**STATE OF RHODE ISLAND**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**(FILED: May 6, 2022)**

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| **CITY OF PROVIDENCE,** ***Plaintiff,*** | : | |
| **v.** | : | **C.A. No. PC-2018-5355** |
| **RHODE ISLAND STATE LABOR RELATIONS BOARD and RI COUNCIL 94, AFSCME, LOCAL UNION 1339,** ***Defendants.*** | : | |

**DECISION**

**NUGENT, J.** The matter before the Court is an administrative appeal from a decision of the Rhode Island State Labor Relations Board (the Labor Board) involving an unfair labor practice dispute, Case No. ULP-6207, between the City of Providence (the City) and RI Council 94, AFSCME, AFL-CIO, Local Union 1339 (the Union). The City appeals the Labor Board's conclusion that it violated the State Labor Relations Act, G.L. 1956 § 28-7-13. Jurisdiction is pursuant to G.L. 1956 §§ 28-7-29 and 42-35-15.

**I**

**Facts and Travel**

The facts in this case revolve around employees who work for the Office of Human Resources at the Providence Public School District (PPSD). (Compl. ¶ 1.) The City, on behalf of PPSD, disciplined two employees, Charlene Vela (Vela) and Karen Lanzieri (Lanzieri), for workplace harassment and bullying of fellow Union member Sharon Carmody (Carmody). *Id.* ¶ 15. Both Vela and Lanzieri are members of Local 1339, the Union for clerks working for the

PPSD. In fact, Vela is the current president of Local 1339, and Lanzieri is the current secretary. *Id.* ¶ 7.

Both Vela[1] and Lanzieri[2] received pre-disciplinary letters detailing the incidents relevant to the purported harassment and bullying. PPSD held pre-disciplinary hearings concerning the matters and then issued written warnings to both Vela and Lanzieri for creating and contributing

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[1] The charges contained in Vela's pre-discipline warning included:

(1) Placing in the mailbox of fellow Union member Sharon Carmody a copy of a page from a Webster's Dictionary on which the word "minimal" and its definition had been highlighted, to emphasize to Carmody that Vela believed Carmody was doing very little work in the area of workers' compensation.
(2) Telling a new staff member that Carmody was a "snitch."
(3) Telling other staff members in the breakroom to stop talking when Carmody entered the room and saying "shh" and "close her ears."
(4) Slamming a door in the administration building to express displeasure with the receptionist.
(5) Saying "if they can't speak English, too bad" about visitors within earshot of a Spanish-English bilingual employee.
(6) Providing to a substitute clerk without authorization of her supervisor a list of substitute clerks that included personal information.
(7) Causing the absence of Carmody and thereby disrupting effective and efficient operations of the Office of Human Resources.
(8) Creating a hostile work environment for multiple members of the Human Resources staff.

Rhode Island State Labor Relations Board, No. ULP-6207, Decision and Order (Board Order), Joint Ex. 4.

[2] The charges contained in Lanzieri's pre-discipline warning included:

(1) Using the term "Swamp Girl" to refer to Carmody.
(2) Telling a new staff member that Carmody was a "snitch."
(3) Telling other staff members in the breakroom to stop talking when Carmody entered the room and saying "shh" and "close her ears."
(4) Allegedly telling Carmody "when I get cocky with you, you'll know about it" and cursing at Carmody.
(5) Allegedly stating that she "will bitch about" Carmody's sister, Joanne Micheletti (Micheletti), the Union's former president in front of Carmody.
(6) Allegedly engaging in multiple conversations about the criminal charges pending against Micheletti because Carmody felt targeted by these conversations.
(7) Creating a Facebook group for clerical employees for the purpose of encouraging them to attend the next court date of Micheletti.
(8) Engaging in activities that constitute bullying in the workplace and misconduct.
(9) Creating a hostile work environment for multiple members of the Human Resources staff.

Board Order, Joint Ex. 5.

to a hostile workplace. Following the City's disciplinary action, the Union filed an unfair labor practice charge with the Labor Board on July 14, 2017, alleging that the City violated sections 1, 3, and 10 of the State Labor Relations Act by disciplining Vela and Lanzieri for protected concerted Union activity. (Compl. ¶ 6.)

