

**American Arbitration Association
Voluntary Labor Tribunal
Case No. 01-18-0004-2846**

**IN THE MATTER OF ARBITRATION BETWEEN
BOSTON POLICE SUPERIOR OFFICERS FEDERATION
&
CITY OF BOSTON**


Grievance: Overtime - National Grid Lockout

AWARD OF THE ARBITRATOR

The Undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered by the above named parties and having been duly sworn and having duly heard the proofs and allegations of the parties AWARDS as follows:

For the reasons set forth in the attached Decision, the grievance is sustained, and those Superior Officers who the Union can show have been adversely affected by the City's action should be made whole, and the Arbitrator will retain jurisdiction for sixty days should there be any dispute over the application of the remedy.

May 17, 2021
Boston, Massachusetts


Gary D. Altman

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ARBITRATION DECISION AND AWARD

Introduction

The Boston Police Superior Officers Federation (“Union”) and the City of Boston Police Department (“Department” or “Employer”) are parties to a Collective Bargaining Agreement (“Agreement”). Under the Agreement, grievances not resolved during the grievance procedure may be submitted to arbitration. The parties presented their case in a virtual Arbitration before Gary D. Altman, Esq., on January 19, 2021. The Union was represented by Patrick N. Bryant, Esq., and the Department was represented by Robert J. Boyle, Esq. The parties had the opportunity to examine and cross-examine witnesses and to submit documentary evidence. The parties submitted post-hearing briefs.

Issue

At the outset of the hearing, the parties were unable to agree upon an issue. The Union maintained that the issue to be decided should be framed as follows:

Is the Grievance Arbitrable?

If so, did the City's Operational Plans violate the overtime/detail provisions of the Collective Bargaining Agreement? If so, what shall be the remedy?

The City maintains that the issues to be decided in this case are as follows:

Is the grievance substantively arbitrable?

Did the City violate an express provision of the CBA when it assigned Motorcycle Officers (MOP) to respond to National Grid work areas until the District could fill the required strike details with District personnel?

After considering the evidence and testimony, it appears that the issues should read:

Is the Grievance substantively arbitrable?

If so, did the City's Operational Plans violate the overtime/detail provisions of the Collective Bargaining Agreement? If so, what shall be the remedy?

Facts

Deputy Superintendent [REDACTED]¹ explained that the City of Boston Police Department is composed of five geographic Areas, (Areas A-E) and within those Areas there are a number of district stations. In addition, there is also Area F, which consists of specialized units such as SWAT, Youth Violence Strike Force, Bicycle, and Mobile Operations (MOP). In addition, each patrol shift in every area has officers cross-assigned on the Emergency Deployment Team (EDT) that responds to emergencies city-

¹ Deputy Superintendent [REDACTED] has since been promoted to the rank of Superintendent.

wide. The officers assigned to EDT work regular duties within their assigned Area unless and until a request for EDT services occurs during the shift. The officers designated as being assigned to EDT vary with each shift; there are no special requirements, training or compensation associated with being on the EDT.

The Boston Police Superior Officers Federation represents Superior Officers in the rank of Sergeant, Lieutenant and Captain. Superior Officers have the opportunity to work overtime and detail assignments, and such extra work is to be assigned on a "fair and equitable basis".² The Superior Officers overtime list includes both Superior Officers and also those assigned as Detective Superior Officers, who are in a separate bargaining unit represented by another union. Fair and equitable, requires the opportunity to be offered overtime and details in reverse order of hours worked in the appropriate Area. For Area F, the Area that includes all the Citywide specialized units, supervisory detail assignments are offered in the other Areas only if the opportunity remains vacant two days prior to the scheduled work.

Boston Police also work during labor disputes in which employees are on strike or locked out of their employment. Deputy ██████████ explained that in such situations there can be picketers on scene at the Company's place of business, and there may be concerns about the safety of the

² There are two types of detail work for Superior Officers and Detective Superiors are. A superior officer has the opportunity to perform a detail that would first be offered to patrol officers. In such situations a superior officer is offered the opportunity to work a patrol officer detail only if the detail is not filled by 7:30 am on the morning of the work. The second type of detail work is considered as a supervisory detail when there are at least three patrol officers assigned to work the same detail. In such situations, a superior officer must be assigned to the detail.

public, strikers, and non-union employees that cross a picket line to perform work. This police work is considered a Strike Detail, and Strike Details are recognized as a unique hybrid of overtime and detail work. As with details, they are paid by the vendor and at a rate specific to the rank of the officer assigned. Unlike details, the hourly pay rate is higher than the usual detail rate. As with overtime, the work is assigned from the overtime lists and is offered to Superior Officers under the "Fair and Equitable" principle that guides regular overtime and detail assignments.

