

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

DENISE FRAZER	)	
	)	CIVIL NO. ST-13-CV-168
	)	
Plaintiff,	)	ACTION FOR
vs.	)	DISCRIMINATION
	)	BREACH OF CONTRACT
POLICE BENEVOLENT ASSOCIATION, LOCAL	)	CIVIL CONSPIRACY, DENIAL
816, et. al.	)	OF DUE PROCESS AND
	)	VIOLATION OF
Defendants.	)	ARBITRATIONAL PROCESS.
	)	
	)	

MEMORANDUM OPINION

Pending before the Court is Plaintiff's Motion to Vacate the Arbitrator's Decision. For the following reasons, Plaintiff's Motion to Vacate the Arbitrator's Decision will be denied. As a preliminary matter, the parties failed to file a Joint Stipulation as Ordered on January 5, 2017, and instead filed individual responses to the Order. The Court cautions the parties against disregarding the specific instructions of the Court.

RELEVANT FACTUAL & PROCEDURAL HISTORY

According to the Verified Complaints in Case No. ST-13-CV-168, filed April 16, 2013, and Case No. ST-14-CV-420, filed September 5, 2014, consolidated and calendared together as Case No. ST-13-CV-168 on April 9, 2015, Denise Frazer alleges that Defendants¹ are liable for

¹ The Court dismissed all actions against former Defendants Edward Pereles and Lisa Plaskett-Samuel, in her individual capacity only, on April 9, 2015. The remaining defendants are as follows:

1. The Police Benevolent Association's Union Local 816
2. Nizar DeWood, Esq.
3. Joss Springette, Esq. in her capacity as legal counsel to the Virgin Islands Office of Collective Bargaining
4. The Virgin Islands Office of Collective Bargaining
5. The Government of the Virgin Islands and Virgin Islands Police Department
6. The Public Employees Relations Board

breach of contract, discrimination, civil conspiracy, denial of equal protection, and violation of due process in connection with the termination Frazer's employment as a police officer with the Virgin Islands Police Department.² Frazer's termination resulted from findings that Frazer violated the Virgin Islands Police Manual with respect to an incident that took place on September 17, 2011.³ The Police Benevolent Association and the VIPD are parties to a Collective Bargaining Agreement⁴ under which the termination of Frazer's employment was affirmed by Arbitrator Edward Pereles on February 18, 2013.⁵ Frazer now seeks a declaratory judgment vacating the award and reinstating her employment.⁶

STANDARDS

The Superior Court has jurisdiction to review arbitration awards under 4 V.I.C. §76(a),⁷ and jurisdiction over the "violation of contracts between a public employer and an exclusive representative, or between labor organizations[.]"⁸ Additionally, the Superior Court may issue declaratory judgments when another independent jurisdictional basis exists.⁹

² ST-13-CV-168, Verified Compl. ¶2. ST-14-CV-420, Verified Compl. ¶2.

³ Defendants' Memo. of Law in Opposition to Plaintiff's Motion to Vacate Award and Reinstatement, page 6.

⁴ ST-13-CV 168, Verified Compl., Exhibit 1: Collective Bargaining Agreement, page 3.

⁵ Defendants' Memo. of Law in Opposition to Plaintiff's Motion to Vacate Award and Reinstatement, page 8.

⁶ On September 22, 2015, Frazer filed a Motion to Vacate the Arbitrator's Decision and Second Motion to Reinstatement Back to Police Officer, and in response, on February 22, 2017, Defendants filed a Motion for Leave to Refile their Response, *Nunc Pro Tunc*, to Plaintiff's Motion to Vacate Arbitrator's Decision. On April 25, 2017, the Court granted Defendants' Motion for Leave to Refile their Response and Memo. of Law in Opposition to Plaintiff's Motion to Vacate Award and Reinstatement Back to Police Officer. The Court noted Defendants' assertion that Defendants prepared a Memorandum dated October 16, 2015, in opposition to Frazer's Motion, and Defendants' assertion that Frazer's subsequent filing of a Reply to the Government's Memorandum on December 15, 2015, substantiates that Frazer received Defendants' Opposition to Frazer's Motion to Vacate the Arbitrator's Decision.

⁷ 4 V.I.C. §76(a) provides, in pertinent part: "Subject to the original jurisdiction conferred on the District Court by section 22 of the Revised Organic Act of 1954, as amended, effective October 1, 1991, the Superior Court shall have original jurisdiction in all civil actions regardless of the amount in controversy."

⁸ 24 V.I.C. §383(a) provides, in pertinent part: "Suits for violation of contracts between a public employer and an exclusive representative, or between labor organizations, may be brought in any court of this Territory having jurisdiction of the parties ... without respect to the amount in controversy or without regard to the citizenship of the parties."

⁹ 5 V.I.C. §1261 provides: "Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either

ANALYSIS

As an initial matter, Frazer's *pro se* filings are to be liberally construed and held to less stringent standards than formal pleadings drafted by attorneys.¹⁰ Frazer asks the Court to vacate the arbitration award and to immediately reinstate Frazer's employment,¹¹ arguing that the Arbitrator violated the Federal Arbitration Act¹² and that Defendants breached their duty of fair representation, breached the CBA, failed to enforce orders, negotiated the CBA in bad faith, deprived Frazer of due process, deprived Frazer of property interests, and engaged in "cruel and unusual punishments" against Frazer and others.¹³ In response, Defendants argue that Frazer's arbitration is governed by the Federal Arbitration Act and, therefore, Frazer's Motion is untimely under the FAA's three-month statute of limitations.¹⁴ Additionally, Defendants contend that, even if the Court deems Frazer's Motion timely, the facts do not support vacation of the arbitration award.¹⁵

I. The Facts Do Not Entitle Frazer to Vacation of the Arbitrator's Decision Under the Federal Arbitration Act

The FAA applies to cases in federal courts under 9 U.S.C. §§ 3-4. In *Southland Corp.*

affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree."

¹⁰ *Smith v. Employees of the Bureau of Corrections*, 64 V.I. 383, 392 (VI. Mar. 7, 2016) ("a pleading 'filed pro se' is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers") (citation omitted) ("[W]hen a litigant chooses to represent himself, it is the duty of the...court to insure fairness, allowing reasonable accommodations for the pro se litigant so long as no harm is done an adverse party"); *See also Appleton v. Harrigan*, 61 V.I. 262, 267 (V.I. 2014) (it is the policy of the Supreme Court of the Virgin Islands to "give pro se litigants greater leeway in dealing with matters of procedure and pleading").

