

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between: *

TOWN OF MASHPEE *

-and- *

MASSACHUSETTS LABORERS' *

DISTRICT COUNCIL *

ARB-14-3827

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Douglas Louison, Esq. - Representing Town of Mashpee

Salvatore Romano - Representing Massachusetts Laborers'
District Council

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The Town did not have just cause to impose a three-day suspension on Charles Maintanis.

Timothy Hatfield, Esq.
Arbitrator
June 17, 2015

INTRODUCTION

On July 1, 2014, Massachusetts Laborers' District Council (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield, Esq. to act as a single neutral arbitrator with the full power of the Department.¹ The undersigned Arbitrator conducted a hearing at the Department's Boston Office on January 22, 2015.

The parties filed briefs on March 13, 2015.

THE ISSUE

Did the Town of Mashpee have just cause to impose a three-day suspension on Charles Maintanis?

If not what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

Article 3 – Management Rights (In Part)

3.1 – Except to the extent that there is contained in this Agreement an express and specific provision to the contrary, all the authority, power, rights, jurisdiction and responsibility of the Town are retained and reserved exclusively to the Town including ... the rights to ... discipline, suspend,

¹ Pursuant to Chapter 145 of the Acts of 2007, the Department of Labor Relations "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the ... the board of conciliation and arbitration ... including without limitation those set forth in [chapter 23C](#), [chapter 150](#), [chapter 150A](#), and [chapter 150E of the General Laws](#)."

remove, deny reappointment, demote and discharge employees for just cause; ...

PROFESSIONAL CONDUCT POLICY

Town of Mashpee employees are expected to act honestly, conscientiously, reasonably and in good faith at all times having regard to their responsibilities, the interests of the Town and the welfare of its residents.

Employees have an obligation to be present at work as required and to be absent from the workplace only with proper authorization; to carry out their duties in an efficient and competent manner, and maintain specified standards of performance; to comply with reasonable employer instructions and policies and to work as directed; to respect the privacy of individuals and use confidential information only for the purposes for which it was intended; to neither use, nor allow the use of Town property, resources, or funds for other than authorized purposes; to incur no liability on the part of the Town without proper authorization; and to maintain all qualifications necessary for the performance of their duties legally and efficiently.

The intent of this policy is to ensure that: 1) employees meet the Town's legitimate expectations in the areas of performance and behavior; 2) employees whose performance or behaviors are deficient are provided with the necessary assistance and motivation to meet the Town's expectations; and 3) disciplinary action initiated against an employee is fair and appropriate.

Failure to behave in a manner consistent with the standards of conduct and policies included herein may result in disciplinary action being initiated against the offending employee. The Town shall utilize a fair and equitable process in reviewing an employee's alleged violation of these standards and policies and shall discipline the employee, if called for, in a manner appropriate given the alleged violation.

This policy applies to all paid, appointive employees in Town Service other than those positions under the supervision and control of the School Committee. Employees subject to collective bargaining agreements are subject to only those provisions in this order which are not specifically regulated by collective bargaining agreements.

FACTS

The Town of Mashpee (Town) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration.

The grievant, Charles Maintanis (Maintanis), is employed by the Town as a Local Building Inspector. Maintanis has held the position since 2004, and has received no prior discipline. Joyce Mason (Mason / Town Manager) is the Town Manager and Appointing Authority for Maintanis' position of Local Building Inspector.

On or about April 10, 2014, the Town began to seek applications for the vacant Municipal Building Commissioner position. Maintanis applied for the position. The Town unhappy with the number of applications received subsequently posted the position a second time seeking further applications.

On March 18, 2014, April 14, 2014, and April 30, 2014, Maintanis signed Certificates of Inspection for three local establishments as part of the annual renewal process for their liquor licenses. Maintanis is authorized to sign these certificates under both Massachusetts General Law and state regulations. The certificates are computer generated, pre-printed certificates with some boxes that allow for input from the person creating the forms. Maintanis typed his name next to the boxes labeled "Name of Municipal Building Commisioner" (sic), and could not delete that title from the forms. Maintanis then signed his name next to the boxes labeled "Signature of Municipal Building Commisioner" (sic), a designation which he also could not delete.

On or about April 30, 2014, it was brought to Mason's attention that Maintanis had signed a Certificate of Inspection as the Municipal Building Commissioner. Mason called Maintanis into her office and showed him the certificate and asked if he signed it. Maintanis acknowledged that he had signed the form, as he was authorized to do. Mason placed Maintanis on paid

administrative leave pending a hearing to determine “whether you knowingly and willfully misrepresented your position and title with the Town when you signed off on a certificate of inspection.”

On May 9, 2014, a disciplinary hearing was held before hearing officer Thomas Mayo (Mayo). Mayo issued a report the same day which recommended a three to five day suspension for Maintanis based on his actions of signing three Certificates of Inspection as Municipal Building Commissioner. Upon reviewing Mayo's findings, Mason decided to suspend Maintanis for three days. On May 23, 2014, Maintanis filed a grievance over the imposition of the suspension, which was denied at all steps by the Town and resulted in the instant arbitration.

POSITIONS OF THE PARTIES

THE EMPLOYER

The Town maintains that it has established just cause for the imposition of a three-day suspension without pay for violation of the Town of Mashpee's Professional Conduct Policy.

The Town Manager, as appointing authority, was authorized and required to enforce the Professional Conduct Policy. She became aware of the potential violation when it was reported to her that Maintanis, serving as the Local Building Inspector, signed and executed three Town Certificates of Inspection. These were not executed in his capacity as the Local Building Inspector, but rather, incorrectly and intentionally as the Municipal Building Commissioner.

There is no dispute, and no misunderstanding on the part of the Town Manager that Maintanis is empowered under state law and Mashpee procedures

to execute such Certificates of Inspection as the local inspector. However, on the three subject forms that serve as the basis for this proceeding, he incorrectly and falsely typed his name on the forms where it indicated "Name of Municipal Building Commissioner". Compounding the falsity of this act, he then signed his name in the blank boxes entitled "Signature of Municipal Building Commissioner".

The seriousness of this false representation was compounded by the fact that at the time Maintanis executed the three Certificates of Inspection, the Town had posted and was undergoing a search for a successor Municipal Building Commissioner. Maintanis had applied for the position, and the Town Manager testified that, in her estimation, the falsehood of holding himself out as the then Building Commissioner had an adverse and chilling effect on the hiring process. The Town Manager's concern was triggered by the limited number of original applicants for the position, which resulted in the necessity for a second posting of the job. The Town would not be able to solicit candidates, if the false impression was created that the position had already been filled or that the applicant was essentially already acting in the Building Commissioner's position.

In the absence of different or contrary findings of fact by this arbitrator and a clear determination that Mason, as appointing authority, violated the standards of just cause based upon substantial evidence or that her decision was otherwise arbitrary or capricious, this arbitrator should uphold the action of the Town Manager and determine no violation of the collective bargaining agreement occurred.

THE UNION

The Town failed to prove by a preponderance of evidence the existence of just cause. It has not offered any Town rule or policy that forbade Maintanis from executing the Certificate of Inspection. Additionally, it has not shown that Maintanis acted beyond the scope of authority granted to him in M.G.L. Chapter 143 and 708 Code of Massachusetts Regulations 110.R7. Finally, it has not established that Maintanis' actions violated any Town rules.

