

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

FALMOUTH HOUSING AUTHORITY

-and-

AFSCME COUNCIL 93

ARB-23-10385

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Timothy Kenneally, Esq. - Representing Falmouth Housing Authority

Justin Murphy, Esq. - Representing AFSCME, Council 93

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 Employer did not have just cause to terminate the grievant John Damiano. The Housing Authority is hereby ordered to reinstate Damiano and make him whole for all his losses resulting from his unjust termination and to remove any reference to this termination from his personnel file.



Timothy Hatfield, Esq.
Arbitrator
August 28, 2025

INTRODUCTION

On December 19, 2023, AFSCME Council 93 (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department appointed Timothy Hatfield, Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a virtual hearing via Web-Ex on June 7, 2024 and June 21, 2024.

The parties filed briefs on August 30, 2024.¹

THE ISSUE

Did the Employer have just cause to terminate the grievant John Damiano?
If not, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

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

ARTICLE 3: EMPLOYMENT- GENERAL AND RECORDS (IN PART)

- 3.1 Documentation of Records: Personnel records will be kept for each employee. Any document inserted in this file that is unfavorable to the employee will be signed by the party making the insertion and the employee to acknowledge receipt. Within thirty days of the original insertion of a document in the file the employee may prepare and attach a statement related to the document. All personnel files shall be secured with access controlled by the Executive Director.

¹ By agreement between the parties and the arbitrator this decision was held in abeyance as the parties awaited a separate decision on this matter from the Massachusetts Department of Labor Standards and a further decision on appeal from the Board of Occupational Safety and Health.

- 3.2 Discipline and Discharge: Each employee is responsible for meeting or exceeding job requirements and for observing regulations necessary for the proper operation of the Housing Authority. Individuals may be disciplined for actions that are not in accordance with the conduct expected of Housing Authority employees. If discipline is required, the following disciplinary actions are designed for everyone's protection and for the interests of the Housing Authority. All steps will be documented.

Step 1. Oral reprimand (minor infractions): When a supervisor perceives an employee's performance problem, the problem will be discussed between the employee and supervisor (Executive Director and/or Union Steward will also be present if requested by either party). Supervisor will prepare a memo for the employee's personnel file about the conversation.

Step 2. Written warning (second offense or more serious infractions): If the problem persists, or more problems emerge, the supervisor will provide the employee with a written warning detailing the objectionable behavior along with the consequences. The warning will specify the timeframe within which performance must improve and state that continued failure will result in termination. A copy of the warning will be placed in the employee's personnel file.

Step 3. Final written warning/suspension: If performance does not improve, the supervisor will provide the employee with a final written warning accompanied by possible probationary status or suspension. The final written warning will contain copies of the previous warnings, indicate specific areas in which the employee must improve, and specify the time period within which the employee's behavior or performance must be corrected. A copy of the final warning will be placed in the employee's personnel file.

Step 4. Termination: If the problem has not been resolved by the previous steps, a letter of termination will be provided to the employee that clearly states the reason(s) for dismissal.

Exclusions. The progression within these steps can be skipped if circumstances warrant. Some examples when steps would likely be skipped include, but are not limited to, the following:

- Willful or negligent misrepresentation of important facts in seeking employment
- Insubordination
- Harassment, including sexual harassment
- Violation of confidentiality
- Repeated unexcused absences
- Destruction of property
- Theft
- Reporting to work intoxicated/impaired
- Possessing or consuming non-prescribed narcotics and/or alcohol on company property
- Instigating a fight on company property
- Carrying a weapon without a business purpose on company property
- Jeopardizing the health or safety of a tenant or employee
- Willfully or negligently exposing the Authority to financial or legal liability.

- 3.3 Grievance and Arbitration Procedure: The Falmouth Housing Authority recognizes that employees may elect to be represented/accompanied by a Union Representative in any hearing. The Authority elects representation of their choosing, such as legal representation, to be present at the hearing.

