STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. SUPERIOR COURT

LIME ROCK FIRE DISTRICT,
Petitioner

v. : C.A. No. PM 93-6128

RHODE ISLAND STATE LABOR
RELATIONS BOARD, Respondent and
LIME ROCK FIREFIGHTERS UNION,
LOCAL 3023, INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS,
AFL-CIO, Intervenor

D E C I S I O N

SHEEHAN, J. This matter is before the Court on the petitioner's, Lime Rock Fire District (hereinafter the "LRFD" or the "District"), appeal of the decision by the Rhode Island State Labor Relations Board (hereinafter the "SLRB" or the "Board") finding that the petitioner committed an unfair labor practice when it laid off six (6) full-time union firefighters. The Lime Rock Firefighters Union, Local 3023, the International Association of Firefighters, AFL-CIO (hereinafter the "Union") and the Board oppose this appeal. Jurisdiction is pursuant to G.L. 1956 (1988 Reenactment) §42-35-15

FACTS/TRAVEL

From the extensive record and memoranda submitted, those facts pertinent to this appeal are as follows. LRFD is a public

subdivision of the Town of Lincoln, incorporated and organized in accordance with the Town Charter and its own corporate charter and by-laws The overall policy of the District is set by district by-laws and charter and by the Board of Fire Wardens (five district citizens elected by Lincoln voters) The District, responsible for protecting district residents from the risks and dangers of fire is operated on a day-to-day basis by a Fire Chief and firefighting personnel. At the time this action accrued in 1992, these firefighting personnel included six (6) permanent full-time union firefighters, represented by the Union, and approximately twenty (20) "call" firefighters who worked part-time and were not members of the union SLRB Decision and Order. Finding of Fact #6 at p 12

The Union is a labor organization within the meaning of the Rhode Island State Labor Relations Act G.L. 1956 (1986 Reenactment) §28-7-1 et seq The Union is the duly organized collective bargaining agent for the District's union employees and has been certified by the Board in that capacity. See, SLRB Case, No. EE-3398. The unit for collective bargaining is comprised of "firefighting and rescue services, excluding the Fire Chief and the Secretary to the District employed by the LRFD." SLRB Decision and Order at p 4

The Union and the District negotiated and entered into two (2) collective bargaining agreements covering the periods of March 1 1988 through February 28, 1990 and March 1, 1990 through February 29, 1992. Id., Finding of Fact #4 at p 11. Those agreements were negotiated through the parties respective negotiating committees and were signed on behalf of the LRFD by the Chairman of the Board of Wardens

On January 23, 1992, the parties commenced bargaining over a new collective bargaining agreement to be effective on March 1992. Consistent with standard labor - management practice, the parties continued to operate under the terms of the 1990-1992 contract while negotiations for the 1992-1994 contract were pending. See, G.L. 1956 (1986 Reenactment) §28-9.1-17 Ground rules for negotiations, one of which was a provision that negotiating sessions be open to the public, were agreed upon on March 24, 1992 Further negotiations took place on April 1, 1992 at which time the District, through its negotiating committee presented written proposals each of which was reviewed and discussed by the parties. Without reaching resolution on any of the proposals submitted, the parties agreed in writing to extend the deadline for negotiations until May 29, 1992 and scheduled the next negotiations meeting for April 21, 1992

On April 20, 1992, the District through its appropriating body, the electorate of the Town of Lincoln, eliminated the salaries of all Union firefighters at the Annual Financial Meeting The Board of Wardens, without consultation or negotiations with the Union, laid off all six (6) full-time Union firefighters on April 24, 1992. To maintain the same level of "manning" at the District's two fire stations, the District added eighteen (18) additional call Firefighters Neither the layoff of the six (6) full-time union firefighters nor the addition of eighteen (18) "call" Firefighters was ever a subject of the negotiations between the Union and the LRFD

On May 8, 1992, the Lime Rock Firefighter's Union, Local 3023 and the International Association of Firefighters, AFL-CIO filed an unfair labor practice charge with the Board alleging that the District violated the Labor Relations Act, specifically G.L 1956 (1986 Reenactment §28-7-12 and §28-7-13(2), (3), (5), (8), (9) (10), when the District unilaterally eliminated 1992-1993 salaries for all union firefighters and laid off all union firefighters in the middle of negotiations for the 1992-1993 collective bargaining agreement. The Board issued a complaint on those charges on October 28, 1992 and, following three (3) days of hearings, concluded that the District had violated §28-7-13(3) (6) and (10).

