

STATE OF CONNECTICUT
DEPARTMENT OF LABOR
BOARD OF MEDIATION AND ARBITRATION

Stratford Board of Education

Case No. 2022-A-0145

And

Date of Award: June 28, 2022

Stratford Public Schools Custodians,
International Federation of Professional
and Technical Engineers, Local 13A

Hearing via Zoom April 11, 2022

ADVOCATES

Patrick R. Linsey, Esq., for the Union

Floyd J. Dugas, Esq., for the Employer

ISSUE

Is this matter arbitrable?

RELEVANT CONTRACT LANGUAGE

A. Purpose

1. The purpose of this procedure is to secure, at the lowest possible administrative level, equitable solutions to grievances which may from time to time arise. Both parties agree that the proceedings shall be kept as informal and confidential as may be appropriate in any level of the procedure.
2. Nothing herein contained shall be construed as limiting the right of any member of the unit having a grievance to discuss the matter in-formally with any appropriate member of the administration.
3. A grievance shall be defined as a disagreement over the interpretation or administration of a specific item contained in the agreement.

B. Procedure

1. Level One-Principle or Immediate Supervisor

A member of the unit with a grievance or dispute shall first discuss it with his immediate supervisor or principal either directly or through the custodian's association representative, with the objective of resolving the matter informally. The Board and the Association encourage the resolution of grievances at the lowest level possible.

2. Level Two-Superintendent of Schools

(a) In the event that such aggrieved member is not satisfied with the disposition of the grievance at Level One, or in the event that no decision has been rendered within ten (10) school days after presentation of the grievance, he may file a written grievance with the Association Grievance Committee. Within five (5) school days after receiving such written grievance it shall be referred by the Grievance Committee to the Superintendent of Schools.

(b) The Superintendent shall represent the administration of this level of the grievance procedure. Within ten (10) school days after receipt of the written grievance of the Superintendent, he shall meet with the aggrieved person and their Association representative in an effort to resolve it.

(c) If a member of the unit does not file a written grievance with the Grievance Committee and the written grievance is not forwarded to the Superintendent within ten (10) school days after the member of the unit knew or should have known of the actor condition on which the grievances based, then the grievance shall be waived. If, at any time in the grievance procedure, the Board fails to meet the time limits specified in the contract for a response, then the Association may proceed to the next level of the grievance procedure without further delay.

3. Level Three Board of Education

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If the aggrieved member of the unit is not satisfied with the disposition of his grievance at Level Two, or no decision has been rendered within ten (10) school days after he first met with the Superintendent, he may file a written grievance indicating such dissatisfaction with the Association Grievance Committee or the Board within five (5) school days after decision by the Superintendent. Within five (5) school days after receiving the written grievance, the Grievance Committee shall refer to the Board. Within ten (10) school days after receiving the written grievance, a Committee of the Board shall meet with the aggrieved member of the unit for the purpose of resolving the grievance. However, the ultimate decision on the grievance at Level Three shall be rendered by the full Board at the next regularly scheduled Board of Education meeting.

4. Level Four- Impartial Arbitration

If the aggrieved unit member is not satisfied with the disposition of his grievance at Level Three, or if no decision has been rendered within 10 school days after he first met with the Board Committee, the Association may proceed to arbitration before an arbitrator of the Connecticut State Board of Mediation and Arbitration. Arbitration shall proceed according to the rules of the Connecticut State Board of Mediation and Arbitration. The ruling of the arbitrator shall be final and binding on all parties.

FACTS OF THE CASE

October 8, 2021.....Local 134A submitted a Level One grievance directly to the Board of Education.

October 14, 2021.... the Union inquired about the status of grievance with the Superintendent.

October 15, 2021....the Superintendent responding by asking if they had followed the negotiated grievance procedure contained in the collective bargaining agreement (CBA)?

October 28, 2021....the Superintendent met with the Union to discuss the grievance.

November 9, 2021....the Union filed a Level Three grievance with the Board of Education.

December 2, 2021....the Board emailed the Union that the grievance was denied "for failing to establish a violation of the collective bargaining agreement."

December 20, 2021....the State Board of Mediation and Arbitration received the Union's letter requesting the issue to be heard by an arbitration panel.

THE CITY'S POSITION

The City based its arbitrability claim on Article III of the CBA, contending the Union violated the language by not following "...the requisite timeline for requesting arbitration..." It is their position that by waiting more than 10 days following the Board of Education's rejection of the grievance, they were in violation of the CBA and have given up all rights to pursue the grievance through arbitration.

THE UNION'S POSITION

The Union's position is quite clear; there is no contractual obligation placed upon the Union to move a grievance to arbitration following the decision of the Board of Education within a specific time frame.

DISCUSSION

The CBA is a collaborative product of the Stratford Board of Education and the Stratford Public Schools Custodians, Local 134A and, like most contracts, an analysis reveals their unique labor management relationship. This case focuses on Article III, the grievance procedure, but with a special emphasis on Level Four- Impartial Arbitration.

The grievance procedure's goal is "...to secure, at the lowest possible administrative level, equitable solutions to grievances which may from time to time arise. Both parties agree that processing shall be kept as informal and confidential as may be appropriate at any level of the procedure." To assure that a grievance is settled in a timely manner, there are specific detailed requirements on when a grievance can be filed, and with whom, all accompanied by clearly set time limits on both parties. Any deviation from the CBA requires the written agreement of both parties.

Here the Union suggests that since the CBA is silent on when they must file for arbitration it is left up to their discretion. This ignores the form set in place within the CBA where at each of the three preceding steps both the Board and the Union each have specific time limits on processing grievances, and neither party has the luxury of disregarding the time limits without a consequence. Consequently, if the Board ignores the time limit, the Union can choose to move grievance to the next step, while if the Union does not follow the timeline the issue is considered settled.

Here the Union argues that since the language of Level 4 - Impartial Arbitration, does identify a specific time frame within which they must move the grievance to the State Board of Mediation and Arbitration they have an unlimited amount of time within which to determine if they file for arbitration or accept the outcome.

On several levels their argument does not satisfy the fundamentals of the negotiated dispute resolution process.

1. Time limits are contractually set in place so that the grievance moves forward in a timely and efficient manner as Union members and management are both entitled to a swift resolution of the issue. The Union's position that the contract is silent on when they must move a case to arbitration defies both reason and the context of the contract for each of the preceding three steps have calendar driven boundaries for both parties; why would the final step be left indeterminate? It defies logic to have the final provision in the dispute resolution open ended.

2. The boundaries of the contract are inviolable to this panel, as arbitrators obligated to work exclusively within those margins, prohibited from adding to or diminishing the language of the CBA. For this panel to agree with the Union's position would effectively destroy the grievance process by making the final step uncertain, potentially leaving unanswered issues hanging for the term of the CBA and be a flagrant abuse of our responsibility.

3. By choosing not to move the grievance forward in a timely manner the Union has relinquished any rights to pursue it further.

DECISION

The panel is unanimous that the grievance is not arbitrable.

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 /S/ _____ 6/21/22
Mark E. Sullivan, Public Member and Chair Date

 /S/ _____ 6/21/22
David A. Ryan, Permanent Management Member Date

 /S/ _____ 6/21/22
Betty Kuehnel, Permanent Labor Member Date