STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

NEW BRITAIN BOARD OF EDUCATION

DECISION NO. 4595

-AND-

MARCH 27, 2012

LOCAL 1186, COUNCIL 4, AFSCME, AFL-CIO

Case No. MPP-27,972

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

Attorney Susan L. Scott
for the School Board

Attorney J. William Gagne, Jr.
for the Union

DECISION AND DISMISSAL OF COMPLAINT

On June 30, 2009, Local 1186, Council 4, AFSCME, AFL-CIO (the Union) filed a complaint, amended on July 29, 2010, with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the New Britain Board of Education (the School Board) violated the Municipal Employee Relations Act (the Act) by unilaterally implementing a summer shutdown on consecutive Fridays in 2009 and 2010.

After the requisite preliminary steps had been taken the parties entered into a partial stipulation of facts and exhibits and the matter came before the Labor Board for a hearing on January 24, 2011. Both parties appeared, were represented, and were allowed to present evidence, examine and cross-examine witnesses, and make argument. Both parties filed post-hearing briefs on June 22, 2011. Based on the entire record before us, we make the following findings of fact and conclusions of law and we dismiss the complaint.

FINDINGS OF FACT

1. The School Board is an employer within the meaning of the Act.

2. The Union is an employee organization within the meaning of the Act and at all times material has been the exclusive bargaining representative of a wall to wall unit of employees of the School Board, including School Board secretaries, maintenance staff, security staff, and nurses.

3. At all times relevant hereto the Union and the School Board were parties to a collective bargaining agreement with effective dates of July 1, 2008 through June 30, 2012 and which provides, in relevant part:

ARTICLE V – HOURS OF WORK, OVERTIME AND HOLIDAY PREMIUM PAY

5.0 The regular work week and workday for:

(a) School Clerical Employees – five (5) days, thirty-seven and one-half (37 ½) hours per week, Monday through Friday.

The work week for ten-month secretaries shall be the student year plus two (2) weeks immediately before the student year plus two weeks immediately following the student year. . . .

. . .

5.1 Overtime

(a) Time and one-half shall be paid as follows:

1. For all work performed by an employee in excess of eight (8) hours in a day and/or forty (40) hours in a week.

2. For all work performed on the sixth day of an employee's regular work week as set forth in Section 5.0.

. . .

ARTICLE VII – VACATIONS

. . .

7.5 (a) The vacation period will be set by mutual agreement between the Superintendent or designee and the employee except that seniority shall govern preference, provided the building or the department's efficiency is not impaired.

. . .

7.10 If the Board implements a summer shutdown, Union members are not required to schedule their vacation during that time period. However, employees

electing to take five (5) vacation days during the scheduled shutdown will earn one (1) bonus day; employees electing to take ten (10) vacation days during the scheduled shutdown will earn two (2) bonus days.

. . .

ARTICLE XXVI – SUCCESSORSHIP

26.0 If the Board of Education sells, leases, assigns, contracts out, subcontracts, transfers, merges, engages in reorganization or shutdown, partial transfer, partial subcontracting, partial shutdown, sale, lease-back arrangement of any Board of Education function or portion thereof affecting current members of this bargaining unit, the Board of Education shall inform the Union of its intent at least thirty (30) days in advance and will comply with its obligations under MERA.

. . .

4. The language of Section 7.10 of the 2008-2012 agreement first appeared in the 1987 - 1989 collective bargaining agreement between the parties. (Ex. 6).

5. During the summer months of 2003 through 2008, secretarial and administrative positions in the Union's bargaining unit worked an additional thirty minutes daily, Monday through Thursday, and left three hours early on Friday. (Exs. 7, 7a, 7b, 7c, 7d). The School Board did not pay overtime to employees working the modified summer schedule and no grievances or complaints were filed regarding the practice. The modified summer schedule was never negotiated with the Union.

6. In January of 2009 the School Board became aware that it faced a potential budget shortfall of approximately eight million dollars for the 2009-2010 school year.

