

**State of Connecticut
State Board of Mediation and Arbitration**

In the Matter of

TOWN OF BLOOMFIELD

-and-

FRATERNAL ORDER OF POLICE

Case No. 2022-A-0022

Hearing Dates: February 6, 2023
March 31, 2023
May 4, 2023

Award Date: July 19, 2023

Hearing Locations: Virtual

AWARD

PANEL MEMBERS:

Dennis C. Murphy, Esq., Chair and Public Member
Betty Kuehnel, Labor Member
Richard Podurgiel, Management Member

Rachel Baird, representing the Union
William A. Ryan, representing the Town

Procedural History and Issue

This is a dispute between the Town of Bloomfield (Town), and the Fraternal Order of Police (Union), concerning the arbitrability of a grievance filed by Rohan Green (Grievant). After due notice, a hearing was held virtually on March 31, 2023 wherein the parties had full opportunity to present evidence and witnesses and to cross-examine same.

The parties jointly presented the following issue to the Panel:

Is this matter arbitrable? (Joint Ex. 1).

Relevant Collective Bargaining Provisions

Article XII – Grievance Procedure and Arbitration Section 1(a):

All grievances, in order to be valid, must be filed in writing and submitted to the division commander involved or, in his absence, the person acting in his capacity, within twenty-one (21) calendar days of the date of the action which prompts the grievance. (Joint Ex. 3 at 42).

Findings of Fact

1. The Grievant was hired by the Town on February 12, 2002. At that time, the Town and the Union were finalizing the terms of an early retirement incentive program which applied to officers hired on or after January 1, 2002. After that date, employees would not be eligible to participate in the police defined benefit plan, but rather they would participate in a defined contribution plan with a match by the Town.

2. On February 22, 2002 the Grievant signed a beneficiary designation form to participate in the defined contribution plan, in addition to a wage deduction form authorizing the Town to make deductions from his pay to be contributed to the plan.
3. For the payroll period ending February 23, 2002, deductions were made from the Grievant's pay and put into his defined contribution plan. Deductions were also made from the paychecks of three other police officers who were hired after January 1, 2002.
4. The Union and the Town executed a document on September 25, 2002 entitled "Amendment to 2000-2005 Employment Agreement between the Town of Bloomfield, Connecticut and the Connecticut Independent Police Union, Local 14 - Amendments Effective January 1 2002." (Union Ex. 2). This amendment provides in part "All union members hired on or after January 1, 2002, will be covered exclusively by the provisions of the Bloomfield Police Section 457/401a Retirement Plan (defined contribution) effective January 1 2002..."
5. The Grievant filed a grievance dated June 25 2021, claiming that he should be eligible to participate in the defined pension plan rather than the defined contribution plan. The Town denied the grievance and challenged arbitrability of the matter based on timeliness of the grievance.
6. The grievant testified that he learned of the amendment to the employment agreement concerning the pension in the month of February 2003.

Arguments of the Town

The Town argues that the language of the contract is clear and that all grievances must be filed within 21 days of the occurrence giving cause to the grievance. Regardless of when one measures the occurrence, the Town argues, the grievance is either 18 or 19 years too late. Whether this was from when the grievant signed the authorization forms for the payroll deduction or when he learned of the amendment to the agreement changing the form of pension in the month of February 2003, the grievance is many years too late.

Arguments of the Union

The union argues that the matter is arbitrable because the town acted fraudulently in presenting the grievant with the authorization form to sign enrolling him in the defined contribution plan.

Further the union argues that the town acted fraudulently on each occasion that officer green received his paycheck and that this continuing course of conduct constitutes a continuing violation which renders the matter arbitrable. When the grievant filed his grievance on June 25, 2021, he received his most recent paycheck within the preceding 14 days, well within the 21 days required by the contract.

Discussion

The burden is on the town to demonstrate that this matter is not arbitrable. It has met that burden. The panel is keenly aware that there is a presumption of arbitrability of labor grievances. And to find that a matter is not arbitrable, it must be found with positive assurance. This matter is clear.

The unions argument that the matter is a continuing violation is not persuasive. The grievance was fully on notice upon his date of hire that he was entering a defined contribution pension plan rather than a defined benefit plan. He certainly was on notice according to his own testimony in February of 2003, when he asserts that he learned of the amendment to the agreement.

Although the Union argues that the Town fraudulently enrolled the grievance in the defined contribution plan, there is not a scintilla of evidence to support fraud. The Town and the Union negotiated the change in good faith with a clear start date. The record reflects a rather routine passage of time for the agreement amendment approval processes. The Union's argument that the change some 19 years ago was not made in good faith by the parties is baseless.

AWARD

The grievance is not arbitrable.

Case No. 2022-A-0022

By the Panel

/s/ Dennis C. Murphy, Esq.
Dennis C. Murphy, Esq.
Chair and Public Member

/s/ Betty Kuehnel
Betty Kuehnel
Labor Member

/s/ Richard Podurgiel
Richard Podurgiel
Management Member