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2015 IL App (3d) 140056-U

Order filed April 23, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

ILLINOIS FRATERNAL ORDER OF)	Appeal from the Circuit Court
POLICE LABOR COUNCIL,)	of the 10th Judicial Circuit,
)	Tazewell County, Illinois,
)	
Defendant-Appellant,)	
)	Appeal No. 3-14-0056
v.)	Circuit No. 13-L-9
)	
TAZEWELL COUNTY, ILLINOIS, and)	
TAZEWELL COUNTY SHERIFF'S)	
DEPARTMENT,)	The Honorable
)	Paul Gilfillan
Plaintiffs-Appellees.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.

Justice Carter concurred in the judgment.

Justice Wright dissented.

ORDER

¶ 1 *Held:* The arbitrator's award ordering the Sheriff to reinstate the sergeant position and return the former employees to that position did not draw its essence from the collective bargaining agreement and exceeded the arbitrator's authority; the order declaring that the collective bargaining agreement expressed the intent of the parties that all collective bargaining unit employees were under the jurisdiction of the Sheriff's Merit Commission drew its essence from the agreement and did not exceed the arbitrator's authority.

¶ 2 Defendant, the Illinois Fraternal Order of Police Labor Council (the Union), appeals the judgment of the circuit court reversing an arbitration award. The arbitration award, entered pursuant to a collective bargaining agreement (CBA), found that plaintiffs, the County of Tazewell (the County) and the Sheriff of Tazewell County (the Sheriff) (or collectively the employer) violated certain provisions of the CBA by abolishing the position of sergeant and replacing it with the non-bargaining unit position of Jail Operations Supervisor (JOS). The arbitrator issued an award ordering the Sheriff to rescind the order creating the JOS position and return the former sergeants to their former positions with all benefits restored. The arbitrator further ordered that the County and the Sheriff acknowledge that the Tazewell County Sheriff's Merit Commission has continuing jurisdiction over the occupants of the position of sergeant. The circuit court granted the plaintiffs' motion to vacate the arbitration award. The union appeals. We affirm the order of the circuit court vacating the award's requirement that the employer reinstate the position of sergeant and return the former sergeants to that position. We reverse the court's order regarding the award's declaration that all bargaining unit positions in existence at the time the CBA was executed were intended to be subject to the jurisdiction of the Sheriff's Merit Commission.

¶ 3 FACTS

¶ 4 The underlying facts in this matter are undisputed. The County maintains a correctional facility which is operated by the Sheriff. The CBA at issue covered a bargaining unit of 48 correctional officers and 5 sergeants. There was no official job description for the position of sergeant. The CBA expired on November 30, 2011, but remained in effect while the parties negotiated a successor agreement.

¶ 5 On October 6, 2011, the Sheriff notified all employees, but not the Union directly, that he intended to establish one or more new non-bargaining unit positions (JOS) and invited any interested employees to apply for the new position. On January 25, 2012, the Tazewell County Board adopted a resolution removing all jail officers from the jurisdiction of the Sheriff's Merit Commission. On January 29, 2012, the five sergeant positions were eliminated and replaced by five JOS positions. The new positions were defined as supervisory, non-bargaining unit positions.¹ The positions were announced as exempt from the coverage of the Tazewell County Sheriff's Merit Commission, which meant that the incumbents would be considered to be "at will" employees with no mechanism for challenging future discipline or dismissals. Unlike the abolished position of sergeant, the JOS position had a written job description that outlined the primary duties and responsibilities of the new position. Included in the written job description were seven items listed as "supervisory responsibilities."

¶ 6 Of the five former sergeants, three applied for and were appointed to JOS positions. The remaining two sergeants did not apply for the JOS position. They were reclassified as corrections officers but continued to be paid the 15% wage premium paid to all sergeants under the expired CBA. The reclassification, however, adversely impacted their bidding seniority, although there is no indication that the two officers actually suffered from the loss of any seniority rights.

¹ The Union filed a separate grievance alleging that the Sheriff violated the CBA by unilaterally excluding the new JOS positions from the bargaining unit. That grievance was the subject of a separate arbitration and was sustained by the arbitrator. The employer petitioned the circuit court seeking to vacate the award. The circuit court denied the petition. The employer sought appellate review from this court which upheld the judgment of the circuit court sustaining the award. *County of Tazewell and Tazewell County Sheriff v. Illinois Fraternal Order of Police Labor Council*, 2015 IL App (3d) 140369.

¶ 7 The Union filed a grievance seeking to rescind the Sheriff's actions by reinstating the rank of sergeant and returning the five former sergeants to that position and a further recognition by the Sheriff and the County that the sergeants were under the jurisdiction of the Tazewell County Sheriff's Merit Commission. The matter proceeded to binding arbitration before Arbitrator Matthew W. Finkin, who conducted an evidentiary hearing on July 24, 2012.

¶ 8 The sheriff testified that the decision to abolish the position of sergeant and create the JOS positions was the culmination of a longstanding effort to correct what he believed to be systemic issues involving discipline and efficient operation of the correctional facility. He provided detailed testimony regarding failures of the sergeants to effectively enforce policies, including misuse of sick leave, permitting sexual encounters between staff and inmates, allowing acts of violence by staff toward inmates, and failing to intervene to prevent potential sexual harassment claims against staff. The sheriff further testified that due to these failures, the department had been held liable for significant sums in civil damages. The sheriff and other management witnesses testified with great detail that the responsibilities of the new position were significantly different from those of the old sergeant position, particularly with regard to supervisory responsibilities. The sheriff testified that, unlike the abolished position of sergeant, the JOS position had a written job description that outlined the primary duties and responsibilities of the new position. Included in the written job description were seven items listed as "supervisory responsibilities" which the employers' witnesses testified were responsibilities that were not exercised to any significant degree by sergeants. Union witnesses testified to the contrary, that despite the new written job description, the job duties and responsibilities of the new position were the same as the old sergeant position.

¶ 9 The arbitrator found that the sheriff violated the CBA by eliminating the sergeant position and replacing it with the JOS position. The arbitrator concluded that the job duties of the two positions were essentially the same. He further concluded that the motivation for the change was not to improve the function and operation of the correctional facility, as the Sheriff had maintained, but to remove the incumbent sergeants from the bargaining unit in order to deny them the protections of contractual due process. The arbitrator reasoned that this motive for the staffing change violated the contractual provision describing management rights contained in the CBA, which provided in pertinent part:

"Except as specifically limited by the express provisions of this Agreement, the Employer retains the traditional rights to manage all affairs of the Sheriff's Office, as well as those rights set forth in the Illinois Public Labor Relations Act. Such management rights shall include, but are not limited to, the following:

* * *

(E) to hire, promote, transfer, schedule and assign employees to positions and to create, combine, modify and eliminate positions within the County Sheriff's Office."

¶ 10 The arbitrator found that the management rights clause at issue implicitly required the employer to act in "good faith" and further limited the employer's right to eliminate positions and create new ones within the sheriff's office to "legitimate reorganizations." The arbitrator found that the reorganization at issue was not "legitimate" because the employer had failed establish that the job duties and responsibilities of the new JOS position were substantially different from those of the old sergeant position. As a remedy, the arbitrator ordered the

employer to rescind the order abolishing the sergeant position and to return the former sergeants to that position.

¶ 11 The second issue addressed by the arbitrator concerned the employers' decision to remove the JOS position from Merit Commission jurisdiction.² The arbitrator recognized that in the absence of any employee actually being denied access to the Merit Commission his ruling on the question was a "declaratory judgment." The arbitrator declared that any future attempt to deny employees' access to the Merit Commission would be a contract violation.

¶ 12 The Sheriff and the County appealed from the arbitrator's order. The circuit court granted summary judgment to the County and Sheriff, thereby reversing the arbitration award. Specifically, the court found that the employer actions in abolishing the sergeant position and creating the JOS position was "clearly for a justifiable and legitimate business purpose, made in good faith, and not for the purpose of disciplining former sergeants or to remove their collective bargaining rights." The court concluded, therefore, that the award was based upon a "gross errors of judgment and/or mistakes of fact" and could not be enforced. On the issue of whether the award properly ordered the employers to continue to recognize Merit Commission jurisdiction over all jail officers, the court held that award was based upon a mistake of law and exceeded the scope of the arbitrator's authority.

¶ 13 ANALYSIS

¶ 14 On appeal, the Union alleges the circuit court erred in vacating the arbitrator's award. Specifically, the Union maintains that well-settled authority limits the review of arbitral awards and the court exceeded those limits by vacating the award based upon its finding that the arbitrator made "gross mistakes" of fact and law. The Union further maintains that the employer recognized that staff reorganizations were subject to an implicit "good faith" requirement when it

² The Sheriff's Merit System Law, 55 ILCS 5/3-8001 *et seq.* (West 2010)

argued at the arbitration hearing that the reorganization was done in good faith to meet organizational short falls. The employer counters with the argument that the arbitrator exceeded his authority under the CBA by questioning the Sheriff's motive in making the staffing change where: (1) the CBA gave the Sheriff the authority to make such staffing changes *except as specifically limited by the express provisions of the Agreement*; (2) no express provision of the agreement was cited by the arbitrator as the basis for finding the staffing changes violated of the CBA; and (3) the arbitrator had "no power to amend, modify, nullify, ignore, add to or subtract from the provisions of the Agreement." The employer further disputes the notion that presenting evidence as to the reasons behind its decision to reorganize constituted an admission that an implicit good faith requirement existed.

¶ 15 Generally, the *vacatur* of arbitration awards is governed by the Illinois Uniform Arbitration Act (the Arbitration Act) 710 ILCS 5/1 *et seq.* (West 2010), which provides that the grounds under which an arbitration award issued pursuant to a collective bargaining agreement may be vacated are the same as existed at common law. 710 ILCS 5/12 (West 2012); *American Federation of State, County & Municipal Employees v. Department of Central Management Services*, 173 Ill. 2d 299, 307 (1996). The common law ground for vacating an arbitration award include "fraud, corruption, partiality, misconduct, mistake, failure to submit the question to arbitration, and failure of the award to draw its essence from the agreement. *Id.* at 304-05. In deciding whether an award draws its essence from the agreement, a court must review the award to determine whether the arbitrator limited himself to interpreting the collective bargaining agreement or exceeded his authority by basing the award upon a body of thought, feeling, policy, or law which emanated from outside the language of the contract. *Amalgamated Transit Union Local 2411 v. Chicago Transit Authority*, 342 Ill. App. 3d 176, 179-80 (2003). Moreover, on

review, the court must determine whether the arbitrator limited himself to interpreting the language of the agreement. *Water Pipe Extension, Bureau of Engineering Laborers' Local 1092 v. City of Chicago*, 318 Ill. App. 3d 628, 636 (2000). The determination thereof is a question of law subject to *de novo* review. *Griggsville-Perry Community Unit School Dist. No. 4 v. Illinois Educational Labor Relations Board*, 2013 IL 113721, ¶ 20.

¶ 16 In the instant matter, we find that the arbitrator's award failed to draw its essence from the agreement where the award was in clear contravention of the express language of the agreement. The arbitrator framed the issue before him as whether the elimination of the sergeant position and the creation of the JOS position as a replacement violated the CBA. The arbitrator noted that the plain language of the relevant contract provision provided that "*except as specifically limited by the express provisions of this Agreement*, the Employer retains the traditional rights to manage all affairs of the Sheriff's Office *** includ[ing] [the right] *** to *create*, *** and *eliminate* positions within the County Sheriff's Office." (Emphasis added.) The task before the arbitrator was to determine whether an express provision of the CBA limited the employer's otherwise unfettered right to create and/or eliminate positions. The arbitrator found no such express provision in the agreement, yet he determined that a limitation on the employer's authority existed despite the lack of an express provision. This was only accomplished by ignoring the clear unambiguous language of the agreement. An arbitrator's authority is limited by the unambiguous language of the contract and arbitrators are not free to ignore plain language or alter the agreement by adding to or subtracting from existing language. *First Merit Realty Services, Inc. v. Amberly Square Apartments LLC*, 373 Ill. App. 3d 457, 463-64 (2007). Here, given the express language of the CBA and the arbitrator's rejection of that express language, we find that the trial court properly determined that the award failed to draw its essence from the

CBA. Under the express language of the CBA, the employer had the right to *eliminate* the position of sergeant and *create* the JOS position. We find, therefore, that the award ordering the Sheriff to return the incumbent employees to the rank of sergeant was properly vacated.³

¶ 17 We next address the issue of whether the arbitrator improperly found that employer “contractually agreed that the Merit Commission has jurisdiction over the positions of Corrections Officer and Sergeant.” The relevant provision of the CBA provided:

“To the extent that the Tazewell County Sheriff’s Work Rules, Merit Commission Rules and Regulations and Procedures, the Tazewell County Employees Personnel Policies Handbook does not conflict with this Agreement, such policies shall continue in full force and effect.”

¶ 18 The employer argued that reference to the Merit Commission in the CBA was a mistake and that the County retained the authority under the Sheriff’s Merit Commission Law to unilaterally remove any correctional officers from the jurisdiction of the Merit Commission. The employer further maintained that the resolution of the county board on January 25, 2012, removing all jail officers from the jurisdiction of the Merit Commission was a proper exercise of authority under the Sheriff’s Merit Commission Law. The Union argued that the language of the CBA incorporating the Merit Commission Rules and Regulations and Procedures into the agreement precluded the County from any unilateral action contrary to the agreement. Both parties argued that the Sheriff’s Merit Commission Law supported their position. The arbitrator rejected both arguments. In doing so, the arbitrator observed that whether the county board

³ We note that issue of whether the newly created positions remained in the bargaining unit was resolved in a subsequent proceeding where this court upheld the arbitrator’s order that those positions were in the unit. See *County of Tazewell and Tazewell County Sheriff v. Illinois Fraternal Order of Police Labor Council*, 2015 IL App (3d) 140369.

could enact the resolution in accordance with the statute was outside his authority. He limited his determination to whether the contract obligated the employer to continue to recognize the jurisdiction of the Merit Commission of jail officers. The arbitrator found that the express language of the contract required the employer to continue to recognize the jurisdiction of the Merit Commission while that contract was in effect. The arbitrator noted that no actual violation of the contract could until a jail officer had actually been denied access to the Merit Commission. He concluded that since no actual violation had yet occurred, he did not need to address the parties' positions regarding whether the contract language violated the Sheriff's Merit Commission Law. He therefore limited his ruling to a "declaratory judgment of what the contract means."

¶ 19 The circuit court vacated the arbitrator's award, finding that the award was contrary to the Sheriff's Merit Commission Law. The court recognized that the arbitrator had not addressed the issue of whether the contract language violated that Sheriff's Merit Commission Law; however, reviewing the arbitrator's award *de novo*, the court held that the contract language was void. On appeal, the Union argues that the court erred in vacating the award based upon an interpretation of the contract that differed from that of the arbitrator. The Union further maintains that, even if the contract language conflicted with the statute, under the Arbitration Act, the terms of a collective bargaining agreement take precedence over any conflicting statute of resolution. 5 ILCS 315/15 (b) (West 2012). The employer maintains that the arbitrator's award is based upon a mistake of law. Specifically, the employer maintains that the Sheriff's Merit Commission Law gives the county board to authority to withdraw any jail officer positions from merit commission jurisdiction at any time. 55 ILCS 5/3-8007 (West 2012). *Goodwin v. McHenry County Sheriff's Department Merit Commission*, 316 Ill. App. 3d 1238, 1243 (2000).

¶ 20 We find that the circuit court erred in vacating the arbitrator’s award, which was limited to finding that the language of the current CBA clearly stated the intent of the parties to confer Merit Commission jurisdiction on all jail positions in existence at the time the CBA was executed. The record is clear that, while the parties each argued that the CBA did not conflict with the Sheriff’s Merit Commission Law, the arbitrator expressly stated that he did not have the authority to rule on that question. The arbitrator further noted that the issue was not ripe in that no bargaining unit employee had been denied access to the Merit Commission. Limiting himself to the contract language, the arbitrator found that the parties intended to grant merit commission protections to all bargaining unit employees. By further limiting his decision to a “declaratory judgment of what the collective agreement means” the arbitrator limited himself to interpreting the collective bargaining agreement and did not exceed his authority by basing the award upon a body of thought, feeling, policy, or law which emanated from outside the language of the contract. *Amalgamated Transit Union*, 342 Ill. App. 3d at 179-80.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed in part and reversed in part. The portion of the arbitration award ordering the Sheriff of Tazewell County to reinstate the position of sergeant and return all former incumbents that that position is vacated. The portion of the award declaring that the CBA expressed the parties intention that all bargaining unit positions in existence at the time the CBA was executed were under the jurisdiction of the Tazewell County Sheriff’s Merit Commission is confirmed.

¶ 23 Affirmed in part; reversed in part.

¶ 24 JUSTICE WRIGHT, dissenting.

¶ 25 Our supreme court has held that judicial review of an arbitrator's award in a collective bargaining situation is very limited. *Griggsville–Perry Community Unit School District No. 4 v. Illinois Educational Labor Relations Board*, 2013 IL 113721, ¶ 18; *American Federation of State, County & Municipal Employees v. Department of Central Management Services (AFSCME)*, 173 Ill. 2d 299, 304 (1996). I write separately to emphasize that the correctness of the arbitrator's interpretation of the collective bargaining agreement is not a matter for the appellate court's consideration. See *Griggsville*, 2013 IL 113721, ¶ 23. In fact, the case law provides that "a court is duty bound to enforce a labor-arbitration award if the arbitrator acts within the scope of his or her authority and the award draws its essence from the parties' collective-bargaining agreement." *AFSCME*, 173 Ill. 2d at 304-05. In this case, the holding of the majority fails to enforce the labor-arbitration award on the grounds that the arbitrator exceeded his authority and the award was not drawn from the essence of the agreement. I respectfully dissent from this holding.

¶ 26 I agree the case law allows an arbitration award, issued pursuant to a collective bargaining agreement, to be set aside on the grounds of fraud, corruption, partiality, misconduct, mistake, or failure to submit the question to arbitration. See 710 ILCS 5/12(e) (West 2012); *AFSCME*, 173 Ill. 2d at 304. Unlike the majority, I submit this particular arbitrator not only acted well within the scope of his authority, but also fashioned an award that drew its essence solely from the language of the collective bargaining agreement at issue. See *Griggsville*, 2013 IL 113721, ¶ 20. Consequently, I would uphold the arbitrator's decision and respectfully dissent.

¶ 27 At the onset, the case law requires this court to apply the *presumption* that the arbitrator did not exceed his authority when making his decision. *Rauh v. Rockford Products Corp.*, 143 Ill. 2d 377, 386 (1991). This record contains no reason to abandon this presumption in my view.

Here, the Union's grievance alleged the sheriff's decision to rename or abolish the sergeant's position was a "sham" managerial action by the sheriff and was intended to insure that any person hired to fill each new position would not qualify for the protections afforded to members of the collective bargaining unit. Consequently, I submit the sheriff's purported lack of good faith and lack of legitimate managerial purpose was squarely placed in the arbitrator's lap and was, by necessity, a primary issue for the arbitrator's consideration.⁴ Accordingly, I would apply the presumption that the arbitrator acted within the scope of his authority and would not set aside the award on this basis.

¶ 28 In addition, I respectfully dissent because I do not believe the arbitrator's factual findings have been afforded great deference as required by existing case law. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 272 (2009). Here, the arbitrator made the following finding:

“[W]hat the record shows is that the [sheriff] abolished the position of Sergeant and reconstituted it under a different name, as a position whose responsibilities were in all essential respects the same, for the purpose of removing the incumbents [sergeants] from the bargaining unit and so denying the incumbents the protection of contractual due process. This is not a valid exercise of the authority of the [sheriff] reserved under Art. 2(E).”

⁴ The sheriff cited case law to the arbitrator that set forth the standards to apply when determining whether an employer's decision was for "legitimate purpose" and done in good faith.

Although the sheriff presented some testimony that attempted to explain his good faith reasons for his decision to rename some positions, the arbitrator, as the fact finder, was not persuaded by the sheriff's testimony.

¶ 29 Based on all the evidence submitted by both parties, the arbitrator determined the persons hired to fill the newly reorganized JOS positions would essentially be assigned the same tasks as the former sergeants. Simply stated, the record supports the arbitrator's view that the new non-bargaining "JOS" position was not based on a legitimate managerial purpose to reorganize the department since the sheriff's decision changed the job title, but did not effectively change the job duties. Giving deference to the arbitrator's finding of fact, I strongly contend the record supports the view that the sheriff made this purported managerial decision for the less than legitimate purpose of avoiding compliance by the sheriff with the collective bargaining agreement concerning the job duties formerly assigned to the sergeants. Avoiding the reach of the collective bargaining agreement is not a proper managerial purpose. For this reason, I strongly assert that the arbitrator's award is soundly based on the essence of the collective bargaining agreement at issue.

¶ 30 Consequently, for the reasons discussed above, I would uphold the arbitrator's finding that section 2(E) of the collective bargaining agreement at issue does not allow the sheriff to misuse his managerial authority, in the absence of good faith, for the purpose of circumventing the protections available to all members of the bargaining unit afforded by the Illinois Public Labor Relations Act (5 ILCS 315/1 *et seq.* (West 2012)).⁵ Therefore, I would reverse the trial court's ruling and affirm the arbitrator's decision and award.

⁵ As the majority order in the instant case noted, in footnote 3, this court recently addressed a separate grievance relating to these same new JOS positions established by the

Tazewell County Sheriff. *County of Tazewell and Tazewell County Sheriff v. Illinois Fraternal Order of Police Labor Council*, 2015 IL App (3d) 140369. In that opinion, this court held the arbitrator's written decision demonstrated that the arbitrator was specifically authorized to interpret the relevant sections of the agreement and this court upheld the arbitrator's determination that the JOS positions, also at issue in the instant case, could not be excluded from the bargaining unit.