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

IN THE MATTER OF	:	
RHODE ISLAND STATE LABOR RELATIONS BOARD	:	
-AND-	:	CASE NO. ULP-6213
WARWICK SCHOOL COMMITTEE	:	

DECISION AND ORDER

TRAVEL OF CASE

The above entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") on an Unfair Labor Practice Complaint (hereinafter "Complaint"), issued by the Board against the Warwick School Committee (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated December 21, 2017 and filed on the same date by the Warwick Teachers' Union, AFT, Local 915 (hereinafter "Union").

The charge alleged as follows:

> The Warwick Teachers' Union (WTU) and the Warwick School Committee (WSC) are parties to a Collective Bargaining Agreement that expired on August 31, 2015. Since that time, the WSC has made numerous unilateral changes to terms and conditions of employment for Warwick teachers. As a result of these unilateral changes, the WTU filed numerous Unfair Labor Practice Charges and grievance arbitrations. Since the expiration of the 2015 Collective Bargaining Agreement, the parties have spent over two years negotiating a successor Collective Bargaining Agreement.
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> In November 2017, the WTU and the WSC finally reached a successor Collective Bargaining Agreement for 2017-2020. The WSC approved the 2017-2020 Collective Bargaining Agreement on November 14, 2017, and the WTU ratified the 2017-2020 Collective Bargaining Agreement on November 21, 2017. As a result of this agreement the WTU agreed to dismiss many of its pending grievance arbitrations and pending Unfair Labor Practice Charges. In exchange, among other items, the WSC agreed to make two (2) retroactive wage raise payments by December 21, 2017 and agreed for the December 21, 2017 payday to adjust employee paychecks to reflect the agreed upon pay raises. The WSC has failed to comply with the payment timeline and has refused to abide by the agreement despite numerous requests by the Warwick Teachers' Union. The WSC has bargaining in bad faith and has once again made unilateral changes to an existing Collective Bargaining Agreement.

Following the filing of the Charge, each party submitted written position statements and responses as part of the Board's informal hearing process. On May 22, 2018 the Board issued its Complaint, alleging the Employer violated R.I.G.L. §28-7-13(6) and (10) when, beginning on or about December 21, 2017, it failed to comply with the previously bargained and agreed upon payment timeline. The Board scheduled a formal hearing for this matter, but the hearing dates were cancelled and the parties, instead, waived their

respective rights to a formal hearing and entered into a Consent Order stipulating to the facts in this matter. The parties' Consent Order was entered on August 30, 2018. Post-hearing briefs were scheduled to be due on October 1, 2018 with the Employer filing its post-hearing brief on October 4, 2018 and the Union filing its post-hearing brief on October 5, 2018 after a requested extension by the Union was granted by the Board. In arriving at the Decision and Order herein, the Board has reviewed and considered the Consent Order and the arguments contained within the post-hearing briefs submitted by the parties.

FACTUAL SUMMARY

By agreement of the parties, the facts of this matter were stipulated to and entered as a Consent Order by the Board on August 30, 2018. The facts are as follows:

1. On May 22, 2018, the SLRB issued a Complaint against Warwick School Committee alleging that the Committee violated R.I.G.L. 28-7-13 (6) and (10) when it unilaterally altered agreed upon retroactive wage payment dates and the agreed upon new pay rate start date.

2. The Warwick Teachers' Union, Local 915 is the exclusive collective bargaining representative for the contracted teachers and coaches employed by the Warwick School Committee.

3. The Warwick School Committee ("Committee") and the Warwick Teaches' Union ("Union") were parties to a Collective Bargaining Agreement ("CBA") that expired on August 31, 2015.

4. Since the expiration of the Collective Bargaining Agreement, the parties had engaged in negotiations, mediation and interest arbitration.

5. On October 19, 2017 the Committee and the Union negotiation teams signed a Final Tentative Agreement.

6. That Final Tentative Agreement incorporated parts of a draft arbitration panel award and negotiated terms and conditions.

