

CONNECTICUT LABOR DEPARTMENT
BOARD OF MEDIATION AND ARBITRATION

CITY OF DANBURY

and

DANBURY POLICE UNION
Local 028

Case No. 2023-A-0026

Date of Award: October 2, 2023

Hearing Dates: July 19, 2023

Location of Hearing: Virtual

AWARD

Advocates

Michael C. Harrington, Esq., for the City

Eugen J. Zingaro, Esq., for the Union

ISSUE

Whether the City violated the Collective Bargaining Agreement (CBA) when it placed Sergeant Krupinsky on administrative leave for June 3-6, 2022? If so, what shall the remedy be?

STATEMENT OF FACTS

Detective Sergeant Krupinsky (Grievant), a member of the Special Investigations Unit, was on a special field operation May 24, 2022, to arrest a drug trafficking suspect. Multiple officers were part of the operation and prearranged to maintain contact via radio devices provided by the police department. As the operation progressed, the officers, except for the Grievant, successfully maintained radio contact and successfully arrested the suspect without the Grievant.

When asked why he had not participated in the arrest the Grievant told his supervisor that the radio must have malfunctioned but also acknowledged that he had a hearing issue. At the same time, he also conceded he was reluctant to get evaluated as he felt it might jeopardize his ability to secure a disability related pension.

The supervisor wrote to the Chief sharing what he identified as a "safety concern" who then immediately put the Grievant on administrative duty awaiting the results of a hearing analysis. The City's Human Resource Director scheduled an appointment for June 6 after which the Grievant was immediately cleared for full duty based on the medical evaluation of his hearing.

THE CITY'S POSITION

The Grievant was not disciplined when placed on administrative duty over a serious concern for his hearing and how that could negatively impact the safety of police operations. Once a physician examined the Grievant and found his hearing "was acceptable for his job duties" he was immediately reinstated to regular duty. As there was no discipline, the just cause standard does not apply.

THE UNION'S POSITION

The Grievant was placed on administrative leave without a medical diagnosis depriving him of four overtime shifts, in effect, disciplining him without just cause. He requests to be made whole.

DISCUSSION

The Grievant, an officer who has served with distinction, approaching the close of a distinguished career, agrees that his hearing has diminished over time. When that became an issue he was reassigned to administrative duties which made him ineligible for overtime until a physician determined that he was fit for duty. In the interim, the Grievant lost four overtime opportunities and is grieving to be made whole.

Despite being short staffed the Chief decided to move the Grievant to an administrative role while his hearing was evaluated by a physician. This is not discipline, but an administrative responsibility exercised by the Chief to assure the safety of all, including the Grievant. The Grievant contends that this reassignment violated just cause with the lost overtime in effect a form of discipline. Just cause has seven distinct requirements outlining how investigations must be fairly conducted, and discipline administered in a consistent, reasonable manner. The loss of overtime brought about by the reassignment of the Grievant for a medical evaluation does not fall under the domain of just cause.

Regular overtime, especially in the uniformed services, has become normalized often because of severe staffing shortfalls, with some employees possibly assuming they have a guaranteed right to the additional hours. Article 12 of the CBA has twelve separate sub sections on overtime including, but not limited to, the assignment of overtime, the rate of pay and how employees can opt out of being offered overtime assignments, but none speak to the guarantee of overtime hours for members of the bargaining unit. The CBA is silent on this topic.

The Panel is unanimous that the Grievant was not disciplined when he was unable to work overtime because of a change in assignment. The grievance is denied.

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/s/ Mark E. Sullivan 9/25/23
Mark E. Sullivan, (Public Member and Chairperson) Date

/s/ Michael C Culhane 9/25/23
Michael C. Culhane, (Management Arbitrator)

/s/ Betty Kuehnel 9/25/23
Betty M. Kuehnel, (Labor Arbitrator)