

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

[CORRECTED]
ARBITRATION AWARD

In the Matter Of:	:	Case No. 2021-A-0352
TOWN OF WESTPORT	:	Date of Award: February 8, 2023
And	:	Hearing Date: November 21, 2022
WESTPORT PROFESSIONAL	:	
FIREFIGHTERS ASSOCIATION	:	
LOCAL 1081, IAFF, AFL-CIO	:	

APPEARANCES: Floyd J. Dugas, Attorney at Law (For the Town)
Eric W. Chester, Attorney at Law (For the Union)

I. ISSUE: (AGREED TO BY THE PARTIES)

Did the Town of Westport violate its CBA by amending the Fire Pension Plan or the CBA?

If so, what shall the remedy be consistent with the CBA?

II. BACKGROUND:

The Westport Professional Firefighters Local 1081, IAFF, AFL-CIO ("Union") filed a grievance asserting that the Town of Westport ("Town") violated the Fire Pension Fund and Article XXIV of the Collective Bargaining Agreement ("CBA"). The claimed violation was based upon the Town's decision to move non-bargaining unit Fire Department

Supervisors from the Fire Pension Fund to the Town's Non-Union Supervisory Employees' Pension Plan ("NUSP").

The grievance was denied during the prior steps of the grievance procedure. The Town raised the issue of whether the matter was arbitrable. An arbitration hearing was held, and this Panel issued an Award finding the matter to be arbitrable. On November 21, 2022, an arbitration hearing on the merits was held via ZOOM. The Union called one witness and the Town called three witnesses, all of whom testified and were subject to cross examination. Each party filed a brief with the Panel on December 30, as agreed. The Panel held an Executive Session on January 11, 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:

The Town maintains six (6) defined benefit pension plans. All of the Town's non-union supervisory employees have historically been covered by the NUSP with the exception of certain nonunion supervisory firefighting and police employees. The positions of Fire Chief, Deputy Fire Chief and Fire Marshal and the individuals in those positions have historically been included in the Fire Pension Fund which is part of the CBA. The Fire Pension Fund is negotiated by the Union. The positions of Fire Chief, Deputy Fire Chief and Fire Marshal are not governed by the CBA and the individuals in those positions are not members of the Union.

The Town's Personnel Director, Ralph Chetcuti ("Mr. Chetcuti") and the Town's Finance Director, Gary Conrad ("Mr. Conrad") consulted with the Town's Pension Attorney and the Plans' Actuary. They were asked whether the nonunion supervisory fire and police employees could be removed from the respective union pension plan. Both advised Messrs. Chetcuti and Conrad that only the NUSP needed to be amended to move the three nonunion supervisory fire positions into the NUSP. The Plan's Actuary further advised that as the assets representing funding for the accrued benefits of the three individuals would remain in the Fire Pension Fund, there would be no adverse impact to that fund. (Town Ex. 11). The Pension Attorney and the Actuary further advised that the Fire Pension Fund did not need to be changed as that Fund was not being changed. (Town Ex. 9)

Mr. Chetcuti wrote to Mr. Nick Marsan ("Mr. Marsan"), President of the Union on April 20, 2021 (Town Ex. 2) indicating there had been objections raised to the "Town's decision to remove the Non-Union, Management Officers from the police and fire pension plans and have them participate in the NUSP. In that letter, Mr. Chetcuti responded to several the Union's concerns.

IV. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT (Town Ex. 1) and FIRE PENSION FUND OF THE TOWN OF WESTPORT (Town Ex. 6):

ARTICLE I

RECOGNITION

The TOWN recognizes the UNION as the exclusive representative of the uniformed Firefighters, Fire Prevention Inspectors, Lieutenants, Assistant Chiefs and Fire Department Apparatus Supervisors. Excluded from this agreement are the Fire Chief, Deputy Chief of Operations and Fire Marshal.

ARTICLE IV

GRIEVANCE PROCEDURE

SECTION 1.

Should any employee or group of employees feel aggrieved concerning the interpretation and/or application of any provision of this Agreement, adjustment shall be sought under this Article.

STEP 1

The employee or the UNION shall submit such grievance in writing to the Fire Chief setting forth a full explanation of the grievance. Within fifteen (15) business days excluding holidays and weekends after said department head receives such grievance, the Chief shall meet with the aggrieved employee or the UNION, whichever submitted the grievance, for the purpose of adjusting or resolving the grievance.

STEP 2

If such grievance is not resolved by the department head to the satisfaction of the employee or the UNION within five (5) days excluding holidays and weekends after such meeting, the employee or the UNION may present such grievance in writing within seven (7) days, excluding holidays and weekends thereafter to the First Selectman. Within seven (7) days, excluding holidays and weekends, after the First Selectman receives such grievance, he/she shall meet with the aggrieved employee or the UNION, whichever submitted the grievance, for the purpose of adjusting or resolving such grievance.

STEP 3

If the grievance is not adequately resolved to the satisfaction of the parties after steps (1) and (2) above have been completed, the party seeking arbitration must submit the dispute within thirty (30) calendar days after receiving the First Selectman's decision, for arbitration by the Connecticut State Board of Mediation and Arbitration. Said Board shall hear and act on such dispute in accordance with its rules and render a decision which shall be final and binding on all parties. Nothing contained herein shall prevent the parties from agreeing to submit such dispute to arbitration by an arbitrator other than the State Board of Mediation and Arbitration.

