STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

(FILED: July 19, 2013)

PROVIDENCE, SC.		**SUPERIOR COURT**
CITY OF CRANSTON	:	
	:	
V.	:	**C.A. No. PM 12-4837**
	:	
INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS, LOCAL 301	:	

DECISION

PROCACCINI, J. The City of Cranston (the City) is before this Court on a Motion to Vacate an arbitration award issued June 26, 2012 (the Award). The Award purported to resolve a dispute between the City and the International Brotherhood of Police Officers, Local 301 (the Union) regarding when a retiring police officer would be considered to have completed twenty years of service. The Union has objected to the City's Motion to Vacate. This Court's jurisdiction is pursuant to G.L. 1956 §§ 28-9-14, 28-9-18.

I

Facts and Travel

The parties in this case do not dispute the material facts. They simply dispute the appropriateness of the Award. As such, this Court will begin with a recitation of the facts which led the parties to the arbitrator before looking in more depth at the Award itself.

Tori-Lynn Heaton (Officer Heaton) was hired by the City on August 20, 1990 as a civilian dispatcher. On June 6, 1994, she became a police officer and continued to be employed by the City. Approximately one year after becoming a police officer, Officer Heaton opted into the State of Rhode Island's pension system—the Municipal Employee

Retirement System (MERS)—and out of the City's pension system. One of the benefits of the City's pension system had been the so-called "round-up rule." This rule allowed for any year in which an officer served at least six months and one day to be counted as a full year for pension purposes, effectively allowing an officer to retire with a full twenty years of service credit after working nineteen years, six months, and one day. It is important for an officer to be credited with twenty years of service before retirement, as both MERS and the City's pension system required twenty years of service to retire and receive a full pension. See § 45-21.2-5(a)(8); see, e.g., Joint Arbitration Ex. 7 – 1994-1997 CBA § 24; Joint Arbitration Ex. 1 – 2005-2008 CBA § 23; Joint Arbitration Ex. 5 – Pension Memorandum of Agreement 1.

Officer Heaton, believing she was still entitled to the benefits of the round-up rule, intended to retire on February 21, 2010—nineteen years, six months, and one day after she started working for the City. She was the first officer who opted into MERS to seek to retire and avail herself of the round-up rule. Officer Heaton and the Union brought a grievance in September 2009 alleging that police officers who entered MERS had been promised the same benefits as they had in the City's pension system, including the round-up rule. The grievance proceeded to arbitration. In the meantime, Officer Heaton, wisely, chose to work the full twenty years rather than risk her pension, and deferred her retirement to on or after August 20, 2010.

Officer Heaton's belief that she was entitled to the benefit of the round-up rule stemmed from the complicated history of collective bargaining agreements, city ordinances and state statutes which were involved in the City's efforts to shift police officers into MERS. Around 1993, the City made a decision to phase its police officers

out of the City's underfunded pension plan and into the State's pension plan. Negotiations began between the Union and the City. Before participation in the State's plan had been finalized, the parties entered into a 1994-1997 collective bargaining agreement (the 1994 CBA), which referenced both the City's pension plan and MERS. (Joint Arbitration Ex. 7 – the 1994 CBA § 24). The 1994 CBA detailed the manner in which both pension plans would operate and included the round-up rule. Id. at § 24.4. The City and the Union finally reached an agreement on the new pension system in 1995. The Union sent its members a memorandum which detailed the benefits those who opted into MERS would receive, including the round-up rule. Officer Heaton also attended a workshop in 1995 about the proposed changeover and was left with the understanding she would be entitled to the same benefits she had under the City's pension plan, including the round-up rule. The changeover to MERS was then implemented, though there was no modification made to the 1994 CBA to reflect this change.

Despite the continued absence of a written agreement between the City and the Union regarding the pension changes, in 1996, the General Assembly passed special legislation which effectively incorporated the City's police officers into the State's pension system. See P.L. 1996, ch. 374. The Union contends, in its memorandum, that this legislation was passed without any input from the Union. The issue before the Court arises from the fact that the special legislation passed by the State did not incorporate the round-up rule, despite the fact that it appeared in the 1994 CBA, which was still in force.

At this time, the City also amended its ordinances to indicate that officers, like Officer Heaton, could elect to enter MERS. See Cranston Code of Ordinances § 2.20.050. Section 2.20.050(B)(2)(c) of the Cranston Code of Ordinances (the

Ordinances) indicated that officers who opted into MERS would be entitled to utilize the round-up rule. Section 2.20.050(B)(2)(f) indicated that the employee's pension rights would be governed by Title 45 of the Rhode Island General Laws, except as modified by the collective bargaining agreement with the City. However, Title 45 includes no mention of the round-up rule. In addition, it proscribes, in § 45-21-14, that the retirement board determines how much service in any one year is equivalent to a year of service, not the municipality. Sections 45-21.2-22(a)(1) and 45-21.2-5(a)(8) require a member to serve twenty years in order to retire and receive a full pension. Moreover, § 45-21.2-17.3 specifically states that all persons becoming members of the State pension system "waive and renounce all accrued rights and benefits of any other pension or retirement system supported wholly or in part by a municipality."

