

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF	:	
	:	
RHODE ISLAND STATE LABOR	:	
RELATIONS BOARD	:	
	:	
-AND-	:	CASE NO: ULP-6099
	:	
CITY OF PAWTUCKET	:	

DECISION AND ORDER

TRAVEL OF CASE

The above entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board"), as an Unfair Labor Practice Complaint (hereinafter "Complaint"), issued by the Board against the City of Pawtucket (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated December 13, 2012, and filed on December 17, 2012, by Rhode Island Council 94, AFSCME, AFL-CIO, Local 1012 (hereinafter "Union").

The Charge alleged violations of R.I.G.L. 28-7-13 (6) and (10) as follows:

"On or about April 19, 2012 the City of Pawtucket unilaterally eliminated a Local 1012 bargaining unit position (Police CD/Secretary) and created a new non-Union position (Police Administrative Assistant). The new non-Union position of Police Administrative Assistant performs the same functions and tasks as the eliminated Police CD/Secretary. The City failed to negotiate and bargain regarding the elimination of the position in violation of R.I.G.L. 28-7-13."¹

Following the filing of the Charge, the parties submitted written statements on January 7, 2013. The Employer submitted a response on January 25, 2013. After the informal process had concluded, the Board reviewed the matter and on June 6, 2013, issued a complaint alleging:

"That the Employer violated R.I.G.L. 28-7-13 (6) and (10) when it passed a proposed ordinance on September 5, 2012, which removed the Union position of Police/CD Secretary from the bargaining unit and replaced it with a non-bargaining unit position of Police Administrative Secretary, without prior bargaining with the exclusive bargaining representative."

"That the Employer violated R.I.G.L. 28-7-13 (6) and (10) when it assigned bargaining unit work to a non-bargaining unit employee."

¹ Although the Charge reads April 19, 2012, September 5, 2012, is the date the Employer passed the proposed ordinances, which removed the Union position of Police/CD Secretary from the bargaining unit and replaced that position with a non-bargaining unit position of Police Administrative Secretary. This date, September 5, 2012, is reflected in the Board's Complaint.

The matter was then scheduled for formal hearing on August 20, 2013. At the Employer's request, the formal hearing was rescheduled and held on October 10, 2013. Representatives from the Union and the Employer were present at the hearing and had full opportunity to examine and cross-examine witnesses and to submit documentary evidence. Post-hearing Briefs were filed on November 25, 2013. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony, evidence, oral arguments and written Briefs submitted by the parties.

SUMMARY OF TESTIMONY AND FACTS

On September 28, 1967, the Union was certified as the bargaining representative of "all employees of the City of Pawtucket except those excluded under Chapter 9.4-2 of Title 28 of the General Laws of R.I." (Joint Exhibit #1 (hereinafter "JT" #1))² Attached to the Certification is a list of positions accreted to or excluded from the bargaining unit from June 22, 1976 through March 29, 1994.

The position of Police/CD Secretary was created in 1995. Since the position's creation, the Union and Employer have recognized it as a bargaining unit position and have included it in every Collective Bargaining Agreement ("CBA"). (Transcript (hereinafter "TR.") pg. 14; See e.g., JT #2, 20) The position was held by Ms. Sandy Benson, a bargaining unit member, from October 1995 until her retirement in December 2011. (JT #14, 15, 16) Following Police/CD Secretary Benson's retirement, the position was filled on a temporary basis by Joyce Rabbit, also a bargaining unit member. (TR. pgs. 29-30) Following Police/CD Secretary Benson's retirement, the Employer did not post the Police/CD Secretary position, nor did the Employer provide notice to the Union of its intention not to fill the position. (TR. pgs. 30-31)

The Union's first and only witness, Mr. August Venice, President of the Union, testified that he first became aware that the Police Chief was recommending that the Police/CD Secretary position be "deleted from the Union" when Venice was in City Hall one day and happened to see an Agenda for an upcoming Personnel Board meeting. (TR. pg. 14) The proposal being considered by the Personnel Board was to eliminate the Police/CD Secretary and to create a non-Union position of Administrative Assistant. Mr. Venice attended the Personnel Board meeting and voiced the Union's objection during the "Public Input Period."

