

ARBITRATION  
Before Will Evans, Esq.

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In the Matter of the Arbitration Between:

NEW ENGLAND POLICE BENEVOLENT  
ASSOCIATION LOCAL 77,  
WESTON POLICE ASSOCIATION

-and-

TOWN OF WESTON

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AAA Case No. 01-22-0002-6279  
Grievance: Weekly Payroll

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Appearances:

Thomas F. Horgan, Esq. Representing NEPBA Local 77, Weston Police Assoc.

David C. Jenkins, Esq. Representing Town of Weston

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:

**OPINION AND AWARD**

The Town of Weston violated Article 10.14 of the parties' collective bargaining agreement when it converted unit members from a weekly payroll cycle to a bi-weekly payroll cycle in July 2022. The Town shall restore all bargaining unit members to a weekly payroll cycle.



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Will Evans, Esq.  
Arbitrator  
December 28, 2022

## **INTRODUCTION**

On or about June 20, 2022, the New England Police Benevolent Association Local 77, Weston Police Association (Union or Association) filed a Demand for Arbitration with the American Arbitration Association (AAA) alleging that the Town of Weston (Town or Employer) violated Article 10.14 of the parties collective bargaining agreement (CBA) when it converted unit members from a weekly payroll cycle to a bi-weekly payroll cycle in July 2022. The AAA docketed the matter as case number 01-22-0002-6279 and in accordance with Section 10 of the AAA Labor Arbitration Rules the undersigned was selected as the arbitrator in the matter.

A virtual arbitration hearing was held on October 21, 2022, at which time both parties were present and represented by counsel. On or about November 28, 2022, the parties filed post-hearing briefs. After careful review of the record evidence and in consideration of the parties' arguments, I make the following findings of fact and render this Opinion and Award.

## **STIPULATED ISSUES**

Did the Town of Weston violate Article 10.14 of the parties' CBA when it converted unit members from a weekly payroll cycle to a bi-weekly cycle in July of 2022? If so, what shall be the remedy?

## **RELEVANT CONTRACT PROVISIONS**

The Town and the Association are parties to a CBA effective for the period of July 1, 2019 through June 30, 2022 and governing the terms and conditions of employment for a bargaining unit consisting of all sergeants, police officers, and

reserve police officers of the Town of Weston Police Department. The CBA provides, in relevant part, as follows:

#### ARTICLE 10 - COMPENSATION

10.14 Pay Period: The Town reserves the right to change from a weekly payroll to a bi-weekly payroll if all Town unions agree. Once changed to a bi-weekly payroll, all references in this contract to a weekly payment shall be changed to reflect a bi-weekly payment including, but not limited to, calculations for computing compensation for unused sick leave, vacation and holiday pay.

#### FACTS

The Town is a party to a collective bargaining agreement with the present Union, as well as collective bargaining agreements with the following five other unions: (1) Police Superior Officers; (2) Dispatchers; (3) DPW; (4) the Firefighters; and (5) Library. With the exception of the Library union, which was due to expire on June 30, 2020, the collective bargaining agreements for all Town unions were effective for the same three-year term and due to expire on June 30, 2019. The Town entered into negotiations with each of these unions and reached agreements for successor contracts governing three-year terms from July 1, 2019 to June 30, 2022 (and from July 1, 2020 to June 30, 2023 for the Library union).

In preparing for successor contract negotiations with the present Union, the Town identified a number of housekeeping items that it wanted to address. The Town introduced several of those proposals for the first time during bargaining on April 26, 2019. In particular, the Town identified a number of costs

it could reduce by running payroll less frequently. For example, the costs to the Town for the employees involved in running payroll, the time spent running payroll, and the costs of materials like paper stock. At the second meeting with the Association, the Town proposed a conversion from weekly payroll to bi-weekly payroll. Ultimately, the parties reached an agreement on language relating to the payroll cycle that was memorialized into a MOA in June of 2020. Specifically, the parties agreed to include the following language in the CBA: “The Town reserves the right to change from a weekly payroll to a bi-weekly payroll if all Town unions agree.”

The Town discussed changing to a bi-weekly payroll cycle with each of the other Town unions and reached agreements to include the following payroll language:

- (1) Police Superior Officers: “The Town reserves the right to change from a weekly payroll to a bi-weekly payroll.”
- (2) Dispatchers: “The Town reserves the right to change from a weekly payroll to a bi-weekly payroll if all Town unions agree.”
- (3) DPW: “The Town reserves the right to change from a weekly payroll to a bi-weekly payroll in the event that other Town unions being paid weekly agree to change to a bi-weekly payroll.”
- (4) Fire: “The Town reserves the right to change from a weekly payroll to a bi-weekly payroll if all Town unions agree.”

(5) Library: “Longevity payments for eligible employees shall be made weekly, until such time as the Town may adopt a bi-weekly payroll.”<sup>1</sup>

On April 8, 2022, Human Resource Director and Assistant Town Manager Lisa Yanakakis (Yanakakis) e-mailed Officer Robert Powell and Sergeant Jeremy Girouard advising that the Town would be converting to bi-weekly payroll beginning July 1, 2022. Around the same time, Yanakakis also informed each of the other unions that the Town would be converting to bi-weekly pay. On May 2, 2022, the DPW union wrote to the Town, “The Department of Public Works for the Town of Weston has not and does not agree to the change of bi-weekly pay periods.” On May 3, 2022, the Dispatcher union wrote, “NEPBA Local 177 Public Safety Communication Unit has not and does not agree to bi-weekly pay.” On May 6, 2022, the Firefighters union wrote, “The Weston Firefighters Association IAFF Local 3660 does not and has not agreed to the change of bi-weekly pay periods.” The Town did not receive any written objection from the Police Superiors Officers or the Library unions.

The Union filed a grievance at Step 2 on May 12, 2022, alleging that the CBA language includes a “clear precondition” for the Town to implement bi-weekly payroll and that such condition had not been met. The grievance was denied and advanced to Step 3 on May 18, 2022. Following a hearing, the grievance was denied by the Town Manager acting as hearing officer. Specifically, the Town Manager found that “[a]ll Town unions unanimously

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<sup>1</sup> The conversion to bi-weekly pay was discussed during Library contract negotiations; however, such language was not added to the CBA. Nevertheless, the contract contains this provision relating to longevity payments.

agreed to go from a weekly payroll to a bi-weekly payroll in their most recent successor CBAs and/or MOAs.” The Town Manager further noted that the Town had already implemented all other pay increases to which the Parties had agreed in its MOA. The Union subsequently demanded arbitration on June 20, 2022. The Town proceeded to implement the conversion to bi-weekly pay beginning at the start of fiscal year 2023 on July 1, 2022.

### **POSITIONS OF THE PARTIES**

#### **THE UNION**

The Union argues that the language at issue, Article 10.14 of the Parties’ CBA, clearly and unambiguously requires that all Town and School unions, including but not limited to the bargaining unit members of NEPBA Local 77, agree to be moved to a bi-weekly payroll before the Town can make such a change. Given that not all School and Town unions agreed to move to a bi-weekly payroll cycle, the Town was prohibited from making this change pursuant to Article 10.14. As such, the Town violated the terms of the CBA when it unilaterally converted members to a bi-weekly payroll cycle in July of 2022 without the express consent of all Town and School Unions. Furthermore, had the parties agreed to allow the Town to unilaterally move to a bi-weekly payroll at their full discretion without any preconditions, they would have proposed and ratified such contract language identical to that found in the Police Superior Officers’ contract, which contains no preconditions.

For all the foregoing reasons, the Union asks the arbitrator to allow the grievance and conclude that the Employer violated the CBA as alleged.

## THE TOWN

The Employer argues that the language in Article 10.14 includes a tacit agreement that the signing union would accept the conversion to bi-weekly payroll unless another union held out. Article 10.14, and each clause like it in the other Town union contracts, must be read to include the tacit agreement of the signing union to convert to bi-weekly payroll, or the language is meaningless. The Town would have the right to implement bi-weekly pay if every union agreed to it regardless of whether or not such language was added in the CBA. Without a finding that the parties had a tacit agreement, the signing union would hold the power to permanently deprive the Town from ever receiving the benefit of that bargained-for language. As such, upon the ratification of the last contract, all six unions that bargained with the Town simultaneously conveyed to the Town their willingness for the Town to convert to bi-weekly payroll provided that all unions so agreed.

Furthermore, the Town contends that the letters from other unions stating their lack of agreement contradict the clauses in their respective memoranda of agreement and are therefore irrelevant. If these letters are given any value to substantiate the Union's argument that the precondition of all unions agreeing to bi-weekly pay was not met, the Town will largely be deprived of the benefit of its bargain with respect to the CBA in this matter.

For all the foregoing reasons, the Town requests that the arbitrator deny the grievance.

## OPINION

The issue before me is whether the Employer violated Article 10.14 of the parties' CBA when it converted unit members from a weekly payroll cycle to a bi-weekly cycle on July 1, 2022. Article 10.14 provides, in relevant part, the following: "The Town reserves the right to change from a weekly payroll to a bi-weekly payroll if all Town unions agree." Again, the Union argues that the language in Article 10.14 is clear and unambiguous in its requirement that the Employer cannot change to a bi-weekly payroll without the agreement of the Town unions. The Employer contends that there was a tacit agreement relating to this provision, as well as comparable provisions in other Town union contracts, that the signing union would consent to the change.

As this is a matter of contract interpretation, it is the Union that bears the burden of proof. The arbitrator's job is not to decide what is fair or unfair in a vacuum, but rather to read the contract and give the language its plain meaning on the theory that the parties wrote what they intended. If the language is clear and unambiguous, there is no need to refer to the parties' intent, as evidenced by bargaining history, or to refer to the practice that was followed after the agreement became effective. The words that the parties used to express their intent is the way the provision should be interpreted and applied in the future.

In the present case, I find the language at issue to be clear and unambiguous. Article 10.14 of the CBA states, "The Town reserves the right to change from a weekly payroll to a bi-weekly payroll ***if all Town unions agree.***" (Emphasis added). Article 10.14 contains a clear precondition (i.e., that all Town



unions agree to move to a bi-weekly payroll cycle) before the Town may make such a change. In addition to the present Union, three other town unions (the DPW, dispatchers, and firefighters) submitted written correspondence indicating that they had not and do not agree to a bi-weekly payroll change. Under such circumstances, I find that the Town did not satisfy the precondition before changing to a bi-weekly payroll cycle.

The Town's argument that the parties had a tacit agreement with the Union is undermined by not only the clear and unambiguous language of Article 10.14, but also its bargaining history with its unions, especially DPW and the Superior Officers. As with any agreement, including tacit, the terms must be understood and accepted by both as an implied term of the contract (i.e., mutuality). An arbitrator who readily infers mutuality without strong evidence risks adding new terms to the agreement and undermining the significance of what the parties have agreed to in the written document.

The language in both the DPW and the Superior Police Officer's Union contracts differs significantly from that of the Association. The DPW contract provides that "[t]he Town reserves the right to change from a weekly payroll to a bi-weekly payroll in the event that **other** Town unions being paid weekly agree to change to a bi-weekly payroll." (Emphasis added). The precondition in the DPW contract (i.e., if other Town unions agree) allows the Town to change the payroll cycle to bi-weekly without necessarily obtaining the agreement of the DPW unit. One could easily infer in the DPW contract that there was a tacit agreement that the Town could change the payroll cycle for DPW, with or without its agreement,

if the other unions agreed. Article 10.14 in the present matter, however, contains no such language. It provides that the Town may change from a weekly payroll to a bi-weekly payroll if **all** Town unions agree – including the present Union. Furthermore, the Police Superiors contract contains no precondition at all. It provides only that “[t]he Town reserves the right to change from a weekly payroll to a bi-weekly payroll.” Based on the evidence presented at hearing, I am persuaded by the Union that had the parties reached an agreement allowing the Town to move unilaterally to a bi-weekly payroll at its full discretion without any preconditions, it would have proposed and ratified contract language identical to the language found in Policed Superiors contract.

In conclusion, I find the language at issue to be clear and unambiguous. Article 10.14 of the CBA states, “[t]he Town reserves the right to change from a weekly payroll to a bi-weekly payroll **if all Town unions agree.**” Because the Town did not satisfy the precondition before making a change to a bi-weekly payroll cycle in July 2022, it violated the parties’ CBA.

### **AWARD**

For all the foregoing reasons, the Town violated Article 10.14 of the parties’ collective bargaining agreement when it converted unit members from a weekly payroll cycle to a bi-weekly cycle in July 2022. The Town shall restore all bargaining unit members to a weekly payroll cycle.



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Will Evans, Esq.  
Arbitrator  
December 28, 2022