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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3207-16T1

BOROUGH OF MOUNTAINSIDE,

Plaintiff-Respondent,

v.

MOUNTAINSIDE PBA LOCAL 126,

Defendant-Appellant.

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Submitted February 26, 2018 – Decided March 28, 2018

Before Judges Sabatino and Rose.

On appeal from Superior Court of New Jersey, Chancery Division, General Equity, Union County, Docket No. C-000012-17.

Mets Schiro McGovern & Paris, LLP, attorneys for appellant (Leonard C. Schiro, of counsel and on the briefs; David M. Bander, on the briefs).

Apruzzese, McDermott, Mastro & Murphy, PC, attorneys for respondent (Frederick T. Danser, of counsel and on the brief; Neha Patel, on the brief).

PER CURIAM

This appeal involves a labor union's grievance of a borough's denial of a police officer's request to be reimbursed for his

tuition costs in a master's degree program. An arbitrator who heard the grievance ruled against the borough and ordered the tuition reimbursement. The arbitrator did so because the borough had failed to provide the officer with any written reasons for denying his request.

The trial court set aside the arbitration award. The court found the arbitrator exceeded his authority by imposing an obligation on the borough to provide written reasons for denying an officer's tuition request, where no such obligation is specified in the governing Collective Negotiations Agreement ("CNA").[1]

For the reasons that follow, we vacate the trial court's decision and remand for further proceedings.

We summarize the facts and procedural history relevant to this appeal succinctly. Appellant Mountainside PBA Local 126 is a labor union that represents PBA members of the police force in the Borough of Mountainside. The union and the Borough entered into a CNA for the relevant time frame of January 1, 2014 through December 31, 2017.

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[1] The agreement in the appendix is titled "Collective Bargaining Agreement[,]" even though both parties refer to it in their briefs as a Collective Negotiations Agreement (CNA). For the purposes of this opinion, we will refer to the agreement as a CNA, consistent with the parties.

Article XX of the CNA, entitled "Education," declares that the Borough "wishes to provide for [its] [e]mployees opportunities for equitable experiences and individual professional development in order to broaden and facilitate functional relationships among its Departments." CNA, Article XX(A). This goal "shall be accomplished by providing for [the Borough's] [e]mployees opportunities for the following [various enumerated] education experiences which, when approved in advance by the Borough, will be funded as noted . . . ." Id. at Article XX(B). The programs eligible for such potential tuition reimbursement include "courses . . . for which . . . college credits are given . . . ." Id. at Article XX(B)(2). Other educational experiences not specified are "to be funded as deemed appropriate by the Governing Body at the time the opportunity for such experience arises." Id. at Article XX(B)(3). If approved, such courses will be "funded at a cost not to exceed that of three (3) graduate courses at a State College . . . ." Id. at Article XX(B)(2). Such approved costs are "to be reimbursed [by the Borough] to the Employee, following successful completion of the course." Ibid.

The CNA does not set forth any standard for approval or disapproval of tuition reimbursement proposals. As noted by the arbitrator and the trial court, before the present dispute arose the Borough had approved tuition reimbursement for six police

officers enrolled in master's degree programs. Those approved requests included master's degrees in Public Administration, Criminal Justice, a joint degree in those two fields, and an unspecified field.

Corporal Jeffrey Stinner, the subject of this dispute, has been a police officer with the Borough since December 1998. He was the union's past president from 2005 through 2010 and has been its vice-president from 2010 to the present. According to the union, the Borough fully reimbursed Stinner for his undergraduate tuition when he obtained a Bachelor's Degree in Business Administration from Centenary College in 2014.

In November 2015, Stinner sent a memorandum to the Borough's police chief, requesting tuition reimbursement to "continue [his] education" by obtaining a Master's Degree in Finance. Stinner had not yet been admitted to a graduate school. He noted in his memo that he had started researching such master's programs but would "await approval" before proceeding further.

The police chief forwarded Stinner's request to the Borough Administrator and the Borough Council. The Council denied the request, without providing a written explanation of why it was doing so. The denial was conveyed to Stinner in an email from the police chief, advising him that the Council's Police Committee had reviewed and rejected his request. As the email noted, although

the Council members "congratulate[d] [him] on [his] achievement in obtaining a Bachelor's Degree in Management[,]" "[u]nfortunately, it is their decision not to approve funding for [his] current request."

Stinner and the union filed a grievance, which was heard by an arbitrator. The arbitrator concluded that the Borough was obligated to fund the tuition because it had violated Article XX of the CNA and an implied duty of good faith. Specifically, the arbitrator found that the Borough had an obligation to give a written reason for the denial, and that any such denial "must be accompanied by a particularized explanation . . . ." Because the Borough had not supplied such written reasons, the arbitrator directed the Borough to approve Stinner's reimbursement request.

The arbitrator rejected the Borough's argument that the CNA unambiguously gives the Borough unfettered discretion in approving or denying tuition reimbursement, and does not require written reasons be furnished for such decisions. The arbitrator found this interpretation of the CNA "at odds with the parties' evident purpose of establishing a stable and continuing contractual educational benefit." As the arbitrator elaborated:

> Under the Borough's reading, it could decide to deny an educational request without stating a reason, even if identical requests had been approved in the past. Thus, this interpretation of Article XX could lead to a

> harsh and unreasonable result: it could potentially undermine or eliminate the negotiated educational benefit by allowing the Borough to simply deny all requests.

Based on this reasoning, the arbitrator concluded "the Borough's contractual authority to approve or deny education requests carries with it the obligation to exercise that authority in a good faith and non-arbitrary manner, by providing a written statement of reasons that explains why a request is denied."

The arbitrator derived some significance from the fact that the Borough had approved tuition reimbursement for other officers enrolled in certain master's degree programs in the past. He noted this past practice supported the union's position that "Stinner was not automatically ineligible for education funding because he planned to pursue a graduate degree." As an important caveat, however, the arbitrator recognized the Borough's approvals of those past requests appeared to be "individualized, case-by-case decisions . . . ." He found "the record does not include any clearly enunciated policy whereby the Borough committed itself to approving [all such tuition requests] . . . regardless of the nature of those courses, the type of degree being pursued, or the credentials of the educational institution." Hence, the crux of the arbitrator's analysis rested upon the Borough's failure to

articulate to Stinner in writing its reasons for denying his specific request.

The Borough moved in the Chancery Division to set aside the arbitrator's decision. The Borough contended the arbitrator had improperly injected terms into the CNA that are not present. The Borough asserted the CNA unambiguously gives the Borough total discretion in approving or denying tuition reimbursement, and does not require the Borough to furnish written reasons for such decisions.

In arguing that the arbitrator exceeded his powers, the Borough pointed to this language in Article III (C), Step 4(2)(d) of the CNA:

> The Arbitrator shall be bound by the provisions of this Agreement and by the applicable laws of the State of New Jersey and the United States. <u>The Arbitrator shall not have the authority to add to, modify, detract from, or alter in any way the provisions of this agreement or any amendment or supplement thereto</u>.
>
> [(Emphasis added).]

The Borough maintained the arbitrator violated this limitation on his authority by "altering" the CNA to impute a requirement to provide written reasons for tuition funding denials.

The Chancery Division judge agreed with the Borough that the arbitrator had exceeded his powers by impermissibly adding terms

to the CNA. Consequently, the judge set aside the award pursuant to a provision within the New Jersey Arbitration Act that authorizes courts to vacate arbitration awards in limited instances where arbitrators "exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made." N.J.S.A. 2A:24-8(d); see also Tretina Printing, Inc. v. Fitzpatrick & Assocs., 135 N.J. 349, 355 (1994).

The judge found that the arbitrator's concerns about the Borough acting arbitrarily or inconsistently in denying Stinner's tuition reimbursement request were misplaced, as there was no indication that a union member had previously sought such reimbursement specifically for a master's degree in finance. The judge noted that the arbitrator and the court were not allowed to remake a better contract for the parties then the one they had entered into. Since the CNA does not spell out a requirement for written reasons, it was improper to impute such an obligation into the parties' agreement.

