STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: May 10, 2016]

COMMUNITY COLLEGE OF RHODE ISLAND, COUNCIL ON POSTSECONDARY EDUCATION and STATE OF RHODE ISLAND	:	
V.	:	**PM-2015-5315**
CCRI EDUCATIONAL SUPPORT PROFESSIONAL ASSOCIATION/ NEARI	:	

DECISION

VOGEL, J. Petitioners—the Community College of Rhode Island, Council on Postsecondary Education and the State of Rhode Island (CCRI)—bring this motion to vacate an arbitration award rendered on November 11, 2015. The Community College of Rhode Island Educational Support Professional Association/NEARI (the Union) objects to CCRI's motion and moves to confirm the arbitration award. The Court exercises jurisdiction pursuant to G.L. 1956 § 28-9-18.

This case reveals the perils of putting "the cart before the horse." CCRI did just that with respect to its employment decisions concerning the hiring of a Campus Police Officer, Michael Crenshaw (Crenshaw). Those employment decisions created a complicated set of circumstances which enabled Crenshaw to serve as a Campus Police Officer for over a year without either attending a mandatory training program or receiving a waiver from the statutory requirement that he do so. After CCRI terminated Crenshaw's employment, the Union filed a grievance, and the matter was submitted to arbitration. Ultimately, the Arbitrator ordered CCRI to restore Crenshaw to his position with compensation for lost time.

This Court is tasked with determining whether to vacate the arbitration award or to confirm it, not to rewrite it. The Court cannot confirm an award that orders CCRI to restore a Campus Police Officer to a position he would be holding in violation of a statutory requirement, a law enacted for the protection of the public. As such, the Court must find that the Arbitrator's award constitutes a manifest disregard for the law and cannot be upheld. At the outset, the grievance is not arbitrable because it arises out of the statutory qualifications for serving as a Campus Police Officer and not out of the provisions of the CBA. For the reasons set forth herein, the Court vacates the arbitration award and denies the Union's motion to confirm.

I

Facts and Travel

CCRI and the Union are parties to a collective bargaining agreement (CBA), which provides for the arbitration of disputes. (CBA Article 13(A).) The CBA states that all CCRI employees are subject to a probationary period of 130 working days and supervisor evaluations every two months. (CBA Article 17(A).) The CBA differentiates between persons employed for less than 130 days who serve at the pleasure of CCRI and persons employed for more than 130 days who are entitled to due process rights. (CBA Article 17(A) and (B).) The CBA refers to the former as "probationary employees" and the latter as "employees." Id. Thus, under the CBA, prospective employees must complete a 130 day probationary period before becoming eligible for employee status. (CBA Article 17(A).) CCRI may dismiss probationary employees "for reasons related to the employee's lack of qualifications or for the good of the service" at any point within the 130 day period. Id. At the end of the probationary period, CCRI has the option to dismiss the employee or to retain his or her services. Id. If CCRI takes no actions at the end of the probationary period, then the employee "is continued" in his or her employment. Id.

The CBA further provides due process rights for persons who have achieved employee status and passed the 130 working day probationary period. The CBA provides that CCRI may only impose disciplinary actions—including oral and written reprimands, suspension, discharge and demotion—against employees who have passed the probationary period if it has just cause. (CBA Article 17(B).) In the event that CCRI imposes a disciplinary action on a non-probationary employee, it must furnish a copy of all of the employee's performance evaluations or disciplinary entries in their personnel record and allow the employee to respond. Id. Within two weeks of a demotion or suspension, the Union may file a grievance on the employee's behalf. Id. If the grievance is not settled through the regular procedure, then the parties may submit the grievance to arbitration. (CBA Article 13.) "Only grievances arising out of the provisions of [the CBA], relating to the application or interpretation thereof, may be submitted to arbitration." Id. Moreover, the CBA states that "[a]ny disciplinary action imposed upon an employee may be processed as a grievance through the regular grievance procedure" and that "[a]n arbitrator shall be empowered to change the disciplinary action if they determine that the action taken was not warranted." (CBA Article 17(B).) The CBA further provides that "disciplinary actions" include oral and written reprimands, suspension, discharge and demotion. Id.

CCRI's College Police Department (the Department) employs campus police[1] to provide security for CCRI's four main campuses and two satellite campuses. (Arbitrator's Opinion and Award at 3.) The Department provides security for approximately 18,000 students, and 850

[1] The record submitted to the Court uses the terms "Campus Police Officer" and "College Police Officer" interchangeably. For purposes of consistency, in this decision, the Court will refer to the position as "Campus Police Officer".

faculty, staff and visitors. Id. Campus Police Officers are state classified positions and fall under the jurisdiction of the Rhode Island Merit System Law. Id. As such, Campus Police Officers must meet certain State prescribed job requirements. Id.; see also General Order. Under state law, Campus Police Officer candidates (Candidates) must receive training at the Academy while serving in a probationary capacity. See G.L. 1956 § 42-28.2-1. In addition, the Rhode Island Police Officers Commission on Standards and Training (RIPOST) has the authority to grant waivers from the Academy requirement (Waivers) to Candidates who have already received training and experience serving as law enforcement officers in other states. No Candidate for a position as a Campus Police Officer can become a permanent employee unless he or she either attends the Academy or obtains a Waiver from the statutory obligation to do so. (General Order.)

To qualify for a Waiver, Candidates must receive a conditional offer of employment from a sponsoring agency. Id. The sponsoring agency, in this case, CCRI, then submits an application for a Waiver on the applicant's behalf to the Executive Director of the Academy (the Executive Director) detailing his or her qualifications. Id. Additionally, RIPOST requires that all waiver candidates are "non-probationary officer[s] in good standing with their current police department/employer" and have completed at least twelve months of continuous active service with a single agency or department. Id. Therefore, the only applicants who can qualify for Waivers are those who are actively employed by an out-of-state police department or agency when they receive the conditional offer of employment from CCRI. See id. Moreover, Candidates seeking a Waiver must complete that process during their probationary term. See id. After the Academy Staff reviews the Waiver Application, the Executive Director notifies the sponsoring agency as to the status of the Candidate's Waiver. Id.

In July of 2013, Crenshaw applied for a position as a Campus Police Officer at CCRI. (Arbitrator's Opinion and Award at 5.) Before applying to CCRI, Crenshaw—a graduate of the Massachusetts Police Academy—had worked for the Southborough Police Department for ten years, from February 2002 to February 2012. Id.; (Ex. F.) On November 8, 2013, CCRI made Crenshaw a conditional offer of employment (the Conditional Offer). (Conditional Offer 1.) The Court notes that at the time CCRI extended the Conditional Offer to Crenshaw, he was not employed as a police officer with the Southborough Police Department. See Arbitrator's Opinion and Award at 5; Ex. F. Rather, he had been terminated from that position twenty-one months earlier. Crenshaw began his 130 day probationary period on November 17, 2013, on the date he started working as a Campus Police Officer at CCRI. Id. The offer of employment was conditioned on several requirements, to wit, that he: obtain a satisfactory score on a psychological exam; complete a fitness and medical exam; pass a background investigation; and complete the Academy. Id. The Conditional Offer explicitly stated that "the candidate will receive a final offer of employment subject to a probationary period if, and only if, each and every term and condition has been completed successfully and all contingencies are satisfied." Id.

During the probationary period, Crenshaw's supervisor gave him three high scoring evaluations, and Crenshaw completed the 130 day probationary period on May 17, 2014.[2] (Arbitrator's Opinion and Award at 5.) On August 18, 2014, three months after the expiration of

[2] This Court notes that the CBA excludes weekends and holidays from its calculation of the 130 day probationary period and only counts working days. See CBA Article 17(A) ("All original appointments and promotional appointments shall be considered as probationary employees for the first one hundred thirty (130) days worked of their continuous employment and shall serve at the pleasure of the College."); see also Arbitrator's Opinion and Award at 5 ("The [CBA] provides for a probationary period of 130 working days . . . [Crenshaw] passed his probation on May 17, 2014."). This Court takes judicial notice of the fact that there are actually 181 days counting weekends and holidays between November 17, 2013 and May 17, 2014.

the probationary period, CCRI submitted a Waiver Application on Crenshaw's behalf. Id. at 6. After reviewing the Waiver Application, the Academy's General Counsel, Lisa Holley (Holley), sent a letter (the Holley Letter) to the Executive Director of the Academy, recommending that he deny Crenshaw's Waiver. As grounds for her recommendation, Holley noted that 1) due to the nature of his termination from the Southborough Police Department, Crenshaw might be eligible for placement in the National De-Certification Index (NDI)[3]; 2) Crenshaw had failed to list a motor vehicle violation and prior arrest on his Application; 3) Crenshaw had self-reported substance abuse and psychological problems while employed at the Southborough Police Department, which resulted in a revocation of his firearm license; and 4) Crenshaw had received a below average rating in his psychological examination. See Holley Letter.

Ultimately, Holley recommended that RIPOST deny the Waiver but stated that nothing would "preclude Officer Crenshaw from reapplying once these issues are resolved to the satisfaction of the [RIPOST]." Id. On October 21, 2014, the Executive Director of the Academy delivered the Holley Letter to CCRI. (Arbitrator's Opinion and Award at 7-8.) On October 30, 2014, CCRI notified Crenshaw that the Academy had denied his Waiver and scheduled a pre-termination hearing. See Letter from Chief Dale R. Wetherell, College Police, to Sheri Norton, Director of Human Resources, CCRI (Oct. 27, 2014); Letter from Sheri Norton, Director of Human Resources, CCRI to Crenshaw (Oct. 30, 2014).

[3] The National Decertification Index (NDI) is a web-based national registry, whereby participating state government agencies may record certificate or license revocation actions relating to police officer misconduct. The purpose of the NDI is to provide state police departments with critical information regarding the qualifications of prospective employees originally certified in other jurisdictions. See Int'l Ass'n of Dirs. of Law Enforcement Standards and Training (IADLEST), National Decertification Index FAQ, IADLEST.ORG, https://www.iadlest.org/Portals/0/Files/NDI/FAQ/ndi_faq.html (last visited Mar. 21, 2016).

On November 5, 2014, CCRI held a so-called pre-termination hearing. Id. At the hearing, CCRI gave Crenshaw access to the Holley Letter; however, CCRI refused to allow Crenshaw to see the Waiver Application it submitted on his behalf. (Arbitrator's Opinion and Award at 9.) During the pre-termination hearing, Crenshaw responded to each of the issues that the Academy Staff had noted in the Holley Letter. Id. Crenshaw informed CCRI that the Southborough Police Department had wrongfully terminated him in retaliation for remarks he had made when he was a union representative and that he was not eligible for placement on the NDI. Id. He also explained that he had never been arrested; rather, he had received a summons on charges that were later dismissed. Id. He informed CCRI that the motor vehicle violation was actually issued to his girlfriend and that he had gone to court and had it dismissed. Id. He also stated that he became addicted to Vicodin after suffering a job-related injury. He further explained that Massachusetts had revoked his firearm license after he self-reported his addiction. Id. at 8-9. However, he informed CCRI that he had subsequently received treatment for his dependency and had passed recent drug tests. Id. at 9-10.

CCRI did not address Crenshaw's responses to the Holley Letter. Instead, CCRI focused on his failure to meet the State requirement that he either complete the Academy or obtain a Waiver. On November 21, 2014, CCRI terminated Crenshaw effective December 5, 2014 based on RIPOST's denial of the request for a Waiver. Id. at 10. In response, the Union filed a grievance, alleging that CCRI had denied Crenshaw due process under the CBA when it refused to allow him to see the Waiver Application it had submitted on his behalf. Id. CCRI denied the grievance, and the dispute proceeded to arbitration. Id.

