

**State of Connecticut
State Board of Mediation and Arbitration**

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| In the Matter of | : | Date of Award: Monday, December 11, 2023 |
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| Town of New Canaan | : | Case No. 2023-A-0061 |
| | : | |
| -and- | : | |
| | : | Date of Hearing: September 20, 2023 |
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| New Canaan Police Local 004 | : | |
| | : | |
| | : | Location of Hearing: Virtual |
| | : | |

AWARD

PANEL MEMBERS:

Dennis C. Murphy, Esq., Chair and Public Member
Peter Carozza, Labor Member
Kenneth Baldyga, Management Member

Rachel M. Baird, representing the Union
Christopher M. Hodgson, Esq., representing the Town

Procedural History and Issue

This is a dispute between the Town of New Canaan (Town) and the New Canaan Police Local 004 (Union) concerning the payment of administrative leave to Officer David Rivera (Grievant).

After due notice a hearing was heard on September 20, 2023, wherein the parties had opportunity to present evidence and witnesses and to cross examine same. The parties filed post hearing briefs and reply briefs.

The parties jointly presented the following issue for determination:

Did the Town violate Article 2, Section 2 of the cba when it declined to pay the Grievant his full salary when he was placed on Administrative Leave on April 27, 2022? If so, what shall the remedy be? (Joint Ex. 1).

Relevant Collective Bargaining Provisions

Article 2

Section 2.

The UNION recognizes that the TOWN'S rights shall include, but are not limited to the establishing or continuing of policies, practices, or procedures for the conduct of the Police Department, the direction of its affairs and working forces, the maintaining of discipline and efficiency of employees; to direct, select, decrease and increase the work force, including hiring, the extent to which the facilities of any department thereof shall be operated; removal of equipment, the right to introduce new and improved methods and facilities and to change existing methods and facilities, to transfer, to promote or demote employees for just cause; to suspend, discharge or otherwise discipline employees for just cause; and otherwise take such measures as the Management may determine to be necessary for the orderly and efficient management and operation of the Police Department for the TOWN OF NEW CANAAN, provided, however, it does not affect wages, hours, or conditions of employment which are mandatory subjects of bargaining.

ARTICLE 18 GRIEVANCE PROCEDURE

Section 1. The purpose of the grievance procedure is to provide an orderly method of adjusting grievances. A grievance is defined as any difference between the TOWN and the UNION or its members as to the interpretation and/or application of any provisions of this Agreement respecting wages, hours, disciplinary action or working conditions contained in this Agreement.

Section 2. - Procedure

The procedure for adjusting a grievance shall be as follows:

STEP 1: The aggrieved member, or the UNION, within fifteen (15) days when the employee, and/or the UNION, first knew or should have known of the occurrence giving rise to the grievance, shall file the grievance, in writing, with the Chief of Police, or his designee. The Chief of Police, or his designee, within ten (10) days of receipt of the written grievance shall meet with the aggrieved and/or the UNION representative in an attempt to resolve the grievance and shall give the UNION, and/or the aggrieved, his written response to the grievance within ten (10) days of said meeting date.

STEP 2: If the grievance is not resolved to the satisfaction of the aggrieved, and/or the UNION, the UNION shall, within ten (10) days of receipt of the Chief's or his designee's written response, at STEP 1, submit the written grievance to the Board of Police Commissioners. Said Board of Police Commissioners shall, within ten (10) days of receipt of the grievance, meet with the aggrieved, and/or the UNION, in an attempt to resolve the grievance and submit a written response, to the UNION, and/or the aggrieved, within ten (10) days of said meeting date.

STEP 3: If the matter is not resolved to the satisfaction of the aggrieved, and/or the UNION, the UNION may, within ten (10) days of receipt of the written response of the Board of Police Commissioners, submit the grievance to the State Board of Mediation and Arbitration, provided, a copy of such arbitration request is provided to the First Selectman. The decision of the arbitrator shall be final and binding, providing that the arbitrator decides only whether or not a specific a provision of this Agreement has been violated and in no event shall the arbitrator have the power or authority to modify, alter, amend, add to or subtract from any provisions of this Agreement. The costs of arbitration shall be divided equally between the TOWN and the UNION.

