STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: November 15, 2012)

CITY OF PROVIDENCE	**:**	
	:	
V.	**:**	**C.A. NO. PM 2012-4252**
	:	
RHODE ISLAND LABORERS' DISTRICT COUNCIL, LOCAL UNION 1033	**:**	

DECISION

PROCACCINI, J. Before this Court is Plaintiff the City of Providence's ("City") Motion to Vacate an Arbitration Award. The arbitration award in question (the "2012 Award") denied a grievance by Respondent Rhode Island Laborers' District Council, Local 1033 ("Union") on the grounds that an alleged violation of the collective bargaining agreement then in effect was de minimis, such that relief was not warranted under the circumstances. Despite its arbitral success on the merits, the City now seeks vacation of the 2012 Award on the grounds that the grievance was not substantively arbitrable. The Union objects to Plaintiff's Motion and moves to confirm the 2012 Award. This Court has reviewed the memoranda submitted by the parties and has considered oral arguments offered to the Court on September 19, 2012. Jurisdiction is pursuant to G.L. 1956 § 28-9-18.

FACTS AND TRAVEL

The City and the Rhode Island Laborers' District Council, Local 1033 have been parties to successive collective bargaining agreements ("CBAs") over a long period of time and remain bound by such an agreement to this day. Although the arbitration award

at issue deals with an alleged violation of the CBA in effect on September 6, 2011, the cornerstone of the present dispute concerns a stipulated agreement between the City and the Union, dated November 9, 1993 and signed by an arbitrator, which the parties refer to as a "stipulated award."

On November 9, 1993, the City and the Union were parties to a CBA effective July 1, 1993 to June 30, 1994 (the "1993-1994 CBA"). The 1993-1994 CBA contained a clause requiring grievances to be arbitrated between the parties in certain circumstances. In relevant part, Article XXI, Section 1 of that agreement states: "It is mutually understood and agreed that all grievances of employees or the Union arising out of the provisions of this contract shall be filed and processed as follows." Additionally, Article XXI, Section 3 states that "[t]he Arbitrator's decision shall be final and binding upon the parties" and that "the arbitrator shall have no power to disregard, alter, amend, add to or deduct from the provisions of this Agreement." Section 3(b) further provides that "[t]he Employer and the Union agree to apply the decision of the arbitrator to all substantially similar situations." In addition, the 1993-1994 CBA contained a provision for "Changes or Amendments" in Article XXVII, stating: "This Agreement constitutes the entire agreement and complete understanding between the [City] and the Union arrived at as a result of collective bargaining, except such amendments hereto or modifications hereof as shall be reduced to writing and executed by the parties following the execution of this Agreement." It is undisputed that the language in these provisions from the 1993-1994 CBA remained intact in all of the successive iterations of CBAs between the Union and the City up to and including the CBA in effect on September 6, 2011.

The so-called "stipulated award" itself arose out of a dispute under the 1993-1994 CBA that the Union brought to arbitration during that time period. While the grounds for that dispute remain unclear from the record, the parties apparently reached an agreement concerning staffing levels at the Department of Communications Police Control Center during the pendency of the arbitration proceeding. This stipulated agreement, referred to by the parties as a "stipulated award," required the City to staff and assign a specific number of Union employees to work in specified positions at the Police Control Center at different times during the week. Also of relevance, the final provision of the stipulated agreement states the following: "The parties hereby agree and acknowledge that this agreement does not establish a precedent or practice and shall not be utilized in any future proceedings or forum, of any nature, except to enforce the provisions herein." Additionally, the agreement did not contain its own independent arbitration clause.

In lieu of issuing an Opinion and Award, the Arbitrator hearing the contemporaneous grievance then signed the stipulated agreement, which was subsequently confirmed by the Superior Court pursuant to § 28-9-17 on December 7, 1993.

