

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

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POLICE OFFICERS ASSOCIATION OF  
MICHIGAN,

UNPUBLISHED  
August 11, 2011

Plaintiff-Appellee,

v

No. 298055  
Lake Circuit Court  
LC No. 2009-007610-CL

LAKE COUNTY and LAKE COUNTY SHERIFF,

Defendants-Appellants.

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Before: SAAD, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

In this action brought to enforce an arbitration award in an underlying labor dispute, defendants appeal by right the circuit court's order enforcing the arbitrator's decision and granting summary disposition in favor of plaintiff. Having found no error in the circuit court's rulings, we affirm.

I

The record establishes that Juanita Knight (Knight) had worked for defendant Lake County Sheriff as an animal control officer for approximately 16 years. Within the Lake County Sheriff's Department there was a bargaining unit consisting of animal control officers and corporals, corrections officers, non-certified marine deputies, and non-certified court security officers. Knight was a member of this unit. At all material times, there was a collective bargaining agreement in place between plaintiff and defendants that governed the terms and conditions of employment for members of the bargaining unit. Among other things, Paragraph 4.1(B) of the collective bargaining agreement gave the sheriff the exclusive right "to hire, promote, assign and transfer" employees within the bargaining unit. However, Paragraph 4.1(B) also provided that the sheriff could not exercise this right "in violation of any specific provisions of this Agreement." Paragraph 4.1(B) further provided that "[t]hese rights shall be subject to the Grievance and Arbitration Procedures established herein . . . ." Paragraph 5.6 provided in pertinent part that, in the event a grievance proceeded to arbitration, "[t]he arbitrator's decision shall be final and binding on the Union, the Employer, and its employees[.]"

At some point in 2007 or earlier, Knight became concerned about the state and condition of the waiting area at the Lake County animal control office. Knight did not believe that the area was suitable for use by members of the public who came to the office to adopt a pet. In

particular, Knight was concerned that the waiting area was in need of better furniture. Knight believed that members of the public would be more likely to adopt a pet if there was a clean and comfortable place to sit and meet the animals.

In response to Knight's complaints, a pre-owned sofa valued at approximately \$50 was donated to the animal control office in September 2007, and placed in the waiting area. However, Knight did not believe that this sofa was the best choice of furniture. Consequently, Knight removed the donated sofa and replaced it with a three-piece set, consisting of a matching sofa, loveseat, and chair. Knight believed that this three-piece set would provide better seating options for visitors at the office and that it would be easier to keep the new furniture clean because of the manner in which it was upholstered. Knight did not seek permission from the sheriff or her direct supervisor before removing the original sofa and switching the furniture. After switching the furniture, Knight took the original, donated sofa to her home.

The Lake County Sheriff became aware that the original, donated sofa had been removed from the animal control office, and assigned one of his detectives to conduct an investigation of the matter. It was discovered that Knight had removed the sofa and that she had replaced it with the new three-piece set. On January 17, 2008, the sheriff wrote a letter informing Knight that she had improperly "convert[ed]" the original sofa "to [her] own use," and officially charging her with misconduct in this regard. Knight wrote to the sheriff the following day, explaining why she had removed the original sofa and why she believed that the new three-piece set was better suited for the waiting area. For instance, Knight explained that whereas the original sofa had "a cloth skirt on the bottom," the new furniture had "legs [t]hat are polyurethaned and easily washed." Knight thus believed that the new furniture would be easier to clean and would not be damaged by the water that seeped into the building's waiting area.

A "predetermination hearing" was held before the Lake County Sheriff on January 18, 2008. Knight again explained why she had removed the original sofa and why she had replaced it with different furniture. Knight also informed the sheriff that she would be willing to bring the original sofa back to the animal control office and remove the three-piece set with which she had replaced it. Nevertheless, on January 22, 2008, the sheriff issued a discharge notice stating that Knight had violated certain internal rules of the sheriff's department and had committed "[m]isconduct" by "convert[ing] . . . departmental property to [her] own personal use[.]" Knight's employment with the Lake County Sheriff's Department was terminated as of January 22, 2008.

Plaintiff, as the union representing bargaining unit employees, filed a grievance challenging Knight's discharge in February 2008. Plaintiff denied that Knight had violated any internal rules of the sheriff's department and asserted that there had been no just cause for her termination under the collective bargaining agreement. Plaintiff requested that Knight be reinstated to her former position of animal control officer with back pay and benefits.

Knight's grievance was denied by the sheriff or his representative, both at step one and step two of the grievance procedure. Therefore, an arbitrator was mutually selected by the parties under the terms of the collective bargaining agreement and the matter proceeded to arbitration on December 10, 2008. In an opinion and award dated February 24, 2009, the arbitrator determined that although there had been just cause to discipline Knight for removing

the sofa without permission, there had been no just cause to terminate her. The arbitrator ruled that Knight had not converted the original sofa with the intent to steal it, and that she had therefore not violated the specific internal rules cited in her discharge notice. The arbitrator noted that “Knight has been separated from employment for more than one . . . year” and that “[t]his hiatus without pay is considered here to be a sufficiently corrective penalty.” The arbitrator ordered that “Knight be forthwith reinstated to her job as an Animal Control Officer without back pay.”

The sheriff directed Knight to report for work on March 9, 2009. When Knight reported to work on March 9, 2009, she was informed that she was not being reinstated to her former position of animal control officer, but was instead being assigned to work as a corrections officer from that date forward. It is undisputed that Knight had never before worked as a corrections officer and was not trained as a corrections officer. Plaintiff sent written notification to the sheriff on March 9, 2009, alleging that his refusal to reinstate Knight to her previous position of animal control officer amounted to a violation of the arbitrator’s award. Two days later, on March 11, 2009, Knight received a letter from the sheriff informing her that she had been “reinstated to [her] job as a full time Animal Control Officer” on March 9, 2009, but that she had been “transferred” to the position of corrections officer as of March 10, 2009.

On September 3, 2009, plaintiff filed an action in the Lake Circuit Court seeking to enforce the arbitrator’s award pursuant to MCL 423.9d. Plaintiff alleged that the sheriff had directly violated the arbitrator’s award by failing to reinstate Knight to the position of animal control officer. Plaintiff contended that, contrary to the representations contained in the sheriff’s letter dated March 11, 2009, Knight had never been *actually* reinstated to her former position as of animal control officer. Instead, plaintiff asserted, the sheriff’s letter of March 11, 2009, was “merely a transparent attempt to retroactively ‘reinstate’ Knight to her position of animal control officer in order to avoid the . . . lawful and binding Award of [the] Arbitrator[.]” Plaintiff maintained that the sheriff had not been entitled to reassign Knight to the position of corrections officer because this action circumvented the arbitrator’s award. Plaintiff requested that the circuit court enforce the arbitrator’s award, enter an order directing the sheriff to reinstate Knight to the position of animal control officer, and declare that the sheriff’s reassignment of Knight to the position of corrections officer was in violation of the arbitrator’s decision.

Thereafter plaintiff moved for summary disposition, arguing that it was beyond genuine factual dispute that the sheriff had not complied with the terms of the arbitrator’s award, that Knight had never been actually reinstated to the position of animal control officer, and that the arbitrator’s award was binding on the parties.

Defendants responded by arguing that the sheriff had fully complied with the arbitrator’s award by reinstating Knight to the position of animal control officer, effective March 9, 2009. Defendants argued that the sheriff had been perfectly free, under the terms of Paragraph 4.1(B) of the collective bargaining agreement, to subsequently transfer Knight to a different position within the collective bargaining unit (i.e., corrections officer) on March 10, 2009. Defendants maintained that it was beyond genuine factual dispute that the sheriff had complied with the arbitrator’s award by reinstating Knight to the position of animal control officer for one day, and contended that plaintiff’s circuit court action was, in actuality, a challenge to the sheriff’s subsequent transfer of Knight. Defendants asserted that because the sheriff’s assignment of

Knight to another position within the collective bargaining unit had never been raised before or decided by the arbitrator, the circuit court lacked jurisdiction to consider the propriety of Knight's subsequent transfer. Defendants noted that the arbitrator "never . . . ordered the Sheriff to forbear from transferring Knight or assigning her different duties." Defendants asserted that because the sheriff had briefly reinstated Knight to her former position before reassigning her to work as a corrections officer, the circuit court should grant summary disposition in their favor.

The circuit court held oral argument on April 5, 2010. Defendants' attorney again argued that the sheriff had fully complied with the arbitrator's award by reinstating Knight to her former position before transferring her to the position of corrections officer. Counsel reiterated that Knight's job classification and assignment had never been at issue during the grievance process, and that the arbitrator had neither considered nor decided whether the sheriff could transfer or reassign Knight after reinstating her. Relying on *SEIU Local 466M v Saginaw*, 263 Mich App 656; 689 NW2d 521 (2004), defendants' attorney argued that the matter of Knight's reassignment or transfer after being reinstated could only be addressed by way of a new grievance, and that the circuit court could not consider the matter because it was outside the scope of the arbitrator's award.

