

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

**RULING ON ARBITRABILITY**

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In the Matter of	: MAY 3, 2024
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CITY OF NEW LONDON	: CASE NO. 2022-A-0217
	:
AND	:Hearing Date: November 3, 2023
	:
	:Date of Ruling: May 14, 2024
	:
AFSCME CO. 4, LOCAL 1378	:Location of Hearing: State Board
	: of Mediation and Arbitration
	: 38 Wolcott Hill Road
	: Wethersfield, CT 06109
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**APPEARANCES:**

Christopher J. Sugar, Esquire  
Staff Rep/Attorney  
Connecticut Council 4  
AFSCME, AFL-CIO  
For the Union

Brian Estep, Esquire  
Conways, Longregan, Sheehan  
& Monaco, P.C.  
For the City

**PANEL MEMBERS:**

Gerald T. Weiner  
Neutral Panel Member, Chair

Michael C. Culhane, Sr.  
Management Panel Member

James Neary  
Labor Panel Member

**ISSUE**

Is Grievance CA31622-2 arbitrable?

## **FACTS**

This grievance was filed by AFSCME, Council 4, Local 1378 (“Union”) against the City of New London (“City”).

Both parties appeared before the Panel on November 3, 2023. The parties were represented by counsel, were given the opportunity to examine and cross-examine witnesses and presented documentary evidence. Briefs were submitted by each party on or about December 18, 2023.

The parties agreed to the issue before the Panel which is: “Is Grievance CA31622-2 arbitrable”? (Jt. Ex.1).

The City raised the claim on October 19, 2023 of whether the grievance is arbitrable due to the Union’s failure to comply with the Collective Bargaining Agreement (“CBA”) Grievance Procedure Article VII, Section 7.2 (Jt. Ex.3).

The Union in its official grievance form alleged that the City violated the CBA relating to wages in violation of Article XXI, Section 21.2(B).

The City posted the position of Building Maintenance Crew Leader to be closed on December 3, 2021 (Jt. Ex.5). Thomas Ferino a City employee 1 applied for and was appointed to the position by the Mayor by correspondence dated January 3, 2023 at a salary of \$37.89 per hour (Jt. Ex. 6). Ferino signed this appointment letter on January 11, 2022. The letter, in part stated: “Your salary in this Public Works Union position shall be at the rate of \$37.89 per hour”. The salary was consistent with the CBA for a Crew Leader scale at Step 1 (Jt. Ex. 4). The

City's formal appointment document was signed by the Department Head on January 11, 2022 (Jt. Ex. 7).

This grievance was presented to management on March 14, 2022 (Jt. Ex. 2) which was over sixty (60) days from the correspondence appointing Ferino the position (January 3, 2022) and over sixty (60) days from the formal appointment document (January 11, 2022).

### **UNION POSITION**

The Union argues that in the face of potentially conflicting provisions the Arbitrator must choose an interpretation that allows for the intended meaning of all provisions to avoid rendering a contract term meaningless. The Union argues that President Burroughs testified that once he was informed by the member (Ferino) that the pay for the Crew Leader Building Maintenance was not right, he filed a grievance in accordance with Section 7.1 and proceeded to meet with the City pursuant to Section 7.2. The Union argues that confusing language in Article 12 would lead to an injustice for the Panel to find this grievance not arbitrable (Union Brief, pg. 4). The Union argued at the hearing that the promoted employee (Ferino) came to the Union President (Burroughs) on March 14 with his concerns and the grievance was filed on March 16, 2022, and therefore was timely.

### **CITY POSITION**

The City asserts that Article VII outlines the grievance procedure and Article VII Section 7.2 requires that a grievance in order to be valid must be submitted in writing to the Department Head within twenty (20) calendar days of the act or omission which gave rise to the grievance (Jt. Ex. 3). The Union President

(Burroughs) testified that he was not approached by Ferino until March 14, 2022 regarding his rate of pay.

The City argues that the parties negotiated specific time frames for the filing of grievances and did not waive them in this matter. The City contends that the grievance was untimely since it was not presented by the Union until March 16, 2022 (Jt. Ex. 2) which was significantly more than twenty (20) days after the appointed individual became aware of the act or omission which gave rise to the grievance.

### **RELEVANT CONTRACT LANGUAGE**

**Section 7.1** Whenever any employee, who is a Union member, shall have any grievance relative to rates of pay, hours of work, or working conditions, s/he may, if s/he wishes, discuss his/her grievance first with his/her Union Steward.

#### **Section 7.2**

- (A). If the Steward believes the complaint to be justified, s/he shall meet with the Division Head and/or the Department Head of the complainant. If such meeting does not resolve the matter within five (5) working days to the satisfaction of the complainant, the complaint may then be formalized as follows:
- (B). The Complaint, to be further processed, must be reduced to writing with sufficient information provided, signed by the complainant and submitted to the Head of the Department with a plain statement of the relief sought and an identification of the specific section(s) of the contract or working conditions claimed to have been violated. Any grievance, in order to be valid for processing, must be submitted in writing to the Head of the Department as provided above within twenty (20) calendar days of the act or omission which gave rise to the grievance. The Department Head shall then have fifteen (15) days to investigate and respond to the grievance. Failure by the City to respond at any step does not indicate acceptance of the grievance and shall not preclude the Union from moving the grievance forward. If the complainant is not satisfied with the Department Head's decision on the written grievance, then the employee or his/her Steward may appeal the grievance to the Mayor/CEO, or his/her designated representative, who shall hear the grievance within two (2) calendar weeks

from the receipt of such a request for the purpose of adjusting or resolving the grievance.

- (C). if the complainant is not satisfied with the Department Head's decision on the written grievance, the employee or his/her Steward may appeal the grievance within fifteen (15) days to the Mayor/CEO, or his/her designated representative, who shall hear the grievance within two (2) calendar weeks from the receipt of such a request for the purpose of adjusting or resolving the grievance.

## **DISCUSSION**

This grievance was filed by the Union as a class action but specifically affects Union member Ferino.. At some point in time Ferino believed his rate of pay for his new position as Building Maintenance Crew Leader was in violation of the contract and he met with his Union President. The Panel finds that Ferino and the Union knew what the rate of pay was for Ferino's new position in January of 2022. Ferino signed his appointment letter on January 11, 2022 and this letter specifically noted his new salary for the position he was promoted into. Ferino's appointment letter (Jt. Ex. 6) was dated January 3, 2022 and the Personnel Action Request was dated January 4, 2022 (Jt. Ex. 7). The January 3, 2022 letter (Jt. Ex. 6) to Ferino specifically set forth his rate of pay for the Building Maintenance Crew Leader, i.e. \$37.89 per hour. The Union/Ferino therefore had knowledge of the act or omission that gave rise to the grievance as early as January 2022 and the grievance was not filed until March of 2022, well beyond the twenty (20) day period as required by the CBA. The Panel finds that the grievance was filed more than twenty (20) days after the act or omission giving rise to the grievance. It is well established that the parties are bound by the CBA time limits they themselves agreed to. In order for this grievance to be timely it needed to be filed no later than

twenty (20) days after the January 3/4, 2022 timeframe. It was not filed until March 11, 2022 and accordingly untimely.

The Union's argument that the CBA contained confusing language is unpersuasive.

After a review of the documentary and testimonial evidence, and by a preponderance of the evidence, the grievance is found by the Panel to be non-arbitrable.

## **RULING**

The grievance in this arbitration (CA31622-2) is not arbitrable.

**/s/ Gerald T. Weiner**  
**Gerald T. Weiner**  
**Panel Chair/Neutral Member**

**/s/ James Neary**  
**James Neary**  
**Union Panel Member**

**/s/ Michael C. Culhane, Sr.**  
**Michael C. Culhane, Sr.**  
**Management Panel Member**