For the following seventeen-plus years, the City and the Union periodically renewed the 1993-1994 CBA through subsequent agreements that explicitly incorporated by reference the preceding iteration of the CBA, adding amendments and making modifications to the body of the CBA as incorporated.[1] This process of renewal, modification, and return to the bargaining table is effectively mandated by § 28-9.4-5, which provides that "no contract [between a municipal employer and employees] shall

[1] The 1993-1994 CBA was effectively renewed in this manner ten (10) times between the time that the 1993-1994 CBA expired on June 30, 1994 and the time of the Union's alleged violation, September 6, 2011.

exceed the term of three (3) years." It is undisputed that the terms and provisions of the so-called "stipulated award" were never physically incorporated or reflected in the body of any comprehensive CBA between the City and the Union, including both the CBA effective at the time the agreement was executed and the CBA effective at the time of the alleged violation. Nevertheless, it also appears undisputed that insofar as staffing levels at the Police Control Center are concerned, the City did not act contrary to the terms of said "stipulated award" until the three-to-eleven shift on September 6, 2011 when, for a period of twenty (20) minutes, the City failed to utilize the requisite number of Union employees in the previously stipulated capacity.

This factual concession on the City's part became the basis for the Union's current grievance, which the Union filed on October 6, 2011. The grievance was heard by an arbitrator on February 29, 2012, who heard arguments from counsel for both parties, accepted evidence, and reviewed post-hearing briefs. On June 4, 2012, the arbitrator explicitly found that the Union's grievance was arbitrable, and that the Union could rely upon the "stipulated award" as a basis for securing arbitral relief. However, because the claimed violation was de minimis, the arbitrator found that no remedies were available and therefore denied the Union's grievance.

The central issue now ready for decision by this Court is arbitrability—specifically, whether a dispute relating to a side agreement stipulated to by the parties in 1993, but never referenced by or physically incorporated into ten subsequent CBAs spanning over seventeen years, is arbitrable under the CBA in effect at the time the Union's grievance arose in 2011.

STANDARD OF REVIEW

Judicial authority to review or vacate an arbitration award is limited. Rhode Island Council 94, AFSCME, AFL-CIO v. State, 714 A.2d 584, 587 (R.I. 1998). An arbitration award may be vacated when the arbitrator manifestly disregarded the law or the contract, or when the arbitration award is completely irrational. Prudential Property and Casualty Insurance Co. v. Flynn, 687 A.2d 440, 442 (R.I. 1996). Grounds for vacating an award are provided by statute 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 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."

A clear case of an arbitrator exceeding his or her authority is to hear a dispute that is not arbitrable. Rhode Island v. Rhode Island Alliance of Social Services Employees, Local 580, SEIU, 747 A.2d 465, 468 (R.I. 2000). "Whether a particular collective bargaining agreement contains clear language creating a duty to arbitrate a particular dispute is a matter for judicial determination." Sch. Comm. of N. Kingstown v. Crouch, 808 A.2d 1074, 1078 (R.I. 2002). Indeed, under Rhode Island law, the issue of substantive arbitrability is deemed "the equivalent of subject matter jurisdiction in the courts." State Department of Mental Health, Retardation, and Hospitals v. Rhode Island Council 94, AFSCME, AFL-CIO, 692 A.2d 318, 322 (R.I. 1997) (hereinafter MHRH).

Because arbitrability is a question of law, such determinations are reviewed de novo. Crouch, 808 A.2d at 1078. As long as an 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 not subject to vacation by the Court. Jacinto v. Egan, 391 A.2d 1173, 1176 (R.I. 1978). However, "[c]ourts should not equate the issue of arbitrability with the deference due the arbitrator's interpretation of the contract." Providence Teachers' Union Local 958 American Fed. of Teachers v. Providence Sch. Comm., 433 A.2d 202, 205 (R.I. 1981). Moreover, "[t]he arbitrator is confined to interpret the terms of the agreement so as to effectuate the intentions of the parties to the contract." Rhode Island Council 94, AFSCME, AFL-CIO v. State, 714 A.2d 584, 588 (R.I. 1998).

A party asserting that the arbitrator has exceeded his or her authority bears the burden of proving this contention. Coventry Teachers' Alliance v. Coventry Sch. Comm., 417 A.2d 886, 888 (R.I. 1980). In such a case, "every reasonable presumption in favor of the award will be made." Id. The proper role for the courts is "to determine whether the arbitrator has resolved the grievance by considering the proper sources . . . but not to determine whether the arbitrator has resolved the grievance correctly." MHRH, 391 A.2d at 1176.

