STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

CITY OF BRIDGEPORT

DECISION NO. 5247

-and-

SEPTEMBER 14, 2022

LOCAL 1522, COUNCIL 4,
AFSCME, AFL-CIO

Case No. MPP-34,205

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

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Attorney John Bohannon
for the City

Attorney Patricia Johnson
for the Union

DECISION AND ORDER

On November 16, 2020, Local 1522, Council 4, AFSCME, AFL-CIO (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board), amended on December 16, 2020, alleging that the City of Bridgeport (the City) violated the Municipal Employee Relations Act (MERA or the Act) by transferring bargaining unit work to newly created non-union information technology (IT) positions and discriminating against the Union.

After the requisite preliminary steps had been taken, the parties came before the Labor Board for a formal hearing on March 22, April 16, May 19, June 2, June 3, July 23, August 12, and November 15, 2021. Both parties appeared, were represented by counsel, and were allowed to present evidence, examine and cross-examine witnesses, and make argument. Both parties filed briefs, which were received on January 28, 2022. Based on the entire record before us, we make the following findings of fact and conclusions of law and issue the following order.

FINDINGS OF FACT

1. The City is a municipal employer under the Act.

2. The Union is an employee organization under the Act. At all relevant times, the Union has been the exclusive representative for a bargaining unit of certain City employees, including the full-time PC support technician; network engineer; computer technician; and accounting assistant assigned to the City's school district. (Exs. C4, C6).[1]

3. At all times relevant hereto, the City and the Union were parties to a collective bargaining agreement, effective July 1, 2014 through June 30, 2019, which stated, in relevant part:

ARTICLE 3 -BARGAINING UNIT

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3.3 The inclusion of a newly established classification will be a subject for negotiations between the City and the Union.

3.4 Any dispute whether a newly established classification is to be included or excluded from the bargaining unit will be submitted to the [Labor Board] to resolve such dispute.

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ARTICLE 10- SUBCONTRACT

The City agrees that it will not contract or subcontract any work presently being performed by employees in the bargaining unit in the Department of Public Facilities, Custodian and Building Maintenance Group and Janitor, excluding Custodians. This shall not prevent the City from contracting or subcontracting for supplementary or emergency service which employees in the bargaining unit are unable to perform during their regular hours of work.

The parties have agreed that the language of Article 10 of the Contract shall be interpreted to cover only the divisions of the City's Public Facilities Department and the Maintenance Division of the Board of Education.

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ARTICLE 11- MANAGEMENT RIGHTS

Except as expressly modified or restricted by a specific provision of this agreement, all statutory and inherent managerial rights, prerogatives, and

[1] Exhibits submitted by the complainant Union are marked with the letter "C" followed by a number and exhibits submitted by the respondent City are marked with the letter "R" followed by a number.

> functions are retained and vested exclusively in the City, including, but not limited to the rights … to: … layoff… and discharge personnel; determine the number and type of positions and organizational structure required to provide City services; … contract for services with other units of government and/or private contractors for the provision of services to or by the City, subject to the provisions of Article 10 … The City shall not exercise its management rights in violation of its obligations under MERA…
>
> ***

(Ex. C4).

4. At all relevant times prior to May 2017, the City maintained an IT Services Department (IT Services) staffed by director Eric Hackinson; PC support technicians Brian Pecora, Christopher Guay, James Benson, Sam Marini, and Dustin Hargrove; computer technicians Samuel McIntyre and Julian Miranda; network engineer Konrad Majka; and several part-time IT positions and teachers on special assignment. The director, part-time employees, and teachers were not in the Local 1522 bargaining unit. (Ex. C6).

5. The PC support technicians and computer technicians (collectively, PC technicians) performed largely the same types of work, including but not limited to deploying network and endpoint[2] devices; deploying and updating software; rewiring; installing and mounting audio and video equipment; maintaining inventory; providing onsite and remote assistance; and processing computers for recycling and data destruction. Pecora also worked with the district's telecommunications systems. Network engineer Majka monitored and managed connectivity in all district locations. (Exs. C10.b, R5.a).

