AMERICAN ARBITRATION ASSOCIATION

Proceedings before

James M. Paulson, Arbitrator

In the matter of: **WASHINGTON FEDERATION OF STATE EMPLOYEES** and **STATE OF WASHINGTON** on behalf of its **Department of Social and Health Services.**	AAA Case No. 75 390 00470 10 Employee Grievance

DECISION

PRELIMINARY STATEMENT

Sherri-Ann Burke, Labor Advocate, appeared on behalf of the Washington Federation of State Employees.

Alicia O. Young, Assistant Attorney General for the State of Washington appeared on behalf of the State's Department of Social and Health Services.

The State of Washington Department of Social and Health Services, hereinafter "DSHS" or the "State", and the Washington Federation of State Employees, hereinafter the "Union", are parties to a collective bargaining agreement[1], hereinafter the "Agreement", which provide for the arbitration of unresolved grievances. The grievance in the instant matter was processed as specified in the Agreement to arbitration through the American Arbitration Association. James M. Paulson was selected to arbitrate the matter and his decision is final and binding as specified in the Agreement.

On June 8, 2011, a hearing was held at office of the Attorney General, 7141 Cleanwater

[1] Exhibit No. 2.

Drive, Olympia, Washington. At the hearing, the parties were permitted to present testimony and documentary evidence. The Union presented as its witnesses: Mr. Employee, grievant and Social Service Worker 2; David Swanson, Community Corrections Officer 3; Anthony Gorini, Social Service Worker 3 and Union Steward; and Michele Fukawa, former Social Service Worker 3 and former Union Steward. The State called as its witnesses: Martha Hooper, Human Resource Consultant 1 of the Children's Administration of DSHS; and Myra Casey, former Regional Administrator for Region 6 of the Children's Administration of DSHS.

By agreement of the parties, their Briefs were due August, 3, 2011. The Arbitrator will issue his Decision and Award on or before September 2, 2011.

STATEMENT OF THE ISSUES

At the hearing, the parties stipulated[2] to the following statement of the issues:

> "Is the grievance of the Union filed on behalf of Mr. Employee on May 3, 2010 under the collective bargaining agreement effective July 1, 2009, through June 30, 2011 arbitrable? To the extent the grievance is arbitrable, did DSHS violate Article 4.5 (C) 3 or 4 of the collective bargaining agreement by sending the grievant a letter dated April 13, 2010, terminating his trial service period? If so, what shall the remedy be?"

Although Article 29.3, D, 2 indicates that the arbitrator will decide issues of arbitrability before taking evidence on the merits, through the stipulated issues the parties have effectively waived that provision. The parties presented evidence and made arguments on both issues of arbitrability and the merits at the hearing. In this decision and as is normal practice, however, the Arbitrator will decide issues of arbitrability first and only reach the merits of the grievance to the extent that it may be arbitrable.

[2] Tr. 3-4.

RELEVANT CONTRACT[3] PROVISIONS

Article 4

Hiring and Appointments

* * *

4.5 Types of Appointment

* * *

3. An employee with permanent status who accepts an in-training appointment will serve a trial service period(s), depending on the requirements of the in-training program. The trial service period and in-training program will run concurrently. The Employer may revert an employee who does not successfully complete the trial service period(s) at any time with one (1) working day's notice. * * *

4. A trial service period may be required for each level of the in-training appointment, or the entire in-training appointment may be designated as a trial period. The trial service period and in-training program will run concurrently. The Employer will determine the length of the trial service period(s) to be served by an employee in an in-training appointment, * * *. The appointment letter will inform the employee of how the trial service period(s) will be applied during the in-training appointment.

* * *

4.6 Review Periods

* * *

B. Trial Service Period

1. Except for those employees in an in-training appointment, all other employees with permanent status are promoted, * * *, will serve a trial service period of six (6) consecutive months. * * *

[3] Although some aspects of the grievance began under the predecessor contract, the cited contract provisions are those in Exhibit No. 2, which were in effect at the time the grievance was filed.

* * *

6. * * * The reversion of employees who are unsuccessful during their trial service period is not subject to the grievance procedure.

Article 29

Grievance Procedure

29.1 The Union and the Employer agree that it is in the best interest of all parties to resolve disputes at the earliest opportunity and at the lowest level. The Union and the Employer * * * are committed to assisting in resolution of disputes as soon as possible.

***** ***** *****

29.2 Terms and Requirements

A. Grievance Definition
A grievance is an allegation by an employee * * * that there has been a violation, misapplication, or misinterpretation of this Agreement, which occurred during the term of this Agreement.

