

American Arbitration Association

Voluntary Labor Arbitration Tribunal

In the Matter of Arbitration between

STOUGHTON POLICE UNION

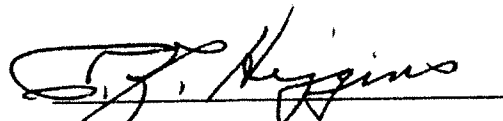
— and —

TOWN OF STOUGHTON

AAA #11 390 01035 08

AWARD OF ARBITRATOR

- 1) This grievance is procedurally arbitrable.
- 2) The Town did violate the Collective Bargaining Agreement when it denied Officer Letendre's request for Court Pay pursuant to Article XXI. As remedy, the parties have 30 days from the date of this Award to contact the Arbitrator through AAA as to whether the hours sought by Officer Letendre in Union Exhibit 5 on any particular day cited in the Trial Court Docket Summary, Employer Exhibit 8, are in excess of the actual hours Officer Letendre attended on that date. I reserve the right to convene a hearing or require briefs on any such dispute. In the absence of notice by that 30th day of any such dispute, the Town will pay Officer Letendre 309 hours of court time, computed in accordance with Article XXI, at the rates in existence for each attendance date.


Richard G. Higgins
Arbitrator

DATED: July 6, 2009

STOUGHTON POLICE UNION

— and —

TOWN OF STOUGHTON

AAA #11 390 01035 08

A hearing was held in the above-referenced case on October 28, 2008, in Stoughton, Massachusetts, before Arbitrator Richard G. Higgins. The hearing was conducted under the rules and auspices of the American Arbitration Association. A post-hearing brief was submitted by each party.

Appearances for Parties: Sheila E. McCravy, Esq.
For the Union

Joseph S. Fair, Esq.
For the Town

THE ISSUES

At the hearing, the parties stipulated that the Issues in dispute are as follows:

- 1) Is the grievance procedurally arbitrable?
- 2) If so, did the Town violate the Collective Bargaining Agreement when it denied Officer Letendre's request for Court Pay pursuant to Article XXI?

If so, what shall be the remedy?

STIPULATION

At the hearing, the parties stipulated "That the language of Joint Exhibit 6 applies to the circumstances of this case."

**RELEVANT CONTRACTUAL PROVISIONS
(Joint Exhibit 6)**

**ARTICLE IX
HOURS OF DUTY**

Section 1. Employees shall work a four (4) day on, two (2) day off work schedule, to be assigned by shift as follows:

First Shift 11:45 p.m. - 8:15 a.m.
Second Shift 7:45 a.m. - 4:15 p.m.
Third Shift 3:45 p.m. - 12:15 a.m.

Effective July 1, 1999, employees who actually report for duty at the beginning of each of the shifts set forth above shall receive fifteen (15) minutes of compensatory time for each such shift that they are physically present for roll call. Usage of sick time, injury time, vacation time, earned time, compensatory time or any other leave paid or unpaid, shall not be considered as being present for roll call for the purpose of being credited with the above compensatory time. This time can only be granted when it will not create an overtime shift for patrolmen.

**ARTICLE XII
INJURY AND SICK LEAVE**

Section 1. When an employee(s) is absent from duty because of an injury or illness sustained in the line of duty for which he would be entitled to compensation, he will receive compensation under the provisions of M.G.L., c.41 s.IIIF, as set forth in Article XXIV. Employees hired prior to January 22, 1986 shall continue to enjoy what contractual rights they had as of that date to accumulate sick and/or vacation leave while absent from duty and on leave pursuant to M.G.L., Chapter 41, s.IIIF; notwithstanding any provisions of this agreement to the contrary. Employees hired after January 22, 1986 shall not be entitled to accumulate either sick or vacation leave while absent from duty and on leave pursuant to said Section IIIF.

**ARTICLE XXI
COURT ATTENDANCE**

Section 1. When an employee attends proceedings at either criminal or civil court after his regular shift on either a hearing, arraignment, or trial in

accordance with a line of duty performance he/she shall be paid a minimum of four (4) hours pay at a time and one-half (1½) rate and time and one-half (1½) rate for any portion of any hour thereafter effective July 1, 1988.

Section 2. The Town agrees that if an employee appears at proceedings at either criminal or civil court after his/her regular shift or on a paid vacation day, he/she shall be paid a minimum of four (4) hours pay at a time and one-half (1½) rate and time and one-half (1½) rate for any portion of an hour thereafter. He/she shall also be compensated one and one half (1½) days of supplemental vacation if he/she appears on a paid vacation day.

ARTICLE XXIII
GRIEVANCE PROCEDURE

(A) PURPOSE: The purpose of the Grievance Procedure shall be to settle employee grievances on as low a level as possible so to insure efficiency and employee morale. Complaints arising over the interpretation of a specific and express provision of this agreement may be processed as a grievance. Failure to comply with the time limits for moving through the steps of the grievance will constitute a waiver of the employee's rights to proceed to the next step. Failure of the management to respond to grievance will allow grievant his right to proceed to the next step.

Section 1.

An employee of SPPU having a grievance or complaint shall reduce the grievance to writing and present it to the Chief within fifteen (15) working days of the occurrence or reasonable knowledge of the occurrence giving rise to the grievance or it shall be null and void. The Chief shall render his decision in writing within seven (7) working days of receipt of the grievance.

RELEVANT POLICE DEPARTMENT POLICY

Stoughton Police Department
Policy
Administrative Leave

This policy rescinds all previous policies related to this subject and shall go into effect immediately on February 1, 2006.

1.0 An officer on administrative leave may be placed on this status if his function as an officer is under investigation by an authorized agency.

1.1 Grounds for the use of this status include periods of investigation by the department itself, periods during which the interaction of the officer with the public may interfere with the performance of his duties, and cases which may warrant removal of the officer from duty in which the department feels the officer acted within his rights despite the ongoing investigation.

1.2 The use of this category is not indiscriminate, and each case differentiating an officer's status between active duty, suspension and administrative leave will be evaluated independently. The use of this category is not subject to negotiation or arbitration and is determined by the Chief of Police and the Town Manager for the Board of Selectman.

1.3 An officer on administrative leave will receive his base salary and will not normally be eligible for detail or overtime work. He will not perform police functions other than pending court appearances which will be re-imbursed at the normal rate.

1.4 The Chief of Police and the Town Manager may, after consulting legal and or other professional counsel, elect to assign detail duty, in house or other duty functions to an officer on administrative leave. Again, such assignments are not discretionary nor are they negotiable.

(Union Exhibit 1)

THE DISPUTE

The grievant in this case, Police Officer Robert E. Letendre, was first employed by the Stoughton Police Department in February 1990. In January 2000, Officer Letendre was involved in the arrest of an employee of a Stoughton automobile sales facility. In March 2005, the Norfolk County Grand Jury indicted Officer Letendre and Stoughton Police Sergeant David Cohen for a variety of offenses. Officer Letendre was charged with a total of two offenses, and each was related to the January 20, 2000 arrest of that auto sales facility employee. The first charge against Officer Letendre asserted that he had assisted Sgt. Cohen after the fact in a kidnapping of that employee. The second charge against Officer Letendre was that he had filed a false written report related to that January 20, 2000 arrest. Sgt. Cohen was charged with a number of

additional offenses relating to dates other than January 20, 2000.
(Employer Exhibits 4 and 5)

Officer Letendre testified as follows concerning one of the “bail condition(s)” imposed on him relating to the above-described charges:

As part of a bail condition I was told not to go to the Police Station and not to contact people from the Police Station. If I called the Police Station I would have the fear of speaking to a witness. I had no way of knowing who would answer the phone. So I couldn't contact anybody at the Police Station.

Employer Exhibit 1 is a March 21, 2005 memorandum from Stoughton Town Manager Mark S. Stankiewicz to Officer Letendre entitled “Administrative Leave.” Employer Exhibit 1 states:

On March 21, 2005 the Town was notified of charges against you from the Norfolk County District Attorney's Office. Based on the indictments you will be placed on administrative leave pending a further review of the charges. The administrative leave will be in addition to your current injured on duty (IOD) status under Massachusetts General Law Chapter 11F [sic] benefits.

Your pay status will remain unchanged however you are hereby ordered to immediately return all Department issued equipment to Acting Chief Christopher Ciampa. These issued items include but are not limited to: firearm, magazine(s), ammunition, badge, identification card, entry door “swipe” card, portable radio, pepper spray, handcuffs, duty belt and any other key(s) to the building and/or department vehicles. You are also ordered not to enter the Police Department premises while on administrative leave.

The administrative leave will continue until further notice.

The trial of Officer Letendre and Sgt. Cohen ended in the summer of 2007. Officer Letendre was found “Not guilty...” on both charges lodged against him. (Employer Exhibit 6) Sgt. Cohen was found “Not guilty...” with respect to the charge against him relating to the January 20, 2000 arrest, but was found guilty of four other charges unrelated to that January 20, 2000 arrest. (Employer Exhibit 7)

Officer Letendre was not immediately returned to active duty following the “Not guilty” verdict on all charges against him. Rather, Town Manager Stankiewicz directed Acting Chief of Police Christopher Ciampa to conduct a Departmental investigation “...for possible violations of Rules, Regulations, Policies and Procedures...” by Officer Letendre relating to the offense for which he had just been tried. On September 24, 2007, Acting Chief Ciampa wrote to

Town Manager Stankiewicz, reviewing the investigation he had conducted based on transcripts of Officer Letendre's testimony at trial, and concluding, "It appears from the information supplied to me that, other than the violation of the handling of evidence, which is a small department wide issue, Officer Robert E. Letendre did not violate any Rules, Regulations, Policies and Procedures of the Stoughton Police Department." (Union Exhibit 3)

Following Acting Chief Ciampa's report to the Town Manager quoted just above, Officer Letendre was returned to active duty. It does not appear that as of said return he was still on the IOD status (M.G.L. §111F) which he had been on when his administrative leave went into effect on March 21, 2005. (Employer Exhibit 1)

On October 1, 2007, Officer Letendre wrote to Acting Chief Ciampa a memorandum entitled "Time Owed." That document (Union Exhibit 4) states in pertinent part:

Sir,

I would like to know if I am going to be receiving the following time as stipulated to in the Agreement Between the Town and the Stoughton Police Patrolmen's Union;

Roll call compensatory time (Article IX)
Sick Leave (Article XII)
Vacation Leave and Personal Day's (Article XVI)
Court Attendance (Article XXI)

As stipulated to in the Rules and Regulations;

Compensatory Time off for commendations received

Thank you in advance for your attention to this matter.

(Union Exhibit 4)

Officer Letendre testified at the arbitration hearing that between his submission of Union Exhibit 4 on October 1, 2007 and the Chief's written response on November 27, 2007, he had a conversation with Acting Chief Ciampa concerning his request for "Time Owed." (Union Exhibit 4) Officer Letendre testified that during that conversation, he agreed to withdraw his claim for payment of Article IX, Section 1, compensatory time for roll call attendance. He testified as follows on that point:

Q: Why did you do that?

