

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

TOWN OF NORWOOD

-and-

NORWOOD FIREFIGHTERS UNION, LOCAL
1631

ARB-21-8749

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Corey Higgins, Esq. - Representing Town of Norwood

Paul Hynes, Esq. - Representing Norwood Firefighters Union,
Local 1631

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 Town did not violate Article XV, Section 1 of the Agreement when it refused to reimburse Firefighter Adam Kewriga for the cost of paramedic school tuition, registration and books. The grievance is denied.



Timothy Hatfield, Esq.
Arbitrator
October 27, 2022

INTRODUCTION

On July 23, 2021, Norwood firefighters Union, Local 1631 (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the 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 Web-Ex on November 4, 2021.

The parties filed briefs on January 11, 2022, January 25, 2022, January 28, 2022 and January 31, 2022.

THE ISSUES

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

The Union proposed:

Did the Town of Norwood violate Article XV, Section 1 of the Agreement between the Town of Norwood and Local 1631, International Association of Firefighters, AFL-CIO by refusing to reimburse Firefighter Adam Kewriga for the cost of paramedic school tuition, registration and books? If so, what shall be the remedy?

The City proposed:

Did the Town of Norwood violate Article XV, Section 1 of the Agreement between the Town of Norwood and Local 1631, International Association of Firefighters, AFL-CIO and past practice by refusing to reimburse Firefighter Adam Kewriga for the cost of paramedic school tuition, registration and books? 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 Town of Norwood violate Article XV, Section 1 of the Agreement between the Town of Norwood and Local 1631, International Association of Firefighters, AFL-CIO by refusing to reimburse Firefighter Adam Kewriga for the cost of paramedic school tuition, registration and books? If so, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

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

Article XV (In Part)**Section 1 EMT Certification**

...

The EMT-B's and Paramedics who receive the above-referred stipend shall recertify through the Department's Continuing Education/Enhancement Training, and auto-defibrillation Recertification Programs to be eligible to receive their stipend. This program will be administered by and paid for by the Fire Department and the Town.

If the employer requires new employees to get certified, it agrees to pay tuition, registration and books for new EMT's. ...

FACTS

The Town of Norwood (Norwood or Employer) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this

arbitration. Adam Kewriga (Kewriga) has been a Firefighter/Emergency Medical Technician in the Town's Fire Department since 2019.

In 2006, the Town and the Union negotiated and implemented an Advanced Life Support Ambulance, the framework and the parameters of the program as it relates to bargaining unit members are set forth in Article XV, Section 1. Firefighter Mawn and Firefighter Ronco attended paramedic school in 2006, along with Firefighters Fagan and Mahoney. The Town paid Safety Program Consultants \$21,045 for the cost of tuition, registration and books. Since 2006, the Town has never reimbursed any firefighter for the cost of attending paramedic school. All such payments have been made directly to the school.

Under Article XV, Section 1, the Town has reimbursed firefighters/paramedics for the \$150 cost of recertifying their annual paramedic certification, which firefighters pay directly to the Commonwealth of Massachusetts.

In 2021, Firefighter Kewriga enrolled in paramedic school on his own and paid for the cost of tuition, registration and books using G.I. benefits. Firefighter Kewriga requested to be reimbursed by the Town for the cost of tuition, registration and books. The Town declined to reimburse Firefighter Kewriga, and the Union filed a grievance over the denial. The Town denied the grievance at all steps of the grievance procedure resulting in the instant arbitration.

POSITIONS OF THE PARTIES

THE UNION

Since this is the first time a Norwood firefighter has been denied reimbursement for EMT certification, the Arbitrator is tasked with resolving this grievance having no past practice and relying solely on language. Moreover, neither the Union nor the Town are claiming any ambiguity with the language.

