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-5818
TOWN OF CHARLESTOWN	:	

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 Town of Charlestown (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated August 31, 2006 and filed on September 1, 2006 by the Teamsters Local 251 (hereinafter "Union").

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

> Since on or about August 1, 2006, Respondent has unilaterally changed the working conditions of bargaining unit employees by: (1) removing regular and overtime work from the Town Hall Custodian and the Clerk; (2) reducing the Clerk to part-time; and (3) adding additional duties/responsibilities to the Treasurer Assistant(s).

Following the filing of the Charge, an informal hearing was scheduled to be held on September 27, 2006, but was postponed several times at the request of both parties, and was ultimately held on January 12, 2007. On the day of the informal hearing, the Employer's representative hand delivered a written Motion to Dismiss. The Union filed an Objection to the Motion to Dismiss on January 29, 2007. By letter dated March 21, 2007, the Board's Administrator notified both parties that the members of the RI State labor Relations Board: "...made a determination that the Employer's Motion to Dismiss shall be denied without prejudice and that a Complaint shall issue in this matter." The Employer submitted a written Answer to the Unfair Labor Practice Charge, as well as a Motion to Dismiss and Memorandum in Support of Motion to Dismiss. On

March 21, 2007, the Board issued its Complaint. The Employer's Answer to the Complaint was dated March 28, 2007. The matter was heard formally on September 28, 1007 and on December 13, 2007. 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. Both the Union and the Employer submitted their Briefs on January 30, 2008.

POSITION OF THE PARTIES

In support of its allegations, the Union presented the testimony of Mr. Steven Labrie, Business Agent for Local 251 Teamsters, and Ms. Maurizia Luzzi, Fiscal Clerk, in the Town of Charlestown; and submitted several documents including: (1) The Collective bargaining Agreement dated 7/1/05-6/30/08 (2) The Westerly Sun Vacancy notice for the Town of Charlestown Treasurer's Assistant and (3) A Memo to Maurizie Luzzi from Gail Wilcox, Treasurer in the Town of Charlestown, dated 8/10/06. The Employer presented the testimony of Mr. Richard J. Sartor, former Town Administrator in Charlestown, as well as the following documents in support of its defense: (1) Supplemental budget information for FY06-07, (2) Charlestown Town Charter, (3) Memo to the Budget Commission from Mr. Richard Sartor dated 2/2/406, and (4) Recruitment and Selection Procedure for the Treasurer's Assistant Position dated June 2006. At the commencement of the formal hearing on September 18, 2007, the Union indicated that it would not be pursuing allegations relating to the Town Hall Custodian or the Town Hall Clerk. The only allegations pursued were those pertaining to the Treasurer's Assistant. (TR. 9/18/07. pg. 4) The Union alleged that the Employer made unilateral changes to the position of Treasurer's Assistant.

FACTUAL SUMMARY

The evidence on this case established that Maurizia "Margaret" Luzzi was hired by the Town of Charlestown as a full-time Fiscal Clerk, on February 28, 2001. At the time of her hiring, the Town's Finance Department consisted of a Treasurer (Zallee Rosso), a Treasurer's Assistant (Tina Mascaro), a full-time Fiscal Clerk (Ms. Luzzi), and a part-time Fiscal Clerk (Barbara Smith).

In approximately 2003, Ms. Smith retired from her position as part-time Fiscal Clerk and the Town hired two (2) part-time employees: Jeanna Krukowski and Linda Andersen. According to Ms. Luzzi's testimony, Ms. Anderson only lasted a short time in the department and when she left the Town's employment, Ms. Krukowski was given more hours, to about 26 hours per week. By 2006, Ms. Rosso had retired as Treasurer and Ms. Gail Wilcox was serving in that role.

In March 2006, Ms. Luzzi learned from Ms. Wilcox that some changes were planned for the Treasurer's office, specifically, that new financial accounting software was going to be implemented and that Ms. Luzzi's job as Fiscal Clerk would be scaled back from full-time to part-time and that a second full-time Treasurer's Assistant position would be created. Ms. Luzzi testified that Ms. Wilcox stated that when the new position opened up, "everyone would be allowed to be interviewed" and that there would be an ad in the paper for applications. (TR. 9/18/07 pg. 51) Ms. Luzzi also testified that when she inquired of Ms. Wilcox as to whom Ms. Wilcox might select for the job if both Ms. Luzzi and Ms. Krukowski scored equally on testing; Ms. Wilcox responded that she would pick Ms. Krukowski. Ms. Luzzi also claimed that during that conversation, Ms. Wilcox stated to Ms. Luzzi, "your husband has benefits, doesn't he"? Ms. Luzzi stated that this comment concerned her so greatly that she called her Union representative for assistance.

As a result of her call to the Union, Ms. Luzzi attended a meeting sometime in April with Mr. Labrie (Union Representative), Mr. Richard Sartor (Charlestown Town Administrator), and Ms. Wilcox, to discuss her concerns. Ms. Luzzi testified that when she repeated Ms. Wilcox's alleged statements concerning whom she would pick and the reference to Ms. Luzzi's husband, Ms. Wilcox denied making the statements. In that meeting, Mr. Sartor indicated that the Town was planning to implement a new financial accounting software and that the duties of the Fiscal Clerk would thereby lessen considerably and that the Town would be needing the services of a second Treasurer's Assistant. Shortly after the meeting, the Town ran an advertisement for the new position. When queried on whether the duties set forth in the advertisement were those which

she performed in her position as Fiscal Clerk, Ms. Luzzi testified that some of the duties were the same, but that some were not. Specifically, she testified that did not perform a complete budget analysis of financial data, she did not supervise any employees, she did not perform any ad hoc projects, and she did not meet with the town's financial auditors. (TR. pgs. 60-61)

Ms. Luzzi testified that at the April meeting, Mr. Sartor told her that in order for her to learn everything that she would need for this new job could take months or years because it was a more advanced position. Nevertheless, according to Ms. Luzzi, Ms. Wilcox and Mr. Sartor agreed to send Ms. Luzzi to some classes to learn more about the duties that would be required of the new Treasurer's Assistant's position. She took one Excel computer class sometime between April and August when the test for the new position was administered. In September 2006, Ms. Luzzi learned that she was not selected for the new position. (Also in September, this ULP was filed with the Board) Ms. Luzzi also learned at some point, that Ms. Krukowski was selected for the new Treasurer's Assistant position. From October 2006 to approximately mid-December 2006, Ms. Luzzi was out from work, due to illness. In January 2007, Ms. Luzzi's position as full-time Fiscal Clerk was reduced to part-time status. She testified that after January 2007, her desk was positioned in such a way so that she could see Ms. Krukowski's work and that much of the work of the this position was the same as performed by Ms, Luzzi in her previous full-time position. She also testified that as of September 2007, the Town had not yet implemented the new financial software package. On cross-examination, Ms. Luzzi acknowledged that she had failed the written examination for the new position of Treasurer's Assistant.

Mr. Sartor was the Town Administrator during 2006, until the day after the November elections. He testified that Ms. Wilcox recommended that the Finance Department be restructured as was ultimately accomplished. The recommendation was vetted by the Town's Citizen Budget Commission, forwarded to the Town Council for adoption in the budget, and ultimately

submitted to the voters at the Financial Town Referendum.[1] Mr. Sartor also testified that during the April 2006 meeting, Mr. Labrie asked that the Town have the employment examination only for current employees and then only if none passed, to open the test to additional candidates. Mr. Sartor denied this request. Mr. Sartor also stated that Mr. Labrie asked for additional training for Ms. Luzzi. Mr. Sartor testified that he agreed to this request and asked Ms. Wilcox to arrange for some training. Mr. Sartor further testified that the examination given for the position was a commercial examination purchased by the Town and was administered on August 31, 2006. Mr. Sartor testified that the highest grade on the written examination was 80 (out of 100) and that Ms. Luzzi scored 35. Additional test scores form other applicants were 26, 62 and 67. The established passing grade for the examination was 60, as established by the testing company. Therefore, Ms. Luzzi did not pass the examination.

