

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

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IN THE MATTER OF :  
TOWN OF WETHERSFIELD :  
and : Case 2022-A-0258  
INTERNATIONAL BROTHERHOOD OF :  
POLICE OFFICERS LOCAL 391 :

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Hearing Date(s): November 29, 2022  
Hearing Location: State Board of Mediation & Arbitration  
Date of Award: March 3, 2023

**APPEARANCES:**

Attorney Kenneth R. Plumb  
Metzger Lazarek & Plumb  
56 Arbor Street, Suite 413  
Hartford, CT 06106  
*For Management*

Attorney Thomas Hatfield  
Assistant General Counsel IBPO/NAGE  
346 Main Street,  
Cromwell, CT  
*For Union*

ARBITRATION AWARD

This arbitration arises from a dispute between the Town of Wethersfield (“Town”) and International Brotherhood of Police Officers Local 391 (“Union”) regarding a twenty-day suspension issued to the Grievant, Officer Jessica Blank. A hearing was held on November 29, 2022 at the State Board of Mediation and Arbitration, 10 Wolcott Hill Road, Wethersfield, CT.

On behalf of the Union, Attorney Hatfield made an opening statement and offered four exhibits (Exh. U-1 to U-4) which were marked as full exhibits absent objection.<sup>1</sup>

On behalf of Town, Attorney Plumb made an opening statement and offered eleven exhibits (Exh. E-1 to E-11) which were marked as full exhibits absent objection. The parties jointly offered two exhibits (Exh. J-1 and J-2) which were marked as full exhibits.

The parties stipulated to the below Issue. (Exh. J-1)

The parties agreed to not offer witnesses or closing arguments in favor of written briefs which were submitted simultaneously on February 1, 2023 and reply briefs which were submitted simultaneously on February 10, 2023.

**ISSUE**

Is Case 2022-A-0258 arbitrable?

**RELEVANT FACTS**

1. The Town and Union entered into a Collective Bargaining Agreement (“CBA”) for the period July 1, 2019 to June 30, 2023. (Exh. J-2)

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<sup>1</sup> The Town reserved the right to argue the relevancy of Exh. U-1 and U-3 in their brief. The Town did not argue relevancy but cited the exhibits in their statement of facts and statement of the case.

2. On April 27, 2022,<sup>2</sup> the Town's Chief of Police issued a Memorandum regarding Internal Affairs investigation IA-22-001 finding Grievant committed Conduct Unbecoming of an Officer. (Exh. U-1).
3. On June 9, Town Manager issued Grievant a 20-day unpaid suspension to be served at the discretion of the Chief of Police. The suspension stems from the findings of the Internal Affairs investigation. (Exh. E-2)
4. On June 16, the Union filed a grievance with the Chief of Police alleging that the 20-day suspension violates the CBA. (Exh. E-3)
5. On June 17, Chief of Police denied the grievance. (Exh. U-2, E-4).
6. On June 20, the Union appealed the grievance to the Town Manager. (Exh. U-2)
7. On June 21, Town Manager denied the grievance. (Exh. E-5)
8. On June 22, Town Manager placed Grievant on paid administrative leave retroactive to June 13 pending a Fitness for Duty Evaluation ("FFDE"). Town Manager indicated that Grievant's decision to turn in her police-issued firearm on June 8 "raises legitimate concerns about her ability to perform the duties of a police officer." (Exh. E-6)
9. On June 28, the Union submitted the suspension grievance to arbitration. The suspension grievance is the subject of this Case 2022-A-0258. (Exh. E-7, E-9)
10. Grievant underwent the FFDE. The reason for the evaluation states: "The Wethersfield Police Department (WPD) sought a psychological fitness for duty evaluation (FFDE) for [Grievant]. On June 9, 2022, she received a twenty (20) day unpaid suspension from her duties as a police officer. This followed an Internal Affairs Investigation and a conclusion of Conduct Unbecoming. [Grievant] was also informed her suspension will commence when she returns to work as a police officer in the Town of Wethersfield." (Exh. U-3)
11. On July 15, Town Manager informed Grievant in writing that pursuant to the FFDE, she was deemed not fit for duty as a police officer and that she remains on paid administrative leave. (Exh. U-3).
12. On August 19, Grievant was separated from her employment as a police officer because she is "not fit for duty as a police officer and not able to perform the essential functions of the position." (Exh. E-8)
13. On August 22, the Union filed a grievance alleging that Grievant's separation from employment violates the CBA. The Chief of Police denied the grievance on the same day. (Exh. U-4)
14. On August 26, the Union appealed the grievance to the Town Manager. (Exh. U-4)
15. The Town Manager denied the grievance on August 30. (Exh. U-4)
16. The Union submitted the separation grievance to arbitration. It is pending as Case 2023-A-0042. (Union's Brief; Employer's Brief)
17. On October 10, the Town's Attorney filed a claim with the State Board of Mediation & Arbitration alleging that the suspension grievance is not arbitrable. (Exh. E-10)

#### RELEVANT CONTRACT LANGUAGE

##### Article 20 Grievance Procedure

20.0 A grievance is a dispute which may arise between the parties concerning the application, meaning, or interpretation of this Agreement, unless specifically excluded by this Agreement and shall be settled in the following manner:

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<sup>2</sup> All dates are 2022 unless otherwise indicated.

All grievances shall be in writing, setting forth the specific section of the Agreement alleged to have been violated, and the specific relief sought, and must be filed with the Chief of Police within ten (10) calendar days of the act or omission complained of or the employee's knowledge of its occurrence.

1. After receipt of the written grievance the Chief of Police may in his discretion also call a conference if he determines it appropriate, but shall within ten (10) working days submit his answer, in writing to the grievant and the Union President.
2. In the event that a satisfactory adjustment of the grievance is not accomplished at step one, within ten (10) calendar days of the receipt of the written answer of the Chief of Police, the grievant may appeal the grievance to the Town Manager. The written decision of the Town Manager shall be given to the grievant, and the Union President within fifteen (15) days of receipt by the Town Manager.
3. In the event that the grievance is not satisfactorily accomplished at Step Two as a result of the written answer of the Town Manager, within ten (10) calendar days after receipt of the decision, the Union shall notify the Town Manager in writing that it intends to submit the grievance to Arbitration; and shall simultaneously file notice of appeal with the Connecticut Board of Mediation and Arbitration under the Rules and Regulations of the Connecticut Board of Mediation and Arbitration in effect at the time of said filing. The decision of such shall be final and binding upon both parties, except that said decision shall not alter nor amend this Agreement in any manner. The Town and the Union may mutually agree to utilize the American Arbitration Association to resolve any particular grievance instead of the Connecticut Board of Mediation and Arbitration with both parties splitting evenly the costs of the arbitrator's services and the proceedings. However, the Parties agree that grievances involving termination of an employee shall be submitted to the American Arbitration Association in accordance with its rules and procedures and with the Union and the Town splitting evenly the costs of the arbitration services and the proceedings.

20.1 Nothing in this article shall prohibit the parties from mutually arranging informal meetings at any step of the grievance procedure.

20.2 Nothing in this article is intended to prohibit the Town or the Union from processing a grievance through the grievance procedure up to and including arbitration.

20.3 The expense for the arbitrator's services and the proceedings shall be borne equally by the Town and the Union. If either party desires a verbatim record of the proceedings, it may cause such a record to be made, providing it pays for the records of such proceeding.

20.4 Grievances involving discharge, suspension, and demotion, following disposition by the Chief of Police, shall be processed beginning at the second step.

20.5 If the employee asks that he be personally represented by his own attorney at step one or two in the grievance procedure, a representative (the President or Executive Board member) may also be present as an observer at the employee's request.

20.6 If the employee is represented by a representative (the President or Executive Board member) of the Union and desires his own attorney to be present as an observer at step one or two, the attorney's presence as an observer will be subject to the approval of the Town's representative.

20.7 In accordance with Section 7-468 (D) of Connecticut's Municipal Employee Relations Act, nothing herein is intended to preclude the employee from representing himself at any one of the first two steps of this grievance procedure.

