**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**(FILED: March 7, 2014)**

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| **SCOTT GAUTHIER and CITY OF CRANSTON POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS, LOCAL 301** | : | |
| **v.** | : | **C.A. No. PM-2012-5402** |
| **CITY OF CRANSTON** | : | |

## DECISION

**VAN COUYGHEN, J.** The matter before this Court is Plaintiffs' application, pursuant to G.L. 1956 § 28-9-18, to vacate an arbitration decision issued on August 14, 2012.[1] Plaintiffs are Scott Gauthier, a retired Cranston police officer, City of Cranston Police Officers, and the International Brotherhood of Police Officers, Local 301 (Union). Defendant is the City of Cranston (City). The Arbitrator found that Plaintiffs had not complied with the grievance procedure delineated in the collective bargaining agreement (CBA) between the Union and the City, and thus dismissed Plaintiffs' grievance on procedural grounds. For the reasons set forth herein, this Court vacates the Arbitration Decision but dismisses the grievance because Plaintiffs lack the substantive right to utilize the arbitration procedures set forth in the CBA. Jurisdiction is pursuant to § 28-9-14.

[1] Section 28-9-15, "Application treated as a motion," states that "[a]ny application to the court or a judge of the court under this chapter shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise expressly provided in this chapter.

## I

## Facts and Travel

The Union and the City are parties to a CBA entered into pursuant to the Municipal Police Arbitration Act (MPAA), §§ 28-9.2-1 et seq. See CBA. The CBA became effective July 1, 2009 and expired on June 30, 2012. The CBA contains the terms and conditions of employment of police officers employed by the City, including the pension benefits to be provided to them upon their retirement.

In § 1 of the CBA, the City "recognize[d] and acknowledge[d] the I.B.P.O. as the sole and exclusive bargaining representative for all full time police officers, up to and including police officers holding the rank of Captain for the purposes of collective bargaining . . . ." (CBA § 1.) Furthermore, § 1 of the CBA defines "member," "member of the bargaining unit," "employee," "officer," "patrol officer," "personnel," and/or "police officer" to mean all full-time police officers, up to and including the rank of Captain.

The CBA defines a grievance as "a dispute between the member (or the Union) and the City," which involves "the application, meaning or interpretation of the express provisions of this Agreement . . . ." (CBA § 22(a).) Section 22 of the CBA provides the procedure for resolving all grievances of members of the Cranston Police Department. (CBA § 22(a).) The CBA requires that a written grievance be filed with the Chief of Police and the Director of Personnel "[n]ot later than twenty (20) days, excluding weekends and holidays, after the event giving rise to the grievance . . . ." (CBA § 22(b).) If a grievance is not resolved through the procedure specified in § 22, either party has the right to refer the grievance to final and binding arbitration. (CBA § 22(e)-(h).)

Mr. Gauthier had been employed by the Cranston Police Department since July 6, 1993, and retired after attaining twenty years of service on July 6, 2009.[2] (Arb. Tr. at 10.) On September 22, 2011, over two years after Mr. Gauthier's retirement, the Union filed a grievance on behalf of Mr. Gauthier. The grievance alleged that Mr. Gauthier was not receiving the retirement benefits afforded to him by the City through the Employee Retirement System of Rhode Island (ERSRI). The grievance alleged that the benefits provided to him violated the parties' CBA, the City Ordinance, and State law. (Joint Ex. 2). Specifically, Plaintiffs asserted that after receiving his retirement check, Mr. Gauthier found that his pension benefit calculation failed to include longevity and holiday earnings, which were part of his original compensation. (Arb. Tr. at 18-19). The grievance was denied, and the Plaintiffs filed a demand for arbitration through the American Arbitration Association in accordance with the CBA. (Joint Ex. 3).