The Labor Board conducted hearings spanning three days of testimony. The Labor Board heard the testimony of Vela, Lanzieri, Carmody, and several other employees of the Office of Human Resources. The Labor Board also heard the testimony of Ray Lambert (Lambert), PPSD's Equal Employment Opportunity Officer. All witnesses testifying before the Labor Board were or are union members of either Local 1339 or Local 1033, with the exception of Lambert.

All witnesses testified about the relevant background and relationships between Vela, Lanzieri, and Carmody. The tale began with the Union's former president, Joanne Micheletti (Micheletti). In March 2016, Micheletti's sister, Carmody, was hired as a substitute clerk within the Office of Human Resources at PPSD. Board Hr'g Tr. Vol. 2, 219:18-220:3, Dec. 14, 2017 (Board Hr'g Tr. Vol. 2). As a substitute clerk, and later a permanent clerk, Carmody worked with both Lanzieri[3] and Vela[4] within the Office of Human Resources at PPSD. *Id.* at 220:15-221:2. At the time of Carmody's hiring, Lanzieri and Vela were both active and long-standing members of the Union. Board Hr'g Tr. Vol. 1, 10:2-17; 97:22-98:13, Sept. 19, 2017 (Board Hr'g Tr. Vol. 1). In October 2016, Micheletti left the Union and her position as president after receiving a promotion to a non-union administrator position within PPSD. Board Hr'g Tr. Vol. 1 at 72:6-18. Carmody testified that she began to experience "hostil[ity]" from Vela and Lanzieri following Micheletti's departure. Board Hr'g Tr. Vol. 2 at 222:20-23. Carmody described several incidents as

[3] Lanzieri is the clerk responsible for substitute teachers at PPSD. Board Order 8.
[4] Vela is the Senior Chief Clerk for the Office of Human Resources at PPSD. Board Order 3.

contributing to this hostile environment at the Office of Human Resources. Carmody described how employees would make derogatory comments about Micheletti, and when Carmody would express her discomfort with these comments, Vela and Lanzieri would instruct Carmody to "block [her] ears." Board Hr'g Tr. Vol. 2 at 223:3-9.

Six months later, in April 2017, Micheletti was arrested and charged with embezzlement of Union funds during her tenure as president. Board Hr'g Tr. Vol. 1 at 36:6-22. Following Micheletti's arrest, Carmody described an increasingly hostile working environment, with bullying and harassment primarily instigated by Vela and Lanzieri. Board Hr'g Tr. Vol. 2 at 224:21-225:8. Carmody testified that Lanzieri called her a "snitch" and that an unidentified co-worker may have referred to her as "swamp girl." *Id.* at 233:14-234:5. Carmody also stated that Lanzieri created a Facebook page specifically designed to disparage Micheletti and harass Carmody. *Id.* at 230:8-17. Finally, Carmody described an altercation with Vela in which the parties argued over the amount of work Carmody contributed to workers' compensation matters within the Office of Human Resources. *Id.* at 226-228.

This argument, regarding Carmody's assignments for workers' compensation, originated in a conversation between Vela and Annette Stimma (Stimma) at the March 2017 monthly meeting of the executive board of the Union. Board Hr'g Tr. Vol. 1 at 17:16-18:16. At the time, Vela was president and Stimma was on the Union's executive board. *Id.* at 9:18-20; 13:12-18. Stimma worked within the Office of Human Resources at PPSD, primarily processing workers' compensation claims. *Id.* at 19:7-11. Stimma had been instructed by Jennifer Lepre (Lepre), Chief of Human Capital at PPSD, to share her workload with Carmody and to train Carmody on some of the aspects of workers' compensation claims. *Id.* at 21:20-22:16. At the March 2017 executive board meeting, Stimma communicated to the other executive board members that she felt

