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-6171
TOWN OF JOHNSTON	:	

DECISION & 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 Johnston (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated , and filed October 16, 2015 by International Brotherhood of Police Officers, Local 307 (hereinafter "Union").

The Charge alleged:

> "That on or about September 10, 2015, duly authorized representatives presented for signature two (2) original copies of Collective Bargaining Agreements for the periods July 1, 2013 through June 30, 2014 and July 1, 2014 through June 30, 2017. Said Agreements were reached as a result of negotiations between the exclusive bargaining representative and the corporate authorities for the Town of Johnston. That, to date, the Town has failed and/or refused to sign the Agreements."

Following the filing of the Charge, the parties each submitted written position statements on November 3, 2015, as part of the Board's informal hearing process. On November 27, 2015, the Board issued its Complaint.

The Employer filed its Answer denying the charges on December 7, 2015. On November 12, 2015, the Employer filed a charge of Unfair Labor Practice (ULP-6175) against the Union, alleging:

> The Town and Local 307 each ratified a Tentative Agreement for Collective Bargaining Agreements for the period July 1, 2013 through June 30, 2014 and July 1, 2014 through June 30, 2017. The Town of Johnston has presented the International Brotherhood of Police Officers, Local 307 with Collective Bargaining Agreements for the period July 1, 2013 to June 30, 2014 and July 1, 2014 to June 30, 2017. The employee organization refused to sign the Collective Bargaining Agreements, but the parties did continue to discuss the basis for their refusal. On or about October 16, 2015, the employee organization filed a charge with the Rhode

Island State Labor Relations Board alleging that the Town refused to sign the Collective Bargaining Agreements. Local 307 continues to demand the inclusion of a matter in the Collective Bargaining Agreements which was not agreed to by the parties and not included in the Tentative Agreement signed by the parties on March 10, 2014. It is now clear to the Town, based on the filing of the Unfair Labor Practice charge filed by the employee organization that it does not intend to sign the Collective Bargaining Agreements unless it contains a provision not agreed to by the parties and not included in the Tentative Agreement ratified by the parties.

Informal hearing statements on the Employer's charge (ULP-6175) were filed by the parties on November 30, 2015. On January 13, 2016, the Board issued a Complaint against the Union, alleging that the Union violated R.I.G.L. 28-7-13.1 (2) when it refused to sign a Collective Bargaining Agreement unless it had a clause that was not part of the parties' ratified Tentative Agreement. On January 25, 2016, the Union filed its answer to the Complaint. Since ULP-6171 and ULP-6175 presented opposite allegations on the same set of operative facts, the Board consolidated the cases for hearings on the merits.

A formal hearing was conducted on January 21, 2016. Representatives from the Union and the Employer were present at the hearings and had full opportunity to examine and cross-examine witnesses and to submit documentary evidence. Post-hearing Briefs were filed by the parties on February 22, 2016. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony, evidence, oral arguments and written Briefs submitted by the parties.

SUMMARY OF FACTS AND TESTIMONY

IBPO Local 307 and the Town of Johnston have been collective bargaining partners for many years, with the most recent expired Collective Bargaining Agreement ("CBA") being for the time period July 1, 2010 through June 30, 2013. On December 4, 2012, the Union notified the Town that it wished to open negotiations for a successor CBA. (Union Exhibit #2) To commence the negotiations, each of the parties submitted written proposals for the successor CBA. The Union's proposals were submitted as Union Exhibit #3 and the Town's proposals were submitted into evidence as Joint Exhibit #1.

Both parties submitted proposals to amend the provisions of Article IV, Section 3 entitled "Medical, Hospital and Physicians Service." The Union's proposal was to add a section to the CBA that would provide an option for cash payments to the employee in lieu of healthcare and dental coverages. The Union also sought a prescription eyeglass

plan. The Town sought in its proposal number five 5(A) to have all employees move to a "Health Savings Account" (hereinafter "HSA"). Additionally, under proposal 5(D), the Town sought the following:

"5(D) - In retirement - with 10 years of service as of July 1, 2012:

Officers with 10 or more years as of July 1, 2012 will receive family coverage in retirement with HSA until age 65. Retirees with other available coverage must take that coverage, with the Town supplementing the co-share difference to keep co-share, doctors and hospital visits, and drug coverage financially comparable."

The parties engaged in collective bargaining for the successor CBA through all of calendar year 2013 and into 2014. In March 2014, the parties reached a Tentative Agreement for a one (1) year contractual Agreement for the period July 1, 2013 through June 30, 2014 and a three (3) year contractual Agreement for the period July 1, 2014 through June 30, 2017. (Joint Exhibit #2) Both the Union membership and the Town Council ratified the Tentative Agreement. On the healthcare issue, the Tentative Agreement provided:

13) "Article IV, Section 3 shall be amended to provide as follows:

> Commencing on July 1, 2014, parties agree to switch to a HSA healthcare plan, family plan deductibles shall be $3,000.00, single plan shall be $1,500.00. Deductibles shall be pre-loaded each year by Town. The deductible will then be reimbursed by the employee through payroll deductions equally divided throughout the year.

14) Article IV, Section 3 shall be amended to provide:

> Retirees and/or spouses who reach age 65 shall enroll in Medicare. The Town shall continue to provide the healthcare benefit level, service level and network level made available prior to the retiree's Medicare eligibility at no cost to the retiree. The Town shall continue to pay any costs associated with Medicare, including healthcare, prescription drugs, and any penalties, interest or enrollment fees. Non-Medicare eligible retirees, spouses and dependents' coverage shall continue as provided for herein."

Subsequent to the execution of the Tentative Agreement, the parties began the process of incorporating the agreed-upon proposals into a new CBA and soon ran into troubles. According to the unrebutted testimony of the Union President, James Brady, when he received the proposed contract language after the TA was signed, there were several areas where the proposed contract language did not represent the parties' Agreement. The parties were eventually able to resolve all of those issues, except for the one concerning healthcare.

Mr. Brady testified that in August 2014, while the parties were working out the CBA language, the Town told the Union that HSAs could not be used for retirees and that a Health Reimbursement Account (hereinafter "HRA") would be required for the retirees. As a result of this claim, Mr. Brady contacted a Mr. Bob Knowles, the Union's contact at Blue Cross/Blue Shield, and set up a meeting at the Johnston Senior Center. The Union's Executive Board, the Union's Attorney, the Town's Attorney, the Town's Chief of Staff, and the Chief of Police all attended the meeting when Mr. Knowles assured all the parties that an HSA was indeed an available health plan for retirees. Subsequent to this meeting, the Union received another proposed draft CBA, which still did not reference the HSA. Mr. Brady testified that in this draft of the CBA, the Town had the initials "HRA" in it, so in response, he began putting the "HSA" reference in his drafts.

Subsequently, the Town was still insisting that an HSA was not legal for retirees; so the parties had a second meeting with Mr. Knowles, from Blue Cross/Blue Shield, who again advised that it was permissible for retirees to have an HSA. (TR. pg. 53) Mr. Brady testified that he thought this issue was finally resolved after this meeting, which he estimated took place in August 2015. Id. He stated "according to the Town, we were all set." (TR. pg. 54) He then testified that he later learned that everything was not "all set"; so he prepared two (2) contracts based solely upon what was agreed upon in the Tentative Agreement, signed them, and delivered them to the Mayor's office for his signature. (Joint Exhibits #3 & #4) Mr. Brady was the only witness in this proceeding; the Town did not provide any rebuttal testimony.

POSITION OF THE PARTIES

The Town argues that the language of Clause 14 of the TA, set forth supra, permits the Town to choose to determine how to fund the retiree health insurance, so long as it meets its obligations as to the healthcare benefit level, service level, and network level. The Town submits that the language of the Tentative Agreement, as it appears in Clause 14, should simply be incorporated into the proposed CBA. The Town claims, "the insertion of language creating a contractual requirement that the healthcare benefit level, service level and network level be funded through a Health Savings Account was not agreed to by the parties, as evidenced in the very specific and detailed language of the Tentative Agreement." (Town's Brief, pg. 5) The Town argues that:

"the plain language of clause 14 clearly establishes that the Town must provide benefit level, service level and network level that the retiree enjoyed upon his retirement at no cost to the retiree. It clearly does not specify whether or not that benefit level, service level and network level are to be provided through an HRA or an HSA." (Town's Brief, pg. 7)[1]

The Union argues that the parties' bargaining history demonstrates the parties' mutual Agreement that whatever health insurance coverage the active members enjoyed carried over to his or her retirement. (Union Brief, pg. 10) The Union points out that the Town's bargaining proposal on this issue sought, for the first time, to convert the active officers from a traditional health insurance plan to a HSA model. (Joint Exhibit #1, proposal 5(A)) Additionally, it was the Town, not the Union that proposed the HSA model for retirees who have ten (10) years of service as of July 1, 2012. (See Proposal 5(D) on Joint Exhibit #1) The Union argues that the healthcare provisions in the TA simply amended the existing CBA, but do not delete any of the other existing provisions in Article IV, Section 3; and that when read together with the TA, establishes that the parties were agreeing to switch from traditional healthcare insurance to a HSA for the retirees. The Union cites to Section 3 (C) of the 2010-2013 CBA which states:

> "In addition, the Employer hereby agrees and covenants the aforementioned coverage shall be continued after retirement of any employee who is a police officer of the Police department on or after the effective date of this Agreement. There shall be no co-pays for retirees."

