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

IN THE MATTER OF	
RHODE ISLAND STATE LABOR RELATIONS BOARD	
-AND-	CASE NO: ULP-6088
THE 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"), as 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 June 13, 2012 and filed on June 14, 2012 by the International Association of Firefighters, Local 1651 (hereinafter "Union").

The Charge alleged violations of R.I.G.L. § 28-7-13 (6) and (10) and (11) as follows:

SUMMARY OF BASIS OF CHARGE

1. The Union and the Town are parties to a Collective Bargaining Agreement ("CBA") governing the period of July 1, 2007-June 30, 2010.

2. The most recent CBA between the parties is the result of interest arbitration award dated August 9, 2011, governing the period of July 1, 2010 through June 30, 2011.

3. By operation of law, the 2007-2010 CBA remains in effect, as amended by the interest arbitration award.

4. Starting in or about October, 2011, the parties met to bargain over the terms of a successor Collective Bargaining Agreement.

5. The Town, however, did not bargain in good faith, and threatened to pass an ordinance unilaterally changing the terms and conditions of employment if the Union did not accede to demands. *See Rhode Island State Labor Relations Board and Town of North Kingstown, Case No ULP 6071.*

6. On or about January 30, 2012, while the parties were still engaged in negotiations, (albeit, not "good faith" negotiations as required by State law) the Town adopted Ordinance 12-02 ("the Ordinance") which unilaterally changed the terms and conditions of employment as set forth in the parties' most recent CBA.

7. On February 28, 2012, the Union filed a Complaint in the Superior Court against the Town of North Kingstown, through its Town Manager and Town Council, seeking a declaration that (1) the Ordinance is invalid because it is in violation of the Town Charter and the Fire Fighters' Arbitration Act ("FFAA") and (2) that the Town's failure to maintain the status quo constitutes a violation of the FFAA and the State Labor Relations Act ("SLRA"). The Union also sought to enjoin implementation of the Ordinance and to enjoin the Town from unilaterally changing the terms and conditions of employment.

8. On or about March 6, 2012, the Town implemented the Ordinance, unilaterally changing the terms and conditions of employment in violation of the CBA, as amended by an interest arbitration award dated August 9, 2011, and State law.

9. The Ordinance, among other things, increases firefighters' workweeks from the contractual forty-two hours per week to fifty-six hours per week; changes firefighters' shifts from ten and fourteen hour days to twenty-four hour days; and decreases firefighters' hourly pay rates.

10. In or about March, 2012, after the Town declared impasse, the Union filed a demand for interest arbitration for the 2011-2012 contract year. Arbitration is pending.

11. On May 23, 2012, the Court issued a Decision, attached hereto and incorporated herein, finding:

(1) "the Ordinance is invalid because it was passed in violation of the Town Charter,"
(2) "the Ordinance is invalid because it conflicts with the FFAA by imposing changes to wages, hours, and terms and conditions of employment without first bargaining to agreement or following the FFAA's statutory arbitration procedures; and
(3) "the Union's request to enjoin implementation of the Ordinance is moot because there is no Ordinance to enjoin."

12. This Board is bound by the Court's holding that the Town violated the FFAA by unilaterally changing the terms and conditions of employment "without bargaining to agreement or following the FFAA's statutory arbitration procedures."

13. Given the Court's clear ruling, the Union submits that a formal hearing is unnecessary and this Board must find that the Town's actions, as aforesaid, constitute a violation of R.I.G.L. § 28-7-13 (6) (10) and (11).

REMEDY

The Union requests that:

1) the Town be ordered to restore the status quo ante as it existed upon the expiration of the parties' collective bargaining agreement;
2) the Town be ordered to compensate the Union and its members for all damages incurred as a result of the Town's failure to maintain the status quo as aforesaid;
3) the Town be ordered to participate in statutory arbitration proceedings; and
4) that the Board order such other relief as it deems proper.

Following the filing of the Charge, the Administrator notified the Employer in writing of the charge and provided a copy of the same. In accordance with R.I.G.L. § 28-7-8 and Board Rule 9.01.6, and R.I.G.L. § 28-7-9(d), the Board's Administrator directed both parties to submit written statements for the informal hearing process by July 2, 2012, with any replies to the initial statements to be filed by July 9, 2012.

After the informal hearing process conducted by the Administrator, the Board reviewed the matter, including the written statements submitted by both parties and issued a Complaint on August 2, 2012. The Board's Complaint alleged: The Employer violated R.I.G.L. § 28-7-13 (6) and (10) when, on March 6, 2012, the Employer unilaterally changed terms and conditions of

employment, including hours and wages, without bargaining to impasse and without exhausting all statutory dispute resolution mechanisms under the Firefighters Arbitration Act. [1]

On August 10, 2012, the Employer filed an answer to the Board's Complaint, denying the charges and asserting twenty-one affirmative defenses. The affirmative defenses are as follows:

1) The Complaint fails to state a claim upon which relief may be granted.

2) The Labor Relations Board lacks jurisdiction over the subject matter of the Complaint.

3) The Union waived bargaining.

4) The Union waived arbitration.

5) The Union has unclean hands.

6) The Union elected its remedies.

7) The terms and conditions which the Town is alleged to have implemented are not lawful subjects of bargaining and/or arbitration.

8) The sovereign cannot be estopped from taking action to protect the citizenry.

9) The sovereign cannot be estopped from acting to avoid debt.

10) The Labor Relations Act and/or the Firefighters' Arbitration Act are superseded by more specific statutes.

11) The Labor Relations Act and/or the Firefighters' Arbitration Act are superseded by more special laws.

12) The Labor Relations Board has acted on unlawful process and denied the Town due process of law.

13) To the extent that the Labor Relations Act and/or the Firefighters' Arbitration Act prohibits the Sovereign from implementing terms and conditions of employment as alleged, the Act(s) violate the Rhode Island Constitution.

14) The allegations in the Complaint are barred by the doctrine of laches.

15) The allegations in the Complaint are barred to the extent they were not filed within the applicable statutory limitations period(s).

16) The Union is estopped by operation of its own conduct.

17) The allegations in the Complaint are barred by the doctrine of ratification.

18) The allegations in the Complaint are barred to the extent that the Union did not exhaust its arbitral remedies.

19) The allegations in the Complaint are barred by the doctrine of collateral estoppel.

20) The allegations in the Complaint are barred by the doctrine of res judicata.

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[1] On August 6, 2012, the complaint was amended to add the name of Charles Brennan which had been inadvertently omitted from the initial complaint.

21) The Town at all times has acted in good faith.

The matter was then scheduled for formal hearings which commenced on September 11, 2012. At the first formal hearing, the Employer filed a copy of a "Verified Complaint and Petition to Stay Arbitration styled Town of North Kingstown v. International Association of Firefighters Local 1651, AFL-CIO, C.A. No. WC 2012-0542. In addition, the Employer made three oral motions: (1) Recusal of Board Member, Frank J. Montanaro; (2) Motion for stay (while the Superior Court Case 2012-0542 was pending; and (3) Motion to dismiss the case. In accordance with Board Rule 7.04.4, the Employer was directed to submit its motions in writing to the Board and the hearing commenced. On or about September 27, 2012, at the commencement of the third formal hearing, the Employer submitted the written motions and the hearing continued. The Union was provided with an opportunity to respond to the written motions and did so on or about October 3, 2012.

At the October 9, 2012 monthly meeting, the Board voted as follows: (1) To deny the motion to recuse Member Frank Montanaro on the basis that the Board does not have subject matter jurisdiction to address said motion; (2) To deny the motion for stay on the basis that the Board has proper subject matter jurisdiction to proceed; and that the within matter is sufficiently different from the East Providence case to follow a different course of action; and (3) To deny the motion to dismiss on the basis that the Board has proper subject matter jurisdiction to proceed. A letter informing the Employer of the outcome of its motions was sent on October 22, 2012.

Formal hearings were opened for the introduction of evidence and examination of witnesses and were held on September 11, 2012, September 13, 2012, September 27, 2012, November 29, 2012, January 29, 2013, February 14, 2013, March 7, 2013, April 23, 2013 and May 7, 2013. Representatives from the Union and the Employer were present at the evidentiary hearings and had full opportunity to examine and cross-examine witnesses and to submit documentary evidence. [2] Transcripts of the testimony adduced at these hearings totaled 615 pages. Extensive briefs were filed on or about June 28, 2013. The Employer's brief was fifty-four pages and had an appendix a few inches thick. The Union's brief totaled fifty-five pages and similarly was accompanied by an Appendix. On July 22, 2013, the Employer submitted a

[2] The Board's efforts to hear this matter expeditiously were hampered by the unavailability of counsel for the parties, due to both approved Court excusals (which were then the basis for excusal requests from appearing before the Board) and scheduling conflicts with other matters. In addition, one of the formal hearings was cancelled, due to a funeral for one of the Union members. The record will reflect that as far as court excusals, during the pendency of this case, the two Union attorneys were excused for a total of 28 business days. The Town's attorney was excused for a total of 107 business days. While the Board doesn't normally specify attorney absences in a decision, this issue was recently highlighted in collateral litigation that was filed to prevent the issuance of this written decision. Town of North Kingstown v Rhode Island State Labor Relations Board, et al. PC 2013-4261. Moreover, it is discussed to establish that the Board complied with the statutory mandates of RIGL 28-7-25 to handle this matter with expedience.

ten page motion to strike the Union's brief, with an appendix containing an order from the Rhode Island Supreme Court. On July 23, 2013, the Union filed its nine page objection to the motion to strike, together with additional documents. On July 30, 2013 at 3:54 p.m., the Employer filed a reply to the Union's objection to the motion to strike. On July 31, 2013, the Board met to consider the case. In doing so, the Board first denied the Employer' motion to strike the Union's brief, in part because this motion was in actuality, a reply brief, which was not authorized by the Board and in part because the Board does not find the relief requested to be appropriate. In addition, the Board decided to not consider the Employer's reply, filed on July 30, 2013, as it was not timely filed for consideration by the Board, in advance of the July 31, 2013, 9:00 am meeting. In arriving at the Decision and Order herein, all participating Board members have reviewed and considered the transcripts, documentary evidence, oral arguments and written briefs submitted by the parties.

FACTUAL SUMMARY

The Employer and Union have long been collective bargaining partners, pursuant to the authority and requirements vested under the FFAA. The most recent long-term collective bargaining agreement ("CBA") was for the period 2007-2010. The contract for fiscal year 2010-2011 was the result of protracted interest arbitration proceedings which produced an award on August 9, 2011 – ***after*** the expiration of the effective contract year. Within that arbitral process, the Employer had sought to change the platoon structure of the fire department from four platoons to three and to change the working hours of the employees from an average workweek of forty-two hours to one of an average of fifty-six hours. The Employer's proposal would have changed the working hours of the firefighters from four days on (two ten hour shifts, followed by two fourteen hour shifts) followed by four days off to one twenty-four hour shift, followed by forty-eight hours off. For the period October 28, 2010 - February 8, 2011, the parties engaged in the interest arbitration process for the 2010-2011 fiscal year. The interest arbitration panel in that proceeding conducted thirteen days of hearings and reviewed 172 exhibits and 357 pages of post-hearing briefs. (Union Exhibit #4) The interest arbitration award for the 2010-2011 fiscal year issued on August 9, 2011, after the conclusion of the fiscal year it governed. The panel in that proceeding denied the Employer's proposal to change the platoons and working hours as requested for a variety of reasons, including: (1) it would be a drastic departure from the current schedule, thereby impacting the lifestyles of employees who have come to function on a four-day on, four-day off type of regimen; (2) it would bring significant change to the way that employees interact with their families by increasing the average number of hours worked per week from forty-two to fifty-six; (3) The Town's financial situation did not warrant such a drastic

change; and (4) None of the comparable communities being compared had the same shift schedule being proposed. (See Union Exhibit #4)

The parties commenced negotiation for a successor agreement for the 2011-2012 fiscal year a little more than two months later on October 28, 2011. At the commencement of these negotiations, the Employer indicated that unless the Union could find a way to make a 1.2 million dollar structural cut in the upcoming CBA, then the Employer was prepared to pass an ordinance that would unilaterally change the terms and conditions of employment, including changing the shifts and increasing the total number of hours that firefighters must work each week. At the initial meeting on October 28, 2011, the parties exchanged initial proposals. The Union's initial proposal for hours and wages was to remain at the forty-two hour work-week (on average), with a five percent wage increase. The Employer's initial proposal for hours and wages was to increase the work-week to fifty-six hours (on average) with no increase in wages and to re-organize the platoon structure from four platoons to three platoons. (See Union Exhibit #8, pgs. 20-21) (This is the very structure that two months earlier had been rejected by the prior year's interest arbitration panel.) [3]

At the next bargaining session on November 29, 2011, the Union proposed increasing the average work-week from forty-two hours to forty-eight hours and withdrew its request for the five percent wage increase. On December 5, 2011, the parties met again. The Union again offered a forty-eight hour work-week, for only forty-five hours of compensation, with the overtime rate to remain the same. The Union lowered its initial demands in regard to other financial items as well. The Employer continued to seek the fifty-six hour work-week with what purported to be a "raise", but which still resulted in the firefighters working more hours overall for less pay per hour.

The Union President and the Town Manager exchanged email communications on December 5th, 12th, and 13th concerning future bargaining sessions and agreed to meet on December 20, 2011 at 2:30 pm in the Town Hall. (Union Exhibits #13 & #14) However, on December 19, 2011 the Employer delivered an ultimatum in the form of a proposed ordinance to the Union. The letter accompanying the proposed ordinance indicated for the first time that the Employer was no longer planning to bargain over ***the decision*** to change the platoon structure and hours of work, but was only willing to negotiate the ***"effects"*** of such of this decision. (Union Exhibit #15) (Underlining and emphasis added herein) In addition, the Employer adopted an entirely new legal position claiming "section 3.26 of the contract will not be renewed, as it

[3] Both the Union's and Town's proposals also addressed a number of other terms and conditions of employment.

unlawfully restricts the constitutional and statutory authority and duties of Town officials." [4] Id. (Underlining and emphasis added herein) In addition, the letter stated "other provisions of the expired contract are either unlawful or require negotiation, in whole or in part, as they cannot be continued in their present form. Among them are included, but are not limited to, the following: Sections 3.22 (B), 3.25 (a), 3.27, 4.1, 4.4 and 4.6. If you would like to discuss any of this, please contact me so that a meeting can be scheduled promptly." Id [5]

Despite the fact that the Employer added to the issues in dispute *after* the initial thirty days of bargaining had passed without an agreement, and then proceeding with the ordinance, the Union's representatives still met with the Employer's representatives on December 20, 2011, as scheduled. At the December 20, 2011 session, the Union proposals were modified in regard to minimum manning and the Employer proposed that the fifty-six hour work-week be imposed only on new hires and current firefighters' work-weeks would increase to forty-eight hours. Upon conclusion of this meeting, the parties were still not in agreement. On December 27, 2011, the Town Manager inquired of the Union as to its availability for "another negotiating session." (Union Exhibit #17)

On January 3, 2012, the Union notified the Town Manager that the Union's Executive Committee was "on board" and that "if the Council approves, we can finalize the small details later this week and move for ratification on my end soon. Should help with the budget prep on your end; keep me posted." (Union Exhibit #18) The Manager indicated that he thought he had "3" (implying Council members on board) and agreed to keep the Union posted. (Union Exhibit #18) He also indicated that he planned to "sell" the Union's proposal to the Council. Id. On Wednesday, January 4, 2012, the Manager sent the Union an email stating: "Hold off on bringing proposal to the body. It's going to take some time to work numbers out and present a few tweaks." Id. The Union President replied, "OK, I wasn't going to take anything to the body unless I know it has the support of the Council and will constitute an agreement if ratified. Talk to you soon." Id.

