

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

ARBITRATION AWARD

In the Matter of:	:	Case No. 2022-A-0144
City of Hartford	:	Date of Award: October 28, 2022
And	:	Hearing Date: July 13, 2022
Hartford Police Union	:	
Lt. Paul West, Grievant	:	Zoom Hearing

APPEARANCES: Alexandra D. Lombardi, Deputy Corporation Counsel,
Attorney at Law (For the City)

Marshall T. Segar, Attorney at Law (For the Union)

I. ISSUE: (Agreed to by the Parties)

Did the City of Hartford violate the Collective Bargaining Agreement or the 2014 Memorandum of Understanding when it discontinued administrative leave with pay for the grievant, Paul West, effective September 29, 2021?

If so, what shall the remedy be?

II. PROCEDURAL BACKGROUND:

Paul West (hereinafter referred to as “Lt. West” or the “Grievant”) is a member of the Hartford Police Union (hereinafter referred to as the “Union”). Lt. West filed a grievance asserting that the City of Hartford (hereinafter referred to as the “City”) violated the 2016-2022 Hartford Police Union Contract (hereinafter referred to as the “CBA”) and the Memorandum of Understanding dated October 8, 2014 (hereinafter referred to as the “MOU”) when it terminated the Grievant’s administrative leave with pay pending a decision by the Workers’ Compensation Commission.

The grievance was not resolved during the Grievance Procedure and was appealed by the Union to Arbitration. An Arbitration hearing was held via Zoom on July 8. Exhibits were provided to the Panel in advance of the hearing which were admitted into evidence over the course of the hearing. Both parties were provided an opportunity to offer testimony and cross-examine witnesses. The City and the Union both filed post hearing briefs by the agreed upon by the due date of September 2, 2022. The parties both filed reply briefs on September 16, 2022. The Panel held an Executive Session on September 28, 2022.

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:

On November 26, 2019, the Grievant's then attorney filed at Workers' Compensation Claim for Compensation (Form 30C) claiming that the Grievant "was struck in the head with a baseball bat while attempting to break up an altercation in the course of his employment." The date of the injury listed was May 3, 2019. The altercation was listed to have occurred at 40 Overlook Drive, Windsor, CT (the Grievant's residence). (Joint Ex. 9).

The City's representative filed its Notice to Compensation Commissioner and Employee of Intention to Contest Employee's Right to Compensation Benefits (Form 30S) with copies to the Grievant and his Attorney on December 5 and 9, 2019. The filings contesting the claims for Worker' Compensation Benefits were timely and were made for several different reasons. (Joint Ex. 8)

The City's utilizes the services of an outside law firm to manage its Workers' Compensation claims that become subject to possible litigation. Attorney James L Pomeranz handled the Grievant's claim. Attorney Pomeranz has over fifty (50) years of experience with Workers' Compensation matters. From Joint Exhibit 7 there appears to have been Informal WC hearings on 1/29/2020 and 6/18/2020 and Pre-Formal hearings on 7/23/2020, 8/18/2020, 1/27/21.

Attorney Pomeranz wrote to Grievant's then attorney, Louis Annecchino on February 17, 2021 (City Ex. 1) when he attempted to have the Grievant evaluated by Dr. Stephen Conway on April 20, 2021 (which never occurred). The Pre-formal hearing on March 23, 2021 was cancelled and rescheduled.

On several occasions Attorney Pomeranz sent Attorney Anecchino Medical Authorization forms for the Grievant to sign which the Grievant refused. (City Exs. 2 & 3) Attorney Pomeranz attempted to depose the Grievant's treating physician on many occasions trying to obtain the Grievant's medical records. The physician refused to provide copies of the medical information without a signed authorization from the Grievant. (City Exs. 4-7).

The City discontinued the Grievant's administrative leave with pay effective September 29, 2021. The Grievant provided signed an Authorization for Release of Medical Records form of the Workers' Compensation Commission dated November 16, 2021 (City Ex. 9).

IV. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT (Joint Exhibit 1) and the MEMORANDUM OF UNDERSTANDING DATED OCTOBER 2014 (Joint Exhibit 2)

Contract

Section 1.7 – No Discrimination

The provisions of this Agreement shall be applied equally to all employees in the bargaining unit without discrimination because of age, sex, marital status, race, color, religion, creed, national origin, political affiliation, union membership, sexual orientation, disability or other protected classification under Federal, State or local law.

Section 3.3 – Personnel

A. The City and the Union shall recognize and adhere to all provisions of ordinances, laws, the Rules and Procedures of the Hartford Police Department, and the Personnel Rules and Regulations not otherwise superseded by the terms of this Agreement. The Personnel Rules and Regulations on the effective date of this Agreement shall be those prevailing for the life of this Agreement. Any changes to these Rules and Regulations shall not be binding on the Union.

Section 3.4 – Prior Benefits and Practices

Any job benefits or work practices existing prior to the date of this agreement, which were the subject of any written memoranda or directives issued by the Chief or his or her Superiors and which are not specifically provided for or abridged in this agreement are hereby protected by this contract.

Section 5.5 – Compensation for Injuries and Disease

Effective for new injuries or disease occurring after July 1, 1987, each employee shall be compensated for any injury or occupational disease under the provisions of the Workers' Compensation Act.

2014 MEMORANDUM OF UNDERSTANDING (MOU)

2. If a contested claim is determined by the Workers' Compensation Commission or Court to be not compensable, then the affected member's sick leave bank will be deducted for all the time charged to the contested claim/injury and the three days of administrative leave with pay if the three days were carried as administrative leave with pay. If the claimant/member does not have sufficient sick leave, then he/she will be obligated to apply other accruals to account for ALWP days received. Further, if the

claimant/member does not have sufficient days in his/her accrual bank, then he/ she will automatically be placed on a repayment plan for any ALWP days received.

3. The failure of an employee to respond in a timely manner to a timely notice of contest filed by the City or its carrier shall be an acceptance of the denial and shall be subject to the adjustments and payback provisions set forth in this agreement.

V. DISCUSSION

While the Union raised several sections of the CBA that it claimed that the City violated, the Panel unanimously concurred that there was no violation of the CBA. The Panel specifically finds that there was no evidence of any discrimination nor any other violation of any other section of the CBA by the City regarding the Grievant. The sole question that the Panel will address is whether the City violated the 2014 MOU.

It is undisputed that the Grievant filed a Workers' Compensation claim on November 26, 2019, claiming he was injured "in the course of his employment" on May 3, 2019. As such, the claim of injury was timely under the Workers' Compensation Statute. It is likewise undisputed that the City contested the claim on various grounds in a timely fashion. The City's witness, Attorney James Pomeranz testified under oath that the Grievant responded in a timely manner to the City's notice contesting the claim.

The language of Paragraph 3 of the MOU is rather clear. The City claimed that the Grievant's conduct was egregious and that his refusal to allow his medical records to be released to either the carrier or the Workers' Compensation Commission was at a minimum purposeful. In the City's view, the Grievant's failure to comply with its reasonable requests was designed to allow him to remain in full pay status while not working for over two (2) years.

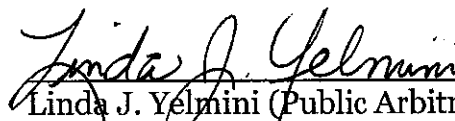
Attorney Pomeranz testified that in his over fifty (50) years of handling Workers' Compensation matters he had never had a situation where an individual refuse to provide an authorization to provide his/her medical records to the carrier and/or the Workers' Compensation Commission. This is likely because most employees do not enjoy the type of benefit presently provided to members of the Hartford Police Union. When other employers contest a Workers' Compensation claim, the employee either receives no Workers' Compensation benefit or their benefit is substantially reduced during the period the benefit is contested. Therefore, it is incumbent upon the employee to provide medical documentation to support their claim that their injury or illness is work related.

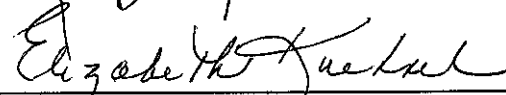
While the City's assessment of the Grievant's conduct may or may not be correct, the Panel is constrained by the language of the 2014 MOU and Attorney Pomeranz' testimony that the Grievant complied with its provisions. There were other legal avenues to require the Grievant to comply with the City's reasonable requests that he sign Medical Authorizations to release information, attend second opinion evaluations and other reasonable requests.


VI. AWARD

For the reasons set forth herein, a majority of the Panel finds that the City violated 2014 Memorandum of Agreement. The Management Arbitrator finds that the Grievant's failure to comply with the City's reasonable requests violated the 2014 Memorandum of Agreement. Based upon the foregoing, the Grievant shall be placed on administrative leave with pay until a decision is made by the Workers' Compensation Commission whether the claim is compensable or not. If the claim is determined to be noncompensable, the provisions of paragraph 2 of the 2014 Memorandum of Agreement shall prevail.

BY THE ARBITRATION PANEL:

 10/5/2022
Linda J. Yelmini (Public Arbitrator & Chairperson)


Elizabeth Kuehnel (Labor Arbitrator)


Kenneth Baldyga (Management Arbitrator)
- dissenting