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-6304
	:	
STATE OF RHODE ISLAND DEPARTMENT OF LABOR & TRAINING	:	

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 State of Rhode Island Department of Labor & Training (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated February 26, 2021 and filed on the same date by the Rhode Island Employment Security Alliance, SEIU, Local 401 (hereinafter "Union").

The charge alleged as follows:

> In or about August 2019, the Rhode Island Employment Security Alliance, SEIU, Local 401 ("Local 401") filed a grievance on behalf of one of its members, Fraud Investigator Carlos Tillett, alleging that the State of Rhode Island, Department of Labor & Training ("State" or "DLT") lacked just cause to discharge Tillett in violation of the collective bargaining agreement ("CBA"). The grievance was not resolved, the Union demanded arbitration and a hearing was scheduled. Prior to the scheduled hearing on November 10, 2020 the parties settled the grievance. In short, the State agreed to reinstate Tillett to a different position at the same pay grade, effective November 23, 2020. Tillett agreed to forego his claim to back pay and a make whole remedy. The settlement terms were confirmed in writing by the State on November 4. As a result, the grievance was placed in abeyance. Local 401 Counsel drafted a memorandum of agreement ("MOA") and circulated it to DLT Counsel. On November 6, DLT Counsel wrote "I will forward and discuss with the Director with the anticipation of signature as soon as possible." Following this communication, DLT Counsel represented that the MOA had to be reviewed and approved by the Department of Administration ("DOA"). To date, despite the efforts of Local 401, the MOA has not been executed by the Director of DLT, or the DOA. Significantly, the DOA has not informed the Union of any disagreement with the terms of the settlement or the lack of authority of the DLT as a basis not to execute the Agreement. Instead, after the State negotiated the terms of the MOA, the State alleges it discovered a separate, unrelated potential disciplinary issue concerning Tillett that occurred after his termination. This subsequent potential issue does not give the State the basis to refuse to execute the MOA (whether it be the DLT or the DOA). If there is in fact a separate issue, the State is free to place Tillett on administrative leave with pay following reinstatement and in all events it must afford him his constitutional and contractual due process rights. The State's duty to bargain in good faith includes the duty to finalize the bargain by executing this written 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 April 2, 2021, the Board issued its Complaint, alleging the Employer violated R.I.G.L. §28-7-13(6) and (10) when, through its representative, the Employer (1) failed and refused to sign a settlement agreement negotiated between the parties to resolve a grievance arbitration dispute and (2) failed to bargain in good faith with the Union when it refused to sign a settlement agreement negotiated between the parties to resolve a grievance arbitration dispute. 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 February 3, 2022. Post-hearing briefs were scheduled to be due on March 7, 2022 and, after a requested extension by the Union was granted by the Board, the Employer and the Union filed their respective post-hearing briefs on April 19, 2022. In arriving at the Decision and Order herein, the Board has reviewed and considered the Consent Order, exhibits 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 February 3, 2022. The facts are as follows:

1. DLT is a department of the executive branch of the State of Rhode Island ("State") and an employer within the meaning of § 28-7-3(4) of the Rhode Island General Laws.

2. Local 401 is a labor organization within the meaning of § 28-7-3(4) of the Rhode Island General Laws and the duly certified bargaining representative for certain DLT employees (EE 3270-A).

3. Local 401 and the State are parties to a collective bargaining agreement ("CBA") that addresses various terms and conditions of employment of Local 401 members.

4. "CT" was a member of Local 401 and employed by DLT as a Fraud and Overpayment Investigator at DLT's Division of Income Support until he was terminated effective August 14, 2019 for alleged misconduct.

5. CT denied any and all allegations of wrongdoing and Local 401 contested his termination by means of the grievance and arbitration process set forth in the CBA.

6. After being terminated, CT applied for, and received, unemployment insurance benefits from DLT.

7. CT, like all individuals collecting unemployment insurance benefits from DLT, was required by § 28-44-13 of the Rhode Island General Laws to properly report any earnings received while collecting unemployment insurance benefits to DLT.

8. After a delay caused by the COVID-19 Pandemic, an arbitration hearing on the validity of CT's termination was scheduled for November 10, 2020.

9. On or about October 23, 2020, Siobhan Stephens-Catala ("Catala"), the attorney representing DLT in the arbitration, contacted Carly Iafrate ("Iafrate"), the attorney representing Local 401, to inquire about the possibility of settlement.

10. Settlement discussions ensued and on November 4, 2020, Catala wrote to Iafrate as follows:

> Good evening,
>
> I believe we have a resolution. The Department agrees to the following as previously proposed:
>
> Reinstatement to state employment in an Assistant Administrative Officer job classification at same pay grade;
> Restoration of state seniority;
> No back pay or other retroactive financial benefits;
> Split cancellation fee (if any) with Arbitrator.
>
> If you wouldn't mind as you previously volunteered drafting a proposed MOA and notify the arbitrator that we will place the grievance in abeyance pending execution of final agreement that would be great.
>
> Thank you for working with me to work this through.

11. Management at DLT was aware of these settlement discussions and approved of the proposed settlement.

12. On November 6, 2020, Iafrate prepared a draft settlement agreement and forwarded it to Catala for review ("Draft Agreement").

13. That same day, Catala wrote to Iafrate that: I will forward and discuss with the Director of the DLT with the anticipation of signature as soon as possible.

14. As the CT arbitration was the first time that Catala had settled a pending arbitration, she was not aware that the Department of Administration ("DOA") had to approve all settlements involving union employees, including members of Local 401.

15. Daniel Ballirano (`Ballirano"), then the State's Deputy Personnel Administrator for Labor Relations and the person who typically reviewed Department-level settlements, was not made aware of either the settlement discussions or the proposed agreement until November 6, 2020, when he received a copy of the Draft Agreement for his review and approval.

16. While reviewing the Draft Agreement, Ballirano learned that CT was under investigation by DLT for unemployment insurance fraud for failing to properly report income earned while collecting unemployment insurance benefits.

17. On November 13, 2020, Iafrate checked with Catala regarding the status of the agreement as the agreement contemplated CT returning to work on November 23.

18. Following the November 13 e-mail, Catala reached out to Iafrate to inform her that the DLT was currently investigating CT for possible unemployment fraud.

19. Catala and Iafrate discussed whether and how this would impact the settlement.

20. At the conclusion of a phone call on November 17, 2020, Catala informed Iafrate that the DLT was still willing to go forward with the settlement because she had no information about the investigation to report to Iafrate and that if the DLT wanted to place CT on administrative leave based on the new allegations, it could do so upon his return to work.

21. Catala told Iafrate that she would contact DOA to execute the agreement.

22. On November 24, 2020, Catala wrote to Iafrate as follows: Still no word on CT, but because of your experience, I was wondering if you have any suggestions. I am told that they are still working on the technical aspects of this.

23. Iafrate asked Catala who had the document and she indicated, on December 1, 2020, that Ballirano still had the agreement.

24. Iafrate and Catala then spoke and Iafrate agreed to reach out directly to Ballirano to find out what the reasons were for the delay.

25. Iafrate was not able to reach Ballirano until January 6, 2021, when they spoke by telephone.

26 During the call, Ballirano asked Iafrate if she was aware of the investigation into CT. Iafrate told Ballirano she was aware generally, but that she had no details. Ballirano asked if Iafrate would agree to revise the agreement to include some language to indicate an investigation was ongoing and the State was not waiving its rights to pursue that investigation. Iafrate agreed so long as it was properly drafted and Ballirano agreed to revise the agreement and send it to Iafrate.

27. Although Ballirano contends that he informed Iafrate that DOA refused to execute the agreement based on the existence of the investigation, Iafrate contends that he did not do so.

