STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF	:	
RHODE ISLAND STATE LABOR RELATIONS BOARD	:	
-AND-	:	CASE NO. ULP-6339
STATE OF RHODE ISLAND – DEPARTMENT OF CORRECTIONS	:	

DECISION AND ORDER

TRAVEL OF CASE

The above-captioned matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") on an Unfair Labor Practice Complaint (hereinafter "Complaint"), issued by the Board against the State of Rhode Island - Department of Corrections (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated June 29, 2022 and filed on the same date by the Rhode Island Brotherhood of Correctional Officers (hereinafter "Union").

The Charge alleged as follows:

> (1) Since about 1972, the Rhode Island Brotherhood of Correctional Officers (RIBCO) has been the exclusive collective bargaining representative on behalf of certain employees of the Department of Corrections ("DOC"); (2) In or about March 2020, the COVID-19 pandemic impacted the operations of the various correctional facilities managed by the DOC as well as the terms and conditions of employment for Correctional Officers; (3) Among other things, the DOC began requiring COVID-19 testing for Correctional Officers; (4) Various issues arose. For example, one Correctional Officer who contracted COVID-19 was out on sick leave for extended amount of time because he continually tested positive; (5) Union officials approached management concerning the propriety of the discharge of sick time for officers who contracted COVID-19 and specifically, whether the absence should be paid as workers' compensation and/or pursuant to State law concerning infectious disease; (6) In response, the DOC began providing administrative leave days for Correctional Officers who test positive for COVID-19 up to a certain number of days; (7) This permitted the DOC and RIBCO to avoid disputes such as grievances over whether the absences should be covered by workers' compensation coverage or sick leave; (8) In addition, once the vaccine became available, the DOC began providing paid time off for officers who experienced a reaction to the COVID-19 vaccine; (9) The parties' existing collective bargaining agreement ("CBA") covers the period July 1, 2017, through June 30, 2020; (10) The parties began negotiating the terms of a successor agreement in or about February 2022; (11) The parties conducted negotiation sessions since February on a regular basis. Most recently, the State informed the Brotherhood that it plans to schedule another meeting, and the Brotherhood is awaiting that next date; (12) In addition, the Brotherhood has filed for interest arbitration, but has indicated to the State that it wishes to continue to meet in order to try to reach a negotiated settlement; (13) During negotiations, the State has not proposed to require Correctional Officers to discharge sick leave in the event he or she tests positive for COVID-19 or any other changes to the status

quo in terms of paid time off related to COVID-19 illness or vaccination; (14) In or about May 2022, Richard Ferruccio ("Ferruccio"), the President of the Brotherhood learned that the DOC was considering requiring Correctional Officers to discharge sick time if he or she tests positive for COVID-19; (15) Accordingly, in late May 2022, Ferruccio sent an e-mail to the Director of the DOC, Patricia Coyne-Fague, Esq. ("Director"), informing the Director that if the DOC was considering such a change to the terms and conditions of Correctional Officers' employment, that the Brotherhood was requesting that the change be the subject of bargaining; (16) Ferruccio did not receive a response; (17) Instead, at a regularly schedule labor management meeting, the Assistant Director of Institutions and Operations, Rui Diniz, notified the Brotherhood that the DOC had indeed decided to require Correctional Officers to discharge sick time but that it would be on a "case-by-case" basis; (18) On June 15, 2022, the Director sent an e-mail to "all staff," informing staff that masks inside the facility would now be optional with certain listed exceptions; (19) At the end of the e-mail, the Director wrote: "Finally, as COVID-19 has reached an 'endemic' stage, much like flu and other illnesses, Administrative Leave will no longer be provided to staff who test positive for COVID-19. Sick time must be used."; (20) In addition, the DOC has decided it will no longer provide paid time off if an officer is sick following vaccination; (21) Before making these unilateral changes to the terms and conditions of employment for Correctional Officers, and while in negotiations for the successor agreement, the DOC refused to bargain with the Brotherhood.

Following the filing of the Charge, each party submitted written position statements and responses as part of the Board's informal hearing process. On August 18, 2022, the Board issued its Complaint, alleging the Employer violated R.I.G.L. §28-7-13 (6) and (10) when, through its representative, the Employer (1) unilaterally decided to stop offering paid administrative leave to officers who were out of work sick due to Covid without first notifying and bargaining with the Union; (2) unilaterally decided to stop offering paid time off for an officer who was out after having received a Covid vaccination; (3) unilaterally decided that masks would be optional, with some exceptions, in the facility without first notifying and bargaining with the Union;[1] and (4) failed to bargain in good faith with the Union regarding certain changes to paid time off for officers who were out sick due to Covid or as a result of receiving the Covid vaccination. After several postponements, the Board held formal hearings on August 17, 2023 and October 17, 2023 at which times all parties were given the opportunity to present and cross-examine witnesses and submit exhibits. Post-hearing briefs were filed by the Employer and the Union on November 27, 2023. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony and exhibits submitted at the hearings and the arguments contained within the post-hearing briefs submitted by the parties.

FACTUAL SUMMARY

The matter before the Board is the Union's claim of an unfair labor practice against the Employer for allegedly unilaterally deciding to stop providing paid time off (administrative leave) for officers who were out of work sick due to Covid or out of work after having received the Covid vaccination and for failing and/or refusing to bargain with

[1] At the outset of the hearing on this matter, the Board was informed that the Union was not pursuing that portion of the Complaint that alleged an unfair labor practice for unilaterally changing the masking policy. (Transcript Vol. I dated August 17, 2023, pages 16 – 17).

the Union over the alleged unilateral change to the terms and conditions of employment for bargaining unit members. The Union has alleged, as will be discussed in more detail below, that the Employer began offering paid administrative leave to bargaining unit members who contracted Covid in March 2020 and continued to offer this paid leave until June 2022 when the Employer abruptly and unilaterally changed and modified the benefit. The Union alleges that upon notification to the Employer of the Union's desire to bargain over the change in the application of administrative leave for those bargaining unit members who contracted Covid, the Employer failed to respond to the Union and failed and/or refused to engage in negotiations with the Union over the change to the paid administrative leave policy. (Transcript Vol. I dated August 17, 2023, pages 58 – 59). The Employer has denied the Union's allegations of unfair labor practices, asserting that administrative leave is a management right that is not subject to bargaining and that its conduct was authorized by the provisions of the parties' collective bargaining agreement and, more specifically, the management rights clause and under the Director's non-delegable statutory authority.

