

In the Matter of Arbitration Between)
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Washington Federation of State)
Employees,)
(Union),)
)
and)
)
)
State of Washington,)
Department of Corrections,)
(Agency))
)
_____)

ARBITRABILITY RULING

Harrison Grievance
AAA Case No. 01-20-0014-9827

Introduction

The Union filed this grievance challenging the Agency’s discharge of Grievant. During the processing of the grievance, the Agency notified the Union of its position that the Union had missed the contractual timeline to advance the dispute to arbitration.

Pursuant to the parties’ contract, AAA notified me on November 16, 2020, that I was appointed as the arbitrator. The arbitration hearing is scheduled for October 27 and 28, 2021. The parties agreed to hold a prehearing to consider the Agency’s procedural arbitrability claim.

The prehearing was held by video conference on September 10. The parties submitted exhibits, presented witness testimony, and argued their positions. My ruling follows.

Background

Step 4 of the grievance procedure in the parties' contract provides for a pre-arbitration review meeting (PARM). Such meetings typically involve a Union representative, an agency HR representative, and a State LR representative.

Step 5 of the grievance procedure provides for arbitration. It allows the Union to file for arbitration with AAA "within thirty (30) days of the * * * (PARM) * * *."

Section 29.2.D of the grievance procedure addresses the failure to comply with timelines. It states: "Failure by the Union to comply with the timelines will result in the automatic withdrawal of the grievance."

The parties' practice at the conclusion of a PARM has been to sign a form noting the status of the grievance. The form includes the following status options: withdrawn; unresolved; or pended. "Withdrawn" indicates the Union has withdrawn the grievance. "Unresolved" indicates that the matter is not resolved, and it states that "Any request for grievance arbitration must be filed within the time frames specified in the Collective Bargaining Agreement." "Pended" means the parties agreed to suspend timelines until a future date; it also provides that unless the parties resolve the dispute or agree to an additional extension, the grievance will be considered unresolved and the timelines for arbitration begin.

The parties met for the PARM in this case on July 13, 2020. During that meeting, the Union presented a settlement offer as well as additional information for the Agency to consider. The parties agreed to meet at a later date for further discussion.

For various reasons, the parties did not have that subsequent discussion until August 6, and then it was as part of a telephone conference call. Because they did not meet in person, the PARM form was not signed and exchanged.

The parties' representatives came away from that phone call with different understandings of the case's status. State LR representative Ron Stormer believed that he communicated that the dispute was at impasse. Union representative Ton Johnson

understood Stormer's statement as indefinite—along the lines of “I don't think we're going to be able to get there.”

On August 11, Agency representative Amy King sent Stormer an email reminding him that they needed to sign the PARM form for the case. A copy of the email was sent to Johnson.

On September 1, Johnson sent this email to Stormer in response to King's August 11 message: “Ron, can we get these documents so I can file for arbitration?”

On September 2, Johnson replied, apologizing for not providing the documents sooner. He went on to say, “Whether those documents are signed or not does not have a bearing on the time limits set forth in the contract so please feel free to move forward without those.” Johnson responded later that day saying he needed the documents because they were part of the Union's internal review process.

On September 11, Union Director of Advocacy Jenny Ho emailed Stormer asking about the status of the case: “I believe we were still waiting on you to confirm that this is not resolved?” (Ho was involved because Johnson was on leave.)

On September 15, Stormer's assistant Olivia May sent Ho the form. On September 21, Ho emailed Stormer to acknowledge receipt of the form. She asked whether there was going to be a dispute about timelines, noting that the date on the form showing that the matter was unresolved was August 6, but that the Union did not have confirmation that it was unresolved until it received the form on September 15.

The Union filed the request for arbitration with AAA on September 22.

On September 25, Stormer advised Ho that the Agency was going to contest the timeliness of any filing for arbitration. On September 28, he told Ho that he had let Johnson know on August 6 that the Agency would not accept the Union's settlement proposal, that the Union did not request an extension of time limits, that there was no agreement to extend the time limits pending the Union's receipt of the PARM form, and

that he told Johnson on September 2 that the form was not needed to file for arbitration.¹

Discussion

The Agency argues that the Union did not file its request for arbitration within the required 30 days. Because it was not timely filed, the Agency contends that the case should be dismissed without a hearing on the merits.

The Union argues that there is no evidence that the case was at impasse after the August 6 discussion. According to the Union, the first written confirmation of impasse was on September 15 when it received the PARM form. The Union concedes, however, that it had knowledge of impasse following Stormer's September 2 email. In either event, the Union points out that the arbitration request was filed on September 22, well within the 30-day time limit for either of those dates.

There is a well-established presumption of arbitrability. Arbitrators are reluctant to dismiss cases on procedural grounds, especially timeliness. The presumption is not absolute, however. Given the facts here, I agree with the Agency and conclude that the Union missed the contractual time limits for arbitration.

The parties treated the dispute as "pending" following the July PARM, and eventually met, albeit by telephone, on August 6. They did not resolve the dispute during that discussion, nor did they agree to an additional extension of the time limits, nor did the Union withdraw the grievance.

There is evidence that the status of the dispute following the August 6 discussion was not clear. The fact that the parties did not meet in person and did not sign the PARM form on that date no doubt contributed to the lack of clarity.

¹ The submitted exhibits indicate that there may have been some confusion on the Union side about whether the PARM form was needed for AAA. There were various internal Union communications on that subject.

Even if the status was unclear after that discussion, the Union knew or should have known that the matter was “unresolved” after receiving King’s August 11 email. Since the dispute was not settled or withdrawn, the only reason for the Agency and State representatives to sign the form was to indicate the matter was unresolved. If the Union had any doubts about the status after seeing that email, it could have asked for confirmation.

Johnson’s September 1 email asking for the form so he could file for arbitration also establishes that the Union knew that the matter was at impasse. Had the Union believed the case was still under consideration, there would have been no reason for that request. If the Union believed the status was uncertain, it would have been more logical to inquire about the status rather than asking for the form in order to file for arbitration.

In any event, any lingering Union uncertainty about the status after the August 11 email should have been erased by Stormer’s September 2 email. The Union still had time to either file for arbitration or, if it believed it needed the form (or more time) to do so, it could have asked to extend the time limit. It did neither.

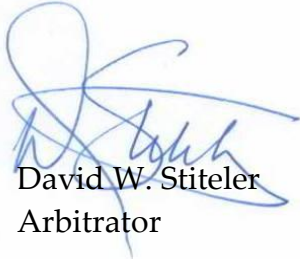
The parties agreed in their contract that, to be timely, a Union request for arbitration must be filed within 30 days of a PARM meeting, absent a mutual agreement to extend the time limits. They also agreed that failure to abide by the contractual time limits amounts to withdrawal of the grievance. Regardless of whether it had the PARM form, the Union knew no later than August 11 that the dispute was unresolved, and by the language of the agreement, that triggered the 30-day time limit. The request for arbitration was not filed until September 22, more than 30 days after the August 6 PARM meeting and King’s August 11 email. It was not timely filed.

I recognize that this is an unfortunate result, but it is one I am compelled to reach by these facts in light of the contract language.

Ruling

The Union's request for arbitration was untimely. The grievance is considered withdrawn, and the case is dismissed. The hearing set for October 27 and 28 is canceled.

Respectfully issued this 17th day of September 2021.



David W. Stiteler
Arbitrator