STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. SUPERIOR COURT

(FILED: February 2, 2017)

WARWICK SCHOOL DEPARTMENT, by and through its Superintendent Philip Thornton and WARWICK SCHOOL COMMITTEE, by and through its Members, BETHANY FURTADO, EUGENE NADEAU, M. TERRI MEDEIROS, JENNIFER AHEARN and KAREN BACHUS	:	
v.	:	C.A. NO. KC-2016-0783
RHODE ISLAND STATE LABOR RELATIONS BOARD, by and through its Chairman, WALTER J. LANNI, and its Members, ALBERT APONTE CARDONA, SCOTT G. DUHAMEL, ARONDA R. KIRBY, FRANK J. MONTANARO, MARCIA B. REBACK and HARRY J. WINTHROP; and WARWICK TEACHERS' UNION, AFT, LOCAL 915	:	

DECISION

GALLO, J. Before the Court is an appeal by the Warwick School Committee (the School Committee) of a decision of the Rhode Island State Labor Relations Board (the Board) finding that the School Committee had committed an unfair labor practice and ordering, among other things, that it cease and desist from refusing to arbitrate certain grievances and that the School Committee abide by all provisions of the expired collective bargaining agreement (CBA) "until such time as a new [CBA] has been either

negotiated or litigated to finality." (Am. Decision 13, Appellee Ex. A.) For the following reasons, the Court reverses the Board's decision.

I

Facts and Travel

The facts are not in dispute in this matter. The School Committee and the Warwick Teachers' Union, AFT, Local 915 (the Union) initially negotiated a CBA that ran from September 1, 2012 until August 31, 2014. (Stip. of Facts ¶ 1, Appellee Ex. B.) On its expiration, the parties agreed to an extension of the CBA to August 31, 2015. Id. at ¶ 2. However, negotiations for a successor CBA for the school year beginning in September 2015 stalled, and the School Committee requested interest arbitration. Id. at ¶¶ 5, 7. Arbitration commenced on December 16, 2015 and is currently ongoing. See Am. Decision 3, Appellee Ex. A.

On September 14, 2015 and October 6, 2015, the Union filed grievances pursuant to the grievance procedure in the expired CBA. (Stip. of Facts ¶ 9, Appellee Ex. B.) The grievance filed on September 14, 2015 related to duty assignments for homeroom teachers for the 2015-2016 school year. Id. at ¶ 12. The grievance filed on October 6, 2015 related to a teacher's suspension for cause. Id. at ¶ 13. Discussions to resolve the grievances failed to achieve a resolution. Consequently, the Union filed for arbitration in accordance with the expired CBA. The School Committee refused to participate in grievance arbitration, relying on the fact that its obligation to arbitrate ended with the expiration of the CBA. Id. at ¶¶ 15, 16.

The Union responded by filing an unfair labor practice charge with the Board on December 7, 2015. On January 9, 2016, the Board issued a complaint alleging that the

School Committee violated G.L. 1956 § 28-7-13[1] when it refused to arbitrate the grievances. The School Committee denied the charge, and the matter was submitted to the Board on the parties' stipulated facts and memoranda.

On June 21, 2016, the Board issued its decision (Decision), finding that the School Committee's refusal to proceed to grievance arbitration amounted to an unfair labor practice in violation of the Rhode Island State Labor Relations Act. (Decision 11, Appellant Ex. 8.) The Board concluded that a "[u]nilateral departure from the terms of an expired Collective Bargaining Agreement, prior to the exhaustion of all available statutory dispute resolution procedures violates the duty under R.I.G.L. 28-7-13 (6) and (10) to bargain in good faith." Id. at 13. The Board ordered the School Committee to "cease and desist from refusing to participate in the processing of grievances, including proceeding to arbitration." Id.

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[1] Section 28-7-13 provides in relevant part as follows:

> "It shall be an unfair labor practice for an employer to:
> . . .
>
> "(6) Refuse to bargain collectively with the representatives of employees, subject to the provisions of §§ 28-7-14—28-7-19, except that the refusal to bargain collectively with any representative is not, unless a certification with respect to the representative is in effect under §§ 28-7-14—28-7-19, an unfair labor practice in any case where any other representative, other than a company union, has made a claim that it represents a majority of the employees in a conflicting bargaining unit.
> . . .
>
> "(10) Do any acts, other than those already enumerated in this section, which interfere with, restrain or coerce employees in the exercise of the rights guaranteed by § 28-7-12." Sec. 28-7-13(6), (10).