ARGUMENTS

In support of its view that the October 6, 2011 grievance was not substantively arbitrable, the City contends that the stipulated agreement was unenforceable under the terms of the 1993-1994 CBA, under the terms of the stipulated agreement itself, and under the terms of the CBA in effect on September 6, 2011. The City argues first that the stipulated agreement was not enforceable under the 1993-1994 CBA because that CBA

expired on June 30, 1994. According to the City's argument, even if the stipulated agreement was considered indistinguishable from the 1993-1994 CBA, the provisions of the stipulated agreement carried no independent duration that would outlast the 1993-1994 CBA. Next, the City argues that if the stipulated agreement was considered purely on its own terms, such that it did carry an independent duration, the stipulated agreement would have expired on November 9, 1996 because of the three-year statutory limitation on municipal contracts with labor organizations imposed by § 28-9.4-5. Finally, the City argues that the stipulated agreement was unenforceable under the CBA in effect on September 6, 2011 because no express provision of that CBA related to minimum staffing levels at the Police Control Center and no CBA between the City and the Union was ever formally amended to reflect the terms of the stipulated agreement. By implication, the City argues that there was no mechanism in the parties' mutual understanding at the time of the stipulated agreement that would otherwise integrate the stipulated agreement into the 1993-1994 CBA for purposes of renewal. In support of these contentions, the City forcefully asserts that the stipulated agreement does not reflect an interpretation of any CBA it ever entered into with the Union, and furthermore that it did not amount to a "decision" of the arbitrator. The City argues that the grievance was effectively submitted pursuant to an expired—therefore, void and unenforceable—stipulated agreement. The City contends that because it did not violate any provision of the CBA in effect on September 6, 2011, the grievance was not substantively arbitrable.

In response, the Union first argues that longstanding fundamental precedents in labor arbitration disputes require the conclusion that its current grievance is substantively arbitrable. Specifically, because the CBA in effect on September 6, 2011 contained an

agreement to arbitrate that did not specifically exclude the subject matter of the Union's grievance, and since there was no other forceful evidence indicating that a dispute pursuant to the stipulated agreement should not be arbitrated, the Union asserts that the dispute must be arbitrable. The Union stresses that ever since the Rhode Island Supreme Court approved the holdings of the "Steelworkers Trilogy"[2] in School Committee of Pawtucket v. Pawtucket Teachers Alliance, R.I., 390 A.2d 386, 389 (R.I. 1978), doubts concerning arbitration clauses must be resolved in favor of arbitrability. The Union then argues that the arbitrator who issued the 2012 Award was correct to conclude that the stipulated agreement from 1993 created a binding obligation on the City's part to comply with the stipulated staffing levels under the CBA in effect on September 6, 2011. The Union emphasizes that the decisions of prior arbitrators have precedential effect as between the parties to a CBA when the relevant language of the underlying CBA has not changed because arbitration decisions are properly understood as interpretations of the CBA's language, reflecting the intent of the parties. The Union contends that this principle applies more forcefully when the arbitration "award" in question reflects an actual agreement between the parties that was fully voluntary. The Union bolsters this position by pointing out that the City never made an attempt to vacate the 1993 "stipulated award," and moreover, that the City continued to abide by its terms until the present dispute. According to the Union's argument, the City's current Motion to Vacate the 2012 Award amounts to a time-barred and impermissible collateral attack on the "stipulated award" from 1993 because the Superior Court's confirmation of that award

[2] The "Steelworkers Trilogy" is a set of cases simultaneously decided by the United States Supreme Court in 1960: United Steel Workers of America v. American Manufacturing Co., 363 U.S. 564 (1960); United Steel Workers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steel Workers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

was essentially a consent decree. Finally, the Union argues that the stipulated agreement, confirmed by the Superior Court in 1993 as an arbitration award, is a permissible interpretation of certain provisions of the 1993-1994 CBA, which provisions remained unchanged all the way through to the CBA in effect on September 6, 2011, as the City never attempted to modify or re-negotiate them. Therefore, the Union contends, the "stipulated award" was not affected by the three-year limitation on municipal-labor contracts imposed by § 28-9.4-5. Rather, it retained validity upon renewal of the relevant provisions in each successive CBA.

