STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: August 15, 2017]

CRANSTON FIREFIGHTERS, IAFF LOCAL 1363, AFL-CIO, Petitioners,	:	
v.	:	**C.A. No. PM-2016-4919**
CITY OF CRANSTON, Respondent.	:	

DECISION

MONTALBANO, J. Before this Court is a petition by the Cranston Fire Fighters, IAFF Local 1363, AFL-CIO (the Union) to vacate an arbitrator's award in a dispute with the City of Cranston (the City), concerning pension contributions contained in the parties' Collective Bargaining Agreement (CBA). The City moves to confirm the arbitrator's award. Jurisdiction is pursuant to G.L. 1956 § 28-9-18.

I

Facts and Travel

The Union and the City have had a long-standing collective bargaining relationship. During the 1990s, the City became concerned about the financial feasibility of its pension system. Specifically, at that time the City's financial advisors warned that the costs of paying out pensions were considerably more than what was being funded by the employees' contributions. As a result, Cranston's then-Mayor, Michael Traficante, approached the Union seeking to make changes to the fire fighters' pension plan. According to Mayor Traficante, the City wanted the police and fire fighters to change from the private pension system that was in

place to the retirement plan that was being offered by the State, the Municipal Employees' Retirement System (MERS). (Award 4.) Under MERS, the City and the Union learned that the employees' contribution rate would be ten percent. Id. at 5.

Once agreements between the parties were reached, the CBA codified the contribution rate of ten percent for those employees who were part of the new MERS system. Id. at 5. Paul Valletta, the President of the Union, testified that in negotiating the CBA, the Union sought to lock-in the employee pension contribution rates for employees entering the MERS system. Id. Therefore, Section 24.2 was included in the CBA, which sought to require the City to cover any increase in the MERS employees' contributions. Specifically, Section 24.2 provided in pertinent part:

> "In the event contributions by members of the Fire Department to the present pension system are more than . . . ten (10%) percent for the State of Rhode Island 'Optional Twenty (20) Year Service Pension' R.I.G.L. 45-21-2-22[1] [sic], with modifications at the effective date of this Agreement are increased during the term hereof, the City of Cranston agrees to pay the difference between the said . . . ten (10%) percent then required to be contributed, retroactively to the date of such increase over . . . ten (10%) percent."

In 2011, the State changed the MERS retirement program by enacting the Rhode Island Retirement Security Act of 2011. (Award 18.) The Rhode Island Retirement Security Act of 2011 became effective July 1, 2012 and created a new defined contribution plan for municipal Police and Fire in the State of Rhode Island, which increased the fire fighters' total contribution rate to eleven percent. Id. at 7, 18. However, the Union did not file a grievance at that time.

[1] Under Section 24.2 of the CBA, the parties cite to "45-21-2-22" as the section codifying the "Optional Twenty (20) Year Service Pension." However, the Court notes that there is no § 45-21-2-22 in the Rhode Island General Laws. Instead, the correct statute is § 45-21.2-22—entitled "Optional twenty year retirement on service allowance." Therefore, it is likely that the reference to "45-21-2-22" in the CBA was a drafting error made by the parties.

According to Mr. Valletta, the Union did not file a grievance because prior to this increase, the fire fighters were actually contributing a total of 11.5% on their own accord—with 10% going to the state pension and 1.5% going to the City to aid the City during a time of financial uncertainty.[2] (Tr. 43). Therefore, the fire fighters' deductions actually went down by .5% as a result of the modification, and the Union elected not to file a grievance. Id. However, the Union noted in its memorandum that in July 2015, "the State increased the [firefighters'] contribution rate to thirteen percent" with ten percent going to the defined benefit plan and three percent going to the defined contribution plan (Union's Mem. 5). See Award, 7-9. It was pursuant to this increase that the Union filed the present grievance. (Award 7; Tr. 30.)

Subsequently, with respect to this increase, the City informed the Union that it intended to deduct three percent from the fire fighters' paychecks, both retroactively and prospectively, in order to pay the three percent mandatory contribution under the new defined contribution plan. However, the Union argued that the City was obligated by the terms of the CBA—specifically, Section 24.2—to pay the increased pension contributions owed by the fire fighters. As a result, the Union filed a grievance with the City on August 29, 2015. The grievance was not resolved by the parties, and pursuant to the terms of the CBA, the Union submitted the grievance to arbitration.

The parties had a hearing before Arbitrator Gary Altman (the Arbitrator) on April 7, 2016. During the arbitration hearing, the parties stipulated that the issue to be decided was the

[2] In 2002, the Cranston Fire Fighters began contributing more than 10% due to a financial crisis in the City. (Award 6.) Mr. Valletta testified that the City approached the Union to reopen the Agreement to achieve financial savings. Id. The concession agreed to was that the "firefighters who were part of the MERS program would contribute an additional .5% per year, to a total of 11.5% by 2004" in order to help the City. Id. Even though the employees were contributing more than 10%, it must be understood that this additional amount was not going to the State retirement system, but instead was going to the City to be used as it saw fit during its financial plight. Id.

disposition of the grievance, and if the grievance was sustained, what the remedy should be. (Award 2.)

A

The Arbitration Award

In his decision, the Arbitrator first concluded that the grievance was procedurally arbitrable, although the grievance was filed more than thirty days after the event that triggered the grievance.[3] (Award 16.) The Arbitrator determined that "even if there is no actual written agreement to waive time limits[] a party, by its conduct, can be held to have waived its right to raise timeliness of the grievance at arbitration." Id. According to the Arbitrator, the City waived its right to challenge the timeliness of the Union's grievance by failing to raise the issue at the hearing. Id.; see also, Elkouri & Elkouri, How Arbitration Works 5-23 (Kenneth May ed.) (8th ed. 2016) ("An employer can be deemed to have waived objections to the union's failure to follow a contract's procedural requirements, particularly when the employer cannot prove that it had been prejudiced thereby."). As the grievance was procedurally arbitrable, the Arbitrator then addressed the merits of the matter.

According to the Arbitrator, Section 24.2 referred specifically to employee contributions "to the State of Rhode Island 'Optional Twenty (20) Year Service Pension' R.I.G.L. 45-21-2-22." (Award 18.) The Arbitrator found that the '"Optional Twenty (20) Year Service Pension"' cited in Section 24.2 was a defined benefit pension plan, which provided "employees an annual pension in which the amount of the pension is based on years of service, and age." Id. at 18. In contrast, the Arbitrator found the additional three percent contribution required by the State did

[3] Section 22(B) states "[s]tep 1. Not later than thirty (30) days, excluding weekends and holidays, after the event giving rise to the grievance, the employee or the Union must submit a grievance in writing to the Chief of the Department." (CBA § 22(B).)

not come into existence until the Rhode Island Retirement Security Act of 2011. Id. Such an increase, the Arbitrator believed, was a result of the Act's creation of a new mandatory defined contribution plan. Id. The Arbitrator concluded that this newly-created defined contribution plan was a statutorily separate and distinct pension plan from the plan articulated in § 45-21.2-22—the statutory section referenced in Section 24.2 of the CBA. Id. at 19. Additionally, in his decision, the Arbitrator further concluded as follows:

> "Since this additional defined contribution plan was not in existence when the parties first negotiated the language of Section 24.2, it certainly cannot be concluded that this defined contribution plan was in the minds of the negotiators when they first agreed to the 10% cap that appears in Section 24.2." Id.

As such, the Arbitrator concluded that Section 24.2 of the CBA had not been violated by the City's failure to cover the new three percent contribution owed by the fire fighters, and therefore, he denied the grievance. Id. at 19-20.

Following the Arbitrator's decision, the Union filed the present petition with this Court. The Union seeks to have the Arbitrator's Award vacated. In support of its position, the Union argues that the Arbitrator disregarded Section 24.2 of the CBA, which the Union believes required the City to pay for the additional three percent contribution. The Union further argues that the Arbitrator disregarded the parties' intent in drafting Section 24.2, and therefore, his decision failed to draw its essence from the contract. Finally, the Union contends the Arbitrator exceeded his powers by interpreting and applying a long-expired CBA between the parties from the 1990s instead of the CBA in effect when the grievance was filed.[4]

[4] In its memorandum, the Union argues that the Arbitrator erred by "interpreting Section 24.2 as it existed in 1995," rather than as it existed in the July 1, 2013 – June 30, 2016 CBA. Therefore, the Union argues that in deciding what was in the minds of the negotiators in 1995, "the Arbitrator was interpreting and applying an entirely different document." Union's Mem. 10-11.

II

Standard of Review

The judicial authority to vacate arbitration awards is statutorily prescribed in § 28-9-18. Pursuant to § 28-9-18, this Court may vacate an arbitrator's award only under three circumstances:

> "(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." Sec. 28-9-18(a)(1)-(3).

Our Supreme Court has held that "[a]s 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 [the Court's] review must end." Jacinto v. Egan, 120 R.I. 907, 911-12, 391 A.2d 1173, 1175-76 (1978). Indeed, '"[a] judicial reversal of an arbitration award based solely on the reviewing court's disagreement with the [arbitrator's] interpretation of the contract would not only nullify the bargain made by the parties but also threaten the strong public policy that favors private settlement of grievance disputes arising from collective bargaining agreements."' Id. (quoting Belanger v. Matteson, 115 R.I. 332, 355, 346 A.2d 124, 137-38 (1975)). Therefore, '"[a]bsent a manifest disregard of a contractual provision or a completely irrational result, the [arbitration] award will be upheld."' North Providence v. Local 2334 Int'l

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However, there is no evidence that the language of Section 24.2 from the 1996/1997 CBA—in which the contribution cap was first incorporated—is any different from the language of Section 24.2 of the CBA in effect when the grievance was filed—the July 1, 2013 – June 30, 2016 CBA. In his decision, the Arbitrator found the additional three percent defined contribution plan did not exist when the cap of Section 24.2 was originally negotiated. (Award 19.) Therefore, the Arbitrator concluded the parties could not have intended for the cap in Section 24.2 to apply to the defined contribution plan that was not yet in existence. Id.

Ass'n of Fire Fighters, AFL-CIO, 763 A.2d 604, 606 (R.I. 2000) (quoting Rhode Island Bhd. of Corr. Officers v. State Dep't of Corrections, 707 A.2d 1229, 1234 (R.I. 1998)). Such "insulation of arbitration awards has been justified on the ground that broad judicial review in this area undermines the strong governmental policy encouraging the private settlement of labor grievances through the relatively inexpensive and expedient means of arbitration." R.I. Council 94, AFSCME, AFL-CIO v. State of Rhode Island, 714 A.2d 584, 588 (R.I. 1998).

The Rhode Island Supreme Court "has recognized the limited role of the Judiciary in the arbitration process." Prudential Prop. & Cas. Ins. Co. v. Flynn, 687 A.2d 440, 441 (R.I. 1996) (citing Paola v. Commercial Union Assurance Cos., 461 A.2d 935, 936 (R.I. 1983)) (citations omitted). "'Moreover, a reviewing court must confirm an arbitrator's award unless it is vacated for reasons of fraud, corruption, undue influence, or abuse of an arbitrator's authority or modified or corrected' as prescribed in §§ 10-3-12 and 10-3-14.'" Aponik v. Lauricella, 844 A.2d 698, 706 (R.I. 2004) (quoting Balian v. Allstate Ins. Co., 610 A.2d 546, 550, 550 n.4, n.5 (R.I. 1992)).

III

Analysis

The Union asks this Court to vacate the Arbitrator's Award on the basis that it fails to draw its essence from and manifestly disregards portions of the CBA, and the decision was wholly irrational. Specifically, it argues that the Arbitrator's interpretation of the CBA did not address the intent of the parties and did not consider several important phrases contained in Section 24.2 of the CBA. Alternatively, the City takes the position that the grievance was inarbitrable. The City next argues that even if the grievance was subject to arbitration, the

Award was a plausible interpretation of the CBA, that the Union has failed to show sufficient reason for vacating said award, and therefore the Arbitrator's Award should be confirmed.

A

Arbitrability

The City first argues that the grievance was inarbitrable. Specifically, the City contends that if the Arbitrator had found in favor of the Union, then the award would have been contrary to "applicable state . . . law" that requires fire fighters to contribute three percent of their compensation to a defined contribution plan. Woonsocket Teachers' Guild, Local 951, AFT v. Woonsocket Sch. Comm., 770 A.2d 834, 838–39 (R.I. 2001) (quoting State v. R.I. All. of Soc. Servs. Employees, Local 580, SEIU, 747 A.2d 465, 469 (R.I. 2000)); see also, G.L. 1956 § 36-10.3-4(2). The Union argues that "there must be a direct conflict between the statutory language" and the CBA in order to negate the arbitrability of an issue. State Dep't of Admin. v. R.I. Council 94, A.F.S.C.M.E., AFL-CIO, Local 2409, 925 A.2d 939, 945 (R.I. 2007) (citations omitted). Here, the parties disagree on the interpretation of § 36-10.3-4(2), which states:

> "Each public safety member not participating in Social Security under the Federal Old Age, Survivors and Disability Income program, shall contribute to the member's individual account an amount equal to three percent (3%) of the member's compensation from July 1 to the following June 30." Sec. 36-10.3-4(2).

Arbitrability is an essential preliminary finding when considering the validity of an arbitrator's award. Our Supreme Court has noted that "a court shall rule in favor of submitting a dispute to arbitration unless the arbitration clause of the collective-bargaining agreement cannot be interpreted to include the asserted dispute, and that all doubts should be resolved in favor of arbitration." R.I. Court Reporters All. v. State, 591 A.2d 376, 377–78 (R.I. 1991) (citing United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582–83 (1960)). The

Rhode Island Supreme Court has further stated that when there are "doubts as to the arbitrability of disputes," a court should resolve them "in favor of arbitration." City of Newport v. Local 1080, Int'l Ass'n of Firefighters, AFL-CIO, 54 A.3d 976, 981 (R.I. 2012) (citing School Comm. of N. Kingstown v. Crouch, 808 A.2d 1074, 1078 (R.I. 2002)) (citations omitted). "However, [that] presumption in favor of arbitration applies only when there is uncertainty about the arbitrability of a dispute." Id. at 981 (citing AVCORR Mgmt., LLC v. Cent. Falls Det. Facility Corp., 41 A.3d 1007, 1012 (R.I. 2012)).

Moreover, when "'applicable state . . . law trumps contrary contract provisions, contrary practices of the parties, and contrary arbitration awards,'" a dispute is inarbitrable. Woonsocket Teachers' Guild, Local 951, AFT, 770 A.2d at 838–39 (quoting R.I. All. of Soc. Servs. Employees, Local 580, SEIU, 747 A.2d at 469). "But there must be a direct conflict between the statutory language and a competing contractual provision" for an issue to be inarbitrable. R.I. Council 94, A.F.S.C.M.E., AFL-CIO, Local 2409, 925 A.2d at 945 (citing State, Dep't of Mental Health, Retardation, & Hosps. v. R.I. Council 94, A.F.S.C.M.E., AFL-CIO, 692 A.2d 318, 324-25 (R.I. 1997)).

Both parties rely on City of Cranston v. Int'l Bhd. of Police Officers, Local 301, 115 A.3d 971 (R.I. 2015). The City contends that the case prevents the grievance from being considered by an arbitrator because the award may run contrary to statute. The Union contends that Int'l Bhd. of Police Officers, Local 301 is clearly distinguishable from the case at hand and is inapposite. In Int'l Bhd. of Police Officers, Local 301, the arbitrator's award involved a police officer who wished to retire, according to the "round-up rule," after nineteen years, six months and one day of service as negotiated in the CBA, instead of the statutorily required twenty years of service. Id. at 973-74. State law requires that a police officer "complete[] at least twenty (20)

years of total service." Id. at 974 (citing § 45-21.2-22). Despite continuing with her grievance, the police officer served the full twenty years and then retired. Id. at 974. "[T]he arbitrator found that, '[e]ven though the [round-up rule] benefit was omitted from the [statute], the City remains contractually obligated to provide that benefit to unit members,' pursuant to the CBA." Id. at 975. Further, "[t]he arbitrator declared that the city 'must either provide the benefit, on its own, or, it may endeavor to secure an amendment of the special legislation to include that benefit.'" Id. In affirming the Superior Court justice's vacating the award, our Supreme Court stated, "it is clear that the arbitrator exceeded his authority by attempting to enforce a CBA provision in direct contravention of state law." Id. at 977. The Court noted that "[a]lthough we have recognized that cities and towns may enter into contracts designed to give greater benefits than state law provides, that authority is not without limitation." Id. at 979 (citing Chester v. aRusso, 667 A.2d 519, 522 (R.I. 1995)).

