STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

CITY OF HARTFORD

DECISION NO. 4719

-AND-

MARCH 19, 2014

HARTFORD MUNICIPAL EMPLOYEES ASSOCIATION

Case No. MPP-30,114

A P P E A R A N C E S:

Attorney Alexandra Lombardi
for the City

Attorney Stephen F. McEleney
for HMEA

DECISION AND ORDER

On December 17, 2012, the Hartford Municipal Employees Association (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the City of Hartford (the City) violated the Municipal Employee Relations Act (MERA or the Act) by unilaterally installing surveillance cameras in the floor supervisors' office at the City's new dispatch facility.

After the requisite preliminary steps had been taken, the parties entered into a partial stipulation of facts and exhibits and the matter came before the Labor Board for a hearing on April 5, 2013. All parties appeared, were represented and were allowed to introduce evidence, examine and cross-examine witnesses, and make argument. The parties filed post-hearing briefs on May 31, 2013. Based on the entire record before us, we make the following findings of fact and conclusions of law and we issue the following order.

FINDINGS OF FACT

1. The City is a municipal employer within the meaning of the Act.

2. The Union is an employee organization within the meaning of the Act and at all material times has been the exclusive bargaining representative of various classifications of City employees.

3. The City and the Union are parties to a collective bargaining agreement (Ex. 4) with effective dates of July 1, 2007 to June 30, 2013 which provides, in relevant part:

> ARTICLE I
> RIGHTS AND RECOGNITION
>
> . . .
>
> **Section 1.5 MANAGEMENT RIGHTS**
>
> Except as specifically abridged or modified by . . . this Agreement, the City . . . will continue to have . . . all of the rights, powers and authority heretofore existing, including but not limited to the following . . . direct its employees, … maintain the efficiency of governmental operations; determine the methods, means and personnel by which the City's operations are to be conducted . . . establish and revise or discontinue policies, programs and procedures to meet changing conditions and to better serve the needs of the public; . . . and fulfill all of its legal responsibilities. The above rights, responsibilities and prerogatives are inherent in the Court of Common Council and the Mayor by virtue of statutory and charter provisions and cannot be subject to any grievance or arbitration proceedings except as specifically provided for in this Agreement.
>
> **Section 1.10 SUPERVISORY RESPONSIBILITIES**
>
> The City and the Association recognize that the positions occupied by the members of the . . . [Union] . . . are and have always been essentially management positions. The Association agrees that the designation of these positions within a bargaining unit has not altered the responsibilities of bargaining unit members to advocate management's functions. .. .

4. At all times relevant hereto the Union represented a bargaining unit of City employees which included the position of public safety communications supervisor in the City's Department of Emergency Services and Telecommunications. (DEST).

5. At all times relevant hereto, DEST has provided emergency call intake and dispatch services on a twenty-four hour basis for the City and is staffed by multiple dispatchers supervised by a single public safety communications supervisor (floor supervisor) per shift. Prior to November, 2012, the DEST facility was located at Jennings Road.

6. By memo (Ex. 7) to all dispatch center staff dated March 25, 2011, DEST director Andrew T. Jaffee (Jaffee) stated, in relevant part:

> SUBJECT: Video Cameras

> As you are aware, video cameras are being installed in the Public Safety Dispatch Center . . .
>
> The system does have the ability to archive (save) video . . . The ability to record audio is also possible with this system; a couple of microphones will be installed. Remember, every time you pick-up a telephone you are being recorded and so are the conversations in the background.
> . . .

7. Shortly after the memo issued, Jaffee attended a supervisor's staff meeting during which concerns were raised as to confidential conversations between dispatchers and floor supervisors. Jaffee indicated at the meeting that he would consider refraining from installing the equipment in the floor supervisor's office. Ultimately, video and audio surveillance equipment was not installed in the floor supervisor's office at the Jennings Road location.

8. On or about April 6, 2011, a dispatcher filed a complaint (Ex. 15) with the Commission on Human Rights and Opportunities alleging that her co-workers and a floor supervisor routinely used profane language, acted inappropriately in the dispatch area, and retaliated against her when she complained.

9. On or about September 12, 2011 a dispatcher filed a complaint (Ex. 16) with DEST contending that two floor supervisors harassed her and acted inappropriately outside the facility as well as in the dispatchers' work area.

10. On or about October 14, 2011, a dispatcher filed a complaint (Ex. 17) with DEST contending that a floor supervisor was harassing him in the dispatchers' work area and treating him differently than other dispatchers.

11. On or about April 9, 2012 a dispatcher sent City Mayor Pedro A. Segarra an e-mail contending that a floor supervisor became hostile and angry with her in the floor supervisors' office on March 28, 2012 during a meeting which was also attended by the Union's vice president.

12. In November, 2012, DEST moved to a new facility located on High Street. The floor supervisors' office in the new facility is centrally located in the dispatch area and the office interior is readily visible to the dispatch area as three of its four walls are glass. Floor supervisors spend the majority of their work shift in the office and also use it for meals and personal telephone calls.

13. The new DEST facility contains video and audio surveillance equipment in the dispatchers' work area, the floor supervisors' office, and the employees' lounge. Information derived from operational cameras and microphones is stored in a server in the basement of the facility and authorized personnel such as Jaffee and DEST operations manager Mike Bruce can access the information by computer at work or at home. At all times relevant hereto, the video and audio surveillance equipment in the floor supervisors' office at the new facility has not been operational.

14. By letter (Ex. 5) to Jaffee dated December 3, 2012, Union attorney, Stephen F. McEleney (McEleney) stated in relevant part:

Dear Mr. Jaffee,

As you know, I represent . . . [the Union] . . . who represents the supervisors in your department.

It has been brought to our attention that the City has installed a surveillance camera in the employee lounge and surveillance camera with audio in the supervisors office. This is in addition to surveillance cameras on the exterior of the building and in the dispatch work area.

It is my understanding there were surveillance cameras in the dispatch work area and exterior of the HPD building in the old facility. Hence, no complaint is made in that regard. However, a surveillance in an employee lounge is a criminal offence under Connecticut General Statutes § 31-84b [sic][1] (copy enclosed). Additionally, the installation or a surveillance camera with or without audio in the supervisors office is a mandatory subject of bargaining which requires just that prior to installing such a camera. In this regard, enclosed please find a copy of City of Stamford, decision number 4345, October 14, 2008 . . .

This is to demand the City immediately remove the surveillance cameras and any audio surveillance from the employee lounge and HMEA supervisors office. Thereafter, if the City desires to negotiate a proposal to install and operate surveillance equipment in the supervisors office, we will enter into such negotiations. . .

15. By e-mail (Ex. 6) to McEleney dated December 3, 2012, City attorney Catharine Freeman (Freeman) stated, in relevant part:

[A]side from being in a new facility, Management is implementing the same practices as was [sic] in place at Jennings Road.

Mr. Jaffe advises me that they will not be utilizing cameras in the referenced staff lounge.

16. By e-mail (Ex. 6) to Freeman dated December 4, 2012, McEleney stated, in relevant part:

I am pleased we will not be forced to file a criminal complaint for the camera in the lounge. However, it appears we will be forced to file an MPP for the camera in the supervisors office as you are refusing to bargain over same . . .

17. By letter (Ex. 10) to Freeman dated February 7, 2013, McEleney stated in relevant part:

[1] Conn. Gen. Stat. § 31-84b does not exist. The Union enclosed a copy of Conn. Gen. Stat. § 31-48b which states, in relevant part:

b) No employer . . . shall operate any electronic surveillance device or system, including but not limited to the recording of sound or voice or a closed circuit television system, or any combination thereof, for the purpose of recording or monitoring the activities of his employees in areas designed for the . . . personal comfort of the employees, such as . . . lounges.

> [O]n Janaury 30th, the City offered, for the first time, to negotiate with HMEA over the impact, only, of the installation of a camera and audio in the Floor supervisors office . . . The next day I left you a voicemail asking whether or not the issue of the ability of the Floor Supervisors to turn the audio/video on and off was a topic which would be covered under "impact bargaining." . . . I have yet to hear . . . [the City's] . . . response . . . Is it the City's position that the issue of the ability and authority of the Floor supervisors to turn the video/audio on and off, depending upon the circumstances, is 'on the table' . . . for impact bargaining or not? . . .

18. By letter (Ex. 11) to McEleney dated February 28, 2013, Freeman stated in relevant part:

> [M]y client has agreed to impact bargaining and simply asks that you provide any and all subjects HMEA wishes to discuss should it desire to schedule impact bargaining. If you do plan to proceed with impact bargaining, please advise at your earliest convenience . . .
>
> I have no other directives on this matter, nor any additional information related to your February 7th correspondence . . .

19. By letter (Ex. 12) to Freeman dated March 19, 2013, McEleney stated, in relevant part:

> The threshold question is whether the City is prepared to negotiate under "impact bargaining" the topic of terms, conditions, and circumstances under which the video/audio can be turned on and off, if needed. I consider your letter of February 28th a failure to respond to my . . . question. Accordingly, I do not see the point in itemizing further topics of "impact bargaining" . . .

CONCLUSIONS OF LAW

1. The installation and operation of any electronic surveillance device or system in the floor supervisors' office in the City's Department of Emergency Service and Telecommunications is a mandatory subject of bargaining.

2. The City violated the Act by failing to bargain about the installation and operation of electronic surveillance devices, the installation and operation of which constitutes a mandatory subject of bargaining.

DISCUSSION

The Union contends that the City violated Section 7-470(a)(4)[2] of the Act when it installed audio and video surveillance equipment in the floor supervisors' office at the new DEST facility without bargaining. In addition to the usual cease and desist and posting requirements, the Union seeks an order requiring the City to remove the equipment and to pay the Union's attorney's fees.

[2] Section 7-470(a)(4) states: (a) Municipal employers or their representatives or agents are prohibited from: . . . (4) refusing to bargain collectively in good faith with an employee organization which has been designated in accordance with the provisions of said sections as the exclusive representative of employees in an appropriate unit . . .

In response, the City claims that the change was not substantial given the factual context and that since its actions were narrowly tailored to investigate misconduct, it had no duty to bargain. The City also argues that its willingness to engage in impact bargaining satisfied its obligations under the Act. On the basis of the record before us we find these defenses without merit and issue the following order.

A unilateral change in an existing condition of employment involving a mandatory subject of bargaining will constitute a refusal to bargain in good faith and a prohibited practice unless the employer proves an adequate defense. ***City of Hartford***, Decision No. 4673 (2013); ***State of Connecticut, Judicial Branch***, Decision No. 4532 (2011); ***Norwalk Third Taxing District***, Decision No. 3695 (1999); ***Bloomfield Board of Education***, Decision No. 3150 (1993); ***City of Stamford***, Decision No. 2680 (1988). In order to prevail, a complaining union must establish a *prima facie* case showing that a change in an existing condition of employment has in fact occurred, for if no change is proven, no further inquiry is warranted. ***Town of Hamden***, Decision No. 2364 (1985). An employer may rebut a *prima facie* case of unlawful unilateral action through several well recognized defenses, including a showing that the action at issue is *de minimus*. ***Norwalk Third Taxing District***, Decision No. 4554 (2011); ***Town of Wallingford***, Decision No. 3902 (2003).

There is overlap between managerial functions and existing conditions of employment and we distinguish mandatory and non-mandatory subjects by using a balancing test derived from ***West Hartford Education Association v. DeCourcey***, 162 Conn. 566, 583-584 (1972), which compares the directness and depth of impingement on conditions of employment with the extent of the employer's need for unilateral action without negotiation to serve or preserve an important policy decision. ***Town of Windsor***, Decision No. 3435 (1996); ***Town of East Haven***, Decision No. 1279 (1975). In performing this analysis we have long recognized the difference between effecting substantial changes and implementing "prophylactic" measures designed to enforce or to monitor existing conditions of employment. ***Town of Newtown***, Decision No. 4557 (2011); ***City of Waterbury***, Decision No. 4238 (2007); ***State of Connecticut, Department of Correction***, Decision No. 3170 (1993); ***City of Bridgeport***, Decision No. 2301 (1984); ***Wilton Board of Education***, Decision No. 1667 (1978).

Our decisions involving workplace surveillance fall well within this framework. In ***Town of Stratford***, Decision No. 1833 (1979), we found a device which recorded police vehicle performance (acceleration, idling time, collisions, etc.) to be a reasonable prophylactic measure because it did not monitor employee thoughts and conversations and was merely a more efficient means of recording information supervisors were obligated to report. Similarly, ***Town of Rocky Hill***, Decision No. 3565 (1998), rejected a challenge to video surveillance of a supervisor's desktop as part of a document leak investigation given the limited nature of the action. ***City of Stamford***, Decision No. 4345 (2008), however, involved widespread surveillance of the entire workplace and we ordered removal of the equipment pending bargaining. These decisions are consistent with those of our federal counterparts. *See* ***Anheiser-Busch, Inc.***, 342 NLRB 560 (2004), *enf'd in part*, 414 F.3d 36 (D.C. Cir. 2005); ***National Steel Corp.***, 335 NLRB 747 (2001); *enf'd* 324 F.3d 928 (7th Cir. 2003); ***Colgate-Palmolive***, 323 NLRB 515 (1997).

The City argues that surveillance of the floor supervisors' office is reasonable given the history of complaints by dispatchers. We disagree. The City does not claim, nor do we find, that the surveillance equipment at issue was installed in order to investigate a specific instance of misconduct. All but one of the complaints involved alleged conduct outside the supervisors'

office and the City declined to compel a statement from the witness to the single incident which did occur in that locale. Continuous video monitoring of the floor supervisors' office, including audio recording of all employee conversations at that location, is similar to the broad surveillance at issue in ***City of Stamford***, *supra* and distinguishes this case from ***Town of Rocky Hill***, *supra*, and ***Town of Stratford***, *supra*. In short, while floor supervisors have no legitimate interest in harassing dispatchers, we cannot conclude on the basis of the record before us that such misconduct actually occurred and we continue to view widespread surveillance as "so inconsistent with human dignity and privacy that it … cut[s] deeply into conditions of employment and into very legitimate employee interests." ***Town of Stratford***, *supra* at p. 3.

Nor do we view a willingness to engage in impact or effects bargaining as dispositive of the Union's complaint. Widespread employee surveillance is itself a mandatory topic and given the correspondence between Freeman and McEleney, we can only conclude that the City declined to bargain over the presence and use of surveillance equipment in the floor supervisors' office. While it may very well be that there exist viable alternatives to the on/off switch proposed by the Union, such does not vitiate the City's obligation to bargain the underlying issue of surveillance.

Since we find that the installation of surveillance equipment in the floor supervisors' office was a change in an existing condition of employment, the Union has established its *prima facie* case and we turn to the City's remaining claim, that the change was *de minimus*.

Noting that the supervisors' office has glass walls, that one telephone line to the office is continually recorded, and that supervisors are free to use other facility areas for private conversation, the City argues that the surveillance at issue is *de minimus*. We find otherwise given the evidence in this case. While the City may not restrict movement of these employees throughout DEST, floor supervisors understandably spend the great bulk of their time in the office given the design of the facility and the duties of their position. Glass walls only afford visual access to the office interior from the dispatchers' work area. The equipment at issue affords recordable aural and visual access from remote locations. Employees take their meals in the supervisors' office and are allowed to use an unrecorded additional telephone line at that locale to make private calls as well as their personal cell phones. While the City is free to rescind its recognition of the value of allowing confidential supervisor-subordinate discourse, this does not render insignificant all other employee concerns over general surveillance.

Turning to the issue of remedy we find that an order requiring the City to cease and desist and to remove the cameras and microphone from the floor supervisors' office would best effectuate the policies of the Act given the factual history in this case. The Union urges an award of attorney's fees contending that the City's position presents no debatable issue and is wholly frivolous. *See* ***City of Hartford***, Decision No. 4549 (2011); ***City of Bridgeport***, Decision No. 4478 (2010); ***Killingly Board of Education***, Decision No. 2118 (1982). In order to address this claim we must assess the City's defenses for substance, the existence of which precludes an award of attorney's fees. ***City of Hartford***, *supra*, ***Norwalk Third Taxing District***, Decision No. 3676 (1999).

Although we find the City's position on the issues in this case without merit, we do not find it devoid of substance. The floor supervisors' office is a room within a room and the latter is subject to widespread surveillance, without objection from the Union and presumably for valid operational reasons. As the Union admits, valid unilateral action in cases of this type turn

on a factually sensitive balancing test and the City was placed on notice of alleged harassment by floor supervisors before DEST moved to High Street. Lastly and while not determinative, we note that the City refrained from using the equipment at issue pending the outcome of this case. For these reasons we find that an award of attorney's fees is not warranted.

ORDER

By virtue of and pursuant to the powers vested in the Connecticut State Board of Labor Relations by the Municipal Employee Relations Act, it is hereby

ORDERED that the City of Hartford:

I. Cease and desist immediately from installing or operating, or allowing the installation and operation of surveillance cameras and microphone in the floor supervisors' office in the City's Department of Emergency Services and Telecommunications (DEST) in accordance with this decision;

II. Take the following affirmative action, which we find will effectuate the purposes of the Act:

A. Immediately take all necessary steps to remove the surveillance equipment in the floor supervisors' office in DEST in accordance with this decision.

B. Bargain immediately upon demand with the Union about any proposal to install and operate surveillance equipment in the floor supervisors' office in DEST in accordance with this decision.

C. Post immediately and leave posted for a period of sixty (60) consecutive days from the date of posting, in a conspicuous place where the employees of the bargaining unit customarily assemble, a copy of this Decision and Order in its entirety.

D. Notify the Connecticut State Board of Labor Relations at its office in the Labor Department, 38 Wolcott Hill Road, Wethersfield, Connecticut, within thirty (30) days of the receipt of this Decision and Order of the steps taken by the City of Hartford to comply herewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Patricia V. Low
Patricia V. Low
Chairman

Wendella Ault Battey
Wendella Ault Battey
Board Member

Barbara J. Collins
Barbara J. Collins
Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 19th day of March, 2014 to the following:

Alexandra Lombardi, Esq. RRR
City of Hartford
550 Main Street
Hartford, CT 06103

Stephen F. McEleney, Esq. RRR
McEleney & McGrail, LLC
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Harry B. Elliot, Jr., General Counsel
CONNECTICUT STATE BOARD OF LABOR RELATIONS