

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

In the Matter of	Case No. 2022-S-0002
State of Connecticut, Corrections	Award Date: October 3, 2022
-and-	Hearing Date: September 14, 2022
AFSCME, CO. 4	

**AWARD**

**PANEL MEMBERS:**

Dennis C. Murphy, Esq., Chair and Public Member  
Donald Sevas, Labor Member  
Kenneth Baldyga, Management Member

Thomas C. Austin, Jr., representing the State  
Jason Wells, representing the Union

### **Procedural History and Issue**

This is a dispute between the State of Connecticut, Corrections (State), and AFSCME Co. 4, (Union) concerning the arbitrability of a certain grievance concerning promotions.

After due notice, a hearing was held on September 14, 2022 where both parties had opportunity to present witness and evidence and cross-examine same. The parties filed post-hearing briefs.

The parties jointly presented the issue as follows:

Is the grievance arbitable?

If so, what shall be the remedy?

### **EXHIBITS**

Joint 1	The Issue
Joint 2	Collective Bargaining Agreement July 1, 2016 – June 30, 2021
Joint 3	Grievance
Joint 4	Correctional Counselor Trainee Job Specifications (Prior to 04.04.2022)
Joint 5	Correctional Counselor Job Specifications (Prior to 04.04.2022)
Joint 6	Connecticut State Statute Sec. 5-200
Joint 7	SBMA/Tom Austin Email 09.02.2022 and 09.06.2022
Joint 8	03.15.2022 Scheduling Notice and Corresponding Email Cancellation
Joint 9	Scheduling Notices 05.19.2022, 07.14.2022, 09.14.2022
Joint 10	SBMA Rules/Regulations/Policies
Union 1	SBMA Case No. 2008-A-0719 Award
Union 2	SBMA Case No. 2009-A-0817 Award

### **Witness List**

Witness 1	Carla Martin
	OLR and DAS Human Resources

### **Relevant Collective Bargaining Provisions**

Article 12 – Grievance Procedure

Section 10. Arbitration Rules. Whichever forum a grievance is filed and/or processed in according to section 9A or 9B above, the following shall apply:

1). Arbitrator's Authority. The arbitrator shall have no power to add to, subtract from, alter, or modify this Agreement, nor to grant to either party matter which were not obtained in the bargaining process, nor to impose any remedy or right of relief for any period of time prior to the effective date of the Agreement,...

4). Job Classification Disputes. Disputes over an employee's job classification (reclassification grievances) shall be subject to the grievance procedure but shall not be arbitrable. The third step of the reclassification grievance shall be the Commissioner of Administrative Services or designee and the final step shall be appealed to a three (3) person panel consisting of personnel officers from each of two (2) State agencies, each of which has more than one hundred (100) employees, and one (1) designee of the Union who is experienced in the area of job classification.

#### Article 16 – Temporary Service in a Higher Class

Section 1. Temporary Assignment to a higher class. An employee who is assigned to perform temporary service in a higher class shall, commencing with the thirty-first consecutive work day, be paid for such actual work retroactive to the first day of such work at the rate of the higher class as if promoted thereto, provided such assignment is approved by the Commissioner of Administrative Services or designee.

#### State Regulation

**Sec. 31-91-23 (b)** A party claiming the dispute is not arbitrable shall submit notice of such claim and the reasons therefor, to the board and to the opposing party at least ten days prior to the initial hearing date.

#### Findings of Fact

1. The parties to this matter were notified of the first hearing date of March 15, 2022 on or about December 13, 2021. (Joint Ex. 8). This hearing date was subsequently postponed by the SBMA on March 9, 2022, the State did not notify the Board or the "opposing party" of their intent to challenge arbitrability by March 5<sup>th</sup> of 2022.

2. The parties were notified a subsequent hearing date of May 19, 2022, on or about April 1, 2022. (Joint Ex. 9). The State failed notify the Board or the "opposing party" of their intent to challenge arbitrability by May 9<sup>th</sup> of 2022. The parties appeared before this Panel for the hearing on May 19, 2022, and during that hearing the State did not claim that the matter was not arbitrable.

3. The parties were notified by the Board of the subsequent hearing date of July 14, 2022, on or about May 20, 2022. The State failed to notify the Board or the "opposing party" of

their intent to challenge arbitrability by July 4<sup>th</sup> of 2022. The parties appeared via *Zoom* due to an unforeseen illness for this hearing date on July 14, 2022. During the hearing, the parties, in concert with the Panel, established the next hearing date of the case would be September 14, 2022.

4. The State notified of its claim that the matter was not arbitrable via email to the Board and the Union on September 2, 2022

5. The grievance in this matter was filed on March 4, 2019. It claims on ongoing contract violations of Article 12, 16 and 17 the collective bargaining agreement, concerning workers performing duties outside of their classification.

### **Arguments of the State**

The State argues that the plain language of the agreement states that disputes concerning proper job classification are explicitly not arbitrable pursuant to Article 12 Section 4.

The State further argues that State Regulation Sec. 31-91-23 (b) is “unnecessary (and) inconsistent with the Contract language...”. (State brief at 7-8).

### **Arguments of the Union**

The Union argues that the State failed to file its claim of arbitrability within ten days of the initial hearing date in violation of Sec. 31-91-23 (b). Therefore, the matter the claim of lack of arbitrability fails.

Further, the Union argues that the issue of adjustments in pay for working out of class as claimed in the grievance do not fall within the Article 12, Section 4 requirements.

### **Discussion**

The State has the burden to demonstrate by a clear preponderance of the evidence that the matter is not arbitrable. It has failed in that burden both procedurally and substantively.

The State’s failure to file its claim of arbitrability within ten days of the first hearing date noticed by the Board renders that subsequent claim on September 2, 2022 fatally flawed. The first hearing date noticed by the Board is the date by which the ten day period is measured.

The State's claim of arbitrability fails substantively because it ignores the grievance claim for payment for temporary service in a higher class as found in Article 16.

As this is an Interim Award, the State will have every opportunity at the hearing on the merits to make its arguments with respect to the agreement's treatment of reclassification.

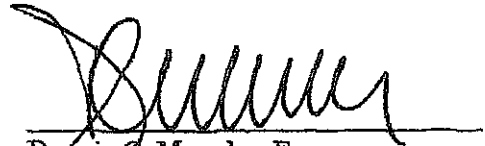
The State's characterization of the State Regulation, which carries the full force of statute, as something which is "unnecessary" and thus can be ignored, is unworthy of an officer of the court.

### AWARD


This matter is arbitrable. The Board staff shall notice to the parties that this matter is going forward in a hearing on the merits at the Boards offices in Wethersfield at 10:00 AM November 2, 2022.

Case No. 2022-S-0002

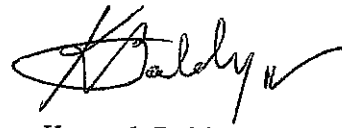
By the Panel



Dennis C. Murphy, Esq.  
Chair



Donald Sevas  
Labor Member



Kenneth Baldyga  
Management Member