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-6328
WEST WARWICK HOUSING AUTHORITY	:	

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 West Warwick Housing Authority (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated January 18, 2022 and filed on the same date by R.I. Council 94, AFSCME, AFL-CIO, Local 2045-1 (hereinafter "Union").

The charge alleged as follows:

> Request for negotiations, including an information request, was sent to the West Warwick Housing Authority ("WWHA"). Director O'Rourke responded by stating that the WWHA "has withdrawn recognition of this Union as a representative of any of its employees." Therefore, the WWHA is refusing to bargain and provide the requested information.

Following the filing of the Charge, each party submitted written position statements and responses as part of the Board's informal hearing process. On March 10, 2022, the Board issued its Complaint, alleging the Employer violated R.I.G.L. § 28-7-13 (3), (5), (6) and (10) when, through its representative, the Employer (1) failed and refused to bargain with the Union regarding the Union's request to open negotiations for a new collective bargaining agreement; (2) unilaterally withdrew recognition of the Union as the sole and exclusive representative of the bargaining unit without notice to the Union or evidence of a good faith doubt in the majority status of the Union within the bargaining unit; and (3) failed and refused to produce or provide, as requested by the Union, certain documents and/or information regarding bargaining unit members that the Union claimed were relevant to and/or pertained to the Union's ability to conduct and engage in contract negotiations on behalf of the bargaining unit.

The Board initially scheduled a formal hearing for April 2022, but at the request of the parties the formal hearing was postponed, and the matter was rescheduled for a hearing on June 16, 2022. A second formal hearing was held on October 20, 2022. Post-hearing briefs were filed by the Union and the Employer on November 21, 2022. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony and exhibits submitted at the hearings and the arguments contained within the post-hearing briefs submitted by the parties.

FACTUAL SUMMARY

The matter before the Board is the Union's claim of an unfair labor practice against the Employer due to the Employer's unilateral withdrawal of recognition of the bargaining unit, its

refusal to bargain with the Union for a successor contract and its refusal to comply with the Union's request for information.

The parties to this dispute have been collective bargaining partners since 1973. The most recent executed collective bargaining agreement was for the period January 1, 2012 through December 31, 2014. (Respondent's Exhibit 1 and Petitioner's Exhibit 2).[1] By letter dated January 13, 2014, the Union notified the Employer "of its intention to commence negotiations for a successor agreement . . ." (Respondent's Exhibit 7; Transcript dated June 16, 2022, page 26). The bargaining between the parties began in April 2014 and continued monthly through approximately the end of 2014. (Transcript dated June 16, 2022, page 27). Because the parties were unable to reach agreement, the Union requested mediation through the Rhode Island Department of Labor & Training. (Transcript dated June 16, 2022, page 28). A mediator was appointed by the Department, but no mediation sessions were ever held between the parties. (Transcript dated June 16, 2022, pages 30 – 31). In addition to no mediation sessions being conducted, the Union never requested interest arbitration over the expired 2012 through 2014 CBA. (See Transcript dated June 16, 2022, page 32).

Commencing in 2015, the Union did not send correspondence or otherwise communicate a request to negotiate with the Employer similar to the request it made in January 2014. (Respondent's Exhibit 7; Transcript dated June 16, 2022, pages 32 – 33). The Union did not request negotiations with the Employer from 2015 through 2020. (Transcript dated June 16, 2022, pages 32 – 33).[2]

In a letter dated July 19, 2021, the Union requested that the Employer engage in negotiations for a new collective bargaining agreement. (Respondent's Exhibit 3 and Petitioner's Exhibit 9; Transcript dated June 16, 2022, page 11). In response, the Employer sent a letter to the Union dated August 20, 2010 [*sic*] expressing wonderment as to why the Union thought it represented employees of the Employer, asserting that there was no collective bargaining agreement in existence and, further, claiming that "there are no employees of the WWHA who are members of this union." (Respondent's Exhibit 4). The Employer closed its response by stating:

> I fail to see how at this late date you believe this union has any right to request to negotiate a contract that expired more than five years ago on behalf of a group of unidentified employees who have expressed no desire to be members of or represented by this union. (Respondent's Exhibit 4).

