

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

In the Matter of _____ : SEPTEMBER 7, 2022
TEAMSTERS LOCAL 671 : CASE NO. 2022-A-0080
AND : (VIOLATION OF SENIORITY)
TOWN OF WINDSOR LOCKS : HEARING DATE: APRIL 5, 2022
: Location of Hearing: State Board of
: Mediation and Arbitration
: 38 Wolcott Hill Road
: Wethersfield, CT 06109
: (ZOOM)

ARBITRATORS:

Date of Award: September 23, 2022

BETTY KUEHNEL
UNION ARBITRATOR

DAVID RYAN
MANAGEMENT ARBITRATOR

APPEARANCES:

JOHN T. FUSSELL, ESQUIRE
ROBERT M. CHEVERIE & ASSOCIATES, P.C.
(FOR THE UNION)

KEVIN M. DENEEN, ESQUIRE
O'MALLEY, DENEEN, LEARY, MESSENA & OSWECKI
(FOR THE TOWN)

ISSUE

Did the Employer violate Article 17 of the Collective Bargaining Agreement when in connection with the newly created Lead Dispatcher/Telecommunicator position it selected for the job the least senior of the three dispatchers who applied for the position?

If so, what shall be the remedy?

PROCEDURAL ISSUE

This grievance was heard by the Panel of the State Board of Mediation and Arbitration on April 5, 2022. Post hearing briefs were filed by the parties on or about May 9, 2022. The Panel consisted of Gerald T. Weiner, Neutral Arbitrator; Betty Kuehnel, Union Arbitrator; and David Ryan, Management Arbitrator. All three Arbitrators attended the Executive Session held on May 27, 2022.

Subsequent to the Executive Session Arbitrator David Ryan passed away. His passing was a tragic loss to the State Board of Mediation and Arbitration as he was a long time member of the Arbitration Panel and respected by all that knew him. Arbitrator Ryan passed before the decision in this arbitration was written.

The parties have agreed to have this grievance decided and signed by the Neutral Arbitrator only. This award, is accordingly, issued by the Neutral Arbitrator, Gerald T. Weiner in accordance with the agreement of the parties.

FACTS

The Town of Windsor Locks ("Town") and Teamsters Local 671 ("Union") are parties to a Collective Bargaining Agreement ("CBA") for the period July 1, 2019 through June 30, 2023 (Town Ex. 1). The CBA covers all full and part-time civilian dispatchers employed by the Town (Town Ex. 1, p. 2, Article 1).

In April 2021 Chief of Police Eric Osanitsch ("Chief") proposed to establish a new position, "Lead Dispatcher/Telecommunicator" (Town Ex. 3, Union Ex. 1). The Board of Police Commissioners approved the new position. The Chief

established the job description and pay for the new position. The new position included supervisory responsibilities including overall supervision of the dispatch function. The Chief invited interested Town Dispatchers in the position to submit a written expression of intent and resume to the Chief. The job description included hours of work, rate of pay and selection process. The selection process was to be a resume and interview with the Chief and Captain.

Once the new position was announced the Union did not attempt to negotiate any of the terms and conditions with the Town nor did the Union challenge the Chief's right to enforce the requirements. The terms of the position (job description, pay and supervisory responsibilities) are inconsistent or omitted from the terms of the CBA (Town Ex. 1, p. 19, Section 23).

The Chief received letters of interest from three (3) current Dispatchers (Town Ex. 3, 4, 5), Dispatchers Garrison, Paluck and Bonilla. The Chief conducted interviews with all three Dispatchers and received input from his command staff (Town Ex. 7). Following the interviews Dispatcher Garrison was selected for the new position. Dispatcher Garrison had the least seniority of the three interviewees (Union Ex. 12). The Chief testified that Garrison was the best candidate for the position and the other two candidates were not qualified for the position. The Chief also testified that if Dispatcher Garrison was found not to be qualified, the Chief would go outside current employees of the Town to fill the position.

This grievance concerns whether choosing the least senior Dispatcher for the newly created position is a violation of the CBA.

The parties presented documentary and testimonial evidence to the Panel, made arguments in behalf of their respective positions and filed post-hearing briefs.

UNION POSITION

The Union offered as relevant contract language the text from CBA Article 17, Seniority, for the years July 1, 2019 to June 30, 2023 (Union Ex. 5); 2015 to 2019 (Union Ex. 6); 2011 to 2015 (Union Ex. 7); and 2006 to 2010 (Union Ex. 8).

The 2006-2010 CBA Seniority Article 18 contained the following language as Paragraph E:

"(E). Newly created or vacant positions shall be offered to employees in the bargaining unit in accordance with their seniority providing the employee can perform the available work". (Union Ex. 8, p.16).

This language was included verbatim in CBAs for years 2011 to 2015, 2015 to 2019, 2019 to 2023. However, the 2006 to 2010 CBA contains the above language but is listed as Paragraph "E", while the other three contracts contain the language but omitted the reference to Paragraph "E". The language in the years 2011 to 2015, 2015 to 2019 and 2019 to 2023 contains the language immediately following Paragraph "D" without any reference to the language being Paragraph "E". Paragraph D in all four CBAs states:

"an employee who was laid off shall have recall rights for a period of six (6) months. Employees shall be recalled in reverse order of lay off".