An arbitration hearing was conducted before Arbitrator Paul Lemont (Arbitrator) on March 14, 2012.[3] The parties stipulated that the issue to be decided by the Arbitrator was, "[d]id the City violate Section 23[4] of the Collective Bargaining Agreement based upon the retirement

[2] Mr. Gauthier purchased four years of military credit towards his retirement.
[3] Considerable testimony, eighteen full exhibits, and post-hearing briefs were filed by the parties.
[4] Section 23, PENSION, § 1 provides;

> "All City ordinances, state statutes and current benefits now in existence as evidenced by a memorandum of understanding signed by the City and IBPO (sic), providing the various forms of retirement benefits in existence upon the execution of the Agreement for members of the bargaining unit are hereby incorporated by reference as if fully stated herein and shall inure to all members of the bargaining unit for the duration of this Agreement. No changes shall be made to said benefits without the written agreement between the City and the I.B.P.O.
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> "Notwithstanding the above, For (sic) all existing employees who retire after the execution of this collective bargaining agreement, the pension cost-of-living adjustments (COLAs) will be fixed at 3.0% per annum, compounded, without any escalation based on raises granted to active employees.

benefits received by grievant Scott Gauthier. If so, what shall the remedy be?" (Arbitration Decision at 2.) The City did not raise procedural arbitrability as a bar to arbitration at the hearing or in its post-hearing memorandum to the Arbitrator. However, the Arbitrator interpreted the stipulated issue to be inextricably intertwined with procedural arbitrability. Namely, the Arbitrator found that Plaintiffs could not avail themselves of the arbitration clause of the CBA unless they complied with the time restraints for filing grievances as set forth therein. See CBA § 22(b). Accordingly, the Arbitrator construed the issue to include the procedural requirement that grievances be filed within twenty days of the event giving rise to the grievance.

On August 14, 2012, the Arbitrator issued a decision which dismissed Plaintiffs' grievance based on procedural arbitrability grounds. (Arbitration Decision at 8.) The Arbitrator based his decision on Plaintiffs' failure to timely file the grievance in accordance with § 22(b) of the CBA. Id. Specifically, the Arbitration Decision notes that Mr. Gauthier's grievance was dated September 20, 2011, well in excess of the twenty day requirement of the CBA. (Arbitration Decision at 2.) As a result, the Arbitrator found that Mr. Gauthier had waived his grievance.[5] Id. Thereafter, Plaintiffs filed a complaint pursuant to § 28-9-18 to vacate the Arbitration Decision.

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> "For any employee hired on or after January 1, 2007, his salary for pension calculation purposes shall be his base salary as of the date of his retirement. (This shall not be construed to exclude longevity and holiday pay as components for pension calculation purposes). The percentage of any such employee's salary for pension calculation purposes shall not increase by 5.0% at age 55."

[5] In his Arbitration Decision, the Arbitrator also noted that the Union claimed that the agreement between the Union and the City—namely, to give employees with then under five years of service the opportunity to remain in the City Plan or to transfer to the State Plan (MERS)—was to provide the same benefits regardless of whether the employee stayed in the City Plan or

## II

## Parties' Arguments

In support of its position, the City asserts that the Arbitration Decision dismissing the grievance was correct. However, the City assigns error to the Arbitrator's reliance on the theory of procedural arbitrability. The City argues that a grievance of a retired police officer is not substantively arbitrable under the CBA. The issue of substantive arbitrability was first raised by the City in their post-hearing memorandum submitted to the Arbitrator before the Arbitration Decision was reached. Additionally, the City asserts that even if the grievance was substantively arbitrable, the Arbitrator did not exceed his authority by dismissing the case on procedural arbitrability grounds.

