STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: November 12, 2015)

EAST GREENWICH SCHOOL COMMITTEE	:	
v.	:	**C.A. No. KM-2015-0717**
EAST GREENWICH EDUCATION ASSOCIATION NEARI/NEA	:	

DECISION

RUBINE, J. Before the Court is a dispute involving the arbitration of a grievance filed by Respondent East Greenwich Education Association NEARI/NEA (Respondent or Association). The East Greenwich School Committee (Petitioner or School Committee) has petitioned the Superior Court for the vacation of an arbitration award in favor of Respondent. Petitioner argues that the arbitrator exceeded his authority in awarding money damages, that the arbitrator's decision was without factual basis, and that the award is erroneous as a matter of law. For the following reasons, the Court denies the petition to vacate and confirms the award of the arbitrator.

I

Facts and Travel

This case arises out of two grievances involving seventeen teachers, filed by Respondent against Petitioner, regarding the total number of students assigned to the aggrieved teachers. The grievance was filed on behalf of seventeen East Greenwich school teachers, all of whom are teachers at the Cole Middle School. Following an arbitration award (the Award) in favor of the Respondent, the School Committee seeks to vacate the Award. Conversely, Respondent "moves

for the Court to confirm the Award." The Court has previously stayed implementation of the Award pending determination of these competing motions.

At the crux of the instant dispute is the language contained in the collective bargaining agreement (CBA) between the School Committee and the Association pertaining to class size. More specifically, the parties disagree on the appropriate application of sections 4-1.3 and 4-1.5 of Article IV of the CBA, which govern the maximum number of pupils per class and the total number of students per teacher, respectively. Pet'r's Ex. 1, Contract between East Greenwich Education Association and East Greenwich School Committee (hereinafter CBA) at 9. Most contentious is the relevancy of the "proportionate" language included in the last sentence of § 4-1.5 that states: "[t]his number [of students] shall be proportionately reduced for teachers with fewer than five (5) regular classes." Id.

By way of background, the Association filed two grievances on September 9, 2014, for alleged violations of contractual provisions governing class size and total students per teacher that occurred during the 2014-15 school year. The Association, on behalf of the teachers, complained that the assignments to the aggrieved teachers at the Cole Middle School exceeded the twenty-five student average class size limit of the CBA. Award at. 3. It is undisputed that the CBA governed the rights and obligations of the parties from September 1, 2013 to August 31, 2016, the period in which all actions underlying this suit took place. Id. at 2. Specifically, the Association relied on §§ 4-1.3 and 4-1.5 that state, in pertinent part:

> "4-1.3
> Secondary school classes, with the exception of physical education classes, shall not exceed thirty (30) pupils per class."
>
> . . . .

> "4-1.5
> "No regular classroom teacher shall be assigned the class responsibility for more than one hundred twenty-five (125) students regardless of the size of his/her classes. This number shall be proportionately reduced for teachers with fewer than five (5) regular classes." CBA at 9 (emphasis added).

The Arbitrator characterized the two grievances as follows: "the assignments to a total of 17 teachers exceeded the 25 student per class average size limit in the Agreement." Award at 7. At the time that Article IV of the CBA was initially negotiated—in 1989—full-time teachers were assigned five classes. However, in 2004, the School Committee implemented a middle school model for teachers at Cole Middle School and reduced the number of classes assigned to each full-time teacher from five to four classes. The total minutes of instruction per teacher were unchanged. The parties appear to have anticipated the possibility that the number of classes per teacher could be reduced. Accordingly, they included in the CBA a clause providing that if the total classes per teacher were reduced to a number less than five, there would be a proportional reduction in the maximum total number of students per teacher. CBA at 9, § 4-1.5. Although the School Committee and Association negotiated contract language to coincide with the new middle school model, the parties did not bargain for any new CBA provisions regarding class size after implementation of the new (four class) model, and §§ 4-1.3 and 4-1.5 remained in the current CBA, which was in effect at the time of the grievance.

The arbitrator, by applying accepted rules of contract construction, conducted a thorough analysis of the dispute. Pet'r's Ex. 3, Award of the Arbitrator at 6-10. In addition to the CBA, the arbitrator considered exhibits submitted by both sides and heard testimony from Superintendent Victor Mercurio and Principal Alexis Meyer. Id. at 2-4. The arbitrator also

made note of § 4-2[1] of the CBA, but ultimately reasoned that it did not apply.[2] After consideration of all the evidence, the arbitrator found that the provisions in the CBA governing class size were unambiguous—requiring the arbitrator to apply their usual and plain meaning—and concluded that the School Committee violated § 4-1.5 by assigning teachers with four classes more than 100 students. Id. at 7-8. He reasoned that "[u]nder the clear meaning of the words chosen by the parties in Article 4-1.3 and 4-1.5, there is a class size limit of 30 students and an overall average limit of 25 students per class."[3] Id. at 8. Applying the proportionality requirement, the arbitrator held that teachers assigned to four classes are limited by § 4-1.5 to a total of 100 students, which represents the proportional reduction as called for in § 4-1.5. Id.

