

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of the Arbitration Between:

LEICESTER SCHOOL COMMITTEE

-and-

INTERNATIONAL UNION OF PUBLIC  
EMPLOYEES, LOCAL 2

ARB-18-6849

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Arbitrator:

Timothy Hatfield, Esq.

Appearances:


Kimberly Rozak, Esq. - Representing Leicester School Committee

Thomas Horgan, Esq. - Representing International Union of Public,  
Employees, Local 2

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 School Committee did not violate the collective bargaining agreement when it refused to pay the grievants vacation or longevity pay upon their lay off on June 30, 2018. The grievances are denied.



Timothy Hatfield, Esq.  
Arbitrator  
January 29, 2020

### **INTRODUCTION**

On July 30, 2018, the International Union of Public Employees, Local 2 (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 Leicester School Department on July 12, 2019.

The parties filed briefs on August 30, 2019.

### **THE ISSUE**

- 1) Pursuant to the 2015-2018 collective bargaining agreement, were William Sylvester and Timothy Millett entitled to receive six weeks of vacation pay upon leaving the school district's employment due to layoff effective June 30, 2018? If so, what shall be the remedy?
- 2) Pursuant to the 2015-2018 collective bargaining agreement, were William Sylvester, Timothy Millett, Adam Troy, Jon Clark, and Kevin Malone entitled to receive longevity payments upon leaving the school district's employment due to layoff effective June 30, 2018? If so, what shall be the remedy?

### **RELEVANT CONTRACT LANGUAGE**

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

#### **Article 7— Grievance Procedure (In Part)**

A grievance shall be defined as a dispute concerning the interpretation, implementation, or application of this collective bargaining agreement.

1. An employee or group of employees having a grievance shall present it in writing through the Union steward or bargaining representative, to the Facilities Manager or his or her designee, stating specifically what article or articles of the collective bargaining agreement the employee believes to have been violated. ...
4. ... The Arbitrator or arbitration panel shall be without power to add to, subtract from, or modify in any way the provisions of this Agreement.

## Article 12– Vacation (In Part)

1. Employees hired after the beginning of the fiscal year (July 1) shall earn vacation time at the rate of one (1) day for every two months of work. The vacation days shall not exceed five (5) days.
2. For service of less than two (2) years, five (5) days
3. For service of more than two (2) years but less than five (5) years, ten (10) days
4. For service of more than five (5) years but less than ten (10) years, fifteen (15) days
5. For service of more than ten (10) years but less than twenty (20) years, twenty (20) days
6. For service of more than twenty (20) years but less than thirty (30) years, twenty-five (25) days
7. For service of thirty (30) years or more, thirty (30) days

For the first year of employment, employees will receive one (1) vacation day for every two (2) months worked through June 30 of that fiscal year. Time worked will count as one full year towards earned vacation time. Thereafter, all employees shall receive the incremental vacation time as of July 1 of the year the employee reaches the trigger year for additional vacation time (i.e. upon July 1 of the individual's third year of employment, they will receive 10 vacation days). Upon resigning, the School has the right to withhold the last paycheck if an employee has used the additional vacation time but has not yet completed the work year in which it is awarded.

Employees hired on or prior to July 1, 1994 will, upon leaving the District for any reason including retirement, be paid out for all unused vacation days. Employees hired on or after July 2, 1994 upon leaving the District for any reason, including retirement, shall receive a prorated payment for such vacation days based upon the actual days worked during the fiscal year that the member leaves the District. ...

## Article 23– Wages (In Part)

... Longevity: An employee will be paid a longevity payment of \$500.00 per year for each year of service at 15 years of service and \$650.00 per year for each year of service at 20 years of service and \$850.00 per year at 25

years or more of service. Payment will be made on the first pay period following July 1 of the qualifying (15<sup>th</sup> or 20<sup>th</sup> or 25<sup>th</sup>) year.

### **RELEVANT MEMORANDUM OF AGREEMENT**

The undersigned, James Foley, President of the G.E.U. Local 2 School Custodians hereinafter the G.E.U. and Paul K. Soojian, Superintendent of Schools, for the Leicester School District, hereinafter the District do hereby agree as follows:

As to the agreed upon language by the parties, this memorandum shall serve to identify those bargaining unit members that are the only employees hired prior on or prior to July 1, 1994 and will upon leaving the District for any reason including retirement, be paid out for all unused vacation days.

Said employees are as follows:

<b>Employee</b>	<b>D.O.H.</b>
Geoffrey Adams	11-2-81
William Sylvester	9-30-85
Timothy Millett	6-19-86
Grover Adams	7-1-94

All other bargaining unit members are employees hired on or after July 2, 1994 and upon leaving the District for any reason, including retirement, shall receive a prorated payment for such vacation days based upon the actual days worked during the fiscal year that the member leaves the District.

Executed this 20<sup>th</sup> day of December, 2011.

### **FACTS**

The Leicester School Committee (School Committee / District) and the Union were parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration.

In December 2011, Superintendent Paul Soojian (Soojian) negotiated a Memorandum of Agreement (MOA) with then Union President James Foley (Foley) concerning vacation time pay for four bargaining unit members hired prior to July 2, 1994. In this MOA, the four named bargaining unit members became entitled to receive a pay out of all unused vacation time upon separation from the District.

All other bargaining unit members were only entitled to receive a prorated share of vacation pay upon separation from the District.

Bargaining unit members were entitled to and received their vacation pay each year during the first pay period of July. Eligible bargaining unit members also received any earned longevity payments in the first pay period of July.<sup>1</sup> All such payments were authorized and received in July 2017.

On June 6, 2018, all bargaining unit members received notices of lay off effective June 30, 2018. Union President William Sylvester (Sylvester) and bargaining unit member Timothy Millett (Millett) used all their vacation time prior to their lay off on June 30, 2018 and received no vacation time payment in their final paycheck from the District.

On June 22, 2018, Sylvester, as Union President, filed multiple grievances for bargaining unit members concerning the District's failure to pay vacation time and longevity payments. The grievances were denied at all steps by the District and resulted in the instant consolidated arbitration.

### **POSITIONS OF THE PARTIES**

#### **THE UNION**

##### **Vacation Benefits**

Millett and Sylvester are owed vacation benefits that they accrued between July 1, 2017 and June 30, 2018. There is no dispute that both Millett and Sylvester

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<sup>1</sup> Payments were made in July of the eligible year regardless of the employee's anniversary date. Structuring the payments in this manner, allowed some employees, with an anniversary date after July, to receive their payment prior to their actual eligibility under the terms of the collective bargaining agreement.

were paid vacation benefits on July 1, 2017, however this payment was for vacation benefits that had accrued and vested the year prior (FY 2017). After receiving their vacation benefits on July 1, 2017, both Millett and Sylvester proceeded to work an additional 365 days (July 1, 2017 – June 30, 2018) for the District before being laid off. Yet, when both Millett and Sylvester received their final paychecks on July 3, 2018, they did not receive any of their accrued vacation time from July 1, 2017, through June 30, 2018. Millett and Sylvester accrued vacation benefits during the year in question and should have been paid out in full upon their separation from employment on June 30, 2018.

According to Article 12 of the collective bargaining agreement, the number of vacation days that an employee accrues each year increases based upon their years of service with the District. Further, once an employee accrues vacation time, it is paid out to that employee not on their anniversary date, but in the first pay period in July of the year said benefits were earned.

Former Superintendent Paul Soojian (Soojian) became the District's Superintendent in 2008. During his time as Superintendent, Soojian changed the period in which an employee received their accrued vacation under the collective bargaining agreement from his/her anniversary date, to the first pay period in July. Soojian testified that this change was made for efficiency purposes, and that there was no intent to also change the period that each member accrued their vacation time.