Following expiration of the 1994 CBA, the City and the Union, after protracted negotiations, eventually agreed to two contracts in 2000—a 1997-1999 collective bargaining agreement (the 1997 CBA) and a 1999-2002 collective bargaining agreement (the 1999 CBA). The pension language in these two contracts was general in that it merely referenced the Ordinances, state statutes, and a Pension Memorandum of Agreement (the MOA), which the parties also entered into on the same date as the contracts. (Joint Arbitration Ex. 8 – the 1997 CBA § 24; Joint Arbitration Ex. 9 – the 1999 CBA § 24; Joint Arbitration Ex. 5 – the MOA). The MOA detailed the pension provisions and included the round-up rule. (Joint Arbitration Ex. 5 – the MOA 6-7).

This rather tortured history leads us to the present state of the law at issue in this case. The CBAs between the parties either included the round-up rule or referenced the MOA, which included the round-up rule. Thus, the round-up rule appears in every CBA

that the parties have submitted to this Court.[1] The Ordinances still include a provision which entitles the officers who opted into MERS to the benefits of the round-up rule. See the Ordinances § 2.20.050(B)(2)(c). However, neither the state statutes governing the State's pension system, nor the special legislation which was passed incorporating Cranston into the State's pension system, include the round-up rule. See P.L. 1996, ch. 374; §§ 45-21-14, 45-21.2-5, -14, -17.3, -22. It was this contractual and legal jumble which the parties submitted to the arbitrator. [2]

The Arbitration Award

The issue submitted to the arbitrator was, "Did the City violate the collective bargaining agreement when it refused to credit Tori-Lynn Heaton with a year of service for pension purposes, notwithstanding that she had not completed a full year of service for the period immediately proceeding the requested retirement?" (the Award 1). The arbitrator divided the Award into two separate analyses. Id. at 20. He began with a contractual analysis to determine whether the City was bound to provide police officers with the benefits of the round-up rule under the CBAs agreed to by the parties. Id. He

[1] The parties have submitted copies of the 1994 CBA, the 1997 CBA, the 1999 CBA and a CBA dated 2005-2008 (the 2005 CBA). The 2005 CBA also includes the round-up rule by reference to, and incorporation of, the MOA. (Joint Arbitration Ex. 1 – the 2005 CBA § 23). The 2005 CBA was in effect when the grievance in this case arose.

[2] In 2009, after Officer Heaton began making inquiries regarding her intended retirement date, the City submitted information on the issue to the Employees' Retirement System of Rhode Island (ERSRI), which administers pensions under MERS. The legal counsel for ERSRI concluded that the matter was governed by state law, which superseded any ordinances or collective bargaining agreements, and did not include the round-up rule. (Joint Arbitration Ex. 3 – Retirement Denial Letter, June 11, 2009). The parties agree that, given that round-up rule's absence from any state statutes applicable to Cranston's police officers, the State is not required to provide Officer Heaton with the benefit of the round-up rule. Rather, the conflict between the parties and the issue presented to the arbitrator are confined to whether, based on the CBAs between the parties, the City is required to provide Officer Heaton with the benefit of the round-up rule.

then moved on to a statutory analysis to determine how the state statutes affected any benefits provided by the CBAs. Id. at 23.

The arbitrator's contractual analysis began by pointing out that the parties made the round-up rule part of each CBA they executed after the switch to MERS, showing an intention to retain the round-up rule. Id. at 20-21. In addition, the round-up rule remained in the Ordinances, even though they had been amended to reflect the change to MERS. Id. According to the arbitrator, the City did not have to retain the round-up rule after the switch; it could easily have left it out of the Ordinances or future CBAs and simply referenced the state statutes. Id. at 21. Moreover, the arbitrator argued, the MOA specifically provided that the pension rights would come from three sources—the language of § 24 of the 1994 CBA, state statutes, and the City's Ordinances.[3] Id. at 21-22. The arbitrator found that these provisions "ma[d]e it crystal clear that the City bound itself to continue providing all pre-existing pension benefits – including the 'round-up' rule – to all unit members who were enrolled in or who elected to transfer" to MERS. Id. at 22. The arbitrator further found the omission of the round-up rule from the special legislation to be inadvertent and not fatal to the Union's case since the City remained bound by the CBAs it signed, which included the round-up rule. Id. Thus, the arbitrator held that, as a matter of contractual interpretation, the City violated the CBA by failing to provide Officer Heaton with the benefit of the round-up rule. Id. at 22-23.