* * *

C. Computation of time
Time limits in this Article must be strictly adhered to unless mutually modified in writing. * * *

D. Failure to Meet Timelines
Failure by the Union to comply with the timelines will result in the automatic withdrawal of the grievance. * * *

* * *

29.5 Filing and Processing – Departments of Corrections and Social and Health Services Employees (Panel Process)
All grievances other than disability separations, layoff or the disciplinary actions described in Section 29.4, above, will be processed as follows:

A. Filing
A grievance must be filed within twenty-one (21) days of the occurrence giving rise to the grievance or the date the grievant knew or could reasonably have known of the occurrence. * * *

B. Processing

* * *

Step 4 – Arbitration
* * * The arbitration will be processed in accordance with Subsection 29.3 C through E.

* * *

29.3 Filing and Processing * * *

*** * ***

D. Authority of the Arbitrator

1. The arbitrator will:

   a. Have no authority to rule contrary to, add to, subtract from, or modify any of the provisions of this Agreement;

   b. Be limited in his or her decision to the grievance issue(s) set forth in the original written grievance unless the parties agree to modify it; * * *

2. The arbitrator will hear arguments on and decide issues of arbitrability before the first day of arbitration at a time convenient for the parties, through written briefs, immediately prior to hearing the case on its merits, or as part of the entire hearing and decision making process. * * *

3. The decision of the arbitrator will be final and binding upon the Union, the Employer and the grievant.

STATEMENT OF FACTS[4]

Background Facts

The Department of Social and Health Services is the largest department in the State of Washington with forty-six Field Offices.[5] Its Division of Children & Family Services, Children's Administration section has a Field Office in Vancouver, Washington. One of the positions in the Children's Administration is that of Social Worker 3. A portion of the duties of a Social Worker 3 involves dealing with the abuse and neglect of children under eighteen. This duty, in turn, involves assessing risk to children and families.[6]

Mr. Employee was employed by the State in its Department of Corrections from 1994 to 2008 – most recently as a Community Corrections Officer 2.[7] He was a permanent employee of the State and had the corresponding rights under the collective bargaining agreement. After finishing relevant graduate studies in Social Work, he decided to apply for a transfer and promotion to become a Social Worker 3 in the Division of Children & Family Services, Children's Administration of DSHS.[8] One of the reasons for his decision was the $2,000 to $3,000 annual pay increase that he would receive.[9] In the SW3 position he would be a CPS worker—a child protection investigator; that is, he had to determine, *inter alia*, whether children were safe or not. [10]

Facts Giving Rise to the Grievance

Appointment Conditions

By letter dated November 4, 2008[11] Mr. Employee received an "In-training appointment to Social Worker 3" in the Children's Administration effective November 16, 2008. Part of this appointment letter stated:

"You will automatically move to Social Worker 3 after twelve (12)

---

[4] The following recitation is intended to describe in summary primarily undisputed facts involved in this matter. Additional and/or disputed facts will be discussed, as may be necessary, later in this Decision.

[5] Tr. 121.

[6] Tr. 134.

[7] Tr. 11.

[8] Tr. 11.

[9] Tr. 11.

[10] Tr. 10-11, 139.

[11] Exhibit No. 8.

> months in your Social Worker 2 position provided you complete all required trainings, etc which your supervisor will go over with you.
>
> * * *
>
> General appointment information is enclosed: **please take time to carefully study this information.** In the event you have questions concerning your appointment, please contact you Personnel Representative Martha Hooper, (360) 725-6806." (Bold in the original).

The General Appointment Information to be enclosed stated that the sequence was that once a person was appointed as a Social Worker 2, then a 12 month trial period would follow. Once a person was appointed as a Social Worker 3, then a 6 month trial period would follow. Mr. Employee denied that the referenced "General Appointment Information" was enclosed or that he had seen it prior to the hearing.[12] Ms. Hooper testified that she was "99.9% sure" that she had enclosed the materials in Mr. Employee's appointment letter.[13] She also testified that she spoke with him on the phone after he received his appointment letter.[14] She recalled that Mr. Employee thought that he should have then been at the Social Worker 3 level and that she "explained the process" to him.[15] In this explanation, she testified that she:

> "told him that as a social worker 2 he would be in trial service for 12 months. And once he reached that 12 months that he would have to serve a six month trial service at the social worker 3 level."[16]

