

STATE OF CONNECTICUT
DEPARTMENT OF LABOR
BOARD OF MEDIATION AND ARBITRATION

City of New Haven

and

AFSCME, Council 4, Local 3144

CASE No. 2021-A-0199

Hearing via Zoom on:

September 30, 2022

Date of Ruling- February 16, 2023

ADVOCATES

Patrick Sampson, Union Staff Representative

Paul Tests, Esq., for the City

ISSUE

Is the Grievance arbitrable?

BACKGROUND

The employer (City) and AFSCME Local 3144 (Union) have a collective bargaining agreement (CBA) which is applicable to the case brought by six-year member Terry Cooper (Grievant).

Timeline

Grievant was hired in 2014 and in six years never received a poor performance review.

January 2020, new Director of the Health Department hired.

March 15, 2020, the pandemic virtually closes Connecticut, and New Haven directs its employees to work from home.

March 20, 2020, the Grievant was placed on administrative leave.

September 4, 2020, Grievance filed on the “retaliatory and discriminatory practice” and subcontracting the Grievant's work by the City.

September 18, 2020, moved to Step 2 by the Union.

The City denied the Step 2 and it was appealed.

November 4, 2020, the Loudermill hearing was conducted remotely.

December 9, 2020, Step Three Hearing was held via Zoom.

December 21, 2020, email from HR Resources Manager Scott Nabel to the Union President denied the Grievance.

January 27, 2021, the Union initiated a request for arbitration.

Applicable Contract Language

Article 22 - Grievance procedure

Section 3 - Procedure

Step 3: (Final six lines) "Prior to denying any grievance at this step, the aggrieved employee and/or his/her representative, if any, shall be afforded the right to meet and discuss the grievance with the Director or his/her representative. Step 3 grievances shall be scheduled within thirty days of receipt of the grievance unless the parties mutually agree to extend the thirty-day requirement. The decision of the Director or his/her representative will be made as soon as practicable, but not later than ten (10) working days after the aforesaid meeting or ten (10) days from the time the meeting should have taken place." (CBA, pg.31)

Section 4 - General Provisions (final item)

"Any grievance not answered within the prescribed time limits may be processed to the next step of the grievance procedure up to and including arbitration." (CBA, pg. .32)

Section 5 - Arbitration

"In order to be considered, a request by the Union for arbitration shall be forwarded to the State Board of Mediation and Arbitration with a copy sent to the Director of Labor Relations or his representative within twenty (20) working days from the receipt of the decision at Step 3 of the grievance procedure or twenty (20) working days from the date such decision should have been made. Grievances not appealed within this time shall be considered settled." (CBA, Pg. 32)

The City' Position

"The Grievance must be dismissed by the Panel because the Union failed to meet the clear requirements of the CBA's grievance timeline found in Article 22. There can be no question that, based on the evidence submitted to this Panel, the requisite timeline for requesting arbitration was not followed by the Union." (*City brief, pg. 4)

The Union's Position

"With its basis in the steelworker's trilogy and codified by ATT v. Communication Workers (121 LRRM 3329), it is standard that where a contract has an arbitration clause, a case is presumed to be arbitrable unless that contract contains a specific bar prohibiting arbitration of a particular dispute." (Union brief, pgs. 7-8)

Discussion

The CBA is the exclusive lens through which the panel determines if a grievance has merit. It is well established by the professional canons of arbitration, supported by the courts that a panel has no authority to amend the language, concluding that when there is clear, unambiguous contract language it must be followed to preserve the integrity of the collective bargaining process and the principles of arbitration.

The Grievance Procedure continued to be effectively administered despite the intrusion of the Covid pandemic. Examining the timeline of this grievance we find each step of the process was completed in a proper manner with both the Union and the City fulfilling their obligation to respond or move the grievance forward through the first three steps in a timely fashion.

The CBA is clear that taking a grievance to arbitration requires that "... a request by the Union for arbitration shall be forwarded to the State Board of Mediation and Arbitration with a copy sent to the Director of Labor Relations or his representative within twenty (20) working days from the receipt of the decision at Step 3." This language could not be more unequivocal about whom should be receiving the application and within what timeframe.

The Union suggested that the confusion brought about by the challenges of Covid affected the grievance process so that the Step 3 denial was not received thus releasing them from the 20-day processing requirement. The testimony of the former Union President was that he could not "recall" receiving the letter denying the Step 3 appeal, while the City presented compelling evidence through the testimony of the Labor Research Associate that the notice was sent via email in a timely manner.

Most critically, Article 22 Section 4, of the CBA empowers the Union to move "*Any grievance not answered within the prescribed time limits may be processed to the next step of the grievance procedure up to and including arbitration.*" The Union had every opportunity and supporting contract language to move this Grievance to arbitration with or without a response to their appeal. They failed to do so in a timely manner.

The Grievance is denied.

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Mark E. Sullivan, Alternate Public Member

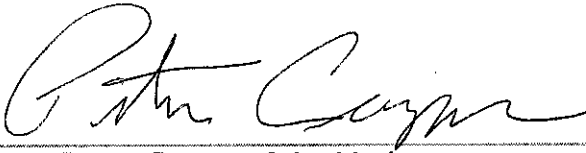
2/7/23

Date



Michael C. Culhane, Permanent Management Member

Date



Peter Carozza, Permanent Labor Member

2/8/23

Date