Between June and December of 2018, National Grid, a Utility providing natural gas to customers throughout the Northeast Region, including the City of Boston, was engaged in a labor dispute with its unionized employees. The Company locked out its employees, but was still providing various services with non-union employees, including responding to emergency calls throughout the City of Boston. National Grid requested police presence at two of its physical sites located in the City of Boston³, and also police presence when non-union employees provided emergency services at various locations throughout the City. In these latter situations National Grid would provide advance notice to the Department.

On June 26, 2018, the Police Department developed and distributed an Operational Plan describing how it would address the need for police services for the ongoing labor dispute. National Grid would pay the Department for the deployment of Boston Police for the Dispute, and officers

³ One of the physical sites was at Gas Tanks on Victory Road, and the other was at National Grid's work yard. Both locations were in Area C, District 11.

would be paid the strike detail rates set forth in the Agreement. The Operational Plan established a liaison, Lt. William Meade in the Special Events Unit of Bureau of Field Services, to coordinate with National Grid and its unions on the police response to the lockout. The Operational Plan assigned one supervisor and three patrol officers on every single shift at both the Company's Gas Tanks and also at National Grid's Work Yard. This meant that Area C District 11 hired a total of six patrol officers and two superior officers above and beyond normal shift staffing for every single shift; the officers were paid at the maximum overtime rate for their respective ranks and National Grid was billed for such costs. The work was classified as OVERTIME-STRIKE and as reimbursable overtime.

The Operational Plan also addressed the need to provide police services for those instances in which National Grid had work crews at other sites. Most of the construction work occurred during the daytime, but the Operational Plan also addressed the need if National Grid had to respond to gas leaks or other events during the evening hours. The June 26 Operational Plan called for Area-Wide Response Squads in each of the five patrol Areas. Specifically, "Whenever a National Grid crew is dispatched to a location on a City of Boston Street, the Area Response Squad will report to their location. They will remain on site until a strike detail can report to that location." Each Area Squad was staffed with one supervisor and four officers in each of the five patrol Areas on every single shift. These area Response Squads responded to National Grid-related emergencies or National Grid work locations that occurred within their Area. This process was in place

from June 26, 2018 until July 20, 2018. This resulted in 87 strike details being deployed during a twenty-four hour period, twelve assigned to the two physical sites, and seventy-five to respond to work sites throughout the City.

Deputy [REDACTED] testified that after the labor dispute had been going on for approximately a month, the Department decided to change the method of assigning strike details for the two night shifts (first-half and second half). Specifically, Deputy [REDACTED] testified that the Department viewed the June 26 Operational Plan as causing unnecessary expense for National Grid. In addition, Deputy Superintendent [REDACTED] explained that because of the additional assignments caused by the labor dispute, patrol officers were complaining about being overworked and having to work too much mandatory overtime.

On July 20, 2018, the City announced changes to the Operational Plan to take effect the next morning. Staffing at the two fixed National Grid locations within Area C was reduced to one supervisor and two police officers per shift. The July 20 revised Operational Plan also changed assignments for the Area-Wide Response Squads on the first half and last half shifts. The Area-Wide Response Squads continued to be assigned on the day shift, with one officer and four patrol officers. Specifically, "whenever a National Grid crew is dispatched to a location on a City of Boston Street, the Area Response Squad will report to their location. They will remain on site until a strike detail can be ordered and report to that location."

For the first and last half, instead of an Area Response Team a "Citywide Response Squad" was assigned staffed exclusively by six officers and one officer

assigned to Mobile Operations Patrol (MOP), the specialized unit within Area F. MOP officers would perform such assignments on their regular tours of duty, and would be paid their regular straight time pay.