A: Basically just give and take. I just told him I wouldn't pursue it. I wasn't physically...in the contract it says you're physically at roll call. So I didn't pursue it for that reason. I wasn't able to be physically at roll call but it's just something that I didn't pursue.

(Testimony of Officer Letendre)

Officer Letendre testified that in the same conversation with Chief Ciampa described just above, the Chief requested Officer Letendre provide a list of dates he appeared in court and the amount of time associated with each appearance. Union Exhibit 5 is a memorandum dated October 13, 2007, from Officer Letendre to Chief Ciampa entitled "Court Time." Union Exhibit 5 states in pertinent part:

Dear Sir,

These are the dates and time I attended court as you requested.

(Union Exhibit 5)

Officer Letendre testified as follows concerning the matter of his request for Court Pay during the period after his submission of the October 1, 2007 request and after his discussions with Acting Chief Ciampa:

Q: What was your belief as to what the Chief, what was going to happen with this Court Time when it was submitted?

A: I was going to be compensated for the time. That's why I was counting all the hours....

Q: How were you able to tally these hours?

A: I have a calendar at home that I wrote all my court dates on.

(Testimony of Officer Letendre)

Union Exhibit 6 is a November 27, 2000 memorandum from Acting Chief Ciampa to Officer Letendre. That memorandum states:

Officer Letendre,

Thank you for your patience in waiting for a reply to the issues that you have raised. After reviewing the Collective Bargaining Agreement I have come to the following conclusions:

1. Vacation Time—Your vacation time that would have been accrued while you were on paid leave will be restored. You were not able to use this time while on paid leave so this time will be restored to you.

2. Sick Time—The CBA states that sick time shall be accrued while an officer is on paid leave, therefore you will be credited with your accrued sick time.

3. Compensatory Time for not calling in sick—The CBA does not address this issue. Although you were on paid leave, you were not actually at work. The spirit of this benefit is to reward officers for coming to work and not calling in sick. For this reason your compensatory time for not calling in sick will not be restored.

4. Pay for court attendance—I would ask further patience with regard to this issue as Town Counsel is researching this matter further. I will get back to you as soon as I hear from them.

(Union Exhibit 6)

Following the November 27, 2007 denial of his request for “Compensatory Time for not calling in sick...” Officer Letendre filed a grievance dated December 5, 2007 contesting that denial. Union Exhibit 7 is a December 11, 2007 memorandum from Acting Chief Ciampa to Officer Letendre regarding that grievance and stating in pertinent part:

Your grievance regarding earned compensatory time for not calling in sick is granted. Effective immediately, your compensatory time for [not] calling in sick will be restored.

(Union Exhibit 7)

Both parties appear to be in agreement that on April 7, 2008, Chief Ciampa informed Officer Letendre that he was being denied his request for compensation for court attendance. The following day, April 8, 2008, Officer Letendre filed a grievance, submitted at the hearing as Joint Exhibit 1, and stating in pertinent part:

Complaint

On April 7, 2008 Chief Ciampa informed me that I would not be getting compensated for my court attendance as stipulated to in the Agreement Between the Town of Stoughton and the Stoughton Police Patrolman’s Union. As a result of my regular law enforcement duties I attended court in excess of three

hundred hours. I believe this denial violates Article XXI Sections 1 thru 3 and all other relevant sections of the Agreement.

Remedy

Compensating me for my court attendance in accordance with the Agreement Between the Town of Stoughton and the Stoughton Police Patrolman's Union and by making me whole for any and all losses will remedy this grievance.

(Joint Exhibit 1)

Acting Chief Ciampa denied the grievance at his level on April 15, 2008. (Joint Exhibit 2) On April 28, 2008, Town Manager Stankiewicz responded to Officer Letendre's grievance, by memorandum, stating:

The Town is in receipt of the Stoughton Police Patrolmen's Union (Union) grievance appeal on behalf of Officer R. Emmet Letendre. The Union is appealing Acting Chief Christopher Ciampa's denial of Officer Letendre's request to be paid overtime for attending the trial that was held during the Summer of 2007 following his indictment on criminal charges.

The criminal trial for which Officer Letendre is seeking overtime for concluded in July 2007. For timeliness reasons alone, the grievance is hereby denied.

Notwithstanding this, and even if the grievance were not untimely, Article XXI of the collective bargaining agreement (CBA) contemplates that the attendance at court is required "in accordance with a line of duty performance". Officer Letendre's appearance in court in this case was required as a result of a criminal indictment that was handed down against him by a grand jury and was therefore not "in accordance with a line of duty performance" within the meaning of Article XXI. Moreover, Officer Letendre was on administrative leave throughout the time that he was on trial, was paid by the Town during that time and cannot be said to have been appearing in court "after his regular shift" within the meaning of Article XXI. Since no violation of the CBA has been established by the Union, the grievance is hereby denied on its merits as well.

(Joint Exhibit 4)

It is the above-outlined Dispute which, having passed through the contractually provided grievance procedure, is before this Arbitrator in the form of the Stipulated Issues shown above.

POSITIONS OF THE PARTIES

Issue #1—Procedural Arbitrability

Position of the Town—Issue #1

The Town asserts that this case is procedurally non-arbitrable in that the underlying grievance was not filed in a timely manner. Article XXIII, “Grievance Procedure,” utilizes the mandatory word “shall” in establishing the requirement that a grievance be submitted in writing “...within fifteen (15) working days of the occurrence or reasonable knowledge of the occurrence giving rise to the grievance or it shall be null and void.” (Article XXIII, Section 1—emphasis added) Article XXIII, Paragraph A, states that “...Failure to comply with the time limits for moving through the steps of the grievance will constitute a waiver of the employee’s rights to proceed to the next step.”

Given the above, the language of the Agreement is clear that a grievance not timely filed cannot be pursued to arbitration. For reasons given below, the Town asserts that Officer Letendre knew, or reasonably should have known, that he was not receiving court time as early as the first pay period after his initial court appearance, and certainly as of the next pay period after his last court appearance. Depending on which of those items is selected, his grievance is either three years late or some eight months late. Under the language of Article XXIII, either scenario makes the grievance procedurally non-arbitrable.

Officer Letendre certainly knew he would not be receiving compensation for court attendance because he himself never filed the requisite court slips which are a condition precedent to receiving such compensation. At the arbitration hearing, Police Department Administrative Assistant Mary Daley-DiCastro testified that she has been responsible for a variety of compensation tasks within the Department, including payment for court appearances. She testified that with respect to Dedham Superior Court, the procedure for payment requires that the officer, following the court appearance, must present a Court Appearance Notification form (Employer Exhibit 11), have it signed off by the Assistant District Attorney, and then the officer must return it to the Department for processing and payment. Officer Letendre did not deny familiarity with that well-established practice. Therefore, because he did not submit the requisite slips, he had full knowledge as early as his first court appearance that no compensation would issue.

The Town rejects the Union's assertion that because the terms of the administrative leave prohibited Officer Letendre from entering the Police Department, he was somehow unable to submit said slips. There was nothing in the terms of his administrative leave which prohibited Officer Letendre from either mailing the completed requisite slips to the Department or having his attorney or personal representative deliver them. By failing to ensure that said slips were forwarded to the Department, he clearly knew that the compensation for which those slips are a condition precedent would not be paid. That knowledge triggered his obligation to grieve within the 15 days established in the Agreement. He failed to submit a grievance within that timeframe, and it is thus null and void.

In addition to the above, Officer Letendre reasonably should have been aware that he was not receiving Court Pay because the compensation he received while on administrative leave did not contain any such pay. It is reasonable to attribute to Officer Letendre knowledge of the amount of the base salary he was paid during administrative leave. Since those payments clearly did not include any compensation for court appearances, he reasonably should have known on each pay period during his administrative leave that he was not being paid Court Pay. Thus, each of those paychecks represented an individual occurrence where Officer Letendre reasonably should have known he was not receiving the court attendance compensation he now seeks.

The Town rejects the Union's claim that the reason Officer Letendre did not submit slips was because the nature of the criminal charges lodged against him would not qualify his appearances as being "...in accordance with a line of duty performance..." The Union asserts that the "line of duty" requirement for such court attendance payments was only satisfied once Officer Letendre was found not guilty and that his claim for such court attendance payments only then became ripe for pursuit. The Town rejects these assertions. It is clear from the outset that Officer Letendre contested the charges against him, and hence by not pleading guilty was asserting that the events of January 20, 2000 were in fact in the line of duty. Thus, his official position, adopted throughout his trial, was that the January 20, 2000 events were in the line of duty, thereby making him eligible for the compensation he now seeks. Regardless of whether the Town would have accepted or rejected timely Court Appearance Notifications does not alter or eliminate Officer Letendre's obligation to file them in a timely manner. Had they been submitted in a timely manner, even if rejected, Officer Letendre and/or his Union could have grieved that denial on a timely basis and could have sought to delay any arbitration until the conclusion of the trial. "What neither the Union nor Officer Letendre were free to do, however, is sit idly by and ignore the court pay procedure and wait as

much as two and a half (2½) years before even submitting a request for such pay.” (Town Brief, p. 11)

The arbitrator should reject any Union assertion that the Town somehow waived its right to assert procedural non-arbitrability by failing to raise it in the early stages of the grievance procedure. The Union cannot claim some disadvantage in arbitration through surprise since Town Manager Stankiewicz clearly raised the issue in his April 28, 2008 grievance response.

The Town did not waive its right to contest payment of court appearance compensation because it chose to accede to other requests from Officer Letendre involving vacation, sick leave, and comp time. Each claim must be assessed on its merits. Some claims might be granted if the employer concludes that the costs of contesting them exceeds the amount at issue. Each category of compensation is controlled by different contract language.

In contrast to the other areas of compensation sought by Officer Letendre, court attendance pay is unique in that it 1) required certain actions be taken by Officer Letendre in order to trigger payment, and 2) court attendance compensation is paid in dollars, whereas the other categories were in the form of accrued leave or compensatory time off.

The Town’s position as to the consequences for the late filing of a grievance has been upheld in *Town of Stoughton and Stoughton Police Patrolmen’s Union*, AAA #11 390 02064 05 (Garraty, 2006) where that arbitrator sustained the Town’s position of procedural non-arbitrability based on untimely filing of a grievance.

The Town asserts that the delay in filing in this case is not without consequences. “If the Union was successful, the Town would have been able to budget for the court time costs that ultimately resulted from the trial. Instead, the Town is being requested to pay out in a lump sum over \$11,000.00 for court time that occurred over a three (3) year span.” (Town Brief, p. 13-14) Officer Letendre now seeks payment for the full amount, after the fact, without having provided the Town the advanced notice through a timely grievance filing that would have allowed planning and budgeting for this cost.

