

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Shoemakersville Borough, :
Appellant :
v. : No. 1104 C.D. 2010
: Argued: June 6, 2011
Shoemakersville Borough :
Police Association :

BEFORE: HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge (P.)
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: September 15, 2011

Shoemakersville Borough (Borough) appeals from an order of the Court of Common Pleas of Berks County (trial court) denying the Borough’s petition to vacate an Act 111¹ grievance arbitration² award. We affirm.

The facts of this case are not in dispute. The substance of the underlying grievance was a request for a disability pension sought by the

¹ Act of June 24, 1968, P.L. 237, as amended, 43 P.S. §§ 217.1-217.10 (Policemen and Firemen Collective Bargaining Act commonly referred to as “Act 111”). Act 111 deals with the rights of police officers to bargain collectively with their public employers regarding the terms and conditions of the employment, including pensions and other benefits, and if they fail to reach an agreement, to proceed to arbitration for resolution. Northampton Township v. Northampton Township Police Benevolent Association, 885 A.2d 81 (Pa. Cmwlth. 2005).

² “Grievance arbitration” is the arbitration which occurs when the parties disagree as to the interpretation of an existing collective bargaining agreement. Town of McCandless v. McCandless Police Officers Association, 587 Pa. 525, 901 A.2d 991 (2006).

Shoemakersville Borough Police Association (Association) on behalf of one of its members, Ronald Yocum (Yocum), a former member of the Shoemakersville Borough Police Department. During the relevant points of his employment with the Borough, Yocum's terms and conditions of employment were governed by a series of collective bargaining agreements. A collective bargaining agreement existed between the parties from 2001 through 2003, but when the parties reached an impasse, an interest arbitration panel issued an interest arbitration award.³ The award set forth new terms and conditions of employment for the police officers in the Borough effective January 1, 2004 through December 31, 2006; directed the integration of the award into the parties' collective bargaining agreement; and directed the continuation of all existing benefits contained in previous awards and written agreements, not modified by the award (hereinafter referred to as the "Agreement").

In 2004, during the term of the 2004-2006 Agreement, Yocum sustained an injury while making a traffic stop for a speeding vehicle. Yocum was out of work from May 4, 2004 through October 2004 during which time he received benefits pursuant to the act commonly referred to as the Heart and Lung Act.⁴ In October

³ "Interest arbitration" is the arbitration which occurs when the employer and employee are unable to agree on the terms of a collective bargaining agreement. McCandless.

⁴ Act of June 28, 1935, P.L. 477, as amended, 53 P.S. §§ 637-638. Section 1(a) of the Heart and Lung Act provides, in pertinent part:

any policeman ... of any ... borough ... who is injured in the performance of his duties ... and by reason thereof is temporarily incapacitated from performing his duties, shall be paid ... his full rate of salary ... until the disability arising therefrom has ceased.

53 P.S. §637(a).

2004 Yocum was released by his treating physician and by the Borough's physician to resume his full duties as a Borough police officer without restriction.

Subsequent to his return, Yocum was placed on administrative leave and was ultimately terminated by the Borough as a result of allegations of misconduct against him. In response to the termination, the Association and Yocum filed a grievance challenging his termination from employment. By arbitration award, Yocum's termination was reduced to a sixty-day suspension without pay and the Borough was ordered to pay Yocum backpay for the remaining period of time.

On June 6, 2006, the Shoemakersville Borough Council, at a regularly scheduled public meeting, (1) authorized an appeal of the arbitrator's award reinstating Yocum, and (2) voted to disband its police department in its entirety. As a result of the disbandment of the police department, all officers, including Yocum, were permanently separated from employment with the Borough.⁵

On September 26, 2006, the Association filed an unfair labor practice charge against the Borough and alleged therein that the Borough had not permanently disbanded its police department, and was refusing to bargain with the Association. The Pennsylvania Labor Relations Board dismissed the charges upon concluding that the disbandment was lawful and had the effect of severing the Borough's obligation to bargain with the Association. The Association's exceptions were overruled; no further appeal was taken.

On June 4, 2007, Yocum sent a letter to the Borough indicating that, according to a May 23, 2007 letter from his treating physician, he was permanently disabled from being a police officer due to his work-related injury. Yocum requested

⁵ The Pennsylvania State Police began providing police protection to the Borough.

disability pension benefits from the Borough's police pension fund, which the Borough denied. Yocum then filed a grievance and demanded resolution by arbitration.

A hearing before an arbitrator was held. At the hearing, the Borough raised the issue of arbitrability/jurisdiction of the arbitrator to hear the matter. By initial decision dated October 5, 2008, the arbitrator determined that the grievance was not arbitrable on the basis the Agreement contained no evidence of an intent for a disability retirement benefit to vest in an individual who is no longer a full-time police officer by virtue of a legitimate disbandment of the police department preceding the time of permanent disability. On appeal, the trial court determined that the arbitrator did have jurisdiction to arbitrate the matter. By order dated February 2, 2009, the trial court vacated the arbitrator's award and remanded the matter to the arbitrator for a determination on the merits. Following remand, the arbitrator issued a second award, dated January 10, 2010, concluding that Yocum was entitled to a disability pension. The Borough appealed that decision to the trial court, which denied the Borough's petition to vacate the award. This appeal now follows.

