

**SPRINGFIELD POLICE BENEVOLENT ASSOCIATION
NEPBA LOCAL 401**

and

TOWN OF SPRINGFIELD

ARBITRATION: Donna Craigue grievance

INTRODUCTION

A hearing was held in the above-captioned matter on March 8, 2019 in the offices of the Town of Springfield in Springfield, VT. Tom Horgan, Esq., represented Springfield Police Benevolent Association, NEPBA Local 401 ("Union"), and Stephen Ankuda, Esq., represented the Town of Springfield ("Employer" or "Town"). Testifying for the Union were: Anthony Moriglioni, patrol officer; and Donna Craigue, the grievant. Testifying for the Town were Town Manager Tom Yennerell and Cathy Sohngen, finance director. All testimony was taken under oath. The parties jointly introduced three exhibits, the Union introduced one exhibit, and the Town introduced four exhibits. Both parties were given a full opportunity to examine and cross-examine witnesses, introduce documentary evidence and make oral argument. The record closed upon receipt of closing arguments on March 29, 2019.

STIPULATED ISSUES

Did the Town violate the collective bargaining agreement by failing to pay the grievant, Donna Craigue, holiday pay on May 28, 2018 while she was on short-term disability? If so, what shall the remedy be, consistent with the agreement?

FINDINGS OF FACT

The Union and the Town are parties to a collective bargaining agreement ("Agreement" or "CBA") in effect from January 1, 2017 through December 31, 2019. [Joint

Exh. 1] The bargaining unit includes all Town police officers and dispatchers under the rank of Lieutenant.

The grievant, Donna Craigue, has worked for the Town police department as a dispatcher for a little over five years. On May 4, 2018, Ms. Craigue became ill and was hospitalized for congestive heart failure.

Because Ms. Craigue learned that she would be out of work for longer than she had previously anticipated, she applied for short-term disability benefits on May 16, 2018. These benefits are set forth in Article 22 §2 of the CBA. [Testimony of D. Craigue, Town Exh. A] The Town has a contract with Lincoln Financial Group to provide coverage for short-term disability benefits. Under this plan, employees receive payments equal to 66 2/3% of an employee's average weekly wages. [Testimony of T. Yennerell, Joint Exh. 1, p. 27]

While awaiting a decision on the application, Town employee Richard Stillings suggested to Ms. Craigue that she use her accrued time so she would continue to receive income. Consequently, during the first two weeks following her illness, Ms. Craigue was paid for nine vacation days and one holiday, Police Memorial Day. [Testimony of D. Craigue, Town Exh. C] As of May 28, 2018, she also was receiving health insurance benefits through the Town, and the Town was deducting money from her check to cover health insurance premiums and retirement deductions. [Testimony of D. Craigue]

Lincoln Financial Group approved Ms. Craigue's application for disability benefits on May 25, 2018. Ms. Craigue's benefits were approved effective May 4, 2018, but there was a 7-day waiting period so her eligibility became effective on May 11, 2018. [Town Exh. B]

Ms. Craigue requested eight hours of holiday pay for Police Memorial Day, May 15, and Memorial Day, May 28. The Town paid Ms. Craigue for May 15 because she was not

receiving short-term disability at the time, and was using accrued vacation. The Town denied payment for May 28 because during the May 20 through June 2 pay period, Ms. Craigue was collecting short-term disability benefits. [Testimony of D. Craigue, C. Sohngen, Joint Exh. 2(D)].

On June 19, 2018, the Union filed this grievance on Ms. Craigue's behalf. [Joint Exh. 2A] The grievance was denied, and processed through the grievance procedure in the CBA. [Joint Exh. 2] Town Manager Tom Yennerell denied the grievance on the grounds that: (1) short-term disability was essentially an unpaid leave of absence and the employee was paid by the insurance company, not the Town; and (2) holiday pay was only applicable for employees actively employed or on vacation. [Testimony of T. Yennerell, Joint Exh. 2-D] He explained that the Town treated short-term disability and workers' compensation leaves similarly. While on disability leave, the Town allowed employees to take 1/3 of a day of sick leave to supplement their benefits and be able to receive their usual income. [Testimony of T. Yennerell] According to the contract with Lincoln Group, an employee's combined sick time, vacation time or personal time may not exceed 100% of normal wages, as the disability insurance policy does not allow employees to be paid in excess of 100% of their routine wages. Because on disability an employee is already being paid 66 2/3% of her wages, being paid an additional 100% of wages for a holiday would raise the employee's compensation to 166 2/3% for that day. Employees are required to report holiday pay to the insurer, which could result in a reduction in disability benefits. [Town Exh. 2-D]

Over the past three years, although more than five employees have received disability or workers' compensation benefits, none were paid holiday pay while they were receiving benefits under either disability program. This information was based on Town Finance

Director Cathy Sohngen's review of the payroll for the past three years to see whether any employees on short-term disability or workers' compensation received holiday pay.

[Testimony of C. Sohngen]

After the grievance was denied, the Union filed for arbitration.

POSITIONS OF THE PARTIES

TOWN: The CBA provides short-term disability benefits for employees who are not able to work and are not on leave due to a work injury or illness. The short-term disability coverage in the CBA places employees who are unable to perform their jobs due to non-work injuries or illnesses in a similar position to employees who are unable to work due to a work-related injuries covered under the Vermont Workers' Compensation Statute. Thus, the Town has made accommodations so that employees avoid suffering a loss of wages while waiting for a determination on their benefit application. Furthermore, as required by the state's workers' compensation law, when a worker who had been receiving workers' comp is reinstated after their incapacity ceases, the worker regains seniority and any unused annual leave, personal leave, sick leave or other compensatory time to which they were entitled prior to interruption of their employment, less any leave or compensatory time used during their absence from work. The same applies to Town employees receiving short-term disability. This statute does not require payment of holiday pay while the employee is receiving workers' comp for total disability.

The Town provides the same short-term disability benefits to other bargaining units, and has denied holiday pay accrual for other workers as well, although it is

possible that at some point the Town unintentionally allowed holiday pay benefits to a worker on disability.

It is against public policy to reward an employee with additional holiday pay while they are not working for the Town and are already eligible for and receiving short-term disability pay.

For these reasons, the grievance should be denied.

UNION: According to the "plain meaning rule," if the words of a CBA are plain and clear, there is no need to resort to interpretation, and the meaning of the words can be derived from the language used. Article 17 §3 of the CBA clearly and unambiguously entitles an employee to be paid a minimum of eight hours of holiday pay for all holidays listed in Article 17, regardless of whether the employee actually works an assigned shift on that holiday.

Article 17 §3 does not render an employee ineligible for holiday pay because they are collecting disability benefits. In fact, it states the opposite because it declares that the employee will be paid for the holiday "whether they work or not."

Likewise, there is no language in Article 22 §2 governing short-term disability that renders an employee ineligible for holiday pay while collecting benefits.

Furthermore, it is clear that Ms. Craigue was treated as an employee of the Town while collecting disability benefits because she received other benefits pursuant to the CBA. Article 17 §1 of the Agreement specifies that employees on leave retain benefits and rights, including seniority and accrued longevity. Short-term disability is a form of leave, and for that reason, Ms. Craigue was entitled to continue receiving benefits under the CBA. The Town Manager affirmed this in his testimony, stating that an

employee collecting disability insurance is essentially on an unpaid leave of absence instead of actively employed.

The Town Manager denied the grievance based upon information received from the disability insurance company, but the terms of that policy do not have bearing on the Town's responsibilities under the CBA.

If the arbitrator finds that the language in Article 17 §3 is ambiguous, past practice should be admissible to clarify the intent of the language. The language in Article 15 §3 does not prevent extrinsic evidence concerning practices between the parties about provisions of the CBA for the sole purpose of clarifying the parties' intent.

The Union requests that the grievance be sustained and that the arbitrator direct the Town to compensate the grievant for eight hours of holiday pay for May 28, 2018, in accordance with Article 17 §3 of the CBA.

RELEVANT CONTRACT PROVISIONS

ARTICLE 15 – GRIEVANCE AND APPEAL

Section 5.

Step-3: Arbitration

The Arbitrator shall be governed by the terms of this Agreement, shall interpret, apply, and determine compliance with the terms, and shall in no way add to, detract from or alter such terms, or to interpret a past practice not specifically set forth in this Agreement.

ARTICLE 17 – EMPLOYEE LEAVE

Section 3 – Holidays

Holidays shall be compensated in the following manner: All employees will be paid eight (8) hours . . . for the holiday whether they work or not with no carryover holidays. Anyone who works on the holiday shall be paid double time for all hours worked on the holiday. . .

It is noted that when a holiday falls within an employee's vacation, no vacation day shall be charged for that time off. . .

The following days shall be recognized as paid Holidays, at the time they are observed, for all regular full-time employees:

Presidents' Day	Police Memorial Day (May 15)	Memorial Day
Independence Day	Veterans Day	Labor Day
Thanksgiving Day	Day After Thanksgiving	Day Before Christmas
Christmas Day (Dec. 25)		

ARTICLE 22-OTHER BENEFITS

Section 2 – Short Term Disability

The Town shall provide, at no cost to the employee, short term disability coverage which shall commence on the first day of an accident or the eighth day of sickness, and be paid to the employee at 66 and 2/3% of his/her regular salary, and will provide up to six (6) months of disability benefits in each incident.

DISCUSSION

The primary goal of contract interpretation is to determine the mutual intent of the parties. This intent is normally found in the words the parties use in their agreement.

Recently, the Supreme Court reaffirmed that collective bargaining agreements must be interpreted according to ordinary contract interpretation principals. *CNH Industrial v. Reese*. 583 US__ (2018). The Court rejected what some lower federal courts had done in reading beyond the actual contract terms and making certain inferences, and said that such inferences “are not a valid way to read a contract” and “cannot be used to create a reasonable interpretation any more than they can be used to create a presumptive one.” In so ruling, the Supreme Court made it clear that arbitrators and judges should not attempt to rewrite unambiguous collective bargaining agreement language.

An arbitrator's failure to follow language that is clear and unambiguous may result in the award being vacated. That is why agreements such as the one before me have language such as appears in Article 15 §5 of the Agreement, quoted above.

For language to be ambiguous, it must be possible to apply more than one meaning to it. As the Union argues, Section 3 addressing holiday pay states that *all employees* will be paid eight hours for holidays *whether they work or not*. There are no exceptions in the CBA that are applicable here. In other words, the CBA does not say that employees on short-term disability leave do not receive holiday pay, yet they are not working.

A party seeking an interpretation that does not correspond with the plain language of an agreement can only prevail if they prove with extrinsic evidence that there was a clear intent attributable to *both* parties that the plain meaning did not apply. That was not the case here.

There was evidence in the record that the Town had a practice of not paying holiday pay to people on disability and workers' comp leave, but there was nothing in the CBA that addressed this.¹ As the Town's counsel pointed out, the CBA prohibits an arbitrator from interpreting a past practice not specifically set forth in therein, and the Agreement does not provide much information about short-term disability, other than to list it as a benefit.

¹ I did not give weight to the Union's evidence of the Town having paid an employee on disability for a holiday because the evidence was not sufficiently reliable for me to use as the basis of a finding of fact.

Without a consensus regarding the intention of the parties, I must apply the plain language interpretation of the Agreement. As Ms. Craigie was an employee of the Town at all relevant times, Article 17 provides that she must be paid for holidays, regardless of whether she worked on those dates.

I am aware that requiring the Town to compensate Ms. Craigie for holidays while she is receiving short-term disability benefits may result in an offset of her benefits paid by the insurance company. This puts the burden of payment on the Town instead of the insurer. If the parties wish to change this, they will have to do so at the bargaining table.

For the reasons set forth above, the grievance is hereby SUSTAINED. Pursuant to Article 17 §3, the Town shall compensate Ms. Craigie for eight hours of holiday pay for May 28, 2018 within 15 days of the date of this award.