

STATE OF OHIO)
)SS:
CUYAHOGA COUNTY)

IN THE COURT OF COMMON PLEAS
CASE NO. CV-440137

CLEVELAND POLICE)
PATROLMEN’S ASSOCIATION)
)
Plaintiff)
)
vs.)
)
CITY OF CLEVELAND)
)
Defendant)

OPINION AND ORDER

MICHAEL J. RUSSO, JUDGE:

The Court has before it an application to vacate arbitration award filed by the Cleveland Police Patrolmen’s Association (hereinafter “CPPA”). For the following reasons, said application is granted.

Facts and Procedural History

In 1984, a charter amendment was passed in the City of Cleveland (hereinafter “the City”) which called for the creation of a Police Review Board (hereinafter “PRB”), whose function was to receive complaints from citizens regarding alleged police misconduct. After investigation, the PRB could either dismiss the complaint or hold a hearing. If it were decided that disciplinary action was warranted, the PRB would submit its recommendation to the Chief of Police. If the Chief decided to suspend the officer for ten days or less and the PRB agreed, the Chief would suspend the officer. Should the PRB disagree with the Chief’s determination, it could suspend the officer for up to ten

days. In the case of a suspension of more than ten days or discharge, the matter would have to be certified to the Director of Public Safety, who would conduct a hearing and make a final decision. (See Arbitration Award, page 2).

When the PRB began to function as a hearing body, union representatives were permitted to sit with the officer; however, that policy was unilaterally changed and union representatives were no longer permitted to sit with the officers or address the board members. Consequently, officers stopped appearing for hearings, and the PRB began issuing subpoenas to secure their attendance. The City then passed emergency Ordinance No. 1256-99, which provided that a police officer who failed to comply with a subpoena issued by the PRB would be guilty of contempt and subject to a fine of up to \$250 and imprisonment for up to 30 days. The CPPA filed grievances asserting that officers were being forced to comply and to attend the PRB hearings despite denial of the due process rights guaranteed them by the collective bargaining agreement (hereinafter “CBA”). Those rights included the rights to legal representation, to cross-examination and to have a court reporter present. In addition, the CPPA filed an unfair labor practice charge with the State Employment Relations Board (hereinafter “SERB”). SERB dismissed the charge as lacking probable cause and noted that any patrol officer could grieve a recommended discipline by the PRB. Once the City denied the grievances as set out above, the CPPA took the matter to arbitration. The arbitrator found that the City did not violate the CBA by denying due process rights to police officers who were subpoenaed to appear before the PRB.

Analysis

Arbitration awards carry a presumption of validity. *Association of Cleveland Fire Fighters, Local 93 of the International Association of Fire Fighters v. City of Cleveland* (2003), 99 Ohio St.

3d 476. They can be overturned, however, by a court of law if “the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.” R.C. 2711.10(D). The Supreme Court of Ohio has held that a reviewing court is limited to determining whether the award draws its essence from the CBA and whether the award is unlawful, arbitrary, or capricious. *Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.* (1990), 49 Ohio St. 3d 129, paragraph two of the syllabus. “An arbitrator’s award draws its essence from a collective bargaining agreement when there is a rational nexus between the agreement and the award, where the award is not arbitrary, capricious or unlawful.” *Mahoning Cty. Bd. of Mental Retardation & Developmental Disabilities v. Mahoning Cty. TMR Edn. Assn.* (1986), 22 Ohio St. 3d 80, at paragraph one of the syllabus.

The CPPA, believing that the arbitrator exceeded his powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter was not made, has brought an application to vacate the arbitration award. Specifically, the Union argues that the arbitrator imperfectly performed his duties by failing to consider issues before him. The two key issues were the applicability of the *Piper* decision, an Ohio Supreme Court case involving due process rights guaranteed to police officers, and the alleged violation of the CBA by virtue of the PRB’s subpoena power and the denial of legal representation at hearing. The Court agrees with the CPPA that the arbitrator imperfectly performed his duties by failing to consider the *Piper* decision. The Ohio Supreme Court has held, pursuant to R.C. 9.84, that a police officer who is the subject of a police department internal affairs investigation and who is compelled to appear before a superior officer for the purpose of answering questions during the course of an investigation is “appearing as a witness” and, therefore, “shall be permitted to be accompanied, represented, and advised by an attorney.” *In*

re: Civ. Serv. Charges & Specs. Against Piper (2000), 88 Ohio St. 3d 308, 311-312. Here, the arbitrator stated that *Piper* concerned internal affairs investigations within the police department and thus was not applicable to a citizen complaint review board. The Court fails to see such a distinction. In this case, the officer's presence to answer questions is mandatory since the PRB has subpoena power and the ability to impose a fine and jail for contempt. More importantly, the PRB is more than an investigatory board, since it can suspend an officer for up to ten days. The arbitrator should have considered the implications of R.C. 9.84 and the *Piper* decision with respect to the grievances filed by the CPPA, but he summarily dismissed the *Piper* decision and stated the CPPA should pursue the issue through separate litigation. In doing so, the arbitrator acted arbitrarily and capriciously.

For all of the foregoing reasons, the Court finds that the arbitrator imperfectly executed his power by failing to apply *Piper*. The plaintiff's application to vacate the arbitration award is granted.

IT IS SO ORDERED.

DATE:

MICHAEL J. RUSSO, JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing **Opinion and Order** has been sent by regular U.S. Mail this ____ day of September, 2003 to: Patrick A. D'Angelo, Esq., 2000 Standard Building, 1370 Ontario Street, Cleveland, Ohio 44113, Counsel for the CPPA and Jennifer Heinert-O'Leary, 601 Lakeside Avenue, Room 106, Cleveland, Ohio 44114-1077, Counsel for the City of Cleveland.

MICHAEL J. RUSSO, JUDGE