The next day, the Union filed a motion to amend the Decision, to which the School Committee objected. Without further hearing, the Board approved the Union's motion to modify the Decision and amended the Decision (Amended Decision) to add the following paragraph:

> "3) The Employer is hereby ordered to maintain all the terms and conditions of employment set forth in the Collective Bargaining Agreement until such time as a new Collective Bargaining Agreement has been either negotiated or litigated to finality." (Am. Decision 13, Appellee Ex. A.)

On August 3, 2016, the School Committee appealed the Board's Amended Decision to this Court. The School Committee also filed a motion to stay the implementation of the Amended Decision pending appeal. On August 16, 2016, this Court granted the motion to stay to the extent that it may be read to restrict the School Committee in respect to the layoff of teachers for decrease in pupil population under G.L. 1956 §16-13-6.

II

Standard of Review

This Court reviews appeals of administrative decisions pursuant to G.L. 1956 § 42-35-15, the Administrative Procedures Act (APA). Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007). Section 42-35-15 provides that the Court may

> "affirm the decision of the agency or remand the case for further proceedings, or . . . reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> "(1) In violation of constitutional or statutory provisions;

> "(2) In excess of the statutory authority of the agency;
>
> "(3) Made upon unlawful procedure;
>
> "(4) Affected by other error or law;
>
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Section 42-35-15(g).

Upon review of an administrative agency appeal, the Superior Court "'reviews the record to determine whether legally competent evidence exists to support the findings.'" Champlin's Realty Assocs. v. Tikoian, 989 A.2d 427, 437 (R.I. 2010) (quoting Sartor v. Coastal Res. Mgmt. Council, 542 A.2d 1077, 1082-83 (R.I. 1988)). "'Legally competent evidence'" has been defined as "'such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance.'" Reilly Elec. Contractors, Inc. v. State Dep't of Labor & Training ex rel. Orefice, 46 A.3d 840, 844 (R.I. 2012) (quoting Foster-Glocester Reg'l Sch. Comm. v. Bd. of Review, 854 A.2d 1008, 1012 (R.I. 2004)) (internal quotation marks and citation omitted).

The Superior Court may "not . . . substitute its judgment on questions of fact for that of the agency whose actions are under review." Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992). That is, where "'competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions.'" Auto Body Ass'n of R.I. v. State Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd.,

650 A.2d 479, 485 (R.I. 1994)). The APA restricts the Superior Court's review of administrative decisions to questions of law. Reilly Elec. Contractors, 46 A.3d at 844. The Superior Court may only vacate an agency decision "'if it is clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.'" Id. (quoting Auto Body Ass'n, 996 A.2d at 95) (internal quotation marks and citation omitted).

III

Analysis

The School Committee's position is that the Board did not have the authority to rule on the issue of arbitrability, and it has no obligation to arbitrate grievances after the expiration of the CBA. The Union argues that whether parties are bound to arbitrate presents a question for the Board and that the School Committee's unilateral refusal to arbitrate the grievances in question amounted to a departure from the terms of an expired contract prior to the exhaustion of the statutory dispute resolution process and, thus, violated the Labor Relations Act as interpreted by the Board in a number of its prior decisions. See R.I. State Labor Relations Bd. v. Warwick Sch. Comm., No. ULP-4647 (RISLRB Nov. 10, 1992); R.I. State Labor Relations Bd. v. Town of N. Kingstown, No. ULP-6071 (RISLRB May 7, 2014); R.I. State Labor Relations Bd. v. City of Pawtucket, No. ULP-6142 (RISLRB Mar. 30, 2015).

The long-established policy of the Board (which the Board refers to as the "static status quo" rule) prohibits public sector employees, such as the School Committee, from departing from the terms of an expired CBA "prior to the exhaustion of all available statutory dispute resolution procedures." (Am. Decision 10, Appellee Ex. A.) Rhode

Island courts have looked to federal court decisions for guidance regarding labor law issues. See DiGuilio v. R.I. Bhd. of Corr. Officers, 819 A.2d 1271, 1273 (R.I. 2003). The Board's static status quo rule, so-called, adopts principles enunciated in N.L.R.B. v. Katz, 369 U.S. 736 (1962), suitably adapted, in the judgment of the Board, to public sector labor relations. The Board relies on Warwick Sch. Comm. v. Warwick Teachers' Union, Local 915, 613 A.2d 1273, 1276 (R.I. 1992), as well as decisions from other jurisdictions in support of its position. See e.g., Moreno Valley Unified Sch. Dist. v. Pub. Emp't Relations Bd., 142 Cal. App. 3d 191, 195-96 (Cal. Ct. App. 1983) (finding the board's policy regarding public sector labor relations reasonable where the board treated unilateral changes to subjects "within the scope of negotiations prior to the exhaustion of the impasse procedure" as unfair labor practices) (internal quotation marks and citation omitted); see Am. Decision 5-7, Appellee Ex. A.

