

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

**38 WOLCOTT HILL ROAD
WETHERSFIELD, CONNECTICUT**

January 23, 2023

TRANSMITTAL MEMORANDUM

Westport, Town of

and

Westport Police Union FOP

Local Lodge 045

Case # 2022-A-0061 General Grievance

2021-1

**NOTE: THIS AWARD IS ALSO BEING SENT VIA FIRST
CLASS MAIL TO EACH PARTY REPRESENTATIVE
PURSUANT TO SBMA REGULATIONS SEC. 31-91-47**

Copies were sent to the following parties:

Rachael M. Baird, Esquire

Attorney Linda J. Yelmini

Christopher M. Hodgson, Esquire

Steven R. Werbner

James S. Marpe, First Selectman

Maria C. Alfonso

Jack Parlon, Labor Specialist

Town Clerk*

File

*When applicable, this transmittal is filed with the town clerk in accordance with Section 31-98, Chapter 560, of the Connecticut General Statutes.

CONTACT PERSON

Ivette Hernandez

2022-MA-0015

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

ARBITRATION AWARD

In the Matter Of: Case No. 2022-A-0061
TOWN OF WESTPORT DATE OF AWARD: January 23, 2023
And HEARING DATE: October 3, 2022
WESTPORT POLICE UNION, FOP Hearing via ZOOM
LOCAL LODGE 045

APPEARANCES: Christopher M. Hodgson, Attorney at Law (For the Town)
Rachael M. Baird, Attorney at Law (For the Union)

I. ISSUE:

Is the matter arbitrable?

II. BACKGROUND:

The Westport Police Union, Fraternal Order of Police, Local Lodge 045, (hereinafter referred to as the "Union") filed a grievance asserting that the Town of Westport (hereinafter referred to as the "Town") made "unilateral changes to the pension plan agreement in violation of the CBA and the pension plan agreement." (Jt. Ex. 1). Specifically, the grievance involves the Town's removal of the non-union, management police officers from the Police Pension Fund without bargaining with the Union.

The grievance was denied during the prior steps of the grievance procedure. The Town raised the issue of whether the matter was arbitrable. On October 3, 2022, an arbitration hearing was held via ZOOM. Exhibits were provided to the Panel in advance of the hearing which were admitted into evidence over the course of the hearing. The Town called one witness who testified and was cross-examined. The Union did not call any witnesses. The Town and the Union both filed post hearing briefs by the agreed upon due date of November 4, 2022. The Panel held an Executive Session on November 9, 2022 by 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 Non-Union Management Police Officers (Chief of Police, Deputy Police Chief(s), Captains and Police Lieutenants) are not members of the Union and are not covered by the CBA. Historically, these Non-Union Management Police Officers were covered by the Police Pension Fund. As a result of an interest arbitration award, the benefits under the Police Pension Fund were reduced.

The Town maintains a Non-Union Supervisory Employee Pension Plan (hereinafter referred to as the "NUSP") and all non-union supervisory employees of the Town participate in that plan except for the Non-Union Supervisory Police and Fire employees. By vote of the Representative Town Meeting in 2021, the Non-Union Management Police Officers were moved (and not pertinent here, the Non-Union Management Fire Personnel were also moved) to the NUSP. (Town Ex. 1)

No assets were moved from the Police Pension Fund to the NUSP. All of the benefits to which the Non-Union Management Police Officers will be entitled will be paid from the NUSP for their entire period of service. The change impacts both current and future Non-Union Management Police Officers.

IV. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT

**ARTICLE I
RECOGNITION**

The TOWN hereby recognizes the UNION as the exclusive representative and bargaining agent for the regular full-time police officers employed by the Police Department, except the Chief of Police, Deputy Police Chiefs, Captains and Police Lieutenants.

**ARTICLE 8
GRIEVANCE PROCEDURES**

SECTION 1.

Should any employee or group of employees feel aggrieved by any conditions of employment, adjustments shall be sought as follows:

STEP 1.

The UNION shall submit the grievance in writing to the Chief of Police, setting forth the nature of the grievance. Within three (3) days after the Chief of Police receives the grievance, he/she shall meet with the representatives of the UNION for the purposes of adjusting or resolving the grievance.

STEP 2.

If the grievance is not resolved by the Chief of Police to the satisfaction of the UNION within five (5) days after such meeting, the UNION may present such grievance in writing within seven (7) days thereafter, to the First Selectman. Within seven (7) days after the First Selectman receives such grievance, he/she shall meet with the representative of the UNION for the purpose of adjusting or resolving grievance.

STEP 3.

