

**STATE OF CONNECTICUT  
DEPARTMENT OF LABOR**

**BOARD OF MEDIATION AND ARBITRATION**

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**CITY OF ANSONIA** : **CASE NO.: 2023-A-0070**  
:  
**AND** : **Date of Award: November 22, 2023**  
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**FRATERNAL ORDER OF POLICE** : **Hearing Dates: August, 1 2023**  
**LOCAL 913** :  
**Location of Hearing: SBMA 38 Wolcott Hill Rd**  
**Wethersfield, CT 06109**

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Panel: M. Jackson Webber- Chairman  
Richard A. Podurgiel Management Arbitrator  
Kevin M. Murphy Union Arbitrator

Representing Fraternal Order  
of Police Local 913

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## **NOTE WELL:**

Neither the Union nor the City numbered the pages of their briefs. In order to cite the proper page of either brief in this Award, page numbers have been assigned to each brief beginning with the face page of each brief being designated as "Page 1."

## **FACTS:**

The Grievant in this matter, Sergeant Ed Magera, is an eighteen (18) year veteran of the Ansonia Police Department (See Union's Post Hearing Brief Page 1). While attempting to restrain and handcuff a person resisting arrest, Sergeant Magera tore a tendon in his ring finger that ultimately required surgery (See Union's Post Hearing Brief Page 1). Because of the injury and the surgery, the sergeant was unable to return to full duty at the department from the date of the injury, September 9, 2021, until February 9, 2022. (See Union's Post Hearing Brief Pages 1 and 2). The Grievant filed for and received worker's compensation benefits (See Union's Post Hearing Brief Page 1). Sergeant Magera received weekly Workers' comp benefits of \$1,328.42, being his base weekly salary (See Union's Post Hearing Brief Page 2).

Article 16 Section F. of the Collective Bargaining Agreement (hereinafter the CBA) by and between the parties states in part:

Any employee disabled in the line of duty to the extent that a doctor, selected by the City, certifies that he/she is totally disabled shall receive full pay up to one (1) year from date of disability or until he/she is determined to be totally disabled, whichever comes first (See Union Exhibit 4, Article 16 Section F).

## **UNION ARGUMENT:**

The Union stressed that the Grievant only received his "base pay" and not his "full pay" as required by Article 16, Section F. of the CBA (See Union's Post Hearing Brief Page 2). It emphasized the meaning of the word "full" as "not lacking or omitting anything; complete" (See Union's Post Hearing Brief Page 2). It offered that the words of the CBA "must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract" (See Union's Post Hearing Brief Page 3). In the instant case, the Union argued that the language of the

CBA is "clear and unambiguous" regarding what a member-employee is "...to be paid in the event of a work-related injury," that is: "Full Pay" (See Union Post Hearing Brief Page 3). It insisted that the CBA does not mention "base pay" nor does it state that such a member is to receive annual pay "...less overtime." Therefore, it claimed that such a member is "...entitled to receive an average of their previous year's earnings" (See Union's Post Hearing Brief Page 3). Since the Grievant's 52-week average annual earnings was \$3,530.30 but was only paid the base pay of \$1,328.42 per week, the City was inflicting economic harm on him (See Union's Post Hearing Brief Page 4). In effect, the Union contended that the City was "constructing its own definition of full pay suited to its own terms for the purpose of calculating weekly wages" (See Union's Post hearing Brief Page 4)

The Union further claimed that the City's argument that past practice showed that it had never included "overtime pay" as part of "full pay" under the statute, is "inapplicable" because there has never been "...a wage earner employed by the police department whose average annual earnings exceed that which was paid by workers' compensation" (See Union's Post Hearing Brief Page 4)

Basically, in conclusion the Union asked that this arbitral panel "...apply the plain meaning of the phrase 'Full Pay' to include overtime. It requests back wages in the amount of \$36,705.86 be paid to the Grievant (See Union's Post Hearing Brief Pages 4-5).

#### **CITY ARGUMENT:**

The City contended that the claim of the Union is without merit (See City Brief Page 1). It stressed that Article 16, Section F of the CBA does not state that the City must pay to the Grievant a weekly compensation "...inclusive of **potential** overtime earnings during his service-related disability absence from work" (See City Brief Page 1). It argued that Article 16 Section F does not indicate that "potential overtime pay" should be considered part of "Full Pay" (See City Brief Page 1)

In addition, the City pointed out that Article 16, Section F has never been read to "...allow anything other than a recovery of base pay" (See City Brief Pages 1-2). It stressed that the arbitral testimony of both Lieutenant Patrick Lynch and Finance Official Maryanne Capone unambiguously underlined the fact that Article 16, Section F. "...has never been interpreted to include pay for potential overtime," and in fact, no City employee has ever been paid "potential overtime" pursuant to said

Article 16, Section F. (See City Brief Page 2). The City offered that testimony was "...not contradicted or discredited by the Union" (See City Brief Page 2).

The City pointed out that interpreting the words "Full Pay" in the statute to include potential overtime is an attempt at redefinition of those words. "...more appropriately addressed during a future collective bargaining of the CBA and should not be part of an arbitral "grievance process" at this time (See City Brief Page 2).

#### **AWARD:**

The Union's argument that *since* "Full Pay" as written in Article 16 Section F "...does not provide" for just the payment of "base pay," or state that "...members are to receive annual pay, less overtime," that therefore "...members are entitled to receive an average of their previous year's earnings..." is not credible or logical (See Union's Post Hearing Brief Page 3). The said Union's argument requires a leap of faith, an interpretation that the definition of "Full Pay" includes "potential overtime." The Union, itself, argued that "fair and reasonable construction of the written words...must be accorded its common, natural and ordinary meaning..." (See Union's Post Hearing Brief Page 3). To then go on to claim that "potential overtime" is to be included as part of "Full Pay" is a subversion of the "fair and reasonable" principal of contract law. Such an interpretation would be an expansion of the term "Full Pay" which would not be a clarification of those two words but rather the Union's "...subjective perception of the terms." Such an additional expanded interpretation of those words is more appropriate to an agreement between the Union and the City as a result of future collective bargaining (See City Brief Page 2)

Additionally, the un-controverted testimony of the witnesses, Lieutenant Patrick Lynch and Finance Official Maryanne Capone that the words "Full Pay" in Article 16 Section F. has never been interpreted to include "Potential Overtime" (See City Brief Page 2) shows clearly that past practice undermines the Union position.

Lastly, since it is impossible to know what overtime the Grievant might have earned during the period from the date of the incident, September 9, 2021, through and including the date of his return to duty, February 9, 2022, *if any*, had he not been injured, an award of overtime based on what he had

earned in the past, would subject the City to unreasonable and subjective responsibility and obligation that it never bargained for.

It is the decision of a majority of the Panel that Potential Overtime is not included in the words "Full Pay" found in Article 16, Section F. of the CBA. Therefore, the Union's grievance is denied.

Respectfully presented this 4<sup>th</sup>.day of November 2023

*/S/ M. Jackson Webber*

M. Jackson Webber  
Chairman

*/S/ Richard A. Podurgiel*

Richard A. Podurgiel  
Management Arbitrator

*/S/ Kevin M. Murphy*

Kevin M. Murphy (Dissenting)  
Union Arbitrator