

STATE OF CONNECTICUT
DEPARTMENT OF LABOR
STATE BOARD OF MEDIATION AND ARBITRATION

IN THE MATTER OF	:	
CITY OF HARTFORD	:	
and	:	Case 2023-A-0085
HARTFORD POLICE UNION	:	

Hearing Date(s): June 28, 2023, August 25, 2023, November 2, 2023, December 20, 2023, and February 26, 2024

Hearing Location: Zoom and State Board of Mediation and Arbitration

Date of Award: June 18, 2024

APPEARANCES:

Attorney Kenneth S. Weinstock
Kainen Escalera & McHale PC
21 Oak Street, Suite 601
Hartford, CT 06106
For Management

Attorney Patrick Tomasiewicz
Fazzano & Tomasiewicz LLC
96 Oak Street
Hartford, CT 06106
For Union

ARBITRATION AWARD

This arbitration arises from a dispute between the City of Hartford (Employer or City) and Hartford Police Union (Union) regarding the Four Ten-Hour Day work assignment. Hearings were held on June 28, 2023 at the Connecticut State Board of Mediation and Arbitration, on August 25, 2023, and November 2, 2023 via Zoom videoconference and on December 20, 2023, and February 26, 2024 at the Connecticut State Board of Mediation and Arbitration.¹

On behalf of the Union, Attorney Tomasiewicz made an opening statement, offered three Union exhibits, and presented three witnesses who were questioned and cross-examined under oath: Gary Dumas (Union Consultant), Jason Thody (Chief), and Josh Walsh (Union Secretary).

On behalf of the Employer, Attorney Weinstock made an opening statement, offered twelve Employer exhibits, and presented one witness who was questioned and cross-examined under oath: Dustin Rendock (Deputy Chief).

The parties jointly offered fifteen exhibits.²

The parties waived oral closing arguments in favor of written briefs which were submitted simultaneously on April 16, 2024. Reply briefs were submitted simultaneously on April 30, 2024. The arbitration panel held an executive session on June 3, 2024.

ISSUES

The parties stipulate the following issues shall be decided: (Exh. J-15):

1. Did the City of Hartford violate the Collective Bargaining Agreement when it discontinued the Four Ten-Hour Day Work assignment?
2. If so, what shall be the remedy?

¹ The first three hearings were limited to requests to postpone.

² Joint exhibits are identified as “J-#;” Union exhibits as “U-#; and Employer exhibits as “E-#.”

RELEVANT FACTS

1. The Employer and Union entered into successive Collective Bargaining Agreements (CBA) for the periods July 1, 1987 through June 30, 1990; July 1, 1990 through June 30, 1994; July 1, 1994 through June 30, 1996; July 1, 1996 through June 30, 1999; July 1, 1999 through June 30, 2004; July 1, 2004 through June 30, 2010; and July 1, 2016 to June 30, 2022. (Exh. J-5, J-9, J-10, J-11, J-12, J-13, J-14, U-3)³
2. A Four Ten-Hour work schedule (4/10 schedule) first appears in the July 1, 1990 through June 30, 1994 CBA. Section 4.1(E) of that CBA states that the chief and Union will jointly study the possibility of alternate work schedules and that on or before January 1, 1991, the City will implement a 4-3 ten-hour work schedule for between 20-30 positions to be filled by volunteers based on seniority and that the work hours and conditions of employment shall be negotiated with the Union. (Exh. J-10, U-3)
3. The parties negotiated a Memorandum of Understanding to outline the conditions of a voluntary 4/10 schedule that could not be mandated by Employer. (Testimony of Union Consultant)⁴
4. In July 1991, Employer and Union entered into an MOU to outline the terms and conditions of the 4/10 schedule which consists of four consecutive ten-hour days followed by three consecutive days off. The MOU states that the minimum bid shift length will be 168 days and that the bid shall be on a voluntary seniority bid basis. “This work schedule will be filled entirely by volunteers.” The MOU states that ten officers will be assigned to each the day and evening shifts of the 4/10 schedule and two sergeants will be assigned to the 4/10 schedule. The MOU also states that given that Section 4.1(E) of the then-current CBA indicates that 20-30 positions will be filled for this work schedule and the MOU calls for 22 employees to be assigned to this work schedule, the parties agree that the number of positions may be renegotiated. (Exh. J-7; Testimony of Union Consultant)
5. The 4/10 schedule language in Section 4.1 remained the same in the 1994-96, 1996-99, and 1999-2004 CBAs. (J-11, J-12, J-13, U-3; Testimony of Union Consultant)
6. Some 4/10 schedule terms and conditions as outlined in the MOU were modified in later CBAs. (Testimony of Union Consultant)
7. Article 4.1 changed in the 2004-10 CBA to state that as many as ten 4/10 schedule police officer and one police sergeant may be mandated per shift; shifts will be filled first by bid and then reverse seniority; identifies the work hours; and grants a 2.5% pay increase for first shift and 5% pay increase for second shift assignments on the 4/10 schedule. (Exh. J-14, U-3)
8. The 2004 changes were made because the then-chief was having difficulty filling the assignment. Language was negotiated between Employer and Union that the chief could mandate the assignment and that officers assigned to the shift receive a pay increase while assigned to that schedule. Prior to the 2004 changes, the 4/10 schedule was exclusively voluntary on the part of the officers. (Testimony of Union Consultant)
9. Appendix K was added to the 2004-10 CBA. It states that the 4/10 schedule “shall be made available as provided for” in this CBA and identifies the specifics of the work schedule, including shift start times, days off, time-off accruals, and how time is converted when an

³ The CBAs for the period between July 1, 2010 and June 30, 2016 were not entered into evidence.

⁴ Union Consultant was a 24-year employee of Employer. The MOU was prepared and executed during his tenure as Union vice -president. He retired as a sergeant and commander of operations and planning. He has served as a paid union consultant since 2002.

- employee moves from the 4/10 schedule to a regular eight-hour day schedule. (Exh. J-6, J-14)
10. The 4/10 schedule language in Section 4.1 did not change from the 2004-10 CBA to the 2016-2022 CBA. (J-5, J-14)
 11. Officers bid on work shifts in 84-day cycles by indicating their shift preference on a bid shift form. Bid shifts are granted based on seniority. The bid shift form lists eight shifts, including “Squad A 4/10 Assignment” and “Squad B 4/10 Assignment.” (Exh. J-2; Testimony of Chief, Deputy Chief)
 12. Not every officer that bids for the 4/10 schedule gets assigned to it, even if not all ten positions are filled. (Exh. E-5, E-6, E-7, E-8, E-9, E-10; Testimony of Chief, Deputy Chief)
 13. The City budgeted for 475 police officers and staffing was as low as 373 officers after the COVID-19 pandemic and the George Floyd incident in 2020. The relief list for staff available to fill in was reduced to near zero. The Chief is unable to manage the department the same way with short staffing. (Testimony of Chief)
 14. Chief decided to suspend the 4/10 schedule in August 2022 due to staffing issues. Chief met with Union leadership prior to suspending the 4/10 schedule. Union leadership did not specifically agree with the decision but understood it based on staffing. (Testimony of Chief)
 15. The 4/10 schedule remains listed on the bid form. (Exh. J-2; Testimony of Deputy Chief)
 16. On August 22, 2022, the Union filed a Second Step grievance alleging that discontinuance of the 4/10 schedule violates CBA Sections 3.4 and 4.1 and Appendix K and that the change causes employees to lose salary increases and cause fewer officers to be available for service calls and to backup fellow officers. Chief denied the grievance on September 15, 2022. On September 22, 2022, the Union filed the grievance at the Third Step. (Exh. J-1)
 17. Prior to August 2022, the Union did not file a grievance against Employer for not filling all ten slots in the 4/10 schedule or for not assigning to it all officers who bid for it in that cycle. (Testimony of Chief, Deputy Chief)

RELEVANT CONTRACT LANGUAGE

Section 3.4 Prior Benefits and Practices

Any job benefits or work practices existing prior to the date of this Agreement, which were the subject of any written memoranda or directives issued by the Chief or his or her Superiors and which are not specifically provided for or abridged in this Agreement, are hereby protected by this contract. This provision shall not preclude the right of the Mayor to make reasonable changes in such work practices and job benefits, provided that no such change shall be made for the purpose of undermining the Union.
(Exh. J-3)

Section 4.1(B) Hours of Work

...

