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

IN THE MATTER OF	:	
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RHODE ISLAND STATE LABOR RELATIONS BOARD	:	CASE NO: ULP-5485
	:	
-AND-	:	
	:	
	:	
TOWN OF NORTH KINGSTOWN	:	

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 Town of North Kingstown (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated August 4, 2000 and filed on August 7, 2000 by Local 473 International Brotherhood of Police Officers, (hereinafter "Union").

The Charge alleged:

> "That the Employer violated 28-7-12 and 28-7-13 (6) and (10) of the Act, when on or about July 31, 2000, it implemented new policies and procedures for the receipt and continued receipt of injured on duty benefits and further, implemented new procedures requiring the performance of light duty as a condition of employment, without first bargaining with the exclusive bargaining representative."

Following the filing of the Charge, an informal conference was held on September 22, 2000 between representatives of the Union and Respondent and an Agent of the Board. When the informal conference failed to resolve the Charge, the Board issued the instant Complaint on June 4, 2001. The Employer filed its answer to the complaint on June 7, 2001.

Formal hearings on this matter were held on March 26, 2002, May 23, 2002, August 27, 2002 and February 20, 2003. Upon conclusion of the hearings, both the Employer and the Union submitted written briefs and reply briefs. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony and evidence presented and arguments contained within the post hearing briefs.

FACTUAL SUMMARY

From 1983 to July 31, 2000, the Town of North Kingstown's Police Department had in effect "General Order No. 20, Series of 1983", which modified Section 306.4 (Injuries) of the Department's Rules and Regulations. (Joint Exhibit #1) Said general order provided in pertinent part: "Members of the North Kingstown Police Department who are injured in the line of duty shall receive full salary while their incapacity exists, or until they are placed on disability retirement."

On July 19, 2000, Police Chief James L. Wynn issued a draft copy of a new general order pertaining to line-of-duty injuries. (Joint Exhibit #3) The draft policy was circulated to senior staff and to the Union Executive Board for its review and comments. The transmittal memo forwarded with the draft copy indicated that the policy would take effect on July 31, 2000 and that the Chief was willing to discuss the policy with the union prior to July 31, 2000. (Joint Exhibit #3) Also on July 19, 2000, the Union executive Board received a memorandum from Sergeant Joseph Hart, wherein he raised several concerns and questions about the proposed general order. (Union Exhibit #1) On July 28, 2000, Union officials met with the Police Chief to discuss their concerns about the general order. After making one change to the document, the Police Chief implemented the general order on July 31, 2000.

POSITIONS OF THE PARTIES

The Union argues that the implementation of General Order 2000-10 constitutes a unilateral change in a mandatory subject for bargaining and that the employer failed to fulfill its bargaining obligation prior to implementation, thus committing an unfair labor practice.

The Employer argues that the Board lacks subject matter jurisdiction to hear the within complaint because the Police Chief has the legal duty and authority to enact rules and regulations and because the resolution of this dispute requires the interpretation of the collective bargaining agreement. The Employer also argues that the enactment of an injured-on-duty (IOD) policy is not a mandatory subject for bargaining and, thus, no bargaining obligation arises on the Employer's part. In the alternative, the Employer argues that there is no obligation to bargain because the Union waived that right by allowing a term in the collective bargaining agreement that permits the enactment of rules

and regulations without negotiations. Finally, the Employer argues that it in fact did bargain and that an agreement was reached; therefore there can be no unfair labor practice in this case.

DISCUSSION

Since the Employer has raised a claim of lack of subject matter jurisdiction, that is the threshold issue for the Board to address. The Employer claims that pursuant to the Town of North Kingstown Ordinances 15-34, the Chief of Police is vested with the statutory authority to "enact reasonable rules and regulations covering the government, discipline, uniforms and equipment of police officers and fixing their duties and prescribing penalties for violations of any such rules and regulations". Brief p. 8 *citing* N.K. Rev. Ord. § 15-33. The Chief is also vested with the authority to "maintain discipline" so as to secure complete efficiency in the department. Brief p. 8 *citing* N.K. Rev. Ord. § 15-34.

The general order at issue in this case is entitled "Line of Duty Injury Policy" (hereinafter IOD policy) which states in pertinent parts:

> I. PURPOSE
>
> The purpose of this policy is to ensure the proper documentation, investigation and accountability for all illnesses and injuries arising out of and in the course of employment.
>
> II. POLICY
>
> "It is the policy of the North Kingstown Police Department to provide a comprehensive disability management program to assist employees who are recovering from a line of duty injury. The purpose of this directive is to establish a consistent method of documenting, investigating and handling of employee claims." (Joint Exhibit #4, p 1-2)

Thus, it is clear by the statement of purpose and the statement of policy that the IOD policy is not designed for nor does it deal with the government, discipline, uniforms or equipment of police officers, the duties of police officers or their discipline. The policy deals with the receipt, continued receipt and potential cessation of salary and benefits for employees who are injured on the job. Therefore, based upon the plain language of the IOD policy itself, this Board is not persuaded that the Chief of Police had any authority under the Town's ordinances to enact any rules pertaining to the subject matter contained in the IOD policy. Therefore, the Employer's claim of lack of subject matter jurisdiction

on the grounds of independent statutory authority vested in the Police Chief is hereby rejected.

The Employer also claims a lack of subject matter jurisdiction in this Board by stating that the resolution of this dispute requires the Board to interpret the parties collective bargaining agreement, and that the Board has no such authority. However, the Employer acknowledges in its brief that the collective bargaining agreement is essentially silent on procedures for the application and receipt of IOD benefits.

The Employer also argues that the enactment of an "injured on duty" policy is not a mandatory subject for bargaining. It is well settled that the potential universe of matters which could be bargained is divided into three separate categories: (1) Mandatory subjects for bargaining, (2) Permissive subjects for bargaining, and (3) Illegal subjects for bargaining. NLRB v Borg-Warner Corp., 356 U.S. 342, 78 S.Ct. 718, (1958), Idaho Statesman v NLRB, 836 F.2d 1396 (D.C. Cir. 1988).

Although there is no fixed list of topics which are mandatory subjects for bargaining, the Supreme Court has held that Section 8 (d)[1] of the National Labor Relations Act includes only those issues that "settle an aspect of the relationship between the employer and employees". Allied Chemical & Alkali Workers v Pittsburgh Plate Glass Co., 404 U.S. 157, 92 S. Ct. 383 (1971).[2] In Ford Motor Co. v NLRB, 441 U.S. 488, 99 S.Ct. 1842 (1979), the Court held that mandatory subjects for bargaining are those subjects that are plainly germane to the "working environment" and are not among those "managerial decisions" which "lie at the core of entrepreneurial control". Since Ford, the NLRB and case law have developed a long list of topics which have been determined to be mandatory subjects for bargaining, under the headings of "wages" [3] (not

[1] Requiring bargaining over "wages, hours, and other terms and conditions of employment".

[2] Also in Allied Chemical, the Court acknowledged that matters falling within the mandatory subject for bargaining classification do not have to *directly* impact the terms and conditions of employment of employees. In that case, the issue was whether or not the Employer had to bargain over the level of retirement benefits for retired employees. The Court held that the retired employees were not employees for purposes of the Act, but then turned its analysis to whether or not the interest of these third party retirees "vitally affects" the terms and conditions of employment of the covered employees.

[3] Includes **fixed rate wages** (H.E. Fletcher, 131 NLRB 474, 48 LRRM 1071 1961 (enforced on other grounds, 298 F.2d 594 (1st Cir. 1962); **incentives or piece work rates**, Providence Journal Co. 180 NLRB 669, 73 LRRM 1235 (1970); **overtime pay**, NLRB v Montgomery Ward & Co. 133 F.2d 676, 12 LRRM 508 (9th Cir. 1943); **shift differentials**, Royal Baking Co. 309 NLRB 144, 141 LRRM 1318 (1992); **severance pay**, NLRB v Litton Fin. Printing Div. 893 F2d 1128, 133 LRRM 2354 (9th Cir. 1990); **rates of pay for new jobs**, LeRoy Machine Co. 147 NLRB 1431, 56 LRRM1369 (1964); **cost of living adjustments**, NLRB v Harvstone Mfg. Corp., 785 F.2d 570 121 LRRM3371 (7th Cir. 1986) cert denied, 479 U.S. 821, 107 S.Ct. 88, (1986); **merit increases**, NLRB v Katz, 369 U.S. 736, 82 S.Ct. 1107, (1962); vacation benefits, ABC Food Services Inc., 176 NLRB 426, 73 LRRM 1052 (1969); **holidays and bonuses**, Singer Mfg. Co. 24 NLRB, 444, modified on other grounds, 119 F.2d 131 (7th Cir. 1941); **retirement plans**, Inland Steel Co. v NLRB, 1870 F2d 247, 22 LRRM 2506 (7th Cir. 1948) ; **group insurance plans**, Sylvania Elec. Prod. Inc. v NLRB, 291 F.2d 128, 48 LRRM 2313 (1st Cir. 1961)

