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-6280
STATE OF RHODE ISLAND, DEPARTMENT OF LABOR & TRAINING	:	

DECISION AND ORDER

TRAVEL OF CASE

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") on an Unfair Labor Practice Complaint (hereinafter "Complaint"), issued by the Board against the State of Rhode Island, Department of Labor & Training (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated July 8, 2020, and filed on the same date by Rhode Island Employment Security Alliance (SEIU) Local 401 (hereinafter "Union").

The Charge alleged as follows:

> 1) In or about January 2020, it was learned by the Union that the DLT changed the duties and responsibilities of the Business Service Specialist position in the West Warwick Network office. In particular, instead of performing the duties and responsibilities associated with the BSS position, the DLT began requiring the BSS to perform front desk duties, normally assigned to a different job classification. On January 31, 2020, the Union sent a demand to bargain over the change to the terms and conditions of employment for the BSS. To date, the DLT has refused to bargain over the change.

Following the filing of the Charge, each party submitted written position statements as part of the Board's informal hearing process. On August 21, 2020, the Board issued its Complaint, alleging the Employer violated R.I.G.L. § 28-7-13 (6) and (10) when, through its representative, the Employer (1) changed the duties and responsibilities of the Business Service Specialist ("BSS") position in the West Warwick Network office without informing, notifying or bargaining with the Union regarding the changes and (2) failed and refused to bargain in good faith with the Union regarding changes to the duties and responsibilities of the BSS position. The Board held a formal hearing for this matter remotely on November 19, 2020, and a second hearing in person on September 23, 2021. Post-hearing briefs were filed by the Employer and the Union on December 29, 2021. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony and exhibits submitted at the hearings and the arguments contained within the post-hearing briefs submitted by the parties.

FACTUAL SUMMARY

The matter before the Board is the Union's claim of an unfair labor practice against the Employer due to the Employer's failure and/or refusal to bargain with the Union over changes the Employer unilaterally made to the duties and responsibilities of the BSS position.

The facts surrounding this unfair labor practice Complaint are, for the most part, not in dispute between the parties. The Union and the Employer were, at all times relevant to the instant proceedings, subject to a collective bargaining agreement dated July 1, 2013 through June 30, 2017. (Joint Exhibit 1). The current dispute involves the Employer's decision to change the job duties and responsibilities of the BSS position in the West Warwick Network office and later in the Wakefield office without notifying or bargaining with the Union over this change to terms and conditions of employment.

The dispute between the parties emanated from a decision by the manager of the West Warwick Field Office, Sheri Carello, to include front desk coverage and walk-in coverage for "customers looking for resumé assistance and/or job development services" as part of the responsibilities of the BSS position. (Joint Exhibit 19). The above-described additional duties were added to the BSS position as part of the role of the BSS in field offices as it related to the job development function performed by the BSS. The change in job function was presented by Ms. Carello at a staff meeting on December 13, 2019, where a discussion of job development procedures for both BSS and Principal Employment Training Interviewer (Counselor) occurred. (Tr. at page 51 – 52; pages 203 – 204).

To understand the concern this change in BSS job duties and responsibilities provoked, it is necessary to understand the functions of the positions working in the Field Offices and the difference in the job duties and responsibilities of the positions assigned to the Field Offices.

The Employer's Work Force Development Services Division includes several different positions, including BSS and Counselors,[1] who provide services to both Rhode Island employers and unemployed Rhode Islanders (respectively) with the goal of assisting job seekers in developing the skills necessary to fill available job vacancies. (Tr. at pages 143 – 145). The Work Force Development Services Division ("Division") operates out of the Employer's main offices and has a number of satellite offices.[2] While

[1] For purposes of this unfair labor practice Complaint, the allegations of violations of the Act only implicate the BSS and Counselor positions. As noted, at the time the original Charge was filed, there had been several other positions working in the field offices, i.e., Employment and Training Assistant, Senior Employment and Training Interviewer, Local Veterans Employment Representative and Disable Veterans Job Assistant (see Joint Exhibits 8, 9, 21 and 22). As the testimony before the Board revealed, as of 2012 the Employment and Training Assistant and Senior Employment and Training Interviewer positions were no longer assigned to field offices (see Tr. at page 103; page 150). In addition, the Local Veterans Employment Representative and Disable Veterans Job Assistant positions were restricted by federal funding requirements to only work with eligible veterans (Tr. at page 47; page 206).

[2] The Employer's Field Offices were referenced by several different names during the hearing. These offices were referred to as Network Rhode Island, One Stop Centers and American Job Centers, among other terms. (Tr. at page 31; page 145). All these terms reference the community-based offices operated

there were several satellite offices where the Division offered services, only the West Warwick and Wakefield offices are the focus of the pending unfair labor practice case before the Board.[3] As is relevant to the instant matter, the West Warwick and Wakefield offices each have a reception desk/front desk area that interacts with the public and is responsible for dealing with persons who walk in for services and/or who may have appointments to discuss programs and services aimed at assisting the underemployed and unemployed individuals.[4] According to the testimony before the Board, the Counselor position was primarily handling the clerical duties of the front desk area during and up to the time of the instant dispute. (Tr. at pages 103 – 104).

As indicated above, the instant dispute involves a change in job duties implemented by the Employer without notice to the Union and without the Employer bargaining with the Union over the alleged change to terms and conditions of employment of the BSS position. Exhaustive testimony was presented by the Union regarding the job duties associated with the BSS position (Tr. at pages 34 – 39), with significant emphasis on the fact that the BSS position is focused on working with employers. (Tr. at pages 153 – 154). This contrasted with the duties of the Counselor position which focused mainly on assisting individuals who either walked in for services or needed unemployment assistance or job assistance training to find employment. (Tr. at page 40).

In May of 2019, after Union members in the BSS position had been working in the Field Offices two days a week since May 2018 (Tr. at page 43; page 75), the Employer decided to move the BSS position from its headquarters in Cranston solely to the Field Offices. (Tr. at page 162). According to the Employer, this was done to put the individuals occupying the BSS position closer to the community and in closer contact with principal interviewers. (Tr. at page 162). As part of this transition, the Employer and the Union negotiated a Memorandum of Agreement ("MOA") memorializing the reassignment of the BSS position to Field Offices on a full-time basis. (Joint Exhibit 2). As part of the MOA, the assignment of the BSS position to Field Offices would require the BSS position to perform all the duties of the position while making sure that the reassignment of the position and the performance of duties was consistent with all the then existing provisions of the collective bargaining agreement. (Joint Exhibit 2 at page 2). The MOA did not contain any language that changed the BSS position to allow for front desk duties to be performed. (Joint Exhibit 2; Tr. at page 67; page 105 – 107).

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by the Employer and from which individuals could obtain services provided by the Employer under its Work Force Development Services Division.

[3] According to the testimony before the Board, the front desk issue is of no concern in either the Providence or Cranston offices since these cities are responsible for staffing that administrative post. (Tr. at page 155).

[4] As noted above, the Charge before the Board involves alleged unilateral action taken by the Employer at the end of December 2019. From a historical perspective, prior to 2012, the front desk duties were performed by either Employment and Training Assistants, Senior Employment and Training Interviewers or Principal Employment Training Interviewers (also known as Counselors). (Joint Exhibits 7, 8 and 9). However, due to layoffs in 2012, the Employment and Training Assistants and Senior Employment and Training Interviewer positions were no longer assigned to the Field Offices. (Tr. at page 103). In fact, as of 2016, none of the Field Offices in question had administrative staff or a receptionist present in the office. (Tr. at page 155).

As previously noted, after a December 13, 2019 staff meeting, Michael Cooney, the individual occupying the BSS position in the West Warwick Field Office, spoke with Ms. Carello regarding the change to the BSS job description that included front desk coverage and walk-in coverage, indicating to her that these were not duties that were included in the BSS position. (Tr. at page 54). According to Mr. Cooney, Ms. Carello responded that she was instructed by her managers that she was able to make this change. (See Tr. at pages 54 – 55). Not satisfied with Ms. Carello's response, Mr. Cooney contacted the then-Local Union President, Charles Matley, regarding the claim that the Employer had unilaterally changed the BSS job duties. Shortly after contacting Mr. Matley, Mr. Cooney received a copy of the front desk coverage schedule for January 2020. (Joint Exhibit 3). On January 6, 2020, Mr. Cooney began his first front desk duty assignment. (Tr. at page 57). While performing the front desk duties such as answering general phone lines, Mr. Cooney was also dealing with documents relative to interacting with job seekers, something he did not do on a regular basis as a BSS. (Joint Exhibits 17 and 18; Tr. at pages 58 – 59). According to the testimony presented to the Board, when Mr. Cooney was assigned to the front desk, he was not able to perform the duties of the BSS position. (See Tr. at pages 59 – 60).

On the same day that Mr. Cooney began performing the front desk duties, Mr. Matley sent an email to the Employer titled, "Step 1 of the grievance process. Cease and desist the assignment of BSS to front desk duty." (Joint Exhibit 10; Tr. at page 107; page 134 – 135). The Employer scheduled a meeting to discuss Mr. Matley's "cease and desist" request, but otherwise took no action to comply with the request. (Tr. at page 108; page 135). The meeting between the Union and the Employer on January 9 was unproductive in resolving the dispute between the parties. (Tr. at pages 55 – 57; pages 135 – 137). In short, at the meeting the Union put forward its position that the BSS position should not be performing front desk work and the Employer responded by asserting that its actions were consistent with its rights under the collective bargaining agreement. (Tr. at page 109; page 137). After the conclusion of the January 9 meeting, the Union did not file a Step 2 grievance with the Employer's Department of Administration as allowed for in the collective bargaining agreement. (See Joint Exhibit 1, Article XXV; Tr. at pages 109 – 110). Instead, on January 31, 2020, Mr. Matley sent another email to the Employer, this time to Sarah Blusiewicz.(Joint Exhibit 12). Neither Ms. Blusiewicz nor any other Employer representative responded to Mr. Matley's January 31, 2020 bargaining request. (Tr. at page 110). Subsequent to sending his request to bargain to Ms. Blusiewicz, Mr. Matley discovered that another BSS, James Hagan, who was assigned to perform BSS duties in the Wakefield Field Office, had also been required to work at the front desk and perform front desk duties. (Tr. at pages 112 – 113). According to Mr. Matley's testimony, the Employer did not notify the Union of this change in BSS duties in the Wakefield Office.

In March 2020, due to the pandemic, the Field Offices were closed to the public. Since that time, no one, including any BSS, has been assigned to perform front desk duties. (Tr. at page 72).

POSITION OF THE PARTIES

Union:

The Union asserts that the Employer engaged in an unfair labor practice when it changed the duties and responsibilities of the BSS position in two satellite offices and failed and refused to bargain with the Union over the changes to the terms and conditions of the BSS position.

Employer:

The Employer contends that it did not violate the Rhode Island State Labor Relations Act ("Act") when it failed and/or refused to bargain with the Union over the claimed changes to the duties and responsibilities of the BSS position. The Employer initially argues that the Charge was filed outside the time limitations set forth in Board Rules and Regulations (Rule 1.22(B)(1)) thereby depriving the Board of jurisdiction over this matter. The Employer also argues that the Union violated the Election of Remedies Doctrine by first filing a grievance regarding this matter before turning its attention to the remedies afforded under the Act. The Employer cites *State of Rhode Island, Department of Environmental Management v. State Labor Relations Board,* 799 A.2d 294 (R.I. 2002) (DEM) in support of its assertion in this area. In addition, the Employer claims that the management rights clause of the collective bargaining agreement authorized its action, that the new assigned job duties were within the "other related" duties of the BSS and to the extent the Employer did not have the authority to assign the duties to the BSS without having to bargain with the Union, the assignment was still proper and no bargaining obligation attached because the new job duties did not constitute a substantial and material change in the working conditions of the BSS position. The Employer finally asserts that the change to the BSS position was de minimis and that the change was authorized because the existing job description allows the Employer to assign "related work" to the position.

DISCUSSION

The issue before the Board is whether the actions of the Employer in failing and refusing to bargain with the Union over unilateral changes to the duties and responsibilities of the BSS position constitutes a violation of the State Labor Relations Act. As discussed in more detail below, it is the Board's view that the conduct of the Employer in not engaging in bargaining with the Union over the change in duties to the BSS position is a violation of the Act. Moreover, the Employer's litany of affirmative defenses does not, based on the entire record before the Board, absolve the Employer from its bargaining responsibility.

