2012 IL App (2d) 110280-U
No. 2-11-0280
Order filed June 25, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LAKE COUNTY FOREST PRESERVE DISTRICT,	)	Appeal from the Circuit Court of Lake County.
Petitioner-Appellee,	)	No. 10-MR-671
v.	)	
ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL and PATRICK WHITE,	)	Honorable Christopher C. Starck,
Respondents-Appellants.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

Held: The trial court erroneously vacated an arbitration decision and award reinstating respondent White where the District did not demonstrate the existence of a clear and dominant public policy against reinstating the police officer who left his post without permission and thereafter was inconsistent in his statements about his conduct. Additionally, the arbitrator did not exceed his authority, and the arbitration decision drew its essence from the parties' collective bargaining agreement.

¶ 1 Respondents, Patrick White (White) and the Illinois Fraternal Order of Police Labor Council (FOP) (collectively, respondents), appeal the order of the circuit court of Lake County, which

vacated the arbitration award and reimposed the decision of petitioner, the Lake County Forest Preserve District (District), to terminate White under the collective bargaining agreement. Respondents argue that the trial court erred in vacating the arbitrator's decision and in using the wrong standard of review. We reverse the trial court and reinstate the arbitrator's award.

¶ 2 We summarize the facts appearing of record. In 2001, the District initially hired White on a part-time basis. In 2003, White was upgraded to full-time employment. Before working with the District, White had been employed as a police officer by the City of Chicago for nearly 30 years.

¶ 3 The District had adopted a collective bargaining agreement with its Ranger Police, and the FOP was the officers' agent in the collective bargaining and enforcement of the contractual provisions. The incident which forms the subject matter of this case was processed through the contractual grievance procedure. Specifically, the matter was assigned to a neutral arbitrator, and the arbitrator heard evidence and made specific written findings of fact based upon that evidence.

¶ 4 At the arbitration hearing, John Tannahill, the District's Chief of the Ranger Police (department), testified that the department was a full-service police organization. The District employed 17 full-time sworn police officers, including the chief, the deputy chief, two commanders, three sergeants, and 10 full-time officers. The District also employed 25 other part-time employees, including civilian and sworn police personnel. The department was organized as a paramilitary operation with a command rank structure, and operated through the issuance of orders disseminated along the chain-of-command.

¶ 5 Tannahill testified that the department had a General Order Manual that applied to all of the department's officers. The manual also contained guidelines for assessing discipline in response to violations of the orders contained in the manual, including factors such as the seriousness of the

violation, the officer's past history, and the severity of the consequences caused by the officer's violation.

¶ 6 In particular, Tannahill emphasized that one of the purposes of the orders in the manual was to provide adequate coverage for District properties. Tannahill explained that the department covered a large geographic area and four to seven officers were employed on each shift, depending on the time of day and year, and the usage of the District's facilities. The District's properties are divided into at least four primary areas, each of which is supposed to receive the same coverage as the others.

¶ 7 Tannahill testified that an officer comes on duty when he or she enters a preserve in his or her assigned patrol district. Likewise, an officer goes off duty when he or she leaves a preserve in the assigned district at the end of the shift. Tannahill testified that if an officer violates the on-duty protocol as stated in the duty manual, he or she will cause a problem in the department's ability to provide coverage to the facilities in the District. An officer violating the on-duty protocol will be subject to disciplinary action, which can include discharge.

¶ 8 According to Tannahill, each officer is responsible for everything that occurs in his or her assigned patrol area, and this was why there could be a significant coverage issue if an officer violated the on-duty protocol. The officer is required to respond to calls, look for violations of the law, and patrol the district. There are, however, reasons for which an officer may be allowed to leave his or her assigned patrol area, like following up on a previous report, investigating a crime, going to lunch, servicing or washing the patrol car, and going to court.

¶ 9 Tannahill then testified about his observations on February 9, 2009. Tannahill testified that, on that date, he was on duty as was White. On that date, White had been assigned to patrol the

District's properties in the southwest portion of Lake County. Respondent's shift was due to end at 2 p.m., and it was expected that White would call in from one of the preserves in his patrol area when he went off duty.

¶ 10 Tannahill testified that, at about 1:45 p.m., he was traveling southbound on Route 45 from Grand Avenue. As he approached Washington Street, Tannahill observed White driving his patrol vehicle heading northbound. Tannahill called White's shift supervisor and asked what area White had been assigned to patrol and whether he had permission to leave his patrol area. Tannahill testified that White's shift supervisor told him that White did not have permission to be outside of his patrol area.

¶ 11 Tannahill testified that he turned around at the next intersection and headed north after White. Tannahill testified that, as he drove past White's house, he observed White back his patrol car into the driveway. Tannahill testified that he circled around and passed by White's house a second time. As he passed by the second time, Tannahill heard White go off duty over the radio. Tannahill then drove to the car wash located at the intersection of Routes 120 and 45 and observed that the car wash was closed that day.

¶ 12 Tannahill started an investigation based on his observations of White's conduct. He ordered White's shift supervisor to obtain statements from each officer regarding his or her whereabouts during the period of 1:30 to 2 p.m. on February 9, 2009. Tannahill also asked for copies of the officers' logs for February 9. He then compared the statements to the logs to see if they matched.

¶ 13 Tannahill testified that respondent, in his written statement, indicated that, at 1:26 p.m., he was fueling his car. White wrote that, at 1:33 p.m., he entered the District's Lakewood facility. White then went to the car wash located at the intersection of Routes 120 and 45, but he did not go

in, because he did not want to go into overtime. White further wrote that he went off duty at 2 p.m. and then went home. Tannahill explained that the car wash at the intersection of Routes 120 and 45 was not within the area White was assigned to patrol on February 9 (although it is just outside the area's northern border); likewise, White's home was not within his February 9 assigned patrol area. Tannahill testified that there were discrepancies between White's written statement and the logs for February 9. In light of his observations and the discrepancies between White's written statement and his February 9 incident log, Tannahill believed that White left the Lakewood facility and proceeded out of his patrol area to his home before the end of his shift.

