STATE OF CONNECTICUT  
LABOR DEPARTMENT  

CONNECTICUT STATE BOARD OF LABOR RELATIONS  

IN THE MATTER OF  
CITY OF WATERBURY  

-and-  
WATERBURY POLICE UNION,  
LOCAL 1237, COUNCIL 15,  
AFSCME, AFL-CIO  

Case No. MPP-22,021  

A P P E A R A N C E S:  
Attorney Kevin J. Daly, Jr.  
For the City  

Attorney Eric R. Brown  
For the Union  

DECISION AND ORDER  

On October 6, 2000, the Waterbury Police Union, Local 1237, Council 15, AFSCME, AFL-CIO (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the City of Waterbury (the City) had violated the Municipal Employee Relations Act (MERA or the Act) by failing to implement a collective bargaining agreement between the Union and the City.  

The parties entered into a partial stipulation of facts and exhibits and appeared before the Labor Board for a hearing on December 4, 2000. Both parties were allowed to present evidence, to examine and cross examine witnesses and to make argument. Both parties filed briefs and reply briefs, the last of which were received on December 29, 2000. Based on the entire record before us, we make the following findings of fact and conclusion of law and we issue the following order.
FINDINGS OF FACT

The findings of fact are based on the stipulation of the parties and the record evidence.

1. The City is a municipal employer within the meaning of the Act.

2. The Union is an employee organization within the meaning of the Act.

3. On October 6, 2000, as amended on November 1, 2000, the Union filed Complaint No. MPP-22,021. (Ex. 1).

4. The City and the Union are parties to a collective bargaining agreement which expired June 30, 2000. (Ex. 2).

5. The parties commenced negotiations for a successor agreement on April 3, 2000. There were no ground rules throughout the proceedings. At the time the negotiations commenced and throughout the negotiation process, the City was at least 8 million dollars in debt.

6. In accord with Section 7-474(a) of the Act, the City was represented by Mayor Philip Giordano, through his Chief of Staff, Ms. Catherine Awwad, during collective bargaining. Ms. Awwad had the authority to negotiate on behalf of the City and to bind the City to an agreement. Mayor Giordano was involved in approximately 90% of the negotiations up until the last month and a half before a tentative agreement was signed on August 17, 2000. During negotiations, the Union was represented by Union President Paul Ariola.

7. During the course of negotiations the parties reached a tentative agreement on individual contract provisions. (Ex. 3). The tentative agreement was not conditioned upon any factors. The tentative agreement was not subject to the results of any actuarial studies.

8. On or about August 17, 2000, the Union and the City through the Mayor’s Chief of Staff executed a Letter of Understanding confirming a tentative agreement on a successor collective bargaining agreement to the collective bargaining agreement which expired June 30, 2000. (Ex. 4). The Letter of Understanding contained the following statement: “It is also agreed that in the event that either party does not ratify the tentative agreement, any further negotiations/arbitration shall be limited to the issues found in the tentative agreement.” (Ex. 4).

9. The Sick Leave Article of said tentative agreement provides that employees may exchange up to one hundred twenty (120) days of accumulated sick leave for no more than three (3) years of service for pension purposes.
10. On August 18, 2000, an actuarial study of the proposed changes in the police contract was issued to said Union by the Robinson Company. (Ex. 5).

11. The agreement was ratified by the Union membership on August 24, 2000.

12. On September 8, 2000 an actuarial study of the proposed changes in the police contract was issued to the City of Waterbury by the firm of Hooker and Holcombe, Inc. (Ex. 6).

13. The Board of Aldermen is the legislative body of the City of Waterbury.

14. On September 21, 2000 the proposed 2000-2005 contract was presented to the Waterbury Board of Finance. (Ex. 7).

15. The Waterbury Board of Finance voted to approve the tentative 2000-2005 agreement on September 21, 2000. (Ex. 8).

16. On September 22, 2000, the Board of Finance confirmed to the Board of Aldermen their approval of the tentative 2000-2005 agreement. (Ex. 9).

17. On September 25, 2000, the proposed 2000-2005 contract was presented to the Waterbury Board of Aldermen for approval in accord with the provisions of Section 7-474(b) of the Act. The Mayor did not address the Board of Aldermen prior to their vote on the agreement although he was aware of the results of the actuarial study commissioned by the City at the time the contract was presented to the Board of Aldermen.

18. On September 25, 2000, the Board of Aldermen voted to approve the agreement between the City and the Union (Exs.10 and 10a).

