STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
CITY OF BRIDGEPORT

-and-

INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS, LOCAL 834

Case No.  MPP-26,819

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

David J. Dunn
For the City

Attorney Daniel P. Hunsberger
For the Union

DECISION AND DISMISSAL OF COMPLAINT

On September 14, 2007 the International Association of Firefighters, Local 834 (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the City of Bridgeport (the City) had violated the Municipal Employee Relations Act (MERA or the Act) by unilaterally changing the working conditions in the Bridgeport Fire Department by: 1) refusing to negotiate the changes made to the on-call policy for the Hazardous Materials Officer position, and 2) removing the public education function from the Fire Marshal’s Division.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on December 15, 2008. Both parties appeared, were represented and allowed to present evidence, examine and cross-examine witnesses, and make argument. Both parties filed post-hearing briefs, the last of which was received on August 27, 2009. 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 City 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 been the exclusive bargaining representative of all uniformed and investigatory positions within the Bridgeport Fire Department (the Department), excluding the Fire Chief.

3. The City and the Union were parties to a collective bargaining agreement with effective dates of July 1, 2001 through June 30, 2004 (Ex. 3) that contained the following relevant provisions:

ARTICLE 10 – WORK WEEK

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Section 2 - …Effective July 1, 1997, each Employee in the Line Gang, Arson Division (sic), Training Division assigned as Safety Officer and Machine Shop who is required to perform stand-by duties shall receive Forty ($40) dollars per day for each such day on which the employee is required to perform such duties. Effective July 1, 1997, for an employee who is a Deputy Chief and is required to perform stand-by duties, the employee shall be paid in addition to the employee’s regular pay, Sixty ($60) dollars for each day of such stand-by duty. Such Deputy Chief shall not earn overtime pay for any work performed concurrently with the employee’s stand-by duty.

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ARTICLE 37 – MANAGEMENT RIGHTS

Except as expressly modified or restricted by a specific provision of this Agreement, all statutory and inherent managerial rights, prerogatives, and functions are retained and vested exclusively in the City, including, but not limited to, the rights, in accordance with its sole and exclusive judgment and discretion, to recruit, select, train, promote, discipline, transfer, layoff, and discharge personnel; determine the number and type of positions and organizational structure required to provide Fire services; define the duties and responsibilities of each position and of the department; acquire and maintain essential equipment and facilities required to conduct the business of providing Fire services; contract for non-fire services with other units of government and/or private contractors for the provisions of non-fire services to or by the City; establish and amend policy, procedures, rules and regulations regarding employees standards of conduct and the manner in which work is performed;
perform the tasks and exercise the authorities granted by statute, charter and ordinance to municipal corporations. The City’s failure to exercise any right, prerogative or function hereby reserved to it, or the City’s exercise of any such right, prerogative, or function in a particular way, shall not be considered a waiver of the City’s right to exercise such rights, prerogative or function or preclude it from exercising the same in some other way not in conflict with the express provisions of this Agreement. The City shall not exercise its management rights in violation of its obligations under MERA (the Connecticut Municipal Employee Relations Act. Connecticut General Statute §7-467, et seq).

4. The City and the Union were parties to a collective bargaining agreement with effective dates of July 1, 2004 through June 30, 2009, ratified in September 2007, that contained the same management rights clause as the previous contract. (Ex. 12). It also contained a revised Article 10, as follows:

**ARTICLE 10 – WORK WEEK**

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Section 2 - …Effective September 17, 2007 all non-line personnel who are required to perform stand-by duties shall receive Forty five ($45) dollars per day for each such day on which the employee is required to perform such duties. Effective July 1, 1997, for an employee who is a Deputy Chief and is required to perform stand-by duties, the employee shall be paid in addition to the employee’s regular pay, Sixty ($60) dollars for each day of such stand-by duty. Such Deputy Chief shall not earn overtime pay for any work performed concurrently with the employee’s stand-by duty.

5. The Fire Marshal Division performs fire prevention, code enforcement and inspection services for the Department. A prospective Fire Marshal is required to successfully complete two training modules offered by the State of Connecticut: Fire Investigation and Fire Inspector, which includes training on the hazardous materials (Hazmat) code and the fire safety code.

6. After completion of the training modules, a prospective Fire Marshal is considered trained to the “operational level” in Hazmat. Individuals trained to that level are expected to be able to identify Hazmat spills or issues.

7. All firefighters in the Department receive “operational level” Hazmat training.

8. Personnel in the Fire Marshal Division act as the Hazmat Officer when necessary, performing that function on an on-call/standby basis. The Hazmat Officer has no special training; he or she has the same operational level of Hazmat training as the rest of the Department.
9. “Directive 22” originated in or about February 24, 1997 to govern on-call/standby for the entire Department. (Ex. 8). It was revised on or about June 6, 2005. (Ex. 9). The latest revision was made on or about December 7, 2005. (Ex.10). According to the revised Directive 22, on-call/standby for the Fire Marshal Division runs from Friday at 9:00 a.m. until the following Friday at the same time. The Directive also includes general rules relating to on-call eligibility and service, supervisor responsibilities and responsibilities for the individual who is on call, including notifying the Fire Communications Center when going on and off call and keeping proper records of time and performance while on standby. The revised Directive also states that the Fire Marshal supervisors must keep two rotating lists for available personnel to be on standby: one Arson list and one Hazmat Officer list. This requirement is not contained in the original version of Directive 22.

10. If the Department needs the services of someone who is trained to actually touch a hazardous substance, it calls in a Hazardous Materials Technician, who performs that function as a member of the Fairfield County Hazmat Unit.

11. Prior to July 6, 2007, if the Department received a call regarding a hazardous material, an engine company was the first to respond. The Hazmat Officer would then be called in from on-call/standby duty. The Hazmat Officer would first isolate the scene and deny entry to the public. He or she would, from a safe distance, attempt to determine what the product was and then notify the appropriate agency, such as the Department of Environmental Protection or the Coast Guard, to handle the matter. The Hazmat Officer would remain responsible for the situation and was required to remain on the scene until the outside agency relieved him or her.

12. Since July 6, 2007, if the Department is notified of a hazardous materials incident, an engine company and the Battalion Chief or Assistant Chief are the first responders. The Battalion Chief isolates the scene, attempts to determine what the product is, and notifies the appropriate agency to handle the matter. The Battalion Chief must remain on the scene until the situation has been resolved or until the Deputy Chief permits him or her to transfer command to another officer.

13. The Battalion Chief is responsible for everything that happens in his district.

14. In 2005, Brian Rooney (Rooney) became Fire Chief. As he familiarized himself with the Department, he realized that most of the personnel in the Fire Marshal Division were trained to the same operational level for Hazmat as the line personnel.

15. Sometime in 2005-2006, in response to his inquiry, the Fire Marshal informed Rooney that a Battalion Chief could perform the same duties as the Hazmat Officer.

16. At some point, Rooney learned that he would be facing a budgetary reduction for 2007, and began looking for ways to accommodate that reduction. Rooney concluded that putting someone on-call to respond as a Hazmat Officer was redundant, because the first
responder to a scene, the Battalion Chief, could perform the same functions and would already be at the scene.

17. On or about June 29, 2007 Fire Marshal Bruce Collins issued a “Read & Post” that stated (Ex. 4):

As of 09:00, Friday, July 6, 2007, there will no longer be an on-call position for Hazardous Materials Officer in the Fire Marshal’s office. The upcoming week (6/29/07 – 7/6/07) is the last week anyone in the Fire Marshal’s Division will receive standby/overtime pay for hazmat (sic). There will only be standby rotation for fire investigation. In the future, the Battalion Chiefs will do the duties of the Hazardous Materials Officer.

18. On or about July 10, 2007 Union President Robert Whitbread sent a letter to Rooney that read, in relevant part (Ex. 5):

You had called me to tell me that you were eliminating On-Call Haz-mat (sic). It is my understanding that as of Friday July 6, 2007 there is no longer an on-call position for Hazardous Materials Officer in the Fire Marshal’s Division. It is my understanding that the Battalion Chiefs will now assume the duties of the Hazardous Materials Officer. Local 834 is requesting any documents you may have or have produced that will explain how this will be accomplished.

19. After Rooney eliminated the on-call Hazmat Officer position, he issued a document entitled “Guidelines for hazardous materials incidents.” (Ex. 6). The Guidelines requested that the recipients refresh themselves with three documents pertaining to Hazmat incidents and provided a set of guidelines to follow when responding to a Hazmat incident. It also listed phone numbers of the various agencies that might be called to respond to an incident and discussed appropriate responses to several different types of potential Hazmat situations, including oil spills and white powder incidents.

20. Before 2005, Fire Inspector Joe Mahalik (Mahalik) worked in the Fire Marshal Division. In addition to his fire inspection duties, he also performed a public education role. In this role, if a school called and wanted someone from the Department to give a talk to the students on fire safety, he would respond. Each talk lasted approximately twenty to thirty minutes.

21. The Department had no curriculum or protocol by which they regularly provided public education services to all of the City’s schools.

22. After Mahalik’s retirement, Fire Inspector Napoleon Jenkins (Jenkins) performed the public education function as needed until he left the Division.

23. About the same time Jenkins left the Division, the Department received a Federal Emergency Management Agency (FEMA) grant. As part of the grant, they received money
to buy smoke alarms to install throughout the City. To accomplish that task, the Department teamed up with the American Red Cross and AmeriCorps. In addition, the American Red Cross handed out a curriculum to all Kindergarten through Grade 5 classroom teachers in the City called “Masters of Disasters,” which educated children on various disasters that might occur, such as hurricanes, tornadoes and fires. Through this program, teachers began educating the children on matters of public safety and fire safety.

24. After the FEMA grant expired, the Centers for Disease Control awarded a five year grant to the Department to buy smoke alarms and continue the “Masters of Disasters” curriculum.

25. After the “Masters of Disasters” curriculum was put in place, that portion of the public education function was no longer performed by the Fire Marshal’s Division or anyone else in the Department. However, the Department still responds to requests to bring a fire truck to a school and the Fire Marshal Division still conducts its fire safety poster contest. In addition, Fire Inspector Dimbo occasionally does public speaking for fire education through the grant.

**CONCLUSIONS OF LAW**

1. The City did not unlawfully unilaterally remove the on-call Hazmat position because its actions were permitted by the applicable collective bargaining agreement.

2. The City did not unlawfully unilaterally remove the public education duties from the Fire Marshal Division because the change was permitted by the applicable collective bargaining agreement and was *de minimis*.

**DISCUSSION**

In the instant matter, the Union alleges that the City violated the Act when it unilaterally removed the on-call Hazmat position and public education duties from the Fire Marshal Division without negotiating with the Union. The City argues that the collective bargaining agreement, including the management rights clause, permitted its actions. The City further argues that it was not obligated to bargain over either change because they were *de minimis* and did not have a major impact on the employees. We agree with the City in this matter for the following reasons.

It is by now well settled that it is a violation of the Act for an employer to unilaterally change an existing condition of employment that is a mandatory subject of bargaining, unless the employer provides an adequate defense. *Norwalk Third Taxing District*, Decision No. 3695 (1999); *Bloomfield Board of Education*, Decision No. 3150 (1993); *City of Stamford*, Decision No. 2680 (1988). However, the burden is on the union to prove that a change has occurred. *City of Middletown*, Decision No. 3271 (1995). Once a *prima facie* case has been established, the employer may defend its actions. *City of Bridgeport*, Decision No. 4149 (2006). Specifically, if the change does
not substantially impact working conditions, the change may be found to be *de minimis* and the employer will not be obligated to bargain that change. *Borough of Naugatuck*, Decision No. 2874 (1990); *City of Stamford*, Decision No. 2677 (1988). Also, if the contract between the parties permitted such action, the employer will not be found to have violated the Act by unilaterally implementing the change. *Town of Ridgefield*, Decision No. 2891 (1991); *City of Stamford*, *supra*.

The City does not dispute the Union’s charges that it unilaterally changed both the Hazmat on-call position and the public education function of the Fire Marshal Division without negotiating. Therefore in this case we will review the alleged changes in order to determine whether the City was obligated to bargain with the Union regarding the changes or whether the City has presented an adequate defense to the Union’s allegations of unlawful unilateral change.

The Union first alleges that the City unilaterally removed the on-call Hazmat Officer position from the Fire Marshal Division without negotiating. The City defends its actions with the language of the contract, specifically Article 37, Management Rights, and the language contained in the new contract’s Article 10, Work Week. We have long held that management rights clauses are to be strictly construed and we will not read a “waiver” into such a clause unless it is clear. *East Hartford Housing Authority*, Decision No. 3733 (1999); *Town of Farmington*, Decision 3237 (1994). In this case, we are persuaded that the City’s actions were fully permitted by the applicable management rights clause. Article 37, Management Rights, clearly gives the City the right to determine the number and type of positions and the organizational structure required to perform fire services, the right to define the duties and responsibilities of each position and of the department, and the right to amend policies, procedures, rules and regulations regarding the manner in which work is performed. We find this language is sufficiently specific to give management the right to amend its practice and its policy regarding on-call/standby.

Further, the language contained in Section 2 of the revised Article 10, Work Week, permits the City’s actions. The new Section 2 removes all references to specific divisions and generally requires that any employee required to perform standby duties be paid on-call/standby pay on a per diem basis. On this point, we are puzzled by the fact that although the Union was apparently so troubled by the City’s removal of the on-call Hazmat position that it was prompted to file this complaint, it nonetheless inexplicably did not contest this revision of Article 10, Section 2 during contract negotiations, which were in progress at the time the City instituted this change in July 2007. Rather, the Union agreed to these contractual terms by which on-call/standby has become an assignment left entirely to the discretion of the City. Based on the evidence presented, the City’s removal of the on-call Hazmat position in favor of a general on-call/standby process is permissible. The Union presented very little testimonial and documentary evidence in this case, and none that we find rebuts the clear language of the contract. Therefore, we find the contract provides a defense for the City’s actions.
Further, the Union offered no testimony or documentary evidence that any individual in the Department had been adversely impacted by the elimination of the on-call Hazmat position. The Union presented no evidence that any employee had been denied on-call/standby pay or had been harmed in any way by the City’s removal of this position. The record is devoid of any evidence of a substantial impact on the working conditions of bargaining unit employees. On the limited record before us, we dismiss this portion of the complaint.

The Union also alleges that the City unilaterally eliminated the public education duties of the Fire Marshal Division without negotiating. The City again defends its actions with Article 37 of the contract. The management rights clause of the contract unequivocally gives the City the right to contract for non-fire services with other government offices and/or private contractors. Further, there was no longer a need for public education to be exclusively performed by the Fire Marshal Division since the bulk of the work was funded through a government grant and administered by the American Red Cross directly to the school teachers. In addition, the public education function is still being performed by the Fire Marshal Division, albeit to a lesser degree. We conclude that the language of Article 37 clearly gives the City the right to remove public education duties from the Fire Marshal Division.

Further, we find this change to be *de minimis*. The presented evidence established that one individual in the Department provided public education services to the City’s schools on an irregular, as-requested basis for twenty to thirty minutes at a time. The Union failed to provide evidence regarding how often this service was performed or how much of the individual’s job was devoted to the function. Thus, we must conclude based on the record that the City was well within its rights in removing public education duties from the Fire Marshal Division and dismiss this portion of the complaint.

Based on the totality of the record before us, we find no unlawful unilateral change and, accordingly, dismiss the Union’s complaint.
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

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

Patricia V. Low
Patricia V. Low
Board Member
DISSENTING OPINION OF MEMBER BATTEY

I respectfully dissent from the portion of the Board’s opinion regarding the unilateral change to the on-call/standby Hazmat position. I conclude that the Union has sufficiently established a past practice of these duties being performed by an employee of the Fire Marshal Division. In this regard, the duties of on-call Hazmat have been performed by a Fire Marshal since at least 1997. It is undisputed that the City unilaterally changed this practice when it removed these duties from the Fire Marshal Division and assigned them to the Battalion Chief already at the scene. Unlike the majority, I cannot find that the City has a valid defense for its actions. I do not believe the management rights clause of the contract is specific enough to permit the unilateral elimination of the on-call Hazmat position. Further, I do not believe that the elimination of a position that pays $40.00 ($45.00 under the successor agreement) per day can be considered an insubstantial impact on the bargaining unit, even without evidence of specific harm. The harm exists in the wholesale and unilateral elimination of the work without negotiating with the employees’ chosen collective bargaining representative.

For the reasons stated above, I therefore respectfully dissent from this portion of the Board’s opinion.

Wendella Ault Battey
Wendella Ault Battey
Board Member
CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 26th day of March, 2010 to the following:

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