The parties are subject to a collective bargaining agreement. (Joint Exhibit 1).[2] The facts comprising the case before the Board are not generally in dispute between the parties, though the interpretation and impact of the facts is certainly contested. This matter has its genesis in late 2019 and early 2020 when the Union president, Richard Ferruccio, became aware of problems with a virus named Covid that was spreading in other countries. (Transcript Vol. I dated August 17, 2023, pages 31 – 32). Mr. Ferruccio approached DOC administration and "raised the concerns of this virus that we were seeing in the other countries," and "wanted to be involved in any type of discussion" concerning how this might be addressed if/when the virus arrived in Rhode Island. (Transcript Vol. I dated August 17, 2023, page 32).

On March 9, 2020, the first Executive Order from the Governor of Rhode Island declaring a Public Health Emergency in Rhode Island was issued. (Respondent Exhibit 1).[3] On March 13, 2020, shortly after the Governor's Emergency Order was announced, the Department of Administration (DOA) released a policy update about Covid that included a notice that "paid administrative leave" would be provided "to employees who are out of work due to a quarantine period as a result of potential work-related exposure." (Respondent Exhibit 2; see also Transcript Vol. II dated October 17, 2023, pages 135 – 136). On March 16, 2020, the Employer sent an email to all staff incorporating the DOA paid administrative leave notice. (Joint Exhibit 2; see Transcript Vol. I dated August 17, 2023, page 37). On March 18, 2020, the Employer apparently modified the DOA paid administrative leave policy by indicating that it would

[2] At the time this dispute began in March 2020, the parties were operating under a collective bargaining agreement (CBA) with an expiration date of June 30, 2020. Due to the pandemic, the parties did not commence negotiations for a new CBA until February 2022. In February 2023, the parties were able to reach a new CBA to replace the CBA that expired in June 2020. The new successor CBA did not address or resolve the instant dispute. (Transcript Vol. II dated October 17, 2023, page 113).

[3] The emergency conditions of the Governor's Executive Order would be renewed multiple times over the next few years. The emergency conditions were not suspended until April 2023.

not require a medical note for employees "out for covid related quarantine or illness." (Joint Exhibit 3; Transcript Vol. I dated August 17, 2023, pages 37 – 38). Members of the bargaining unit began testing positive for Covid in April 2020. (Transcript Vol. I dated August 17, 2023, page 34). If a correctional officer tested positive for Covid or had been in close contact with someone who tested positive, that individual was required to quarantine. (Transcript Vol. I dated August 17, 2023, page 34). In those situations, the bargaining unit member who was quarantined received paid administrative leave. (Transcript Vol. I dated August 17, 2023, pages 38; 40; 48).

While there were some bumps along the way (see Transcript Vol. I dated August 17, 2023, pages 42 – 48; Petitioner Exhibit 2), for the most part the parties co-existed harmoniously regarding the use of paid administrative leave for over two (2) years from its inception in March 2020. (Transcript Vol. I dated August 17, 2023, pages 54 – 56; Petitioner Exhibit 5).[4] However, on May 27, 2022, Mr. Ferruccio wrote to the Employer's Director indicating that the Union had learned that the Employer "would eliminate paid leave for officers who are suffering from COVID-19 and instead, to require officers to discharge sick leave." (Petitioner Exhibit 6; Transcript Vol. I dated August 17, 2023, pages 58 – 59). Mr. Ferruccio also stated in his letter a demand for bargaining prior to any change the Employer might implement, asserting that any such change would constitute "a change in terms and conditions of employment." (Petitioner Exhibit 6). The Employer did not respond to Mr. Ferruccio's May 27 letter. (Transcript Vol. I dated August 17, 2023, pages 59 – 60; Transcript Vol. II dated October 17, 2023, pages 153 – 154). Instead, on June 15, 2022, the Employer's Director sent an email to all personnel stating, as relevant to the instant matter before the Board, the following:

> Finally, as COVID-19 has reached an "endemic" stage, much like flu and other illnesses, Administrative Leave will no longer be provided to staff who test positive for COVID-19. Sick time must be used.
>
> (Joint Exhibit 4).

Approximately a week later, on June 21, 2022, the Employer sent another email to all personnel stating that administrative leave would no longer be provided for those individuals getting a vaccine or booster shot and that sick time would have to be used. (Joint Exhibit 5). On June 29, 2022, the Union filed an unfair labor practice charge with the Board.

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[4] As the testimony before the Board revealed, in March 2020 the Employer had ordered some bargaining unit members to stay home due to contracting the virus. When the Union approached the Employer about compensation for these members, the Employer balked at resolving the issue and the Union filed a grievance. (Petitioner Exhibit 8; Transcript Vol. II dated October 17, 2023, pages 103 – 104). This issue was eventually resolved with the implementation of paid administrative leave. (Transcript Vol. II dated October 17, 2023, page 106). There was also a dispute involving two (2) bargaining unit members, Saggal and Lebeau, who were unable to return from quarantine because they could not receive a negative Covid test. (Transcript Vol. I dated August 17, 2023, page 43; Petitioner Exhibit 6). This dispute was also resolved when the Employer agreed to provide the employees with paid administrative time for all the time each had discharged. (Transcript Vol. I dated August 17, 2023, pages 46 – 47; Petitioner Exhibits 3 and 4).

POSITIONS OF THE PARTIES

Union:

As previously indicated, the Union claims that the Employer's unilateral change in eliminating the use of paid administrative leave[5] for bargaining unit members who contracted Covid was a material and substantial change in working conditions, was a mandatory subject of bargaining and obligated the Employer to bargain with the Union over said changes. The Union also asserts that the Employer's unilateral action and its failure to engage in good-faith negotiations with the Union constitute a violation of the State Labor Relations Act (Act). The Union further claims that the use of administrative leave constitutes a past practice and that the Employer did not end the practice in a manner consistent with its statutory obligations.

Employer:

In contrast to the Union, the Employer argues that its use of paid administrative leave to cover absences due to Covid was strictly within the purview of the Employer and not something that had to be negotiated with the Union. The Employer claims that administrative leave is, by its very nature, a management right and not something that was ever negotiated with the Union. The Employer also asserts that the use of administrative leave falls squarely within the scope of non-delegable statutory powers granted to the Director under R.I.G.L. 42-56. The Employer also argues that it was authorized to make changes to how and when administrative leave was applied/used under the management rights clause of the collective bargaining agreement. The Employer, in the alternative, argues that administrative leave was so closely aligned to the negotiated contractual provision titled Special Sick Leave (Joint Exhibit 1, Section 12.8) that its actions were legitimate and could not be in violation of the Act. Finally, the Employer argues that the granting of administrative leave did not constitute a past practice.

