

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

TOWN OF WALLINGFORD

DECISION NO. 3902

-and-

MARCH 6, 2003

LOCAL 1570, COUNCIL 15,
AFSCME, AFL-CIO

CASE NO. MPP-21,187

A P P E A R A N C E S:

Attorney Dennis G. Ciccarillo
For the Town

Attorney Eric R. Brown
For the Union

DECISION AND DISMISSAL OF COMPLAINT

On October 1, 1999, Local 1570, Council 15, AFSCME, AFL-CIO (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Town of Wallingford (the Town) had violated the Municipal Employee Relations Act (the Act) by making a unilateral change in a mandatory subject of bargaining.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on March 12, 2002 at which both parties appeared and were represented by counsel. They were given full opportunity to present evidence, to examine and cross-examine witnesses and make argument. Both parties filed briefs, the last of which was received on May 9, 2002.

Based upon the entire record before us, we make the following findings of fact and conclusions of law, and dismiss the complaint.

FINDINGS OF FACT

1. The Town is an employer within the meaning of the Act.
2. The Union is an employee organization within the meaning of the Act which at all times material was the exclusive bargaining representative of a bargaining unit consisting of all regular full-time Police Officers, Sergeants, Lieutenants and Captains of the Investigatory and Uniformed Division of the Police Department.
3. The Town and the Union are parties to a collective bargaining agreement (Ex. 2) effective July 1, 1996 through June 30, 2000, which provides in Article 23 that the Town shall have the “right to determine the type and size of equipment to be used.”
4. Rule 24.2 of the Rules and Regulations of the Police Department provides:

“All articles of uniform, equipment and firearms shall conform in style and design to specifications as provided for and approved by the Chief of Police and no other shall be substituted or added to those items.”
5. General Order 92-03 negotiated with the Union provides in Section V:

“Department personnel, acting under color of authority, shall carry only that equipment issued and/or approved by the Department. Nothing in this order shall preclude the issuance of special department equipment, i.e., gas masks, riot sticks, special weapons, etc. issued during unusual incidents or for special assignments at the direction of a superior officer.”
6. The normal method of communication for members of the bargaining unit on duty is by radio. The Police Department has a state of the art radio system which has very few “dead spots.” There have been no complaints about the new radio system. The radio system is preferred since it is monitored by most members of the Department keeping them up to date about police activities, and all conversations are recorded. Longer conversations are handled by means of pay telephones.
7. The Department has issued cell phones for the use of certain units that have need for them, such as the Narcotics Bureau, Traffic Unit and the SWAT Unit. In addition to the radio equipment in the cruisers, the Department issues a personal, portable radio unit to each officer. Both radio systems have emergency call features.
8. Beginning around 1992, certain police officers purchased personal cell phones and began using them on duty. There is some evidence that some supervisors knew of this and took no action.
9. In August, 1999, the Chief and Deputy Chief became aware of the unauthorized use of cell phones and issued a Special Order (Ex. 6) stating:

Consistent with the provision of our General Order 92-03, Dress, Grooming, and Equipment Standards, specifically Section V, employees are hereby reminded that only those items of issued equipment shall be carried or used in the performance of their duties. Accordingly, the use of personal cellular telephones by on duty members of the Police Department is expressly prohibited.

10. The Town's objection to the use of personal cell phones were lack of recording, distraction from proper activities and cutting dispatch out of the "information loop."

11. The Town discussed the Special Order (Ex. 6) with the Union on September 9, 1999. Safety was not raised as an issue by the Union.

12. The Union filed the instant complaint alleging that the use of cell phones was a mandatory subject of bargaining which the Town had unilaterally changed.

CONCLUSIONS OF LAW

1. A unilateral change in a condition of employment involving a mandatory subject of bargaining constitutes a refusal to bargain unless committed to the employer's discretion by a specific article of the contract, or the employer proves another adequate defense.

2. The management rights clause of the contract and the relevant General Order gave the employer the right to determine the equipment to be used.

3. The employer did not violate the Act by prohibiting the use of personal cell phones.

DISCUSSION

A unilateral change in a condition of employment that is a mandatory subject of bargaining will constitute a violation of Sec. 7-470(a)(4) of the Act unless the employer provides an adequate defense. *NLRB v. Katz*, 369 U.S. 735 (1962), *West Hartford Board of Education v. DeCoursey*, 162 Conn. 566 (1972). One of the employer defenses is that the action was authorized expressly or by implication by the terms of a collective bargaining agreement. See *Town of Newington Board of Education*, Decision No. 1116 (1973). *affd.*, *Town of Newington v. Connecticut State Board of Labor Relations*, Docket No. 109307 (1973). This defense is clearly applicable here.

The management rights clause of the collective bargaining agreement (Ex. 2) provides that the Town shall have the right to determine the type of equipment to be used.

General Order 92-03 (negotiated with the Union), (Ex. 8) states that Police Officers shall carry only equipment issued and/or approved by the Department. The right to prohibit the use of cell phones could not be more clear.

Even though the employer may have the right to make a unilateral change in a mandatory subject of bargaining by contract or otherwise, it must nevertheless, bargain

with the Union if the change creates substantial secondary effects on terms and conditions of employment. See *State of Connecticut, Department of Correction*, Decision No. 3229 (1994). In this case we find the secondary effects of the Town's decision to ban the use of personal cell phones to be *de minimus*.

The Town had the clear right to ban the use of personal cell phones while on duty; therefore, we will dismiss the complaint.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Municipal Employees Relations Act, it is hereby

ORDERED that the complaint filed herein be and the same hereby is **DISMISSED**.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

John W. Moore, Jr.
John W. Moore, Jr.
Chairman

Wendella A. Battey
Wendella A. Battey
Board Member

Patricia V. Low
Patricia V. Low
Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 6th day of March, 2003 to the following:

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