¶ 14 Tannahill testified that he met with White twice to inform him that he was the subject of a formal investigation and to obtain a verbal statement. In his verbal statement, White stated that, at about 1:45 p.m., he left his patrol area to get a car wash, but because the line was long, he did not get his car washed because he was afraid that it would take too long and he would go into overtime. White also told Tannahill that, during the morning of February 9, he had been ill with diarrhea, and, at about 1:45, he was afraid he was having another episode, so he proceeded from the car wash to his house, which was fairly close, so he would not have an accident and soil his uniform. White also admitted that he had not been given permission to venture outside of his assigned patrol area.

¶ 15 Tannahill testified that, in his opinion, the verbal statement was different than the written statement and the Febraury 9 incident logs. Tannahill testified that, in his opinion, the differences among the three sources were properly interpreted as an attempt by White to be deceitful about his actions and motivations.

¶ 16 Tannahill reviewed all of the evidence his investigation collected and determined that White had violated critical departmental policies and procedures when he abandoned his post, had failed

to be truthful and forthcoming during the investigation, and had changed his statements. Based on this finding, Tannahill concluded that White had left his patrol area unprotected thereby destroying the continuity, effectiveness, and efficiency of the department's operations. As a result, Tannahill made the decision to discharge White.

¶ 17 White testified that, while he was employed with the District, he had never received an evaluation of failing to meet the expectations of his job duties. White testified that, in all of his performance evaluations with the District, he had been rated as meeting, meeting plus, or exceeding expectations in every category. White also noted that, before the February 9 incident, he had never been disciplined for being out of his assigned patrol district without permission.

¶ 18 White's testimony suggested that this disciplinary action was retaliatory. White related that, in July 2008, he filled out an affidavit alleging that some of the department's supervisors, including Tannahill, were using their vehicles improperly. Toward the end of July 2008, White was called to a meeting with Tannhill regarding his allegations. At his next performance review, White received ratings of did not meet expectations in every single category (compared to all previous reviews in which he never received such a rating). White requested a meeting with the sergeant who conducted the performance review, but he never heard anything further about the evaluation. White also testified that, in October 2008, he was instructed to change his log entries going back several months to comply with new standards for completing personal incident logs, and, when he did not complete the task to his supervisor's satisfaction, White received a reprimand for failing to apply the new standards.

¶ 19 White testified that, usually, he arrived at his duty post in his assigned patrol area about 15 minutes before his shift would be scheduled to begin, but he did not record the extra time on his logs

because he was ordered not to do so. White also testified that, while he was off duty, he occasionally would respond to calls.

¶ 20 Turning to the events of February 9, 2009, White testified that, at 1:26 p.m., he was fueling his vehicle. White acknowledged that the fuel logs showed his time of fueling to be 1:08 p.m., and he could not explain the difference in times. White noted, however, that he used the clock in his car, which was synchronized with the department's clocks (as well as the official national timekeeping device in Colorado), while the fuel depot's clock was not synchronized with the department's clocks. White further noted that he had no other entries in his log after fueling because he did not actually reach his intended destination of the car wash.

¶ 21 White asserted that Commander Hoffman had given him blanket permission to visit the car wash without first asking for permission to leave his assigned patrol area. White explained that Hoffman told him it was ridiculous to ask for permission because the car wash was located on the border of one of the patrol areas. In rebuttal testimony, Hoffman stated that he had never given anyone, including White, leave to depart from his or her assigned patrol area in order to fuel or wash his or her vehicle without first asking permission.

¶ 22 White testified that, at about 1:52 p.m., as he approached the car wash, he noticed a long line waiting to use the car wash. In consideration of the time, White concluded he would not be able to finish washing his car before his shift ended, so he would go into overtime if he tried to get his car washed. White testified that he decided to go on towards his home instead of returning to his patrol area because he thought he might soil his clothes if he stayed in the car instead of finding a bathroom. White testified that his home was fairly close, so he decided to go there. On that day, White's shift ended at 2 p.m. White testified that he made his radio call that he was going off duty

shortly before he reached his driveway. White testified that he stayed in his vehicle for about two minutes after his shift ended completing the entries in his incident log and logging off of the computer in the car and the department's system.

¶ 23 White maintained that his written statement and his answers given during his verbal interview with Tannahill were accurate and complete. White acknowledged that it violated the department's on duty protocol to communicate that he was going off duty from near his own driveway (and outside of his assigned patrol area). Likewise, White acknowledged that the department's on duty protocol required that he obtain permission to leave his assigned patrol area. White further testified that he did not think that it was proper for an officer to leave his or her patrol area without permission for as little as 10 minutes.

¶ 24 Following the reception of the above-summarized evidence, on February 3, 2010, the arbitrator issued a lengthy written decision. The arbitrator determined that, on February 9, 2009, White did not have permission to leave his assigned patrol area. Further, the arbitrator determined that White's various versions of the events were not consistent. The arbitrator was not bothered by the discrepancies as he concluded that exactitude about the events made little difference to his determination. Instead, the arbitrator noted that White's inconsistencies illuminated his credibility, which the arbitrator expressly found to be less than the other, disinterested witnesses testifying during the proceedings, and the issue of whether he was forthcoming and honest during the District's investigation, as required by the department's rules and regulations, finding that White had violated those rules as well. The Arbitrator concluded, therefore, that the District had proved its major issues, that White was absent from his patrol area without permission, and that White had not been fully truthful during the investigation.

¶ 25 The arbitrator then considered whether there was just cause to terminate White's employment. The arbitrator acknowledged the seriousness of the offenses and agreed that White was subject to a significant penalty. The arbitrator nevertheless determined that, based on White's work history with the District, White had been a capable and generally reliable employee. Viewing the totality of the evidence in the record, the arbitrator determined that the District's penalty of discharge was "too harsh" for the circumstances and not supported in the evidence. The arbitrator determined that, instead, a penalty of a lengthy suspension without pay would be the appropriate penalty. The arbitrator reasoned that the lengthy suspension would "impress upon [White] that he ha[d] committed serious rule violations, while simultaneously allowing [him] to show his understanding of the fact that he must change and improve both his conduct and his adherence to the District's rules and protocols." The arbitrator vacated the termination and reinstated White, but without any back pay. Finally, the arbitrator concluded that "[t]here was no just cause to discharge [White]. There was just cause to issue a disciplinary suspension to [White]."

¶ 26 On April 23, 2010, the District filed its action in the circuit court of Lake County seeking to overturn the arbitrator's decision and award. The parties filed cross-motions for summary judgment and, on January 27, 2011, argued the merits of their motions to the trial court.

¶ 27 On March 2, 2011, the trial court issued its order reversing the arbitrator's decision and affirming the District's decision to terminate White. The trial court reasoned that, under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2010)), it was reviewing an administrative agency's decision. Applying the framework of administrative review, the trial court held:

> "In this matter, the court finds that the findings of the arbitrator as to the facts are not against the manifest weight of [the] evidence. The arbitrator found that White had committed serious violations of work rules and that a severe sanction was appropriate for those violates. The findings of fact by the arbitrator are consistent with the factual allegations that formed the basis of the termination below. The findings of the [a]rbitrator substantiate the validity of the termination of White by [the District] pursuant to the terms and conditions of the [collective bargaining agreement].
>
> While one year without pay, as imposed by the arbitrator, is clearly a severe sanction, the court finds that the arbitrator's decision to reduce the penalty to one year without pay from the imposed sanction of termination is clearly erroneous and is not supported by the law and the terms of the collective bargaining agreement. The findings of fact by the arbitrator validate the termination of White by [the District] for cause. The arbitrator elected to impose his opinion of what he believed to be the appropriate sanction for White and chose to overrule the specific powers and authority of [the District] in dealing with this serious work violation of duty."

Respondents timely appeal.

¶ 28 We begin with our standard of review. The judicial review of an arbitration award is extremely limited and the award will be given exceptional deference. *American Federation of State, County & Municipal Employees, AFL-CIO v. State of Illinois*, 124 Ill. 2d 246, 254 (1988) (*AFSCME I*). The deferential standard has been developed to give effect to the legislature's intent in enacting the Illinois Uniform Arbitration Act (Act) (710 ILCS 5/1 *et seq.* (West 2010)), namely to provide finality for labor disputes that are submitted to arbitration. See 710 ILCS 5/12 (West 2010) (court

may vacate an arbitration award only on grounds recognized at common law); *American Federation of State, County & Municipal Employees, AFL-CIO v. Department of Central Management Services*, 173 Ill. 2d 299, 304 (1996) (*AFSCME II*). Further, the Act contemplates that an arbitration award will be disturbed by the court only in cases of fraud, corruption, partiality, misconduct, mistake, or failure to submit the issue to arbitration. 710 ILCS 5/12(a) (West 2010); *Board of Education of the City of Chicago v. Chicago Teachers Union, Local No. 1*, 86 Ill. 2d 469, 474 (1981). The court is therefore "duty bound to enforce a labor-arbitration award if the arbitrator acts within the scope of his or her authority and the award draws its essence from the parties' collective-bargaining agreement." *AFSCME II*, 173 Ill. 2d at 304-05, citing *Board of Trustees of Community College District No. 508 v. Cook County College Teachers Union, Local 1600*, 74 Ill. 2d 412, 421 (1979).

¶ 29 Regarding the collective bargaining agreement, the parties effectively agreed that any question about the interpretation of the collective bargaining agreement would be settled by the arbitrator. This is because, in the collective bargaining agreement, "the parties have contracted to have their disputes settled by an arbitrator, rather than by a judge, [so] it is the arbitrator's view of the meaning of the contract that the parties have agreed to accept." *AFCSME II*, 173 Ill. 2d at 305. A court will not disturb the arbitrator's construction of the collective bargaining agreement simply because its interpretation differs from that of the arbitrator. *AFSCME II*, 173 Ill. 2d at 305.

¶ 30 Further, the court presumes that the arbitrator did not exceed his or her authority. *City of Northlake v. Illinois Fraternal Order of Police Labor Council, Lodge 18*, 333 Ill. App. 3d 329, 335 (2002). Thus, even if a court disagrees with the arbitrator's interpretation of the collective bargaining agreement, it is not a basis to disturb the arbitration award. *AFSCME II*, 173 Ill. 2d at 306. Likewise, a court will not disturb the arbitration award due to an error of law or of fact when

the award was within the submission of the parties and a full hearing had been held. *Northlake*, 333 Ill. App. 3d at 335. Indeed, a court will not disturb the arbitrator's award even if it determines that the award was against the manifest weight of the evidence. *Northlake*, 333 Ill. App. 3d at 335. With these principles in mind, we turn to the issue presented, namely, whether the arbitrator's award must be upheld.

¶ 31 The trial court properly upheld the arbitrator's factual determinations. The arbitrator determined that White had violated the District's rules and protocols when, on February 9, 2009, sometime before 2 p.m., he was absent from his assigned patrol area without permission from his superiors. This subjected White to disciplinary action. The arbitrator further found that, during the investigation of his actions on February 9, White had been inconsistent and inaccurate in answering questions posed and had not been completely truthful during the District's investigation. The trial court also properly accepted these factual determinations.