6. The City periodically provided its IT Services technical staff with training on new or evolving technology.

7. At all times relevant hereto, the City used outside contractors or vendors to install new technology as part of a construction project or when installation was included in the purchase price of an item.

8. At all times relevant hereto, the City maintained written job descriptions for the PC technician and network engineer positions, which did not require a post-secondary degree. (Exs. C5.a, C5.b).

9. Sometime prior to May 2017, the Union and the City began trying to update existing IT Services job descriptions to better reflect a complete and accurate picture of their existing duties. Over the next 2-3 years, the Union shared its ideas with the City at labor-management meetings, including proposed updated job descriptions drafted by field

[2] "Endpoint" devices communicate remotely through a network.

representative Paul Lavallee. The process of updating the existing job descriptions was never completed. (Exs. C5.a, C5.b, C7).

10. In May 2017, Jeffrey Postolowski replaced Hackinson as director of IT Services. Postolowski envisioned a two-tiered IT Services Department. Specifically, "Tier 1" technicians who physically repair broken endpoint devices in the field and higher level "Tier 2" technicians responsible for "enterprise management". Enterprise management involves managing devices and networks remotely. Postolowski considered PC technicians to be Tier 1.

11. Sometime between May 2017 and February 2020, accounting assistant Janine Angers transferred to another department. The City did not refill Anger's position. (Exs. C6, R1).

12. In February 2020, Majka resigned and the City redistributed the network engineer's work to other positions.

13. In March 2020, during the onset of the coronavirus pandemic in Connecticut, IT Services supported approximately 13,000 desktop computers and Chromebooks. Students were not permitted to take computer devices home.

14. In June 2020, City public schools obtained approximately 5,000 portable computers from the State to facilitate remote learning.

15. Sometime prior to June 9, 2020, Postolowski drafted job descriptions for 4 purportedly Tier 2 positions: endpoint technician 1; telecommunications analyst; ITS field technician; and network support technician. Postolowski wrote that the ITS field technician required an associate degree in IT. However, the other three job descriptions stated that post-secondary IT degrees were "preferred" rather than required. (Exs. C10.a; C10.b; C10.c; C10.d).

16. On June 9, 2020, the City posted an opening for a network support technician. The posting did not identify whether the position was part of the Union bargaining unit. The City hired external candidate Mike Honda for the position. (Ex. C.10.).

17. On September 5, 2020, the City posted a job opening for a full-time endpoint technician I. The posting again did not indicate whether the position was part of the bargaining unit. (Ex. C10.a).

18. In October 2020, the City school district acquired another 17,500 portable computers, increasing the total number of devices supported by IT Services from 13,000 to 33,000.

19. On October 9, 2020, the City posted openings for ITS field technicians and a telecommunications analyst. The posted salary range for ITS field technician was equivalent to the 2018 salary range for PC technician. In addition, for the first time, the

postings stated that the positions were "unaffiliated" with a bargaining unit. (Exs. C4, C10b, C5b).

20. The City hired Pecora as the telecommunications analyst.[3] Pecora did not have a post-secondary degree in IT.[4] The City hired McIntyre and 2 external candidates, Fanne Sainralius and Corey Abraham, as ITS field technicians. (Ex. C17).

21. On October 27, 2020, Union president Sherry Weller emailed Eric Amado of the City's labor relations office (Ex. C25), stating, in relevant part:

> It has been brought to my attention that the City is eliminating Union positions for non-Union positions in the IT Department. The positions being posted are Union work. This is blatantly anti-union animus, and cannot be allowed to happen. In addition it is clearly a MERA violation. I am willing to discuss this with you ASAP, as I will be filing an MPP.

***

Later that day, Amado replied, in relevant part:

> How was it brought to your attention? Verbally? Inclusive of the job postings do you have examples that support your claim, which I can review?
>
> Please share and we can discuss.

***

Weller did not reply.