The School Committee's appeal is focused not so much on the Board's static status quo rule, generally, as it is on the Board's determination that its refusal to arbitrate the subject grievances amounted to an unfair labor practice and the Board's order that, as a remedy, it proceed with arbitration. The School Committee argues, citing Litton Fin. Printing Div. v. N.L.R.B., 501 U.S. 190, 205-06, 210 (1991), that the Union's grievances involve conduct that occurred after the CBA expired, and, as such, the School Committee is not subject to the expired CBA's arbitration clause. The School Committee also relies on Providence Teachers' Union v. Providence Sch. Bd. for its contention that it is not bound by the general arbitration clause in the expired CBA with respect to grievances filed after the contract's expiration that do not deal with disputes that arose under the

contract or rights that accrued or vested under the contract. See 689 A.2d 388, 393 (R.I. 1997) (citing Litton, 501 U.S. at 206).

In Litton, the union filed an unfair labor practice charge when the employer, Litton, refused to submit to arbitration to resolve grievances regarding layoffs made after the contract expired. 501 U.S. at 194-95. The National Labor Relations Board (NLRB) found that Litton's "wholesale repudiation" of its obligation to arbitrate grievances after the expiration of the CBA amounted to an unfair labor practice. Id. at 195. However, the NLRB did not order arbitration as a remedy, concluding that the grievances in issue were based on conduct (layoffs) which occurred after the contract expired and therefore were not arbitrable. Id. at 196. It instead ordered Litton to process the grievances through the grievance process and bargain with the union over the layoffs. Id. at 196-97. The NLRB also provided a limited backpay remedy. Id. at 197.

The Supreme Court, in Litton, specifically did not address the NLRB's determination that Litton had committed an unfair labor practice. Id. at 196-97. The Court's review was limited to whether the layoff grievances were arbitrable. Id. at 196. The Court, citing with favor past decisions of the NLRB, noted that arbitration clauses are excluded from the Katz prohibition on unilateral changes. Id. at 192-93. The Court held the obligation to arbitrate a grievance survives expiration of a CBA only where the grievance arises under the contract. Id. at 205. The Court reasoned that

> "[a] postexpiration grievance can be said to arise under the contract only where it involves facts and occurrences that arose before expiration, where an action taken after expiration infringes a right that accrued or vested under the agreement, or where, under normal principles of contract interpretation, the disputed contractual right survives expiration of the remainder of the agreement." Id. at 205-06.

The Litton Court went on to conclude that the layoffs which followed expiration of the CBA did not infringe rights which accrued or vested under the contract. Id. at 210. The Court pointed out that "[t]he layoffs took place almost one year after the Agreement had expired[,]" and, the Court explained, the grievances did not "involve rights which accrued or vested under the Agreement, or rights which carried over after expiration of the Agreement, not as legally imposed terms and conditions of employment but as continuing obligations under the contract." Id. at 209. Thus, the dispute over the layoffs was held to be not arbitrable. Id. at 210. The Court, in Litton, emphasized that the prohibition against unilateral changes arises by operation of law, viz., the statutory mandate to bargain in good faith,[2] whereas "[n]o obligation to arbitrate . . . arises [] by operation of law," but rather, "[t]he law compels a party to submit his grievance to arbitration only if he has contracted to do so." Id. at 200 (internal quotation marks and citation omitted).

In the case at bar, the Union filed both grievances after the expiration of the CBA, which expired in August 2015. (Stip. of Facts ¶ 2, Appellee Ex. B.) In September 2015, the Union filed a grievance in response to the School Committee's duty assignments for homeroom teachers for the 2015-2016 school year. Id. at ¶12. The School Committee's action was forward-looking and applied to the school year that followed the expiration of the CBA. See id. In October 2015, the Union filed a grievance regarding a teacher's suspension for cause that had occurred after the CBA expired. Id. at ¶ 13. Accordingly,

[2] The National Labor Relations Act states that "[i]t shall be an unfair labor practice for an employer . . . to refuse to bargain collectively with the representatives of his employees . . . ." 29 U.S.C. § 158(a)(5). The Rhode Island Labor Relations Act mirrors the federal law, providing that "[i]t shall be an unfair labor practice for an employer to . . . [r]efuse to bargain collectively with the representatives of employees . . . ." Sec. 28-7-13(6).

both grievances dealt with conduct that occurred after the CBA expired and neither grievance addressed a dispute that arose out of the CBA or involved rights that accrued under the CBA. See Litton, 501 U.S. at 205-06; see also Providence Teachers' Union, 689 A.2d at 392-93 (declining to compel arbitration pursuant to a general arbitration clause in an expired CBA where the dispute "neither arose during the term of the contract nor involved a right that accrued or vested under the contract").

