

STATE OF CONNECTICUT
DEPARTMENT OF LABOR
STATE BOARD OF MEDIATION AND ARBITRATION

In the Matter of : FEBRUARY 13, 2022
: CASE NO. 2021-A0236
TOWN OF CROMWELL : (DOWNES-ACCRUED SICK TIME)
: HEARING DATE: AUGUST 30, 2022
AND :
: Location of Hearing: State Board of
NAGE, LOCAL R1-121 : Mediation and Arbitration
: 38 Wolcott Hill Road
: Wethersfield, CT 06109
: (ZOOM)

AWARD DATE: MARCH 2, 2023

APPEARANCES:

Kenneth S. Weinstock, Esquire
Kainen, Escalera & Mchale, P.C.
21 Oak Street, Suite 601
Hartford, CT 06106

For the Town of Cromwell

Thomas Hatfield, Esquire
Asst. General Counsel
IBPO/NAGE
346 Main Street
Cromwell, CT
For the Union

ISSUE

Did the Town of Cromwell violate Article 14, Section 2(a) of the Collective Bargaining Agreement when it did not pay Grievant twenty-five percent (25%) of her accrued sick leave when she left employment with the Town of Cromwell?

If so, what shall be the remedy?

FACTS

The Town of Cromwell ("Town") and National Association of Government Employees, Local R1-121 ("Union") are parties to a Collective Bargaining Agreement ("CBA") effective July 1, 2020 – June 30, 2023 (Jt. Ex. 2).

This grievance was filed on January 21, 2021 and alleges that Mailene Downes ("Grievant") should have received a payout of a portion of her accrued sick time when she left employment with the Town.

The parties appeared before the Panel on August 30, 2022 and were afforded the opportunity to examine and cross-examine witnesses. The Town presented one witness and the Union did not offer witness testimony. The parties agreed to various documentary exhibits and each part filed post-hearing briefs.

Grievant was employed by the Town as a Dispatcher and decided to leave her employment in December of 2020 after working for the Town for 13 years.

Grievant requested a payout of twenty-five percent (25%) of her accrued sick leave pursuant to Article 13, Section 2(a) of the CBA. The request was denied by the Town. In follow-up to the Town's denial, Grievant filed this grievance asserting she submitted retirement documents and was entitled to the 25% payout of her accrued sick leave in accordance with the CBA (Grievance, Jt. Ex. 3).

The CBA, Article 14, Section 2(a) is determinative of when an employee is entitled to receive the 25% payout of accrued unused sick time. This provision establishes that the right to payment is "upon retirement" and retirement is defined as "meeting the requirements to receive a pension under applicable provisions of the Town of Cromwell Employee Pension Plan" (Jt. Ex. 2). The Town maintains a

retirement/pension plan for employees which is governed by Town Code Chapter 54 (Jt. Ex. 7).

The Town denied the grievance on January 22, 2021 due to Grievant not satisfying the age requirement of 55 for early retirement or 62 years old for normal retirement under the Pension Plan and therefore concluded Grievant was not "retired" (Jt. Ex. 4). The grievance was submitted to Step 2 (Jt. Ex. 5) and again the grievance was denied due to Grievant's not meeting the requirements to receive a pension under the provisions of the Employee Pension Plan, Town Code Chapter 54 (Jt. Ex. 6).

When Grievant left Town employment she worked for the Town for more than 10 years and accordingly was vested in the Pension Plan. However, she was not yet age 55 with at least 15 years of credited service when she left employment, (the determinative age for receiving early retirement pension, nor was she age 62, the determinative age for receiving a normal retirement).

The only witness that testified before the Panel was Town Finance Director Marianne Sylvester ("Sylvester"). Sylvester testified about how Article 14, Section 2(a) of the CBA is applied. She stated that in the 2010-2013 CBA the language only said "upon retirement" without reference to retirement as defined in the Pension Plan (Town Ex. 1). The Union and Town agreed to make a change to the language by adding the sentence "for purposes of this provision, retirement is defined as meeting the requirements to receive a pension under applicable provisions of the Town of Cromwell Employee Pension Plan in the 2013-2017 CBA (emphasis added). Sylvester also testified that Article 14, Section 2(a) has been

consistently interpreted to mean that the 25% payout of accrued sick leave was given only to an employee who upon leaving employment is immediately eligible to begin collecting either an early or normal retirement and she further testified that the payout is never given to someone who is only vested in the Pension Plan but does not qualify for an immediate early or normal Pension Plan payment (emphasis added).

