

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
EXPEDITED ARBITRATION AWARD

In the Matter of Arbitration between
TOWN OF SWANSEA

and

NATIONAL FRATERNAL ORDER OF POLICE *

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Case No:
ARB-21-8601

Date Issued: June 11, 2021

Issue: Is the temporary court officer position mandated by the contract to be posted and bid on as a shift? If so, what shall be the remedy?

Contractual Provisions: The Union did not cite a particular contract provision but rather an alleged long-standing past practice. The Town cites Article V of the contract.

Award: For at least ten years, sergeants in the Town's Police Department bid in February of each year for two 4pm to 12am shifts, two 12am to 8am shifts, one 8am to 4pm shift, and one court officer assignment. Each bid has a start date of July 1 of the same year and ends on June 30, the end of the fiscal year. In the past, the most senior sergeant who bid on the court officer assignment or the above referenced shifts is awarded the bid starting July 1. Occasionally, the court officer assignment or a shift is vacated prior to the end of the fiscal year because of a promotion, retirement, etc. On these occasions, the Town typically posts the bid and chooses the most senior sergeant who applied, and that person would fill that shift or the court officer assignment until the end of the fiscal year.

Article V, Section H(5) defines temporary positions as openings lasting no more than 90 days. Additionally, the contract states that the Employer may fill any temporary job vacancy with any employee who, in the judgment of the employer, has the skill, ability and experience best suited to the performance of the job.

In February of 2021, the Sergeants bid on the above referenced shifts and court officer assignment for the July 2021/2022 fiscal year. Mark Foley (Foley), the most senior sergeant to bid on the court officer position was awarded the assignment for the upcoming fiscal year. In March of 2021, Sgt. Patrick Mooney (Mooney), the court officer for the 2020/2021 fiscal year, was promoted and the court officer assignment became vacant on April 6, 2021. Chief Marc Haslam (Haslam) then posted a Temporary Shift bid for a sergeant for the 8am to 4pm shift. In April of 2021, Haslam reassigned Foley from his 8am to 4pm patrol supervisor shift to the court officer assignment. Haslam reassigned Foley to the court officer position because he wanted continuity in the position, and Foley had already applied for the assignment for the upcoming fiscal year.

The Union argues that the parties had a binding past practice of posting bids for the court officer position and awarding the position to the most senior officer who applied. The Union asserts that the Town violated that practice when Haslam failed to post a bid for the temporary court officer position in the spring of 2021 and reassigned Foley into the position. I disagree.

In this instance, the court officer position would be open for 85 days, from April 6, 2021 to June 30, 2021. Because this time period is less than 90 days, the contract defines it as a temporary position. The contract allows the Employer to choose any officer it deems appropriate to fill the temporary position. The Union argues that this contract language does not control because the parties have a binding past practice of posting a bid for the Court Officer position and choosing the most senior officer who bid for the position. However, a past practice cannot overcome explicit contract language. City of Somerville, 44 MLC 123, 125, MUP-16-5023 (January 30, 2018). In this case, the contract language is clear and unambiguous. Article V defines temporary positions as those open for no more than 90 days and allows the Employer to assign any officer it deems fit to fill the vacancy.

For all the above-mentioned reasons, the grievance is denied.

A handwritten signature in black ink that reads "Meghan Ventrella". The signature is written in a cursive, flowing style.

Meghan Ventrella, Arbitrator