In support of its motion to vacate, the School Committee argues that the language referencing class size is ambiguous and that the arbitrator exceeded his powers, abused his discretion, and manifestly disregarded the law by applying § 4-1.5's "proportionate" language to the instant grievances and fashioning an award absent specific remedial language in the CBA. Pet'r's Mot. to Vacate Arbitration Award at 3. The School Committee further contends that the last sentence of § 4-1.5 contradicts § 4-1.3, and that the arbitrator was therefore obligated to reform the CBA. Id.

[1] Section 4-2 states, in pertinent part: "Class size limits may be exceeded for the purposes of innovation and/or experimentation upon consultation among the administration, the teachers involved, and the Association." CBA at 9 (emphasis added).

[2] "Although Article 4-2 is arguably relevant, the [School Committee] does not argue that it applies in this case, and there was no evidence that the [School Committee] consulted with affected teachers and the Association, nor was the Association informed that the middle school model innovations included exceeding the long-standing 25-student average class size." Pet'r's Ex.1 at 3 n.1.

[3] Although the CBA does not expressly provide for an average class size, a teacher can have no more than five classes with a maximum total number of students of 125, meaning that the average number of students can be no higher than twenty-five. See CBA at 9.

The Association asserts, and the Arbitrator agreed, that §§ 4-1.3 and 4-1.5 are unambiguous and that the arbitrator did not err in applying their plain meaning to the instant dispute. The School Committee takes the position that the last sentence of § 4-1.5, dealing with proportional reduction, should simply be stricken from the CBA, under the contention that it is "archaic language that has no place or application to the current middle school model at Cole." Pet'r's Mem. in Supp. of Mot. to Vacate Arbitration Award at 13.

II

Standard of Review

Section 18(a) of Title 28, Chapter 9 of the Rhode Island General Laws expressly states the grounds upon which this Court will vacate an arbitration award. That section provides, in pertinent part:

> "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." G.L. 1956 § 28-9-18(a).

It is well settled that "[t]he authority of the courts in this jurisdiction to review an arbitral award is statutorily prescribed and is limited in nature." N. Providence Sch. Comm. v. N. Providence Fed'n of Teachers, Local 920, Am. Fed'n of Teachers, 945 A.2d 339, 344 (R.I. 2008) (citing Metro. Prop. and Cas. Ins. Co. v. Barry, 892 A.2d 915, 918 (R.I. 2006)). In the absence of this Court finding one or more grounds to vacate the Award, it must be confirmed, because "[i]f the award 'draws its essence from the contract' and reflects a 'passably plausible

interpretation of the contract,' a reviewing court must confirm the award." State, Dep't of Corr. v. R.I. Bhd. of Corr. Officers, 115 A.3d 924, 928 (R.I. 2015) (quoting Cumberland Teachers Ass'n v. Cumberland Sch. Comm., 45 A.3d 1188, 1192 (R.I. 2012)). "Due to the public policy favoring the finality of arbitration awards, such awards enjoy a presumption of validity." N. Providence Sch. Comm., 945 A.2d at 344 (citing Pierce v. R.I. Hosp.,875 A.2d 424, 426 (R.I. 2005)); see also Prudential Prop. and Cas. Ins. Co. v. Flynn, 687 A.2d 440, 441 (R.I. 1996). As such, "[t]he proper role for the courts in this regard is to determine whether the arbitrator has resolved the grievance by considering the proper sources 'the contract and those circumstances out of which comes the 'common law of the shop" but not to determine whether the arbitrator has resolved the grievance correctly." Jacinto v. Egan, 120 R.I. 907, 912, 391 A.2d 1173, 1176 (1978) (quoting Gorman, Labor Law 585 (1976)). "As long as the award 'draws its essence' from the contract and is based upon a 'passably plausible' interpretation of the contract, it is within the arbitrator's authority and our review must end." Id. (quoting United Steelworkers of Am. v. Enter. Wheel & Car Corp., 363 U.S. 593, 597 (1960)).

