

STATE OF CONNECTICUT
DEPARTMENT OF LABOR

STATE BOARD OF MEDIATION AND ARBITRATION

ARBITRATION AWARD

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|---------------------------|---|----------------------------|
| In The Matter Of: |) | CASE NO: 2021-A-0290 |
| |) | |
| TOWN OF STRATFORD |) | AWARD DATE: March 25, 2022 |
| |) | HEARING DATE: |
| |) | September 24, 2021 |
| |) | |
| IAFF, LOCAL 998 |) | LOCATION OF HEARING: |
| |) | |
| GRIEVANT: Timothy O'Flynn |) | ZOOM HEARING |

PANEL: Attorney Susan E. Halperin, Chair and Alt. Public Member
Michael C. Culhane, Permanent Management Member
Charles Fabian, Alternate Labor Member

APPEARANCES:

For the Town: Attorney Paul T. Testa

For the Union: Attorney James C. Ferguson

ISSUE

The Parties could not agree on the statement of the issue. After presentations to the Panel and discussions with the Panel, they agreed on the following Issue:

Did the Town of Stratford violate Article 23, Section 12 and any other relevant provisions of the Collective Bargaining Agreement with Local 998 when it denied Tim O'Flynn reimbursement for courses?

If so, what shall be the remedy?

**ARTICLE XXIII
MISCELLANEOUS**

Section 12.

The Town shall pay for books and tuition, at a rate of seventy-five (75%) percent up to one thousand (\$1,000.00) dollars per year, to each employee who successfully completes, with a "C" average or better, a course or courses leading to a degree in "Fire Technology" or any other course. Such payment to be made on or about April 15. Such courses shall be job related and shall be approved by the Chief.

STATEMENT OF THE CASE

This matter is before the State Board of Mediation and Arbitration because of a grievance filed with the Town of Stratford (hereinafter referred to as the "Town") by IAFF, Local 998 (hereinafter referred to as the "Union") concerning whether or not the Agreement effective July 1, 2018 through June 30, 2022 (hereinafter the "Agreement") requires that Tim O'Flynn (hereinafter referred to as the "Grievant") be reimbursed for his Administrative Law Courses.

The grievance was filed on January 19, 2021.

The Grievant has been employed by the Department for over eleven years and currently holds the rank of firefighter.

He testified that he has been on the Grievance Committee for eight years, a union officer for seven years, and is currently the Vice-President of Local 998 and the Chair of the Grievance Committee. During this time, he testified that he was unaware of anyone being denied reimbursement for educational courses.

He testified that the practice for reimbursement is for the employee to complete the class, then hand in the paperwork to the Chiefs secretary for reimbursement.

He testified that the reimbursement is not limited to "Fire

Technology," stating the Town has reimbursed tuition to other fire department employees for courses leading to master's degrees in public administration and emergency management, that reimbursement is not limited to rank, but all positions of the department, and that there is no practice of prior approval required for education reimbursement.

He is currently pursuing his Juris Doctorate with a workplace concentration at Quinnipiac University School of Law. He testified that he was previously reimbursed for the law school courses of Contracts and Human Rights. He also testified that before the Chief denied his educational reimbursement for Administrative Law the Chief never asked for a syllabus or class description and that it was not until discovery for this arbitration that the Town ask for a syllabus or class description.

After the hearing was completed, the Parties agreed to brief the matter postmarked and electronically transmitted. Reply briefs were submitted on or about November 22, 2021.

The Panel held an executive session on December 15, 2021 at which time it reached this Majority decision on the grievance.

The Panel submits that each Party was provided the full opportunity to direct and cross-examine witnesses and to be heard.

UNION POSITION

The Union presented several witnesses, including the Grievant, as well as documentary evidence to establish that prior approval and subsequent approval by the Fire Chief was never required in the past.

It argues that the Town deprived the Grievant of reimbursement for his law courses although he was approved for others without question by the prior Fire Chief.

It challenges the testimony of the Town's witness, the current Fire Chief, who determined that he has the right of final approval for payment for the courses in accordance with the specific terms of the collective bargaining agreement.

The Union emphasizes that the Chief also acknowledged that he approved reimbursement for courses for this Grievant and numerous others showing that this disapproval was arbitrary.

The Union asks the Panel find that the Town acted in violation of Article XIII, Section 12 and asks that the Grievant be reimbursed for his Administrative Law Course.

TOWN POSITION

The Town maintains that the Union and the Grievant did not demonstrate that Article XIII, Section 12 was violated as the Administrative Law Course is not related to the Grievant's firefighting duties and the Fire Chief always had the final approval under the contract's terms.

