

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

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In the Matter of	:	Case No. 2024-A-0010; 2024-A-0011
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City of Danbury	:	
	:	Date of Award: August 12, 2024
	:	
-and-	:	
	:	Date of Hearing: May 7, 2024
	:	
Danbury Police Union Local 028	:	
	:	Location of Hearing: Virtual
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**AWARD**

**PANEL MEMBERS:**

Dennis C. Murphy, Esq., Chair and Public Member  
Betty Kuehnel, Labor Member  
Kenneth Baldyga, Management Member

Jeffery L. Ment, Esq., representing the Union  
Michael C. Harrington, representing the Employer

### **Procedural History and Issue**

This is a dispute between the City of Danbury (City) and the Danbury Police Union Local 028 (Union) concerning the pension of Peter Gantert (Grievant). This Panel heard two companion cases that were of sufficiently similar fact base they were combined for administrative economy.

After due notice a hearing was heard on May 7, 2024, wherein the parties had opportunity to present evidence and witnesses and to cross examine same. The parties filed post hearing briefs and reply briefs.

The parties jointly presented the following issues for determination:

Whether Lt. Gantert's unused benefit payouts at his retirement should have been paid out (1) at his rate of pay as a Lieutenant or (2) at the Captain Step 3 rate of pay? (2024-A-0010).

Whether Lt. Gantert's pension benefit should be calculated based on (1) a 3-year average using the Captain Step 3 rate of pay or (2) on the Captain Step 3 rate of pay existing in November of 2023? (2023-A-0011).

### **Relevant Collective Bargaining Provisions**

"Lieutenant McColgan and Lieutenant Gantert, should they not reach the rank of Captain during their employment as police officers for the City of Danbury, shall retire at Step 3 Captain's pay." (Union Exhibit 4, City of Danbury -and- Danbury Police Union Local #891, Council #15, AFSCME, AFL-CIO, Tentative Agreement, Impact of Police Department Reorganization and Extension of Current Contract, March 4, 2007).

“Lieutenant P. Gantert, should he not reach the rank of Captain during his employment as a police officer for the City of Danbury, shall retire at Step 3 Captain’s pay.” (Union Exhibit 3, Collective Bargaining Agreement, Appendix A, at 66-67).

**Article 7, Section 7.2.1** Any vacation time to which an employee may be entitled at the time of retirement may be taken as time off or paid at the prevailing hourly rate at the time of retirement at the employee’s option. (Id.).

**Article 8, Section 8.12.1.** Compensatory time. Payment will be at the employee’s straight time hourly rate of pay at the time of retirement.

**Article 8.2** Except as provided below, in the event of death or retirement, and employee (or an employee's estate) shall receive as terminal pay fifty percent (50%) of his/her accumulated sick leave valued at the applicable rate in use at the time of the employees death or retirement. ...

### **Findings of Fact**

1. In 2007, the City proposed to reorganize the Police Department by, *inter alia*, reducing the number of captains on the organizational chart. As a result, the Union negotiated to protect the Grievant’s rights as he was next in line to become a captain. The Union negotiated that should the Grievant not be promoted to the position of captain by the time he retired, he would retire at Step 3 captain’s pay. This was later incorporated into the collective bargaining agreement.

2. When the grievant decided to retire he had not been promoted to captain. The pension board met on November 1, 2023, and unanimously agreed on the benefits the grievant should receive in retirement. The minutes of that meeting reflect the following:

“A discussion was held by members of the board regarding Lt. Gantert’s line of duty disability pension application. The issues discussed were the qualifying disability, the CBA language regarding retirement at Captain 3 and why an addendum was made, the interpretation based on the agreement between the City and the Union including the intent and rationale of the agreement not being at Captain 4 rate. A motion was made by Det. Capt. Williams seconded by Ofc. Iaquinto to grant Lt. Peter Gantert a line of duty disability pension at the rate of Captain 3 as of July 1, 2023 (\$123,413) without a three-year average. A 3 year average is not applicable due to Lt. Gantert never receiving any pay at the rank of Captain. Per the CBA ‘Lieutenant P. Gantert, should he not reach the rank of Captain during his employment as a police officer for the City of Danbury, shall retire at Step 3 Captain’s pay.’ All were in favor and the motion passed. Lt. Gantert is retired as Captain Gantert as of the end of the business day 11/1/2023.” (Union Exhibit 5).

