

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF  
HARTFORD BOARD OF EDUCATION

DECISION NO. 4175

-and-

August 4, 2006

LOCAL 566, COUNCIL 4, AFSCME, AFL-CIO

CASE NO. MPP-23,737

APPEARANCES:

Attorney Ann Bird  
For the Board of Education

Attorney J. William Gagne, Jr.  
For the Union

Neil Macy, Education and Labor Relations Consultant  
For the Intervenor, Hartford Educational Support Personnel

**DECISION AND DISMISSAL OF COMPLAINT**

On December 10, 2002 Local 566, Council 4, AFSCME, AFL-CIO (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Hartford Board of Education (the School Board) had violated § 7-470 of the Municipal Employee Relations Act (MERA or the Act) by subcontracting bargaining unit work to non-bargaining unit personnel in violation of an agreement between the parties.

In or about early spring 2003, the Hartford Educational Support Personnel (HESP) intervened in the case as an interested party. HESP represents employees of the School Board and was implicated in this matter by the Union's complaint.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on November 22, 2004 and May 5, 2005. The parties appeared, were represented, and were allowed to introduce evidence, examine and cross-

examine witnesses, and make argument. The School Board and the Union filed post-hearing briefs the last of which was received by the Labor Board on September 19, 2005.<sup>1</sup> 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 a municipal employer within the meaning of the Act.
2. The Union is an employee organization within the meaning of the Act, and at all material times has represented a bargaining unit of employees of the School Board, including skilled trade maintenance employees.
3. The Union and the School Board were parties to a collective bargaining agreement in effect from July 1, 1996 through June 30, 2002. (Ex. 4).
4. At all relevant times, Mark Blumenthal (Blumenthal) was an employee of the School Board and a Union official. Prior to December 1998/January 1999 Blumenthal was the Local Union Vice President; at some point thereafter he was elected Local Union President.
5. For approximately seven months prior to December 1998/January 1999, Blumenthal held the bargaining unit position of Warehouse Storekeeper. In that position, Blumenthal served as the storekeeper for the School Board's central warehouse. The job description defines the nature of the work as being "Under the general supervision of the Purchasing Manager, responsible for the operation of school system warehouse in an efficient, effective manner." It further lists the responsibilities of the position as follows:
  1. Direct daily operations in a manner to assure safety of personnel, security of materials, and on-schedule delivery of orders.
  2. Process requisitions at correct times taking into account reorder points, available storage space, peak ordering seasons, shelf life.
  3. Receive and verify all shipments vs. purchase orders.
  4. Assure that all shipments received are stocked in the correct area.
  5. Verify correctness/accuracy of orders filled and amounts charged.
  6. Personally fill postage orders and maintain adequate postage inventory.

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<sup>1</sup> All of the parties had the opportunity to file briefs in this matter. On June 8, 2005 the Labor Board received notification that the Intervenor would not be submitting a brief and that it agreed with the position taken by the School Board.

7 Supervise truck drivers and other staff assigned to Warehouse, including recommending disciplinary action to the Purchasing Manager.

8. Perform other related duties as assigned. (Ex. 7).

6. The central warehouse was originally located on Chestnut Street in Hartford. It then moved to the basement of the former G. Fox building on Market Street in Hartford. Prior to December 1998/January 1999 the Hartford school system had operated this warehouse for a number of years for the purpose of storing some of the supplies and materials used by the school system, including paper, forms, and art supplies. Science equipment was not part of the warehouse's inventory.

7. The storekeeper at the central warehouse was responsible for receiving, storing, and purchasing these supplies. When schools or administrative offices requested an item, the storekeeper would direct the central warehouse's truck drivers to deliver it. The storekeeper also maintained an inventory of the stored items.

8. Prior to December 1998/January 1999, three bargaining unit members, including Blumenthal, were assigned to work in the central warehouse. The other two individuals, Jose Ruiz (Ruiz) and Gregory Hooper (Hooper), operated the two trucks assigned to the central warehouse.

9. Prior to early 1999, the central warehouse was not the only location where supplies were stored for the Hartford school system.

10. Since before 1999, the Hartford school system has operated a print shop, located on Market Street in Hartford. The print shop prints forms and documents for the school system. It stores some of its own paper and product on site without employing a storekeeper. Some of the paper used by the print shop and some of its product also were stored in the central warehouse and delivered by the truck drivers. The School Board at some point began utilizing messengers, another Union bargaining unit position, to deliver the printed forms. The operation and function of the print shop continued unaffected by the closing of the central warehouse.

