

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-6207
	:	
PROVIDENCE SCHOOL DEPARTMENT	:	
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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 Providence School Department (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") filed on July 14, 2017 by RI Council 94, AFSCME, AFL-CIO, Local 1339 (hereinafter "Union").

The Charge alleged:

"Violation of 28-7-13 (1) (3) and (10). Charlene Vela, President of Local 1339 and Karen Lanzieri, Secretary of Local 1339, have been unjustly disciplined based on their protected and concerted Union activity. Management from the Providence School Department have also been spying/keeping the Union activities under surveillance, in addition to attempting to dominate and/or interfere with the administration of the Union. Local 1339's management and operation. In that, both Ms. Vela and Ms. Lanzieri were each given a written reprimand based on protected Union activity. Charlene was given a written reprimand based on the fact that she placed a photocopy of the word minimal from the Webster dictionary in a member (Sharon Carmody's) mailbox and showed it to another Executive Board member as a follow up from an Executive Board meeting of Local 1339 where an Executive Board member described the member's work as minimal or little. The discipline was also based on an allegation that the President allegedly said do not talk in front of a member because that person "is a snitch" for management, which if said, is protected concerted activity. Further, it is alleged that the President of Local 1339 should not have given the name of Union members to other Union representatives who are also represented by RI Council 94 for the purpose of collective bargaining, which is clearly a protected activity. Further, President Vela was questioned by management about the local Union's determination to file charges with the State Police regarding former President, Joanne Michaelletti's ( a current management employee) misappropriation of funds and was informed during a meeting with other Union members/representatives present, that in most cases when a member embezzles money from his/her Union, he/she just has to repay it and charges normally aren't filed against that person, nor is that person arrested. Management further stated that President Vela should understand that Ms. Carmody would be upset about that since Joanne Michaelletti is her sister and she was arrested. Further, after this meeting, the school's attorney asked President Vela for a copy of the Union's forensic audit of the

Local's books, then on a later date an HR Officer (management) requested to view the Union's checkbook. The discipline of President Vela came shortly after she denied the requests by Management review these Union documents. Ms. Lanzieri was given a written reprimand by Management based on presumptions that she allegedly, while working in her Union executive board position, (1) stated not to talk about a member because she was a snitch for management and (2) for having conversations with members about the arrest of the former Union President for misappropriation of funds. Further, she was questioned by Management and disciplined on protected and concerted activity of having a Local Union Facebook page and conversations that took place on this private Union Facebook group. Based on these actions, it is clear that Management was spying on and/or surveilling the activities of employees, they were interfering in the administration of the Union by attempting to control and/or participate in the management and policies of the Union. Further, they interfered in the concerted activity of the Union. These activities are also in violation of R.I.G.L. 28-7-12."

Following the filing of the Charge, the parties each submitted a written position statement as part of the Board's informal hearing process. On August 25, 2017, the Board issued an Complaint alleging: "That the Employer violated R.I.G.L. 28-7-13 (1), (3) and (10) when, beginning on or about April 25, 2017, it threatened and imposed discipline on Union President Charlene Vega and Union Secretary Karen Lanzieri for actions that are protected and concerted Union activity; and when the Employer interfered with, spied on and/or kept Union activities under surveillance."

The Employer filed its Answer to the Board's Complaint on August 31, 2017. Formal hearings were conducted on September 19, 2017 and December 14, 2017. 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 or about February 14, 2018. 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. On February 22, 2018, the Board voted to uphold the charge of unfair labor practice and referred the matter to its legal counsel for drafting a Decision & Order, consistent with its determination.

#### **SUMMARY OF TESTIMONY**

The Union presented testimony from Union President Charlene Vela, Clerk Elvira Logan, Clerk Carol Laird, Union Vice President, Karen Lanzieri and Elena Gianfrancesco, a Union Executive Board member. The School Department presented its Equal Employment Opportunity ("EEO") and Recruitment Officer, Mr. Raymond Lambert, its

Chief of Administration, Joseph P. DiPina, and Human Resources Technician, Sharon Carmody. The witnesses were all sequestered during the course of this proceeding.

**Testimony of Ms. Charlene Vela**

Ms. Vela testified that she has been employed by the Providence School Department for over fifty (50) years as a clerk in the Human Resources Department, with the last nineteen (19) in the position of Senior Chief Clerk. Ms. Vela has been on the Union's Executive Board for a little over thirty-five (35) years, serving as President since October 2016 and as Vice President for approximately ten (10) to twelve (12) years.

Ms. Vela testified that the Union's March 2017 monthly Executive Board meeting started late because one of the members, Annette Stimma, was late and had to be called to come to the meeting. When Ms. Stimma arrived, she was very rushed and was talking about her workload and how she felt her position ought to be upgraded and that she was having to train another worker to help her. Ms. Vela testified that she warned Ms. Stimma about training the other clerk, Ms. Sharon Carmody, too well because management might just replace Ms. Stimma with Ms. Carmody. In response to Ms. Vela's admonition, Ms. Stimma stated that she only gives Ms. Carmody minimal training and minimal work. (TR. pg. 19) Ms. Vela explained that she gave that warning to Ms. Stimma because she knew that management was not happy with Ms. Stimma's work. Ms. Vela stated that Jennifer Lepre, Chief of Human Capital had made it clear to her and to the former Union President that although Ms. Lepre liked Ms. Stimma, she was not happy with Ms. Stimma's work performance. (TR. pg. 23) Ms. Vela further testified that the Union had already unsuccessfully attempted to get Ms. Stimma's position upgraded and that she was concerned that Ms. Stimma might be involuntarily moved out of her position. (TR. pg. 25) Ms. Vela further testified that she understood Ms. Stimma's response to mean that she was giving Ms. Carmody a minimal amount of training and not too much work.

On or about April 6, 2017, Ms. Vela was approached by Ms. Carmody's sister, Ms. Joanne Micheletti, who also happened to be the immediate prior Union Local President. Ms. Micheletti asked Ms. Vela if she would be willing, as Union President, to assist Ms. Carmody, as well as another clerk in Human Resources, Arlene Derosiers, in

receiving out-of-rank pay. (TR. pg. 28) Ms. Vela agreed that she would assist the clerks. Ms. Vela then remarked to Ms. Carmody, who was also present during this conversation, that Ms. Vela understood that Ms. Carmody was being trained on worker's compensation work and opined that Ms. Carmody was being "violated" every day because she's doing a substantial amount of work above her paygrade. (TR. pg. 28) Ms. Carmody remarked to Ms. Vela that Ms. Stimma had been making statements that Ms. Carmody is hardly doing any worker's compensation work. Ms. Vela then told Ms. Carmody that Ms. Stimma had said essentially the same thing the prior month at the executive board meeting; that Ms. Carmody was only doing a minimal amount of worker's compensation work and was only receiving minimal training. (TR. pg. 29) Ms. Vela testified that she concluded the conversation by telling the women to let her know when they wanted to go see management on the upgrade request.

On April 7, 2017, Ms. Stimma approached Ms. Vela and demanded to know why she had told Ms. Carmody that Ms. Stimma had characterized Ms. Carmody as doing minimal worker's compensation work. The conversation took place in a hallway near Ms. Carmody's work station and she came out to join it. Ms. Stimma denied ever having made such a declaration about Ms. Carmody's workload at the March Executive Board meeting. Ms. Vela insisted that other Board members heard her say that Ms. Stimma gives Ms. Carmody the "least" amount of worker's compensation work. Then, Ms. Carmody got angry and claimed that Ms. Vela had not used the word "least" when she told her what Ms. Stimma had said at the Executive Board meeting. Ms. Carmody stated that Ms. Vela had used the word "minimal" when originally telling her about what Ms. Stimma had said at the March Executive Board Meeting. (TR. pgs. 32-34)

After this conversation broke up, in an effort to prove that the word "least" and the word "minimal" mean the same thing, Ms. Vela photocopied the word "minimal" from a dictionary and then handed a *highlighted* copy of the definition to Ms. Stimma at her desk; and then left a copy in Ms. Carmody's mailbox, because she was not at her desk. Ms. Vela testified that Ms. Stimma seemed offended and retorted that she knew what the word minimal meant. The dictionary from which the photocopy was taken provided examples of how the word being defined could be used in a sentence. However, when using the defined word in the sentence, a symbol was used to denote where the word

being defined would be inserted into the sentence. In this case, the definition of the word “minimal” was written, in part, as follows:

“relating to or being a minimum, the last possible (a victory won with ~ loss of life) b: barely adequate (a ~ standard of living).”

