

STATE OF MICHIGAN
COURT OF APPEALS

POLICE OFFICERS ASSOCIATION OF
MICHIGAN,

UNPUBLISHED
November 10, 2009

Plaintiff-Appellant,

v

LEELANAU COUNTY and LEELANAU
COUNTY SHERIFF,

No. 285132
Leelanau Circuit Court
LC No. 07-007669-CL

Defendants-Appellees.

Before: Donofrio, P.J., and Wilder and Owens, JJ.

PER CURIAM.

Plaintiff, Police Officers Association of Michigan, appeals as of right from an order of the trial court granting summary disposition in favor of defendants, Leelanau County and the Leelanau County Sheriff. This action stems from the trial court's review of an arbitrator's order in a grievance brought pursuant to the parties' collective bargaining agreement. Because the trial court's determination that defendants could not be compelled to return Leelanau Sheriff's Department Deputy Bruce Beeker to actual "law enforcement duties" was not decided by the arbitrator and was not an issue for the trial court to review, we vacate only that portion of the trial court's order. However, because the trial court did not exceed its mandate to review only the arbitrator's contractual authority, did not err in finding that the arbitrator exceeded his contractual authority in retaining jurisdiction over a fitness for duty issue and awarding interest and half the cost of continuing arbitration to plaintiff, we affirm the trial court's order in all other regards. We affirm in part and vacate in part.

On April 19, 2006, defendants terminated Beeker's employment due to "inappropriate contacts with a criminal suspect and conduct on [the suspect's] behalf [that] showed an appalling disregard for [Beeker's] duties and responsibilities as a law enforcement Deputy." Beeker filed a grievance stating that defendants had not terminated him for just cause. In accordance with the collective bargaining agreement between the parties, an arbitrator heard Beeker's grievance. The arbitrator ultimately agreed with Beeker that defendants did not have just cause to terminate Beeker. However, the arbitrator also determined that Beeker required a psychological fitness for duty examination. The arbitrator then ordered that defendants put Beeker back on the payroll and compensate him for back pay. The arbitrator also ordered that defendants could assign Beeker a desk job, put him on paid leave, or give him special projects until a favorable fitness report was received when he could be returned to "law enforcement duties." The arbitrator also

ordered that defendants could terminate Beeker if Beeker received an unfit for duty report. The arbitrator retained jurisdiction to “resolve any issues which may arise over implementation of this award.”

The first fitness for duty examination determined that Beeker was unfit for his duties as a law enforcement officer. Defendants terminated his employment. Beeker objected to the results of this examination and requested a second examination in accord with the provisions of the labor agreement. The second examination found Beeker fit for duty. At defendants’ request a third examination was performed. The third examination found Beeker fit for duty. Defendant returned Beeker to employment but assigned him to staff a newly created complaint desk rather than return him to road patrol. The arbitrator later issued a supplemental opinion ordering defendants to comply with the third fitness for duty evaluation by reinstating Beeker to the payroll, paying interest on the back pay owed, and paying half the costs of the continuing arbitration.

Plaintiff then filed suit in the trial court seeking to enforce the arbitrator’s award. Defendants subsequently filed a motion for summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10). The trial court granted defendants’ motion for summary disposition and refused to order that Beeker be restored to law enforcement duties. The trial court found that the arbitrator exceeded his authority, as determined by the labor agreement, when he created issues that did not exist in awarding relief that was not authorized by the agreement. The trial court indicated that the arbitrator’s authority was limited to finding whether just cause existed to terminate Beeker, and that neither the court nor the arbitrator had the authority to compel defendants to return Beeker to law enforcement duties. For these reasons, the trial court affirmed the restoration of Beeker’s employment with the department but reversed the arbitrator’s order to restore Beeker to “law enforcement duties” rather than desk duties. The trial court also declined to compel defendants to pay interest on back pay or pay the costs of additional arbitration. Plaintiff appeals as of right.

A trial court’s determination of a motion for summary disposition is reviewed de novo. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004). Generally, issues regarding an order to enforce, vacate, or modify an arbitration award are also reviewed de novo. *Saveski v Tiseo Architects, Inc*, 261 Mich App 553, 554; 682 NW2d 542 (2004). However, when considering the enforcement of an arbitration award, our review is narrowly circumscribed to a determination of whether the award was beyond the contractual authority of the arbitrator. *Police Officers Ass’n of Michigan v Manistee Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002).

