

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: May 31, 2016)

RHODE ISLAND COLLEGE

V.

RHODE ISLAND COUNCIL 94,
AFSCME, AFL-CIO, LOCAL
2878

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C.A. No. PM 2014-0591

DECISION

MATOS, J. Before this Court is Rhode Island College’s (RIC’s) motion to stay implementation of an arbitration award (Arbitration Award) and RIC’s motion to vacate the same. Rhode Island Council 94, AFSCME, AFL-CIO, Local 2878 (the Union) moves to confirm the same Arbitration Award. Jurisdiction is pursuant to G.L. 1956 § 28-9-14. For the reasons set forth in this Decision, this Court grants RIC’s motion to vacate the Arbitration Award; RIC’s motion to stay is moot; and the Union’s motion to confirm is denied.

I

Facts and Travel

RIC and the Union are parties to a collective bargaining agreement (CBA). Pursuant to the CBA, RIC may discipline employees only for just cause. See CBA, Art. 24. The CBA also provides that when the Union or an employee challenges RIC’s decision to discharge an employee, the matter may be submitted to arbitration. Id., Art. 25. In this case, RIC terminated Robert Panciocco (the Grievant) following an incident at the school. The Union grieved the termination in accordance with the CBA, and it was submitted to arbitration.

At the arbitration hearing on December 18, 2013, both the Union and RIC were represented by counsel, and the Grievant testified. While there was no formal statement of an issue before the arbitrator, the arbitrator framed the issue as: “Was the Grievant . . . terminated from his employment for just cause? And, if not, what shall be the remedy?” (RIC’s Ex. A, Arbitration Award dated Jan. 17, 2014 at 3).

The Grievant worked at RIC for thirty-one years as of July 15, 2013, the date of the incident. Id. at 6. Prior to the incident, the Grievant had a clean employment record evidencing no previous discipline. Id.

On the date of the incident, the Grievant reported to his housekeeper duties at Whipple Hall. Id. at 7. According to the Grievant, at approximately 10:30 in the morning, he became aware that he had his .22 caliber semiautomatic pistol in his back pocket. Id. The gun was fully loaded with six rounds in the magazine and one round in the chamber. (Deputy Chief Casbarro Mem. July 22, 2013). The Grievant claimed that when he realized that he had his gun on him, he went to put the gun in his car, but he changed his mind when he saw that there were elementary school children near his car. Arbitration Award at 7. Therefore, the Grievant returned to work with the gun still in his possession. He did not make anyone at RIC aware that he had the gun on his person.

The Grievant left work at approximately 1:20 p.m., as he had previously received permission to leave work early on that day. Id. According to the Grievant, at around 3:00 p.m. he realized that his gun was no longer in his pocket. Id. When he realized this, the Grievant thought he might have lost it in a bathroom while he was cleaning Whipple Hall.¹ Id. At that time, the Grievant, for the first time, called RIC’s Safety and Security Office to report the

¹ A residence hall on RIC’s campus. Arbitration Award at 7.

situation. First, he spoke with the desk officer, and, fifteen minutes later, he called back and spoke with the lieutenant on duty. Id.

RIC's Safety and Security Office dispatched an officer to Whipple Hall. The officer did not find the gun in a bathroom at Whipple Hall. Id. While continuing his search, the officer located the gun in a trash can near the front of Whipple Hall. Id. The officer brought the gun back to the campus police headquarters where it was unloaded. Id. RIC's Safety and Security Office then told the Grievant that the weapon had been found. Id.

On July 26, 2013, the Grievant and his union representatives appeared before RIC's interim director of human resources for a pre-disciplinary hearing. Id. Following the hearing, RIC sent the Grievant a letter dated July 30, 2013 (Termination Letter); the letter informed the Grievant that RIC was terminating him effective August 1, 2013. On August 2, 2013, the Union filed a grievance on the Grievant's behalf asserting that the Grievant had not been terminated for just cause. Arbitration Award at 3, 7; see also Official Grievance Form. RIC and the Union agreed to take the grievance directly to arbitration. Arbitration Award at 8.

A

The CBA and Policies on Workplace Violence

The CBA between RIC and the Union provides for arbitration. See CBA, Art. 25-26.

