

CITY OF HARTFORD

Decision No. 3049

Case No. MPP-12,349

Appealed to Superior Court in Hartford Docket No. CV-93-0519483

Notice from Maloney 8/2/94 dismissing due to settlement.

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF  
CITY OF HARTFORD

Decision No. 3049

-and-

HARTFORD POLICE UNION

CASE NO. MPP-12,349

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

October 26, 1992

H. Maria Cone, Attorney  
For the City

Stephen F. **McEleney**, Esq.  
For the Union

**DECISION. ORDER. AND PARTIAL DISMISSAL OF COMPLAINT**

On August 22, 1989, the Hartford Police Union (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the City of Hartford (the City) had engaged and was engaging in practices prohibited by the Municipal Employee Relations Act (the Act). As later amended on October 26, 1989 and March 22, 1990, the Union charged that the City had violated C.G.S. **§7-470(a), (1), (2), (4)**, and (c) by contracting out work traditionally performed by bargaining unit members without negotiation, refusing to bargain, and making a unilateral change in a mandatory subject of bargaining during negotiations for a successor collective bargaining agreement. In particular,

the Union alleged that the City had implemented a program on January 31, 1990 previously negotiated with the Hartford County Sheriff's Office which permitted members of the Sheriff's Office to perform job functions previously performed by Union members at the detention facility located at 155 Morgan Street in Hartford. Additionally, the Union complained that Sheriff's Deputies began transporting prisoners prior to their arraignment from the Morgan Street facility to the Lafayette St. Superior Court, which also concerned work previously performed by Union members. At the time the Union amended its complaint on October 26, 1989, it also filed a request for interim relief which it subsequently withdrew on June 12, 1990.

After the requisite preliminary steps had been taken, the matter was brought before the Labor Board for hearings on March 22, 1990, June 12, 1990, September 26, 1990, October 15, 1990, October 18, 1990, January 7, 1991 and February 25, 1991, at which time the parties **appeared**, were represented by counsel, and were given a full opportunity to present evidence, examine and cross-examine witnesses, and make argument. Both parties filed post-hearing briefs.

On the basis of the entire record before us, we make the following findings of fact, conclusions of law, order, and partial dismissal of the complaint.

### **FINDINGS OF FACT**

(Note: Due to the numerous hearings held in this case and the nonconsecutive numbering of pages, transcripts will be referred to by number and date.)

1. The City is a municipal employer within the meaning of the Act.
2. The Hartford Police Union is an employee organization within the meaning of the Act.
3. At the time of the filing of the Union's complaint, the parties were subject to a collective bargaining agreement, the duration of which was from July 1, 1987 to June 30, 1990.

#### **A. BASIC STEPS IN PROCESSING PRISONERS**

4. The Morgan Street lockup (Morgan Street) has for many years been used as a facility for the processing and detention of individuals who have been arrested in the City of Hartford.

5. When individuals are first arrested in Hartford, they are transported to Morgan Street where they are identified, their property is inspected and stored, fingerprinted, photographed, and questioned regarding any other pertinent information they may have. This process is referred to as “booking”. **(Tr. Vol.I, Mar. 22, 1990, p.16-17)**

6. Following the completion of the booking process, prisoners must be interviewed by a bail commissioner, arraigned before a magistrate, and formally charged with a crime. At that time, it is also determined whether they may be released, and if so, under what circumstances such as through the posting of bond, or execution of a written promise to appear. **(Tr. Vol.I, Mar. 22, 1990, p.118)**

7. Since the court system is usually unable to arraign a prisoner immediately, it becomes necessary to detain and maintain a prisoner until this task can be accomplished.

8. In Hartford, the courthouse facility, where prisoners are arraigned, is located at Lafayette Street, and it is necessary to transport prisoners from Morgan Street in order to accomplish the arraignment procedure.

9. Following arraignment, it is then necessary to return prisoners to Morgan Street where they are either detained pending trial or formally released under the circumstances previously described in Finding of Fact #6.

10. In approximately 1983, the Department of Corrections (Corrections) first agreed to assume custody and maintenance of prisoners for the Hartford Police Department after they had been booked. **(Tr. Vol.IV, Oct. 15, 1990, p.67, Tr. Vol.VI, Jan. 7, 1991, p.91-92)**

11. The 155 Morgan Street facility has four floors. **(Tr. Vol.I, Mar. 22, 1990, p. 17)**

12. The Hartford Police Department **(HPD)** booking facility is on the first floor. **(Tr. Vol.I, Mar. 22, 1990, p.18)**

13. The State Department of Corrections occupies the remainder of the Morgan Street facility. **(Tr. Vol.I, Mar. 22, 1990, p. 18)**

#### **B. RELEASE OF PRISONERS FROM HPD CUSTODY:**

14. From August 1983 to January of 1990, Hartford police officers and matrons were exclusively concerned with the booking process, accepting and controlling prisoners, fingerprinting and photographing them, and putting them in cells.

