STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: October 1, 2015]

RHODE ISLAND COUNCIL ON POSTSECONDARY EDUCATION and UNIVERSITY OF RHODE ISLAND	:	
V.	:	**PM No. 14-5703**
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, PART-TIME FACULTY UNITED a/k/a URI/AAUP, PTFU	:	

DECISION

LANPHEAR, J. This matter is before the Court on Rhode Island Council on Postsecondary Education and University of Rhode Island's (Plaintiffs), motion to vacate an arbitration award issued on November 13, 2014. Defendant, Kenneth Jolicoeur, through the union for part-time faculty at URI, objects to Plaintiffs' motion and moves to confirm the arbitration award. The arbitrator found that there was substantive arbitrability of the claim, and that the employer's interpretation that the collective bargaining agreement (CBA) limits part-time professors to two courses per semester was not supported by the text of the agreement. Jurisdiction is pursuant to G.L. 1956 § 28-9-18.

Facts and Travel

Kenneth Jolicoeur works at URI as a part-time faculty member and is part of the defendant-union. (Mem. in Supp. of Mot. to Stay at 2.) In Spring 2013, Mr. Jolicoeur was scheduled to teach two classes, ENG 110 and CLS/ENG 160. Id. In addition to these two courses, Mr. Jolicoeur received an administrative assignment as a coordinator in the Special

Programs Office, which coordinates high school programs. Id. After receiving the assignment, the University informed Mr. Jolicoeur that the combination of the two courses and administrative assignment would exceed the maximum hours for a part-time professor and offered him a choice of which two assignments he wished to keep. Id. at 3. Mr. Jolicoeur chose to teach the two courses, and the Union filed a grievance on his behalf for the failure to assign the administrative position. Id. The controversy proceeded through Step IV of the grievance process. Id. The Union then requested arbitration. Id.

The arbitrator issued an award dated October 14, 2014, finding that the issue was substantively arbitrable. Id. The arbitrator also decided on the merits of the case finding that the employer violated the CBA by rescinding the Special Programs Contract. Id. Additionally, the arbitrator ordered the employer to refrain from imposing a two course limit per semester for part time professors because it was not part of the CBA. Id. at 4.

Plaintiffs filed a motion to stay the implementation and vacate the arbitration award. Defendant objected to the motion to vacate and moved to confirm the arbitration award. Plaintiffs filed a supplemental memorandum.

Standard of Review

"Due to the public policy favoring the finality of arbitration awards, such awards enjoy a presumption of validity." N. Providence School Committee v. N. Providence Federation of Teachers, Local 920, American Federation of Teachers, 945 A.2d 339, 344 (R.I. 2008) (quoting Pierce v. Rhode Island Hospital, 875 A.2d 424, 426 (R.I. 2005)). "The authority of the Courts 'to review an arbitral award is statutorily prescribed and is limited in nature."' Buttie v. Norfolk & Dedham Mutual Fire Insurance Co., 995 A.2d 546, 549 (R.I. 2010) (citing N. Providence School Committee, 945 A.2d at 344). There are statutory limitations as to when the

Court can vacate an award which include "[w]here the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." G.L. 1956 § 10-3-12(4). The Court can overturn an arbitration award "only if the award was 'irrational or if the arbitrator[s] manifestly disregarded the law.'" Wheeler v. Encompass Insurance Co., 66 A.3d 477, 481 (R.I. 2013) (citation omitted). The Court cannot vacate an arbitrator's decision as long as it "'draws its essence' from the contract and is based upon a 'passably plausible' interpretation of the contract, it is within the arbitrator's authority and our review must end." State v. National Association of Government Employees Local No. 79, 544 A.2d 117, 119 (R.I. 1988) (citing Jacinto v. Egan, 120 R.I. 907, 912, 391 A.2d 1173, 1176 (1978)).

Substantive Arbitrability

The Plaintiffs assert that to be arbitrable, there must be a valid agreement and the dispute fall within the scope of the arbitration agreement. Plaintiffs contend the CBA arbitration clause is limited to disputes "with respect to the interpretation, application, or violation of any provision in the Agreement" and that this present matter falls outside the scope of the CBA because the CBA does not cover administrative work.

