STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of the ALBANY PERMANENT PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCALS 2007and 2007-a,
Petitioners,

DECISION/JUDGMENT

-against-

Index No. 462-19
RJI No. 01-19-130670

CITY OF ALBANY, NEW YORK,
Respondent.

APPEARANCES:

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RYBA J.,

Petitioners Albany Permanent Professional Firefighters Association, Locals 2007 and 2007-a (hereinafter the Union), are the bargaining units for all firefighters actively employed by respondent City of Albany (hereinafter the City), with the exception of the Fire Chief and Deputy Chiefs. In 2015, the City provided written notice to all retired employees that, effective January 1, 2016, certain retiree health insurance plans would be modified by, among other things, imposing a first-time deductible of $250 for individual plans and $500 for family plans for those retirees enrolled in the Empire Plan. In response, the Union filed a grievance alleging that the City's unilateral decision to modify existing health insurance plans without first discussing the proposal with the Union violated Section 27.1 of the parties' most recent collective bargaining agreement (hereinafter CBA). Section

27.1 of the CBA states as follows:

> 27.1 Health Insurance. If the City wishes to change the existing health insurance plan, the *City shall present proposals to the Union for discussion and possible agreement on these proposals*. If no proposal is agreed upon, then an expedited arbitration will commence with an arbitrator to be chosen from the list of disciplinary arbitrators. The issue of the arbitration will be whether the new City proposal grants *substantially equivalent coverage to members of the bargaining unit*. The arbitrator's decision will control as to whether the City has the right to make any such change. [emphasis supplied]

The Union's grievance proceeded to a two-part arbitration. The first arbitration addressed the first prong of Section 27.1, namely whether the City was required to present its proposal for changes to retiree health insurance plans to the Union prior to imposing the changes. During that arbitration, conducted by arbitrator Dennis Campagna, the City argued that Campagna lacked contractual authority to decide the grievance because the CBA applies only to grievances made on behalf of active employees who are members of the Union, not retirees who are no longer Union members. The City additionally argued that Section 27.1 applies only to proposals to change the existing health insurance plans of active employees, and that the City was not required to present the Union with proposals to change the health insurance plans of retirees.

By decision dated November 3, 2016, Arbitrator Campagna initially acknowledged that his contractual authority hear and decide grievances under the CBA extended only to matters relating to the "existing health plans" of active employees who are "members of the bargaining unit". Although the City's proposed health insurance changes appeared to affect only retirees, Arbitrator Campagna found that the changes also affected active employees. In support of this conclusion, Arbitrator Campagna reasoned that active employees, as *prospective* retirees, would suffer adverse impacts to their existing health plans because the City's proposal would eliminate the deductible-

free health insurance - - a form of deferred compensation - - that they were scheduled to receive upon their retirement. Because the City's proposed changes adversely affected actively employed members of the bargaining unit in this manner, Arbitrator Campagna found that the CBA conferred upon him sufficient contractual authority to decide the grievance.

For the same reasons, Arbitrator Campagna further found that the first prong of Section 27.1 applied to require the City to present its proposed changes to the Union for discussion and possible agreement. Because the City failed to present the proposed changes to the Union prior to implementing them, Arbitrator Campagna found that the City violated Section 27.1. He therefore directed the parties to proceed to expedited arbitration for a determination of whether the proposed change to retiree health insurance deductibles provided "substantially equivalent" coverage to members of the bargaining unit pursuant to the second prong of Section 27.1.[1] Supreme Court (Hartman, J.) confirmed Arbitrator Campagna's award by decision and judgment dated June 13, 2017.

The parties thereafter proceeded to expedited arbitration before a different arbitrator, Sumner Shapiro. The singular issue for Arbitrator Shapiro to decide under Section 27.1 was whether imposing a new $250/$500 deductible upon retiree health plans provides coverage that is "substantially equivalent" to the coverage that was previously afforded to bargaining unit members. Following a hearing, Arbitrator Shapiro issued an interim award dated October 8, 2018 (hereinafter Interim Award) in which he recommended that the parties "consider an interim step" of negotiating

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[1] Arbitrator Campagna's determination was guided in part by two prior decisions arising from a previous arbitration between the parties regarding the City's proposal to eliminate Medicare Part B reimbursements for retirees, and upon an interest arbitration decision relating to a dispute between the parties regarding the terms of the collective bargaining agreement that would succeed the one at issue in this case.

a settlement prior to the issuance of a final award. Arbitrator Shapiro urged the parties to consider various alternatives to the proposed new deductibles, and held any final award in abeyance pending the settlement discussions. However, Arbitrator Shapiro also noted that "[a]t the election of either party we will proceed to issue a binding award."

When the parties were unable to reach a settlement of the matter, Arbitrator Shapiro issued a final arbitration award on November 21, 2018 (hereinafter the Final Award). In that decision, Arbitrator Shapiro emphasized, as did Arbitrator Campagna, that the scope of his authority to issue an arbitration award was limited by the terms of the CBA. However, Arbitrator Shapiro reasoned that because the CBA extends protection only to active employees of the Union and does not apply to retirees, deciding the "substantially equivalent" issue as it relates to retirees "would infringe upon the existing separation of retiree rights and active firefighter [rights]". Arbitrator Shapiro further found that issuing a remedy to retirees would violate Section 20.3 of the CBA, which states that "the arbitrator shall have no power to add to, subtract from or modify the terms of the agreement". Simply put, Arbitrator Shapiro found that he lacked the contractual authority to issue a remedy to retirees because they were not active employees protected by the terms of the CBA. Accordingly, Arbitrator Shapiro found that he was "constrained from issuing a further remedy". The Union thereafter commenced the instant proceeding pursuant to CPLR Article 75 seeking to vacate the Final Award or, alternatively, to confirm the Interim Award. The City opposes the requested relief and cross-moves to confirm the award. The City opposes the cross petition.

Where the parties agree to submit their dispute to arbitration, judicial review is extremely limited (see, Matter of New York State Correctional Officers & Police Benevolent Assn. v State of New York, 94 NY2d 321, 326 [1999]; Matter of Sprinzen [Nomberg], 46 NY2d 623, 629

[1979]; Matter of Barron [State of NY Office of Mental Health], 135 AD3d 1111, 1112 [2016], lv denied 27 NY3d 905 [2016]). Although the Court cannot examine the merits of an arbitration award and may not substitute its judgment for that of the arbitrator even if the award contains errors of law or fact (see, Matter of Sprinzen [Nomberg], 46 NY2d at 629-63 [1979]), the Court will vacate an award that "violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on an arbitrator's power" under CPLR 7511 (Matter of Kowaleski [New York State Dept. of Correctional Servs.], 16 NY3d 85, 86 [2010] [citation omitted]). Notably, an arbitrator's power "extends only to those issues that are actually presented by the parties" (Matter of Joan Hansen & Co. Inc. v Everlast World's Boxing Headquarters Corp., 13 NY3d 168, 173 [2009]).

Here, the Union seeks to vacate the Final Award on the ground that it was irrational and was issued in excess of his authority, and exceeded a specifically enumerated limitation set forth in CPLR 7511 (b) (1) (iii) in that it was "so imperfectly executed it that a final and definite award upon the subject matter submitted was not made" (CPLR 7511[b][1][iii]; see, Matter of Andrews v County of Rockland, 120 AD3d 1227, 1228 [2014], lv dismissed 24 NY3d 1090 [2015]). Specifically, the Union contends that because Arbitrator Campagna already determined that Section 27.1 granted an arbitrator the authority to issue a remedy in this case, Arbitrator Shapiro's conclusion that Section 27.1 did not grant him such authority irrational and exceeded his authority. The Union additionally argues that because Arbitrator Shapiro declined to issue any remedy whatsoever, the Final Award was "so imperfectly executed" that a final and definite award on the subject matter was not made.

