

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

DECISION

In the Matter of : APRIL 18, 2024
: :
GUILFORD BOARD OF EDUCATION : CASE NO. 2023-A-0114
:
AND : DATE OF AWARD: April 23, 2024
: :
: HEARING DATE: OCTOBER 18, 2023
:
: LOCATION OF HEARING: State Board
LOCAL 1303, COUNCIL4, : of Mediation and Arbitration
AFSCME, AFL-CIO : 38 Wolcott Hill Road
: Wethersfield, CT 06109

: (by Zoom)

APPEARANCES:

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For the Guilford Board of Education

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For the Union

PANEL MEMBERS:

Gerald T. Weiner
Neutral Panel Member

Kenneth Baldyga
Management Panel Member

Peter Carozza
Labor Panel Member

ISSUE

Did the Guilford Board of Education violate the Collective Bargaining Agreement by not counting a personal day as hours worked for the purpose of calculating overtime?

If so, what shall the remedy be?

FACTS

This grievance proceeding is the result of a grievance (Jt. Ex. 2) submitted by Local 1303, Council 4, AFSCME, AFL-CIO (“Union”) alleging the Guilford Board of Education (“BOE”) violated the Collective Bargaining Agreement (“CBA”), specifically, Section 6.1 and the past practice concerning its interpretation in the application of “hours worked” for the calculation of overtime.

Both the BOE and Union remotely via zoom appeared before the Panel on October 18, 2023 for a hearing. The parties did not present any witnesses for testimony. Each party presented arguments to the Panel in support of their respective positions. The parties stipulated to joint Exhibits 1 through 12 and no other exhibits were introduced. The parties also agreed to a Joint Stipulation of Facts (Jt. Ex. 12) which is set forth below. Each party filed post-hearing briefs.

On August 30, 2022, Custodian Robert Joyce (“Grievant”) was informed that four (4) of the hours that he worked on Saturday, August 20, 2022, would not be paid at the time and one-half overtime rate because on August 25, 2022, during the same week, he took a half day (4 hours) of paid personal leave. The BOE and Union agree that there is substantial agreement as to the facts and circumstances underlying this grievance.

The Joint Stipulation of Facts (Jt. Ex. 12) presented by the parties comprehensively sets forth the facts in this grievance and is herein set forth:

JOINT STIPULATION OF FACTS

1. The Guilford Board of Education (“BOE”) and Local 1303 (“Union”) are parties to a Collective Bargaining Agreement (“CBA”).
2. In July 2022, the parties were in negotiations for a successor agreement, as the term of the CBA had ended on June 30, 2022.

3. At the initial negotiation session for a successor agreement, on July 1, 2022, the BOE presented to the Union a “Notification Based on Existing Contract Language Effective August 15, 2022 (“Notification”).” The Notification cited the language of Section 6.1 of the CBA and stated “[t]he School District has been including erroneously other paid leave as hours worked, contrary to the clear language in Section 6.1”.
4. The BOE informed the Union, via the Notification that “the Union is on notice that effective July 1, 2022, Section 6.1 shall be enforced as written and only paid holidays and paid sick days shall be counted as hours worked for purposes of computing overtime.” At the time that the Union received the Notification the Union objected to the BOE’s interpretation of the CBA regarding the calculation of hours worked for overtime.
5. Section 6.1 of the CBA reads, “Time and one-half (1-1/2) shall be paid for all hours worked over eight (8) hours in one day and forty hours in one week. For purposes of computing overtime, hours of paid holidays and hours of paid sick days shall be counted as hours worked.”
6. The language of Section 6.1 of the CBA is unchanged since, at least, the 1974-1976 CBA.
7. The BOE’s consistent and longstanding practice has been to count vacation time and personal time as hours worked when calculating hours worked for the purpose of determining overtime.
8. On August 30, 2022, custodian Robert Joyce was informed that four (4) of the hours that he worked on Saturday, August 20, 2022, would not be paid at the time and one half (1-1/2) overtime rate because on August 25, 2022, during the same work week he took a half-day (4 hours) of paid personal leave.
9. In a grievance dated September 2, 2022, custodian Robert Joyce filed a grievance based on the BOE not including personal time as hours worked when calculating overtime. This grievance was denied at the Step 1 level by the Director of Operations, Clifford Gurnham.
10. Since the change in the calculation of overtime, and the Union’s objection to the change, is an issue subject to repetition, the parties agreed subsequent grievances regarding this issue would be stayed pending the outcome of the grievance filed on behalf of Mr. Joyce.
11. In correspondence dated September 20, 2022, Superintendent of Schools, Paul Freeman, denied the grievance at the Step 2 level.