The Employer followed this statement by offering to meet with the Union to discuss its "representational status" regarding employees of the Employer if the Union had any evidence to contradict the Employer's assertions. (Respondent's Exhibit 4; Transcript dated June 16, 2022, pages 12 – 13). In response to the Employer's August 20 correspondence, the Union sent correspondence dated October 5, 2021 to the Employer's Executive Director. (Respondent's Exhibit 5 and Petitioner's Exhibit 10). In its response, the Union asserted that it was the exclusive representative for employees in the bargaining unit, asserted that the existence of a collective bargaining agreement had been resolved by the State Labor Relations Board in case EE-2068

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[1] Respondent's Exhibit 1 is the same as Petitioner's Exhibit 2, a copy of the last fully executed collective bargaining agreement between the parties dated January 1, 2012 through December 31, 2014. During the hearings in the case the parties, on several occasions, each introduced the same document as an exhibit. Where appropriate this Decision will identify the same document introduced as exhibits by the parties.

[2] According to the testimony of the Union senior staff representative, Alexis Lyman, the Union did not request a resumption of mediation in 2016 through 2022. (Transcript dated June 16, 2022, pages 33 – 35).

and, further asserted, that the collective bargaining agreement was in place as the contract had "automatically renewed" for one-year periods beginning January 2016 through December 31, 2021. (Respondent's Exhibit 5 and Petitioner's Exhibit 10; Transcript dated June 16, 2022, pages 13 – 14). The Union's October 5 correspondence also requested certain information regarding the bargaining unit and information necessary to "prepare for negotiations . . ." (Petitioner's Exhibit 10).

The Employer responded to the Union's October 5 correspondence in a letter dated October 19, 2021. (Joint Exhibit 1; Transcript dated June 16, 2022, page 14). In its October 19 letter, the Employer acknowledged the Union's request to negotiate a successor contract and stated that in accordance with its previous correspondence, "the West Warwick Housing Authority ("WWHA") has withdrawn recognition of this union as a representative of any of its employees." (Joint Exhibit 1). The Employer went on to reject the Union's claim that the collective bargaining agreement was still in effect citing both Rhode Island General Laws and the "substantial economic harm to each employee" as the basis for its rejection of the Union's position. (Joint Exhibit 1; Transcript dated June 16, 2022, pages 14 – 15). The Employer concluded its correspondence by offering to meet with the Union to discuss the issues raised in each party's dueling correspondence with the caveat that "we both agree that this meeting would not be considered a negotiating meeting or used in any way to claim that the WWHA has an obligation to bargain with this union." (Joint Exhibit 1). There was no meeting between the Employer and the Union after the Employer's August 20 correspondence. (See Transcript dated June 16, 2022, page 46). Instead, on or about January 18, 2022 the Union filed the instant unfair labor practice charge. (Transcript dated June 16, 2022, page 16 – 17).

POSITION OF THE PARTIES

Union:

The Union claims that the Employer has illegally and improperly withdrawn recognition of the Union as the exclusive representative of the bargaining unit and refused to bargain with the Union over this decision and the Union's general request for negotiations. In addition, the Union claims that the Employer has failed to provide it with certain information the Union requested as relevant to its request to bargain. The Union asserts that these actions by the Employer were in violation of the Rhode Island State Labor Relations Act (hereinafter "Act").

Employer:

In contrast to the Union's position, the Employer asserts that it has not violated the Act with respect to its withdrawal of recognition of the bargaining unit and its refusal to engage in bargaining with the Union. It also denies that it failed or inappropriately withheld information that the Union requested asserting instead that the Union was not entitled to the information. The Employer's position is that it lawfully and properly withdrew recognition of the Union as the exclusive representative of the bargaining unit due to, at least in part, the Union's abandonment of the unit from 2015 through 2021. The Employer also claims that it had a good faith doubt as to the majority status of the Union at the time it withdrew recognition.

DISCUSSION

The issues before the Board encompass alleged unilateral action by the Employer in withdrawing recognition of the Union as the exclusive representative of the bargaining unit and a failure to bargain with the Union after it requested negotiations for a successor contract. There is also an issue that the Employer has failed to provide the Union with information it requested as relevant to its ability to bargain with the Employer. As will be discussed in greater detail below, the Board has reviewed the documentary and testimonial evidence presented to it along with the memoranda of law submitted by the parties. Based on all the evidence, the Board has concluded that no violation of the Act was committed by the Employer as alleged in the complaint.

