PUBLISH

American Federation of State, County and Municipal Employees AFL-CIO, Local 1896 (AFSCME) v. The City of Lancaster -- No. CI-15-09669 -- Wright, J. – April 13, 2016 -- Civil -- Collective Bargaining Dispute -- Appeal from Grievance Arbitration Award governed by PERA -- Standard of Review -- Essence Test -- Manifestly Unreasonable Test -- Managerial Prerogative -- Minimum Qualifications -- Seniority -- Denial of Position. Union's appeal not cognizable within standard of Essence Test because it argues that Arbitrator erred as matter of law and misinterpreted Management Rights Provision of CBA. Even if cognizable, Arbitrator's award affirming City's denial of position of evidence specialist and Arbitrator's interpretation that CBA gives City final say in determining minimum qualifications confirmable because Arbitrator's award rationally derived from CBA in accordance with requirements of Essence Test. Award also confirmable because it does not otherwise violate public policy.

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES AFL-CIO, LOCAL 1896 (AFSCME) Appellant	:	CI-15-09669
v.	:	
THE CITY OF LANCASTER Appellee	:	

O P I N I O N

BY: WRIGHT, J. April 13, 2016

Appellant American Federation of State, County and Municipal Employees AFL-CIO, Local 1896 (AFSCME) ("Union") has filed an Amended Petition for Review Pursuant to 42 Pa. C.S. §933(b) (Labor Arbitration) ("Amended Petition") asking this Court to review Arbitrator Alan A. Symonette, Esq.'s October 6, 2015 Opinion and

Award ("Award"). (Am. Pet. at 3, ¶ 7.) The Award will be upheld for the reasons that follow.

BACKGROUND

The instant appeal arises from a dispute between Appellant Union and Appellee, City of Lancaster ("City") over the City's denial of the position of Evidence Specialist to Union member Cory Simo.[1] (Award at 2 reprinted in Br. in Support of Am. Pet. Ex. C at 2.)[2]

In sum, between July 21 and August 1, 2014, the City posted an opening for current City Employees to apply for the position of Evidence Specialist with the City's Police Department.[3] (Id. at 3.)[4] Arbitrator Symonette summarized the general duties of the position as follows.[5]

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[1] During the arbitration process, the Union and the City "stipulate[d] to the following statement of the issue: Did the City violate the Collective Bargaining Agreement when it denied the grievant [Mr. Simo] the position of Evidence Specialist? If so, what shall the remedy be?" (Award at 5 reprinted in Br. in Support of Am. Pet. Ex. C at 5.)

[2] The Briefs of the Parties contain Exhibits referenced throughout this Opinion. The City's Brief in Opposition to the Union's Amended Petition for Review has four Exhibits attached. Exhibit A is a copy of Arbitrator Symonette's Award. Exhibit B is a copy of the Collective Bargaining Agreement in effect throughout the instant dispute. Exhibit C is a copy of Grievant Mr. Simo's list of Exhibits submitted to Arbitrator Symonette. Exhibit D is a copy of the Union's Exhibit List and Brief submitted to Arbitrator Symonette following the Arbitration Hearing. The Union's Brief in Support of Petition for Review of Governmental Determination (Labor Arbitration) has three Exhibits attached. Exhibit A is selected portions from the City's Human Resources Policy Manual and a blank copy of the City's Internal Job Bid Form. Exhibit B is a copy of the same Collective Bargaining Agreement and Exhibit C is a copy of the Award.

[3] The "position of Evidence Specialist [is] a civilian position with the [City's] Police Department." (Award at 3 reprinted in Br. in Support of Am. Pet. Ex. C at 3.)

[4] Both the City and Union agree that the Award contains the only factual record of the arbitration hearing. Compare (Am. Pet. at 9, ¶ 17(FF)) (noting lack of transcript of arbitration hearing) with (Resp't.'s Answer to AFSCME's Am. Pet. for Review at 6, ¶ 17(FF)) (admitting same).

[5] I am bound to use Arbitrator Symonette's summary of the Evidence Specialist's primary duties for the purposes of this Appeal. See Neshaminy School Dist. v. Neshaminy Fed'n. of Teachers, 122 A.3d 469, 474 (Pa. Commw. Ct. 2015); Snyder County Prison v. Teamsters Local Union 764, 95 A.3d 957, 962 (Pa.Commw. Ct. 2014). Neither the Union nor the City submitted a copy of the Job Posting or Job Description to this Court but these documents were provided to Arbitrator Symonette as exhibits during the arbitration proceedings. See (Br. in Opposition to Pet.'s Am. Pet. for Review Exs. C, D) (Listing Job Posting and Job Description as Exhibits submitted to Arbitrator Symonette). Thus, "absent some countervailing record evidence," Arbitrator Symonette's summary of the Evidence Specialist's duties controls. Mt. Carmel, at 1304 n.9.

- Provide[s] expertise in the collection[,] processing and control of evidence, perform specialized duties as both a technician and custodian of evidence, represents the Police Bureau in various external settings

- Assumes charge and control of the crime scene

- Provides testimony regarding crime scene collection [, and the] processing and control of evidence

- Coordinates the documentation and processing of evidence

- Ensures the proper storage of evidence and property in order to maintain the evidentiary value of evidence-including the chain of custody[-]to quickly locate and make available such evidence and property for forensic testing, legal proceedings and other related matters
- Disposes of evidence and property using accepted methods consistent with the law and Police Bureau policy, especially as it relates to the integrity of the process

- Maintains the evidence room in general, as well as the Police Bureau's supply of evidence packaging and processing materials . . .

- Performs data entry of evidence into the Department computer system

(Id. at 3.)