Moving to his statutory analysis, the arbitrator then determined whether the round-up rule would be in direct conflict with State pension statutes. Id. at 23. The

[3] The language of the round-up rule in the MOA is identical to the language in § 24 of the 1994 CBA. (Joint Arbitration Ex.5 – the MOA 6-7; Joint Arbitration Ex. 7 – the 1994 CBA § 24.4).

arbitrator noted that State pension statutes neither provide for, nor specifically prohibit, the use of a round-up rule and that the General Assembly's adoption of a round-up rule in other contexts was an indication that the requirement of twenty years of service was only a default rule and could be altered. Id. at 24-25. According to the arbitrator's logic, if a round-up rule could be provided by the State, then there was no reason that a municipality could not be required to provide the benefit of such a rule on the basis of an independent contractual commitment. Id. at 25. There was no direct conflict, according to the arbitrator, between MERS and the City's provision of the round-up rule. Id. at 26. He compared the situation to one in which the City had gone to a private company and purchased pension coverage for its employees but negligently omitted a round-up rule in the contract with the company. Id. at 25. In such a situation, the arbitrator argued, there would be little question that the Union could enforce the round-up rule against the City. Id. "The City would have effectively become a 'self-insurer' as to that portion of the pension benefits which it neglected to include in its contract with the pension company." Id. at 25-26. Consequently, the arbitrator concluded that the City, in the situation at issue, had acted as a self-insurer of the benefit of the round-up rule and was required to either provide the benefit on its own or secure an amendment of the special legislation to include the round-up rule. Id. at 26. This, the arbitrator stated, was the only way for the City to honor its contractual commitments. Id.

The Union sought a make-whole remedy. Id. However, the City argued that no remedy was appropriate for Officer Heaton since she had already served a full twenty years. Id. The arbitrator concluded that the City was correct. Id. at 27. He then stated that, as a "pioneer," Officer Heaton would have to be content with merely knowing she

was right and had helped the next generation of police officers. Id. Specifically, she would have to be content with the "declaration of rights" provided by the Award, as no make-whole remedy was available. Id.

The City claims the arbitrator exceeded his authority by issuing an Award requiring it to provide Officer Heaton with the benefit of the round-up rule. The Union objects, claiming the Award should be treated with deference and upheld by this Court.

II

Standard of Review

This Court's authority to review or vacate an arbitration award is statutorily prescribed and very limited. Purvis Sys., Inc. v. Am. Sys. Corp., 788 A.2d 1112, 1114 (R.I. 2002); R.I. Council 94, AFSCME, AFL-CIO v. State, 714 A.2d 584, 587 (R.I. 1998). Accordingly, an arbitration award must be vacated only if: 1) it was "procured by fraud"; 2) the arbitrator exceeded his or her powers or "so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted was not made"; or 3) there was no valid submission or contract. Sec. 28-9-18(a)(1)-(3).

An arbitrator's powers are exceeded if the arbitrator's award failed to "'draw its essence'" from the contract, "'reached an irrational result,'" manifestly disregarded the contract, or was not based on a "'passably plausible'" interpretation of the contract. Woonsocket Teachers' Guild, Local 951, AFT v. Woonsocket Sch. Comm., 770 A.2d 834, 837 (R.I. 2001) (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, et al., 713 A.2d 1250, 1253 (R.I. 1998)). "[A]n arbitrator may [also] exceed 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, Dep't of Corr. v. R.I. Bhd. of Corr. Officers, 867 A.2d 823, 829 (R.I. 2005). Additionally, resolving a dispute that is not arbitrable exceeds an arbitrator's powers. Woonsocket Teachers' Guild, 770 A.2d at 837. Whether a dispute is arbitrable is a question of law and merits a broader standard of review than an arbitrator's decision on the merits: a question of arbitrability is reviewed de novo. Providence Teachers Union v. Providence Sch. Bd., 725 A.2d 282, 283 (R.I. 1999); Providence Teachers' Union Local 958 Am. Fed'n of Teachers v. Providence Sch. Comm., 433 A.2d 202, 205 (R.I. 1981).

However, arbitration awards "enjoy a presumption of validity" in Rhode Island due to the strong public policy favoring their finality. North Providence Sch. Comm. v. North Providence Fed'n of Teachers, Local 920, Am. Fed'n of Teachers, 945 A.2d 339, 344 (R.I. 2008). In addition, it is appropriate for arbitrators to decide relevant questions of state law and how state law relates to the grievances at issue. R.I. Bhd. of Corr. Officers v. State, 643 A.2d 817, 821 (R.I. 1994) ("[A]rbitrators may and should decide questions of relevant state law and the interpretation thereof in resolving a grievance brought pursuant [to] a [collective bargaining agreement].").

III

Analysis

A

The Parties' Arguments

The City argues that the arbitrator exceeded his authority by requiring it to: 1) pre-retire the MERS participating officers after nineteen years, six months, and one day; 2) pay them 50% of their salaries for the remaining time before they hit twenty years

of service; 3) pay MERS both the City's and the employee's retirement contributions based on their full salary for this same period; and 4) furnish MERS with false information that the same officers had in fact served a full twenty years. It also remains unclear, the City points out, whether MERS would credit the officers with twenty years of service in this situation.

Additionally, the City contends that, though it accepts that the arbitrator's factual conclusion that the parties intended to retain the round-up rule cannot be contested, the parties failed to accomplish that objective when the round-up rule was not included in the special legislation. The City posits that the failure to accomplish its intent is due to the fact that the CBAs and the Ordinances at issue cannot modify state law when there is, as in this case, a direct conflict between the two. Here, state law provides that the retirement board decides what amount of service will be equal to one year and further specifically states that a member must serve twenty years, in direct conflict with the round-up rule.

