SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Hall of Justice

California Attorneys, Administrative Law Judges and Hearing Officers in State Employment Plaintiff/Petitioner(s) vs. California Department of Human Resources Defendant/Respondent(s)	No. 34-2023-00334685-CU-PT-GDS Date: 06/28/2023 Time: 11:05 AM Dept: 53 Judge: Timothy Salter ORDER re: Ruling on Submitted Matter

The Court, having taken the matter under submission on 06/27/2023, now rules as follows:

On February 14, 2023, CASE commenced this action when it filed its Petition to Compel Arbitration. CASE is the exclusive collective bargaining representative of approximately 4,500 legal professionals in State Bargaining Unit 2 ("BU 2"). (Pet. ¶ 1.) CASE alleges that in or about August 2022, CASE and Respondent California Department of Human Resources ("CalHR" or "Respondent") entered into a written Memorandum of Understanding ("MOU") which established the terms and conditions of employment for BU2. (*Id*. at ¶ 2; Ex. 1.) The MOU covers the period of July 1, 2022 through June 30, 2025. (*Ibid*.)

CASE contends that the grievance and arbitration provisions appear in Article 7 of the MOU, and "Step 4" of the Grievance Procedure (found in Section 7.11), provides "[i]f the grievance is not resolved at Step 3 . . . CASE shall have the right to submit the grievance to arbitration." (*Id*. at ¶ 7.) Throughout the COVID-19 pandemic, CASE asserts that most State employees, including majority of the BU 2 employees, were ordered to work from home, and further, majority of the BU 2 employees continue to telework unless required to attend hearings, court appearances, or perform other in-person tasks. (*Id*. at ¶ 8.)

Starting in 2021 and continuing in 2022, a few State departments that employ BU 2 legal professionals began to mandate that BU 2 employees return to work in the office. (*Id*. at ¶ 9.) CASE alleges that the mandates were similar in that they all required an arbitrary number of days in the office, without regard to the actual operational needs of the department, and without regard that BU 2 employees had been successfully and efficiently performing their duties remotely for more than two years. (*Ibid*.)

At each of the departments that issued the "return to office" mandates, CASE requested on behalf of all BU 2 employees in that department that they be allowed maximum telework flexibility, with the express exception that they would be required to come into the office, if necessary, to perform duties that could not be done remotely. (*Id*. at ¶ 10.)

CASE made substantively identical requests to each department, and each request was denied "citing a variety of questionable operational needs." (*Id*. at ¶ 11.) After the requests were denied, CASE filed "all affected" grievances on behalf of all BU 2 employees, at each respective

department, under Section 6.4 of the MOU. (*Id*. at ¶ 12.) CASE explains that Section 6.4 governs telework, and provides: "Employee requests to telework shall not be denied except for operational needs." (*Ibid*.) That section further provides "[e]mployees who believe their request to telework was denied in violation of this subsection, may file a grievance that can be appealed to the fourth level of the grievance procedure." (*Ibid*.)

As to each all-affected grievance, CASE pursued the various steps of the Grievance Procedure, and the grievances were denied at each step, and although each grievance was filed at a different point in time, all grievances were eventually appealed to the fourth level of the grievance. (*Id*. at ¶ 13.)

DISCUSSION

Through the instant motion, CASE seeks to compel this action to arbitration pursuant to the grievance and arbitration provisions of the MOU between the parties. Specifically, CASE contends that it has an agreement with CalHR which specifies that disputes over telework can be "appealed to the fourth level of the grievance procedure," and thus, according to CASE, should be arbitrated.

Legal Standard

A written agreement to submit a controversy to arbitration is valid, enforceable, and irrevocable consistent with standard contract principles. There is a strong public policy favoring the enforcement of arbitration agreements. (Code Civ. Proc., §1281; *Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 706.) On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy, the court shall order the petitioner and the respondent to arbitrate the matter if it determines that an agreement to arbitrate the controversy exists, unless it determines that: (a) the right to compel arbitration was waived by the petitioner; (b) grounds exist for the revocation of the agreement; or, (c) a party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact. (Code Civ. Proc., §1281.2; *Rosenthal v. Great Western Fin. Securities Corp*. (1996) 14 Cal.4th 394, 413.)

"Under both federal and state law, the threshold question presented by a petition to compel arbitration is whether there is an agreement to arbitrate." (*Sparks v. Del Mar Child and Family Svcs*. (2012) 207 Cal.App.4th 1511, 1517.) "Absent a clear agreement to submit disputes to arbitration, courts will not infer that the right to a jury trial has been waived." (*Id*. at p. 1518.)

Telework Request/Grievance Procedure

Section 6.4 provides in pertinent part: "[e]mployee requests to telework shall not be denied except for operational needs. When teleworking requests are denied, the reason shall be put in writing, if requested by the employee. **Employees who believe their request to telework was denied in violation of this subsection, may file a grievance that can be appealed to the fourth level of the grievance procedure**." (Pet., Ex. 1 (MOU) at § 6.4.B [emphasis added].)

Article 7 of MOU, entitled "Grievance and Arbitration," sets forth the following Grievance Procedure:

7.6 Informal Discussion

An employee grievance initially shall be discussed with the employee's immediate supervisor. Within fourteen (14) calendar days, the immediate supervisor shall give their decision or response.

7.7 Formal Grievance – Step 1

A. If an informal grievance is not resolved to the satisfaction of the grievant, a formal grievance may be filed no later than:

1. Thirty (30) calendar days after the employee can reasonably be expected to have known of the event occasioning the grievance;

2. Twenty-one (21) calendar days after receipt of the decision rendered in the informal grievance procedure.

B. However, if the informal grievance procedure is not initiated within the period specified in Item (1) above, the period in which to bring the grievance shall not be extended by Item (2) above.

C. A formal grievance shall be initiated in writing on a form provided by the State and shall be filed with a designated supervisor or manager identified by each department head as the first level of appeal.

D. Within thirty (30) calendar days after receipt of the formal grievance, the person designated by the department head as the first level of appeal shall respond in writing to the grievance.

E. No contract interpretation or grievance settlement made at this stage of the grievance procedure shall be considered precedential.

7.8 Formal Grievance - Step 2

If the grievant is not satisfied with the decision rendered pursuant to Step 1, the grievant may appeal the decision within twenty-one (21) calendar days after receipt to the department head or designee.

Within thirty (30) calendar days after receipt of the appealed grievance, the person designated by the department head as the second level of appeal shall respond in writing to the grievance. A copy of the written response shall be sent concurrently to CASE.

7.9 Formal Grievance - Step 3

A. If the grievant is not satisfied with the decision rendered at Step 2, the grievant may appeal

the decision within twenty-one (21) calendar days after receipt to the Director of the Department of Human Resources or designee.

B. Within thirty (30) calendar days after receipt of the appealed grievance, the Director of the Department of Human Resources or designee shall respond in writing to the grievance.

7.11 Formal Grievance - Step 4

A. If the grievance is not resolved at Step 3, within thirty (30) calendar days after receipt of the fourth level response, CASE shall have the right to submit the grievance to arbitration. If the grievance is not submitted to arbitration within 30 calendar days after receipt of the 3rd level response or when the 3rd level response was due (if not mutually extended), it shall be considered withdrawn with prejudice.

B. The State shall assign a representative to the matter and provide electronic notice of the assignment to CASE within 30 calendar days of receipt of CASE'S request to arbitrate the grievance.

C. Within fourteen (14) calendar days after the State provides CASE with notice of the representative assigned to represent the State pursuant to paragraph B above, or at a date mutually agreed to by the parties, the parties shall meet to select an arbitrator. If no agreement is reached on the selection of an arbitrator the parties shall, immediately and jointly, request the State Mediation and Conciliation Service to submit to them a panel of nine (9) arbitrators from which the State and CASE shall alternately strike names until one name remains and this person shall be the arbitrator. If the parties cannot agree from which service to obtain the list of arbitrators, the party requesting arbitration shall pay all costs, if any, of obtaining the list of arbitrators.

D. The arbitration hearing, itself, shall be conducted in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association. The cost of arbitration shall be borne equally between the parties.

E. An arbitrator may, upon request of CASE and the State, issue their decision, opinion, or award orally upon submission of the arbitration. Upon the request of either party, the arbitrator will be required to put their decision, opinion, or award in writing, with copies to each party.

F. The arbitrator shall not have the power to add to, subtract from, or modify this MOU.

Only grievances as defined in Section 7.2(a) of this Article shall be subject to arbitration. In all arbitration cases, the award of the arbitrator shall be final and binding upon the parties.

(*Id*. at §§ 7.6-7.11.)

CASE argues that because language in Section 6.4, provides telework disputes can be appealed "to the fourth level," telework disputes are appealable to "Step 4" of the Grievance Procedure. As Step 4 provides that "CASE shall have the right to submit the grievance to arbitration," CASE contends that the telework disputes at issue should be subject to arbitration. CASE states

that after the grievances were denied at CalHR's level of review, CASE properly demanded arbitration of the disputes.

In opposition, CalHR argues that although arbitration is labeled as "Step 4" of the Grievance Procedure, the "overarching" Grievance Procedure consists of "five stages of review, with arbitration being the fifth stage." (Oppos., p. 12: 19-21 [citing to MOU at pp. 37-39].) According to CalHR, the Grievance Procedure is as follows:

1. 7.6 Informal Discussion (review by immediate supervisor)
2. 7.7 Formal Grievance – Step 1 (appeal to designated manager)
3. 7.8 Formal Grievance – Step 2 (appeal to department head)
4. 7.9 Formal Grievance – Step 3 (appeal to CalHR)
5. 7.11 Formal Grievance – Step 4 (appeal to arbitration)

(*Id*. at p. 12: 23-25.)

Thus, per CalHR's calculation, despite arbitration being labeled "Step 4" of the Grievance Procedure, this step would actually constitute the *fifth* level of the Grievance Procedure. CalHR argues that "[i]f informal resolution is counted appropriately as a stage in the grievance process, then 'fourth level' refers to CalHR—not arbitration." (Oppos., p. 7: 18-20.) To further support this assertion, CalHR points to the bargaining history, dating back to as far as 1999, when Section 6.4 was first. CalHR argues that the "historical interpretation" of Section 6.4 confirms that the parties never intended to arbitrate the same. The Court has considered the "historical interpretation" of Section 6.4 but finds that a more important factor to consider in determining the parties' intent can be ascertained directly from the language of the MOU applicable to this action.

"When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible . . ." (Civ. Code, § 1639.) The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other. (Civ. Code, § 1641.) "Any contract must be construed as a whole, with the various individual provisions interpreted together so as to give effect to all, if reasonably possible or practicable." (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith* (1998) 68 Cal.App.4th 445, 473.)

Here, the language of Section 6.4 expressly states that if teleworking requests are denied, "[e]mployees who believe their request to telework was denied in violation of this subsection, may file a grievance that can be **appealed to the fourth level of the grievance procedure**." (MOU, § 6.4.B.) As highlighted above, the Grievance Procedure is *specifically* itemized as four total steps (Step 1 to Step 4). Accordingly, a plain reading of these two sections together would indicate the parties intended the teleworking disputes of Section 6.4 to be appealable to **Step 4** of the Grievance Procedure, and thus, be subject to arbitration.

In disputing this position, CalHR argues that language in Step 4 seemingly refers to the prior step (Step 3) as the "fourth level response." Step 4 provides: "[i]f the grievance is not resolved at Step 3, within thirty (30) calendar days after receipt of the **fourth level response**, CASE shall have the right to submit the grievance to arbitration . . . (MOU, § 7.11.A [emphasis added].) CalHR

asserts that this language references Step 3, and by referring to Step 3 as the "fourth level response," this would seemingly corroborate their position that there are actually *five* steps in the Grievance Procedure: "'fourth level' clearly and indisputably refers to CalHR - not arbitration." (Oppos., p. 12: 10-11.) As such, CalHR avers that the phrase "fourth level" as used in Step 4 (in Section 7.11) should be given the same meaning in Section 6.4. However, as CASE points out, this interpretation seems inconsistent with language from the same section. Indeed, additional language in Step 4 references Step 3 as the "3rd level response": If the grievance is not submitted to arbitration within 30 calendar days after receipt of the **3rd level response** or when the **3rd level response** was due (if not mutually extended), it shall be considered withdrawn with prejudice. (MOU, § 7.11 [emphasis added].)

Additionally, language from other steps in the Grievance Procedure corroborate that there are only **four steps**. For example, in describing procedure for Step 1, language in that section indicates "[w]ithin thirty (30) calendar days after receipt of the formal grievance, the person designated by the department head as the **first level** of appeal shall respond in writing to the grievance." (MOU, § 7.7.D [emphasis added].) Consistent with this numerical progression, in describing procedure for Step 2, language in that section indicates "[w]ithin thirty (30) calendar days after receipt of the appealed grievance, the person designated by the department head as the **second level** of appeal shall respond in writing to the grievance . . ." (*Id*. at § 7.8 [emphasis added].) Accordingly, as it appears there are only four steps in the Grievance Procedure, the "fourth level," as used in Section 6.4, regards Step 4 of the Grievance Procedure.

Reviewing the contract as a whole provides further clarity. In other provisions of the MOU, where the parties intended for Step 3 (CalHR level) to be the "final level," the parties included additional language wherein they expressly stated the same. The Court cannot ignore the fact that throughout the MOU, where the parties intended the CalHR level to be the final level, there is express language such as "shall not be subject to arbitration," "shall be final," or "there may be no further appeals":

The Telework Stipend Program is **grievable through the CalHR level. This program shall not be subject to arbitration. Any decision reached at the CalHR level shall be final."** (MOU, § 5.13.C [emphasis added].)

This section concerning flexible working hours and reduced work time is subject to the grievance procedure **up to and including the third level of review. It shall not be subject to arbitration**. (*Id*. at § 6.3.B [emphasis added].)

Disputes regarding the denial of the use of PLP 2020 time may be appealed through the grievance procedures. **The decision by the Department of Human Resources shall be final and there may be no further appeals**. (*Id*. at § 9.19 [emphasis added].)

Notably missing from Section 6.4 is any similar express language. If the parties did in fact intend for Section 6.4 to *only* be appealable to the CalHR level (and not subject to arbitration), it curious why the parties chose not to include such express language similar to what was used throughout the entirety of the MOU.

Grievances Brought by CASE

Alternatively, CalHR argues in opposition that the petition must be denied as Section 6.4 only covers "individual employee requests" for telework, and not "requests for wholesale changes to the state's telework policies." (Oppos., p. 17: 21-22.) According to CalHR, because the grievances here are brought by CASE on behalf of *all* BU2 employees, such requests would not constitute "individual" employee requests to telework as covered by Section 6.4. (Oppos., p. 18: 5-10.) This argument is not well taken.

As CASE aptly highlights in reply, Section 7.2 expressly provides that a "grievance is a dispute between the State and CASE, or between the State and one or more employees, involving the interpretation, application, or enforcement of the express terms of this MOU." (MOU, § 7.2.A.) Considering this language, the Court is not persuaded that the sole fact the grievances are brought by CASE on behalf of multiple employees would otherwise exempt applicability of Section 6.4.

Presumption of Arbitrability

The Court further notes, in the context of disputes arising under collective bargaining agreements, such is the case here, there is a presumption of arbitrability. In *City of Los Angeles v. Superior Court* (2013) 56 Cal.4th 1086, 1097, the California Supreme Court explained that:

"[f]or disputes arising under collective bargaining agreements, there is a 'presumption of arbitrability,' under which a court should order arbitration of a grievance 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.' (*AT&T Technologies v. Communications Workers* (1986) 475 U.S. 643, 650 [quoting *United Steelworkers v. Warrior & Gulf Co.* (1960) 363 U.S. 574, 582-583.) 'This presumption of arbitrability for labor disputes recognizes the greater institutional competence of arbitrators in interpreting collective-bargaining agreements, "furthers the national labor policy of peaceful resolution of labor disputes and thus best accords with the parties' presumed objectives in pursuing collective bargaining."'"(*AT&T*, *supra*, 475 U.S. at p. 650 [quoting *Schneider Moving & Storage Co. v. Robbins* (1984) 466 U.S. 364, 371-372].)

Because of this central role played by arbitration in the interpretation and enforcement of labor agreements, '[a]part from matters that the parties specifically exclude, all of the questions on which the parties disagree must . . . come within the scope of the grievance and arbitration provisions of the collective agreement.' (*United Steelworkers*, *supra*, 363 U.S. at p. 581.) Moreover, in deciding whether a particular labor dispute is covered by a collective bargaining agreement's arbitration provision, '[d]oubts should be resolved in favor of coverage.'" (*Id*. at p. 583.)

In *City of Los Angeles*, employees represented by a union filed a grievance against the City of Los Angeles arguing that the City's adoption of a mandatory furlough program violated the wage and workweek provisions of the MOUs governing their employment. (*City of Los Angeles*, *supra*, 56 Cal.4th.) In support of the grievance, the Union relied on provision of the MOUs, which provided, that "[e]mployees shall be compensated for 40 hours per week at the regular hourly rate for their class and paygrade" and which referenced salary schedules based on a work

year consisting of 52 weeks of 40 hours each. (*Id*. at pp. 1097-1098.) The MOU's arbitration provision defined "grievance" as "a[ny] dispute concerning the interpretation or application of this written MOU or departmental rules and regulations governing personnel practices or working conditions applicable to employees covered by this MOU." The final step of the Grievance Procedure was to submit the grievance to arbitration. (*Ibid*.)

The High Court held that the employee grievance was a "dispute concerning the interpretation" of the MOU because: "it was a dispute concerning the interpretation of the MOUs' provisions generally establishing a 40-hour workweek, reserving to the City the right to 'relieve City employees from duty,' reserving to the City the right to 'take all necessary actions to maintain uninterrupted service to the community and carry out its mission in emergencies,' and allowing the City to exercise its reserved management rights 'except as specifically set forth herein.' Because the dispute concerns the interpretation of the MOUs, it is one that the City is contractually obligated to arbitrate unless the dispute falls within an express exemption from arbitration." (*Id*. at p. 1099.)

DISPOSITION

For the reasons explained herein, and given the presumption of arbitrability in the present circumstance, the Court concludes that the telework disputes pursuant to Section 6.4 of the MOU are subject to arbitration. As such, CASE's motion to compel arbitration is GRANTED.

This minute order is effective immediately. No formal order or other notice is required. (Code Civ. Proc., §1019.5; California Rules of Court, rule 3.1312.)

Certificate of Mailing is attached.

Dated: 06/28/2023

Timothy Salter / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO	Reserved for Clerk's File Stamp **FILED** Superior Court of California County of Sacramento 06/28/2023 P. Lopez, Deputy
COURTHOUSE ADDRESS: Gordon D. Schaber Superior Court 720 Ninth Street, Sacramento, CA 95814	
PLAINTIFF/PETITIONER: California Attorneys, Administrative Law Judges and Hearing Officers in State Employment	
DEFENDANT/RESPONDENT: California Department of Human Resources	
CERTIFICATE OF MAILING	CASE NUMBER: 34-2023-00334685-CU-PT-GDS

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Order re: Ruling on Submitted Matter upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in , California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Dated: 06/28/2023

By: */s/ P. Lopez*
P. Lopez, Deputy Clerk