

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between: *

WORCESTER HOUSING AUTHORITY *

-and- *

ARB-15-4666

MASSACHUSETTS & NORTHERN NEW *

ENGLAND LABORERS' DISTRICT *

COUNCIL *

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Nicholas Anastasopoulos, Esq. - Representing Worcester Housing Authority

Tom Coffey, Esq. - Representing Massachusetts & Northern New
England 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 Worcester Housing Authority had just cause to suspend Jerry Santiago for a period of thirty days and the grievance is denied.



Timothy Hatfield, Esq.

Arbitrator

July 8, 2016

INTRODUCTION

The Massachusetts & Northern New England 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. The undersigned Arbitrator conducted a hearing at the Law Offices of Mirick, O'Connell, DeMallie & Lougee in Westborough, Massachusetts on February 11, 2016.

The parties filed briefs on May 2, 2016.

THE ISSUE

Did the Worcester Housing Authority have just cause to suspend Jerry Santiago for a period of thirty days? If not what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

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

ARTICLE 3 SCOPE OF THE AGREEMENT AND WHA RIGHTS (In Part)

The Union acknowledges and agrees that nothing in this Agreement shall limit the WHA in the exercise of its regular and customary function of management and in the direction and supervision of the WHA's business. This includes, but is not limited to the right to: add or eliminate departments; require and assign overtime; increase or decrease the number of jobs; change process; assign work and work to be performed; schedule shifts and hours to work and lunch or break periods; hire; suspend; demote, discipline, or discharge; transfer or promote; retain employees; layoff because of lack of work or other legitimate reasons; establish rules, regulations, job descriptions, policies and procedures; conduct orderly and efficient operations; establish new jobs; abolish and

change existing jobs; determine where, when, how, and by whom work will be done; determine standards of proficiency in required skills and physical fitness standards and to take whatever action may be necessary or advisable to carry out the mission of the WHA; except where any such rights are specifically modifies or abridged by terms of this Agreement. ...

ARTICLE 18 GRIEVANCE PROCEDURE (In Part)

Section 1 – Definition of Grievance – An alleged violation of a specific, express provision of this Agreement.

Section 2 – Grievance Steps – (d) Step Four (Arbitration)

The submission to arbitration must be made within thirty (30) days after the expiration of the last grievance procedure period.

The arbitrator shall be selected by the mutual agreement of the parties. ... Hearings before the arbitrator ... shall be conducted in accordance with the rules of the ... Massachusetts Board of Conciliation and Arbitration. ...

The decision of the arbitrator shall be binding, subject to review in accordance with the procedure established under provisions of M.G.L. chapter 150 (c). The arbitrator shall have no power to alter, amend, add to, or detract from the language of this Agreement; nor shall the arbitrator have any power with respect to any rights or relief for any period prior to the effective date of this agreement. ...

ARTICLE 38 – HIGHER STANDARDS OF CONDUCT (In Part)

A. Overview

In the event an employee who is a member of this Union has been convicted or has entered a plea of guilt to a serious criminal act, he/she shall report the conviction or plea of guilt to a committee designated by the Appointing Authority as the "Self-Reporting Committee" (the Committee). In addition, an employee charged or arrested for any serious criminal act is required to notify the committee as soon as possible after the charge or arrest. Failure to timely notify the Committee will be considered a violation of this Article and subject the employee to discipline and/or termination based on the recommendation of the Committee. ...

STANDARDS OF CONDUCT (In Part)

The WHA is committed to the highest standards of ethics and business conduct and its employees are expected to use good judgment, adhere to high ethical standards and conduct themselves in a positive, professional

manner. Conduct that interferes with operations, discredits, or is offensive to applicants for housing, tenants, or fellow employees will not be tolerated. If an employee fails to comply with the standards, then the employee may be subject to disciplinary action, up to and including termination.

Positive conduct and generally accepted workplace practices are expected from employees. The WHA cannot list all examples, however some examples of such conduct includes, but is not limited to the following: ...

- Performing job assignments and tasks on time, efficiently, professionally and in cooperation with coworkers and supervisors;
- ...
- Complying with WHA policies and procedures; ...
- Using WHA issued items, such as keys and key cards only in the manner authorized by the WHA.

Negative and illegal conduct is prohibited. The WHA cannot list all examples, however some examples of such conduct includes, but is not limited to the following: ...

- Stealing, duplicating or other unauthorized use of WHA keys and key cards. ...
- Other acts of dishonesty affecting the WHA. ...

