

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

In the Matter of	:	Case No. 2021-A-0261
	:	
City of New Haven	:	Date of Award: June 13, 2024
	:	
-and-	:	
	:	
Elm City Local, CACP	:	Dates of Hearing: April 16 and 25, 2024
	:	
	:	
	:	Location of Hearing: Zoom

RULING ON ARBITRABILITY

PANEL MEMBERS:

Dennis C. Murphy, Esq., Chair and Public Member
Betty Kuehnel, Labor Member
Ken Baldyga, Management Member

Marshall Segar, Esq., representing the Union
Curtis Stubbs, Esq., representing the Employer

Procedural History and Issue

This is a dispute between the City of New Haven (City) and the Elm City Local, CACP (Union) concerning the arbitrability of a grievance concerning Christopher Acosta (Grievant).

After due notice a hearing was heard on April 16, 2024, and April 25, 2024, wherein the parties had opportunity to present evidence and witnesses and to cross examine same. The parties filed post hearing briefs.

The parties jointly presented the following issue for determination:

Is the grievance arbitrable?

Relevant Collective Bargaining Provisions

Article 13 (Grievance Procedure)

Section 1 (Purpose)

The purpose of the grievance procedure shall be to settle employee grievances on as low an administrative level as is possible and practicable, so as to insure efficiency and employee morale.

Section 2 (Definition)

A grievance shall be considered to be a dispute between an employee and/or the Union and the City, and/or any of its agents, servants, employees, officials, boards, or commissions concerning the interpretation and application of any of the provisions of this Agreement (emphasis added), including the discharge, suspension, demotion, or other discipline of an employee. Probationary employees shall not have recourse to the Grievance Procedure arbitration provision under Article 3.

Section 3 (Procedure)

Any employee may use this grievance procedure with or without Union assistance. In the event that an employee is aggrieved, he or she shall, prior to initiating a grievance at STEP ONE, discuss the subject of his or her grievance with the head of his or her division and a Union representative within fifteen (15) days after the event giving rise to the grievance, or within

fifteen (15) days of when the employee would reasonably have had knowledge of the occurrence giving rise to the grievance. No such discussion shall be conducted in the absence of a Union representative. No grievance settlement made as a result of an individually processed grievance shall contravene the provisions of this Agreement.

Step One: If the Union and/or any employee claims to be aggrieved by the action or inaction of the City and/or of its agents, servants, employees, officials, boards or commissions, either must submit the grievance in writing to the Chief of Police or his or her designee within fifteen (15) days after when the Union and/or employee would reasonably have had knowledge of the occurrence giving rise to the grievance, or within fifteen (15) days after the discussion with the Division Head, referred to above, whichever is later. The Chief or his or her designee shall set up a meeting between the parties within ten (10) days and shall answer the grievance, in writing, within ten (10) days after receipt of said grievance, setting forth his or her decision.

Step Two: If the employee and/or the Union are not satisfied with the decision at Step One of the grievance procedure, either must submit the grievance to the Director of Labor Relations or his or her designee within ten (10) days after receipt of the decision rendered by the Chief of Police or his designee. **The Director of Labor Relations, or his or her designee, shall render his or her decision in writing within ten (10) days after he or she has met and discussed the grievance with the Union** (emphasis added). The grievance hearing at Step Two must be held within thirty (30) days of receipt of the grievance by the Director of Labor Relations.

Step Three: If the decision of the Director of Labor Relations is not satisfactory to the Union or the employee, the Union may submit the matter to the Connecticut Board of Mediation and Arbitration or the American Arbitration Association with a copy to the Director of Labor Relations within fifteen (15) days after receipt of said decision. Within thirty (30) working days after receipt of the Union's submission to arbitration the City may, up to a limit of five (5) cases per calendar year, remove any case filed to the Connecticut State Board of Mediation and Arbitration to the American Arbitration Association. The decision of the Arbitrator(s) shall be final and binding with respect to the employee, the Union the City, its agents, servants, employees, officials, and its boards and commissions.

Section 4

The Union and the City, on behalf of themselves and their agents, servants, employees, officials, boards, and commissions, hereby empower and confer upon the

Connecticut Board of Mediation and Arbitration and the American Arbitration Association Arbitrator the following powers and authority:

(a) To interpret and apply the provisions of this Agreement. (emphasis added)

(b) In grievances involving the discharge or other discipline of an employee, to conduct a de novo hearing, in accordance with the rules of said Board or Association for the purpose of determining whether said discharge or discipline was for just cause, as required by Article 4 hereof, and, in connection therewith, to uphold, rescind, reverse, or modify the discharge or discipline of any employee by the City or any of its agents, servants, employees, boards or commissions.

Grievances concerning the discharge or other discipline of an employee are hereby acknowledged to be disputes concerning the interpretation and application of the provisions of this Agreement, including but not limited to Article 4 hereof, and to that end the parties agree that in such matters, said Arbitrator(s) is specifically empowered to receive evidence of alleged misconduct by the employee involved, as well as any defense, denial, or other evidence controverting or concerning such allegation, or relating thereto, or in mitigation thereof for the purpose of interpreting and applying the provisions of this Agreement, including but not limited to, the provisions of Article 4 hereof (b) To award the grievant and/or the Union a remedy if it sustains the grievance.

(d) The Arbitrator(s) jurisdiction to make an award shall be limited by the submission and confined to the interpretation and/or application of the provisions of this Agreement. The Arbitrator(s) shall not have the jurisdiction to make an award which has the effect of amending, altering, enlarging, or ignoring the provisions of this Agreement in effect at the time of the occurrence of the grievance being arbitrated, nor shall the Arbitrator(s) have jurisdiction to determine that the parties have amended or supplemented this Agreement, unless such amendment and/or supplemental agreement has, in fact, been made.

(e) In addition to the above, by mutual agreement, the parties may elect to use the expedited arbitration procedures, in accordance with the rules and regulations of the Board of Mediation and Arbitration, for any grievances involving disciplinary actions of less than a five (5) day suspension without pay and/or any grievances concerning the interpretation and application of routine contractual issues and provisions.

Section 5

If any of the decisions to be rendered by the City or its agents in Steps 1-3 above are not rendered within the time limitations specified herein, said grievance shall pass to the next step.

Section 6

Time extensions beyond those stipulated in this grievance procedure may be arrived at by the written mutual agreement of the parties concerned.

Section 7

Either party shall have the right to employ a public stenographer or use a mechanical recording device at any step in this procedure.

Section 8

If a grievance is not submitted and/or appealed within the prescribed time limits herein above, said grievance shall be deemed settled.

Findings of Fact

1. The Grievant was suspended for five (5) days as a disciplinary measure in December of 2018. The five (5) days were held in abeyance. A grievance was timely filed challenging the suspension. The grievance was filed with the Chief and the City's Labor Relations Office. (Test. Florencio Cotto, (Cotto) President of the Union).

2. Cotto met with the City's Labor Relations Officer, Scott Nabel (Nabel), to discuss the matter. The parties had a practice and pattern to wait for a sustained period of time pass when suspensions were held in abeyance to determine if the officer corrected the bad behavior or repeated it, prior to proceeding to arbitration. Nabel testified that a one year delay was common. Nabel did not enter a response to the grievance in the file.

3. Due to Covid, the City issued a memo dated March 27, 2020, which stated that "any grievances or State Labor Board complaints filed during this state of emergency be held in abeyance until the state of emergency is over." (Union Ex. 6).

4. The grievance in this matter, with 34 others, were filed for arbitration with this Board on April 2, 2021.

Arguments of the City

The City argues that the matter is not arbitrable because the Union failed to complete the steps in the grievance procedure.

Further, the City argues that despite the City's waiver of time limits during Covid, there was no specific waiver concerning this grievance. The City argues the Union waited too long to file for arbitration. It argues as Scott Nabel testified, a one year holding of a suspension in abeyance was common. In this matter the Union waited 2 years to file the grievance. Therefore, it is not arbitrable.

Arguments of the Union

The Union argues that the burden is on the City that the matter is not arbitrable and it has not met that burden.

The time waiver of March 27, 2020, evidences a broad lifting of the time limits to file for arbitration, the Union argues. This matter, with many others, have been filed for arbitration beyond the contractual time limits in reliance on this memo.

Further, the Union argues that holding suspensions in abeyance for a sustained period was common to determine if a settlement could be reached based on the officer's behavior, prior to filing for arbitration.

Discussion

The City has the burden to demonstrate that the matter is not arbitrable. It has not met that burden.

The memo from the City dated March 27, 2020 set a broad understanding that time limits for submitting cases to arbitration were suspended. There is nothing

offered by the City which demonstrates a clear and specific revocation of such suspension. The Union's reliance on the waiver was reasonable.

The vague understanding to hold filing for arbitration for disciplinary suspensions adds to the reasonable reliance the Union had to not strictly follow the timelines in the Agreement on filing with the Board.

The presumption of arbitrability is strong for very good public policy reasons. It must be said with positive assurance that a matter is not arbitrable. There is nothing in the record before us which comes close to attaining that assurance.

RULING

The grievance in this matter is arbitrable.

By the Panel

/s/ Dennis C. Murphy, Esq.
Dennis C. Murphy, Esq.
Chair and Public Member

/s/ Betty Kuehnel
Betty Kuehnel
Labor Member

/s/ Kenneth Baldyga
Kenneth Baldyga
Management Member