7. On February 2, 2009 School Board Assistant Superintendent Ronald Jakubowski (Jakubowski) received a memo stating that substantial daily electricity savings would be realized if the Superintendent's recommendation to close all School Board buildings on Fridays was implemented during the summer months. (Ex. 8).

8. By letter to all union presidents dated May 6, 2009, School Board president Sharon Beloin-Saavedra (Beloin-Saavedra) confirmed that representatives of the School Board and the unions had recently engaged in off-the-record discussions concerning the anticipated budget shortfall. On behalf of the School Board, Beloin-Saavedra proposed several employee concessions, including furlough days and wage freezes, to reduce the number of position eliminations necessary to address the shortfall. (Ex. 9).

9. On May 26, 2009 School Board Human Resources Director Robert Stacey (Stacey) sent a memo (Ex. 10) to then Union vice president Helen Murratti-Pion (Murratti-Pion) stating, in relevant part:

> The district intends to go to a 4 day work week during the summer of 2009 in order to save money on utilities and other related costs of keeping offices open. As such, we would need to negotiate changes in some working conditions in order to do this . . .

If you concur, the following provisions would go into effect:

--No overtime pay for the period of the extended work day;
--40 hour employees will work Monday thru Thursday from either 7:00 a.m. to 5:30 pm. or 7:30 a.m. to 6:00 p.m.
--37.5 hour employees will work Monday thru Wednesday from either 7:00 a.m. to 5:00 p.m.; 7:30 a.m. to 5:30 p.m.; or 8:00 a.m. to 6:00 p.m.; on Thursdays, the day will be shortened by ½ hour;
--Leave days will be counted as 1.25 days for leave used on any of the Monday thru [sic] Thursday dates during this period of time;
--Staff may choose to use vacation leave for each Friday and work a regular schedule. However, this option would only apply if selected for all 7 weeks.

Some operational staff will work their regular work week all summer as their operations are not impacted by the 4 day work week scenario.

--Maintenance employees;
--Custodial and cleaning aide employees;
--Security Staff working as custodians

We hope that you will agree to this 4 day work week proposal. If you do agree, please sign below and return to my attention. If you do not agree, or have questions regarding this proposal, please contact me directly.

10. Murratt-Pion, then Union president James Amato (Amato) and Union staff representative Edward Thibodeau (Thibodeau) met with Stacey on May 26, 2009 and discussed the shutdown plan described in the memo as well as a potential exchange of furlough days for an agreement not to lay off Union members.

11. On May 28, 2009 Stacey sent memos to representatives of three other bargaining units notifying them of the summer shutdown and proposing certain changes in working conditions. (Exs. 11, 11a, 11b).

12. On June 3, 2009 a Union meeting of School Board employees was conducted and consensus was reached to accept the shutdown plan, provided it applied to all bargaining unit members employed by the School Board. The members also agreed to two furlough days in exchange for an agreement that no members of the bargaining unit would be laid off. Thibodeau conveyed the outcome of the meeting to Stacey.

13. On June 9, 2009 Murratti-Pion e-mailed Stacey inquiring as to the School Board's position and Stacey responded by e-mail (Ex. 12) that day stating, in relevant part:

. . .
1. The 4 day work week for all L1186 staff would be okay with the understanding the time would be straight time and not OT, etc. For the 7 Fridays noted.
…
3. There is shut down language in the contract that could be implemented on these 7 Fridays if there is no agreement by L1186 to do so.

…

5. The concession discussions will not result in saving any grant funded positions. As such, the Board cannot commit to a no layoff promise regarding PSLs.[1] If those positions are eliminated local funding will not be used to save those positions.

…

7. We could agree to a no layoff position for local budget impacted positions only if the union agrees to 4, and maybe even 3, furlough days, but not for 2 days. . . .

. . .