The Management Rights section states:

“The Union recognizes that except as specifically limited, abridged or relinquished by the terms and provisions of this agreement, all rights to manage, direct or supervise the operations of the State and the employees are vested solely in the State.

“For example, but not limited thereto, the employer shall have the exclusive rights subject to the provisions of this agreement and consistent with the applicable laws and regulations:

“A. To direct employees in the performance of the duties of their positions;

“B. To hire, promote, transfer, assign, and retain employees in positions within the bargaining units and to suspend, demote, discharge, or take other disciplinary action against such employees;

....

“E. To relieve employees from duties because of lack of work or for other legitimate reasons.” CBA, Art. 4.

Article 24 of the CBA discusses Discipline and Discharge of employees. It states:

“Disciplinary action may be imposed upon an employee only for just cause. Any disciplinary action imposed upon an employee may be processed as a grievance through the regular grievance procedure as outlined in Article 25 . . . Where appropriate, disciplinary action or measures shall include only the following:

“1. Oral reprimand

“2. Written Reprimand

“3. Suspension

“4. Discharge

“5. Demotion where appropriate

“When any disciplinary action is to be implemented, the Appointing Authority shall before or at the time such action is taken, notify the employee and the Union in writing of the specific reasons for such action.” CBA, Art. 24.

Immediately following its discussion of the disciplinary action that may be imposed upon employees, the CBA discusses the employee’s right to grieve the imposition of said disciplinary action. If the grievance procedure is unsuccessful, then the CBA provides that the matter may proceed to arbitration.²

² The relevant CBA provisions providing for a grievance procedure and enabling a grievance to proceed to arbitration states in relevant part that:

“24.2 The Appointing Authority shall not discharge or suspend an employee without just cause. Within two weeks of such suspension or discharge, the Union may file a grievance with the State Labor Relations Administrator as set forth in Article 25 and such hearing shall be held no later than three days after the Union’s request.

....

“25.1 For the purpose of this agreement, the term “grievance” means any difference or dispute between the State and the Union, or between the State and any employee with respect to the

In this case, the Grievant violated two policies on violence in the workplace: one promulgated by the State and one promulgated by the R.I. Board of Governors for Higher Education (the Board).

The Board's policy states in pertinent part that:

“The Board of Governors complies with and supports the language and spirit of applicable laws as they relate to employee security and safety. Therefore, **the Board has adopted a statewide zero tolerance policy for workplace violence.**

“1. This policy is committed to working with non-classified employees to maintain a work environment free from threats of violence, harassment, and intimidation. **This policy includes an absolute prohibition against employees carrying any firearms or personal weapons onto any Board/State property**, except as may be specifically authorized by law and as required in the employee's official responsibilities as a non-classified employee.” (Emphases added.)

The policy goes on to prohibit employees from engaging in violent behavior. The State of Rhode Island's policy is nearly identical to the Board's policy on workplace violence.³

interpretation, application, or violation of any of the provisions of this agreement.

....

“In the event the grievance is not settled in a manner satisfactory to the aggrieved member and/or the Union, then such grievance may be submitted to arbitration . . .” CBA, Art. 24-25.

³ The State's policy on the prevention of violence in the workplace states:

“The State of Rhode Island complies with and supports the language and spirit of applicable laws as they relate to employee security and safety. Therefore the State has adopted a zero tolerance policy for workplace violence.

“1. This Policy is committed to working with State employees to maintain a work environment free from threats of violence, harassment, and intimidation. **This policy includes an absolute prohibition against employees carrying any firearms or personal weapons onto any State property**, except as may be specifically authorized by law and as required in the employee's official responsibilities as a non-classified employee.” (Emphasis added.)

Accordingly, both the Board and the State maintain a zero tolerance policy for workplace violence, and both have policies which include an absolute prohibition against employees carrying any firearms or personal weapons onto certain premises. Both of the policies would prohibit an employee from carrying a firearm into one of RIC's dormitories.

B

The Arbitration Award

The Grievant testified before the arbitrator at a hearing on December 18, 2013. During his testimony, he acknowledged that he had brought a loaded gun onto RIC's campus on July 15, 2013. Arbitration Award at 8.

RIC argued that the Grievant's actions constituted "a clear violation of the State and College policies on prevention of violence in the workplace." Id. At the arbitration hearing, RIC presented the testimony of the Interim Director of Human Resources and two campus police reports. Id. The Union did not dispute the fact that the Grievant brought a loaded gun to RIC's campus, where he lost said weapon. Id. at 8-9. Further, the Union did not dispute that the Grievant reported that he had brought a gun to campus only after he had discovered that he had misplaced the weapon. Id.

At the hearing, the Union presented evidence that the Grievant had worked for RIC for thirty-one years and had a clean employment record. Id. at 9. The Union argued that the Grievant was unaware of the policies on prevention of violence in the workplace and that he was initially unaware that he had the gun on his person when he arrived at work. Id. at 9.

The Grievant acknowledged that bringing the gun onto campus was a mistake, although he remained firm in his contention that it was unintentional. Id. at 10. The Union argued, and

RIC did not dispute, that the Grievant did not engage in any threatening or violent behavior with the gun. Id.

The Union also presented evidence at the hearing which established that the Grievant is licensed to carry concealed firearms in Maine, Massachusetts, Connecticut, New Hampshire, and Rhode Island. Id. at 9. The National Rifle Association certified the Grievant as an Instructor for Pistol and Personal Protection in the Home. Id.

Finally, the Union also presented an exhibit which was accepted into evidence over RIC's objection. The exhibit concerned an incident at the University of Rhode Island (URI) in 2007 where a campus police officer allegedly brought a firearm to campus. Id. at 10. That incident was resolved through settlement and resulted in a week-long suspension. Id. When that incident occurred, the State's policy on violence in the workplace was in full effect, but the Board had yet to promulgate its policy. Id. at 10-11. At the hearing, the Union argued that the URI incident constituted precedent for reducing the discipline in the case before the arbitrator. Id.

In the Arbitration Award, the arbitrator discussed the Union and RIC's positions and the evidence that supported each. Id. at 8-12. The arbitrator then delved into his opinion, quickly determining that the Union's arguments concerning the allegation that the Grievant was unaware of the pertinent policies were meritless. Id. at 13. The arbitrator wrote, "no employee can credibly claim to think that bringing a firearm to a college campus could be acceptable behavior." Id.

The arbitrator analyzed whether just cause supported RIC's decision to terminate the Grievant. The arbitrator stated he analyzed the indicia of just cause and believed most of the standards had been met. Id. The arbitrator found that the policies relating to the prevention of violence in the workplace, including the prohibition of firearms, relate to RIC's need for safe,

orderly, and efficient operation of its business. Id. The arbitrator also found that before discipline was imposed, a proper investigation and hearing took place. Id. Finally, the arbitrator noted that the Grievant admitted to bringing and losing the weapon on campus. Id.

The arbitrator also considered the 2007 incident at URI introduced by the Union. As that case ended in settlement, the arbitrator acknowledged that he did not know much about the circumstances of that incident. Id. at 13-14. However, the arbitrator relied on the settlement for “limited guidance value.” Id. The arbitrator considered URI and RIC to be the same employer as both are subject to the authority of the Board, and the policy at issue in the URI incident was one of the policies at issue before this arbitrator. Id. The arbitrator found the URI incident stood for the proposition that “something short of termination may still be possible in a ‘zero tolerance’ context.” Id. at 14.

The final factor the arbitrator considered was whether the degree of discipline was reasonably related to the offense. Id. When considering this factor, the arbitrator noted that he accepted the Union’s assertion that the Grievant inadvertently brought the gun to work and never intended to harm anyone at work with the weapon. Id. The arbitrator also accepted the Grievant’s testimony that when he realized he had the gun, he considered putting it in his car but instead continued working without making anyone else aware that he had the weapon on his person. Id. The arbitrator recognized that the Grievant lost the weapon in a residence hall on RIC’s campus, a mistake which could have, but fortunately did not have, deadly consequences. Id. at 14-15. Then, the arbitrator weighed the Grievant’s clean employment record, apparent passive intent, and fact that the Grievant did not commit actual violence against the uncontested acts of the Grievant. See id. at 15.