It notes that the job description does not include anything related to the law courses for which the Grievant seeks reimbursement.

The Town emphasizes that the prior course approvals are inconsistent with the clear language of the Agreement that requires the Chief's approval even though the provision does not require that the course is related to firefighting duties or only firefighting courses.

It argues that the Union has not demonstrated that the Chief's approval is automatic as the evidence shows that the prior approval for

this firefighter's law courses was signed by a subordinate not the Chief after the Chief did not sign.

ANALYSIS AND DISCUSSION

The Panel reviewed and analyzed the documentary and testimonial evidence in light of the stipulated issue.

The Union has the burden of proof.

A Majority of the Panel, the Management and Public Members, find that the record evidence supports a finding by a preponderance of the evidence, that the grievance should be denied.

The Agreement does not provide a specific reimbursement process in Article XIII, Section 12. The evidence shows that questions regarding ~~"approval" have occurred under both the prior Chief and the current Chief.~~

The Union could not and did not make the argument that past practice required the payment for the courses because the contract language is clear and the practice inconsistent.

The phrase "and the approval of the Chief" has meaning. It does not mean that the approval can be done by a designee of the Chief or a subordinate. It also does not mean that there is approval without the Chief's concurrence.

We are not going to address the question of job-related courses because the phrase regarding the Chief's approval is so clear.

The evidence substantiates that the process has differed even with regard to the Grievant's courses.

The contract does not have language such as "such approval will not be unreasonably withheld", etc. that puts a limit on the Chief's authority.

It is axiomatic that if there is clear and unequivocal contract language, an arbitrator need not, indeed cannot, look to past practice. Elkouri and Elkouri, See How Arbitration Works, at 12-24.¹

Our function is not to rewrite the Parties' contract. We are limited to finding out what the Parties intended under a particular clause. The intent of the Parties is to be found in the words which they, themselves, employed to express their intent.

Here, the Union cannot show nor could it argue that any binding past practice existed and was violated by the Town. In order to succeed on a past practice claim, the Union must show the existence of a fixed past practice prior to the alleged change and a clear departure from that change without engaging in bargaining.

Instead, it relies on exhibits showing the prior reimbursements that are not determinative of this issue.

The Majority finds that the phrase "and approved by the Chief has meaning" separate and distinct from the question as to whether Flynn's courses were job related. We do not intend to address that question.

Based on the foregoing, the grievance is denied.


AWARD

The grievance is **denied**.

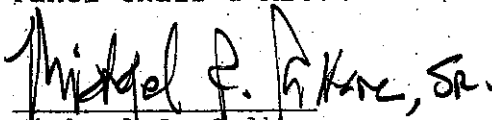
The Town of Stratford did not violate Article 23, Section 12 or any other relevant provisions of the Collective Bargaining Agreement with Local 998 when it denied Tim O'Flynn reimbursement for courses?

**CONNECTICUT STATE BOARD
OF MEDIATION AND ARBITRATION**

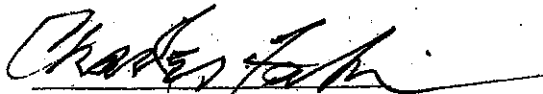
BY:



Susan E. Halperin
Attorney At Law
Panel Chair & Alternate Public Member



Michael C. Culhane
Permanent Management Member



Charles Fabian
Alternate Labor Member
Dissenting

The process in the collective bargaining agreement under Article XXIII, Section 12, for book and tuition reimbursement is clear and concise. For courses leading to the specific degree in Fire Technology and any other course that is job related, employees shall be paid at the specified rates in the contract. Once a course is determined to be job related then the contract requires that the Chief shall approve such courses. The contract puts the determination of job relatedness first and then requires the Chief to approve the course. The contract does not require the employee to seek approval first from the Chief, nor does the contract give the Chief the sole authority to determine whether a course is job related.

Therefore, the question before the panel is whether the course for which the grievant sought reimbursement is job related. Both documentary and oral evidence submitted by the Union clearly weigh in favor of the grievant. The Town at some points during the evidentiary hearing did try to argue that only courses in which the employee received instruction in direct fire fighting tasks. However, they eventually modified that position and admitted that tasks or duties not directly related to fire fighting could in fact be job related. In point of fact, the grievant and another employee had previously been paid for courses not directly related to fire fighting but more administrative in nature.

For these reasons I feel the Union grievance should be sustained and I therefore dissent from the majority opinion.

Respectfully submitted
Charlie Fabian