On appeal, the union contends that the trial court did not show proper deference to the arbitrator. The union contends that an obligation to act in good faith and engage in fair dealing is implied in every public contract, and that the arbitrator appropriately recognized and enforced that concept. The Borough

counters that the trial court's opinion says nothing about the concept of good faith. It argues the court correctly found that the arbitrator erred by reading words into the CNA that simply are not part of the agreement.

Having considered these points, we agree with certain contentions of both sides. We agree with the Borough and the trial court that, as a general principle of the Arbitration Act, when individuals or parties have agreed on a defined set of rules in a contract to govern the arbitration process, "an arbitrator exceeds his powers when he ignores the limited authority that the contract confers." County Coll. of Morris Staff Ass'n v. County Coll. of Morris, 100 N.J. 383, 391 (1985). The terms of the negotiated contract provide the scope of the arbitrator's authority. Therefore, an arbitrator "may not disregard the terms of the parties' agreement, nor may he rewrite the contract for the parties." Ibid. (internal citations omitted).

That said, we agree with the union and the arbitrator that the law imposes a general obligation upon both parties to a contract to carry out their respective obligations in good faith. Wade v. Kessler Inst., 172 N.J. 327, 340 (2002); see also Restatement (Second) of Contracts § 205 (Am. Law Inst. 1981) ("[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement"). Under

such an imputed overarching covenant of good faith, "'neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract[.]'" Wade, 172 N.J. at 340 (alteration in original) (quoting Bak-A-Lum Corp. v. Alcoa Bldg. Prod., 69 N.J. 123, 129 (1976)). As a corollary proposition, a party breaches the implied covenant when it "exercises its discretionary authority arbitrarily, unreasonably, or capriciously . . . ." Wilson v. Amerada Hess Corp., 168 N.J. 236, 251 (2001).

The Borough does not refute these principles. Nor does it gainsay the proposition that the implied covenant of good faith is deemed an inherent part of every collective bargaining agreement. See, e.g., Steelworkers Local 4624 v. New Park Mining Co., 273 F. 2d 352, 356-57 (10th Cir. 1959); Jara v. Buckbee-Mears Co., 469 N.W. 2d 727, 731 (Minn. Ct. App. 1991).

Applying these legal standards, we concur with the Borough and the trial court that the arbitrator strayed from his authority by specifically reading into the CNA a requirement for the Borough to convey written reasons when denying an employee's tuition reimbursement request. The omission of such written reasons does not inherently signify that the Borough lacked good faith reasons for the rejection. Moreover, the requirement of a writing would impose an additional burden upon the Borough decision-makers that

is not called for under the CNA. If a writing requirement were extended to other decisions made on employee requests, that burden could significantly increase.

Nevertheless, the obligation to act in good faith and deal fairly with union members concerning this negotiated tuition benefit would be useless if a governing body could arbitrarily grant or deny requests on a whim, without being accountable to provide some explanation (oral or otherwise) for why it granted one tuition request and denied another. However, that does not necessarily have to be conveyed, as the arbitrator found, in written form when the Borough responds to an employee's request. Even so, the Borough must be prepared to defend its decision, and explain its underlying rationale, if the decision is grieved before an arbitrator.[2]

Here, as the trial court noted, the record is silent as to exactly why the Borough turned down Officer Stinner's request. We offer no views on the subject. The issue must be adjudicated on its merits before the arbitrator, something which apparently was never done.

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[2] Parenthetically, we note the Borough may choose to provide written reasons in order to promote positive relationships with its employees and also to memorialize the grounds of decision for future reference. Our point is that we cannot impose such an obligation on the Borough.

For these reasons, we vacate the trial court's decision without prejudice and remand for further proceedings before an arbitrator to address the merits of the Borough's denial. See, e.g., Kimba Med. Supply v. Allstate Ins. Co., 431 N.J. Super. 463, 490 (App. Div. 2013) (noting that, in limited situations, a judicial remand to an arbitrator or dispute professional to give further consideration to a case may be appropriate to address open issues not amenable to the court's resolution from the existing record), certif. granted, 217 N.J. 286, and certif. dismissed as improvidently granted, 223 N.J. 347 (2014). The unsuccessful party after the renewed arbitration may thereafter seek further relief before the Superior Court. We do not retain jurisdiction.

Vacated and remanded.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION