

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

*

*

TOWN OF LONGMEADOW

*

*

-and-

*

ARB-20-8378

*

LONGMEADOW ASSOCIATION OF
MUNICIPAL EMPLOYEES

*

*

*

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Gordon Quinn, Esq. - Representing Town of Longmeadow

John Connor, Esq. - Representing Longmeadow Association of
Chelsea Choi, Esq. Municipal Employees

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The grievance is not procedurally arbitrable. The grievance is denied.



Timothy Hatfield, Esq.
Arbitrator
March 3, 2022

INTRODUCTION

On December 30, 2020, the Longmeadow Association of Municipal Employees (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield, Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a virtual hearing via Web Ex on July 6, 2021.

The parties filed briefs on August 12, 2021.

THE ISSUE

Issue:

- 1) Is the grievance procedurally arbitrable? If so,
- 2) Whether the Town violated the collective bargaining agreement when it invoiced and collected from Mr. Von Hollander the full amount of his health insurance premium cost during an unpaid leave of absence for medical reasons that followed the expiration of his FMLA leave in 2020? If so, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

ARTICLE 11 GRIEVANCE AND ARBITRATION PROCEDURE (In Part)

Any grievance or dispute which may arise between the parties concerning the application or interpretation of this Agreement, unless specifically excluded by Agreement, shall be settled in the following manner:

Step 1: The Grievant shall reduce the grievance to writing and present it to the head of the department or, in the absence of the head, to the assistant to the head of the department within ten (10) days of the date of the occurrence of the subject of the grievance or the grievant's knowledge of its occurrence, whichever is later.

The written grievance shall contain a statement of the grievance and the facts involved, the provisions of this Agreement alleged to be violated, and the remedy requested.

The head of the department involved, or the assistant shall attempt to adjust the dispute and shall render a decision, stating the basis for such decision, within ten (10) days from receipt of the grievance. ...

Step 3: If the grievance has not been resolved or if the head of the department or the assistant has failed to render a decision within the time provided, the Union may present it in writing to the Town Manager within ten (10) days from receipt of the decision from the head of the department or the assistant or the expiration of time when such decision was due, whichever is later. The Town Manager or their designated representative shall meet with the parties to the grievance within fourteen (14) days after receipt of the grievance and shall render a decision in writing, stating the basis for such decision within twelve (12) days from the date of such meeting.

If the grievance remains unsolved, the Union shall so notify the Town Manager, in writing, that it intends to submit the grievance to arbitration. Such notice shall be served within thirty (30) days after the receipt of the decision of the Town Manager or the expiration of time fixed for such decision, whichever is later.

The arbitration of any grievance under this Agreement shall be before an arbitrator to be appointed by the state Board of Conciliation and Arbitration, provided that the Town or the Union shall retain the right to use the services of the American Arbitration Association in cases of disciplinary suspension, termination, or cases involving costs in excess of five thousand dollars to the Town, exclusive of arbitration costs.

The award of the arbitrator shall be in writing and shall state the findings of fact, reasoning and conclusion. The award shall be final and binding upon the Union, the Town and the grievant; provided, however, that nothing contained herein shall be construed to forbid either party from resorting to court for relief from, or to enforce rights under any arbitration award.

The arbitrator shall be without power or authority to make any award, the terms of which are not permitted directly or indirectly by law or which are in conflict with the express provisions of this Agreement.

...

FACTS¹

The Town of Longmeadow (Town) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration. The grievant, Fritz Von Hollander, (Von Hollander) worked in the Town's Department of Public Works (DPW). Von Hollander and his dependents were enrolled in the Town's health insurance plan, for which the Town contributed half of the premium cost.

As a result of an injury occurring outside of work, Von Hollander began a leave of absence under the Family and Medical Leave Act (FMLA) on May 22, 2020. On June 23, 2020, the Town sent Von Hollander a letter approving his FMLA leave through August 13, 2020. In this letter, the Town outlined Von Hollander's responsibilities and obligations for the cost of his health insurance while he was on FMLA leave and, if necessary, during any unpaid leave after his FMLA leave expired.