In particular, the Board found that the action of the voters, in eliminating funds for the salaries of the six (6) full-time union firefighters constituted both an interference with the existence of the Union in violation of §28-7-13(3) and (10) and a refusal to bargain with the Union in violation of (§28-7-13(6).

As a result, the Board entered an Order on October 12, 1993 directing the District immediately to reinstate all six (6) laid off union firefighters with full pay and all benefits retroactive to the date of their termination of employment and with no deductions for back pay or unemployment benefits. SLRB Decision at p 16.

The petitioner asserts that neither the district voters nor the LRFD committed an unfair labor practice. The District argues that the Board's decision is erroneous as a matter of law and should be reversed. Brief of Petitioner at p. 15. In the alternative, the LRFD asks that the SLRB order be amended to require that firefighters interim earnings and unemployment compensation be deducted from any back pay award. Id. at p. 26 In contrast, the Union submits that the petitioner has failed to meet its burden of proving that the record, taken as a whole, is devoid of any evidence supporting the Board's Decision and Order and as such argues that the Order be affirmed. Intervenor's

Memorandum at p. 24.

Standard of Review

This Court is granted jurisdiction to review decisions of the SLRB pursuant to G.L 1956 (1988 Reenactment) §42-35-15 This statute also mandates the scope of review permitted by this Court. Section 42-35-15(g) provides:

> (g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, interferences, conclusions, or decisions are:
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> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error or law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Section 42-35-15 precludes a reviewing court from substituting its judgment for that of the agency in regard to the credibility of the witnesses or the weight of the evidence concerning questions of

fact Costa v. Registry of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988). The reviewing court must uphold an agency decision if there is any legally competent evidence in the record supporting decision Barrington School Committee v. Rhode Island State Labor Relations Board, 608 A.2d 1126, 1138 (R.I. 1992); Blue Cross and Blue Shield v. Calderone, 520 A.2d 969, 972 (R.I. 1987). The court must reverse those factual conclusions only when they are completely devoid of any competent evidentiary support in the record. Sartor v. Coastal Resource Management Council, 542 A.2d 1077, 1081 (R.I. 1988) An Administrative decision can be vacated by this Court if it is clearly erroneous in view of the reliable, probative and substantial evidence contained in the entire record Costa v. Registry of Motor Vehicles, at 1309 The above stated standard does not preclude judicial review of questions of law and their application to the facts. Turner v. Department of Employment Security, Board of Review, 479 A.2d 740, 742 (R.I 1984).

Unfair Labor Practice

Initially, this Court will address the LRFD's challenge to the Board's finding that the LRFD unlawfully interfered with the existence of the Union by failing to bargain with the Union and by unilaterally, and without consultation or negotiation, laying off six (6) union firefighters in direct contravention of §28-7-12

and §28-7-13(3)(6) and (10) of the Labor Relations Act

The Labor Relations Act is designed to fulfill "the economic necessity for employee to possess full freedom of association, actual liberty of contract and bargaining power equal to that of their employers." G.L. 1956 (1986 Reenactment) §28-7-2. As a result of greater economic interdependence and a community of interests in matters of vital public concern, employees employers have recognized and instituted the practice of bargaining collectively as between equals and in satisfaction of the statutorily prescribed mutual obligation of the duty to meet, confer and bargain in good faith.§28-7-2 and §28-9.1-6. Collective bargaining is the performance of that mutual obligation of a public employer and the representative of its employees, in the instant matter LRFD and the Union respectively, to meet at reasonable times and confer in good faith with respect to employment relations. It may also include the negotiation of an agreement and, optimally, the execution of a written contract incorporating any agreement reached between the parties. See Warwick Teacher's, C.A. No. 1199 (Super. Ct. Feb. 26, 1993), cert. denied, Warwick School Committee v. R.I. State Labor Relations Board, No. 93-125-M.P (April 8, 1993). The good faith obligation does not compel either party to agree to a proposal or require the making of a concession

only to dutifully bargain until those efforts are either abandoned or exhausted and result in an impasse or the implementation of a new agreement. Id.; citing too, Wasco County v. American Federation of State, County and Municipal Employees, 569 P.2d 15, 18 (Or. App. 1977)

The Union submits, in a position endorsed by the Board in its decision, that the District failed to bargain in good faith by unilaterally eliminating salaries while collective bargaining was in process and by laying off every union member during those ongoing negotiations Intervenor's Memorandum at pp. 15 and 21.

Union argues that unilateral termination of employment and benefits by the LRFD do not represent a serious effort at reaching a collective bargaining agreement and in fact constitutes a violation of the employer's duty to bargain Id. at p. 21, citing, Warwick School Comm. v. R.I. S.L.R.B Appeal of Cumberland Valley School Dist., 394 A.2d 946, 950 (Pa. 1978); Pennsylvania Labor Relations Board v. Mars Area School District, 389 A.2d 1073 (Pa 1978)

The petitioner, in a series of interrelated arguments contends that the conclusions of the Board are clearly erroneous and that the process of review by the Board was made upon unlawful procedure and constituted an abuse of discretion in clear violation

of §42-35-15. The LRFD first argues that the SLRB decision, in holding that district voters committed an unfair labor practice in eliminating funds for the salaries of the six (6) full-time union firefighters is erroneous as a matter of law Petitioner's Brief at p. 15 It is the District's position that the electorate represent a separate and distinct authority freely empowered and supported in their actions by common law, contractual right and public policy to hire, fire, and lay off its union employees for any reason or no reason at all Id. at pp. 15-19 The District contends that the electorate were under no obligation to either maintain salaries and/or preserve positions for the six (6) union firefighters and that any ruling providing for that cannot be justified. Id. at p. 16

Similarly, the petitioner claims that it had a contractual right to lay off workers under an agreement signed by the Union and that the Board's decision that the District committed an unfair labor practice in failing to bargain with the Union is "out of line as a matter of law." Petitioner's Reply Memorandum at p. 3 The LRFD, asserts that it simply carried out the terms of its agreement with the Union and exercised its "bargained for liberty." Id. at p. 10.

The petitioner's conclusions, as colorfully and dramatically

as they may be presented in their submissions to this Court, are not supported by the extensive record as reviewed and considered by the SLRB and preserved for this Court The Board had before it ample evidence to support its findings. The factual conclusions of administrative agencies shall be reversed only when they are completely bereft of competent evidentiary support in the record Sartor v. Coastal Resources Management Council, 542 A.2d at 1082. See also, Hardman v. Personnel Appeal Board, 100 R.I. 145, 152 (1965); Fox v. Personnel Appeal Board, 99 R.I 566, 571 (1963). In the instant matter, the factual conclusions of the Board are supported by substantial evidence as indicated by the facts summarized in this decision and contained in the record

This Court, after carefully scrutinizing the record, concludes that the District's contentions regarding the propriety of their bargaining actions and the related commission of a fair and agreed upon labor practice are entirely without basis in the record. In contrast, there exists substantial evidence to indicate that the District, in direct derogation of the Labor Relations Act in §28-7-13(3)(6) and (10), intentionally and without consultation or negotiation with the appropriate body, namely the Union, instituted changes recommended by the electorate and effectuated an unfair labor practice by laying off all six (6) full-time union

firefighters. The record demonstrates with sufficient evidentiary support that this action was taken unilaterally by the District without discussion with or notice to the Union. The Board decided the measure, applied by the LRFD solely while in the midst of continuing negotiations with the Union, constituted an unfair labor practice and a failure in the duty to bargain in good faith. SLRB Decision at p. 9, and 10. Great deference must be afforded to a hearing officer's findings. See Environmental Scientific Corporation v. Durfee, 621 A.2d 200, 207 (R.I. 1993).

