STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF	:	
RHODE ISLAND STATE LABOR RELATIONS BOARD	:	
-AND-	:	CASE NO. ULP-6291
STATE OF RHODE ISLAND – DEPARTMENT FOR CHILDREN, YOUTH AND FAMILIES	:	

DECISION AND ORDER

TRAVEL OF THE CASE

The above-captioned 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 for Children, Youth and Families (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated October 7, 2020 and filed on the same date by Rhode Island Council 94, AFSCME, AFL-CIO, Local 314 (hereinafter "Union").

The Charge alleged as follows:

> The State of Rhode Island - Department for Children, Youth and Families has begun to search the personal effects of RI Council 94, Local 314 members who work at the Rhode Island Training School. Over at least the last thirty (30) years, Local 314 members have never been subjected to having their personal bags searched while at work. This change was never discussed with the Union prior to its unilateral implementation. Following the implementation of this new invasive practice, the administration has refused to stop this practice or negotiate with the Union. This is a violation of R.I.G.L. 28-7-13 (3), (6) and (10) by a failure to bargain.

Following the filing of the Charge, each party submitted written position statements and responses as part of the Board's informal hearing process. On November 25, 2020, the Board issued its Complaint, alleging the Employer violated R.I.G.L. § 28-7-13 (3), (6) and (10) when, through its representative, the Employer (1) unilaterally changed terms and conditions of employment by instituting a search of bargaining unit members' bags and other personal effects prior to or upon the member entering the workplace and (2) failed and/or refused to bargain with the Union over the implementation of searches of bargaining unit members' bags and other personal effects prior to or upon the individuals entering the workplace. A formal hearing was held before the Board on February 18, 2021 at which time both parties were given the opportunity to present and cross-examine witnesses and submit exhibits. Post-hearing briefs were filed by the Employer and the Union on March 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 for an alleged unilateral change in terms and conditions of employment when the Employer instituted a new policy providing for all bargaining unit personnel entering the Training School facility to have to go through a metal detector and have their personal bags searched.

The parties are partners in a Collective Bargaining Agreement dated July 1, 2017 through June 30, 2020 (Joint Exhibit 1). The Rhode Island Training School, a facility operated by the Employer, is a juvenile detention facility. The instant matter had its genesis in September 2020 when administrators at the Training School received information that a juvenile detained within the facility was in possession of contraband. (Transcript, pages 17 – 18; page 92)[1] Upon learning of this information, the administrators at the Training School immediately ordered an investigation (Transcript, pages 17 – 18). The results of the investigation determined that a juvenile who had been detained at the Training School for a significant period of time tested positive for illegal substances. Since the juveniles had been at the facility for a significant period of time, it was expected that the juveniles would be substance-free and not test positive for illegal substances. Thereafter, the Training School facility was searched, but no additional illegal substances or contraband was discovered. Further investigation determined that the parent of one of the juveniles detained at the facility was observed on security camera transferring what was believed to be a cartridge containing drugs to her son (Transcript page 92). Additional investigation by the Rhode Island State Police found that an employee of the facility had been bringing contraband and other products into the Training School without authorization or permission (Transcript, pages 51 – 52).[2]

For some time, visitors to the Training School facility, including parents, have been required to walk through a metal detector or be searched or subject to a handheld scan for evidence of metal upon entering the facility (Transcript, pages 37 – 38). Prior to this case, however, the staff of the Training School have not been searched, nor have their personal belongings been searched, nor have they been required to go through a metal detector upon entrance to the Training School facility (Transcript, page 16). While the investigation resulted in the arrest of three individuals, including a long-term employee of the facility, the investigation was inconclusive as to whether the introduction of contraband into the facility was widespread or an isolated incident. It is unquestioned that the Training School prohibits individuals, whether parents, visitors or staff, from bringing a long list of

[1] The contraband turned out to be a vape pen and a cartridge containing the drug THC. (See Transcript, page 48).

[2] Testimony before the Board revealed that the September 2020 incident was not the first time that the administration had discovered contraband in the Training School. (Transcript, pages 86 – 87; page 93).

contraband items into the facility. (Transcript, pages 43 – 44; page 86; Petitioner Exhibits 3 and 4).

The Employer asserted through witness testimony, and the Union did not seriously dispute the issue, that the introduction of contraband or illegal substances into the Training School facility is a critical safety concern for both the detained juveniles, as well as the staff of the facility (Transcript, page 57 – 58; pages 93 – 94). As a result, the Training School instituted a "search policy" that covered every person, including bargaining unit members, entering the facility (See Petitioner Exhibits 6 and 8; Transcript, pages 92 – 93). This policy was introduced by email from the facility director, Brian Terry, to all employees of the facility. (See Petitioner Exhibit 6).

Upon receiving notice of this change in policy,[3] the Union immediately sought to discuss this change in procedure with facility administrators (Transcript, page 36). However, the Employer took the position that it was not obligated or required to bargain over the implementation of the new search policy and, therefore, refused to meet and confer with the Union regarding its concerns about the unilaterally instituted search policy (Transcript, page 36; page 99). Thereafter, on October 7, 2020 the Union filed an Unfair Labor Practice Charge with the Board.

POSITION OF THE PARTIES

Union:

The Union's central argument in the instant matter is that the Employer has unilaterally changed terms and conditions of employment by instituting a search policy of all bargaining unit members upon entering the Training School facility without bargaining with the Union over the contents of the policy. The Union asserts that not only are its members carefully and thoroughly vetted prior to being hired to work at the Training School, but they are subject to constant monitoring during the course of their workday by over 100 cameras located throughout the Training School. (Transcript, page 25). Further, the Union asserts that the searching of bargaining unit members and their personal belongings is extremely invasive, unnecessary (due to the extensive vetting and background checks individuals must go through prior to being hired) and is a violation of their privacy. Finally, the Union argues that the implementation of the search policy is a significant and material change in terms and conditions of employment that requires the Employer to bargain with the Union prior to implementing such a policy. The Employer's refusal to bargain with the Union, in the Union's view, constitutes a violation of the State Labor Relations Act (hereinafter "Act").

Employer:

The Employer counters the Union's assertion of an unfair labor practice by claiming that its actions were appropriate and authorized by the contract and statutory authority.

[3] According to testimony, besides the significant vetting that employees go through prior to being assigned and employed at the Training School, in over 33 years bargaining unit members have never been subjected to searches nor have they been required to go through metal detectors or have they had their bags and belongings searched upon entrance to the facility (Transcript, page 16).

The Employer asserts that upon its discovery of contraband and illegal substances in the facility, it had an obligation to take action to protect the safety of the juvenile residents as well as the staff at the facility. (Transcript, pages 93 – 94). While the Employer does not contest the fact that it unilaterally implemented the search policy, it contends that the policy is minimally invasive and that its obligation to protect the safety of the juvenile residents and staff of the facility by preventing the introduction of contraband and illegal substances into the facility is of paramount concern. As noted, the Employer also asserts that the management rights clause of the Collective Bargaining Agreement in addition to statutory language authorizes the Employer's action in this case.

DISCUSSION

The issue before the Board, simply stated, is the Union's claim that the Employer has committed an unfair labor practice in violation of the Act by unilaterally implementing a policy requiring all bargaining unit personnel to be subject to a search (going through a metal detector and having their personal belongings searched) upon entering the Training School facility (Petitioner Exhibits 6 and 8). The Union also contends that the Employer had an obligation to bargain with the Union prior to implementing the search policy and the Employer's failure to engage in good faith bargaining also violates the Act. The Employer defends its actions, as previously noted, by asserting it has a contractual and statutory obligation to maintain safety in the Training School facility and that implementing the new search policy (which includes all individuals entering the facility, including administrators as well as bargaining unit personnel) is an appropriate and reasonable exercise of that authority.

There is no dispute between the parties that the new search policy was unilaterally implemented by the Employer without first engaging in bargaining with the Union over the implementation of the policy. (See Transcript, pages 18 – 19; pages 92 – 93; page 104; Petitioner Exhibits 6, 7 and 8).[4] Therefore, the immediate question before the Board is whether the implementation of the new search policy by the Employer constitutes a mandatory subject of bargaining which, if found by this Board, would require the Employer to bargain with the Union prior to implementing such a change. Based on the Board's review of the evidence before it, including the testimony of all witnesses, the exhibits submitted by the parties and the respective memoranda of law, the Board has determined that the new search policy implemented by the Employer requiring that bargaining unit personnel go through a metal detector and have their personal belongings searched upon entering the Training School facility was a substantial, material and significant change to the terms and conditions of employment of members of the bargaining unit. As such, the policy constitutes a mandatory subject of bargaining. The Employer's failure to engage in

[4] As Petitioner Exhibits 6, 7 and 8 appear to reflect and as the testimony indicates (see Transcript, pages 108 – 109), the Union was notified in advance by the Employer that the policy was to be implemented. However, there appears to be no evidence to suggest that after the Union requested bargaining, the Employer engaged in meaningful or good faith bargaining discussions with the Union prior to implementing the policy. In fact, just the opposite appears to have occurred (Transcript, page 36; page 99).

good faith bargaining with the Union prior to unilaterally implementing the policy constitutes a violation of the Act.[5]

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 Act. (See R.I.G.L. §28-7-13; §36-11-7; *Rhode Island State Labor Relations Board v. Town of North Smithfield*, ULP-5799 (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 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.")).

As previously noted, the issue facing the Board is whether the implementation of the search policy for "safety" reasons is a mandatory subject of bargaining. The contention by the Employer that safety regulations is a management function and not subject to mandatory negotiations has been rejected by the National Labor Relations Board ("NLRB") and various courts that have looked at similar issues.[6] Thus, courts have found that "workers, through their chosen representative, should have the right to bargain with the Company in reference to safe work practices." *See NLRB v. Gulf Power Co.*, 384 F.2d, 822 (5th Cir. 1967); *see also Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203 (1964) wherein the Supreme Court specifically mentioned "safety practices" as a condition of employment in defining the bargaining duty of an Employer. The NLRB also follows this line of thinking. *See Armour Oil Co.*, 253 NLRB 1104 (1981); *Hi-Tech Corp.*, 309 NLRB 3 (1992) where the NLRB found that the management rights provision relied on by the Employer to be insufficient to constitute a clear and unequivocal waiver of the Union's right to bargain over a specific no tobacco rule. In the instant matter, the Employer has been clear in asserting that the implementation of the search policy was due to "safety" concerns raised by the introduction of discovered contraband material in the facility. Thus, by the Employer's own admission, the introduction of the search policy as applied to bargaining unit employees is a mandatory subject of bargaining.

A. Unilateral Action by the Employer.

In the present case, there appears to be little dispute between the parties that the Employer unilaterally acted in instituting the search policy to cover bargaining unit

[5] As will be discussed in greater detail in this Decision, the Board acknowledges the Employer's claim that it has both contractual and statutory authority to implement a search policy without having to bargain with the Union. Simply stated, the Board disagrees with the Employer's assertions, noting that (1) health and safety issues have consistently been found to be mandatory subjects of bargaining, and (2) the Employer failed to provide the Board with any specific authority to support its position that there are statutory provisions authorizing its actions.

[6] 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 Fire Fighters, 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)).

members. Instead, and as previously noted, the central dispute is whether the search policy as implemented is a mandatory subject of bargaining and, if so, did the Employer engage in good faith bargaining with the Union regarding the changes to the employees' working terms and conditions of employment.

The facts of this case are straightforward and generally not in dispute. The Employer operates the Training School facility which houses juvenile offenders. As part of the Employer's security procedures, all visitors to the facility, i.e. parents, attorneys, vendors, are subject to being searched before entering the facility. However, bargaining unit personnel have never been searched. (See Transcript, pages 16 – 17; pages 35 – 36). The change in policy by the Employer came into being after contraband was found on a juvenile in the facility who acquired the contraband from his parent. A subsequent investigation by the facility and the Rhode Island State Police turned up other incidents of contraband being introduced in the facility and resulted in arrests and the termination of an employee of the facility. (See Transcript, pages 17 – 18; page 86).[7] As counsel for the Employer described it, the discovery of contraband in the facility was a "wake-up call" regarding the safety and security of the facility. (See Transcript, page 14). The Employer's resulting action was to implement a new search policy that required everyone entering the facility, including bargaining unit personnel, to go through a metal detector and have their personal belongings searched. (See Petitioner Exhibits 6, 7 and 8; see Transcript, pages 92 – 93). Upon learning of the Employer's decision to implement a new search policy, the Union contacted the Employer and sought to have discussions over the implementation of the policy. (Transcript page 19 – 20). While some meetings between the parties occurred, the Employer had no intention of altering or changing its new search policy. (See Transcript, page 20; page 99; page 105).

The Board need not spend extensive time on this particular issue as there appears to be no dispute, based on the evidence, that the Employer unilaterally decided and implemented changes to the working terms and conditions of bargaining unit members. (See Transcript pgs. 18 – 19; pgs. 92 – 93; pg. 104). While the Employer has asserted that the changes to the working conditions of bargaining unit personnel were necessary for the health and safety of the juveniles and personnel working at and entering the Training School facility, the fact that the Employer puts forth a plausible reason for its action does not obviate the situation nor does it change the fact that the Employer acted unilaterally in deciding on the changes, announcing the changes and implementing the search policy prior to any meaningful or good-faith negotiations with the Union. 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. Town of North Smithfield*, ULP-5759 (May 15, 2006); *Rhode Island State Labor Relations Board v. Woonsocket School*

[7] The Employer provided evidence, which the Union did not seriously contest, that the bringing of contraband items into the Training School facility was a safety consideration for both the juvenile population and the employees who work in the facility. (See Transcript, pages 87 – 88).

Committee, ULP-4705 (June 4, 1997). Further, in the Board's view, the action taken by the Employer in implementing the search policy is a material and substantial change in the working conditions of bargaining unit members. Finally, as noted above, it is the Board's view that safety issues are mandatory subjects of bargaining which require an Employer to bargain with the employees' exclusive bargaining representative. (*See Town of North Kingstown v. International Association of Fire Fighters, Local 1651, AFL-CIO*, 107 A.3d 304, 313 (R.I. 2015)).

While the Employer argues, as discussed in more detail below, that its actions were authorized under the existing Collective Bargaining Agreement and through its statutory authority, these arguments do not alter the fact that the Employer took unilateral action in changing the working terms and conditions of employment of the bargaining unit personnel. Because the explanation put forth by the Employer neither supports nor legally justifies its unilateral action, the Board finds that the Employer acted in violation of the Act.

B. 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 distributed the email notice of the new search policy (see Petitioner Exhibits 6, 7 and 8). 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. §36-11-1). In the instant case, the Union was afforded no legitimate opportunity to bargain over the directive effectuating a change in what would occur when bargaining unit personnel presented themselves on a daily basis for entry into the Training School facility. The unilateral change in procedures, i.e. the new policy of requiring bargaining unit personnel to go through a metal detector and have their personal belongings searched, was noticed to the Union at the same time the new policy went into effect (see Petitioner Exhibit 6). In other words, the evidence before this Board indicates that no advance notice was provided to the Union regarding the implementation of the policy so as to afford the Union a meaningful opportunity to negotiate with the Employer. Moreover, the evidence before the Board was clear that even when the Employer discussed the issue with the Union it had no intention of changing its position (Transcript page 99). As this Board and the courts have made clear, a failure to bargain over a mandatory subject of bargaining constitutes an unfair labor practice and a violation of the Act (*See Barrington School Committee,*

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)*.

The testimony before the Board was that a single meeting on December 7, 2020 occurred between the parties regarding this incident. (See Transcript, page 20). In addition, there was testimony of "conversations" but, according to the Union president, no negotiations occurred between the parties. (See Transcript, pages 20 – 21). The Employer did not seriously dispute the lack of negotiations between the parties. While the Employer confirmed that there was a meeting on December 7, 2020 with the Union and that other conversations about the search policy had occurred, the Employer made clear that its position with respect to this meeting and conversations was that it would not discontinue the policy. (See Transcript, page 99; page 105). In short, the evidence before the Board was that although the Employer said it was willing to discuss the search policy with the Union, it was not willing to make any changes to the policy. (See Transcript, pages 108 – 109; page 112; page 114). While the Board is certainly familiar with the term "hard bargaining,"[8] in this case the evidence before the Board presents more as an unwillingness by the Employer to engage in any legitimate and serious good faith discussion about the search policy. This failure by the Employer to engage in good faith negotiations with the Union is a violation of the Act.

C. The Employer's Arguments Fail to Mitigate Against its Unilateral Action and Failure to Bargain with the Union.

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 implementing a new search policy to cover bargaining unit members entering the Training School facility. As will be discussed below, the Board has reviewed these various arguments and explanations and 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.

The Employer initially argues that implementing the new search policy is a management right under the parties' Collective Bargaining Agreement and is, therefore, not something over which the Employer is required to negotiate with the Union. However, beyond simply stating that it believes the management rights clause of the CBA gives it the authority to act, the Employer fails to provide this Board with any other support for its theory that the management rights clause in the CBA gives it the authority to unilaterally make changes in the safety procedures of the workplace. In the Board's view, the Employer too broadly interprets the provisions of the contractual management rights

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[8] The issue of good faith bargaining requires that an Employer meet with the Union with a "bona fide intent to reach an agreement." *Atlas Mills, Inc*. 3 NLRB 10, 21 (1937). There is no bright line test on what constitutes bad faith in bargaining and the distinction between lawful "hard" bargaining and unlawful "bad faith" or "surface" bargaining can be difficult to assess. However, over the years the NLRB, the courts and this Board have managed to establish some standards. See *Gadsden Tool Inc.,* 327 NLRB 164 (2000); *Pleasantview Nursing Home, Inc. v. NLRB,* 351 F.3d 747 (6th Cir. 2003). Thus, while the Act does not require that the parties agree, it does require that the parties negotiate in good faith with the view of reaching an agreement if possible. See *NLRB v. Highland Park Manufacturing Co*., 110 F.2d 632 (4th Cir. 1940).

clause, misconstrues or ignores the applicable case law and has failed to consider the circumstances surrounding its unilateral action as a factor in this matter.

Initially, the Board need not spend a great deal more 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. 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 the instant case and as previously noted, safety policies and procedures are considered a part of terms and conditions of employment.

In Rhode Island, a similar prohibition exists.[9] 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,*

[9] In Rhode Island, the Board has previously ruled, in a manner similar to the NLRB and the Supreme Court decision in *NLRB v. Katz*, that a public Employer's unilateral implementation of bargaining proposals prior to the exhaustion of the statutory dispute resolution procedures is a per se unfair labor practice (*see Rhode Island State Labor Relations Board and Warwick School Committee*, ULP-4647 at p. 17; *see also RISLRB v. City of Pawtucket,* ULP-6142). While the Board has rejected the private sector impasse concept in public sector bargaining, its rulings that an Employer's unilateral change in terms and conditions of employment prior to the completion of the statutory dispute resolution process constitutes an unfair labor practice under R.I.G.L. 28-7-13 similarly track the NLRB's prohibition against unilateral changes by an Employer during bargaining.

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*.

The evidence before the Board makes clear that the changes made by the Employer in implementing the new search policy impacted terms and conditions of employment which are mandatory subjects of bargaining.[10] The Employer does not dispute before this Board that its action in instituting the new search policy was done in a unilateral manner. Instead, the Employer asserts that it had the right to do so under the management rights provisions of the then existing CBA and under its statutory authority. However, the Board has carefully reviewed the hearing testimony, exhibits and memorandum submitted by counsel in this matter and has been unable to locate any specific evidence, beyond generic statements, or case law citations to support the Employer's arguments.

Next, as noted above, the Employer provided testimonial evidence that it had an "obligation" to maintain the safety of the Training School facility. (Transcript page 117). The Employer asserted that this obligation arose from "statutory authority" but nowhere within the evidence submitted to this Board has the Employer directed or pointed the Board to a specific citation in either case law or State statute to support its contention. While the Board takes notice of the Employer's assertion of statutory authority to act in the manner that it did, without evidence to support or substantiate the assertion, the Board has no choice but to find such a defense lacks merit.

As mentioned above, the Employer in support of its actions asserted authority under the management rights clause of the Collective Bargaining Agreements. However, as with its statutory authority argument, the reliance on the management rights clause is no more persuasive. A review of the parties' Collective Bargaining Agreement shows that there is not only a management rights clause, but there is also a health and safety clause. (See Joint Exhibit 1, Article IV and Article XXVIII). The management rights clause specifically notes as follows:

> 4.1 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 State and the employees are vested solely in the State.

A review of the health and safety clause makes it apparent to the Board that the Union has not waived its right through its agreement to a management rights provision to negotiate with the Employer over health and safety issues such as the implementation of a search policy.

[10] As the testimony revealed, prior to the October 9, 2020 email from Brian Terry bargaining unit members had never previously been required to go through a metal detector or have their bags searched upon entering the Training School facility. (Transcript, page 16 – 17; pages 23 – 24).

In the Board's view, the Employer's management rights in this particular situation are further limited by the language in 4.1(f) which allows the Employer to "take whatever actions may be necessary to carry out its mission in emergency situations, i.e. an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature." (See Joint Exhibit 1, Article IV). Clearly, the situation presented to the Board in the instant matter does not, in the Board's view, fall within the definition of an emergency as set forth in the management rights clause.[11] In short, even if the Board were to agree that the Employer made a strong argument in support of its management rights authority, a review of the language of the Collective Bargaining Agreement makes it clear that the Union did not waive or give up its right to negotiate with the Employer over the implementation of matters involving safety in the Training School facility.

