On August 25, 2008 Local 184, Council 4, AFSCME, AFL-CIO (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Metropolitan District Commission (the MDC) violated the Municipal Employee Relations Act (MERA or the Act) by unlawfully subcontracting bargaining unit work to non-bargaining unit workers.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on October 7, 2009. Both parties appeared, were represented and were allowed to introduce evidence, examine and cross-examine witnesses, and make argument. Both parties filed post-hearing briefs, the last of which was received on December 8, 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 MDC 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 clerical, operational, and maintenance employees assigned to operate and maintain the MDC’s facilities and processes.

3. At all relevant times the MDC and the Union were parties to a valid collective bargaining agreement with effective dates of January 1, 2007 through December 31, 2010 that contained the following relevant provision (Ex. 4):

   **ARTICLE 7. – JOB POSTING**

   7.1 **POSTING** The following procedures shall be used in the filling of positions within the bargaining unit.

   a. **INTENT TO POST**

      Within thirty (30) days following the date on which a position becomes vacant the District will:

      1. Post the position; or,
      2. Advise the Union President that the position will be posted at a future date beyond the thirty (30) day period and specify the approximate date.
      3. Advise the Union President that the position will not be posted.

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4. Michael Branciforte (Branciforte) has worked for the MDC for fifteen and a half years.

5. Effective the week beginning December 25, 2005, the MDC relocated Branciforte from a Dispatcher position in the Operations Department to a Dispatcher position in the Plant Maintenance Department.

6. The official job description for the Dispatcher position reads, in relevant part (Ex. 6):

   **GENERAL DESCRIPTION:**

   This is responsible dispatching work involving relaying information via a two-way radio and using a paging system.
Work involves responsibility for communicating maintenance and repair information to field systems and meter personnel. Duties include relaying information and instructions, and performing clerical functions. This position also has the responsibility for making routine priority dispatching decisions in accordance with established procedures. This work requires that the employee have good knowledge of District operations and the ability to communicate in a clear, concise manner.

SUPERVISION RECEIVED:

Works under the general supervision of the Assistant Yard Services Superintendent.

EXAMPLES OF DUTIES:

Operates a two-way radio to receive and transmit calls. Relays information and instructions. Maintains awareness of field crew locations. Operates a computer terminal to obtain dispatching information.

Prepares meter reports. Maintains records of meter charges and tests. Computes meter flow data and transmits it to the Customer Service Unit.

Monitors pressure gauges and changes gauge charts weekly.

Processes work orders. Assists in employee timekeeping and payroll record keeping.

Maintains logs and files; sorts, removes and replaces documents in files. Maintains petty cash records.

Answers telephone and direct callers, takes messages or answers routine questions.

Performs related work as required.

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7. On or about August 10, 2008 Branciforte accepted the position of MDC Water Pollution Control Plant Operator.

8. On or about September 2, 2008, the MDC sent the Union a memorandum with the subject, “Section 7.1(a) Notification Dispatcher (M. Branciforte, Incumbent).” (Ex. 5). The memorandum read:
In accordance with Section 7.1 (a) of the Collective Bargaining Agreement, you are hereby notified of the District’s intention not to post the above-captioned position at this time.

9. At some point, Local Union President Gilbert Bironi (Bironi) asked to discuss the decision not to refill Branciforte’s former Dispatcher position.

10. Prior to leaving his Dispatcher position in Plant Maintenance, Branciforte’s supervisor, Plant Maintenance Administrator Todd Cormier (Cormier), asked him to provide a list of his job duties and responsibilities. Branciforte’s list read as follows (Ex. 7):

   **JOB DUTIES FOR DISPATCHER PLANT MAINTENANCE DEPARTMENT**

   1) Timekeeping for Plant Maintenance Department.
   2) P-Card Custodian for Plant Maintenance Department.
   3) Inputting weekly labor sheets.
   4) Record keeping and filing for material safety data sheets.
   5) Record keeping and filing of P.M. Plant Lubrication Manifests.
   6) Processing meal allowances.
   7) Processing boot allowances.
   8) Monitoring RBAS computer, and dispatching crews to alarms.
   9) Processing weekly overtime reports.
  10) Answering Maintenance Supervisors (sic) phones, and taking messages.
  11) Downloading, printing, and filing, (sic) weekly pump station chart recorders.
  12) Updating, recording and filing weekly pump station p.m. sheets.
  13) Making out work orders.
  14) Teco work orders for Plant Maintenance Department, East Hartford Plant, Rocky Hill Plant, and Poquonock Plant.
  15) Ordering office supplies.
  17) Updating and maintaining plant maintenance phone directory.
  18) Updating and maintaining Pump Station Generator Exercise Schedule.
  19) Maintaining gas detector calibration work orders.
  20) Generating, printing, distributing, and recording of performance appraisals.
  21) Distributing paychecks.
  22) Communicating with CBYD for mark outs of pump station work.
  23) Communicating with CL&P for pump station power outages.
  24) Updating, printing, and filing of daily work schedule assignments.
  25) Updating Hartford Plant and all Pump Station fire extinguisher Maintenance schedule.
  26) Delivering mail through out (sic) plant.
  27) Scanning Pump Station Chart Recorders to hard drive.
  28) Tracking and maintaining Pump Station wet well cleaning.
  29) Updating and maintaining Pump Station generator fuel log.
  30) Updating and maintaining Pump Station sewer pumping hours.
31) Updating and maintaining Pump Station water pumping hours.
32) Updating and maintaining Pump Station generator run hours.
33) Communicating with vendors for information for various Plant Maintenance Personnel.
34) Overtime dispatching and record keeping for storm events.

