, I knew that there needed to be discipline, some type of discipline." (TR. pg. 144) Mayor Lombardi's testimony was as follows:

Q: So, again, between the time Mr Kane first brought to your attention and the time you received this letter, you never talked to Ms. lafrate, did you?

A: No.

Q: You never asked for her version of the event?

A: No.

Q: Okay. In fact, even after you got this letter you ever talked to Ms. lafrate until the pre-suspension hearing on January 11th, correct:

A: Correct.

Q: Okay. And by that time, on January 11th, you had already decided to suspend Ms. lafrate for five (5) days without pay, right?

A: I did.

(TR. pg. 148)

In his testimony, Mayor Lombardi agreed that he too would characterize Ms. lafrate as a "malcontent." (TR. pg. 139) In making this characterization, he agreed that she's filed a number of grievances and arbitrations and that she is never satisfied, and is therefore, a malcontent. Mayor Lombardi confirmed that when Mr. Kane described the December 9, 2016 call to him, Mr. Kane did not specify what he heard Ms. lafrate say. Mayor Lombardi stated that the "whole crux of the conversation was that he wasn't happy with the way the conversation was going and didn't think that whoever was on the other end of the line was being treated professionally." (TR. pg. 140) Mayor Lombardi stated that he did not take immediate action because he wanted to digest it and not be hasty. He stated that it was when he received Ms. Reynolds's letter that he decided that some type of discipline must ensue. (TR. pg. 144)

Mayor Lombardi testified that for the time period after he received Ms. Reynolds's complaint letter dated December 12, 2016 and between January 10, 2017 when he sent the notice of pre-suspension hearing to Ms. lafrate, that he did not have any conversations with the complainant, Ms. Reynolds. (TR. pg. 151) Mayor Lombardi denied that his decision to issue the five (5) day suspension had anything to do with Ms. lafrate's history of filing grievances and claimed that the decision was based solely on Ms. Reynolds's complaint. (TR. pg.155)

**Lynda Labbadia:**

Ms. Labaddia serves as the Town's Payroll Manager and is also a member of Local 1033. (TR. pgs. 157-158) Ms. Labaddia testified as a witness for the Town and produced a series of documents from Ms. Iafrate's personnel file which Ms. Labaddia characterized as disciplinary records for the period of April 2001 through November 2016. (TR. pg.160) According to Ms. Labbadia's testimony, Ms. Iafrate's file contained a form indicating a November 2016 incident resulting in a verbal warning for verbal abusive conduct. (Respondent's Ex. 2) The form is not signed by Ms. Iafrate, but Ms. Labbadia testified that this is not unusual. (TR. pg. 174) (Respondent's Ex. 2). This document indicates if Ms. Iafrate's performance did not improve, the next discipline she was going to receive was going to be written. (Id.) Ms. Labbadia testified that between November 2, 2016 and January 12, 2017, when Ms. Iafrate was suspended, there is no written warning in her file. (TR. pg. 175)

The Town conducted a pre-suspension hearing on January 12, 2017 at 10:00 am. Mr. Kane read Ms. Reynolds's letter out loud at the hearing. At the hearing, no one from the Town ever accused Ms. Iafrate of calling Ms. Reynolds a "deadbeat," or telling her "we don't make mistakes" or "people have to pay their bills." (TR. pg. 264) Late that day, after the arbitration hearing, Mr. Fossa handed Ms. Iafrate a "Notice of Suspension" indicating that she was being suspended for five (5) working days "based upon a complaint lodged by a disabled citizen alleging that you were rude and loud to her when she spoke with you seeking information and municipal services." (JT. Ex. 3). Ms. Iafrate testified, "at that time he [Mr. Fossa] said, 'You know, we could have dropped this, you know, if you got rid of the Deputy Town Clerk,' he meant to say assessor, 'we could have dropped this. If that went [a]way(sic) and the other grievance went away, you would have come to work tomorrow.'" (TR. pg. 52) The Town denies any connection between the suspension and Ms. Iafrate's grievance filing history and asserts that the suspension was based solely on her employee misconduct. (TR. pgs. 128, 155-156)

**DISCUSSION**

**WHETHER THE TOWN OF NORTH PROVIDENCE DISCIPLINED MS. IAFRATE IN RETALIATION FOR EXERCISING HER CONTRACTUAL RIGHTS.**

The testimony in this case spanned three (3) formal hearing dates during which the Board heard distinctly different versions of the phone call placed by Ms. Reynolds on December 9, 2016. Because the testimony varied witness to witness, the Board must assess credibility when making its factual findings. Despite the inconsistencies, the Board finds that there was indeed a phone call on December 9, 2016 between Elizabeth Iafrate and Allyn Reynolds. Further, the Board finds that an issue arose during that phone call and Mr. Kane became involved. There are two (2) critical components of this incident that require a close review and analysis in assessing

credibility: (1) The content of the conversation between Ms. Iafrate and Ms. Reynolds; (2) The manner in which the phone call was transferred from Ms. Iafrate to Mr. Kane for completion.

**Content of Conversation:**

In her letter of complaint to Mr. Kane in December 12, 2016, Ms. Reynolds first alleges that she spoke to a woman in Mr. Kane's office who initially refused to provide her name, but ultimately admitted that her name was Liz. Ms. Reynolds then states that she asked to speak to Liz's superior because she was tired of "being screamed at by someone I didn't even know." She also states, "yelling and insulting people is no way to treat the people who are responsible for your paycheck." Notably absent from this letter is any reference to or statement of what "Liz" actually said in this phone call or how she insulted Ms. Reynolds. (Respondent's Ex. 1)

By the time Ms. Reynolds testified on June 8, 2017, she claimed that Ms. Iafrate had allegedly (1) called her a "deadbeat"; (2) said "we don't make mistakes"; and (3) said that "people have to pay their bills." (TR. pg. 259) The Board finds the statements attributed to Ms. Iafrate in this phone call to be highly offensive and the type of comments that should have and would have led to swift discipline, if uttered. However, the very offensive nature of the comments supports a finding that if in fact they were uttered by Ms. Iafrate in that telephone call, Ms. Reynolds would have been sufficiently outraged enough to report those comments immediately upon speaking to Mr. Kane that afternoon. There is no evidence in the record to support a finding that she told Mr. Kane what Ms. Iafrate had allegedly just said to her. Mr. Kane did not testify that Ms. Reynolds reported these statements to him when he took over the call. Mr. Kane did not testify that he heard Ms. Iafrate make any of these statements. Similarly, when Ms. Reynolds wrote her complaint letter a few days later, she completely omitted any reference to the offensive statements allegedly uttered by Ms. Iafrate. But, Ms. Reynolds claimed that she told Mr. Kane about these statements when he came to her house to pick up the complaint letter.

The Board cannot fathom that Ms. Reynolds told Mr. Kane about these comments that day and that Mr. Kane simply kept this astonishing revelation to himself. These kinds of outrageous outbursts certainly would have been immediately reported by Mr. Kane to Mr. Fossa and/or Mayor Lombardi. This Board simply does not believe that if these officials had such damning accusations against Ms. Iafrate that they would have waited until after the Christmas holidays to address the situation. Such a construct is simply not credible, in any way. Additionally, not one of the Town officials, Mr. Kane, Mr. Fossa, or Mayor Lombardi, testified that Ms. Reynolds ever told them that Ms. Iafrate made these comments, despite Ms. Reynolds's claim that she told all of them at one point or another.

Further, Ms. Iafrate testified that at her pre-suspension hearing on January 12, 2017, she was *not* accused of making these specific statements. Certainly, had Ms. Reynolds in fact told the Mayor, Mr. Fossa, Mr. Kane, and Mr. Ragosta that Ms. Iafrate made these outrageous statements, these allegations would have been made at the pre-suspension hearing. Not one of the Town officials testified that Ms. Reynolds told them or that Ms. Iafrate was accused of this conduct at her pre-suspension hearing. Therefore, the Board does not find Ms. Reynolds's testimony even remotely credible on this issue.

**Manner of Transferring Phone Call:**

In her complaint letter, Ms. Reynolds stated: "Liz finally turned my call over to you. I learned from you that you heard her yelling at me on the phone and you told her to give my call to you." (Respondent's Ex. 1) Yet, her sworn testimony on June 8, 2017 was very different. There, she said: I heard someone holler, "put that phone, that call into my office." (TR. pg. 249) These are two(2) entirely different accounts of how the call came to be transferred. Based upon the vast inconsistencies in Ms. Reynolds testimony, vis a vis the testimony of Town officials, the Board affords her testimony little to no credit, certainly none on these two crucial points.

In addition to the issues pertaining to the actual phone call, Ms. Reynolds testified in June 2017, that she claimed to have reported the three (3) statements allegedly made by Ms. Iafrate to Mr. Kane on December 15, 2016, when he came to her house to pick up her letter. (TR. pgs. 261-262) She also claims to have told Mayor Lombardi in a December 2016 phone call that Ms. Iafrate said these specific terrible things to her. (TR. pg. 256) She also testified that she repeated these same allegations at a meeting she had in Town Hall with Mayor Lombardi, Mr. Fossa, Attorney Ragosta, Lynda Labbadia, and Mr. Kane (TR. pgs. 258-259). Ms. Reynolds was not sure of the date of the meeting in Town Hall but it was in response to a request made by the Mayor who said there was going to be a hearing on the issue. No other Town witness testified that there was a meeting in Town Hall with Ms. Reynolds, Mayor Lombardi, Mr. Kane, Mr. Fossa, and Attorney Ragosta.

Mr. Fossa testified that he never spoke with or met Ms. Reynolds until the morning of the April 25, 2017 formal hearing. (TR. pg. 65) Mayor Lombardi testified that between the time of receiving Ms. Reynolds's letter and issuing the January 11, 2017 notice of pre-suspension hearing, he never spoke with Ms. Reynolds. (TR. pg. 151) Mr. Kane denied having had any conversations with Ms. Reynolds since December 15th when he picked up the letter from her. (TR. pg. 120)

In addition to these credibility issues, the Board is troubled by the timing of the pre-suspension letter which was issued on the eve of one of Ms. Iafrate's arbitrations. In its brief,

the Town of North Providence argues that the timing of the suspension, coming as it did on the same day as a scheduled arbitration and one (1) month after the incident, should not be construed as bad faith, citing this Board's decision in Rhode Island State Labor Relations Board and Rhode Island Resource Recovery Corp., ULP-5459, at pg. 6 (December 11, 2001). While the Board can accept as true that the Town wanted to wait until it actually received Ms. Reynolds's letter of complaint before addressing Ms. Iafrate's interaction with Ms. Reynolds, there is simply no evidence that the Town made any effort during the weeks following receipt of the letter to gather any facts with respect to the alleged incident. No one confronted Ms. Iafrate about the phone call. No one offered Ms. Iafrate the opportunity to offer an explanation and defend herself against the allegations. Given the serious nature of the allegations, the Board does not find it credible that Ms. Iafrate's supervisors simply waited until after the holidays to pursue the matter, especially since Mr. Kane had immediately addressed Ms. Iafrate's unacceptable office demeanor by counseling her in his office and by placing a written warning in her personnel file, a scant few weeks before the incident with Ms. Reynolds. The Board finds that the timing of the disciplinary action was designed to intimidate and pressure Ms. Iafrate into dropping her arbitration, scheduled for the same day as her pre-disciplinary hearing.

Further, the Board is troubled by the issuance of a five (5) day suspension without pay, where there was no progressive discipline. The November 2, 2016 Employee Warning Report in Ms. Iafrate's personnel file (Respondent's Ex. 2) reflects the November incident involving Ms. Iafrate's verbal misconduct for which she received a verbal warning from Mr. Kane. This document further indicates that "failure to improve will result in written consequences." Although the Report lacks her signature and is a document she asserts she never saw, Ms. Iafrate acknowledged that the incident itself occurred and that Mr. Kane addressed it with her immediately thereafter. Union representative, Mr. Ronald Coia, testified that a five (5) day suspension without pay without citing any prior progressive discipline is unusual and excessive. (TR. pg. 191) The Board agrees.