This modified Operational Plan also indicated that "any request for emergency work after midnight will be called into the Operations Division ... by National Grid Management. The Operations Duty Supervisor will then contact the Citywide Response Squad Supervisor, who will report to that particular location and determine what police resources are required." MOP responded to requests around the City and MOP officers were to remain at their central location unless and until there was a call for service. If there were no calls for work to be performed by National Grid during the evening hours, no strike details were called and National Grid was not billed for any such tours.

On July 20, Union President [REDACTED] wrote to Deputy [REDACTED], Commander of the Office of Labor Relations, protesting the Department's change in the method of the "way strike details are given out." On Monday, July 23, the City revised the Operational Plan again, this time to note: "Whenever a National Grid crew is dispatched to a location for emergency work on a City of Boston Street, a minimum of one (1) supervisor and a minimum of one (1) police officer will be assigned to each location." On July 25, the City further revised the Operational Plan. The Area-Wide Response Squads continued on the day shift, much as they had the previous month, and the Department discontinued using MOP officers working their regular work hours on the first half and last half shifts, and instead

the work was again assigned to Area Wide Response squads.
The Operational Plan further provided:

On the FIRST HALF and the MORNING WATCH tours of duty, the District Duty Supervisors will be notified of all requests for emergency work related to the National Grid strike/lockout. The Duty Supervisors will have the Patrol Supervisor respond and make a determination as to what police resources are required. An on duty unit will remain on site until a minimum of one (1) supervisor and a minimum of one (1) police officer can be ordered to respond.

Now, if National Grid needed to provide a service in an Area, an Area Patrol Supervisor responded to the activity to determine if a strike detail was required. If so, then an appropriate number of officers (no less than one supervisor and a patrol officer) was hired from the Area overtime lists.

The Union filed the present grievance on July 25, 2018 stating:

That the Department/City has unilaterally changed the way it handles the National Grid Lockout pertaining to but not limited to Article VIII, and Article XIV, in violation of the Collective Bargaining Agreement between the City of Boston and the Boston Police Superior Officers' Federation.

The City denied the grievance, asserting:

To the extent that the Union's grievance challenges the deployment of MOP personnel, it is well settled that the Department may deploy a specialized unit such as MOP on an overtime basis when circumstances warrant. This is inherent in the Police Commissioner's nondelegable authority and it is also consistent with the Department's practice. The Department has obtained at least one prior arbitration award expressly stating that MOP can be deployed for overtime involving a gas company. BPPA # 16-1078 (October 21, 1994).

Relevant Provisions of the Agreement

ARTICLE IV - Management Rights

The Municipal Employer shall not be deemed to be limited in any way by this Agreement in the performance of the regular and customary functions of municipal management, and reserves and retains all powers, authority and prerogatives including, without limitation, the exclusive right of the Police Commissioner to issue reasonable rules and regulations governing the conduct of the Police Department, provided that such rules and regulations are not inconsistent with the express provisions of this Agreement.

ARTICLE V - Grievance Procedure and Arbitration

Section 1. Only matters involving the question whether the Municipal Employer is complying with the express provisions of this Agreement shall constitute grievances under this Article.

Section 6. The decision of the arbitrator shall be final and binding upon the parties, except that the arbitrator shall make no decision which alters, amends, adds to or detracts from this Agreement, or which recommends a right or relief for any period of time prior to the effective date of this Agreement, or which modifies or abridges the rights and prerogatives of municipal management under Article IV of this Agreement.

ARTICLE VII - Stability of Agreement

Section 1. 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 hereto.

Section 2. The failure of the Municipal Employer or the Federation to insist, in any one or more incidents, upon performance of any of the terms or conditions of the Agreement shall not be considered as a waiver or relinquishment of the right of the Municipal Employer or of the Federation to future

performance of any such term or condition, and the obligation of the Federation and the Municipal Employer to such future performance shall continue in full force and effect.

ARTICLE VIII - Hours of Work and Overtime

Section 2. Scheduling of Overtime. In emergencies or as the needs of the service require, employees may be required to perform overtime work. Employees shall be given as much advance notice as possible of overtime work.

All scheduled overtime shall be distributed on a fair and equitable basis to personnel within a district, unit or section. Said overtime will be distributed by a superior officer in each district, unit or section and that superior officer will keep a record of acceptances and refusals which record will be posted weekly. For purposes of assignment, to the extent possible, the parties recognize a distinction between the ranks . . .

Section 3. Overtime Service. All assigned, authorized or approved service or out- of-turn of an employee's regularly scheduled tour of duty (other than paying police details), including service on an employee's scheduled day off, or during his vacation, and service performed prior to the scheduled starting time for his regular tour of duty, and service performed subsequent to the scheduled time for conclusion of his regular tour of duty, including the assigned, authorized or approved service of officer-detectives or plainclothesmen, and including court time as set forth in Article IX, shall be deemed overtime service subject to the following rules:

ARTICLE XIV - Paying Details

Section 4. All authorized and assigned paid details shall be distributed on a fair and equitable basis to personnel within a district, unit or section. Said details will be distributed by a superior officer in each district, unit or section and that superior officer will keep a record of acceptances and refusals which record will be posted weekly. On those occasions when there is a need for a multiple number of superior

officers to supervise a detail in any district, unit or section as set out in Section 1 above, that detail will be assigned by the paid detail service with the understanding that either the sergeant, lieutenant or captain, a minimum of one assigned to the detail, will come from the district, unit or section.

RULES AND PROCEDURES OF THE BOSTON POLICE DEPARTMENT

BPD RULE 202 (August 12, 1980) - City Exhibit

Sec. 1 GENERAL CONSIDERATIONS

The police role at the scene of any labor dispute is to maintain order while protecting life and property. Similarly, the police are required to protect the rights of citizens who are exercising their right to peaceably assemble. It is where these conflicting interests clash that the police role becomes complex. Violence cannot be tolerated nor may the denial of egress and ingress to premises being picketed or the interference with the use of public thoroughfares be allowed to continue.

Performance of police duties. Police officers must not allow themselves to become the focus of the dispute. They must avoid taking sides or provoking any action that could result in violence. If violence does occur the police cannot ignore their duty to restore order. In doing so they are reminded to use the minimum force necessary.

Requests for the services of police officers at labor disputes will be performed by off-duty officers as special assignments at the prevailing overtime rate for the maximum basic salary of the officer so assigned. (This will not include any differential pay for detectives or specialists.) Such special assignments shall be mandatory and assigned and recorded similar to present overtime assignments. Private business concerns requesting such services will be billed by the Police Department and payments to officers recorded and reported in the usual manner.

Sec. 2 POLICY

It must be noted that both sides in a labor dispute have definite rights and responsibilities. Strikers have a right to assemble and to picket peacefully to publicize and dramatize their cause. They do not have the right to intimidate non-strikers or to impede persons or vehicles entering or leaving an employer's property. The employer has a right to conduct his business and to have his property safeguarded from damage or destruction. The police task is to protect the rights of both sides. This can become increasingly difficult as a strike becomes protracted. In such cases, the police must remain tolerant and patient but never reluctant to take decisive action when necessary.

Arrests at picket and/or strike scenes should be avoided except for flagrant violations which require immediate action. Only the minimum force necessary shall be used to effect arrests. Offenders shall be removed as quickly as possible to avoid an emotional reaction from fellow picketers or strikers. Whenever possible, it is preferable to obtain sufficient information to present to a court later for the issuance of a court process against the persons concerned.

Sec. 3 PROCEDURES

An important factor in avoiding disorder and the subsequent necessity for making arrests is to establish an early contact with the leaders of demonstrations and/or strike leaders and company officials. At such a meeting police responsibility can be set out in detail and the cooperation of the prospective participants can be sought as their obligation to maintain public safety and good order is made clear to them by a police spokesman.

When a strike is imminent or has already begun, a department spokesman shall meet with representatives of management and labor, preferably including picket captains, to advise them of police policy with respect to picketing. (A similar meeting shall be arranged, when possible, with leaders of any civic group picketing or group which is known to be contemplating

picketing.) The means by which this police policy would be carried out should be clearly explained and an attempt should be made to reach an understanding with respect to the actions of all concerned parties.

Area commanders shall conduct or assign police spokesman to conduct such meetings as are required by this section and then notify the Division of Informational Services of the outcome of the meeting. The Division of Informational Services shall make a public announcement when such a meeting is held and the understanding that was reached by the concerned parties. If the parties involved in a strike cannot be brought together in a meeting with the police the area commander shall notify both management and labor by letter of the police policy and the means intended to be used to enforce it. A public announcement shall then be made that such notice was given.

When a picket line is established, it shall be the obligation of the officer in charge at the scene to make contact with the leader of the pickets and seek his cooperation. Good relations between the police and pickets can ease law enforcement problems.