Next, the City draws the Court's attention to the fact that an ordinance is considered a nullity if it transcends the power granted to the municipality by a state enabling act. In the instant case, § 45-21.2-22(a)(1), the enabling act, provides that the City may permit the retirement of a member if the member has completed twenty years of service. Thus, any ordinance allowing retirement after nineteen years, six months, and one day transcends the power granted to the City and is a nullity. The City further remarks that § 45-21.2-17.3 and Ordinance § 2.20.050(B)(2)(b) provide that officers becoming members of MERS waived all accrued rights from any other pension system,

which would include the round-up rule.[4] In summation, the City argues that there is a direct conflict between the CBAs and the Ordinances and the State's statutory authority. The City contends that when such a conflict exists, the statutory authority trumps contracts and ordinances. Thus, according to the City, the arbitrator exceeded his powers by contravening state law and essentially rewriting the CBA.

The Union counters by arguing that the Award should be upheld because it draws its essence from the CBA, since the CBA clearly and unambiguously provides that the intent of the parties was to retain the round-up rule. The Union contends that the officers are entitled to the benefit of their bargain. Moreover, the Union avers that it is possible for a municipality to provide employees with more rights than they are granted under state statutes when there is no direct conflict between the two. The state statutes in the instant case, the Union points out, do not specifically prohibit the round-up rule and thus there is no direct conflict. Therefore, the state statutes have no bearing on the City's contractual obligations to the Union members. The Award, according to the Union, simply requires the City to provide the benefit of the round-up rule, as it promised by contract.

[4] The City's argument that officers entering that State pension system are not entitled to the benefits of the round-up rule because they specifically waived all benefits from the City's pension system, both by statute and ordinance, is not convincing. The round-up rule is specifically provided to officers entering MERS in the MOA and the Ordinances. See the Ordinances § 2.20.050(B)(2)(c); Joint Arbitration Ex. 5 – the MOA 6-7. Thus, it was not simply a carry-over right from the City's pension plan but was specifically promised to officers opting into MERS.

B

The Arbitrator's Award

The issue before this Court is whether the arbitrator exceeded his authority by issuing an Award requiring the City to provide police officers in the State's pension system the benefit of the round-up rule contained in the CBAs.

i

The Arbitrator's Contractual Analysis

At the outset, the Court finds that the arbitrator's contractual analysis was sound and on point. The parties agreed, numerous times, that the officers in MERS would be entitled to the benefits of the round-up rule. The 1994 CBA specifically included the round-up rule, stating in § 24.4 that "[a]ny year in which a member completes over six (6) months of service will be credited with a complete year of credited service." (Joint Arbitration Ex. 7 – the 1994 CBA § 24.4). The rule was then incorporated into the 1997 CBA, the 1999 CBA and the 2005 CBA through reference to the MOA. (Joint Arbitration Ex. 8 – the 1997 CBA § 24, sec. 1; Joint Arbitration Ex. 9 – the 1999 CBA § 24, sec. 1; Joint Arbitration Ex. 1 – the 2005 CBA § 23, sec. 1; Joint Arbitration Ex. 5 – the MOA 6-7). The MOA states, in § 24.4, that members of both the City's plan and the State's plan would be vested in ten years. (Joint Arbitration Ex. 5 – the MOA 6). The section goes on to detail the amount of the vested pension payment and then states, as in the 1994 CBA, "[a]ny year in which a member completes over six (6) months of service will be credited with a complete year of credited service." Id. at 6-7.

Our Supreme Court tells us that "well-settled rules of contract[] interpretation" dictate that "the intent of the parties is best determined by the wording of the documents

that they drafted, agreed upon, and executed." DeMarco v. Travelers Ins. Co., 26 A.3d 585, 631 (R.I. 2011). This Court's examination of the CBAs between the parties serves to affirm the decision of the arbitrator in his contractual analysis—the parties clearly demonstrated an intent to retain the round-up rule for the officers who entered MERS. The Court's conclusion is further supported by the fact that, when the switch was being made from the City's pension plan to the State's pension system, the City amended the Ordinances to reflect the change and kept the round-up rule for officers in the State's pension system. Section 2.20.050(B) of the Ordinances is entitled "Optional State of Rhode Island Pension" and subsection (2)(c) clearly states, "[a] credited year of service will be any year of service with over six months completed." Thus, the intent of the parties was clearly to retain the round-up rule. Id.

ii

The Arbitrator's Statutory Analysis

The Court must next turn to the question of whether the arbitrator reached an irrational result and contravened state law when he made a "declaration of rights" that the CBAs between the parties and the Ordinances could be interpreted to require the City to provide the benefit of the round-up rule despite State retirement statutes to the contrary.

