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 TRANSPORTATION	:	CASE NO. ULP-6380

DECISION AND ORDER OF DISMISSAL

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 Transportation (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated August 15, 2023 and filed on the same date by the International Federation of Technical and Professional Employees (hereinafter "Union").

The charge alleged as follows:

> Union accretion petition seeking the inclusion of an "Administrative Officer" currently held by Jamie Overton was filed on March 27, 2023. Notice of an informal hearing was sent to the parties on April 5, 2023. On April 6, 2023, Jamie Overton received a memo transferring her from the RIDOT Property Management Department to the RIDOT Maintenance Department located at 360 Lincoln Avenue, Warwick, R. I. 02888. There were no prior issues with Local 400 or Jamie Overton, before the transfer memo. On May 16, 2023, RIDOT posted a notice for a vacancy in the position of "Administrative Officer" within the Property Management Division, the Division from which Jamie Overton had been transferred on April 6, 2023. The unilateral transfer of the Local 400 member was instituted in retaliation to Local 400's earlier petition to accrete the position of "Administrative Officer" into the Union, in violation of § 28-7-13 (8) and (10). The Labor Relations Act protects labor organizations and their members from retaliation due to an accretion filing.

Following the filing of the Charge, each party submitted written position statements and responses as part of the Board's informal hearing process. On November 20, 2023, the Board issued its Complaint, alleging the Employer violated R.I.G.L. § 28-7-13 (8) and (10) when, through its representative, the Employer (1) unilaterally transferred an employee out of her "Administrative Officer" position after an accretion petition, seeking to add the position to the bargaining unit, was filed by the Union; and (2) retaliated against the Union and its bargaining unit member when it transferred the employee out of her

"Administrative Officer" position after an accretion petition, seeking to add the position to the bargaining unit, was filed by the Union.

The Board initially scheduled a formal hearing, but at the request of the Union the formal hearing was postponed and, instead, rescheduled for March 14, 2024. A second formal hearing was held on May 23, 2024. Post-hearing briefs were filed by the Union and the Employer on June 24, 2024. In arriving at the Decision 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 transferring bargaining unit member Jamie Overton from her position in the Employer's Property Management Department to the Employer's Maintenance Department after the Union filed an accretion petition seeking to add the title of "Administrative Officer" held by Ms. Overton to the Union's bargaining unit. The Union alleges the Employer's action violated both the Union's and Ms. Overton's right to engage in concerted activity, i.e., the filing of the accretion petition, and was retaliation against Ms. Overton for her seeking to join the Union. The Employer denies the Union's allegations and asserts, in its defense, that it had a legitimate, non-discriminatory reason for transferring Ms. Overton.[1]

The parties are subject to a collective bargaining agreement. (Joint Exhibit 1). The facts comprising the case before the Board are not generally in dispute between the parties. Jaime Overton is the subject of this pending unfair labor practice complaint. Ms. Overton was hired by the Employer on September 20, 2018 into the position of Administrative Officer. At the time of her hire, her position was a non-union position. (Respondent Exhibit 2; Tr. Vol. I at pages 32; 41 – 42). Initially, Ms. Overton was assigned to work in Legal Services (Respondent Exhibit 2; Tr. Vol. I at page 42). In August 2019, Ms. Overton was transferred to Property Management from Legal Services. (Tr. Vol. I at page 49). Both departments come under the Administrative Services Division of the Employer. (Tr. Vol. I at page 49; 54 – 55; 103 – 104). Ms. Overton remained in the titled position of Administrative Officer while assigned to Legal Services and Property Management. (Tr. Vol. I at pages 49 – 50). Ms. Overton worked in Legal Services and Property Management without there being any identified issues or problems with her work performance.

In or around January 2023, Ms. Overton was made aware, for the first time according to her testimony, that she "had a position that was a union position." (Tr. Vol. I at page 34). This information prompted Ms. Overton to contact the Union and request to become a member. (Tr. Vol. I at page 34). After being contacted by

[1] The Employer also raised at the initial formal hearing a motion to dismiss the case on the grounds that Ms. Overton was never transferred out of her "Administrative Officer" position as set forth in the Complaint issued by the Board. The Board instructed the Employer to supplement its oral argument with a written presentation for the Board to consider, however, the Employer never submitted anything to the Board in writing. See Board Rules and Regulations 1.11E1.