Ms. Iafrate testified that during the meeting on January 11, 2017 when she was notified of the pre-suspension hearing, Mr. Fossa stated that if she dropped the pending grievances and arbitrations, the suspension would go away. Although Mr. Fossa initially testified that he did not recall making this statement, when Ms. Iafrate's Attorney suggested that Ms. Iafrate had a tape recording of the meeting, Mr. Fossa quickly changed his testimony and said, "I might have said that." (TR. pg. 69)

It is well established that retaliation or even threats of retaliation for filing a grievance or otherwise engaging in protected activity constitutes an unfair labor practice. See Rhode Island

State Labor Relations Board and State of Rhode Island Department of Corrections, Case No. ULP-6073, citing Pemberton v. Bethlehem Steel Corp., 66 Md.App. 133, 145, 502 A.2d 1101, 1107 (1986) cert. denied, 306 Md. 289, 508 A.2d 488, cert. denied, 479 U.S. 984 (1986). Most employers are not blatant when retaliating against employees. When blatant admissions take place, it is usually without corroborating witnesses. In this case, Ms. Iafrate claims that she was told, in a meeting with her two (2) supervisors, that if she had dropped her grievances/arbitrations, the suspension “would have gone away.” One supervisor can’t recall specifically what the other might have said, but agreed that “it could have been said.” The other supervisor admitted, after being told there is a tape recording of the meeting, “I might have said that.” The Board finds these statements to be admissions of impermissible conduct. This finding is corroborated by the following facts: (1) Mr. Kane did not confront Ms. Iafrate either on the day of the phone call, or at any time thereafter, despite the fact that when faced with a similar lack of professional conduct in the office by Ms. Iafrate, Mr. Kane confronted and reprimanded her; (2) At no time prior to the commencement of the hearings before this Board was Ms. Iafrate presented with Ms. Reynolds’s allegations claiming that Ms. Iafrate called Ms. Reynolds a deadbeat, said “we don’t make mistakes” and “people have to pay their bills”; (3) The objective evidence in Ms. Iafrate’s personnel file indicated that the next step in discipline for similar conduct would be a written warning.

This Board believes that a phone call took place on the afternoon on December 9, 2016 between Ms. Iafrate and Ms. Reynolds and that Ms. Iafrate’s tone was loud, condescending and rude. We do not believe that Ms. Iafrate called Ms. Reynolds a “deadbeat” or stated “we don’t make mistakes” or “people have to pay their bills.” We believe that Town officials encouraged Ms. Reynolds to make her written complaint. We further believe that after she made her initial written complaint, Ms. Reynolds began to embellish her story and was not dissuaded by Town officials.<sup>6</sup> Suffice it to say then that we do not find Ms. Reynolds’s verbal testimony in these proceedings credible. We do believe that her letter, written nearly contemporaneously with the incident, accurately reflects what occurred. Had Ms. Iafrate made the offensive comments that were attributed to her at the hearings before the Board, Ms. Reynolds would have included them in her letter of complaint and we believe that the disciplinary action would have been swiftly taken, rather than undertaken more than a month after the incident.

Additionally, we find that the Town’s defense that it was waiting for the holidays to pass before filing any disciplinary action is not credible, primarily for the reasons already discussed. We believe that Ms. Iafrate’s supervisors waited to spring this matter on her as last-minute

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<sup>6</sup> We do not wish to believe that there was a meeting in Town Hall with Town officials and the Town’s attorney, because if there was, there was clearly perjury taking place by several Town witnesses in the hearings.

leverage to attempt to coerce her into dropping the arbitration. Indeed, this is precisely the result they told her they sought. When she would not comply, she was disciplined far more severely for the nature of the proven offense of rudeness on the telephone. As such, the Town violated R.I.G.L. §28-7-13 (10) when it retaliated against Ms. lafrate for refusing to drop her grievance and the scheduled arbitration.

