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

**FILED**

2016 MAY 11 P 4: 01

CLERK OF COURTS  
CUYAHOGA COUNTY

CLEVELAND POLICE PATROLMEN'S ASSOCIATION  
Plaintiff

Case No: CV-14-833934

Judge: MICHAEL J RUSSO

CITY OF CLEVELAND  
Defendant

**JOURNAL ENTRY**

96 DISP.OTHER - FINAL

OPINION AND ORDER. OSJ.

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

\_\_\_\_\_  
Date

STATE OF OHIO )  
 )SS:  
CUYAHOGA COUNTY )

IN THE COURT OF COMMON PLEAS  
CASE NO. CV-833934

CLEVELAND POLICE PATROLMEN'S )  
ASSOCIATION )

Plaintiff )

vs. )

CITY OF CLEVELAND )

Defendant )

**OPINION AND ORDER**

**MICHAEL J. RUSSO, JUDGE:**

The Court has before it the Application to Vacate Arbitration Award filed by the Cleveland Police Patrolmen's Association ("CPPA") and the Opposition Brief and Application to Confirm the Arbitration Award filed by the City of Cleveland ("City"). For the following reasons, the application of the CPPA to vacate the arbitration award is denied, and the application of the City to confirm the arbitration award is granted.

**Procedural History**

The uncontroverted facts are that on January 17, 2013 the Cleveland Division of Police issued Divisional Notice ("DN") 13-31 informing officers that there would be a limited number of patrol officers assigned to the Gang Impact Unit ("GIU"). The GIU is a highly specialized unit under the command of the Bureau of Special Services headed by Commander Gary Gingell. DN 13-31 sets forth general requirements for the position and also stated, "[a]pplicants are subject to a screening process that may include an interview and a review of attendance, sick time use, discipline, quality

of work, performance evaluations, and supervisor recommendations.” Officer Valerie Thompson requested to be considered for assignment to the GIU on February 7, 2013. At the time of her request, she had almost twenty years of service with the Cleveland Police Department. Officer Thompson was one of seventy-eight candidates that applied for these positions. All candidates were subject to an interview with a captain and two sergeants assigned to the GIU. After the interviews were completed, recommendations were forwarded to Commander Gingell for review. Officer Thompson was second on the seniority list. Gingell requested and received the disciplinary records for each applicant. Gingell considered only the applicant’s active disciplinary record, which encompassed discipline issued within two years of the time of selection. With respect to Officer Thompson, a review of her record revealed that she had been issued a five-day suspension for insubordination and inappropriate conduct over social media on February 13, 2013. Based on this active disciplinary record involving insubordination, Commander Gingell recommended to the Chief of Police that Officer Thompson did not meet the requirements of the position, should not pass the screening process, and thus should be disqualified from consideration. Some of the officers who were recommended had a disciplinary history involving insubordination, but none were within the active two year period. Officer Thompson was not the only officer with seniority passed over for the assignment. Officer Richard Adams was also passed over based on an active insubordination charge. Due to her disqualification, Officer Thompson filed a grievance in accordance with the grievance procedure outlined in the Collective Bargaining Agreement (“CBA”), which denial was ultimately appealed to the American Arbitration Association. On March 25, 2014 an arbitration hearing was held in which the parties presented testimony and documentary evidence. On July 10, 2014, Arbitrator Paul F. Gerhart issued an opinion and award

in which he denied the grievance filed by Thompson. He found no contractual violation with respect to the Chief's disqualification of Officer Thompson's application for the GIU. The arbitrator did issue a proviso that if her disciplinary suspension for insubordination was set aside as a part of a separate grievance proceeding that she be offered an assignment to the GIU within thirty days.

