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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

CITY OF CLEVELAND
Plaintiff

Case No: CV-18-908520

Judge: MICHAEL J RUSSO

CLEVELAND ASSN OF RESCUE EMPLOYEES,
LOCAL 175
Defendant

JOURNAL ENTRY

96 DISP.OTHER - FINAL

12/12/2019: OPINION AND ORDER.

D1 CLEVELAND ASSOCIATION OF RESCUE EMPLOYEES, LOCAL1975'S MOTION TO CONFIRM AND ENFORCE ARBITRATION AWARD, FILED 02/05/2019, IS GRANTED. THE CITY'S MOTION TO VACATE ARBITRATION AWARD IS DENIED.

OSJ. FINAL.

COURT COST ASSESSED TO THE PLAINTIFF(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

Judge Signature *OSJ* Date

FILED
2019 DEC 13 P 4: 25
CLERK OF COURTS
CUYAHOGA COUNTY

STATE OF OHIO)
) SS:
CUYAHOGA COUNTY)

IN THE COURT OF COMMON PLEAS
CASE NO. CV-18-908520

CITY OF CLEVELAND)
 Movant-Plaintiff,)
)
 vs.)
)
CLEVELAND ASSOCIATION OF)
 RESCUE EMPLOYEES, ILA, LOCAL 1975)
 Respondent-Defendant.)

OPINION AND ORDER

This matter is before the court on a “Motion to Vacate Arbitration Award” filed by movant city of Cleveland (City), and a “Counter-Application to Confirm and Enforce Arbitration Award” filed by respondent the Cleveland Association of Rescue Employees, ILA, Local 1975 (CARE). Based upon a review of the briefs of the parties, the collective bargaining agreement of the parties (CBA), the award of the arbitrator, and the entire record provided, this court finds, pursuant to R.C. 2711.10 and for the reasons below, that the arbitration award shall be upheld and enforced in its entirety.

FACTUAL BACKGROUND

The City and CARE are parties to a CBA that was effective from April 1, 2013 through March 31, 2016. CARE is the exclusive bargaining representative for all full-time employees of the Cleveland Division of EMS for the following positions: emergency medical technician (EMT), emergency medical dispatcher (EMD), paramedic, and sergeant. In March 2016, the City and CARE began negotiations for a successor CBA, which extended over two years due to the controversial and complicated matters at hand. In December 2017, the parties mutually agreed to submit the matter to Arbitrator David Stanton. The parties underwent mediation with Stanton in February 2018, but no final settlement was reached. The remaining unresolved issues were arbitrated on March 6 and April 5-6, 2018. The parties submitted pre-hearing position statements to Stanton on March 2, 2018. The City and CARE agreed to an impasse arbitration procedure, under which the parties agreed “[t]he arbitrator shall select the City’s proposal or the Union’s proposal on an issue-by-issue basis.” CARE CBA, Article XXVII. CARE identified 27 distinct issues as open for resolution, and the city identified eight disputed “articles,” which

comprised a number of open issues. The arbitration included 118 exhibits and 665 pages of transcribed testimony and argument on the open issues that were submitted to Stanton.

On September 17, 2018, Stanton issued a 56-page award, resolving all outstanding issues. The parties agree that the final award contains some mistakes, but they disagree as to whether those mistakes are non-substantive or require at least a partial vacatur of the award. The court must decide whether Stanton clearly acted in a manner that exceeded his authority under Article XXVII of the CBA.

The parties dispute four awards from the arbitrator from the following articles: Art. XXV—Discipline; Art. XXIX—Hazardous Duty Injury; New Art—Employee Mental Health Evaluations; and New. Art.—Employee Assistance Program.

ANALYSIS AND OPINION

The court is aware of the difficult and emotionally-taxing job faced by the members of CARE, but also understands the desire of the City for uniformity and consistency amongst the different bargaining units within the city government. The trial court's jurisdiction to review the award is "narrow and limited," and restricted to the statutory grounds in R.C. Chapter 2711. *Warren Educ. Ass'n v. Warren City Bd. of Educ.*, 18 Ohio St. 3d 170, 173, 480 N.E.2d 456 (1985). The City claims that the award is subject to vacatur because of misbehavior of Stanton by which the City's rights have been prejudiced, and that Stanton so imperfectly executed and exceeded his powers that a mutual, final, and definite award was not made. R.C. 2711.10(C) and (D). CARE believes that Stanton properly executed his duties within the bounds of the CBA.

1. Art. XXV—Discipline. Award, p. 35

Article XXV of the CBA requires that under most circumstances, "an employee who is disciplined must be disciplined within thirty (30) working days from the date the Commissioner or Chief of Operations had knowledge of said event." It also requires that "the City shall not consider, as a basis of progressive discipline, any reprimand, suspension, or other disciplinary action which occurred more than two (2) years previous." The City sought to increase the timeframe to issue discipline from 30 to 60 days, and to increase the "shelf-life" or lookback period for progressive discipline from two to three years. CARE sought to maintain current contract language of 30 days for the issuance of discipline and maintain the shelf-life period of two years.

In the award, Stanton determined that the current contract language remain pursuant to CARE's final offer, reasoning that the City has not provided a compelling evidentiary basis to warrant any change by proving that the current timeframe is problematic. Stanton mistakenly added language that the current contract language was agreed to at the hearings and that the City had withdrawn its proposal for the shelf-life. The City seems to argue that Stanton thus improperly awarded the contract language because he believed that the City had withdrawn their objection to this proposal. Regardless of whether that is accurate, Stanton provided a systematic, alternative explanation for his award based on the evidence presented at the hearing. The court finds that any error is minor, and does not justify vacating his decision as he selected an option available to him under the CBA. So long as an arbitrator "is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." *United Paperworkers Internatl. Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 38, 108 S.Ct. 364 (1987).

2. Art. XXIX—Hazardous Duty Injury. Award p. 40

Art. XXIX of the CBA currently provides paid leave for injuries sustained on duty as a result of assault, patient transport, and patient care issues, among others. CARE sought to include post-incident mental trauma to the list of injuries qualifying for Hazardous Duty Injury under the CBA, as the City has allowed concessions for union members of the Police and Fire Departments with workplace-induced mental trauma. The City rejected this proposal as the Police and Fire Departments do not allow mental trauma to be the basis for fully paid leave.

Stanton awarded the proposal, as articulated by CARE, to recognize post-incident mental trauma as potentially qualifying for HDI leave. Stanton reasoned the evidence presented by CARE showed that the types of events, accidents, shootings, and stabbings attended to by its members would leave an immediate and lasting impact on those present at an unfathomable accident or crime scene. CARE members are called daily to triage such circumstances at the scene and then provide transportation to a healthcare facility for treatment. Stanton included language in this discussion about the start date for a new employee assistance program representative, although that staffing decision was not a part of this article and therefore will not be considered by the court to be a part of the award. Again, because Stanton was arguably applying the contract under the scope of his authority, this minor confusion about the start date

of the EAP representative is not sufficient to overturn his decision under *United Paperworkers*, above.

3. New Art—Employee Mental Health Evaluations and Employee Assistance Program. Award, p. 53.

These final two disputed issues will be discussed in tandem as they were decided simultaneously in Stanton's award. CARE proposed new articles to be included in the successor CBA that would create an Employee Assistance Program (EAP): first, a bargaining unit member would be assigned to be a full-time paid representative to whom employees could bring complaints regarding mental trauma sustained on the job; and second, a new article that would establish terms governing employee mental health evaluations. Stanton rejected the proposed language of both new articles pursuant to the City's final offer, indicating that the evidence of record simply does not support their inclusion at this time. The court questions the City's dispute of an award that was determined in its favor, but again, absent evidence that Stanton was acting outside the authority of the CBA, the court must uphold the arbitrator's decision.

4. Conclusion

The four awards disputed by the City were selected from either the City's proposal or CARE's proposal on an issue-by-issue basis as required by CARE CBA, Article XXVII. The non-substantive errors contained within Stanton's award do not prejudice the rights of any party nor do they show that Stanton so imperfectly executed and exceeded his powers that a mutual, final, and definite award was not made.

JUDGMENT

In light of the foregoing, and pursuant to R.C. 2911.09 and R.C. 2711.12, movant city of Cleveland's motion to vacate arbitration award is denied. Respondent Cleveland Association of Rescue Employees, ILA, Local 1975's motion to confirm and enforce the arbitration award is granted. Statutory interest is awarded pursuant to R.C. 1343.03(A) on the compensation awarded to the members of CARE in the Award that has been withheld by the City during the pendency of this case.

IT IS SO ORDERED.



Michael J. Russo, Judge

12-13-2019
Date

CERTIFICATE OF SERVICE

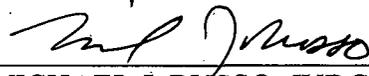
A copy of the foregoing Opinion and Order was sent by e-mail this 13th day of December,
2019 to:

CITY OF CLEVELAND

Jon M. Dileno, Esq.
Ami J. Patel, Esq.
Zashin & Rich Co., L.P.A.
950 Main Avenue, 4th Floor
Cleveland, Ohio 44113

**CLEVELAND ASSOCIATION OF RESCUE
EMPLOYEES, ILA, LOCAL 1975**

Ryan J. Lemmerbrock, Esq.
Brooks W. Boron, Esq.
Muskovitz and Lemmerbrock, LLC
The BF Keith Building
1621 Euclid Avenue, Suite 1750
Cleveland, Ohio 44115



MICHAEL J. RUSSO, JUDGE