STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: June 22, 2016]

STATE OF RHODE ISLAND DEPARTMENT OF CORRECTIONS	:	
V.	:	**PM-2015-3201**
RHODE ISLAND PROBATION AND PAROLE ASSOCIATION	:	

DECISION

VOGEL, J. Petitioner—the State of Rhode Island Department of Corrections (DOC)—brings a Motion to Vacate an Arbitration Decision and Award rendered on April 27, 2015. Respondent—the Rhode Island Probation and Parole Association (RIPPA)—objects to the DOC's motion and moves to confirm the Arbitration Decision and Award. The Court exercises jurisdiction pursuant to G.L. 1956 § 28-9-18. For the reasons set forth in this Decision, the Court denies the DOC's Motion to Vacate and grants RIPPA's Motion to Confirm. The Court grants RIPPA's request to recover reasonable and necessary costs and attorney's fees pursuant to § 28-9-18(c).

I

Facts and Travel

The DOC and RIPPA are parties to a collective bargaining agreement (the Joint CBA), which provides for the arbitration of disputes. (Joint CBA Article 25.2.) The Joint CBA covers two bargaining units within the DOC: EE-3457 (Probation Officers or PO Unit) and EE-3456 (Supervisors or Supervisor Unit). See Joint CBA; Arbitrator's Decision and Award 2. The PO Unit includes the positions of Parole Coordinator; Probation and Parole Officers I-III; Case Aide

Technician; Internship/Volunteer Coordinator; and Juvenile Probation and Parole Services Technician. (Joint CBA Article 4.2(A).) The Supervisor Unit includes the positions of Deputy Compact Administrator; Probation and Parole Supervisor; Executive Secretary of the Parole Board; and Senior Research Technician. Id. RIPPA represents members of the PO and Supervisor Units, as well as members of a third bargaining unit within the DOC, EE-3505[1] (Clericals or Clerical Unit). See Arbitrator's Decision and Award 2; see also Joint CBA Article 4.2(B).

Joint CBA Article 4.2(B) sets forth a specific application structure to fill vacancies both in the Supervisor Unit and for those in the PO Unit. See Joint CBA Article 4.2(B). Specifically, as it relates to all vacancies, other than low-level Probation and Parole Officer positions, the Joint CBA Article 4.2(B) provides as follows: "[v]acant bargaining unit positions shall be filled from within the bargaining unit when there are six (6) applicants on the certified list[2] from within the bargaining units defined as EE-3456 [Supervisor Unit] and EE-3457 [PO Unit]." Id. However, in the event that there are fewer than six such employees on the certified list—or no certified list exists—Article 4.2(B) further provides that "the State will make a reasonable effort to promote from within the bargaining unit, however nothing herein shall be construed to require selection from the bargaining unit in such a case." Id. Article 4.2(B) defines a "reasonable effort" as,

> "(a) Accepting applications and a conscientious review of the applicant's qualifications.
>
> "(b) A quantitative evaluation of the applicant's total work experience, education, in-service training and any other

[1] This Court notes that Respondent's Memorandum contains a discrepancy in that it refers to Clericals as belonging to bargaining unit 3503. It appears that Clericals belong to bargaining unit 3505.

[2] The Joint CBA does not provide a definition for the phrase "certified list."

documented preparation for positions of increased responsibility.

"(c) Relating such qualifications and experience to the official job specifications.

"(d) The character of the applicant.

"(e) The potential of the applicant to carry out the duties of the class of position.

"(f) The applicant's state seniority." Id.

