

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of the Arbitration Between: \*

CITY OF TAUNTON \*

-and- \*

ARB-13-2695 \*

MASSACHUSETTS LABORERS DISTRICT \*

COUNCIL \*

\*\*\*\*\*

The Department, having afforded the parties full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at the hearing, has considered the issue, and, having studied and weighed the evidence bearing on the issues, awards as follows:

AWARD

Nina Knox is not entitled to past vacation pay under the Collective Bargaining Agreement.



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Zachary See, Esq.

Arbitrator

January 27, 2014

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**INTRODUCTION**

Paul Coffey, Field Representative of the Massachusetts Laborers District Council (Union) filed a unilateral petition against the City of Taunton (City) on March 13, 2013. Under the provisions of G.L., Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Zachary See, Esq., to act as a single neutral arbitrator with the full power of the Department.<sup>1</sup> The undersigned Arbitrator conducted a hearing at the Department's office in Boston on November 19, 2013.

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<sup>1</sup> Pursuant to Chapter 145 of the Acts of 2007, the Department "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the ... the board of conciliation and arbitration ... including without limitation those set forth in chapter 23C, chapter 150, chapter 150A, and chapter 150E of the General Laws."

Sal Romano represented the Union at the Arbitration. Bargaining unit member Nina Knox (Knox), Principal Clerk in the City's Building Department appeared for the Union.

Jason Buffington represented the City. Maria Gomes (Gomes), the City's Human Resources Director, appeared for the City.

I received the Union's post-hearing brief on January 10, 2014, and the City's post-hearing brief on January 14, 2014.

### **THE ISSUE**

Is Nina Knox entitled to past vacation pay under the Collective Bargaining Agreement and if so, how much?

### **RELEVANT CONTRACT LANGUAGE**

The parties' July 1, 2009 through June 30, 2012, Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

#### **ARTICLE X VACATIONS**

##### **Section 1.**

...

All employees working for the City of Taunton while involved with the C.E.T.A. program will be credited for that employment for the purposes of computing vacation accrual.

Section 2. Any employee thereof, covered by the Agreement, who has worked continuously, shall be granted an annual vacation without loss of pay as follows:

5 years through 9 years = three (3) weeks vacation  
10 years through 16 years = four (4) weeks vacation

#### **ARTICLE XV LONGEVITY**

All employees covered by this Agreement in full-time service of the City of Taunton who have completed five (5) years of continuous service, in permanent status and occupying a position subject to the Salary Administration Plan and Ordinance, shall be paid longevity based on the City of Taunton's third year Patrolman's salary, including Patrolman's hazardous duty pay. "Continuous Service" is defined as having no break in employment with the City of Taunton.

#### ARTICLE XVII SENIORITY

To the extent permitted by applicable law (including M.G.L. Chapter 31), seniority shall govern for all purposes. Seniority shall mean length of continuous employment in the bargaining unit.

...

Seniority shall also apply to the granting of benefits. Senior employees will get first choice on vacation scheduling.

#### THE FACTS

Bargaining unit member Knox has worked for the City since October 22, 1990. Knox worked part-time with the City's School Department from October 22, 1990 to November 10, 2002. Knox then worked full-time for the School Department from November 11, 2002 to September 28, 2004. Knox worked full-time for the City's Municipal Lighting Plant from September 28, 2004 through July 2, 2006. From July 3, 2006 through the present, Knox has worked full-time for the City's Building Department under the Agreement. Knox's employment with the City from October 22, 1990 through July 2, 2006 was not under the Agreement. Knox presently serves as a Principal Clerk in the City's Buildings Department.

It is undisputed that Gomes had personal knowledge of the Agreement's bargaining history. The Union previously proposed that employees' vacation

accrual account for all public service in Federal, State, and City employment. The City refused this proposal.

### **POSITIONS OF THE PARTIES**

#### **THE UNION**

Knox has worked continuously for the City since October 22, 1990, for a total of sixteen years, and she is entitled to more weeks of vacation pursuant to Article X, Section 2. The language of Article XV clarifies the meaning of Article X, Section 2. Article XV defines "continuous service" as having no break in employment with the City, therefore Article X, Section 2's language "worked continuously" should be construed as granting vacation based on continuous employment with the City.