A. The Employer's Withdrawal of Recognition

The Union initially complains that the Employer illegally withdrew recognition from the bargaining unit when it notified the Union of such action in its October 19, 2021 correspondence. (Joint Exhibit 1). Traditionally, the National Labor Relations Board (NLRB) has held that an employer may withdraw recognition from an incumbent union if it can affirmatively establish either that the union no longer enjoyed majority status when recognition was withdrawn or that the withdrawal was predicated on a reasonably grounded doubt as to the union's continued majority status, which doubt was asserted in good faith based upon objective considerations, and raised in the context free of employer unfair labor practices. (*Allentown Mack Sales & Services v. NLRB*, 522 U.S. 359 (1998)). Without detailing in this Decision the long history behind the NLRB's withdrawal of recognition standards, it is sufficient to note here that the Supreme Court's *Allentown* decision prompted the NLRB to reconsider its withdrawal of recognition standard in *Levitz Furniture Co. of the Pacific, Inc.*, 333 NLRB 717 (2001). In *Levitz*, the NLRB overruled another case involving withdrawal of recognition, *Celanese Corp.*, 95 NLRB 664 (1951), and determined that an employer could withdraw recognition from an incumbent union when it had a good-faith doubt about the union's continuing majority status. In *Levitz*, the NLRB ruled that an employer may unilaterally withdraw recognition from an incumbent union only where the employer can demonstrate that "the union has actually lost the support of the majority of the bargaining unit employees." *Levitz Furniture Co.*, 333 NLRB at p. 717. The *Levitz* decision placed the burden squarely on an employer to prove by a preponderance of the evidence that the union "had, in fact, lost majority support." *Levitz Furniture Co.*, 333 NLRB at p. 725).

Notwithstanding an employer's ability, as described above, to withdraw recognition from an incumbent union, there are prohibitions against such action by an employer in specific circumstances. Thus, withdrawal of recognition will ordinarily be precluded by law if the union has recently been certified or recognized, or if a collective bargaining agreement is in effect. As noted and as relevant to the instant case, an employer generally cannot withdraw recognition from an incumbent union during the life of an existing collective bargaining agreement. *Auciello Ironworks, Inc. v. NLRB*, 517 U.S. 781 (1996). However, the NLRB has approved withdrawal of recognition during the course of an existing collective bargaining agreement where the employer's action was supported by evidence the union lacked the support of a majority of the employees in the bargaining unit. *Shaw's Supermarkets, Inc.*, 350 NLRB 585 (2007). The NLRB has held unlawful a withdrawal of recognition where the employer contended that the contract had expired, but ambiguity about the contract's expiration date was later resolved by the NLRB to show that the

contract was three months shy of expiration at the time recognition was withdrawn. *Spectrum Health-Kent Community Campus*, 353 NLRB 99 (2009).[3]

In the case before the Board, the Union has asserted that several decisions of this Board support its contention of the existence of the bargaining unit and the positions within the unit. Specifically, the Union claims that Board case EE-2068 certified the maintenance aide and maintenance working foreman positions as part of a bargaining unit represented by the Union. The Union also claims that in ULP-6159, the Board confirmed that certain positions were legal bargaining unit positions, these being receptionist and housing specialist. The Union further claims that since the 2000 – 2002 collective bargaining agreement, it has been bargaining for contractual benefits for the bargaining unit and, in particular, the positions of maintenance aide, maintenance working foreman, housing specialist and senior housing specialist. The Union also points to Article 40.1 of the collective bargaining agreement and notes that since neither party after 2014 and until July 2021 had noticed the other of a desire to change the contract, that the collective bargaining agreement automatically continued year to year without a break under its own terms. (Respondent's Exhibit 1 and Petitioner's Exhibit 2).

