

STATE OF CONNECTICUT
DEPARTMENT OF LABOR
BOARD OF MEDIATION AND ARBITRATION

AWARD

City of New Haven

Case No. 2024-A-0026

and

Hearing Date: February 27, 2024

Hearing Location: Zoom

Local 884, Council 4,

Date of Award: April 23, 2024

AFSCME AFL-CIO

Panel Members:

Ann F. Bird, Neutral

Michael C. Culhane Sr., Management

Betty Kuehnel, Labor

Advocates:

James T. Ferraro for the Union

Attorney Curtis Stubbs for Management

ISSUE

Does the City of New Haven's established practice of having Police Records Clerks I and II perform training of new clerks constitute "supervisory" work of a nature consistent with the job functions outlined in the "Records Supervisor" job description, and therefore a violation of the collective bargaining agreement?

If so, what shall the remedy be?

FACTS

This is a dispute between the City of New Haven (“City”) and Local 884 of Council 4, AFSCME AFL-CIO (“Union”). The Union filed a grievance on behalf of three records clerks employed in the City’s Police Department’s records division. The grievance alleged that the City improperly failed to pay a differential for time these clerks devoted to on the job, peer to peer, training of new records clerks, in accordance with Article 15, Section 10 of the parties’ collective bargaining agreement. The City denied the grievance and the matter ultimately came to arbitration.

A virtual arbitration hearing was conducted before this panel on February 27, 2024. The City appeared through Labor Relations Attorney Curtis Stubbs and the Union appeared through Service Representative James T. Ferraro. All proposed exhibits were admitted as full exhibits. (Joint Exhibits 1 – 6; Union Exhibits 1 – 3; and City Exhibits 1 – 5) Records Clerks Kym Bray and Dana Hutchinson and Labor Relations Director Wendella Ault Battey testified for the Union. Records Supervisor Donna Rockhill, Lieutenant David Portela and Assistant Chief of Police Manmeet Bhogtana testified for the City. Each party had a full opportunity to present evidence, including testimony, and to cross-examine witnesses called by the opposing party. The parties submitted post hearing briefs on March 28, 2024.

The Union represents the Records Clerks (I and II) employed in the New Haven Police Department as well as the Records Supervisor. Records clerks create, maintain and retrieve information related to arrested and wanted persons using in-house and state computer systems. Job duties include inputting data from warrants and related documents as well as responding to requests from police officers and others for information contained in data bases.

The Records Clerk job descriptions do not list training other staff as a job function, but state that clerks “perform[s] related work as required.”

Records clerks report to the Records Supervisor and the Lieutenant in charge of the Police Department's records division. The job description of the Records Supervisor, a position of higher classification also in Local 884, identifies "trains department clerical personnel in the use of office machines and in filing systems and procedures" as an illustrative example of the work.

Until about 2014, the Records Supervisor trained newly hired clerks over two to three days in a classroom setting. This training focused on data entry, and was followed by a period of several weeks of on the job peer to peer training, where experienced clerks demonstrated work tasks and observed new clerks performing the work.

The experienced clerks were not trained in how to train others and were not provided with training materials.

In about 2014, a new operating system was introduced in the records division. This new system automated, streamlined and greatly reduced the work of data entry. As a result, the Records Supervisor stopped providing the two to three days of classroom training for new hires.

Since that change, new hires have been trained primarily¹ through on the job peer to peer demonstration and observation with experienced records clerks over a period of several weeks.

The Records Supervisor oversees the training of new clerks by reviewing their work on line, assigning experienced clerks to provide on the job training, and soliciting evaluative information from experienced clerks and the Lieutenant in charge of the records division.

Since 2020, when the pandemic hit, the Records Supervisor often works remotely and is not physically present at the work site for much of the work week.

¹ Newly hired clerks learn the COLLECT system through self-study modules and take a test to demonstrate proficiency in that system.

Experienced records clerks who provide on the job training of new hires have never been paid a differential for such work.