Clericals have a separate collective bargaining agreement and are not covered under the Joint CBA. (Arbitrator's Decision and Award 2.) However, Article 4.2(B) does address Clericals when outlining the procedure for filling vacancies at entry level Probation Officer positions. The Joint CBA describes the method to be followed for considering applicants for those jobs. Id.; see also Joint CBA Article 4.2(B). Specifically, the Joint CBA provides that "[v]acant Probation and Parole I positions will be filled from within the top six (6) employees on the certified list from bargaining unit EE-3505 [Clerical Unit] represented by RIPPA when there are six (6) bargaining unit employees on the list." Id. In the event that the certified list contains fewer than six employees from the Clerical Unit, Article 4.2(B) requires that the DOC "make a reasonable effort[3] to promote from within the bargaining unit." Id. In the job hierarchy, it is clear that Supervisor positions are considered higher than PO positions, and PO positions are considered higher than Clerical positions. As such, the CBA implicitly recognizes that no upper level Supervisor would apply to fill an entry level Supervisor position and no Supervisor or upper level PO would apply to fill an entry level PO position.

[3] This section of Article 4.2(B) provides the same definition of a "reasonable effort" as the standard provided above.

In March of 2014, the DOC posted a vacancy notice for the position of Deputy Compact Administrator (DCA), a lower level position within the Supervisor Unit. (Resp't's Mem. 1.); see also Arbitrator's Decision and Award 2. The vacancy notice limited applicants to DOC employees from the Supervisor Unit, the PO Unit, and the Clerical Unit.[4] (Resp't's Mem. 2.) The DOC received six applications from members of the PO Unit and one application from a member of the Clerical Unit. (Arbitrator's Decision and Award 2.) No members from the Supervisor Unit applied. The DOC created a four-person panel (Hiring Panel) to review the seven applicants' resumes and conduct interviews. Id. at 6. Based on initial interview scores, the Hiring Panel selected two applicants for a second interview: Laura Queenan (Queenan), and Heidi DuPerry (DuPerry). Id. at 6. Prior to applying for the DCA position, Queenan had worked as a Probation Aide—a position classified in the Clerical Unit—in the DCA's Office for approximately twenty years. Id. at 5-6. However, for approximately fourteen months before the DOC posted the vacancy notice, Queenan had filled in as the acting DCA following the retirement of the individual who had previously held the position. Id. at 5. DuPerry, on the other hand, held a Bachelor's Degree in Criminal Justice and Sociology and had amassed twelve years of experience as a PO. (Resp't's Mem. 2.)

After the second interview, the Hiring Panel selected Queenan for the DCA position. (Arbitrator's Decision and Award 6.) In making its selection, the Hiring Panel determined that Queenan was "an excellent fit" for the position as well as "the only one qualified to be appointed." Id. The Hiring Panel explained that its decision to hire Queenan was influenced by the fact that she had trained the two prior DCAs and was the "go to" person in the office. Id. In

[4] Both the DOC and RIPPA agree that there was no "certified list" of applicants in this case. Thus, neither party disputes that the clause of Joint CBA Article 4.2(B), which requires that the "State . . . make a reasonable effort to promote from within the bargaining unit," applies in this matter.

support of its decision, the Hiring Panel also noted that DuPerry had no direct experience with the office and had told the Hiring Panel that she would face a "learning curve" if she took the position. Id.

After the Hiring Panel made its selection, RIPPA filed a class action grievance on behalf of the six members of the PO Unit, who had applied for the DCA position, against the DOC. RIPPA claimed that the DOC had violated the Joint CBA when it failed to make a "reasonable effort"—as that term is defined in the Joint CBA—to promote a member of the PO Unit to the DCA position. The DOC denied the grievance, and the matter proceeded to arbitration. At the Arbitration Hearing, which took place on March 12, 2015, the parties stipulated to the following issues before the Arbitrator:

> "Did the State violate the collective bargaining agreement (CBA) by failing to make a reasonable effort to promote a qualified candidate from within the bargaining unit to the position of Deputy Compact Administrator and by selecting a candidate outside the bargaining unit? If so, what shall be the remedy?" Id. at 1.