² Rhode Island Council 94, AFSCME, AFL-CIO, was formerly Rhode Island Public Employees Council 70 AFSCME AFL-CIO. It is this name that appears on the Certification of Representatives.

(TR. pg. 15, JT #6) Mr. Venice testified that he believed there were a total of four (4) Personnel Board meetings during which abolishing the position was discussed and that he attended three (3) of them. (TR. pgs. 15, 21; JT #6, 7, 8) At each meeting he continued to object to the Employer's proposal. (TR. pgs. 15, 21; JT #6, 7, 8) The Employer never contacted Mr. Venice to negotiate the elimination or alteration of this bargaining unit position. (TR. pg. 15) Mr. Venice did have a discussion with the City's Personnel Director and was told that the City was "within its rights, that they [sic] had a right to abolish a job and they [sic] had a right to create a job and ... they [sic] didn't need the Union's permission to do it." (TR. pg. 16) Ultimately, on April 18, 2012,³ the Personnel Board voted to reject the Police Chief's request. (TR. pg. 16, JT #9)

After the Personnel Board rejected his proposal, the Chief submitted the same to the City Council in April/May 2012. (TR. pg. 16, JT #10, 11) The proposal was then heard by the Finance Committee and, in September 2012, was approved and enacted in the form of two Ordinances.⁴ (JT #12, 13) Mr. Venice acknowledged on cross-examination that although he could not remember, he felt sure that a Union representative appeared at some of the Finance Committee meetings and full Council meetings where the Chief's request was discussed. (TR. pgs. 22-23)

Coincidentally, May 24, 2012 also marked the start of negotiations between the Union and Employer for a new contract, and the Employer first presented its formal proposal concerning the elimination of the Police/CD Secretary from the bargaining unit. (TR. pg. 17; JT #3) Mr. Venice testified that before May 24, 2012, there were no negotiations, whatsoever, between the Union and Employer regarding the deletion of the Police/CD Secretary position from the bargaining unit. After May 24, 2012, as part of the negotiations on the new contract, the Union and Employer had discussions about it at one (1) or two (2) meetings. (TR. pg. 17) At those discussions, the Employer indicated, over the Union's objections, that it wanted to delete the position of Police/CD Secretary as supervisory and confidential. (TR. pg. 18) After one (1) or two (2) unsuccessful meetings, the Union and Employer agreed to hold this issue in abeyance while they negotiated finances. (TR. pg. 19) When the parties could

³ Mr. Venice testified that the Personnel Board rejected Chief King's proposals on August 18, 2012. However, the documentary evidence reflects that the actual date of the Personnel Board's rejection was April 18, 2012. (JT # 9)

⁴ The Ordinance creating the new position refers to it as "Police Administrative Secretary" (JT # 12). However, both witnesses referred to the position as "Police Administrative Assistant" throughout the formal hearing herein. Therefore, for purposes of this Decision and Order, the Board will refer to the newly created position as "Police Administrative Assistant."

not come to an agreement on the financial issues, the Employer declared impasse. (TR. pg. 19) As of the hearing date of the matter herein, no interest arbitration panel had yet convened. (TR. pg. 19, 31) Despite the fact that interest arbitration had not yet begun, the City passed an Ordinance in September 2011, which eliminated the bargaining unit position of Police/CD Secretary and created a new non-Union position of Police Administrative Assistant. (JT #12, 13)

On cross-examination, Mr. Venice acknowledged he was not personally familiar with the day-to-day duties of either the Police/CD Secretary or Police Administrative Assistant. He had reviewed both job descriptions, however, and found that, "there is a basic core of essentially the same duties." (TR. pgs. 26-28) Some of the duties of the newly-created Police Administrative Assistant that were not previously performed by the Police/CD Secretary were performed by the Police Accountant, another bargaining unit position eliminated by the Employer. (TR. pgs. 26, 31)