Here, § 36-10.3-4(2) states "[e]ach public safety member . . . shall contribute to the member's individual account an amount equal to three percent (3%) of the member's compensation" per year. Sec. 36-10.3-4(2). The City interprets this language to simply mean that the City cannot contribute the three percent; only the individual can make the contribution. The Union believes the language does not preclude the City from paying the individual an increased amount in order for the individual to make that contribution. Both parties' interpretations are plausible. Accordingly, the Court must make a "presumption in favor of arbitration." Local 1080, Int'l Ass'n of Firefighters, AFL-CIO, 54 A.3d at 981 (citing AVCORR Mgmt., 41 A.3d at 1012) (holding "[the] presumption in favor of arbitration applies only when there is uncertainty about the arbitrability of a dispute").

Further, the Union argues that to interpret the Supreme Court's decision in Int'l Bhd. of Police Officers, Local 301, finding a CBA clause conflicted with state law, to be applicable in this case would lead to an inevitable incongruity with §§ 28-9.1-1, et. seq., the Fire Fighters' Arbitration Act. 115 A.3d at 977. That Fire Fighters' Arbitration Act states, in the statement of policy:

> "It is declared to be the public policy of this state to accord to the permanent uniformed members, rescue service personnel of any city or town, emergency medical services personnel of any city or town, and all employees of any paid fire department in any city or town all of the rights of labor other than the right to strike or engage in any work stoppage or slowdown. To provide for the exercise of these rights, a method of arbitration of disputes is established." Sec. 28-9.1-2(b).

As fire fighters are members of a public safety union, the statute requires that they be afforded arbitration to deal with disputes, as they are unable to strike as can other nonpublic safety unions. Id. To interpret the law to deny the arbitrability of a claim would fly in the face of the Fire Fighters' Arbitration Act, and because the CBA allows for any grievance to proceed to an arbitrator, it is clear that the issue is arbitrable. R.I. Court Reporters All., 591 A.2d at 377–78 (citing United Steelworkers of America, 363 U.S. at 582–83.)

Our Courts lean toward arbitrability of a grievance if contemplated in a CBA between two parties. Id. In the case at hand, there are different interpretations of the meaning of § 36-10.3-4(2). The two different interpretations, however, do not make the grievance inarbitrable. In addition, the Fire Fighters' Arbitration Act requires arbitration of grievances between a municipality and its fire fighters' union. For these reasons, this Court holds that the grievance is arbitrable.

B

The Arbitrator's Award

In the current CBA, the parties agreed that the City would pay any Cranston fire fighter's additional cost above either the fire fighter's nine or 10 percent contribution to the pension system, effectively creating a cap on the fire fighter's contribution. (CBA § 24.2(1).) This cap is the crux of the grievance that the Union filed.

The Arbitrator's Award was primarily based on the difference between a defined benefit plan and a defined contribution plan. See Award 17-20. The differences between a defined benefit plan and a defined contribution plan have been explained as follows:

> "A defined benefit plan pools the [retirement] plan's assets in an aggregate trust fund and promises a fixed amount to plan participants at retirement regardless of investment performance. In a defined benefit plan the sponsoring employer is liable for the payment of plan benefits and therefore bears the risk of accumulating insufficient assets . . . a defined contribution plan assigns each participant an individual account. At retirement the participant receives the entire account balance. The relative success or failure of the plan depends on how well the assets have been invested." Rethinking the Risk of Defined Contribution Plans, 4 Fla. Tax Rev. 607, 610–12 (2000).

The Arbitrator wrote in his award that before the Rhode Island legislature passed sweeping pension reform, Cranston fire fighters contributed to a defined benefit plan, either through the state MERS system or through the City of Cranston Fire Fighters' pension. (Award 18.) On July 1, 2012, a new state law created an additional defined contribution plan that required fire fighters who do not contribute to Social Security to contribute three percent of their salary to the defined contribution plan. Id.

The Union argues that the Arbitrator's interpretation of the CBA does not draw its essence from the CBA. The Union contends that the Arbitrator's decision must be vacated, as

Section 24.2 of the CBA does not draw a distinction between the defined contribution plan and the defined benefit plan.

However, the Arbitrator considered this additional defined contribution plan to be statutorily required and separate and distinct from the defined benefit plan contemplated when the CBA clause was drafted in 1995. Id. at 19. He based his decision on the reference in Section 24.2(1) to § 45-21.2-22, entitled "Optional twenty year retirement on service allowance." Id. The Arbitrator believed that the reference in the CBA to this state statute was to the old pension plan—the defined benefit plan. Id. The Arbitrator further supported his conclusion that the defined benefit and defined contribution plans were separate and distinct by explaining that "[t]he defined contribution deductions are not co-mingled with the accounts for the defined benefit pension plan, the money for the defined contribution plan is submitted to TIAA-CREFF [sic] for the benefit of employees." Id. at 20.

Thus, the Arbitrator, in interpreting the CBA, drew this distinction based on the reference in Section 24.2 to § 45-21.2-22, which he interpreted to include only the defined benefit plan. The Arbitrator explained that "the specific language of Section 24.2 refers to the 'optional twenty year service pension;' which was the traditional pension plan, and was governed by Chapter 45-21, the provision dealing with the defined benefit pension plan." (Award 19-20.) The Arbitrator found that the defined benefit plan and the defined contribution plan were different programs because the defined contribution plan's funds are "submitted to TIAA-CREFF [sic] for the benefit of employees." (Award 20.) Consequently, the Arbitrator based his decision on his interpretation of the contract, his award clearly draws its essence from the contract, is based on a passably plausible interpretation of the contract, and is within the Arbitrator's authority.

The Union further argues that the Arbitrator's Award must be vacated because it "manifestly disregards a contractual provision." R.I. Council 94, AFSCME, AFL-CIO, 714 A.2d at 588 (citations omitted). Section 24.2(1) of the CBA provides:

> "In the event contributions by members of the Fire Department to the **present pension system** are more than nine (9%) percent for the City of Cranston Fire Fighters' pension and ten (10%) percent for the State of Rhode Island 'Optional Twenty (20) Year Service Pension' RI.G.L. [45-21.2-22], **with modifications at the effective date of this Agreement** are increased during the term hereof, the City of Cranston agrees to pay the difference between the said nine (9%) percent and ten (10%) percent then required to be contributed, retroactively to the date of such increase over nine (9%) percent and ten (10%) percent." (CBA § 24.2(1) (emphases added).

The Union contends that the Arbitrator's Award, in making a distinction between defined benefit and defined contribution plans, violated the CBA by ignoring language in Section 24.2, such as "present pension system" and "with modifications at the effective date of this Agreement." (CBA § 24.2(1).) The Union suggests that this language indicates intent by the parties that Section 24.2 of the CBA be applicable to both types of plans, and that the Arbitrator has therefore disregarded the plain and unambiguous provisions of Section 24.2(1). However, this argument disregards the fact that the only specific statutory reference in Section 24.2 of the CBA is to § 45-21.2-22, the statutory framework for the defined benefit plan. If the parties intended Section 24.2(1) of the CBA to apply to the defined contribution plan, they could have included a specific reference to § 36-10.3-4(2) in Section 24.2(1) of the CBA. They did not.

Our Supreme Court has noted that an arbitrator "'is without authority to disregard or modify plain and unambiguous provisions.'" Nappa Constr. Mgmt., LLC v. Flynn, 152 A.3d 1128, 1134 (R.I. 2017) (quoting Wyandot, Inc. v. Local 227, United Food and Commercial Workers Union, 205 F.3d 922, 929 (6th Cir. 2000)) (holding "although an arbitrator 'may

construe ambiguous contract language, he is without authority to disregard or modify plain and unambiguous provisions.'"). However, in this case, the Arbitrator's interpretation is passably plausible, as the Arbitrator determined that Section 24.2 of the CBA applied to only defined benefit plans. As such, "[a]lthough this Court might well have interpreted [Section 24.2] differently, [it is required] by appellate review to give great deference to the arbitrator's award." State v. R.I. All. of Soc. Serv. Employees, Local 580, 861 A.2d 455, 458 (R.I. 2004). Our Supreme Court has stated that a court may not nullify an arbitration award because it disagrees with the arbitrator's interpretation of the contract as that would "threaten[] the strong public policy that favors private settlement of grievance disputes." Jacinto, 120 R.I. at 916, 391 A.2d at 1178. Even if the Court were to disagree with the Arbitrator's interpretation of the CBA, it could not overturn the Arbitrator's decision on that basis. R.I. All. of Soc. Serv. Employees, Local 580, 861 A.2d at 458. Because the Arbitrator's decision "'draws its essence' from the contract and is based upon a 'passably plausible' interpretation of the contract," his award must be confirmed. Jacinto, 120 R.I. at 912, 391 A.2d at 1176 (citations omitted).

