2016 IL App (1st) 152444-U

SECOND DIVISION
December 29, 2016

No. 1-15-2444

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FOREST PRESERVE DISTRICT OF COOK COUNTY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 14 CH 8673
	)	
FRATERNAL ORDER OF POLICE LODGE NO. 166, ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL,	)	Honorable
	)	David B. Atkins,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

O R D E R

¶ 1 *Held*: Circuit court's order denying summary judgment to The Forest Preserve District of Cook County (District), granting summary judgment to the Fraternal Order of Police Lodge No. 166, Illinois Fraternal Order of Police Labor Council (Union), and confirming an arbitration award in favor of the Union is affirmed over the District's contentions that the award did not draw its essence from the collective bargaining agreement between the parties, the arbitrator lacked the authority to impose "manning" requirements on the District, and the award violated public policy.

¶ 2 The Forest Preserve District of Cook County (District) appeals from a circuit court order denying its motion for summary judgment, granting summary judgment to the Fraternal Order of Police Lodge No. 166, Illinois Fraternal Order of Police Labor Council (Union), and confirming an arbitration award which directed the District to compensate two of its police sergeants for the complained-of overtime work shifts that they were denied. On appeal, the District contends that the court erred in confirming the arbitration award because: (1) the award does not draw its essence from the collective bargaining agreement (Agreement) between the parties; (2) the arbitrator lacked the authority to impose "manning" requirements on the District; and (3) the award violates public policy. We affirm.

¶ 3 The District is a governmental body organized and operated pursuant to the Cook County Forest Preserve District Act (Act) (70 ILCS 810/0.01 *et seq.* (West 2012)). It owns and maintains about 69,000 acres of land and numerous facilities within Cook County for the benefit of the public. Pursuant to the Act, the District also maintains a police force to preserve public peace on its properties. 70 ILCS 810/15 (West 2012)). The Union is an exclusive representative for a bargaining unit of police sergeants employed by the District.

¶ 4 The District and the Union are parties to an Agreement which governs, among other things, the sergeants' wages, hours and conditions of employment. Article III of the Agreement enumerates the District's rights and obligations. Section 3.1(B) of Article III provides, in relevant part, that:

> "The [Union] recognizes that the District has the full authority and responsibility for directing its operations and determining policy. The District reserves unto itself all powers, rights, authority, duties and responsibilities conferred upon it and vested in it by the statutes of the State of Illinois, and to adopt and apply all rules, regulations and policies as it may

deem necessary to carry out its statutory responsibilities; provided, however, that the District shall abide by and be limited only by the specific and express terms of this Agreement, to the extent permitted by law:

***

(B) The Union recognizes the exclusive right of the District to establish reasonable work rules, make work assignments, determine reasonable schedules of work, determine established methods, process and procedures by which work is to be performed as well as set work standards."

¶ 5 The Agreement also provides a grievance resolution procedure between the parties. Under Article IX of the Agreement, grievance resolution culminates in binding arbitration.

¶ 6 Because the facts are not in dispute we recount them here to the extent necessary to resolve the issues raised on appeal. The record shows that, in January 2011, Sergeant Jerry Paszek filed a grievance with the District, protesting the District's denial of his request to take time off from work. After a third-step grievance hearing, the grievance was denied. In denying the grievance, the arbitrator found that Paszek was properly denied time off because the evidence presented showed that the District needed at least two sergeants to be scheduled to work the second and third shifts. The arbitrator's decision was based, in part, on the testimony of the District's then Assistant Chief of Police John Palcu, who testified that he needed at least two sergeants on the work schedule assigned to the second and third shifts and that, without Sergeant Paszek, the Assistant Chief would have only one sergeant on the schedule. After the denial of the grievance and when the following months' schedules were released, there were multiple shifts when only one sergeant was scheduled to work.

¶ 7 In January and February of 2012, the Union filed grievances with the District on behalf of Sergeants Paszek and Joe Shukstor regarding the District's procedures for scheduling overtime. The grievances alleged that the sergeants were essentially denied overtime when the District failed to offer overtime opportunities for the shifts when only one sergeant was scheduled to work. Specifically, Sergeant Paszek's grievance alleged that he was denied an overtime opportunity on the following dates, when only one sergeant was assigned to work the entire Cook County Forest Preserve: first shift of January 12, 13, 14, 18, 20 and 21, of 2012; second shift of January 5, 6, 7 and 8, of 2012; third shift of January 15, 16, 17, 18, 22, 24, 25, 27, 29 and 30, of 2012; and third shift of February 1 and 2, of 2012. Sergeant Shukstor's grievance raised the same allegation for the following dates: second shift of December 10, 11, 16, 17, 22, 23, 24, 25, 26, 29, 30 and 31, of 2011; and second shift of January 6 and 7, of 2012. The grievances were combined for resolution and the matter proceeded to arbitration.

¶ 8 Prior to the arbitration hearing, the parties stipulated to the following issue: "Did the [District] violate its [Agreement] with the [Union] when it did not post opportunities for Sergeants' overtime in the limited instances when only one Sergeant was scheduled to work and, if so, what is the remedy?"

¶ 9 At the hearing, George Holtschlag, the Union's Field Representative, testified regarding the evidence adduced at the third-step grievance hearing held on Sergeant Paszek's initial grievance. Holtschlag stated that, at the hearing, Assistant Chief Palcu testified that Sergeant Paszek was denied days off because the assistant chief needed at least two sergeants to be scheduled to a shift before he could grant time off.

¶ 10 Sergeant Paszek similarly testified that, at the initial grievance hearing, Assistant Chief Palcu stated that he would never schedule only one sergeant to work on a given day. On the date of the hearing in this case, Assistant Chief Palcu was no longer employed by the District and did not testify.

¶ 11 First Deputy Chief Kelvin Pope testified that his rank with the District is equivalent to that of then Assistant Chief Palcu. Chief Pope stated that there was no minimum staffing policy for the District's police force and that he could not establish a policy of minimum staffing because policies derive from written directives and general orders. Chief Pope also stated that policies are not stated orally, unless it is to reinforce a policy that has previously been documented.

¶ 12 On February 21, 2014, the arbitrator issued an award in favor of the Union, finding that the District had violated the Agreement by acting arbitrarily in denying overtime on the complained-of dates. In reaching this conclusion, the arbitrator stated that this was a management rights case involving the District's managerial determinations concerning whether or not to assign overtime on the complained-of dates. As such, the arbitrator noted that he was not deciding the broad question of whether the District had a minimum staffing policy which required more than one sergeant on duty for the second and third shifts, and that the award should not be read to establish such a minimum staffing policy. With regard to a remedy, the arbitrator found that Sergeants Paszek and Shustor shall be made whole at the appropriate contract rate for the complained-of overtime opportunities that they were denied.

¶ 13 The District filed a complaint in the circuit court to vacate the arbitration award. The Union subsequently filed a petition to confirm the award. The parties then filed cross-motions for summary judgment. In its motion, the District argued that the arbitration award should be vacated because: it

did not draw its essence from the Agreement; it violates Section 14(i) of the Illinois Public Labor Relations Act (Labor Act) (5 ILCS 315/14(i) (West 2012)); and it violates public policy.

¶ 14 After hearing argument on the summary judgment motions, the court found in favor of the Union and confirmed the arbitration award. In its written order, the court stated that the arbitration award drew its essence from the Agreement because the District had the exclusive right to determine reasonable schedules of work and the arbitrator was evaluating the reasonableness of the District's actions in setting work schedules. The court also found that the award did not violate section 14(i) of the Labor Act because the award did not impose minimum manning requirements on the District, but rather focused on whether or not the District acted arbitrarily in its scheduling of shifts. The court further found that the award did not violate public policy because it did not dictate manning requirements to the District. The District appeals.

¶ 15 Judicial review of an arbitrator's award is " 'extremely limited.' " *Griggsville-Perry Community Unit School District No. 4 v. Illinois Educational Labor Relations Board*, 2013 IL 113721, ¶ 18 (quoting *American Federation of State County & Municipal Employees v. State*, 124 Ill. 2d 246, 254 (1988)). Under this limited review, a reviewing 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." *American Federation of State, County & Municipal Employees v. Department of Central Management Services*, 173 Ill. 2d 299, 304-05 (1996) (hereinafter *AFSCME v. CMS*). This standard gives deference both to the parties' decision to have disputes settled by an arbitrator rather than a judge and to the intent of the legislature in enacting the Uniform Arbitration Act (710 ILCS 5/1 *et seq*. (West 2012)), "provide[s] finality for labor disputes submitted to arbitration." See also *The State of Illinois Department of*

Central Management Services v. American Federation of State, County & Municipal Employees, Council 31, 2016 IL 118422, ¶ 28 (hereinafter *CMS v. AFSCME*) (quoting *AFSCME v. CMS*, 173 Ill. 2d at 304). Whether an arbitrator's decision fails to draw its essence from the Agreement presents a question of law. *CMS v. AFSCME*, 2016 IL 118422, ¶ 28.

