FOURTH DIVISION
August 4, 2016

No. 1-15-1501

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

VILLAGE OF STICKNEY POLICE DEPARTMENT, Plaintiff-Appellee, v. ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL, F.O.P., LODGE #242, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 13 CH 05917 Honorable Diane J. Larsen, Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court judgment reversed and remanded with directions. Trial court erred in vacating arbitration award reducing discipline for police dispatcher from termination to 10-day suspension, where arbitrator did not exceed her authority, reinstatement did not violate public policy, and no gross mistake of fact or law appeared on face of award.

¶ 2 Plaintiff, the Village of Stickney Police Department (the Department) terminated Heather Miller, one of its dispatchers (referred to as "telecommunicators" in the Department) for various alleged acts of misconduct. Defendant, the Illinois Fraternal Order of Police Labor Council, Lodge 242 (the Union), filed a grievance on Miller's behalf, alleging that the Department lacked the necessary just cause to terminate Miller under the collective-bargaining agreement (CBA) between the Union and the Department.

¶ 3 Pursuant to the CBA, the grievance proceeded to binding arbitration. After a two-day hearing and briefing by both parties, the arbitrator reduced Miller's discipline from termination to a 10-day suspension, but conditioned Miller's reinstatement on her successful completion of a fitness-for-duty examination.

¶ 4 The Department filed a complaint in the circuit court of Cook County seeking to vacate the arbitration award. The Department alleged that the arbitrator exceeded her authority and violated the CBA by reducing Miller's punishment, and that the award violated public policy because reinstating Miller posed a threat to the public. The trial court vacated the arbitration award.

¶ 5 The Union appeals, arguing that the trial court erred in vacating the award because the Department could not show that the arbitrator exceeded her authority, violated public policy, or made gross errors of fact or law. We agree. For reasons explained more fully below, the Department's claims amount to nothing more than an attempt to have a court reweigh the evidence presented and conclude, contrary to the arbitrator's finding, that just cause existed to terminate Miller. We reject the Department's attempt to avoid the consequences of the arbitrator's award—to which it agreed to be bound—when it has provided no basis to vacate the award other than the Department's disagreement with the arbitrator's view of the facts and interpretation of the CBA. We reverse the trial court's judgment vacating the arbitration award and remand with instructions to enter judgment on the award.

¶ 6 I. BACKGROUND

¶ 7 In 2000, Miller began working as a telecommunicator with the Department. She was a member of a bargaining unit represented by the Union that also included the Department's patrol

officers and sergeants. But as a telecommunicator, Miller was not a sworn police officer. Rather, her job was to dispatch emergency calls for the Department.

¶ 8 The CBA between the Union and the Department stated that no employee could "be suspended, relieved from duty or disciplined in any manner without just cause." The CBA also provided for a multi-step grievance process, which culminated in arbitration. The CBA stated that the arbitration would "be final and binding on the parties" but also said that the "arbitrator shall have no power to amend, modify, nullify, ignore, add to or subtract from the provisions" of the CBA.

¶ 9 In March 2010, the Department placed Miller on paid administrative leave because she had been arrested for misdemeanor domestic battery following an incident involving her five-year-old daughter. Ultimately, Miller was acquitted of the offense, and the Department of Children and Family Services (DCFS) concluded that allegations of child abuse lacked credible supporting evidence. After her acquittal, Miller remained on leave while the Department conducted its own investigation. The Department suspended Miller for 3 days, but Miller filed a grievance challenging her suspension, and her grievance was sustained.

¶ 10 On May 28, 2010, the Department's chief of police, Joseph Kretch, sent Miller a letter notifying her that she had been terminated for conduct she had engaged in while on leave. The letter listed six reasons for her termination:

> "1. You were wearing a Stickney Police Officer's Dress Uniform while attending the Police Officer's Memorial in Springfield, Illinois on May 6, 2010.
>
> 2. You were wearing a Police Officer's Badge belonging to a Franklin Park Police Officer while attending the Police Officer's Memorial in Springfield, Illinois on May 6,

2010. Note: this conduct also may rise to the level of impersonating a Police officer which is beyond the scope of this administrative employment decision.

3. You failed to comply with a written directive from me to report to Deputy Chief Frank Figueroa each day during your Paid Administrative Leave until your return to duty date.

4. You failed to cooperate with Perspectives *** and the assigned physician during a fitness for duty evaluation that you were directed to participate in on May 12, 2010.

5. You disobeyed a direct order from Sgt. Gary Wiseman in that he verbally advised you that you were not authorized to wear a Stickney Police Officer's Dress Uniform.

6. You gave numerous false statements during your interrogation."

The Union filed a grievance alleging that the Department lacked just cause to terminate Miller. The grievance proceeded to an arbitration hearing, where arbitrator Jeanne M. Vonhof presided.

¶ 11 At the arbitration hearing, Miller testified that she had attended the police memorial in Springfield nearly every year since 1992. She said that, in 2005, she asked the Department's chief at the time, John Zitek, if she could get a dress uniform to wear to the memorial and to police officers' wakes and funerals. According to Miller, Zitek said "that would be fine, even though it was not my regular uniform by our *** guidelines of what we wear." Miller testified that Zitek also provided her with patches for the dress uniform, to which only Zitek had access.

¶ 12 Miller testified that Zitek directed her to speak with Sergeant Sladetz about what items she needed to purchase for the uniform. Sladetz told her what items to purchase and told her not

to buy the hat that went along with the dress uniform because the hat had an emblem showing that the wearer was a police officer. Miller testified that, after speaking to Sladetz, she went to a uniform store and purchased the dress uniform.

¶ 13 Miller also testified that she received a badge from her boyfriend, Michael Witz, who was the chief of police for the Franklin Park police department, to wear at the memorial. Miller said that the badge did not say "Police Officer," but it did say "Franklin Park Police." Miller testified that the badge was one of Witz's old badges from when he was a patrol officer. She said that the badge was no longer active.

