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

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| IN THE MATTER OF | : | |
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| RHODE ISLAND STATE LABOR RELATIONS BOARD | : | CASE NO: ULP-4922 |
| | : | |
| -AND- | : | |
| | : | |
| THE STATE OF RHODE ISLAND, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT | : | |

## DECISION AND ORDER

### 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 State of Rhode Island, Department of Environmental Management (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated November 4, 1994 and filed on November 7, 1994 by the R.I. Council 94, AFSCME, AFL-CIO, Local 2881 (hereinafter "Union")

The Charge alleged:

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| Violation of Section 28-7-13 | Paragraphs (6) (10) and any other provisions that may apply |

> The Department of Environmental Management violated the collective bargaining agreement by posting a position for a Principle (sic) Forester within the Division of Forest Environment as a part-time position without first negotiating with the union. There are no part-time Principle (sic) Forester positions in the Department.

Following the filing of the Charge, an informal conference was held on December 19, 1994 between representatives of the Union and the Respondent and an Agent of the Board. When the informal conference failed to resolve the Charge, the Board issued the instant Complaint on February 20, 1997. The Employer filed its answer to the complaint on February 25, 1997, denying the allegations contained in paragraph 3 and 4 of the complaint, with the exception that the Employer admitted that the "Department posted a position for a Principal Forester within the Division of Forest Environment as a part-time position without first negotiating with the Union." On March 18, 1997, the Employer

filed an amended answer, asserting five affirmative defenses. On April 7, 1997, the Employer filed a motion to dismiss, together with a memorandum of law. On April 11, 1997, the Union filed its objection to the Employer's motion. The matter was then set down for hearing on April 17, 1997, but was rescheduled for medical reasons. On August 26, 1997, the Board convened the formal hearing to find that the parties were requesting that the matter be held in abeyance while settlement negotiations commenced. The Board granted the request, canceled the formal hearing and then held the matter in abeyance. After the Board's Administrator made two inquiries on the status of the case, the Union, on March 6, 1998, requested that the matter be reassigned to the formal hearing calendar.

The matter was then assigned formal hearing dates of May 5, 1998 and then August 25, 1998, which said dates were not acceptable to the Union. A formal hearing on this matter was ultimately held on September 1, 1998. Both parties were represented by Counsel and had the opportunity to present evidence and to examine and cross examine witnesses. Upon conclusion of the hearing, both the Employer and the Union decided to submit briefs which were due within 30 days after receipt of the transcript. Thereafter, both the Union and the Employer requested and were granted extensions of time in which to file their briefs. The Employer filed its brief on November 25, 1998 and the Union filed its brief on December 16, 1998. 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 and the memorandum of law.

## FACTUAL SUMMARY

On or about July 8, 1994, the Employer posted a vacancy notice for the part-time position of Principal Forester. See Union exhibit #1. The notice provided that the position would have a work week of Monday through Friday and would enjoy a salary of $27,836.00 to $32,149.00. The position in question was for the Employer's Division of Forest Environment, for utilization in the Forest Health program. The Forest Health program is funded in part by $30,000.00 in federal matching monies. (TR. p. 10) Prior to the posting, the Employer had been employing entomologists for the work of the Forest Health program.

The Union presented the testimony of Louis Roccabello, a grounds superintendent and the state Vice President for the Union since April 1998 and Local President since

January 1991. (TR. p. 12) Mr. Roccabello testified that prior to the July 1994 posting for the Principal Forester position, he was not aware of any part-time positions within his bargaining unit. (TR. p. 13) He stated that the Employer had not negotiated the creation of the part-time Forester position, but that it had negotiated a number of other conditions of employment over the years. (TR. 14., Union exhibits 3 & 4) On cross examination, Mr. Roccabello identified copies of decisions from level two and three grievance hearings. (TR. p. 20) He also testified that he had engaged in discussions with the Employer regarding some "flex-time" positions starting in September, 1994. (TR. p.37)

The Union also presented the testimony of Greg Cassidy, formerly a Senior Forester within the Division of Forest Environment since November 1987. (TR. p. 40) He testified that he applied for the Principal Forester position and was interviewed by Mr. Thomas Dupree. (TR. p. 41) Mr. Cassidy testified that Mr. Dupree informed him during the interview that the position carried no benefits and the hours of work would be less then 20 per week. (TR. p. 41) Mr. Cassidy testified that although there was no discussion of the salary during his interview, he understood that the posted salary range would be prorated. (TR. p. 42) On cross examination, Mr. Cassidy stated that he and Mr. Dupree had discussed the federal funding for the program and the fact that the position had to be limited to part-time because of funding constraints. (TR. p. 45)

The Employer presented the testimony of Thomas Dupree, the Chief of the Division of Forest Management for twelve years. (TR. p. 47) He testified that when he first became Chief, the Division had 60 full time equivalent (hereinafter "FTE") positions, but that over the course of several years, the positions were reduced and that in March 1994, there were only 35 FTEs. (TR. p. 47-48) With such a reduction in the work force, the Division had a problem trying to get its job done within all the program areas. (TR. p. 48) He also testified that in 1994, the Division had a structural deficit in its payroll of $200,000.00 (TR. p. 48) He testified that the federal government required the state to fund a Forest Health program. (TR. p. 50) Mr. Dupree stated that the entomologists who had been working in the Forest Health program had been doing so on a part-time basis. (TR. p. 51) He also stated that the U.S. Forest Service had expressed a dissatisfaction in the way the program was being conducted, in that the entomologists did not have adequate technical expertise beyond the identification of insects. He further testified that

as a result of these problems, the federal funding was in jeopardy and that the Division needed to hire a Forest Health Specialist. (TR. p. 52) Mr. Dupree testified that he offered the new position to Greg Cassidy, but that Mr. Cassidy ultimately refused the position because it was part-time. (TR. p. 54) Mr. Dupree testified that there were other members of the Union that applied for the position, but that they were all unqualified for the position. (TR. p. 55)

On cross examination, Mr. Dupree testified that in 1994, the Division received approximately $325,000.00 in federal funding, of which $30,000.00 was earmarked for the Forest Health program. He further testified that these amounts were the same in 1993, 1992 and 1991 (TR. p. 59) Mr. Dupree also explained that he requested and received a waiver from the federal government in order to fill the Forest Health position on a part-time basis, rather than the full-time basis that was preferred by the federal government. (TR. p. 66) Mr. Dupree admitted that he told job applicants that the position wouldn't carry any benefits. (TR. p. 68) He did not discuss hours of work and stated that the days of work could be flexible. (TR. p. 68)

The Employer next presented Mr. Paul Pysz, the Human Resources Administrator at the State of Rhode Island's Department of Transportation. (TR. p. 69) His testimony was limited in that he was not associated with the Department of Environmental Management.

The Employer's final witness was Ms. Melanie Marcaccio, (formerly known as Melanie Mouradjian) the Chief of Human Resources for the Department of Environmental Management. She testified that in early or mid 1994, prior to the Union filing the charge in this matter, she had had discussions with the Union concerning the creation of part-time positions and job-sharing positions, in general. (TR. p. 74-75) She testified that the Union indicated opposition to the creation of part-time and flex-time positions because of seniority problems. (TR. p. 75) She stated that the union would not agree to part-time positions. (TR. p. 75) She could not remember whether she drafted Union Exhibit #6, a document entitled "Final Draft Policy on Leaves of Absence Regarding Pregnancy and Child Care", revised 6/30/93. (TR. p. 80) She also testified that although there were no part-time positions in the bargaining unit in June 1993, there were people who were working a part time schedule. (TR. p. 81) She agreed that the creation of the part-time

Principal Forester position was the first part-time position in the Department. (TR. p. 81) She also testified that she has participated in numerous negotiations for the Council 94 "Master Contract". (TR. p. 84) She acknowledged that the Department had already created the Principal Forester position when she issued a letter on August 18, 1994 indicating that the Department would not be adverse to creating some limited part-time positions." (TR. p. 86-88) Also see Employer Exhibit #8. She also testified that the Principal Forester position carried a pro-rated benefits package. Finally, Ms. Marcaccio testified that Ms. Catherine Sparks was hired into the position but that Ms. Marcaccio did not know what hours Ms. Sparks works, whether Ms. Sparks has ever received overtime pay or whether she has ever worked more than 20 hours in a week.

## POSITION OF THE PARTIES

The Union's position is that the Employer knows that it is required to negotiate with the exclusive bargaining agent when it creates or changes positions within the bargaining unit. The Union also asserts that the Employer's past conduct is evidence of its knowledge of the requirement to bargain and negotiate over changes or additions to the bargaining unit. The Union also argues that resolution of its complaint does not require an interpretation of the collective bargaining agreement and that the subject matter of its complaint is within the jurisdiction of the State Labor Relations Board.

The Employer raised a number of arguments in its defense. First, it claims that the Board does not have subject matter jurisdiction because the charge filed by the Union alleges a contract violation and that the matter must be referred to arbitration for resolution. The Employer also complains that the time requirements of R.I.G.L. 28-7-9 (b) (5) are mandatory and that the complaint must be dismissed. The Employer also argues that the Board's complaint is vague and that the creation of a part-time position is a statutory right of the Director of the Department over which no bargaining is required. Finally the Employer argues that no unfair labor practice occurred because there were attempts to engage in discussions with the Union and that the contract gives the Employer the right to create part-time positions.

## DISCUSSION

The first matter to be addressed in this Decision and Order is the Employer's allegation that this matter is not within the jurisdiction of the State Labor Relations Board,

and that it belongs in arbitration. The Employer adopts this position because the charge initially filed with the Board specifically alleged a violation of the collective bargaining agreement. While it is true that the charge filed by the Union references both the Rhode Island State Labor Relations Act (hereinafter "Act") *and* the collective bargaining agreement, the complaint issued by the Board references the Act, and does not charge the Employer with a violation of its collective bargaining agreement. Furthermore, the charge does not require interpretation of the collective bargaining agreement as argued by the Employer; the complaint alleges that the Employer violated R.I.G.L. 28-7-13 (6) and (10) by posting a part-time position within the Division of Forest Management without first negotiating with the Union. Pursuant to the Rhode Island State Labor Relations Act, R.I.G.L. 28-7-1 et seq., (hereinafter "RISLRA" or "Act") the Board has exclusive subject matter jurisdiction in the first instance to determine whether or not an unfair labor practice has been committed by either an employer or a labor organization. R.I.G.L. 28-7-13, 28-7-13.1. Also see, Paton v. Poirier, 286 A.2d 243 (1972). No other agency or body within the State of Rhode Island has concurrent jurisdiction to hear such matters. There is no question that a given set of facts may well give rise to both an allegation of a violation of a collective bargaining agreement and an allegation of a violation of the Act. Therefore a complaint which alleges the existence of an unfair labor practice is properly heard by the Board unless there exists some legal bar to the board's jurisdiction.

The Employer further argues that the Board is barred from exercising jurisdiction because "the present dispute is extremely similar if not identical to the dispute set forth in Lime Rock Fire District v State Labor Relations Board, 673 A.2d 51 (1996)" and because the collective bargaining agreement between the parties has an arbitration clause. The Board disagrees with the Employer's analysis of jurisdiction in this regard. In Lime Rock, the Rhode Island Supreme Court stated that the Board lacked subject matter jurisdiction because the Fire Fighters Arbitration Act (hereinafter "FFAA"), R.I.G.L. 28-9 et seq. expressly contained a "specific and unmistakable directive for arbitration". Id at 54. However, the specific and unmistakable directive for arbitration of R.I.G.L. 28-9.1-7 contemplated by the Lime Rock decision, only arises during interest arbitration negotiations pursuant to R.I.G.L. 28-9.1-7. In fact, the Lime Rock Court specifically stated:

"Nor does the statute leave any doubt as to which issues are subject to arbitration once that process has been invoked. The 'unresolved issues' referred to in 28-9.1-7 are explicitly defined as:

'any and all contractual provisions which have not been agreed upon by the bargaining agent and the corporate authorities within the thirty (30) day period referred to in 28-9.1-7. *Any contractual provision not presented by either the bargaining agent or the corporate authority within the thirty (30) day period shall not be submitted to arbitration as an unresolved issue*". (Emphasis added in original) Section 28-9.1-3(3)"

In the case of state employees, there is statutory authority that requires unresolved contract issues, arising in the course of interest arbitration to be submitted to mediation, conciliation and binding arbitration. R.I.G.L. 36-11-7.1, 36-11-8, and 36-11-9. However, the underlying dispute in this matter did not arise within the context of interest arbitration matter. Therefore, the Lime Rock decision has no bearing whatsoever on this case and presents no bar to jurisdiction of the unfair labor practice charge as presented or complaint as issued.

The Employer also argues that the Board must "defer" to the grievance arbitration procedure as set forth in the parties' collective bargaining agreement. In support of its argument the Employer refers the Board to the National Labor Relations Board's (hereinafter "NLRB") decision in Collyer Insulated Wire, 192 NLRB 837, 77 L.R.R.M. 1931 (1971) and its progeny which deal with the NLRB's deferral doctrine. Further, the Employer argues that since the Rhode Island Supreme Court has looked to federal labor law for guidance in state labor issues,[1] that the Board is essentially required to adopt a "deferral policy" which mirrors the federal "deferral policy".[2] The Board rejects the Employer's arguments for the following reasons.

First, the federal deferral doctrine or policy espoused by the NLRB is an ever changing policy which has regularly been expanded, contracted, reversed and reinstated in whole and in part since it was first enunciated in Spielberg Mfg. Co., 112 NLRB 1080, 36 LRRM 1152 (1955) initial deferral policy. Also see Raytheon Co., 140 NLRB 883, 52 LRRM 1129 (1963) adopting additional deferral requirements; Dubo Manufacturing Corp. 142 NLRB 431, 53 LRRM 1070 (1963) in applying deferral to grievance arbitration

[1] R.I. Public Communications Authority v Rhode Island State Labor Relations Board, 650 A.2d 479 (RI 1994); Barrington School Committee v State Labor Relations Board, 120 R.I. 479 (1978).

[2] Furthermore, the NLRB has indicated that deferral is not appropriate in all cases and many issues remain outside the reach of the deferral doctrine.

procedures, the NLRB declared that its policy was to effectuate section 203 (d) of the NLRA which provides: "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievances disputes arising over the application or interpretation of an existing collective bargaining agreement" 29 USC 173 (d) ; Electronic Reproduction Service Corp. 213 NLRB 758, 87 LRRM 1211 (1974) expanding the Spielberg parameters of deferral ; Suburban Motor Freight, Inc. 247 NLKRB 146, 103 LRRM 1113 (1980) overruling the Electronic Reproduction expansion parameters; United Technologies Corp, 268 NLRB 557, 115 LRRM 1049 (1984) staying the Board's processes where the grievance arbitration procedures have been invoked voluntarily in order to give full effect to those proceedings.

In addition, the deferral policy contemplates that a matter has been or will be heard by an arbitrator. In Olin Corp, 268 NLRB 573, 115 LRRM 1056 (1984), the NLRB established that deferral would be appropriate if two conditions precedent are met: (1) the contractual issue is factually parallel to the unfair labor practice issue, and (2) the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice dispute. However, in the Olin decision, the NLRB emphasized that the mere fact that a grievant had an opportunity to present the unfair labor practice issue to the arbitrator is not sufficient to warrant deferral.

In this case, the Employer argues [under the deferral doctrine umbrella] that since the Union had initially filed a grievance relating to the same subject matter of this proceeding, the Union is precluded from pressing an unfair labor practice charge and the Board is precluded from taking jurisdiction of the charge. Such a result is clearly not contemplated by the deferral policy which contemplates that the NLRB should defer hearing complaints of unfair labor practices while an arbitration is proceeding; the deferral doctrine does not mean that the NLRB must decline jurisdiction altogether. In this case, the Union did not proceed [for reasons which were not set forth in the record] to arbitration. Therefore, if the Board had declined to hear the case, the Union would be left with no avenue to have its complaint heard.

In addition, this Board has stated in many decisions in the past and continues to so hold that a particular set of facts may give rise to both a contract violation and a violation under the Rhode Island State Labor Relations Act (hereinafter "Act"). This Board is

clearly without jurisdiction to hear an allegation of contract violation and an arbitrator is without jurisdiction to determine if there has been a violation of the Act. However, the same set of facts may indeed give rise to two different complaints, one alleging a contract violation and the other alleging a violation of the Act. Both the Employer and the Union are free to pursue remedies in two different forums for these two different complaints. In this case, the Union has clearly alleged a violation of R.I.G.L. 28-7-13 (6), and (10). Were this Board to decline jurisdiction over this case, the Union would be left with no avenue of remedy since this Board has exclusive jurisdiction in the State of Rhode Island to determine whether an unfair labor practice has occurred. This Board will not decline its jurisdiction to hear an alleged violation of the Labor Relations Act just because a party may also allege a cause of action in a different forum. To do so would be a clear violation of the Board's statutory responsibility.

Finally, even if the Board were to adopt a "deferral policy", to do so within the context of this proceeding would not be permissible. The Board's functions are subject to the Administrative Procedures Act, R.I.G.L. 42-35 et seq. Barrington School Committee v Rhode Island State Labor Relations Board, 608 A.2d 1126 (1992). Therefore, before amending its policies or rules of procedure, the Board is required to give public notice and hold a hearing. To apply a new regulation or policy without such a hearing, the Board believes that it would be in violation of the APA. Moreover, if the Employer feels that the Board should adopt a deferral policy, it has the right to petition the Board requesting the promulgation of such a rule. However, if the Employer were to request the adoption of such a rule, this Board does not believe that it has the authority to adopt a deferral policy because while Section 203 (d) of the NLRA gives the NLRB the statutory authority to defer, there is no such counterpart found within the RISLRA.

The Employer also argues that the time limits in R.I.G.L. 28-7-9 (b) (5) are mandatory and the failure to hold a formal hearing on the case within 60 days of its filing creates an absolute bar to the Board's jurisdiction. The Board does not agree with the argument set forth by the Employer in this regard in that recently the Rhode Island Superior Court ruled on this very issue and found the time frames to be directory, and not mandatory. State of Rhode Island, Department of Administration v Rhode Island State Labor Relations Board, PC 97-4890, J. Cresto. (Copy attached as Exhibit A) In so

holding, Judge Cresto stated that the "provisions of 28-7-9 (b)(5) are clearly meant to 'secure order, system and dispatch', citing Providence Teachers Union v. McGovern, 113 R.I. 169, 319 A.2d 358 (1974). Further, the Court found, "there is no language demonstrating an intent to make compliance a prerequisite to action or which serves to invalidate a tardy hearing".

Therefore, for all of the forgoing reasons, the Employer's motion to dismiss on the grounds of lack of jurisdiction is hereby denied.

The Employer also argues, on substantive ground that the decision as to provision of services is a statutory responsibility of the Director of Environmental Management, and thus, the creation of a part-time position, is excluded from collective bargaining. Since R.I.G.L. 36-11 et seq. established the right of employees, full and part-time [except casual and seasonal] of the State of Rhode Island, to engage in collective bargaining, this argument is rejected.

It is well settled that work schedules, salaries and other terms and conditions of employment are mandatory subjects for bargaining. In this case, the testimony clearly established that the creation of the position of Principal Forester on a part-time basis was the first time the Department had created a part-time position. (See testimony of Ms. Marcaccio at TR. p. 81) It is equally established in this case that the Employer did not negotiate the terms or conditions of the part-time position when it was created. In its defense, the Employer is essentially arguing that it did not have to negotiate the terms and conditions of the part-time position when it was created, because it had already done so when it negotiated the Master Contract. The Union has argued that the Employer's past actions have demonstrated its knowledge of its requirement to bargain with the Union over terms and conditions of employment and changes thereto.

The Board is troubled by the Employer's dogged insistence in its brief that it does not have to bargain with the Union at all concerning the creation of the part-time Principal Forester position, particularly in light of the Department's September 16, 1994 letter to Ms. Nancy Stanton. (Employer exhibit #7) In responding to Ms. Stanton's request for a part-time position, the Employer stated:

> "Be advised however, that the Department is in the process of negotiating with Council 94, Local 2881 to establish job sharing opportunities within our agency. In accordance with the statute, the Union's approval is

necessary in each instance. Further, the Union has argued that part time positions may not be established without negotiation with and authorization by them. Until such time as an agreement is entered into by the parties, the Department cannot approve your request." (Underlining added)

Further, Union exhibit #6 also establishes that the Employer had adopted the position that part-time work was not previously permitted by the Employer because it states:

"Other than permitted herein, no part-time work is permitted within the Department of Environmental Management."

For the Employer to state on the one hand [when refusing a request of an employee] that it must wait until the Union and Employer enter into an agreement, and on the other hand [in this case] to state that it has no duty to negotiate is illustrative of one of the reasons that employees seek the protections of collective bargaining in the first place.

Thus, a newly created part-time position where none existed before has an impact on members of an existing bargaining unit. The other Union members have an interest in how the part-time hours and benefits compare to those afforded to full-time employees, particularly if existing bargaining unit members are interested in applying for the part-time positions. In this case, the testimony clearly established that Mr. Dupree, when interviewing Mr. Cassidy, stated that the position was limited to 20 hours per week. In fact, Mr. Cassidy testified that the part-time limitation is the main reason that he did not take the position when it was offered to him. Although Mr. Dupree told applicants that the position carried no benefits, it is undisputed that the position actually did have a prorated benefit package. Had the Employer discussed these terms and conditions with the union before it posted and filled the position, perhaps some of the confusion surrounding the benefits and work schedules could have cleared up.

Furthermore, the Appendix to the Union's brief contains copies of Ms. Sparks time sheets which clearly demonstrate an inconsistent schedule and many weeks of work in which there are more than 20 hours of work This raises a question in the minds of some Board members as to whether or not a current Union member may have been interested in applying for this position because a position that is less than full-time, but more than 20 hours per week may indeed be appealing to some members of the existing bargaining unit. In addition, the "flexible" scheduling which was revealed during the interview process (as opposed to the "Mon-Fri." posted schedule) may also have been appealing to some

members of the bargaining unit. Conversely, although there has been no compliant issued by the current employee concerning the work hours, it appears from the time sheets that there are days in which this bargaining unit position is filled upwards of 10 hours per day. This type of schedule may or may not be acceptable to the current employee, but the Union is entitled to bargain over the establishment of such a schedule. Therefore, this Board finds that the Employer did commit an unfair labor practice when it failed to negotiate the terms and conditions of a new type of position with the Union before posting and filling the position.

## 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) On or about July 8, 1994, the Employer posted a vacancy notice for the part-time position of Principal Forester within the Employer's Division of Forest Environment, for work within the Forest Health Program. The notice provided that the position would have a work week of Monday through Friday and would enjoy a salary of $27,836.00 to $32,149.00.
4) Prior to the posting, the Employer had been employing full-time entomologists for the work of the Forest Health program.
5) Mr. Greg Cassidy, a member of the Union's bargaining unit, applied for and was interviewed by Mr. Thomas Dupree for the part-time position. Mr. Dupree mistakenly informed Mr. Cassidy that the position carried no benefits when in fact it carried pro-rated benefits.
6) Mr. Cassidy did not accept the position because of its limited hours.
7) The creation of the part-time Principal Forester position was the first part-time position in the Department.

8) The Employer had already created the part-time Principal Forester position when Ms. Marcaccio issued a letter on August 18, 1994 indicating that the Department would not be adverse to creating some limited part-time positions.

9) The Employer did not negotiate the wages, hours of employment, time off and work schedule or other benefits for the part-time Principal Forester position before it was posted in July 1994.

10) The employee filling the part-time position has worked an inconsistent schedule and her work weeks often exceed 20 hours of work. Further, the Employee enjoys some holiday pay and vacation.

## CONCLUSIONS OF LAW

1) The Board has subject matter jurisdiction in this case.

2) Wages, hours of employment, time off and work schedules are all terms and conditions of employment and are mandatory subjects for bargaining.

3) The Employer has an obligation to discuss the terms and conditions of employment for newly created positions.

4) The Union has proven by a preponderance of the evidence that the Employer has committed a violation of R.I.G.L. 28-7-13 (6) and (10) by refusing and failing to negotiate the terms and conditions of employment [wages, hours of employment, time off and work schedules] for the part-time position of Principal Forester prior to its creation.

## ORDER

1) The Employer is hereby ordered to cease and desist from creating any new part-time positions without first negotiating the terms and conditions of employment of the same with the Union.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Gina A. Vigliotti, Chairperson

Frank J. Montanaro, Member

Joseph V. Mulvey, Member

Gerald S. Goldstein, Member

Ellen L. Jordan, Member

Paul E. Martineau, Member

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

Dated: June 10, 1999

By:
Joan Brousseau, Acting Administrator