Chief Paul King, Chief of the Pawtucket Police Department, and the Employer's first and only witness, testified that in December 2011, when Police/CD Secretary Benson retired, the City of Pawtucket was in a financial crisis and was looking to save money. (TR. pg. 36)⁵ Chief King consulted with the Mayor and Mr. Pires, the Mayor's Director of Administration and the Public Safety Director, regarding the newly vacated Police/CD Secretary position. (TR. pg. 36) Chief King had concerns regarding the position and its future. (TR. pgs. 36-38, 42) Working with Mr. Pires, Chief King determined that there should be a change in job responsibilities for the Police/CD Secretary. (TR. pgs. 36, 42, 44) With assistance from the City's Personnel Department, Chief King created a new position of Police Administrative Assistant, a non-Union position to replace the Police/CD Secretary. (TR. pg. 44)

Chief King readily acknowledged that he never negotiated with the Union regarding the deletion of the Police/CD Secretary position. (TR. pg. 58) Chief King agreed that the duties formerly performed by the eliminated bargaining unit position of Police Chief Accountant have been shifted to the new, non-Union Police Administrative Assistant position. (TR. pg. 59) Chief King acknowledged that the new Police Administrative Assistant performs the bargaining unit work previously performed by the eliminated Police/CD Secretary. (TR. pg. 59)

⁵ During that time frame, as members of Local 1012 retired, the city of Pawtucket looked at each vacated position. The city filled some vacancies, but not all. (TR. pg. 36)

In addition to the testimonial evidence presented by the Union's sole witness and the Employer's sole witness, the parties submitted Joint Exhibits illustrating the timeline of pertinent events. On January 12, 2012, Chief King wrote to the City Personnel Board seeking to have it consider revising, renaming, and reclassifying the bargaining unit position of Police/CD Secretary. (JT #5) Personnel Board Meetings occurred on January 18, 2012, February 15, 2012, and April 18, 2012. (JT #6, 7, 8) After the Personnel Board did not support the Chief's request, he wrote to the City Council on April 19, 2012, and May 24, 2012, seeking to have the Pay Ordinance amended to create the position of Police Administrative Secretary as a Classified Non-Union position. (JT. #10, 11) On September 5, 2012, the City of Pawtucket adopted i) an Ordinance which created the Position of Police Administrative Secretary as a Classified non-Union position, and ii) an Ordinance which deleted the Position of Police/CD Secretary from Local 1012. (JT #12, 13)

The following Job Descriptions were entered into Evidence as Joint Exhibits: Job Description dated "Approved Date February 2012" for the Job Title "Police Administrative Assistant" (JT #17); Job Description dated "Approved Date January 2001" for the Job Title "Police/C.D. Secretary" (JT #18); and Job Description dated "Approved Date July 2005" for Job Title "Police/Chief Accountant" (JT #19).

POSITION OF THE PARTIES

The Union argues that the Police/CD Secretary position is a Union position. The Union alleges that the Employer acted unilaterally when it eliminated the Police/CD Secretary position and assigned bargaining unit work to the newly created non-bargaining unit position of Police Administrative Assistant, all without prior bargaining.

The Employer argues that it did not violate R.I.G.L. 28-7-13 (6) and (10) when it passed an ordinance on September 5, 2012, which deleted the bargaining unit position of Police/CD Secretary and replaced it with a non-bargaining unit position of Police Administrative Assistant, nor when it assigned the former bargaining unit work to the new position. As a defense to its unilateral action, the Employer argues that the position of Police/CD Secretary was never formally accreted into the bargaining unit and therefore, the Employer had no legal obligation to bargain with the Union over the abolishment of the position. The Employer further claims that since the Police/CD Secretary position was not formally certified as a bargaining unit position, then its work cannot be considered bargaining unit work. The Employer asserts, that notwithstanding the fact that the position was not appropriately in the bargaining unit, the Employer did in fact bargain with the Union prior to passing the ordinance in September 2012.