Plaintiffs contend that they have standing under the CBA to pursue arbitration and that this matter is substantively arbitrable. In addition, Plaintiffs argue that the arbitrator exceeded his powers pursuant to § 28-19-18(a)(2) by deciding issues beyond those framed and stipulated to by the parties. Specifically, Plaintiffs argue that the Arbitration Decision, based on procedural grounds and the timeliness of the grievance, constituted error. They argue that the Arbitrator's authority was limited to the issue framed by the parties. Moreover, Plaintiffs aver that the Arbitrator denied them a meaningful opportunity to argue and present evidence regarding the timeliness of the grievance because it was never addressed by the parties. Furthermore, Plaintiffs assert that the Arbitrator reached an irrational result in his Arbitration Decision. Specifically,

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elected to move to MERS. (Arbitration Decision at 5.) Furthermore, the Arbitrator indicated that he was "virtually convinced that back when the agreement was made, Longevity and Holiday Pay were intended to be part of the bargain. Why else would one leave one plan for another if the bottom line for the member was a lesser benefit. Who would be foolish enough to transfer!" (Arbitration Decision at 7.) In addition, the Arbitrator stated, "I do not believe for one minute that it was the intention of the parties to exclude those who attempted to assist the City in an hour of need." (Arbitration Decision at 7.)

Plaintiffs state that the Arbitrator agreed with Plaintiffs' position on the stipulated issue, yet decided to dismiss the grievance on an issue not before the Arbitrator.

## III

## Standard of Review

Our Supreme Court has looked to the extensive body of federal case law involving labor law, as there are many parallels between Rhode Island's labor regulations and the federal system of labor regulation. See Burrillville v. R.I. Labor Relations Bd., 921 A.2d 113 (R.I. 2007); see also DiGuilio v. R.I. Bhd. of Corr. Officers, 819 A.2d 1271, 1273 (R.I. 2003). The United States Supreme Court discussed arbitration's place in private sector labor law in the Steelworkers Trilogy. United Steelworkers v. Am. Mfg. Co., 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960). The value of labor arbitration to alleviate occupational discord and employment litigation in the courts is widely acknowledged. See, e.g., Warrior & Gulf Navigation Co., 363 U.S. at 579 (finding that the collective bargaining agreement is created to encompass the entire employment relationship and conceives of "a new common law—the common law of a particular industry or of a particular plant"); see also School Committee of City of Pawtucket v. Pawtucket Teachers Alliance AFT Local 930, 120 R.I. 810, 814-16, 390 A.2d 386, 390 (1978) (adopting the United States Supreme Court Steelworker Trilogy holdings that favor arbitration and stating that "a court shall rule in favor of submitting the dispute to arbitration unless the arbitration clause of the collective-bargaining agreement cannot be interpreted to include the asserted dispute and that all doubts should be resolved in favor of

arbitration").[6] When deciding whether a particular dispute falls within the purview of an arbitration clause, the United States Supreme Court has cautioned that a court should not entangle itself in a review of the merits of the underlying grievance. Warrior & Gulf Navigation Co., 363 U.S. at 582.

Accordingly, pursuant to our precedent, "'[i]t is well settled that, in the typical case, the judiciary's role in the arbitration process is limited.'" Providence Sch. Bd. v. Providence Teachers Union, Local 958, 68 A.3d 505, 508 (R.I. 2013) (quoting Drago Custom Interiors, LLC v. Carlisle Bldg. Sys., Inc., 57 A.3d 668, 670 (R.I. 2012)). "Due to the public policy favoring the finality of arbitration awards, such awards enjoy a presumption of validity." N. Providence Sch. Comm. v. N. Providence Fed'n of Teachers, Local 920, 945 A.2d 339, 344 (R.I. 2008) (citing Pierce v. R.I. Hosp., 875 A.2d 424, 426 (R.I. 2005)).

