

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF MUSKEGON,

Plaintiff-Appellant,

v

MUSKEGON FIRE FIGHTERS UNION,

Defendant-Appellee.

UNPUBLISHED

January 14, 2003

No. 235016

Muskegon Circuit Court

LC No. 01-040738-CL

Before: Meter, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

This labor relations dispute arises out of plaintiff's reorganization plan which affected a member of defendant bargaining unit. Defendant filed a grievance which went to arbitration. The arbitrator entered an award for defendant. Plaintiff appealed to the circuit court which granted defendant's motion for summary disposition, upholding the arbitrator's award. Plaintiff now appeals as of right and we affirm.

I

Our review of this matter is limited. A court may not review an arbitrator's factual findings or decision on the merits; a court may only decide whether the award draws its essence from the contract. *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 150; 393 NW2d 811 (1986); *Police Officers Ass'n v Manistee Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002). If an arbitrator, in granting an award, did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the arbitration agreement, judicial review effectively ceases. *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 118; 607 NW2d 742 (1999). In recognition of the limited scope of our review, plaintiff's only arguments on appeal are that the arbitrator's award did not draw its essence from the collective bargaining agreement and that the arbitrator exceeded his authority in granting relief to defendant.

The arbitrator's choice of remedy is also generally broad. The question is whether the remedy fashioned is rationally explainable as a logical means of furthering the aims of the contract. *Michigan Ass'n of Police v City of Pontiac*, 177 Mich App 752, 759; 442 NW2d 773 (1989). A reviewing court is without authority to fashion its own remedy.

II

The circuit court's well-reasoned Opinion and Order, issued May 29, 2001, granting defendant's motion for summary disposition exhibits an understanding of the limited scope of judicial review of the arbitrator's award, acknowledges the factual findings of the arbitrator, and addresses the only two pertinent issues on appeal: whether the arbitration award draws its essence from the collective bargaining agreement and whether the arbitrator exceeded his authority. We agree with the circuit court's resolution of these two issues and because we can scarcely improve on his opinion, quote relevant portions of it here and adopt them as our own.

The subject matter of this dispute commenced in 1999 when the plaintiff and defendant had several meetings concerning reorganization and streamlining of city services. As part of that reorganization, plaintiff decided to have the building official, permit technician, building trade inspectors, housing inspectors, and a clerical person added to the Muskegon Fire Department. After the reorganization was implemented, the Union filed a grievance which was submitted to arbitration. . . . The requested relief was that the reorganization be changed back, or that the bargaining for the changes begin. . . .

Section 20.1, "Step three" of the CBA states: "The arbitrator shall have jurisdiction and authority only to interpret, apply, and determine compliance with this agreement and shall not add to, subtract from or alter in any way its provisions." Section 18.1 of the CBA states: "Wages, hours and conditions of employment in effect at the execution of this agreement shall, as contained herein, be maintained during the term of this agreement." Section 18.2 provides: "The city shall make no unilateral changes in wages, hours and conditions of employment during the term of this agreement." Article 8 of the CBA incorporates the existing job descriptions, including that of fire marshall.

The arbitration decision at pages 12 – 13 relied upon Articles 8, 18.1, and 18.2 in finding that "the grievance has merit." The arbitrator found at page 12 that "If the Fire Marshall is analogized with a Battalion Chief, his domain has **vastly increased** from supervisory responsibility over the Fire Inspector to an additional staff of some (10) individuals. . . ." The arbitrator then ordered the following award at page 13: "AWARD. The Grievance is granted and it is directed that the position of Fire Marshall be restored to its former job duties and responsibilities not inconsistent with the past practice of the parties and the job description of the Fire Marshall contained in Exhibit A attached to the Collective Bargaining Agreement."

* * *

[T]he Court finds as a matter of law that the CBA did give the arbitrator the authority to adjudicate the issue submitted, as an alleged change in the supervisory responsibilities of the Fire Marshall is a "condition of employment" within the meaning of Articles 18.1, 18.2, and 8 of the CBA. Thus, the Court finds as a matter of law from the CBA itself that the arbitrator did not exceed the scope of his authority. The Court further finds that the arbitrator did make

adequate findings of fact and conclusions of law at pages 12 – 13 of his decision in the manner which this Court has previously noted in this opinion and order. The Court finally finds that the arbitrator's decision does state which of the Union's objections are sustained, i.e., that having the building official and the building trade inspectors, housing inspectors, permit technician, and clerical employee (all non-bargaining unit employees) be under the supervision of the Fire Marshall is a violation of the present CBA.

The Court disagrees with plaintiff's argument . . . that the plaintiff cannot know what to do to comply with the arbitration decision. That decision clearly holds that the Fire Marshall is not to have supervisory authority over the building official and the Fire Marshall is not to have direct or indirect supervisory authority over the non-bargaining unit employees who report to the building official, including the building trade inspectors, housing inspectors, permit technician, and clerical employee. The Fire Marshall's duties are to be those which existed before the reorganization, and surely city officials and the Fire Marshall must know what those duties were. (Emphasis added.)

Quite clearly the arbitrator's award drew its essence from the collective bargaining agreement because it dealt with defendant's claim that plaintiff violated the contract by unilaterally changing conditions of employment¹. Just as clearly the arbitrator acted within the scope of his authority; in adjudicating defendant's grievance, the arbitrator simply interpreted and applied the contract and determined whether plaintiff complied with it. In addition, as pointed out in the circuit court opinion, it is also clear what plaintiff must do to comply with the arbitration award; it must restore the *status quo ante* with regard to the Fire Marshall's duties.

Affirmed.

/s/ Patrick M. Meter

/s/ Janet T. Neff

/s/ Pat M. Donofrio

¹ We note that even though the Fire Marshall was involved in the changes, he did so without the authority of his bargaining unit, defendant-union.