At arbitration, the DOC contended that the term "bargaining unit" within Article 4.2(B) referred only to employees in the Supervisor Unit, not employees within the PO Unit. Id. at 8-9. Thus, the DOC alleged that in the absence of a certified list, Article 4.2(B) required only that the DOC make a reasonable effort to promote from within the Supervisor Unit. Id. Given that there was no certified list and the DOC did not receive any applicants from the Supervisor Unit, the DOC argued that it was free to hire the most qualified applicant, which in this case, was Queenan. Id. at 9. In response, RIPPA argued that the language in the CBA required that the DOC select an applicant from within either the Supervisor or PO Units. Id. at 7. Moreover, RIPPA contended that even if the DOC was not required to select an applicant solely from within the Supervisor or PO Units, it was required to make a reasonable effort to promote from within

the PO or Supervisor Units before selecting an outside applicant. Id. at 7-8. RIPPA alleged that the DOC failed to consider the reasonable effort criteria when it made its selection, violating the Joint CBA. Id. at 8.

On April 27, 2015, the Arbitrator rendered a decision and issued an award in favor of RIPPA. Id. at 20. First, the Arbitrator determined that the term "bargaining unit," referenced within Article 4.2(B) of the Joint CBA, referred to a single unit encompassing both POs and Supervisors. Id. at 14. Having interpreted the Joint CBA as combining the two units into one unit for the purposes of Article 4.2(B), the Arbitrator concluded that in the absence of a certified list or any Supervisor Unit applicants, the DOC was first required to make a reasonable effort to promote an employee from within the PO Unit. Id. at 14-15. However, the Arbitrator noted that in the event that the DOC made a reasonable effort to promote a PO, but ultimately could not find a qualified applicant from within the PO Unit to fill the vacancy, then the Joint CBA did not prohibit the DOC from selecting an applicant from outside the PO Unit. Id. at 19-20.

The Arbitrator determined that in this case, the DOC had violated the Joint CBA because it did not make such a reasonable effort to promote a PO. Id. at 15-16. The Arbitrator found that the Hiring Panel ignored the criteria they were required to consider to make a reasonable effort to promote a PO to fill the position. Id. at 15-16. The Arbitrator acknowledged that the Hiring Panel had addressed the first factor, to wit, reviewing the applicant's qualifications. Id. However, the Hiring Panel failed to examine the other identified criteria set forth under Article 4.2(B). Id. at 16. Specifically, the Arbitrator found that the Hiring Panel did not perform a quantitative evaluation of the applicants nor did the Panel consider the potential of the applicants to carry out the position's requirements. Id. He cited testimony from members of the Hiring Panel who not only admitted that they had not addressed all of the factors set forth in the CBA,

but acknowledged that they actually were unaware that the CBA defined the reasonable effort standard. Id. at 15-16.

Thus, the Arbitrator determined that the Hiring Panel violated the Joint CBA when it failed to make a reasonable effort to promote from within the PO Unit and instead hired Queenan. Id. at 20. The Arbitrator ordered that the DOC void the promotion of Queenan, select a new Hiring Panel, and make a reasonable effort to promote one of the six PO applicants to the position of DCA. Id. at 21. The Arbitrator noted that the new Hiring Panel could select a candidate from outside the PO Unit applicant pool, if it found that none of the PO Unit applicants were qualified for the position under the established reasonable effort standard. Id. at 20.

On June 26, 2015, the DOC filed a separate petition, PM-2015-2774, a Motion to Stay Implementation of the Arbitration Award Pending a Decision on a Petition to Vacate. However, the record does not reflect that the DOC sought a hearing on that motion after filing it. The Court's decision on the cross-motions to vacate and confirm will render the Motion to Stay moot.

II

Standard of Review

Section 28-9-18 of the Rhode Island General Laws governs this Court's review of an arbitrator's award and provides that:

> "(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."