[6] As above-mentioned, the Steelworkers Trilogy, adopted by the Rhode Island Supreme Court, set forth a presumption of arbitrability in the context of the private sector employment relationship. In the past, our Supreme Court has raised concerns that arbitrators in the public sector might be called upon to interpret state law and as a result it has been suggested that an effective judicial review of such determinations of law may require more judicial scrutiny in the resolving of disputes in the public sector than in the private sector. See Jacinto v. Egan, 120 R.I. 907, 922-23, 391 A.2d 1173, 1181 (1978) (Weisberger, J. dissenting). However, our Supreme Court responded that "nothing in chapter 9 of title 28 suggests or implies that the General Assembly ever intended that there be dual standards of judicial review under § 28-9-18, one for the public sector and another for the private sector" and thereafter extended the private sector presumption of arbitrability expressed in the Steelworkers Trilogy to public sector arbitrability determinations. See Jacinto, 120 R.I. at 917, 391 A.2d at 1178. In the context of a dispute between a teachers' association and a public school committee, our Supreme Court found that "[a]s long as the 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 our review must end." Jacinto, 120 R.I. at 912, 391 A.2d at 1175-76 (citing Enterprise Wheel & Car Corp., 363 U.S. at 597); see also Belanger v. Matteson, 115 R.I. 332, 355-56, 346 A.2d 124, 138 (1975), cert. denied, 424 U.S. 968 (1976); Burns v. Segerson, 122 R.I. 123, 404 A.2d 500 (1979); R.I. Council 94 v. State, 456 A.2d 771 (R.I. 1983); Reynolds v. Fraternal Order of Police Lodge No. 9, 475 A.2d 1041 (R.I. 1984).

Despite the presumption of validity, there are circumstances where vacating an arbitration award is justified. Grounds for vacating an award are provided in § 28-9-18:

> "(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."

"An arbitrator exceeds his or her powers if the arbitrator decides an issue that is not arbitrable." State Dep't of Admin. v. R.I. Council 94, Local 2409, 925 A.2d 939, 944 (R.I. 2007). "The issue of whether a dispute is arbitrable is a question of law that this Court reviews de *novo.*" AVCORR Mgmt. LLC v. Central Falls Det. Facility Corp., 41 A.3d 1007, 1010 (R.I. 2012) (citing State Dep't of Corr. v. R.I. Bhd. of Corr. Officers, 866 A.2d 1241, 1247 (R.I. 2005)).

Cognizant that "[a]rbitration is a matter of contract," this Court applies "[g]eneral rules of contract construction." City of Newport v. Local 1080, Int'l Ass'n of Firefighters, 54 A.3d 976, 980 (R.I. 2012) (citing AVCORR, 41 A.3d at 1010 (quoting Radiation Oncology Assocs., Inc. v. Roger Williams Hosp., 899 A.2d 511, 514 (R.I. 2006))). However, when the contract is "a product of a state statute, [this Court] must first examine the contract in the light of that legislation." Id.

Since a party cannot be required to submit to arbitration for any dispute which it has not agreed to submit, the issue of arbitrability turns upon the parties' intent when they entered into the contract from which the dispute ultimately arose. See id. (citing AVCORR, 41 A.3d at 1010). In addition, an arbitrator exceeds his or her power "if the [decision] fails to draw its

essence from the agreement, if it was not based upon a passably plausible interpretation thereof, if it manifestly disregarded a contractual provision, or if it reached an irrational result." City of East Providence v. United Steelworkers of Am., Local 15509, 925 A.2d 246, 252 (R.I. 2007) (internal quotation marks omitted).

## IV

## Analysis

### Substantive Arbitrability

Issues of substantive arbitrability refer "to whether an issue is properly the subject of an arbitration agreement[;] that is, whether a party has agreed to be bound by an arbitration decision concerning the subject matter of the case." Theodore J. St. Antoine, The Common Law of the Workplace: The Views of Arbitrators § 1.21 at 16 (1998). Thus, although the Arbitrator dismissed the arbitration based upon procedural grounds, the predicate issue which must be resolved is whether or not substantive arbitrability existed.[7] See Local 930, 120 R.I. at 816, 390

[7] "Procedural arbitrability refers to whether the parties' contractual prerequisites for arbitration have been met." Theodore J. St. Antoine, The Common Law of the Workplace: The Views of Arbitrators § 1.21 at 16 (1998). Procedural arbitrability issues include allegations of waiver, delay, or whether a petitioner's failure to satisfy the notice requirement or the grievance procedure bars arbitration. Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp., 460 U.S. 1, 24-25 (1983). "The United States Supreme Court has articulated a policy preferring arbitrability of issues related to procedural limitations on arbitration." See John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 556-57 (1964) (rejecting employer's contention that union's noncompliance with grievance procedure was one for the courts and not the arbitrator, in part, because compliance with grievance procedure requirements are commonly indivisible from the merits of the dispute); see also Electrical Workers Local 1228 v. WNEV-TV, 778 F.2d 46 (1985), cert. denied, 106 S. Ct. 2916 (1986) (concluding that whether amendment of grievance outside thirty-day grievance procedure requirement constituted impermissible procedure "is surely a question for the arbitrator if he decides that the original grievance phraseology was insufficient"); 5 Theodore Kheel, Labor Law § 23.07 at 23-57 (2000) (it is now well settled that questions of procedural arbitrability are to be resolved by the arbitrator). Our Supreme Court has explained that "'[t]he framing of the precise issue is a procedural problem'" that "'should be left to the arbitrator.'" Purvis Sys., Inc. v. Am. Sys. Corp., 788 A.2d 1112, 1115-16 (R.I. 2002) (quoting Providence Teachers Union v. Providence Sch. Comm., 440 A.2d 124, 128 (R.I. 1982)).

A.2d at 390. If substantive arbitrability did not exist, then the Arbitrator had no authority to act. See Local 2409, 925 A.2d at 944. If substantive arbitrability is lacking, the dispute "must be resolved, if at all, judicially rather than through arbitration." See Local 1080, 54 A.3d at 982.

Substantive arbitrability is akin to legal standing. See Providence School Board, 68 A.3d at 508-509. The jurisdiction of an arbitrator, or the substantive arbitrability of a grievance, may be challenged on the grounds that the grievant(s) do not have standing under the collective bargaining agreement. Fairweather, Practice & Procedure in Labor Arbitration 150 (4th ed. 1999) (Fairweather, Practice & Procedure). In the present controversy, the City did not object to substantive arbitrability at the arbitration hearing. However, the City raised the issue in its post-hearing memorandum submitted to the Arbitrator before the Arbitration Decision was rendered. (City's Post-hr'g Mem. at 8-10). In Aetna Bridge Co. v. State Dep't of Transp., the Department of Transportation was not required to object to substantive arbitrability at the arbitration hearing to preserve the issue for appeal. 795 A.2d 517, 522-23 (R.I. 2002). Our Supreme Court "deem[ed] 'the question of substantive arbitrability, the right to have the grievance heard in arbitration at all, [to be] the equivalent of subject matter jurisdiction in the courts.'" Id.; see also State, Dep't of Mental Health, Retardation and Hosps., 692 A.2d at 323 (quoting Nathan & Green, Challenges to Arbitrability, in 1 Labor and Employment Arbitration § 13.01[4] at 12-13 (Bornstein & Gosline eds. 1996)). "Consequently, substantive arbitrability, like subject matter jurisdiction, can be raised at any time." Aetna Bridge Co., 795 A.2d at 522-23 (citing R.I. Bhd.

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In addition, our Supreme Court has held that "once substantive arbitrability is established, issues of procedural arbitrability should be left to the arbitrator." Sch. Comm. of Pawtucket v. Pawtucket Teachers Alliance AFT Local 930, 120 R.I. 810, 816, 390 A.2d 386, 390 (1978).

of Corr. Officers v. State Dep't of Corr., 707 A.2d 1229, 1235 (R.I. 1998)). Accordingly, the City did not waive the substantive arbitrability issue by failing to raise it at the arbitration hearing on March 14, 2012. Moreover, questions of substantive arbitrability are decided de novo, without deference to the arbitrator. Providence School Board, 68 A.3d at 511.

