**Matter of Uniformed Firefighters of Cohoes, Local 2562, IAFF, AFL- CIO v City of Cohoes, N.Y.**

2025 NY Slip Op 31637(U)

April 4, 2025

Supreme Court, Albany County

Docket Number: Index No. 912573-24

Judge: Denise A. Hartman

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STATE OF NEW YORK
SUPREME COURT — COUNTY OF ALBANY

IN THE MATTER OF UNIFORMED FIREFIGHTERS OF COHOES, LOCAL 2562, IAFF, AFL-CIO,

Petitioner,

-against-

CITY OF COHOES, NEW YORK,

Respondent.

For a Judgment Pursuant to Article 75 of the Civil Practice Law and Rules

**DECISION, ORDER & JUDGMENT**

Index No. 912573-24

April 4, 2025

HON. DENISE A. HARTMAN, AJSC

APPEARANCES

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*No other appearances*

Hartman, J.

Petitioner Uniformed Firefighters of Cohoes, Local 2562, IAFF, AFL-CIO (petitioner) seeks judgment pursuant to CPLR article 75 vacating an arbitrator's decision and award dismissing its grievance appeal as untimely. Respondent City of Cohoes, New York (respondent), has filed nothing in opposition. For the reasons that follow, the relief requested in the petition is in all respects denied and the proceeding is dismissed.

**Background**

Petitioner, the exclusive bargaining representative for City of Cohoes firefighters, and respondent are parties to a collective bargaining agreement, which includes a three-step grievance procedure. In relevant part, Step 1 of the grievance procedure provides that petitioner may file a written grievance to the Chief within 30 working days of the occurrence which gave rise to the grievance and the Chief is required to hold a meeting with the grievant within five working days (*see* NYSCEF Doc No. 3 at 2). The Chief must provide a written answer to the grievance within five working days of the meeting but "[f]ailure to do so will not preclude [petitioner] from proceeding to step 2" (*id.*).

Step 2 provides that petitioner may appeal the Chief's decision to the Mayor within 10 working days of receipt of the Chief's decision (*see id.*). The Mayor is required to review the grievance and notify petitioner of his decision within 10 working days, but "[f]ailure to so notify will not preclude [petitioner]

from proceeding to Step 3" (NYSCEF Doc No. 3 at 2). And Step 3 provides, as relevant, that, "[a]ny unresolved grievance having been processed fully through Step 2 may be submitted to arbitration by either the City or [petitioner] in accordance with the following: [a] grievance will be considered timely if appealed to arbitration within twenty-one (21) working days of the receipt of the Step 2 decision" (*id.*). The CBA provides that "[t]he term working days shall mean the City Hall schedule (Monday through Friday excluding holidays)" (*id.*).

By decision and award dated October 4, 2024, the arbitrator dismissed petitioner's grievance as untimely (*see* NYSCEF Doc No. 4 at 7). The arbitrator observed that respondent presented as an issue "[a]t the hearing" whether "the Demand for Arbitration [was] timely filed" (*id.* at 3). The arbitrator concluded that it was not. The arbitrator noted that petitioner filed its grievance on January 17, 2023, and that it was "undisputed that [petitioner] was sent, via email and US mail, the City's Step 2 denial of the grievance on January 27, 2023 and that [petitioner's] Demand for Arbitration was not filed . . . until June 2, 2023" (*id.* at 5). The arbitrator calculated the time between petitioner's receipt of the Step 2 denial and its June 2, 2023 filing by using "every day" in that period without excluding weekends or holidays and, alternatively, based on a "firefighter's work schedule of one day on, three days off" (*id.* at 6), though the arbitrator does not appear to have considered the CBA's definition of

"working days" (*id.* at 2). Having concluded that the appeal was untimely, the arbitrator declined to address the "other procedural and substantive matters at issue in th[e] proceeding" (*id.*).

Petitioner commenced the present CPLR article 75 proceeding by filing a petition and notice of petition on December 26, 2024 (*see* NYSCEF Doc Nos. 1-2). Petitioner contends that the arbitrator exceeded her authority and impermissibly added to and/or modified the CBA by failing to exclude holidays and weekends from the time calculation under Step 3 of the grievance process in concluding that petitioner did not timely file its demand for arbitration. Petitioner also argues that the arbitrator excluded and/or ignored relevant evidence that petitioner timely "sent" its notice of arbitration on February 24, 2023 (NYSCEF Doc No. 1 at ¶ 7). And petitioner advances several arguments regarding the merits of its grievance. The Court has received no opposition from respondent.