28. On January 13, Iafrate followed up with Ballirano as to the status of the agreement. Ballirano replied that he was "expecting to hear about developments today/tomorrow. If I don't get a response by then I will move the SPA forward."

29. Ballirano did not explain what developments he was referring to or from whom he was expecting to hear from regarding such developments.

30. After not hearing from Ballirano, Iafrate wrote to Ballirano on January 21, 2021 as follows:

> Congratulations. I can only imagine how glad you are to move on to the next horizon!
>
> We need to get this done ASAP. I am going to need to file an unfair relative to this settlement if I do not get the SPA back and executed. This member was supposed to be reinstated by agreement back in November. I understood from early on that there may be a separate pending investigation concerning this employee. But the agreement was to reinstate him regardless. If the State wanted to put him on administrative leave at that time, fine. But we cannot have him hanging out forever as by now we would have had an arbitration award. We have been more than patient.
>
> Can we please get this done? If I do not have it by next Friday I will file the ULP.

31. The following day, Ballirano called Iafrate and asked if CT would be willing to resign his employment in exchange for some backpay.

32. On February 8, 2021, Iafrate informed Ballirano that CT would not agree to resign and that the Local intended to file the instant charge to enforce the original agreement.

33. Although Ballirano contends that he informed Iafrate that he would not approve the original proposed settlement, Ms. Iafrate contends that he did not do so.

34. On or about February 26, 2021, Iafrate filed the above captioned unfair labor practice charge with the Rhode Island State Labor Relations Board ("Labor Board")

35. On or about April 2, 2021, after consideration of the statements submitted by DLT and Local 401, the Labor Board issued a Complaint and scheduled an evidentiary hearing for August 24, 2021.

36. On or about February 12, 2021, DLT referred CT's unemployment case to the Office of the Attorney General for possible criminal prosecution.

37. On or about March 19, 2021, CT was arrested by the Rhode Island State Police and charged with two felonies, Obtaining Property By False Pretenses in an amount of $10,000 (R.I. Gen. Laws § 11-41-4) and Access To A Computer for Fraudulent Purposes (R.I. Gen. Laws § 11-52-2).

38. CT plead not guilty to both charges and his criminal case is currently pending in Rhode Island Superior Court.

39. Ballirano reviewed and executed at least two (2) settlement agreements involving Local 401, one (1) of which involved a disciplinary matter, during his tenure as the State's Deputy Personnel Administrator for Labor Relations.

40. Jacqueline Kelley ("Kelley") was responsible for reviewing and approving proposed settlements involving the unions representing State employees, including Local 401, prior to Ballirano.

41. Kelley reviewed and executed at least five (5) settlement agreements involving Local 401, three (3) of which involved disciplinary matters during her tenure in this position.

42. On or about April 9, 2020, Local 401 and DLT executed a side agreement authorizing non-Union personnel to perform certain bargaining unit work during the COVID-19 Pandemic. Ballirano did not execute this agreement. While Local 401 believes there may be other agreements which were executed by DLT but not executed by Ballirano or his predecessors, Local 401 has not been able to locate them.

43. DLT and Local 401 hereby waive their rights to present and cross examine witnesses during the evidentiary hearing and agree to have the above captioned matter decided upon these Stipulated Facts and the agreed upon exhibits previously submitted to the Labor Board.

POSITION OF THE PARTIES

Union:

The Union's central argument in the instant matter is that the Employer, upon reaching agreement on the terms of a settlement agreement involving Tillett was obligated to have the document executed by the appropriate authority. The Union claims the Employer

refused to execute the original agreement and then, after renegotiating the agreement and obtaining the Union's approval to changes to the original agreement, refused to execute the modified agreement. These actions, according to the Union, demonstrate that the Employer has violated the State Labor Relations Act (hereinafter "Act"). In addition, the Union contends that the Employer, in failing to sign the settlement agreement, has also failed to bargain in good faith with the Union. The Union is seeking a make whole remedy for the Employer's delay in refusing to sign the agreement.