It has long been the position of this Board that when an employer unilaterally changes terms and conditions of employment without first engaging in bargaining with the bargaining unit's exclusive representative, the employer commits a violation of the State Labor Relations Act (hereinafter "Act"). (See R.I.G.L. § 28-7-12; §28-7-14; §28-9.7-4; R.I.G.L. § 28-9.7-6; *Rhode Island State Labor Relations Board v. State of Rhode Island – Department of Corrections,* ULP-6256 (May 24, 2021); *Rhode Island State Labor Relations Board v. Middletown School Department*, ULP-6257A (September 9, 2020); *Rhode Island State Labor Relations Board v. Woonsocket School Committee*, ULP-4705 (June 4, 1997); *Local 2334 of the International Association of Fire Fighters, AFL-CIO v. The Town of North Providence*, PC-13-5202 (September 26, 2014); and *NLRB v. Solutia, Inc.*, 699 F.3d 50, 60 (1st Cir. 2012) (providing that an employer is in violation of a governing collective bargaining statute "when it makes a unilateral change to a term or condition of employment without first bargaining to impasse with the union").[5]

A. The Employer Engaged in Improper Unilateral Action.

In the present case, there appears to be little dispute between the parties that the Employer unilaterally acted in implementing changes to the BSS position and, specifically, assigning front desk duties to the BSS position in the Field Offices. Instead, the central dispute appears to be the disagreement between the Employer and the Union over whether the Employer engaged in good-faith bargaining with the Union regarding the changes to employee working terms and conditions of employment.[6]

The facts in this matter are generally straightforward and not in dispute. Neither party disputes that over the course of time, the BSS position has increasingly moved from a central office location to working exclusively out of the Field Offices. The parties do not dispute that this movement was negotiated and that a MOA was established setting forth the parameters of the move. (Joint Exhibit 2). The parties also do not dispute that the West Warwick and Wakefield Field Offices did not have administrative staff or a receptionist at and prior to the initial eruption of the present dispute (Tr. at page 155), nor do they dispute that the front desk duties primarily focus on assisting underemployed and unemployed Rhode Islanders who are seeking to fill a job vacancy. (See Tr. at pages 90 – 94; pages 152 – 153). Similarly, the parties do not dispute that the primary role of the BSS position is to work with employers to identify positions that can be filled by job seekers who have been working with Counselors. (Tr. at pages 34 – 39; page 154). Further, there appears to be no dispute between the parties that in mid-December 2019, the Employer, at a staff meeting and without first notifying the Union, introduced additional job duties to the BSS position, specifically front desk coverage and "walk-in coverage for customers looking for resumé assistance and/or job development services" that had not

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[5] This Board and the courts of this State have, with respect to labor law issues, consistently looked to federal labor law for guidance. (*See Town of North Kingstown v. International Association of Firefighters, Local 1651, AFL-CIO,* 107 A.3d 304 (R.I. 2015); and *Town of Burrillville v. Rhode Island State Labor Relations Board*, 921 A.2d 113, 120 (R.I. 2007)).

[6] The Board, of course, recognizes that the Employer has raised several affirmative defenses to its conduct in this case. These defenses will be discussed by the Board later in this Decision.

been previously included in the job description of the BSS position. (Compare Joint Exhibit 19 with Joint Exhibit 6; Tr. at pages 53 – 54).

In short, the Employer presented little evidence (other than the affirmative defenses it raised which are discussed later in this Decision) to combat the facts presented by the Union that a unilateral change to the working conditions of the BSS position occurred in December 2019 with the assignment of front desk duties to the BSS position.

Just as there appears to be little dispute between the parties that the Employer acted unilaterally in adding front desk duties to the BSS position, there also appears to be little dispute that the addition of these duties changed the terms and conditions of employment of the BSS position.[7]

As previously mentioned, the Board has long held that an employer violates the terms of the Act when it unilaterally changes terms and conditions of employment without first engaging in bargaining with the exclusive representative of the employees. See *Rhode Island State Labor Relations Board v. State of Rhode Island – Department of Corrections,* ULP-6256 (May 24, 2021); *Rhode Island State Labor Relations Board v. Middletown School Department*, ULP-6257A (September 9, 2020); *Rhode Island State Labor Relations Board v. Town of North Smithfield*, ULP-5759 (May 15, 2006); *Rhode Island State Labor Relations Board v. Woonsocket School Committee*, ULP-4705 (June 4, 1997). Further, there is no dispute that the actions taken by the Employer, i.e., changing the working terms and conditions of employment of bargaining unit personnel, are mandatory subjects of bargaining which require the Employer to bargain with the employees' exclusive bargaining representative. (See R.I.G.L. § 28-9.4-1; R.I.G.L. § 36-11-1(a); *Town of North Kingstown v. International Association of Firefighters, Local 1651, AFL-CIO,* 107 A.3d 304, 313 (R.I. 2015).[8]

While the Employer makes arguments, see discussion *infra*, that its actions were authorized, justified, and allowed under the existing collective bargaining agreement, even if such arguments were found to be valid, it would not alter the fact that the Employer, in the instant case, took unilateral action in changing the working terms and

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[7] The Board acknowledges and will discuss *infra* the Employer's argument that it was authorized to make the additional work assignment based on language in the management rights clause, that the change in job duties was not substantial or material in nature, that the additional duties were included in the BSS job description as part of "other related duties clause" and that the change was merely de minimis in nature. The Board has considered each of these affirmative defenses and concluded that none is sufficient to overcome the evidence before the Board that the Employer's unilateral action impacted terms and conditions of employment, that the effect on terms and conditions of employment was substantial and material and, therefore, is a mandatory subject of bargaining which requires the Employer to engage in good-faith bargaining with the Union.

[8] As R.I.G.L. § 28-9.4-1 makes clear, the right "to bargain on a collective basis with municipal employers, covering hours, ... working conditions and other terms of employment;" is part of the panoply of rights given to municipal employees by the statute. These rights are further enunciated within R.I.G.L. § 28-9.4-3(a). As the statutory language establishes, these are mandatory rights over which an employer has an obligation to bargain before it unilaterally makes changes in these areas. (*See Town of North Kingstown v. International Association of Firefighters, Local 1651, AFL-CIO*, 107 A.3d 304 (R.I. 2015)). The provisions of R.I.G.L. 36-11-1 provides State employees with the same bargaining rights provided for municipal employees.

conditions of employment of bargaining unit personnel. Because the justification put forth by the Employer for its actions neither supports nor legally justifies its unilateral action, the Board finds that the Employer acted in violation of the Act.

