

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-6119
	:	
TOWN OF NORTH PROVIDENCE	:	

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 Town of North Providence (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated October 1, 2013, and filed October 3, 2013 by the Fraternal Order of Police ("FOP"), Lodge 13 (hereinafter "Union").

The Charge alleged:

"Since the 1950s, the North Providence Police Department has had a canine (K-9) dog and K-9 police Officers (Officers responsible for handling K-9)." In 2006, the Department began a K-9 Officer Selection Process. Following the selection process, Officer Michael Zaccagnini was selected for the position. In addition to selecting Officer Zaccagnini, the Town of North Providence and the labor organization representing North Providence Police Officers, Fraternal Order of Police, Lodge 13, negotiated and included the K-9 position as a bid post within the 2006-2009 CBA. In October 2007, the parties negotiated and executed a Memorandum of Agreement (MOA) concerning the establishment of a K-9 Unit setting forth the agreed upon criteria for such position and the conditions to which a K-9 Officer would have to adhere. The parties, in the MOA, specifically recognized the Agreement to include the K-9 Officer in the 2006-2009 CBA. The parties are currently in collective bargaining negotiations for a successor CBA (7/1/09-6/30/12). In May 2013, while negotiations were ongoing, the Town unilaterally eliminated the K-9 position from the bargaining unit and returned the canine "Buran" to Officer Zaccagnini, violating the duty to bargain in good faith over the terms and conditions of its Officer's employment, among other things. The parties have invoked, but not yet completed, the statutory dispute resolution procedures.

Following the filing of the Charge, the parties each submitted a written position statement as part of the Board's informal hearing process. On December 10, 2013, the Board issued an Complaint alleging: (1) That the Employer has violated R.I.G.L. 28-7-13(3) (6) and (10) when it unilaterally changed the terms and condition of employment for an Officer performing K-9 duties, during negotiations for a successor Collective Bargaining Agreement, and without exhausting all alternate dispute resolution procedures required by the Municipal Police Arbitration Act (MPAA).

The Employer filed its Answer on December 16, 2013 and the matter was set down for formal hearing for January 16, 2014. The formal hearing took place on January 16, 2014.

Representatives from the Union and the Employer were present at the hearings and had full opportunity to examine and cross-examine witnesses and to submit documentary evidence. The parties submitted fourteen (14) joint exhibits and no other exhibits. Post-hearing Briefs were filed by both parties on March 5, 2014. 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 FACTS AND TESTIMONY

The facts in this case are not in dispute. Indeed, all the documentary exhibits submitted are Joint Exhibits. The parties, herein, have been collective bargaining partners for many years, with their last written Agreement being for the period July 1, 2006 - June 30, 2009. (Joint Exhibit #1, executed December 4, 2006) On October 23, 2006, the Police Department issued Personnel Order 06-107, which was a process to solicit letters of interest for a K-9 position assignment. (Joint Exhibit #2) On October 11, 2007, the parties also entered into a Memorandum of Agreement (MOA) concerning the K-9 Unit, intended to memorialize the parties' Agreement concerning the "criteria for bidding into the Canine Unit and overtime/comp time to be provided to members of the K-9 Unit, as well as other matters involving that Unit." (See Joint Exhibit #5) The MOA details numerous conditions and requirements for this Unit, including extensive annual training. After an application and selection process, Officer Michael Zaccagnini was selected as the K-9 Officer. (See Joint Exhibit #4) The canine, "Buran", arrived at the North Providence Police Department in November 2006. Together, Buran and Officer Zaccagnini formed the K-9 Unit and performed as such until Officer Zaccagnini sustained an on-the-job knee injury in the fall of 2012 that required surgery. Officer Zaccagnini was out of work for several months and anticipating a return in February 2013. Zaccagnini requested that he be permitted to schedule Buran's K-9 in-service training, which was overdue, due to Zaccagnini's IOD status. (See Joint Exhibits #7 & 9) Zaccagnini was advised that no training would be scheduled for either Zaccagnini or Buran until such time as Zaccagnini was medically cleared for a return to duty status. (Joint Exhibit #8) Zaccagnini returned to duty on March 4, 2013 and resumed the K-9 position, wearing his K-9 uniform and working the K-9 shift, but without Buran, the canine. On March 18, 2013, Captain Brendan Furtado notified Officer Zaccagnini, via email, that Buran and Zaccagnini's K-9 training Unit would not be scheduled until the Captain had a meeting with the Chief and Deputy Chief. (Joint Exhibit #11) On March 19, 2013, Officer Zaccagnini notified various senior Officers, via email, that he considered patrol vehicle # 288 to be unsafe and that there were problems with his K-9 patrol vehicle (#222). (Joint Exhibit #10)

