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Hanford Mission Integration Solutions, 2025 BNA LA 46

BEFORE SHIANNE SCOTT, ARBITRATOR

IN THE MATTER OF THE ARBITRATION BETWEEN

HANFORD GUARDS UNION, LOCAL 21, on behalf of A__, Grievant,

Union

and

HANFORD MISSION INTEGRATION SOLUTIONS,

Employer

OPINION AND ORDER DETERMINING THE SUBSTANTITVE ARBITRABILITY OF THE UNDERLYING GRIEVANCE (GRIEVANCE NO. 24-004)

June 13, 2025

BNA Headnotes

LABOR ARBITRATION

SUMMARY

[1] Arbitrability – Discharge - Probationary employees ►100.0765 ►100.40

Arbitrator Shianne Scott ruled that the grievant was a probationary employee of Hanford Mission Integration Solutions on the date of his discharge, even though he had voluntarily resigned over a year prior to being rehired. She held that his grievance is not substantively arbitrable and concluded she was precluded from hearing the dispute. Arbitrator Scott found that under the clear language of the CBA the grievant lost all his prior service credits when he quit, and if rehired, as he was, he must be considered a probationary employee. Additionally, the employer consistently treated the grievant as a new employee with probationary status in compliance with the CBA, re-set his seniority date to match the date of his rehire, and required him to complete refresher training courses to become an SPO II. Finally, the CBA specifically states that the arbitrator doesn't have authority to determine the discharge of an SPO during their probationary period.

APPEARANCES:

On behalf of the Union:

Jackson Millikan, Esq., Of Counsel
Streepy Lemonidis Consulting & Law Group
701 Fifth Avenue, Suite 4200
Seattle, Washington 98104
E-mail: jackson@slclg.law[1]
Jared Paulsen, Esq., Of Counsel
Thenell Law Group
6 Centerpointe Dr., Suite 450
Lake Oswego, OR 97035
E-mail: Jared@thenellawgroup.com

On behalf of the Employer:

Hong Chen, Esq.
Hanford Mission Integrated Solutions
P.O. Box 943, MSIN H1-21
Richland, WA 99352

E-mail: Hong_Chen@rl.gov

INTRODUCTION

This Opinion and Order Determining the Substantive Arbitrability of the Underlying Grievance (this Order) arises pursuant to the Labor Agreement (the Agreement) between the Hanford Guards Union Local 21 (HGU, or the Union), on behalf of A__ (the Grievant or A__), and Hanford Mission Integration Solutions (HMIS, the Company, or the Employer) (collectively, the Parties), under which Shianne Scott was appointed to serve as Arbitrator, and under which this Order shall be "final, binding and conclusive"[2] amongst the Parties.

PROCEDURAL HISTORY

On April 29, 2024, the Union submitted a Step III "emergency grievance"—Grievance No. 24-004 —in response to A__'s termination by the Employer on April 23, 2024 (the Grievance). The Employer denied the Grievance. Having been unable to mutually resolve the Grievance, the Union referred the Grievance to arbitration on July 14, 2024.

Following the undersigned's appointment to serve as Arbitrator, the Parties scheduled a two-day in-person hearing on the merits of the Grievance for July 15, and 16, 2025. However, on March 6, 2025, the Employer proposed a briefing-only schedule to address its contention that the Grievance is not substantively arbitrable.[3] Presumably, the Parties expected that a hearing on the merits would be held as scheduled if the Arbitrator finds that the Grievance is substantively arbitrable.

Following receipt of the Employer's briefing proposal concerning the substantive arbitrability issue, the Arbitrator instructed the Employer's counsel to meet-and-confer with the Union's counsel and attempt to agree on a briefing schedule.

On March 26, 2025, the Employer's counsel notified the Arbitrator that the Parties reached agreement on a briefing schedule, as follows:

> Initial briefs — 4/29 at 2 pm Pacific Time (4 weeks from now)
>
> Reply briefs — 5/14 at 2 pm Pacific Time (2 weeks for reply briefs)
>
> Arbitrator decision — 6/16 by 5 pm Pacific Time (4 weeks from our final briefs)

The Arbitrator approved the briefing schedule previously agreed upon by the Parties.

