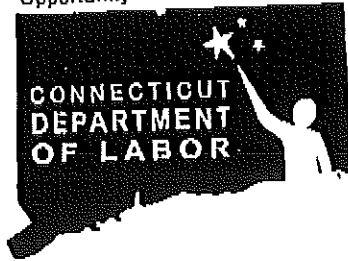


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### Board of Mediation and Arbitration

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# F A X

To: John Bunce  
 From: Julie Ferrigno, SBMA  
 Date: December 10, 2010  
 Re: Decesion Waterford Police 2003-A-0707

Attached is the decision you requested.

## Eleven (11) pages will follow

Julie Ferrigno  
 860-263-6880

0 ✓

STATE OF CONNECTICUT  
DEPARTMENT OF LABOR

STATE BOARD OF MEDIATION AND ARBITRATION

ARBITRATION AWARD

In the matter of:

CASE NO. 2003-A-0707

TOWN OF WATERFORD

Date of Award: May 17, 2004

-AND-

Dates of Hearings:

AFSCME, COUNCIL 15, LOCAL 1948

November 18, 2003  
January 7, 2004

APPEARANCES:

For the Town:

Thomas R. Gibbons, Esquire

For the Union:

Kenneth DeLorenzo, Esquire

\*\*\*\*\*

ISSUE

Whether the Town violated the Collective Bargaining Agreement  
between the parties by denying overtime and extra duty assignments  
to Hugh Teel after he notified the Town of his intent to retire  
effective August 9, 2003 and placed himself on terminal leave?

If so, what shall the remedy be?

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**PERTINENT CONTRACT CLAUSES****ARTICLE II**  
**MANAGEMENT RIGHTS**

2.1 The Employer shall continue to have, whether exercised or not, all of the functions of management and shall have retained and reserved unto itself the right to exercise all the powers, authority and prerogatives of management, except as specifically abridged or modified by a specific provision in this Agreement, including, but not limited to, the following items:

- A. the operation and direction of the Police Department;
- B. the determination of the level of services to be provided;
- C. the direction, control, supervision and evaluation of officers;
- D. the establishment or change of job assignments;
- E. the increase, change or discontinuation of operations in whole or in part;
- F. the institution of technological changes;
- G. the revising of processes, systems or equipment;
- H. the alteration, addition or elimination of existing methods, equipment or facilities;
- I. the determination of the location, organization, number and training of personnel;
- J. the assignment of duties and work assignments;
- K. the assignment of duty stations;
- L. the scheduling and assigning of leaves;
- M. the hiring, appointment and promotion of officers;
- N. the demotion, suspension, discipline or discharge of officers for just cause;

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- O. the making, amendment and enforcement of such rules, regulations, operating and administrative procedures from time to time as the Employer deems necessary, provided however, that no specific provision in this Agreement is violated;
- P. the transfer, layoff, or relief of employees from duty for legitimate reasons.
- Q. during an emergency, the Town shall have the right to take any action necessary to meet the emergency notwithstanding any contrary provisions of this Agreement.

**ARTICLE VI**  
**GRIEVANCE PROCEDURE**

6.1 The purpose of the grievance procedure shall be to settle employee grievances on as low an administration level as is possible and practicable so as to ensure efficiency.

6.2 A grievance is a dispute between an employee (or the Union) and the Town involving the interpretation or application of this agreement including:

- c) Interpretation and application of rules and regulations and policies of the Waterford Police Department.

6.5 A grievance shall be processed in the following three (3) steps.

Step 3. If the Union is not satisfied with the decision rendered, the Union may, within fifteen (15) working days, submit the grievance to the Connecticut State Board of Mediation and Arbitration (CSBMA), with written notice to the Town, and the decision rendered by the arbitrator(s) shall be final and binding upon both parties. Any grievance dealing with discipline of less than ten (10) days suspension may be arbitrated under the expedited rules of the Board. In lieu of arbitration before the Connecticut State Board of Mediation and Arbitration, either party may transfer discipline or non-disciplinary discharge cases to the American Arbitration

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Association ("AAA") provided however, that if the discipline involves less than a ninety (90) day suspension, the expenses of AAA shall be borne by the moving party and provided further that if the discipline is greater than or equal to a ninety (90) day suspension (including termination or a non-disciplinary discharge), the expenses of AAA shall be shared equally by the Town and the Union. When either the Town or the Union seeks to move a matter to AAA, the moving party shall provide notice of the transfer within five (5) working days of the transfer. Under no circumstances shall a case be transferred to AAA after the CSBMA has scheduled such case for arbitration, unless by mutual agreement of both parties.

