

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2273CV00707B

NEW BEDFORD HOUSING AUTHORITY)
Plaintiff)
)
v.)
)
MASSACHUSETTS PUBLIC EMPLOYEE)
COUNCIL, LOCAL UNION 367)
Defendant)

BRISTOL,SS SUPERIOR COURT
FILED

OCT 24 2022

JENNIFER A. SULLIVAN, ESQ.
CLERK / MAGISTRATE

**COMPLAINT AND APPLICATION TO VACATE
ARBITRATOR'S AWARD PURSUANT TO G.L. C. 150C, § 11(a)(3)**

INTRODUCTION

Now comes the Plaintiff, the New Bedford Housing Authority (hereafter "Plaintiff" or "Housing Authority") and respectfully requests that this honorable Court vacate the Award of Arbitrator Mark M. Grossman, Esq. (hereafter "Arbitrator Grossman") issued on September 27, 2022, in the matter of Massachusetts Public Employee Council, Local Union 367 (hereafter "Union"), Grieving Party and the Housing Authority, Responding Party, Brian Andrade, Grievant, AAA Case No. 01-22-0000-4617, on the grounds the arbitrator has exceeded his authority as granted by the Collective Bargaining Agreement.

In support hereof, the Plaintiff alleges as follows:

NATURE OF PROCEEDINGS and JURISDICTION

1. This is an action commenced pursuant to G. L. c. 150C, § 11(a)(3) which provides that a party to a collective bargaining agreement may ask the Superior Court to vacate an arbitrator's award.

PARTIES

2. The New Bedford Housing Authority is the public housing authority for the city of New Bedford, founded in 1938 and with a principal place of business in 128 Union Street, 4th Floor, New Bedford, Bristol County, Massachusetts.
3. The Massachusetts Public Employee Council, Local Union 367 is a labor organization under G.L. c. 150E with a principal place of business 7 Laborers Way, Hopkinton, Middlesex County, Massachusetts.
4. The Housing Authority and Union are parties to a collective bargaining agreement (“Agreement”) effective January 1, 2018, through December 21, 2020.

VENUE

5. Pursuant to G.L. c. 150C, § 15, venue in Bristol County Superior Court is proper as all employees covered by the Agreement have their place of employment in New Bedford, Bristol County, Massachusetts.

FACTUAL BACKGROUND

6. Brian Andrade (hereafter “Andrade”) was hired by the Housing Authority on October 1, 2018, into the position of Maintenance Aide to work within the Housing Authority’s District 1.
7. Andrade was initially served under the supervision of Carl Landy (hereafter “Mr. Landry”) as District Maintenance Supervisor and Brian DaSilva (hereafter “Mr. B. DaSilva”) as the Assistant Maintenance Supervisor.
8. Mr. Landry immediately observed several problems with the way in which Andrade went about completing his work and interacting with other members of the District 1 maintenance team.

9. Despite only being proficient in electrical work, Andrade had very strong opinions on how the various duties of the Maintenance Aides should be completed, often times ignoring directions and doing things “his way.”
10. Andrade was initially paired to work with several different members of the District 1 Maintenance staff in the early months of his employment, but many of those employees reported that Mr. Andrade was difficult to work with.
11. Andrade was eventually paired to work with Larry DaCosta (hereafter “Mr. DaCosta”), a much more senior Maintenance Aide, and the two (2) worked together on fixing empty apartment units for several years until shortly before Andrade’s eventual termination.
12. On or about November 16, 2021, Andrade and Mr. DaCosta began work on an empty unit. Shortly after beginning work on the unit, Mr. DaCosta received a phone call from Steven Ptaszenski (hereafter “Mr. Ptaszenski”), another District 1 Maintenance Aide, asking Mr. DaCosta if he could use the pickup truck to bring a ladder to another unit to fix a leaking gutter.
13. Mr. DaCosta informed Mr. Ptaszenski that he would be finishing work in about thirty (30) minutes and then Mr. Ptaszenski could take the pickup truck. Andrade subsequently questioned Mr. DaCosta as to the nature of the call and asked why Mr. Ptaszenski needed to use the pickup truck as opposed to the other District 1 vehicles.
14. Andrade then called Mr. Ptaszenski and their supervisor, Mr. B. DaSilva, to further inquire as to why he needed the pickup truck.
15. Following the completion of their work in the empty unit, Mr. DaCosta and Mr. Andrade drove the pickup truck back to Boa Vista, one of the many Housing Authority

