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-

CITY OF WOONSOCKET

CASE NO. ULP-5447

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 City of Woonsocket (hereinafter Employer) based upon an Unfair Labor Practice Charge (hereinafter Charge) dated January 5, 2000, and filed on January 10, 2000, by the Woonsocket Local 404, IBPO (hereinafter Union).

The Charge alleged:

> "That the Employer has engaged in a continuing violation of 28-7-12 and 28-7-13 (6), (7), and (10) of the Act, when it failed and/or refused to implement the terms of a grievance decision which was resolved in favor of the Union."

Following the filing of the Charge, an informal conference was held on February 9, 2000, between representatives of the Union and Employer and an Agent of the Board. When the informal conference failed to resolve the Charge, the Board issued the instant Complaint on October 23, 2000. The Employer failed to file any Answer to the Complaint.

A formal hearing on this matter was held on March 13, 2001. Upon conclusion of the hearing, both the Employer and the Union submitted written briefs. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony and evidence presented and arguments contained within the post hearing briefs.

FACTUAL SUMMARY

The facts in this case are not in dispute; there are only the legal conclusions that flow from these facts, which are in dispute between the parties. The Union is the exclusive bargaining representative for all full-time police officers employed by the City of Woonsocket, excluding the Chief of Police. At all times pertinent to this Complaint, there existed a Collective Bargaining Agreement (Union Exhibit #1). Contained within the Agreement are certain provisions pertaining to civilian dispatch overtime (Union Exhibit #1, p. 19, Section 6.9).

Sergeant Glen Hebert, pursuant to the terms of the Collective Bargaining Agreement, signed up for civilian dispatch overtime, but was by-passed on multiple occasions because he holds the rank of Sergeant. As a result, Sgt. Hebert filed a grievance and began pursuing it through the steps of the Grievance Arbitration Procedure (see Union Exhibit #2). The grievance was ultimately upheld by the Woonsocket Personnel Appeals Board, which directed that Sgt. Hebert submit documentation as to the amount of overtime he had lost (Union Exhibit #3). Sgt. Hebert did submit the documentation and then presented a bill to the City to pay him for the loss of back pay from the result of being by-passed for the overtime (Union Exhibit #5). The City refused to pay the bill and filed a demand to arbitrate the matter (Union Exhibit #6). The Union raised the issue of arbitrability, questioning whether the City could arbitrate a dispute that wasn't between the Union and the City, but was essentially a dispute between the City Council and the Personnel Appeals Board. The Arbitrator ruled that the matter was not arbitrable, which made the decision of the Personnel Appeals Board final (Union Exhibit #7). The bill was resubmitted to the City for payment, and the City continued to refuse to pay Sgt. Hebert. Thereafter, the Union filed its Charge with the Board.

POSITION OF THE PARTIES

The Union argues that this Board has subject matter jurisdiction to hear this Complaint, because the Employer has repudiated the Collective Bargaining Agreement between the parties, and that such conduct is prohibited by law pursuant to R.I.G.L. 28-7-13 (6) and (10) (Union's brief, p. 5). In addition, the Union argues that the Employer violated R.I.G.L. 28-7-13 (6) and (10) when it refused to comply with the decision of the Personnel Appeals Board. The Union asks that the Employer be ordered to cease and desist from engaging in this Unfair Labor Practice, and it be ordered to pay Sgt. Hebert the sum of seven thousand five hundred forty-seven dollars and sixty-eight cents ($7,547.68), plus interest at the statutory rate; and to order the Employer to reimburse the Union for any and all costs it incurred in pursuit of this matter, including reasonable attorney's fees.

The Employer argues that the Board does not have subject matter jurisdiction, and that the Union failed to meet its burden of proof. The Employer seeks a dismissal of the Complaint.

DISCUSSION

R.I.G.L. 28-7-13 (11) provides that, it is an Unfair Labor Practice to fail to implement an Arbitrator's Award, unless there is a stay of its implementation by a court of competent jurisdiction, or upon the removal of any such stay. In this case, the only Arbitration Award

found that the issue submitted to Arbitration was not arbitrable. Therefore, there was no finding made as to the substantive nature of the underlying grievance.