15. In January of 1990, the City changed the procedure in the police department's processing of prisoners. Prior to that time a prisoner was taken to the first floor of Morgan Street for booking. Following the completion of the booking process, the police department temporarily surrendered custody of the prisoner to the Department of Corrections which is located on the third and fourth floors of that facility. When it came time for arraignment, prisoners were transported across town to the Lafayette Street courthouse. This system will hereinafter be referred to as the "old system". **(Tr.Vol VI, Jan. 7, 1991, p.91)**

16. After January, 1990 (the new system), the City changed the agency to whom the HPD was to transfer prisoners for custodial maintenance from the Department of Corrections to the Hartford County Sheriffs. **(Tr.Vol.III, Sept. 26, 1990, p.p. 275-277)**

17. Under the old system, the HPD performed its booking procedures on the first floor of Morgan Street. Following the completion of booking, prisoners were transferred to Correction's holding facilities on the third and fourth floors.

18. Under the old system, the State would send one or two guards to secure custody of an arrested individual and escort him or her to the holding facilities on the 3rd floor by elevator. **(Tr.Vol.I, Mar. 22, 1990, p.20)**

19. The precise point of transfer of prisoners from HPD personnel to either Correctional personnel or sheriffs took place at either the bull pen, the elevator, or when actually delivered by HPD officers to Corrections on the fourth floor. **(Tr.Vol.II, June 12, 1990, p. 148, Tr.Vol.IV, Oct. 15, 1990, p.68, Tr.Vol.I, Mar. 22, 1990, p.80)**

20. Under the old system, HPD exclusively performed the duties of booking prisoners.

21. Under the old system, both HPD and Corrections were responsible for the property of prisoners. Currently, the police are solely responsible for property. **(Tr.Vol.IV, Oct. 15, 1990, p.87)**

22. Under the old system, police officers and matrons would deal with the family members of prisoners. **(Tr.Vol.I, Mar. 22, 1990, p.24)**

23. Under the old system, Corrections was primarily responsible for custodial maintenance of booked prisoners. However, the job of providing for the custodial needs of prisoners was shared with HPD in some respects as more fully described below.

24. Under the old system, the Department of Corrections was to assume custody of processed prisoners within one hour of being notified. This rarely occurred and due to staffing shortages, prisoners were occasionally held for 7 or 8 hours before being transferred, without food and under overcrowded circumstances. **(Tr.Vol.IV, Oct. 15, 1990, p.69-72, Tr.Vol.VI, Jan. 7, 1991, p.82-83)**

25. Under the old system, it was necessary for HPD to temporarily hold booked prisoners until Corrections staff could come down the elevator and effect a transfer of custody. The HPD had a single cell for this purpose known as the "Bull Pen." **(Tr.Vol.I, Mar. 22, 1990, p.21,79)**

26. Additionally, prior to the introduction of sheriffs to the Morgan Street facility, one additional cell was used by HPD and Corrections to hold female prisoners. **(Tr.Vol.I, Mar. 22, 1990, p.22)**

27. When the number of prisoners in the bull pen began to approach capacity, the Police booking sergeant would exercise the judgement to transfer some of the prisoners to the State Corrections holding cells. **(Tr.Vol.I, Mar. 22, 1990, p.23)**

28. Under the old system, if a fight broke out anywhere in the booking facility,\* police officers would be called upon to quell any disturbance. **(Tr.Vol.I, Mar. 22, 1990, p.25)**

29. Prior to the employment of the sheriffs, police officers would constantly observe the activity of prisoners in the bullpen in order to avoid fights which would otherwise ensue. **(Tr.Vol.I, Mar. 22, 1990, p. 140)**

30. In the past violent incidents have occurred within the bullpen including stabbings. **(Tr.Vol.I, Mar. 22, 1990, p. 142)**

31. The change was motivated by the unduly lengthy time in which Corrections responded to requests from the police to handle the overflow of incoming prisoners. **(Tr.Vol.III, Sept. 26, 1990, p.277)**

32. Under the new system, both booking and custodial maintenance are performed on the first floor of Morgan Street, thereby eliminating the need for HPD to hold prisoners temporarily since prisoners are immediately transferred to the sheriffs upon completion of booking. **(Tr.Vol.V, Oct. 18, 1990, p.32)**

33. Occasionally, it still becomes necessary for the police to directly place prisoners in the new cells which the sheriffs operate because of gang violence and other violent prisoners who refuse to participate voluntarily in the booking process. **(Tr.Vol.I, Mar. 22, 1990, p.37)**

34. Apart from the improved cells and conditions of confinement, the primary differences between the new system and the old is the point of transfer of processed prisoners. **(Tr.Vol.IV, Oct. 15, 1990, p.76)**