B. The Employer's Unilateral Change in Duties to the BSS Position was in Violation of the State Labor Relations Act.

As noted above, the issue of unilateral changes to terms and conditions of employment is one that frequently comes before the Board and is an issue upon which much has been written. Basically, an employer is prohibited from making unilateral changes in terms and conditions of employment (which, as discussed above, are mandatory subjects of bargaining) where those changes represent a material and substantial alteration of what the previous application or practice has been. (See R.I.G.L. § 28-7-12; § 28-7-14; § 36-11-1; and § 36-11-7; *Rhode Island State Labor Relations Board v. Town of North Smithfield*, ULP-5799 (May 15, 2006); *Local 2334 of the International Association of Firefighters, AFL-CIO v. The Town of North Providence*, PC-2013-5202 (Sept. 26, 2014); and *NLRB v. Solutia, Inc.*, 699 F.3d 50, 60 (1st Cir. 2012) (providing that an employer is in violation of a governing collective bargaining statute "when it makes a unilateral change to a term or condition of employment without first bargaining to impasse with the union")). In the instant case, there was no debate, discussion or disagreement upon the fact that the Employer unilaterally changed the duties of the BSS position (Joint Exhibit 19; Tr. at pages 51 – 54; Tr. at page 214). While the Employer certainly raised defenses for its actions, claiming justification based on the language in the management rights clause among other items, at no point during the testimony or in the memorandum of law submitted by the Employer to the Board did the Employer deny that it had unilaterally implemented changes to the BSS position nor did it deny that the changes constituted terms and conditions of employment for bargaining unit personnel (Tr. at pages 165 – 166; page 169; page 214). Thus, the undisputed evidence before the Board was that the Employer made unilateral changes to terms and conditions of employment, i.e., the Employer unilaterally changed the working conditions of bargaining unit personnel by adding the front desk duties to the BSS position without engaging in bargaining with the Union.

C. <u>The Unilateral Changes to the BSS Position Were Material and Substantial</u>

Just as the facts presented to the Board showed without dispute that the changes proposed by the Employer to the BSS position were enacted unilaterally, the evidence before the Board also demonstrated that the unilaterally proposed changes had a material and substantial impact on employee terms and conditions of employment. The changes proposed by the Employer added front desk duties to the BSS position that were not included in the job description (Joint Exhibit 6; Joint Exhibit 19; Tr. at page 54; page 203), involved interacting and performing functions with unemployed and underemployed individuals (duties not regularly assigned or included as part of the BSS duties – compare Joint Exhibit 6 with Joint Exhibit 7; see also Tr. at pages 33 – 39; 97 – 98; 153 – 154) and

prevented the individual in the BSS position from performing his BSS duties while working at the front desk (Tr. at pages 59 – 60). In addition, the evidence showed that the number of hours when a BSS was assigned to the front desk generally averaged one full day per month (7 hours per day) plus 4 – 5 lunches per month (one-half hour per lunch) (see Joint Exhibits 3 – 5).[9] The above undisputed evidence makes clear to the Board that the changes made to the BSS position were, in fact, material and substantial.

It is well settled before this Board that changes to an employee's job description, work duties, job assignment or responsibilities comes within the concept of terms and conditions of employment. See *Rhode Island State Labor Relations Board and State of Rhode Island Department of Health*, ULP-6276 (February 6, 2021); *Rhode Island State Labor Relations Board and Pawtucket School Department*, ULP-6287 (May 24, 2021); *Rhode Island State Labor Relations Board and Middletown School Department*, ULP-6257 (2020); see also *Essex Valley Visiting Nurses Association*, 343 NLRB No. 92 (2004). Thus, there can be no legitimate argument that the changing or modifying of an employee's work duties or assignment goes to the essence of the working terms and conditions of the employee or group of employees, provided the change is not immaterial, insubstantial, or insignificant. See *Ead Motors*, 346 NLRB 1060 (2006).

In the present case, the Board finds that the addition of front desk duties to the BSS position were material and substantial changes that required the Employer to bargain with the Union over these mandatory subjects of bargaining. As noted above, the addition of the front desk duties not only added duties not previously performed by the BSS,[10] but also prevented the BSS from performing the job duties contained in his job description while on front desk duties. As the evidence before the Board demonstrated, the BSS had to relocate to the front desk to perform duties that were at least somewhat alien to the type of work the BSS normally and regularly performed (Tr. at pages 58 – 60). Further and as previously noted, when performing front desk duties, the BSS was not able to perform the duties of the BSS position (Tr. at pages 59 – 60). Add to the significant

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[9] According to the Employer, the BSS position would have spent between 7 and 8 hours per month performing front desk duties (Tr. at page 209), arguing that this amount of time is "minimal" and the assignment was not a material or substantial change for the BSS position. Based on the evidence presented to it, the Board must reject the Employer's argument on this point.

[10] The Board acknowledges testimony presented by the Employer that individuals who previously occupied the BSS position stated they had performed front desk duties (Tr. at pages 182 – 185; pages 190 – 191; pages 194 – 196). These individuals also testified that they never complained to the Union about having to perform front desk duties (Tr. at page 191; page 197). While the Employer asserts that this willingness by these individuals occupying the BSS position to perform front desk duties is strong evidence that front desk duties were part of the BSS duties, the Board cannot agree or subscribe to this reasoning. First, an employee accepting an assignment from his/her employer without argument or complaint does not signal anything about whether the assignment is proper or within the parameters of the job description in question. Instead, it shows that the employee followed a directive from his/her employer, nothing more. Second, by not complaining to the Union, the employees who performed the front desk duties deprived the Union of the opportunity to bring to the Employer's attention its concern and/or objection to the front desk assignment (it must also be noted that the Employer never informed the Union of these assignments). Part of the Union's responsibility as the employee representative is to protect the integrity of job duties and job descriptions. It cannot do this if job duties are being assigned without its knowledge. Finally, and notwithstanding the testimony that individuals in the BSS position had previously agreed to perform the front desk duties, this conduct does not foreclose the Union from raising its objection to the conduct in this case. As noted, it is undisputed that the Union was not made aware of the assignment of front desk duties to a BSS until this case was presented. Thus, there was no waiver by the Union of its right to credibly challenge the Employer's action in the instant case.

changes in duties the amount of time the Employer was assigning the BSS to perform front desk duties (a minimum of 7 – 8 hours a month according to the Employer (Tr. at page 209) while the schedules show a slightly higher number of hours (see Joint Exhibits 3 – 5)) and it is clear to this Board that the changes to the BSS position because of the assignment of front desk duties was a material and substantial change. See *Rhode Island State Labor Relations Board and State of Rhode Island Department of Health*, ULP-6276.

The reliable and probative evidence before the Board was that the Employer's unilateral change to terms and conditions of employment, i.e., its unilateral change to the terms of the BSS job duties, demonstrated that the changes had a material and substantial impact on employee terms and conditions of employment. This conduct was a violation of the Act.

D. The Employer Failed To Bargain With The Union.

In addition to unilaterally changing terms and conditions of employment for bargaining unit members, the Employer failed to bargain with the Union over the unilateral change it implemented when it added the front desk duties to the BSS position (see Joint Exhibit 19). As the case law of this Board and the statutory law makes clear, an employer is required to negotiate with the exclusive representative of its employees over mandatory subjects of bargaining (*see Barrington School Committee v. Rhode Island State Labor Relations Board,* 388 A.2d 1369, 1374-75 (R.I. 1978); *School Committee of the City of Pawtucket v. Pawtucket Teachers Alliance AFT Local 930*, 390 A.2d 386, 389 (R.I. 1978); *Town of Narragansett v. International Association of Firefighters, Local 1589*, 380 A.2d 521, 522 (R.I. 1977); *Belanger v. Matteson*, 346 A.2d 124, 136 (R.I. 1975)). As R.I.G.L. § 28-7-2(c) makes clear, it is the policy of the State to allow and encourage bargaining over wages, hours and other working conditions between employees and employers. (See also R.I.G.L. § 28-7-14; R.I.G.L. § 28-9.7-4).

As noted above, the Board need not spend a great deal of time on whether a unilateral change by an employer to terms and conditions of employment represents a mandatory subject of bargaining. This Board's decisions as well as the overwhelming number of decisions from Rhode Island courts, the NLRB and the federal courts all support the notion that wages, hours and terms and conditions of employment represent mandatory subjects of bargaining and changes in these areas by an employer obligates the employer to bargain with the Union representing the employees before making any changes. *See NLRB v. Katz,* 369 U.S. 736 (1962)*; Rhode Island State Labor Relations Board v. State of Rhode Island – Department of Corrections,* ULP-6256 (May 24, 2021); *Rhode Island State Labor Relations Board v. Middletown School Department*, ULP-6257A (September 9, 2020); *Rhode Island State Labor Relations Board v. Town of North Smithfield*, ULP-5759 (May 15, 2006); *Rhode Island State Labor Relations Board v. Woonsocket School Committee*, ULP-4705 (June 4, 1997); *Local 2334 of the International Association of Firefighters, AFL-CIO v. The Town of North Providence*, PC 13-5202

(September 26, 2014); *NLRB v. Solutia, Inc.*, 699 F.3d 50, 60 (1st Cir. 2012). Thus, the United States Supreme Court made clear in *Litton Financial Printing Division, A Division of Litton Business Systems, Inc. v. National Labor Relations Board*, 501 U.S. 190, 198 (1991) that "[n]umerous terms and conditions of employment have been held to be the subject of mandatory bargaining under the NLRA."

In Rhode Island, R.I.G.L. § 28-7-13(6) makes it an unfair labor practice for an employer to "refuse to bargain collectively" with its employees' representative. Generally, an employer violates its bargaining obligation when it refuses to bargain with its employees' representative concerning wages, hours and other terms and conditions of employment, so-called mandatory subjects of bargaining. Much has been written on the subject of what constitutes a mandatory subject for bargaining. Mandatory subjects of bargaining are those subjects that address wages, hours and other terms and conditions of employment. The determination of whether an item is to be considered a mandatory bargaining subject has been discussed by the NLRB and the United States Supreme Court on numerous occasions. Thus, for example, in *Ford Motor Company v. NLRB*, 441 U.S. 488 (1979), the Supreme Court described mandatory bargaining subjects as those subjects that are "plainly germane to the 'working environment'..." Similarly, our Supreme Court has recognized that items which are considered mandatory subjects of bargaining are subject to both negotiation and/or arbitration. *See Town of North Kingstown v. International Association of Firefighters, Local 1651, AFL-CIO*, 107 A.3d 304, 313 (R.I. 2015); *National Labor Relations Board v. Wooster Division of Borg-Warner Corp.* 356 U.S. 342, 349 (1958); *Barrington School Committee v. Rhode Island State Labor Relations Board, supra*; *School Committee of the City of Pawtucket v. Pawtucket Teachers Alliance AFT Local 930, supra*; and *Town of Narragansett v. International Association of Firefighters, Local 1589, supra*.

In the instant case, the Union was afforded no legitimate opportunity to bargain with the Employer over the unilateral addition of front desk duties to the BSS position. There can be little argument or legitimate disagreement that changes to the duties and responsibilities of an employee's bargaining unit position represents a change to terms and conditions of employment. See *Rhode Island State Labor Relations Board v. Middletown School Department*, ULP-6257A (September 9, 2020). In the *Middletown* case, the employer unilaterally altered the working conditions of several bargaining unit members. In implementing its reorganization of bargaining unit position duties due to a funding cutback, the employer met with the Union to "discuss" the changes that were being made. However, as the Board noted in its Decision,

> while Union representatives were able to meet with representatives of the School Department, the discussions regarding the School Department's unilateral action did not afford the Union an opportunity to engage in meaningful bargaining over the School Department's decision to reorganize the Facilities Division. Instead, the School Department simply notified the Union of the changes it was making and refused to alter or modify its position.

Middletown School Department, ULP-6257A, at page 8.

In the instant case, to the extent that there was a meeting and discussion between the parties regarding the Employer's unilateral change to the BSS position duties, the Union's attempts to have the action changed were frustrated by the Employer's unwillingness to discuss the change in good faith. The testimony before the Board shows that after Mr. Matley, the then Local Union President, sent on January 6, 2020 a "cease and desist" email to the Employer's representatives, a meeting was scheduled and held on January 9, 2020. (See Tr. at page 79; pages 107 – 108; page 136). According to testimony presented by the Union, this meeting was short, and the Employer denied the Union's request at the meeting and without considering the information the Union had wanted to present. (See Tr. at pages 108 – 109). Even looking at the Employer's description of the meeting, it is clear the Employer had its mind made up prior to entering the meeting and was not going to change its decision (Tr. at pages 135 – 137). On January 31, 2020, the Union specifically asked for bargaining regarding the Employer's unilateral action, but the Employer never even responded to this request. (Tr. at pages 175 – 176). Thus, no further discussions between the parties occurred. When the Employer unilaterally added front desk duties to the BSS position in the Wakefield field office (Tr. at pages 111 – 114), it didn't notify the Union of the change thereby depriving the Union of its opportunity to engage in bargaining over the change in terms and conditions of employment.

Based on the evidence before this Board, it is clear that the Employer did not engage in good faith bargaining with the Union over the Employer's unilateral change to the duties of the BSS position. This conduct constitutes a violation of the Act.

E. The Employer's Defenses.

During the presentation of its witnesses and in its memorandum of law, the Employer has presented to the Board several arguments and explanations to attempt to justify and/or support its action in unilaterally changing the working terms and conditions of employment of bargaining unit personnel. As is discussed below, the Board has reviewed these arguments and explanations and, in the Board's view, does not believe that they offer sufficient grounds to mitigate against the Employer's unilateral action nor its failure to bargain with the Union over mandatory subjects of bargaining.

1. The Charge was Untimely Filed.

The Employer initially argues that the Charge filed by the Union in this matter must be dismissed because it failed to adhere to the Board's Rules and Regulations concerning the timely filing of unfair labor practice Charges. Rule 1.22 (B)(1)., provides in relevant part as follows: "Charges must be filed with the Board within six (6) months from the date of knowledge of the alleged unfair labor practice." In the instant case, the Employer alleges that the instant Charge, filed July 8, 2020, was outside the six-month time limitation period regarding the addition of front desk duties to Mr. Cooney in the West Warwick Field Office. According to the evidence presented to the Board,

Mr. Cooney first became aware of the addition of the front desk duties sometime on December 13, 2019, when he attended a staff meeting and the job development procedures for BSR (BSS position) were distributed. (Joint Exhibit 19; Tr. at pages 51 – 52; pages 203 – 204). Mr. Cooney had a brief conversation with his supervisor (Ms. Carello) after the staff meeting but was unable to have the additional front desk job duties changed or withdrawn. Mr. Cooney then contacted the Local Union President, Mr. Matley, and on January 6, 2020, Mr. Matley sent an email to the Employer seeking a "Step 1" grievance meeting. The meeting was held on January 9 with Employer and Union representatives, but no resolution to the Union's request to "cease and desist" adding the front desk duties to the BSS position was achieved.

As can be seen from the above timeline, Mr. Cooney first became aware of the changes to his BSS position on December 13, 2019, at a staff meeting. Clearly, the filing of the unfair labor practice Charge on July 8, 2020 is well beyond the six-month time limitation if December 13, 2019 is used as the date of first knowledge. Similarly, even if the Board were to look at the date when the Union was first notified of the front desk duties being added to Mr. Cooney's BSS position, that date would be January 6, 2020. Even this date is still outside the six-month time limitations period.[11] Thus, the Employer is correct in noting that as it relates to Mr. Cooney, the July 8, 2020 unfair labor practice Charge filing is clearly untimely. However, that does not end the Board's analysis of the timeliness issue.

While the Charge does note that "duties and responsibilities" of the BSS position in the "West Warwick Network Office" were changed, the Charge also alleges that on January 31, 2020, "the Union sent a demand to bargain over the change to the terms and conditions of employment for the BSS." The Charge alleges that the Employer refused to bargain over the change to the BSS position. On its face, this failure to bargain allegation that arose from a January 31, 2020 request for bargaining by the Union falls well within the six-month time period for filing a Charge where the date of filing is July 8, 2020. The NLRB and numerous federal courts have recognized the concept that each refusal to bargain by an employer under a general duty to bargain creates a separate violation. See *J. Ray McDermott & Co. v. NLRB*, 571 F.2d 850, 858 (5th Cir. 1978), cert. denied, 439 U.S. 893 (1978); see also *NLRB v. Basic Wire Products, Inc.,* 516 F.2d 261 (6th Cir. 1975); *Cone Mills Corp. v. NLRB*, 413 F.2d 445 (4th Cir. 1969). In the present case, it is clear to this Board that the request to bargain made by the Union on January 31, 2020 was a separate and distinct act for which the Employer had an obligation to respond by engaging in good faith bargaining over unilateral changes to terms and conditions of employment.

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[11] The Union in its brief to the Board does not address Mr. Cooney's initial knowledge of the change to his BSS duties in December 2019 nor his initial contact with the Local Union President, Mr. Matley, on January 6, 2020 and the impact of these dates on the July 8, 2020 filing of the Charge and the Employer's timeliness argument. Instead, the Union briefly mentions the meeting on January 9, 2020 (stating it was inside the six months limitations period) and then focuses on its January 31, 2020 bargaining request, arguing that the request to bargain creates a separate event that makes the July 8 filing timely (see *National Labor Relations Board v. Basic Wire Products, Inc.*, 516 F.2d 261 (6th Cir. 1975).

Thus, based on the reliable, probative and substantial evidence in the record before the Board, the failure to bargain over changed terms and conditions of employment allegation contained in the Charge filed on July 8, 2020 was timely filed with the Board.

The Employer argues that because the Union and Mr. Cooney were aware of the changes to Mr. Cooney's BSS position outside the six-month time limitation set forth in Board Rule 1.22(B)(1)., the entire unfair labor practice Charge should be dismissed. However, as noted above, the Charge filed by the Union not only asserted unilateral changes to terms and conditions of the BSS position in the West Warwick Field Office, but the Charge also asserted that the Employer failed to bargain over these changes when the Union, on January 31, 2020, requested such bargaining. Therefore, the Employer's failure to bargain is a separate portion of the Charge (and a separate issue raised in the Complaint from the Board) that was filed in a timely manner.

Finally, there was evidence before the Board that the changes to the BSS position in West Warwick were not the only changes unilaterally implemented by the Employer. There was evidence presented to the Board that in addition to the changes to Mr. Cooney's BSS position, there were also front desk duties added to the BSS position filled by James Hagan in the Wakefield Field Office. (Tr. at page 111). According to Mr. Matley's testimony, he learned about the addition of front desk duties to Mr. Hagan's BSS position subsequent to his sending the cease and desist request in early January 2020. (Tr. at page 113). In fact, Mr. Matley testified that he believed he did not discover the information regarding the change to Mr. Hagan's BSS position duties until "after I made the request for bargaining." (Tr. at page 113). This would mean that the information regarding a unilateral change in terms and conditions of employment to a BSS position, specifically Mr. Hagan's, was not discovered by the Union until after January 31, 2020, or well within the six-month time limitations period for the Charge filed on July 8, 2020 with the Board.

For all of the above reasons, the Board rejects the Employer's timeliness argument with regard to the instant matter.

2. The Charge was Filed in Violation of the Election of Remedies Doctrine.

The Employer also asserts that the matter before the Board must be dismissed because the Union's action in filing a Charge with the Board is in violation of the Election of Remedies Doctrine. According to the Employer, the violation occurred when the Union initially sent an email titled "Step one of the grievance process" on January 6 to the Employer seeking the Employer to "cease and desist" from implementing front desk duties as part of the BSS position and then, after a meeting on January 9 produced no resolution to the dispute, abandoned its pursuit of the grievance and subsequently filed the Charge now before this Board seeking the same remedy it (the Union) originally sought when it filed the grievance. The Union objects to the Employer's characterization of its actions, claiming that the remedies it sought when it sent the email to the Employer is not the

same as the remedy it is asking this Board to implement if an unfair labor practice is found by this Board.[12]

The Election of Remedies Doctrine, according to the Employer's argument, deprives this Board of jurisdiction over an unfair labor practice Charge filed after the union "**starts** the process of seeking redress through the grievance and arbitration process." (Emphasis in original). See Employer Memorandum of Law at page 10 – 11 citing *State of Rhode Island, Department of Environmental Management v. State Labor Relations Board,* 799 A.2d 274 (R.I. 2002). In essence, the Election of Remedies Doctrine is designed to prevent a party, in this case a union, from proceeding down one path in search of a remedy of a wrong (i.e., filing a grievance over a claimed contract violation and asking that the wrong be corrected) and then abandoning the first path before completion and pursuing a second path (filing an unfair labor practice Charge) where the union seeks the same remedy. As the Supreme Court noted in the *Department of Environmental Management* case, once "the union entered the grievance procedure, it had selected the remedy to adjudicate its claim, and the union should have pursued that remedy to its conclusion." See Employer Memorandum of Law at page 11 citing *State of Rhode Island, Department of Environmental Management v. State Labor Relations Board,* 799 A.2d at 287. See also *Cipolla v. Rhode Island College Board of Governors for Higher Education*, 742 A.2d 277, 279 (R.I. 1999).

Notwithstanding the above, the Board does not find that an Election of Remedies violation has occurred in the present case. Specifically, the evidence before the Board demonstrates that the "cease and desist" email was sent on January 6 on behalf of Mr. Cooney and his claim of changes in his BSS job duties. However, the Board has already ruled that the Charge filed on July 8 was untimely only as to Mr. Cooney's claim. Thus, the Election of Remedies Doctrine has no application in the present case. Further, there was no evidence before the Board that any Step one process was entered into on behalf of Mr. Hagan, the other Union member who had his BSS job duties unilaterally changed by the addition of front desk duties (Tr. at pages 112 – 114; page 173). In other words, there is no claim of an Election of Remedies violation as to Mr. Hagan as the only action taken on his behalf is the filing of the pending unfair labor practice before this Board.

Therefore, based on the evidence before this Board as discussed above, the Board must reject the Employer's Election of Remedies argument as being without merit in the present case.

3. The Employer's Action was Not Authorized under the Terms of the Collective Bargaining Agreement.

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[12] The Union also argues that the email was not an actual grievance filing. See Union Memorandum of Law at pages 24 – 25. While the Board need not address this particular argument in order to decide the Election of Remedies issue before it, suffice it to say that the evidence before the Board does not support the Union's argument on this specific point.

The Employer also claims that its actions in unilaterally changing the duties of the BSS position were appropriate as the Employer was simply acting in accordance with its bargained for rights under the collective bargaining agreement. The Employer cites a recent National Labor Relations Board (NLRB) case, *M.V. Transportation, Inc.*, 368 NLRB No. 66 (2019), to support its contention that the contract language allows it to act unilaterally without engaging with the Union. While the *M.V. Transportation* case changed the method by which the NLRB looked at cases involving a claim that the Union had waived its right to bargain over changes implemented or instituted by an employer during the term of a CBA, the case was not a signal that every management rights clause, even broadly written clauses, allow employers the ability to act with impunity and in a unilateral manner without discussing changes in terms and conditions with the Union.[13]

In the instant case, the Board has looked closely at the management rights clause in the collective bargaining agreement in place at the time of these events. The CBA provides the Employer with a fairly standard set of rights and responsibilities that it may exercise "except as limited, abridged, or relinquished by the terms and provisions of this agreement..." (Joint Exhibit 1, Article IV at page 4). In other words, even though the management rights clause provides the Employer with the ability to "direct employees in the performance of official duties", those rights were specifically limited in that they must be consistent with the terms of the collective bargaining agreement. In reviewing the management rights clause, the Board has determined that there were limitations on the Employer's ability to act in a unilateral manner regarding terms and conditions of employment. For example, the job duties of the position in question are memorialized (at least by reference) in the collective bargaining agreement (Joint Exhibit 1, Article V, Sections 5.7 and 5.9). More significantly to the Board's inquiry, Section 5.7(d) makes clear that the Employer is to notify the Union "prior to a change in any classification in the unit." (Joint Exhibit 1 at pages 10 – 11). The Board agrees with the Union's argument on this point that the language in Section 5.7 clearly restricts the Employer's ability under the management rights provision from unilaterally acting as it did in this case. Said differently, whether this Board applies the "clear and unmistakable" standard or the "contract clause" standard recently set forth in *MV Transportation*, there is simply no evidence in the record as a whole before this Board to conclude that the Union waived its right to bargain over this issue. In short, this Board's review of the management rights language shows it to be generic in its terms and failing to specifically provide the Employer with the rights it has

[13] In objecting to the Employer's argument that the Union waived its right to bargain over the Employer's action, the Union asserts that the Board should continue to apply the "clear and unmistakable" standard for determining whether a waiver of bargaining rights has occurred. This Board has not taken a position on which standard (i.e., the "clear and unmistakable" standard or the more recently described "contract coverage" standard set forth in *MV Transportation*) to adopt. The "clear and unmistakable" standard was long a staple of NLRB decisions addressing waiver claims. However, with a change of NLRB members in 2019 the standard has changed to an analysis of whether the contract language shows that a waiver occurred. See *MV Transportation* at pages 8 – 12. This Board, like the Rhode Island courts, has always looked to federal law and especially the NLRB for guidance in determining allegations of unfair labor practice violations and it will continue to do so. However, the Board sees no overarching reason to decide in this case or at this time which standard it prefers or selects for purposes of bargaining waiver allegations that may come before it. Instead, the Board will continue to review the evidence and applicable case law as presented in each case and make its decisions based on what is presented to it.

asserted in this case (i.e., to unilaterally add duties to the BSS position that materially alter how the job is performed). There was no evidence presented by the Employer to the Board that during negotiations for the Union contract, the Union ever contemplated allowing the Employer the unilateral right to alter job descriptions by adding duties without first being able to negotiate such changes.

The Employer also argues that the phrase "to perform other related duties as required" contained in the BSS job description authorized the Employer to act in the manner it did (Joint Exhibit 6). Based on the evidence before the Board, this argument must also be denied as being without merit. First, the evidence makes clear that there was only a limited or tangential relationship between the duties of the BSS and the front desk duties. While both positions dealt with the general area of unemployment, the individual occupying the BSS position spent the overwhelming majority of his time working with employers while the front desk assisted the unemployed and underemployed (Tr. at pages 34 – 39; page 41; page 88). The front desk also performed tasks, i.e., giving typing tests or answering questions and working with documents not used by the BSS, that were distinct from the duties of a BSS (Tr. at pages 59 – 60). In addition, and a critical flaw in the Employer's argument, is the different population the BSS works with when compared to the population encountered when performing front desk duties. The evidence shows clearly that the difference between employers and unemployed or underemployed individuals and what each group needs in terms of services and expectations is significantly different and cannot be said to be "related" as the Employer posits in its brief. (See Tr. at pages 80 – 82; 83 – 85).