The experienced clerks who provide on the job training often volunteer for the assignment but can also be assigned if there are insufficient volunteers.

The Union never objected to the practice of having experienced records clerks provide peer to peer on the job training of new hires without a pay differential, either before or after the change of operating system or the pandemic. Nor did the Union raise the issue in the recent collective bargaining process.

Records clerks do receive a pay differential for performing other functions, such as expediting.

In March 2023, the Union first requested a pay differential for the records clerks who were training new hires. At that time, there were three or four new hires receiving training. After review, the City denied the request.

The Records Supervisor and Lieutenant in charge of records created a differential log form for clerks involved in training to record the dates that they trained new hires in the event that the Union's request for a pay differential might be granted in the future.

No one, including the Records Supervisor or Lieutenant, sought financial approval for a differential from the City's Director of Labor Relations or any other appropriate executive officer of the City.

CITY ARGUMENT

The City argues that the Union failed to prove a violation of the contract. First, the City argues, the training was not "required" of any clerk, but was purely voluntary. While there was evidence that some clerks volunteered to train others, other evidence reflected that this was

not always the case. Second, the City argues, the training function was de minimus, and a part of the clerks' usual practice of sharing information and tips on how to perform the work.

UNION ARGUMENT

The Union submits that the uncontested facts demonstrate a violation of Article 15, Section 10 of the collective bargaining agreement in that: a) experienced clerks provide peer to peer training for new hires; b) training is explicitly a job function of the Records Supervisor; and c) the Records Supervisor is a position of higher classification and pay in Local 884. The Union points out that the Lieutenant and Supervisor even created a "Differential Log" for the training clerks to keep track of their performance of this function, as evidence of their understanding that a differential is owed.

RELEVANT CONTRACT PROVISIONS

Article 15 Wages

Section 10

Employees required and assigned in a higher classification within Local 884 for more than one (1) working day in a working week shall be paid at the rate of the higher classification for the entire period that they are working in the higher classification. A higher classification is a classification in a higher salary range than the employee assuming the duties. Financial approval must be obtained by the Department Head prior to assigning employees to the higher classification.

Article 34 Supervisory Clause

A Supervisor shall not perform work of a nature normally performed by an employee covered by this Agreement except in cases of emergency, correction of trouble or for purposes of training.

DISCUSSION

The facts of this case are essentially undisputed. Records clerks have been providing on the job peer to peer training for new hires for over ten years. They have never received a pay differential for this work. While the circumstance might seem on the surface to fall within the parameters of Article 15, Section 10, the parties have never practiced that clause accordingly.

Instead, the parties have treated this work as part of the ordinary course of the clerk's job function, as "related work as required". Although the clerks know about differentials, they never asked for a differential in the many years they have been performing peer to peer on the job training. Instead, it seems that the peer to peer training was considered a regular part of the clerk's job function and/or just a minor deviation. The parties' behavior, therefore, contradicts interpretation of the peer to peer training as being part of the Records Supervisor's role, as distinct from the regular function of the records clerk. Indeed, the evidence showed that the Records Supervisor never provided on the job training using the demonstration and observation model that the clerks are performing now.

Moreover, the evidence demonstrated that the clerks are not performing the training tasks that the Records Supervisor did earlier, before the change of operating system and pandemic, or that she does now. The clerks are not instructing new hires on data input in a classroom setting, for instance.

In summary, the function of providing peer to peer training does not constitute "supervisory" work of a nature consistent with the job functions outlined in the "Records Supervisor" job description. The City need not, therefore, pay the clerks at the higher rate of the Records Supervisor for this work. The City's practice, therefore, is not a violation of the collective bargaining agreement.

DECISION

The grievance is denied.

/s/ Ann F. Bird
Ann F. Bird
Neutral Panel Member

April 22, 2024
Date:

/s/ Michael C. Culhane, Sr.
Michael C. Culhane Sr.
Management Panel Member

April 22, 2024
Date:

/s/ Betty Kuehnel
Betty Kuehnel Dissenting
Labor Panel Member

April 17, 2024
Date: