

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

In the Matter of : APRIL 17, 2023
WEST HAVEN BOARD OF EDUCATION : CASE NO. 2023-A-0076
AND : HEARING DATE: January 11, 2023
AFSCME CO. 4, LOCAL 2706 : LOCATION OF HEARING: State
: Board of Mediation and Arbitration
: 38 Wolcott Hill Road
: Wethersfield, CT 06109
: (BY ZOOM)

APPEARANCES: Board Representative
Floyd Dugas, Esquire
Berchem Moses P.C.
175 Broad Street
Milford, CT 06460

Union Representative
Christopher J. Sugar, Esquire
Connecticut Council 4
AFSCME, AFL-CIO

ISSUE

Is this grievance arbitrable? (Jt. Ex. 1)

FACTS

The West Haven Board of Education ("Board") and Local 2706 of AFSCME Council 4 ("Union") are parties to a Collective Bargaining Agreement ("CBA") for the period July 1, 2022 – June 30, 2025 (Jt. Ex. 2).

The parties agreed to the issue presented to the Panel as Joint Exhibit 1 as follows:

"Is this grievance arbitrable?"

This grievance involves the termination of Steven Stills ("Grievant"), a Custodian employed by the Board. The termination, according to the Union, was without just cause.

The Union filed a Step 2 grievance with the Superintendent's Representative, Acting HR Director, Tammy Mursko, alleging Grievant was wrongfully terminated. The "Official Grievance Form" (Jt. Ex. 3) had a handwritten date of 9/30/23 (the parties agreed that the date should have been year "22" rather than "23").

On or about October 14, 2022, Acting HR Director Mursko hand-delivered a letter dated October 12, 2022 to Union President, Richard Robinson, denying the grievance (Board Brief, pg. 3, Jt. Ex. 3). After receipt of the denial, the Union bypassed Step 3 of the grievance procedure, which is presentment of the grievance to the Board of Education, and filed a request for arbitration with the State Board of Mediation and Arbitration ("SBMA"). The request for arbitration is set forth in Step 4 of the CBA. (Jt. Ex. 2). The Union's request for arbitration was received by the SBMA on October 31, 2022 as evidenced by the time stamp on the request for arbitration (Jt. Ex. 4).

The CBA, Article XII, Section 12.3 (Step 4) requires the Union to request arbitration with the SBMA by written notice to the Board within fifteen (15) days (emphasis added) after the reply of the appointing authority is due (Jt. Ex. 2, p. 16).

The Union's filing for arbitration with the SBMA was received by the SBMA seventeen (17) days (emphasis added) after the Union received the Board's hand-delivered decision denying the grievance. The decision denying the grievance was hand-delivered to the Union President on October 14, 2022.

BOARD POSITION

The Board argues that the grievance is non-arbitrable as a result of the Union's failure to comply with the clear requirements of CBA timelines in Article XII, Section 12.3. The Board cites various prior SBMA decisions as well as decisions from other jurisdictions for the proposition that a Union's failure to comply with time limits of CBA's results in the Grievant being untimely and must be dismissed (Board Brief, Pg. 6). The Board asserts that prior SBMA decisions established that a grievance is filed when it is date-stamped by the Board and not when the grievance form is completed by a Union Representative (Board Brief, pg. 7-8 and Section 31-91-124 of Board Regulations). The Board alleges that the Board date-stamped claim for arbitration on October 31, 2022 which was seventeen (17) days after the hand-delivered Step 2 denial.

The Board further contends that Article XII of the CBA requires the time for filing a grievance to be measured by "days" and not "working days". The Board argues that "working days" under the CBA only applies to when the Board is responding to a grievance, and "days" applies when the Union is initially filing a grievance or advancing a grievance to the next step in the grievance process.

The Board further urges that if the Union failed to follow the clear timelines enumerated in the CBA, the Panel cannot ignore this failure.

The Board further argues that the grievance should be denied for the failure to adhere to the technical requirements of the CBA as a result of failure to file at Step 3 with the Board of Education. The CBA, according to the Board, does not allow the Union to bypass any step in the grievance process. To allow the Union to bypass a step is tantamount to amending the CBA, according to the Board. The Board concludes its argument by asserting that the Union failed to follow the enumerated timeliness in the CBA and such delay is fatal to the grievance. Secondly, the Board points to the Union's bypass of Step 3 of the required procedure and accordingly the grievance is not arbitrable.

UNION POSITION

The Union argues that Article XII of the CBA contains multiple connotations of "days" and "working days". The Union contends that even if the Panel disagrees that the word "work" was mistakenly omitted from Article XII the grievance was only (emphasis added) filed two days late and it could not have been filed on a weekend or holiday (union Brief, pg. 4). The Union argues that a suspension and/or termination is a very serious disciplinary action and believes the parties meant to use the word "working day" or "working days", rather than "days" with respect to this type of disciplinary action. The Union asserts that the parties are only arguing over "two days" (Union Brief, pg. 6) and given the confusing language of Article XII it would be an injustice for the Panel to find this grievance non-arbitration. This matter, according to the Union, should be allowed to proceed to a full hearing on the merits.

**RELEVANT CONTRACT LANGUAGE
ARTICLE XII
DISCIPLINARY PROCEDURE**

12.0 Disciplinary action shall be applied in a fair manner.

12.1 Disciplinary action may include: (a) verbal warning; (b) written warning; (c) suspension without pay; and (d) discharge, or a combination of these.

