

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

DLR Docket No. MUP-15-4652

FERRUCCIO ROMEO	)
	)
Charging Party,	)
	)
and	)
	)
TOWN OF WINTHROP,	)
	)
Respondent	)
	)

**RESPONDENT'S MEMORANDUM IN OPPOSITION TO FERRUCCIO
ROMEO'S REVIVAL MOTION**

On March 2, 2016, Ferruccio Romeo filed a "Request to Revive the Charge" in which the Respondent opposes for the reasons stated below.

In determining whether the allegations in the Charge should be deferred to arbitration, the Department of Labor Relations (DLR) considers if: 1) the issues posed by the Charge are essentially a question of contract interpretation; 2) the statutory issues raised by the case are well settled; and 3) the resources of the DLR and the parties can be conserved through deferral. *Town of Ware*, 17 MLC 1565 (1991) (citing *Whittier Regional School Committee*, 13MLC 1325 (1986)). Also, the arbitration award must dispose of the substantially identical issue presented to the commission. *City of Cambridge*, 7 MLC 2111, 2112 (1981).

When the Department of Labor Relations defers a case to arbitration, the DLR retains jurisdiction over the allegations in the Charge and may act under any of the following circumstances: a) if the grievance is not resolved with reasonable promptness

by the grievance-arbitration process; b) if the grievance and arbitration procedures have not been fair or regular; or c) if the result of the grievance and arbitration procedure is repugnant to 150E. *Spielberg Mfg. Co.*, 112 NLRB 1080, 1082 (1955).

On February 28, 2016, Arbitrator Bruce Fraser determined that there was no just cause for the termination of Officer Ferruccio Romeo. The Arbitrator also ordered that Officer Romeo be given a Letter of Warning for failing to receive authorization for an alternative location for performing the Pump Detail on November 24, 2014, prior to working the detail. Additionally, the Arbitrator awarded Officer Romeo shall be made whole for all lost wages and benefits.

After reviewing the arbitration agreement, the Respondent opposes the Motion to Revive the charge because the standard necessary to revive a Charge is not present in this case. To start, the grievance was resolved with reasonable promptness by the grievance-arbitration process. On March 5, 2015, based on the evidence presented, the Investigator dismissed the Charge and the parties were notified of the decision. On March 16, 2015, Officer Romeo filed the "Charging Party Ferruccio Romeo's Request for Review of the March 5, 2015 Dismissal of the Charge of Prohibited Practice" pursuant to Section 11 of the Law wherein he also moved for deferral of the matter to arbitration. Following Officer Romeo's request, the Employer filed "Respondent Town of Winthrop's Response to Review of the March 5, 2015 Dismissal of Charge of Prohibited Practice" on April 1, 2015 requesting affirmation of the dismissal and arguing against the motion to defer the charge to arbitration. After reviewing the request and response, the Department of Labor Relations deferred the Charge of Prohibited Practice to Arbitration on May 21, 2015. Lastly, on February 28, 2016, there was a timely arbitration award issued in favor of

Officer Romeo. Therefore, there was reasonable promptness throughout the grievance-arbitration process without any undue delay.

Secondly, the grievance and arbitration procedures were both fair and regular. The Board suggests following the long and successful functioning arbitration process that has been used to resolve the underlying dispute and make it unnecessary for either party to follow the more formal, and sometimes lengthy, combination of administrative and judicial litigation provided under the National Labor Relations Act. *Collyer Insulated Wire*, 192 NLRB 837, 843 (1971). The rationale behind the deferral policy is not to compel parties to agree to arbitrate disputes arising during a contract term, but instead is intended to merely give full effect to their own voluntary agreements to submit all such disputes to arbitration, rather than permitting such agreements to be sidestepped and permitting the substitution of our processes, a forum not contemplated by their own agreement. *Collyer Insulated Wire*, 192 NLRB 837, 842 (1971).

The Commonwealth Employment Relations Board (CERB) frequently looks to National Labor Relations Board (NLRB) decisions for guidance in construing similar statutory provisions. *Salem School Committee*, 35 MLC 199 (2009); *Plainridge Race Course, Inc.*, 28 MLC 185, 186 (2001) (citing *Greater New Bedford Infant Toddler Center*, 12 MLC 1131, 1155 n.42 (1985), aff'd 13 MLC 1620 (1987)).

Under the *Collyer* deferral policy, deferral is appropriate where: (1) the contract clearly provides for the grievance and arbitration of disputes, (2) the action taken by the employer was not designed to undermine the Union and was based on a substantial claim of contractual privilege, and (3) it appears that the arbitral interpretation of the contract will resolve both the unfair labor practice issue and the contract interpretation issue in a

manner compatible with the law. *Natick School Committee*, 11 MLC 1387, 1395-96 (1985).

The Board policy is to effectuate, wherever possible, the intent of Congress expressed in Section 203(d) of the 1947 Labor Management Relations Act, namely, "final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement." *Dubo Mfg. Corp.*, 142 NLRB 431, 432 (1963). In order to follow the congressional intent, the Board recognizes existing arbitration awards and has even required parties to use that method before utilizing the Board's process of resolving issues. *Id.* It would frustrate the intent expressed by Congress if the Board were to now allow the use of the Board's processes to enable the parties to avoid their contractual obligations as interpreted by the court." *Id.*

In the Romeo case, the parties' utilized the grievance process, the Department of Labor Relations properly deferred the case to arbitration, and ultimately an Arbitrator made a decision based on the evidence presented. Therefore, the grievance and arbitration procedures were fairly and properly applied to the matter.

Finally, the result of the grievance and arbitration procedure is not repugnant to 150E. The NLRB has announced that it will defer to arbitration awards so long as "the contractual issue is factually parallel to the unfair labor practice issue, and...the arbitrator was presented generally with the facts relevant to resolving the labor practice." *Olin Corp.*, 268 NLRB No. 86, 115 LRRM 1056, 1058 (1984). In deciding whether an award is "clearly repugnant" to the Act, the Board will defer even if the award is totally

inconsistent with NLRB precedent. Id. Only if the award is “palpably wrong” will the NLRB not defer. Id.

In the past when the Commission has denied a motion to defer to arbitration, like in *Town of Ware*, 17 MLC 1565 (1991), the reason for the denial was because the Town completely opposed utilizing the arbitration process at all. As a result, the Commission could not defer to an arbitration process, which has been enjoined. Id. at 1567. So, the Commission stated, “as long as the Town refuses to participate in arbitration it is unlikely that the grievance arbitration process can resolve this dispute between the parties.” Id.

The Arbitrator ruled on the issue of Officer Romeo’s disparate treatment and severity of the discipline by awarding him with back pay and issuing a warning instead of upholding the termination. At the arbitration, the Union argued that the termination of Romeo was inconsistent with the commitment to progressive discipline. *Winthrop Police Local 421 v. Town of Winthrop, Massachusetts.*, No. 01-15-0002-6830 (AAA, Feb. 28, 2016). Furthermore, the Charging Party mentioned how the discipline against Officer Romeo was inconsistently imposed on other officers who were previously found to be AWOL and untruthful. Id. at 18.

For the reasons mentioned above, the Respondent, Town of Winthrop, respectfully opposes the Charging Party, Ferruccio Romeo’s, Motion for Revival of the unfair labor charge. The unfair labor practice charge was resolved within reasonable promptness by the grievance-arbitration process, the procedures were fair and regular, and the result was not repugnant to G.L.c.150E. The Arbitrator awarded Officer Romeo lost wages and benefits in addition to reversing his termination to a warning letter. In

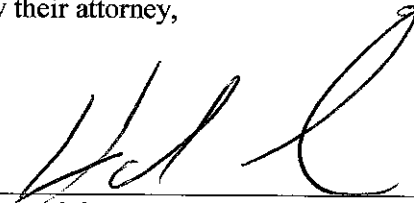
conclusion, the unfair labor charge was already addressed, decided, and remedied through the arbitration process.

Dated: March 28, 2016

Respectfully submitted,

TOWN OF WINTHROP

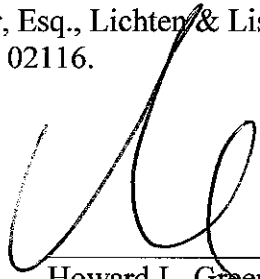
By their attorney,

A handwritten signature in black ink, appearing to be 'H. Greenspan', written over a horizontal line.

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion By The Town Of Winthrop To Extend The Time To Respond To The Notice To Revive has been sent via U.S. Mail, postage pre-paid this 28th day of March, 2016 to Thomas P. Fowler, Esq., Lichten & Liss-Riordan, P.C., 729 Boylston Street, Suite 2000, Boston, MA 02116.



Howard L. Greenspan