22. In November 2020, Postolowski restructured IT Services into a User Services Team and a Data Center Operations Team. User Services consists of the Help Desk Support Team and the PC Support Team. The PC Support Team repairs devices in the field while the Help Desk Support Team repairs devices remotely. Data Center Operations' computer technicians work largely with network and phone systems.

23. On November 23, 2020, the City notified PC support technicians Benson, Hargrove, and Miranda that they were being laid off due to a reduction in staffing within their job classifications. The layoffs took effect four days later.

24. In an email to Denise Altro-Dixon dated November 26, 2020 (Ex. C12) regarding the layoffs, Weller stated, in relevant part:

> The Union had received no prior communication from the City or Board of Education that would indicate that the City had experienced such a

[3] Postolowski and another member of management advised Pecora to apply for a non-union position to safeguard his continued employment.

[4] Pecora has an associate's degree in accounting and a bachelor's degree in psychology. (Ex. C22).

> dramatic drop in the need for the services being performed by these three … [Union] IT employees that there could, let alone would, be layoffs.
>
> I am certain you can understand my concern and confusion when only a few hours earlier that day we were communicating regarding the City's posting and hiring of nonunion employees to perform IT work and there was no mention of these forthcoming layoffs. It is difficult to comprehend that the City no longer needs these union IT employees when it is posting and hiring new nonunion employees to perform IT work…
>
> The Union requests that the City/BOE rescind these layoff notices and put these … [U]nion employees back to work.
> …

Altro-Dixon did not respond.

25. Guay and Marini remained in their existing roles as PC support technicians. As of November 15, 2021, they were the only bargaining unit members left in IT Services.

CONCLUSIONS OF LAW

1. Absent an adequate defense, an employer commits an unlawful refusal to bargain and a prohibited practice when it unilaterally transfers bargaining unit work to non-bargaining unit employees.

2. In the absence of improper motive, or an express contractual provision, an employer has the right to eliminate positions, create new positions, and lay off employees for legitimate managerial purposes.

3. The City subcontracted bargaining unit work in violation of the Act.

4. The City violated the Act by laying off three PC support technicians on November 27, 2020.

DISCUSSION

The Union argues that the City violated Sections 7-470(a)(1),(2) and (4)[5] of the Act by transferring the work formerly performed by the PC technicians and network

[5] Conn. Gen. Stat. § 7-470(a) states, in relevant part:

> (a) Municipal employers or their representatives or agents are prohibited from: (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed in section 7-468; (2) dominating or interfering with the formation, existence or administration of any employee organization; … [and] … (4) refusing to bargain collectively in good faith with an employee organization which has been designated in accordance with the provisions of said sections as the exclusive representative of employees in an appropriate unit…

engineer to the network support technician, ITS field technician, endpoint technician 1, and telecommunications analyst. In addition, the Union argues that the City was motivated by anti-union animus when it laid off Hargrove, Benson, and Miranda.

The City responds that the Union failed to establish its prima facie case of subcontracting under ***City of New Britain***, Decision No. 3290 (1995). In the alternative, the City argues that the management rights and layoff provisions in the collective bargaining agreement authorized its actions; the Union waived its rights to bargain; and the layoffs were for legitimate operational and budgetary reasons. Based on the entire record before us, we agree with the Union.

Subcontracting

We use the three-pronged standard first articulated in ***City of New Britain***, supra, to analyze claims that an employer has illegally transferred or subcontracted bargaining unit work. Under ***City of New Britain***:

> The Union bears the initial burden of establishing a prima facie case 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. Once a union has established a prima facie case the burden shifts to the employer to provide an adequate defense. ***City of Bridgeport***, Decision No. 4706 (2014); ***City of New Haven***, Decision No. 4656 (2013); ***Woodbridge Board of Education***, Decision No. 4565 (2011); ***City of Bridgeport***, Decision No. 4478 (2010). Such defenses may include the existence of a contractual provision which permits the subcontracting or transfer of the work; that the work removed from the bargaining unit is de minimus, or that the transfer was in keeping with established past practice. In addition, either party may argue that public policy may have an impact on the situation. ***Town of Enfield***, Decision No. 4620 (2012); ***City of Bridgeport***, Decision No. 4478, supra…

Milford Board of Education, Decision No. 5199 pp. 8-9 (2021) and cases cited therein. Since the conjunctive "and" is used to state the three elements of the ***City of New Britain*** standard all must be proven to establish a prima facie case of illegal subcontracting. Id.; see also ***Afkari-Ahmadi v. Fotovat-Ahmadi***, 294 Conn. 384, 393 (2009); ***Penn v. Irizarry***, 220 Conn. 682, 687 (1991); ***Town of Madison***, Decision No. 4688 (2013); ***City of Hartford***, Decision No. 4499 (2011).

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Section 470(a)(2) is concerned with circumstances where an employer inserts itself into the structure or operation of what purports to be a labor organization, thereby creating a so-called "company union." See ***Town of Windham***, Decision No. 4859 (2016); ***Town of Cheshire***, Decision No. 4809 (2015); ***New Fairfield Board of Education***, Decision No. 3327 (1995). Since the record is devoid of evidence or argument material to such issue we dismiss the Union's claim under that section.

In the first instance, the City contends that the work in question is not bargaining unit work. Specifically, the City argues that changing technology and remote learning generated new and more advanced enterprise management responsibilities, including providing remote assistance and cybersecurity. Moreover, according to Postolowski, Tier 1 technicians could not be trained to perform that new work short of obtaining a post-secondary degree in principles of management information systems. We are not persuaded.

"[T]here can be situations where 'technology or other changes have so totally merged or altered the elements of the work in question that the former bargaining unit tasks have been subsumed by some other process.'" ***Town of East Haven***, Decision No. 3965 p.5 (2004). For example, in ***Milford Board of Education***, supra, school media aides performed rudimentary technology-related tasks like fixing loose keys, resetting computer cables, changing lightbulbs, downloading software updates, and performing other "quick fixes". In 2018, however, the school district transitioned to wireless technology and devices which eliminated the media aides' technology-based work. Specifically,

> Chromebooks … [with] integrated screen and keyboard mean that technicians must disassemble the device for most repairs. Interactive TV screens replaced smart boards with their trays of lightbulbs. Wireless technology and rechargeable batteries reduced reliance on cables and cords [and c]loud-based computing eliminated the need to install or update software on individual devices.

Id., pp. 9-10.

The Milford Board of Education replaced the media aides with a new non-union position of technology integrated support specialist. Under the specific circumstances of that case, we found that the union could not satisfy the first prong of the test because the integrated support specialists performed a distinct, higher level of work that was beyond the capabilities of most former media aides. However, we believe that the instant case is distinguishable from ***Milford Board of Education***.[6]

In ***City of New Britain***, we defined "bargaining unit work" as "work that is or may logically be done by the bargaining unit". Id., p.36; see also ***City of Shelton***, Decision No. 4812 (2015). In this case, the record contains substantial evidence that PC technicians have long been performing the same types of work as the ITS field technicians and telecommunications analyst, including remote management, malware detection, and cybersecurity. In fact, they still perform much of that work. We also credit

[6] In ***Milford Board of Education,*** we warned that a lesser showing was unlikely to yield the same result. Id., p. 10; see also ***City of Hartford***, Decision No. 4117 (2006) (city violated the Act where new position performed much the same work previously done by bargaining unit members)**.**

Guay's testimony that the new network technician is a "down scaled" version of Konrad Majka's former job.

While the School District has adopted new remote learning platforms like Microsoft Teams, IT is a dynamic field where technology is forever evolving. We credit Guay's and Pecora's testimony that while the labels may change, the technological processes and required skillsets remain the same. As Pecora succinctly stated, PC technicians have historically "made the leap" from one new platform or software program to the next. The City largely relies on Postolowski's testimony that a post-secondary degree in IT is essential to performing Tier 2 work. However, we found Postolowski's testimony to be evasive and inconsistent on that point.[7] Accordingly, we afford it less weight. Postolowski further testified that the human resources department made the decision to exclude the new positions from the bargaining unit. However, assistant human resources director Timothy McNamara could not articulate a reason behind the decision and testified that he had no objection to the positions being included. In sum, the record supports the conclusion that the existing bargaining unit positions could have adapted to changing technology, with or without additional training *as they have done in the past*. Therefore, we find that the work in question "is or may logically be done by the bargaining unit". ***City of New Britain***, supra, p.36.

