

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

CITY OF BRIDGEPORT

DECISION NO. 4602

-AND-

May 16, 2012

INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, LOCAL 834

Case No. MPP-29,018

A P P E A R A N C E S:

Attorney John R. Mitola
For the City

Attorney Daniel P. Hunsberger
For the Union

DECISION AND ORDER

On January 20, 2011 the International Association of Fire Fighters, Local 834 (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the City of Bridgeport (the City) had committed practices prohibited by the Municipal Employee Relations Act (MERA or the Act) by failing to comply with an arbitration award.

After the requisite preliminary administrative steps had been taken, the parties entered into a partial stipulation of exhibits and the matter came before the Labor Board for a hearing on May 27, 2011. Both parties were represented by counsel, allowed to present evidence, examine and cross-examine witnesses, and make argument. Both parties submitted post-hearing briefs, the last of which was received on July 15, 2011, and reply briefs, the last of which was received on July 29, 2011.

FINDINGS OF FACT

1. The City is a municipal employer within the meaning of the Act.
2. The Union is an employee organization within the meaning of the Act and at all relevant times has represented a bargaining unit of firefighters employed by the City.
3. The Union and the City were parties to a collective bargaining agreement (Ex. 4) with effective dates of July 1, 2004 through June 30, 2009 that provided, in relevant part:

...

ARTICLE 5 – DISCIPLINARY ACTION

No permanent employee shall be removed, dismissed . . . except for just cause.

...

ARTICLE 6 – ADJUSTMENT OF GRIEVANCE PROCEDURE

Section 1 – Should any employee . . . feel aggrieved concerning the employee’s . . . conditions of employment, which . . . conditions are controlled by this Contract, . . . adjustment shall be sought as follows:

...

d) If such grievance is not resolved to the satisfaction of the Union . . . the Union may . . . submit the dispute to arbitration by the Connecticut State Board of Mediation and Arbitration. Said Board shall hear and act on such dispute in accordance with its rules and render a decision which shall be final and binding on all parties.

4. At all times relevant hereto Section 212 (Ex. 10) of the City Charter has provided

Section 212 Rejection of certain persons; appeal

The personnel director may reject the application of any person for admission to a test or refuse to test any applicant or refuse to certify the name of an eligible for employment who is found to lack any of the established qualification requirements for the position for which he applies or for which he has been tested, or who is physically unfit to effectively perform the duties of the position, or who is addicted to the habitual use of drugs or intoxicating liquors, or who has been guilty of any crime or infamous or notoriously disgraceful conduct, or who has been dismissed from the public service for delinquency, or who has made a false statement of any material fact or practiced or attempted to practice deception or fraud in his application or in his tests, or in securing eligibility or appointment.

Any such person may appeal to the civil service commission from the action of the personnel director in accordance with the rules established hereunder.

5. On March 28, 2007 the City terminated Joseph Cennamo (Cennamo) from his position as a City firefighter. The Union filed a grievance contesting the termination which was ultimately submitted to arbitration. (Ex. 5)
6. On March 22, 2010 a tripartite panel of the Connecticut State Board of Mediation and Arbitration (the arbitrators) issued a written arbitration award (the award) which stated, in relevant part:

ISSUE

Did the City have just cause to terminate Firefighter Joseph Cennamo?
If not, what shall the remedy be?

. . .

AWARD

The grievance is **sustained in part and denied in part.**

The City of Bridgeport did not have just cause to terminate the employment of the Grievant, Joseph Cennamo.

The City shall reinstate him to his employment forthwith on receipt of this Award subject to a fitness for duty examination performed by the City's third party provider within a reasonable time frame. If reinstated because he is found fit for duty, he shall retain his seniority and his separation shall be considered a suspension.

If reinstated, he shall not receive any back pay for the period of his termination until his reinstatement.

(Ex. 5)(emphasis in original).

7. At some point after the award issued and prior to April 1, 2010, Deputy Fire Chief Petrucelli (Petrucelli) wrote Union president Robert Whitbread (Whitbread) seeking contact information for Cennamo. Whitbread provided the information and Deputy Fire Chief James Grace (Grace) contacted Cennamo. Cennamo submitted to a drug test at Grace's request and the results were negative.
8. On April 1, 2010 Grace went to the Office of the City's Civil Service Commission and told Personnel Assistant Lisa Kollman (Kollman) that Cennamo would be coming to the office to be processed in order to return to active status. Grace also told Kollman that Cennamo had already submitted to a drug test.
9. On April 1, 2010 sometime after Grace met with Kollman, Cennamo went to the Civil Service office to be processed for reinstatement. Cennamo met with Zada Perez

(Perez), an office clerk and, following the process the City uses for new hires,¹ Perez gave Cennamo several forms to fill out and requested Cennamo's driver's license and social security card. After examining Cennamo's driver's license, Perez told Kollman that Cennamo did not resemble the license photograph. Kollman declined to identify Cennamo herself² and interrupted a meeting to consult with her supervisor, Personnel Director David Dunn (Dunn). After discussing the identification issue and Grace's earlier visit that day, Dunn identified Cennamo and instructed Kollman to follow the "normal process"³ which included a drug test at St Vincent's Hospital. Kollman informed Perez and Cennamo that another drug test would be necessary. Cennamo contacted Whitbread by telephone and stated that the Civil Service office should already have his file and that its requests for his license and social security card were "fishy." Cennamo then told Perez that he did not have his social security card with him, that his ride was waiting, and that he would return.

10. On April 1, 2020 sometime after Whitbread's telephone conversation with Cennamo, Whitbread sent Fire Chief Brian Rooney (Rooney) a letter (Ex. 6) stating, in relevant part:

There seems to be some confusion regarding Joe Cennamo's return and what is required and the procedures that need to be followed. I am requesting that whatever is required of Joe be put in writing or e-mail it to me so that we can facilitate his return as soon and as smoothly as possible. . . . Joe is eager to cooperate and return to work.

11. On April 3, 2010 Cennamo was arrested in Fairfield for alleged shoplifting of women's shoes. (Ex. 14a).

12. On April 9, 2010 Dunn sent Cennamo a letter (Ex. 7) stating, in relevant part:

In light of your recent larceny arrest by the Fairfield Police Department, the administrative process for your reinstatement has been placed in suspension.

The Civil Service Office shall review the arrest and incident reports and shall be in touch with you.

¹ The City ordinarily mails new employees a packet with forms to complete and instructions listing documents that must be presented to the Civil Service office with the completed forms. The City did not mail the packet or instructions to Cennamo.

² Kollman attended high school with Cennamo.

³ If an employee has been off the City payroll for more than three months, the Civil Service office will require a criminal background check, a drug test, and a physical exam prior to reinstatement. Civil Service contracts with St. Vincent's Hospital to perform the drug test and physical exam as needed and without scheduled appointments.

13. On April 20, 2010 the City filed an application to vacate the award in Superior Court for the judicial district of Fairfield at Bridgeport pursuant to General Statutes § 52-418. (Ex. 8).
14. As a general rule, Dunn will not process reinstatement of an employee pursuant to an arbitration award pending an application by the City to vacate such award.
15. On May 14, 2010 Cennamo pled guilty to larceny in the sixth degree in connection with his arrest on April 3, 2010. (Ex. 14B).
16. On July 2, 2010 Cennamo was arrested in Bethel for allegedly shoplifting a sandwich. (Ex. 15A).
17. On July 20, 2010 Cennamo was arrested again in Bethel for allegedly shoplifting a bag of potato chips, a house plant, and two planters. (Ex. 16A).
18. On July 26, 2010 Cennamo pled guilty to larceny in the sixth degree in connection with the events of July 2, 2010. (Ex. 15B).
19. On September 10, 2010 Cennamo pled guilty to sixth degree larceny in connection with the events of July 20, 2010. (Ex. 16B).
20. On October 13, 2010 Cennamo was arrested in Newtown for alleged assault-related crimes. (Ex. 17).
21. At some point after October 31, 2010 Rooney notified Dunn of a newspaper article reporting Cennamo's recent arrest for assault and Rooney initiated an investigation of Cennamo's criminal history.
22. Upon completion of the investigation, Dunn learned of Cennamo's convictions and other arrests subsequent to April 3, 2010 and he met with Rooney and City attorneys to discuss how to handle the situation. The City attorneys expressed a concern that if the Superior Court denied the City's application to vacate the award, the City would not be able to use the recent arrests against Cennamo. At the conclusion of the meeting it was agreed that the City would withdraw its application to vacate the award and Dunn would exercise his authority under Charter §212.
23. On November 30, 2010 the City withdrew its application to vacate the award. (Ex. 8).
24. On December 2, 2010 Dunn sent Cennamo a letter (Ex. 9) which stated, in relevant part:

As a follow up to my April 9, 2010 letter and arbitration award 2007-A-0706 (attached) please be advised that as the Personnel Director for the City of Bridgeport, your employment will not be reinstated due to the reasons below.

Specifically you have failed to comply with a fitness for duty medical examination that was being scheduled for you on April 1, 2010 by the staff of the Civil Service Commission. In addition, per the terms of your arbitration award and in compliance with Section 212 of the City of Bridgeport Charter (attached), I am rejecting your reemployment because:

- You are “not fit for duty” due to your incarceration
- You are physically unfit to perform the duties of a Firefighter due to your failing to cooperate with a medical fitness for duty examination and drug screening
- Your criminal activity which has occurred subsequent to the date of your arbitration award further disqualifies you from reinstatement: . . .
- Lastly, you have exhibited unsatisfactory habits and conduct due to your arrests and incarceration.

Further, pursuant to the Charter of the City of Bridgeport, you may appeal my decision . . .

25. By letter dated December 9, 2010 Whitbread appealed Dunn’s December 2, 2010 action to the City’s Civil Service Commission. (Ex.11).

26. On January 11, 2011 the Civil Service Commission denied Cennamo’s appeal.

27. The Union filed a grievance under the collective bargaining agreement contesting Dunn’s actions of December 2, 2010, which grievance is pending.

CONCLUSION OF LAW

1. The City violated Section 7-470(a)(6) of the Act when it failed to comply with an arbitration award.

DISCUSSION

The Union contends the City violated Section 7-470(a)(6)⁴ of the Act by failing to comply with an arbitration award requiring Cennamo to be reinstated to his former firefighter position subject to a fitness for duty examination. The Union argues that the City knowingly declined to schedule the required examination and wrongly shifted the blame in this regard to Cennamo. The Union also claims that Cennamo’s criminal violations after the issuance of the award do not excuse the City’s noncompliance given

⁴ General Statutes § 7-470(a)(6) provides, in relevant part:

Sec. 7-470. Prohibited acts of employers and employee organizations. (a) Municipal employers or their representatives or agents are prohibited from: . . .

(6) refusing to comply with . . . a valid award or decision of an arbitration panel . . .

the continued employment of other bargaining unit members with comparable conviction histories.

The City responds that absent Cennamo's cooperation and submission to a fitness for duty exam, the City could not implement the award. The City also argues that Cennamo's criminal activity after issuance of the award justified an exercise of the Personnel Director's authority under the City Charter to refuse reinstatement.