If an incident arises, or if it is apparent that a potentially dangerous situation is arising, it should be called to the attention of the picket leader immediately. He should be encouraged to handle the problem promptly. In many instances, this will eliminate the need for police intervention.

Police officers shall not enter company property during a strike except to perform a proper police purpose. They shall not park department or personal vehicles upon company property or use any company facilities. At a strike scene, police officers shall not use a company cafeteria nor shall they accept invitations to eat with either union or management personnel.

Pickets must leave sufficient room on sidewalks for pedestrian traffic. When the picket line is moving there must be sufficient room between pickets to allow a person to pass through without colliding with the pickets. Police officers shall ensure that all persons who wish to do so have the opportunity to enter or

leave premises peacefully. Pickets must not interfere with the use of public thoroughfares either by pedestrian or vehicular traffic. Vehicles must be allowed to enter or leave premises where a strike is in progress. When picketing is conducted contrary to the provisions of this rule the pickets shall be given specific instructions as to what actions they will be required to take in order to comply with police policy. If such instructions are not complied with a sufficient number of police officers shall be employed to carry out the department policy. Any persons resisting or interfering with such police action may be arrested and removed from the scene.

When possible, if violence occurs or is obviously imminent, the area should be cordoned off until order is restored or the threat of violence removed.

Position of the Parties

Summary of the Union's Arguments

The Union first maintains that its grievance is substantively arbitrable. The Union claims that this dispute is over the interpretation of the language in the parties' Agreement pertaining to fair and equitable distribution of overtime, and as such does not involve the non-delegable authority of the Commissioner. The Union contends that paid details, including strike details and overtime, are to be distributed on a fair and equitable basis, and arbitrators have held that this means that such work is to be assigned by the low officer principle in the geographical Area in which the work arises.

The Union maintains that this was, in fact, how the strike detail work was assigned for the first month during the National Grid labor dispute in 2018. The Union states that on July 21, 2018 the City changed the strike detail assignment, by assigning all such work on first half and last half shifts to the Citywide Mobile Operations Unit, a,

and not by geographical Area of where the work originates. The Union states that the issue of the circumstances and needs in which the Department can deviate from Area wide assignment of details and overtime has been the subject of arbitration in prior cases. Specifically, the Union states that in a 1994 Award issued by Larry Katz, he considered the issue of whether the City could deviate from the practice of assigning strike details to officers and assign these to the MOP instead of the geographical Areas.

The Union states that the facts before Arbitrator Katz also involved a labor dispute with Boston Gas, and the City decided to deploy the MOP unit to a Citywide stand-by rapid response assignment, and not assign the work based on the geographical Area where the work derived. In that case Arbitrator Katz found that the City assigned Motorcycle Officers, since they could respond to disputes more quickly than the cruisers assigned to the Area, and had the tactical training to address issues that could arise at the scene. The Union states that even though Arbitrator Katz ruled in favor of the City he found that there were "special circumstances" that justified the assignment of the strike detail instead of officers from the local Area.

The Union states that Arbitrator Katz reviewed the many prior awards on the distribution of overtime, and ruled that the City cannot simply assert that there are special needs, but must actually prove that special skills or equipment are required for the assignment, and that if the work could be performed by regular officers, then utilizing a specialized unit would violate the fair and equitable distribution of overtime required by the parties' Agreement.

The Union argues that the analysis of events in the present case, demonstrates that no special needs existed to assign the MOP the work for the first and second half shifts instead of Superior Officers from the geographical Area. The Union states that the Department presented no witnesses involved with developing the Operational Plans for the National Grid lockout. The Union states that Deputy [REDACTED] had no firsthand knowledge as to why the Department, in July, decided to change the assignment to MOP. The Union contends that the reasons testified by Deputy [REDACTED] to justify the change was that it was costing National Grid a lot of money for coverage for all three shifts, and that officers were already working a lot of mandatory overtime. The Union states that these justifications, even if accurate, do not excuse the City from violating the contract and past practice for the assignment of strike details in a fair and equitable manner.

The Union maintains that the Department cannot point to any reason why it needed the unique skill set or special equipment for the MOP to perform the work, as the work had been done by Superiors and regular officers on all shifts for the first month of the labor dispute. In fact, the Union states that for the day shifts, the Department continued to use the fair and equitable system for such strike details, even when MOP was assigned to the work after July 20. The Union claims that the work in question could have been performed just as well by regular police officers.

The Union further argues that there was no need for any rapid response by MOP, as National Grid informed the

Department of the location of the work in advance, so police could respond in sufficient time to the scene. Moreover, the Union states that even when the MOP was utilized to respond after July 20, they did not respond to the sites with motorcycles, but in regular patrol cars.

The Union concludes that the grievance should be sustained and a determination made that the City did not distribute overtime in a fair and equitable manner. The Union states that those employees who were impacted should be made whole.

Summary of the Department's Arguments

The Department first maintains that the grievance is not arbitrable. The Department states that Article V Section 1, provides that grievances are defined as violation of an "express clause" of the Agreement. The Department contends that the Union is contesting changes made to the Operational Plan for the National Grid labor dispute. The Department argues that there is nothing in the parties' Agreement that pertains to Operational Plans for labor disputes, and thus any disputes about the Operational Plan cannot be grieved. Similarly, the Department maintains that details for labor disputes are governed by Rule 202, and again, this Rule is not part of the Collective Bargaining Agreement, and thus the Union does not have the contractual right to challenge how officers and superior officers are deployed for strike details.

The Department maintains that the Union's contention that there was a unilateral change in working conditions is also an issue that cannot be resolved in arbitration. The Department contends that allegations of unfair labor practice charges must be addressed before the Massachusetts

Division of Labor Relations and not through the grievance arbitration process.

The Department maintains that the Police Commissioner has the non-delegable right to deploy patrol or superior officers, and the decision as to whether the work is designated as detail or regular work assignment is a matter that is within the Police Commissioner's non-delegable managerial authority. The Department points to a prior arbitration Decision in which the Arbitrator considered the 1994 Boston Gas strike, and the Arbitrator held that the Department could deploy MOP officers on regular duty to respond to emergency situations, and did not have to assign such work as a strike detail. The Department contends that the Commissioner's managerial authority has been codified in the Boston Police Commissioner's statute, and Massachusetts Courts have long held that decisions such as deploying officers or whether the work is to be assigned as a regular patrol duty or detail assignment is in the sole discretion of the Commissioner under Massachusetts Law, and cannot be challenged through the grievance and arbitration process.

The Department states that Deputy [REDACTED] testified that in the July 20 and July 23 Operation Plans, MOP Superior or patrol officers were assigned to respond on a standby-basis and were working their regular tour of duty, and paid on a straight time basis. The Department states that the Union did not provide the name of one Superior Officer who lost work opportunities due to the use of the MOP on the first and last half shifts. Moreover, the Department further argues that even though it did not assign MOP to work overtime during this Labor Dispute, it

had the managerial right to deploy officers assigned to one of the specialized Units on an overtime basis where there exists a specialized need. The Department points to prior arbitration Awards in which Arbitrators have recognized the Department's authority to deploy MOP officers on an overtime basis to respond to labor disputes throughout the City. The Department concludes that the grievance must be dismissed.

Discussion

The City first maintains that this dispute is not substantively arbitrable, and cites numerous court decisions with respect to the non-delegable right of the Boston Police Commissioner to manage the Department. Indeed, there have been many cases in which the Commissioner's non-delegable rights have been elaborated upon and discussed in these court decisions. The answer as to whether a particular dispute is non-arbitrable depends entirely on the circumstances and the particular contract language presented in the grievance.

It must be stated that the grievance in the present case does not involve the minimum staffing levels, or the number of Superior Officers that have to be assigned to the strike details. Rather, this dispute only deals with the contractual issue of how strike details are to be assigned; that is, whether the contractual guarantee that strike details be distributed in a fair and equitable manner applies to the National Grid labor dispute that occurred in 2018. A number of cases have been introduced in which arbitrators have reviewed the application of the contractual standard of fair and equitable assignment of overtime for strike details. Thus, this is clearly a

contractual dispute that can be pursued through the grievance arbitration process.