ARBITRABILITY

A

The "Stipulated Award"

It is evident to this Court that a key threshold matter for determination is the nature of the so-called "stipulated award," which was signed by an arbitrator on November 9, 1993, and judicially confirmed by Order of the Superior Court on December 7, 1993. Determination of this threshold issue carries consequences not only with respect to the outcome of the present dispute, but also perhaps with respect to similar stipulated agreements reached by the parties in the past, many of which were not physically incorporated into the body of successive iterations of the parties' CBA.[3] In the present case, determining the nature of the "stipulated award" is particularly important because one provision of the CBA that has been continually retained states that the

[3]The City colorfully refers to agreements of this sort as "shadow contracts" because they are "dragg[ed] . . . behind [the CBA] like the chains of the ghost of Jacob Marley." In other words, the City maintains that it was never the intention of the parties for stipulated agreements—whether reached in the midst of an arbitration proceeding or confirmed by order of the Superior Court—to be incorporated into the CBA as an interpretation of the provisions therein. To incorporate such agreements into the CBA for purposes of renewal, the City argues, would make it impossible for the City to keep track of its obligations under any given CBA.

parties "agree to apply the decision of the arbitrator to all substantially similar situations" in the future.

To begin, this Court is mindful that inherent differences exist between the settlement of a dispute and the resolution of a dispute through arbitration. Strozier v. General Motors Corp., 635 F.2d 424, 425 (5th Cir. 1981). "A settlement is a compromise voluntarily agreed to by the parties [wherein] [e]ach party generally accepts something less than that to which he believes he is entitled based on a decision that the compromise is more advantageous to him than the sum of the risks and benefits involved in pursuing the claim." Id. On the other hand, resolution through binding arbitration amounts to "adjudication" by a neutral third party, which neither party is free to accept or reject because the parties must abide by the arbitral decision. Id.

Here, the Union essentially concedes that the stipulated agreement was not the result of any procedure resembling adjudication. The so-called "stipulated award" from 1993 was not issued by the arbitrator after "consider[ing] the respective positions of the parties;" nor was there a "full evidentiary hearing" or any kind of "hearing on the merits." (Union Memorandum at 15-16.) Rather, it appears that instead of resolving through arbitration the Union's grievances—the precise nature of which is not disclosed in the record—the parties stipulated to new contractual terms of their own free will in an agreement that is very clearly drafted by the parties' lawyers. It is noteworthy that the stipulated agreement itself makes no reference to any provision or any specific language of the 1993-1994 CBA which it is purported to interpret, and no express provision in any CBA from 1993 through present is related to staffing levels at the Police Control Center. Cf. E. Associated Coal Corp. v. United Mine Workers of Am., 531 U.S. 57, 62 (2000)

("[W]e must treat the arbitrator's award as if it represented an agreement between Eastern and the union as to the proper meaning of the contract's words."). As such, the "stipulated award" does not reflect any "decision" of the arbitrator that the CBA would require to be binding in all "substantially similar situations." Moreover, we cannot know what a "substantially similar situation" would be because the record does not disclose what situation would have been arbitrated in 1993—or what provision of the CBA the arbitrator would have interpreted—had the parties not reached a stipulated agreement before the arbitrator had the opportunity to accept evidence or hear arguments. The calculations of either party in arriving at the 1993 stipulated agreement, the potential points for negotiation (whether covered by the 1993-1994 CBA or not), and the provisions that would actually have been arbitrated, are ultimately a mystery, both then and now.

Additionally, even if the Union is correct that the Superior Court Order confirming the "stipulated award" on December 7, 1993 should be treated as a "consent decree," the Order does not indicate precisely what the parties consented to, other than the terms of the stipulated agreement. This Court is not convinced that the parties' decision to reach a stipulated agreement at that time, rather than to commit to resolution of their dispute through arbitration, means that the parties intended to create interpretive precedent for certain provisions of the 1993-1994 CBA that were not then even specified. Moreover, other courts have agreed—under closely analogous circumstances—that "the ministerial recording of . . . agreements as stipulated arbitral awards does not automatically transform the agreements into full-blown arbitration 'decisions'" because "the awards represented nothing other than the parties' own agreements resolving all

remaining issues between them." Int'l Brotherhood of Police Officers, Local 564 v. Borough of Jewett City, 661 A.2d 573, 580-81 (Conn. 1995); see also Bd. of Educ. v. AFSCME, 487 A.2d 553, 557 (Conn. 1985) (finding that an arbitration panel exceeded its powers where it found a violation of the parties' CBA based on a violation of a stipulated award). If the "stipulated award" does not reflect the decision of an impartial arbitrator resolving a specific dispute, then it would be unreasonable to conclude, absent some confirmatory contemporaneous evidence, that the award reflected an interpretation of some provision of the CBA then in effect. Therefore, as a threshold matter, this Court finds for the reasons above that the so-called "stipulated award" of 1993 is properly characterized as an agreement between the parties, and not as an arbitration decision.

B

The Circuit Split

Having determined that the "stipulated award" properly reflects an agreement between the parties, this Court now analyzes the substantive arbitrability of the Union's grievance. The Union's grievance is premised on the contention that the 1993 stipulated agreement created a binding obligation on the City under the CBA in effect on September 6, 2011, violation of which is therefore subject to arbitration under that CBA.

The proper test for ascertaining the arbitrability of side or settlement agreements is an issue of first impression in Rhode Island, and other courts are split on the issue. Under the approach of the Third, Sixth, Seventh, and Ninth Circuits, the court considers the side agreement to be a part of the CBA and then determines whether the side agreement would have fallen under the scope of the CBA's arbitration clause. See generally United Steelworkers of Am. v. Cooper Tire & Rubber Co., 474 F.3d 271 (6th

Cir. 2007); Inlandboatmens Union of Pac. v. Dutra Group, 279 F.3d 1075 (9th Cir. 2002); L.O. Koven & Bro., Inc. v. Local Union 5767, United Steelworkers, 381 F.2d 196, 201 (3d Cir. 1967). Alternatively, under the approach of the Second, Fourth, and Eighth Circuits, the court considers the relatedness of the side agreement to the CBA when reviewing whether an arbitration clause of a CBA should be applied to a side agreement. See United Steelworkers v. Duluth Clinic, Ltd., 413 F.3d 786 (8th Cir. 2005); Cornell Univ. v. UAW Local 2300, United Auto. Aerospace and Agric. Implement Workers, 942 F.2d 138, 140 (2d Cir. 1991); Adkins v. Times-World Corp., 771 F.2d 829, 831-32 (4th Cir. 1985). Side agreements deemed collateral are not subject to the terms of the CBA's arbitration clause, while those not deemed collateral are subject to the CBA's arbitration clause. See Duluth Clinic, Ltd., 413 F.3d at 789; Cornell Univ., 942 F.2d at 140; Adkins, 771 F.2d at 831-32. Commentators generally agree that the "collateral" test is aimed at more effectively ascertaining the parties' intent with respect to the agreements made. See, e.g., Rachel M. Bowe, Note, The Scope of Arbitration Clauses in Collective Bargaining Agreements & The Superficial Divide: Clarifying the Circuit Confusion, 31 Hamline L. Rev. 233, 261 (2008); Daniel T. Lloyd, Note, Reaching Too Far? An Analysis of the Circuit Split Regarding the Scope of Arbitration Clauses in Collective Bargaining Agreements, 11 U. Pa. J. Bus. L. 237, 255-56 (2008); Richard A. Bale, The Arbitrability of Side and Settlement Agreements in the Collective Bargaining Context, 105 W. Va. L. Rev. 575, 597-98 (2003).