Despite the presumption in favor of arbitration, "[t]he jurisdiction of an arbitrator may be challenged on the grounds that the grievant is not entitled to make use of the grievance machinery." Fairweather, supra, at 151. Retirees have been prevented from utilizing the grievance process where the agreement restricts arbitration to employees. Id. Courts and arbitrators have found that grievances are not arbitrable when the grievants are contractually excluded from making use of the grievance process. Id. at 152. As a general rule, persons who are not parties to a collective bargaining agreement have no standing to compel arbitration under the agreement. Id. at 85. For example, courts have ruled that persons promised benefits by an employer, and who thereafter retire, have no standing to seek arbitration either independently or through their union. Id. at 85-86.

In most cases, the starting point for determining the substantive arbitrability of a dispute is interpreting the contract between the parties. See Local 1080, 54 A.3d at 980 (internal citation omitted). Here, however, the CBA must comply with the mandates of the MPAA, and, as a result, this Court must first "examine the contract in light of that legislation." See id.

The MPAA gives local police officers "the right to bargain collectively with their respective cities or towns and be represented by an organization in the collective bargaining as to wages, rates of pay, hours, working conditions, and all other terms and conditions of employment." See § 28-9.2-4. The purpose of the MPAA, and its counterpart, the Firefighters Arbitration Act (FFAA), is to prevent any work stoppage that would cause the interruption of

public services essential to public safety. See City of Warwick v. Warwick Regular Firemen's Ass'n, 106 R.I. 109, 256 A.2d 206 (1969). In return for prohibiting work stoppages, both acts provide for mandatory binding arbitration to resolve contractual disputes with the municipality. See §§ 28-9.2-2 and 28-9.1-2.

There are two Rhode Island Supreme Court cases that are germane to the instant matter and address the prohibition of activities on the part of emergency workers that imperil public safety. See Local 1080, 54 A.3d at 976; Arena v. City of Providence, 919 A.2d 379 (R.I. 2007). In Arena, 919 A.2d at 389-90, our Supreme Court held that because the plaintiffs were "retired firefighters seeking a declaration of their existing rights[,] . . . the FFAA [did] not apply to [the] plaintiffs' claim" and that "plaintiff retirees [could not] be subject to the FFAA's mandates." See also Allied Chem. & Alkali Workers of Am., Local Union No. 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971). The Court emphasized that "retirees and current employees of the fire department [did] not share a 'community of interests' with respect to plaintiffs' COLA benefits . . . ." Arena, 919 A.2d at 390. The "community of interest" concern was of principal significance, as our Supreme Court reasoned that "the [firefighters union] and the city could conceivably come to an agreement that would adversely affect plaintiffs [in order] to benefit current fire department employees." Id.[8] In Local 1080, our Supreme Court examined the FFAA and found that the FFAA "embodie[d] a compromise: it takes away from firefighters the

[8] "Community of interest" refers to whether employees have a substantial mutual interest in wages, hours, and other conditions of employment. See R.I. Laborers' Dist. Council v. City of Providence, 796 A.2d 443, 446 (R.I. 2002). Moreover, while noting that "retirees, at least in situations such as the within, cannot be treated as employees[,]" our Supreme Court identified two additional concerns that reinforced the conclusion "that the term 'firefighter' in the FFAA does not and cannot include retirees." Arena, 919 A.2d at 390. First, "[t]he ordinary meaning of 'firefighter' and the definition included in the FFAA [could not] reasonably be construed to include retirees[,]"; and second, "[t]he dangers against which the FFAA protects are simply not present with regard to retirees . . . ." Id. at 389-90.

right to strike, but gives them an alternative form of dispute resolution through which to resolve disagreements with municipal officials." 54 A.3d at 980.

The legislative intent behind the FFAA and the MPAA are similar, if not identical.[9] Thus, the analyses set forth in Arena and Local 1080 are applicable to the case before this Court. The preliminary question is whether the MPAA applies to retired police officers. See Arena, 919 A.2d at 389; see also Allied Chem., 404 U.S. at 166. The Court notes that the term 'police officer' is defined in the MPAA as "a full-time police officer from the rank of patrolman up to and including the rank of chief, including policewomen, of any particular police department in any city or town within the state." See § 28-9.2-3. This definition does not include retirees. See Local 1080, 54 A.3d at 980-81(citing Arena, 919 A.2d at 389.) Moreover, the dangers against which the MPAA protects are simply not present with regard to retirees. See id. (citing Arena, 919 A.2d at 389.) Specifically, retired police officers, like retired firefighters, cannot strike or threaten public safety as a result of a work stoppage. See id. (citing Arena, 919 A.2d at 389.) In addition, retirees and current employees of the police department do not share a "community of

[9] Section 28-9.2-2, in pertinent part, provides:

> "[i]t is declared to be the public policy of this state to accord to full-time police officers of any paid police department in any city or town all of the rights of labor other than the right to strike or engage in any work stoppage or slowdown. To provide for the exercise of these rights, a method of arbitration of disputes is established."

Section 28-9.1-2, in relevant part, provides:

> "[i]t is declared to be the public policy of this state to accord to the permanent uniformed members, rescue service personnel of any city or town, emergency medical services personnel of any city or town, and all employees of any paid fire department in any city or town all of the rights of labor other than the right to strike or engage in any work stoppage or slowdown. To provide for the exercise of these rights, a method of arbitration of disputes is established."

interests" with respect to retirement benefits. See id. (citing Arena, 919 A.2d at 389); see also Allied Chem., 404 U.S. at 173. The "community of interest" is of concern because the Union and the City could feasibly come to an agreement that could harm the Plaintiffs in order to benefit current Police Department employees. See Arena, 919 A.2d at 390. Thus, it is clear that the legislature did not intend to include retired police officers within the purview of the MPAA. See Local 1080, 54 A.3d at 981-82; Arena, 919 A.2d at 390.

This Court now turns to the CBA to determine whether or not it provides a basis for conducting arbitration of Plaintiffs' grievance. See Local 1080, 54 A.3d at 980. The definition of relevant terms within the CBA is fundamental to the determination of the substantive arbitrability of the grievance. See Local 958, 68 A.3d at 511; Local 1080, 54 A.3d at 981. In Local 1080, a collective bargaining agreement between a firefighters' union and the City of Newport (Newport) required Newport to provide health insurance coverage to active firefighters and to offer the same coverage "to retired members of the Newport Fire Department." 54 A.3d at 977. When Newport adjusted the health coverage for both active and retired firefighters, the firefighters' union attempted to arbitrate two grievances that it had filed contesting the changes in coverage provided to retired firefighters. Id. at 977–78.[10] Our Supreme Court found that the retirees' grievances were not arbitrable. Id. at 981–82. The Court looked to the FFAA and the collective bargaining agreement as the Court did in Arena and found that "the parties did not intend to arbitrate disputes regarding retiree healthcare,"[11] and "that such disputes must be

[10] Newport filed a complaint in Superior Court seeking a declaration that the grievances were not arbitrable. Id. at 978. The trial justice declared that the grievances were not arbitrable because "[r]etired firefighters are not firefighters within the embrace of the [collective-bargaining agreement] . . . ." Id.

[11] In its ruling, the Court highlighted several provisions of the collective-bargaining agreement, including the provision defining the terms—"member," "employee," and "firefighter"—that made it clear to the Court that retired firefighters were not included. Id. at 981.

resolved, if at all, judicially rather than through arbitration." Id. at 982; see also Local 958, 68 A.3d at 506-512 (holding that the union's grievance on behalf of retired teachers was not arbitrable based on the relevant language from the parties' collective bargaining agreement and earlier decisions in Arena and Local 1080).[12] See Arena, 919 A.2d at 388-89; Local 1080, 54 A.3d at 982.

In the case at bar, the language from the CBA also makes it clear that Plaintiffs' grievance is not substantively arbitrable. Under the CBA,

> "[t]he City hereby recognize[d] and acknowledge[d] the I.B.P.O. as the sole and exclusive bargaining representative for all full time police officers, up to and including police officers holding the rank of Captain for the purposes of collective bargaining and entering into agreements relative to wages, rates of pay, and other terms and conditions of employment." (CBA, § 1.)