properties, to pick up materials for their next project. Upon entering Boa Vista, Mr. Andrade approached Mr. Ptaszenski and initiated a verbal altercation, staring at Mr. Ptaszenski and stating, “What are you going to do?” From there, the two (2) men engaged in a loud verbal altercation, trading insults; however, Mr. Ptaszenski maintained his physical distance from Mr. Andrade and attempted to get the dump truck keys so that he could leave and fix the gutter.

16. Mr. Ptaszenski repeatedly stated, “keep him away from me” to Mr. B. DaSilva and the other members of the department that observed the interaction. Eventually, Mr. Ptaszenski obtained the dump truck keys and left the building to perform work elsewhere.
17. Shortly thereafter, Mr. DaCosta and Andrade returned to their vehicle and left Boa Vista. While driving, Andrade remained enraged, screaming words to the effect of: “I’m no punk” and “who does he think he’s playing?” in reference to Mr. Ptaszenski. Before ending his tirade, Mr. Andrade stated to Mr. DaCosta words to the effect of “[Mr. Ptaszenski] is bigger than me, but I fight dirty. I’ll stab him in the throat, and he’ll never talk again.”
18. Following Andrade’s November 16, 2021, altercation with Mr. Ptaszenski, multiple employees reported their concerns to the Housing Authority regarding Andrade’s escalating and violent behavior.
19. Housing Authority Executive Director Steven Beauregard (hereafter “Mr. Beauregard”) conducted a meeting with Andrade on November 22, 2021, to discuss the incident and Andrade’s misconduct.

20. During that November 22, 2021, meeting, Andrade refused to accept responsibility for his actions or express any regret for his misconduct.
21. The Housing Authority was in the process of gathering additional information relative to Andrade's November 16, 2021, incident when another violent outburst occurred involving Andrade.
22. On the evening of December 13, 2021, Andrade parked his vehicle so as to block the only exit from the Maintenance office parking lot. Mr. B. DaSilva spoke to Andrade about not parking his vehicle in a manner that blocks the only means of access and egress to the Maintenance Office parking lot.
23. Despite being advised about this precise issue, on or about the morning of December 14, 2021, Andrade intentionally parked his vehicle blocking the only exit from the Maintenance Office parking lot while members of District 1 were attempting to leave the Maintenance Office to head out to their daily assignments.
24. After waiting a short period of time for Andrade to clock in and return to his vehicle to no avail, Mr. B. DaSilva entered the Maintenance Office in order to speak with Andrade about why he was blocking him in again, especially after discussing this less than twenty-four (24) hours before. In response, Andrade engaged in a heated verbal altercation with Mr. B. DaSilva.
25. Upon hearing the verbal altercation outside of the Maintenance Office, Housing Authority employee Matt DaSilva (hereafter "Mr. M. DaSilva") became concerned for Mr. B. DaSilva's safety and approached Andrade and Mr. B. DaSilva.
26. Andrade told Mr. M. DaSilva that he needed to leave and mind his own business. Mr. M. DaSilva informed Andrade that this conversation was his business, as his vehicle

had also been blocked in by Andrade. In response to Mr. M. DaSilva's comment, Andrade stated: "I'd love to put hands on you."

27. Due to the escalating argument and threatening comments from Andrade, Housing Authority employees contacted their supervisors and Mr. Beauregard and several other supervisors arrived at the Maintenance Office shortly thereafter.
28. Mr. Beauregard attempted to de-escalate the situation and ultimately ordered Andrade to leave and go home. Andrade refused to comply with Mr. Beauregard's order. Mr. Beauregard informed Andrade that he would call the police and have Andrade removed from premises if he did not leave as ordered.
29. Andrade refused to comply with Mr. Beauregard's express order and the police were called to the Maintenance Office due to Andrade's threatening and violent behavior.
30. The Police spoke to Andrade and told him that if he did not leave, he would be charged with trespass.
31. Andrade ultimately left in his vehicle, recording a video of the remaining employees out his vehicle's window while he drove away.
32. The Housing Authority placed Andrade on paid administrative leave pending the outcome of an investigation into the incidents in November and December of 2021.
33. As a result of the investigation, the Housing Authority found sufficient credible evidence that Mr. Andrade engaged in several counts of workplace violence in violation of the Housing Authority's enumerated polices; as such, the Housing Authority sent Andrade notice that it was contemplating his termination.