35. Prisoners who have completed their processing are turned over to the custody of the sheriff at the door which runs from the photo room to Cell D. **(Exh.6,Tr.Vol.V, Oct. 18, 1990, pp.33-38)**

36. The staffing levels of police officers have remained the same since the introduction of sheriffs to Morgan Street. **(Tr.Vol.I, Mar. 22, 1990, p.38)**

### C. THE REMODELLING OF THE FACILITY

37. In October of 1989, the City completed a remodelling of the facilities on the first floor of Morgan Street. **(Exh.5,6)** Prior to remodelling, all the cells on the first floor were used by HPD. **After** the remodelling, the area previously occupied by three cells are now divided into six cells. Under the new system, HPD and the sheriffs share the use of cells "C" and "D" as indicated on Exhibit 6, and the sheriffs utilize the remainder of the cells for their custodial duties. As a consequence of the remodelling, the area formerly utilized by HPD for prisoner booking and retention pending delivery to Corrections, is now utilized by the sheriffs for custodial maintenance.

38. During the renovation of the Morgan Street Detention facilities, the Union President was taken on a tour of the facility, shown the structural changes which were being made, and given an opportunity to ask questions and receive information. **(Tr.Vol.V, Gct.18, 1990, p.32)**

39. The female cell is currently shared by both the police and sheriffs since it constitutes the sole female facility available. **(Tr.Vol.IV, Oct. 15, 1990, p.54)**

40. The "Bullpen" ("cell" in Exh.5; "Cell B" in Exh.6) was previously utilized as a general purpose holding cell by HPD under the old system. (Tr.Vol.3, September 12, 1990, p.276). Under the new system, the same floor space is utilized by the sheriffs for custodial maintenance **(Tr.Vol.III, Sept. 12, 1990, p.278)**

41. Any disturbances which take place in the remodelled cells are now the primary responsibility of the sheriff. **(Tr.Vol.I, Mar. 22, 1990, p.88)**

42. Occasionally, police officers will still be called upon to assist in quelling a disturbance which erupts in the bull pens. **(Tr.Vol.I, Mar. 22, 1990, p.124)**

43. A matron from the police bargaining unit and a sheriffs deputy share the responsibility of dealing with members of the public who inquire about the status of prisoners, but the police remain exclusively in control of the computer information related to the status of prisoners. **(Tr.Vol.I, Mar. 22, 1990, p.64)**

44. The desk sergeant remains responsible for emergency medical problems which prisoners experience while in custody even after they have been remanded to the custody of the sheriff. **(Tr. Vol. I, Mar. 22, 1990, p.67, Tr. Vol. IV, Oct. 15, 1990, p.77)**

45. The HPD squads that normally staff the booking operation of the Morgan Street facility have not changed in number or composition since the sheriff began deploying deputies at the facility. **(Tr. Vol. I, Mar. 22, 1990, p.94)**

#### D. TRANSPORTATION OF PRISONERS

46. Under the old system, Corrections would re-transfer custody of prisoners to a number of entities for transportation to arraignment. In the late 1970's and early 1980's it was the HPD. At some point in the early 1980's Corrections utilized its own paddy wagon for transportation. **(Tr. Vol. IV, Oct. 15, 1990, p. 96)**. For a particularly violent prisoner, or one arriving early in the morning, the HPD would circumvent its transfer to Corrections altogether and have a police cruiser deliver the prisoner to Lafayette Street. **(Tr. Vol. IV, Oct. 15, 1990, p.79, p.96; Tr. Vol. I, Mar. 22, 1990, p.22, 150; Tr. Vol. II, June 12, 1990, pp. 150-153)**

47. Two police officers would be routinely assigned to driving a paddy wagon to transport prisoners to court for arraignment. **(Tr. Vol. II, June 12, 1990, p.152)**

48. The primary responsibility of HPD paddy wagons was and continues to be to **service** patrol units in the field. **(Tr. Vol. VI, June 7, 1991, p.64-65)**

49. Prior to January 31, 1990, the HPD paddy wagon frequently broke down one to three times a week at which time sheriffs would provide transportation **(Tr. Vol. VII, Feb. 25, 1991, p.126)**

50. Under the new system, sheriffs are responsible for the transportation of **pre**-arraignment prisoners to Lafayette Street. The impact upon the HPD van is a loss of one shuttle per day, one shift, personnel added by the sheriffs to provide transportation and the schedule change for the HPD van is that it no longer swings by Lafayette Street on its outbound trip in the morning. **(Tr. Vol. VI, Jan. 7, 1991, p.64,84, Tr. Vol. V, Oct. 18, 1990, p. 46, Tr. Vol. VI, Jan 7, 1991, p.p.16-18)**.