If the grievance is not resolved by the First Selectman to the satisfaction of the UNION within five (5) days after such meeting, the UNION may within ten (10) days thereafter submit the dispute to arbitration by the Connecticut State Board of Mediation and Arbitration. The TOWN may at its option elect to have the grievance heard by the American Arbitration Association provided the TOWN pays the cost of the arbiter and the American Arbitration Association fee.

The parties agree that any and all disputes concerning the arbitrability, application or interpretation of a specific provision of the Agreement shall be committed solely and exclusively to the arbitrator named herein for final and binding decision. The decision of such Board/Arbitrator shall be final and binding on all parties.

SECTION 2.

Nothing contained herein shall prevent any employee from presenting his/her grievance and representing himself/herself.

SECTION 3.

The arbitrator shall not have authority to change, modify, or amend the Agreement.

SECTION 4.

If an aggrieved employee or group of employees fail to file a grievance under this section within sixty (60) days of the occurrence leading to the grievance, then such grievance shall be deemed waived, and neither the Connecticut State Board of Mediation and Arbitration or the American Arbitration Association shall have no jurisdiction in the matter.

SECTION 5.

Time limits prescribed in this Article may be extended by mutual agreement in writing by both parties; and it is further agreed that neither party shall unreasonably withhold agreement to extend any time limits as requested by the other party.

**ARTICLE 29
PENSION PLAN**

It is understood and agreed that all provisions of the Pension Agreement dated February 3, 1972 and as amended known as "Police Pension Fund of the Town of Westport" are incorporated herein and are made part hereof as though fully set forth herein. Any question concerning eligibility or computation of the benefits shall be subject to the grievance and arbitration provisions of this Agreement.

V. DISCUSSION

The Town raised the issue of substantive arbitrability. When issues of substantive arbitrability are raised, generally the Panel must determine if the parties agreed to make the arbitration process available under the terms of the grievance at issue. The inquiry is typically two-pronged in cases of substantive arbitrability: (1) has the subject matter of the dispute been specifically excluded from arbitration under the CBA; and (2) if not, is there other forceful evidence that the parties did not intend disputes over the subject matter to be arbitrated. The burden of proof is on the employer to prove the matter is not arbitrable.

There is a public policy favoring arbitration to settle disputes which has been articulated by Congress and the Supreme Court. The seminal case of ***Steelworkers v. Warrior & Gulf Navigation Co.***, 363 U.S. at 582 provides that arbitral 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".

The Union correctly argues in its brief that all of the provisions of the Pension Agreement are incorporated in the CBA as provided in Article 29. However, the language of Article 29 limits issues only those issues "concerning eligibility or computation of the benefits" to the grievance and arbitration provisions of the CBA.

The issue of whether the Town could remove the Non-Union Management Police Officers from the Police Pension Fund is not a question of eligibility or computation of benefits. The CBA covers Union members, and the Non-Union Management Police

Officers are specifically excluded from its Recognition Clause. The removal of these Non-Union Police Officers is not a question of eligibility or computation of benefits at all and certainly not a question of the computation of eligibility or computation of benefits of Union members. Therefore, the majority of the Panel finds the language makes it clear that the issue raised by the Union's grievance is not covered by the Grievance Procedure.

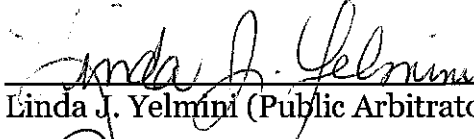
The Union argues that "the Town's decision to remove the non-union supervisory police officers from the Police Plan is a unilateral change that is a violation of the CBA." Further, the Union argues that whether or not that unilateral change is positive or negative or has no impact on the Union, "is not relevant to the issue of arbitrability." The Panel agrees and these are arguments as to the merits of the issues.

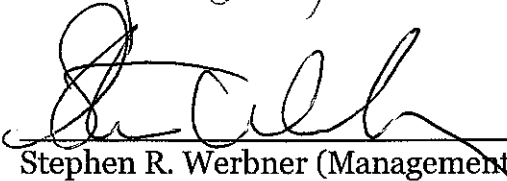
The Panel is constrained by the language of Section 3 of Article 8 of the CBA which provides "The arbitrator shall not have authority to change, modify, or amend the Agreement." For the Panel to find the Union's grievance to be arbitrable would be violative of this contract provision.

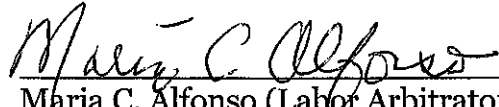
VI. AWARD

For the reasons set forth herein, a majority of the Panel finds the matter not to be arbitrable.

BY THE ARBITRATION PANEL:

 11/15/2022
Linda J. Yelmini (Public Arbitrator & Chairperson)


Stephen R. Werbner (Management Arbitrator)

 11/10/22
Maria C. Alfonso (Labor Arbitrator) Dissenting