

**Village of Manlius v Town of Manlius Prof.
Firefighters Assn., IAFF Local #3316**

2019 NY Slip Op 34139(U)

January 14, 2019

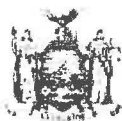
Supreme Court, Onondaga County

Docket Number: 009883/2018

Judge: Deborah H. Karalunas

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LETTER DECISION

Re: Village of Manlius v. The Town of Manlius Professional Firefighters
Association, IAFF Local #3316
Index No.: 009883/2018; RJI No.: 33-18-3535

Dear Counselors:

This constitutes the Court’s decision regarding petitioner’s motions to stay arbitration.

The Village of Manlius (“the Village”) and the Town of Manlius Professional Firefighters Association, IAFF Local #3316 (“the Association”) are parties to a collective bargaining agreement effective from June 1, 2015 through May 31, 2019 (“the CBA”). Pet. ¶ 3 and Leonard Aff. ¶ 2 and Exh. 1. Caroline Wright (“Wright”) is employed by the Village as a firefighter. Leonard Aff. ¶ 4. While on duty on January 19, 2017, Wright allegedly injured her shoulder. *Id.* ¶ 5.

On February 27, 2017, Wright submitted a request for benefits under General Municipal Law § 207-a (“GML § 207-a”). *Id.* ¶ 5 and Exh. 2. On September 27, 2017, the Village denied Wright’s request for GML § 207-a benefits asserting, “[a]mong other reasons, your medical provider has indicated that the shoulder pain you are currently experiencing existed prior to the January 19, 2017 incident.” *Id.* ¶ 6 and Exh. 3. On October 17, 2017, the Association filed a grievance alleging that Wright was improperly denied GML § 207-a benefits in violation of section 7.14 of the CBA. *Id.* ¶ 7 and Exh. 4; Nesci Aff. ¶ 8.

Following denial of Wright's GML § 207-a benefits, the Association requested of the Village details as to the basis for its denial. Nesci Aff. ¶ 9. On March 16, 2018, the Association sent the Village a letter following-up on outstanding discovery requests for witness statements and the medical documentation relied on by the Village to deny Wright's GML § 207-a benefits. The letter also advised that Wright had retained Patrick Sorsby to represent her in the grievance process. *Id.* ¶ 8 and Exh. 5; Sorsby Aff. ¶ 10 and Exh. A. The Village did not recognize Sorsby as Wright's counsel because it claimed only the Association was authorized to represent Wright in the dispute over GML § 207-a benefits. Sorsby Aff. ¶ 12. Thereafter, in August 2018, the Association retained Sorsby to represent it in the grievance commenced on behalf of Wright. *Id.* Neither Wright nor the Association received any documentation supporting the Village's denial of Wright's GML § 207-a benefits. Sorsby Aff. ¶ 14 and Nesci Aff. ¶ 11. On September 25, 2018, almost one year after the Association filed a grievance alleging that Wright was improperly denied GML § 207-a benefits, the Association filed a demand for arbitration with the Public Employment Relations Board ("PERB"). *Id.* ¶ 9 and Exh. 6.

By verified petition filed October 17, 2018, the Village seeks to stay arbitration and permanently enjoin the Association from future similar arbitration demands. The Village argues it is entitled to a permanent stay because the demand for arbitration fails to meet a condition precedent in the CBA and is untimely under CPLR §§ 217, 7502 and 7503. Respondent opposes the petition arguing that because the Village refused to provide the requested support for its denial, the parties never completed Step 2 of the grievance, and the demand for arbitration was timely made. Sorsby Aff. ¶¶ 13-14; Dunn Aff. ¶ 10 and Nesci Aff. ¶¶ 9-11.

Arbitration is "a creature of contract in which the parties themselves charter a private tribunal for the resolution of their dispute and are free to enlarge, restrict, modify, amend or terminate their agreement to arbitrate." Village of Chester v. Local 445, Int'l. Bd. of Teamsters, 118 A.D.3d 1012, 1012-1013 (2d Dep't 2014).

Here, the parties agree that the subject matter of the dispute – Wright's entitlement to GML § 207-a benefits -- is governed by the CBA and, if timely, would be arbitrable under the CBA. The issue then is whether the dispute is barred by the time limitations prescribed in the CBA and/or the CPLR.

At the outset, the court swiftly rejects the applicability of the four month limitations period set forth in CPLR § 217. When, as here, the parties established a mechanism for resolution of their dispute, that mechanism – a collective bargaining agreement - governs the process and timeliness of the quarrel. The cases cited by the Village are inapposite. Neither Dahn v. Keane, 1 A.D.3d 1038 (4th Dep't 2003) nor Dearman v. City of White Plains, 237 A.D.2d 603 (2d Dep't 1997) involved a contractual procedure for arbitration contained in a collective bargaining agreement.

Turning next to the CBA, Article 24 sets forth the following three-step grievance and arbitration procedure:

§24.1 Grievance Procedure

A grievance shall be defined as a controversy, dispute or difference arising out of the interpretations or application of this contract (except for grievances concerning discipline or discharge, which will be processed in accordance with the procedures set forth in Article 19).

Step 1: The grievance shall be first presented in writing by the Association or a member to the Fire Chief and/or Administrative Assistance and shall then be discussed during a meeting with the affected members(s), an Association representative and the Fire Chief and/or Administrative Assistant. Such meeting shall occur within ten (10) calendar days following submission of the grievance or this step shall be deemed waived.

