2011 IL App (2d) 101096-U
No. 2-10-1096
Order filed September 22, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

KEITH NYGREN, Sheriff of McHenry County, Plaintiff-Appellant, v. ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL, McHENRY COUNTY PEACE OFFICERS UNIT #1 and ZANE SEIPLER, Defendants-Appellees.	)	Appeal from the Circuit Court of McHenry County. No. 10-MR-2 Honorable Thomas A. Meyer, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

Held: The arbitrator's award did not violate public policy or exceed the scope of authority; affirmed.

¶ 1 Plaintiff, Keith Nygren, Sheriff of McHenry County, appeals the judgment entered by the circuit court of McHenry County, denying his complaint to vacate an arbitration award. Plaintiff contends (1) the arbitrator's decision to reverse the discharge of defendant, Deputy Zane Seipler,

violated well-defined and dominant public policies, and (2) the arbitrator's award exceeded his scope of authority. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Defendant, Illinois Fraternal Order of Police Labor Council, McHenry County Peace Officers Unit #1 (Union), is a "labor organization" as defined by section 3(i) of the Illinois Public Labor Relations Act (5 ILCS 315/3(i) (West 2010)). The McHenry County Sheriff's Department (Department) is a "public employer" as defined by section 3(o) of the Act (5 ILCS 315/3(o) (West 2010)). The Union and the Department are parties to a collective bargaining agreement (CBA). The Union represents all full-time sworn peace officers employed by the Department. Seipler is a "public employee" as defined by section 3(n) of the Act (5 ILCS 315/3(n) (West 2010)), and a member of the bargaining unit employed by the Department and represented by the Union.

¶ 4 Following an internal investigation and recommendation that Seipler be terminated for writing traffic tickets and a warning notice containing false information, plaintiff terminated Seipler's employment. The Union filed a grievance alleging plaintiff terminated Seipler's employment without just cause. The parties agreed to final and binding arbitration of disputes pursuant to the CBA. The parties stipulated that the issue for the arbitrator was whether Seipler was discharged for just cause, and if not, what was the appropriate remedy.

¶ 5 The facts heard by the arbitrator were essentially undisputed. On June 29 and July 11, 2008, Seipler performed traffic stops. In both cases, the passengers agreed to Seipler's option to take control of the vehicles instead of arresting the unlicensed drivers. After the passengers switched to the driver's seat, Seipler issued the passengers tickets for violations. In the June incident, Seipler issued the passenger a warning notice for speeding. In the July incident, Seipler issued a traffic citation for having no insurance and for failing to wear a seat belt, and he noted on the citation that

the passenger was the driver of the vehicle. On the two citations issued, Seipler listed the race of the offender as Caucasian, although the driver speeding and the driver operating the vehicle without insurance were Hispanic. Under State law, whenever a citation or warning is issued, the issuing officer must complete a report providing racial profiling information.

¶ 6 After the mother of one of the passengers who was issued a ticket complained, the Department opened an investigation into Seipler's conduct, and Seipler was placed on paid administrative leave. Seipler did not deny his actions, believing that he properly exercised officer discretion.

¶ 7 Other evidence introduced to the arbitrator revealed that another employee in the bargaining unit and under plaintiff's command, Deputy Jennifer Asplund, engaged in behavior similar to that of Seipler, and plaintiff had issued her a three-day suspension. Like Seipler, Asplund was accused of issuing traffic tickets without probable cause. Asplund had issued three separate drivers traffic tickets for no insurance without issuing any other traffic citations. During the Department's investigation, one of drivers stated that she did not have valid insurance at the time of the stop. The other two drivers reported that they showed Asplund proof of insurance and that Asplund gave them a choice of receiving tickets for speeding or for no insurance. The drivers opted to receive citations for no insurance even though they showed Asplund proof of insurance. After investigation, the investigator determined that Asplund's explanation of the events was not credible and recommended termination. Plaintiff issued Asplund a three-day suspension instead of the recommended termination.

¶ 8 At the arbitration hearing, plaintiff explained his decision to issue a three-day suspension to Asplund. He explained that the three-day suspension was for conduct unbecoming an officer, for asking violators what tickets they wished to receive, and for misrepresentation.

¶ 9 After considering the transcript, his notes of the hearing, and the parties' exhibits, briefs, and arguments, the arbitrator ordered the Department to reinstate Seipler and compensate him for his loss. The arbitrator determined that there was no just cause to terminate Seipler, but he should be suspended for three days, based upon the previous disciplinary action taken by plaintiff against Asplund.

¶ 10 Plaintiff filed a complaint to vacate the arbitration award. Plaintiff alleged the arbitrator's award was invalid because the arbitrator exceeded his authority and the award violated public policy. After review, the trial court affirmed the arbitrator's decision and dismissed plaintiff's complaint with prejudice in a written opinion, finding that "the Arbitrator acted within the scope of the authority stipulated by the parties and granted under the CBA," and that the award did not violate public policy. Plaintiff timely appeals.

¶ 11 II. ANALYSIS

¶ 12 A. Standard of Review

¶ 13 Judicial review of an arbitral award is extremely limited and the award must be afforded exceptional deference. *American Federation of State, County & Municipal Employees v. State of Illinois*, 124 Ill. 2d 246, 254 (1988) (*AFSCME I*). This standard reflects the legislature's intent in enacting the Illinois Uniform Arbitration Act — to provide finality for labor disputes submitted to arbitration. See 710 ILCS 5/12 (West 2010) (denying judicial authority to vacate arbitral awards except on grounds recognized at common law). The Act contemplates judicial disturbance of an award only in instances of fraud, corruption, partiality, misconduct, mistake, or failure to submit the question to arbitration. *Board of Education v. Chicago Teachers Union, Local No. 1*, 86 Ill. 2d 469, 474 (1981). "Thus, 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." *American Federation of State, County & Municipal Employees v. Department of Central Management Services*, 173 Ill. 2d 299, 304-05 (1996) (*AFSCME II*) citing *Board of Trustees of Community College District No. 508 v. Cook County College Teachers Union, Local 1600*, 74 Ill. 2d 412, 421 (1979).

¶ 14 To this end, any question regarding the interpretation of a CBA is to be answered by the arbitrator. "Because the parties have contracted to have their disputes settled by an arbitrator, rather than by a judge, it is the arbitrator's view of the meaning of the contract that the parties have agreed to accept. We will not overrule that construction merely because our own interpretation differs from that of the arbitrator." *AFSCME II*, 173 Ill. 2d at 305.

¶ 15 "There is a presumption that the arbitrator did not exceed his or her authority." *City of Northlake v.* Illinois *Fraternal Order of Police Labor Council*, 333 Ill. App. 3d 329, 335 (2002). Even when a court does not agree with the arbitrator's interpretation of the agreement, that is clearly not a basis to overturn the award. *AFSCME II*, 173 Ill. 2d at 306. Nor will a court overturn an arbitration award for error of law or fact when the award was within the submission of the parties and after a full hearing had been held. *Northlake*, 333 Ill. App. 3d at 335. A court will not reverse an arbitrator's award if it finds the award is against the manifest weight of the evidence. *Northlake*, 333 Ill. App. 3d at 335. In fact, the parties must abide by the factual findings of the arbitrator. See *Chicago Transit Authority v. Amalgamated Transit Union Local 308*, 244 Ill. App. 3d 854, 863 (1993).

¶ 16 Article XVI of the CBA defined the arbitrator's authority to hear Seipler's grievance and to determine whether the Department violated the CBA. Articles IV, XIV, and XVI of the agreement delineate the arbitrator's authority to review whether the Department's decision to terminate Seipler

was made with "just cause." Under these provisions, the parties agreed that no employee can be disciplined without "just cause."

¶ 17 B. Public Policy Exception

¶ 18 The first issue raised by plaintiff is whether the arbitrator's award reinstating Seipler to his position as a patrol deputy must be vacated because it violates the explicit public policy of employing law enforcement officers who must be held to high standards of honesty and credibility. Plaintiff's appellate brief sets forth numerous statutes and case law to support his argument that an arbitration award in contravention of public policy is not enforceable and that, by statute and case law, the Department is precluded from employing any person who has been found to have made false arrests and falsified documents as a law enforcement officer. Plaintiff argues that keeping Seipler on the force will impugn the reputation of the entire Department. Seipler and the Union respond that the arbitrator made a rational finding that Seipler is amenable to corrective discipline and that, therefore, the award reinstating Seipler does not violate public policy.

¶ 19 Plaintiff is correct that a court cannot enforce an arbitration award made pursuant to a collective bargaining agreement where the award violates public policy. *AFSCME I*, 124 Ill. 2d at 260. This doctrine is based upon the common-law notion that courts will not lend judicial power to the enforcement of private agreements that are immoral or illegal. *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29, 42 (1987). However, the public policy exception is an extremely narrow one and should "not otherwise sanction a broad judicial power to set aside arbitration awards." *Misco, Inc.*, 484 U.S. at 43. "[T]he reinstatement of an employee who has violated an important public policy does not necessarily itself violate public policy." *City of Highland Park v. Teamster Local Union No. 714*, 357 Ill. App. 3d 453, 462 (2005).

¶ 20 To vacate an award under the public policy exception, courts are required to undertake a two-step analysis. The first question is whether a well-defined and dominant public policy can be identified. *AFSCME II*, 173 Ill. 2d 299, 307 (1996). If so, the second question is whether the arbitrator's award, as reflected in his or her interpretation of the agreement, violates public policy. *AFSCME II*, 173 Ill. 2d at 307-08.

¶ 21 Neither the arbitrator nor the trial court took issue with the contention that a public policy exists in Illinois that law enforcement officers are held to high standards of honesty and credibility. As stated by the trial court, "[t]his concept is so obvious that no further discussion as to the basis of the public policy is required." The arbitrator also found that Seipler's conduct violated department rules and that the misconduct warranted discipline. Thus, the only question here is whether reinstating Seipler violates public policy. See, *e.g.*, *Jacksonville Area Ass'n for Retarded Citizens v. General Service Employees Union, Local 73*, 888 F. Supp. 901, 906 (C.D. Ill. 1995) (issue was not whether the employee's past conduct violated public policy but whether reinstatement of the employee violated public policy).

¶ 22 The arbitrator found that, during the four years Seipler worked for the Department, he was recognized for his work ethic, he was commended for being among the officers who wrote the most traffic tickets, and was not regarded as a poor worker or had a history of disciplinary problems. The arbitrator determined that a three-day suspension was warranted in lieu of discharge. Implicit in these findings is that Seipler was amenable to discipline. See *AFSCME II*, 173 Ill.2d at 322 ("as long as the arbitrator makes a rational finding that the employee can be trusted to refrain from the offending conduct, the arbitrator may reinstate" the employee and the reviewing court will affirm).

¶ 23 There is a "long-standing principle that an employee's amenability to discipline is a factual determination which cannot be questioned or rejected by a reviewing court." *AFSCME II*, 173 Ill.

2d at 331-32. Where an arbitrator has expressly or by implication determined that an employee can be rehabilitated and is not likely to commit an act that violates public policy in the future, a court would be hard-pressed to find a public policy barring reinstatement. *AFSCME II*, 173 Ill. 2d at 332 (relying on *Stead Motors of Walnut Creek v. Automotive Machinists Lodge No. 1173*, 886 F.2d 1200, 1213 (9th Cir.1989)).

¶ 24 The cases cited by plaintiff do not require a different result. *Chicago Fire Fighters Union Local No. 2 v. City of Chicago*, 323 Ill. App. 3d 168 (2001), provides an example of whether an arbitration award violates public policy and where the arbitrators' determinations were reversed. *Department of Central Management Services v. AFSCME*, 245 Ill. App. 3d 87, 99 (1993), *Ironton v. Rist*, No. 10CA10, 2010 WL 4273235, at *6 (Ohio App. 4th Dist. Oct. 25, 2010), and *City of Boston v. Boston Police Patrolmen's Ass'n*, 824 N.E. 2d 855, 863 (2005), involve arbitration cases involving dishonest conduct and contain facts similar to Seipler's case. Plaintiff argues that the arbitrator, like the arbitrators in the cases relied upon, committed similar errors because the arbitrator failed to consider the nature and seriousness of Seipler's conduct in fashioning an appropriate award and failed to consider the detrimental impact that Seipler's behavior would have on his ability to continue to perform his job effectively.