On May 16, 2013, Acting Chief Paul Martellini approached Officer Zaccagnini in the hallway of the police station and advised him that the K-9 position/assignment was being eliminated and that if he wanted, Zaccagnini could purchase Buran, for \$1.00, in accordance with the terms of the MOA. (TR. pg. 38) Martellini advised Zaccagnini that a bill of sale had already been prepared to facilitate the purchase. Zaccagnini did purchase the now “retired” Buran as his own personal pet. (See Joint Exhibit #12) Zaccagnini’s K-9 position was eliminated and he returned to a regular patrol position. As a result, Zaccagnini’s work schedule changed, his required uniform changed, and he lost the use of the special K-9 vehicle. In addition, Zaccagnini no longer earned compensatory time off in a manner different than regular Patrol Officers, as he did when he was serving in the K-9 Unit. At the time that Martellini notified Zaccagnini of this change in his terms and conditions of employment, the Union and the Town were contemporaneously engaged in negotiations for a successor Collective Bargaining Agreement. Neither the elimination of the K-9 Unit, nor its effects on bargaining unit member Zaccagnini, was discussed in these contract negotiations. Moreover, it is undisputed that the Town did not engage in any bargaining at any time concerning its decision to eliminate the K-9 Unit or its effects on Officer Zaccagnini.

POSITION OF THE PARTIES

It is the Union’s position that the Employer has engaged in an unfair labor practice by unilaterally eliminating the K-9 Unit and returning Officer Zaccagnini to regular patrol duties without prior bargaining. In essence, the decision to eliminate the K-9 Unit resulted in a change to the work schedule and work benefits of bargaining unit member Officer Zaccagnini without negotiation with the Union. The Union argues that since the parties were in negotiations for a successor Collective Bargaining Agreement, it was incumbent upon the Town to bargain over at the very least, the effects of the decision to eliminate the K-9 Unit.

The Employer argues it did not violate the Labor Relations Act and that any and all acts it took were permitted by the Management Rights Clause of the CBA, as well as by the Town’s Charter. In addition, the Town argues that it essentially “pre-bargained” concerning this issue via the Memorandum of Agreement and that when the day arrived for Buran to retire, there was “nothing left to discuss.”

DISCUSSION

The issue here is whether the Town had a duty to bargain with the Union over the effects of its decision to eliminate the K-9 Unit and if so, did the Town engage in bargaining?¹ In its

¹ As noted by the Town in its Brief, the Union did not appear to challenge the Town’s right to retire the canine, “Buran.”

Brief, arguing that the Employer is only bound to engage in “effects” bargaining if there is a reasonable expectation that there is going to be an effect on bargaining unit members, the Town quotes this Board’s prior decisions: *Rhode Island State Labor Relations Board and State of Rhode Island, Department of Corrections*, ULP No. 5439 at pgs. 4 & 6. There, this Board stated, “while this Board still embraces the concept and applicability of ‘effects bargaining’, there are limits to this issue. This Board finds that, in order for the Employer to be bound to engage in additional ‘effects bargaining’, there must be a reasonable expectation that there is, in fact, going to be an effect on bargaining unit members.” The Town argues that in this case, any changes in the K-9s conditions of employ after Buran’s retirement were immaterial or insubstantial and did not warrant effects bargaining. The Town further argues that any perceived K-9 Officer “perks” were merely an accommodation for such responsibilities and that once Buran was retired, there was no longer the need for any such perks. (Town’s Brief pg. 5)

The Town refers the Board’s attention to the case of *United Technologies Corp.*, 278 NLRB 306, 308 (1986) for its position that the effect in bargaining unit member Zaccagnini was not material, substantial or significant.² The Town also argues that even if the Board is not persuaded by the argument that there was no material or significant impact, that the parties had already “pre-bargained” and agreed that the only significant issue was the disposition of Buran after his retirement. The parties adhered to the requirement that Zaccagnini be permitted to take possession of the dog.

The Union has argued that it is undisputed that the elimination of the K-9 Officer position was, in fact, a material change in the terms and conditions of employment for Zaccagnini who worked different hours than other Patrol Officers, had different rates of pay, (compensatory time off and overtime) had a different uniform and was permitted the use of a take-home patrol vehicle, and had access to significant training and certification for high-risk incidents (both within the Town and outside the Town) In addition, the Union argues that Officer Zaccagnini’s bidded assignment was unilaterally changed, in contravention of Article VI of the CBA.³

The first issue that we address is whether the terms and conditions of employment and Officer Zaccagnini’s assignment as a K-9 Officer are mandatory subjects for bargaining. It is well-settled that hours of work, rates of pay, training, and promotional opportunities are considered mandatory subjects for bargaining. Indeed, the parties recognized as much when

² In this case, the NLRB found no material change in terms and conditions of employment, and consequently, no unfair labor practice for a health care-related program, (“Correct-A-Bill”) which was a voluntary program enacted by the Employer, without bargaining. The program consisted of an incentive payment being awarded to employees who had undergone hospitalization, if they voluntarily checked their invoices and found errors, which resulted in funds being returned to the Employer from the insurer.

³ The Town’s actions may well have been considered by an Arbitrator as a violation of the CBA. However, this Board has no authority to so find. We note that there are often factual circumstances that give rise to both a contract claim and an unfair labor practice charge. This Board is empowered, however, only to act upon unfair labor practices.

they bargained and created the Memorandum of Agreement Re: K-9 Unit, (Joint Exhibit #5) as permitted by Article VI, Section 2 of the CBA (Joint Exhibit # 1). This MOA addresses hours of work, shift assignment, the K-9 Officer's trade-off of promotional opportunity, the use of a marked police vehicle for take-home purposes, training requirements, care, feeding and housing of the K-9 dog, a residency requirement for the K-9 Officer, on-call requirements, compensatory time and the requirement that the K-9 Officer execute a waiver under the Fair Labor Standards Act. Finally, as noted by the Town in its Brief, the MOA provides an opportunity for the K-9 Officer to retain the dog as his own personal property, at his own expense, after "the retirement of the dog." (See Joint Exhibit #5, p. 3) This MOA is silent, however, on the discontinuation of the K-9 Unit itself. The only reference to the "longevity" of the program is found on page 1 of the MOA, where it states:

"a) The Town has had in place a K-9 Unit consisting of one or more Officers for the past several years.

b) The Town intends to continue the K-9 Unit on a going forward basis."

In addition, this Memorandum of Agreement does not itself have an expiration date. Therefore, we view this document as an on-going Agreement, separate and apart from the parties' CBA. In reviewing this document, we have come to the conclusion that the MOA contemplates that the K-9 Unit was intended to be an "on-going" operation and that it addresses only the working conditions of the K-9 Officer while he/she holds that position. The Agreement does not contemplate the expiration of the K-9 Unit or the method by which any such termination would occur, or its impact on the Officer (s) holding said position (s). This is not to say that the Town cannot eliminate the use of a K-9 operation, but rather that it left open the issue that the effects of a termination of the program would have on the terms and conditions of employment of the K-9 Officers.

The Town argues that the Agreement did in fact contemplate the termination of the K-9 Unit in that the K-9 Officer would be permitted to retain ownership of a retired K-9 dog. While the issue of the dog was indeed settled by the MOA, the issue of the impact of the discontinuation of the program on the Officers themselves is conspicuously absent. We are not sure whether this was by design (because the program was "intended" to be on-going) or by oversight or mistake. In any event, the MOA was certainly not a comprehensive document when it came to the "conclusion" or discontinuation of the program. We can think of several relevant employment issues that could come up upon discontinuation and should have been addressed; either by this original Agreement or when the Town was coming to the conclusion that it no

longer desired to have its own K-9 Unit. These include, but are not limited to: (1) Whether an advance notice period to the affected Officer should be required, so that he/she could ascertain:

a) whether he/she could prepare for any upcoming promotional opportunities (which had to be foregone as a K-9 Officer).

b) whether he/she could begin preparations for a move to a municipality other than the ones required by the Agreement.

c) whether he/she had adequate non K-9 uniforms ready to go or whether the same would need to be ordered.

2) At what time of year the discontinuation of the K-9 Unit should occur? This potentially has an impact on the Officer's ability to bid for shifts and other assignments, which are done by seniority and only at certain times of the year. Joint Exhibit #1 is the parties' last written Collective Bargaining Agreement. The successor to this Agreement was being negotiated at the time the Town eliminated the K-9 position. Article VI, (Seniority) - Section 2 (Bidding for Assignments) of that Agreement states in part: "In addition, the Chief may establish criteria (to be agreed upon with the FOP) for bidding for the assignment of the department's K-9 Officer(s)." Article VI, (Seniority) - Section 3 (Bidding for Shifts) further provides: "Employees shall be permitted to choose their work shifts on the basis of seniority when consistent with the efficient operation of the department. Work shift availability shall be posted prior to January 1st of each year."

The MOA provides that the K-9 Officer must be willing to forego assignment by seniority and accept assignments to any of the following shifts: 3:00 P.M. – 11:00 P.M., 4:00 P.M. – 12:00 midnight, and 6:00 P.M. – 2:00 A.M. When an Officer is no longer serving in the K-9 Unit, he/she would once again be permitted to select his/her shift on a seniority basis. An employee's scheduled shift (hours of work) is arguably one of the most important terms or conditions of employment, which can have a major impact not only upon an Officer's family life, but also for his/her availability for additional overtime shifts. In the case of Officer Zaccagnini, the change to his "bidded" assignment of K-9 Officer occurred during May, after the annual seniority-based assignments and bids that took place in January, thus potentially depriving him of the ability to select a regular patrol shift, based upon seniority.

REMEDY

This is, unfortunately for Officer Zaccagnini, one of those cases herein, where the available, practical remedy, is not all that palatable, given that the events had already long concluded at the time the charge of unfair labor practice had been filed. Since we have determined that the Employer committed an unfair labor practice when it failed to negotiate the

effects of the elimination of the K-9 Unit with the Union, we hereby order the Employer to meet and negotiate with the Union concerning this matter. We also order the Employer to post a copy of this Decision and Order on all employee bulletin boards and on its website (if applicable) for a period of no less than sixty (60) days.

FINDINGS OF FACT

- 1) The Rhode Island Department of Corrections 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 parties herein have been collective bargaining partners for many years, with their last written Agreement being for the period July 1, 2006 - June 30, 2009.
- 4) On October 23, 2006, the Police Department issued Personnel Order 06-107, which was a process to solicit letters of interest for a K-9 position assignment.
- 5) On October 11, 2007, the parties also entered into a Memorandum of Agreement (MOA) concerning the K-9 Unit intended to memorialize the parties' Agreement concerning the "criteria for bidding into the Canine Unit and overtime/comp time to be provided to members of the K-9 Unit, as well as other matters involving that unit."
- 6) The MOA details numerous conditions and requirements for this unit, including extensive annual training. After an application and selection process, Officer Michael Zaccagnini was selected as the K-9 Officer.
- 7) The canine (K-9), "Buran", arrived at the North Providence Police Department in November 2006. Together, Buran and Officer Zaccagnini formed the K-9 Unit and performed as such until Officer Zaccagnini sustained an on-the-job knee injury in the fall of 2012 that required surgery.
- 8) Officer Zaccagnini was out of work for several months, and anticipating a return in February 2013. Zaccagnini requested that he be permitted to schedule Buran's K-9 in-service training, which was overdue, due to Zaccagnini's IOD status.
- 9) Zaccagnini was advised that no training would be scheduled for either Zaccagnini or Buran until such time as Zaccagnini was medically cleared for a return to duty status.
- 10) Zaccagnini returned to duty on March 4, 2013 and resumed the K-9 position, wearing his K-9 uniform and working the K-9 shift, but without Buran, the canine.

- 11) On March 18, 2013, Captain Brendan Furtado notified Officer Zaccagnini, via email, that Buran and Zaccagnini's K-9 training would not be scheduled until the Captain had a meeting with the Chief and Deputy Chief.
- 12) On May 16, 2013, Acting Chief Paul Martellini approached Officer Zaccagnini in the hallway of the police station and advised him that the K-9 position/assignment was being eliminated and that if he wanted, Zaccagnini could purchase Buran, for \$1.00, in accordance with the terms of the MOA.
- 13) Martellini advised Zaccagnini that a bill of sale had already been prepared to facilitate the purchase. Zaccagnini did purchase the now "retired" Buran as his own personal pet.
- 14) Zaccagnini's K-9 position was eliminated and he returned to a regular patrol position.
- 15) As a result, Zaccagnini's work schedule changed, his required uniform changed, and he lost the use of the special K-9 vehicle. In addition, Zaccagnini no longer earned compensatory time off in a manner different than regular patrol Officers, as he did when he was serving in the K-9 Unit.
- 16) At the time that Martellini notified Zaccagnini of this change in his terms and conditions of employment, the Union and the Town was contemporaneously engaged in negotiations for a successor collective bargaining Agreement.
- 17) Neither the elimination of the K-9 Unit nor its effects on bargaining unit member Zaccagnini, were discussed in these contract negotiations.
- 18) The Town did not engage in any bargaining at any time concerning its decision to eliminate the K-9 Unit or its effects on Officer Zaccagnini.

CONCLUSIONS OF LAW

- 1) The issue of the effect of the elimination of the K-9 Unit is an issue that required bargaining with the Union.
- 2) The Memorandum of Agreement does not constitute bargaining or pre-bargaining on the issue of the effect of the elimination of the K-9 Unit.
- 3) 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).

ORDER

- 1) The Employer is hereby ordered to negotiate the effects of the elimination of the K-9 Unit with the Union.
- 2) The Employer is hereby ordered to post a copy of this Decision and Order on all employee bulletin boards and publish it on its website (if applicable) for a period of no less than sixty

(60) days. The Employer shall effect such publication within five (5) days of receipt of this Decision and Order.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni

Walter J. Lanni, Chairman

Frank J. Montanaro

Frank J. Montanaro, Member

Gerald S. Goldstein

Gerald S. Goldstein, Member

Marcia B. Reback

Marcia B. Reback, Member

Scott G. Duhamel

Scott G. Duhamel, Member

Bruce A. Wolpert

Bruce A. Wolpert, Member (Dissent)

Board Member Elizabeth S. Dolan did not participate in this matter.

Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: June 25, 2014

By: Robyn H. Golden
Robyn H. Golden, Administrator