Any grievance or dispute which may arise between the parties involving application, meaning, or interpretation of this agreement shall be settled in the following manner:

Step 1. The Executive Director, aggrieved employee, and the Union Steward or Representative shall try to resolve the grievance by discussing it. The Executive Director shall respond to the Steward/Representative and employee in writing within five (5) working days.

Step 2. The Union Steward or Representative, with the aggrieved employee, shall take up the grievance or dispute in writing with the Executive Director within ten (10) working days of the date of occurrence, or his/her knowledge of its occurrence. The Executive Director shall attempt to adjust the matter and shall respond to the

Steward within five (5) working days. (Either time limit may be waived in case of mutual agreement in writing).

Step 3. If the grievance has not been settled, it shall be presented in writing to the Chairperson of the FHA Board of Commissioners within five (5) working days after the Executive Director's response is received. The FHA Board shall have a hearing on the matter at their next regularly scheduled meeting and shall respond to the Steward, in writing, within ten (10) working days. [The] Union may be present when the Board reviews the grievance. Either party (management or labor) has the right to request a hearing on the grievance before the Board of Commissioners of the FHA. When such a hearing is called, the grieving party must be present at said hearing.

Step 4. If the grievance is still unsettled, the Union may, within thirty (30) calendar days after the reply of the FHA Board of Commissioners, by written notice to the other, request arbitration.

The arbitration proceeding shall be conducted by the Division of Labor Relations.

The decision of the arbitrator shall be final and binding on the parties and the arbitrator shall be requested to issue his/her decision within thirty (30) days after the conclusion of testimony and argument. Both parties recognize the need to maintain any arbitration schedule. To that end, if either party, for any reason, postpones an arbitration hearing, any potential liabilities, for either party, resulting from the arbitration process, may be mitigated by the arbitrator in any award to the original date of the arbitration hearing. ...

Grievances involving discharge or suspension shall be processed, beginning at the second step. If the case reaches arbitration, the arbitrator shall have the power to direct a resolution of the grievance, up to and including the restoration to the job with all compensation and privileges that would have been due the employee. The authority of the arbitrator shall be confined to interpretation of the terms of the collective bargaining agreement and the determination of just cause.

FACTS

The Falmouth Housing Authority (Housing Authority / Authority / Employer) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration.

The Authority assists low and extremely low-income households, including families, seniors, veterans, people with disabilities, and individuals who were formerly unhoused. The Authority's mission is to ensure safe, decent and affordable housing for its residents.

John Damiano (Damiano / Grievant) began his career with the Housing Authority as a seasonal employee in 2017. He became a full-time Maintenance Mechanic on August 8, 2018. Bobbi Richards (Richards / Executive Director) became the Authority's Executive Director in 2018. In April 2021, Richards gave Damiano an oral reprimand, Damiano's only prior discipline.

In 2021, Damiano was concerned about exposure to asbestos on the job. Assistant Director Leslie Pearce (Pearce) assured Damiano that the casing on the pipe in question was fiberglass and not asbestos. In 2023, Director of Maintenance Michael Coffey alerted his team of potential asbestos exposure when someone drilled through a pipe accidentally. On August 2, 2023, Damiano contacted the Department of Labor Standards (DLS) to report the incident. On August 3, 2023, the DLS sent an employee to inspect the pipes in the Housing Authority's Sea Salt complex. After this incident, Damiano requested his time and attendance records from the Authority because he was concerned about his exposure to asbestos.

Prior to August 25, 2023, Damiano approached the tenant² in her apartment and told her he was conducting a confidential survey of Authority tenants. Damiano asked the tenant if she had any problems with the office and if she did, would she be willing to speak to a reporter or a town official. The tenant stated that she did not want to get involved.

After her interaction with Damiano, the tenant sent an email to Richards informing her that one of her employees had approached her asking about any problems she may have had and asked her if she would be willing to speak to a reporter or town official. The tenant stated further that she was fearful of retaliation should word get out that she had informed Richards what had been happening.

