

AMERICAN ARBITRATION ASSOCIATION  
AAA No. 01-18-0003-6765

**ARBITRATOR'S AWARD**

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In the matter between:

PLYMOUTH FIREFIGHTERS LOCAL 1768

and

TOWN OF PLYMOUTH


Grievance: Failure to Comply with Grievance Process

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**AWARD**

The Undersigned, having been designated in accordance with the parties' Collective Bargaining Agreement and having duly presided at the parties' arbitration hearing, AWARDS as follows:

The Town violated Article 14 of the parties' Collective Bargaining Agreement when the Town Manager designated the Assistant Town Manager to meet with the Union at step 2 of a grievance process on July 12, 2018. As a remedy, the Town Manager is enjoined from delegating his/her hearing officer duties under the parties' Collective Bargaining Agreement.

  
Betty E. Waxman, Esq.

Dated: February 11, 2019

AAA No. 01-18-0003-6765  
**ARBITRATOR'S OPINION AND AWARD**

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PLYMOUTH FIREFIGHTERS  
LOCAL 1768

and

Grievance: Failure to Comply  
with Grievance Process

TOWN OF PLYMOUTH  
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Appearances: For the Union: James Hykel, Esq.  
For the Employer: David Jenkins, Esq.

**I. STATEMENT OF THE CASE**

In September of 2018, the Union grieved the Town Manager's designation of the Assistant Town Manager as the step 2 hearing officer in regard to a disciplinary action. The grievance was denied by Town Manager Melissa Arrighi and the matter proceeded to arbitration. Union Exhibit 1. An arbitration hearing was held on December 12, 2018. Town Manager Arrighi and Firefighter/Grievance Committee Chair Scott Flora testified. The parties presented one joint exhibit. The Union presented two additional exhibits and the Town presented two additional exhibits with subparts.

The parties presented oral closings in lieu of filing post-hearing briefs. The hearing was declared closed on January 15, 2019.

**II. ISSUE (formulated by the arbitrator)**

Did the Town violate Article 14 of the parties' Collective Bargaining Agreement when the Town Manager designated the Assistant Town Manager to meet with the Union at step 2 of a grievance process on July 12, 2018 and, if so, what shall be the remedy?

**III. RELEVANT CONTRACT PROVISIONS - Joint Exhibit 1  
ARTICLE XIV - GRIEVANCE AND ARBITRATION PROCEDURE**

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Step 2. If the grievance has not been settled [at step 1], it shall be presented in writing to the Town Manager within ten (10) week days after the Chief's answer. The Town Manager or, in the event of a temporary or permanent vacancy in the position of Town Manager, the Acting Town Manager, shall meet with the Union representative(s) and shall respond in writing to the Union within ten (10) week days of the meeting at which the grievance is discussed.

#### ARTICLE XXIII - STABILITY OF AGREEMENT

A. No amendment, alteration or variation of the terms or provisions of this Agreement shall bind the parties hereto unless made and executed in writing by the parties thereto.

B. The failure of the Town or Local 1768 to insist, in any one or more situations, upon performance of any of the terms or provisions of this Agreement, shall not be considered a waiver or relinquishment of the right of the Town or of Local 1768 to future performance of any such term or provisions, and the obligations of Local 1768 and the Town to such performance shall continue.

#### IV. EVIDENCE

Town Manager Melissa Arrighi testified that she became Assistant Town Manager in 2004 and Town Manager in 2012. As Assistant Town Manager, she negotiated collective bargaining agreements and served as the step 2 hearing officer for nine bargaining units including the Firefighter's Union. According to Arrighi, the Union did not challenge her role in presiding at step 2 hearings between 2004 and 2012, nor did it object to Human Resource Director Roberta Kety serving in the same role. Arrighi stated that there have been four Assistant Town Managers over the past ten years. Their participation as step 2 hearing officers at Firefighter grievances is documented in Town Exhibits 1 & 2.

According to Arrighi, she does not interfere with or overrule the step 2 decisions made by Assistant Town Managers because they have heard the evidence and she has not.

Arrighi noted that the parties, at present, are negotiating a new collective bargaining agreement.

Firefighter/grievance committee chair Scott Flora asserted that neither the contract nor any other provision permits individuals other than the Town Manager to serve as a step 2 hearing officer unless the Town Manager position is vacant. He has not hitherto objected to Assistant Town Managers serving as step 2 hearing officers but seeks to have the matter resolved prior to the Union entering into contract negotiations for the next contract. Flora testified that reliance on Assistant Town Managers as step 2 hearing officers creates a lack of continuity, although he acknowledged that the Union has not been prevented from offering evidence at step 2 hearings nor has it experienced delays in receiving responses. According to Flora, the Union only files one or two step 2 hearings per year which is not a burdensome requirement on the Town Manager.

V. THE PARTIES' POSITIONS

*THE UNION'S POSITION*

Under the parties' Collective Bargaining Agreement (CBA), the assignment of a designee is, in several sections, made explicit. The inclusion of these explicit references makes clear that in the absence of such provisions, no such designation is permitted. As a matter of policy, the Town Manager should preside at step 2 grievance hearings because he/she is typically more experienced and longer-serving than are Assistant Town Managers and, thus, better equipped to deal with Union disputes.

The Union relies on Article XXIII to dispute the existence of a past practice permitting Assistant Town Managers to serve as step 2 hearing officers. Article XXIII provides that "no amendment, alteration or variation of the terms or provisions of this Agreement shall bind the parties hereto unless made and executed in writing by the parties thereto." There is no such written amendment, alteration or variation in this case

which would permit the Assistant Town Manager to conduct step 2 hearings. Thus, even though Assistant Town Managers have, in the past, been assigned the responsibility of meeting with the Union and rendering step 2 decisions, prior contract violations do not prevent the Union from insisting that the Town Manager, in the future, fulfill his/her Article XIV, step 2 obligations.

#### *THE TOWN'S POSITION*

The Town acknowledges that there are several contractual provisions which specifically designate subordinates to act in lieu of a specified individual. For instance, Article III.D states that Chief of the Department or officers "acting in his stead" may excuse employees from emergency duty and Article XV.G permits the Chief "or his designee" to waive the 24 hour deadline for requesting leave to attend to Association business. The Town nonetheless disputes the Union's claim that the absence of similar language in Article XIV prohibits the Assistant Town Manager from serving as a step 2 hearing officer. According to the Town, the explicit designations contained in Articles III and XV pertain to operational issues that need to be made "on the spot" whereas the responsibility of serving as a step 2 hearing officer in Article 14 involves administrative review.

The Town further states that Assistant Town Managers have served as step 2 hearing officers since 2009 without complaint from the Union. According to the Town, their participation over the past nine years has established a past practice. In performing such service, the Assistant Town Managers have not functioned in their individual capacities but, rather, as representatives of the Office of the Town Manager.

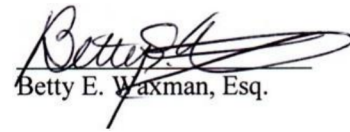
#### VI. FINDINGS AND CONCLUSIONS

The contract language of Article XIV is unequivocal that the Town Manager shall meet with the Union and respond in writing to grievances that are not settled at step 1. Unlike other sections of the contract which provide for "designees" or "officers acting in [the Chief's] stead" to perform executive functions, Article XIV does not permit the sharing of step 2 hearing responsibilities. Not only is Article XIV silent with respect to such designation, it explicitly provides for the "Acting" Town Manager to serve as step 2 hearing officer when the Town Manager position is vacant -- a circumstance that does not apply in the present case. The explicit reference to one such designation makes clear that other implicit designations are not permitted in the parties' contract.

The Town has presented evidence that prior to the filing of the instant grievance, the Union tolerated a past practice of allowing step 2 grievances to be conducted by Assistant Town Managers and, on occasion, by the Town's Director of Human Resources. This forbearance did not establish a past practice, however, because Article XXIII provides that "no amendment, alteration or variation of the terms or provisions of [the CBA] shall bind the parties hereto unless made and executed in writing by the parties thereto." No such written agreement was entered into by the parties which permits the designation of the Assistant Town Manager to serve as a step 2 hearing officer.

As a practical matter, conducting one or two step 2 hearings per year involving Local 1768 grievances is not unduly burdensome. The Town Manager's participation is sought by the Union because Town Managers generally have more experience than do Assistant Town Managers, are better equipped to deal with Union disputes, and can promote continuity in the decision-making process.

For the aforesaid reasons, the Town lacked the contractual authority to delegate the Town Manager's Article XIV hearing officer responsibilities to the Assistant Town Manager at step 2 of a grievance process on July 12, 2018. As a remedy, the Town Manager is enjoined from delegating his/her hearing officer duties under the parties' Collective Bargaining Agreement.



Betty E. Waxman, Esq.

Date: February 11, 2019