For the above reasons, the Town asks that the Arbitrator find this case to be procedurally non-arbitrable.

Position of the Union—Issue #1

The Union asserts that the grievance in this case was timely filed, and hence the matter is procedurally arbitrable.

“The criminal charges for which Officer Letendre was indicted were accessory to kidnapping and making a false police report.” (Union Brief, p. 4 citing Town Exhibit 4) Those charges all arose out of actions taken by Officer Letendre while in uniform on January 20, 2000. The nature of those charges is such as to call into question whether Officer Letendre’s appearance during those court proceedings was pursuant to actions taken “...in accordance with a line of duty performance...” (Article XXI) While those charges remained unresolved, Officer Letendre’s court appearances could not be viewed as appearances related to events “...in accordance with a line of duty performance...” It was not until he was found “not guilty” and subsequently cleared of any violation of Departmental rules, policies and regulations that the events of January 20, 2000 could be seen in their true light—i.e., “...line of duty performance.” The final event in Officer Letendre’s exoneration occurred on September 24, 2007 with the Chief’s conclusion that other than a violation which was Department-wide, “...Officer Robert E. Letendre did not violate any Rules, Regulations, Policies and Procedures of the Stoughton Police Department.” (Union Exhibit 3) Shortly after the Acting Chief’s findings, Officer Letendre was removed from administrative leave, and within days he filed his October 1, 2007 request for benefits, including court attendance compensation. (Union Exhibit 4)

The Union asserts that following his October 1, 2007 request for court attendance compensation, there was no reason for him to grieve non-payment, since neither the Department nor Acting Chief Ciampa denied court appearance compensation until April 7, 2008. On November 27, 2007, the Acting Chief asked for “...further patience...” in regard to court attendance compensation. He went on to state that “...I will get back to you as soon as I hear from them (Town Counsel).” (Union Exhibit 6) The Town cannot seek to penalize Officer Letendre for, as requested by the Chief, showing patience and awaiting the Town’s research into the question of his court appearance compensation request. When the denial finally occurred on April 7, 2008, Officer Letendre filed a grievance one day later, on April 8, 2008. (Joint Exhibit 1)

The Union asserts that it is worthy of note that Officer Letendre’s grievance seeking compensatory time for not calling in sick during this same period was granted. The Town did not raise timeliness or procedural non-arbitrability in responding to and granting that grievance. They should not be allowed to raise it in this case.

For the above reasons, the Union asks that the Arbitrator find in its favor, and that this grievance be declared timely and arbitrable.

DISCUSSION

Issue #1—Procedural Arbitrability

At the outset of this Discussion, I would like to thank the representatives of the parties for the detailed and professional manner in which they presented their respective positions on both issues.

When, as here, parties to a Collective Bargaining Agreement negotiate a grievance procedure culminating in "...final and binding..." arbitration, there exists a presumption that they wish that system be utilized to resolve their disagreement. This concept is often referred to as the "presumption in favor of arbitrability." When, as here, arbitrators are constrained to "...not add, subtract from or alter any provisions of this Agreement..." she/he cannot ignore clear contract language which renders a dispute non-arbitrable. When the parties have negotiated language excluding certain subjects from arbitration, or sanctioning certain procedural failures by prohibiting arbitration, those prohibitions must be enforced as written. When, however, the circumstances of a particular case leave some doubt as to whether those sanctions have been triggered, those scenarios warrant the application of the "presumption in favor of arbitrability."

The Town has argued that as early as the first pay period following his initial court appearance in Dedham, Officer Letendre should have been fully aware that he was not receiving court attendance compensation, both because 1) it did not appear in his paycheck, and 2) he knew full well that he had not initiated the process for payment by filing the Court Appearance Notification. In response to that argument, the Union responds that the nature of the charges against Officer Letendre were such as to call into question whether his court appearances were related to an event which qualified as "...line of duty performance..." (Article XXI) Police Department Administrative Assistant Daley-DiCastro testified at length concerning the procedure which culminates in a police officer in Stoughton receiving compensation for court appearances. As noted above, the Town focused on that portion of the procedure required of police officers, where in Superior Court they must present the Court Appearance Notification form (Employer Exhibit 11) to the ADA for signature, and then present the completed form back to the Department for payment. The Town rejects the Union's assertion that the court appearances did not become "line of duty..." until Officer Letendre's acquittal. Thus, argues the

Town, Officer Letendre was, from the outset, obligated to fulfill his portion of the procedure.

When assessing the reasonableness of Officer Letendre's failure to file Court Appearance Notification forms for all of his court appearances related to his trial, I must point out that a police officer's role in that procedure is preceded by certain obligations and actions taken by the courts and by the Town. Administrative Assistant Daley-DiCastro testified as follows on point:

Q: In Dedham courts, whether it be Superior or District or other courts, what is the process there? There's a form you indicated are provided to the officers.

A: Yes.

Q: Let me just show you this document (Employer Exhibit 11) and what is that document?

A: That's the Court Appearance slip. There are actually two copies. There's a white copy which is the original that we give to the officer and there's a yellow copy which I keep in my office.

Q: And so this is the form that's given to any officer that's going to Dedham Superior or other courts other than Stoughton?

A: Yes.

Q: Who fills out that information and what information comes back?

A: Once I'm made aware of the fact that someone has to go to a Dedham court case, this form is filled out. It's attached to a copy, if we get a notification from Dedham, either a summons or via the fax, it's attached to that. The court case associated with that is pulled and this is attached to that form. The form is attached to the Court case and it's in records so that the Officer can pull it the day we need it. The case is put up on a yellow Court sheet that's posted in the back, listing which officers need to go to court....They take their court case in the morning, they go to court, they come back with it signed, time in and time out. I then take it like I do with the Stoughton court slips and I put it on their card, the amount of time for that day, and at the end of the month I total all the cards.

(Testimony of Ms. Daley-DiCastro—emphasis added)

There is no evidence before me to indicate that the ADA in this case sent a fax or subpoena to the Stoughton Police Department compelling the appearance of Officer Letendre. There is no evidence that the Administrative

Assistant filled out the Town's portion of the Court Appearance Notification form indicating that Officer Letendre was to appear as a witness in this case. There is no evidence before me that the Town took that completed form and attached it "...to the court case..." so that Officer Letendre could "...pull it the day we need it." There is no evidence before me that "...the case (was) put up on a yellow court sheet that's posted in the back listing which officers need to go to court...."

Given the above, it is clear that Officer Letendre is not the only individual or organization who varied from the established procedure with respect to the initiating of, processing of, response to, or submission of a Court Appearance Notification form (Employer Exhibit 11). The record of this case is clear that everyone—from the ADA through the Department's administrative staff and Officer Letendre—all treated his appearances in this case as if they were other than a "line of duty performance..." appearance. Indeed, the court case itself could be viewed in a generic sense as addressing the question of whether his actions on January 20, 2000 were a crime or were performance in the line of duty.

Given that everyone in the procedural chain leading to court appearance compensation behaved as if Officer Letendre's appearances were not line-of-duty performance appearances, it would be unreasonable to single out his responsibilities in that procedure as not having been completed and thereby qualifying as knowledge on his part that he was not being paid court appearance compensation.

I am satisfied that everyone involved in Officer Letendre's trial, from the ADA through the Department and Officer Letendre and his defense counsel, all behaved in a reasonable and prudent manner by suspending their normal court appearance compensation procedures in this case until the question of whether his January 20, 2000 actions were criminal activity or line-of-duty performance. When Officer Letendre was found "not guilty," and subsequently exonerated by the Chief from any violation of rules, regulations, and/or policies other than a system-wide transgression not unique to Officer Letendre, his court appearances changed in identity. By virtue of being found "not guilty" in the court, and by virtue of essential exoneration of any violation of Departmental obligations, at that moment Officer Letendre's January 20, 2000 actions became "line of duty performance," and his court appearances relating to those January 20, 2000 events became, retroactively, "line of duty performance" appearances.

Given the above, it is my finding that this case is procedurally arbitrable. Within a week of being removed from administrative leave, Officer Letendre sought, in writing, a variety of contractual benefits, including the court

appearance compensation at issue in this case. I am satisfied that the Acting Chief's reaction was to investigate the matter and ask Officer Letendre to be "patient." That patience, when requested by the employer, cannot be the basis of a finding that the Officer failed to act in a timely manner, especially when, as here, the Grievance Procedure states as a "...purpose...to settle employee grievances on as low a level as possible so to insure efficiency and employee morale...." (Article XXIII, Paragraph A) I am satisfied that the parties essentially suspended the time clock from October 1, 2007 to April 7, 2008 at the request of the employer in order to give the Department time to research the question. The time clock for filing in this case was triggered when Officer Letendre reasonably concluded he was not going to be paid court time. That realization occurred on April 7, 2008, and he filed his grievance the following day.

I am satisfied that the concept of a "presumption in favor of arbitrability" supports my finding discussed above.

It is my finding and award that this case is procedurally arbitrable.

POSITIONS OF THE PARTIES

Issue #2—Merits

Arbitrator's Note: During my discussion on Issue #1—Arbitrability just above, I found that once Officer Letendre was found "not guilty" and subsequently essentially exonerated in the Department's internal investigation, his actions on January 20, 2000 qualified as "...line of duty performance...." In the Merits section of this case, both parties have addressed that "...line of duty performance..." issue. It would unnecessarily create a document of unmanageable length to lay out again the parties' arguments with respect to the "line of duty performance" issue and then have me restate my reasoning for my finding that as of his exoneration in court and within the Department, Officer Letendre's court appearances retroactively qualify as appearances associated with "...line of duty performance...."

Under these circumstances, I will present just below the parties' positions on the Merits without revisiting the portion of those positions devoted to the question of line-of-duty performance which I have already resolved above.

Position of the Union—Issue #2

The Union asserts that the Town did violate the Collective Bargaining Agreement by denying Officer Letendre's request for Court Pay pursuant to Article XXI.

The Union asserts that the Department's Administrative Leave Policy (Union Exhibit 1), while denying eligibility for detail or overtime work while on administrative leave, does provide that "...pending court appearances...will be re-imbursed at the normal rate." (Union Exhibit 1, Section 1.3) Thus, Officer Letendre's administrative leave status does not act as a bar to receipt of court appearance compensation.

The Union rejects the Town's assertion that somehow there is a past practice of not compensating Stoughton police officers for court appearances related to trials where they are the criminal defendant. The Town asserts that there were three other cases where police officers were prosecuted and did not receive court appearance compensation for their appearances at their own trial. On cross-examination, however, Administrative Assistant Daley-DiCastro acknowledged that none of the examples cited, other than that involving Officer Letendre, involved situations where the indicted officers were charged with offenses occurring while they were in the performance of their police duties. Thus, those cited examples do not establish precedent, and are distinguishable on their merits.