The party claiming that an arbitrator exceeded his authority in rendering the arbitration award (in this case the School Committee) "bears the burden of proving this contention, and every reasonable presumption in favor of the award will be made." Coventry Teachers' Alliance v. Coventry Sch. Comm., 417 A.2d 886, 888 (R.I. 1980). Furthermore, "[s]tatutory authority to vacate an award in a situation in which the arbitrators exceeded their powers does not permit a judicial resolution of the relevant contractual provisions[;] [t]he mere fact that the arbitrator misconstrues either the contract or the law affords no basis for striking down the award." Id. at 889.

III

Analysis

In asking the Court to vacate the Award in favor of the Association, the School Committee raises two issues on appeal. The School Committee avers that in rendering the Award, the arbitrator exceeded his powers and reached an irrational result in deciding that the CBA provisions regarding class size were unambiguous. Additionally, the School Committee contends that the arbitrator was not empowered to fashion a remedy in the absence of proof of damages and without specific contract language addressing such a remedy.

A

The Arbitrator did not Exceed his Powers

In concluding that the School Committee had violated the provisions regarding class size in the CBA, the arbitrator reached a rational result, and thus, did not exceed his authority given that he considered all relevant evidence presented by both parties, that his decision was based on the specific provisions governing class size in the CBA, and that he declined to amend or reform the CBA absent explicit evidence to support reformation.

The Court notes that "[s]ince arbitration is the creature of a contract wherein the parties themselves, by agreement and submission, define the arbitrator's powers, courts, in deciding whether arbitrators have exceeded their powers, need only examine the submission and award to determine whether the award conforms to the submission." Coventry Teachers' Alliance, 417 A.2d at 888 (citing Bd. of Educ. of Bridgeport v. Bridgeport Educ. Ass'n, 173 Conn. 287, 289-90, 377 A.2d 323, 325 (1977)). "In addition, th[e] [Supreme] Court has held that an award may be vacated if 'the award was irrational or if the arbitrator manifestly disregarded the law.'" Cumberland Teachers' Ass'n, 45 A.3d at 1192 (quoting N. Providence Sch. Comm., 945 A.2d at

344). The Court is cognizant "that, in reviewing the arbitration award, [it] do[es] not engage in [a] de novo review of statutes and contracts." State, Dep't of Corr. v. R.I. Bhd. of Corr. Officers, 64 A.3d 734, 741 (R.I. 2013) (citing Cumberland Teachers Ass'n, 45 A.3d at 1192).

Ultimately, it is the Court's duty to confirm an arbitration award "[i]f the award draws its essence from the contract and reflects a passably plausible interpretation of the contract." Id. at 740 (internal quotation marks omitted) (quoting Cumberland Teachers Ass'n, 45 A.3d at 1192).

In regard to the instant appeal, it is clear to the Court that the arbitrator carefully considered the evidence presented to him, including the grievances submitted by the Association, the arguments proffered by both parties, and most importantly, all relevant provisions of the CBA. In his ten-page opinion, the arbitrator referenced the twenty-five year history of Article IV. He acknowledged, as Superintendent Mercurio had testified to, the 2004 change of Cole Middle School to a middle school model and the effect that the new model had in changing the number of class assignments for teachers from four classes to five. Additionally, the arbitrator noted that in 2007 there had been a proposal by the School Committee to eliminate Article IV from the CBA, which was flatly rejected by the Association, and that there was no evidence that the proposal was ever renegotiated after that time.

The Court is satisfied that the arbitrator considered the language of the CBA as it applied to the dispute he was tasked with resolving and did not reach an irrational result. The Court concludes that the two provisions can be read together and that § 4-1.5 is a clarification of § 4-1.3, not contradictory. See Haviland v. Simmons, 45 A.3d 1246, 1258 (R.I. 2012) (quoting Young v. Warwick Rollermagic Skating Ctr., Inc., 973 A.2d 553, 558 (R.I. 2009) ("In determining whether or not a particular contract is ambiguous, the court should read the contract 'in its entirety, giving words their plain, ordinary, and usual meaning.'")). In other words, when

the school department reduced the number of classes per teacher to four, it was necessary to proportionally reduce the maximum pupils per teacher from 125 to 100. This is the only conceivable meaning of the words "proportionately reduced," thus the maximum total pupils per teacher had to be similarly reduced from 125 pupils under the five class paradigm to 100 pupils under the modified four class per teacher model. If the arbitrator failed to accept this reduction, the words "proportionately reduced" contained in § 4-1.5 would be ignored, something the arbitrator and this court may not do. R.I. Council 94, AFSCME, AFL-CIO v. State of R.I., 714 A.2d 584, 588 (R.I. 1998) (Court may vacate an arbitration award that disregards a contractual provision.). The arbitrator's Award therefore draws its essence from the contract and is based upon far more than a passably plausible interpretation of the contract.