Sylvester was Union's Chief Steward in 2011 and participated in negotiations with Soojian over the change in when employees received their

accrued vacation payment. The parties agreed to a memorandum of agreement (MOA) dated December 20, 2011 in which four bargaining unit members (including Millett and Sylvester) were listed by name. All four of the named individuals were hired by the District before July 1, 1994 and were specifically listed in the MOA to differentiate how they were to accrue their vacation time. The four individuals listed in the MOA did not accrue vacation time during their first year of employment, having to work one full year with the District before receiving any vacation benefits. The MOA was negotiated to bring the employees hired before July 1, 1994 in par with the rest of the bargaining unit members who were receiving vacation benefits during their first year of employment. The four named individuals were the only employees receiving their vacation time in arrears. Given that all employees hired after July 2, 1994 began accruing vacation time upfront immediately upon hire, the MOA was drafted with the intent of leveling the playing field, ensuring that moving forward the four named employees would continue to accrue their vacation time in arrears.

Article 12 of the collective bargaining agreement states that:

Employees hired on or prior to July 1, 1994 will, upon leaving the District for any reason including retirement, be paid out for all unused vacation days. Employees hired on or after July 2, 1994 upon leaving the District for any reason, including retirement, shall receive a prorated payment for such vacation days based upon the actual days worked during the fiscal year that the member leaves the District.

This language mirrors the language of the MOA and serves as the basis for the Union's grievance concerning Millett and Sylvester's accrued vacation benefits. Soojian testified that this language was added to the collective bargaining

agreement to prevent employees from receiving all their accrued vacation time upfront and then resigning the next day. However, this contingency was only applied to those employees hired after July 2, 1994, and not the employees hired prior to July 1, 1994. This fact serves to further bolster the Union's position that Millett and Sylvester were receiving vacation benefits in arrears, otherwise there was no reason to differentiate the employees by their hire date.

Soojian testified that when the District changed the period in which employees received their vacation benefits to the first pay period in July, there was no intent to also change how vacation time accrued. Sylvester stated that before 2008, employees received their accrued vacation time on their anniversary date as opposed to the first pay period of July. Thus, how an employee accrues vacation time remained unchanged. Receipt and accrual of vacation benefits are two separate and distinct issues. Despite changing the date in which an employee was entitled to receive their vacation benefit, the evidence established that how an employee accrued vacation time remained unchanged and continued to occur between the 12 months between the employee's respective anniversary date.

Sylvester's date of hire was September 30, 1985, and Millett's date of hire was June 19, 1986. Thus, at a minimum, Sylvester accrued vacation benefits from September 30, 2017 through June 30, 2018, and Millett accrued vacation benefits from June 19, 2017 through June of 2018. Having accrued at least some vacation time during the respective anniversary dates, they are entitled to receive said benefits upon separation in June of 2018.



Longevity

Article 23 of the collective bargaining agreement provides for a longevity benefit for employees who have worked 15 continuous years with the District. Similar to vacation benefits, longevity is paid out during the first payroll period in July of the year it is earned.

Sylvester completed 15 years of continuous service with the District in September 2000. The parties negotiated a longevity benefit for the first time on July 1, 2001, and Sylvester received his first longevity payment on July 3, 2001, with 15 years and 9 months of service to the District. Sylvester then received additional longevity payments each year in July, except for July 2018.<sup>2</sup>

There is nothing in Article 23 that states that an employee accrues longevity as of July 1<sup>st</sup> of a given year; it simply states that it is to be paid out during the first pay period in July. When a benefit is paid out to an employee and when they accrue that same benefit are not the same thing. Similar to vacation benefits, an employee accrues their longevity during the 12 months between their anniversary date beginning on their 15<sup>th</sup> year of employment with the District.

On July 1, 2018, Sylvester became eligible to collect his accrued longevity that had begun accruing on his anniversary date of September 30, 2017. At a minimum, Sylvester and the other grievants, had accrued some longevity since their last anniversary dates and were eligible to collect those payments on July 3, 2018, when they received their final paycheck. Article 23 does not state that an

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<sup>2</sup> July 2018 longevity payments were made to bargaining unit members in October upon ratification of a successor collective bargaining agreement.

employee must be working for the District as of July of 2018, it simply states that an employee becomes eligible to collect the benefit, and having received their final paycheck on July 3, 2018, there is no language in the collective bargaining agreement preventing the District from paying this benefit.

### Conclusion

The Union requests that the Arbitrator uphold the grievance and direct the District to comply with the collective bargaining agreement by reimbursing the grievants for all accrued but unpaid longevity and vacation time benefits.

### **THE EMPLOYER**

Since the issues in this case involve matters of contract interpretation, the Union carries the burden of proof. The Union must demonstrate by a preponderance of the evidence, that the custodians are entitled to a payout for six weeks' vacation as well as longevity pay. The District maintains that the custodians received all benefits / payments due to them as of June 30, 2018, and since they were not employed as of July 1, 2018, they were not entitled to the payments now claimed owed to them.

### Vacation Benefits

Contrary to the allegations in the grievance, Sylvester and Millett were not entitled to receive six weeks' vacation pay upon leaving the district's employment on June 30, 2018 because they had used all their allotted vacation by that date. Sylvester and Millett were granted thirty (30) days of vacation on July 1, 2017 to be used during the fiscal year. By June 30, 2018, when they were laid off, both

had used all 30 days of their vacation and were not owed for any unused vacation days or any additional vacation time.

In the Union's opening statement, it claimed that when Soojian became Superintendent in 2008, he changed the date when vacation was paid out to July but made no change in accrual. The Union believes that this resulted in Sylvester and Millett being owed vacation time, but this is incorrect. First, vacation time is not accrued, it is granted up front on July 1<sup>st</sup> to all bargaining unit members except for those in their first year of employment. Second, Soojian's statement that vacation used to be granted on an employee's anniversary date, and that was changed to July 1<sup>st</sup> is incorrect. Thibeault testified that vacation was always granted on July 1<sup>st</sup>, but the amount differed based on the custodian's date of hire (i.e. between 7/1 to 12/31 and 1/1 to 6/30).

The Union is wrong in its argument that the 2011 MOA supports its argument that Sylvester and Millett are entitled to six weeks' vacation pay because their names are listed in the MOA. The MOA is clear and unambiguous and does not support the Union's position. Thibeault testified that prior to the MOA, vacation payouts upon separation from employment were prorated for all custodians. The change made through the MOA was that it allowed the four named individuals to receive full pay for any unused vacation days at the time they left the district.

Soojian's testimony is fundamentally incorrect in his assertion that the four individuals listed in the MOA were a year behind in vacation and that is why they were named in the MOA. Neither the MOA, nor the collective bargaining agreement state that the four individuals are a year behind. Additionally, Soojian

further admitted that there are no documents supporting his understanding that Sylvester and Millett were in arrears on vacation time.

### Longevity

Sylvester, Millett, Troy, Clark and Malone (grievants) were not entitled to receive longevity payments when they were laid off on June 30, 2018 because they received their fiscal year 2018 longevity payment on July 1, 2017 and were no longer employed as of July 1, 2018. The collective bargaining agreement states that longevity payments "will be made on the first pay period following July 1 of the qualifying (15<sup>th</sup> or 20<sup>th</sup> or 25<sup>th</sup>) year." All applicable payments were made to the grievants on July 1, 2017, and they were not owed any additional payments.

The longevity provision of the collective bargaining agreement requires payment to be made in the year the custodian qualifies for the payment, not the year after. In other words, longevity is front loaded, and has always been paid up front, and no longevity payments were owed to the grievants when their employment ended on June 30, 2018.

As for each of the grievants, Malone was hired by the District on August 26, 2003 and had not reached 15 years of service by June 30, 2018. Clark reached his 15 years of service on September 26, 2015, and received his first longevity payment on July 24, 2015, two months before he reached his 15 years of service. Troy reached his 15 years of service on December 13, 2014 and received his first longevity payment on July 11, 2014, five months before reaching his 15 years of service. Sylvester reached his 15 years of service on September 30, 2000, and Millett reached his 15 years of service on June 19, 2001. Longevity was added to

the collective bargaining agreement effective July 1, 2001 and Sylvester and Millett received their first longevity payment thereafter on July 3, 2001.

The District's records clearly show that longevity payments were made each year before the date of the employees' work anniversary, demonstrating that longevity was front loaded.

### Conclusion

The evidence presented by the District, coupled with Thibeault's unrebutted testimony on the method of paying out longevity and vacation to custodians who leave the District, demonstrates that the District did not violate the collective bargaining agreement. Accordingly, the Union's grievances should be dismissed.