The Employer posits, further, that its actions were consistent with the Pawtucket City Charter and Code of Ordinances, as well as within the Employer's managerial prerogative. Lastly, the Employer claims that the new position of Police Administrative Assistant is confidential and therefore, cannot be included in the bargaining unit.

DISCUSSION

I. THE POSITION OF POLICE CD/SECRETARY IS A UNION POSITION AND PART OF THE LOCAL 1012 BARGAINING UNIT.

Our analysis must begin with whether in fact the position of Police/CD Secretary is a bargaining unit position. Only if it is a bargaining unit position is there a requirement that the Employer bargain with the Union prior to abolishing it. And only if it is a bargaining unit position is the assignment of that position's work to a non-bargaining unit employee a violation of the State Labor Relations Act.

The Employer, in its Brief, argues that the Police/CD Secretary may not be considered a bargaining unit position because it never was formally accreted into the bargaining unit. The Employer relies on the "Disposition of Positions" attached to the Certification of Representatives to support its position. (JT #1) Specifically, the Employer asserts that the absence of the job title "Police/CD Secretary" in the "Disposition of Positions" is evidence that the position was not accreted.

The Employer then refers to the Board's Rules and Regulations to argue that even when parties agree by consent that a position should be included in the bargaining unit, a formal procedure is required by the Board. See RISLRB Rules and Regulations Section 8.04. In this case, the Employer argues, there is no evidence that either the Employer or Union complied with that procedure. Therefore, the Employer concludes, the Police/CD Secretary may not be considered part of the bargaining unit.

A review of the documentary evidence, specifically the Certification of Representatives and the attached Disposition of Positions, indeed reflects that no formal steps were taken with the Board by the Union or the Employer to either accrete or exclude the position of Police/CD Secretary from the bargaining unit. However, the Board's inquiry does not end there.

It is undisputed that from the time the position of Police/CD Secretary was created in 1995, both the Union and Employer considered the position included within bargaining unit. This is apparent from the testimony of both Mr. Venice and Chief King and the documentary evidence entered as Joint Exhibits. For example, all of the Collective Bargaining Agreements in effect between the Employer and the Union since 1996 include the position. (TR. pg. 14; JT #2, 20) Moreover, when Chief King evaluated the position and determined that it

should be eliminated, his correspondence to the Personnel Board and City Council reflects his understanding that the position was in fact included within the bargaining unit. (See JT #5, 10, 11) Additionally, when negotiations between the Employer and the Union commenced in May 2012, the Employers' Proposal #1 specifically refers to the position of Police/CD Secretary as one the Employer seeks to have eliminated from the bargaining unit. Finally, the Ordinance itself refers to the Police/CD Secretary as a bargaining unit position. (JT #13) It is, therefore, apparent to the Board that from 1995, when the position of Police/CD Secretary was created, through at least the date of the formal hearing herein, the Employer and Union were in agreement that this position was included within and considered a part of the bargaining unit.

The Employer, in its Brief, relies on the Board's Rules and Regulations to assert that even when parties consent to the accretion of a position to a bargaining unit, the parties must comply with a formal process to effect that accretion. The Employer refers in its Brief to the section of the Board's Rules and Regulations that addresses "Voluntary Recognition: Accretion of the Position(s) by Parties." However, in 1995, when the Police/CD Secretary position was created, this section was not yet included in the Board's Rules and Regulations. While the Board's Rules and Regulations in effect today require compliance with a specific process for parties to accrete a position to a bargaining unit, whether the position is in dispute or not, this was not the case in 1995. In fact, prior to a revision of the Rules and Regulations, effective January 1, 2007, there was no specific section governing accretion by voluntary recognition. As a result, prior to that revision, parties often engaged in a more informal method of accretion/exclusion in instances where there was agreement with respect to whether a position should be included within or excluded from a bargaining unit.

The evidence in this case establishes that for nearly twenty (20) years, by agreement of the parties, the position of Police/CD Secretary was included within the bargaining unit. As such, the Board rejects the Employer's eleventh-hour declaration, in the face of a charge of an unfair labor practice, that position is not properly considered a bargaining unit position. Therefore, based on its review of the testimonial and documentary evidence, as well as its own Rules and Regulations, the Board finds that the position of Police/CD Secretary is a bargaining unit position. It follows therefore, that the work performed by the Police/CD Secretary is bargaining unit work.

