

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

_____	September 9, 2022
In the Matter of	:
NEW BRITAIN HOUSING AUTHORITY	: CASE NO. 2022-A-0152
AND	: LOUIS MORALES (TERMINATION)
LOCAL 1186, COUNCIL 4, AFSCME	: HEARING DATE: JUNE 17, 2022
	: Location of Hearing: State Board of
	: Mediation and Arbitration
	: 38 Wolcott Hill Road
	: Wethersfield, CT 06109
_____	: (ZOOM)

APPEARANCES:

GARY R. BROCHU, ESQUIRE, STAFF REPRESENTATIVE
(UNION)

LISA LIZAREK, ESQUIRE
METZGER LAZAREK & PLUMB LLC
(HOUSING AUTHORITY)

ISSUE

Did the Grievant, Luis Morales, violate the terms of the Last Chance Agreement?

If not, what shall the remedy be?

FACTS

This matter is before the Panel as a result of a grievance filed by Local 1186, Council 4, AFSCME ("Union") alleging the New Britain Housing Authority ("Authority") violated the Collective Bargaining Agreement ("CBA"), Article X, Section 10.1, which requires just cause for a discharge.

Luis Morales ("Grievant") was a Maintainer employed by the Authority from April 25, 2016 until he was terminated on January 7, 2021 for being legally intoxicated at work on January 5, 2021 (Jt. Ex. 1).

Grievant was given a Blood Alcohol Concentration ("BAC") test on January 5, 2021 which disclosed he was in fact under the influence of alcohol and he was terminated on January 7, 2021 (Jt. Ex. 1). The January 7th termination proceeded to arbitration and a decision was issued by the Arbitration Panel in that arbitration on June 15, 2021 (Jt. Ex. 1).

The Panel sustained the Union's grievance with the following conditions:

1. Grievant was reinstated to his most recent position;
2. Back pay was not ordered;
3. Grievant's seniority, retirement and health care would be reinstated to the status held on January 5, 2021;
4. A Last Chance Agreement ("LCA") was to be executed by the parties before Grievant returned to work which needed to include:
 - (a) "The Grievant must immediately enroll with and actively participate at least weekly in the EAP Program for those with alcohol problems.

Failure to immediately enroll and participate in this manner will result in immediate termination;”

- (b) “If management is reasonably suspicious that the Grievant has come to work impaired a BAC Test must be performed within 2 hours. Any reading above .08 will result in immediate termination. If Grievant refuses the test or makes himself unavailable within that 2 hour window, termination will follow immediately”.

A Memorandum of Understanding and LCA were executed by the Authority, Union and Grievant on July 8, 2021 (Jt. Ex. 2). Grievant returned to work on June 28, 2021 pursuant to the Arbitration Award and LCA. Grievant immediately went to the Wheeler Clinic on his first day back at work and registered for substance abuse group treatment (Union Ex. 2). This program met weekly on Mondays at 4:00 p.m. Grievant was permitted to punch out of work at 3:30 p.m. in order to be timely at the Wheeler Clinic at 4:00 p.m.

Grievant successfully completed the Wheeler Program (Union Ex. 10) but continued to attend the program until his second termination (Union Ex. 11 and 12). During the course of his treatment at Wheeler Grievant missed three sessions prior to termination. He did not attend the August 2, 2021 session as he was on vacation that day and informed his clinician that he was on vacation (Union Ex. 10). Authority records confirm that he was on vacation that day (Union Ex. 13). Grievant further did not attend a session on August 23, 2021 due to illness and he informed his clinician of this fact (Union Ex. 5). The Authority did not challenge Grievant’s claim of illness on August 23rd and 24th. Grievant

did not attend a session on October 11, 2021 as this was Columbus Day and a CBA paid holiday.

Grievant was informed by letter on October 2021 from Authority Executive Director John Hamilton ("Hamilton") that his termination of employment was being considered and he was invited to a meeting on November 2, 2021 (Jt. Ex. 3). Specifically Grievant was advised that the Authority knew he missed at least two Wheeler sessions and the Authority believed Grievant needed to attend a program at least weekly for 5 years (Jt. Ex. 3).

Grievant, during his attendance in the Wheeler Program, hand-delivered letters to the Authority from his Wheeler Clinician on a weekly basis (Union Brief, pg. ix).

Pursuant to a letter dated November 5, 2021 (Jt Ex. 4), Hamilton told Grievant he was terminated because he did not comply with specific conditions contained in the Arbitration Award and the LCA as he did not continue with weekly alcohol dependency treatment. At a meeting with Authority representatives Grievant stated he did not believe he needed to attend any more treatment sessions as he completed the program (Authority Brief, pg. 4). The LCA by its terms is in effect until June 28, 2026 (Jt. Ex. 1, Section 2). Grievant confirmed that he completed 10 Wheeler Clinic sessions and was finished with treatment.

