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| **IN THE MATTER OF ARBITRATION** | ) | |
| | ) | |
| **BETWEEN** | ) | **GRIEVANCE: Shawn Masters** |
| | ) | |
| **STATE COUNCIL OF PROFESSIONAL EDUCATORS, OEA** | ) | **Grievance: Arbitrability** |
| | ) | **Grievance #DRC 2021-02478-10** |
| | ) | **BEFORE: ROBERT G. STEIN, NAA** |
| **AND** | ) | **ARBITRATOR** |
| | ) | |
| **OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS** | ) | |


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**INTRODUCTION**

This matter came on for hearing before the arbitrator pursuant to the collective bargaining agreement ("Agreement" or "CBA") between The State of Ohio ("Employer" "ODRC") and The Council of Professional Educators ("Union" or "SCOPE") That Agreement is effective from 2021 through 2024 and included the conduct which is the subject of this grievance. (Jt. Ex. 1) The department involved in this matter was the Department of Rehabilitation and Corrections ("ODRC") Robert G. Stein was mutually selected by the parties to impartially arbitrate this matter, pursuant to Article 5 of the Agreement. The need for a formal hearing on this matter was discussed by the parties in a virtual meeting on Zoom held on October 13, 2022. During the meeting with the Arbitrator the parties mutually agreed to waive a formal oral hearing in favor of the written submission of evidence and arguments, submitted to the Arbitrator by mail and by email on October 31, 2022. The parties mutually agreed to that hearing/submission date, and they were each provided with a full opportunity to present documentary evidence and arguments supporting their respective positions. The hearing was declared closed upon the parties' individual submissions of post-hearing briefs.

The single issue in this case is arbitrability. The parties have also agreed to the submission of joint exhibits and joint stipulations.

**ISSUE**

Is the grievance arbitrable?

## I. RELEVANT CONTRACT LANGUAGE

The relevant contractual language is Section 10.01 of the Agreement. It states:

> ***Each employee has the responsibility to obtain and/or to maintain current certification(s) required for his/her present classification title and parenthetical subtitle.***
>
> ***In DRC and DYS, all credential staff must possess licensure and shall have a valid teaching credentials (2 years or more) on July 1 of each year as defined by ODE for their specific parenthetical subtitles. Any employee who fails to comply with these provisions by July 1 of each year (as referenced above) is subject to termination and shall only be able to grieve such action through Step 2 of the grievance process.***

**BACKGROUND**

The Grievant, Shawn Masters ("Masters" or "Grievant"), a teacher in the State of Ohio for approximately twenty (20) years at the time of his termination. Masters was terminated from his position as a teacher with ODRC on 8/9/2021. According to the Employer, the Grievant was removed for violating Rules 48:

> *Rule 48: Failure to obtain, maintain and/or keep current any certifications, license, driving insurability, etc., that is required to perform the duties of the position or to meet the minimum qualifications of the position*.

According to the Employer, School Superintendent, Jennifer Sanders, reported that the Grievant's teaching license had expired and that he had failed to renewal his license as required under the Employer's rule 48. Again, Article 10.1 of the Agreement addresses this issue:

> *In DRC and DYS, all credentialed staff must possess licensure and shall have valid teaching credentials (two (2) years or more) on July 1 of each year as defined by ODE for their specific parenthetical subtitle. Any employee who fails to comply with these provisions by July 1 of each year (as referenced above) is subject to*

*termination and shall only be able to grieve such action through the Agency Step of the grievance process.*

As a result of Masters' inaction in complying with policy and with the requirements of the Agreement he was removed from his position on August 9, 2021. The Union filed a grievance on behalf of Masters, and it was processed pursuant to Article 5 of the CBA. The grievance remained unresolved and given the facts surrounding the case in view of the requirements of Article 10.1 as stated above, it was submitted to the Arbitrator for a determination on its arbitrability.