¶ 14 Miller testified that she and Witz had a daughter together and had been dating for 13 ½ years. She acknowledged that she was not legally married to Witz but also described him as a "spouse," which she believed to mean the same thing as "significant other."

¶ 15 Miller identified a photograph taken at the memorial in 2008, which depicted her in the dress uniform with some Stickney police officers.

¶ 16 Miller testified that, while she was on administrative leave, she was required to contact Deputy Chief Figueroa every day at 11 a.m. On the day of the memorial, Miller had called in after 11 a.m. and left a voicemail. She testified that she received a call from Figueroa later that day saying that he had received her voicemail, but also that he wanted to see her the next day because she had called late. Miller said she explained that she was in Springfield at the memorial and could not return by the next morning. Figueroa told her to come in the day after she got back to "talk to him about how to better communicate."

¶ 17 Miller admitted that she did not call Figueroa at all on the day she was scheduled to see a doctor for a mandatory fitness-for-duty examination, May 12, 2010. She said that she did not

have an opportunity to call in even after the examination because she had to pick up her daughter and do "other personal things."

¶ 18 Miller testified that, at the evaluation on May 12, 2010, the doctor told her that anything she said would be put in a report and given to the Department. She testified that, at that time, the criminal domestic-battery charges were still pending against her and she was represented by an attorney. Miller answered the doctor's questions until she felt like she needed legal advice before answering any further questions. She maintained that she did not "refuse to answer questions." According to Miller, the doctor said that she was not obligated to answer his questions and that she had the right to seek the advice of her attorney. The doctor ended the session so that Miller could consult her attorney and said that he would schedule a follow-up appointment.

¶ 19 Miller acknowledged that, in February 2010, she used the Department's address as her address when she was renewing the registration sticker for her car. She said that she used the Department's address because she was moving shortly thereafter. She testified that she did not know it was against the law to use the Department's address on her registration.

¶ 20 Chief Kretch, the Department's chief at the time of the hearing, testified that he made the ultimate decision to terminate Miller after conferring with Deputy Chief Figueroa. Kretch noted that Figueroa conducted the investigation into Miller's conduct that led to her termination. Kretch believed that any one of the six grounds listed in his letter alone would have been sufficient grounds for termination. But, Kretch added, he had also taken into account Miller's prior disciplinary history in deciding to terminate her. Kretch testified that Miller had previously been suspended for insubordination and lying, and that, because of "[p]rogressive discipline," he did not believe that any discipline other than termination was appropriate in this case.

¶ 21 Kretch testified that, while Miller was on leave for her domestic-violence arrest, he had ordered her to call in and report to Deputy Chief Figueroa every day. Kretch believed that Miller had complied with his directive every day except one.

¶ 22 Deputy Chief Figueroa testified that he investigated Miller's alleged misconduct. Figueroa said that telecommunicators like Miller were not sworn police officers and that they had specific uniforms and badges assigned to them. Figueroa testified that the Department had a written policy requiring all employees, including telecommunicators, to wear their assigned uniforms. Figueroa testified that only sworn police officers had an authorized dress uniform; telecommunicators did not have one.

¶ 23 Figueroa testified that, on May 6, 2010, he received a text message from Officer Lochridge, who informed him that Miller was wearing a police dress uniform and a badge at the memorial in Springfield. Figueroa told Lochridge that Miller was violating the law and the Department's uniform policy. He told Lochridge to ask Miller to take off the uniform and, if she did not cooperate, to contact the Illinois State Police to arrest her for impersonating a police officer.

¶ 24 Figueroa testified that Chief Kretch had instructed Miller to call in while she was on leave because the Department had difficulty contacting her in the past. While Miller was supposed to call in at 11 a.m. every day, Figueroa testified that he had permitted her to call in early or late, and to leave a voicemail if he was not available. Figueroa testified that he "made it very clear to her that *** failure to follow this order would result in discipline being taken against her."

¶ 25 Figueroa said that Miller failed to call in on May 12, 2010, the day she had been scheduled to submit to the fitness-for-duty examination. Figueroa received a call from the doctor who was supposed to perform the examination, who told Figueroa that Miller had not cooperated with the exam. Figueroa tried to call Miller three times that day on her cell phone, but she did not answer.

¶ 26 Figueroa testified that he interrogated Miller as part of his investigation into her alleged misconduct. Figueroa claimed that Miller made "more than two dozen false statements" during that interrogation and "was very evasive in her answers." Specifically, Figueroa noted that Miller said that she had been given permission to wear the dress uniform by the Department's former chief, John Zitek. But, Figueroa acknowledged, he did not contact Zitek because he had "no idea where he [was] or how to get a hold of him."

¶ 27 Figueroa offered other examples of Miller's alleged lies during the interrogation. Figueroa testified that, at her interrogation, Miller said that she had only worn the dress uniform to the memorial, but also said that she had worn it "at funerals and all kinds of other events." He said that she also initially denied wearing a badge at the memorial, then later admitted to wearing her boyfriend's badge. He also testified that Miller initially referred to her boyfriend as a friend, then as a spouse, then said that they were "engaged or *** together." As another example, Figueroa noted that Miller could not offer a "reasonable explanation" as to why she could not call to check in on May 12.

¶ 28 Figueroa also testified to past problems with Miller's performance. He testified that he had received complaints from her coworkers that she had made derogatory comments about them and that "she [did not] know how to talk to people." He also testified that she had been

suspended three previous times for insubordination and once for "lying about *** bereavement leave."

¶ 29 Based on the information he received during his investigation, Figueroa recommended to Chief Kretch that Miller be terminated.

