

State of Connecticut
State Board of Mediation and Arbitration

ARBITRATION AWARD

In the Matter of

Case No. 2022-A-0110

City of New Britain

Date of Award **January 26, 2023**

-and-

Date of Hearing: March 22, 2022

IAFF, Local 992

Location of Hearing: Via Zoom

AWARD

PANEL MEMBERS:

Dennis C. Murphy, Esq., Chair and Public Member
Charlie Fabian, Labor Member
Michael C. Culhane, Management Member

Procedural History and Issue

This is a dispute between the City of New Britain (city), and the IAFF, Local 992 (union), concerning a written warning issued to Firefighter Jose Silva (grievant).

After due notice a virtual hearing was held on March 22, 2022, wherein the parties has opportunity to present evidence and witnesses and cross examine same. The parties filed post hearing briefs. The parties jointly submitted the following issue for determination:

Was the Grievant issued a written warning without just cause? If so, what shall the remedy be?

Relevant Collective Bargaining Provisions

Article Seven-Disciplinary Procedure

7.1 No employee covered by this agreement shall be discharged, reduced in rank, suspended or disciplined in any manner except for just cause.

7.2 Any action taken under Section 7.1 may be appealed through the grievance and arbitration procedures of this Agreement as to the existence of just cause and the appropriateness of the discipline applied.

7.3 Any action taken under 7.1 other than oral warning shall be stated in writing, giving the reasons for same, and a copy given to the employee and the Union at the time of such action.

...

7.5 The Chief Engineer may discipline upon a finding of just cause up to but not including discharge.

Article Thirteen-Grievance Procedure and Arbitration

13.5(a) If any grievance ... remains unsettled, it may be submitted to arbitration at the request of the Union to the Connecticut State Board of Mediation and Arbitration...

Findings of Fact

1. The grievant was hired as a firefighter in New Britain in 2007. He has no prior discipline.
2. Linda Guard (Guard) is the Human Resources Director for the city. She maintained a practice of meeting with firefighters and allowing them to review their promotional test scores with an aim for improvement. Prior to the city's 2020 Lieutenant promotional test administration, Guard met with the grievant and firefighter Andrew Czerepuszko to review the results of their 2018 oral panel examination. The grievant became argumentative during this meeting to the extent that firefighter Czerepuszko had to tell him to calm down. (Test. of Guard).
3. The grievant took the 2020 Lieutenant promotional examination and passed the written portion with a score of 76 but failed the oral panel component. He requested to meet with Guard to review his results, which she agreed to and scheduled sometime prior to March 11, 2021. Jerrell Hargraves (Hargraves), the city's Human Rights and Opportunities officer, also joined the meeting with Guard and the grievant. Hargraves is black. At this meeting the grievant was confrontational and dismissive of the oral panel results and commented that it was interesting that all black firefighters passed the oral exam. (Test. of Guard and Hargraves).
4. The grievant asked to meet with Guard a second time to review his oral examination test results. Guard granted the request but felt very uncomfortable meeting with the grievant again due to his past history. As a result, she requested that the city's corporation counsel also be present. The meeting was scheduled and held on March 11, 2021.
5. A week prior to March 11, 2021 Fire Chief Ortiz had heard that the grievant was making statements to others at work concerning the Chief's involvement in the oral examination process. The Chief is black. The Chief met with the grievant to discuss the matter. The grievant raised as a concern that the Chief knew one of the proctors who participated in the oral exam process; that all the proctors were from the Hartford Fire Department where the Chief used to work; and, the grievant made innuendo and a direct claim that the Chief had an agenda to ensure that only black firefighters were promoted in an argumentative and confrontational manner. The grievant stated "We all know your agenda Chief." (Test. of Chief).

6. The grievant was met on March 11, 2021 by Guard, Hargraves and Mary Pokorski, Associate City Attorney (Pokorski). The grievant secretly recorded the meeting. (City Exhibit 2 Union Exhibit 2).

The grievant was surprised to see that Pokorski was also attending the meeting. The grievant expressed that he was not happy with his oral examination results, that he wanted to know about the testing process, who selected the testing company. The grievant stated that the Chief knew the proctor at the written examination, to which Guard stated that that was normal. The grievant expressed issues with the Chief being in the building despite the fact that the Chief's office is in City Hall, where the testing took place.

The grievant further asked who picked the oral panel members, to which Guard explained that she consults with Chiefs and other department heads who know of individuals in their fields who are knowledgeable in the subject matter to staff the oral panel component. The grievant stated "Why was it all Hartford guys and not from other departments." (City Exhibit 2; Union Exhibit 2). Both Guard and Hargraves stated that not all oral panel members were from Hartford. The grievant stated "I believe it was all Hartford." Guard did explain that two panelists cancelled at the last minute and were replaced by members of the Hartford department, and the grievant responded "so the panel was all Hartford. (Id.).

The grievant then complained that some candidates were told to be brief and others were not. Hargraves explained that they had one half hour for answers and some were told to wrap their answer up. The grievant pointing his finger toward Hargraves in an aggressive manner that that wasn't fair. Pokorski asked the grievant to stop pointing his finger at Hargraves, and to stop being aggressive. The grievant stated that he was not being aggressive.

The grievant stated that no one was happy with the test results. Hargraves asked "so when you say no one is happy that is everyone who took the exam is that what you mean?" The grievant ignored Hargraves question. At which point Hargraves left the room, because the grievant was dismissive of him. (Test. of Hargraves; City Exhibit 2; Union Exhibit 2).

The grievant then stated "So the Chief can be involved and is involved quite a bit in the testing process?", to which Guard said no. The grievant stated "He picked the entire oral panel he's involved that's 50%." At that point Pokorski lost her temper and became loud and the meeting ended.

7. At the April 6, 2021 fact-finding meeting with the Chief concerning the grievant's behavior, the grievant and the union did not notify the Chief that the meeting on March 11th had been recorded. The Chief held a pre-disciplinary meeting on the grievant's behavior as conduct

unbecoming a city employee to hear from the grievant. The grievant and the union again failed to disclose the recording of the meeting. After the written warning was issued, the Union President Keough informed that Chief that the meeting had been recorded and that he should rescind the written warning or he would disclose the recording and embarrass city officials. The Chief requested and received the tape recording of the March 11 meeting pursuant to the Municipal Employee Relations Act. (Test. of Chief). The recording did not change the Chief's mind with respect to the written warning.

8. Guard testified that the grievant "was confrontational and has a habit of bullying me." As a result of the grievant's behavior, Guard no longer no longer meets with testing candidates to individually review test results "so this doesn't happen again." (Test. of Guard).

Arguments of the Employer

The city argues that the grievant's behavior cannot and should not be condoned. That his disparaging, confrontational, bullying and dismissive behavior is unacceptable conduct that requires discipline.

The city further argues that the fact that the grievant secretly recorded the March 11 meeting demonstrates that he did not ask for the meeting to in good faith review his test results, but rather in an attempt to gain any information possible to use against the participants. That this itself is conduct unbecoming a city employee.

Further, the union's failure to disclose the recording, and then do so after the discipline was issued was clearly an implicit threat.

Arguments of the Union

The union argues that the grievant was in his right to request a review of his test results, and that he was ambushed at the March 11 meeting by the attendance of the city attorney. That he was intimidated. And that it was not the grievant who became loud and confrontational, but rather he remained calm. It was the city attorney who lost her temper and became loud and confrontational.

The union argues that several of Daugherty's seven tests for just cause were not met here. These include the failure of the city to put the grievant on notice that inquiring about his test

results could result in discipline and the failure of the investigation to be fair because of preexisting prejudice against him. The inclusion of the city attorney in the meeting was a variation of normal process.

Further, the union argues that there is no substantial evidence that the grievant was disrespectful, intimidating or bullying during the March 11 meeting. In fact, the opposite is true; the city attorney herself was bullying and disrespectful. Therefore, the penalty was without just cause for this firefighter without a blemish on his record.

Discussion

The city has the burden to demonstrate by a preponderance of the evidence that it had just cause to issue the grievant a written warning. It amply carried that burden.

The Human Resource Director testified credibly that the grievant had a history of intimidating and bullying her, as he did in the prior meeting prompting another firefighter to admonish him. This behavior was exemplified by the grievant's refusal to accept simple facts such as not all the oral exam panel members were from Hartford. His insistence on the false opposite demonstrates a form of bullying that's unacceptable. A sad result of the grievant's behavior is the Director's justified determination to cease meeting with firefighters with test results to coach and educate them on possible improvements they may make.

Yes, the city attorney did get loud and lose her temper but that was entirely understandable given the grievant's insistence on false facts and blatant innuendo on conspiracy theories.

So the grievant's behavior in the March 11th meeting provided just cause for a written warning. However, more deeply troubling underlying his behavior is his willingness to spew unmasked racial disharmony in the department and directly to the Chief. To openly say such things as "we all know your agenda Chief", with clear innuendo and actual statement that the Chief unlawfully conducted himself with racial animus, without a scintilla of actual evidence of such animus, is despicable and totally unacceptable conduct. To recklessly attempt to smear the Chief's reputation and undermine his authority does great disservice to the Chief personally, to the department as a whole, and to the city. The community looks to professional firefighters with respect and esteem. The grievant's behavior, bourn of his own failures, deserve neither. His dismissive disrespect of Hargraves further discloses his own racial animus.

The grievant's confrontational and unsavory conduct can also be seen in his secret recording of the March 11 meeting. His and the union leadership's failure to disclose the existence

of the tape to the Chief in the pre-disciplinary meetings was dishonest and unbecoming uniformed officers. The union leadership's attempt to use the recording as leverage after the discipline was issued was worse.

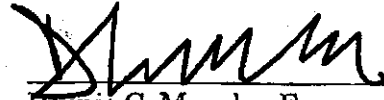
Should an employee truly believe that a racial pattern of discrimination exist, and have evidence demonstrating such, there are legitimate processes to pursue. Based upon the evidence before this Panel, that is clearly not the case here. All of the union's arguments have been considered and found unpersuasive.

AWARD

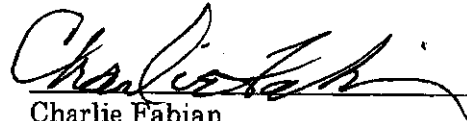
The Grievant was issued a written warning for just cause.

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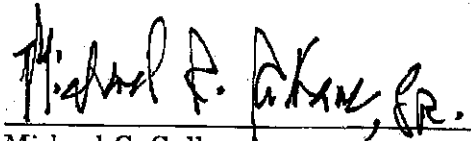
By the Panel



Dennis C. Murphy, Esq.
Chair and Public Member



Charlie Fabian
Labor Member



Michael C. Culhane
Management Member