Section 3. At any step of the grievance procedure, either party may request extension of time which can be extended if mutually agreed upon in writing by both parties. An extension shall not be unreasonably withheld.

Section 4. At any state of the grievance procedure, the aggrieved party shall have the right to have present one (1) member of the UNION Grievance committee or his/her designee who may be on duty and/or an outside representative.

Section 5. Any grievance that is not appealed to the next step within the specified time limits will be considered settled based on the last decision rendered.

ARTICLE 19
SICK LEAVE

Section 1. All employees shall accumulate one and one-quarter (1 1/4) days of sick leave with pay for each month during which the employee is in the employ of the TOWN. The purpose and intent of this sick leave provision is to provide for continuance of pay in the event an employee falls ill or suffers a non-job connected injury and is unable to work.

Section 2. Sick leave shall not be considered as a privilege, which an employee may use at his/her discretion but shall be allowed in the case of: (i) the employee's personal illness or physical incapacity resulting from non-occupational causes, or (ii) the illness of a member of the employee's immediate family (defined as spouse, child, stepchild, parent, stepparent, brother, sister, grandparent, grandchild, parent-in-law or any relation domiciled within an employee as a member of his family who is listed as a dependent for income tax purposes) that requires the employee's personal care and attention.

ARTICLE 21 INJURY LEAVE

Section 1. Each permanent employee of the Department who is injured or disabled in the performance of his/her duties shall be entitled to injury leave with pay less Worker's Compensation from the date of injury until such time as he/she is able to return to duty on a full time basis. In no event shall such injury leave exceed two (2) years, or the date of maximum medical recovery as determined by the Workers' Compensation Commission, whichever comes first. If after two (2) years from the date the disability began, or after attaining maximum medical recovery, the full time employee is totally disabled within the meaning of the Pension Agreement, he/she is eligible to apply for the disability benefits therein.

Section 2. At any time during the recovery period, the TOWN can require the injured employee to undergo a physical examination conducted by a physician designated by the TOWN, and the employee will provide the Chief with a medical update and report of his/her condition every thirty (30) days unless waived by the Chief.

Findings of Fact

1. The Town and the Union are parties to a collective bargaining agreement expiring on June 30, 2023. The Grievant was injured on the job and placed on Workers'

Compensation Leave or Injury Leave on April 21, 2021. When an officer is on Injury Leave, the Agreement provides that the Town provides the difference between Workers' Compensation benefits and the officer's salary. (Town Ex. 2).

2. On May 3, 2022, the Grievant applied for a disability retirement due to his injury. He resigned his employment on August 15, 2022.

3. The Grievant failed to comply with Workers' Compensation requirements that he conduct job searches and attend physical therapy. (Town Ex. 5). His benefits were reinstated on January 27, 2022, but again stopped on April 2, 2022, due to his failure to conduct job searches or attend physical therapy. (Town 8).

4. The Town applied the Grievant's accumulated sick and vacation time to pay him from April 4, 2022 through April 17, 2022 in order to continue his pay.

5. The Town learned on April 27, 2022, that the Stratford Police Department intended to arrest the Grievant and charge him with illegal possession of explosives, a felony, illegal use of explosives without a permit a felony, illegal possession of an assault weapon, a felony, illegal transfer and purchase of pistol and revolver, a felony, and three counts of illegal transfer and purchase of a pistol and revolver. The Grievant was arrested on those charges on April 28, 2022. (Town Ex. 6).

6. On May 2, 2022, the Grievant was also arrested by the Naugatuck Police Department and charged with reckless endangerment, first degree, conspiracy to commit veterinary medicine without a license, both misdemeanors and conspiracy to commit malicious acts to wound or kill an animal, a felony.