Twelve Month In-training/Trial Service Period as Social Worker 2

During Mr. Employee's twelve month in-training/trial service period (November, 2008-November, 2009) as a Social Worker 2, he was supervised by Jason Van Handel, who, in turn, reported to Area Administrator, Cindy Hardcastle.[17] Sometime in approximately September, 2009 Mr. Employee was advised by Mr. Van Handel to contact Ms. Hooper concerning his permanent advancement to a Social Worker 3 at the end of his Social Worker 2 one year trial period. By e-mail dated September 22, 2009[18] Ms. Hooper told Mr. Employee that "[w]hen you go to a SW3 level (November 16, 2009) you are then required to serve a 6-month trial service at

[12] Tr. 158.
[13] Tr. 119.
[14] Tr. 105.
[15] Tr. 105.
[16] Tr. 106.
[17] Exhibit No. 30., p. 1.
[18] Exhibit No. 13.

the SW3 level and once that is complete you are permanent as SW3."

On September 25, 2009, Mr. Employee made a detailed response[19] to Ms. Hooper's e-mail in which he made the following points: (1) He had consulted with a Union representative and believed that under the then current collective bargaining agreement[20], his trial service period would end on November 16th. (2) He, his supervisor and other team members understood that his trial period was for twelve months. (3) He referenced the provisions in the Agreement stating that the in-training and trial service period would run concurrently and that his appointment letter was to inform him of how the trial service period(s) would be applied during the in-training period. (4) His appointment letter made no mention of a trial service time period and, accordingly, his trial service period for Social Worker 3 would end November 16, 2009.

On September 29, 2009 Ms. Hooper, in turn, replied to Mr. Employee and stated that the Agreement clearly provided that a trial service period may be required to each level of the in-training appointment. She noted that Mr. Employee was only completing his in-training period as a Social Worker 2 (not Social Worker 3) on November 16th. Upon completion of his one year period at the SW2 level, he would receive a new appointment to the Social Worker 3 level and notification of the six month trial service period at that level.

On September 30, 2009 DSHS/CA Regional Business Manager Mike Minion sent Mr. Employee an e-mail[21] further responding to his September 25th e-mail and pointing out that his initial appointment letter to SW2 came under the old Agreement were there was no requirement that the appointment letter state the training service time for eventual appointment to SW3.

At the hearing, the following colloquy occurred on cross-examination of Mr. Employee:

"Q. * * * And were you okay that DSHS told you, no, you are actually going to have to serve a six-month trial service period as a social worker 3?

"A. As I said, after speaking with a fellow shop steward * * *, I decided at that time I did not feel aggrieved. Because I figured I did a year, I'll do another six months.

"Q. * * * So you looked into the question and challenged whether you have to serve a six month trial service period, and you agreed that you would; is that fair?

"A. Agreed."[22]

The first written analysis of Mr. Employee's perEmployeece at the Social Worker 2 level appears to be his PerEmployeece and Development Plan prepared by his supervisor Jason Van

[19] Exhibit No. 13.
[20] Joint Exhibit No. 1.
[21] Exhibit No. 14.
[22] Tr. 48-49.

Handel covering the period of November 16, 2008 to September 30, 2009[23]. While the Plan stated that Mr. Employee "demonstrated a basic understanding of the roles and duties of Child Protective Services social worker" and "should be elevated to the Social Worker III classification", there were also some criticisms. "[C]hallenges in time management" and "difficulty" communicating "in written form" were cited.

Six Month In-training/Trial Service Period as Social Worker 3

On November 3, 2009 Mr. Employee was sent a letter[24] from Children's Administration Deputy Regional Administrator Edith Hitchings informing him that he had completed his in-training as a SW2 and that his "next level of * * * in-training appointment is to Social Worker 3 * * * effective November 16, 2009. He was further notified that he "will serve a six (6) month trial service period" and if he was "not successful in meeting this job requirement [he] may be reverted at any time during the in-training plan with one (1) working day's notice."

On February 9, 2010, Mr. Van Handel sent an e-mail[25] to Mr. Employee notifying him that there was a "need to meet with you to review some concerns and present you with a PerEmployeece Plan to address these concerns." On February 10 and also 12, 2010, Mr. Employee was presented with a perEmployeece plan by his Mr. Van Handel in which five perEmployeece deficiencies were detailed.[26] Mr. Employee was required to comply with the plan to remedy those deficiencies. A follow-up meeting was scheduled for February 19th. By e-mail dated February 16th, Mr. Employee requested a mentor be assigned to help him and by his e-mail dated February 18th, Mr. Van Handel agreed to do so.[27]

In February, March and April, 2010, Mr. Employee, Mr. Van Handel, and Union Steward Fukawa[28] had various PerEmployeece Plan Meetings[29] and reviewed Mr. Employee's progress against the plan. By the record of these meetings, Mr. Employee was improving his perEmployeece.

By letter dated April 13, 2010, however, Regional Administrator Casey told Mr. Employee:

> "This is notice that effective today (4/13/10) your trial service appointment ends. You did not successfully complete all the elements of the Social Worker 3 level."[30]

[23] Exhibit No. 29, p. 3.
[24] Exhibit No. 9.
[25] Exhibit No. 26.
[26] Exhibit No. 27.
[27] Exhibit No. 24.
[28] Exhibit No. 30, Tr. 95-97.
[29] Exhibit No. 27.
[30] Exhibit No. 10.

The Grievance and Responses

On May 3, 2010, Mr. Employee and the Union filed a grievance challenging the issuance of the April 13, 2010 notice terminating his trial service at the Social Worker 3 level. In its grievance, the Union cited Article 4.5 C 3 & 4 of the Agreement as being violated. Reference was made to the November 4, 2008 appointment letter which referenced that he will "automatically" to be moved to the Social Worker 3 level after his twelve month in-training period. Emphasis was placed on the fact that no trial service period was referenced at the SW3 level after the twelve month period at SW2. Finally, it was stated that "[t]his is in violation of the CBA which specifies that the grievant's appointment letter will specify the trial service periods, which it did not."[31]

DSHS denied the grievance at step one and made the following points: (1) The grievance is untimely as Mr. Employee and the Union knew of the action they are grieving well before the twenty-one day period within which they were required to file a grievance. (2) The language in his 2008 appointment letter said that Mr. Employee moved automatically the Social Worker 3 level when he completed his in-training at Social Worker 2 level not that he gained permanent status at the Social Worker 3 level. (3) The DSHS position was explained to Mr. Employee at the time of his appointment and he agreed to accept the job with that understanding.[32]

The parties were unable to resolve the grievance during the remainder of the grievance process. By letter[33] dated November 19, 2010 the Union demanded arbitration of Mr. Employee's grievance under the terms of the Agreement.

[31] Exhibit No. 3.
[32] Exhibit No. 4.
[33] Exhibit No. 7.

CONTENTIONS OF THE PARTIES[34]

Position of the Union

Arbitrability

In its position on arbitrability, the Union contends that the grievance was "properly submitted" and before the Arbitrator in a procedurally correct fashion. Indeed, the Union argues that DSHS, as a matter of procedural fairness failed to notify Mr. Employee of a trial service period in his letter of appointment.

The Merits

The essence of the Union's argument is that DSHS violated the Agreement by failing to provide the "necessary information" to Mr. Employee "prior to and during the course of" his "in-training appointment the necessary elements" as required by the Agreement for him "to successfully complete the in-training appointment." Reference is made to the provisions in the Agreement listing what elements must exist for an in-training program. Emphasis is placed on the fact that Mr. Employee was not informed of a trial service period in is initial appointment letter. Additionally, the Union asserts that he was not informed of what elements of the Social Worker 3 level he failed to meet.

The Union further points to the requirement of the Agreement that an in-training and trial service period run concurrently. Accordingly, the argument goes, the actions of DSHS were arbitrary and capricious.

Position of the Department of the Department of Social and Health Services

Arbitrability

The State makes two basic arguments as to why the grievance is not arbitrable: (1) Under the Agreement, the decision to revert an employee during a trial service period or during an in-training period is not subject to the grievance procedure. (2) The Agreement specifically makes untimely completed acts by DSHS which the Union was aware of prior to twenty-one days before the filing of the grievance on May 3, 2010. An analysis is then made of the contentions of the Union and Mr. Employee showing that based on content and the time of the claim the grievance is not properly in arbitration. Additionally, an analysis of the "continuing violation" theory is made showing that it does not apply to the instant facts somehow making the grievance arbitrable. Finally, potential argument by the Union that the grievance was not "ripe" because Mr. Employee did not initially feel aggrieved is disposed of by reviewing the applicable language in the Agreement and by referencing an analogous decision by the United States

[34] This brief description of the positions of the parties is drawn primarily from their Briefs.

Supreme Court under discrimination law.