"[S]ubstantive arbitrability, like subject matter jurisdiction, can be raised at any time." Aetna Bridge Co. v. State Department of Transportation, 795 A.2d 517, 523 (R.I. 2002). Arbitration derives from the contract between the parties, and therefore, "the first issue to be decided is whether an arbitrable grievance emanates from the collective bargaining agreement." State, Department of Corrections v. R.I. Brotherhood of Correctional Officers, 866 A.2d 1241, 1247 (R.I. 2005) (citing R.I. Court Reporters Alliance v. State, 591 A.2d 376, 378 (R.I. 1991)). "'A duty to arbitrate a dispute arises only when a party agrees to arbitration in clear and

unequivocal language, and even then, the party is only obligated to arbitrate issues that it explicitly agreed to arbitrate."' State, Department of Corrections v. R.I. Brotherhood of Correctional Officers, 115 A.3d 924, 929 (R.I. 2015) (quoting State Department of Corrections, 866 A.2d at 1247.

To determine whether the parties agreed to arbitrate, it is necessary to review the agreement itself. The CBA's arbitration provision provides, "only grievances arising out of the provisions of this contract relating to the application or interpretation or violation thereof may be submitted to arbitration." (CBA § 13.4.) A grievance is defined as "any difference or dispute between the Board and the Association or between the Board and any employee with respect to the interpretation, application, or violation of any of the provisions of the Agreement." Id. at § 13.1. The arbitrator found that the main issue of this dispute centered around the interpretation of Article X, and whether it imposes a two course limit per semester on part time professors. (Award 4.)

The arbitrator relied on the language of the CBA and other documents to come to his conclusions. He went through a methodical recitation of the definitions and sections of the CBA to determine what was required for the matter to be arbitrable. This Court agrees that the subject matter arose out of the application or interpretation of the CBA, and therefore, the arbitrator had subjective arbitrability over the matter because the agreement contained "clear and unequivocal language" that it agreed to arbitrate these issues. See State, Department of Corrections, 115 A.3d at 929.

Procedural Arbitrability

The Plaintiffs also assert that the issue is not procedurally arbitrable. However, our Supreme Court has clearly stated that '"once substantive arbitrability is established, issues of

procedural arbitrability should be left to the arbitrator."' Burns v. Segerson, 122 R.I. 123, 130, 404 A.2d 500, 503-04 (1979) (quoting School Committee v. Pawtucket Teachers Alliance, R.I., 120 R.I. 810, 390 A.2d 386, 390 (1978)). In Burns, the Court also looked at the statute that gave the Court jurisdiction to vacate an award, which listed certain limited grounds. Burns, 122 R.I. at 130, 404 A.2d at 504. The Court found that it could not vacate an award based on procedural defects. Id. Similarly, § 10-3-12—providing statutory limitations as to when the Court can vacate an award—does not state procedural defects as a reason for vacating an arbitration award. Therefore, the arbitrator alone must decide on issues of procedural arbitrability, and because the Superior Court cannot vacate the award for procedural defects in the grievance process, the Court need not discuss the issue of procedural arbitrability. Id.

Arbitration Fails on the Merits

Plaintiffs argue, alternatively, if the dispute is arbitrable, that the award should still be vacated as irrational because the arbitrator exceeded the scope of his authority. Plaintiffs cite the following reasons as to why the award should be vacated: the conclusion that the grievant was discriminated against is irrational, and the conclusion that CBA imposes a two course maximum per semester is irrational and ignores the language of the CBA.

Plaintiffs first argue that the arbitrator's decision that Mr. Jolicoeur was discriminated against for his participation in union activities was irrational because the Union did not meet its burden of proof to prove this issue. However, Plaintiffs also state in their motion that the arbitrator "could not, and did not, as a matter of law, reach the conclusion suggested by the PTFU, that the grievant was subject to discipline based on his Union activities." The arbitrator stated in his award that "I do not find that the grievant's Fall 2013 Special Programs Contract

was rescinded due to union activity." (Award 8.) Therefore, the arbitrator held the Employer did not discriminate.