REMEDY

Finally, this Court must address the issue of remedies afforded the respondents in this matter, in particular, the Board's decision to award back pay without deduction from either unemployment benefits or interim earnings during the period of the off until the date of the reinstatement. SLRB Decision and Order at p. 16. The petitioner pleads that the SLRB proceedings on the back pay issue and their refusal to deduct interim earnings "amounts to a punishment" of the LRFD, results in a windfall for those members, and is plainly unlawful. Petitioner's Brief at p 24 Further, the District argues that the SLRB's refusal to deduct from the back pay any unemployment compensation that the firefighters received during their layoff constituted a "penalty"

in violation of the very principles upon which those awards are based as well as a violation of the SLRB's "mandate to act fairly and nonarbitrarily." Id. at 25. The Union submits that subject to the authority proscribed in G.L. 1956 (1986 Reenactment) §28-7-22(b)(1), the Board acted entirely within its liberal authority to remedy unfair labor practice charges and award back pay. Intervenor's Memorandum at p. 25.

The approach taken in our jurisdiction in this controversy reflects that position endorsed by several federal courts, the National Labor Relations Board and numerous arbitrators. Council 94, Am. Fed. of State, Etc. v. State, 475 A.2d 200 (R.I 1984); Bryson v. Clark, 89 R.I 183 (1959); See also Phelps Dodge Corp. v. Labor Board, 313 U.S. 177 (1941 N.L.R.B. v. Pilot Freight Carriers, Inc., 604 F.2d 375 (5th Cir 1979); O. C. & A. Wkrs. Int. U. AFL-CIO v. N.L.R.B., 547 F.2d 598 (D.C Cir. 1976). It is the intention of the Court that plaintiff be made whole but it certainly is not the intention, by any narrow construction of the word "compensation," that he should be able to enrich himself. Bryson v. Clark, 89 R.I. at 186. The amount of back pay awarded to an employee who has been improperly discharged is the difference between what the employee would have earned but for the wrongful discharge and his actual interim earnings or, in extreme

circumstances, and, only when the burden is sustained by the pleading party that amount attributed to a "willful loss of earnings." Id.; O. C. & A. Wkrs. Int. U., AFL-CIO v. N.L.R.B., 547 F.2d at 602.

Alternatively, unemployment compensation is neither pay nor wages but instead constitute a "collateral benefit" that the worker receives from the State as a matter of social policy Council 94, Am. Fed. of State, Etc. v. State, 475 A.2d at 204 Rhode Island has followed the instructive lead of the United States Supreme Court in N.L.R.B. v. Gullet Gin Co., 340 U.S. 361, 71 S. Ct. 337, 95 L.Ed. 337 (1951), where the Court, in upholding the Board's refusal to deduct unemployment benefits from the award of back pay, observed that "(unemployment payments to the employees were not made to discharge any liability or obligation of respondent, but to carry out a policy of social betterment." Id. at 364

It is this Court's conclusion then that, based on the evidence on the record viewed in light of relevant and guiding case law, that the Board acted improperly in refusing to deduct interim earnings from the award of back pay but acted within its authority in ordering back pay without a deduction for unemployment compensation.

For the reasons hereinabove set out, the decision of the SLRB dated October 12, 1993 is affirmed in part and reversed in part. Specifically, this Court finds that the SLRB determination that the LRFD committed an unfair labor practice by unilaterally terminating six (6) full-time union firefighters is supported by substantial evidence of record. The SLRB's decision pertaining to the award of back pay without deduction is affirmed as to unemployment earnings and reversed as to interim earnings

Counsel shall submit appropriate entry within two weeks