This Court is also cognizant of recent precedent from both the United States Supreme Court and the Rhode Island Supreme Court suggesting that the general presumption in favor of arbitrability alone is not dispositive of this case. For example,

arbitration is not permitted when an arbitration agreement is completely silent as to the arbitrability of certain classes of disputes. See Stolt-Nielsen S.A. v. Animalfeeds Int'l Corp., 130 S. Ct. 1758, 1775-76 (2010) (holding that if an arbitration agreement is silent on the subject of class arbitrations, then generally such arbitrations are not permitted). Furthermore, the Supreme Court of this State recently held that "[i]n the absence of clear language in the CBA providing that plaintiffs . . . have a right to submit grievances to the arbitration and grievance procedures, no such right will be read into the contract." Sacco v. Cranston Sch. Dept., Nos. 2011-21-Appeal, 2011-22-Appeal, 2012 WL 4903092, at *3 (R.I. Oct. 17, 2012) (stating further that "if the school district or union intended for coaches to enjoy the rights of teachers in their professional capacities, it would have included the term in the definitional section"). Moreover, "[s]ince 'a party cannot be required to submit to arbitration any dispute which [it] has not agreed so to submit,' the issue of arbitrability 'turns upon the parties' intent when they entered into the contract from which the dispute ultimately arose.'" City of Newport v. Local 1080, Int'l Ass'n of Firefighters, AFL-CIO, No. 2011-69-M.P., 2012 WL 5451565, at *3 (R.I. Nov. 8, 2012) (holding further that when the parties did not intend to arbitrate disputes under a CBA, "such disputes must be resolved, if at all, judicially rather than through arbitration.")

Importantly, the "collateral" test pays deference to the principle that an arbitrator's authority first must derive from the contract itself. See AT & T Techs., Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 648-49 (1986) ("[A]rbitrators derive their authority to resolve disputes only because the parties have agreed in advance to submit such grievances to arbitration."); Stanley-Bostitch, Inc. v. Regenerative Envtl. Equip. Co., 697 A.2d 323, 326 (R.I. 1997) ("[N]o one is under a duty to arbitrate unless with

clear language he [or she] has agreed to do so."). Because the issue of intent would bear such longstanding import in the context of this case, this Court determines that the "collateral" approach of the Second, Fourth, and Eighth Circuits is the proper test to apply.

C

Applying the "Collateral" Test

Under the "collateral" approach, the Court first decides whether the relevant arbitration clause is narrow or broad. Duluth Clinic, Ltd., 413 F.3d at 788. Distinguishing between narrow and broad arbitration clauses is necessary and sound because the "'scope of the arbitration clause, like any contract provision, is a question of the intent of the parties.'" Louis Dreyfus Negoce S.A. v. Blystad Shipping & Trading Inc., 252 F.3d 218, 225 (2d Cir. 2001) (citation omitted). If the arbitration clause is narrow, the court determines whether or not the dispute involves an agreement collateral to the agreement with the arbitration clause. Duluth Clinic, Ltd., 413 F.3d at 789. "Only if the clause is broad does the court analyze whether the dispute relates to the subject matter of the agreement." Id.

Here, the relevant arbitration clause is found in Article XXI of the CBA, entitled "GRIEVANCE AND ARBITRATION PROCEDURE." The parties agree that the language in the clause has not changed in any iteration of the parties' CBA since 1993-1994. The clause states: "It is mutually understood and agreed that all grievances of employees or the Union arising out of the provisions of this contract shall be filed and processed as follows." Additionally, Article XXI, Section 3(A) limits the power of the

arbitrator, stating that the arbitrator "shall have no power to disregard, alter, amend, add to or deduct from the provisions of this Agreement."

The Court finds this language indistinguishable from the arbitration clause language analyzed in Duluth Clinic, 413 F.3d at 789. There, the Eighth Circuit found the arbitration clause to be narrow because the language in the clause did not require arbitration of "[a]ny controversy or claim arising out of or relating to this Agreement," as it had in Fleet Tire Serv. of N. Little Rock v. Oliver Rubber Co., 118 F.3d 619, 620 (8th Cir. 1997). Instead, the plain language of the arbitration clause limited grievances to violations of the "terms and provisions" of the CBA itself. Moreover, the Eighth Circuit noted that "[i]f the parties intended arbitration for any agreement between themselves, the authority of the arbitrator would not have been limited to the CBA itself." Duluth Clinic, 413 F.3d at 789. The same applies in the present case, where the Arbitrator is specifically limited under the CBA to adjudicating "the provisions of this Agreement." Thus, this Court finds that the arbitration clause for the CBA in effect on September 6, 2011—the language of which remained unchanged since the 1993-1994 CBA—is narrow.

