STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 9, 2019)

CITY OF CRANSTON	**:**	
	:	
v.	**:**	**C.A. No. PM-2018-0050**
	:	
INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS, LOCAL NO. 301, by and through its President, MICHAEL CARAMANTE, and its Secretary, JOSE ALFONSO	**:**	

DECISION

NUGENT, J. Before this Court is Plaintiff City of Cranston's (Plaintiff or the City) motion to vacate and stay an arbitration award (the Award) which was issued on November 20, 2017. Defendant International Brotherhood of Police Officers, Local No. 301, *et al*. (Defendant or the Union) objects to Plaintiff's motion and moves to confirm the Award. The Arbitrator found that the instant grievance was arbitrable and that the Plaintiff violated Sections 1 and 7B of the controlling collective bargaining agreement (the CBA). Jurisdiction is pursuant to G.L. 1956 §§ 28-9-18 and 28-9-17.

I

Facts and Travel

A

Background

Beginning in 2002, the Rhode Island State Labor Relations Board certified the Union as the exclusive bargaining representative for all full-time Cranston police officers, as recognized by Section 1 of the CBA between the Union and the City. Arb. Award at 6. At all times relevant

hereto, the CBA was in effect between the parties. *Id*. Officer Matthew Josefson (Josefson), a member of the Union bargaining unit, was promoted to sergeant on July 24, 2013 but demoted to patrol officer on November 24, 2013 after it was found that he had secretly taped conversations with certain Cranston Police Department (CPD) supervisors. *Id*. at 6-7. Josefson's demotion resulted from his agreement with the CPD in lieu of other discipline. *Id*. at 7. Following an internal investigation of the CPD ordered by the Mayor of Cranston, the Union learned of the demotion and requested to bargain on his behalf; however, efforts to negotiate were unsuccessful. *Id*. at 5.

Josefson then retained private counsel and filed suit against the City on March 29, 2016 in U.S. District Court (DRI) excluding the Union as a party. *Id*. at 5. Josefson's attorney, Joseph F. Penza Jr., filed a complaint alleging due process violations, intentional infliction of emotional distress, tortious interference with a contractual relationship, and civil conspiracy. *Id*. at 12-13.

On July 22, 2016, Josefson and the City reached a settlement after negotiations without the Union's involvement, and the court entered a consent judgment against the City. *Id*. at 14. The judgment ordered the City to pay $215,000 including costs and attorneys' fees, reinstate Josefson to sergeant with the same shift assignment and seniority as if he had continuously served, and remove documents related to the charges or investigation from his record. *Id*. at 15. Thereafter, Josefson was reinstated to the rank of sergeant on July 25, 2016, and the number of sergeants reached twenty while the patrolman position remained vacant in conflict with the CBA. *Id*. at 15-16.

Upon learning of the agreement, the Union sent the City a demand letter to bargain and the City declined, reasoning that no one was negatively affected by the action and that there was no violation to discuss. *Id*. at 16. On August 16, 2016, Mr. Escobar, the Union's Business Agent, and Mr. Santagata, the Union's president, filed a class action grievance. *Id.* The grievance alleged

that the City entered into an agreement without bargaining with the Union thereby violating Section 1 of the CBA and requested that the City fill the patrol officer vacancy immediately and make the additional sergeant position permanent. *Id*. After Robert Coupe, Director of Administration for Mayor Fung, denied the grievance, the Union filed a timely demand for arbitration. *Id*. at 17.

B

Pre-Arbitration

In their demand for arbitration, the Union contended that the subject matter was arbitrable because the City had violated Section 1 of the CBA by negotiating directly with a member of the Union and such a violation is prohibited by the recognitions clause contained in the CBA. *Id*. at 20-21. Because of this violation, the Union further argued that the City had a contractual duty to respond to the Union's request for bargaining as the City's actions impacted the conditions and terms of employment of bargaining unit members. *Id*. at 24-25.

Opposing arbitration, the City maintained that the subject matter was not arbitrable because staffing levels fall outside the scope of bargaining and that they were non-delegable managerial decisions that could not be delegated to an arbitrator. *Id*. at 18. Such decisions are reserved to the City through the management rights clause and the duties provision in Section 7 of the CBA. *Id*. at 19. Even if the subject matter was arbitrable, the City maintained that arbitration would not be appropriate as the purpose of arbitration is to make the injured party whole and the Union suffered no harm to remedy. *Id*. at 26. The City argued that the Union's request for a permanent twentieth sergeant position would put them beyond "whole" and would be an excessive award beyond the scope of arbitration. *Id*. at 27.

C

The Award

The Arbitrator issued the Award finding the dispute was arbitrable and that the City violated the recognitions clause protected both by statute and the contractual agreement between the parties as found in Section 1 of the CBA. *Id*. at 30. The Arbitrator found the dispute was arbitrable because it concerned an alleged violation of the CBA that called for "application, meaning or interpretation of the express provisions of this Agreement." *Id*.

The Arbitrator further found that the City had violated both Section 1 and Section 7B of the CBA. *Id*. at 31-32. The Arbitrator explained that because the settlement between the City and Josefson included matters such as pay, position, and promotion, the settlement was covered by the CBA. *Id*. at 31. Additionally, the Arbitrator found that the City's unilateral decision that there was nothing for the parties to bargain about violated Section 1 of the CBA. *Id*. Lastly, the Arbitrator determined that by leaving Josefson's patrolman position vacant after reinstating him to sergeant, the City violated Section 7B requiring no reduction in the number of positions and thus affected the bargaining members in a way that required negotiations with the Union. *Id*. at 32-33.

In response, the City filed a motion to vacate arbitration award arguing the Arbitrator exceeded her authority by impermissibly encroaching upon the City's management rights with respect to staffing and its authority to resolve private lawsuits. The Union responded by filing a motion to confirm arbitration asserting that the parties bargained for the process at issue and that none of the City's arguments justifies vacating the Award. In response to each other's instant motions, both parties objected.

II

Standard of Review

It has long been settled that "'Rhode Island has a strong public policy in favor of the finality of arbitration awards.'" *ABC Building Corp. v. Ropolo Family, LLC*, 179 A.3d 701, 705 (R.I. 2018) (quoting *Berkshire Wilton Partners, LLC v. Bilray Demolition Co., Inc.*, 91 A.3d 830, 834 (R.I. 2014)). "To preserve the integrity and efficacy of arbitration proceedings, judicial review of arbitration awards is extremely limited." *Berkshire Wilton Partners, LLC*, 91 A.3d at 834-35 (citing *Aponik v. Lauricella*, 844 A.2d 698, 704 (R.I. 2004)). Section 28-9-18(a) of the General Laws of Rhode Island provides the limited grounds for vacating an arbitration award. Those grounds are:

> "(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." Section 28-9-18(a).

"Due to the public policy favoring the finality of arbitration awards, such awards enjoy a presumption of validity." *North Providence School Committee v. North Providence Federation of Teachers, Local 920, American Federation of Teachers*, 945 A.2d 339, 344 (R.I. 2008). "[T]he 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 *North Providence School Committee*, 945 A.2d at 344). "[J]udicial reversal of an arbitrator's award solely on the ground of a reviewing court's disagreement with [the arbitrator's] construction of the contract is prohibited." *Council 94, American Federation of State, County, and*

Municipal Employees AFL-CIO v. State of Rhode Island, 475 A.2d 200, 203 (R.I. 1984) (alterations in original). The Court cannot vacate an arbitrator's decision if it "'draws its essence' from the contract and is based upon a 'passably plausible' interpretation of the contract." *State v. National Association of Government Employees Local No. 79*, 544 A.2d 117, 119 (R.I. 1988) (quoting *Jacinto v. Egan*, 120 R.I. 907, 912, 391 A.2d 1173, 1176 (1978)) (internal quotation marks omitted).

However, the Court can overturn an arbitration award "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) (alteration in original) (quoting *Aponik*, 844 A.2d at 703). Thus, "[a]n arbitrator may exceed his or her authority by giving an interpretation that fails to draw its essence from the parties' agreement, is not passably plausible, reaches an irrational result, or manifestly disregards a provision of the agreement." *Berkshire Wilton Partners, LLC*, 91 A.3d at 835. In such a case, a court may vacate the award as having "manifestly disregarded the law." *Berkshire Wilton Partners, LLC*, 91 A.3d at 835 (citing *Prudential Property and Casualty Insurance Co. v. Flynn*, 687 A.2d 440, 442 (R.I. 1996)).

III

Analysis

A

Arbitrability

A threshold issue is whether the instant dispute was substantively arbitrable. *See State, Department of Corrections v. Rhode Island Brotherhood of Correctional Officers*, 64 A.3d 734, 740 (R.I. 2013). In other words, this Court must address whether the Arbitrator possessed the requisite authority to resolve the dispute. *See id*. at 739. In determining arbitrability, courts should

employ a presumption in favor of arbitration so that "[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *United Steelworkers of America v. Warrior and Gulf Navigation Co.*, 363 U.S. 574, 582-583 (1960).

The CBA at issue recognizes the Union as the sole and exclusive bargaining member representative for purposes of collective bargaining and agreements relative to wages, rate of pay, and other terms and conditions of employment. The City contends that the Union has not met its threshold of proving arbitrability and that the Arbitrator impermissibly encroached on the City's management rights with respect to staffing.

The City claims that the Arbitrator impermissibly encroached on its management rights by disregarding the management rights clause provision of the CBA in which the City reserves and retains "all authority, powers, rights, jurisdiction, and responsibilities for the management and direction of the officers and other employees. . . ." CBA § 3.5. The City argues that such a provision grants it the authority to determine staffing levels without being subject to arbitration. The City explains that instead of being subject to arbitration, the CBA expressly reserves staffing level decisions to the discretion of the city council as a right that has not been disposed of otherwise by the CBA. In addition, the City contends the act of adding a position constituted a non-arbitrable management right that did not require the City to bargain with the Union because the CBA only spoke to restrictions against reductions.

In response, the Union argues that the subject matter—negotiations relating to wages, rates of pay, and conditions of employment—is arbitrable as a mandatory subject of bargaining. The Union points out that the matters at issue exceeded the City's management duties and instead

constituted mandatory bargaining subjects as outlined in Sections 1 and 3.5 of the CBA. The Union claims that the matters involved in the private settlement exceeded the City's management rights clause, and that the CBA required bargaining concerning Josefson's recovery of seniority and shift assignment when they reinstated him to sergeant and left his patrolman position vacant. The Union claims that by refusing to include the Union in these discussions, the City clearly violated the recognitions clause of Section 1 of the CBA which requires that the City "acknowledges the [Union] as the sole and exclusive bargaining representative for all full time police officers of the Cranston Police Department ("Department") . . . for the purpose of collective bargaining and entering into agreements relative to wages, rates of pay, and other terms and conditions of employment." The Union reasons that because the City's statutory and contractual obligations to Josefson existed independently of the lawsuit, it was subject to the CBA's negotiation requirements. The Union urges the Court to defer to the Arbitrator's factual findings on whether there were items over which to bargain.

It is well-settled that courts shall favor arbitrability and resolve any doubts in favor of coverage. *See United Steelworkers of America,* 363 U.S. at 582-583 (favoring arbitrability); *see also Coventry Teachers' Alliance v. Coventry School Committee*, 417 A.2d 886, 888 (R.I. 1980) (requiring claimant to prove the arbitrator has exceeded his or her authority and requiring every presumption in favor of the arbitrator). Employing said presumption and resolving doubts in favor of coverage, this Court finds that the instant dispute concerns issues relative to wages, rate of pay, and other terms and conditions of employment including seniority. As the issues are governed by the CBA, the Union is to be the sole and exclusive bargaining member in disputes regarding such issues. *See Barrington School Committee v. Rhode Island State Labor Relations Board*, 120 R.I. 470, 479, 388 A.2d 1369, 1375 (1978) (noting terms and conditions of employment constituted

mandatory subject of bargaining); *See also J.I. Case Co. v. National Labor Relations Board*, 321 U.S. 332 (1944) (finding employer not justified in refusing to negotiate with union when it reached separate agreements with employees in an individual contract regarding terms and conditions of employment). Accordingly, this Court finds that the issue was arbitrable.

B

The Award

Having found the issue to be arbitrable, this Court turns to the issue of whether the Arbitrator granted an award that was within her authority. The City seeks to vacate the Award by claiming that the Award exceeded the Arbitrator's authority in that it required the City to bargain before reinstating Josefson to his prior position when the City should not have been required to do so. Further, the City argues that the Award constitutes a manifest disregard of the law. The Union contends that the City did not meet its burden in establishing a manifest disregard for the law which is necessary to compel this Court to vacate an arbitration award. *See Wheeler*, 66 A.3d at 481 (quoting *Aponik*, 844 A.2d at 703) (requiring manifest disregard for the law to overturn arbitration award).

The Arbitrator's decision needs only be a passably plausible interpretation of the CBA. *Woonsocket Teachers' Guild, Local 951, AFT v. Woonsocket School Committee*, 770 A.2d 834, 837 (R.I. 2001). An Award will not be considered passably plausible if it is a "'completely irrational result.'" *Town of Smithfield v. Local 2050*, 707 A.2d 260, 264 (R.I. 1998) (quoting *Westcott Construction Corp. v. City of Cranston*, 586 A.2d 542, 543 (R.I. 1991)). While the City may disagree with the Arbitrator's contractual interpretation that she possessed the authority to arbitrate and grant an award, such a disagreement does not render the Arbitrator's award irrational. *See United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960)

(affirming an award when it "draws its essence" from the contract). The Court will uphold the Award as a passably plausible interpretation. *See id*. The high standard necessary to overturn an award occurs when an arbitrator correctly understands the law but chooses to disregard it. *See North Providence School Committee*, 945 A.2d at 344 (quoting *Westminster Construction Corp. v. PPG Industries, Inc.*, 119 R.I. 205, 211, 376 A.2d 708, 711 (1977)) (requiring "'something beyond and different from a mere error in the law or failure on the part of the arbitrators to understand or apply the law'"). Here, it is evident that the Arbitrator was well within an appropriate contractual interpretation when determining that the settlement involved mandatory bargaining subjects.

The Arbitrator drew her authority from Sections 1 and 30 of the CBA. These provisions provide that:

> "The City hereby recognizes and acknowledges the I.B.P.O. as the sole and exclusive bargaining representative for all fulltime police officers of the Cranston Police Department ("Department"), up to and including police officers holding the rank of Captain for the purpose of collective bargaining and entering into agreements relative to wages, rates of pay, and other terms and conditions of employment.
>
> . . . .
>
> "Any and all benefits now in existence as provided in this Agreement herein shall continue to accrue to said employees and shall be made a part hereof. Upon execution of this Agreement, no so called "side-agreements" shall exist or be recognized by the City without agreement of the City and the I.B.P.O."

See CBA §§ 1 and 30. These provisions expressly limit the City's management rights by refusing to recognize any side agreements made without the agreement of the City and the Union. The City argues that since adding a twentieth sergeant is an inherent management right, which the Union does not dispute, it does not have a duty to bargain with the Union over anything else involved in the settlement. However, while it is true that the City may enjoy the right to add a position without penalty, the effects of the settlement reach far beyond a mere staffing increase

and consequently require bargaining under the CBA. *See* CBA § 1 (requiring parties to recognize the Union as bargaining representative for purposes of rates of pay, wages, and other terms and conditions of employment). As a result of reinstating Josefson to his previous position as sergeant, the City reduced the number of patrolmen below mandatory staffing levels and made a decision regarding his wages, seniority, and shift assignment which are mandatory bargaining subjects. *See id*. (requiring bargaining over rates of pay, wages, and other terms and conditions of employment). Furthermore, the agreement to reinstate Josefson necessarily impacts the wages, seniority and shift assignments of other members.

In support of its argument that it did not have a duty to bargain with the Union, the City cites a decision of the Federal Labor Relations Authority (*Government Printing*) and an advice letter issued by one of the National Labor Relation's Board Directors (*American Water*). *See U.S. Government Printing Office and Columbia Typographical Union, No. 101*, 23 FLRA 35, 1986 WL 75749 (August 11, 1986); *see also In re: American Water Service Co., Inc.*, 2013 WL 2146637 (NLRB 2013). Reliance on these is misplaced. *Government Printing* represents a case governed by the Equal Employment Opportunity Commission which did not provide for the presence of the exclusive bargaining representative in the process, *id*. at 40, in contrast to the instant matter where the CBA did require the presence of the Union. Additionally, the City cites *American Water* to argue that an employer may settle a lawsuit with an employee without violating prohibitions against direct dealing. However, in *American Water*, the union was accidentally excluded from negotiations while here the Union was intentionally excluded from negotiations. *American Water* held that direct dealing was an employer's communication with a union-represented employee regarding wages, hours, and terms and conditions of employment without the union present.

Finally, the Union argues that its required involvement in future settlement discussions will not encroach on the City's ability to settle lawsuits. It is well settled that "the exact degree (if any) to which prior awards may impact present matters remains within the purview of the arbitrator." EDNA ASPER ELKOURI & FRANK ELKOURI, HOW ARBITRATION WORKS 11-3 (Kenneth May ed., 8th ed. 2018). There has been no evidence presented to show that involving the Union in future settlements will encroach on the City's ability to resolve these independent lawsuits. The City cannot avoid the Award based on a possible "inconvenience" in adhering to the Award's requirements without showing the manifest disregard of the law necessary to vacate an award. *See Wheeler*, 66 A.3d at 481 (quoting *Aponik*, 844 A.2d at 703) (requiring manifest disregard of the law).

Accordingly, this Court finds that the Award is based on a passably plausible interpretation of the controlling CBA. It does not evidence a manifest disregard of the law necessary to vacate the Award.

IV

Conclusion

Based on the foregoing reasons, this Court finds that the Arbitrator's decision was a passably plausible interpretation of the CBA given that Sections 1 and 30 expressly limit the City's management rights, and the Arbitrator's Award relied on those limitations regarding issues of wages, rate of pay, and other conditions of employment. Consequently, the Arbitrator's Award drew its essence from the contract and did not manifestly disregard the law in its interpretation of the contract and is therefore entitled to deference under the limited scope of review afforded to this Court. Accordingly, this Court denies the City's motion to vacate and confirms the Award pursuant to § 28-9-17. Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**City of Cranston v. International Brotherhood of Police Officers, Local No. 301, by and through its President, Michael Caramante, and its Secretary, Jose Alfonso**
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COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 9, 2019**
JUSTICE/MAGISTRATE:	**Nugent, J.**
ATTORNEYS:	
For Plaintiff:	**Stephen M. Robinson, Esq.**
For Defendant:	**Carly B. Iafrate, Esq.**