The Borough raises the following issues for our review:

1. Whether the trial court erred and exceeded the scope of its authority under Act 111's narrow certiorari standard of review by vacating the arbitrator's contractual interpretation that he lacked jurisdiction under the parties' collective bargaining agreement to hear a dispute, which arose following the lawful disbandment of the Borough's police department and after the expiration of the parties' collective bargaining agreement, where the arbitrator's determination involved contractual interpretation.
2. Assuming arguendo that the trial court properly characterized the determination of the arbitrator's

jurisdiction as a purely legal issue, did the trial court err by concluding that the right to receive a disability pension vests in a Pennsylvania municipal police officer on the date on which the officer sustains an injury as opposed to the date on which the officer's injury is determined to be permanent.

3. Whether the trial court erred by failing to vacate the arbitrator's award, which directed the Borough to perform an act in excess of its authority by providing a disability pension to a former employee who was not a Borough police officer at the time at which his disability was determined to be permanent as the result of a lawful disbandment of a municipal police department.

The Borough contends a narrow certiorari standard of review is appropriate in this case and that the trial court erred and exceeded the scope of its authority under narrow certiorari standard of review by vacating the arbitrator's contractual interpretation that he lacked jurisdiction under the parties' collective bargaining agreement to hear the dispute. We disagree.

It is well settled that review of an Act 111 grievance arbitration award is narrow certiorari, which limits courts to reviewing: (1) the jurisdiction of the arbitrator; (2) the regularity of the arbitration proceeding; (3) whether the arbitrator exceeded his authority; and (4) whether the arbitrator deprived one of the parties of constitutional rights. Pennsylvania State Police v. Pennsylvania State Troopers' Association (Betancourt), 540 Pa. 66, 79, 656 A.2d 83, 89-90 (1995); Borough of Jenkintown v. Hall, 930 A.2d 618 (Pa. Cmwlth. 2007). In applying this scope of review, courts give great deference to the determinations of arbitrators. Id.

However, when a court reviews an arbitrator's decision on jurisdiction, a dual standard of review should be applied. McCandless; Borough of Jenkintown. Under this "dual standard," a court's review of a pure question of law is plenary. Id.

On the other hand, where resolution of the issue of jurisdiction requires fact-finding or contract interpretation, the court's review of the arbitrator's decision should be one of extreme deference. Id. In other words, if resolving the question of jurisdiction *depends* "to some extent upon arbitral fact-finding or a construction of the relevant [collective bargaining agreement]," then the Court's review is not plenary. Jenkintown, 930 A.2d at 622.

Here, the arbitrator reviewed the terms of the expired Agreement. Contrary to the Borough's assertions, the arbitrator's decision did not involve an interpretation of the Agreement warranting deference. The arbitrator's ultimate decision rested, not on the terms of the Agreement, but upon the absence of an express provision to arbitrate matters following the expiration of the Agreement. The arbitrator referenced what he did not find in the parties' contract, i.e., a specific intent to arbitrate a police officer's right to a disability pension once the department had been disbanded. His determination was based solely upon the fact that the claim itself arose following the disbandment of the department and the expiration of the Agreement. It was not dependent upon any construction of the terms of the Agreement. The arbitrator's "fact-finding" was not necessary to a determination of jurisdiction. We, therefore, conclude that a plenary scope of review is applicable to the issue of jurisdiction.

The Borough argues that, even under the plenary scope of review, the arbitrator still lacked jurisdiction to arbitrate the matter because there was no contractual obligation to arbitrate since Yocum's disability pension benefit had not vested prior to his separation from employment as a result of the lawful disbandment of the police force. We disagree.

A pension benefit vests when the participant satisfies all necessary elements of receipt for the pension benefit. Theelin v. Borough of Warren, 544 A.2d 1135 (Pa. Cmwlth. 1988). The relevant contractual provision of the 2004-2006 Agreement is found in Article XIII – Pensions, Section 3, which reads:

Any Full Time Police Officer who dies or becomes totally disabled due to injury sustained in the line of duty shall be fully vested, and shall be eligible for retirement benefits of fifty percent (50%) of final average salary.

Accord Certified Record (C.R.), Ordinance No. 339-1994 of Borough of Shoemakersville, Article VI, Section 1(b).

Relying upon Crisamore v. City of York, 688 A.2d 1271 (Pa. Cmwlth. 1997), and Sassu v. Borough of West Conshohocken, 929 A.2d 258 (Pa. Cmwlth. 2007), the Borough maintains that Yocum did not vest his right to a disability pension prior to his separation from employment. In Crisamore, the city pension ordinance stated that in order for a police officer to receive a disability pension, he was required to submit two physician's statements attesting to the officer's disability. The officer contended that he was entitled to receive a disability pension on the day he became permanently disabled, not when he proved it. Crisamore. On appeal, we determined that pursuant to the terms of the pension ordinance, the officer's disability pension rights did not vest until the date the pension fund received the second physician's statement. Id.