Turning to the second criterion in ***City of New Britain***, we believe that the City overstates the work historically performed by outside vendors. Contrary to the City's assertions, the record reveals that outside vendors largely installed new technology when that work was part of a new construction, included in the purchase price of new technology, or funded by grant monies. We have little difficulty distinguishing between the City's limited past reliance on vendors and the wholesale transfer of work in the instant case. Regarding the final criterion, we do not consider the loss of 6 Union jobs to be diminimis. See ***City of Norwalk***, Decision No. 3798 pp. 20-21 (2000) and cases cited

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[7] Postolowski testified, in relevant part:

> Q. So is it your position that only [Tier 2] applicants with college degrees could be capable?
>
> A. No. I would say like with any job, you know, there are – there are appropriate training courses that you take, like with any degree, where you move from one part of your career to another. You know, when you move from being an LPN, as an example, to an RN you are elevating your career, there are educational milestones that are required to accomplish that.
>
> THE CHAIRMAN: You didn't answer her question, though … Did you think it was necessary to have a college degree….?
>
> THE WITNESS: Yes.
>
> ***

Transcript of November 15, 2021 hearing, pp. 45:25-46:17.

therein. Accordingly, we find that the Union has proved a prima facie case of subcontracting and turn to the City's defenses.

The City's Contract Defense

"A provision in a collective bargaining agreement authorizing an employer's conduct is a valid defense to a claim of unilateral change because a union may contractually waive its statutory right to bargain provided the waiver is clear and unmistakable." ***West Hartford Board of Education***, Decision No. 4838 (2015); see also ***City of Waterbury Board of Education***, Decision No. 4337 (2008); ***NLRB v. Metropolitan Edison***, 460 U.S. 693, 708 (1983). However, we construe management rights provisions strictly. "In order for such a clause to place an item which is a mandatory subject of bargaining (e.g., a condition of employment) into the realm of management prerogative, the clause must make specific reference to the matter in dispute." ***Town of Wethersfield***, Decision No. 1418 p. 4 (1976); see also ***Town of Glastonbury,*** Decision No. 4927 (2017); ***City of Hartford***, supra; ***Waterbury Board of Education***, supra; ***State of Connecticut***, Decision No. 2419 (1985); ***City of Hartford***, Decision No. 1425 (1976); ***City of New Haven***, Decision No. 1342 (1975).

In this case, the City argues that its actions are permitted by Article 11 of the collective bargaining agreement. In our view, however, such reliance is misplaced since the rules for construing contracts apply to collective bargaining agreements. As such, we ascertain the parties' intent "by looking at the contract as a whole and giving the contract's words their ordinary meaning and one that renders its provisions consistent", ***S. H. Electric, Inc v. Town of Bethel***, 312 Conn. 843, 853 (2014) (citations omitted), and "we give effect to all the language included therein, as the law of contract interpretation . . . militates against interpreting a contract in a way that renders a provision superfluous." ***Honulik v. Greenwich***, 293 Conn. 698, 711 (2009); see also ***Connecticut National Bank v. Rehab Associates***, 300 Conn. 314, 323 (2011).

Applied to the instant case, we find that Article 11 permits the City to contract for services with "other units of government[8] and/or private contractors; determine "organizational structure"; and "layoff … personnel" subject to its legal obligations under MERA. (Ex. C4) (footnote added.). However, the City transferred bargaining unit work from one group of City positions to another and not to private contractors or other units of government. Thus, the subcontracting language in Article 11 does not apply. Furthermore, the City's reliance on Article 10 is misplaced since it further restricts the already limited right to subcontract in Article 11 by carving out certain work performed in other departments. Lastly, while the City retains the rights to change its operations and lay off employees, those rights are limited by the statutory duty to bargain over conditions of employment and MERA does not permit a municipal employer to make

[8] In ***City of Stamford,*** Decision No. 5169 (2021), we used accepted principles of contract construction to construe the phrase "other unit of government" as "a component of a government body which is distinct from the City."

organizational changes by illegally subcontracting bargaining unit work. Accordingly, we find that the City failed to prove its contract defense.

Waiver

The City next argues that the Union waived its rights to bargain by rejecting Amado's October 27, 2020 offer to discuss the alleged subcontracting. We again disagree. In ***Norwich v. Norwich Fire Fighters***, 173 Conn 210 (1977), the Court held that a union waives its rights if it fails to demand bargaining where the totality of the circumstances includes reasonable notice of the change to the union and an opportunity to negotiate. Id.; see also ***State of Connecticut Department of Administrative Services***, Decision No. 2085 (1981). We have long held, however, that ***City of Norwich*** does not provide a basis for waiver in the absence of full notice and a reasonable opportunity to request bargaining before the change is made. Rather, a union is relieved of the obligation to demand bargaining when faced with a fait accompli. Otherwise, the union would be forced to negotiate impact when the balance of the bargaining relationship has been illegally altered. ***Windsor Board of Education***, Decision No. 4555 (2011) and cases cited therein.

In this case, the record is devoid of evidence that the City notified the Union that it was replacing existing bargaining unit positions with non-union positions any earlier than the October 9, 2020 job postings. Moreover, we can reasonably infer that publicly designating the positions as "unaffiliated" signified that excluding them from the bargaining unit was a fait accompli. Similarly, the City failed to provide any notice before laying off Hargrove, Miranda, and Benson. On the contrary, Weller's email to Altro-Dixon establishes that the Union had been led to believe that there would be no layoffs. Under those circumstances, the Union was within its rights to decline to meet with the City absent a return to the status quo. Accordingly, we find that the Union did not waive its rights to bargain.

Anti-union animus

This Board has repeatedly affirmed the proper method of analysis of retaliation cases:

> A complainant alleging that employees were discriminated against in their employment because of union activity has the initial burden of showing that the discriminatory action was taken because of these protected activities, or at least that the protected activities were a substantial factor in bringing about these adverse actions. ***Town of Greenwich***, Decision No. 2257 (1983), aff'd ***O'Brien v. State Board of Labor Relations***, 8 Conn. App. 57 (1986); ***Connecticut Yankee Catering Co***., Inc. Decision No. 1601 (1977). We determine whether the complainant has met this burden to establish a prima facie case of discrimination using an analytical framework such as is found in ***Wright Line***, 251 NLRB 1083, enf'd 622 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982), "A prima facie

> case includes proof that: (1) the employee engaged in protected, concerted activities; (2) the employer had knowledge of those activities; and (3) the employer harbored anti-union animus." ***New Britain Board of Education***, Decision No. 4290 p. 4 (2008). Once a prima facie case is established, we then address whether the employer has established an affirmative defense which may include proof that the employer would have pursued its course of conduct regardless of any anti-union motivation. ***City of Hartford***, Decision No 3785 (2000); ***New Fairfield Board of Education***, Decision No. 3327 (1995).

City of Norwalk, Decision No. 4621 p.6 (2012), aff'd 156 Conn. App. 79 (2015). See also ***Town of Hamden***, Decision No. 4404 (2009); ***Town of Wallingford***, Decision No. 3999 (2004); ***Orange Board of Education***, Decision No. 3417 (1996).

As to the first element of a prima facie case of discrimination, the Labor Board has adopted the definition of "protected, concerted activity" set forth in ***Meyers Industries***, 296 NLRB 493 (1984) (Meyers I) ("engaged with or on the authority of other employees, and not solely by or on behalf of the employee himself") and in ***NLRB v. City Disposal Systems***, 465 U.S. 822 (1984) ("invocation of a right derived from a collective bargaining agreement"). ***Town of Old Saybrook***, Decision No. 4089 (2005); ***Board of Trustees for State Technical Colleges***, Decision No. 2825 (1990). In this case, the Union was engaged in "protected, concerted activity" within the meaning of ***Meyers Industries***, supra. Specifically, the Union was engaged in a multiyear effort to update the job descriptions of the PC technicians to accurately reflect current duties and guarantee their continued relevance in the workplace. Furthermore, since the Union was actively working with management, we find that the employer had the requisite knowledge. Therefore, the only question is whether the City harbored anti-union animus.

"[I]n the absence of improper motive, or an express contractual provision, an employer has the right to eliminate positions, create new positions, and lay off employees for legitimate managerial purposes." ***Town of Stratford***, Decision No. 999 (1971); ***Newington Board of Education***, Decision No. 1116 (1973); ***West Haven Board of Education***, Decision No. 1363 (1976). However, "[p]roof need not consist [of] direct evidence of improper motive." ***Connecticut Yankee Catering Co.***, Decision No. 1601 p. 5 (1977). "In this day and age, discrimination is almost invariably conducted surreptitiously; employers who engage in this form of misconduct do not do so overtly." ***Town of Wallingford***, Decision No. 3662 p. 5 (1999); see also ***Town of Watertown***, Decision No. 3719 (1999). As such, "direct evidence is rarely available and the Union is entitled to the benefit of any inferences that are reasonable under the circumstances . . ." ***Connecticut Yankee Catering Co.***, supra.

The record here supports a finding of anti-union animus. Weller testified that Postolowski made statements indicating that he was frustrated by the Union's presence in IT Services. Although admittedly hearsay, in our view Postolowski's and the City's conduct supports Weller's testimony. Postolowski testified that a post-secondary degree in IT was indispensable for performing Tier 2 work. Yet, he admitted the contrary in 3

out of 4 job descriptions that he authored. Furthermore, we cannot ignore that the City was less than forthcoming about its intention to exclude the new positions from the bargaining unit and thereafter used subtle intimidation and layoffs to eliminate bargaining unit jobs.

Where a complainant establishes a prima facie case of discrimination, an employer may still rebut that case and prove that the protected, concerted activity or union activity was not the reason for the adverse action, which was taken instead for a legal reason. Where a discharge is motivated by two reasons, one legal and the other illegal, the burden is on the employer to separate the two and show that the discharge would have occurred even in the absence of the illegal motivation. This analysis arises out of ***Wright Line***, supra; see also ***Town of Greenwich***, Decision No. 2269 (1984); ***Sheriff's Department***, ***Fairfield County***, Decision No. 3106-B (1993). In this case, the City argues that restructuring IT Services and reducing staff was necessary to reconcile changing educational and technological demands and the impacts of the pandemic with budgetary limitations. However, the record tells a different story. As discussed above, there is substantial evidence that the incumbent PC technicians are capable of performing the so-called Tier 2 work, with or without post-secondary degrees. While there is no dispute that the workload increased dramatically during the beginning stages of the pandemic, the City failed to demonstrate that substituting non-union employees for bargaining unit members was necessary to alleviate its operational and budgetary concerns. As such, we conclude that, but for anti-union animus, the City would have incorporated its existing bargaining unit staff into its plans for converting to remote learning.

Remedy

We find that a qualified return to status quo ante would best effectuate the policies of the Act. Thus, under the conditions set forth blow, the City shall return Pecora, McIntyre, Benson, Miranda, and Hargrove to their former bargaining unit positions and make them whole for any losses attributable to the City's unlawful actions. Furthermore, the Union seeks attorney's fees and costs. This Board has held that awarding attorney fees, costs and interest is within our remedial powers and we have exercised that authority where we conclude that a proffered defense presents no debatable issue and is wholly frivolous. ***City of Bridgeport***, Decision No. 4478 (2010); ***Killingly Board of Education***, Decision No. 2118 (1982); ***City of Norwalk***, Decision No. 3537 (1997); ***Norwalk Board of Education***, Decision No. 3506 (1997); ***New Haven Board of Education***, Decision No. 3356 (1996). In making that determination we must carefully examine each of the respondent's defenses to determine whether there is any substance. If there is, an award of attorneys' fees, costs and interest is not warranted. ***Norwalk Third Taxing District***, Decision No. 3676 pp. 6-7 (1999).