12.2 All suspensions and discharges must be stated in writing when effected and a copy given to the employee and Union President; also, written warnings shall be similarly furnished to the employee and the Union President.

12.3 Disciplinary action may be appealed to the grievance procedure as provided below.

GRIEVANCE & ARBITRATION PROCEDURE – Any grievance or dispute which may arise between the parties which cannot be resolved, including the application, meaning or interpretation of this Agreement, shall be settled in the following manner:

Step 1 – The employee, or the Union Steward, with or without the employee, shall take up the grievance or dispute with the employee's immediate Supervisor within **ten (10) days** of the grievance or the employee's knowledge of its occurrence. The Supervisor shall attempt to adjust the matter and shall respond to the Steward within **three (3) working days**.

Step 2 – If the grievance has not been settled, it shall be presented in writing by the Union Steward or other Union official to the Superintendent or his representative within **seven (7) days** after the Supervisor's response. The Superintendent or his/her representative shall respond to the Union Steward or the Union official in writing within **three (3) working days**.

Step 3 – If the grievance still remains unadjusted, it shall be presented by the Union Steward, Union Representative or Chief Steward to the Board in writing within **seven (7) days** after the response of the Superintendent or his/her representative. The Board shall respond in writing to the Union Steward, Representative or the Chief Steward (with a copy of the response to the Local Union President) within **five (5) working days** after the next scheduled meeting of the Board.

Step 4 – If the grievance is still unsettled, either party may, within **fifteen (15) days** after the reply of the appointing authority is due, by written notice to the other, request arbitration by the State Board of Mediation and Arbitration. Said Board shall hear and act on such dispute in accordance with its rules and regulations. The decision of the

State board of Mediation and Arbitration shall be final and binding upon the parties according to law.

Note: After initial submission of grievance, time limits on replies at various levels of the proceedings may be extended upon mutual agreement of both parties.

DISCUSSION

This matter is before the Panel on the sole issue of whether the grievance filed by the Union is arbitrable. Both parties appeared before the Panel via a zoom hearing on January 11, 2023. The parties were afforded a full opportunity to present and cross-examine witnesses. Neither party presented any witnesses to the Panel but agreed on eleven (11) Exhibits that were admitted as full Joint Exhibits. Both parties took the opportunity to argue their respective positions to the Panel as well as filing briefs on or before March 6, 2023.

The Board's position on arbitrability is based on the Union's alleged failure to follow the timeline procedural requirements of the CBA and on December 12, 2022 the Board objected to the grievance on the basis that it was procedurally not arbitrable. In addition, the Board argues that the Union failed to follow the procedural requirements of the CBA by ignoring a Step set forth in the CBA.

It is undisputed that the grievance filed by the Union was "two days" late as set forth in the Union Brief, page 6. The Union's explanation for the late filing centers on the language set forth in Article XII, Section 12.3 of the CBA. That clause describes the timeline requirements for filing grievances as well as the arbitration procedure. Several timeline requirements need to be filed within "working days" while other timeline requirements require filing in "days". Step 4 of the procedure in part states:

"Step 4 – If the grievance is still unsettled, either party may, within fifteen (15) days after the reply of the appointing authority is due, by written notice to the other, request arbitration by the State Board of Mediation and Arbitration...."

It is clear that a Union claim for arbitration needed to be filed within fifteen (15) days and there is absolutely no reference for those days to be "working days".

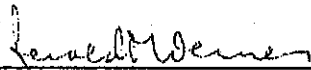
This language is clear and unambiguous. The parties do in fact make reference to other grievance procedure filings be "working days" but the critical section for this grievance only refers to "days". Accordingly, the Union had fifteen (15) days after reply of the appointing authority was due. It was asserted by the Board, and not disputed by the Union, that the Board, acting by its representative, hand-delivered a letter to the Union President on October 14, 2022. The Union had fifteen (15) days from October 14, 2022 to timely file its arbitration request to the SBMA. It is also undisputed that the SBMA received the request for arbitration on October 31, 2022 (Jt. Ex. 4). The fifteenth day was October 19, 2022 which was a Saturday. There is no contractual language allowing for an extension of the fifteen (15) day period if it falls on a weekend or holiday. The filing of the grievance with the SBMA on October 31, 2022 was therefore late. The Panel does not have any authority to amend or modify the clear and unambiguous CBA language to extend the filing date if said date falls on a weekend or holiday. The language set forth in Article XII was agreed to by the parties and clearly contemplated the filing of the grievance request based on "days" rather than "work days". The filing timelines in a CBA need to be strictly construed and so long as the parties agree to observe specific time limitations those limits must be upheld in arbitration.

Accordingly, after a review of the evidence presented in this proceeding, and by a preponderance of the evidence, this grievance is non-arbitrable due to the untimely request for arbitration with the SBMA.

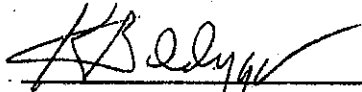
In view of the Panel's decision on the untimely filing and non-arbitrability of this grievance, the Panel does not address the Board's claim that the Union bypassed Step 3 of the grievance procedure.

DECISION

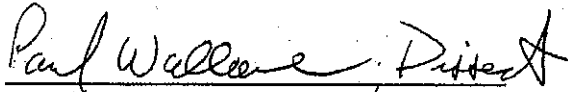
This grievance is non-arbitrable.



Gerald T. Weiner, Neutral Arbitrator



Kenneth Baldyga, Management Arbitrator



Paul Wallace, Union Arbitrator