SECTION 2.

The time limits provided for herein may be extended by written agreement signed by all parties.

SECTION 3.

If an aggrieved employee or group of employee fails to file a grievance under this Article within fifteen (15) business days excluding holidays and weekends of the event leading to the grievance or from the date on which the Grievant should have been aware of the grievance, then such grievance shall be deemed waived for all purposes.

ARTICLE XXIV

PENSIONS

SECTION 1. FIRE PENSION PLAN

Incorporated herein by reference is a Pension Agreement dated July 1, 1977, as amended effective July 1, 1985, July 1, 1991, July 1, 2001 and July 1, 2005 and July 1, 2016 to be known as the "Fire Pension Fund of the Town of Westport" the benefits provided therein shall become a liability of the Town and shall not be terminated as a result of the termination of this Agreement. Any dispute concerning the interpretation or application of any provision of said Pension Agreement shall be subject to the grievance and arbitration provisions of this Agreement.

FIRE PENSION FUND OF THE TOWN OF WESTPORT

2016 Amendment and Restatement

July 1, 2016 to June 30, 2024

(relevant portions)

1.6 "Employee" means any regular full-time firefighter employee of the Fire Department of the Town of Westport. Any full time probationary employee who becomes a Participant on his date of employment shall be entitled to all benefits under this Plan as defined for an Employee under this Section 1.6, including probationary time.

1.10 "Participant" means any Employee who is included in the Plan as provided in Section 2.

**SECTION 2
ELIGIBILITY**

2.1 Each new Employee shall become a Participant on his date of employment. Each Employee who was a Participant in the Plan as in effect prior to the Effective Date shall continue to participate in this Plan.

2.3 Participation in the Plan shall terminate if an Employee ceases to remain an Employee other than by reason of retirement, or disablement, under the Plan. Participation shall be continued under an Approved Absence.

**SECTION 11
MODIFICATIONS**

11.1 No change or modification or (sic) any provisions of the Plan may be made prior to July 1 2024 except by mutual consent of the parties hereto.

V. DISCUSSION:

The Parties agreed that the Panel is to decide whether the Town violated the CBA by amending the Fire Pension Fund or the CBA. In its Award on arbitrability, the Panel determined that the only question it had left to decide was whether the Town amended the Fire Pension Fund. The Union bears the burden of proof on these questions which are very similar. If the Union does not prevail, the grievance must, of course, fail.

The Union correctly points out that individuals in the classifications of Fire Chief, Deputy Fire Chief and the Fire Marshal in the Town all meet the statutory definition of firefighter under CGS §7-313g. Likewise, individuals who hold those positions could also be employees of the Town. The present Fire Chief is Michael Kronick and the present Deputy Chief is Nicholas Marsan who both, at a minimum, meet the definition of employee.

The legislative body of the Town is the Representative Town Meeting ("RTM"). It consists of 36 elected members and basically is responsible for determining the governance of the Town. Many of its functions are performed through Committees made up of RTM members that report back to the RTM. The RTM must vote and approve the work of most Committee recommendations.

The RTM Employee Compensation, Finance, and Public Protection Committees met jointly on May 19 according to the June 15, 2021 Minutes of the Special Meeting of the RTM (Town Ex. 9) to consider whether to revise the NUSP. At the Special Meeting of the RTM on June 15, 2021, the RTM voted "to revise the Retirement Plan for Non-Union Supervisory Employees of the Town of Westport to include current management of the

include Non-Union Supervisory employees in the Police and Fire Departments at that meeting.

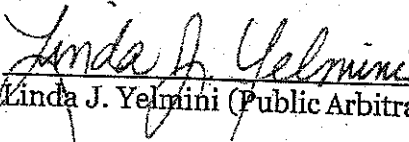
The contributions that had been made on behalf of the individuals in the positions of Fire Chief, Deputy Fire Chief and Fire Marshal remain in the Fire Pension Fund. Additionally, any accumulation in the assets resulting from those contributions remained in the Fire Pension Fund for the benefit of the unionized firefighters. The liabilities for the accrued benefits of those three individuals were no longer attributable to the Fire Pension Fund, as their benefits will be paid exclusively from the NUSP.

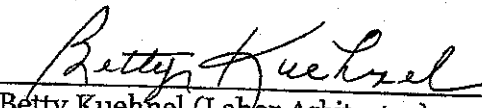
The Fire Pension Fund remained unchanged.

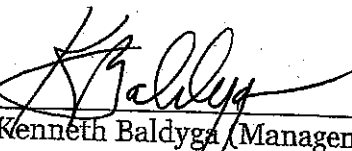
VI. AWARD:

For the reasons set forth herein, the Panel unanimously finds that the Town of Westport did not violate its Collective Bargaining Agreement or the Fire Pension Fund.

BY THE ARBITRATION PANEL:


1/23/2023
Linda J. Yelmini (Public Arbitrator & Chairperson)


Betty Kuehnel (Labor Arbitrator)


Kenneth Baldyga (Management Arbitrator)