

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: OCTOBER 31, 2012)

PROVIDENCE SCHOOL BOARD	:	
	:	
V.	:	C.A. No.: P.M. 12-3448
	:	
PROVIDENCE TEACHERS UNION,	:	
AFT LOCAL 958, AFL-CIO	:	

DECISION

CARNES, J. Before this Court are the Providence School Board’s (the “Board”) Motion to Vacate an arbitration award issued on April 10, 2012 and the Providence Teachers Union’s (the “Union”) Cross-Motion to Confirm the Arbitration Award. The Board asks this Court to declare that the grievance filed by the Union over the Board’s unilateral decision dictating the terms of a teacher’s appeal of a Recommitment Review Team decision not inviting him or her back to teach is not arbitrable. Jurisdiction is pursuant to R.I. Gen. Laws 1956 §§ 28-9-14, 28-9-17 to -18.

I

Facts and Travel

The following facts are based upon the parties’ memoranda and the arbitrator’s decision. The parties do not dispute the material facts. In 2010, six Providence schools were designated as needing improvement by the Rhode Island Department of Education (RIDE). Pursuant to RIDE regulations the schools had to choose an intervention model. See 08 010 CRIR 028 § IV(2). Providence chose the Transformation Model. Under

Section 8-32 of the collective bargaining agreement entered into between the parties (the “CBA”), the Union and the Board would work collaboratively to implement the Transformation Model and re-staff the schools. The parties worked together admirably to develop the Re-Staffing Procedure for PPSD Transformation Schools (the “Re-Staffing Procedure”). This procedure provided that a teacher who wished to remain at the school could submit an Election to Work Agreement to the Principal. The Principal would then decide whether to retain the teacher. If the Principal chose not to retain the teacher, the teacher was sent to an interview with the Recommitment Review Team (the “RRT”). The RRT was composed of the school district’s Level Executive Director and the Content Area Supervisor, with the support of the school principal and the Level Vice President of the Union. The interview consisted of about twenty minutes in which the teacher would be asked five questions. After the interview teachers would receive a letter either inviting them back to teach at the school or informing them they were not being retained. A teacher who was not invited back after an RRT interview was entitled to an appeals process in which he or she could appeal the decision to the School Improvement Intervention Team (the “SIIT”). The SIIT was co-chaired by the Union President, Steven Smith, and the Superintendent, Thomas Brady. It is this appeal process, provided for in the Re-staffing Procedure, which provides the crux of the issue in this case.

About thirty five teachers availed themselves of the appeals process.¹ Prior to a hearing of appeals scheduled for April 15, 2011, the Board informed the Union that neither the teachers nor their representatives would be permitted to be present and that the appeal would be limited to “procedural improprieties”. This was the first time the Union

¹ All Providence Teachers Union members involved in this dispute did not lose their jobs, hours, salaries, or benefits. They were simply transferred to other Providence schools.

had heard of such limitations. The Union refused to participate in the hearing because it was incompatible with due process and the CBA. The SIIT deemed all appeals to be withdrawn when the Union President was not present on the hearing date. The Union filed a grievance which proceeded to arbitration.

In a thoughtful, thirty-three page decision the arbitrator found that the grievance was arbitrable and that the imposition of an appeals process inconsistent with the agreement between the parties violated Section 8-32 of the CBA. As such, the arbitrator's award required the Board to cease and desist from violating the CBA and required the parties to work collaboratively, as required in the CBA, to determine the exact terms of the appeals process.

The Board requests that this Court vacate the arbitrator's award because he exceeded his authority by ruling on an issue which is within the Board's non-delegable duties and thus not arbitrable. Further, the Board argues that even if the dispute was arbitrable the arbitrator's award should be vacated as it contradicts the language of the CBA. The Union counters that the grievance was arbitrable and that an arbitrator's award is entitled to a high level of deference in this Court.