The Union argues that negotiations for a CBA successor-contract for 2011 to 2015 resulted in a typographical error, the erroneous deletion of the Section heading "E" from the last sentence of the seniority of the Seniority Article. The Union asserts "the mutual failure of either party to recognize this unintentional

drafting error carried forward in each successor-contract (Union Exhibits 7, 6, 5)(Union Brief pg. 4). The Union argues this typographical error was not discovered until preparation for this arbitration case and counsel for the Union notified the Town attorney of the discovery of the "E" heading omission typographical error more than a week prior to the mailing of the Exhibits to Arbitrators on March 31, 2022.

The Union argues that the error caused the Chief to misconstrue the last sentence of the Article as an extension of subsection "D" (Union Ex. 3). The Union contends the parties never intended the last Paragraph of the Seniority Article to be applied only in the event of a layoff as the Chief incorrectly concluded in his grievance denial letter (Union Ex. 2 and 3). The Chief, according to the Union, only considered the seniority obligation to apply to cases involving lay-offs and not newly created positions. The Union argues the last sentence of Article 17 is a separate contractual obligation requiring the senior applicant to be awarded the newly created position. The Union argues that documentary evidence clearly reveals the mutual mistake of the parties in failing to identify the drafting error in the missing Subsection "E" heading.

The Union further asserts that the Town announced for the first time at the arbitration hearing that the new position is not a bargaining unit position and not covered by the CBA. The Union argues this defense should be rejected as the Town waited until the hearing to raise it and the Town by its conduct treated the position as being in the CBA.

TOWN POSITION

The Town argues the newly created position has supervisory and investigatory responsibilities over the civilian Dispatchers and the Town's decision to create new positions is an exercise of managerial function. The Town asserts that it was incumbent on the Union to seek either unit clarification petition to include the new position in the unit and the Union failed to do so. The position is outside the bargaining unit and is not subject to the grievance procedure according to the Town. The Union also failed to reach a memorandum of agreement to incorporate the position into the bargaining unit. The Town further contends the Panel does not have the authority to add terms to the CBA and cannot force the addition of the new position into the recognition clause of the CBA.

In this case, according to the Town, the Union and every member of the bargaining unit were present with the job description for the new position. The job description contained numerous additions or changes from the provisions of the CBA as applied to the civilian Dispatcher positions. The Union did not demand any negotiation over these changes. The Town claims that even if the position was included in the bargaining unit, the Union's failure to demand negotiations about the new job description waives the Union's right to challenge the selection process. The Union challenge came only after a candidate was selected.

The Town finally argues that Article 17 of the CBA directly deals with seniority as it relates to layoffs and recalls only. The Town further asserts that

there was no testimony about how the final paragraph was alleged a mutual mistake. The Town also contends the Union argument on this issue is irrelevant as the subsection deals with "newly created or vacant positions" and these positions must be in the bargaining unit. The Town argues any such vacant or newly created position must be a "full or part-time civilian Dispatcher and this new position is not one of the civilian Dispatchers. The Town concludes its argument by alleging the Article 17 seniority language was not intended to apply to a promotion position.

RELEVANT CONTRACT LANGUAGE

ARTICLE 2: APPLICATION OF AGREEMENT

This Agreement shall apply to all Full and Part-Time Civilian Dispatchers employed by the Town of Windsor Locks, Connecticut.

ARTICLE 4: TOWN RIGHTS

Unless expressly and specifically limited, modified, abridged or relinquished by a specific provision of this Agreement, and whether exercised or not, the rights, powers and authority heretofore held by the Town of Windsor Locks, pursuant to any charter, general or special statute, ordinance, regulation or other lawful provision over the complete operations, practices, procedures and regulations with respect to bargaining unit employees shall remain solely and exclusively in the Town including, but not limited to, the following: to determine the standards of services to be offered by the Town employees; determine the standards of selection for Town employment; direct its employees; take disciplinary action; hire, assign, transfer or promote its employees; relieve its employees from duty because of lack of work or for other legitimate reasons; issue rules and regulations affecting work conditions not specifically covered by this Agreement; enforce them and, from time to time, change them; maintain the efficiency of governmental operations; determine duty assignments and the number of individuals needed for specific assignments and shifts; determine work schedules

Article 17 – Seniority

- A. Seniority shall be defined as the right of precedence accruing to an employee based upon the length of continuous service in the bargaining unit.

- B. In the event the Employer finds it necessary to, lay off any of its employees because of insufficient work or any other reason, the seniority rule in each classification shall prevail.
- C. In the event of such layoff, the employee shall receive payment for his vacation period.
- D. An employee who was laid off shall have recall rights for a period of six (6) months. Employees shall be recalled in the reverse order of layoff.

Newly created or vacant positions shall be offered to employees in the bargaining unit in accordance with their seniority, providing the employee can perform the available work.