**SUMMARY OF THE EMPLOYER POSITION**

The Employer avers that Masters is required to comply with both policy and the dictates of the Agreement. Furthermore, the Employer points out that this rather predictable and routine licensure requirement is not only essential, but also predictable as to its renewal procedure and its timing. Additionally, bargaining unit employees, including Masters are provided with timely reminder notifications as a renewal year approaches as well as a warning about suggested deadlines for having adequate time to meet the July 1st requirement. For purposes of accuracy and completeness regarding these arguments the following information and arguments are identified by the Department are largely reproduced from the Employer's brief and represented the central basis for the Employer's findings in this matter:

***Notification***

*On August 7, 2020, the Grievant received his first reminder by email and signed notification that his teaching license would expire on June 30, 2021.[1] On February 23, 2021, the Grievant received his second reminder that his teaching license would expire on June 30, 2021.[2] Both notifications stated the following:*

> *This memo is to remind you that your teaching license will expire on June 30, 2021.Please note that it is your responsibility to complete the requirements to renew your certificate/license. As you should already be aware, maintenance of your license is a requirement for continued employment in the position you currently hold. When you have completed the requirements for renewal, please forward the proper documentation needed for proof to the LPDC, transcripts if required, no later than March 31, 2021. You are also required to complete your renewal license on-line through your ODE SAFE account and submit payment.*

[1] Arbitration Book Tab 3, pages 41 & 42 first notice
[2] Arbitration Book Tab 3, page 43. second notice

> *Article 10 of the SCOPE contract states, "…all credentialed staff must possess licensure and shall have valid teaching credentials on July 1 of each year…" Failure to renew my license will result in disciplinary action.*

*The Grievant signed these reminders acknowledging receipt and the understanding of the consequences if he failed to renew his license. The Grievant was also notified in the reminders that he would need to forward the proper documentation to the Local Professional Development Committee (LPDC) no later than March 31, 2021. The policy recommends that the Grievant submit his application and necessary attachments to ODE by March 31st of the renewal year. This long-standing policy clearly states,[3]*

> *Education staff must submit their application electronically on the ODE website. It is recommended that all applications and necessary attachments be submitted to ODE by March 31st of the renewal year. Applications received after March 31st of the renewal year shall be processed but not guaranteed to be processed in time to meet the July 1st deadline for the issuance of a license by the ODE.*

*The grievant did not submit his application until May 17, 2021.[4]*

***Background Check***

*The Ohio Central School System Local Professional Development Committee (OCSS LPDC) has a license renewal process guide supplied on its website.[5] Within the guide are requirements, suggested timeframes and a renewal checklist. The OCSS LPCD renewal timeline[6] suggests that in the Fall of year 4, the teacher should complete BCI and FBI background check/fingerprinting. The Grievant acknowledged that he had reviewed the OCSS LPDC license renewal process guide during his investigatory interview.[7] In spite of this guidance, the Grievant waited until May 17, 2021, to apply for his background check.[8] The Grievant's FBI background check was completed on May 20, 2021.[9] In an email dated June 8, 2021, Amanda Carroll, AFIS Operator 2 with Bureau of Criminal Investigations (BCI), confirmed the completion of the FBI background check. She also stated that the BCI background check was still in process and could take up to 30 days. Ms. Carroll indicated that the BCI background check would be sent to ODE when completed. Ms. Virginia Potts, Identification Supervisor at BCI stated, "We went live with a new computer system on 6/2/2021. The majority of the background checks are now completing in 24-48 hours, if there is criminal history that needs to be reviewed, those results are taking 60 days."[10]*

*In a phone interview on July 13, 2021,[11] Ms. Potts stated,*

> *Old system was shut down on May 26. Anything sitting in cue was likely on a "Hit List". Normally a license will process within a few days. But if there is a legal or criminal action on the license it*

[3] Arbitration Book Tab 3, page 140, Policy 57-EDU-08
[4] Arbitration Book Tab 3, page 152, Education Summary for Shawn Masters.
[5] Arbitration Book Tab 3, page 66, Licensure Renewal Process
[6] Arbitration Book Tab 3, page 69, OCSSLPCD renewal timeline
[7] Arbitration Book Tab 3, page 24, Masters Investigatory Interview
[8] Arbitration Book Tab 3, page 15, Investigators report
[9] Arbitration Book Tab 3, page 28, email from Amanda Carroll
[10] Arbitration Book Tab 3, page 123, email from Virginia Potts
[11] Arbitration Book Tab 3, page 117, discussion with Virginia Potts

*flags, and the license has to be checked with files that are ruled hard copy. The applicant isn't notified that their application is flagged. Once manually compared the license is processed.*

*The application for licensure states,*[12]