only hourly rates of pay and salaries, but all compensation for services and emoluments related to the employment relationship) "hours" [4] (topic which encompasses a wide variety of matters that effects both when employees are required to work and when they are not required to work) and "terms and conditions of employment". The phrase "terms and conditions of employment" is a catchall that encompasses mandatory subjects of bargaining that cannot be conveniently categorized as either wages or hours, and has been broadly construed by the NLRB and the Courts to include a myriad of topics including: Management rights, NLRB v Am. National Insurance Co. 343 U.S. 395, 72 S.Ct. 824 (1952) ; grievance procedures, NLRB v Tomco Communications, Inc. 567 F.2d 871, 97 LRRM 2660 (9th Cir. 1978); vacations, Great Southern Trucking Co. v NLRB, 127 F.2d 180 (4th Cir. 1942) cert denied 322 U.S. 729, 64 S.Ct. 944 (1944); leaves of absence, Singer Mfg. Co. 24 NKRB 444 (1940) modified on other grounds 119 F.2d 131 (7th Cir,1941) and disciplinary rules and codes of conduct, Newspaper Guild Local 10 v NLRB, 636 F.2d 550 (D.C. Cir. 1980). *See* National Labor Relations Board: Law and Practice, 13.03 (5).

The United States Supreme Court, in recognizing that the determination of a mandatory subject for bargaining is a fact-dependent analysis, has declared that the classification of bargaining subjects as terms or conditions of employment is a matter which the Board [NLRB] has special expertise and its judgment as to what is a mandatory subject for bargaining is entitled to considerable deference. Ford Motor Co. v NLRB, 441 U.S. 488,495, 99 S.Ct. 1842 (1979).

This Board recently had the occasion to review a strikingly similar factual scenario in ULP Case No 5419, State of Rhode Island Labor Relations Board v Town of Burrillville, decided on April 29, 2002. In that case, the Board determined that the subject of the receipt on injured-on-duty benefits was a mandatory subject for bargaining. This conclusion of law was affirmed by Justice Darigan of the Rhode Island Superior

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employee stock purchase plans, Richfield Oil Corp. v NLRB, 231 F.2d 717, 37 LRRM 2327 (D.C. Cir. 1956, cert denied, 351 U.S. 909, 76 S. Ct. 695 (1956); and **employee discount programs,** NLRB v Cent. Ill. Pub. Co., 324 F.2d 916, 54LRRM 2586 (7th Cir. 1963). See *NLRA Law and Practice*, 13.05.

[4] **Particular hours of day and days of week required to work,** Associated Food Retailers, Inc. v Jewel Tea Co. 381 U.S. 761, 85 S.Ct. 1797 (1965); **compensatory time off for overtime worked,** Fall River Savings Bank, 260 NLRB 911, 109 LRRM 1292 (1982); **shift schedules,** Carbonex Coal Co. 262 NLRB 1306, 111 LRRM 1147 (1982); **overtime policies,** Equitable Resources Exploration, 207 NLRB 730, 141 LRRM 1279 (1992) enforced mem., 989 F.2d 492 (4th Cir. 1993); **time clock procedures,** Cardinal Sys., 259 NLRB 456, 109 LRRM 1005 (1981), **rest periods, lunch periods and wash-up time,** Nat'l Grinding Wheel Co., 75 NLRB 905, 21 LRRM 1095 (1948); **shift assignments,** Southern Newspapers, Inc., 255 NLRB 154, 107 LRRM 1058 (1981) and **leave- including leave without pay,** Rocky Mountain Hospital, 289 NLRB 1370, 130 LRRM 1493 (1988). *NLRA: Law & Practice,* 13.03 (4)

Court in Case No. PC 02-2513, decided January 30, 2004. In his decision, Justice Darigan noted that the General Order in that case impacted both wages and the terms and conditions of the officers' employment by imposing strict new requirements with which officers must comply in order to qualify for injured-on-duty status and wages. In that case, the general order: (1) permitted an officer's duty status to be changed from IOD to "sick" in certain circumstances (2) changed the calculation of vacation time for an officer injured in the line of duty by requiring the officer to take "furlough" time when he or she leaves the state for more than 24 hours while injured and (3) imposed mandatory discipline upon officers who fail to attend two scheduled appointments to be evaluated by the Town's physician. Id at 10. The Court also noted that the testimony in the record and the text of the general order itself supported a conclusion that the provisions of the general order constituted a substantial and material change from the Police Department's previous practices concerning injured on duty claims. Id at 11.

In this case, the Town of North Kingstown's IOD policy also affects both wages and the terms and conditions of the officers' employment by imposing strict new requirements with which officers must comply in order to qualify for injured-on-duty status and wages. [5] In addition, the policy also impacts negotiated benefits (vacation, and sick leave, rank).

Section B (5) of the policy provides:

> "Employees who are on injured on duty status who wish to leave the state for a period of time in excess of twenty four hours must obtain a letter from their treating physician approving of such travel and submit it to the Chief of Police in advance. All such out of state time will be attributed to an employee's vacation, or if vacation has been exhausted, to leave without pay, unless the time out of state is part of a Department assignment."

Suppose the injured officer is traveling out of state to undergo a medical procedure such as surgery or burn treatments which will require a prolonged hospital stay out-of-state. According to the above portion of the policy, an injured officer undergoing necessary medical treatment is treated as if he or she was on a vacation and if he or she has no vacation time on the books; he or she is placed on "leave without pay" status. This is a significant departure from the previous IOD policy and certainly is germane to

[5] Although this Board has no power to determine whether the IOD policy violates the provisions of R.I.G.L. 45-19-1 which requires the payment of the injured officer's salary and benefits and medical expenses, during the entire term of incapacity, the plain language of the policy certainly seems to be violative of that statute. See Sections B (5) (7) which allows the Police Chief to place an injured officer into a "leave without pay" status.

the working environment of the police officers. Moreover, it appears to be violative of R.I.G.L 45-19-1, as well.

Sections F (10) and G (1) of the IOD policy appear to conflict with each other, leaving the employee's status at risk and subject to the whims of a sitting Chief. Section F (1) states that the "final determination of whether an employee's work status is accepted as injured on duty (ID) for payroll purposes rests with the office of the Chief of Police. Yet, Section G (1) leaves the final and binding determination as to medical status to the medical community, where it belongs. So, what happens when an injured officer's condition is not agreed upon by his physician and the town physician and has been finally determined by the third physician and the Chief is not happy? Does he get to make the final decision as set forth by Section F (1) or is the medical opinion rendered pursuant to G (1) determinative?

Section B 10) of the new IOD policy implements a light duty requirement and provides: "Employees may not refuse light duty assignments that are supported by and consistent with the recommendations of their attending physician, a Town physician, or a physician who is selected pursuant to Section IV (G) of this order." Section B (11) provides: "Employees who refuse such a light duty assignment may be subject to discipline pursuant to the rules and regulations of the department. All cases of an officer refusing a light duty assignment will result in an immediate review of the continued acceptance of the injury being compensable and may also result in discipline under the department's rules and regulations." However, R.I.G.L. 45-19-1 provides for a complete safety net for wages and other benefits for officers who are wholly ***or partially incapacitated*** by reason of injuries received or sickness contracted in the performance of his or her duties. It seems clear to this Board then that unless the Union has agreed to a light duty policy through negotiations, then the Town's order is not only a fiat which amounts to an unfair labor practice, but is likely to be violative of R.I.G.L. 45-19-1 as well.

THE DUTY TO BARGAIN IN GOOD FAITH

During the term of an existing collective bargaining agreement, an employer may not change any term or condition of employment addressed in the contract absent consent of the Union. With respect to matters of employment not addressed in the contract, an

employer's obligation for bargaining is that of good faith and the employer may not institute a proposed change to matters not contained in the agreement, unless the employer has bargained to impasse or the union has waived its right to bargain. Milwaukee Spring Division of Illinois Coil Spring Co. 268 NLRN 601, 115 LRRM 1065 (1984 enforced sub nom., UAW Local 547 v. NLRB, 765 F.2d 175 (D.C. Cir 1985) Also see *NLRA Law & Practice.* 12.06 (3). In this case, it is undisputed that neither the previous IOD policy nor the CBA contained any language about light duty assignments, let alone mandatory assignments that could force an employee to work out of rank.

