DECISION and ORDER

On May 18, 1983, Local 1303 of Council 4, AFSCME, AFL-CIO (Union) filed with the Connecticut State Board of Labor Relations (Board) a complaint alleging that the Town of East Haven (Town) had engaged and was engaging in practices prohibited by the Municipal Employee Relations Act (Act) in that:

1. The Town has violated and continues to violate the act by using non-bargaining unit workers to do bargaining unit work. Also the Town has violated the Agreement reached to resolve MPP-7225 dated June 29, 1982.

On April 12, 1983, the Town used a packer owned by Latella Carting Co and two non-bargaining unit workers to work on the Spring Clean-up in East Haven.

On April 21, 1983 this Union sent a letter to the Director of Public Services advising him to cease and desist from this activity and negotiate this matter with the Union. To date we have had no response from the Town on this matter and they have continued to use non-bargaining unit people on this work.

After the requisite administrative steps had been taken the matter was brought before the Board for a hearing on October 13, 1983, at which the parties appeared and were given full opportunity to adduce evidence, examine and cross-examine witnesses, and make argument. The Union filed a brief; the Town did not. On the basis of the whole record before us we make the following findings of fact and conclusions of law.

Findings of Fact

1. The Town of East Haven is a municipal employer within the meaning of the Act.

2. Local 1303 of Council 4, AFSCME, AFL-CIO, is an employee organization within the meaning of the Act and is the exclusive
bargaining representative of all employees in the Department of Public Services with exclusions not here relevant.

3. The parties have a collective bargaining agreement (Contract) in effect from July 1, 1982 to June 30, 1984.

4. The Town has had a practice for at least 13 years of holding a Spring Clean-up. The purpose of the Spring Clean-up is to allow Town residents to put out any trash items in bulk that would not normally be picked up in the regular trash pick-up, e.g. refrigerators, stoves, etc.

5. For at least 13 years the work performed during Clean-up was performed exclusively by bargaining unit members with two exceptions.

6. Normal trash pick-up is not performed by members of the bargaining unit; rather it is contracted to a private refuse firm, Latella Carting Co.

7. The first exception occurred approximately eight years ago when the Town used its police and firefighters on the Clean-up. The Union protested and the Police and Firefighters Unions agreed not to perform Spring Clean-up work.

8. In June of 1982, the Town hired employees of Latella Carting Co. to perform Spring Clean-up.

9. The Union filed a prohibited practice complaint with this Board regarding the Town's action and on June 28, 1982 the Union and the Town entered into a settlement agreement. This agreement reads in pertinent part:

1) The Town agrees to cease and desist from hiring any outside contractor to handle the spring clean up without first bargaining with the union. (Case No. MPP-7225)

10. The 1983 Spring Clean-up was scheduled in April. Two or three days after the start of the Spring Clean-up, Ralph Lambert, the Public Works foreman approached Dominic Redente, the Director, and told him that "we were falling behind on the schedule." Redente directed Lambert to contact the Union representative and tell them that (he) was planning to bring in a packer.

11. That same day, Redente approached Anthony Criscio, the Union Vice President. Criscio responded that he would have to get a hold of the Union President who was on vacation and then sit down and talk about it.

12. Approximately three days later the Town hired Latella Carting Co. to assist in the Spring Clean-up.

13. On April 21, 1983, the Union staff representative wrote the Town protesting the action.

14. On May 18, 1983, the Union filed this complaint.

Conclusions of Law

1. The refusal to comply with a negotiated settlement of a prohibited practice case constitutes a violation of Section 7-470 (a) (4) of the Act and a prohibited practice.

2. The parties entered into a negotiated settlement agreement of Case No. MPP-7225.

3. The Town has failed to comply with that settlement agreement.
Discussion*

We have recently held that a refusal to comply with a negotiated settlement of a prohibited practice case constitutes a violation of Section 7-470(a)(4) of the Act and a prohibited practice. City of Bridgeport (Police), Decision No. 2075-A (1982); Town of East Haven, Decision No. 2142 (1982). In Bridgeport, we outlined our rationale in depth:

The intent of the Act and the longstanding policy of this agency has been to encourage actively the settlement of prohibited practice disputes without it being necessary for the parties to engage in litigation at a formal hearing before this Board. It has been with this intent and policy in mind that the Board and Assistant Agents strive to mediate settlements at the informal conference level of our proceedings. This approach is a direct analogy to the purposes and operation of a contractual grievance procedure in promoting the settlement of grievances in the preliminary steps of the grievance procedure (i.e., the steps preceding arbitration). The importance of expedition and sureness in the settlement of prohibited practice disputes is at least equal to that required for the effective operation of the grievance arbitration process. Given these similarities, it would be, to say the least, anomalous for us to hold that failure to comply with a grievance settlement constitutes a violation of the duty to bargain, while a failure to comply with a negotiated agreement settling a prohibited practice case presents no violation of the Act. This is in keeping with our general view that the Act should be interpreted, insofar as it is reasonable, to encourage and protect mutual resolution of all types of labor disputes. In this regard, our Connecticut Supreme Court has similarly expressed the view that "a purpose of our labor laws is to create a climate wherein the parties find it mutually advantageous to resolve problems through discussion and negotiation." City of Norwich v. Norwich Fire Fighters, et al., 173 Conn. 210, 219 (1977).

Surely if we were to permit either party to a prohibited practice settlement to ignore the terms of such a settlement and instead encouraging litigation or self help. This would hardly foster the climate contemplated by the Act or by the court in Norwich.

In the present case the settlement agreement of the prohibited practice complaint (MPP-7225) is clear. By that agreement, the Town agreed not to hire outside contractors to handle Spring Clean-up without first bargaining with the Union. Despite that agreement the Town, one year later, proceeded to do exactly what the agreement prohibited.

The Town's defense to its action culled from the testimony of Ralph Lambert, the Public Works foreman, is that the Union did not respond in a timely manner and that an emergency existed which necessitated prompt action. A review of the record does not support the Town's position.

The sequence of events is not in dispute. Lambert, the Public Works foreman, approached Tony Criscio, the Union Vice President, and told him that Redente, the Director of Public Works, was contemplating bringing in a packer, meaning that the Town wished to hire an outside contractor to assist in the Spring Clean-up.

At the hearing the Union amended its complaint alleging that the Town refused to comply with a settlement agreement arising out of a prohibited practice complaint. And in its Brief the Union failed to make an argument concerning its original complaint, i.e. subcontracting out, and therefore consider that as abandoned. Therefore, in our discussion we will treat only the refusal to comply with a settlement agreement, although based upon the record before us it appears that the Union could have made out a prima facie case on the original charge.
Criscio responded that the Union president was on vacation and that he would get back to Lambert. Two or three work days passed and during that time the Latella firm was hired to assist in the Spring Clean-up. The only issue in dispute is whether Lambert approached Criscio before the Clean-up began as Criscio testified to, or whether Lambert approached Criscio two days after the Clean-up began as Lambert testified to. Since we find Lambert's testimony to be more consistent as a whole, we credit his testimony on this issue.

Under the circumstances, the Union's failure to respond within two days after Lambert's notification to Criscio does not indicate to us an attitude of non-cooperation or recalcitrance. Furthermore, the Town made no attempt to follow up the original notification. It is also clear to us that an emergency situation did not exist, for if the Town was severely running behind schedule it could have authorized overtime for bargaining unit members. Certainly the Town was aware of its bargaining obligation under the previous year's settlement agreement because it informed the Union of its intended action. However, it blatantly chose to ignore this settlement agreement by hiring Latella when it could have taken a much less drastic alternative, i.e. hiring bargaining unit members on overtime to complete the task. It may be that the Town's scheduling of the Spring Clean-up was overly ambitious. However, it is more reasonable to infer that the Town originally planned its Spring Clean-up based upon Latella's availability and hoped that it could convince the Union of the reasonableness of its position. Whatever the Town's motives, it is clear that its action was clearly unreasonable, premature and a refusal to comply with a settlement agreement.

One final word. Counsel for the Town in his closing remarks argued that our decision in City of Torrington, Decision No. 2172 (1983) supports the Town's position. In Torrington, we found that the union had failed to show that the disputed work had been by practice performed exclusively by bargaining unit employees and therefore under the unilateral change theory the union had not sustained its burden of proof. As we stated earlier in this discussion, the Union abandoned its claim of subcontracting out relying solely on the refusal to comply with a settlement agreement theory. Therefore, the facts outlined in Torrington, supra, are not applicable to this case.

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

ORDERED, that the Town of East Haven shall

I. Cease and desist from failing and refusing to comply with the negotiated settlement in prohibited practice case no. MPP-7225.

II. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Maintain the existing practice of having bargaining unit members perform Spring Clean-up until agreement with the Union or impasse is reached;

(b) 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 customarily assemble, a copy of this Decision and Order in its entirety; and
(c) Notify the Connecticut State Board of Labor Relations at its'office in the Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut, within thirty (30) days of the receipt of this Decision and Order of the steps taken by the Town of East Haven to comply therewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

BY

s/ Patricia V. Low
Patricia V. Low

s/ Kenneth A. Stroble
Kenneth A. Stroble

TO:

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