¶ 30 Michael Witz, the chief of police for the Franklin Park police department, testified that he had known Miller for 13 years, and that they had a child together. Witz said that he had loaned Miller one of his former patrolman's badges for the memorial because he could not attend and he wanted her to wear it "in honor of those fallen." Witz said that he told Miller to wear it only during the ceremony and to keep it in her pocket at all other times.

¶ 31 John Sladetz, a sergeant with the Department, testified that he recalled speaking about a dress uniform he had purchased with other officers in the Department's radio room. Miller was in the room, and she asked Sladetz where he purchased his dress uniform. Sladetz told her the name of the store where he had purchased his. Sladetz testified that Miller did not say that she was going to purchase a dress uniform and did not ask him if she could wear a dress uniform.

¶ 32 Gary Wiseman, another sergeant with the Department, testified that he received a call from Officer Lochridge on May 6, 2010. Lochridge told Wiseman that Miller was wearing a police officer's dress uniform and a badge. Wiseman testified that Miller was not authorized to wear those items because she was a telecommunicator and was on administrative leave at the time. Wiseman told Deputy Chief Figueroa what Lochridge had told him.

¶ 33 Wiseman testified that he first heard of Miller wearing the dress uniform in 2008. At that time, he instructed her not to wear it. Wiseman acknowledged that he did not put this order in

writing. Wiseman testified that he had seen Miller at police funerals since he told her not to wear the uniform, but that she was not wearing the dress uniform at those funerals.

¶ 34 Officer Collin Lochridge testified that he was at the police memorial in Springfield on May 6, 2010, and he saw Miller wearing a sworn police officer's dress uniform. Lochridge did not confront her or ask her why she was wearing it. Instead, he called Sergeant Wiseman and Chief Deputy Figueroa. Lochridge said that Miller could have been arrested for wearing the badge, but he could not arrest her because he was outside his jurisdiction. Lochridge testified that he had also seen Miller wear the uniform to the memorial in 2008.

¶ 35 Doctor Stafford Henry testified that he was assigned to perform Miller's fitness-for-duty evaluation. Henry described Miller's cooperation with the exam as "intermittent." He testified that Miller was "[i]rate, emotionally labile, [and] very inappropriate," and that she spoke to him "in a derogatory fashion." Specifically, he testified that Miller had told him that he "had exceeded [his] authority." He said that Miller "evaded" questions regarding problems she had had on the job, including her "interpersonal difficulties." Henry testified that Miller was cooperative at the beginning of the interview but became uncooperative when he began to ask her questions about her job.

¶ 36 Dr. Henry testified that Miller expressed concerns that the Department would receive the information that she disclosed to him during the examination. Henry said that he told Miller that the Department would get a copy of his report. He also advised Miller that she did not have to answer his questions and that the traditional doctor-patient relationship did not exist between them. Henry acknowledged that Miller stayed and answered his questions for approximately two hours after receiving this information.

¶ 37 Dr. Henry testified that he ended the examination after Miller repeatedly suggested that she need to speak with her attorney. Henry's report indicated that the examination was not complete.

¶ 38 Sergeant Richard Jaczak testified that he pulled over Miller while she was driving on June 23, 2011 (after she had been terminated). Jaczak testified that Miller's license plates were expired and her driver's license was suspended. Jaczak said that Miller provided him a court document which, according to her, showed that she had vacated the suspension of her license. She said that her license was "supposed to be cleared up." Jaczak testified that he investigated further and found out that Miller's license was still suspended; the court document simply reflected the fact that the underlying ticket had been vacated. Jaczak said that he tried to contact her "several times *** to let her know she should turn herself in." After Jaczak did not hear back from her, he obtained an arrest warrant for Miller for driving while her license was suspended.

¶ 39 After the warrant had issued, Miller turned herself in. But Jaczak testified that he never had to appear in court and did not know how the charge had been disposed of. Figueroa testified in rebuttal that the ticket had been dismissed.

¶ 40 On cross-examination, Jaczak testified that he had learned Miller had expired plates when Deputy Chief Figueroa told him that her plates were expired and her license was suspended. Jaczak said that Figueroa told him that "a stop would be appropriate."

¶ 41 The arbitrator authored a 41-page award that detailed the testimony she had heard and the reasons behind her award. After summarizing the evidence and the parties' arguments, the arbitrator made specific findings with respect to each of the Department's reasons for terminating Miller.

¶ 42 With respect to Miller's wearing a dress uniform and badge at the memorial service, the arbitrator credited Miller's testimony that she had received permission to wear the uniform from former Chief Zitek. The arbitrator noted that Miller had worn the uniform openly prior to 2010, without any repercussions. And the arbitrator noted that she was able to obtain patches for the uniform that were only distributed by the chief. While recognizing that Sergeant Wiseman testified that he had told Miller not to wear the uniform anymore in 2008, the arbitrator believed Miller's testimony over Wiseman's. With respect to the badge, the arbitrator found that Miller did not intend to impersonate a police officer by wearing the badge. Still, the arbitrator found that wearing the badge was a "significant lapse in judgment" that warranted "some discipline."

¶ 43 Turning to Miller's alleged failure to complete the fitness-for-duty evaluation, the arbitrator noted that Miller did attend the examination with Dr. Henry and answered some of his questions. Moreover, the arbitrator found Miller's reluctance to answer other questions reasonable because she was facing criminal charges and was "in danger of losing her job." The arbitrator also noted that Henry's report was, in fact, turned over to the Department, which was one of Miller's main concerns. The arbitrator noted that Miller displayed "some lack of cooperation that may be subject to discipline," but that "she did not so fail to cooperate that day that she should be terminated for insubordination for failing to complete the assessment."

¶ 44 With respect to Miller's failure to call in on May 12, 2010, the arbitrator found that Miller should have called in at some point, even if she could not call in precisely at 11 a.m. But, the arbitrator noted, "the Department had notice of [Miller's] whereabouts that day," because Miller had the examination scheduled. And the arbitrator found that Miller had "conscientiously complied with the order" to call in. Thus, the arbitrator concluded that "the failure to call in on

this single day [was not] a dischargeable instance of insubordination." Still, the arbitrator found that "some discipline" should be imposed because Miller violated the order to call in.