II

Standard of Review

Arbitration awards "enjoy a presumption of validity" in Rhode Island due to the strong public policy favoring their finality. North Providence Sch. Comm. v. North Providence Fed'n of Teachers, Local 920, Am. Fed'n of Teachers, 945 A.2d 339, 344 (R.I. 2008). Accordingly, this Court's authority to review or vacate an arbitration award is statutorily prescribed and very limited. Purvis Sys., Inc. v. Am. Sys. Corp., 788 A.2d

1112, 1114 (R.I. 2002); R.I. Council 94, AFSCME v. State, 714 A.2d 584, 587 (R.I. 1998). An arbitration award may be vacated only if: 1) it was “procured by fraud”, 2) the arbitrator exceeded his or her powers or “so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted was not made”, or 3) there was no valid submission or contract. G.L. § 28-9-18(a).

An arbitrator’s powers are exceeded if the arbitrator’s award failed to “draw its essence” from the contract, “reached an irrational result”, manifestly disregarded a contract provision, or was not based on a “passably plausible” interpretation of the contract. Woonsocket Teachers’ Guild, Local 951, AFT v. Woonsocket Sch. Comm., 770 A.2d 834, 837 (R.I. 2001) (quoting State Dep’t of Children Youth and Families v. R.I. Council 94, 713 A.2d 1250, 1253 (R.I. 1998)). An arbitrator may also exceed his or her powers by resolving a dispute that is not arbitrable. Id. Whether a dispute is arbitrable is a question of law and merits a broader standard of review than an arbitrator’s decision on the merits. Providence Teachers Union v. Providence Sch. Bd., 725 A.2d 282, 283 (R.I. 1999) (quoting State Dept. of Mental Health, Retardation, and Hospitals v. R.I. Council 94, 692 A.2d 318, 323 (R.I. 1997)).

III

Analysis

Arbitrability

The issue this Court must resolve is whether the arbitrator in this case exceeded his authority because the dispute he resolved was not arbitrable. Our Supreme Court has recognized that duties imposed on a school board by statute may not be a subject of the arbitral process because they are non-delegable. North Providence Sch. Comm., 945

A.2d at 346 n. 12. Specifically, “school committees are not at liberty to bargain away their powers and responsibilities with respect to the essence of the educational mission.” Id. at 347. Thus, any decision made by the Board in this case, based on a power specifically imposed by statute or which goes to the essence of the educational mission of the school district is non-delegable and, as such, not arbitrable. Accordingly, the issue before this Court turns on whether the Board’s unilateral decision determining the rules regarding a teacher’s appeal to the SIIT from a RRT decision is prescribed by statute or goes to the essence of the educational mission.

The Board contends that the Union has produced no evidence that the decision to allow only procedural appeals was based on anything other than providing students with more opportunities for learning and achievement. According to the Board, its decision falls within its non-delegable duties arising from the sweeping language of Title 16 of the Rhode Island General Laws and the RIDE regulations governing intervention in persistently lowest-achieving schools. See 08 010 CRIR 028. Under the regulations, the Board has sole responsibility to ensure that the requirements of the Transformation Model are met. Id. at § VI(1)-(2). One of the requirements of the Transformation Model is that the teacher and principal mutually consent to staff assignments. Id. at § IV(iv)(1)(i)(f). The Board claims the arbitrator’s decision requiring collaboration between the parties to develop rules for an appeal of a teacher’s transfer directly conflicts with its duties under the regulations and makes staffing reform policy contingent on an appellate review by the SIIT.

The Union argues that the Board has failed to point to a single statute or regulation which even remotely discusses what process a reassigned teacher is entitled to

and instead merely invokes the general requirements of Title 16 and the RIDE regulations to claim that this grievance is not arbitrable. The Union goes on to argue that the Board produced no evidence that shows that its decision was motivated by a concern for the educational mission—the Superintendent did not even testify at the arbitration.

The instant analysis begins by noting that our courts have addressed the issue of which school board decisions are non-delegable and these decisions provide guidance. Our Supreme Court has held that when Title 16 of the Rhode Island General Laws specifically required a school committee to satisfy the needs of children with limited-English proficiency a requirement that all teachers in the Limited English Proficiency Program submit a copy of their lesson plans once a month to the associate director of the program was non-delegable and thus not arbitrable. Pawtucket Sch. Comm. et al. v. Pawtucket Teachers' Alliance, Local No. 930, Am. Fed'n of Teachers et al., 652 A.2d 970, 971-72 (R.I. 1995) (stating that reviewing English as a Second Language programs and determining whether they complied with state law was a responsibility that the school committee could not delegate pursuant to statute).

In Woonsocket Teachers' Guild, 770 A.2d at 835-36, the principal at Woonsocket High School called on the nurse to administer medication required by a handicapped student who was being provided special education services at the school through the Northern Rhode Island Collaborative (the “NRIC”). Rhode Island General Laws section 16-21-7 specifically required every district to have a school health program, section 16-24-1 required the school to provide a special education program, and RIDE regulations required school districts to provide health services to NRIC students. Id. at 837. Our

Supreme Court, therefore, held that the duty to provide health service to NRIC students was created by state law and was, as such, non-delegable and not arbitrable. Id. at 838.

Finally, in North Providence School Committee, 945 A.2d at 346, discontinuing a fifty minute composition period for English teachers based on budgetary concerns was held to be arbitrable. The Court stated that because the school committee justified its decision on the basis of economic concerns, and not educational concerns, it could not find that the decision related to the essence of the educational mission and was, as such, a non-delegable duty under the broad terms of Title 16. Id. at 347. Since our Supreme Court's decision in North Providence School Committee, the Superior Court has held that revision of written job descriptions for non-teaching positions, including the minimum requirements, was not so closely related to the educational mission as to be non-delegable and not arbitrable. Sch. Comm. of the Town of North Providence v. R.I. Laborers' Dist. Council, Public Employees Union 1033, No. 10-0025, April 26, 2010, Lanphear, J. On the other hand, in Central Falls School District Board of Trustees v. Central Falls Teachers Union, No. 07-4684, August 7, 2008, Savage, J., the Superior Court found that a school district's decision to promote one candidate to the position of English Department Chair over another was non-delegable and not arbitrable since it closely related to the educational mission.

Based on these cases this Court first looks at whether the Board's decision in this case was pursuant to a responsibility specifically conferred upon the Board by statute. Despite the Board's reference to many provisions of the RIDE regulations regarding persistently lowest-achieving schools and the general powers afforded to it under Title 16, this Court finds, after detailed review, that no statute or regulation specifically confers

upon the Board the responsibility for prescribing the method of a teacher's appeal from the RRT. Rather, Title 16 and the RIDE Regulations confer more general powers on the Board to manage public schools and ensure implementation of the Transformation Model. See e.g. G.L. § 16-2-9(a); 08 010 CRIR 028 §§ IV(iv)(1)(i)(f), VI(1)-(2). Further, the Board could not cite any statutes or regulations specifically giving it the power to determine the method of appeal from a RRT decision. As such, because it was not based on a power or responsibility specifically conferred by statute, to be considered a non-delegable duty the Board's decision must be closely related to the essence of the educational mission. North Providence Sch. Comm., 945 A.2d at 347.

Upon careful review of the close issue in this case, the Court finds that the connection between the procedure for an appeal of a RRT decision not to invite a teacher back to a persistently-lowest performing school and the essence of the educational mission is just too tenuous. In North Providence School Committee, the Court was confronted with a change in the number of periods a teacher would teach each day. Id. at 341. This directly related to the quantity and likely the quality of a teacher's work. Id. Despite this connection to the educational mission, the Court still found that the change in the number of teaching periods was not sufficiently related to the essence of the educational mission because the school board had justified it as an economic decision. Id. at 347. Here, the Board has not justified its decision at all; it has failed to provide any reasoning in its memorandum or in arbitration for its unilateral decision. Moreover, the grievance at issue here has less to do with the educational mission than a decision regarding how many periods a teacher must teach. See id. at 341, 347. The Board's resolution regarding the process of a teacher's appeal to the SIIT was purely procedural.

It had nothing to do with the merits of each teacher's appeal, the teacher's performance, or even the overall approach to reforming a persistently lowest-achieving school. It did not affect who would be educating students or which teachers would be retained since it did not address how the merits of a teacher's appeal would be considered by the SIIT or what the resulting action by the SIIT might be. It was solely a decision about the procedural details of an appeals process the parties had already agreed upon in the Re-Staffing Procedure. In this regard, the grievance in this case much more resembles the revision of job descriptions for non-teachers, than it does a decision about which candidate to promote or what portion of a teacher's day is spent teaching. See North Providence Sch. Comm., 945 A.2d at 341; R.I. Laborers' Dist. Council, No. 10-0025, April 26, 2010, Lanphear, J.; Central Falls Teachers Union, No. 07-4684, August 7, 2008, Savage, J.

Consequently, the relationship between a decision about the level of process to be afforded a teacher who has not been invited back by the principal and then the RRT in his or her appeal to the SIIT is too remotely related to the essence of the educational mission to be considered a non-delegable duty and thus not arbitrable.² See North Providence Sch. Comm., 945 A.2d at 347. If this Court were to find the Board's decision to be pursuant to a non-delegable duty, despite its remote relationship with the essence of the educational mission, then it follows that the entire procedure for evaluating teachers at a persistently-lowest achieving school could potentially be considered non-delegable. There would be no encouragement for the Board and the Union to work collaboratively,

² It is worth noting that the arbitrator made no decision regarding what the appropriate appellate procedure should be or what the effect of a decision by the SIIT would be. Def.'s Ex. I: Arbitrator's Opinion and Award 32. The arbitrator merely required the parties develop the procedure for an appeal collaboratively, as prescribed in the CBA. Id.

as they have largely done in this case, to implement the RIDE intervention protocols and provide a method for reforming our state's most needy schools.

Arbitrator's Decision on the Merits

The Board makes one final argument that, even if the grievance is arbitrable, this Court should vacate the arbitrator's decision because it is inconsistent with the plain language of the CBA. It claims that the plain language of section 12-3.3 of the CBA explicitly permits the Board to involuntarily transfer an employee at the discretion of the Superintendent and that Article 18 recognizes the school district's exclusive management right to supervise and control all of its employees.

The arbitrator's decision need only be a passably plausible interpretation of the CBA. Woonsocket Teachers' Guild, 770 A.2d at 837. It is not passably plausible if it is a "completely irrational result." Town of Smithfield v. Local 2050, 707 A.2d 260, 264 (R.I. 1998) (quoting Westcott Constr. Corp. v. City of Cranston, 586 A.2d 542, 543 (R.I. 1991)). Here, the arbitrator based his decision on section 8-32 of the CBA which is titled "School Improvement Intervention Team" (SIIT) and states that "the parties will collaborate through a School Improvement Intervention Team to develop a protocol for schools with the status *Low-Performing* or *Low-Performing/Not Improving* and/or schools that have federal – or state-imposed sanctions and interventions." Def.'s Ex. III: CBA § 8-32. The arbitrator found that this section of the CBA was violated by the Board's unilateral actions. Def.'s Ex. I: Arbitrator's Opinion and Award 25.

This Court finds that the arbitrator's decision was a passably plausible interpretation of the CBA, given the language of section 8-32 requiring the parties to act collaboratively to develop a protocol for lowest-achieving schools. Neither section 12-

3.3 nor Article 18 give the Board the specific power to determine the appeals process for a teacher in a lowest-performing school. Def.'s Ex. III: CBA § 12-3.3; 18. As such, these sections do not necessarily trump section 8-32 and, thus, the arbitrator's reliance on section 8-32 does not make his decision completely irrational. See Local 2050, 707 A.2d at 264; see also Woonsocket Teachers' Guild, 770 A.2d at 837 (finding an arbitrator's award not passably plausible only where it based its decision "on a limitation contained *nowhere* within the CBA"). Consequently, the arbitrator's award was passably plausible and is entitled to deference under the limited scope of review afforded to this Court. Purvis Sys., Inc., 788 A.2d at 1114.

IV

Conclusion

In conclusion, the procedure for an appeal of a teacher's transfer from a persistently-lowest performing school is too tenuously related to the essence of the educational mission of the school district to be considered non-delegable and thus not arbitrable. Thus, the arbitrator did not exceed his authority by deciding a dispute that was not arbitrable. Additionally, the arbitrator's award was based on a passably plausible interpretation of the CBA. Consequently, the Board's Motion to Vacate the Arbitration Award is DENIED and the Union's Cross-Motion to Confirm the Arbitration Award is GRANTED.

Counsel is instructed to prepare an appropriate judgment for entry.