Plaintiff's attorney once again argued that, contrary to defendants' assertion, the Lake County Sheriff had never actually reinstated Knight to the position of animal control officer in the first place. Counsel maintained that the sheriff's letter of March 11, 2009, in which he purported to have reinstated Knight to the position of animal control officer for one day, was merely a self-serving ruse designed to retroactively circumvent the arbitrator's award. Counsel conceded that the sheriff had the authority to transfer or reassign employees under Paragraph 4.1(B) of the collective bargaining agreement, but argued that the sheriff could not exercise this authority for the purpose of evading a binding, final decision of the arbitrator. Counsel also pointed out that, despite defendants' assertions to the contrary, plaintiff was not challenging the sheriff's right or authority to transfer Knight. Instead, counsel maintained, plaintiff was merely seeking enforcement of the arbitrator's award, with which the sheriff had never complied.

After considering the briefs and arguments of the parties, the circuit court observed from the bench in relevant part:

[T]he arbitrator's decision expected that [Knight] would be reinstated to her job. And as a matter of what's reasonable when you reinstate somebody, you don't simply turn around within one or two days and say, guess what, you're no longer holding the position that you went to arbitration on.

\* \* \*

I would . . . give a two-week period for the sheriff to redo who he's got where so that [Knight] would be back as the animal control officer. And that'd be effective two weeks from today.

\* \* \*

[W]hat the arbitrator intended is a restoration to the status quo as to [Knight's] job position at the time she was suspended without pay. And so that

puts her in the position . . . as though the arbitration is a thing that's done and done with.

\* \* \*

[P]resumably the arbitrator was mutually chosen because he does have a certain talent level as an arbitrator. So there is a . . . respect to be due to the arbitrator's finding.

And for the arbitrator to have what I considered a fairly reasonable opinion, for that to be circumvented by simply saying, "guess what, you're no longer an animal control [officer]," strikes me as circumventing the arbitrator's intent.

\* \* \*

[I]f the sheriff got, so to speak, stubborn and two weeks from now said, "Well, guess what, you're now a corrections officer again," absent any new, independent reason, then I would say we got the same problems here . . . .

\* \* \*

[Knight is] back in her job. That should happen within two weeks. It can be sooner, but within two weeks of today. And it should be what's called a fresh start.

Defendants' attorney specifically asked the court whether the sheriff would ever be entitled to transfer Knight to a different job in the future. The circuit court observed that "unless [the sheriff has] a reason independent of his frustration with the arbitrator, unless he's got a reason independent of that . . . [Knight] gets to stay where she's at." The court explained that, in deciding whether to transfer Knight to a different job in the future, the sheriff should "use common sense" and "do what's reasonable."

On April 23, 2010, the circuit court entered a written order granting plaintiff's motion for summary disposition and directing defendants "to reinstate Knight to her former position as an Animal Control Officer within fourteen (14) days of the date of the hearing in this matter."

## II

We review de novo a circuit court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). We similarly review de novo a circuit court's decision to enforce an arbitration award. *Ann Arbor v AFSCME Local 369*, 284 Mich App 126, 144; 771 NW2d 843 (2009).

## III

MCL 423.9d governs the arbitration of labor disputes such as the one at issue in the present case. See *SEIU*, 263 Mich App at 660. After an arbitrator's award has been rendered in

voluntary arbitration proceedings conducted pursuant to a collective bargaining agreement or otherwise conducted by agreement of the parties, the award “shall be enforceable at law or in equity as the agreement of the parties.” MCL 423.9d(4); see also *Rowry v Univ of Michigan*, 441 Mich 1, 7; 490 NW2d 305 (1992). In other words, a final arbitrator’s award essentially becomes part of the parties’ contract. See *id.* at 9-10; see also *Ann Arbor*, 284 Mich App at 143. Thus, when a plaintiff sues in circuit court to enforce such an arbitration award, the plaintiff is essentially seeking specific performance of the parties’ agreement. *Rowry*, 441 Mich at 10.

Of course, “[i]t is well settled that judicial review of an arbitrator’s decision is limited.” *Lincoln Park v Lincoln Park Police Officers Ass’n*, 176 Mich App 1, 4; 438 NW2d 875 (1989). “A court may not review an arbitrator’s factual findings or decision on the merits.” *Id.* Nor may a court substitute its own judgment for that of the arbitrator, *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 497; 475 NW2d 704 (1991), and “[a] reviewing court is without authority to fashion its own remedy,” *SEIU*, 263 Mich App at 661. Accordingly, while the reviewing court is authorized to “enforce an arbitrator’s clear and specific award,” the court may “not ‘adjudicate the merits of a contingent claim created by a past award.’” *Id.* at 663, quoting *Armco Employees Ind Federation, Inc v Armco Steel Co, LP*, 65 F3d 492, 498 (CA 6, 1995). As the *Armco* Court made clear, “[a] court is able to distinguish an actual failure to comply with an award, which it is empowered to remedy, from, for example, a response whose adequacy in compliance with an award is ambiguous, and where the arbitrator must first make a decision.” *Id.*

Contrary to defendants’ arguments on appeal, the circuit court did not decide matters that were not submitted to the arbitrator. Defendants spend a great deal of time and effort attempting to distort the facts of this case.<sup>1</sup> But it is clear from the record that the circuit court never decided that the Lake County Sheriff could not transfer or reassign Knight in the future. Nor did the circuit court render any decision concerning Knight’s job classification. It is true that the circuit court remarked from the bench that the sheriff’s reassignment of Knight to the position of corrections officer constituted evidence of his intent to circumvent the arbitrator’s award. The circuit court also observed that before transferring or reassigning Knight in the future, the sheriff should demonstrate a “common sense” reason for doing so, independent of his raw desire to avoid compliance with the arbitrator’s decision. But defendants are simply incorrect in arguing that the circuit court ruled that the sheriff could never again reassign Knight to a different job within the bargaining unit. As explained previously, Paragraph 4.1(B) of the parties’ collective bargaining agreement granted the sheriff the exclusive right “to hire, promote, assign and transfer” employees within the unit. The circuit court fully acknowledged this provision during oral argument, specifically observing that the sheriff would be entitled under the terms of the

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<sup>1</sup> We note that defendants have failed to comply with the applicable court rules on appeal. The statement of facts in defendants’ brief on appeal is argumentative and largely avoids mentioning any unfavorable facts. An appellant’s statement of facts must set forth “[a]ll material facts, both favorable and unfavorable,” and the facts must be “fairly stated without argument or bias.” MCL 7.212(C)(6). For the future, we caution defendants that this Court has the authority “to dismiss an appeal . . . for . . . failure of the appellant . . . to pursue the case in conformity with the rules.” MCL 7.216(A)(10).

contract to reassign Knight in the future so long as the reassignment was not done for the purpose of evading or circumventing the arbitrator's award.

Moreover, it is axiomatic that a court speaks only through its written judgments and orders, not through its oral pronouncements. *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009); *Hall v Fortino*, 158 Mich App 663, 667; 405 NW2d 106 (1986). The circuit court's written order in this case provided only that summary disposition was granted in favor of plaintiff and that defendants were required "to reinstate Knight to her former position as an Animal Control Officer within fourteen (14) days of the date of the hearing in this matter." The order did not mention the sheriff's right to transfer or reassign Knight in the future; nor did it mention Knight's duties or job classification. Quite simply, the circuit court did not decide any claim concerning the sheriff's right to transfer employees or the job assignment of Juanita Knight.

Defendants contend that the proper outcome of the present appeal is controlled by this Court's decision in *SEIU*, 263 Mich App at 657-664. There, while the employee was working as a tax "auditor" for the city of Saginaw, she applied for the open position of tax "specialist." *Id.* at 657. Despite the employee's seniority and experience, the city filled the specialist position with Janet Schramke, an outside applicant who had no seniority. *Id.* The plaintiff union thereafter filed a grievance on the employee's behalf, and an arbitrator ultimately ordered the city to hire the employee as a tax specialist. *Id.*

After the arbitrator issued the award, [the city] assigned [the employee] to the specialist position and paid her accordingly. But shortly thereafter, [the city] "reorganized" the department. Pursuant to this reorganization, [the city] redefined the duties of the specialist position such that [the employee], although placed in the position of specialist, essentially was assigned the same duties that she performed in her old position as auditor. [The city] then hired Schramke for a newly created position of income tax manager, the duties of which were essentially the same as the former specialist position. [*Id.* at 657-658.]

The plaintiff union filed an action in circuit court seeking enforcement of the arbitrator's award and reinstatement of the employee to the former, pre-reorganization position of tax specialist. *Id.* at 658. The city responded by pointing out that it had reorganized its finance department and that the former, pre-reorganization position of tax specialist no longer existed. The city asserted that it had the right to reorganize its finance department and that the issue of the employee's job classification in the newly reorganized department had never been considered or decided by the arbitrator. *Id.* The circuit court ultimately granted summary disposition in favor of the city. The court determined that the plaintiff union was not merely seeking enforcement of the arbitrator's award, but was actually attempting to challenge the employee's job classification in the newly reorganized finance department. Because the question of the employee's job classification in the newly reorganized finance department had never been decided by the arbitrator, the court ruled that it lacked jurisdiction to consider the matter. The court further observed that, in order for the union to challenge the employee's job assignment in the newly reorganized finance department, the employee would be required to file a new grievance. *Id.* at 659-660.

On appeal, this Court affirmed the circuit court's ruling, holding that if the circuit court had ordered the city "to revert to the prereorganization duties of specialist," it would have been "fashioning a new remedy beyond that awarded by the arbitrator." *Id.* at 662. The *SEIU* Court further held that "[t]he issue whether [the city's] postarbitration actions were permissible under the [collective bargaining agreement], or were a mere ruse to avoid compliance with the arbitration award, is a matter that can only be addressed by way of a new grievance and arbitration." *Id.* The *SEIU* Court concluded that "for the [circuit] court to 'enforce' the award as [the union] requested, the . . . court would have had to perform fact-finding and fashion a new award. This is beyond the scope of the [circuit] court's jurisdiction." *Id.* at 663-664.

Turning to the case at bar, defendants contend that the present facts are nearly identical to those of *SEIU*. Defendants argue that the reasoning of *SEIU* must therefore control. We disagree, and conclude that the reasoning of *SEIU* is distinguishable on at least two different grounds.

First, it is undisputed that there was no departmental reorganization in the present case as there was in *SEIU*. Indeed, the record establishes that after the Lake County Sheriff terminated Knight's employment as an animal control officer, he posted Knight's former job in the animal control office and sought applications for the position. In other words, unlike in *SEIU*, the circuit court in the present case was able to enforce the arbitrator's award without having to delve into complex organizational issues that had never been considered by the arbitrator and which arose entirely after the arbitration was already completed.

Second, and even more importantly, the record establishes that Knight was never actually reinstated to the position of animal control officer in the first instance. In *SEIU*, after the arbitrator issued his award, the employee was reinstated "to the specialist position and paid . . . accordingly." *Id.* at 657-658. Only some time later did the city of Saginaw decide to reorganize its finance department and change the employee's job classification. In contrast, it is undisputed that when Knight reported back to work March 9, 2009, she was informed that she was not being reinstated to the position of animal control officer, but was instead being assigned to work as a corrections officer. It is true that the sheriff sent a letter to Knight two days later in which he informed her that she had been "reinstated to [her] job as a full time Animal Control Officer" on March 9, 2009, but that she had been "transferred" to the position of corrections officer as of March 10, 2009. However, this subsequent, self-serving letter was insufficient to create a genuine issue of material fact concerning whether Knight was ever actually reinstated in accordance with the arbitrator's award. See *Stefan v White*, 76 Mich App 654, 660; 257 NW2d 206 (1977). The uncontroverted evidence plainly established that, at the time Knight reported back to work on March 9, 2009, she was told by her supervisor that she was being transferred to the position of corrections officer, effective immediately.

In short, the Lake County Sheriff never complied with the arbitrator's award by reinstating Knight to her former position. Thus, unlike in *SEIU*, the adequacy of the sheriff's actions in response to the arbitrator's award was not ambiguous or genuinely in dispute. See *Armco*, 65 F3d at 498. Instead, it cannot be seriously disputed that the Lake County Sheriff "actual[ly] fail[ed] to comply" with a "clear and specific award," and the circuit court was therefore empowered to enforce it. *SEIU*, 263 Mich App at 663. To enforce the award as

plaintiff requested, the circuit court was not required to perform any additional fact-finding or to fashion a new remedy. *Id.*

Notwithstanding defendants' assertions on appeal, the circuit court did not consider matters that were never submitted to the arbitrator, did not decide the matter of Knight's job classification, and did not substitute itself for the initial grievance and arbitration procedure. Quite simply, the circuit court's ruling does not limit the Lake County Sheriff's right or authority to make future decisions concerning Knight's job classification or to transfer Knight within the bargaining unit pursuant to the terms of the collective bargaining agreement. Nor have we considered the sheriff's right or authority to make such future transfers or job-classification decisions in this opinion. At the same time, however, we conclude that it was beyond genuine factual dispute that the Lake County Sheriff never complied with the arbitrator's award by reinstating Knight to the position of animal control officer in the first instance. Therefore, the circuit court properly granted summary disposition in favor of plaintiff. The circuit court did not exceed its jurisdiction by enforcing the arbitrator's clear and specific award.

Affirmed. As the prevailing party, plaintiff may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen

/s/ Pat M. Donofrio