51. Sheriffs now transport prisoners to court through the **use** of transportation teams.

E. THE SHERIFF NEGOTIATIONS

52. The City commenced negotiations with the State to address further overcrowding problems prior to July of 1989 when Assistant Chief Jesse Campbell assumed the responsibility of being chief spokesperson for the City. (Tr.Vol.III, Sept. 12, 1990, p.293)

53. On August 2, 1989, Hartford Police Chief Ronald **Loranger** wrote the following **letter** to Alfred Rioux, High Sheriff of Hartford County:

I have been kept completely informed by Assistant Chief Jesse Campbell of the negotiations of a memo of agreement regarding the processing, custody and transportation of H.P.D. prisoners, **between** the Hartford Police Department, Sheriff's Department and the Department of Corrections.

From the start, it has been our intent in any negotiations to enable us to decrease sworn personnel assigned to our Detention Division for much needed street duty assignments. It is our understanding that all agencies involved were aware of this, and concurred with this intent.

To accomplish these goals I request the following;

A Wagon with two Deputies to transport prisoners, assigned to 155 Morgan Street Detention Facilities on a 24-hour basis.

A second wagon team be assigned during peak periods, your supervisors will have the option to call this team back as needed.

One Deputy to be assigned to these facilities to assist in other detention-related duties on a 24-hour basis.

One Deputy assigned from 1800 hrs to 0200 hrs to assist in dealing with the public. A dramatic increase in queries and a higher processing time is expected upon the implementation of the new procedures.

It is my understanding that negotiations are going well with expectations of an agreement in the near future. Looking forward to working together, I remain:

Very truly yours,  
Ronald J. **Loranger**  
Chief of Police

(Exh.3)

54. On August 18, 1989 The Union filed this complaint with the Labor **Board** alleging that the City was refusing to bargain on demand over its negotiations with the Sheriff concerning the contracting out of work traditionally performed by the Hartford Police Union.

**(Exh. 17)**

55. The City originally intended to utilize sheriffs to manage the Morgan Street lockup in order to free up police officers for other duties. **(Tr.Vol.III, Sept. 26, 1990, p.269)**

56. The changes instituted by the City in January of 1990 concerning the sheriffs were the result of an agreement of November, 1989 between several governmental entities in order to alleviate increased overcrowding in state detention facilities:

**MEMORANDUM OF AGREEMENT**

**REGARDING THE USE OF THE LAFAYETTE STREET COURTHOUSE LOCK-UP  
ON A 24 HOUR BASIS**

The state's prisons and jails are now at full inmate capacity, and the number of persons in the custody of the commissioner of correction is certain to increase. The rate at which the correctional population is increasing (35% in 1988 and 10.1% during the first quarter of 1989) exceeds the state's ability to create new correctional space. Therefore, the state must make some use of the lock-up facilities at the Lafayette Street Courthouse in Hartford to ease prison and jail overcrowding. The placement of Hartford Police Department arrestees in this facility pending arraignment will make available a like number of spaces at the Morgan Street and Jennings Road detention facilities for other categories of inmates.

This memorandum of agreement is intended as a statement of principles governing the use of the Lafayette Street Courthouse Lock-up (the Lock-up) on a continuous operation basis as housing for persons arrested by the Hartford Police Department and held pending presentment at the next session of court, such persons being known as temporary surrenders.

1. It is the intent of the parties to this agreement that no arrestees will be admitted or released directly to or from the Lock-up, and no social visits will be allowed at the Lock-up.
2. All processing or booking of arrestees will be accomplished by the Hartford Police Department at the booking facility located at 155 Morgan Street.

3. After arrival at the lock-up and prior to arraignment, all releases, with or without bond, shall be accomplished by the Hartford Police Department from the booking facility located at 155 Morgan Street.
4. After the 155 Morgan Street booking facility closes, now scheduled for September 30, 1992, all processing, booking and releasing of arrestees will continue **not** to occur at the Lock-up.
5. The Hartford County Sheriff's Department shall have responsibility for transporting all temporary surrenders between the Morgan Street Detention Center and the Lock-up. The Sheriff's Department shall promptly transport to the booking facility at 155 Morgan Street any inmate of the Lock-up ordered released by a bail commissioner, for release by the Hartford Police Department.
6. The Hartford County Sheriff's Department shall be responsible for the operation of the Lock-up.
7. During the term of this memorandum of agreement, the Lafayette Street Courthouse shall not be open to the public on weekends, holidays and before **9:00** a.m. on weekdays, and shall close to the public at 5:00 p.m. or upon completion of each day's court sessions. The Courthouse may be open to the public on other days or during other hours at such times as court sessions are necessary due to temporary emergency situations.
8. The undersigned parties will meet on a quarterly basis during the first year of this agreement to review and evaluate the operation of the Lock-up. The meetings shall be called by the undersecretary of the Office of Policy and Management. Meetings will be held in subsequent years if requested by at least two parties in attendance at the last quarterly meeting in each year.
9. This agreement constitutes notice to the City of Hartford of intent to use the Lock-up for inmates occupancy (for temporary surrenders) in lieu of the notice provisions contained in a letter dated July 13, 1988 from **William H. Carbone**, Under Secretary, Office of Policy and Management to Mayor Carrie S. Perry, City of Hartford.

10. The City of Hartford agrees that the use of the Lock-up in accordance with the principles of this agreement does not constitute conversion to a full time prison within the meaning of paragraph 23 of a lease for 155 Morgan Street, Hartford, and paragraph 26 of a lease for cell facilities at Police Headquarters on Jennings Road, Hartford, both dated February 26, 1988 and between the City of Hartford and the State of Connecticut.
11. A memorandum of agreement entitled Regarding the Emergency Use of the Lafayette Street Courthouse Lock-up for Inmate Housing dated in October and November, 1988 and signed by the chief court administrator, the commissioner of correction, the Hartford County Sheriff and the secretary of the Office of Policy and Management is superseded (sic) by this memorandum of agreement and is **null** and void.
12. This memorandum of agreement shall terminate on December 31, 1992 unless extended by agreement of the parties.

(Exh. 16)

57. The introduction of the newly remodelled first floor in November of 1989 saw a marked improvement in the booking and arraignment procedure of prisoners. **(Exh. 19)**

58. The increased number and type of cells due to remodelling has created a safer environment for both police officers and prisoners.

59. Since the institution of the new renovations, the incidents of violence, overcrowding, stabbings, robbery, and fights have been substantially reduced and the time necessary to process a prisoner has been greatly decreased. **(Tr. Vol. IV, Oct. 15, 1990, p.p.80-87)**

60. There have been fewer injuries to officers since the renovations have taken place. **(Tr. Vol. VI, Jan.7, 1991, p.39)**

#### F. CIVILIANIZATION

61. The City has in the past contracted out dispatch services, the civilianization of communications, planning, crime analysis, administrative services, including personnel services, non-emergency lockouts of automobiles, the records room, fiscal affairs, and supervision of the records division. **(Tr. Vol. VI, Jan.7, 1991, p.53-56,69)**

62. In recent years, a high school security force has supplanted police officers by providing school security and issuing parking tickets on school property. (Tr.Vol.VI, Jan.7, 1991, p.73)

## CONCLUSIONS OF LAW

1. Unilateral assignment of bargaining unit work to nonbargaining unit personnel will constitute a violation of the Act where the work in question by practice has been performed exclusively by bargaining unit personnel, and the employer does not provide an adequate defense.

2. Where a certain type of work has been by practice performed by bargaining unit and by nonbargaining unit personnel, continued instances of sharing such work do not violate the Act.

3. The detention and maintenance of prisoners who have previously been booked by the Hartford Police Department has been shared for a number of years by the Police Department and the Department of Corrections.

4. The City's action in negotiating and contracting with the Hartford County High Sheriff to provide Sheriffs deputies to provide for the detention and maintenance of prisoners previously booked and processed by the Hartford Police constitutes an extension of the shared work already in existence, and does not constitute a prohibited practice or violation of the Act.

5. The actions of sheriffs deputies in answering the door to detention and taking questions from members of the public while working with a police matron who provided the information from a police computer was so insubstantial as to be de **minimus**.

6. The City's contracting out of the transportation of prisoners between Morgan Street and Lafayette Street to the Sheriffs which had previously been performed by the Union constituted a prohibited practice and a violation of the Act.

## DISCUSSION

This Board long ago decided, following principles laid down by the National Labor Relations Board and affirmed by the United States Courts of Appeals and the United States Supreme Court, that the decision to contract out bargaining unit work to nonbargaining unit personnel was a mandatory subject of bargaining. A failure to bargain in good faith over such a decision is a prohibited practice and a violation of the Act. See, e.g. **Plainville Board of Education**, Decision No. 1192 (1974).

Here the Union contends that by entering into an agreement with the sheriff to perform certain duties at the Morgan Street Lockup, that a substantial part of the work associated with the processing and detention of prisoners which was formerly done exclusively by bargaining unit employees, has been contracted out in violation of the Act.

The City responds that, the work in issue has been shared with nonbargaining unit personnel in the past, and thus that no unilateral change has occurred. Further, the City asserts that any change which may have occurred is incidental and de **minimus** and has had no substantial impact upon working conditions of the bargaining unit. As a result, the City concludes it is under no duty to **negotiate** with the Union over its decision to enter into a contract with the Sheriffs for certain custodial and transportation services at the Morgan **Street** facility.

Contracting out of bargaining unit work is a topic which has been before us on a number of occasions. See, e.g. **City of Norwalk**, Decision No. 2912 (1991); **Town of Trumbull**, Decision No. 2910 (1991); **Town of Watertown**, Decision No. 2515 (1986); **City of Stamford**, Decision No. 2194 (1983); **City of New Britain**, Decision No. 2108 (1982); **Board of Education of the City of Hartford**, Decision No. 1938 (1980); **City of Milford**, Decision No. 1849 (1980); **City of New Haven**, Decision No. 1558 (1977); **Plainville Board of Education**, Decision No. 1192 (1974).

It is well settled that in the absence of an adequate defense an employer commits an illegal refusal to bargain and thus a prohibited practice under the Act when it unilaterally contracts out or assigns to nonbargaining unit personnel work which has been performed exclusively by bargaining unit employees. **Town of Watertown**, supra. However, it is clear that not all contracting out of work is illegal. When work has been by practice performed both by bargaining unit and nonbargaining unit personnel, the continued sharing of such work does not violate the Act. **Board of Education of the City of Hartford**, supra; **Town of Watertown**, supra.

The Union's complaint contains multiple counts concerning both alleged violations of the Act and aspects of the work allegedly contracted out. The violations include not only an allegation concerning the unilateral contracting out of bargaining unit work, but also a count alleging a refusal to bargain on demand during negotiations for a successor agreement. The work allegedly contracted out is described by the Union as (a) the processing and holding of prisoners; (b) observance of prisoners in cells; (c) dealing with attorneys, bondsmen, and family members of prisoners, and (d) transportation of prisoners from Morgan Street to the Lafayette Street facility. As part of its prima facie **case**, the Union must establish that the work in issue has in the past been exclusively performed by the bargaining unit. If it does not, all that has **been** said above about contracting out has no application. **Central Soya Co., Inc.**, 151 **NLRB** 1691, 58 **LRRM** 1667 (1965); **City of Torrington**, Decision No. 2172 (1983). We discuss each of these matters in turn.

## Control of Prisoners in Booking

The Union contends at great length the duty of maintaining order and safety of prisoners in its custody in the bullpen was bargaining unit work exclusively performed by members of the HPD, that with the remodeling of the Morgan **Street** facility and introduction of the sheriff into the facility, these **duties** were contracted out unilaterally in violation of the Act. The Union is correct in its description that for many years the Hartford Police have provided custodial care to prisoners in the bullpen. The Union is also correct in its assertion that the transfer to the sheriffs of the function of guarding the prisoners in the bullpen was done without bargaining with the Union. However, we conclude that the Union is incorrect in its **characterization** of this action as transfer of work exclusively performed by members of the HPD. Rather, we conclude that the Union has too narrowly defined the work at issue as supervision of the bullpen. The work at issue is more properly defined as custodial care of prisoners following completion of the booking process. Application of the latter definition leads us to the conclusion that custodial care following booking has for many years **been** a shared function, and accordingly the HPD has no obligation to bargain concerning the transfer of any custodial supervision that belonged to it.

We first explain our conclusion that the custodial care following booking was a shared function. It is clear to us from evidence that the booking process - including fingerprinting, property inventory, and background investigation, - were and are entirely the province of the HPD both in practice and "on paper". After the **arrestee** was booked, custody was supposed to be transferred fairly promptly to the Corrections Department ("old system"). In fact, there was a variation in how much time elapsed before the transfer of custody. There was also a variation in where custody was transferred physically. ~~old system~~, in some instances the custody was promptly transferred following booking and in other cases many hours elapsed, with a long period in which the prisoner was held in the bullpen. If the prisoner remained in the bullpen, he was in fact routinely guarded by HPD bargaining unit members. Thus, it is perfectly understandable that the Police Unit members would come to see this as their work -- they did it **often** and for long periods, and it was at times both difficult and dangerous. But we believe it unworkable for the task of custodial care of prisoners to be minced up conceptually -- or in reality -- into subcategories. In some ways our unwillingness to splinter work into subcategories is parallel to our unwillingness to define bargaining unit work according to geographic locations --i.e. where different types of workers are utilized in different locations to perform one category of work we have found it shared work. ***Board of Education of the City of Hartford, supra.***<sup>1</sup>

We also **note** our agreement with the City's assertion that part of the Union's

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<sup>1</sup> By the same token we also note that the City has presented us with many examples of "**civilianization**" of police dispatchers and others **within** the Department in aid of its shared work defense. **These** employees performed different work at other locations. Thus it is flawed to conclude **that** the performance of a different type of shared work within the bargaining unit constitutes a valid defense.

argument confuses the physical location of particular work with the substance of the work itself and perhaps its ownership. When the facility was remodeled, the sheriffs were placed on the same floor with **HPD** booking personnel, and the sheriffs began performing the Corrections responsibility for custodial maintenance in the area formerly known as the bullpen. Again, the parallel lies with our cases requiring a unit wide analysis of work. Here the Corrections personnel used to perform post-booking custodial care outside of the view of the police. Now it is within their view, in shared physical facilities. That does not change the shared nature of the work -- or put alternatively, the "nonexclusive" nature of the police work.<sup>2</sup> The concept of bargaining unit work focuses on substance, not location.