¹¹ Plaintiff's Motion to Vacate the Arbitrator's Decision and Prima Facie Case Above and Beyond the Preponderance of Evidence and 2nd Motion to Reinstate Back to Police Officer, page 1.

¹² Plaintiff's Response to Defendant, Joss Springette's/Office of Collective Bargaining Opposition to Plaintiff's Motion to Vacate, Reinstate and Summary Judgment, pgs. 15-16.

¹³ Plaintiff's Motion to Vacate the Arbitrator's Decision and Prima Facie Case Above and Beyond the Preponderance of Evidence and 2nd Motion to Reinstate Back to Police Officer, page 22.

¹⁴ Defendants' Memo. of Law in Opposition to Plaintiff's Motion to Vacate and Reinstate, page 9.

¹⁵ *Id.*, pgs. 10, 12.

v. *Keating*, and *Allied-Bruce Terminix Companies v. Dobson*, the United States Supreme Court reaffirmed that the FAA also applies in state courts to the extent that an arbitration provision affects interstate commerce.¹⁶ In *Gov't of the Virgin Islands v. United Indus., Svc., Transp., Prof. & Gov't Workers of N.A.*, the Virgin Islands Supreme Court reiterated that “the FAA is premised on Congress's power to regulate interstate commerce—and not Congress's plenary powers under the territorial clause,” and thus, in the Virgin Islands, “a contract comes within the purview of the FAA only when an interstate nexus is shown.”¹⁷ In order to determine whether an interstate nexus exists to trigger application of the FAA, the Third Circuit and the United States Supreme Court have focused upon the interstate or international nature of the operations of one or more parties to a contract or upon the interstate nature of the arbitration agreements.¹⁸ Although federal precedent favors a broad construction of the interstate nexus requirement, “the Virgin Islands Supreme Court has suggested, in *dicta*, that it favors a far narrower interpretation of the

¹⁶ *V.I. v. United Indus. Workers, N.A.*, 169 F.3d 172, 176 (3d Cir. V.I. Feb. 17, 1999) (“Although the FAA applies by its terms to cases in federal courts, 9 U.S.C. §§ 3-4, in *Southland Corp. v. Keating*, [***495] 465 U.S. 1, 79 L. Ed. 2d 1, 104 S. Ct. 852 (1984), and *Allied-Bruce Terminix Companies v. Dobson*, 513 U.S. 265, 130 L. Ed. 2d 753, 115 S. Ct. 834 (1995), the Court reaffirmed that the FAA also applies in state courts to the extent that an arbitration provision affects interstate commerce. See also *Virgin Islands Hous. Auth. v. Coastal Gen. Constr. Services Corp.*, 27 F.3d 911, 915 (3d Cir. 1994). Thus, in order for the FAA to apply in the Territorial Court, the arbitration at issue must affect interstate commerce as defined by *Allied-Bruce*”).

¹⁷ *Gov't of the Virgin Islands v. United Indus., Svc., Transp., Prof. & Gov't Workers of N.A.*, 64 V.I. 312 n.3 (V.I. Jan. 13, 2016).

¹⁸ *Prentice v. Seaborne Aviation, Inc.*, 65 V.I. 96, 17-18 (Super. Ct. Sept. 1, 2016). (“In evaluating whether the employment contract between Prentice and Seaborne evidences a transaction that “turn[ed] out, in fact, to have involved interstate commerce,” the Court proceeds under the guiding principle, articulated by the Supreme Court of the United States and reiterated by the Third Circuit, that in enacting the FAA Congress intended to utilize the full extent of its powers under the Commerce Clause to uphold the enforceability of arbitration agreements across the nation. See *Allied-Bruce*, 513 U.S. at 277. Thus, the only arbitration agreements not governed by the FAA are those so devoid of any connection to interstate commerce that they would fail to withstand scrutiny even under the expansive interpretation of Congressional regulatory power that has defined Commerce Clause jurisprudence for nearly 75 years. The Court is also guided by the analytical focus of both the Third Circuit and the Supreme Court of the United States upon the interstate or international nature of the operations of one or more parties to the contract”) [emphasis added]; See also *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 281 (U.S. Jan. 18, 1995) (“we accept the “commerce in fact” interpretation, reading the Act’s language as insisting that the “transaction” in fact “involve” interstate commerce, even if the parties did not contemplate an interstate commerce connection”).

interstate nexus requirement that would, in turn, significantly limit the applicability of the FAA.¹⁹ Further, “the Virgin Islands Supreme Court has previously distinguished between the substantive and procedural aspects of the FAA, and concluded that the provisions of the FAA that merely establish procedures in the federal system—such as those pertaining to jurisdiction, or that establish filing deadlines—do not preempt local law.”²⁰ Finally, because territorial courts must follow as binding precedent decisions of the United States Supreme Court that interpret federal statutes,²¹ the Superior Court is bound by the decisions of the United States Supreme Court interpreting the substantive provisions of the FAA.

Regarding whether Frazer’s Motion is timely under the FAA, 9 USCS §12 provides, in pertinent part: “Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered.”²² But, to the extent that the FAA even applies to Frazer’s case, 9 USCS §12 does not apply, since the FAA’s procedural provisions do not preempt local law.²³ Thus, while it appears that Frazer filed the Motion on September 22, 2015, more than two years after the award was delivered on February 18, 2013,²⁴ the Court will not deem Frazer’s Motion untimely.

¹⁹ *Prentice*, 65 V.I. at 15 (citations omitted).

²⁰ *United Indus., Svc., Transp., Prof. & Gov’t Workers of N.A.*, 64 V.I. at 321-22 (“‘There is no federal policy favoring arbitration under a certain set of procedural rules.’ Consequently, the three-month limitations period in section 12 of the FAA is inapplicable to this proceeding”) (citations omitted).

²¹ *Antilles School, Inc. v. Lembach*, 64 V.I. 400, 418 (V.I. 2016) (“We also conclude that the Superior Court correctly recognized that it is not bound to mechanically follow every precedent from the United States Supreme Court. Clearly, state and territorial courts must follow, as binding precedent, decisions of the United States Supreme Court that interpret the United States Constitution, federal statutes, and federal treaties”) (citing *Chesapeake & O. Ry. Co. v. Martin*, 283 U.S. 209, 221 (U.S. Apr. 13, 1931)).

²² 9 USCS §12.

²³ *United Indus., Svc., Transp., Prof. & Gov’t Workers of N.A.*, 64 V.I. at 321-22 (“‘There is no federal policy favoring arbitration under a certain set of procedural rules.’ Consequently, the three-month limitations period in section 12 of the FAA is inapplicable to this proceeding”) (citations omitted).

²⁴ Defendants’ Memo. of Law in Opposition to Plaintiff’s Motion to Vacate Award and Reinstate, page 8 (in reference to Defendants’ Memo. of Law in Opposition to Plaintiff’s Motion to Vacate Award and Reinstate, Exhibit 8, Arbitrator’s Award and Opinion).

Since neither party has alleged that the CBA incorporated the FAA as a term of contract, whether the FAA governs this arbitration depends upon whether there exists a sufficient nexus with interstate commerce to trigger the application of the FAA. In *Prentice v. Seaborne Aviation, Inc.*, the Virgin Islands Superior Court focused upon the interstate or international nature of the operations of one or more parties to the contract and applied the FAA to an arbitration that on its face involved only an agreement between a Virgin Islands business and a Virgin Islands citizen concerning work to be performed entirely within the Virgin Islands, on the basis that one of the parties was involved in international operations.²⁵ Further, in *V.I. v. United Indus. Workers, N.A.*, the Third Circuit applied the FAA to a contract between a union affiliated with the American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”) and the Virgin Islands Department of Justice, reasoning that, even though the matter could have been construed as a local transaction, an interstate nexus existed via the union’s AFL-CIO affiliation and the Virgin Islands Department of Justice’s involvement in matters spanning

²⁵ *Prentice v. Seaborne Aviation, Inc.*, 65 V.I. 96, at 107-09 (“In evaluating whether the employment contract between Prentice and Seaborne evidences a transaction that “turn[ed] out, in fact, to have involved interstate commerce,” the Court proceeds under the guiding principle, articulated by the Supreme Court of the United States and reiterated by the Third Circuit, that in enacting the FAA Congress intended to utilize the full extent of its powers under the Commerce Clause to uphold the enforceability of arbitration agreements across the nation. See *Allied-Bruce*, 513 U.S. at 277. Thus, the only arbitration agreements not governed by the FAA are those so devoid of any connection to interstate commerce that they would fail to withstand scrutiny even under the expansive interpretation of Congressional regulatory power that has defined Commerce Clause jurisprudence for nearly 75 years. The Court is also guided by the analytical focus of both the Third Circuit and the Supreme Court of the United States upon the interstate or international nature of the operations of one or more parties to the contract. Here, despite the fact that “the record is scant as to an interstate nexus,” just as in *United Indus. Workers*, the Court is of the opinion that even if the “the individual employment contract...can be construed narrowly as an employment contract of a local nature only,” Defendant Seaborne’s business — offering commercial air travel between the U.S. Virgin Islands, Puerto Rico, the British Virgin Islands, and several other international destinations in the Caribbean — is inherently interstate and international in nature. See 169 F.3d at 176-77. Even if the employment contract, on its face, involves only an agreement between a Virgin Islands business and a Virgin Islands citizen concerning work to be performed entirely within the Virgin Islands, in point of fact Prentice contributed to the operation of a business that provided interstate and international commercial air travel. Thus, it is clear that the Employment Agreement between Prentice and Seaborne, “turn[ed] out, in fact, to have involved interstate commerce,” and that, consequently, the FAA is applicable to the arbitration provision in the contract at the heart of this dispute. See *Allied-Bruce*, 513 U.S. at 277.”).

multiple states.²⁶ Here, although neither the CBA nor the dispute in issue occurred in interstate commerce, the Court takes judicial notice that Local Chapter 816 of the PBA is affiliated with the AFL-CIO, which is sufficient to render the FAA applicable. Additionally, the Court takes judicial notice that the Government of the Virgin Islands, a defendant, is involved in interstate and international matters of commerce sufficient to create the necessary nexus for the FAA to apply.

Even when such an interstate nexus exists, however, the Virgin Islands Supreme Court has questioned, in *dicta*, the applicability of the FAA's Section 10, which lists grounds for vacating an award, recognizing that some courts have held it to be among the procedural provisions of the FAA that do not apply in state and territorial courts, unless agreed to otherwise in an arbitration agreement, even if an action otherwise comes within the purview of the FAA.²⁷ Because the Virgin Islands Supreme Court has declined to decide the issue,²⁸ it could be argued that "in the absence of any definitive holding from the Supreme Court...the [Superior] Court remains bound

²⁶ *V.I. v. United Indus. Workers, N.A.*, 40 V.I. 489, 169 F.3d 172 at 176 ("While it is true that in this case the record is scant as to an interstate nexus, we recognize that the appellee United Industrial Workers of North America, Seafarers International Union, AFL-CIO itself, which represents Acker, is an international body embracing Union workers not only in the various states of the union, but in foreign countries as well. Its activities, by their very nature, qualify as having an interstate nexus. Moreover, we can take judicial notice that the Attorney General's office of the Virgin Islands, of which Acker was a member until his termination, has been and is involved with matters concerning the various states... We are satisfied that while Acker was not employed directly in the channels of commerce, the interstate nexus required for application of the FAA has been met").

²⁷ *United Indus., Svc., Transp., Prof. & Gov't Workers of N.A.*, 64 V.I. at 325 (citing *Mave Enters., Inc. v. Travelers Indem. Co. of Conn.*, 219 Cal. App. 4th 1408, 162 Cal. Rptr. 3d 671, 688 (2013) (holding that 9 U.S.C. §§ 10 and 11 are not applicable in state court proceedings unless the parties, through their agreement, stipulated to their application); *Int'l Bank of Commerce-Brownsville v. Int'l Energy Dev. Corp.*, 981 S.W.2d 38, 42-43 (Tex. App. 1998) (limiting judicial review of a commercial arbitration award to the provisions of section 10 and 11 as contemplated in an arbitration agreement); *Atlantic Painting & Contracting Inc. v. Nashville Bridge Co.*, 670 S.W.2d 841, 846 (Ky. 1984) ("[T]here is ... nothing in the [FAA] remotely suggesting that the motion to vacate procedure ... has any application at all to such state action... The procedural aspects [such as where a party to arbitration seeks to enforce or vacate an arbitration award] are confined to federal cases.")).

²⁸ *United Indus., Svc., Transp., Prof. & Gov't Workers of N.A.*, 64 V.I. at 326 ("We need not decide whether this deferential standard of review should apply, however, because the arbitrator clearly exceeded his powers under the collective bargaining agreement, 9 U.S.C. § 10(a)(4), to the extent that he imposed his "own brand of industrial justice" rather than attempting to apply the terms of the collective bargaining agreement").

to follow the binding precedent of the Third Circuit establishing the applicability of the FAA in the territorial courts, including the provisions of 9 U.S.C. §10.”²⁹ But, since the Virgin Islands Supreme Court has indicated (again, in *dicta*) that the Superior Court is no longer bound by Third Circuit precedent,³⁰ the Superior Court is left without a clear standard. Accordingly, the Court will examine Frazer’s arbitration under the lens of both FAA Section 10 and the ‘brand of industrial justice’ standard used by the Virgin Islands Supreme Court for the review of arbitration awards that do not fall under the purview of the FAA.

