

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

CITY OF MALDEN

-and-

NEW ENGLAND POLICE BENEVOLENT
ASSOCIATION, LOCAL 78

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ARB-15-4818

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Albert Mason, Esq.

Thomas E. Horgan, Esq.

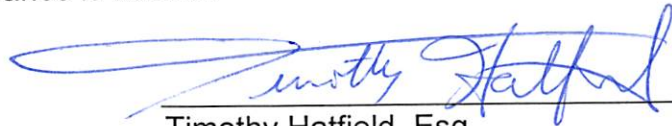
- Representing City of Malden

- Representing New England Police
Benevolent Association, Local 78

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The City did not violate Article 6 of the collective bargaining agreement by failing to properly compensate superior officers during their week of mandatory NERPI training, and the grievance is denied.



Timothy Hatfield, Esq.
November 10, 2016

INTRODUCTION

On September 14, 2015, the New England Police Benevolent Association, Local 78 (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield, Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a hearing at the Department's Boston office on May 23, 2016.

The parties filed briefs on July 21, 2016.

THE ISSUES

The Parties were unable to agree on a stipulated issue. The proposed issue before the arbitrator is:

The Union proposed:

1. Whether the City of Malden violated Article 6, "Training" of the parties' collective bargaining agreement by failing to properly compensate superior officers during their week of mandatory NERPI training?
2. If so, what shall be the remedy?

The City proposed:

1. Did the employer violate the collective bargaining agreement, Article 6 as alleged in the grievance dated 7/25/15?
2. If so what shall be the remedy?

Issue:

As the parties were unable to agree on a stipulated issue, I find the appropriate issue to be:

1. Did the City violate Article 6 of the collective bargaining agreement by failing to properly compensate superior officers during their week of mandatory NERPI training?
2. If so, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

The parties' collective bargaining agreement (Agreement) contains the following pertinent provisions:

Article 1 – Membership and Agreement Defined (In Part)

Section 3: There shall be no alteration, deviations amendments or abridgements of this Agreement unless mutually agreed upon and set down in writing, signed by authorized representatives of both the City and Local # 78.

Section 4: This Agreement is not an abridgement or alteration of any past rules, past practices, regulations and/or orders with respect to rights, privileges, policies and practices affecting the Local's relationship with the Commissioner, the Chief of Police or the Patrolmen's Association, nor is it a forfeiture of the City's or Local's rights under M.G.L. Chapter 150E unless language in this agreement specifically abridges or forfeits such.

Article 2 – Rights and Privileges (In Part)

Section 2: Subject to this Agreement and applicable law, the City reserves and retains all of the regular and customary rights and prerogatives of municipal management. This Agreement shall not be interpreted as diminishing the rights of the City to administer and prescribe (subject to this Agreement and applicable law) the methods and means by which the operation of the Police Department shall be conducted. The Rules and Regulations of the Police Department of the City are, by this reference incorporated herein and made part of this Agreement; and such Rules and Regulations may be applied where not inconsistent with or in conflict with this Agreement or provisions of law.

Article 6 – Training (In Part)

Section 1: Any Superior Officer required by the “department” to attend any training of course as a requirement of his/her rank of position in the department, shall, if attendance is on a day off, be compensated at his/her overtime rate or, at the Superior Officer’s request, compensation in time off. (sic)

FACTS

The City of Malden (City) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration.

Prior to 2015, the City required officers to attend training that the Massachusetts Criminal Justice Training Council at the Northeast Regional Police Institute (NERPI) had developed. This NERPI training was an annual one-day training. Whenever this one-day NERPI training conflicted with an officer’s regularly scheduled shift, or required that an officer attend training during scheduled time off, the City would allow the officer the option of: 1) attending the NERPI training in lieu of working his/her regular shift, or 2) submitting a request for a vacation day on the date of the training and receiving eight hours of overtime for attending the training as outlined in Article 6 of the collective bargaining agreement.

In 2015, the Commonwealth of Massachusetts increased the number of mandatory NERPI training days from one to four. In light of this change, the City began assigning officers who attended the NERPI training, a new training-week schedule for the week of NERPI training. This schedule consisted of four day-shift training days, followed by three days off, in lieu of the officers’ regular work schedules. Officers were not permitted to work double shifts during the training

week, and the City no longer approved vacation requests for the training days, thereby eliminating overtime payments for attending NERPI training. The Union filed a grievance over the City's failure to pay overtime when unit members attended the training on their regularly scheduled days off. The grievance was denied at all steps by the City, and resulted in the instant arbitration.

POSITIONS OF THE PARTIES

THE UNION

The primary rule in construing a written instrument is to determine the meaning, not alone from a single word or phrase, but from the instrument as a whole. The meaning of each paragraph and each sentence must be determined in relation to the contract as a whole. How Arbitration Works, Elkouri & Elkouri (6th Ed.). If the words are plain and clear, conveying a distinct idea, there is no occasion to resort to interpretation, and their meaning is to be derived entirely from the nature of the language used. When language is specific and unambiguous, there is little room for misunderstanding as to what the language means and how it applies. Id.

Here, Article 6 specifically states that:

Any Superior Officer required by the "department" to attend any training of course as a requirement of his/her rank of position in the department, shall, if attendance is on a day off, be compensated at his/her overtime rate or, at the Superior Officer's request, compensation in time off. (sic)

The language in this article is clear and unambiguous on its face and thus, must be interpreted according to its plain terms.

At the arbitration hearing, Captain Marc Gatcomb (Gatcomb) and Lieutenant Ryan Fortier (Fortier) testified that beginning in 2015, the City ordered members to attend mandatory NERPI training on their regularly scheduled days off and/or were reassigned from their regularly scheduled shifts in order to attend the training. These members were not paid overtime or provided compensatory time for their attendance at NERPI. The failure to provide such compensation was contradictory to the intent of Article 6 as well as the long standing practice of the parties.

Malden Superior Officers work one of three scheduled work shifts:

- Administrative Schedule (Monday – Friday 8 AM – 5PM)
- Day/Early shift schedule (patrol 8 AM – Midnight)
- Late shift schedule (patrol Midnight to 8 AM)

On June 18, 2015, the Department told officers not to report to their regularly scheduled shift, but instead to report directly to NERPI training during the hours of 8 AM to 3:30 PM, Monday through Friday. Furthermore, officers were told by the Department that they were to attend NERPI training in lieu of working their regular scheduled shifts. Prior to 2015, officers always had been allowed to work both shifts and receive overtime pay for doing so, provided that the officers could attend mandatory training and still report timely for the start of their regularly scheduled shifts. As a result of the Department's failure to compensate officers in accordance with Article 6 and the past practice of the parties, many officers were negatively impacted financially.

Officers who had their schedules changed to accommodate NERPI training were adversely impacted financially, because they did not receive

overtime pay to attend the training. Also, they were unable to work details during the day shift hours prior to reporting to their regular assigned shifts. Additionally, they were prohibited from working their regularly assigned shift after attending NERPI training even if it was possible to do so without conflict.

Fortier testified that during the week of April 4, 2016 through April 7, 2016, when he was ordered to attend NERPI training, his regular assigned schedule would have been:

- Monday 8 AM – 12 AM
- Tuesday Off
- Wednesday 8 AM – 12 AM
- Thursday Off
- Friday Off
- Saturday Off

Instead, he was scheduled for four straight work days to attend training without any overtime pay. As a result of the schedule change, his regular days off on Tuesday and Thursday became unplanned work days. He also was not allowed to work his regularly assigned shift of 4 PM – 12 AM following the conclusion of training, even though it would have been possible to do so without conflict. In so doing, the City violated Article 6 of the collective bargaining agreement, as well as the parties' past practice.

Past Practice

The language of Article 6 is clear and unambiguous and should be enforced based on its plain terms. However assuming *arguendo* that Article 6 contains some ambiguity, the long standing past practice clearly and unequivocally reaffirms the Union's position in this case. Prior to 2015, the City always paid overtime to unit members whenever they were reassigned from their

regular scheduled shifts in order to attend mandatory NERPI training. Additionally, the City has continued to recognize this practice when dealing with other forms of mandatory training such as BTO training and 911 training. Recently, the City has permitted unit members to submit overtime slips for their attendance at those other mandatory trainings.

Conclusion

The City violated Article 6 of the collective bargaining agreement, as well as the parties' long standing past practice, by adjusting the officers' schedules to attend the NERPI training without properly compensating them at their overtime rates of pay. Article 6 was negotiated into the collective bargaining agreement with the intent of providing additional compensation to police officers, if and when, they were required to utilize their regularly scheduled time off to attend a mandatory training.