¶ 45 With respect to the Department's assertion that Miller had lied during its investigation, the arbitrator noted that, while Deputy Chief Figueroa had indicated that Miller had lied numerous times, there was "almost no testimony at arbitration about why he considered the statements to be untrue." The arbitrator noted that Figueroa said that he did not believe that Miller had received permission to wear the uniform, but the arbitrator had concluded the opposite based on the testimony. Nor did the arbitrator find that Miller's reference to Chief Witz as her "spouse" rose to the level of a lie. The arbitrator concluded that there was not "sufficient evidence" to sustain the charge that Miller had lied during the investigation.

¶ 46 Finally, with respect to the charges relating to conduct that occurred after Miller had been terminated—her use of the Department's address on her registration and her driving on a suspended license—the arbitrator noted that, generally, "a discharge must stand or fall upon the reasons given at the time of discharge and the employer cannot add other reasons once the case reaches arbitration." Thus, the arbitrator concluded that these issues "should not be considered as a separate basis for [Miller's] discharge." The arbitrator did consider these incidents in fashioning her remedy, however.

¶ 47 Turning to the remedy, the arbitrator concluded that termination was inappropriate for the charges that she had sustained. Recognizing that Miller did not have "an exemplary past employment record," the arbitrator found that "the violations which have been sustained in this care are [not] sufficiently serious or similar to [Miller's] earlier infractions so as to justify termination." The arbitrator also noted a lack of evidence of progressive discipline that would

justify termination as the logical next step. Thus, the arbitrator found that there was not just cause for Miller's termination. Instead, the arbitrator found that Miller's violations and past discipline warranted a 10-day suspension.

¶ 48 The arbitrator also conditioned Miller's reinstatement on her completion of a fitness-for-duty examination. The arbitrator ordered that, if Miller was found fit, then she should be reinstated with full backpay except for the period that she was suspended. If, on the other hand, Miller was found unfit or did not participate in the examination, she would not be reinstated and would receive only six months' backpay.

¶ 49 The Department then filed a complaint in circuit court seeking to vacate the arbitration award. The complaint summarized the Department's allegations and the evidence supporting those allegations that was presented at the arbitration hearing. The complaint argued that the Department had thus proved its allegations, and that those violations constituted just cause for Miller's termination. The complaint listed 16 reasons why the arbitrator's award should be vacated, most of which amounted to arguments why the award violated public policy and how the arbitrator had exceeded her authority.

¶ 50 The record contains no transcript of any hearings on the Department's complaint. Instead, there is simply a one-page handwritten order by the trial court "vacating the arbitration award in its entirety."

¶ 51 The Union appeals from the circuit court's order vacating the arbitration award.

¶ 52 II. ANALYSIS

¶ 53 Before reaching the merits, we note that we lack a transcript of the proceedings in the circuit court that reveal the reasons for the trial court's judgment (assuming that oral argument

was even heard). Nor does the trial court's one-page order vacating the award explain the court's reasoning for doing so. But that does not prevent us from reviewing the trial court's decision. On appeal, we review the circuit court's judgment, not its reasoning. *Rodriguez v. Sheriff's Merit Comm'n of Kane County*, 218 Ill. 2d 342, 357 (2006). And we are reviewing the same record that the circuit court reviewed. The record contains transcripts of the arbitration hearing, the arbitrator's written award, and the Department's complaint seeking to vacate the award. Thus, we can review the possible reasons for vacating the arbitration award and determine whether they have merit based on the proceedings before the arbitrator.

¶ 54 Moreover, whether the arbitrator exceeded the scope of her authority and failed to derive her award from the essence of the CBA, as contended here by the Department, is a question of law. *Griggsville-Perry Community Unit School District No. 4 v. Illinois Educational Labor Relations Board*, 2013 IL 113721, ¶ 20. As such, our review of the trial court's vacatur of the arbitration award is *de novo.* See *Herricane Graphics, Inc. v. Blinderman Construction Co.*, 354 Ill. App. 3d 151, 156-57 (2004); *Rosenthal-Collins Group, L.P. v. Reiff*, 321 Ill. App. 3d 683, 687 (2001); *Hawrelak v. Marine Bank, Springfield*, 316 Ill.App.3d 175, 179 (2000). Thus, we owe no deference to the trial court's decision, as we might, for example, had the trial court heard testimony and issued findings of fact based on that evidence. See, *e.g.*, *People ex rel. Waller v. Harrison*, 348 Ill.App.3d 976, 979-80 (2004) (*de novo* review involves no deference to trial court's decision). The absence of the trial court's reasoning, if any such reason was given in open court, does not hinder our review.

¶ 55 We now turn to the substance of the Union's appeal. "[J]udicial review of an arbitral award is extremely limited." *American Federation of State, County and Municipal Employees,*

AFL-CIO v. Department of Central Management Services, 173 Ill. 2d 299, 304 (1996) (*AFSCME II*). By contracting to arbitrate their disputes regarding a contract, the parties to a CBA must accept "the arbitrator's view of the meaning of the contract." *Id.* at 305. "We will not overrule that construction merely because our own interpretation differs from that of the arbitrator." *Id.* The same is true of any factual findings made by the arbitrator; by agreeing to have their dispute "settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts *** that [the parties] have agreed to accept." *Griggsville-Perry Community Unit School District No. 4*, 2013 IL 113721, ¶ 18 (internal quotations omitted).

¶ 56 Simply put, "a court has 'no business weighing the merits of the grievance.' " *Id.* (quoting *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29, 37–38 (1987)).

