

**STATE OF CONNECTICUT
STATE BOARD OF MEDIATION AND ARBITRATION**

*****	Case No:	2024-A-0025
In the matter of	*	
	*	Hearing Dates: October 6, 2023
CITY OF NEW HAVEN	*	
	*	Date of Award: November 29 , 2023
	*	
-and-	*	
	*	Place of Hearing: 38 Wolcott Hill Road
LOCAL 844, AFSCME COUNCIL 4,	*	Wethersfield, CT
	*	

Appearances:

For the City: Lisa S. Lazarek, Esq.
For the Union: James Ferraro, Staff Representative

ISSUE

Did the City of New Haven have just cause to terminate the grievant, Tyjuan Staton, pursuant to Article 26 of the Collective Bargaining Agreement?

If not, what shall be the remedy?

PERTINENT CONTRACT CLAUSES AND WEAPONS POLICY

ARTICLE 26 – Disciplinary Procedures

Section 1

Department Heads of the various City Departments, or their designee, shall exercise full disciplinary authority consistent with their oath of office and their responsibility to direct employees to perform the required work duties to achieve Department program goals and provide satisfactory municipal services to the public.

If a supervisor or a manager has reason to reprimand or counsel an employee, it shall be done in a manner that will not embarrass the employee before other employees or the public.

Section 2

Normally, discipline shall include either:

- (A) A verbal warning, (B) a written warning; (C) a suspension without pay; or (D) Discharge and shall be progressive in nature.

Whatever disciplinary action is taken, the parties recognize that the merits of a given situation play an important role in determining what action is appropriate, and as such, it is not the intent of the parties that all discipline will necessarily follow the order or steps cited above.

It is the intent of the parties that whatever the action, such action shall be consistent with Section 4 of this Article.

Section 3

All disciplinary actions may be appealed through the established grievance procedure.

Section 4

(A) Employees shall only be disciplined for just cause.

(B) All suspensions, discharges and warnings must be stated in writing and a copy given to the employee and the Union President.

Section 5

(A) All verbal warnings and written warnings shall be removed from the employee's record after a period of two (2) years if there has been no reoccurrence of the infraction and the employee has a good work record. All other disciplinary records, i.e., suspensions, loss of bidding rights, reduction in grade, shall be removed from an employee's work record after five (5) years if there has been no reoccurrence of the infraction and the employee has a good work record.

(B) Once an employee has satisfied the prerequisites of (A) above, the Employer agrees that it will never bring the warnings or suspensions up again.

Section 6

Employees who are discharged during their probationary period shall not have recourse to appeal said discharge to Arbitration pursuant to Article 14 of this Agreement.

Section 7

Union Representation: An employee shall have the right to Union representation at investigatory interviews that the employee reasonably believes could lead to discipline. An Employee shall not have the right to a representative of their choosing if it shall unreasonably delay (more than 24 hours) the investigation but shall have access to any available union representation.

City of New Haven Weapons Policy

Purpose: The purpose of this policy is to ensure the safety of all municipal employees and the general public; to regulate the possession of weapons and/or explosive devices during the course of the work day; to set acceptable standards of conduct concerning the displaying, brandishing, possessing or transporting of any weapon within the confines of any city owned, leased or rented offices, buildings, vehicles or property. This policy does not apply to employees of the Police Department who lawfully possess and are required by the Department to carry weapons

Issuing Authority: The Chief Administrative Officer is the issuing authority for this policy.

Enforcement Authority: Daily administration and enforcement is the responsibility of all Coordinators and Department Heads.

Policy

1. **In order to avoid a potentially dangerous situation to bodily life and limb, any employee found to be in violation of this policy shall be subject to immediate termination.**

- a) No employee shall bring any weapon or dangerous instrument into any City worksite.
- b) No employee shall use or attempt to use, or even threaten to use a weapon or dangerous instrument in a City worksite.
- c) No employee shall cause or threaten to cause death or physical injury to any individual in a City worksite.

2. Many employees of the City of New Haven have legally valid municipal and State permits for the possession and transportation of firearms. Notwithstanding these permits, employees are STRICTLY PROHIBITED from possessing any weapons and/or explosive devices during the course of their work day or in performance of their City duties. Further, no weapons or explosive devices of any sort, either open or concealed, shall be allowed on work premises including:

- a) lockers
- b) private vehicles parked on City of New Haven property
- c) any City owned, leased or rented property including vehicles

The City views this prohibition as essential to ensure that a safe and efficient work place is provided for City employees and for the general public.

Definitions

Weapon: Any firearm or air gun (loaded or unloaded), knives (with a blade longer than 1.5"), clubs, metal or brass knuckles, sling shots, stilettos, cross bows martial arts instruments, or any electronic defense device with which an electronic impulse or current may immobilize or kill an animal or person.

Dangerous Instrument: Any instrument, article, or substance that under the circumstances is capable of causing death or serious physical injury.

Work Day: Any time an employee is engaged in the performance of duties on behalf of the City of New Haven including travelling to and from his/her workplace.

Issuing Authority: _____

Effective Date: 12/11/09

Previously Revised: Date 12/09 _____

A copy of this policy is available for review at the Department of Human Resources. It is also available on the City's computer network at N:\POLICIES.

FACTS

The grievant, Tyjuan Staton, was employed by the City of New Haven for about two years as a Parking Enforcement Officer (PEO) when he was terminated for a violation of the City's Weapons Policy.

On June 7, 2023, the grievant got involved in a dispute with a person whose car was parked in a Loading Zone in the City's downtown area. The same person had parked his car in the same location the day before.

Just prior to the incident, the grievant was ready to go on his break and had planned on going to the gun range. He had taken his pistol from a locked box in his car and placed a holster containing the pistol on his waist.

Just as he was ready to leave for the gun range, he got a call from his supervisor to cancel his break and go to the area in question, where he encountered the person whose car was parked in the Loading Zone. When he approached the parked car, he noticed a woman sitting in the car and informed her that the car was parked in a Loading Zone and would have to be moved. She responded that the driver of the car was walking back to the car to speak with him. When the gentleman approached, the grievant informed him that the car was parked in a Loading Zone and would have to be moved. A "dispute" began and the gentlemen punched the PEO in the face. The PEO began defending himself and was getting ready to place a ticket on the windshield of the car when the gentleman went to the trunk of his car and pulled out a bat or axe handle and approached the PEO in a threatening manner. The grievant, remembering that he had his pistol at his waist, unholstered it and pulled it to the side of his leg in view of the gentlemen.

While all of this was transpiring, a bystander called the police and an officer appeared on the scene. After questioning, the gentleman was placed under arrest. The PEO satisfied the police officer that he had a license to carry the gun, so he was released and allowed to leave work for the rest of the day.

Parking Enforcement officers are not allowed and are not trained to carry a weapon of any kind while on duty. They are, however, provided with de-escalation training through the New Haven Police Department. The grievant had received such training.

After the incident, the grievant returned to work on his next scheduled day to work and approximately five (5) weeks later he was notified that he was being terminated for violating the City Policy of not being allowed to have possession of a weapon while on duty.

POSITIONS OF THE PARTIES

The City's position is that it has established by more than a preponderance of the evidence that the grievant pulling out a gun during an altercation with a driver of an automobile on a public street while performing his work duties is conduct that clearly violated the City's Weapons Policy and its prohibition against carrying a weapon while at work and/or at a City worksite.

And, certainly the grievant's actions that day met the "so called" seven (7) tests of just cause enabling the City to discharge the grievant.

Also, no matter what explanation the grievant gave for having the handgun on his person that day, there is nothing to justify the fact that he had a loaded handgun on him on a busy public street while performing his work duties.

The Union challenges the just cause doctrine in several ways. Firstly, at the time of his hire when the grievant signed that he received some 22 policies of the City, was he aware and did he understand the City's Weapons Policy. The Union is questioning whether or not the grievant had any subsequent training about these policies.

Further, the City in terminating the grievant abused its discretion since it went far beyond what was necessary given the circumstances of the case.

OPINION

The Panel of Arbitrators does not agree the City had just cause to terminate the grievant. However, the Panel finds there was just cause to issue lesser discipline, which the panel determines to be a suspension without pay or benefits until reinstatement effective December 1, 2023

The Weapons Policy is not only for the benefit of the general public, but also for the safety of the employees. It is clear that the grievant received the Policy when he was hired; and, if he did not understand it, then he should have questioned it. Perhaps the City was remiss in not emphasizing it at a later time, but the fact is that the Policy existed and it applied to anyone except those employees specifically authorized to carry a weapon.

The Panel of Arbitrators then had to decide whether or not the discipline of termination was proper under the circumstances. It is certainly not an everyday occurrence when a PEO encounters a person who yells at an employee of the City and attacks the City employee causing physical harm to him.

In addition to hitting the employee in the face, the person then takes what can be considered a weapon from the trunk of his car and then after hitting the bat or axe handle on the ground in a menacing manner threatens more physical harm to the employee.

A normal person would certainly try to avoid being harmed and would likely call for help or defend himself or both.

Article 26 of the Collective Bargaining Agreement sets forth the Disciplinary Procedures and the varying degrees of discipline from verbal warnings to termination depending upon any prior discipline given to an employee and severity of the act involved.

There should be just cause for any discipline as stated in Section 4(A). Section 2 of Article 26 discusses the various forms of discipline and it states the following, "Whatever disciplinary action is taken, the parties recognize that the merits of a given situation play an important role in

determining what action is appropriate, and as such, it is not the intent of the parties that all discipline will necessarily follow the order or steps cited above.”

In the present case, because of extenuating circumstances and in light of the fact that the grievant had never been disciplined before, the majority of the Panel believes that the discipline of termination was excessive.

AWARD

The grievance is sustained. The termination issued to Tyjuan Staton was without just cause. However, the majority of the panel finds that there was just cause to suspend the grievant.

The grievant shall be reinstated on December 1, 2023; however, there shall be no benefits paid to him or accrued by him for the duration of the suspension.

CONNECTICUT STATE BOARD OF
MEDIATION AND ARBITRATION

By /S/ Louis P. Pittocco
Louis P. Pittocco, Esq., Public Member

/S/ Michael C. Culhane Sr.
Dissenting
Michael C. Culhane Sr., Management Member

/S/ Charles Fabian
Charles Fabian, Labor Member