FACTS

The Worcester Housing Authority (WHA) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times. The grievant, Jerry Santiago (Santiago) has been employed by the WHA since January 2001. In order to perform the essential functions of his position, the WHA issued numerous keys to Santiago.

On May 26, 2010, Santiago signed the following Key Acknowledgement and Protocol:

I, (Jerry Santiago), hereby verify and agree that I have turned in all keys that I have in my possession, that have been issued to me by the Worcester Housing Authority (WHA), and/or that I may have obtained while employed at the WHA. I further understand that

should I have in my possession any other keys that I have failed to return and/or acknowledge to the WHA, I will be subject to disciplinary action.

Further, I understand that the keys, access cards and/or other such devices that allows access to secured areas and/or apartments are issued in order for me to complete my job duties and that the proper storage and usage of these items are of vital importance to the safety of WHA residents and staff. By accepting these keys, I understand that I am responsible for the safe keeping and proper usage of these keys, access cards and any other such devices, and that the following protocol must be adhered to:

1. Keys, access cards and/or any other such devices are not to be duplicated or reproduced in any way and/or are not to be given to anyone to duplicate or otherwise reproduce.
2. Keys, access cards, and/or any other such devices are not to be given, loaned or otherwise transferred to any other individual, including but not limited to other WHA employees, outside contractors and/or residents.
3. Should my keys, access cards and/or any such devices become lost for any reason, I am required to immediately notify my immediate supervisor, as well as the Control Center Supervisor.
4. Only the Control Center is authorized to issue keys, access cards and/or any other such devices.

(Jerry Santiago)
Employee Signature

(5-26-2010)
Date

Since 2007, nine WHA employees have been disciplined for violation of the key protocol policy. These disciplines have ranged from an oral warning to a negotiated one hundred day suspension with a Last Chance Agreement. Each of

the employees disciplined reported losing his/her keys to their immediate supervisor or to the Control Center Supervisor.

Since the inception of his employment at the WHA, Santiago has been disciplined on twenty-one (21) occasions. He has received four (4) counseling memos, three (3) oral warnings, eight (8) written warnings, and six (6) suspensions including the thirty-day suspension currently at issue in this arbitration.

On April 21, 2015, WHA employee Juan Garcia (Garcia), at the request of Santiago, used his key to allow Santiago and a resident entry through a security door into a WHA property at 68 Boylston Street.

On April 24, 2015, as a result of a separate investigation into potential criminal activity stemming from the April 21, 2015 incident above, Santiago's supervisor ordered him to turn in his keys. Santiago informed his supervisor that he had lost his keys one week prior and had not reported it to anyone. A total of twenty-four (24) keys were lost and have not been recovered.

Based on Santiago's violation of the WHA reporting protocols, he was suspended for a period of thirty-days. The Union filed a grievance over the suspension that was denied at each step of the grievance procedure and resulted in the instant arbitration.

POSITIONS OF THE PARTIES

THE EMPLOYER

There is no dispute that Santiago, as a long term employee of the WHA, was well aware of his obligation to immediately report losing his WHA issued

keys. The WHA's Key Acknowledgement and Protocol policy expressly lays out the WHA's expectations if employees lose their keys or access cards. It also puts employees on notice that they will be subject to discipline if they fail to follow the protocols outlined in the policy. Santiago, like all other WHA employees who are issued keys, was provided the policy and acknowledged receipt of the policy by signing it. Moreover, at no point during the grievance or arbitration process did the grievant or the Union deny the existence of the policy or its application to the current arbitration. More importantly, the Union acknowledged that Santiago failed to comply with the policy when he failed to report losing his keys. Based on the above, the Union is simply asking for some lesser discipline to be imposed by the arbitrator. However, the Union failed to provide any basis in support of this position.

During the arbitration, the WHA presented evidence that employees are disciplined for losing their keys. The discipline ranged from a warning to a negotiated one hundred day suspension with a Last Chance Agreement. The discipline imposed on the other employees was based on a close analysis of the particular facts, the individual employee's work history and the labor tenet of progressive discipline.

Based on the factors described above and Santiago's particular disciplinary history, there is more than enough support to sustain the thirty-day suspension imposed on him. First, unlike every other employee disciplined under this policy, Santiago intentionally failed to report losing his keys. Given his longevity with the WHA and understanding of the key policy, the fact that

Santiago did not understand the gravity of not reporting the loss of his keys on the overall operation is remarkable. In no uncertain terms, Santiago consciously decided his concerns about his employment status outweighed his responsibilities to the WHA's property and resident safety.