We recognize the importance of closely observing and at times restraining incarcerated prisoners in order to maintain their health and safety, and that performing this function presents hazards from time to time to HPD personnel. However, we do not **find** that consideration to be dispositive of whether the work was that of the bargaining unit or not. Rather, these factors bear on responsibility - and sometimes liability - to the city and/or the state, as opposed to ownership of the work. Neither have we been presented with evidence sufficient to establish that the use of sheriffs presents safety implications to the police sufficient to require that the City bargain with the police union when it would otherwise not have to do so. We also note that while the Union initially contended that safety issues were at stake, this issue was not pursued throughout the proceeding and was later finally abandoned.

### Dealing with Members of the Public

The Union complains that prior to the changes instituted by the City, a police matron would deal with members of the public including family members, attorneys, and bondsmen concerning the status of the prisoners, and this work was exclusively work of the bargaining unit. According to the Union, following the changes, a sheriff assumed these duties, and it asserts that this constitutes unilateral contracting out. The evidence before us indicates that occasionally a sheriff answers a door and takes questions regarding prisoner status, but does so only on an incidental basis during the busiest times of the day, with the police matron still regularly performing these duties. Also, only HPD personnel have access to the computer which contains the information concerning prisoner status. In light of the incidental nature of the work and lack of access of sheriffs to the computers, we find the change, if it even rises to that level, to be de **minimus**. We note that any change is a product of the physical

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<sup>2</sup> We also fail to see the analogy the Union seeks to draw between the current circumstances and the facts presented to us in *Town of Watertown*, Decision No. 2515 (1986). In *Watertown*, the bargaining unit had exclusively performed the work of hauling chipstone for a number of years. Here, as our analysis above demonstrates, the HPD has not been exclusively responsible for custodial maintenance of prisoners for many years.

redesign of the facility as much as anything else. In conclusion, we find no duty to bargain over so insubstantial a modification in working conditions. Town *of Willington*, Decision No. 2238 (1983).

### Transportation of Prisoners

The Union asserts that the transportation of prisoners from Morgan Street to the Lafayette Street courthouse for arraignment has been exclusively bargaining unit work by past practice, and that this task has been unilaterally contracted out by the city to the sheriff since January, 1990. The City notes in its defense that the HPD paddywagon is still utilized, with the same number of officers on the same number of shifts. However, we note that the sheriffs have contracted to add additional personnel in order sufficiently to carry out the task previously performed by the police of transporting prisoners to and from Lafayette Street for arraignment. Although a union alleging an illegal, unilateral removal of unit work may have to show an impact on the unit, that impact need not consist of layoffs or other direct consequences. As we noted in Town *of Plainville*:

But the decisions also make it clear that the requirement may be satisfied where the "impact" is much more indirect and subtle. Thus "departure from previously established operating practices," and "impairment of . . . reasonably anticipated work opportunities" are recognized, each as a separate and distinct ground for finding substantial impact. So is a practice which generates fears of future encroachment upon bargaining unit work. As the court recognized in the District 50 case, supra, 358 F.2d 234, 237, such "fears are palpably real and disturbing." *Plainville* at p.6.

We find a substantial impact here in the impairment of anticipated work opportunities.

The City also draws our attention to the fact that in emergencies when the police wagon broke down, both sheriffs and correctional personnel would transport the prisoners to court, or hospital facilities. However we cannot regard these exigent circumstances as being either knowing or voluntary forms of shared work. We believe that what underlies these circumstances are in fact the exigencies of the criminal justice system itself. An arrested individual deprived of his or her liberty must not only be protected and **cared** for, but also must be promptly presented to a bail commissioner and a magistrate. Failure to adhere to these statutory requirements expose both the police department and the city to liability. Thus, a Union's good faith effort to help avoid such circumstances should not later be interpreted as an acquiescence in the process of sharing bargaining unit work with non

bargaining unit members. These instances would not logically have given rise to the filing of a prohibited practice complaint. In sum, we find there has been no genuine sharing of this work in the past. We turn to the action complained of, the actual transfer of transportation duties.

In the agreement **entered** into by the City with the Department of Corrections, the Judicial Department, the Hartford County Sheriff, and the State, we find that the City, without bargaining with the Union in advance, expressly agreed to allow the Hartford County Sheriffs Department to assume responsibility for transporting all temporary surrenders between Morgan Street and the Lafayette Street courthouse. ( Exhibit **16,-** Finding of Fact No. 56) Since the work was not genuinely shared in the past, the City was not free to consent to this contracting out of police transportation work without bargaining with the Union over its decision to do **so.**<sup>3</sup> Thus, we conclude that the City committed a prohibited practice by failing and refusing to bargain over the contracting out of HPU transportation work between Morgan Street and Lafayette Street.