Ms. Overton, the Union, on March 27, 2023, filed a Petition for Unit Clarification and/or Accretion with the Board. (Respondent Exhibit 6A). On April 5, 2023, the Board notified the Employer of the filing of the Accretion Petition by the Union. (Petitioner Exhibit 1). On April 6, 2023, Ms. Overton received written notice from the Employer that she was being transferred from Property Management to the Maintenance Department. (Tr. Vol. I at page 29; Petitioner Exhibit 1; Respondent Exhibit 5). The move from Property Management to Maintenance changed the Division in which Ms. Overton's position was placed[2] and also required Ms. Overton to report to a different location (Property Management was located at 2 Capitol Hill in Providence while the Maintenance Department was located in Warwick; see Tr. Vol. I at pages 90 – 91). The move to Maintenance did not impact Ms. Overton's job title nor did it affect her wages or benefits. (Tr. Vol. I at pages 61 – 63;109; Respondent Exhibit 5).

Approximately one month after Ms. Overton was transferred to the Maintenance Department, a job posting for an Administrative Officer position was posted for Property Management. (Tr. Vol. I at pages 109 – 110). According to the Employer's testimony, this posting was made in error and was eventually taken down and replaced with a posting for an Office Manager position. (Tr. Vol. I at pages 110 – 111; Respondent Exhibit 7). Ms. Overton applied for the Office Manager position, but she was not selected for the position. (Tr. Vol. I at pages 72 – 73; 114).

In July 2023, the Employer and the Union entered into a Consent Agreement that accreted Ms. Overton's titled position of Administrative Officer into the Union. (Respondent Exhibit 6).

POSITIONS OF THE PARTIES

Union:

As previously indicated, the Union claims that the Employer's transfer of Ms. Overton from Property Management to the Maintenance Department violated the Union's and Ms. Overton's right to engage in protected concerted activity and was in retaliation for Ms. Overton asking to join the Union as a member. The Union asserts that the timing of the transfer, i.e., notice of the transfer was made one day after the Employer was notified of the Union's Petition to accrete Ms. Overton's position, and the fact that (1) Ms. Overton's duties in the Maintenance Department (essentially being a receptionist) were different than what she was doing in Property Management (2) the transfer to the Maintenance Department forced Ms. Overton to relocate out of Providence to a facility in Warwick and (3) the transfer had a chilling effect on other Union members demonstrates anti-union animus on the part of the Employer. As noted, the Union also claims that the transfer was an effort by the Employer to retaliate against Ms. Overton because she wanted to join the Union.

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[2] The Administrative Officer position into which Ms. Overton was originally hired was in the Administrative Services Division. (Respondent Exhibits 4A – 4H). When Ms. Overton was transferred to the Maintenance Department, her Administrative Officer position was placed under Administrative Services, Highway & Bridge Maintenance. (Respondent Exhibit 5).

Employer:

In contrast to the Union, the Employer argues that its transfer of Ms. Overton was strictly a management decision designed to increase the operational efficiency of the Maintenance Department. The Employer points to the fact that there was a vacancy at the Maintenance facility that needed to be filled after the retirement of the previous occupant and that consideration of filling this vacancy had been ongoing before the Employer received notice from the Board of the Union Petition to accrete Ms. Overton's Administrative Officer position. The Employer also notes that Ms. Overton suffered no loss due to her being transferred, i.e., her position title (Administrative Officer) remained the same and her wages and benefits were also unchanged. Finally, the Employer points out that it actually agreed to the accretion of Ms. Overton's Administrative Officer position into the Union.

DISCUSSION

The issue before the Board involves whether the Employer committed an unfair labor practice under the State Labor Relations Act (hereinafter "Act") when it transferred Ms. Overton from the Property Management Department to the Maintenance Department shortly after the Employer received notice that the Union had filed a Petition to accrete Ms. Overton's Administrative Officer position into the Union. For its part, the Employer denies that it engaged in any unlawful conduct when it transferred Ms. Overton and claims that it was acting within its management rights to improve the operational efficiency of the Maintenance Department.

