

WFSE (Evans, Eva) v. LNI, (AAA Case No. 01-21-0003-6476)

HEARING ON ARBITRABILITY

I was selected as the arbitrator to hear a case of arbitrability in a dispute between the Washington Federation of State Employees (“Union”) and the Department of Labor and Industries (“Employer”). (*WFSE (Evans, Eva) v. LNI* (AAA Case No. 01-21-0003-6476). The hearing took place via ZOOM on July 15, 2021. Brandon Crawford represented the Union, and Thomas Knoll represented the Employer. The Union and the Employer are parties to a collective bargaining agreement (“Agreement”) effective 7/1/19 through 6/30/21.

The central dispute is whether the Union made a timely request for arbitration on 4/29/21. The Agreement requires that “the time limits must be strictly adhered to unless mutually modified in writing.” (Art. 29.2C) It also states that arbitration demands “must be filed with the AAA within 30 days *of the mediation session*, [emphasis added] pre-arbitration review meeting or receipt of the notice no pre-arbitration review meeting will be scheduled.” (Art. 29.3.B)

Following discipline of a Union member, the Union filed a grievance under the Agreement and the parties agreed to try to resolve the dispute in mediation. They participated in mediation sessions with the assistance of PERC mediator Michael Snyder (the “Mediator”). The final joint session was held on 2/4/21 according to the exhibits and uncontested testimony of two Employer witnesses. In this case, the 30 days would have been from that last mediation session, a session in which Employer and Union representatives participated with the Mediator. The Employer heard nothing further from the Union until the Union filed for arbitration on 4/29/21

Union representative Jason Holland continued communication with the Mediator after 2/4/21, including an email from the Mediator on 3/23/21 stating “If [the grievant] isn’t interested in making any further proposals let me know so I can close my case and you folks can move this onto the next step.” And another email from the Mediator on 3/30/21: “last follow-up before I close this. Let me know by next Tuesday, 4/6 if you want me to keep working on it. Thanks.” Representatives for the Employer were not copied on those emails. The Union, in its demand for arbitration, stated that “the mediation meeting was concluded on April 7, 2021,” giving it 30 days to decide about filing a demand for arbitration, which it did on 4/29/21

However, the email communication between the Union and the Mediator on 3/30/21 cannot be considered “the mediation session” as called for in Article 29.3 of the Agreement. “The mediation session,” with participation of both Union and Employer representatives, ended on 2/4/21. As a result, the Union had until 3/6/21 to decide about a filing. Further, there was no written request from the Union after 2/4/21 to modify the time limits per Article 29.2.C.

The Arbitrator finds that the Union did not file a demand arbitrate within 30 days of the last mediation session, per Article 29.3.B Step 5. It does not have standing to proceed to arbitration on the merits of the grievance.

Sincerely,

Paul M. Grace

Paul M. Grace, Arbitrator

July 16, 2021