As our Supreme Court has articulated, courts review arbitration awards under a highly deferential standard and have very limited authority to review the merits of an arbitration award. Cumberland Teachers Ass'n v. Cumberland Sch. Comm., 45 A.3d 1188, 1191 (R.I. 2012). The basis for this deferential standard is rooted in "the strong public policy favoring settlement of collective bargaining grievances." State Dep't of Corr. v. Rhode Island Bhd. of Corr. Officers, 867 A.2d 823, 828 (R.I. 2005). Courts may not "reconsider the merits of the award despite allegations that it rests upon errors of fact or on a misinterpretation of the contract." Rhode Island Council 94, AFSCME, AFL-CIO v. State, 714 A.2d 584, 588 (R.I. 1998) (citing United Paperworks Int'l Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 36 (1987)). Rather, "[a]bsent a manifest disregard of a contractual provision or a completely irrational result, the award will be upheld." Rhode Island Bhd. of Corr. Officers v. State Dep't of Corr., 707 A.2d 1229, 1234 (R.I. 1998) (quoting Town of Coventry v. Turco, 574 A.2d 143, 146 (R.I. 1990)) (internal quotation marks omitted). "[A]s long as an arbitrator's award 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 [the Court's] review must end." Cumberland Teachers Ass'n, 45 A.3d at 1192 (quoting City of East Providence v. Int'l Ass'n of Firefighters Local 850, 982 A.2d 1281, 1285 (R.I. 2009)) (internal quotation marks omitted).

Generally, courts will not entertain a party's motion to vacate an arbitrator's award unless the party seeking to vacate the award implements the award. See § 28-9-18(b). However, "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." Id. In order to stay the implementation of an arbitrator's award, the moving party must show that implementation of the award would cause irreparable harm and that the plaintiff was likely to succeed on its motion to vacate the award. Turco, 574 A.2d at 146. Absent an abuse of discretion, the Supreme Court will uphold a trial court's order to stay an arbitrator's award. Id. However, a trial court's discretion to stay implementation of the award "is further constrained by § 10-3-11 which provides that 'any party to the arbitration may apply to the court for an order confirming the award, and thereupon the court must grant the order confirming the award unless the award is vacated, modified or corrected.'" Aponik v. Lauricella, 844 A.2d 698, 705 (R.I. 2004) (quoting G.L. 1956 § 10-3-11).

III

Analysis

The DOC bases its motion to vacate on multiple arguments. First, the DOC contends that the Arbitrator's Award limits its ability to hire the most qualified person to fill the DCA vacancy in violation of its statutory and contractual rights. Next, the DOC argues that it was not duty-bound to give preference to any applicant based upon his or her membership in a particular bargaining unit. Finally, the DOC asserts that the Arbitrator reached an irrational result and overlooked material evidence when he determined that the DOC had not made a reasonable effort to hire from within the bargaining unit.

In its first argument, the DOC contends that the Arbitrator's Award wrongfully interferes with its ability to hire the most qualified person to fill the subject vacancy. Specifically, the

DOC argues that the Decision and Award conflicts with its statutory authority to hire and promote qualified employees pursuant to Rhode Island General Laws § 42-56-10, which provides that the Director of the DOC may "[h]ire, promote, transfer, assign, and retain employees." The DOC further claims that the Award interferes with its contractual rights "to hire, promote, transfer, assign, and retain employees in positions within the bargaining unit" under Article 6.1 of the Joint CBA. The DOC contends that Queenan was the most qualified applicant for the DCA position. Thus, because the Arbitrator's Award requires the DOC to void Queenan's promotion, the DOC contends that the Decision and Award contravenes § 42-56-10 and Article 6.1 of the Joint CBA. The Court disagrees.

In the Decision and Award, the Arbitrator did not foreclose the DOC from ultimately selecting the most qualified applicant for the position. Article 4.2(B) provides that "the State will make a reasonable effort to promote from within the bargaining unit, however nothing herein shall be construed to require selection from the bargaining unit in such a case." (Article 4.2(B).) Based on this language cited above, the Arbitrator determined that the DOC first had to make a reasonable effort to promote a member from within the PO and Supervisor Units before looking to outside applicants. See id. The Arbitrator noted that the Joint CBA, unlike many other public sector promotion provisions, did not contain language authorizing the DOC to pick the best-qualified applicant if it interfered with the chain of priority. Id. at 17. Further, the Arbitrator found that the language of Article 4.2(B), which states that "nothing herein shall be construed to require selection from the bargaining unit," meant that it was possible that the DOC could select an applicant from outside the PO and Supervisor Units. Id. at 18-19. Therefore, the Arbitrator found that if after making a reasonable effort to promote a candidate from within the PO and Supervisor Units the State concluded that no applicants were qualified for the position,

the DOC would be able to select the most qualified candidate from outside the PO and Supervisor Units. Id.

Here, the Arbitrator grounded his interpretation of the "reasonable effort" requirement in the language of the Joint CBA. See Jacinto v. Egan, 120 R.I. 907, 913-14, 391 A.2d 1173, 1176 (1978) (holding that courts must uphold an arbitrator's award if it is "sufficiently grounded" in the language of the contract). Further, his interpretation does not interfere with the DOC's statutory right to hire and promote employees, nor does it conflict with Article 6.1 of the CBA. See Berkshire Wilton Partners, LLC v. Bilray Demolition Co., Inc., 91 A.3d 830, 836 (R.I. 2014) (holding that courts must uphold an arbitrator's award unless the arbitrator manifestly disregards the law). Accordingly, the Court rejects the DOC's first argument and finds that the Arbitrator did not exceed his authority.

Next, the DOC argues that the Arbitrator erred when he interpreted Article 4.2(B) as requiring that the DOC give priority to PO applicants over Clerical applicants. Rather, the DOC contends that Article 4.2(B) merely requires that the DOC conduct a thorough evaluation of any and all applicants—regardless of bargaining unit membership—and make a reasonable effort to promote a qualified bargaining unit member whenever possible. The Court is not persuaded by the DOC's argument.

The Arbitrator determined that Article 4.2(B) established a hierarchy, whereby members of the bargaining units covered under the Joint CBA—to wit, POs and Supervisors—would have hiring priority over outside applicants. In making this determination, the Arbitrator examined the term "bargaining unit" as it appears in the Joint CBA provision that reads, "the State will make a reasonable effort to promote from within the bargaining unit." (Article 4.2(B).) The Arbitrator found that the term "bargaining unit" as set forth in this provision was sufficiently

ambiguous to require him to address the intent of the parties. See DiPaola v. DiPaola, 16 A.3d 571, 577 (R.I. 2011) ("In construing an ambiguous contract provision, it is necessary to examine both the circumstances surrounding the development of the ambiguous terms and the intentions of the parties." (quoting Flynn v. Flynn, 615 A.2d 119, 121 (R.I. 1992)) (internal quotation marks omitted). The Arbitrator concluded that the "bargaining unit" included members of bargaining unit EE-3457—the PO Unit—but did not include Clericals who were not covered under the Joint CBA.

The Arbitrator then determined that it was the intent of the parties that the POs be given priority over applicants from any bargaining unit outside the Joint CBA when applying for Supervisor positions. As such, he found that the DOC first had to make a reasonable effort to promote a member from within the PO Unit to fill the vacant DCA position before looking to applicants from the Clerical Unit. (Arbitrator's Decision and Award 18-19.)

Essentially, the Arbitrator interpreted Article 4.2(B) as giving enhanced status to the members of the bargaining units covered under the Joint CBA, and the Court cannot say that such an interpretation is not passably plausible. See Cumberland Teachers Ass'n, 45 A.3d at 1192. The Rhode Island Supreme Court strongly discourages trial justices from conducting a de novo review of an arbitration award when deciding a motion to vacate or confirm under the Arbitration Act. See Wheeler v. Encompass Ins. Co., 66 A.3d 477, 483-84 (R.I. 2013) (holding that a trial court's de novo review of an arbitration award was in error given the limited standard of review); see also Lemerise v. Commerce Ins. Co., No. 2014-244, 2016 WL 1458213, at *5 (R.I. Apr. 13, 2016) ("[A] trial justice ha[s] no authority under the Arbitration Act to conduct a de novo review of the arbitrators' award."). Moreover, the standard of review does not permit the Court to review the Joint CBA de novo. See State Dep't of Corr. v. Rhode Island Bhd. of

Corr. Officers, 64 A.3d 734, 741 (R.I. 2013) ("[I]n reviewing the arbitration award, [the Court does] not engage in [its] usual de novo review of statutes and contracts."). Rather, this Court's task is to determine whether the Arbitrator's interpretation of the Joint CBA was passably plausible. See id.