Richards, who was out on medical leave at the time, spoke to the tenant to clarify some of the information obtained. Richards asked the tenant to write a letter to her explaining what had taken place and told her to sign it “anonymous”. Richards requested the tenant write the letter as the tenant stated she wanted to remain anonymous and her prior email listed her name and email address. On August 28, 2023, the tenant submitted a written letter outlining her interaction with Damiano.

On August 30, 2023, Richards met with the Union for a previously scheduled collective bargaining session. During this session, Richards told the Union bargaining representative Sheila Kearns (Kearns) about Damiano’s conduct. Kearns told Richards that the collective bargaining agreement had

² For privacy reasons, in this decision, this witness shall be referred to as the tenant. The name of this individual is known to the arbitrator and the parties, and she testified at the arbitration hearing.

articles dealing with discipline and she should do what she needed to do, and the Union would grieve it if necessary.

On August 31, 2023, Richards met with Damiano and his Union representative Jason Norton (Norton). Richards had complied three years' worth of payroll records requested by Damiano. Richards had placed the information on a flash drive for Damiano. She asked Damiano to sign a letter stating that he had received the flash drive and Damiano refused. At no time during this meeting with Damiano did Richards ask him about the tenant's complaint.

On September 1, 2023, Richards terminated Damiano for his interaction with the tenant. At no time prior to his termination did she speak to Damiano about the issue, nor did she conduct a Loudermill hearing before deciding to terminate his employment. At no point prior to his termination did Richards interview Damiano about the tenant's complaint. She never attempted to ascertain from him if the allegations were true or what, if anything, Damiano had to say in response. Richards refused to schedule a Loudermill hearing prior to terminating Damiano and further declined to schedule one even after the Union informed her of the need to hold one.

On September 5, 2023, the Union filed a grievance over Damiano's termination. The grievance was denied at all steps of the grievance procedure, including a hearing before the Housing Authority's Board of Commissioners.

On November 21, 2023, the Board of Commissioners issued a decision upholding the termination. On December 19, 2023, the Union filed for arbitration.

POSITIONS OF THE PARTIES

THE EMPLOYER

The Housing Authority discharged Damiano because (1) he intimidated at least one elderly and vulnerable tenant while trying to encourage that tenant to file complaints against the Authority and Richards with the local press and/or Town authorities, (2) he conducted an unauthorized survey of residents in an effort to gather information to be used to undermine his employer, and (3) through his actions, he willfully or negligently exposed the Authority to financial or legal liability; failed to report a grievance to the Authority and instead aired his grievances publicly to the tenants; and generally, behaved in a manner inconsistent with the behavior required of an employee of the Authority.

Just Cause

Just Cause is not easily defined and has been the topic of much analysis. Some arbitrators, like Arbitrators Abrams and Nolan, have suggested the use of a “systematic theory” to examine just cause.³ This theory was analyzed by Arbitrator Thomas Cipolla who wrote,

Just cause ... embodies the idea that an employee is entitled to continued employment, provided he attends work regularly, obeys work rules, performs at some reasonable level of quality and quantity, and refrains from interfering with his Employer's business by his activities on or off the job.⁴

Arbitrator Cipolla favored that definition because,

[It] encompasses the principle that an Employer cannot arbitrarily or capriciously terminate any employee. It also recognizes that the

³ See Abrams & Nolan, Toward a Theory of Just Cause in Employee Discipline Cases, 1985 Duke Law Journal 594 (1985).

⁴ Veolia Transportation, 125 LA 1227 (Arb. 2008) (quoting Toward a Theory of Just Cause in Employee Discipline Cases, 1985, Duke Law Journal 594 at 601).

employee is not absolutely guaranteed a job once the employee secures seniority or permanent status, but rather that the employee may lose his or her job when the employee's conduct becomes so faulty or indefensible that the Employer has no option left but to terminate the employee for such conduct.⁵

It has also been said that the appropriate test for just cause is "... whether a reasonable person taking into account all relevant circumstances would find sufficient justification in the conduct the employee to warrant discharge."⁶

The Authority will herein prove that, regardless of which just cause test you apply, the only reasonable conclusion is that the Authority terminated Damiano with just cause.

