

STATE OF CONNECTICUT, LABOR DEPARTMENT
BOARD OF MEDIATION AND ARBITRATION

ARBITRATION AWARD

Town of Stratford

CASE NO.: 2023-A-0004

and

Zoom hearing date:
June 7, 2023

IAFF, Local 998

Date of Award: August 1, 2023

Advocates

Chris Hodgson, Esq., for the Town

James Ferguson, Esq., for the Union

ISSUE

Did the Town of Stratford violate Article XIII of the Collective Bargaining Agreement with IAFF Local 998 when it required Firefighter William Hansen to have a fitness for duty examination by a psychologist?

If so what shall the remedy be?

The Union charges that the Town violated the collective bargaining agreement (CBA), Article XIII, by sending firefighter William Hanson (Grievant) to a fitness for duty examination by a psychologist instead of following the contract which requires the use of a medical doctor.

APPLICABLE CONTRACT LANGUAGE

ARTICLE XIII

SICK LEAVE

(Only included sections of Article XII that involved the grievance.)

Section 2.

The parties agree, on the whole, the members of this bargaining unit have used the benefits as provided for in Section 1 of this Article well within the traditional uses of sick leave and off duty injury leave.

The Chief or his designee, including a physician shall have, at reasonable hours, the right to call upon and be admitted to the sick or injured employee's home for the purposes of establishing the condition of the employee's health and his readiness for duty. Any employee who is on sick leave or non-service connected injury leave and is absent from home at the time of such visit, that absence does not constitute a prima facia case of abuse of sick or injury leave.

Section 3.

A. Any sick leave of three (3) consecutive shifts or more shall only be approved upon presentation of the medical certificate documenting the employee's medical treatment. The employee shall provide a medical certificate upon returning to duty. In cases of long term illness or injury, defined as an absence of ten consecutive shifts or more, the employee shall provide a medical certificate identifying the expected duration of the employee's absence by the end of the tenth consecutive shift. Employees may also be required to provide a medical certificate certifying their ability to perform the essential functions of the employee's position upon returning to duty which shall also be required for any sick leave taken under Article XIII, Section 7.

B. The Chief or his designee may, at his sole discretion, require an employee to supply a second medical certificate, or submit to an examination by the Town's physician, if he believes that the employee is abusing sick leave or injury leave.

C. Any employee, while on sick leave or non-service connected injury leave, shall not engage in any gainful employment.

D. Any evidence of abuse of sick leave shall result in appropriate disciplinary action.

E. (1) Work Related Injury Leave -Employees will provide the name of the employee's treating physician to Human Resources within 24 hours after the initial evaluation by the Town's vendor. If the Employee changes doctors, the Employee will provide the name of the new doctor within 24 hours of the change.

(2) The Employee will sign a medical authorization for Human Resources and Town Vendor to obtain medical records from the treating physician. The Employee or family member shall contact Human Resources if the Employee is physically unable to sign a medical authorization to obtain an extension.

(3) Employees will be subject to discipline in accordance with the disciplinary procedure in Article IV of this Agreement for failing to provide the physician's name as required above, unless a valid reason is confirmed by the Town.

Section 4. "Definitions"

For the purpose of this division, the following words and phrases shall have the meanings respectively ascribed to them in this Section.

MEDICAL CERTIFICATE. A written signed by a registered practicing physician, certifying to the period of disability of the patient while he or she was undergoing professional treatment.

THE TOWN'S POSITION

The Town suggests that Article XIII simply contains "...language concerning specific situations that might arise concerning the use of sick leave" leaving the Town unencumbered on how to determine a firefighter's "fitness for duty". For support they cite Article XIII, section 2, subsection D, "...the Chief or his designee, including a physician, shall have, at reasonable hours, the right to call upon and be admitted to the sick or injured employee's home for the purposes of establishing the condition of the employee's health and his readiness for duty." They conclude their argument with; "...that specific factual scenario does not apply to the Town's request that the Grievant submit to a fitness for duty exam with a psychologist to determine when, if ever, he would be able to return to regular duty." They concluded that since the parties have not negotiated specific language limiting the Town's use of a psychologist to determine if the Grievant was fit for duty it is free to do so and thus has not violated the CBA.

THE UNION'S POSITION

The Union claims that the CBA and its intent are clear, all medical exams whether to substantiate a firefighter can return to work or is absent for a permissible reason must be completed by a physician. Supporting their position the Union cites Article III, Section 3, B.

The Chief or his designee may, at his sole discretion, require an employee to supply a second medical certificate, or submit to an examination by the Town's physician, if he believes that the employee is abusing sick leave or injury leave.

The Grievant provided a medical certificate from his MD, with clearance for light duty. With that in hand the Chief, under Article III, Section 3, B required that the Grievant "...appear for the IME with Dr. Kirschner so he can also provide his opinion with reasonable medical certainty." Testimony revealed that the second opinion was sought because the evaluation of the Grievant's physician was not trusted.

Dr. Mark Kirshner is not a physician, thus not fulfilling the requirement of Article XIII which demands that anyone providing a medical opinion must be an MD.

DISCUSSION

Article XIII is clear, concise, and consistent in its use of the words medical doctors or physician to identify the health care professionals authorized to examine and share a medical opinion regarding the wellbeing of Local 988 members. When the Town informed the Grievant that they were seeking "...an Independent Medical Examination..." as permitted by Article XIII of the CBA it triggered, by definition, the entire Article, including the requirement that the employee can be required to "...submit to an examination by the Town's physician," but also the negotiated requirement of who is authorized to conduct those examinations.

By deciding to send the Grievant to a PhD instead of an MD to determine if he was ready to return to the full-time duties of a firefighter, the Town violated the CBA.

AWARD

The Grievance is sustained, and the Town is directed to follow the CBA by having medical examinations conducted exclusively by a physician.

STATE OF CONNECTICUT, LABOR DEPARTMENT
BOARD OF MEDIATION AND ARBITRATION

CASE NO.: 2023-A-0004

___/S/ Mark E. Sullivan _____ 7/28/23 _____
Mark E. Sullivan, PhD Date
Alternate Public Member

___/S/ Kenneth Baldyga Dissenting _____ 7/28/23 _____
Ken Baldyga Date
Alternate Management Member

___/S/ Peter Carozza _____ 7/28/23 _____
Peter Carozza Date
Permanent Labor Member