(CBA July 1, 2019 to June 30, 2023)

Article 17 – Seniority

- A. Seniority shall be defined as the right of precedence accruing to an employee based upon the length of continuous service in the bargaining unit.
- B. In the event the Employer finds it necessary to, lay off any of its employees because of insufficient work or any other reason, the seniority rule in each classification shall prevail.
- C. In the event of such layoff, the employee shall receive payment for his vacation period.
- D. An employee who was laid off shall have recall rights for a period of six (6) months. Employees shall be recalled in the reverse order of layoff.

Newly created or vacant positions shall be offered to employees in the bargaining unit in accordance with their seniority, providing the employee can perform the available work.

(CBA July 1, 2015 to June 30, 2019)

Article 17 – Seniority

- A. Seniority shall be defined as the right of precedence accruing to an employee based upon the length of continuous service in the bargaining unit.

- B. In the event the Employer finds it necessary to, lay off any of its employees because of insufficient work or any other reason, the seniority rule in each classification shall prevail.
- C. In the event of such layoff, the employee shall receive payment for his vacation period.
- D. An employee who was laid off shall have recall rights for a period of six (6) months. Employees shall be recalled in the reverse order of layoff.

Newly created or vacant positions shall be offered to employees in the bargaining unit in accordance with their seniority, providing the employee can perform the available work.

(CBA July 1, 2011 to July 30, 2015)

Article 18 – Seniority

- A. Seniority shall be defined as the right of precedence accruing to an employee based upon the length of continuous service in the bargaining unit.
 - B. In the event the Employer finds it necessary to, lay off any of its employees because of insufficient work or any other reason, the seniority rule in each classification shall prevail.
 - C. In the event of such layoff, the employee shall receive payment for his vacation period.
 - D. An employee who was laid off shall have recall rights for a period of six (6) months. Employees shall be recalled in the reverse order of layoff.
 - E. Newly created or vacant positions shall be offered to employees in the bargaining unit in accordance with their seniority, providing the employee can perform the available work.
- (CBA July 1, 2006 to June 30, 2010)

DISCUSSION

The Arbitrator needs to determine whether the Employer (Town) violated the CBA when it selected the least senior of the three Dispatcher applicants for the newly created Lead Dispatcher/Telecommunicator position.

The newly-created position was approved by the Police Commission and the Chief determined the job description duties and pay provisions for the position. On or about April 23, 2021 the job description was reduced to writing by the Chief and incorporated in a notice to the Department, Dispatchers and presumably the Union setting forth the time line for Dispatchers to apply to the Chief if interested in the position. Dispatchers had until May 14, 2021 to submit a letter of interest to the Chief. The notice was dated April 23, 2021 (Town Ex. 3) and accordingly the unit and Dispatchers had sufficient time and notice to raise the issue of negotiating the terms and conditions with the Town. The Union did not challenge the right of the Chief to enforce these requirements. The new position has both supervisory and investigatory responsibilities over the Dispatchers and the Town's decision to create new positions for legitimate reasons is an exercise of managerial function and it is the responsibility of the Union to seek negotiation with the Town in order to have the position included in the bargaining unit and/or negotiate the terms and condition of the new position. The Union did neither.

In this matter the Union was:

1. Presented with the Town's job description;
2. The job description contained numerous additions or changes from the CBA as it relates to Civilian Dispatchers;
3. The Union did not negotiate over these changes.

Accordingly, the time to object to the selection process was when the Union became aware of the provisions of the job in April. The Union having failed to

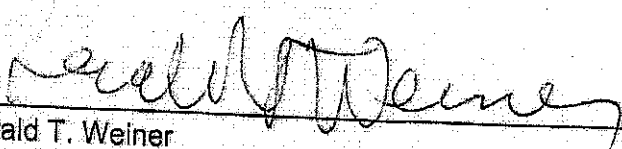
raise the issue with the Town prior to the selection of the candidate, leads to the conclusion that the Town followed the correct process as set forth in the posting. The Town could select the least senior applicant for the position since the decision to create new positions is a managerial function and was outside the bargaining unit.

The Union's argument that there was a mutual mistake of the parties in failing to identify the so-called drafting error resulting in the missing Subsection "E" heading is unpersuasive. Neither of the documents admitted into evidence or testimony disclose any facts or circumstances surrounding the alleged error. Was it a "mutual" mistake or a "unilateral" mistake. No information was presented to the Arbitrator about how and why the CBAs after 2006 - 2010 eliminated the letter "E" from the Seniority Article. Accordingly, the Town's argument that the provisions of Article 17 do not apply to the selection of its least senior Dispatcher as the seniority provisions of this Article is limited to lay off and recall provisions. Also, the subsection deals with newly created or vacant provisions and these positions must be in the bargaining unit.

After a review of the documentary and testimonial evidence as well as argument by the parties, the Arbitrator finds the Town did not violate Article 17 of the CBA when in connection with the newly created Lead Dispatcher Telecommunicator position it selected for the job the least senior of the three Dispatchers who applied for the position.

DECISION

The grievance is Denied.



Gerald T. Weiner
Neutral Arbitrator