Ms. Vela testified that after the aforementioned hallway incident on April 7, 2017, Ms. Carmody stopped speaking to her.

On the night of Thursday April 13, 2017, at 9:30 PM, just prior to the district’s April vacation week, Ms. Vela received a telephone call from the R.I. State Police advising her that Ms. Carmody’s sister, Ms. Michelletti (former Union President) had been arrested on a charge of embezzlement from the Union. The next time that Ms. Vela saw Ms. Carmody at work was on April 19, 2017. Ms. Vela testified that she had been a bit nervous about seeing Ms. Carmody since her sister had now been arrested on a charge leveled by the Union. However, the day of the 19<sup>th</sup> passed without incident.

On April 24, 2017 Ms. Carmody filed a complaint with the School Department claiming that the copy of the dictionary definition which contained the words “loss of life” in the example sentence constituted a “life threatening message.” She wrote: “it was clear to me at this point my life had been threatened by someone or someones in my office.” She further requested a “full investigation” of the people that worked in the office on select days during the school vacation week. (Respondent’s Exhibit # 2)

On April 25, 2017, Ms. Vela attended a meeting in which she was advised that she was being accused by Ms. Carmody of various incidences of bullying and harassment; and that Ms. Carmody claimed that the photocopy of the definition of minimal, which referred to a loss of life, constituted a death threat. (TR. pg. 40) Also in attendance at this meeting were Mr. Raymond Lambert, the EEO officer, Ms. Jordon Montrelis, the HR Officer, and Ms. Kristen Vita, Union Vice President. Ms. Vela testified that she responded to the various accusations, denying them all. Ms. Vela was not the only employee to have been accused by Ms. Carmody of bullying and harassment; Union Secretary, Karen Lanzieri, was also accused of a similar conduct. On April 25, 2017, Ms. Lanzieri also had a separate meeting with the HR and EEO Officers to review the allegations.

After the HR meetings concluded on the 25, 2017, the Employer and Union attempted to conduct a meeting with Ms. Carmody, Ms. Vela, and Ms. Lanzieri, to try and

resolve the issues between the women. But, when Ms. Carmody learned that it was Ms. Vela whom had placed the definition photocopy in her mailbox, she became enraged. Ms. Carmody commenced screaming and yelling that she was going to call the police and she refused to meet with anyone in an attempt to resolve the issues. Ms. Vela stated that Ms. Carmody then left work early for the rest of the day on sick time. According to Ms. Vela, Ms. Carmody called in sick for the rest of the week and then used five (5) vacation days the following week. Ms. Vela indicated that Ms. Carmody did not have much vacation time accrued because she was a fairly new employee. Ms. Carmody presented a doctor's note that provided a medical excuse, due to work place stress, commencing on April 25, 2017. Ms. Carmody did not return to work for several weeks thereafter.<sup>1</sup>

On or about April 26, 2017, Ms. Vela was approached by Mr. Bryan Marshall, an HR officer who asked to meet with her privately. Mr. Marshall told Ms. Vela that he was working with School Department Attorney, Charlie Ruggerio, on an investigation of Ms. Michelletti and asked Ms. Vela for a copy of the Union's checkbook register and the forensic report the Union had prepared in connection with the embezzlement matter. Ms. Vela refused to turn over the documents and asked him why the Employer was doing an investigation of Ms. Michelletti since she was accused of embezzling from the Union, not the School Department. (TR. pgs. 47-48)

On or about April 28, 2017, Ms. Vela responded to the bullying accusations in writing and when she delivered the letter to Mr. Lambert, she commented that she thought it was strange that Ms. Carmody's "bogus" complaint was filed only after her sister had been arrested. Ms. Vela testified that Mr. Lambert stated that the arrest was a very unusual case; that Unions typically would not prosecute and would let a member simply make restitution. Ms. Vela also testified that Mr. Lambert had made some comments about Ms. Carmody maybe feeling embarrassed and uncomfortable at work because of the situation with her sister. Ms. Vela advised Mr. Lambert that no one was holding anything against Ms. Carmody for her sister's actions. (TR. pg. 44)

On or about May 24, 2017, Ms. Vela received a letter indicating that the School Department had conducted a full investigation in to Ms. Carmody's allegations and that it

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<sup>1</sup> Ms. Vela also testified, prior to any objection by opposing counsel, that at the time Ms. Carmody was out of work on stress leave, Ms. Carmody's grandson was born.

was proceeding to schedule a pre-disciplinary hearing to be held on June 12, 2017. That letter alleged eight (8) instances/types of misconduct in her capacity as Chief Clerk. On the same day, Ms. Lanzieri also received a letter notifying her of a pre-disciplinary hearing with similar, although not identical, charges. Ms. Vela claimed that Ms. Lepre, the Employer's Chief of Human Capital, told her that she was responsible for making Ms. Carmody sick. (TR. pg. 61)

Ms. Vela's pre-disciplinary hearing was conducted by Mr. Joseph DiPina, the Chief of Administration, on June 12, 2017. By then, Ms. Vela had hired an Attorney, Mr. Harrison, to represent her. Mr. Harrison presented a written statement at the pre-disciplinary hearing in lieu of having Ms. Vela provide any direct testimony. On June 19, 2017, Ms. Vela received Mr. DiPina's decision, which found that she was guilty of all the allegations that had been made against her; and issued a written warning against workplace bullying. Ms. Vela did not appeal this decision under the grievance provisions of the Union's Collective Bargaining Agreement. She testified that as a result of the decision, she felt sickened and on edge, because in fifty-five (55) years of work, she had never acquired any disciplinary record. She further testified that prior to Ms. Lepre, she had an excellent relationship with administrators.

On cross-examination, Ms. Vela acknowledged that she did not provide any testimony at her pre-disciplinary hearing disputing any of the charges made against her. (TR. pg. 71) She further acknowledged that when Ms. Carmody had attempted to file a grievance in September 2016, as a six-month probationary employee, Ms. Vela mistakenly told Ms. Carmody that she had no rights as a bargaining unit member. (TR. pg. 75) Ms. Vela stated that she did not know that she could file a grievance for her written warning, despite having served as the Union Vice President for at least a decade and having filed all the Union grievances during that time-frame. (TR. pg. 78) Ms. Vela further testified on cross-examination that although she had been told about the Union's Facebook page, she herself had never seen it because she's not "computer tech" and had not learned about Facebook at that time. (TR. pg. 86) Ms. Vela acknowledged that the Union's attorney, Ms. Santoro, called her and told her to get the Facebook page taken down and she, in turn, asked Ms. Lanzieri to take it down. (TR. pg. 86)

**Testimony of Elvira G. Logan, HR Specialist**

Ms. Logan, an HR specialist in another bargaining unit, Local 1033, worked with both Ms. Vela and Ms. Lanzieri. She testified that she has known and worked with both women for many years and had never been bullied by either of them. She further stated that she had never been interviewed by either Ms. Lambert or Jordan Montrelis concerning harassment by Ms. Vela or Ms. Lanzieri or bullying by either woman against another employee. (TR. pg. 92) The Employer did not cross-examine Ms. Logan.

**Testimony of Carol Laird**

Ms. Laird, the Assistant Human Resources Generalist, a member of Local 1033, testified that she has worked with both Ms. Vela and Ms. Lanzieri for many years and that she had never seen either woman bully or harass another employee. (TR. pg. 95) She also testified that she was not interviewed by Mr. Lambert regarding either Ms. Vela or Ms. Lanzieri. (TR. pgs. 95-96) The Employer did not cross-examine Ms. Laird.

**Testimony of Karen Lanzieri**

Ms. Lanzieri testified that she has been employed by the Providence School Department for twenty-eight (28) years and as a clerk in the Human Resources Office for the Providence School Teachers for thirteen (13) years. Ms. Lanzieri is a member of Local 1339 and at the time of this hearing, was in her first term as the recording secretary of the Local. Ms. Lanzieri testified that she was present at the March 2017 Union Executive Board Meeting where there had been considerable discussion concerning the allegations against former Union President Micheletti. (TR. pgs. 97,100) Ms. Lanzieri explained that Ms. Lepre, Director of Human Capital had made statements both to Ms. Lanzieri and to Ms. Vela that she wasn't sure what she was going to do with Ms. Stimma because she was getting many complaints about her. Ms. Stimma felt overwhelmed and couldn't keep up with her job. As a result, Ms. Lanzieri explained that the Union Board members cautioned Ms. Stimma at that meeting to only teach Ms. Carmody what she had to, because Ms. Stimma's job was in real jeopardy. (TR. pg. 101) Ms. Lanzieri stated that Ms. Stimma's response to this caution was: "I'm not stupid. I know that. I only teach her the minimal amount of work." (TR. pg. 102.)



### Testimony of Elena Gianfrancesco

Ms. Gianfrancesco testified that she was present at the March 2017 Union Executive Board meeting when Ms. Stimma was complaining about her workload and providing some training to Ms. Carmody. Ms. Gianfrancesco confirmed that the Board members cautioned Ms. Stimma against providing too much training for Ms. Carmody, for fear that Ms. Stimma just might get herself replaced by Ms. Carmody. Ms. Gianfrancesco said:

“We discussed a lot of things, but I think the issue was Annette or---there’s a lot of stuff going on in the School Department right now. And, I think the issue was Annette was complaining about her job, and she had someone helping her. And, we had said, you know, don’t teach her everything, you know, because she’s going to end up getting your position and you’re going to be out of a job.” (TR. pg. 135)

Ms. Gianfrancesco confirmed that several other members of the Executive Board also urged Ms. Stimma to use caution and not train herself right out of a job. Ms. Stimma responded that she wasn’t teaching Ms. Carmody everything, only minimal matters. Ms. Gianfrancesco said that Ms. Vela queried Ms. Stimma to make sure she understood what “minimal” meant. (TR. pg. 138). Ms. Gianfrancesco said that Ms. Stimma said she understood, but that she needs the help. Ms. Gianfrancesco understood “minimal” in this context to mean that Ms. Stimma was teaching Ms. Carmody very little; just what she needed to know. Id.

Ms. Gianfrancesco also confirmed that the Executive Board decided to start a closed Facebook group for Union members, because many of the members have small children and cannot get to meetings. The Union had previously tried a newsletter, but that just didn’t work out. (TR. pg. 140). She said that the group followed a Facebook model used by the Providence Teachers Union. She acknowledged that there was griping on the Facebook page and that the fact that Ms. Micheletti had been arrested was also discussed on that closed group page. Ms. Gianfrancesco further stated that she had never known Ms. Lanzieri to call Ms. Carmody a “swamp girl.” (TR. pgs. 140-142) On cross-examination, Ms. Gianfrancesco acknowledged that her workspace was in a different building from Ms. Vela and Ms. Carmody. She also acknowledged that she had no personal knowledge of the issues surrounding the controversy over the photocopied definition; she only knew what she had heard from others. (TR. pgs. 142-143).

### **Testimony of Raymond Lambert**

Mr. Lambert, the School Department's EEO and Recruitment Officer, testified that he had previously worked for the State of Rhode Island for thirty (30) years and had a background in Worker's Compensation and EEO matters. He indicated that the Providence School Department has an EEO policy which permits employees to file complaints when they feel if they are being harassed or discriminated against. (TR. pgs.150-151). He explained that there are two (2) different types of complaints; one based on a person's status as a member of a protected class and the other being bullying & harassment complaints. He said that an aggrieved employee must fill out a form and then the department will investigate.

In this case, he testified that Ms. Carmody first came to see him in December 2016 and filed a complaint about being harassed over her sister's status. He stated that he and Jordan Montrelis, a Human Resources Officer, investigated the complaint by talking to the accused employees and others within the same offices. (TR. pg. 153). He further testified that Ms. Carmody had come to see him after she found the dictionary definition of minimal in her mailbox, alleging that it was a death threat. He stated that she also complained about being called a "swamp" thing; that there was a loud confrontation between Ms. Carmody and others in a hallway; that Ms. Carmody had been called a "snitch"; and that other employees said to not talk when she was around. (TR. pg. 155-156). As a result, Mr. Lambert said he investigated by interviewing Ms. Vela, Ms. Lanzieri, an employee with the first name LaShonna and other co-workers.

Mr. Lambert testified that he met with an A.J. McLeod who indicated that he had overheard a "swamp thing" comment being made with respect to Ms. Carmody. (TR. pg. 158). Mr. Lambert also testified that he met with an employee named Martha DeMelendez who claimed that the particular people involved were always giving Ms. Carmody a hard time. He said that Ms. DeMelendez said that she had observed the loud hallway confrontation that took place between Annette Stimma, Charlene Vela, and Sharon Carmody. (TR. pg. 159) He stated that Ms. Vela admitted to him that she had placed the dictionary definition in Ms. Carmody's mailbox because of the ongoing dispute as to whether Annette Stimma had said that Sharon Carmody was doing minimal work. (TR. pg.160).

During his interview with Ms. Lanzieri, he discussed the Union's Facebook page because someone had alerted his office to its existence. He asserted that he had to determine what the motivation was as to why these individuals were perhaps picking on Ms. Carmody; and that it became clear that it was all pretty much related to the situation surrounding Ms. Carmody's sister. He indicated that he believed that the Facebook page was a hateful thing directed at Ms. Micheletti, but acknowledged that by the time he had interviewed Ms. Lanzieri, the Facebook page was already down. (TR. pg. 161) Mr. Lambert stated that at the conclusion of the interviews, he determined that there should be some discipline, because the situation had become disruptive to the operations of the office. He said that Ms. Vela and Ms. Lanzieri had admitted putting the definition in the mailbox and Ms. Lanzieri had admitted to putting up the Facebook page. (TR. pgs. 162-163). He further testified that "some of the statements "were verified by some of the other witnesses." He stated that he found the conduct to be harassing and recommended some sort of discipline.

Mr. Lambert opined that Ms. Carmody had been going through a continuous kind of what she felt was harassing behavior since she was hired and that finding the definition of the word "minimal" in her mailbox "finally brought everything to a head." (TR. pg. 164). Mr. Lambert verified that Ms. Carmody filed a worker's compensation claim and that she was out of work from April 26, 2017 to June 2, 2017. (TR. pg. 165). He stated that he made a recommendation to Ms. Jennifer Lepre, his supervisor, that Ms. Vela and Ms. Lanzieri have some form of discipline imposed upon them.

On cross-examination, Mr. Lambert changed his testimony about the timing of Ms. Carmody's written complaint, indicating that it was not brought in December 2016, but in the spring of 2017. (TR. pgs. 168-169). He further explained that Ms. Carmody had complained to him in December about who was invited to Christmas parties and who received candy, but that she had not filed a written complaint at that time. Mr. Lambert also testified that Ms. Carmody started her employment after her sister had returned to the School Department, after being out on a worker's compensation claim for three and a half years, and that she had moved out of her Union position to a non-Union position at a much higher rate of pay. (TR. pg. 170).

Mr. Lambert acknowledged that Ms. Carmody's written complaint against Union President Vela was filed approximately a week after her sister had been arrested for embezzling from the Union. He further acknowledged that he told Ms. Vela that Ms. Carmody might have been upset with the fact that her sister had been arrested. (TR. pg. 172). Mr. Lambert agreed that he had known in early April 2017 about the Union meeting in which Ms. Stimma had stated that she was only giving Ms. Carmody minimal work. He stated that Ms. Carmody did tell him that she was upset over the arrest of her sister and her alleged treatment as a result. Mr. Lambert also stated again that A.J. McLeod had overheard the swamp thing and that he had witnessed a little bit of the harassing behaviors. (TR. pg. 180).

Mr. Lambert stated that he had interviewed Martha DeMelendez about the complaints concerning Ms. Vela. He acknowledged that Ms. DeMelendez has had a history in 2016 of yelling, screaming, and slamming doors and that just prior to the hearing in this matter, Ms. DeMelendez had allegedly engaged in the same behavior. He indicated that she had not been disciplined for this recent conduct, but that Ms. Vela and Ms. Lanzieri had recently filed a complaint and that the matter will be investigated. (TR. pgs. 185-186). He also stated that he did not know if Ms. DeMelendez had been disciplined previously for this conduct, and stated that "there have been meetings over and over regarding the behaviors in the office." (TR. pg. 197).