Supervisors and POs constitute two separate bargaining units, and the Joint CBA does not specify that POs should be given priority over Clericals when vacancies arise within entry level Supervisor positions. However, a review of Article 4.2(B) provides support for the Arbitrator's determination that the Joint CBA gives preference to POs and Supervisors over Clericals. The Court notes the section of that Article, which outlines the limited promotional rights of Clericals. Specifically, the clause provides that "[v]acant Probation and Parole I positions will be filled from within the top six (6) employees on the certified list from bargaining unit EE-3505 [Clerical Unit] represented by RIPPA when there are six (6) bargaining unit employees on the list." (Joint CBA Article 4.2(B).) In the event that the certified list contains fewer than six employees from the Clerical Unit, Article 4.2(B) requires that "the State will make a reasonable effort to promote from within the bargaining unit." Id. It is significant that the Joint CBA addresses Clericals when outlining the procedure for filling vacancies at entry level Probation and Parole Officer positions. Id. This provision illustrates that the Joint CBA recognizes a promotion hierarchy, with Supervisors above POs and POs above Clericals. This provision also acknowledges the likelihood that no upper level Supervisor would apply to fill an entry level Supervisor position and no Supervisor or upper level PO would apply to fill an entry level PO position.

Moreover, this Court notes that the DOC's argument that all applicants must be considered on equal footing in filling vacancies that arise within the Supervisor Unit would lead

to an absurd result. To follow this logic, the DOC would not be required to give priority to a Supervisor applying to fill the subject vacancy. Under the DOC's interpretation, no applicant would have any priority over any other candidate, even non-members of RIPPA. This assertion disregards Article 4.2(B) of the Joint CBA, which provides a specific application structure to fill vacancies both in the Supervisor Unit and those in the PO Unit. To accept this argument would render Article 4.2(B) meaningless.

Here, the Arbitrator concluded that the language of Article 4.2(B) of the Joint CBA as it relates to the meaning of "bargaining unit" was ambiguous. As such, the Arbitrator was justified in determining the intent of the parties. See DiPaola, 16 A.3d at 577. The Court finds that this interpretation of Article 4.2(B) of the Joint CBA was passably plausible. See Wheeler, 66 A.3d at 483-84; Lemerise, 2016 WL 1458213, at *5. Accordingly, the Arbitrator did not exceed his authority and the Court must confirm the Award. See State v. R.I. Alliance of Social Servs. Emps., Local 580, SEIU, 747 A.2d 465, 468 (R.I. 2000) (RIASSE).

Finally, the DOC argues that the Arbitrator reached an irrational result and overlooked material evidence when he determined that the DOC had not made a reasonable effort to hire from within the bargaining unit. Here, based on the language of Article 4.2(B), the Arbitrator determined that the DOC did not make a reasonable effort to promote from within the PO or Supervisor Units before looking to outside applicants to fill the position. (Arbitrator's Decision and Award 15-16.) The Arbitrator found that the Joint CBA "rigorously defined" the standard for "reasonable effort," which the Hiring Panel did not consider. Id. Further, the Arbitrator noted that the members of the Hiring Panel had "candidly conceded that they were unaware of these requirements when they conducted the promotion process." Id. at 16. Moreover, the Arbitrator found that the Hiring Panel had clearly not conducted a quantitative evaluation, nor

had the Hiring Panel considered the potential of the applicants to carry out the position's requirements. Id. In so finding, the Arbitrator concluded that the DOC had violated the Joint CBA because it had not made a reasonable effort to promote from within the PO Unit.[5] Id.

