

**Town of Andover
Board of Selectmen
Special Meeting**
Friday February 17th at 7:00 P.M.
Location: virtual Zoom meeting

Regular Meeting Agenda

Zoom Directions:

Click here to join by computer for video/audio: <https://us02web.zoom.us/j/86535769336>

Call-in from your phone for audio: +1 646 558 8656.

Meeting ID: 865 3576 9336
Passcode: 207862

1. Call to Order/Pledge of Allegiance
2. Public Speak
3. Executive session to discuss Union Grievance
4. Discuss and act upon Union Grievance Step 2
5. Adjournment

AFSCME/COUNCIL 4

American Federation of State, County and Municipal Employees OFFICIAL GRIEVANCE FORM

Local: 1303-368 of AFSCME Council 4

DATE SUBMITTED: November 16, 2023

Municipality: Town of Andover

Step 1.

Local Grievance No.:

Step 2.

Grievant: Class

Step 3.

Title:

Class Action: Yes

Immediate Supervisor:

I authorize AFSCME Local _____ as my representative to act for me in this grievance.

DATE: _____ Signature of Employee _____

Signature of Union Representative: *Lorin Dafoe, Esq.* _____

Title: Staff Attorney Representative, Council 4

AT EACH STEP MAKE THREE (3) COPIES OF GRIEVANCE: ONE (1) TO UNION FILE, ONE (1) TO MANAGEMENT, ONE (1) WORKING COPY

STATEMENT OF GRIEVANCE:

ARTICLES AND SECTIONS of the contract which have been violated;

Article 3, Section 3.4

but not limited thereto.

GRIEVANCE: On November 12, 2022 the Town used non-bargaining unit employee to perform bargaining unit overtime work in violation of the Collective Bargaining Agreement.

REMEDY:

Make all members affected by this violation whole.

FIRST STEP RESPONSE: The grievance was submitted to the Town of Andover via email on 11/22/2022

My response is as follows:

First this is not a legal Grievance. The Town of Administrator was first notified of this grievance by email on 11/22 2022, for an incident that was alleged to occur on 11/12/2022 Therefore this grievance violates section 17.2 step 1 because it is outside the legal requirement for notification within 5 working days. Second it is not signed by the employee.

However, since the Union attorney admits that she was notified by the employees on a timely basis and it was the Union Attorney's error in not notifying me, I accepted the grievance process but requested a mou signed by both parties allowing the extension of the timeline. The MOU was submitted and signed by both parties.

I scheduled a meeting with the Public works Union employees for 11/23/2022 at 12 noon in the Andover Town Hall to discuss the grievance.

The employees allege the following: that on the date in question I used public work equipment, including orange cones and caution tape and that by using public works equipment. I violated the union agreement section 3.4 which states the following: "Non-bargaining unit employees shall not be called to work overtime unless there are no full-time employees available."

On the date in question, I received notification at approx. 8 am from a resident stating there was a tree down on Townsend rd. I determined after visiting the site that part of one lane was blocked but the road was passable in both directions. I placed 2 cones in the road to warn motorists. I then drove around other town roads and found no issues. On my way home, I noticed a cable wire that was hanging low on long hill rd I placed 2-3 strips of tape on the wire along with 2 more cones.

I determined at the time that it was not necessary to call in any employees and that he did not need to respond.

It is my finding that inspecting roads after a minor wind event, placing cones and caution tape is a de minimis act that does not require the assistance of public works employees. Section 3.3 C of the ASFCME contract makes the determination of calling in employees an act of management " if the employer deems it necessary" Nothing occurred that required calling public works. No outside individual was hired or called to work so I

find that the illegal subcontracting claim is invalid and denied.
The town does not intend to set the precedent that this is required of the town.

Signed: *Eric Anderson* Title : Town Administrator _____ Date: 11/28/2022

SECOND STEP RESPONSE: The grievance was submitted to me on.
My response is as follows:

Signed: _____ Title: _____ Date:

THIRD STEP RESPONSE: The grievance was submitted to me on. My response is as follows:

Signed: _____ Title: _____ Date:.

Waiver Form: The time limits for submission of Step#1, Step#2, Step#3 (circle one) has been extended for a period of _____ Signed: _____ Date: _____

Attention Employer

THE UNION REQUESTS THE FOLLOWING INFORMATION:

- 1) Any and all records, documents, and/or statements in the municipality's possession pertaining to this matter which is the subject of this grievance.
- 2) A written detailed explanation of the basis for each step response.

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Second it is not signed by the employee.

However, since the Union attorney admits that she was notified by the employees on a timely basis and it was the Union Attorney's error in not notifying me, I accepted the grievance process but requested a mou signed by both parties allowing the extension of the timeline. The MOU was submitted and signed by both parties.

I scheduled a meeting with the Public Works Union employees for 11/23/2022 at 12 noon in the Andover Town Hall to discuss the grievance.

The employees allege the following: that on the date in question I used public work equipment, specifically 4 orange cones and caution tape and that by using public works equipment, the town violated the union agreement section 3.4 which states the following: "Non-bargaining unit employees shall not be called to work overtime unless there are no full-time employees available."

On the date in question, I received notification at approx. 8 am from a resident stating there was a tree down on Townsend rd. I determined after visiting the site that part of one lane was blocked but the road was passable in both directions. I placed 2 cones in the road to warn motorists. I then drove around other town roads and found no issues. On my way home, I noticed a cable wire that was hanging low on Long Hill rd I placed 2-3 strips of tape on the wire along with 2 more cones.

It is my finding that anything that occurred is a de minimis act that does not require the overtime callout of public works employees. No non-bargaining unit employee was "called to work overtime" on November 12, 2022 and so Section 3.4 of the CBA was not violated. Section 3.3 C of the ASFCME contract makes the determination of calling in employees an act of management " if the employer deems it necessary" Nothing occurred that required calling public works. No outside individual was hired or called to work so I find that the illegal subcontracting claim is invalid and denied.

Signed: *Eric Anderson* Title : Town Administrator _____ Date: 11/28/2022

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My response is as follows:

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I scheduled a meeting with the Public Works Union employees for 11/23/2022 at 12 noon in the Andover Town Hall to discuss the grievance.

The employees allege the following: that on the date in question I used public work equipment, including orange cones and caution tape and that by using public works equipment. I violated the union agreement section 3.4 which states the following: "Non-bargaining unit employees shall not be called to work overtime unless there are no full-time employees available."

On the date in question, I received notification at approx. 8 am from a resident stating there was a tree down on Townsend rd. I determined after visiting the site that part of one lane was blocked but the road was passable in both directions. I placed 2 cones in the road to warn motorists. I then drove around other town roads and found no issues. On my way home, I noticed a cable wire that was hanging low on Long Hill rd I placed 2-3 strips of tape on the wire along with 2 more cones.

In reaching my conclusion I considered the following examples to illustrate where I think the town should use the callout procedure.

1. After the normal public workday is over the public works supervisor and I travel around in a town of Andover Truck and examine the road network. In the process one of us identifies an area for a future sharrow installation. One of us marks the location using town owned paint. That is clearly within the supervisory function of the administrator and supervisor and is at best a de minimus use of public works supplies and equipment.
2. On a Saturday the public works supervisor notices that a culvert is backed up because a tree is blocking the outfall. He calls his friends Raul and Vito to help him, jumps in the town backhoe and grabs a town chainsaw, cuts the tree and uses the backhoe to clear the debris. It takes them

½ a day to do it and he pays his friends under the table. That would be a case of illegal subcontracting.

3. At 6 pm the fire department gets a call that there is a tree/ are wires down on a road.
 - a. The Fire Dept goes out to inspect. There is a tree down that snapped the primary and broke the line across a cul de sac. They place cones and caution tape and notify me. Acting as the Emergency Management Director (EMD), I drive out, get the closest pole number and take a picture of the blockage, I then drive to the town hall, call in a level 2 blockage event to Eversource who addresses the problem in a few hours. No public works callout.
 - b. The Fire Dept goes out to inspect. There is a small tree down that snapped only a cable/ phone line broke. They use 3 guys to push it out of the way and then call me to inform me public works will need to do some cleanup the next day. No public works callout.
 - c. The Fire Dept goes out to inspect. There is a tree down that snapped only a cable/ phone line broke. They put out cones to block the road. It is a large tree and the Chief calls the public works supervisor who activates 2 public works employees to address the blockage.
 - d. The Fire Dept goes out to inspect. There is a tree down that snapped only a cable/ phone line broke. At the same time, we receive reports of trees down and outages on numerous other roads. Public works supervisor immediately activates all of the public works employees. I go into the office, and public works is divided into two (2 person crews). The first priority is identify damage to the utility grid as well as a list of roads blocked. Both the fire department and PW calls or texts that information in to me. I log onto the utility company EMD site and input all the Level 1,2,3 blocked roads that need to be addressed. Public works clears what they can safely in the dark, and begins marking detours where possible. The town uses social media and the emergency alert system to inform the public. Public works is dismissed at 1 am and reports back for work at 6 am. That evening one crew is kept on an additional 3 hours clearing roads and working with utility crews.

In A and B, I would consider this de minimus uses of time and town equipment, in C and D some or all of the public works employees would be called in on overtime. After storms usually myself or the public works supervisor look at the roads to see if there is anything that needs to be addressed by public works. My rule of thumb for overtime call outs is if there are roads that are completely blocked that can be opened by public works, if a lot of roads are affected, or there are significant safety concerns public works is called in to work.

If the issues with the roadways can wait to be addressed during the regular next shift, then they do not get called in. That is a judgement call by myself, and or the public works supervisor.

In this case specifically there were no completely blocked roads, there was a low hanging cable or phone wire on long hill road with some smaller debris. In my judgement, this posed a minor safety concern because a taller truck or bus could have hit the wire. Public works would likely not have been able to reattach the wire to the house. In that case, I placed 2 cones and hung several strips of caution tape from the wires. Had I called up public works, it would have cost the town 12 hours of labor (two employees, three hours each minimum, at doubletime rates for at most 5 minutes worth of placing cones/tape. Based on this, I consider this to be a de minimus use of any public works supplies. No one was hired or paid to do anything that could have been performed by public works on overtime.

I also considered if there was anything in the union contract that offered additional guidance. The contract clearly states that it is a management prerogative to call in public works employees. In this case management chose not to.

It is my finding that anything that occurred is a de minimis act that does not require the overtime callout of public works employees. Section 3.3 C of the ASFCME contract makes the determination of calling in employees an act of management “ if the employer deems it necessary” Nothing occurred that required calling public works. No outside individual was hired or called to work so I find that the illegal subcontracting claim is invalid and denied.

Signed: *Eric Anderson* Title : Town Administrator _____ Date: 11/28/2022

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