When asked if he thought the dictionary definition was a death threat, Mr. Lambert stated that Ms. Carmody took the "loss of life" as a death threat. He further opined that "it's a matter of perception. If she perceived it as a threat, in her mind, it's a threat. In my mind, it might not be a threat." (TR. pg. 187). He further stated: "I determined that she was entitled to perceive it that way." (TR. pg. 188). He acknowledged that Ms. Vela, Ms. Lanzieri, and Ms. Stimma all had told him that the word "minimal" in this controversy derived from a discussion that took place at the March 2017 Union Executive Board meeting where Ms. Stimma had said that Ms. Carmody was doing minimal worker's compensation work. He further acknowledged that he was advised that there was a later controversy over the word "minimal" versus "least"; and that the reason Ms. Vela photocopied the definition was to establish to her co-workers that the two (2) words mean the same thing. (TR. pg. 189). He ultimately agreed that the reason Ms. Vela put the

definition in the box was to compare the words “least” and “minimal” and not to threaten Ms. Carmody. (TR. pg. 200)

Mr. Lambert also acknowledged that during his interview of Ms. Lanzieri, he asked if she had any ill will towards Ms. Carmody and that Ms. Lanzieri stated that she did not. Ms. Lanzieri was forthright that she was upset with Ms. Carmody’s sister, Ms. Michelletti. He admitted telling Ms. Lanzieri that putting up the Facebook page wasn’t a good idea and asked Ms. Lanzieri why Ms. Carmody wouldn’t be upset over the fact that people were talking about her sister on a Facebook page. (TR. pg. 192). He further admitted asking Ms. Lanzieri if she had put the Facebook page up specifically about Ms. Michelletti being arrested and that maybe it was poor judgment on her behalf. Mr. Lambert claimed to not remember that Ms. Lanzieri told him that she had not written anything on the Facebook page about Ms. Michelletti, but did recall that she was an administrator of the Facebook group; and that she acknowledged that others had written about Ms. Michelletti’s status. He assumed that because the Facebook group was for members of Local 1399 that anyone who is a member of the local can see the page and further stated that it’s for “anybody on the Internet.” He stated that he had no idea if it was a secret Facebook group. (TR. pg. 193). Upon further cross-examination over a copy of the Facebook page, he acknowledged that neither Ms. Carmody nor Ms. Vela were members of the group. (TR. pg. 195).

When cross-examined on the issue of Ms. Vela allegedly calling Ms. Carmody a “snitch”, a charge for which Ms. Vela was disciplined, he admitted that he didn’t know that Ms. Carmody said it was Ms. Vela who said it, but “they” said it. He guessed that “they” meant Ms. Vela, Ms. Lanzieri, LaShonna... “the whole group.” He finally admitted that he wasn’t sure if anybody even said that Ms. Vela called Ms. Carmody a snitch. (TR. pgs. 197-198). Later, he stated that it was “probably” A.J. McLeod who verified that Ms. Vela called Ms. Carmody a snitch. When pressed further, Mr. Lambert finally said that he couldn’t recall who told him that Ms. Vela called Ms. Carmody a snitch.

Mr. Lambert stated that Ms. Carmody reported to him that she got into a verbal confrontation with LaShonna who allegedly challenged Ms. Carmody to throw up her hands, but that LaShonna was not disciplined because no one witnessed the incident.

Mr. Lambert described it as a “he said, she said” situation that no one witnessed. Therefore, no one could be disciplined. (TR. pgs. 198-199)

When cross-examined on the issue of Ms. Lanzieri allegedly calling Ms. Carmody a swamp girl, Mr. Lambert could not identify any specific time frame for the alleged comment; stating that it could have been anytime from November 2016 onward. He admitted that he has no idea what it means and that he assumed that the statement took place in the office, because A.J. McLeod overheard it. (TR. pgs. 201-202)

Finally, when cross-examined about his discussion with Ms. Vela when she was questioned, Mr. Lambert admitted telling her that Unions typically gather themselves together and have a person make restitution and not have people arrested. He further stated: “well, the reference for me was why it was made into such a big, public thing.” He also acknowledged asking Ms. Vela “why does it surprise you that Ms. Carmody would be upset since you had her sister arrested”? (TR. pg. 203)

On re-direct examination, Mr. Lambert stated that Ms. Carmody began complaining to him in December 2016 and it was a constant, ongoing kind of thing. He claimed that she came to him frequently. (TR. pg. 204) As for the “swamp thing” comment, Mr. Lambert testified that the thing that stuck out the most from his interview of A.J. McLeod was that he heard the “swamp thing” comment. (TR. pg. 206)

On re-cross examination, Mr. Lambert admitted that when the Union attempted to resolve the problem that Ms. Carmody was yelling and screaming in the cafeteria and saying she was calling the police. He stated that he understood why Ms. Carmody would not want to be represented by the Union that just had her sister arrested; and therefore, his office could not mediate the dispute and felt that he had to make a decision on the matter and decided to recommend discipline for Ms. Vela and Ms. Lanzieri. (TR. pgs. 207-210)

### **Testimony of Joseph P. DiPina**

Mr. Joseph P. DiPina, the Chief of Administration, testified that although he doesn't normally preside over disciplinary disputes that he did so in this case at the request of Ms. Jennifer Lepre, Chief of Human Capital. He relayed that the pre-disciplinary hearings were quite short; and that both Ms. Vela and Ms. Lanzieri relied on written statements submitted by their attorney and that neither testified. (TR. pgs. 212-213) He reviewed the

statement, as well as information that had been collected by the Human Resources Department and made a decision. On cross-examination, Mr. DiPina agreed that he had not conducted any independent investigation of his own, before coming to a decision on the matter.

### **Testimony of Sharon Carmody**

The final witness to testify in this case was Sharon Carmody, who at the time of the December 2017 hearing, was employed by the School Department as a Human Resources Technician. Ms. Carmody testified that she may have said some things to Mr. Lambert prior to April 2017, but April was when she went to him about the dictionary photocopy that was left in her mailbox. (TR. pg. 224) She said that after her sister, Ms. Michelletti, stepped down as Union President, the office environment was hostile towards her. She stated that Ms. Vela and Ms. Lanzieri were making derogatory comments about her sister in front of her and that she asked them to stop and take it elsewhere. She claimed that they told her to “block her ears” and mind her business and that the comments did not stop (TR. pg. 223) Ms. Carmody testified that after her sister was arrested in April 2017, things got worse, with statement such as: “Oh, we hope she goes to jail. She worked with Jennifer Lepre. She sold out the Union. That’s how her sister got a position.” (TR. pg. 225)

Ms. Carmody stated that one day she was in the cafeteria and Ms. Vela came over and started talking to Ms. Michelletti. Ms. Vela then turned to Ms. Carmody and said, “oh by the way, Annette says you don’t do anything for her.” Ms. Carmody said that she then went upstairs to ask Ms. Stimma why she would say such a thing, because Ms. Carmody felt she had been doing a good job. Ms. Stimma allegedly told Ms. Carmody that she had never said such a thing. (TR. pg. 226) According to Ms. Carmody, the next day she was approached by a coworker who told her that Ms. Vela and Ms. Stimma were in the hallway talking and that they wanted Ms. Carmody to join them. Ms. Carmody says that when she arrived, they were getting a little loud with each other and that Ms. Vela kept saying Jo-Anne Micheletti. Ms. Carmody stated that this had nothing to do with her and to not drag her into it.

She stated that the following week, she went to her mailbox and discovered the photocopy of the definition. She testified that the highlighted word was “miniscule”, not

minimal. She said that she was upset by the words "loss of life" because it had been such a hostile environment. She spoke with Ms. Lepre and Ray Lambert and they asked her to wait until the following week before filing any complaints, to give them a chance to look into things. (TR. pgs. 228-229) The following week, Mr. Lambert and Jordan Montrelis met with her and asked her to tell them her story. When she was done, they asked her not to say anything to anyone else and she didn't. She said she couldn't understand why a Union sister would have put something like that in her mailbox and that she perceived it as harassment. (TR. pg. 232)

Ms. Carmody indicated that her sister called her and asked her to go on Facebook for her, because she was not permitted by the Court to use social media. Ms. Micheletti had heard that there was a Facebook group that was bashing her and she wanted Ms. Carmody to confirm this for her. Ms. Carmody did go on Facebook and saw that there was a page, but she did not ask to join it.

When Ms. Carmody spoke to Mr. Lambert about the definition, she also told him that someone was calling her snitch, about her asking Ms. Vela and Ms. Lanzieri talking about her sister and refusing to stop, about being told by Ms. Vela the previous September that she had no Union rights because she was on probation. Ms. Carmody claimed that when she walked into the break room, she heard Ms. Lanzieri say: "Here she comes. She's a snitch."

On direct examination, Ms. Carmody stated that she had heard a comment along the lines of "swamp girl", but wasn't one hundred percent sure that it was directed at her. She said there was a group of four (4) clerks who hang together and that she wasn't sure who even said it, so that she was not going to point a finger at one person. But, she did tell Mr. Lambert about the comment. (TR. pg. 234)

Ms. Carmody confirmed that she was out of work for a period of time after the mailbox incident and stated that the hostile work environment was causing her stress; and that because her doctor felt it was not a good environment for her to be in. When she returned to work, the School Department moved the location of her desk.

On cross-examination, Ms. Carmody acknowledged that when she worked as a long-term sub, a position that Ms. Vela found for her, there were no problems. But, when she came on full-time in March 2016, she said that there were comments about her right



from the beginning, but did acknowledge that Ms. Vela was out of work at that time and did not return until June 2016. (TR. pgs. 236-237) She further stated that there were minor issues occurring in October 2016, but that she did not complain to anyone. Sometime in early 2017, there was a Union meeting in which a Union member, not Ms. Vela or Ms. Lanzieri, or any Executive Board member, said three (3) times that Ms. Micheletti had f\*\*\*ed the Union. As a result, Ms. Carmody got into a screaming confrontation with that individual. (TR. pg. 241)

Ms. Carmody recalled that one day in April 2017, Ms. Vela approached her sister in the cafeteria, but claimed no recollection about any conversation wherein Ms. Vela told her that she was being violated every day that she works as a Group 5 employee, while being paid as a Group 3 employee. (TR. pg. 243) Ms. Carmody similarly denied hearing anything about her workload when she was asked to join Ms. Vela and Ms. Stimma in the hallway on the day of their loud confrontation.

Ms. Carmody's recollection of the photocopied definition was that the word was minuscule and that she perceived the document as a death threat. She said she couldn't understand why the document was placed in her mailbox anonymously. She stated that once this occurred, she felt as though things were out of control and so she went to Mr. Lambert. (TR. pg. 246) She acknowledged that on April 25, 2017, she learned that it was Ms. Vela who had put the definition in her mailbox; and that she was very upset and did not want to have a conversation about it and that she wanted to call the police. She confirmed that she went out on stress leave the following day.

### **POSITION OF THE PARTIES**

The Union argues that the Employer discriminated against Ms. Vela and Ms. Lanzieri due to their affiliation with the Union, spied on or kept their activities under surveillance, interfered with the operation of the Union and interfered with the ability of Ms. Vela and Ms. Lanzieri to engage in concerted activities. As evidence of this charge, the Union points to evidence in the record that demonstrates that the Employer's investigation focused on protected Union activities such as the launching of the Facebook page, the Employer's refuted request for Union documents, and the defense of Ms. Carmody's sensitivities concerning her sister's arrest. The Union claims discriminatory treatment, because Ms. Vela was disciplined for loud or boisterous

behavior in the office (slamming doors) when other, non-Executive Board employees engaged in the same conduct without punishment. Finally, the Union claims that the Employer showed its discriminatory intent when it criticized the Union for reporting the former Union President to the police for prosecution, rather than letting her simply make restitution.

The Employer says that its workplace has a long history of being heavily Unionized and that there is no evidence of anti-Union animus, as would be required to find an unfair labor practice. The Unionization has been in place for decades, with several Collective Bargaining Agreements having been negotiated with the instant Union. The Employer claims there is not a case of an Employer seeking to chill concerted activity. More importantly, however, the Employer argues that the documentary evidence in the record establishes that Ms. Vela and Ms. Lanzieri were disciplined exclusively for harassing and bullying behavior against Ms. Carmody and that it simply cannot be argued that the Employer has an anti-Union animus when it protected one Union member against the attacks of other Union members. The Employer also argues that the Union's creation of a Facebook page cannot be deemed to be a protected activity. Similarly, Ms. Vela's furnishing of an employee list for Unionizing purposes, without consent from her Employer, is not protected, concerted activity. Finally, the Employer argues that the written warnings issued against Ms. Vela and Ms. Lanzieri exclusively for their conduct towards Ms. Carmody and that they failed to challenge this action through the grievance process, which was within their rights and obligation, if they were unhappy with the result. The Employer argues that the Union has failed to produce any evidence of protected activity or anti-Union animus and has, therefore, failed to make a prima facie showing, as required by *N.L.R.B. v Wright Line, Inc.* 662 F.2d 899, 903 (1<sup>st</sup> Cir. 1981).

### **DISCUSSION**

In this case, both parties rely on *N.L.R.B. v Wright Line, Inc.* 662 F.2d 899, 903 (1<sup>st</sup> Cir. 1981) as the legal standard for the Board to consider. Although *Wright Line* was a termination case, its principles have been applied to discipline cases as well. *N.L.R.B. v La-Z-Boy Midwest, a Div. of La-Z-Boy Inc.*, 390 F.3d 1054, 1058 (8th Cir.2004). Under this approach, the complainant must make a prima facie showing that protected conduct was a "motivating factor" in the Employer's decision to discipline the employee. The

burden then shifts to the Employer to demonstrate that the same action would have been taken notwithstanding the protected conduct.

**The Charges against Ms. Vela**

The Employer sent Ms. Vela a pre-disciplinary letter dated May 23, 2017 (Joint Exhibit # 4). That letter accused Ms. Vela of:

- (1) Placing a copy of a page from a Webster's dictionary on which the word "minimal" and its definition had been highlighted in the mailbox of another staff member, to emphasize to that staff member that Ms. Vela believed she was doing very little work in the area of Worker's Compensation;
- (2) On at least one occasion of telling a new staff member that a clerk in HR was a "snitch";
- (3) On multiple occasions of telling other staff members in the supply room in the HR Office, to stop talking when a specific staff member walked in the room, implying that she had been talking about this staff member and saying "shh" and "close her ears";
- (4) On multiple occasions of slamming a door in the administration building to express displeasure with the receptionist;
- (5) On at least one occasion of saying "if they can't speak English, too bad" about visitors, within an earshot of a Spanish-English bilingual employee, making her feel that you have an issue with her and with Spanish speaking visitors;
- (6) Provided a list of substitute clerks that included personal information such as names, addresses and phone numbers to a substitute clerk who asked for it, without authorization from, or the knowledge of your supervisor;
- (7) Causing the absence of a staff member who felt targeted and thereby disrupting the effective and efficient operations of the Human Resources Office.
- (8) Creating a hostile work environment for multiple members of the Human Resources staff.

A pre-disciplinary hearing was conducted on June 12, 2017 by Joseph P. Di Pina. According to Mr. DiPina's testimony, in his capacity as Hearing Officer, he simply relied upon information gathered by the Human Resources Department (the record is unclear as to how that information was imparted to him) and a written statement from Ms. Vela's Attorney. No testimony occurred. On June 21, 2017, Mr. Di Pina issued a letter containing a written warning to Ms. Vela. In that letter, he stated that it was his determination that

the allegations against her were credible and that she created and contributed to a hostile workplace for multiple staff members that disrupted the efficient and effective operations of Human Resources over several months. He further found that while he did not believe that she intended to physically threaten or harm any members of the staff, it was his finding that her conduct threatened the emotional health and safety of at least two (2) staff members. He stated that this letter shall serve as a written warning that her conduct was unacceptable and as notice that she must cease and desist from such conduct immediately and permanently.

**Analysis of the Charges against Ms. Vela**

Under the *Wright Line* test, as adopted and applied under federal case law, there must first be a prima facie showing sufficient to support an inference that the Employer's opposition to the protected conduct was a motivating factor in the Employer's discharge or discipline. Once this is established, the burden then shifts to the Employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

In Ms. Vela's case, the initial protected conduct of discussing the minimal amount of worker's compensation work and then following up with the dictionary definition clearly had its genesis in the March 2017 Executive Board meeting, where multiple Executive Board members warned Ms. Annette Stimma against providing "too much training" to Ms. Carmody on the subject matter of worker's compensation. Ms. Vela testified that the reason such advice was tendered to Ms. Stimma was because the Union had already tried unsuccessfully to get Ms. Stimma's position upgraded and that Ms. Vela was aware of the Employer's concerns over Ms. Stimma's work performance. (TR. pg. 23) Ms. Vela was not the only person to testify on this issue. Both Ms. Lanzieri and Ms. Gianfrancesco corroborated this testimony. (TR. pgs. 102 and 137) The Board notes that both Ms. Vela's and Ms. Lanzieri's testimony occurred during the first hearing in this case. Had the Employer desired to rebut their testimony about Ms. Stimma's performance or the Employer's concern thereon, the Employer could have brought in Ms. Lepre, the Chief of Human Capital at the second hearing to rebut this testimony. However, not only did this testimony remain unchallenged, it was further corroborated by the testimony of Ms. Gianfrancesco, who was in attendance

at the March 2017 Executive Board meeting. Additionally, Ms. Vela candidly admitted having given this advice to Ms. Stimma, even when being admonished by the Employer for doing so. Furthermore, if this discussion with the word “minimal” had not taken place, why was there a heated discussion in the hallway on this subject between Ms. Vela and Ms. Stimma, to which Ms. Carmody was eventually summoned? By the time the Employer issued the pre-disciplinary letter in May 2017, it had been informed by both Vela and Lanzieri that *neither* of them had accused Ms. Carmody of doing minimal work, as was alleged in the letter. But, rather, that it was Ms. Stimma who stated that she was giving Ms. Carmody only the minimal amount of training as was necessary. If the Employer wanted to challenge this information, it could have presented Ms. Lepre to dispute the same at the second hearing, but did not do so. Rather, at the second hearing, this information was all corroborated by Ms. Gianfrancesco. As such, the Board credits the testimony given by Ms. Vela, Ms. Lanzieri, and Ms. Gianfrancesco as to the caution given to Ms. Stimma and her assertion that she was only providing minimal training to Ms. Carmody.

