

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DETROIT POLICE OFFICERS ASSOCIATION,  
  
Plaintiff-Appellant,

UNPUBLISHED  
February 15, 2011

v

CITY OF DETROIT,

Defendant-Appellee.

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No. 293510  
Wayne Circuit Court  
LC No. 08-115816-CL

Before: TALBOT, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff appeals from an order of the circuit court granting summary disposition to defendant and denying summary disposition to plaintiff on plaintiff's complaint to set aside an arbitration award in favor of defendant on plaintiff's grievance under the parties' collective bargaining agreement (CBA). We affirm.

This dispute arises under a CBA imposed upon the parties in 2007 by an arbitration panel convened under 1969 PA 312 (MCL 423.231 *et seq.*). Among other things, the Act 312 panel adopted the city's last-best offer (LBO) with respect to health care benefits, which became Article 21 of the CBA. This article includes provisions for cost sharing by the employees and establishes which health plans the city shall offer to the employees covered by the CBA, including provisions that employees would pay 20% of the health care premiums. Shortly after the Act 312 panel's decision, plaintiff filed the instant grievance. At issue is whether the term "premium" includes the "illustrative rate"<sup>1</sup> that is used with respect to self-funded health plans

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<sup>1</sup> As we understand it, the "illustrative rate" is a term used with respect to self-funded plans. Because such plans are self-funded by the employer, there is no traditional "premium" paid to an insurance company. Rather, the "illustrative" is established by an underwriter to establish the equivalent of the premium that would be paid under a traditional insurance policy. Or, more precisely, to determine that the funds that need to be budgeted to cover the claims made under the plan. It is also used to establish the employees' share of the cost of the plan. It is the city's use of the "illustrative rate" with respect to its self-funded plans for this latter purpose that plaintiff challenges in the grievance. Because we resolve this matter based upon the scope of

and whether a special open enrollment period should have been offered when the new CBA went into effect rather than waiting for the next regular open enrollment period. The umpire decided the grievance in favor of the city, concluding that the term “premium” in the CBA included the “illustrative rate” and that the CBA did not require offering a special open enrollment period after the Act 312 panel’s decision. The umpire filed a lengthy, detailed decision upholding the city’s position. Because we conclude that this appeal may be resolved by consideration of the judiciary’s role in reviewing arbitration decisions, we need not review that award or the umpire’s reasoning in any detail.

The limited nature of a court’s review of an arbitration award was summarized in *Ann Arbor v American Federation of State, Co, and Muni Employees (AFSCME) Local 369*, 284 Mich App 126, 144; 771 NW2d 843 (2009):

This Court reviews de novo a trial court’s decision to enforce, vacate, or modify an arbitration award. Judicial review of an arbitrator’s decision is narrowly circumscribed. A court may not review an arbitrator’s factual findings or decision on the merits. Likewise, a reviewing court cannot engage in contract interpretation, which is an issue for the arbitrator to determine. Nor may a court substitute its judgment for that of the arbitrator. [Citations omitted.]

Rather, a court’s inquiry is “merely whether the award was beyond the contractual authority of the arbitrator.” *Id.*

Plaintiff seeks to have us do, and sought to have the circuit court do, precisely that which we are not permitted to do: to substitute our judgment for that of the arbitrator and engage in contract interpretation. While the interpretation called upon in this case was perhaps not simple, as reflected by the fact that the umpire filed a 48-page opinion in this matter, it was within the authority of the arbitrator to make and, by extension, outside the scope of the authority of this Court or the circuit court to make. Ultimately, what was at issue was a question of contractual interpretation: Does the term “premium” in the CBA include the “illustrative rate” for self-funded plans and whether the CBA required a special open-enrollment period to be offered at the time the CBA went into effect. Ultimately, plaintiff is merely dissatisfied with the umpire’s interpretation of the contract in this respect. Plaintiff is seeking a more favorable interpretation from this Court. But that is not our role.

Plaintiff seeks to invoke the United States Supreme Court’s admonition in *United Steelworkers of America v Enterprise Wheel & Car Corp*, 363 US 593, 597; 80 S Ct 1358; 4 L Ed 2d 1424 (1960), that in interpreting a collective bargaining agreement, an arbitrator must not “sit to dispense his own brand of industrial justice.” But the umpire in the case at bar did no such thing. There is no indication from the umpire’s decision that he reached the decision that he thought fair or just, or imposed what he believed the CBA should provide for. Rather, he carefully reviewed the CBA and the history leading up to its adoption and reached what he believed was the correct interpretation of the language contained in the CBA.

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judicial review of the arbitrator’s decision, we ultimately do not reach the determination whether the use of the term “premium” would properly include the “illustrative rate.”

In sum, we conclude that the trial court correctly rejected plaintiff's challenge to the arbitration award.

Affirmed. Defendant may tax costs.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Michael J. Kelly