As many as ten (10) 4/10-hour day police officer assignments, and one (1) police sergeant may be mandated per shift with define starting times of 07:00 hours and 17:00 hours as a component of the basic car plan. These assignments as part of the Bid Shift process would first be filled as a selected bid and then by reverse seniority in accordance with the normal bid shift process and Article III, Section 3.8. Officers assigned to this mandatory work schedule who report to work at 07:00 hours will receive a two and one-half percent (2.5%) weekly increase of their pay rate. Employees assigned to this

mandatory work schedule who report to work at 17:00 hours will receive a five percent (5%) increase in their pay rate. This pay rate increase will be in effect only for the time officers / sergeants are assigned to the 4/10 schedule.

Officers assigned to the relief list may be scheduled in a ten (10) hour day assignment and will receive time and a half compensation for any hours worked beyond eight (8) hours in a day. The conditions and terms of this work schedule shall be as outlined in Appendix K.

The Chief of Police may implement a mandatory 4/10-hour day work schedule for investigative personnel. Consideration shall first be given to volunteers by seniority for this work schedule. No more than twenty-five percent (25%) of investigative personnel will be assigned to this work schedule and they shall receive no additional compensation for working this schedule. The conditions and terms of this work schedule shall be as outlined in Appendix K and employees so assigned shall not be subject to altering of their normal starting times.

(Exh. J-5)

Appendix K Four Ten-Hour Day Work Schedule

The four ten-hour day work schedule shall be made available as provided for in this Agreement. The specifics of the work schedule are as follows:

The workweek shall consist of four consecutive ten-hour days followed by three consecutive days off, except for normal scheduled day off rotations.

The day off schedule for Officers shall be three sets of days off. They shall be Sunday/Monday/Tuesday; Tuesday/Wednesday/Thursday and Sunday/Friday/Saturday. These sets of days off shall rotate in reverse order every twenty-eight (28) days.

The workday for those employees assigned to this work schedule shall commence at 07:00 hours the day shift or 17:00 hours the night shift.

Employees assigned to this work schedule will have all accrued days converted to hours based on eight hours for each accrued day or prorated portion thereof.

The accrual of holiday and leave time shall be based on an eight (8) hour day as it is provided for in Article V, Sections 5.1, 5.2, 5.3 and 5.4 of this Agreement.

All accrued time will be taken as a half-day or a full day in accordance with the accepted practice for holiday, vacation, and personal leave usage. A half-day being five (5) hours a full day being ten (10) hours. Compensatory time may be used on an hourly basis. All accrued time usage will be deducted on an hour for hour basis.

Employees working a holiday in accordance with Article V, Section 5.1 of this Agreement will at their option receive either ten (10) hours additional pay or ten holiday compensatory hours.

Should an employee return to an eight-hour day assignment, all accrued time will be reconverted to days, other than compensatory hours. Any hours that will result in not being evenly divisible by four will be added to the employee's compensatory hours.

No employee assigned to a ten (10) hour day assignment, unless with the direct approval of the Chief of Police or his designee, shall work more than eighteen hours in a day or eighteen consecutive hours.

Employees assigned to this work schedule may have their schedule altered for training purposes. Employees who attend training that is less than ten (10) hours in a day may at

their option elect to use two (2) hours compensatory time or report to their Commander to meet the ten-hour day requirement. Employees may also have their schedule altered for weeklong training sessions.