Step 2: If the grievance remains unresolved after Step 1, it shall be presented in a meeting between the Mayor and/or his designees, the grievant and up to two (2) representative of the Association. If this meeting is not held within fifteen (15) days of the meeting in Step 1, this step will be considered complete.

Step 3: If the grievance remains unresolved after both Step 1 and Step 2, then The Association may submit the grievance, in writing (with a copy to the Village of Manlius), to the American Arbitration Association or New York State Public Employees Relations Board (PERB) for the selection of an arbitrator to resolve the grievance in accordance with its rules and regulations. The decision of the arbitrator shall be final and binding on both parties to this contract. . . .

* **

§ 24.3 Time Limitations

If a Step 1 written copy of the grievance was not served on the Village within thirty (30) days of the act, occurrence, or event giving rise to the grievance, or if the grievance was not submitted in writing to the American Arbitration Association or to PERB (with a copy to the Village) within thirty (30) days after the completion of Step 1 and Step 2, the grievance will be deemed waived and there shall be no right to arbitration. The time limits set forth in this section may be waived only by mutual written agreement between the parties.

CBA §§24.1 and 24.3.

Thus, the CBA limits both the time within which a grievance must be served and the time within which a demand for arbitration must be made. Addressing first the grievance, the CBA mandates that a grievance be served within thirty days of the act, occurrence, or event giving rise to the grievance. CBA § 24.3. Here, the Village denied Wright GML § 207-a benefits on September 27, 2017. The Association served its grievance on October 17, 2017. Accordingly, the grievance was timely served.

The demand for arbitration was served on September 25, 2018. The Village maintains the demand for arbitration was untimely. In support of its position, the Village argues service of a timely demand for arbitration is a condition precedent to arbitration and by not filing a demand for arbitration within 30 days following completion of Step 2 of the grievance procedure, the Association failed to comply with the condition precedent. However, this argument assumes Step 2 of the grievance was completed, a fact made murky by the imprecise, ill-defined terms of the CBA.

With the existing ambiguities, the questions before the court are: (1) who decides whether compliance with the time limitations found in section 24.3 of the CBA is a condition precedent; (2) are the time limitations found in section 24.3 of the CBA a condition precedent; (3) who decides whether the Association complied with the time limitations found in section 24.3 of the CBA; and (4) did the Association comply with the time limitations found in section 24.3 of the CBA. Unfortunately, the answers to these questions also are unclear.

In Enlarged City Sch. Dist. v. Troy Teachers Ass'n, 69 N.Y.2d 905 (1987) the Court of Appeals stated: “[q]uestions concerning compliance with the contractual step-by-step grievance process have been recognized as matters of procedural arbitrability to be resolved by the arbitrators, particularly in the absence of a very narrow arbitration clause or a provision expressly making compliance with the time limitation a condition precedent to arbitration.” Id. at 907; see also, Town of Greece (Civil Serv. Empls. Ass'n., Inc., Local 828, AFSCME, AFL-CIO), 153 A.D.3d 1626, 1627 (4th Dep't 2017).

However, several courts have held: “[t]he threshold determination of whether a condition precedent to arbitration exists and whether it has been complied with, is for the court to determine.” Village of Chester, 118 A.D.3d at 1013; see also, Matter of Livingston Cty. (Civil Serv. Empls. Ass'n., Inc., Local 1000, AFSCME, AL CIO), 101 A.D.3d 1697, 1697 (4th Dep't 2012); All Metro Health Car Servs., Inc. v. Edwards, 57 A.D.3d 892, 893 (2d Dep't 2008) (same); Kachris v. Sterling, 239 A.D.2d 887 (4th Dep't 1997).

Although it is difficult to reconcile these cases, this court concludes that it is empowered to decide the first question - whether the CBA contains a condition precedent to arbitration. To that end, reading section 24.3 of the CBA as a whole, notwithstanding the absence of the precise words “condition precedent,” the court concludes that timely service of a grievance and arbitration are conditions precedent to arbitration. Cf. Village of Chester, 118 A.D.3d at 1013 (CBA provision requiring officer to file a grievance with the Chief of Police within 15 days “effectively imposed a condition precedent on the commencement of arbitration”); In re

Greenburgh, 125 A.D.2d 315 (2d Dep't 1986)(timely filing of both steps one and two of grievance deemed condition precedent to step three arbitration"); Avondale Mills v. Majestic Carpet Mills, Inc., 60 A.D.2d 542 (1st Dep't 1977)(staying arbitration based on clause that required institution of arbitration within one year; clause provided: "failure to institute arbitration proceedings within this period shall constitute an absolute bar to the institution of any arbitration . . . and a waiver of all claims").

The remaining issue - whether the Association complied with the time limitations contained in section 24.3 of the CBA - is for the arbitrator. Resolution of that issue turns on whether, and if so when, the parties completed Step 1 and Step 2 of the grievance procedure, *i.e.*, the conduct of the parties during the contractual step-by-step grievance process. Enlarged City Sch. Dist., 69 N.Y.2d at 907; see also, Cty. of Rockland, 51 N.Y.2d at 7-8; Poughkeepsie v. Poughkeepsie Unit. Local 486 Civil Serv. Empls. Assn., 78 A.D.2d 653, 653 (2d Dep't 1980).

Accordingly, petitioner's motion to stay arbitration is DENIED and the petition is DISMISSED.

Counsel for respondent is directed to prepare an order consistent with this decision to be submitted to the Court on notice within 30 days. The order shall attach a copy of this letter decision and incorporate it therein.

Very truly yours,



Deborah H. Karalunas, J.S.C.

DHK/sjs