*Fact 3: Educators must disclose on their licensure application any past professional discipline of any professional certificates, licenses, registrations or permits. This could include discipline on a nursing, law, education or other type of license from Ohio or any other state.*

*Fact 4: Educators must disclose all their criminal convictions on every licensure application and renewal submitted to the department, even if the educator has reported the information on a previous application. This disclosure includes, but is not limited to:*

- *Sealed or expunged convictions;*
- *Cases that do not appear on background checks;*
- *Charges that resulted in a diversion or an intervention-in-lieu-of-conviction program;*
- *Guilty pleas; and*
- *Pending or ongoing criminal cases.*

***Arbitrability***

*The Collective Bargaining Agreement between the State of Ohio and the State Council of Professional Educators OEA/NEA states in article 10.01:*

*In DRC and DYS, all credentialed staff must possess licensure and shall have valid teaching credentials (two (2) years or more) on July 1 of each year as defined by ODE for their specific parenthetical subtitle. Any employee who fails to comply with these provisions by July 1 of each year (as referenced above) is subject to termination and shall only be able to grieve such action through the Agency Step of the grievance process.*

*A meeting was held on the arbitrability regarding this grievance on September 22, 2022, by virtual means through Zoom. Present were Kerri Hoover with OEA, Kate Nicholson with OCB, James Adkins and Allison Vaughn with ODRC. The union argued that the Grievant was advised that certification should only take thirty (30) days from the date of submission to be processed. Management presented documents to show the long-standing policy, agency reminders, previous recertifications, successful submission and notice of consequences related to the unsuccessful submissions.*

*At the conclusion of this meeting all parties were notified by the Arbitrator that the only mitigation that could be considered would be if the grievant could show proof that he was advised that certification should only take thirty (30) days from the date of submission to be processed. The Arbitrator required that this proof be submitted no later than September 30, 2022.*[13]

*On October 12, 2022, Kerri Hoover with OEA sent an email*[14] *to the Arbitrator and Kate Nicholson along with two (2) attachments to be considered.*[15] *The email from the Grievant was dated October 11, 2022. Both of these documents were already included in the disciplinary packet*[16] *and the documents were discussed at the September 22nd meeting. The Union provided no proof and no new information by the September 30 deadline.*

[12] Arbitration Book Tab 3, page 133, application for licensure
[13] Arbitration Book Tab 5, page 179, Arbitrators clarification of opinion.
[14] Arbitration Book Tab 5, page 181, Email from Kerri Hoover
[15] Arbitration Book Tab 5, page 185 & 186 Union docs
[16] Arbitration Book Tab 3, page 28, email from Amanda Carroll, page 123, email from Virginia Potts

***Conclusion***

*By the express terms of the parties' negotiated collective bargaining agreement, this grievance is not arbitrable. A ruling in the Union's favor would result in a direct violation of the contract. Other arbitrators have said that when language is unambiguous it must be upheld.*

*Arbitrator Nowell stated,*[17]

*The arbitrator is bound to fashion an award and decision based on what is contained in the collective bargaining agreement. Clear and unambiguous contract language cannot be ignored. In Wolf Baking Co., Inc., 83 LA 24, Arbitrator Marlatt states the following. "No party to a Contract may evade the express terms of the Contract on the grounds that such terms are impractical, unreasonable, or even absurd. The Contract is the Contract, and arbitrators are not free to vary its terms to achieve a more equitable or productive result….It is the arbitrator's responsibility to read the Contract and tell the parties how it applies to the dispute at hand, and this is the limit of his jurisdiction. This standard applies in the instant case.*

*Arbitrator Goldberg stated,*[18]

*Section 6.05 of the Agreement places substantial limitations on the arbitrator's authority to resolve disputes under the Collective Bargaining Agreement. That section states:*

*"The arbitrator shall have no power to add to, subtract from, or modify any of the terms of this agreement; nor shall the arbitrator impose on either party a limitation or obligation not specifically required by the express language of this agreement"*

*This arbitrator, therefore, is jurisdictionally required to hold the parties to their agreed upon language, including the periods of limitation for filing grievances, notwithstanding the arbitrator's personal views as to whether or not such requirements are reasonable.*

*You stated in a prior arbitration*[19] *with this same Union,*

*The arbitrator here is a creature of the contract from which he derives his authority, and he must confine his decisions. Although he may use his expertise in interpreting and applying the contractual provisions, the arbitrator may not substitute his own sense of equity and justice because his award must by grounded in the Agreement's terms. Article 6, Section 6.05, of the Agreement specifically identifies the following recognized limitations to the arbitrator's authority:*

