

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of the Arbitration Between: \*

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ESSEX COUNTY SHERIFF'S DEPARTMENT \*

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-and-

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ARB-19-7403

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INTERNATIONAL BROTHERHOOD OF \*  
CORRECTIONAL OFFICERS, LOCAL R1-071 \*

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Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Stephen Pfaff, Esq. - Representing Essex County Sheriff's Department

James Dever, Esq. - Representing International Brotherhood of  
Correctional Officers, Local R1-071

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 grievance is denied as it is procedurally not arbitrable.



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Timothy Hatfield  
Arbitrator  
January 6, 2021

### **INTRODUCTION**

International Brotherhood of Correctional Officers, Local R1-071 (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 February 25, 2020.

The parties filed briefs on April 17, 2020.

### **THE ISSUE**

Is the grievance arbitrable? If so, did Sheriff Coppinger violate the collective bargaining agreement by making Captain Peter Cignetti the Scheduling Captain? If so, what shall be the remedy?

### **RELEVANT CONTRACT LANGUAGE**

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

#### **ARTICLE 17 PROMOTIONS AND TRANSFERS (In Part)**

...

##### **Section 2 Transfers**

- A. Regarding any position covered by this collective bargaining agreement, when a vacant or new position arises, the Sheriff shall post and fill such vacant or new position at a job grade level and post assignment decided by the Sheriff or his designee. Any such vacancy shall be posted no later than thirty (30) days after all accrued leave, vacation and holiday benefits, if any, payable pursuant to the provisions of this Agreement have been paid to the former incumbent of said vacant position.

- B. A new position shall be posted not later than thirty (30) days after sufficient monies have been appropriated and received by the Employer to fund said new position. ...

## **ARTICLE 26 GRIEVANCE PROCEDURE (In Part)**

### Section 1

The term "grievance shall mean any dispute concerning the application or interpretation of the terms of this collective bargaining agreement, except discharge cases, which shall be handled exclusively with Article 24 above, and any other provision of this Agreement which has been expressly excepted from the grievance procedure.

### Section 2

The grievance procedure shall be as follows:

**Informal** The Union representative, with or without the aggrieved employee, shall present the grievance orally to the Superintendents of the Middleton Correctional Facility or the Lawrence Correctional Alternative Center, or their respective designees, depending on where the alleged grievable incident occurs. Grievances resolved informally at this level shall not constitute a precedent for future matters.

**Step I** If the grievance is not resolved informally, the employee and/or the Union shall submit a grievance in writing ... to the person designated by the Appointing Authority for such purpose not later than thirty (30) calendar days after the date on which the alleged act or omission giving rise to the grievance occurred or after the date on which there was a reasonable basis for knowledge of the occurrence. ...

The failure to file a grievance or to appeal to arbitration within the time limits established shall constitute a waiver of the grievance. The parties may agree in writing to extend any time limits. ...

### Section 6

The arbitrator shall have no power to add to, subtract from or modify any provision of this Agreement or to issue any decision or award inconsistent with applicable law. The decision or award of the arbitrator shall be final and binding in accordance with M.G.L., c. 150C. ...

## Section 10

Any step or steps in the grievance procedure, as well as time limits prescribed at each step of this grievance procedure, may be waived by mutual agreement of the parties in writing. ...

**RELEVANT MEMORANDUM OF AGREEMENT (IN PART)**

This Memorandum of Agreement is entered into by the Essex County Sheriff Frank G. Cousins, Jr., as the sole Appointing Authority, and the International Brotherhood of Correctional Officers (IBCO), Local R1-71. The following agreement shall cover the period from July 1, 2010 through June 30, 2012 and applies to all employees covered by the terms of the current collective bargaining agreement. This MOA modifies the terms and conditions of the current collective bargaining agreement in effect between the parties, expiring June 30, 2012. As such, the parties hereby agree as follows: ...

E. The parties agree that all positions covered by the current collective bargaining agreement will be subject to "right of assignment," filled at the Sheriff's discretion ...

F. All references to shift bidding contained in the current collective bargaining agreement shall be deleted. ...

I. The provisions of the Memorandum of Agreement shall apply concurrently with the terms of the existing collective bargaining agreement as provided in Article 42. Subject to ratification by the IBCO, Local R1-71, the modification recited herein shall be incorporated in the existing collective bargaining agreement, expiring June 30, 2012. ...

**FACTS**

The Essex County Sheriff's Department (Employer / ECSD) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration. Sheriff Kevin Coppinger (Sheriff Coppinger / Sheriff) is the sheriff of Essex County. Michael Marks (Marks) is a former Superintendent at the ECSD. Lieutenant Karen Paluzzi (Lt. Paluzzi / Paluzzi) is a bargaining unit member and the Union Secretary. Brian Connor (Connor) is the bargaining unit representative of the IBCO.

In September 2017, Sheriff Coppinger appointed Captain Peter Cignetti (Captain Cignetti / Cignetti) as the Scheduling Captain, a new position. The Sheriff did not post this position prior to filling it with Cignetti. Between September 2017 and February 28, 2019, the ECSD and the Union engaged in informal settlement discussions about the particulars of this position. In November 2018, in a meeting with the Union, the Sheriff discussed the official duties of the position and shortly thereafter, Cignetti began receiving his raise as Scheduling Captain. On February 28, 2019, Sheriff Coppinger gave the Union a written copy of the final official duties of the Scheduling Captain ending the informal discussions about the particulars of this position. On April 2, 2019, the Union again attempted to bring up the issue of the Scheduling Captain but was rebuffed by the ECSD. The Union filed a grievance on April 22, 2019 claiming a violation of the posting procedures of Article 17 of the collective bargaining agreement. The ECSD denied the grievance as untimely filed and not a violation of the collective bargaining agreement at all steps of the grievance procedure, resulting in the instant arbitration.

### **POSITIONS OF THE PARTIES**

#### **THE EMPLOYER**

##### Procedural Arbitrability

The Union filed this grievance on April 22, 2019 for an event that took place in September of 2017 when Sheriff Coppinger assigned scheduling duties to Captain Cignetti. Therefore, the grievance is untimely, and the matter is not arbitrable, because pursuant to the Article 26, §2 of the collective bargaining agreement Step I grievances must be filed within 30 days.

The Union's witnesses were unconvincing in their attempt to circumvent the untimeliness of the grievance. Lt. Karen Paluzzi first testified that February 28, 2019 was the official date they were told that "the issue was no longer for discussion." Afterwards, Lt. Paluzzi desperately tried to change the date to April 2, 2019, so that the April 22, 2019 grievance would fall within the thirty-day grievance requirement.

Paluzzi's attempt to change the date makes no sense for several reasons. The actual grievance form indicates that the duty assignment of Scheduling Captain was made in September of 2017. There is no reference on the grievance form that "working groups had been meeting to discuss the issue of Scheduling Captain" (as Paluzzi testified to, but both Sheriff Coppinger and Superintendent Marks denied), much less any indication that there was some sort of final "no" made by the Sheriff on this matter at an April 2, 2019 meeting. Moreover, as stated above, Paluzzi testified that the last meeting held with respect to the issue of Scheduling Captain was February 28, 2019. By her own testimony, there were no further meetings with Sheriff Coppinger after February 28, 2019, making the April 22, 2019 grievance filing untimely.

The Union should have realized the thirty-day grievance filing clock began to run on February 28, 2019. That date makes the most sense because Sheriff Coppinger testified that on February 28, 2019, he presented the duties of the Scheduling Captain in writing to the Union leadership which included Lt. Paluzzi. Sheriff Coppinger testified that he had a diary of notes from that day and that was the last day the issue of Scheduling Captain was discussed, albeit only duties of

the assignment. Therefore, the last date the Union could possibly say that discussions about the Scheduling Captain were in the “informal” stage of the grievance procedure was February 28, 2019. Accordingly, the grievance filed on April 22, 2019 is beyond the thirty-day requirement of Article 26, §2, Step I.

Realizing that their testimony about what allegedly occurred on certain dates was fatally flawed, both Paluzzi and Connor presented a novel idea for consideration; that the appointment of Captain Cignetti to the position of Scheduling Captain was just a “temporary” assignment that did not become final until April 2, 2019, when Sheriff Coppinger allegedly stated that the issue would no longer be discussed. This is the first time the Union ever raised the issue of a “temporary assignment.” The grievance does not reference anything about the assignment being temporary, moreover, the Sheriff testified that he never mentioned, never mind agreed, that the assignment was temporary in any meeting.