Next, this Court must determine whether the dispute involves an agreement collateral to the agreement with the arbitration clause. Here, the agreement with the arbitration clause is the CBA in effect on September 6, 2011 and the Court must determine whether the stipulated agreement from 1993 was collateral to it, or, alternatively, whether the stipulated agreement "may be read as part and parcel of the Collective Bargaining Agreement." See Cornell Univ., 942 F.2d at 140. If the stipulated agreement is collateral to the parties' CBA, it is not subject to arbitration. See id.

"Arbitration of collateral matters may not be 'compelled merely based upon the existence of an arbitration clause in the main agreement.'" Duluth Clinic, 413 F.3d at 790 (citing Prudential Lines, Inc. v. Exxon Corp., 704 F.2d 59, 64 (2d Cir. 1983)).

As an initial matter, in Adkins, the Third Circuit applied the "collateral" test to a CBA and a side agreement that the union in that case contended was an "addendum"—therefore not collateral—to the parties' CBA. Adkins, 771 F.2d at 831-32. The Third Circuit agreed that the CBA and the side agreement were part of the same contract after analyzing the language of the side agreement, its negotiation history, and the parties' conduct. Id. at 831. In finding that the side agreement was a non-collateral addendum, violation of which would invoke the arbitration clause of the CBA, the court noted that: (1) the side agreement was titled "Addendum;" (2) the side agreement was re-executed upon each renewal of the collective bargaining agreement; and (3) the parties actually treated the side agreement to be a part of the collective bargaining agreement. Id. at 832.

In looking for similar guideposts in the present case, this Court draws a complete blank. As in Duluth Clinic, there is nothing in the CBA or the side agreement that "evidences an intent to incorporate the separate agreement[] into the CBA." 413 F.3d at 791. There is no clear language in the stipulated agreement of 1993 indicating that it is part and parcel of the 1993-1994 CBA, much less any language to suggest that it would be automatically or impliedly included under the CBA should the CBA be renewed in the future. There is no direct reference to the parties' CBA in the stipulated agreement of 1993 and there is no revealing title such as "Amendment" or "Addendum." Furthermore, the stipulated agreement was never re-executed or formally integrated into the body of any CBA entered into between the Union and the City, despite the parties' ten chances to

do so over a period of more than seventeen years. The Court finds that the stipulated agreement of 1993 was not an amendment or modification of the 1993-1994 CBA, and nor could it possibly have been an amendment of the CBA in effect on September 6, 2011. The 2011 CBA was fully integrated by its own terms, "except [for] such amendments hereto or modifications hereof as shall be reduced to writing and executed by the parties following the execution of this Agreement." (Emphasis added) (City's Memorandum at 4.) Moreover, the 1993 stipulated agreement was fully self-contained because its closing provision stated that "this agreement does not establish a precedent or practice and shall not be utilized in any future proceedings or forum, of any nature, except to enforce the provisions herein." (Union Memorandum, Appendix B at 3.)

Rather than incorporating the stipulated agreement into the 1993-1994 CBA, or any CBA that followed, the Union allowed the stipulated agreement to lurk in the shadows until September 6, 2011, when the staffing levels fell below the purported requirement for a period of twenty minutes. This agreement was hidden from view and unknown to anyone examining the CBA. The Union emphasizes the City's longstanding compliance with the 1993 stipulated agreement, and then argues that such compliance indicates a continuing intent to be bound by the stipulated agreement on the City's part. The Union's characterization of the facts in this respect is self-serving, and it would be understandable for the City to refrain from making any characterization to the contrary while the current cross-motions are pending decision. At this stage, the Court is not convinced that the City's conceded compliance with the stipulated award for a period of seventeen years can reasonably be used to infer anything other than application of the

City's managerial discretion to staffing levels at the Police Control Center during that time period.

