

STATE OF CONNECTICUT
DEPARTMENT OF LABOR
STATE BOARD OF MEDIATION AND ARBITRATION

ARBITRATION AWARD

In the Matter Of:

TOWN OF PLAINFIELD WATER
POLLUTION CONTROL AUTHORITY

And

AMERICAN FEDERATION OF STATE,
COUNTY and MUNICIPAL EMPLOYEES,
AFL-CIO, LOCAL 1303-164

Case No. 2022-A-0029

Date of Award: February 17, 2023

Hearing Date: October 26, 2022

GRIEVANT: Arthur Roberts

APPEARANCES: Kristi D. Kelly, Attorney at Law (For the Town)
Deborah McKenna, Attorney at Law (For the Grievant)

I. ISSUE:

Is the matter arbitrable?

II. BACKGROUND:

There is a dispute whether the American Federation of State, County and Municipal Employees Union, AFL-CIO, Local 1303-164 (hereinafter referred to as the "Union") filed this grievance on behalf of the Arthur Roberts (hereinafter referred to as either "Mr. Roberts" or the "Grievant"). A review of the Board's records show that the Grievant and his wife attempted to file this and three (3) other grievances with the Board and pay the filing fee. The Board did not accept the filing or the fee from the Grievant.

The staff of the Board contacted the Union and the Union filed this and the other three (3) grievances on behalf of the Grievant and paid the filing fee to the Board. Thereafter, the Grievant waived Union representation and is represented by private counsel in this arbitration.

This grievance asserts that the Town of Plainfield Water Authority (hereinafter referred to as either the "Town" or the "Authority") discriminated and retaliated against the Grievant in violation of the Collective Bargaining Agreement ("CBA"). Additionally, the grievance specifically claims a violation of Article 6.6 of the CBA and "all other relevant articles of the Contract." The claimed violation is based upon assignment of overtime on April 5, 2021 and was dated April 25 and filed with the Authority on April 26, 2021.

The grievance was denied during the prior steps of the grievance procedure. The Town raised the issue of whether the matter was arbitrable. On October 26, 2022, an arbitration hearing was held. The parties each called witnesses who testified and were subject to cross-examination. The parties agreed to file Briefs by November 18. The parties asked for the date to be extended which extension was granted. Each party filed a Brief with the Panel on December 23, as agreed. The Panel held an Executive Session on January 17, 2023 via ZOOM.

The parties have complied with the grievance and arbitration provisions of the CBA. This grievance is properly before the Connecticut State Board of Mediation and Arbitration.

III. STATEMENT OF FACTS:

Arthur Roberts has been employed by the Authority as a Backhoe Operator/Laborer for approximately twelve (12) years. According to the Grievance Form (Jt. Ex. 2), the Grievant claimed that there was a sewage blockage on Third Street Extension in Plainfield on April 5, 2021. According to the Form, the Grievant overheard coworkers discussing the sewage blockage on that date. This fact was confirmed in his testimony.

At that time, the Grievant had been cleared for full duty and according to the Grievant should have been called to work overtime. He claimed the Authority did not call him. While the Authority in its Brief stated the overtime opportunity existed on April 3, the Step One Answer (Jt. Ex. 4) indicated that the overtime opportunity existed on April 5. (N.B. April 5, 2021, was a Monday, and April 3, 2021 was a Saturday). While the Authority is likely correct that the overtime opportunity existed on Saturday April 3, 2021, for the Panel's deliberations in this case, the April 5 date was utilized as it was part of Joint Exhibit 4 which was introduced at the arbitration.

The Grievant testified and the Grievance Form indicates that he overheard coworkers discussing the sewer blockage on April 5, 2021. The Grievance was filed with the Authority on April 26, 2021.

IV. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT (Joint Ex. 1)

ARTICLE XII

GRIEVANCE PROCEDURE AND ARBITRATION

Section 12.0

A grievance for the purpose of this procedure shall be considered to be an employee and/or Union complaint concerned with matters relating to the interpretation and application of the Articles and Sections of this Agreement.

Section 12.1

Any employee may use this grievance procedure with or without Union assistance. Should an employee process a grievance through one or more steps provided herein prior to seeking Union aid, the Union may process the grievance from the next succeeding step following that which the employee has utilized. (No grievance settlement made as a result of an individually processed grievance shall contravene the provision of this Agreement).

- a. *Step One* – Any employee who has a grievance shall reduce the grievance to writing and submit it within five (5) working days from the date of the occurrence to the Chief Steward, who will deliver it to the head of the department who shall use his/her best efforts to settle the dispute. The department head's decision shall be submitted in writing to the aggrieved employee and his/her representative if represented, within five (5) working days of receipt of the grievance.
- b. *Step Two* – If no agreement is reached at step one, the employee and/or representative shall submit the grievance in writing within five (5) working days to the Authority. Within twenty (20) working days after receiving said grievance a meeting will be held between the First Selectman, the Supervisor, the aggrieved, and the Union Steward, in an effort to reach a solution. Within an additional twenty (20) working days the Authority shall render their decision in writing to the aggrieved employee and his/her representative.
- c. *Step Three* – If the grievance is not settled at Step Two the parties may within thirty (30) working days after receipt of the written decision of the Authority, submit the grievance to the Connecticut State Board of Mediation and Arbitration. The State Board of

Mediation and Arbitration shall have no power to add to, subtract from, amend, alter or delete any provisions of this Agreement. The decision of the Board of Mediation and Arbitration shall be final and binding upon both parties provided it is no contrary to the law.

Section 12.3

Any of the time limitations specified in this Article and Steps provided herein may be waived by written mutual which shall be final and binding on all parties.

V. DISCUSSION

The Authority raises the issue of arbitrability. The Authority posits that the grievance is untimely and, therefore, is not procedurally arbitrable. Procedural arbitrability refers to whether the parties have complied with the terms of the grievance and arbitration procedure contained in the CBA.

The CBA provides that the Employee shall file the grievance in writing within five (5) working days of the date of the occurrence of the claimed violation. Mr. Roberts admitted that he knew of the opportunity to work overtime on April 5. Taking the most liberal interpretation, the five (5) working days would have expired on April 13, 2021. The CBA at Section 12.3 provides that the time limits may be waived by written mutual agreement of the parties. While Mrs. Roberts testified that she believed that the time limits had been extended by thirty (30) days, neither the Union nor the Authority verified this assertion. Additionally, no written documentation was introduced as required by the CBA.

Arbitrator's jurisdiction is determined by the CBA. Arbitrators are virtually unanimous in holding that procedural breaches totally defeat the right to arbitrate unless they are *de minimus* or there is some reason that the failure to comply with the language can be excused.

There is a public policy favoring arbitration to settle disputes which has been articulated by the Congress and the Supreme Court. The U.S. Supreme Court has held that "arbitration is a matter of contract." *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960). The question of arbitrability is generally one where the

Arbitrator must determine if the parties agreed to make the arbitration process available under the terms of the grievance at issue.

Arbitrable review is appropriate, "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted disputes. Doubts should be resolved in favor of coverage." The burden of proof is on the employer to prove the matter is not arbitrable. The grievance is well outside the contractual time limits.

VI. AWARD:


For the reasons set forth herein, the Panel unanimously finds that the matter is not arbitrable.

BY THE ARBITRATION PANEL:

 2/8/2023
Linda J. Yelmini (Public Arbitrator & Chairperson)



Paul Wallace (Labor Arbitrator)


Michael C. Culhane, Sr. (Management Arbitrator)