19. On September 25, 2000, the City Clerk issued a summary report reflecting the Board of Aldermen’s vote. (Ex. 11).

20. Section 339 of the City Charter is entitled “Approval or veto by Mayor” (Ex. 12) and provides in relevant part:

   Each vote, resolution, order, bylaw or ordinance which passes said board shall be transmitted forthwith to the mayor. …If he shall disapprove it, he shall, within ten (10) days, return it to the city clerk, with his objections in writing, and the clerk shall present the same to the board of aldermen at its next meeting;

On October 4, 2000, the Mayor sent a memo to the Union stating that the had exercised the veto power of the office of the Mayor. (Ex. 13). The Mayor marked the summary report reflecting the Board of Aldermen’s vote as “Veto” 10-4-00 Philip Giordano, Mayor. (Ex. 11).

22. As a result of the Mayor’s veto action, the City has refused to implement the agreement.

23. There exists in Waterbury a Budget Advisory Council (BAC) which was formed by a special act of the state legislature in 1996. Pursuant to the statute, the BAC is charged with overseeing the City’s budget in an effort to produce a balanced budget. The BAC has authority to disapprove proposed budgets for the City.

24. **CONCLUSION OF LAW**

1. The City violated the Act by refusing to implement a valid collective bargaining agreement.

**DISCUSSION**

In this case, the Union contends that the City has failed to implement a valid collective bargaining agreement between the parties. The City does not dispute that it has failed to implement the agreement. Instead it argues that the agreement is not valid until signed by the Mayor. The City claims that the Mayor has the right under the City Charter to veto the contract and that he is not obligated, under all circumstances, to sign a contract which has been favorably voted upon by the Board of Aldermen. According to the City, the Mayor had an obligation to veto this contract because he could not pass a budget if the contract was implemented. In this case, we agree with the Union.

The facts before us are essentially undisputed. During negotiations, the City was represented by Ms. Awwad who had full authority to enter into an agreement on behalf of the City. Neither the tentative agreement nor the Letter of Understanding contained any contingencies with regard to the results of actuarial studies. Indeed, neither document contained any specific restrictions other than an implication in the Letter of Understanding that both parties would “ratify” the contract. Throughout the contract negotiations, the City was fully aware of its financial condition. In spite of this knowledge, the City signed a tentative agreement with the Union. The parties have stipulated that the agreement was thereafter presented to the Board of Aldermen in accordance with the provisions of MERA. At the time of the presentation to the Board of Aldermen, the City was in possession of its own actuarial study showing the financial impact of the contract. Again, in spite of this knowledge, the Mayor did not address the Board of Aldermen regarding the contract. Only after having entered into the tentative agreement

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1 At the hearing, we rejected hearsay testimony offered by the City that the tentative agreement was contingent upon the results of an actuarial study commissioned by the City. The City admitted that Ms. Awwad was available to testify; the City simply did not bring her to the hearing. Under the circumstances, we rejected the hearsay testimony regarding the alleged contingency.
agreement and presenting it to the Board of Aldermen did the Mayor “veto” the agreement.

We find that the Mayor had no authority to veto the agreement once it was voted upon favorably by the Board of Aldermen. The parties have stipulated and we find, that the agreement was submitted to the Board of Aldermen in accordance with the provisions of MERA. Although the minutes of the meeting of the Board of Aldermen (Ex. 10) and the summary memorandum (Ex. 10a) do not use the words “request for funds” as used in the Act, the documents make clear that the Board of Aldermen discussed finances exclusively during their discussions and voted regarding financing of the contract. The Aldermen were aware of the actuarial studies and discussed those reports in their deliberations. It is very clear, and the parties agree, that the vote taken by the Board of Aldermen approved the funds necessary for the new agreement in accordance with MERA. Compare: City of Groton v. Connecticut State Board of Labor Relations, Dkt. No. CV94-0104742 J.D. New London at Norwich, 3/12/97, Parker, J. (reversing Labor Board decision where no evidence of need for funds to implement contract). Having done so, no other action is allowed on the contract except for the Mayor to sign it as a ministerial act. MERA specifically provides that the action taken by the legislative body of the municipality is the exclusive method for approving a collective bargaining agreement. Once that approval is given by the legislative body, no other action is allowed, notwithstanding any provisions of the local Charter. Simply put, the Mayor’s veto power is not applicable to this contract.