On Wednesday, January 11, 2012, the Town Manager sent an email to the Union President stating: "Let me know when you can meet- this week or next. We have costed out all of the items and we have an offer that Dan is finishing that we should meet and discuss." Id. The Union President replied that he was available any day Jan. 17-20, starting at 10:00 am and that he would need to be back in Warwick by 3 p.m. each day, as well. He stated: "let me know

[4] Section 3.26 of the expired contract is entitled "Minimum Manning."
[5] Section 3.22 is Platoon Assignments, Section 3.25 (a) Vacancies in Fire and Rescue Officer Ranks, Section 3.27, Vacancies, Section 4.1 Hours of Work and Regular Hourly Rates, Section 4.4 Call-back pay, Line Members, Section 4.6. Overtime Pay- Non-Holiday Line Members and Staff Members.

what works for you and Dan and we can go from there." Id. The Manager replied: "Thanks, I will get back to you." Id.

The parties met again on January 18, 2012 and the Employer's proposal on hours was again *back to* a fifty-six hour workweek for *all* members, plus a series of other items. This written document was entitled "Final Proposal to Union." (Union Exhibit #20) The Employer characterizes its proposal as being a twenty percent pay increase and the Union characterizes it as a thirteen percent decrease. That's because the increase in the number of average hours is not accounted for in the Employer's description of a twenty percent increase. On January 27, 2012, the Union membership met and voted to reject the Employer's January 18, 2012 offer. On January 29, 2012, the Union President met with the Town Manager to review a document entitled "NKFFA Annual Savings Estimate through 6/30/15", which purported to clarify the Union's prior offer. This document estimated that the structural savings to the Town for the balance of FY 2011-2012 would be $215,212.00. The projected savings in 2012-2013 would be $749,539.00 and the projected savings for 2013-2014 were estimated at $711,540. The annual savings for 2014-2015 were projected at $510,149.00. The projected structural savings was projected to be $780,544.00. The Union President testified that the Manager's response to this document was that "he and Trish would...take a look at the numbers and get back to me." (TR. p.87)

The next day, January 30, 2012, the Employer passed the proposed ordinance, with an effective date of March 11, 2012. On February 14, 2012, the Union President emailed the Manager to "touch base." He stated: "I'm not sure if you are waiting for me to get back to you, but I thought you were going to review the numbers with Trish and get back to me. Not a big deal, but with everything going on, I wanted to make sure we were on the same page." (Union Exhibit #22) The Manager replied: "Waiting for you. I will check with my folks and get back." Id. On February 15th-17th, the parties exchanged additional scheduling emails. (Union Exhibit #23) In these emails, *the Employer* offered the dates of February 23rd, March 5th, March 8th, and March 9th.

The parties met again on February 23, 2012. The Union submitted a written proposal that would provide for a forty-eight hour work-week, for only forty-two hours pay, as well as other concessions. (Union Exhibit #24) The parties did not come to an agreement at this session. The next session was scheduled for March 5, 2012. On March 1, 2012, the Union notified the Manager of a scheduling conflict for Monday the 5th. The Union acknowledged in that email that the Employer's attorney was in Europe. The Manager responded that "Dan's in contact" with him daily. (Union Exhibit #25) In addition, since the Ordinance was scheduled to

go into effect, the Union filed its action in Superior Court (North Kingstown I) seeking injunctive relief to prevent the implementation of the ordinance. The Court held the first hearing on this matter on or about March 6, 2012. On March 9, 2012, the Union filed a demand for interest arbitration for fiscal year 2011-2012 with the American Arbitration Association. (Union Exhibit #27) In the cover letter accompanying that demand, the Union stated that on Tuesday March 6, 2012, Dan Kinder, acting on behalf of the Town, declared impasse in the contract negotiations for the contract year 2011-2012. On March 11, 2012, the Employer implemented the ordinance and unilaterally changed the terms and conditions of employment for the North Kingstown Firefighters, including hours and wages. After the Court issued its decision on May 23, 2012, the Union then filed the within unfair labor practice charge on June 14, 2012. As noted supra, The Board issued its Complaint against the Employer on August 2, 2012.

DISCUSSION OF CONTEXT OF DECISION & ORDER

It is important to note that this matter does not come before this Board free of other limiting factors and that the Board does not address this matter in a vacuum or write this decision on a blank slate. Indeed, labor discord between the Town of North Kingstown and Local 1651 is widely known and has been publicly discussed and reported on the front pages of the Providence Journal and other news outlets for the better part of the last two years. While the Board takes no stock in or notice of anecdotal evidence or discussions in the press, there *are* Superior and Supreme Court proceedings which have occurred that affect our decision-making ability, pursuant to the doctrines of collateral estoppel and res judicata. There are issues that are still being raised by the parties in this proceeding that have already been decided by the Courts, (albeit some of those issues are on appeal). We will endeavor to carefully weave our way through the myriad of issues and discuss them each within the context of this decision. In doing so, we must provide procedural information pertaining to judicial actions, which were made part of the Board's record.

COLLATERAL COURT PROCEEDINGS

On February 28, 2012, the Union filed a three count verified complaint in the Washington County Superior Court seeking: (1) a declaratory judgment that a recently-enacted Town of North Kingstown ordinance, reorganizing the fire department, was invalid due to procedural defects at the meeting at which it was adopted (Count I); (2) a declaratory judgment that the Town's failure to maintain the status quo violates the Firefighters Arbitration Act ("FFAA") and the State Labor Relations Act ("SLRA"), and that the ordinance is preempted by the FFAA and/or the SLRA to the extent they are in conflict (Count II); and (3) injunctive relief preventing the Town from changing the terms and conditions of employment (Count III). North Kingstown

Firefighters, Local 1651 v Town of North Kingstown, WC 12-0127 (hereinafter referred to as "North Kingstown I") [6]

According to the thirty-six page decision issued on May 23, 2012, the North Kingstown Town Manager testified before the Court that the Town could unilaterally implement any change to the firefighter workforce and could do so by ordinance. (See Court decision at p.11 also submitted as Union Exhibit #1, Attached, hereto, as *Appendix I* to this decision.) The Town also maintained that all other changes flowing from that management right to reorganize may be implemented immediately upon passage of the reorganization ordinance, free of any requirement to successfully bargain over wages, hours, and working conditions or to engage in interest arbitration. (See Court decision at pgs. 11-12, Union Exhibit #1, also Appendix I to the decision) The Employer challenged the Court's jurisdiction as to Counts I and III and filed a motion to dismiss. The Court, Justice Stern presiding, granted the Employer's motion to dismiss part of Count II, citing Warwick School Committee v Warwick Teachers' Union No 916, 613 A.2d 1273, 1274 (R.I. 1992). Judge Stern held that the Superior Court did not have original jurisdiction to require parties to a labor dispute to enter into any particular agreement and that justices of the Court may not set out the terms and conditions of employment. The Superior Court reiterated the Supreme Court's holding in Warwick School Committee that the Rhode Island State Labor Relations Board is the tribunal to make determinations as to whether or not the terms and conditions of an expired agreement should be controlling pending the negotiation and execution of a new collective bargaining agreement. (See Court decision at pgs. 15-16, Union Exhibit #1, also Appendix I to this decision.) The Superior Court also determined that both the Union and the Town (corporate authority) have the obligation under R.I.G.L. § 28-9.1-7 to submit unresolved issues to arbitration. The Court specifically stated:

> "In this Court's view, R.I.G.L. § 28-9.1-7 unambiguously imposes a mandatory burden of submitting unresolved issues to arbitration on each party who wishes that those issues be arbitrated, or either party may waive them. This provision does not anticipate allowing either the Town or the Union to simply wait the thirty (30) days to expire to implement unilateral terms and conditions of employment."

The Court, in so holding, specifically declined to accept the Town's interpretation of the Supreme Court's holding in Lime Rock Fire District v Rhode Island State Labor Relations Board, 673 A.2d 51, 54 (R.I. 1996) as intending to place the burden of submitting issues to arbitration soley upon the Union.

As to whether the Employer's ordinance conflicted with the FFAA, the Court held: "this Court finds that the platoon structure of the Fire Department is a management right that may be properly asserted at the expiration of the CBA. Going forward the parties may agree to a new

[6] The Superior Court issued its decision in "North Kingstown I" on May 23, 2012.

CBA that addresses the effects of this management change on mandatory bargaining subjects or proceed to interest arbitration, solely to determine the effects on mandatory bargaining subjects and not the management decision itself." (Decision at p. 31) In rejecting the Employer's contention that it did not have to bargain over the wages and hours of employment because the decision to reorganize was a non-delegable management right and that any conflicts between the FFAA and the Town's ordinance must be resolved in favor of the Ordinance, the Court stated: "this Court finds that the FFAA supersedes the Ordinance insofar as the Ordinance attempts to regulate those issues subject to mandatory bargaining under the Act, including wages, hours and all terms and conditions of employment, and that the Ordinance is, therefore, invalid." (Decision at p. 34)

The second lawsuit that involves these parties was filed by the Employer on September 5, 2012. At the first formal hearing, the Employer submitted a copy of its "Verified Complaint and Petition to Stay Arbitration, styled Town of North Kingstown v. International Association of Firefighters Local 1651, AFL-CIO, C.A. No. WC 2012-0542. (hereinafter, referred to as "North Kingstown II") This complaint was later amended, seeking stay of interest arbitration proceedings, as well as seeking a stay of the Board's processing of the within complaint, ULP-6088, alleging that the Board did not have subject matter jurisdiction. (Respondent's Exhibit #21) [7] In that suit, the Employer alleged that the Union had not requested bargaining at least one hundred twenty days in advance of the latest date under which monies could be appropriated by the town; and therefore, the Union had waived its right to bargaining and to interest arbitration for the 2011-2012 fiscal year. The Employer also alleged that the parties had not been able to come to an agreement within thirty days from and including the date of their first meeting and that the Employer had not agreed to any extension of the thirty-day period; and therefore, the Union had waived its right to request interest arbitration thereafter. In addition, the Employer alleged that pursuant to the Superior Court's decision in North Kingstown I, the Employer had a right to proceed to interest arbitration to determine the "effects" of the its management right to re-organize the fire department and that the Union was refusing to submit to such arbitration.

In December 2012, the Superior Court issued a lengthy decision on this suit, which is attached hereto as Appendix #2. The Court held:

(1) The Town's actions in implementing unilateral changes to the wages, hours, and terms and conditions of employment, were unlawful, as in violation of the doctrine of election or (sic) remedies and the terms of the FFAA.

[7] We note at this point that despite the request for the Court to limit the Board's jurisdiction in that case, the Board was never named as a party to that proceeding.

(2) This Court finds that the SLRB, and not this Court, has jurisdiction over the subject matter of the Complaint in ULP-6088 insofar as it is necessary to determine which terms and conditions have existed between the parties since the expiration of the previous CBA.

(3) The arbitration panel does not have jurisdiction to determine the effects of said unilateral changes, as those changes are invalid and must be undone.

(4) Both the Union and the Town waived their rights to submit unresolved issues to interest arbitration under the FFAA, pursuant to R.I. Gen. Laws § 28-9.1-7.

(5) The interest arbitration panel has no jurisdiction to decide any unresolved issues existing between the Town and the Union because interest arbitration—pursuant to the terms of the FFAA—was waived by the parties for the fiscal year **2011-2012.**

In that decision, the Court also ordered the Employer to "un-ring the bell" as it pertained to the unilateral implementation of the terms and conditions of the departmental organization and ordered the Employer to return the firefighters to the terms and conditions of employment that existed upon the expiration of the 2009-2010 contract. The Employer subsequently appealed the Superior Court's decision and sought a stay from the Rhode Island Supreme Court of the implementation of the Superior Court's order to "un-ring the bell." (Joint Exhibits #4, #5, #6, & #7) The Supreme Court granted the stay, finding that the Employer had met its burden of the likelihood of success on the merits of its appeal pertaining to the Court's order to "un-ring the bell" and revert to the prior terms and condition of employment, in part because the Superior Court did not possess subject matter jurisdiction to determine the terms and conditions of employment when there is an expired collective bargaining agreement. The Court noted that such jurisdiction lies with the Rhode Island State Labor Relations Board. (See Exhibit #1 to Town's Motion to Strike Union's Brief.)

A third suit was filed on or about August 25, 2013 by the Town of North Kingstown against this Board, alleging that we had wholly failed to provide it with an informal hearing, as required by law and that the timeframe for issuance of this decision and order had passed, as a matter of law. The Town sought injunctive relief from the Superior Court, trying to prevent the issuance of this written decision and order. After written memos and oral argument, the Court, Justice Procaccini presiding, denied the Town's prayers for relief. He specifically found that the statutory timeframe for the issuance of this decision had not yet expired, as the proceedings in this matter did not conclude until July 31, 2013, when the Board decided pending motions on the case, issued its preliminary determination and referred the matter to legal counsel for drafting.

DISCUSSION

SUMMARY: POSITIONS OF THE PARTIES

The Employer argues that the Board need not reach the merits of the complaint it issued and must dismiss the same because the Union, on March 15, 2012, filed numerous grievances challenging the reorganization of the Fire Department, seeking the same remedies as sought from the Board. Thus, the Employer argues, the Union has elected its remedy and the Board does not have subject matter jurisdiction over the matter. The Employer also alleges that the Union is barred from seeking a remedy from the Board because the dispute may only be resolved through arbitration pursuant to the Fire Fighters Arbitration Act (FFAA). The Employer further argues that even if the Board did have jurisdiction over the matter, the Employer did not commit an unfair labor practice because the Employer had no duty to bargain with the union over the reorganization of the fire department. The Employer also argues that it did not commit an unfair labor practice because the Employer and the Union had bargained to impasse and had exhausted the dispute resolution procedure of the FFAA as of March 11, 2012. Finally, the Employer also argued before the Board that because Superior Court Justice Stern's December 14, 2012 decision has been appealed by the Employer and stayed by the Rhode Island Supreme Court, that the same has no force or effect or law and that the Labor Board is not bound by it.

The Union argues that the Employer's unilateral change in terms and conditions of employment violated the duty to bargain in good faith which requires the parties to maintain the status quo until impasse. In addition, the Union argues that impasse cannot occur until the expiration of all statutory impasse procedures has been exhausted and that if statutory impasse procedures do not begin, they cannot be exhausted. The Union also argues that strict compliance with timelines for negotiations are not mandated, when the parties have agreed to continue negotiating; and that the evidence shows that the parties herein had agreed to continue negotiations until at least March 5, 2012. The Union also argues that the application of private sector impasse law (which is not even appropriate) will establish that impasse had not been reached when the Employer unilaterally imposed terms and conditions of employment. Finally, the Union argues that none of the Employer's affirmative defenses have merit and should be rejected.

THE DUTY TO BARGAIN IN GOOD FAITH & IMPASSE

The duty not to effect unilateral changes in terms and conditions of employment is derived from the statutory command to bargain in good faith. Litton Financial Printing Division, v NLRB, 501 U.S. 190, 203 (1991). The Employer claims that the evidence has and will continue

to show that the parties were at impasse at all relevant times during these negotiations, including March 11, 2012 when the reorganization went into effect. (TR. pgs. 569-570) The Employer claims that all of its participation in negotiations, including the very first meeting, was simply its efforts to "break impasse."