In his opinion, the arbitrator stated, “[h]ere we confront the never-resolved question of whether an arbitrator should modify or eliminate a penalty, lawfully imposed by an employer, when, in the arbitrator’s judgment, the penalty was excessive.” Id. at 15. While the arbitrator acknowledged that the Grievant’s conduct was “reckless,” the arbitrator concluded that “the Grievant’s long service, coupled with the absence of intent to harm, justif[ied] restoring [the Grievant] to the workforce.” Id. at 16. Ultimately, the arbitrator sustained the grievance, finding that the Grievant was not terminated for just cause. Id. at 17. The arbitrator stated that the Grievant would be reinstated immediately but held that the employee would not receive pay or benefits lost from August 1, 2013 onward, as the Grievant would be considered to have been on a disciplinary suspension between August 1, 2013 and the date of reinstatement. Id.

RIC appeals the arbitrator’s award.

II

Standard of Review

It is a settled principle that Courts possess limited authority to review the merits of and vacate arbitration awards. See Lemerise v. Commerce Ins. Co., No. 2014-244-Appeal, 2016 WL 1458213, at *6 (R.I. Apr. 13, 2016); State, Dep’t of Corr. v. R.I. Bhd. of Corr. Officers, 115 A.3d 924, 928 (R.I. 2015) (citing Berkshire Wilton Partners, LLC v. Bilray Demolition Co., 91 A.3d 830, 834 (R.I. 2014)); John Rocchio Corp. v. Town of Coventry, 919 A.2d 418, 420 (R.I. 2007). When considering a motion to vacate an arbitration award, the judge’s review is governed and constrained by § 28-9-18, which provides in pertinent part:

“(a) In any of the following cases the court must make an order vacating the award, upon the application of any party to the controversy which was arbitrated:

“(1) When the award was procured by fraud.

“(2) Where the arbitrator or arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted was not made.

“(3) If there was no valid submission or contract, and the objection has been raised under the conditions set forth in § 28-9-13.

“(b) A motion to vacate, modify, or correct an arbitrator’s award shall not be entertained by the court unless the award is first implemented by the party seeking its vacation, modification, or correction; provided, the court, upon sufficient cause shown, may order the stay of the award or any part of it upon circumstances and conditions which it may prescribe.

“(c) If the motion to vacate, modify, or correct an arbitrator’s award is denied, the moving party shall pay the costs and reasonable attorneys’ fees of the prevailing party.” Sec. 28-9-18.

One of the reasons that courts have limited authority to review the merits of an arbitration award is there is a public policy interest favoring the finality of arbitration awards. State, Dep’t of Corr. v. Rhode Island Bhd. of Corr. Officers, 115 A.3d at 928 (citing Berkshire Wilton Partners, LLC, 91 A.3d at 834). Even an error of law in and of itself is insufficient to authorize a court to vacate an arbitration award. State, Dep’t of Corr. v. R.I. Bhd. of Corr. Officers, 115 A.3d at 928 (citing State, Dep’t of Corr. v. R.I. Bhd. of Corr. Officers, 64 A.3d 734, 740 (R.I. 2013)).

While judicial review is limited, it must exist to ensure the arbitration process is not compromised or tainted by irrationality. See Prudential Prop. & Cas. Ins. Co v. Flynn, 687 A.2d 440, 441 (R.I. 1996). The legislature has outlined and the Rhode Island Supreme Court has explained the circumstances when an arbitration award should be vacated. See § 28-9-18. The Rhode Island Supreme Court has stated that arbitration awards may be vacated when a court finds “a manifest disregard of a contractual provision, a completely irrational result, a decision that is contrary to public policy, or an award that determined a matter that was not arbitrable in the first place.” State, Dep’t of Corr. v. R.I. Bhd. of Corr. Officers, 64 A.3d at 739 (citing Cumberland Teachers Ass’n v. Cumberland Sch. Comm., 45 A.3d 1188, 1192 (R.I. 2012)).

Further, a court must vacate an arbitration award when it finds that the arbitrator has exceeded his [or her] powers under § 28-9-18(a)(2). See City of E. Providence v. United Steelworkers of Am., Local 15509, 925 A.2d 246, 252 (R.I. 2007) (citing State Dep't of Corr. v. R.I. Bhd. of Corr. Officers, 867 A.2d 823, 828 (R.I. 2005)).