DISCUSSION

In order to understand the full nature of the dispute in this case, we must first understand the differences between an HSA and an HRA. The parties agreed to and did submit a post-hearing exhibit, entered as Joint Exhibit #5 that explains the differences between the two (2) types of plans. According to Robert L. Knowles of Blue Cross/Blue Shield:

> "HRAs are Employer sponsored plans, where an Employer sets an allowance for employees who can then use that money to be reimbursed for medical expenses. HSAs are individually owned accounts by the employee that the Employers can choose to contribute to.
>
> One of the most important differences between the two is that the Employer owns the HRA and the employee owns the HSA. This means that the

[1] The parties agreed that while there originally were a number of outstanding issues when it came to the CBA, all other issues were resolved. The sole issue remaining herein, is whether or not the language of the Tentative Agreement permits the Town to choose a Health Reimbursement Account, as opposed to a Health Savings Account, for retiree health benefits.

> employee takes the HSA along when he or she changes jobs. If an employee with an HRA changes or loses his or her job, the remaining amount in an HRA defaults to the Employer.
>
> Another significant difference involves how the two types of accounts are funded. The money in an HRA is provided solely by the Employer. HRAs are usually unfunded notational accounts, with no cash value. An HSA is a tax-advantaged account that can be used to pay for IRS-defined healthcare expenses, including long term care and COBRA premiums. Anyone can contribute to an HSA, including the Employer, the employee or a family member. However, the employee must be enrolled in a 'qualified high deductible health plan' and not be collecting Medicare."

In this case, the Board is presented with cross claims, with each party alleging an unfair labor practice against the other over its refusal to sign a proffered CBA. The proffered CBAs are identical in all respects, except for the lettering and numeration of Section 3 - Medical, Hospital and Physicians Services, the precise wording of that clause, *and* the provision of an HSA for retirees in the Union's proffered CBA versus the provision of an HRA for retirees in the Town's proffered CBA.

R.I.G.L. 28-9.2-6 requires that a municipality, though its corporate authorities, meet and confer in good faith with a designated police employee representative. This obligation includes the duty to cause any agreement resulting from the negotiations to be reduced to a written contract. In order to determine if either party is guilty of an unfair labor practice for refusing to execute a proffered CBA, we must examine the facts and circumstances as established by the testimony and documentary evidence, to ascertain whether there had been a "meeting of the minds" between the parties on all issues. It is an unfair labor practice to refuse to execute a written contract that embodies the agreement reached between bargaining parties, or by otherwise repudiating an oral agreement. NLRB v Strong, 393 US 357, 359, 362, 89 S. Ct. 541,543, 21 L.Ed.2d 546 (1969), H.J. Heinz Co. v NLRB, 311 US 514, 525-526, 61 S.Ct. 320, 325, 85 L.Ed. 309 (1941), NLRB v Crimptex, I 501,505-06 (1st Cir. 1975), NLRB v Auciello Iron Works, 980 F.2d 804, (1st Cir. 1992).

In this case, we have a TA executed by the parties as the first piece of evidence to review. The format of TAs vary depending upon the parties using them. Sometimes they contain the specific language for each proposed change to a CBA and sometimes they have more generalized language or an outline of a proposal, which will be later crafted into the final contract language. We find that examining the TA against each of

the parties proposed CBAs can illuminate how the TA should be interpreted for the disputed issue of HSA versus HRA.

In the present case, this TA is a hybrid, in that sometimes very specific language is provided for an amendment of a section, but the TA does not provide the entire paragraph or section being amended. For instance, the very first change to the CBA listed in the TA is Article I, Section 6 - Table of Organization provides:

> **"The staffing of the Johnston Police Department shall consist of sixty-seven (67) officers."**

When we look to Joint Exhibit #3 (the Union's proffered CBA) and Respondent Town's Exhibit #1, (Town's proffered CBA) we find the following identical language:

> **"The Johnston Police Department shall maintain sixty-seven (67) officers including the Chief and the Deputy Chief, consist of three (3) Divisions, namely the Uniform Division, the Investigative Division, and the Operations and Training Division. Within these Divisions, there shall be Bureaus assigned within the respective Divisions which are identified in the Table of Organization. The Table of Organization for the Police Department is attached hereto as Exhibit "A" and is incorporated here by reference.**
>
> **In accordance with Article I, Section 4 of this Agreement, any changes or modifications in the Table of Organization, including but not limited to changes in its design, staffing, numbers and/or ranks shall be in the discretion of the Police Chief. However, changes resulting in reduction in ranks and/or department strength are prohibited."**

Thus, it is clear that the TA only contained the proposed change to be inserted into this existing paragraph.

The second change proposed by the TA is:

"Article II, Section 1 - Seniority shall be amended by adding thereto:

> **Overtime within each division may open to members outside of their division, once all overtime lists within that division have been exhausted. Refer to Article X, Section 3 for the callback procedure."**

In reviewing Article II, Section 1 of both the Town's and the Union's proffered CBAs, we do not even find the language for overtime. When we refer to Article X, Section 3, we find the following language inserted into an existing provision:

> **"Overtime within each division may open to members outside of their division, once all overtime lists within that division have been exhausted."**

In reviewing the third proposed change in the TA, we find the following language:

> **"Any and all job bidding shall be according to seniority rights. All bids will be submitted sealed and will remain sealed until the bidding process (5 calendar days) has expired and only then will the bids be**

opened and the senior officer will be awarded the bid. An IBPO, Local 307, Executive Board Member shall be present when bids are opened."

In reviewing the proposed CBAs on this issue, both of them have this same language. However, the Union's proffered CBA is "redlined" and shows that the first sentence of the above provision was already contained in the prior CBA. Reference to Union Exhibit #1 (2010 - 2013 CBA) confirms this. So, again, this demonstrates that the TA was designed to provide only the proposed change to the pre-existing provisions.

The fourth proposed change listed in the TA provides:

> **"Article II, Section 2 - Determination (A) shall be amended as follows: Seniority is hereby defined as a continuous length of service an employee has been a police officer of the Johnston Police Department from the date of graduation from the Municipal Police Training Academy for newly trained police officers or from the swearing in date of officers who may have transferred in from other departments."**

When we refer to both CBAs proffered by the parties, we find again that they are identical and that the above language is only a part of the pre-existing Article II, Section 2 (A). The entire provision states:

> **"Seniority is hereby defined as a continuous length of service an employee has been a police officer of the Johnston Police Department from the date of graduation from the Municipal Police Training Academy for newly trained police officers or from the swearing in date of officers who may have transferred in from other departments. Within thirty (30) days next following the execution of this Agreement, a seniority list shall be posted in a conspicuous location in the Johnston Police Station. Any and all amendments to, or corrections of, said list shall be made within thirty (30) days of the posting thereof."**

The fifth proposed change in the TA deals with a change to the definition of the probationary period in Article II, Section 2 (D) as follows:

> **"There shall be a one (1) year probationary period beginning from the date the officer candidate graduates the Municipal Police Training Academy."**

In reviewing both parties' proffered CBAs, we find this sentence of probationary language added into a pre-existing section, with the balance of the section remaining the same.

In reviewing the balance of the TA against the proposed CBAs, we find similar patterns of either specific language or general language, which is then incorporated into pre-existing contract provisions, which remain intact. Therefore, when evaluating the TA's language on retiree healthcare proposed for Article IV, Section 3, against the two (2) CBAs being offered, we shall treat this provision of the CBA in the same manner as the parties have treated all the other sections.

As set forth previously, TA Proposals 13 & 14 stated:

13) "Article IV, Section 3 shall be amended to provide as follows:

> Commencing on July 1, 2014, parties agree to switch to a HSA healthcare plan, family plan deductibles shall be $3,000.00, single plan shall be $1,500.00. Deductibles shall be pre-loaded each year by Town. The deductible will then be reimbursed by the employee through payroll deductions equally divided throughout the year.

14) Article IV, Section 3 shall be amended to provide:

> Retirees and/or spouses who reach age 65 shall enroll in Medicare. The Town shall continue to provide the healthcare benefit level, service level and network level made available prior to the retiree's Medicare eligibility at no cost to the retiree. The Town shall continue to pay any costs associated with Medicare, including healthcare, prescription drugs, and any penalties, interest or enrollment fees. Non-Medicare eligible retirees, spouses and dependents' coverage shall continue as provided for herein."

The prior contract (2010 - 2013) provided as follows:

Section 3 - Medical, Hospital and Physicians Service:

It is agreed that the Employer will provide health insurance to the employees. The Employer hereby recognizes and guarantees that the health and dental coverages and benefits in existence on July 1, 2010 shall remain in effect for the term of this Agreement.

(A) All bargaining unit members starting July 1, 2010 shall contribute $35.00 per pay period toward the cost of individual healthcare coverage and $45.00 per pay period toward the cost of family healthcare coverage.

All bargaining unit members starting July 1, 2011 shall contribute $45.00 per pay period toward the cost of individual healthcare coverage and $55.00 per pay period toward the cost of family healthcare coverage.

All bargaining unit members starting July 1, 2012 shall contribute $55.00 per pay period toward the cost of individual healthcare coverage and $65.00 per pay period toward the cost of family healthcare coverage.

Individual coverage is defined as coverage for one person, and family coverage for more than one person.

(B) The Town of Johnston shall allow any bargaining unit member who retires after July 1, 2001 to participate in the Town Group Dental Plan, such cost for participation to be paid by the retiree in its entirety.

(C) In addition, the Employer hereby agrees and covenants the aforementioned coverage shall be continued after retirement of any employee who is a police officer of

the Police Department on or after the effective date of this Agreement. There shall be no co-pays for retirees.

(D) A dental plan will be provided for every police officer of the Johnston Police Department. The dental plan will include the option of family coverage or individual coverage for each officer.

(E) Each member covered by this Agreement, along with their family, will be given a prescription plan under their healthcare coverage.

(F) The co-pay for Urgi-Care visit shall be $25.00, and the co-pay for an Emergency Room visit shall be $50.00.

In reviewing the nearly identical proffered CBAs, the language of this Article was modified substantially to reflect the fact that the Town was switching healthcare models to a HSA model. All reference to the costs of co-pays were eliminated in both proposed CBAs. The reference to the 2010 coverage was eliminated. Interestingly and tellingly, however, the requirements for a dental plan and a prescription plan as set forth above in Sections D & E remained in both proffered CBAs. That brings us to Section C, as set forth above.

> **"In addition, the Employer hereby agrees and covenants the aforementioned coverage shall be continued after retirement of any employee who is a police officer of the Police Department on or after the effective date of this Agreement. There shall be no co-pays for retirees."**

Section C in the 2010-2013 CBA, which was not proposed to be eliminated by the TA, required the Employer to ***continue*** the ***aforementioned*** coverage. Therefore, this language clearly referenced and incorporated the health plan provided to the active officers and required its continuation into retirement. Each of the parties recognized that this Section C was not intended to be eliminated because *they each retained it* in their proffered CBAs.

The Union's proffer of this "Clause C" in its proposed CBA provides:

> "In addition, the Employer agrees and covenants that the aforementioned **HSA health insurance** coverage shall be continued after retirement of any employee who is a police officer of the Police Department on or after the effective date of this Agreement. There shall be no **cost**[2] for retirees." (The bolded language is what was added or changed by the Union in its proffer.)

[2] In the 2010-2013 CBA, the reference was to "co-pays", not "costs."

The Employer's proffer for "Section C" in its CBA stated:

> "In addition, the Employer agrees and covenants that an **HRA health insurance** coverage **plan** shall be **provided**[3] after retirement of any employee who is a police officer of the Police Department on or after the effective date of this Agreement." (The bolded language is what was added or changed from the prior CBA. It should also be noted that the Employer's proposal deletes any reference to lack of expense on the retiree's part.)

Thus, when reviewing Section C in the original CBA, which was not proposed to be eliminated, as against what each of the parties have proffered, we find that the Town's proffer substantially changes the intent and meaning of this pre-existing provision. The word "continued" is defined as "lasting or enduring, without interruption" or "going on after an interruption, resuming." (Dictionary.com. Collins English Dictionary, Complete & Unabridged 10th Edition, Harper Collins Publishers) The Town's proffer, which does not retain the words "aforementioned" or "continued", opens the door to allowing the Town to provide a benefit to the retirees, which is entirely different from the coverage provided to the active employees. There is a significant difference in the meaning of this provision when the words "aforementioned" and "continued" are eliminated and the word "provided" is substituted. The Union's proffer references with specificity the "aforementioned" type of health insurance (HSA) that is to be continued after retirement and does not impair the purpose or meaning of this provision.

The Town argues before the Board and in its Brief that based upon the language of the Tentative Agreement, it may choose how to fund the retiree health insurance, so long as it meets its obligation as to the healthcare benefit level, service level, and network level. The Town also claims that "the insertion of language creating a contractual requirement that the healthcare benefit level, service level and network level be funded through a Health Savings Account was not agreed to by the parties as evidence by the very specific and detailed language of the Tentative Agreement." (Brief pg. 5) Finally, the Town argues that the information provided in Joint Exhibit #5 demonstrates that the choice of funding though an HSA or an HRA does not change the benefit level, service level or network level of the health insurance for retirees. The Town claims that the incorporation of Clause 14 of the TA ensures both parties that the Agreement that they reached will be accurately reflected on the CBA and each party will be bound by the

[3] In the 2010-2013 CBA, the word used is "continued", not "provided."

terms of their Agreement. We do not agree with the Town's positions for the following reasons:

1) NEITHER PARTY EVER CONTEMPLATED THE REMOVAL OF ARTICLE IV, SECTION 3 (C).

The Town argues in its Brief that Clause 14 is sufficient and in effect, that Article IV, Section 3(C) can simply be eliminated. However, it is abundantly clear that neither party thought that Section 3(C) was intended to be eliminated from the CBA, as evidenced by the inclusion of this provision in *each* of the proffered CBAs. Each party moved the location of this provision to be the last provision in this section. Each party changed the provision, as discussed infra, but neither party anticipated its removal. We find, therefore, that the provision for continuation of the aforementioned coverage was intended to remain and shall remain.

2) IT WAS THE TOWN THAT PROPOSED THE SWITCH TO A HSA AND DIFFERENTIATED BETWEEN RETIREES AND MEDICARE ELIGIBLE RETIREES.

The Union's original negotiating proposal did not contemplate a change from its traditional health insurance coverage model. It was the Town that proposed this substantial change. In reviewing this proposal (Joint Exhibit #1), we note the following language:

"5 (D) - In retirement - with 10 years as of July 2012:

Officers with 10 or more years as of July 1, 2012 will receive family coverage in retirement with HSA until age 65. Retirees with other available coverage must take that coverage with the Town supplementing the co-share difference to keep co-share, doctors and hospital visits, and drug coverage financially comparable.

When Officers with 10 years as of July 1, 2012 reach age 65, they will receive Medicare Part C gap coverage as well as an 80%/20% Part D supplement for themselves and their spouse paid by the Town." (Retired Officer pays all Part B costs)

Thus, it is the *Town* that proposed HSA accounts for both active and pre-Medicare eligible retirees.

3) A KEY COMPONENT OF BOTH HSA & HRA "COVERAGE" IS THE METHOD OF FUNDING.

As noted above, Article IV, Section 3 (C), which was not proposed for change, provided that the "aforementioned coverage" be continued. The Town has argued essentially that "coverage" only means benefit level, service level, and network level; and

that as long as the Town's plan provides the same benefit level, service level, and network level to retirees, as it does to active employees, then the Town may require the use of a HRA.

"Coverage" is defined as "the extent of the protection provided by insurance." (Dictionary.com. Collins English Dictionary, Complete & Unabridged 10th Edition, Harper Collins Publishers) The protection provided by HSA and HRA insurance includes not only the personal health protection afforded by the provision of medical services, but also the scope of the financial protection of the benefits of the plan. In this case, Joint Exhibit #5 indicates that HSAs may be used to pay: qualified long-term care insurance, health insurance, while receiving state or federal unemployment insurance, and Medicare premiums. In addition, unspent HSA dollars are real dollars, which may be used to reduce or eliminate an enrollee's share of a deductible in subsequent years, and HSA account holders may invest the funds in interest bearing accounts. HRAs do not permit interest payments to the participants. HSAs may be funded by the employee, Employer or both, up to a maximum of $3,350.00 for single plans and $6,550.00 for family plans (as of 2015). Thus, in this case, the parties have agreed that the Town will "advance" $3,000.00 on a pre-loaded debit card for members with family plans and the members will then reimburse the Town from each paycheck. These employees could elect to fund the balance of their HSA accounts to the annual maximum. HRA account holders cannot fund their own accounts; Employers must be sole funding source. The HSA is also portable and employees who leave employment may take their account with them. HRAs generally revert to the Employer on termination of employment. These financial benefits are, in this Board's opinion, part and parcel of the benefit levels of the plan. As such, the requirement to provide the same benefit levels to retirees as employees, includes these financial benefits.

So, while the Town argues that the funding mechanism of the benefit levels is its choice, it's clear that the very nature of the HSAs and the HRAs incorporate funding as part of the benefit level of the coverage. As such, it is impossible to provide a retiree with the same benefit level of an HSA with an HRA.

4) THE ONLY TESTIMONY IN THE RECORD SUPPORTS A FINDING THAT THE PARTIES AGREED UPON THE TOWN'S PROPOSED HSA FOR ALL EMPLOYEES AND RETIREES.

Only one witness provided any testimony in this matter; James Brady, the President of the Union. He testified that in negotiations, (and referring to Joint Exhibit #1) the Town proposed to move the active officers and the retirees to an HSA for their health insurance coverage. (TR. pg. 34) He also testified that the Town explained what an HSA was by having Doug Jeffrey, from Blue Cross, send the Union an email that described the HSA coverage, "from A to Z". (TR. pg. 35) Mr. Brady explained that once the parties reached a Tentative Agreement, after approximately fourteen (14) negotiating sessions, he presented this Agreement to his membership. He testified: "We did a power point on the screen at the meeting and described all portions of the healthcare, the Health Savings Account, as we knew it, as it was presented to us in the pamphlet that Blue Cross gave to us." (TR. pg. 37) He also testified that the retirees and/or spouses who reach the age of 65 shall enroll in Medicare; and that the Town shall *continue* to provide the healthcare benefit level, service level, and network level made available prior to the retiree's eligibility for Medicare, at no cost to the retiree. (TR. pgs. 37-38) He further testified that in the 2010-2013 Agreement that the healthcare coverage was under Blue Cross Health Mate Coast-to-Coast and was the same for active employees and retirees. Mr. Brady further testified that at no time during negotiations or finalizing the TA, did the Town even propose a health reimbursement account. (TR. pgs. 38-39)[4] In fact, even after the parties had agreed on or about July 10, 2015 to implement the TA, without the benefit of a signed CBA, the Town did not propose an HRA for retirees. Mr. Brady stated that he had never even heard the term "Health Reimbursement Account" until after July 10, 2015 when the Town's Chief of Staff first mentioned it. (TR. pg. 45) Mr. Brady testified that he told the Town that the Union had not agreed to an HRA and that the Chief of Staff told him in reply that the parties had to do an HRA and that an HSA was not available in retirement. Id. As a result of this

[4] After the execution of the TA, and without benefit of a signed CBA, the Town changed the healthcare coverage to the HSA, without any advance notice to the Union. This resulted in many problems for employees and their families. Mr. Brady testified that on July 1, he was on vacation and had had his cell phone turned off while he was golfing. When he turned the phone back on, he had approximately 25 missed messages and texts from members complaining that their health coverages were terminated.

representation, the parties[5] had a meeting with the Blue Cross representative, Mr. Knowles, at the Johnston Senior Center. Mr. Brady testified that this meeting took approximately 45 minutes and that they were all advised that it was perfectly legal to have an HSA in retirement. (TR. pg. 49) When the Union received the Town's draft CBA after this meeting, the initials "HRA" were inserted where they had not been before. This led to a second meeting being called with Mr. Knowles, from Blue Cross, where he told the parties *again* that it was legal to have a HSA in retirement. (TR. pgs. 52-53) Thereafter, Mr. Brady prepared two (2) CBAs based solely on what was contained in the CBAs, signed them on September 10, 2015 and delivered them to the Town. (TR. pg. 54)

The Town's cross examination of Mr. Brady consisted of approximately one dozen questions, wherein Mr. Brady confirmed his signature on various documents. That was it. There was no attempt by the Town to discredit Mr. Brady's testimony that he had never heard of an HRA until after July 10, 2015. The Town did not present any witnesses of its own to discredit or rebut Mr. Brady's testimony that the parties had only agreed upon an HSA, as originally requested by the Town. The Town did not explain or try to discredit Mr. Brady's representations that the Blue Cross representative had advised all the parties that having an HSA in retirement was perfectly legal. From the Board's perspective, Mr. Brady's testimony was consistent with the documentary evidence of the case; and we believe that it was conclusively established that the Town had negotiated an HSA health insurance plan for both the employees and the retirees. We further believe that the lack of rebutting testimony, the existence of Joint Exhibit #1, which seeks an HSA for retirees, the fact that there were two (2) specific meetings with Mr. Knowles and the existence of Joint Exhibit #5, all give rise to an unrebutted inference that the Town found out about the existence of HRAs after it negotiated the TA. Further, we find that these facts, especially the fact that the Town persisted in seeking an HRA for retirees, after being told at least twice that HSAs were legal for employees, constitutes bad faith in its dealings with the Union. We find therefore that the Town's failure to execute the

[5] The Union Executive Board, Union Attorney, Town's Chief of Staff, Doug Jeffrey, the Police Chief, the Town's Attorney and the Blue Cross representative, Mr. Knowles.

CBA proffered by the Union was done deliberately in bad faith, without a good faith belief in the merits of its refusal and constitutes a prohibited unfair labor practice.

FINDINGS OF FACT

1) The Town of Johnston 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 been collective bargaining for many years.

4) In its negotiations for a successor CBA, both the Union and the Employer submitted proposals to amend the provisions of Article IV Section 3 entitled "Medical Hospital and Physicians Service". The Union's proposal was to add a section to the CBA that would provide an option for cash payments to the employee in lieu of healthcare and dental coverages. The Union also sought a prescription eyeglass plan. The Town sought in its proposal number 5(A) to have all employees and non-Medicare eligible retirees move to a "Health Savings Account".

5) The parties engaged in collective bargaining for the successor CBA through all of calendar year 2013 and into 2014. In March 2014, the parties reached a Tentative Agreement for a one (1) year contractual Agreement for the period July 1, 2013 through June 30, 2014; and a three (3) year contractual Agreement for the period July 1, 2014 through June 30, 2017. (Joint Exhibit #2) Both the Union membership and the Town Council ratified the Tentative Agreement.

6) On the healthcare issue, the Tentative Agreement provided:

13) "Article IV, Section 3 shall be amended to provide as follows:

> Commencing on July 1, 2014, parties agree to switch to a HSA healthcare plan, family plan deductibles shall be $3,000.00, single plan shall be $1,500.00. Deductibles shall be pre-loaded each year by Town. The deductible will then be reimbursed by the employee through payroll deductions equally divided throughout the year.

14) Article IV, Section 3 shall be amended to provide:

> Retirees and/or spouses who reach age 65 shall enroll in Medicare. The Town shall continue to provide the healthcare benefit level, service level and network level made available prior to the retiree's Medicare eligibility at no cost to the retiree. The Town shall continue to pay any costs

> associated with Medicare, including healthcare, prescription drugs and any penalties, interest or enrollment fees. Non-Medicare eligible retirees, spouses and dependents' coverage shall continue as provided for herein."

7) Subsequent to the execution of the Tentative Agreement, the parties began the process of incorporating the agreed-upon proposals into a new CBA.

8) The Union President testified that while the parties were working out the CBA language, the Town told the Union that HSAs could not be used for retirees and that a Health Reimbursement Account (hereinafter "HRA") would be required for the retirees.

9) As a result of this claim, The Union President contacted a Mr. Bob Knowles, the Union's contact at Blue Cross/Blue Shield and set up a meeting at the Johnston Senior Center. The Union's Executive Board, the Union's Attorney, the Town's Attorney, the Town's Chief of Staff, and the Chief of Police all attended the meeting when Mr. Knowles assured all the parties that a HSA was indeed an available health plan for retirees.

10) Despite Mr. Knowles assurance that HSAs were permissible for retires, the Town persisted in using language for HRAs instead; and a second meeting was held between the parties, wherein Mr. Knowles again assured them that HSAs were legal for retirees.

11) Thereafter, the Union President prepared, signed, and delivered two (2) contracts to the Town's Mayor for execution. One contract covers the period July 1, 2013 through June 30, 2014 and the second one covers the period July 1, 2014 through June 30, 2017.

12) The Town did not present any evidence that it had negotiated to provide an HRA for retirees.

13) The Town did not present any evidence or testimony that rebutted the Union President's testimony.

14) Based upon the clear and convincing evidence before the Board, the Employer's conduct in this case, in refusing to execute the Union's proffered CBA, after being told twice by the Blue Cross representative that HSAs are permissible for retirees, was egregious and wholly without merit.

CONCLUSIONS OF LAW

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

ORDER

1) The Employer is hereby ordered to execute the CBA proffered by the Union for the period of July 1, 2013 through June 30, 2014.

2) The Employer is hereby ordered to execute the CBA proffered by the Union for the period of July 1, 2014 through June 30, 2017.

3) The Employer is hereby ordered to pay the legal fees of the Union for its prosecution of this Complaint.

4) The Employer is hereby ordered to post a copy of this Decision & Order on its website and to physically post a paper copy on all common area bulletin boards in its municipal buildings.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank J. Montanaro, Member

Marcia B. Reback, Member

Scott G. Duhamel, Member

Harry E. Winthrop, Member

Alberto Aponte Cardona, Esq., Member (Dissent)

BOARD MEMBER, ARONDA R. KIRBY, ABSTAINED FROM THIS MATTER.

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

Dated: June 7, 2016

By: Robyn H. Golden
Robyn H. Golden, Administrator

ULP- 6171

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-6171
TOWN OF JOHNSTON	

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-6171, dated June 17, 2016, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **June 17, 2016**.

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

Dated: June 17, 2016

By: _____
Robyn H. Golden, Administrator