Mr. Sartor further testified that while several of the fiscal office's duties, including accounts receivable, accounts payable, payroll, and benefits did have components that could be performed and were performed by the Fiscal Clerk, the tasks for each of those areas performed by the new Treasurer's Assistant position were far more sophisticated that required of the Fiscal Clerk's position. (See discussion at TR. 12/13/07 from pgs. 130-139 inclusive)

DISCUSSION

The Employer argues that the complaint should be dismissed for a variety of reasons: (1) That the Town took no actions between August 1, 2006 and August 31, 2006, as alleged; (2) That there has been no net effect to the Union; that there are still the same number of full-time equivalent (FTE) positions; and (3) The Union did not object to the contents of the job description for the new Treasurer's Assistant, nor request bargaining, when it had a meeting with Town officials in April 2006 and therefore, the Union has waived its rights (4) That this

[1] Employer's Exhibit # 3 is memorandum from Richard Sartor to the Budget Commission dated February 24, 2006. This document sets forth a variety of proposed changes to Town personnel, including those in the Treasurer's office. It states in pertinent part, "The position of Treasurer's Assistant will be filled by competitive examination consistent with the bargaining unit contract. Employer's Exhibit #1 is a "Supplemental Information" sheet from the 2006-2007 budget. It states in pertinent part: "The change in position classifications is due to a need for staff support in accounting functions versus clerical work, the need for data collection, and analysis and ad hoc project assistance that requires accounting expertise and computer experience including spreadsheets, word processing, database maintenance and report writing."

Board has no jurisdiction to hear this complaint because the issue is a matter of contract interpretation which is not within the Board's province.

The Union argues that there was "obvious" Union animus involved and that the Town attempted to weaken the Union by removing Ms. Luzzi, a supposedly strong Union supporter and replaced her with Ms. Krukowski, a supposedly anti Union supporter. The Union also argues on page one of its Brief that the Town violated the provisions of the parties' CBA by failing to post the new full-time Treasurer Assistant's position before advertising it to the public.

The Union claims that in 2005, certain town employees organized a decertification campaign in an attempt to remove the current Bargaining Agent. That effort supposedly failed and according to the Union's Brief, Ms. Luzzi was "identified as a strong Union supporter." The Union cites pages 5 and 17 of the September 2007 transcript for support of these allegations. However, when one reviews these transcript pages, it is apparent that these citations are to the Union Counsel's opening argument at hearing and not to any *evidence* adduced at hearing to support these bare assertions. Ms. Luzzi's testimony is completely devoid of any discussion at all concerning her feelings one way or another relative to the Union. The only mention made of the Union is that Ms. Luzzi felt nervous about her position and called Mr. Labrie for advice. In addition, the record is likewise completely bereft of any evidence supporting a charge that Mr. Krukowski was an anti-Union supporter or that management's representatives, Ms. Wilcox or Mr. Sartor, harbored any Union animus. The Board is disturbed by the Union's allegations of Union animus under the circumstances presented. To prominently feature this argument on page 1 of a Post-Hearing Brief, when the record is devoid of any evidence supporting the charge, is demeaning to the members of this Board and to all the parties involved in this case. In fact, the only testimony relative to a decertification was given by Mr. Sartor. He testified however that he was unaware that there had been a decertification petition and that he would not want the Teamsters to be decertified because he thought he had a good working relationship with them! He testified that he was not aware of any actions by Margaret Luzzi which either supported or opposed the Union.

This testimony remained completely unchallenged by the Union on cross examination. Charges of Union animus should not be tossed around lightly, as the same is a serious charge. The Union has done nothing but weaken its credibility by making such a serious charge, and then wholly failing to produce any evidence whatsoever in support.

The Union also argues that the Town had an absolute obligation to bargain with the Union concerning the addition of a second full-time Treasurer's assistant and the reduction in hours of work for the full-time Fiscal Clerk. The Employer argues that the parties had already bargained about the Town's rights to hire and re-organize and that the terms and conditions of this are contained in the parties' Collective Bargaining Agreement. The Union relies on a prior Board decision with the Newport School Committee. However, the Union's reliance on that case is misplaced. In Newport, the School Committee failed to consult the Union about the creation of *new* position. In this case, the position of Treasurer's Assistant already existed and the parties had already bargained over the terms and conditions of employment for this position. The Town was simply adding a second employee with the same title. No bargaining was required to add another employee to an existing title.

Surprisingly, the Union also argued in its Brief that the Town violated the parties' Collective Bargaining Agreement, and that the violation constitutes an unfair labor practice. The Employer rightfully argues that the issue of whether a contract violation occurred is not an issue within the Board's jurisdiction; that is for an arbitrator to decide. This hands-off approach to contract violations is well-settled Board jurisprudence. A recent example of the Board's reminder to parties concerning the Board's jurisdiction is found in ULP-5399 Town of West Warwick, decided July 21, 2001.

The Union argues that it did not waive its right to bargaining because it was not given a meaningful opportunity to bargain before the implementation so the re-organization. However, the evidence established that once Ms. Luzzi learned of the proposal to re-organize her department by adding a new full time Assistant Treasurer and reducing the hours of a Fiscal Clerk, she notified her

Union representative who immediately set up a meeting with the Town Administrator and the Town Treasurer. By that time, in early April, the proposal had been discussed by the Town's Budget Commission, and still needed to be adopted by the Town Council and then referred to the Public Referendum for voting. The public referendum did not take place until the first week in June. The evidence established that upon the Union's request, the Town Administrator did meet and discussed the town's plans to re-organize the functions in the Treasurer's office. The Union was fully aware of the Town's plans no later than this meeting. While the evidence established that Mr. Labrie asked that the Town limit the competitive examination to Union members, (which request was refused by Mr. Dartor) Mr. Labrie did not take any further action. He did not tell the Administrator that the Union felt that bargaining was necessary in any way, shape, or form to undertake the reorganization; the Union did not request bargaining over the nature of the test materials or the required passing score any other topic for that matter.[2] Thus, to the extent that bargaining may have bargaining may have been required; in light of the contract provisions (which we decline to interpret) the Union wholly failed to request bargaining and has waived any rights to bargain.

FINDINGS OF FACT

1) The Town of Charlestown 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) Early in 2006, the Employer submitted a proposal to re-organize the Town's Treasurer's office to the Budget Commission. The proposal would add a

[2] Finally, the evidence establishes that the ultimate selection of Ms. Krukowski over Ms. Luzzi was not related to Union animus. Ms. Luzzi regrettably failed the written examination and did not advance to the interview process. This is simply a case of an unhappy employee who wanted a promotion, but failed to earn it.

second Treasurer's Assistant position and reduce the hours of the Fiscal Clerk- resulting in the same number of bargaining unit positions.

4) In early April after learning of the proposal from Fiscal Clerk Maurizia "Margaret" Luzzi, Steven Labrie, and the Union's Business Agent requested a meeting with Town officials to discuss the plan. At the meeting, Mr. Labrie asked the Town Administrator to consider administering the competitive examination only to existing bargaining unit employee. Mr. Sartor did not agree. Mr. Labrie also asked that Ms. Luzzi be given some additional training, to which Mr. Sartor agreed.

5) Mr. Labrie did not tell Mr. Sartor that the Union believed that negotiations were necessary to either establish the position or to implement the testing and promotional procedures.

6) Mr. Luzzi applied for the Treasurer's Assistant position and took a written examination, which she failed with a score of 35 (out of 100). After failing the written examination, Ms. Luzzi was not afforded an interview and she was notified in September 2006 that did not receive the position of Treasurer's Assistant. Another Fiscal Clerk, Ms. Krukowski, received the new Treasurer's Assistant position.

7) Ms. Luzzi was out of work from October 2006 to mid-December 2006, due to illness. In January, when she returned to work, her position of Fiscal Clerk was reduced from full-time status to part-time status.

CONCLUSION OF LAW

1) The Union has not proven, by a fair preponderance of the credible evidence, that the Employer 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.

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IN THE MATTER OF	:	
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-AND-	:	CASE NO: ULP-5818
TOWN OF CHARLESTOWN	:	

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. 5818 dated **September 18, 2008**, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **September 18, 2008**.

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

Dated: September 18, 2008

By: _____
Robyn H. Golden, Administrator

ULP-5818

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank Montanaro, Member

Gerald S. Goldstein, Member

Ellen L. Jordan, Member

John R. Capobianco, Member

Elizabeth S. Dolan, Member

JOSEPH MULVEY ABSTAINED FROM VOTING IN THIS MATTER

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

Dated: September 18, 2008

By:
Robyn H. Golden, Administrator

ULP- 5818