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

IN THE MATTER OF

RHODE ISLAND STATE LABOR
RELATIONS BOARD

-AND-

CASE NO: ULP-5768

CITY OF EAST PROVIDENCE

DECISION and ORDER

TRAVEL OF CASE

The above entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") as an Unfair Labor Practice Complaint (hereinafter "Complaint") issued by the Board against the City of East Providence (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated August 10, 2005 and filed on August 15, 2005 by the United Steelworkers of America, Local 15509 (hereinafter "Union").

The Charge alleged violations of R.I.G.L. 28-7-13 (6) and (10) as follows:

a) Failure to properly post vacancies within the Animal Shelter in accord with the CBA.
b) Improper employment of non bargaining unit members in bargaining unit work.
c) Failure to deduct union dues from the wages of employees listed above.
d) Permitting non bargaining unit members to work in excess of twenty hours per week, on a regular basis.
e) Failure to properly compensate those individuals employed to perform the functions of Pound Keeper and Assistant Pound Keeper.
f) Failure to bargain with the union regarding any of the foregoing unilateral changes in working conditions.

Following the filing of the Charge, an informal conference was scheduled in accordance with R.I.G.L. 28-7-9 for September 6, 2005. The Employer filed an answer to the Unfair Labor Practice Charge on August 16, 2005, denying allegation (a) through (e) as set forth on the charge and admitting that it did not negotiate. Due to scheduling conflicts and efforts to resolve the matter, the informal was continued to November 30, 2006. On December 14, 2005, the Board issued its complaint. The Employer filed an answer to the Charge on

December 23, 2005. The matter was heard formally on February 9, 2006. Representatives from both the Union and the Employer were in attendance and had full opportunity to present evidence and to examine and cross-examine witnesses.

FACTUAL SUMMARY

This dispute arises as the result of actions taken by the Employer in response to a public health crisis that occurred in the summer of 2004. Apparently, employees of the East Providence Animal Shelter were housing raccoons at the shelter that turned out to have rabies. Unfortunately, the raccoons had not been quarantined from the other animals or members of the staff or public, creating a public health threat and the Rhode Island Department of Environmental Management immediately shut down the shelter. The Employer also immediately terminated the entire staff at the shelter.[1]

Up until the time of this incident, the Animal Shelter had been under the jurisdiction of the Chief of Police and had four job classifications represented by the Union. They were: Animal Control Supervisor, Animal Control Officer,[2] Pound Keeper and Assistant Pound Keeper.[3] There were full-time employees filling the positions of Animal Control Supervisor, Pound Keeper and Assistant Pound Keeper. The City also employed several part-time animal control officers and part-time pound keepers. The part-time employees worked primarily on weekends, but also filled in for vacationing or sick full-time employees.
part-time employees, who were working less than twenty (20) hours per week, were not members of the bargaining unit. Due to the rabies outbreak, the domestic animals at the shelter were placed under quarantine. Since the entire shelter staff had been terminated, the Employer needed to hire replacement staff immediately to feed and care for the animals. Two employees were hired immediately to care for the animals; Ms. Lynn Durfee and Mr. Evan Barlow.
employees were paid $8.00 an hour for their work, with none of the contractual benefits afforded to the full-time employees such as health insurance, vacation

[1] These termination actions form no part of the instant dispute and are mentioned for the purpose of explaining how non bargaining unit workers came to perform bargaining unit work.
[2] At the time of the rabies incident, this position was vacant.
[3] The lowest compensation rate in the CBA for the position of Assistant Pound Keeper is $12.00 per hour.

pay, sick pay, holiday pay, or pension contributions. From the time that they began their employment at the Animal Shelter, both Ms. Durfee and Mr. Barlow worked not only a forty (40) hour work week, but also worked significant overtime hours for nearly every week on the job.