On June 3, 2020, Von Hollander exhausted his accrued time, and beginning on June 17, 2020, the Town began billing him for his share of the cost of his health

¹ By agreement between the parties and the arbitrator, the issue of procedural arbitrability was argued prior to proceeding to the merits of the case. The parties were directed to address the issue of procedural arbitrability first in their respective post-hearing briefs. Based on my ruling in this matter, I have included only the facts and arguments in this decision related to procedural arbitrability.

insurance while on FMLA leave. On August 13, 2020, Von Hollander's FMLA leave expired.

On September 17, 2020, the Town sent Von Hollander a letter formally notifying him of the expiration of his FMLA leave on August 13, 2020 and reminding him of his obligation to pay 100% of his health insurance cost while out on an unpaid leave of absence after the expiration of his FMLA leave.

On October 5, 2020, the Town send Von Hollander a follow-up letter outlining the timeline of the status of his different leaves and invoicing him for 100% of the cost of his health insurance premiums for August 14, 2020 through the end of October 2020 when he was on an unpaid medical leave.

On October 20, 2020, Von Hollander paid the Town the outstanding balance for his health insurance. On November 3, 2020, Union Counsel John Connor (Connor) contacted Town Manager Lyn Simmons (Town Manager Simmons), disputing the Town's authority to collect the full premiums under M.G.L. c. 32B §7. On November 13, 2020, the Town responded to Connor's email by denying that the collection of the health insurance premiums was a violation of State law and stating that it was authorized under the Town's Personnel Manual.

On November 23, 2020, Connor sent another email reply to the Town with an attached grievance. The Town denied the grievance at each step of the grievance procedure, resulting in the instant arbitration.

POSITIONS OF THE PARTIES**THE UNION**

The grievance is procedurally arbitrable and the Town violated Article 32 of the collective bargaining agreement by invoicing and collecting from Von Hollander the full amount of his health insurance premium costs during his unpaid leave of absence.

The Town asserts that the grievance should be denied on procedural arbitrability grounds because the grievance was not timely filed pursuant to the collective bargaining agreement. However, this matter is timely filed as it is a continuing violation by the Town. The improper invoice and collection of the full amount of health insurance premium costs from bargaining unit members during an unpaid leave of absence, for his or her own medical reasons, was ongoing prior to the Union's grievance filing and has continued through the date of the arbitration, constituting a continuing violation of the collective bargaining agreement.

Additionally, the Town waived its arguments regarding the Step I filing dates because it did not raise the issue in its response to the Step I grievance. Thus, the Town waived its arbitrability objections by failing to raise them sooner, and the matter is procedurally arbitrable.

THE EMPLOYER

Article 11, Step I of the collective bargaining agreement requires a grievant to reduce his/her grievance to writing and present it to the head of his department or, in the absence of the head, to the assistant to the head of the department within ten days of the date of the occurrence of the subject of the grievance or the grievant's knowledge of its occurrence, whichever is later. This did not occur.

Von Hollander was clearly made aware upon receiving the Town's September 17, 2020 correspondence concerning the exhaustion of his FMLA leave benefit, that he would be responsible for 100% of the health insurance premium cost for the period following the expiration of his FMLA leave. This point was repeatedly emphasized to him in the October 5, 2020 correspondence which included invoices. Von Hollander paid these invoices through a check made out to the Town dated October 20, 2020. Clearly, he was aware of the occurrence of the subject of his grievance at the time he received the Town's September 17, 2020 correspondence and, at the latest, at the time he received the October 5, 2020 correspondence which prompted him to make payments to the Town. Yet, his grievance challenging the Town's actions was not filed until November 17, 2020, much later than the ten-day time period prescribed by the collective bargaining agreement.

