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-6221 ULP-6225
TOWN OF NORTH PROVIDENCE	:	**(CONSOLIDATION)**

DECISION AND ORDER

TRAVEL OF CASE

The above entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") on two (2) separate Unfair Labor Practice Complaints that the Board has determined to consolidate, pursuant to Board Rule 1.11(H), due to the identical nature of the facts and the request of the parties through their Consent Order.

The initial Unfair Labor Practice Complaint (hereinafter "Complaint"), ULP-6221, issued by the Board against the Town of North Providence (hereinafter "Employer") is based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated May 29, 2017 and filed on the same date by the Rhode Island Laborers District Council, Local 1033 (hereinafter "Union").

The Charge alleged as follows:

> (a) On or about May 4, 2018, the Respondent canceled the parties' mediation scheduled for May 8, 2018, and, on May 8, 2018, engaged in direct dealing with the Complainant's membership, among other violations, by communicating by letter directly with employees of Respondent, who are Complainant's members, regarding terms and conditions of employment, labor negotiations and mediation and grievances; (b) Respondent's May 4, 2018 correspondence also discriminates against Local Union 1033 member and Respondent's employee Elizabeth Iafrate for filing and arbitrating her claims for out-of-classification pay and the Complainant's claim that non-bargaining unit employees are performing bargaining unit work in Respondent's Tax Assessor's office; and (c) Refusing to bargain and canceling mediation until all grievances of member Elizabeth Iafrate have been arbitrated and communicating same in an email to the mediator appointed by the Director of the Rhode Island Department of Labor and Training.

Following the filing of the charge, each party submitted written position statements and responses as part of the Board's informal hearing process. On June 28, 2018 the Board issued its Complaint alleging the Employer violated R.I.G.L. 28-7-13(3), (6), (8) and (10) when (a) on or about May 4, 2018, the Employer canceled the parties' mediation scheduled for May 8, 2018 and engaged in direct dealing with the Union's membership by communicating by letter directly with employees, who are Union members, regarding

terms and conditions of employment, labor negotiations and mediation and grievances; (b) In correspondence dated on or about May 4, 2018, the Employer discriminated against employee and Union member Elizabeth Iafrate for filing and arbitrating her claims for out-of-classification pay and the Union's claim that non-bargaining unit employees were performing bargaining unit work in the Tax Assessor's office; and (c) On or about May 5, 2018, in an email to the mediator appointed by the Director of the Rhode Island Department of Labor and Training, the Employer refused to bargain and canceled mediation until all grievances of bargaining unit member Elizabeth Iafrate had been arbitrated. The Employer's answer to the Complaint, denying the allegations, was received by the Board on July 16, 2017. The Board scheduled a formal hearing for this matter which was held on August 21, 2018. Post hearing briefs were requested by the parties and the Union's brief was received on October 12, 2018 and the Employer's brief was received on October 10, 2018.

The second Unfair Labor Practice Complaint, ULP-6225, was issued by the Board against the Employer based upon an Unfair Labor Practice Charge dated July 20, 2018 and filed on the same date by the Union.

The Charge alleged as follows:

> (a) On or about May 4 and May 5, 2018, the Respondent, through emails sent by its attorney, cancelled the parties' mediation scheduled for May 8, 2018 and indicated that "we will be in touch once we get through all the Elizabeth Iafrate arbitrations."; (b) On or about May 8, 2018 the Respondent, through its Mayor, notified the Petitioner and its bargaining unit that it was cancelling the parties' mediation scheduled for May 8, 2018, purportedly due to its need to prepare and defend itself in an arbitration scheduled for May 10, 2018 and filed on behalf of bargaining unit member Elizabeth Iafrate; (c) Said actions are in retaliation against Elizabeth Iafrate for exercising her right to file grievances and/or pursue arbitrations in violation of the Decision and Order of the RI State Labor Relations Board in the case of Town of North Providence and Elizabeth Iafrate, dated December 15, 2017 and in violation of R.I. Gen. Laws 28-7-13 (8) and (10).

Following the filing of the charge, each party submitted written position statements and responses as part of the Board's informal hearing process. On August 31, 2018 the Board issued its Complaint alleging the Employer violated R.I.G.L. 28-7-13 (6), (8) and (10) when the Employer (1) cancelled mediation scheduled for May 8, 2018; (2) cancelled mediation scheduled for May 8, 2018, purportedly due to its need to prepare and defend itself in an arbitration scheduled for May 10, 2018 of a grievance filed on behalf of bargaining unit member Elizabeth Iafrate; (3) by cancelling the mediation for the purported reason of needing to prepare itself for arbitration on a grievance filed by bargaining unit member Elizabeth Iafrate, retaliated and discriminated against Ms. Iafrate; and (4) by cancelling the mediation for the purported reason of needing to prepare itself for arbitration on a grievance filed by bargaining unit member Elizabeth Iafrate, violated the provisions of the RI State Labor Relations Board's Order in Case No. ULP-6198. The Employer's answer to the Complaint, denying the allegations, was received by the Board

on September 4, 2018. The Board scheduled a formal hearing for this matter which was to be held on October 18, 2018. However, on the date of the scheduled hearing the parties presented an agreed upon Consent Order to the Board. The Consent Order of the parties provides as follows:

By agreement of the parties, the Rhode Island State Labor Relations Board ("SLRB") issues the following order:

1. The SLRB shall decide this case giving due consideration to following:

   A. The complete administrative record in RISLRB Case No. ULP-6221, including the full evidentiary record of the formal hearing conducted on August 21, 2018, all stipulations set forth at said hearing, and the requests for judicial notice made at said hearing.

   B. The arbitration decision and award of John B. Cochran, Esq. in LRC Case # 255-16, which is attached hereto and made a part hereof as Respondent's Exhibit 2.

   C. Judicial notice of Elizabeth Iafrate's civil litigation against the Rhode Island Laborers District Council, Public Employees Local 1033 and various co-defendants, docketed as Superior Court C.A. No. PC2017-4590.

   D. Judicial notice of the SLRB's Decision and Order in Case No. ULP-6198 and the Respondent's appeal of same to the Superior Court, docketed as C.A. No. PC-2018-0008.

   E. That Elizabeth Iafrate's work assignment at the Respondent's Public Works garage was made by agreement after the initiation of Superior Court C.A. No. PC2017-4590, and that Elizabeth Iafrate has accepted the Town's accommodation in making said work assignment.

2. The parties have agreed to waive a formal hearing in this matter scheduled for October 18, 2018, and the SLRB shall make the requisite findings of fact and conclusions of law to adjudicate the Complaint it issued on August 31, 2018.

By the parties agreeing that the Board should review the "complete administrative record in RISLRB Case No. ULP-6221", the need for the formal hearing was eliminated. Post hearing briefs were requested by the parties and the Union's brief was received on December 26, 2018 and the Employer's brief was received on December 21, 2018.

In arriving at this Consolidated Decision & Order, the Board has reviewed and considered the testimony, evidence and exhibits submitted at the formal hearing, as well as the arguments and attached documents contained or referenced within the post hearing briefs submitted by the parties in both cases.

