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

| IN THE MATTER OF<br><br>RHODE ISLAND STATE LABOR RELATIONS BOARD<br><br>-AND-<br><br>STATE OF RHODE ISLAND DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES | CASE NO. ULP-6330 |
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## DECISION AND ORDER

## TRAVEL OF CASE

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") on an Unfair Labor Practice Complaint (hereinafter "Complaint"), issued by the Board against the State of Rhode Island Department of Children, Youth and Families (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated February 11, 2022 and filed on the same date by Rhode Island Alliance of Social Service Employees, Local 580, SEIU (hereinafter "Union").

The charge alleged as follows:

> Union member Patrick Placedo was terminated on January 25, 2022 by the DCYF of the State of Rhode Island. The Union made requests to DCYF on January 25, 2022 for all documents related to the termination of said Union member. The Union's attorney made the same request for said documents on February 1, 2022. None of the requested information has been provided.

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 13, 2022, the Board issued its Complaint, alleging the Employer violated R.I.G.L. § 28-7-13 (6), (7) and (10) when, through its representative, the Employer (1) failed and refused to produce or provide, as requested by the Union, certain documents and/or information that the Union claimed were relevant to and/or pertained to the termination of employment of a bargaining unit member.

The Board initially scheduled a formal hearing, but at the request of the parties the formal hearing was postponed and, instead, the parties filed September 28, 2022 an agreed upon stipulation of facts in the form of a Consent Order. The Board approved the Consent Order on October 11, 2022. After a number of requested and approved extension requests, post-hearing briefs were filed by the Union on December 12, 2022 and the Employer on November 29, 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 failure and refusal to comply with the Union's request for information concerning the termination of a bargaining unit member. The parties agreed to waive their right to a formal hearing and, instead, submitted to the Board an agreed upon set of stipulated facts in the form of a Consent Order. The Consent Order provided as follows:

## CONSENT AGREEMENT

Now come the petitioner, the Rhode Island Alliance of Social Service Employees, Local 580, SEIU ("Local 580" or "Union"), and the respondent, the State of Rhode Island, Department of Children Youth and Families ("DCYF" or "Department"), (collectively "Parties"), and, in accordance with Rule 1.8(G) and Rule 1.8(J) of the Rules and Regulations of the Rhode Island State Labor Relations Board, hereby jointly petition this Honorable Labor Relations Board to enter an order in the above captioned matter incorporating the following stipulations:

1. The Parties hereby waive the right to a formal evidentiary hearing, including without limitation, the right to present and cross examine witnesses and present documentary evidence, in the above captioned matter.

2. The Parties hereby agree that, in lieu of a formal evidentiary hearing, this Board may decide the above captioned matter on a record that consists of Stipulated Facts and Joint Exhibits, as well the written briefs of the Parties;

3. The proposed Stipulated Facts are appended hereto as Exhibit A;

4. A list of proposed Joint Exhibits is appended hereto as Exhibit B, with the individual exhibits appended thereto; and

5. Nothing herein shall be considered a waiver of the right of the Parties to submit written briefs in support of their respective positions or to appeal the decision of this Board in accordance with the provisions of the Administrative Procedures Act.

The stipulated facts as appended to the Consent Order as Exhibit A provide as follows:

## STIPULATED FACTS

Now come the petitioner, the Rhode Island Alliance of Social Service Employees, Local 580, SEIU ("Local 580" or "Union") and the respondent, the State of Rhode Island, Department of Children Youth and Families ("DCYF" or "Department") and hereby stipulate to the following facts in the above captioned matter:

1. On or about February 11, 2022, counsel for Local 580 filed the above captioned unfair labor practice charge.

2. At the conclusion of the informal hearing process, this Honorable State Labor Relations Board ("Board") issued a Complaint and scheduled an evidentiary hearing for June 21, 2022.

3. Prior to the hearing, DCYF and Local 580 advised the Board that they had agreed to have the above captioned matter decided on a stipulated record and requested that the hearing be cancelled.

4. DCYF and Local 580 hereby waive their rights to present and cross examine witnesses during an evidentiary hearing and agree to have the above captioned matter decided upon these Stipulated Facts, the agreed upon exhibits submitted to the Board contemporaneously herewith and the briefs to be submitted by the Parties at a date ordered by the Labor Board.

