

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN VANSEN,

Plaintiff-Appellee,

v

CITY OF PONTIAC,

Defendant-Appellant.

UNPUBLISHED

August 3, 2001

No. 218520

Oakland Circuit Court

LC No. 97-000876-CL

Before: Bandstra, C.J., and White and Collins, JJ.

PER CURIAM.

In this action to vacate an arbitration award, defendant appeals as of right from the circuit court's order granting plaintiff's motion for summary disposition. We reverse the circuit court's order and reinstate the arbitrator's award upholding plaintiff's dismissal from defendant's employ.

Plaintiff, a sergeant in defendant's police department, was terminated for misconduct following his conversion of city gasoline to his own use. Plaintiff filed a grievance under his union's collective bargaining agreement and took the dispute to arbitration. After finding that defendant's police chief's conclusions were supported by the evidence, and that plaintiff's acts warranted discharge, the arbitrator denied plaintiff's grievance.

Plaintiff appealed the arbitrator's decision to the circuit court, which vacated the arbitration award after finding that the collective bargaining agreement between defendant and plaintiff's union did not permit discharge as a form of discipline, and that the arbitrator had therefore exceeded his authority in upholding plaintiff's termination.

On appeal from the circuit court's order, defendant argues that the court erred by reading § 5.5 of the collective bargaining agreement so as to preclude discharge of an employee for cause. We agree.

A court's review of an arbitration award arising from a collective bargaining agreement is quite restricted. In *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 118; 607 NW2d 742 (1999), this Court explained the standard of review as follows:

The necessary inquiry for this Court's determination is whether the award was beyond the contractual authority of the arbitrator. Labor arbitration is a product of contract and an arbitrator's authority to resolve a dispute arising out of the appropriate interpretation of a collective bargaining agreement is derived exclusively from the contractual agreement of the parties. It is well settled that judicial review of an arbitrator's decision is limited. A court may not review an arbitrator's factual findings or decision on the merits. Rather, a court may only decide whether the arbitrator's award "draws its essence" from the contract. If the arbitrator in granting the award did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases. [*Id.*, quoting *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989) (Citations omitted.)]

Section 5.5 of the collective bargaining agreement provides, in relevant part, that "[d]iscipline will be administered as set forth in the Pontiac City Charter and as published and in accordance with the Rules and Regulations of the Police Department." Section 10.7 of the collective bargaining agreement states that "all provisions of the City Charter . . . relating to the working conditions and compensation of officers are incorporated herein by reference[.]" Article 4.108 of defendant's city charter expressly grants department directors, which includes the police chief, the power to discipline and remove employees of the department. Similarly, § 62 of the police department's rules and regulations states that a police department member found guilty of violating any rule or regulation "will be subject to reprimand, suspension, forfeiture of pay, or dismissal[.]"

When faced with alternate possible interpretations of a contract this Court favors a reasonable construction over an unreasonable one. *Schroeder v Terra Energy Ltd*, 223 Mich App 176, 188; 565 NW2d 887 (1997). A contractual provision barring any termination of employment for cause is an extraordinary provision that would have merited an explicit mention in any collective bargaining agreement. In the absence of a specific provision expressly barring discharge, we conclude that the collective bargaining agreement cannot be construed as barring discharge for cause.

We read §§ 5.5 and 10.7 of the collective bargaining agreement as incorporating by reference the dismissal provisions stated in article 4.108 of the city charter and § 62 of the police department's rules and regulations. Although § 5.5 of the contract does not specifically include dismissal under the types of discipline that may be imposed, that portion of the section is not presented as a comprehensive list of sanctions. Section 5.5 certainly does not constitute an explicit prohibition of discharge, a usual sanction for the most egregious employee offenses.¹ Further, the language in both article 4.108 and § 62 indicate that dismissal is a separate consequence distinct from lesser disciplinary acts such as reprimand, suspension, or demotion. Other provisions in the collective bargaining agreement also clearly contemplate that an

¹ In other words, § 5.5 does not address dismissal as a sanction and, accordingly, the provisions of the city charter and police department's rules that countenance that sanction are not inconsistent with that section.

employee may be dismissed or discharged from employment. Accordingly, we conclude that discharge was a form of discipline permitted under the collective bargaining agreement, and that the arbitrator therefore did not act outside of the scope of his authority in upholding that sanction.

The circuit court's order is reversed and the arbitrator's award denying plaintiff's grievance is reinstated.²

/s/ Richard A. Bandstra

/s/ Helene N. White

/s/ Jeffrey G. Collins

² We do not address plaintiff's challenge concerning the arbitrator's findings with respect to the deputy police chief's alleged promise that plaintiff would not be dismissed if he passed a polygraph examination. Plaintiff's argument challenges the arbitrator's factual findings or decision on the merits and is therefore outside this Court's scope of review. *Lenawee Co Sheriff, supra* at 118.