State of Connecticut
State Board of Mediation and Arbitration

In the Matter of Town of Wallingford -and- NIPSEU Local 2019	Case No. 2021-A-0322 Date of Award: April 26, 2023 Hearing Date: January 24, 2023

AWARD

PANEL MEMBERS:

Dennis C. Murphy, Esq., Chair and Public Member
Jeffrey Scanlon, Labor Member
Kenneth Baldyga, Management Member

Eric R. Brown, Esq., representing the Union
Dennis G. Ciccarillo, representing the Employer

Procedural History and Issue

This is a dispute between the Town of Wallingford (Town) and NIPSEU Local 2019 (Union) concerning the proper placement of Laurence Abele, the grievant, on the appropriate wage table. After due notice a virtual hearing was held on January 24, 2023 wherein both parties offered testimony and exhibits and an opportunity to cross examine same. The parties filed post hearing briefs and reply briefs. The parties jointly submitted the following issue for resolution:

> Did the Town of Wallingford violate the electric production collective bargaining agreement by its placement of the grievant in the wage table for employees hired after November 14, 2006?
>
> If so, what shall the remedy be?

It should be noted from a procedural standpoint that at the close of the hearing, the Management Member of the Panel requested that briefs be submitted in hard copy. Although both parties agreed to do so, the Union failed to do so, even after subsequent request.

Relevant Collective Bargaining Provisions

ARTICLE 1
RECOGNITION

Section 1: The Division recognizes the Union as the exclusive representative of all regular and probationary employees in the operating units of the Electric Division, as decided by a Consensus of Opinion Election conducted by the Connecticut State Labor Department on August 1, 1955, except supervisory employees, technical employees, confidential employees and persons having access to corporate books and payrolls, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment.

Section 3: The term "employee" as used in this Agreement shall refer only to employees of the Division for whom the Union is the collective bargaining representative as provided in Section 1 of this Article.

ARTICLE 16
WAGES

Appendix A
Effective September 1, 2019-For Employees Hired After November 14, 2006
All steps at Annual Intervals Except as Noted Below

Classification	Step 1	Step 2	Step 3
Meter Reader	24.44	27.80	30.95

ARTICLE 20
LONGEVITY

g). Employees hired, promoted, transferred or demoted into the unit on or after March 26, 2014 shall not be eligible to receive longevity pay.

Findings of Fact

1. The grievant has been employed by the town of Wallingford since August of 1998. In 2007 he was transferred into the public works division as a Maintainer II. On July 9, 2020, he was transferred into the Electric Division from the Public Works Division as a Meter Reader.

2 The posted hourly rate of pay for Meter Reader was a range from $24.44 to $30.95. The grievant's was at the maximum step wage rate of $26.27 as a Maintainer II. As a new employee in the Electric Division, he went to an hourly rate of $27.80, as indicated in Appendix A of the Agreement.

3. Adwin Rusczek was hired in the Public Works bargaining unit with the Town in May 1999. He was hired into the Electric Division in September 2011. He subsequently went into the position of System Operator effective July 2016.

4. Despite being hired into the Electric Division after November 14, 2006, Rusczek was paid at the higher rate assigned to those hired before then.

5. On November 15, 2006, Terrence Sullivan, then Personnel Director, wrote a letter to John Fernandes, Assistant Business Manager, IBEW, Local 457, which summarized and confirmed the final language of the newly negotiated collective bargaining agreement. It stated in part:

"New hires, including newly transferred or promoted from other bargaining units (and therefore new employees covered by this CBA) would follow the "new hires" schedule....

Please review the contract draft and let me know as soon as possible, or by November 22, 2006, if there are any corrections to be made or omissions on my part. I will then print clean final copies for IBEW's signature." (Town Exhibit 8).

Fernandes never responded to this letter and the language was included and subsequently executed by both parties.

6. A prior arbitration award by this Board, Case No. 2022-A-0086, concerning Sal Criscio, found that although he was hired into the Electric Division after November 14, 2006, he should be granted an accumulation of sick days as allotted employees hired before that date, as the Town had continued to allot him 1 ½ days per month, instead of 1 ¼ days after his hire into the Electric Division. The Town argued that that was a mistake.

Arguments of the Union

We fully considered the Union's arguments. The salient are as follows:

The Union argues that the grievant should be paid the higher rate indicated for those hired before November 14, 2006 due to the past practice established by the Ruszek and Criscio examples. The Union argues that being transferred from one Town Division to another does not define the date of hire with the Town, and that all benefits should be determined from the date of hire with the Town.

Arguments of the Employer

The Town argues that the plain language of the agreement sets forth that the use of the term "employee" in the agreement only refers to employees within the Electric Division. As a result, the grievant was paid the appropriate pay rate pursuant to the agreement.

Further, the language of the agreement was confirmed and clarified by the Town's Personnel Director's letter to the Union which asked for comment. No comments or objections were received.

The Town takes the position that the matters of Ruszek and Criscio were simply mistakes made. And, that these mistakes do not make a consistent past practice which it now must perpetuate.

Further, the Town posted the appropriate salary to which the grievant knowingly and without complaint applied.

Discussion

The Union has the burden to demonstrate by a preponderance of the evidence that the Town violated the collective bargaining agreement in its application of the wage scale to the grievant. It has failed to carry this burden.

The contract is clear: "The term "employee" as used in this Agreement **shall refer only to employees of the Division** for whom the Union is the collective bargaining representative..." (Article 1, Section 3, emphasis added). Arbitrators are creatures of contract. Our authority and the limitation of our analysis derive from the plain language of the agreement. There is nothing ambiguous in this language.

The Union cites Article 20 language which provides that "employees hired, promoted, transferred or demoted into the unit" would not receive longevity pay after a certain date. It attempts to argue that this creates an ambiguity in the Article 1, Section 3 language by including both "hired" and "transferred" in the same definitional grouping. We disagree. The Article 20 language can easily be read as a listing of routes by which one becomes an "employee". That is not inconsistent with the notion that one only becomes an "employee" when one is employed by the Electric Division, as the plain language requires.

With respect to the examples of Ruszek and Criscio, we accept the Town's recognition that those events did happen in the past, but were in done in error. A past practice which flies in the face of plain contractual language must be open, consistent and persistent conduct that both parties clearly acknowledge in order to become the basis for the newly agreed upon

understanding. That is not present here. We do not find the facts and holding in the prior Criscio arbitration Award particularly instructive to our analysis.

Personnel Director Sullivan's 2006 contemporaneous letter to the Union clearly defines new hires to whom the new wage scale applied, as being those hired into the Division. The Union's failure to challenge that clearly articulated notion at the time is persuasive as to the nature of the bargain struck. Further, the nature of that bargain is rational and reasonable on its face. It does not lead to absurd results.

AWARD

The Town of Wallingford did not violate the Electric Production Collective Bargaining Agreement by the placement of the grievant in the wage table for employees hired after November 14, 2006.

By the Panel

Dennis C. Murphy, Esq.
Chair and Public Member

Jeffrey Stanton
Labor Member

Kenneth Baldyga
Management Member