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

ARBITRATION AWARD

In the Matter Of:

HOUSING AUTHORITY OF BRIDGEPORT

And

AMERICAN FEDERATION OF STATE, COUNTY and MUNICIPAL EMPLOYEES COUNCIL 4, AFL-CIO, LOCAL 2311

Case No. 2022-A-0186

DATE OF AWARD: April 20, 2023

HEARING DATES: September 29, 2022
November 9, 2022
January 13, 2023
January 19, 2023

Hearing: 38 Wolcott Hill Road
Wethersfield, CT

APPEARANCES: William A. Ryan, Attorney at Law (For the Authority)
Cherlyn Poindexter, Staff Representative (For the Union)

I. ISSUE: (Agreed to by the Parties)

1. Did Bridgeport Housing Authority/Park City Communities violate Article 25, Section 25.5 of the parties' collective bargaining agreement when it terminated the Grievant's (Eric Vasquez) employment on May 27, 2021?

2. If so, what shall the remedy be in accordance with the terms of the collective bargaining agreement?

II. BACKGROUND:

The American Federation of State, County and Municipal Employees Council 4, AFL-CIO, Local 2311, (hereinafter referred to as the "Union") filed a grievance asserting that the Housing Authority of Bridgeport (hereinafter referred to as the "Authority" or the "Employer") violated Section 25.5 of Article 25, MOU and any other article, policy or procedure that may apply of the Collective Bargaining Agreement (hereinafter referred to as the "CBA"). The grievance concerned the termination of

the employment of Erick Vazquez (hereinafter referred to as "Mr. Vazquez" or the "Grievant").

The grievance was denied during the prior steps of the grievance procedure. On January 19 and 26 arbitration hearings were held and both parties were provided an opportunity to present evidence and testimony. The parties both filed briefs with the Panel by February 24, as agreed. The Parties reserved the right to file reply briefs by March 10. Neither party filed a reply brief. The Panel held an Executive Session on March 27, 2023.

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. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT (Jt. Ex. 2)

ARTICLE 25
Effective Date and Duration of Agreement

Section 25.1

This Agreement shall be in full force and effect upon execution until September 30, 2022. However, no economic entitlements shall be retroactive except as explicitly stated.

Section 25.4

This Authority will participate in s Network Provider program. An employee who is absent due to a workplace injury and who receives an approval from the treating physician for limited duty must deliver the physician's statement to the Authority. The Authority may require an employee to return to work to perform light duty in accordance with the approval of the treating physician, and the employee will not be eligible for any overtime assignments.

Section 25.5

The period of time an employee can be out of work and maintain his/her employment with the Authority shall not exceed twelve (12) months over a rolling twenty-four (24) month period, or sooner if, based upon a physician's examination, a determination is made that as a result of the employee's injury, the employee will never be able to perform the essential functions of his/her position.

IV. STATEMENT OF FACTS

The CBA governing this grievance was effective October 1, 2019 and expired on September 30, 2022. The Agreement was signed on February 11, 2020. (Jt. Ex. 2) The COVID-19 Pandemic started in March of 2020. The employees in the Maintenance Department worked on a hybrid schedule during the height of the COVID-19 Pandemic and at some point, returned to a "normal" work schedule. It is unknown exactly when the employees in the Maintenance Department returned to a "normal" work schedule.

Mr. Vazquez was a Maintenance Mechanic with the Authority. At the time of his termination of employment, Mr. Vazquez had fourteen (14) years of service. On January 23, 2020, the Grievant suffered a work-related injury and was out of work from that date until his separation from employment on May 27, 2021. The claim for Worker's Compensation benefits was accepted and approved. The Grievant's injury was to his shoulder, and he had rotator cuff repair on October 16, 2020. Following his surgery, the Grievant had physical therapy and engaged in a "work hardening" program.

The Union presented medical reports indicating the Grievant's restrictions as follows:

Date	Comments	Exhibit No.
2/26/20	No heavy lifting with left upper extremity greater than 10 lbs	U-4
4/28/20	No heavy lifting greater than 10 lbs with left upper extremity	U-4
10/16/20	Rotator Cuff repair Surgery	

11/25/20	Unable to return to work until further notice	U-4
1/20/21	No pushing pulling carrying no greater than 5 lbs	U-4
5/26/21	No heavy lifting with left upper extremity greater than 10 lbs	U-5
6/23/21	May return to work on 6/24/21 with no restrictions	U-5

The position of Maintenance Mechanic with the Authority consists of several different functions. Primarily the duties consist of rehabilitating and maintenance of housing units. Both the Grievant and Miguel Santiago, the Union President (also a Maintenance Mechanic) testified that the work can be physically demanding consisting of carpentry, plumbing, replacing floors, etc.

V. DISCUSSION:

In its brief, the Union presented an extensive argument that the Authority did not have **just cause** to terminate the Grievant. This is not the question before the Panel. The question to be resolved by the Panel is outlined in the agreed upon issue. The issue to be resolved is whether the Authority violated Section 25.5 of the CBA. On this issue the Union bears the burden of proof.

The language of Section 25.5 of the CBA is new contractual language which was agreed upon by the Authority and the Union. The Union argues in its brief that since the Grievant was injured on January 23, 2020 and the CBA was executed on February 11,

2020, the new language of Section 25.5 does not apply to him. The Union's position, though creative, is unavailing.

All the language of the CBA is effective on October 1, 2019, except for any economic provision which does not indicate it is retroactive. If the language of Section 25.5 was not effective on October 1, 2019, the language of Section 25.1 would have had to so specify. The Union would not argue that any change in other language provisions which they were successful in achieving in the negotiations for this CBA which benefited members was not effective on October 1, 2019. If the Authority took the position that other contractual language did not apply until February 11, 2020, that argument would not be successful.

The language of Section 25.5 represents a significant change to the CBA. Presumably the Union made members aware of the change in language during meetings or handouts at the time the CBA was ratified. In its brief, the Union argues that the Authority should have warned the Grievant and Mr. Santiago of the provisions of Section 25.5. As the then Union President and the Chief Negotiator for the Union participated in the negotiations and the membership voted on the CBA with the inclusion of Section 25.5, no additional notice was required.

The Panel would note that it was extremely troubled by the inability of the Authority's Chief Legal Officer, Tracy Norris to explain the language regarding the maximum time an employee can be absent following a work-related injury contained in Section 25.5. The language is clear.

Equally troubling was Ms. Norris' testimony that Maintenance Mechanics are not eligible for light duty. This simply is not true. Section 25.4 of the CBA contains a

provision for light duty. The Authority's position regarding light duty as stated in the Grievant's letter terminating his employment is likewise inaccurate. The letter goes even further than Ms. Norris' testimony. It provides "Park City Communities does not recognize light duty". (Jt. Ex. 4) The language of Section 25-4 does not exclude Maintenance Mechanics from light duty. The language of Section 25.4 provides that the "Authority **may** require an employee to return to work to perform light duty". Here, the Authority did not require the Grievant to perform light duty although it certainly could have.

According to Mr. Santiago, at some point in his career, he suffered a work-related injury and was required/allowed to perform light duty. This is not inconsistent with the language of Section 25.4 (assuming that was the operative language at the time Mr. Santiago was injured).

The Panel is constrained by the language of Section 25.5. Mr. Vazquez was out of work from January 24, 2020 until May 27, 2021 or at least until April 6, 2021, the date of his Loudermill hearing. At a minimum, the time the Grievant was out of work due to a work-related injury was fourteen and one-half months. As fourteen and one-half months is, obviously, greater than twelve months, the Panel is constrained by the clear language of Section 25.5.

VI. AWARD

For the reasons set forth herein, a majority of the Panel finds that the Authority did not violate Section 25.5 of the CBA.

BY THE ARBITRATION PANEL:

/s/ Linda J. Yelmini
Linda J. Yelmini (Public Arbitrator & Chairperson)

/s/ Donald Sevas
Donald Sevas (Labor Arbitrator) - dissenting

/s/ Richard Podurgiel
Richard Podurgiel (Management Arbitrator)