When a party claims that there has been a refusal to comply with an arbitration award we will interpret the award to ascertain what it requires and then determine whether the respondent has complied with those requirements. *Town of Enfield*, Decision No. 4461 (2010); *City of Willimantic*, Decision No. 1795 (1979). We use an objective standard and we do not consider whether the respondent acted in good faith or whether its interpretation of the award is a plausible one. *Town of Wallingford*, Decision No. 3807 (2001); *Town of Stratford*, Decision No. 3277 (1995); *City of New Haven*, Decision No. 3060 (1992); *Town of Newington*, Decision No. 2957 (1991); *Weston Board of Education*, Decision No. 2678 (1988); *Hartford Board of Education*, Decision No. 2683 (1988). Nor is it our function to relitigate or second guess the merits of grievance decisions. Our role is limited to meeting our statutory responsibility to insure that the outcome of the grievance procedure is respected. *Connecticut Employees Union Independent (NP-2 Unit)*, Decision No. 3446 (1996); *City of Waterbury*, Decision No. 2195 (1983). As such, our analysis "only looks to the language of the settlement" or in this case, the arbitration award. *Town of Enfield*, *supra* at p. 11 (*quoting City of Waterbury*, Decision No. 3593 (1998)). If we find there has not been compliance, we will find a violation of the Act. *State of Connecticut, Department of Correction*, Decision No. 4475 (2010).

We find on the basis of the record before us that the City did not comply with the award. The prerequisite to Cennamo's reinstatement, "a fitness for duty examination performed by the City's third party provider within a reasonable time frame," required affirmative cooperation between the City and Cennamo. Cennamo's initial cooperation is established by his compliance with Grace's request that he submit to a drug test and present himself at the Civil Service office for processing. While Cennamo's departure from Civil Service was premature on April 1, 2010, it was understandable given the circumstances.⁵

The record does not, however, reflect City cooperation in obtaining the required fitness exam. The City did not afford Cennamo reasonable notice of its processing procedures including required documentation, forms to be completed, and tests to be administered. Neither Cennamo nor Whitbread were aware of the relationship between the Civil Service office and St. Vincent's Hospital in this regard and both men reasonably

⁵ At the time Cennamo left the Civil Service office, his identity had been questioned, his earlier drug test had been deemed insufficient, and he had been asked to complete multiple forms he believed the City already had. Since Cennamo required Union assistance to convince the arbitrators that his termination was without just cause, he may have reasonably concluded that Union intervention was necessary if he was to obtain reinstatement pursuant to the award.

expected that the fitness for duty examination at issue would be scheduled in advance. More important, Dunn's suspension of the "administrative process" for Cennamo's reinstatement within two weeks of Whitbread's written request for the City's reinstatement requirements indefinitely postponed the required fitness for duty exam.⁶ In short, we find the City's claim that lack of award compliance is attributable to Cennamo to be without merit. The necessary fitness examination required City cooperation which we find, on the basis of the record before us, was not forthcoming.

Nor does the Personnel Director's authority under Section 212 of the City Charter excuse noncompliance with the award. The award expressly found that Cennamo was terminated in violation of the parties' collective bargaining agreement and clearly stated the remedy required in light of such violation. General Statutes Section 7-474(f) addresses conflicts between municipal charters and collective bargaining agreements:

In any event, any conflict or inconsistency which may exist between the charter provisions and the collective bargaining agreement is clearly resolved by that portion of § 7-474(f) of the General Statutes which provides that "[w]here there is a conflict between any agreement reached by a municipal employer and an employee organization and approved in accordance with the provisions of sections 7-467 to 7-477, inclusive, on matters appropriate to collective bargaining, as defined in said sections, and any charter, special act, ordinance, rules or regulations adopted by the municipal employer . . . the terms of such agreement shall prevail."

Board of Police Commissioners v. White, 171 Conn. 553, 564 (1976). It is well established that an exercise of authority derived from a collectively bargained grievance procedure trumps a conflicting exercise of authority under local law pursuant to § 7-474(f). *Board of Police Commissioners v. White*, *supra*; *City of Bridgeport*, Decision No. 3996 (2004); *City of Bridgeport*, Decision No. 2343 (1985); *Town of East Hartford*, Decision No. 1439 (1976). Moreover, in *City of Bridgeport*, Decision No. 3996 (2004) we found the removal of an employee's name from a promotional list by the personnel director under Section 212 to be in violation of a valid settlement agreement and consequently, the Act.

The City does not dispute that the award was the end result of a grievance procedure established by a valid collective bargaining agreement or that it concerned a matter appropriate to collective bargaining. As such, the City may not, through its

⁶ A review of the circumstances of Cennamo's April 3rd arrest was the purported basis for Dunn's April 9th suspension of the reinstatement process, yet Dunn testified that he was not aware of Cennamo's May 14th guilty plea to those charges until October when he learned of Cennamo's arrest in Newtown. Since the award required City action "forthwith" and Cennamo's plea was readily obtainable public information, we find that the stated basis for Dunn's suspension of the reinstatement process was mere pretext.

personnel director or otherwise, unilaterally refuse⁷ to refer Cennamo to its third party vendor for a fitness for duty exam or refuse reinstatement pursuant to the award if Cennamo is determined to be fit.⁸ Only upon satisfaction of these obligations may the City exercise whatever rights it has under local law.

As to the issue of remedy we find that an order of immediate compliance with the award will effectuate the policies of the Act. Based on the record before us, however, we find that traditional make-whole relief would be inappropriate. Neither the Union nor Cennamo took any action⁹ to enforce the award between April 9, 2010 and December 9, 2010, an unreasonably long period of time in our view. We also note that the arbitrators expressly declined to award Cennamo back pay and while we do not seek to reward the City's illegal conduct, nor will we encourage unnecessary or unexplained delays in assertion of rights under the Act.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Municipal Employee Relations Act, it is hereby

ORDERED that the City of Bridgeport

I. Cease and desist from failing to comply with the March 22, 2010 arbitration award of the State Board of Mediation and Arbitration in Case #2007-A-0706 (Cennamo, Joe).

II. Take the following affirmative actions which we find will effectuate the purposes of the Act.

A.

i.) refer Cennamo to the regular provider used by the City's Civil Service office for fitness-for-duty examinations for new employees within fourteen (14) days of the issuance of this Decision, and

ii) require the examination to be conducted on a date certain within one (1) week of said referral, and

⁷ The City did not exercise its right under General Statutes § 52-420(c) to seek "an order staying any proceedings . . . to enforce the award" while its application to vacate was pending in Superior Court nor did it prosecute said application to conclusion.

⁸ There appears to be no dispute that "fitness for duty," as used in the award, involves a medical determination given the City's stated plan to have Cennamo examined at St. Vincent's Hospital.

⁹ Available options included a prohibited practice complaint to the Labor Board and/or an application to confirm the award pursuant to General Statutes § 52-417. The instant complaint was not filed until January 20, 2011 and the record does not reflect the timely filing of an application to confirm the award.

iii) afford the Union and Cennamo written notice of the referral and scheduled examination date at least twenty-four hours in advance of the scheduled examination date, and

iv) afford the Union and Cennamo written notice at least twenty-four hours in advance of the scheduled examination date that the City shall be relieved of any obligation under this Decision and Order to reinstate Cennamo if Cennamo does not submit to examination after notice as provided herein.

B. Reinstatement Cennamo to his former position in accordance with the March 22, 2010 award provided Cennamo submits to an examination in accordance with paragraph IIA and is found fit for duty.

C. Post immediately and leave posted for a period of sixty (60) consecutive days from the date of posting, in a conspicuous place where the employees of the bargaining unit customarily assemble, a copy of the Decision and Order in its entirety.

D. Notify the Connecticut State Board of Labor Relations at its office in the Labor Department, 38 Wolcott Hill Road, Wethersfield, Connecticut within thirty (30) days of receipt of the Decision and Order of the steps taken by the City of Bridgeport to comply herewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Wendella Ault Battey
Wendella Ault Battey
Acting Chairman

Patricia V. Low
Patricia V. Low
Board Member

Robert A. Dellapina
Robert A. Dellapina
Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 16th day of May, 2012 to the following:

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