Finally, whether Captain Cignetti’s duties as Scheduling Captain in September of 2017 were temporary or not does not matter for purposes of filing a grievance. Nothing in the grievance procedure indicates that a matter allegedly designated as temporary somehow precludes the application of time limits of the grievance procedure. The Union believed in September of 2017 that the Sheriff had allegedly violated the collective bargaining agreement by assigning the duties of Scheduling Captain to Cignetti without posting. They were obligated to do one of three things if they believed they were aggrieved: 1) file a grievance within thirty days; 2) reach an agreement with the employer in writing to extend any time limits, pursuant to Article 26, §2, Step II; or 3) waive by mutual agreement by the parties

in writing any step or steps in the grievance procedure pursuant to Article 26, §10. Neither of these options was pursued by the Union in this matter. Accordingly, this matter is not arbitrable whether viewed as becoming ripe for grievance on February 28, 2019, or on the more correct date of September 2017.

### Merits

Prior to 2010, assignments for the positions of captains and lieutenants were posted by the Sheriff, and those interested members were allowed to bid on shifts pursuant to the collective bargaining agreement. The Sheriff had limited discretion in making assignments since he had to choose from the top three seniority bidders.

In 2010, however, that all changed when the parties entered into a Memorandum of Agreement which stated in part:

E. The parties agree that all positions covered by the current collective bargaining agreement will be subject to “right of assignment,” filled at the Sheriff’s discretion ...

F. All references to shift bidding contained in the current collective bargaining agreement shall be deleted. ...

In exchange for the Sheriff having the right of assignment, the Union accepted the reinstatement of thirteen furloughed days, roll call pay and a significant wage increase package. The Sheriff now had complete and unfettered discretion to assign any lieutenant or captain to any assignment that required a lieutenant or captain.<sup>1</sup>

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<sup>1</sup> Except for third shift, which is not an issue in this case.



The Union would have the arbitrator believe that the 2010 MOA applied only to those lieutenants and captains who were already in assigned positions and performing specific duties that existed at the time of the signing of the MOA. This argument is undercut by the fact that both former Sheriff Cousins and Sheriff Coppinger took full advantage of the right of assignments on numerous occasions after 2010 by creating new assignments such as Captain in the Female Detoxification Unit, a Records Captain, an Administrative Captain, a Training Captain, and a Compliance Captain, all without any posting or bidding, and most significantly, all without a grievance being filed by the Union.

Finally, if the Union actually believed that Article XVII was not rendered moot by the MOA, would Paluzzi send a April 21, 2017 email to Chief of Staff Newman stating that “because our Union is looking to work seniority into our next contract, is there a way to get an official list of IBCO R-71 Union members and their seniority dates?”

As of the signing of the MOA, the Sheriff has the complete discretion to assign all lieutenants and captains their duties, and therefore had the right to assign whomever he wanted to the position of Scheduling Captain.

### Conclusion

For all the reasons stated above, the Employer requests that the grievance be denied because it is not arbitrable. If the arbitrator should determine that the grievance is arbitrable, he should the grievance on the merits due to the parties signing the 2010 MOA giving the Sheriff the sole discretion for the assignments and duties for lieutenants and captains.

**THE UNION**Procedural Arbitrability

The ECSD believed that the trigger for when the grievance clock began was the actual directive for a bargaining unit member into the position of Scheduling Captain. However, it is not the posting of a rule or directive that starts the clock, rather it is the enforcement of such that begins a grievance clock. The parties were negotiating the particulars (duties and wages) of the Scheduling Captain position up through April 2, 2019. At that meeting, Sheriff Coppinger claimed the unilateral right to set the terms and conditions for the position of Scheduling Captain. This proclamation was the trigger for the Union to file a formal grievance, as the informal means did not resolve the issue. Thus, the underlying grievance was filed April 22, 2019, which is well within the thirty (30) days agreed to under the collective bargaining agreement.

The burden belongs to the ECSD to sustain its arbitrability claim. The evidence above, demonstrates the burden has not been sustained. Therefore, the Union requests the underlying grievance be heard on the merits.

Merits

The parties agreed under Article 17 of the collective bargaining agreement that “when a new or vacant position arises, the Sheriff shall post and fill such vacant or new position.” Additionally, “a new position shall be posted not later than thirty (30) days after sufficient monies have been appropriated ... and all permanent full-time employees in the bargaining unit ... shall have seven (7) calendar days to bid for such position.” There is also a selection process where

the Sheriff chooses from the most senior bidders to fill a new position. The Sheriff failed to follow any of these steps in filling the position of Scheduling Captain. Based on the Sheriff's failure, the Union filed the underlying grievance, which is its right under the collective bargaining agreement.

The ECSD believed the new position did not have to be posted because of the 2010 MOA. However, that was a mistake, as the MOA only specifically deleted shift bidding from the collective bargaining agreement, not the remainder of Article 17. Article 17 addresses many topics other than how new positions are filled, including transfers, probation periods for promotions and phased out employment. Are we to understand these provisions no longer exist because of the MOA?

The MOA in question refers to "all positions covered by the current collective bargaining agreement will be subject to right of assignment." Scheduling Captain was a new position, as it was not covered under the collective bargaining agreement when the grievance was filed. While new positions are not mentioned in the MOA, they are specifically mentioned in the collective bargaining agreement. If the parties wanted the MOA to delete language regarding new positions from the collective bargaining agreement, they could have done what they did to shift bidding in the MOA, but they did not.

The ECSD has created new positions since the MOA was signed. Two such positions were the Shift Executive Officer and Shift Commander, both were posted. The Scheduling Captain was another in the line of newly created positions but was not posted as the other two were. The MOA only states "all positions covered by the current collective bargaining agreement will be subject to right of

assignment.” It was improper for Sheriff Coppinger to follow the MOA when filling the new position of Scheduling Captain.

### Conclusion

If the arbitrator agrees the grievance should be sustained, then the Union requests as a remedy only that newly created jobs in the bargaining unit be posted as stated in the collective bargaining agreement. The Union is not seeking a reposting of the Scheduling Captain’s position.

### **OPINION**

The issue before me is: Is the grievance arbitrable? If so, did Sheriff Coppinger violate the collective bargaining agreement by making Captain Peter Cignetti the Scheduling Captain? If so, what shall be the remedy?

The parties agreed to argue the issue of arbitrability prior to the merits of the case on the day of the hearing. The parties were instructed to brief the issue of arbitrability first in their post-hearing briefs, prior to addressing the merits. This decision will address the arbitrability argument first and will only address the merits if the matter is arbitrable.

For all the reasons stated below, the grievance is not arbitrable as it was untimely filed and is denied.

It is undisputed that Sheriff Coppinger filled the position of Scheduling Captain in September 2017 when he assigned the duties to Captain Cignetti. The ECSD argues that any grievance filed by the Union over this position was due within thirty calendar days of this date as outlined in the collective bargaining agreement. The Union counters that the September 2017 filing date is incorrect

because 1) the assignment was subject to ongoing discussions between the parties through April 2, 2019, and/or, 2) the assignment was temporary in nature. I agree with the Union's argument that the September 2017 filing date is not the proper date for starting the clock on the Union's obligation to file a grievance, as the parties were engaged in informal settlement discussions as outlined in the collective bargaining agreement. As discussed in more detail below, however, I disagree that the parties were still engaged in those informal settlement discussions until April 2, 2019 as the Union contends.

While the evidence is clear that the parties continued to discuss the particulars of this position well after September 2017, the evidence does not support the Union's position that those discussions extended to April 2, 2019. In November 2018, Sheriff Coppinger notified the Union of the duties of the Scheduling Captain, and Captain Cignetti received his raise. The parties met again on February 28, 2019. At this meeting, Sheriff Coppinger presented the final written duties of the position to the Union, culminating the informal discussion period. At this point, under the collective bargaining agreement, the Union had thirty days to file a grievance over the Sheriff's actions if they deemed them to be a violation of the collective bargaining agreement. The Union failed to do so within the required thirty days, instead waiting until April 22, 2019.

While the Union may have attempted to resurrect the issue of the Scheduling Captain at an April 2, 2019 meeting, it did so in an attempt to circumvent the timelines of the grievance procedure, even though the Union was aware that Captain Cignetti had received his raise in November 2018, and the

Union had received the final written duties of the position on February 28, 2019. As such, I find that the Union should have been aware on February 28, 2019 that the informal discussions of this position were finished, and any grievance would need to be filed within thirty days. Ultimately, the Union's filing on April 22, 2019 is untimely and a violation of the timelines outlined in the collective bargaining agreement. Having found the grievance to be untimely filed and not arbitrable, and in accordance with the parties' agreement at the hearing, I decline to rule on the merits of the case.

**AWARD**

The grievance is denied as it is procedurally not arbitrable.



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Timothy Hatfield, Esq.  
Arbitrator  
January 6, 2021