AUTHORITY POSITION

The Authority argues Grievant violated the terms of the LCA by not attending weekly treatment sessions. The Authority points to the Arbitration

Award which required Grievant to actively participate at least weekly in an EAP program for those with alcohol dependency (Jt. Ex. 1). The Authority argues that Grievant's failure to attend a program weekly resulted in the Authority's right to immediately terminate him. His failure to attend required sessions and ceasing the program after 10 sessions was a violation of the LCA, according to the Authority.

The Authority further argues that the letter and spirit of the Arbitration Award was that Grievant obtain help for his alcohol problem and to do so he needed to stop drinking both on and off the job (Authority Brief, pg. 5).

The Authority asserts that Grievant does not understand or appreciate he was given a last chance to salvage his job by attending a treatment program at least weekly for 5 years and secondly Grievant should not drink alcohol even when he is off duty. The Authority asserts that Grievant was under an obligation to attend regular program meetings and missing several meetings constituted a breach of the LCA.

UNION POSITION

The Union argues that Grievant did not violate the express terms of the LCA in that:

- (a) The LCA only requires Grievant to provide proof of his enrollment and weekly participation prior to being reinstated and thereafter provide a note from the program confirming weekly participation;
- (b) If employee tests positive for alcohol (greater than 0.08 BAC) during his employment the Authority shall have the right to terminate Grievant.

The Authority argues that there was no reason to test Grievant for drugs and he in fact was not tested. The Authority further contends that Grievant provided a letter from Wheeler dated June 28, 2021, the first day of his return to work evidencing his enrollment in an alcohol dependency program, and the record is clear, according to the Union, that Grievant provided weekly hand-delivered letters evidencing his enrollment and participation in the program.

The Authority also argues that Grievant's absence from the program for 3 days (August 2, 2021, August 23, 2021 and October 11, 2021) were excusable events. August 2, 2021 was Grievant's approved vacation day; August 23, 2021 was a paid sick day; and October 11, 2021 was Columbus day, a paid holiday. The Authority argues all of these absences were approved and paid for by the Authority.

The Union also argues that the Authority did not provide notice to Grievant that excused absences from the program could lead to termination. The Union concludes that Grievant enrolled and participated in the program and there was no violation of the language in the LCA.

DISCUSSION

The issue presented to the Panel is whether Grievant violated the LCA. Accordingly, an examination of the language of the LCA is at the heart of this grievance. Grievant, a 5 year employee of the Authority was first terminated in January of 2021 as a result of being intoxicated at work with a BAC showing he was under the influence of alcohol. This initial termination resulted in the filing of a grievance by the Union challenging the termination. The Panel in that

grievance reinstated Grievant, without back pay, subject to the specific conditions including that the parties sign an LCA.

The LCA was negotiated between the parties and required Grievant to enroll and actively participate at least weekly in an EAP program for people with alcohol problems. Grievant's failure to comply with this condition would result in immediate termination.

The Panel finds that Grievant returned to work on June 28, 2021 pursuant to the conditions of the LCA and did in fact enroll at the Wheeler Clinic Alcohol Program on the first day of his returning to work as evidenced by Wheeler's letter dated June 28, 2021 (Union Ex. 2). Grievant further attended weekly meetings at the Clinic and in fact successfully completed the program. By letter dated October 18, 2021 Wheeler wrote: "Luis Morales successfully completed substance abuse group and treatment at Wheeler Clinic"...(Union Ex. 10). The letter goes on to specify the dates of the 10 sessions Grievant attended the program. The Panel accordingly finds Grievant complied with the LCA condition that he immediately enroll and attend an alcohol program. It is important to note that the LCA does not include any duration for Grievant to continue in the program. It merely states: "Grievant must immediately enroll with and actively participate at least weekly in the EAP Program for those with alcohol problems". The Panel is limited to interpreting the clear and unambiguous language of the LCA which does not contain any language as to duration of the program. Accordingly, the Grievant's immediate enrollment and regular participation in the

program satisfies the condition of the LCA. In summary, Grievant successfully completed a program for individuals with alcohol problems.

The Panel finds the Authority's argument that Grievant missed some program meetings to be unpersuasive. Those absences were a result of illness and work holidays. The Panel finds the Clinic's conclusion that Grievant "successfully completed substance abuse group treatment at Wheeler Clinic" (Union Ex. 10) to be persuasive.

After a review of the documentary evidence, testimony, and argument of the parties, the Panel finds by a preponderance of the evidence that Grievant did not violate the LCA.

DECISION AND REMEDY

1. Grievant did not violate the LCA and shall be immediately reinstated to his most recent position;
2. Grievant shall not receive back pay;
3. Grievant's seniority, retirement and health benefits will be reinstated to his termination date;
4. The LCA shall remain in full force and effect in accordance with its terms (five (5) years from July 8, 2021);
5. The condition contained in the LCA that Grievant participate in an EAP Program is no longer operative as Grievant has already satisfied that condition.

Gerald T. Weiner
Gerald T. Weiner, Neutral Arbitrator

Michael C. Culhane, Sr.
Michael C. Culhane, Management Arbitrator

Betty A. Kuehn
Betty Kuehn, Union Arbitrator