¶ 57 Instead, "[w]hen an arbitration award has been entered pursuant to a [CBA], the grounds for vacating, modifying, or correcting the award are only those grounds that existed under the common law—fraud, corruption, partiality, misconduct, mistake, or failure to submit the question to arbitration." *County of Tazewell v. Illinois Fraternal Order of Police Labor Council*, 2015 IL App (3d) 140369, ¶ 12; see also 710 ILCS 5/12(e) (West 2014) (grounds for vacating arbitration award entered pursuant to CBA are "those which existed prior to the enactment of" the Uniform Arbitration Act (710 ILCS 5/1 *et seq.* (West 2014))). Along with those exceptions, arbitration awards may be vacated where the arbitrator exceeds his or her authority. *AFSCME II*, 173 Ill. 2d at 304-05. Courts have also "crafted a public policy exception to vacate arbitral awards which otherwise derive their essence from a [CBA]." *Id.* at 306. But "[w]henever possible, arbitration awards should be construed to uphold their validity." *Village of Posen v. Illinois Fraternal Order of Police Labor Council*, 2014 IL App (1st) 133329, ¶ 37.

¶ 58 In this case, the Department raised three exceptions to the general rule upholding the validity of arbitration awards: (A) that the arbitrator exceeded her authority and did not derive her award from the essence of the CBA; (B) that the award violates public policy; and (C) that the award contains gross mistakes of fact and law. We address each of these issues in turn.

¶ 59 A. Arbitrator's Authority

¶ 60 Both in the trial court and in this court, the Department has argued that the arbitrator's award should be vacated because she exceeded her authority in finding that the Department lacked just cause to terminate Miller. "[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' [CBA]." *AFSCME II*, 173 Ill. 2d at 304-05. An arbitrator's power may be limited when one of the parties to the CBA is a public entity and the arbitration award "would constitute an impermissible delegation of discretionary public responsibility specifically reposed by law in [the public entity]." *Board of Trustees of Community College District No. 508 v. Cook County College Teachers Union, Local 1600*, 74 Ill. 2d 412, 420 (1979). We begin with a presumption that the arbitrator did not exceed her authority. *Kenny v. Kenny Industries, Inc.*, 406 Ill. App. 3d 56, 62 (2010); *Herricane Graphics*, 354 Ill. App. 3d at 155.

¶ 61 The Department's claim is that, by finding that Miller's conduct was not just cause for her termination, the arbitrator improperly stripped it of the power to discipline its employees as permitted by the CBA. Our supreme court rejected a nearly identical argument in *American Federation of State, County and Municipal Employees, AFL-CIO v. Illinois*, 124 Ill. 2d 246, 256 (1988) (*AFSCME I*). At issue in *AFSCME I* was a grievance filed by the union on behalf of two mental health technicians terminated by the Illinois Department of Mental Health after they

made an unauthorized trip to a flea market during work hours. *Id.* at 250-51. While they were absent from work, one of the patients—one in a different wing of the facility, not under the care of these technicians—died while left unattended. *Id.* The arbitrator had reduced the technicians' punishment from termination to four-month suspensions. *Id.* at 251. The State, seeking to vacate the award, argued that, by reducing the discipline it imposed, the arbitrator "substituted his own judgment for the [State's] managerial discretion as to the discipline required to maintain acceptable standards of recipient care." *Id.* at 256.

¶ 62 The supreme court disagreed, stating that, "[w]hile it is not the function of an arbitrator to usurp management's right to define quality of service, the fairness of penalties imposed for faulty work may be closely scrutinized by arbitrators." (Internal quotation marks omitted.) *Id.* The court noted that the State could only discipline employees under the CBA if it had " 'just cause' " to do so, and the CBA did not define " 'just cause.' " *Id.* at 255-56. The court stated, "When a [CBA] does not define what 'just cause' is, it is left up to the arbitrator to determine if the grievants were discharged for 'just cause.' " *Id.* at 256. Because the arbitrator had the authority to determine what just cause meant and whether the technicians' conduct amounted to just cause, the court rejected the notion that the arbitrator had exceeded his authority and encroached on the State's power to discipline its employees. *Id.* at 256-57.

¶ 63 Just like the State in *AFSCME I,* the Department in this case argues that the arbitrator exceeded her authority and violated the Department's managerial authority under the CBA by declining to find that the Department had just cause to terminate Miller. But, like the CBA at issue in *AFSCME I,* the CBA in this case did not define "just cause," leaving the interpretation of that phrase, and what conduct constitutes "just cause," to the arbitrator. Here, the arbitrator

reviewed the evidence presented to her and, interpreting the CBA, found that Miller's conduct did not constitute just cause for termination.

¶ 64 In sum, the arbitrator's finding that the Department lacked just cause to terminate Miller did not "strip" the Department of its disciplinary authority. The arbitrator simply measured the Department's disciplinary actions by the very standard against which the Department agreed to be measured in the CBA. The arbitrator did not exceed her authority in this regard.

¶ 65 The Department also alleges that the arbitrator exceeded her authority by incorrectly interpreting a Department rule requiring all "Members of the Department" to strictly comply with all state laws, local ordinances, and Department rules. That rule provides that "Members of the Department shall include sworn officers and civilian employees," such as telecommunicators. In a footnote, the arbitrator wrote, "One of the Department's rules requires that employees be aware of and comply with state laws, and other ordinances. However, it is likely that this rule is applied somewhat differently to police officers who must be aware of the law to enforce it, than to Telecommunicators." The Department contends that this finding did not draw its essence from the CBA because there was "no factual basis for her conclusion, and [it] was totally contrary to the express terms of [the rule]."

¶ 66 We disagree that this footnote shows that the award was not drawn from the essence of the CBA. In fact, this footnote appears to have played little, if any, role in the award. The arbitrator discussed the footnote as part of her analysis of the Department's evidence that Miller had used the Department's address for her vehicle registration. But the arbitrator expressly stated that this evidence, which the Department had collected *after* Miller had been terminated, did not factor into her decision regarding whether the Department had just cause to terminate Miller. We

fail to see how the interpretation of this rule could have affected the award when it did not factor into the central question that the arbitrator was called on to answer.