A total of five City employees applied for the position, including Mr. Simo. (Id. at 4.) The Police Department granted interviews to two candidates, Mr. Simo, and Mr. Randy King. (Id.) A panel of five members of the Police Department interviewed Mr. Simo and Mr. King, asking each candidate identical questions. (Id.)

At the time of the arbitration hearing, Mr. Simo had been a City employee for approximately 15 years: the first 11½ as a Community Service Aide ("CSA") with the

City's Police Department and the last 3 as a Recyclable Materials Coordinator. (Id. at 3-4.) As a CSA, Mr. Simo testified during court proceedings in Lancaster County and "assisted in the processing of crime scenes" as well as the collection and packaging of evidence "to be logged into the evidence room." (Id. at 4.) Mr. Simo added that he had completed several criminal justice courses relating to crime lab protocols and was proficient with basic computer skills. (Id.)

When he applied, Mr. King was the City's Clerk for Co-compliance and Inspections. (Id. at 4.) Mr. King had also worked as a Community Service Aide, but for 7 years, and "had assisted in the evidence division" for 3½ years. Mr. King's experience included "logging evidence into a computer program called the Bar Coded Evidence Analysis Statistical Tracking" ("BEAST") system and "transport[ing] evidence to and from the lab."[6] (Id.)

The City rejected Mr. Simo's bid, determining that Mr. Simo's experience failed to meet the minimum qualifications for the position. (Id. at 4-5, 12.) The City based its rejection on Mr. Simo's lack of "experience in working inside the evidence room." (Id. at 4.) The City found that Mr. Simo did not have sufficient "experience with the accepted methods of evidence handling, documentation, process and control techniques." (Id. at 2.) The City then awarded the Evidence Specialist position to Mr. King due to his "prior experience dealing with the "storage of and accounting for evidence in the evidence room." (Id. at 4.) Mr. King later declined the offer, citing potential emotional qualms from processing violent crime scenes, especially those involving babies and children. (Id.)

[6] Arbitrator Symonette does not describe the "lab" to and from which Mr. King transported evidence. Presumably, it is the Police Department's crime lab and the evidence room is a different room within the Department.

After Mr. King refused to accept the position, the City opened it for bids from external candidates, one of whom was eventually hired. Compare (Id. at 5) (describing opening of position to external candidates) with (Br. in Opposition to Pet.'s Am. Pet. for Review at 9) (stating that the City has filled the Evidence Specialist position.)

The Union filed a grievance on Mr. Simo's behalf on November 6, 2014. (Award at 2 reprinted in Br. in Support of Am. Pet. Ex. C at 2.) After the City denied the grievance, an arbitration was held on July 8, 2015 in front of Arbitrator Symonette to resolve the instant dispute. (Id. at 1-2.) On October 6, 2015, Arbitrator Symonette issued the Award denying Mr. Simo's grievance.

On or about November 5, 2015, the Union appealed to this Court, filing a timely "Petition for Review of Governmental Determination (Labor Arbitration)" ("Petition"). The City replied with Preliminary Objections on or about November 25, 2015. The Union responded by submitting an Amended Petition ("Amended Petition") along with a supporting brief ("Union Brief") on or about December 9, 2015. The City filed its Answer to the Amended Petition ("Answer") on or about December 22, 2015, with a responsive supporting brief ("City Brief"). Oral Argument was held in Chambers on March 7, 2016. All briefs have been filed and this matter is now ripe for disposition.

DISCUSSION

In the instant appeal, the Union petitions this Court to review the Award, which upheld the City's denial of Mr. Simo's grievance. (Am. Pet. at 3, ¶ 7.) The Union requests that this Court vacate Arbitrator Symonette's Award and give the position of Evidence Specialist to Mr. Simo, along with back pay, as appropriate. (Id. at 11, ¶ 19.)

This Court has jurisdiction over the instant appeal pursuant to the combination of 42 Pa.C.S. § 933(b)[7] and 42 Pa.C.S. § 102.[8] It arose from a Collective Bargaining Agreement ("CBA") between the City and the Union governed by the Public Employee Relations Act ("PERA") 43 P.S. §§ 1101.101-1101.2301.[9] PERA provides that it shall be lawful for civilian municipal workers like those employed by the City to "organize, form, join or assist in employe[e] organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice . . ." 43 P.S. § 1101.401.

"Judicial review of a grievance arbitration award under PERA is governed by the standard of review called the 'essence test.'"[10] Office of Att'y. Gen. v. Council 13, Am. Fed'n. of State, Cnty. & Mun. Emps., AFL-CIO, 844 A.2d 1217, 1222 (Pa. 2004) (citing State System of Higher Educ. (Cheyney University) v. State College University Professional Ass'n (PSEA-NEA), 743 A.2d 405, 413 (Pa. 1999)). The essence test mandates that a reviewing court confirm an award if: "(1) the issue as properly defined is within the terms of the agreement, and (2) the award can be rationally derived from the agreement." Neshaminy School Dist. v. Neshaminy Fed'n. of Teachers, 122 A.3d 469, 474 (Pa. Commw. Ct. 2015). This standard of review is similar to the standard of

[7] Governing appeals from arbitral awards.
[8] Explaining that the City is a "government agency" for the purposes of an appeal from an arbitration award.
[9] The CBA is effective from January 1, 2014 to December 31, 2016. (See CBA Cover Sheet reprinted in Union Br. Ex. B.)
[10] The "extremely limited narrow certiorari scope of review" that governs appeals from grievance arbitrations involving police officers and firefighters is "distinct from" and "inapplicable to" the "essence test" and thus does not apply to grievance arbitrations governed by PERA. See State System of Higher Educ. (Cheyney University) v. State College University Professional Ass'n (PSEA-NEA), 743 A.2d 405, 413 n.9 (Pa. 1999).

review promulgated in the Uniform Arbitration Act ("UAA").[11] Id. Under the UAA standard of review, an arbitrator's award may be set aside when it is "contrary to law" such that "had [the arbitrator's award] been a verdict of a jury the court would have entered a different judgment or a judgment notwithstanding the verdict." Id. (quoting 42 Pa.C.S. §7302(d)(2)). Judgment notwithstanding the verdict "may be entered where (1) the moving party is entitled to judgment as a matter of law or (2) the evidence is such that no two reasonable minds could disagree that judgment was due to the moving party." Id. (citing White v. City of Philadelphia, 102 A.3d 1053, 1057 (Pa. Commw. Ct. 2014)).