The Union further argues that the Arbitrator's Award does not draw its essence from the CBA because it does not contemplate the parties' intent, citing R.I. Council 94, AFSCME, AFL-CIO, which holds that "[t]he arbitrator is confined to interpret the terms of the agreement so as to effectuate the intentions of the parties to the contract." 714 A.2d at 588. "Where no ambiguity is found, it is basic that the intention of the parties must govern *if* that intention can be clearly inferred from the writing and if it can be fairly carried out in a manner consistent with settled rules of law." W.P. Assocs. v. Forcier, Inc., 637 A.2d 353, 356 (R.I. 1994) (citing Westinghouse Broad Co., Inc. v. Dial Media, Inc., 122 R.I. 571, 581, 410 A.2d 986, 991 (1980)) (emphasis in original). "In interpreting unambiguous contracts, [the Court] 'consider[s] the situation of the

parties and the accompanying circumstances at the time the contract was entered into, not for the purpose of modifying or enlarging or curtailing its terms, but to aid in the interpretive process and to assist in determining its meaning.'" Id. (citing Hill v. M.S. Alper & Son, Inc., 106 R.I. 38, 47, 256 A.2d 10, 15 (1969)).

While determining the parties' intent when forming the CBA, the Arbitrator drew a distinction between defined benefit plan, as described in Title 45, Chapter 21, and the defined contribution plan, as described in § 36-10.3-4(2). The Arbitrator wrote, "[t]he defined contribution deductions are not co-mingled with the accounts for the defined benefit pension plan, the money for the defined contribution plan is submitted to [TIAA CREF] for the benefit of employees." (Award 20.) The Union argues that this distinction is without merit. However, the Arbitrator's conclusion is a passably plausible interpretation of the intent of the parties.

In this case, testimony provided during the arbitration hearing established that Section 24.2 was not discussed during negotiations for the CBA in effect from July 1, 2013 to June 30, 2016. (Tr. 56:18-57:5, Apr. 7, 2016.) Other testimony established further that the language of Section 24.2 had been the same since 1997. Id. at 17:10-14. Further, the Arbitrator found:

> "[s]ince this additional defined contribution plan was not in existence when the parties first negotiated the language of Section 24.2, it certainly cannot be concluded that this defined contribution plan was in the minds of the negotiators when they first agreed to the 10% cap that appears in Section 24.2. To now conclude that the parties must have intended to include the 3% employee contribution for the defined contribution plan, in the 10% cap for the defined pension plan in 24.2, is conjecture, and by doing so the arbitrator would be creating a new contractual benefit, rather than interpreting the language of the parties' Agreement." (Award 19.)

Clearly, the Arbitrator considered the intent of the parties when making his decision. Id. In fact, the Arbitrator did "interpret the terms of the agreement" in order to "effectuate the intentions of the parties to the contract." R.I Council 94, AFSCME, AFL-CIO, 714 A.2d at 588. The Union

disagreed with the Arbitrator's interpretation of the parties' intent. However, even if this Court were to disagree with the Arbitrator's interpretation of the parties' intent, it could not overturn his award. R.I. All. of Soc. Serv. Employees, Local 580, 861 A.2d at 458.

In this case, there is no statutory basis upon which the Arbitrator's Award may be vacated. The award was not the result of "fraud, corruption, undue influence, or abuse of an arbitrator's authority." Aponik, 844 A.2d at 706. As such, this Court must confirm the Award. Id. ("a reviewing court must confirm an arbitrator's award unless it is vacated").

IV

Conclusion

The grievance filed by the Union in this case is arbitrable. The Arbitrator based the Award on his interpretation of the contract. His Award clearly draws its essence from the contract (CBA) and it is further based upon a passably plausible interpretation of the contract. The Award is clearly within the Arbitrator's authority. The Award neither manifestly disregards the law, nor produces an irrational result. Consequently, the Union's Motion to Vacate the Arbitrator's Award is denied, and the City's Motion to Confirm the Arbitrator's Award is granted.

Counsel shall submit an appropriate Order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Cranston Firefighters, IAFF Local 1363, AFL-CIO v. City of Cranston
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COURT:	Providence County Superior Court
DATE DECISION FILED:	August 15, 2017
JUSTICE/MAGISTRATE:	Montalbano, J.

ATTORNEYS:

For Plaintiff:	Elizabeth A. Wiens, Esq.
For Defendant:	Timothy M. Bliss, Esq.