The collective bargaining agreement states that any grievance not processed within the time limitations set forth in the agreement shall be deemed to have been waived, unless the grievant was precluded from compliance by reason of mental or physical incapacity which was not raised in this matter.

The Union argues that the Town has waived its right to assert this timeliness defense, and/or that the dispute amounts to a continuing violation. Neither of these arguments has have merit. First, the collective bargaining agreement does not state that the Employer must present an argument that a grievance is untimely at any specified time period before an arbitration hearing. Second, the grievance is based on a single, discrete event of the Town invoicing Von Hollander for health

insurance premium costs covering the period of August 14, 2020 through October 2020. The grievance does not allege an ongoing pattern of wrongful conduct since Von Hollander's payment of the invoices which is what would provide the basis for invoking the doctrine of continuing violation. As such, the continuing violation doctrine does not apply. Because the grievance was not timely processed, the grievance must be denied as being waived as required by the collective bargaining agreement.

OPINION

The issue before me is:

- 1) Is the grievance procedurally arbitrable? If so,
- 2) Whether the Town violated the collective bargaining agreement when it invoiced and collected from Mr. Von Hollander the full amount of his health insurance premium cost during an unpaid leave of absence for medical reasons that followed the expiration of his FMLA leave in 2020? If so, what shall be the remedy?

For all the reasons stated below, I find that the grievance is not procedurally arbitrable, and the grievance is denied.

The parties' collective bargaining agreement states in Article 11 that:

The Grievant shall reduce the grievance to writing and present it to the head of the department or, in the absence of the head, to the assistant to the head of the department within ten (10) days of the date of the occurrence of the subject of the grievance or the grievant's knowledge of its occurrence, whichever is later.

In this case, Von Hollander, upon his receipt of the Town's September 17, 2020 correspondence to him, should have been aware "of the occurrence of the subject of the grievance." In this letter, the Town specifically stated that:

For an employee who is on the Town Health Insurance and has exhausted their full FMLA benefit but has still not returned to work, they will be responsible for 100% of their Health Insurance premiums effective at the end of the FMLA period.

Thus, as of September 17, 2020 Von Hollander knew, or should of known of the Town's intention to collect from him 100% of the health insurance premiums while he remained out on medical leave after the expiration of his FMLA leave. Von Hollander's receipt of the Town's September 17, 2020 letter started the collective bargaining agreement's ten day period for filing a grievance.

Even if I reviewed the facts in a light most favorable to the grievant, there can be no doubt that as of October 5, 2020, upon Von Hollander's receipt of a follow up letter from the Town, he became aware "of the occurrence of the subject of the grievance." On this date, the Town outlined the dates and amounts that Von Hollander owed for his health insurance premiums. In response to this letter, Von Hollander paid the Town by check for the amounts owed for his health insurance premiums. In the light most favorable to the grievant, the ten-day window for filing a grievance began October 5, 2020.

The Union's filing of the grievance occurred on November 17, 2020, beyond the ten-day period for filing a grievance outlined in the collective bargaining agreement regardless of whether the clock starts at the September 17, 2020 letter, or the October 5, 2020 letter. Additionally, I do not find that the employer is

prohibited from raising the issue of procedurally arbitrability simply because it did not raise the issue during the grievance procedure, as there is no specific language in the collective bargaining agreement requiring it.

Finally, the Union's attempt to make this a continuing violation, thus making its filing timely, is unsupported by the facts. This grievance objects to the Town's collection of 100% of Von Hollander's health insurance premiums for a definitive period of time: the end of his FMLA leave until his return to work. The facts do not support a finding of a continuing violation.

For all the reasons stated above, I find that the grievance is not procedurally arbitrable, and the grievance is denied.²

AWARD

The grievance is not procedurally arbitrable. The grievance is denied.



Timothy Hatfield, Esq.
Arbitrator
March 3, 2022

² On July 23, 2021, the Union moved to reopen the record to submit additional evidence concerning the merits of this case. Based on my ruling on procedural arbitrability, I decline to rule on the motion as the issue is moot.