“[A]n arbitrator exceeds his or her powers under § 28-9-18(a)(2) if the arbitration award fails to ‘draw its essence’ from the agreement, if it was not based upon a ‘passably plausible’ interpretation thereof, if it manifestly disregarded a contractual provision, or if it reached an irrational result.” State v. R.I. Emp’t Sec. Alliance, Local 401, SEIU, AFL-CIO, 840 A.2d 1093, 1096 (R.I. 2003) (quoting State Dep’t of Children, Youth and Families v. R.I. Council 94, Am. Fed’n of State, Cnty., and Mun. Emps., AFL-CIO, 713 A.2d 1250, 1253 (R.I. 1998)). A court determines if an arbitrator exceeded his power by examining whether the arbitrator had the authority, based on the parties’ CBA, to reach certain issues not whether the arbitrator correctly decided the merits of the case. Thomas H. Ohmke & Joan M. Brovins, Commercial Arbitration, § 146:1(3rd ed. 2015).

III

Analysis

1. The Management Rights Section of the CBA

RIC argues that this Court should vacate the Arbitration Award because the arbitrator exceeded his authority by substituting his judgment and changing the discipline that RIC imposed. The Union argues that the arbitrator acted within his statutory authority and authority provided under the CBA in modifying what the arbitrator found to be an excessive penalty.

As RIC points out, the CBA states that discipline may be imposed only upon a finding of just cause. See CBA, Art. 24. Therefore, as the arbitrator imposed discipline in the form of a

disciplinary suspension on the Grievant, he clearly found that in this case just cause for discipline existed. See id. However, the arbitrator determined that the termination at issue was not merited, holding that it was his “opinion” that an extended disciplinary unpaid-suspension was the appropriate discipline in this case. See Arbitration Award at 16. While the CBA states that just cause is needed to suspend or terminate an employee, it does not state that a different level of just cause is needed to suspend, rather than to terminate, an employee. See CBA, Art. 24. In one clause, the CBA says that just cause is needed to discipline employees, and in another clause, the CBA states that just cause is needed to suspend or terminate employees. Id. However, nowhere in the CBA does it state that more cause must be found to terminate an employee rather than to suspend an employee.

In Rhode Island, arbitrators have the authority to modify the penalty imposed by the employer or otherwise fashion an appropriate remedy for the employee unless the parties agree otherwise in writing. Sec. 28-9-1. In State, Dep’t of Corr. v. R.I. Bhd. of Corr. Officers, 115 A.3d at 928, the Rhode Island Supreme Court reviewed a court order vacating an arbitration award in favor of a Department of Corrections (DOC) employee. In that case, the DOC employee had been terminated for failure to report that a fellow correctional officer was smoking marijuana on duty even when the DOC employee was interviewed about the incident. See id. Like this case, the issue before the arbitrator was, “Was [the grievant] terminated with just cause? If not, what shall be the remedy?” Id. at 927.

Like the CBA here between RIC and the Union, the collective bargaining agreement in the 2015 DOC case had a management rights section. See id. at 930. The management rights section contained in the collective bargaining agreement in the DOC case was nearly identical to

the Management Rights section contained in the CBA here.⁴ In the 2015 DOC case, the Rhode Island Supreme Court affirmed the vacation of an arbitration award because the arbitrator failed to take into consideration the management rights section of the collective bargaining agreement when the arbitrator issued his award. Id. at 931. The Court held that the arbitrator in that case abused his power by holding that the DOC director lacked just cause to terminate the grievant without addressing the management rights section. Id.

In this case, the Management Rights section of the CBA states:

“The Union recognizes that except as specifically limited, abridged or relinquished by the terms and provisions of this agreement, all rights to manage, direct or supervise the operations of the State and the employees are vested solely in the State.

“For example, but not limited thereto, the employer shall have the **exclusive rights** subject to the provisions of this agreement and consistent with the applicable laws and regulations:

“A. To direct employees in the performance of the duties of their positions;

“B. To hire, promote, transfer, assign, and retain employees in positions within the bargaining units and to suspend, demote, discharge, or take other disciplinary action against such employees;

....

“E. To relieve employees from duties because of lack of work or for other legitimate reasons.” CBA, Art. 4. (Emphasis added.)

Like the management rights section in the DOC case, this section gives RIC the exclusive right to discipline its employees.

