STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

CITY OF STAMFORD

-AND-

STAMFORD FIRE FIGHTERS, LOCAL 786
I.A.F.F., AFL-CIO

DECISION NO. 4832

AUGUST 25, 2015

Case No. MPP-30,967

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

Attorney Robert J. Murray
for the City

Attorney John M. Creane
for the Union

DECISION AND ORDER AND PARTIAL DISMISSAL OF COMPLAINT

On June 6, 2014, the Stamford Fire Fighters, Local 786, I.A.F.F., AFL-CIO (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board), amended on September 10, 2014 alleging that the City of Stamford violated the Municipal Employee Relations Act (MERA or the Act) by unilaterally entering into an agreement with a third party that changes the bargaining unit's terms and conditions of employment.

After the requisite preliminary steps had been taken, the parties entered into a partial stipulation of facts and exhibits and the matter came before the Labor Board for a hearing on September 11, 2014, October 16, 2014, and November 4, 2014. Both parties appeared, were represented by counsel, and were 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 December 22, 2014.

FINDINGS OF FACT

1. The City is a municipal employer pursuant to the Act.

2. The Union is an employee organization pursuant to the Act and, at all material times, has been the exclusive representative of a bargaining unit of all uniformed and investigatory positions within the Stamford Fire Department (SFD) with the exception of Assistant Chief and Chief.

3. The City and the Union are parties to a collective bargaining agreement (Ex. 5) with effective dates of July 1, 2005 through June 30, 2009,[1] which provides, in relevant part:

ARTICLE VI
GRIEVANCE PROCEDURE

1. If any dispute shall arise between the Union and the City or the Department in connection with the construction, interpretation, validity or performance of this agreement, the party seeking adjustment of such dispute shall submit a written statement thereof to the Chief of the Fire Department . . .

2. Any dispute not settled . . . may be submitted to arbitration . . .
. . .

ARTICLE VIII
STAFFING

1. In order to protect the health and safety of the employees in the bargaining unit, the minimum working staffing per shift shall be . . . assigned to Companies as follows . . .
. . .

ARTICLE X
WORK WEEK

1. . . . Effective as soon as practicable . . . the regular work week for all employees who perform fire fighting duties will be changed from the current work schedule of three (3) tours of days of ten (10) hours each, followed by three (3) days off, followed by three (3) tours of nights of fourteen (14) hours each, followed by three (3) days off, followed by three (3) tours of days and so on to a 24 hour on/72 hour off work week as set forth below . . .
. . .

ARTICLE XI
OVERTIME

[1] In February and October of 2009, The Union and the City entered into two subsequent agreements extending the 2005 – 2009 contract from July 1, 2009 through June 30, 2011 with certain changes not relevant to this case.

1. Whenever any employee works in excess of his regularly assigned work week . . . he shall be paid for such overtime work at one and one-half (1½) times the hourly rate which he receives for his regularly assigned duty. . .

. . .

ARTICLE XXI
SENIORITY

. . .

3. All other things being equal, preference because of seniority shall be the determining factor in making all daily work assignments within each Fire Station, including temporary assignments to drive and operate the apparatus within such Fire Station.

. . .

ARTICLE XXVIII
CITY'S PREROGATIVES

Except as herein provided for, the City shall have the sole and exclusive right to determine all matters affecting the operation of the Department, including but not limited to the right to direct and control the fire fighting force and other employees, the right to hire and make transfers (other than on account of Union activity) for any cause which in the judgment of the Chief or the Fire Commission may affect the efficient operation of the Department, and the City's decision in all such matters shall not be subject to contest or review by the Union or any employee.

. . .

4. The Turn of River Fire Department (TOR) is a volunteer fire company[2] incorporated in 1928 and owns and operates two fire stations within the fire district assigned to it under the Stamford charter. At all times relevant hereto, the City has assigned certified fire service personnel[3] within the bargaining unit represented by the Union to serve in the TOR fire district.

5. Prior to April 1, 1999, and in addition to its voluntary members, TOR employed seventeen certified fire service personnel. On or about April 1, 1999, these persons became City employees holding positions within the SFD and assigned to TOR. (Ex. 12).

6. On March 10, 2000, the City and TOR entered into a memorandum of agreement (Ex. 12) that provides, in relevant part:

WHEREAS, the Company and the City now wish to enter into an agreement

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[2]TOR is one of five volunteer fire departments operating within the City's geographic boundaries, the others being Long Ridge Fire Company (Long Ridge), Springdale Fire Company (Springdale), Glenbrook Fire Department, and Belltown Fire Department. (Ex. 24).

[3] Bargaining unit fire service personnel are sometimes referred to as "career" firefighters or personnel to distinguish them from volunteer firefighters.

relating to the Company's continuing supervision and direction of Career Fire Service Personnel (also known as "Fire Fighter" under the City's Civil Service system) of the City assigned to serve the Company's fire service district ("the Career Fire Service Personnel") and the City's future funding . . . of the Company.

. . .

2. During the term of this Agreement, the Company shall continue to maintain complete operational control and ownership over its fire station and fire apparatus and the Company management shall retain complete authority over its response and chain of command responsibilities with the Company's fire service district, which authority shall include, but shall not be limited to, the authority to direct the Career Fire Service Personnel assigned to the Company. . .

3. The City hereby delegates to the Company all legal authority to collectively bargain with the Career Fire Service Personnel, through their collective bargaining representative, with regard to all mandatory subjects of bargaining related to work rules, regular overtime and private duty assignments, work schedules, disciplinary action and grievance processing applicable to the Career Fire Service Personnel. Such delegation shall apply to all aspects of the negotiation over contract terms, including impasse resolution procedures, as well as the settlement of any grievances concerning such matters.

. . .

6. For the term of this Agreement, the City shall provide the Company with an annual budget allocation to be determined through the regular budgetary process applicable to City departments, in an amount sufficient to pay the Company's costs for its operation as a volunteer fire company . . .

7. This Agreement shall continue indefinitely unless otherwise mutually agreed to by the parties.

. . .

7. On August 1, 2006, a tripartite panel of arbitrators issued an arbitration award (Ex. 19) addressing a dispute concerning a provision in a Memorandum of Agreement (Ex. 18) between the City and Springdale which afforded Springdale the "right to require a transfer of any of the Stamford Fire Rescue Employees[4] . . . for any legally permissible reason." The award states in relevant part:

> However, Stamford did not breach this aspect of the Agreement in this case, because it finally did order the transfers . . . But the City did not act in a manner consistent with the Agreement . . . when it transferred the firefighters, then made it clear that it did not believe that the transfers would improve the efficiency of the department[5], in effect arguably creating a violation of the CBA[6] . . .

[4] "Stamford Fire Rescue Employees" in the context of this provision are City firefighters in the bargaining unit who were formerly employed by Springdale.

[5] Article 28 of the collective bargaining agreement reserves the Chief's right to transfer employees "for any cause which in the judgment of the Chief . . .may affect the efficient operation of the Department . . ."

> We recognize that there is another entity with rights under these circumstances, namely the Union. It is entirely possible that an arbitrator considering a claimed breach of the [Memorandum of] Agreement could reach a different conclusion from a[n] . . . entity considering a claimed breach of the CBA on the same facts. But that is not something we can address. We are limited to considering rights and responsibilities between only the parties to the [Memorandum of] Agreement . . .

8. In April of 2008, TOR Fire Chief Frank Jacobellis notified the City that due to recent events, Union officials[7] would no longer be allowed to enter TOR stations. Since that time and at all times relevant hereto, bargaining unit personnel assigned to the TOR fire district do not enter TOR stations and work out of a temporary facilities on Vine Road and Long Ridge Road. At present, such personnel consist, per work shift, of two firefighters and an officer at the Vine Road facility and three firefighters and an officer at the Long Ridge building. (Ex.12).

9. On or about November 6, 2012, City voters ratified an amendment (Ex. 8) to the City charter that provides, in relevant part:

> Sec. C5-40. Fire Department.
> (a)
> There shall be a Fire Department for the City of Stamford ("Department").
> (b)
> Powers and Duties of the Fire Chief. The Chief of the Fire Department shall be responsible for:
> (1)
> The administration, supervision and discipline of the Fire Department . . .
> . . .
> (6)
> Assignment of all members of the Department to their respective posts, shifts, details and duties;
> (7)
> Making rules and regulations concerning the operation of the Department and the conduct of all members of the Department subject to approval by the Fire Department subject to approval by the Fire Commission;
> . . .
> (f)
> Volunteer Fire Companies. The volunteer fire companies of Stamford shall be part of the Stamford Fire Department and will be important components of the Stamford Fire Department. The perpetuation and strengthening of those volunteer companies through recruitment of volunteer firefighters shall be a priority of the Fire Chief and the Assistant Chief for Volunteer Services. Nothing in this Charter shall be construed to affect the organization, status or property of the volunteer fire companies of Stamford except that they are now part of the combined Stamford Fire Department and subject to the provisions of this Charter.

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[6] CBA is an acronym for collective bargaining agreement.

[7] All Union officials are fire service personnel in the bargaining unit.

(g)
Volunteer Fire Company Chiefs. The Chiefs of the volunteer fire companies of Stamford shall have primary firefighting responsibilities in their Fire Service Districts and primary responsibilities over the personnel and equipment assigned to their Fire Service Districts, subject to the supervision and direction of the Assistant Chief of Volunteer Services and the Fire Chief.
. . .

10. By letter (Ex. 27) to then City Director of Legal Affairs Joseph Capalbo dated November 19, 2012, Union president Brendan Keatley (Keatley) stated, in relevant part:

> Local 786, IAFF requests a prompt meeting to open discussions on the implementation of the historic Fire Service Charter changes overwhelmingly approved on November 6th 2012.
> . . .
> The details of the City's implementation of the Charter changes are of great interest and are of vital concern to the Union and its members, particularly since the implementation of the Charter changes will almost certainly impact existing terms and conditions of employment.
> . . .

11. By letter (Ex. 22) to Keatley dated December 5, 2012, Capalbo stated, in relevant part:

> Thank you for your letter of November 19, 2012. It is understandable that the Stamford Professional Fire Fighters Association has an interest in the City Administration's implementation of the fire service Charter changes. Please be assured that this office will contact you at a time in the future to discuss such plans.