DISCUSSION

The issue before the Board is relatively simple and straightforward, i.e. did the Employer in June 2022 unilaterally change how paid administrative leave was applied and used for bargaining unit members who contracted Covid and, if so, was that change material and substantial such that the Employer was obligated to bargain with the Union over said change? The Board will also address whether the use and subsequent elimination of administrative leave by the Employer constitutes a mandatory subject of bargaining. Finally, the Board will discuss the various defenses raised by the Employer to its conduct in this case.

The Board has recently been presented with a significant number of cases that claim the employer in question has acted in violation of the Act by making unilateral changes to policies or procedures that impact the terms and conditions of employment of bargaining

[5] This would include, in the Union's view, whether an officer who contracted Covid had to demonstrate that he/she got Covid in the workplace and whether a medical note would be required.

unit members. The instant case is no different in the sense that the Union has alleged the Employer unilaterally changed how administrative leave was used (by eliminating its availability to bargaining unit members) and the Employer has not provided any evidence to suggest that the elimination of paid administrative leave was justified. As this Board has repeatedly stated, when an employer unilaterally changes terms and conditions of employment without first engaging in bargaining with the bargaining unit's exclusive representative, the employer commits a violation of the Act. (See R.I.G.L. §28-7-12; §28-7-14; §28-9.7-4; R.I.G.L. §28-9.7-6; *Rhode Island State Labor Relations Board v. City of East Providence,* ULP-6344 (December 14, 2023); *Rhode Island State Labor Relations Board v. State of Rhode Island – Department of Corrections,* ULP-6256 (May 24, 2021); *Rhode Island State Labor Relations Board v. Middletown School Department*, ULP-6257A (September 9, 2020); *Rhode Island State Labor Relations Board v. Woonsocket School Committee*, ULP-4705 (June 4, 1997); *Local 2334 of the International Association of Fire Fighters, AFL-CIO v. The Town of North Providence*, PC-13-5202 (September 26, 2014); and *NLRB v. Solutia, Inc.*, 699 F.3d 50, 60 (1st Cir. 2012) (providing that an employer is in violation of a governing collective bargaining statute "when it makes a unilateral change to a term or condition of employment without first bargaining to impasse with the union").[6]

As noted above, the issue facing the Board is whether the implementation of purported changes to how the Employer applied and used administrative leave constitutes a mandatory subject of bargaining. The Board need not spend a significant amount of time on this particular issue. Administrative leave is, in essence, a benefit to employees and is part of the personnel policies created by the Employer for the operation of the facility. (See Respondent Exhibit 13). Plant rules have long been held to be mandatory subjects of bargaining by the National Labor Relations Board (NLRB). Thus, an employer is generally prohibited from unilaterally implementing or changing such rules. *Schraffts Candy Co.* 244 NLRB 1274 (1979); *Dynatron/Bondo Corp.,* 324 NLRB 572 (1997); *Goya Foods of Florida*, 347 NLRB 1118 (2006). Rhode Island has also adhered to the idea that sick time or sick policies are part of terms and conditions of employment and, therefore, mandatory subjects of bargaining. See *Belanger v. Matteson*, 346 A.2d 124, 129 (R.I. 1975).[7] In the present case, there is no dispute that the Employer substituted the use of administrative leave for sick time. (Transcript Vol. I dated August 17, 2023 at page 60). This was a significant and valuable benefit that the Employer

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[6] This Board and the courts of this State have, with respect to labor law issues, consistently looked to federal labor law for guidance. (*See Town of North Kingstown v. International Association of Firefighters, Local 1651, AFL-CIO,* 107 A.3d 304 (R.I. 2015); and *Town of Burrillville v. Rhode Island State Labor Relations Board*, 921 A.2d 113, 120 (R.I. 2007)).

[7] As has been readily admitted by both parties, administrative leave was used by the Employer to compensate bargaining unit members who were out of work and quarantined because of contracting Covid. Administrative leave was substituted for what otherwise, under different circumstances, would have required the use of sick time by the employee who was unable to report for duty. In fact, there is evidence before this Board that disputes between the parties involving how officers who were out of work due to Covid would be paid and, at least early in the process, administrative leave was used in place of sick time and if sick time was used it was reimbursed and administrative time was used instead. (Transcript Vol. II dated October 17, 2023, pages 106; 135 – 136).

gratuitously and unilaterally provided to bargaining unit members who contracted Covid. (Transcript Vol. I dated August 17, 2023 at pages 43 – 44).

A. The Employer Engaged In Improper Unilateral Action.

In the present case, there appears to be little dispute between the parties that the Employer unilaterally acted in June 2022 when it implemented changes to how it applied and used administrative leave to cover bargaining unit members. (See Joint Exhibits 4 and 5; Transcript Vol. II dated October 17, 2023, pages 153 – 156). Instead, the central issue is whether the unilateral elimination of administrative leave resulted in material and substantial changes to the employees' working conditions.

As discussed above, the facts in this case are relatively straightforward. Beginning in March 2020, the Employer provided paid administrative leave to members of the bargaining unit who were unable to report for duty due to Covid. (Joint Exhibits 2 and 3; Respondent Exhibits 2 and 3). Administrative leave was provided for as long as the individual was absent due to Covid. During this period of time, the Employer "established a rebuttable presumption" that if an officer contracted Covid it was due to his/her work and did not require officers to present medical documentation. (Transcript Vol. II dated October 17, 2023, pages 135 – 136; 149 – 150; Joint Exhibits 2 and 3). This status lasted for over two (2) years, until June 2022, when the Employer made the unilateral decision to eliminate access to administrative leave and require bargaining unit members to use sick leave for absences due to illness including Covid. (Joint Exhibits 4 and 5; Transcript Vol. II dated October 17, 2023, page 153 – 154).

During the above noted two (2) plus year period that the Employer provided paid administrative leave for bargaining unit members who contracted Covid and were required to be absent from work, employees did not have to use their own sick time when they were absent due to Covid. (Transcript Vol. I dated August 17, 2023, pages 34 – 36; 37 – 38; Transcript Vol. II dated October 17, 2023, pages 106; Petitioner Exhibits 2 and 8). As admitted by the Employer's Director, if an employee was out of work due to Covid it was presumed that the employee contracted the virus at work. (Transcript Vol. II dated October 17, 2023, pages 134 – 136). In addition, employees in this situation were not required to present medical documentation of their Covid illness. (Transcript Vol. II dated October 17, 2023, page 136). These were all significant benefits to bargaining unit members. (Transcript Vol. I dated August 17, 2023 at pages 36 – 38; 43 – 44). However, all this changed in June 2022 with the Employer's unilateral action. (Joint Exhibits 4 and 5). As the memo from the Employer's Director makes clear, the Employer was discontinuing paid administrative leave for employees who tested positive for Covid and requiring that such employees "must" use their sick time. (Joint Exhibit 4). This was certainly a material and substantial change for officers who tested positive for Covid and were out of work. (Transcript Vol. I dated August 17, 2023, pages 43 – 44). Whereas prior to June 2022 employees who were out of work due to Covid received administrative leave and did not have to use their accrued sick or vacation time, after the June 15, 2022 memo, officers who tested positive for Covid and missed work would be charged from their

personal accrued sick time. Such a change, in the Board's view, represents a substantial and material change in working conditions for employees and, therefore, is a violation of the Act.

B. The Employer Failed To Bargain With The Union

In addition to unilaterally changing terms and conditions of employment for bargaining unit members, the Employer failed to bargain with the Union over the unilateral change it implemented when it distributed the June 15, 2022 and June 21, 2022 memoranda (see Joint Exhibits 4 and 5). Specifically, the Union sent the Employer's Director a letter dated May 27, 2022 requesting bargaining over what was then the proposed unilateral change. (Petitioner Exhibit 6). As the testimony from the Employer revealed, the Employer did not respond to the Union's request and did not bargain with the Union prior to or after its unilateral elimination of the use of paid administrative leave was implemented. (Transcript Vol. I dated August 17, 2023, pages 58 – 60; Transcript Vol. II dated October 17, 2023, pages 153 – 154).

As the case law of this Board and the statutory law makes clear, an employer is required to negotiate with the exclusive representative of its employees over mandatory subjects of bargaining (*see Barrington School Committee v. Rhode Island State Labor Relations Board,* 388 A.2d 1369, 1374-75 (R.I. 1978); *School Committee of the City of Pawtucket v. Pawtucket Teachers Alliance AFT Local 930*, 390 A.2d 386, 389 (R.I. 1978); *Town of Narragansett v. International Association of Firefighters, Local 1589*, 380 A.2d 521, 522 (R.I. 1977); *Rhode Island State Labor Relations Board and Middletown School Department,* ULP-6257A, (September 9, 2020); *Belanger v. Matteson*, 346 A.2d 124, 136 (R.I. 1975)). As R.I.G.L. §28-7-2(c) makes clear, it is the policy of the State to allow and encourage bargaining over wages, hours and other working conditions between employees and employers. (See also R.I.G.L. §28-7-14; R.I.G.L. §28-9.7-4; §36-11-1).

As noted above, the Board need not spend a great deal of time on whether a unilateral change by an employer to terms and conditions of employment represents a mandatory subject of bargaining. This Board's decisions as well as the overwhelming number of decisions from Rhode Island courts, the NLRB and the federal courts all support the notion that wages, hours and terms and conditions of employment represent mandatory subjects of bargaining and changes in these areas by an employer obligates the employer to bargain with the union representing the employees before making any changes. *See NLRB v. Katz,* 369 U.S. 736 (1962)*; Rhode Island State Labor Relations Board v. Town of North Smithfield*, ULP-5759 (May 15, 2006); *Rhode Island State Labor Relations Board v. Woonsocket School Committee*, ULP-4705 (June 4, 1997); *Local 2334 of the International Association of Firefighters, AFL-CIO v. The Town of North Providence*, PC 13-5202 (September 26, 2014); *NLRB v. Solutia, Inc.*, 699 F.3d 50, 60 (1st Cir. 2012). Thus, the United States Supreme Court made clear in *Litton Financial Printing Division, A Division of Litton Business Systems, Inc. v. National Labor Relations Board*, 501 U.S. 190, 198 (1991) that "[n]umerous terms and conditions of employment have been held to be the subject of mandatory bargaining under the NLRA."

In Rhode Island, R.I.G.L. §28-7-13 (6) makes it an unfair labor practice for an employer to "refuse to bargain collectively" with its employees' representative. Generally, an employer violates its bargaining obligation when it refuses to bargain with its employees' representative concerning wages, hours and other terms and conditions of employment, so-called mandatory subjects of bargaining. Much has been written on the subject of what constitutes a mandatory subject for bargaining. Mandatory subjects of bargaining are those subjects that address wages, hours and other terms and conditions of employment. The determination of whether an item is to be considered a mandatory bargaining subject has been discussed by the NLRB and the United States Supreme Court on numerous occasions. Thus, for example, in *Ford Motor Company v. NLRB*, 441 U.S. 488 (1979), the Supreme Court described mandatory bargaining subjects as those subjects that are "plainly germane to the 'working environment'..." Similarly, our Supreme Court has recognized that items which are considered mandatory subjects of bargaining are subject to both negotiation and/or arbitration. *See Town of North Kingstown v. International Association of Firefighters, Local 1651, AFL-CIO*, 107 A.3d 304, 313 (R.I. 2015); *National Labor Relations Board v. Wooster Division of Borg-Warner Corp.* 356 U.S. 342, 349 (1958); *Barrington School Committee v. Rhode Island State Labor Relations Board, supra*; *School Committee of the City of Pawtucket v. Pawtucket Teachers Alliance AFT Local 930, supra*; and *Town of Narragansett v. International Association of Firefighters, Local 1589, supra*.

In the instant case, the Union was afforded no legitimate opportunity to bargain over the unilateral dissolution of the use of administrative leave. (Transcript, Vol. I, dated August 17, 2023, page 59; Vol. II, dated October 17, 2023, pages 153 – 154). The unilateral change in no longer allowing paid administrative leave to employees who tested positive for Covid and were out of work was implemented by the Employer under the apparent position that the Employer had no "obligation" to bargain with the Union. (Transcript, Vol. II, dated October 17, 2023, pages 153 – 154). In other words, the evidence before this Board indicates that no advance notice was provided to the Union regarding the implementation of the policy changes and the Employer categorically refused to negotiate with the Union over the unilateral change it implemented. (Transcript Vol. I dated August 17, 2023 at pages 57 – 59). As this Board and the courts have made clear, a failure to bargain over a mandatory subject of bargaining constitutes an unfair labor practice and a violation of the Act (*See Rhode Island State Labor Relations Board v. City of East Providence, supra*; *Barrington School Committee, supra; School Committee of the City of Pawtucket v. Pawtucket Teachers Alliance AFT Local 930, supra;* and *Town of Narragansett v. International Association of Firefighters, Local 1589, supra)*.

As previously indicated, unilateral changes to plant rules where the rules affect terms and conditions of employment represent mandatory subjects of bargaining. In the instant case, it is apparent from the evidence presented to the Board that there were unilateral changes to the use of administrative leave, that the changes impacted employee sick time usage and, therefore, the changes had a significant, substantial and material effect on

the working terms and conditions of employment of bargaining unit members. The testimony before the Board confirmed this conclusion. (Transcript Vol. I dated August 17, 2023 at pages 42 – 45; 48; 58 – 59; Petitioner Exhibits 2, 3, 4 and 6). There is no serious argument to be made that sick time benefits and the accrual or use of such benefits are not part of employee terms and conditions of employment and, therefore, mandatory subjects of bargaining. See *National Licorice Co. v. NLRB*, 309 U.S. 350 (1940; *NLRB v. Katz*, 369 U.S. 736 (1962); *Southern California Edison Co.*, 284 NLRB 1205, *enforced* 852 F.2d 572 (9th Cir. 1988).

The evidence before the Board makes clear that the unilateral changes made by the Employer in eliminating how administrative leave was applied and used impacted terms and conditions of employment which are mandatory subjects of bargaining. As such, the Employer's conduct was in violation of the Act.

C. Past Practice

The Union has also argued that the Employer's use of administrative leave established a past practice which the Employer could not simply ignore or eliminate at its whim. In Rhode Island, past practice for purposes of collective bargaining is set forth in statute. (See R.I.G.L. 28-9-27). The statute provides as follows:

> (a) * * * (1) The collective bargaining agreement does not contain an express provision that is the subject of the grievance; *or*
> (2) The collective bargaining agreement contains a provision that is unclear and ambiguous; *or*
> (3) The collective bargaining agreement contains a provision which has been mutually agreed upon by the parties that preserves existing past practices for the duration of the collective bargaining agreement.
> (b) A party claiming the existence of a past practice shall be required to prove by clear and convincing evidence that the practice:
> (1) Is unequivocal;
> (2) Has been clearly enunciated and acted upon;
> (3) Is readily ascertainable;
> (4) Has been in existence for a substantial period of time; and
> (5) Has been accepted by representatives of the parties who possess the actual authority to accept the practice. * * *
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> R.I.G.L. § 28-9-27.

A review of the brief history of use by the Employer of administrative leave for purposes of covering Covid illness among bargaining unit members demonstrates to this Board that no past practice has been established.

Initially, a review of the collective bargaining agreement shows that past practice language exists within its terms. (See Joint Exhibit 1, Article 35.5 at page 56).[8] This language simply allows for the continuance of benefits or practices that have been established between the parties. Under the Rhode Island statute, however, in addition to looking for existing contract language, there is an obligation upon the party claiming the practice to show that the practice is "unequivocal", "clearly enunciated", "readily ascertainable", "has been accepted by representatives of the parties" and has "been in existence for a substantial period of time..." R.I.G.L. § 28-9-27. The evidence before the Board makes clear that the use of administrative leave by the Employer met the first four (4) factors cited above, i.e., it was unequivocal, clearly enunciated, readily ascertainable and accepted by the parties. (See Joint Exhibits 2 and 3; Transcript Vol. I at page 36 – 38; Transcript Vol. II at page 135). However, where the Board believes the Union's evidence falls short is with the requirement that the practice has "been in existence for a substantial period of time..." According to the evidence, the use of administrative leave for bargaining unit members who contracted Covid began in mid-March 2020. The use of administrative leave ended on June 15, 2022 or approximately 27 months after its implementation. While the Union has presented the Board with several cases regarding the establishment of a past practice (see Union Memorandum of Law at pages 17 – 21), none of those cases speak to a statutory requirement like or similar to the language in R.I.G.L. 28-9-27. In the Board's view, twenty seven (27) months simply does not encompass the statutory requirement of a "substantial period of time..." In reviewing a similar issue, our Supreme Court used the phrase "long-standing" to describe the period of time the claimed practice had been in place. See *North Providence School Committee v. North Providence Federation of Teachers, Local 920*, 945 A.2d 339, 345 (R.I. 2008). In this Board's view, a time period of just slightly over two (2) years does not constitute something that is "long-standing" or represents a "substantial period of time..." As such, the Board finds that the use of administrative leave by the Employer beginning in March 2020 and ending on or about June 15, 2022 did not create a past practice in this case.

D. The Employer's Defenses

The Employer has put forth a series of defenses to its action in the matter before the Board. One of the Employer's main arguments centers on its claim that it was authorized to make the changes to how administrative leave was utilized under the management rights clause of the collective bargaining agreement. It further argues that any changes it made to the application or use of administrative leave were authorized pursuant to R.I.G.L. §42-56-10 claiming that its actions constitute non-delegable duties under the referenced statute. The Employer also contends that administrative leave is an inherent management function that was never bargained for between the parties nor is it a right for which the Employer is obligated to bargain. In addition, the Employer attempts to

[8] The language at Article 35.5 states: "Except as otherwise expressly provided herein, all privileges and benefits which employees have hereto enjoyed shall be maintained and continued by the State during the term of this Agreement."

bolster its managerial powers argument by asserting that the 1988 Personnel Rules (Respondent Exhibit 13) authorize the use of administrative leave, that administrative leave is not a "new" concept and administrative leave has never been included in the collective bargaining agreement. As will be discussed in more detail below, the Board rejects these arguments by the Employer as insufficient to justify its actions in the instant case.

(i) The Management Rights Clause

The management rights clause of the collective bargaining agreement, Article IV, Section 4.1 (Joint Exhibit 1) provides the Employer with a fairly standard set of rights and responsibilities that it may exercise "except as limited, abridged, or relinquished by the terms and provisions of this Agreement, . . . and consistent with applicable laws and regulations . . ." (Joint Exhibit 1 at page 3). While the CBA, as noted, provides the rights enumerated therein to the Employer, the setting forth of these rights does not absolve the Employer of its obligation to bargain over mandatory subjects of employment nor does it authorize the Employer to unilaterally change the terms and conditions of employment of bargaining unit members.

The management rights clause makes clear that the rights set forth in Section 4.1 cannot be inconsistent with the provisions set forth in other parts of the CBA nor can it use its management rights to violate "applicable laws and regulations." (Joint Exhibit 1). In the Board's view, when the Employer decided to use paid administrative leave for employees who tested positive for Covid and were prevented from coming to work and not require these employees to use their accrued sick or vacation time, the Employer created a benefit for bargaining unit members that was as valuable as having any other type of paid time off benefit under the CBA. Though the Employer is certainly correct to point out that administrative leave is not found anywhere in the CBA,[9] that absence doesn't mean the Employer's statutory obligation to bargain over mandatory subjects has disappeared or been eliminated. While the rights granted under the management rights clause can be described as extensive, nowhere within the terms of Section 4.1 does it allow the Employer, in the Board's view, to make a unilateral change to terms and conditions of employment as it did when it eliminated administrative leave without first notifying the Union and bargaining over the proposed change.

The Employer argues, in essence, that its decision to provide paid administrative leave to employees who contracted Covid and were away from the workplace instead of requiring those employees to use their accrued sick time was a managerial prerogative covered under the management rights clause of the CBA. For example, the Employer argues that its decision to use administrative leave was authorized or sanctioned by the language in the CBA that allows the Employer to "take whatever actions are necessary

[9] As the evidence before the Board demonstrated, the parties commenced negotiations for a new collective bargaining agreement in February 2022 when the use of administrative leave was still in effect. (Transcript Vol. II dated October 17, 2023, page 112). The Employer did not make or offer any proposals regarding the use of administrative leave during negotiations. (Transcript Vol. II dated October 17, 2023, page 113).

to carry out its mission in emergency situations..." (Joint Exhibit 1, Article IV, Section 4.1F).[10] However, this language defines "emergency situations" as "an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of [sic] recurring nature." In the Board's view, this language speaks to a single or isolated situation that unexpectedly arises and needs to be addressed quickly. In the present case, while the impact of Covid could be described as unforeseen, it was certainly not a singular or isolated occurrence. The mere fact that the situation went on for many months – years in fact – demonstrates that it was a situation of a recurring nature and, therefore, not a situation that would fall under the emergency powers provision of the management rights clause. Further, it is interesting to note that in the communication sent out by the Employer announcing the use of administrative leave, nowhere was there any language that referenced the emergency powers section of the CBA. (See Joint Exhibits 2 and 3).

The Employer also argues that the use of administrative leave was the type of managerial decision that lies "at the core of entrepreneurial control" of an organization. (See Employer Memorandum of Law at page 13). The Employer cites several cases that support the concept that certain managerial decisions are so much a part of running or operating a business or organization that they can't be separated out, but never links how using administrative leave during the Covid outbreak is part of the Employer's entrepreneurial control of the facility. The area of whether a decision by an employer is or is not a part of its entrepreneurial control of its business has a long and complicated history at the NLRB (a history which the Board will not detail herein). It is generally accepted, however, that the type of decision-making referred to when discussing this issue and that would obviate an employer's bargaining obligation focuses on decisions "in the nature and direction of a significant facet of the business." See *Otis Elevator (II),* 270 NLRB 232 (1984). Where the decision is centered or focused on labor costs, however, the employer does have an obligation to bargain with the union over its decision. See *Fibreboard Paper Products Corp.*, 130 NLRB 1558, *enforced*, 322 F.2d 411 *D.C. Cir. 1963), *aff'd,* 369 U.S. 203 (1964). In the present case, it is clear to this Board that the decision to use and later eliminate the use of administrative leave for Covid related illnesses was a labor costs associated decision. Therefore, in the Board's view the Employer's decision was subject to bargaining. Further, while there might be a case to be made that the Employer had no obligation to bargain pre-implementation of its decision to use administrative leave, there is no question that its failure to bargain over its decision to unilaterally discontinue the benefit is a violation of the Act.[11]

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[10] It is clear that the Governor's March 2020 Executive Order noted that the COVID-19 "outbreak" had been designated "as a Public Health Emergency" (Respondent Exhibit 1). Also, the Employer's Director testified that she was aware of the language referencing "emergency situations" in the CBA. (Transcript Vol. II dated October 17, 2023, page 146 – 147). However, the Employer unilaterally ended the use of administrative leave and required the return to using sick leave by bargaining unit members (Joint Exhibits 4 and 5) without referencing the contractual emergency powers (or her alleged statutory emergency powers) and while the Governor's Executive Orders continued to extend the state of emergency until April 2023. (Transcript Vol. II dated October 17, 2023, pages 155 – 156).

[11] The Employer also noted in its memorandum an NLRB Advisory Memorandum suggesting that an employer's decision to unilaterally "institute new policies and benefits in response to the Covid-19

As part of this same argument, the Employer posits that administrative leave is, "[b]y its very nature...a managerial function that has never been a bargained for right." See Employer Memorandum of Law at page 16. While administrative leave, as a concept, can certainly be described as a tool in the management/employer toolkit, that does not insulate an employer from its bargaining obligation when it decides to offer or provide the benefit to its employees. The Employer in the instant case could have determined that using administrative leave was not the right course of action and refused to provide it to employees who contracted Covid in the workplace. However, once the Employer made the gratuitous decision to offer the benefit to employees, it could not unilaterally determine to stop providing the benefit without negotiating this significant and material change with the Union.

Similarly, the inclusion of administrative leave in 1988 State Personnel Rules (Respondent Exhibit 13) does not eliminate the Employer's bargaining obligation. As previously indicated, unilateral changes to plant rules where the rules affect terms and conditions of employment represent mandatory subjects of bargaining. In the instant case, it is apparent from the evidence presented to the Board that the use of administrative leave impacted employee sick time usage and, therefore, the changes arising when the benefit was unilaterally eliminated had a significant, substantial and material effect on the working terms and conditions of employment of bargaining unit members.[12] In other words, the inclusion of administrative leave in the Personnel Rules does not excuse the Employer from its obligation to engage in bargaining with the Union under the Act.

The Employer also argues to the Board that it did not violate the Act because the CBA contains a provision that provides employees with paid leave for communicable diseases contracted at work (Joint Exhibit 1, Article 12.8) and this contract clause is "similar in nature" to how administrative leave was applied. See Employer Memorandum of Law at page 23. The Employer's attempt to turn Article 12.8 of the CBA into a substitute for administrative leave, while creative, is simply unpersuasive. First, though the Employer had an opportunity in March 2020 to point to Article 12.8 and attempt to apply it to individuals who contracted Covid, it did not do so. Instead, it chose to use administrative leave. As best the Board can discern, Article 12.8 did not enter the discussion of paid time off for employees contracting Covid until after the Employer had decided to eliminate the use of administrative leave (and the Union objected to the

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pandemic," was not a violation of the National labor Relations Act. (See Employer Memorandum of Law at pages 15 – 16). Unfortunately for the Employer's argument, the Advisory is clear, and even the Employer admits (though somewhat obscurely), that the NLRB will still require an employer to negotiate with the union "over the decision...within a reasonable time" after unilateral implementation. See Employer Appendix 6.

[12] A review of the Administrative Leave policy submitted to the Board as an exhibit (Respondent Exhibit 13) does not mention the word "emergency" as a reason for offering administrative leave though the policy does state that administrative leave "may" be granted under "extenuating circumstances." It is also important to note that under the policy the State (either the Personnel Administrator or the Director of Administration) "may" authorize or grant administrative leave under certain circumstances. This authority is, therefore, discretionary in its use. Once that discretion is exercised, as it was in the instant case, the Employer has offered and provided a benefit to the employees. As a benefit, administrative leave is a mandatory subject of bargaining and cannot be eliminated at a whim by the Employer without first engaging in negotiations with the Union.

elimination). (See Transcript Vol. II dated October 17, 2023 at page 156). Second, as is clear from a review of the language in Article 12.8, there are conditions that govern its use. Specifically, there are restrictions on the amount of sick time available and conditions on how approval for use is granted. This is significantly different from the way the Employer applied administrative leave beginning in March 2020 where it accepted as a reasonable presumption that anyone who contracted Covid did so at work and that no medical note was required. Third, the Board views as critical the Employer's failure to note Article 12.8 as available to employees when it eliminated the use of administrative leave in June 2022. As was specifically stated in the Employer's email, after administrative leave was eliminated, employees "must" use their sick leave. (See Joint Exhibit 4). No mention of Article 12.8 was made in the email. These distinctions are, in the Board's view, material differences between how administrative leave was applied in this case and how Article 12.8 would be applied. Finally, while the Employer contends that administrative leave and Article 12.8 are, in essence, interchangeable, the reality is, as mentioned above, they are quite different. The Employer's argument here is one of convenience and not substance. The two (2) provisions are not simply two (2) sides of the same coin but are significantly different and were treated that way by the Employer as demonstrated by its action and conduct in this case.

Finally, the Employer raises the issue of waiver, claiming that through the negotiation of the CBA and, more particularly, the management rights clause, the Union has waived its right to contest the Employer's actions regarding its use of administrative leave. As discussed above, the Board believes the evidence does not support the Employer's waiver claim against the Union. In the instant case, and as discussed above, the management rights language in the CBA (Joint Exhibit 1, Article IV) is, in the Board's view, fairly traditional. More importantly, the management rights clause places certain limitations on the actions of the Employer by stating that the rights contained in the clause are "limited, abridged, or relinquished by the terms and provisions of the Agreement..." There is also a further restriction to the Employer's use of its management rights in the notation must exercise its rights "consistent with applicable laws and regulations." (Joint Exhibit 1, Article IV). As the parties have readily agreed, there is nothing in the CBA that addresses administrative leave. There is also no language that specifically or even incidentally acts as a waiver of the Union's right to seek bargaining over the Employer's unilateral action. This position has previously been articulated by the Board in prior decisions. See *Rhode Island State Labor Relations Board and Town of West Warwick,* ULP-6249 (December 19, 2019); *Rhode Island State Labor Relations Board and Middletown School Department*, ULP-6257A (September 9, 2020). In the instant case, there is simply no evidentiary support for the claim that the Union has waived its right to bargain over the elimination of the administrative leave benefit.

(ii) Statutory Authority

The Employer also argues that its use and subsequent elimination of administrative leave was covered as part of the non-delegable authority it has granted to it under

R.I.G.L. §42-56-10. The Employer cites *Vose v. Rhode Island Brotherhood of Correctional Officers*, 587 A.2d 913 (R.I. 1991) in support of its argument. In *Vose* the Supreme Court was presented with a situation where the Director of the Department of Corrections had brought a declaratory judgment action asking the Court to determine whether the Director had the authority to institute a mandatory overtime policy in order to safely and appropriately staff the prison in light of an increasing population. The Union objected, claiming that the new mandatory overtime policy was prohibited by the collective bargaining agreement. The Court found that the limitations placed on the Director by the contract language interfered with his ability to provide safe and adequate security for the facility. *Vose* at page 915. In particular, the Court found that the contractual prohibition stripped the Director of his ability to implement rules "incidental to...his...powers [to provide for]...care, and custody for all persons committed to the correctional facility." *Vose* at page 915.

In the instant case and unlike *Vose*, no such similar evidence has been presented to this Board by the Employer. As previously noted, the Employer asserts that the use of administrative leave "was done as a result of the emergency situation" created by the Covid outbreak. See Employer Memorandum of Law at page 17. While it is clear that the Governor's Executive Orders referenced a "Public Health Emergency" (Respondent Exhibit 1), nowhere in the communications from the Employer was any reference used that the implementation of administrative leave was due to or as a result of an emergency situation. (See Joint Exhibits 2 and 3). The Employer did present testimony from its former Director that in March and April 2020 as a congregate facility it didn't want people to come to work sick. (Tr. Vol. II dated October 17, 2023 at pages 133 – 137; 140 – 142; 146 – 148). It was around this thought process and with advice from health professionals that administrative leave was implemented.[13] However, in the Board's view the actions of the Employer do not appear to fit into the non-delegable duties category carved out in *Vose* or set forth in R.I.G.L. 42-56-10. In essence, what the Employer was facing was a staffing issue created by it not wanting employees who contracted Covid to come to work and possibly infect other employees. (Tr. Vol. II dated October 17, 2023 at pages 149 – 151). While this reasoning demonstrates the best of intentions by the Employer, it does not, in the Board's review of the evidence and the statutory standards, fall within the non-delegable duties set forth in the statute.

In the instant case, the Board does not see the Employer's obligation to bargain over the unilateral dissolution of the use of administrative leave as inhibiting the Employer's Director's ability to, as the Supreme Court noted in *Vose*, "[m]ake and promulgate necessary rules and regulations incidental to the exercise of his or her powers [to provide for] * * * safety, discipline, * * * care, and custody for all persons committed to correctional facilities." See section 42-56-10(v)." See *Vose v. Rhode Island Brotherhood of Correctional Officers*, 587 A.2d at 915. The Employer's ability to apply administrative

[13] Part of the granting of administrative leave included that employees who contracted Covid were presumed to have caught it at work and did not have to produce a sick note. (Tr. Vol. II dated October 17, 2023 at pages 135 – 136).

leave was clearly not interfered with when DOA and the Employer unilaterally determined that it would offer administrative leave to employees who had contracted Covid. In fact, the dispute here is, in the Board's view, directly opposite of what the *Vose* decision intended. In *Vose*, the Court was securing the right of the Employer's Director to implement rules and regulations to address safety, discipline, care and custody of persons in the facility. In this case, as noted above, the Employer exercised that right by using administrative leave to address potential staffing issues created by Covid related absences. (Tr. Vol. II dated October 17, 2023 at pages 149 – 150). The distinction between this case and *Vose* is that the Union wanted to bargain with the Employer about its **removal or elimination** of the administrative leave rule, not its implementation of the rule. In the Board's view, the unilateral elimination of the use of administrative leave and the concurrent obligation to bargain with the Union over such elimination did not impact in any way the myriad statutory duties provided for under R.I.G.L. 42-56-10.

The Employer's failure to negotiate with the Union regarding its unilateral dissolution of the use of administrative leave represents a violation of the Act.

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 the Employer were subject to a collective bargaining agreement dated July 1, 2017 through June 30, 2020.

4. In February 2023, the parties were able to reach a new CBA to replace the CBA that expired in June 2020. The new successor CBA did not address or resolve the instant unfair labor practice complaint.

5. In late 2019 and early 2020 the Union president became aware of problems with a virus named Covid that was spreading in other countries and approached the Employer and raised concerns about the virus and wanted to be involved in any discussion concerning how this might be addressed if/when the virus arrived in Rhode Island.

6. On March 9, 2020, the first Executive Order from the Governor of Rhode Island declaring a Public Health Emergency in Rhode Island was issued.

7. The emergency conditions of the Governor's Executive Order would be renewed multiple times over the next few years. The emergency conditions were not suspended until April 2023.

8. On March 13, 2020, shortly after the Governor's Emergency Order was announced, the Department of Administration released a policy update about Covid that included a

notice that "paid administrative leave" would be provided "to employees who are out of work due to a quarantine period as a result of potential work-related exposure."

9. On March 16, 2020, the Employer sent an email to all staff incorporating the Department of Administration paid administrative leave notice.

10. On March 18, 2020, the Employer modified the Department of Administration paid administrative leave policy by indicating that it would not require a medical note for employees "out for covid related quarantine or illness."

11. Members of the bargaining unit began testing positive for Covid in April 2020.

12. Correctional officers who tested positive for Covid or had been in close contact with someone who tested positive, were required to quarantine. In those situations, the bargaining unit member who was quarantined received paid administrative leave.

13. On May 27, 2022, the Union President wrote to the Employer's Director indicating that the Union had learned that the Employer "would eliminate paid leave for officers who are suffering from COVID-19 and instead, to require officers to discharge sick leave." The letter also contained a demand for bargaining prior to any change the Employer might implement.

14. The Employer did not respond to the Union President's May 27, 2022 letter.

15. On June 15, 2022, the Employer's Director sent an email to all personnel stating, in relevant part, that COVID-19 has reached an "endemic" stage and administrative leave would no longer be available to employees who tested positive for Covid-19. The email also indicated that instead of receiving administrative leave, sick leave must be used by employees.

16. On June 21, 2022, the Employer sent an email to all personnel stating that administrative leave would no longer be provided for those individuals getting a vaccine or booster shot and that sick time would have to be used.

17. On June 29, 2022, the Union filed an unfair labor practice charge with the Board.

18. The Employer unilaterally changed the working terms and conditions of employment of bargaining unit members when in June 2022 it unilaterally eliminated the use of administrative leave.

19. The Employer unilaterally changed the working terms and conditions of employment of bargaining unit members when it unilaterally eliminated the use of administrative leave without engaging in good faith bargaining with the Union.

CONCLUSIONS OF LAW

1. The Union has proven by a fair preponderance of the evidence that the Employer committed a violation of R.I.G.L. § 28-7-13(6) and (10) when it unilaterally changed the working terms and conditions of employment of bargaining unit members when it eliminated the ability of bargaining unit members to receive administrative leave if they contracted Covid or if they were getting a vaccine or booster shot.

2. The Union has proven by a fair preponderance of the evidence that the Employer committed a violation of R.I.G.L. § 28-7-13(6) and (10) when it failed and refused to negotiate with the Union before it unilaterally changed the working terms and conditions of employment of bargaining unit members by eliminating the ability of bargaining unit members to receive administrative leave if they contracted Covid or if they were getting a vaccine or booster shot.

ORDER

1. The Employer is hereby ordered to cease and desist from making unilateral changes to working terms and conditions of employment, without first notifying the Union and giving it the opportunity to bargain over any proposed changes.

2. The Employer is hereby ordered to cease and desist from unilaterally changing how administrative leave is used for employees who contract Covid or if they are getting a vaccine or booster shot consistent with the terms of this Decision.

3. The Employer is hereby ordered to make whole any bargaining unit member who, after June 15, 2022, contracted Covid at work, was absent as a result and was denied the use or receipt of administrative leave and was required to use his/her sick time for the absence, by having the amount of sick time expended replaced to his/her account.

4. The Employer is hereby ordered to post a copy of this Decision and Order for a period of not less than sixty (60) days in each building where bargaining unit personnel work, said posting to be in a location where other materials designed to be seen, read and reviewed by bargaining unit personnel are posted.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Scott G. Duhamel, Member

Stan Israel, Member

**** BOARD MEMBERS KENNETH B. CHIAVARINI, HARRY F. WINTHROP AND LAWRENCE PURTILL WERE ABSENT FOR SIGNING OF THE DECISION & ORDER.**

**** BOARD MEMBER ARONDA R. KIRBY ABSTAINED FROM VOTING ON THIS MATTER**

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

Dated: February 19 2024

By: Thomas A. Hanley
Thomas A. Hanley, Administrator

ULP--6339

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

IN THE MATTER OF STATE OF RHODE ISLAND DEPARTMENT OF CORRECTIONS -AND- RHODE ISLAND BROTHERHOOD OF CORRECTIONAL OFFICERS	CASE NO. ULP- 6339

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-6339, dated February 19, 2024, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **February 21, 2024.**

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

Dated: February 21, 2024

By: Thomas A. Hanley III
Thomas A. Hanley
Administrator