⁴ In the 2015 DOC case, the Management Rights section was quoted as stating:

“the employer shall have the *exclusive right*, subject to the provisions of this [CBA] and *consistent with applicable laws and regulations*: * * * To hire, promote, transfer, assign, and retain employees in positions within the bargaining unit, and to suspend, demote, discharge or take other disciplinary action against such employees[.]” State, Dep’t of Corr. v. R.I. Bhd. of Corr. Officers, 115 A.3d at 931 (emphasis in original).

Here, the Arbitration Award lists an excerpt from the Management Rights section of the CBA as a “relevant contract provision.” See Arbitration Award at 4. However, at no point in his analysis, opinion, or award does the arbitrator mention or discuss the relevance of the Management Rights section of the CBA. Failing to address the relevant contract provision was an abuse of the arbitrator’s power. See State, Dep’t of Corr. v. R.I. Bhd. of Corr. Officers, 115 A.3d at 931. “An arbitrator has a duty to resolve a dispute based on the relevant provisions in the CBA.” Id. (citing Woonsocket Teachers’ Guild, Local 951, AFT v. Woonsocket Sch. Comm., 770 A.2d 834, 839 (R.I. 2001)). Accordingly, the arbitrator exceeded his authority when he disregarded or ignored the Management Rights section of the CBA. See e.g. id. at 933; see also R.I. Emp’t Sec. Alliance, Local 401, SEIU, AFL-CIO, 840 A.2d at 1096 (quoting R.I. Council 94, Am. Fed’n of State, Cnty., and Mun. Emps., AFL-CIO, 713 A.2d at 1253)).

2. Public Policy-Campus Safety

In 2003, the Rhode Island Supreme Court affirmed the Superior Court’s vacation of an arbitration award when the Superior Court held: “Under the circumstances, it would seem irrational to conclude that the Director, pursuant to §§ 42-56-10(2) and 42-56-10(7), is powerless to terminate a security guard who allows himself or herself to be compromised by an inmate, thereby creating a potential security risk.” State v. R.I. Bhd. of Corr. Officers, No. 00-2163, 2001 WL 267757, at *6 (R.I. Super. Feb. 26, 2001), rev’d sub nom. State v. R.I. Bhd. of Corr. Officers, 819 A.2d 1286 (R.I. 2003).⁵

⁵ Section 42-56-10 of the Rhode Island General Laws delegates to the director of the DOC certain rights and duties including the duty to:

“(2) Maintain security, safety, and order at all state correctional facilities, utilize the resources of the department to prevent escapes from any state correctional facility, take all necessary precautions to prevent the occurrence or spread of any disorder, riot, or insurrection of any state correctional facility, including, but not

Unlike the director of the DOC, the Board is not statutorily required to maintain a safe campus. See G.L. 1956 § 16-56-1. However, there is a strong public policy interest in ensuring the safety of our college campuses. See e.g. J.W. Powell, Campus Security and Law Enforcement (2nd ed. 1981); Oren R. Griffin, Confronting the Evolving Safety and Security Challenges at Colleges and Universities 5 *Pierce L. Rev.* 413 (2007). The strong public policy in preventing workplace violence is demonstrated and served by the Board and RIC's zero tolerance policy on workplace violence.

The Supreme Court of the United States has held that when vacating an arbitration award as contrary to public policy, a court must determine that the award runs “contrary to an explicit, well-defined, and dominant public policy, as ascertained by reference to positive law and not from general considerations of supposed public interests[.]” E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17, 531 U.S. 57, 63 (2000).

Throughout this country there exists a dominant, well-defined policy against violence in the workplace. The Federal Department of Labor states on their official website that:

“It is our policy to promote a safe environment for our employees and the visiting public, and to work with our employees to maintain a work environment that is free from violence, harassment, intimidation, and other disruptive behavior. The Department’s position in this area is that violence or threats of violence — in all forms — is unacceptable behavior. It will not be tolerated and will be dealt with appropriately.” United States Department of Labor: DOL Workplace Violence Program, <https://www.dol.gov/oasam/hrc/policies/dol-workplace-violence-program.htm> (last visited 5/12/2016).

limited to, the development, planning, and coordination of emergency riot procedures, and take suitable measures for the restoration of order;”

and the right to

“(10) Relieve employees from duties because of lack of work or for other legitimate reasons[.]” Sec. 42-56-10.