The arbitrator did not disregard contractual language as to proportional reduction—in fact, he found that language unambiguous and interpreted the words as written. He properly rejected the School Committee's request that § 4-1.5 be removed from the contract or rewritten. The arbitrator also properly rejected the argument that the reference to proportional reduction was archaic and unenforceable, as the provision was clearly still in force and cannot be read out of the CBA at the request of a single party.

B

Remedy was Within Arbitrator's Authority

The arbitrator was vested with the authority to fashion the remedy contained in the Award by the language granting such authority contained in the CBA, by the stipulated questions the parties submitted to arbitration, as well as by pertinent authority from the Rhode Island Supreme Court. In its motion to vacate, the School Committee asserts that the arbitrator was not empowered to grant the financial remedy contained in the Award because of an absence of proof

of damages or a clause in the contract addressing money damages to be awarded for breach of the provisions governing class size. The Court finds this assertion both unavailing and misleading.

Both parties agreed to submit the following "Agreed Issues" to arbitration: "1) Did the [School Committee] violate the collective bargaining agreement in the manner it assigned students to teachers? 2) If so, what shall be the remedy?" Award at 2 (emphasis added). The School Committee was on notice that if the arbitrator found that it had violated Article IV, the arbitrator would fashion the remedy. "The [school] committee cannot now complain that the [arbitrator] exceeded [his] powers when it agreed to and voluntarily participated in [considering] the very issue submitted to and decided by the [arbitrator]." Coventry Teachers' Alliance, 417 A.2d at 889. In Coventry Teachers' Alliance, the Supreme Court specifically approved the arbitrator's award of monetary damages in connection with the arbitrator finding a violation of contract provisions mandating a twenty-five student limit per class by the school committee and affirmed the arbitrator's conclusion that a monetary award of $150 was the appropriate remedy for such a violation.

As to imposition of a monetary remedy, Article XIX of the CBA, specifically, § 19-3.4, vests the arbitrator with such authority to determine an appropriate remedy in the event of a dispute. Section 19-3.4(b) states: "it is agreed that the arbitrator is empowered to include in any award such financial reimbursement or other remedies as he/she judges to be proper." CBA at 30. The School Committee participated in the negotiations for the current contract that contained this clause and signed the CBA on August 20, 2014. That the teachers did not adduce evidence as to an additional teaching burden resulting from the reduction from five classes per day to four classes per day does not prevent the arbitrator from making a financial award in light of his

finding that the School Committee breached the contract by assigning more students to certain teachers than was permitted by the explicit terms of the CBA. The remedy in the Award reflects the arbitrator's effort to apply a basic tenet of contract law. That is, if a breach occurred the proper remedy is to return the employees adversely affected to the economic position they would have enjoyed but for the contract violation. See R.I. Tpk. and Bridge Auth. v. Bethlehem Steel Corp., 119 R.I. 141, 165-66, 379 A.2d 344, 357 (1977); see also 11 Corbin on Contracts § 55.3 (Rev'd ed. 2005).

The arbitrator determined that to the extent the workload exceeded the contractual limits, the affected employees should receive a wage differential in the form of a pro-rata payment per student above the limit. The arbitrator described the remedy as the pro-rata per student above the limit. The formula for application of this remedy is to be determined by calculating the per student wages—broken down into per student per day, if necessary—to the affected teachers and multiply that number by the number of assigned students in excess of the contractual maximum.[4] Award at 10 n.3.

C

Attorneys' Fees Pursuant to § 28-9-18(c)

As a result of this motion to vacate, the Association requests that the Court require the School Committee to pay the Association's costs and attorneys' fees. Section 28-9-18(c) states that "[i]f the motion to vacate, modify, or correct an arbitrator's award is denied, the moving party shall pay the costs and reasonable attorneys' fees of the prevailing party." Sec. 28-9-18(c). This Court will therefore award the Association (as the prevailing party) its costs including reasonable attorneys' fees. The amount of the award of costs and fees will be determined after

[4] The arbitrator characterized this relief as a mathematically determinable remedy and therefore declined to retain jurisdiction over the implementation of the remedy. Id.

further hearing and an opportunity for the parties to present evidence as to the resolution of the issue of the amount of fees deemed reasonable.

IV

Conclusion

For the aforementioned reasons, the Court DENIES the School Committee's motion to vacate the Award and GRANTS the Association's motion to confirm the Award. Costs and reasonable attorneys' fees are awarded to the prevailing party in an amount to be determined at a later date. The order staying implementation of the Award is vacated.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**East Greenwich School Committee v. East Greenwich Education Association NEARI/NEA**
CASE NO:	**KM-2015-0717**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**November 12, 2015**
JUSTICE/MAGISTRATE:	**Rubine, J.**
ATTORNEYS:	
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