Put differently, a reviewing court "does not inquire into whether the arbitrator's decision is reasonable or even manifestly unreasonable; rather, the question is whether the award may in any way be *rationally* derived from the agreement between the parties." Danville Area School Dist. v. Danville Area Educ. Ass'n., PSEA/NEA, 754 A.2d 1255, 1259 (Pa. 2000) (emphasis added). In fact, the essence test "connotes a more deferential view of the award than the inquiry into whether the award is *reasonable*" because "[a]n analysis of the 'reasonableness' of an award too easily invites a reviewing court to ignore its deferential standard of review and substitute its own interpretation of the contract language for that of the arbitrator." Cheyney University, 743 A.2d 405 at 413 n.8 (emphasis added). In short, "[a] reviewing court will not second-guess the arbitrator's fact-finding or interpretation as long as the arbitrator has arguably construed or applied the CBA." Neshaminy, 122 A.3d 469 at 474.

[11] 42 Pa.C.S. § 7302(d)(2).

On the other hand, a court may "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." Cheyney University, 743 A.2d 405 at 413. In other words, a reviewing court may set aside an award when the Arbitrator "exceed[s] his jurisdiction and authority," such as by "reading a new provision into the CBA." Neshaminy, 122 A.3d 469 at 477.

Additionally, under the public policy exception to the essence test, even if an arbitrator's award is properly derived from the essence of a collective bargaining agreement, "a [reviewing] court should not enforce a grievance arbitration award when it contravenes a 'well-defined, dominant' public policy, as 'ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests.'" Westmoreland Intermediate Unit # 7 v. Westmoreland Intermediate Unit # 7 Classroom Assistants Educational Support Personnel Ass'n., PSEA/NEA, 939 A.2d 855, 865-66, 595 (Pa. 2007); Neshaminy School Dist. v. Neshaminy Fed'n. of Teachers, 122 A.3d 469, 474 (Pa. Commw. Ct. 2015). While the public policy exception "relates to the usual cases in which an arbitrator has reduced a discipline imposed by the public employer" there could be "other types of arbitration awards which arguably violate a public policy." City of Bradford v. Teamsters Local Union No. 110, 25 A.3d 408, 414 n.12 (Pa. 2011); see generally Neshaminy, 122 A.3d 469 (finding violation of public policy exception to essence test in atypical situation).

ISSUES

The Union initially raises over 30 grounds for appeal,[12] but condenses these into two main arguments in its supporting brief, as follows: the Award should be dismissed in its entirety for failing to meet the essence test[13] and the Arbitrator's Decision is manifestly unreasonable.[14] In the interest of clarity, I shall discuss these Arguments in the following order: 1. the Union's argument that the award violates the "manifestly unreasonable" test and 2. the Union's essence test argument

MANIFESTLY UNREASONABLE TEST

The Union argues that the Award is manifestly unreasonable "because it does not in any manner reconcile with the CBA," exclusively relying upon one Commonwealth Court case from 1986 to support this proposition. (Union Br. at 8); see American Fed'n. of State, County and Mun. Employees, Dist. Council 84, Local 297, AFL-CIO v. Board of Public Educ. of School Dist. of Pittsburgh, 503 A.2d 1044, 1046-47 (Pa. Commw. Ct. 1986). The City responds that the "manifestly unreasonable" standard "is not an element of the deferential 'essence test.'" (City Br. at 9.)

[12] See (Am. Pet. ¶ 17(A)-(GG.)
[13] See (Union Br. at 5-7.)
[14] See (Union Br. at 8-10.) The Union also raises two collateral issues as part of the instant Appeal. First, it complains that the City refused to provide certain documents before the arbitration hearing, despite its request. See (Am. Pet. ¶ 18(A); (Union Br. at 4.) Second, the Union protests Arbitrator Symonette's consideration of allegedly flawed evidence offered by the City during the Arbitration. See (Am. Pet. ¶ 18(B). Specifically, the Union claims that Arbitrator Symonette improperly considered a blank spreadsheet presented by the City that purportedly would have reflected Mr. Simo's work experience. (Union Br. at 3.) Because the spreadsheet allegedly misspelled Mr. Simo's name, it was blank and, thus Mr. Simo's actual work experience was supposedly not able to be verified. (Id.). The City generally denies these two issues in its Answer, and does not address them in its Brief. See (Answer to Am. Pet. ¶ 18(A)-(B); see generally (City Br.) Ultimately, these concerns do not affect the disposition of this case. Arbitrator Symonette relied on the language of the CBA rather than on the City's spreadsheet in crafting his Award. (Award at 10-12 reprinted in Union Br. Ex. C at 10-12.) Furthermore, Mr. Simo admitted that he lacked key qualifications for the position. (Award at 8-9 reprinted in Union Br. Ex. C at 8-9.) His arbitration counsel acknowledged the same. (City Br. Ex. D at 2) (Union's Arbitration Brief) ("In accordance with the **job description**, [Mr. Simo] met all of the following qualifications except maintaining the evidence room, which he could have easily learned.") (emphasis in original).