The Department of Labor also recognized on their website that concealing a weapon is a form of workplace violence. See id.

Likewise, there is positive law throughout this country that prohibits the carrying of firearms on college campuses; for example, New York and Massachusetts are among the states that have positive law prohibiting the carrying of firearms on college campuses. See e.g. Mass. Gen. Laws Ann. ch. 269, § 10(J) (West 2015); N.Y. Penal Law § 265.01-a (McKinney 2013). While Rhode Island does not have positive law prohibiting guns on college campuses, it is RIC's policy for employees not to bring weapons to campus and an arbitration award need not violate positive law to be contrary to public policy. See E. Associated Coal Corp., 531 U.S. at 63.

The facts of this case are not in dispute. The Grievant admitted to—however, inadvertently—bringing a loaded firearm onto a college campus. When the Grievant became aware that he had the gun on his person, he told no one and continued to work with the gun in his possession. Then, hours after the Grievant had left work for the day, he realized that he had lost a loaded weapon while he was cleaning a college dormitory. The Grievant only made RIC aware of the situation when he realized his weapon was unattended somewhere on the college campus. The arbitrator acknowledged that the Grievant's conduct in failing to report and then losing the weapon was “reckless” and argues for “severe consequences.”⁶ Arbitration Opinion at 16. Finally, the arbitrator accepted, and the Union did not dispute, that the violence in the workplace

⁶ Indeed, even if there were no “zero tolerance policy,” common sense requires acknowledgement that bringing a loaded weapon onto a college campus and reporting it only after losing the weapon is conduct that demands discipline. See Catholic Cemeteries v. RI Laborers Dist. Council ex rel. Local Union 271, No. 04-6148, 2005 WL 957734, at *7 (R.I. Super. Apr. 22, 2005) (there is no need for a zero tolerance policy before an employer can impose discipline on employee for threatening his fellow employees).

policies, including the prohibition of firearms, relate to RIC's need for safe, orderly, and efficient operation of its business of higher education. Id. at 13.

Here, the arbitrator's decision, like the decision of the arbitrator in State v. R.I. Bhd. of Corr. Officers, 819 A.2d 1286, was irrational because it rendered RIC powerless to terminate an employee who had exposed the campus community—employees and students alike—to the security risk of a fully loaded firearm by bringing and then losing said firearm on campus. In light of the strong public policy interest that exists concerning keeping our schools, colleges, and universities safe from violence and crime, it is irrational and contrary to public policy to divest the Board and the State of the authority to terminate an employee who undisputedly violated a policy aimed at creating a safe and efficient campus and workplace. Accordingly, this Court's vacates the Arbitration Award. See State, Dep't of Corr. v. R.I. Bhd. of Corr. Officers, 64 A.3d at 739 (citing Cumberland Teachers Ass'n, 45 A.3d at 1192).⁷

IV

Conclusion

This Court finds that the arbitrator's decision to reinstate the Grievant was irrational, in manifest disregard of the Management Rights section, an admittedly relevant portion of the CBA, and contrary to public policy. See § 28-9-18. Accordingly, and for all the reasons set

⁷ Additionally, the arbitrator improperly relied on a URI settlement in reaching his decision. As the arbitrator noted, “[w]hen parties to a collective bargaining agreement settle a dispute, it usually tells the observer that there were weaknesses in one or both cases, and that the parties negotiate to achieve some of what each party wants, leaving the rationales unrecorded.” Arbitration Award at 13. The arbitrator's reliance on the URI settlement agreement for even limited guidance value was improper, as once a settlement is concluded the merits of the underlying claim are not examined. United States v. Baus, 834 F.2d 1114, 1127 (1st Cir. 1987) (citations omitted).

forth in this Decision, RIC's petition to vacate is granted. The Union's motion to confirm arbitration is denied, and RIC's motion to stay implementation of the Arbitration Award is moot.

Counsel should submit the appropriate judgment for entry.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Rhode Island College v. Rhode Island Council 94,
AFSCME, AFL-CIO, Local 2878

CASE NO: PM 2014-0591

COURT: Providence County Superior Court

DATE DECISION FILED: May 31, 2016

JUSTICE/MAGISTRATE: Matos, J.

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