

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

AWARD

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	:
CITY OF NORWALK	: CASE NO. 2024-A-0126 (JOSE SILVA)
	: HEARING DATE: JULY 9, 2024
	: LOCATION OF HEARING:
AND	: State Board of
	: Mediation & Arbitration
AFSCME CO. 4, LOCAL 2405	: 38 Wolcott Hill Road
	: Wethersfield, CT 06109
<hr/>	: (VIRTUAL)

APPEARANCES:

**TINA FOGELL, DIRECTOR,
Human Resources & Labor Relations
City of Norwalk
125 East Avenue
Norwalk, CT 06856
City Representative**

**Robert Montouri
Staff Representative
AFSCME Co. 4
444 East Main Street
New Britain, CT 06051-2055
Union Representative**

ISSUE

Did the City of Norwalk have just cause to issue a written warning to Jose Silva for failing to follow instructions and being “insubordinate?”

If so, what shall be the remedy?

FACTS

This grievance concerns a written warning issued by the City of Norwalk ("City") to a bargaining unit employee who works in the Public Works Department operating heavy equipment, i.e. forklift and other equipment. A voluntary training session was scheduled at the request of employees for the operation of forklift equipment. The training consisted of a combination of classroom time as well as the actual operation and maneuvering forklifts around pallets. The classroom training was held in the morning and the actual operation of forklifts class was held in the afternoon.

Jose Silva ("Grievant") took the forklift training. He completed the classroom portion of the training and was scheduled to complete the driving of forklift portion with the second group of employees. Grievant was the last employee of the day to perform the driving portion of the training. Grievant thought he completed the course and was going to take the cones down and put them away. A pallet was brought forward and Grievant believed it was for the next person and since he was last he did not think he needed to set up for another driver.

Supervisor Halverson told Grievant that he was in fact supposed to bring the pallet back and by not doing so he would receive a failed training for not completing the entire training and would receive a written warning.

The following day Grievant was urged by his direct Supervisor, Jose Ortiz ("Ortiz"), to go and speak to Superintendent Chris Torres ("Torres"). Grievant went to speak to Torres and he brought his Union Representative. Torres

became angry and Torres added the word “insubordination” to Grievant’s written warning. Supervisor Halverson was not present at the meeting between Torres and Grievant even though Halverson was a witness to the forklift incident that occurred on the prior day.

Grievant failed the training for non-completion and was issued a written warning which included a claim that Grievant was given the discipline for insubordination.

A virtual hearing on this grievance was held by the Panel on July 9, 2024. Both parties appeared and were represented, afforded the opportunity to examine and cross-examine witnesses, provided testimonial evidence and made argument in support of their respective positions.

UNION POSITION

The Union claims that Supervisor Halverson, a witness to the training, was asked if Grievant was insubordinate during the incident and Halverson answered that Grievant was not insubordinate. The Union and Grievant do not object to the issuance of a written warning or being failed for non-completion of the training, but argue that the addition of the word “insubordination” to the written warning by Torres was inappropriate. Grievant claims that Torres was not a witness to the incident and could not determine that Grievant was insubordinate.

Grievant claims the word “insubordination” should be removed from the written warning and he should be directed to apologize to Supervisor Halverson for not completing the training. The Union further claims Grievant was never ordered to complete the course nor was he asked to apologize.

CITY POSITION

The City points to the testimony of Supervisor Matthew Halverson who stated Grievant, during his maneuvering, picked the pallet up and then set it down. Grievant was told, according to Halverson, that he needed to go back and forward on the course in order to complete the training but Grievant refused to complete the training.

Torres, Superintendent of Public Works, testified that the next morning he brought everyone together in a room as he thought the incident sounded like a misunderstanding. The City argues that Grievant thought the training was silly and the meeting was silly. The City alleges that Grievant was told to apologize and he refused.

DISCUSSION

The Panel concludes that the circumstances leading to the written warning was partially due to a misunderstanding. The claims by both the Union and the City witnesses are credible, i.e. the City believes Grievant was given a directive to complete the course while Grievant did not believe a directive was given. It is apparent to the Panel that some type of discipline is appropriate but the inclusion in the written warning that Grievant was “insubordinate” is an overreach by the City. The written warning shall remain in effect but any reference in the warning that Grievant was “insubordinate” shall be removed. The Panel notes that Grievant had no prior disciplinary problems during his employment with the City and was a good employee.

Moreover, the written warning was issued for conduct that occurred outside Grievant's everyday work duties. The alleged conduct occurred during a training session that the Panel believes mitigates any discipline that might be imposed by the City.

After a review of the testimony and arguments presented by the parties, and by a preponderance of the evidence, it is found that the issuance of a written warning by the City to Grievant was appropriate but all references in the warning to Grievant's "insubordination" shall be forthwith removed. The Panel is mindful of the Union's statement that Grievant received "proper punishment" (Union's post-hearing brief/summary, pg. 2). The Union's objection to the inclusion of the word "insubordinate" in the written warning is valid.

DECISION

The grievance is sustained.

However, all references in the written warning to Grievant's "insubordination" shall be removed forthwith.

/s/ Gerald T. Weiner
Gerald T. Weiner
Chair and Public Panel Member

/s/ Betty Kuehnel
Betty Kuehnel
Labor Panel Member

/s/ Kenneth Baldyga
Kenneth Baldyga
Management Panel Member
Dissenting