As to the allegation that Ms. Vela called Ms. Carmody a snitch, this claim completely unraveled at the hearing in this case. As set forth previously, when Mr. Lambert was cross-examined on the issue of Ms. Vela allegedly calling Ms. Carmody a “snitch”, a charge for which Ms. Vela was disciplined, he admitted that he didn’t know that Ms. Carmody said it was Ms. Vela who said it, but “they” said it. He guessed that “they” meant Ms. Vela, Ms. Lanzieri, LaShonna... “the whole group.” He finally admitted that he wasn’t sure if anybody even said that Ms. Vela called Ms. Carmody a snitch. (TR. pgs. 197-198). Later, he stated that it was “probably” A.J. McLeod who verified that Ms. Vela called Ms. Carmody a snitch. When pressed further, he finally said that he couldn’t recall who told him that Ms. Vela called Ms. Carmody a snitch. As such, the Board cannot find that there was any credible or good-faith basis for the Employer to bring this charge against either Ms. Vela or Ms. Lanzieri.

As to the accusation that Ms. Vela said “shh” or “close your ears” on multiple occasions, only Ms. Carmody testified on this issue. She stated that Ms. Vela and Ms. Lanzieri were talking about her sister, the former Union president who was arrested in a charge of concerting Union funds. She claimed that when she asked them to stop

talking about her sister, they told her to “block her ears” and mind her business and that the comments did not stop (*TR. pg. 223*) Ms. Carmody testified that after her sister was arrested in April 2017, things got worse, with statement such as: “Oh, we hope she goes to jail. She worked with Jennifer Lepre. She sold out the Union. That’s how her sister got a position.” (*TR. pg. 225*) Once again, there can simply be no question that if Ms. Vela and Ms. Lanzieri did indeed engage in such discussion concerning Ms. Carmody’s sister, it was pertaining to the Union itself; clearly protected, concerted speech. Ms. Carmody never claimed that she was blamed in any way for her sister’s alleged actions. Although she claims she felt targeted by the talk, the Board finds that the fact that Union officials charged with safeguarding the Union’s assets might talk about an ongoing criminal investigation during working hours as not unusual. Ms. Carmody had to expect and/or anticipate that this issue would be the subject of great interest in the work place. The Employer did not produce a copy of any policy that stated that Union officials were prohibited from discussing Union business amongst themselves in the workplace. As such, this charge was clearly unwarranted and also had its genesis in protected Union activity.

On the issue of slamming doors on multiple occasions, the apparent basis for the Employer’s charge is an alleged statement made by Martha DeMelendez to Mr. Lambert in the course of his investigation. That allegation was hearsay in the proceedings before Mr. DiPina and was hearsay before this Board as well. If this issue was truly the basis for discipline, then it wasn’t proved before this Board. Additionally, Mr. Lambert indicated that he was aware that Ms. DeMelendez herself has been guilty of slamming doors and loud behaviors and could not indicate that she had been disciplined for this same conduct. The Employer could have presented live testimony from Ms. DeMelendez, but failed to do so. The only other testimony came from Ms. Vela who stated that on one occasion, the door did slip accidentally out of her hands and slam. The timing of this incident is unclear from the testimony.

On the accusation concerning the bi-lingual employee and the alleged comment that “if they don’t speak English, too bad”, this too was hearsay. No employee ever testified before this Board that such a comment was ever made by Ms. Vela. In fact, the

identity of the employee making the accusation was never revealed. As such, the Board finds that this accusation cannot reasonably be considered or evaluated.

On the accusation that Ms. Vela wrongfully provided a list of employees to another employee for the purpose of organizing, the Employer argued to this Board that this act was in no way a concerted activity but was akin to “espionage.” Despite this statement, the Employer further argued that Ms. Vela was disciplined exclusively for her harassing and bullying behavior. Indeed, although this issue is identified in the pre-disciplinary letter, it is not mentioned in the letter issued by Mr. DiPina. As such, we need spend no further time on it in this decision.

Finally, on the issue of “causing the absence” of a staff member who felt targeted and creating a hostile work environment, the only specific allegations that have survived are Ms. Vela placing the dictionary definition in Ms. Carmody’s mailbox and her alleged discussion of Ms. Carmody’s sister’s alleged criminal activity. The Board finds that is not objectively reasonable for anyone to believe that a photocopy from a dictionary of the word “minimal”, even with the use of the phrase “minimal loss of life”, could even remotely be described as issuing a death threat. We do not dispute that Ms. Carmody found it stressful to be in her work environment with Union officials and other Union members under the lens of her sister’s arrest. Certainly, that had to be a very trying time for her and being out on stress leave for several weeks had to have spared her the embarrassment of facing her colleagues in the immediate aftermath of her sister’s arrest. However, the Union officials, here, did nothing wrong by referring a matter to the State Police, pressing charges as necessary, and then discussing the same while in the workplace. The first two (2) actions were clearly concerted, protected activity and the last, without any proof that they willfully violated a known policy for discussing specific Union business in the workplace, we find the Employer’s charges against Ms. Vela to be pre-textual and motivated by Union animus. In further support of this finding, we note that Ms. Lambert repeatedly indicated to Ms. Vela that the Union’s decision to charge Ms. Michelletti was, in his opinion, very unusual. Indeed, it was clear as testified before us that he was critical of the Union’s decision to charge Ms. Micheletti. We refer specifically to his demeanor and his statement: “well, the reference for me was why it was made into such a big, public thing.” Furthermore, he acknowledged asking Ms. Vela “why does it surprise you that

Ms. Carmody would be upset since you had her sister arrested”? His testimony made it clear that he did not find the Union’s actions palatable and that he sympathized with Ms. Carmody because her sister had been arrested.

**The Charges Against Ms. Lanzieri**

The Employer sent Ms. *Lanzieri* a pre-disciplinary letter dated May 23, 2017 (Joint Exhibit # 5). That letter accused Ms. *Lanzieri* of: (1) Using the term “Swamp Girl” to refer to a member of the HR staff in conversations held in close proximity to this staff member.

(2) On at least one occasion of telling a new staff member that a clerk in HR was a “snitch” and should be avoided because she spent time in the Chief of Human Capital’s office;

(3) On multiple occasions of telling other staff members in the supply room to stop talking when a specific staff member walked in the room, implying that she had been talking about this staff member and saying “shh” and “close her ears”;

(4) For allegedly telling one staff member: “when I get cocky with you, you’ll know about it” and in a separate conversation, telling that staff member, “f\*\*k you, f\*\*k you.”

(5) For allegedly stating that you “will bitch about” the former Union president in front of her sister, a current Human Resources staff member;

(6) For allegedly engaging in multiple conversations about the criminal charges pending against the former president of the clerical Union, whose sister is a current Human Resources staff member who felt targeted by these conversations;

(7) For creating a Facebook group for clerical employees for the purpose of encouraging them to attend the next court date of the former president of the clerical Union, whose sister is a current Human Resources staff member who felt targeted by this Facebook group.

(8) Engaging in activities that constitute bullying in the workplace and misconduct;

(9) Creating a hostile work environment for multiple members of the Human Resources staff.

A pre-disciplinary hearing was conducted on June 12, 2017 by Joseph P. Di Pina. According to Mr. DiPina’s testimony, in his capacity as Hearing Officer, he simply relied upon information gathered by the Human Resources Department (the record is unclear as to how that information was imparted to him) and a written statement from



Ms. Lanzieri's Attorney. No testimony occurred. On June 21, 2017, Mr. Di Pina issued a letter containing a written warning to Ms. Lanzieri. In that letter, he stated that it was his determination that the allegations against her were credible and that she created and contributed to a hostile workplace for at least one (1) staff member that disrupted the efficient and effective operations of Human Resources over several months. He further found that while he did not believe that she intended to physically threaten or harm any member of the staff, it was his finding that her conduct threatened the emotional health and safety of one staff member. He stated that this letter shall serve as a written warning that your conduct was unacceptable and as notice that she must cease and desist from such conduct immediately and permanently.

