

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

METROPOLITAN DISTRICT COMMISSION

CASE NO. 2022-A-0082

and

Award Date: June 16, 2023

AMERICAN FEDERATION OF STATE COUNTY  
AND MUNICIPAL EMPLOYEES, COUNCIL FOUR, LOCAL 184

Hearing Date: May 1, 2023

Zoom Hearing May 1, 2023

ADVOCATES

John Mirtle, Esq., for the Metropolitan District Commission

Anthony Bento, Esq., AFSCME, Council 4

**ISSUE STATEMENT**

Did the MDC violate the collective bargaining agreement by using subcontractors to mow grass from July 23, 2021 to the present at: 4 Water Pollution Control Facilities (Hartford, Poquonock, Rocky Hill and East Hartford), Operations Facility & Training Center (125 Maxim Road Hartford), Customer Service Center (60 Murphy Road Hartford), Vehicle Maintenance Facility (50 Murphy Road, Hartford) and the Rossi Building (231 Brainard Rd. Hartford) If so, what shall the remedy be?

**BACKGROUND**

AFSME, Council 4, Local 184 (Union) and the Metropolitan District Commission (MDC), have enjoyed a succession of collective bargaining agreements (Contract) beginning in the late 1960's and fully understand the reasons for and the function of the grievance procedure. The grievance, submitted on July 23, 2021, under the appropriate contractual rubric, charged the MDC had violated Section 17.21 of the contract by employing contractors to mow lawn, a negotiated area of work for bargaining unit members.

The contractual language in question, 17.21, reads:

*"The District may use contracted services for grass cutting and ancillary activities such as weed-whacking at all Pump Stations and the Riverfront Park. The Union waives all right to contest this contracted service."*

The September 7, 2021; response by the MDC denying the grievance at Step III reads:

*"Contractor has been notified that services will discontinue. Effective immediately, the District is working to resolve issues (including but not limited to acquisition of equipment) to support grass cutting by Local 184 employees."*

**POSITION OF THE MDC**

The MDC argues that they retain "...the full and exclusive right to determine the assignment of work, methods and operations" and that Article 2, Section 2.1 supports their position.

*"Section 2.1 Unless expressly limited by a specific section of this agreement the rights, authority, powers and responsibilities of the District, as conferred by any general or Special Act of the Legislature or any District ordinance or regulation including but not limited to all control and direction over employees of the District as well as the complete operational management of all facilities, policies and procedures used shall remain vested solely and exclusively with the District."*

The MDC also disagrees that the CBA language cited by the Union, Section 17.21, supports the Union's contention of a contractual violation. The MDC contends that the "long history" of using outside contractors to mow grass (suggesting an established past practice) and the language cited is not "...controlling, nor determinative..." of this grievance and, most importantly, "...does not limit the District's ability to use contracted services for grass cutting generally or at the locations that are subject of this grievance."

Additionally, they contend the contract does not "...recognize that bargaining unit work must be exclusively performed by the bargaining unit."

**THE UNION'S POSITION**

The Union agrees that there was a long, contentious history of employing outside contractors to mow grass but counters that the language cited in this grievance was added to the contract ratified in 2015, to address that problem and it remains intact in the current contract. On July 23, 2021, the Union filed a class action grievance asserting that "Contractors (were) doing 184 work cutting grass at M.D.C. facilities." Following Step III of the grievance procedure, the M.D.C. responded:

*"Contractors have been notified that services will discontinue. Effective immediately, the District is working to resolve issues (including but not limited to acquisition of equipment) to support grass cutting by Local 184 employees."*

The Union asserts that despite the admission by the MDC that this grass cutting is the responsibility of Local 184 members, contractors continue to be utilized to this day. The Union requests that the MDC be directed to stop and to make Local 184 members whole for the contractually prohibited use of contractors.

**DISCUSSION**

The MDC asserts that they have "...full and exclusive right to determine the assignment of work, methods and operation." That statement is true except, and this is the crux of this grievance, where contract language modifies the relationship between the Union and the MDC. As pointed out by the MDC, this issue of grass cutting was a long-standing contentious issue, but that changed with the ratification of the 2015 contract removing the underpinnings of a past practice argument.

Prior to the 2015 negotiations the Union had failed in its attempt to have their members be exclusively responsible for grass cutting across MDC properties through a charge at the State Board of Labor Relations. In the 2015 negotiations the Union was successful in securing new language with the inclusion of Section 17.21 memorializing who would cut the grass for the largest portions of the MDC by identifying specific areas where the MDC could, without challenge by the Union, employ outside contractors to cut grass.

Section 17.21, of the contract reads:

*"The District may use contracted services for grass cutting and ancillary activities such as weed-whacking at all Pump Stations and the Riverfront Park. The Union waives all right to contest this contracted service."*

The 2015 contract language remains unchanged, clearly written, succinct, and unambiguously identifies where the MDC may use contracted grass cutting services. Interestingly, the MDC appeared to confirm the meaning of Section 17.21 in its Step III response to this grievance but then chose to continue, unabated, employing outside contractors. The Panel is unanimous in sustaining this section of the grievance by directing the MDC to immediately cease using outside contractors to mow grass not included in Section 17.21 and simultaneously return that work to the Union's members.

The Union's request to make the bargaining unit members whole is beyond our charge as we have no data identifying who was affected and to what extent. When seeking this remedy, the Union is obligated to assemble all the necessary data on who was affected and what amount should be restored. In especially challenging circumstances the Union may need to employ the power of a subpoena to provide to the panel a complete and accurate record of data supporting the request for remuneration. For those reasons a majority of the panel cannot support the Union's request to "...make all the impacted employees whole." This section of the grievance is denied.

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Mark E. Sullivan, Alternate Public Member

6-12-23

Date



Russel Melita, Alternate Management Member

6/13/23

Date



Donald Sevas, Alternate Labor Member

6/13/23

Date

(DISSSENTING)