

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

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SUPERIOR COURT
CIVIL ACTION
NO. 14-1863-A

TOWN OF MIDDLETON

v.

MIDDLETON POLICE BENEVOLENT ASSOCIATION,
LOCAL 292, MASSCOP

MEMORANDUM OF DECISION AND ORDER ON
(1) MOTION TO VACATE ARBITRATION AWARD, and
(2) MOTION TO CONFIRM ARBITRATION AWARD

The Town of Middleton (“the Town”) filed this action to vacate an arbitration award that required the Town to reinstate former Middleton Police Officer Brian Kelley (Officer Kelley”) to his former position as a patrol officer, and to make him whole for all his losses, commencing at a date set by the arbitrator. The Middleton Police Benevolent Association (“MPBA”), Local 292, MASSCOP, on behalf of Officer Kelley, filed a cross-motion to confirm the arbitrator’s award (“the award”).

The arbitration arose from a grievance filed by the MPBA after the Town failed to reappoint Officer Kelley as a police officer based on an off-duty domestic dispute with his former partner in Maine on May 1, 2013. Following that dispute, Officer Kelley was charged with several criminal offenses in Maine. However, he ultimately pled guilty only to a charge of disorderly conduct, and that charge was dismissed after Officer Kelley complied with several conditions of pre-trial probation imposed by the court in Maine.

On May 2, 2013, upon receipt of notice of the Maine criminal charges, the Town's Police Chief suspended Officer Kelley without pay, and suspended his Class A licence to carry a firearm. And on June 30, 2013, at the end of Officer Kelley's three year appointment to the Town's police force, the Police Chief failed to reappoint Officer Kelley to the police force, effectively terminating him as a police officer.

On November 14, 2013, the MPBA filed a grievance, stating that Officer Kelley had been terminated without just cause. The grievance was arbitrated on July 22, 2014, pursuant to the Collective Bargaining Agreement ("CBA") between the Town and the MPBA. On November 20, 2014, the arbitrator ruled that the Town had violated the "just cause" termination provision of the CBA, and ordered that the Town reinstate him. The arbitrator could not and did not order that the Police Chief reinstate Officer Kelley's licence to carry a firearm.

DISCUSSION

The Town has now moved to vacate the arbitrator's award on the grounds that (1) the arbitrator exceeded her authority, (2) the award requires the Town to engage in conduct prohibited by law, and (3) the award violates public policy. Essentially, the Town contends that without a licence to carry a firearm, Officer Kelley cannot be reinstated to the Town's police force because he cannot fully perform his duties as a police officer. The Town asserts that the decision to reinstate Officer Kelley's licence

to carry a firearm rests with Town's Police Chief, and that the Police Chief has indicated that he will not authorize Officer Kelley's licence to be reinstated. Accordingly, the Town argues that the Arbitrator's award is unlawful because it essentially forces the Town to not only reinstate Officer Kelley, but in doing so, requires the Town, through the Police Chief, to issue him a license to carry a firearm.

"Arbitrators have broad discretion in interpreting collective bargaining agreements and in providing complete relief to an aggrieved party." *Town of Duxbury v. Duxbury Permanent Firefighters Ass'n. Local 2167*, 50 Mass. App. Ct. 461, 464 (2000) (internal quotations and citations omitted). The court may only vacate an arbitration award for one of the reasons set forth in G.L. c. 150C, § 11, such as evidence of fraud, partiality, or misconduct; or where the Arbitrator has exceeded his powers or rendered an award that requires others to engage in unlawful conduct. G.L. c. 150C, § 11(a). "Absent fraud, errors of law or fact are not sufficient to set aside an award." *City of Lynn v. Thompson*, 435 Mass. 54, 61-62 (2001) (internal quotations and citations omitted). "The merits of the remedy chosen by the arbitrator are beyond the scope of judicial review absent grounds for vacation under G.L. c. 150C, § 11." *City of Lynn v. Council 93, American Fed'n of State, County and Mun. Employees, Local 193*, 51 Mass. App. Ct. 905, 905 (2001).

I.

The arbitrator did not exceed her authority in ordering that Officer Kelley be

reinstated. See *School Comm. of Needham v. Needham Educ. Ass'n*, 398 Mass. 709, 714 (1986)(employee reinstatement is standard arbitral remedy where employee discharge is found to be in violation of a CBA's "just cause" provision).