The Employer's failure to negotiate with the Union regarding its implementation of the new search policy represents a violation of the Act.

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 are subject to a Collective Bargaining Agreement dated July 1, 2017 through June 30, 2020.
4. The Employer has a policy that all visitors and vendors to the Training School facility, including parents of detained juveniles and attorneys, must pass through a metal detector and have their belonging searched or be "wanded" before entering the facility.
5. The Employer conducts searches of visitors and vendors to the facility to prevent contraband from entering the facility.
6. The Employer has never during the past three (3) plus decades ever subjected bargaining unit personnel to searches of their personnel belongings or required them to go through a metal detector upon entering the Training School facility.
7. Bargaining unit personnel are thoroughly vetted and screened, including an extensive background check, before being hired to work at the Training School facility.
8. The Employer has policies that specifically prohibit individuals, including bargaining unit personnel, from bringing contraband material into the facility. The Employer also has an extensive security system that includes over 100 security cameras throughout the Training School facility.

[11] There was ample evidence before the Board that the introduction of contraband in September 2020 was not the first time that contraband had been found in the Training School facility, nor was it a situation that the administrators of the facility expected to go away with the introduction of the new search policy. (See Transcript, pages 92 – 93).

9. In September 2020, the Employer discovered that a detained juvenile was in possession of contraband material.

10. The Employer investigated and determined that the juvenile had received the contraband from his parent. The investigation also discovered that other individuals, including an employee, had brought contraband material into the facility.

11. This investigation was not the first time that the Training School administration had discovered that contraband material had been brought into the facility, including sometimes by bargaining unit members.

12. On October 9, 2020, the Employer sent an email announcing that "Anyone entering the facility will be searched. They also need to pass through the metal detector. Staff leaving and returning to the facility will be searched and must walk thru the metal detector. No exceptions." (Petitioner Exhibit 6).

13. Prior to the Employer's October 9, 2020 email, no bargaining unit personnel had been subject to a search or going through a metal detector upon entering the Training School facility.

14. The Employer unilaterally changed the working terms and conditions of employment of bargaining unit members when it introduced the new search policy on October 9, 2020.

15. The Employer unilaterally changed the working terms and conditions of employment of bargaining unit members when it introduced the new search policy on October 9, 2020 without engaging in good faith bargaining with the Union.

CONCLUSIONS OF LAW

1. The Union has proven by a 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 working terms and conditions of employment of bargaining unit members when it introduced a new search policy on October 9, 2020.

2. The Union has proven by a preponderance of the evidence that the Employer committed a violation of R.I.G.L. § 28-7-13(6) and (10) when it failed and refused to negotiate with the Union before it unilaterally changed the working terms and conditions of employment of bargaining unit members.

ORDER

1. The Employer is hereby ordered to cease and desist from making unilateral changes to working terms and conditions of employment, without first notifying the Union and giving it the opportunity to bargain over any proposed changes.

2. The Employer is hereby ordered to cease and desist from requiring bargaining unit personnel to go through a metal detector and/or have their personal belongings searched or be "wanded" before or at the time of entering the Training School facility.

3. Should the Employer decide to implement a search policy that requires bargaining unit personnel to go through a metal detector and/or have their personal belongings searched or be “wanded” before or at the time of entering the Training School facility, the Employer must first engage in good faith negotiations with the Union.

4. 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 are designed to be seen, read and reviewed by bargaining unit personnel are posted.

RHODE ISLAND STATE LABOR RELATIONS BOARD

/s/ Walter J. Lanni
Walter J. Lanni, Chairman

/s/ Scott G. Duhamel
Scott G. Duhamel, Member

/s/ Aronda R. Kirby
Aronda R. Kirby, Member (Dissent)

/s/ Derek M. Silva
Derek M. Silva, Member

/s/ Harry F. Winthrop
Harry F. Winthrop, Member

/s/ Stan Israel
Stan Israel, Member

BOARD MEMBER, KENNETH CHIAVARINI, WAS ABSENT FOR SIGNING OF THE DECISION & ORDER

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

Dated: **May 25, 2021**

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

ULP- 6291

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-6291
STATE OF RHODE ISLAND - DEPARTMENT FOR CHILDREN, YOUTH AND FAMILIES	:	

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-6291, dated May 25, 2021, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **May 25, 2021.**

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

Dated: May 25, 2021

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