As noted above, the Union asserts that Ms. Overton was illegally transferred because she exercised her protected rights under the Act. Specifically, the Union claims that Ms. Overton's expressed desire to join the Union and the Union's filing of a Petition to accrete Ms. Overton's Administrative Officer position into the Union bargaining unit was protected, concerted activity. (See Tr. Vol. I, at pages 34 – 37). According to the Union, the Employer's actions against Ms. Overton were taken because she engaged in protected conduct.

The Union's Claim of Concerted Activity

The rights of employees are set forth in R.I.G.L. § 28-7-12 of the Act. One of these rights is to engage in what is termed "concerted activity". Interference, restraint or coercion in the exercise of these additional rights under the Act or discrimination by an employer against employees for engaging in such concerted activities violates the Act. The term "concerted activities" is intentionally broad. However, for "concerted activities" to be protected, the employee activity that is undertaken must be done by two or more employees or by one employee on behalf of other employees. Thus, the National Labor Relations Board (NLRB) has determined, for example, that a conversation involving only a speaker and a listener may constitute concerted activities if it has some relation to group action in the interest of employees (*see Mushroom Transportation Company v. NLRB*, 330 F.2d 683, 685 (3rd Cir. 1964); *see also Mobile Exploration and Producing U.S. v.*

NLRB, 200 F.3d 230 (5th Cir. 1999)).[3] To be protected under the Act, employee activity must be both "concerted" in nature and pursued either for union-related purposes aimed at collective bargaining or for other "mutual aid or protection". Thus, the concert requirement of the Act has not been literally construed to limit protection solely to employee activity involving group action directly. Thus, in determining whether activity by a single employee is concerted, the NLRB (and this Board) will look to the purpose and effect of the employee's actions. (*See NLRB v. Caval Tool Division, Chromalloy Gas Turbine Corp.*, 262 F.3d 184 (2nd Cir. 2001)). In the instant case, as will be discussed below, the evidence presented demonstrated and the Board ultimately found that the conduct the Union alleges it and Ms. Overton engaged in that constituted protected, concerted activity, i.e., requesting to join the Union and the filing of a Petition for Accretion, was protected activity under the Act.

From the Board's review of the testimonial and documentary evidence and the arguments contained in the respective memoranda of law, it is undisputed that when Ms. Overton was hired as an Administrative Officer, her position was not in the Union. (Tr. Vol. I at pages 32; 34). It is also undisputed that Ms. Overton had no real knowledge of the difference between a union and a non-union position until around January 2023 when she had a conversation with "someone who explained" to her that she occupied a position "that was a union position.". (Tr. Vol. I at page 34). This information led Ms. Overton to contact the Union and request to join the Union which, in turn, prompted the Union to file an accretion petition. (Tr. Vol. I at page 34). It is clear, at least to this Board, that Ms. Overton's request to join the Union and the subsequent filing of the accretion petition by the Union was designed to support the Union as the exclusive representative of individuals in the Administrative Officer position and in the Union as a whole. In other words, the purpose of Ms. Overton contacting the Union in order to be able to join the Union and the filing of the accretion petition by the Union was aimed at both collective bargaining and "mutual aid or protection" of employees in the Union. In the Board's view, Ms. Overton's conduct clearly falls within the definition of protected and/or concerted activity as that term has been used by the NLRB and this Board. (*See NLRB v. Caval Tool Division, Chromalloy Gas Turbine Corp.*, 262 F.3d 184 (2nd Cir. 2001).

The Employer spent virtually no effort or time attempting to contradict the notion that Ms. Overton had engaged in protected concerted activity by contacting the Union, seeking to join the Union and having the Union file an accretion petition to include her in the Union. Instead, and as will be discussed in more detail below, the Employer asserts that Ms. Overton's "Union Affiliation was never a consideration" in the Employer's transfer of Ms. Overton from Property Management to Maintenance. (Employer Memorandum of Law at page 4). Since the Employer, in essence, conceded that Ms. Overton and the

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[3] Rhode Island courts have looked to the Act's federal counterpart, the National Labor Relations Act, and federal case law decided under the federal Act for guidance in the field of labor law. (*See DiGuilio v. Rhode Island Brotherhood of Correctional Officers*, 819 A.2d 1271, 1273 (R.I. 2003); *MacQuattie v. Malafronte*, 779 A.2d 633, 636 n.3 (R.I. 2001)). Thus, as appropriate, the Rhode Island Supreme Court has adopted federal labor law case decisions. (*See Belanger v. Matteson*, 115 R.I. 332, 338 (R.I. 1975)).