#### **FINDINGS OF FACT**

1. The Town of North Providence is an “Employer” within the meaning of the Rhode Island State Labor Relations Act.
2. Elizabeth lafrate is employed as a Tax Clerk by the Town of North Providence and is an “Employee” within the meaning of the Rhode Island State Labor Relations Act.
3. Ms. lafrate is a Union member of Local 1033. She filed her charge with the Board after her Union refused to do so.
4. On December 9, 2016 Ms. Allyn Reynolds, a Providence resident, called the Tax Assessor’s office and spoke with Ms. Elizabeth lafrate regarding an issue with her motor vehicle tax bill. During this call, Ms. lafrate was rude, loud and unprofessional, however she did not call Ms. Reynolds a “deadbeat”, nor did she say “we don’t make mistakes” or “people have to pay their bills.”
5. At some point during the phone call, Ms. lafrate’s supervisor, Tax Assessor, Thomas Kane became concerned about Ms. lafrate’s tone of voice and the unprofessional manner in which the call was being handled and requested that the call be transferred to him. Ms. Reynolds did not tell Mr. Kane that Ms. lafrate called Ms. Reynolds a “deadbeat”, or that she said “we don’t make mistakes” or “people have to pay their bills.” Ms. Reynolds did state that she was planning to write a letter of complaint.
6. On or about December 12, 2016, Mr. Kane alerted Mayor Lombardi and Chief of Staff, Richard Fossa, about the telephone call between Ms. Reynolds and Ms. lafrate and the possibility of a written complaint.
7. On December 12, 2016, Ms. Reynolds wrote a letter of complaint to Mr. Thomas Kane regarding the call. Ms. Reynolds’s complaint letter did not accuse Ms. lafrate of calling Ms. Reynolds a “deadbeat” or stating that “we don’t make mistakes” or “people have to pay their bills.”
8. On December 15, 2016, Mr. Kane drove to Ms. Reynolds’s residence and personally picked up the letter and brought it back to Town Hall.

9. Mr. Kane shared the letter with Mayor Lombardi and Mr. Fossa. Neither Mayor Lombardi, Mr. Fossa, nor Mr. Kane addressed Ms. Iafrate regarding Ms. Reynolds's written allegations until January 11, 2017.

10. On January 11, 2017 at 3:30 pm, Ms. Iafrate was summoned to a meeting with Mr. Fossa and Mr. Kane and was presented with a notice of pre-suspension hearing for the following morning, at 10 am. During this meeting, Mr. Fossa told Ms. Iafrate, "if you dropped this grievance, this would have went away."

11. Mr. Ronald Coia is the Union's Business Agent. Mr. Coia was not present at the January 11, 2017 meeting in Mr. Kane's office, but Ms. Iafrate was permitted to call him.

12. Upon handing Ms. Iafrate the suspension, Mr. Fossa again said, "you know, we could have dropped this, you know, if you got rid of the Deputy Town Clerk, we could have dropped this. If that went [a]way, you would have came to work tomorrow."

#### **CONCLUSION OF LAW**

1. Petitioner has proven by a fair preponderance of the credible evidence that the Employer retaliated against Ms. Iafrate for her history of filing grievances and pursuing arbitrations by issuing excessive, non-progressive discipline and therefore committed a violation of R.I.G.L. §28-7-13 (10).

#### **ORDER**

1. The Employer is hereby ordered to cease and desist from retaliating against Petitioner for exercising her right to file grievances and/or pursue arbitrations.
2. The Employer is hereby ordered to expunge from Petitioner's personnel file any reference that Ms. Iafrate allegedly called Ms. Reynolds a deadbeat or that she said, "we don't make mistakes" or "people have to pay their bills" and the January 12, 2017 suspension received in connection with same.
3. The Employer is hereby ordered to rescind the five (5) day suspension without pay and reinstate Ms. Iafrate's wages for the days of her suspension.



RHODE ISLAND STATE LABOR RELATIONS BOARD

  
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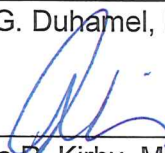
Walter J. Lanni, Chairman

  
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Marcia B. Reback, Member

  
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Scott G. Duhamel, Member

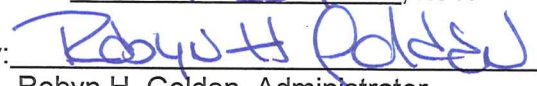
  
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Aronda R. Kirby, Member (Dissent)

**Board Member, Kenneth B. Chiavarini, abstained from participation in this matter.  
Board Member, Alberto Aponte Cardona, is recused from participation in this matter.**

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

Dated: DECEMBER 15, 2017

By:   
Robyn H. Golden, Administrator

