

VIRGINIA:

MEDIATION/BINDING MEDIATION (JURIDICAL SOLUTIONS)

METROPOLITAN WASHINGTON AIRPORTS :
POLICE ASSOCIATION, IUPA LOCAL 5004, :
UNION :

V. :

METROPOLITAN WASHINGTON :
AIRPORTS AUTHORITY, :
EMPLOYER :

OPINION

ON JUNE 24, 2019, this matter came for Mediation/Binding Mediation in furtherance of a Settlement Agreement between the Metropolitan Washington Airports Authority (MWAA) and the Metropolitan Washington Airports Police Association, IUPA LOCAL 5004 (Union), dated November 30, 2018, which Settlement Agreement has been well documented in the parties' briefs, and the terms of which are not in dispute.

The agreement provides, among other things, that the "Parties will mediate issue of reimbursement of 2018 hang tag fees and suspension of further hang tag fees". And, "In the event that the Parties are unable to settle this issue by September 28, 2018, the Parties agree to participate in binding mediation on this issue" (Paragraph V of the Settlement Agreement.)

At the mediation session Counsel for MWAA took the position that the Settlement Agreement was unenforceable for three principle

reasons: First, it was unenforceable for the reason that the Settlement Agreement lacked consideration and therefore was not a valid contract; second, that the signators for MWAA had no authority to legally bind the MWAA; and finally, that there is not a standard set out in the Settlement Agreement which would allow a mediator to make a finding on the issue of “secure” parking lots.

LACK OF CONSIDERATION

MWAA contends that because the Union retained its right to arbitrate pursuant to the original grievance, it gave up nothing by entering into the Settlement Agreement and therefore as a contract, fails for lack of consideration. As stated in the Union’s brief, by entering into the Settlement Agreement, both parties sought to avoid the uncertainty of arbitrating pursuant to the underlying grievance. In the case of Horace Mann Ins. Co. v. Government Employees Ins.Co., 231 Va 426, 429-431 (1986), the Virginia Supreme Court stated, “...parties to a contract are at liberty to determine their own valuations, and courts generally will not inquire into the adequacy of consideration” The Settlement Agreement itself contains the language, “the Parties have come to a resolution regarding the Grievance that will avoid the need to participate in the arbitration scheduled in the matter” (Preamble).. Under the facts of this case I conclude there was adequate consideration.

AUTHORITY TO BIND MWAA

The Union’s grievance relating to its rights under Article 26 of the Collective Bargaining Agreement (CBA) was commenced on or about July 26, 2017. Various issues were resolved through negotiation except for the issue of hang tag fees. To resolve that remaining issue, the parties on November 30, 2018 executed the “SETTLEMENT AGREEMENT”. The agreement includes the language “Parties will mediate issue of reimbursement of 2018 hand tag fees and suspension of further hang tag fees” (Paragraph V)

The Settlement Agreement was signed on behalf of MWAA by Chief of Police David Huchler and by Labor Relations Specialist Janice Borneman-Eckels. On behalf of the Union, the Settlement Agreement

was signed by Cpl. Paul Alexander , President, and Heidi Meinzer, Esq. legal counsel

At the agreed upon date of June 24, 2019, representatives of both parties appeared and executed an Agreement to Mediate and an Agreement for Combination Mediation-Arbitration with Juridical Solutions, PLC. At the outset of the mediation session, counsel for MWAA represented that the Settlement Agreement was not enforceable and that MWAA had no authority to negotiate hang tag fees. The mediation session was terminated and the binding mediation session followed. No evidence was presented. Closing arguments were made, and the parties agreed to submit briefs in support of their respective positions.

From the date of the signing of the Settlement Agreement until the date of the mediation session, MWAA representatives by their signatures and by their actions represented that they had the authority to negotiate the hang tag issue, as they did in negotiating other issues relating to Article 26 of the collective bargaining agreement (CBA). I am of the opinion that the representatives of MWAA did have authority to negotiate and bind MWAA pursuant to the terms of the Settlement Agreement.

SECURE PARKING

By the terms of the Settlement Agreement the parties agreed to "...mediate issue of reimbursement of 2018 hang tag fees and suspension of further hang tag fees." (Paragraph V). From the plain reading of that language, that it is clear that the Union wanted and that MWAA would consider some negotiated settlement of both past and further hang tag fees until MWAA could comply with the language of Article 26 (CBA). "Bargaining Unit employees **shall** (emphasis added) be entitled to a secure parking location adjacent to each station".

From MWAA's legal brief and from the discussions at the mediation session, it is clear that it is MWAA and not Union which is in charge of building and providing secure parking. It is therefore MWAA's duty to prove that it has provided secure parking as a condition to a right to receive hang tag fees. Until it is demonstrated that MWAA has

complied with the entitlements within the language of Article 26, past and future hand tag fees, by the terms of the Settlement Agreement, are negotiable by mediation and, if not successful, then settled by binding mediation.

CONCLUSION AND AWARD

In accordance with this opinion, I find that Union employees are entitled to reimbursement of any hang tag fees for the year 2018 and any paid in 2019, and they are likewise entitled to suspension of such hang tag fees for the years 2020, 2021 and 2022, or until MWAA has shown that it has complied with the language of Article 26 (CBA).

Pursuant to Paragraph (VII) (C) of the Settlement Agreement, Union is awarded \$4515.00 in attorney's fees.

Should any part of this award be later challenged, hang tag fees are suspended until final resolution, and additional attorney's fees may be awarded.

By the terms of the Agreement to Mediation and the Agreement For Combination Mediation-Arbitration between the parties and Juridical Solutions, PLC, each party is responsible for one half of the fees. Juridical Solutions will invoice each party accordingly.



John E. Kloch
Mediator

September 30, 2019