

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

ARBITRATION AWARD

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| In the Matter Of: | : | Case No. 2022-A-0062 |
| CITY OF NORWICH | : | Date of Award: June 28 th , 2023 |
| And | : | Hearing Date: March 21, 2023 |
| AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, LOCAL 818-042 | : | |

APPEARANCES: Kenneth R. Plumb, Attorney at Law (For the City)
Anthony J. Bento, Attorney at Law (For the Union)

I. ISSUE: (AGREED TO BY THE PARTIES)

Did the City of Norwich violate the Collective Bargaining Agreement between the City and AFSCME Council 4, Local 818-042, dated July 1, 2019 – June 30, 2024 when it failed to promote the Grievant, John Johnson, to the position of Public Works Superintendent in 2021?

If so, what shall the remedy be?

II. BACKGROUND:

The American Federation of State, County and Municipal Employees, AFL-CIO, Council 4, Local 818-042 (hereinafter referred to as the “Union”) filed a grievance asserting that the City of Norwich (hereinafter referred to as the “City”) violated Article 4

and all other relevant Articles of the Collective Bargaining Agreement (hereinafter referred to as the "CBA"). The claimed violation was based upon the failure of the City to promote the Grievant, John Johnson (hereinafter referred to as the "Grievant" or "Mr. Johnson") to the position of Public Works Superintendent for the City.

The grievance was denied during the prior steps of the grievance procedure. On March 21, 2023, an arbitration hearing was held via ZOOM. The Grievant testified and was cross examined. The City called three (3) witnesses, all of whom testified and were subject to cross examination. The parties each filed a Brief with the Panel on April 21, as agreed. The City filed a Reply Brief on May 5. The Union did not file a Reply Brief. The Panel held an Executive Session on May 17, 2023 via ZOOM.

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

III. STATEMENT OF FACTS:

The Grievant has been employed by the City for approximately thirty-three (33) years. He has held positions of increasing responsibility: Equipment Operator, Crew Leader, Road Foreman and Facilities and Grounds Manager. Mr. Johnson applied for the promotion to the position of Public Works Superintendent three times. The first two times he applied, the position was awarded to the individual with the most seniority. The last time the Grievant applied for the promotion was in 2021 and he was the most senior applicant for the position. The Grievant was not awarded the promotion which is the subject of this grievance.

The position of Public Works Superintendent was posted in May of 2021. Several internal and external candidates applied for the position. Brigid Marks, Director of Human Resources (hereinafter referred to as "Ms. Marks") testified that seven (7) individuals were deemed qualified for the position and offered the opportunity to participate in the oral board process. Six (6) individuals participated in the oral board process as one of the individuals did not respond to the offer. (Jt. Ex. 7)

Following the oral board process, three (3) individuals received a score of 70 or greater: the Grievant, Roy Predmore and David Jackson, all of whom were internal candidates. The three (3) individuals were placed on the Certification For Appointment (Jt. Ex. 12) which was supplied to Director of Public Works, Patrick McLaughlin (hereinafter referred to as "Mr. McLaughlin").

Mr. McLaughlin appointed an interview panel consisting of himself, the former Public Works Director, and the current City Engineer. The same questions were asked of Messrs. Johnson, Predmore and Jackson. The scoring sheets of each of the three (3) members of the interview panel were introduced as Joint Exhibits 8, 9 and 10. All three (3) members of the interview panel scored Mr. Predmore the highest following the interviews. As the appointing authority, Mr. McLaughlin appointed Mr. Predmore to the position of Public Works Superintendent. Mr. Predmore had approximately seven (7) years of service at the time of his promotion to the position.

IV. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT (Joint Ex. 1):

ARTICLE 4 – MERIT SYSTEM

Chapter XIV of the Charter of the City of Norwich and the Merit System Rules promulgated in accordance with said Chapter, adopted by the Personnel and Pension Board of the City of Norwich on April 23, 1953, as amended, shall control all matters between members of the Union and the City, except as the terms of this Agreement shall expressly conflict with the terms of said Chapter XIV of the Charter or said Merit System Rules, in which case the terms of this Agreement shall be binding and control.

ARTICLE 15 – GRIEVANCE PROCEDURE

Section 1. For the purposes of this Agreement, a grievance shall be defined as the allegation of a misapplication or misinterpretation of a specific term of this Agreement, or a suspension, dismissal or other departmental disciplinary action excluding oral or written reprimands or warnings.

Section 2. Notice of disciplinary action, other than an oral reprimand or warning, shall be given to the employee in writing. Copies of all required notices of disciplinary action and appeals shall be transmitted to the employee and to the Union, and shall be placed in the employee's personnel file.

Section 3. The aggrieved employee may be accompanied by another member of the Union at any step of the grievance procedure.

Section 4. Grievances shall be processed in the following manner:

STEP 1. The grievance shall be presented by the aforesaid employee, in writing, to the immediate supervisor within five (5) working days of the event giving rise to the grievance. The immediate supervisor shall meet with the employee within five (5) working days of receiving the grievance. (In the event that the immediate supervisor is the Department Head, the grievance shall be presented by the aggrieved employee in writing to the Department Head within five (5) working days of the event giving rise to the grievance and the same shall be processed in accordance with Step 2.) Said grievance shall state the details giving rise to the grievance, the section(s) of the Agreement alleged to have been violated, and the remedy sought.

STEP 2. If no satisfactory settlement is reached in Step 1, the written grievance shall be presented by the aggrieved employee within five (5) working days to the Department Head for further action. The Department Head shall have ten (10) working days to respond.

STEP 3. If no satisfactory settlement is reached in Step 2, the written grievance shall be submitted by the aggrieved employee within five (5) working days after the decision of the Department Head to the Human Resources Director. The Human Resources Director will make an effort to resolve the grievance and shall render an answer within ten (10) working days of its receipt.

STEP 4. In the event the grievance is not settled in Step 3 above in a manner satisfactory to both parties, then either the Union or the City has the right and authority, within ten (10) working days thereafter, to submit it to the Connecticut State Board of Mediation and Arbitration to arbitrate such dispute or grievance in accordance with its rules. The decision of the Board shall not add to, subtract from, or otherwise amend the Collective Bargaining Agreement between the City and the Union.

Section 5. Any time limit specified in the Article, except for the initial filing of a grievance, may be extended by a mutual agreement of the Union and the City, provided that if a grievance is not submitted by the Union to a higher step in the above procedure within the specified time limit, it shall be deemed settled on the basis of the answer rendered at the last step considered.

Section 6. When a decision is not rendered by the City at any step with the time limits specified in the grievance procedure, the employee shall assume that no satisfactory settlement can be reached and may proceed with the next step of the grievance procedure, provided he/she does so within the specified time limits enumerated in Section 4 of this Article. Failure of the City to act at any step in the grievance procedure shall be construed as though the City rejected said grievance.

ARTICLE 18 – MANAGEMENT RIGHTS

Section 1. The Union recognizes that, subject to the terms of this Agreement, the City has rights, powers, and authority to manage its own operations. These rights include, but are not limited to:

- a. Establishing standards for productivity, determining the objectives of municipal departments, determining the

methods and means of fulfilling those objectives including selecting, increasing and decreasing the staff through hiring, promotion, assignment, transfer, discharge and layoff;

- b. Maintaining discipline and efficiency of employees;
- c. Establishing and changing protection standards and quality standards;
- d. Determining the need for removing, replacing and purchasing new equipment;
- e. Determining the needs for purchasing or contracting for products and services from outside sources;
- f. Introducing new and improved methods or improve old methods of operation;
- g. Determine the need to add, alter, or discontinue services and programs;
- h. Taking any necessary action to fulfill its objectives in emergencies; and
- i. Fulfilling all of its legal responsibilities

Section 2. The City's failure to exercise any right in a particular way shall not be deemed a waiver of any right or preclude the City from exercising the same in some other way not in conflict with the provisions of this Agreement.

V. DISCUSSION:

There are few, if any, factual disputes in this case. At the time the promotional opportunity to Public Works Supervisor, Mr. Johnson had thirty-three (33) years of service and Mr. Predmore had seven (7) years of service.

The Union bears the burden of proof in this case and makes two (2) arguments. One: The City's Merit System Rules were violated and therefore the CBA has been violated. This is based upon Ms. Marks' testimony that seniority played no role in the promotional process. As the Union correctly points out, the Merit System Rules provide that: "Applicants for promotional tests will receive credit for their service with the City". [Jt. Ex. 2, Rule VI, § E (1), pg. 15]

A formula is contained in the Rules on how credit for service with the City is to be credited to determine whether the applicant obtains the score of 70 in order to qualify to participate in the promotional process. This is not the question presented here. Mr. Johnson qualified to be included in the promotional process based upon his application. His experience was considered, and he was deemed qualified for the promotional process by obtaining a score of 70 or above. There is nothing in the Merit System Rules or the CBA which provides that seniority is to be considered in the selection of the individual for promotion. The Union's argument, while appropriate in other situations, is inapplicable here.

Two: The second argument of the Union is that Mr. Predmore did not meet the minimum qualifications of the position of Public Works Superintendent. The Job

Announcement (Jt. Ex. 3) provided that in order to qualify for the position, an applicant must have:

“A high school diploma, or the equivalent, supplemented by at least two years of college level courses in technical civil engineering or construction technology, plus seven years of increasingly responsible experience in highway construction and maintenance services, including at least three years in a supervisory capacity, or an equivalent combination of education and qualifying experience.”

The Union’s argument that Mr. Predmore did not meet the minimum qualifications of the job is based upon the fact that he had only been with the City of Norwich for seven (7) years and only three (3) of those years were as a Crew Leader. This argument does not recognize the fact that Mr. Predmore was employed for the last five (5) years of his employment with Mohegan Sun Casino as a Crew Leader of eight (8) individuals and during snow removal events he was the Crew Leader of over twenty-five (25) individuals. Additionally, the Union’s argument does not recognize the language “or an equivalent combination of education and qualifying experience”. Ms. Marks determined that Mr. Predmore was therefore qualified for the position of Public Works Superintendent under the language of the Job Announcement.

The hurdle that the Union could not overcome is the language of the CBA and the Merit System Rules. The City has the contractual authority to appoint any of the individuals from the Certification List for a position. If there were a person on the list who was an external candidate with no service with the City of Norwich, the City could have appointed him/her to that position. While the City had, on at least two (2) earlier occasions, appointed individuals with the most seniority to the position of Public Works

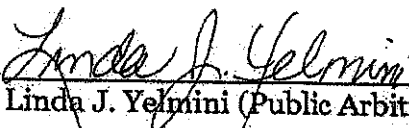
Superintendent, there is no requirement or contractual violation if they chose not to do so in the future.

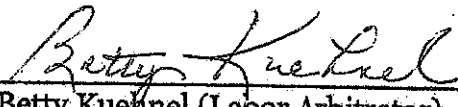
Certainly Mr. Johnson was disappointed when he was not awarded the position of Public Works Superintendent. However, during his testimony Mr. Johnson admitted that there was no requirement either under the CBA or the Merit System Rules that the senior employee be awarded a promotion. He testified, however, that because he was the most senior, he should have been promoted. The Panel is required to interpret the language of the CBA to determine if there has been a contract violation. Despite the Union's arguments, it was unable to meet its burden of proof that there was a contractual violation.

VI. AWARD:

For the reasons set forth herein, the Panel unanimously finds that the City of Norwich did not violate its Collective Bargaining Agreement.

BY THE ARBITRATION PANEL:


Linda J. Yelmini (Public Arbitrator & Chairperson) 5/29/2023


Betty Kuehnel (Labor Arbitrator)


Michael C. Culhane, Sr. (Management Arbitrator)