

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of the Arbitration Between: \*

CITY OF WORCESTER \*

-and- \*

NAGE, LOCAL 495 \*

ARB-20-8117

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Arbitrator:

Timothy Hatfield, Esq.

Appearances:

William Bagley, Esq. - Representing City of Worcester

Michael Manning, Esq. - Representing NAGE, Local 495

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 the collective bargaining agreement when it declined to accept the grievant's bid to go from a Senior Regional Dispatcher on the 11 p.m. to 7 a.m. shift to a Regional Dispatcher III on the 7 a.m. to 3 a.m. shift, and the grievance is denied.



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Timothy Hatfield, Esq.  
Arbitrator  
December 16, 2021

**INTRODUCTION**

NAGE, Local 495 (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 virtual hearing via WebEx on January 22, 2021.

The parties filed briefs on March 19, 2021.

**THE ISSUE**

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

**The Union proposed:**

Did the City violate the collective bargaining agreement when it declined to accept the grievant's bid to go to days pursuant to the posting dated February 12, 2020? If so, what shall be the remedy?

**The City proposed:**

Did the City violate the collective bargaining agreement when it did not allow a Senior Regional Dispatcher to resign from her position and then voluntarily demote herself to a Regional Dispatcher III and transfer from an overnight shift to a day shift? 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:

Did the City violate the collective bargaining agreement when it declined to accept the grievant's bid to go from a Senior Regional Dispatcher on the 11 p.m. to 7 a.m. shift to a Regional Dispatcher III on the 7 a.m. to 3 p.m. shift.

If so, what shall be the remedy?

**RELEVANT CONTRACT LANGUAGE**

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

**ARTICLE 4 MANAGEMENT RIGHTS**

In the interpretation of this Agreement, the City shall not be deemed to have been limited in any way in the exercise of the regular and customary functions of municipal management or governmental authority and shall be deemed to have retained and reserved unto itself all the powers, authority and prerogatives of municipal management or governmental authority including, but not limited to, the following examples: the operation and direction of the affairs of the departments in all of their various aspects; the determination of the level of services to be provided; the direction, control, supervision and evaluation of the employees; the determination of employee classifications; the determination and interpretation of job descriptions, but not including substantive changes; the planning, determination, direction and control of all the operations and services of the departments (and their units and programs); the increase, diminishment, change or discontinuation of operations in whole or in part; the institution of technological changes or the revising of processes, systems or equipment; the alteration, addition or elimination of existing methods, equipment, facilities or programs; the determination of the methods, means, location, organization, number and training of personnel of the departments, or its units or programs; the assignment and transfer of employees; the scheduling and enforcement of working hours; the assignment of overtime;

the determination of whether employees (if any) in a classification are to be called in for work at times other than their regularly scheduled hours and the determination of the classification to be so called; the determination of whether goods should be made, leased, contracted or purchased on either a temporary or a permanent basis; the hiring, appointment, promotion, demotion, suspension, discipline, discharge, or relief of employees due to lack of funds or of work, or the incapacity to perform duties or for any other reason; the making, implementation, amendment, and enforcement of such rules, regulations, operating and administrative procedures from time to time as the City deems necessary; and the power to make appropriation of funds; except to the extent abridged by a specific provision of this Agreement or law.

The rights of management under this article and not abridged shall not be subject to submission to the arbitration procedure established in Article 11 herein.

Nothing in this article shall be interpreted or deemed to limit or deny any rights of management provided the City by law.

#### **ARTICLE 10 SENORITY (In Part)**

Seniority shall be defined as meaning the length of service from the date of appointment under G.L. c. 31, in the respective bargaining unit ....

Subject to the provisions of Article 31, preference in assignment to work shifts ... will be made in accordance with seniority as defined herein. ...

#### **ARTICLE 11 GRIEVANCE PROCEDURE (In Part)**

5. The award of the arbitrator shall be final and binding upon all parties, subject to the following conditions:

a. The arbitrator shall make no award for grievances initiated prior to the effective date of this Article.

b. The arbitrator shall have no power to add to, subtract from, or modify this contract or the rules and regulations of the City and the Charter, Ordinances and Statutes concerning the City, either actually or effectively.

c. The arbitrator shall only interpret such items and determine such issues as may be submitted to him by the written agreement of the parties.

d. Grievances may be settled without precedent at any stage of the procedure until the issuance of a final award by the arbitrator.

e. Appeal may be taken from the award to the Worcester Superior Court as provided for in paragraph 6.