Damiano Lost His Job Because His Conduct Was So Faulty and Indefensible That the Authority Had No Option but to Terminate

When Damiano entered the tenant's apartment to solicit her participation in his scheme to undermine the Authority and Richards, he deliberately and thoughtlessly placed the tenant in a highly uncomfortable and unwelcome position. The tenant was forced to deny Damiano's devious and disloyal request, while knowing that he had a key to her apartment, and then had to decide whether or not to risk retaliation by reporting his behavior to the Authority. The fact that Damiano spoke of confidentiality to the tenant evidences his awareness that what he was asking her to join was a secretive and unauthorized plot against his employer.

Damiano was fully aware of the Authority's discipline policy prior to the events that led to his termination as he had been previously disciplined with a

⁵ Id. at 1236-1237.

⁶ RCA Communications, Inc., 29 LA 567, 571 (Harris, 1961).

written warning. Damiano knew that he could be disciplined for actions that were not in accordance with conduct expected of Housing Authority employees.

Damiano knowingly put his job in jeopardy when he elected to walk into the tenant's apartment to conduct an unauthorized confidential inquiry of a vulnerable resident, and he has therefore forfeited his position with the Authority. Nothing is more paramount to the Authority than the safety, security, and best interests of the residents. The penalty imposed on Damiano for putting his personal interests ahead of the Authority's and most importantly, the tenant's, is therefore proportionate to the seriousness of the proven misconduct. There was sufficient justification in the conduct of the employee to warrant discharge. The Authority must protect its vulnerable residents from behavior that violates its mission and must eliminate such behaviors by its staff.

Damiano Received Adequate Due Process

Before terminating Damiano, Richards interviewed the tenant and concluded that her allegations were true and extremely troubling. Richards then met with Kearns and Norton on August 30 and discussed proper discipline for Damiano. Richards then met with Norton again on August 31 and discussed the possibility of a last chance agreement for Damiano instead of termination. It is only after those discussions that Richards decided to terminate Damiano.

Damiano was given a full evidentiary hearing before the Board of Commissioners. During the hearing, he denied the encounter with the tenant. The Board concluded, correctly, that Damiano was being dishonest when he denied his encounter with the tenant. That conclusion and Damiano's baseless denial of

the event are significant to an assessment of due process. If all Damiano and the Union planned to do in meetings with Richards was to offer unsupported denials of the event, then nothing would have changed in those meetings. Damiano inexplicably refuses, even now, to admit that he entered the tenant's apartment and sought to enlist her in his plot to undermine his employer and Richards, and his unsupported denial should be held against him.

By clinging to this lie, Damiano has shattered all sense of trust that the Authority ever had in him and could ever have moving forward. As a result, Damiano does not deserve a second chance at the Authority.

Department of Labor Standards Complaint

Damiano's allegation that he was terminated for filing a complaint about asbestos with DLS is baseless. To prove such a claim, the Union and Damiano would have to put some evidence before the Arbitrator proving that when Richards terminated Damiano she was aware that he had filed a complaint. Neither the Union nor Damiano put any such evidence before the Arbitrator because no such evidence exists. The alleged retaliation defense is a hail Mary pass that falls incomplete. There is simply no credible evidence supporting the conclusion that Richards terminated Damiano for his anonymous complaint to DLS on August 1, 2023, as opposed to the tenant's August 25, 2023, complaint.

Conclusion

The Authority had just cause to terminate Damiano because (1) he failed to conform to the Authority's usual and necessary standards of conduct, and (2) the grounds for discharge are reasonably related to the Authority's mission. Based

upon the facts proven during the arbitration and summarized above, the Authority has presented more than sufficient evidence to establish that it had just cause to discharge Damiano. Therefore, the Employer asks the Arbitrator to deny and dismiss this grievance.

