

PETITION OF: * IN THE
 FEDERATION OF PUBLIC * CIRCUIT COURT
 EMPLOYEES LOCAL 4883 AFT, * FOR
 AFL-CIO *
 FOR JUDICIAL REVIEW OF THE * BALTIMORE COUNTY
 DECISION OF: *
 * Case No. 03-C-16-7546
 BALTIMORE COUNTY, MD *
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MEMORANDUM OPINION

Currently before the Court is the Petition for Judicial Review and to Compel Binding Arbitration submitted on behalf of the Federation of Public Employees Local 4883 AFT, AFL-CIO ("the Federation"), filed on July 19, 2016 (Paper No. 1000). Respondent Baltimore County, MD ("Baltimore County" or the "the County") filed its Response on September 5, 2016 (Paper No. 1001). The Federation filed a "Response to Respondent's Response" on September 15, 2016 (Paper No. 1002). The matter was heard on March 6, 2017. For the reasons stated in open court following the hearing and those stated in this Memorandum Opinion, the Federation's Petition to Compel Binding Arbitration will be granted.

Baltimore County and the Federation entered into a Memorandum of Understanding ("the MOU"), covering the timeframe July 1, 2012 through June 30, 2016. Relevant portions of the MOU are attached to the Federation's Petition as Exhibit 1. In January, 2015, Baltimore County raised with the Federation the possibility of changing the work schedules of its emergency communications employees (sometimes "911 Call Center Employees" or "employees"). Following extensive negotiations, in November, 2015, the parties signed a Memorandum of Settlement ("the MOS") in which they agreed, among other things, that the effected employees would work 12 hour shifts pursuant to the Pitman Rotating Shift Configuration (the "Pitman

Configuration"). The MOS and Pitman Configuration are attached to the Federation's Petition as Exhibit 2. The Pitman Configuration graphically depicts the 911 Call Center Employees working five 12 hour shifts (60 hours) one week and two 12 hour shifts (24 hours) the next week. Following ratification of the MOS, Baltimore County prepared documentation to reclassify the emergency communication employees from 40 hour to 84 hour bi-weekly employees. The County provided the Federation with the proposed changes on December 8, 2015. The Personnel and Salary Advisory Board ("the PSAB") voted to accept the changes on December 9, 2015. The County Council approved the change and adopted corresponding legislation on December 21, 2015.

According to the Federation, "the County unilaterally reduced the hourly pay of the 911 Call Center employees to such a degree that it required them to work an additional 104 hours per year in order to earn the same base salary as they were earning prior to agreeing to the terms of the Addendum." Petition at ¶ 10. Moreover, the Federation claims that "the County recommended legislation to the PSAB and County Council that was inconsistent with the terms and conditions of the MOU as Amended." *Id.* The Federation contends that it has properly followed the grievance process outlined in the MOU and is entitled to have the matter addressed through arbitration.

The County, on the other hand, argues that the current dispute does not fall within the parameters of the MOU "and is therefore not subject to arbitration." Response at 1. The County points out that the parties agreed that the 911 Call Center employees would work 12 hour shifts and that the MOS contains "an attachment reflecting the agreed upon 'Pitman Rotating Shift Configuration' which unequivocally represents the employees' newly negotiated 84-hour bi-weekly schedule." *Id.* at 2. Simply put, the County argues that "the Federation's complaint is

not covered by the grievance process," *Id.* at 4, and, further, that once the Legislature approved the change and enacted Bill No. 89-15, the Executive Branch lost jurisdiction.

The MOU outlines the agreed upon grievance process. Pursuant to Section 4.1, the term grievance is defined as "any dispute between an employee and the Administration . . . concerning the application or interpretation of the terms" of the MOU. MOU at 5. Importantly, the procedures outlined in Article 4 and Article 5 of the MOU "are the exclusive procedures for the resolution of all grievances, and no employee shall be permitted to process any grievance except as set forth herein." The required procedural steps to pursue a grievance are set forth in Section 4.3. There is no dispute that the Federation followed the steps. Pursuant to Article 5, any grievance "that has been properly processed through the grievance procedure . . . may be appealed to arbitration The jurisdiction and authority of the arbitrator of the grievance and the arbitrator's opinion and award shall be confined exclusively to the interpretation and/or application of the express provision or provisions of the MOU" MOU at 8.

There is no dispute that the Federation followed the appropriate steps and demanded arbitration. Indeed, the parties agree that the arbitration provision contained in the MOU is valid. The question before this Court is whether the current controversy constitutes a grievance as defined in the MOU and, if so, whether the matter is subject to arbitration following the passage of Bill No. 89-15.

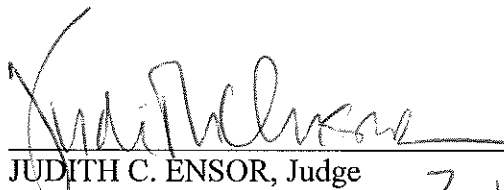
As already mentioned, pursuant to the MOU, the "term grievance shall mean any dispute between an employee and the Administration . . . concerning the application or interpretation of the terms" of the MOU. The MOS constitutes an addendum to the MOU. That document sets forth that the "settlement only affects the classifications" of: Emergency Communications Technicians Trainee (40 hours), Emergency Communications Technician I (40 hours), Emergency Communications Technician II (40 hours), Emergency Communications Assistant

Supervisor (40 hours), and Emergency Communications Supervisor (40 hours). The MOS further delineates that the employees shall work 12 hour shifts, scheduled to adhere to the Pitman Rotating Shift Configuration, which was attached. The Pitman Configuration shows that employees will work 60 hours one week and 24 hours the next. According to counsel for the County, however, the Pitman Configuration (as graphically depicted as an attachment to the MOS) is not used in practice.

The MOS indicates that those affected by the reclassification are 40 hour employees. The Pitman Configuration, however, outlines a different scenario. According to the County's attorney, a third schedule is actually used in practice. This confusion and/or conflict gives rise to a dispute concerning the application or interpretation of the terms contained in the MOS. That issue is subject to the grievance procedure, which ultimately envisions the matter being resolved via binding arbitration. If, as the County suggests, the passage of legislation immediately and irrevocably deprives the Executive Branch and an arbitrator from further consideration of the matter, the grievance process would be cut short and have little meaning.

The only issue before this Court is whether the current controversy is subject to arbitration. This Court makes no comment regarding the merits of the Federation's grievance. It does note, however, that the Federation's pleadings are very strongly worded and accusatory in nature. This Court was not provided with any evidence to suggest that the County intentionally acted improperly or with nefarious intent.

A separate Order follows this Opinion.




JUDITH C. ENSOR, Judge 3-10-17

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* * * * *

ORDER

Having read and considered the Federation's Petition for Judicial Review and to Compel Binding Arbitration (Paper No. 1000), Baltimore County's Response (Paper No. 1001), and the Federation's "Response to Respondent's Response" (Paper No. 1002), and having considered the relevant case law and the arguments of counsel, it is this 10th day of March, 2017, hereby ORDERED that the Federation's Petition to Compel Binding Arbitration be, and hereby is GRANTED.



 JUDITH C. ENSOR, Judge