

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

In the Matter of	:	:Case No. 2024-A-0015
	:	
City of Danbury	:	
	:	:Date of Ruling: June 11, 2024
	:	
-and-	:	
	:	
	:	:Date of Hearing: April 4, 2024
Danbury Police Union Local 028	:	
	:	:Location of Hearing: Zoom
	:	

RULING

PANEL MEMBERS:

Dennis C. Murphy, Esq., Chair and Public Member
Betty Kuehnel, Labor Member
Michael Culhane, Management Member

Jeffrey Ment, 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 John Krupinsky (Grievant).

After due notice a hearing was heard on April 4, 2024, wherein the parties had opportunity to present evidence and witnesses and to cross examine same. The parties filed post hearing briefs.

The parties jointly presented the following issue for determination:

Is the matter in Case No. 2024-A-0015 arbitrable?

Findings of Fact

1. The grievance in this matter protests that the City, in response to the Grievant's inquiry of May 2023, has indicated it will deduct 4.5% from the Grievant's vacation and sick leave payouts, if any. The grievance avers that this intention is violative of the collective bargaining agreement and the pension ordinance.

2. The Grievant has not filed any formal indication of intent to retire. He testified that it is possible he may not have any accumulated time upon retirement.

3. At the Step 2 grievance hearing the City denied the grievance and challenged arbitrability.

Arguments of the City

The City argues first, that since the Grievant has not retired, there is no actual case or controversy. It is unknown what if any vacation or sick leave the Grievant may have upon retirement, and what actual provisions of the collective bargaining agreement might be in effect upon his retirement.

Second, the City argues the matter is not arbitrable because the class of beneficiaries of the grievance are retirees who, as such, are no longer represented by the Union.

Third, the City argues that the grievance is untimely because it challenges a long standing position of the City.

Arguments of the Union

The Union argues that the City misinterprets the collective bargaining agreement by deducting 4.5% from accumulated time.

The Union further argues that the grievance is arbitrable. It cites the agreement which states that “a grievance shall be deemed to be a complaint concerned with ... (3) matters related to the interpretation and application of the terms and conditions of this Agreement.” (Exhibit A, Article 9, §B(3)). The grievance is a dispute from an active employee concerning a misinterpretation of the language of the agreement and pension ordinance.

Discussion

The City has the burden to demonstrate that the matter is not arbitrable. It has met that burden.

Although the City is correct in arguing that retirees are no longer employees covered under the collective bargaining agreement, that argument does not apply here. The Grievant is still an employee. We find the matter not arbitrable because, as the Grievant testified, when he actually does retire, he may or may not have any accumulated sick or vacation time. And, the pension benefits may be amended before his retirement.

Connecticut General Statute § 52-418 (a) (4) provides that an arbitration award may be vacated “if the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final and **definite** award upon the subject matter submitted was not made.” (emphasis added).

The grievance before us is not susceptible to a definite award if found arbitrable, therefore it is not. Should the grievance be upheld, the remedy would necessarily be stated conditionally. An award would state something to the effect: “*If the Grievant is not deceased prior to filing for retirement, and if he has any accumulated vacation and/or sick time, and*

if the collective bargaining agreement retains the identical language as currently held, and if there are no settlements or side agreements which alter the language or change the pension ordinance, and if the City is not bankrupt and world has not ended, then the City shall not deduct 4.5% from accumulated time from the Grievant.”

As there is no actual case or controversy stated, and if arbitrable a definite award is not attainable; therefore, the matter is not arbitrable.

Ruling

The matter in Case No. 2024-A-0015 is not arbitrable.

By the Panel

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

/s/ Betty Kuehnel
Betty Kuehnel
Labor Member

/s/ Michael Culhane
Michael Culhane
Management Member