### OPINION

The issues before me are:

1) Pursuant to the 2015-2018 collective bargaining agreement, were William Sylvester and Timothy Millett entitled to receive six weeks of vacation pay upon leaving the school district's employment due to layoff effective June 30, 2018? If so, what shall be the remedy?

2) Pursuant to the 2015-2018 collective bargaining agreement, were William Sylvester, Timothy Millett, Adam Troy, Jon Clark, and Kevin Malone entitled to receive longevity payments upon leaving the school district's employment due to layoff effective June 30, 2018? If so, what shall be the remedy?

For all the reasons stated below, the District did not violate the collective bargaining agreement when it refused to pay the grievants vacation or longevity pay upon their lay off on June 30, 2018. The grievances are denied.

Vacation Time

The Union's principle argument is that the 2011 MOA stands for the concept that Millett and Sylvester, as two of the named individuals, are entitled to vacation pay in arrears. The MOA however, fails to articulate this concept and instead merely allows Millett and Sylvester the ability to receive full payment of unused vacation time upon their separation from the District. Both Sylvester and Soojian testified that, notwithstanding what the document actually states, the intent was to have the named individuals continue to earn vacation time in arrears.

Prior to deciding whether to credit the testimony of Sylvester and Soojian on the intent of the MOA, I first must decide if the MOA is clear and unambiguous. If the document is clear and unambiguous on its face, then any testimony about a contrary or additional intent is immaterial. The document states in relevant part that:

As to the agreed upon language by the parties, this memorandum shall serve to identify those bargaining unit members that are the only employees hired prior on or prior to July 1, 1994 and will upon leaving the District for any reason including retirement, be paid out for all unused vacation days.

Said employees are as follows:

<b>Employee</b>	<b>D.O.H.</b>
Geoffrey Adams	11-2-81
William Sylvester	9-30-85
Timothy Millett	6-19-86
Grover Adams	7-1-94

All other bargaining unit members are employees hired on or after July 2, 1994 and upon leaving the District for any reason, including retirement, shall receive a prorated payment for such vacation days based upon the actual days worked during the fiscal year that the member leaves the District.

I find this MOA to be clear and unambiguous in its terms. Specifically, the four named individuals, including the two grievants in this case, would be paid out for all unused vacation pay upon separation from the District. All other bargaining unit members would receive only a prorated amount of their vacation balance upon separation from the District. Having found that the MOA is clear and unambiguous, I decline to read into the MOA an additional unwritten and unacknowledged intent that the four named individuals were additionally earning their vacation time in arrears.

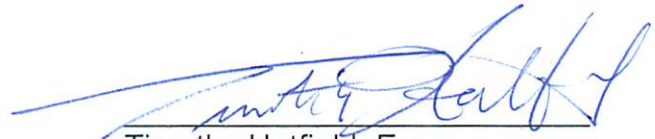
As such, the grievants, having used all their vacation time prior to their separation from the District on June 30, 2018 are not entitled to any further vacation time payment from the District.

#### Longevity

The Union's argument that longevity was paid in arrears and thus the grievants were entitled to additional longevity pay upon separation does not satisfy the Union's burden in the face of the District's evidentiary submission on how longevity has been paid to bargaining unit members since its inception. The District was able to prove that longevity pay has been paid to bargaining unit members in July of the year the member became eligible, regardless of the exact date of eligibility. Bargaining unit members received their longevity payment months before they actually arrived at the prescribed threshold, conclusively proving that longevity was not paid in arrears, and in most cases paid prior to the bargaining unit member actually becoming eligible for the payment. As such, the

grievants, having been paid their longevity payment in July 2017, were not entitled to any further payment upon their separation from the District on June 30, 2018.

For all the reasons stated above, the School Committee did not violate the collective bargaining agreement when it refused to pay the grievants vacation or longevity pay upon their lay off on June 30, 2018. The grievances are denied.

A handwritten signature in blue ink, appearing to read "Timothy Hatfield", is written over a horizontal line.

Timothy Hatfield, Esq.  
Arbitrator  
January 29, 2020