Under FAA Section 10, “courts are permitted to vacate an arbitration award:

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.”³¹

First, Frazer contends that the arbitration decision was procured in violation of these factors,³² asserting that Arbitrator Pereles never requested a copy of the termination notice from the

²⁹ *Bennett v. Gov't of the Virgin Islands*, 2017 V.I. LEXIS 36, 6 (Super. Ct. Feb. 27, 2017).

³⁰ See *Mosby v. Mullgrav*, 2016 V.I. Supreme LEXIS 28, at *8-9 n.2 (V.I. July 12, 2016) (citing *Hodge v. Bluebeard's Castle, Inc.*, 62 V.I. 671, 685-92 (V.I. 2015) (holding that this Court is not bound by decisions of the Appellate Division or the Third Circuit, even where those decisions concern the same parties and legal issues); *Hamed v. Hamed*, 63 V.I. 529, 534-35 (V.I. 2015) (explaining that Appellate Division and Third Circuit decisions are not binding on the Superior Court)).

³¹ 9 U.S.C. §10(a).

³² Plaintiff’s Response to Defendant, Joss Springette’s/Office of Collective Bargaining Opposition to Plaintiff’s Motion to Vacate, Reinstate and Summary Judgment, pgs. 15-16.

Defendants prior to conducting the arbitration hearing,³³ that “the arbitration hearing was not warranted; for it occurred prior to termination[,]”³⁴ and that the Police Commissioner’s February 13, 2012, letter indicating his intention to recommend Frazer’s termination “was not grounds for termination.”³⁵ Though the record indicates that the Governor approved the VIPD’s recommendation to terminate Frazer on February 26, 2013,³⁶ several months after the arbitration hearing on August 28-30, 2012,³⁷ the CBA does not provide that the Governor must approve an employee’s discharge prior to an arbitration hearing. Instead, the CBA indicates that the arbitration of an employee discharge is to occur prior to the Governor’s approval of the discharge³⁸ and that a grievance challenging the discharge may be arbitrated upon demand by the PBA.³⁹ Thus, conducting the arbitration prior to the Governor’s approval of Frazer’s termination constituted correct procedure under the CBA and did not violate any of the factors under FAA Section 10(a)(1-4).

Second, Frazer argues that the Arbitrator “exceeded his powers” when he failed to render the arbitration award within forty-five days of the hearing and submission of facts.⁴⁰ An

³³ *Id.*, page 16.

³⁴ *Id.*

³⁵ *Id.*, page 17.

³⁶ Plaintiff’s Motion for Summary Judgment, page 9.

³⁷ Defendants’ Memo. of Law in Opposition to Plaintiff’s Motion to Vacate Award and Reinstate, page 7.

³⁸ ST-13-CV 168, Verified Compl., Exhibit 1: Collective Bargaining Agreement, Article V Section 11 provides: “In the case of discharge of an employee, he shall be removed from the payroll effective the date of discharge provided that if a grievance challenging the discharge is filed and is upheld by the Arbitrator, an arbitration award restoring the grievant to employment shall be immediately complied with by the Employer whether or not further proceedings in the nature of an appeal are instituted by the Employer, pending the outcome of such proceedings. A discharge shall be subject to the approval of the Governor in accordance with law.”

³⁹ ST-13-CV 168, Verified Compl., Exhibit 1: Collective Bargaining Agreement, Article V Section 2A provides: “If the Employer’s final answer at Step 3 is not satisfactory to the PBA, within fifteen (15) working days after receipt of the Employer’s final answer, the Union shall present the Police Commissioner with a written notice of its demand for arbitration. The demand for arbitration shall include a copy of the grievance specifying the nature of the grievance, the violation and relief sought.”

⁴⁰ Plaintiff’s Response to Defendant, Joss Springette’s/Office of Collective Bargaining Opposition to Plaintiff’s Motion to Vacate, Reinstate and Summary Judgment, pgs. 15-16 and 19.

“arbitrator's power is both derived from, and limited by, the collective-bargaining agreement” and “[h]is task is limited to construing the meaning of the collective-bargaining agreement so as to effectuate the collective intent of the parties.”⁴¹ Courts have found that arbitrators exceed their powers when “they rule on matters outside of their proper consideration, they rule on a question not put before them, or they render a decision beyond the scope of the issues submitted for decision.”⁴² The record reflects the arbitration decision was rendered on February 18, 2013,⁴³ several months after the arbitration hearing, in contravention of Article V Section 2C of the CBA,⁴⁴ which provides: “[t]he arbitrator’s decision shall be rendered forty-five (45) days following commencement of the hearings or submission of all agreed stipulations of the facts.”⁴⁵ But, Frazer has not presented evidence to indicate that the Arbitrator “exceeded his powers” or so imperfectly executed them such that the Arbitrator failed to submit a “mutual, final, and definite award upon the subject matter” under 9 U.S.C. §10(a)(4). Additionally, Frazer has not submitted evidence to indicate that the failure to render the arbitration award within forty-five days merits a vacation of the award under any other provisions of FAA Section 10.

Similarly, the record indicates that the arbitration hearing took place more than sixty days following the demand for arbitration,⁴⁶ in violation of the CBA, which provides, “In the case of

⁴¹ *Barrentine v. Arkansas-Best Freight Sys.*, 450 U.S. 728, 741 (U.S. Apr. 6, 1981).

⁴² *Ladner v. Dalkon Shield Claimants Trust (In re A.H. Robins Co.)*, 238 B.R. 300, 309 (E.D. Va. Apr. 20, 1999) (citing *J.A. Jones Constr. Co. v. Flakt, Inc.*, 731 F. Supp. 1061, 1064 (N.D.Ga. 1990); *Sun Ship, Inc. v. Matson Navigation Co.*, 785 F.2d 59, 62 (3rd Cir. 1986); *Raytheon Co. v. Computer Distributors, Inc.*, 632 F. Supp. 553, 558 (D.Mass. 1986)).

⁴³ Defendants’ Memo. of Law in Opposition to Plaintiff’s Motion to Vacate Award and Reinstate, Exhibit 8, Arbitrator’s Award and Opinion, page 11.

⁴⁴ Plaintiff’s Motion to Vacate the Arbitrator’s Decision and Prima Facie Case Above and Beyond the Preponderance of Evidence and 2nd Motion to Reinstate Back to Police Officer, page 12.