7. As part of the Final Tentative Agreement, two (2) Collective Bargaining Agreements were approved and executed. One Collective Bargaining Agreement was dated September 1, 2015 through August 31, 2017 and the other is dated September 1, 2017 through August 31, 2020.

8. The two (2) CBAs resulted in immediate retroactive payments and going forward pay raises. However, the parties agreed to delay those retroactive payments until a date certain of December 21, 2017 and the new paycheck raise to be effective December 21, 2017.

9. The parties did in fact agree for the retroactive payments and the new pay rate to be made by a date certain.

10. The Committee believes that it needed funding to be released by the Warwick City Council in order to effectuate the payments because on June 3, 2017 the Warwick City Council ("Council") had withheld $3,000,000.00 from the Committee's budget request pending the parties agreeing to a new CBA and the Committee is legally obligated to maintain a budget that does not result in debt (See RIGL 16-2-9(d) and (16-2-21 et seq.). On or about November 20th, 21st, and again on the 27th, the Committee made immediate and diligent efforts to get before the Council to request a release of the funds. For reasons unknown to the Committee, the Council would not place the Committee and this request on their agenda until January 17, 2018.

Immediately upon realizing that the deadline could not be met, the Committee notified the Union.

11. The Union believes the Committee would not have violated any law by making the payment prior to receiving funds from the Warwick City Council.

12. The Committee did eventually make the retroactive payments on January 30th and 31st, 2018 and started paying the new pay rate on February 1st, 2018.

13. There being no material dispute of facts, the parties have agreed to waive the formal hearing in this matter scheduled for August 23, 2018.

POSITION OF THE PARTIES

Union:

The Union presents three (3) arguments in support of its position that the Employer engaged in unfair labor practices when it failed to make retroactive wage payments on the designated contractual date. The Union initially argues that the Employer has an obligation to bargain under R.I.G.L. 28-7-13 before it makes unilateral changes to terms and conditions of employment. In the instant case, the Union alleges that the Employer made unilateral changes to terms and conditions of employment in that it failed to make retroactive wage payments on the contractually designated date without bargaining with the Union. In addition, the Union also argues that the specified contractual date (December 21, 2017) for payment of retroactive wages was not conditioned on the release of funds to the Employer by the Warwick City Council. Finally, the Union argues that the Employer's unilateral change in terms and conditions of employment, specifically its failure to make the agreed upon and negotiated retroactive wage payments by the contractually specified date, has caused damages to the Union and its members. The Union argues the agreement for retroactive wage payments to be made by the Employer on December 21, 2017 was a significant inducement to the Union to ratify the Collective Bargaining Agreement and the failure by the School Committee/Employer to make the payment on the contractually specified date has caused damages for which the Employer should reimburse the Union and its members.

Employer:

In its Memorandum of Law to the Board, the Employer contends that it did not fail to bargain in good faith with the Union as it reached an agreement for, among other things, the retroactive payment of wages on a date certain, that being December 21, 2017. The Employer argues that it could not comply with the contractually agreed upon date as it is legally obligated to maintain a budget that does not result in debt in accordance with R.I.G.L.16-2-9(d).The Employer claims it was unable to make the retroactive wage payment to the Union on the date specified in the contract because the Warwick City Council withheld three million dollars ($3,000,000.00) in funding from the School Committee's budget request and, despite requests from the Employer, the Warwick City Council did not release the funds until on or about January 17, 2018.

The Employer also argues that the matter before the Board is moot in that there is no live case or controversy before the Board, as the payments in question were made in

January and February 2018. Further, the Employer argues that the Union has waived any claims it has against the Employer in this matter by accepting the wage payments made in January and February 2018; that the instant matter is barred by the theory of accord and satisfaction; and that the Board's Complaint fails to state a claim upon which relief can be granted as neither Collective Bargaining Agreement contains language that requires the Employer to pay the Union membership retroactive pay as alleged in the original Unfair Labor Practice Charge.

DISCUSSION

The issue before the Board is whether the action of the Employer in not making the wage payment on December 21, 2017 to bargaining unit members as agreed to and set forth in the parties' Collective Bargaining Agreement constitutes a unilateral change in terms and conditions of employment, which would require the Employer to bargain with the Union prior to making such a change. A failure to bargain with the exclusive representative of the employees over a mandatory subject of bargaining is a violation of the State Labor Relations Act (hereinafter "Act").