In Sassu, a retired borough police officer brought action against the borough seeking a disability pension and retroactive payment of disability pension benefits following a change in pension plan affecting eligibility requirements, which went into effect after his retirement. On appeal, we determined that the officer's rights under the borough's pension plan became fixed at the time of his

separation from employment, not when the borough switched to a new plan. Sassu. The officer's pension was governed under the former plan. Id. Since the officer did not meet the eligibility requirements under the former plan, he was not entitled to a disability pension. Id.

The case at hand is readily distinguishable from Crisamore and Sassu. The sole requirement set forth in the Agreement for vesting a disability pension is that the officer "becomes totally disabled due to injury sustained in the line of duty." The Borough did not require any other conditions to vesting. Yocum met this definitional requirement. Yocum was injured in the line of duty on May 3, 2004, while the Agreement was in effect and became totally disabled as a result of the injury. Although Yocum did not become disabled until after the disbandment of the police department and expiration of the Agreement, the Agreement does not state *when* the disability must occur in order to vest. We, therefore, conclude that the arbitrator properly exercised jurisdiction over the grievance.

Lastly, the Borough contends that the Arbitrator's second award is unlawful and should be vacated because it directs the Borough to perform an act in excess of its authority by providing a disability pension to a former employee who was not a Borough police officer at the time at which his disability was determined to be permanent as the result of a lawful disbandment of the police department.⁶ We disagree.

⁶ The Borough also contends that the arbitrator's award of a disability pension to Yocum violates Article III, Section 26 of the Pennsylvania Constitution, which prohibits a public employer from increasing compensation or benefits which a public employee receives after his services have been completely rendered to the municipality. The Borough failed to raise this constitutional issue before the trial court, and, as a result, this issue is waived. See Pa. R.A.P. 302(a); City of Philadelphia v. Fraternal Order of Police Lodge No. 5, 677 A.2d 1319 (Pa. Cmwlth. 1996).

Relying upon Camaione v. Borough of Latrobe, 523 Pa. 363, 567 A.2d 638 (1989), cert. denied, 498 U.S. 921 (1990), the Borough contends that, just as with Heart and Lung Act benefits, entitlement to a disability pension benefit is extinguished when the employee is separated from employment. In Camaione, a police officer, who suffered a work-related injury and could not return to work, began receiving Heart and Lung Act benefits because he was deemed temporarily incapacitated from performing his duties. The police officer's benefits under the Heart and Lung Act were terminated following involuntary retirement. Camaione. The officer filed a complaint in mandamus seeking to have his public employer restore his full salary under the provisions of the Heart and Lung Act. Id. The officer reasoned that he was entitled to his full salary as long as his disability was of a temporary nature and that he was never afforded a hearing to establish that a change in his condition had occurred. Id.

On appeal, our Supreme Court held that Heart and Lung Act benefits did not confer a property right which superseded the public employer's right to regulate its police complement through involuntary retirement because of economic hardship. Id. Thus, the police officer was not entitled to a due process hearing prior to the termination of benefits. Id. The Supreme Court explained that the Heart and Lung Act is remedial legislation, which provides compensation for police officers who suffer temporary incapacity or disability in the performance of their work. Id. The benefits of full compensation granted by the Heart and Lung Act terminate upon retirement. Id. The Heart and Lung Act does no more than assure uninterrupted compensation of salary for current members of a police force while a temporary incapacity exists to insure that injured police officers are treated equally with actively employed officers. Id. In order to receive Heart and Lung

Act benefits, the officer must be a member of the police force and temporarily incapacitated from employment. Id.

The Borough's reliance upon the Heart and Lung Act and Camaione is misplaced. Heart and Lung Act benefits, which serve solely as a temporary income replacement vehicle, are materially distinguishable from disability benefits, such as work-related disability pension benefits. Heart and Lung Act benefits are temporary in nature and automatically extinguish upon cessation of employment, whereas disability pension benefits contemplate permanent disability and can continue even after employment is terminated.

Under the narrow certiorari scope of review, the arbitrator did not exceed his authority. Yocum met the Borough's qualifications for the disability pension as set forth in the Agreement. Yocum's separation from employment pursuant to the disbandment of the police department did not extinguish Yocum's ability to obtain a disability pension pursuant to that Agreement. To conclude otherwise, would deny members of the bargained-for benefit simply because their line-of-duty injury did not develop into or "become" a disability until after the expiration of the Agreement.

Accordingly, the order of the trial court is affirmed.

JAMES R. KELLEY, Senior Judge

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Shoemakersville Borough,	:	
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Shoemakersville Borough	:	
Police Association	:	

ORDER

AND NOW, this 15th day of September, 2011, the order of the Court of Common Pleas of Berks County, at Docket No. 10-3017, dated May 7, 2010, is AFFIRMED.

JAMES R. KELLEY, Senior Judge