STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed May 3, 2021]

COMMUNITY COLLEGE OF RHODE ISLAND FACULTY ASSOCIATION/NEARI/ NEA,	:	
Petitioner,	:	
v.	:	**C.A. No. PM-2020-04882**
COMMUNITY COLLEGE OF RHODE ISLAND,	:	
Respondent.	:	

DECISION

VOGEL, J. Community College of Rhode Island Faculty Association/NEARI/NEA (the Union) brings this Motion to Vacate Arbitration Award entered against it in favor of Community College of Rhode Island (CCRI). CCRI objects to the Union's motion and has filed its own Motion to Confirm the Arbitration Award and for an Award of Attorney's Fees. This Court exercises jurisdiction over this controversy pursuant to G.L. 1956 §§ 28-9-17 and 28-9-18. For the reasons set forth herein, the Court denies the Union's Motion to Vacate and grants CCRI's Motion to Confirm Arbitration Award. The Court also conditionally grants CCRI's request for attorney's fees.

I

Background[1]

This controversy involves an interpretation of the collective bargaining agreement which governs the relationship between the Union and CCRI. *See* Ex. 2 to Pet'r's Mem. Law Supp. of Mot. Vacate (CBA). Pertinent to this case, the CBA establishes a "Curriculum Review Committee" (CRC) composed of 13 voting faculty members and chaired by the Vice President for Academic Affairs. *See* CBA, Art. II, §§ (G)(1)-(2)[2]; Ex. 1 to Pet'r's Mem. (Arbitration Decision and Award) at 1. The purpose of the CRC is to "consider all courses of study and programs, regardless of origin, including all experimental courses which have run for a maximum of two semesters, and to approve or reject individual courses to be offered for degree credit in existing or proposed programs." (CBA, Art. II, § (G)(4).) Article II, Section (G)(4) further provides:

> *Modifications to existing courses, including changes in catalog descriptions, shall be subject to the approval of the Curriculum Review Committee*. All courses affirmed by the Curriculum Review Committee are subject to approval by the President of the College. Any recommendation rejected by the President shall be returned to the Curriculum Review Committee with the President's reasons for rejection. The Curriculum Review Committee will in turn forward the rejection and the reasons to the appropriate academic unit. *Id.* (emphasis added).

[1] The Court bases this Decision on the materials submitted by the parties in support of their respective positions: the Arbitrator's Decision and Award; the Collective Bargaining Agreement; and the Union's Post-Arbitration Brief. Of note, neither party provided the Court with arbitration hearing transcripts or minutes from meetings of the Curriculum Review Committee (CRC) which were presented to the arbitrator as a joint exhibit. *See* Ex. 1 to Pet'r's Mem. (Arbitration Decision and Award) at 1, 22 (noting that the arbitrator reviewed 570 pages of meeting minutes from 82 CRC meetings over 23 years). The parties also waived oral argument. *See* March 4, 2021 Email to Judge Vogel.

[2] The Court notes that there appears to be a typographical error in Article II of the CBA, as three sections within the same article are labeled "A," including the section governing the CRC at issue here. *See* CBA, Art. II. However, it is clear that this section of the CBA was meant to be labeled "G," as it is the seventh section enumerated in Article II and follows directly after "F." *See id.* Indeed, the arbitrator refers to this section as Article II, Section G; this Court will follow the same convention. *See* Arbitration Decision and Award at 3.

Of note, beyond this contractual language, "there are no committee rules or regulations, handbooks or other documents that set forth the parameters of the jurisdiction of the CRC or specifically lists it[s] duties and responsibilities . . . ." (Arbitration Decision and Award at 2.)

In 2017, CCRI academic leadership proposed an additional three-week winter session, known as a "J-Term," with the hope that adding this term would positively impact student success and improve disappointing graduation and retention rates. *Id.* at 6. CCRI also sought to keep pace with equivalent colleges that offered condensed terms over the traditional winter break.[3] *Id.*

Dr. Rosemary Costigan, CCRI's Vice President for Academic Affairs, requested that department chairs and deans identify which courses would be adaptable to a three-week session. *Id.* The same process previously had been utilized when selecting summer session courses to be completed in less than the regular 15-week semester. *Id.* at 7.[4] The Union objected to CCRI's plan to offer three-week sessions without first submitting the modified courses to the CRC for review and approval in accordance with Article II, Section G of the CBA. *Id.* at 9.