¶ 67 Moreover, even if this interpretation had played into the arbitrator's remedy, it was not so manifestly incorrect that her award would constitute a disregard of the CBA. " '[T]he question of interpretation of the [CBA] is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling [her] because their interpretation of the contract is different from his.' " *Board of Trustees of Community College District No. 508, Cook County v. Cook County Teachers Union, Local 1600*, 74 Ill. 2d 412, 421 (1979) (quoting *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599 (1960)). We review the merits of an arbitrator's interpretation of the contract to "determine only if the arbitrator's award drew its essence from the agreement so as to prevent a manifest disregard of the agreement between the parties." *Board of Trustees of Community College District No. 508, Cook County*, 74 Ill. 2d at 421.

¶ 68 In this case, the arbitrator found that Miller's use of the Department's address, together with her other infractions, only constituted just cause for a 10-day suspension, not termination. To the extent that this finding rested on her interpretation of the Department's rule requiring its employees to know the law, we do not find that interpretation to be a manifest disregard of the CBA. It is not manifestly unreasonable to conclude that sworn police officers, charged with enforcing the law, should have greater awareness of the law than telecommunicators, who simply dispatch calls. The Department has failed to show that the arbitrator's decision amounts to a manifest disregard of the CBA.

¶ 69 The arbitrator did not exceed her authority in determining that the Department lacked just cause to terminate Miller. We decline to second-guess the arbitrator's view of the facts or interpretation of the CBA, as the Department urges us to do.

¶ 70 B. Public Policy

¶ 71 The Department also alleges that the arbitrator's reduction of Miller's discipline violated public policy. A court will not enforce an arbitration award that interprets a CBA in a way that "is repugnant to established norms of public policy." *AFSCME II*, 173 Ill. 2d at 307. But the public-policy exception "is a narrow one" to be invoked only when it is "clearly shown" that an arbitrator's interpretation of the CBA "violate[s] some explicit public policy." *Id.* We apply a two-step analysis to the application of the public-policy exception:

> "The threshold question is whether a well-defined and dominant public policy can be identified. If so, the court must determine whether the arbitrator's award, as reflected in his interpretation of the agreement, violated the public policy." *Id.* at 307-08.

The application of this test "is necessarily fact dependent." *Id.* at 311.

¶ 72 In order for the first step to be established, "the public policy must be 'well-defined and dominant' and ascertainable 'by reference to the laws and legal precedents and not from generalized considerations of supposed public interests.' " *Id.* at 307 (quoting *W.R. Grace & Co. v. Local Union No. 759*, 461 U.S. 757, 766 (1983)). To determine whether such a public policy exists, we "look to our 'constitution and *** statutes, and when cases arise concerning matters upon which they are silent, then in its judicial decision and the constant practice of the government officials.' " *AFSCME II*, 173 Ill. 2d at 307 (quoting *Zeigler v. Illinois Trust & Savings Bank*, 245 Ill. 180, 193 (1910)).

¶ 73 The Department cites *Illinois State Police v. Fraternal Order of Police Troopers Lodge No. 41*, 323 Ill. App. 3d 322 (2001), for the proposition that Illinois has a well-established policy of promoting effective law enforcement. The Department also argues that there is a public policy that police department personnel should be "honest during their employment and in internal investigations." For purposes of this case, we will assume that the Department has accurately identified two public policies that satisfy the first step of the public-policy exception. But as we explain more fully below, the arbitrator's award violates neither policy under the second step.

¶ 74 This court has recently explained the application of the second step of the public-policy doctrine in the context of a dispute over an employee's termination:

> "[P]roving a violation of public policy requires more than making a plausible argument that the public will suffer some sort of harm from the enforcement of an arbitration award. In *** cases *** in which awards were overturned on public-policy grounds, the awards amounted to condoning blatant and specific violations of established policies, and in effect to enabling future violations by employees who had demonstrated their proclivities to gross unfitness or illegality." *Illinois State Toll Highway Authority v. International Brotherhood of Teamsters, Local 700*, 2015 IL App (2d) 141060, ¶ 63.

¶ 75 Two cases provide helpful examples of when an arbitration award will and will not violate public policy. In *AFSCME II*, 173 Ill. 2d at 301-02, 317-18, the supreme court held that an arbitration award reinstating a DCFS child welfare specialist who had falsified and failed to file reports violated the public policy of protecting children's welfare. The specialist had filed a report stating that three children she was charged with overseeing were " 'doing fine,' " when the children had actually died in a fire. *Id.* at 301. And she had failed to submit case plans for the

children for three years. *Id.* After her termination, her union filed a grievance, which the arbitrator sustained because DCFS had not timely disciplined the specialist under the terms of the CBA. *Id.* at 302. The arbitrator found that the failure to timely discipline the specialist precluded him from addressing the merits of the dispute and ordered the specialist reinstated. *Id.* The supreme court held that the arbitrator's interpretation of the timely-discipline provision of the CBA violated public policy. *Id.* at 317-18. The court noted that "[t]he arbitrator's remedy for the violation of the contract's time provision caused him to fully reinstate a DCFS child welfare specialist *** without *any* determination that the welfare of the minors in the DCFS system will not be compromised by such a reinstatement." (Emphasis in original.) *Id.* at 317. Nor did the arbitrator "take any precautionary steps to ensure the misconduct at issue here will not be repeated, and he neither considered nor respected the pertinent public policy concerns that arose from them." *Id.*

¶ 76 By contrast, in *Village of Posen*, 2014 IL App (1st) 133329, ¶ 47, this court held that an arbitrator's award immediately reinstating a police officer who had been terminated for simultaneously receiving his salary and workers' compensation checks did not violate any public policy favoring trustworthy police officers. The village had terminated the officer for allegedly stealing the funds the village had given to him. *Id.* ¶ 3. The arbitrator found that the village lacked just cause, crediting the officer's testimony that he did not intend to steal from the village. *Id.* ¶¶ 21, 23. On appeal, this court stated that, assuming "there were a public policy favoring trustworthy police officers, it is difficult to see how reinstatement would violate that policy where [the officer] provided an 'innocent explanation of his actions' and was not found to have intended to commit theft." *Id.* ¶ 47.