**Analysis of the Charges Against Ms. Lanzieri**

In reviewing the evidence in this record, the Board is compelled to point out that much of the testimony in this case amounted to hearsay and in some cases, totem pole (double) hearsay. The allegation against Ms. Lanzieri falls directly into this category. Not one witness testified before this Board that Ms. Lanzieri called Ms. Carmody a swamp thing or swamp girl. Mr. Lambert's testimony was that A.J. McLeod told him that he heard Ms. Lanzieri refer to Ms. Carmody as a swamp thing. This is double hearsay and the Board will not consider any such allegation. Ms. Carmody herself testified that she heard someone say something about a swamp thing, but could not be sure if it was even directed at her. Furthermore, she refused to point the finger at anyone, let alone Ms. Lanzieri. As such, we believe that this charge was not brought against Ms. Vela in good faith.

Ms. Carmody testified in her direct testimony that she heard Ms. Lanzieri repeatedly called her a snitch and that she did eventually complain to Mr. Lambert about this. (TR. pg. 233) Ms. Lanzieri was questioned on this by the Employer's attorney and she denied ever having called Ms. Carmody a snitch. Ms. Lanzieri attributed that allegation to Martha DeMelendez. Earlier in her testimony Ms. Lanzieri stated that she wasn't "buddies" with Ms. Carmody but they did speak at work. Ms. Lanzieri stated that when the new Board was being elected for the Union, Ms. Carmody encouraged her to go for vice president. In one of her answers, Ms. Lanzieri queried, "how can one month I should run for vice president and the next month, I'm bullying her"? This particular issue is one of the few occasions in which the accused and the accuser testified directly before

this Board. In the face of directly opposing testimony, the Board must make a credibility determination on the testimony. We credit Ms. Lanzieri's testimony on this subject. We question the Employer's decision to charge Ms. Lanzieri with this allegation. This is another one of the "she said/she said" situations. When faced with that same scenario with LaShonna who allegedly challenged Ms. Carmody to throw up hands, Mr. Lambert said he could not discipline LaShonna because no one witnessed the incident. (TR. pgs. 198-199) Why then, would the Employer proceed to discipline Ms. Lanzieri for a she said/she said situation which was witnessed or overheard by no one?

Ms. Lanzieri testified that she was asked by Mr. Lambert about whether she told Ms. Carmody twice to go f \* \* k herself and that she emphatically denied having made those comments. (TR. pg. 110) On cross-examination, she denied this again. (TR. pgs. 122-123) Ms. Carmody did not testify on this issue. The only allegation that Ms. Carmody made at the hearing on someone using the "F" word was it was someone else at a Union meeting, not Ms. Lanzieri.

The charges against Ms. Lanzieri included a claim that Ms. Lanzieri said to Ms. Carmody: "when I get cocky with you, you'll know about it." Ms. Lanzieri candidly admitted saying this to Ms. Carmody, but only in response to an admonition to her made by Ms. Carmody to "don't get cocky with me." Ms. Lanzieri explained that this spat took place at Christmas time of 2016. Ms. Carmody was upset with Ms. Lanzieri because Ms. Lanzieri had given Christmas gifts to other employees in the office and Ms. Carmody was upset with her over that. Ms. Lanzieri stated that at the end of that workday, she was feeling bad and went up to Ms. Carmody to wish her a Merry Christmas and Ms. Carmody "went off" on her. That is when the "cocky" exchange took place. The Board finds that the Employer has been one sided in its approach on this issue; charging one employee with discipline and not the other. Furthermore, this incident, from Christmas 2016, was so remote in time to the charge in late April 2017, as to make its inclusion in the charge suspect. The claim that Ms. Lanzieri said "shh" and "close her ears" were discredited hereinbefore, at page 24 of this decision and will not be repeated here.

Ms. Lanzieri was also accused of engaging in multiple conversations about the criminal charges pending against Ms. Michelletti and that Ms. Carmody felt targeted by the conversations. Ms. Lanzieri explained in her testimony that while there were indeed

many conversations taking place about that subject, she was responding, in her capacity as a Union official to inquiries from Union members. She explained that after Ms. Micheletti was arrested, things went down-hill in the office. Her sister was angry at everyone and there was tension in the office. She said that people were confused and upset, not only in her office, but in the building. She said that once word got out about what had happened and it was on the radio, everybody (other members of Local 1339) wanted to know what was going on and that they would come to her and to Ms. Vela. (TR. pg. 103) Ms. Lanzieri stated that she and Ms. Vela did have a conversation with the secretary, Ms. Lepre, who told them that Ms. Carmody had overheard a conversation about her sister. Ms. Lanzieri said that she told the secretary that she (Ms. Carmody) needs to realize that these conversations are not against her and no one has anything against her. "She (Carmody) didn't do anything wrong and she's got to get a thick skin because she's going to hear things about her sister." (TR. pg. 113) The conversations referenced here are clearly concerted, protected activity, responding to Union members concerning the status of a very serious issue facing the membership. The Employer had no reason, whatsoever, to discipline Ms. Lanzieri for responding to her members' inquiries. It was not Ms. Lanzieri's fault that Ms. Michelletti's sister happened to work in the same office as Executive Board members. Moreover, there was no evidence in the record that the Employer had requested Union officials to not talk about this matter during working hours.

Ms. Lanzieri was also accused of creating a Facebook group on April 19, 2017 for the purpose of encouraging them to attend the next court date of the former president of the Union; whose sister is a current Human Resources staff member who felt targeted by this Facebook group. This allegation is probably the most egregious allegation against Ms. Lanzieri. The Employer knew that Ms. Carmody was not a member of this group and did not see any of the postings on the site. For that matter, the Employer never saw any of them either. The group was a closed, private group for member of Local 1339 only. Ms. Vela, Ms. Lanzieri, and Ms. Gianfrancesco all told the Employer that the Facebook group was created for membership informational purposes because no one would agree to write a newsletter. Ms. Lanzieri acknowledged that the launch timing ended up being poor, because it coincided with Ms. Michelletti's arrest; and she also admitted that there

was discussion about Ms. Michelletti on it. However, there was absolutely no testimony in this proceeding whatsoever that would corroborate the Employer's allegation that this Facebook group was created for the purpose of encouraging people to attend court hearings. It's not clear at all how Ms. Carmody could possibly feel targeted when the group was closed. If she wanted to join, she could have, but chose not to. Had the Facebook postings been public and used Ms. Carmody's name, there could have been something to the Employer's claim. However, the Union members didn't give up their rights to free speech just because the accused former Union president also had a sister still working in the same workplace. This conduct is clearly protected concerted activity, which was ignored by the Employer.

In this case, the Employer requested, on more than one occasion, for the Union to turn over records to it concerning the Union's case against Ms. Micheletti and the Ms. Vela refused. Then, the Employer made it abundantly clear that it did not approve of the Union's handling of the matter and Mr. Lambert repeatedly opined that this was not the normal way a Union would handle such a charge. It was glaringly clear that the Employer sympathized with Ms. Carmody and the embarrassing nature of the situation for her. Ms. Carmody's testimony and Mr. Lambert's testimony on when she complained did not match up. He claims that she complained repeatedly and she says she "may" have mentioned various things to him, but had not complained. What is clear is that the situation of the former Union president's transgression was unprecedented and that all the parties were struggling with the aftermath of the Union's charges against her. This Board does not believe that without the Union animus that developed over its public airing of dirty laundry that the Employer would have attempted to discipline either Ms. Vela or Ms. Carmody. The testimony was too skimpy and the Employer's actions were inconsistent on how it treated other transgressions with other similarly situated employees (slamming doors, putting up fists, allegedly calling people names, etc.).