FACTUAL SUMMARY

The facts surrounding the instant matter are not in dispute between the parties, though the interpretation of those facts, the impact of the actions of the Employer, and the intent of the Employer's actions elicit diametrically opposite views from the parties.

At the formal hearing on August 21, 2018, two (2) witnesses were presented: Elizabeth Iafrate testified for the Union and Mayor Charles Lombardi testified for the Employer. At the beginning of the hearing, the parties entered the following stipulations by agreement:

> Stipulation number one, Local 1033 and the Town engaged in good faith collective bargaining between June of 2015 to November of 2017 for the purposes of negotiating a Collective Bargaining Agreement to commence July 1, 2015.
>
> The second stipulation is on March 14th, 2018, pursuant to Rhode Island General Law 28-9.4-10, the Rhode Island Department of Labor & Training Director Scott Jenson appointed Ronald Cascione, Esquire to mediate the collective bargaining [sic] between Local 1033 and the Town.
>
> On April 19th, 2018, Mediator Ronald Cascione convened and conducted the initial mediation session for Local 1033 and the Town.
>
> Next stipulation, number four, on May 10 and May 23rd, 2018 Local 1033 and the Town arbitrated before John Corcoran, Esquire a grievance filed by Local 1033 on behalf of Elizabeth Iafrate, which case was docketed by the Labor Relations Connection as, quote, "Town of North Providence, Local Union 1033, Labor Relations Connection Number 255-16, Elizabeth Iafrate, Deputy Tax Assessor, pay rate," end quote.
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> Stipulation number five, on June 13th, 2018, Local 1033 and the Town arbitrated before Tammy Brynie, Esquire a grievance filed by Local 1033 on behalf of Elizabeth Iafrate, which was docketed by the Labor Relations Connection as, quote, "Elizabeth Iafrate, Suspension, Labor Relations Connection Case Number 602-17." That case is scheduled for a second day of arbitration on November 9, 2018.
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> The sixth stipulation, on January 12, 2017, Local 1033 and the Town arbitrated before Philip Dunn, Esquire Local 1033's grievance, which case was docketed as, quote, "Town of North Providence, Local Union 1033, Labor Relations Connection, Case Number 453-15, Deputy Tax Assessor, non-bargaining unit persons performing bargaining unit work", end quote. That case is scheduled for a second day of arbitration on October 23, 2018. (Tr. pgs. 4 – 6)

The Employer and the Union have a longstanding collective bargaining relationship. As the stipulations indicate, this case has its genesis with the start of negotiations for a new Collective Bargaining Agreement to commence July 1, 2015. Though the parties attempted to negotiate a new Collective Bargaining Agreement, they were unsuccessful and mediation through the Department of Labor & Training was requested. On March 14, 2018 a mediator, Ronald Cascione, was appointed and on April 19, 2018 the mediator conducted the initial mediation session between the parties (Stipulation #2 and #3). Another mediation session was scheduled for May 8, 2018 between the parties (Tr. pg. 35). However, on May 4, 2018 the Employer's counsel sent an email to the mediator canceling the May 8th mediation session. The email stated as follows:

> Ron – Mayor Lombardi is canceling the mediation session due to the need to prepare witnesses for an arbitration with Local 1033 on the 10th that Mayor thought would have been resolved. We will be in touch about rescheduling mediation.
>
> Thanks,
> Vin
> (Petitioner Exhibit 1)

On May 5, the mediator responded to the Employer's counsel through email stating "OK. I will wait to hear." (Petitioner Exhibit #1). In response, the Employer's counsel wrote to the mediator on May 5th "Thanks Ron. We will be in touch once we get through all the Elizabeth Iafrate arbitrations." (Petitioner Exhibit #1). The emails from the Employer's counsel to the mediator were copied to the Union's representative, Ronald Coia, Esq.

On May 8, 2018 Mayor Lombardi, the Chief Executive Officer for the Town of North Providence and the individual who has responsibility for labor relations in his capacity as Head of the Executive Branch of the Town Government (Tr. pg. 33), sent a letter to David Zarella and Lynda Labadia regarding the cancellation of the May 8, 2018 mediation session. Mr. Zarella and Ms. Labadia were both Union members and members of the Union's negotiating committee (Tr. pg. 38). In addition, the letter was sent to G. Richard Fossa, the Mayor's Chief of Staff, Ronald Coia, Esq., Local 1033 Business Manager and the Union's chief negotiator, Vincent F. Ragosta Jr., Esq. and members of Local 1033 (Petitioner Exhibit #2). The letter from Mayor Lombardi stated as follows:

> Dear David and Lynda:
>
> I regret that I must cancel the mediation session previously set for May 8, 2018. I am doing so because despite previous representations by attorney Coia that there would be postponement or withdrawal and settlement of Local 1033's grievances on behalf of Elizabeth Iafrate (pertaining to her claims for out-of-classification pay and bargaining unit work performed by non-bargaining unit employees), I have learned that Mr. Coia has now reneged on those representations, and that the arbitration docketed as LRC#255-16, Elizabeth Iafrate, Deputy Tax Assessor – Pay Rate, will be going forward to be tried before Arbitrator John B. Cochran, Esq. on May 10, 2018. Accordingly, the Town must devote its time and resources to preparing for and defending that case rather than mediate.
>
> It is unfortunate that we are deterred from our efforts and progress to forge a multi-year Collective Bargaining Agreement; but given Local 1033's decision to move forward with arbitration on March [sic] 10th I must prioritize the use and availability of the Town's staff, witnesses and legal services for that case.
>
> I trust you shall convey this information to your membership.
>
> Very truly yours,
> Charles A. Lombardi, Mayor
> (Petitioner Exhibit 2).

There is no dispute that subsequent to Mayor Lombardi's May 8, 2018 letter, a previously scheduled arbitration hearing titled "Elizabeth Iafrate, Deputy Tax Assessor Rate of Pay" was held (Stipulation #4). The day after the arbitration hearing, on May 11, 2018, the Mayor's May 8th correspondence was received by bargaining unit member Elizabeth Iafrate (Tr. pg. 17). Ms. Iafrate is a long-term employee of the Town of North Providence, having been employed for approximately thirty (30) years (Tr. pg. 16). Although Ms. Iafrate over her career has worked in a number of different locations in Town and in a number of different capacities in a number of different

departments within Town Government, (Tr. pg. 16), as of the date of the hearing before the Board she was assigned to the Department of Public Works in the automotive division (Tr. pg. 15; See also the Consent Order at Paragraph 1E).

Over the last couple of years, Ms. Iafrate has filed at least four (4) separate grievances dealing with allegations of contract violations, as well as disciplinary matters (Tr. pg. 22, line 17 through pg. 27, line 2; Petitioner Exhibit #3; Stipulation #4, #5 and #6). All of the referenced grievances are in various stages of hearing or waiting for a decision (Tr. pgs. 23 – 27; Stipulation #4, #5 and #6; see also Respondent's Exhibit #2, the arbitration decision and award of John Cochran, Esq. in LRC #255-16).