¶ 32 The arbitrator next determined that, while there was just cause to impose disciplinary sanctions against White, there was not just cause to terminate White. Rather, there was only just cause supporting disciplinary sanctions short of termination, such as a lengthy suspension without pay, which was what the arbitrator determined to be the appropriate penalty. In reaching this conclusion, the arbitrator considered White's history with the District, his performance evaluations, as well as the seriousness of the misconduct, and the possible and actual harm that could have or did result from the misconduct. The arbitrator held that, in line with the collective bargaining agreement and the district's philosophy, progressive discipline short of termination should have been imposed. The arbitrator also determined that White likely would have the opportunity to demonstrate that, as

a result of his corrective punishment, he understood and could follow the District's rules and protocols, as well as improve his conduct and his adherence to the District's rules and protocols.

¶ 33 In evaluating the arbitrator's decision, the trial court held that the arbitrator's conclusions as to discipline were "clearly erroneous and [were] not supported by the law and the terms of the collective bargaining agreement." This holding follows from the trial court's adoption of the standard of review applicable to administrative review. See *Lindemulder v. Board of Trustees of the Naperville Firefighters' Pension Fund*, 408 Ill. App. 3d 494, 500 (2011) (the administrative agency's findings of fact will be disturbed if they are against the manifest weight of the evidence; pure questions of law are reviewed *de novo*; mixed questions of law and fact are reviewed under the "clearly erroneous" standard). This standard, however is manifestly incorrect. The proper standard of review is that which we have outlined above: the arbitrator's award will be upheld "if the arbitrator acts within the scope of his or her authority and the award draws its essence from the parties' collective-bargaining agreement." *AFSCME II*, 173 Ill. 2d at 304-05. Thus, the court should have considered the arbitrator's findings to determine if they were obtained through fraud, corruption, partiality, misconduct, mistake, or if the parties failed to submit the issue to arbitration. *Board of Education*, 86 Ill. 2d at 474. There is nothing in the record to suggest that the award was obtained through fraud or corruption; there is likewise no indication in the record of the arbitrator's partiality or misconduct. Neither party has alleged that the arbitrator acted on a mistaken apprehension of the evidence or the law. Finally, there is no question about what was submitted to arbitration. Accordingly, there is no ground that would ordinarily justify setting aside the arbitrator's determination.

¶ 34 The District argues, that the public policy exception should apply to the arbitrator's decision, or, alternatively, that the arbitrator exceeded his authority. We consider each contention in turn, beginning with the public policy exception.

¶ 35 A court may not 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 is the basic rationale of the public policy exception, which allows a court to to vacate an arbitration award in narrow circumstances. See *AFSCME II*, 173 Ill. 2d at 306-07 (as with any contract, the court may not enforce an arbitration award that violates public policy). In order to employ the public policy exception to vacate an arbitration award, the arbitrator's interpretation of the collective bargaining agreement as evidenced by the arbitration award must violate some explicit public policy. *AFSCME II*, 173 Ill. 2d at 307. The public policy exception is narrow and can be invoked only when a contravention of public policy is clearly shown. *AFSCME II*, 173 Ill. 2d at 307. "Public policy" as utilized in this exception means a well defined and dominant public policy which is ascertainable by referring to the laws, constitution, and legal precedents of the state and not from generalized considerations of supposed public interests. *AFSCME II*, 173 Ill. 2d at 307. To determine what constitutes public policy, the courts may consider the constitution and statutes and, when those sources are silent, the judicial decisions and the consistent practices of governmental officials. *AFSCME II*, 173 Ill. 2d at 307.

¶ 36 In order to apply the public policy exception, the court uses a two-step process. The threshold question is whether the court can identify a well defined and dominant public policy regarding the issue in question. *AFSCME II*, 173 Ill. 2d at 307. If it can do so, then "the court must

determine whether the arbitrator's award, as reflected in his interpretation of the agreement, violated the public policy." *AFSCME II*, 173 Ill. 2d at 307-08.

¶ 37 The District tries to identify the public policy at issue here in terms of employing a mendacious and disobedient officer. The District purports to discern ample sources from which to conclude that the employment of an individual who would leave his post without permission and who would then be untruthful in explaining his actions contravenes clear public policy. The District's position, however, is the product of oversimplification and conflation.

¶ 38 First, the District tries to demonstrate the existence of a clear and dominant public policy, but it is unclear to what effect. The District argues that police officers are in a unique position of public trust and responsibility, suggesting, perhaps, that there is a public policy against employing untrustworthy and irresponsible persons as police officers. The District cites *Gardner v. Broderick*, 392 U.S. 273 (1968), and *Grabinger v. Conlisk*, 320 F. Supp. 1213 (N.D. Ill. 1970), to illustrate a police officer's responsibility and position of public trust. While we agree that a police officer enjoys a unique position in the workplace, we are not sure that this adequately demonstrates this state's dominant public policy on the matter. In the first place, the cases on which the District relies are from the federal jurisdiction, not Illinois. While the U.S. Supreme Court may, through its opinions, denominate the law and public policy of the nation, there is nevertheless a complete lack of examples of the purported public policy from the Illinois Constitution, statutes, or judicial opinions. Second, and perhaps more importantly, the cases provide only a generalized indication of the police officer's position in the workplace and in society. (We note that our supreme court cautioned that this state's public policy must be discerned by referring to the laws, constitution, and legal precedents of the state and not from generalized considerations of supposed public interests.

AFSCME II, 173 Ill. 2d at 307. The federal authority provides, at best, only generalized statements about the police officer's obligation to his or her public employer and the public trust placed in him or her.) Last, the District does not identify the precise issue in question. Instead, it hints that the issue may be that public policy is vaguely against employing a person who is untrustworthy and irresponsible as a police officer. (We do not believe that, even if more clearly defined, this would be the proper issue to address. Rather, we see the issue as whether it is against public policy to *reinstate* a police officer who left his assigned patrol area without permission and who thereafter was not forthcoming and was inconsistent in his explanations of his behavior on the date in question. Thus, the public policy being identified should deal with reinstatement, not general employment or cause to discharge. In our view, the District conflates the issues of general employment with cause to discharge in attempting to frame the proper issue.)