II. **THE CITY OF PAWTUCKET FAILED TO BARGAIN PRIOR TO ABOLISHING THE POLICE/CD SECRETARY POSITION.**

Next we address whether the Employer fulfilled its obligation to bargain prior to abolishing the position of Police/CD Secretary, a bargaining unit position. The timeline of events as they relate to this aspect of the case are undisputed. In December 2011, Ms. Sandy Benson, the Police/CD Secretary retired. Following her retirement, Chief King, in consultation with the Mayor and Public Safety Director, decided to delete/abolish the Union position of Police/CD Secretary and create a new non-Union position in its place. Specifically, Chief King sought to rename, reclassify, and modify the duties and responsibilities of the Police/CD Secretary. (JT #5) To effect this change, beginning in January 2012, Chief King began taking steps with the Personnel Board to delete the Police/CD Secretary (Union) position and create the Police Administrative Assistant (non-Union) position. (JT #5) At no time during this process, at least from January 2012 until May 24, 2012, did Chief King negotiate with the Union regarding the deletion of the position. Chief King admitted this when questioned on cross-examination. (TR. pg. 58)

Despite Chief King's admission, the Employer argues in its Brief that it did in fact negotiate with the Union as evidenced by its "Proposal #1" presented to the Union on May 24th 2012. (JT #3) The Employer points out that the Union admitted to discussing the deletion of this position at one (1) or two (2) bargaining sessions. (TR. pg. 18) The Employer further asserts that the Union was "afforded a full and fair opportunity to speak before the Personnel Board regarding the deletion of the Police/CD Secretary position on January 18, 2012, February 15, 2012, and April 18, 2012. (TR. pg. 21; JT #6, 7, 8)

The Board is unpersuaded. The testimony adduced at the formal hearing as well as the documentary evidence submitted as Exhibits confirm that by January 2012, the Employer had decided, without any negotiation whatsoever with the Union, to abolish the Union position of Police/CD Secretary and to create a non-Union position of Police Administrative Assistant. The Employer then began taking the necessary steps to effect this decision. The record reflects a complete absence of negotiations on this issue having taken place between the parties at any time until the parties began negotiating a successor agreement in May 2012. At that time, the elimination of the Police/CD Secretary was discussed at "one or two meetings." (TR. pg. 17) Then, unable to reach agreement, the parties decided to hold the issue in abeyance while they negotiated finances. (TR. pg. 19) However, without any further negotiation with the Union, in September 2012, the City Council, by Ordinance, eliminated the position of Police/CD Secretary from the bargaining unit.

While the Employer asserts that the “one (1) or two (2) meetings” at which the issue was discussed is evidence of negotiations, there is no evidence that such discussions in May 2012 qualify as good-faith negotiations given that the Employer had decided, in January, to abolish the position and by May, the process of implementing the decision was well underway. As is well established, an Employer who enters into negotiations, “with [its] mind hermetically sealed against even the thought of entering into an Agreement with the Union” does not make for good faith. See NLRB v. George Pilling & Son, 119 F.2d 32, 37 (3rd Cir 1941) citing NLRB v. Griswold Mfg. Co., 106 F.2d 713, 723 (3rd Cir 1939). Regardless, after the two unsuccessful negotiating sessions, the parties agreed to hold the matter in abeyance. The testimony reflects that no additional negotiations regarding the issue occurred. While the opportunity to voice an objection at a Public Input Period, at a meeting of the Personnel Board may allow one to make concerns and objections known, it in no way amounts to good-faith bargaining. Similarly, the opportunity to speak before the City Council and/or its Finance Committee is not equivalent to good-faith bargaining. When the City passed its Ordinance eliminating the bargaining unit position of Police/CD Secretary, this was nothing less than a wholesale repudiation of the City’s bargaining obligation.

III. THE EMPLOYER IS ASSIGNING BARGAINING UNIT WORK TO A NON-BARGAINING UNIT EMPLOYEE.

The newly created position of Police Administrative Assistant is presently a non-Union position. It was created by Ordinance in September 2012 and neither party has filed a Petition with the Board to accrete the position to the bargaining unit.

In determining whether the Union is assigning bargaining unit work to a non-bargaining unit employee, the Board finds the Employer’s own testimony instructive. Chief King admitted that the Employer is assigning bargaining unit work to non-bargaining unit personnel. Specifically, Chief’s King admitted: (1) certain of the job responsibilities of the eliminated bargaining unit position of Police Chief Accountant have been assigned to the new position of Police Administrative Assistant; and (2) the new position of Police Administrative Assistant is responsible for the regular secretarial work performed by the former bargaining unit position of Police/CD Secretary. (TR. pg. 59) Therefore, the Board can only conclude that the assignment to the Police Administrative Assistant of the work that had been the responsibility of the former Police/CD Secretary constitutes the assignment of bargaining unit work to non-bargaining unit personnel, in violation of R.I.G.L 28-7-13 (6) and (10). The Board makes no finding with respect to the assignment of the work previously performed by the former Police Chief Accountant as that is not the subject of the Complaint herein.

IV. **THE EMPLOYER'S PASSAGE OF THE ORDINANCE DELETING THE UNION POSITION OF POLICE/CD SECRETARY VIOLATES THE STATE LABOR RELATIONS ACT.**

The Employer argues that its passage of the Ordinances eliminating the Union position of Police/CD Secretary and creating the non-Union position of Police Administrative Assistant was consistent with the Pawtucket City Charter and the Pawtucket Code of Ordinances and, therefore, was appropriate. However, the Employer disregards, completely, the statutory requirements of the State Labor Relations Act and the Municipal Employees Arbitration Act, Chapter 9.4 of Title 28 of the Rhode Island General Laws ("MEAA").

Public employees, specifically Municipal employees are afforded the right to engage in collective bargaining with their Employer by virtue of the MEAA. Under that Act, an obligation to bargain in good faith is imposed upon the Employer. (R.I.G.L. 28-9.4-5) Further, under the MEAA there is a process to be followed with regard to unresolved issues that arise during negotiation of a contract. (R.I.G.L. 28-9.4-10) This process involves mediation and conciliation, arbitration, and in some cases compulsory mediation. None of this occurred.

Twenty (20) years ago this Board decided Case No ULP-4647, SLRB v Warwick School Committee. That case examined the issue of unilateral implementation of terms and conditions of employment imposed by a school committee during the negotiations of a successor Collective Bargaining Agreement. This Board held: "We conclude that unilateral departure from the terms of an expired contract, prior to the exhaustion of all available statutory dispute resolution procedures, violates the obligation under R.I.G.L. 28-7-13 to bargain collectively." (ULP-4647, Decision pg. 10) This holding was recently re-affirmed in the Board's decision in Case No ULP-6088, Rhode Island State Labor Relations Board and the Town of North Kingstown.

In this case, the Employer and Union began contract negotiations in May 2012. At that time, the Employer proposed deleting the Police/CD Secretary from the bargaining unit. (JT #3) No agreement was reached on this issue and at some point the Employer declared impasse. However, as of the formal hearing before the Board, there had been no mediation, conciliation or arbitration, as mandated by the MEAA, to address this issue and other unresolved issues. Despite the Employer's failure to exhaust the statutory dispute resolution procedures as required under the MEAA, in September 2012, the Employer, by way of Ordinance, unilaterally eliminated the Union position of Police/CD Secretary. While the Employer's actions may have been consistent with the procedures set forth in its Charter and Code of Ordinances, doing so

prior to the exhaustion of the statutory dispute resolution procedures, as set forth in the MEAA is a violation of the Employer's obligation to bargain collectively, under R.I.G.L. 28-7-13.

V. THE BOARD REJECTS THE EMPLOYER'S CLAIM THAT ITS ACTIONS WERE WITHIN ITS MANAGERIAL PREROGATIVE.

The Employer argues that deleting the bargaining unit position of Police/CD Secretary from the bargaining unit and creating the non-bargaining unit position of Police Administrative Assistant was within its managerial prerogative. In its Brief, the Employer cites Article 4 – Management Rights - of the Collective Bargaining Agreement which provides, “The Union recognizes that except as specifically limited, abridged, or relinquished by the terms and provisions of this agreement, all rights to manage, direct or supervise the operations of the City and the employees are vested in the City.” (JT #2, pg. 6) While the Board acknowledges that the Employer retains certain management rights, the Board disagrees with the Employer's assertion that its actions in this case fall within those rights.

First of all, the Police/CD Secretary position was eliminated in name only. Really, the position simply was modified. As Chief King testified, and the documentary evidence confirms, the Police/CD Secretary position was, revised, renamed and reclassified. (JT #5) Along with changing the job title from Police/CD Secretary to Police Administrative Assistant, the salary and some job duties were changed as well. Viewed as a job modification, this action absolutely affects wages, hours and other terms and conditions of employment, and therefore, falls squarely within the realm of what is a mandatory subject for bargaining.

Second, the evidence establishes that the position of Police/CD Secretary was within the bargaining unit. As such, the work performed by the Police /CD Secretary was bargaining unit work. The evidence also establishes that the position of Police Administrative Assistant is not within the bargaining unit. It is the Board's view that removal of long-time bargaining unit work from the bargaining unit and subsequent transfer of the same work to other employees who are not members of the bargaining unit, is akin to “sub-contracting.” As such, this is a mandatory subject for bargaining. FibreBoard Paper Products Corp. v. NLRB, 379 US 203, 215 (1964).

The Board also notes that the Employer did not seem to feel eliminating the position from the bargaining unit was a management right that did not have to be bargained in May 2012 when the Employer presented its Proposal #1 to the Union at the first bargaining session. That proposal suggests that, at least at that time, the Employer recognized its obligation to bargain over the deletion of several positions from the bargaining unit. The Board agrees and finds that revising, renaming, and reclassifying the bargaining unit position of Police/CD Secretary position is a mandatory subject for bargaining over which the Employer failed to bargain.

VI. **WHETHER THE NEW POSITION OF POLICE ADMINISTRATIVE ASSISTANT IS ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT IS NOT PROPERLY BEFORE THE BOARD.**

While the Employer may have the right to create a new position, whether or not that position is eligible for inclusion in a bargaining unit, is to be determined by the Board pursuant to the procedures set forth in Sections 8.04 and 8.05 of the Board's Rules and Regulations. Those sections address the Unit Clarification procedures for accretion or exclusion of positions. Presently before the Board is a charge of an Unfair Labor Practice filed pursuant to Section 9.01 of the Board's Rules and Regulations. Within an unfair labor practice proceeding, the Board has no lawful authority to "clarify" a position. Our focus is strictly limited to the Complaint that we issued. In this case, the Complaint that was issued by the Board was: "That the Employer violated R.I.G.L. 28-7-13 (6) and (10) when it passed a proposed ordinance on September 5, 2012, which removed the Union position of Police/CD Secretary from the bargaining unit and replaced it with a non-bargaining unit position of Police Administrative Secretary, without prior bargaining with the exclusive bargaining representative.... [and] when it assigned bargaining unit work to a non-bargaining unit employee." Therefore, the issue of whether the newly created position of Police Administrative Assistant is or is not eligible for collective bargaining is not presently before the Board.

FINDINGS OF FACT

1. The City of Pawtucket is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
2. The Union is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection; and as such, is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.
3. The position of Police/CD Secretary was created in 1995.
4. Since its creation in 1995, the position of Police/CD Secretary has been recognized by the Employer and the Union as a bargaining unit position.
5. Since its creation in 1995, the position of Police/CD Secretary has been included in every Collective Bargaining Agreement in effect between the Employer and the Union.
6. The position of Police/CD Secretary was held by a bargaining unit member from 1995 until her retirement in December 2011.
7. Following the Police/CD Secretary's retirement in December 2011, Chief King decided to rename, reclassify, and modify the Police/CD Secretary position.

8. In January 2012 the Employer began the process of creating a new, non-Union position of "Police Administrative Assistant" and eliminating the Union position of "Police/CD Secretary."
9. At no time prior to May 2012 did the Employer negotiate with the Union regarding the deletion of the Police/CD Secretary position from the bargaining unit.
10. In May 2012, at the start of negotiations for a Collective Bargaining Agreement for the contract effective July 1, 2012 - June 30, 2015, the Employer presented its "Proposal #1", which proposed deleting the position of Police/CD Secretary from the bargaining unit.
11. The Union and Employer discussed the elimination of the Police/CD Secretary position at one (1) or two (2) meetings and then agreed to hold the issue in abeyance while they negotiated finances.
12. No further negotiations on the issue of the Police/CD Secretary were held.
13. Unable to come to an agreement on finances, the Employer declared impasse.
14. Despite the declaration of impasse, no interest arbitration panel has convened as of the date of the formal hearing herein.
15. In September 2012, the City Council voted to pass a proposed Ordinance deleting the Police/CD Secretary position from the bargaining unit.
16. In September 2012, the City Council voted to pass a proposed Ordinance creating the non-Union position of Police Administrative Assistant position.
17. The newly created position of Police Administrative Assistant is a non-Union position.
18. The non-Union position of Police Administrative Assistant performs the bargaining unit work previously assigned to the Police/CD Secretary.

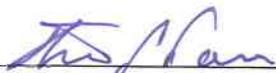
CONCLUSIONS OF LAW

1. The Union has proven by a fair preponderance of the credible evidence that the Employer has committed a violation of R.I.G.L. 28-7-13 (6) and (10) when it passed a proposed ordinance on September 5, 2012, which removed the Union position of Police/CD Secretary from the bargaining unit and replaced it with a non-bargaining unit position of Police Administrative Assistant, without prior bargaining with the exclusive bargaining representative.
2. The Union has proven by a fair preponderance of the evidence that the Employer has committed a violation of R.I.G.L. 28-7-13 (6) and (10) when it assigned bargaining unit work to non-bargaining unit personnel.

ORDER

1. The Employer is ordered to cease and desist from abolishing a bargaining unit position without first bargaining with the Union.
2. The Employer is ordered to cease and desist from assigning bargaining unit work to non-bargaining unit personnel.
3. The Employer is ordered to return bargaining unit work previously performed by the Police/CD Secretary back to the bargaining unit.

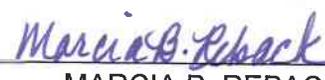
RHODE ISLAND STATE LABOR RELATIONS BOARD

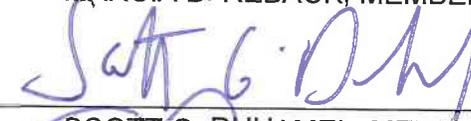

WALTER J. LANNI, CHAIRMAN

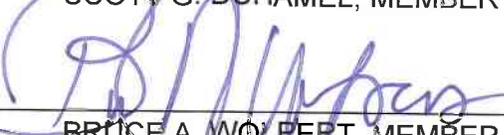

FRANK MONTANARO, MEMBER


GERALD S. GOLDSTEIN, MEMBER


ELIZABETH S. DOLAN, MEMBER


MARCIA B. REBACK, MEMBER


SCOTT G. DUHAMEL, MEMBER


BRUCE A. WOLFERT, MEMBER

GERALD S. GOLDSTEIN WAS NOT PRESENT TO VOTE ON THE CONCLUDED CASE BUT IS SIGNING THE DECISION AND ORDER AS WRITTEN.

ENTERED AS AN ORDER OF THE
RHODE ISLAND STATE LABOR RELATIONS BOARD

Dated: June 19, 2014

By: 
ROBYN H. GOLDEN, ADMINISTRATOR