

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

CITY OF NEW HAVEN

DECISION NO. 5328

-and-

AUGUST 9, 2024

LOCAL 3144 of COUNCIL 4,  
AFSCME, AFL-CIO

Case Nos. MPP-35,105  
MEPP-35,110

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

Attorney Lisa S. Lazarek  
for the City

Attorney Christopher J. Sugar  
for the Union

**DECISION, PARTIAL DISMISSAL OF COMPLAINTS AND ORDER**

On September 18, 2023, Local 3144, Council 4, AFSCME, AFL-CIO (the Union) filed a complaint (MPP-35,105) with the Connecticut State Board of Labor Relations (the Labor Board), amended on November 17, 2023, alleging that the City of New Haven (the City) violated Section 7-470(a)(4) of the Municipal Employee Relations Act (the Act) by unilaterally changing<sup>1</sup> the terms of a tentative agreement reached during contract negotiations. On September 25, 2023, the City filed a complaint (MEPP-35,110) alleging that the Union bargained in bad faith by renegeing on the successor agreement. The Union's and City's complaints were thereafter consolidated.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on February 16 and March 6, 2024. Both parties appeared, were represented

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<sup>1</sup> Although the complaint refers to the City "unilaterally changing" the tentative agreement, reading the complaint as a whole and the Union's brief in MPP-35,105, we find that the term is used as a factual allegation and not to allege an additional distinct violation (i.e., unilateral change to a binding past practice) under the Act.

by counsel, and were allowed to present evidence, examine and cross-examine witnesses, and make arguments. The parties filed post-hearing briefs which were received on May 6, 2024. Based on the entire record before us, we make the following findings of fact and conclusions of law, dismiss the complaints, in part, and issue an order directing the parties to complete their statutory bargaining obligation on the issue of employee pension contributions.

**FINDINGS OF FACT**

1. The City is an employer within the meaning of the Act.
2. The Union is an employee organization within the meaning of the Act and at all relevant times has represented a bargaining unit of certain supervisory and professional employees of the City.
3. The City and the Union were parties to a collective bargaining agreement, with effective dates of July 1, 2015 through June 30, 2020, which stated, in relevant part:

SCHEDULE A – Pension Provisions

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ARTICLE II PROVISIONS OF THE RETIREMENT PLAN APPLICABLE TO  
EMPLOYEES REPRESENTED BY MANAGEMENT UNION  
LOCAL 3144 OF [AFSCME]

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Section 2 – Determination of Contributions of Participating Members

The rate of contribution shall be 10% of pay; said percentage to be deducted from each eligible participating member’s pay . . .

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(Ex. U5).

4. In or about 2021, the City and the Union entered into negotiations for a successor collective bargaining agreement. Then-director of labor relations Cathleen Simpson was the City’s chief spokesperson and staff representative Patrick Sampson was the Union’s chief spokesperson. The parties exchanged initial contract proposals.
5. Sometime after the exchange of proposals, Simpson left her employment with the City.
6. In February 2022, Wendella A. Battey became the City’s new director of labor relations and assumed the role of the City’s chief spokesperson.

7. In October 2022, Battey met with the Union to discuss a “reset” of the contract negotiations. The next month, on November 9, 2022, Battey met with Sampson to discuss narrowing the scope of negotiations to those proposals which the parties deemed most significant.

8. On or about November 18, 2022, Battey presented the Union with a set of revised City proposals, which stated, in relevant part:

OFF THE RECORD  
REVISED PROPOSALS AND WITHDRAWALS  
FOR LOCAL 3144

NOVEMBER 18, 2022<sup>2]</sup>

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PROPOSAL NO. 27

Article 21, Pensions and Schedule A

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**CITY’S PROPOSAL:**

Revised proposal as follows:

**Contract language will be revised to reflect the following:**

**Effective upon the signing of this agreement, the employee contribution to CERF shall be 10.5%.**

**Employees hired prior to the implementation of this agreement shall be subject to the following CERF pension changes:**

- **Joint and survivor benefits options**
- **Early retirement reduction factor to 5%**

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<sup>2</sup> The cover of the City’s document included a key, which stated, in relevant part:

***
Red text – indicates notations and/or status of changes to original proposals
<del>Strikethrough text</del> – indicates proposed deletions to the current contract language
<b>Bolded text</b> – indicates proposed additions to the current contract language
Where indicated, <b>bolded</b> proposed text may <b>REPLACE</b> all current contract language
The City reserves the right to add to/modify/delete any of these proposed contract changes during the course of negotiations

(Ex. 3)(Emphasis in original).

