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-6344 & ULP-6344A
CITY OF EAST PROVIDENCE	:	

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 City of East Providence (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated September 19, 2022 and filed by the United Steelworkers Local 15509 (hereinafter "Union").

The Charge alleged as follows:

> The City of East Providence has installed, and since about June 2022, used an audio recording system in City Hall which continuously monitors and records bargaining unit members. The City failed to bargain with the Union prior to implementing this audio surveillance of bargaining unit members.

On May 15, 2023, the Union filed an Amended Charge. The Amended Charge alleged as follows:

> In or around April 2023, the City relocated bargaining unit public safety dispatchers from an existing Emergency Communication Center in the East Providence Police Department to a new Emergency Communication Center located in Fire Station #3 at 30 North Broadway, East Providence, R.I. The City of East Providence installed multiple video cameras which have the capability to record video of the areas in which dispatchers perform their work. The Emergency Communication Center is not open to members of the general public. Prior to the relocation of the Emergency Communication Center, bargaining unit dispatchers were not subject to video surveillance. The imposition of video surveillance is a change in terms and conditions of dispatcher employment. The City failed to bargain with the Union prior to implementing the video surveillance of bargaining unit dispatchers.

Following the filing of the initial Charge, each party submitted written position statements as part of the Board's informal hearing process. On November 18, 2022, the Board issued its Complaint, alleging the Employer violated R.I.G.L. § 28-7-13 (1), (6) and (10) when, through its representative, the Employer (1) unilaterally implemented, installed, or otherwise put in place a video and/or audio recording system in areas of the work place where bargaining unit members work without consulting with or engaging in bargaining with the Union; and (2) failed to bargain with the Union over the use and/or installation of video and/or audio surveillance recording equipment in City Hall in areas where bargaining unit members work. Prior to the Board holding

a formal hearing on the initial Complaint, the Amended Charge was filed. Following the filing of the Amended Charge, each party submitted written position statements as part of the Board's informal hearing process. On June 22, 2023, the Board issued its Complaint, alleging the Employer violated R.I.G.L. § 28-7-13 (1), (6) and (10) when, through its representative, the Employer (1) unilaterally implemented, installed, or otherwise put in place a video and/or audio recording system in areas of the work place where bargaining unit members work without consulting with or engaging in bargaining with the Union; and (2) failed to bargain with the Union over the use and/or installation of video and/or audio surveillance recording equipment in City Hall in areas where bargaining unit members work; and (3) failed to bargain with the Union over the use and/or installation of video and/or audio surveillance recording equipment in Emergency Communication Center where bargaining unit members work. The Board held a formal hearing for this matter on August 10, 2023. Post-hearing briefs were filed by the Employer and the Union on October 4, 2023. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony and exhibits submitted at the hearing 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 unilateral implementation of video and/or audio recording equipment in City Hall and the Emergency Communication Center where bargaining unit members work and the Employer's failure and/or refusal to bargain with the Union over the alleged change in terms and conditions of employment the Employer unilaterally enacted. The Union also alleges the Employer violated the State Labor Relations Act (hereinafter "Act") when it failed to comply with the Union's request for information.

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 November 1, 2020 through October 31, 2023 (Joint Exhibit 1). The Union represents bargaining unit members who work in City Hall in the Clerk's office, the Tax Assessor's office, the Treasury office and the Building Inspector/Zoning office. (See Tr. at pages 74 – 75; 77 – 78; Joint Exhibit 2). The Union also represents public safety dispatchers who work at the Emergency Communication Center. (Tr. at page 85). Since 2014 video only recording cameras have been installed in City Hall in several locations. The use and installation of these video only cameras in City Hall was done with the Union's knowledge and acquiescence. (Tr. at page 38; 104 – 106; Joint Exhibit 2).

In the middle of June 2022, the Employer decided to replace some of the video only cameras in City Hall with cameras that had both audio and video capability. (Tr. at page 106; Joint Exhibit 2). The audio component was activated in the Clerk's office, the Tax Assessor's office, the Treasury office and the Building Inspector/Zoning office. (Joint Exhibit 2). The Clerk's office, the Tax Assessor's office, the Treasury office and the Building Inspector/Zoning office all have counters which allow employees in those offices to interact with the public. (Joint Exhibits 6 & 10). Those offices also contain space behind the counter for employees to work at desks and in cubicles. The areas behind the counter are not open to or accessible to the public. Some of the offices also contain a partially partitioned area where employees may take breaks. (Joint Exhibits 6 & 10). The cameras are positioned near the counters and show the public areas

of the effected offices. The cameras are positioned to monitor the public areas of the offices. (Joint Exhibit 2).

The audio component of the video recording camera system is able to cover an area larger than just the public areas of the office. The audio component also is able to cover/record the non-public areas of the office where the employees work at their desks and/or take breaks. The audio recording range covers areas of the non-public space in the offices which are not visible to the public and allow for conversations that, if occurring, the public cannot hear. (Tr. at pages 40 – 41; 45 – 47; 56; 76 – 77; 81; Joint Exhibit 3; Joint Exhibit 6; Joint Exhibit 10).

In September 2022 the Employer introduced a new workplace policy for the audio/video recording devices. (See Joint Exhibit 4).

In April 2023, the Employer decided to install video recording cameras in the Emergency Communication Center (ECC). (Tr. at page 23).[1] The ECC is a secure facility in which all professional communications are recorded. (Tr. at pages 20 – 21; 118; Joint Exhibit 11). There are four workstations for dispatchers in the ECC. There is a video camera positioned directly above each workstation. (Tr. at page 23). Due to the configuration and staffing of the ECC, dispatchers have a limited ability to leave their workstations during their shifts. (Tr. at page 30; 34). No other non-public area of Fire Station No. 3 is subject to video recording cameras. (Tr. at page 25).

POSITION OF THE PARTIES

Union:

The Union asserts that the Employer engaged in an unfair labor practice when it unilaterally installed audio recording as part of the video camera recording system in City Hall and failed and refused to bargain with the Union over the decision to change the terms and conditions of employment of certain bargaining unit members due to its unilateral action. The Union also alleges that the Employer violated the Act when it unilaterally decided to install video recording cameras in the new Emergency Communication Center located in the fire station and failed and refused to bargain with the Union over the decision to change the terms and conditions of employment of certain bargaining unit members due to its unilateral action.

Employer:

The Employer contends that it did not violate the Act when it failed and/or refused to bargain with the Union over the claimed unilateral change to the terms and conditions of employment of bargaining unit members in City Hall and the Emergency Communication Center. The Employer argues that the Management Rights and Scope of Agreement clauses of the collective bargaining agreement authorized its action and that it had no obligation to bargain over its unilateral decision to install audio/video recording cameras in City Hall and the Emergency Communication Center because the Union waived its right to engage in such bargaining when it negotiated and executed the current collective bargaining agreement.

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[1] Prior to April 2023 the public safety dispatchers had worked in the dispatch room located in the Employer's police station. (Tr. at page 21). The dispatch room in the police station had never had a video recording camera installed in it. (Tr. at pages 21 – 22). The dispatch center was relocated to the fire station "on North Broadway in the Rumford section of the City" in April 2023. (Tr. at page 22).

DISCUSSION

The issue before the Board is whether the actions of the Employer in unilaterally changing terms and conditions of employment by installing audio/video recording cameras in City Hall and the Emergency Communication Center and failing and refusing to bargain with the Union over the Employer's unilateral change constitutes a violation of the Act. As discussed in more detail below, it is the Board's view that the conduct of the Employer in taking unilateral action and not engaging in bargaining with the Union over the unilateral installation of audio recording cameras in City Hall and video recording cameras at the ECC is a violation of the Act. Moreover, the Employer's affirmative defense 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 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").[2]

A. The Employer Engaged in Improper Unilateral Action.

In the present case, there appears to be no dispute between the parties that the Employer unilaterally acted in installing an audio recording component to the video cameras in City Hall and installing video recording cameras in the ECC. (Joint Exhibit 2; see Employer Memorandum of Law at page 5). In fact, the Employer has conceded that its decision to install audio/video cameras in certain locations in City Hall and to install video-only cameras in the ECC was unilateral in nature. (See Employer Memorandum of Law at page 5).

Just as there appears to be little dispute between the parties that the Employer acted unilaterally in installing audio/video recording devices in City Hall and the ECC, there also appears to be little dispute that the installation of these cameras changed the terms and conditions of employment of the impacted bargaining unit members.[3]

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

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[2] 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)).

[3] The Board acknowledges and will discuss *infra* the Employer's argument that it was authorized to unilaterally install the audio/video cameras based on language in the Management Rights clause and the Scope of Agreement provision contained in the existing CBA. The Board has considered the affirmative defense and concluded that it is not 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 and that no waiver by the Union of its right to seek bargaining under these circumstances existed or occurred.

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). In the instant case, as mentioned above, there can be little legitimate argument against the notion that the installation of an audio component to the video cameras in City Hall and the installation of video cameras in the ECC changed the terms and conditions of employment for those effected individuals. (Tr. at pages 40 – 41; 45 – 47; 76 – 77; Joint Exhibit 6; Tr. at page 23; 30; Joint Exhibit 11). 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, is a mandatory subject of bargaining which requires the Employer to bargain with the employees' exclusive bargaining representative. (See R.I.G.L. § 28-9.4-1; *Town of North Kingstown v. International Association of Firefighters, Local 1651, AFL-CIO,* 107 A.3d 304, 313 (R.I. 2015).[4]

While the Employer makes the argument, see discussion *infra*, that its action was authorized, justified, and allowed under the existing collective bargaining agreement, even if such an argument 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 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 Installing Audio/Video Cameras 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; *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 or disagreement upon the fact that the Employer unilaterally installed an audio component to the video camera recording system in certain locations in City Hall and installed video recording cameras in the ECC. Further, there was little to no discussion concerning whether this change to the terms and conditions of employment of certain bargaining unit members was

[4] 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)).

material and substantial and had a significant impact on the performance of their daily job duties and responsibilities.

C. The Unilateral Changes in Installing Audio/Video Cameras Were Material and Substantial

Just as the facts presented to the Board showed without dispute that the changes taken by the Employer to the cameras in City Hall and the installation of cameras in the ECC were enacted unilaterally, the evidence before the Board also demonstrated that the unilateral changes had a material and substantial impact on employee terms and conditions of employment. The changes implemented by the Employer meant that bargaining unit members working in City Hall were subject to having their conversations overheard and that bargaining unit members in the dispatch center were subject to being recorded during their working time. (Tr. at pages 40 – 41; 45 – 47; 58 – 62; 76 – 77; 23; 30). This meant that the impacted bargaining unit members in City Hall had to alter their conversations and places where they could speak confidentially due to the range capability of the audio component of the camera (Tr. at pages 40 – 41; Joint Exhibit 3). For those bargaining unit members in the ECC, the impact was a complete reversal from what had previously been occurring, i.e., there were no cameras in the police dispatch area and now there were cameras in the dispatch area located in the fire station. (Tr. at page 22). Thus, with the implementation of video recording in the ECC, every move a dispatcher made was subject to being recorded. (Tr. at pages 23 – 24). In addition and as stated in the policy (Joint Exhibit 11, Section 1.14.3), the video camera allows the Employer to capture a variety of situations (i.e., "complaints by staff or the public or improper or unprofessional conduct, the investigation related to a crime, damage to property or missing property, labor grievance, workplace injury claims and similar incidents or complaints.") that could lead to a dispatcher being disciplined. The introduction of discipline as a potential consequence of use of the video camera is clearly, in this Board's view, a substantial and material change for dispatchers in the ECC.

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 installation of audio/video recording cameras in City Hall and the installation of video cameras in the ECC was clearly a term and condition of their employment that was materially and substantially altered by the Employer's unilateral action.

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 installed an audio component to the video recording cameras in City Hall and installed video cameras in the ECC. 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*.

Further, plant rules have long been held to be mandatory subjects of bargaining by the NLRB. Thus, an employer is generally prohibited from unilaterally implementing or changing such rules. *Schraffts Candy Co.*, 244 NLRB 1274 (1979); *Dynatron/Bondo Corp.*, 324 NLRB 572 (1997); *Goya Foods of Florida*, 347 NLRB 1118 (2006). In addition, where a rule effects or implicates an employee's continuation of employment, such as through a disciplinary system, it will be a mandatory subject of bargaining regardless of an employer's legitimate reason for its promulgation. See *BHP (USA)Inc, dba BHP Coal New Mexico*, 341 NLRB 1316 (2004).

In the instant case, the Union was afforded no legitimate opportunity to bargain with the Employer over the unilateral changes the Employer made in installing an audio component to the video cameras in City Hall and installing video cameras in the ECC. (Tr. at pages 39 – 40; 75 – 78; 82; 86 – 87; Joint Exhibit 3). In addition, the Employer has conceded that "it did not bargain with the Union over these substantive decisions." (See Employer Memorandum of Law at page 5). There can be little argument or legitimate disagreement that changes to the working conditions of bargaining unit members 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 discussion 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.
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> *Middletown School Department*, ULP-6257A, at page 8.

In the instant case, similar facts are present. While the parties did meet (see Tr. at pages 39 – 40; Joint Exhibit 3), the Employer clearly rejected any discussion or negotiation over its decision to install the audio/video cameras in City Hall and the ECC. (Tr. at page 97 – 101).[5]

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 in installing audio/video cameras in City Hall and the ECC where bargaining unit members worked. This conduct constitutes a violation of the Act.

E. The Employer's Defense.

During the presentation of its witnesses and in its memorandum of law, the Employer has presented to the Board an argument 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 the Employer's argument and, in the Board's view, does not believe that it offers sufficient grounds to mitigate against the Employer's unilateral action nor its failure to bargain with the Union over mandatory subjects of bargaining.

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[5] The Board acknowledges the undisputed evidence that the Union did not request effects or impact bargaining from the Employer regarding its decision. (Tr. at pages 64 – 66; 116 – 117).

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

The Employer claims that its actions in unilaterally installing audio/video recording cameras in City Hall and the ECC was 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. *MV Transportation* overruled *Provena St. Joseph Medical Ctr.*, 350 NLRB 808 (2007), which set forth the clear and unmistakable waiver standard to determine whether an employer's unilateral action was permitted, and instead adopted a "contract coverage" standard, under which unilateral action is permitted if it falls within the compass or scope of certain contractual language in the CBA. 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.[6]

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 what the Board considers to be a limited set of rights and responsibilities, i.e., the Employer, subject to the terms of the collective bargaining agreement, has "responsibility for the policies and administration of the departments covered by this Agreement which shall be subject to this agreement and which it shall exercise under the provisions of law and in fulfilling its responsibilities under this Agreement." (Joint Exhibit 1, Article II, Section 2.01 at page 3). As can be seen, the rights allowed to the Employer under the Management Rights clause of the CBA are not without limitation. 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. What upends the Employer's waiver argument in the Board's view of the evidence before it is the potential for disciplinary action by the Employer against bargaining unit personnel by use of the audio/video cameras in City Hall and the ECC. (See Tr. at pages 85 – 87; 106 – 114; Joint Exhibit 2; Joint Exhibit 4; Joint Exhibit 11). As the testimony before the Board makes clear, the Employer intended to use the audio portion of the video recording system to assist it in investigations as needed. (Tr. at pages 106 – 108). In fact, there was testimony that the Employer used the recording system to exonerate employees who were accused of wrongdoing (Tr. at pages 110 – 115). While the Employer presumably submitted this evidence to demonstrate the benefits of the audio recording component, it is clear to the Board

[6] In addition to the NLRB's 2019 case law regarding application of the "contract coverage" standard, the Board has in the recent past looked at 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.

that if the system can be used for good it can also be used as a disciplinary tool. Such a clear and present danger offends the language in Article X of the CBA which addresses discipline and discharge of bargaining unit members. By unilaterally introducing the audio component to City Hall, the Employer has impacted possible discipline of bargaining unit members. Addressing discipline unilaterally without bargaining with the Union is, in this Board's view, a clear violation of the Act.

Based on the above, the Board is not convinced that the language of the Management Rights clause provides the Employer with the "carte blanche" authority to act unilaterally that it asserts in its arguments to this Board. 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. Contrary to the Employer's argument, the evidence before the Board demonstrates that the installation of the audio/video components to City Hall and the ECC impacted provisions of the collective bargaining agreement. The clear language of the management rights clause makes the Employer's conduct in this case a violation of that language and not a waiver by the Union of its right to bargain over the Employer's unilateral action.[7]

A similar situation exists regarding the installation of video cameras in the ECC. According to the testimony before the Board, the Employer claims it installed the video cameras in the ECC to protect the dispatch center "just in case something happened." (Tr. at page 119). This generic statement was further expanded upon to mean a possible "carbon monoxide leak" or "an attack on the dispatch center" as examples. (Tr. at page 119). The Union, however, claims that the explanation given by the Employer for installing video cameras in the ECC was "in case the dispatchers had a physical altercation with each other." (Tr. at page 87). This testimonial evidence appears to be in contrast to the Employer's written policy regarding the video cameras in the ECC. As the Employer's policy states, the video cameras in the ECC will be used for "complaints by staff or the public or improper or unprofessional conduct, the investigation related to a crime, damage to property or missing property, labor grievance, workplace injury claims and similar incidents or complaints." (See Joint Exhibit 11, Policy 1.14.3 at page 28). This language clearly implicates the possibility of discipline of a bargaining unit member as a result of being involved in an investigation by the Employer related to one of the above-mentioned areas. As this Board and the NLRB have made clear on numerous occasions, policies that impact the possibility of discipline of an employee represent a mandatory subject of bargaining. It also clearly impacts the language of the CBA. (Joint Exhibit 1, Article X). (See *Toledo Blade Co.*, 343 NLRB No. 51 (2004); *Electri-Flex Co.*, 228 NLRB 847 (1977); *SLRB and Rhode Island Department of Corrections*, ULP-6256).

The Employer also argues that the Scope of Agreement language further shields it from having to bargain with the Union over its unilateral decision to install an audio component to the

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[7] In addition to the impact on discipline the Employer's installation of audio to the video cameras had on the City Hall employees, there was also evidence before the Board that the audio component intruded on the Union's ability to speak and confer with bargaining unit members as provided for in Article VIII, Section 8.08 (see Tr. at pages 67 – 68; 85; 94 – 95; Joint Exhibit 1 at page 23). This evidence further demonstrates that the Employer's unilateral conduct violated or had the potential to violate the Union's ability to communicate with its members regarding contract issues as provided for under Section 8.08 of the CBA. This impact on the Union's right to administer the contract also supports the Board's finding that the Employer's unilateral action and failure to bargain with the Union over such action is in violation of the Act.

video cameras in City Hall and install video cameras in the ECC. Based on the evidence before the Board, the Board cannot agree with the Employer's conclusion.

The Employer, in essence, argues to this Board that the Scope of Agreement language (Joint Exhibit 1, Article III, Section 3.01) acts as an unequivocal waiver by the Union of its right to bargain over issues that are either in the CBA or not contained in the CBA for the life of the Agreement. For its part, the Union objects to the Employer's expansive reading of Section 3.01 and, instead, contends that the Scope of Agreement language acts to "preserve the status quo as of the time of contract execution." (Union Memorandum of Law at page 19). In reviewing the Scope of Agreement language as applied to the facts of this case, it is the Board's view that the language does not create a waiver of the Union's right to demand bargaining over the Employer's unilateral change to a mandatory subject of bargaining.

As the Board understands the Employer's argument, the Scope of Agreement language allows the Employer carte blanche to do whatever it wants regarding either language that is currently in the contract or a policy that it creates and implements during the term of the CBA. The Employer points to language from the Rhode Island Supreme Court in *D'ellena v. the Town of East Greenwich*, 21 A.3d 389,393 (R.I. 2011) for the proposition that a waiver involves "the voluntary intentional relinquishment of a known right" or results from "action or inaction" on the part of a party. (See Employer Memorandum of Law at page 6). The Employer then postulates that because the existence of video cameras in City Hall was well known to the Union, it can be extrapolated that the Union should have known by signing the CBA with the Scope of Agreement language that it was waiving its right to bargain with the Employer when it added audio capability to the cameras in City Hall and installed video cameras in the ECC when the dispatch center had never previously been subject to video recording. This is a leap in reasoning that the Board believes is without merit and will not support in the present case. What the Employer is really arguing is that the Scope of Agreement language allows it, to make a logical leap, to unilaterally modify or change contract language during the term of the CBA and the Union would have no right to bargain over the change.[8] While admittedly the above example is somewhat far afield of the facts in this case, it does demonstrate, in the Board's view, the fallacy of the Employer's argument under the present factual circumstances. In other words, by introducing audio to the video cameras in City Hall and installing video cameras in the ECC the Employer has unilaterally changed or modified the agreed upon and negotiated for discipline language contained in Article X of the CBA and refused to bargain with the Union over this change to a mandatory subject of bargaining.

The above analysis is supported by the Scope of Agreement language. As the State Employee Relations Board of Ohio noted in *City of North Ridgeville*, SERB Opinion No. 2000-008 (June 22, 2000), clauses like the Scope of Agreement language presented here are designed to "protect the status quo rather than provide justification for unilaterally changing the employment relationship." Nowhere within the Scope of Agreement is there language that allows or authorizes the Employer to make unilateral changes to existing negotiated terms in the CBA. Yet, based on the evidence presented to this Board, that is precisely what the Employer attempted to accomplish by its unilateral action in installing audio in the video cameras in City Hall and video cameras in the ECC. This action by the Employer is clearly a violation of the Act.

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[8] Presumably the Union would have the right to file a grievance under the CBA to challenge such unilateral action by the Employer. However, to carry this analysis to a potentially absurd conclusion, under the Employer's Scope of Agreement argument the Employer could also unilaterally change the contractual grievance and arbitration language to foreclose the Union's ability to challenge its unilateral change.

F. The Union's Request for Information

The Union has also argued in its case in chief before the Board that it made a request for information to the Employer and the Employer failed to comply with the request. (Tr. at pages 70 – 73; 78 – 80; Joint Exhibit 2; Union Memorandum of Law at page 4). This Board has addressed an employer's obligation to provide a union with relevant information on several occasions. See *Rhode Island State Labor Relations Board and Rhode Island Department of Children, Youth and Families*, ULP-6330 (March 14, 2023); *Rhode Island State Labor Relations Board and State of Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals,* ULP-6261/6270 (August 24, 2021); *City of Cranston*, ULP-5744 (March 26, 2007). However, in the present case the Board need not address the facts surrounding the Union's claims that the Employer failed to comply with its request for information since this claim was never included as part of the Union's original Charge or amended Charge and was never part of the Complaints issued by the Board in this case. As such and notwithstanding the Union raising the issue during the hearing and in its post-hearing memorandum, the Board cannot exercise its jurisdiction over the issue as it is not properly before the Board.

