

A. DOC Instituted COVID-19 Paid Administrative Leave Policy

Brotherhood's President, Richard Ferruccio (Ferruccio), first approached DOC administration in early 2020 after seeing COVID-19's impact in other countries. (Labor Board Decision at 3.) Based on anticipated potential issues around COVID-19 and sick leave for Rhode Island correctional officers who contracted COVID-19, Brotherhood "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[.]" (Compl. ¶ 8; Labor Board Decision at 1.)

In early March 2020, the governor of Rhode Island declared a Public Health Emergency in Rhode Island, and, on March 13, 2020, the Department of Administration (DOA) released a policy update 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.'" (Labor Board Decision at 3; *see* Certified Labor Board R., Joint Ex. 2.)

On March 16, 2020, DOC e-mailed all staff incorporating the DOA paid administrative leave notice. (Certified Labor Board R., Joint Ex. 2.) In the e-mail, DOC stated that "[w]hile there is no evidence that COVID-19 has impacted the state employee population, we will be extending paid administrative leave to employees who are out of work due to a quarantine period as a result of potential work-related exposure." *Id.* After the e-mail, DOC began providing administrative leave days for correctional officers who tested positive for COVID-19 up to a certain number of days, and, once the COVID-19 vaccine became available, DOC provided paid time off for officers who experienced a reaction to the vaccine. (Compl. ¶ 8; Labor Board Decision at 1.)

The parties' existing collective bargaining agreement (CBA) covered the period of July 1, 2017 through June 30, 2020, and the parties began negotiating the terms of a successor agreement around February 2022. (Labor Board Decision at 1.) The parties reached a new CBA in February 2023. *Id.* at 3 n.2.

B. DOC Discontinued COVID-19 Paid Administrative Leave Policy

Around May 2022, Ferruccio "learned that the DOC was considering requiring Correctional Officers to discharge sick time if he or she tests positive for COVID-19[.]" *Id.* at 2.

On May 27, 2022, Ferruccio e-mailed the Director of DOC indicating that Brotherhood had learned that DOC would eliminate paid administrative leave for correctional officers sick due to COVID-19 and the officers would be required to discharge sick leave. *Id.* at 4. Ferruccio stated "a demand for bargaining prior to any change" and asserted that the change would constitute "a change in terms and conditions of employment." *Id.* He did not receive a reply. (Compl. ¶ 8; Labor Board Decision at 2.)

On June 15, 2022, DOC Director Patricia Coyne-Fague (Director or DOC Director) e-mailed staff about changes to the mask policy and stated that "[f]inally, 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." (Certified Labor Board R., Joint Ex. 4.)

On June 21, 2022, DOC Director e-mailed staff stating that the DOC would no longer provide paid administrative leave if an officer got sick following a COVID-19 vaccination or booster. (Certified Labor Board R., Joint Ex. 5.)

C. Labor Board Hearing and Decision

On June 29, 2022, Brotherhood filed an Unfair Labor Practice Charge with Labor Board alleging that DOC made “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.” (Compl. ¶ 8; Labor Board Decision at 1.)

After Brotherhood filed its Unfair Labor Practice Charge, the Labor Board started an informal hearing process and the parties submitted written position statements. (Compl. ¶ 9; Labor Board Decision at 2.) Also, Brotherhood filed a response to DOC’s statement. (Compl. ¶ 9; Labor Board Decision at 2.)

Around August 18, 2022, Labor Board issued a complaint alleging DOC violated §§ 28-7-13(6) and (10) when it: “(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 [Brotherhood]; (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 [Brotherhood]; and (4) failed to bargain in good faith with [Brotherhood] 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.” (Compl. ¶ 10; Labor Board Decision at 2.)

On August 17, 2023 and October 17, 2023, formal hearings were conducted before Labor Board. (Compl. ¶ 11; Labor Board Decision at 2.) Post-hearing briefs were filed on November 27, 2023. (Labor Board Decision at 2.) Brotherhood argued that DOC’s unilateral change in eliminating paid administrative leave for correctional officers who contracted COVID-19 constituted a “material and substantial change in working conditions,” and “was a mandatory

subject of bargaining and obligated [DOC] to bargain with [Brotherhood] over said changes.” *Id.* at 5. Brotherhood further argued that the unilateral action violated the State Labor Relations Act and that the use of administrative leave constituted a past practice and DOC did not end the practice in a manner consistent with its statutory obligations. *Id.*

DOC argued that its use of paid administrative leave to cover absences due to COVID-19 was “strictly within the purview” of DOC and was “not something that had to be negotiated” with Brotherhood because administrative leave is a management right and falls within the scope of non-delegable statutory powers granted to the Director under G.L. 1956 chapter 56 of title 42 and DOC was authorized to make administrative leave changes under the management rights clause of the CBA. *Id.* DOC further argued that administrative leave was “so closely aligned to the negotiated contractual provision titled Special Sick Leave . . . that its actions were legitimate,” and “granting of administrative leave did not constitute a past practice.” *Id.*

Labor Board found that DOC, discontinuing the paid administrative leave policy, made “a substantial and material change in working conditions for employees” and violated the State Labor Relations Act. *Id.* at 7-8. Labor Board found that DOC’s unilateral changes impacted terms and conditions of employment, which are mandatory subjects of bargaining, and, thus, DOC’s conduct was in violation of the State Labor Relations Act. *Id.* at 10. Labor Board found that the use of administrative leave beginning in March 2020 and ending in June 2022 did not create a past practice in this case. *Id.* at 11.

On February 19, 2024, Labor Board entered an order (Decision) finding by a fair preponderance of evidence that DOC violated §§ 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.” *Id.* at 19. Additionally, Labor Board found by a fair preponderance of evidence that DOC violated §§ 28-7-13(6) and (10) “when it failed and refused to negotiate with [Brotherhood] 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.” *Id.* DOC was ordered (1) to cease and desist from making unilateral changes to working terms and conditions of employment without first giving Brotherhood the opportunity to bargain over proposed changes, (2) to cease and desist from unilaterally changing how administrative leave is used for employees who contract COVID-19 or get a vaccine or booster, (3) to make whole any bargaining unit member who, after June 15, 2022, contracted COVID-19 at work, was absent as a result, was denied administrative leave, and was required to use sick time, and (4) to post a copy of the Decision so bargaining unit members could see and review it. *Id.*

D. Present Action

On February 26, 2024, DOC brought this administrative appeal to Superior Court alleging that DOC has exhausted all of its available remedies, DOC is aggrieved by the Labor Board Decision, and the Decision was “unsupported by law or fact and is, inter alia, contrary to law; in excess of the Board’s statutory authority; made upon unlawful procedure; clearly erroneous in light of the reliable, probative and substantial evidence in the record; and arbitrary, capricious, and/or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.” (Compl. ¶¶ 16-18.) DOC seeks for the Labor Board Decision to be reversed and for reasonable attorney fees, costs, and expenses. *Id.* at 7.

II

Standard of Review

When reviewing the decisions of an administrative agency, the Court “sits as an appellate court with a limited scope of review.” *Mine Safety Appliances Co. v. Berry*, 620 A.2d 1255, 1259 (R.I. 1993). This Court’s review of an appeal from a decision of an administrative agency is governed by the Rhode Island Administrative Procedures Act (APA), § 42-35-15. *See Rossi v. Employees’ Retirement System of the State of R.I.*, 895 A.2d 106, 109 (R.I. 2006). Under the terms of the APA, appellate jurisdiction in the Superior Court is conferred by § 42-35-15 to review final orders and certain interlocutory orders of state administrative agencies not exempted explicitly from the provisions of the APA. Section 42-35-15 provides, in pertinent part:

“(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- “(1) In violation of constitutional or statutory provisions;
 - “(2) In excess of the statutory authority of the agency;
 - “(3) Made upon unlawful procedure;
 - “(4) Affected by other error of law;
 - “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
 - “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”
- Section 42-35-15(g).

“In essence, if ‘competent evidence exists in the record, the Superior Court is required to uphold the agency’s conclusions.’” *Auto Body Association of Rhode Island v. State of Rhode Island Department of Business Regulation*, 996 A.2d 91, 95 (R.I. 2010) (quoting *Rhode Island Publication Telecommunications Authority v. Rhode Island State Labor Relations Board*, 650 A.2d 479, 485 (R.I. 1994)). When reviewing a decision under the APA, the Court may not

substitute its judgment for that of the agency on questions of fact. *See Johnston Ambulatory Surgical Associates Ltd. v. Nolan*, 755 A.2d 799, 805 (R.I. 2000). The Court defers to the administrative agency's factual determinations, provided that they are supported by legally competent evidence. *See Arnold v. Rhode Island Department of Labor and Training Board of Review*, 822 A.2d 164, 167 (R.I. 2003). The Court cannot “weigh the evidence [or] pass upon the credibility of witnesses [or] substitute its findings of fact for those made at the administrative level.” *E. Grossman & Sons, Inc. v. Rocha*, 118 R.I. 276, 285, 373 A.2d 496, 501 (1977).

Where there is legally competent evidence in the record to support the agency's decision, this Court must uphold that decision. *Id.*; *see Barrington School Committee v. Rhode Island State Labor Relations Board*, 608 A.2d 1126, 1138 (R.I. 1992). “Legally competent evidence (sometimes referred to as ‘substantial evidence’) has been defined as ‘relevant evidence that a reasonable mind might accept as adequate to support a conclusion[; it] means an amount more than a scintilla but less than a preponderance.’” *Town of Burrillville v. Rhode Island State Labor Relations Board*, 921 A.2d 113, 118 (R.I. 2007) (quoting *Center for Behavioral Health, Rhode Island, Inc. v. Barros*, 710 A.2d 680, 684 (R.I. 1998)). Thus, this Court may reverse factual conclusions of administrative agencies “only when they are totally devoid of competent evidentiary support in the record.” *Baker v. Department of Employment and Training Board of Review*, 637 A.2d 360, 363 (R.I. 1994) (quoting *Milardo v. Coastal Resources Management Council*, 434 A.2d 266, 272 (R.I. 1981)). Questions of law, however, are not binding upon a reviewing court and may be freely reviewed to determine what the law is and its applicability to the facts. *Carmody v. Rhode Island Conflict of Interest Commission*, 509 A.2d 453, 458 (R.I. 1986).

III

Analysis

A. Whether DOC Director Was Acting Within Her Scope of Powers

DOC argues that terminating paid administrative leave for officers who contracted COVID-19 did not violate the State Labor Relations Act because offering paid administrative leave was a management function under Article IV of the CBA and within the statutory powers of the Director under § 42-56-10 and, therefore, terminating paid administrative leave did not violate the State Labor Relations Act. (DOC Reply at 1.) The main issue before this Court is whether the Director acted properly within the scope of the statutory powers vested in her under § 42-56-10 and/or by the CBA's Article IV Management Rights Clause when she removed the paid administrative leave policy. If DOC was acting within its powers, then removing the paid administrative leave policy, even if the decision was unilateral, would not be a violation of the State Labor Relations Act.

1. Director Powers Under § 42-56-10

DOC argues that Labor Board violated the non-delegable statutory powers of the DOC Director by finding DOC violated §§ 28-7-13(6) and (10) because the Legislature granted DOC's Director broad statutory powers under § 42-56-10 to maintain safety and "take all necessary precautions to prevent the occurrence or spread of any disorder," and the CBA does not limit DOC Director's ability to maintain safety of the facility. (DOC Br. at 7-8.) Because of § 42-56-10, DOC argues that DOC's Director was within her statutory powers to discontinue paid administrative leave. *Id.* at 10. Labor Board argues that there is no direct conflict from any of the Director's obligations set forth in § 42-56-10 that prevented DOC from bargaining in this case, so DOC was required to bargain over the elimination of paid administrative leave. (Labor

Board Br. at 15.) Brotherhood argues that § 42-56-10 does not excuse DOC from complying with the State Labor Relations Act because “this Court has not granted any employer (including [DOC]) an unlimited pass when it comes to its relationship with organized labor.” (Brotherhood Mem. at 17-18.)

The DOC Director has certain powers enumerated by statute under § 42-56-10. Section 42-56-10, in pertinent parts, provides:

“In addition to exercising the powers and performing the duties, which are otherwise given to [the director] by law, the director of the department of corrections shall:

“(2) Maintain security, safety, and order at all state correctional facilities, utilize the resources of the department to prevent escapes from any state correctional facility, take all necessary precautions to prevent the occurrence or spread of any disorder, riot, or insurrection of any state correctional facility, including, but not limited to, the development, planning, and coordination of emergency riot procedures, and take suitable measures for the restoration of order;

“ . . .

“(5) Manage, direct, and supervise the operations of the department;

“ . . .

“(8) Maintain the efficiency of the operations of the department[.]” Section 42-56-10.

A director has statutory authority under § 42-56-10 to institute policies to maintain security, safety, and order at state correctional facilities. Section 42-56-10; *State, Department of Corrections v. Rhode Island Brotherhood of Correctional Officers*, 115 A.3d 924, 933 (R.I. 2015). However, in the context of this situation, the Director’s authority to maintain security and safety would not be diminished with bargaining.

DOC argues that the Rhode Island Supreme Court in *Vose v. Rhode Island Brotherhood of Correctional Officers*, 587 A.2d 913 (R.I. 1991), held that “a Collective Bargaining Agreement shall not limit or restrict the Director’s statutory authority under § 42-56-10” and

governmental employers cannot bargain away authority they hold under statute. (DOC Br. at 8-9.) In *Vose*, the Rhode Island Department of Corrections adopted a policy requiring officers to work involuntary overtime, and this policy changed the previous CBA policy that allowed the director to mandate involuntary overtime only in an emergency situation. *Vose*, 587 A.2d at 913. The Supreme Court, reviewing the declaratory judgment, held that what made the case justiciable was that there was a conflict between § 42-56-10 and the CBA. *Id.* at 915. Here, in contrast, there is no direct conflict between § 42-56-10 and the CBA. Nowhere in the CBA does the agreement mention administrative leave. *See* Certified Labor Board R., Joint Ex. 1. Nowhere in § 42-56-10 does the statute mention that an employer has the right to forgo mandatory bargaining—quite the contrary, § 42-56-10 was amended in 2007 to specify that a CBA should not be affected or diminished based on an alleged conflict with § 42-56-10. *See* § 42-56-10(24) (“Notwithstanding the enumeration of the powers of the director as set forth in this section, and notwithstanding any other provision of the general laws, the validity and enforceability of the provisions of a collective bargaining agreement shall not be contested, affected, or diminished, nor shall any arbitration award be vacated, remanded or set aside on the basis of an alleged conflict with this section or with any other provision of the general laws.”).

Significantly, the Court in *Vose* held that the CBA should not be interpreted as restricting a director’s statutory power to order mandatory involuntary overtime because a director must be able to “provide for adequate security, regardless of whether an emergency is deemed to be present,” and the director authorized the policy because there was an increased population of incarcerated individuals and staffing was insufficient to handle this increase in the incarcerated population. *Vose*, 587 A.2d at 914, 916. Here, DOC does not allege the decision to remove paid administrative leave was due to a threat to security or any similar reasoning. *See generally* DOC

Br. DOC alleges it instituted the policy at the start of COVID-19 as a way to prevent officers from coming to work sick and infecting others, but DOC did not offer any similar security justification for removing the policy. *See id.* In discontinuing the paid administrative leave policy, DOC stated that COVID-19 reached an endemic stage and there could be “further relaxations” for COVID-19 mitigation strategies, which implied that DOC did not believe there was any safety or security risk in removing paid administrative leave. *See Certified Labor Board R., Joint Ex. 4.*

Further, Labor Board and Brotherhood argue that the distinction between this case and *Vose* is that, here, Brotherhood wanted to bargain with DOC about DOC’s removal of the paid administrative leave policy and, in *Vose*, the issue was with a policy being implemented. (Labor Board Br. at 13-14; Brotherhood Mem. at 24.) “In [Labor] Board’s view, the unilateral elimination of the use of administrative leave and the concurrent obligation to bargain with [Brotherhood] over such elimination did not impact in any way the myriad statutory duties provided for under R.I.G.L. 42-56-10.” (Labor Board Decision at 17; Brotherhood Mem. at 24.) This Court finds this argument persuasive considering the removal of paid administrative leave did not constitute any threat to safety or security and did not conflict with any other employer responsibilities under § 42-56-10.

DOC argues that the present action is similar to *State of Rhode Island, Department of Corrections v. Rhode Island State Labor Relations Board & Rhode Island Brotherhood of Correctional Officers*, No. PC-2021-4279, Aug. 2, 2022, Lanphear, J. (PC-2021-4279) where the Rhode Island Superior Court overturned Labor Board’s decision that found changes to the Absenteeism Management Program (AMP) were made unilaterally and were material and substantive. (DOC Reply at 3-4.)

While the case is not binding on the Court, the Court notes some distinguishing factors between the present action and PC-2021-4279. In PC-2021-4279, the DOC Director made changes to the AMP without bargaining with Brotherhood in response to sick time being used in excess. PC-2021-4279 at 2. Also, the Director issued changes that would modify “previous discipline tracks,” create a new system for absenteeism where there would be “progressive sanctions” for violators, require staff to “apply for and be approved” for certain types of leave, and address “pattern abuse” issues. *Id.* at 2-3. By making changes to the AMP, the Director sought to address an issue with employees using sick time excessively and sought to address “some abuse” that was happening by employees when calling out sick. *Id.* at 2. The Superior Court, in reversing Labor Board’s decision, found that the changes were within the Director’s statutory authority because lack of staffing had a direct impact on “inmate life” and this could have “deleterious effects” on the safety of the institution. *Id.* at 17-18.

Here, DOC did not claim any issues with excessive absenteeism or an impact on staffing due to the paid administrative leave policy. *See* Labor Board Decision. DOC did not claim any issues with staffing that would indicate a safety or security reason to remove the paid administrative leave program. *Id.* Instead, DOC claimed that COVID-19 reached an endemic stage, implying that COVID-19 was not a safety concern as it had been in the past, so DOC felt it could stop providing paid administrative leave to officers. *See* Certified Labor Board R., Joint Ex. 4.

The Superior Court, in PC-2021-4279, found *Vose* persuasive because both PC-2021-4279 and *Vose* were factually similar in that each action involved the Director making a decision that addressed staffing issues to maintain a required level of staffing for safety and security. PC-2021-4279 at 17. In the present action, there is no similar concern for staffing because DOC did

not remove the paid administrative leave policy to ensure appropriate staffing to maintain facility security; instead, it appears to this Court that DOC removed paid administrative leave so it would not have to pay officers paid administrative leave if they were out sick due to COVID-19. Therefore, the logic of PC-2021-4279 is not persuasive in the present action.

Next, DOC argues that the Rhode Island Supreme Court held in *State, Department of Mental Health, Retardation, & Hospitals v. Rhode Island Council 94, A.F.S.C.M.E., AFL-CIO*, 692 A.2d 318, 324 (R.I. 1997) (MHRH) that MHRH could not bargain away the Director's statutory responsibilities. (DOC Br. at 9.) As this Court articulated above, the CBA and § 42-56-10 do not conflict, and the decision to discontinue paid administrative leave does not constitute bargaining away any statutory responsibilities under § 42-56-10.

DOC further argues that the Rhode Island Supreme Court in *Laurie v. Senecal*, 666 A.2d 806, 809 (R.I. 1995) observed that prison administrators should be afforded deference as needed to preserve internal order and discipline. (DOC Br. at 8.) Though *Laurie* does stand for this principle, the facts are too dissimilar to draw a parallel to the present action. In *Laurie*, the Rhode Island Department of Corrections sought a preliminary injunction to authorize the director to force feed an incarcerated individual in order to prevent that individual from attempting to end his life by refusing to take liquid or solid nourishment. *Laurie*, 666 A.2d at 807. The Rhode Island Supreme Court, in remanding the case and authorizing the director to preserve the life of the individual, stated that day-to-day problems in a correction facility's operations "are not susceptible of easy solutions" and prison administrators "should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Id.* at 809. The Supreme Court further reasoned that "in the absence of substantial evidence in the record to

indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.” *Id.* (internal quotation omitted).

Clearly, the present case does not hold the same underlying concerns as *Laurie*. *Laurie* presented issues of prisoner rights and the duties prison administrators hold in preserving life and preventing suicide. In the present case, DOC instituted a policy to prevent the spread of COVID-19, but the issue lies in the removal of the paid administrative leave policy, which speaks to budgetary issues rather than issues of safety and security.

Lastly, DOC argues that instituting paid administrative leave to officers in 2020 was the “Director fulfilling her statutory obligation to take all necessary precautions to prevent the occurrence or spread of any disorder, in this case Covid, so that all facilities would be maintained safely, and securely, and does not then become a term and condition of employment.” (DOC Br. at 10.) Then, the Director removed administrative leave as the “COVID-19 pandemic was becoming an endemic and the need for exercising the powers of the director to prevent the occurrence and spread of the disease ceased as did the need to continue administrative leave.” *Id.* DOC argues that the Director “did not bargain the initial offering of administrative leave or the termination of it,” and “if once [Director used her powers] it became something that required bargaining,” that “would negate the powers of the Director[.]” *Id.* at 10-11. This Court does not find this argument persuasive because it assumes that the Director made one decision related to the administrative leave policy—one decision that encompasses both the commencement of the paid administrative leave policy and the taking away of the administrative leave policy—and the Court finds this contrary to the facts presented. DOC did not communicate that the implementation of administrative leave was due to or was a result of an emergency situation, DOC did not indicate there would be an end date to the administrative leave policy, the policy

lasted for two years, and DOC ended the policy before the governor declared that the state of emergency was over. (Labor Board Decision at 16; Certified Labor Board R., Joint Ex. 2.) These facts all indicate that the removal of paid administrative leave was a decision distinct from the decision to implement the policy, and, therefore, there is sufficient evidence to support the Labor Board Decision.

Therefore, Labor Board did not violate § 42-56-10 by finding that DOC violated the State Labor Relations Act, and, accordingly, the Court finds that the Labor Board Decision was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, was not arbitrary and capricious, and was not characterized as an abuse of discretion or a clear unwarranted exercise of discretion.

2. Director Powers Under CBA

DOC argues that the Labor Board Decision finding DOC violated §§ 28-7-13(6) and (10) violated the management rights section of the CBA that empowered the Director to act in an emergency situation. (DOC Br. at 11-12.) DOC argues that (1) Article IV of the CBA “recognizes that the right to manage, direct[,] or supervise the operations of the State and the employees’ vests solely in the State ‘including to take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or combination of circumstances which calls for immediate action in a situation which is not expected to be recurring in nature,’” (2) the emergency situation was created when there was a “combination of circumstances that existed at the time when Covid first affected Rhode Island,” (3) this emergency situation was the reason for instituting the paid administrative leave policy, and (4) the combination of circumstances ceased to exist, which meant “the emergency ceased [to exist] and the need for granting administrative leave ended.” *Id.* at 12-14.

Labor Board argues that the unilateral elimination of paid administrative leave was a violation of the management rights prohibition because it was inconsistent with existing language that does not “allow the Employer . . . to make a unilateral change to terms and conditions of employment as it did when it eliminated administrative leave without first notifying [Brotherhood] and bargaining over the proposed change.” (Labor Board Br. at 12.) Brotherhood argues that Article 4.1 of the CBA limits the granting of management rights to those that can be exercised without violating the CBA and does not excuse DOC from abiding by the CBA. (Brotherhood Mem. at 27.)

Article IV – Managerial Rights of the CBA provides:

“4.1 The Brotherhood recognizes that except as limited, abridged, or relinquished by the terms and provisions of this Agreement, the right to manage, direct, or supervise the operations of the State and the employees is vested solely in the State.

“For example, the employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

“A. To direct employees in the performance of official duties;

“B. To hire, promote, transfer, assign, and retain employees in positions within the bargaining unit, and to suspend, demote, discharge or take other disciplinary action against such employees;

“C. To maintain the efficiency of the operations entrusted to it;

“D. To determine the methods, means, and personnel by which such operations are to be conducted;

“E. To relieve employees from duties because of lack of work or for other legitimate reasons;

“F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of recurring nature.” Article IV, CBA. (Certified Labor Board R., Joint Ex. 1.)

Article IV of the CBA gives management rights to manage, direct, and supervise operations, but it does not give management unlimited rights. Article IV makes it clear that management decisions cannot be inconsistent with other rights and cannot violate applicable laws or regulations. *See* CBA Article IV. Article IV language states that DOC has the right to manage operations “except as limited, abridged, or relinquished by the terms and provisions of this Agreement.” *Id.* Article IV also states that DOC has the exclusive right to certain management rights “subject to the provisions of this Agreement and consistent with applicable laws and regulations[.]” *Id.* This language makes it clear that DOC did not have unlimited right to manage operations; instead, DOC must also comply with applicable laws, such as § 28-7-13 and applicable CBA requirements to bargain with Brotherhood on mandatory subjects for bargain.

DOC further argues that administrative leave is “not a term and condition of employment subject to bargaining but rather a management tool,” so DOC “was under no legal obligation to negotiate with [Brotherhood] prior to making the necessary implementation of a procedure to address an unprecedented worldwide pandemic and likewise, when the emergency situation ended and the pandemic became an endemic, there was no need to bargain to return to the status quo.” (DOC Br. at 14, 21.) Labor Board and Brotherhood argue that “[w]hile 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.” (Labor Board Br. at 16; *see also* Brotherhood Mem. at 25.)

Again, Article IV of the CBA gives management rights to manage, direct, and supervise operations, but management rights are subject to applicable laws, like the State Labor Relations Act.

Section 28-7-13(6) provides that it shall be an unfair labor practice for an employer to:

“Refuse to bargain collectively with the representatives of employees, subject to the provisions of §§ 28-7-14 [through] 28-7-19, except that the refusal to bargain collectively with any representative is not, unless a certification with respect to the representative is in effect under §§ 28-7-14 [through] 28-7-19, an unfair labor practice in any case where any other representative, other than a company union, has made a claim that it represents a majority of the employees in a conflicting bargaining unit[.]”
Section 28-7-13(6).

Section 28-7-13(10) provides that it shall be an unfair labor practice for an employer to:

“Do any acts, other than those already enumerated in this section, which interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by § 28-7-12[.]” Section 28-7-13(10).

Section 28-7-12, which lays out the rights of the employees, states in relevant part “[e]mployees shall have the right . . . to bargain collectively through representatives of their own choosing . . .” *See* § 28-7-12.

Labor Board found, based on ample precedent support, that (1) a change to terms and conditions of employment represented a mandatory subject of bargaining, (2) an employer is required to negotiate with employees’ representation over mandatory subjects of bargaining, (3) a change to administrative leave that impacts an employee’s sick leave is a term and condition of employment that is a mandatory bargaining subject, and (4) DOC unilaterally changed the use of administrative leave. *See* Labor Board Decision at 8-9.

In the Labor Board Decision, Labor Board found that “[a]dministrative leave is, in essence, a benefit to employees and is part of the personnel policies created by [DOC] for the operation of the facility,” and “[p]lant rules have long been held to be mandatory subjects of bargaining by the National Labor Relations Board,” so an employer “is generally prohibited from unilaterally implementing or changing [these] rules.” *Id.* at 6. The Rhode Island Supreme Court

has “recognized the persuasive force of federal cases which have construed the phrase ‘terms and conditions of employment.’” *Town of North Kingstown v. International Association of Firefighters, Local 1651 AFL-CIO*, 107 A.3d 304, 312 (R.I. 2015) (internal quotation omitted). Additionally, Labor Board found that “[Brotherhood] sent [DOC’s] Director a letter dated May 27, 2022 requesting bargaining over what was then the proposed unilateral change[,] [and] [a]s the testimony from [DOC] revealed, [DOC] did not respond to [Brotherhood’s] request and did not bargain with [Brotherhood] prior to or after its unilateral elimination of the use of paid administrative leave was implemented.” (Labor Board Decision at 8.) Based on Labor Board’s findings, this Court finds that there was legally competent evidence in the record to support Labor Board’s decision that the removal of paid administrative leave was subject to bargaining, DOC made a unilateral change to a term and condition subject to bargaining, and this unilateral change violated the State Labor Relations Act requiring DOC to bargain collectively with Brotherhood.

Finally, DOC argues that it had authority to “take whatever actions may be necessary” in emergency situations. However, as this Court articulated *supra*, the Court is not persuaded by the argument that the removal of paid administrative leave constituted an emergency situation under Article IV. DOC’s decision to institute the paid administrative leave policy and then its decision to remove the paid administrative leave policy were not one decision; they were two distinct decisions. It is clear the policy to institute paid administrative leave was a management decision responding to an emergency situation, but it is also clear that the decision to remove paid administrative leave was another decision that was not made in response to an emergency situation. Once DOC instituted its paid administrative leave policy, DOC created a benefit for officers and this benefit could not be removed without bargaining with Brotherhood.

Because Labor Board determined, based on the factual record and ample statutory and precedent case law support, that DOC violated §§ 28-7-13(6) and (10) when it engaged in improper unilateral action by removing paid administrative leave without bargaining with Brotherhood, there is legally competent evidence in the record to support Labor Board's Decision.

Accordingly, the Court finds that Labor Board's Decision was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, was not arbitrary and capricious, and was not characterized as an abuse of discretion or a clear unwarranted exercise of discretion.

B. Whether Removal of Paid Administrative Leave Was a Substantial and Material Change

The next issue is whether the removal of the paid administrative leave policy was a substantial and material change. DOC argues that even if this Court finds administrative leave to be a term and condition of employment, "its application did not substantially and materially differ from [S]ection 12.8 of the CBA" and did not need to be negotiated. (DOC Br. at 22.) DOC essentially argues that (1) "[S]ection 12.8 of the CBA had a negotiated clause which addressed paid leave for communicable diseases contracted at work that was similar to how administrative leave was allocated," (2) Section 12.8 functioned in a similar way to how the contested paid administrative leave policy was issued, and (3) an employer is not required to bargain over union requests contained in a current contract, so DOC did not violate §§ 28-7-13(6) and (10). *Id.*

Labor Board argues that "while [DOC] contends that administrative leave and Article 12.8 are, in essence, interchangeable, the reality is, as mentioned above, they are quite

different . . . The two provisions are not simply two sides of the same coin, but are significantly different and were treated that way by [DOC] as demonstrated by its action and conduct in this case.” (Labor Board Br. at 17.) Brotherhood argues that DOC’s position regarding Section 12.8 lacks credibility because DOC never offered Brotherhood special sick credits in 2020, DOC “never offered special sick leave credits to any officer who was ordered not to report to work due to COVID-19,” DOC denied a grievance on the basis of Section 12.8, DOC afforded officers who were quarantined administrative leave and not special sick leave credits, and DOC told officers they would have to use their own sick leave and not special sick leave credits when DOC ended the paid administrative leave policy. (Brotherhood Mem. at 29.)

Section 12.8, in pertinent part, provides:

“Any employee . . . who contracts a communicable disease in the regular course of his employment, shall be granted special sick leave credits not to exceed 120 hours in a calendar year if he is a forty (40) hour employee or 105 hours in a calendar year if he is a thirty-five (35) hour or nonstandard employee. Such sick leave credits shall be available and sick leave granted upon the approval by the Personnel Administrator or the written recommendation of the Appointing Authority. Such recommendation shall be based upon a determination by blood test, other appropriate diagnostic tests, or other approved methods and supported by a statement from a qualified physician that the health of the employee required such sick leave to permit recuperation from exposure to such occupational hazards.”

DOC argues in its Reply Memorandum that the “NLRB has long held that an employer is not obligated to bargain over changes that are minimal and do not have significant, substantial, and material impact on terms and conditions of employment.” DOC Reply at 3; *see W-I Forest Products Company*, 304 NLRB 957, 959 (1991). In *W-I Forest Products Company*, the court found that the policy change—between employees only being allowed to smoke during breaks in designated areas and employees not being allowed to smoke on the employer’s property at any

time—was “clearly . . . a substantial and material change for those who smoked.” *W-I Forest Products Company*, 304 NLRB at 959. This Court also finds that Labor Board was clear in determining that Section 12.8 of the CBA and the paid administrative leave differed significantly, and removal of the paid administrative policy was a substantial and material change because going from not being required to use personal sick time to being required to use personal sick time is clearly a substantial and material change for officers.

Labor Board made this determination based on legally competent evidence in the record. Labor Board found that DOC did not attempt to use Section 12.8 to address sick time at the start of COVID-19 or anytime while the paid administrative leave policy was in place. *See* Labor Board Decision at 14. Labor Board found that Section 12.8 and the paid administrative policy differed in conditions of its use, including that Section 12.8 had restrictions on the amount of sick time available and conditions for how the sick time would be granted. *Id.* at 15. Additionally, Labor Board found that DOC did not tell officers that Section 12.8 could be used once DOC eliminated paid administrative leave but instead told officers that they must use their sick time. *Id.*; Certified Labor Board R., Joint Ex. 4. Based on these findings, Labor Board found that the two policies were significantly different in how they were used and treated, and these distinctions constituted material differences in the paid administrative leave policy and Section 12.8. (Labor Board Decision at 14.)

In the presence of competent evidence to support Labor Board’s reasoning, this Court may not overturn Labor Board’s Decision. Accordingly, the Court finds that Labor Board’s Decision was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, was not arbitrary and capricious, and was not characterized as an abuse of discretion or a clear unwarranted exercise of discretion.

IV

Conclusion

For all of the foregoing reasons, DOC's appeal is DENIED and Labor Board's Decision is AFFIRMED. In light of this, DOC is not entitled to any relief requested in their Complaint. Counsel shall submit the appropriate order and judgment for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: State of Rhode Island, Department of Corrections v.
Rhode Island State Labor Relations Board and Rhode
Island Brotherhood of Correctional Officers

CASE NO: PC-2024-01030

COURT: Providence County Superior Court

DATE DECISION FILED: December 11, 2024

JUSTICE/MAGISTRATE: Carnes, J.

ATTORNEYS:

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