STATE OF CONNECTICUT
DEPARTMENT OF LABOR
STATE BOARD OF MEDIATION AND ARBITRATION

RULING ON ARBITRABILITY

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| In the Matter Of: | : | Case No. 2024-A-0113 |
| WEST HAVEN BOARD OF EDUCATION | : | Date of Ruling: August 20, 2024 |
| And | : | Hearing Date: June 11, 2024 |
| AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 4, AFL-CIO | : | VIA: ZOOM |

APPEARANCES: Floyd J. Dugas, Attorney at Law (For the Board)
Christopher J. Sugar, Attorney at Law (For the Union)

## I. ISSUE:

1. Is this matter arbitrable?

2. If so, did the employer breach the collective bargaining agreement as alleged by the Union in the grievance document?

3. If so, what shall the remedy be consistent with the contract?

## II. PROCEDURAL BACKGROUND:

The Union filed a grievance asserting the West Haven Board of Education (hereinafter the "Board") violated Article 7.7 of the collective bargaining agreement (hereinafter the "CBA") when it did not pay Lori Hunt (hereinafter "Ms. Hunt" or the "Grievant") the workers' compensation differential.

The Board raised the issue of whether the matter was arbitrable. On June 11, 2024, an arbitration hearing was held on Zoom.

The parties each filed a Brief with the Panel on July 16, as agreed. The Panel held an Executive Session on July 23.

This grievance is properly before the Connecticut State Board of Mediation and Arbitration.

## III. FACTS

There are few, if any, facts in dispute in this case. The Grievant was injured at work and she was covered by Workers' Compensation. She received compensation payments in accordance with the Workers' Compensation Statute.

Section 7.7 of the CBA provides that the Board will pay a wage differential payment to the injured person for a period of up to four (4) months. The wage differential payment is designed to supplement the Workers' Compensation payment so that the individual will receive an equivalent weekly wage he/she was receiving at the time of his/her injury. The Grievant was not paid the wage differential payments as provided under Section 7.7 of the CBA.

## IV. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT (Ex. 1)

### ARTICLE XII

### DISCIPLINARY PROCEDURE

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GRIEVANCE & ARBITRATION PROCEDURE - Any grievance or dispute which may arise between the parties which cannot be resolved, including the application, meaning or interpretation of this Agreement, shall be settled in the following manner:

Step 1 - The employee, or the Union Steward, with or without the employee, shall take up the grievance or dispute with the employee's immediate Supervisor within ten (10) days of the grievance or the employee's knowledge of its occurrence. The Supervisor shall attempt to adjust the matter and shall respond to the Steward within three (3) working days.

Step 2 - If the grievance has not been settled, it shall be presented in writing by the Union Steward or other Union official to the Superintendent or his representative within seven (7) days after the Supervisor's response. The Superintendent or his/her representative shall respond to the Union Steward or the Union official in writing within three (3) working days.

Step 3 - If the grievance still remains unadjusted, it shall be presented by the Union Steward, Union Representative or Chief Steward to the Board in writing within seven (7) days after the response of the Superintendent or his/her representative. The Board shall respond in writing to the Union Steward, Representative or the Chief Steward (with a copy of the response to the Local Union President) within five (5) working days after the next scheduled meeting of the Board.

Step 4 - If the grievance is still unsettled, either party may, within fifteen (15) days after the reply of the appointing authority is due, by written notice to the other, request arbitration by the State Board of Mediation and Arbitration. Said Board shall hear and act on such dispute in accordance with its rules and regulations. The decision of the State Board of Mediation and Arbitration shall be final and binding upon the parties, according to law.

Note: After initial submission of grievance, time limits on replies at various levels of the proceedings may be extended upon mutual agreement of both parties.

## V. **DISCUSSION:**

The Board argues that this grievance is not arbitrable as it is untimely. The Board further argues that the Union did not follow the Grievance Procedure when the Union did not submit the grievance to the Board as required by Step Three of that Procedure. Both are questions of procedural arbitrability.

The Union argues that the CBA contains no affirmative language that a grievance is forfeited (not arbitrable) if the time limits are not followed. The Union makes the same basic argument regarding its failure to follow the steps of the grievance procedure. The Union argues that its failure to file the grievance to the Board as stated in Step 3 of the Grievance Procedure does not render the matter to be not arbitrable.

It is well settled that there is a public policy favoring arbitration to resolve disputes. This public policy has been articulated by the Congress and the Supreme Court. The U.S. Supreme Court held that "arbitration is a matter of contract." *Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960). The question of arbitrability is generally one where the Panel must determine if the parties agreed to make the arbitration process available under the terms of the grievance at issue.

The seminal case of *Steelworkers* v. *Warrior & Gulf Navigation Co*. provides that arbitrable review is appropriate, "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted disputes. Doubts should be resolved in favor of coverage." 363 U.S. at 582. The burden of proof is on the Board to prove the matter is not arbitrable.

"For arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Id.* The Connecticut Supreme Court has repeatedly articulated a clear public policy of the State in favor of arbitration of disputes.

Arbitrators and courts are virtually unanimous in holding that procedural breaches totally defeat the right to arbitrate unless they are *de minimis*. Most arbitrators strictly enforce the timeline set out in the grievance procedure where the parties have consistently enforced those requirements. Time limits are generally treated as jurisdictional; in other words, if the timeline was not met, the arbitrator does not have the authority to hear the merits of the case.

In this case, the Union did not submit the grievance to the Board at all. The language of Step 3 provides "If the grievance still remains unadjusted, it ***shall*** be presented . . . to the Board in writing within seven (7) days." [Emphasis added] Shall is an imperative command, usually indicating that certain actions are mandatory and not permissive.

Assuming *arguendo* that the Union did file the grievance with the Board as stated in Step 3 of the Grievance Procedure, the Board would have had five (5) days to respond in writing following a meeting of the Board to consider the grievance.

The Union filed the grievance with the Human Resources Department of the Board on December 6, 2023. The Human Resources Department responded on December 8, 2023 indicating that the grievance was untimely. (Ex. 2.) The Union filed for arbitration

with the State Board of Mediation and Arbitration on a form which they dated January 30, 2024 and it was stamped as received by the State Board on February 2, 2024.

Step 4 of the Grievance Procedure provides that if the grievance remains unsettled, the Union had to file the matter to arbitration with the State Board of Mediation and Arbitration within fifteen (15) days of the Board's answer. One would have to assume that the response by Human Resources was the response of the Board under the Union's argument. Based upon the Union's argument, the Union would have had until December 23 to file the grievance to arbitration with the State Board of Mediation and Arbitration. January 30 or February 2 are well outside the fifteen (15) day period measured from December 8, 2023. The matter was filed for arbitration either twenty-eight (28) or thirty-one (31) days after the December 8 date and certainly not within the contractual limit of "within fifteen (15) days."

## VI. **RULING**

For the reasons set forth herein, the Panel unanimously finds the matter to be not arbitrable.

BY THE ARBITRATION PANEL:

/s/Linda J. Yelmini 8/15/24

Linda J. Yelmini (Public Arbitrator & Chairperson)

/s/Peter S. Carozza, Jr. 8/15/24

Peter S. Carozza, Jr. (Labor Arbitrator)

/s/Kenneth Baldyga 8/15/24

Kenneth Baldyga (Management Arbitrator)