

STATE OF CONNECTICUT, DEPARTMENT OF LABOR
BOARD OF MEDIATIONS AND ARBITRATION

City of Ansonia

CASE NO. 2021-A-0102

And

Ansonia Police Union,
FAOP, Local 913

Date of Award: July 20, 2022

Date of Hearings: February 4, 2022
March 21, 2022

Location of Hearings: Virtual

ADVOCATES

E, Gregory Cerritelli for the Union

John Marini for the City

ISSUE

Did the City Violate Article 5 and/or Article 6 of the collective bargaining agreement by denying the grievant the opportunity to work outside overtime in conjunction with the Danbury State's Attorney's Office during the pendency of a use of force investigation being conducted by the Connecticut State Police while on administrative leave. If the city did violate the CBA, the panel should determine the appropriate remedy.

BACKGROUND

The parties agree to the facts of the case and thus we are using, in its entirety, the Statement of Facts presented by the Union in their brief.

"The incident occurred on January 2, 2020, when the grievant responded to a domestic violent incident. At approximately 7:30 PM January 2, 2020, a female complainant drove to the Ansonia Police Department from her room at 81 Myrtle Ave., Apt. 1 and asked that the police go to her home. She reported that her boyfriend Michael, who was not supposed to be there, was at her home. He had been drinking and causing a disturbance, he scared her and had taken her cell phone to keep her from calling the police. She asked that they'd be sent as soon as possible before her boyfriend destroyed everything. Officers were sent to the home.

Ansonia police Sergeant Christopher Flynn and Officers Brendan Nelson and Wojciach Podgorski went to the residence. They made contact with Michael Gregory first at the back door of the home and then inside where Mr. Gregory had armed himself with a knife. He said that the police were going to have to shoot him. Police told him to drop the knife repeatedly. Mr. Gregory moved from the kitchen to the bedroom. When the police kicked open the bedroom door Mr. Gregory still had the knife in his hand. Officer Nelson used a Taser to try to subdue Mr. Gregory. He did not respond to the tasing and came out of the bedroom into the kitchen with a knife coming at the police officers until he was fatally shot by Officer Nelson.

The report of this incident was prepared by the Danbury State's Attorney and was released December 18th 2020-almost an entire calendar year since the fatal event period. During the preceding 12 months, the grievant was placed on modified status and was unable to sign up for, or work, any outside overtime."

UNION'S POSITION

The Grievant's unblemished career as a Police Officer did not protect him from losing substantial income by being denied overtime made available only to certified police officers, not on administrative leave, during the 12-month investigation of the on duty fatal shooting. That investigation by the State's Attorney's Office and the Connecticut State Police cleared the Grievant and he was once again able to work OT which, at the time of the administrative leave, accounted for approximately 25% of his annual wage before the shooting. "It is an indisputable fact the Grievant lost ascertainable wages during fiscal year 2020 because of his administrative status and thus is entitled to the compensation for the overtime wages he lost." (Union Brief, pg. 8) "Accordingly, the union is seeking an award of back wages to compensate Grievant for the yearly extra duty wages he would have otherwise received." (Union Brief, Pg. 8)

THE CITY'S POSITION

The City agreed with the facts of the case as presented by the Union which resulted in the Grievant being placed on administrative leave and therefore not qualified for the assignment of the traditional overtime he had worked in the recent past. His involvement in a fatal shooting immediately triggered an investigation by the State's Attorney's Office as well as the Connecticut State Police and required that he be placed on paid Administrative Leave, suspending his credentials making him ineligible for any overtime requiring the presence of a police officer.

DISCUSSION

There is no disagreement that one of the most difficult and challenging careers is that of a police officer. Not only do we expect them to place themselves between us and imminent danger, but our society also believes they must operate in a prototypical manner making the right choice every time without exception.

In this case we have a Grievant who has a stellar record as police officer being confronted with a Hobson's choice after the utilization of all non-lethal measures failed to defuse a situation and a life was lost. Immediately following the fatal shooting, the Grievant was placed on administrative leave, aka desk duty, thus removing him from all on the street police activity. The investigation by the State's Attorney's office and the Connecticut State Police launched immediately took a year to complete before the Grievant was vindicated and reinstated to full duty as a police officer. During the investigation the Grievant was denied all OT available to Ansonia police officers because he was unable to act in an official capacity while on paid administrative leave.

The Union's argument focused entirely on how overtime is distributed within the Department and ignores that the Grievant had been placed on paid administrative leave while the investigation was conducted. That administrative status immediately removed the Grievant from the list of police officers eligible for overtime by suspending his ability to act as a police officer.

The panel agrees that this is a conundrum which places a good officer, such as the Grievant, in a very difficult position of doing everything right, protecting fellow officers, himself, as well the public and then being penalized while investigations are conducted to determine if he followed all the appropriate procedures. While we sympathize with the Grievant's denial of overtime opportunities and recognize this was a major financial challenge for his family, we see no path where he can ameliorate his losses through the grievance procedure for the contract does not provide access to overtime for officers placed on administrative leave.

DECISION

The Grievance is denied.

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Mark E. Sullivan

6/7/22

Mark E. Sullivan, Public Member

Date

/s/

6/7/22

David A. Ryan, Management Member

Date

/s/ Dissent

6/8/22

Peter Carozza, Labor Member

Date