

AMERICAN ARBITRATION ASSOCIATION

AWARD

In the Matter of _____ : **MAY 16, 2023**
:
HARTFORD FEDERATION OF TEACHERS : **AAA CASE NO. 01-22-0003-5972**
:
AND : **JOHN GRANDE**
: **(WRITTEN REPRIMAND)**
HARTFORD BOARD OF EDUCATION :

:

ARBITRATOR: GERALD T. WEINER, ESQUIRE

ISSUE

Is this grievance arbitrable?

FACTS

The Hartford Federation of Teachers (“Federation” or “Union”) and the Hartford Board of Education (“Board”) are parties to a Collective Bargaining Agreement (“CBA”) for the period July 1, 2019 through June 30, 2022, and this CBA is the operative agreement for this proceeding (Union Exhibit 1). This grievance concerns a written reprimand issued by the Board to one of its employees, John Grande (“Grievant”). On or about December 14, 2021, the Federation filed an official grievance contesting the written reprimand. The Federation requested that the reprimand be removed from Grievant’s file and that he be made whole in every way (Union Exhibit 6). The grievance was initially denied at the first step grievance procedure and the Federation then requested the grievance be heard at the Step 2 Superintendent level hearing (Union Exhibit 5). The grievance was thereafter heard at a February 9, 2022 Superintendent level hearing and was denied pursuant to a February 22, 2022 decision (Union Exhibit 7).

On or about August 17, 2022, the Board received the Federation’s Demand for Arbitration (Board Exhibit 4). The August 17, 2022 Demand for Arbitration was approximately six months after the Superintendent Step 2 level denial (February 22, 2022).

On August 26, 2022, the Board gave timely notice to the American Arbitration Association (“AAA”) that the grievance was not procedurally arbitrable (Board Exhibit 2).

A hearing on the sole issue of whether the grievance is arbitrable was held on March 24, 2023 before Arbitrator Gerald T. Weiner, who was chosen by the parties in accordance with AAA rules and procedures.

Each party to this grievance was represented at the March 24, 2023 hearing and presented documentary and testimonial evidence, made arguments in behalf of their respective positions, examined and cross-examined witnesses, and submitted post-hearing briefs.

The written reprimand issued by the Board after its investigation relates to Grievant's conduct at an October 28, 2020 Professional Development session. The Board determined that Grievant made inappropriate and unprofessional comments in a group discussion during the Professional Development resulting in making staff members uncomfortable (Union Exhibit 2).

This Award/Decision addresses the issue of arbitrability only.

BOARD POSITION

The Board argues that the claim for arbitration filed by the Federation was filed to arbitration approximately six months after the Step 2 Superintendent level decision and was well beyond the CBA filing timeframe (Board Brief, pg. 12). The Board contends that the contract language is clear and the grievance must be filed to arbitration within ten work days of the Superintendent level decision and the failure to file at any step within the time limits, according to the CBA shall be considered withdrawal of the grievance (CBA, Art. 111(B), (Union Ex. 1). The Board asserts the Step 2 decision is dated February 22, 2022 and the Board did

not receive the Federation's Demand for Arbitration until August 17, 2022, six months later.

The Board rejects the Federation's claim that it misunderstood its ability to represent non-dues members in an arbitration as this misunderstanding does not excuse its untimely filing to arbitration. The Board further rejects the Federation's claim that the untimely filing should be excused because the Board took an exceedingly long period of time to investigate the issues as related to the October 28, 2020 Professional Development and to schedule a pre-disciplinary meeting. The Board contends that there is nothing in the CBA that requires a timeframe within which investigations must be completed and pre-disciplinary meetings must be scheduled. The Board's position is that any delay in the process (investigation and scheduling pre-disciplinary hearings) had nothing to do with the Federation's failure to timely file the Demand for Arbitration.

The Board concludes that the six month delay in filing for arbitration by the Federation results in the grievance considered withdrawn as set forth in the CBA and accordingly this grievance is not arbitrable.