5. DCYF 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.

6. Local 580 is a labor organization within the meaning of § 28-7-3(6) of the Rhode Island General Laws and the duly certified bargaining representative for certain DCYF employees.

7. Local 580 and the State are parties to a collective bargaining agreement ("CBA") that addresses various terms and conditions of employment of Local 580 members. (The last collective bargaining agreement that was in a single document expired on June 30, 2012.) While the parties have entered into Memoranda of Agreements for subsequent successor CBA's, those agreements have not been incorporated into a single collective bargaining agreement document. The CBA provisions quoted herein are current versions of the parties' CBA and were applicable at all times during the events that occurred in this matter.

8. Pursuant to Article 11.11 of the CBA and § 36-4-28 of the Rhode Island General Laws, individuals hired off of a civil service list have so-called "Probationary Status" and serve a six (6) month probationary period of 130 working days ("Probationary Period").

9. Pursuant to Article 11.12 of the CBA and § 36-4-28 of the Rhode Island General Laws, employees with Probationary Status ("Probationary Employees") may be dismissed during their Probationary Period for reasons related to their qualifications or for the good of the service. Moreover, under the terms of Article 11.12 of the CBA, the dismissal of an employee during his or her Probationary Period is "without recourse."

10. Pursuant to § 36-4-42 of the Rhode Island General Laws, Probationary Employees who have been dismissed during their Probationary Period may file an appeal with the Rhode Island Personal Appeal Board ("PAB") to contest their dismissal.

11. Article 28.6(A) of the CBA provides that "[a]ny charge against an employee shall be made in writing and signed by the person making the same, and a copy of such charge shall be filed with the Union and a copy with the employee against whom the charge is made."

12. On or about November 7, 2021, Patrick P began his employment as a Child Protective Investigator at DCYF with Probationary Status.

13. At all times relevant hereto, Patrick P was a member of Local 580.

14. On or about Friday, January 14, 2022, Stephanie Terry, Assistant Director, DCYF, informed Barry Noel, First Vice President of Local 580, that there had been some complaints about texts and comments that were made by Patrick P.

15. Upon being advised of the complaints against Patrick P, Mr. Noel immediately asked Ms. Terry for copies of the comments and texts at issue. Ms. Terry then advised Mr. Noel that she would need to check with the Division of Human Resources, Department of Administration ("Human Resources") and Patricia Hessler, DCYF General Counsel, before doing so.

16. After the discussion with Mr. Noel, Ms. Terry contacted Antonio Teixeira of Human Resources and Ms. Hessler to advise them of Mr. Noel's request and to discuss whether the texts and complaints against Patrick P had to be turned over to Local 580.

17. On or about Tuesday January 18, 2022, Ms. Terry informed Mr. Noel that the issues regarding Patrick P's behavior would be addressed during a meeting that was going to be scheduled to discuss Patrick P's First Probationary Report.

18. During a previously scheduled meeting with Ms. Hessler that was held on or about January 24, 2022, Mathew Gunnip, President of Local 580, raised the issue of the complaints against Patrick P and requested copies of the comments and texts at issue, and any statements that DCYF received regarding them.

19. Ms. Hessler informed Mr. Gunnip that, while she thought that the Union might be entitled to those documents, she would need time to consider the matter and consult with the Human Resources before making a decision on whether the Union was entitled to the documents.

20. On or about January 19, 2022, Kimberly Joly-Sow, Patrick P's supervisor and a fellow member of Local 580, prepared Patrick P's first probationary report and opined that he was not a good fit for his position because he "lacks the sensitivity and boundaries required by the position and does not appear invested during training sessions." The basis for Ms. Joly-Sow's opinion is found in the addendum to the report.

21. On or about January 25, 2022, Ms. Terry scheduled a meeting with Patrick P and Local 580 that day to discuss Patrick P's First Probationary Report. The meeting was held via TEAMS. Patrick P attended this meeting and was represented by Mr. Gunnip and Mr. Noel. DCYF was represented by Ms. Terry, Kimberly Joly-Sow, Dawn Ellsworth, Domenic Lancellota, and Ms. Hessler, who attended the meeting at the request of Local 580 President Gunnip.

22. At the start of the meeting, Mr. Gunnip reiterated his request for copies of the comments and texts at issue, and any statements that DCYF received regarding them.

