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

ARBITRATION AWARD

In the Matter Of:	:	Case No. 2022-A-0027
CITY OF NEW HAVEN	:	DATE OF AWARD: February 7, 2024
And	:	Hearing Dates: **2022** January 18, March 14, December 13 **2023** February 14, March 16, July 6, July 27 and August 8
UNITED PUBLIC SERVICE EMPLOYEES UNION, LOCAL 424, UNIT 34	:	
Grievant: Henry Bell	:	38 Wolcott Hill Road Wethersfield, CT 06109

APPEARANCES: Christopher R. Henderson, Attorney at Law (For the City)
John M. Walsh, Jr., Attorney at Law (For the Union)

I. ISSUE: (Agreed to by the Parties)

Did the City of New Haven have just cause to terminate the employment of Mr. Henry Bell?

If not, what shall be the remedy consistent with the collective bargaining agreement?

II. BACKGROUND:

The United Public Service Employees Union, Local 427, Unit 34 (hereinafter referred to as the "Union" or "UPSEU") filed a grievance on behalf of its member Henry Bell (hereinafter referred to as "Mr. Bell" or the "Grievant"). The Union claimed that the

City of New Haven (hereinafter referred to as the "City") did not have just cause when it terminated Mr. Bell. The grievance was filed for arbitration with the Connecticut State Board of Mediation and Arbitration.

Hearings were scheduled on several days but were cancelled or postponed primarily due to the pendency of criminal charges. Arbitration hearings on the merits were held on July 27 and August 8, of 2023 at which both parties were provided an opportunity to present evidence, provide testimony and cross examine witnesses.

On December 7, the City filed a Motion to Reopen the Hearing and a Request for Postponement of the Submission of Post Hearing Briefs. On December 12, the Union filed an Object to the City's Motion. The Panel met on December 18 via ZOOM to consider the City's Motion and the Union's Objection. The Panel denied the City's Motion to Reopen the Hearing and notified the Parties of its decision on December 18. The Request to Postpone the filing of Briefs was granted. Thereafter, the parties agreed to file Briefs by December 28 and Reply Briefs by January 12, 2024. The Panel received both Briefs and Reply Briefs in accordance with the agreed upon rescheduled dates. The Panel held an Executive Session on January 16 via ZOOM.

The parties have complied with the grievance and arbitration provisions of the collective bargaining agreement. This grievance is properly before the Connecticut State Board of Mediation and Arbitration.

III. STATEMENT OF FACTS:

Mr. Bell was hired as a seasonal worker for the City in 2015 and became a full-time employee on February 20, 2016. He was employed in the Sanitation Department as a Refuse Laborer.

In late 2018, Mr. Eric Salters (hereinafter referred to as "Mr. Salters") had been employed by the City in the Sanitation Department for approximately twenty (20) years as a Refuse Driver. Prior to late 2018, the Grievant and Mr. Salters had what Mr. Salters described as a good relationship.

On or about December 21, 2018, Mr. Bell was working with Mr. Salters. Mr. Bell asked Mr. Salters who were the best Refuse Laborers. Mr. Salters named employees other than Mr. Bell, a response which did not please Mr. Bell. Mr. Salters testified that Mr. Bell reminded Mr. Salters of his prior violent altercations, including arrests and convictions; indicating that Mr. Bell would "fuck you up." Mr. Salters testified that Mr. Bell repeated similar statements at least five (5) times which Mr. Salters felt were threats. Mr. Salters testified that there were other incidents where it was clear that Mr. Bell was still very upset about being excluded from Mr. Salters ranking of Mr. Bell among the best Refuse Laborers.

On December 26, 2018, another employee, Willie Telford (hereinafter referred to as "Mr. Telford") invited both Mr. Bell and Mr. Salters to his home after work. Mr. Salters and Mr. Telford rode together in Mr. Salters' car and Mr. Bell arrived separately in his own vehicle.

It is at this point that Mr. Salters and Mr. Bell's description of what occurred diverges significantly.

Mr. Bell indicated that while backing up his car into Mr. Telford's driveway, he almost his Mr. Salters' vehicle. According to Mr. Bell, Mr. Salters exited his vehicle and started yelling at Mr. Bell. They engaged in a "war of words" and Mr. Salters returned to his vehicle. Mr. Bell stated that he knew Mr. Salters had guns so he left Mr. Telford's house concerned he would be shot.

Mr. Salters, on the other hand, testified that Mr. Bell came up to him and said "N.. ger don't you ever talk shit to me." At this point, Mr. Salters saw that Mr. Bell had a gun in his hand. Mr. Salters stated that he "went into prayer mode" and then Mr. Bell "hit me upside the head with the butt of the pistol and a round went off." Mr. Bell then left. Mr. Salters called 911 and described what had occurred.

The police arrived and took statements from Mr. Telford, Mr. Rawls (another coworker who had arrived shortly after the altercation) and two construction workers who were working on the roof of the neighboring house. The construction workers indicated they heard a "pop, that sounded like a gunshot." Mr. Salters was transported to the hospital and treated for a contusion to the left side of his head.

The Grievant was arrested and charged with the following crimes:

1. Assault in the 2nd Degree (Class D Felony)
2. Criminal possession of a firearm (Class C Felony)
3. Threatening in the 1st Degree (Class D Felony)
4. Carrying a pistol without a permit (Class D Felony)
5. Illegal discharge of a firearm (Class C Misdemeanor)
6. Reckless endangerment in the 1st Degree (Class A Misdemeanor)
7. Breach of Peace in the 2nd Degree (Class B Misdemeanor)

III. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE 10 - Arbitration

Section 1

In order to be considered, a request by the Union for arbitration must be received by the Director of Labor Relations or his representative within ten (10) calendar days from the date of decision at Step 3 of the grievance procedure. Grievances not appealed within this time shall be considered as resolved.

Section 2

Request for arbitration must be in writing and contain the following items: (1) Signed approval to arbitrate of the individual employee(s) involved; (2) The section(s) believed violated; (3) The relief sought; and (4) A statement of the Union's position. In order that both parties may be fully prepared should a case go to arbitration, it is agreed that neither party may amend references to the Article and/or Sections believed violated after receipt by the Director of Labor Relations of the letter requesting arbitration.

Section 3

Within ten (10) working days from the date of receipt of the arbitration request, either party concerned may write and request the use of the Connecticut Mediation and Arbitration Service unless both parties agree to use the American Arbitration Association.

Section 4

In addition to the above, by mutual agreement the parties may elect to use the expedited arbitration procedures, in accordance with the rules and regulations of the Connecticut Board of Mediation and Arbitration, for any grievances involving disciplinary actions of less than a five (5) day suspension without pay and/or any grievances concerning the interpretation and application of routine contractual issues and provisions.

Section 5

The Arbitrator's fee and expenses shall be borne equally by the parties to this Agreement. The Employer and the Union shall also share equally the expenses of any and all mutually agreed-upon services concerned desirable or necessary in connection with the proceedings.

Section 6

The Arbitrator(s) selected in accordance with the procedure described in Section 3 of this Article shall conduct a hearing at which the facts and arguments relating to the dispute shall be heard. It is contemplated that the City and the Union shall mutually agree in writing as to the statement of the matter to be arbitrated prior to any hearing and if this is done, the Arbitrator shall confine his decision to the particular matter that was specified; in the event of failure of the parties to so agree on a statement of issue to be submitted, the Arbitrator shall confine his consideration to the written statement of the grievance presented in Step 2 of the grievance procedure. The Arbitrator(s) jurisdiction to make an award shall be limited by the submission and confined to the interpretation or application of the provisions of this Agreement. The Arbitrator(s) shall not have jurisdiction to make an award which has the effect of amending, altering, enlarging, or ignoring the provisions of the Agreement in effect at the time of the occurrence of the grievance being arbitrated, nor shall the Arbitrator have jurisdiction to determine that the parties have amended or supplemented the Agreement unless that is agreed to as part of the issue to be arbitrated. The Arbitrator shall have no authority to consider or rule upon any matter which is stated in this Agreement not to be subject to arbitration, which is not a grievance as defined in Article 8 above, or which is within the City's or Management's discretion or control, or which is not specifically covered by this Agreement.

The Arbitrator may not issue declaratory or advisory opinions and shall confine himself exclusively to the question which is presented to him, which question must be actual and existing.

In the event either party feels that the Arbitrator has exceeded his jurisdiction, the issue of whether or not jurisdiction has in fact been exceeded may be appealed to any court of competent jurisdiction for the interpretation and decision.

ARTICLE 18- Discipline

Section 1

Divisional Heads of the Department shall exercise full disciplinary authority consistent with their own oaths of office and their responsibilities to direct employees to perform the required work duties in order to achieve departmental program goals and satisfactory municipal services to the general public.

Section 2

All disciplinary actions shall be applied in a fair and just manner and shall be subject to the principles of progressive discipline.

Section 3

Normally, unless otherwise provided in this Agreement, (a) a verbal warning, (b) a written warning, (c) suspension without pay and (d) discharge and shall ordinarily follow this order.

Section 4

All disciplinary action may be appealed through the established grievance procedure.

Section 5

(a) All verbal warnings, suspensions and discharges must be stated in writing and a copy given to the Union and the employee.

(b) Permanent employees shall only be discharged for just cause.

Section 6

(a) All verbal warnings and written warnings shall be removed from an employee's record after a period of 2 years if there has been no reoccurrence of the infraction and the employee has a good work record. All other disciplinary records (i.e., suspensions, loss of bidding rights, reduction in grade) shall be removed from an employees work record after three (3) years if there has been no reoccurrence of the infraction and the employee has a good work record. (

b) Once an employee has satisfied the prerequisites of (a) above, the Employer agrees that it will never bring the warnings or suspensions up again.

Section 7

Employees who are discharged during the probationary period shall not have recourse to appeal said discharge to arbitration under Article 10 of this Agreement.

ARTICLE 22 — Refuse Collection Incentive and Workweek

Section 1

The workweek for employees in the Refuse Division is defined as Monday through Friday, inclusive, eight (8) hours each day.

Section 2

Employees in the Refuse Division shall be paid eight (8) hours at their current hourly rate for each day worked (Monday through Friday

inclusive) irrespective of the hours needed to complete their routes, with the exception that any hours worked in any one day beyond eight (8) hours (Monday through Friday inclusive) exclusive of holidays, shall be compensated at time and one-half (1-1/2) their current hourly rate.

All refuse collection, recycling and yard waste collection routes shall be picked up on the day that they are scheduled to be collected.

Section 8

All laborers and truck drivers shall report to the garage at the start of the work day before going out on their routes and report back to the garage after they complete their routes before going home.

Section 18

The refuse collection crews shall pick up all yard waste in proper containers or in bundles. This shall include the separate pick up of all recyclables. The yard waste shall be collected separately from all other refuse, that is, yard waste shall not be mixed with the refuse in the refuse truck. Unless directed otherwise by the Director of Public Works, the refuse crews shall complete the refuse collection route scheduled on a day, empty the refuse from the truck, clean out the packer section, and return to their route to pick up the yard waste. The yard waste shall be dumped at a location determined by the Department.

V. DISCUSSION

Mr. Bell was terminated for violating the City's Workplace Violence Policy, the City's Code of Ethics and Public Policy (City Ex. 2)

The City's Workplace Violence Policy states that the City has a "Zero tolerance for acts of violence in the workplace by or among its employees. This policy is inclusive of acts and/or threats of violence, including intimidation, by and to employees . . ." (City Ex. 21)

> Violence in the Workplace: Any comment or behavior that would be interpreted by a reasonable person as indicating the potential of physical violence toward people or property. Some examples include:
>
> a) Physical assault, threat to assault, or stalking an employee or customer.
>
> b) Possessing or threatening with a lethal weapon, vandalism or arson

Section 12 5/8-4 (c) of the City's Code of Ethics provides: Public officials and municipal employees shall refrain from abusive conduct [toward] . . . other public officials or municipal employees or members of the public." (City Ex. 22)

Not unlike most other collective bargaining agreements, this collective bargaining agreement does not define "just cause". Just cause is typically defined as: "A reason that is legally acceptable or sufficient" and whether the employer was guided by reasonableness and fairness. In its simplest form, there must be satisfactory proof that the employee engaged in the act upon which the discipline is based. "Just cause" is one which is not for any arbitrary, capricious, or illegal reasons and which is one based on

facts. For example, if the proof is insufficient that the employee committed a violation, discipline cannot stand. If the evidence is sufficient to demonstrate that the employee is 'guilty' of the conduct alleged, then the next question, generally speaking, relates to whether the penalty is for just cause."

The Union in its brief utilizes the Black's Law Dictionary definition of "just cause" of: "A cause outside legal cause, which must be based on reasonable grounds [and] there must be a fair and honest cause or reason regulated by good faith. Fair, adequate, reasonable cause. Legitimate cause." Black's Law Dictionary, 775 (5th ed. 1979). Black's Law Dictionary has since combined "just cause" with "good cause" having found that courts have generally determine that the terms are synonymous. The 2016 edition of Black's Law Dictionary no longer defines "just cause". In any event, the employer must have a reasonable ground for discipline which is also fair. The Connecticut Supreme Court has articulated and adopted this standard.

In determining whether just cause exists, many arbitrators utilize the Seven Elements of Just Cause first outlined by Arbitrator Carol Daugherty in ***Enterprise Wire Co.,*** 46 LA 359 (1966). Under a traditional view, if any of the questions proffered under the *Daughtery* test is answered in the negative, then just cause does not exist. Today, this formulaic analysis of the Test has been rejected by many arbitrators.

The Panel is not constrained by the *Daugherty* test and rejects its formulaic application. However, that does not negate the *Daughtery* test as it can be helpful in determining whether just cause exists. The Union addressed some of the elements of the

Daugherty test in its Brief. The Panel will briefly review the most salient of the Union's claims under the *Daughtery* test.

1. **Was the employee warned of the consequences of his conduct?** Mr. Bell was given a copy of both the City's Workplace Violence Policy and the City's Code of Ethics when he was first employed. He acknowledged in his interview that he was aware of the contents of both.

The Union's best argument regarding the failure of the City to prove a "knowing" violation of either the Policy or the Code of Ethics is that the assault by Mr. Bell on Mr. Salters occurred outside the workplace and, therefore, it is not prohibited under the Policy. However, the conflict between Mr. Bell and Mr. Salter began on or about December 21, 2018 **at work**. It continued to escalate thereafter, and Mr. Bell continued to become more and more aggressive and his behaviors more threatening toward Mr. Salters **at work**. Mr. Bell's conduct escalated to violence on December 26, 2018 following taunting of Mr. Salters that very day, **at work**. Even before the incident on December 26, Mr. Bell violated both the Policy and the Code of Ethics. The nexus between Mr. Bell's conduct at work prior to December 26 and his conduct on that day has been clearly demonstrated.

While there may not have a specific warning that there would be consequences for assaulting a fellow employee even not at the workplace, clearly Mr. Bell would have known there would be consequences both at work and criminally.

2. Did the employer investigate before administering the discipline? There was a significant delay between the date of the incident, December 26, 2018 and the date Mr. Bell was terminated, July 1, 2021. Mr. Bell had been arrested for the articulated charges the day after the incident. Mr. Bell was on paid administrative leave from December 27, 2018 until July 1, 2021. The City conducted a thorough investigation, interviewing witnesses, and reviewing all available evidence which concluded in 2021. While it could be claimed that some of the delay was due to COVID, the outbreak did not begin in earnest until February **2020** at the earliest. While two and one-half years is an extraordinary amount of time for an individual to be paid based upon the involved conduct, it does not impact the fact that a thorough investigation took place prior to the imposition of discipline.

3. Did the investigation produce substantial evidence or proof that the employee was guilty as charged? The answer to this question is an unquestioned yes. Mr. Bell denied the accusations, while Mr. Salters was unwavering in his account of the events on the date they occurred, throughout the investigation, including his testimony at the hearing. Mr. Bell did not testify at the hearing. Therefore, the Panel was unable to assess his credibility and he was not subject to cross-examination. The Panel has the unrebutted testimony of Mr. Salters on which to rely.

4. Was the discipline imposed reasonably related to the conduct at issue? The Union states in its Brief that: "Discharge is recognized as the most extreme industrial penalty not only because an employee's job, seniority, other contractual benefits and reputation are at stake, but also for its long term effect on future employment

opportunities." As the Union points out, termination of employment is often referred to as the "equivalent of economic capital punishment."

The Union also claims that there was a significant delay between the date of the incident (December 26, 2018) and the date Mr. Salters filed a Workplace Violence Complaint (January 10, 2019). (City Ex. 15) The Panel would note that Mr. Salters was out of work from December 27, 2018 until July 15, 2019. In addition to the physical injuries he suffered at the hands of Mr. Bell, Mr. Salters was diagnosed with a number of significant mental health issues, including post-traumatic stress disorder due to the altercation with Mr. Bell.

Mr. Salters had no reason to fabricate his version of the escalating threats of Mr. Bell toward him which began at the workplace on or about December 21, 2018. Further Mr. Salters had no reason to fabricate the December 26th violent assault by Mr. Bell. There was credible and uncontroverted evidence that Mr. Salters experienced significant injury due to Mr. Bell's assault which required treatment. The assault also caused Mr. Salters to be out of work for over six (6) months.

VI. AWARD

For the reasons set forth herein, a majority of the Panel finds that the City had just cause to terminate the employment of the Grievant, Henry Bell.

BY THE ARBITRATION PANEL:

/s/ *Linda J. Yelmini*
Linda J. Yelmini (Public Arbitrator & Chairperson)

/s/ *Jeffrey Scanlon*
Jeffrey Scanlon (Labor Arbitrator) DISSENTING

/s/ *Kenneth Baldyga*
Kenneth Baldyga (Management Arbitrator)