THE UNION

It is well established that the Employer has the burden of proof to show that Damiano committed a wrongdoing. Here, the Employer has failed to prove that Damiano ever committed any wrongdoing, as the only wrongdoing that occurred is the denial of due process that occurred when Damiano was denied the opportunity to be aware of the charges and to offer explanations or denials before he was terminated.

The Employer has also failed to establish just cause for the termination. Just cause essentially embodies seven principles that have been laid out by Arbitrator Carroll Daugherty. The following principles are pertinent to this case:

- Did the employer give the employee forewarning as to any possible discipline or consequences resulting from the employee's conduct?
- Was the investigation fair and objective?
- Did the investigation produce substantial evidence or proof of guilt?
- Was the penalty reasonably related to the seriousness of the offense and past record?

A “no” answer to any one or more of these questions signifies that just and proper cause did not exist.⁷

As an initial matter, the Housing Authority cannot prove that Damiano even committed a wrongdoing, as the sole witness is not credible, and completely lied under oath. This is the same witness who testified that Damiano, for no specific reason, approached her to speak to a town official or reporter. Even if true, this allegation is not a wrongdoing. Even if it was, the Housing Authority still lacks just cause to terminate Damiano’s employment over this. The Housing Authority certainly did not give any prior warning to Damiano regarding this, and the alleged rule regarding tenants and grievances has nothing to do with the Housing Authority’s operations. The investigation that Richards conducted was not fair or objective, as she trusted an elderly woman under previous threats of eviction and never asked Damiano for his side of the story. The investigation did not produce any evidence or proof of guilt, and it is unjust to proceed from an oral reprimand for unrelated conduct straight to termination. The penalty imposed was not reasonably related to the seriousness of the offense.

No Evidence of Wrongdoing

The Housing Authority’s only reason for terminating Damiano was because he “willfully or negligently exposed the Authority to financial or legal liability” and “failed to report a grievance to the Authority and instead aired them to the tenants.” The termination letter failed to state any of the facts giving rise to the termination.

⁷ See Grief Bros. Cooperage Corp. & United Mine Workers of America, 42 LA 359, 362-65 (1966).

In the Step III grievance response, the Board of Commissioners alleged that Damiano asked a tenant if she had any problems with the office or with maintenance, stating that he could arrange to have her speak to a reporter or town official. Richards received an email from the tenant, who then was directed to resubmit it as an anonymous letter. Richards terminated Damiano without investigating if any of this was true or asking for Damiano's side of the story.

During the arbitration, the tenant testified and lied under oath. Specifically, she denied ever having a close relationship with Damiano, which was untrue as she had specifically asked for Damiano to make repairs at her apartment, and confided in him her complaints with the Housing Authority. Further she admitted that she had been threatened with eviction in the past. Finally, she insisted that she had written the letter prior to sending the email, and could not respond when confronted with the dates of the email and the letter showing that the email had come first. Simply put, this witness is not credible, and Richards blindly accepted her allegations against Damiano without investigating or obtaining Damiano's explanation.

Damiano testified that he advised the tenant to reach out to the Department of Elderly Services and/or the Senior Center to get the help she needed after being bullied and assaulted. This is not a wrongdoing, this is an employee doing the right thing for an elderly tenant. There is no evidence that this statement "exposed the Authority to legal or financial liability." Further, there is no evidence that this statement amounts to "airing out a grievance to a tenant." If anything, a tenant

aired out a grievance to Damiano and he acted accordingly. The Housing Authority cannot even satisfy the first prong of just cause.

No Just Cause – Termination Was the Result of Reporting on the Presence of Asbestos

The real reason Damiano was terminated was because he reported the presence of asbestos within the Authority to the Department of Labor Standards. The day before his termination, Damiano advised Richards why he requested his timesheets. At this point, Richards became aware of who got the Department of Labor Standards involved. It is also why Richards did not schedule an interview with Damiano regarding the tenant's complaint, nor even advise him of receiving the complaint days prior. While the Housing Authority denies that it terminated Damiano for being a whistleblower, the facts do not support the Housing Authority's denial.