11. Some of the materials used to maintain the School Board buildings themselves (light fixtures, light bulbs, toilets, sinks, etc.) were stored at the Buildings and Grounds Department on Wethersfield Avenue in Hartford without the oversight of a storekeeper. This storage function existed prior to January 1999 and continued after that date.

12. Martin Luther King School on Ridgefield Street in Hartford also served as a storage facility for the School Board, and housed miscellaneous material, including repair maintenance items. The facility was not staffed with a storekeeper. This storage area existed prior to January 1999 and continued to exist after that date.

13. In or about the late 1990's, Hartford received a National Science Foundation grant and began to implement a kit-based approach to its science education. In 1998 – 1999

Ilene Katz (Katz) was the lead science teacher at Annie Fisher Elementary School in Hartford. In that position, Katz was part of a team of lead science teachers charged with implementing the science kit program in the Hartford school system. At that time, the program was small; only a few kits were available and they were rotated between the schools. There was no official plan for refurbishing the kits once the items in them had been used. Katz did not use the central warehouse procurement process to obtain any science equipment, including science kits, for her school and was not even aware there was a central warehouse available to help her with the science kits.

14. Blumenthal testified that he played a role in the science kit refurbishment process prior to 1999. On or about September 30, 1997 he and the central warehouse crew received a letter from Dr. Patricia Daniel, Superintendent of Hartford Public Schools, commending them for work related to the science kits, namely, unloading, unpacking, moving and storing the material for later pick up by school custodians. (Ex. 6).

15. Sometime prior to late 1998, the School Board decided to streamline functions within the school district to improve overall efficiency. As a result, it was decided that the central warehouse would be closed and the purchasing system reformed. After closure, the schools and administration would order all necessary supplies and materials from approved vendors, who would then deliver the items directly to the ordering location. Surplus would be stored on site.

16. Sometime in late 1998, the Union requested negotiations to discuss the impact of this operational change on the Union's membership. School Board representatives met with Union leadership to bargain the impact of the closing of the central warehouse. It was discussed at these negotiations that once the warehouse closed, schools would be supplied directly from vendors.

17. The parties reached an agreement (the Agreement), memorialized in a December 11, 1998 interdepartmental/informational memorandum written by Robert A. Stacy, Director of Human Resources for Hartford Public Schools, and addressed to Matthew Borrelli, Interim Superintendent, which provided:

- Mark Blumenthal will go to a Landscaping position effective, January 4, 1999. His salary will go from \$36,587 to \$35,573. He will bump Brian Nelson from this position.
- Brian Nelson will return to his M&C Helper position effective, January 4, 1999. His salary will go from \$34,384 to \$29,114. He will have recall rights to take next Landscaping vacancy.
- Mr. Hooper will move into a vacant M&C Helper position with no change in salary.

- Mr. Ruiz will go to a Custodial position. His salary will go from \$28,214 to \$26,402.

We agreed with the Bargaining Unit that:

- There will be no special arrangements for staff impacted;
- There will be no probationary period for staff impacted in new positions;
- The recall rights in the contract will be honored;
- If the warehouse does not close January 1<sup>st</sup> as scheduled, Local 566 staff will stay in these positions until positions are eliminated; and
- No work previously done by Local 566 staff will be performed by anyone outside the bargaining unit. (Ex. 5).

18. Charles Lombard, Staff Representative for Council 4, AFSCME, AFL-CIO, and Janet Peichert (Peichert), who worked in human resources for non-certified personnel, both participated in impact bargaining. Both testified that the last provision of the Agreement meant that no work performed in the central warehouse by the three warehouse employees would be performed by anyone else.

19. The central warehouse closed in or about early 1999. Blumenthal prepared an inventory of the warehouse's contents shortly before its closing. (Ex. 15).

20. In or about June 2001, the School Board created a new position, Project Specialist and Coordinator for the Science and Math Division of the Curriculum and Instruction Department. The position was negotiated with and placed in the HESP bargaining unit. HESP's bargaining unit includes a variety of positions that support the educational functions of the school system. The job was posted according to School Board procedure and Felix Martinez (Martinez) applied for and was hired into the position sometime in the summer of 2001. (Ex. 16).

21. The Project Specialist and Coordinator reports to the Assistant Director for Science and is assigned to work in the science resource center to support science teachers in the science kit-based curriculum. The job description for the position states that its primary function is to be "Responsible for coordinating, refurbishing, and delivering all science kits and supplies district-wide and from the Hartford Public Schools Resource Center." (Ex. 12). The position's enumerated typical duties and responsibilities are:

1. Coordinate, set-up, and refurbish used science kits and delivers the refurbished kits to the schools as needed.
2. Maintain an inventory of kits and science supplies.

3. Procure science equipment and science supplies as needed.
  4. Fill teachers requests for needed science supplies and equipment.
  5. Answer teacher questions about science kits and equipment – including demonstrating equipment care and use.
  6. Monitor use of kits and equipment by teachers.
  7. Maintain a neat and efficient Science/Math Resource Center.
  8. Provide assistance in orchestrating science presentations like the citywide science fair.
  9. Works closely with Assistant Director on special science projects through out the year.
  10. Perform other duties, which may be assigned by supervisor or designee.
22. The science kit program now works as follows. Science teachers receive three grade-specific science kits per year. Each kit addresses a different content area and is taught for three months. Once a unit is completed, the science kits are refurbished.
23. When Martinez began work as the Project Specialist and Coordinator in summer 2001, there were approximately 2,500 to 3,000 science kits in use in the Hartford school system. Martinez would go to each school, pick up the used science kits, bring them back to the resource center for refurbishing, and then deliver new kits to each school. At that time, the resource center was housed at the New Learning Corridor School on Washington Street in Hartford. Once the program grew, the resource center moved to Fox Middle School, where it remains. As of May 2005, 21 different versions of the science kits were in use for grades pre-K through eight, totaling approximately 5,000 science kits in all. Any excess kits were stored at Martin Luther King School. At the time of the labor board hearing, Martinez processed between 800 – 950 orders for science kits every three months. Approximately 70 – 75 percent of his time was spent on the refurbishing process. It took him two to three weeks to deliver and pick up science kits to all 28 schools.
24. Martinez is also tasked with educating the science teachers on the purposes and uses for the science kits. When he first began working as the Project Specialist and Coordinator, he would assist Ken Fastiggi, Director of Science at the time, and Katz in conducting professional development sessions for the teachers about the kits. Sessions were held every Thursday for about seven or eight months. After that, if a teacher was unfamiliar with the process, Martinez would conduct a demonstration and tutorial session for the teacher. In addition, at the time of the labor board hearing Martinez was instructing other interested school districts on the resource center and kit-based science program.

25. The School Board maintains a number of positions whose job duties include driving. The Union's bargaining unit includes some of those positions, as does HESP's bargaining unit.

26. Possession of a valid driver's license is a prerequisite for the Project Specialist and Coordinator position. It was not a requirement for the Warehouse Storekeeper position.

27. At some point prior to the filing of the instant complaint, Blumenthal was informed by several fellow Union members that there were two active warehouses storing and distributing supplies formerly stored and distributed by the central warehouse.

28. Through an investigation, Blumenthal believed he had found four locations performing such work, including Martin Luther King School and the print shop. Just prior to the Labor Board hearing, he observed and photographed a School Board truck, similar to the trucks formerly assigned to the central warehouse, collecting science kits from an elementary school. He also observed and photographed pallets of paper in the basement of the Hartford Public School building on Market Street in Hartford.

29. At some point after the closing of the central warehouse, Rafael Martinez (R. Martinez), Union Local Vice President and School Board employee, observed Martinez on several occasions loading and unloading a School Board truck with science kits at Martin Luther King School.

30. Approximately a year and a half prior to the Labor Board hearing, Blumenthal advised Peichert that the Project Specialist and Coordinator job classification should be in the Union's bargaining unit.

### **CONCLUSIONS OF LAW**

1. In order to prove a *prima facie* case of unlawful subcontracting/transfer of work, a Union must show that:

- a. The work in question is bargaining unit work;
- b. The subcontracting/transfer of work varied significantly in kind or degree from what had been customary under past practice;
- c. The alleged subcontracting/transfer of work had a demonstrable adverse impact on the bargaining unit.

2. The Union in this case failed to establish a *prima facie* case of unlawful subcontracting/transfer of work.

3. The School Board did not unilaterally transfer bargaining unit work to non-bargaining unit personnel.

4. The School Board did not commit a prohibited practice with regard to the Agreement.

### DISCUSSION

The Union alleges in this case that the School Board closed the central warehouse and unilaterally transferred the work performed there to other, non-bargaining unit employees in violation of an agreement between the parties. The School Board contends that it has not violated that agreement; that it has not reestablished the central warehouse functions and has not transferred the work formerly performed in the central warehouse to non-bargaining unit personnel.

We first analyze the Union's transfer claim using the standard established in *City of New Britain*, Decision No. 3290 (1995). In order to prove a *prima facie* case of unlawful subcontracting or transfer of work, the Union must show that (1) the work in question is bargaining unit work; (2) the subcontracting or transfer of work varied significantly in kind or degree from what had been customary under past established practice; and (3) the alleged subcontracting or transfer of work had a demonstrable adverse impact on the bargaining unit.

The Union has failed to establish a *prima facie* case of unlawful subcontracting. First, even recognizing that the general storage and delivery of supplies and equipment is work that was done by the bargaining unit in the central warehouse, the record is clear that the system of centralized storage and delivery has been eliminated by the School Board. In this regard, the record establishes that some time in the late 1990's the School Board decided to streamline functions in an effort to improve overall efficiency. Within this effort, the central warehouse was closed and the functions of the warehouse, namely centralized storekeeping and delivery of inventory, were rendered obsolete. Thus, the work performed by these employees is no longer being performed by anyone in the system. The new system reduced inventory and requires a direct-from-vendor approach with individual locations storing small amounts of stock and self-managing the ordering process. In effect, the new system eliminates the need for a Warehouse Storekeeper and truck drivers.

This case is not unlike the situation in *Stamford Housing Authority*, Decision No. 3897 (2003) in which the employer eliminated an outdated ordering system thus eliminating the need for the position of Inventory Control Clerk. The Labor Board dismissed the unlawful transfer complaint, finding that the new system eliminated the need for a centralized clerk because any inventory control was now done at the local level under a more streamlined system. The case before us presents a similar situation and requires the same analysis.

We also note that procuring, storing, and delivering equipment and supplies to the various School Board entities were never performed only by warehouse workers. Historically, the School Board stored a variety of its excess supplies in locations other than the central warehouse even while the warehouse was operational. That storage was incidental to the business conducted by each location and no

storekeeper was needed to maintain and oversee the stock. Moreover, from the evidence presented it is clear that the Union understood and accepted that once the central warehouse closed, the schools and administrative buildings would be supplied needed material directly from vendors.

The Union focuses on the work done by central warehouse employees on the science kits. However, the School Board did not begin to implement the kit-based approach to science education until the late 1990's, and then only on a small scale. The science kit project was in the nascent stages of implementation when the central warehouse was closed. The roles played by the truck drivers and the storekeeper in this program were very minor and not part of the delineated job duties of those employees. Further the record clearly shows that there was no consistent system regarding the science kits at that stage and different employees all participated in ordering, stocking, and refurbishing the kits.

Further, the work performed by the Project Specialist and Coordinator, a non-bargaining unit position, substantially differs in both content and emphasis from that performed by the Warehouse Storekeeper. In addition, the qualifications required for the two positions, including education level, skills, and experience, are considerably diverse. While the Storekeeper may have had some sporadic and limited function relating to the science kits in the early days of the program's implementation, once the science kit program became *de rigueur* in the Hartford Public School System, the School Board realized that the program required more complete and devoted attention. Thus the position of Project Specialist and Coordinator was created to manage the entire science kit process from procurement to dissemination and to perform other educational support duties for the Science Department. Because of the prior limited and inconsistent involvement of the Warehouse Storekeeper with regard to science kits, we cannot find that there was a substantial change in practice when the program was further developed and the Project Specialist and Coordinator took over all duties.

Based on the above, we find that the School Board has not unlawfully transferred bargaining unit work to non-bargaining unit personnel. Because the Union has not met its burden of proof in this case, we dismiss this aspect of the complaint.

To the extent that the Union is claiming a breach of the Agreement, we also reject this claim. Assuming we even have jurisdiction over a breach of this Agreement (*see Norwalk Board of Education*, Dec. No. 3415 (1996); *Town of Stratford*, Dec. No. 3587 (1998)) we find the School Board's actions do not breach the Agreement.

**ORDER**

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

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

CONNECTICUT STATE BOARD OF LABOR RELATIONS

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John W. Moore, Jr.  
Chairman

Wendella A. Battey  
Wendella A. Battey  
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 4<sup>th</sup> day of August, 2006 to the following:

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