Employer:

In its memorandum of law to the Board, the Employer contends that it was justified in its action in not executing the settlement agreement. According to the Employer's argument, while it does not dispute that a settlement agreement was reached between the attorney representing the Department of Labor and Training (DLT) and the attorney for the Union and the agreement was reduced to writing, it contends that because the Department of Administration (DOA) did not approve the settlement agreement there was no binding agreement between the parties and, therefore, nothing that obligated the Employer to execute the settlement document.

DISCUSSION

The issue before the Board, simply stated, is the Union's claim that the Employer failed to execute a mutually negotiated and agreed upon settlement agreement resolving a pending disciplinary grievance arbitration matter. The Union asserts that the Employer's refusal to execute the settlement agreement represents a failure to bargain in good faith which is a violation of the Act. The Employer contends that because DOA is the sole authority for approving agreements and it did not approve this settlement agreement, no binding agreement existed and, therefore, the Employer had no obligation to execute the document.

In sifting through the stipulated facts, exhibits and memoranda of law submitted by the parties, the Board has concluded, as will be discussed in greater detail below, that the Employer violated the Act by failing to execute the settlement agreement. In short, while it appears clear that DLT did not have the authority to finalize the settlement agreement without approval from DOA (see Stipulated Fact #14), it is equally clear that DOA, as the authorized authority, negotiated a revision to the original settlement agreement to which the Union agreed (see Stipulated Fact #26). This separate negotiation and agreement between the parties (specifically the Union and DOA) created a new settlement agreement that the Employer was obligated to sign. The Employer's failure to execute the document was in violation of the Act.

A. The Employer Failed to Execute the Settlement Agreement in Violation of the Act.

As previously noted, the settlement agreement required the Employer to reinstate Tillett to an Assistant Administrative Officer position (see Stipulated Fact #10). The Board

has considered the Employer's arguments and, as discussed in greater detail below, must reject them as being insufficient to abrogate the Employer's responsibility to comply with R.I.G.L. 28-7-13 (6) and (10) of the Act.

It is a basic concept of Board law that a failure to bargain in good faith with the exclusive representative of the bargaining unit constitutes an unfair labor practice under the Act. See *Rhode Island State Labor Relations Board and Town of Johnston*, ULP-6171 (June 17, 2016); *NLRB v. Strong*, 393 U.S. 357 (1969); See also *Valley Central Emergency Veterinary Hospital*, 349 NLRB 1126 (2007) (where the NLRB noted that the employer's "repudiation of the tentative agreement, based on its invalid objection to the Union's ratification process, was therefore unlawful." *Id.* at 1127). In the instant case, there is no dispute that the parties entered into a valid settlement agreement to resolve the pending disciplinary matter (see Stipulated Facts #10, 20, 21 and 26). There is also no dispute that the Employer failed to execute the settlement agreement as negotiated between the parties.[1] Based on the Board's review of the stipulated facts and the arguments raised by the parties in their respective memoranda, the Board has determined that the Employer's refusal to sign the agreement was unjustified and in violation of the Act.

The Employer argues that no binding agreement was ever reached between the parties because DOA, as the entity with the authority to enter into such agreements, never agreed to the settlement agreement. In the Board's view and based on the agreed upon facts, this argument must fail.

Initially, there is little doubt that the parties (specifically DLT and the Union) entered into a valid settlement agreement (see Stipulated Facts #9, 10, 11, 12 and 13). There is also no doubt that DLT, on its own, did not have the authority to enter into such an agreement without the approval and authorization of DOA (see Stipulated Fact #14). Thus, while DLT and the Union entered into a valid agreement to resolve the disciplinary matter then pending and it appears DLT negotiated the agreement in good faith with the Union, DLT had no independent ability to execute the document. Therefore, in the Board's view, no binding agreement existed at that juncture of the discussions as DOA had not yet seen or reviewed the settlement agreement or given its approval to enter into the agreement (see Stipulated Facts #14 and 15).