*"The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement; nor shall the arbitrator impose on either party a limitation or obligation not specifically required by the express language of this Agreement."*

*It is generally-recognized that neither party to an agreement should be able to gain through arbitration what it was unable to successfully assert in prior negotiations or bargaining. Ultimately, "[i]t is not for the arbitrator to question whether the parties made a good bargain." Int'l Union of Operating Eng'rs, Local 3 and Premier Chems., 00-1 Lab. Arb. Awards (CCH) P 3245 (Calhoun 1999). What is recognized by this arbitrator and his colleagues is that the bargain struck in negotiations must be recognized and enforced during the Agreement's tenure.*

[17] OCB Arbitration 2167, page 18
[18] OCB Arbitration 1149, Page 8 & 9
[19] OCB Arbitration 2128, page 8

*The collective bargaining agreement has not changed.[20] The above language must be upheld to ensure the integrity of both parties, their negotiations, and the collective bargaining agreement.*

The State respectfully requests that the Arbitrator find that this grievance is not arbitrable.

## SUMMARY OF THE UNION'S POSITION

As a foundational issue, the Union avers that Article 10.1 was negotiated due to the fact that some teachers were regularly failing to get their licenses renewed. They were in essence not taking this requirement seriously. However, contrary to the findings of the Employer, Masters complied with the spirit of this provision and met his responsibilities to maintain his certification. He met some difficulties with the speed and efficiency of the responding agencies such as BCI and ODE who led him to believe the process would have been more efficient after he filed his background request with BCI on May 17, 2021, sufficient time to have his license renewed by July 1, 2021. For purposes of accuracy and completeness regarding these arguments the following information and arguments identified by the Union are largely reproduced from the Union's brief and represented the central basis for the Union's findings in this matter:

ARGUMENT

**The Grievance was filed timely for all intents and purposes and shall allowed to be able to go forward spirit of the collective bargaining agreement.**

The State contends the grievance should be dismissed because it was not allowed to move forward due to the collective bargaining agreement.

The relevant contractual language at Section 10.01 states as follows:

> ***Each employee has the responsibility to obtain and/or to maintain current certification(s) required for his/her present classification title and parenthetical subtitle.***
>
> ***In DRC and DYS, all credential staff must possess licensure and shall have a valid teaching credentials (2 years or more) on July 1 of each year as defined by ODE for their specific parenthetical subtitles. Any employee who fails to comply with these provisions by July 1 of each year (as referenced above) is subject to termination and shall only be able to grieve such action through Step 2 of the grievance process.***

[20] Collective Bargaining Agreement, article 5.05, page 26

However, the Association argues that this not the intent of the language. Mr. Sauter was involved in the negotiation of this language in 2006 and states that the rationale for this language was for those teachers who had been remiss about their licensure and had not taken appropriate steps to renew their licensure. As Mr. Sauter states:

> ***I was part of the SCOPE bargaining team when the above contractual provision was negotiated with the State and first included in the 2006-2009 CBA. The State initially made a proposal which resulted in the above contractual language.***
>
> ***The State expressed that there had been instances where teachers had completely ignored their licensure renewal responsibilities and continued to teach without licensure. The State focused on and objected to teacher who were unwilling to do their required educational training for purposes of licensure renewal. I believe that SCOPE entered into this new contractual provision because it understood the State's concern with teachers who completely disregarded their licensure renewal responsibilities.***

To my knowledge as the Labor Relations Consultant with SCOPE since 2015, this is the very first time that a teacher had taken all appropriate steps to obtain their licensure in a timely fashion and was terminated even though there was nothing more he could have done to obtain the licensure.

Additionally, this delay in the renewal of Mr. Masters license was an error and delay by the Ohio Department of Education and BCI. As you can see from the email from ODE Counsel (Union Exhibit 4) he was also aware of delays taking place due to an augmentation in the system with BCI as also addressed in the notes from Mr. Masters (Union Exhibit 5). These are factors that the grievant could not have foreseen or knew about in advance of his renewal.