(Exh. J-6)

UNION POSITION

The Union argues that the Employer made a unilateral change in existing conditions of employment that are mandatory subjects of bargaining; that Employer refused to bargain in good faith; that an MOU has been in place since July 1991 to implement the 4/10 schedule; that the MOU specifically states that the 4/10 schedule shall not be altered, amended or modified without the agreement of the parties; that the MOU was signed by the parties and is a binding agreement; that the word “shall” used throughout the MOU leaves no room for the Chief’s discretion; that Chief revoked the 4/10 schedule without notice to the Union and without effort to negotiate in good faith; and that failure to fill the 4/10 schedule has affected wages and pension benefits for affected employees. The Union asks for the grievance to be sustained and for the Employer to restore units 22, 24, 27, 29, and 30 to the 4/10 schedule and grant backpay for all hours, including overtime and private duty, for each day that the 4/10 schedule was denied in the schedule.

EMPLOYER POSITION

The Employer argues that this is a contract interpretation case, not a violation of labor law issue; that the CBA is the pivotal document to look at; that the CBA language is different than the MOU and the terms have changed over time; that the CBA says that the 4/10 schedule may be mandated; that the word “may” is permissive and implies discretion; that the term “shall” that appeared in the MOU does not appear in the CBA; that no sergeant has been assigned to the 4/10 schedule for at least 19 years and if it was mandatory, the Union should have filed a grievance and/or prohibited practice charge, which they did not; that the Union cannot have it both ways to say that the language requires it and then overlook it when sergeants are not assigned in accordance with the language; that the MOU was supplanted by subsequent CBA language; that the CBA doesn’t require a certain number of officers to be assigned to the 4/10 schedule; that the number of assignments has fluctuated over the years with no challenge from the Union; that the grievance is looking for the immediate return of five units to the 4/10 schedule and if Chief has discretion to assign as few as two, then there is no contractual basis for a remedy for five units; that the Union’s position does not comport with the CBA language; and that the CBA allows the Chief discretion to decide whether to fill the 4/10 schedule and, if he does, Appendix K outlines the terms and conditions of the work schedule. The Employer asks that the grievance be denied.

DISCUSSION

The Union has the burden of proving, by a preponderance of evidence, that the Employer violated the CBA.

We do not find persuasive the Union’s argument that the language of the 1991 MOU is currently applicable. In 2004, the CBA was modified to change the 4/10 schedule from a voluntary schedule for up to 22 officers to a schedule where the Chief could mandate as many as ten officers. Appendix K, which outlines the terms of the 4/10 schedule to be followed if officers are mandated to it, was added to the CBA in 2004.

Union Consultant credibly testified that the MOU was modified by the terms of subsequent CBAs; that the CBA changes in 2004 were negotiated between the parties; that prior to 2004, the 4/10 schedule was exclusively the employee's choice; that the Chief was having difficulty filling the assignment; and that the 2004 language was negotiated so that the Chief could mandate someone to work the shift. The credible evidence supports a finding that the terms of the 1991 MOU were provided for, with some bargained-for amendments, in the 2004 CBA and that the MOU is not protected by Article 3.4 after 2004.

Article 4.1 gives the Chief discretion to mandate "as many as ten" 4/10 schedule police officer assignments and one police sergeant per shift. If the Chief does mandate officers to the schedule, it must be done in accordance with the terms stated in Appendix K.

The Union's argument is basically that the Chief has discretion to mandate as many as ten officers but must mandate at least one officer. The plain language of the CBA does not require the Chief to assign any specific number or assign all those who bid for it. We do not find the Article 4.1 language "as many as ten" to mean at least one and no more than ten.

The Union's argument that if someone bids for it, they should get it is not supported by the CBA language or past practice. The credible evidence shows that on multiple occasions, officers bid for the 4/10 schedule and were not assigned to it even though fewer than ten officers bid for it, and that the Union did not file a grievance claiming that the officers who bid the shift and were not awarded the bid had to be assigned to it.

The Union has not met its burden of proving, by a preponderance of evidence, that the Employer violated the CBA when it suspended assignments to the 4/10 schedule due to staffing issues.

AWARD

The City of Hartford did not violate the Collective Bargaining Agreement when it discontinued the Four Ten-Hour Day Work assignment. The grievance is dismissed.

/s/ Janis C Jerman

Janis C. Jerman, Chair/Neutral Member

/s/ Peter Carozza DISSENT

Peter Carozza, Labor Member

/s/ Robert Massa

Robert Massa, Management Member