Reinstatement of Officer Kelley's employment was the purpose of the grievance and precisely the subject of the arbitration. Reinstatement of Officer Kelley's licence to carry was neither within the scope of the arbitration nor was it ordered by the arbitrator. In ordering Officer Kelley to be reinstated, the arbitrator acted within and pursuant to the scope of her authority under the CBA. See *Town of Duxbury*, 50 Mass. App. Ct. at 465 (the parties to a CBA are subject to the Arbitrator's interpretation of that agreement).

Although the Town has argued that Officer Kelley cannot perform his duties without a firearm, the Town has not addressed or discussed any other options available to it, including assignment Officer Kelley to desk duty, at least while he reapplies for a licence from the Police Chief, or investigates other alternatives for securing a licence.¹ See G.L. c. 140, § 131.

II.

The arbitrator's award does not require the Town to violate any provision of

¹ Whether the Police Chief might be obligated or compelled to issue a licence to carry to an otherwise qualified Town police officer is beyond the scope of the present action. Similarly, other options for securing a licence to carry that have been suggested by the MPBA are not for this court to determine in the circumstances of this action.

state or federal law. Reinstatement of Officer Kelley to the Town's police force does not contravene any statute, rule or regulation, and in particular, does not violate G.L. c. 140, § 131. Officer Kelley is not a "prohibited person" from carrying a firearm under the law, and the only ground given by the Police Chief for suspending Officer Kelley's licence to carry was that, at that time, he was subject to criminal charges and an abuse prevention order in Maine. Those charges have since been dismissed and the abuse prevention order has been lifted. At a minimum, if the Police Chief refuses to grant or reinstate Officer Kelley's licence to carry a firearm, he has a right to judicial review of that decision. G.L. c. 140, § 131(f). It may ultimately be for a court to determine whether Officer Kelley should have a licence to carry pursuant to law — and to allow that process to go forward would in no way be a violation, or require the Town to violate, the law.

III.

The Town lastly contends that to reinstate Officer Kelley, as required by the arbitrator's decision, would violate public policy. In Massachusetts, there is a "stringent, three-part analysis" for determining whether an arbitrator's award reinstating an employee should be vacated on public policy grounds. *City of Boston v. Boston Police Patrolmen's Association*, 443 Mass. 813, 818 (2005). In the present case, the Town has failed to meet the requirements of two of the three factors that would merit vacating the arbitrator's award.

The factor that the employee's conduct must be "disfavored conduct which is integral to the performance of employment duties," *Massachusetts Highway Department v. American Federation of State, County & Municipal Employees, Council 93*, 420 Mass. 13, 16 (1995), refers or relates to the employee's conduct which gave rise to the employer's disciplinary action, in this case, the domestic violence incident in Maine. It does not relate to or rest upon whether the employee, in this case Officer Kelley, if reinstated, can perform his duties and a police officer without a licence to carry a firearm. And the domestic violence incident, while deplorable, does not relate to Officer Kelley's ability to perform his duties as a police officer.

The factor that the award "violates public policy to such an extent that the employee's conduct would have required dismissal," *Bureau of Special Investigations v. Coalition of Public Safety*, 430 Mass. 601, 605 (2001), has also not been satisfied in this case. There is no statutory requirement in Massachusetts that mandates the dismissal of a police officer who engaged in Officer Kelley's conduct during the incident in Maine. Indeed, the arbitrator found that Officer Kelley did not engage in an assault or other felonious misconduct. And she recognized that all of the criminal charges lodged against him in Maine were eventually dismissed after he took and completed certain courses that addressed his conduct. There is no evidence or law that Officer Kelley's actions *required* his dismissal from his job as a police officer.

The Town's argument that reinstating Officer Kelley without a licence to carry

a firearm violates public policy to such an extent that it would require his dismissal is without merit. As noted earlier, there is no evidence that the Town has no options to reinstate Officer Kelley without a licence to carry, and there is no legal support for the Town's contention that Officer Kelley cannot apply for and secure a licence to carry where the Police Chief has apparently already decided not to issue him such a licence. Nor does the award address, interfere with or overrule the Police Chief's independent obligation to determine who may be issued a licence to carry a firearm, subject, of course, to judicial review.

ORDER

For the foregoing reasons, the Motion to Confirm the Arbitration Award is **ALLOWED**, the Motion to Vacate the Arbitration Award is **DENIED**, and the Arbitration Award is **CONFIRMED**.

A handwritten signature in black ink, appearing to read "Peter M. Lauriat", written in a cursive style. The signature is positioned above a horizontal line.

Peter M. Lauriat
Justice of the Superior Court

Dated: February 27, 2017