

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of Arbitration between \*  
\*  
WORCESTER HOUSING AUTHORITY \* Case No.: ARB-17-6102  
\*  
and \*  
\*  
MASSACHUSETTS LABORER'S DISTRICT \*  
COUNCIL, LOCAL 367 \*  
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Arbitrator:

Kendrah Davis, Esq.

Appearances:

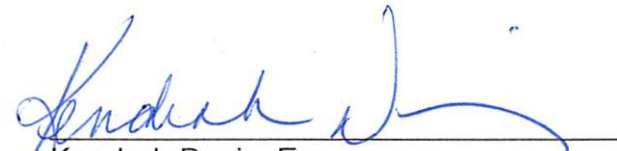
Nicholas Anastasopoulos, Esq. - Representing Worcester Housing Authority

S.L. Romano - Representing Massachusetts Laborer's  
District Council, Local 367

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 the Grievant for one day without pay. The grievance is denied.

  
Kendrah Davis, Esq.  
Arbitrator  
February 16, 2018

### INTRODUCTION

On July 21, 2017, the Massachusetts Laborer's District Council, Local 367 (Union) filed a unilateral petition for Arbitration with the Department of Labor Relations (DLR). Under the provisions of M.G.L., Chapter 23, Section 9P, the DLR appointed Kendrah Davis, Esq., to act as a single neutral arbitrator with the full power of the DLR. The undersigned Arbitrator conducted a hearing at the Worcester Housing Authority on October 26, 2017. On February 7 and 9, 2017, the Union and the Worcester Housing Authority (Employer or WHA), respectively, filed post-hearing briefs with the DLR.<sup>1</sup>

### THE ISSUE

Did the Worcester Housing Authority have just cause to suspend the Grievant for one day without pay? 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 AGREEMENT AND WHA RIGHTS

....

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 businesses. 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

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<sup>1</sup> On December 11, 2017, January 3, 16 and 29, 2018, the parties requested extensions of time to file their post-hearing briefs. I granted those extensions.

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 modified or abridged by terms of this Agreement.

....

By way of example but not limitation, the WHA retains the following rights:

- to determine the mission, budget, and policy of the WHA;
- to determine the organization of the WHA, the number of employees, the work functions, and the technology of performing them;....
- to transfer, temporarily reassign, or detail employees to other shifts or other duties;....
- to establish or modify work schedules and shift schedules and the number and selection of employees to be assigned;
- to take whatever actions may be necessary to carry out its responsibilities in situations of emergency;
- to enforce existing rules and regulations as it deems appropriate;

The WHA also reserves the right to decide whether, when, and how to exercise its prerogatives, whether or not enumerated in this Agreement. Accordingly, the failure to exercise any right shall not be deemed a waiver.

....

### **FACTS**

The WHA and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration.

The WHA issues an employee handbook, which includes "Standards of Conduct." The Grievant received a copy of the handbook and signed an acknowledgement of receipt on September 17, 2012. The Standards of Conduct state, in relevant 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 include, but [are] not limited to, the following:

- Treating applicants for housing, tenants, and fellow employees in a courteous and professional manner;
- Performing job assignments and tasks on time, efficiently, professionally and in cooperation with coworkers and supervisors;....
- Refraining from behavior or conduct that is offensive or undesirable;....
- Complying with WHA policies and procedures....

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

- Misuse of WHA funds;
- Theft or abuse of WHA property;....
- Other acts of dishonesty affecting the WHA;
- Hindering an employee's ability to perform his or her job;....

The WHA has employed the Grievant since March 22, 2004. At all relevant times to this arbitration, the Grievant has held the position of Maintenance Mechanic and was assigned to the WHA's property at 275 Pleasant Street in Worcester, Massachusetts. At that location, there is office space on the first floor that was once utilized as a medical clinic. At some point prior to May 10, 2017, the clinic's physician and staff moved to a new location on Main Street, leaving behind medical equipment and other office items that needed to be transferred. WHA created a "Relocation Form" for that transfer, which included an inventory of 74 items. One item was a scale that needed to be moved from the old clinic to the new location by May 13, 2017.

On May 10, 2017, the WHA assigned the Grievant to work at the Pleasant Street

location. During the Grievant's shift on that day, Assistant Maintenance Director Jeremy Gagon (Gagon) and a WHA Information Technology (IT) employee named Cory<sup>2</sup> instructed the Grievant, along with another employee, to clear the clinic office. In order to strip and wax the clinic floor, the Grievant took a scale from the clinic and moved it to his office located in the basement. Neither Gagon, nor Cory, nor anyone else from WHA management authorized the Grievant to take the scale to his office. Nor did anyone create a WHA "Equipment Location Change" form to show that the WHA had changed the intended destination of the scale (i.e., from Main Street to the Grievant's office).

On or about May 12, 2017, WHA Director of Management Nancy Jones (Jones) became aware that the scale was missing and conducted an investigation. After reviewing video surveillance, Jones and WHA Director of Admissions Nayda Sanchez (Sanchez) determined that the Grievant and another employee had taken the scale from the clinical office and moved it to the Grievant's office. Three times on May 12, 2017 and once on May 15, 2017, WHA Executive Director Alex Corrales (Corrales) and WHA Director of Maintenance Steve Alvarez (Alvarez) tried unsuccessfully to contact the Grievant by cellular phone to inquire about the scale. At some point on or about May 11, 2017, a coworker informed the Grievant that WHA management was looking for a missing scale. Based on this information, the Grievant returned the scale to the clinical office, which was also recorded by video surveillance.

By interoffice memorandum dated May 15, 2017, Corrales suspended the Grievant for one day without pay, and the Union filed a timely grievance. On June 28,

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<sup>2</sup> Neither party identified Cory's last name.

2017, WHA conducted a hearing at which the Grievant admitted to removing the scale from the clinical office without prior authorization. The Grievant, however, denied receiving calls from Alvarez and Corrales on May 12 and 15, 2017, claiming that there were "dead spots" at the Pleasant Street property that prevented his receipt of those calls. The next day on June 29, 2017, Corrales directed Alvarez to conduct cellular testing at the Pleasant Street location to determine whether dead spots existed. After finding no such evidence, Corrales suspended the Grievant for one day without pay on May 20, 2017.

Despite the Grievant's record of 12 prior disciplines, Corrales decided that the Grievant should serve his suspension on a Saturday, which is not a regular work day for the Grievant. As a result, the Grievant did not lose any regular salary, but he did become ineligible for overtime when he served his suspension on Saturday, May 20, 2017.

### **POSITIONS OF THE PARTIES**

#### **THE UNION**

The Grievant is a member in good-standing with the Union. The Grievant only moved the scale to his office after Gagon and Cory informed him that WHA would discard most of the office items. Based on this information, the Grievant decided to move the scale to his office, but as soon as he learned that Alvarez had inquired about the scale, the Grievant returned the item to its original location in the clinic.

The WHA failed to clarify the exact instructions given by Gagon and Cory to the Grievant concerning the clinic office space. The WHA also failed to prove that the Grievant violated any portion of the "Standards of Conduct" because it cannot show that

the Grievant had illicit intent to move the scale. At all times, WHA knew the exact location of the scale because it was under constant video surveillance. Also, the Grievant never tried to hide the scale and never removed it from the Pleasant Street property. The Grievant's decision to move the scale to his office was based on his belief that it was a safe location.

Based on these facts the WHA did not possess just cause when it disciplined the Grievant because it cannot meet the tests for just cause. Specifically: (1) the WHA failed to give the Grievant forewarning of the possible or probable consequences of his disorderly conduct; (2) the WHA's rule against moving the scale was not reasonably related to orderly, efficient, and safe operation of the WHA, nor was it reasonably related to the performance that the WHA might properly expect; (3) the WHA failed to discover whether the Grievant violated or disobeyed a rule or order of management prior to his suspension; (4) the WHA failed to conduct a fair and objective investigation; (5) the WHA failed to apply its rules, orders or penalties even-handedly and without discrimination to all employees; and (6) the penalty issued by the WHA was not reasonably connected to the "proof" of the alleged offense.

For all the foregoing reasons, the Union asserts that the grievance should be upheld, and respectfully requests that the Grievant be made whole for all losses.

**THE EMPLOYER**

The Grievant is a long-term employee of the WHA and is well aware of his obligations not to take liberties with items on WHA property. The Grievant's awareness includes his knowledge of following all protocols relative to moveable property. The Grievant testified that residents and partners of the WHA must have complete trust and faith in WHA employees, and that WHA employees cannot reroute, discard or repurpose equipment without express authorization from WHA management. The Grievant received and signed a copy of the employee handbook, which includes "Standards of Conduct" expectations for employees.

The Grievant engaged in prohibited conduct and violated a reasonable workplace rule, and the discipline imposed by Corrales complied with the concept of progressive discipline. First, in the Grievant's first 13 years of employment with the WHA, he was disciplined on 12 previous occasions—with six of those disciplines resulting in suspensions for one or more days. Those disciplines arose from various workplace violations that include, but are not limited to: leaving work early, falsifying work tickets (twice), failing to follow instructions, and falsifying a timecard. Given the Grievant's disciplinary record and progressive discipline, WHA gave the Grievant a huge break by suspending him for one day on his day off.

Neither logic nor physics explains why the missing scale was the only clinic item (out of 74) that prevented the Grievant from waxing the floor. There was ample room for the Grievant to rearrange items to fit the scale into or near the office without moving it to a private office in the basement. The Grievant's account of not having cellular phone coverage at the Pleasant Street property is also suspect because at no time before or after this incident did the Grievant or management ever report an issue with



accessing each other via cellular phone. Based on the exhibits in evidence, the Grievant consciously did not pick up the incoming calls from Alvarez because the Grievant was tipped off by his co-worker (who had spoken to Jones earlier that day) that Alvarez was looking for the missing scale. Rather than answer his phone, the Grievant opted to return the scale to the clinic area. The Grievant's credibility should be judged against his disciplinary record and the nature of offenses contained therein; as there are several disciplinary matters that call into question the grievant's credibility, veracity and judgment.

For all the foregoing reasons, the grievance should be denied, and the matter dismissed.

#### **OPINION**

The issue before me is whether the WHA had just cause to suspend the Grievant for one day without pay. For all the reasons stated below, I find that the WHA did have just cause to suspend the Grievant for one day without pay, and the grievance is denied.

It is undisputed that the Grievant, a long-time WHA employee, was aware of the "Standards of Conduct" that were outlined in the employee handbook. It is also undisputed that the Grievant moved the scale from the clinic and placed it in his office without proper authorization from WHA management. Although the Grievant returned the scale to the clinic area less than 24-hours after taking it, he only returned it after learning that WHA management was looking for that item. The Union did not present evidence that the Grievant would have ever returned the scale on his own if not for Jones' investigation into the incident. The Grievant had been aware of the Standards of

Conduct since at least September 17, 2012, when he signed an acknowledgement of receipt of the employee handbook. The Grievant's actions show a conscious disregard for WHA policy and for clinic property placed in the WHA's care. Therefore, I find that discipline is appropriate.

Having found that the WHA decision to discipline the Grievant was appropriate, the next issue is whether the WHA had just cause for a one day suspension without pay. The Grievant's extensive disciplinary history shows that his suspension was necessary. The Grievant's total of 12 separate disciplines, including six prior suspensions, creates a solid foundation to support the WHA's decision to suspend him for one day without pay on May 20, 2017. The Union has presented no compelling argument to support a reduced disciplinary action.

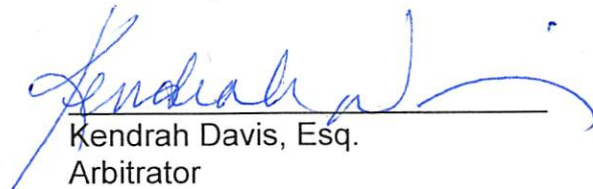
Finally, I am not persuaded by the Union's argument that the Grievant placed the scale in his office for the sole purpose of waxing the clinic floor. Nor am I persuaded that the Grievant lacked cellular service at the Pleasant Street property when Alvarez and Corrales tried to contact him on May 12 and 15, 2017. The facts show that there were several dozen items in the clinic office space at the time of the incident, but nothing shows why the scale was the only item that interfered with the Grievant's job duties. Nor does any fact show why the Grievant moved only the scale from the first floor of the Pleasant Street property to his basement office, while choosing to keep all of the other clinic items in the office. Further, nothing in the record shows that the Pleasant Street location ever experienced "dead spots" before, after or around the time that Alvarez and Corrales tried to contact the Grievant by cellular phone. Based on my review of the record, I find that the Grievant did not lack cellular service around the time

that he placed the scale in his office. I also find the Grievant did not have prior authorization from WHA management to take the scale and move it to his office.

For all the reasons stated above, the WHA had just cause to suspend the Grievant for one day without pay on May 20, 2017, and the grievance is denied.

**AWARD**

The Worcester Housing Authority had just cause to suspend the Grievant for one day without pay. The grievance is denied.



Kendrah Davis, Esq.  
Arbitrator  
February 16, 2018