

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF DETROIT,

Plaintiff-Appellant,

v

DETROIT POLICE OFFICERS ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED
February 12, 2013

No. 306474
Wayne Circuit Court
LC No. 11-006114-CZ

Before: JANSEN, P.J., and WHITBECK and BORRELLO, JJ.

PER CURIAM.

Plaintiff City of Detroit (the City) appeals as of right the circuit court's order granting summary disposition to defendant Detroit Police Officers Association (the Union) under MCR 2.116(C)(10) and ordering the City to comply with an arbitration award. We affirm.

I. FACTS

This case concerns whether the Union is entitled to interest on overdue lump-sum payments under the Deferred Retirement Option Program (the retirement program) contained in the collective bargaining agreement between the parties. The retirement program allows participating members who are eligible for retirement to elect whether to "cash out" accumulated sick time if they choose to keep working. One of the options under the retirement plan is to "cash out" and receive a lump sum payment at the member's present rate of pay. The bargaining agreement requires the City to make this payment within 30 days.

In July 2010, the Union filed a grievance against the City, asserting that even though the collective bargaining agreement required the City to pay the lump sum payments within 30 days, the City delayed payments beyond 30 days and refused to pay interest. The parties agreed to arbitrate the dispute.

After hearings and arguments, the arbitrator found that the bargaining agreement did not include a provision that required the City to pay interest on the delayed lump sum payments. He also found that it was the past practice of the parties for the City to pay such interest. The arbitrator found that the bargaining agreement was silent on whether the Union was entitled to interest, and that the City would pay interest on delayed payments similar to the payments at issue. The arbitrator concluded that "[t]he practice is that if there is a delay in paying the lump sum, interest will be paid. The fact that the lump sum is now paid in connection with the

selection of the [retirement plan] does not change the practice.” The arbitrator ordered the City to pay interest on the late lump sum payments.

The City moved the trial court to vacate the arbitrator’s award, and the Union moved the trial court for summary disposition under MCR 2.116(C)(10). The trial court held that the parties negotiated arbitration, that the decision was made under the arbitrator’s authority, and that the arbitrator’s decision was binding. The City now appeals.

II. ENFORCEMENT OF ARBITRATION AWARDS

A. STANDARD OF REVIEW

This Court reviews de novo the trial court’s decision on a motion for summary disposition.¹ We also review de novo the trial court’s decision to enforce an arbitration award.²

B. LEGAL STANDARDS

Our review of an arbitrator’s award is very limited.³ A reviewing court must accept the arbitrator’s factual findings and decisions on the merits, and cannot engage in contractual interpretation.⁴ A reviewing court may only vacate an award in a few circumstances, including if the arbitrator exceeded his or her contractual powers.⁵ Unless the arbitrator “disregard[ed] the terms of his employment and the scope of his authority as expressly circumscribed in the arbitration agreement, judicial review effectively ceases.”⁶

Thus, a reviewing court may not overturn an arbitrator’s award “as long as the arbitrator is even arguably constructing or applying the contract and acting within the scope of his authority.”⁷ However, the arbitrator may not “disregard or modify the unambiguous provisions of a collective bargaining agreement.”⁸

¹ *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

² *Miller v Miller*, 474 Mich 27, 30; 707 NW2d 341 (2005); *City of Ann Arbor v AFSCME*, 284 Mich App 126, 144; 771 NW2d 843 (2009).

³ *Police Officers Ass’n of Mich v Manistee Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002).

⁴ *City of Ann Arbor*, 284 Mich App at 144.

⁵ *Miller*, 474 Mich at 31; MCL 600.5081.

⁶ *Police Officer’s Ass’n of Mich*, 250 Mich App at 343, quoting *Lincoln Park v Lincoln Park Police Officers Ass’n*, 176 Mich App 1, 4; 438 NW2d 875 (1989).

⁷ *City of Ann Arbor*, 284 Mich App at 144.

⁸ *Police Officers Ass’n of Mich*, 250 Mich App at 343, quoting *General Tel Co of Ohio v Communications Workers of America, AFL-CIO*, 648 F2d 452, 457 (CA 6, 1981).

C. APPLYING THE STANDARDS

The contractual powers of the arbitrator in this case are not in dispute. The City argues that the arbitrator improperly found that a past practice existed between the City and the Union, and that the arbitrator looked beyond the material terms of the bargaining agreement. But “an arbitrator has great latitude in the sources he may rely upon in resolving disputes concerning the appropriate interpretation of specific contractual provisions, including . . . the past practices of the parties[.]”⁹ Further, reviewing courts may not review the arbitrator’s findings of fact.¹⁰ Thus, the City would only be entitled to relief if the arbitrator’s award was against the plain and unambiguous language of the collective bargaining agreement.

Here, the City admits that the bargaining agreement is silent concerning whether it has to pay interest in this circumstance. The bargaining agreement requires the City to make the payment under the retirement plan within 30 days, but provides no remedy if the City fails to do so. Irrespective of the past practices of the parties, the bargaining agreement does not address this issue. Thus, the arbitrator’s award was not contrary to any plain and unambiguous language in the contract. We conclude that the trial court properly determined that the arbitrator’s award arguably construed or applied the contract, and granted summary disposition.

We affirm.

/s/ Kathleen Jansen
/s/ William C. Whitbeck
/s/ Stephen L. Borrello

⁹ *Port Huron Area School Dist v Port Huron Ed Ass’n*, 426 Mich 143, 160; 393 NW2d 811 (1986).

¹⁰ *City of Ann Arbor*, 284 Mich App at 144.