14. On June 11, 2009 Thibodeau sent Stacey an e-mail (Ex. 13) stating, in relevant part:

> . . . My members were very clear when I met with them last week; they would only agree to concessions if it meant that ALL of our members would have a job. Since the PSL's have just been told that their jobs are eliminated, I really don't have the authority to go any further on this. Please report to the board that our members are not willing to give concessions at this time.
>
> In regard to the "shutdown" issue I know that the contract has a clause that refers to a "summer shutdown," it's very vague . . . On the other hand, we have very clear language stating that clerical employees work 5 days, 37 ½ hours per week, Monday-Friday. . . We also have clear language that states all employees are paid time and a half for any work over 8 hours in a day. If the Board unilaterally imposes some kind of shutdown and violates any of that language, I'm going to have to file a grievance.

15. On June 25, 2009 Stacey sent Murratti-Pion an e-mail (Ex. 14) stating, in relevant part:

> The Superintendent has asked me to inform you that she is implementing the summer shutdown language in Article 7.10 of collective bargaining agreement.
>
> The shutdown will be in effect for the following Fridays:
>
> - July 10, 17, 24, 31
> - August 7, 14, 21
>
> Staff will return to their regular work week starting the week of August 24, 2009.
>
> Union members are not required to schedule their vacation during that time period.
>
> Those not using vacation days will not be paid.
>
> The only other leave that may be substituted for use on those Fridays are furlough days.
>
> Employees electing to take five (5) vacation days during the shutdown will earn one (1) bonus day. Employees electing to take seven (7) vacation days during the shutdown will earn 2 bonus days.

[1] "PSL" is an acronym for Parent Student Liaison which is a grant funded position.

Employees will work their regular work day on Monday thru Thursday of these seven (7) weeks.
. . .

16. On June 29, 2009 Thibodeau sent Stacey a letter (Ex. 15) stating, in relevant part:

> . . .
>
> 1) The Union does not agree to the shutdown plan . . . We intend to file a class-action grievance to recoup for our members any pay that is lost as a result of the shutdowns.
>
> 2) Any member who chooses to use vacation time on any shutdown day (in order to receive pay) is likewise doing so under protest . . .
>
> We have given up four days' pay in the form of furloughs to help the Board of Education weather its present financial difficulties. We find it distressing and insulting that, after such a gesture of good faith, the BOE intends to take seven more days' pay from our members unilaterally.

17. On July 2, 2009 the Union executed a Memorandum of Understanding (Ex. 16) with the School Board that provided, in relevant part:

> . . .
>
> 1. The Local 1186 members will concede four (4) furlough days during the 2009-10 fiscal year.
> . . .
>
> 4. In recognition of these concessions the Board agrees to not eliminate any Local 1186 bargaining unit positions for the 2009-10 fiscal year as a result of the budget cuts.
> . . .

18. By July 9, 2009 the representatives of the three other bargaining units had agreed in writing to the changes set forth in Stacey's memos of May 28, 2009. (Exs. 11, 11a, 11b).

19. The School Board implemented a shutdown on seven consecutive Fridays in July and August of 2009. Employees in secretarial and administrative positions in the Union's bargaining unit did not work on, or receive pay for, such days unless accrued vacation time was used. Such employees were, however, allowed to take furlough days on Friday shutdown days. Employees using accrued vacation days on Friday shutdown days received bonus days in accordance with Section 7.10 of the contract.

20. On October 5, 2009 the parties executed the 2008 - 2012 collective bargaining agreement.

21. During the months preceding the summer of 2010 the School Board anticipated a budget shortfall of approximately seventeen million dollars.

22. On April 13, 2010 Stacey sent Union vice president Vanessa Wallace (Wallace) a letter identical to his May 26, 2009 letter to Murratti-Pion but which differed in that it gave notice of the School Board's intent to implement a shutdown during eight consecutive Fridays in July and August of 2010 and in that the School Board's offer to extend the Monday through Thursday workday did not expressly exclude any members of the bargaining unit. (Ex. 18).

23. On April 12 and 13, 2010 Stacey sent memos to representatives of the three other bargaining units notifying them of the summer shutdown and again proposing certain changes in working conditions. (Exs. 19, 19a, 19b).

24. By letter to all union presidents dated April 29, 2010, Beloin-Saavedra confirmed that representatives of the School Board and the unions had again recently engaged in off-the- record discussions concerning the anticipated budget shortfall. On behalf of the School Board, Beloin-Saavedra proposed several employee concessions to minimize the number of positions the School Board would have to eliminate to address the shortfall. (Ex. 25).

25. By letter (Ex. 26) to Beloin-Saaverdra dated May 10, 2010, Thibodeau stated in relevant part:

> . . . The Union is not willing to discuss concessions at this time for the following reasons:
>
> 1) Last year Local 1186 acted in good faith, agreeing that each bargaining unit member would take four unpaid furlough days within the coming fiscal year to help the BOE through its budget problems. Shortly after that agreement was reached, the Board of Education unilaterally imposed a "shutdown" for seven consecutive Fridays during the Summer . . .
>
> The Union filed . . . charges of bad faith bargaining as well as a grievance over violation of contract language guaranteeing a Monday through Friday workweek . . . Until those charges are resolved, the bargaining unit members are reluctant to enter into any more Concessions discussions . . .

26. By May 18, 2010 the representatives of the three other bargaining units had agreed in writing to the changes set forth in Stacey's memos of April 12 and 13, 2010. (Exs. 19, 19a, 19b).

27. By memo (Ex. 20) to all District Staff dated May 26, 2010, Stacey stated, in relevant part:

> It has been determined that the District will again work 4 day work weeks during the summer of 2010. As such, no one will be working on Fridays starting with July 2nd and continuing through August 20th . . .
> . . .
>
> - Local 1186 did not agree to a 4 day work week. Therefore the administration has imposed Summer Shutdown language available in the contract as the only

option to close down all schools and departments on Fridays to save the money planned as savings in the budget. As such:

- Local 1186 employees work their regular work schedule Monday through Thursday

- Local 1186 employees only will not be paid for the shutdown Fridays unless they choose to use vacation leave days

- Local 1186 employees will receive bonus leave days for using vacation leave on shutdown Fridays as a provision of their contract – One (1) bonus day for using vacation leave on 5 Fridays & two (2) bonus days for using vacation leave on all 8 Fridays

- Local 1186 employees cannot use sick or personal leave, or any other leave, on those Fridays

28. The School Board implemented a shutdown on eight consecutive Fridays in July and August of 2010. Employees in the Union's bargaining unit did not work on, or receive pay for such days unless accrued vacation time was used. Employees using accrued vacation days on Friday shutdown days received bonus days in accordance with Section 7.10 of the contract.

CONCLUSIONS OF LAW

1. A unilateral change in a condition of employment involving a mandatory subject of bargaining constitutes a refusal to bargain unless the employer proves an adequate defense.

2. The School Board had the right to implement a summer shutdown under the collective bargaining agreement.

3. The School Board did not violate the Act by implementing a partial shutdown on consecutive Fridays during July and August of 2009 and 2010.

DISCUSSION

The Union claims that the School Board violated the Act by closing its facilities on Fridays during July and August thereby unilaterally denying bargaining unit members compensable work days. The Union contends that the five day summer work week was a long established practice and guaranteed by Article V of the collective bargaining agreement and that by unilaterally implementing a partial summer shutdown the School Board denied the Union its statutory right to bargain changes in terms and conditions of employment.

The School Board responds that a necessary element of the Union's *prima facie* case is lacking because the modified summer work week observed by clerical and administrative bargaining unit members during the six years preceding the events at issue precludes a finding that the alleged practice was consistent, enduring and accepted. The School Board also contends that even if the Union was able to establish a *prima facie* case, the collective bargaining agreement both recognizes the School Board's authority to implement a summer shutdown and reflects the results of the parties' impact bargaining in the event such authority is exercised.

Based on the record before us we agree with the School Board's latter defense and dismiss the Union's complaint.

It is by now well settled that it is a violation of the Act for an employer to unilaterally change an existing condition of employment that is a mandatory subject of bargaining unless the employer provides an adequate defense. ***State of Connecticut, Judicial Branch***, Decision No. 4532 (2011); ***Norwalk Third Taxing District***, Decision No. 3695 (1999); ***Bloomfield Board of Education***, Decision No. 3150 (1993); ***City of Stamford***, Decision No. 2680 (1988). It is equally well established that although an employer is not required to bargain over fundamental decisions committed to managerial discretion, it is nevertheless required to bargain where that decision occasions substantial impacts on matters involving mandatory subjects. ***City of Stamford***, Decision No. 4551 (2011); ***City of Bridgeport***, Decision No. 1485 (1977); *see also,* ***First National Maintenance Corp. v. NLRB***, 452 U.S. 666, 677-878 n. 15 (1981);[2] ***Local 1186, AFSCME v. State Board of Labor Relations***, 224 Conn. 666, 671-672, (1993). "To establish a unilateral change of a condition of employment, the union must establish that the employment practice at issue was 'clearly enunciated and consistent, [that it] endured[d] over a reasonable length of time, and [that it was] an accepted practice by both parties."' ***Board of Education of Region 16 v. State Board of Labor Relations***, 299 Conn. 63, 79 (2010)(*quoting*, ***Honulik v. Greenwich***, 293 Conn. 698, 719 n. 33).

It is the Union's initial burden to make a *prima facie* case establishing that a change in an existing condition of employment has in fact occurred, for if no change is proven, no further inquiry is warranted. ***State of Connecticut,*** Decision No. 4573 (2012). ***Town of Hamden***, Decision No. 2364 (1985). Once the Union has made its *prima facie* case, the burden shifts to the employer to establish an adequate defense. ***Norwalk Third Taxing District***, Decision No. 3695 (1999). We recognize a controlling provision of a collective bargaining agreement as such a defense. ***Town of Stratford***, Decision No. 3846 (2001); ***Norwalk Third Taxing District***, *supra;* ***City of Stamford***, Decision No. 2992 (1992).

A five day compensable summer work week concerns ". . . wages [and] hours . . ." within the meaning of General Statutes §7-470(c)[3] and as such is a mandatory subject of bargaining. Notwithstanding the modified summer schedule observed from 2003 through 2008, the evidence establishes that School Board members of the Union's bargaining unit had long enjoyed a five day compensable work week prior to 2009.[4] Although the record is silent as to the work schedule provisions of prior collective bargaining agreements, we note that Article V of the current contract is consistent with the alleged past practice. In conclusion, we find the modified

[2] Decisions of the United States Supreme Court are "of great assistance and persuasive force" when interpreting Connecticut statutes patterned after the National Labor Relations Act." ***West Hartford Education Assoc. v. DeCourcy***, 162 Conn. 566, 579 (1972).

[3] General Statutes §7-470(c) provides, in relevant part:

> " . . . to bargain collectively is the performance of the mutual obligation . . . to . . . confer in good faith with respect to wages, hours, and other conditions of employment . . ."

[4] While the School Board introduced evidence that indicates that there may have been a two week summer shutdown in 1986, we find that the parties' practice since that time endured sufficiently to establish a practice for purposes of our unilateral change doctrine.

work schedule of 2003 to 2008 largely irrelevant[5] to the issue of whether a five day compensable work week practice existed and we find the that the Union has established it *prima facie* case.

Turning to the School Board's contract defense we exercise our "limited jurisdiction to interpret a contract where the employer's conduct constitutes a *prima facie* violation of the Act and the employer seeks to justify its conduct on the grounds that the contract permits the change." ***New Haven Parking Authority***, Decision No. 3523 p. 8 (1997); *see also* ***Town of Plainville***, Decision No. 1790 (1979). "[I]n construing contracts, we give effect to all the language included therein, as the law of contract interpretation . . . militates against interpreting a contract in a way that renders a provision superfluous." ***Honulik v. Greenwich***, *supra*, 293 Conn. at 711; *see also* ***Connecticut National Bank v. Rehab Associates***, 300 Conn. 314, 323 (2011). After a review of relevant provisions of the collective bargaining agreement, we agree with the School Board that the agreement contemplated a partial summer shutdown and provided for an accommodation of respective impacts on the parties.

Sections 7.10 and 26.0 clearly presume[6] that the School Board has the authority to implement a shutdown. In contractually acknowledging shutdown as a decision committed to managerial discretion, however, the parties also agreed in Section 26.0 that the School Board would afford the Union advance notice and otherwise "comply with its obligations under MERA." Given the context, this language can only refer to the School Board's statutory obligation "to bargain about the *effects* of its managerial decision on working conditions." ***Local 1186 AFSCME v. State Board of Labor Relations***, *supra*, 224 Conn. at 671.

The Union construes the reference in Section 5.0 to a ". . . regular work week . . . for . . . five (5) days . . ." as a contractual entitlement to a work schedule that precludes a summer shutdown. The School Board counters that the Union's construction deprives Section 7.10 of all meaning and that the two sections can be read consistently if the phrase "regular work week" in Section 5.0 is viewed either as a reference to the academic year or to a work week in which a shutdown has not been implemented. We agree with the School Board that the Union's construction renders Section 7.10 mere surplusage and is contrary to accepted rules of contract interpretation.[7]

Section 7.10 concerns the effect of a shutdown on members of the bargaining unit. Loss of compensable work days for the duration of a shutdown is the obvious impact on employees if school facilities are closed. Vacation use during a shutdown restores lost income but imposes a cost on employees by reducing accrued vacation benefits. Section 7.10 represents the outcome of the parties' negotiations over this impact. Employees are allowed additional paid time off as an incentive to use accrued vacation time when such use will least impact School Board operations. While the arrangement does not wholly defray the cost to employees of a summer shutdown, it is not our role to question the give and take of collective bargaining. Section 7.10 establishes that

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[5] Had the School Board unilaterally implemented its proposals of May 26, 2009 and April 13, 2010, the 2003-2008 modified work schedule would have been relevant to the issue of whether the change was *substantial.*

[6] E.g., "*If* the Board implements a summer shutdown . . ."; "*If* the Board . . . engages in . . . shutdown [or] partial shutdown . . ."

[7] [Where] alternative interpretations of a clause are possible, one of which would give meaning and effect to another provision of the contract, while the other would render the other provision meaningless or ineffective, the inclination is to choose the interpretation that would give effect to all provisions. ***Elkouri and Elkouri, How Arbitration Works, §9.3.A.viii.a,***p. 463 (6th ed. 2003).

the parties negotiated over this eventuality and as such serves as a contract defense to the Union's claim of improper unilateral change.

Assuming that the predecessor to the 2008-2012 collective bargaining agreement also contained Section 7.10,[8] the Union's own actions support our conclusion that the Union was not denied its right to bargain under the Act. The Union executed the 2008-2012 collective bargaining agreement, which included Section 7.10, *after* the School Board gave notice of its intention to implement a summer shutdown and its claimed reliance on that provision.[9] Similarly, the Union executed the 2009 Memorandum of Understanding (exchanging furlough days for no layoffs) *after* it received unequivocal notice that the shutdown was being implemented and notwithstanding its position that the shutdown exacted unbargained-for furlough days from its members. There is nothing in the record before us to establish that the Union was obligated to enter into these agreements independent of its concerns over the shutdown. While the Union's exercise of its right to refuse to waive the contractual overtime provision was a valid means to attempt to dissuade the School Board from implementing the shutdown, such action does not establish the School Board's bad faith.

Based on the record before us we conclude that the School Board has established an adequate defense to the Union's claim that there was a unilateral change to the past practice at issue and so we dismiss the complaint.

ORDER

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

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

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Patricia V. Low
Patricia V. Low
Board Member

Wendella Ault Battey
Wendella Ault Battey
Board Member

Robert A. Dellapina
Robert A. Dellapina
Board Member

[8] The 2008-2012 agreement was executed on October 5, 2009 and the preceding contact was not offered into evidence. Given the testimony and the existence of Section 7.10 in the 1987-1989 contract, we assume Section 7.10 continued unchanged in the contract immediately preceding the 2008-2012 contract.

[9] The Union has contended at all times that Section 7.10 was too "vague" to support the School Board's position.

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 27th day of March, 2012 to the following:

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