

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

**ARBITRATION AWARD**

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In the Matter of:	:	Date of Award: October 23, 2023
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State of Connecticut, Department of Emergency Services and Public Protection (DESPP)	:	Case No. 2023-S-0002
	:	Hearing Date: August 9, 2023
And	:	
	:	Location of Hearing: ZOOM
AFSCME Council 4, Local 478 (NP-3)	:	

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APPEARANCES:                     Kristen Pepin, Attorney at Law (For the State)  
   Heather Longo Racicot, Service Representative  
   (For the Union)

**I.     ISSUE: (AGREED TO BY THE PARTIES)**

Did the Department of Emergency Services and Public Protection violate the contract by requiring the Grievant to use his personal accruals while he was out on medical leave?

If so, what is the remedy in accordance with the NP-3 bargaining unit contract?

**II.    PROCEDURAL BACKGROUND:**

The American Federation of State, County and Municipal Employees, Council 4, AFL-CIO, Local 478, NP-3 (hereinafter referred to as the “Union” or “AFSCME”) filed a grievance asserting that the Department of Emergency Services and Public Protection (hereinafter referred to as “DESPP”), an agency of the State of Connecticut (hereinafter

referred to as the “State”) violated the collective bargaining agreement (hereinafter referred to as the “CBA”). The claim is the CBA was violated because the “Grievant has been forced to use FMLA and personal accruals while place on leave.” (Joint Ex. 2).

The grievance was not resolved and was appealed to arbitration. On August 9, 2023 an arbitration hearing was held via ZOOM. Both parties were provided an opportunity to offer testimony and cross-examine witnesses. The State and the Union both filed post hearing briefs by the due date of September 15, 2023. The Panel held an Executive Session on September 29, 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. STATEMENT OF FACTS:**

There are few, if any, factual disputes in this case. Vincent DeLia (hereinafter referred to as “Mr. DeLia” or the “Grievant”) is a State Police Dispatcher at DESPP. The Grievant has been employed in that position for approximately twenty-five (25) years.

On November 29, 2021, the Grievant became ill at work and was taken by ambulance to the hospital. The Grievant remained out of work until February of 2022. On February 21, 2022, the Grievant submitted a Fitness for Duty Certificate signed by Robert Henry, MD. (Union Ex. 1) The form indicated that Mr. DeLia could return to work on February 25, 2022 with the following restrictions:

Employee should not be exposed to any environmental hazards including, but not limited to mold, lead or any substances that may contain lead. Employee had a reaction at his work location at 631 Amity Road, Bethany that caused his liver to shut down and increase blood pressure and heart rate. This may have been caused by a substance ingested from the building. Further testing is ongoing.

Mr. DeLia return to work on February 25. Later that afternoon, he was advised not to return to work until his Fitness for Duty Certificate had been reviewed. Mr. DeLia was directed to speak with Daphne Lewis (hereinafter referred to as “Ms. Lewis”) from the Equal Employment Opportunity Office. (Union Ex. 2). During a conversation on March 1, Mr. DeLia indicated to Ms. Lewis (confirmed in a later email) that Mr. DeLia declined a possible transfer to another troop. Mr. DeLia was told that consideration of a temporary transfer was dependent upon completion of American Disability Act (hereinafter referred to as the “ADA”) form. (State Ex. 1)

There were several interactions between Mr. DeLia and Ms. Lewis wherein Mr. DeLia clearly indicated that he would not be filling out the ADA paperwork nor requesting

an ADA accommodation. He indicated that he was “willing to take a temporary reassignment to another location on the same shift” but would not fill out the ADA paperwork.

Mr. DeLia used his personal accruals between February 26 and April 6 at which point they were exhausted. Mr. DeLia was placed on authorized unpaid leave between April 7 and July 21 when he returned to work. Mr. DeLia submitted an Employee Fitness for Duty Certification under the State Family/Medical Leave Act (CGS § 5-248a). The form was signed by Carly Rumanoff, Physician’s Assistant indicating Mr. DeLia was “fully able to resume working on July 20, 2022.” (Union Ex. 10)

There is little doubt that the DESPP facility where Mr. DeLia had been working (Troop I in Bethany) needed remediation. The local health department verified the various problems that existed building which housed Troop I. The problems were remediated prior to Mr. DeLia’s return to work on July 21 after completing Union Exhibit 10.

Mr. DeLia submitted a Workers’ Compensation claim. The claim was denied by Gallagher Bassett on or about February 8, 2022 stating that the claim was not work related. Gallagher Bassett is the Workers’ Compensation administrator for the State of Connecticut. The present status of that claim is unknown.

**IV. PERTENENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT - JULY 1, 2021 – JUNE 30, 2025 (JOINT EX. 1)**

**ARTICLE 15**

**GRIEVANCE PROCEDURE**

**Section Eleven. Arbitration Rules. . . .**

1. **Arbitrator's Authority.** The arbitrator shall have no power to add to, subtract from, alter, or modify this Agreement, nor to grant to either party patters which were not obtained in the bargaining process, nor to grant to impose any remedy or right of relief for any period of time prior to the effective date of this Agreement, or to grant pay retroactively for more than thirty (30) calendar days prior to the date a grievance was submitted at Step I.

**ARTICLE 25**

**WORKERS' COMPENSATION**

**Section Two. Workers' Compensation Coverage and Payments.** Where an employee has become temporarily totally disabled as a result of illness or injury caused directly by his/her employment or sustained in the course of his/her employment, said employee may, pending final determination as to the employee's eligibility to receive workers' compensation benefits, charge said period of absences to existing leave accounts. Where a determination is made supporting the employee's claim, State authorities shall take appropriate steps to rectify payroll and leave records in accordance with said determination . . . Accrued leave time may be used to supplement workers' compensation payments up to but not beyond the regular salary.

**ARTICLE 31**

**SICK LEAVE**

**Section Two.** The appointing authority shall grant sick leave to the eligible employee who is incapacitated for duty. During such leave, the employee is compensated in full and retains his/her employment benefits. Such leave shall not be granted for periods of time during which the employee is receiving compensation in accordance with Section 5-142 or 5-143 of the General Statutes except to the extent permitted by said Sections, . . .

## **ARTICLE 32**

### **SAFETY AND HEALTH**

**Section One.** The Employer shall provide a workplace free from unsafe or unhealthy conditions. The Employer shall make every effort to make repairs or to adjust unsafe or unhealthy working conditions as soon as possible after such conditions are reported.

**Section Three.** No employee shall be required to perform work under unsafe or unhealthy conditions; provided, however, that an employee must follow the rule “work now, grieve later” unless there is imminent danger to the employee’s physical well-being.

## **ARTICLE 34**

### **TRANSFERS**

**Section One. Transfers Within an Agency.** Transfers within an agency may be made as follows:

(a) Permanent and temporary transfers within an agency may be made with the approval of the Commissioner of Administrative Services either by the appointing authority for the good of the service or by request of the employee with the approval of the appointing authority. . . .

## **V. DISCUSSION**

In arbitration proceedings involving a disciplinary grievance, the burden of proof is on the Employer. A contract interpretation grievance challenges the Employer's violation of a nondisciplinary term of the CBA. The burden of proof is on the Union in a contract interpretation case. As this is a contract interpretation case, the Union bears the burden of proof.

The applicable standards for contract interpretation are well established. Where the language is clear and unambiguous, Arbitrators must give effect to the parties' intent as expressed in that language. In determining whether the language is clear, words are given their ordinary and popularly accepted meaning, absent evidence they were used in a different sense.

The Union claimed that DESPP "refused to temporarily reassign the grievant to an alternate work location or place him on authorized paid leave forcing him to utilize his own accruals despite his medical clearance to work." Factually, this is not the case. The policy of DESPP requires the completion of certain paperwork to consider requests for temporary transfers when medical issues are presented. Mr. DeLia's request was subject to this policy.

DESPP, through Ms. Lewis, stated on several occasions that a temporary transfer was a possible outcome if Mr. DeLia would complete the necessary paperwork. This was not a refusal to temporarily reassign the grievant to an alternate work location.

Section One of Article 34 of the CBA provides that temporary transfers at the request of an employee requires the approval of the agency and the DAS Commissioner.

Temporary transfers are not required to be granted under the CBA; they are discretionary. DESPP utilized a procedure to follow when requests for temporary transfers are made by employees in situations such as Mr. DeLia's. The procedure is a reasonable one which does not violate the CBA. Mr. DeLia failed to comply with the procedure. The Grievant was instead granted leave under Family Medical Leave Act (hereinafter referred to as "FMLA"). Mr. DeLia was allowed to utilize his accrued leave balances to cover his absence from work.

Further the CBA provides that employees are permitted to utilize their existing leave balances during the pendency of a Workers' Compensation claim. The CBA goes on to provide that if the claim is granted, payroll and leave records will be modified in accordance with the determination.

The Union also states that the CBA was violated by the DESPP's failure to grant Mr. DeLia a paid administrative leave. There is no provision of the CBA that permits the granting of a paid administrative leave in situations such as the one involving Mr. DeLia.

This is a situation wherein Mr. DeLia engaged in "self-help". He refused to complete the required paperwork in accordance with DESPP's reasonable rule. The Grievant's refusal resulted in DESPP not having the requisite information to consider his request for a temporary transfer.



**VI. AWARD**

For the reasons set forth herein, the Panel unanimously finds the State of Connecticut, Department of Emergency Services and Public Protection did not violate the collective bargaining agreement by requiring the Grievant to use his personal accruals while he was out on medical leave.

BY THE ARBITRATION PANEL:

/s/ *Linda J. Yelmini*

Linda J. Yelmini (Public Arbitrator & Chairperson)

/s/ *Betty Kuehnel*

Betty Kuehnel (Labor Arbitrator)

/s/ *Michael C. Culhane, Sr.*

Michael C. Culhane, Sr. (Management Arbitrator)