CCRI ultimately chose to offer 19 courses for inclusion in a three-week J-Term claiming that the condensed programs would follow the 15-week semester sessions as to content, credit hours, and student learning outcomes. *Id.* at 6, 7. Of the 19 courses, fourteen were distance-learning classes that previously had been offered as such during the fifteen-week Spring and Fall terms. *Id.* at 6. CCRI did not submit any of those courses of study to CRC to "consider" and "approve or reject" them for inclusion in an intensive three-week format. *Id.* at 6, 8; *see* CBA, Art. II, § (G)(4). In response, the Union filed a grievance under Article IX of the CBA, which sets forth the

[3] Although planning for the J-Term began in 2017, CCRI did not offer the three-week J-Term session to students until 2019. (Arbitration Decision and Award at 6, 7.)

[4] The Spring and Fall terms each span 15 weeks. (Arbitration Decision and Award at 1.) CCRI also offers two six-week sessions in the summer. *Id.*

grievance procedure for challenging the "interpretation, application, or violation of any of the provisions of [the] Agreement." CBA, Art. IX, § (A)(1); Arbitration Decision and Award at 1. On November 19, 2018, when the grievance was not satisfactorily resolved, the Union filed a demand for arbitration. *See* CBA, Art. IX, § (A)(4); Arbitration Decision and Award at 2. By agreement of the parties, CCRI did not delay its plan to offer a J-Term pending the outcome of the grievance procedure and arbitration. The program began in 2019. (Arbitration Decision and Award at 3.)

Arbitration

The parties agreed to submit the following question to arbitration:

> "Did the College violate Articles I and II of the Collective Bargaining Agreement by refusing to submit courses it had selected for the J-Term (Winter Intercession) 2019 to the Curriculum Review Committee for approval?" *Id.* at 2.

The arbitrator, John J. Harrington conducted hearings on September 24, 2019, December 13, 2019, and December 18, 2019. *Id.* Dr. Rosemary Costigan, Vice President for Academic Affairs, testified on behalf of CCRI that all courses included in the J-Term were regular courses offered in other semesters. *Id.* at 6-7. She stated that the three-week courses provide students with the same content, credit hours and learning outcomes as during a 15-week session. *Id.* at 7. She asserted that modifications to the length of a course constituted a change modality and did not require resubmission of the course to the CRC. *Id.* at 5, 6. She provided examples in which CCRI had adopted changes in modality and scheduling without CRC involvement, such as when summer session classes extended beyond the usual 6-week session or were presented in fewer than six weeks. *Id.* at 5. Dr. Costigan further testified that changing an in-person class to distance learning or a combination of both did not require submission to CRC. *Id.* She testified that reapproval by CRC was required only if the course itself was modified and that once approved, a course may be

taught in any modality if the learning outcomes, hours, and credits remain unchanged. *Id.* at 7-8, 20.

In contrast, the Union President[5] disagreed and testified that certain changes in modality require CRC approval. *Id.* at 9. He referenced the CRC "Course Proposal Approval Tracking Form" that directs a proponent for course approval to identify the modality of the course. He testified that CCRI had attempted to eliminate that requirement, but that effort failed. *Id.* at 9-10. The Union leadership reasoned that including this requirement reflects an intent to involve CRC for changes in modality. *Id.* The Union President opined that any course approved for presentation in a 15-week format must be resubmitted to CRC before being offered in condensed format. *Id.* at 10-11. He noted that CRC adopted a policy in 2014 permitting minor changes in a course syllabus without CRC approval. *Id.* at 11.

The Union also offered CRC minutes showing courses submitted to CRC for reapproval in which the proposed modifications involved changes in modality and in the number of credits earned. *Id.* at 8, 9.

The long-standing Chair of the Psychology Department who oversees 15 full-time and between 40 and 50 part-time adjunct faculty members also testified. *Id.* at 12. He expressed concern that the foundational course, General Psychology, was offered during the J-Term. He noted that the professor of the J-Term class eliminated two required core chapters which negatively impacted learning outcomes. *Id.* at 12-13. The Chair testified that even though the course material for the J-Term General Psychology class included the same outcomes included in other semesters,

[5] The limited record submitted to the Court does not include the identities of the Union President or faculty members who testified at the arbitration hearing other than to note without further identification that department chairs Kilduff, Killgore, Valicenti and Sienkiewicz offered testimony. (Arbitration Decision and Award at 24.) The Court intends no disrespect by referring to these witnesses by their positions rather than their names.

the omission of the two chapters rendered it a "partial course." *Id.* at 12. When taught in regular semesters, students' learning and performance are assessed through in-class proctored exams. *Id.* at 13. J-Term General Psychology students took an at-home open book test. *Id.* However, the Chair acknowledged that when he found that a professor in the psychology department was not following required procedures, that professor was subject to removal from the class or might be required to receive developmental training. *Id.* at 14.

Next, the Chair of the Social Science Department expressed concerns about offering Sociology 1010 as a distance learning class during the J-Term. *Id*. at 15. The class had been taught remotely in other semesters, and the syllabus for the J-Term did not differ from previous classes. *Id.* However, when the Chair reviewed the course materials after the session ended, she realized that some required chapters were omitted. On this basis, she opined that certain approved learning outcomes were not achieved during the J-Term. *Id.*

The Chair of the Mathematics Department testified about the inclusion of Math 1139 as a distance learning class in the J-Term session, a course she previously taught both as an in-person lecture class and on-line. *Id.* At 17. She expressed concern that the J-Term students were not sufficiently tested to determine whether they achieved course outcomes. *Id.* It was unclear whether her concerns referred to the condensed format of the course or the failure of the particular professor to adhere to course requirements. *See id.*

The Chair of the Level 2 Nursing Department testified that she taught Pharmacology 3, during the J-Term, and the "content, credit hours and outcomes, including the exams, were the same as when the course was taught during a regular semester." *Id.* at 18. She further testified that as a department chair, she encountered instances in which a professor had neither followed the

approved syllabus nor presented all approved outcomes. *Id.* She handled those situations at the department level and did not refer the issue to the CRC. *Id.*

Following the close of testimony, the Union argued that a change in presentation of a course from a typical 15-week semester or six-week summer session to twelve days was a significant modification. *Id.* at 20. Furthermore, the Union contended that the term "modification" was not ambiguous and that the plain meaning rule requires one interpretation of Article II, Section G(4): that any changes to a course, including modality changes, requires CRC approval. *Id.* at 20-21. The Union further argued that no exceptions to the plain meaning rule apply in this case. *Id.* at 21. The Union also pointed to J-Term courses in which syllabi were modified and student learning outcomes were not achieved; the Union contended that such courses required approval by the CRC. *Id.* The Union cited the course approval form and the requirement that the course proponent identify a modality as proof that certain modalities may be inappropriate for certain courses. *Id.* at 22. The Union requested that the arbitrator require CCRI to submit any course modification to the CRC, including modality changes. *Id.* at 23.

Conversely, CCRI argued that the process used to select and schedule J-Term courses had been used in other condensed sessions, including summer sessions. *Id.* at 23. According to CCRI, the course descriptions, content, credit hours, and student learning outcomes as approved by the CRC were not altered for the J-Term; only the modality to the courses were changed, and those changes were typically submitted for reapproval to the CRC. *Id.* CCRI contended that the Union's position was inconsistent with the contractual language and the parties' prior interpretations. *Id.* at 24. Relying on the joint exhibit of CRC minutes, CCRI further argued that the Union could point to only three examples in over twenty years where a course was resubmitted to the CRC for a modality change, and that in all three examples, the courses included substantive changes in

addition to the modality change. *Id.* CCRI averred that the history of the CRC demonstrated that the parties understood the CRC's jurisdiction to be limited to changes in course description, content, credit hours, and student learning outcomes. *Id.* Finally, CCRI argued that a professor's failure to teach the courses as approved by the CRC subjected the individual professor to discipline but did not involve CRC participation. *Id.* at 24-25.

On April 3, 2020, the arbitrator issued his decision denying the Union's grievance. The arbitrator noted that "[f]rom an educational policy perspective, the Union raises what appears to be legitimate concerns about how a college course originally proposed and approved to be taught in a period of time that extends over 15 weeks or six weeks can be taught in 12 days and still achieve the same educational outcomes." *Id.* at 25. However, the arbitrator emphasized that "educational policy" concerns were outside the scope of his determination. *Id.* He articulated the issue before him as interpreting the meaning and scope of the provision '"[m]odifications to existing courses . . . shall be subject to the approval of the Curriculum Review Committee."' *Id.* (quoting CBA, Art. II, § (G)(4)). He rejected the Union's argument that the term "modifications" was clear and unambiguous. *See id.* at 25-26. He focused on determining the "intent of the parties on what 'modifications' would require a new approval of the Committee[.]" *Id.* at 25; *see id.* ("Framed another way, what, if any, modifications could be made without a new Committee approval?").

The arbitrator noted that only the following changes in catalog descriptions expressly require CRC approval: "the name of the course, the identifying number designation of the course, the number of credits awarded for successful completion of the course, and a brief description of the course." *Id.* at 25-26. These are changes included within the meaning of the term "catalog descriptions." *See id.* at 25. The arbitrator found that the CBA does not otherwise define the term

"modifications" nor has the CRC "adopted rules of procedure that expressly defines the term." *Id.* at 26. The arbitrator found the term "modifications" to be overly broad and ambiguous stating that "[t]he only source of a definition of the term and whether it is so broad to include every change to an approved course, or is more narrow to only cover a limited group of changes, is an examination of the course of dealings of the parties over the years as they defined the term through their actions." *Id.*

Upon examining the evidence regarding the course of dealings between the parties, the arbitrator determined that "[a]ny course approved by the CRC and then offered in any other format that was not listed on the original approval form could not be taught in such a way that changed the course description, the content, the credit hours or the student learning outcomes that had been approved for the course" by the CRC. *Id.* at 26. According to the arbitrator, "[t]hose four components had to be maintained whether the course was taught in 15 weeks, 6 weeks, 12 days, in a classroom or on-line through distance learning." *Id.* The arbitrator further stated that a professor's failure to teach the course with respect to course description, content, credit hours, and student learning outcomes as approved by the CRC did not constitute a violation of the CBA by CCRI. *Id.* at 27. Instead, the arbitrator found that CCRI wanted the courses to be taught as approved and that the changes to the course were discovered only after the session ended. *Id.* at 27.

The arbitrator rejected the Union's argument that *any* change to a course required CRC approval. *Id.* Such interpretation, according to the arbitrator, "is too broad and not consistent with the way in which the CRC has functioned over many years." *Id.* at 29. More specifically, the arbitrator determined that the parties' prior course of dealings demonstrated that a change in modality, such as switching to distance learning or shortening a 15-week course to a shorter

summer presentation, did not require CRC approval, so long as the "course content, the credits and student learning outcomes" remained the same as those previously approved by CRC. *Id.* at 27-28.

Ultimately, the arbitrator found that "[t]he 19 courses offered in the 2019 J-Term had been approved by the CRC" and were "supposed to be offered and taught in a way that was compliant with the approved content of the course and the student learning outcomes." *Id.* at 28. Further, "[t]he only modification was the change in format which in the past had not required a new CRC approval under the contract." *Id.* Consequently, the arbitrator determined that CCRI did not violate Articles I[6] or II of the CBA by offering any of the 19 courses in the J-Term without resubmission to the CRC. *Id.* at 28, 29. He denied the grievance. *Id.* at 29.

On June 30, 2020, the Union filed a timely Motion to Vacate Arbitration Award pursuant to §§ 28-9-14 and 28-9-18. *See* § 28-9-21. CCRI responded by filing a Motion to Confirm the Arbitration Award pursuant to § 28-9-17 and for an Award of Attorney's Fees pursuant to § 28-9-18(c).

II

Standard of Review

"'[I]n the typical case, the judiciary's role in the arbitration process is limited."' *Providence Teachers' Union Local 958, AFT, AFL-CIO v. Hemond*, 227 A.3d 486, 490 (R.I. 2020) (quoting *Providence School Board v. Providence Teachers Union, Local 958, AFT, AFL-CIO*, 68 A.3d 505,

[6] Although the parties' proposed question to the arbitrator also referenced Article I of the CBA, the arbitrator noted that this section of the CBA was the "[r]ecognition clause in the contract" and that "[n]o evidence was presented on the issue and no arguments were made by the Union alleging a violation of the Article." (Arbitration Decision and Award at 29.) Article I of the CBA provides that the Union is the "exclusive bargaining agent for all collective negotiations . . . for all employees of the Community College of Rhode Island who are members of the bargaining unit . . . ." (CBA, Art. I.)

508 (R.I. 2013)). "Normally, the conditions for vacating an arbitrator's award are extremely narrow." *Id.* Pursuant to § 28-9-18, the Court must vacate an arbitration award only under the following 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."

"Otherwise, '[t]he court has no authority to vacate the arbitrator's award absent a manifest disregard of a contractual provision, a completely irrational result, a decision that is contrary to public policy, or an award that determined a matter that was not arbitrable in the first place.'" *State, Department of Corrections v. Rhode Island Brotherhood of Correctional Officers,* 64 A.3d 734, 739 (R.I. 2013) (quoting *Cumberland Teachers Association v. Cumberland School Committee,* 45 A.3d 1188, 1192 (R.I. 2012)).

"[A] court has no authority to vacate an arbitration award based upon a mere error of law." *Id.* at 740. However, the Court may vacate an arbitration award "'if the arbitrator manifestly disregarded the law."' *Id.* at 739 (quoting *Cumberland Teachers Association,* 45 A.3d at 1192). "'[A] manifest disregard of the law occurs when an arbitrator understands and correctly articulates the law, but then proceeds to disregard it."' *Id.* at 740 (quoting *Cumberland Teachers Association,* 45 A.3d at 1192). But, "[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." *Id.* (quoting *Cumberland Teachers Association,* 45 A.3d at 1192.)

III

Motion to Vacate/Confirm

Crucial to the arbitrator's decision that CCRI did not violate the CBA was his determination that the operative phrase "modifications to existing courses" was ambiguous, and reasonably and clearly susceptible to more than one rational interpretation. (Arbitration Decision and Award at 25-26 (noting that the term could be "so broad to include every change to an approved course, or is more narrow to only cover a limited group of changes")).

In challenging this finding, the Union argues that the arbitrator impermissibly looked beyond the clear language of the CBA in order to define the term "modification" (Union's mem. At 4) Specifically, the Union argues that the arbitrator improperly looked to the parties' past practices in construing the term and disregarded the clear and unambiguous language of the contract by looking to the parties' past practice to define the term. (Pet'r CCRI's Mem. Law Supp. of Mot. Vacate (Union's Mem.) at 4.) The Union contends that no exception to the plain meaning rule applies. *Id.* at 5-6.

CCRI counters that the term "modification to existing courses" is ambiguous and therefore, the plain meaning rule does not apply. (Resp't's Mem. Opp'n to Mot. Vacate Supp. of Mot. Confirm and for Award of Attorney Fees (CCRI Mem.) at 12.) CCRI claims that the Union's focus on the singular word "modification" is misplaced and that the arbitrator properly viewed the term in the context of the phrase "modification *of a course.*" *Id.* at 12 (emphasis in original). CCRI asserts that the Union's interpretation fails to give all of the words in the CBA meaning and would lead to absurd results. *Id.* at 13-14. CCRI concludes that the arbitrator appropriately analyzed the parties' course of dealing to interpret the meaning of the language in the CBA, the award draws

its essence from the contract, and was a passably plausible interpretation of the CBA. *Id.* at 14, 16-17.

CCRI further contends that "the Union confuses 'past practice' with 'course of dealing'" and therefore "misinterprets and misapplies the caselaw." (Resp't's Reply Mem. Supp. of Mot. Confirm (CCRI Reply) at 2.) CCRI contends that the Union's cases are not analogous to the case at bar because they do not relate to whether the arbitrator could look to the parties' course of dealing to interpret the contract in the first instance, and further, that "there is no issue here of whether past practice can undo an interpretation" of the CBA. *Id.* at 3-5.[7]

IV

Analysis

"Whether a contract's terms are ambiguous is a question of law." *National Refrigeration, Inc. v. Standen Contracting Company, Inc.*, 942 A.2d 968, 971 (R.I. 2008). "[W]hen considering 'whether a contract is clear and unambiguous, the document must be viewed in its entirety and its language be given its plain, ordinary and usual meaning.'" *Garden City Treatment Center, Inc. v. Coordinated Health Partners, Inc.*, 852 A.2d 535, 542 (R.I. 2004) (quoting *Rubery v. Downing Corp.*, 760 A.2d 945, 947 (R.I. 2000)). Language in a contract is ambiguous if "'it is reasonably