At the time that these employees were hired, Mr. Scott Cook, the Union President made several inquiries to both the City Manager and the Personnel Director concerning the new staffers at the Shelter. Specifically, Mr. Cook inquired as to the number of hours that the new employees were working so as to ascertain whether they were part-time employees who should not be represented by the Union or full-time employees who were represented by the bargaining unit. Both the City Manager and the Personnel Director repeatedly assured Mr. Cook that the new animal shelter employees were working twenty (20) hours or less per week. They also told Mr. Cook that the duties of the Animal Control Officer were being performed on an as needed basis by the City of Pawtucket.

In July, 2005, at arbitration hearings concerning the shelter employees who had been terminated from their positions, the Union learned through Ms. Durfee's testimony that she not only was not a part-time employee, but that she had been working full-time since her very first week on the job and that she had worked significant overtime in each and every pay period since she started work. Her testimony also revealed that she had been paid at the rate of $8.00 per hour and had been afforded none of the contractual benefits afforded to bargaining unit members. Her testimony at the arbitration hearing also revealed that there was another full-time employee at the shelter and that she had been performing several of the duties of the Animal Control Officer over the preceding year.

Also in July, 2005, Ms. Durfee inquired of her supervisor, Mr. Stephen Coutu about the possibility of getting a raise and mentioned to him that she was aware that after six (6) months she was supposed to become a permanent City employee, with benefits. Mr. Coutu advised Ms. Durfee that he was leaving on vacation and that they could discuss the issue upon his return. Approximately one week later, on July 18, 2005, the City Manager issued a letter to Ms. Durfee,

advising her that her services at the Animal shelter would no longer be needed, "effective the end of business July 19, 2005."

SUMMARY OF TESTIMONY & EVIDENCE

In support of its allegations, the Union presented the testimony of Ms. Lynn Durfee and Mr. Scott Cook and submitted several documents including: Payroll records from the City of East Providence's Pound from July 2004 to July 2005, (2) Vacancy Notice for the position of Animal Control Officer dated August 22, 2004, (3) Termination letter to Lynn Durfee dated July 18, 2005 and (4) The collective bargaining agreement ("CBA") for the period October 1, 2003 through October 31, 2006. The City presented the testimony of Raymond Benoit, the City's Personnel Director, but presented no document in support of its defense.

Ms. Durfee testified that prior to the discharge of the staff at the animal shelter, during the rabies outbreak, she had worked as a volunteer at the shelter. The day after the shelter employees were discharged, Ms. Durfee received a call from Captain Walter Barlow, of the East Providence Police Department asking if she would take care of the animals. (TR. pgs. 15-16) Captain Barlow advised Ms. Durfee that her compensation would be $8.00 per hour and that her responsibilities included cleaning and feeding the animals and keeping the pound clean. They did not discuss schedules, hours or benefits and Ms. Durfee understood that she was to work as many hours as was necessary for the job. (TR. p. 16) The City's payroll record indicates that the first paycheck for Ms. Durfee was dated August 26, 2004 and reflected payment for sixty-one (61) hours. During the next two week pay-period, Ms. Durfee worked eighty (80) regular hours and forty-four (44) overtime hours. Ms. Durfee's amount of work continued substantially the same for the entire time was employed. (Union Exhibit #1)

As for her duties, Ms. Durfee testified that while the shelter was still under quarantine and closed to the public, her duties consisted of feeding, watering and caring for the animals and keeping the shelter clean. After the shelter re-opened in September 2004, she also began doing quarantine forms for animals, taking animal control complaints and calls and picking up dead animals. (TR. p.

She was also involved in the adoption of animals and collected the appropriate fees and transmitted them to Captain Barlow. (TR. p. 35) She also testified that a second full time shelter employee, Evan Barlow was hired a few weeks after her. The payroll records verify that Evan Barlow immediately started work as a full-time employee, with significant overtime hours. (Union Exhibit #1) Ms. Durfee testified that during the first few weeks of her employment, her supervisor, Captain Walter Barlow, would stop in to check on things once or twice a week. After the first few weeks, Captain Barlow checked in with Ms. Durfee a few times a week by telephone. (TR. p. 19)