The Union urges this Court, given the clear contractual intent of the parties, to find Chester v. aRusso controlling.[5] 667 A.2d 519 (R.I. 1995). In Chester, the plaintiffs,

[5] Chester was overruled by Webster v. Perrotta, 774 A.2d 68 (R.I. 2001). In Webster, our Supreme Court stated that Chester was a decision of statutory construction, determining the relationship between special legislation and a contract which provided a greater benefit than the legislation. Id. at 81-82. It was not a decision on the merits of the provisions, or what benefits the disabled officers were entitled to. Id. at 82. The Supreme Court only overruled Chester to the extent it could be considered a decision on

disabled police officers and union members, were appealing a grant of summary judgment in the defendants' favor. Id. at 520-21. The issue was whether general state legislation, special legislation passed by the State concerning the officers in question, or the collective bargaining agreement between the parties controlled the percentage of disability payments to which the officers were entitled. Id. The Court held that special legislation prevails over general legislation, but a collective bargaining agreement "whose terms provide greater disability benefits than [are] afforded by the special legislation but are in accordance with the provisions of the general legislation" prevails over special legislation. Id. at 521. While this case initially seems instructive, it requires that the CBA, which in this case provides more pension benefits than the state laws, be in accordance with any general legislation in order to prevail. In other words, the CBA must not be in "direct conflict" with statutory law. See State Dept. of Admin. v. R.I. Council 94, A.F.S.C.M.E., AFL-CIO, Local 2409, 925 A.2d 939, 944-45 (R.I. 2007) (holding that in order to be excused from compliance with a CBA there must be a direct conflict with state law). Consequently, it leaves the Court with the same question—did the arbitrator reach an irrational result by concluding that the round-up rule in the CBAs and Ordinances was not in direct conflict with state legislation and, thus, simply a benefit the City agreed to provide in addition to those afforded in MERS?

Upon an exhaustive review of the CBAs, the Ordinances, and statutes at issue, in addition to the Award and the memoranda provided by the parties, the Court holds that the round-up rule in the CBAs contravenes state law and, consequently, the arbitrator's decision to the contrary was patently irrational and exceeded his authority.

---

the merits of the provisions. Id. Thus, it remains good law for the portions of the decision analyzed by this Court.

It is a long accepted rule that contracts may not contravene applicable state statutes and if they do so, the contract provisions are illegal. Pawtucket Sch. Comm. v. Pawtucket Teachers Alliance, 610 A.2d 1104, 1106 (R.I. 1992) (holding that over a century ago the Court held that contracts entered into in contravention of state law are illegal). Indeed, our Supreme Court has stated that "parties to a CBA have no legal authority to contravene state law by word or deed." State v. R.I. Alliance of Soc. Servs. Emps., Local 580, SEIU, 747 A.2d 465, 469 (R.I. 2000). Arbitration awards that contravene state law, or enforce CBA provisions in contravention of state law, are in excess of an arbitrator's authority because the award reaches a determination on an issue that is, in fact, not arbitrable. See R.I. Bhd. of Corr. Officers v. State Dep't of Corr., 707 A.2d 1229, 1235 (R.I. 1998) (discussing with approval two other Supreme Court cases where it was determined that the grievances were nonarbitrable since the State was granted statutory responsibility for the subjects at issue in the grievance and, as such, could not bargain them away). The reasoning behind this rule is that "in a CBA, governmental employers may not bargain away authority that has already been delegated to management or to other governmental agents by state law or other paramount public policy." Id. To find that this rule applies and an arbitration award contravenes state law, the provisions of the CBA between the parties must be in direct conflict with state statutes. R.I. Council 94, 925 A.2d at 944-45 (holding that there must be a direct conflict with state law for a CBA provision to be unenforceable).

The Court finds that there is a direct conflict between the round-up rule and state law in this case. It is undeniable that the language allowing for the round-up rule appears in every CBA between the parties, either directly or by incorporating the MOA. This

language specifically provides that, for the purposes of determining credited service for a pension, any year in which more than six months have been served will be considered a complete year of service. However, § 45-21-14 specifically provides "[t]he retirement board fixes and determines, by appropriate rules and regulations, how much service in any year is equivalent to a year of service." (Emphasis added.) The City and the Union cannot dictate what amount of time served in a year will be credited as a year when that duty is given to the retirement board. Allowing anyone but the retirement board to make such a determination would be in direct conflict with § 45-21-14.[6] See, e.g., id.

In State, Dep't of Mental Health, Retardation, and Hospitals v. R. I. Council 94, A.F.S.C.M.E., AFL-CIO, our Supreme Court held that the Department of Mental Health, Retardation, and Hospitals (the Department) could not bargain away the director's statutorily proscribed responsibility to provide for the health and welfare of the Department's patients. 692 A.2d 318, 324-25 (R.I. 1997). Consequently, the Department could not submit to arbitration, or agree in a CBA to submit to arbitration, a dispute concerning how many consecutive over-time hours its employees could volunteer to work. Id. at 319, 324-25. If the Department was not able to arbitrate the number of consecutive hours allowed because of the director's rather broad statutory responsibility, it follows that the City clearly cannot arbitrate the State's statutory right to determine how much service in a year will be deemed one year of service. The City is not authorized to bargain that right away since it is specifically provided to the State in statute. Thus, the CBA provisions containing the round-up rule, which are in direct

[6] The Court also notes that, in § 45-21.2-5(a)(8), the State defers to the CBA between the parties for any illness or injuries not covered in Title 45 but fails to so defer when it comes to the term of service required for a pension.

conflict with the State's statutory rights, contravene state law, and are invalid. See Pawtucket Teachers Alliance, 610 A.2d at 1106 (holding that contracts entered into in contravention of state law are illegal). Furthermore, any dispute regarding honoring the round-up rule in contravention of state statutes was not properly before the arbitrator. See R.I. Bhd. of Corr. Officers, 707 A.2d at 1235 (citing with approval two cases holding that the State may not bargain away statutory responsibilities and, thus, any issue involving such responsibilities was not arbitrable).