At arbitration, CCRI argued that the dispute was not arbitrable because neither the CBA, nor the Arbitrator, could change the state mandated requirement that the Academy grant

Crenshaw a Waiver. Id. In the alternative, CCRI argued that even if the dispute were arbitrable, CCRI had just cause to terminate Crenshaw because the Academy had rejected his Waiver. Id. at 11. In response, the Union argued that the dispute was arbitrable because the Union only sought due process protections under the CBA, not to change the Academy's requirement. Id. The Union alleged that CCRI denied Crenshaw due process when it refused to allow him to review the Waiver Application CCRI submitted on his behalf. Id. at 12. Further, the Union contended that CCRI violated Crenshaw's due process rights because it failed to reapply for a Waiver on Crenshaw's behalf after he addressed the Academy's reasons for denial outlined in the Holley Letter. Id.

The Arbitrator found in favor of Crenshaw and ordered him restored to his position as a Campus Police Officer with compensation for time lost. Id. at 20. First, the Arbitrator found that the dispute was arbitrable because Crenshaw had passed the probationary period under the CBA. Id. at 15. Thus, in the Arbitrator's opinion, Crenshaw was entitled to due process rights provided by the CBA to permanent employees. Id. The Arbitrator determined that because CCRI denied Crenshaw's request to see the Waiver Application, CCRI had "unfairly hobbled his ability to respond to the questions in the Holly [sic] letter." Id. at 18. Further, the Arbitrator found that CCRI did not have just cause to terminate Crenshaw because CCRI made no effort to resubmit Crenshaw's Waiver Application to the Academy or answer any of the Academy Staffs' concerns. Id. at 19. Thus, the Arbitrator concluded that CCRI had violated Crenshaw's due process rights under the CBA. Id. at 20. As a result, the Arbitrator required that CCRI restore Crenshaw to his position and compensate him for lost time. Id. CCRI timely filed a motion to vacate the Arbitrator's Award.

In its motion, CCRI alleges that as a threshold matter, the dispute is not substantively arbitrable. CCRI argues that it has no authority under the Merit System Law to change the Academy's Waiver prerequisite. Rather, CCRI contends that the Waiver is a basic job requirement imposed by state law, which the Arbitrator cannot negotiate away. Therefore, CCRI argues that Crenshaw's lack of qualification is not arbitrable. Additionally, CCRI argues that the Award is irrational because it reinstated an unqualified employee, which contravenes public policy as well as statutory requirements.

In response, the Union argues that the dispute is arbitrable. The Union essentially alleges that after Crenshaw passed the probationary period under the CBA, he achieved an "enhanced status." Thus, the Union argues that Crenshaw's "enhanced status" renders the dispute arbitrable. The Union also argues that because the Holley Letter stated that Crenshaw could reapply to the Academy, it was not a final decision on the Waiver. As such, the Union contends that Crenshaw was not unqualified for the position and CCRI did not have just cause to terminate him. Lastly, the Union alleges that CCRI violated Crenshaw's due process rights when it denied his requests to see the Waiver Application at his pre-termination hearing.

II

Standard of Review

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

> "(a) In any of the following cases the court must make an order vacating the award, upon the application of any party to the controversy which was arbitrated:
>
> (1) When the award was procured by fraud.
>
> (2) Where the arbitrator or arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted was not made.

> (3) If there was no valid submission or contract, and the objection has been raised under the conditions set forth in § 28-9-13."

Generally, courts have very limited authority to review the merits of an arbitration award. Rhode Island Bhd. of Corr. Officers v. State Dep't of Corr., 707 A.2d 1229, 1234 (R.I. 1998). '"Absent a manifest disregard of a contractual provision or a completely irrational result, the award will be upheld."' Id. (quoting Town of Coventry v. Turco, 574 A.2d 143, 146 (R.I. 1990)). However, the court must vacate an arbitrator's award if an arbitrator has exceeded his or her powers or adjudged a dispute which was not arbitrable in the first place. State v. RIASSE, Local 580, SEIU., 747 A.2d 465, 468 (R.I. 2000). The issue as to whether a dispute is arbitrable concerns a question of law, which the Court reviews de novo. Id. (quoting Rhode Island Council 94, AFSCME, ALF-CIO v. State, 714 A.2d 584, 588 n.2 (R.I. 1998)).

Moreover, the Court has held that an arbitrator exceeds his or her powers through interpreting a collective bargaining agreement in a way that "contravenes state law or other public policies that are not subject to alteration by arbitration." Rhode Island Bhd. of Corr. Officers, 707 A.2d at 1234. Specifically, valid, statutorily required employment prerequisites are not subject to arbitration and arbitrators cannot negotiate them away. RIASSE, 747 A.2d at 468; see also Pawtucket School Comm. v. Pawtucket Teachers' Alliance, Local No. 930, AFT, 652 A.2d 970, 972 (R.I. 1995); Town of West Warwick v. Local 2045, Council 94, 714 A.2d 611, 612 (R.I. 1998).

III

Analysis

As a threshold matter, CCRI submits that the Arbitrator had no authority over this dispute and therefore the dispute was not arbitrable. CCRI argues that in arbitrating this dispute, the

Arbitrator impermissibly modified a state law, which requires that all out-of-state police officers seeking permanent employment receive a Waiver from the Academy. This Court agrees that the dispute was not arbitrable.

It is undisputed that the Waiver requirement is a valid, employment prerequisite, which is not subject to arbitration. See RIASSE, 747 A.2d at 468. In Rhode Island, before becoming a permanent employee, out-of-state police officers must either receive training at the Academy or obtain a Waiver from the Academy requirement from RIPOST. (Arbitrator's Opinion and Award at 3); see also General Order. The Rhode Island Legislature has stated

> ". . . that the protection of the health, safety, and welfare of our citizens, can best be met by the creation of an educational training and recruitment program for persons who seek careers as police officers in order that such persons while serving in a *probationary capacity prior to permanent appointment* will receive training at approved recruit and in-service training facilities." Sec. § 42-28.2-1 (emphasis added).

In furtherance of these goals, the Legislature established the Academy and directed RIPOST to promulgate mandatory training standards for the Academy. See § 42-28.2-2; State v. Partington, 847 A.2d 272, 276 (R.I. 2004). As part of its standards, RIPOST requires all out-of-state police officers seeking permanent employment as a Rhode Island police officer "to achieve" a Waiver from RIPOST "prior to permanent employment as a police officer." See General Order. The General Order requires that sponsoring agencies submit Waiver applications after issuing conditional offers of employment. Id. Moreover, sponsoring agencies may only submit Waiver applications on behalf of candidates who are "non-probationary officer[s] in good standing with their current police department/employer." Id. After reviewing Waiver Applications, the Staff then makes a recommendation to the Executive Director, and notifies the sponsoring agencies. Id. Thus, out-of-state, non-probationary police officers in good standing

with a current employer must obtain Waivers from the Academy as a condition precedent to permanent employment in Rhode Island.

Here, the Southborough Police Department had terminated Crenshaw at the time CCRI submitted the Waiver Application on his behalf. Therefore, Crenshaw was not a "non-probationary officer in good standing" with a police department, which the Academy requires as a condition precedent to granting a Waiver pursuant to the General Order. Moreover, it is undisputed that the Academy did not grant Crenshaw a Waiver. Thus, at the time of his termination, Crenshaw had not met the Waiver requirement and could not qualify as a permanent employee under state law. However, despite acknowledging Crenshaw's lack of qualifications, the Arbitrator ultimately found that Crenshaw had achieved an "enhanced" or regular employment status, which entitled him to due process under the CBA. See Arbitrator's Opinion and Award at 16, 18.

This Court notes that it is clear from his decision that the Arbitrator struggled in making a determination as to Crenshaw's status after he passed the 130 day probationary period. The CBA provides that

> "[a]t the end of the [130 day] probationary period, a decision will be made whether to retain or terminate the employee. If the employee is not notified, in writing, that their services are not satisfactory, or that their continued employment is not desired at the expiration of the probationary period, then they shall be continued in their employment." (CBA Article 17(A).)