11. Branciforte performed actual dispatching functions approximately ten percent of the time as a Dispatcher in Plant Maintenance. He performed dispatching functions approximately seventy-five percent of the time when he was a Dispatcher in Operations.

12. For a period of time while a Dispatcher in Plant Maintenance, Branciforte worked one day per week in West Hartford performing solely clerical work for the MDC.

13. While at Plant Maintenance, the duties listed in Exhibit 7 were added to Branciforte’s responsibilities by Cormier or Cormier’s supervisor, Jack Prue, or one of the other supervisors. They were not given to him all at once, but rather over time.

14. All of the duties listed on Exhibit 7 were performed by other employees, including members of the Union’s bargaining unit; members of the supervisors’ union, Local 1026, Council 4, AFSCME (Local 1026); members of Local 3713, Council 4, AFSCME (Local 3713), the union that represents engineering, technical, and clerical employees of the MDC; and non-union employees prior to the duties being assigned to Branciforte.

15. After Branciforte left Plant Maintenance, his former supervisors, members of Local 1026, assumed responsibility for the duties Branciforte had been performing. Recently a member of Local 3713 began performing the work that Branciforte used to perform at Plant Maintenance.

16. There are still Dispatchers in the Union’s bargaining unit and the Dispatcher position in the Union’s bargaining unit has not been eliminated by the MDC.

CONCLUSION OF LAW

1. The MDC did not unlawfully subcontract or transfer Union bargaining unit work.

DISCUSSION

In the instant matter, the Union’s complaint alleges that the MDC violated the Act when it unlawfully subcontracted a bargaining unit member’s work to non-bargaining unit personnel. The MDC counters that the work in question was not bargaining unit work, that the transfer of work was in keeping with past practice, and that there has been no impact on the bargaining unit. In this case we agree with the MDC for the following reasons.
We analyze the Union’s 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.

It is the union’s initial burden to make a *prima facie* case establishing that a change in an existing condition of employment has in fact occurred, for if no change is proven, no further inquiry is warranted. *Town of Hamden*, Decision No. 2364 (1985). Once the Union has made its *prima facie* case, the burden shifts to the employer to provide an adequate defense, which may include contractual provisions allowing the action; that the work assigned outside the unit was *de minimis*; or that it was in keeping with past practice. *City of New Britain*, supra.

Based on the record in this case, we find that the Union has not established a *prima facie* case of unlawful subcontracting. First, it is clear that the work in question has always been performed by both non-union employees and employees from various locals. While dispatching work itself may in fact belong to the Union, it was uncontested that Branciforte, despite his title, was barely performing traditional dispatching work while at Plant Maintenance. Branciforte testified that he only did actual dispatching work ten percent of the time at Plant Maintenance.¹ In addition, the undisputed evidence demonstrated that the work that was actually performed by Branciforte at Plant Maintenance had not historically been performed solely by bargaining unit personnel, but instead by non-union personnel and employees from the Union and other locals. The Union did not present any evidence showing that the alleged subcontracting or transfer of work after Branciforte left Plant Maintenance was any different than what had customarily occurred.

Further, this record is devoid of any evidence showing that the alleged subcontracting or transfer of work has had a demonstrable adverse impact on the bargaining unit. The MDC has not eliminated the position of Dispatcher from the Union. No one has lost his or her job or any overtime opportunities. In short, the Union has failed to produce any evidence of any impact whatsoever on the bargaining unit caused by the MDC’s actions here.

Even assuming *arguendo* that the Union was able to establish a *prima facie* case of unlawful subcontracting or transfer of work, the MDC’s actions after Branciforte’s departure from Plant Maintenance were in keeping with past practice. As discussed above, the uncontroverted evidence indicated that employees other than strictly Union bargaining unit members had previously performed the work in question. Thus assigning

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¹ Neither party presented any evidence with respect to who currently performs the dispatching functions of Branciforte’s work at Plant Maintenance. As such we are unable to address this aspect of the Union’s claim.
that work to other employees after Branciforte’s departure was in keeping with accepted practice and provides a valid defense for the MDC’s actions here.

Based on the record before us, we find the Union has failed to make its *prima facie* case of unlawful subcontracting or transfer of work, and we dismiss the 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

Wendella Ault Battey
Wendella Ault Battey
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CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 1st day of June, 2010 to the following:

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