overworked and that her position should be upgraded to a higher pay grade. *Id.* at 18:9-16. Vela responded that Stimma should consider the potential consequences of training Carmody to do clerical work for workers' compensation claims. *Id.* at 18:17-19:6. Vela testified that Lepre, who supervised Stimma, had expressed dissatisfaction with Stimma's work. *Id.* at 23:7-13. Vela testified that she warned Stimma that if Stimma trained Carmody too well, Lepre might replace Stimma with Carmody. *Id.* at 18:17-23. Stimma responded to Vela's warning by stating that she was only giving Carmody "minimal" training and work relating to workers' compensation. *Id.* at 19:2-6. Multiple eyewitnesses, including Lanzieri, confirmed Vela's account of the March 2017 meeting and testified that they, and other executive board members, had expressed support for Vela's admonition to Stimma. *Id.* at 101:10-102:5; Board Hr'g Vol. 2 at 136:13-137:17.

Following the March 2017 executive board meeting, Vela testified that she had a conversation with Carmody and Micheletti during lunch on April 6, 2017. Board Hr'g Vol. 1 at 27:12-21. Vela testified that Micheletti requested Vela, as Union president, to assist Carmody and another clerk to get a salary increase because they were doing work above their pay grade. *Id.* at 27:22-28:2. Vela testified that she agreed to assist Carmody and the other clerk to get the salary increase. *Id.* at 28:2-5. Vela testified that during the conversation she commented to Carmody that she saw that Carmody was primarily doing assignments related to workers' compensation, assignments above her pay grade. *Id.* at 28:6-18. Vela testified that she told Carmody that Stimma had told Vela that Carmody was doing only a "minimal" amount of workers' compensation work and that Stimma had given Carmody "minimal" training. *Id.* at 29:5-10.

The following day at work, April 7, 2017, Vela testified that Stimma confronted Vela about the "minimal" work comment. *Id.* at 30:6-11. Stimma demanded to know why Vela had told Carmody that Stimma had said that Carmody was doing "minimal" work and denied ever making

such a statement at the March 17 executive board meeting. *Id.* at 30:11-16. Carmody, overhearing the discussion, joined the argument. *Id.* at 30:17-23. Vela testified that she told both Carmody and Stimma that Stimma had, in fact, made the comment, and that other executive board members heard Stimma state that she gave Carmody the "least" amount of workers' compensation work. *Id.* at 30:21-23. Vela testified that Carmody grew angry at Vela's switch from "minimal" to "least" as a qualifier. *Id.* at 30:23-31:2. Vela testified that she was attempting to explain to Carmody that Carmody could file a grievance with the Union for doing work above her pay grade. *Id.* at 31:3-9. Vela testified that Carmody got upset and the altercation ended. *Id.* at 31:10-15.

Following the April 7 argument, Vela acquired a copy of Webster's Dictionary and made photocopies of the page that included the entry for the word "minimal." *Id.* at 31:16-19; Board Order, Joint Ex. 3. Vela then highlighted the entry for "minimal" and gave a copy of the highlighted page to Stimma while Stimma was at her desk. Board Hr'g Vol. 1 at 31:19-24. Vela also left a copy of the highlighted page in Carmody's mailbox, having failed to find Carmody at her desk. *Id.* at 32:1-2.

Carmody testified that she found the dictionary entry in her mailbox a few days later. Board Hr'g Vol. 2 at 227:17-228:11. The definition of "minimal" included, in part: "relating to or being a minimum, the last possible (a victory won with ~ loss of life) b: barely adequate (a ~ standard of living)." Board Order, Joint Ex. 3. Carmody testified that she interpreted the copy of the dictionary page to constitute a death threat because a portion of the definition included the phrase "loss of life." Board Hr'g Vol. 2 at 245:14-17.

On April 24, 2017, Carmody reported all of these incidents to Lambert, PPSD's Equal Employment Opportunity Officer, claiming that the dictionary copy constituted a life-threatening message and requesting a full investigation of the harassment she experienced within the Office of

Human Resources at PPSD. *Id.* at 177:7-10; 231:19-232:11. On April 25, 2017, Carmody presented a doctor's note indicating that she was suffering from workplace stress and took leave for over a month. *Id.* at 234:8-20. Lambert, after hearing of Carmody's experiences, conducted an internal investigation in which he interviewed Vela, Lanzieri, and several other PPSD employees. *Id.* at 178:4-12. The next day, Vela and Lanzieri had separate meetings with Lambert in which Lambert and other employees informed the pair that Carmody had accused them of bullying and harassment. *Id.* at 178:13-16.