The CBA goes on to provide that employees that pass the probationary period may only be terminated for just cause. Id. In his decision, the Arbitrator noted that Crenshaw's "employment arrangement was unusual because he passed probation without fully qualifying for the position by meeting the Academy requirement." (Arbitrator's Opinion and Award at 16.) However, the Arbitrator concluded that Crenshaw became a regular employee eligible for

contractual protections for the purposes of the CBA after he finished his 130 day probationary period. Id. at 17. Therefore, the Arbitrator determined that arbitrating the dispute did not require him to modify a state law; rather, it merely required him to interpret contractual language in the CBA. Id.

It is well settled that an arbitrator may not interpret a collective bargaining agreement in a way that "contravenes state law or other public policies that are not subject to alteration by arbitration." Rhode Island Bhd. of Corr. Officers, 707 A.2d at 1234. Here, however, the Arbitrator's reasoning rendered the statutory term "permanent employee" contained in § 42-28.2-1 meaningless. Essentially, the Arbitrator's interpretation of the CBA negates the State's requirement that all out-of-state police officers receive a Waiver from the Academy as a prerequisite to permanent employment. It follows that under the Arbitrator's Opinion, CCRI could ignore the Academy requirement indefinitely by allowing its police officers to remain on the job after the expiration of the probationary period with the contractual protections of employees. This Court cannot contravene state law to uphold the Arbitrator's determination that Crenshaw received an "enhanced status" by virtue of CCRI's failure to timely file a Waiver Application within the 130 day probationary period. See id.

As the Rhode Island Supreme Court has held, "applicable state employment law trumps contrary contract provisions, contrary practices of the parties, and contrary arbitration awards." RIASSE, 747 A.2d at 469. Thus, the Waiver requirement, which is a function of State law, cannot be disregarded or bargained away by the Arbitrator in favor of contractual language contained in the CBA. Further, this Court notes that the Arbitrator's decision contravenes public policy and ultimately delegates RIPOST's authority to establish standards to protect the health, safety and welfare of citizens to arbitrators. See State, MHRH v. Rhode Island Council 94,

A.F.S.C.M.E., AFL-CIO, 692 A.2d 318, 324 (R.I. 1997) (holding that a state department could not delegate its statutory responsibility to provide for the health, safety and welfare of physically and mentally disabled patients at the IMH).

In passing § 42-28.2-2, the Legislature seemingly recognized the potentially tragic consequences which could result from employing untrained—or otherwise unqualified—campus police officers on its campuses. Therefore, the Arbitrator's Award restoring Crenshaw to his position as a Campus Police Officer—despite his failure to obtain a Waiver—is irrational and manifestly disregards a statutory requirement. See Rhode Island Bhd. of Corr. Officers, 707 A.2d at 1234; RIASSE, 747 A.2d at 469. This grievance arises from Crenshaw's failure to meet the minimum statutory qualifications of the job and does not arise out of the provisions of the CBA. See State Dep't of Children, Youth and Families v. Rhode Island Council 94, Am. Fed'n of State, County and Mun. Emps., AFL-CIO, et al., 713 A.2d 1250, 1254 (R.I. 1998) ("An arbitrator may . . . exceed his or her powers by interpreting a CBA in a way that contravenes state law or other public policies that are not subject to alteration by arbitration."). Accordingly, this Court grants CCRI's Motion to Vacate the Arbitrator's Award and denies the Union's Motion to Confirm the Arbitrator's Award.

Because the termination was not arbitrable, this Court will not address the Union's arguments regarding whether CCRI had just cause to terminate Crenshaw.

IV

Conclusion

For the foregoing reasons, this Court grants CCRI's Motion to Vacate the Arbitration Award, pursuant to § 28-9-18(a)(2), and denies the Union's Motion to Confirm the Arbitration Award. Counsel shall submit an Order consistent with this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Community College of Rhode Island, Council on Postsecondary Education, et al. v. CCRI Educational Support Professional Association/NEARI
CASE NO:	PM-2015-5315
COURT:	Providence County Superior Court
DATE DECISION FILED:	May 10, 2016
JUSTICE/MAGISTRATE:	Vogel, J.
ATTORNEYS:	
For Plaintiff:	Jeffrey S. Michaelson, Esq.
For Defendant:	John E. DeCubellis, Jr., Esq.