The Parties both timely presented their Initial Briefs and Reply Briefs. The undersigned has carefully reviewed the Parties' respective positions regarding the substantive arbitrability of the Grievance, as well as the relevant language in the Agreement, the accompanying exhibits and the cases cited by the Parties. This Order is timely issued in accordance with the Parties' briefing schedule.

THE ISSUES TO BE DECIDED

The Parties did not stipulate to a statement of the issues to**[*2]** be decided. The Employer's proposed statement of the issues is:

....whether A__ was a probationary employee on April 23, 2024, when he was still assigned to the Basic Training Academy to complete the necessary training and had not obtained Human Reliability Program certification.[4]

The Union's statement of the issue is:

Whether Grievant was a probationary employee on the date of his termination (4/23/2024).[5]

I adopt the Union's statement of the issue to be decided.

RELEVANT AGREEMENT PROVISIONS

The Employer and the Union are Parties to the Agreement, in effect November 1, 2021, through November 1, 2024, which contains the following relevant articles:

ARTICLE 1 — RECOGNITION

1. The Company agrees to recognize the Union as the sole and exclusive collective bargaining agency as to rates of pay, hours of work and other conditions of employment for all Security Police Officers (SPOs) employed by The [sic] Company at Richland, Washington as derived through National Labor Relations Board Certification No.19-RC-691 by which the Union is designated as the exclusive collective bargaining representative but excluding all other employees and supervisors.

2. This Agreement will be binding upon the parties hereto, their successors, and assigns.

***

ARTICLE 5 - JOB DEFINITION AND QUALIFICATIONS

GENERAL

1. The Company will determine a SPO's (SPO I, SPO II or SPO III) qualifications for initial employment, and for continued employment, except as otherwise limited by this Agreement, except for the determination of medical qualifications and mental standards under 10 CFR Part 1046, which will be made by the Occupational Medical Service Provider (OMSP). If required by DOE orders, determination of suitability for receiving and maintaining a DOE "Q" clearance and Human Reliability Program (HRP) access will be made by the DOE in accordance with their regulations.

2. SPOs (SPO I, SPO II or SPO III) will meet initially and continue to meet the required standards and qualifications as set forth in the Code of Federal Regulations, 10 CFR Part 1046 (Medical, Physical Readiness, Training and Access Authorization Standards for Protective Force Personnel), or as hereafter revised.

***

PART I — CLASSIFICATIONS

1. The SPOs covered by this Agreement will be classified as follows:

Security Police Officer I
Security Police Officer II
Security Police Officer III

A. Classifications

***

A Security Police Officer II is a uniformed Security Police Officer who meets all SPO I requirements and the higher physical fitness standards (Advanced Readiness Standard), as defined in 10 CFR Part 1046. Additionally, they meet the weapons and training standards defined in the DOE Order 473.3A chg. 1, "Protection Program Operations" or as hereafter revised. A SPO II may be assigned to a tactical assignment.

***

C. Training

Prior to initial assignment to duty, each SPO will successfully complete a course or courses of basic instruction and qualification as set forth in 10 CFR Part 1046 and the DOE Order 473.3A chg. 1, or as hereafter revised.

D. Medical Evaluations

SPOs**[*3]** are required to have an annual physical and mental examination. These examinations and any subsequent follow-up to complete the medical clearance process will be paid by the Company and provided through the OMSP. SPOs will attend these examinations on Company time. If a SPO is required by the Company to visit the OMSP for a Fitness for Duty examination, that also will be done on Company time and at the Company's expense. Before undertaking or engaging in physical training activities to enable a SPO to meet the requirements of 10 CFR Part 1046 and the DOE Order 473.3A chg. 1, or as hereafter revised, a SPO must be cleared for such activity by the OMSP.

SPOs may discuss their examinations with the examining physician. SPOs who are unable to perform their duties because of temporary or permanent physical disabilities determined by the OMSP will be subject to the conditions set forth below.

