

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

TOWN OF PEMBROKE

and

NATIONAL FRATERNAL ORDER OF POLICE

ARB-23-10230

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

David C. Jenkins, Esq. - Representing the Town of Pembroke
Steven C. Johnson, Esq.

Scott Dunlap, Esq. - Representing the National Fraternal Order of
Police

The parties agreed to bifurcate the issues in this arbitration and allow the arbitrator to determine the procedural arbitrability of the grievance before accessing its merits. After considering the bifurcated issue, I conclude as follows:

AWARD

The grievance is not procedurally arbitrable and therefore is denied.



Timothy Hatfield, Esq.
Arbitrator
February 21, 2025

INTRODUCTION

On September 14, 2023, the National Fraternal Order of Police (Union) filed a unilateral petition¹ for Arbitration with the Department of Labor Relations (Department).² Under the provisions of M.G.L. Chapter 23, Section 9P, the Department appointed Timothy Hatfield, Esq. to act as a single neutral arbitrator with the full power of the Department. The Town of Pembroke (Town) and the Union (collectively, parties) agreed to bifurcate the issues in this case and allow the arbitrator to determine the procedural arbitrability of the grievance before accessing its merits. On September 6, 2024, the parties filed briefs on the issue of arbitrability.

THE BIFURCATED ISSUE

Is this matter procedurally arbitrable?

¹ The Union filed two petitions for arbitration, one on September 14, 2023, which the Department docketed as ARB-23-10230, and the other on December 8, 2023, which the Department docketed as ARB-23-10365. Both petitions stemmed from the same grievance which challenged the discipline that the Town issued to the grievant on or about August 14, 2023. The Department subsequently closed Case No. ARB-23-10365.

² In its brief, the Town noted that the grievant's certified collective bargaining representative is the Pembroke Police Union. However, the Town acknowledged that the National Fraternal Order of Police filed the arbitration petition, and it did not make any arguments concerning the identity of the certified representative. I need not address this issue because it is not germane to my decision.

RELEVANT CONTRACT LANGUAGE

The Collective Bargaining Agreement (CBA) between the Town and the Union contains the following pertinent provisions:³

Article IX – GRIEVANCE

Grievances arising out of matters covered by this Agreement, and disputes and consultations on any question arising out of the employer-employee relationship will be processed in the following manner:

Section 1...

Section 3

If the decision of the Town Manager is not acceptable to the employee or to the Union, they may appeal to the American Arbitration Association [AAA] within fifteen (15) days for a decision. The decision of the arbitrator shall be final and binding on both parties to this Agreement.

FACTS

The Union represents a bargaining unit that includes the patrol officers and sergeants that the Town employs, including Sergeant Thomas Baragwanath (grievant). The Town and the Union are parties to a CBA that was in effect at all times relevant to this arbitration.

By memo dated August 9, 2023, and signed on August 14, 2023, Town Police Chief Richard MacDonald issued the grievant a Letter of Reprimand & Reassignment (Letter) for conduct that occurred on August 3, 2023. The Union grieved the Letter in accordance with the CBA, asserting that the Town did not

³ There is no provision in Article IX or any other section of the CBA that would allow the Department to order the parties to arbitrate the merits of a grievance before the AAA.

have just cause to discipline the grievant. On September 14 and December 8, 2023, the Union filed unilateral petitions for Arbitration with the Department. The Union did not appeal this matter to the AAA.

POSITIONS OF THE PARTIES

THE UNION

In light of both federal and Massachusetts' strong public policy supporting arbitration, this matter should be decided on the merits rather than dismissed as the result of a procedural error. By arguing for dismissal, the Town seeks to avoid an independent review of the discipline imposed, and to discount the delicate balance of the parties' negotiating demands and concessions that produced the contractual arbitration provision. Additionally, relying on the technicality of a procedural misfiling will make the discipline a permanent part of the grievant's Peace Officer Standards and Training Commission (POST) disciplinary history, when the conduct underlying the discipline did not even warrant a suspension.

Arbitrators have substantial discretion to fashion remedies that are appropriate in each case. Here, it is within this Arbitrator's scope of discretion to order a hearing on the merits of the grievance or to direct the parties to arbitrate the merits of the grievance before the AAA.

THE EMPLOYER

The Union's petition for arbitration is not procedurally arbitrable before the Department. Arbitration is a creation of the bargained-for agreement and is limited by its terms. Section 3 of Article 9 of the CBA expressly provides that the Union

may appeal an adverse decision from the Town Manager to the AAA. Nowhere does it provide that the Union may appeal to the Department.

Here, as in Town of Hull, 43 MLC 126, ARB-15-4725 (Nov. 4, 2016), the Union filed the petition for arbitration in the wrong place. However, unlike the situation in Town of Hull, where the arbitration clause at issue required an aggrieved party to appeal to an agency that no longer existed, the AAA is still a functioning agency. As this arbitrator stated in Town of Hull, if the union was unsure about where to file for arbitration, it could have taken steps to ascertain the appropriate location, or it could have asked the Town for its position on the appropriate location to file.

In sum, the Union disregarded clear contractual language and now asks the Arbitrator to read provisions into the CBA that do not exist. The Town asks the Arbitrator to deny the Union's grievance.

OPINION

The bifurcated issue before me is: is this matter procedurally arbitrable?

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

An arbitrator's authority is derived directly from the parties' collective bargaining agreement. Here, Section 3 of Article 9 of the CBA unequivocally directs the Union or the aggrieved employee to appeal an adverse decision from the Town Manager to the AAA. There is no provision in the CBA that would allow me to order the parties to arbitrate the merits of this grievance before the AAA. The Union has offered no explanation for filing its petitions with the Department instead

of the AAA, and even if I was inclined to hear the merits of the matter, the CBA does not authorize the Department to take any further action with respect to this petition. Consequently, I dismiss the petition on procedural grounds and will not assess the merits of the grievance.

AWARD

The grievance is not procedurally arbitrable and therefore is denied.



Timothy Hatfield, Esq.
Arbitrator
February 21, 2025