The plain language of the afore-referenced statute clearly references only *Arbitrator's Awards*, not decisions of Personnel Appeals Boards, third level grievances or any other form of dispute resolution. As much as the Board sympathizes with the Union's dilemma in this case, the Board is limited to the plain language of the statute, and cannot re-write the statute because of what it may perceive to be an inequitable situation. Therefore, the Board has no authority to convert the City's alleged repudiation of its contract to an Unfair Labor Practice under R.I.G.L. 28-7-13 (11) because, to do so, would require this Board to impermissibly expand the plain meaning of said statute.

The Board also notes that, although the Union has argued that the Employer has clearly repudiated the terms of the contract, this is an issue for an Arbitrator to decide. The Board has no jurisdiction to determine whether the contract has been violated or repudiated; such a determination is the sole province of an Arbitrator. As such, the Board does not have subject matter jurisdiction in this case.

The Union presented no evidence that the Employer refused to bargain over anything; therefore, there can be no finding that the Employer violated R.I.G.L. 28-7-13 (6). Finally, although the Board is tempted to find that the Employer's conduct violates R.I.G.L. 28-7-13 (10), to do so would require the Board to find that it is an Unfair Labor Practice to fail to implement the decision of the City Personnel Appeals Board. That, of course, would require an "end-run" around R.I.G.L. 28-7-13 (11), something that this Board will not do. Had the legislature intended to include lower level dispute resolution decisions in R.I.G.L. 28-7-13 (11), it would have done so.

FINDINGS OF FACT

1) The Respondent is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.

2) The Union is a labor organization, which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection and, as such, is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.

3) The Union is the exclusive bargaining representative for all full-time police officers employed by the City of Woonsocket, excluding the Chief of Police. At all times

pertinent to this Complaint, there existed a Collective Bargaining Agreement. Contained within the Agreement are certain provisions pertaining to civilian dispatch overtime.

4) Sgt. Glen Hebert, pursuant to the terms of the Collective Bargaining Agreement, signed up for civilian dispatch overtime, but was by-passed on multiple occasions because he holds the rank of Sergeant. As a result, Sgt. Hebert filed a grievance and began pursuing it through the steps of the Grievance Arbitration Procedure.

5) The grievance was ultimately upheld by the Woonsocket Personnel Appeals Board, which directed that Sgt. Hebert submit documentation as to the amount of overtime he had lost. Sgt. Hebert did submit the documentation, and then presented a bill to the City to pay him for the loss of back pay from the result of being by-passed for the overtime.

6) The City refused to pay the bill and filed a demand to arbitrate the matter. The Union raised the issue of arbitrability, questioning whether the City could arbitrate a dispute that wasn't between the Union and the City, but was essentially a dispute between the City Council and the Personnel Appeals Board.

7) The Arbitrator ruled that the matter was not arbitrable, which made the decision of the Personnel Appeals Board final. The bill was resubmitted to the City for payment, and the City continued to refuse to pay Sgt. Hebert. Thereafter, the Union filed its Charge with the Board.

CONCLUSIONS OF LAW

1) The Board does not have subject matter jurisdiction to hear this matter because it alleges a violation or repudiation of the collective bargaining agreement, an area which is within the sole jurisdiction of an arbitrator to decide.

2) R.I.G.L. 28-7-13 (11) is limited to Arbitrator's Awards, and does not apply to the decision of the Woonsocket Personnel Appeals Board.

3) The Union has not proven, by a fair preponderance of the credible evidence, that the Employer has committed a violation of R.I.G.L. 28-7-13 (6) or (10).

ORDER

1) The Unfair Labor Practice Charge and Complaint in this matter are hereby dismissed.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank J. Montanaro, Member

Joseph V. Murvey, Member

Gerald S. Goldstein, Member

Ellen L. Jordan, Member

John R. Capobianco, Member

Elizabeth S. Dolan, Member

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

Dated: July 31, 2001

By: Joan N. Brousseau, Administrator