12. In 2013, TOR, Springdale, and Long Ridge sued the City contending that the recent charter amendment violated their legal rights. On December 13, 2013, a final decision entered in the case of ***Turn of River Fire Department, Inc., et al v. City of Stamford, et al***, Superior Court, judicial district of Stamford-Norwalk, Doc. No. FST-CV-13-6016962-S (2013), finding that the charter amendments did not violate plaintiff's rights and the plaintiffs appealed. (Ex. 24).

13. On March 20, 2014, representatives of the Union and the City met to discuss pending issues and the City provided the Union with several draft documents, including a draft Fire Protection Services Agreement between the City and the volunteer fire companies. The meeting adjourned so the Union could review the documents. (Ex. 14).

14. By letter to City Director of Legal Affairs, Kathryn Emmett (Emmett) dated March 27, 2014, Keatley stated that the draft Fire Protection Services Agreement was "problematic . . . from start to finish . . ." and identified multiple Unions concerns. (Ex. 14).

15. On or about May 7, 2014, the City and TOR executed a Fire Protection Services Agreement (FPSA) (Ex. 9) which differed substantially from the earlier draft agreement and which provides, in relevant part:

FIRE PROTECTION SERVICES AGREEMENT

The purpose of this Agreement is to implement the charter amendments approved by the City electorate . . . on November 6, 2012 . . .

. . .

This Agreement, . . . is intended to permit the Volunteer Fire Departments, . . . to continue to function as legally separate . . . entities, while at the same time consolidating their respective fire fighting and emergency operations with those services provided by Stamford's career fire department . . . so as to operate as a single Fire Department . . . (the "Department") under the direction of "the Chief" . . .

The Chief, subject to the agreement and cooperation of the Chiefs of the respective Volunteer Fire Departments, shall endeavor to assign career personnel to the Volunteer Fire Departments as necessary to ensure adequate fire and rescue coverage in the respective volunteer fire districts. The Chiefs of the respective Volunteer Fire Departments shall not unreasonably withhold their agreement and cooperation with such assignments.

. . .

The City shall not house, station or assign any career personnel and/or city owned fire apparatus in the respective volunteer fire stations, without the express written consent and agreement of the Volunteer Fire Department . . .

The Chiefs of the respective Volunteer Fire Departments shall have the right, after good faith consultation with the Assistant Chief for Volunteer Services and the Chief, to request the transfer of any career personnel assigned to that Volunteer Chief's Volunteer Fire Department from that Department and the Chief shall not unreasonably deny that request.

Unless otherwise mutually agreed, the City shall not assign city-owned apparatus to a Volunteer Fire Department having or requiring a minimum staffing of more than three and/or four career personnel, depending upon minimum staffing under the Local 786 CBA, so that on-duty career personnel and available qualified volunteers may be formed into and work together as a task force or response team under the direction of the ranking career officer assigned to the particular apparatus. Career and volunteer personnel working together as a task force or response team shall include splitting the task force or response team among different apparatus, as appropriate. Subject to prearrangement and approval by the Chief, career personnel will split into a task force even if no volunteers are at the station. At all times, there shall be a minimum of two seats available for volunteer personnel. The Volunteer Fire Departments' respective volunteers shall be entitled to ride out on any primary, career-staffed apparatus (e.g., Engines 6, 7, 8, and 9) operating from their respective fire stations, and become a part of the firefighting team, provided that any such volunteers are qualified to do so . . .

The Department shall function under a single set of Standard Operating Guidelines ("SOGs") and a standard set of house rules for each fire station, provided that the same may vary from location to location depending upon differences . . . as determined by the Chief . . .

All career personnel assigned to a Volunteer Fire Department will report up through the chain of command of the unit to which they are assigned in all aspects of their positions . . . Likewise, all career personnel shall recognize the chain of command of the ranking volunteer officers in his or her volunteer station and all volunteer personnel shall recognize the chain of command of ranking career officers assigned to his or her volunteer station.

. . .

Command of the fire ground and other emergency incidents will follow the protocols of the National Incident Management System ("NIMS"). The chain of command, in reverse order, is the first arriving qualified: firefighter, Lieutenant, Captain, Deputy Chief (Unit 4), Assistant Volunteer Chief, Volunteer Chief, Assistant Chief for Volunteer Services, Assistant Chief for Career Services, and (the) Chief. Volunteer officers may take command in other districts consistent with NIMS' protocols.

The Chief shall consider and take into account in good faith input offered by the Assistant Chief for Volunteer Services and/or the Volunteer Chiefs concerning collective bargaining issues having potential impact on the Volunteer Fire Departments . . .

The Parties recognize that training is critical . . . and that joint training by and among volunteers and paid fire fighters working from the same firehouses helps maintain and foster a team approach to firefighting. The City agrees, therefore, that the volunteers and the Volunteer Fire Departments' respective Training Officers shall have the right to participate in all career training programs . . . Further, the City shall use reasonable efforts to schedule training for the volunteers, including joint training, at times and locations that are convenient for the volunteers, so as not to be disruptive to the Volunteer Fire Departments' respective operations. . . Career personnel assigned to the volunteer departments will be available to train with the volunteers during traditionally scheduled training times such as evenings and weekends. . . and [i]f after mediation, the Parties are still unable to reach a resolution, the Parties shall . . . submit the dispute . . . to binding arbitration. . . The arbitrator's decision shall be final and binding on the Parties . . .

This Agreement, subject to the terms and conditions hereof, shall supersede and replace any and all prior "Management Agreements" by and between the Parties and shall operate in settlement of the existing litigation by and between the Parties.

. . .

The City Fire Marshall may use the services of any volunteers qualified to perform fire marshal or fire inspector services.

. . .

CONCLUSIONS OF LAW

1. A unilateral change in a condition of employment involving a mandatory subject of bargaining constitutes an illegal refusal to bargain under the Act absent a valid defense.

2. A unilateral change to the chain of command in an organization containing a rank structure bargaining unit may impact employee health and safety, a mandatory subject of collective bargaining.

3. The City violated the Act by unilaterally changing the chain of command to interject volunteer personnel without bargaining over the health and safety impact of that decision.

DISCUSSION

This case arises from recent developments in the complex and often tortured relationship between the Union, the City, and the multiple fire service agencies serving City residents. The City, in order to share in certain federal funds and in an effort to implement a charter amendment which makes "[t]he volunteer fire companies . . . part of the Stamford Fire Department . . ." yet preserves their internal organization and status, entered into a contract[8] with a volunteer fire company[9] that the Union contends violates its rights under the Act. Specifically, the Union contends that the FPSA authorizes a transfer of fire marshal work outside the bargaining unit and makes changes with respect to job assignment, minimum staffing, chain of command and training scheduling for career employees assigned to TOR. In addition the Union claims that the very existence of the FPSA improperly interferes with the City's ability to collectively bargain in accordance with the Act and sets the stage for conflicting arbitration awards.

In response, the City contends that the bargaining unit has not exclusively performed fire marshal duties in the past and that no work transfer to TOR volunteers has actually occurred. The City also claims that the FPSA does not violate the collective bargaining agreement or occasion substantial changes to negotiable aspects of job assignment, minimum staffing, chain of command or training scheduling. Lastly, the City argues that the possibility of conflicting arbitration awards is irrelevant to the issue of whether the City has violated its statutory duty to bargain. While we agree with the City that it did not violate the Act by agreeing with TOR to assume certain obligations, we do find that it should have negotiated with the Union the impacts occasioned by changes to the chain of command before entering into the FPSA. We address the union's claims in order.

Transfer of fire marshal work

We ordinarily assess alleged illegal transfer of bargaining unit work under the standard set forth in ***City of New Britain***, Decision No. 3290 (1995):

[8] E.g. the May 7, 2014 Fire Protection Services Agreement (FPSA).

[9] E.g. Turn of River Fire Department (TOR).

> 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 Shelton, Decision No. 4812 p. 5 (2015); ***Town of Middlebury***, Decision No. 4756 (2014). While the parties agree that the work in question is bargaining unit work, they dispute the history of exclusivity and the existence of adverse impact. We need not resolve these issues, however, because the Union's claim rests solely on the FPSA provision that the City "may" use qualified TOR volunteers to perform fire marshal duties and the record does not reflect that it has actually done so.[10]

We will not ignore an employer's otherwise illegal unilateral action on the basis of local legislation or settlement agreements with third parties. ***State of Connecticut, Judicial Branch***, Decision No. 4749 (2014); ***City of New Haven***, Decision No. 4690 (2013); ***State of Connecticut***, Decision No. 4269 (2007); ***Town of Winchester***, Decision No. 3430 (1996); ***Town of New Canaan,*** Decision No. 2553 (1987). In the absence of actual change, however, we will not issue a cease and desist order unless the party's present conduct "unequivocally sets the stage for a future unilateral course of action even though no present change is wrought." ***City of Bridgeport***, Decision No. 1510 p. 5 (1977). Since the FPSA does not require the use of TOR volunteers, the record[11] does not support a finding of a work transfer in violation of the Act.

Unilateral change - repudiation claims.

In contending that the City violated the Act by entering into a contract with TOR, the Union relies heavily on alleged conflicts between the FPSA and the existing collective bargaining agreement. While it is well established that we do not have jurisdiction to address a claim, standing alone, that the collective bargaining agreement has been breached, of necessity we must address such a claim "when it is interdependent with a claim over which the board of labor relations does have jurisdiction." ***Piteau v. Hartford Board of Education***, 300 Conn. 667, 689 (2011) (duty of fair representation claim dependent on contract claim). *See also*, ***Shepaug Valley Regional School District***, Decision No. 4765 (2014) (contract authorization of employer's action is recognized defense to unilateral change claim); ***Southington Board of Education***, Decision No. 1717 (1979) (unmistakable breach of unambiguous contract language is repudiation in violation of Act); ***City of Bridgeport***, *supra* at 5 ("we have no jurisdiction to decide whether there has been a breach of contract unless the conduct which constitutes the

[10] Since TOR's consent in no fashion validates City subcontracting in violation of MERA, the Union is under no obligation to object or to demand bargaining prior to the potential transfer at issue.

[11] Absent evidence of the details and circumstances of the City's actual exercise of this option under the FPSA, the Union cannot fully address the issues of exclusivity and adverse impact necessary to establish its *prima facie* case under ***City of New Britain***.

breach also violates the Act . And it does . . . if it is a unilateral change in . . . conditions of employment.").

The Union claims that to the extent the FPSA conflicts with the collective bargaining agreement, there has been repudiation as well as unilateral changes in existing conditions of employment. Since the City denies that any such conflict exists and rejects the Union's interpretation of the collective bargaining agreement, there can be no repudiation unless we find that the City's interpretation is wholly frivolous or implausible or asserted in subjective bad faith. ***City of Hartford***, Decision No. 4736 (2014); ***Hartford Board of Education***, Decision No. 2141 (1982). As the record does not support a finding of subjective bad faith[12] by the City, we assess the Union's repudiation claims under our "straight face" standard.[13] In short, unlawful repudiation is "something beyond mere breach," ***Town of Plainville***, Decision No. 1790 p.6 (1979), and to the extent we find that existing conditions of employment established by the collective bargaining agreement were not unilaterally changed by the FLSA in violation of the Act, we need not address the Union's repudiation claims.

An employer violates the Act when, absent a defense, it unilaterally changes an existing condition of employment that is a mandatory subject of bargaining. ***Shepaug Valley Regional School District***, *supra*. ***State of Connecticut, Judicial Branch***, Decision No. 4532 (2011); ***Norwalk Third Taxing District***, Decision No. 3695 (1999); ***Bloomfield Board of Education***, Decision No. 3150 (1993); ***City of Stamford***, Decision No. 2680 (1988). A condition of employment may be established by past practice where the complainant shows that the employment practice was "clearly enunciated and consistent, [that it] *endured[d] over a reasonable length of time*, and [that it was] an accepted practice by both parties." (Emphasis in original, internal quotation marks omitted). ***Board of Education of Region 16 v. State Board of Labor Relations***, 299 Conn. 63, 73 (*quoting* ***Honulik v. Greenwich***, 293 Conn. 698, 719 n. 33 (2009)). A ***prima facie*** case of unlawful unilateral change requires proof that an employer unilaterally changed a past practice involving a mandatory subject. ***Shepaug Valley Regional School District***, *supra*. A defense sufficient to rebut such a case includes a showing that an employer's actions were *de minimus* or that the parties' collective bargaining agreement affords express or implied consent to the unilateral action at issue. ***Region 16 Board of Education v. State Board of Labor Relations***, *supra*, 299 Conn. at 74; ***City of New Haven***, Decision No. 4735 (2014). We address each of the alleged unilateral changes in turn.

Job assignment

The Union argues that the FPSA provisions requiring TOR consent or input in matters involving assignment of career personnel conflict with the parties' rights under the collective bargaining agreement thereby effecting unilateral changes in conditions of employment. We disagree.

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[12] We do not consider exclusion of the Union from the City's negotiations with TOR sufficient to establish subjective bad faith.

[13] A wholly frivolous and implausible interpretation of contract language amounts to an illegal repudiation if it is "a construction or interpretation which no respectable lawyer could urge with a straight face." ***Southington Board of Education***, *supra* at 4-5 (1979).

Assignment of personnel is ordinarily not considered a mandatory subject of bargaining:

> We believe that the power to reassign employees to other duties which are concededly within the job description of those employees is fundamental to the operation of any public agency and therefore involves the exercise of managerial discretion. ***West Hartford Education Association v. DeCourcy***, 162 Conn. 566, 582, 593 [sic] (1972); ***Town of East Haven***, Case No. MPP-2818, Decision No. 1279 (1974).

City of Hartford, Decision. No. 2462, p. 8 (1986); *see also* ***Town of Westbrook***, Decision. No. 4687 (2013); ***City of Bristol***, Decision No. 4626 (2012); ***Town of Wolcott***, Decision No. 3628 (1999). As such, the collective bargaining agreement is not the source of the City's right of assignment but rather a potential means of restricting its inherent authority. The Union's reliance on the management rights language in the collective bargaining agreement is misplaced because Article 28 merely recites this concept; "[e]xcept as herein provided . . . the right to direct and control . . . employees . . . for any cause which in the judgment of the Chief . . . may affect . . . efficient operation . . . shall not be subject to contest or review *by the Union or any employee*." (emphasis added). Absent a provision limiting exercise or delegation of its inherent power of assignment, the City was free to assume obligations by contract with other parties which restrict its rights in this regard.

The City's agreement to not assign any career personnel "in the volunteer fire station[]" without TOR's express consent is not an impermissible delegation of authority but rather a recognition that TOR owns its fire station and has the right to control entry to its premises. Nor has the Union demonstrated that its rights under the collective bargaining agreement are diminished by the City's obligation under the FPSA to "not unreasonably" deny career employee requests for assignment to a volunteer fire department or TOR requests to transfer career employees. We see no reason why *reasonable* accommodation of such requests does not further "efficient operation of the Department" under Article 28. Similarly, the Union has failed to show conflict between the FPSA and Article 21 § 3 of the collective bargaining agreement which affords daily work assignments on the basis of seniority "[a]ll other things being equal." Absent agreement with the Union to the contrary, the City is free to determine when circumstances are not "equal" on the basis of employee suitability for specific assignments or the City's contractual obligations to third parties.

Staffing levels

The Union contends that the FPSA violates existing minimum manning provisions in the collective bargaining agreement and precludes future negotiated changes to those requirements. Specifically, the Union objects to the prohibition of the City apparatus which exceed current contractual staffing requirements, the requirement that two seats on City apparatus be reserved for TOR volunteers, and the authorization of "splitting" career and volunteer personnel among different vehicles. We find, given the record before us, that the FPSA does not require the City to violate current contract manning provisions and that the Union's claim of potential refusal to bargain in the future is not ripe for review.

An employer's decision as to appropriate staffing levels is not a mandatory subject of bargaining but the Labor Board will order bargaining over any changes in mandatory topics, such as employee safety, which result from the change in manning. ***City of Stamford,*** Decision No. 4551 (2011); ***State of Connecticut*** , Decision No. 4577 (2012); ***Town of East Lyme***, Decision No. 3836 (2001); ***Town of North Haven***, Decision No. 3143 (1993); ***Town of Winchester***, Decision No. 2259 (1983); ***City of Hartford***, Decision No. 1850 (1980); ***City of Bristol***, Decision No. 1485 (1977). "However, the [U]nion bears the burden, through the production of competent evidence, of identifying the secondary impacts and we will not presume that they are substantial." ***State of Connecticut, Department of Corrections***, Decision No. 3229, p.4 (1994)(citations omitted).

The Union has not met its burden to establish how or why the City's agreement to reserve places on City apparatus for TOR volunteers violates the Act. It is undisputed that the City can honor both this obligation and its minimum manning obligations under the collective bargaining agreement with existing equipment. While FPSA staffing parameters may be relevant in future negotiations concerning minimum manning levels, we will not speculate in the absence of an evidentiary record as to the posture of the parties[14] or the then existing variables impacting employee health and safety in order to find a violation of the duty to bargain under Section 7-740(c) of the Act.[15]

We do not find support in the record for the Union's claim that "splitting" of response team personnel[16] as described in the FPSA will violate existing minimum manning practices.[17] The first sentence of the FPSA paragraph at issue expressly acknowledges that City apparatus have specific minimum staffing levels of career personnel. Furthermore, the Union readily admits that established manning practices have not yet been violated and that the details of response team "splitting" are as yet unknown. Past TOR volunteer conduct[18] is in itself insufficient to establish a change in current employment practices as reflected in the collective bargaining agreement.

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[14] The Union assumes that in the event changed circumstances obligate the City to renegotiate staffing level impacts, the City will refuse to bargain in deference to the FPSA and/or TOR will insist on strict performance of FPSA staffing parameters. This assumption is unwarranted to the extent that the City recognizes its obligations under the Act and declares the offending provision unenforceable which the FPSA appears to contemplate: "[I]f any one or more provisions of this Agreement shall be deemed illegal or unenforceable . . ."

[15] Section 7-470(c) states, in relevant part:

> "[T]o bargain collectively is . . . to meet . . . and confer in good faith with respect to wages, hours, and other conditions of employment . . . but such obligation shall not compel either party to agree to a proposal or require the making of a concession."

[16] The FPSA provides that bargaining unit members and TOR volunteers may be formed into a "response team" which in turn may be "split[ ] . . . among different apparatus, as appropriate." (Ex. 9, p. 3).

[17] Minimum manning levels are set forth in detail in the Art. 8 of the collective bargaining agreement and specify the minimum career personnel to be assigned to each apparatus, e.g. "Engine Company #1 shall have three (3) Fire Fighters, on (1) Officer." (Ex. 5, Art, 8 § 1).

[18] The Union president testified that TOR volunteers often respond to fire scenes with multiple undermanned TOR apparatus.

The concern that the City's obligation to refrain from assigning TOR City vehicles with staffing in excess of current levels will result in an unlawful refusal to bargain in the future is at most, premature. A case is not ripe if it "present[s] a hypothetical injury or a claim contingent upon some event that has not and indeed may never transpire." (Citation and internal quotation marks omitted). ***St. Paul Travelers Companies, Inc. v. Kuehl***, 200 Conn. 800, 816 n. 7 (2011). ***City of Hartford***, Decision No. 4673 p. 11 (2013), *see* ***Town of Monroe***, Decision No. 4822 (2015). The existing detailed minimum manning provision in the collective bargaining agreement is the result of the parties' good faith negotiations on this issue and expectations for the foreseeable future and there is no evidence before us of a substantial change in circumstances that would obligate the City to renegotiation of these provisions.

Chain of command

The Union contends that the insertion of TOR volunteers into the chain of command of bargaining unit personnel pursuant to the FPSA substantially impacts employee health and safety and therefore required bargaining with the Union. In response, the City claims that the FPSA merely preserves the existing practice of having career personnel report to career supervisors and volunteer personnel report to volunteer supervisors, except for overall command of emerging fire scenes where the FPSA conforms to the court's ruling in ***Turn of River Fire Dept. v. City of Stamford***, Superior Court, judicial district of Stamford-Norwalk, Docket No. FST-CV-13-6016962-S (Exhibit 24).[19] Given the language of the FPSA and the evidence before us, we agree with the Union that it was entitled to impact bargaining.

The FPSA states that "[a]ll career personnel . . . will report up through the chain of command of the unit to which they are assigned . . ." and "shall recognize the chain of command of the ranking volunteer officers . . ." Even if we assume that "unit" consists wholly of career personnel,[20] the word "recognize"[21] unambiguously introduces volunteer officers as supervisors of bargaining unit members. In addition, the FPSA affords volunteer officers priority over lower ranking career officers at emergency fire scenes. In short, we find that the FPSA effects a change from the command structure for career personnel assigned to TOR since 2008.

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[19] In ***Turn of River Fire Dept. v. City of Stamford***, the court held that as recipients of federal funds, TOR and the City are required to conform to National Incident Management Systems standards promulgated by the Department of Homeland Security which require a single identifiable person in charge also is the highest ranking first responder on the scene. Since the City charter amendments afford "Chiefs of the volunteer fire companies . . . primary responsibilities in their Fire Service Districts . . ." the court reasoned that the City could not require volunteer Chiefs, or their properly trained and certified designees, to report to lower ranking career personnel at fire scenes.

[20] This assumption may be unwarranted as the FPSA also states that "[c]areer apparatus and crew assigned to a Volunteer Fire Department shall operate as a *combined unit* for that Volunteer Fire Department . . ." (emphasis added).

[21] Webster's defines "recognize" as "[t]o perceive or acknowledge the validity or reality of ". . ." Webster's New Collegiate Dictionary (Houghton Mifflin Co. 1995)

Although an employer's decision may be a proper exercise of managerial discretion, the obligation to negotiate arises when that decision has a substantial impact on employee health and safety which is a mandatory subject of collective bargaining. ***City of Hartford***, Decision No. 4677 (2013); ***City of Stamford***, Decision No. 4551 (2011); ***State of Connecticut, Department of Corrections***, *supra*; ***City of New Haven***, Decision No. 3148 (1993); ***Town of Winchester***, Decision No. 2259 (1983). Decisions concerning chain of command hierarchy concern assignment of personnel and are not ordinarily considered a mandatory topic. ***Town of Newtown***, Decision No. 4732 (2014) ***Town of Wolcott***, Decision No. 3682 (1999); *but see* ***Town of East Haven***, Decision No. 1279 (1975). In this context, however, we find that the change at issue substantially impacts employee health and safety. The FPSA stipulates that training is critical to firefighter safety but is silent as to the necessary training and experience credentials of volunteer supervisors who have been introduced into the chain of command for career employees. The Act reflects a legislative recognition that uniformed and investigatory bargaining units in municipal fire departments have special interests arising from the element of danger involved in protecting the public safety. ***City of New Britain***, Decision No. 916 (1970). At a minimum, the Union should have been afforded an opportunity to bargain over the qualifications of third party supervisors the City has broadly authorized to direct employees in emergencies.[22]

Training schedules

The FPSA contemplates joint training of volunteers and career personnel on evenings and weekends for the convenience of volunteers which the Union contends changes the past practice of training during the traditional work week. The City responds that any changes to the training schedule practice effected by the FPSA are authorized by the collective bargaining agreement.

At the outset we note that there is not a sufficient evidentiary basis in the record to support the existence of the employment practice the Union alleges. The collective bargaining agreement does not expressly address training schedules and the Union president's testimony that career personnel training "traditionally occurs during the day" is in itself, insufficient to establish an enforceable practice.[23] Furthermore, even if there was sufficient evidence to show that past training for career personnel did not occur at night or on weekends, contractual reservation of the City's right "to direct and control . . . employees . . ." under Article 28 subject to Article 11 payment of overtime compensation authorizes the change at issue. A well-recognized defense to a claim of unlawful unilateral change exists "where the collective bargaining agreement gives express or implied consent to the type of unilateral action involved." ***Board of Education of Region 16 v. State Board of Labor Relations***, *supra*, 299 Conn. at 74 (*quoting* ***In Re Naugatuck***, Decision No. 2874, p. 4 (1980). *See*, ***State of Connecticut, Department of Correction***, Decision No. 4589 (2012); ***Woodbridge Board of Education***, Decision No. 4565 (2011); ***Town of Plainville***, *supra*.

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[22] The Union's right to negotiate this issue would extend to supervision of routine preparation and readiness for emergencies to the extent that such impacts employee health and safety.

[23] Proof of a preexisting, fixed and definite practice requires evidence of a baseline of substantial duration. ***Region 16 v. State Board of Labor Relations***, *supra*, 299 Conn. at 75 – 80.

FPSA dispute resolution procedure

Relying on the apparent conflict between and ***City of Stamford***, Decision No. 4119 (2006), and the Springdale arbitration award that followed, the Union argues that the FPSA's dispute resolution procedure improperly sets the stage for conflicting rulings in different forums. We find no violation of the Act in this regard. The Union does not contest the City's statutory authority[24] to enter into contracts or that arbitration is the favored means of settling private disputes. ***AFSCME, Council 4 v. Department of Children and Families***, 317 Conn. 238, 249 (2015). The Springdale arbitrators expressly acknowledged that their role was limited to assessing the rights of the parties before them and their award did not afford relief inconsistent with the Labor Board's order in ***City of Stamford***, *supra*. Furthermore, Sections 7-470(a)(6) and 7-474(f) of the Act reflect a legislative intent to afford collective bargaining agreements and grievance arbitration awards preferential status with respect to a municipal employer's other obligations.[25] In short, we reject the notion that the City violates the Act merely by assuming the risk that its obligations to the Union may conflict in the future with those it owes other entities.

FPSA coercion

The Union contends that the very existence of the FPSA violates Section 7-470(a)(1)[26] of the Act because the City will now refuse Union proposals that would, if accepted, conflict with its contractual obligations to TOR. The Union likens the FPSA in this regard to contract parity clauses which we have long held to be inherently restrictive of collective bargaining rights. *See* ***City of Meriden***, Decision No. 3822 (2001); ***Town of Manchester***, Decision No. 2900 (1991); ***Borough of Naugatuck***, Decision No. 1228

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[24] Conn. Gen. Stat. § 7-148(c)(1)(A) states, in relevant part:

> (c) Powers. Any municipality shall have the power to do any of the following . . . (1). . . (A) Contract and be contracted with . . .

[25] Conn. Gen. Stat. § 7-470(a)(6) states, in relevant part:

> (a) Municipal employers or their representatives or agents are prohibited from: ... (6) refusing to comply with a . . . valid award or decision of an arbitration panel or arbitrator . . .

Conn. Gen. Stat. § 7-474(f) states, in relevant part:

> (f) Where there is a conflict between any agreement reached by a municipal employer and an employee organization . . . and any charter, special act, ordinance, rules or regulations . . . the terms of such agreement shall prevail . . .

[26] Conn. Gen. Stat. § 7-470(a)(1) states:

> (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 . . .

Conn. Gen. Stat. § 7-468(a) states, in relevant part:

> (a) Employees shall have, and shall be protected in the exercise of, the right . . . to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment . . . free from actual interference, restraint or coercion.

(1974), *dismissal of appeal affirmed*, ***Local 1219, IAFF v. Connecticut State Board of Labor Relations***, 171 Conn. 342 (1976); ***Portland Board of Education***, Decision No. 2802 (1990); ***City of New London,*** Decision No. 1128 (1973), *appeal dismissed*, ***Local Union 1522, IAFF v. State Board of Labor Relations***, 31 Conn. Supp. 15 (1973).

We find the Union's comparison of the FPSA with illegal parity agreements untenable.

> A parity clause in a contract binds the employer to give additional benefits to the contracting union in the event that a later contract with another union affords more favorable treatment (in one or more specified ways) than did the earlier contract. The additional benefits consist in whatever is needed to equalize the two contracts in the respects specified . . .

City of New London, *supra* at pp. 5-6. Such clauses have an "*inevitable* tendency . . . to interfere with, restrain and coerce the right of the later group to have untrammeled bargaining." *Id.* at p. 9 (emphasis in original).

The FPSA does not afford TOR categorical benefits contingent on the Union obtaining specific favorable treatment in future collective bargaining agreements. While there may very well be discernable impacts on subsequent negotiations between the Union and the City, the same is also true of many circumstances within and outside the City's control. The Union has not been placed in the position of negotiating prospective privileges for TOR and our jurisdiction does not encompass assessment of municipal obligations to third parties absent a violation of the Act.

In conclusion, we find that the City did not repudiate the collective bargaining agreement or engage in unlawful unilateral action with respect to job assignment, minimum staffing, and training scheduling by entering into the FPSA with TOR. We do not address the Union's claims regarding fire marshal work as no transfer has actually occurred. We do find, however, that the City failed to negotiate the health and safety impacts occasioned by changes to the chain of command and we order relief consistent with these findings.

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 Stamford:

I. Cease and desist from failing to negotiate substantial impacts occasioned by changes to the chain of command encompassing the bargaining unit.

II. Take the following affirmative actions which we find will effectuate the purposes of the Act.

A. Restore the chain of command encompassing bargaining unit members assigned to the Turn of River fire district to that which existed

immediately prior to the signing of the Fire Protection Services Agreement on May 7, 2014.

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

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 receipt of this Decision and Order of the steps taken by the City of Stamford to comply herewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Wendella Ault Battey
Wendella Ault Battey
Acting Chairman

Robert A. Dellapina
Robert A. Dellapina
Alternate Board Member

Ann Bird
Ann Bird
Alternate Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 25th day of August, 2015 to the following:

Attorney Robert J. Murray
City of Stamford Government Center RRR
888 Washington Boulevard
Stamford, CT 06901

Attorney John M. Creane
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92 Cherry Street
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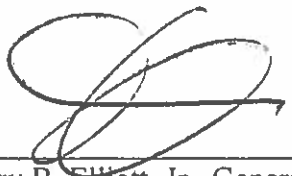

Harry B. Elliott, Jr., General Counsel
CONNECTICUT STATE BOARD OF LABOR RELATIONS