Ms. Iafrate testified that upon receiving the Mayor's May 8th correspondence, she opened it, read it and was "shocked, ... humiliated ... [and] didn't understand why I was being villainized [sic] for the members not having a contract, ..." (Tr. pg. 17, lines 15 – 17). Ms. Iafrate further testified that when she went to work for the first time after having received the letter she "was humiliated to the fact that I didn't want to face my coworkers that morning, ..." (Tr. pg. 19, lines 12 – 14). Ms. Iafrate also testified, without dispute, that on May 28th, at a special Union meeting, one of the members of the bargaining unit "was screaming at me that I was nothing but trouble, that because of one person the whole body has to suffer." (Tr. pg. 20, lines 12 – 14). Ms. Iafrate further testified, again without dispute, that while one of the Union stewards stood up for her, indicating to other bargaining unit members that it was not Ms. Iafrate's fault and they should not blame her (Tr. pgs. 20 – 21), she continued to be the subject of ridicule among certain bargaining unit members that made her feel "horrible." (Tr. pg. 21, line 16). Ms. Iafrate testified that she was informed that one of the bargaining unit members was looking into the procedure "to vote me out of the Union." (Tr. pg. 21, line 14). Ms. Iafrate also testified that at another point in time she learned one of the individuals who had defended her to the bargaining unit had been accosted by another bargaining unit member and told that "he was going to piss and shit all over his car." (Meaning the car of the individual who had defended Ms. Iafrate) (Tr. pg. 22, lines 5 – 9). When asked what her reaction was to this particular statement, Ms. Iafrate stated "I was humiliated, I was horrified, and this is the reaction that I had feared from this letter going out." (Tr. pg. 22, lines 15 – 16).

Notwithstanding the bargaining unit's reaction to receiving the Mayor's correspondence, Ms. Iafrate acknowledged that as a result of the Mayor's letter, neither her grievance nor the arbitration of her grievances was deterred in any way ..." (Tr. pg. 28, lines 18 – 21). In fact, Ms. Iafrate acknowledged that none of the grievance and arbitration matters she filed were stopped or deterred, as a result of the Mayor's letter (Tr. pg. 29). Ms. Iafrate also acknowledged that, notwithstanding the Mayor's May 8th letter, she wasn't deterred from pursuing other arbitration matters (Tr. pg. 32).

Mayor Lombardi testified that prior to sending his May 8th letter, people would come into his office or call him, or he would bump into people who were asking what was going on with regard to contract negotiations (Tr. pg. 34, lines 18 – 24). The Mayor testified that

due to this interest in the negotiations, when he postponed the negotiations "because of this hearing," he thought "those individuals who I care about should know exactly why this was being canceled at this point in time, not to say that it's not going to be addressed and that offer is out there, and that's the reason why the letter was sent, to let them know exactly why." (Tr. pg. 34, line 22 through pg. 35, line 3). The Mayor also confirmed, as was stated in his May letter, that he had canceled the mediation session when he learned "that the May 10th arbitration was not going to be postponed or settled ..." (Tr. pg. 35, lines 7 – 9; lines 19 – 23).

The Mayor also confirmed his thought process in mentioning Ms. Iafrate's grievance and arbitration matters in the letter when he testified "I thought it was important to clearly explain, and not, how can I say, have to be questioned why. It's not just canceling it. I thought I owed those individuals an explanation and a final or true explanation. (Tr. pg. 36, lines 4 – 7; see also Tr. pg. 39, lines 14 – 22).

As of the date of the formal hearing before the Board, the Union and the Employer had not resumed mediation or negotiations for a new Collective Bargaining Agreement.[1]

POSITION OF THE PARTIES

The Union's Position:

In ULP-6221, the Union has alleged that the Employer has committed unfair labor practices by (a) engaging in direct dealing with the Union's membership; (b) discriminating against a bargaining unit member, Elizabeth Iafrate, for filing and arbitrating various claims; and (c) refusing to bargain and canceling mediation until all of Ms. Iafrate's grievances have been arbitrated.

On the issue of direct dealing, while the Union acknowledges that the Employer has a free speech right to communicate with its employees, the Union asserts that the Employer's May 8th correspondence was an obvious attempt to coerce members of the bargaining unit, to bypass the legitimate representative of the bargaining unit for purposes of negotiating and to divide or split the bargaining unit; all actions which violate the legitimate concept of direct dealing. See *Adolph Coors Company*, 235 NLRB 271 (1978); *Rhode Island State Labor Relations Board and State of Rhode Island, Department of Corrections*, ULP-5251.

The Union also argues that Ms. Iafrate is a victim of discrimination as a result of the contents of the Mayor's letter in that the Mayor specifically identified both Ms. Iafrate and her two (2) grievance arbitration matters and the need to prepare for those matters as the reason why he was canceling the mediation session. Further, the Union argues that the Town's counsel's email to the mediator indicating that new mediation dates would not be scheduled until after the Town had completed the various arbitrations involving Ms. Iafrate is further evidence that the Town's actions in targeting Ms. Iafrate to her coworkers and fellow bargaining unit members was discriminatory against Ms. Iafrate.

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[1] The parties stipulated that a proposed mediation session had been scheduled for August 28, 2018, a week after the formal hearing (Tr. pg. 37).

Finally, the Union alleges that the Town has refused to bargain with the Union. The Union asserts that the email from the Town's counsel to the mediator indicating that mediation would be canceled until all of Ms. Iafrate's grievances had been arbitrated is, in and of itself, sufficient evidence to demonstrate the Town's refusal to bargain. The Union argues that, notwithstanding the fact that a mediation session had been proposed for August 28, 2018, a suggested meeting date does not absolve the Town of its previous refusal to meet and confer with the Union in good faith.

In ULP-6225, the Union asserts that the Employer has retaliated and discriminated against Ms. Iafrate and violated this Board's Order issued in ULP-6198 by its actions in cancelling the mediation scheduled for May 8, 2018 based on its claimed need to have to "prepare" for a grievance arbitration filed on behalf of Ms. Iafrate and scheduled to be heard on May 10, 2018. The Union alleges that the evidence clearly demonstrates that the reason provided by the Employer for cancelling the mediation session was simply a "pretext for an ulterior motive." (See Union Memorandum in ULP-6225 at pg. 12). The Union points to the Mayor's letter (Petitioner's Exhibit #2 in ULP-6221) and the emails of the Employer's attorney (Petitioner's Exhibit #1) as clear evidence of the Employer's retaliatory motivation against Ms. Iafrate. As the Union views the evidence, the Mayor had several alternatives he could have pursued to inform the bargaining unit of the situation had he legitimately wanted to cancel mediation without hurting Ms. Iafrate. However, instead of choosing the least provocative means, the Mayor, in the Union's view, chose "a different path." (See Union Memorandum in ULP-6225 at pg. 14). From the Union's perspective, the Mayor's specific targeting of Ms. Iafrate in his letter was one in retaliation for Ms. Iafrate exercising her rights and in violation of the Board's Order in ULP-6198.

The Town/Employer's Position:

In ULP-6221, the Town's position, in a nutshell, is that it has acted fully above board, in good faith, and in a transparent manner; and that the correspondence by the Mayor was a legitimate communication with the bargaining unit and there was no coercion or threats contained in the correspondence. In short, it is the Town's position that there was no inappropriate communication between the Mayor and the bargaining unit based on the May 8th letter. The Town further asserts that the Union has failed to prove its allegations of discrimination and failure to bargain as the Town, at no time, discriminated against Ms. Iafrate or failed or refused to bargain with the Union. The Town argues that cancelling a single mediation session does not and cannot constitute an unlawful refusal to bargain.

As to the allegation of discrimination, the Town claims that there is no evidence to suggest that the Union has met its burden under the statute to demonstrate discrimination against Ms. Iafrate. The Town contends that nothing in the emails between its counsel and the mediator mentions Ms. Iafrate or could be construed as discriminatory against her. Instead, the emails demonstrate that the Town was simply prioritizing its resources to address the issues presented by Ms. Iafrate's arbitration cases. The Town also derides

any claim by the Union that the "mere mention" in the Mayor's correspondence of May 8th of Ms. Iafrate was discriminatory and rejects any idea that it should be "held responsible" for Ms. Iafrate being treated badly by her co-workers. (See Town's Memorandum in ULP-6221 at pg. 13).

As for ULP-6225, the Employer initially argues that this case should be dismissed as it is "merely a rehashing of the unfair labor practice charges lodged against the Town by the Union in ULP-6221..." (See Town's Memorandum in ULP-6225 at pg. 2). In the alternative, the Employer argues the two (2) Unfair Labor Practice Complaints should be consolidated. The Employer goes on to argue that no matter which direction the Board selects, it must dismiss the Union's charges in the pending case as the Union, from the Employer's perspective, has failed to sustain its burden of proof with respect to each of the allegations. The Employer also argues that the Board cannot enforce its Order in ULP-6198 through an administrative proceeding before the Board but must take enforcement action to Superior Court.[2]

DISCUSSION

As noted above, the Union has alleged, in ULP-6221, that the Employer has committed unfair labor practices by (a) engaging in direct dealing with the Union's membership through communicating by letter directly with employees, who are Union members, regarding terms and conditions of employment, labor negotiations, and mediation and grievances; (b) discriminating against a bargaining unit member, Elizabeth Iafrate, for filing and arbitrating an out of classification pay claim and the Union's claim that non-bargaining unit employees were performing bargaining unit work in the Tax Assessor's office; and (c) refusing to bargain and canceling mediation until all grievances of bargaining unit member Elizabeth Iafrate have been arbitrated. The Union has also alleged, in ULP-6225, that the Employer committed an unfair labor practice by retaliating against Ms. Iafrate when the Employer notified the negotiating committee, the bargaining unit and the mediator that it was cancelling the scheduled mediation session purportedly, so it could prepare for the May 10, 2018 grievance arbitration involving Ms. Iafrate. The Board will address each of the Unfair Labor Practice cases separately for ease of reference.

Case No. ULP-6221

The Union's initial allegation against the Employer claims that the Employer engaged in direct dealing with the Union's membership when the Town's Mayor sent a letter dated May 8, 2018 to the Union's membership notifying the membership, among other things, that the Employer was cancelling previously scheduled mediation due to its

[2] As of the drafting of this Consolidated Decision & Order, a judgment has been entered by the Superior Court in PC-2018-0008 enforcing the Board's Decision & Order in ULP-6198 and denying the Town's appeal to vacate said Decision & Order. The Town is currently appealing the Superior Court judgment to the Supreme Court, but the Superior Court's decision is presently in full force and effect as it has not been stayed or enjoined pending the Town's appeal.

need to prepare for specifically identified arbitration cases filed by a bargaining unit member, Elizabeth Iafrate (see Petitioner Exhibit #2).[3]

The term "direct dealing" is used to describe practices that constitute violations of Section 8(a)(1) and (a)(5) of the National Labor Relations Act and, correspondingly, R.I.G.L. 28-7-13(3), (6) and (10) of the State Labor Relations Act.[4] The National Labor Relations Board (NLRB) and federal courts have unanimously recognized (as have numerous state courts) that an Employer violates Section 8(a)(1) and (a)(5) if it engages in direct dealing with employees and, thereby, interferes in the collective bargaining process and in the Union's role as the exclusive bargaining representative. See *American Pine Lodge Nursing & Rehabilitation Center v. NLRB*, 164 F.3d 867 (4th Cir. 1999); see also *Service Employees International Union, AFL-CIO, Local 509 v. Labor Relations Commission*, 729 N.E. 2.d 1100 (2000); *Board of Education of Region 16 v. State Board of Labor Relations*, 7 A.3d 371 (Conn. 2010); *NLRB v. Pratt & Whitney Aircraft Division*, 789 F.2d 121, 134 – 35 (2nd Cir. 1986). Improper direct dealing is characterized by actions that persuade employees to believe that they can achieve their objectives by dealing directly through the Employer and thus erode the Union's position as the exclusive bargaining representative. See *American Pine Lodge Nursing & Rehabilitation Center,* 164 F.3d at 875; see also *NLRB v. Pratt & Whitney Aircraft Division*, 789 F.2d at 134. Another way to frame the question of direct dealing is "whether the Employer has chosen "to deal with the Union through the employees, rather than with the employees through the Union."" *American Pine Lodge Nursing & Rehabilitation Center,* 164 F.3d at 875, citing *NLRB v. General Electric Co.*, 418 F.2d 736, 759 (2nd Cir. 1969).

Of course, counter balancing the prohibition against direct dealing is an Employer's strong interest in preserving its right to free speech. In other words, an Employer is free to communicate its views to its employees "so long as the communications do not contain a threat of reprisal or force or promise of benefit." *NLRB v. Gissel Packing Co., Inc.* 395 US 575, 618 (1969); see also *In the matter of Rhode Island State Labor Relations Board and State of Rhode Island Department of Corrections*, ULP-5251 (May 2001).

Drawing the line between an Employer's legitimate right of freedom of speech and illegal direct dealing with employees produces a relatively straight forward standard of permissible conduct. An Employer may speak freely to its employees about a wide range of issues including the status of negotiations, outstanding offers, its position, the reasons for its position and objectively supportable, reasonable beliefs concerning future events. See *American Pine Lodge Nursing & Rehabilitation Center*, 164 F.3d at 875; *In the Matter of Rhode Island State Labor Relations Board and State of Rhode Island Department of Corrections*, ULP-5251 (2001). But, under Section 8(c) of the National Labor Relations

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[3] Other than an email communication between the Employer's legal counsel and the mediator, the May 8th correspondence is the central piece of evidence that involves or impacts all of the Union's unfair labor practice claims.

[4] The Rhode Island Supreme Court has previously stated, in *Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board*, 694 A.2d 1185, 1189 (R.I. 1997), that it will "look to federal labor law for guidance in resolving labor questions" that come before it.