Ms. Durfee testified that she and Evan Barlow were primarily the only two employees at the shelter until February 2005 when the City hired Charlie Savoie as the Animal Control Officer. (TR. p. 19) Notwithstanding the arrival of Mr. Savoie, Mr. Durfee continued to perform the same duties which included picking up dead animals, catching strays, investigating complaints, disposing of dead animals, transporting animals for veterinary treatment, maintaining and cleaning the pound, feeding and watering the animals, answering phone calls from the public and performing related work as required. (TR. p. 21) Ms. Durfee testified that during the course of her employment, she received no paid vacation, no paid holidays, no sick time or health insurance. Ms. Durfee testified that during her term of employment she paid her own health insurance. For the first several months, she was able to obtain her health insurance through a COBRA extension from her previous employer at the rate of $368.76 per month. In March, 2005, her COBRA coverage ended and she began paying her individual health care insurance to Blue Cross directly at the rate of $471.38, per month.

The Union also presented the testimony of Scott Cook, the Union President. Mr. Cook's testimony was consistent with that of Mr. Raymond Benoit, the Personnel Director. Both men testified that Ms. Cook did indeed inquire on several occasions to both Mr. Fazioli and Mr. Benoit, as to the number of hours being worked by Mr. Durfee and Mr. Barlow. Both Mr. Benoit and Mr. Cook testified to this Board that Mr. Benoit told Mr. Cook that the employees were working less than twenty hours per week. Mr. Benoit testified that he did not

check the payroll records of the employees, but simply contacted the City Manager to inquire as to the status of the employees. Mr. Cook stated that he received a report that the pound employees had been seen driving the animal control officer's van and were allegedly picking up dead animals. When Mr. Cook inquired of Mr. Benoit as to this matter, Mr. Benoit advised him that the employees were probably going to get lunch because the van was at their disposal. Mr. Benoit also advised Mr. Cook that the Pawtucket Animal Control Officer was picking up the animals in East Providence.

Mr. Cook also called Mr. Fazioli twice concerning the allegation that the "part-timers" were picking up dead animals, a function which is squarely within the job description of the full-time bargaining unit position of Animal Control Officer. (TR. p. 43) On both occasions Mr. Fazioli stated that he would look into the matter and get back to Mr. Cook. Mr. Fazioli later reported each time that nobody was working more than twenty (20) hours per week and that the Pawtucket Animal Control Officer was being called when there were dead animals to pick up. (TR. p. 43) [4]

DISCUSSION

There is no question in the minds of the undersigned Board members that the City of East Providence purposefully assigned bargaining unit work to non bargaining unit members and did so with a direct knowledge and understanding that not only was such conduct an Unfair Labor Practice, but obvious and direct violations of the parties' CBA. The Board does not recall any other case that contained such blatant, willful and deceptive conduct that continued for such an extended period of time. The conduct in this case was extreme.

There can be no question that when faced with a public health crisis, the City was obligated to respond swiftly and decisively, not only as to the shelter employees who were possibly culpable in precipitating the crisis, but also as to its efforts to obtain replacement personnel to care for the animals which had been quarantined. The Board finds no fault with the City's efforts in those regards, particularly in the first month or so after discovering the rabid raccoons.

[4] Although Mr. Fazioli was present at the beginning of the hearing in this matter, he departed and did not return to provide testimony.

However, once the shelter had been disinfected, the quarantine lifted and the shelter reopened to the public, the Employer's grace period ended While it is also understandable that the Employer was a bit in a quandary as to whether or not to hire new full-time personnel when the former staff was grieving their terminations, the Employer was obligated to deal with its ongoing personnel issues in accordance with both the contract and the law. It had to be abundantly clear to all concerned that two allegedly part-time people would not be sufficient to replace three full-time and a bevy of part-time and weekend personnel. There was absolutely no testimony, whatsoever, presented to this Board that the City made any efforts to look at the staffing issues and work out a schedule that did not violate the contract or that did not permit the assignment of bargaining unit work to non bargaining unit members. In fact, the opposite appears to be true. It seems clear to this Board, that both the City Manager and the Personnel Director knew that the staff was working more than twenty (20) hours per week, and that they deliberately mislead the Union President each and every time he inquired on this subject.