#### **FINDINGS OF FACT**

1. The Providence School Department 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. In March 2017, Union Local 1399 conducted an Executive Board meeting at which at least Ms. Charlene Vela, Ms. Karen Lanzieri, Ms. Annette Stimma, and Ms. Elena Gianfrancesco were present. At this meeting, Ms. Stimma was complaining about her workload and discussing her training of Ms. Sharon Carmody in the area of worker's compensation. Ms. Vela warned Ms. Stimma to be cautious about the amount of training she provided to Ms. Carmody, because Ms. Vela was aware that Ms. Jennifer Lepre, Director of Human Capital had serious concerns about the quality of Ms. Stimma's work. Ms. Vela, as well as other Executive Board Members, were concerned that the Employer might simply unilaterally move Ms. Carmody into Ms. Stimma's position. Ms. Stimma responded that she only provides minimal training and work to Ms. Carmody.
4. On or about April 6, 2017, Ms. Vela was approached by Ms. Carmody's sister, Ms. Joanne Micheletti, the immediate prior Union Local President. Ms. Micheletti asked Ms. Vela if she would be willing, as Union President, to assist Ms. Carmody, as well as another clerk in Human Resources, Arlene Derosiers, in receiving out-of-rank pay. Ms. Vela agreed that she would assist the clerks. Ms. Vela then remarked to Ms. Carmody, who was also present during this conversation, that Ms. Vela understood that Ms. Carmody was being trained on worker's compensation work and opined that Ms. Carmody was being "violated" every day because she's doing a substantial amount of work above her paygrade.
5. On or about April 7, 2017 Ms. Stimma approached Ms. Vela and demanded to know why she had told Ms. Carmody that Ms. Stimma had characterized Ms. Carmody as doing minimal worker's compensation work. The conversation took place in a hallway near Ms. Carmody's work station and she came out to join it. Ms. Stimma denied ever having made such a declaration about Ms. Carmody's workload at the March Executive Board meeting. Ms. Vela insisted that other Board members heard her say that Ms. Stimma gives Ms. Carmody the "least" amount of worker's compensation work. Then, Ms. Carmody got angry and claimed that Ms. Vela had not used the word "least" when she told her what Ms. Stimma had said at the Executive Board meeting.

Ms. Carmody stated that Ms. Vela had used the word “minimal” when originally telling her about what Ms. Stimma had said at the March Executive Board meeting.

6. After this conversation broke up, in an effort to prove that the word “least” and the word “minimal” mean the same thing, Ms. Vela photocopied the word “minimal” from a dictionary and then handed a *highlighted* copy of the definition to Ms. Stimma at her desk and then left a copy in Ms. Carmody’s mailbox, because she was not at her desk.
7. The dictionary from which the photocopy was taken provided examples of how the word being defined could be used in a sentence. However, when using the defined word in the sentence, a symbol was used to denote where the word being defined would be inserted into the sentence. In this case, the definition of the word “minimal” was written: “relating to or being a minimum, the last possible (a victory won with ~ loss of life) b: barely adequate (a ~ standard of living).”
8. On or about April 13, 2017 at 9:30 PM, Ms. Vela was advised by the police that that Ms. Carmody’s sister, Ms. Michelletti (former Union President) had been arrested on a charge of embezzlement from the Union
9. On April 24, 2017 Ms. Carmody filed a complaint with the School Department claiming that the copy of the dictionary definition which contained the words “loss of life” in the example sentence constituted a “life threatening message.”
10. On April 25, 2017, Ms. Vela and Ms. Lanzieri were summoned to meetings with HR personnel in which they were advised that they were being accused by Ms. Carmody of various incidences of bullying and harassment.
11. In Ms. Lanzieri’s case, she was questioned extensively by the Employer about the Union’s private Facebook page and its contents.
12. In Ms. Vela’s case, she candidly explained that she had put the dictionary definition in Ms. Carmody’s box, but explained that its purpose was to clarify that the word “minimal” and “least” meant the same thing; and Ms. Carmody had its genesis in a Union meeting at which Ms. Stimma was given advise concerning her working conditions.
13. Ms. Vela’s and Ms. Lanzieri’s explanation of the “minimal” issue was corroborated by Ms. Gianfrancesco.

14. After the HR meetings concluded on the 25<sup>th</sup>, the Employer and Union attempted to conduct a meeting with Ms. Carmody, Ms. Vela, and Ms. Lanzieri, to try and resolve the issues between the women. But, when Ms. Carmody learned that it was Ms. Vela whom had placed the definition photocopy in her mailbox, she became enraged. Ms. Carmody commenced screaming and yelling that she was going to call the police and she refused to meet with anyone in an attempt to resolve the issues.
15. Thereafter, Ms. Carmody presented a doctor's note that provided a medical excuse, due to work place stress, commencing on April 25, 2017. Ms. Carmody did not return to work for several weeks thereafter.
16. On or about April 26, 2017, Ms. Vela was approached by Mr. Bryan Marshall, an HR officer who asked to meet with her privately. Mr. Marshall told Ms. Vela that he was working with School Department Attorney, Charlie Ruggerio, on an investigation of Ms. Michelletti and asked Ms. Vela for a copy of the Union's checkbook register and the forensic report the Union had prepared in connection with the embezzlement matter.
17. On or about April 28, 2017, Ms. Vela responded to the bullying accusations in writing and when she delivered the letter to Mr. Lambert, she commented that she thought it was strange that Ms. Carmody's "bogus" complaint was filed only after her sister had been arrested. Mr. Lambert stated that the arrest was a very unusual case; that Unions typically would not prosecute and would let a member simply make restitution.
18. On or about May 24, 2017, both Ms. Vela and Ms. Lanzieri received letters indicating that the School Department had conducted a full investigation in to Ms. Carmody's allegations and that it was proceeding to schedule a pre-disciplinary hearing to be held on June 12, 2017.
19. The pre-disciplinary hearings were conducted by Mr. Joseph P. DiPina, the Chief of Administration, on June 12, 2017. Ms. Vela and Ms. Lanzieri were both represented by private counsel at this meeting and did not present any testimony.
20. On or about June 19, 2017, Ms. Vela and Ms. Lanzieri received Mr. DiPina's decision, which found that they were guilty of essentially all the allegations that had been made against them and issued a written warning against workplace bullying. Neither Ms. Vela nor Ms. Lanzieri elected to file grievances.

21. Other employees in the Human Resources Department have slammed doors without receiving discipline.
22. The Employer did not present any witness to corroborate Ms. Carmody's testimony that she heard Ms. Lanzieri call her a snitch.
23. The Employer did not present any witness to corroborate Ms. Carmody's allegation that Ms. Lanzieri had ever called her a swamp girl or swamp thing. In fact, at the hearing, Ms. Carmody refused to identify any specific employee on this allegation.
24. The Employer did not present any policy that prohibits employees from talking about Union matters during working hours.
25. Neither the Employer's representatives nor Ms. Carmody ever viewed any content on the Union's Facebook page.
26. The Employer presented inadmissible hearsay testimony on several matters which has been disregarded by the Board.

#### **CONCLUSIONS OF LAW**

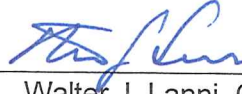
1. The Union has proven by a fair preponderance of the credible evidence in this case that the Employer has committed a violation of R.I.G.L. 28-7-13 (3) and (10).

#### **ORDER**

1. The Employer is hereby ordered to cease and desist interfering with the administration of the Local.
2. The Employer is hereby ordered to remove the discipline from both Ms. Vela and Ms. Lanzieri's files and make them whole for any lost wages and benefits, if applicable.



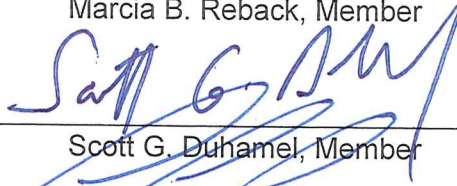
RHODE ISLAND STATE LABOR RELATIONS BOARD



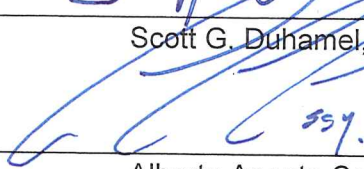
Walter J. Lanni, Chairman



Marcia B. Reback, Member



Scott G. Duhamel, Member



Alberto Aponte Cardona, Member



Derek M. Silva, Member

BOARD MEMBER, ARONDA R. KIRBY, ABSTAINED FROM VOTING IN THIS MATTER.

BOARD MEMBER, KENNETH B. CHIAVARINI, RECUSED HIMSELF FROM PARTICIPATION IN THIS MATTER.

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

Dated: June 28, 2018

By:   
Robyn H. Golden, Administrator

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

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IN THE MATTER OF	:	
	:	
RHODE ISLAND STATE LABOR	:	
RELATIONS BOARD	:	
	:	
-AND-	:	CASE NO. ULP-6207
	:	
PROVIDENCE SCHOOL DEPARTMENT	:	

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**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-6207, dated June 28, 2018, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **June 28, 2018**

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

Dated: June 28, 2018

By:   
Robyn H. Golden, Administrator