

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[FILED: October 1, 2015]

TOWN OF JOHNSTON	:	
	:	
V.	:	PM No. 2015-1845
	:	
RHODE ISLAND COUNCIL 94, AFSCME,	:	
LOCAL 1491, by and through its President,	:	
LOUIS M. PRATA	:	

DECISION

LANPHEAR, J. The matter is before the Court on Town of Johnston’s motion to vacate an arbitration award. Colleen Crowley, through Rhode Island Council 94, AFSCME, Local 1491, objects and moves to confirm the arbitration award. The arbitrator found that as a Clerk I with the Town’s Board of Canvassers, Ms. Crowley is a classified town employee; therefore, the Collective Bargaining Agreement between the Town and Local 1491 applied to the Defendant.

Facts and Travel

Colleen Crowley was employed with the Board of Canvassers from July 18, 2005 to June 11, 2014. (Ex. 3, Stipulated Facts ¶ 1.) Both parties followed the terms of the Collective Bargaining Agreement (CBA) between the Town of Johnston (Town) and Rhode Island Council 94, AFSCME, Local 1491 (Union or Local 1491). Id. For the first five years of Ms. Crowley’s employment, she was classified and in the pay scale of Clerk I, and subsequent to year five, she was classified as a Clerk II. Id. at ¶ 2. Throughout her employment, Ms. Crowley paid dues to Local 1491 and was listed on the “Town of Johnston Municipal Employees, Local 1491 Seniority List.” Id. at ¶ 3.

On June 11, 2014, the Johnston Board of Canvassers voted unanimously to eliminate the Clerk I position held by Ms. Crowley. (Mem. in Supp. of Mot. to Vacate Arbitration Award 1.) Thereafter, she attempted to use her bumping rights¹ under Articles 10.8 and 10.6 of the CBA by notifying the Mayor’s chief of staff by email. Id. at 1-2. The Town, through its City Solicitor, informed Ms. Crowley that she was ineligible to bump because her Clerk I position did not qualify. Id. at 2. The Town stated that Ms. Crowley did not qualify because she was hired under the state statutory authority given to the Canvassing Board, and not the Town Administration. (Objection to Mot. to Vacate 3.) Ms. Crowley, following CBA procedures, filed Step 1, 2, and 3 grievances, which were all denied by the Town. (Mem. in Supp. of Mot. to Vacate Arbitration Award 2.)

On August 12, 2014, Local 1491 filed a demand for arbitration with the American Arbitration Association (AAA). Id. The Town challenged the arbitrability of the matter. Id. The arbitrator agreed to bifurcate the issue of substantive arbitrability and limited his award to this one issue. Id. at 2-3. On April 28, 2015, the arbitrator issued his award, finding the issue arbitrable. Id. at 3.

On May 5, 2015, the Town filed a motion to stay and vacate the award. Id. The Union objected to the motion to vacate and filed a motion to confirm the arbitration award on July 17, 2015. On July 27, 2015, the Town objected to the motion to confirm the arbitration award.

Standard of Review

“Arbitration awards enjoy a strong presumption of validity given the ‘strong public policy in favor of the finality of arbitration awards.’” N. Providence School Committee. v. N. Providence Federation of Teachers, Local 920, American Federation of Teachers, 945 A.2d 339,

¹ “Bumping rights,” so-called, are contractual rights to replace another employee in a similar position with less seniority.

344 (R.I. 2008) (quoting Pierce v. R.I. Hospital, 875 A.2d 424, 426 (R.I. 2005)). Arbitration awards are difficult to overturn, and the Court’s authority to review is “statutorily prescribed and is limited in nature.” Buttie v. Norfolk & Dedham Mutual Fire Insurance Co., 995 A.2d 546, 549 (R.I. 2010) (citing N. Providence School Committee, 945 A.2d at 344). There are statutory limitations as to when the Court can vacate an award which include, “Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.” G.L. 1956 § 10-3-12(4). The Court can overturn an arbitration award “only if the award was ‘irrational or if the arbitrator[s] manifestly disregarded the law.’” Wheeler v. Encompass Insurance Co., 66 A.3d 477, 481 (R.I. 2013) (citation omitted). “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.” R.I. Court Reporters Alliance v. State, 591 A.2d 376, 378 (R.I. 1991) (citing Jacinto v. Egan, 120 R.I. 907, 912, 391 A.2d 1173, 1176 (1978)).

Arbitrability

The Town argues that the issue was not arbitrable because Ms. Crowley was appointed by the Board to her position through “Local Canvassing Authority,”² G.L. 1956 § 17-8-5(a)(4), so the CBA did not apply to Crowley. The Town avers that because the statute clearly vests the hiring authority solely with the Board, it is irrelevant whether Ms. Crowley was treated as a

² The Local Canvassing Authority states,

“(a) Each canvassing authority shall have and exercise the functions, powers, and duties provided for local boards by this title or by any law not inconsistent with this title. It shall:

...

“(4) Appoint and employ all its necessary clerical and technical assistants and fix the compensation of each person appointed, within the limits of funds available to it pursuant to law. . . .” Sec. 17-8-5.

Town employee and followed the CBA because the language of the statute preempts the local rules. The Town thus concludes the arbitrator exceeded his authority by issuing an award that contravenes state law and public policy because the arbitrator did not have substantive arbitrability.

“[S]ubstantive arbitrability, like subject matter jurisdiction, can be raised at any time.” Aetna Bridge Co. v. State Department of Transportation, 795 A.2d 517, 523 (R.I. 2002). The Court reviews arbitrability de novo. City of Newport v. Local 1080, International Association of Firefighters, AFL-CIO, 54 A.3d 976, 980 (R.I. 2012) (citing AVCORR Management LLC v. Central Falls Detention Facility Corp., 41 A.3d 1007, 1010 (R.I. 2012)). “Arbitration is a creature of the contract between the parties; the first issue to be decided is whether an arbitrable grievance emanates from the collective bargaining agreement.” State, Department of Corrections v. R.I. Brotherhood of Correctional Officers, 866 A.2d 1241, 1247 (R.I. 2005) (citing R.I. Court Reporters Alliance, 591 A.2d at 378). “If an individual is not a party to the collective bargaining agreement at issue, the dispute is not arbitrable as to that individual.” Id. (citing Operative Plasterers’ and Cement Masons’ International Association, Local 40 v. Contracting Plasterers of R.I., 619 A.2d 838, 839 (R.I. 1993)). “A duty to arbitrate a dispute arises only when a party agrees to arbitration in clear and unequivocal language, and even then, the party is only obligated to arbitrate issues that it explicitly agreed to arbitrate.” State, Department of Corrections v. Rhode Island Brotherhood of Correctional Officers, 115 A.3d 924, 929 (R.I. 2015) (quoting State Department of Corrections, 866 A.2d at 1247). “When uncertainty exists about whether a dispute is arbitrable, this Court, like the United States Supreme Court, ‘has enunciated a policy in favor of resolving any doubt in favor of arbitration.’” School

Committee of Town of N. Kingstown v. Crouch, 808 A.2d 1074, 1078 (R.I. 2002) (citing Brown v. Amaral, 460 A.2d 7, 10 (R.I. 1983)).

The threshold issue to decide is whether Ms. Crowley’s Clerk I position is a position that is governed by the CBA. CBA Article 1—Recognition states that, “The bargaining unit for the purposes of this agreement shall consist of the Town of Johnston Municipal Employees pursuant to Title 28, Chapter 9A.”³ (Ex. 1, CBA § 1.1.) Section 28-9.4-2, a Rhode Island labor statute, defines “municipal employee” as “any employee of a municipal employer, whether or not in the classified service of the municipal employer.”⁴ G.L. 1956 § 28-9.4-2. In sum, the Court must determine if the Board of Canvasser’s Clerk position is for an “employee of a municipal employer.”

The Clerk I position is not specifically delineated in the Town Charter. The Board⁵ either appointed Ms. Crowley or selected her through a bidding process, by the authority given to it pursuant to G.L. 1956 § 17-8-5(a)(4), which authorizes the Board to “[a]ppoint and employ all its necessary clerical and technical assistants. . . .” Id. The Town argues that the state law supersedes the local Charter, and the Clerk’s position is not classified and Ms. Crowley is not a Town employee. The Union rebuts that the State statute and local Charter can stand together; therefore, Ms. Crowley is a classified town employee whose position was authorized by a state statute. The language of the Rhode Island state statute does not establish other proceedings for the classification of the clerical assistants or how the statute should be interpreted with local authorities. See § 17-8-5(a)(4).

³ Both parties noted this is a typographical error in the CBA and should read 9.4.

⁴ Exceptions are listed, but none is applicable to the present matter.

⁵ The Board members are considered classified employees of the Town of Johnston and are funded by the government. (Ex. 15, Charter § 16; Award 9).

This Court finds the arbitrator's determination that Ms. Crowley's clerk position with the Board of Canvassers is a position that falls under the CBA was not irrational, and drew its essence from the CBA.⁶ Although § 17-8-5(a)(4) provides the authority to the Board to hire clerks, the funding itself comes from the town. See § 17-8-5(a)(4). "Classified Personnel" is defined as "[a]ll persons engaged, appointed or employed in the service of the Town and shall be considered members of the classified service, excepting those excepted by the provisions of Sec.16-4 of the Town Charter." (Union Ex. 16, Personnel Policies § 47-1.) Ms. Crowley presented evidence showing that she was "employed in the services of the town." See, e.g., Ex. 2, Paycheck; Award 9. Therefore, the Court finds that the arbitrator had subjective arbitrability over the matter because the agreement contains "clear and unequivocal language" that it agreed to arbitrate these issues. See State, Department of Corrections, 115 A.3d at 929.

Essence from CBA

The Town contends that the arbitrator exceeded his authority by issuing an opinion that included issues not raised by the parties and which did not draw their essence from the CBA. The Town asserts that when the arbitrator held Ms. Crowley's appointment might not have been proper, the arbitrator exceeded his authority because it was not an issue before him. The Town stresses that the record shows that Ms. Crowley was appointed by the Board of Canvassers and not under civil service law. The Town further disagrees that the parties are governed by civil service law and not the CBA and asserts the holding is irrational and fails to draw its essence from the CBA.

Vacating an arbitrator's award is appropriate when it "exceed[s] his or her powers by interpreting a CBA in such a way that it contravenes state law or other public policies that are not

⁶ The arbitrator also found that the Town waived its right to argue Ms. Crowley was not in the Union after treating her as a member and leading her to believe she was a member for so long. (Award 10.)

subject to alteration by arbitration.” State, Department of Corrections, 115 A.3d at 931 (citing State Department of Corrections v. R.I. Brotherhood of Correctional Officers, 867 A.2d 823, 829 (R.I. 2005)). An alleged misconstruction of the contract is not a sufficient basis for vacating an arbitration award “even if the construction is clearly erroneous.” Jacinto, 120 R.I. at 912, 391 A.2d at 1175-76. The Court’s task is to ensure the arbitrator used the proper sources in making its decision, not to decide if the arbitrator ruled correctly. Id. at 1176. The award must only draw “its essence from the contract and [be] based upon a passably plausible interpretation of the contract.” Id. (internal quotations omitted).

The issue before the arbitrator was whether the dispute was arbitrable. (Award 2.) The Award suggests that the procedure in hiring Ms. Crowley “may” have been flawed because the Town presented evidence that she did not bid on her position. (Award 9.) Part of the Town’s argument turned on whether the Plaintiff was appointed to her position or bid on her position through the civil service selection process, aiding its argument that Ms. Crowley was not a classified Town employee. (Ex. 2, Town of Johnston’s Pre-Hearing Mem. 8). The arbitrator responded to this argument by discussing the evidence presented concerning her hiring process. (Award 9-10.) The Town presented evidence that there was no record evidencing a posting for the Clerk position, and an affidavit from Mr. Parata stating he did not remember a time when a Clerk from the Board of Canvassers bid on a position or used bumping rights. (Supplemental Ex. 2; Supplemental Ex. 3.) Ms. Crowley presented evidence that other Clerks in the office bid on their positions. (Stipulated Facts, ¶¶ 4-10.) Additionally, Ms. Crowley presented evidence showing how the Town led her to believe her position was covered under the CBA by: paying dues with money withheld from her paycheck, being included on the Seniority list, and her employment was governed by the CBA provisions. See Award, at 9. The Award’s

contemplation that Ms. Crowley may have been improperly hired had no bearing on the outcome of the award, and the arbitrator did not make a finding on it. Therefore, considering the Court's limited scope of review and presumption of validity, the Court must affirm the award because the arbitrator relied on the language of the CBA in making his decision. See N. Providence School Committee, 945 A.2d at 344; Buttie, 995 A.2d at 549. The arbitrator's decision "draws its essence from the contract and is based upon a passably plausible interpretation of the contract." The Court affirms the arbitrator's finding that the dispute is arbitrable. See id. (internal quotations omitted).

Conclusion

In conclusion, the current dispute is arbitrable because Ms. Crowley is a municipal employee in the Town of Johnston and therefore, an employee that falls under the provisions of the CBA. As Ms. Crowley is a Town employee who receives the benefits of the CBA, the arbitration clause governs this dispute, which renders this dispute arbitrable. Consequently, Plaintiff's Motion to Vacate the Arbitration Award is denied, and Defendant's Motion to Confirm the Arbitration Award is granted.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Town of Johnston v. Rhode Island Council 94, AFSCME, Local 1491, by and through its President, Louis M. Prata

CASE NO: PM 2015-1845

COURT: Providence County Superior Court

DATE DECISION FILED: October 1, 2015

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

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