Mr. Bob Sauter, legal counsel for SCOPE has submitted a statement in support of moving forward, attached as Exhibit 2 for the union. As Mr. Sauter contends, Mr. Masters did all he could (and then some) to renew his license in a timely fashion. He had all items in and had fulfilled every obligation needed for renewal by May 17, 2021- well before the deadline. You will also see in Union Exhibit 1, Mr. Masters made contact with folks verifying it would be in and got confirmation it would be in within thirty (30 days) which still puts him at June 17th, 2021- plenty of time.

The State would have you believe that he should have had everything in by March of the year of renewal as suggested by the State policy, however, in a quick search of various SCOPE members on the ODE educator website lookup there are many of them that do not get their information in that early and have had ZERO issues with getting renewal by July 1. Mr. Masters admits he should have done these items earlier in case there was this delay but did not do so due to personal matters he was going through. Even with those matters he still did all of his coursework in a timely fashion and this delay was only because of his fingerprinting.

Mr. Masters first went to the BCI offices in London, Ohio on May 17, 2021 to submit his background check request. He was initially told that it would take approximately one week for this to be done. Mr. Masters became concerned after one week had passed without a word from BCI. He visited the BCI office on several occasions to inquire about the statue of his BCI background check. He was told that BCI was having computer system issues. On June 30, 2021 Mr. Masters went to BCI and obtained by hand his completed BCI criminal background check. He was advised by BCI that it could not fax the background check to ODE but that DR&C, as his school district, could fax this information to ODE. He went immediately from BCI to DR&C where he handed two (2) employees his completed BCI background check and requested that it be sent to ODE that day. See Union Exhibit 1.

It would be detrimental to the grievant and go against the spirit of the language of the collective bargaining agreement for the arbitrator to rule in favor of the State. This is a termination case and the grievant's career is at stake.

**Conclusion & Prayer for Relief**

Mr. Masters met his responsibility "to maintain current certification(s) required for his/her present classification and parenthetical title," and to do so "by July 1" as required by Section 10.01 of the CBA.

A review of Mr. Masters' licensure at ODE shows that he currently holds a 5 Year Professional Career Technical (4-12) license in the Teaching Field of Drafting Occupations. This licensure was issued to him on July 6, 2021 with an effective date of July 1, 2021.

At no time did Mr. Masters teach without a license. Mr. Masters was on an approximate 2-week inter-session (vacation) prior to his return to work on July 6, 2021 when the inter-session ended. Mr. Masters was advised by ODE on July 6, 2021 that his licensure renewal had been issued and he at no time taught without licensure. During the period of time that Mr. Masters took steps to deal with BCI and submit his BCI background check to DR&C on June 30, 2021 he was on inter-session time and not teaching.

For that and the other reasons listed above, the Association respectfully asks that this grievance be moved to arbitration to be determined on its merits.

## DISCUSSION

The arbitrator's role in this matter is to determine whether it is procedurally arbitrable and subject to arbitrable review and jurisdiction. Once it has been determined that the parties have submitted the subject matter of a dispute to arbitration, issues which grow out of a dispute and bear on its final resolution, should be left to an arbitrator." *John Wiley and Sons v. Livingston*, 376 U.S. 543, 84 S.Ct. 908, 918-19 (1964). The issue of a grievance's arbitrability is a question within the function and jurisdiction of arbitrators to decide. *City of Lincoln, Neb., and Lincoln Firefighters Ass'n, Local 644, Int'l Ass'n of Firefighters*, 00-2 Lab. Arb. Awards (CCH) P 3589 (Berquist 2000).

> In the final analysis, the issue of arbitrability must be determined by the arbitrator. This is especially true when issues of procedural arbitrability are in dispute. Essentially, in such circumstances, the function of an arbitrator is to decide whether an allegation of non-arbitrability is sound. This is often compared to the responsibility of a trial judge, who is asked to dismiss a complaint on motion for a directed verdict or failure to state a sustainable cause of action. Essentially, the decision on arbitrability by the arbitrator is part of his or her duties.

*Operating Eng'rs v. Flair Builders*, 406 U.S. 487 (1972).

In more routine disputes regarding arbitrability, arbitrators often face the same type of concerns that at times are raised by an employer. "Questions of procedural arbitrability, including

those related to the timeliness of a grievance under the provisions of a collective bargaining agreement, are decided by the arbitrator and not the courts." *The Common Law of the Workplace: The Views of Arbitrators,* § 2.24 (Theodore J. St. Antoine, 2nd ed., 2005).