Plaintiff argues on appeal that in deciding not to enforce the arbitrator’s award, the trial court impermissibly reviewed the arbitrator’s findings and substituted its own judgment for that of the arbitrator’s judgment in interpreting the labor agreement. Plaintiff asserts that the arbitrator was acting within the authority granted him by the labor agreement when he reinstated Beeker to law enforcement duties and retained jurisdiction over the dispute to implement the award. Therefore, plaintiff contends that the arbitrator was within his authority to issue supplemental awards regarding the payment of interest and the cost of continuing arbitration.

Labor arbitration is a product of a contractual agreement between the parties on how to resolve disputes that may arise, and the authority vested in an arbitrator to interpret a collective

bargaining agreement for such a purpose is derived exclusively from the agreement. *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 150-151; 393 NW2d 811 (1986). As long as the arbitrator does not disregard the terms of his employment and exceed the scope of his authority as expressly circumscribed in the contract, judicial review is inappropriate. *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 118; 607 NW2d 742 (1999).

Our review of the record reveals that the trial court commented extensively on the arbitrator's findings and opinions in the motion hearing and its opinion and order. The trial court criticized and disputed the arbitrator's findings, suggested that the arbitrator's attitudes were misinformed, and opined that the arbitrator's findings dealt a significant blow to all victims of domestic violence and set the cause for sexual equality in the workplace back several decades. Nonetheless, the trial court clearly acknowledged the well-settled limits on its power of review. Thus, despite suggesting that the sheriff acted in accord with the obligations of his office in terminating Beeker, the trial court did not vacate the arbitrator's order reinstating Beeker. We therefore conclude that the trial court's animated commentary was only illustrative of its personal opinions and not the product of judicial review under an inappropriate legal standard. Plaintiff has not shown error in this regard.

The trial court did determine, however, that the arbitrator exceeded his authority in determining that Beeker's psychological fitness for duty was an issue for arbitration. Plaintiff argues that in doing so, the trial court was impermissibly interpreting the labor agreement provisions and substituting its judgment for that of the arbitrator. Plaintiff argues that its labor agreement with defendants permits psychological duty for fitness examinations. Section 24.1 of the labor agreement provides as follows:

The County may require that employees submit to physical and medical tests and examinations by a County appointed doctor when such tests and examinations are considered necessary to the County in maintaining a capable work force, employee health and safety, etc., provided, however, that the County will pay the cost of such tests and examinations. In the event there is a disagreement between the employee's physician and the County's physician concerning the employee's ability to do his job or return to his job, at the written request of the employee, the employee will be referred to a mutually agreeable physician for examination whose decision shall govern the matter. The County and the employee shall share the cost of the physician.

The arbitrator relied on this section of the agreement in requiring Beeker to have a fitness examination and to receive counseling. Even though the section only refers to physical examinations and testing, defendants agreed at a motion hearing before the trial court that the labor agreement supported the examination process.

In adhering to its role to determine if the arbitrator's award was issued within the scope of his authority granted under the labor agreement, *Lenawee Co Sheriff, supra* at 118, the trial court did not interpret or dispute that § 24.1 authorizes a fitness for duty examination. However, it is clear that the trial court disagreed that the arbitrator's contractual authority included evaluating Beeker's mental health and then requiring the fitness for duty examination when the

subject of the grievance was whether just cause to terminate existed. We see no error in this analysis. Again, it was the trial court's role to determine if the arbitrator's award was issued within the scope of his authority granted under the labor agreement. *Id.* In doing so, the trial court did not interpret or dispute that § 24.1 authorizes a fitness for duty examination. The labor agreement does provide that arbitration is the procedure that the parties must use to resolve grievances. Beeker's grievance was that his termination was excessive and without just cause. Defendants responded that Beeker violated his oath of office and code of conduct, and that past difficulties with him were also considered in his termination. The labor contract at § 5.9 provides that "[t]he jurisdiction of the Arbitrator shall be limited to the case before him." Thus, the arbitrator was limited to offering an opinion only on whether defendants had just cause to terminate Beeker for violating his oath of office and code of conduct and past conduct. In sum, the trial court did not exceed its mandate to review only the arbitrator's contractual authority in deciding that the arbitrator acted outside the scope of his authority in ordering a fitness for duty examination.