However, the status of the document changed when it was forwarded to DOA for review. Upon receiving the agreement, DOA learned that Tillett was under investigation for possible unemployment insurance fraud (see Stipulated Facts #16, 18 and 19). A DOA representative, the State's Deputy Personnel Administrator for Labor Relations (Ballirano) entered into discussions with the Union's attorney regarding this new set of facts (see Stipulated Fact #26). In fact, DOA (Ballirano) proposed additional language to the

[1] While the Board recognizes that the Employer claims it informed the Union that it would not execute the settlement agreement (see Stipulated Fact #14), the Union disputes this information. As will be discussed later in this decision, the Board finds that the parties reached an agreement and the Employer's refusal or unwillingness to execute the agreement was not justified or supported by the facts.

Union to be included in the original settlement agreement to cover DOA's concerns regarding these new facts regarding the investigation of possible wrongdoing by Tillett (see Stipulated Facts #26). The Union agreed to the changes proposed by DOA and a new settlement agreement was drafted by DOA (see Stipulated Facts #26). It was at this point, based on the Board's review of the stipulated facts, that DOA and the Union had a complete understanding regarding a new settlement agreement. This newly revised settlement agreement, proposed at the suggestion of DOA, was negotiated by the entity (DOA and, specifically, its representative Ballirano) that had the authority to approve all settlement agreements (see Stipulated Facts #14, 15 and 26). In the Board's view, DOA's refusal to execute this renegotiated settlement agreement constituted a violation of the Act.

The stipulated facts also reveal the assertion by the Employer that on two separate occasions DOA informed the Union that it was not going to sign the settlement agreement (see Stipulated Facts #27 and 33). These same stipulated facts show that the Union disputes this assertion by DOA, claiming that no such statements were made (see Stipulated Facts #27 and 33). Because the facts were agreed to by the parties, the Board did not have the opportunity to listen to and view the witnesses under examination and cross examination regarding this particular point of contention. However, two additional agreed upon facts convince the Board that DOA's agreement with the Union was valid and that its protestations, even if made, were unconvincing. The first fact is that DOA and, specifically, its authorized representative Ballirano, renegotiated with the Union to include language in the settlement agreement that would address DOA's concerns about the ongoing fraud investigation involving Tillett (see Stipulated Facts #16 and 26). There would be no reason, in the Board's estimation, for DOA to make this suggestion to add new language covering its unemployment fraud investigation of Tillett if it had no intention of signing the agreement once revised to its liking. In other words, if DOA was truly stating that it was not going to execute the settlement agreement, there would have been no reason to renegotiate the terms of the document. Instead, DOA could have simply ended the entire process by signaling its disapproval of the arrangement initially made by DLT with the Union. By renegotiating provisions of the document with the Union, DOA was stating, in the Board's view, very clearly that with these particular revisions it would be satisfied with the new agreement. This is further confirmed by the fact that when the Union's attorney contacted Ballirano approximately one week after their discussion and agreement to modify the terms of the original settlement agreement, Ballirano indicated that he was "expecting to hear about developments" in the ongoing investigation, but if he didn't receive a response "then I will move the SPA [settlement agreement] forward." (Stipulated Fact #28). Again, if Ballirano had already communicated to the Union's attorney his position that he was not going to execute the agreement (Joint Stipulation #27), then it makes no sense for him to tell the Union's attorney that he was waiting to hear about "developments" and that if he did not hear he would move the agreement forward (see Stipulated Facts #28 and 29).