¶ 77 This case falls more in line with the facts of *Village of Posen* than *AFSCME II*. Just as the arbitrator in *Village of Posen* found that the officer lacked the intent to steal, the arbitrator in this case concluded that Miller did not intend to impersonate a police officer by wearing the dress uniform and badge to the police memorial, and she also credited Miller's explanation that she had received permission to wear the dress uniform from the Department's former chief. Nor did the arbitrator agree with the Department that Miller had lied during the Department's investigation. The arbitrator's decision was based on a credibility determination she made after observing Miller and the Department's witnesses testify. Like the court in *Village of Posen*, we fail to see how the arbitrator's reduction of Miller's discipline could violate any public policy favoring honest police officers when the arbitrator reasonably concluded that Miller did not lie.

¶ 78 Nor do we see how Miller's 10-day suspension and conditional reinstatement violates the alleged public policy of promoting effective law enforcement. The Department presented no evidence that Miller's alleged insubordination or other misconduct had any effect on her duties as a telecommunicator or hampered the Department's efforts to investigate or prevent crime. The Department notes that "[i]n order *** to expose crime, it must rely on its telecommunicators who serve as a vital and integral link between the citizens and the Department's law enforcement officers." While that may be true, there was no evidence that Miller's eventual reinstatement would deny the Department such a "vital link."

¶ 79 Moreover, unlike the award in *AFSCME II*, which immediately reinstated the specialist without consideration of the effect on other children in DCFS care, the arbitrator's award in this case clearly reflected a consideration of the possibility that Miller's misconduct could have an effect on her job. Specifically, the arbitrator conditioned Miller's reinstatement on her

completion and passage of a fitness-for-duty examination. The arbitrator imposed that condition to ensure Miller's "psychological suitability for the special demands of work at a police department." Thus, the arbitrator did not ignore or act contrary to public policy concerns. To the contrary, she expressly considered them and factored them into her award.

¶ 80 The Department cites *Chicago Transit Authority v. Amalgamated Transit Union, Local 241*, 399 Ill. App. 3d 689 (2010), for the notion that the arbitrator's award violated public policy because it "directly pose[d] a threat of harm to the Village's citizens, police officers and personnel." But in *Chicago Transit Authority*, the arbitrator required that the Chicago Transit Authority reinstate a bus driver who had pleaded guilty to sexually assaulting his 12-year-old stepdaughter and had admitted to having sexual relationships with other 17-year-olds. *Id.* at 690, 692, 695. The court held that reinstatement of the driver would violate public policies in favor of protecting children because the driver "did not complete the sex-offender treatment program, failed several polygraphs concerning his sexual behavior, and did not pass his final polygraph until 2006, some five years after he left the program." *Id.* at 698. The court also noted that the driver "told his therapist that he engaged in *** sexual acts with his 12-year-old stepdaughter on so many occasions that he could not count them." *Id.*

¶ 81 The facts of this case are a far cry from those of *Chicago Transit Authority*. Miller did not engage in any activities even approaching the heinous conduct of the bus driver in *Chicago Transit Authority*. And the Department failed to show how Miller's alleged problems with her coworkers and superiors had any impact on her ability to dispatch emergency calls. As we noted above, the arbitrator took steps to ensure that Miller could in fact perform her job duties by conditioning her reinstatement on the completion of a fitness-for-duty evaluation. We reject the

Department's contention that the award posed a threat to the public or to other members of the Department.

¶ 82 C. Gross Mistake of Fact or Law

¶ 83 Finally, the Department claims that the arbitrator's award contains gross errors of fact and law that require the award to be vacated. "Gross errors of judgment in law or a gross mistake of fact are not grounds for vacating an award unless the mistakes or errors are apparent upon the face of the award." *Rauh v. Rockford Products Corp.*, 143 Ill. 2d 377, 393 (1991). Long ago, the United States Supreme Court and our supreme court cautioned that, when examining an arbitration award for a gross mistake of fact or law, "[c]ourts should be careful to avoid a wrong use of the word 'mistake,' and, by making it synonymous with mere error of judgment, assume to themselves an arbitrary power over awards." *Burchell v. Marsh*, 58 U.S. 344, 350 (1854); *White Star Mining Co. v. Hultberg*, 220 Ill. 578, 602 (1906) (quoting *Burchell*, 58 U.S. at 350).

¶ 84 We begin with the alleged mistakes of fact. The Department lists several alleged gross mistakes of fact contained in the arbitrator's award: (1) the arbitrator's finding that Miller had not intended to impersonate a police officer or to act insubordinately by wearing the dress uniform and badge; (2) the arbitrator's findings that Miller had meaningfully complied with the fitness-for-duty examination and also that she displayed only "some lack of cooperation" at the fitness-for-duty examination; (3) the arbitrator's finding that Miller's failure to comply with the order to call in while on leave did not constitute a "dischargeable instance of insubordination"; (4) the arbitrator's finding that there was "almost no evidence" that Miller had lied during the Department's investigation even though it presented "evidence that Miller lied about getting

Chief Zitek's permission in 2005, and that her 'boyfriend,' Chief Witz, was her 'husband' "; and (5) the arbitrator's finding that Miller's past record did not justify her termination.

