

**State of Connecticut
State Board of Mediation and Arbitration**

In the Matter of	:	Case No. 2023-A-0058
	:	
Norwalk Transit District	:	
	:	Date of Award: November 8, 2023
	:	Date of Hearing: August 11, 2023
-and-	:	
	:	Location of Hearing: State Board of
	:	Mediation and Arbitration
AFSCME Council 4, Local 1303-186	:	38 Wolcott Hill Road
	:	Wethersfield, CT 06109
	:	(VIRTUALLY BY ZOOM)
	:	

AWARD

PANEL MEMBERS:

Dennis C. Murphy, Esq., Chair and Public Member
Peter Carozza, Labor Member
Tina Ann Collins, Management Member

Chuck Paris, representing the Union
Floyd J. Dugas, Esq., representing the Employer

Procedural History and Issue

This is a dispute between the Norwalk Transit District (employer) and AFSCME Council 4 Local 1303-186 (union) concerning the arbitrability of a grievance.

After due notice a hearing was heard on August 11, 2023, virtually, wherein the parties had opportunity to present evidence and witnesses and to cross examine same.

The parties filed post hearing briefs.

The parties jointly submitted the following issue for determination:

Is the matter arbitrable?

Relevant Collective Bargaining Provisions

ARTICLE XX GRIEVANCE AND ARBITRATION

20.4 ARBITRATION: Any grievance which is not settled through the grievance procedure provided above may be submitted to the Connecticut State Board of Mediation and Arbitration under the rules providing for final binding arbitration. Such submission must be within fourteen (14) calendar days after the response at Step #3. (Joint Ex. 1 at 18).

Findings of Fact

1. The grievance filed in this matter was denied by the employer's Chief Financial Officer Matt Pentz on September 16, 2022.

2. The grievance appeal form was stamped as received by the Board on October 3, 2022. (Joint Ex. 3). Fourteen days from the denial at Step 3 would have been September 30, 2022.

3. The employer filed a timely objection to the request for arbitration based upon the timeliness of the union filing.

4. Edwin Perez, union representative, testified that he was tasked with dropping the grievance appeal off at the Board and that his expense report for that month records that he was at the Board offices in Wethersfield on September 29, 2022. He testified that although he believes he dropped off this grievance appeal at the Board on September 29, he was “not 100% certain it was this grievance.” He did not ask for or receive a receipt of the filing.

5. Perez further testified that other union representatives also drop grievance appeals off at the Board. It was his routine to drop grievance appeals off “maybe once a month, maybe less than that.

Arguments of the Employer

The employer argues that the grievance must be found untimely filed under the clear terms of the agreement and thus not subject to the arbitration process. The contractual procedures must be followed, and the union failed to do so. The employer cites many prior cases where the clear language of the grievance procedure and arbitration clause were upheld and matters were found not to be arbitrable.

The employer further argues that the testimony of Perez cannot be relied upon, in that, in his own words, he was not entirely certain that he dropped the grievance appeal off at the Board on the 29th, within the required timeframe.

Arguments of the Union

The union argues that the testimony of Perez demonstrates that the union fulfilled its obligation and delivered the grievance to the Board on September 29, 2022, one day before the timeframe as required by the agreement.

Further, the union argues that the strong presumption of arbitrability should move this Panel to find the matter arbitrable.

Discussion

Our analysis starts with a reminder of our standard of review in matters of arbitrability. As we know, “arbitration should be compelled unless it may be said with ‘positive assurance’ ” that the matter should be found not arbitrable. (**How Arbitration Works**, Elkouri & Elkouri, 6th ed., at 52, citing *Gateway Coal Co. v. Mine Workers Dist. 4, Local 6330*, 414 U.S. 368 (1974), and the *Steelworkers Trilogy*).

The factual question before us is a rather narrow one. What constitutes a “submission” to the Board requesting arbitration, as required by Section 20.4 of the agreement. Additionally, what is the import of the date stamped “Received” on the Board’s submission form.

Although the testimony of Edwin Perez was without total certainty, his testimony was credible and supported by his travel records that he had travelled to the Board in Wethersfield on September 29, 2022. In light of the strong presumption of arbitrability, we find that in all likelihood, he submitted the appropriate form on that date. Then what do we make of the fact that the form was time stamped on October 3, 2022, a Monday? We can safely infer from our Regulations that the date stamp of “Received” is not sole and definitive demonstration of filing or submission to the Board.

Section 31-91-4 provides that “All communications should be addressed to the State Board of Mediation and Arbitration, 38 Wolcott Hill Road, Wethersfield, Connecticut, 06109.” Further, “Except as otherwise provided in this subsection, faxes shall be accepted by the board for communication purposes with the board. To meet any mandated time frame, faxes shall be received by the close of the business day of the board. The close of business day is 4:30 p.m. Faxes shall not be accepted for last best offers in interest arbitration or for briefs in any proceedings.”

Therefore, our regulations provide that mail sent to the Board address, or a fax to the Board, will suffice as a filing or submission. There is no requirement for a fax to be subsequently date stamped as “Received” by the Board, although in normal usage a fax usually carries at least a date received, often with a time.

We find this matter arbitrable under the unique facts of this case because it is conceivable that Perez delivered the appeal form to the Board’s proper address as provided

in the Board's regulations on September 29, but for some reason it was not processed or stamped that Thursday or the next day but was discovered and stamped as received on Monday the 3rd of October. Although we note this slight possibility, we also note the usual diligence of all staff members with an understanding of the importance of noting when filings or submissions to the Board occur.

AWARD

This matter is arbitrable.

Case No. 2023-A-0058

By the Panel

/s/ Dennis C. Murphy, Esq.

Dennis C. Murphy, Esq.
Chair and Public Member

/s/ Peter Carozza

Peter Carozza
Labor Member

/s/ Tina Ann Collins

Tina Ann Collins
Management Member