23. During the course of this meeting, Patrick P was advised that he had failed his probation and was being dismissed from his Child Protective Investigator position effective that day, January 25, 2022.

24. Patrick P was offered the opportunity to respond during the course of the meeting, but on the advice of Local 580, he did not do so.

25. Local 580 advised Patrick P not to respond to the allegations against him because DCYF had not provided Local 580 with the documents that it had requested.

26. Shortly after the meeting of January 25, 2022, Local 580 President Gunnip emailed the following request for documents to Ms. Hessler and DCYF Director Aucoin:

    All written and verbal witness statements, notes, and investigative reports related to [Patrick P's] termination including any complaint, written or verbal including copies of any and all statements, either written or verbal from witnesses about the incidents giving rise to his termination plus any report, investigation, findings or recommendations made by any investigator pertaining to the incidents giving rise to his termination.

27. On January 25, 2022, Ms. Hessler, after consulting with personnel from the State's Division of Human Resources, responded to Mr. Gunnip's request for the documents related to the allegations against Patrick P by emailing him Patrick P's probation report, including the addendum. Ms. Hessler also stated that "the CBA (11.12) specifically speaks to the probationary period and that there is no recourse for a probationary employee to challenge the decision to terminate him for the good of the service." Ms. Hessler also "again offer to you and your executive team to meet with CPS [Child Protective Services] administration to discuss concerns that you may have."

28. Mr. Gunnip responded to Ms. Hessler by means of an email dated January 25, 2022, in which he reiterated the Union's request for documents and specifically requested that DCYF provide "all written and verbal witness statements, notes, and investigative reports related to [Patrick P's] termination including any complaint, written or verbal including copies of any and all statements, either written or verbal from witnesses about the incidents giving rise to his termination plus any report, investigation, findings or recommendations made by any investigator pertaining to the incidents giving rise to his termination."

29. Ms. Hessler responded to Mr. Gunnip by means of an email dated January 25, 2022, in which she informed him that she understood his request but was "unable to provide this information." Ms. Hessler also informed Mr. Gunnip that, given the unusual nature of the request, she contacted Human Resources and was told that a "probationary employee is entitled only to the probation report and the addendum that was read today."

30. On January 26, 2022, Mr. Noel emailed Ms. Hessler and explained why Local 580 was entitled to all of the documents that it had requested.

31. Ms. Hessler responded to Mr. Noel by means of an email dated January 26, 2022, in which she again explained why the Union was not entitled to any documents beyond the probationary report and addendum that she had already provided because Patrick P. had not yet completed his probation. Ms. Hessler also suggested that he speak to "the supervisor who made the report and the supervisor

who completed the probation report, [both of whom] are bargaining unit members."

32. On February 1, 2022, John Harrington, counsel for Local 580, emailed Ms. Hessler to reiterate the Union's request for the documents and explained why Local 580 was entitled to them.

33. After receiving Mr. Harrington's email, Ms. Hessler informed Mr. Gunnip that DCYF had not changed its position and would not be providing Local 580 with any documents beyond the probationary report and addendum that she had already provided.

34. Since December of 2012, ten other members of Local 580 have been dismissed from State service during their Probationary Period, The State did not provide either the employee or Local 580 with any documents beyond the probationary reports at issue in any of these cases and Local 580 did not request the information that Local 580 is requesting with respect to the Patrick P dismissal in any of these cases.

35. On or about February 11, 2022, Patrick P, by and through his attorney, filed an appeal with the Rhode Island Personnel Appeal Board ("PAB") to contest his dismissal from State service.

36. Pursuant to § 36-3-10.1 of the Rhode Island General Laws, the PAB has the authority to issue a subpoena compelling the production of "books, papers, and documents" at the request of either the appellant or the State.

37. On June 28, 2022, counsel for Patrick P. in his PAB appeal forwarded a request for documents to Ms. Hessler, which included the documents related to Patrick P's dismissal that had previously been requested by the Union.

38. On or about August 15, 2022, Ms. Hessler provided documents to counsel for Patrick P. in response to her request for documents in the PAB matter, including the documents related to Patrick P's dismissal that had previously been requested by the Union.

39. Counsel for Patrick P. in the PAB Appeal considers the documents provided by Ms. Hessler to be a full and complete response to her request.

## POSITION OF THE PARTIES

***Union:***

The Union claims that the Employer has failed to provide it with certain information the Union requested on behalf of a terminated bargaining unit member and which the Union asserted was relevant to its representation of said bargaining unit member. The Union claims that this action by the Employer was 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 refusal to provide the Union with the documents it requested. The

Employer's position is that it was not required to provide the requested information because the discharged employee was in his probationary period with the Employer and, by contract, had no right to access either the grievance or arbitration provisions of the collective bargaining agreement. Thus, according to the Employer, the requested documents were not relevant to the Union's representative obligations under the CBA. The Employer also asserts that a prior Board decision (ULP-6261/6270) regarding an employer's obligation to accede to a union's request for documents is not applicable in the instant case and that the Board is without jurisdiction in this matter.

## DISCUSSION

The issue before the Board is the Employer's failure and refusal to provide the Union with information it requested and claimed to be relevant to its ability to represent a member of its bargaining unit who had been terminated by the Employer. As will be discussed in greater detail below, the Board has reviewed the documents and stipulated facts presented to it along with the memoranda of law submitted by the parties. Based on all the evidence, the Board has concluded that the Employer violated the Act when it failed and refused to provide the Union with the documents it requested.

As noted, this case involves whether the Employer is required to produce information that the Union requests and claims is relevant to its administration of the contract and, specifically, its representation of a member of the bargaining unit who was terminated by the Employer. Generally, a request by a union for documents regarding the termination of a bargaining unit member is a request with which this Board has previously determined an employer must comply. (See *City of Cranston*, ULP-5744 and *Rhode Island State Labor Relations Board and State of Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals*, ULP-6261/6270 (August 24, 2021)). In the instant case, there is a twist from the fact patterns presented in the above cited cases in that the discharged employee was still in his probationary period at the time of his termination.[1] Thus, a primary argument by the Employer against it providing the Union with the requested information is the fact of the employee's probationary status and the fact that the Union had no recourse to the grievance or arbitration provisions of the collective bargaining agreement on behalf of the employee due to said probationary status.[2]

The matter of whether an employer must provide a union with requested information that the union claims is relevant to its representation of a discharged employee is an issue that this Board, the National Labor Relations Board ("NLRB") and the United States

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[1] Under the terms of the collective bargaining agreement between the parties, employees with probationary status could be dismissed by the employer during the probationary period "without recourse." (See Stipulated Fact #9).

[2] It is important to note that the Employer asserts that the employee's probationary status makes the Union's request for information and documents in this case not relevant. The Employer does not argue that the specific documents requested by the Union are not relevant to its defense of the terminated employee under circumstances where the employee were not a probationary employee. In other words, the Employer's sole basis for denying the Union's request for information in this case was the employee's probationary status and not that the documentation might not otherwise be relevant were the employee's status not probationary.

Supreme Court have all previously addressed. *See City of Cranston,* ULP-5744; *Roseburg Forest Products Co.,* 331 NLRB 999 (2000); *National Labor Relations Board v. Acme Industrial Co.*, 385 US 432 (1967); *Detroit Edison v. NLRB*, 440 US 301 (1979). In each of these cases and many more cases decided by the NLRB and the courts, it is clear that an employer must provide "relevant information needed by a labor union for the proper performance of its duties as the employee's bargaining representative." *See Detroit Edison v. NLRB*, 440 US at 303.

In a recent decision addressing this issue, this Board, in the *City of Cranston* case, was presented with a situation involving the termination of a bargaining unit member and the union's request for a copy of the terminated member's personnel file. The city, claiming that the personnel file was confidential, would not provide a copy to the union unless and until the union secured the written permission of the impacted member. In determining that the city's refusal to produce the personnel file as requested was a violation of the Act, the Board noted as follows:

> It is well established that an employer is obligated to supply requested information that is potentially relevant and will be of use to the Union in fulfilling its responsibilities as exclusive bargaining representative. *Roseburg Forest Products Co.*, 331 NLRB 999, 1000 (2000). The purpose of this rule is to enable the union to understand and intelligently discuss the issues raised in grievance handling and contract negotiations. *Rivera-Vega v. Conagra*, 70 F.3d 153, 158 (1st Cir. 1995). Information relating to wages, hours and other terms and conditions of employment is presumptively relevant and necessary for the Union to perform its obligations. *Roseburg*, supra. While the right to obtain relevant information is not unfettered, the party asserting confidentiality bears the burden of proof. *Roseburg*, supra.
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> *City of Cranston*, ULP-5744, page 3.