Here, the City offered a single theory to rebut the Union's case: changing technology and the shift to remote learning generated new Tier 2 enterprise management responsibilities which did not exist before and which were too advanced for most former PC technicians. As such, the City claims that it was compelled to layoff Benson,

Hargrove, and Miranda to afford hiring a Tier 2 endpoint technician, ITS field technicians, and a telecommunications analyst. However, the City's argument flies in the face of substantial evidence that the existing PC technicians were *and still are* competently performing work that is allegedly beyond their capabilities. Additionally, the City failed to offer any legitimate rationale to explain or justify creating the positions outside of the bargaining unit. Accordingly, we find that the Union is entitled to attorneys' fees and costs attributable to prosecuting the instant complaint. In drawing this conclusion, we are not saying that management does not have a right to structure its operations. However, employers may not violate MERA to achieve otherwise legitimate aims.

ORDER

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

ORDERED, that the City of Bridgeport shall:

1. Cease and desist from subcontracting bargaining unit work to the positions of network support technician; endpoint technician I; field technician; and telecommunications analyst pending bargaining with Local 1522, Council 4, AFSCME, AFL-CIO.

2. Take the following affirmative steps which the Board finds will effectuate the purposes of the Act:

   a. Return Brian Pecora and Samuel McIntyre to their former bargaining unit positions with the seniority, salary, and benefits they would have but for the City's unlawful actions, retroactive to their dates of hire. Moreover, to the extent that Pecora and/or McIntyre received higher pay or benefits in their non-union positions, they shall not be required to reimburse the City for those amounts;

   b. Upon the Union's request, the remedy in paragraph 2.a, above, shall be held in abeyance for up to sixty (60) calendar days while the parties negotiate over including the new tier 2 positions in the Local 1522 bargaining unit in accordance with Article 3 of the collective bargaining agreement;

   c. Offer James Benson, Dustin Hargrove, and Julian Miranda reinstatement to their former bargaining unit positions. Pay Benson, Hargrove and Miranda full back pay with interest, less any interim earnings and/or unemployment compensation benefits received, retroactive to November 27, 2020. Back pay is not contingent on acceptance of the offer of reinstatement.

d. Pay to Local 1522, Council 4, AFSCME, AFL-CIO its reasonable attorneys' fees and costs, plus interest, associated with prosecuting MPP-34,205 before this Board, including but not limited to preparing for and attending hearings, filing a brief, and obtaining hearing transcripts. In addition, the City shall reimburse the Union for all union dues lost because of its misconduct, plus interest.

e. Post and leave posted for a period of sixty (60) consecutive days from the date of such posting, in a conspicuous place where the employees customarily assemble, a copy of this Decision and Order in its entirety; and

f. Notify the Connecticut State Board of Labor Relations at its office in the Labor Department, 38 Wolcott Hill Road, Wethersfield, Connecticut, within thirty (30) days of the receipt of this Decision and Order of the steps taken by the City of Bridgeport to comply therewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

_____[9]
Wendella Ault Battey
Acting Chairman

_____
Barbara J. Collins
Board Member

_____
Ellen Carter
Alternate Board Member

[9] Wendella A. Battey participated in the deliberation of this case and agreed with the decision but left the Board before signing.

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed, postage prepaid, this 14th day of September, 2022 to the following:

Attorney Tamara J. Titre (Cert. RRR)
City of Bridgeport
45 Lyon Terrace
Bridgeport, CT 06604

Attorney John Bohannon (Cert. RRR)
City of Bridgeport
45 Lyon Terrace
Bridgeport, CT 06604

Attorney Patricia Johnson (Cert. RRR)
AFSCME, Council 4
444 East Main Street
New Britain, CT 06051

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Frank N. Cassetta, General Counsel
CONNECTICUT STATE BOARD OF LABOR RELATIONS