The Town Violated the Collective Bargaining Agreement

For the Town to ignore clear and unambiguous contract language is a violation. The Town's principal witness could not cite any authority which allowed it not to reimburse the grievant. In fact, it was based upon nothing but speculation and conjecture. This case shows that the Town thinks it has the unfettered and absolute right to alter and add to a collective bargaining agreement unilaterally.

This case, however, is a contract interpretation case and both sides must adhere to what the collective bargaining agreement states or does not state. The Arbitrator is charged with interpreting language that the parties negotiated. The parties could have negotiated language allowing the Town to limit payments due to a collateral service, but the parties did not do so. Both the Town and the Union had the unlimited right to make demands and proposals on any subject or matter during negotiations. The language in Article XV, Section 1 is clear and neither side can make a unilateral change.

Practice

The terms "practice, or our practice" were mentioned several times by the Town. The Town, however, cannot claim a past practice on this issue, as it is not disputed that this is the first time that a member has ever been denied

reimbursement under this Article. Therefore, the plain language of Article XV, Section 1 is dispositive of this issue. It is an arbitration axiom that practice can be a useful aid to interpretation, along with bargaining history, where the language at issue is ambiguous. Where the language is clear and unambiguous, however, the use of any source beyond the language itself and its factual context is strictly prohibited by arbitral law.

Town's Reliance on Department Rules at the Expense of Clear Contract Language is Illegal

Supreme Judicial Court precedent clearly indicates that where a collective bargaining agreement is in conflict with work rules promulgated by a public safety department, the collective bargaining agreement should prevail. In fact, the Town's only reason for following Department rules at the expense of the collectively bargained benefit is an order that the Chief mentioned for the first time at the hearing. Even assuming *arguendo* that there was some order that Kewriga needed to request permission to attend Paramedic School, it would have no bearing upon the applicability of the contract, because the relevant language is not ambiguous. The Town contends that where conflicting HR rules or policy are more convenient, they may be followed at the expense of relevant contractual provisions. Such reasoning makes a mockery of collective bargaining.

Keli Spencer's Failure to Appear

The Town failed, without any explanation, to have this key witness appear and testify at the hearing. The Arbitrator should conclude, in a manner consistent with arbitral authority, that Spencer failed to appear at the hearing because her

testimony would not have helped the Town's position. Simply put, since the grievance is based upon her initial denial, the Town's position cannot be sustained.

Conclusion

There are two distinct interpretations of what Article XV, Section 1 requires when a firefighter takes courses related to EMT certification. First is the Town's version which would give no meaning to Article XV, Section 1 because, in its view, the Town's Human Resource Department can decide whether or not to reimburse a firefighter for EMT certification. Clearly, this is not what Article XV, Section 1 provides for, nor is it what the parties agreed to.

Next, is the Union's position which is based upon literal application of the Article, and the uncontradicted and credible testimony of Union witnesses. There is nothing in the collective bargaining agreement which permits the Town to offset payments from some collateral source. The Town is not relieved of its obligation to pay if the member receives financial support, whether it is a generous relative or a grateful nation. Pursuant to the plain language of the collective bargaining agreement, the Town is required to pay for the registration, tuition and books. The Arbitrator cannot ignore clear-cut contractual language, and may not legislate new language, since to do so would usurp the role of the labor organization and employer. The Union requests that the Arbitrator find that the Town violated the provisions of Article XV, Section 1 and issue a make whole remedy.

THE EMPLOYER (In Part)¹The Town did not violate Article XV, Section 1

The fundamental issue in this case is whether the language of Article XV, Section 1 that states “[i]f the employer requires new employees to get certified, it agrees to pay tuition, registration and books for new EMT’s” is clear and unambiguous or whether the language is ambiguous and requires parties to look to past practice to interpret it. If the arbitrator determines that the disputed provision is clear and unambiguous, he must resolve the dispute on the language alone. If, however, he determines that the language is not clear and unambiguous, he may then consider extrinsic evidence.