Therefore, based upon the reasons set forth herein, the grievance should be upheld, and it should be determined that the City is required to compensate bargaining unit members at their overtime rates of pay whenever the City reassigns and/or changes members regularly scheduled shift assignments for the purposes of having them attend NERPI training.

THE CITY

The City's position is that no officer can be in two places at the same time. When the grievants were properly assigned to their regular duties and shifts, if, for some reason they were required to report for training, at that time, on that schedule, on what would be their days off, then they would be compensated at

their overtime rates or receive comp time as provided in the collective bargaining agreement. Given the acknowledged reality throughout the grievance process, as well as at the hearing, that the reassignment to NERPI training is not an alleged wrong or violation, facts and common sense show that none of the officers involved were scheduled for training on Friday through Sunday. Those were the days that were factually scheduled as days off for the temporarily scheduled NERPI training week.

The four-day training duty with three days off was the schedule that the grievants were assigned to work for the training week, a schedule which was the same for all officers assigned to training. The fact that some officers were reassigned from a schedule that was different from the NERPI training week schedule does not mean that they were assigned to training on their normal days off. All officers were put on the same schedule when they were assigned to training and the days off were the same for all. The City then returned all officers so scheduled to their normal schedules and normal days off the following week.

Here, when an officer is correctly and temporarily reassigned and scheduled to a different shift, for statutorily required training, which is only available on certain days, then the officer is being scheduled for training on the training duty shift and his/her time off would be in accordance with the temporarily assigned training duty schedule. The grievants were not scheduled for training duty in accordance with the same shift that they normally held and worked on. They were temporarily reassigned to a training duty schedule, a different schedule from their normal duties and shift. The training duty was

scheduled for Monday through Thursday, and the officers' days off were Friday through Sunday.

Conclusion

Given the valid reassignment involved, there is no contract violation. No individual can be in two places at one time or on two shift schedules at one time. The unchallenged and appropriate reassignment involved in this case precludes the application of the provisions of Article 6. The City requests that the grievance be denied.

OPINION

The issues before me are:

1. Did the City violate Article 6 of the collective bargaining agreement by failing to properly compensate superior officers during their week of mandatory NERPI training?
2. If so, what shall be the remedy?

For the reasons stated below, I find that the City did not violate Article 6 of the collective bargaining agreement by failing to properly compensate superior officers during their week of mandatory NERPI training, and the grievance is denied.

I find the language of Article 6 to be clear and unambiguous, and I agree with the Union's argument, that my decision should be based on its "plain terms"

as written.¹ Contrary to the Union's argument however, I find that the officers who attended the newly required four-day NERPI training, attended the training during work time and were not required to attend the training on their days off.

The parties' dispute centers on the City's decision, once the NERPI training became four days, to reassign officers attending the training a new training-duty schedule for the week of NERPI training, which replaced the officers' regular schedules. In so doing, the City was able to assign all officers attending the training four day-shifts to coincide with the training, and the following three days off to complete the officers' work week. Officers were then reassigned back to their regular schedule the following week.

The Union's grievance alleges a violation of Article 6, in that officers were required to attend training on their day off and did not receive overtime compensation. This argument however ignores the City's decision to reassign the officers to a new schedule during the week of NERPI training. By assigning the officers a training schedule, the City ensured that no officer had to attend training on a day off by moving the officers to a four day on and three day off training schedule. However, the Union failed to allege or provide any evidence or argument that the City was not authorized to make such a schedule change. Having nothing in the record before me that makes the City's decision to move officers to a training schedule during NERPI week a contract violation, I am

¹ Even if I was to find the Article 6 language to be ambiguous, which I do not, the Union's alternative argument concerning a past practice of officers taking a vacation day on the NERPI training day in order to become eligible for overtime is unpersuasive due to the change in circumstances surrounding the NERPI training requirement going from one day to four days.

unable to find that the City required officers to attend training on their days off, which would trigger compensation under Article 6.

AWARD

The City did not violate Article 6 of the collective bargaining agreement by failing to properly compensate superior officers during their week of mandatory NERPI training, and the grievance is denied.



Timothy Hatfield, Esq.
November 10, 2016