There is No Policy or Rule Forbidding Helping a Tenant

There is no way that Damiano knew that he would be disciplined for "failing to report grievances to the Authority" because that is not listed anywhere with the collective bargaining agreement or under the Authority's Code of Conduct. In fact, the Employee's Handbook even has a provision for "Voicing Concerns/Grievances," and there is nothing that states an employee may not speak to a tenant about concerns or grievances. The Authority's Conduct Standards lists grounds and/or circumstances in which an employee may be disciplined and once again, "airing out a grievance to a tenant" is not listed. Three sources dictate the terms of Damiano's employment and "airing out grievances to

tenants” is nowhere to be found. It is unjust to discipline, never mind terminate, an employee when he could not reasonably know that an action was not acceptable.

The Investigation Was Not Fair or Objective

The fact that Richards received an email complaint, spoke to the tenant and fired Damiano a few days later is repugnant to basic labor law. How is it that Richards, in conducting this so-called investigation, could not even be bothered to ask Damiano what occurred? She had an ample opportunity, because she was meeting with him about his time sheets the day before she fired him. Damiano was terminated without any due process. The United States Supreme Court held in Cleavland Board of Education v. Loudermill that, “an essential principle of due process is that a deprivation of life, liberty, or property be proceeded by notice and opportunity for hearing appropriate to the nature of the case.” “The need for some form of pretermination hearing, recognized in these cases, is evident from a balancing of the competing interests at stake.” There is no question that Damiano is a public employee and, as such, should have received a Loudermill hearing.

In conjunction with Loudermill, the arbitral precent has addressed this issue. “Procedural fairness requires an employer to conduct a full and fair investigation of the circumstances surrounding an employee’s conduct and to provide an opportunity for him to offer denials, explanations, or justifications that are relevant before the employer makes its final decision, before its position becomes polarized.”⁸ This did not occur here, and due process and the basic tenants of

⁸ See Elkouri & Elkouri, How Arbitration Works, 905 (Volz & Googin ed., BNA Books 5th ed. 1977).

labor law require the Authority to at least give Damiano an opportunity to explain or deny what occurred with the tenant. Richards was even advised that she had not given Damiano a Loudermill hearing, and she characterized this as “ridiculous” because the Union wanted her to adhere to matters and principles not within the collective bargaining agreement. This argument completely glosses over the concept of due process and warrants a reversal of the decision to terminate Damiano.

Prior Discipline

Damiano’s only prior discipline was an oral reprimand for a heated confrontation he had with Richards about withholding raises. Richards admitted during her testimony that she had also raised her voice to Damiano during the encounter. This is the only discipline in his file. While Richards testified that in a separate incident, Damiano called her a racist slur, she never disciplined him for the alleged incident, and there is no record of it ever occurring.

The collective bargaining agreement discusses progressive discipline. Richards could have given Damiano another oral reprimand, a written warning, or even a suspension. Instead, she jumped right to termination based on only one side of a story. This is not just cause or progressive discipline. Therefore, the imposition of this termination cannot be considered reasonably related to the offense and Damiano’s past record.

Conclusion

For all the forgoing reasons, the Employer violated the collective bargaining agreement when it terminated Damiano on September 1, 2023. The Union

respectfully requests that the Arbitrator find that Damiano committed no wrongdoing and that there is no just cause for termination. The Union requests that Damiano be restored with back pay to the date of his wrongful termination, and any other relief deemed fair and just to make Damiano whole.

OPINION

The issue before me is:

Did the Employer have just cause to terminate the grievant John Damiano?

If not, what shall be the remedy?

For all the reasons stated below, the Employer did not have just cause to terminate the grievant John Damiano. The Housing Authority is hereby ordered to reinstate Damiano and make him whole for all his losses resulting from his unjust termination and to remove any reference to this termination from his personnel file.