For the reasons above, this Court finds that the stipulated agreement was at best collateral to the CBA in effect on September 6, 2011. The arbitrator in this case found the dispute substantively arbitrable by accepting at face value the Union's argument that the so-called "stipulated award" had become a "provision" of the CBA, and then cursorily determining that the presumption in favor of arbitrability of disputes should be applied. The arbitrator's conclusory and incomplete analysis failed to review the applicable statutes in a meaningful way and made no mention of the substantial case law that has been cited in this Opinion. Because the 1993 stipulated agreement was at best collateral to the CBA in effect on September 6, 2011, the instant grievance is not covered by that CBA's arbitration clause and the City's Motion to Vacate an Arbitration Award must be granted.

D

R.I.G.L. § 28-9.4-5

The Court notes separately that under the foregoing analysis, the stipulated agreement of 1993 expired on November 9, 1996 because of the three-year limitation on municipal contracts with labor organizations, as required by § 28-9.4-5. Therefore, the Union's grievance is not arbitrable under the CBA in effect in September 2011 for that supplemental reason as well.

Moreover, the Court points out that § 28-9.4-5 leaves little room for municipalities and their labor-organization partners to flout the three-year limitation on the basis of the parties' mutual consent. We must presume that the legislature knew how

to enact a provision allowing for such consensual conduct. The parallel "Obligation to Bargain" statute under § 28-9.1-6 provides that in the context of Firefighters' Arbitration, "no contract shall exceed the term of one year, unless a longer period is agreed upon in writing by the corporate authorities and the bargaining agents." (Emphasis added.) Section 28-9.4-5 gives municipalities and their labor counterparts no such freedom at the bargaining table, and a municipality-labor organization agreement that has a term longer than three years is a violation of the public policy of this State. Arguably, this would make an agreement longer than three years void and unenforceable. After the parties submitted briefs and made oral arguments, the Court was presented with a copy of the most recent CBA, which the arbitrator in the current dispute relied on. On its face, this CBA appears to cover a span of four years, in violation of § 28-9.4-5. The Union asserts that the CBA represents two separate agreements of one and three years, respectively. The City makes no objection.

Having found for the reasons above that the Union's current grievance is not substantively arbitrable, this Court need not reach the issue of whether the parties violated § 28-9.4-5 by simultaneously negotiating and executing two allegedly separate CBAs that in fact resulted in a comprehensive CBA with a span of four years. If such a practice is a violation of § 28-9.4-5, then vacation of the present award may be required on the grounds that the underlying CBA is void and unenforceable as well. Cf. Providence Teachers Union v. Providence School Board, 725 A.2d 282, 283 (R.I. 1999) ("Although neither party has raised the issue concerning the validity of the underlying CBA and its effect on the arbitrator's subject-matter jurisdiction in this case, we . . . conclude that it is determinative of this appeal.").

CONCLUSION

Whatever descriptive term is used to identify the 1993 agreement at issue—"stipulated award," or "side agreement," or "settlement agreement"—the inescapable fact remains that this understanding between the parties remained outside the lines, language, and intent expressed within the four corners of CBAs that were re-negotiated ten times, covering a seventeen-year period. The most accurate description of this agreement is that it was an outlier. There is nothing before the Court to suggest otherwise.

This Court is mindful of the salutary purpose of a carefully drafted, detailed CBA, that is, the written declaration of the respective rights and obligations of the parties. Moreover, a well-constructed agreement minimizes the likelihood of future disputes between employees and employers. No one's interests are served by leaving the negotiated settlement of a seemingly significant labor contract issue outside of the contract's purview it purportedly relates to for seventeen years.

The Court also notes that the contract at issue is a municipal contract involving the capital city of this state and, as such, implicates the public interest as well. It is certainly not in the public interest to permit and enforce negotiated side agreements which are allowed to exist in perpetuity, which are shielded from view or examination, and remain unknown except to those who originally negotiated the settlement agreement, until a dispute arises.

The case law, statutory law and public interest inherent in municipal contracts compel the conclusion that the City's Motion to Vacate the Arbitrator's Award must be granted. Moreover, the 1993 side agreement was repugnant to the three-year statutory limit on the duration of municipal-labor CBAs.

Accordingly, the arbitration award in this matter is vacated.

Counsel shall prepare a Judgment in conformity with this Decision.