I agree with the City. The "manifestly unreasonable" test is not part of the current formulation of the essence test standard of review. Danville Area School Dist. v. Danville Area Educ. Ass'n, PSEA/NEA, 754 A.2d 1255, 1259 (Pa. 2000). Rather, it has been completely subsumed within the public policy exception to the essence test and replaced by a three-step analysis. See City of Bradford v. Teamsters Local Union No. 110, 25 A.3d 408, 414-15 (Pa. Commw. Ct. 2011) (recognizing abrogation of the "manifestly unreasonable" test and promulgating three-step analysis); Slippery Rock Univ. of Pennsylvania, Pennsylvania State System of Higher Educ. v. Ass'n. of Pennsylvania State College and Univ. Faculty, 71 A.3d 353, 364 (Pa. Commw. Ct. 2013) (quoting City of Bradford, 25 A.3d 408 at 414) (applying public policy exception). Thus, Local 297 cannot support the Union's argument that the Award should be vacated as "manifestly unreasonable."

For convenience of reference, in Local 297, "two custodial employees of the School Board bid for a posted vacancy for the position of Fireman A at the South High School." Id. at 1045. Once the less senior employee was awarded the position, the more senior employee filed a grievance, alleging that the "selection of the less senior employee" violated the seniority provisions of the applicable collective bargaining agreement. Id. The Arbitrator granted the grievance, awarding the more senior employee the position. Id.

The Court of Common Pleas vacated the award on the ground that it was "manifestly unreasonable." Id. On appeal, the Union argued that the award failed to draw its essence from the collective bargaining agreement while the School District countered that the award was "manifestly unreasonable" in light of a prior award by the

same arbitrator "interpreting the same language" of the collective bargaining agreement. Id. at 1046-47.

The Commonwealth Court reversed the Court of Common Pleas on the basis that the award "did [not] draw its essence from the collective bargaining agreement." Id. at 1046. The Commonwealth Court also noted that, in 1986, an arbitrator's award could "be reversed when it is manifestly unreasonable" in "relation to the language" of the collective bargaining agreement. Id. at 1047. However, the Commonwealth Court cited a since-abrogated Pennsylvania State Supreme Court decision to support this conclusion. Id. at 1047; see Philadelphia Hous. Auth. v. Union of Security Officers No. 1, 455 A.2d 625 (1983) (abrogation recognized in City of Bradford v. Teamsters Local Union No. 110, 25 A.3d 408, 415 (Pa. Commw. Ct. 2011) (criticizing "tests such the 'manifestly unreasonable' test, noting that Philadelphia Hous. Auth. was decided under 'now-overruled standards' and that the 'analytical paradigm . . . employed in th[at] case . . . w[as] rejected by [the Pennsylvania] Supreme Court as overbroad and insufficiently deferential to the arbitrator's findings and judgment.'")

Because the Commonwealth Court upheld the arbitrator's award in Local 297 on the basis of the essence test, it is entirely legitimate for the Union to argue that this Court should decide that Arbitrator Symonette's Award was not rationally derived from the CBA just as the Commonwealth Court used the same standard to reach the opposite conclusion in Local 297. See Local 297, 503 A.2d 1044 at 1046. Thus, I shall evaluate the Union's arguments regarding the "manifestly unreasonable" test under the rubric of the essence test.

ESSENCE TEST

To review, the essence test mandates that a reviewing court confirm an award if: "(1) the issue as properly defined is within the terms of the agreement, and (2) the award can be rationally derived from the agreement." Neshaminy School Dist. v. Neshaminy Fed'n. of Teachers, 122 A.3d 469, 474 (Pa. Commw. Ct. 2015). The Union and the City agree that the issue falls within the scope of the CBA. Compare (Am. Pet. ¶ 5); (Union Br. at 5) (describing dispute as governed by CBA) with (City Br. at 9) (agreeing that CBA controls). Therefore, the dispositive questions are whether the Award is rationally derived from the CBA and, additionally, whether the Award otherwise contravenes the public policy exception to the essence test.

To determine whether Arbitrator Symonette's Award is rationally derived from the CBA, I must start by analyzing its pertinent terms. See Office Of Att'y. Gen. v. Council 13, American Fed'n. of State, Cnty. & Mun. Employees, AFL-CIO, 844 A.2d 1217, 1223 (Pa. 2004). Arbitrator Symonette claims to have based his Award on one Section from the Management Rights Article of the CBA and on two Sections from the Seniority/Job Posting and Vacancy Article of the CBA.[15] (Award at 5 reprinted in Union Br. Ex. C at 5.)

The applicable Management Rights provision of the CBA provides that:

> Matters of inherent managerial policy are also reserved exclusively to the City. These include, but shall not be limited to, such areas of discretion or policy as the functions and programs of the City, standards of service, the right to suspend or discharge for reasonable cause, regulate the size of its work force, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel.

(CBA Article 3, Section 2 reprinted in Union Br. Ex. B at 21.)

[15] Arbitrator Symonette also claims to have considered documentary evidence and testimony as part of the Arbitration proceedings. (Award at 2 reprinted in Union Br. Ex. C at 2.) For lists of Exhibits submitted to Arbitrator Symonette see (Simo Exhibit List reprinted in City Br. Ex. C.); (Arbitration Exhibits reprinted in City Br. Ex. D.)

The pertinent Sections from the Seniority/Job Posting and Vacancy Article[16] of the CBA state, in turn, that:

> "Qualifications" or "qualified" is the skill, experience, ability, education and prior work history as a City employee that make an employee suitable for the job and further promotion. City determination concerning minimum qualifications for a given job shall be final.

(CBA Article 32 Section 3 reprinted in Union Br. Ex. B at 21.)

> Current qualified employees desiring to be considered for such vacancies shall submit a written request to the Bureau of Human Resources. Vacancies shall be filled by appointing from among the qualified employees who have submitted a written request such that the employee with the greatest seniority **who is deemed qualified for the position shall be awarded the position.**

(CBA Article 32 Section 7(b) reprinted in Union Br. Ex. B at 22) (emphasis in original).

Arbitrator Symonette found that the general duties of the position of Evidence Specialist involved working in the evidence room. (Award at 3 reprinted in Union Br. Ex. C at 3.) He then concluded that the City's determination that Mr. Simo did not meet the minimum qualifications for the Evidence Specialist position did not violate the CBA, grounding his conclusion in the above-quoted Sections of the Seniority/Job Posting and Vacancy Article of the CBA. (Id. at 10-12.)

Specifically, Arbitrator Symonette concluded that Sections 7(b) and 3 of Article 32, when read together, indicate that the City acted consistently with the CBA. (Id. at 11-12.) Arbitrator Symonette relied on Section 3 of Article 32 of the CBA to define the term "qualified" in Section 7(b) of Article 32. He then concluded that, while the City must appoint the most senior qualified employee to fill a vacancy, the CBA gives the City the "final say" in deciding whether an employee is "qualified." Thus, he determined that the

[16] The Award describes the "Seniority/Job Posting and Vacancy Article" as Article IX of the CBA. See (Award at 5 reprinted in Br. in Support of Am. Pet. Ex. C at 5.) It is actually Article 32 of the CBA. See (CBA Article 32 Sections 3, 7(b) reprinted in Union Br. Ex. B at 21-22.)

CBA gives the City the prerogative to decide who meets or fails to meet the "minimum qualifications" of a given job.[17] (Id.) Arbitrator Symonette also noted that the CBA does not preclude the City from using interviews to help decide whether a candidate meets those "minimum qualifications." (Id. at 11.) In short, Arbitrator Symonette stated that an employee is not "qualified" for a position within the meaning of the CBA simply because the City interviews that employee. (Id.)

The Union contends that the Award is not rationally derived from the CBA's plain language or intent. (Union Br. at 5.) The Union relies on Section 3 of Article 32 in conjunction with selected language from the City's 2008 Human Resources Policy Manual, referring to this document as the City's "Hiring Policy." (Id. at 2); see (Id. Ex. A.) The Union quotes the following language from the Hiring Policy to support its argument:

> Human Resources will review the forms for completion and forward those from qualified staff to the hiring supervisor. The hiring supervisor will interview the employees who are qualified for the job opening. The judgment of qualifications for the position rests solely with the City.

(Union Br. at 2.)

The Union claims that the Hiring Policy was an exhibit at the Arbitration Hearing. (Id. at 4.) The main thrust underlying a major argument that the Union repeats using different language throughout its brief is that Arbitrator Symonette disregarded the above-quoted "plain language" of the Hiring Policy as well as the past practice of the Union and the City. (Union Br. at 3-4, 6, 7, 10.) Specifically, the Union asserts that the "plain language" of the Hiring Policy "commands that only [applications from] 'qualified staff' [as determined by Human Resources] are [forwarded] to the hiring supervisor." (Id.

[17] Arbitrator Symonette also noted that the first sentence of Section 7(b) of Article 32 is not artfully drafted, stating that this sentence seems to imply that every employee who submits a job application to the Human Resources Department would be considered qualified for a position, even if that employee is not later interviewed. (Award at 11 reprinted in Union Br. Ex. C at 11.)

at 4.) The Union similarly argues that Arbitrator Symonette disregarded "ancillary interpretive tools such as past practice and policies derived from the [CBA]." (Id. at 6.) The Union posits that "the record should have reflected that only qualified candidates are interviewed," concluding that, once the interview occurred, "only the issue of seniority" is left to consider. (Union Br. at 6.) In other words, the Union asserts that, in the past, the interview process was not used to determine whether candidates for a vacancy were qualified. (See Union Br. at 6.)

The Union also argues that Arbitrator Symonette improperly based the Award on a job qualification injected into the arbitration proceedings by the City. (Union Br. at 5.) Specifically, the Union claims that the Award improperly focused on Mr. Simo's lack of experience with "evidence collection," a qualification that supposedly does not appear in the job posting or in the evidence presented during the Arbitration proceedings. (Id.) The Union claims that this result effectively allows the City to inject new terms into the CBA by basing hiring decisions on job qualifications that are not included in the job posting or description. (Id.)

Next, the Union argues that both the Award itself as well as its effect on Union members show that the Award was not rationally derived from the CBA. (Id. at 7.) The Union states that Arbitrator Symonette interpreted only select portions of the CBA "while ignoring" both other portions of the CBA as well as the Hiring Policy. (Id.) The Union again claims that the City "strayed from its past practice" by adding qualifications to the vacancy and that Arbitrator Symonette improperly relied on those invented qualifications in fashioning his Award. (Id.) The Union asserts that the Award puts Union members in

such a difficult position that Arbitrator Symonette's Award could not possibly be rationally derived from the CBA. (Id.)

The Union next argues in a similar vein that Arbitrator Symonette took the sections of the CBA he relied upon "out of context" and again "ignored other language" in the CBA. (Id. at 8.) Specifically, the Union contends that Arbitrator Symonette misinterpreted Sections 3 and 7(b) of Article 32 of the CBA ("Seniority/Job Posting and Vacancy.") According to the Union, these Sections allow the City to post qualifications for a vacancy, but then require the City to be bound exclusively by the posted qualifications because its members rely upon those qualifications when applying for a position. (Id. at 8-9.) The Union continues that, as a result of the Award, job qualifications are now a "moving target" and that its members no longer know whether they are "qualified" or "not qualified" for a vacancy. (Id. at 9.) The Union implies that this result is absurd and that this implied absurdity illustrates that the Award could not have been rationally derived from the CBA. (Id.)

Next, the Union argues that Arbitrator Symonette inappropiately emphasized language in Section 7(b) of Article 32 of the CBA that was in bold type. (Id.) The Union claims that Arbitrator Symonette ignored information that this language was written in bold type, not to demonstrate emphasis, but to show changes from prior collective bargaining agreements. (Id.)

Finally, the Union again claims that Arbitrator Symonette improperly interpreted the CBA by cherry-picking the select phrases on which he based his Award. (Id.) The Union claims that the "true language of the contract and concomitant hiring procedures is that the city would determine qualifications, post [them], interview *only* those who

meet the criteria and hire the most senior of those interviewed." (Id.) (emphasis in original). The Union concludes "[t]o have a policy that states, clearly, that that "*only* qualified applicants will be interviewed and then to say [that a] candidate [who] was interviewed is not qualified flies in the face of logic." (Id. at 10) (emphasis in original).

The City counters that the Award is rationally derived from the CBA because Arbitrator Symonette grounded his Award in the appropriate sections of the CBA and properly interpreted the applicable language of those sections. (City Br. at 5-6.) The City next disputes the Union's contention that the Hiring Policy was presented to Arbitrator Symonette during the Arbitration proceedings and submits two Exhibit Lists from the Arbitration Proceedings to prove this point. (City Br. at 6; City Br. Exs. C, D.) The City implies that, as a result of the Union's alleged failure to submit the Hiring Policy to Arbitrator Symonette, I should not consider it in rendering my decision. (Id.) The City then adds that, even if considered, the Hiring Policy should not affect my ruling because the Award addresses the arguments raised by the Union using the Hiring Policy. (Id.) In short, the City claims that, under the CBA, it can use the interview process to asses a candidate's qualifications and determine whether a candidate meets the minimum qualifications for a position. (Id. at 7.)

The City next disputes that the Union ever raised the issue of "past practice" during the Arbitration proceedings and submits the Union's Brief to the Arbitrator to support this contention. (Id. at 8, Ex. D.) The City adds that the Union's references to "past practice" in its Brief are not relevant. (Id. at 8.)

Finally, the City characterizes the majority of the Union's Brief as requesting a merit review of the Award and asserts that this line of argument fails to support the only

applicable line of argument that "that the Award was not rationally related to the CBA." (Id.) The City continues that, if the Union is correct that every candidate selected for an interview meets minimum qualifications, then the language of the CBA that gives the City the ability to make the "final determination concerning minimum qualifications" would be "completely moot and superfluous." (Id. at 9.)

At the outset, I must clarify the proper scope of my review of the Award. To reiterate, the only issues left for me to decide are whether the Award is rationally derived from the CBA and, additionally, whether it violates the public policy exception to the essence test. The key factual question at the center of this dispute is whether Mr. Simo met the minimum qualifications for the Evidence Specialist position. Both the Union and the City spend a substantial portion of their respective briefs addressing this question. The Union claims Mr. Simo met the minimum qualifications for the position while the City claims that he did not. Arbitrator Symonette agreed with the City. (See Award at 10-12, reprinted in Union Br. Ex. C at 10-12.) He utilized witness testimony, documents submitted by the Parties, post-hearing briefs and the arguments of counsel to reach this determination. (Award at 10, reprinted in Union Br. Ex. C at 10.) Accordingly, I will defer to his conclusion on this point. The Commonwealth Court's recent opinion holding that I may not "second-guess" Arbitrator Symonette's "fact-finding or interpretation as long as [he] has arguably construed or applied the CBA" only strengthens this conclusion. Neshaminy School Dist. v. Neshaminy Fed'n. of Teachers, 122 A.3d 469, 474 (Pa. Commw. Ct. 2015).

Additionally, both the Union and the City claim that this Award will result in far-reaching policy implications for their respective sides. The Union claims that, if the City

is right and the Award is confirmed, its members cannot know whether they qualify for a position and the seniority system would be affected. The City asserts that, if the Union is right and the Award is vacated, the interview process would be pointless because the most senior candidate selected for an interview would automatically be awarded the position and the interview itself would play no role in whether that individual was ultimately hired. Again, the issue of what effects the Award might have on the Union and the City is not before this Court. Accordingly, it will not be addressed.

I shall now evaluate whether the disputed Award is rationally derived from the CBA. For the following reasons, I agree with the City and conclude that it is. Initially, the Award is certainly not "contrary to law" such that I would have rendered a different judgment or a judgment notwithstanding the verdict had the Award been the verdict of a jury. See Neshaminy, 122 A.3d 469 at 474. Thus, the Award may not be set aside as a violation of the essence test on this ground.

Next, I note that the essence test standard of review is intentionally deferential in favor of the arbitrator's Award and that I am not to "inquire into whether the arbitrator's decision is reasonable or even manifestly unreasonable" but am to determine "whether the award may in any way be rationally derived from the agreement between the parties." Danville Area School Dist. v. Danville Area Educ. Ass'n, PSEA/NEA, 754 A.2d 1255, 1259 (Pa. 2000); see State System of Higher Educ. (Cheyney University) v. State College University Professional Ass'n (PSEA-NEA), 743 A.2d 405, 413 (Pa. 1999)). Under this standard, I may not set aside the Award even if my conclusions would be at variance with Arbitrator Symonette's.

Thus, the following questions remain: (1) whether the "[A]ward indisputably and genuinely is without foundation in, or fails to logically flow from, the collective bargaining agreement." Cheyney University, 743 A.2d 405 at 413; (2) whether Arbitrator Symonette "exceed[ed] his jurisdiction and authority," such as by "reading a new provision into the CBA." Neshaminy, 122 A.3d 469 at 477; and (3) whether the Award violates public policy. City of Bradford v. Teamsters Local Union No. 110, 25 A.3d 408, 414-15 (Pa. Commw. Ct. 2011). The answer to all three questions is "no."

First, Arbitrator Symonette used appropriate language from the applicable Sections of the CBA in rendering his Award. (Award at 10, reprinted in Union Br. Ex. C at 10.) He recognized the ambiguity in the first sentence of Section 7(b) of Article 32, noting that, in isolation, this sentence could be read to say that any employee who submits an application to Human Resources, even one not selected for an interview, would be deemed qualified for the vacant position. (Id.) This interpretation would support the Union's position that every candidate granted an interview is already qualified for the position. (Union Br. at 6-7.) He also implied that this same language could be used to reach the opposite conclusion—that an individual is not qualified simply by applying for the position. (Award at 10, reprinted in Union Br. Ex. C at 10.) This interpretation would support the City's position that a candidate is not qualified simply because that candidate is selected for an interview. (City Br. at 7.)

To resolve this ambiguity, he appropriately looked to the second sentence of that same Section in conjunction with Section 3 of the same Article. (Id. at 10-11.) He stated that the last part of the second sentence's being in bold type indicated that the Union and the City intended to emphasize the City's prerogative to determine whether a job

applicant was qualified for a given position. (Id. at 11.) While the Union claims that Arbitrator Symonette ignored evidence that the bold type was not intended to denote emphasis, it presents no evidence to support this bald allegation. (See Union Br. at 9.) Moreover, even if the Union's allegation is true, that potential fact would not warrant overturning the Award. Arbitrator Symonette did not rely on the bold type of Section 7(b) of Article 32 when he determined that the City's actions were consistent with the CBA. (Award at 11, reprinted in Union Br. Ex. C at 11.) Rather, he found the language of Section 3 of Article 32 dispositive. (Id. at 10-11.) Thus, even if the bold type of Section 7(b) denoted modifications in the CBA rather than emphasis, as the Union claims, it would not have affected the rationale underlying Arbitrator Symonette's decision.

This argument of the Union must fail for an additional reason. Arbitrator Symonette used Sections 7(b) and 3 of Article 32 of the CBA in fashioning the Award. (Award at 10-11, reprinted in Union Br. Ex. C at 10-11.) These Sections are indisputably part of the CBA. Therefore, the Award is rationally derived from the CBA. While the Union might disagree with his interpretation of these Sections, mere disagreement does not mean that his interpretation reaches the high bar required to set it aside under the essence test. See State System of Higher Educ. (Cheyney University) v. State College University Professional Ass'n (PSEA-NEA), 743 A.2d 405, 413 (Pa. 1999)).

The Union's similar arguments that the Award should be set aside because Arbitrator Symonette allegedly ignored the City's Hiring Policy and past practice are equally misguided.[18] Arbitrator Symonette's Award squarely addressed and directly

[18] The City claims that I should disregard these interpretive tools entirely, asserting that the Union never presented any arguments using the Hiring Policy or past practice to Arbitrator Symonette. (City Br. at 6, 8.) Ultimately, the City's argument in this regard is of no moment because the Award addresses and rejects the arguments the Union now raises using past practice and the Hiring Policy. Compare (Union Br.

rejected the arguments raised by the Union in this regard. He concluded that, according to Section 3 of Article 32 of the CBA, the City has the "final say in determining" who meets and who does not meet the minimum qualifications for a position, noting that "[b]ased upon the agreement, just because the city decides to interview a person or persons as part of this process does not necessarily mean that the candidate meets 'minimum qualifications.' That decision rests with the City." Compare (Union Br. at 6-7, 9-10) (describing Hiring Policy and past practice arguments) with (Award at 6-7, 10-12 reprinted in Union Br. Ex. C at 6-7, 10-12) (summarizing the Union's arguments during the arbitration process and stating conclusions). Under the essence test, I must defer to these conclusions that are rationally derived from the CBA. See Neshaminy School Dist. v. Neshaminy Fed'n. of Teachers, 122 A.3d 469, 474 (Pa. Commw. Ct. 2015).

Moreover, just because the Union would use these tools to arrive at a different interpretation of the CBA does not mean the Award ultimately written by Arbitrator Symonette is not rationally derived from the CBA. It simply means that the Union disagrees with the Award. Mere disagreement is not a basis to set aside an Award under the essence test. Finally, the fact that Arbitrator Symonette never expressly referenced the Hiring Policy or Past Practice in the Award does not necessarily mean he did not consider them. It is just as likely that he used these aids to reach conclusions in the Award that are at variance with the Union's position.

I now turn to the argument raised by the Union in the "Manifestly Unreasonable" test section of its Brief. The Union argues that the CBA allegedly mandates that the most senior minimally qualified candidate for a vacancy must be awarded that position.

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at 6-7, 9-10) (describing Hiring Policy and past practice arguments) with (Award at 6-7 reprinted in Union Br. Ex. C at 6-7) (summarizing the Union's arguments during the arbitration process).