As described above, it is the Employer's burden of proof to demonstrate that it had a good faith doubt in the Union's majority status. If the Employer is able to present evidence to demonstrate its good faith doubt in the majority status of the Union, then its withdrawal of recognition will generally be upheld. There are several ways in which an employer can show it had an objective, good faith doubt in the majority status of the Union. These include employee activity or inactivity within the Union, the activity or inactivity of the Union or the filing of a decertification petition. In the present case, the Employer claims that the Union's inactivity provided it with a sufficient good faith doubt to withdraw recognition.[4] The Employer, in its defense, points to a litany of inactivity by the Union during the period of time between the expiration of the 2012 – 2014 CBA and the Union notice of a request for bargaining in July 2021. Initially, the Employer demonstrated that the Union had failed to request negotiations for a new collective bargaining agreement starting in January 2015 and every year thereafter until July 2021. (Transcript dated June 16, 2022, pages 32 – 33). The Employer also demonstrated that after the Union requested mediation in early 2015 regarding its inability to secure a new collective bargaining agreement after the expiration of the 2012 – 2014 CBA, that not only did mediation not occur in 2015, but the Union never requested the resumption of mediation in any subsequent years. (Transcript dated June 16, 2022, pages 30 – 31; pages 33 – 35). Similarly, the Employer was able to demonstrate that the Union at no time made a demand for interest arbitration pursuant to Rhode Island law from 2015 to the present. (Transcript dated June 16, 2022, page 36).[5]

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[3] The NLRB has also recognized what it terms "anticipatory withdrawal" where an employer may announce that it will not recognize the union after the contract expires as long as the employer can demonstrate that the union has lost majority support during the term of the agreement and provided that the employer continues to comply with the existing agreement while it remains in effect. *Abbey Medical*, 264 NLRB 969 (1982); *Parkwood Development Center, Inc.*, 347 NLRB 974 (2006).

[4] The NLRB generally disfavors a withdrawal of recognition where an employer relies solely on the absence of bargaining for a period of time to justify the withdrawal of recognition. See *Area Trade Bindery Company*, 352 NLRB 172 (2008) where the NLRB determined that a union had not abandoned the bargaining unit based on a one-year lapse in contact; see also *Port Printing & Ad Specialties*, 344 NLRB 354 (2005) where the NLRB found that four years without bargaining was not sufficient ground for withdrawal of recognition where the contract automatically renewed annually and the employer did not request bargaining. As the above decision explains, however, the Employer did not rely solely on the Union's absence of bargaining for its withdrawal decision.

[5] It should be noted that during the period January 2015 through 2021, the Employer also did not request negotiations with the Union for changes to the collective bargaining agreement.

In addition to the Union's lack of activity in attempting to negotiate new contracts with the Employer, the Employer also presented evidence of the inactivity of employees with regard to the local Union and the Union's lack of knowledge regarding bargaining unit members. Thus, the Employer presented evidence that as of July 19, 2021, the date the Union requested negotiations, the Union was unaware of whether there was a locally appointed or elected representative of the Union employed by the Employer. (Transcript dated June 16, 2022, pages 39 – 40). The Union also conceded during cross-examination that it either didn't know if there was a locally appointed or elected representative of the Union employed by the Employer (Transcript dated June 16, 2022, pages 39 – 40). Similarly, the Employer was able to demonstrate that the Union did not have a local president, secretary, treasurer, steward or executive board member in place or employed by the Employer. (Transcript dated June 16, 2022, pages 40 – 41). Further, the Employer presented evidence that the Union had little knowledge of when the last time was that an employee of the Employer bargaining unit was elected, occupied or appointed to one of the above identified positions in the local bargaining unit (Transcript dated June 16, 2022, pages 41 – 42). The Employer also introduced evidence that the Union was unaware of the last time that the bargaining unit held a union meeting. (Transcript dated June 16, 2022, page 42).

In addition to the above information, the Employer was able to demonstrate that not only did the Union have little knowledge of the construct or workings of the bargaining unit it claimed it represented, but that it was unwilling or unable to present any evidence to the Employer that employees of the Employer were actual members of the bargaining unit. Thus, when the Employer asserted in its August 20, 2021 letter that it appeared clear that the Union did not "even know the names, positions or job duties of the WWHA employees that you wish to represent over even the most basic terms or conditions of their employment" and offered the Union an opportunity to present evidence to the contrary, the Union was unable or unwilling to do so. (Transcript dated June 16, 2022, pages 44 – 46).

