

**State of Connecticut
State Board of Mediation and Arbitration**

In the Matter of	:	Case No. 2023-A-0215
	:	
City of Norwalk	:	Date of Award: March 28, 2024
	:	
-and-	:	
	:	
Local 2405, Council 4	:	Date of Hearing: January 16, 2024
AFSCME, AFL-CIO	:	Location: Virtual Hearing
	:	

AWARD

PANEL MEMBERS:

Dennis C. Murphy, Esq., Chair and Public Member
Betty Kuehnel, Labor Member
Michael Culhane, Management Member

Robert Montuori, representing the Union
Tina M. Fogell, representing the Employer

Procedural History and Issue

This is a dispute between the City of Norwalk (City) and Local 2405, Council 4, AFSCME, AFL-CIO (Union), concerning the (Grievant).

After due notice a hearing was heard on January 16, 2024, wherein the parties had opportunity to present evidence and witnesses and to cross examine same. The parties filed post hearing briefs.

The following is the issue for determination:

Did the City violate Article 16.3 and/or settlement agreement dated February 27, 2022, when a temporary employee opened the door at a facility at Foder Farms on March 4, 2023? If so, what shall the remedy be?

Relevant Collective Bargaining Provisions

Article 16

Section 16.3 The City of Norwalk agrees that only those equipment operators whose usual duties are closely associated with work required to be performed beyond their regular hours of employment shall be used for extra work. For the purpose of this section, extra work shall include emergency work and snow removal. If the regular employees of the department are not available to do extra work, the authorized supervisor shall call other qualified employees. Until normal resources are exhausted, no person other than the employees of the Operations Division shall drive or work on any piece of city owned equipment for extra work but DPW may draw from other employees in Local 2405 if they are qualified.

Grievance Settlement dated 2/27/2023.

“During the course of the hearing the following settlement was agreed upon by both the city and the union:

1. The City will not use temporary employees who are working in Park Maintenance positions to unlock doors at Park Department venues for prospective customers that are normally opened by full time or part time event planning staff of the Recreation in Parks Department.” (Joint Ex. 5).

Findings of Fact

1. On Saturday, March 4, 2023, John Seuch, a temporary employee working in a park maintenance position, opened the facility at Foder Farms to conduct registration activities for the public gardens at that location. Mr. Seuch had engaged in these activities a number of times prior to this event. The registration for the community gardens at Foder Farms began at 8:00 AM in the morning of March 4, 2023, and was concluded before the evening event which was arranged by the outside party began. (Test. Kenneth Hughes, Superintendent of Public Properties and Parks).

2. Union witness Scott Shular testified that he and a co-worker were sent to Foder Farms due to an issue with the fireplace. The temporary worker at the site asked for instructions on how to operate the fireplace. (Test. Shular). The City presented payroll evidence showing that Shular was not at Foder Farms on March 4, 2023.

Arguments of the Union

The Union argues that the City violated the prior grievance settlement when it had a temporary worker and not an event coordinator or a member of Local 2405 to open the facility for the event on March 4, 2023.

Further, the temporary worker asked for instructions on how to operate the fireplace at the facility, which shows the City with a pattern of violating the grievance settlement

Arguments of the Town

The City argues that it did not violate the contract or the grievance settlement because the temporary worker was not opening the facility for “prospective customers” as specified in the settlement, but rather, for registration for the community gardens, as he had done a number of times before.

Further, the City argues that the Union did not demonstrate a violation since payroll records demonstrate that the Union’s witness was not at Foder Farms on the date in question.

Discussion

The Union has the burden to demonstrate by a preponderance of the evidence that the City violated the collective bargaining agreement and/or the grievance settlement. It failed to demonstrate such a violation.

The Union did not counter the City’s factual assertion that the temporary worker was not opening the venue for “prospective customers”, as the settlement agreement proscribes. Rather, he was there concerning registration for the community gardens. The Union offered no past practice that this overtime had been consistently performed by members of the union.

We find that the City’s use of the temporary for the work performed on March 4, 2023 as set out in the record before us did not violate the collective bargaining agreement or the grievance settlement.

AWARD

The City of Norwalk did not violate Article 16.3 of the collective bargaining agreement or the Grievance Settlement dated 2/27/23, when a temporary worker opened the door to Foder Farms on March 4, 2023.

Case No. 2023-A-0215

By the Panel

/s/ Dennis C. Murphy, Esq.

Dennis C. Murphy, Esq.
Chair and Public Member

/s/ Betty Kuehnel

Betty Kuehnel
Labor Member

/s/ Michael Culhane

Michael Culhane
Management Member