Under federal law, an employer's unilateral implementation of or changes to plant rules without notice to or consultation with the union may constitute a violation of Section 8 (a) (5) of the NLRA where such rules or changes constitute material significant and substantial changes to terms and conditions of employment. *The Developing Labor Law*, 4th Ed. Supp., 224. citing Nortech Waste, 336 NLRB No. 79, 168 LRRM 1361 (2001)(changes in sick leave policy); Flambeau Airmold Corp. 334 NLRB No. 16 (2001) (changes in discipline policy, sick leave/vacation approval process). "An employer may also violate the Act when it unilaterally converts a previously informal and occasional rule into a written policy statement that includes discipline and *applies at all times."* (emphasis added herein) *The Developing Labor Law*, 4th Ed. Supp., 224 citing Scepter Inc. v NLRB, 280 F.3d 1053, 169 LRRM 2525 (D.C. Cir. 2002) In Scepter, the employer unilaterally instituted a new rule, the violation of which could result in termination and required the employees to sign the policy as an "acknowledgement" of its receipt. The Court held that the new work rule, which had converted a previously informal policy into a hard and fast rule and whose violation would subject an employee to summary discharge, had a significant effect on the conditions of employment. Id.

In this case, there are several "hard and fast rules" which appear to require a loss of IOD status, even when the subject matter of the rule may not be within the control of the employee. For instance, Section IV (A) (9) requires the injured officer to obtain and submit to the Chief, a completed "Physician's Report of an Employee Injury". Failure to produce the report within fifteen (15) days of the injury will result in the time off being treated as unpaid leave, unless and until the IOD claim is proved to the satisfaction of the Chief. An injured employee, or even a healthy one for that matter, cannot control if and

when a treating physician fills out paperwork. The injured employee may not even know who it was that treated him or her, depending upon where the treatment was obtained, under what circumstances and how long it takes for the employee to be in a sufficiently healthy position to chase down paperwork. This section of the policy is written with mandatory language – "will be treated as unpaid leave" instead of discretionary language – "may be treated as unpaid leave". Once again, the Board is faced with the possibility that an employee could easily be deprived of rightful statutory benefits through the whims of a single individual or by a policy that is simply too rigid for the circumstances.

Section IV (B) (7) provides another example of rigidity that result in punishment. It provides that employees who fail to report for a medical examination "will be considered not to have provided sufficient proof of his/her status and will be removed from injured on duty status. The employee may also be subject to discipline. Thus, the employee who suffers a death in his or her family requiring attendance at a funeral instead of a doctor's appointment will be removed from IOD status. The employee who has no transportation to a doctor's appointment because his or her medical conditions prohibit driving and he or she could not find alternate transportation will be removed from IOD status. An employee who fails to report because of an error in scheduling by the doctor's office or because he or she did not receive timely notice of the appointment automatically loses IOD status. The list could go on and on. While none of these results may be actually intended by the draftsman of the policy, they are mandated because of the way the policy is written.[6] This is very disconcerting to the Board.

EXCEPTIONS TO THE DUTY TO BARGAIN IN GOOD FAITH

The obligation to bargain continues even after a collective bargaining agreement has been negotiated as to any term or condition of employment not embodied in the agreement, unless one party or both have waived their right to bargaining. NLRB v Jacobs Manufacturing Co. 196 F.2d 680, 20 LRRM 2098 (2nd Cir 1952) Waivers may arise from the express terms of the contract, from the failure of one party to request negotiations when informed on prospective changes or may be inferred from the history of the parties' negotiations. Because the right to demand bargaining is a statutory right, waivers will not be readily inferred and will be found only when there is "clear and

[6] Of course, there is always the possibility that the draftsman did intend to have such significant power retained in the Chief.

unmistakable" evidence that a waiver was intended. Bozeman Deaconess Hospital, 322 NLRB 1107, (1997) quoting Johnson-Bateman Co., 295 NLRB 180,184, 131 LRRM 1393 (1989) Also see *NLRA Law and Practice* 12.04 (9)

Contractual waivers are most typically incorporated into the "management rights" clause of contracts. These clauses generally reserve to the Employer, the affirmative right to act unilaterally in regards to specified subjects concerning the terms and conditions of employment. The Supreme Court has held that a waiver will not be inferred from general contractual language and that waiver language must be clear and unmistakable.

