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COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2018-804

TOWN OF CARVER

vs.

CARVER POLICE UNION, NEW ENGLAND POLICE
BENEVOLENT ASSOCIATION, LOCAL 89

**MEMORANDUM OF DECISION AND ORDER ON
PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS**

The plaintiff, the Town of Carver ("Town"), brought this action requesting the court vacate an arbitration award pursuant to G. L. c. 150C, § 11(a)(3). The matter is before the court on the Town's Motion for Judgment on the Pleadings. The defendant, the Carver Police Union, New England Police Benevolent Association, Local 89 ("Union"), opposes the motion and requests that the court affirm the arbitration award pursuant to G. L. c. 150C, § 11(d). For the reasons discussed below, the Town's Motion for Judgment on the Pleadings is **DENIED** and the arbitration award is **AFFIRMED**.

BACKGROUND

The Town and the Union are parties to a Collective Bargaining Agreement ("CBA") covering the terms and conditions of employment of the Union's members, full-time patrol officers and sergeants employed by the Town. The CBA contains the following relevant provisions:

Article XI, titled "Vacation Leave"

1. For less than one (1) years service, one (1) day per month, not to exceed ten (10) days and must be used prior to July 1st.
2. Completion of one (1) years service, two (2) weeks vacation.

3. Completion of one (1) years service one (1) day for every (2) years service in addition to two (2) weeks, to a maximum of four (4) weeks. The vacation week shall consist of seven (7) days.... Vacations shall be picked by seniority and can only be canceled by the employee, unless there exists an emergency serious enough to pre-empt authorized absence[.]

Article XIII, titled "Base Pay Rates:"¹

Additional Longevity pay increases of three hundred dollars (\$300.00) per year after completion of (5) years for the next five (5) years. On the anniversary of the fifteenth-year the employee shall receive an additional three hundred fifty dollars (\$350).

Article XXIII, titled "Grievance Procedure:"

Any grievance between the parties which involves interpretation or application of the express terms of this agreement, the disposition of which is not provided for in law, rule, or regulations shall be settled [by arbitration].

The Town's police department is covered by the provisions of G. L. c. 31, the civil service statute. For approximately twenty years, the Town recognized the prior service of officers transferring from police departments covered by G. L. c. 31 for the purpose of determining those officers' wages, vacation allowances, and other benefits under the CBA. The Town, however, did not recognize the prior service of officers transferring from police departments not covered by G. L. c. 31 for these purposes. During this twenty-year period, the Town hired nine officers from police departments governed by G. L. c. 31 and four officers from police departments not governed by G. L. c. 31.

On June 15, 2015, the Union filed a grievance alleging that the Town had violated the CBA by failing to recognize the prior service of officers who had transferred from police departments not governed by G. L. c. 31. The Town denied the grievance, concluding that the

¹ This section also sets out a salary scale based on "service completed" for patrol officers and "service ... years" for sergeants.

parties had an established past practice of only recognizing an officer's prior service if that service had been with a police department governed by G. L. c. 31. The Union demanded arbitration.

Sarah Kerr Garraty held an arbitration hearing on April 9, 2018. The Town proposed the following question for the arbitrator: "Did the Town violate Article 11 (vacation) and/or the longevity provision of Article 13 (Base Rate of Pay) by failing to recognize certain officers' prior service with non-civil service departments? If so, what shall be the remedy?" On June 26, 2018 Arbitrator Garraty issued an Award. She determined that the Town had violated Articles 11 and 13 by failing to recognize certain officers' prior service with police departments not governed by G. L. c. 31. Arbitrator Garraty looked to the language of the CBA, specifically the provision in the CBA defining seniority, as she determined that the dispute "at its essence" is about seniority. Article IV of the CBA states that seniority "means an employee's length of continuous service with the employer since his/her earliest date of continuous full time employment, excluding, until completion of the probationary period, the time spent in a training academy prior to his/her admission into the bargaining unit."² Arbitrator Garraty concluded that there is no specific language in the CBA allowing the Town, as the employer, to add seniority above that gained through "continuous service with the Town." Arbitrator Garraty disregarded the Town's argument regarding past practice because she determined that the Agreement's definition of seniority was not ambiguous. She determined that "[t]he Town has applied the term 'continuing service with the employer' as meaning, 'continuous service with the employer,

² The section also states: "Seniority shall be used in the following manner:" and lists uses such as bidding on vacations and determining certain shift assignments.

enhanced by previous service in other police departments' in a manner that irrationally and discriminatorily awards extra contractual seniority to most, but not all bargaining unit members.”

Arbitrator Garraty ordered that the Town grant seniority to the affected officers from the date of their employment in the non-chapter 31 departments from which they transferred and pay lost wages and benefits from three weeks prior to June 10, 2015, when the grievance was filed, to the date of compliance with the Award.

DISCUSSION

“A matter submitted to arbitration is subject to a very narrow scope of review.”

Plymouth-Carver Regional Sch. Dist. v. J. Farmer & Co., 407 Mass. 1006, 1007 (1990).

“Courts inquire into an arbitration award only to determine if the arbitrator has exceeded the scope of [her] authority, or decided the matter based on ‘fraud, arbitrary conduct, or procedural irregularity in the hearings.’” *Id.*, quoting *Mario v. Tagaris*, 395 Mass. 397, 400 (1985). See also G. L. c. 150C, § 11(a)(3) (court shall vacate arbitration award if “the arbitrators exceeded their power or rendered an award requiring a person to commit an act or engage in conduct prohibited by state or federal law”). An arbitrator exceeds her authority by granting relief beyond the scope of the arbitration agreement or beyond that to which the parties bound themselves or by awarding relief prohibited by law. *Plymouth-Carver Regional Sch. Dist.*, 407 Mass. at 1007.

The Town argues that the arbitration award should be set aside on the ground that the arbitrator exceeded her powers. See G. L. c. 150C, § 11(a)(3). More specifically, the Town contends that the language for determining benefits under Articles 11 and 13 is ambiguous because those provisions refer to “years service” and “years” without defining these terms. Further, because the language is ambiguous, the arbitrator should have relied on the Town’s past

practice to interpret the CBA. See *Duxbury v. Duxbury Permanent Firefighters Ass'n*, 50 Mass. App. Ct. 461, 464-465 (2000) (arbitrator is governed first by collective bargaining agreement; “[a]lternatively, in instances where the provisions of an agreement are not clear and unequivocal, the arbitrator may rightly look to past practice to resolve ambiguities”). Instead, the arbitrator used the CBA’s definition of “seniority” to interpret these terms even though Article IV limits the use of “seniority” to that article and the CBA does not otherwise use “seniority.”

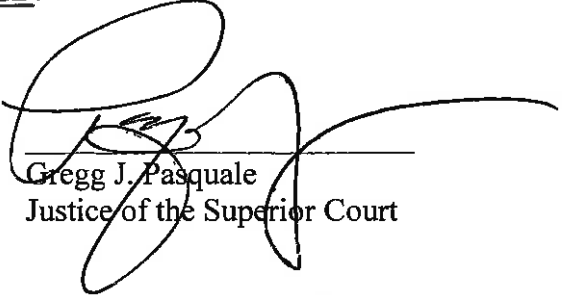
An arbitrator may not ignore the plain words of a contract. *Grobet File Co. of America v. RTC Sys., Inc.*, 26 Mass. App. Ct. 132, 134-135 (1988). However, “[i]f there is room for doubt or interpretation on the question, then the issue properly lies within the broad authority conferred upon arbitrators of civil disputes.” *Id.* at 135. When an arbitrator’s decision concerns interpretation of contract language, a court has no business overruling the arbitrator even if the court would have interpreted the contract differently. See *Sheriff of Suffolk County v. AFSCME Council 93, Local 419*, 68 Mass. App. Ct. 222, 226, 227 (2007); see also *Grobet File Co. of America*, 26 Mass. App. Ct. at 135 (court will not disturb arbitrator’s findings and conclusions even if court believes they are erroneous).

Here, the arbitrator interpreted the CBA and the Town disagrees with her interpretation. The Town’s contention that the arbitrator exceeded her power is in essence a claim that she committed an error in her interpretation of the CBA. That she may have committed an error, however, does not mean that she exceeded her authority. See *Conway v. CLC BIO, LLC*, 87 Mass. App. Ct. 503, 506 (2015). The parties agreed that the arbitrator would have the authority to decide “any grievance between the parties which involves interpretation or application of the express terms of this agreement” In accordance with this provision, the arbitrator applied the definition of “seniority” to Articles 11 and 13 to find that the Town was violating those

provisions by treating members of the bargaining unit differently. Even if the court would have interpreted the CBA differently, Arbitrator Garraty's interpretation was not so irrational or implausible that the court would vacate her award. See *School Comm. of Needham v. Needham Educ. Ass'n.*, 398 Mass. 709, 713 (1986) (arbitrator's award "is entitled to judicial respect insofar as it draws its essence from the collective bargaining agreement"; award will be upheld unless arbitrator's "interpretations and conclusions are substantially irrational or implausible").


ORDER

For the foregoing reasons, it is hereby **ORDERED** that Town's Motion for Judgment on the Pleadings is **DENIED** and the arbitration award is **AFFIRMED**.



Gregg J. Pasquale
Justice of the Superior Court

Dated: 5-1-20

A TRUE COPY ATTEST

Clerk of Courts