In addition to contravening the State's right to determine how much service in a year will be deemed a year of service, the round-up rule, and the Award enforcing it, further contravene state law because they are in direct conflict with §§ 45-21.2-22(a)(1) and 45-21.2-5(a)(8). Section 45-21.2-22(a)(1) allows local legislative bodies of cities and towns to permit the retirement of a member of MERS, provided that the member has completed at least twenty years of total service. The special legislation passed by the General Assembly to incorporate Cranston police officers into MERS, as codified in § 45-21.2-5, also states that any member of the Cranston Police Department may retire under MERS, provided he or she has earned a service retirement allowance for twenty years of service. However, the round-up rule would allow retirement at only nineteen years, six months, and one day. This is clearly in direct conflict with the twenty years required by statute.

Thus, the situation before the Court is not, as the Union and arbitrator contend, a circumstance where the City is simply providing a greater benefit than the state law allows for. On the contrary, the City is providing a benefit it is not authorized to provide under § 45-21-14 and which contains a completely, patently different, requirement than

§§ 45-21.2-5(a)(8) and 45-21.2-22(a)(1).[7] Consequently, this Court finds that the round-up rule in the CBAs is in direct conflict with the state statutes at issue and is, consequently, in contravention of state law. See R.I. Council 94, 925 A.2d at 944-45; R.I. Bhd. of Corr. Officers, 707 A.2d at 1235.

Similar to a situation where a contract is in direct conflict with state law, our Supreme Court has also held that a municipal ordinance is "unenforceable and invalid" when it contravenes state law. Providence City Council v. Cianci, 650 A.2d 499, 501 (R.I. 1994); see also Town of Glocester v. R.I. Solid Waste Mgmt. Corp., 120 R.I. 606, 607, 390 A.2d 348, 349 (1978) (A municipal ordinance which is in "direct and material conflict with a state law of general character and statewide concern is invalid . . . and whether the two so conflict depends on what the Legislature intended when it enacted the statute."). Section 2.20.050(B)(2)(c) of the Ordinances contains language nearly identical to the round-up rule provided in the CBAs and the MOA. The same analysis applied to the round-up rule in the CBAs, thus, applies equally to the round-up rule in the Ordinances. Both are in direct conflict with state law and, as such, are preempted by state law.[8] Consequently, the Award to the contrary was irrational, and itself in contravention of state law.

[7] Additionally, the arbitrator's comparison to the City contracting with a private company to provide pension benefits is off base. MERS is governed by state statute and is applicable to all members of the system statewide. Moreover, state statutes preempt ordinances and contracts. Pawtucket Teachers Alliance, 610 A.2d at 1106; Providence City Council v. Cianci, 650 A.2d 499, 501 (R.I. 1994). Thus, it would be a completely different situation if the CBAs and the Ordinances were not in conflict with state statutes but were rather in conflict with a contract entered into between the City and a private company.

[8] It is also worth noting that the General Assembly twice passed legislation which included a round-up rule, thus showing the necessity of specifically providing for a round-up rule in the special legislation in order to ensure that retiring officers would

The effect of the Award also illustrates its irrationality and supports this Court's conclusion. As the City argued, it cannot comply with the Award without disregarding City law and being deceptive and untruthful to the State. The Award requires the City to permit an officer to retire after nineteen years, six months, and one day. Then, the City would have to begin making pension payments to that officer, equal to fifty percent of the officer's annual salary. In addition, the City would continue paying its required pension contributions and pay the officer's required pension contributions for the intervening months until that officer reached twenty years of service. However, while making all these payments, the City would have to consider the officer to be a full-time employee. These actions would be in violation of § 2.80.030 of the Ordinances which provides that "[n]o employee who has retired from his or her employment with the city and is receiving a retirement pension shall be employed by the city as a full-time employee unless he or she first relinquishes or waives his or her retirement pension for the duration of his or her re-employment."

When twenty years had been served, the City would have to report to the State, pursuant to § 36-9-21,[9] that the officer was a full-time employee for twenty years and, thus, accrued twenty years of credited service. This report would be untrue given that the employee had, in actuality, stopped working for the City almost six months prior.[10]

---

enjoy the benefit of it. See §§ 45-21-17.1(a) (stating that for certain municipal legislators "[s]ervice in excess of six (6) months in any one year constitutes one full retirement credit year"), 45-21-14.1 (repealed 2011) (providing that service as a member of any city or town council in excess of six months in any one year would constitute one full retirement credit year).

[9] Section 36-9-21 requires the City to provide MERS with information concerning the length of service of each employee.