In Providence Teachers' Union, our Supreme Court found that an arbitration clause in an expired contract did not apply to a grievance regarding safety standards in a teacher's science classroom as the "dispute arose after expiration of the contract and did not involve a right that accrued or vested under the expired contract." 689 A.2d at 393. As did the Court in Providence Teachers' Union, this Court "reject[s] the proposition that a general arbitration clause in an expired contract represents a valid mechanism for resolving a dispute that neither arose during the term of the contract nor involved a right that accrued or vested under the contract." Id. at 392-93. Thus, the grievances are not arbitrable and the Board erred in ordering arbitration. See id. at 393; see also Litton, 501 U.S. at 205-06.

As noted above, the NLRB, in Litton, though refusing to order the employer to arbitration, nonetheless held Litton's "wholesale repudiation" of its obligation to process grievances to be an unfair labor practice. 501 U.S. at 195. Here, however, there is simply no evidence in the record to support a finding that the School Committee committed an unfair labor practice. After their contract expired, the Union filed grievances according to the expired contract's grievance procedure. (Stip. of Facts ¶ 9, Appellee Ex. B.) The grievances related to duty assignments for homeroom teachers and

a teacher's suspension. Id. at ¶¶ 12, 13. The School Committee took part in the grievance procedures outlined in the expired contract. Id. at ¶ 10. When the parties could not come to an agreement, the School Committee declined to proceed to arbitration as the contract had expired. Id. at ¶ 11.

Unlike in Litton, where the employer refused to discuss or participate in any grievance process with the union regarding the layoffs, here, the School Committee did engage with the Union regarding the two grievances filed after the expiration of the contract. See 501 U.S. at 194-95. There is simply no evidence in the record to support a finding of bad faith bargaining in violation of § 28-7-13(6) and (10). Under the circumstances, the Board erred in concluding that the School Committee committed an unfair labor practice.

The School Committee also finds fault with that portion of the Board's Amended Decision which enjoins the School Committee to "maintain all the terms and conditions of employment set forth in the Collective Bargaining Agreement until such time as a new Collective Bargaining Agreement has been either negotiated or litigated to finality." (Am. Decision 13, Appellant Ex. A.)

The Board is a creature of statute. See § 28-7-4. Its jurisdiction was invoked in this case by the filing of an unfair labor practice charge which specifically alleged that the School Committee refused to arbitrate the grievances referred to above. See § 28-7-21. The charge was never amended to incorporate any other allegedly prohibited acts. See Am. Decision 13, Findings of Fact at ¶ 20, Appellant Ex. A. The Court recognizes the Board has some latitude with respect to the relief it may afford on finding an unfair

labor practice.[3] However, it appears to the Court that under the circumstances present here, the added third paragraph of the Board's Amended Order, which enjoins any change to the expired CBA "until such time as a new [CBA] has been either negotiated or litigated to finality," is overbroad to the point of being arbitrary. The determination of whether a particular change to terms of an expired CBA is permissible should be made on a case by case basis, and should include consideration of whether the change involves a mandatory subject of bargaining as opposed to a management right or, in the public sector context, a non-delegable duty. See Town of N. Kingstown v. Int'l Ass'n of Firefighters, 107 A.3d 304, 318 (R.I. 2015) (finding that the town's decision to reorganize the lengths of the firefighters' work shifts was a management right, and, as such, the town was "not required to bargain with the union regarding th[e] decision"); see also Vose v. R.I. Bhd. of Corr. Officers, 587 A.2d 913, 915 (R.I. 1991) ("[S]tatutory powers and obligations cannot be contractually abdicated."). The Board issued its Amended Decision in this case on the Union's motion without further hearing. The School Committee, it appears, was provided no opportunity to present for the Board's consideration the particulars of any proposed departures from the terms of the expired CBA, along with its reasons why it should not be constrained by the Board's status quo rule. In doing so, the Board acted arbitrarily and erroneously.

IV

Conclusion

After review of the entire record, this Court finds the Amended Decision of the Board was clearly erroneous based on the evidence of record. Substantial rights of the

[3] Section 28-7-9(b)(4) provides that the Board "is empowered to order complete relief upon a finding of any unfair labor practice." Sec. 28-7-9(b)(4).

School Committee have been prejudiced. Accordingly, the Amended Decision of the Board is reversed. Counsel shall submit the appropriate judgment for entry.