FEDERATION POSITION

The Federation argues that the Board's assertion that the timelines were not complied with is an attempt to avoid their (Board's) burden of proof of just cause. The Federation contends the Board is attempting to deny the Grievant representation from the Federation and compromises the Federation's ability to defend itself against a duty of fair representation charge filed by Grievant against the Federation (Federation Brief, pg. 2). The Federation argues the effect of not

letting the case proceed to a full hearing on the merits causes harm to all parties, i.e. the employee and his relationship with his employer, and the Federation's ability to defend the Grievant. The Duty of Fair Representation is also harmed if the grievance is found to be non-arbitrable (Federation Brief, pg. 2). The Federation further argues that the newly elected Federation team was not aware that non-Federation employees of the bargaining unit were entitled to the arbitration process even when they do not pay dues or an agency fee. As soon as the Federation understood Grievant was entitled to representation in the summer of 2023, the Federation reversed its position and submitted the case for arbitration on August 24, 2022. Approximately six months had expired from the Superintendent's Step 2 decision issued on February 22, 2022.

The Federation urges that there is a general presumption in favor of finding a grievance arbitrable. The Federation argues that there are significant extenuating circumstances which make this case more compellingly arbitrable than not: (1) there were significant delays from the employer that prolonged the grievance process over two years due to Covid-19; (2) there was a misinterpretation of public policy by the Federation that affected the processing of the grievance to arbitration; and (3) a duty of fair representation charge was filed against the Federation by the Grievant. All three examples, according to the Federation, are cause for the Arbitrator to find that extenuating circumstances became obstacles preventing the Federation from processing the grievance to complete perfection.

The Federation describes examples of the Board's delay to gather testimony and investigate the issues against Grievant and contends the Federation is being held to a strict timeliness standard while the employer is allowed to take its time at every step of the way. The Federation contends it is not fair that the employer could delay over a year in issuing discipline and not afford the Federation the same deference.

The Federation concludes its argument by asserting that changing public policy interpreted by a newly elected Federation leadership resulted in a late filing of the grievance to arbitration on August 24, 2022 instead of complying with the CBA timelines and the most delays were caused by the Board's inability to conduct and conclude a timely investigation of the issues. The Federation asks the Arbitrator declare the grievance arbitrable, to decide this case on the merits, or send the parties back to come up with an amicable resolution.

RELEVANT CONTRACT PROVISIONS

ARTICLE III

B. Procedure

Grievances shall be processed in the following manner:

Step 1:

A bargaining unit member must submit his/her grievance in writing and such grievance must be received by the immediate supervisor within twenty (20) work days of the date when the events giving rise to the grievance occurred. Such submission shall be made to the immediate supervisor for a satisfactory adjustment. The written grievance must indicate the specific nature of the grievance and the specific contract provision(s) alleged to be violated. Such immediate supervisor may request a meeting with the bargaining unit member prior to making his/her decision, but in any event must render his/her decision within five (5) work days of the submission. The bargaining unit member may be

accompanied by a Federation representative if he/she so desires at any such meeting.

Nothing in this provision shall prohibit a bargaining unit member from informally discussing his/her problem with the involved supervisor, prior to filing a grievance. However, the time limits for filing the initial grievance may only be waived or extended by written agreement between the Superintendent (or specified designee) and the Federation President (or designee).

Step 2:

If no satisfactory settlement is reached after presentation of the grievance at Step 1, the grievance may be pursued by the bargaining unit member to the Superintendent (or his/her designee) by providing the Superintendent (or his/her designee) with a copy of such grievance and requesting a meeting in writing, within ten (10) work days of the decision of the Supervisor at Step 1. The Superintendent or his/her designee will schedule a meeting with the Grievant to attempt to resolve the issues related to the grievance within twenty (20) work days following the bargaining unit member's filing of the grievance with the Superintendent (or his/her designee). The Superintendent (or his/her designee) shall have ten (10) work days after holding the meeting to issue a written decision. A copy of the decision shall be provided to both the Grievant, if a Grievant was present at the meeting, and the Federation.

Step 3:

In the event that the grievance is not settled at Step 1 or Step 2, then the Federation may seek arbitration of the grievance. No bargaining unit member may file for arbitration as an individual, but only the Federation may file an appeal to arbitration hereunder. The Federation's request for arbitration shall be in writing and must be filed with the applicable arbitration agency with a copy to the Superintendent or his/her designee within ten (10) work days after the receipt of the Superintendent's (or his/her designee's) decision at Step 2 or not later than ten (10) work days following the expiration of the time limits for making such a decision, whichever shall occur first. All grievances filed for arbitration shall be submitted to the American Arbitration Association.