It has long been the position of this Board that when an Employer unilaterally changes terms and conditions of employment without first engaging in bargaining with the bargaining unit's exclusive representative, the Employer commits a violation of the State Labor Relations Act (See R.I.G.L. 28-9.3-2(a); R.I.G.L. 28-9.3-4; *Rhode Island State Labor Relations Board v. Town of North Smithfield*, ULP-5759 (May 15, 2006); *Rhode Island State Labor Relations Board v. Woonsocket School Committee*, ULP-4705 (June 4, 1997); *Local 2334 of the International Association of Firefighters, AFL-CIO v. The Town of North Providence*, PC 13-5202 (September 26, 2014); *NLRB v. Solutia, Inc.*, 699 F.3d 50, 60 (1st Cir. 2012) (providing that an Employer is in violation of a governing collective bargaining statute "when it makes a unilateral change to a term or condition of employment without first bargaining to impasse with the Union").[1]

In the present case, the parties have stipulated that they entered into two (2) separate Collective Bargaining Agreements, one dated September 1, 2015 through August 31, 2017 and the other dated September 1, 2017 through August 31, 2020 (See Paragraph 7 of the Consent Order). The parties further stipulated that the "two (2) CBAs resulted in immediate retroactive payments and going forward pay raises." (See Paragraph 8 of the Consent Order.) The parties also stipulated that the retroactive payments and going forward pay raises would occur and be effective, respectively, on December 21, 2017 (See Paragraph 8 of the Consent Order). In addition, the Employer does not dispute that the payment of retroactive wages did not occur until January 30 and 31, 2018 and that the starting pay for the new pay rates did not become effective February 1, 2018 (See Paragraph 12 of the Consent Order). While the Employer has raised several defenses and explanations for missing the retroactive payment date

[1] This Board and the Courts of this State have, with respect to labor law issues, consistently looked to federal labor law for guidance. See *Town of North Kingstown v. International Association of Firefighters, Local 1651, AFL-CIO*, 107 A.3d 304 (R.I. 2015); and *Town of Burrillville v. Rhode Island State Labor Relations Board*, 921 A.2d 113, 120 (R.I. 2007)

and starting new pay rate date of December 21, 2017 (See discussion *infra*), there is little question that the Employer's admitted failure to adhere to the agreed upon payment date, i.e.// December 21, 2017, and the Employer's change of said payment date to January 30 and 31, 2018 without engaging in any negotiation with the Union can be viewed as nothing other than a violation of R.I.G.L. 28-7-13(6) and (10).

The facts of this case are straightforward and admitted. The parties entered into Collective Bargaining Agreements that contained a date certain upon which retroactive wage payments and new starting wage rates were to be effective (See Paragraphs 7, 8, and 9 of the Consent Order). Instead of making the payments and enacting the new pay rates on the agreed upon date certain, the Employer, without discussion or negotiation with the Union, unilaterally determined to delay the date of payment and the effective date for the new pay rates to the end of January and the beginning of February 2018 (See Paragraphs 10, 11, and 12 of the Consent Order). Such conduct is a classic example of an Employer engaging in a violation of the Act by not bargaining with the exclusive representative of the employees prior to unilaterally changing contractual terms and conditions of employment.[2]

Therefore, based on the stipulations entered into by the parties, it is clear that the actions taken by the Employer in this case amount to a unilateral change in terms and conditions of employment, i.e.// the changing of the retroactive wage payment date and the changing of the start date for application of new wages, without bargaining with the Union in violation of the Act. However, before we conclude this matter the Employer has raised a number of defenses which must be addressed.

Warwick City Council's Failure To Release Funding to the Employer Does Not Mitigate Unfair Labor Practice Claim

As an initial defense, the Employer asserts that the failure of the Warwick City Council to release funding to the School Committee forced the Employer to delay the retroactive wage payment date and the effective date for the new wage rates. On this point, the parties stipulated as follows:

> 10. The Committee believes that it needed funding to be released by the Warwick City Council in order to effectuate the payments because on June 3, 2017 the Warwick City Council ("Council") had withheld $3,000,000.00 from the Committee's budget request pending the parties agreeing to a new CBA and the Committee is legally obligated to maintain a budget that does not result in debt (See RIGL 16-2-9(d) and (16-2-21 et seq.). On or about November 20, 21 and again on the 27th, the Committee made immediate and diligent efforts to get before the Council to request a release of the funds. For reasons unknown to the Committee, the Council would not place the Committee and this request on their agenda until January 17, 2018. Immediately upon realizing that the deadline could not be met, the Committee notified the Union. (See Paragraph 10 of Consent Order)

[2] Wages and the payment of wages is so clearly a mandatory subject of bargaining and a critical piece of the definition of terms and conditions of employment that this Board need not spend any significant time on the issue. See R.I.G.L. 28-9.3-1(b); *Town of North Kingstown v. International Association of Firefighters, Local 1651, AFL-CIO*, 107 A.3d 304, 313 (R.I. 2015); *National Labor Relations Board v. Wooster Division of Borg-Warner Corp.* 356 U.S. 342, 349 (1958).

The Employer argues, without submitting any supporting evidence to substantiate its claim, that it was prevented from making the retroactive wage payment on December 21, 2017 and putting into effect the new wage rates as of the same date, because doing so without proper funding from the Warwick City Council would place the School Committee in violation of R.I.G.L. 16-2-9(d) which "legally obligated [the Employer] to maintain a budget that does not result in debt" (Employer Memorandum at pg. 5). Unfortunately, beyond making this statement and the assertion that it "could not legally make the payment until the funds were released by the City, otherwise it would have knowingly maintained a budget that resulted in debt," (Employer Memorandum at pg. 5), the Employer provides no evidentiary material to support these conclusions. More importantly, a review of R.I.G.L. 16-2-9(d) and R.I.G.L. 16-2-21, et seq. does not obviate the need for the Employer to have engaged in bargaining with the Union prior to making a unilateral change in a mandatory term and condition of employment.

R.I.G.L. 16-2-9(d) provides as follows:

> (d) Notwithstanding any provisions of the general laws to the contrary, the requirement defined in subsections (d) through (f) of this section shall apply. The School Committee of each school district shall be responsible for maintaining a school budget which does not result in a debt.

While the plain meaning of the above statutory language may appear, at first blush, to support the Employer's position in this case, as the courts have noted on numerous occasions, consideration of the entire statute as a whole and individual sections in the context of the entire statutory is critical when construing the statutes. *East Providence School Committee v. East Providence Ed. Assoc.*, PB 09-1421 (Superior Court of RI, March 15, 2010) citing *Planned Environments Management Corp. v. Robert*, 966 A.2d 117, 122 (R.I. 2009). In the present case before the Board, the Employer appears to be suggesting, without explicitly stating, that R.I.G.L.16-2-9(d) must supersede application of R.I.G.L. 28-7 and 28-9.3. However, a close reading of the *East Providence* case, which explicitly dealt with the issue of the interplay between Title 16 and Title 28, demonstrates that such a contention is without merit.

In the *East Providence School Committee* case, a decision of first impression issued by Judge Silverstein, the Superior Court provided an excellent analysis of the interplay between R.I.G.L. 16-2-9 (and other associated statues under Title 16, Chapter 2) and the provisions of Title 28, in particular R.I.G.L. 28-9.3-1 and R.I.G.L. 28-7.13. In that particular case, as distinguished from the present case before the Board, the East Providence School Committee was attempting to unilaterally change teacher wages after its Collective Bargaining Agreement with the Union had expired and the School Committee had negotiated, mediated and engaged in statutory interest arbitration under the provisions of R.I.G.L. 28-9.3 without success. When the School Committee announced that it would unilaterally change teacher wages, the Union filed an Unfair Labor Practice Charge with the State Labor Relations Board and the School Committee countered with a Declaratory Judgment action in Superior Court. In reconciling the competing positions of the parties and the competing statutory provisions, the Superior Court initially recognized the intent of R.I.G.L. 16-2-9 (i.e.// that "each school