What is impasse? One treatise defines "impasse", as an elusive concept denoting the time when a stalemate has been reached, such that it may be said that further bargaining in the future would be unlikely to produce progress. National Labor Relations Act: Law & Practice, N. Peter Lareau, 12.04 (7) (a). When impasse is reached, under federal labor law for *private sector parties*, there is a temporary suspension of the duty to bargain. Id. There is no fixed definition of an impasse or deadlock that can be applied mechanically to all factual situations, nor is there a rigid formula for assessing so subtle an issue as the precise time as to when an impasse occurs. Id, citing Dallas Gen. Drivers, Warehouseman and Helpers, Local Union No 745 v NLRB, 355 F.2d 842, 61 LRRM 2065, 52 LC 16817 (D.C. Cir. 1966) The NLRB utilizes five criteria in determining whether impasse has occurred under federal private sector law: (1) Bargaining history; (2) Good faith of the parties in negotiations; (3) Length of negotiations; (4) The importance of the issue or issues to which the parties disagree; and (5) The contemporaneous understanding of the parties as to the state of negotiations. Taft Broadcasting Co., 163 NLRB 475, 64 LRRM 1386, 1967 (1967) enforced sub nom., Television & Radio Artists v NLRB, 395 F.2d 622. (D.C. Cir 1968). Under the NLRB's regulations, the party asserting an impasse must establish: (1) The actual existence of a good faith bargaining impasse; (2) the issue as to which the parties are at impasse is a critical issue; (3) the impasse on this issue led to a breakdown in the overall negotiations; in short, that there can be no progress on any aspect of the negotiations until the impasse relating to the critical issue is resolved. National Labor Relations Act: Law & Practice, N. Peter Lareau, 12.04 (7) (a).

In the event that impasse is reached, a private sector employer under federal labor law employer is permitted to unilaterally implement changes in terms and conditions of employment reasonably comprehended by its pre-impasse proposals that the parties have had a reasonable opportunity to bargain. Id. at 12.04 (7) (b). If the breakdown in negotiations is brought about by bad faith bargaining or other unfair labor practices, no impasse exists and the employer is not free to unilaterally implement is proposals. Industrial Union of Marine & Shipbuilding Workers v NLRB, 320 F.2d 615, (3rd Cir. 1963), cert denied, 375 U.S. 984, 84 S.Ct. 516, 11 L. Ed. 2d 472 (1964).

In this case, the parties began negotiating at the end of October, 2012, just two months after an arduous and expensive interest arbitration proceeding where the Employer had not

been awarded the change in platoon schedules and hours that it was again seeking in the 2011-2012 contract. At that initial meeting, the Employer announced that it had to secure 1.2 million dollars in structural savings and that in the absence of the same, it would implement the changes that it was proposing. Indeed, less than two months later, the Employer published its proposed ordinance and set a time frame by which it would be implementing the same, all while collective bargaining, supposedly in good faith, was taking place. This arbitrary date, selected by the Employer, is evidence of its bad faith, by selecting a date at which it says definitely that "impasse" will occur. In essence, the Employer is saying, "cave to us by then, or else." This is bad faith bargaining.

In addition, the Employer did not introduce any evidence in the record as to why 1.2 million was the amount it "needed" to save per year in the upcoming contract. The Union President testified at the first hearing on September 11, 2012 that at the first meeting, the Employer's representatives indicated that it had determined that if the firefighters went to a fifty-six hour work-week, the Employer would save 1.2 million dollars, so that was the amount of concessions they would have to have from the Union if the Union did not want a fifty-six hour work-week. (TR. pgs. 59-60.) So, the "need" to save money is driven solely by its desire to secure a fifty-six hour work-week. Indeed, the Town Manager testified as follows concerning the first bargaining session:

> "The message was that long-term structural change, attaining that by moving to the three platoon system for a savings of 1.2 million dollars, and it was also related to the Union that, if there was another alternative or alternative means of attaining that type of savings and long- term structural change, that the Town would be open to considering them." (TR. p. 581)

There has never been any explanation by the Employer as to where this 1.2 million dollar figure came from. There were no documents submitted into the record documenting any financial stress on the Employer. There were no documents that supported why the Employer "needed" 1.2 million dollars in structural savings, as opposed to simply wanting the same. As noted by the Union in its brief, an asserted inability to pay, if important enough to raise, is important enough to require some sort of proof as to its accuracy. citing Nat'l Labor Relations Board v Truitt Mfg. Co., 351 U.S. 149, 152-53, 76 S.Ct. 753, 755-56, 100 L. Ed. 1027 (1959) While the Employer claims that it desired from a management perspective to adopt a new platoon structure, the Town Manager readily acknowledged that unless the hourly wage rate for the firefighters was decreased, there would be no way for the fifty-six hour work-week to achieve savings. In fact, he testified: "If implementing the three-platoon system and keeping the hourly rate the same, in spite of the fact that the employees are salaried employees, it would have been cost prohibitive, absolutely cost-prohibitive." (TR. pgs. 604-605) Thus, what was really being bargained was the

wage rate, without any supporting documentation from the Employer as to why the wage rate must be reduced for the Employer's well-being.

We believe that making an unsubstantiated demand for a *significant wage reduction* is unreasonable and evidences a refusal to enter into good-faith bargaining about wages. Moreover, to claim that the parties were at "impasse" at the meeting at which bargaining proposals were first exchanged, evidences a mind-set that there was no intent to engage in good-faith bargaining. Such a mind-set is more indicative of "surface bargaining" in a pre-determined effort to get to impasse; to claim justification for unilateral implementation of proposals, which, in Rhode Island, has never previously been permitted under the FFAA.

We find, therefore, that since the Employer's "bargaining" was tainted by bad faith, "impasse" could not occur. This finding however does not end our inquiry into the impasse issue. We will now address the issue of "impasse" within the context of the FFAA and whether the same can ever occur and whether an Employer may ever unilaterally implement terms and conditions of employment.

IMPASSE: PRIVATE SECTOR VS PUBLIC SECTOR COLLECTIVE BARGAINING

We begin our discussion by reviewing this Board's long-established position concerning the status of terms and conditions of employment for public sector employees, after the expiration of a prior collective bargaining agreement. Twenty-one years ago, this Board decided Case No ULP-4647, SLRB v Warwick School Committee. That case examined the issue of unilateral implementation of terms and conditions of employment imposed by a school committee, during the negotiations of a successor CBA. [8] This Board held: "We conclude that unilateral departure from the terms of an expired contract, prior to the exhaustion of all available statutory dispute resolution procedures, violates the obligation under R.I.G.L. § 28-7-13 to bargain collectively." (ULP-4647 Decision p.10) In that case, the Board discussed the significant differences between private sector disputes and public sector disputes. We noted that the School Committee had urged the Board to adopt the federal model for dealing with *private sector disputes* which would allow the Employer to unilaterally impose terms upon the reaching of an impasse in negotiations for a successor CBA, without regard to the distinct character of *public sector* bargaining. We declined to do so and instead joined with other jurisdictions - notably New York, Triborough Bridge & Tunnel Authority, 5 PERB §4505, Aff'd, 5 PERB §3037 (1972); California, Moreno Valley United School District v PERB, 142 Cal. App. 3rd, 1991 Cal. Rptr. 60 (1983); and Oregon, Wasco County v AFSCME Local No 2752, 30 Ore. App. 863, 569

[8] Prior ULP 4518, which found the Warwick School Committee had committed an unfair labor practice by refusing to execute a negotiated agreement, was overturned by the Superior Court in the basis that the negotiators for the school committee lacked actual authority to bind the committee.

P.2d 15 (1977), opinion following remand, 46 Ore. App. 859, 613 P.2d 1067 (1980) that had rejected the same approach. (ULP-4647 Decision p. 11)

In our discussion in ULP-4647, we noted that the private sector model of collective bargaining contemplated the use of economic warfare.

> "In the private sector, unlike the public sector, it is anticipated, in fact, customary- that a union will exercise its right to strike for the purpose of obtaining leverage at the bargaining table. The threat of a strike, and the strike itself, are legitimate economic weapons. Section 13 of the National Labor Relations Act, 29 U.S.C. 163 provides, in relevant part, that the NLRA shall not 'be construed so as to either interfere with or impede or diminish in any way, the right to strike.' Private sector theory embraces the position that the strike weapon 'supports the principles of the collective bargaining system' by balancing the power of labor and management. *NLRB v Erie Resistor Corp.* 373 U.S. 221, 235 (1963)." (ULP-4647 Decision p. 12)

In ULP-4647, we went on to discuss the fact that Rhode Island, to the contrary, adopts a different model for public sector bargaining, within the context of collective bargaining for teachers. The same discussion that was applicable then to teachers continues to be applicable to the public employees at issue in this case, the firefighters. The public policies in the Fire Fighter Arbitration Act are set forth at R.I.G.L. § 28-9.1-2, which is printed in full herein ***(with our underlining added herein)***, to provide a fuller backdrop to understanding the Board's ultimate decision in this case.

§ 28-9.1-2. Statement of policy

(a) The protection of the public health, safety, and welfare demands that the permanent uniformed members, rescue service personnel of any city or town, emergency medical services personnel of any city or town, and all employees of any paid fire department in any city or town not be accorded the right to strike or engage in any work stoppage or slowdown. This necessary prohibition does not, however, require the denial to these municipal employees of other well recognized rights of labor such as the right to organize, to be represented by a labor organization of their choice, and the right to bargain collectively concerning wages, rates of pay, and other terms and conditions of employment.

(b) It is declared to be the public policy of this state to accord to the permanent uniformed members, rescue service personnel of any city or town, emergency medical services personnel of any city or town, and all employees of any paid fire department in any city or town all of the rights of labor other than the right to strike or engage in any work stoppage or slowdown. To provide for the exercise of these rights, a method of arbitration of disputes is established.

(c) The establishment of this method of arbitration shall not, in any way be deemed to be a recognition by the state of compulsory arbitration as a superior method of settling labor disputes between employees who possess the right to strike and their employers, but rather is solely a recognition of the necessity to provide some alternative mode of settling disputes where employees must, as a matter of public policy, be denied the usual right to strike.

In Rhode Island, our legislative leaders have determined that strikes by public employees, in this case, firefighters, are quite simply unacceptable. That prohibition appears in the FFAA as set forth above, but derives in part from the findings set forth in the State Labor

Relations Act that strikes, lockouts, and other forms of industrial strife and unrest are inimical to the public safety and welfare, and frequently endanger the public health. R.I.G.L. § 28-7-2(b).

We wrote in ULP-4647 that "among commentators," there is unanimity of opinion that the private sector collective bargaining model is not transferable to public sector. The articles mentioned were all authored well after the establishment of the FFAA. It appears then, that Rhode Island was clearly on the forefront of the labor relations models by recognizing very early on that for reasons of public policy and safety, firefighters should be denied the right to strike. This Board continues to embrace and appreciate the wisdom of those who realized this factor early on and who did not attempt to include private sector elements of "warfare" into the public sector collective bargaining model. The continuing prohibition of strikes, which makes sense, must be balanced for the employees who do not have this right. The "Legislative denial of the right to strike should not be allowed to reduce collective bargaining to collective begging." (ULP-4647, Decision p.16) The Employer's counterbalancing prohibited activity is "self-help" in the form of unilaterally imposing terms and conditions of employment. As stated by the Court in Moreno Valley United School District v PERB, 142 Cal. App. 3rd, 1991 Cal. Rptr. 60 (1983): "Unilateral imposition of terms by an Employer signals an end to the mutual dispute resolution process regarding those terms. The Employer loses any incentive to participate in the dispute resolution process because it has imposed terms it deems satisfactory." Id. In deciding ULP-4647, we wrote:

> "We join those jurisdictions which hold that an employer's implementation of bargaining proposals is per se an unfair labor practice. In *Wasco County,* 569 P.2d 15, aff'd, 613 P.2d 1067, the Court of Appeals of Oregon approved a SLRB decision squarely on point. There, the employer implemented the Union's wage proposal prior to exhaustion of dispute resolution procedures. Citing the SLRB decision, the Court acknowledged the dichotomy between federal and state impasse resolution procedures, even though Oregon employees have a limited right to strike. It seems to us the case even more compelling when public employees have no right to strike whatsoever. See also, *Gresham Grade Teachers v Gresham Grade School*, 630 P.2d 1304 (Ore. 1981).
>
> We observe that this rule will likely have a stabilizing impact on labor relations. Neither party will be subject to a term or condition of employment that it had not previously agreed to. We believe that this will contribute to the maintenance of good relations...between teaching personnel and school committees. G.L. 28-9.3-1. "

The Employer argues in its brief, that in addition to unilateral implementation being allowed under federal law with private sector employers, several other states permit public employers to unilaterally implement contract proposals upon impasse. The Employer argues therefore, the law and/or policy should be the same in Rhode Island. In the public sector, impasse resolution procedures in collective bargaining disputes vary widely from state to state. Some states utilize mediation and fact-finding (conciliation), some utilize interest arbitration for all issues, some utilize interest arbitration for only some issues, some states permit employee

strikes and some prohibit strikes, in whole or in part, some states permit "final" offer arbitration. See Public Sector Impasse Resolution Procedures. Charles B. Craver, 60 Chi.-Kent L. Rev. 779 (1984)

The Employer points to Massachusetts, Maine and Alaska as three states, which allow the unilateral imposition of terms and conditions of employment upon an impasse and, in theory, argues that Rhode Island should follow this approach as well. In actuality, the Employer uses federal law and the law from these other states, as justification for what it has already done. In Massachusetts Organization of State Engineers & Scientists v Labor Relations Commission, 452 N.E.2d 1117, 1121-22 (Mass 1983) the Court upheld the Commission's ruling that permitted the Employer to unilaterally implement "work rules" after a formal declaration of impasse and prior to the conclusion of fact-finding. However, in that case, the prior CBA specifically provided for that result: "[s]hould a successor agreement not be executed by July 1, 1980, this Agreement shall remain in full force and effect until a successor agreement is executed or an impasse in negotiations is reached." Id at 921. Thus, the parties themselves agreed in advance when unilateral implementation may occur. This is not the case here.

The Employer also cites Mountain Valley Education Association v Maine School Administrative District, 655 A.2d 348, 353 (ME. 1995) in support of its argument that unilateral implementation should be permitted by public sector employers after reaching impasse. In that case, the parties had engaged in mediation, fact-finding, and arbitration, which was non-binding as to some issues. After the arbitration panel issued its recommendation, the Employer made a "last best offer", which was not in accord with the arbitration recommendation and then implemented. The Maine Labor Board found that the Employer had violated the state law in part, but upheld the Employer's actions in part. The Court upheld the Board's decision and described the evolution of Maine's adoption of the "impasse exception" to general prohibition against unilateral implementation of terms and conditions of employment. The Court stated:

> Maine law as well as federal law imposes the obligation to bargain in good faith as part of the statutory definition of collective bargaining. 26 M.R.S.A. §965(1)(C); 29 U.S. C.A. § 158(d) (1973 & Supp.1994). The National Labor Relations Act (NLRA) requires employers and employees' representatives in the private sector to bargain in good faith with respect to the mandatory subjects of bargaining; namely, "wages, hours, and other terms and conditions of employment." 29 U.S. C.A. § 158(d). In order to support the bargaining process and prevent it from being circumvented or disparaged, federal law has long been interpreted to prevent either party from unilaterally changing wages, hours or working conditions. See Litton Fin. Printing Div. v. NLRB, 501 U.S. 190, 198, 111 S.Ct. 2215, 2221, 115 L.Ed.2d 177 (1991); NLRB v. Katz, 369 U.S. 736, 743, 82 S.Ct. 1107, 1111-12, 8 L.Ed.2d 230 (1962); NLRB v. McClatchy Newspapers, Inc., 964 F.2d 1153, 1157, 1161-62 (D.C.Cir.1992). Thus, while bargaining, and before impasse, a private employer is prevented from "going over the head" of the bargaining agent by unilaterally increasing or decreasing wages. The parties are required to maintain the status quo while bargaining, and this principle applies both to negotiations before an initial contract and to post-expiration

negotiations for a new contract. See Litton Fin., 501 U.S. at 198, 111 S.Ct. at 2221.

Here, in Maine, the Board adopted the rule against unilateral changes with respect to public sector bargaining, see, e.g., Easton Teachers Ass'n v. Easton Sch. Comm., No. 79-14, at 3-5 (Me.L.R.B. March 13, 1979), and we have upheld the Board's use of this rule. See Lane v. Board of Dir. of Me. Sch. Admin. Dist. No. 8, 447 A.2d 806, 809-10 (Me.1982); State v. Maine Labor Relations Bd., 413 A.2d 510, 515 (Me.1980).

In 1978, the Board adopted from federal labor law the impasse exception to the rule against unilateral change. Maine State Employees Ass'n v. State, No. 78-23, at 4 (Me.L.R.B. July 15, 1978), aff'd sub nom. State v. Maine Labor Relations Bd., 413 A.2d 510 (Me.1980). This exception allows a party to unilaterally implement its last best offer when negotiations have reached a bona fide impasse. [3] See Litton, 501 U.S. at 198, 111 S.Ct. at 2221; McClatchy Newspapers, 964 F.2d at 1157, 1164-65; Easton, No. 79-14, at 4-5. Once the parties have in good faith exhausted the prospects of reaching an agreement, unilateral change that is reasonably comprehended within the pre-impasse proposals no longer violates the Act. After impasse, however, the duty to bargain is not extinguished. Rather it is temporarily suspended until changed circumstances indicate that the parties are no longer inalterably deadlocked. See Auburn Firefighters Ass'n Local 797 v. City of Auburn, No. 89-01, at 23 (Me.L.R.B. March 31, 1989); see also McClatchy Newspapers, 964 F.2d at 1164-65.

Notwithstanding the similarities with federal law, Maine law differs in at least one respect--impasse cannot occur until specified forms of intervention have been exhausted. Public employees in Maine, unlike employees in the private sector, do not have the right to strike or engage in work stoppages, 26 M.R.S.A. § 964(2)(C). Having eliminated the most common form of impasse resolution procedure, Maine law adds to the definition of good-faith bargaining the obligation to participate in mediation, fact finding, and arbitration procedures. 26 M.R.S.A. § 965(1)(E). These "peaceful" third-party intervention procedures are intended as substitutes for strikes and work stoppages and are designed to provide escalating pressure on both parties to produce a voluntary settlement." (Underlining added herein)

Thus, even in Maine, impasse cannot occur until such time as the parties have *exhausted* all specified forms of dispute resolution-mediation, etc.

The Employer also cites Alaska Public Employees Association v State, 776 P.2d 1030, 1033 (Ala. 1989) in support of its argument. That case is strikingly different than the facts presented herein, because the parties stipulated when they were at impasse; and the employees at issue (Class II and Class III) also had a right to strike. This case did not examine what would have happened with Class I employees (which included police and fire) who do not have a right to strike. Thus, the case is not persuasive to this Board to adopt such a standard here in Rhode Island.

In Rhode Island, we do not have one public employee bargaining statute, but rather a patchwork of statutes, each addressing a separate category of public employees. In Title 28 of the General Laws, we have:

(1) Chapter 28-9.1. Firefighters' Arbitration (§§ 28-9.1-1 - 28-9.1-17)

(2) Chapter 28-9.2. Municipal Police Arbitration (§§ 28-9.2-1 - 28-9.2-17)

(3) Chapter 28-9.3. Certified School Teachers' Arbitration (§§ 28-9.3-1 - 28-9.3-16)

(4) Chapter 28-9.4. Municipal Employees' Arbitration (§§ 28-9.4-1 - 28-9.4-19)

(5) Chapter 28-9.5. State Police Arbitration (§§ 28-9.5-1 - 28-9.5-17)

(6) Chapter 28-9.6. 911 Employees' Arbitration (§§ 28-9.6-1 - 28-9.6-16)

(7) Chapter 28-9.7. Correctional Officers Arbitration (§§ 28-9.7-1 - 28-9.7-17)

In addition, under Title 36, we have:

(8) Chapter 36-11. Organization of State Employees (§§ 36-11-1 - 36-11-13)

Interestingly, here in Rhode Island, the dispute resolution mechanisms vary from Act to Act. For both the Firefighters Arbitration Act and the Municipal Police Arbitration Act, the parties' unresolved issues must be submitted to interest arbitration which is *binding on all issues*. The only right of review of an interest arbitration panel's decision is by petition for certiorari. (*See* 28-9.1-7 and 28-9.1-15 and 28-9.2-7 and 28-9.2-15)

Under the Certified School Teachers' Arbitration Act, unresolved issues go first to compulsory mediation and/or conciliation and then to arbitration. Issues submitted to arbitration, except those requiring the expenditure of funds shall be binding, with a limited right of appeal to the Superior Court. There is no specific reference to the Supreme Court in this Act.

Under the Municipal Employees Arbitration Act, the parties have the *option* to submit unresolved issues to mediation and/or conciliation. They may choose to go directly to arbitration. Issues submitted to arbitration, except those requiring the expenditure of funds shall be binding, with a limited right of appeal to the Superior Court. There is no specific reference to the Supreme Court in this Act.

Under the State Police Arbitration Act, the parties' unresolved issues must be submitted to interest arbitration which is *binding on all issues*. The only right of review of an interest arbitration panel's decision is by petition for certiorari. (*See* 28-9.5-7 and 28-9.5-14) Similarly, both the 911 Employees Arbitration Act and the Correctional Officers Arbitration Act also operate on the basis of binding arbitration on all issues; with a right of review only by petition for certiorari to the Supreme Court. (*See* 28-9.6-7 and 28-9.6-14 and 28-9.7-7 and 28-9.7-14)

Under the State Employees Arbitration Act, the parties have the *option* to submit unresolved issues to mediation and/or conciliation. They may choose to go directly to arbitration. Issues submitted to arbitration, except those concerning *wages* shall be binding, with a limited right of appeal to the Superior Court. There is no specific reference to the Supreme Court in this Act.

Our General Assembly has, therefore, clearly determined that there shall be a distinct difference between the dispute resolution mechanisms to be used in collective bargaining disputes with public safety personnel (firefighters, police, 911 employees, state police and

correctional officers) and other types of public sector employees (teachers, municipal employees and state employees).

All of these statutes contemplate an initial, short period of bargaining, after which the *impasse* (unresolved issues) resolution procedures should be initiated. In the instant case, the FFAA provides for a short period of bargaining (thirty days) after which a party *could* declare impasse and then move onto interest arbitration for the unresolved issues. The parties are able to explicitly extend this thirty-day period by a written document evidencing that intent (Lime Rock) and each party bears an equal responsibility for submitting its unresolved issues to the arbitral process. (North Kingstown II) Although Judge Stern has apparently come to a conclusion that any extension of the thirty-day period must have an explicit writing evidencing the mutual agreement to extend, this Board does not believe that the same should be necessary. We believe that the mutual actions of the parties could establish an agreement to extend the time for negotiations before impasse procedures must be used or waived. This is the only logical interpretation on how best to balance the bargaining power between the competing interests in the public sector.

Therefore, after considering the Employer's arguments, and in re-reviewing and re-examining the public policy considerations we discussed in 1992, we find no reason today to depart from the position we took then. To the extent that any of our decisions in the past twenty-one years have deviated or appeared to deviate from this precedent, we hereby reject the same and re-affirm our 1992 holding: "we conclude that unilateral departure from the terms of an expired contract, prior to the exhaustion of all available statutory dispute resolution procedures, violates the obligation under R.I.G.L. § 28-7-13 to bargain collectively." In addition, for the reasons discussed supra, we agree with Judge Stern and hereby find that the mandates of the Fire Fighters Arbitration Act ("FFAA") do not permit unilateral implementation of terms and conditions of employment under *any circumstances*, whether or not impasse has been reached and/or statutory dispute mechanisms have been exhausted. [9] The sole avenue of resolving "unresolved issues" or impasse is interest arbitration with review via certiorari to the Rhode Island Supreme Court.

[9] While not before us, the Municipal Police Arbitration Act (MPAA), the Correctional Officers Act, the State Police Arbitration Act and the 911 Employees Arbitration Act all have similar statutory schemes as the FFAA and we would treat issues arising under these statutes in the same manner.

ELECTION OF REMEDIES

The first substantive defense proffered by the Employer in response to the Board's complaint herein, to be addressed, is that of the "election-of-remedies" as that doctrine has been developed to date in labor relations in Rhode Island. The Employer has argued forcefully and repeatedly throughout these proceedings that the Board has no subject matter jurisdiction to hear the Union's request for relief, because the Union has "elected its remedies" by filing a series of individual grievances on or about March 15, 2012, relating to the same subject matter, seeking the "same remedies." (Employer brief p.1 and pgs.18-22 and Employer motion to dismiss, pgs. 4-6) The Employer argues that the Rhode Island Supreme Court's holding in Department of Environmental Management v Rhode Island State Labor Relations Board, 799 A.2d 274, 277-279 (R.I. 2002) is controlling on this issue and that the Board simply does not have subject matter jurisdiction to hear the matter. The Employer argues:

> "The DEM case involved a union that initially elected to file a grievance under a collective bargaining agreement that called for arbitration on unresolved grievances. Rather than actually proceeding to arbitration, however, the union instead filed a complaint with the Labor Board. ...Pursuant to the CBA's grievance procedures, the union could further pursue the matter through binding arbitration. The Rhode Island Supreme Court held that the matter was improperly before the Labor Board because, by first initiating the grievance process, the Union had elected its remedy. In the present case, the Union also chose first to file grievances and indeed pressed them on to arbitration. Thus the present matter is improperly before the Board and must be dismissed." (Employer brief p. 20)

In response, the Union argues that the doctrine of election-of-remedies only applies "when one party to a CBA attempts to take advantage of a statutorily-prescribed remedy and **loses**, or vice versa." *citing* School Committee of North Kingstown v Crouch, 808 A.2d 1074, 1080 (R.I. 2002).[10] The purpose of the doctrine of election-of-remedies is to prevent one party from getting two bites at one apple. Id. The Union argues that because the ***Employer has moved to stay all the grievance arbitrations***, it cannot seek to prevent this Board from hearing these charges, because the same would leave the Union with "no bites and no apple." Finally, the Union argues that it is not seeking double recovery. If the Board issues relief herein, then many of the grievances will become moot, although some factual finding may still need to be made by an arbitrator, and the Board should order the Employer to participate in the arbitrations. The Employer argues in rebuttal that there is no evidence of a motion to stay the pending arbitration hearings in either Union Exhibit #28 (cited by the Union) or elsewhere in the record of this case.

[10] School Committee of North Kingstown v Crouch, 808 A.2d 1074, 1080 (RI 2002) was decided by the Rhode Island Supreme Court five months after State Department of Environmental Management v State Labor Relations Board, 799 A.2d 274 277 (RI 2002)

The Rhode Island Supreme Court's development of the doctrine of election-of-remedies within the field of labor relations has a long history, summarized as follows by the Court in Martone v Johnston School Committee, 824 A.2d 426 (R.I. 2003):

> "This Court has long adhered to the election of remedies doctrine to 'mitigate unfairness to both parties by preventing double redress for single wrong. State Department of Environmental Management v State Labor Relations Board, 799 A.2d 274 277 (RI 2002) (DEM). Pursuant to the election of remedies doctrine, 'when one party to a CBA attempts to take advantage of the grievance procedure and loses,***that party [is prohibited] from pursuing the same dispute in the courts of this state.' Id at 278 (quoting *Cipolla v. Rhode Island College, Board of Governors for Higher Education*, 742 A.2d 277, 281(R.I. 1999)). Similarly, when one party to a CBA attempts to take advantage of a statutorily-prescribed administrative remedy and loses, the election-of-remedies doctrine prohibits that party from pursuing the same dispute through a grievance procedure." *School Committee of North Kingstown v Crouch*, 808 A.2d 1074, 1080 (R.I. 2002).
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> Recently, this Court reaffirmed the force and breadth of the election of remedies doctrine in DEM. DEM, 799 A.2d at 278. In that case, DEM employees learned that DEM was posting a part-time job opening for a 'principal forester.' *Id* at 276. The employees' union contended that the posting violated its CBA with DEM. *Id* The Union then also filed a grievance with DEM pursuant to the CBA requesting that the posting be lifted and that DEM create an opening for a full-time position. Id. After DEM rejected its request, the Union appealed to the Department of Administration's Office of Labor Relations, which also denied the union's request. Id Pursuant to the CBA's grievance procedures, the union could further pursue the matter only through binding arbitration. Id At that point, the union complained to the state Labor Relations Board which heard the case pursuant to G.L. 1956 28-7-9- (b)(5). DEM 799 A.2d at 276. The board ultimately granted a cease and desist order forbidding DEM to create the part-time position, Id at 279. This Court held that the matter was improperly before the board because by first initiating the grievance process, the union selected its remedy and 'should have pursued that remedy to conclusion.'" (Martone at 429-430 citing DEM)
>
> "Martone contends that the election of remedies doctrine does not apply to this case because his grievance and demand for a 16-13-5 hearing were designed to challenge different actions taken by the committee. ... However, as described in DEM, the doctrine of election-of-remedies has at its core, the salient purposes of preventing unfairness to the parties. DEM, 799 A.2d at 278. We believe that the remedies Martone sought through his grievance and request for a 16-13-5 hearing are sufficiently similar to trigger the equitable doctrine of election-of-remedies....Accordingly, we conclude that it would be unfair to force the committee into duplicative litigation to defend its actions." Martone at 430.

The Employer herein, argues that this case falls squarely within the doctrine-of-election of remedies; that the doctrine is dispositive and the Board does not have subject matter jurisdiction to proceed. If the facts herein, were as simple as the Employer alleges and if the Superior Court had not already ruled on this issue, then the Employer's argument might be more persuasively credible and accurate. However, the facts in this case and collateral travel of the issues are anything but simple. The Employer herein has persistently and consistently tried to thwart any and all avenues of relief that the Union has sought. Regardless of what action the Union attempts, whether it is in Superior Court, before the American Arbitration Association, or before the State Labor Relations Board, the Employer springs up like a Jack-In-The-Box, squeaking "no jurisdiction, no jurisdiction." This modus operandi of treating labor relations like a

chess game, in an effort to simply out-maneuver the Union from seeking relief or exercising its rights to collective bargaining, is not one that is consistent with one of the core principles or policies of the Labor Relations Act, which is to restore equality of bargaining power between and among employers and employees. *See* R.I.G.L. § 28-7-2(c).

