

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

In the Matter of

Award Date: November 22, 2022

CITY OF BRIDGEPORT

CASE NO. 2021-A-0251
(JOSIAH NELSON, GRIEVANT)

AND

Hearing Date: August 8, 2022

NAGE LOCAL R1-200

LOCATION OF HEARING: State Board
of Mediation and Arbitration
38 Wolcott Hill Road
Wethersfield, CT 06109
(BY WAY OF ZOOM)

APPEARANCES:

Tamara J. Titre, Esquire
Office of Labor Relations
45 Lyon Terrace
Bridgeport, CT 06604
(For the City)

Richard M. Solazzo, Esquire
Assistant General Counsel
National Association of Government Employees
3510 Main Street
Bridgeport, CT 06606
(For the Union)

ISSUE

Did the Grievant, Josiah Nelson, work out of classification and, if so, did the City fail to pay Grievant under the CBA Section 26.7?

FACTS

The City of Bridgeport ("City") and the National Association of Government Employees ("Union") are parties to a Collective Bargaining Agreement ("CBA") effective July 1, 2018 through June 30, 2022 (Jt. Ex. 5) and extended thereafter pursuant to Connecticut General Statute Section 7-475.

The Union filed a grievance on or about September 10, 2021 on behalf of Josiah Nelson ("Grievant"). Grievant was hired by the City on August 2, 2016 as a Custodian 1 and assigned to Columbus Elementary School and reassigned to Harding High School on September 20, 2020 in the same job classification. The grievance was filed at Step II of the grievance procedure and in part asserted that Grievant was working out of classification and within the scope of the Higher Custodian III job classification.

The grievance claimed that Grievant was entitled to receive the higher rate of pay as a Custodian III for the period of time he worked out of classification. The grievance was denied at Step II (Jt. Ex. 2) and the Union claimed the matter for arbitration on or about March 30, 2021 (Jt. Ex. 3). The grievance alleges that Grievant was working out of classification in that he cleans a maximum of 40 rooms and 13 bathrooms that was continuous and ongoing during the period he was working out of classification. The grievance requested a resolution pursuant to Article 26 Wages 26-7 (Joint Exhibit 1). At the time of the filing of the grievance, Grievant was working the 2:00 p.m. to 11:00 p.m. shift at Harding High School.

A zoom hearing was held in this matter before the Panel on August 8, 2022. Both parties appeared, were afforded the opportunity to present documentary and testimonial evidence, examined and cross-examined witnesses and filed post-hearing

briefs. The Panel held an Executive Session on September 30, 2022 to review the evidence and decide on an Award in this matter.

RELEVANT CONTRACT LANGUAGE

"ARTICLE 26.7 – WAGES"

Employees required to work on a higher classification than their normal classification shall be paid at the rate of the higher classification for that period of time.

CITY POSITION

The City argues that Grievant was not working out of classification and did not perform the duties of a Custodian III. The Union, according to the City, did not meet its burden of proof that Grievant was working beyond his classification as a Custodian I. The City contends the job description for the Custodian I position does not specify a minimum or maximum room count for the building assignment. The City argues that Grievant's job description refers to a building of moderate size and complexity and Harding High School is a school of moderate size and complexity. Unlike the job description of a Custodian III, there is no minimum or maximum number of rooms a Custodian I is required to clean, according to the City.

The City further contends that Grievant did not perform supervisory duties in his capacity as Custodian I. During Grievant's time at Harding working the 2:30 p.m. – 11:00 p.m. shift, Sylvester Ellis, a Custodian IV, supervised Grievant and three other employees. The City asserts Grievant's job description as Custodian I clearly defines the job duties and responsibilities of a Custodian I and specifically excludes any reference to a minimum or maximum of rooms

The City further contends that when Grievant worked in a higher classification as an Acting Custodian IV, he was paid at the rate of the higher classification consistent with the terms of the CBA. Any supervisory responsibility performed by Grievant was performed in his capacity as an Acting Custodian IV and not as a Custodian I, and he was paid for his work as a Custodian IV.

UNION POSITION

The Union argues that Grievant worked as a Custodian III during the two month period September 1 through October 31, 2020 and is entitled to acting pay. The Union argues that Harding is not of "moderate size" but is of such size as to require additional custodial help. During the relevant period at least one or two janitress and at least one service assistant were also working along side Grievant at Harding on the same shift as Grievant.

The Union contends Harding is not of moderate size but rather it is of such a size as to require additional custodial help. They argue that while Custodial I is responsible only for buildings of "moderate size", that person may have "occasional" limited supervision over a subordinate janitorial worker usually working on a different shift (Union Ex. 4, pg. 1; Union Brief, pg. 7). The Custodian III position requires either work in a "public building of such size as to require additional custodial help and regular supervision thereof, involving one or two janitresses and possible weekend attention from a relief custodian or the assumption of some minor secondary supervisory responsibility in acting as assistant to a custodial supervisory..."(Union Exhibit 4, p. 3; Union Brief, pg. 7).

The Union asserts this is not where an employee performing work in a lower skilled classification performs a few tasks in a higher skilled classification that he would not otherwise perform. The Union argues Custodian I and Custodian III performs the same essential work but under different circumstances and supervisory tasks is not required to achieve Custodian III status. Custodian I works in a moderate size building while Custodian III works in a larger building requiring additional custodial help and supervision thereof. The Union argues Grievant's responsibilities met all the conditions for classification as Custodian III at all relevant times after September 1, 2020.

DISCUSSION

The Panel must decide whether Grievant, a Custodian I employee with the City at Harding High School, was required to do the work of a Custodian III but paid only at the rate of a Custodian I.

An examination of the job description for a Custodian I and III is essential to making a determination in this Arbitration proceeding. The job descriptions were entered into evidence as Joint Exhibit 4.

It is clear that the Custodian I job description does not require a minimum or maximum number of rooms to be cleaned at the building assignment at Harding High School. The job description for Custodian I only requires responsibility for custodial care and minor maintenance of a building of "moderate" size and complexity or works under the supervision in a high school or very large building without more complex equipment and systems. Also, unlike a Custodian III, there is no minimum or maximum number of rooms a Custodian I is required to clean.

Additionally, a Custodian III job description includes in part "regular supervision" involving one or two janitresses and possible weekend attention from a relief custodian, or assumes some minor secondary, supervisory responsibility in acting as assistant to a custodial supervisor..." The Union did not carry its burden on whether Grievant performed these duties. Again, room requirement is not included in the job description of a Custodian I and the statement in the grievance form that Grievant "cleans a maximum 40 rooms 13 bathrooms" is unpersuasive. The Custodian I position does not place a limitation on the number of rooms to be cleaned. Moreover, any supervisory work performed by Grievant was within the job description of a Custodian I who "may exercise limited supervision over a subordinate janitorial worker" (Jt. Ex. 4)

The Panel also notes that Article 26.7 states: "employees required (emphasis added) to work in a higher classification than their normal classification shall be paid at the rate of the higher classification for that period of time". The record is devoid of any evidence that Grievant was required to work in a higher classification (emphasis added).

It is also noteworthy that when Grievant accepted work as acting Custodian IV after negotiations with the Union, he was paid at the rate of a Custodian IV. During this period he supervised three employees, locked up the building and oversaw the night shift. Grievant accordingly was appropriately compensated when he worked in the higher classification.

The filed grievance (Jt. Ex. 1), alleges that Grievant "cleans maximum 40 room 13 bathroom" and infers this is above Custodian I duties. As previously noted, there is no limiting room language to the job description for a Custodian I, but a Custodian III is

limited to a maximum of nineteen rooms, minimum of ten. Grievant's argument and statements in the filed grievance (Joint Exhibit 1) are unpersuasive.


In conclusion, the Panel, after a review of the evidence and by a preponderance of the evidence find that Grievant did not work out of classification. The Union has not met its burden of proof in this grievance arbitration.

DECISION


The grievance is denied.



Gerald T. Weiner
Neutral Arbitrator



Betty Kuehnel
Labor Arbitrator



Michael Culhane
Management Arbitrator