The Court agrees. An arbitration award is irrational "if there is no proof to justify it"

(Matter of Rockland County Bd. of Coop. Educ. Servs. v BOCES Staff Assn., 308 AD2d 452, 453 [2003]). Furthermore, an arbitrator exceeds his or her authority by ruling on an issue that is outside the scope of the questions presented (see, Matter of Joan Hansen & Co. Inc. v Everlast World's Boxing Headquarters Corp., 13 NY3d 168, 173 [2009]). In addition, an award will be vacated as indefinite or nonfinal for purposes of CPLR 7511 when it either "leaves the parties unable to determine their rights and obligations, it does not resolve the controversy submitted, or it creates a new controversy" (Matter of Snyder-Plax v American Arbitration Assn., 196 AD2d 872, 874 [1993]; see, Matter of Andrews v County of Rockland, 120 AD3d 1227 1228 [2014]; Matter of Westchester County Corr. Officers Benevolent Assn., Inc. v Cheverko, 112 AD3d 840, 841 [2013]; Civil Serv. Employees Ass'n. v City of Nassau, 305 AD2d 498 [2003]).

Here, Arbitrator Campagna determined that the City's proposed changes to retiree health insurance deductibles altered the existing health insurance plans of active employees, and that therefore Section 27.1 applied to grant the arbitrator authority to decide the dispute. Arbitrator Campagna's award was confirmed, and it thus became the law of the case (see, City of Elmira v Walter, 150 AD2d 129, 131 [1989]). The sole issue before Arbitrator Shapiro thus became whether the second prong of Section 27.1 - - substantial equivalency - - was satisfied. The Court finds that Arbitrator Shapiro exceeded his authority by revisiting the first prong of Section 27.1, as he was only tasked with resolving the sole issue of "substantial equivalency". Moreover, Arbitrator Shapiro's conclusion that he lacked authority to reach the issue of substantial equivalency was contrary to the law of the case, and was therefore irrational. The Court finally concludes that Arbitrator Shapiro's decision to make no determination on the issue of substantial equivalency rendered the Final Award "so imperfectly executed that a final and definite award upon the subject

matter submitted was not made" (CPLR 7511[b][1][iii]). Indeed, the Final Award left the parties unable to determine their rights and obligations, and without any resolution of the controversy submitted. Accordingly, the Final Award must be vacated.[2]

As for the Union's final contention that the Interim Award should be confirmed, such award offered no final or definite resolution of the issue presented and therefore confirmation is inappropriate. Instead, the matter must remitted for a determination of substantial equivalency before a new arbitrator. The parties' remaining contentions, to the extent not specifically addressed, have been examined and found to be lacking in merit.

For the foregoing reasons, it is

ORDERED and ADJUDGED that the relief requested in the petition is granted in part, without costs, to the extent that the Final Award dated November 21, 2018 is vacated, and the matter is remitted for further proceedings before a new arbitrator on the issue of substantial equivalency, and the relief requested is otherwise denied, and it is further

ORDERED that respondent's motion to confirm the arbitration award is denied, without costs.

This shall constitute the Decision and Judgment of the Court. The original Decision and Judgment is being returned to the counsel for Petitioners who is directed to enter this Decision and Judgment and to serve respondents with a copy of this Decision and Judgment with notice of entry.

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[2] In reaching this result, the Court emphasizes that it does not find that Arbitrator Shapiro made factual or legal errors as to the meaning and effect of Section 27.1, but rather that he failed to render an award on the sole issue presented for his determination and instead issued a ruling as to a matter that had been previously decided (see, Matter of Falzone [New York Cent. Mut. Fire Ins. Co.], 15 NY3d 530, 534 [2010]; Matter of Aftor v Geico Ins. Co., 110 AD3d 1062, 1064 [2013]).

The Court will transmit a copy of this Decision and Judgment and the papers considered to the County Clerk. The signing of this Decision and Judgment shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the provision of that rule regarding filing, entry, or notice of entry.

Dated: June 19, 2019

HON. CHRISTINA L. RYBA
Supreme Court Justice