STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: July 31, 2013)

JOSEPH ALTONGY	:	
	:	
V.	:	**C.A. No. PC 13-2526**
	:	
THE CITY OF PAWTUCKET, by and through its Treasurer/Finance Director, JOANNA L'HEUREUX	:	

DECISION

PROCACCINI, J. Plaintiff Joseph Altongy (Altongy) brings before this Court a request for declaratory judgment. Altongy asks this Court to declare that section 63-8 of the Pawtucket Code of Ordinances (the Ordinances) governs his request for placement on a disability pension and, by § 63-8's application, Defendant the City of Pawtucket (the City) must place him on the disability retirement list. The City objects to Altongy's request for declaratory judgment and believes this matter is governed by §§ 59-24 and 59-25 of the Ordinances and Article XII, Section 6 of the collective bargaining agreement between the City and the Pawtucket Lodge No. 4 Fraternal Order of Police (the CBA). Jurisdiction is pursuant to G.L. 1956 § 9-30-1.

I

Facts and Travel

The facts in this case are largely undisputed, as evidenced by the Agreed Statement of Facts submitted by the parties. Altongy joined the Pawtucket Police Department (the Pawtucket PD) on June 28, 2002. (Agreed Statement of Facts ¶ 3). Since Altongy's induction into the Pawtucket PD, he served in the Patrol Bureau and

currently holds the rank of patrolman. Id. at 4-5. As a patrolman, Altongy's duties were "patrolling the streets of Pawtucket, making car stops, responding to calls for police assistance, and making arrests." Id. at 6. "On or about December 20, 2010, Altongy began to experience pain in both of his hands." Id. at 7. He left work on January 18, 2011 because of the wrist pain. Id. at 8. The Pawtucket PD's records state Altongy was carried "sick" on January 18, 19, and 20, 2011, and was only considered injured on duty (IOD) as of January 23, 2011.[1] Id. However, Altongy claims he missed work on January 18, 19, and 20, 2011 because of his work-related injuries. Id. Additionally, the Initial Injury Report Altongy's supervisor prepared indicates "lost time began" on January 18, 2011.[2] Id. The Initial Injury Report filed on January 19, 2011 included an Incident Report that stated Altongy's injury was carpal tunnel syndrome. Id. at 8A.

On January 24, 2011, Dr. Adib Mechrefe examined Altongy and opined that Altongy's injuries were work related.[3] Id. at 9. Following CBA protocol, the City had Dr. Steven McCloy examine Altongy on February 17, 2011, and he conversely determined Altongy's injuries were not work related. Id. at 10-11. If, as in this case, the two physicians disagree, Art. XII, § 1 and Art. XII, § 5 of the CBA set forth guidelines

[1] Carried sick is being out on a temporary sick leave. However, IOD is a classification for an officer who is physically unable to work.

[2] The parties agreed that the Court need not make a determination of when IOD began, since over eighteen months and sixty days, which is the amount of time at issue under § 63-8 of the Ordinances, has expired, no matter what start date is used. This date only gains significance if Altongy prevails on the merits and the parties are unable to resolve the damage aspect of the case. (Agreed Statement of Facts ¶ 25).

[3] Dr. Mechrefe is inaccurately referred to as Dr. Adid Mechrefe in the Agreed Statement of Facts. (Agreed Statement of Facts ¶ 9). However, the January 24, 2011 report contains a reference to both Dr. Adib Mechrefe and Dr. Anthony Mechrefe. (Joint Ex. 4 – Dr. Adib Mechrefe's Jan. 24, 2011 Report 1, 3). Due to the lack of clarity in the Agreed Statement of Facts, when referencing the January 24, 2011 report on Altongy's injuries, the Court will use the name listed in the section entitled "Physician's Name"—Dr. Adib Mechrefe. Id. at 1.

for selecting a Medical Arbitration Physician (MAP). Pursuant to Art. XII, § 5 of the CBA, Altongy was sent to Dr. Randall Updegrove, the MAP, who concluded that Altongy's injuries were work related, thereby allowing Altongy to continue his stay on IOD, following Art. XII, § 2(d) of the CBA. Id. at 12-13.

Altongy had surgery on his right wrist on or about May 5, 2011, and on his left wrist on June 16, 2011. Id. at 14-15. He returned to work in a "Light Duty Status" on October 3, 2011, and remained "Light Duty Status" through September 8, 2012.[4] Id. at 16 and 19. While Altongy worked light duty he never performed any normal police functions of a Patrol Bureau patrolman. Id. at 21. He "never wore a uniform, did not have his badge and was not permitted to carry a gun." Id. On or about September 8, 2012, Altongy was advised by his physician, Dr. Anthony Mechrefe, that his condition was "chronic" and he could not return to his regular duties.[5] Id. at 22. In accordance with Dr. Anthony Mechrefe's guidance, Altongy applied for a disability pension on September 13, 2012. Id. at 23. On October 24, 2012, Altongy received a letter from Chief Paul King (Chief King) of the Pawtucket PD stating that Altongy had an appointment with Dr. Steven Graff (Dr. Graff). Id. at 27. On November 13, 2012, Dr. Graff examined Altongy and opined that there was "no work-related reason for [Altongy]

[4] "Light Duty Status" is defined as clerical work, front office work, or work in the Control Center. (Joint Ex. 2 – CBA Art. XII, § 3(b)).

[5] The September 24, 2012 letter reiterating the diagnosis that Altongy's condition was "chronic" is signed by Dr. Anthony Mechrefe. (Joint Ex. 5 – Dr. Anthony Mechrefe's Sept. 24, 2012 Letter 1). Therefore, the Court will use the name Dr. Anthony Mechrefe in reference to the September 2012 diagnosis regarding the permanence of Altongy's condition. The Court wishes to note that the Agreed Statement of Facts, in addition to referencing a clearly inaccurate first name for Dr. Mechrefe, then proceeds to refer to him only as Dr. Mechrefe, therefore adding to the lack of clarity. (Agreed Statement of Facts ¶¶ 9, 11, 12, 22, 23, 29, 41). Moreover, it seems to the Court, upon review of the exhibits, that Altongy saw both Dr. Adib Mechrefe and Dr. Anthony Mechrefe, making the inaccuracy in the Agreed Statement of Facts all the more striking.

not to be able to perform his full duties as a police officer." (Joint Ex. 7 – Dr. Graff's Report 5). After Dr. Graff rendered his opinion, he and Dr. Anthony Mechrefe decided that Dr. Edward Akelman (Dr. Akelman) would serve as the MAP, pursuant to Art. XII, § 5 of the CBA. (Agreed Statement of Facts ¶ 29). On January 23, 2013, Dr. Akelman examined Altongy and stated Altongy could perform police work without fear of injury, although Dr. Akelman added "he should be trialed on a shooting range to see whether he can shoot a gun or not." (Joint Ex. 8 – Dr. Akelman's Report 2).

On January 29, 2013, Chief King ordered Altongy back to full duty as of February 4, 2013. (Agreed Statement of Facts ¶ 31). On February 1, 2013, Beacon Mutual Insurance (Beacon), on behalf of the City, wrote to Dr. Akelman for clarification of Altongy's January 23, 2013 examination report. Id. at 32. On February 4, 2013, Dr. Akelman replied to Beacon indicating that "the determining factor whether he could return to the Police force would be if he passes his firearms test, I believe." [6] (Joint Ex. 11 – Dr. Akelman Letter). Pursuant to Chief King's order, Altongy reported to Lieutenant Cory Jackson at the Pawtucket PD's Planning and Training Office on February 4, 2013 at 8:00 a.m. "to begin the process of preparing for return to full duty." (Agreed Statement of Facts ¶ 34; Joint Ex. 9 – Chief King Letter). Altongy reported to the Pawtucket PD on February 4 and 5, 2013 where he reviewed training tapes and other training material. (Agreed Statement of Facts ¶ 35). He did not perform any functions of a Patrol Bureau patrolman. Id. "On February 6, 2013, Altongy reported to the firing

[6] There seems to be a clear misunderstanding between Dr. Akelman and the Pawtucket PD regarding his report's meaning. There also appears to be a lack of definitiveness in what would actually be determinative of Altongy's ability to resume his duties as a patrolman. The Pawtucket PD believed that he was qualified to work regardless of the firearms test. However, Altongy believed his ability to work hinged on the firearms test's success, based on Dr. Akelman's recommendation.

range for his firearm testing." Id. at 36. During the firearms test, which consisted of loading, holstering, unholstering, and firing his gun, Altongy complained of finger numbness and pain generating up his right arm, which Altongy would have testified were symptoms of his carpal tunnel syndrome. Id. at 37. While drawing his gun during the firearms test, Altongy dropped his gun, which he would have testified was because of finger numbness. Id. at 38. After this mishap, Altongy was taken to the Memorial Hospital in Pawtucket by his supervisors and diagnosed, again, with carpal tunnel syndrome. Id. at 39. Altongy was next taken to the Pawtucket PD, where he filed an Initial Injury Report, in which he stated the reason for dropping his weapon during the test was numbness and pain in his hand. Id. at 40.

After the firearms test, Beacon, on behalf of the City, asked Dr. Anthony Mechrefe whether or not Altongy could work light duty, and Dr. Anthony Mechrefe responded that he believed Altongy was fit for light duty. Id. at 41. "Altongy was ordered back to work on March 13, 2013 and was once again assigned to a light duty position." Id. at 42. Midway through his shift on March 13, 2013, Altongy experienced wrist pain and asked a commanding officer if he could go home and take his pain medication (Vicodin). Id. at 43. After his consumption of pain medication, Altongy never returned to complete his shift. Id. Altongy began using accumulated sick time on March 13, 2013, and plans to use his sick time until it expires on August 18, 2013. Altongy v. City of Pawtucket, No. 13-2526, June 12, 2013 (Order) ¶ 6, Procaccini, J. He has not returned to work at the Pawtucket PD, even in a light duty status since March 13, 2013. Id. at 44. Altongy maintains his injury is chronic, and therefore, he is entitled to a

disability pension. The City disagrees, arguing Altongy did not have sufficient medical support to warrant placement on the disability retirement list.

The parties attempt to reconcile this dispute using §§ 63-8, 59-24 and 59-25 of the Ordinances. Altongy contends that § 63-8 mandates that an officer who is incapacitated by injuries or sickness contracted during the course of his or her work and is unable to perform his or her duties for twenty consecutive months must be placed on the retirement list.[7] However, the City uses §§ 59-24 and 59-25 to support its position that a police officer can only receive disability benefits when he or she is determined permanently disabled by three physicians: a City physician, a physician employed by the officer and a third physician selected by the other two physicians. The City argues that, based on their interpretation of the Ordinances, Altongy has not fulfilled the criteria necessary for placement on the disability retirement list because the MAP determined Altongy's health would not hinder him from performing his duties as a patrolman. Currently, the City has not placed Altongy on the disability retirement list. Therefore, Altongy is seeking a declaratory judgment from this Court declaring that § 63-8 of the Ordinances controls and, consequently, that the City must place him on the disability retirement list.

II

Standard of Review

Under the Uniform Declaratory Judgments Act (the Act), this Court "shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Sec. 9-30-1. The Act's stated purpose is "to settle and to afford

[7] The Ordinance states that an officer must be disabled for eighteen months and sixty days; however, both parties' memoranda referred to this as twenty months. Therefore, for simplicity and conformity, the Court will refer to the time period as twenty months throughout this Decision.

relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Sec. 9-30-12; see also Capital Props., Inc. v. State, 749 A.2d 1069, 1080 (R.I. 1999) (stating that the purpose of the Act is '"to facilitate the termination of controversies'") (quoting Fireman's Fund Ins. Co. v. E.W. Burman, Inc., 120 R.I. 841, 845, 391 A.2d 99, 101 (1978)). A declaratory judgment is issued without a jury; therefore, the judge must serve as the fact finder. Fleet National Bank v. 175 Post Road LLC., 851 A.2d 267, 273 (R.I. 2004). Under the Act, a decision to grant a remedy is purely discretionary. Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket Sch. Comm., 694 A.2d 727, 729 (R.I. 1997). An actual justiciable controversy is necessary for a court to exercise its discretion under the Act. See Providence Teachers Union v. Napolitano, 690 A.2d 855, 856 (R.I. 1997).

