

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

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In the Matter of

Case No. 2022-A-0188

Housing Authority of the  
City of Danbury

Date of Award **February 23, 2023**

-and-

Hearing Date: December 7, 2022

Local 1303-402, Council 4  
AFSCME, AFL-CIO

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**AWARD**

**PANEL MEMBERS:**

Dennis C. Murphy, Esq., Chair and Public Member  
Peter Carozza, Labor Member  
Marc S. Mandell, Esq., Management Member

Joshua Herbst, representing the Union  
Joseph P. Mortelliti, Esq., representing the Employer

### Procedural History and Issue

This is a dispute between the Housing Authority of the City of Danbury (Authority), and Local 1303-402, Council 4, AFSCME, AFL-CIO (Union), concerning the payment of Matt Millard (Grievant), for call-back work performed on January 8, 2022. After due notice, a hearing was held virtually on December 7, 2022, wherein the parties presented evidence and witnesses and an opportunity to cross-examine same. The parties filed post hearing briefs.

The issue in the matter is: Did the Danbury Housing Authority violate the collective bargaining agreement in its payment to the Grievant for work performed on January 8, 2022.

### Relevant Collective Bargaining Provisions

#### ARTICLE VIII-HOURS OF WORK AND OVERTIME

##### Section 8.4

"During snowstorms on weekends and holidays, employees shall contact the Agency by 6:00 a.m. for snow removal assignments and, if not called in shall call again at 7:00 a.m. (based on storm intensity) for assignments. For snow removal assignments after 7:00 a.m., the Agency will contact employees individually. The call back minimum for snow removal assignments which are not continuous to the beginning or end of an employee's regular work shift shall be three (3) hours. The call back minimum shall apply to each time an employee is called out for a snow removal assignment. On snow days the start time for administrative and clerical employees shall be announced over the local radio station by 6:00 a.m."

##### Section 8.5

"Employees called back to work hours which are not continuous to the start or end of their regular work shift shall be paid a minimum of two hours, for the first call only, at the applicable overtime rate, except when responding to assist locked-out residents or to provide access to a unit or property, when a minimum of one hour shall be paid. There shall be only one (1) first call per day. On-call assignment shall include two persons at all times during the following time period: Seven days a week 12:00 a.m. to 7:00 a.m. On-call shall be the duration of five (5) weeknights and two (2) weekend days. On-call responsibility shall begin at 7:00 a.m. Monday and end at 6:59 a.m. on the following Monday. On-call employee assignments shall be voluntary and determined on the basis of seniority. If there are no volunteers, on-call assignments shall be determined on the basis of inverse seniority. Employees will receive the amount one hundred fifty dollars (\$150.00) per week."

### Findings of Fact

1. On January 8, 2022, the Authority's entire maintenance staff were called in for snow removal duties. These snow removal duties began at 7:09AM and completed at 10:09AM, and employees went home. (Union Ex. 4; test. of Grievant).

2. The Grievant was on call that weekend and was called in to complete work orders, one of which is the subject of this grievance. That work order was created on January 8, 2022 at 11:50AM, and it was to examine walkway conditions at Glen Apartments between Units 1 and 4 and was Work Order #38817. The Grievant responded to the work order and applied salt to the walkway there. He completed the work at 1:30PM. The Grievant responded to two other work orders that day, one at 3:30PM and one at 5:25PM.

3. The Grievant was paid the two -hour call back minimum for responding to Work Order #38817, as provided in Section 8.5 of the Agreement. He felt he deserved the three -hour call back minimum as provided in Section 8.4, and filed the grievance before this Panel.

4. The words "snow removal" were not on the work order in question. The Grievant arrived the site at 12:30 and salted the walks but did not shovel snow or ice. (Test. of Grievant).

5. The snow removal three hour call back rate provided by Section 8.4 has traditionally been a "snow removal company wide call out". (Test of Joshua Smith). Smith is a twelve year employee and is the Maintenance Manager in charge of call outs. Each maintenance staff member is assigned a specific Authority property when snow removal becomes necessary.

6. Justin Carneiro, a Mechanic Aide and the Union Vice President, testified that three or four times over the past years, he has been paid the three hour rate for call back to visually check for snow shoveling/ salting work.

7. Jesse Castro, the Operations Director, testified that he does not recall any employee getting the three -hour minimum for assessing a situation and throwing salt if needed.

### Arguments of the Union

The Union argues that the Authority violated the agreement by not paying the three - hour minimum as required by Section 8.4. The follow up grounds inspection and salting were done due to the snow storm, as everyone was called in that morning on snow removal.

The Union further argues that Mr. Carneiro's testimony proves the point, by giving examples where he has been paid at the snow removal rate for inspecting walkways and salting.

### Arguments of the Authority

The Authority argues that the proper payment was made in this case and that the grievance should be denied. The work the Grievant performed in assessing the area on the work order and throwing salt if necessary does not constitute a call back for snow removal. The work done was after the all -employee snow removal callback was completed.

Snow removal as found in Section 8.4 is an all employee event, where employees are assigned a predetermined area to clear snow and ice and salt if necessary. This event was an isolated workorder area requiring inspection and throwing salt if necessary. The Grievant's work more properly falls under Section 8.5 of the agreement.

### Discussion

The Union has the burden to demonstrate by a preponderance of the evidence that the Authority violated the agreement. It has not met that burden in this matter.

This contract interpretation matter is admittedly not a crystal clear matter. Mr. Carniero's testimony that he has been paid the three hour minimum three or four times over the past "years" for being called back to inspect an area and shovel or throw some salt supports the notion that the three hours should be paid in this instance. However, it is unclear whether those instances occurred well after the all-employee call back had ended, as it was here, and whether those always involved snow shoveling or not. It certainly should be acknowledged that "snow

removal” also contains in it the activity of applying some salt. It does not necessarily follow that inspecting an area and throwing some salt must be “snow removal”.

The testimony of Joshua Smith was convincing: snow removal under Section 8.4 means a “snow removal company wide call out”, where each employee has a predetermined location, the event has a specific start and finish. The Authority, in this case Mr. Smith, declares a snow removal effort, not a tenant triggering a workorder as was the case here.

On the day in question the “snow removal” call out ended in the morning. The Grievant was called back to complete a workorder asking for inspection and remediation if needed. This effort seems to more appropriately fit under the requirements of Section 8.5 than 8.4. Mr. Castro’s testimony lends support to this conclusion.

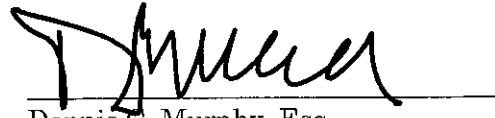
Admittedly, this is not a clear conclusion. However, since in this matter the Union has the burden to demonstrate by a preponderance of the evidence that there is a violation, we find that the Authority did not violate the Agreement.

#### AWARD

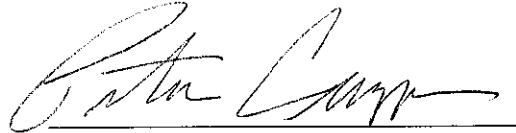
The Danbury Housing Authority did not violate the collective bargaining agreement in its payment of the Grievant for work performed on January 8, 2022.

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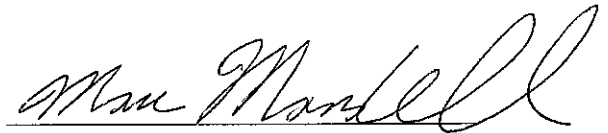
By the Panel

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Dennis C. Murphy, Esq.  
Chair and Public Member

A handwritten signature in black ink, appearing to read "Peter Carozza", written over a horizontal line.

Peter Carozza  
Labor Member

A handwritten signature in black ink, appearing to read "Marc S. Mandell", written over a horizontal line.

Marc S. Mandell, Esq.  
Management Member