Therefore, the Board finds that the Employer has violated R.I.G.L. 28-7-13 (6) and (10) when is assigned bargaining unit work to non-bargaining unit workers without bargaining with the certified bargaining agent. This type of conduct is not permissible. It undermines the City's credibility on labor relations, not only for the affected bargaining unit, but for the entire City. The complaining union is well justified in its complaint and for the remedies sought, not only for the Union itself, but for the employees who worked for the better part of a year, for far less money than entitled, for no benefits and no time off. Although this Board has rarely exercised its authority to direct the payment of back wages and benefits, the Board will not countenance the Employer's willful behavior in this case and will not let stand the resulting adverse impacts to the employees.

Therefore, the Board is hereby ordering the Employer to pay back wages and benefits to both Lynn Durfee and Evan Barlow and any other employee who worked more than twenty (20) hours per week at the East Providence Animal Shelter during the period of August 2004 through the present. Lynn Durfee shall

be paid at the contractual rate for Pound Keeper for the first thirty (30) days of employment. Thereafter, her rate of pay, through the date of her termination shall be at the contractual rate for Animal Control Officer. [5] The record is not clear as to the types of duties performed by Evan Barlow or any other employees who worked more than twenty (20) hours per week. The other titles in the collective bargaining agreement include assistant Pound Keeper at a pay grade 30 and Assistant Pound Keeper at pay grade 28. Therefore, the minimum rate to be paid to the other employees working twenty (20) or more hours per week shall be the contractual rate for Assistant Pound Keeper. In addition, all animal shelter employees who worked twenty (20) or more hours per week shall receive contractual holiday pay for each holiday that occurred during the course of their employment and for the personal holidays afforded by Article X, Section 10.01 of the contract. In the event that the employee worked the holiday, he or she shall be entitled to extra compensation as provided for by Article X, Section 10.03 of the contract.

Ms. Durfee shall also be reimbursed for all health insurance premiums that she paid personally during the course of her employment with the City. If there were other animal shelter employees who worked more than twenty (20) hours per week and who did not receive health insurance from the City, they shall be paid a sum of money which equals the premium that the City would have been required to pay on their behalf. All amounts awarded for health insurance compensation shall be net of any amount of premium co-share required from employees by contract. All animal shelter employees who worked more than twenty (20) hours per week, and who received no vacation pay, shall be paid a sum of money equal to the amount of vacation that to which he or she was contractually entitled.

With this Order, the Board intends to order the Employer to pay any and all funds that should have been paid to or on behalf of the affected animal shelter employees and the foregoing recitation of contractual benefits is not intended to

[5] Although the record indicates that the City actually filled the Position of Animal Control Officer in March of 2005, the testimony is unrebutted that Mr. Durfee continued to perform the same duties as she had for the previous several months, duties which are clearly those of the Animal Control Officer, as described in Union Exhibit #3.

be the exclusive remedy. For example, if one of the employees was otherwise entitled to bereavement leave during his or her employment, they must be compensated. From the amounts due to Ms. Durfee, Mr. Barlow and any other affected employee, the appropriate Union dues or agency fee shall be deducted and remitted to the Union. The City is ordered to make the aforementioned ordered payments within thirty (30) days of the issuance of this order.

The Employer is also hereby ordered to post a copy of this Decision and Order on all employee bulletin boards for a period of time no less than thirty (30) days.

FINDINGS OF FACT

1) The City of East Providence is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
2) The Union is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection; and, as such, is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.
3) The Union represents the following job classifications at the East Providence Animal Shelter: Animal Control Supervisor, Animal Control Officer, Pound Keeper and Assistant Pound Keeper. The Union does not represent employees who work less than twenty (20) hours per week.
4) In July of 2004, all full-time employees at the Animal Shelter were fired from their positions as the result of a rabies outbreak which occurred because the employees were illegally housing wild raccoons. The Animal Shelter was placed under quarantine and new staff was hired to care for the animals.
5) At least two of the replacement employees, Ms. Lynn Durfee and Mr. Evan Barlow, worked on a full-time basis from the time of their hire, at the rate of $8.00 per hour. Both also worked significant overtime hours during the course of their employment. No contractual benefits such as vacation pay, sick pay, holiday pay or health insurance were afforded to these employees.

6) The minimum salary by contract for an Assistant Pound Keeper is $24,841.88.

7) The minimum salary by contract for Pound Keeper is $27,094.08.

8) The minimum salary by contract for Animal Control Officer is $29,576.24.

9) Ms. Durfee's duties included a variety of animal control tasks, including picking up dead animals, catching strays, investigating complaints, disposing of dead animals, transporting animals to the veterinarian for treatment or euthanasia, working with the public and shelter staff, record keeping, collecting money, cleaning cages and the pound, and feeding and watering animals. Ms. Durfee was performing nearly all the items set forth on the job description of Animal Control Office, with very little, if any supervision

10) Despite repeated inquiries by the Union concerning the number of hours that Ms. Durfee and Mr. Barlow were working, City Officials, including the City Manager and the City Personnel Director, repeatedly advised the Union that both employees were working less than twenty (20) hours per week.

11) The first time that the Union received verification that Ms. Durfee and Mr. Barlow were working well in excess of twenty (20) hours per week was in July, 2005 at an arbitration hearing concerning the discharges of the prior shelter staff.

CONCLUSION OF LAW

1) The Union has proven by a fair preponderance of the credible evidence that the employer committed a violation of R. .G.L. 28-7-13 (6) and (10).

ORDER

1) The Employer is hereby ordered to immediately cease and desist from using non-bargaining unit employees to perform bargaining unit work.

2) The Employer is hereby ordered to pay to Lynn Durfee, Evan Barlow and any other Animal Shelter employee who worked twenty (20) or more hours per week for the period of July, 2005 to the present, all back wages and contractual benefits (for example, vacation pay, holiday pay, personal leave pay and bereavement leave) that they would have received if they had been treated like the full-time employees that they were. Lynn Durfee shall be paid the contractual

rate for Animal Control Officer. Evan Barlow shall be paid at least the contractual rate for the Assistant Pound Keeper. Any other qualifying employee shall also be paid at the contractual rate of Assistant Pound Keeper.

3) The Employer shall reimburse Lynn Durfee all funds she paid for health insurance during the course of her employment with the City. The Employer shall also reimburse Ms. Durfee for any out-of-pocket medical expenses that she may have incurred during her employment that should have been covered by the City's health insurance plan. If there were other animal shelter employees who worked more than twenty (20) hours per week and who did not receive health insurance from the City, they shall be paid a sum of money which equals the premium that the City would have been required to pay on their behalf. All amounts awarded for health insurance compensation shall be net of any amount of premium co-share required from employees by contract.

4) From the funds ordered to be paid under this order to Ms. Durfee, Mr. Barlow and any other employee, the Employer shall deduct all Union dues or agency fees that would have been paid by the replacement shelter employees during the course of their employment and remit those funds to the Union.

5) The Employer is ordered to post a copy of this decision on all employee bulletin boards for period of thirty (30) days commencing immediately upon receipt of this order.

RHODE ISLAND STATE LABOR RELATIONS BOARD

WALTER J. LANNI, CHAIRMAN

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GERALD S. GOLDSTEIN, MEMBER

ELLEN L. JORDAN, MEMBER

CAPOBIANCO, MEMBER

ELIZABETH S. DOLAN, MEMBER

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

Dated: 6-22, 2006

By: _____
ROBYN H. GOLDEN, ADMINISTRATOR

ULP-5768

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

IN THE MATTER OF

RHODE ISLAND STATE LABOR
RELATIONS BOARD

-AND-

CASE NO: ULP-5768

CITY OF EAST PROVIDENCE

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 ULP No. 5768 dated June 22, 2006 may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after June 22 2006.

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

Dated: 6-22, 2006

By: Robyn H. Golden
Robyn H. Golden, Administrator

ULP- 5768