¶ 16 On appeal, the District first contends that the arbitrator's award does not draw its essence from the Agreement because: (1) there is no basis in the Agreement for the "arbitrary and capricious" test applied by the arbitrator; (2) the circuit court erred in confirming the award based on the "reasonableness" standard because the arbitrator did not rely on that standard in crafting his award and that standard lacks support from the language in the Agreement; and (3) there is no language in the Agreement to support the conclusion reached by the arbitrator that the District had an affirmative obligation to offer overtime.

¶ 17 To show that the arbitrator strayed from his duty to interpret and apply the Agreement, and instead imposed his own notions of right and wrong, the District must clear " 'a high hurdle.' " *CMS v. AFSCME*, 2016 IL 118422, ¶ 31 (citing *Griggsville-Perry*, 2013 IL 113721, ¶ 20, quoting *Stolt Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662, 671 (2010)). To clear this hurdle, the District must show that "there is no 'interpretive route to the award, so a noncontractual basis can be inferred and the award set aside.' " *Id.* (citing *Griggsville-Perry*, 2013 IL 113721, ¶ 20, *quoting Chicago Typographical Union No. 16 v. Chicago Sun-Times, Inc.*, 935 F. 2d 1501, 1506 (7th Cir. 1991)). Here, we find the District has failed to clear this high hurdle.

¶ 18 Contrary to the District's arguments, the record shows that the arbitrator relied on the Agreement in crafting his award. At the outset of the award, the arbitrator pointed out that, under sections 3.1(B) and 4.4(A) of the Agreement, the District had the managerial right to "determine

reasonable schedules of work" and, in doing so, "will attempt to assign overtime work to the employees who are immediately available when the need for overtime occurs[.]" The arbitrator acknowledged that the decision to "determine reasonable schedules of work" and "when the need for overtime occurs" are the District's decisions because under the Agreement the District had the "management right to run its operations—arbitrators do not." However, the arbitrator noted that the District's right to make managerial decisions does not allow it to make decisions that are immune from challenge by the Union through the grievance procedure outlined in the Agreement.

¶ 19 As such, the arbitrator also noted that, while the District has the right to make managerial decisions under the Agreement, those decisions cannot be "arbitrary, capricious, or taken in bad faith." In adopting this standard, the arbitrator cited to a treatise, *How Arbitration Works*, and quoted the following language: "Even where the agreement expressly states a right in management, expressly gives it discretion as to a matter, or expressly makes it the 'sole judge' of a matter, management's action must not be arbitrary, capricious or taken in bad faith." Given the District's right to make managerial decisions under the Agreement, the arbitrator stated that he was not determining whether the District's decisions were "correct" in his eyes, but rather the basis on which the District made its decisions. In doing so, the arbitrator noted that, as long as the District was able to show a "rational basis, justification or excuse" for its managerial decisions, he had no authority to second-guess those decisions.

¶ 20 In determining whether the District showed a rational basis or justification for its decision, the arbitrator considered Assistant Chief Palcu's statements at the prior third-step grievance hearing where he stated that he needed to have at least two sergeants scheduled to work on the second and third shifts. The arbitrator pointed out that the District gave no reason to explain why it took

contrary positions with respect to the specific dates involved in Sergeant's Paszek's time off grievance and the dates involved in this case where the District did not need two sergeants on the schedule. The arbitrator stated that he did not "have a 'rational basis, justification or excuse' to explain why contrary positions were taken by the District with respect to the specific dates involved in Sergeant Paszek's time off grievance *** and the dates involved in this case." The arbitrator found that "no" reason was insufficient to meet the relaxed standard of review in this management rights case and justify the District's managerial decision. Accordingly, the arbitrator concluded that the District's decision to not have two sergeants working on the second and third shifts on the dates in question was arbitrary and that the sergeants' grievances had merit.

¶ 21 Based on our review of the arbitration award, we find that the arbitrator, in interpreting and applying the Agreement between the parties, acted within the scope of his authority and that his award was guided by contract principles. Accordingly, we conclude, as a matter of law, that the award drew its essence from the Agreement.

¶ 22 In reaching this conclusion, we are not persuaded by the District's argument that the arbitration award must be set aside because the arbitrator applied a standard of review which lacked support in the language of the Agreement. The District contends that, in referencing the treatise on *How Arbitration Works*, the arbitrator based his award on "a body of thought, feeling, policy or law outside of [the Agreement]." In doing so, the District claims that the arbitrator violated Article IX of the Agreement, which outlines a grievance procedure between the parties. Section 11.7 of Article IX provides, in relevant part, that:

> "The Arbitrator, in issuing his/her opinion, shall not amend, modify, nullify, ignore or add to the provisions of this Agreement. The issue or issues to be decided will be limited

> to those presented to the Arbitrator in writing by the [District] and the [Union]. The Arbitrator's decision must be based solely upon his/her interpretation of the meaning or application of the express relevant language of the Agreement."