The DOC essentially urges this Court to perform a de novo review of the record, which was before the Arbitrator, to determine whether he gave adequate consideration to each piece of evidence before him. However, pursuant to its standard of review, this Court may not review the factual determinations of the Arbitrator. See Rhode Island Council 94, AFSCME, AFL-CIO, 714 A.2d at 588 ("Courts thus do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts . . . If the courts were free to intervene on these grounds, the speedy resolution of grievances by private mechanisms would be greatly undermined." (quoting Misco, Inc., 484 U.S. at 37-38) (internal quotation marks omitted). Accordingly, the Court must accept the Arbitrator's factual findings. Moreover, it is apparent to the Court that the Arbitrator grounded his analysis in the language of the parties' Joint CBA. See Berkshire Wilton Partners, LLC, 91 A.3d at 836. Therefore, the Arbitrator's Decision and Award does not reach an irrational result and this Court must uphold it. See id.

[5] The DOC also argues that the Arbitrator did not fully answer the questions presented to him. Specifically, the DOC contends that the Arbitrator did not determine whether the DOC violated the Joint CBA by selecting a candidate outside the PO or Supervisor Units. Thus, the DOC argues that the Arbitrator's Decision and Award is not final or definite and as such must be overturned. However, the Arbitrator determined that in this case the DOC had violated the Joint CBA because it did not make a reasonable effort to promote from within the PO Unit, before looking to applicants from outside the PO Unit. (Arbitrator's Decision and Award 15.) In essence, the Arbitrator determined that the DOC had not violated the Joint CBA by hiring outside the PO Unit. See id. at 18. Rather, the Arbitrator determined that the DOC had violated the Joint CBA because it did not follow proper procedure before hiring outside the PO Unit. Id. at 20. Moreover, the Arbitrator determined that if the DOC had made a reasonable effort to promote within the PO Unit and determined that no member of the PO Unit was qualified for the DCA position, then the DOC could have hired an applicant from outside the PO Unit. Id. Thus, the Arbitrator fully answered the questions presented to him, and the Award is final and definite.

RIPPA seeks reimbursement of expenses and attorney's fees expended in defending DOC's motion to vacate. This request is consistent with the provisions of § 28-9-18(c), which provides in pertinent part, that "[i]f the motion to vacate . . . 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(c). Having denied the DOC's motion to vacate the Arbitrator's Award, the Court will award costs and fees to RIPPA. However, the Court notes that any costs or attorney's fees awarded in this case must be "consistent with the services rendered, that is to say . . . fair and reasonable." Colonial Plumbing & Heating Supply Co. v. Contemporary Constr. Co., 464 A.2d 741, 743 (R.I. 1983) (quoting Palumbo v. United States Rubber Co., 102 R.I. 220, 223-24, 229 A.2d 620, 622-23 (1967)) (internal quotation marks omitted). The Court cannot fix an attorney fee award without receiving evidence demonstrating the reasonableness of the amounts sought. See Laverty v. Pearlman, 654 A.2d 696 (R.I. 1995).

IV

Conclusion

For the aforementioned reasons, this Court denies the DOC's Motion to Vacate and grants RIPPA's Motion to Confirm the Arbitrator's Award. The DOC shall fill the vacant position of Deputy Compact Administrator (DCA) consistent with the Award and Decision of the Arbitrator. As such, the Court upholds the Arbitrator's decision voiding the promotion of Laura Queenan to serve as DCA. Consistent with that decision, the case is remanded to the DOC to make a reasonable effort, as that term is defined in Article 4.2(B), to promote from within the bargaining units covered by the Joint CBA. If unable to fill the vacancy with a qualified applicant after making such reasonable effort, the DOC may select a candidate from outside the Supervisor and PO Units.

The Court agrees that RIPPA, as prevailing party, is entitled to recover reasonable and necessary costs and fees. Counsel for RIPPA shall submit the appropriate affidavit and evidence in support of this request. The DOC may have three weeks to respond to RIPPA's submissions. Thereafter, the Court will assign the motion for fees and costs for hearing.

The Motion to Stay Implementation of the Arbitration Award Pending a Decision on a Petition to Vacate (PM-2015-2774) is rendered moot by this Decision. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	State of Rhode Island Department of Corrections v. Rhode Island Probation and Parole Association
CASE NO:	PM-2015-3201
COURT:	Providence County Superior Court
DATE DECISION FILED:	June 22, 2016
JUSTICE/MAGISTRATE:	Vogel, J.
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