The evidence presented by the Employer is, in the Board's view, overwhelming that there was both employee inactivity and Union inactivity with regard to the operation and representation of the bargaining unit at question in this case. The evidence was clear that the Union took no steps between at least January 2015 and early July 2021 to request negotiations or engage in bargaining with the Employer for a new collective bargaining agreement. Admittedly, if this was the only evidence the Employer presented to the Board, its attempt at withdrawing recognition from the Union would fail (see *Area Trade Bindery Company*; see also *Port Printing & Ad Specialties*). However, the Employer demonstrated that the Union took no additional steps allowed under the statutory bargaining process to secure a collective bargaining agreement with the Employer (i.e. the Union did not ask to reinstate the 2015 mediation at any time through 2021, nor did it seek statutory interest arbitration at any time between 2015 and 2021). In addition, it appears clear that the Union had little to no knowledge of who the members of the bargaining unit actually were or whether any members of the bargaining unit actually existed. This is clear not only from the questions sought by the Union in its information request (Petitioner's Exhibit 10), but when given the opportunity by the Employer to present evidence that there were, in fact, employees who were members of the Union, the Union failed to do so. (Transcript dated June 16, 2022, page 46). While there was no evidence presented by the Employer that it polled or questioned employees regarding their attitude (positive or negative) toward the Union, it appears clear to this Board that the complete lack of involvement between employees of the Employer and the Union between 2015 and 2021, the lack of dues deductions from any

employees during that period [6] and the Union's lack of involvement in attempting to get a collective bargaining agreement demonstrate that the Employer's withdrawal of recognition was not a violation of the Act.

The Union's only real response to the Employer's evidence was to claim, as previously mentioned, that the Union was certified as the exclusive representative, that there is Board case law identifying positions in the bargaining unit and that there was still a collective bargaining agreement in place at the time the Union requested negotiations in July 2021. While these statements may all be true, they do not, in any reasonable analysis of the evidence, rebut what the Board views to be the overwhelming evidence presented by the Employer of both Union inactivity regarding the bargaining unit and employee inactivity toward the Union and the bargaining unit.[7]

As noted previously, this Board is cognizant of the idea that withdrawal of recognition of the Union during the term of an existing collective bargaining agreement is generally precluded. *See Auciello Ironworks, Inc. v. NLRB*, 517 U.S. 781 (1996). However, this rule is not without exceptions. In *Shaw's Supermarkets, Inc.*, the NLRB upheld an employer's withdrawal of recognition after the third year of a five (5) year contract where the employer was able to show that the union had an actual loss of majority status.[8] In *Shaw's Supermarkets*, the NLRB was presented with the issue of whether an employer may rely on evidence of actual loss of majority support to withdraw recognition from a union during the term of a collective bargaining agreement. In answering the question in the affirmative, the NLRB reiterated its *Levitz Furniture* standard that the "unilateral withdrawal of recognition from an incumbent union is unlawful unless that union has actually lost the support of a majority of the bargaining unit employees." *See Shaw's Supermarkets, Inc.*, 350 NLRB at page 587. While the *Shaw's Supermarkets* case does not factually align with the circumstances presented to this Board in the instant case, the overall concept of not prohibiting withdrawal of recognition during the term of an existing contract applies in the instant matter.[9] In the instant case, it is this Board's conclusion that the evidence presented by the Employer, as described above, is more than sufficient to demonstrate the Employer had actual evidence of the Union's loss of majority support. As the NLRB noted in *Shaw's Supermarkets*, "an employer . . . in possession of facts showing an actual loss of majority support for an incumbent union should have wider freedom of action than an employer lacking such knowledge." *See Shaw's Supermarkets* at page 587. Because the Employer was, in this Board's view, able to demonstrate that the Union had a loss of majority support and that the Employer

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[6] *See* decision of Superior Court in *West Warwick Housing Authority v. Rhode Island State Labor Relations Board*, KC-2016-1000 in which the Court overruled a Board Decision requiring the Employer to deduct dues from bargaining unit members. There was no evidence presented to the Board in this case by the Union that it took any steps after the judgment in the above noted case was entered to have the Employer restart the dues deduction for members of the bargaining unit.