6.13 The jurisdiction and authority of the arbitrator and his opinion and award shall be confined to the interpretation and/or application of the provisions of this Agreement at issue between the Union and the Town. He/She shall have no authority to add to, detract from, alter, amend, or modify any provision of this Agreement. The arbitrator shall not have jurisdiction to hear or decide more than one (1) grievance without the mutual consent of the Town and the Union. The written award of the arbitrator on the merits of any grievance adjudicated within his jurisdiction and authority shall be final and binding on the aggrieved employee, the Union, and the Town.

## ARTICLE XII OVERTIME PAY

12.1 Overtime for employees shall be one-and-one half (1 ½) times the normal hourly rate in Article XI of the Agreement of the employee for any hours in excess of the employee's regularly scheduled hours for any given day or week.

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12.5 In all overtime assignments, regular members of the department shall be given first preference.

12.7 All scheduled and spontaneous overtime shifts shall be distributed by seniority on a rotating basis.

Overtime rosters, one each for Lieutenants, Sergeants and Patrol shall be maintained and include all full-time employees listed by seniority order (date of hire). No employee may be skipped on the list, but a refusal will be counted as that employee's turn at overtime.

12.8 For the purposes of this Article overtime is divided into three (3) categories:

A. SCHEDULED OVERTIME:

Scheduled overtime is defined as shifts that become available and need to be filled as a result of long range scheduling; i.e., a schedule that has been posted three weeks in advance.

1) Employees may submit an Overtime Request Card three (3) weeks in advance of the request week indicating their availability for scheduled overtime. The Overtime Request Card and the overtime roster will be used for assigning scheduled overtime.

ARTICLE XVII  
WORK ASSIGNMENT/EXTRA WORK DUTY

17.1 The terms "extra police work" or "extra police duty" for the purpose of this article shall mean police duty for which an employee is paid by the Town of Waterford and the Town of Waterford is reimbursed by some other party.

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**ARTICLE XXI**  
**SICK LEAVE**

21.8 An employee shall, prior to the actual date of his/her retirement, meet with the Chief of Police and in writing advise the Chief of Police of his/her intention to retire from Town service. The accumulated sick leave shall be determined and the Chief of Police shall schedule such employee on paid leave, and such leave shall be taken in advance of separation from the Town.

Any employee who has notified the Chief on his intent to retire may, upon mutual agreement with the Town and the employee, request a lump sum payment of accrued benefit days, including sick days, due days, personal days and vacation days. Payment must be made within twelve (12) months from the date of the notification of intent.

**ARTICLE XXVIII**  
**INSURANCE AND PENSION**

28.4 Retirement Plan: All current employees are covered under the provisions of the Municipal Employees Retirement Fund Plan B.

CASE NO. 2003-A-0707PAGE 7**STATEMENT OF THE CASE**

By letter dated October 25, 2002, Officer Hugh Teel, the grievant, informed Chief Murray Pendleton of his intention "to retire from the Waterford Police Department effective August 9, 2003. I will commence my paid leave on December 3, 2002." At a subsequent personal meeting the two gentlemen mutually affirmed the intent of the letter.

On that occasion there was no discussion with regard to Officer Teel's seeking overtime or extra duty assignments during his paid or terminal leave.

Now the practice within the Department is that Officers seeking overtime assignments sign up three weeks in advance. (Extra duty assignments are posted as they become available and are to be responded to within specific time limits.)

Before December 3, 2002, Officer Teel had been signing up for overtime assignments which would occur after that date. On November 25, 2002, the Scheduling Officer notified Officer Teel that as of December 3, 2002 he was no longer eligible to seek overtime or extra duty assignments, since he was on terminal leave.

Within a few days the Union filed a grievance on his behalf. Officer Teel continued to sign up for overtime and extra duty assignments until August 9, 2003, his retirement date.

By letter of January 14, 2003, Deputy Chief Thiel informed Officer Teel that pursuant to Police Department policy 36.02 (1) and (2) his "authority and powers to make arrests and carry firearms as a police officer have been suspended due to in-active status."

