

Special Board of Selectmen's Meeting

March 23, 2010

Present: First Selectman Gayle Weinstein; Selectman David Muller; Town Administrator Tom Landry; Administrative Assistant Judy DeVito;

This meeting was recorded and video taped and the tapes are available in the Selectmen's office.

Mr. Gilbert joined the meeting by telephone.

Ms. Weinstein called the meeting to order at 5:32pm

Pledge of Allegiance- Joe Abruzzi leads the meeting with Pledge of Allegiance

Discussion/decision regarding a grievance by Weston Highway Employees Union Local 1303-41 of Connecticut Council 4 AFSCME, AFL-CIO and Weston Dispatchers Local 1301-212 of Connecticut Council 4 AFSCME, AFL-CIO regarding the Day of Mourning declared by Governor Rell for February 10, 2010.

Kelly Cashman said that this is an Administrative Hearing and per Connecticut General Statutes is closed to the public and she asked that all the members of the public be asked to leave at this time. Mr. Landry said that he did not know and would check with legal counsel.

Ms. Weinstein spoke with counsel and said that if this was a disciplinary action then the employee being disciplined has the option to have it either in public or private session. However, since this is an administrative action and not a disciplinary action, we cannot find anything that warrants a private hearing. She asked Ms. Cashman if she had the statute or would she want some time to look it up. If she had the number we could give it to Town Counsel to look up. She would be happy to take that step and do so. In absence of that she sees no reason to close the administrative hearing to the public.

Ms. Cashman said that all of her members were harmed by not being able to get their benefit that is due them under the article in the contract, and because of the fact that you have allowed other people in and would not close this session, she will be filing a charge with MERA and she will have the statute by then.

Ms. Cashman that they were here for two grievances both of them institutional. One for the dispatcher and the other DPW. She said in the books, how arbitration works by Elkouri and Elkouri chapter 9 standards for interpreting contract language states in part "there is no need for interpretation unless the agreement is ambiguous". "If the words are plain and clear conveying the distinct idea there is no occasion to resort to technical rules of interpretation and the clear meaning would ordinarily be applied by arbitrators." She said it further goes on to say that arbitrators seek to interpret collective agreements to

determine the intent of the parties. They determine the intent of the parties from various sources including the express language of the agreement, statements made of pre-contract negotiations, bargaining history and past practice. Moreover the terms of the collective bargaining agreements are to be implied in a logical manner consistent with the language intent of the parties and with the entire agreement.

The current collective bargaining agreement has clear and unambiguous language in the contract. In fact, this language has been in both of these contracts for so long that no one can tell Ms. Cashman when they were put into the contracts. She said this is the first time that the Town has denied this contract benefit and [the Town] is relying on an arbitration award from another time with another collective bargaining agreement and a different set of circumstances regarding a Day of Mourning than what is in front of you now.

Ms. Cashman said that the case involving the Town of So. Windsor does not set a precedent. Arbitration awards do not set precedents. It cannot be used for denying benefits in this case. Although there was a Day of Mourning called in So. Windsor, it was not a state wide day it was a proclamation in honor of a Board member who had passed away in the Town.

Ms. Cashman said that their grievance is a Day of Mourning made by executive order from the Governor of the State of Connecticut. She said it was not specific to the Town, it was a statewide day of mourning and therefore the contract language being clear and unambiguous, being applied evenly every single time any other Day of Mourning has been given in this circumstance, has been approved must be approved again. The Union respectfully requests the Boards sustained agreements make the employees for both the DPW and the dispatchers hold for the benefits that are due them.

Mr. Landry said he would like to point out one distinction that Ms. Cashman made which was the So. Windsor event was not a statewide Day of Mourning and this is a statewide Day of Mourning and that is an important distinction. He said our contracts do not have that language "statewide".

Mr. Landry said he sees the words in the contract and in the governors declaration and he can see that they are the same. The reading of the contract provisions is done not in isolation. It must be done within the context of labor law and with guidance offered by labor board decisions, precedent and past practice. In considering the request for payments he looked to several areas for guidance in the reasoning and interpretation of the relevant contract provisions.

He said first, A "Day of Mourning" is not defined in either contract. Second, how have they treated such request in the past? He could not find an instance in which the units have requested payment for or for which the Town has made holiday pay based upon a Day of Mourning as declared by the Governor. He said we do not appear to have a demonstrative practice of doing so and the bargaining units have not provided him with any instances in which we have made such payment, and he has no recollection of having done so in the eight years that he has been here.

Third, Mr. Landry asked, what was the intent of those who drafted the language? He has copies of contracts going back to 1988 for both units and the language was in both contracts at the time. There is nothing in records available to him to describe the genesis of the language or the intent of the framers.

Fourth, is there relevant guidance from available labor board rulings or decisions? He found one decision that appears to closely reflect our current situation. On January 15, 2009 the State of Connecticut the Department of Labor Board of Mediation and Arbitration ruled in the matter of the Town of So. Windsor and Local 1303.28 of Council 4, AFSCME, AFL-CIO.

The salient point that he takes from this decision as it relates to the request at hand is that the declaration by Governor Rell of February 10, 2010, as a Day of Mourning was a ceremonial act. She did use the phrase contained in our two contracts but this alone holds no real distinctive meaning.

He said it is the same type of recognition as when she declared a day of remembrance or a moment of silence, or asked for church bells to be rung at a certain time to honor the memory of those slain at Virginia Tech. It is the same as when she orders flags flown at half staff for fallen soldiers or the same upon the death of former Connecticut officials or issued a proclamation commemorating a certain event. He said it was no different in tenor scope than these other activities. She did not close state offices as was done to mark the death of presidents or as part of a holiday observance like September 11, 2001. She did not do it to distinguish the event in gravity or of importance, it was simple a choice of phrase in a ceremonial act of respect.

Mr. Landry read from the arbitration award from the Town of So. Windsor. “to summarize the Town’s position, the intent of the Agreement is clear, only on days designated as “holidays” will bargaining unit members be entitled to premium pay which does not include days of mourning and/or remembrance declared in “ceremonial” fashion by the Governor’s office.

The So. Windsor decision leads him to conclude that the “ceremonial” distinction is an important one and that the mere invocation of the phrase “Day of Mourning” is insufficient in and of itself to trigger the contract provision which imposes the requirement of holiday pay or holiday observance. If it were sufficient, the Labor Board could not have found for the town of So. Windsor in this matter.

Mr. Landry said, coupled with the fact that there is no guiding definition of the term in the contracts nor is there an identified past practice by the Town for paying such request and he has no insight into the intent of the negotiators who initially placed the language into the contracts, he is left to rely more heavily on the guidance provided by the Board of Mediation and Arbitration in the So. Windsor decision. To the extent that the term “Day of Mourning” is modified in either contract it is by the term “holiday”.

The DPW contract reads “the following holiday should be observed as days off with full pay and any day declared a holiday or day of mourning by the President, Governor, First Selectman and Board of Selectmen. The Dispatch language is similar and both appear in the holiday section of each contract. He feels there placement in that section is not by mistake or happenstance and that was true in the So. Windsor contract and it was something noted by the Board of Mediation in its decision. After much thought in the deliberation he has concluded that to deny the payment as requested was indeed the correct application of the contract language.

Mr. Landry said one of the grievances requires a decision in 15 days and the other in 30 days. The Board of Selectmen has a meeting scheduled for April 1, and that falls into the 15 day timeframe.

Ms. Weinstein asked if we called the governor’s office to see what her intent was. Mr. Landry said he did call but they said they did not know. Mr. Gilbert asked if the Town of Weston paid a day of mourning for Debra Fine. Mr. Landry said no. Mr. Gilbert said that Ms. Cashman talked about the clarity of the language and makes two other points. She indicates that past practice is very important. He said the two elements of contract interpretation are in fact intent and past practice. It seems to him that if the day of mourning for Ms. Fine was not paid then it should have been grieved and it was not. He suspects that that did not happen because no one realized because it was not high profile.

Mr. Muller asked Ms. Cashman about her statement, arbitration awards did not establish precedent, what it was based on. She said labor law does not establish a precedent and that was through MERA. Mr. Muller asked if we extend the concept that the use of the term “Day of Mourning”. If the Governor were to, for example, have a Day of Mourning every time a soldier is killed would the argument be the same. Ms. Cashman said she would have to see what the Governor said at that time.

Ms. Cashman said that the Governor’s office is well aware that many many many collective bargaining agreements in the State of Connecticut have this trigger mechanism for “Day of Mourning” and she is very careful about what she says and when she says it. You won’t see her saying soldier killed is a Day of Mourning, so she did not think that she would ever be here on that issue, but if she was, she would be making the same argument.

Ms. Weinstein said she would like to hear what the governor’s office has to say as to what the intent is of this day. She recommended that they push the decision off until the April 1, 2010 meeting when Mr. Gilbert will be back in town and she would also like to talk to the governor’s office. Mr. Muller said he felt the intent of the declaration is an important component. He said that if the intent is as conveyed as a ceremonial declaration it is a very clear indication as to how they would make a decision.

March 23, 2010

5

At 6:22pm Ms. Weinstein closed the hearing.

Respectfully submitted

Judy M. DeVito
Administrative Assistant
Approved 04/01/10