

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

ARBITRATION AWARD

In the Matter Of:	:	Date of Award: 9/25/23
CITY OF DANBURY	:	Case No. 2023-A-0137
And	:	Hearing Date: July 24, 2023
DANBURY POLICE UNION, FOP, LOCAL 028	:	Location of Hearing: Virtual

APPEARANCES: Michael C. Harrington, Attorney at Law (For the City)
Rachel M. Baird, Attorney at Law (For the Union)

I. ISSUE:

Is the matter arbitrable?

II. PROCEDURAL BACKGROUND:

The Danbury Police Union FOP Local 028 ("Union") filed a grievance asserting the City of Danbury ("City") violated the Article 16 of the collective bargaining agreement ("CBA") when it denied Covid Bonus payments to those employees who were active employees between March 1, 2020 and March 1, 2022, but had left employment after March 1, 2022. The Union in its grievance and brief alleges that the number of individuals who were denied the Covid Bonus totaled twenty-four (24).

The grievance was denied at the earlier steps of the grievance procedure. The City raised the issue of whether the matter was arbitrable. On July 24, 2023, an arbitration

hearing was held via Zoom and both parties were provided an opportunity to present evidence and testimony. The parties each filed a brief with the Panel on August 31, 2023, as agreed. The Panel held an Executive Session on September 12, 2023 via ZOOM.

The parties have complied with the grievance and arbitration provisions of the CBA. This grievance is properly before the Connecticut State Board of Mediation and Arbitration.

III. STATEMENT OF FACTS:

There are few, if any, disputed facts in this case. The City and the Union negotiated a successor CBA for the period July 1, 2021 through June 30, 2024. The contract was ratified by the Union in October of 2022 and approved by the City Council on November 2, 2022. The agreement provides for a COVID bonus payment to employees and is set forth in Section IV of this Award.

A dispute arose over which employees were entitled to the COVID Bonus payment. The City takes the position that employees who left employment (either resigned or retired) prior to November 2, 2022 (the date the City Council ratified the agreement) were not entitled to the COVID Bonus payment. The Union, on the other hand, takes the position that employees who left employment prior to November 2, 2022 are entitled to the COVID Bonus payment.

IV. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT (Jt. Ex. 4)

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 16
WAGES

General Wage Increases (GWI)

- Effective July 1, 2021: 2.5% GWI
- Effective July 1, 2022: \$500 increase to each step and then 2.75% GWI
- Effective July 1, 2023: \$500 increase to each step and then 2.75% GWI

COVID Bonus

In recognition of the service provided to the community during the COVID pandemic, all bargaining unit members who were active employees

between March 1, 2020 and March 1, 2022 shall receive a bonus of \$3600.00. If an employee only worked a portion of the two-year period, then the bonus shall be pro-rated. The bonus shall not count toward an employee's pension.

ARTICLE 26 **RETROACTIVE PAY**

Section 26.1 All payments of additional wages past due, if any, under this Agreement by reason of increases in wages, above the levels of June 30, 2021, shall be made by the City to Employees who are active on the date of ratification not later than the fourth pay day following the ratification of this Agreement by the Danbury City Council. There shall be no retroactivity for Special Services, Extra Police Work, Extra Duty or Private Duty Work.

V. DISCUSSION:

There is a public policy favoring arbitration to settle disputes which 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.

While both the U.S. and Connecticut Supreme Courts have articulated their clear preference to resolve disputes under collective bargaining agreements through arbitration (presuming contractual language is present), the inquiry in this case does not stop there.

The instant grievance deals with the interpretation of the language regarding eligibility for the COVID Bonus payment. As the City correctly points out, the Union does not represent individuals who retired or otherwise left employment. This grievance was filed by the Union alleging a contract violation over the interpretation of the language of the COVID Bonus Payment.

In substantive arbitrability cases, the inquiry is typically two-pronged: (1) has the subject matter of the dispute been specifically excluded from arbitration under the agreement; and if not, (2) is there other forceful evidence that the parties did not intend disputes over that subject matter to be arbitrated.

Whether the individuals who retired or otherwise separated employment are entitled to the COVID Bonus Payment City, is a factual question that the Panel must consider and decide.

VI. AWARD

For the reasons set forth herein, the Panel unanimously finds the matter to be arbitrable.

BY THE ARBITRATION PANEL:

/s/ Linda J. Yelmini

Linda J. Yelmini (Public Arbitrator & Chairperson)

/s/ Betty Kuehnel

Betty Kuehnel (Labor Arbitrator)

/s/ Tina Ann Collins

Tina Ann Collins (Management Arbitrator)