

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
EXPEDITED ARBITRATION AWARD

In the Matter of Arbitration between

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TOWN OF SWANSEA

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Case No: ARB-21-8772

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and

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Date Issued: December 10, 2021

SWANSEA SUPERIOR OFFICERS
ASSOCIATION

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Background: The Swansea Superior Officers Association (Union) is the exclusive collective bargaining representative for permanent sergeants employed by the Town of Swansea (Town). On or about June 1, 2021, Chief of Police Marc Haslam (Chief) informed bargaining unit members that he was assigning Detective Keith Chomka (Chomka) to the position of temporary sergeant, effective July 1, 2021. The position of temporary sergeant is not recognized as a union position. For the period of June 1, 2021 to July 13, 2021, the Town and the Union engaged in negotiations over whether Chomka and/or temporary sergeants could be accreted into the bargaining unit. During these negotiations and beginning on July 1, 2021, Chomka performed sergeant police functions and worked sergeant overtime opportunities on July 3, 2021 and on thirty-two other occasions before the end of his temporary assignment. On July 15, 2021, the Union filed the grievance at issue alleging that the Town violated Article II of the collective bargaining agreement between the parties, effective July 1, 2019 to June 30, 2022 (CBA), by assigning work to Chomka, including overtime opportunities, that was exclusively performed by bargaining unit members.

Procedural Arbitrability Issue: Is the grievance arbitrable under the CBA with regard to timeliness?

Decision: The grievance procedure outlined in Article V, Section J of the CBA states in part “grievances shall be filed and processed according to the following procedures... within five (5) calendar days of knowledge of facts giving rise to a grievance, the Union or an affected employee shall submit a written statement to the Chief of Police setting forth the action complained of.” The Town argues that the grievance is not arbitrable because the Union filed the grievance more than five days after learning on July 1, 2021 that Chomka was performing duties as temporary sergeant, and on July 3, 2021 that Chomka was working sergeant overtime opportunities. Conversely, the Union argues that the alleged violation is a continuing violation and that the parties were engaged in good faith negotiations until July 13, 2021, which tolled the period of timeliness under the CBA.

I do not agree with the Union that the parties’ negotiations toll the time period for filing a grievance under the CBA, absent mutual agreement to extend the deadline.

Nevertheless, the Union's grievance is timely. Chomka worked overtime assignments on several occasions during his temporary appointment, at least one of which occurred less than five days prior to the date the grievance was filed. Therefore, the grievance was timely filed and is arbitrable.

Substantive Arbitrability Issue: Whether or not the Town violated Article II of the CBA by assigning work (including overtime) to a temporary sergeant that the Union argues is exclusively assigned to members of the bargaining unit? And if so, what shall be the remedy?

Decision: The Union does not dispute that the Chief is authorized under the CBA to make temporary appointments to vacant sergeant positions. In addition, the Union does not dispute that the Chief may assign temporary sergeants to perform the same police functions as permanent sergeants. Rather, the Union argues that the Town violated the Recognition Clause in Article II of the CBA when it afforded Chomka the same "rates of pay, wages, hours of work and other conditions of employment" as bargaining unit members. The Union argues that the benefits listed in the CBA are exclusive to bargaining unit members and cannot be offered to non-unit employees. The specific and sole example offered by the Union of the work assigned to Chomka is the ability to be on the sergeant's overtime rotation and work overtime opportunities that would otherwise be available to bargaining unit members.

The language in the Recognition Clause of Article II states: "[t]he employer recognizes the Union as the sole and exclusive collective bargaining agent with respect to rates of pay, wages, hours of work and other conditions of employment for all permanent fulltime police sergeants of the Town of Swansea." This language establishes the Union as the exclusive bargaining representative for permanent full-time police sergeants employed by the Town. Contrary to the Union's argument, it does not state, or even imply, that the benefits afforded to bargaining unit members under the CBA are exclusive to the bargaining unit or that the Town cannot afford the same benefits to other employees. As a non-bargaining unit position, the Town has the managerial right to determine the salary and benefits of the temporary sergeant and to direct his or her work assignments, including overtime assignments. There is no language in the CBA indicating an agreement of the parties to exclude temporary sergeants from the sergeant rotation or stating that overtime assignments are exclusive to permanent sergeants. Further, the evidence presented at arbitration indicates that in the past, when temporary sergeants were recognized in a bargaining unit, the position was included in the sergeant overtime rotation and was assigned overtime opportunities by the Chief. Absent evidence of a mutual agreement to exclude temporary sergeants from sergeant overtime assignments, I do not find that the Town violated Article II of CBA.

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


SARA SKIBSKI HILLER, ESQ.
ARBITRATOR