[7] The Court rejects any contention that the arbitrator misconstrued the evidence in making his factual determinations. *See* Union Reply Mem. at 4-5. The Court has limited authority to review the factual determinations of an arbitrator and reviews arbitration awards under a highly deferential standard. *Cumberland Teachers Association*, 45 A.3d at 1191. "Indeed, the proper role of the courts in reviewing an award is merely 'to determine whether the arbitrator has resolved the grievance by considering the proper sources [of] the contract . . . but not to determine whether the arbitrator has resolved the grievance correctly.'" *Prospect CharterCARE, LLC v. Conklin*, 185 A.3d 538, 544 (R.I. 2018) (quoting *Jacinto v. Egan*, 120 R.I. 907, 912, 391 A.2d 1173, 1176 (1978)). Additionally, the parties did not provide the Court with the hearing transcripts or exhibits presented to the arbitrator, and this Court would be unable to examine the "voluminous" record referenced by the Union in its memorandum adequately to opine on the arbitrator's determinations. (Union Mem. at 4, 5.)

and clearly susceptible of more than one interpretation.'" *National Refrigeration, Inc.*, 942 A.2d at 972 (quoting *Rotelli v. Catanzaro*, 686 A.2d 91, 94 (R.I. 1996)). However, the Court is mindful that "it is virtually axiomatic that an undefined term in a contract is susceptible of more than one interpretation." *Garden City.*, 852 A.2d at 542. Furthermore, '"[a] court should not . . . stretch its imagination in order to read ambiguity into a [contract]where none is present."' *Id.* (quoting *Textron, Inc. v. Aetna Casualty and Surety Co.*, 638 A.2d 537, 539 (R.I. 1994)) (brackets in original).

Black's Law Dictionary defines the term "modification" as "[a] change to something; an alteration or amendment." *Modification,* Black's Law Dictionary (11th ed. 2019). Had this term stood alone in the CBA without modifying words, this broad definition might provide the sole meaning to the word. However, the word "modification" must be considered in the context of the sentence at issue: "Modifications to existing courses, including changes in catalog descriptions, shall be subject to the approval of the Curriculum Review Committee." CBA, Art. II, § (G)(4); *see Garden City,* 852 A.2d at 542. When viewed in light of the surrounding text and given its plain meaning, it is clear that "modifications" relates to "existing courses" and is reasonably susceptible to more than one meaning. *See id.* The CBA specifies certain modifications that must be referred to the CRC, such as those "including changes in catalog descriptions." (CBA, Art. II, § (G)(4).) If all modifications require CRC approval, there would be no reason to describe a specific type of change that could not be adopted without referral to the CRC.

Indeed, in his decision, the arbitrator specifically noted that the parties only had expressly defined one category of changes that require CRC approval—changes to catalog descriptions—but that the parties did not otherwise define the term "modifications." (Arbitration Decision and Award at 25-26.) Furthermore, although the arbitrator did not specifically discuss whether the

language was clear or unambiguous, his analysis assumes as much. The arbitrator stated that the language of the CBA could be interpreted in two ways: "broad[ly] to include every change to an approved course" or "narrow[ly] to only cover a limited group of changes." *Id.* at 26. This interpretation of the language of the CBA is passably plausible. Consequently, the arbitrator did not "manifestly disregard clear and unambiguous language of the contract" because the language of the CBA does not constitute a clear and unambiguous use of the term "modification" when read in its entirety. *See City of Newport v. Lama*, 797 A.2d 470, 473 (R.I. 2002).

If contract terms are clear and unambiguous, the parties' subjective intent is of no import. *Inland American Retail Management LLC v. Cinemaworld of Florida, Inc.*, 68 A.3d 457, 462 (R.I. 2013). "A resort to . . . outside sources is not permitted to aid or explain the intended meaning of the parties, unless and until the contract language is found to be ambiguous." *Id.* at 464. "When an arbitrator ignores clear-cut contractual language or assigns to that language a meaning that is other than that which is plainly expressed, the arbitrator has exceeded his authority and the award will be set aside." *State v. Rhode Island Employment Security Alliance, Local 401, SEIU, AFL-CIO*, 840 A.2d 1093, 1096 (R.I. 2003).

However, when contract language has been found to be ambiguous, "the intent of the parties must be determined." *Carney v. Carney*, 89 A.3d 772, 776 (R.I. 2014). "'[T]he court will look to the construction placed upon such terms by the parties themselves as an aid in determining their intended meaning.'" *D.T.P., Inc. v. Red Bridge Properties, Inc.*, 576 A.2d 1377, 1382 (R.I. 1990) (quoting *Woonsocket Teachers' Guild, Local 951 v. School Committee of City of Woonsocket*, 117 R.I. 373, 376, 367 A.2d 203, 205 (1976)). Because the relevant provision in the CBA is not clear and unambiguous, the arbitrator was permitted to look beyond the plain language of the contract to discern the parties' intent. *See Inland American Retail Management LLC*, 68

A.3d at 465 (citing Restatement (Second) *Contracts* § 203(b) (1981) for the position that "course of performance, course of dealing, and usage in custom or industry may be used in determining the intent of contracting parties")).

After reviewing the evidence regarding the parties' course of dealing, and the specific details regarding the J-Term courses, the arbitrator made two interrelated findings: (1) that the change in format from 15-week course to 12-day course did not modify the course in such a way as to conflict with CRC approved course catalog descriptions, content, credit, or student learning outcomes, and that (2) because modality changes alone historically had not been submitted to the CRC, this change did not require approval by the CRC. (Arbitration Decision and Award at 26-28.)

This Court's review of his decision and his reasoning is limited. In this case, the arbitrator articulated the basis of his determination to examine the intent of the parties on which modifications required CRC approval. Applying the deferential standard afforded to an arbitrator's decision, the Court finds that he offered a "passably plausible" interpretation of the contract which "draws its essence" from the CBA. *See Rhode Island Brotherhood of Correctional Officers*, 64 A.3d at 739 (quoting *Cumberland Teachers Association*, 45 A.3d at 1192). The arbitrator did not exceed his powers nor so imperfectly execute them to support vacating the award.

Accordingly, the Court rejects both arguments advanced by the Union: that the contractual language was clear and unambiguous, and that the arbitrator erred in considering the parties' course of dealings with respect to the CBA.

V

Attorneys' Fees

CCRI contends that if this Court grants its Motion to Confirm and denies the Union's Motion to Vacate, it is entitled to an award of fees pursuant to § 28-9-18(c). Section 28-9-18(c) provides: "If 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." Our Supreme Court has held this provision of the statute to be "clear and unambiguous," and that if unsuccessful, the moving party must pay reasonable costs and fees of the prevailing party incurred in defending the motion to vacate. *See Gannon v. City of Pawtucket*, 200 A.3d 1074, 1081 (R.I. 2019).

A party requesting fees must demonstrate the reasonableness of those fees by '"affidavits or expert testimony establishing the criteria on which a fee award is based[.]"' *Tri-Town Construction Co., Inc. v. Commerce Park Associates 12, LLC*, 139 A.3d 467, 480 (R.I. 2016) (quoting *Colonial Plumbing & Heating Supply Co. v. Contemporary Construction Co., Inc.*, 464 A.2d 741, 744 (R.I. 1983)). '"[A]ttorneys are competent to testify as experts in determining what is a reasonable charge for legal services rendered."' *Id.* (quoting *Colonial Plumbing*, 464 A.2d at 744). Furthermore, such evidence should be elicited from "counsel who is a member of the Rhode Island Bar and who is not representing the parties to the action in which fees are sought." *Id.*

Consequently, CCRI is entitled to an award of fees related to its defense of the arbitration award in this Court, pursuant to the clear and unambiguous language of § 28-9-18(c). *See Gannon*, 200 A.3d at 1081. However, CCRI must establish the reasonableness of those fees through evidence presented from an independent attorney. Therefore, the Court shall determine the fee award after further hearing and presentation of evidence regarding the reasonableness of the claim.

VI

Conclusion

For the reasons set forth herein, the Court denies the Union's Motion to Vacate and grants CCRI's Motion to Confirm Arbitration Award and for Award of Attorney Fees.

Consistent with this Decision, CCRI may request a WebEx hearing before the Court to present evidence in support of its claim for attorney's fees incurred in connection with defending the Union's Motion to Vacate.

Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	Community College of Rhode Island Faculty Association/NEARI/NEA v. Community College of Rhode Island
CASE NO:	C.A. No. PM-2020-04882
COURT:	Providence County Superior Court
DATE DECISION FILED:	May 3, 2021
JUSTICE/MAGISTRATE:	Vogel, J.
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