6. Appeal from the arbitrator's award may be made to Superior Court on any of the following bases, and said award will be vacated and another arbitrator shall be appointed by the Court to determine the merits if:

a. The award was procured by corruption, fraud, or other undue means;

b. There was evident partiality by an arbitrator, appointed as a neutral, or corruption by the arbitrator, or misconduct prejudicing the rights of any party;

c. The arbitrator exceeded his powers by deciding the case upon issues other than those specified in sections 5(b) and (c), or exceeded his jurisdiction by deciding a case involving non-grievable matters as specified in Section 1, or rendered an award requiring the City, its agents, or representatives, the Union, its agents or representatives, or the grievant to commit an act or to engage in conduct prohibited by law as interpreted by the Courts of this Commonwealth;

d. The arbitrator refused to postpone the hearing upon a sufficient cause being shown therefor, or refused to hear evidence material to the controversy or otherwise so conducted the hearing as to prejudice substantially the rights of a party;

e. There was no arbitration agreement on the issues that the arbitrator determined, the parties having agreed only to submit those items to arbitration as the parties had agreed to in writing prior to the hearing, provided that the appellant party did not waive his objection during participation in the arbitration hearing; but the fact that the award orders reinstatement of an employee with or without back pay or grants relief that would not be granted by a court of law or equity, shall not be grounds for vacating or refusing to confirm the award.

### **FACTS**

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

grievant, Jessica Kacevich (Kacevich / grievant) worked for the City in the Emergency Communications Department. Kacevich worked as a Regional Dispatcher III from March 2017 until the fall of 2018, before being promoted to a Senior Regional Dispatcher in October 2018 and assigned to the overnight shift.

In 2018, the Union and City came to an agreement for a Career Path Classification Plan for Regional Dispatchers. The agreement created a four-step classification plan which included four different pay grades. The Senior Regional Dispatcher is in a different classification from Regional Dispatcher III and is paid at a higher pay grade.

As a Senior Regional Dispatcher, Kacevich serves as a shift supervisor. Two Senior Regional Dispatchers are assigned to each shift and run the dispatch operation on a day-to-day basis. They are responsible for assignments for each regional dispatcher under their control on a shift.

In February 2020, the Emergency Communications Department posted opportunities for employees to change shifts, asking employees to indicate their interest. Kacevich expressed her interest in moving to the day shift. Kacevich was informed that the open positions were for a different classification and that there were no openings for Senior Regional Dispatchers on the day shift. Kacevich then sought to resign her position as a Senior Regional Dispatcher and demote herself into a Regional Dispatcher position on the day shift. The City denied that request.

The Union filed a grievance over the City's refusal to award Kacevich the day shift position. The grievance was denied at all steps by the City and resulted in the instant arbitration.

### **POSITIONS OF THE PARTIES**

#### **THE UNION**

Jessica Kacevich's current title is a Senior Regional Dispatcher, the highest Union position in the Communication Department. As a Senior Regional Dispatcher, she is qualified for, and has actually worked in, all the lower dispatch positions.

Kacevich bid for a posted day shift which was subsequently filled by employees with less seniority in a lower classification. There can be no doubt that Kacevich is qualified for the assignment in question, which in the Union's eyes is nothing more than a change in her hours from the overnight shift to days. There is also no question that she possesses more seniority than those selected for the shifts. Article 10 of the collective bargaining agreement is clear that preference in assignments to work shifts will be made in accordance with seniority.

In its grievance response, the City asked the Union for contractual support for the proposition that an employee enjoys the privilege to bump a lower ranked employee from his/her position. This grievance has never been about the displacement of an employee. The shift assignment Kacevich covets was an advertised vacancy. The City's attempt to frame the issue in such a fashion is endeavoring to foster division within the workforce.

The Union asserts that this is a case of qualifications and seniority. The collective bargaining agreement unmistakably recognizes the privilege seniority should bring to shift assignments. The real question the grievance raises is whether employee advancement through the Career Path Classification Plan negates all possibility of mid-career adjustment.

Kacevich was fully aware that the day shift position she bid for was actually to be filled with a lower ranked title than she possessed. She made it clear that she would resign her higher title in favor of the lower one upon acceptance of her bid. She was tired of the night shift and saw that bidding into the day shift with the higher title was not a viable option. Instead, she relied on her qualifications and seniority as a Regional Dispatcher II to fill the vacancy.

Once informed that her bid for the position was being rejected Kacevich asked Stanley how earlier requests from Senior Regional Dispatcher to Regional Dispatcher III were allowed. Stanley gave no answer at the time, but at the hearing he testified that the other employee Kacevich was referring to requested a hardship allowance to enable her to be demoted and secure a different shift. Stanley, when pressed, simply said that the transfer had been approved by the City management above him. So apparently there is a secret way to secure the type of reassignment requested by Kacevich, and it is only available to those with the political connections to make it happen.

The Union does not assert the right to submit a position-specific resignation at any time and upset the set schedules both parties enjoy. The current scenario



only occurs when openings are available and higher classified employees wish to take a financial hit and abandon the more lucrative higher classification. The impact to the City's budgeting and scheduling functions is zero. The number and titles of assigned personnel to each shift remains the same.

The Union requests that the grievance be sustained, and an order be issued to the City placing the grievant in her bid-for position.

### **THE EMPLOYER**

In the instant case, the Union seeks an order that would require the City to permit any supervisory level employee to resign from their position, and then require the City to permit them to move to a lower position. Taken to the extreme, it would allow every supervisor in the Emergency Communications Department to decide at any given time that they no longer wished to be supervisors and wished to demote themselves to dispatcher level positions, leaving the department with no supervisors and too many dispatchers.

The Union was unable to present any provision in the collective bargaining agreement obligating the City to permit a Senior Regional Dispatcher to resign from her position and then voluntarily demote herself to a Regional Dispatcher III position for any reason, including the employee's desire to transfer from an overnight shift to a day shift. To the contrary, Article 4 of the collective bargaining agreement reserves to management the power to make decisions with regard to promotions and demotions.

In addition to the clear language of the collective bargaining agreement, the Union failed to provide evidence of an established past practice. As Stanley testified, during his ten years in the Emergency Communications Department, there was only one occasion where an employee was permitted to voluntarily demote herself. On that occasion, the request was not permitted as a matter of course as suggested by the Union. Rather, the request was presented as a personal hardship and it was reviewed by Stanley, forwarded to Human Resources, and ultimately approved by the City Manager to accommodate the employee's unique circumstances. It is clear from the evidence that there is no practice whereby supervisory employees are permitted to voluntarily demote themselves as a matter of course for any reason, including a desire to transfer shifts.

#### Conclusion

Based on the foregoing, the City did not violate the collective bargaining agreement when it did not permit Kacevich to resign her position, and then voluntarily demote herself so that she could transfer from an overnight shift to a day shift. The grievance should be denied.

#### **OPINION**

The issue before me is: Did the City violate the collective bargaining agreement when it declined to accept the grievant's bid to go from a Senior Regional Dispatcher on the 11 p.m. to 7 a.m. shift to a Regional Dispatcher III on the 7 a.m. to 3 p.m. shift. If so, what shall be the remedy? For all the reasons

stated below, the City did not violate the collective bargaining agreement when it declined to accept the grievant's bid to go from a Senior Regional Dispatcher on the 11 p.m. to 7 a.m. shift to a Regional Dispatcher III on the 7 a.m. to 3 p.m. shift, and the grievance is denied.

In 2018, the City and the Union agreed on a Regional Dispatcher Classification Plan. This plan created four classifications for dispatchers, Regional Dispatcher I, II, III and Senior Regional Dispatcher, each with its own unique pay grade and qualifications. Moving between each classification was a promotion which included increased and different duties and a salary increase. In the case of the Senior Regional Dispatcher, these increased duties were in the form of functioning as the shift supervisor. The City, in its sole discretion, decided to place two Senior Regional Dispatchers on each shift. These two Regional Dispatchers were in charge of the day-to-day operation of the Emergency Communications Center during their shift.

Kacevich applied for and was promoted to Senior Regional Dispatcher and assigned to the overnight shift with the commensurate change in duties and compensation in 2018. The City posted shift change opportunities in 2020 and Kacevich, eager to move to day shift, expressed interest. It was at this time that she was informed that there were no Senior Regional Dispatcher openings on the day shift. Kacevich then attempted to resign as a Senior Regional Dispatcher and return to a Regional Dispatcher role on the day shift commensurate with her seniority. The City declined her request.

The collective bargaining agreement contains language in Article 4, the Management Rights Clause, which places all decisions on demotion exclusively in the purview of the City. Additionally, the collective bargaining agreement contains no language on the issue of an employee bumping into a lower classification. While the Union is correct that Kacevich's request did not involve a potential bumping situation because the shift changes were to fill corresponding Regional Dispatcher openings, it is nonetheless instructive to note the lack of any such restrictions in the collective bargaining agreement.

Armed with the exclusive authority to decide on demotions, the City could have allowed Kacevich's request to reclassify herself back into the lower classification of Regional Dispatcher III and then hired a new Senior Regional Dispatcher to fill Kacevich's overnight shift. For reasons known only to the people involved, the City decided not to do so and denied Kacevich's request as was their contractual right.

The Union's argument that Kacevich had more seniority than the employees whom the City chose for the day shift is irrelevant. The openings in question were for Regional Dispatchers and Kacevich was a Senior Regional Dispatcher and not eligible without a demotion that the City declined to authorize. Had the City agreed to the demotion, Kacevich's seniority would have entitled her to the day shift, but as discussed, the City preferred to keep Kacevich as a Senior Regional Dispatcher.

While the Union was correct that at least one other employee was allowed to voluntarily demote back to the Regional Dispatcher position in the past, it came with the City's assent after a review of her particular circumstances. It was not a unilateral decision by the employee. Kacevich, made a similar request that was reviewed and ultimately denied by the City. One allowance to satisfy a hardship request does not create a past practice that usurps the City's unilateral right to decide on demotions. For all the reasons stated above, the grievance is denied.

### **AWARD**

The City did not violate the collective bargaining agreement when it declined to accept the grievant's bid to go from a Senior Regional Dispatcher on the 11 p.m. to 7 a.m. shift to a Regional Dispatcher III on the 7 a.m. to 3 p.m. shift, and the grievance is denied.



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December 16, 2021