34. Said Notice of Contemplated Termination notified Andrade of a meeting set to take place on January 13, 2022. That meeting was ultimately waived by Andrade and the Housing Authority issued its decision to terminate Andrade on January 13, 2022.
35. The Housing Authority had just cause to terminate Andrade.
36. On or about January 15, 2022, Andrade, through the Union, submitted a Grievance appealing his termination.
37. That Grievance was submitted for arbitration with AAA and arbitration hearings were held before Arbitrator Grossman on May 25, 2022, and June 16, 2022.
38. On September 27, 2022, AAA issued the decision and award of Arbitrator Grossman dated September 27, 2022, relative to Andrade's termination appeal (hereafter "Award").
39. A true and accurate copy of the Award is attached as Exhibit 1.
40. Arbitrator Grossman adopted the facts as presented by the Housing Authority and found that Andrade engaged in multiple instances of threatening, violent behavior in violation of the Housing Authority's enumerated polices.
41. Arbitrator Grossman also found that Andrade repeatedly denied responsibility for his violent behavior and denied that his threatening misconduct occurred. Arbitrator Grossman stated that he did not find Andrade, nor²² his recounting of events, to be credible.
42. Arbitrator Grossman expressly wrote: "I find [Mr. DaCosta] very credible and do not accept [Andrade's] testimony that he did not make that statement, and that Mr. DaCosta might have misunderstood what he did, to be credible. Suggesting you might cripple

another employee is not the kind of statement that is likely to be misunderstood or misremembered. It is startling.” (Ex. 1, at 16).

43. Arbitrator Grossman expressly found: “clearly, an employee who initiates a physical confrontation or threatens to do so commits very serious misconduct, which may be the basis for immediate termination.” (Ex. 1, at 16).

44. Nonetheless, Arbitrator Grossman issued the following award: “The New Bedford Housing Authority did not have just cause to terminate Brian Andrade. It shall immediately reinstate him to a similar position to the one he held, without back pay or benefits. His discipline shall be considered a final warning that any further incident involving any physical confrontation with another employee, any threat of such confrontation, or even the suggestion that he would favor such a confrontation shall be the basis for his immediate termination.” (Ex. 1, at 19-20).

COUNT I

THE COURT SHOULD VACATE THE REMEDY OF THE TERMINATION DECISION AWARD AS BEING OUTSIDE THE AUTHORITY OF THE ARBITRATOR.

45. The Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 44 and incorporates each herein by reference.

46. Section 11(a)(3) of chapter 150C provides, in relevant part, that “the superior court shall vacate an [arbitrator’s] award if . . . the arbitrators exceeded their powers . . .” G.L. c. 150C, § 11(a)(3).

47. An Arbitrator exceeds their powers or otherwise violates G.L. c. 150C, § 11(a)(3) if their award violates well-defined public policies.

48. Reinstating Andrade violates well-defined public policies and the safety the employees of the Housing Authority and the residents that they serve.

49. That portion of the Arbitrator's remedy in Award, mandating that the Plaintiff reinstate Andrade, violates well-defined public policies and, therefore, by mandating reinstatement, the Arbitrator exceeded his authority by construing the Agreement in a manner that violates public policy.

REQUEST FOR RELIEF

WHEREFORE, The Plaintiff demands that the Court enter judgment vacating the Arbitrator's Decision insofar as the remedy orders reinstatement of Andrade pursuant to G.L. c. 150C, § 11(a)(3) and for such other relief as deemed just and proper.

Respectfully submitted,
On behalf of New Bedford Housing Authority,
By their attorneys,


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