(Union Br. at 8.) The Union continues that, since Mr. Simo purportedly met the minimum requirements for the Evidence Specialist position and was the most senior applicant,[19] he must be awarded the Evidence Specialist position under the CBA. (Id.) The Union cites one case to support this argument. (Id.); see American Fed'n. of State, County and Mun. Employees, Dist. Council 84, Local 297, AFL-CIO v. Board of Public Educ. of School Dist. of Pittsburgh, 503 A.2d 1044 (Pa. Commw. Ct. 1986).

I find this argument unconvincing and the Union's reliance on this case misplaced. The Union's argument is premised on Mr. Simo meeting the minimum qualifications for the evidence specialist position. Arbitrator Symonette appropriately rejected the Union's contention that Mr. Simo met the minimum qualifications for the Evidence Specialist position and I refuse to disturb that determination. (See Award at 10-12, reprinted in Union Br. Ex. C at 10-12.) Thus, the Union's argument falls flat.

Furthermore, the case cited by the Union actually supports the City's argument. In Local 297, the Commonwealth Court determined that the Arbitrator's Award was rationally derived from the applicable Collective Bargaining Agreement, reversing the trial court ruling to the contrary. Local 297, 503 A.2d 1044 at 1046. Because the Award here is similarly rationally derived from the CBA, the holding in Local 297 supports confirmation of the Award. Thus, the Union's reliance on this case is inapposite.

Second, Arbitrator Symonette did not "exceed. . . his jurisdiction and authority," such as by "reading a new provision into the CBA," despite the Union's assertions to the contrary. Compare (Union Br. at 5) with Neshaminy School Dist. v. Neshaminy Fed'n. of Teachers, 122 A.3d 469, 477 (Pa. Commw. Ct. 2015). The Commonwealth Court in

[19] (Union Br. at 1.)

Neshaminy determined that the arbitrator in that case exceeded his jurisdiction and authority by "reading a new provision into the CBA" when the arbitrator based his Award on an "implied covenant of good faith and fair dealing" rather than grounding it in specific language from the Collective Bargaining Agreement. See Neshaminy, 122 A.3d 469 at 476-77. Indeed, the arbitrator in Neshaminy failed to "cit[e] any provision of the CBA." Id. Here, Arbitrator Symonette cited Sections 7(b) and 3 of Article 32 and determined that the language of Section 3 definitively resolved the ambiguity in Section 7(b) in favor of the City. (See Award at 10-12 reprinted in Union Br. Ex. C at 10-12.) Thus, the Award here does not violate this variation of the essence test. Accordingly, I conclude that the Award does not violate the essence test.

This conclusion does not end my inquiry as I must now consider whether the Award violates the public policy exception to the essence test. I conclude it does not. Under the public policy exception to the essence test, "a [reviewing] court should not enforce a grievance arbitration award when it contravenes a 'well-defined, dominant' public policy, as 'ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests.'" Westmoreland Intermediate Unit # 7 v. Westmoreland Intermediate Unit # 7 Classroom Assistants Educational Support Personnel Ass'n., PSEA/NEA, 939 A.2d 855, 865-66, 595 (Pa. 2007); Neshaminy School Dist. v. Neshaminy Fed'n. of Teachers, 122 A.3d 469, 474 (Pa. Commw. Ct. 2015). This exception typically applies when a public employee has violated the public trust and the "arbitrator has reduced discipline imposed by the public employer." City of Bradford v. Teamsters Local Union No. 110, 25 A.3d 408, 414 n.12 (Pa. 2011). Applying the public policy exception involves a three-step analysis. Slippery

Rock Univ. of Pennsylvania, Pennsylvania State System of Higher Educ. v. Ass'n. of Pennsylvania State College and Univ. Faculty, 71 A.3d 353, 364 (Pa. Commw. Ct. 2013).

This case is not the typical case when the public policy exception generally applies because there was no discipline imposed by the City that was later reduced by Arbitrator Symonette. See City of Bradford, 25 A.3d 408 at 414 n.12. Additionally, unlike the Award in Neshaminy, which violated public policy and involved an arbitrator's determinations regarding a school district strike and lockout that affected the general public, the Award here has absolutely no effect on the public—it only affects a public employee. See Neshaminy, 122 A.3d 469 at 471-73, 475-76. Additionally, the Award does not address any 'well-defined, dominant' public policy. Id. at 474. Thus, there is no need to apply the public policy exception's three-step analysis to this Award. See Slippery Rock Univ., 71 A.3d 353 at 364. Accordingly, the Award must be confirmed.

CONCLUSION

Appellant American Federation of State, County and Municipal Employees AFL-CIO, Local 1896 (AFSCME)'s Amended Petition for Review Pursuant to 42 Pa. C.S. §933(b) (Labor Arbitration) is DENIED. Arbitrator Symonette's Award is CONFIRMED.

Accordingly, I enter the following:

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES AFL-CIO, LOCAL 1896 (AFSCME) Appellant	:	CI-15-09669
v.	:	
THE CITY OF LANCASTER Appellee	:	

O R D E R

AND NOW, this ___ day of, April, 2016, upon consideration of Appellant American Federation of State, County and Municipal Employees AFL-CIO, Local 1896 (AFSCME) ("Union")'s Amended Petition for Review Pursuant to 42 Pa. C.S. §933(b) (Labor Arbitration) ("Amended Petition") from an October 6, 2015 Arbitration Award ("Award"), Appellee's Answer thereto, accompanying Briefs and Oral Argument:

It is hereby ORDERED that the Union's Amended Petition for Review is DENIED and that the Award is CONFIRMED.

BY THE COURT:

/s/

JEFFERY D. WRIGHT
JUDGE

Attest:

Copies to:

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