

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
EXPEDITED PROCEDURAL ARBITRABILITY DECISION

In the Matter of Arbitration between

TOWN OF DENNIS
and
MASSACHUSETTS LABORERS
DISTRICT COUNCIL

ARB 21-8855

Date Issued: May 9, 2022

Issue: Is the grievance procedurally arbitrable?

Background: The grievant, Matt Eaton (Eaton), worked for the Town of Dennis (Town/ Employer) as a Craftsperson II from November 3, 2014 until his termination on August 18, 2021. A grievance over his termination was filed on August 24, 2021. The grievance form under the Nature of Grievance section stated: "Termination with out cause." No further information was provided as to the specifics of the dispute.

The parties' collective bargaining agreement grievance article states (in part):

Step 2: If the matter has not been resolved at Step 1 ... The written grievance must include a statement of the grievance, quoting the specific Article(s) and Section(s) of the Agreement which have been violated, the specific action which violated the Article(s) and Section(s) and a detailed explanation of how said action violated the Agreement. Any grievance submitted without this complete and detailed "statement of grievance" will be considered ineligible to follow the procedure. ...

Step 4: If the grievance has been denied by the Town Administrator, the Union may within twenty-one (21) days of the date of such denial by written notice to the other, request arbitration. ... The arbitrator shall have no right to add, subtract, alter or amend the provisions of this Agreement.

In an email exchange between the Town's Labor Counsel and the Union's business agent, the parties agreed to move this matter to Step III of the grievance procedure in front of the Town Administrator. In this email exchange Town Counsel stated (in part):

I can confirm that the Town received Matt's grievance August 25 (copy attached) to appeal Town Administrator Elizabeth Sullivan's August 18, 2021 Decision discharging him from his position with the Town.

Per the Union's request, the parties agree that the grievance can go directly to Town Administrator Sullivan, who will provide the Town answer (by September 8.)

Following receipt of the Town answer, the time in which the Union can file for Arbitration (Step 4) will begin. (Grievance Article from CBA attached).

Other than allowing the grievance to proceed directly to the Town Administrator for a response, the Town does not waive any defenses to the grievance if it goes to Arbitration, including but not limited to whether the grievance is arbitrable. ...

On September 8, 2021, the Town Administrator denied the grievance on two grounds, stating: "Your Grievance fails to include the 'statement of grievance' required for it to advance to Arbitration," and "[a]ssuming your grievance is arbitrable, it is denied on the merits because there was cause to discharge you." On September 28, 2021, the Union filed for Arbitration with the Department of Labor Relations. The parties agreed to bifurcate the issue of procedural arbitrability.

Analysis:

The Union argues that there is no precise definition of "Statement of the Grievance" and without a precise definition, it is impossible to bind a party to the language contained in Step II as the employee has no idea what is expected of him when filing a grievance. Without the definition, it is impossible to apply the "plain meaning" rule to contract interpretations. There is no clear-cut contractual language leaving the term ambiguous.

The Union also argues that Step II of the grievance procedure was bypassed by agreement between the parties. Claiming non-compliance with a portion of Step II, which contains undefined terms, is unfair and unacceptable. Commonsense dictates that skipping Step II means it has no application in this matter.

The Employer argues that the grievance is not arbitrable because the Union failed to include the "Statement of Grievance" required for it to be eligible for arbitration. The language in the grievance procedure is clear and unambiguous, and the arbitrator cannot ignore clear-cut contractual language. An arbitrator must enforce clear and unambiguous language as it is written and without giving it a meaning other than what has been expressed.

The Union knew or should have known what had to be included in the grievance to advance the grievance to arbitration. This aside, Town Labor Counsel attached the entire grievance article to his email response to the Union's business agent when he informed him that the Town "does not waive any defenses to the grievance if it goes to Arbitration, including but not limited to whether the grievance is arbitrable." The Town again raised the issue of the grievance being procedurally faulty when the Town Administrator denied the Step III grievance on both procedural grounds and on the merits. The Union chose to ignore the issue and filed for arbitration anyways. For the Arbitrator to now hear the ineligible grievance on the merits would compound the Union's failure to comply with the grievance procedure. Further, it would alter or amend the provisions of the collective bargaining agreement, which is beyond the Arbitrator's authority.

An arbitrator's authority is derived from the parties collective bargaining agreement. In this case that authority is limited by agreement of the parties and as such, I have no right to add, subtract, alter or amend the provisions of this Agreement. The parties have also agreed to a very detailed and specific requirement for what a grievance is required to include and what the consequences are if that information is omitted.

In this case, the grievance submitted failed to follow the clear and unambiguous language. Specifically, the grievance failed to quote the articles and sections of the Agreement which had been violated; the specific action which violated the article(s) and section(s); and give a detailed explanation of how said action violated the Agreement. The consequence of this failure is also clearly and unambiguously specified, stating: "[A]ny grievance submitted without this complete and detailed 'statement of grievance' will be considered ineligible to follow the procedure."

I am unpersuaded by the Union's arguments that the language is unclear and/or undefined. I find the language requirements to be some of the most detailed requirements I have witnessed in a collective bargaining agreement. Regardless, it is the language that the parties have collectively bargained and agreed to, and language that I am specifically prohibited from altering. Finally, the Union's argument that because Step II of the grievance procedure was skipped the language of the collective bargaining agreement should not apply is also unpersuasive. The Town made it abundantly clear in the email exchange, when it attached the complete grievance procedure, the grievance itself, and stated expressly that the Town "does not waive any defenses to the grievance if it goes to Arbitration, including but not limited to whether the grievance is arbitrable", that it believed there were procedural issues. The Union chose to ignore the warning in the email and took no corrective action after the Step III response stated that the grievance was denied, in part, on procedural grounds. The results of those decisions left the grievance subject to the current procedural arbitrability claim.

I find the grievance to be deficient in that it failed to include the information mandated by the parties collective bargaining agreement. This deficiency made the grievance ineligible for arbitration. To not enforce the clear and unambiguous language would be akin to altering the express terms of the collective bargaining agreement which is beyond my authority.

For all the reasons stated above the grievance is procedurally non-arbitrable and the grievance is denied.

A handwritten signature in blue ink that reads "Timothy Hatfield". The signature is written in a cursive style with a horizontal line above the name.

Timothy Hatfield, Arbitrator