The parties stipulated at the hearing before the Panel that Grievant had more than 10 years of service, left her retirement funds in the retirement account when she left Town employment and she would be eligible to receive a pension at age 62.

TOWN POSITION

The Town argues that the Panel needs to interpret Article 14, Section 2(a) of the CBA and the Town Pension Plan in order to resolve this grievance. The CBA provides that "upon retirement" an employee is entitled to receive accrued unused sick time. The Town asserts that retirement is defined as meaning the requirements to receive a pension under the applicable provisions of the Town's Employee Pension Plan (Jt. Ex. 2). The Town claims that an employee must be at least 55 years old with at least 15 years of service to be entitled to an early retirement at the time they leave Town employment. The Town argues that Grievant was not age 55 nor did she have 15 years of service at the time she left employment. The Town asserts that by the clear definition of retirement date set forth in the Pension Plan Grievant could not be considered retired at the time she left employment with the Town and was therefore properly denied the 25% payout

of her accrued, unused sick leave. The Town's position that the only time an employee is entitled to the 25% sick leave payout is when the employee leaves Town service and at the same time actually receives Pension Plan payments. The fact that the employee is only vested in the Plan is insufficient, according to the Town.

The Town argues that the Pension Plan defines Grievant as a "Terminated Participant" which is defined as an employee who has been terminated other than by death or retirement. (Jt. Ex. 7, Section 54-3). The Town argues the individual must be retired as defined in the Pension Plan rather than merely leaving employment and Grievant is not entitled to the accrued sick leave payment.

The Town further urges that since Grievant did not qualify for either an early or normal retirement when she left employment, she was not retired as she can only begin receiving a pension at her normal retirement date when she turns 62.

UNION POSITION

The Union argues this case concerns the plain meaning of CBA Article 14, Section 2(a) and relevant sections of the Town Retirement Plan. The Union asserts the dispute in this grievance centers on the language "meeting the requirement to receive a pension under applicable provisions of the Town of Cromwell Employee Pension Plan". The Union contends that because Grievant is vested in the Plan and accordingly is guaranteed to receive her pension when she turns 62 she has met the requirements under the Plan to receive a sick leave payout. The Grievant, according to the Union, is defined as retired under Article 14, Section 2(a) and is entitled to the 25% accrued sick leave payment.

The Union argues that Section 54-22A of the Pension Plan states that a Plan participant has 100% of their accrued Plan benefit vested after "10 or more" years. The Union argues (1) Grievant had more than ten (10) years of service when she resigned, elected to leave her contributions in the Trust Fund and will begin collecting her retirement benefit when she turns 62 and Grievant needs to do nothing further to receive her pension. The Union argues the Town is incorrectly limiting the broader language in Article 14 Section 2(a) as this Section does not state that an individual must be defined as retired under the Plan and only requires that the individual has met the requirements to receive benefits, which, according to the Union, Grievant has met.

The Union concludes by arguing that Grievant is "retired" under Article 14, Section 2(a) and is entitled to receive 25% of her accrued sick time.

**RELEVANT CONTRACT LANGUAGE
COLLECTIVE BARGAINING AGREEMENT**

**ARTICLE 6
GRIEVANCE PROCEDURE**

STEP FOUR. If the Union is not satisfied with the decision rendered by the Town Council, it may, within twenty (20) days after receipt of that decision, submit the grievance to the Connecticut Board of Mediation & Arbitration or, upon mutual agreement of the parties, submit the matter to the American Arbitration Association pursuant to its rules and procedures. The decision rendered by the Arbitrator(s) shall be final and binding on both parties. The Arbitrator shall have no power to add or subtract from or modify in any way the terms of this Agreement. The Costs of arbitration shall be borne equally by both parties.

**ARTICLE 14
SICK LEAVE**

Section 2.

(a) Upon retirement, twenty-five (25%) percent of the amount of sick leave accrued will be converted into cash and remitted to the employee. For purposes of this provision, ***retirement is defined as meeting the requirements to receive a***

pension under applicable provisions of the Town of Cromwell Employee Pension Plan.

The Town of Cromwell Pension Plan (Joint Ex. #7):

Section 54-3. Terms defined.

NORMAL RETIREMENT DATE- For a participant who retires on and after January 1, 1989, the first day of the month coinciding with or next succeeding his 62nd birthday or the completion of five years of participation in the plan, whichever occurs later.

RETIRED PARTICIPANT – A person who has been a participant and who is receiving retirement benefits under Article V hereof.

RETIREMENT DATE – The first day of the month coinciding with or next succeeding the date of actual retirement of a participant from service with the Town, which date shall not be earlier than his 55th birthday.

TERMINATED PARTICIPANT – A person who has been a participant but who is no longer an employee and whose status as an employee has been terminated other than by death, retirement or leave of absence.

Section 54-13. Benefit formula.

Each participant at retirement on his normal, early or deferred retirement date on or after June 30, 1982, shall be entitled to an annual retirement benefit commencing on his normal, early or deferred retirement date, payable in monthly installments for life thereafter, equal to 1.5% of his average final compensation multiplied by his years of credited service.

Section 54-16. Early retirement option.

Each participant who shall have reached his 55th birthday and shall have at least 15 years of credited service shall have the option, to be exercised by a written notice to the Board and with the consent of the Board, to retire at any time thereafter prior to his normal retirement date. The amount of retirement benefits payable to such retired participant shall be computed as provided in Section 54-13 hereof, except that the date of such early retirement shall be used in determining his credited service, and the amount thus obtained will be reduced, such reduction to be determined by the actuary in accordance with accepted actuarial practices, if such retirement benefit is to commence prior to such participant's normal retirement date. The contingent annuitant and the ten-year certain options, provided for in Sections 55-14 and 54-15 hereof, may be elected by a participant who elects to retire early under this section, in which case the term "retirement

date" shall be deemed to mean early retirement date wherever applicable in Sections 54-14 and 54-15.

Section 54-22. Payments required.

A.

If any participant shall cease to be an employee of the Town, except upon death or as a retired participant or except as provided in Article IX hereof for leave of absence, then he shall be entitled to a return of all of his contributions to the trust fund, plus interest thereon computed at the annual rate of 3% prior to July 1, 1976, and at the annual rate of 5% thereafter, compounded annually to date of termination; provided, however, that any participant who shall elect to leave his contributions in the trust fund shall be entitled at his normal retirement date, if he shall then be living and if such contributions are left in the trust fund, to the following percentage of the amount of retirement benefit as computed under the provisions of Section 54-13 hereof, such percentage to depend upon the number of his full years of credited service under the plan following his entry date, except that the date of such termination shall be used in determining his credited service:

Years of Credited Service Under the Plan	Percent of Accrued Benefit Vested
Fewer than 10	0%
10 or more	100%

DISCUSSION

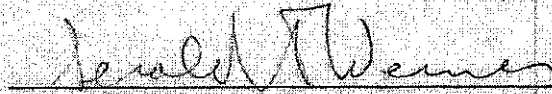
This grievance requires the Panel to interpret Article 14, Section 2(a) of the CBA and relevant parts of the Town Pension Plan. The CBA defines when an employee is entitled to receive the payment of unused sick time which is "upon retirement" and the CBA defines retirement as meeting "the requirements to receive a pension under applicable provisions of the Town of Cromwell Employee Pension Plan". (Jt. Ex. 2). It is inescapable that an employee must be 55 years old with at least 15 years of service to qualify for early retirement. Here, Grievant was not 55 and did not have 15 years of service upon leaving employment with the Town and could not receive Pension Plan payments.

The Panel unanimously finds that Grievant is not a retired employee but rather a "terminated participant" under the Pension Plan. Moreover, the Pension Plan defines a "retired participant" as a person who has been a participant and who is receiving retirement benefits under Article V of the Plan. Grievant did not qualify for either early or normal retirement at the time she left employment, she was not a retired participant at the time she left employment, and she was only eligible to receive a pension at her normal retirement date, i.e. 62. The fact that Grievant was indeed "vested" in the Pension Plan upon leaving employment was not determinative as to the issue of whether she was "retired" under the requirements of the Pension Plan. The Union has not met its burden of proof in this grievance. Pursuant to the plain and unambiguous language of the CBA and Pension Plan Grievant could not be considered "retired" at the time she left employment with the Town.

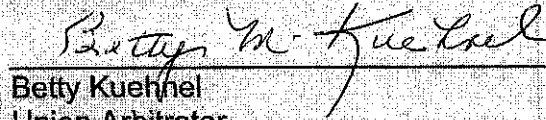
After a review of the testimonial and documentary evidence and by a preponderance of the evidence, the Panel concludes the Town did not violate Article 14, Section 2(a) of the CBA when it did not pay Grievant twenty-five percent (25%) of her accrued sick leave when she left employment with the Town.

DECISION

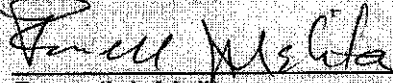
The grievance is denied.



Gerald T. Weiner
Neutral Arbitrator



Betty Kuehn
Union Arbitrator



Russell J. Melita
Management Arbitrator