12. The BOE conducted a Step 3 hearing of the grievance on December 5, 2022. In correspondence dated December 8, 2022, the BOE informed Mr. Joyce and the Union that the grievance was denied.
13. The Union filed for arbitration of the grievance with the Connecticut State Board of Mediation and Arbitration.
14. At the initial negotiation session for a successor agreement, on July 1, 2022, the Union presented the following proposal concerning Section 6.1:

Time and one-half (1-1/2) shall be paid for all hours worked over eight (8) hours in one day and forty (40) hours in one week. For purposes of computing overtime, hours of paid holidays and hours of paid sick days and bereavement days shall be counted as hours worked.
15. At the initial negotiation session for a successor agreement, on July 1, 2022, the BOE presented the following proposal concerning Section 6.1:

Time and one-half (1-1/2) shall be paid for all hours worked over eight (8) hours in one day and forty (40) hours in one week. For purposes of computing overtime, hours of paid holidays and ~~hours of paid sick days~~ shall be counted as hours worked.
16. The parties negotiated a successor CBA for the term July 1, 2022 – June 30, 2025, which was signed and executed on June 9, 2023. The current CBA does not contain any changes to the language of Section 6.1.

BOE POSITION

The BOE does not dispute the decades long past practice where paid personal and vacation time were counted as hours worked for calculating overtime. The BOE concedes this practice was in place in spite of clear and unambiguous limitation in the CBA that only paid holidays and hours of paid sick leave shall be counted as hours worked for calculating overtime.

The BOE essentially argues two points in support of its position: (1) a longstanding past practice cannot modify clear contract language; and (2) the employer has the right to enforce a policy or contract provision by overlooking a past practice that contradicts the CBA provision.

The BOE argues that arbitrators may not consider past practice when the terms of the contract are clear.

The BOE further points to the clear and unambiguous contract language, which it argues needs to be followed notwithstanding the longstanding past practice to the contrary. The BOE urges the Panel to follow the accepted rule of contract interpretation and construction that “the expression of one thing is the exclusion of another.”

The BOE argues the CBA clearly states that paid holidays and paid sick days count as hours worked when determining overtime in a particular week and no other types of paid days are mentioned. Accordingly, the BOE urges no other paid days count as hours worked when calculating overtime and it was not in violation of the CBA when it excluded Grievant’s four (4) hours of personal leave from his overtime calculations.

The BOE concludes its argument by arguing that a finding in favor of the Union in this proceeding would be adding to or subtracting from the terms of the CBA.

UNION POSITION

The Union argues that the relevant CBA provision in this grievance is Section 6.1 which is silent as to whether vacation and personal time is included when computing overtime (Jt. Ex. 10). The Union asserts that although vacation and personal time inclusions for computing overtime are not expressly referenced in Section 6.1 the factual record is clear that prior to July 2022 there was a consistent and longstanding practice to include vacation and personal time as hours worked when calculation overtime (jt. Ex. 12). This longstanding practice, the Union argues, becomes part of the CBA, even when the practice is unwritten.

The Union asserts that the BOE unilaterally changed its past practice of including paid personal leave and vacation in overtime calculations forty-eight (48) years after the current Section 6.1 language was in the CBA (Union Brief, pg. 4). Moreover, the Union argues the Section 6.1 language has endured for over a dozen contractual agreements without change.

The Union contends that the mere omission in Section 6.1 of any reference to the vacation and personal time does not result in the language being clear and unambiguous since there is no restriction on the BOE to include those days for overtime calculations and this is exactly what the BOE has done for some forty-eight (48) years. The Union concludes its argument by stating Section 6.1 is not ambiguous but only silent as to whether this time (vacation and personal days) should be included in the calculations.

RELEVANT CONTRACT LANGUAGE

ARTICLE VI – HOURS OF WORK

6.1 Time and one-half (1-1/2) shall be paid for all hours worked over eight (8) hours in one day and forty (40) hours in one week. For purposes of computing overtime, hours of paid holidays and hours of paid sick days shall be counted as hours worked.

ARTICLE VIII – HOLIDAYS

8.0 Each of the following designated days shall be considered a paid holiday for full-time employees under this Agreement and any eligible employee entitled thereto shall receive said holiday off with pay:

ARTICLE IX – VACATIONS

9.0 Full-time employees shall be entitled to paid vacations on the basis of length of service as of July 15, as follows:

ARTICLE XII – FUNERAL LEAVE

- 12/0 In the event of death in an employee's immediate family, the Board agrees to grant time off with pay at the employee's hourly rate for not more than four (4) scheduled working days up to and including the day of the funeral. It is the intent of this Article and it shall be so administered to provide within the stated limit pay for time actually lost during the normal work week, as defined in Article VI, in making arrangements for and attending the funeral or a memorial service. "Immediate family" is defined as the father, mother, sister, brother, spouse, child, step-parent, step-child, brother-in-law, sister-in-law, mother-in-law, father-in-law, grandparent and grandchild of an employee.

ARTICLE XIII – LEAVE PROVISIONS

- 13.0 Full-time employees shall be entitled to paid sick leave to the extent of fifteen (15) days per year, cumulative up to two hundred twenty-five (225) days. Full-time employees who have completed fifteen (15) years of service with the Board shall be entitled to paid sick leave of eighteen (18) days per year cumulative to 225 days. Full-time employees hired on or after July 1, 2019, shall be entitled to paid sick leave as described above, cumulative to 200 days. Part-time employees shall be entitled to paid sick leave of ten (10) days per year, cumulative to up to fifty (50) days. When a part-time employee transfers to a full-time position, the employee may carry over unused and accumulated sick days on a prorated basis.
- 13.3 Full-time and part-time employees shall be entitled to paid personal leave of two (2) days per year for the discharge of legal responsibilities which cannot be discharged except during the regular work hours and for other unavoidable conflicts of a personal nature involving the individual employee.
- 13.5 One Union officer will be allowed to attend one (1) day of Union Conferences per year without loss of pay.

ARTICLE XIV – GRIEVANCE PROCEDURE

- 14.1 Any grievance not settled under the above grievance procedure may be taken to arbitration by either the Union or the Board. The grievance must be submitted to arbitration within ten (10) working days of the date of the decision in Step 3 and notice by certified mail must be given to the opposite party. The matter shall be submitted for arbitration by the State Board of Mediation and Arbitration and the arbitrator shall not have the power to add or subtract from or modify any of the terms of this Agreement. The decision of the arbitrator shall be final and binding and shall conclusively determine the subject of the arbitration for the duration of this Agreement provided such decision is in accordance with law. Any cost of arbitration shall be shared equally by the Board and the Union.

ARTICLE XV – COLLECTIVE BARGAINING

- 15.0 This Agreement represents the full and complete agreement of the parties with respect to all matters relative to rates of pay, wages, hours of employment and other conditions of employment. The Union agrees that there has been full opportunity to bring up for negotiation any matter pertaining to rates of pay, wages, hours of employment, and other conditions of employment, and that no such matters will be brought up for negotiation during the term of this Agreement.

Working Agreement Between the Guilford Board of Education and Local 1303
September 1, 1974 through August 31, 1976

ARTICLE VI – HOURS OF WORK

- 6.1 Time and one-half (1-1/2) shall be paid for all hours worked over eight (8) hours in one day and forty (40) hours in one week. For purposes of computing overtime, hours of paid holidays and hours of paid sick days shall be counted as hours worked.

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DISCUSSION

The Panel is called upon to address the question of whether the BOE's consistent and longstanding interpretation and past practice of including vacation and personal time as hours worked when computing overtime can be unilaterally changed by the BOE.

The Panel finds that the unilateral change of the longstanding practice adhered to by the BOE of including personal days as hours worked for the purpose of calculating overtime is a violation of the CBA (See agreed to submission).

The practice of including personal and vacation days in overtime calculations has existed over an extremely uninterrupted long period of time, approximately forty-eight (48) years, and became an incorporated element of the full and complete CBA. The BOE

practice was so well understood and taken for granted by both the BOE and Union it became and is an implied term of the contract. As a result of the longstanding practice of inclusion of personal leave and vacation as hours worked in the overtime calculation over multiple CBAs, that practice is essentially a part of the CBA and should not be disturbed.

The BOE's argument that Section 6.1 of the CBA is clear and unambiguous is unpersuasive.

The exclusion of any reference to personal and vacation days in Section 6.1 is not fatal to the Union's position. The CBA language does not specifically restrict hours worked to holiday and sick days and it does not expressly exclude vacation and personal time. The provision is merely silent as to whether vacation and personal time is to be included in the overtime calculation. That silence, together with the BOE's longstanding past practice is persuasive and any effort to unilaterally remove personal and vacation days from overtime calculations is a violation of the CBA. The BOE is bound to its longstanding practice and any change to that practice needs to be done through negotiations.

After a review of all the documentary evidence, and by a preponderance of the evidence, the BOE violated the CBA by not counting a personal day as hours worked for the purpose of calculating overtime.

DECISION

The grievance is sustained.

REMEDY

The BOE shall include personal leave as hours worked in the calculation of overtime.

/s/ Gerald T. Weiner
Gerald T. Weiner
Public Member and Panel Chair

/s/ Peter Carozza
Peter Carozza
Labor Member

/s/ Kenneth Baldyga
Kenneth Baldyga
Management Member