[10] The Court deems it important to also point out that if the State were to learn that the officer had actually retired months earlier and the City was using the discussed system to

While this Court has previously observed that "a promise is a promise-notwithstanding the adverse and unforeseen consequences associated with it[,]" in this case, it simply is not rational to require a City to violate its own laws and be intentionally untruthful to the State in order to comply with an arbitration award. City of Cranston v. Int'l Bhd. of Police Officers, Local 301, Nos. PM 2004-1043, 2004-1646, 2005 WL 375087, at *10 (Super. Ct. Feb. 11, 2005). It is similarly irrational to require such compliance when the arbitration award is enforcing a provision of a CBA, which is itself in contravention of state law. Moreover, the fact that the state of the law is such that the City would be forced to both violate its own laws and misrepresent facts to the State to provide the benefit of the round-up rule is further support for the Court's conclusion that the rule is in direct conflict with state law. If the round-up rule and state law were not in direct conflict and could coexist, presumably the City would be able to comply with both without the cloak and dagger steps which the Award now requires.

If the round-up rule in the CBAs and the Ordinances did not contravene state law, the Court sees no reason why a City could not provide its retirees with benefits greater than the State provides, as was done in Chester. 667 A.2d at 521. However, in this case, the extra benefits being provided are in direct conflict with state law and usurp responsibility granted to the state retirement board by statute. Accordingly, the Award is irrational since, in order to comply, the City will be forced to disregard the state statutes requiring twenty years of service and falsely report to MERS that officers, who have in fact served only nineteen years, six months, and one day, have served twenty years.

---

provide the benefit of the round-up rule, there is no evidence whatsoever that the State would honor the City's misrepresentation and give the officer credit for twenty years of service.

Thus, the Court finds that the arbitrator exceeded his authority by issuing an irrational award, in contravention of state law. See R.I. Bhd. of Corr. Officers, 867 A.2d at 829 (holding that an arbitrator exceeds his or her powers by interpreting a CBA in a way that contravenes state law); Woonsocket Teachers' Guild, 770 A.2d at 837 (stating that an arbitrator exceeds his or her powers if the award reached an irrational result).

iii

The Arbitrator's "Declaration of Rights"

Though the Court has determined that the Award must be vacated because it contravenes state law and leads to an irrational result, it cannot ignore the arbitrator's purported "declaration of rights," which addresses future rights of those covered by the CBA. (the Award 27).

As stated previously, Officer Heaton, wisely, worked an additional six months to ensure she would meet MERS' twenty years of service retirement benchmark, thus creating a situation where no make-whole remedy was available. Surprisingly, the arbitrator, perhaps realizing there was nothing in this case left to substantively decide, embarked on a future "declaration of rights" to guide other similarly situated officers. The arbitrator essentially rendered a declaratory judgment in the context of a grievance arbitration. This Court finds the arbitrator exceeded his power by issuing this future declaration. See § 28-9-18(a)(2).

After an extensive search of case law and treatises, the Court finds no authority which gives arbitrators the power to issue declaratory judgments absent express

authorization in a CBA.[11] Rather, the Rhode Island Superior Court holds exclusive jurisdiction to issue declaratory relief in a case of this nature. See Bradford Assocs., et al. v. R.I. Div. of Purchases, et al., 772 A.2d 485, 489 (R.I. 2001) (stating that an action pursuant to the Uniform Declaratory Judgments Act invokes the Superior Court's original jurisdiction, granted by statute). Section 9-30-1 states that "[t]he superior . . . court upon petition, . . . shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." However, this seems to be in essence what the arbitrator did, thus usurping this Court's statutory authority to issue declaratory judgments. See 4 Am. Jur. 2d Alternative Dispute Resolution § 177 at 232 (2007) (stating that an arbitrator has "discretion to fashion a remedy as long as the award draws its essence from or is limited by the arbitration agreement or applicable statute.") (emphasis added).

Courts are commonly asked to issue declaratory relief in labor cases before the cases proceed to arbitration, typically to determine whether the issues are arbitrable in the first place. Id. § 103 at 158-59. Given this Court's finding that the issue in this case was not properly before the arbitrator,[12] it follows that the dispute between the parties should have, more properly, been brought before this Court in an action for a declaratory judgment. See, e.g., Providence Teachers Union, 725 A.2d at 283 (stating that an arbitrator's decision on the arbitrability of an issue is reviewed de novo and not given the same deference as a decision on the merits). This is especially true given that the issues in this case primarily arose from reconciling CBA provisions and the Ordinances with

[11] The Court notes that this search also uncovered the fact that there is little written on the subject of declaratory judgments in the context of an arbitration.
[12] See discussion supra Part III.B.ii.

state law, rather than simply interpreting a CBA. See, e.g., Vose v. R.I. Bhd. of Corr. Officers, 587 A.2d 913, 913-14 (R.I. 1991) (addressing a declaratory judgment action brought in Superior Court before proceeding to arbitration, asking the Court to declare that a new policy of the Department of Corrections was valid and that a contrary provision in the CBA was invalid since it conflicted with state law). Moreover, proceeding in this manner would have allowed this Court to assess the request under the parameters of the Uniform Declaratory Judgments Act and would have been in the interest of both judicial economy and a speedy resolution of the issue between the parties. See § 9-30-1 et. seq.; see, e.g., State v. Rivera, 987 A.2d 887, 901 (R.I. 2010) (citing judicial economy as one of the considerations when determining whether to sever a trial when the defendant wishes to testify on one charge but remain silent on another); State v. Day, 925 A.2d 962, 980 (R.I. 2007) (citing judicial economy as a reason that the Sixth Amendment right to confrontation is not absolute); Burns v. Sundlun, et al., 617 A.2d 114, 116-17 (R.I. 1992) (citing judicial economy as a support for the requirement of exhausting administrative remedies).