3. The City maintains a pension ordinance which requires that a police officer's pension benefit be based upon a three-year average of the officer’s base earnings. The pension office, when calculating the Grievant’s benefits, utilized the captain step three pay rates from 2020, 2021 and 2022 to calculate the Grievant’s pension benefit.

4. The Grievant testified that he was present during the negotiations concerning his retirement in 2007. He recalled the discussion that captain 2 rate of pay was lower than lieutenant’s pay, and that captain 4 rate of pay was too high. Further, since he should have been promoted to captain, he deserves the accumulated payouts at captain pay.

5. Alan Baker was Chief of Police from 2005 through 2016. He participated in the restructuring negotiations. He testified that he had no recollection of any discussion on the issue of three year averaging. He also had no recollection of any discussion on payout of accumulated time at captain’s pay.

6. Andi Gray has worked for the City for thirty years, and became payroll supervisor in 1998. Part of her duties are to provide pension estimates. She provided

the Grievant an estimate of the three highest years at captain 3 rate, as that is the normal rule to apply. She testified that she calculated the Grievant's accumulated time for payout at lieutenant 4 rate, because the agreement that the Grievant would "retire at captain" only applied to the pension.

7. Dianne Rosemark has been Assistant Corporation Counsel since 2006. She testified that if the parties had intended to exempt the Grievant from the three-year averaging requirement, in her opinion an amendment to the pension plan would have been necessary. However, the parties had the ability to agree that a specific salary level would be applicable.

### **Arguments of the Union**

The Union argues that the Grievant, through no fault of his own, was likely to not reach the rank of captain after years of service with the City's Police Department. As a result, the parties negotiated an explicit exception for the Grievant as a departure from the other terms of the collective bargaining agreement regarding pension payments and benefits. The City now wishes to renege on that promise by imposing a three-year averaging of the captain 3 pay in direct violation of the agreement.

The Union further argues that since the Grievant was entitled to retire at captain step three pay, and did in fact retire at that level, 'it is illogical and impossible to conclude that his rate of pay at the time of retirement was anything other than that of Step 3 Captain's pay.' (Union brief at unnumbered 6). As a result, the Grievant should receive payout of all accumulated time at captain 3 rate of pay, not at lieutenant's pay.

The Union cites section §32-104(e) of the Pension Ordinance, the section upon which the three-year averaging calculation is based, as providing "With respect to the 1983 Police Pension Fund of Danbury and to the pension benefits of the membership

of such fund, the term ‘pay’ as used in any applicable section of this article, shall be defined as the average of the annual straight time earnings **received** by any regular member of the fund during the three years of highest compensation.” (emphasis added). Since the Grievant did not actually *receive* the captain’s pay, the three-year averaging does not apply to him.

### **Arguments of the Town**

The City argues that it appropriately applied the three-year averaging as required by the pension ordinance. The Pension Board, it argues, had no authority to alter or amend the terms of the Pension Plan. And, since the Finance Director was not a party to the original negotiations concerning the Grievant, the fact that he was a member of the Pension Board is not relevant. It also argues that it appropriately paid the Grievant accumulated time at lieutenant's pay rather than captain 3 rate of pay.

The City argues “Nothing in the CBA expressly states that Lt. Gantert is exempt from the three-year average, nor is there any provision stating that the payouts for Lt Gantert's unused time were to be paid out at a rate of pay other than his pay rate on his last day of employment.” (City brief at 5).

The Grievant was considered to have constructively received captain step 3 pay for purposes of calculating his pension benefit. As such, he constructively received the prior two years as well.

### **Discussion**

Both issues presented to the Panel for determination require interpretations of the collective bargaining agreement. We hear both issues together because the resolution springs from the same analysis of the party’s intent.

We begin with a review of the plain language at issue: “Lieutenant P. Gantert, should he not reach the rank of Captain during his employment as a police officer for the City of Danbury, shall retire at Step 3 Captain’s pay.” This stand-alone language does not specify if it stands as an exception with singularity, superseding and negating all other rules which normally apply to pension determinations, as the Union argues, or whether it simply identifies the salary level the Grievant’s pension calculation shall be made with a three-year average consistent with all others, as the City argues. It is ambiguous.