The above language makes clear that a request for documents and/or other information that the Union claims is relevant to its processing and understanding a grievance or is necessary for it to engage in contract negotiations is material that an employer, upon receiving the request, is obligated to comply with under most circumstances. A failure to provide such information without a justifiable explanation for refusing to do so makes the Employer's conduct a violation of the Act. See *Rhode Island State Labor Relations Board and State of Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals,* ULP-6261/6270 (August 24, 2021).

In the instant case, the Union was faced with the Employer's claims that it was refusing to provide the requested information because the terminated employee was in his probationary period and the employee had no right under the collective bargaining agreement to file a grievance or demand arbitration due to his status as probationary. (See Joint Exhibit 8, Article 11.12; see also Stipulated Facts #8 and #9). Thus, when the Union requested that the Employer provide the Union with specific information in order to be able to discuss the Employer's actions with the employee, the Employer failed to provide the requested materials. (See Stipulated Facts #17, 25, 27, 29, 31 and 33).

Under both our Act and the National Labor Relations Act (NLRA at Section 8(a)(5)), there is a general obligation intertwined with the duty to bargain in good faith to "supply the union, upon request, with sufficient information to enable it to understand and intelligently discuss the issues raised in bargaining." *S.L. Allen & Co.,* 1 NLRB 714, 728 (1936); see also *Industrial Welding Co.*, 175 NLRB 477 (1969); *American Baptist Homes of the West*, 362 NLRB 1135, 1136 (2015), citing *NLRB v. Acme Industrial Co.*, 385 US 432 (1967); see also R.I.G.L. 36-11-7; *Belanger v. Matteson,* 346 A.2d 124 (R.I. 1975).

Following this line of thinking in a long line of cases, the NLRB has applied a liberal test to determine whether information is relevant by looking at whether the requested information is of "probable" or "potential" relevance. *Transport of New Jersey*, 233 NLRB 694 (1977); *American Baptist*, at 1136-1137. As the NLRB has previously stated, relevant information is "information...directly related to the union's function as a bargaining representative and that it appear reasonably necessary for the performance of this function." *Food Service Co.,* 202 NLRB 790 (1973); *Otis Elevator Co.*, 170 NLRB 395 (1968); *Oaktree Capital Management*, 353 NLRB No. 127 (2009); *Metropolitan Home Health Care*, 353 NLRB No. 3 (2008). In the instant matter and according to the stipulated facts consented to by the parties and provided to the Board, the Employer's sole reason for not providing the information the Union requested was due to the probationary status of the terminated employee. (See Stipulated Facts #27 and 29). At no time during the back and forth between the parties did the Employer ever contend that the information was not relevant or that there was some other reason, other than the employee's probationary status, for its refusal to supply the requested information. (See Stipulated Fact #19). In other words, the Employer refused to comply with the Union's request for presumptively relevant information (see Joint Exhibit 17; Stipulated Fact #19), because the employee was in his probationary status and could be discharged "without recourse", i.e. the employee could not access the grievance and arbitration provisions of the CBA and, therefore, the Union had, in the Employer's view, no representational obligation that would allow it to have access to the requested documents.

While the Employer acknowledges the legal standards surrounding an employer's obligation to provide "relevant information" to the Union for the "proper performance" of the Union's duties as the employee's bargaining representative (see *Detroit Edison v. NLRB*, 440 U.S. 301, 303 (1979)), and that this obligation includes the requirement of providing a union with the information it needs "to determine whether to take a grievance to arbitration" (see *American Baptist Homes of the West*, 362 NLRB 1135, 1136 (2005)), as noted above, the Employer contends that the employee's probationary status makes this case different from this Board's decisions in the *City of Cranston* and *Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals*. In essence, the Employer argues to this Board, as referenced above, that because the employee did not have the protection of regular, non-probationary status and because the Union did not have the right to grieve the employee's dismissal under the collective bargaining agreement, the Union's contention that the documents it requested were relevant to its representation of the employee was misplaced. (See Employer

Memorandum of Law at pages 8 - 9). Thus, the Employer argues that the case law which is normally applicable in situations involving employees in a non-probationary status who may be terminated and the Union's request for information regarding that termination simply does not apply in the present situation. In the Board's view, however, the Employer's argument does not accurately portray the Union's representative obligation to the employee nor does it appear to take into account the Union's ability to represent the employee before the Employer.

As the parties stipulated to in this matter, the Employer had received complaints about "texts and comments" made by a probationary employee. (See Stipulated Facts #14 and #15). As a result of these complaints regarding the employee's behavior, a meeting was held on January 25, 2022 between the Employer, the Union and the employee. (See Stipulated Fact #21). Prior to this meeting, the local Union President, Mathew Gunnip, had "requested copies of the comments and texts at issue, and any statements that DCYF received regarding them." (See Stipulated Fact #18). This request was not complied with by the Employer prior to the scheduled meeting. At the meeting to discuss the employee's behavior and the complaints regarding his conduct, the Union, at the beginning of the meeting, requested again copies of the comments and texts at issue and any statements the Employer had regarding them. (See Stipulated Fact #22). During the meeting, the employee was told that he had failed his probation and was being dismissed from his position effective January 25, 2022, the day of the meeting. (See Stipulated Fact #23). The employee was offered the opportunity during the course of the meeting to respond to the allegations raised against him. However, the Union advised the employee not to respond to the allegations "because DCYF had not provided Local 580 with the documents that it had requested." (See Stipulated Facts #24 and #25).

In its argument to the Board, the Union asserts that the Employer's failure to provide the requested information and documents regarding the employee's situation deprived the Union of its ability to advocate on behalf of the employee. As the Union asserts in its brief to the Board, because it did not have the documents it had requested, it was handicapped in arguing that the "dismissal was unwarranted" or that the Employer's actions should be modified or reversed based on the circumstances. (See Union Memorandum of Law at page 16). In short, the Union argues that its ability to represent the employee, a core function of its contractual obligation to bargaining unit members, was not only hampered but severely undercut by the Employer's failure to provide the requested documentation.

In reviewing the evidence presented in this matter and the briefs of both parties, the Board agrees with the Union's assessment and analysis of the situation. Though it is apparent that the circumstances of this case are not identical to the situation presented to the Board in *State of Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals*, the facts of that case nonetheless have application to the instant situation. As this Board and the NLRB have stressed in prior cases (and the Employer has acknowledged), relevant documents requested by a union involving the termination of an employee must be provided by the Employer. See *City of*

*Cranston* and *Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals.*

Equally as important, relevant documents that go to a union's ability to represent an employee must also be provided by the Employer upon the Union's request. Simply because an employee holds probationary status and does not have a right to grieve or seek arbitration under a collective bargaining agreement does not invalidate or render null and void a union's ability and obligation to represent the employee. In that representative capacity, the Union has the ability to meet with and discuss with the Employer aspects of the case which may result in the Employer changing, modifying or even reversing its decision. However, in the instant case, the Union could not exercise its ability to represent the employee because it did not have the relevant information it had requested from the Employer. As the parties stipulated, because the Union did not have the requested information, it decided to advise the employee not to respond to questions or give information to the Employer regarding his recommended dismissal. Whether this was good or bad advice is not before this Board nor is it relevant to this Board's decision on the facts before it. What is before this Board is whether the information requested by the Union was relevant to its ability to represent the bargaining unit member facing dismissal. To that question, the Board must respond with an emphatic yes. The case law in this area does not make a distinction between an employee's probationary or non-probationary status with regard to requests for information by a union involving a discharged employee. Instead, the case law speaks to a union's need to receive information to aid it in determining what is meritorious and what is not. While it is clear that the Union, in this case, would not be reviewing the requested information in order to determine whether to grieve or take the case to arbitration, it is nonetheless clear that the Union could have used the requested material to advise the employee of his limited rights under the collective bargaining agreement and possibly persuade the Employer to change or alter its decision regarding the employee's dismissal. Being deprived of this opportunity by the Employer's refusal to give it the information it requested is, in this Board's view, a violation of the Act.[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.

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[3] As the Board has made clear that it believes the employee's probationary status should not have been a deterrent to the Union's receipt of the information it requested, the Board does not believe it needs to specifically address the Employer's jurisdictional argument (see Employer Memorandum of Law at pages 15 – 18). While the Board certainly agrees with the Employer's argument that it is outside this Board's jurisdiction to answer questions relating to the interpretation of language in a collective bargaining agreement or to resolve grievances, in the present case the Board's decision is not based on such interpretation or determination.

3. The Union and the Employer were subject to a collective bargaining agreement and Memoranda of Agreement relative to successor CBAs.

4. Pursuant to Article 11.12 of the existing CBA, employees in so-called probationary status may be dismissed during the probationary period "without recourse."

5. Patrick P. was an employee with the Employer and a member of the Union. Patrick P. began his employment with the Employer on November 7, 2021.

6. On or about January 14, 2022, the Employer informed the Union that it had received "some complaints" about texts and comments made by Patrick P. Upon being advised of this situation, the Union requested copies of the documents and materials in question. The Union received no response from the Employer.

7. The Employer prepared a first probationary report regarding Patrick P's performance that indicated, in relevant part, that he was "not a good fit" in his position as he lacked "sensitivity and boundaries required by the position..."

8. On January 25, 2022 a meeting was held between the Employer, the Union and Patrick P. to discuss the first probationary report. At the beginning of this meeting, the Union again asked for copies of the comments and texts at issue as well as any statements the Employer had received regarding the matter.

9. During the course of the January 25 meeting, Patrick P. was informed he had failed his probationary period and would be dismissed from his position with the Employer.

10. During the January 25 meeting, the Employer gave Patrick P. the opportunity to respond to the allegations against him, but on the advise of the Union he did not say anything. The Union advised Patrick P. not to respond to the allegations against him because the Employer had not provided the Union with the documents it had requested.

11. After the meeting on January 25 the Union again requested information from the Employer regarding Patrick P's situation and the related documents. This request was denied by the Employer because under the CBA a probationary employee had no recourse to challenge a decision to terminate him.

12. The Union made several more attempts to obtain information from the Employer regarding the particulars of Patrick P's dismissal including copies of texts and comments and any related statements the Employer possessed. The Employer denied each request.

13. Under Rhode Island law, Patrick P appealed his dismissal to the Personnel Appeal Board. Patrick P through his attorney contacted the Employer and requested all documents related to Patrick P's dismissal including the documents that had been previously requested by the Union. The Employer provided to Patrick P's attorney all of the documents he requested.

## 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/or (10) when it failed and

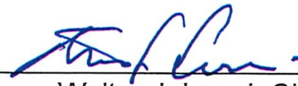
refused to provide the Union with relevant information the Union had requested in order to be able to represent a bargaining unit member who had been dismissed under the collective bargaining agreement.

## ORDER

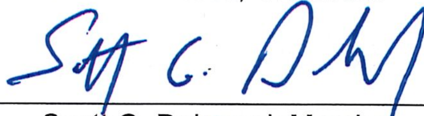
1. The Employer is hereby ordered to cease and desist from refusing to provide relevant documents and information to the Union which the Union claims are relevant to its administration of disciplinary matters involving bargaining unit members.

2. 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.

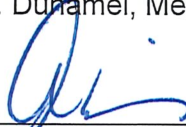
RHODE ISLAND STATE LABOR RELATIONS BOARD



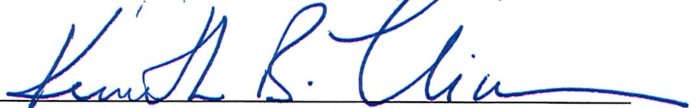
Walter J. Lanni, Chairman



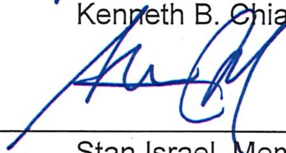
Scott G. Duhamel, Member



Aronda R. Kirby, Member (Dissent)



Kenneth B. Chiavarini, Member (Dissent)



Stan Israel, Member

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

Dated: *March 14, 2023*

By: */s/ Thomas A. Hanley*
Thomas A. Hanley, Administrator

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

| IN THE MATTER OF | |
|---|---|
| STATE OF RHODE ISLAND – DEPARTMENT FOR CHILDREN, YOUTH AND FAMILIES | |
| -AND- | CASE NO. ULP- 6330 |
| RHODE ISLAND ALLIANCE OF SOCIAL SERVICE EMPLOYEES, LOCAL 580, SEIU | |

**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-6330, dated March 14, 2023, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **March 16, 2023.**

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

Dated: March 16, 2023

By: */S/ Thomas A. Hanley*
Thomas A. Hanley
Administrator