In lieu of submitting grievances to the American Arbitration Association for arbitration the parties may by mutual agreement submit grievances to a single arbitrator mutually selected by them.

The decision of the arbitrator shall be final and binding upon both parties, except as otherwise provided by law. The arbitrator shall have no power to add to, delete from, or modify in any way the provisions of this Agreement.

C. General Provisions

4.....Failure at any Step to appeal within the specified time limits shall be considered a withdrawal of the grievance...

DISCUSSION

The Board has timely raised the issue of whether this grievance is arbitrable. The Federation has not disputed the Board's claim that the filing of the grievance was more than the ten-day timeline requirement set forth in the CBA, Article 111(B) (Union Exhibit 1). As a matter of fact, the grievance was not filed until approximately six months after the Superintendent's Step 2 denial of the grievance. The Step 2 denial was issued on February 22, 2022 (Union Exhibit 7) and the grievance was filed in August of 2022.

The Federation has offered several arguments as to why the Arbitrator should not follow the ten-day filing requirement set forth in the CBA. All of the Federation arguments are equitable in nature and are not based on specific CBA language.

The Federation's arguments as to why this matter should be declared arbitrable are as follows:

- (1) The Board has the burden to prove it had just cause to discipline Grievant and alleging "blown timelines in the contract" (Federation Brief, pg. 2) is an attempt to avoid their burden of proof of just cause:
- (2) The Federation made an error in understanding the relatively new public policy in the Janus v. American Federation of State, County and Municipal Employees, Council 31, et al, case which held that non-Federation public employees do not have to pay Federation dues

or agency fees (Federation Brief, pg. 2). The newly elected Federation team was not aware that non-Federation employees of the bargaining unit were entitled to the arbitration process even if they do not pay dues or agency fees;

- (3) Once the Federation became aware of the correct interpretation of the law it submitted the case for arbitration in August of 2022;
- (4) There is a general presumption in favor of grievances being found arbitrable (Federation Brief, pg. 6);
- (5) There were significant delays by the employer that prolonged the grievance process over two years due to Covid-19 (Federation Brief, pg. 7). The Board delayed gathering the facts about the underlying incident which led to the discipline and delayed issuing an investigation summary, and delayed the pre-disciplinary meeting;
- (6) A duty of fair representation charge was filed against the Federation.

The simple undisputed fact in this grievance is that the Federation filed the Demand for Arbitration approximately six months after the trigger date of February 22, 2022, i.e. the Superintendent Step 2 decision. The CBA language could not be clearer and provides in part:

In the event that the grievance is not settled at Step 1 or Step 2, then the Federation may seek arbitration of the grievance.... The Federation's request for arbitration shall be in writing and must be filed with the applicable arbitration agency with a copy to the Superintendent or his/her designee within ten (10) work days after the receipt of the Superintendent's (or his/her designee's) decision at Step 2.... (emphasis added). (Federation Exhibit 1, Article 111(B)(Step 3).

Moreover, Article III(C)(4) provides that failure at any Step to appeal within the timelines is considered a withdrawal of the grievance. The grievance filing deviated from this language not by a few days, weeks or a month or two, but was filed approximately six months after the trigger date of February 22, 2022.

While the Arbitrator is sympathetic and understands the Federation's position, this decision must be controlled by the clear and unambiguous language of the CBA. The Demand for Arbitration needed to be filed within ten days of the Superintendent's denial at Step 2. Accordingly, this grievance is non-arbitrable.

The CBA further clearly requires that the Arbitrator has "no power to add to, delete from, or modify in any way the provisions of this agreement". (Article III, B, Step 3). A decision in favor of the Federation on the arbitrability issue would result in the Arbitrator modifying the clear CBA language.

After a review of all the documentary and testimonial evidence, and by a preponderance of the evidence, the grievance in Case No. 01-22-0003-5972 is non-arbitrable.

DECISION

The grievance is non-arbitrable.



GERALD T. WEINER
ARBITRATOR