[7] It is the conclusion of this Board, based on the evidence submitted in this case, that the Union's six and one-half year absence of bargaining with the Employer, when added to all the other evidence before the Board, makes this case different from the NLRB decisions in *Area Trade Bindery Company* and *Port Printing & Ad Specialties.*

[8] In the *Shaw's Supermarkets* case, the bargaining unit consisted of 1,600 full-time and regular part-time employees at 12 different stores. A decertification petition was filed with the NLRB and it was subsequently demonstrated that more than 900 signatures were matched to a list of bargaining unit employees indicating that they did not want the union to represent them in collective bargaining with the employer.

[9] As will be discussed below, the 2012 – 2014 CBA was in effect in 2021 due to automatic renewals pursuant to the language of the parties' Agreement.

had a good faith doubt as to the Union's majority support,[10] the unilateral withdrawal of recognition by the Employer in the instant case is not a violation of the Act.

B. <u>The Union's Refusal to Bargain Allegation</u>

The Union also alleges that the Employer violated the Act when it refused to engage in negotiations for a successor collective bargaining agreement as requested by the Union in its July 19, 2021 correspondence. (Respondent's Exhibit 3 and Petitioner's Exhibit 9). As the case law of this Board and the statutory law make clear, an employer is required to negotiate with the representative of its employees over mandatory subjects of bargaining. *See Barrington School Committee v. Rhode Island State Labor Relations Board*, 388 A.2d 1369, 1374-1375 (R.I. 1978); *Town of Narragansett v. International Association of Fire Fighters, Local 1589*, 380 A.2d 521, 522 (R.I. 1977). As R.I.G.L. § 28-7-2(c) also makes clear, it is the policy of the State to allow and encourage bargaining over wages, hours and other working conditions between employees and employers. In the instant case, however, there is a question as to whether the Employer had an obligation to bargain at the time the Union made its request for bargaining in July 2021.

In arguing that the Employer had an obligation to bargain with it, the Union claims that the 2012 – 2014 collective bargaining agreement was still in effect through the concept of automatic yearly renewals. Under the terms of the 2012 – 2014 CBA, Article 40.1, the language provides that the "contract shall be automatically renewed yearly thereafter unless either party shall give written notice to the other one hundred twenty (120) days prior to its expiration that it desires to negotiate changes to the contract." (Respondent's Exhibit 1 and Petitioner's Exhibit 2 at page 28). The Union argues that because neither party made a request for bargaining or put forth a notice of changes desired to the contract between 2015 and 2021, the collective bargaining agreement automatically renewed on a yearly basis. The Employer, on the other hand, argues that the absence of any effort by the Union to negotiate or mediate a new contract over a 6 ½ year period shows that no actual collective bargaining agreement existed between the parties.

In a case brought before this Board in 2015 (Case No. EE-2068), the same parties were involved in a matter involving a decertification petition being filed against the Union. As part of the Board's investigation of any decertification petition, the Board must determine whether a contract bar exists, i.e. whether a written contract is in place that would bar any filing of a decertification petition 30 days immediately preceding 60 days prior to the expiration of the contract. As defined by Board Rules and Regulations, to be a bar to a decertification, a written contract must (1) be in writing and be signed by the employer and the labor organization; (2) address substantial terms and conditions of employment; and (3) exist for a definite duration. *See* Board Rules and Regulations, Section 8.03.2(d). In EE-2068 and as relevant to the instant case, the Board determined that after the 2012 – 2014 collective bargaining agreement expired, "a contract bar to a decertification petition for the period January 1, 2015 through December 31, 2015," did exist. See EE-2068 at page 4. In short, the Board determined that, pursuant to the terms of the collective bargaining agreement, because all articles not under negotiation remained in full force and effect after the December 31, 2014 expiration, the contract between the parties extended through 2015.

Similarly, the language under Article 40.1 of the parties' 2012 – 2014 collective bargaining agreement (Respondent's Exhibit 1 and Petitioner's Exhibit 2) is clear that the "contract shall be automatically renewed yearly thereafter unless either party shall give written notice to the other

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[10] It must also be noted that the Union did not present any evidence to the Board showing the Employer's doubt of the Union's majority status was not a good faith doubt.

one hundred twenty (120) days prior to its expiration that it desires to negotiate changes in the contract." (Respondent's Exhibit 1 and Petitioner's Exhibit 2 at page 28). The evidence before the Board is undisputed that neither party made any attempt or effort to express a desire to negotiate changes to the collective bargaining agreement between 2015 and the Union's July 2021 letter. Therefore, in this Board's view, the parties had a series of one-year contracts starting in 2015 and running through 2021 due to the automatic renewal provision.