Finally, Santiago holds the distinction of being the most disciplined employee at the WHA. To suggest that a reduction of the discipline is appropriate is wholly without merit. The Union failed to present even a scintilla of evidence to support its request to reduce the discipline imposed in this matter. The WHA requests that the arbitrator deny the grievance and uphold the thirty day suspension.

THE UNION

Santiago is grieving a thirty-day suspension for the loss of twenty-four keys, sometime prior to April 24, 2015, and for his alleged failure to report the loss in a timely manner.

The background of this incident was relayed in an April 29, 2015 letter from Executive Director Raymond Mariano (Mariano) to Santiago. It stated that:

(1) On Friday, April 24, 2015, as a result of a separate investigation into potential criminal matters, your supervisor requested that you turn over your keys pending the outcome of the investigation. (2) You then informed your supervisor that you had lost several keys approximately one week prior and failed to report that to the WHA."

The Union submits that pursuant to Article 38 of the collective bargaining agreement, Santiago's supervisor should not have held the April 24, 2015 meeting with him in the first place. The parties have contractually created a separate "Self-Reporting Committee" for cases involving charges of serious

criminal acts. This Committee consists of one WHA official appointed by the Executive Director, one official designated by and a member of the Union, and one neutral member that is neither an employee of the WHA, nor a member of the Union. The Committee has the authority to review both the charges reported by the Union member and, as in this case, the Committee also has the authority to review a case where the member has failed to timely notify the Committee of such charges.

The Union submits that when the WHA was initially made aware of the charges of alleged criminal conduct, it should have referred the entire matter to the Committee for resolution. Contractually, Santiago's supervisor should not have taken matters into his own hands, assumed guilt, and requested Santiago's keys. It was only by the WHA's denial of Santiago's contractual rights to the independent Committee's review that he suffered a thirty-day suspension. The WHA's right to discipline Santiago is procedurally subject to the collective bargaining agreement's Committee process and this process was not followed. Accordingly, the WHA did not have just cause to discipline Santiago without first engaging in the above Committee review.

Even if the WHA had followed the proper procedure in this case, the Union submits that the thirty-day suspension was excessive and should be reduced by the arbitrator. Accordingly, the Union requests that the arbitrator find that the discipline was not for just cause and in violation of the parties' collective bargaining agreement. The Union requests that Santiago be made whole for all economic losses.

OPINION

The issue before me is: Did the Worcester Housing Authority have just cause to suspend Jerry Santiago for a period of thirty days? If not what shall be the remedy?

For the reasons stated below, I find that the WHA did have just cause to suspend Jerry Santiago for a period of thirty days and the grievance is denied.

It is undisputed that Santiago, a long time WHA employee, was aware of the reporting requirements for lost keys. It is also undisputed that Santiago waited at least one week before informing the WHA of the lost keys, and only did so when he was required to turn in his keys to his supervisor. There was no evidence presented that Santiago would have ever reported the lost keys on his own if not for the investigation into an alleged incident on April 21, 2015. Santiago had been aware of the reporting requirements since at least May 26, 2010, when he signed the Key Acknowledgment and Protocol. Santiago's actions show a conscious disregard for the policy and placed the safety of his fellow employees and the WHA residents in potential jeopardy. Discipline was certainly appropriate.

Having found the WHA decision to discipline Santiago appropriate, the next issue is whether there was just cause for a thirty-day suspension. Santiago's extensive disciplinary history leaves little doubt that a lengthy suspension was necessary. Santiago's total of twenty-one separate disciplines, including five prior suspensions creates a solid foundation to support the WHA's

decision to suspend him for thirty days. There has been no compelling argument presented to support the idea of a reduction of this discipline.

Finally, I am not persuaded by the Union's argument that pursuant to Article 38 of the collective bargaining agreement, Santiago's supervisor should have should have sent the investigation concerning the April 21, 2015 incident to the Self-Reporting Committee and therefore, would never have asked for Santiago's keys and discovered that Santiago had lost his keys. A review of Article 38's clear and unambiguous language reveals that the Self-Reporting Committee is for a Union member who "has been convicted or has entered a plea of guilt to a serious criminal act." There was no evidence presented that Santiago had been convicted or entered a plea of guilt to a serious criminal act when his supervisor scheduled the meeting on April 24, 2015. The only information presented at the hearing was that an investigation was conducted into an incident on April 21, 2015. The facts before me do not show that Santiago was ever charged with a crime or entered any sort of plea. As such the Union's reliance on this Article is misplaced.

AWARD

The Worcester Housing Authority had just cause to suspend Jerry Santiago for a period of thirty days and the grievance is denied.



Timothy Hatfield, Esq.

Arbitrator

July 8, 2016