After the conclusion of the three days of hearings, the Labor Board issued a thorough decision in which it made several findings of fact, including that the Webster's Dictionary incident originated in a Union executive board meeting discussion regarding Stimma's working conditions. Board Order 29. The Labor Board also made findings of fact that discredited the other charges against Vela and Lanzieri. The Labor Board found that other employees within the Office of Human Resources slammed doors without receiving discipline, a charge directed toward Vela. *Id.* at 32. The Labor Board found that the City failed to present corroborating evidence or testimony that either Vela or Lanzieri had ever called Carmody a "snitch" or "swamp girl." *Id.* The Labor Board also found that the City failed to present evidence of a policy that prohibits employees from discussing Union matters while at work. *Id.* Finally, the Labor Board found that neither the City nor Carmody had ever viewed the Union's Facebook page and therefore could not demonstrate that the Facebook page harassed or targeted Carmody. *Id.*

Ultimately, the Labor Board found that Vela and Lanzieri's conduct toward Carmody constituted protected and concerted union activity. *Id.* Accordingly, the Labor Board concluded that PPSD's discipline of Vela and Lanzieri violated § 28-7-13, which prohibits discipline of such conduct. *Id.* The City timely appealed the Labor Board's decision to this Court on July 26, 2018,

alleging that the Labor Board's decision was arbitrary, capricious, and erroneous as a matter of law, and therefore should be vacated. (Compl. ¶¶ 18-35.) This Court heard oral argument from both sides on January 28, 2022.

## II

## Standard of Review

This Court's review of an appeal from a decision of an administrative agency is governed by the Rhode Island Administrative Procedures Act (APA), § 42-35-15. *See Rossi v. Employees' Retirement System*, 895 A.2d 106, 109 (R.I. 2006). Under the terms of the APA, appellate jurisdiction in the Superior Court is conferred by § 42-35-15 to review final orders and certain interlocutory orders of state administrative agencies not exempted explicitly from the provisions of the Act. Section 42-35-15 provides, in pertinent part:

> "(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, inferences, conclusions, or decisions are:
>
> > "(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 of 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(g).

Our Supreme Court has ruled that "'[t]his Court does not substitute its judgment for that of the agency concerning the credibility of witnesses or the weight of the evidence concerning questions of fact.'" *Beagan v. Rhode Island Department of Labor & Training*, 162 A.3d 619, 626 (R.I. 2017) (quoting *Tierney v. Department of Human Services*, 793 A.2d 210, 213 (R.I. 2002)).

When this Court reviews questions of fact, it "may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are clearly erroneous." *Guarino v. Department of Social Welfare*, 122 R.I. 583, 588, 410 A.2d 425, 428 (1980) (internal quotation omitted); *see Environmental Scientific Corp. v. Durfee*, 621 A.2d 200, 206 (R.I. 1993); *Liberty Mutual Insurance Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991) (reviewing court is "not privileged to assess the credibility of witnesses and may not substitute [our] judgment" concerning the weight of the evidence on questions of fact).

