

STATE OF MICHIGAN
COURT OF APPEALS

DETROIT POLICE OFFICERS ASSOCIATION,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED

November 13, 2003

No. 241574

Wayne Circuit Court

LC No. 02-203924-CL

Before: Whitbeck, C.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Plaintiff Detroit Police Officers Association (DPOA) appeals as of right from a trial court order denying its motion for summary disposition and dismissing its suit against defendant City of Detroit. The DPOA was seeking to enforce a labor arbitration award. We reverse.

I. Basic Facts And Procedural History

In a January 23, 2001 letter, the Detroit chief of police recommended to the Board of Police Commissioners that Police Officer Eugene Brown be promoted to sergeant. The Board did not approve the promotion, citing Section 7-1114 of the Detroit City Charter, which had been incorporated into the collective bargaining agreement. Section 7-1114 contains two paragraphs:

The chief of police shall make all promotions within the department. All promotions shall be with the approval of the board.

Promotions shall be made on the basis of competitive examinations administered by the director of police personnel except for positions above the rank of lieutenant or its equivalent. All examinations will be prepared by the division of police personnel with concurrence of the board. No person who has taken an examination and has been placed on a register of employees eligible for promotion, may be passed over in favor of an employee with a lower examination score, unless the chief of police files with the board and the division of police personnel written reasons for the bypass, and the promotion is approved by four (4) of the commission members serving. Any person having been passed over may appeal to the board.

The DPOA filed a grievance, alleging that the Board's failure to promote Brown violated the collective bargaining agreement (CBA). The umpire granted the grievance, finding no basis to disagree with an earlier umpire's interpretation of the same charter provision in the case of *P. O. Theresa Byrge*. The umpire in that decision stated:

[T]he city charter provision upon which the commissioners rely in their denial of the grievant's promotion states that no person on the promotion list may be passed over unless the chief files with the board the written reasons for the bypass. Here, there was [sic] no such written reasons filed, and instead, the chief had verbally offered his opinion to the board that the grievant's disciplinary record was not such that her promotion should be denied. While the board has an oversight function in reviewing promotions proposed by the chief, they cannot ignore the express charter provision protecting candidates eligible for promotion from an arbitrary bypass.

Citing only the first paragraph of Section 7-1114 of the Charter, the trial court held that the charter provision was "as clear and unambiguous as it could possibly be," and that the Board therefore had authority to disapprove the promotion. The trial court concluded that the umpire had substituted his judgment for the language of the CBA, and further concluded that Brown was not entitled to the promotion because the Board did not approve it. Accordingly, the trial court denied the motion for summary disposition and entered a judgment of dismissal.

II. Standard Of Review

Our review of this issue, like the trial court's, is limited to whether the arbitration award drew its essence from the contract and whether the award was within the arbitrator's authority under the CBA.¹ Our review ceases once substantive arbitrability is determined, regardless whether the arbitrator's interpretation of the contract was wrong.²

III. The Provisions Of The CBA

The arbitrator's authority in this case was set forth in Section 8(D) of the CBA, which provides in relevant part:

The umpire shall limit his decision strictly to the interpretation, application or enforcement of the specific articles and sections of this Agreement, and he shall be without power or authority to make any decision:

¹ *Michigan State Employees Ass'n v Dep't of Mental Health*, 178 Mich App 581, 584; 444 NW2d 207 (1989), quoting *Ferndale Education Ass'n v Ferndale School Dist*, 67 Mich App 637, 642-643; 242 NW2d 478 (1976).

² *Id.*

1. Contrary to or inconsistent with or modifying or varying in any way the terms of this Agreement or of applicable laws prevailing over the terms of this Agreement.

* * *

3. Limiting or interfering in any way with the powers, duties or responsibilities of the city under its Charter or applicable laws prevailing over the terms of this Agreement . . .

IV. Interpreting The CBA And The Charter

In *Pennsylvania Power Co v Local Union No 272 of the IBEW*,³ citing *United Paperworkers Int'l Union v Misco, Inc.*,⁴ the court noted that an arbitration award may be vacated where there is a manifest disregard of the agreement “totally unsupported by principles of contract construction and the law of the shop.” However, the court further stated:

[I]f the arbitrator’s interpretation is in any rational way derived from the collective bargaining agreement, the arbitration award will not be disturbed . . . An arbitration award will not be vacated just because the court believes its interpretation of the agreement is better than that of the arbitrator . . .

In this case, unlike the situation in *Pennsylvania Power Co, supra*, and *Lenawee Co Sheriff v Police Officers Labor Council*,⁵ the arbitrator did not inject any new terms into the CBA. Rather, his interpretation was derived from the language of the charter provision that the CBA incorporated. Moreover, his construction was in no way “totally unsupported by principles of contract construction.” Rather, both interpretations advanced by the parties were plausible based solely on the language of the charter provision. Whether the trial court or this Court would deem one interpretation favorable to another is irrelevant.⁶ Since the CBA conferred authority on the arbitrator to interpret the terms of the CBA, determination of this issue was within the arbitrator’s authority. We conclude, therefore, that the trial court exceeded the scope of permissible review when it addressed whether the arbitrator’s interpretation was right or wrong.

The City also asserts that the arbitrator exceeded his authority by making a decision that limited its powers under the charter and that the decision violated Section 6 of the CBA, which deals with management rights and responsibilities. This section precluded policies and procedures in the CBA from being construed to reduce the authority conferred on city officials in

³ *Pennsylvania Power Co v Local Union No 272 of the IBEW*, 276 F3d 174 (CA 3, 2001).

⁴ *United Paperworkers Int'l Union v Misco, Inc.*, 484 US 29, 38; 108 S Ct 364; 98 L Ed 2d 286 (1987).

⁵ *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111; 607 NW2d 742 (1999).

⁶ *Michigan State Employees Ass’n, supra* at 584.

the charter “as limited by the provisions” of the CBA. Determining whether the Board’s responsibility is limited by the CBA of necessity requires construction of the CBA. We therefore conclude that, to the extent the arbitrator’s determination was based on an interpretation of the CBA, that determination cannot be disturbed because the arbitrator’s very authority to interpret the CBA was conferred on him in the CBA itself.

Reversed and remanded for entry of an order enforcing the arbitration award. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Brian K. Zahra

/s/ Pat M. Donofrio