He was ordered to return his department duty-issued weapon, badges and identification card. Officer Teel complied with the order.

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With the foregoing history as background, the Union argued on the basis of his status on terminal leave, as opposed to retired, that Officer Teel was eligible to obtain overtime and extra duty assignments in the same fashion as any other officer who was working a forty hour week. The Union contended that there was nothing in the collective bargaining agreement which precluded his seeking and making himself available for these overtime and extra duty opportunities. The Town, therefore, was to compensate him for these lost opportunities.

The Town, on the other hand, argued that retirement means leaving active work which translates into absence from roll call, briefings and training sessions. This distancing of the grievant from everyday activities in turn jeopardizes the safety of the grievant himself as well as his fellow officers and the community.

The Town also contended that his absence produced costly overtime assignments, some of which, ironically, he himself might fill.

Lastly, the Town contended that there was nothing in the collective bargaining agreement which affords him this opportunity.

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**DISCUSSION OF THE CASE**

As both parties pointed out, there is nothing in the collective bargaining agreement that refers to this situation. Even though retiring officers on terminal leave in the past have not pursued the possibility of seeking overtime and extra duty assignments, this does not constitute a past practice recognized by the parties.

Rather, no one gave the matter any thought. It remains an unexplored and untested territory.

To begin with, Officer Teel in his October 25, 2002 letter to the Chief expresses his intention to retire effective August 9, 2003. There is no indication that the Chief challenged the grievant's explicit intention.

On November 25, 2002, Officer Teel was told that he was ineligible to apply for overtime and extra duty assignments beyond December 3, 2002. He ignored this admonition. He continued to apply until August of 2003.

It was on January 14, 2003 that he was formally reduced to "in-active status." He complied with the order and turned in his weapon, badges and identification card.

In assessing the merits of this case, this panel makes the following observations:

The collective bargaining agreement is silent on the role of an officer on terminal leave. We find nothing which would preclude Officer Teel from applying for overtime and extra duty assignments.

However, we also find that he was eligible to do so only to January 14, 2003 when he was properly reduced to "in-active status" in accordance with Police Department policy.

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We have come to two conclusions:

The Town initially did violate the collective bargaining agreement by disallowing Officer Teel's attempts to secure overtime and extra duty assignments.

By legitimately relegating Officer Teel to an "in-active status" on January 14, 2003, it reduced its liability to zero, as of that date.

Therefore, may we point out the following:

- 1) Union exhibit 1 indicates he worked overtime during the week ending December 7, 2002 and was duly compensated.
- 2) The first two pages of Union exhibit 2 - Request for Overtime - fall within the parameters of our ruling.
- 3) The first three pages of Union exhibit 3 - Extra Duty Assignment - fall within the parameters of our ruling.

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AWARD

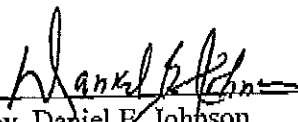
The Town violated the Collective Bargaining Agreement between the parties by denying overtime and extra duty assignments to Hugh Teel after he notified the Town of his intent to retire effective August 9, 2003 and placed himself on terminal leave.

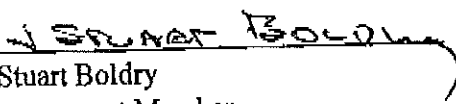
Based on the rotating system of overtime opportunities, the parties shall jointly determine the number of opportunities Officer Teel actually lost out on between December 8, 2002 and January 14, 2003.

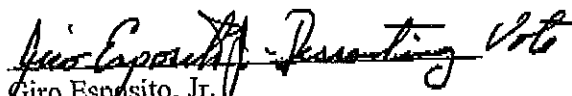
The parties also shall determine the legitimacy of Officer Teel's application for an extra duty assignment for the period of January 6-10, 2003.

The Town shall thus compensate him accordingly.

## CONNECTICUT STATE BOARD OF MEDIATION AND ARBITRATION

  
\_\_\_\_\_  
Rev. Daniel E. Johnson  
Panel Chairperson and Public Member

  
\_\_\_\_\_  
J. Stuart Boldry  
Management Member

  
\_\_\_\_\_  
Giro Esposito, Jr.  
Labor Member