COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

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In the Matter of the Arbitration Between: *

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CITY OF WOBURN *

*

-and- * ARB-17-6272
* ARB-18-6459

*

NEW ENGLAND POLICE *
BENEVOLENT ASSOCIATION *

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Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Ellen Callahan Doucette, Esq.	-	Representing City of Woburn
Thomas Horgan, Esq.	-	Representing New England Police Benevolent Association

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 of Woburn violated Article X of the collective bargaining agreement when it failed to pay Officer Curran and Officer Seguin 8 hours pay for their detail shifts worked on July 29, 2017 and November 18, 2017 respectively. The City is ordered to make Officer Curran and Officer Seguin whole for their losses.

Timothy Hatfield, Esq.
Arbitrator
December 11, 2018

INTRODUCTION

On October 16, 2017 and January 18, 2018, the New England Police Benevolent Association (Union) filed unilateral petitions 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 Woburn City Hall on February 15, 2018.

The parties filed briefs on March 30, 2018.

THE ISSUE

Did the City of Woburn violate Article X, "Paid Details" by not compensating Officer Robert Curran eight hours of pay after working his July 29, 2017 detail at Marshall's (Detail # 17-1997) and by not compensating Officer Norm Seguin eight hours of pay after working his November 18, 2017 detail at Hilton Boston Hotel (Detail # 17-3291)? If so, what shall the remedy be?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

Article IV - Stability of Agreement (In Part)

> Section 3 - The failure of the City or the Union to insist, in any one or more situations, upon performance of any terms of provisions of this Agreement, shall not be considered a waiver or relinquishment of the right of the City or the Union to future performance of any such term or provision, and the obligations of the City and the Union to such performance shall continue.

Article VII - Grievance Procedure (In Part)

Section 1 - ... For purposes of a grievance processed beyond Step 2, a grievance shall be defined as a complaint, dispute or controversy between the City and the Union (and/or officer) involving only an interpretation of a specific provision of this Agreement. ...
Step 4 - If the decision of the Mayor is not acceptable to the Union, it may be appealed to the State Board of Mediation and Arbitration within 30 days.

Article X - Paid Details (In Part)

Section 8 - ... An officer required to work before noon, and after the noon lunch period shall be paid a minimum of eight (8) hours.

An officer who works a road job that goes beyond hours (4) hours (sic) shall be paid a minimum of eight (8) hours, and shall receive time and one half the applicable rate after eight (8) hours. ...

FACTS

The Union and the City are parties to a collective bargaining agreement that was in effect at all relevant times. On July 29, 2017, Officer Robert Curran (Curran) worked a detail at the Marshall's/TJX Companies on Commerce Way. The detail was scheduled for 10 AM to 2 PM. Officer Curran submitted his detail slip for 8 hours pay. After initially being approved, Chief Robert J. Ferullo, Jr. (Chief Ferullo) later modified the slip to reflect 4 hours of pay. On August 1, 2017, the Union filed a grievance over the City's failure to pay 8 hours pay for the detail.

On November 18, 2017, Officer Normand Seguin (Seguin) worked a detail shift at the Hilton Hotel from 10 AM to 2 PM. Thereafter, Seguin submitted his detail slip for 8 hours pay. The City denied the requested 8 hours pay and instead paid Seguin 4 hours of pay. On November 21, 2017, the Union filed a grievance over the City's failure to pay 8 hours pay for the detail.

The City denied each grievance at all steps of the grievance procedure. The Union filed for two arbitrations that were consolidated and resulted in the instant hearing.

POSITIONS OF THE PARTIES

THE UNION

Article X Is Clear and Unambiguous

A contract must be interpreted in accordance with its clear terminology. According to the "plain meaning rule," 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.[1] When language is specific and unambiguous, there is little, if any, room for misunderstanding as to what the language means and how it applies. The Union respectfully requests that the Arbitrator apply the "plain meaning rule" in this case when interpreting Article X.

Article X, Section 8, paragraph 3 states that:

> An officer required to work before noon, and after the noon lunch period shall be paid a minimum of eight (8) hours.

This provision is clear and unambiguous because no term is susceptible of more than one meaning, and no reasonably intelligent person would differ on this provision's proper meaning. Here, the provision's plain and clear language conveys the distinct idea that: an officer who works a detail that starts before noon and is required to work through the noon lunch period is entitled to receive a minimum of eight hours pay for working that detail, regardless of how many

[1] See How Arbitration Works, Elkouri & Elkouri (6th Ed.), p. 434.

hours that officer actually works. The language of this provision suggests no other reasonable interpretation.

Lack of Restrictive Language

Article X contains no language that specifies that this benefit applies only to certain types of details, and given this lack of any such restrictive language, it should apply to all details. The provision plainly reads: "An officer required to work," without any further restrictive language, it does not offer any reasonable meaning other than a general detail.