The second fact that works against DOA's claim of having told the Union it would not execute the agreement was DOA's offer to have Tillett resign his employment (see Stipulated Facts #31). According to the Stipulated Facts, this offer was made by DOA shortly after Ballirano received communication from the Union's attorney stating that she would "need to file" an unfair labor practice charge if she did not receive an executed settlement agreement (see Stipulated Fact #30). The communication from the Union's attorney acknowledged the pending unemployment fraud investigation and possible repercussions to the employee but also asserted that the agreement was to reinstate the employee and such action should be accomplished sooner rather than later (see Stipulated Fact #30). It was the following day, according to the Stipulated Facts, that Ballirano contacted the Union's attorney and inquired whether Tillett would "agree to resign his employment in exchange for some backpay." (Stipulated Fact #31). Again, making such an offer appears to the Board, based on the facts before it, as a tacit acknowledgement by DOA that it had an agreement with the Union and that it was trying to find another way to wiggle out of executing the settlement agreement. As noted previously, if DOA had already indicated to the Union that it would not approve the settlement agreement and would not execute the document (as alleged in Stipulated Facts #27 and 33), then there would appear to be no logical or rational reason for DOA to make an offer of backpay to Tillett in exchange for his resignation. The only conclusion the Board can draw from this series of communications between the parties is that DOA was looking for some reason to extricate itself from something it didn't want to do but knew it was obligated to do, i.e., execute the revised settlement agreement.

Based on all of the above, it is the Board's view that the Employer had a valid agreement with the Union and violated the Act by refusing to execute the settlement agreement renegotiated between DOA and the Union.

B. The Employer's Failure to Execute the Settlement Agreement Demonstrated Bad Faith in Violation of the Act.

An employer is not only required to bargain with the exclusive representative of the bargaining unit but is obligated to do so in good faith. While much has been written about the term "good faith" and what it means, generally the courts, this Board and the NLRB have found that "good faith" in the bargaining context is an "obligation...to participate actively in the deliberations so as to indicate a present *intention* to find a basis for agreement." *NLRB v. Montgomery Ward & Co.*, 133 F.2d 676 (9th Cir. 1943) (Emphasis in the original). This obligation implies "an open mind and a sincere desire to reach an agreement" as well as a "sincere effort...to reach a common ground." *Id.* at 686. See also *NLRB v. Reed & Prince Mfg. Co.*, 118 F.2d 874, 855 (1st Cir. 1941). In the instant case, while DLT and DOA appeared to express the necessary intent and "sincere" desire to reach an agreement with the Union to resolve the disciplinary matter, the Employer's change of heart at the last instant (see Stipulated Facts #26, 28, 29 and 31) demonstrated that it was not acting in good faith in its dealings with the Union and in its refusal to execute the settlement agreement.

Without repeating the discussion above, it is clear to the Board that after renegotiating the settlement agreement to include additional language DOA believed it needed to address the ongoing investigation (Stipulated Fact #26), DOA's refusal to execute the agreement demonstrated bad faith in violation of the Act. This finding of bad faith is supported, in the Board's view, by DOA's attempt to have Tillett resign his employment instead of DOA executing the agreement it negotiated with the Union (see Stipulated Facts #30 and 31). Based on the evidence before the Board, DOA knew that it had an agreement with the Union to return Tillett to work but was desperate to get out of that agreement. In this situation, requesting Tillett's resignation was a clear demonstration of bad faith bargaining on the part of the Employer as was its refusal to sign a document which had been properly negotiated by authorized authorities of the parties.

C. The Make Whole Remedy

The last issue that is before the Board involves the appropriate remedy for the Employer's actions in violation of the Act. The Union is asking the Board to require the Employer to sign and comply with the terms of the settlement agreement and to make Mr. Tillett whole for the losses he suffered due to the Employer's failure to reinstate him in November 2020 in accordance with the original settlement agreement.[2]

