

**State of Connecticut
State Board of Mediation and Arbitration**

In the Matter of :
:
Town of Newington :
:
-and- :
:
AFSCME Co. 4. Local 2930 :
:
:

Case No. 2022-A-0128

Date of Award January 12, 2023

AWARD

PANEL MEMBERS:

Dennis C. Murphy, Esq., Chair and Public Member
Stephen R. Ferrucci, III, Labor Member
Michael C. Culhane, Sr., Management Member

Scott Soares, Staff Rep., representing the Union
Kenneth R. Plumb, Esq., representing the Employer

Procedural History and Issue

This is a dispute between the Town of Newington (Town), and AFSCME, Co. 4, Local 2930 (Union), concerning the contracting out of renovation work at two ballfields. After due notice, a hearing was held on September 19, 2022 at the Board's offices where the parties had opportunity to present evidence and witnesses and cross-examine same. The parties filed post hearing briefs and reply briefs.

The parties jointly agreed to the following Issue for the Panel:

Did the Town violate the collective bargaining agreement between AFSCME Local 2930 and the Town dated July 1, 2020-June 30, 2024 by contracting out renovations to the two softball fields at the high school and the little league field known as Badger Field in September and October 2021? If so, what shall the remedy be?

Relevant Collective Bargaining Provisions

ARTICLE III. MANAGEMENT RIGHTS

3.0 Except where such rights, powers and authority are specially relinquished, abridged or limited by a specific provision of this Agreement, the Town, through its Town Manager, Board of Education and Superintendent of Schools, has and will continue to retain, whether exercised or not, all the rights, powers, and authority heretofore held by the Town of Newington, ...

b. To establish or continue policies, practices and procedures for the conduction of Town business...

k. To determine the mission of a department or office and the method and means necessary to fulfill that mission....

3.2 The Town shall continue to have the right to subcontract or transfer any type or kind of work as it has in the past, specifically including but not limited to, the subcontracting of multiple part construction projects. The Town agrees to provide the Union with a minimum of sixty (60) days advance notice when paving work is to be subcontracted to a third party vendor, except that less than sixty (60) day notice may be provided when the paving work is required due to exigent or emergency circumstances.

ARTICLE IV. HOURS OF WORK, OVERTIME AND HOLIDAY PREMIUM PAY

4.6 If no regularly assigned employee within a particular position is available for overtime, and other bargaining unit employee within the same classification may be assigned, provided, however, that if no bargaining unit employee within the same classification is available, the Town may assign any other employee. Except as otherwise permitted under Section 3.2, all

bargaining unit work will be done by bargaining unit employees unless there are no bargaining unit employees available.

Findings of Fact

1. The Town's Park and Recreation Department has some fourteen employees and are responsible for a variety of services related to the upkeep and maintenance of various Town facilities. This matter concerns the maintenance of thirty athletic fields.

2. The current language in Sections 3.2 and 4.6 have been in the collective bargaining agreement since 2012.

3. In 2021, the Town decided that it was necessary to undergo extensive renovations of three of the Town's athletic fields. These were the two women's softball fields located at Newington High School and the little league field known as Badger field. Both fields had not been renovated for many years and Town residents had lodged complaints about the conditions, citing among other things an equivalency violation of Title IX. The Town determined to upgrade the fields and due to the schedule of usage, had two months to do so. (Test. William DeMaio (DeMaio), Superintendent of Parks and Recreation).

4. The Town determined to contract out the renovations to a company called Championship Turf for one of the softball fields and Badger Field, and Stonehedge Landscaping for the other softball field. The work on the fields included digging up the existing silt some three to four inches and replacing that with some twenty tons of a material called Dura Edge, a material which does not become dusty and takes rain well. Other work on irrigation, lighting, electrical and fencing issues was also required.

5. The Town determined that it was in the Town's best interest to contract out the work for several reasons: it was the first time three fields needed renovation at the same time; there was a limited time to do the work; and the Town did not have available the necessary equipment to accomplish the job, such as an ABI Force Laser to lay out the pitcher's mound, home plate and the base paths. This last item cost approximately \$80,000. (Id.).

The Town also decided to contract out the work because in 2020, the Department used its employees to renovate another field known at Volunteer Field. This work took a month and a

half to complete at a cost of over \$25,000 in employee hours. (Town Ex. 6). The Town expressed that it was proud of the work the employees performed in these renovations. The Town was concerned that the required work complained of here would not be completed in time, and employees would be drawn away from the necessary work they perform on a daily basis. No employees were laid off or experienced reduced hours of work due to the contracting out.

6. The Town contracted out similar significant renovation work on recreational facilities in 1972, 1974, 1986, 1988, 1989, 2009, 2015, 2018 and 2020, prior to it doing so in 2021. (Town Ex. 4).

7. During contract negotiations in 2020, the Town proposed to change the contracting out language in the collective bargaining agreement to state that it could contract out without the qualifier found in Section 3.2 of "...as it has in the past." (Union Ex. 1). The Union rejected the proposal and it did not change. The Town Manager, Keith Chapman, testified that that proposal was made because the language in 3.2 does not make sense.

Arguments of the Union

The Union argues that the Town's attempt to change the language of the Agreement to have the unrestricted right to contract out significant renovations of Town property demonstrates that it does not now have the right to contract out the renovations here.

With respect to the past incidents of contracting out, the Union argues that it is not known whether any employees were on staff during those periods of time who had the skills and time to perform those renovation type works. Further, only one of the past eight instances cited was a renovation of a ball field.

Further, the Union argues that the renovations of ballfields is a responsibility found in the Groundskeeper IV job description. And, although there are only two Groundskeeper IVs in Town service, many other employees helped out during the 2020 renovation of Volunteer Field.

The Town acted in bad faith, the Union argues, by not either planning ahead with sufficient time for employees to perform the work, or approach the Union requesting an exception be made for the contracting out work complained of here.

Arguments of the Town

The Town argues that the language of Section 3.2 of the Agreement specifically allows the Town to contract out the work in question here. That the language has been in the Agreement since 2012 and relied upon since to contract out work. The specific language does not restrict the types or amounts of work that the Town has the right to contract out. The language specifically recognizes the Town's right to contract out "multipart construction projects". The renovations here involved silt removal, product installation, laser grading, irrigation and electrical work.

Further, even if the renovation work may be considered "shared work" with the bargaining unit members, since they performed similar work in the past, that would not eliminate the Town's right to contract out the work should it deem necessary.

The Town argues that it held a reasonable concern that the work would not be completed on time, as some workers have exhibited an aversion to working overtime. Also, their regular duties are important and could not be ignored for a sustained period required to complete the renovation work.

Discussion

The Union has the burden to demonstrate by a preponderance of the evidence that the Town violated the collective bargaining agreement when it contracted out the renovation of the three ball fields. It has not met that burden.

The language of the collective bargaining agreement is not ambiguous and does not lend itself to a variety of interpretations:

"3.2 The Town shall continue to have the right to subcontract or transfer any type or kind of work as it has in the past, specifically including but not limited to, the subcontracting of multiple part construction projects. ...". The remainder of the section deals with paving.

The only possible interpretation here is in the words "as it has in the past". This can either be seen as a limiting notion, one where the Town can subcontract work *only* as it can demonstrate that it previously has, or as an expansive permission where the notion is that the Town *always* has had no limitation on the ability to subcontract work. The evidenced presented did not shed light on this distinction without harm because under either interpretation, the Town holds the right to subcontract the work in question.

The fact that the Town used bargaining unit to rehabilitate a field on a single instance in the past does render the language in 3.2 meaningless. Further and most importantly, the Town amply demonstrated in Town Exhibit 4 that it has used contractors in the past to conduct extensive renovation and construction work in the past on recreational facilities. The Union argues that those should not be considered comparisons because it is not known if the employees held the skills to perform the work required. This would be a meaningful argument if there were contract language requiring such an analysis. There is not.

The need for expensive equipment such as the laser leveler, the short window of time available to accomplish the work and the comparative cost analysis, and the fact that existing employees were continuously working during the timeframe, all support the Town's argument that the contract language supported its subcontracting and it was reasonable to do so. Further, it is clear that the work required multiple parts to complete, as contemplated in Section 3.2.

The Town's attempt to clarify the language of 3.2 in contract negotiations also does not alter the plain meaning of the existing language. It would be beyond the scope of this Panel's authority to rewrite the section with limitations as a result of such renegotiations.

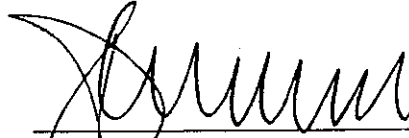
Since the language in Section 3.2 is clear on its face, we need not consider the Town's argument under Section 4.6 that employees were not available to perform the work in question because they were not available due to their ongoing workload. Nor do we need to parse the Town's plaudits of its employees on the prior renovation where employees were used.

Certainly the Town could have done a better job engaging the Union with respect to the extensive work required and the need to contract out beforehand, and explain such during the grievance procedure.

AWARD

The Town did not violate the collective bargaining agreement between AFSCME Local 2930 and the Town dated July 1, 2020 – June 30, 2024 by contracting out the renovations to the two softball Fields at the high school and the little league field known as Badger Field in September and October 2021.

By the Panel



Dennis C. Murphy, Esq.
Chair and Public Member



Stephen R. Ferucci, III
Labor Member (Dissenting)



Michael C. Culhane, Sr.
Management Member