Union engaged in protected concerted activity as described above, the central issue for the Board becomes whether the Employer acted improperly and in violation of the Act when it transferred Ms. Overton from Property Management to Maintenance after learning that the Union had filed a Petition to accrete Ms. Overton's Administrative Officer position into the Union.

The Union's Evidence of Illegal Employer Conduct

According to the Union's presentation of testimony, the transfer of Ms. Overton from Property Management to Maintenance was an illegal act designed to interfere with Ms. Overton's protected rights and to retaliate against her for her choice to join the Union. In order for the Union to be successful on its claims, there must be enough evidence in the record to support "a reasonable inference" that an employee's protected activity was the "motivating factor" for the employer's adverse employment action. If there is not, then the party with the burden must present some evidence linking the employer's alleged wrongful conduct to the employee's protected activity or union animus.

In order to meet this initial burden, the General Counsel (or in this case the Union) can use circumstantial evidence to support a claim that an adverse employment action was based on animus against the Union or the protected concerted activity engaged in by the employee. As the NLRB has stated on many occasions,

> Circumstantial evidence of discriminatory motive may include, among other factors, the timing of the action in relation to the union or other protected conduct; contemporaneous unfair labor practices; shifting, false, or exaggerated reasons offered for the action; failure to conduct a meaningful investigation; departures from past practices; and disparate treatment of the employee.
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> *Intertape Polymer Corp. and Local 1149 International Union, United Automobile, Aerospace and Agricultural Workers of America (UAW), AFL-CIO*, 372 NLRB No.133, (August 25, 2023) at pages 6 – 7.

See also *Tschiggfrie Properties, Ltd.,* 368 NLRB No. 120 at pages 4; 8 (2019).

As evidence to support its claims, the Union initially points to the fact that the Employer received notice from the Board that the Union had filed an accretion petition to add Ms. Overton's Administrative Officer position to the bargaining unit on April 5, 2023. (Petitioner Exhibit 1). On the very next day, April 6, Ms. Overton received notice that she was being transferred to Maintenance. (Tr. Vol. I at page 29; Petitioner Exhibit 1). The transfer was effective April 10, 2023. (Tr. Vol. I at pages 28 – 29; Petitioner Exhibit 1). According to Ms. Overton's testimony, since her transfer to Maintenance several co-workers had "told me or referred to it [Maintenance] as Siberia" and that Maintenance was "where they send people as punishment." (Tr. Vol. I at pages 30 – 31). As a result, Ms. Overton found Maintenance to be "very, very stressful." (Tr. Vol. I at page 30). While Ms. Overton acknowledged that her job title did not change when she was transferred to Maintenance (Tr. Vol. I at page 59), she claimed that unlike her duties in Legal Services and Property Management, in Maintenance she "sat there with nothing to do."

(Tr. Vol. I at page 38). Ms. Overton described having few specific tasks and being passed around "to whoever needed me." (Tr. Vol. I at pages 38; 95 – 97). Ms. Overton found her time in Maintenance to be "Depressing, sad, boring." (Tr. Vol. I at page 39). When informed during her questioning by Union counsel that the Employer has claimed she was transferred for the efficient operations of Maintenance, Ms. Overton claimed that reasoning was "a lie." (Tr. Vol. I at page 36). Ms. Overton asserted she didn't believe the Employer's reasoning, explaining how the Employer claimed to want an office manager position but posted an Administrative Officer position and then when she applied for the new posting, the Employer removed it and posted the office manager position. (Tr. Vol. I at page 36). Ms. Overton also testified that when she was transferred to Maintenance, she replaced someone who was assigned to the stormwater division, but she (Ms. Overton) was not assigned to stormwater and that the person she replaced had retired in November, but it took the Employer until April to decide to fill the vacancy even though they knew about it for many months. (Tr. Vol. I at page 36 – 37). In support of this last assertion, Ms. Overton testified that prior to her arriving in Maintenance she contacted "the director of where I was going, and I let him know I was going there. He told me, oh, I didn't know you were coming." (Tr. Vol. I at page 37).

The Union, not surprisingly, emphasizes the timing of Ms. Overton contacting the Union, the Union filing the accretion petition and Ms. Overton being transferred (and, to a lesser extent, the Employer posting and then removing the posting of an Administrative Officer position after Ms. Overton applied) as conclusive evidence that the Employer has violated the Act. The Union also appears to argue that the Employer's failure to consider Ms. Overton's reaction to being transferred from Property Management to Maintenance (and from Providence to Warwick) as further evidence of its nefarious and illegal intentions. The Union also claims that the transfer of Ms. Overton had or could have had a chilling effect on other bargaining unit members, arguing that other Union members might perceive the Employer's actions toward Ms. Overton as a warning to others against engaging in protected concerted activity. (See Union Memorandum of Law at page 5). While it is certainly possible to imagine that if other employees were aware of what happened to Ms. Overton, they might think twice before engaging in union activity, the Union failed to present any testimonial or documentary evidence to support this contention.[4]

While the Union's reliance on the timing of Ms. Overton's transfer is certainly appropriate, in reviewing all the evidence submitted in this case, including the unchallenged testimony concerning the Employer's reason for the transfer (see discussion below), it is clear to the Board that the timing of the transfer, while concerning, is not enough for the Board to declare the Employer's actions to be in violation of the Act. Although the Board has looked at whether the circumstantial evidence supported the

[4] Other than Ms. Overton, the Union presented no other witnesses who might have claimed that they were impacted by knowing what happened to Ms. Overton. No such witnesses were presented by the Union. While the Union did cross-examine witnesses presented by the Employer, the Union did not extract from these witnesses any testimony that would support the claim that the Employer's transfer of Ms. Overton had a chilling effect on other bargaining unit members.

Union's claims, the problem is that the evidence before the Board did not establish the "reasonable inference" the Union needed. Without this demonstration of an inference of wrongful conduct by the Employer, the Union had to present evidence that the motivating factor in the Employer's conduct was "animus against the union or other protected activity", i.e. a causal link between the Employer's actions and protected activity. See *Tschiggfrie Properties, Ltd.,* 368 NLRB No. 120 at page 6 & fn 13. As noted, in the Board's view there was no such evidence presented in this record.

The Employer's Defense

The crux of the Employer's defense resides in the testimony of John Igliozzi, the Employer's Assistant Director for Administration and Legal Services and Chief of Staff. Mr. Igliozzi testified as to his general duties and responsibilities and his role in both hiring Ms. Overton and reassigning her from Legal Services to Property Management. (Tr. Vol. II at page 152). Mr. Igliozzi also testified regarding an evaluation/reorganization process he engaged in at the end of 2022 and the beginning of 2023 concerning the review of "units, seeing their efficiencies, their professionalism, and coming up with an action plan, executing the action plan, and then moving forward and addressing staffing needs,..." (Tr. Vol. II at page 153). One of the units Mr. Igliozzi reviewed was Maintenance. (Tr. Vol. II at pages 153 – 154). As part of this evaluation process, Mr. Igliozzi testified that he noticed a vacancy at the front door desk at the Maintenance facility when he visited there and made a decision to transfer Ms. Overton to fill that vacancy. (Tr. Vol. II at pages 154 – 156).[5] According to Mr. Igliozzi's testimony, the filling of the vacancy by reassigning Ms. Overton to Maintenance allowed him flexibility to "repost a new legal position there and get someone who has the legal skill set to work in the legal office." (Tr. Vol. II at page 156).

Mr. Igliozzi also testified that when he first learned that Ms. Overton requested to join the Union and, specifically, when he first learned of the accretion petition, he was "fine" with that occurring. (Tr. Vol. II at page 158). When Mr. Igliozzi was asked whether the accretion petition had anything to do with the decision to move Ms. Overton, he responded as follows:

> No, I didn't take it into consideration. The move was – that move process was already in motion, and then that was happen – because it takes a couple of weeks prior to begin the process to move, and then after you do issue the request to move, it takes a couple of weeks after that. It's a whole – you got to deal with IT and

[5] The Employer also presented the testimony of Matthew Ouellette, the Employer's State Highway Maintenance Operations Engineer. Mr. Ouelette testified that in April 2023 he was located at the Maintenance facility in Warwick. (Tr. Vol. II at page 137). He also testified that in April 2023 a vacancy in the front desk at Maintenance was filled by the transfer of Ms. Overton. (Tr. Vol. II at page 144). He testified that the front desk had previously been filled by another employee who retired at the end of December 2022. (Tr. Vol. II at page 143). He also testified about the delay in filling the front desk job, stating that Maintenance "had a lot of priority [sic] going on." (Tr. Vol. II at page 145). Mr. Ouelette also noted that in January 2023 he was only in an acting role, that his former position had not yet been filled, Maintenance had a lot of vacant positions to be filled, "and then winter was going on. So it was a lot of priorities where we didn't get to addressing that [the front door] ahead of April." (Tr. Vol. II at page 145).

> the movers. It's a whole, so, but it's still a shorter timeframe addressing a staffing need than doing a three, four-month hiring plan. (Tr. Vol. II at pages 158 – 159).

Mr. Igliozzi also addressed the allegation that the Employer retaliated against Ms. Overton by transferring her to Maintenance. First, Mr. Igliozzi testified that even if Ms. Overton had been a Union member he still would have transferred her from Property Management to Maintenance. (Tr. Vol. II at pages 159 – 161). As to the specific claim by the Union that the Employer retaliated against Ms. Overton, Mr. Igliozzi stated

> It didn't matter to the Department or myself that Ms. Overton was going to accrete. It was going from a – the key was we were addressing a maintenance issue at the time, a legal issue at the time, she wanted to accrete, right, the union wanted to receive membership, fine. There was really no problem. (Tr. Vol. II at page 159).

There was no contradictory or opposing evidence introduced by the Union during the formal hearing or in its post-hearing memorandum to challenge Mr. Igliozzi's version of the events surrounding the transfer of Ms. Overton from Property Management to Maintenance. While the Board is sympathetic to Ms. Overton's situation, i.e., the stress and anxiety she felt after her transfer and her feeling like it was a "punishment" to be reassigned to Maintenance, there is no evidence in the record before this Board to suggest or support the idea that the Employer thought transferring Ms. Overton was a punishment for her exercising her desire to join the Union or that the Employer knew or had reason to believe that reassigning Ms. Overton to Maintenance would cause or exacerbate her stress and anxiety levels. Instead, as the evidence clearly outlines, there was a vacancy at the front desk in Maintenance that needed to be filled and Mr. Igliozzi made the decision to transfer Ms. Overton to fill the vacancy. The discussion and process for filling the vacancy had been started well before the Employer learned that Ms. Overton wanted to join the Union or of the Union's filing of an accretion petition. (Tr. Vol. II at pages 155 – 159). As Mr. Igliozzi testified without contradiction, he was "fine" with Ms. Overton joining the Union and her desire to do so did not enter into his decision-making process. (Tr. Vol. II at pages 158 – 161).

On two additional points raised by the Union, i.e., the reposting of the Administrative Officer position in Property Management after Ms. Overton was transferred and the claim that the director to whom Ms. Overton was reporting to in Maintenance had no idea that she was being transferred, the Employer was able to present evidence that the Board credits with debunking each of these claims.

Regarding the issue of the reposted Administrative Officer position, the Union attempts to use this act to demonstrate that the transfer of Ms. Overton was a sham to cover disparate treatment and retaliation toward Ms. Overton expressing a desire to join the Union and for the Union filing an accretion petition. The evidence before the Board, however, belies this interpretation of the events. The Employer presented the testimony

of Stephen Almagno, the Employer's Assistant Director of Administrative Services. Mr. Almagno testified that he had supervisory responsibility over Ms. Overton. He also testified that prior to the time of Ms. Overton's transfer, he had wanted to create and had engaged in discussions about creating an office manager position, but the only way he could get the position was through funding it from another position as he was unable to get a new position. (Tr. Vol. I at pages 105 – 107). Mr. Almagno also testified that after Ms. Overton was transferred, he created the office manager position, but due to a paperwork processing error instead of the office manager position being posted, the Administrative Officer position was reposted. (Tr. Vol. II at pages 109 – 110). When Mr. Almagno discovered this mistake – he testified that the reposting was "just human error. It's not a hanging offense. Someone just made a mistake." – he had the mistake corrected and the office manager posting was made and the position filled. (Tr. Vol. II at page 110 – 111; Respondent's Exhibit 7).[6]

A review of the record evidence before the Board makes clear that there was no evidence submitted to challenge or contest Mr. Almagno's testimony on this issue. Because there was no contrary evidence presented to the Board, the Board credits Mr. Almagno's testimony on this point.

Another issue raised by the Union in its attempt to show that the Employer's actions in transferring Ms. Overton were in violation of the Act, was Ms. Overton's testimony that prior to her arrival in Maintenance, she "called the director of where I was going and let him know I was going there. He told me, oh, I didn't know you were coming." (Tr. Vol. II at page 37). As noted previously, the Employer presented the testimony of Mr. Ouelette, who was the head of the Employer's Highway and Bridge Maintenance Division. Mr. Ouelette testified that a "week before" he received a call from Mr. Igliozzi informing him that Ms. Overton was being transferred to Maintenance and then he received "a memo" at the end of the week regarding Ms. Overton's arrival.[7] The Union chose not to cross examine Mr. Ouelette. Ms. Overton did not identify the name of the "director" she called, but since there is no other evidence in the record to support a different conclusion, the Board must presume that she spoke with Mr. Ouelette. There is no evidence in the record to suggest that Mr. Ouelette had a bad motive for testifying as he did regarding this particular issue nor was there any evidence that he had bias against Ms. Overton or the Union. Thus, the Board credits Mr. Ouelette's testimony on this point.

For all of the above stated reasons, the Board finds that the Employer did not violate the Act when it transferred Ms. Overton from Property Management to Maintenance after learning that the Union had filed an accretion petition to include Ms. Overton's Administrative Officer position in the Union. The evidence presented by the Union does not establish a "reasonable inference" to support the Union's claims. As noted

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[6] Mr. Almagno confirmed during his testimony that Ms. Overton did apply for the office manager position, but she wasn't hired. He explained that there were 81 applicants for the position and five finalists were selected. Ms. Overton was not one of the finalists. (Tr. Vol. II at page 114).

[7] The Union submitted as an attachment to its Charge (Petitioner Exhibit 1), the memo Mr. Igliozzi sent to Ms. Overton on April 6 reassigning her to Maintenance. At the bottom of the memo, one of the names copied in "Ouelette".

previously, absent this demonstration of an inference of wrongful conduct by the Employer, the Union had to present evidence that the motivating factor in the Employer's conduct was "animus against the union or other protected activity", evidence that, in the Board's view, it was unable to produce.

The Motion to Dismiss

At the commencement of the formal hearing, the Employer orally raised a Motion to Dismiss the instant Complaint. The Employer's argument centered on the fact that the Complaint issued by the Board stated allegations of violations of the Act because the Employer had "Unilaterally transferred an employee out of her "Administrative Officer" position" and had "Retaliated against the Union and its bargaining unit member when it transferred the employee out of her "Administrative Officer" position..." (See Board Complaint). The Employer claimed that the Board's phrasing in the Complaint was not true because the employee, Ms. Overton, had not be "transferred...out of her position..." Instead, Ms. Overton had been transferred from one department, Property Management, into a different department, Maintenance, but had maintained her title as an Administrative Officer throughout the transfer process.

The Board's Rules and Regulations, Rule 1.11E make clear that a party that raises a motion at a formal hearing must also present the motion to the Board in written form. In addition, the parties were reminded of this Rule at the time of the raising by the Employer of the Motion to Dismiss (Tr. Vol. I at pages 7 – 8). The Employer did not submit to the Board a separate written memorandum regarding the basis for its Motion to Dismiss. While the Employer referenced, in its memorandum in chief to the Board, that the allegations concerning Ms. Overton being transferred out of her Administrative Officer position were not factually accurate (see Employer Memorandum of Law at page 3), this reference does not, in the Board's view, constitute compliance with Rule 1.11E. Therefore, the Employer's Motion to Dismiss is denied.

Notwithstanding the Board's above denial on procedural grounds, the Board also notes that the Employer's verbal sleight of hand does not lend merit to its substantive argument. In other words, the Employer attempts, in its Motion to Dismiss, to make a technical distinction between words like "transfer", "position" and "title". The evidence before the Board in this case is that Ms. Overton was transferred out of the job, her "position", in Property Management and moved to a different job in Maintenance, while maintaining her same "title", i.e., Administrative Officer. (See discussion at Tr. Vol. I at pages 10 – 15; 17 – 20). While it is clear Ms. Overton was always in the titled position of Administrative Officer, it is just as clear that the Complaint issued by the Board focused on the transfer by the Employer as being an alleged illegal action under the Act. Therefore, the Board believes the Motion to Dismiss also has no substantive merit.

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 parties are subject to a collective bargaining agreement dated July 1, 2021 through June 30, 2024.

4. Jaime Overton was hired by the Employer on September 20, 2018 into the position of Administrative Officer.

5. At the time of her hire, Ms. Overton's position was a non-union position.

6. Ms. Overton was initially assigned to work in Legal Services.

7. In August 2019, Ms. Overton was transferred to Property Management from Legal Services.

8. Both Legal Services and Property Management come under the Administrative Services Division of the Employer.

9. Ms. Overton remained in the titled position of Administrative Officer while assigned to Legal Services and Property Management.

10. Ms. Overton worked in Legal Services and Property Management without there being any identified issues or problems with her work performance.

11. In or around January 2023 Ms. Overton was made aware, for the first time, that she "had a position that was a union position." This information prompted Ms. Overton to contact the Union and request to become a member.

12. After being contacted by Ms. Overton, the Union, on March 27, 2023, filed a Petition for Unit Clarification and/or Accretion with the Board.

13. On April 5, 2023, the Board notified the Employer of the filing of the Accretion Petition by the Union.

14. On April 6, 2023, Ms. Overton received written notice from the Employer that she was being transferred from Property Management to the Maintenance Department.

15. The move from Property Management to Maintenance changed the Division in which Ms. Overton's position was placed and also required Ms. Overton to report to a different location (Property Management was located at 2 Capitol Hill in Providence while the Maintenance Department was located in Warwick.).

16. The move to Maintenance did not impact Ms. Overton's job title nor did it affect her wages or benefits.

17. Ms. Overton was transferred to Maintenance from Property Management because there was a vacancy in the front desk that the Employer decided needed to be filled.

18. Discussions regarding filling the front desk job with the Administrative Officer title position held by Ms. Overton began prior to the Employer being notified that Ms. Overton had contacted the Union about becoming a member and that the Union had filed an accretion petition to add the Administrative Officer position occupied by Ms. Overton to the bargaining unit.

19. Shortly after Ms. Overton was transferred to the Maintenance Department, a job posting for an Administrative Officer position was posted for Property Management. This posting was made in error and was eventually taken down and replaced with a posting for an Office Manager position.

20. Ms. Overton applied for the Office Manager position but was not selected as a finalist for the position.

21. In July 2023, the Employer and the Union entered into a Consent Agreement that accreted Ms. Overton's titled position of Administrative Officer into the Union.

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

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 (8) and (10) when it transferred Jaime Overton from Property Management to Maintenance after being notified that the Union had filed an accretion petition to include the position of Administrative Officer occupied by Ms. Overton in the bargaining unit.

3. The Union has not proven by a preponderance of the evidence that the Employer retaliated against Jaime Overton, in violation of R.I.G.L. § 28-7-13 (8) and (10), when it transferred Jaime Overton from Property Management to Maintenance after being notified that the Union had filed an accretion petition to include the position of Administrative Officer occupied by Ms. Overton in the bargaining unit.

ORDER

1. The Complaint in this matter is hereby dismissed.

RHODE ISLAND STATE LABOR RELATIONS BOARD

WALTER J. LANNI, CHAIRMAN

SCOTT DUHAMEL, MEMBER (DISSENT)

ARONDA R. KIRBY, MEMBER

HARRY F. WINTHROP, MEMBER

LAWRENCE PURTILL, MEMBER (DISSENT)

BOARD MEMBER STAN ISRAEL RECUSED HIMSELF FROM VOTING ON THIS MATTER.

ENTERED AS AN ORDER OF THE
RHODE ISLAND STATE LABOR RELATIONS BOARD

Dated: November 13, 2024

By: _____
THOMAS A. HANLEY, ADMINISTRATOR

ULP-6380

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

IN THE MATTER OF STATE OF RHODE ISLAND – DEPARTMENT OF TRANSPORTATION -AND- IFPTE, LOCAL 400	CASE NO. ULP- 6380

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- 6380, dated November 12, 2024, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **November 13, 2024.**

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

Dated: November 13, 2024

By: _____
Thomas A. Hanley
Administrator