¶ 85 These alleged mistakes of fact are nothing more than an attempt by the Department to have this court reweigh the evidence and find that it possessed just cause to terminate Miller. We see no mistakes of fact on the face of the arbitrator's award. Rather, the arbitrator based her findings on the evidence presented at the arbitration hearing and reasonable inferences from that evidence. Whether we would have made the same findings is not at issue. We reject the notion that any gross mistakes of fact exist on the face of the award to justify vacating it.

¶ 86 We now turn to the alleged error of law. The Department contends that the arbitrator drew a negative inference from the Department's failure to call Chief Zitek to testify about whether he had given Miller permission to wear the dress uniform. The Department notes that "Chief Zitek was a man who was not within the [Department's] control as he had not been employed by the Village since 2007, and left that employment on bad terms." Thus, according to the Department, the arbitrator "grossly misapplied the missing witness rule against" it.

¶ 87 We disagree that the arbitrator drew any negative inference from Chief Zitek's absence. The arbitrator wrote:

> "Neither Chief Kretch nor Deputy Chief Figueroa talked to former Chief Zitek during the investigation of this charge. [Miller] has consistently claimed the existence of this permission from Chief Zitek since this issue arose in 2010—in her interrogation during the investigation through the arbitration hearing. Talking to him would have been the easiest way to resolve this question of whether a prior administration in the Department had granted [Miller] permission to wear the dress uniform under certain

> circumstances. The Department had a responsibility to conduct a thorough investigation, especially into a charge it claims is sufficient, standing alone, to merit termination. There were enough other facts supporting [Miller's] claim that she had permission to wear the uniform that it is difficult to understand why the investigation did not include talking to Chief Zitek. On the basis of this record the Arbitrator concludes that it is more likely than not that [Miller] did have permission from an earlier Department administration to wear the dress uniform on certain limited occasions."

Nowhere did the arbitrator state that she took Zitek's absence as evidence that Miller had obtained his permission. See *Johnson v. Owens-Corning Fiberglas Corp.*, 233 Ill. App. 3d 425, 436 (1992) (negative inference means that "the jury may infer that the testimony of the witness would be adverse to that party"). Instead, the arbitrator simply noted that Miller had consistently claimed that she received Zitek's permission, that other evidence supported that claim, and that, despite this evidence, the Department did not investigate that claim. In other words, the arbitrator discussed Zitek's absence solely in the context of explaining why she credited Miller's explanation, why she found that there was insufficient evidence to refute it, and why she questioned the overall thoroughness of the Department's initial investigation.

¶ 88 Critically, the arbitrator noted that the Department had argued "that the Union should have called Zitek as a witness to prove *** that he gave [Miller] permission." Thus, the arbitrator's comments about the Department's responsibility to investigate were simply a response to the Department's argument that Miller should have had the burden of producing Zitek. We fail to see how the arbitrator drew any negative inference as the Department suggests.

¶ 89 Finally, the Department argues that the arbitrator made gross mistakes of fact or law in finding that the Department had presented insufficient evidence that Miller had lied. The Department lists "five *** definitive lies by Miller, which are verified by reference to her responses during the *** interrogation": (1) at her interrogation, Miller said that she did not know of the Department's uniform policy, but at the arbitration hearing, Miller conceded that the dress uniform was not her regular uniform under the Department's rules; (2) at the interrogation, Miller said that the badge she wore was not a police officer's badge, but at the arbitration hearing, she said that it was; (3) at the interrogation, Miller said she could not call in to Deputy Chief Figueroa while she was in her fitness-for-duty evaluation, but Dr. Henry testified that he would have let her call in; (4) Miller testified that she received permission to wear the dress uniform from Chief Zitek; and (5) at the interrogation, she said that she used her cell phone when leaving Dr. Henry's office but also said she did not know if her phone was working.

¶ 90 None of these examples are properly characterized as "definitive lies." At most, they constitute conflicting testimony that the arbitrator could choose to believe or disbelieve. With respect to the first example, the Department neglects the fact that the arbitration hearing occurred *after* Miller's interrogation. Thus, it is possible that Miller was not aware of the uniform rule at the time of the interrogation but learned of it before the arbitration hearing. The second example offered by the Department could be explained by the fact that, at both the interrogation and the arbitration, Miller testified that the badge she wore was not an active police badge. Thus, she could have construed it as not belonging to a police officer. At both the interrogation and the arbitration hearing, she readily conceded that, at one point, it was used as a badge for an active police officer.

¶ 91 The third example is simply a conflict between Miller's and Dr. Henry's testimony; the arbitrator was not required to accept Henry's testimony as the truth and Miller's as a lie. The fourth example is simply testimony that the arbitrator credited and that was supported by the evidence. The Department seems to regard it as a "definitive lie" only because it does not support the Department's view of the facts.

¶ 92 And the final example is not even an example of contradictory testimony, let alone a lie. Miller first said that she used her cell phone after the appointment. Later, Deputy Chief Figueroa asked her whether there was "any time" on May 12, 2010 when her phone was not working, to which she responded, "I don't know." Just because she used her phone at some point in the day does not mean that she would necessarily know whether it was working for the rest of the day. We reject the notion that the arbitrator ignored any supposed "definitive lies" in the record.

¶ 93 Moreover, none of these alleged errors appear on the *face* of the arbitration award, such that they would justify its vacatur. Reading the award alone, we see no gross errors of fact or law. Rather, the arbitrator based her decision on the evidence that she described as being presented at the arbitration hearing, drew reasonable inferences from that evidence, and reasonably interpreted the CBA. The Department's challenges to the arbitration award amount to nothing more than an attempt to second-guess the decisionmaking process to which they agreed to be bound. We reject those challenges and hold that the trial court erred in vacating the arbitration award.

¶ 94 III. CONCLUSION

¶ 95 For the reasons stated, we reverse the trial court's judgment vacating the arbitration award and remand with instructions to enter judgment on the arbitration award.

¶ 96 Reversed and remanded with directions.