⁴⁵ ST-13-CV 168, Verified Compl., Exhibit 1: Collective Bargaining Agreement, page 19.

⁴⁶ Defendants’ Memo. of Law in Opposition to Plaintiff’s Motion to Vacate Award and Reinstate, Exhibit 7, PBA Demand for Arbitration Letter dated January 24, 2012.

dismissal, suspension or promotion, when the demand for arbitration has been presented, the selection and hearing of the case shall be done within sixty (60) working days of the date of the demand.”⁴⁷ But again, the record does not suggest, nor does Frazer argue, that the Arbitrator exceeded his powers delegated to him under the CBA such that a mutual, final, and definite award between the PBA and VIPD was not rendered. Further, there is no indication in the record that the delay of the hearing violated any other provision of FAA Section 10(a)—e.g., that as a result of the delay of the hearing, Frazer’s rights were “prejudiced” under 9 U.S.C. §10(a)(3). Prejudice is found when a plaintiff’s “fundamental right to be heard [i]s grossly and totally blocked,”⁴⁸ and “misconduct apart from corruption, fraud, or partiality in the arbitrators justifies reversal only if it so prejudices the rights of a party that it denies the party a fundamentally fair hearing.”⁴⁹ The record reveals that the PBA presented witnesses, arguments, and testimony on behalf of Frazer over the course of the three-day arbitration hearing, and there is no evidence that Frazer was denied a fundamentally fair hearing due to the delay or otherwise.⁵⁰ If anything, the delay of the hearing worked to Frazer’s benefit, as it extended the duration of Frazer’s employment as a police officer. Accordingly, the Court will not vacate the arbitration award under FAA Section 10 due to either the Arbitrator’s failure to render his decision within forty-five days under the CBA or the delay in conducting the hearing.

⁴⁷ ST-13-CV 168, Verified Compl., Exhibit 1: Collective Bargaining Agreement, page 19.

⁴⁸ *Cofinco, Inc. v. Bakrie & Bros., N. V.*, 395 F. Supp. 613, 516 (S.D.N.Y. June 11, 1975).

⁴⁹ *Apex Fountain Sales, Inc. v. Kleinfeld*, 818 F.2d 1089, 1094 (3d Cir. 1987); *See also* PREJUDICE, BLACK’S LAW DICTIONARY (9th ed. 2009) (n. 1. “Damage or detriment to one’s legal rights or claims”).

⁵⁰ Defendants’ Memo. of Law in Opposition to Plaintiff’s Motion to Vacate Award and Reinstate, Exhibit 8, Arbitrator’s Award and Opinion.

Third, Frazer argues that the award should be vacated because the Arbitrator addressed solely whether there was just cause for the recommendation for the termination of Frazer⁵¹ and did not consider whether Frazer was properly terminated under the CBA.⁵² Frazer contends that, had the Arbitrator found that Frazer was improperly terminated due to violations of the CBA's grievance procedures, Frazer's termination would have been reversed and she would have been reinstated as a police officer.⁵³ Frazer's argument appears to be based in the CBA's grievance procedure provisions, which provide in pertinent part:

"[I]f the PBA fails to process a grievance to the next step within the limits provides, notwithstanding any prior agreements to the contrary, the grievance shall be considered disposed of on the last answer of the Employer. If the Employer...fails to provide its answer to a grievance within the time limits provided, the grievance shall be considered adjusted as sought by the employee and/or the PSA's Representative and shall be binding and enforced by the Employer."⁵⁴

In support of this argument, Frazer cites the following passage from the arbitration opinion and award as an indication that the Arbitrator refused to hear whether the VIPD or PBA failed to process Frazer's grievances within the time limits provided by the CBA and, thus, whether her termination should have been reversed:

"...the Parties agreed (1) that there were **no substantive or procedural arbitrability issues for the arbitrator to consider** and (2) the matter should proceed solely on the merits of the Grievance. The parties stipulated to the issues involved."⁵⁵ [emphasis added]

⁵¹ Defendants' Memo. of Law in Opposition to Plaintiff's Motion to Vacate Award and Reinstatement, Exhibit 8, Arbitrator's Award and Opinion, page 9.

⁵² ST-14-CV-420 Verified Complaint, ¶73. See also Plaintiff's Motion to Vacate the Arbitrator's Decision, pgs. 2, 19.

⁵³ Plaintiff's Motion to Vacate the Arbitrator's Decision and Prima Facie Case Above and Beyond the Preponderance of Evidence and 2nd Motion to Reinstatement Back to Police Officer, page 19.

⁵⁴ ST-13-CV 168, Verified Compl. Exhibit 1: Collective Bargaining Agreement, Article V Section 1, A Step 2, pgs. 16-17.

⁵⁵ Defendants' Memo. of Law in Opposition to Plaintiff's Motion to Vacate Award and Reinstatement, Exhibit 8, Arbitrator's Award and Opinion, page 2.

The arbitrability of a labor dispute “involves the jurisdiction of the...arbitrator to hear the subject matter of that dispute”, and “[t]hat jurisdiction is conferred by the collective bargaining agreement between the parties involved in the dispute.”⁵⁶ “Substantive arbitrability” questions entail “whether the party seeking arbitration is making a claim which on its face is governed by the [CBA]” and are determined by the court, and not the arbitrator, unless there is “clear expression in the contract to the contrary.”⁵⁷ “Procedural arbitrability” questions, on the other hand, comprise “whether procedural conditions to arbitration have been met” and are decided by arbitrators.⁵⁸ Thus, it appears that, prior to the arbitration hearing, the PBA and VIPD recognized that the merits of Frazer’s termination were subject to arbitration under the CBA. Since the CBA governs employee termination disputes, the PBA and VIPD, not the Arbitrator, determined there were no substantive issues for the court to decide. Further, the Arbitrator presumably relied on the parties’ agreement that all procedural conditions to arbitration had been met so that the arbitration could proceed. The agreement between the PBA and the VIPD not to pursue any procedural irregularities does not provide a basis for overturning the Arbitrator’s decision.

⁵⁶ *Dep’t of Hous. & Cmty. Renewal v. United Indus. Serv.*, 1988 V.I. LEXIS 45, 8 (Terr. Ct. Jan. 15, 1988).

⁵⁷ *Amalgamated Transit Union, Local 880 v. New Jersey Transit Bus Operations, Inc.*, 200 N.J. 105, 115 (N.J. July 15, 2009) (“‘Substantive’ arbitrability refers to ‘whether the particular grievance is within the scope of the arbitration clause [in the CBA] specifying what the parties have agreed to arbitrate.’ *Id.* at 96, 228 A.2d 329. To determine a question about substantive arbitrability, a court need only decide ‘whether the party seeking arbitration is making a claim which on its face is [**410] governed by the [CBA].’ *Ibid.* (internal quotations omitted). That determination is a function for the court, not the arbitrator, ‘absent clear expression in the contract to the contrary.’”) (citation omitted).

⁵⁸ *Id.* at 113 (“‘[P]rocedural’ arbitrability refers to ‘whether [***20] procedural conditions to arbitration have been met,’ *id.* at 97, 228 A.2d 329. The panel viewed the answer as determinative because questions of substantive arbitrability are to be decided by the courts unless the parties have agreed otherwise, *Laborers’ Local Union Nos. 472 and 172 v. Interstate Curb & Sidewalk*, 90 N.J. 456, 463-64, 448 A.2d 980 (1982), whereas questions of procedural arbitrability are decided by the arbitrator, *Standard Motor Freight, supra*, 49 N.J. at 97, 228 A.2d 329.”).

Assuming for argument that the arbitration of any potential procedural irregularities could have resulted in the reversal of Frazer's termination, the Court will determine whether Frazer was properly terminated under the grievance procedures. Article V of the CBA governs grievance, arbitration and disciplinary disputes between the VIPD and employees, and Article V Section 10 outlines the procedures for disciplinary actions against employees.⁵⁹ Frazer's discharge as a police officer was governed in part by Article V Section 10C, which provides:

"There shall be a fifty (50) day statute of limitations for the Department to institute disciplinary action(s) against any employee covered by this Agreement. The institution of an action shall be considered the serving of charges and specifications upon the employee and the president of the PBA or his designee. The fifty (50) day period shall commence from the date the alleged violation was committed or becomes known or should have become known to the Department provided that no disciplinary action shall be instituted after ninety (90) days following the alleged infraction. Thirty (30) working days after the institution of the charges, the hearing and the determination as to guilt or innocence and punishment, if any, shall be made in writing to the employee and/or the PBA. The statute of limitations provided herein shall be stayed upon a justified request by either party."

Frazer alleges three violations Article V Section 10C.

First, Frazer argues that she was not charged within fifty days of the alleged infractions that occurred on September 17, 2011.⁶⁰ But, the record indicates that Frazer was charged on October 28, 2011,⁶¹ forty-one days after the September 17, 2011, incident and, thus, within the fifty-day limitations period provided by Article V Section 10C.

⁵⁹ ST-13-CV 168, Verified Compl., Exhibit 1: Collective Bargaining Agreement, Article V Section 10, pgs. 16-23.

⁶⁰ Plaintiff's Motion to Vacate the Arbitrator's Decision and Prima Facie Case Above and Beyond the Preponderance of Evidence and 2nd Motion to Reinstate Back to Police Officer, page 3.

⁶¹ ST-14-CV-420, Verified Compl. ¶18.

Second, Frazer asserts that the hearing officer rendered his December 14, 2011, thirty-one working days after the institution of charges on October 28, 2011, and thus, one day past the thirty-day limitations period.⁶² The Court takes judicial notice that in addition to weekends, there were three observed holidays in November 2011—D. Hamilton Jackson Day on November 1, 2011, Veteran's Day on November 11, 2011, and Thanksgiving on November 24, 2011. Because holidays and weekends are not working days, they are excluded from the calculation. A count of the number of working days between October 28, 2011, and December 14, 2011, shows that the hearing officer rendered his decision exactly thirty working days after the institution of charges, and thus, was not in violation of Article V Section 10C.

Third, Frazer contends that the date of her final discharge upon the Governor's approval was "528 days after the September 11, 2011, [the] date of the alleged violations or 438 days in excess of the 90 days"⁶³ in violation of Article V Section 10C. Frazer appears to misinterpret Article V Section 10C to mean that the entire disciplinary process, including the Governor's approval of an employee discharge, should be completed within ninety days. But, Article V Section 10C provides that the disciplinary action must be instituted within ninety days of the alleged disciplinary violation.⁶⁴ Article V Section 10C defines the institution of charges as "the serving of charges and specifications upon the employee and the president of the PBA or his designee."⁶⁵ Because the disciplinary action against Frazer was instituted within ninety days of the date of the alleged infractions on September 17, 2011, and Frazer was served on October 28, 2011,⁶⁶ the

⁶² *Id.*

⁶³ Plaintiff's Motion to Vacate the Arbitrator's Decision and Prima Facie Case Above and Beyond the Preponderance of Evidence and 2nd Motion to Reinstate Back to Police Officer, page 4.

⁶⁴ ST-13-CV 168, Verified Compl., Exhibit I: Collective Bargaining Agreement, Article V Section 10C, page 22.

⁶⁵ *Id.*

⁶⁶ Plaintiff's Motion to Vacate the Arbitrator's Decision and Prima Facie Case Above and Beyond the Preponderance of Evidence and 2nd Motion to Reinstate Back to Police Officer, page 4.

VIPD did not violate Article V Section 10C. Further, there is nothing in the CBA to indicate that an employee's discharge must occur within a certain time period.

Finally, Frazer alleges that the procedural grounds for the PBA's demand of the arbitration were not met.⁶⁷ Because the arbitrator determines whether such grounds are met,⁶⁸ this matter is outside of the Court's review. Accordingly, the Court finds that Frazer was properly terminated under the CBA.

II. The Facts Do Not Entitle Frazer to Vacation of the Arbitrator's Decision Under the 'Brand of Industrial Justice' Standard

Because the Virgin Islands Supreme Court has suggested, in *dicta*, that it favors a narrow application of the interstate nexus,⁶⁹ it could also be argued that the FAA does not apply here. In *Gov't of the Virgin Islands v. United Indus., Svc., Transp., Prof. & Gov't Workers of N.A.*, the Virgin Islands Supreme Court "opined that no interstate nexus would exist to trigger application of the FAA to an arbitration clause contained in a collective bargaining agreement 'executed between a Virgin Islands governmental department and a Virgin Islands union on behalf of

⁶⁷ ST-14-CV-420 Verified Complaint, ¶23. Frazer's argument invokes Article V Section 2A, which provides: "If the Employer's final answer at Step 3 is not satisfactory to the PBA, within fifteen (15) working days after receipt of the Employer's final answer, the Union shall present the Police Commissioner with a written notice of its demand for arbitration. The demand for arbitration shall include a copy of the grievance specifying the nature of the grievance, the violation and relief sought."