#### **THE EMPLOYER**

Knox is not entitled to past vacation because only her employment under the Agreement as a member of the Union's local 1144-B bargaining unit counts toward her vacation allotment. The language of Article XVII clarifies the meaning of Article X, Section 2. Article XVII states in part that "seniority shall govern for all purposes. Seniority shall mean length of continuous employment in the bargaining unit. . . . Seniority shall also apply to the granting of benefits," therefore Article X, Section 2's language regarding vacation should be construed as granting vacation based on continuous employment in the bargaining unit.

### **OPINION**

The Agreement's Article X, Section 2 Vacation provision is ambiguous. It is not clear whether the language "Any employee thereof, covered by this

Agreement, who has worked continuously, shall be granted an annual vacation without loss of pay as follows.” refers to all continuous work with the City of Taunton, or just continuous work with the local 1144-B unit. This language is further ambiguous because the word “thereof” refers to the thing just mentioned, and in this Agreement employees in the C.E.T.A. [Comprehensive Employment Training Act] program are mentioned just prior to Article X, Section 2, in the last paragraph of Article X, Section 1. Because it is not clear whether Article X, Section 2 grants vacation based on all continuous employment with the City of Taunton or just continuous employment with local 1144-B, I consider other provisions of the Agreement, as argued by the parties, to construe the language in Article X, Section 2.

Both parties rely on other provisions of the Agreement to support their respective interpretations of the language in Article X, Section 2. The Union argues that the phrase “worked continuously” refers to no break in employment with the City, pursuant to the Article XV Longevity provision. The Union showed that Knox has worked continuously for the City for sixteen years as indicated in an October 15, 2010 letter from the Director of the City’s Contributory Retirement System, and Article XV Longevity provision defines “continuous service” as having no break in employment with the City of Taunton.

The City, on the other hand, argues that the language in Article X, Section 2 only applies to Knox’s work in the Union’s local 1144-B bargaining unit, starting July 3, 2006 to the present. The City relies on the Article XVII Seniority provision, which states in part that “seniority shall govern for all purposes. Seniority shall

mean length of continuous employment in the bargaining unit. . . . Seniority shall also apply to the granting of benefits.”

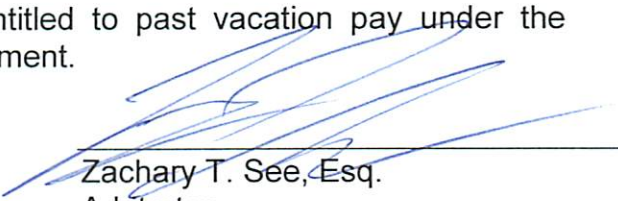
The language in Article XV and Article XVII addressing continuous employment supports contrary interpretations of the language in Article X, Section 2 and neither provision specifically references vacation. Article XVII does state “Seniority shall also apply to the granting of benefits,” and Article X, Section 2 refers to granting vacation (employees “shall be granted an annual vacation”), however Article XVII does not specifically reference Article X, Section 2. Therefore, because of the ambiguity and lack of clarity in the Agreement regarding whether all continuous employment with the City counts towards vacation or just continuous employment with local unit 1144-B, further information regarding the parties’ intent is necessary to interpret the language in Article X, Section 2.

The bargaining history of this Agreement demonstrates that the parties did not intend all continuous employment with the City to count toward vacation accrual. Bargaining history is a valid aid in interpreting and construing contract language, particularly where there is some ambiguity or lack of clarity. The bargaining history showed that the Union had previously proposed that employees’ vacation accrual account for all public service in Federal, State and City employment, and that the City refused this proposal. This bargaining history shows that the parties intended the language in Article X Section 2 to refer to all continuous employment with the bargaining unit, and not all continuous employment with the City.

Therefore, for the reasons discussed above, I award the following:

**AWARD**

Nina Knox is not entitled to past vacation pay under the Collective Bargaining Agreement.



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Zachary T. See, Esq.

Arbitrator

January 27, 2014