

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF OAK PARK,

Plaintiff/Counter Defendant-
Appellant,

V

OAK PARK PUBLIC SAFETY OFFICERS
ASSOCIATION and POLICE OFFICERS
ASSOCIATION OF MICHIGAN,

Defendants/Counter Plaintiffs
Appellees.

UNPUBLISHED

April 29, 2003

No. 239430

Oakland Circuit Court

LC No. 01-031896-CZ

Before: Griffin, P.J., and Neff and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition and affirming an arbitration award. We reverse.

Judicial review of a labor arbitrator's decision is narrowly circumscribed. *Gogebic Medical Care Facility v AFSCME Local 992, AFL-CIO*, 209 Mich App 693, 696; 531 NW2d 728 (1995). In *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1; 438 NW2d 875 (1989), this Court explained:

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.* at 4 (citations omitted).]

In the case before us the collective bargaining agreement provides that officers could work two different shifts, twelve-hour shifts and eight-hour shifts. The twelve-hour shifts have

fixed working hours and are chosen by seniority. Thus, they are chosen by the most senior officers because these shifts result in fourteen days off in a twenty-eight-day cycle, plus they also result in hundreds of dollars of extra pay. These shifts however are paid on a straight time basis. The eight-hour shifts have had no fixed working hours (because they are not always staffed when there were twelve-hour shift shortages). The contract provides that the twelve-hour shift must be completely staffed before any employees may work an eight-hour shift. It also provides that the officers were paid for straight time wages for the twelve-hour shifts. Once mandatorily assigned to a twelve-hour shift, an officer is not entitled to overtime for those twelve hours of work. He is only entitled to straight time wages. (See Contract, Sec 8.1.E). That is completely clear in the contract. The unions claimed that officers reassigned to the twelve-hour shift were entitled to overtime and these were the individuals named in the grievance. The arbitrator awarded each of the officers named in the grievances forty percent of their overtime claims despite their having been paid the contractual "straight time wage rates". No one is quite clear as to where the arbitrator found this forty percent provision.

In this case, the parties submitted a dispute relating to the interpretation, application, and enforcement of certain provisions of the collective bargaining agreement, as amended by a letter of understanding, governing overtime pay and shift selection. The arbitrator found that the parties' dispute was legitimate, but rather than resolve the merits of that dispute, he ruled that the union prevailed on procedural grounds, specifically, the city's violation of the agreement's rules for resolving a grievance before proceeding to arbitration. The arbitrator then proceeded to determine an appropriate remedy. Although an arbitrator has the power to fashion a remedy, he or she is precluded from doing so if it is not contained within the four corners of the contractual agreement. *Police Officers Ass'n of Michigan v Manistee Co*, 250 Mich App 339, 346; 645 NW2d 713 (2002), The remedy cannot conflict with the terms of the agreement. *State Office of State Auditor v Minnesota Ass'n of Professional Employees*, 504 NW2d 751, 755 (1993).

In the case before us the contract provision is quite clear that the twelve-hour shifts were to be paid at straight time wages and overtime pay was authorized only if an officer had been held over at the end of a shift or called back for duty after a shift. The arbitrator never found that these officers' shifts were changed in violation of the agreement. Thus there was no justification for any award of overtime pay and certainly a forty percent proviso as fashioned by the arbitrator did not draw its essence from the contract. *Lincoln Park, supra* at 4.

An arbitrator may not act on his own sense of personal justice but is confined to interpretation and application of the agreement before him. *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 119 (1999). In order to effectuate the result he reached, the arbitrator fashioned a remedy which was not to be found within the four corners of the contract. Accordingly we conclude that he exceeded his authority in that his decision did not draw its essence from the agreement.

Reversed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Hilda R. Gage