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<sup>3</sup> Neither party presented arguments in their briefs which focused on any statutory basis for the State or local entities to claim custody or transportation of prisoners as solely within prerogatives; so we do not base our conclusions on any such theories. However, we are aware of the provisions of Connecticut General Statutes § 6-32(a),(b), (c), or (d), none of which were cited. We note that in particular, **§6-32(d)(3)** appears, on an initial reading, to specify as work within the province of the local police **department, transportation** work of the same or similar nature to that involved here. Section 6-32(d) provides in full as follows:

**Sec. 6-32d Responsibility for transportation and custody of prisoners.**

Except as otherwise agreed between the advisory board and the department of correction or other appropriate agency the responsibility for transportation and custody of prisoners shall be assumed as follows:

- (1) Each high sheriff shall be responsible for the transportation of male prisoners between the courthouse within his county and: (A) Community correction centers, until sentencing; (B) other places of confinement after arraignment and until sentencing; and (C) the place of initial confinement, after sentencing. In addition, each high sheriff shall be responsible for the transportation of adult female prisoners between the courthouse with his county and community correction centers, not including the correctional institution at Niantic. If such transportation is in other than state vehicles, the owner of the vehicle used shall be reimbursed by the state at the rate established for state employees with the office of policy and management.
- (2) The department of correction shall be responsible for the transportation of adult female prisoners between places of confinement and either courthouses or community correction centers, at the discretion of the commissioner of correction.
- (3) **Each** high sheriff shall be responsible for the custody of prisoners at courthouses within his county, except that the local police operating any lockup shall be responsible for the custody of prisoners within that lockup. In addition, if such designated lockup is not in the same building as the courthouse serviced by it, the local police operating such a designated lockup shall be responsible for escorting prisoners from the lockup to the courthouse. The town in which such a designated lockup is located shall be reimbursed pursuant to section **7-6135a.**

### The Refusal to Bargain During Negotiations

The Union correctly states that the refusal to negotiate over a **unilateral** change in working conditions during bargaining for a contract will constitute a prohibited practice and a violation of the Act absent a valid defense, **City of Milford**, Decision No. 1270 (1974). We have held that during negotiations for a successor agreement, that both major and minor conditions of work must be brought by either party to the bargaining table for negotiations. Immediately prior to the implementation of the sheriffs at Morgan Street, the parties concluded a successor agreement. Even though requests were made by the Union to negotiate during those negotiations, and even though the Union President was taken on a tour of the facility and given an opportunity during those negotiations to ask questions about the changes which were to occur, no discussion or negotiations were had about the City's intention to enter into an agreement with Corrections, the State, Judicial Department, and Sheriffs concerning the contracting out of transportation work. Clearly as previously stated such a change was substantial, because the addition of additional sheriffs for the purpose of providing such transportation evidences a loss of reasonably anticipated work opportunities. Therefore we further find that the City's action was particularly egregious as it undermined the on-going bargaining process.

**XXX**

In light of our conclusions on the numerous facets of this case, we enter an order dismissing the allegations of the Union related to the unilateral removal of custodial work, and work involving "dealing with the public", and order the City to bargain concerning the contracting out unilaterally of bargaining unit transportation work between Morgan Street and the Lafayette Street courthouse in Hartford.

### O R D E R

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

ORDERED that the counts relating to the processing and holding of prisoners, the observance of prisoners in cells and dealing with the members of the public be, and the same are hereby dismissed.

**IT IS FURTHER ORDERED** that the City of Hartford shall:

- I. A. Cease and desist from refusing to negotiate with the Union upon demand concerning the decision to contract out the transportation of prisoners between Morgan Street Detention Facility and the Lafayette Street for arraignment;

- B. Cease and desist from entering into agreements to transfer this transportation work to other law enforcement agencies without prior bargaining upon request with the Union.
- II. Take the following **affirmative** action which the Labor Board finds will effectuate the policies of the Act.
  - A. Negotiate upon demand with the Union over the proposal to transfer to other law enforcement entities the transportation of prisoners from Morgan Street Detention facility to Lafayette Street courthouse for arraignment.
  - B. Assign bargaining unit uniformed personnel to perform this assignment and make them whole for any losses they have incurred during the period the work has been transferred.
  - C. Post immediately and leave posted for a period of sixty (60) consecutive days from the date of posting, in a conspicuous place where the employees customarily assemble, a copy of this Decision and Order in its entirety.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

By s/Patricia V. Low  
Patricia V. Low

s/Susan R. Meredith  
Susan R. Meredith

s/Margaret A. Lareau  
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