Additionally, Plaintiffs argue that the arbitrator's holding (that the employer violated the CBA by imposing a two course per semester limit) is irrational, and manifestly ignores the language of the CBA and should be vacated. However, Plaintiffs reference no language in the CBA imposing a two course limit. Plaintiffs generally assert that evidence of past practice of limiting part time professors to two courses and a previous arbitration that imposed a two course limit should control, but this cannot replace the language of the CBA. See R.I. Court Reporters Alliance, 591 A.2d at 378 ("contract must contain a past-practice provision or a savings clause that evidences the mutual intent of the parties to establish these benefits as enforceable past practices. Otherwise these past practices cannot serve as the basis for arbitration."); Town of N. Providence v. Local 2334 International Association of Fire Fighters, AFL-CIO, 763 A.2d 604, 606 (R.I. 2000) ("past practice may not form the basis to prevent enforcement of an award, unless the contract itself contains a 'sufficiently clear past-practice provision"').

The Court has the authority to vacate an arbitrator's award if it "exceed[ed] his or her powers by interpreting a CBA in such a way that it contravenes state law or other public policies that are not subject to alteration by arbitration." State, Department of Corrections, 115 A.3d at 931 (citing State Department of Corrections v. R.I. Brotherhood of Correctional Officers, 867 A.2d 823, 829 (R.I. 2005)). An alleged misconstruction of the contract is not a sufficient basis for vacating an arbitration award "even if the construction is clearly erroneous." Jacinto, 120 R.I. at 912, 391 A.2d at 1175-76. The Court's task is simply to ensure the arbitrator used the proper sources in making its decision, not decide if the arbitrator ruled correctly. Id. at 1176.

The award must only "draw[] its essence from the contract and is [be] based upon a passably plausible interpretation of the contract." Id. (internal quotations omitted).

The arbitrator based his Award on the language in the CBA and on past suggested amendments. Specifically, the arbitrator reviewed proposed amendments to the CBA, including a proposal to impose a two course limit on part-time professors, which were rejected. (Award 14.) It is clear the arbitrator extensively reviewed the CBA in searching for a provision that could be considered to limit the part-time faculty to two courses per semester. Id. at 11-12. Instead, the arbitrator found that the CBA does not include any minimum or maximum course loads per semester for the part-time faculty. Id. There are provisions for maintaining part-time status for CBA eligibility, but they do not impose course limits per semester. Id. at 13-14; (CBA § 1, Maintenance of Bargaining Unit Status, which provides requirements for part-time professors to remain in the Union.) The arbitrator concluded that since the CBA imposed no limits of courses taught per semester, that the Employer unilaterally imposed the limit. (Award 15-16.)

After reviewing the CBA, this Court finds that the Arbitrator's Award, which allows Mr. Jolicoeur to teach two courses and take on an administrative position, "draws its essence from the contract and is based upon a passably plausible interpretation of the contract." See Jacinto, 120 R.I. at 912, 391 A.2d at 1175-76. The CBA does not mention any limitations on courses that can be taught per semester. Therefore, considering the Court's limited scope or review and presumption of validity, the court must affirm the award. See N. Providence School Committee, 945 A.2d at 344; Buttie, 995 A.2d at 549.[1]

[1] Although the Court is affirming the holding of the Award, it notes that the arbitrator may have overreached by ordering the Employer generally to cease and desist from unilaterally imposing

Conclusion

In conclusion, the current dispute was arbitrable because the issue concerned an interpretation of Article X of the CBA. Additionally, the arbitrator's award finding that the CBA included no terms that limited part-time employees to teaching two courses per semester and no administrative work was based on a passably plausible interpretation of the CBA. Consequently, Plaintiffs' Motion to Vacate the Arbitration Award is denied and Defendant's Motion to Confirm the Arbitration Award is granted.

Counsel is instructed to prepare an appropriate judgment for entry.

---

the two courses per semester limit on bargaining unit employees. However, the issue is not before the Court, and may not be subject to such review.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Rhode Island Council on Postsecondary Education and University of Rhode Island v. American Associatin of University Professors, et al.
CASE NO:	PM 2014-5703
COURT:	Providence County Superior Court
DATE DECISION FILED:	October 1, 2015
JUSTICE/MAGISTRATE:	Lanphear, J.
ATTORNEYS:	
For Plaintiff:	Jeffrey S. Michaelson, Esq.; Timothy J. Dodd, Esq.
For Defendant:	Lynette J. Labinger, Esq.