In the matter of

STATE OF CONNECTICUT
DEPARTMENT OF CORRECTIONS

-and-

LOCAL 387 OF COUNCIL #4,
AFSCME, AFL-CIO

Case No. SPP-10,646

A P P E A R A N C E S :
John Nord, Labor Relations Specialist
for the State of Connecticut

Barbara J. Collins, Attorney
for the Union

DECISION

and

DISMISSAL OF COMPLAINT

Statement of the Case

On May 20, 1987, Local 387 of Council #4, AFSCME, AFL-CIO (Union) filed with the Connecticut State Board of Labor Relations (Board) a complaint alleging that the Connecticut State Department of Corrections (State) had engaged and is engaging in prohibited practices within the meaning of Section 5-272 of the Act Concerning Collective Bargaining for State Employees (Act) in that:

The Employer is in violation of Section 5-271 and 5-272(c) in that on or about 3-26-85, the employer unilaterally changed, without Union consent or benefit of collective bargaining, conditions of employment, affecting employees at CCC-Cheshire.

Specifically, as a practice, employees were provided the benefit of paid change-up time after the beginning of the work day. The Employer has chosen to eliminate that practice.

After the requisite administrative steps had been duly taken the matter came for hearing before the Board at the Labor Department in Wethersfield on April 19, 1988. At that hearing, the complaint was amended to include the charge that there was a unilateral change in paid change-up time at the end of each workday as well the beginning of each work day. Both parties were given opportunity to produce evidence, make oral argument and file briefs. Both parties have filed briefs.
Based on the whole record before it, the Board makes the following findings of fact, conclusions of law, and order of dismissal.

Findings of Fact

1. The State of Connecticut, Department of Corrections, is an employer under the Act.

2. The Union is an employee organization within the meaning of the Act and has at all material times been the exclusive statutory bargaining representative of the correction officers, including maintenance personnel, at Cheshire Correctional Facility (26-A).

3. Robert French was appointed to the position of Plant Facility Engineer at Cheshire in October of 1982 and held that position until June of 1986. In that position he was responsible for supervision of the maintenance staff which numbered approximately 15 at the time of this hearing. When he first arrived at Cheshire he noticed that Mr. Silvestri, a maintenance employee and Union steward, was reporting to work without a uniform and questioned him about it. Silvestri responded that he had change-up time. French then discussed this problem with Warden Bruce Goldson who told him that there was no change-up time. French then discussed this problem with Warden Bruce Goldson who told him that there was no change-up time policy, and French informed Silvestri of this.

4. On October 5, 1982, after his conversation with French, Deputy Warden Bruce Goldson issued a directive ordering all maintenance personnel to report to work wearing the uniforms that had been issued to them, warning them that the directive would be strictly enforced. (Exhibit 5).

5. Despite this directive, the record reveals that Silvestri intermittently reported to work in his civilian clothes. In addition, another maintenance employee, Mr. Napierksi, would occasionally come to work in civilian clothes. On these occasions French would discuss the necessity of conforming to the uniform policy with the violating employees. However, the evidence fails to reveal that either Silvestri or any other employee at any time was reprimanded or disciplined for his continual failure to report to work wearing his uniform.

6. On March 26, 1985, Victor Liburdi, the Warden at Cheshire, issued the following interdepartment message:

   Employees in operations which are not continuous, work five (5) seven hour and fifteen (15) minute days. All employees in this category shall report to work at 8:15 AM in full uniform (if applicable) in the established area, i.e. (dining hall to pick up inmates, shop area, industries area.) No employee will be authorized to leave institution at the end of work day before 3:30 PM, without authorization by a supervisor. (emphasis added) (Exhibit 2)

7. The above-referenced memo was issued after Liburdi noticed Silvestri come into the cafeteria in his civilian clothes.
8. On April 16, 1985 the Union, in response to the directive, filed a grievance alleging that the prohibition against change-up time violates a past practice. On January 7, 1986, in the step three response, the State denied the Union's grievance on the grounds that there was no contractual provision dealing with past practices and therefore the matter was not grievable. (Exhibit 6).

9. Sometime in March 1985, during collective bargaining for a successor agreement, the Union submitted a proposal for a "Prior Practice" article which is outlined below:

"Any rights, privileges, benefits and work practices existing prior to the date of this Agreement and which are not specifically provided for or superseded by a provision of this Agreement shall remain in effect."

(Exhibit 9).

10. On February 5, 1986, Warden Liburdi issued another interdepartment message reminding all employees of the scheduled work week, a reiteration of the March 26, 1985 message. (Exhibit 8).

11. William Young, a steamfitter at Cheshire, testified that for at least twenty years prior to 1985, some maintenance personnel at the Cheshire Correctional Facility, himself included, had a custom of arriving at work at 8:15 in civilian clothes or clean uniforms; then they would walk through the main gates to the cafeteria, report to the dining hall, take inmates to the workshops, and go to their locker room where they would change into uniforms for maintenance work. ( Transcript 10, 11, 12, 15, 62-65). He further testified that just prior to the end of the day, some maintenance employees would repeat the process, first washing up, then changing back into clean uniforms or civilian clothes. ( Transcript, pp. 62-65).

12. Robert French testified that before coming to Cheshire he held a similar position at the Bridgeport Correctional Center. He stated that he had never heard of the term change-up time prior to his discussion with Silvestri and that employees under his supervision routinely reported to work in uniform with the exception of Silvestri.

13. Warden Liburdi testified that in his twenty-one years with the Department of Corrections at various locations including Bridgeport, New Haven and Cheshire, he had never heard of change-up time until 1985. ( Transcript p. 50, 51).

14. Goldson further testified that on occasion he had conversations with Mr. French about Mr. Silvestri's failure to report to work in uniform. On these occasions he would tell French to speak to Silvestri about the necessity of wearing his uniform to work.

Conclusions of Law

1. A unilateral change in a working schedule which affects working hours and work load without consultation and negotiation with the Union constitutes a violation of the Act.
2. Although a collective bargaining agreement may not have language covering a specific major term or condition of employment, the agreement carries forward for its term the major terms and conditions, not covered by the agreement which prevailed when the agreement was executed.

3. For there to be a unilateral change, the Union must make out a prima facie case of a fixed practice prior to the alleged change and a clear departure from that practice without bargaining.

4. The Union has not established that there has been a clear departure from an open, and fixed practice of change-up time throughout the Department of Corrections facilities: therefore, the State has not violated the Act.

Discussion

We have consistently held that an employer's unilateral change in an existing condition of employment that is a mandatory subject of bargaining will constitute a refusal to bargain in violation of the Act unless the employer proves an adequate defense. Town of Hamden, Decision No. 2394 (1985). This is true whether or not the existing condition is guaranteed by the contract because a collective bargaining contract is deemed to carry forward the conditions which prevailed when the contract was executed unless a contrary intention is manifest. Town of Newington, Decision No. 1116 (1973). In order to make out a prima facie case the Union must show the existence of a fixed practice prior to the alleged change and a clear departure from that practice without bargaining. Town of Hamden, supra; Redding Board of Education, Decision No. 1922 (1980). It has been long settled that changes in employees' working schedules are a major condition of employment and a mandatory subject of bargaining. Amity Board of Education, Decision No. 1845 (1979); West Hartford Education v. DeCourcy, 162 Conn. 566 (1972); City of Bridgeport, Decision No. 1319-A (1975).

The thrust of the Union's argument is that the State has unilaterally changed the valuable benefit of change-up time which has been in effect for over twenty years. This alleged benefit allowed maintenance workers at the Cheshire Correctional facility to shower and change into and out of uniform after the start and prior to the end of the work day.

The facts in this case are not in dispute. The Union proved that since 1982 at least three of fourteen or fifteen members of the maintenance unit employees at the Cheshire facility occasionally reported to work in other than their work clothes. Mr. Young testified that prior to the 1985 memorandum he would routinely report to work either in his civilian clothes or clean work clothes. The percent of time he would report to work in his civilian clothes instead of a clean uniform was not made clear by his testimony. When Mr. French arrived at Cheshire in 1982 he noticed that Silvestri often reported to work in his civilian clothes, and when he questioned Silvestri about this was told that he had "change-up time." French then discussed this problem with Assistant Warden Goldson who told him there was no such thing as "change-up time." Goldson then issued a memo requiring employees to wear their uniforms to work. Whenever Silvestri or other employees would report to work in civilian clothes, French would inform them that such practice was not permissible. In 1985 and again in
1986, Warden Liburdi issued directives requiring employees to report to work in full uniform. The evidence also reveals that despite these directives, Silvestri on occasions reported to work in his civilian clothes, and although he was spoken to by French he was never reprimanded or disciplined for his failure to report to work in uniform.

From these facts we conclude that there was no consistent practice to use change-up time by maintenance employees at Cheshire. The prison administration by memoranda in 1982, 1985 and 1986 communicated its policy that maintenance employees were to report to work in uniform. The fact that some employees failed to regularly adhere to this policy, coupled with the administration's rather lax enforcement of it, does not create a past practice.

Finally, and more importantly, in order for us to find a violation based upon unilateral change theory, the practice that has been changed must be shown to be unit-wide rather than at a specific location. Hartford Board of Education, Decision No. 2573 (1987); Portland Board of Education, Decision No. 1670 (1978). The testimony of French, Goldson and Liburdi, who had extensive experience throughout the correctional system, all testified that they never heard of the term "change-up time" until Silvestri mentioned it to French. Moreover, they testified that at other institutions where they served, all personnel reported to work in uniform. Clearly, the Union has failed to meet its burden of proof.

**Dismissal of Complaint**

by virtue of and pursuant to the powers vested in the Connecticut State Board of Labor Relations by the Act Concerning Collective Bargaining for State Employees, it is

ORDERED, that the complaint filed herein be, and the same hereby is, dismissed.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

By __s/ Patricia V. Low __
    Patricia V. Low, Chairman

__s/ Craig Shea __
    Craig Shea

__s/ Lee Terry __
    Lee Terry

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