¶ 25 Plaintiff's argument lacks credence when compared to the discipline imposed in Asplund's case. Plaintiff's suspension of Asplund for three days instead of following the recommended termination exemplifies plaintiff's belief that the integrity and best interests of the Department were not compromised by allowing Asplund to remain a member of the Department.

¶ 26 Moreover, we find plaintiff's attempts to distinguish the present case from the Asplund case unavailing. Asplund wrote false tickets in violation of the same public policy at issue here. In fact, it is arguable that Asplund's situation was more egregious than Seipler's because Asplund's

explanation of the events was not credible; whereas Seipler acknowledged his violations. As pointed out by the trial court, "[w]hile [plaintiff] argued that Deputy Asplund issued citations to people who had actually violated the law, the fact remains that the citations that were issued were inappropriate and seemingly violations of the public policy that [plaintiff] now demands be strictly construed."

¶ 27 Given plaintiff's treatment of the Asplund matter, we cannot accept plaintiff's argument that public policy demands that Seipler be terminated. Accordingly, while perhaps we may have decided the case differently, we hold that the arbitrator's award reinstating Seipler to his former position and that a three-day suspension was appropriate discipline, after implicitly concluding that he was amenable to discipline, does not violate any well-defined public policy.

¶ 28 C. Scope of Authority

¶ 29 Plaintiff next argues that the arbitrator exceeded his authority under the CBA by focusing on the discipline imposed in the Asplund case rather than considering Seipler's misconduct, and that this usurped plaintiff's right to discipline Seipler pursuant to the CBA.

¶ 30 The arbitrator's authority generally depends on what the parties have agreed to submit to arbitration. *AFSCME I*, 124 Ill. 2d at 254. The question of whether an arbitrator exceeded his authority is one of law and subject to *de novo* review. *Water Pipe Extension, Bureau of Engineering Laborers' Local 1092 v. City of Chicago*, 318 Ill. App. 3d 628, 634 (2000).

¶ 31 The parties agreed that the issues presented to the arbitrator were whether Seipler was terminated for just cause and, if not, what was the appropriate remedy. The CBA did not define "just cause." When a collective bargaining agreement does not define "just cause," it is left to the arbitrator to determine if the grievant was discharged for just cause. *AFSCME I*, 124 Ill. 2d at 256. The arbitrator found that there was no "just cause" to terminate Seipler, which clearly fell within the

scope of the authority stipulated to by the parties. Following a determination that there was no "just cause" to terminate, the arbitrator also had explicit authority to determine the appropriate remedy under the CBA. After considering the second portion of the authority agreed to by the parties, the arbitrator determined that the more appropriate remedy was suspension.

¶ 32 The arbitrator neither ignored Seipler's misconduct nor inappropriately focused on the Asplund case. One of the arguments considered by the arbitrator was disparate treatment. The charges against Asplund were the same as the charges brought against Seipler. Pursuant to the CBA, the parties recognized the principals of "Progressive and Corrective Discipline," and that disciplinary action may be imposed on an employee only for just cause.

¶ 33 Plaintiff points out that the CBA provides: "The Employer's agreement to use progressive and corrective disciplinary action does not prohibit the Employer in any case from imposing discipline, which is commensurate with the severity of the offense." The arbitrator found "Sheriff Nygren's decision to suspend Deputy Asplund for three days rather than follow the recommendation of termination, reflect[ed] a belief on the Sheriff's part that the misconduct in question, albeit serious, was correctable through the application of progressive discipline." Thus, contrary to plaintiff's assertion, the arbitrator's focus on the Asplund case was, in actuality, a focus on whether progressive discipline, as outlined by the CBA, was a more appropriate method of discipline in lieu of a discharge.

¶ 34 We find the determination that there was no just cause to terminate Seipler and that the appropriate remedy was a three-day suspension fell within the authority granted to the arbitrator under the CBA as well as the explicit stipulation by the parties concerning the scope of the arbitrator's authority.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the decision of the circuit court of McHenry County.

¶ 37 Affirmed.