The pattern of the collective bargaining agreement indicates that each paragraph expresses a distinct and independent provision, and those paragraphs do not insist or rely upon each other. Of the seven paragraphs in Article X, Section 8, only the fourth paragraph mentions "road jobs." If the term "road jobs" was substituted in Section 8 for general details, it would change the meaning of the entire section. For that reason it would be inappropriate to take "require to work" to mean "road jobs" simply because they exist in the same section.

If the parties had intended for this specific provision to apply to only "road jobs," it seems reasonable to infer that they would have included more restrictive or precise language in this section, as they had in the remainder of the collective bargaining agreement. The parties had used the term "road jobs" throughout the remainder of the collective bargaining agreement to clearly express specific types of details when relevant, but did not do so here. In this case, the type of detail is not restricted, and the City is not free to ignore clear and unambiguous language that was negotiated in good faith.

Finally, the term "road job" does not appear in Section 8 until after the provision in question, and in a separate paragraph. It would be arbitrary and illogical to select terms so randomly and out of logical sequence to define one another. Applying the definition of "work" to mean "road jobs" exclusively would be importing an arbitrary new term that would interrupt the clear and plain meaning of the provision.

Clear and Unambiguous - Conclusion

Neither party disputes the times of the details. Officer Curran worked from 10 AM to 2 PM on July 29, 2017, and Officer Seguin worked from 10 AM to 2 PM on November 18, 2017. As such, the Officers met the requirements of Article X, Section 8 to receive eight hours of pay for their time worked.

Extrinsic Evidence

The parole evidence rule is substantive law that bars the introduction of extrinsic evidence, whether in oral, documentary, or other form, to contradict or supplement the final and complete written expression of the parties' agreement. Where the written terms of the collective bargaining agreement are not ambiguous on their face, extrinsic evidence is not admissible to contradict them. Parole evidence may not be used to create ambiguity where none otherwise exists, as parties are bound by the plain terms of the collective bargaining agreement.

Here, the collective bargaining agreement represents a final and complete written expression of the parties' agreement. The testimony of City witness Officer Jolly, is not a part of this final expression, and as such, his testimony is

barred by the parole evidence rule. Moreover, even if extrinsic evidence were permissible, Officer Jolly's testimony would not be beneficial or reliable because he was not a party negotiating these specific terms at the time they were originally negotiated into the agreement. Given that Officer Jolly was not present at the time the provision was originally negotiated, his testimony should be disregarded.

Road Jobs

Although the Union contends that the language should be interpreted by the plain meaning rule, if the arbitrator finds that Section 8 only applies to "road jobs," the City has still violated the collective bargaining agreement as the details in question fall under the category of "road jobs."

The collective bargaining agreement does not define "road jobs," but a "road job" is anything that puts an officer in the roadway directing traffic. The details in question are categorically "road jobs" due to their location in a roadway, and due to the type of work involved, i.e. directing vehicle traffic in order to promote the safety of drivers, pedestrians, and staff. Therefore, even if Section 8 applies only to "road jobs," these details are in fact "road jobs."

Past Practice

The City introduced a significant body of past details in order to indicate the purported past practice of the City not adhering to the eight hour pay provision of Section 8. However as explained above, past practice evidence is not admissible to rebut clear and unambiguous contractual language. Here, past practice evidence would only be admissible if the City could establish that the

language in Article X, Section 8 was somehow ambiguous on its face. The City has failed to establish any ambiguity in the language, and thus all extrinsic evidence should be held inadmissible.

Waiver

Even if one were to assume that the City failed to properly compensate officers in the past in accordance with Article X, Section 8, it does not result in a waiver of the Union's right to challenge this issue now. Article IV, Section 3 of the collective bargaining agreement states:

> The failure of the City or the Union to insist, in any one or more situations, upon performance of any terms of provisions of this Agreement, shall not be considered a waiver or relinquishment of the right of the City or the Union to future performance of any such term or provision, and the obligations of the City and the Union to such performance shall continue.

The alleged past practice of not paying the contractually obligated eight hours only exhibits the City's past failure to meet contractual obligations and does not result in a waiver of the Union's right to contest the issue at the present time.

Conclusion

Therefore, based on the reasons set forth and the evidence presented at the hearing, the Union's grievances should be upheld and it should be determined that the City violated the collective bargaining agreement when it did not pay Officers Curran and Seguin their contractually agreed upon pay of eight hours for the details worked. The Union requests that Officers Curran and Seguin be made whole for their losses.

THE EMPLOYER

The City did not violate Article X of the collective bargaining agreement when it declined to pay Officer Curran and Officer Seguin 8 hours detail pay to perform traffic details which were scheduled for 4 hours. If Section 8 is clear and unambiguous, it applies only when a police officer is required to work a detail which includes a scheduled lunch period. As neither officer took a lunch period, the minimum 8 hour detail payment does not apply. If Section 8 is not clear and unambiguous, then the City's submittal of documentary and testimonial evidence showing a consistent past practice of applying Section 8 only when the detail is a "road job" may be considered when rendering a decision.

Clear and Unambiguous

When the language of a collective bargaining agreement is clear and unequivocal, an arbitrator must apply its language in a manner that is consistent, and as written. An arbitrator may not ignore the plain words of a contract. Here, Section 8 states that "an officer required to work before noon, and after the noon lunch period shall be paid a minimum of eight (8) hours." The plain language used means that the officer is working a detail that includes a lunch period from which he will return to continue working. Further, using the term "lunch period" means that the detail is of a length that a lunch period would be necessary or perhaps mandated. In such cases, payment of 8 hours may be just compensation for a lengthy detail.

It is the Union's argument that where an officer works a detail through the noon lunch hour, that officer should be compensated at a minimum of 8 hours.

Such an interpretation would require the arbitrator to disregard the phrase "before noon, and after the noon lunch period" and replace it with the word "through," which is not within an arbitrator's authority.

Section 8 is Ambiguous

If the language of the agreement is ambiguous, an arbitrator may look to facts extrinsic to the language of the contract documents, including the parties' past practice under current and predecessor bargaining agreements and declarations of the parties, in order to determine the parties' intent.

A determination that the relevant contract language is neither clear nor unambiguous may be readily made in this case based upon the dispute between the parties. The Union alleges that the 8 hour mandatory pay applies when an officer works through the lunch hour, conversely, the City asserts that the Union's position disregards the detailed language "before, and after the noon lunch period." In any event, Section 8 has long been applied only to road jobs.

The City has presented overwhelming evidence consisting of records for hundreds of details from 2014 through 2017 showing a long and unbroken past practice of not paying officers who work non-road job details, including working through the noon hour, a mandatory 8 hours. Chief Ferullo testified that all details are paid a minimum of 4 hours, and for details over 4 hours, the officer is paid for the actual time worked.

Conclusion

For the reasons set forth above, the City respectfully requests that the arbitrator find that the City of Woburn did not violate Article X, Paid Details, and dismiss the consolidated grievances.

OPINION

The issue before me is: Did the City of Woburn violate Article X, "Paid Details," by not compensating Officer Robert Curran eight hours of pay after working his July 29, 2017 detail at Marshall's (Detail # 17-1997) and by not compensating Officer Norm Seguin eight hours of pay after working his November 18, 2017 detail at Hilton Boston Hotel (Detail # 17-3291)? If so what shall the remedy be?

For all the reasons stated below, the City of Woburn violated Article X of the collective bargaining agreement when it failed to pay Officer Curran and Officer Seguin 8 hours pay for their detail shifts worked on July 29, 2017, and November 18, 2017, respectively.

To begin, as both parties acknowledge, the first question to be answered in this matter is whether the language of the collective bargaining agreement is clear and unambiguous. I find that Article X, Section 8 is clear and unambiguous, and thus it is unnecessary to rely on outside extrinsic evidence to form a conclusion as to its intended meaning. Article X, Section 8, clearly states that:

> An officer required to work before noon, and after the noon lunch period shall be paid a minimum of eight (8) hours.

There are no qualifications or restrictions in this language beyond the need for the detail to begin before noon and end after the noon lunch period. Nowhere does this language indicate that it is specifically for "road jobs" as argued by the City. If the parties had wanted to restrict this provision to "road jobs" only, they needed to specifically state so in the language. The failure to include such restrictive language now estops the City from reasonably arguing that it does not apply to all details.

Additionally, the City's argument that an officer must have taken a lunch break for the disputed language to apply is also unfounded. The additional payment, above and beyond the actual hours worked during the detail, compensates the officer for being unable to take a lunch break. There would be no need for an additional payment if the officer was able to take a lunch break before returning to finish the detail. Attempting to read such a restriction into the language is unreasonable. For all the reasons stated above, the City of Woburn violated Article X of the collective bargaining agreement when it failed to pay officers Curran and Seguin eight (8) hours pay for their details.

REMEDY

Having found that the City violated the collective bargaining agreement when it failed to pay Officers Curran and Seguin eight (8) hours pay for their detail shifts of July 29, 2017, and November 18, 2017 respectively, the City is ordered to make Officer Curran and Officer Seguin whole for their losses.

AWARD

The City of Woburn violated Article X of the collective bargaining agreement when it failed to pay Officer Curran and Officer Seguin 8 hours pay for their detail shifts worked on July 29, 2017 and November 18, 2017 respectively. The City is ordered to make Officer Curran and Officer Seguin whole for their losses.

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