

STATE OF CONNECTICUT
DEPARTMENT OF LABOR
STATE BOARD OF MEDIATION AND ARBITRATION

ARBITRATION AWARD

In the Matter Of: Case No. 2023-A-0116
HOUSING AUTHORITY OF BRIDGEPORT DATE OF AWARD: January 17, 2024
And HEARING DATES: July 21, 2023
AMERICAN FEDERATION OF STATE, COUNTY and MUNICIPAL EMPLOYEES COUNCIL 4, AFL-CIO, LOCAL 2311 Hearing: 38 Wolcott Hill Road Wethersfield, CT

APPEARANCES: William A. Ryan, Attorney at Law (For the Authority)
Cherlyn Poindexter, Staff Representative (For the Union)

I. ISSUE:

1. Did Bridgeport Housing Authority/Park City Communities violate Articles 1, 16 and 25 of the parties' collective bargaining agreement when it terminated the Grievant's (Rondell Miley) employment on June 8, 2022?
2. If so, what shall the remedy be in accordance with the terms of the collective bargaining agreement?

II. BACKGROUND:

The American Federation of State, County and Municipal Employees Council 4, AFL-CIO, Local 2311, (hereinafter referred to as the "Union") filed a grievance asserting that the Housing Authority of Bridgeport (hereinafter referred to as the "Authority" or the "Employer") violated Articles 1, 8 and 25, MOU and any other article, policy or procedure that may apply of the Collective Bargaining Agreement (hereinafter referred to as the "CBA"). The Union did not pursue its claims under

Article 8 at the hearing. The grievance concerned the termination of the employment of Rondell Miley (hereinafter referred to as “Mr. Miley” or the “Grievant”).

The grievance was denied during the prior steps of the grievance procedure. On July 21, 2023 an arbitration hearing was held and both parties were provided an opportunity to present evidence and testimony. The parties both filed briefs with the Panel by October 20, as agreed. The Panel held an Executive Session on October 24, 2023.

The parties have complied with the grievance and arbitration provisions of the CBA. This grievance is properly before the Connecticut State Board of Mediation and Arbitration.

III. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT (Jt. Ex. 3)

**ARTICLE 1
RECOGNITION**

Section 1.1

The Employer recognizes the Union as the sole and exclusive bargaining agent for the purposes of establishing wages, hours and conditions of employment for all of those employees of the Housing Authority of the City of Bridgeport as certified by the Connecticut Board of Labor Relations in Decision No. 843, issued December 23, 1968 and as amended by the Recognition Agreement dated February 11, 1980 to include secretaries, clerical and all other non-supervisory employees and all skilled tradesmen as amended by the Recognition Agreement as of June 8, 1990. This agreement also includes the employees who are classified as maintenance mechanics.

ARTICLE 16

LEAVE OF ABSENCE

Section 16.1

A. The Employer may grant leaves of absence without pay for a period not to exceed one (1) year. Requests for such leave shall be made in writing to the Executive Director and shall include a statement of the reasons therefore and of the length of leave requested.

ARTICLE 25

Effective Date and Duration of Agreement

Section 25.1

This Agreement shall be in full force and effect upon execution until September 30, 2022. However, no economic entitlements shall be retroactive except as explicitly stated.

Section 25.4

This Authority will participate in a Network Provider program. An employee who is absent due to a workplace injury and who receives an approval from the treating physician for limited duty must deliver the physician's statement to the Authority. The Authority may require an employee to return to work to perform light duty in accordance with the approval of the treating physician, and the employee will not be eligible for any overtime assignments.

Section 25.5

The period of time an employee can be out of work and maintain his/her employment with the Authority shall not exceed twelve (12) months over a rolling twenty-four (24) month period, or sooner if, based upon a physician's examination, a determination is made that as a result of the employee's injury, the employee will never be able to perform the essential functions of his/her position.

IV. STATEMENT OF FACTS

The CBA governing this grievance was effective October 1, 2019 and expired on September 30, 2022 which was submitted as Joint Exhibit 3. The parties represented that it was in effect at the time of the Grievant's termination of employment.

Mr. Miley was a Maintenance Aide with the Authority. At the time of his termination of employment, Mr. Miley had seventeen (17) years of service. On February 11, 2021, the Grievant was out of work from that date due to a work related injury until his separation from employment on June 8, 2022. The Grievant filed a claim for Worker's Compensation benefits due to his injury. The Grievant's injury was to his back, and he had declined surgical intervention.

The job of a Maintenance Aide requires an employee to be "able to lift and carry 50 lbs. without assistance, walk throughout the site, go up/down stairs, shovel snow, work in cold or hot weather conditions . . ." The job duties of a Maintenance Aide include: "responsible for performing a variety of unskilled, semi-skilled and skilled tasks in maintenance, janitorial, electrical and plumbing." (Employer Ex. 3)

The Employer and the Union presented medical reports indicating the Grievant's restrictions as follows:

Date	Restrictions	Exhibit No.
4/20/21	Rest/sit for 5 minutes after 20 minutes of standing. Avoid lifting 50 lbs or more	E-4
7/8/21	Patient should not lift weights	E-7
8/5/21	Patient still light duty	U-1
9/2/21	Continue light duty	U-2
6/21/22	2/10/21 injury likely aggravated prior injury of 3/27/15, but was "temporary and self limited."	E-8

V. DISCUSSION:

In its brief, the Union presented an extensive argument that the Authority did not have **just cause** to terminate the Grievant. This is not the question before the Panel. Therefore, the Panel has no choice but to ignore the arguments of the Union regarding just cause. The question to be resolved by the Panel is outlined in the Issue. The issue to be resolved is whether the Authority violated Article 1, 16 and 25 of the CBA. On these issues the Union bears the burden of proof.

The Union presented no evidence or argument that the Authority violated Article 1. Therefore, the Union failed to meet its burden of proof regarding a violation of this Article.

The Union presented a note dated September 1, 2021 from the Grievant “accepting a leave of absence to retain my job/position”. (Union Ex. 4) Additionally, the Union presented an undated note from the Grievant requesting a medical leave. (Union Ex. 5) Further, the Union submitted another note from the Grievant dated September 3, 2021 indicating that he “will accept the medical leave of absence.” (Union Ex. 6) Yet there was no evidence presented that the Authority ever granted the Grievant’s request for any type of leave of absence. More importantly, the Grievant admitted during the hearing that the Authority never granted his request. Therefore, the Union failed to meet its burden of proof regarding a violation of Article 16.

Section 25.4 of Article 25 of the CBA provides that the Authority “will participate in a Network Provider program.” Section 25.4 goes on to provide that “the Authority **may** require an employee to return to work to perform light duty in accordance with the

approval of the treating physician.” (Emphasis Added) The light duty provision applies to all positions in the bargaining unit. The Authority provided testimony that the restriction provided by the Grievant’s treating physician dated April 20, 2021 “Rest/sit for 5 minutes after 20 minutes of standing” could not be accommodated even with a light duty assignment. The Union presented no evidence refuting this position of the Authority.

The Union stated in its Brief that the Grievant had the same restrictions for many years. However, no evidence was presented at the hearing that this was true. If this was in fact true, there would have been no necessity for the physician to outline the restriction in his statement dated April 20, 2021. (Employer Ex. 4)

The language of Section 25.5 of the CBA is new contractual language which first appeared in this CBA and represents a significant change. The language was agreed upon by the Authority and the Union.

Mr. Miley was out of work from February 11, 2021 until June 8, 2022. The Grievant was out of work due to a work-related injury sixteen (16) months. As sixteen (16) months is, obviously, greater than twelve months, the Panel is constrained by the clear language of Section 25.5.

VI. AWARD

For the reasons set forth herein, the Panel unanimously finds that the Authority did not violate Articles 1, 16 or 25 of the CBA.

BY THE ARBITRATION PANEL:

/s/ Linda J. Yelmini

Linda J. Yelmini (Public Arbitrator & Chairperson)

/s/ Donald Sevas

Donald Sevas (Labor Arbitrator)

/s/ Richard Podurgiel

Richard Podurgiel (Management Arbitrator)