Importantly, this Court's review is limited to the record before the agency. Section 42-35-15(f) ("[t]he review shall . . . be confined to the record"). It would exceed this Court's authority under the APA to consider extraneous evidence. *Nickerson v. Reitsma*, 853 A.2d 1202, 1206 (R.I. 2004). Likewise, this Court cannot vacate or modify a penalty in an effort to do substantial justice between the parties. *Id.* Where there is legally competent evidence in the record to support the agency's decision, this Court must uphold that decision. *Id.*; *see Barrington School Committee v. Rhode Island State Labor Relations Board*, 608 A.2d 1126, 1138 (R.I. 1992). "Legally competent evidence (sometimes referred to as 'substantial evidence') has been defined as 'relevant evidence that a reasonable mind might accept as adequate to support a conclusion[; it] means an amount more than a scintilla but less than a preponderance.'" *Town of Burrillville v. Rhode Island State Labor Relations Board*, 921 A.2d 113, 118 (R.I. 2007) (quoting *Center for Behavioral Health, Rhode Island, Inc. v. Barros*, 710 A.2d 680, 684 (R.I. 1998)). Thus, this Court may reverse factual conclusions of administrative agencies "'only when they are totally devoid of competent evidentiary support in the record.'" *Baker v. Department of Employment and Training Board of Review*, 637 A.2d 360, 363 (R.I. 1994) (quoting *Milardo v. Coastal Resources Management Council*, 434 A.2d 266, 272 (R.I. 1981)). Questions of law, however, are not binding upon a

reviewing court and may be freely reviewed to determine what the law is and its applicability to the facts. *Carmody v. Rhode Island Conflict of Interest Commission,* 509 A.2d 453, 458 (R.I. 1986).

## III

## Parties' Arguments

The Labor Board determined that the City disciplined Vela and Lanzieri for engaging in protected union activity because all of the alleged disputes concerning Carmody arose from issues relating to the Union. Board Order 20-24; 25-28. Specifically, the Labor Board found that, by disciplining Vela and Lanzieri, the City violated §§ 28-7-13(3) and 28-7-13(10) of the State Labor Relations Act (SLRA). *Id.* at 32.

On appeal, the City and the Union disagree about the genesis of the disciplinary action initiated by the City, just as they did before the Labor Board. The City maintains that it disciplined Vela and Lanzieri for workplace bullying and harassment of Carmody. (Compl. ¶¶ 18-35.) The City argues that the Labor Board's finding that the City violated § 28-7-13 was factually and legally unsupported. *Id.* ¶ 15. The Union argues that the Labor Board correctly determined that Vela and Lanzieri engaged in protected and concerted union activity while interacting with Carmody. (Resp't's Mem. 4.) Therefore, the Union argues that the Labor Board properly found that the City's disciplinary actions were in direct contravention of §§ 28-7-13(3) and 28-7-13(10) of the SLRA.[5] (Resp't's Mem. 4.)

[5] The City asserts that the Labor Board made no finding that the City violated section 1 of the SLRA, but notes that the Labor Board did find that the City had violated sections 3 and 10 of the SLRA, and specifies that it is this ruling that the City is appealing. (Compl. ¶ 6.)

## IV

## Analysis

The SLRA protects the rights of employees to engage in concerted union activity. Section 28-7-12.[6] Section 28-7-13 prohibits employers from interfering with union activity or restraining an employee's right to participate in union activity. The statute states in pertinent part that:

"It shall be an unfair labor practice for an employer to:

" . . .

> "(3) Dominate or interfere with the formation, existence, or administration of any employee organization or association, agency, or plan which exists in whole or in part for the purpose of dealing with employers concerning terms or conditions of employment, labor disputes, or grievances, or to contribute financial or other support to any such organization, by any means . . . .
>
> ". . .
>
> "(10) Do any acts, other than those already enumerated in this section, which interfere with, restrain or coerce employees in the exercise of the rights guaranteed by § 28-7-12." Section 28-7-13.

Accordingly, discharge or discipline is an unfair labor practice if the employee's protected conduct is a substantial or motivating factor for the action or is based in whole or in part on anti-union animus. *N.L.R.B. v. Wright Line*, 251 N.L.R.B. 1083 (1980), *enforced* 662 F.2d 899, 902

[6] In its entirety, § 28-7-12 (Rights of employees) reads:

> "Employees shall have the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion from any source[; but n]othing contained in this chapter shall be interpreted to prohibit employees and employers from conferring with each other at any time; provided, that during that conference there is no attempt by the employer, directly or indirectly, to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this section."

(1st Cir. 1981), *cert. denied*, 455 U.S. 989 (1982).[7] In satisfying the requirements of the SLRA, the employee has the burden of proving by a preponderance of the evidence that anti-union sentiment contributed to the employer's adverse employment action. The employer then has the burden of proving, as an affirmative defense, that the adverse action would have occurred even in the absence of the unfair labor practice. *N.L.R.B. v. Transportation Management Corp.*, 462 U.S. 393 (1983).

The bounds of protected concerted union activity are broad. To qualify as concerted activity, conduct "need not take place in a union setting and it is not necessary that a collective bargaining agreement be in effect. It is sufficient that the [complaining] employee intends or contemplates, as an end result, group activity which will also benefit some other employees." *Koch Supplies, Inc. v. N.L.R.B.*, 646 F.2d 1257, 1259 (8th Cir. 1981). Even a conversation can constitute concerted activity, "'but to qualify as such, it must appear at the very least that it was engaged in with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of the employees.'" *El Gran Combo de Puerto Rico v. N.L.R.B.*, 853 F.2d 996, 1004 (1st Cir. 1988) (quoting *Mushroom Transportation Co. v. N.L.R.B.*, 330 F.2d 683, 685 (3d Cir. 1964)). The critical inquiry is not whether an employee acted individually, but rather whether the employee's actions were in furtherance of a group concern. *Meyers Industries, Inc. v. Prill*, 281 N.L.R.B. 882, 887 (1986).

Substantial evidence supports the Labor Board's finding that Vela and Lanzieri engaged in protected concerted activity when interacting with Carmody. *Town of Burrillville*, 921 A.2d at 118.

[7] In Rhode Island, when interpreting a statute patterned after the National Labor Relations Act, such as the SLRA, courts may look to federal case law for guidance. *See, e.g., Barrington School Committee v. Rhode Island State Labor Relations Board*, 120 R.I. 470, 479, 388 A.2d 1369, 1374-75 (1978); *North Kingstown v. North Kingstown Teachers Association*, 110 R.I. 698, 707, 297 A.2d 342, 347 (1972).

The record shows that the facts and circumstances leading to Vela's placement of the "minimal" definition photocopy in Carmody's mailbox originated in the March 2017 executive board meeting of the Union. Board Hr'g Tr. Vol. 1 at 18-32. The Labor Board credited the testimony of Vela in her description of the March 2017 executive board meeting and of the ensuing conflict. Board Order 29-30. Vela testified that her interactions with Stimma and Carmody were rooted in Union-related issues. Vela described cautioning Stimma on March 6, 2017 against training herself out of a job as both a friend and as the Union president who had previously advocated on Stimma's behalf in a prior grievance filing. Board Hr'g Tr. Vol. 1 at 24:14-26:1. The Labor Board also credited Vela's testimony that the April 6, 2017 altercation stemmed from Carmody and Micheletti's request for Vela, as Union president, to support Carmody's demand for a higher pay grade from the administration. Board Order 4. Traced to its origin story, the dictionary incident clearly arose out of Union members communicating about workload, right to appropriate compensation, and Vela's role as Union president in navigating Union concerns. Therefore, the Labor Board correctly determined that Vela's delivery of the highlighted copy of the dictionary definition to Carmody constituted protected concerted behavior. Section 28-7-12; *Koch Supplies, Inc*, 646 F.2d at 1259.

Further, the Labor Board credited Lanzieri's explanation for the genesis of the Union Facebook page. Board Order 27-28; 32. Both Lanzieri and several Union members testified that the Facebook page served as a substitute for a newsletter. Board Hr'g Tr. Vol. 1 at 15:9-16, 104:2-106:3; Vol. 2 at 140:1-14. The Labor Board declined to credit Carmody's testimony that Lanzieri established the Facebook page to target and harass Carmody and Micheletti, in part because neither Carmody nor Lambert had ever seen the Facebook page. Board Order 32. The creation of a Facebook page designed to update Union members on Union news and events clearly constitutes

"concerted activit[y]" protected by the SLRA. Section 28-7-12; *Koch Supplies, Inc*, 646 F.2d at 1259.

In considering the evidence that Lanzieri and Vela called Carmody a "snitch" or "swamp girl," the Labor Board weighed the testimony of the disciplined employees against that of Carmody. Board Order 32. Carmody testified that only Lanzieri had called Carmody a "snitch," and that Carmody was unable to identify who called her a "swamp girl" or even if the "swamp girl" comment was directed at Carmody. Board Hr'g Tr. Vol. 2 at 233:14-234:5. Both Lanzieri and Vela emphatically denied calling Carmody a "snitch" or "swamp girl," and several other Union members denied ever hearing Lanzieri and Vela describe Carmody in such a way. Board Hr'g Tr. Vol. 1 at 52:18-19, 123:4-6; Vol. 2 at 141:24-142:7. Further, the Labor Board noted that the City failed to present corroborating evidence of employees who heard Lanzieri and Vela make these derogatory remarks. Board Order 32. Therefore, the Labor Board properly discredited these allegations of name-calling.

The Labor Board carefully considered Lambert's testimony that he was surprised by the Union's stance toward Micheletti's embezzlement. Board Order 23-24. Lambert testified that he found the Union's decision to support the embezzlement charge rather than handling the matter internally to be surprising and unusual. Board Hr'g Tr. Vol. 2 at 202:23-203:15. The Labor Board also considered Lambert's comment to Vela, "why does it surprise you that Ms. Carmody would be upset since you had her sister arrested?" *Id.* at 203:16-24. The Labor Board ultimately determined that Lambert's testimony indicated that he found the Union's actions regarding Micheletti's arrest to be distasteful and that he sympathized with Carmody's position. Board Order 24.

Considering the evidence before the Labor Board in its totality, and incorporating the Labor Board's credibility determinations, it is clear to this Court that the Labor Board properly found that the Union successfully demonstrated the existence of an anti-union bias motivating the City's discipline of Vela and Lanzieri. *Wright Line*, 662 F.2d at 902. The burden then shifted to the City to demonstrate that the City would not have disciplined Vela and Lanzieri but for the protected concerted activity. *Id.* The Labor Board determined that the City failed to present evidence that corroborated any bullying or harassing behavior by Lanzieri and Vela. Board Order 32. The Labor Board discredited unsupported hearsay by Lambert as to Vela and Lanzieri's alleged name-calling of Carmody or any other employee. *Id.* Further, the City failed to bring forth evidence that Vela made discriminatory comments about Spanish-language speakers, as alleged in the pre-disciplinary warning letter. *Id.* at 22-23. The City also failed to show why Vela had been disciplined for one instance of door-slamming while other employees who admittedly also slammed doors had not been disciplined. *Id.* at 22.

Ultimately, the Labor Board, considering the evidence before it, decided that the Union proved its case and the City did not. *Cf. Sears, Roebuck & Co. v. N.L.R.B.*, 349 F.3d 493, 503 (7th Cir. 2003) ("The [employee's] prima facie case and the [employer's] affirmative defense available under *Wright Line* are linked: the weaker the prima facie case, the easier it is for the employer to establish that it would have taken the adverse action regardless of the employee's protected activity."). This Court finds no error in the Labor Board's consideration of evidence and testimony and its determinations of credibility supporting its ultimate legal conclusion that the City violated § 28-7-13. Section 42-35-15. Because legally competent and substantial evidence supports the Labor Board's reasoning, this Court must uphold the Labor Board's decision. *Nickerson*, 853 A.2d at 1206.

## V

## Conclusion

After review of the entire record, this Court affirms the Labor Board's decision in its entirety. Counsel shall submit the appropriate order for entry.

**RHODE ISLAND SUPERIOR COURT**

***Decision Addendum Sheet***

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|---|---|
| **TITLE OF CASE:** | **City of Providence v. Rhode Island State Labor Relations Board, et al.** |
| **CASE NO:** | **PC-2018-5355** |
| **COURT:** | **Providence County Superior Court** |
| **DATE DECISION FILED:** | **May 6, 2022** |
| **JUSTICE/MAGISTRATE:** | **Nugent, J.** |
| **ATTORNEYS:** | |
| **For Plaintiff:** | **Charles A. Ruggerio, Esq.**<br>**Sergio A. Spaziano, Esq.** |
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