While the above conclusion establishes that a collective bargaining agreement for a period of one year existed between the parties for the period January 1, 2021 through December 31, 2021, this is also not the end of our discussion and analysis. As discussed in Section A above, the Board made clear that the Employer's withdrawal of recognition during the term of an existing collective bargaining agreement, while unusual, was not a violation of the Act based specifically on the evidence presented to the Board by the Employer. In other words, the strength of the Employer's evidence will overcome the normal instinct to preclude a withdrawal of recognition during the term of a CBA. See *Shaw's Supermarkets*. This, in and of itself, may absolve the Employer of its bargaining obligation, but there is also another equally significant reason to find that the Employer did not have an obligation to bargain with the Union when the latter made a request for bargaining in correspondence dated July 19, 2021.

As noted, the Union made its request to the Employer to bargain for a successor collective bargaining agreement in correspondence dated July 19, 2021. (See Petitioner Exhibit 9). If, as the Board has indicated, there was a collective bargaining agreement in place between January 1, 2021 and December 31, 2021, then the July 19 notice by the Union was well within the 120 days prior to expiration language contained in Article 40.1 of the parties' collective bargaining agreement. (Respondent's Exhibit 1 and Petitioner's Exhibit 2). However, while the Union's bargaining notice to the Employer complied with the terms of the collective bargaining agreement, it did not, in the Board's view, comply with existing statutory law (See R.I.G.L. § 28-9.4-9 and our Supreme Court's decision in *Town of North Kingstown v. International Association of Fire Fighters, Local 1651, AFL-CIO*, 107 A.3d 304 (2015)). In the *North Kingstown* case, the parties were engaged in a long and contentious battle over the negotiation of new collective bargaining agreements spread over several years. When the matter came before the Supreme Court, one of the numerous issues raised by the Town was that the Union failed to comply with its statutory obligation (R.I.G.L. § 28-9.1-13) to provide notice to request to bargain at least 120 days before the last day on which money can be appropriated by the Town.[11] For purposes relevant to the instant case, the Supreme Court found that the language in § 28-9.1-13 to be mandatory and a precondition to the employer's obligation to bargain. *See Town of North Kingstown*, 107 A.3d at 315 – 316). In other words, the Supreme Court determined that the union's failure to give the Town the requisite 120 days notice "before the last day on which money can be appropriated" by the employer removed any obligation the Town had to bargain regarding any matter requiring the appropriation of money. *See Town of North Kingstown*, 107 A.3d at 316). In the instant case, the Union has failed to provide the appropriate statutory notice to the Employer under R.I.G.L. § 28-9.4-9. As such, the Board sees the Union's failure to

[11] R.I.G.L. § 28-9.1-13 and R.I.G.L. § 28-9.4-9 provide the same requirement for a union representing firefighters (28-9.1) and municipal unions (28-9.4), i.e. that the union must "serve written notice of request for...collective bargaining on the municipal employer at least one hundred twenty (120) days before the last day on which money can be appropriated..." See R.I.G.L. 28-9.4-9.

meet the statutory notification obligations as another reason to find that the Employer did not violate the Act when it refused to bargain with the Union after its July 19, 2021 request.[12]

C. The Union's Request for Information

The Union also claims that the Employer has violated the Act by its failure to provide information the Union has requested and alleges is relevant to its bargaining obligation. Based on the above findings and conclusions of the Board that the Employer withdrew recognition of the Union in accordance with the Act and did not violate the Act by refusing to bargain with the Union, the Board can dispose of the Union's information request quickly.

Generally, a request by a union for documents and information regarding collective bargaining is a request with which this Board has previously determined an employer must comply. *See City of Cranston*, ULP-5744. However, in the instant case, the request for information cannot be seen as relevant since the Employer had withdrawn recognition of the Union and had no bargaining obligation with the Union. Without a bargaining obligation, the information requested by the Union, while normally relevant for purposes of collective bargaining, was not relevant in the instant case and did not need to be provided by the Employer. See *West Warwick Housing Authority v. Rhode Island State Labor Relations Board*, KC-2016-1000.

