STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Woodbridge Public Schools

-and- SEPTEMBER 7, 2010

UE Local 222, CILU/CIPU, CILU #80

Case No. MPP-28,493

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

Eugene Elk
For the Union

Attorney Jason R. Stanevich
For Woodbridge Public Schools

DECISION ON MOTION FOR DEFERRAL

On April 13, 2010, UE Local 222, CILU/CIPU, CILU #80 (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Woodbridge Public Schools (the Employer) had violated Section 7-470(4)[1] of the Municipal Employee Relations Act (MERA or the Act) by unilaterally subcontracting the work of the bargaining unit.

On August 20, 2010, the Employer filed a Motion for Deferral of this matter on the grounds that the Union has filed a grievance with the State Board of Mediation and Arbitration (SBMA) alleging a contractual violation that is the same contractual issue that would be determinative of whether the Employer had committed a prohibited practice under the Act. On September 1, 2010, the Union filed a Memorandum in Opposition to Respondent's Motion to Defer to Arbitration, arguing that its complaint before the Labor Board is completely independent of the matter before the SBMA and thus should not be deferred.

[1] In its response to the Motion to Defer to Arbitration the Union stated that it was amending the complaint to correct a typographical error in the citation of the statutory section alleged to have been violated. As of the date of this decision on the Motion no amendment has been received by the Labor Board.

DISCUSSION

The Employer argues that the hearing scheduled in this matter for September 9, 2010 should be postponed and that the Labor Board should defer to the grievance arbitration process. The Employer argues that this matter involves a breach of contract and the Union invoked the grievance procedure in the contract on the same issue that is before this Labor Board in the prohibited practice complaint. The Union objects to the Motion for Deferral, arguing that the prohibited practice complaint is wholly independent of its claim before the SBMA that the Employer breached the collective bargaining agreement. It further argues that its claim that the Employer unilaterally changed an established past practice by subcontracting the Union's work.[2] We agree with the Union and deny the Motion for Deferral for the reasons set forth below.

As we noted in ***Norwalk Third Taxing District***, Decision No. 3676 (1999) we have never wholly adopted the deferral principle set forth by the National Labor Relations Board (NLRB) in **Collyer Insulated Wire**, 192 NLRB 837 (1971). Deferral to arbitration is a discretionary doctrine, rather than a mandatory one. ***Id***. The Employer, in its argument urging deferral, cites to our decisions in ***City of Groton (Police),*** Decision No. 1134 (1973), ***Town of Orange (Police Department)***, Decision No. 1581 (1977) and ***City of New London***, Decision No. 2411 (1985). We do not find that the principles discussed in the cases cited by the Employer require the deferral to arbitration in this case.

In ***City of New London***, *supra*, this Labor Board held that it will decline to address an issue of contract interpretation if such issue has been grieved and the union failed to pursue binding arbitration after denial of the grievance on the merits. In ***New London***, *supra*, we noted that:

> The rule that we have set forth in the present case is similar to our longstanding policy of post-arbitral deferral. It has always been the rule of both this Board and the NLRB that when a prohibited practice or unfair labor practice case turns upon an interpretation of a collective bargaining agreement, the labor relations agency will defer to an arbitration award resulting from prior resort to the grievance procedure. In such cases we do require that the arbitral proceedings were "fair and regular," the parties had agreed to be bound by the arbitral award and the award is not repugnant to the purposes and policies of the labor relations statutes. See ***New Fairfield Board of Education***, Decision No. 1555 (1978**)**; ***Spielberg - Manufacturing Co.,*** 112 NLRB 1080 (1955).

[2]The Union's complaint alleges, "[t]he Woodbridge BOE has violated and continues to violate Section 7-470(4) of the MERA by unilaterally subcontracting bargaining unit work." The Union argues in its Memorandum in Opposition to the Motion to Defer that the allegation in its complaint is a unilateral change in the past practice of subcontracting bargaining unit work.

That is not the case here. The grievance alleging a breach of specific provisions of the collective bargaining agreement brought to the SBMA and is currently pending. As such, there has been no ruling interpreting a specific provision of the collective bargaining agreement relevant to the matter before the Labor Board.

The Employer also urges us to defer to arbitration under our decision in ***City of Groton (Police),*** *supra*, in which we held that the arbitration process will be preferred when the unilateral action on the part of an employer alleged to consist solely of a breach of the collective bargaining agreement without a claim of bad faith or repudiation. The Union in this case argues that it has not solely alleged a breach of the collective bargaining agreement but has claimed that the Employer has unilaterally subcontracted bargaining unit work in violation of the Act. The Union claims that this case is governed by the analysis set forth in ***City of New Britain***, Decision No. 3290 (1995) and that interpretation of a provision of the collective bargaining agreement would only be an issue if the Employer raises it as a defense. The Employer in its Motion to Defer acknowledges that it intends to raise as a defense to the Union's complaint that the collective bargaining agreement permits its unilateral action. Given these claims we cannot, on the face of the Union's complaint, find that it relates solely to a breach of contract claim. The claim of unilateral change in a past practice is properly within our jurisdiction. ***Norwalk Third Taxing District***, Decision No. 3676 (1999).

Lastly, the Employer argues the facts in ***Town of Orange (Police Department)***, *supra,* are directly analogous to the facts in the instant dispute. That case centered on the interpretation of a specific contractual provision that had been submitted to arbitration but had not yet been decided by the panel. However, the claim of the Union here, as noted above, does not involve the interpretation of specific provision of the collective bargaining agreement but rather a claim of unilateral subcontracting of bargaining unit work. We do not find the decision in ***Town of Orange,*** *supra,* controlling in this case.

For the reasons stated above, we deny the Employer's Motion to Defer to Arbitration and exercise our jurisdiction over this matter. The request to postpone the hearing set for September 9, 2010 is denied.

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 Motion for Deferral filed by the Woodbridge Public Schools in this matter is **DENIED.**

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Robert A. Dellapina
Robert A. Dellapina
Board Member

Patricia V. Low
Patricia V. Low
Board Member

Wendella Ault Battey
Wendella Ault Battey
Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 7th day of September, 2010 to the following:

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