

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

SMART LOCAL 565

and

TRACHTE BUILDING SYSTEMS, INC.

Case ID: 655.0000

AWARD NO. 7992

Appearances:

Jill M. Hartley, Attorney, The Previant Law Firm, S.C., 310 W. Wisconsin Avenue, Suite 100 MW, Milwaukee, Wisconsin, appearing on behalf of SMART, Sheet Metal, Air, Rail and Transportation Workers Local 565.

Douglas E. Witte, Attorney, Boardman & Clark LLP, 1 South Pickney Street, Suite 410, P.O. Box 927, Madison, Wisconsin, appearing on behalf of Trachte Building Systems, Inc.

AMENDED ARBITRATION AWARD

SMART Local 565 (hereinafter referred to as the Union), and Trachte Building Systems, Inc. (hereinafter referred to as the Company or the Employer, were parties to a 2022-2024 collective bargaining agreement. On June 8, 2023, the Union filed a grievance arbitration request with the Wisconsin Employment Relations Commission. Pursuant to that request and the terms of the applicable collective bargaining agreement that provides for final and binding arbitration of unresolved grievances, the Commission assigned me to serve as arbitrator to decide the instant grievance. The parties agreed to bifurcate the grievance and to brief the issue of arbitrability first, and only have a hearing on the merits if the arbitrator determines the grievance is arbitrable. The parties filed initial briefs on August 28, 2023. The parties filed reply briefs on September 21, 2023. Having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned issues the following Award.

ISSUE

The Union frames the issue as follows:

Is the Union's April 28, 2023, grievance over Jeffery Hammond's discharge arbitrable on its merits?

The Employer frames the issue as follows:

Whether the appeal to arbitration was timely.

I find that the issue to be decided herein is as follows:

Is the grievance filed by the Union arbitrable?

DISCUSSION

Jeffery Hammond is a member of the Sheet Metal, Air, Rail and Transportation Workers Union, Local 565. Hammond was discharged from his employment with Trachte Building Systems on April 27, 2023. On April 28, 2023, the Union timely filed a grievance alleging Hammond was discharged without just cause. The Union began the grievance at Step 3, as designated by the Collective Bargaining Agreement (CBA). By email dated May 12, 2023, the Company denied the grievance at Step 4. The Union responded with its intent to move the grievance to arbitration on May 15, 2023. On June 8, 2023, the Union submitted a Request to Initiate Grievance Arbitration to the Wisconsin Employment Relations Commission (WERC).

The Company disputes that the Union's grievance is arbitrable on the grounds that the request to the WERC to appoint an arbitrator was not submitted within fifteen days of the Company's Step 4 Answer. The Union asserts that the CBA does not contain forfeiture language for untimely submission to arbitration, and therefore the grievance must be heard and decided on the merits.

With respect to grievances and the arbitration procedure, Article 9 of the CBA states:

SECTION 1

For the purpose of this Agreement, the term grievance means any dispute between the Company and the Union, or between the Company and any teammate concerning the effect, interpretation, and application, claim of breach or violation of this Agreement. A grievance must be filed within seven (7) working days from the date of acquisition of direct knowledge of the cause of the grievance or it shall be barred.

Grievances of termination of employment will start with step 3. The former teammates may be asked to join via phone.

The following procedure shall be followed:

...

- STEP 3 If such written disposition does not satisfactorily resolve the grievance, the Union shall present the grievance to the Plant Manager/Logistics Manager or Director of Human Resources and/or his Representative within one (1) working day. The Plant Manager/Logistics Manager or Director of Human Resources shall meet with a Committeeman, the involved steward and the grievant, as soon as possible after such submission. The Committeeman may request one or more of the other Committeemen to attend such meeting. The Company shall provide a written answer to such grievance within three (3) working days after the Step 3 meeting.
- STEP 4 If such written disposition does not satisfactorily resolve the grievance, such grievance shall be submitted in writing to the Plant Manager/Logistics Manager or Director of Human Resources. The Company representatives will meet with the Union Committee and the Union's Business Representative within five (5) working days after the receipt of the Step 3 answer. If no satisfactory settlement is reached from the Step 4 meeting, the grievance, at the option of either party, shall be submitted to arbitration.

SECTION 2

Arbitration – In the event the grievance has not been settled in any of the foregoing steps, the matter may be appealed by either party to an impartial arbitrator to be appointed by the parties within fifteen (15) days after Step 3 has been made; either party may request that the Wisconsin Employment Relations Commission appoint an arbitrator. Such person shall act as such impartial arbitrator. Any fees or expenses involved in the arbitration proceedings will be borne equally between the parties. *The arbitrator shall not have jurisdiction to alter or amend in any way the provisions of this Agreement and his decision must be in accordance with the terms of this Agreement.* His decision will be binding on all parties.

Emphasis added.

Grievances have a “broad presumption of arbitrability,” and arbitral law has a strong preference for resolving disputes on substantive rather than procedural grounds. *See City of Madison v. WERC*, 261 Wis.2D 423 (2003). Because of this presumption, the Employer bears the burden of proof that a grievance is not arbitrable. Any credibility disputes must be resolved in favor of a conclusion that the grievances are arbitrable, and any ambiguous contract language must be resolved in favor of a finding of arbitrability.

An arbitrator cannot disregard or modify plain or unambiguous provisions of a CBA. *See Madison Tchrs. Inc. v. Madison Metro Sch. Dist.*, 2004 WI App 54, 271 Wis. 2d 697, 678 N.W.2d 311 at ¶ 15; *see also See City of Springfield*, 136 LA 1258, 1262 (Weatherspoon 2016) (quoting *United Steelworkers v. Warrior & Gulf Manufacturing Company*, 363 U.S. 574, 582 (1960)).

Arbitrators are consistently reminded that they lack authority to amend or modify a CBA, *see The Nutrition Group*, 136 LA 44, 49 (Miles, 2015) (where CBA was silent as to effect of Union's untimely action at step in grievance, Arbitrator could not modify any terms and could not "infer or conclude what the parties intended"). Thus, arbitrators are bound to abide by a CBA's clear and unambiguous provisions as a matter of contract interpretation. This mandate is clear in the current matter from Article 9, Section 2 of the parties' CBA: "The arbitrator shall not have jurisdiction to alter or amend in any way the provisions of this Agreement and his decision must be in accordance with the terms of this Agreement."

It is undisputed that the Union's correspondence to the WERC requesting appointment of an arbitrator was sent on June 8, 2023, and was therefore beyond fifteen days from the date of the Employer's May 12 grievance denial. However, there is clearly no language in the CBA which provides for the forfeiture of the grievance. Nothing in the Step 4 language or any other provision of the grievance procedure permits the Arbitrator to find the grievance barred or inarbitrable on its merits because the fifteen-day time limit was not met. It appears the parties have chosen not to negotiate a consequence for untimely submission of the request to appoint an arbitrator. Consequently, I conclude that I am prohibited from reading one in. Similarly, I find that the CBA's language is not ambiguous.

Given the foregoing, I conclude that the Union's grievance is arbitrable. Therefore, a hearing shall be set as soon as practical.

Issued at the City of Madison, Wisconsin, this 11th day of December, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Anfin Jaw, Arbitrator