Plaintiff next argues that the trial court erred in declining to enforce the arbitrator's award which plaintiff asserts was circumvented when Beeker was assigned to staff the complaint desk. Defendant reinstated Beeker and assigned him to the complaint desk in August 2007. However, the arbitrator's supplemental opinion was issued in June 2007. Clearly, the arbitrator did not—indeed could not—address the issue of Beeker's assignment to the complaint desk rather than the "law enforcement duties" he sought to be assigned to, when that action postdated the arbitrator's decision.

In *Service Employees Int'l Union Local 466M v Saginaw*, 263 Mich App 656, 657-658; 689 NW2d 521 (2004), this Court reviewed a situation where after the defendant complied with an arbitrator's order to assign an employee to a certain position in the city's fiscal services department, the defendant then reorganized the department and redefined the duties of the position which resulted in the employee having the same responsibilities as before the issuance of the order. This Court concluded that the trial court was correct in determining that the court was without jurisdiction to review the facts presented at arbitration or assess any facts concerning the purported reorganization that arose after arbitration, because case law is clear that an arbitrator is the sole fact-finder in arbitration. *Id.* at 661-662. This Court said that "[t]he issue whether defendant's postarbitration actions were permissible under the CBA, or were a mere ruse to avoid compliance with the arbitration award, is a matter that can only be addressed by way of a new grievance and arbitration." *Id.* at 622.

Here, the trial court determined that neither it nor the arbitrator could order the sheriff to restore law enforcement powers to Beeker. The trial court said that "if" the arbitrator's award were determined to require defendants to restore law enforcement duties to Beeker, then the trial court would refuse to enforce the award. Presumably, the trial court concluded that compelling the sheriff to confer law enforcement duties or powers was beyond the scope of the arbitrator's authority. Thus, for the same reasons as those in *Service Employees Int'l*, the trial court was without jurisdiction to review or decide any aspect of Beeker's employment duties. *Service Employees Int'l*, *supra* at 661-662. We therefore vacate that part of the trial court's order pertaining to restoring Beeker's law enforcement powers. Though we express no opinion, we do note that because the trial court and the arbitrator here were without authority to decide Beeker's

employment duties based on the labor agreement as part of this action, if Beeker so chooses, he may file a new grievance challenging the substance of his employment responsibilities.

Next, plaintiff challenges the trial court's finding that the arbitrator exceeded his authority when he retained jurisdiction to resolve Beeker's fitness for duty, ordered defendants to pay interest on the back pay owed to Beeker, and declined to order defendants to pay half the costs of the continued arbitration. The power to determine a remedy is a necessary part of the arbitrator's jurisdiction unless precluded by specific contractual language. *Police Officers Ass'n of Michigan, supra* at 346. When issuing a remedy, the arbitrator may consider any mitigating factors, which includes all circumstances that may reflect on a party's intent and the likelihood that the wrongful behavior would be repeated. *Id.* An arbitrator is empowered to award an appropriate level of discipline for the violations found. *Id.*

As discussed above, the arbitrator exceeded his contractual authority when he ordered a fitness for duty examination in an apparent effort to enter Beeker into counseling. This was not an issue in the case presented to the arbitrator, and the possibility that Beeker could be terminated as a result of the examination means that the award was not an appropriate level of discipline for what the arbitrator determined were the minor violations not warranting termination. Therefore, the trial court's finding that the arbitrator exceeded his contractual authority by involving himself in the fitness for duty issue was correct. The arbitrator's subsequent actions, which defendants objected to and did not participate in, were beyond the scope of the arbitrator's authority pursuant to the parties' agreement and therefore defendants do not have to pay for those actions involved in the additional arbitration.

In sum, the trial court did not exceed its mandate to review only the arbitrator's contractual authority and did not err in finding that the arbitrator exceeded his contractual authority in retaining jurisdiction over a fitness for duty issue and awarding interest and half the cost of continuing arbitration to plaintiff. But, the trial court's determination that defendants could not be compelled to return Beeker to "law enforcement duties" could not be decided by the arbitrator and was not an issue for the trial court to review. Thus, we affirm the trial court's order in all regards except that we vacate that portion of the order pertaining to restoring Beeker's law enforcement powers.

Affirmed in part and vacated in part. Costs to neither plaintiff nor defendants.

/s/ Pat M. Donofrio
/s/ Kurtis T. Wilder
/s/ Donald S. Owens