Personnel who need to attend to personal matters between themselves and the OMSP, or the DOE to qualify for, or to retain their medical and/or security clearances will do so on their own time.

***

2. Tactical Response Resources

The Company will establish plans for the development of, and deployment of SPO II and SPO III resources. SPO II and SPO III resources will assure adequate emergency response to events associated with the attempted or actual sabotage of nuclear weapons, theft of nuclear weapons or test devices, Category I quantities of SNM, other selected strategic materials and associated facilities, labor disturbances and other situations threatening the security of the facility.

***

D. Special Training Requirements

SPO II and SPO III (candidates and/or incumbents) must successfully complete special training, including training and qualifications with firearms and other special weapons and equipment, to become and remain eligible for tactical assignments. Such firearms qualifications will include obtaining and retaining, with Company issued weapons, a minimum qualifying score on each of the approved firearms qualifications courses. The Company will administer the specialized training programs as necessary.

ARTICLE 14 — SENIORITY

1. The seniority of each SPO is their relative position with respect to other SPOs in their seniority group. Seniority will not determine service credits, which are outlined in Article 15 entitled "Continuity of Service". [sic]

***

4. Seniority does not apply to promotions or transfers to jobs outside the bargaining unit.

5. New SPOs will be considered probationary employees while assigned to the Basic Training Academy and for a period of one hundred eighty (180) calendar days after completion of the Basic Training Academy. If "Q" clearance has not been issued within the first ninety (90) days after graduation from the Basic Training Academy, a maximum of**[*4]** ninety (90) days will be added once the "Q" clearance has been issued. During this time, they will acquire no seniority credit; however, at the end of this period, if retained, they will be placed on the seniority list and their seniority will start from their date of hire. The Union may represent such SPOs for grievances relating to pay, hours of work or conditions of employment.

***

ARTICLE 15 - CONTINUITY OF SERVICE

1. Definition of Terms

A. "Continuity of Service" designates the status of a SPO who has service credits totaling fifty-two (52) or more weeks.

B. "Continuous Service" designates the length of each SPOs continuity of service and will equal the total service credits of a SPO who has "continuity of service." For those SPOs transferring directly to the Company from Fluor Hanford, continuous service will include continuous service with Westinghouse Hanford Company and Rockwell Hanford Operations.

C. "Service credits" are credits for periods during which the SPO is actually at work for the Company or for periods of absence for which credit is granted (as provided in Section 3).

D. "Absence" is the period a SPO is absent from work either with or without pay (except a paid vacation period) computed by subtracting the date following the last day worked from the date the SPO returns to work. Each separate continuous period away from work will be treated as a single absence from work.

2. Loss of Service Credits and Continuity of Service

Service credits previously accumulated and continuity of service, if any, will be lost whenever SPOs:

A. Quit, resign, or are discharged.

***

3. Service Credits

Service credits for each SPO will be granted for periods during which the SPO is actually at work for the Company and for absences as follows:

***

B.

***

If SPOs who have lost prior service credits or continuity of service are reemployed, they will be considered new SPOs and will not receive service credits (unless all or part of prior service credits are restored) for any time prior to the date of such reemployment.

***

ARTICLE 20 — ARBITRATION

1. Any grievance which remains unsettled after having been fully processed pursuant to the provisions of Article 19 - Grievance Procedure and which involves either,

A. The interpretation or application of a provision of this Agreement or

B. A disciplinary penalty (including discharge) imposed on or after the effective date of this Agreement, which is alleged to have been imposed without just cause, may be submitted to arbitration provided written application is made within sixty (60) business days after the final decision is given at the Step III level of the grievance procedure.

2. For the purpose of proceedings, within the scope of B. above, the standard to be applied by an arbitrator to cases involving disciplinary penalty (including discharge) is that such penalties will be imposed only for just cause. No arbitrator will have the authority**[*5]** to review, revoke, modify or enter any award with respect to:

A. The discharge of SPOs during their probationary period as referenced in Article 14[.]

***

7. Each party will bear its respective expenses. The expenses and fee of the arbitrator will be shared equally by the Union and the Company.

8. The arbitrator will not have the power to add to, disregard or to modify any of the terms of this Agreement or any Supplemental Agreement of the parties.

9. The arbitrator will not make any decisions that conflict with security regulations adopted by the DOE.

10. The decision of the arbitrator will be final, binding and conclusive.

FINDINGS OF FACT

After a thorough review and careful consideration of the Parties' Initial and Reply Briefs and the documentary evidence presented by the Parties, the undersigned makes the following Findings of Fact:

The Parties

Hanford Mission Integration Solutions (the Employer, the Company, or HMIS) is a Department of Energy (DOE) contractor that provides site services "as part of the One Hanford cleanup mission."[6] In accordance with Article 1, the Hanford Guards Union Local 21 (the HGU, or the Union) "is the sole and exclusive collective bargaining agency as to rates of pay, hours of work and other conditions of employment for all Security Police Officers (SPOs)." A__ (A__, or the Grievant) was initially hired by the Employer to work as a SPO II on May 2, 2022.

A__'s Work History with the Employer

Based on the Parties' briefs and the documentary evidence, A__'s initial hire date, and the following points are not in contention:

• The Basic Training Academy requires SPOs to undergo sixteen weeks of training, as well as a physical fitness test, secured firearms qualifications, and fulfill additional basic training requirements. SPOs must also obtain "Q" clearance, as well as Human Reliability Program (HRP) certification.

• The HRP, established pursuant to 10 C.F.R. Part 712, is a security program intended to ensure that SPOs granted access to special nuclear materials, explosive devices, or secured facilities meet the most rigorous standards of reliability, including both physical and mental fitness.

• Following his hire date on May 2, 2022, A__ graduated from the United States Department of Energy Training Center (the Basic Training Academy, or Tactical Response Force (TRF)-100)), on August 12, 2022.

• A__ was granted "Q" clearance on August 29, 2022.

• A__ obtained his HRP certification on September 1, 2023.

• A__ was reassigned from the Basic Training Academy on September 26, 2022.

• The Employer placed A__ at an official post on September 27, 2022.

• Just over a year later, A__'s "Q" clearance was revoked on September 28, 2023, following his voluntary resignation on the same date.

• The Employer officially rehired A__ on March 4, 2024.

• The rehire letter states, in pertinent part:
This position has been identified as part of the Human Reliability Program (HRP) as defined under 10 CFR 712. Employees occupying a HRP role will be enrolled in a security and safety reliability**[*6]** program designed to ensure that individuals meet the highest standards of reliability and physical and mental suitability.

• A__ took refresher courses between March 7, 2024 and April 10, 2024, in order to requalify to work as a SPO II.

• A__'s "Q" clearance was reinstated on March 27, 2024.

• On April 23, 2024, the Employer terminated A__ because of an incident that occurred on March 28, 2024 (one day after A__ received "Q" clearance).

• The first sentence of the termination letter states: "This letter is to inform you that your probationary employment with Hanford Mission Integration Solutions (HMIS) is terminated effective immediately.

• As of April 1, 2024, A__'s seniority date was March 4, 2024.

• As of April 23, 2024, A__ had not received HRP re-certification.

• As of April 23, 2024, A__ was assigned to work at the Hammer facility because he had not yet received HRP re-certification.

The Parties' Dispute

The Parties' dispute centers on the events that unfolded after the Employer reinstated A__ as a SPO II on March 4, 2024. The Union asserts that A__ was *not* a probationary employee as of April 23, 2024, because A__ was terminated on the 620th day following his graduation from the Basic Training Academy on August 12, 2022.[7]

On the other hand, the Employer asserts that A__ was still a probationary employee, primarily because A__ had not yet obtained his HRP re-certification as of his termination date, and because A__ had not yet fulfilled all the requirements for a probationary employee after he was rehired. The Employer argues that A__ was therefore a probationary employee who is not subject to the "just cause" provisions in Article 20.[8]

The Union acknowledged that A__ had not obtained his HRP re-certification as of April 23, 2024 as indicated in its demonstrative exhibit, which states: "Q clearance granted **3/27/2024** But still waiting for HRP cert."[9] Notably, the Union also stated in its Reply Brief:

> If this matter proceeds in July, the Union will demonstrate that Grievant had completed his refresher courses but remained stuck in limbo at the Hammer facility awaiting his HRP certification, as this often slow process involves both the Employer and the Department of Energy.[10]

OPINION

Who Has The Burden of Proof?

In general, the union has the burden of proof in a contract interpretation case.[11] Citing this general rule, the Employer asserts that the *Union* is required to prove whether A__ "was properly classified as a probationary employee under Article 14, Section 5 of the CBA and whether this matter is arbitrable under Article 20, Section 2."[12]

While the Employer raises a valid argument, I concur with the Union's position: it is well-settled that when arbitrability is contested on substantive grounds, the burden of proof rests with the employer.[13] Accordingly, in this situation, although the burden typically rests with the union to demonstrate the correctness of its interpretation when it files a contract interpretation grievance, in this case, it is the *Employer* who bears**[*7]** the burden of establishing that its interpretation of the Agreement precludes the Arbitrator from reaching the merits of the Grievance.

What is the Employer's Quantum of Proof?

It is well-established in labor law jurisprudence that the standard of proof in a contractual dispute is the preponderance of the evidence standard.[14] A preponderance of the evidence standard is defined as:

> The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior

> evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.[15]

For purposes of this Order, the undersigned applies the preponderance of the evidence standard concerning the Employer's burden of proof.

The "Plain Meaning Rule" Applies to this Order

Before presenting the rationale underlying the conclusions set forth below, the Arbitrator affirms her alignment with the prevailing view among labor arbitrators, namely that:

> ...applying *the plain and most common meanings* of the words promotes stability in contractual relationships and minimizes the need for extended factual inquiry into what the parties may have intended or believed.[16]

Indeed, as famously stated by Arbitrator Carlton J. Snow:

> Application of what has been characterized as *the plain meaning rule* as a standard of contract interpretation requires that the meaning of contractual language be determined solely by attaching the plain or usual meaning to words that appear clear and unambiguous on the face of an agreement.[17]

As detailed below, here, the "plain meaning rule" establishes that A__ was a probationary employee as of the date of his termination. For that reason, and that reason alone, regretfully, the undersigned Arbitrator finds that she is precluded from hearing the merits of the Grievance.

Did the Employer Establish that the Grievant was in Probationary Status as of the Date of His Termination?

Yes. Unfortunately, the undersigned has reached the conclusion that the Grievance is *not* substantively arbitrable. As fully addressed below, there are three reasons why the undersigned has reached this conclusion.

Reason 1: A__ Lost His Service Credits When He Voluntarily Quit.

The first reason why the Grievance is not substantively arbitrable is because the Agreement's clear and unambiguous language provides that A__ forfeited *all* prior service credits and was treated as a new probationary employee upon his rehire in March 2024. We start with the language in Article 15.1.C.:

> "Service credits" are credits for periods during which the SPO is *actually at work* for the Company.[18]

A__ worked for the Employer from/about May 2022, through September 2023. However, A__ was *not working* for the Employer between September 28, 2023 (the date of his resignation), and March 4, 2024 (the**[*8]** date of his rehire). In that regard, Article 15.2.A. provides:

> Service credits previously accumulated and continuity of service, if any, *will* be lost whenever SPOs...Quit, resign, or are discharged.[19]

Use of the word "*will*" is very instructive, as a reputable dictionary defines the word "will" to mean: "expressing *inevitable* events."[20] In other words, *if* a SPO quits his job, *inevitably*, the SPO *will* lose his service credits.
Next, Article 15.3.B. provides:

> If SPOs who have lost prior service credits or continuity of service are *reemployed, they will be considered new SPOs* and *will not* receive service credits (unless all or part of prior service credits are restored) for any time prior to the date of such re-employment (emphasis added).

Furthermore, Article 14.5. provides:

> *New SPOs will be considered probationary employees* while assigned to the Basic Training Academy and for a period of one hundred eighty (180) calendar days after completion of the Basic Training Academy. If "Q" clearance has not been issued within the first ninety (90) days after graduation from the Basic Training Academy, a maximum of ninety (90) days will be added once the "Q" clearance has been issued. During this time, they will acquire no seniority credit; however, at the end of this period, if retained, they will be placed on the seniority list and their seniority will start from their date of hire. The Union may represent such SPOs for grievances relating to pay, hours of work or conditions of employment (emphasis added).

The above language aligns with the "if...then" rule, establishing a conditional relationship where, *if* a SPO quits, *then* he *will* lose his service credits, and, *if rehired*, he *will* then be considered a *new SPO on probation*, and will *not receive service credits prior to the date of his re-employment*.
The language is clear and unambiguous. As a "new employee" post-rehire, A__ was treated as if he were a "new" SPO and was therefore also treated as if he were a "probationary employee" who is not entitled to service credits for the dates he worked for the Employer before his re-hire date.
In *NLRB v. Burns International Security Services, Inc.*[21] the U.S. Supreme Court recognized that an employer is generally not obligated to retain prior employment benefits for rehired workers unless the language is "*explicit*" and is required by contract or statute. That word "explicit" is important; it means: "in a clear and detailed manner, leaving no room for confusion or doubt."[22] Simply put, the Agreement *explicitly* states that a SPO forfeits all service credits accrued if he "quit" *before* the date of his re-employment. Furthermore, upon re-employment, the SPO is considered a "new SPO" and is placed in probationary status.

Reason 2: The Employer Consistently Treated A__ as a "New" Employee Who is in Probationary Status Following His Rehire.

The second reason the Employer established that the Grievance is not substantively arbitrable is because the Employer adhered to the language in the Agreement that required A__ to be**[*9]** treated as a "new" SPO who is in probationary status.

For example, the Employer required A__ to complete refresher training courses to requalify him to work as a SPO II. Additionally, the Employer mandated that A__ undergo the process of obtaining "Q" clearance again, despite having previously been approved for "Q" clearance during his initial employment with the Employer. Additionally, A__ worked at the Hammer facility post-rehire, specifically because he had not yet received HRP re-certification.
Both Parties acknowledge that A__ was required to obtain HRP re-certification but had not completed it by his termination date. Again, that aligns with the Agreement at Article 5, Section 1:

> The Company will determine a SPO's (SPO I, SPO II or SPO III) qualifications for initial employment, and for continued employment, except as otherwise limited by this Agreement, except for the determination of medical qualifications and mental standards under 10 CFR Part 1046, which will be made by the Occupational Medical Service Provider (OMSP). If required by DOE orders, determination of suitability for receiving and maintaining a DOE "Q" clearance and Human Reliability Program (HRP) access will be made by the DOE in accordance with their regulations.

As the Union aptly noted, A__ was "stuck in limbo" due to his pending HRP re-certification.

Further, the Employer re-set A__'s seniority date to coincide with his re-hire date of March 4, 2024, consistent with Article 15.3.B.:

> If SPOs who have lost prior service credits or continuity of service are reemployed, they will be considered new SPOs and will not receive service credits (unless all or part of prior service credits are restored) for any time prior to the date of such re-employment.

Resetting A__'s seniority date is also consistent with the language in Article 15.2.A.:

> Service credits previously accumulated and continuity of service, if any, will be lost whenever SPOs...*Quit, resign*, or are discharged.

The Employer also complied with Article 14.5, again, by treating A__ has a new SPO on probation:

> *New SPOs will be considered probationary employees* while assigned to the Basic Training Academy and for a period of one hundred eighty (180) calendar days after completion of the Basic Training Academy. If "Q" clearance has not been issued within the first ninety (90) days after graduation from the Basic Training Academy, a maximum of ninety (90) days will be added once the "Q" clearance has been issued. During this time, they will acquire no seniority credit; however, at the end of this period, if retained, they will be placed on the seniority list and their seniority will start from their date of hire. The Union may represent such SPOs for grievances relating to pay, hours of work or conditions of employment (emphasis added).

Concerning the above language in Article 14.5, the Union asserts: "Adding 180 days to 8/12/2022 results in the End of Probation date of 2/8/2023."[23] This statement refers to the date A__ graduated from the Basic**[*10]** Training Academy during his initial employment with the Employer. While the Union's argument is well-written and creative, as the saying goes, "the math ain't mathing."[24]

A mere 50 days lapsed between March 4, 2024, the date of rehire, and April 23, 2024, A__'s termination date. Therefore, although A__ received "Q" clearance on March 27, 2024, under any scenario listed in Article 14.5, A__ was *still* a probationary employee. Simply put, the Agreement contains no *clear and unambiguous language* establishing that *graduation* from the Basic Training Academy determines the date on which the Employer would consider A__ eligible to work as a probationary, new SPO II following his *rehire*. Instead, the Agreement *clearly* indicates that A__'s rehire date of March 4, 2024, reset the timeline for *all requirements* necessary to complete probation.

Lastly, the Union acknowledges that A__ had not obtained HRP recertification prior to his termination, a requirement that needed to be fulfilled before A__'s probationary status ended. For this reason, the claim that A__ was not on probation after 180 days from the date he graduated from the Academy contradicts the clear and unambiguous language of the Agreement.

Reason 3: The Agreement Establishes that the Arbitrator Has No *Authority* to "Review, Revoke, Modify or Enter any Award with respect to the Discharge of a SPO During Their Probationary Period."

Finally, and perhaps *most critically*, the Agreement specifically precludes the Arbitrator from reviewing a discharge of a SPO who is on probation. Specifically, Article 20.2.A. states:

> For the purpose of proceedings, within the scope of B. above, the standard to be applied by an arbitrator to cases involving disciplinary penalty (including discharge) is that such penalties will be imposed only for just cause. No arbitrator will have the *authority* to review, revoke, modify or enter any award with respect to...[t]he discharge of SPOs *during their probationary period* as referenced in Article 14*[.]*[25]

As the undersigned recently held in *Hill Crane Service, Inc.*:[26]

> absent *evidence* that the language is vague, ambiguous, or so unclear that the language is simply unenforceable,[27] the Arbitrator's authority to interpret is strictly limited to the four (4) corners of the [Agreement].[28]

As a mentor and colleague used to say, "I am a creature of the contract." I agree with that statement. Put simply, the Arbitrator's authority comes directly from the language in the Agreement, and the Arbitrator *literally has no power* to legislate new language based on what she may think the language should say, "since to do so would usurp the role of the labor organization and the employer."

Here, the Agreement specifies that the Arbitrator does not have the *authority* to determine the discharge of a SPO during their probationary period. The unambiguous language of the Agreement is dispositive, plainly stated, and its terms require no further interpretation. For this third reason, the undersigned has *no choice* but**[*11]** to rule that the Employer has proven that the Grievance lacks substantive arbitrability.

CONCLUSION

While I compliment the Union's commendable advocacy and duty of fair representation of A__, the Agreement *expressly prohibits* the Arbitrator from issuing *any* Order or Award concerning the discharge of SPOs during their probationary period. Given that the Employer has established—by preponderant evidence—that A__ remained in probationary status as of his termination on April 23, 2024, the Arbitrator is *without authority* to consider the substantive merits of the Grievance.

ORDER

For all the foregoing reasons, points, and authorities, the Employer has established that A__ was a probationary employee as of the date of his termination. Consequently, the Grievance filed on his behalf is not substantively arbitrable and is therefore denied. The hearing scheduled for July 15 and 16, 2025, is vacated, as the Arbitrator literally has no ability to address the merits of the Grievance. As provided for in the Agreement, this Order is "final, binding and conclusive."

In accordance with Article 20.7: "The expenses and fee of the arbitrator will be shared equally by the Union and the Company."

DATED this 13th day of June, 2025.

Shianne Scott, Arbitrator

Portland, Oregon

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fn 1 Although Mr. Millikan no longer serves as the Union's counsel, the undersigned includes Mr. Millikan because he presented the Union's written arguments regarding the arbitrability issue.

fn 2 *See* Article 20, Section 1.10. of the Agreement.

fn 3 While the Employer's counsel did not explicitly use the term "substantive arbitrability," the undersigned concurs with the Union that the Employer's assertion that the Grievance is not arbitrable because the Grievant was a probationary employee at the time of his termination is, more likely than not, a matter of substantive arbitrability. See Union's Initial Brief at page 2. According to *Black's Law Dictionary* (9th ed. 2019) and other legal authorities, "substantive arbitrability" pertains to whether a particular dispute or issue falls within the scope of the parties' arbitration agreement and is therefore subject to arbitration.

fn 4 The Employer's Initial Brief at page 6.

fn 5 The Union's Initial Brief at page 4 (emphasis in the original).

fn 6 Employer's Initial Brief at page 4.

fn 7 Union's Initial Brief at page 6 (emphasis added).

fn 8 Employer's Initial Brief at page 6.

fn

9 Emphasis in the original; misspellings and punctuation errors in the original.

fn

10 Union's Reply Brief at page 8.

fn

11 *School City of Hobart*, 109 LA 527 (1997); *Canteen Corp.*, *101 LA 925* (1993).

fn

12 Employer's Initial Brief at page 12.

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13 *See* the Union's Reply Brief at page 1; *see, also, e.g.*, *Inlandboatmen's Union of the Pacific v. Dutra Group*, 279 F.3d 1075, 1079 (9th Cir. 2002), where the Ninth Circuit Court of Appeals held that "the party contesting arbitrability bears the burden of proving that the grievance is not arbitrable." The *Inlandboatmen's* decision is consistent with the established presumption in favor of arbitration under federal labor law, which imposes the burden on the party seeking to exclude a dispute from arbitration to prove that exclusion in a clear and unmistakable manner. *See, e.g.*, *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 650 (1986).

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14 *See, e.g.*, *Linn County*, 136 BNA LA 616, 621 (Gaba, 2016).

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15**[*12]** *Black's Law Dictionary* (9th ed. 2019).

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16 *See*, *Anchor Glass Container Corp.*, 136 LA 823 (Miles, 2016) (emphasis added).

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17 Carlton J. Snow, *Contract Interpretation: The Plain Meaning in Labor Arbitration*, 55 Fordham L. Rev. 681 (1987) (emphasis added).

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18 Emphasis added.

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19 Emphasis added.

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20 *Oxford English Dictionary* (12th ed., 2011) (emphasis added).

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21 406 U.S. 272, 281 (1972).

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22 *Oxford English Dictionary* (12th ed., 2011).

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23 Union's Initial Brief at page 13.

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24 See https://en.wiktionary.org/wiki/the_math_ain%27t_mathing

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25 All emphases added.

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26 2024 BL 204329, 2024 BNA LA 31 (Scott, 2024).

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27 *See, e.g. Toledo Edison Co.*, *94 LA 905, 910* (Richard, 1990) (held: it is possible that a word or phrase in a collective bargaining agreement is so vague or ambiguous as to be unenforceable).

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28 *Hill Crane Services, Inc.*, 2024 BL 204329, 2024 BNA LA 31, at page 201, citing *Department of Veterans Affairs*, 121 LA 833 , 834 (Kilroy, 2005) (held: although "the law abhors a forfeiture...the Arbitrator is confined to the four corners of the Agreement. . . .[W]here the Agreement is specific and unambiguous as to its terms, they must be applied.").

Dale A. Slagley

PKL Services Inc., 2025 BNA LA 57

BEFORE

DALE A. SLAGLEY

Arbitrator

In the Matter of Arbitration

between

PKL Services Inc.

and

Int'l Assn. of Machinists & Aerospace Workers, Lodge 2006

FMCS Case # 240416-05363