IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

CITY OF TAMPA,
Plaintiff,

v.

TAMPA POLICE BENEVOLENT ASSOCIATION,
Defendant.
_____/

CASE NO.: 22-CA-010607

DIVISION: D

ORDER DENYING PLAINTIFF'S PETITION TO VACATE OR MODIFY ARBITRATION AWARD AND ORDER CONFIRMING ARBITRATION AWARD

THIS CAUSE comes before the Court on Plaintiff City of Tampa's Petition to Vacate or Modify Arbitration Award filed on December 22, 2022. The petition seeks to vacate an arbitration award rendered by an arbitrator on the ground that, by deciding an issue not submitted to him, his decision exceeded his authority under the parties' collective bargaining agreement. A hearing was held on April 4, 2023. Plaintiff was represented by Attorney Thomas M. Gonzalez and Defendant was represented by Attorney Robert T. McCabe. This Court, having reviewed the petition, Defendant's motion to confirm and answer to the petition, all the parties' attachments, applicable law and having heard the parties' arguments through counsel, and being otherwise fully advised on the issues before the Court, finds that:

1. The parties were subject to a collective bargaining agreement ("CBA") which specifies wages, hours and conditions of employment for Tampa police officers.

2. Officer Azariah Israel was employed by Plaintiff as a police officer and was covered by the parties' CBA. Israel's employment was terminated by Plaintiff for alleged misconduct on April 28, 2021.

3. On behalf of Officer Israel, Defendant filed two grievances. The first grievance challenged Plaintiff's interpretation of §40.4.1 of the CBA. Plaintiff interpreted the language to require Israel to turn over his VA records to its fitness for duty evaluator to comply with a fitness for duty evaluation. The second grievance challenged §40.4.1 on the same grounds as the first grievance, and in addition alleged that Plaintiff did not have just cause to terminate Officer Israel's employment for alleged insubordination for failing to turn over his VA records. The just cause challenge was based on Article 38, §§38.1 and 38.2 of the CBA.

4. The parties' CBA contains a grievance procedure wherein the parties' have agreed to submit unresolved grievances to final and binding arbitration. *See* Plaintiff and Defendant's Ex. A, pp. 9-10.

5. The parties submitted the instant case to final and binding arbitration and mutually agreed to the selection of Arbitrator Stuart Goldstein. Arbitrator Goldstein rendered a decision on September 27, 2022. *See* Defendant's Ex. D. On December 22, 2022, the petition to vacate or modify the arbitration award was filed pursuant to §682.13(1)(d) and §682.14(1)(b), Florida Statutes, alleging that the arbitrator exceeded his authority by deciding a matter that was not submitted to him. The petition was timely filed within ninety (90) days of service of the arbitrator's award.

6. The arbitrator's award set forth his findings of fact, the two issues submitted by the parties, summaries of the parties' evidence and arguments, pertinent contract provisions, discussion, and his final award. As to the first issue, the arbitrator found that Plaintiff did not violate Article 40, §40.4.1 of the parties' CBA by requiring the release of Officer Israel's VA records. He also found that Officer Israel was insubordinate for refusing to release those records. As to the second issue submitted by the parties, however, the arbitrator found that Plaintiff did not have just cause to terminate Officer Israel's employment. Plaintiff contends that the arbitrator's decision should be set aside because he decided an issue that was not presented to him and, therefore, exceeded his authority to wit: whether Plaintiff had a right to require a fitness for duty evaluation and apparently, to receive the results *at a particular time*.

7. Plaintiff and Defendant have expressly agreed that a grievance "…shall be defined as any difference, dispute or complaint regarding the interpretation or application of the terms of this Agreement. They have further agreed to submit grievances that cannot be resolved to final and binding arbitration with the only limitation being that "the arbitrator shall limit his decision strictly to the interpretation, application and enforcement of this Agreement and shall have no power to amend, add to or subtract from the terms of the agreement." *See Id.,* pp. 9-10.

Key to resolving this dispute is what the parties agreed to submit to the arbitrator. There is no dispute between the parties regarding the first issue submitted to the arbitrator; that issue will not be discussed further. The dispute in this case arises from the arbitrators decision regarding the second issue submitted which pertains to whether the termination of Officer Israel's employment was for just cause.

Plaintiff framed the second issue as, "Did the City have just cause to terminate the Grievant and, if not, what shall be the remedy." Defendant framed the issue as "Did the City have just cause to terminate the Grievant's employment based upon his refusal to sign a release for all his EAP records and VA psychiatric records? If not, what is the remedy." Both parties agree that the arbitrator was given the authority to interpret and apply the just cause standard to Plaintiff's disciplinary decision in the instant case. The arbitrator phrased this issue as, "Did the City have just cause to terminate the Grievant's employment. If not, what shall be the remedy." The arbitrator was clearly tasked by the parties with determining an appropriate remedy in the event he decided that there was not just cause to terminate Officer Israel's employment. Although Plaintiff contests the remedy, that being to reinstate Officer

Israel to his former position, Plaintiff expressly agreed to allow the arbitrator to formulate an appropriate remedy—without limitation.

The arbitrator considered whether there was just cause for terminating Officer Israel's employment based on his insubordination for refusing to release his VA records, an issue expressly agreed upon by both parties to the arbitration. The arbitrator concluded that there was not just cause for termination when he weighed the severity of the decision against the conduct of Officer Israel, its impact on the City of Tampa, Officer Israel's minimal disciplinary history and his stellar ten (10) year record of service as evinced by his evaluations. This is exactly what the parties authorized him to do. The remedy does not change the issue presented to the arbitrator.

Under §682.13, Florida Statutes, an arbitrator's decision may be vacated only upon very limited grounds. In this case, Plaintiff's stated grounds are that the arbitrator allegedly exceeded his authority by deciding an issue that was not before him. §§ 682.13(1)(d) and 682.14(1)(b), Fla. Stat. Although the parties do not agree on its application to these facts, they both agree that the holding in *United Steelworkers of America v. Enterprise Wheel and Car Corp.,* 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960) is applicable to this dispute. As was the case in *United Steelworkers of America,* the parties to the instant case agreed to submit their disputes regarding the meaning and application of their CBA to final and binding arbitration. *Id.* at 1361, 597. The arbitrator is to "…bring his informed judgment to bear in order to reach a fair solution to the problem", and "[t]his is especially true when it comes to formulating remedies." *Id.* The Court held that the lower court's refusal to review the merits of an arbitration award was proper and that when lower courts do review such awards, it undermines the parties' agreement to settle labor disputes by arbitration. *Id.* In order to honor the parties' intent to have contract disputes resolved by arbitrators, the arbitrator's decision must "draw its essence" from the interpretation of the parties' CBA. *Id.* In the instant case, the arbitrator does what the parties empowered him to do; he interprets the meaning of just cause for discipline, an issue that the parties agreed should be submitted to him, and he formulates an appropriate remedy.

The case most analogous to the instant case is *Amalgamated Transit Union, Local 1593 v. Hillsborough Area Regional Transit Authority,* 450 So.2d 590 (Fla. 2d DCA 1984). Factually, *Amalgamated Transit Union* involves a bus driver who left his bus, chased down a passenger and pushed her because she spit on him when he asked her to stop smoking. *Id.* at 591. Clearly this was a very serious violation of employer rules. The management rights language in the parties' CBA is like that in the instant case where it states that the employer, "reserves and retains exclusively [the right] to suspend, discharge, demote or otherwise discipline employees for sufficient and just cause." *Id.* In the instant case, the management rights language states that the employer retains the right to, "suspend, discharge, demote or otherwise discipline employees for just cause." In *Amalgamated Transit Union,* the employer insisted that the language in the CBA precluded the arbitrator from determining the appropriateness of the punishment under the facts. *Id.* The arbitrator concluded that the contractual language authorized him to determine whether the proven infraction, given the surrounding facts and circumstances, warranted the disciplinary sanction given. *Id.* The lower court agreed with the employer and vacated the award. The

appellate court reversed, holding that, "The collective bargaining agreement charges the arbitrator with interpreting the agreement. The arbitrator's agreement should not be overturned merely because another plausible interpretation exists." *Id. See also, Raynor v. Florida State Lodge,* 987 So.2d 152 (Fla. 1st DCA 2008)(although language purported to vest sole authority for the severity of disciplinary sanctions in management rights, court still held that because the arbitrator interpreted the language as not limiting his ability to modify or rescind a penalty that he considered to be arbitrary or lacking due process, the arbitration award could not be vacated because many Florida courts have held that a just cause analysis is a permissible interpretation of a collective bargaining agreement) *See, e.g., Communications Workers of America v. City of Largo,* 463 So.2d 454 (Fla. 2d DCA 1985).[1]

In the instant case, just as in *Amalgamated Transit Union,* the arbitrator was charged with interpreting the parties' agreement. Based upon the holding in *Amalgamated Transit Union* and the other cases cited above, in addition to the issue submitted to the arbitrator, he may determine the appropriateness of a disciplinary action as part of his just cause determination. The mere fact that Plaintiff questions what went into the arbitrator's reasoning and suggests, without proof, that he wrongfully decided the reasonableness of a fitness for duty evaluation at a particular point in time does not amount to "another plausible interpretation" of the CBA, and even if it did, based upon the holding in *Amalgamated Transit Union* it would not support vacating the arbitrator's award.[2]

In contrast, in *Lake City Fire & Rescue Association, Local 2288 v. City of Lake City,* 240 So.3d 128 (Fla. 1st DCA 2018) the parties' CBA did restrict an arbitrator's ability to formulate an alternative penalty where he deemed the sanction of termination to be too severe. In *Lake City Fire & Rescue Association,* the parties' CBA contained language that said, "In the case of a grievance arising from a discipline, the arbitrator shall not have the authority to alter or amend the discipline but may only determine whether the employee engaged in the misconduct alleged." *Id.* Since there is no such limitation in the parties' CBA in the instant case, the arbitrator had the authority to modify the disciplinary sanction of termination, and where an arbitrator's decision is within the scope of the authority conferred

[1] *Cf. Amalgamated Transit Local 1593 v. Hillsborough Cnty. Transit Auth'ty,* Case No. 20-CA-5240 (Fla. 13th Jud. Cir. 2021), *aff'd* 339 So. 3d 340, wherein the trial court upheld arbitrator's decision based on an issue presented in a manner substantially like that of this case because the award was within the scope of the issue submitted. In that case, having been submitted the question whether there was "just cause" for termination, and, if not "what should the remedy be," the arbitrator, despite finding that there was not just cause for the employee's termination, upheld the termination on other grounds. Thereafter, in denying the employee's petition to vacate the arbitration award upholding her termination, the trial court deemed the arbitrator's ability to determine the appropriate remedy to be "exceptionally broad." Although this case is not binding, this Court nonetheless finds it to be persuasive.

[2] It bears mention that Plaintiff has argued that the arbitrator in this case, by ordering that Officer Israel should be afforded a final opportunity to provide all requested records and complete a fitness for duty evaluation, has denied it the opportunity to know whether Israel was fit for duty when he failed to report to work during an all personnel callout during the riots in May of 2020. This argument seems misplaced because Plaintiff did not request a fitness for duty evaluation in May of 2020. In fact, Plaintiff did not request the fitness for duty evaluation that is the subject of this dispute until after a domestic situation that occurred between Officer Israel and his wife while he was off duty in August of 2020.

upon him, a trial court cannot vacate the arbitrator's award on the basis that the arbitrator exceeded his authority. *See Amalgamated Transit Union, Local 1579 v. City of Gainesville,* 264 So.3d 375 (Fla. 1st DCA 2019).

In conclusion, the arbitrator in the instant case was empowered by the parties to interpret their agreement. Specifically, they sought his interpretation of Article 40, §40.4.1 and Article 38, §§38.1 and 38.2. The arbitrator interpreted Article 40, §40.4.1 in favor of Plaintiff in that he held that the Union and Officer Israel were incorrect in their assertion that Officer Israel did not have to provide his VA records as part of his completion of his fitness for duty evaluation. The arbitrator interpreted the just cause provision of Article 38 in favor of the Union and Officer Israel, holding that there was no just cause for the sanction of termination. However the arbitrator did impose what amounts to a nearly two (2) year unpaid suspension and he required, as a prerequisite to any return to duty, that Officer Israel turn over all records required for a fitness for duty evaluation to the evaluator of Plaintiff's choice and successfully complete said evaluation. This is exactly what the parties empowered the arbitrator to do and therefore, his actions do not exceed his authority in violation of §682.13(1)(d) Florida Statutes and do not constitute an impermissible award based upon a matter not submitted to arbitration in violation of §682.14(1)(b), Florida Statutes.

For all the foregoing reasons, it is ORDERED that the Petition to Vacate or Modify Arbitration Award is DENIED in its entirety, and the Arbitration Award is hereby CONFIRMED.

ORDERED on the date imprinted with Judge Peacock's signature.

Electronically Conformed 4/18/2023
Emily A. Peacock

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Emily A. Peacock, CIRCUIT JUDGE

Copies provided through JAWS
to all counsel of record.