

STATE OF CONNECTICUT, LABOR DEPARTMENT
BOARD OF MEDIATION AND ARBITRATION

City of Shelton

Case No. 2021-A-0014

And

Date of Award: March 17, 2022

Shelton Police Union

Hearings held via Zoom on:

September 22, 2021

November 3, 2021

November 19, 2021

Mark J. Sommaruga, Esq., for the City

Barbara Resnick, Esq., for the Union

ISSUE

Did the City violate Article 24 of the collective bargaining agreement between the City and the Shelton Police Union when the City issued a warning to Lt. Moore on June 2, 2020?

If so, what shall the remedy be?

BACKGROUND

Friday, May 29, 2020

Early in the Pandemic, a Special Order was distributed to the Police Department outlining "...building usage, including restroom availability for officers, and restroom options that were available for officers. The options included in the ""Read and Sign"" book: 1) Portable toilets in the PD parking lot, 2) restrooms were available in the PD only if the officer was there for specific police related matter, 3) Supervisors had keys to the Farmers Market." Although not contained in the Special Order, Lt. Yerzak did say that officers could use the facilities at their homes if they notified their supervisor in advance.

Friday, May 29, 2020

At the 8 a.m. roll call Lt. Yerzak "...advised all officers present of the new "Read and Sign" book..." which now contained the aforementioned Special Order on restroom availability. Lt. Moore (Grievant) had questions on the Special Orders, specifically requesting that Lt. Yerzak's oral announcement about home bathroom use be included in the book. Lt. Yerzak agreed to speak with the Chief about including it in the "Read and Sign" book.

May 29, 2020

Lt. Yerzak made the same presentation on bathroom availability to the evening roll call including the "Read and Sign" book requirement.

May 29, 2020, 3:42

Lt. Yerzak and Chief Sequeria read the Grievant's Daily Shift Report and found that it did not contain the specific instructions given by Lt. Yerzak on the new "Read and Sign" requirement.

May 29, 2020, just before the end (4:00p.m.) of the shift

The Chief sent a memo to the Grievant which said in part, "Please document in today's daily shift report what Lt. Yerzak discussed in detail regarding the "Read and Sign" book and the special order discussed at roll call."

Shortly after writing the Grievant, the Chief met him in the roll call room and verbally requested that the Grievant update the document as both his email and text requested.

May 29, 2020, 5:36 PM

The Chief texted the Grievant, "*Dave, did you update the daily shift report as I instructed?*"

May 29, 2020, 7:01 PM

The Grievant responded: "*Chief, sorry about the delayed response but I'm dealing with some personal matters. I sent a text message to Lt. Yerzak requesting he forward to me any additions he thought were missing from my daily shift report as it related to roll call this morning. I thought I had summarized what he discussed but certainly if there are any additions, I will add them in the morning. I won't be terribly available for the rest of the night but if there is anything specific you want me to add to the DSR please let me know.*"

May 29, 2020, 9:23 PM

The Chief responded "*Ok. You can just add it into your Monday DSR. Please link up with Brian to make sure all that is required is in it. Thanks.*"

Monday, June 1, 2020

The missing information was added to the DSR by the Grievant.

Tuesday, June 2, 2020

The Chief issued a written warning to the Grievant saying that he was empathetic to the personal matter and saw it as a reasonable excuse but then discussed the importance of communication within a police department and the requirement that "...you comply with all lawful requests..." he concluded this portion of the note saying "Thank you for your anticipated cooperation moving forward."

The note continued, "*This written memorandum shall serve as official written warning for insubordination in compliance with SPD's Rules and Regulations (12 members and employees of the department shall promptly obey any lawful order emanating from any superior officer) and also documented in Policy Manual-Obedience to Orders (010706). I am directing you to immediately comply with the above standards and I will continue to monitor your compliance.*"

(City Brief, pgs.7-8)

City's Position

The City is confident that the steps taken against the Grievant were done in a manner that enforces the current policies and rules of the PD, supports the maintenance of an appropriate level of supervision and reminds everyone that obedience to the chain of command and lawful orders from such, must be complied with immediately.

Not investigating or conducting a Loudermill before discipline was seen as unnecessary since the Chief, who administered the discipline, was present at the conclusion of the shift and that "...there is no legal or constitutional requirement for a public employee to have a Loudermill pre-disciplinary conference where the discipline amounts only to a written reprimand. The courts have found that the mere issuance of written reprimands does not trigger the protections of due process (or the resulting need for a Loudermill hearing.)" (City, Brief, p. 11)

The City's argument continues that even employing "...the more-employee friendly seven step standard for assessing the existence of "just cause" ...the Grievant's claims still emerge as insufficient." (City Brief, pg. 10)

Union's Position

The Union alleges the discipline was dispensed without due process and just cause focusing on him not being given the opportunity to respond to the charges by relaying his side of the story, a basic right contained within the Shelton Police Department's rules.

"An employee who is subject to a complaint shall be notified in writing within 5 business days of such complaint (1) the fact that a complaint has been made; (2) the identity of the complainant, if known; (3) the substance of the complaint; (4) the law or policy that is alleged to have been violated, and (5) the date upon which the investigation is expected to be completed." (Union Exhibit 1 p. 6)

The Shelton Police Department, under Chief Sequeira, refined their Discipline System Policy which requires the Chief to investigate before discipline can be administered; "Just Cause" means that before discipline can be imposed there is a reason for the disciplinary action to be taken, which is neither arbitrary nor capricious, but is supported by a thorough and accurate investigation." (Union Exhibit 2, page 1) On page 5 of the same document, section 5A the employee also is guaranteed the right to a Loudermill hearing within thirty days of the recommended discipline is to be imposed. The Union contends that neither happened.

The Union also raised the issue of desperate treatment by comparing the Daily Shift Reports of the other Lts. to the Grievant's during the same time frame; none contained the information for which the Grievant was disciplined. The Union asks, why would this occur?

DISCUSSION

The following are not in dispute:

1. The desired material on available sanitary facilities and the new policy on the ““Read and Sign” book was not in the Daily Report of the Grievant on the evening of May 29, 2020.
2. The missing data was pointed out by the Chief in a discussion with the Grievant in the “ready room.”
3. The Chief sent the same message about the missing information to the Grievant via messenger and email.
4. The Grievant responded that evening and said he would take care of the missing information...”
5. The Chief responded “Ok. You can add it to your Monday DSR. Please link up with Brian to make sure all that is required is in it. Thanks.”
6. On Monday, the Grievant updated the DSR.
7. On Tuesday the Grievant received a written warning citing him for insubordination.

From the testimony, its tone and inclusion of items in the City’s brief that had no direct bearing on the current case, the Panel is aware there is a less than desirable working environment at the Shelton Police Department.

We have a written warning, generally seen as a “heads up” for a minor mistake now used to charge a senior officer with insubordination, one of the most serious of offenses that an employee can be charged. It must be noted here that the Panel has not seen an insubordination charge outside of a termination hearing.

The basic requirements surrounding a legitimate charge that an employee has been insubordinate are quite clear:

- 1) Was the Grievant given a direct order?

The parties are diametrically opposed on this question.

- 2) Was the Grievant aware he had received a direct, clearly understood order?

Again, no agreement.

- 3) Was it a legitimate order for the Grievant to carry out?

What the Chief wanted was legitimate, how it was sought was not.

- 4) Was the Grievant aware that by choosing not to carry it out there would be specific consequences?

The answer here is unequivocal, no.

If the Chief saw this as insubordinate, why did his email response to the Grievant on Friday evening say "Ok. You can add it to your Monday DSR." A serious violation of the rules and procedures of the Shelton Police Department should invoke a far more solemn response on the part of the Chief, not an easy-going permission to take care of the deficiency on Monday.

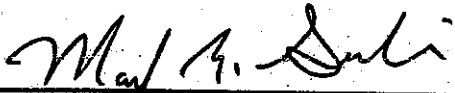
The Panel also saw an additional drawback, the inconsistent testimony concerning the meeting of the Chief and Lt. Yerzak with the Grievant in the "roll call" room where the order was supposed to have been given. During cross examination the Lt. was not at all sure where he was in the "roll call" room at the time and modified his response multiple times during cross examination severely undercutting his value as a witness and raising the question if any order was given by the Chief.

The importance of this meeting in the "roll call" room, particularly the location of each of the players is a critical component in the outcome of this arbitration. The Chief's actions, including "Ok. You can add it to your Monday DSR.", do not support his decision to wait four days to charge insubordination. Lt. Yerzak's inconsistent testimony is tainted and thus is of no value to the Panel while the Grievant's position has been unequivocal and credible from the beginning.

Credibility, the quality of being trusted and believed is lost by employing evasive or ever-changing answers to an innocent question, such as, where were you in the "roll call" room? Answering questions in a forthright manner, even when the response may be unfavorable to your cause, is a dependable indicator of a credible witness which can also be the determining factor in how an arbitration case is decided.

The grievance is sustained.

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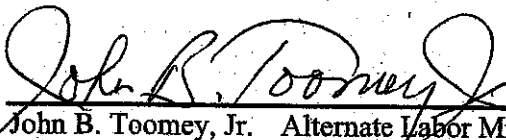


Mark E. Sullivan, Alternate Public Member



Christopher Y. Doby, Alternate Management Member

DISSENT



John B. Toomey, Jr. Alternate Labor Member

Date