STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFLCIO, and KENYON MEADE,

Petitioners,

For a Judgment Pursuant to Article 75 Confirming an Arbitration Award

-against-

STATE OF NEW YORK and THE NEW YORK STATE OFFICE OF MENTAL HEALTH,

Respondents.

DECISION and ORDER
INDEX NO. 3237-08
RJI NO. 01-08-092758

Supreme Court Albany County All Purpose Term, August 15, 2008
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

Petitioners commenced this CPLR Article 75 proceeding seeking to compel respondents to arbitrate, pursuant to CPLR §7503(a). Respondents oppose the petition. Because petitioners have set forth an arbitrable controversy, and have demonstrated their entitlement to arbitration

under CPLR §7503(a), their petition is granted.

CPLR §7503(a) states "[a] party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration. Where there is no substantial question whether a valid agreement was made or complied with, and the claim sought to be arbitrated is not barred by limitation under subdivision (b) of section 7502, the court shall direct the parties to arbitrate."

The Court of Appeals, in Matter of Board of Educ. of Watertown City School Dist., (93 NY2d 132, 137 [1999]) reiterated the well established two step criteria Courts must apply in determining "whether and when a particular public sector grievance is subject to arbitration." The first step "calls for an examination, by the court, of the subject matter of the dispute" Id. at 138. This first step focuses on whether "public policy... statutory or constitutional restrictions" preclude arbitration, due to the particular subject matter of the dispute. Id. The second step "calls for a determination as to whether the parties agreed to arbitrate the grievance. The second... step invokes the sort of conventional judicial analysis that is influenced by the wording of the CBA." Id. Specifically, the second step requires the court to compel arbitration if "there is a reasonable relationship between the subject matter of the dispute and the general subject matter of the CBA." Id. at 143.

In or about June 2004, respondent New York State Office of Mental Health (hereinafter "OMH") hired petitioner Meade to work as a Food Service Worker I at its Pilgrim Psychiatric Center. By virtue of such employment, petitioner Meade was a member of the Civil Service Employees Association(hereinafter "CSEA"). Respondent State of New York and CSEA are parties to a collective bargaining agreement. For purposes of this proceeding, the pertinent part of the collective bargaining agreement is Article 33 - Discipline (hereinafter "Article 33").

By letter dated February 6, 2008, Pilgrim Psychiatric Center (an OMH facility) served a Notice of Discipline (hereinafter "NOD") on petitioner Meade by mailing it to him certified mail return receipt requested. The NOD was not personally served on petitioner Meade, but commenced a disciplinary proceeding against him pursuant to Article 33.

Article 33 allows petitioner Meade to file a grievance to challenge the NOD, and requires the grievance to be filed within fourteen days of service of the NOD. Article 33 deems a timely grievance to constitute a demand for arbitration.

Here, respondents acknowledge receipt of petitioner Meade's undated letter three months after serving him with the NOD, which explicitly states that it is intended to "grieve the Notice of Discipline Dated February 6, 2007". In his undated letter, petitioner Meade claims that service of the NOD was improper because it was not personally served.

Petitioners seek to compel arbitration of petitioner Meade's termination by specifically challenging the validity of the respondents' service of the NOD. Respondents have refused to arbitrate, claiming that the petitioners have not complied with Article 33 conditions precedent to arbitration and that it is barred by the statute of limitations.

Applying the two step process set forth in Matter of Board of Educ. of Watertown City School Dist., supra, petitioner Meade's claims are arbitrable.

First, the subject matter of petitioner Meade's claim can be arbitrated. The subject matter of his grievance is his termination from employment for misconduct and the respondents claimed non-compliance with its notice obligations under Article 33. Respondents do not argue that the subject matter herein is not arbitrable. Nor are there any "public policy... statutory or constitutional restrictions" to prevent the subject matter claimed by petitioner from being

arbitrated. Id.

Second, the parties have agreed to arbitrate the subject matter of petitioner Meade's claims. Article 33 specifically sets forth the process and procedures for arbitration of disputes between CSEA employees and respondents relative to termination of employment due to misconduct. (§33.4) Article 33 specifically states that "disciplinary arbitrators... shall have the authority to resolve a claimed failure to follow the procedural provisions of this Article including, but not limited to, the timeliness of the filing of the disciplinary grievance, and whether the notice of discipline was properly served in accordance with this Article." (§33.4[f][1]) Not only is the subject matter of the dispute herein "reasonably related" to the subject matter of petitioner's claim, it is directly on point. Id.

Because the subject matter of petitioners' claim is not precluded from arbitration and the collective bargaining agreement's arbitration provisions cover the subject matter of this dispute, this Court finds that petitioner Meade has set forth an arbitrable claim.

Moreover, there is no issue of fact as to whether the parties "made or complied with" their agreement to arbitrate this dispute. (CPLR §7503[a]). Here, both parties agree that a collective bargaining agreement, which requires arbitration, exists. Likewise, it is undisputed that the respondents have refused to arbitrate petitioners' claim. As set forth above, the petitioners' claim falls directly under Article 33's provision setting forth the arbitrator's authority in resolving disputes. By respondents' refusing to arbitrate petitioners' claim they have not complied with the agreement.

Despite respondents' contention to the contrary, petitioner Meade's claim is not barred from arbitration because he did not comply with a condition precedent, i.e. submitting a timely

demand for arbitration. The collective bargaining agreement does not explicitly set forth "conditions precedent" to arbitration, but does state that a "timely filing of such a grievance shall constitute a demand for arbitration". (§33.3[c][2]). Here, petitioner Meade demanded arbitration by his undated grievance letter that respondents received three months after the NOD. As set forth above, Article 33 provides the arbitrator with the authority to hear and decide a "claimed failure to follow [its] procedural provisions". (§33.4[f][1]). Accordingly, the petitioners' claims are "for resolution by the Arbitrator as incidental to the conduct of the arbitration proceeding." (Matter of County of Rockland [Primiano Constr. Co.], 51 NY2d 1 [1980][finding that the timeliness of a demand is not a condition precedent]; Matter of City of Albany (Pomakoy), 142 AD2d 775, 776 [3 Dept.1988] [stating "whether respondent timely presented his grievance is a matter for an arbitrator to determine, not the courts"]).

Additionally, petitioners have not violated the statute of limitations governing the petitioners' claim if it had been brought in a court of this State. (CPLR §§ 7503(a) and 7502(b); Matter of County of Rockland [Primiano Constr. Co.], supra at 6-7). Petitioners employment contract dispute under the parties collective bargaining agreement is governed by a 6 year statute of limitations, and this action has been commenced well within such period of time. (In the Matter of County of Broome (Rauen), 130 AD2d 811 [3d Dept. 1987])

Accordingly, because petitioners have set forth all the necessary proof required by CPLR §7503(a), this Court directs the parties to arbitrate.

All papers, including this Decision and Order are being returned to the attorneys for the petitioners. The signing of this Decision and Order shall not constitute entry or filing under

CPLR §2220. Counsel are not relieved from the applicable provision of that section relating to filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
September 2, 2008

Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Verified Petition dated April 17, 2008, Verified Petition, dated April 17, 2008, with attached exhibits A-D;
2. Verified Answer and Counterclaim, dated July 17, 2008, Affidavit of Darlene Shattuck, dated July 17, 2008 with attached Exhibits 1-4, Affidavit of Walter J. Pellegrini, dated July 17, 2008 with attached Exhibits 1-3;
3. Affidavit of Lisa McNeil, dated August 13, 2008, Affidavit of Mary Rubilotta, dated August 13, 2008.