20.8 The Town or the Union may file a single grievance at the appropriate step. When this occurs, all other grievances, if any, on the same event, shall be held in abeyance, and the Town or Union grievance shall be processed as a precedent.

20.9 When such grievance is resolved, the parties shall promptly review the other grievances, if any, that were held in abeyance in an effort to resolve them.

20.10 This mutual review procedure shall not require more than five work days subject, however, to mutual extension of period of review if circumstances so require.

20.11 If any such grievance cannot be settled on the basis of the precedent grievance, it shall be processed in accordance with the grievance procedure, and once more in accordance with the time limitations established in this Agreement.

#### Article 24 Discipline

24.0 All discipline shall be for just cause.

#### EMPLOYER POSITION

The Town argues that Grievant was given a 20-day suspension but never served it because she was separated from her employment after being found unfit for duty; that her separation from employment was not for disciplinary reasons so progressive discipline is not at issue; and therefore, this case is not ripe for arbitration.

#### UNION POSITION

The Union argues that the issue in this case is not abstract because the Town actually issued the suspension which was an underlying reason for and consideration in the FFDE that resulted in Grievant's separation from employment, which issue is pending in another arbitration case.

The Union also argues that 1) if the issue is found to be non-arbitrable, it will effectively alter the CBA to say that "served discipline" – instead of "all discipline" – shall be for just cause; and 2) the Arbitration Panel is statutorily tasked with hearing grievances and should not rescind that authority under the doctrine of ripeness.

#### DISCUSSION

The Town relies on two cases that are distinguishable from the instant case. In Richardson v. Bloomfield Board of Education, the employee was "threatened" with discipline – which was not subject to the grievance procedure – however, none was ever actually issued. In the instant case, discipline was issued and subject to the grievance procedure under the CBA.

In AFSCME Council 15 Local 3153 AFL-CIO v. Town of Newtown, the court did not rule on the issue of ripeness; it ruled that it did not have jurisdiction to review the arbitration panel's finding of non-arbitrability based on ripeness. The court's decision indicates that the town never applied its interpretation of a contract provision to any actual employee and that the arbitration panel found the case "non-arbitrable because no actual dispute existed." In the instant case, the Town did not threaten or opine on potential action but took action to issue a suspension.

The Union's argument that the Arbitration Panel should not rescind its authority under the doctrine of ripeness is not persuasive. The Arbitration Panel's authority to hear grievance arbitration cases does not make every such case arbitrable. Conn. Gen. Stat. § 31-97 specifically provides an avenue to challenge arbitrability. That procedure would be superfluous under the Union's argument.

The credible evidence supports a finding that there is an actual controversy among the parties, that the controversy can be adjudicated by the Arbitration Panel and that there is a likelihood that a contingent event will deprive Grievant of an actual injury.

If the suspension grievance is deemed non-arbitrable and the separation grievance is sustained, Grievant may be subject to the 20-day suspension upon return to work with no remedy, resulting in an actual injury that is not addressable at that time since the ten-day period to grieve the suspension will have long passed.

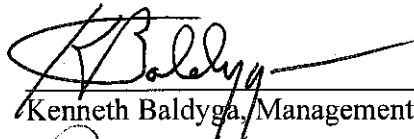
The sole circumstance identified as the reason for the FFDE is that Grievant received a 20-day suspension following an Internal Affairs investigation that concluded she engaged in Conduct Unbecoming. If the suspension played a role in the FFDE which resulted in Grievant's separation from employment, a finding on the merits in the suspension case may impact the separation case, making the issue a live controversy ripe for determination.

**AWARD**

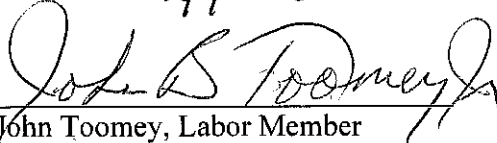
Case 2022-A-0258 is arbitrable.



Janis C. Jerman, Chair and Neutral



Kenneth Baldyga, Management Member



John Toomey, Labor Member