While the above quoted language specifically states that the Town agrees to pay the tuition, registration and books for EMT’s to get certified, it does not state to whom such payments are to be made. Likewise, the language in the paragraph that immediately precedes the applicable language in Article XV, Section 1 states:

“The EMT-B’s and Paramedics who receive the above-referred stipend shall recertify through the Department’s Continuing Education/Enhancement Training and auto defibrillation Recertification Programs to be eligible to receive their stipend. This program will be administered by and paid for by the Fire Department and the Town.”

Just as the language stating that the Town agrees to pay the tuition, registration and books for EMT’s to attend paramedic school does not state to whom payments are to be made, the language in the paragraph immediately

¹ Based on my ruling in this matter, I have included only the Employer’s relevant arguments in this section.

preceding it also does not say to whom the Fire Department/Town must pay for the cost of EMT-B and Paramedics to be certified.

A review of the payments under both provisions reveals two starkly different practices even though the language of both provisions requires the Town to pay for such costs. As the language of both of these paragraphs is silent as to whom such payments are to be made by the Town, it is clear that the language in Article XV, Section 1 is ambiguous.

The indisputable and uncontroverted evidence presented at the arbitration hearing plainly establishes that the Town has never reimbursed firefighters for the cost of attending paramedic school, but instead has paid the paramedic school directly for the cost of tuition, registration and books for each firefighter who has been sent to paramedic school by the Town. At the hearing, the Union's witnesses, Firefighter Ronco and Firefighter Mawn, each admitted that when they were sent to paramedic school, they were not reimbursed by the Town for the cost of the tuition, registration and books. Nor did either firefighter refute that the Town paid for the cost of tuition, registration and books directly to the paramedic school. The evidence plainly establishes that a longstanding practice has existed, dating back to 2006, where the Town pays the paramedic school directly and does not reimburse the respective firefighter for such costs.

For these reasons, the Union's grievance should be denied in its entirety.

OPINION

The issue before me is: Did the Town of Norwood violate Article XV, Section 1 of the Agreement between the Town of Norwood and Local 1631, International

Association of Firefighters, AFL-CIO by refusing to reimburse Firefighter Adam Kewriga for the cost of paramedic school tuition, registration and books? If so, what shall be the remedy?

For all the reasons stated below, the Town did not violate Article XV, Section 1 of the Agreement when it refused to reimburse Firefighter Adam Kewriga for the cost of paramedic school tuition, registration and books. The grievance is denied.

As this is a contract interpretation case, I must first decide if the language of Article XV, Section 1 is clear and unambiguous. If the language is clear and unambiguous, then my decision is based solely on the plain language of the Article. If I find, however, that the language is ambiguous, I may then decide this dispute using additional evidence such as past practice.

In this matter, Article XV, Section 1 deals with two different payments. The first is the reimbursement for annual recertification, and the second deals with the initial cost of paramedic school. I find the language in Article XV, Section 1 to be ambiguous as it does not state in either instance to whom the payments shall be made.

The Town was able to show in each instance a binding past practice on who receives the payments. The \$150 dollar payment for reimbursement is made directly to the firefighter after the firefighter has paid the Commonwealth of Massachusetts. The practice however is different for the initial cost of paramedic school. Here, the Town has paid the school directly for all costs associated with the program.

Since 2006, no firefighter in Norwood has been directly reimbursed for the cost of tuition, registration and books for attending paramedic school. While the Town has paid these costs for the firefighters, it has always paid the paramedic school directly. As such, I find a valid past practice, and Firefighter Kewriga is not entitled to a direct reimbursement.²

AWARD

The Town did not violate Article XV, Section 1 of the Agreement when it refused to reimburse Firefighter Adam Kewriga for the cost of paramedic school tuition, registration and books. The grievance is denied.



Timothy Hatfield, Esq.
Arbitrator
October 27, 2022

² Based on my ruling, I decline to address any additional arguments the Town proffered as a rationale for its denial.