Furthermore, an arbitrator's powers are dependent upon the arbitration agreement between the parties and an arbitrator exceeds his or her powers by deciding an issue that the parties did not, by contract, agree to submit to the arbitrator. 4 Am. Jur. 2d Alternative Dispute Resolution §§ 67 at 126, 143 at 202-203 (2007). Here, no declaratory or advisory relief was specifically requested by the parties. The issue before the arbitrator asked only whether the City violated the CBA. (the Award 1). Also, the CBA currently in effect between the parties confines the arbitrator's jurisdiction to interpretation and/or application of the provisions of the CBA. (Joint Arbitration Ex. 1 –

the 2005 CBA § 22(g)). It specifically provides that the arbitrator may not "add to, detract from, alter, amend or modify" the CBA and is without power to issue an award exceeding his or her jurisdiction under the law and the CBA. Id. Thus, despite a rather broad grant of jurisdiction, the CBA does not give the arbitrator power to issue declaratory or advisory relief. Id. at § 22. While there is some limited support for the proposition that arbitrators may issue advisory opinions, it is only potentially possible in situations, unlike this case, where the parties request it and the CBA specifically provides for it. Jay E. Grenig & Rocco M. Scanza, Fundamentals of Labor Arbitration, § 9:10 at 78 (2011). The Court is left to ponder why the arbitrator would issue declaratory relief when it was not specifically requested by the parties, is not provided for in the contract and is reserved by statute to the Superior Court. Consequently, the Court finds that the arbitrator exceeded his authority by issuing a "declaration of rights" which he did not have jurisdiction to award.

In summary, this Court finds that the round-up rule is in contravention of state law, as it directly conflicts with state statutes. This Court further finds that the arbitrator's conclusion to the contrary was an irrational result, especially given the lengths the City must go to in order to comply. See Woonsocket Teachers' Guild, 770 A.2d at 837. Moreover, the dispute was not even properly before the arbitrator since the City cannot bargain away a state's statutory rights. See R.I. Bhd. of Corr. Officers, 707 A.2d at 1235 (citing rule that an issue involving the State's statutory responsibilities is not arbitrable). Thus, because the Award was in contravention of state laws, reached an irrational result, and issued a "declaration of rights" which was not within the arbitrator's jurisdiction to award, the Court finds that the arbitrator exceeded his authority. See

Woonsocket Teachers' Guild, 770 A.2d at 837 (stating that an arbitrator exceeds his or her powers if the award reached an irrational result); R.I. Bhd. of Corr. Officers, 867 A.2d at 829 (an arbitrator's powers are exceeded if his or her award contravenes state law). As such, the Court must vacate the Award. See § 28-9-18(a)(2). "'The law [cannot] help a [person] get paid for doing what the law says shall not be done.'" R.I. Alliance of Soc. Servs. Emps., 747 A.2d at 469 (quoting Birkett v. Chatterton, 13 R.I. 299, 302 (1881)).

While it is not germane to this Court's analysis to determine "how" or "why" the parties never incorporated the CBAs' round-up rule provisions in the MERS statutory scheme, it is troubling to see the parties' apparent intent frustrated by a lack of detail and follow-through by those responsible to negotiate and implement these terms. In the final analysis, however, MERS is a pension system administered by the State of Rhode Island. It is established and governed by statute. Simply put, in this case, there is no way around the MERS' twenty year pension eligibility requirement or the power granted to the State to determine what portion of a year must be worked to receive credit for a full year of service—requirements that were known, or should have been known, to all involved in this process.

IV

Conclusion

In conclusion, this Court finds that the Award was irrational, given the fact that it contravened state law and required the City to violate its Ordinances and intentionally misrepresent facts to the State in order to comply. Additionally, the Court finds that the issue before the arbitrator was not arbitrable because the provisions of the CBAs and the

Ordinances contravened state law by purporting to bargain away authority reserved to the State in § 45-21-14, to determine what constituted a year of credit for pension purposes. Moreover, the arbitrator improperly issued a "declaration of rights," in essence a declaratory judgment, over which this Court has jurisdiction by statute. As such, the Award must be vacated because the arbitrator exceeded his powers. Thus, the City's Motion to Vacate is granted. Counsel will submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**City of Cranston v. International Brotherhood Of Police Officers, Local 301**
CASE NO:	**PM 12-4837**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 19, 2013**
JUSTICE/MAGISTRATE:	**Procaccini, J.**
ATTORNEYS:	
For Plaintiff:	**Vincent F. Ragosta, Jr., Esq.** **Timothy M. Bliss, Esq.**
For Defendant:	**Michael W. Murphy, Esq.**