> The position that arbitrators strain to avoid forfeiture expresses one side of a long-standing conflict between competing equities. On the one hand, the employer is correct that, where the contractual language established stringent time limits for the various steps of the grievance and arbitration procedure, arbitrators are generally inclined to construe such express requirement strictly, on the assumption that the parties mutually established time limits to promote expeditious handling of grievances. Time limits are designed to avoid stalls, surprises, and unreasonable delays and to encourage a reasonably speedy resolution of labor disputes, many arbitrators have routinely recognized. Where an agreement sets a specific time within which grievances must be processed, the time limits are viewed as self-imposed "statutes of limitations" and not just mere formalities.

*Cont'l Distilling Sales Co.,* 52 LA 1138, 1141 (Sembower 1969).

Arbitrators do not like to rule that a matter is not arbitrable because they view the central purpose of arbitration is to resolve disputes. Roger Abrams, "The Power Issue in Public Sector Arbitration." *Minnesota Law Review*, vol. 67, pp. 62-73 (1982). It is well settled that an Arbitrator must evaluate the Board's arbitrability objection in light of the long-standing federal labor policy favoring arbitration. And, in their authoritative treatise on labor arbitration, Elkouri & Elkouri note that:

> [*I*]*t has been said that as a general statement, forfeiture of a grievance based on missed time limits should be avoided whenever possible… while it is not for an Arbitrator to re-write the contract, if the contract is ambiguous insofar as time limits are concerned, since the law abhors forfeitures, the ambiguity should be resolved in favor of timeliness… [for example an arbitrator] interpreted a contract provision requiring the filing of a grievance within five days of the event to mean five working days.*

*How Arbitration Works, 8th Ed. 9-55.*

Because the arbitrator is a creature of the contract from which he derives his authority, he is also limited thereby and must, therefore, confine his decision as directed or prescribed. Although he may use his expertise in interpreting and applying the contractual provisions, the

arbitrator cannot substitute his own sense of equity and justice because his award must be grounded in the negotiated terms. The underlying question to be resolved is: "What should the parties mutually understand the relevant contract provision to mean in the specific circumstances giving rise to the parties' dispute?" The starting point is to determine what that language meant to them when the Agreement was drafted and mutually adopted. *Package Co. of Cal. Red Bluffs Molded Fibre Plant and United Paperworkers Int'l Union, Local 1876*, 91-2 Lab. Arb. Awards (CCH) P 8457 (Pool 1991). The first place to look to determine the intent of the parties is the contractual language itself, and where the language is clear and unambiguous, arbitrators must give effect to that plain language. *Communications Workers of Am., AFL-CIO, Local 621 and YP Tex. Yellow Pages L.L.C.,* 13-2 Lab. Arb. Awards (CCH) P 5932 (Holley 2013). The "plain meaning" principle of contract interpretation applies when, as in the present matter, there is specific language in a contract which speaks directly to and addresses the outcome of a contested issue. *Beacon Journal Pub. Co. and Graphic Communications Int'l Union, No. 42C*, 00-2 Lab. Arb. Awards (CCH) P 4548 (Ruben 1999).

If the words are plain and clear, conveying a distinct idea, then there is no occasion to resort to technical rules of interpretation, and the clear meaning will ordinarily be applied by arbitrators. *Colonial Baking Co. (Chattanooga, Tenn.) and Bakery, Confectionery and Tobacco Workers, Local 25*, 110 LA (Holley 1993). If the language of a contract is free from ambiguity, an arbitrator should effectuate the clearly expressed intent of the parties. *Duluth (Minn.) City and County Employees Credit Union and AFSCME Council 96, Local 3558*, 117 LA 28 (Befort 2002). In those circumstances, there is no need for an arbitrator to go beyond the face of a contract to settle a dispute. *QUADCOM 9-1-1 Pub. Safety Communications Sys. (Carpentersville, Ill.) and Local 73, Serv. Employees Int'l Union*, 113 LA 987 (Goldstein 2000). Even though the parties to an agreement may disagree as to its meaning, an arbitrator who finds the language to be unambiguous will enforce its clear meaning. *S. Council of Indus. Workers and Johnstone-Tombigbee Mfg. Co., Inc*., 00-1 Lab. Arb. Awards (CCH) P 3378 (Hovell 2000). The Union has successfully established and proven the facts necessary to support its claim. *Tenneco Oil Co*., 44 LA 1121, 1122 (Merrill 1965). The Union made a strong case for consideration of equity in this matter and that much of what happened to the Grievant was beyond his control, having