¶ 39 Next, the cases the District cited in support of its contention are more concerned with whether a police officer who leaves his post without permission and engages in untruthfulness thereafter may be discharged instead of whether an officer who committed actions that subjected him to discharge may be reinstated. In other words, the issue, as we see it, is about reinstatement, while the District focuses on discharge. The District primarily cites to *Launius v. Board of Fire and Police Commissioners of the City of Des Plaines*, 151 Ill. 2d 419, 435 (1992) (a police officer who abandoned his duties during an historic flood had given the department just cause to terminate him), and *Valio v. Board of Fire and Police Commissioners for the Village of Itasca*, 311 Ill. App. 3d 321, 331 (2000) (the administrative finding that the officer violated departmental rules subjected the officer to discharge). While the officers in *Launius* and *Valio* were properly subjected to discharge for their misconduct, this says nothing about this State's public policy regarding the reinstatement

of erring police officers. Instead, the cases may help guide an understanding of what sort of conduct may constitute just cause for the particular penalty of discharge. (We note that the issue of just cause for discharge has no bearing on the question of when the public policy exception may be used to vacate an arbitration award.) In addition, *Launius* and *Valio* are clearly administrative proceedings and not arbitrations, so they are subject to a more lenient standard of appellate review than arbitration awards, which may be disturbed only in a few circumstances. Compare *Lindemulder*, 408 Ill. App. 3d at 500 (describing standard of review for cases under administrative review), and *Board of Education*, 86 Ill. 2d at 474 (describing circumstances under which an arbitration award may be disturbed on appellate review).

¶ 40 Next, the District argues that the arbitration award in this case violated public policy and should be vacated. However, the District, as noted above, does not identify a clear and dominant public policy (beyond the admonition that a police officer may not freely leave his assigned area or place of duty and should be unfailingly truthful in responding to investigations of his conduct). Instead, it extensively quotes *AFSCME II* and its explanation of the public policy exception. This general discussion does nothing to determine what is the clear and dominant public policy or whether the arbitrator's award and interpretation of the collective bargaining agreement violated that public policy. Additionally, the District makes a case that certain misconduct can authorize the dismissal of the officer, citing, among others, *Valio*, 311 Ill. App. 3d at 330. While this is a correct statement of the law, it misses the precise issue here, namely, whether White's misconduct should bar his reinstatement because such a reinstatement would violate the State's clear public policy. Interestingly, the District completely ignores the rule that "the 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).

¶ 41 Instead, the District analyzes three cases which demonstrate the District's conception of the public policy: *Grabinger*, *Valio*, and *AFSCME II*. *Grabinger* involved issues of police officers' constitutional rights and due process under an internal investigation. *Grabinger*, 320 F. Supp. at 1217. Indeed, the District highlights the passage in which the contours of public policy are, in its view, being established. *Grabinger*, 320 F. Supp. at 1219-20 ("While we do not evaluate the relative importance of an honest municipal police force vis-a-vis the government's interest in national security, we must note that a law enforcement officer is in a peculiar and unusual position of public trust and responsibility"). *Grabinger* is inapposite to show whether the arbitrator's decision violated public policy because, at best, it offers only clues as to what the public policy is (albeit it is silent regarding reinstatement; instead it comments on the existence of cause to impose disciplinary sanctions).

¶ 42 Similarly, the District cites *Valio* for the importance of honesty in an officer's responses to questioning when undergoing an internal investigation. *Valio*, 311 Ill. App. 3d at 331. Again, while *Valio* may provide guidance in determining the public policy surrounding cause for discipline or termination, it does not answer any question with respect to the appropriateness of reinstatement. *Valio* is likewise inapposite.

¶ 43 The District cites *AFSCME II* as an analogous case, because there, the employee was dishonest in documenting that she performed her required tasks, and this was found to violate public policy mandating the protection of children, especially those under the aegis of the Department of Children and Family Services. *AFSCME II*, 173 Ill. 2d at 316. In that case, the court held that the

employee's reinstatement violated public policy because the arbitrator did not identify any means by which the state could be assured that the employee's reinstatement would not again harm the children under the protection of the DCFS. *AFSCME II*, 173 Ill. 2d at 317-18. While *AFSCME II*, at least, is procedurally and factually similar to the case at bar, there are two main points under which the District's attempt to analogize it to this case fails. First, unlike in *AFSCME II*, the District here has not demonstrated the clear and well defined public policy the reinstatement of White is supposed to violate. Second, the arbitrator's determination that suspension was warranted rather than discharge implicitly determines that White was amenable to discipline and would not be likely to commit future violations. *AFSCME II*, 173 Ill. 2d at 331-32 (the arbitrator's determination that an employee is amenable to discipline is a factual issue that cannot be questioned or rejected on review (under the proper standard of review); an express or implied determination by the arbitrator that an employee can be rehabilitated and is not likely to commit an act that violates public policy in the future suggests that it would be difficult to find a public policy barring reinstatement). Thus, while there is some applicability of *AFSCME II* to the issue of whether White's reinstatement would violate public policy, the analysis in *AFSCME II* actually refutes the District's reliance on it by suggesting that it would be difficult to find a public policy barring reinstatement after the employee has been deemed amenable to corrective measures. Accordingly, we also determine that *AFSCME II* is inapposite.