One of the most fundamental aspects of just cause is the employee's right to procedural due process. Public sector employees have procedural due process rights granted to them if they have a property interest in their job. These rights are grounded in the Fifth and Fourteenth Amendments to the United States Constitution.⁹ For public sector employees, the just cause provision of the collective bargaining agreement creates this protectable property interest.¹⁰ This property interest cannot be taken away from the employee without procedural due

⁹ See Elkouri & Elkouri, How Arbitration Works, Ch. 19.3 (May ed., BNA Books 8th ed. 2016), *citing*, Logan v. Zimmerman Brush Co., 455 U.S. 422, 28 FEP Cases 9 (1982).

¹⁰ Id. at Ch.19.3.A.i, *citing*, Moffit v. Town of Bergfeld, F2d 880 (2d. Cir. 1991).

process, which includes two key elements: notice and an opportunity to be heard.¹¹ The Supreme Court has held that a public employee with a property interest is entitled to “oral or written notice of the charges against him, an explanation of the employer’s evidence, and an opportunity to present his side of the story” before the proposed action is taken.¹²

Though public employers may provide a full-scale evidentiary post-discipline hearing at which an employee may request a review and reconsideration of the tangible job action, that process cannot satisfy the public employee’s interest in presenting his or her side of the case before an adverse job action is taken.¹³ The government’s interest in the expeditious removal of unsatisfactory employees and the avoidance of administrative burdens simply does not outweigh the employee’s interest in this regard.¹⁴

In the present instance, Richards received an email from the tenant on August 25, 2023, outlining the tenant’s allegations about her interaction with Damiano. Richards then spoke to the tenant, asked her some clarifying questions and requested she put her allegations in writing and sign the letter “anonymous,” as the tenant had requested anonymity. Richards received this letter on August 28, 2023. By letter dated September 1, 2023, Richards terminated Damiano without ever speaking to him about the allegations. Richards failed to discuss the

¹¹ *Id. citing, Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

¹² *Id. citing, Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 546 (1985)

¹³ *Id.* at 543.

¹⁴ *Id.*

issue with Damiano even though she met with him and the Union steward personally on August 30, 2023, to deliver payroll information Damiano had previously requested. I am unpersuaded by the Authority's argument that bringing up potential discipline of Damiano with the Union representative at a collective bargaining session represented due process, as Damiano was not present at the bargaining session.

In addition to the Authority's failure to provide an opportunity for Damiano to respond to the allegations prior to making a decision on his employment status, the Authority failed to provide proper notice to him. The only notice Damiano received was his termination notice after Richards had decided to terminate him. At no time did the Authority give Damiano an oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story as is required for a public employee with a property interest in his continued employment. The Authority failed to provide Damiano with any due process before terminating his employment.

Finally, I am unpersuaded that the Authority has cured its due process violation by holding a hearing before the Housing Authority's Board of Commissioners after the termination and during the grievance procedure. The whole purpose of notice and a Loudermill hearing is for the employee to be able to answer the allegations against him prior to a decision being issued. The fact that the Board of Commissioners ultimately agreed with Richard's decision is irrelevant. The irreparable harm was committed the moment Damiano was terminated without receiving his due process rights.

For all the reasons stated above, the Employer did not have just cause to terminate the grievant John Damiano. The Housing Authority is hereby ordered to reinstate Damiano and make him whole for all his losses resulting from his unjust termination and to remove any reference to this termination from his personnel file. I will retain jurisdiction until such time as the parties have agreed on the proper remedy to satisfy this decision.

AWARD

The Employer did not have just cause to terminate the grievant John Damiano. The Housing Authority is hereby ordered to reinstate Damiano and make him whole for all his losses resulting from his unjust termination and to remove any reference to this termination from his personnel file.

A handwritten signature in blue ink, reading "Timothy Hatfield".

Timothy Hatfield, Esq.
Arbitrator
August 28, 2025