submitted his application for license renewal in May with the assurance that he would make the July 1st contractual deadline. Yet, a ruling that the language of Article 10.1 that contains a specific deadline is clear and unambiguous and to depart from it, absent evidence in support of a different approach, runs contrary to the principle of applying the expressed intent of the language. (Cincinnati Enquirer, 94 LA 1121, 1126 (Witney, 1990), Hemlock Pub. Sch. Bd or Educ., 83 LA 474, 477 (Dobry, 1984) The language of Article 10.1 was argued by the Association that its aim was directly related to teachers who "completely disregard their licensure renewal responsibilities." (Union brief, p. 7) While I respect this assertion and in particular the opinion of its representative, that is not what the straightforward wording conveys. (Union Ex. 2)

*The* language is clear and unequivocal in its wording, and it has existed for some time. Typically, in evaluating whether a grievance is arbitrable an arbitrator may attempt to evaluate the training and experience of the advocates in having agreed upon the language contained in the agreement, its precise wording, and the party's observance to it over time. If there is evidence of a more casual adherence to the language requirements, an arbitrator is likely to depart from applying it as it is literally stated. (Earth Grains Div., (Paris) 98 LA 632, 636 (Woolf, 1992), Sonoco Prods. Co. 95 LA 58, 62 (Heinz), 1990) Do the words of Article 10.1 intend to specifically deal with outliers, employees who for whatever reason, continually fail to adhere to state licensure requirements, prompting the need for specific deadlines and considerable managerial discretion in enforcing said deadlines? Was it not meant to be harshly imposed upon the employee who unintentionally or rarely fails to meet the July 1st deadline?

The arbitrator knows from extensive experience with the parties that the language of Article 10.1 was agreed upon by competent and experienced negotiators, representing major clients (OEA/NEA and the State of Ohio), who were likely very capable and deliberate in their work. And, if there are different meanings for agreeing to this language that was understood or conveyed at the time of its formation (e.g., to address chronically delinquent educators verses establishing a single "bright line rule" applicable to all) there is a lack of proof and mutual understanding of same and it is not discernable from the plain wording of Article 10.1. For that reason, the words of Article 10.1 must be applied with the knowledge that they are carefully

crafted and intentional. A second principle in contract interpretation is the tendency for arbitrators to favor contract interpretations that are consistent with applicable law. (Girard Coll., 71 LA 1050, 1054 (Kramer, 1978) That is indeed the case here, see Rule OAC 3301-24-08, and RC 5120.01.

The Grievant is a long-term employee and during this day and age, finding qualified educators appears to be even more of a challenge than in prior years. This is clearly an unfortunate situation for both the Grievant, who has lost his job and the State who must operate its program with one less experience teacher. However, it is also clear from the evidence that this was not a matter lacking forethought or forewarning. The Grievant had plenty of notice and according to the record, he had considerable experience with the renewal process, and he is well aware of his licensure requirements. Along with his colleagues he was given two specific written warnings approximately 11 months and again approximately 5 months before hand (8/7/2020 and 2/23/21). (Tab 3) In addition, recommendations were given to him regarding the suggested deadline of March 31st for timely submission of his renewal. Additionally, he should have been acutely aware of the fact that the COVID pandemic was a known disrupter of many types of public and private sector services. Also, in 2011, he failed to meet the July 1st deadline by over a month and faced termination, save the intervention of the Union, who came to his aid and was able to convince management to give him a second chance. (Tab 3)

While I can appreciate the fact that people can be distracted by traumatic events in their lives, yet what was at stake here was nothing less than the Grievant's livelihood. In spite of all of the warnings he again found himself in this situation. The arbitrator, adhering to the Agreement, must yield to the "bright line rule" language in Article 10.1 that limits a bargaining unit members grievance appeal rights to the Agency step as agreed to by the parties.

**AWARD**

The grievance is restricted by the requirements of Article 10.1 of the Agreement and *is only able to be grieved through Step 2 of the grievance process.*

Respectfully submitted to the parties this _____ day of December 2022,

_____

**Robert G. Stein, Arbitrator**