III

Analysis

A

Ordinance Scheme

Altongy asks this Court to issue a declaratory judgment endorsing his interpretation of § 63-8 of the Ordinances, which states:

> "Any of the personnel of the Police or Fire Divisions who shall in the future remain away from their regular employment as a firefighter or police officer for a period of 18 months due to becoming wholly or partially incapacitated by reason of injuries incurred or sickness contracted during the performance of their duties shall, at the expiration of the 18 months, return to duty within 60 days thereafter or shall be deemed physically unfit for duty and therefore unable to return to his or her respective regular duties as a police officer or firefighter. Such person or persons who shall not return within the 60 days of the aforesaid shall immediately be placed upon a retirement list

> and shall receive the regular retirement pay based upon his or her wages and other factors, just as if said person had completed all of the other requirements set forth in the ordinances governing retirement of personnel of the Police and Fire Divisions of the City of Pawtucket."

Altongy asserts that § 63-8 encompasses a situation, like his own, where, during the course of employment, a police officer is injured and after twenty months IOD still remains unable to return to his or her regular duties. In such a situation, Altongy maintains that § 63-8 requires the officer to be automatically placed on the disability retirement list. Thus, Altongy contends after twenty months away from regular employment he should have been automatically placed on the disability retirement list. The City counters § 63-8's applicability by maintaining that §§ 59-24 and 59-25 of the Ordinances apply.

The City reads §§ 59-24 and 59-25 to require that, in all circumstances in which a police officer sustains an occupational injury, the officer must have a physician confirm the injury's totality and permanence in accordance with § 59-25(A) before removal to the disability pension list under § 59-24(C). Section 59-24(C) of the Ordinances states:

> "Any member who becomes totally and permanently disabled after the date of the passage of this article as a result of an injury or illness suffered in the performance of the member's duties shall receive a benefit equal to 66 2/3% of the member's pay at the time of his or her total and permanent disability . . ."

Section 59-25(A) establishes the guidelines for determining an officer's inability to work:

> "The determination of the disability from any cause shall be made upon the basis of reports on examination made by three physicians consisting of a City physician, a physician employed by the member and a third physician selected by the other two. Each physician shall be required to state

> whether the disability is occupational or nonoccupational in nature."

The City uses § 59-25(B)'s language to support its contention that a determination by § 59-25(A) is required to qualify for a disability pension under § 59-24(C). Section 59-25(B) states:

> "A member on disability may be required to submit to an examination at least once each year by a physician or physicians appointed by the Personnel Board of the City of Pawtucket to establish that the member is totally and permanently incapacitated for normal service as a police officer or firefighter and is entitled to continue to receive disability payments. If such physician or physicians determine that the member is no longer totally and permanently incapacitated for his or her normal service, the member shall have the right to request examination by an impartial physician who shall be selected by the City's physician and the member's physician. If said impartial physician determines that the member is no longer totally and permanently incapacitated for normal service as a police officer or firefighter, the Personnel Board may cancel such member's disability payments. . . ."

The City contends that § 59-25(B) provides a commonsensical understanding of the physician examination: because this section mandates a physician screening to remain on the pension list, it follows logically that an examination is needed under § 59-25(A) to gain acceptance to the disability retirement list.

Altongy reconciles §§ 63-8, 59-24, and 59-25 by arguing that the Ordinances govern different situations. Altongy believes officers seeking a disability retirement pension who have been IOD for over twenty months should automatically be awarded the pension under § 63-8, whereas §§ 59-24 and 59-25 deal with officers who have been IOD less than twenty months. He contends that § 63-8 was enacted to prevent police officers from remaining on IOD open-endedly, while also giving police officers reasonable

recovery time. Altongy believes that §§ 59-24 and 59-25 of the Ordinances apply to two different scenarios. The first allows an officer who believes he or she is completely and totally disabled, and whose belief is confirmed by physicians' decisions under § 59-25(A), to apply for a disability pension before the twenty months § 63-8 proscribes. The second involves an officer who came back from IOD only to realize he or she could not perform his or her duties and therefore wanted to apply for disability retirement without the twenty consecutive months § 63-8 requires. Altongy further construes Art. XVIII, § 6 of the CBA to apply when the City, on an officer's behalf, discretionarily seeks the disability pension under § 59-24(C), thereby allowing the City to bypass § 63-8 and its twenty month IOD requirement. This situation is likely to occur when it is clear from the outset that an officer's injuries are chronic.

The City reconciles §§ 63-8, 59-24, and 59-25 of the Ordinances by arguing that in all cases, even those which meet the requirements of § 63-8, a determination of complete and total disability based on § 59-25(A) is necessary. The City and Altongy agree that Art. XVIII, § 6 of the CBA allows the City to implement the physician review discretionarily, prior to the twenty months set forth in § 63-8. The City contends the Ordinances create an overarching scheme which allows the City discretion in determining the timetable for an officer's acceptance to the disability retirement list, but that a physician review is always necessary before being placed on that list.

B

Reconciling the Ordinances

The issue before this Court is how §§ 63-8, 59-24 and 59-25 of the Ordinances should be interpreted, given our Supreme Court's precedent on statutory reconciliation.

Specifically, this Court was presented with an Agreed Statement of Facts and asked to issue a declaratory judgment determining how §§ 63-8, 59-24, and 59-25 apply to an officer in Altongy's particular situation.[8]

This Court finds, given the facts presented, the memoranda submitted, and our Supreme Court precedent, that § 63-8 of the Ordinances applies to Altongy's particular circumstances. This Court reads § 63-8 to establish that when an officer of the Pawtucket PD is "wholly or partially incapacitated by reason of injuries incurred or sickness contracted during the performance of [his or her] duties" and is unable to return to work in his or her previous capacity for twenty months, then he or she must be placed on the disability retirement list. Altongy was properly determined to be IOD in accordance with the CBA's terms. Therefore, after twenty consecutive months of being unable to perform his prior duties, Altongy must be placed on the disability retirement list.

To begin, the Court notes that "[w]hen interpreting an ordinance, we employ the same rules of construction that we apply when interpreting statutes." Ruggerio v. City of Providence, 893 A.2d 235, 237 (R.I. 2006). When faced with a problem of interpreting two seemingly inconsistent statutes, the Court must attempt to harmonize them consistent

[8] The City raises the issue of whether Altongy is entitled to injunctive relief in its memorandum. However, by agreement of the parties and order of this Court, the only issue presented to the Court for decision is the merits of the case in the form of a declaratory judgment and, thus, it is not necessary at this time for the Court to address the issue of injunctive relief. See Altongy v. City of Pawtucket, No. 13-2526, June 12, 2013 (Order) ¶¶ 1, 8, Procaccini, J. The City also raises the issue of whether this case should be submitted to arbitration under the terms of the CBA, despite the fact that the issue between the parties revolves around the interpretation of the Ordinances, not any terms of the CBA. Altongy has not contended that any sections of the CBA have been violated nor asked this Court to address the CBA in any way. Moreover, in the City's brief discussion of the question of arbitrability, it only cites to the entire article in the CBA governing grievance and arbitration procedures—it does not cite to any specific sections of the CBA which are at issue in this case. Thus, this case is properly before this Court to determine the applicability and correct interpretation of the Ordinances at issue.

with their general scope. See Montaquila v. St. Cyr, 433 A.2d 206, 214 (R.I. 1981) ("[The] practice [is to] constru[e] and apply[ ] … apparently inconsistent statutory provisions in such a manner so as to avoid the inconsistency."); see also State v. Dearmas, 841 A.2d 659, 666 (R.I. 2004); Blanchette v. Stone, 591 A.2d 785, 786 (R.I. 1991); State v. Bradshaw, 101 R.I. 233, 242, 221 A.2d 815, 820 (1966). "This rule of construction applies even though the statutes in question [may] contain no reference to each other and are passed at different times." State v. Ahmadjian, 438 A.2d 1070, 1081 (R.I. 1981). The Pawtucket City Council passed § 63-8 on March 6, 1973, and §§ 59-24 and 59-25 were enacted on June 29, 1973. The Pawtucket City Council did not repeal § 63-8 expressly or by implication when passing §§ 59-24 and 59-25. Thus, the Court must attempt to harmonize them.[9]

Statutes or ordinances which are related to the same subject matter, as in this case, are considered in pari materia. See Dearmas, 841 A.2d at 667-668. The Court begins its attempt to harmonize these Ordinances by noting—because they are determined to be in pari materia—that they "may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject." Black's Law Dictionary 862 (9th ed. 2009). The Court's goal when interpreting conflicting ordinances should be to leave both ordinances operative. See Providence Electric Co., Inc. v.

[9] Though the issue was not raised by the parties, this Court notes that there was no repeal by implication in this case. Repeals by implication are extremely rare and the American legal system disfavors their use. Only when statutes are irreconcilably repugnant will the last-enacted statute be preferred. State v. Souza, 456 A.2d 775, 781 (R.I. 1983). "When the repealing effect of a statute is doubtful, the statute will be strictly construed to effectuate its consistent operation with previous legislation." Berthiaume v. Sch. Comm. of the City of Woonsocket, 121 R.I. 243, 248-49, 397 A.2d 889, 893 (1979); see also Providence Electric Co., Inc. v. Donatelli Building Co., Inc., 116 R.I. 340, 344, 356 A.2d 483, 486 (1976); 1 Norman J. Singer, Sutherland Statutory Construction § 23:10 at 477-78 (2009). This Court does not find the Ordinances to be irreconcilably repugnant.

Donatelli Building Co., Inc., 116 R.I. 340, 344, 356 A.2d 483, 486 (1976). This is especially true given that the Pawtucket City Council intended all three Ordinance sections to coexist, which is clear from their enactment within a short period of time of each other. See Landers v. Reynolds, 92 R.I. 403, 407, 169 A.2d 367, 369 (1961) ("[T]he underlying purpose of [this] court is to determine the intention of the legislature in passing the statute."); see also Providence Journal Co. v. Rodgers, 711 A.2d 1131, 1134 (R.I. 1998) (holding that a Legislature is presumed to know the state of the law when it enacts or amends a statute). When reconciling statutes or interpreting statutory provisions, the Rhode Island Supreme Court directs this Court to literally construe a clear and unambiguous statute. See Martone v. Johnston Sch. Comm., 824 A.2d 426, 431 (R.I. 2003); see also State v. Santos, 870 A.2d 1029, 1032 (R.I. 2005); State v. Grayhurst, 852 A.2d 491, 516 (R.I. 2004). Literally interpreting a clear and unambiguous statute requires the Court to give the statute's words their plain and ordinary meanings. See Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996); see also Marran v. Baird, 635 A.2d 1174, 1180 (R.I. 1994); O'Neil v. Code Comm'n for Occupational Safety and Health, 534 A.2d 606, 608 (R.I. 1987).

Although §§ 63-8, 59-24, and 59-25 all pertain to disability pensions, § 63-8 is not ambiguous on its face.[10] Section 63-8 states that, after twenty months of being

[10] In Marran, a case involving statutory interpretation, our Supreme Court held that the language of § 45-9-3 of the Rhode Island General Laws was clear and unambiguous. 635 A.2d at 1180. One portion of § 45-9-3 stated that power was vested in "'the director of the state department of administration[ ] . . . [ ]to appoint a budget and review commission in any town or city where the director . . . finds that the town or city's bond rating has been assigned by one or more recognized rating agencies to a rating which is below investment grade and [that] there is an imminent threat of default on any or all of its debt obligations.'" Id. (quoting § 45-9-3). The language of § 63-8 is equally clear and unambiguous.

physically unable to perform his or her duties, an officer "shall be deemed physically unfit for duty and therefore unable to return to his or her respective regular duties as a police officer or firefighter." (Emphasis added.) The officer "shall immediately be placed upon a retirement list and shall receive the regular retirement pay based upon his or her wages and other factors, just as if said person had completed all of the other requirements set forth in the ordinances governing retirement of personnel of the Police and Fire Divisions of the City of Pawtucket." The Ordinances § 63-8 (emphasis added). The Ordinance unambiguously states that after twenty months on IOD, an officer is deemed physically unfit for duty and shall be placed on the disability retirement list. The language's clarity constrains the Court to read it plainly. See Accent Store Design, Inc., 674 A.2d at 1226.

Unless contextually necessary, our Supreme Court has held that "shall" connotes an imperative. Nielson v. C & N, Inc., 685 A.2d 282, 282 (R.I. 1996); see also Gross v. State, Div. of Taxation, 659 A.2d 670, 671 (R.I. 1995) (stating that compliance with the statute at issue was mandatory because of the Legislature's repeated use of "shall"); Quality Court Condo. Ass'n v. Quality Hill Dev. Corp., 641 A.2d 746, 751 (R.I. 1994) (stating that the general rule of statutory construction is that "may" indicates a discretionary provision and "shall" indicates a mandatory provision); 3 Norman J. Singer, Sutherland Statutory Construction § 57:2 at 8-9 (2008) ("'Shall' is considered presumptively mandatory unless there is something in the context or the character of the legislation which requires it to be looked at differently."). Moreover, the definition of "shall" states that it is used to express a command. Merriam-Webster's Dictionary and Thesaurus (2006). Consequently, the plain meaning of the word "shall" in § 63-8 is that

it operates as a mandatory command—an officer must be placed on the disability retirement list after being IOD for twenty months. See 1A Norman J. Singer, Sutherland Statutory Construction § 32A:11 at 880 (2009) ("The use of the word as a command is now firmly fixed . . . in legal phraseology."). The language contained in § 63-8 and §§ 59-24 and 59-25 gives this Court no reason to believe "shall" was intended by the Pawtucket City Council to be given anything but its plain and ordinary meaning. The City Council chose the word "shall" rather than "may," illustrating an intent that § 63-8 be mandatory. See Landers, 92 R.I. at 407, 169 A.2d at 369 ("[T]he underlying purpose of [this] court is to determine the intention of the legislature in passing the statute.") This conclusion is further supported by the word "immediately" in § 63-8 which suggests that the action must be taken as soon as the twenty month time period has expired. Therefore, § 63-8 must be interpreted as Altongy suggests—an officer who has been on IOD for twenty consecutive months must be immediately and automatically placed on the disability retirement list at the expiration of the twenty months.

The City contends that §§ 59-24 and 59-25 of the Ordinances requires that two of three physicians find Altongy disabled prior to placement on the disability retirement list, regardless of time previously spent IOD. The Court, however, holds that §§ 59-24 and 59-25 do not apply to situations like Altongy's. The Court concludes that §§ 59-24 and 59-25 apply, rather, to a situation where an officer is so seriously injured that it becomes evident that regardless of time spent IOD, the officer will not be able to return to his or her prior duties. In addition, the Court determines that §§ 59-24 and 59-25 apply when an officer returns to full duty before the twenty month window expires only to find the injury prohibits his or her ability to complete prior duties. To hold otherwise would

require this Court to disregard the plain language of § 63-8, which clearly requires an automatic placement on the disability retirement list after twenty months of IOD status.

This Court deems it important to also note that Altongy's continued doctor's visits after his application for a disability pension and the attempted weapon firing test are not deemed a revocation of his previously filed retirement application, nor will the Court infer that these activities established a personal belief of his own physical ability to resume a full duty classification. Specifically, this Court references the November 13, 2012 examination by Dr. Graff, the January 23, 2013 examination by Dr. Akelman, the February 6, 2013 firing arms test, and Altongy's brief return to light duty on March 13, 2013. Rather, this Court holds that Altongy was merely following a superior's orders and his subordination does not negatively affect his request for declaratory judgment. Moreover, as discussed above, once Altongy passed the twenty month mark and requested a disability pension in September 2012, he should have automatically been placed on the list under § 63-8.

This Court finds that its interpretation of these Ordinance sections is supported by well-established rules of construction as well as by logic and common sense.[11] The Court takes the position that Ordinance § 63-8 provides officers a twenty month window to

[11] See Kaya v. Partington, 681 A.2d 256, 267-68 (R.I. 1996) ("The reason to be on guard is that when legislative silence is confronted, the temptation is omnipresent for judges to label any interpretation of that silence that embodies policies with which they disagree as 'absurd' or 'creat[ing] a result not intended by the Legislature[.]'"); see also Oliver Wendell Holmes, The Theory of Legal Interpretation, 12 Harv. L. Rev. 417, 419 (1899) ("We do not inquire what the legislature meant; we ask only what the statute means."). "In the memorable words of Justice William O. Douglas: 'That seems to us to be the common sense of the matter; and common sense often makes good law.'" State v. Bergevine, 883 A.2d 1158, 1159 (R.I. 2005) (quoting Peak v. U.S., 353 U.S. 43, 46 (1957)).

recover from their ailments and to make a thoughtful decision regarding whether they can return to their prior duties. This interpretation of § 63-8 is the most logical because the officer is given a finite period to recover, yet not given an unlimited entitlement to IOD status. See State v. Beaulieu, 110 R.I. 113, 121, 290 A.2d 850, 854 (1972) (stating that the common sense of the community clarifies a statute's application). Since IOD officers collect 100% of their salary directly from the City's budget, § 63-8 affords the City more control over finances and personnel management within its police department. Without the twenty month time frame set forth by § 63-8, an officer could conceivably stay IOD indefinitely and cost the City significant financial and administrative hardship. See Turner v. Safely, 482 U.S. 78, 98 (1987) (looking to common sense in determining if an ordinance is related to an appropriate state objective).

In deciding that §§ 63-8, 59-24, and 59-25 of the Ordinances apply to different situations and work in tandem to settle disability retirement controversies, this Court has endeavored to keep all sections operative and limit inconsistencies in future interpretation. See Kells v. Town of Lincoln, 874 A.2d 204, 212 (R.I. 2005) (construing and applying inconsistent statutory provisions so as to avoid inconsistencies). If the Court was to apply the City's interpretation of §§ 63-8, 59-24, and 59-25, there could seemingly be no situation in which § 63-8 could be given its plain meaning. Section 59-24 would trump in every situation, rendering § 63-8 inoperative and meaningless. See Providence Electric Co., Inc., 116 R.I. at 344-45, 356 A.2d at 486 (construing conflicting ordinances to leave both operative). Additionally, § 59-25(B), which requires yearly reassessment by a physician to stay on the disability pension list, clearly provides a check to any concern which might arise from having an officer with twenty consecutive months

on IOD automatically placed on the list. Moreover, the Pawtucket City Council clearly intended these Ordinances to be necessary in governing disability retirement disputes, given that less than four months passed between the enactments. Ahmadjian, 438 A.2d at 1081 (illustrating how to analyze statutes passed at different times). Therefore, each section must serve some purpose in the City's disability retirement scheme. Thus, the Court's conclusion conforms with precedent and allows all three Ordinances to retain their plain meanings and remain operative, harmonized laws governing officer disability.

IV

Conclusion

This Court grants a declaratory judgment in favor of Altongy and concludes that Ordinance § 63-8 applies to Altongy and to officers similarly situated. The Court finds, specifically, that § 63-8 requires an officer who is IOD for twenty months to immediately be placed on the disability retirement list without being required to have three physicians determine he or she is totally and permanently disabled under § 59-25(A). An officer who is placed on the disability retirement list is still subject to § 59-25(B)'s periodic examinations to maintain the appropriateness of their classification. Thus, the Court does not determine that §§ 59-24 and 59-25 of the Ordinances are inoperative, only that they apply to situations which differ factually from the situation presented before this Court. Counsel will submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Altongy v. The City of Pawtucket**
CASE NO:	**PC 13-2526**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 31, 2013**
JUSTICE/MAGISTRATE:	**Procaccini, J.**
ATTORNEYS:	
For Plaintiff:	**Joseph F. Penza, Jr., Esq.**
For Defendant:	**Frank J. Milos, Esq.**