The District maintains that the arbitrator's award was not limited to the "express relevant language of the Agreement." We disagree.

¶ 23 As mentioned, the award shows that the arbitrator was guided by the language of the Agreement regarding the District's right to "determine reasonable schedules of work." In interpreting this language, the arbitrator was free to seek guidance from sources external to the Agreement, provided that his award drew its essence from the Agreement and did not manifest an infidelity to this obligation. See *American Federation of State, County and Municipal Employees, AFL-CIO v. The State of Illinois Department of Mental Health, et al.*, 124 Ill. 2d 246, 254-55 (1988) (quoting *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960)) ("When an arbitrator is commissioned to interpret and apply the [Agreement], he is to bring his informed judgment to bear in order to reach a fair solution of a problem. *** He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the [Agreement]. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award"). Here, the arbitrator did not stray from his obligations by looking to sources external to the Agreement and, thus, we see no reason to refuse enforcement of the award.

¶ 24 The District next contends that the arbitrator lacked the authority to impose "manpower" requirements on the District. Specifically, the District argues that Section 14(i) of the Labor Act prohibits an arbitrator in an interest arbitration proceeding from issuing an award about "manning."

5 ILCS 315/14(i) (West 2012). We consider this argument together with the District's final and related argument that the arbitration award is unenforceable because it violates public policy since questions of law-enforcement manning are to be answered by government officials, not arbitrators.

¶ 25 We initially note that, in setting forth these arguments, the District does not challenge the arbitrator's factual finding regarding the District's failure to explain why it took contrary positions with respect to the specific dates involved in Sergeant Paszek's time off grievance, where the District needed two sergeants on the schedule, and the dates involved in this case, where the District did not need two sergeants on the schedule. The District also does not offer an explanation for this discrepancy in its briefs. Rather, the District argues that the arbitrator lacked authority to impose manpower requirements on it and that these requirements violate public policy.

¶ 26 That said, we need not address these arguments in great detail because they rest on the faulty premise that the arbitration award imposed manning requirements on the District. While we agree with the District that an arbitrator has no authority to impose manning requirements on it and that to do so would violate public police, here, the award imposes no such requirements.

¶ 27 The record shows that, following the arbitration award, the District will continue to retain full authority to determine its own manpower needs. In crafting his award, the arbitrator was careful to point out that he was not addressing the broad question of whether the District had "a minimum staffing policy requiring more than one sergeant on duty [for] the second and third shifts and this award should not be read to establish such a minimum staffing policy." The arbitrator then expressly stated "as I do not have to reach that broad issue to decide this case, I express no opinion on that overall minimum staffing question." Rather, the arbitrator was resolving "a case involving

the District's managerial determinations concerning whether or not to assign overtime on specific dates" and whether the District acted arbitrarily in making those determinations.

¶ 28 In resolving this issue and concluding that the District acted arbitrarily in making its managerial decisions, the arbitrator found only that the District did not apply its own reasoning consistently regarding the number of sergeants necessary to be scheduled on particular shifts. The arbitrator pointed out that the District gave no reason to explain this inconsistency in its manning needs and that it therefore acted arbitrarily in denying overtime on the complained-of dates. Stated differently, it was the District's failure to supply a basis for its decision, not the decision itself, that led the arbitrator to find in favor of the Union.

¶ 29 Specifically, if the District decides that it needs only one sergeant on the schedule for the second and third shifts, then, when a second scheduled sergeant asks for time off, the District cannot deny the request on the previously stated basis that it needs two sergeants on the second and third shifts. If the District decides that it needs two sergeants on the second and third shifts, and it has only one on the schedule, it must find a second sergeant to serve on the second and third shifts, even if it must pay that sergeant overtime.

¶ 30 The arbitration award merely forecloses the District from denying a request for overtime on the basis that it needs only one sergeant on the second and third shifts, if the District has previously defended the denial of requested leave by presenting sworn testimony that two sergeants were necessary on those shifts. The award also forecloses the District from denying a request for time off on the basis that it needs two sergeants on the second and third shifts, if the District has decided that it needs only one sergeant on those shifts. More importantly, the award does not mandate the District to assign only one sergeant on any shift or to assign two sergeants to any shift. The award

leaves that matter, and all manpower decisions, to the District. As such, although the award is tangentially related to manning, it does not impose manning requirements on the District. Accordingly, it does not violate the Labor Act or public policy.

¶ 31 For the reasons stated, we affirm the order of the circuit court denying the District's motion for summary judgment, granting summary judgment in favor of the Union, and confirming the arbitration award.

¶ 32 Affirmed.