**Analysis**

As an initial matter, "[w]here a collective bargaining agreement contains a broad arbitration clause, the question of whether a party has complied with the procedural requirements of the grievance process—such as time limitations—is to be resolved by an arbitrator absent 'a provision expressly making compliance with the time limitations a condition precedent to arbitration'" (*Matter of Board of Educ. of the Rondout Val. Cent. Sch. Dist.*

*[Rondout Val. Fedn. of Teachers]*, 101 AD3d 1446, 1447 [3d Dept 2012], quoting *Matter of Enlarged City School Dist. of Troy v Troy Teachers Ass'n*, 69 NY2d 905, 907 [1987] [additional citations omitted]; *Cf. Matter of Raisler Corp. [New York City Hous. Auth.]*, 32 NY2d 274, 279 [1973]).

Here, the CBA provides that "[a]ny grievance arising between the parties shall be settled in accordance with the [three-step grievance] procedure[,]" which culminates in arbitration if unresolved at the first two steps, and defines grievance as "a claimed violation, misinterpretation or inequitable application of the existing rules, procedures or regulations covering terms and/or working conditions applicable to the members of the [Cohoes Fire] Department and shall include all provisions of [the CBA]" (NYSCEF Doc No. 3 at 2). But nothing in the relevant portion of the CBA expressly conditions the parties' ability to seek arbitration on adherence to the time limitations in the three-step grievance procedure. Accordingly, "CPLR article 75 . . . does not provide a basis for disturbing the [decision and] award in issue" because "[t]he decision of the arbitrator concerning the timeliness of the filing of the grievance is not subject to judicial review" (*Matter of Miller v New York State Dept. of Mental Hygiene*, 70 AD2d 938, 938 [2d Dept 1979]; *see Matter of Board of Educ. of the Rondout Val. Cent. Sch. Dist. [Rondout Val. Fedn. of Teachers]*, 101 AD3d at 1448; *see also Matter of Enlarged City School Dist. of Troy*, 69 NY2d at 907).

In any event, petitioner has failed to establish that the arbitrator exceeded her authority, added to or modified the CBA, or any other ground warranting vacatur of the October 4, 2024 decision and award. "[A]n arbitrator's rulings . . . are largely unreviewable" (*Matter of Falzone v N.Y. Cent. Mut. Fire Ins. Co.*, 15 NY3d 530, 534 [2010]). "Courts must give deference to an arbitrator's decision and cannot examine the merits of an arbitration award, even if the arbitrator misapplied or misinterpreted the law or facts" (*Matter of Grasso [Grasso]*, 72 AD3d 1463, 1465 [3d Dept 2010]). As relevant to the present proceeding, CPLR 7511 (b) (1) (iii) provides that an "award shall be vacated . . . [if] an arbitrator . . . making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made."

Petitioner does not dispute that it received the Step 2 decision on January 27, 2023. Regardless of whether the arbitrator overlooked the CBA's definition of "working days," such oversight was of no moment to her ultimate conclusion. The arbitrator found that petitioner did not file the demand for arbitration until June 2, 2023, which is well beyond the 21-day period for filing the demand pursuant to Step 3 of the grievance procedure even applying the CBA's definition of "working days."

And the Court finds uncompelling petitioner's self-serving argument that the arbitrator excluded and/or ignored evidence that it had "sent" its

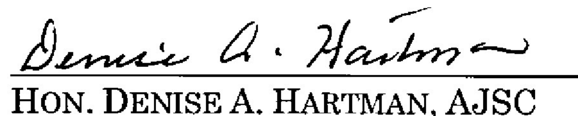
demand for arbitration in February 2023 (NYSCEF Doc No. 1 at ¶ 7). If such evidence exists, petitioner has conspicuously omitted it from the materials proffered in support of its petition. And petitioner's claim that the arbitrator failed to notify it that "timeliness was an issue" is belied by the fact that the arbitrator's decision and award specifically noted that respondent challenged the timeliness of petitioner's demand for arbitration at the hearing (NYSCEF Doc No. 4 at 3). Petitioner's remaining arguments go to the merits of its grievance, which the arbitrator did not consider, and which are not properly before the Court.

Accordingly, it is hereby

**ORDERED AND ADJUDGED** that the relief requested in the petition is in all respects **DENIED**, and the proceeding is **DISMISSED**.

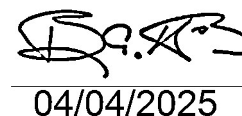
This constitutes the Decision and Order of the Court, the original of which is being uploaded to NYSCEF for electronic entry by the Albany County Clerk. Upon such entry, counsel for petitioner shall promptly serve notice of entry on all other parties entitled to such notice.

Dated: Albany, New York
April 4, 2025



HON. DENISE A. HARTMAN, AJSC

Papers Considered:
*NYSCEF Doc Nos. 1-9*



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