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 subject to a collective bargaining agreement dated 2012 – 2014.

4. In April 2014, after noticing a request to bargain in January 2014, the parties commenced negotiations for a successor collective bargaining agreement. The parties negotiated for several months but were unable to reach agreement.

5. The Union requested mediation in 2015. While a mediator was appointed, no mediation sessions between the parties were conducted.

6. Neither the Union nor the Employer made a written request of the other party for negotiations for a new collective bargaining agreement between 2015 and June 2021.

7. On or about July 19, 2021 the Union made a written request to the Employer to commence negotiations for a successor collective bargaining agreement.

8. During 2015 through 2021 the Union did not request resumption of mediation with the Employer, nor did it request statutory interest arbitration.

9. The Union was shown to have no knowledge of whether there were employees of the Employer holding elective or appointed positions of president, treasurer, secretary or steward in

[12] The Board acknowledges that no evidence was presented by either party regarding this particular issue, the Board notes that when the Union made its request for bargaining for a successor agreement to the 2012 – 2014 CBA it did so on January 13, 2014 (Respondent's Exhibit 7). While this is not conclusive evidence regarding the date of appropriation of money by the Employer, the language in the CBA in existence in 2014 regarding when notice must be presented, Article 40.1, was the same in July 2021 as were the beginning and ending dates of the CBA, i.e. January 1 through December 31..

the bargaining unit between 2015 and 2021. The Union was also shown to not know when the last Union meeting for the bargaining unit was held.

10. The Employer responded to the Union's July 19 request for bargaining by indicating that it did not believe a collective bargaining agreement existed and, in essence, it did not believe that any employees of the Employer were members of the bargaining unit.

11. The Union responded on October 5, 2021 to the Employer's August 20 letter, stating that it was the exclusive representative of the bargaining unit, that the bargaining unit had been certified by the RI State Labor Relations Board and that a contract was in place through automatic renewal under the terms of the 2012 – 2014 CBA. The Union also made a request for information needed to conduct negotiations.

12. The Employer responded on October 19, 2021 by withdrawing recognition of the Union as the exclusive representative of the bargaining unit based on the Employer's stated good faith doubt as to the Union's majority status.

13. In its October 19 letter to the Union the Employer provided the Union with an opportunity to meet so that the Union could submit to the Employer any information or evidence it had to contradict the Employer's stated facts as contained in its letter. The Union did not meet with the Employer nor did it submit any information or evidence to contradict the Employer's stated facts.

CONCLUSIONS OF LAW

1. The Union has not proven by a preponderance of the evidence that the Employer committed a violation of R.I.G.L. § 28-7-13 (3), (5), (6) and/or (10) when it unilaterally withdrew recognition from the bargaining unit.

2. The Union has not proven by a preponderance of the evidence that the Employer committed a violation of R.I.G.L. § 28-7-13(6) and (10) when it failed and refused to negotiate with the Union before it unilaterally withdrew recognition from the bargaining unit and after it received the Union's request for negotiations for a new contract.

3. The Union has not proven by a preponderance of the evidence that the Employer committed a violation of R.I.G.L. § 28-7-13(6) and (10) when it failed and refused to provide the Union with relevant information the Union had requested in order to be able to bargain with the Employer for a new collective bargaining agreement.

ORDER

This case is hereby dismissed with no finding of any violation of the Act.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Scott G. Duhamel, Member

Aronda R. Kirby, Member

Kenneth B. Chiavarini, Member

Stan Israel, Member

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

Dated: March ~~14~~, 2023

By: _____
Thomas A. Hanley, Administrator

ULP--6328

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

IN THE MATTER OF WEST WARWICK HOUSING AUTHORITY -AND- RI COUNCIL 94, AFSCME, AFL-CIO, LOCAL 2045-1	CASE NO. ULP- 6328

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-6328, dated March 14, 2023, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **March 20, 2023.**

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

Dated: March 20, 2023

By: _____
Thomas A. Hanley
Administrator