**Employees hired after the implementation of this agreement and ~~non-vested CERF members with less than eight (8) years in CERF as of the signing of this agreement~~, shall be subject to the following CERF pension changes:**

- **Normal retirement age of 65; eliminate Rule of 85**
- **Joint and survivor benefit option**
- **Change early retirement reduction factor to 5%**

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(Ex. C3)(Footnote added).

9. On or about December 15, 2022, the City and the Union met for negotiations. During this meeting, Battey explained Proposal 27 to the Union’s negotiating team. The parties did not agree on a new contract and negotiations continued.

10. On or about January 30, 2023, Battey gave the Union a document summarizing the status of the parties’ proposals and counterproposals. The document listed proposals by number and indicated whether they were withdrawn, modified, rejected, tentatively agreed upon (“TA”), etc. Regarding Proposal 27 the document stated, in relevant part:

CITY’S RESPONSE AND COUNTER TO THE  
OUTSTANDING PROPOSAL PER THE [UNION’S]  
RESPONSE DATED JANUARY 30, 2023

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CITY#27 – TA with Early Retirement factor 3% OPEB contribution 1.5%<sup>[3]</sup>

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(Ex. C4) (Footnote added).

11. The parties’ negotiating committees continued to bargain.

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<sup>3</sup> Battey testified that her practice was to include only tentatively agreed to changes to the terms in her November 18, 2022 proposals. According to Battey, she omitted any reference to the proposed 0.5% increase to employee pension contributions because the Union committee agreed to the increase. The Union’s witnesses testified that the proposed 0.5% increase was rejected.

12. On or about March 29, 2023, the City’s and the Union’s negotiating teams reached what they perceived to be a comprehensive tentative agreement and concluded negotiations. Battey prepared a document which stated, in relevant part:

**CITY OF NEW HAVEN  
AND  
LOCAL 3144 AFSCME COUNCIL4  
TENTATIVE AGREEMENT 3/29/23**

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City #27 - with Early Retirement factor 3%, OPEB contribution 1.25%. TA 3/2/23

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(Ex. C5) (Emphasis in original).

13. On March 31, 2023, after reviewing the tentative agreement with the negotiating team, Sampson and Union president Gilda Herrera signed it on behalf of the Union. Battey signed the tentative agreement on behalf of the City. (Ex. C5).

14. On or about May 2, 2023, Sampson created a summary document with a “more comprehensive explanation of changes” to the contract, which stated, in relevant part:

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**SCHEDULE A PENSION PROVISIONS**

Section 6(g) – Early Retirement factor increased from 2% to 3%

Section 9 – Requirements for Participation

Any person who becomes an eligible employee of the City shall be required to participate in the Retirement Fund; ~~provided no~~ **any** person who becomes an eligible employee on or after his/**her** sixtieth (60<sup>th</sup>) Birthday may **choose to** participate in the Retirement Fund or **Social Security**.

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(Ex. 6). Sampson’s summary made no reference to any changes to the existing employee pension contribution language in the contract. Sampson showed a copy of his summary to the rest of the Union’s negotiating committee before presenting it to the membership for a ratification vote. Sampson did not share his summary with the City.

15. On or before May 9, 2023, Battey prepared a summary of the changes to the contract to submit to the City’s Board of Alders which stated, in relevant part:

Schedule A, Pension Provisions	Employee contributions increased to 10.5%; New employees are eligible to retire at age 65 and don’t have Rule of 80/85; early retirement penalty increased to 3% for each year of early retirement; employees have options for joint and survivor benefits; employees 60 years or older have the option to participate in either the Pension or Social Security.
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(Exs. C6, C7). Battey did not forward a copy of her summary to the Union. However, it was made publicly available on the City’s website.

16. On May 9, 2023, at a public meeting, the Board of Alders ratified the tentative agreement based on Battey’s summary document. A group of Local 3144 members, including Herrera, attended that meeting. Five of those members opposed the tentative agreement based on retroactive pay language, but they did not object to the pension provision at issue here.

17. On May 11, 2023, based on Sampson’s summary, the Union membership voted to ratify the tentative agreement. (Ex. U6).

18. In mid-May 2023, Battey prepared a draft successor contract, which reflected that the employees’ pension contribution was 10.5%. Battey forwarded a copy of the draft collective bargaining agreement to the Union.

19. Sometime in July 2023, not having received a response from the Union, and due to begin a vacation, Battey inquired about the contract.

20. In late July or early August, 2023, upon reviewing the draft successor contract, Sampson noticed the increase in the employee pension contribution from 10% to 10.5% and what he considered to be a “drastic change” to the joint survivor benefit. Battey was on vacation and Sampson met with City labor relations attorney Curtis Stubbs. Stubbs later communicated Sampson’s concerns to Battey.

21. In August 2023, via email, Sampson asked the City to return the employee pension contribution to 10% as in the previous contract. Battey responded that she could not change an issue that had been agreed to in negotiations, approved by the Board of Alders, and ratified by the parties.

22. The Union refused to sign the draft successor contract.

### **CONCLUSIONS OF LAW**

1. The City and the Union did not reach a meeting of the minds on an essential term of the successor agreement, i.e., the employee pension contribution percentage.
2. The City did not repudiate the parties' tentative agreement or bargain in bad faith when it included the 0.5% increase to the employee pension contribution in the draft successor contract.
3. The Union did not act in bad faith by refusing to sign the draft successor contract which included a 0.5% increase to the employees' pension contribution percentage.
4. The parties have a statutory obligation to complete bargaining on the issue of employee pension contributions.

### **DISCUSSION**

In MPP-35,105, the Union contends that the City acted in bad faith and repudiated the March 31, 2023 tentative agreement in violation of Section 7-470(a)(4)<sup>4</sup> of the Act by unilaterally including a 0.5% increase to the employee pension contribution in the draft successor collective bargaining agreement, which was never agreed upon in negotiations. As a remedy, the Union seeks an order reforming the contract to reflect the Union's rejection of the 0.5% increase.

The City responds that a repudiation analysis is inapplicable here since the Union argues that the parties did not agree to the 0.5% increase during negotiations.<sup>5</sup> In MEPP-35,110, the City argues that the Union agreed to the 0.5% increase proposed by Battey and bargained in bad faith by reneging on that agreement. Based on the entire record before us, we find that the parties failed to reach an agreement on employee pension contributions, partially dismiss the complaints, and direct the parties to return to the table and complete their statutory bargaining obligations on that issue alone.

It is well settled that repudiation of a contract may be found under very limited circumstances. The first is where the respondent party takes an action based upon an interpretation of the contract and that interpretation is asserted in subjective bad faith. The

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<sup>4</sup> Conn. Gen. Stat. Section 7-470(4) states, in relevant part:

(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 . . . as the exclusive representative of employees in an appropriate unit . . .

<sup>5</sup> The Union introduced testimony regarding an alleged dispute over the joint survivor benefit in the contract. However, the Union's original and amended complaints allege repudiation and bad faith bargaining only as it pertains to the 0.5% increase to employee pension contributions and we consider the issue of a joint survivor benefit to be a material variance from those pleadings under our regulations. Regs., Conn. State Agencies §7-471-63. Accordingly, we do not consider that claim.

second is where the respondent party has taken an action based upon an interpretation of the contract and that interpretation is wholly frivolous or implausible. The third type of repudiation does not involve assertion of an interpretation of the contract but instead the respondent either admits or does not challenge the complainant's interpretation and seeks to defend its action on some collateral ground. *Norwich Board of Education*, Decision No. 2508 (1986); *Hamden Board of Education*, Decision No. 3426 (1996). "Application of this standard, however, presupposes the existence of a binding contract provision or agreement," *State of Connecticut, Department of Correction*, Decision No. 4750 pp. 4-5 (2014); see also *City of Hartford*, Decision No. 3453 (1996), and the record here does not support the existence of a binding agreement on employee pension contribution rates.

An enforceable contract requires "that the parties' minds had truly met ... If there has been a misunderstanding between the parties, or a misapprehension by one or both so that their minds have never met, no contract has been entered into by them and the court will not make for them a contract which they themselves did not make." (internal citations and quotation marks omitted.) *Fortier v. Newington Group, Inc.*, 30 Conn. App. 505, 510, cert. denied, 225 Conn. 922 (1993); see also *St. Bernard School of Montville, Inc. v. Bank of America*, 312 Conn. 811, 830 (2014) ("To constitute an offer and acceptance sufficient to create an enforceable contract, each must be found to have been based on an identical understanding by the parties....") (citations omitted.) In this case, both parties produced witnesses who were present at the bargaining table and who gave conflicting testimony regarding whether the proposed 0.5% increase to employee pension contribution rates was accepted or rejected. Batty testified that the Union agreed to the increase in return for other concessions, such as movement on the OPEB contribution and early retirement factor. Sampson and Union recording secretary Velisha Cloud<sup>6</sup> testified that the Union rejected the proposed increase. Having had the opportunity to observe the witnesses' demeanor and having carefully reviewed the entire evidentiary record, we find that each party had a diametrically opposed understanding of the employee pension contribution percentage when they executed the tentative agreement on March 31<sup>st</sup> and which was not discovered until after the ratification/approval process was complete. We believe that a number of factors contributed to this misunderstanding, including Simpson's departure after the first exchange of proposals, a mutual desire to "reset" stalled negotiations, and, most notably, the lack of clear ground rules, especially rules establishing a uniform method of documenting tentative agreements on individual proposals.<sup>7</sup> As it stands, the City viewed the omission of the employee pension contribution in Proposal No. 27 as signifying the Union's acceptance and the Union viewed the omission as signifying that the proposed increase was off the table.<sup>8</sup>

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<sup>6</sup> Cloud testified that she took notes during every negotiation meeting that she attended. However, those notes are not in the administrative record.

<sup>7</sup> Sampson testified that the parties initially established ground rules for negotiations but may not have signed them because they were negotiating during the coronavirus pandemic. In any case, there are no ground rules in the administrative record. We believe that the existence of ground rules could have avoided the issue before us. For example, ground rules could have established a mutually agreed upon method for documenting tentatively agreed upon proposals with greater precision.

<sup>8</sup> In its brief, the Union acknowledges that there was no meeting of the minds, but argues that the City failed to reduce the negotiators' agreement to writing as required under the Act. Conn. Gen. Stat. § 7-474(b) ("Any agreement reached by the negotiators shall be reduced to writing"). We disagree. In our view, the issue here is not the lack of a writing but the negotiators' understanding of that writing.



The record supports a finding that the parties did not come to a meeting of the minds on the proposed increase to employee pension contributions and therefore no agreement was reached on that issue. However, that finding alone does not resolve this matter. At the core of each complaint is a statutory obligation to bargain in good faith, which the parties have not completed. “Although the Act requires parties to meet and confer with respect to wages, hours and other conditions of employment, the parties’ obligations do not stop there... While parties are not required to agree to a proposal, they cannot merely walk away if an agreement is not reached.” *Danbury Housing Authority*, Decision No. 5289 p. 14 (2023); see also *Town of Coventry*, Decision No. 1289 (1975) (absent ground rules to the contrary, failure to reach a meeting of the minds on one issue did not permit town to withdraw from agreement on remaining proposals). Since there are no ground rules in the record, there is no evidentiary basis for finding that the parties mutually consented to some alternate method for resolving the type of misunderstanding we have been presented with in the instant complaints. As such, we find that the parties have a duty to return to the bargaining table and complete negotiations on the issue of employee pension contributions. See *Town of Coventry*, supra, p. 5 (finding that “the bargaining process is not yet complete, though there is only that one question left for negotiation” and “direct[ing] the parties to resume negotiations upon that one remaining issue”). In addition, since there was no binding agreement on the proposed 0.5% increase, the City currently has no authority to deduct 10.5% for employee pension contributions. Accordingly, we dismiss the complaints only as they pertain to claims that the other party repudiated or reneged a valid agreement and issue the following order directing the parties to comply with their continuing obligation to bargain in good faith.

### **ORDER**

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

**ORDERED** that:

- I. The City and the Union shall complete their statutory duty to bargain in good faith over the issue of employee pension contribution percentages only, unless the parties mutually consent to reopen other issues for further bargaining. The complaints in MPP-35,105 and MEPP-35,110 are otherwise dismissed.
- II. The parties shall take the following affirmative action, which we find will effectuate the purposes of the Act.
  - A. The City and the Union shall resume bargaining over the issue of employee pension contributions within thirty (30) days of the date of this Decision, Partial Dismissal of Complaints and Order. Except as otherwise directed herein, all applicable timetables for negotiations, and if necessary, binding arbitration, shall be in effect unless hereafter modified, deferred, or waived in accordance with Section 7-473c(d)(7) of the Act. All other provisions of the

agreement ratified or approved by the City and the Union, respectively, on May 9 and May 11, 2023, shall remain in effect unless reopened by mutual consent.

B. To the extent that the City has begun deducting 10.5% from employees' payroll for their pension contribution, it shall cease doing so within the first full pay period after the date of issuance of this Decision, Partial Dismissal of Complaints and Order and make the affected employees whole for said deductions as required by any negotiated agreement or binding arbitration award on that issue.

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, Partial Dismissal of Complaints and Order in its entirety.

D. Notify the Connecticut Board of Labor Relations at its offices in the Labor Department, 38 Wolcott Hill Road, Wethersfield, Connecticut within forty-five (45) days of receipt of this Decision, Partial Dismissal of Complaints and Order of the steps taken by the City and the Union to comply herewith.

#### CONNECTICUT STATE BOARD OF LABOR RELATIONS

Barbara J. Collins  
Barbara J. Collins  
Board Member

Katherine C. Foley  
Katherine C. Foley  
Board Member

Ellen Carter  
Ellen Carter  
Board Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing was mailed, postage prepaid, this 9<sup>th</sup> of August 2024 to the following:

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