“[A] contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself....If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous. (Citation omitted; internal quotation marks omitted). When the language of a contract is ambiguous, the determination of the parties’ intent is a question of fact...” (Internal quotation marks omitted.) *Cruz v. Visual Perceptions, LLC*, 311 Conn. 93, 110, 84 A.3d 828 (2014); as cited in *Gregory Stiegler et al. v. City of Meriden et al.*, (SC 20803), (2024).

The record before us is sparse with respect to the party’s intent. This is not surprising since it concerns an agreement made seventeen years ago. The Chief at the time, recalled in testimony that there were no discussions had concerning whether or not the three-year averaging rule applied. Nor were there any discussion concerning the manner in which the Grievant’s accumulated time would be paid. The Grievant’s memory was that the agreement to retire at step 3 captain meant exactly at the step 3 captain rate in place on the date of his retirement, without the three-year averaging. His memory on the matter was without strength or certainty, and without any accompanying support.

The City’s Pension Board interpreted the language as the Grievant had. Whether it acted *ultra vires* as the City argues is a matter for the courts to decide. This Panel is here to interpret the contract.

The Union’s arguments on the two issues are inconsistent. On the one hand it argues that since the “step 3” language does not explicitly state that the three-year

averaging rule applies, then it does not. However, although the language does not explicitly state that accumulated benefits will be paid out at the step 3 captain's rate, that benefit *does* apply because those are the terms of the agreement applying to any regular retirement. In other words, all the regular rules of retirement should apply to the accumulated benefits, except the three-year averaging rule.

The City's argument is equally inconsistent. It argues that the Grievant was constructively retired at the step 3 captain's rate and the normal rules concerning the three-year averaging should apply. However, the constructive nature of his status does not go so far as to apply to the rules concerning the payout of accumulated benefits. Those rules don't apply.

Both parties are trying to have it both ways. He was either constructively made a captain or not.

In discerning the party's intent, we look to the nature of the specific agreement made here, and the collective bargaining agreement as a whole. We fully considered finding that the Grievant was treated *sui generis*, and that the parties intended the agreement to retire him at step 3 captain meant it was locked into that rate, with no three-year averaging. And, since unspecified, there were no other benefits attached, such as accumulated time at the step 3 captain rate. This finding, however, concludes that the parties intended the Grievant to enjoy a pension greater than every other captain who retires at step 3. (The record does not reflect whether captains always retire at top step or not). This conclusion seems unlikely in that the Grievant did not spend one day in the rank of captain. This would provide an unjust enrichment. And, although as the Union argues, the Grievant lost the opportunity to become captain as a result of and at the time of the reorganization through no fault of his own, he had opportunities to apply for the position subsequently and failed to do so. The equities of the original bargain are somewhat shifted.

One obvious principle underpinning the collective bargaining agreement is equal treatment for equal status. All employees in the same rank shall be paid the same, in the same step progression. All with the same seniority shall receive the same calculation of accumulated benefits. It would require very specific language



excluding the Grievant from the three-year averaging rule to overcome this strong presumption of equal treatment.

It is most likely that the parties intended the agreement to fundamentally mean that the Grievant would retire at step 3 *as any other captain would*. Not less than, and not better than. That he would constructively become a captain step 3 in all respects, since he was denied the opportunity.

Therefore, we find that the unused benefit payouts should be made as if he constructively *were* retiring at the step 3 captain's rate. And his pension calculation pursuant to the normal rules of three-year averaging shall equally apply as if he constructively worked those years, as any other captain retiring at the step 3 captain's rate would.

### **AWARD**

Lt. Gantert's pension benefit should be calculated based on a 3-year average using the Captain Step 3 rate of pay. (2024-A-010).

Lt. Gantert's unused benefit payouts at his retirement should have been paid out at the Captain Step 3 rate of pay. (2024-A-011).

Case Nos. 2024-A-010; 2024-A-011

By the Panel

*/s/ Dennis C. Murphy, Esq.*

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Dennis C. Murphy, Esq.  
Chair and Public Member

*/s/ Betty Kuehnel*

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Betty Kuehnel  
Labor Member

*/s/ Kenneth Baldyga*

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Kenneth Baldyga  
Management Member