The Merits

In its argument on the merits, the State makes three basic arguments. First, there was no duty to state in Mr. Employee's initial appointment letter all of the trial service periods that would be necessary for him to become permanent Social Worker 3 level. In this regard, an analysis is made of the applicable language in the 2007-2009 Agreement and the 2009-2011 Agreement showing that the requirement asserted by the Union was not in place when the 2008 appointment letter was written.

Second, the State asserts that it was not estopped from requiring a trial service period for Mr. Employee at the Social Worker 3 level. An analysis is made of the types of possible estoppel with the contention that neither is satisfied by the facts present. Specifically, Mr. Employee could not reasonably rely on language in his appointment letter that he would "automatically" move to the Social Worker 3 level to conclude that DSHS was waiving its normal trial service period at that level. Additionally, any possible reliance by Mr. Employee on that language was dispelled by his conversations and e-mails with Ms. Hooper. Further, he did not rely to his detriment on the language in his appointment letter as he did not suffer any harm. Case law suggests that estoppel cannot trump controlling language in a contract. Finally, estoppel, when used against the government requires "manifest injustice" be present—which is not present here.

Third, the State argues that the appointing authority exercised appropriate discretion in deciding to revert Mr. Employee to level 2. The record is cited showing a reasonable basis in fact for Ms. Casey's decision. The State contends that the Union has not presented evidence that the decision to revert was arbitrary or capricious.

DECISION

Burden and Quantum of Proof

This Arbitrator follows the general rule that the moving party in a legal proceeding, including labor arbitration, normally has the burden of proof.[35] This burden is usually to prove its case by a preponderance of the evidence;[36] that is, to prove that the facts and the meaning of the relevant contract language are more likely than not as it asserts. In order to prevail, the party with the burden of proof on a particular issue must meet its burden.

In this matter, the State has made the claim that the grievance is not arbitrable. Accordingly, the State is the moving party as to that claim and has the burden of proof. Assuming, *arguendo*, that the grievance is arbitrable, in whole or in part, then the Union has the burden of proof as to the merits of its claim that the State violated the Agreement by its actions with respect to the grievant.

Arbitrability

The parties have stipulated that the first issue to be decided by the Arbitrator is whether the May 3, 2010 grievance[37] is arbitrable. In deciding this matter, the Arbitrator must look at the claims of the Union as asserted in the grievance as to both what it claims occurred and what it claims the Agreement means. The concluding paragraph of the grievance captures the essence of the Union's claim:

> "On 4/13/10, the appointing authority separated the grievant from his Social Worker 3 position under the provisions of the trial service articles. This is in violation of the CBA which specifies that the grievant's appointment letter will specify the trial service periods, which it did not."

---

[35] For a general discussion on the use of the concept of burden of proof in arbitration see: Elkouri & Elkouri, *How Arbitration Works*, (BNA 6th Ed. 2003), pp. 422-424; "In general, the party asserting a claim has the burden of proof. Where the parties are adjudged to have presented equally persuasive evidence on each side of an issue, it is in equipoise, and the party asserting the claim has failed to meet its burden." 2010 Cumulative Supplement to the 6th Edition, May, *supra*, p. 190.

[36] See generally, *MacCormack on Evidence* (Thompson/West 6th Ed. 2006), pp. 568-569.

[37] Exhibit No. 3.

Reversions Not Subject to the Grievance Procedure

The first argument raised by the State points to language in the Agreement which unequivocally states that the "reversion of employees who are not successful in their trial service period is not subject to the grievance procedure."[38] The Union does not challenge this argument. Accordingly, to the extent that the Union is questioning the decision of DSHS to revert Mr. Employee to level 2 status from his level 3 status, the grievance is not arbitrable pursuant to the specific language of the Agreement. In other words, assuming that the grievant was in fact in a trial service period, the decision to revert him may not be the subject to the grievance procedure.[39]

Grievance Must Be Filed Within Twenty-one Days

Grievance Is Untimely on Its Face

The second paragraph in the grievance underscores the key event behind the substance of the Union's complaint:

> "The grievant received an appointment letter on 11/4/08 stating that he was hired into an in-training position for Social Worker 3. After 12 months, the letter states that he will 'automatically' be moved to a Social Worker 3 position. There is no language indicating that a trial service period will occur after this 12 month in-training period."

Essentially, the Union claims that this 2008 letter violates the collective bargaining agreement which was in place from July 1, 2009 through June 30, 2011. It is undisputed that there was no requirement in the collective bargaining agreement in place when the 2008 letter was written that DSHS must specify when trial service periods run in appointment letters. That requirement only was in effect beginning July 1, 2009. Accordingly, on its face the grievance is not only untimely but also was not a violation of the collective bargaining agreement when the 2008 letter was written. The Union does not challenge with this analysis. Accordingly, the State has presented a *prima facie* case that the grievance is untimely.

Ripeness

In the course of the hearing, Mr. Employee stated that he did not file a grievance before

[38] Exhibit No. 2, p. 15.

[39] In the course of the hearing, there was some discussion of the general principle that decisions by management in the context of a collective bargaining agreement may not be arbitrary or capricious. With the specific language excluding reversion decisions from the grievance procedure an argument may be made that even arbitrary or capricious reversion decisions may be beyond the reach of the Union to question. The Arbitrator does not find it necessary to decide that question.

the reversion letter of April, 2010, because he did not feel aggrieved until that time. He contended that he only suffered harm when his trial service period was ended in April, 2010. Accordingly, the Union argument goes, the time limits for filing a grievance should only begin to run from the time of the reversion letter in April, 2010; that is, the grievance was not "ripe" for filing until his receipt of the April, 2010 letter terminating his trial service period. The further contention in this argument is that the Union is thereby permitted to raise events beyond the twenty-one day time limit for filing grievances to prove a contract violation.

In a different context than the present one, the "ripeness" argument has been accepted. Where an employer had established a rule of conduct but not applied it to anyone, it has been held that a union must wait for the application of the rule to someone before it may file a grievance.[40] On the other hand, here Mr. Employee's situation was changed by subjecting him to a trial service period in that he did not have the security of being permanent at level 3. Moreover, all of the facts/events involved in making the argument that there was a contract violation by subjecting him to a trial service period had occurred many months before he was reverted.

The Agreement states that "it is in the best interest of all parties to resolve disputes at the earliest opportunity" and that the Union and the Employer "are committed to assisting in the resolution of disputes as soon as possible."[41] This directive trumps the argument that Mr. Employee and/or the Union could wait until DSHS reverted him many months after Mr. Employee (having consulted with the Union) first articulated his position and confronted DSHS on the matter. Explicit and relevant language in the Agreement must always be followed over the application of conflicting general theories.[42] Both testimony and documentary evidence[43] show that the parties exchanged their respective views on the alleged contract violation in 2008 and 2009. The "ripeness" doctrine does not revive this late filed grievance.

Continuing Violation

While arbitrators do recognize the "continuing violation" theory[44] which permits a grievance to be filed at anytime and still be timely, that theory is not applicable to the instant matter. As the State argues, the continuing violation theory typically applies to wage claims[45]

---

[40] See discussion in Schoonhoven, *Fairweather's Practice and Procedure in Labor Arbitration* (BNA 4th Ed. 1999), 152-153.

[41] Exhibit No. 2, p. 66.

[42] "Ordinarily, all words used in an agreement should be given effect." Elkouri & Elkouri, *supra*, p. 464.

[43] Tr. 59-60; Tr. 104-107; Tr. 118; Exhibit Nos. 13, 14 & 16.

[44] Elkouri & Elkouri, *supra*, pp. 218-219; See also the refusal of the Supreme Court to apply the continuing violation theory to a wage case under Title VII of the Civil Rights Act in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S, 618 (2007).

[45] *Bazemore v. Friday*, 478 U.S. 385 (1986).

and not to "single isolated and completed transactions."[46] Clearly the decision to require Mr. Employee to serve a trial service period at level 3 was made and completed many months before he was reverted. On the other hand, he was continuously subjected to the effect of being in a trial service period until his reversion. While this situation may be somewhat analogous to a wage claim, the Arbitrator concludes that specific contract language controls the question. The previously cited language in the Agreement requiring the parties to resolve disputes at the "earliest" possible time together with admonition that "[t]ime limits * * * must be strictly adhered to"[47] prohibits the application of the continuing violation theory to this grievance. Clearly, Mr. Employee's grievance protesting his being required to serve a trial service period at level 3 could have been filed many months earlier.

Conclusion as to Arbitrability

For the reasons set forth above, the Arbitrator concludes that the grievance dated May 3, 2010 on behalf of Mr. Employee is not arbitrable.[48]

_____

James M. Paulson, Arbitrator

August 18, 2011

[46] *Ibid.*

[47] Exhibit No. 2, p. 66.

[48] Obviously, with this conclusion, the Arbitrator will not address the merits of the grievance.