The next paragraph of the same section of the CBA defines "'' 'member,' 'member of the bargaining unit,' 'employee,' 'officer,' 'patrol officer,' 'personnel,' and/or 'police officer'' (or plurals thereof) . . . [as] the officers described in the preceding paragraph." Id. As shown above, the preceding paragraph of the CBA defines those terms as meaning full-time police officers. Id. Hence, retirees were clearly and unambiguously excluded from the bargaining unit. See Local 958, 68 A.3d at 511; see also 2A Sutherland Statutory Construction § 46:4 (7th ed.) ("courts are bound to give effect to the literal meaning without consulting other indicia of intent or meaning when the . . . text itself is 'plain' or 'clear and unambiguous'").

[12] Several decisions from the Superior Court have addressed the issue of whether a retirees' grievance or union's grievance on behalf of retirees is arbitrable. The most recent, having the benefit of Arena and Local 1080, found that the language of the CBA proscribed grievances on behalf of retired firefighters. Town of West Warwick v. Int'l Ass'n of Firefighters, Local 1104, 2013 WL 4763824, at 7 (R.I. Super. Ct. Aug. 29, 2013)

Accordingly, there is no provision in the CBA that allows a retiree to utilize the grievance procedure set forth therein. See CBA.

Mr. Gauthier, as a retired police officer, cannot submit a grievance to arbitration according to the terms of the CBA. See Arena, 919 A.2d at 388-89; Local 1080, 54 A.3d at 982. The grievance was not substantively arbitrable because the Plaintiffs did not have standing to pursue this particular grievance.[13] See Local 958, 68 A.3d at 512. The CBA, like the collective bargaining agreement in Local 1080, clearly and unambiguously fails to include retirees in the bargaining unit because such retirees were not included in the definitions of "member," "member of the bargaining unit," "employee," "officer," "patrol officer," "personnel," and/or "police officer." See Local 1080, 54 A.3d at 981. The proper forum to resolve any dispute is through the courts. The Plaintiffs can enforce their contractual rights, if they have any under the CBA, judicially. See Arena, 919 A.2d at 390; see also Abad v. City of Providence, No. 01-2223 WL 2821310 (R.I. Super. Oct. 5, 2004) aff'd sub nom. Arena, 919 A.2d at 379.

## V

## Conclusion

The Arbitration Decision dismissing the grievance is vacated. The Arbitrator exceeded his powers by dismissing the arbitration on procedural arbitrability grounds. An arbitrator exceeds his or her powers if the arbitrator decides an issue that is not substantively arbitrable. The grievance was not arbitrable because the Plaintiffs did not have standing to pursue the grievance procedure set forth in the CBA. Thus, the decision must be vacated in accordance with § 28-9-18(a)(2). However, the grievance is hereby dismissed based upon the lack of

[13] This Court need not address whether or not the City waived its procedural arbitrability argument by failing to raise the issue at the arbitration hearing or in its post-hearing memo because the dismissal of Plaintiffs' grievance is being upheld on alternative grounds.

substantive arbitrability. This dispute must be resolved, if at all, judicially rather than through the arbitration provision set forth in the CBA. Counsel for the prevailing party shall submit the appropriate judgment for entry.

**RHODE ISLAND SUPERIOR COURT**

***Decision Addendum Sheet***

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| **TITLE OF CASE:** | **Scott Gauthier and City of Cranston Police Officers, International Brotherhood of Police Officers, Local 301 v. City of Cranston** |
| **CASE NO:** | **PM-2012-5402** |
| **COURT:** | **Providence County Superior Court** |
| **DATE DECISION FILED:** | **March 7, 2014** |
| **JUSTICE/MAGISTRATE:** | **Van Couyghen, J.** |
| **ATTORNEYS:** | |
| **For Plaintiff:** | **Michael W. Murphy, Esq.** |
| **For Defendant:** | **Vincent F. Ragosta, Jr., Esq.**<br>**Timothy M. Bliss, Esq.** |