

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

ARBITRATION AWARD

In the Matter of:	:	Case No. 2022-A-0058
Town of Manchester	:	Date of Award: March 17, 2022
And	:	
Manchester Police Officers Association	:	
MPOA on behalf of all officers denied	:	Hearing Date: November 24, 2021
“administrative time” for ordered	:	
quarantine	:	

APPEARANCES: Kevin M. Roy and Sarah N. Niemiroski, Attorneys at Law
(For the Town)
David S. Taylor and Stephen F. McEleney, Attorneys at Law
(For the Union)

I. ISSUE: (Agreed to by the Parties)

Did the Town of Manchester violate Article 17, Section 2(b) of the Collective Bargaining Agreement? If so, what shall the remedy be?

II. PROCEDURAL BACKGROUND:

The Manchester Police Officers Association (hereinafter referred to as the “Union”) filed a grievance asserting that the Town of Manchester (hereinafter referred to as the “Town”) violated Article 17, Section 2(b) of the Collective Bargaining Agreement (hereinafter referred to as the “CBA”) when it required several unvaccinated employees to use sick or vacation time in July 2021 when they tested positive for COVID.

The grievance was not resolved and was appealed to arbitration. An arbitration hearing was held via ZOOM on November 24, 2021. Both parties were provided an opportunity to offer testimony and cross-examine witnesses.

The Town and the Union both filed post hearing briefs on January 21, 2022, as agreed. The parties reserve the right to file reply briefs by February 4 and would let the Board know by January 24 if they would like to avail themselves of that opportunity. The parties declined the opportunity to file reply briefs and the Panel was so notified. The Panel held an Executive Session on February 15, 2022 via ZOOM.

The parties have complied with the grievance and arbitration provisions of the CBA. This grievance is properly before the Connecticut State Board of Mediation and Arbitration.

III. STATEMENT OF FACTS:

There are few if any factual disputes in this case. In early 2020, a global COVID-19 pandemic gripped the world. When the outbreak first began, there were no vaccines and no cures. Little was known about the transmission or much else about the virus at that time.

In March of 2020, the federal government provided funding to employers to supplement COVID-19 sick leave for employees. The Town utilized the funding it received to offer "COVID-19 Administrative Time" to all Town employees who were either infected or exposed to COVID-19. This benefit was not required to be offered to first responders under the federal law or contract and no funding was provided for this purpose for these

individuals. The Town made the decision to offer the benefit to all employees, including first responders.

Under the Town's policy, any Town employee who was either infected or exposed to COVID-19 and had to quarantine as a result would not have to charge their sick or vacation leave. This benefit was not bargained for with any employee group.

Vaccinations became available to first responders and certain high-risk groups in December of 2020 and to the general population over the age of 16 in April of 2021. On May 21, 2021, the Town announced a change in its "COVID-19 Administrative Time" policy to be effective June 1, 2021. (Union Ex. 1) The revised policy provided that unvaccinated employees who tested positive for COVID-19 would have to utilize their sick and/or annual leave while quarantined. Such employees would no longer be entitled the benefit of "COVID-19 Administrative Time" policy, although they could use sick leave for quarantine time even if not sick.

In July of 2021, several police officers attended a picnic. After the party, ten (10) officers tested positive for COVID-19. Two (2) of the ten (10) officers were vaccinated and the other eight (8) were not. The two (2) vaccinated officers received "COVID-19 Administrative Time", while the remaining eight (8) unvaccinated officers were required to charge sick or annual leave for the time they were required to quarantine.

Several of the unvaccinated officers, who tested positive, testified they had religious and/or personal reasons for not being vaccinated. The Town offered no exceptions to its treatment of unvaccinated employees under its revised policy.

IV. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE 5 - NONDISCRIMINATION

Section 1. Neither the Town nor the Union shall discriminate against any employee covered by this Agreement in a manner which would violate any applicable laws because of race, creed, color, national origin, age, sex, gender identity, genetic information, veteran status, handicap, religious belief, political affiliation or sexual orientation.

ARTICLE 17 - GRIEVANCE PROCEDURE

Section 1. Purpose – The purpose of the grievance procedure shall be to settle grievances on as low an administrative level as is possible and practicable, so as to insure efficiency and employee morale.

Section 2. Definition – A grievance, for the purposes of this procedure, shall be considered to be a Union complaint concerned with: . . .

- (b) Charge of favoritism or discrimination.

V. DISCUSSION

The Union is not claiming that its members have been discriminated against in violation of the CBA. In both its brief and in its opening statement the Union does not claim that the “unvaccinated” is a protected class under either the contract or the law. Instead, the Union is claiming that the Town is engaging in “favoritism” by giving a greater benefit to vaccinated employees over those that chose not to be vaccinated. As the Town correctly points out the term “favoritism” is not defined in the CBA, while “discrimination” is defined in Article 5, Section 1.

Favoritism is typically where someone in leadership demonstrates favor toward one employee over others unrelated to performance and instead occurs due to a personal bond or friendship between the two. The Town adopted the changed policy outlined in

its memorandum dated May 21, 2021 (Union Ex. 1) clearly to incentivize employees to become vaccinated. This was the reason for the change as testified by then Deputy General Manager Steve Stephanou.

The Town wanted to incentivize employees to become vaccinated for several reasons:

1. The vaccine had proven effective in helping prevent serious illness
2. It was recommended by the CDC and state and local health officials
3. Vaccines were readily available
4. Operationally the Town needed employees (especially police and fire) to provide services to Town residents
5. Federal funding for sick leave for COVID leave was to expire on September 30, 2021.
6. The Town had self-funded the sick leave for COVID for first responders without federal funding.

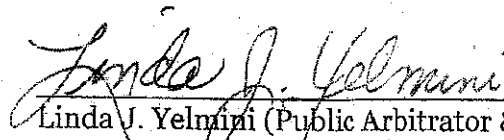
The Town gave the members of this bargaining unit the benefit of "COVID-19 Administrative Time". As they are first responders, the Town did not receive any reimbursement from the federal government when the Town magnanimously decided to self-fund this benefit for these employees from some time in March of 2020 until June 1, 2021.

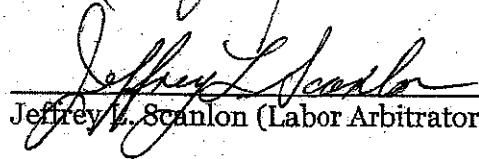
There was a rational basis to change the benefit of "COVID-19 Administrative Time" offered to vaccinated individuals versus unvaccinated individuals. The standard was universally applied to all employees and was not a result of favoritism. The change in policy was neither arbitrary nor capricious. The majority of the Panel finds that the Union has not met its burden of proof that the contract was violated.

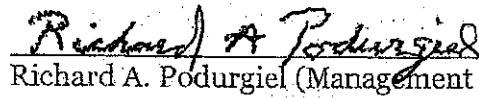
VI. AWARD

For the reasons set forth herein, the majority of the Panel finds that the Town did not violate Article 17, Section 2(b) of the Collective Bargaining Agreement.

BY THE ARBITRATION PANEL:

 2/27/2022
Linda J. Yelmini (Public Arbitrator & Chairperson)


Jeffrey L. Scanlon (Labor Arbitrator) [dissenting]


Richard A. Podurgiel (Management Arbitrator)