Act and, correspondingly, R.I.G.L. 28-7-12 and 13(10),[5] an Employer cannot act in a coercive manner by making separate promises of benefits or threatening employees. Thus, an Employer may freely communicate with employees in non-coercive terms, as long as those communications do not contain some sort of express or implied quid pro quo offer that is not before the Union. This standard recognizes the right of represented employees to negotiate exclusively through their Union, while protecting the right of Employers to tell their side of the story. *Id.*

However, communications by an Employer that may undermine a Union's authority as the bargaining representative by encouraging employees to deal directly with the Employer or to abandon the Union are clearly impermissible. See *American Pine Lodge Nursing & Rehabilitation Center*, 164 F.3d at 879 - 880. In other words, even when an Employer may not have made threats or promises in its direct communications, it still may violate the law where it attempts to bypass the Union in negotiations. Thus, Employer communications directed to employees that, for example, solicit employee sentiment or disparage the Union are likely to erode or undermine the Union's position as the exclusive bargaining representative of the employees. See *American Pine Lodge Nursing & Rehabilitation Center*, 164 F.3d at 885; see also *N.L.R.B. v. Wallkill Valley General Hospital*, 886 F.2d 632 (3rd Cir. 1989).

As noted above, the instant case revolves around the effect, impact, meaning and interpretation of Mayor Lombardi's May 8th communication addressed to Union negotiating committee members and copied to all members of the bargaining unit. As testified to by Ms. Iafrate, upon reading the Mayor's letter she felt "shocked, … humiliated … [and] didn't understand why I was being villainized [sic] for the members not having a contract, …" (Tr. pg. 17, lines 15 – 17). Ms. Iafrate further testified that the letter made her feel as if she "didn't want to face my coworkers that morning, …" (Tr. pg. 19, lines 12 – 14) and that she felt "horrible" as she was the subject of ridicule among and by certain bargaining unit members (Tr. pg. 21). In fact, the undisputed evidence shows that at least one (1) bargaining unit member screamed at Ms. Iafrate, during a Union meeting, that she was "nothing but trouble," and that the entire Union body was made to suffer, because of her. (Tr. pg. 20) Further evidence demonstrated that even though certain bargaining unit members, including a Union steward, defended Ms. Iafrate against these attacks, these individuals, who had stood up for Ms. Iafrate, were also subjected to threats of reprisal by at least one (1) bargaining unit member (Tr. pg. 22).

It appears clear from a review of the May 8th correspondence that the intent of the letter was to make sure all bargaining unit members knew that the postponement and cancellation of the scheduled mediation session was due to Ms. Iafrate and the fact that

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[5] Section 8(c) of the NLRA provides that the "expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of the subchapter, if such expression contains no threat of reprisal or force or promise of benefit." Though the Act does not contain an identical provision, both R.I.G.L. 28-7-12 and 28-7-13(10) prohibit an Employer from, among other things, coercing employees in the exercise of their rights under the Act. See *In the Matter of Rhode Island State Labor Relations Board and State of Rhode Island Department of Corrections,* ULP-5251 (2001).

she had filed grievances, which were going to arbitration (Petitioner Exhibit #2). Further, the letter also made clear that the fault for the cancellation of mediation was placed squarely at the Union's doorstep, as the letter not only noted that it was the Union's "decision to move forward with the arbitration on March [sic] 10th", but the letter also specifically identified another reason for cancellation being that the Union had "reneged" on a purported representation that it would postpone or withdraw or settle Ms. Iafrate's grievances (Petitioner Exhibit 2). There can be little dispute, and the Board so finds, that such language as used by the Mayor in his letter was designed to not only place blame on the Union for the cancellation of the mediation and the inevitable delay in achieving a new Collective Bargaining Agreement with the Employer, but also to erode and undermine the Union's position as the sole representative of the bargaining unit. This conclusion is supported by the testimony of Mayor Lombardi. The Mayor bluntly testified that he had postponed the negotiations "because of [the] hearing" scheduled for Ms. Iafrate's grievance and that "the reason why the letter was sent, [was] to let them [bargaining unit members] know exactly why." (Tr. pgs. 34 – 35). The Mayor's testimony emphasized that he had cancelled the mediation session because he learned that Ms. Iafrate's scheduled May 10th arbitration "was not going to be postponed or settled …" (Tr. pg. 35). In the Mayor's words, he believed he "owed" bargaining unit members "an explanation and a final or true explanation." (Tr. pg. 36, lines 4 – 7) and that he "needed to clearly explain why this meeting or this mediation was being canceled at this point in time." (Tr. pg. 39, lines 15 – 17). The Mayor further admitted that he believed it was "indispensable" when communicating with the bargaining unit that Ms. Iafrate and her particular grievances be identified (Tr. pg. 39, lines 18 – 22).

Another significant factor that the Board credits in its analysis of the impact and intent of Mayor Lombardi's May 8th letter to the bargaining unit was his explanation of why he mentioned the failed negotiations to resolve at least one (1) of Ms. Iafrate's arbitration cases (See Petitioner Exhibit #2). Specifically, in the May 8, 2018 letter, the Mayor states, in relevant part, as follows:

> I am doing so because despite previous representations by attorney Coia that there would be postponement or withdrawal and settlement of Local 1033's grievances on behalf of Elizabeth Iafrate (pertaining to her claims for out-of-classification pay and bargaining unit work performed by non-bargaining unit employees), I have learned that Mr. Coia has now reneged on those representations, and that the arbitration docketed as LRC#255-16, Elizabeth Iafrate, Deputy Tax Assessor – Pay Rate will be going forward to be tried before Arbitrator John B. Cochran, Esq. on May 10, 2018. (Petitioner Exhibit #2)

However, according to the Mayor's testimony and exhibits, the discussion and ultimate failure to resolve the matters referenced in the May 8, 2018 letter occurred in early January 2017 (See Respondent Exhibit #1; Tr. pg. 43, lines 5 – 21; Tr. pg. 46, lines 20 – 23). Further, the arbitration case referenced in the proposed settlement actually went to hearing on January 12, 2017 and was scheduled for a second hearing date on

October 23, 2018 (See Stipulation #6; Tr. pgs. 5 – 6). Thus, the Mayor's reference to the Union having "reneged" on settling or withdrawing certain arbitrations was to an event that had happened more than sixteen (16) months before he wrote his letter to the bargaining unit and did not relate to the arbitration case he mentioned in the letter, but to an entirely different case filed by Ms. Iafrate. Since there was no evidence that there had been any intervening settlement discussions other than what was represented in Respondent's Exhibit #1, the Board does not find credible the Mayor's explanation and reason for inserting this otherwise pejorative statement about the Union into the letter. In the Board's view, the inclusion of this reference was designed and intended to make the Union appear to be an unfaithful or unwilling partner in dealing with the Town. Such an inference appears clearly directed at undermining the influence of the Union with its members.

The Mayor's correspondence to the bargaining unit did not mention anything about what the Employer's collective bargaining offer had been to the Union, nor did the Mayor in his correspondence attempt to defend the Town's bargaining position or provide a reasoned explanation for why the Town's offer to the Union should be accepted by the bargaining unit (See Petitioner Exhibit #2; Tr. pg. 42, lines 4 – 7; Tr. pg. 47, lines 19 – 24). In these limited terms, it cannot be said that the Mayor's letter to the bargaining unit offered either threats or promises concerning the Town's offer because, as indicated above, no discussion of the offer was included in the letter. However, improper direct dealing with the bargaining unit is not, as noted above, solely reliant on an Employer's attempt to sway bargaining unit members through threats or promises based on the offer made or discussed during negotiations. In fact, where the communication attempts to undermine the Union's position as the sole and exclusive representative of the employees and seeks to, whether overtly or subtly, encourage bargaining unit members to abandon the Union and look to the Employer as the party with whom they should deal or negotiate, the Employer in those circumstances has also committed an Unfair Labor Practice.

The Town argues, without evidence, that it did not violate R.I.G.L. 28-7-13(3) because the Union could put forth no evidence to support its charge of "direct dealing" by the Town (See Town Memorandum at pgs. 4 – 10).[6] In reality and as discussed above, there was abundant evidence to demonstrate the improper intent and impact of the Mayor's May 8th communication to the bargaining unit. The Town's defense of its actions takes both a narrow and, to use its term, a "hyper-technical" reading of the direct dealing cases. While the Town notes a number of instances wherein an Employer can engage in legitimate direct communication with its employees without committing a violation of the Act (See Town Memorandum at pgs. 8 – 9), these citations and instances fail to address

[6] In its memorandum, the Town argues that only a small sliver of the language in R.I.G.L. 28-7-13(3) applies to the Union's "direct dealing" charge (See Town Memorandum at pg. 6). The Board takes no position on the Town's argument on this point as it is not critical to its determination of whether a violation of some portion of 13(3) occurred. The Board has found that such a violation did occur.

the circumstances presented to the Board in this case, the substance of the Mayor's letter or his clear intent as expressed in his written words and his testimony.

In the instant case, based on a careful reading of the Mayor's correspondence (Petitioner Exhibit #2) and the testimony provided at the hearing, the Board has no doubt that the Mayor's intentions in communicating with the bargaining unit were designed to erode the bargaining unit's confidence in its representative, i.e.// the Union, and to have bargaining unit members look to the Mayor, as the chief negotiator for the Town, as the individual best situated to get the employees a new contract. These actions clearly are a violation of R.I.G.L. 28-7-13 (3) and (10) as they "interfere with the ... administration" of the Union and were designed to "interfere with, restrain or coerce employees" in exercising their rights under the Act.

The Union also alleges that the Employer discriminated against Ms. Iafrate for filing grievances and arbitrating those grievances against the Employer. Based on Ms. Iafrate's undisputed testimony and, specifically, her recounting of how she was made to feel after reading the Mayor's letter and how certain bargaining unit members reacted toward her after the letter was publicized, it is clear that she was adversely impacted by the Mayor's May 8th communication to the bargaining unit. While it is undisputed that notwithstanding the May 8th correspondence, Ms. Iafrate was not deterred in arbitrating her grievances, pursuing other grievances or in any way stopped from arbitrating her issues (Tr. pg. 29; Tr. pg. 32), it is also uncontestable that the Mayor's May 8th correspondence held Ms. Iafrate up to ridicule and humiliation before her coworkers, all members of the bargaining unit. Ms. Iafrate was particularly singled out in the Mayor's communication for having filed grievances that were scheduled to be arbitrated and the correspondence was equally clear that as a result of Ms. Iafrate's action in filing grievances and pressing those matters to arbitration, the scheduled mediation of the Collective Bargaining Agreement was cancelled. This obvious linkage placed Ms. Iafrate in a bad light with her coworkers and adversely impacted her. The Mayor, during his testimony, offered no legitimate reason for specifically identifying Ms. Iafrate as the cause of cancellation of the scheduled mediation. In fact, the Mayor testified he thought it was "indispensable" to mention Ms. Iafrate and her pending grievances as part of his correspondence with the Union membership (Tr. pg. 39, lines 18 – 22).

Though the record does not indicate that Ms. Iafrate suffered any tangible loss, as a result of the Mayor focusing on her scheduled arbitration matters in his May 8th letter, a tangible loss is not required under the Act for purposes of finding that discrimination has occurred. In this case, the Board finds that by the Mayor singling out Ms. Iafrate for her filing of grievances and going to arbitration over her grievances as the primary reason for cancelling a scheduled mediation, the Employer has violated R.I.G.L. 28-7-13(8), which provides it is an Unfair Labor Practice for an Employer to "discriminate against an employee because he or she has signed or filed any ... petition, or complaint ..." Ms. Iafrate's filing of grievances and moving those grievances to arbitration clearly, in the Board's view, are actions that she is entitled to pursue under both the Act and the

Collective Bargaining Agreement. By holding her up to ridicule for engaging in conduct that she is entitled to pursue, the Town has caused Ms. Iafrate to suffer adversely and, by doing so, committed an Unfair Labor Practice under both Section 13(8) and (10) of the Act.

The Board, in making this finding, specifically rejects the Employer's argument that the language of R.I.G.L. 28-7-13(8) must be read and interpreted in a narrow and limited fashion. As the Act clearly and succinctly states, "[a]ll the provisions of this chapter shall be liberally construed for the accomplishment of this purpose." (R.I.G.L. 28-7-2(e)). As the purpose and policy of the Act is to prevent Employers from denying employees the right to "freedom of association and organization," to protect "the right of employees to organize and bargain collectively" and to allow employees to engage in their rights under the Act "free from the interference, restraint or coercion of Employers…", the Board under the authority granted to it by the Act is obligated to prevent Employers from interfering with these rights (see R.I.G.L. 28-7-2(b), (c), and (d)). The Employer's interpretation of R.I.G.L. 28-7-13(8) as urged in its memorandum is simply too confining, limited and restricted an interpretation of the Act and, thus, must be rejected by the Board.

Finally, the Union has alleged that the Employer has refused to bargain with the Union in violation of the Act. Specifically, the Union alleges that by cancelling mediation until all of Ms. Iafrate's grievances were arbitrated the Employer has violated R.I.G.L. 28-7-13(6) of the Act. The evidence on this point is not in dispute, though the Employer argues that the interpretation of the facts demonstrates it did not refuse to bargain with the Union. Notwithstanding the Employer's arguments, the facts clearly point to a violation of the Act.

As previously noted, on May 4th the Employer's attorney sent an email to the mediator cancelling the previously scheduled mediation due to the Town's "need to prepare witnesses for an arbitration with Local 1033 on the 10th that the Mayor thought would have been resolved." (Petitioner Exhibit #1). In response to the mediator's acknowledging receipt of the May 4th email, Employer's counsel, on May 5th, wrote back to the mediator stating that the Employer would "be in touch once we get through all the Elizabeth Iafrate arbitrations." (Petitioner Exhibit #1). Further, the Mayor's May 8th communication, as previously discussed, noted the cancellation of the mediation session due to the ongoing arbitrations pursued by Local 1033 on behalf of Ms. Iafrate and indicating that "the Town must devote its time and resources to preparing for and defending that case rather than mediate." (Petitioner Exhibit #2). At the time the Union filed the instant Unfair Labor Practice Charge, no new mediation or negotiating sessions had been scheduled or proposed between the parties since the Mayor's May 8th communication.

It is apparent from the Employer's counsel's rather straightforward email communication with the mediator on May 5, 2018 that the Town did not intend to continue the mediation process until all of Ms. Iafrate's arbitrations had been concluded (Petitioner Exhibit #1). As the facts set forth in the parties' stipulations make clear

(See Stipulations #4, #5 and #6), there were numerous arbitration cases scheduled that would delay the resumption of mediation between the parties, based on the language in counsel's email, until the end of 2018 if not later.[7] In addition, the Employer's counsel had copied the Union's chief negotiator, Mr. Coia, on his email communication with the mediator. Thus, it is not difficult to conclude that, based on the plain language of the Employer's counsel's email to the mediator of May 5th, the Union would believe that the Town did not intend to continue or schedule any mediation sessions for a significant period of time. This action on the part of the Employer clearly represents, in the Board's view, a refusal to bargain with the Union contrary to the Employer's obligations under R.I.G.L. 28-7-13(6).

The Employer argues that it did not refuse to bargain with the Union and appears to assert that its denial is valid, because the Union failed to object to the cancellation of mediation and failed to inquire regarding subsequent dates for mediation (See Employer Memorandum in ULP-6221 at pg. 10). The Town also asserts that cancelling a single mediation session cannot constitute or support a finding of an Unfair Labor Practice. If this were the only fact before the Board, the Town's argument might prove to have some merit. However, the Board believes the argument, though skillfully crafted, has clearly understated the significance of counsel's email to the mediator and the impact of the Mayor's follow up communication to the bargaining unit. As the plain language of the Employer's counsel's May 5th email to the mediator states, bargaining was not going to occur between the parties until all of Ms. Iafrate's arbitrations had been completed. Instead of being a benign cancellation of a single mediation session, this statement clearly indicates that the Employer had no intention of scheduling any future mediation sessions until sometime in the distant future after all of Ms. Iafrate's arbitrations are completed. Having copied the Union's chief negotiator on this May 5th email (Petitioner Exhibit #1), it could not be lost on the Union that the Employer was refusing to engage in any further bargaining until sometime, at the earliest, in 2019. The Union would know this because it was aware of the grievances and arbitrations that were scheduled on behalf of Ms. Iafrate (Stipulations #4, #5 and #6), as well as other arbitrations that Ms. Iafrate had coming up (Tr. pg. 41). Thus, the Union was keenly aware of the underlying message in the May 5th email sent to the mediator by the Employer's counsel, i.e.// the Town does not intend to schedule, propose or engage in mediation with the Union at all until the arbitrations are complete. This definitive statement by the Employer left the Union with little room to maneuver and no legitimate hope that if it attempted to seek additional dates for mediation it would be successful in obtaining said dates. Further, the fact that a scheduled mediation

[7] As Stipulation #5 states, there was a second day of arbitration scheduled for November 9, 2018 in Case No. 602-17. As Stipulation #6 states, a second day of arbitration was also scheduled in Case No. 453-15, Deputy Tax Assessor, for October 23, 2018. Even if both of these cases were to conclude with those second day hearings, if the parties filed memoranda of law the arbitrator's decisions would likely not be rendered until sometime in early 2019.

date was agreed to between the parties after the Union filed its Unfair Labor Practice Charge does not, in the Board's view, mitigate against a finding of a violation of the Act.[8]

ULP-6225

This Unfair Labor Practice Complaint alleges that the Employer retaliated against Ms. Iafrate in violation of the Board's Decision and Order in ULP-6198 and R.I.G.L. 28-7-13 (6), (8) and (10) when it cancelled the previously scheduled mediation session using as its excuse that it needed to prepare for the upcoming (two (2) days later) grievance arbitration of Ms. Iafrate. As is discussed above in ULP-6221 and for the reasons stated therein, the Board finds that the content of the Employer's May 8, 2018 letter (Petitioner Exhibit #2) and the content of the Employer's attorney's email correspondence dated May 4 and 5, 2018 (Petitioner Exhibit #1) were designed and intended to place the blame for the cancellation of mediation and the delay in getting a new contract at least partially upon Ms. Iafrate in retaliation for her exercising her rights to file grievances under the CBA and for her having filed an Unfair Labor Practice charge against the Employer.

As the evidence presented to the Board makes clear, based on Ms. Iafrate's undisputed testimony and, specifically, her recounting of how she was made to feel after reading the Mayor's letter and how certain bargaining unit members reacted toward her after the letter was publicized, it is clear that she was adversely impacted by the Mayor's May 8th communication to the bargaining unit. The evidence before the Board demonstrates that the Mayor's May 8th correspondence held Ms. Iafrate up to ridicule and humiliation before her coworkers, all members of the bargaining unit. Ms. Iafrate was particularly singled out in the Mayor's communication for having filed grievances that were scheduled to be arbitrated and the correspondence was equally clear that, as a result of Ms. Iafrate's action in filing grievances and pressing those matters to arbitration, the scheduled mediation of the Collective Bargaining Agreement was cancelled. This obvious linkage placed Ms. Iafrate in a bad light with her coworkers and adversely impacted her. The Mayor, during his testimony, offered no legitimate reason for specifically identifying Ms. Iafrate as the cause of cancellation of the scheduled mediation. In fact, the Mayor testified he thought it was "indispensable" to mention Ms. Iafrate and her pending grievances as part of his correspondence with the Union membership (Tr. pg. 39, lines 18 – 22). Further, when the Mayor wrote his May 8th letter he was aware that less than six (6) months earlier, on December 15, 2017, the Board had issued its Decision and Order in ULP-6198. This Decision and Order found that the Town had violated R.I.G.L. 28-7-13 (10) by retaliating against Ms. Iafrate for doing precisely what she had done in the instant case, i.e.// file grievances and demand to go to arbitration. Based on the clear evidence, it was "indispensable" for the Mayor to mention Ms. Iafrate, because he sought to retaliate against her for having filed an unfair labor

[8] As the parties noted during the course of the hearing, a mediation date was proposed by the mediator for one week after the August 21st hearing date (Tr. pg. 37). However, there is no evidence in the record as to whether this proposed date was finalized between the parties.

practice charge against the Town and for having the temerity to file several grievances against the Town. This conclusion is further supported by the emails sent to the mediator from the Employer's counsel, wherein it is made clear that no further mediation sessions would occur until the Town completed "all the Elizabeth Iafrate arbitrations." (Petitioner Exhibit #1). The intent of the Employer could not be clearer in the present case, i.e.// to make Ms. Iafrate the reason why mediation was being cancelled and why negotiations and a potential new contract were being delayed.

In this case, the Board finds that by the Mayor singling out Ms. Iafrate for her filing of grievances and going to arbitration over her grievances as the primary reason for cancelling a scheduled mediation, the Employer has violated R.I.G.L. 28-7-13(8), which provides it is an Unfair Labor Practice for an Employer to "discriminate against an employee because he or she has signed or filed any ... petition, or complaint ..." Ms. Iafrate's filing of grievances and moving those grievances to arbitration clearly, in the Board's view, are actions that she is entitled to pursue under both the Act and the Collective Bargaining Agreement. By holding her up to ridicule for engaging in conduct that she is entitled to pursue, the Town has committed an Unfair Labor Practice under both Section 13(8) and (10) the Act.

For all the above stated reasons, the Board finds that the Employer's statement that it would not mediate until all of Ms. Iafrate's arbitrations had been completed to be a refusal to bargain and a violation of R.I.G.L. 28-7-13(8).

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 and grievances and other mutual aid or protection and as such is a "labor organization" within the meaning of the Rhode Island State Labor Relations Act.
3. The Employer and the Union have a longstanding collective bargaining relationship. Local 1033 and the Town engaged in good faith collective bargaining between June 2015 to November 2017 for the purposes of negotiating a Collective Bargaining Agreement to commence July 1, 2015.
4. On March 14, 2018, pursuant to Rhode Island General Law 28-9.4-10, the Rhode Island Department of Labor & Training Director, Scott Jenson, appointed Ronald Cascione, Esq. to mediate the collective bargaining between Local 1033 and the Town.
5. On April 19, 2018, Mediator Ronald Cascione convened and conducted the initial mediation session for Local 1033 and the Town.
6. Another mediation session was scheduled for May 8, 2018 between the parties. However, on May 4, 2018 the Employer's counsel sent an email to the mediator canceling the May 8th mediation session.

7. On May 5, the mediator responded to the Employer's counsel through email. On that same date, the Employer's counsel responded to the mediator stating that he would contact the mediator "once we get through all the Elizabeth Iafrate arbitrations." (Petitioner Exhibit 1). The emails from the Employer's counsel to the mediator were copied to the Union's representative.

8. On May 8, 2018, the Mayor, for the Town of North Providence and the individual responsible for labor relations on behalf of the Town, sent a letter to members of the Union's negotiating committee. The letter was also sent to the Union's chief negotiator and members of Local 1033.

9. On May 10, 2018 and May 23, 2018, Local 1033 and the Town arbitrated before John Cochran, Esq. a grievance filed by Local 1033 on behalf of Elizabeth Iafrate, which case was docketed by the Labor Relations Connection as "Town of North Providence, Local Union 1033, Labor Relations Connection Number 255-16, Elizabeth Iafrate, Deputy Tax Assessor, pay rate." Arbitrator Cochran issued his decision on September 3, 2018.

10. On June 13, 2018, Local 1033 and the Town arbitrated before Tammy Brynie, Esq. a grievance filed by Local 1033 on behalf of Elizabeth Iafrate, which was docketed by the Labor Relations Connection as "Elizabeth Iafrate, Suspension, Labor Relations Connection Case Number 602-17." That case was scheduled for a second day of arbitration on November 9, 2018.

11. On January 12, 2017, Local 1033 and the Town arbitrated before Philip Dunn, Esq. Local 1033's grievance, which case was docketed as "Town of North Providence, Local Union 1033, Labor Relations Connection, Case Number 453-15, Deputy Tax Assessor, non-bargaining unit persons performing bargaining unit work." That case was scheduled for a second day of arbitration on October 23, 2018.

12. Elizabeth Iafrate's work assignment in the Town's Department of Public Works garage was made by agreement between the parties, the assignment was accepted by Ms. Iafrate; and the referenced agreement was entered into after Ms. Iafrate initiated litigation against the Union and various defendants in PC-2017-4590.

13. The Employer appealed the Decision & Order of the Board in ULP-6198 to the Superior Court (PC-2018-0008). After receiving and reviewing written briefs from the parties and hearing oral argument, the Superior Court denied the Town's appeal to vacate the Board's Decision & Order.

CONCLUSIONS OF LAW

1. The Town violated R.I.G.L. 28-7-13(3) and (10) when it sent a letter, dated May 8, 2018, from the Mayor to all bargaining unit members cancelling a scheduled mediation session, in an attempt to coerce those Union members in the exercise of their rights as enumerated by the Act.

2. The Town violated R.I.G.L. 28-7-13(8) and (10) when it sent a letter, dated May 8, 2018, from the Mayor to all bargaining unit members explaining that the cancellation of a scheduled mediation session was due, in part, to Union member

Elizabeth Iafrate having filed grievances and demand for arbitrations in two (2) specifically named cases.

3. The Town violated R.I.G.L. 28-7-13(6) and (10) when, through communication dated May 5, 2018 between the Town's counsel and the mediator and through the May 8, 2018 communication between the Mayor and the bargaining unit, it refused to bargain with the Union.

4. The Town violated R.I.G.L. 28-7-13(8) and (10) when it sent a letter, dated May 8, 2018, from the Mayor to all bargaining unit members explaining that the cancellation of a scheduled mediation session was due, in part, to Union member Elizabeth Iafrate having filed grievances and demand for arbitrations in two (2) specifically named cases and when, through communication dated May 5, 2018 between the Town's counsel and the mediator it refused to schedule additional bargaining sessions until it had completed all of the arbitrations involving Elizabeth Iafrate in retaliation for Ms. Iafrate exercising her rights and in direct contravention of the Board's Decision and Order in ULP-6198.

ORDER

1. The Employer is hereby ordered to cease and desist from retaliating against Elizabeth Iafrate for exercising her right to file grievances and/or pursue arbitrations and/or file unfair labor practice charges with this Board.

2. The Employer is hereby ordered to cease and desist from discriminating against Elizabeth Iafrate for exercising her right to file grievances and/or pursue arbitrations.

3. The Employer is hereby ordered to cease and desist from undermining or disparaging the Union in any communications the Town has with members of the bargaining unit.

4. The Employer is hereby ordered to cease and desist from refusing to engage in either mediation or good faith bargaining with the Union in accordance with R.I.G.L. 28-7-12.

5. 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 materials 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

Derek M. Silva, Member

BOARD MEMBER, ALBERTO APONTE CARDONA, HAS RECUSED HIMSELF FROM PARTICIPATION IN THIS MATTER.

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

BOARD MEMBER, ARONDA R. KIRBY, WAS ABSENT FOR THE SIGNING IN THIS MATTER.

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

Dated: February 14, 2019

By: _____
Robyn H. Golden, Administrator

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-6221 ULP-6225
TOWN OF NORTH PROVIDENCE	:	**(CONSOLIDATION)**

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-6221 ULP-6225, dated February 4, 2019, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **February 4, 2019.**

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

Dated: February 4, 2019

By: _____
Robyn H. Golden, Administrator