That having been said, in all of the cases that the Supreme Court has dealt with to date concerning the election-of-remedies doctrine, an alternative remedy, whether it be a statutory hearing before a school committee, department of education or a contractual remedy such as arbitration, was in fact *available*, and had been previously sought or begun and abandoned by either an individual plaintiff or union. The Employers did not challenge the Unions' right to proceed in those alternative, original forums. In State Department of Environmental Management v State Labor Relations Board, 799 A.2d 274 277 (R.I. 2002), the Union had filed a grievance over the posting of part-time positions and then *decided* not proceed to arbitration but instead sought redress before this Board. The Court held: because Council 94 elected and later abandoned its remedy, the case was not appropriately before the Labor Board, nor was the dispute ripe for judicial review. *Id* at 278.[11]

In an earlier case, Cipolla v Rhode Island Board of Governors for Higher Education, 742 A.2d 277 (R.I. 1999), the plaintiff sought retroactive inclusion in the pension system through a grievance. When the grievance was denied, rather than proceed to arbitration, the plaintiff sought injunctive relief in the Superior Court. The Court held: "when one party to a CBA attempts to take advantage of the grievance procedure and loses, the election of remedies doctrine prevents that party from pursuing the same dispute in the court of this state." Id at 281.

In Martone v Johnston School Committee, 824 A.2d 426 (R.I. 2003), the plaintiff, a school principal who had admitted to stealing a student's prescription medication, had been through months of hearings before the school committee on whether his license to teach could be revoked. The Union then filed a demand for arbitration on the same subject. The Court barred the arbitration under the doctrine of election-of-remedies and held: "differences in the remedies sought will not necessarily foreclose application of the election-of-remedies doctrine, provided the remedies are sufficiently similar." Id at 430-31.

None of the election-of-remedies cases decided by our Supreme Court have dealt with the type of factual circumstances presented in the case. Here, the Employer has consistently

[11] When that matter was before the Board, the Employer claimed that the Board was required to adopt the federal Collyer doctrine, which required deferral of unfair labor practice action when an arbitration was pending on the same set of facts, but seeking relief under the parties' contract. When this issue proceeded to the Rhode Island Supreme Court, the matter was converted to an "election-of-remedies" issue.

maintained the position that the prior CBA ***has expired and is of no force and effect.*** At page 33 of its brief, the Employer states:

> "At the time that the Reorganization was implemented, there ***was no valid, enforceable collective bargaining agreement between the Town and the Union.*** The last collective bargaining agreement between the parties expired on June 30, 2010 (Union Exhibit #3). ***Neither that agreement nor any clause contained therein could lawfully extend beyond the Agreement's three year term.*** See R.I. Gen Laws 28-9.1-6 ('in no event shall the contract exceed the term of three (3) years.') Similarly, the interest arbitration agreement lasted one year, and expired on June 30, 2011. (Union Exhibit # 4) Applicable law prevents it from extending any longer than that one year. § 28-9.1-12 R.I.G.L. Therefore, there was ***no collective bargaining agreement in place*** at the time that the Town implemented the Reorganization. Because the collective bargaining agreement had been removed by statute, the Town was free to implement the Reorganization. Firefighters are public employees who are excepted from the protection of Federal Law on concerted activities, union activity and unfair labor practices relating to such. The FFAA permits firefighters to join unions and obtain recognition of such unions via elections***, but the FFAA requires that the Town do no more that bargain in good faith with the Union***, which the Town has done and will continue to do until the parties reach agreement on a contract. While the firefighters had been protected by a written agreement, when that expired and the Union waived its right to request interest arbitration, the firefighters ***were left at the discretion of the Town and its implementation of the Reorganization was controlling***."
>
> "The FFAA contains no prohibition on the Town's ability to implement such a change. This is likely because the FFAA provides firefighters with the right to timely invoke binding interest arbitration, which is designed to resolve all unresolved bargaining issues, thereby obviating the need for any unilateral action on the part of the municipality in most circumstances." (See Employer brief p. 34)
>
> ***(Bold and italic emphasis added herein.)***

In fact, the Employer took the position that since (in its opinion) only the Union had waived its right to interest arbitration, the Employer possessed the right, as a matter of law, to implement the Reorganization without bargaining with the Union because the same was within the Employer's "sovereign power." (Employer's brief p. 33)

In its brief, the Union had argued that the Employer had refused to engage in grievance arbitration. (Union brief at p. 15) The Employer claimed, in its motion to strike the Union's brief, that there was no evidence *anywhere in the record* to support the Union's claim that the Employer had filed a motion to stay grievance arbitrations. (See motion to strike p. 2, par 3 & 4) The Employer pointed out that the Union's reference to Union Exhibit #28 was merely a petition to stay the 2011-2012 interest arbitration and that it made no reference at all to grievance arbitrations. The Employer's response to Union Exhibit # 28 is indeed correct. That document, filed on September 5, 2012, was a "Verified Complaint and Petition to Stay Arbitration" (W.C. 2012-0542) and sought to enjoin *interest* arbitration. However, the decision that ultimately issued from that later amended verified complaint was submitted to the Board at the commencement of the hearing on January 29, 2013. (See TR. p. 343) On page one of that

decision, the Court, in referring the matter being presented stated: "These petitions include both Plaintiff's Motion to Stay the 2011-2012 Interest Arbitration in C.A. WC-2012-0542, **Plaintiff's Motion to Stay the Arbitrations of Certain Firefighter Grievances in C.A. No. 2012-0368."** (Emphasis added) The Court ultimately limited its decision to the "Plaintiff's Motion to Stay Interest Arbitration" in C.A. WC- 2012-0542 and the declaratory relief relative to those issues. The record before for the Board does not indicate that the "Motion to Stay the Arbitrations of Certain Firefighter Grievances in C.A. No. 2012-0368" has ever been decided or dismissed. However, based upon the Employer's continued insistence that no collective bargaining agreement, or any clause from the expired collective bargaining agreement, can be in effect, as a matter of law, then there is clearly no *agreement* to arbitrate the disputes. So, without an agreement to arbitrate, the Union is obviously precluded from "electing" an alternative remedy.

This Board finds that the doctrine of election-of-remedies, which our Supreme Court has repeatedly held is "grounded in equity and is designed to mitigate unfairness to both parties by preventing double redress for a single wrong" does not bar the Board from exercising jurisdiction over the within unfair labor practice charge. The Union has not been permitted to *successfully elect* an alternative remedy, because the Employer maintains that there is no contract in existence and has brought an action in Superior Court on that very issue. The election-of-remedies contemplates that a party is entitled to at least *one* avenue of relief. Under the facts presented, the Employer wants the fact that the Union *attempted* to seek relief by filing grievances to be held against the Union. The Employer urges this result despite the fact that the union was and is thwarted by the Employer's claim that there is no grievance mechanism because there is no contract. The mere filing of the grievances, under the circumstances presented, does not, in this Board's opinion, bar the Union's ability to seek relief before this Board; because the Employer has made it perfectly clear that it does not agree there is an arbitration clause, because there is no contract. Moreover, the record reflects that none of the grievances have been heard to date by any arbitrators.

In reaching this determination, the Board is aided by the Superior Court's decision in Coventry Fire District v State Labor Relations Board, C.A. No PC 04-5950, issued October 31, 2005 by Justice Gibney. In that case, the Employer filed an unfair labor practice against a firefighter union for allegedly refusing to execute an agreed upon CBA. The Board, after a full hearing on the merits, with one member recused, was deadlocked (3-3) on the issue presented. The Board, therefore, had no choice but to dismiss the case procedurally. The Employer appealed and named both the Union and the Labor Board as Defendants in that

proceeding. On appeal, the Union maintained the position that once it (the Union) had submitted the issue of the contract to arbitration, the District was barred from bringing a ULP claim under the election-of-remedies doctrine. The Court, while upholding the Board's dismissal, found the DEM election-of-remedies case was readily distinguishable on two grounds: (1) unlike the parties in DEM, the District and Union had no collective bargaining agreement in place. "Thus, when the Union applied for arbitration, ***it was not electing a remedy available to it through a CBA because there was no CBA***." (emphasis added); (2) That the doctrine was to prevent the same party from seeking relief in two venues, not to prevent one party when the other has filed in a different venue.

In this case, the Employer has insisted most vociferously that there was no CBA and that the Union was at the mercy of the "sovereign." Therefore, the Union, when it filed its various grievances in March 2012, could not be "electing a remedy" because there was no governing CBA. Fundamental fairness and equity dictate that the Employer doesn't get to have the facts swing both ways for it. It cannot argue on the left hand that there is no CBA, so the Union's grievances must be stayed, while at the same time arguing on the right hand, that the union "elected its remedy" when it filed the grievances under the contract and therefore, foreclose the union from any remedies whatsoever. The Board finds that to interpret the doctrine of election-of-remedies in the manner presented and argued in this case would be a perversion of the intent and purposes of both the State Labor Relations Act and the Firefighters Arbitration Act; both which seek to foster equality of bargaining power, and would be entirely inconsistent with the Supreme Court's prior holdings and the Superior Court's application of the doctrine of election-of-remedies. Therefore, we find specifically that we have subject matter jurisdiction to hear and decide this matter and that subject matter jurisdiction is not foreclosed by any rational or fair application of the doctrine of the election-of-remedies.

FIREFIGHTERS ARBITRATION ACT & LIME ROCK

The Employer also insists that the Board does not have subject matter jurisdiction over the within complaint because the Reorganization is an unresolved issue and that the Firefighter Arbitration Act (FFAA) requires submission of the issue to arbitration. The Employer argues that the Union is barred from seeking a remedy with the Labor Board under the Rhode Island Supreme Court's decision in Lime Rock Fire District v R.I. State Labor Relations Board, 673 A.2d 51 (R.I. 1996) The Employer argues that the facts in this case are indistinguishable from Lime Rock and that Lime Rock controls. (Employer's briefs p. 25)

The Union argues that Lime Rock explicitly holds that the parties themselves may agree to extend the period of negotiations, thereby extending the timeframe to submit unresolved issues to interest arbitration. (Union brief. p. 31) The Union also argues that the Board should decline to interpret Lime Rock as permitting a Union to involuntarily waive its right to interest arbitration. In support of this argument, the Union notes that at the time Lime Rock was decided, when the Union had refused to participate in interest arbitration, the Employer had no remedy available to it before the Labor Board. It was not until the following year, 1993 that the General Assembly amended R.I.G.L. § 28-7-13.1, making it an unfair labor practice for a public sector employee organization (union) to "avoid or refuse to comply with any statutory impasse procedures as may be provided in chapters 29-9.1." Thus, the Union argues that the Employer's remedy for any alleged "refusal" by the Union to comply with the FFAA is to file an unfair labor practice charge, not a waiver of statutory impasse procedures. The Union also argues: (1) that Lime Rock is distinguishable on other grounds. In Lime Rock the Union refused to submit unresolved issues to arbitration and filed with the Labor Board instead. In this case, the Union has in fact filed for interest arbitration, but the filing was challenged by the Employer as being untimely and the Employer is the one that has refused to participate in interest arbitration. (2) There is no evidence that the Union intended to waive its rights to arbitrate and that the opposite is true. (3) Even if the deadlines in R.I.G.L. § 28-9.1-7 are mandatory, the thirty-day period does not begin while the parties have agreed to continue negotiating and there is no specific requirement that an agreement to continue negotiations be separately reduced to writing. (4) The parties did continue negotiating until at least March 5, 2012.

The Employer's insistence that Lime Rock is indistinguishable from the facts in this case rings hollow. In Lime Rock, the parties had a written agreement concerning future bargaining sessions. Prior to the expiration of those scheduled sessions, the electorate (not the District's negotiating team) of the fire district voted, at the annual meeting, to de-fund the fulltime firefighters. After the vote took place, the Union refused to attend the next scheduled bargaining session, ceased bargaining, and submitted a claim of unfair labor practice to this Board. In holding that the Board did not have subject matter jurisdiction to hear the complaint, the Supreme Court stated that the issue of funding was an "unresolved issue" that should have been submitted by the Union to interest arbitration, not to the Labor Board. The Court said that the Union failed to exhaust its remedy under the FFAA, namely, to seek arbitration for unresolved issues. It is important to distinguish that in Lime Rock, it was the actions of the electorate (not the Employer) that created the unresolved issue; and in this case, it was the Employer, through the Town Council, and not the third-party electorate.

After the decision in Lime Rock was issued, the General Assembly amended the State Labor Relations Act and afforded the right to employers to file unfair labor practice charges against unions. In this case, the parties engaged in continuous negotiations, even after the Employer adopted the ordinance pertaining to the Reorganization. (See Union Exhibits #22, #23, & #24) The Union then sought interest arbitration for the unresolved issues. (Union Exhibit #26 & #27) The Court, in North Kingstown II, eventually determined that the Union's filing for interest arbitration was untimely because the parties had not mutually agreed to extend the timeframe for submission to arbitration. However, the Court found that the Town had *also* waived its right to resolution of the unresolved issues because it too failed to submit the unresolved issues to arbitration. In addition, the Town had the right to file an unfair labor practice over the Union's alleged "refusal" to submit the matters to arbitration and failed to do so. Therefore, the Court ruled that neither party could make unilateral changes to terms and conditions of employment and that the parties must wait for the collective bargaining window to re-open.

The key provision of the FFAA implicated herein is R.I. Gen Laws § 28-9.1-7 which provides:

> " **Unresolved issues submitted to arbitration.** In the event that the bargaining agent and the corporate authorities are unable, within thirty (30) days from and including the date of their first meeting, to reach an agreement on a contract, any and all unresolved issues shall be submitted to arbitration."

In Lime Rock, the court specifically found that this statute permitted parties to agree to extend the thirty-day period of negotiations by mutual consent, thus permitting a timely submission to interest arbitration at a date later than the thirty days contemplated by the statute. Lime Rock at 54. Lime Rock did not specifically find that the extension of negotiations by mutual consent *must* be documented in writing, although in that case, there was a document to that effect. [12]

In this case, despite the fact that this Board believes the facts readily and overwhelmingly establish that the parties collectively agreed, as evidenced by their mutual actions and multiple negotiating sessions, to extend the time for negotiations and thereby, extended the thirty-day period for submission of unresolved issues to interest arbitration, this issue is *res judicata* because it has already been decided by Judge Stern in Town of North Kingstown II (as referenced herein supra). The most we can do here is to respectfully disagree

[12] The Union highlights in its brief that the original thirty days had long since expired when the parties in Lime Rock executed their written document memorializing the extension of time. Thus, the Union argues that no rigid application of the statute, within the context of labor reality, should be required or makes sense. We agree.

with the Judge's findings, while reluctantly adopting the same as our own.[13] Judge Stern found in this case that:

> "...there is no evidence that the parties expressly agreed to either a particular time frame for negotiations or an extension of such a time frame to a particular point. Thus, without an express agreement to create- and subsequently to alter- a specific timeframe for negotiations, this Court is unable to extend the deadline imposed by the FFAA, as interpreted in Lime Rock. Therefore, the Court finds that the Union has waived its rights to interest arbitration."

The Court, however, did not stop at finding that the Union had waived its right to interest arbitration. The Court went on to carefully analyze the statute to determine if the statutory burden of submitting issues to arbitration was borne solely by the Union or equally by the Union and Employer and found that both parties had an equal obligation under the statute. (See North Kingstown II, pgs. 13-15. The Court concluded:

> "Based on such an application of the statute's plain meaning, this Court holds that R.I. Gen Laws § 28-9.1-7 is equally applicable to both the Union and the Town. Such an application means that, under the Rhode Island Supreme Court's holding in Lime Rock, both the Union and the Town were required to submit unresolved issues to arbitration within thirty (30) days of the parties' first meeting on October 28, 2011. See Lime Rock, 673 A.2d at 54. However, neither the Union nor the Town submitted those unresolved issues to arbitration. Therefore, this Court holds that ***both parties have waived their rights to engage in interest arbitration related to their collective bargaining negotiations***. See Id. As such, both the Union and the Town must now wait until the "window opens again" for interest arbitration. If interest arbitration is properly requested during the statutory time period, in accordance with the FFAA, the process will go forward." (Emphasis added herein)

The Court, therefore, prohibited both parties from seeking relief from this Board, ***due to their waivers of their rights to pursue interest arbitration*** under the FFAA. (Decision at 19) However, the Court went on to find that neither party is prohibited from filing with this Board to determine the effects of the failure to enter into a new agreement and ***whether or not the terms and conditions of an expired contract should be controlling pending the***

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[13] Were we deciding this case without prior judicial action, we would have no problem concurring with several of the Union's arguments. The evidence in this record overwhelmingly established to this Board's satisfaction that the parties continually agreed to extend the period of negotiations. (See Union Exhibits 13, 14, 15 17, 18, 19, 22 and 23). Moreover, the evidence also shows that the parties had long worked "cooperatively" with each other, informally extending timelines contained in the FFAA. In fact, on February 23, 2011, the Union President sent the Town Manager a letter requesting the opportunity to meet and confer to negotiate a successor agreement. Pursuant to R.I.G.L. 28-9.1-6, the Town was required to meet and confer within 10 days of receipt of the notice. The Town Manager failed to respond to the request within the requisite ten days. (See Union Exhibit #6) At that point, the Union could have immediately submitted its proposals to interest arbitration or filed an unfair labor practice. Ultimately recognizing the tardiness of his response, the Manager sent the Union a communication stating: "I hope we don't have a problem with timeliness on the letter I just sent. Since we do work as cooperatively as possible together." The Union President responded: "I don't have any issue with the timeliness of the response letter. (Union Exhibit #7) The Manager responded: "one of my "favorites" brought it up and I assured him you and I were on the same page."(Union Exhibit #7) In addition, there is no evidence whatsoever that the Town and Union did not agree to the many bargaining sessions they held. Thus, had this matter been presented to us in the first instance, we would have held that the parties mutually agreed to extend the thirty-day period referred to in § 28-9.1-7 for negotiations, as evidenced by their clear and unmistakable actions and that they both retained the right to submit issues to interest arbitration. We do however agree with Judge Stern's decision that each party bears the obligation under the statute to submit their unresolved issues to arbitration.

negotiation and execution of a new agreement. (Decision at 20 and 21) In reaching its conclusion that the SLRB has jurisdiction to determine what, if any, agreement is in force between the parties, the Court cited to the Rhode Island Supreme Court as follows:

> "If a dispute should arise between the parties concerning the effect of the failure to enter into a new agreement and whether or not the terms and conditions of an expired agreement should be controlling pending the negotiation and execution of a new agreement, the tribunal to make such a determination is the State Labor Relations Board...*If the union should contend that the terms of an expired agreement should apply until a new agreement should be reached, its remedy would be to file an unfair labor practice complaint with the State Labor Relations Board, pursuant to the terms of §28-7-13.*The Superior Court would have jurisdiction only to review the decision of the State Labor Relations Board pursuant to §42-35-15. In short, the Superior Court does not have original jurisdiction of the question to determine what, if any, agreement is in force between the committee and the union." Warwick Sch. Comm. v. Warwick Teachers' Union Local 915, 613 A.2d 1273, 1276 (R.I. 1992) (emphasis added by Judge Stern)

In granting the Employer's motion for a stay of the mandatory injunction in North Kingstown II (restoring the prior terms and conditions of employment to the NK firefighters), our Supreme Court itself made reference to this same case:

> "The hearing justice likely erred in issuing the following mandatory preliminary injunction: "By February 13, 2013, the [t]own is ordered to reinstate wages, hours, and other terms and conditions of employment that exi[s]ted pre-lateral implementation [], i.e. prior to March 11, 2012. At this stage, we deem the issuance of this injunction to be improper for several important reasons: (1) neither party requested it (FN4) (2) it directly contravened this Court's well-settled precedent established in *Warwick School Committee v Warwick Teachers' Union, Local 915,* 613 A.2d 1273, 1276 (R.I. 1992) in which we stated that 'the Superior Court does not have original jurisdiction of the question to determine what, if any, agreement is in force between [management] and [a] union' and may not require the parties to enter into any particular agreement; and it was ordered absent the requisite findings (FN5) and without notice to the Town., as required by Rule 65 (a) (1) of the Superior Court Rules of Civil Procedure."

In addition, R.I.G.L. § 28-9.1-6 (Obligation to bargain) specifically provides: "An unfair labor practice charge may be complained of by either the employer's representative or the bargaining agent to the state labor relations board which shall deal with the complaint in the manner provided in chapter 7 of this title." Therefore, based in part upon the holding in North Kingstown II and upon the stay issued by the Rhode Island Supreme Court, as well as R.I.G.L. § 28-9.1-6, this Board finds that it has jurisdiction under the FFAA and the State Labor Relations Act to both hear and decide this controversy.

DUTY TO BARGAIN

The Town argues that it had no duty to bargain for three distinct reasons:

(1) The Town's Home Rule Charter vested in the Manager and Council, the supervening right to implement the Reorganization.

(2) The Town's authority and duty to implement the reorganization cannot be contractually abdicated.

(3) The Reorganization falls into the category of management rights which is not a mandatory subject for bargaining.

Home Rule Charter: The Employer argues that its Home Rule Charter supersedes any general law, including those found under the Labor Relations Act and the FFAA, insofar as those general laws apply to the Town. The Employer claims that its charter permits it to "reorganize" any of its departments. (Town of North Kingstown Charter, Section 310.) The Employer relies upon a series of cases for its position, including: Town of Johnston v Santilli, 892 A.2d 123, 129 (R.I. 2006), International Association of Firefighters Local 799 v Napolitano, 516 A.2d 1347, 1349 (R.I. 1986), Town of West Warwick v Local 2045, 714 A.2d 613, (R.I. 1998), Retirement Bd. of Employees' Retirement System of the City of Providence v City Council of Providence, 660 A.2d 721, 727-28 (R.I. 1995). The Employer argues that since the Town Charter was adopted and specifically ratified after the adoption of the FFAA and State Labor Relations Act, the Town Charter controls and "trumps" those acts.

The Employer's citation to these cases, while technically correct for the recitation of the holdings, is, in this Board's opinion, misplaced. Those cases dealt with situations where *competing* statutes and charters were at odds with each other and determine which regulation "trumps" the other. In its brief, the Employer does not even attempt to view its rights under its charter and obligations under state law for collective bargaining as harmonious. Moreover, the Employer does not set forth any reason why it believes that its charter and the FFAA and the SLRA are in conflict with each other. The Employer simply argues from a legal perspective, that *if* they are in conflict, the charter prevails.

In this case we see no conflict whatsoever; and find that the charter's provisions for reorganization are *in pari materia* with the requirements of both the FFAA and the SLRA. "It is well-settled under the rules of statutory construction that statutes which are not inconsistent with each other and relate to the same subject matter are *in pari materia* and should be considered together so that they will harmonize with each other and be consistent with their general object and scope." Berthiaume v. School Committee of Woonsocket, 121 R.I. 243, 249, 397 A.2d 889, 893 (1979) (quoting Providence Teachers Union, Local 958 v. School Committee, 108 R.I. 444, 449, 276 A.2d 762, 765 (1971)). The Employer's Charter and the State Labor Relations Acts both deal with the employment of public employees in the Town of North Kingstown. The Charter specifically provides that the town may "re-organize" any of its departments and the Town Manager may make such assignment of powers and duties as he/she may consider advisable, unless otherwise provided by charter or ordinance. The Charter is silent on the issue of hours or work, wages and other benefits or emoluments of

employment. In addition, the Charter itself contemplates that "the laws of the state not inconsistent with this Charter, except those superseded by or declared inoperative by ordinance or resolution of the Council, shall have the force and effect of ordinances of the Town." We understand that provision to mean that the statutory requirements for bargaining in good faith found in the FFAA and the SLRA are considered by the Employer to have the same force and effect of a Town ordinance. Thus, we read these laws together and find that the Employer's right to reorganize its fire department in no way conflicts with its statutory obligations for collective bargaining as set forth by the FFAA and the SLRA.

The FFAA confers a major benefit upon the Employer: its firefighters are prohibited from engaging in any work stoppage or slowdown and are specifically denied the right to strike. In exchange for that protection, the Employer is required to respect the employees' rights to bargain collectively concerning wages, rates of pay and other terms and conditions of employment. R.I. Gen. Laws § 28-9.1-2(a)

> The protection of the public health, safety, and welfare demands that the permanent uniformed members, rescue service personnel of any city or town, emergency medical services personnel of any city or town, and all employees of any paid fire department in any city or town not be accorded the right to strike or engage in any work stoppage or slowdown. This necessary prohibition does not, however, require the denial to these municipal employees of other well recognized rights of labor such as the right to organize, to be represented by a labor organization of their choice, and the right to bargain collectively concerning wages, rates of pay, and other terms and conditions of employment.

There is no conflicting provision in the FFAA that prohibits the Employer from re-organizing its fire department. Indeed, Judge Stern has already ruled on this issue in North Kingstown I and then clarified his position again in North Kingstown II. According to Judge Stern:

> "the FFAA represents a public policy decision made by our State's elected representatives in both the Legislative and Executive branches. From a public policy perspective, it provides for the uninterrupted provision of emergency services in the State, as it denies firefighters the traditional right to strike, which is generally afforded to unionized employees. See G.L. 1956 28-9.1-2. On the other hand, it significantly restricts the Town by not allowing it to implement changes to wages, hours, and other terms and conditions of employment outside of compliance with the FFAA or through a CBA. (Charles B. Craver, *The Judicial Enforcement of Public Sector Interest Arbitration*, 21 B.C. L.Rev. 557,558 (1980) "Interest arbitration is, in fact, 'the most common public sector device for resolving bargaining disputes' where other solutions have proved ineffective.")

In this case, the charter and statute are readily harmonized and permit the Employer to exercise its right to reorganization, provided however, that prior to implementation, it collectively negotiates in good faith, the impact to the firefighters' wages, rates of pay and other terms and conditions of employment. The SLRA similarly states: "Experience has proved that protection by law of the right of employees to organize and bargain collectively removes certain recognized sources of industrial strife and unrest, encourages practices fundamental to the

friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and tends to restore equality of bargaining power between and among employers and employees, thereby advancing the interests of employers as well as employees." R.I.G.L. § 28-7-2. Thus, it is clear that the Employer retains the right to reorganize its department, but in doing so, the Employer still must bargain collectively with the Union concerning wages, hours, or other working conditions and cannot impose unilateral changes to these mandatory subjects for bargaining. There is no reason why the two provisions should be read as inconsistent or at odds, especially when the SLRA is to be construed liberally and is an exercise of the police power of the state for the protection of the public welfare, prosperity, health and peace of the people of the state. See R.I.G.L. § 28-7-2 (f). In addition, we note that R.I.G.L. § 28-7-44, under the SLRA, provides: "Insofar as the provisions of this chapter are inconsistent with any other general, special or local law, the provisions of this chapter shall be controlling." Thus, even if the Charter and state statutes for bargaining were inconsistent, which we specifically do not find, the SLRA would appear to control.

No Contractual Abdication of Rights:

The Employer argues that statutory powers and obligations cannot be bargained away and that Sections 310 and 406 of its Charter permit it to reorganize the department into the organizational structure the Employer deems appropriate. (Brief p. 31) As such, the Employer argues that this Board is without authority to finds its reorganization into three divisions unlawful. The Employer argues that it had no duty to bargain with the Union over the reorganization because that would be an improper contractual restriction on the Employer's statutory powers. The Employer also argues that the Board is without authority, therefore, to order the Employer to organize the department back into the system requested by the Union.

As stated above, the Employer's ability to reorganize under its charter is not something that this Board sees as conflicting with the Employer's obligation to engage in bargaining with the Union concerning the effects of the decision on the wages, hours and other terms and conditions of employment. Although there is some disagreement as to the Board's authority to order the Employer to permanently organize the Department back "into the system requested by the Union," we do indeed have the power and authority to order the Employer to maintain a status quo that existed upon the expiration of the last CBA, until such time as all the statutory procedures in the FFAA have been exhausted, up to and including the obligation to file for certiorari after the issuance of an interest arbitration award. Indeed, it is our position, as well as Judge Stern's position, that under the FFAA, the only entity that may issue changes to the

terms and conditions of employment for firefighters is a duly authorized and convened interest arbitration panel.

Reorganization was a Management Right

We note that this issue is one that has also been addressed by Judge Stern. In North Kingstown I, Judge Stern held:

> "If the Town desires, it can, with notice to the Union, reassert its management right. Any binding arbitration can determine the effects on mandatory subjects of bargaining. In this case the Town, through Ordinance, may assert that those management rights permissively bargained in a CBA upon expiration are reasserted. This Court finds that the platoon structure of the Fire Department is a management right that may be properly asserted at the expiration of the CBA. Going forward the parties may agree to a new CBA that addresses the effects of this management change on mandatory bargaining subjects or proceed to interest arbitration, solely to determine the effects on mandatory bargaining subjects and not the management decision itself."

This holding was further clarified, later in the decision.

> "This Court is well aware that the Town is not required to bargain over every conceivable concession, and the ability to make managerial changes is certainly within its sovereign power. It is not convinced, however, that in this instance the changes to wages and hours are solely an effect of that management change from four (4) platoons to three (3) platoons. Instead, the Ordinance explicitly addresses changes to wages and hours. Thus, the Ordinance, on its face, affects subjects which are very clearly items which must be bargained for pursuant to the FFAA. See § 28-9.1-4."

We cannot say it any clearer than Judge Stern: the management right being asserted here, on its face, affects subjects which are very clearly items which must be bargained for pursuant to the FFAA.

We will also note, however, that apparently the Employer did not feel this was a "management right" that did not have to be bargained until sometime in December 2012; well after the issuance of the interest arbitration award from the preceding year and after the exchange of initial proposals for the 2011-2012 year. The Employer had readily bargained this issue, presumably at great expense to both parties, for more than one year. If the Employer was so sure this was an inherent "management right", then why did it litigate this very issue all the way to an interest arbitration award just a few months prior to commencing negotiations for the 2011-2012 year, especially when its negotiators were the same people? In addition, why wasn't the Employer's position of this as a "management right" asserted at the commencement of negotiations and the exchange of proposals?

This Board is very disturbed by the unfairness now visited upon the Union as a result of the Employer's late change of position on this issue and Judge Stern's decisions in

North Kingstown I and North Kingstown II, because the Judge overlooked the Employer's *failure to assert this issue in a timely manner.* The FFAA requires the parties to submit their proposals for changes in successor collective bargaining agreements within thirty days of the date of their first bargaining session. R.I.G.L. § 28-9.1-17. In this case, the Employer clearly believed in October 2012 that it had the obligation to bargain the issues of the firefighters' work-hours and rates of pay *because it offered to bargain these issues*. The Employer's package of contract proposals contemplates the implementation of the fifty-six hour workweek. (Union Exhibit #8, pgs. 21-22) The Employer's proposals did **not** state that it considers the issue of the platoon structure and hours of work as a "non-delegable" management right.

Based upon Judge Stern's interpretation of the FFAA, the thirty-day period contemplated for negotiations commenced on October 28, 2011 and concluded on November 27, 2012. In Judge Stern's opinion, after that initial thirty days, all unresolved issues had to be submitted to interest arbitration by the parties. When they failed to do so, both parties waived their rights to this method of resolving the issues and the bargaining window for 2011-2012 fiscal years closed. *However,* the Employer did not even claim that the platoon structure was a non-delegable management right that only required bargaining as to the "effects" of this decision until December 19, 2011. (See Union Exhibit #15) Thus, with Judge Stern's decision, the Employer was able to change a *fundamental issue of bargaining*, well after the thirty day period had expired and after the time in which the Union could have submitted that issue as an unresolved issue for bargaining.

IMPASSE RESOLUTION

The Employer argues that the essential elements of the Board's complaint have not been established because not only did impasse exist on March 5, 2012 when the ordinance was implemented, the "Union exhausted the statutory resolution procedures set forth in the FFAA." (Brief p. 39). The Employer alleges that the Union failed to exhaust the statutory resolution procedures by (1) failing to timely request interest arbitration within thirty days of the parties' first negotiation meeting, as required by R.I.G.L. § 28-9.1-7 and (2) by failing to timely notify the Employer of its intention to bargain wages, rates of pay, and other matters requiring the appropriation of money, as required by R.I.G.L. § 28-9.1-13.

The Union responds that participation in statutory impasse procedures is mandatory, regardless of whether one or both parties failed to strictly comply with statutory deadlines. *Rhode Island Council 94 v Carcieri*, 2008 WL 4824439. In addition, the Union argues that statutory dispute resolution mechanisms cannot possibly be exhausted because the Employer

has refused to participate in interest arbitration procedures; thus the procedures have not even begun.

We note that this too is an issue that has been specifically litigated between the Employer and the Union before the Rhode Island Superior Court in North Kingstown II and that Judge Stern has held that ***both*** parties have, by failing to submit the unresolved issues to interest arbitration within thirty days of their first meeting, waived their respective rights to interest arbitration. Thus, the window for interest arbitration for the contract year 2011-2012 is closed and the parties must wait until interest arbitration for the following year. Id. Although this Board is bound by the doctrine of res judicata on this issue, and *cannot* find differently than Judge Stern, we wish to note for the record that we respectfully do not agree with his ruling on this issue and that were this issue to come before us in another matter, we would not follow this ruling as precedent, since there are opposing Superior Court opinions on the issue of participation in statutory impasse procedures. *See* Rhode Island Council 94 v Carcieri, 2008 WL 4824439. In Carcieri, the Court stated:

> "Although the statutory framework contains tight timelines and anticipates "fast track" resolution of contract disputes, both parties are in default of these statutory timeframes...Irrespective of the timing of the proceedings, however, the language of the statutory scheme is mandatory and the parties may not ignore, and cannot waive, the requirement that they participate in...compulsory proceedings."[14]

The Board believes that the legislature's creation of a "method of arbitration of disputes", with the final word being vested within the province of a neutral arbitrator, is clear on its face. Nowhere within the FFAA is there any indication that either the municipality or the union could either knowingly or unknowingly waive the requirements of submitting contract negotiation disputes to an independent third party arbitrator. We understand that in Lime Rock, the Supreme Court did in fact hold that the Union had "failed to exhaust its remedy" under the FFAA in submitting unresolved issues to arbitration within the designated time period, and so it had waived its right to pursue that remedy. Id at 54. Thus, there is precedent in case law for finding that a Union can *knowingly* waive its rights to interest arbitration and be foreclosed from participation. Indeed, "waiver" is defined by Merriam Webster's dictionary as "the act of intentionally relinquishing or abandoning a known right, claim or privilege." We believe therefore, that the Lime Rock Court's holding was in direct response to the specific fact in that case, that the Union had refused to continue the mutually agreed-upon course of bargaining

[14] Also see: West Warwick School Committee v. West Warwick Teachers' Alliance, 1996 WL 936936 (R.I. Super. 1996), Town of West Warwick v Derosiers, 1998 WL 182633 (R.I. Super. March 31, 1998), and Rhode Island Council 94 v Rhode Island, 705 F.Supp. 2d 165 (D.R.I.) (Smith, J.)

and deliberately abandoned that process, in favor of proceeding before this Board on a ULP case.

The facts in this case are quite different. Here, the Union, after many months of continuous negotiation sessions, *agreed to by the Employer*, and after unilateral action by the Employer on mandatory subjects for bargaining (imposition of wages & hours), filed for interest arbitration under the FFAA. In addition, the Union sought relief in the Superior Court from the unilateral implementation (North Kingstown I) and sought an order directing the Employer to participate in interest arbitration proceedings.

We are aware of the multiple "fast track" timeframes set forth under the FFAA and note that the policy behind these timeframes is to achieve labor peace as quickly as possible, for the public's good. We are also aware however, from years of experience and more specifically, the record in this case, that interest arbitration under the FFAA, in the normal course of events, often takes several months to conclude the necessary hearings and then several more months before a decision is issued. The record in this case established that the interest arbitration proceeding that took place between these two parties for the prior contract year (July 1, 2010-June 30, 2011) spanned thirteen hearings held between October 28, 2010 and February 8, 2011. The parties submitted 172 exhibits, some of which contained multiple parts, and transcripts of the proceedings totaled 357 pages. (See Union Exhibit #4, Interest Arbitration Award) The decision was not issued until August 11, 2011, after the expiration of the contract year it covered! Thus, while the FFAA calls for a "fast-track" interest arbitration process, the practical reality is that in application, the process simply cannot and does not conclude within the contemplated timeframes.

In addition, following the Court's holding in Lime Rock, where it said that the failure to submit unresolved issues to arbitration was a *failure to exhaust remedies* under the FFAA, then the opposite cannot be true in this case, as argued by the Employer. The Employer argues at pgs. 48-51 of its brief that the Union "exhausted" the statutory dispute resolution procedures under the FFAA by voluntarily waiving its right to pursue interest arbitration. The Employer's argument, while seeking a similar result as Lime Rock, argues just the opposite of the Lime Rock holding. Here, the Employer and the Union both failed to exhaust remedies- according to Judge Stern's decision. Just as this failure to exhaust remedies under the FFAA did not permit the Union to strike, the Employer similarly, does not have a right to unilateral implementation of its proposals.

The doctrine of exhaustion of remedies requires a party to use all available procedures before resorting to the Courts and requires that the party not only raise the issue, but requires the party to proceed throughout the entire proceeding to a final decision on the merits of the controversy. See Blacks Law Dictionary 6th Ed. The FFAA contemplates this very process. Indeed, the only mention of any court proceedings in the FFAA is § 28-9.1-15 which provides:

> "The sole avenue of review of a decision of an arbitration panel issued pursuant to this chapter shall be by petition for writ of certiorari to the supreme court. In the event a decision of the arbitration panel is sought to be reviewed by writ of certiorari to the supreme court, the matter shall be given priority by the supreme court."

In this case, the facts and evidence readily establish that the statutory dispute resolution procedures *have not been exhausted* by the Employer. This is especially true because after the expiration of the original thirty days of bargaining, when the parties were still bargaining and neither had invoked interest arbitration, *the Employer added additional topics for bargaining and adopted an entirely new legal theory as to its obligations* (or lack thereof) over bargaining the platoon structure and work hours. How can it be fair or appropriate to allow the Employer to add new bargaining topics after the window for invoking interest arbitration has supposedly been closed for that bargaining year? We do not believe that this is what's contemplated by the FFAA at all because it would result in a completely unfettered balance of power in favor of the Employer.

Interest arbitration, while invoked by the Union, was thwarted by the Employer, and the Superior Court has held that each party has now waived their right to those procedures for the 2011-2012 contract year. The Union has argued to us that despite the Court's decision in North Kingstown II, both parties have now waived their right to interest arbitration for the 2011-2012 year, there remains a question as to whether either party can waive interest arbitration or whether it is mandatory. The Union submits then that it is this Board that has jurisdiction to determine whether the parties must proceed to interest arbitration. The Union argues that we derive this authority in part, from the amendment of R.I.G.L. § 28-7-13.1. While we agree that this Board *should* have jurisdiction and does have jurisdiction to order the parties to engage in interest arbitration over the unresolved issues, this matter has already been submitted to and decided by the Superior Court. This Board does not have the authority to overrule a Superior Court decision and we decline to do so here. We must reluctantly find that both parties have waived the opportunity to proceed to interest arbitration for the 2011-2012 year. However, if the Superior Court's decision is later overturned by the Supreme Court and the Supreme Court rules that this Board indeed possesses the authority to order

the parties to interest arbitration for the 2011-2012 year, then we direct that the same take place upon conclusion of those Court proceedings.

NOTICES UNDER R.I.G.L. § 28-9.1-13

The Employer argues that the Union exhausted the FFAA's statutory dispute resolution procedures when the Union failed to send a written notice to request bargaining at least one hundred twenty days prior to the last day on which money can be appropriated by the Employer. The Employer argues that the last day upon which it could appropriate money was May 4, 2011 and that the Union's deadline was, therefore, January 4, 2011.

The Union replies that the Tiverton case specifically stated that in order to give R.I.G.L. § 28-9.3-13 a reasonable interpretation, the "last day" as applied to Tiverton or any other municipality similarly situated, is the day on which the financial town meeting is ordinarily held. The Union argues that the Employer did not present any evidence of when its financial town meeting is "ordinarily held" or that North Kingstown is similarly situated to Tiverton. The Union notes that the date of a financial town meeting may coincide with the past day on which money can be appropriated like Tiverton, but may not. The Union argues that Mr. Embury, the Town Manager, testified that pursuant to Section 1008 of the Town's Charter (Employer's Exhibit #28) the Council has the authority to delay final budget approval until after a new fiscal year has begun and that the Council had the authority to appropriate money after May 4, 2011. (TR. p. 613)

The Union also argues that in Tiverton, the Employer protested the timeliness of the request, from the beginning and only participated in negotiations under protest. So, even if the resulting interest arbitration award in Tiverton should have been invalidated due to the untimely notice, in this case, the Employer did not protest the timeliness of the notice and did not protest participating in negotiations until now. Therefore, the Employer should not get to disavow its participation.

This again is an issue that the Superior Court considered and ruled on in North Kingstown II. There, Judge Stern held:

> "This Court finds that the Rhode Island Supreme Court's interpretation of the 120-day notice requirement in Town of Tiverton is conclusive on the issue of forfeiture. Based on a direct application of the holding in that case, it would seem as though the Union's failure to comply with the statute is fatal to the Union's ability to collectively bargain. See Id. At 166, 372 A.2d at 1276. Indeed, this Court finds that the Union's notice was defective under the plain language of R.I. Gen. Laws § 28-9.1-13. However, as the Court noted in Town of Tiverton, lack of timely notice means only that 'the town was not obliged to negotiate' on issues falling under the statute. Id. This language is not prohibitive of such negotiations. Here, by contrast, there is no dispute that the Town actually engaged in negotiations with the Union on a wide range of issues, all after receipt of the Union's defective notice." The Court, after analyzing similar cases held: "Under such analysis, this

> hCourt holds that '[b]ecause the parties initiated collective bargaining negotiations for the purposes of entering into a new agreement', the Union's defective request to engage in such negotiations is not fatal to the Union's ability to collectively bargain." See Lime Rock, 673 A.2d at 53."
>
> "In support of this holding, this Court notes that the purpose of the relevant provision is 'to afford the Town sufficient time to consider matters affecting town finances.' Town of Tiverton, 118 R.I. at 164, 372 A.2d at 1275. Here, the Town was not obligated to engage in collective bargaining with the Union following the union's defective request; however, the Town actually engaged in such negotiations. Thus, it is clear that the Town was not deprived of 'sufficient time to consider matters affecting town finances.'"

Judge Stern concluded: "Once the Town engaged in collective bargaining with the Union, it was bound to follow the other provisions of the FFAA, including those requiring unresolved issues to be submitted to interest arbitration. See G.L.1956 28-9.1-7." (Town of North Kingstown II, Decision at p. 10)

We concur with Judge Stern's finding in this matter. In addition to the matters discussed by the Court, we also note that the Employer again failed to assert this as being an issue until long after the bargaining process for the fiscal year 2011-2012 had ended. This issue was not raised until after the complaint in this case was issued and for those reasons, we believe that the Court could also have found that the Employer was guilty of laches in asserting this defense. If the Employer has a "defense" to its obligation to bargain, the duty to bargain in good faith requires that such defense be raised at the commencement of the proceedings and resolved under the FFAA, as in the Town of Tiverton. At the very least, had the Employer asserted this defense, the Union would have had the opportunity to ascertain the answer to this threshold question at that time. Given Judge Stern's decision, both parties would still be in the same position today, as it pertains to their inability of accessing interest arbitration for the 2011-2012 fiscal year, without agreement of the other, but each could have saved significant sums of money had this issue been raised in a timely manner. It is not fair to "sit" on a negotiating defense and later pull it out when things start to go the wrong way. We believe that the Employer's failure to raise this within the scope of its bargaining constitutes bad faith. An Employer that wants to raise the timeliness a Union's first request to bargain as a defense in an unfair labor practice proceeding is hereby advised that it must assert that defense when it first accrues.

The Employer, claims in its brief that the Union did not respond to the Employer's response to the Union's initial request to for negotiations for 2011-2012. (See brief p. 2) However, the Employer's assertion is simply false. The Union did indeed respond to the Town Manager on March 11, 2011, as follows:

> "Hi Mike: I don't have any issue with the timeliness of the response letter. We've had a few conversations regarding the situation with the 2011-2012 negotiations and I feel we are on the same page. I also know that the budget process is picking up, and that is going to consume a considerable amount of your time. However, if you think it would be productive to meet prior to the issue of the arbitration award, let me know and I'll be happy to set something up." (Union Exhibit #7)

The Employer's own cross-examination of Mr. Furtado, the Union President, made it abundantly clear that both parties were waiting for the interest arbitration award for 2010-2011 to come down before commencing negotiations for the following contract year. (See TR. p.157) This only makes common sense. How could the parties know from which point to negotiate without knowing the outcome of the prior year's arbitration award? The Employer also goes on to argue in its brief that as a result of the Union not requesting bargaining sessions, bargaining did not commence until October 28, 2011 and that in the intervening months, the Employer adopted its budget. (Brief p. 3) The implication being made by the Employer is that it is the Union's fault that the budget that was eventually adopted by the Employer was sufficient only to fund what the Employer wanted to fund and not what the Union seeks. The problem with that implication is that the evidence is clear that both parties were in fact waiting for the interest arbitration award for 2010-2011. Nothing of course, prohibited the Employer from budgeting adequately for what an interest arbitration panel for 2011-2012 might award. To the extent that the Employer did not prepare for such a contingency speaks only of the Employer's poor planning.

CONCLUSION

This Board is not happy with and regrets the amount of time it took to complete the hearings in this matter. It has always been the Board's policy to grant attorney excusals, when requested and especially when a party has a medical excuse. This case however, highlighted that the Board may have to set a new policy or rule on this issue. The hearings in this case took entirely far too long to conclude, especially when we know that the employees in this case were being forced to work twenty-four hour shifts that were unilaterally and unlawfully imposed upon them by the Employer. In addition, we believe that the Employer knew full well that it was engaging in an unlawful practice when it unilaterally changed the terms and conditions of employment and did so in an effort to "push the envelope" within the labor relations community. We are also concerned that despite two lengthy Superior Court decisions against it, on multiple grounds, the Employer continued to impose the unlawful terms and conditions of employment. We find that there was no valid reason, either based in statute or Rhode Island case law that would cause the Town's leaders or advisors to believe with any good faith, that the firefighters here were "at the mercy of the sovereign" and that the Town possessed the unilateral right to

impose its will on its employees, especially when the Town failed to avail itself of the statutory right and obligation to engage in interest arbitration on its unresolved issues.

The remedies that we set forth in this case are reflective of our feelings concerning the Employer's deliberate and unlawful behavior. In crafting our remedies, we recognize that we cannot give back to the firefighters the time that they have missed with their families or undo the stress that they have endured. We wish there was more we could have done about that and that we could have concluded these hearings far sooner than we did.

That having been said, it is our intent to make the firefighters as whole as we possibly can. Under the broad statutory grant set forth in R.I.G.L. § 28-7-22(b) to remedy unfair labor practices, we have crafted a "make whole" remedy herein, which includes not only all wages owed, but interest as well. In addition, our remedy is designed to serve as a warning to this Employer and all other Employers that the imposition of unilateral terms and conditions of employment is not justified, when there exists a mandatory statutory resolution for bargaining disputes.

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) The Union and Employer have long been collective bargaining partners, with the last negotiated contract being for the period July 1, 2007- June 30, 2010.
4) The most recent CBA between the parties is the result of interest arbitration award dated August 9, 2011, governing the period of July 1, 2010 through June 30, 2011.
5) The Union gave notice to the Employer on February 23, 2011 that it desired to engage in collective bargaining for the 2011-2012 fiscal year.
6) On May 4, 2011, the Town Council adopted a budget for the 2011-2012 fiscal year.
7) On October 28, 2011, after the issuance of the 2010-2011 interest arbitration award was issued, the parties met for the first time to bargain over the terms of a successor collective bargaining agreement for fiscal year 2011-2012.
8) The parties exchanged contract proposals at the October 28, 2011 meeting. The Town proposed, in part, that the parties agree to a revised platoon schedule, which would

eliminate one platoon and would increase the average workweek for the firefighters from forty-two hours to fifty-six hours.

9) The Town Manager testified at hearing that he believed the parties were at "impasse" at this first negotiation meeting, but he did not ever say so to any member of the Union.

10) The parties did not reach an agreement within thirty days after the first bargaining session on October 28, 2011.

11) Neither the Union nor the Employer sought interest arbitration for unresolved issues immediately following the expiration of the thirty days following the first bargaining session and the parties continued to meet and negotiate.

12) On December 19, 2011, more than thirty days after the first negotiating session, the Employer issued a letter that changed its position on what it considered its bargaining obligation to be and added several new items to the bargaining list that were not contained on its original set of proposals. Instead of bargaining over the implementation of a new platoon structure and hours of employment, the Employer decided that it was only going to negotiate over the "effects" of implementing a new platoon structure and hours of employment. In addition, the Employer threatened to implement an ordinance mandating the new platoon structure, unless the Union could come up with 1.2 million dollars in structural savings.

13) Despite the Employer's threat, the Union still continued to meet with the Employer to try to negotiate a successor agreement.

14) On or about January 30, 2012, while the parties were still engaged in negotiations, the Employer adopted Ordinance 12-02 which unilaterally changed the terms and conditions of employment as set forth in the parties' most recent CBA.

15) On February 28, 2012, the Union filed a Complaint in the Superior Court against the Employer through its Town Manager and Town Council, seeking a declaration that (1) the Ordinance was invalid because it was in violation of the Town Charter and the Fire Fighters' Arbitration Act ("FFAA") and 2) that the Town's failure to maintain the status quo constitutes a violation of the FFAA and the State Labor Relations Act ("SLRA"). The Union also sought to enjoin implementation of the Ordinance and to enjoin the Town from unilaterally changing the terms and conditions of employment.

16) On or about March 6, 2012, the Employer implemented the Ordinance, unilaterally changing the terms and conditions of employment.

17) The Ordinance, among other things, increases firefighters' workweeks from the contractual forty-two hours per week to fifty-six hours per week; changes firefighters' shifts from ten and fourteen hour days to twenty-four hour days; and decreases firefighters' hourly pay rates.

18) In or about March, 2012, after the Employer finally "declared" impasse, the Union filed a demand for interest arbitration for the 2011-2012 contract year.

19) On May 23, 2012, the Rhode Island Superior Court, Justice Stern presiding, issued a Decision, attached hereto and incorporated herein, finding: (1) "the Ordinance is invalid because it was passed in violation of the Charter," (2) "the Ordinance is invalid because it conflicts with the FFAA by imposing changes to wages, hours, and terms and conditions of employment without first bargaining to agreement or following the FFAA's statutory arbitration procedures; and (3) "the Union's request to enjoin implementation of the Ordinance is moot because there is no Ordinance to enjoin"

20) On June 14, 2012, the Union filed the within charge.

21) Following the filing of the Charge, the Administrator notified the Employer in writing of the charge and provided a copy of the same. In accordance with R.I.G.L. § 28-7-8 and Board Rule 9.01.6, and R.I.G.L. § 28-7-9 (d), the Board's Administrator directed both parties to submit written statements for the informal hearing process by July 2, 2012, with any replies to the initial statements to be filed by July 9, 2012.

22) After the informal hearing process conducted by the Administrator, the Board reviewed the matter, including the written statements submitted by both parties and issued a complaint on August 2, 2012. The Board's complaint alleged: The Employer violated R.I.G.L. § 28-7-13 (6) and (10) when, on March 6, 2012, the Employer unilaterally changed terms and conditions of employment, including hours and wages, without bargaining to impasse and without exhausting all statutory dispute resolution mechanisms under the Firefighters Arbitration Act.

23) On August 10, 2012, the Employer filed an answer to the Board's Complaint, denying the charges and asserting twenty-one affirmative defenses.

24) The matter was then scheduled for formal hearing, which commenced on September 12, 2012. At the first formal hearing, the Employer filed a copy of a "Verified Complaint and Petition to Stay Arbitration styled *Town of North Kingstown v. International Association of Firefighters Local 1651, AFL-CIO*, C.A. No. WC 2012-0542.

25) At the first hearing the Employer made three oral motions: (1) recusal of Board Member, Frank J. Montanaro; (2) motion for stay (while the Superior Court Case 2012-0542 was pending); and (3) motion to dismiss the case.

26) In accordance with Board Rule, 7.04.4, the Employer was directed to submit its motions in writing to the Board and the hearing commenced. On or about September 27, 2012, at the commencement of the third formal hearing, the Employer submitted the written motions and the hearing continued. In accordance with Rule 7.04.4, the Union was provided with an opportunity to respond to the written motions and did so on or about October 2, 2012.

27) At the October 9, 2012 meeting, the Board voted as follows: (1) To deny the motion to recuse Member Frank Montanaro on the basis that the Board does not have subject matter jurisdiction to address said motion; (2) To deny the motion for stay on the basis that the Board has proper subject matter jurisdiction to proceed; and that the within matter is sufficiently different from the East Providence case to follow a different course of action; and (3) To deny the motion to dismiss on the basis that the Board has proper subject matter jurisdiction to proceed. A letter informing the Employer of the outcome of its motions was sent on October 22, 2012.

28) In December 2012, the Superior Court issued a lengthy decision Town of North Kingstown v. International Association of Firefighters Local 1651, AFL-CIO, C.A. No. WC 2012-0542 finding: (1) The Town's actions in implementing unilateral changes to the wages, hours, and terms and conditions of employment, were unlawful, as in violation of the doctrine of election of remedies and the terms of the FFAA. (2) The SLRB has jurisdiction over the subject matter of the Complaint in ULP-6088 insofar as it is necessary to determine which terms and conditions have existed between the parties since the expiration of the previous CBA. (3) The arbitration panel does not have jurisdiction to determine the effects of said unilateral changes, as those changes are invalid and must be undone. (4) Both the Union and the Town waived their rights to submit unresolved issues to interest arbitration under the FFAA, pursuant to R.I. Gen. Laws § 28-9.1-7. (5) The interest arbitration panel has no jurisdiction to decide any unresolved issues existing between the Town and the Union because interest arbitration, pursuant to the terms of the FFAA, was waived by the parties for the fiscal year 2011-2012.

29) Formal hearings were opened for the introduction of evidence and examination of witnesses and were held on September 11, 2012, September 13, 2012, September 27, 2012, November 29, 2012, January 29, 2013, February 14, 2013, March 7, 2013, April 23, 2013 and May 7, 2013. Representatives from the Union and the Employer were present at the evidentiary hearings and had full opportunity to examine and cross-examine witnesses and to submit documentary evidence.

30) The Board's efforts to schedule the hearings in this matter more tightly was thwarted by the extensive unavailability of the Employer's legal counsel who was court-excused for 107 days and who also had numerous scheduling conflicts when he was not court-excused. The Union's counsel (two attorneys) was also unavailable for a combined total of 28 days.

31) Transcripts of the testimony adduced at these hearings totaled 615 pages. Extensive briefs were filed on or about June 28, 2013. The Employer's brief was fifty-four pages and had an appendix a few inches thick. The Union's brief totaled fifty-five pages and similarly was accompanied by an Appendix.

32) On July 22, 2013, the Employer submitted a ten page motion to strike the Union's brief, with an appendix containing an order from the Rhode Island Supreme Court.

33) On July 23, 2013, the Union filed its nine page objection to the motion to strike, together with additional documents.

34) On July 30, 2013 at 3:56 p.m., the Employer filed a reply to the Union's objection to the motion to strike.

35) On July 31, 2013, the Board met to consider the case and closed the hearing process. In doing so, the Board first denied the Employer's motion to strike the Union's brief, in part because this motion was in actuality, a reply brief, which was not authorized by the Board and in part because the Board does not find the relief requested to be appropriate. In addition, the Board decided to not consider the Employer's reply, filed on July 30, 2013, as it was not timely filed for consideration by the Board, in advance of the July 31, 2013 9:00 a.m. meeting.

CONLUSIONS OF LAW

1) The Board properly held both informal and formal proceedings in compliance with the requirements of the State Labor Relations Act.

2) The Board's ability to decide this case is constrained by the doctrine of res judicata from collateral Court proceedings in the Rhode Island Superior and Supreme Courts.

3) The Board's subject matter jurisdiction to hear the within complaint of the unfair labor practice is not defeated by the doctrine of election-of-remedies, because of the Employer's insistence that no contract is in effect; and therefore, there is no agreement to arbitrate disputes.

4) The Board has subject matter jurisdiction to determine whether the terms of an expired collective bargaining agreement are controlling, pending the negotiation of a new collective bargaining agreement.

5) Wages, rates of pay, hours, working conditions, and other terms and conditions of employment are mandatory subjects for bargaining under both the Fire Fighters Arbitration Act and the State Labor Relations Act.

6) The Employer did not conclusively establish that May 4, 2011 was the last day that it could vote to appropriate money for the 2011-2012 fiscal year.

7) The Employer waived its defense under R.I.G.L § 28-9.1-17 to the obligation to bargain under R.I.G.L. § 28-9.1-1 by not timely asserting the same and by then subsequently commencing and participating in collective bargaining for months.

8) The Employer's obligation to bargain collectively with the firefighters, pursuant to the Fire Fighters Arbitration Act and the State Labor Relations Act may be readily harmonized with and is not contrary to the Town's right under its Charter to reorganize any of its departments.

9) The Employer's failure to state and reveal to the Union that the Employer believed the parties were "at impasse" at the end of the first bargaining session constitutes bad faith bargaining in violation of R.I.G.L. § 28-7-13 (6).

10) The Employer's change in theory on December 19, 2011, as to its obligation to bargain the platoon schedule, hours, and wages, occurred after its initial submission of contract proposals and after the thirty day period following the first bargaining session on October 28, 2011, constitutes bad faith bargaining in violation of R.I.G.L. § 28-7-13 (6).

11) The obligation to submit unresolved issues to interest arbitration, pursuant to R.I.G.L. § 28-9.1-7 is equally applicable to both the Union and the Employer and is required of a party in order to exhaust statutory dispute remedies.

12) Under the FFAA, an Employer may not unilaterally implement any terms or conditions of employment, even if the parties reach impasse, because the sole resolution to impasse is interest arbitration, with any subsequent review by petition for certiorari to the Rhode Island Supreme Court.

13) The Employer's unilateral implementation of changes to wages, hours and other terms and conditions of employment, without having availed itself of the required statutory remedy of interest arbitration, is a per se violation of R.I.G.L. § 28-7-13 (6) and (10).

ORDER

1) The Employer is hereby ordered to immediately restore the firefighters' schedule, hours of work, and hourly rate of pay to that which existed upon the expiration of the 2010-2011 contract year.

2) The Employer is hereby ordered, within sixty (60) days from the issuance of this order, to make all firefighters whole, monetarily, by paying to each and every firefighter, all wages that should have been paid at 2010-2011 regular, overtime, and holiday rates for all the hours the firefighters worked in excess of what they should have worked under the prior schedule of hours and rate of pay.

3) The funds owed to each firefighter under Paragraph 2 supra, shall bear interest at the rate of 12% per annum, running from the date of filing of this charge, to wit, June 14, 2012 through the date of payment.

4) The Employer is hereby ordered, within sixty (60) days from the issuance of this order, to make all firefighters whole, monetarily, by paying to each and every firefighter, any and all payments concerning clothing allowances, tuition reimbursement, or any other item that was contained in the 2010-2011 contract and that was unilaterally discontinued by the Town, if any.

5) The Employer is hereby ordered to participate in Interest Arbitration for the 2011-2012 fiscal year, provided however, that this requirement shall come into existence only if and when the Rhode Island Supreme Court overturns Judge Stern's decision finding a waiver of the Union's right to interest arbitration for the 2011-2012 year.

6) The Employer is hereby ordered to restore and then maintain the status quo on all terms and conditions of employment that existed in the 2010-2011 collective bargaining agreement, until such time as a change has either been mutually agreed to by the Employer and Union or until an interest arbitration panel's award for 2011-2012 or any subsequent year has been issued and not overturned by the Rhode Island Supreme Court, whichever comes first.

7) The Employer is hereby ordered to cease and desist from unilaterally implementing, at any time henceforth, any changes to the wages, rates of pay, hours, working conditions, or other terms and conditions of employment of the employees represented by the Union.

8) The Employer is hereby ordered to post a copy of this decision on all common area bulletin boards within its municipal buildings and on its website for a period no less than sixty (60) days; and to mail, via U.S. postal service, an actual physical copy of this decision to every firefighter employed by the Town of North Kingstown and any other employee represented by the Union in this case.

RHODE ISLAND STATE LABOR RELATIONS BOARD

WALTER J. LANNI, CHAIRMAN

FRANK MONTANARO, MEMBER

GERALD S. GOLDSTEIN, MEMBER

MARCIA B. REBACK, MEMBER

SCOTT G. DUHAMEL, MEMBER

BOARD MEMBER ELIZABETH S. DOLAN RECUSED HERSELF IN THIS MATTER.

BOARD MEMBER BRUCE A. WOLPERT DID NOT PARTICIPATE IN THIS MATTER.

ENTERED AS AN ORDER OF THE
RHODE ISLAND STATE LABOR RELATIONS BOARD

Dated: September 27, 2013

By: _____
ROBYN H. GOLDEN, ADMINISTRATOR

ULP- 6088

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

IN THE MATTER OF	
RHODE ISLAND STATE LABOR RELATIONS BOARD	
-AND-	CASE NO: ULP-6088
TOWN OF NORTH KINGSTOWN	

NOTICE OF RIGHT TO APPEAL AGENCY DECISION PURSUANT TO R.I.G.L. 42-35-12

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of Case No. ULP-6088, dated September 27, 2013, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **September 27, 2013**.

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

Dated: September 27, 2013

By: _____
Robyn H. Golden, Administrator