IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

YORK COUNTY PRISON,	:	**No. 2019-SU-001997**
Petitioner	:	
	:	
v.	:	
	:	
TEAMSTERS LOCAL UNION NO. 776,	:	
Respondent	:	**Civil Action-Law and Equity**

APPEARANCES:

For the Petitioner: Cory A. Iannacone, Esquire
For the Respondent: Ira H. Weinstock, Esquire

ORDER DENYING PETITION TO MODIFY OR VACATE ARBITRATION AWARD

AND NOW, this 10th day of February, 2020, it is **HEREBY ORDERED** and **DIRECTED** that the Petition of York County Prison to Modify or Vacate Arbitration Award is **DENIED** and the Arbitration Award dated June 9, 2019 is **AFFIRMED**, for the reasons stated in the Opinion, of even date hereof, that accompanies this Order.

The Prothonotary shall provide notice of this Order as required by law.

ISSUED AT YORK, the day first above written.

BY THE COURT:

Lawrence F. Clark, Jr., S.J.

LAWRENCE F. CLARK, JR., S.J.

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OPINION IN SUPPORT OF ORDER DENYING PETITION TO MODIFY OR VACATE ARBITRATION AWARD

CLARK, SJ
February 10, 2020

This matter is before the Court on the Petition of York County Prison to vacate the Arbitration Award of June 9, 2019.

FACTUAL AND PROCEDURAL BACKGROUND

This case involves the discharge of Correctional Officers Marcial Baez and Graig Phillips ("Officers" or "Grievants") from their employment at York County Prison ("YCP") operated by the County of York, Pennsylvania ("County" or "Petitioner"). Both were terminated from their employment at the YCP due to their conduct prior to a "use of force" incident involving an inmate on suicide prevention watch, which event occurred on May 1, 2018, and for their alleged intentional dishonesty during a subsequent investigation

into the use of force incident. The Correctional Officers are represented by Teamsters Local Union No. 776 ("Respondent" or "Union"). The Union filed grievances on behalf of the Correctional Officers, alleging that the discipline imposed upon them was **without just cause**. Pursuant to the Collective Bargaining Agreement ("CBA") between YCP and the Union, the matter was submitted to binding arbitration, with the parties choosing John M. Skonier, Esquire as the Arbitrator.

The parties appeared before Arbitrator Skonier on December 12, 2018 for a full Hearing on the merits of the issues in dispute, with the Arbitrator issuing his written Decision and Award on June 9, 2019. The **jointly stipulated** issue before the Arbitrator was "whether the County had **just cause** to discharge the Grievants and, if not, what shall be the remedy?" (Emphasis added). The Arbitrator's Decision includes extensive findings of fact which the Court will summarize herein.

On May 1, 2018, Correctional Officers Baez and Phillips were responsible for the custody and care of an inmate with mental health issues who had been placed on suicide prevention watch. Officers Baez and Phillips verbally engaged in bantering with the inmate, which bantering included: taunting and antagonizing the inmate, using profanity and slurs, and causing the inmate to become agitated to the point that he placed a mattress against his cell door. Officers Baez and Phillips notified a Lieutenant, who directed them and several other Correctional Officers to open the cell door and remove the obstructing mattress. While the Officers were attempting to remove the mattress, the inmate punched a Correctional Officer and bit his arm. This precipitated the "use of force" incident, which

involved subduing the inmate and placing him in a restraint chair and moving him to the Prison Medical unit. (Decision and Award, p. 5-6). This incident became the subject of a Use of Force report. Officers Baez and Phillips were both questioned about the incident during fact-finding meetings by prison administration officials. The Officers were specifically asked if they or any other staff had taunted or antagonized the inmate, to which both Officers initially responded "No." (Decision, p. 6). An audio/video surveillance tape verifies that the Officers did, in fact, use obscene and/or demeaning language towards the inmate, which the Officers ultimately acknowledged after their initial interviews. A transcript of the tape can be found at pages 15 and 16 of the Arbitrator's Decision and Award.

At the conclusion of the investigation, the County issued a termination letter to Officers Baez and Phillips, which stated in part that the Officers were found to have "taunted and antagonized an inmate" and "were dishonest during the investigation." The letter further stated that the Officers' actions violated the CBA, York County Prison Procedures Manual and the Code of Ethics, and were also "contrary to the orderly operations and reputation interests of the York County Prison." (Decision and Award, p. 3).

The Union alleged that the discipline imposed upon the Grievant Officers was **without just cause**, in violation of the CBA. The relevant provisions of the CBA in this case are Articles 3 and 18. Article 3, Section 1 states in part as follows:

> [t]he Management of the County operations and the direction of the working force is vested exclusively in the Employer and includes, but is not limited to, the right to: hire, suspend, discipline or discharge **for proper cause**, or transfer, and the right to relieve employees from duty because of lack of work or for other legitimate reasons under this Contract; (Emphasis added).

Article 18 (Discharge, Demotion, Suspension, and Discipline), Section 1, states in part as follows:

> The Employer shall not demote suspend, discharge, or take any disciplinary action against an employee **without just cause**. (Emphasis added).

(Decision and Award, p. 3-4). The Union argued that the Officers were not intentionally dishonest as there was no intent to deceive or defraud, distinguishing between incorrect and dishonest answers. The Union noted that Officer Phillips corrected his initial response prior to any discipline being imposed, and that Officer Baez did not believe his conduct constituted taunting but was rather typical banter between inmates and prison guards. (Decision and Award, p. 7-8). The Union also referred to Article 18, Section 4, which includes a schedule of offenses, noting that involvement in an unprovoked altercation only results in a suspension while failure to follow instruction or perform assigned work results in a written warning. They argue that Officers Baez and Phillips were essentially discharged for inappropriate language without any inappropriate use of force. (Decision and Award, p. 9).

The County, in response, pointed to the Correctional Officers' Code of Conduct. "This involves an intelligent, humane, and impartial treatment of inmates. Profanity directed to inmates, or vengeful, brutal, or discriminatory treatment of inmates will not be tolerated." (Decision and Award, p. 10); Code of Conduct, Article 1. The Prison Warden explained the importance of Correctional Officers performing their functions professionally, particularly in the context of guarding an inmate on suicide watch. The Warden further explained the importance of truthfulness during an investigation, and that the Grievant Officers were discharged both for dishonesty and for their taunting and antagonizing behavior toward an inmate in crisis, which created a situation resulting in a use of force. *Id.*

The County compared the actions of Officers Baez and Phillips to those of three other Correctional Officers at YCP who were previously discharged for arranging and conducting demeaning "games" using the inmates. Two of those other Officers were discharged for perpetrating the "games" while the third was discharged for lying about his knowledge of them during an investigation. Those discharges were upheld through an arbitration award. The Union argued that the actions of Officers Baez and Phillips were not comparable to those of the Officers in that prior arbitration case, inasmuch as those incidents resulted in **criminal charges** resulting in three trials in which two of those other Officers were found guilty of **criminal conduct**. An arbitrator upheld the discharges of those three other Officers due to "serious misconduct." (Decision and Award, p. 7-8).

After a more detailed review of the words and actions of Officers Baez and Phillips, the Arbitrator determined that both men were less than fully forthcoming and honest when questioned during the fact-finding meetings and that "neither fully acknowledged their actions until they heard the audio tape." The Arbitrator further stated as follows:

> Although the Officers' conduct was wrong and deserving of discipline, it was pejorative name-calling between the Grievants and the inmate, and does not come close to the despicable misconduct that resulted in the discharge of the three Correctional Officers in 2017, two for their behavior of using inmates in "games" and the third for his complicity in not reporting the matters and for denying knowledge of them.

(Decision and Award, p. 19). The Arbitrator found that while the current Grievants' misconduct was deserving of a serious penalty, it did not merit discharge. A YCP official who was part of the fact-finding meetings, Commander Rohrbach, admitted to inappropriate name calling and acknowledged that it regularly occurs at the Prison. However, the Arbitrator recognized that the inmate in this case was on suicide prevention watch and found that the Officers "had a greater obligation to control their reactionary urge to engage in demeaning banter. Further, the Grievants were not forthcoming in their responses during their fact-finding meetings." The Arbitrator ultimately determined that "while discharge is not found to be appropriate, a serious penalty is warranted, and will be so awarded." (Decision and Award, p. 20). The Arbitrator issued the following Award:

> On the basis of the record as a whole and for the reasons discussed, **just cause for discharge is not found**. However, just cause for discipline is found. The Grievants are to be returned to work with full seniority but without back pay. Their time out of service is to be carried as a disciplinary suspension. (Emphasis added).

Id.

The County filed a Petition to Modify or Vacate Arbitration Award in the Court of Common Pleas of York County on July 2, 2019. A hearing on the Petition was scheduled for August 6, 2019. Respondent filed a Petition for Recusal of York County Judges on August 2, 2019, which was granted by Order of the Honorable Richard K. Renn dated August 13, 2019. An Administrative Order issued by President Judge Joseph C. Adams dated September 3, 2019 confirmed the recusal and requested appointment of an out-of-county Judge for disposition of the matter. The matter was subsequently assigned and submitted to the undersigned. Briefs in Support of and Opposition to the Petition to Modify or Vacate were submitted by the parties to the Court for review prior to the hearing. A hearing on the Petition to Vacate was also held on November 14, 2019 with counsel for the parties presenting oral arguments. By Order dated November 19, 2019, the Court granted the County's Application for Stay of Enforcement of Arbitration Award, with the agreement of the Union. The parties each submitted post-hearing Briefs on December 2, 2019.

DISCUSSION

The two issues presented by the County in its Petition and Brief in Support of the Petition to Modify or Vacate the Arbitration Award are as follows:

1. Where the CBA specifically provides for immediate termination in cases of proven dishonesty, was the Arbitrator required to uphold Grievants' terminations once he made the factual determination that Grievants were dishonest?

2. Whether the June 9, 2019 Award should be vacated or modified where Grievants' admitted conduct violated an explicit, well-defined, and dominant public policy against abuse of prison inmates?

(Petitioner's Brief, p. 6).

The parties both recognize in their respective Briefs, and during discussion with the Court during Oral Argument, the standard of review in our Commonwealth for arbitration awards. (Transcript of Proceedings, 11/14/2019, p. 6-7). Act 195 of Pennsylvania's Public Employee Relations Act provides that arbitration awards are reviewed pursuant to the "essence test." The Pennsylvania Supreme Court defined the essence test as follows:

> The arbitrator's award must draw its essence from the collective bargaining agreement. Pursuant to the essence test as stated today, a reviewing court will conduct a two-prong analysis. First, the court shall determine if the issue as properly defined is within the terms of the collective bargaining agreement. Second, if the issue is embraced by the agreement, and thus, appropriately before the arbitrator, the arbitrator's award will be upheld if the arbitrator's interpretation can rationally be derived from the collective

bargaining agreement. **That is to say, a court will only vacate an arbitrator's award where the award indisputably and genuinely is without foundation in, or fails to logically flow from, the collective bargaining agreement**. (Emphasis added).

State Sys. of Higher Educ. (Cheyney Univ.) v. State College Univ. (PSEA-NEA), 743 A.2d 405, 413 (Pa. 1999); *See also, Greene County v. Dist. 2, UMW*, 852 A.2d 299, 306-307 (Pa. 2004);

With regard to the first issue presented, the County argues that the Award fails the essence test because the Arbitrator had no latitude to alter the punishment of Grievants to anything less than termination because they were found to be dishonest, and the Schedule of Discipline ("Schedule" of "Table") found at Article 18, Section 4 listing discharge as the first penalty for dishonesty mandates such a result. At the time of the hearing, due to the assertion by the Petitioner in its pre-hearing writings submitted to the Court, the Court first questioned Petitioner's counsel with regard to this issue, particularly as to whether there is any language indicating that **any** disciplinary measures contained in the disciplinary Table are **mandatory**. (Transcript, p. 2-7). Petitioner's counsel argues that the discipline for dishonesty should be interpreted as mandatory because the discipline contained in the Table for other offenses allows for greater latitude and provides for more than one type of disciplinary measure or different lengths of suspensions. (Transcript, p. 7-9). Petitioner argues that, by failing to strictly interpret the discipline Table, as the Petitioner construes the implied interpretation of such CBA provision, "the Arbitrator has

rewritten the terms of the parties' collective bargaining agreement. On these grounds, the Award cannot say to draw its essence of the bargaining agreement and, more specifically, the parties' negotiated and agreed upon discipline table contained in the same." (Brief in Support of Prison's Petition, p. 10). In short, the County argues that the Parties would not have included the discipline Table with specific penalties for certain offenses in the CBA if they had intended to allow an Arbitrator to modify the penalty once the wrongdoing had been found.

The Union, in response, argues that **just cause is a condition precedent** for discipline in Article 18 of the CBA; and, most importantly, the Union notes that **just cause was the issue jointly stipulated by the parties to be decided by the Arbitrator**. (Post-Hearing Brief in Opposition, p. 4; Decision and Award, p. 5; Transcript, p. 19-20). The Union further argues that the County should be estopped from arguing that the just cause provision does not govern the result in this matter, otherwise the imposition of sanctions is simply a matter of rote and the County is essentially arguing that "the issue set before the Arbitrator was not even the issue to be decided." (Post-Hearing Brief in Opposition, p. 5). The Union urges the Court to not allow the Petitioner's agreed upon and stipulated issue to be ignored and dishonored in this case. The Court also raised the issue of estoppel with counsel for the parties during oral arguments:

> "Well, why would the parties submit a just cause argument to an arbitrator if in the final analysis they take the position that the just cause clause is of no moment to the determination of the arbitrator because of the

table and their interpretation of required or a mandatory discipline of termination?

Otherwise, it is just a mechanical kind of process, and so, therefore, by stating the matter to be determined by the arbitrator in the fashion that it was set on the table before him, do they not – are they not estopped from arguing that the just cause clause is endemic to the whole dispute and that this is not just a mechanical operation of a "T" [termination] on a Table?"

(Transcript, p. 20-21). The Union's response was that the Arbitrator decided the exact issue jointly stipulated by the parties. *Id.* at 21. Counsel for the Union also noted that there is **no language** in Article 18 of the CBA indicating **mandatory discipline** for any offense. *Id.* at 21.

The Court is in agreement with Respondent and finds that, even if Petitioner is not estopped from arguing interpretation of the just cause provision, the Arbitration Award certainly meets the essence test. The issue as jointly stipulated by the parties for submission to the Arbitrator was as follows:

> "The issue in this matter is whether the County had just cause to discharge the Grievants and, if not, what shall be the remedy?"

(Decision and Award, p. 5). This meets the first part of the essence test, as the defined issue is within the terms of the CBA. As noted above, Article 18, Section 1 states that the County "shall not demote suspend, discharge, or take any disciplinary action against an employee **without just cause**." (Emphasis added). Despite the Schedule of discipline

contained in Article 18, Section 4, the Court finds that the Schedule does **not** establish mandatory penalties for certain violations, such as dishonesty, without specific language to that effect. There is no language in Article 18 indicating that the discipline contained in the Schedule is "mandatory" or that such discipline "shall" be imposed if an employee is found to have engaged in any wrongdoing. This is distinguishable from cases such as those cited by Petitioner where "just cause" is more specifically defined or where language indicating a mandatory provision is used in a collective bargaining agreement. The cases cited by the County in support of its position are distinguishable. The provision at issue in *County of Berks v. Int'l Bhd. of Teamsters Local Union No. 429* (2008 Pa. Commw. Unpub. LEXIS 99) involved required firearms training and stated in part as follows:

> All employees covered under this agreement **will** be required to qualify semi-annually. Employees who fail to qualify **will** be suspended without pay and given four (4) opportunities to qualify within one (1) week. If employee fails to qualify after four (4) attempts in one (1) week they **will** be terminated. (Emphasis added).

The case of *Dep't of Corr. v. Pa. State Corr. Officers Ass'n,* 56 A.3d 60 (Pa. Commw. 2012), involved suspended corrections officers and a provision of the collective bargaining agreement regarding the timing of grievances which stated in part as follows:

> [An employee] **shall** present the grievance in writing to the respective institution . . . within fifteen (15) working days of the date of the occurrence

> giving rise to the dispute, or when the employee knew or by reasonable diligence should have known of the occurrence." (Emphasis added).

Id. at 63. Both of the provisions cited above are clearly distinguishable from the provisions of the CBA at issue here in that they contain language mandating certain behavior and discipline for violations of policy. The Court also questioned whether any testimony established a course of conduct of the parties in prior disciplinary proceedings, where there was an intent to disregard the just cause provision of the CBA and mandate the Arbitrator's decision and the disciplinary outcome. No such past practice or course of conduct was established. (Transcript, p. 26).

The Court also finds that Arbitrator Skonier's Award meets the second part of the essence test, as the Arbitrator's interpretation of the CBA allowing for Grievants to be suspended rather than terminated rationally derives from the Agreement. As the discipline Table in Article 18, Section 4 can be interpreted as discretionary absent specific language to the contrary, the Arbitrator's decision to impose a suspension rather than uphold the discharge of Grievants is appropriate after having conducted a full review of the facts. The Court cannot say that the Award is without foundation in, or fails to logically flow from, the CBA, nor will the Court substitute its own interpretation of the facts for that of the Arbitrator. The Arbitrator did not find the requisite level of dishonesty on the part of the officers to establish just cause for termination, and was careful with his words when stating that both Grievants were "less than honest" when questioned during the fact-finding meetings. (Decision, p. 19).

The Court is also in agreement with Respondent that the Arbitration Award should not be vacated or modified pursuant to a public policy exception. While the Court recognizes a legitimate public policy of protecting prisoners from all forms of abuse by corrections officers, particularly when it comes to at-risk inmates on suicide prevention watch, such a public policy can be upheld through disciplinary measures less than termination for a first offense. In support of a public policy exception, Petitioner directs the Court to provisions of the federal Prison Rape Elimination Act. While the Act defines sexual abuse by prison staff as including verbal statements of a sexual nature to a detainee, there is not a mandated penalty of discharge for a first-time violation by an employee. 6 CFR §§ 115.6, 115.76. This case is also clearly distinguishable from the prior case, discussed above, involving three YCP corrections officers who used inmates for some type of "games", a form of gross physical abuse. This case is more analogous to that cited by Respondent, *Rose Tree Media Sec'ys & Educ. Support Personnel Assoc. v. Rose Tree Media Sch. Dist.*, 136 A.3d 1069 (Pa.Commw. 2016), where it was found that the reinstatement of an employee discharged for mistreatment of a special needs student did not violate public policy because the revised penalty of a five-day suspension was sufficient to correct the employee's behavior. In this case, Grievants were found to have engaged in "excessive and inappropriate" banter and "had a greater obligation to control their reactionary urge to engage in demeaning banter upon being provoked by the inmate." (Decision, p. 17). The Court also recognized that there is "no doubt that the conduct of the corrections officers is deplorable. The question is, is it something that can be remedied by

something less than termination?" (Transcript, p. 31). The Court finds that the Arbitration Award appropriately enforces public policy by imposing a lengthy suspension on Corrections Officers Baez and Phillips, without pay. The Court therefore declines to modify or vacate the Award on public policy grounds.

CONCLUSION

Based upon the foregoing, the Court will issue the Order that accompanies this Opinion, denying the Petition to Modify or Vacate Arbitration Award and lifting the stay on enforcement of the Award.

ISSUED AT YORK, the day first above written.

BY THE COURT:

Lawrence F. Clark, Jr., S.J.

LAWRENCE F. CLARK, JR., S.J.