district shall be responsible for maintaining a school budget which does not result in a debt." (See *East Providence School Committee v. East Providence Education Association*, at pg. 4) and acknowledged that the Rhode Island Supreme Court had determined that based on the language of Chapter 2 of Title 16, "it is clear that the General Assembly intended School Committees to amend their budgets, request waivers, and request additional appropriations from their host municipalities at the first indication of a possible or actual deficit." (See *Id.* at pg. 5; *School Committee of City of Cranston v. Bergin-Andrews*, 984 A.2 629, 643-44 (R.I. 2009)).[3]The Superior Court also was cognizant of not limiting the scope of its analysis and statutory review to a single section of the statute. Thus, the Court recognized that R.I.G.L. 16-2-9(b) provides that nothing in section 16-2-9 "shall be deemed to limit or interfere with the rights of teachers and other school employees to collectively bargain pursuant to chapters 9.3 and 9.4 of title 28 or to allow any School Committee to abrogate any agreement reached by collective bargaining." (See *East Providence School Committee v. East Providence Education Association*, PB09-1421 at pg. 5). More to the point in the instant case, the Superior Court specifically noted that while R.I.G.L. 16-2-9(d) requires a School Committee to maintain a balanced school budget despite any laws to the contrary, the Court determined that "the language in subsection (b) does not conflict with or negate its interpretation of the mandate in section 16-2-9(d). Under the language of 16-2-9, a School Committee must bargain in good faith with certified public-school teachers in accordance with Title 28 and honor current Collective Bargaining Agreements." *Id.* at pg. 5.

As to which statutory provision might take precedence, the Court went on to discuss the force and legal effect of the expired Collective Bargaining Agreement between the parties. Noting the Union's argument that the School Committee was under a statutory duty to continue to adhere to the terms and conditions of the expired Collective Bargaining Agreement until a successor agreement was achieved, the Court declined to subscribe to this position, instead noting that Title 28 contains no such mandate pertaining to school teacher labor contracts and that R.I.G.L. 28-9.3-4 indicates that "no contract shall exceed the term of three (3) years." *Id* at pg. 6. The Court, citing previous decisions in *Providence Teachers' Union v. Providence School Board,* 689 A.2d 399 (R.I. 1997) and *City of Cranston v. Teamsters Local 251,* PM09-1518, July 22, 2009, noted that the terms of the Collective Bargaining Agreement expired prior to the implementation of the disputed salary and benefit changes and, therefore, the Court found that the Collective Bargaining Agreement was no longer binding and that the School Committee did not abrogate any agreement reached by collective bargaining. *Id.*

The distinction between the *East Providence School Committee* decision and the case before the Board is clear. In the case before the Board and in direct factual opposition to the case presented by the East Providence School Committee, a Collective Bargaining Agreement was in existence between the Union and the Employer

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[3] The Court's analysis not only considered other relevant provisions of Title 16, Chapter 2, but thoroughly reviewed the use of the word "notwithstanding" as it impacted the potential conflict between R.I.G.L. 16-2-9(d) and provisions of Title 28, specifically R.I.G.L. 28-9.3-1 and 28-7-13.

and had recently been negotiated with a provision specifying the date upon which retroactive wage payments and a new wage rate application would go into effect (See Paragraphs 8 and 9 of the Consent Order). Thus, as the *East Providence* Court made clear, the Employer is obligated under R.I.G.L. 16-2-9(b) and Title 28 to "honor" the terms of its current Collective Bargaining Agreement.

Further, there are other provisions of R.I.G.L.16-2-9, which work against the Employer's apparent interpretation of its obligations and responsibilities under R.I.G.L. 16-2-9(d). Specifically, there are numerous provisions of R.I.G.L.16-2-9, which obligate the Employer to engage in negotiations and enter into a Collective Bargaining Agreement as occurred in the instant case. Once a School Committee enters into a Collective Bargaining Agreement it is prohibited, under R.I.G.L. 16-2-9(b), from engaging in activity or conduct that would allow it "to abrogate any agreement reached by collective bargaining." (See R.I.G.L.16-2-9(b). In short, the Employer's reliance on R.I.G.L.16-2-9(d) is misplaced in the instant case.

As such, we find the Employer's argument regarding the application of R.I.G.L. 16-2-9(d) wholly insufficient to justify, mitigate or explain away its actions in this case.

Employer's Procedural Claims Are Without Merit

In its Memorandum of Law, the Employer cites several procedural arguments, i.e.// mootness, waiver of claims, accord and satisfaction, and the Complaint fails to state a claim upon which relief can be granted, as further basis for the Board to dismiss the pending Unfair Labor Practice Complaint. While we believe that none of these procedural claims has merit or provides a legitimate basis to dismiss the Complaint, the Board will deal with each of these claims individually.

The Matter is Moot

The Employer argues, in essence, that because it made the wage payments that were the subject of the Union's initial Unfair Labor Practice Complaint in January and February 2018 there is no justiciable or live case or controversy pending before this Board. If such were the case, the argument goes, the matter should be dismissed. Unfortunately for the Employer the matter is not moot, and the Board has appropriate jurisdiction to decide the issue.

While the Employer correctly cites in its Memorandum the definition for when a case would be moot before a court or administrative body, the definition simply does not apply to the facts of the instant case. The Employer, as it does in several of its other affirmative defenses (See below), attempts to argue that because it made the retroactive wage payments, no violation of the Act has occurred. This theory, while creative, is simply wrong. While there is no doubt that the retroactive payment of wages negotiated and agreed to by the parties was an important element to the Union, its initial charge and the Complaint in the instant matter alleged that the violation of the Act resulted from the Employer failing to "comply with the previously bargained and agreed upon payment timeline." (See Complaint at Paragraph 3.) Thus, it was the Employer's failure to meet the

negotiated upon payment date of December 21, 2017 and the Employer's unilateral decision to change the date to the end of January and February 2018, which resulted in a finding of a violation of the Act. The fact that the retroactive wage payment was made late does not address the Employer's unilateral action, its failure to meet the negotiated timeline and date or its failure to bargain over its unilateral action.

The Union Waived Any Claims Against the Employer

This argument by the Employer, quite simply, asserts that by the Union accepting the raises when paid by the Employer it waived any right it had to make further claims against the Employer.[4] The Employer, once again, places emphasis on the receipt of the retroactive wage payment and ignores the basis for the original Unfair Labor Practice Charge and subsequent issuance of a Complaint by this Board, i.e.// that the payment was supposed to be made on a date certain, i.e.// December 21, 2017, and not on January 30 and 31 and February 1, 2018 as occurred. The conduct by the Employer that was alleged to be a violation of the Act was the Employer's unilateral changing of the payment date without negotiating with the Union. The fact the payments were ultimately made and accepted by the bargaining unit members in no way acts as a waiver of the Union's right to pursue an Unfair Labor Practice Charge under R.I.G.L. 28-7-13. Further, the Employer has presented no evidence, other than the Union's receipt of the retroactive wage payments, to suggest that the mere receipt of the payments was tantamount to the Union waiving its rights to file an Unfair Labor Practice Charge. Said another way, the Employer presented no evidence to suggest that the Union engaged in any affirmative action, beyond accepting late wage payments, that would demonstrate a waiver of its rights in this case.

The Complaint is Barred by Accord and Satisfaction

As with its other arguments, the Employer once again puts its emphasis on the payment and acceptance of the payment by the Union and ignores the fact that it unilaterally delayed the payment from the negotiated and agreed upon date of December 21, 2017 to a date of its choosing, in this case January 30 and 31 and February 1, 2018. While the Employer has satisfied its obligation to make the retroactive wage payments, its argument of accord and satisfaction is inapplicable to the instant situation as the wrong alleged by the Union is not the late payment, but the Employer's unilateral action without negotiating with the Union. That action, as has been already discussed, was a clear violation of the Act.

The Complaint Fails to State a Claim Upon Which Relief Can be Granted

This argument by the Employer claims that neither "CBA contains language that requires the Committee to pay the WTU membership retroactive pay as was originally alleged." (See Employer Memorandum of Law at pg. 8.) Initially, the Employer has failed to submit as exhibits either of the Collective Bargaining Agreements it entered into with

[4] Technically, the wage rates were paid to bargaining unit members, not the Union and, therefore, any waiver argument, to be factually accurate, would only apply to each individual bargaining unit member. Nonetheless, the Board will address this affirmative defense as if it runs to the Union.

the Union and that it references in this portion of its memorandum of law. As such, the Employer has failed to provide this Board with any evidence to substantiate its claim.

Further, as previously noted, the initial charge and, more specifically, the Board's Complaint as issued directly states an allegation that the Employer violated R.I.G.L. 28-7-13(6) and (10) when "it failed to comply with the previously bargained and agreed upon payment timeline." (See Paragraph 3 of Board Complaint.) This language, which succinctly sets forth the issue before the Board, clearly states a claim upon which relief can be granted.

FINDINGS OF FACT

1. The Respondent 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. As a result of extensive negotiations, the Union and the Employer entered into two (2) Collective Bargaining Agreements, one dated September 1, 2015 through August 31, 2017 and the other dated September 1, 2017 through August 31, 2020.
4. The resolution, agreement, and execution of the two (2) Collective Bargaining Agreements resulted in retroactive wage payments and pay raises to the bargaining unit to be implemented and made effective on December 21, 2017.
5. The Employer failed to make the agreed upon retroactive wage payments on December 21, 2017 and failed to make the pay raises effective December 21, 2017.
6. Without engaging in any negotiations with the Union, the Employer unilaterally delayed the retroactive wage payments and the effective date of the new pay raises.
7. On January 30 and 31, 2018, dates unilaterally selected by the Employer without negotiation with the Union, the Employer made retroactive wage payments to Union bargaining unit members.
8. On February 1, 2018, a date unilaterally selected by the Employer without negotiation with the Union, the Employer made effective the new pay raises for bargaining unit members.

CONCLUSIONS OF LAW

1. The Employer unilaterally changed the terms and conditions of employment, in particular the wage payment date and effective date of pay raises as specifically agreed to by the parties as part of their negotiations for new Collective Bargaining Agreements.
2. The Union has proven by a preponderance of the evidence that the Employer committed a violation of R.I.G.L. 28-7-13(6) and (10) when it failed and refused to negotiate with the Union before it changed the wage payment date for bargaining unit members as specifically agreed to by the parties.

ORDER

1. The Employer is hereby ordered to cease and desist from making unilateral changes to terms and conditions of employment, without first notifying and giving the Union the opportunity to bargain over any changes.
2. The Employer is hereby ordered to pay interest on the wage rate increase for the forty (40) day period of time between December 21, 2017 and February 1, 2018.
3. The Employer is hereby ordered to make the effective date of the wage rate increase for bargaining unit members December 21, 2017; and make whole any and all bargaining unit members who may not have received the proper wage payment between December 21, 2017 and February 1, 2018.
4. The Employer is hereby ordered to post a copy of this Decision and Order for a period of not less than sixty (60) days in each building where bargaining unit personnel work; said posting to be in a location where other material designed to be seen, read, and reviewed by bargaining unit personnel are posted.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Marcia B. Reback, Member

Scott G. Duhamel, Member

Aronda R. Kirby, Member (Dissent)

Alberto Aponte Cardona, Member

Derek M. Silva, Member

BOARD MEMBER, KENNETH B. CHIAVARINI, WAS NOT PRESENT TO SIGN.
KENNETH B. CHIAVARINI DISSENTED IN THIS MATTER.

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

Dated: NOVEMBER 27, 2018

By: _____
Robyn H. Golden, Administrator

ULP- 6213

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

IN THE MATTER OF	:	
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-AND-	:	CASE NO. ULP-6213
WARWICK SCHOOL COMMITTEE	:	

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-6213, dated June 28, 2018, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **November 27, 2018.**

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

Dated: November 27, 2018

By: _____
Robyn H. Golden, Administrator