The Union acknowledges that Article XXI provides compensation for court appearances occurring "...after (a police officer's) regular shift..." The Union asserts that at the time of his placement on administrative leave, Officer Letendre was assigned to the 4:00 p.m. to midnight shift and received the shift differential associated therewith. Officer Letendre continued to receive his night shift differential while on administrative leave. Thus, the Town continued to compensate Officer Letendre in the manner associated with assignment to the 4:00 p.m. to midnight shift, and hence his appearances at court, both before and during his trial, occurred "...after his regular shift..."

Officer Letendre's night shift status during this period was further evidenced by his return to the night shift on active duty once administrative leave was cancelled.

The Union asserts that Officer Letendre's summary of court appearances (Union Exhibit 5), when compared to the Trial Court Information Center list of Calendar Events for the Docket number associated with this trial, do not differ substantially. The Union is willing to waive those dates on which the two documents differ in favor of the docket entries. Thus, Officer Letendre is

entitled to 309 hours of court time computed in accordance with Article XXI at time and one-half.

For the above reasons, the Union asks that the Arbitrator find in its favor, and that Officer Letendre be made whole.

Position of the Town—Issue #2

Officer Letendre's court appearances at his own criminal trial were not appearances related to "...line of duty performance." Administrative Assistant Daley-DiCastro "...testified, she is aware of four (4) police officers who have been charged with crimes during the time they were employed by the Town and she is not aware of any of them having been paid court time for any court appearances they made in connection with their own cases." (Town Brief, p. 15)

Even if the Arbitrator concludes that Officer Letendre's court appearances were "...in accordance with line of duty performance..." the Union has failed to satisfy its burden of proof in this case in that "...the Union has not submitted any court appearance notices to reflect that Officer Letendre's presence was **required** at the court appearances he made nor has it submitted any signed court time forms to verify the amount of time that Officer Letendre actually spent in court." (Town Brief, p. 16) The Arbitrator should not accept as satisfying the Union's burden of proof Officer Letendre's list that he prepared from wall calendar notations. There has been no evidence presented to warrant a conclusion that his appearances were required on each of those occasions, nor any establishing the exact amount of time associated with each. Indeed, during his testimony, Officer Letendre acknowledged that some of these appearances in court were related to pre-trial motions and conferences which did not involve any testimony by Officer Letendre. "In the absence of his providing testimony at those events, it is unclear what purpose Officer Letendre's presence served at those preliminary matters and thus, the Union cannot demonstrate that those appearances were even eligible for court pay." (Town Brief, p. 17)

Article XXI compensates officers for court attendance only when that attendance occurs "...after his regular shift..." At the time of these contested court appearances, Officer Letendre was on administrative leave and was not working the 4:00 p.m. to midnight shift. Indeed, his administrative leave was in addition to his status on IOD pursuant to M.G.L. c.41, §111F. Officer Letendre was being paid his base weekly salary during the time he was on administrative leave. He was on administrative leave due to his pending trial. Thus it is reasonable to conclude that he was already being compensated for those trial appearances. Court appearance compensation is intended to be for court

appearances occurring outside an individual's regular shift. Officer Letendre was not working during the hours of 4:00 p.m. to midnight on any of the days when he appeared in court related to his case. Rather, he was on paid administrative leave, which was a status implemented and designed to allow his court appearances. Thus, those appearances were not outside his regular shift. To grant these court appearance compensation claims in addition to the full base pay already received by Officer Letendre would create a situation where he receives a windfall benefit. Thus, the only scenario which would warrant an award of any additional compensation would be were Officer Letendre to establish that he qualified for overtime pay by virtue of being involved in his trial appearances for more than 40 hours in a week. Even if one were to rely upon Officer Letendre's less-than-precise wall calendar notation-based claims, the only week qualifying for such overtime pay is that of July 16, 2007, when he exceeded the 40 hour work week by a single hour.

The Town rejects the Union assertion that the continued receipt by Officer Letendre of night shift differential during his administrative leave establishes that he should be viewed as still being assigned to that shift. The fact is that when Officer Letendre was put on administrative leave he was already on IOD pursuant to 111F, which requires that IOD be "...without loss of pay..." (Town Brief, p. 19, Footnote 7) The Town was required, therefore, to maintain his nightshift differential pursuant to his IOD status.

For the above reasons, the Town asks that the Arbitrator find in its favor, and that the grievance be denied on its merits.

DISCUSSION

Issue #2—Merits

As noted at the outset of this section on Issue #2, I have already ruled upon the question of whether Officer Letendre's court appearances qualified as appearances related "...to line of duty performance." Therefore, I will not repeat that analysis in this section.

The Town asserts that even if Officer Letendre's appearances were viewed as "...in accordance with line of duty performance..." the Union has still failed to meet its burden of proof to establish that all of Officer Letendre's appearances were "required." The Town asserts that the court appearances of a criminal defendant could vary widely from the type of appearances normally required of a police officer making such appearance "...in accordance with line of duty performance...." The Town asserts that Article XXI was designed for

those traditional forms of appearances rather than the extensive appearances of a criminal defendant involving motions, depositions, and other matters not involving testimony.

With all due respect to the Town's well-crafted arguments regarding whether or not Officer Letendre was "required" to be at all of the appearances cited by the Union, I am satisfied that there is no reason for me to accept that his appearances at the Calendar Events documented by the Trial Court in its Docket summary of events was anything less than required. Clearly, a criminal defendant is required to be at far more events in his trial than would an officer called solely as a witness in someone else's criminal trial. However, once Officer Letendre was acquitted of both criminal charges and Department transgressions, his criminal trial appearances must all be viewed as "...in accordance with a line of duty performance...." The legal status of Officer Letendre's January 20, 2000 actions has been established by the court. By acquitting him, the court has removed all claim that his January 20, 2000 actions were anything other than "...in accordance with a line of duty performance...." While his appearances in his own trial clearly exceed the frequency of appearances he would make in someone else's criminal trial, that difference is one of frequency rather than one of essence. I am satisfied that all appearances by Officer Letendre during his own trial were required, and based upon his acquittal were "...in accordance with a line of duty performance..." on January 20, 2000.

With respect to the accuracy of the appearances provided to the Chief by Officer Letendre in Union Exhibit 5, the Union has accepted the Trial Court Information Center Calendar Event Docket summary, and has modified its claim to solely the events documented on that summary. I acknowledge full well that Employer Exhibit 8, the Docket summary, does not establish the number of hours each day for the required appearances. I note, however, that each side has available to it certain court records which could establish with certainty the number of hours devoted to many of those court events. I will address this issue further below.

This then brings us to the key question remaining in this case. Article XXI provides for compensation for a variety of court attendance events occurring "...after (a police officer's) regular shift..." The question then is whether Officer Letendre was appearing in court "...after his regular shift..." Clearly, if he was viewed as still being on the 4:00 p.m. to midnight shift, those court appearances would qualify as "...after his regular shift..."

I acknowledge full well the temptation to conclude that no appearance on administrative leave in court could be viewed as "after his regular shift" because an officer on administrative leave is not showing up for duty.

However, there are many examples where a police officer's leave status continued to require payment of certain compensation, even though the officer is not performing actual duties. The Town itself has cited the 111F Injured-On-Duty requirement that an individual on such non-work status continue to receive any differentials, including night shift differential. Clearly, an individual on 111F who is not working at all is not working during the night shift, which carries an associated differential. Yet the statute requires the Town to continue to pay night shift differential, and it did so with Officer Letendre prior to even putting him on administrative leave. The question, then, is whether administrative leave, as administered in the Town of Stoughton, should be viewed as a status where court time is simply not warranted because the individual is not working. The answer to this question lies in the Stoughton Police Department's own policy on administrative leave. That policy, submitted at the arbitration hearing as Union Exhibit 1, states in pertinent part at Section 1.3:

An officer on administrative leave will receive his base salary and will not normally be eligible for detail or overtime work. He will not perform police functions other than pending court appearances which will be re-imbursed at the normal rate.

(Union Exhibit 1—emphasis added)

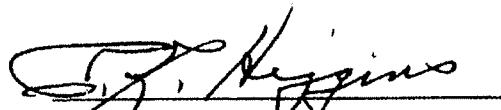
Given Union Exhibit 1, it is clear that individuals on administrative leave whose normal assignment was the 4:00 to midnight or midnight to 8:00 a.m. shift would have any "...in accordance with line of duty performance..." court appearances occurring while they were on administrative leave treated as being "...after (their) regular shift..." There is nothing in Section 1.3 which would indicate that it is intended to address solely that extremely small set of court appearances by day shift officers on administrative leave when that court appearance occurs on what would be their normal day off. Indeed, the Town's theory that a person on administrative leave should not be viewed as assigned to any particular shift, since they are not actually working, by extension would have to be viewed as an argument that no police officer should be viewed as having a particular Wednesday or Friday off while on administrative leave since they are not performing any work to be "off" from. The second section of Section 1.3 makes sense if, and only if, individuals on administrative leave are treated for court appearances as if they were still working their normally assigned shifts and days off.

I find nothing in the terms of the memorandum from Town Manager Stankiewicz placing Officer Letendre on administrative leave effective March 21, 2005, which would in any way negate or override Section 1.3 of the Police Department's administrative leave policy.

Given the above, I am satisfied that the Town did violate the Collective Bargaining Agreement at Article XXI when it denied Officer Letendre's request for court pay pursuant to Article XXI. As remedy, the parties will have 30 days to research and discuss any documented basis for varying from the 309 hours which the Union, at page 10 of its brief, asserts is due Officer Letendre. The parties will have 30 days to research the hours sought by Officer Letendre and the Union for dates documented on the Docket summary (Employer Exhibit 8). If at the end of 30 days either party wishes to contest the hours sought by the Union for those Docket summary listed days, they may, through notice to AAA by that 30th day, seek a ruling from me on any particular days contested. I reserve the right to have any such dispute resolved by brief or by additional hearing as I deem appropriate based on the scope of the disagreement. In the absence of an expressed desire by either party by the 30th day after this Award to address the number of hours on a particular day, the Town will award Officer Letendre 309 hours of court time computed in accordance with Article XXI.

AWARD

- 1) This grievance is procedurally arbitrable.
- 2) The Town did violate the Collective Bargaining Agreement when it denied Officer Letendre's request for Court Pay pursuant to Article XXI. As remedy, the parties have 30 days from the date of this Award to contact the Arbitrator through AAA as to whether the hours sought by Officer Letendre in Union Exhibit 5 on any particular day cited in the Trial Court Docket Summary, Employer Exhibit 8, are in excess of the actual hours Officer Letendre attended on that date. I reserve the right to convene a hearing or require briefs on any such dispute. In the absence of notice by that 30th day of any such dispute, the Town will pay Officer Letendre 309 hours of court time, computed in accordance with Article XXI, at the rates in existence for each attendance date.


Richard G. Higgins
Arbitrator

DATED: July 6, 2009