7. The grievant received a letter dated April 27, 2022, placing him on "paid administrative leave" pending completion of the criminal investigation and any possible I.A. investigation. (Town Ex. 7). The Grievant remained in the status of "Injury Leave" subsequent to April 27, 2022.

8. The Town's Human Resources Director, Cheryl Jones, testified that Injury Leave is Workers' Compensation pay supplemented by the Town to reach full salary. Once the Workers' Compensation pay stops, so does the supplemental pay. Further, being placed on paid administrative leave is done to leave the employee in an active status, in whatever status the employee is on.

Arguments of the Union

The Union's initial argument, based upon the jointly submitted Issue, is that the Town did not have just cause to discipline the Grievant by ceasing his injury leave pay.

The Union argues in the alternative that the default status of an officer on Injury Leave is full pay. And, that the Grievant's failure to abide by the requirements of Workers' Compensation to conduct job searches and attend physical therapy as required by his physician "have no relation to Grievant's continued entitlement to injury leave pay." (Union brief at 5).

The Union argues that the Grievant is entitled to full pay and benefits from April 18, 2022 through August 14, 2022.

The Union also seems to argue that since the Grievant was placed on "paid Administrative Leave", that his full pay should have continued regardless of the status of his Workers' Compensation benefits status.

Arguments of the Town

The Town argues that the burden is on the Union to demonstrate that the Town violated the agreement between the parties, and that it failed to do so. Since this matter does not involve discipline, the just cause provision of Article 2, Section 2 does not apply.

Further, the Town argues that the plain language of the agreement can only be read to support its position that stopping the Grievant's pay was appropriate. Injury Leave is comprised of Workers' Compensation benefits plus the differential paid by the Town. Since the Grievant ceased receiving Workers' Compensation benefits, the differential ceased.

Placing the Grievant on “paid Administrative leave” was the Town’s way of continuing the Grievant’s employment status as active, the Town argues. It did not provide an independent right to full pay once the Injury Leave benefits ceased.

Discussion

The Union has the burden to demonstrate by a preponderance of the evidence that the Town violated the collective bargaining agreement. It failed to do so.

First, the jointly submitted issue to the Panel requires us to determine whether Article 2, Section 2, Management Rights, has been violated. (Joint Ex. 1). The Union in its brief creates a restatement of the issue as to whether the Grievant’s benefits were terminated for just cause. Although the “just cause” requirement for discipline is found within the Management Rights clause, the Union’s restatement of the agreed upon Issue is not appropriate. And, since the termination of the Grievant’s pay was not discipline, his pending arrest notwithstanding, Article 2, Section 2 is not implicated and thus not violated.

Article 21, Section 1 states that “Each permanent employee of the Department who is injured or disabled in the performance of his/her duties shall be entitled to injury leave with pay less Workers’ Compensation...”. Although not within the purview of the issue jointly presented to the Panel, we will consider this provision in quasi-dictum fashion. The Town’s interpretation of this provision is the correct one.

When an employee cannot work due to an on the job injury, Worker’s Compensation benefits as defined by statute control the employees’ treatment and status. The additional benefit of paying the differential is simply that, a differential. This provision cannot be read as establishing an independent benefit to pay an employee full pay when Workers’ Compensation benefits are denied for whatever reason, whether that be the employee never established a valid claim or the employee’s noncompliance with statutory requirements, as in this case. At that point, the employee can apply other accumulated benefits such as sick time or vacation time. The Grievant testified he did claim those benefits, and the Town also did so on his behalf.

The Union’s argument that the Grievant could not use sick time or vacation time when Workers’ Compensation benefits were denied is incorrect.

AWARD

The Town did not violate Article 2, Section 2 of the cba when it declined to pay Grievant's full salary when he was placed on Administrative Leave on April 27, 2022

Case No. 2023-A-0061

By the Panel

/s/ Dennis C. Murphy, Esq.

Dennis C. Murphy, Esq.
Chair and Public Member

/s/ Peter Carozza

Peter Carozza
Labor Member

/s/ Kenneth Baldyga

Kenneth Baldyga
Management Member