

CONNECTICUT DEPARTMENT OF LABOR
BOARD OF MEDIATION and ARBITRATION
RULING OF THE BOARD

Hartford Board of Education

Case No. 2021-A-0223

and

Date of Award: February 9, 2023

Local 566, Council 4, AFSCME

Date of Hearing: May 18, 2022

Location of Hearing: Via Zoom

Lori Mizerak, Esq. for the Board of Education

Anthony J. Bento, Esq. for the Union

ISSUE

"Was Section 21.0(B) of the Collective Bargaining Agreement violated when schools were closed for inclement weather on December 17, 2020; February 1, 2021; February 2, 2021; February 9, 2021; and February 19, 2021." (BOE Brief, p.3)

If so, what shall the remedy be?

Pertinent Contract Language

21.0(B) All Day Closing

If schools are closed all day, in which case a public announcement is made before schools are scheduled to open in the morning, employees will be notified as follows;

1. **Ten-Month Employees:** Cafeteria employees on a ten (10) month basis are not required to report for work. Such employees shall work on the day(s) upon which school is rescheduled. Head Lunch Supervisors/Meal Coordinators shall call the Food Service Office for further instructions and/or reassignment.
2. **Twelve-month Employees:** Employees on a twelve (12) month basis are expected to report to work, unless otherwise notified. It is expected that these persons will exert a reasonable effort to reach their assigned posts. If an individual is unable to report to his or her post because of transportation or other difficulties and has made a reasonable effort to arrive at his/her place of employment, he/she should communicate as soon as possible with his/ her immediate superior. If it is decided that the absence is justified, it will be charged to sick leave; if not, a pay deduction will be made. Even though school buildings and the administration building are closed and employees released, the custodial and maintenance staff are still responsible for the proper operation and maintenance of the buildings. Unless otherwise notified they are required to report to work and are given earned time off.

FACTS

The Union and the Board of Education (BOE) stipulated that on these dates the buildings were closed because of stormy weather: December 17, 2020; February 1, 2021; February 2, 2021; February 9, 2021 and February 19, 2021.

BOE POSITION

The BOE argues that the school buildings and central office must be physically closed, and those employees released to satisfy the requirements of Section 21, 21.0 (B). Since the latter did not take place, the Grievants are not entitled to any earned time off.

"The Union claims that the custodians who reported to work on the following days are entitled to earned time off pursuant to Section 21.0(B) of the contract: December 17, 2020, February 1, 2021, February 2, 2021, February 9, 2021 and February 19, 2021. On none of these days, however, were employees released, and, in fact on three of these days, the central office administration building remained open." (BOE Brief, p.23)

The BOE states that on December 17, 2020, and February 1, 2021 the Central office and schools were closed, but "... staff were required and directed to remotely engage in their normal workday from their homes." Without that release the BOE is not required to provide earned time off to this group of employees.

UNION POSITION

The Union's position is that when the Board made the announcements that "[a]ll schools will be closed Thursday December 17, [2020]" and "[d]ue to inclement weather and the parking ban in the City of Hartford, and all Hartford Public Schools will be closed for in-person learning on Monday, February 1, 2021 and Tuesday February 2, 2021", and again released the same announcement on February 9, 2021 and February 19, 2021 the "All Day Closing" requirement of Section 21.0(B) was satisfied.

The union also argues that Section 21.0 (B) requires the Grievants "to report for work, unless otherwise notified (emphasis added) and are given earned time off." As the Grievants were not directed to stay at home, they arrived and performed their duties expecting to receive earned time off.

DISCUSSION

Our lives have been irrevocably changed by the pandemic that was accompanied by the extraordinary expansion of sophisticated computer applications available via the Internet. No longer will school children, or possibly some teachers as well, anticipate the time off which traditionally complemented a Nor'easter, for all that changed in 2020 with the maturation of computer technology and the ever-expanding administrative expectations of teachers who are now directed to move their classes to the Internet while Central Office Staff are directed to work from home. Weather and hazardous travel conditions are no longer obstructions to instruction, but the same cannot be said of those charged with maintaining the school buildings.

Section 21.0 (B) of the CBA requires the Grievants to "exert a reasonable effort" to arrive ready to meet the assignments awaiting. If unsuccessful, either an approved attempt will be covered by using a sick day or the employee will go without pay. Within the same paragraph of the CBA we read the following:

"Even though school buildings and the administration building are closed and employees released, the custodial and maintenance staff are still responsible for the proper operation and maintenance of the buildings. Unless otherwise notified they are required to report to work and are given earned time off."

The Union's argument employs the analogy of the carrot and the stick to assure that the custodial and maintenance staff must "...exert a reasonable effort to reach their assigned posts." The stick portion of the equation was either forfeiture of a day's pay for an unreasonable effort or using a sick day to cover the time lost, while the carrot is the earned time in question.

Its puzzling to imagine with the State asking citizens not to travel unless "absolutely necessary," that the administrative office would be kept open. That is, until the maturation of the personal computer and the increased capabilities of the Internet, where instead of planning ahead for a challenging drive the staff simply follows the directive to work at home using their computer and phone.

Unfortunately, the custodial and maintenance staff do not have the same opportunity and are expected to be at work or required to use an earned sick day or receive no compensation. In years past, once the school and administrative offices were closed everyone was effectively "released" to ride out the storm, while today, technology makes it possible to run an

administrative office remotely turning the "released" action required by the CBA at best into an anachronism, a contractual condition that has been attenuated.

The current language states that custodial and maintenance staff are to come to work unless everyone else has been released and only then will earned time off be arranged.

A critical question to this case asks what does "released" mean within the construct of this contract? Remembering the contract was negotiated well before personal computers became ubiquitous, the "release" was clearly referring to the physical presence of the employee at the Central Office since there were few, if any, opportunities for work to be completed outside of occupying that space. It is clear that prior to 2019 the closing of the building and the "release" from remaining at work were indistinguishably knotted.

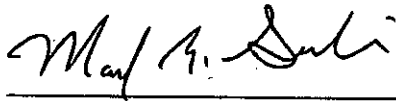
The BOE's change in this construct was driven by the convergence of the pandemic's forced closings and the capability of working from a remote location. With the work location redefined as any place with Internet access the word "release" is now interpreted as attached to the work instead of the location. Three of the five dates contained within the Grievance (February 2, 9, 19, 2021) did not qualify for the earned time off since the buildings were open and the staff were on location working. On December 17, 2020, and February 1, 2021, the buildings were closed, and the staff were directed to work from home.

DECISION

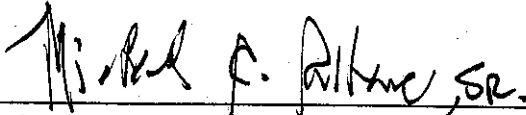
Case No.2021-A-0223 is sustained and the Grievants will have two days of earned time restored.

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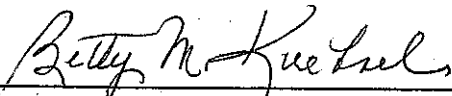
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Mark E. Sullivan Alternate Public Member



Michael C. Culhane, Permanent Management Member



Betty M. Kuehnel, Permanent Labor Member