

CONNECTICUT LABOR DEPARTMENT
BOARD OF MEDIATION AND ARBITRATION

CITY OF NEW HAVEN

and

AFSCME, COUNCIL 4, LOCAL 884

CASE NO. 2021-A-0175

Hearings via Zoom on
October 18 and November 4,
2022

Date of Award: December 30, 2022

ADVOCATES

Lisa S. Lazarek, Esq. for the City of New Haven

Christopher J. Sugar, Esq. for the Union

ISSUE

Did the City violate the collective bargaining agreement, as alleged in the Union's statement of its grievance?

BACKGROUND

Prior to the COVID Pandemic, the Grievant worked the "back of the room" of the Police Records Department that was not eligible for overtime (OT). With the advent of the pandemic the administrative organization of the office changed with the Grievant, at times, working the "front" apparently opening the opportunity for OT for her. Prior to this, those working with the public on the front desk were the only employees eligible for OT.

At that point "...the Grievant acknowledged that she was placed in the overtime rotation as of September 8, 2020, although the record does not reflect why." (City Brief, pg. 6) It was then the Grievant began signing up for OT, but never had the opportunity to work OT. She eventually learned that OT was to be distributed as evenly as possible amongst those who said they were available. After the passage of several months with no opportunity for OT the grievance was filed seeking redress.

THE CITY'S POSITION

The City presented a multi-tiered case with the following arguments:

1. No data was shared demonstrating beyond a reasonable doubt that the Grievant was "...entitled to work any specific (emphasis added) overtime during the dates in question." (City Brief, p. 12)
2. Following her return to work in July 2020, the Grievant was assigned to the "B-Squad". Once again no evidence was presented that she was denied any OT while in this status.
3. No evidence was presented that "front desk" and "back of the room" clerks held the "...same job classification affected by the overtime assignment."
4. No evidence supported the proposition the Grievant was entitled to OT:
5. "The Union did not prove that overtime was available for the Grievant on any of the fourteen days in question." (City Brief, p.15)

THE UNION'S POSITION

The Union's argument can be summarized by these themes:

1. The language is clear that the OT is to be equitably distributed as possible.
2. There was no objection by the City when the Union's case revealed the Grievant had signed up for OT but failed to receive any.
3. By not offering the Grievant OT, the City "...breached the agreement as equitable distribution in clear unmistakable terms means the Grievant should have received overtime assignments on the rotation and that her denial breached the contract." (Union Brief, p 4)

DISCUSSION

The CBA is crystal clear requiring that OT is to be equitably distributed amongst "...the bargaining unit employees holding the same job classification affected by the overtime assignment." (CBA, Article 8, Section 2) In the Police Records Department there was the requirement that any employee available for OT had to "sign the book" in order to be considered. From the testimony of two witnesses, including the Grievant and the administrator of the Department, it was painfully obvious that this was a flawed strategy allowing employees to sign their name well after the administrator made the decision on who would work the available OT. Not only did this deny the administrator the opportunity to distribute the OT equitably but also created the conundrum of not being able to recognize if employees had signed up in a timely manner before the assignments were made.

From the data distributed by both parties there is no way the Panel can legitimately identify how much the Grievant might be owed; we simply cannot identify when or if the Grievant was denied the opportunity for OT. The Panel did receive testimony that there is a new process in place which is projected to eliminate the problem.

The testimony also revealed that the organization of the Police Records Department was less than ideal. Neither the Grievant nor the administrator gave a credible rendition of the organizational structure before the Covid Pandemic, specifically on which positions were regularly assigned OT and why others were not. That appears to have been addressed by ending the artificial division called the "front of the office" and creating a single, unified employee group.

Information that would have been useful, but not shared, includes:

- 1) A history of OT in the Police Records Department before the pandemic including how much was available and who was assigned.
- 2) The distribution of the OT covering the time the Grievant alleges there was a problem.
- 3) How much did the Grievant purportedly lose by the inequitable distribution of OT?

AWARD

A majority of the panel sustains, the grievance and agrees that the CBA language clearly states that the department must adhere to "...the principle of distributing overtime as equitably as practicable..."

The panel is not awarding back pay.

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Mark E. Sullivan

Mark E. Sullivan, Alternate Public Member

12/13/22

Date

Kenneth Baldyga DISSENT

Kenneth Baldyga, Alternate Management Member

12/21/22

Date

Betty M. Kuehnel

Betty M. Kuehnel, Permanent Labor Member

12/23/22

Date