A make whole remedy is a tool often applied by fact finders in discharge cases where the issue has involved employee wage and benefit losses. The idea, of course, is to place the parties in the position they would have been had there been no violation. See *Cadillac Gage Co.*, 87 LA 853 (1986); *Prairie Farms Dairy*, 121 LA 1362, 1365 (2005). The NLRB takes a similar position regarding make whole remedies (see *NLRB v. Coca-Cola Bottling Co.*, 191 F.3d 316, 325 (2d Cir. 1999) where the court noted that the gross backpay an employee who has been wrongfully discriminated against should receive "is the amount that will "restore the situation as nearly as possible, to that which would have obtained but for the illegal discrimination.""). Most authorities believe that a make whole remedy requires an employer to make the affected employee whole for all wage and benefit losses the employee suffered from the date of the injury through and until the employee is put back in the same position he was in prior to the Employer's act that caused the original wage and benefit losses. (See *Elkouri and Elkouri*, How Arbitration Works, 18-15 – 18-16 (7th Ed. 2012); *NLRB v. Coca-Cola Bottling Co., supra; Parkview Lounge, LLC v. National Labor Relations Board*, 790 Fed. Appx. 256 (2d Cir. 2019)). In short, a make whole remedy is not unusual as part of an arbitration award or an NLRB decision and, in fact, this Board has on more than one occasion and where appropriate, ordered a make whole remedy (see *Rhode Island State Labor Relations Board and Rhode Island Department of Labor & Training*, ULP-6258, June 30, 2020; *Rhode Island State Labor Relations Board and Town of West Warwick,* ULP-6249, December 16, 2019; *Rhode Island State Labor Relations Board and City of Central Falls,* ULP-5394, July 27, 2001).

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[2] The revised settlement agreement between DOA and the Union did not alter the reinstatement status or date of reinstatement of Mr. Tillett.

In the matter pending before the Board, there is no dispute based on the stipulated facts as to when Mr. Tillett would have been reinstated to his job had the settlement agreement been signed by the Employer. That date was November 23, 2020 (see Joint Exhibits 10, 11 and 12;). There was no evidence submitted to the Board that indicated or implied that the November reinstatement date was altered or changed when DOA renegotiated the settlement agreement with the Union (see Stipulated Facts #26 and 30). Therefore, the Board will use November 23, 2020 as the date back to which the Employer must make Mr. Tillett whole as to those wages and benefits he would otherwise have been entitled to receive had he been reinstated on that date as contemplated by the original and subsequently revised settlement agreement. However, due to the passage of time and the apparent investigation of Tillett due to possible unemployment fraud, the status of Tillett's employment with the State is unknown to the Board. Therefore, any calculation of wages and benefits made to reimburse and make whole Tillett as part of this decision will be reduced by any wages and benefits Tillett may have earned between November 23, 2020 and the date of the Employer's compliance with the Board's make whole remedy from employment other than with the State.[3]

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. The Union and the Employer were parties to a collective bargaining agreement dated July 1, 2013 through June 30, 2017 which was operative for purposes of the instant dispute.

4. "CT" was a member of Local 401 and employed by DLT as a Fraud and Overpayment Investigator at DLT's Division of Income Support until he was terminated effective August 14, 2019 for alleged misconduct.

5. After a delay caused by the COVID-19 Pandemic, an arbitration hearing on the validity of CT's termination was scheduled for November 10, 2020.

6. On or about October 23, 2020, the attorney representing DLT in the arbitration, contacted the attorney representing Local 401, to inquire about the possibility of settlement. Settlement discussions ensued between the parties and,

[3] The date of compliance will be either the date of Tillett's reinstatement under the agreement as required by this decision or an earlier date should Tillett's employment with the Employer have ended regardless of the reason. Also, mitigation assumes that if Tillett earned wages and benefits it was not through employment with the State during the period between November 23, 2020 and the date of this Decision.

ultimately and with the knowledge of DLT, a proposed settlement agreement was drafted and submitted to DLT for its approval. Among other items in the settlement agreement was a provision that would reinstate CT to a position as of November 23, 2020 at his prior level of wages and benefits.

7. As the arbitration was the first time that the DLT attorney had settled a pending arbitration, she was not aware that the Department of Administration ("DOA") had to approve all settlements involving union employees, including members of Local 401.

8. The State's Deputy Personnel Administrator for Labor Relations and the person who typically reviewed Department-level settlements, was not made aware of either the settlement discussions or the proposed agreement until November 6, 2020, when he received a copy of the Draft Agreement for his review and approval.

9. While reviewing the Draft Agreement, the State's Deputy Personnel Administrator for Labor Relations learned that CT was under investigation by DLT for unemployment insurance fraud for failing to properly report income earned while collecting unemployment insurance benefits.

10. Several phone calls were made between the parties regarding the status of the agreement. At the conclusion of a phone call on November 17, 2020, the DLT attorney informed the Union's attorney that DLT was still willing to go forward with the settlement because she had no information about the investigation to report and that if the DLT wanted to place CT on administrative leave based on the new allegations, it could do so upon his return to work. Notwithstanding this conversation, no further progress on getting the agreement signed occurred.

11. Eventually, the Union's attorney contacted the State's Deputy Personnel Administrator for Labor Relations. During the call, the State's Deputy Personnel Administrator for Labor Relations asked the Union's attorney if she was aware of the investigation into CT. The Union's attorney told the State's Deputy Personnel Administrator for Labor Relations that she was aware generally, but that she had no details. The State's Deputy Personnel Administrator for Labor Relations then asked if the Union's attorney would agree to revise the agreement to include some language to indicate an investigation was ongoing and the State was not waiving its rights to pursue that investigation. The Union's attorney agreed so long as it was properly drafted. The State's Deputy Personnel Administrator for Labor Relations agreed to revise the settlement agreement and send it to the Union's attorney. The reinstatement date did not change in the revised agreement.

12. Thereafter and over a period of several weeks and calls with the State's Deputy Personnel Administrator for Labor Relations, the Union's attorney attempted to determine why the settlement agreement was still not executed. At one point the State's Deputy Personnel Administrator for Labor Relations inquired as to whether CT would agree to resign his employment in exchange for the payment of some backpay. The Union's attorney rejected this offer.

13. While the State's Deputy Personnel Administrator for Labor Relations claimed that he informed the Union's attorney on two separate occasions that he was not willing to sign the settlement agreement, the Union's attorney disputes this and states that no such conversations were held or communicated.

14. The settlement agreement was never signed by the Employer.

CONCLUSIONS OF LAW

1. 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 to execute a renegotiated settlement agreement between DOA and the Union.

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 to negotiate in good faith with the Union by not executing a renegotiated settlement agreement between DOA and the Union.

ORDER

1. The Employer is hereby ordered to execute the settlement agreement renegotiated between DOA and the Union on or about January 6, 2021.

2. The Employer is hereby ordered to make Mr. Tillett whole commencing from November 23, 2020 through and including the date payment is made for all wages and benefits Tillett would otherwise have been entitled to receive had he been reinstated to his position in accordance with the settlement agreement. This Order will be mitigated by any earnings (including wages or salary and benefits) Mr. Tillett may have received between November 23, 2020 and the date of payment by the Employer pursuant to this Order. This Order will further be mitigated to the extent that if Mr. Tillett is no longer employed by the Employer, then the end date for any payments will be the date of his termination after all legal appeals are concluded or end of his employment with the State, whichever is sooner.

3. The Employer is hereby ordered to post a copy of this Decision and Order for a period of not less than 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

Kenneth B. Chiavarini, Member

Derek M. Silva, Member

Harry F. Winthrop, Member

Stan Israel, Member

****BOARD MEMBERS ARONDA R. KIRBY AND SCOTT G. DUHAMEL WERE NOT PRESENT TO SIGN DECISION & ORDER AS WRITTEN. BOTH BOARD MEMBERS VOTED IN FAVOR OF THE MOTION.****

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

Dated: *August 16, 2022*

By: _____
Thomas A. Hanley, 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- STATE OF RHODE ISLAND - DEPARTMENT OF LABOR & TRAINING	CASE NO. ULP-6304

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-6304, dated August 16, 2022, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **August 19, 2022.**

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

Dated: August 19, 2022

By: Lisa L Ribezzo
Lisa L. Ribezzo,
Programming Services Officer