The thrust of the Town's case begins with Mason's ambiguous May 1, 2014 letter where she informs Maintanis that she is scheduling a hearing to determine "whether you knowingly and willfully misrepresented your position and title with the Town, when you signed off on a Certificate of Inspection as the Mashpee Building Commissioner." In order to sustain that allegation, the Town is required to prove by a preponderance of evidence that Maintanis knowingly, dishonestly, willfully, and intentionally misrepresented himself. The Town did not provide any facts to support this claim, except the grievant's own admission concerning his signature. The Town did not show that it warned Maintanis or gave him specific instructions about who could endorse the Certificates of Inspection. The Town admits that both Massachusetts General Law Chapter 13, Section 3, as well as 780 of the Code of Massachusetts Regulations 110.R7, provide Maintanis with statutory powers to perform his duties, which includes executing the Certificates of Inspection. Also, the Town failed to provide any evidence indicating Maintanis ever told anyone he was the Municipal Building Commissioner.

Without an ounce of evidence, the Town Manager falsely claimed that Maintanis violated the Code of Professional Responsibility. Did she have another agenda in mind when she initiated the groundless claim of Maintanis' dishonesty? Credence must be given to this idea, especially when you consider the total lack of evidence to sustain the requirements of just cause as well as the preponderance of evidence standard required. Maintanis never wrote or typed the words Municipal Building Commissioner on the Certificate of Inspection. Instead, all he did was sign his name in a pre-printed box. The convoluted logic employed by the Town, is shown in the Town Manager's Step 3 response where she states:

The Town does not dispute your authority to sign the form as the Local Inspector. However, by you knowingly signing the form as the Building Commissioner, you violated the Town's Professional Code of Conduct. Therefore, my decision to suspend you for three (3) days without pay stands.

Conclusion

The grievant requests that the three day suspension be vacated and that he be made whole for his losses.

OPINION

The issue before me is: Did the Town of Mashpee have just cause to impose a three-day suspension on Charles Maintanis?

If not what shall be the remedy?

For all the reasons stated below, the Town did not have just cause to impose a three-day suspension to Charles Maintanis.

There is no dispute that Maintanis signed all three Certificate of Inspection forms in the boxes beside the heading “Signature of Municipal Commisioner” (sic). Mason suspended Maintanis because she concluded that he deliberately signed the forms as Municipal Building Commissioner to give the false impression that he already held that position. Mason believed that the false representation was compounded by the fact that the Town was undergoing a search for a new Municipal Building Commissioner, and that Maintanis holding himself out as the then Municipal Building Commissioner would have an adverse and chilling effect on the hiring process. Mason reasoned that the Town would not be able to solicit candidates, if the false impression was created that the position had already been filled or that an applicant was essentially already acting in that position. She inferred that her concerns were valid because a second posting was deemed necessary due to the low number of original applicants.

The Town, however, failed to produce any evidence, beyond Mason’s pure speculation, that Maintanis’ signing the certificates had any relation to the number of applicants, or had any effect, never mind a “chilling” effect, on the hiring process. There could have been a myriad of reasonable explanations why the Town did not receive a significant number of applications.

Additionally, the Town was unable to show that Maintanis’ signature was an attempt to willfully deceive anyone. Maintanis never told anyone he was the Building Commissioner, and he was honest in his responses, when questioned by Mason, that he had in fact signed the certificates as he felt he was authorized

to do. The Town also failed to produce any evidence that Maintanis' signature was anything other than a Local Inspector signing a certificate that he was lawfully authorized to sign in the only box available for a signature. As such, the Town has not proved that Maintanis' violated the Professional Conduct Policy. Although, as the Town argues, Maintanis could have used a pen to cross out the Building Commissioner title box, his failure to do so does not warrant just cause for a three-day suspension.

REMEDY

Having found that the Town has failed to sustain its burden of proving just cause for a three-day suspension, I now order the Town to remove all references to a three-day suspension from Maintanis' personnel file, and order the Town to make Maintanis whole for all lost wages and benefits that resulted from his suspension.

AWARD

The Town did not have just cause to impose a three-day suspension on Charles Maintanis.

Timothy Hatfield, Esq.
Arbitrator
June 17, 2015