CONNECTICUT STATE BOARD OF MEDIATION AND ARBITRATION
LABOR DEPARTMENT

38 WOLCOTT HILL ROAD
WETHERSFIELD, CONNECTICUT

April 20, 2023

TRANSMITTAL MEMORANDUM

New Haven, City of
and
AFSCME Co. 4
Local 884

****

Case # 2022-A-0201 *Tracey Menagee-Hie* #

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Arbitration Award

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This Award is also being sent via first class mail to each party representative pursuant to SBMA regulation Sec. 31-91-47.

Copies were sent to the following parties:

Christopher Sugar, Staff Atty. Rep
Wendella Ault-Battey, Esquire
Joanne Courtmanche, Exec. Assistant
Stefanie Wise, Adm. Asst. Coord.
Town Clerk*
File

Dennis C. Murphy
Richard A. Podurgiel
Betty Kuehnel

*When applicable, this transmittal is filed with the town clerk in accordance with Section 31-98, Chapter 560, of the Connecticut General Statutes.

CONTACT PERSON
Brigitte Bisson
2022-MA-0052

State of Connecticut
State Board of Mediation and Arbitration

In the Matter of	Case No. 2022-A-0201
City of New Haven	
-and-	Date of Award April 20, 2023
Local 884, AFSCME, Council 4	Hearing Dates: April 20, 2022 June 2, 2022 October 5, 2022 November 28, 2022 January 9, 2023

AWARD

PANEL MEMBERS:

Dennis C. Murphy, Esq., Chair and Public Member
Betty Kuehnel, Labor Member
Richard A. Podurgiel, Management Member

Christopher J. Sugar, Esq., representing the Union
Lisa S. Lazarek, representing the Employer

Procedural History and Issue

This is a dispute between the City of New Haven (City) and Local 884, AFSCME, Council 4 (Union) concerning the termination from employment of Tracey Menafee-Hie (Grievant).

After due notice, hearings before this Panel were had virtually wherein the parties presented witnesses, evidence and an opportunity to cross-examine same. The parties filed post hearing briefs and reply briefs.

The parties jointly submitted that following issue for determination:

Did the City have just cause to terminate the Grievant?
If not, what shall the remedy be? (Joint Ex. 1).

Relevant Collective Bargaining Provisions

ARTICLE 14 - Arbitration

Section 1

In order to be considered, a petition by the Union for arbitration shall be received by the Director of Labor Relations or his representative within ten (10) working days after the next regular scheduled meeting of the Union's Executive Board following the date of the Step 3 decision, but in no event more than forty (40) working days after the date of decision at Step 3. Grievances not appealed within this time shall be considered as settled.

Section 2

Petition for arbitration shall be in writing and contain the following items: (1) Signed approval to arbitrate by the Union, (2) The specific Section(s) believed violated; (3) The relief sought; and,
(4) A statement of the issue involved. In order that both parties may be fully prepared should a case go to arbitration, it is agreed that neither party may amend the grievance, including references to the Article(s) or Section(s) believed violated, after receipt by the Director of Labor Relations of the petition for arbitration.

Section 3

The Arbitrator or arbitrators shall be the Connecticut State Board of Mediation and Arbitration, except as otherwise agreed upon by both parties to this Agreement.

Section 4

The arbitration fee and expenses shall be borne equally by the parties to this Agreement. The Employer and the Union shall also share equally the expenses of any and all mutually agreed upon services considered desirable or necessary in connection with the proceedings

Section 5

The arbitrator(s) designated in accordance with Section 3 of this Article shall conduct a hearing at which the facts and arguments relating to the dispute shall be heard. The arbitrator(s) jurisdiction to make an award shall be limited by the submission and confined to the interpretation or application of the provisions of this Agreement. The arbitrator shall not have jurisdiction to make an award which has the effect of amending, altering, enlarging or ignoring the provisions of the Agreement in effect at the time of the occurrence of the grievance being arbitrated, nor shall the arbitrator have jurisdiction to determine that the parties by implication have amended or supplemented the Agreement, unless the parties shall expressly submit to him the issue as to whether such an Agreement by implication was made. The arbitrator(s) shall confine the award to a decision that the City or the Union has or has not violated a specific provision of this Agreement, and if such an award is in the affirmative, the award shall specify the remedy.

Section 6

The written award of the arbitrator made in accordance with the above arbitration procedure shall be final and binding on the parties to this Agreement, subject only to court appeal of the decision.

ARTICLE 26 - Disciplinary Procedures

Section 1

Department Heads of the various City Departments, or their designee, shall exercise full disciplinary authority consistent with their oath of office and their responsibility to direct employees to perform the required work duties in order to achieve Department program goals and provide satisfactory municipal services to the general public. If a supervisor or a manager has reason to reprimand or counsel an employee, it shall be done in a manner that will not embarrass the employee before other employees or the public.

Section 2

Normally, discipline shall include either (A) A verbal warning; (B) A written warning; (C) A suspension without pay; or (D) Discharge, and shall be progressive in nature. Whatever disciplinary action is taken, the parties recognize that the merits of a given situation play an important role in determining what action is appropriate, and as such, it is not the intent of the parties that all discipline will necessarily follow the order or steps cited above. It is the intent of the parties that whatever the action, such action shall be consistent with Section 4 of this Article.

Section 3

All disciplinary actions may be appealed through the established grievance procedure.

Section 4

(A) Employees shall only be disciplined for just cause.

(B) All suspensions, discharges and warnings must be stated in writing and a copy given to the employee and the Union President.

Section 5

(A) All verbal warnings and written warnings shall be removed from the employee's record after a period of two (2) years if there has been no reoccurrence of the infraction and the employee has a good work record. All other disciplinary records, i.e., suspensions, loss of bidding rights, reduction in grade, shall be removed from an employee's work record after five (5) years if there has been no reoccurrence of the infraction and the employee has a good work record.

(B) Once an employee has satisfied the prerequisites of (A) above, the Employer agrees that it will never bring the warnings or suspensions up again.

Section 6

Employees who are discharged during their probationary period shall not have recourse to appeal said discharge to Arbitration pursuant to Article 14 of this Agreement.

Section 7

An employee shall be entitled to Union representation at all investigatory interviews that the employee reasonably believes could lead to discipline

Findings of Fact

1. The Grievant was a school security officer employed by the New Haven Board of Education (Board) for seventeen years until her employment was terminated on January 26, 2022 for insubordination and violations of the City's Hostile Work Environment and Workplace Violence Policies. (Joint Ex. 5).

2. The Grievant's direct supervisor was Director of Security, Chief Thaddeus Reddish (Chief), a retired New Haven Police Officer. He found a general lack of discipline and supervision under the previous Chief. Officers were found sitting and sleeping while on duty. The Chief spoke with the employees and notified them that the rules were going to be enforced and progressive discipline would be followed. The Grievant was not cooperative in accepting the Chief's management, and her relationship with him was "very hostile". (Test. of Grievant).

3. In 2018, the Grievant was progressively disciplined for a number of unprofessional interactions with her co-workers, non-compliance with her work schedule and non-compliance with various workplace rules, resulting in written warnings, a five-day suspension and a ten-day suspension. (Joint Ex. 3 at 208-224). The following are examples of the Grievant's behavior:

- March 5, 2018: The Grievant was assigned to act as security at the Athletic Center, when a couple of attendees became difficult and verbally aggressive. The Grievant escalated the situation, and as the couple was being removed from the Center, the Grievant "started dancing and celebrating the fact the woman was being put out[, f]urther escalating the situation." (Joint Ex. 3, at 223)

- April 5, 2018: "Officer Menafee became very angry and began using expletives directed at [Chief Reddish] (ie "Fuck that, I am taking the seven days" "You aren't shit, fuck you mother fucker")...She continued to yell, scream and cry at the top of her lungs...Union 884 officials [asked Chief Reddish] to leave the room while they attempted to calm her down..." (Joint Ex. 3, at 215)

- June 27, 2018: The Grievant was assigned to work the Career Pool on June 26, 2018 where she was observed to be on her iPad and not performing her duties. She was counseled to stay off her iPad. Thereafter, the Grievant called her supervisor, where she "began ranting and raving about people out to get her and she then hung up on me." (Joint Ex. 3, at 217)

- September 7, 2018: At a meeting regarding the Grievant's requested schedule change, the "meeting didn't go in Tracy Menafee's favor, and she became very emotional, crying, and stated that she was going to kill herself, further stated that she will go to the doctor; then peeled off in her vehicle." (Joint Ex. 3, at 224)

4. As a result of the Grievant's behavior, she received a ten-day suspension without pay and executed a last chance agreement. This required her to not report to work tardy more that twice a calendar month, and to not engage in insubordination or unprofessional behavior. (Joint Ex. 3 at 225). The Grievant did not violate the last chance agreement for the two years it was in effect.

5. The Grievant's school assignment changed on January 26, 2021. She informed the Chief that she had previously scheduled a doctor's appointment for 7:30 a.m. the morning of January 27, 2021. This was later changed to 9:30 a.m. The Grievant had not notified anyone of this appointment, because she felt she could make the appointment and back to work at her previous school in time. The Grievant called the Chief, who told her to meet with the new principal and ask whether she should take a half of a sick day or go to the doctor's appointment and come back.

6. On the morning of January 27, 2021, the Chief received a phone call from the newly assigned principal who asked where the Grievant was. The Chief called the Grievant who "started going off" on him. She was yelling and screaming words such as "fuck you motherfucker". (Test of Chief). The Chief advised her that she was creating a hostile work environment and that he had her on the speakerphone and others were listening. At that point the Grievant "started screaming, Take me off the speaker motherfucker." (Id.). When the Chief advised the Grievant that he would not take her off the speaker she hung up. (Id.).

7. The Chief requested the City's Labor Relations Director Cathleen Simpson (Director) to investigate the Grievant's hostile behavior to determine if and what discipline was warranted. The Director included this with other complaints made against the Chief. These were sent to a third party for investigation and recommendation. The final report was issued August 10, 2021. (Joint Ex. 3). The Chief was exonerated of all charges, and it supported the Director's decision to place the Grievant on administrative leave due to her volatile state of mind. It also recommended the Grievant undergo a psychological evaluation and fitness for duty exam.

8. The evaluation of the Grievant "did not reveal the presence of any emotional, behavioral, cognitive or interpersonal disabilities." And that she "has the capacity to function successfully if she so chooses and if she does, she should be able to return to successful functioning. If not she should be treated with disciplinary tools available to the City." (Joint Ex. 6).

9. A *Loudermill* hearing was held on December 9, 2021. The City determined to terminate the Grievant's employment for creating a hostile work environment, insubordination to the Chief, insubordination for being on City property during her administrative leave, and an unwillingness or inability to meet the essential job functions of a School Security Officer.

10. During the hearing before this Panel, the Grievant was asked if there was anything she would have done differently. She answered "No". (1/9/23 Tr. at 43). She also testified that she never swore and never used the work "motherfucker". (Id. at 11, 53). "I've never sworn at Thaddeus Reddish and/or any staff for no apparent reason or not reason at all. I just never did." (Id. at 56). When asked on cross examination if she ever swears, she answered "I never said I don't swear. I don't swear directly at people who I have conversations with...". (Id at 55-56). And, "When I'm an employee, I may use profanity, but not in a disrespectful way." (Id. at 86). The Grievant also testified that cursing at a supervisor would be appropriate cause for discipline. (Id. at 71).

11. The Grievant concurrently worked for the school bus company. The independent investigation reported a Facebook posting by the Grievant which was "extremely hostile and vulgar and her diatribe directed at parents whose children use First Student Transportation." (Joint Exhibit 3). And, following this, "...it was reported that (the Grievant) was making threats toward First Student staff. During our interview with (the Grievant), she explained the thought

process related to her conduct, and we seriously questioned her ability to make sound judgments in the interest of safety and security." (Id. at 42).

Arguments of the City

The City argues that it had just cause to terminate the Grievant's employment. It cites the *Daughtery* seven steps to demonstrate that just cause existed in a disciplinary case. It argues that all steps have been reasonably met. The City conducted an independent evaluation of the facts involved; it held a fair hearing with the grievant represented; it published sufficient rules of behavior for the grievant to be on fair notice of the consequences of her actions; it followed appropriate expectations of progressive discipline.

The Grievant, the City argues, agreed that the use of vulgar language at a supervisor was unacceptable and that discipline was appropriate.

The discipline was fairly applied in a non-discriminatory fashion in that there were no other instances where an employee whose conduct was similar to the Grievant's.

The City further argues that with respect to any credibility questions related to the Grievant's use of abusive and vulgar language at the Chief should be resolved in the Chief's favor. It points to the Grievant's own conflicting testimony in support of this argument.

Finally, the City argues that the Grievant's vulgar Facebook posting is a basis to find a pattern of conduct on the Grievant's part which is consistent with the Chief's testimony.

Arguments of the Union

The Union also bases its arguments on the *Daughtery* tests. It concludes the opposite. It argues that the City did not demonstrate by clear and convincing evidence that it had just cause to terminate the Grievant's employment.

The Union argues that the independent investigation did not find that the Grievant swore at the Chief. It only found that the Grievant should undergo a fitness for duty examination which she complied with.

The City failed to give the Grievant sufficient warning that her behavior would result in termination. The last chance agreement the Grievant received was over three years ago from the termination. And, it was not demonstrated that the last chance agreement was of the same conduct complained of here.

The punishment of termination, the Union argues, is far beyond that which should be reasonably applied here. The Grievant's long-term employment, almost 18 years, should have been taken under consideration and the discipline should have been reduced.

Finally the Union questions the Chief's claims that he feared for his safety when with the Grievant. The Chief's mere testimony on these claims should not be taken as a convincing and sufficient basis for termination.

Discussion

The City has the burden to demonstrate by a preponderance of the evidence that it had just cause to terminate the Grievant's employment. It has met this burden. The Union argues that the standard of proof should be by clear and convincing evidence. Some arbitrators will use a "clear and convincing" standard for termination cases where the behavior complained of involves acts of serious moral turpitude resulting in societal condemnation. We choose here to use the standard of preponderance of the evidence.

The Chief testified credibly about the Grievant's vulgar and threatening language toward him. Such conduct by any employee is unacceptable. Certainly, such conduct is unacceptable in any organization, especially one which provides school security. Unfortunately, the function of providing school security has developed into a serious and highly critical function, where accountability of one's whereabouts, the discipline of coverage and the need for precise and respectful communications in a chain of command are essential. The Grievant failed this standard after due notice.

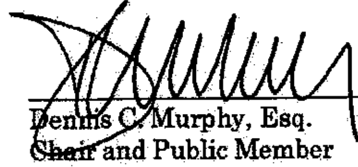
The Grievant amply demonstrated a profound lack of respect for authority and a careless lacking of proper conduct in the public sector. Her vulgar display on Facebook directed at the parents of school children fully informs us of her disrespect for any semblance of civil norms. No school is required to tolerate such behavior. The fact that after the last chance agreement she was able to measure her language and refrain from using foul language in a threatening way demonstrated that she was more likely than not capable of continuing to behave in a reasonably acceptable way. The psychological evaluation found that her threatening and vulgar conduct was a voluntary choice of behavior on her part. We join in that conclusion, and find accordingly.

AWARD

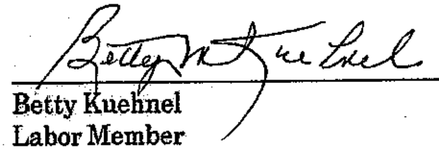
The City had just cause to terminate the Grievant.

Case No. 2021-A-0216

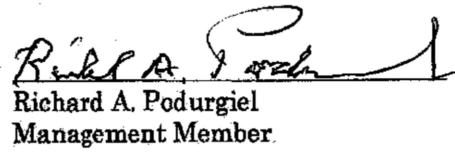
By the Panel



Dennis C. Murphy, Esq.
Chair and Public Member



Betty Kuehnel
Labor Member



Richard A. Podurgiel
Management Member