⁶⁸ *Amalgamated Transit Union, Local 880* 200 N.J. 105 at 113 ("'[P]rocedural' arbitrability refers to 'whether [***20] procedural conditions to arbitration have been met,' *id.* at 97, 228 A.2d 329. The panel viewed the answer as determinative because questions of substantive arbitrability are to be decided by the courts unless the parties have agreed otherwise, *Laborers' Local Union Nos. 472 and 172 v. Interstate Curb & Sidewalk*, 90 N.J. 456, 463-64, 448 A.2d 980 (1982), whereas questions of procedural arbitrability are decided by the arbitrator, *Standard Motor Freight, supra*, 49 N.J. at 97, 228 A.2d 329.").

⁶⁹ *United Indus., Svc., Transp., Prof. & Gov't Workers of N.A.*, 64 V.I. at 321-22 ("There is no federal policy favoring arbitration under a certain set of procedural rules.' Consequently, the three-month limitations period in section 12 of the FAA is inapplicable to this proceeding") (citations omitted).

workers residing in the Virgin Islands who provide services in Virgin Islands correctional facilities.”⁷⁰

Assuming, *arguendo*, that FAA Section 10 does not apply here, the Court looks to the ‘brand of industrial justice’ standard articulated by the Virgin Islands Supreme Court in *United Indus., Svc., Transp., Prof. & Gov’t Workers of N.A.*:

In *Volt Info. Sciences, Inc. v. Board of Trs.*, 489 U.S. 468, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989), the Supreme Court of the United States confirmed that in creating the FAA “Congress’ principal purpose [was] ensuring that private arbitration agreements are enforced according to their terms.” *Id.* at 478. The Court has expressly held that an arbitrator exceeds his powers, providing grounds for vacating the arbitral decision and award under 9 U.S.C. § 10(a)(4), “when [an] arbitrator strays from interpretation and application of the agreement and effectively ‘dispense[s] his own brand of industrial justice.’” *Major League Baseball Players Ass’n v. Garvey*, 532 U.S. 504, 509, 121 S. Ct. 1724, 149 L. Ed. 2d 740 (2001) (quoting *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960)).
United Indus., Svc., 64 V.I. at 326.⁷¹

With respect to the Arbitrator’s interpretation and application of the CBA, Article V Section 10 provides: “The award shall be in writing. It shall contain a statement of the issues, and an appraisal of the important arguments of both sides, a factual summary of the conclusions and the reasoning or rationale in support of these conclusions.”⁷² Here, the Arbitrator’s decision contained a statement of the issues (“The Parties stipulated that issues are: (1) Whether there was just cause for termination for the Recommendation for the Termination of Denise M. Frazer; and

⁷⁰ *Prentice v. Seaborne Aviation, Inc.*, 65 V.I. 96, at 15 (quoting *Gov’t of the Virgin Islands v. United Indus., Svc., Transp., Prof. & Gov’t Workers of N.A.*, 64 V.I. 312 n.3).

⁷¹ *Gov’t of the Virgin Islands v. United Indus., Svc., Transp., Prof. & Gov’t Workers of N.A.*, 64 V.I. at 326.

⁷² ST-13-CV 168, Verified Compl., Exhibit I: Collective Bargaining Agreement, Article V Section 10, page 20.

(2) If not, what should the remedy be?"⁷³ an appraisal of the arguments from the PBA and the VIPD, findings of fact, and conclusions supported by reasoning.⁷⁴ Based on witness testimony and evidence presented at the hearing, the Arbitrator concluded that Frazer gave an incomplete rendition of the facts in her IA report, in violation of the Virgin Islands Police Manual and Code of Ethics, which constituted grounds for termination.⁷⁵ Although Frazer appears to argue that the arbitration decision contained "substantive errors"⁷⁶, the Court is not authorized to review the Arbitrator's decision on the merits.⁷⁷ Thus, there is no indication in the record that the Arbitrator strayed from the interpretation and application of the CBA or effectively dispensed his own brand of industrial justice.

⁷³ Defendants' Memo. of Law in Opposition to Plaintiff's Motion to Vacate Award and Reinstate, Exhibit 8, Arbitrator's Award and Opinion, page 9.

⁷⁴ *Id.* pgs. 9-11.

⁷⁵ *Id.* pgs. 1-11.

⁷⁶ Plaintiff's Motion to Vacate the Arbitrator's Decision and Prima Facie Case Above and Beyond the Preponderance of Evidence and 2nd Motion to Reinstate Back to Police Officer, page 3 (Plaintiff asserts, "That there were numerous 'Substantive Errors' where-in Arbitration Edward A. Pereles mentioned, thus stepping outside of his 'JURISDICTION' as an arbitrator, making decisions that belong before a court of law.").

⁷⁷ *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509-510 (U.S. May 14, 2001) (Regarding an arbitration involving a collective bargaining agreement, the Court opined: "Judicial review of a labor-arbitration decision pursuant to such an agreement is very limited. Courts are not authorized to review the arbitrator's decision on the merits despite allegations that the decision rests on factual errors or misinterprets the parties' agreement. *Paperworkers v. Misco, Inc.*, 484 U.S. 29, 36, 98 L. Ed. 2d 286, 108 S. Ct. 364 (1987). We recently reiterated that if an 'arbitrator is even arguably construing or applying the contract and acting within the scope of his authority,' the fact that 'a court is convinced he committed serious error does not suffice to overturn his decision.'" *Eastern Associated Coal Corp. v. Mine Workers*, 531 U.S. 57, 62, 148 L. Ed. 2d 354, 121 S. Ct. 462 (2000) (quoting *Misco, supra*, at 38). It is only when the arbitrator strays from interpretation and application of the agreement [***9] and effectively "dispenses his own brand of industrial justice" that his decision may be unenforceable. *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597, 4 L. Ed. 2d [***747] 1424, 80 S. Ct. 1358 (1960). When an arbitrator resolves disputes regarding the application of a contract, and no dishonesty is alleged, the arbitrator's "improvident, even silly, factfinding" does not provide a basis for a reviewing court to refuse to enforce the award. *Misco*, 484 U.S. at 39. In discussing the courts' limited role in reviewing the merits of arbitration awards, we have stated that "courts . . . have no business weighing the merits of the grievance [or] considering whether there is equity in a particular claim." [*510] *Id.* at 37 (quoting *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 568, 4 L. Ed. 2d 1403, 80 S. Ct. 1343 (1960)). When the judiciary does so, 'it usurps a function which . . . is entrusted to the arbitration tribunal.' *Id.* at 569; see also *Enterprise Wheel & Car Corp., supra*, at 599 ('It is the arbitrator's construction [of the agreement] which was bargained for [****10] . . .')).

Further, the facts previously discussed by the Court under the FAA standard do not suggest that the Arbitrator strayed from the application of the CBA in reaching his decision that there was just cause for the recommendation of the termination of Frazer. For example, neither the delay of the arbitration hearing nor the delay of the issuance of the arbitration decision relate to the Arbitrator's interpretation of the CBA in deciding Frazer's case. Accordingly, the Court finds that Frazer is not entitled to vacation of the Arbitrator's decision under the 'brand of industrial justice' standard with respect to the arguments considered under the FAA standard.

Finally, Frazer's arguments elsewhere in the record do not support a vacation of the arbitration decision under FAA Section 10 or the 'brand of industrial justice' standard. First, Frazer's contentions that the arbitration award should be vacated because Defendants are liable for bad faith and "cruel and unusual punishments"⁷⁸ constitute legal conclusions couched as factual allegations, which the Court is not bound to accept as true⁷⁹ and which are not supported by the record. Second, Frazer's arguments that Defendants are liable for breach of duty of fair representation, breach of the CBA, deprivation of "property interests," and deprivation of due process⁸⁰ are separate causes of action that the Court will address in a separate Memorandum Opinion. Third, Frazer's assertion that the Arbitrator's decision was "inconceivably" issued prior to the hearing,⁸¹ since it was dated several months prior to the dates of the arbitration

⁷⁸ Plaintiff's Motion to Vacate the Arbitrator's Decision and Prima Facie Case Above and Beyond the Preponderance of Evidence and 2nd Motion to Reinstate Back to Police Officer, page 22.

⁷⁹ *Webster v. CBI Acquisitions, LLC*, 2012 V.I. LEXIS 9, *2, [WL], at *1 (Super. Ct. 2012) (citing *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986)) (while the Court must take all of the factual allegations in the complaint as true, courts are not bound to accept as true a legal conclusion couched as a factual allegation).

⁸⁰ Plaintiff's Motion to Vacate the Arbitrator's Decision and Prima Facie Case Above and Beyond the Preponderance of Evidence and 2nd Motion to Reinstate Back to Police Officer, page 22.

⁸¹ ST-14-CV-420 Verified Complaint, ¶28 (Frazer argues that the arbitration award was rendered on February 12, 2012, several months prior to the arbitration hearing, because the date on the award is "February 12, 2012").

hearing,⁸² is unpersuasive, because Defendants submitted as evidence emails indicating that the year listed on the arbitration decision was merely a typographical error that read “2012” instead of “2013.”⁸³ Fourth, Frazer’s assertion that the PBA refused to withdraw its demand for arbitration upon Frazer’s request is unpersuasive as a foundation for vacation, since the CBA provides that only the PBA or the VIPD may initiate arbitration regarding the termination of an employee, regardless of the employee’s wishes.⁸⁴ Fifth, Frazer’s complaint that Frazer was unaware of the contents of the PBA’s demand for arbitration⁸⁵ does not support vacation, since nothing in the CBA provides that an employee must know the contents of a demand for arbitration. Sixth, Frazer alleges that Defendant Springette submitted “three (3) fabricated [v]ersions of the arbitration decision; in her [q]uest to terminate” Frazer,⁸⁶ and supports this allegation by asserting that the arbitration decision was printed on letterhead for the Office of Collective Bargaining and that the signature of Arbitrator Pereles was missing.⁸⁷ Because Frazer submits no evidence to suggest that the contents of the arbitration decision were fabricated, Frazer’s challenge to the authenticity of the arbitration decision lacks merit. Moreover, with regard to Frazer’s assertion that the Arbitrator’s signature is missing, evidence submitted by Defendants indicates that the Arbitrator’s signature appears on page 11 of the arbitration decision

⁸² ST-14-CV-420 Verified Complaint, ¶28.

⁸³ Defendants’ Memo. of Law in Opposition to Plaintiff’s Motion to Vacate Award and Reinstate, Exhibit 13: Emails between the PBA and Arbitrator Pereles (Evidence submitted by Defendants indicates that Arbitrator Pereles submitted his award on February 12, 2013, and the year on the arbitration award is a typographical error. A series of emails, dated November 19, 2012, to February 4, 2013, between Arbitrator Pereles and the PBA, wherein Arbitrator Pereles requests from the PBA extensions for submitting his opinion and award, suggests this to be the case. Frazer presents no evidence to support her allegation that the award was in fact rendered in 2012).

⁸⁴ ST-13-CV 168, Verified Compl., Exhibit 1: Collective Bargaining Agreement, page 21 (Article V Section 9 states: “The foregoing procedures of the Article shall be the exclusive means of settlement of all grievances arising under this Agreement and may be initiated by either party”).

⁸⁵ Verified Complaint ST-14-CV-420, ¶22.

⁸⁶ Plaintiff’s Response to Defendant, Joss Springette’s/Office of Collective Bargaining Opposition to Plaintiff’s Motion to Vacate, Reinstate and Summary Judgment, pgs. 32-33.

⁸⁷ Verified Complaint ST-14-CV-420, ¶75.

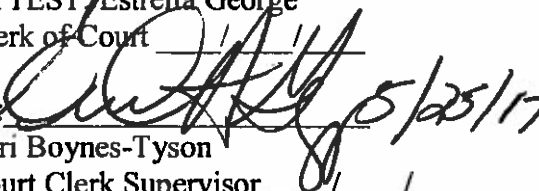
and again on his cover letter for the arbitration decision.⁸⁸ Seventh, Frazer's assertion that she continued to work as a police officer for over one year between the Police Commissioner's recommendation of her termination on February 13, 2012, and her receipt of the Governor's approval of her termination on February 28, 2013,⁸⁹ does not support vacation of the arbitration decision, since nothing in the CBA suggests that an employee's discharge must occur within a certain time period of a recommendation.

CONCLUSION

For the foregoing reasons, under both the FAA and the 'brand of industrial justice' standard, Frazer is not entitled to a vacation of the arbitration award. Accordingly, Plaintiff's Motion to Vacate the Arbitrator's Decision will be denied. An Order consistent with this Memorandum shall follow.

Dated: May 25, 2017

ATTEST: Estrella George
Clerk of Court

by:  5/25/17
Lori Boynes-Tyson
Court Clerk Supervisor


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

CERTIFIED A TRUE COPY
DATE: 5-25-17
ESTRELLA H. GEORGE
Clerk of the Court
By: 
Cameil A. Clarke
Court Clerk II

⁸⁸ Defendants' Memo. of Law in Opposition to Plaintiff's Motion to Vacate Award and Reinstate, Exhibit 8, Arbitrator's Award and Opinion, pgs. 9, 13.

⁸⁹ Verified Complaint ST-14-CV-420, ¶24-25.