The evidence before the Board was that the Employer unilaterally announced changes to the BSS position, i.e., that front desk duties were being added to the position, without first notifying the Union of the change. Not only was that something the Union had never contemplated (and no evidence was presented to the Board to suggest otherwise), but even the language of the management rights clause does not offer the type of unbridled latitude that the Employer seeks in its argument before this Board. Thus, based on the reliable, probative and substantial evidence in the record before it, there was nothing to even suggest that the Employer's actions in this case came within the exceptions created in the management rights clause to allow the Employer to act in a unilateral manner to change mandatory subjects of bargaining without first negotiating with the Union.

4. The Changes to the BSS Position were Material and Substantial and were not De Minimis.

The final affirmative defenses raised by the Employer assert that the changes to the duties of the BSS position were neither material nor substantial and that any changes to the position were de minimis in nature. Thus, from the Employer's perspective, it had no duty to bargain over the changes to the BSS position. As discussed in detail above, the Board has rejected each of these arguments as being without merit.

The Board will not repeat here what it has previously stated above regarding whether the changes to the BSS position were material and substantial. It is clear based on the entire record of evidence before the Board that the changes unilaterally implemented by the Employer to the BSS position constituted a material and substantial change to the duties of the position. Similarly, the Board has rejected the argument that the changes were only de minimis in nature. Again, without fully repeating what has been previously stated, the differences between the job functions, the inability of the BSS to perform the duties of that position while working the front desk and the amount of time the BSS was assigned to the front desk all show that the changes were not de minimis in nature.

FINDINGS OF FACT

1. The Respondent 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 Union and the Employer were, at all times relevant to the instant matter, subject to a collective bargaining agreement dated July 1, 2013 through June 30, 2017.

4. The Employer provides Workforce Development Services in a variety of locations. The Employer provides services to both unemployed individuals and employers seeking to fill job vacancies.

5. At the time of the instant dispute, the Employer was providing services to unemployed individuals and employers from so-called satellite locations or field offices throughout Rhode Island. Two (2) of these locations were West Warwick and Wakefield. Each of the field offices had a number of State employees working in different job titles to provide services to unemployed individuals and employers. Two of the job titles, as relevant to the instant dispute, were the Business Service Specialist (BSS) and the Principal Employment Training Interviewer (Counsellor).

6. The BSS worked with employers to assist them in finding individuals to fill job vacancies. The Principal Employment Training Interviewer worked almost exclusively with unemployed or underemployed individuals providing them assistance and services in the hopes of having them develop job skills that would allow them to fill job vacancies.

7. In 2018 the Employer decided to move some of the BSS positions out of the central office to the field offices on a part-time basis. In May 2019 the Employer decided to increase the presence of BSS in the field offices by agreeing with the Union to assign BSS full time to the field offices.

8. While in the West Warwick field office, one of the BSS, Michael Cooney, began discussing with his supervisor the role of the BSS as it related to job development services. A Job Development Procedures for BSR (also known as BSS) was drafted.

9. On December 13, 2019, the supervisor introduced the draft document at a staff meeting. The draft document included provisions that required the BSS to perform front desk coverage.

10. Mr. Cooney first learned of the addition of front desk coverage to his BSS job duties at the staff meeting on December 13, 2019. After the staff meeting Mr. Cooney spoke with his supervisor and questioned her regarding the added job functions.

11. Mr. Cooney subsequently informed the Local Union President, Charles Matley, of the change to his job duties. On January 6, 2020, Mr. Matley sent an email to the Employer titled "Step one of the grievance process. Cease and desist the assignment of BSS to front desk duty."

12. On January 9, 2020, Employer representatives and Union representatives met to discuss the Union's "Cease and desist" request. The meeting was relatively short and nothing was resolved between the parties. The Employer did not stop assigning front desk coverage to the BSS.

13. The Union did not pursue a grievance. Instead, on January 31, 2020, Mr. Matley sent another email to the Employer requesting bargaining regarding the addition of the front desk duties to the BSS. The Employer never responded to this request.

14. Subsequent to Mr. Matley sending his January 31, 2020 bargaining request to the Employer, Mr. Matley learned that another BSS in the Wakefield field office had been required to perform front desk duties. No one from the Employer notified the Union of this change to job duties before it occurred.

CONCLUSIONS

1. The Union has proven by a fair preponderance of the evidence that the Employer committed a violation of R.I.G.L. § 28-7-13 (6) and (10) when it unilaterally changed the job duties of the BSS position by adding front desk duties.

2. The Union has proven by a fair preponderance of the evidence that the Employer committed a violation of R.I.G.L. § 28-7-13 (6) and (10) when it unilaterally changed the job duties of the BSS position and failed to notify and bargain with the Union over changes to a mandatory subject of bargaining.

ORDER

1. The Employer is hereby ordered to cease and desist from unilaterally changing the job duties of the BSS position and from assigning and/or requiring the BSS to perform front desk coverage without first notifying and bargaining with the Union over such assignment and changes to the position.

2. The Employer is hereby ordered to cease and desist from failing and refusing to bargain with the Union over changes to terms and conditions of employment and specifically changing the job duties of the BSS that are mandatory subjects of bargaining.

3. The Employer is hereby ordered to post a copy of this Decision and Order for a period of not less than sixty (60) days in each building where bargaining unit personnel work, said posting to be in a location where other materials designed to be seen, read and reviewed by bargaining unit personnel are posted.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Scott G. Duhamel, Member

Aronda R. Kirby, Member (Dissent)

Kenneth B. Chiavarini, Member (Dissent)

Stan Israel, Member

BOARD MEMBERS, DEREK SILVA (IN FAVOR) AND HARRY WINTHROP (DISSENT) WERE ABSENT FOR SIGNING OF THE DECISION & ORDER.

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

Dated: **March 8, 2022**

By: */s/ Lisa L. Ribezzo*
Lisa L. Ribezzo, Agent

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

IN THE MATTER OF STATE OF RHODE ISLAND – DEPARTMENT OF LABOR AND TRAINING -AND- RHODE ISLAND EMPLOYMENT SECURITY ALLIANCE (SEIU), LOCAL 401	CASE NO. ULP- 6280

NOTICE OF RIGHT TO APPEAL AGENCY DECISION
PURSUANT TO R.I.G.L. 42-35-12

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of Case No. ULP-6280, dated March 8, 2022, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **March 9, 2022.**

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-29.

Dated: March 9, 2022

By: */S/ Thomas A. Hanley*
Thomas A. Hanley
Administrator