Under federal law, it is a settled concept that even when there exists a mandatory subject for bargaining, unilateral changes to such a term or condition of employment, to be illegal, must be measured against exiting rules to see whether there is a significant, substantial and material impact on employees' terms and conditions of employment. If changes by an employer lack such an impact, then no bargaining is required. Rust Craft Broadcasting, 225 NLRB 327 1976, United Technologies Corp, 278 NLRB 306, 308 (1986), Peerless Food Products, 236 NLRB 161 (1978). Compare with W-I Forest Products Co., 304 NKRB 83, (1991) (smoking ban was mandatory subject, in part because violation of the ban could lead to discipline)

In this case, the Town argues that it was not required to bargain with the union over the terms of this General Order because the collective bargaining agreement contains a provision that allows the Town to revise rules and regulations, after discussion with the Union and that the Union's consent is not required. Therefore, the Town argues that because it has reserved the right to implement rules and regulations, then it had no obligation to bargain over the creation of a light duty policy and the significant changes to the existing IOD policy which could result in the deprivation of a statutory benefit by an injured employee. If the Town's logic is carried to a natural conclusion, then the Town could unilaterally implement any change to any term or condition of employment merely by issuing a rule or regulation.

Section 3.3 (A) of the collective bargaining agreement provides that the town and Union "shall recognize and adhere to all provisions of federal, state and local laws, the North Kingstown Police Department Rules and the terms of this agreement". Thus, any rule or regulation which is subject to revision after discussion with the Union (but not

agreement by the Union) must necessarily be in compliance with federal, state and local laws. By Town Ordinance, the Chief only has the authority to "enact reasonable rules and regulations covering the government, discipline, uniforms and equipment of police officers and fixing their duties and prescribing penalties for violations of any such rules and regulations".

The provision of IOD benefits to injured police officers is mandated by R.I.G.L. 45-19-1. This statute requires very simply that a municipality shall pay to the injured–on-duty police officer, who is either ***wholly or partially incapacitated, during the period of incapacity***, the salary or wages and benefits to which the police officer would have been entitled had he or she not been incapacitated.

Therefore, this Board finds that the promulgation of the "General Order", does not appear to be the type of rule or regulation that is authorized by the North Kingstown Ordinance. However, even if it were authorized by the Ordinance, the General Order impacts on mandatory subjects for bargaining and operates to deprive an injured officer of statutory and contractual benefits in many circumstances and requires a partially incapacitated officer to involuntarily return to duty status. Therefore, the unilateral implementation of the policy without bargaining in good faith is violative of R.I.G.L. 28-7-13 (6) and (10). [7]

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) From 1983 to July 31, 2000, the Town of North Kingstown's Police Department had in effect "General Order No. 20, Series of 1983", which modified Section 306.4 (Injuries) of the Department's Rules and Regulations. Said general order provided in pertinent part: "Members of the North Kingstown Police Department who are injured

[7] The Employer also argues that it had bargained and actually reached agreement. However, the Employer made only one change to the policy, implemented and then agreed to continue discussions. This is not reaching an agreement.

in the line of duty shall receive full salary while their incapacity exists, or until they are placed on disability retirement."

4) On July 19, 2000, Police Chief James L. Wynn issued a draft copy of a new general order pertaining to line-of-duty injuries. On July 28, 2000, Union officials met with the Police Chief to discuss their concerns about the general order. After making one change to the document, the Police Chief implemented the general order on July 31, 2000.

5) After the implementation of the General order, some additional discussions were conducted and some correspondence was exchanged between the parties

CONCLUSIONS OF LAW

1) The issue of the receipt of injured on duty benefits and the issue of "light duty" are mandatory subjects for bargaining.

2) The Union has proven by a fair preponderance of the credible evidence that the Employer has committed a violation of R.I.G.L. 28-7-13 (6) and (10).

ORDER

1) The Employer is hereby ordered to cease and desist from further use of the Injured on Duty policy, without first bargaining its implementation in good faith with the exclusive bargaining agent.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank J. Montanaro, Member

Joseph V. Mulvey, Member

Gerald S. Goldstein, Member (Dissent)

Ellen L. Jordan, Member (Dissent)

John R. Capobianco, Member

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

Dated: MAY 11, , 2004

By:
Robyn H. Golden, Acting Administrator

NOTE: Elizabeth S. Dolan, Board Member, recused herself from participation in this matter.

ULP-5485