

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

RULING ON ARBITRABILITY

In the Matter Of:	:	Case No. 2024-A-0012
	:	
CITY OF DANBURY	:	Date of Ruling: May 14, 2024
	:	
And	:	Hearing Date: March 20, 2024
	:	
DANBURY POLICE UNION, FOP, LOCAL 028	:	Location of Hearing: Virtual
	:	

APPEARANCES: Michael C. Harrington, Attorney at Law (For the City)
Jeffrey L. Ment, Attorney at Law (For the Union)

I. ISSUE:

Is the matter arbitrable?

II. PROCEDURAL BACKGROUND:

The Danbury Police Union FOP Local 028 (hereinafter the “Union”) filed a grievance asserting the City of Danbury (hereinafter the “City”) violated Section 32-104(c) [and other relevant Sections] of the Pension Ordinance. The Union claims that the City did not appropriately utilize the definition of pay in the Pension Ordinance.

The grievance was denied at the earlier steps of the grievance procedure. The City raised the issue of whether the matter was arbitrable. On March 20, 2024, an arbitration hearing was held via Zoom and both parties were provided an opportunity to present

evidence and testimony. Witnesses testified and were cross-examined. The parties each filed a Brief with the Panel on April 19, 2024, as agreed. The Panel held an Executive Session on April 24, 2024, via ZOOM.

The parties have complied with the grievance and arbitration provisions of the collective bargaining agreement (hereinafter the “CBA”). This grievance is properly before the Connecticut State Board of Mediation and Arbitration.

III. STATEMENT OF FACTS:

The grievant in this case is Sergeant John Krupinsky (hereinafter “Sgt. Krupinsky”). In 2023, Sgt. Krupinsky submitted a request to the City’s Finance Department for an informal estimate of his pension. The informal estimate was provided. The estimate utilized Sgt. Krupinsky’s base pay for his three highest calendar years. The Union claimed that the estimate was incorrect and filed this grievance.

During the hearing, the Union alleged that individuals could not dispute their pension calculation once they had begun receiving their benefit. This matter was clarified at the hearing. Letters were provided and introduced as City Exhibits 5A and 5B confirming that the forms whereby employees apply for their pensions do not contain any statements that “waive any rights” the employee may have to contest their “pension calculation.”

Sgt. Krupinsky has not applied for his pension benefit, and he remains employed by the City.

IV. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT (Jt. Ex. 1) and PENSION ORDINANCE

ARTICLE 1
RECOGNITION

Section 1.1 The City recognizes the Union as the sole and exclusive bargaining agent for all full-time, permanent investigatory and uniformed members of the Police Department with the authority to exercise police powers, for all employees commonly referred to as Animal Control Officers, and Special Police Officers, exclusive of the Chief and Deputy Chief of Police.

Animal Control Officers are employed under the terms and conditions contained in Articles 29 through 46 inclusive.

Special Police Officers, who qualify as Union members, are employed under the terms and conditions contained in Articles 47 through 56 inclusive.

ARTICLE 9
GRIEVANCE PROCEDURE

Section 9.1 This procedure is established to ensure an equitable resolution of all problems that arise as a result of the employer-employee relationship within the Police Department: . . .

B. Definitions: A grievance for the purpose of this procedure shall be deemed to be employee or Union complaint related to or concerned with: . . .

(3) Matters relating to the interpretation and application of the terms and conditions of this Agreement.

ARTICLE 42
PENSION PLAN

Section 42.1 The City of Danbury agrees that the City of Danbury Pension Plan for General Employees approved by the Common Council of the City of Danbury on July 3, 1973, and any amendments thereto resulting from negotiations between the City and Unions representing City employees covered by the Pension Plan shall become a part of this contract.

PENSION ORDINANCE

SECTION 32-104(e)

With respect to the 1983 Police Pension Fund of Danbury and to the pension benefits of its 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 (3) years of highest compensation.

V. **DISCUSSION:**

The City argues that this grievance is not arbitrable for several reasons. The City included some prior arbitration decisions of the SBMA with its Brief.

It is well settled that there is a public policy favoring arbitration to resolve disputes. This public policy has been articulated by the Congress and the Supreme Court. The U.S. Supreme Court held that “arbitration is a matter of contract.” *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960). The question of arbitrability is generally one where the Panel must determine if the parties agreed to make the arbitration process available under the terms of the grievance at issue.

The seminal case of *Steelworkers v. Warrior & Gulf Navigation Co.* provides that arbitrable review is appropriate, “unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted disputes. Doubts should be resolved in favor of coverage.” 363 U.S. at 582. The burden of proof is on the City to prove the matter is not arbitrable.

“For arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” *Id.* The Connecticut Supreme Court has repeatedly articulated a clear public policy of the State in favor of arbitration of disputes.

In this case, the Union is grieving a Pension Ordinance. Section 9.1 of the CBA defines a grievance as: “Matters relating to the interpretation and application of the terms and conditions of this Agreement.” Pension ordinances are not part of the CBA. As the City correctly points out in its Brief, the Union did not cite any provision of the contract that has been violated.

The City further argues that as the Union does not represent retirees and since Sgt Krupinsky is not entitled to a pension benefit until he retires, the grievance is not arbitrable. It is certainly true that the Union does not represent retirees, and pension benefits are only payable to retirees. However, it is clear that even the Union did not believe that a provision of the CBA had been violated when it filed its grievance. Otherwise, it would have identified a provision which had been violated in their grievance.

In its Brief, the Union valiantly attempts craft arguments that this dispute falls within the definition of grievance under the CBA. The Union also attempts to distinguish this case from other SBMA decisions which determined matters not to be arbitrable. Alternatively, the Union argues that other decisions of the SBMA finding matters arbitrable are similar. Neither argument is availing.

VI. RULING

For the reasons set forth herein, the Panel unanimously finds the matter to be not arbitrable.

BY THE ARBITRATION PANEL:

/s/ Linda J. Yelmini

Linda J. Yelmini (Public Arbitrator & Chairperson)

/s/ Betty Kuehnel

Betty Kuehnel (Labor Arbitrator)

/s/ Kenneth Baldyga

Kenneth Baldyga (Management Arbitrator)