### Analysis

"The public policy favoring arbitration requires that courts have only limited authority to vacate an arbitrator's award." *Association of Cleveland Fire Fighters, Local 93 of the International Association of Fire Fighters v. City of Cleveland*, 99 Ohio St. 3d 476, 2003-Ohio-4278, ¶ 13. Yet, such awards can be overturned by a court of law whenever, "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 a determination of 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.*, 49 Ohio St. 3d 129 (1990), 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.*, 22 Ohio St. 3d 80 (1986), at paragraph one of the syllabus.

Pursuant to statute, the Court of Common Pleas is limited in its review of a decision of an arbitrator to the four grounds for vacation of an award set forth in R.C. 2711.10:

(A) The award was procured by corruption, fraud, or undue means.

(B) There was evident partiality or corruption on the part of the arbitrators, or any of them.

(C) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(D) 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.

Absent any of the foregoing circumstances, the court is required to affirm an award issued by an arbitrator.

In this instance, the CPPA is seeking to vacate the arbitration award pursuant to R.C. 2711.10(D). The arbitration award issued by Arbitrator Gerhart thus may only be vacated if the CPPA can establish under subsection (D) that the arbitrator exceeded his powers or so imperfectly executed his duties that “a mutual, final and definite award” was not made. Pursuant to R.C. 2711.10(D), even an error of fact or law by an arbitrator does not provide a basis for vacating an arbitration award. *Orwell Natural Gas Company, Inc. v. Pcc Airfoils, L.L.C.*, 189 Ohio App.3d 90, 2010-Ohio-3093, ¶ 10 (8<sup>th</sup> Dist.).

Here, the CPPA argues that the City improperly introduced into DN 13-31a screening process which included a review of discipline. Arbitrator Gerhart relied upon Articles IV and XX of the CBA in his analysis. Article IV (4)(b) gives the City the right to “[d]irect, supervise, **evaluate** or hire employees and to determine when and under what circumstances a vacancy exists.” Article XX (45)(a) permits the Chief of Police to post “a list of the minimum qualifications and objective criteria to be considered and required in filling the position.” Arbitrator Gerhart found that the discipline record of an applicant is a permissible factor for assessing the minimum qualifications of

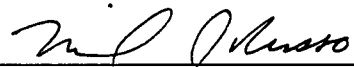
an applicant for a posted vacancy. He concluded that the City did not violate the CBA because Article IV, when read in conjunction with Article XX, permits the City to evaluate patrol officers based on the minimum requirements and objective criteria for the position to be filled. Because discipline was not a factor expressly excluded by Article XX, the City was permitted under the CBA to take it into consideration as long as it was included in the posting, which it was. The discussion and analysis by Arbitrator Gerhart demonstrates that there is a rational nexus between the CBA and the arbitration award because the award can be derived from the terms of the agreement.

Next, the CPPA argues that there was not a final and definite award because of the proviso the arbitrator added to his award. Because of the timing of the grievance at issue and the grievance of her disciplinary suspension, the arbitrator included a proviso that if her disciplinary suspension for insubordination was set aside as a part of a separate grievance proceeding that she be offered an assignment to the GIU within thirty days. Arbitrator Gerhart added the proviso because the denial of this grievance was predicated on Officer Thompson's disciplinary record. Ultimately, Officer Thompson never appealed her insubordination charge through the grievance procedure. The arbitration award issued by Arbitrator Gerhart thus was a final and definite award and there is no need to consider the proviso or vacate the award.

The standard set forth in R.C. 2711.10(D) necessitates that the CPPA establish that the arbitrator exceeded his powers or so imperfectly executed his duties such that a mutual, final and

definite award was not made. The CPPA has failed to meet its burden on this issue, and the Court hereby confirms the arbitration award and denies the application to vacate.

**IT IS SO ORDERED.**


  
MICHAEL J. RUSSO, JUDGE

**CERTIFICATE OF SERVICE**

A copy of the foregoing Opinion and Order has been sent by regular U.S. mail this 11<sup>th</sup> day of May, 2016 to:

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MICHAEL J. RUSSO, JUDGE