Section 7-474 of the Act provides in part: (b) Any agreement reached by the negotiators shall be reduced to writing. Except where the legislative body is the town meeting, a request for funds necessary to implement such written agreement and for approval of any provisions of the agreement which are in conflict with any charter, special act, ordinance, rule or regulation adopted by the municipal employer or its agents, such as a personnel board or civil service commission, or any general statute directly regulating the hours of work of policemen or firemen or any general statute providing for the method or manner of covering or removing employees from coverage under the Connecticut municipal employees’ retirement system or under the Policemen and Firemen Survivors’ Benefit Fund shall be submitted by the bargaining representative of the municipality within fourteen days of the date on which such agreement is reached to the legislative body which may approve or reject such request as a whole by a majority vote of those present and voting on the matter; but, if rejected, the matter shall be returned to the parties for further bargaining. Failure by the bargaining representative of the municipality to submit such request to the legislative body within such fourteen day period shall be considered to be a prohibited practice committed by the municipal employer. Such request shall be considered approved if the legislative body fails to vote to approve or reject such request within thirty days of the end of the fourteen-day period for submission to said body. … (c) Notwithstanding any provision of any general statute, charter, special act or ordinance to the contrary, the budget-appropriating authority of any municipal employer shall appropriate whatever funds are required to comply with a collective bargaining agreement, provided the request called for in subsection (b) of this section has been approved by the legislative body of such municipal employer… (e) An agreement between a municipal employer and an employee organization shall be valid and in force under its terms when entered into in accordance with the provisions of sections 7-467 to 7-477, inclusive, and signed by the chief executive officer or administrator as a ministerial act. … The procedure for the making of an agreement between the municipal employer and an employee organization provided by said sections shall be the exclusive method for making a valid agreement for municipal employees represented by an employee organization, and any provisions in any general statute, charter or special act to the contrary shall not apply to such an agreement.
The City argues that the contract cannot be considered valid until the Mayor signs it. In this regard, the City claims that §7-474(e) of the MERA provides that the contract is valid only when the request for funds is approved and the Chief Executive Officer signs it. However, the City’s argument is misplaced. MERA clearly provides that the signing of the contract by the Chief Executive Officer is a ministerial act. A ministerial act is one “performed in a prescribed manner without the exercise of judgment or discretion as to the propriety of the action.” *Lombard v. Edward J. Peters, Jr. P.C.*, 252 Conn. 623, 749 A.2d 630 (2000). The statute refers to the signing of the contract, once it has been approved in accordance with the statute, as a ministerial act. We do not believe it can be any more clear that the Mayor does not have discretion with regard to his signature on the approved agreement.

Finally, the BAC’s role in this matter is irrelevant. Even if the BAC can be considered to be the “budget-appropriating authority” in Waterbury, MERA makes clear that it must appropriate whatever funds are required to comply with a valid collective bargaining agreement. (§7-474(d)). Thus, if the BAC requires the Mayor to balance a budget, he must do so in conjunction with implementation of this collective bargaining agreement. The BAC plays no role in the approval of the funds for the contract under MERA.

This contract is valid and enforceable. The Act clearly provides that the duty to bargain in good faith includes the obligation to execute a written contract incorporating the terms of the agreement, if requested by either party. Further, the failure to implement the valid agreement constitutes a repudiation of the contract. See: *City of Middletown*, Decision No. 3509 (1997). It is clear that the pension fund is in trouble and that the parties find themselves faced with a serious situation with regard to that plan. However, the time for these parties to have dealt with that reality was at the bargaining table. Nothing forced the City to tentatively agree to this contract or to approve the request for funds to implement it. The City had available to it the binding arbitration process in which its financial situation would have been closely examined. The fiscal circumstance in Waterbury was known to all involved throughout the process. There is now a valid and binding collective bargaining agreement in place which must be implemented.

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3 Section 7-470(c) provides in part: “For the purposes of said sections, to bargain collectively is the performance of the mutual obligation of the municipal employer or his designated representative and the representative of the employees …and the execution of a written contract incorporating any agreement reached if requested by either party….”
ORDER

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 City of Waterbury:

I. Cease and desist from failing to execute and implement the collective bargaining agreement between the City and the Union;

II. Take the following affirmative steps which we find will effectuate the purposes and policies of the Act:

A. Execute and implement immediately the collective bargaining agreement between the City and the Union;

B. Make whole any bargaining unit member for any losses incurred as a result of the City’s failure to execute and implement the collective bargaining agreement since September 25, 2000;

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 members of the bargaining unit assemble, a copy of this Decision and Order in its entirety.

D. Notify the Connecticut State Board of Labor Relations at its office at 38 Wolcott Hill Road, Wethersfield, Connecticut, within thirty (30) days of the receipt of the Decision and Order of the steps taken by the City of Waterbury to comply herewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

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

Patricia V. Low
Patricia V. Low
Board Member

C. Raymond Grebey
C. Raymond Grebey
Alternate Board Member
CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 24th day of January, 2001 to the following:

Attorney Eric R. Brown
Council 15, AFSCME, AFL-CIO
290 Pratt Street
Meriden, Connecticut 06450

Attorney Kevin J. Daly, Jr.
52 Holmes Avenue
Waterbury, Connecticut 06710

Philip A. Giordano, Mayor
City of Waterbury
City Hall, 236 Grand Street
Waterbury, Connecticut 06702

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Jaye Bailey Zanta, General Counsel
CONNECTICUT STATE BOARD OF LABOR RELATIONS