¶ 44 The District next contends that we should follow "consistent and persuasive arbitral precedent" to determine that the arbitration award here violated public policy. As an initial matter, arbitration decisions do not provide any sort of *precedent*. Precedent is defined as a "decided case that furnishes a basis for determining later cases involving similar facts or issues." Black's Law

Dictionary 1195 (7th ed. 1999). To constitute precedent, an arbitration decision would have to stand on equal footing with a reported appellate decision. It is clear, however, that the arbitral forum is nothing like the appellate forum; rather, it more akin to the trial court, in which the facts are determined followed by the application of law to those facts. We note that it is well settled that a trial court's decision has no precedential effect on an appellate court. *Hubbard Street Lofts LLC v. Inland Bank*, 2011 IL App. (1st) 102640, at ¶ 11. Likewise, an arbitrator's decision, being very similar to a trial court's decision, can have no precedential effect over an appellate court. Indeed, the trial court is called upon to review the arbitrator's decision, which necessarily suggests that the arbitration decision has no precedential effect over a trial court because it is an inferior tribunal to the trial court.

¶ 45 In addition, the arbitrations cited by the District appear to be distinguishable. In the first, the case involved a determination about just cause to terminate a police officer who was charged with leaving his post and later falsifying his time records to evade punishment. *City of Cooper City, Florida v. Broward County Police Benevolent Ass'n*, 118 LA (BNA) 842 (2003) (Hoffman, Arb.). In the second arbitration decision cited by the District, the case again involved whether there was just cause to terminate a police officer who had left his post without authorization. *Name Redacted,* 2008 AAA LEXIS 1119 (2008) (Bornstein, Arb.). The District cites to several more, all involving the question of whether just cause existed to terminate an employee who abandoned his post without permission. No purpose would be served to further recount these arbitration decisions, because, as we have noted previously, a decision about just cause to discharge the employee is inapposite to the issue here. Thus the arbitration decisions are inapposite to this case.

¶ 46 We have considered the District's arguments regarding whether a clear and dominant public policy can be identified regarding the reinstatement of a police officer who left his duty post and was not consistent in answering questions about his actions, concluding that no such public policy has been identified. We have further considered the authority advanced by the District attempting to demonstrate that the arbitrator's decision should be vacated as being against public policy, and found that authority to be distinguishable and inapposite. As a result, we reject the District's contention that the arbitrator's decision violated public policy and was required to be vacated. Thus, we reject the District's argument regarding the public policy exception.

¶ 47 Next, the District contends that the arbitrator's decision was outside of his authority and did not draw its essence from the collective bargaining agreement. Alternatively, the District contends that the arbitration decision contains "gross errors of judgment in law and gross mistakes in fact" requiring vacation of the arbitrator's decision. We agree with the District's statement of the law. Nevertheless, we do not believe that the district has sufficiently argued the point and, therefore, it has forfeited the contention on appeal.

¶ 48 The District initially argues:

> "An Arbitration Decision and Award can and should be vacated by this Court if the Arbitrator did not act within the scope of his authority, and/or did not draw its essence from the collective bargaining agreement. In addition and/or in the alternative, this Court can and should also set aside the Award because it contains both gross errors of judgment in law and/or gross mistatkes of fact."

The District supports this statement of law with citations to *AFSCME II*, *Garver v. Ferguson*, 76 Ill. 2d 1 (1979), *TruServ Corp. v. Ernst & Young LLP*, 376 Ill. App. 3d 218 (2007), and *Hawrelak v. Marine Bank, Springfield*, 316 Ill. App. 3d 175 (2000).

¶ 49 All of the cases note that review of an arbitration award is extremely limited and a court will disturb an arbitration award only in instances of fraud, corruption, partiality, misconduct, mistake, or failure to submit the question to arbitration. *AFSCME II*, 173 Ill. 2d at 304; *Garver*, 76 Ill. 2d at 7; *TruServ*, 376 Ill. App. 3d at 224-25; *Hawrelak*, 316 Ill. App. 3d at 179. The cases also note that an arbitrator's decision will not be set aside due to mistakes of law or fact or errors in the arbitrator's judgment, and we note that the District did not include this rule in its statement of the law. *Garver*, 76 Ill. 2d at 7; *TruServ*, 376 Ill. App. 3d at 224; *Hawrelak*, 316 Ill. App. 3d at 179. Finally, an arbitrator's decision may be set aside for gross errors of judgment in law or gross mistakes of fact, but only if they are apparent on the face of the arbitration decision (and we note that the District did not mention the caveat to this rule). *Garver*, 76 Ill. 2d at 10-11; *TruServ*, 376 Ill App. 3d at 224; *Hawrelak*, 316 Ill. App. 3d at 179. This final rule is further qualified: to use the gross error of law or gross mistake of fact standard, "the reviewing court must be able to conclude from the face of the award that the arbitrators were so mistaken as to the law that, if apprised of the mistake, they would have ruled differently" (*TruServ*, 376 Ill. App. 3d at 224-25), or a party must provide clear, strong, and convincing evidence that the award was improper (apparently as to any of the reasons to disturb an arbitration award, including the gross error/gross mistake standard) (*Hawrelak*, 316 Ill. App. 3d at 179). Once again, the District did not include this standard in its explanation of the law.

¶ 50 Following its block-citation to the four cases, the District quotes 18 passages from the arbitrator's written decision, apparently consisting of what it believes to be the pertinent factual findings made by the arbitrator. Thereafter, the District states:

> "The District respectfully submits that, having made such findings, and applying the relevant case law, the Arbitration decision and Award reinstating White: was not within the scope of the Arbitrator's authority; did not draw its essence from the collective bargaining agreement; and contained both gross errors of judgment in law and gross mistakes of fact, and should, therefore, be vacated, and White's dismissal be affirmed."

¶ 51 The sum and total of the District's analysis is contained in the three sentences quoted above. The first two sentences set forth, incompletely (and somewhat misleadingly), the legal rules that will apply. The third sentence conclusorily restates the District's contention. There is no analysis and no application of the identified rules to the facts, even to the pertinent facts singled out by the District. This is wholly inadequate and violates Supreme Court Rule 341(h)(7) (eff. July 1, 2008), which requires a party's argument to contain its "contentions *** and the reasons therefor." See also *People v. Kohler*, 2012 IL App (2d) 100513, ¶ 31 (the failure to actually include argument on an issue operates to forfeit appellate review of the issue). The District's argument contains its contentions, but wholly fails to include any of the reasons supporting its contentions. Accordingly, we hold that the District has forfeited this issue on appeal for failing to provide adequate argument to support its contention.