In fact, this is not the first dispute over the assignment of strike details to be submitted to arbitration. Nor is it the first dispute that involved using officers working in the City-Wide MOP unit instead of officers working in one of the geographical Areas in which the work originated, to perform the work in question. Arbitrator Larry Katz, in a 1994 Decision, also considered the assignment of MOP officers to perform strike details instead of officers working in the Area in which the work originated. That case also involved the assignment of overtime for a strike involving Boston Gas, a predecessor of National Grid. In his Decision, Arbitrator Katz reviewed a number of prior arbitration decisions in which "the applicable contractual standards" had been established and wrote that his decision required the application of those prior cases to the facts before him.

The present case also calls for application of the applicable standards that have been addressed in past decisions. It is helpful to consider Arbitrator Katz's review of the past strike details and the applicable standards. In his Decision he stated:

In the first instance, strike details, just as overtime assignments, are to be made within the appropriate geographical area, using the "low-man first" principle. In the present case, this principle was followed for the so-called "regular" strike details (which constituted a significant portion of the work).

In the second instance, there may be some "special circumstances" in which the City may deviate from these geographical assignments. When there is a

reasonably demonstrated operational need for officers from a specialized unit, who have necessary skills and/or equipment beyond those available to regular police officers within an area, the City may assign the details (or overtime) to the specialized officers.

The City's mere assertion that such special needs exist will not be sufficient to meet its burden of proof. Where the evidence demonstrates that, in fact, no special skills or equipment was required and that the work could have been performed just as well by regular police officers, the failure to make in-area assignments will likely be found to violate the contract.

The question to be addressed is whether there exist special needs, as discussed by Arbitrator Katz, that warranted the use of the city-wide MOP unit instead of assigning the work to Superior Officers from the local Area. In the present case, it cannot be concluded that the work at issue required the expertise and equipment of the MOP to perform the work in question. First, for the first month under the Department's developed Operational Plan the Strike Details were assigned first within the Area in which the work originated, under the so called "low-man first" principle. There was no evidence nor any suggestion that there were any problems or concerns in assigning the work in this manner.

Moreover, the Department continued to follow the original Operational Plan for strike details during the day shift. In other words, the police work during the day was the same as in the evening. Thus, it cannot be said that the work at question required any "operational needs for officers from a specialized unit, who have necessary skills and/or equipment beyond those available to regular police officers within an area. ..." Katz Award p. 8

Deputy [REDACTED] was not involved in the Department's decision-making process to change the Operational Plan from having strike details for the first and last half shifts assigned from the geographical Areas to the City wide MOP. The Operational Plan was overseen by the Department's Special Events Unit, no-one from the Special Events Unit testified about the need for the change in the Operational Plan. The Department is certainly given wide latitude in changing the Operational Plan for the ongoing Labor Dispute, and the Arbitrator should not second guess the staffing levels determined in the Department's Operational Plan. Nonetheless, there must be some rational explanation by a person or the persons making the decision as to why there was a change in the Operational Plan to use the MOP for the first and second half shifts, and bypass the fair and equitable assignment process for Strike Details on these shifts.

In the present case, there is no evidence as to why there was such a need to have the MOP unit during the first and last half, but not during the day shift. The fact that the details would have cost National Grid less money than assigning Superior Officers from the Area, is not a special circumstance that warrants ignoring the long standing practice of assigning such work on a fair and equitable basis. There is no evidence that either special skills or equipment that was required during the first and last half shifts was in any way unique and that the work could not "have been performed just as well by regular police officers." Arbitrator Katz p. 9. As Arbitrator Katz stated:

The City's mere assertion that such special needs exist will not be sufficient to meet its burden of

proof. Where the evidence demonstrates that, in fact, no special skills or equipment was required and that the work could have been performed just as well by regular police officers, the failure to make in-area assignments will likely be found to violate the contract.

It must be concluded that in the present case the City has not demonstrated that there were any special needs that warranted bypassing the traditional fair and equitable distribution of strike details by geographical Areas, and instead use the Citywide MOP for the first and last half shifts. Accordingly, the grievance is sustained. Those Superior Officers that the Union can show have been adversely affected by the City's action should be made whole. The Arbitrator will retain jurisdiction for sixty days should there be any dispute over the application of this remedy.

Conclusion

For the reasons set forth more fully above, the grievance is sustained, and those Superior Officers who the Union can show have been adversely affected by the City's action should be made whole, and the Arbitrator will retain jurisdiction for sixty days should there be any dispute over the application of the remedy.

May 17, 2021
Boston, Massachusetts


Gary D. Altman