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 November 1, 2020 through October 31, 2023.

4. Prior to June 2022 the Employer had installed and operated video recording cameras in various offices in City Hall with the knowledge and acquiescence of the Union.

5. Prior to April 2023 the Emergency Communication Center had been located in the Employer's police station. While located in the police station the ECC had never been subject to or had video recording cameras focused or trained on their workstations.

6. In June 2022 the Employer installed and activated an audio component to the video recording cameras in City Hall in the Clerk's office, the Tax Assessor's office, the Treasury office and the Building Inspector/Zoning office.

7. The Clerk's office, the Tax Assessor's office, the Treasury office and the Building Inspector/Zoning office all have counters which allow employees in those offices to interact with the public. Those offices also contain space behind the counter for employees to work at desks and in cubicles. The areas behind the counter are not open to or accessible to the public. Some of the offices also contain a partially partitioned area where employees may take breaks.

8. The cameras are positioned near the counters and show the public areas of the effected offices. The cameras are positioned to monitor the public areas of the offices.

9. The audio component of the video recording camera system is able to cover an area larger than just the public areas of the office. The audio component also is able to cover/record the non-public areas of the office where the employees work at their desks and/or take breaks. The audio recording range covers areas of the non-public space in the offices which are not visible to the public and allow for conversations that, if occurring, the public cannot hear.

10. The Union was not informed of the installation of an audio component to the video recording cameras in City Hall offices prior to the installation and activation of the audio recording.

11. In September 2022, subsequent to the installation and activation of the audio component of the video recording camera system, the Employer introduced a written policy covering the audio/video recording camera system

12. In April 2023, the ECC was relocated from the police station to Fire Station No. 3 on North Broadway in the Rumford section of East Providence.

13. There are four workstations for dispatchers in the ECC. There is a video camera positioned directly above each workstation.

14. Due to the configuration and staffing of the ECC, dispatchers have a limited ability to leave their workstations during their shifts.

15. No other non-public area of Fire Station No. 3 is subject to video recording cameras.

16. The Employer unilaterally changed the working terms and conditions of employment of bargaining unit members in City Hall and the ECC when it installed and activated an audio component to the video recording camera system in City Hall and installed video cameras in the ECC.

17. The Employer unilaterally changed the working terms and conditions of employment of bargaining unit members in City Hall and the ECC when it installed and activated an audio component to the video recording camera system in City Hall and installed video cameras in the ECC without engaging in good faith bargaining with the Union.

CONCLUSIONS

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 an audio component/capability to the video recording cameras in various areas of City Hall.

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 unilaterally changed the working terms and conditions of employment of bargaining unit members when it installed video recording cameras in the ECC.

3. 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 in City Hall and the ECC.

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 using the audio portion of the cameras located in City Hall. The Employer is further ordered to cease and desist from activating and/or using the video cameras located in the ECC, consistent with the terms of this Decision.

3. Should the Employer decide to activate the audio capability of the video cameras in City Hall and/or activate the video cameras in the ECC, consistent with the terms of this Decision, 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 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)

Harry F. Winthrop, Member

Lawrence E. Purtill, Member

****BOARD MEMBERS KENNETH CHIAVARINI AND STAN ISRAEL WERE NOT IN ATTENDANCE TO SIGN THE DECISION AND ORDER*****

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

Dated: December 12, 2023

By: _____
Thomas A. Hanley, Administrator

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

IN THE MATTER OF CITY OF EAST PROVIDENCE -AND- UNITED STEELWORKERS, LOCAL 15509	CASE NO. ULP- 6344 & ULP- 6344A

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-6344 & ULP- 6344A, dated December 12, 2023, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **December 14, 2023.**

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

Dated: December 14, 2023

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