¶ 52 Last, the District contends that the arbitrator exceeded his authority under the collective bargaining agreement by ignoring the District's rights to make and enforce rules as well as its discretion to discharge an employee without first imposing progressive discipline short of discharge.

Additionally, the District argues that the arbitrator's decision was not drawn from the essence of the collective bargaining agreement. Generally, the arbitrator's authority 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 or her authority is one of law which we review *de novo*. *Anderson v. Golf Mill Ford, Inc.*, 383 Ill. App. 3d 474, 478 (2008). In determining whether an arbitration decision draws its essence from the collective bargaining agreement, the court determines whether the arbitrator limited him- or herself to interpreting the collective bargaining agreement, and even where the decision is based upon the arbitrator's misreading of the collective bargaining agreement, the court must uphold the decision so long as the arbitrator's interpretation was derived from the language of the agreement. *Amalgamated Transit Union, Local 241 v. Chicago Transit Authority*, 342 Ill. App. 3d 176, 180 (2003). The arbitrator's decision will be overturned for not drawing its essence from the collective bargaining agreement where the arbitrator based his or her decision on a body of thought, feeling, policy, or law outside of the agreement. *Amalgamated Transit Union*, 342 Ill. App. 3d at 180.

¶ 53 The parties agreed that the issues presented to the arbitrator were whether White was terminated for just cause and, if not, what was the appropriate remedy. The collective bargaining agreement 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 employee was discharged for just cause. *AFSCME I*, 124 Ill. 2d at 256. The arbitrator here determined that there was no "just cause" to discharge White, and this determination clearly fell within the scope of the authority stipulated to by the parties. After the arbitrator found that there was no "just cause" to discharge White, the arbitrator also had explicit authority to determine the appropriate remedy under the collective

bargaining agreement, pursuant to the parties' submission to arbitration. The arbitrator determined that the proper remedy in this case was suspension, as provided by the authority granted to the arbitrator by the parties. Accordingly, we hold that the arbitrator did not exceed his authority in rendering a decision.

¶ 54 As to whether the arbitrator's decision drew from the essence of the collective bargaining agreement, the arbitrator recognized that the District had promised to adhere to the principles of progressive discipline in the collective bargaining agreement. The arbitrator determined that, in light of the totality of the circumstances, balancing the seriousness of the offense with the fact that White remained close by his assigned patrol area, along with White's relatively good disciplinary record and the fact that he had never before been charged with or disciplined for leaving his patrol area without permission, there was insufficient cause for discharge. The arbitrator then impliedly determined that White was amendable to discipline short of discharge and was unlikely to commit similar violations in the future (see *AFSCME II*, 173 Ill. 2d at 331-32), and that the significance of the suspension would further serve to educate White in and deter him from future infractions of the District's rules. The arbitrator then determined that a suspension comprised of the time White had not been allowed to work during the pendency of the arbitration would be appropriate and corrective discipline for White and ordered White's reinstatement without back pay. The arbitrator had been granted the authority to determine White's proper punishment and did so utilizing the terms and concepts set forth in the collective bargaining agreement. We discern nothing from the "outside" of the collective bargaining agreement influencing or causing the arbitrator's decision and, accordingly, we cannot say that the arbitrator's decision in this case did not draw from the essence of the collective bargaining agreement.

¶ 55 The District argues that the terms of the collective bargaining agreement are somewhat unusal and stricter than most. According to the District, the collective bargaining agreement expressly lists its extensive "Management Rights," including the rights to manage and direct its employees, and to discharge them for just cause (although we note that this statement includes the rights to also suspend, demote, and take other disciplinary actions). In addition, according to the District, the collective bargaining agreement circumscribes the arbitrator's powers by expressly withholding from the arbitrator the "right to amend, modify, nullify, ignore, add to , or subtract from the provisions of this Agreement." The District further contends that the collective bargaining agreement vested it with the power to assess various penalties, including discharge, when the District finds just cause to institute disciplinary action against an employee. The District therefore concludes that it has "broad discretion with respect to the promulgation of rules and the imposition of discipline, including the option of discharge," and that the arbitrator exceeded his authority in fashioning his decision. We disagree.

¶ 56 Notably absent from the District's contention is the precis of the arbitrator's basic authority in this case, embodied in the issues submitted for arbitration: whether White was discharged for just cause and, if not, what was the appropriate remedy. The arbitrator expressly determined that there was insufficient cause for discharge. According to the issues the parties agreed to submit to the arbitrator, he was then empowered to determine the appropriate remedy and did so. Further, the remedy did not violate the terms of the collective bargaining agreement or draw from sources outside of the collective bargaining agreement. Accordingly, the arbitrator did not exceed his authority and the decision was drawn from the essence of the collective bargaining agreement.

¶ 57 The District cites to *Truck Drivers & Helpers Union Local 784 v. Ulry-Talbert Co.*, 330 F.2d 562, 564-65 (8th Cir. 1964), to support its argument that the arbitrator exceeded his authority. *Truck Drivers*, however, is inapposite, because there, the parties agreed only to submit the question of whether there was just cause for discharge. *Truck Drivers*, 330 F.2d at 564. The parties did not submit the second issue that was submitted here, namely, if there was no just cause for discharge, what should be the appropriate discipline. Thus, the court's holding that the arbitrator exceeded his authority in *Truck Drivers* was based on on the fact that the arbitrator had not been granted authority to determine the appropriate discipline, but did so anyway. *Truck Drivers*, 330 F.2d at 564-65. Here, the parties expressly submitted the issue of determining appropriate discipline if there were not sufficient cause to discharge, so *Truck Drivers* is inapposite.

¶ 58 The District next assails the arbitrator's reasoning. This is improper under the standard of review we follow. See, *e.g.*, *AFSCME II*, 173 Ill. 2d at 304 (grounds to disturb the arbitrators decision are limited to fraud, corruption, partiality, misconduct, mistake, or failure to submit the question to arbitration). Effectively, the arbitrator's reasoning is inviolate, if it is conducted in good faith and is within his or her authority. *Garver*, 76 Ill. 2d at 7; *TruServ*, 376 Ill. App. 3d at 224; *Hawrelak*, 316 Ill. App. 3d at 179. Thus, we reject the District's argument on this point.

¶ 59 The District also takes exception to the arbitrator's statements in which he expressed his belief that White would learn from his mistakes and would not repeat them. According to the District, this language was drawn from outside of the collective bargaining agreement and excused the inexcusable. We disagree. The arbitrator followed the tenets of progressive discipline contained in the collective bargaining agreement. The statements the District objects to show that the arbitrator believed that White was capable of reforming his conduct in the future, and satisfies the principle

in *AFSCME II*, 173 Ill. 2d at 331-32, suggesting that the employee needs to be amendable to lesser discipline in order to justify the determination that a penalty less than discharge is the appropriate discipline. We reject the District's contention on this point.

¶ 60 The District next asserts that the collective bargaining agreement reserved solely to the District the right to determine whether discipline is merited and what level of discipline to impose. While it is true that the collective bargaining agreement contains provisions reserving various rights to the District, the argument is, on its face, absurd. The collective bargaining agreement also provides for a grievance procedure and mandatory binding arbitration for grievances that cannot be settled by the parties. In effect, the District's view effectively ignores these provisions in favor of those that reserve certain rights to the District as employer. We reject the District's contention on this point.

¶ 61 The District continues, and points specifically to section 18.3 of the collective bargaining agreement, which provides that:

> "[t]he arbitrator shall be without power to make any decision or award that is contrary to or inconsistent with, in any way, applicable laws, or of rules and regulations of administrative bodies that have the force and effect of law. The arbitrator shall not in any way limit or interfere with the powers, duties and responsibilities of the District under law and applicable court decisions."

The District argues that the arbitrator's decision violated this passage. We disagree. The parties expressly submitted the issues of whether White was discharged with just cause, and if not, what was the appropriate discipline to impose. The arbitrator ruled on those issues and only those issues and

did not limit or interfere with the District's powers, duties, and responsibilities. We continue to reject the District's argument on this point.

¶ 62 Last the District purports to state the precise provisions with which it believes that the arbitrator's decision conflicts, namely sections 24.8 and 18.3 of the collective bargaining agreement. The District argues that it has the right to discharge White without resort to progressive discipline under section 24.8. We agree it does, but there must still be just cause in order to discharge White. The arbitrator concluded that there was not sufficient cause to justify discharge, and this conclusion does not conflict with section 24.8 of the collective bargaining agreement. Additionally, we view the proper issue to be one of reinstatement for purposes of determining whether public policy was violated; the District's claim does not regard reinstatement, so it misses that issue altogether.

¶ 63 The District argues that the arbitrator's decision was contrary to and inconsistent with applicable laws in violation of the provisions of section 18.3 of the collective bargaining agreement. The previous paragraphs of this disposition have laid out the applicable laws and demonstrated that the arbitrator's decision was within and consonant with those laws. Thus, we reject this argument.

¶ 64 The District argues that the arbitrator's decision limited and interfered with its powers, duties, and responsibilities, again violating section 18.3. This argument fails because the arbitrator decided only the issues submitted to it. Further, the argument is absurd, because, if followed literally, then nothing could be submitted to an arbitration, because a result adverse to the District's position would limit and interfere with the District's powers, duties, and responsibilities, thus rendering part of the collective bargaining agreement either nugatory or illusory. We must interpret a contract to give effect to all of its provisions and not interpret it so as to nullify any of its provisions or render them

meaningless. *Burcham v. West Bend Mutual Insurance Co.*, 2011 IL App (2d) 101035, at ¶ 41. Accordingly we reject this point as well.

¶ 65 The District implies that the arbitrator's decision was not final and binding because it was not rendered in accord with the limitations of section 18.3. We disagree. We have demonstrated that the arbitrator did not exceed his authority or otherwise fail to comply with the provisions of section 18.3. Accordingly, we reject this argument.

¶ 66 Finally, the District argues that the arbitrator violated section 18.3 because his decision effectively changed or modified the collective bargaining agreement. We disagree. The District has made no showing that the the arbitrator did anything other than adjudicate the dispute before him. Further, the parties expressly agreed that the issues subject to arbitration were whether cause existed to discharge White, and if not, what was the appropriate discipline. We do not perceive how answering these questions would implicate the other terms of the collective bargaining agreement. Further, as we have noted repeatedly, the argument leads to an absurd result, because if followed literally, the District is effectively saying that any arbitration on any issue that reaches a result different from its position necessarily interferes with its powers and changes the collective bargaining agreement. In effect, the District's position, if accepted, would render the arbitration provisions meaningless or illusory, and we cannot interpret the collective bargaining agreement in such a manner. *Burcham*, 2011 IL App (2d) 101035, at ¶ 41. Accordingly, we reject this contention.

¶ 67 The judicial review of an arbitration decision is closely limited. The District failed to demonstrate that there was a clear and dominant public policy that conflicted with White's reinstatement. The District also failed to demonstrate that the arbitrator exceeded his authority or that his decision was not drawn from the essence of the collective bargaining agreement.

Accordingly, we must uphold the arbitrator's original decision, and we therefore reverse the trial court's judgment.

¶ 68 For the foregoing reasons, the judgment of the circuit court of Lake County is reversed.

¶ 69 Reversed.