

s STATE OF MICHIGAN
COURT OF APPEALS

CITY OF OAK PARK,

Plaintiff/Counter-Defendant-
Appellant,

v

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

Defendants/Counter-Plaintiffs-
Appellees.

UNPUBLISHED
May 30, 2006

No. 259444
Oakland Circuit Court
LC No. 04-056014-CL

Before: Cavanagh, P.J., and Fort Hood and Servitto, J.J.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition to defendants and denying summary disposition for plaintiff in this labor arbitration dispute. Because the arbitrator's award was consistent with the scope of his authority and the collective bargaining agreement and was not violative of public policy, we affirm.

This action arises from a labor dispute. Plaintiff employs members of defendants, Police Officers Association of Michigan and Oak Park Public Safety Officers Association, as police officers. A collective bargaining agreement ("CBA") between plaintiff and defendants was in effect from 1997 to 2001. When the CBA expired, plaintiff no longer recognized or followed a CBA provision requiring a minimum of seven officers per shift (eight, if an officer was assigned to dispatch) based primarily upon its position that the provision was a non-mandatory subject of bargaining. Defendants grieved plaintiff's action and the issue was ultimately submitted to arbitration. The arbitrator found that plaintiff had violated the CBA provision concerning manpower staffing and ordered the provision restored, additionally awarding damages to defendants.

In 2004, plaintiff filed an action in the circuit court to vacate the arbitrator's award. Defendants thereafter moved for summary disposition seeking dismissal of the action and confirmation of the award. The circuit court granted defendants' motion and plaintiff now appeals the trial court's order confirming the arbitration award.

This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004). In considering a motion pursuant to MCR 2.116(C)(10), a court considers affidavits, pleadings, depositions, admissions and other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *Id.* If the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue upon which reasonable minds could differ. *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003). A litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10). *Maiden, supra*. The court rules plainly require the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial. *Id.* Thus, the reviewing court should evaluate a motion for summary disposition under MCR 2.116(C)(10) by considering the substantively admissible evidence actually proffered in opposition to the motion.

In the present appeal, plaintiff first argues that the trial court erred in granting summary disposition to defendants and ordering that the arbitrator's award be enforced, because the arbitrator's award exceeded the scope of the collective bargaining agreement (CBA) between the parties. We disagree.

Our review of a labor arbitrator's decision is limited. *POAM v Manistee Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002), citing *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 117; 607 NW2d 742 (1999). As stated in *POAM, supra*:

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. . . . 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. [(citation omitted).]

We do not engage in interpretation of the CBA where the parties have agreed that an arbitrator shall decide questions of contract interpretation. *Monroe Co Sheriff v Fraternal Order of Police*, 136 Mich App 709, 715; 357 NW2d 748 (1984). "Where a court finds itself weighing the pros and cons of each party's interpretation of substantive provisions of the contract, it is likely that the court has gone astray." *Id.*, p 716 (internal quotation marks and citation omitted). While the powers of an arbitrator are limited, "his awards should be upheld so long as he does not disregard or modify plain and unambiguous provisions of a collective bargaining agreement." *POAM, supra*, p 343.

Whether we or the trial judge agree[s] with the arbitrator's interpretation is irrelevant. *Ferndale Ed Ass'n v School Dist for the City of Ferndale*, 67 Mich App 637, 643-644; 242 NW2d 478 (1978). Where an arbitrator's decision clearly indicates that he or she interpreted the contract provisions agreed to by the parties, our function is to determine whether the arbitrator's conclusions were within the framework of the contract. *Id.*, p 643.

The specific CBA provisions at issue concern minimum shift manpower (MSM). The CBA requires a minimum of seven officers per shift, or eight if an officer was assigned to dispatch. The CBA required the minimum levels to “be in effect for the term of this agreement, however, it cannot be modified unless [1] mutually agreed to by both the Employer and the Union, or [2] as a result of bargaining on a subsequent contract to this agreement, or [3] so ordered by a 312 arbitrator” (Article VIII).

The arbitrator found that the MSM provision, by its terms, survives the termination date of the CBA, stating: “the . . . language of Section 8.1 must be given effect.” The arbitrator hewed to the language of section 8.1, including the language regarding modification being permitted “as a result of bargaining on a subsequent contract to this agreement” While this option ([2], above) for modification of the MSM could be interpreted in either of two ways (that a subsequent contract can modify the MSM or, instead, that mere negotiations on a subsequent contract can “result” in modification of the MSM), our role is not to weigh the pros and cons of the competing interpretations of this provision, *Monroe Co Sheriff, supra*, p 716. Because the arbitrator did not disregard unambiguous provisions and his decision finds its basis in a specific CBA provision, the arbitrator’s decision draws its essence from the CBA and must be upheld.

Additionally, judicial review must cease once it is determined that an arbitrator did not disregard the terms of his employment and the scope of his authority. *POAM, supra*, p 343. Here, the CBA provides: “Authority of Arbitrator Any unresolved grievance which relates to the interpretation, application, or enforcement of any specific[] articles or sections of this agreement . . . may be submitted to arbitration.” The arbitrator, then, did not disregard the terms of his employment or the scope of his authority, because the CBA expressly authorized him to resolve disputes over the interpretation of the CBA.

The CBA further provides: “*There shall be no appeal from the arbitrator’s decision if made in accordance with his jurisdiction and authority under this Agreement. The arbitrator’s decision shall be final and binding on the City, on the employee or employees and on the Association.*” Accordingly, pursuant to the language of the CBA, and viewing the evidence in a light favorable to plaintiff, not only did the trial court correctly conclude that the arbitration award drew its essence from the CBA, the arbitrator’s decision is final and binding.

Plaintiff next argues that this Court should reverse the grant of summary disposition to defendants because the arbitrator dispensed his own brand of industrial justice. We disagree.

It is true that an arbitration award may not represent the arbitrator’s “own brand of industrial justice.” *Port Huron Area Sch Dist v PHEA*, 426 Mich 143, 152; 393 NW2d 811 (1986). However, this statement is merely one part of the legal principles setting forth the scope of judicial review of an arbitrator’s decision: “An arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. . . . [H]is award is legitimate only so long as it draws its essence from the collective bargaining agreement. . . .” *Id.* In proffering his second argument, plaintiff has selectively chosen the phrase “his own brand of industrial justice” from the broader statement of the scope of judicial review of labor arbitration awards, and then simply appended this phrase to his prior argument.

As previously noted, the arbitrator's interpretation of the CBA was within his authority. As also noted above, the trial court correctly applied the proper scope of judicial review of the arbitration award. The arbitrator did not dispense his own brand of industrial justice. Rather, he engaged in a reasonable interpretation of an ambiguous CBA provision. As such, we reject this argument.

Plaintiff finally argues that this Court should reverse the grant of summary disposition to defendants because the arbitration award is against public policy. Plaintiff specifically argues that the MSM provision of the CBA is a permissive subject of bargaining, and that plaintiff therefore has a right to unilaterally modify the provision. Again, we disagree.

In *LCC v LCC Faculty Ass'n (On Remand)*, 171 Mich App 172; 429 NW2d 619 (1988), this Court "recognized that a court may not enforce a collective bargaining agreement that is contrary to public policy," and stated that "the question of public policy is ultimately one for resolution by the courts." *LCC, supra*, p 173 (internal quotation marks and citation omitted). This court also cautioned, however, that "a court's refusal to enforce an arbitrator's *interpretation* of such contracts is limited to situations where the contract as interpreted would violate some explicit public policy that is well defined and dominant" *Id.* (internal quotation marks omitted).

Here, the arbitrator's interpretation of the CBA does not violate an explicit, well defined and dominant public policy. That permissive subjects of bargaining are not subject to arbitration is a principle from Act 312 arbitration, MCL 423.231 *et seq.*, i.e., compulsory arbitration. *GRCC Faculty Ass'n v GRCC*, 239 Mich App 650, 652, 656-657; 609 NW2d 835 (2000). Here, however, the parties engaged in voluntary arbitration. There is no explicit, well defined and dominant public policy against voluntary arbitration of a permissive subject of bargaining and none of the authorities cited by plaintiff demonstrates such a policy. Therefore, the trial court did not err in rejecting plaintiff's public policy argument.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto