2017 IL App (2d) 170271-U
No. 2-17-0271
Order filed December 22, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

EAST DUNDEE AND COUNTRYSIDE FIRE PROTECTION DISTRICT, Petitioner-Appellant, v. INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 4684 and ANTHONY P. POMPA, Respondents-Appellees.	)	Appeal from the Circuit Court of Kane County. No. 16-MR-62 Honorable David R. Akemann, Judge, Presiding.

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

ORDER

¶ 1 *Held*: In finding that the District did not have just cause to discharge the firefighter, and instead imposing a suspension, the arbitrator did not violate public policy, exceed his authority, or usurp the District's management rights.

¶ 2 The petitioner, the East Dundee and Countryside Fire Protection District (District), appeals the order of the circuit court of Kane County, which affirmed the arbitration award vacating the District's termination of the respondent, Anthony Pompa, and instead imposing a suspension. The District argues that the trial court erred in affirming the arbitration award. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The District, Pompa, and the respondent, the International Association of Firefighters Local 4684 (Union), were parties to a collective bargaining agreement (CBA). Pompa is a fire lieutenant and has been employed by the District for 15 years. On February 24, 2015, in accord with the procedures required under the CBA, the District filed a complaint with the District's Board of Fire Commissioners (Board) seeking the termination of Pompa's employment. In the complaint, the District alleged that Pompa had sent, via email, a continuing education test answer sheet to two firefighter/paramedics. The record indicates that the email was sent on January 11, 2015, and that it was a scantron answer sheet that was filled out by hand, had Pompa's name on it, and was dated January 8, 2015. The District set forth the previous disciplinary action that had been taken against Pompa, which included a July 22, 2014, demotion from assistant chief to lieutenant for violation of numerous District policies and an August 2, 2014, written warning for violation of the District's email use policy. Given Pompa's disciplinary history, the District argued that termination was the appropriate discipline for disseminating the test answers.

¶ 5 On April 16, 2015, a hearing commenced before the Board. The District's Fire Chief, Steve Schmitendorf, testified that he had been the District's chief for the last five years and was assistant chief for 10 years prior to that. In regards to continuing education for paramedics, Schmitendorf testified that he did not know all the requirements. He knew that some of the continuing education was hands-on and some of it was self-study, which included video training. Schmitendorf's understanding was that, while paramedics could watch the videos together and talk about them, the exams were to be done individually.

¶ 6 When Schmitendorf discovered that Pompa had sent the answer sheet, he asked his assistant chief, Jason Parthun, to confirm that it was an answer sheet for a continuing education class. Schmitendorf acknowledged that the answer sheet had Pompa's name on it. Schmitendorf testified that there was no reason to be sending out answer sheets other than for purposes of

cheating. Schmitendorf believed that a lack of proper continuing education would place the public's safety in jeopardy. Schmitendorf testified that he conducted an investigation prior to commencing disciplinary action. He confirmed with Sherman Hospital that the test was supposed to be taken individually. He also spoke with one of the recipients of the email, Mark Setzer.

¶ 7 On cross-examination, Schmitendorf testified that Sherman Hospital was in charge of the continuing education requirements for the department. At some point prior to January 2015, Sherman Hospital made some modifications to how continuing education was done, which included more home self-study that could be done in a group or individual setting. He acknowledged that the email sent by Pompa had no language in the body of it. He was familiar with the Firefighter's Disciplinary Act (50 ILCS 745/1 *et seq*. (West 2014)) and knew that he had the right to question Pompa about the email. He acknowledged that he never asked Pompa why he sent the email. Schmitendorf did not know if Sherman Hospital had a policy prohibiting paramedics from sharing their answer sheets after a test.

¶ 8 Justin Williams testified that he was the emergency medical systems coordinator for Sherman Hospital. Paramedics were required to have 100 hours of continuing education every four years to maintain certification. In January 2015, a new process started whereby paramedics were placed in one of two groups. The first group had a live instructor cover the continuing education material and then the instructor gave a test. The second group received a take home packet or CD so they could study and complete the work at their own pace. The second group also had to take a test and turn it in. Williams acknowledged that there was never a written rule that said the paramedics had to complete the tests individually. He said it was foreseeable that paramedics would work together on the take home tests. He would not have expected that someone would just copy someone else's answers. On February 3, 2015, Sherman Hospital sent

out a letter clarifying that paramedics should take the tests individually after completing the required assignments.

¶ 9 Mark Setzer testified that he was a firefighter paramedic and had been employed by the District for about 10 years. His paramedic license was still valid but he was not working due to an injury. He acknowledged that Pompa sent him an email with an answer sheet. He did not ask for the answer sheet to be sent to him. Setzer testified that he opened the email and looked at it but did not do anything with it, tell anyone about it, or forward it to anyone. When he looked at the answer sheet, he believed that it was Pompa's answers for a continuing education test that Pompa had taken. Setzer testified that he did not use the answer sheet while taking any continuing education tests because he thought it would be "almost like cheating." On cross-examination, Setzer acknowledged that he did not know why Pompa sent him the email and that it could have been sent by mistake. Pompa had never previously encouraged him to cheat or do anything else improper or illegal.

¶ 10 Jason Parthun testified that he was the District's assistant fire chief and he was also a paramedic. Parthun testified that lieutenants are like shift commanders and have a heightened level of responsibility as they need to provide leadership and direction. Sherman Hospital was responsible for providing continuing education opportunities for the department. Parthun testified that he participated in continuing education training every month to maintain his paramedic license. The new self-study continuing education was basically a PowerPoint presentation with a voice over. After viewing the presentation, the paramedic had to take a written exam. While the instruction was in a group setting, the tests were taken independently. Based on his investigation, what Pompa sent to Setzer and another paramedic was the January continuing education test answer sheet. Parthun testified that both paramedics who received the answer sheet were off duty due to injuries. Parthun opined that Pompa sent them the answer

sheet so that the recipients did not have to go somewhere, such as the firehouse or the hospital, to view the presentation. Since the occurrence with Pompa, Sherman Hospital had sent a letter, and addressed in continuing education sessions, that the sharing of answer sheets was not allowed.

¶ 11 On cross-examination, Parthun acknowledged that under the Firemen's Disciplinary Act (50 ILCS 745/1 *et seq*. (West 2014)) he would have been allowed to question Pompa about why he sent the email containing the answer sheet, but he never did so. He did informally question Setzer about the email. He opined that Pompa's reason for sending the email was for the purpose of cheating because there would be no other reason to share the answer sheet. Parthun believed termination was justified because cheating was unethical.

¶ 12 Pompa presented no evidence or exhibits and did not testify on his own behalf. Following closing arguments, the Board sustained the charges against Pompa. The Board then conducted a hearing as to the appropriate remedy. Schmitendorf testified that on July 22, 2014, Pompa was demoted from assistant chief to the rank of lieutenant for failure to adequately perform the role of assistant chief and other violations of District policy. These violations included the placing of inappropriate Facebook postings, altering a department-owned vehicle without permission, making negative comments about the chief and other employees, sending a threatening text message to an employee, insubordination, and mishandling a grievance filed against the District. Pompa could have requested a hearing in front of the Board to challenge his demotion but did not do so.

¶ 13 On August 2, 2014, Pompa was given a written warning for violation of the District's email use policy. Pompa had forwarded an email from the chief regarding department issues to an outside individual that worked for another fire department. In addition, Pompa had repeatedly posted derogatory comments on Facebook that, according to Schmitendorf, reflected poorly on the department. Pompa filed a grievance regarding this disciplinary action.

¶ 14 Finally, Schmitendorf testified that the sending of the email with answers to the continuing education exam was, alone, sufficient to warrant termination because it violated a level of trust. He did not want untrustworthy people working for the department. Schmitendorf testified that Pompa was the only employee that he had sought to terminate since 2000.

¶ 15 On June 18, 2015, the Board voted to terminate Pompa's employment with the District. On July 21, 2015, the Board issued its written findings and decision. The Board found that Pompa utilized the District's computers to email test answer sheets to two of the District's paramedics. The answer sheets were related to continuing education requirements for paramedic certification of District employees. Pompa did not contest that he sent the email. At the time it was sent, Pompa served in a supervisory capacity and was expected to show exemplary leadership. The paramedics that received the email were required to participate in the continuing education process. The Board found that the email was intended to allow the paramedics to bypass learning the continuing education materials. The sending of the emails violated District rules related to the use of computer equipment, electronic mail, truthfulness, and ethical conduct. The Board found that Pompa's conduct was a serious ethical violation which encouraged other employees to cheat on continuing education requirements and that this conduct could have seriously compromised public safety. The Board concluded that Pompa's conduct justified the sanction of termination.

¶ 16 On July 23, 2015, Pompa filed a grievance in response to his termination and the matter proceeded to arbitration as required by the CBA. The issue set for arbitration was whether the District had just cause to terminate Pompa and, if not, a determination as to the appropriate remedy. In lieu of holding another hearing, the parties agreed to submit the matter for ruling based on the administrative record that was created during the proceedings held before the Board.

¶ 17 On January 6, 2016, the arbitrator issued a written decision. The arbitrator found that it was undisputed that Pompa sent an email to two paramedics that contained an answer sheet for a continuing education test that the paramedics were required to take. The arbitrator stated that he was "extremely troubled by the absence of any statement or testimony" from Pompa. The arbitrator noted that if Pompa sent the email to allow the two paramedics to bypass the training and just take the exam, such conduct would be unethical and could have negative ramifications for the District. However, the arbitrator stated that he could not make such a finding without any type of statement from Pompa. The arbitrator noted that Schmitendorf assumed the reason the email was sent was for the purpose of cheating, but the chief never confirmed that by asking Pompa. The arbitrator stated it was impossible to know why Pompa sent the email "since he was not given the opportunity prior to his discharge to explain why he sent the answers." The arbitrator found that the "failure to give [Pompa] any opportunity to explain his action prior to discharge deprived him of his due process." The arbitrator further found that the failure to have any explanation from Pompa did not "inevitably lead to the conclusion the sending of the email was *per se* wrong." The arbitrator noted that the District had the burden of proof in the case and found that the District had not met its burden as Pompa had been an employee for 15 years and there was no evidence of dishonesty during that time. The arbitrator concluded that he had no choice but to vacate the discharge and reinstate Pompa as an employee of the District. Nonetheless, the arbitrator stated that Pompa should have set forth in the email why it was being sent and, if he had done so, he could have alleviated the need for the disciplinary proceeding. The arbitrator imposed, as the appropriate remedy, a 30-day suspension.

¶ 18 On January 22, 2016, the District filed a complaint in the circuit court of Kane County to vacate the arbitration award and reinstate the Board's order of discharge. On March 9, 2017, the

trial court denied the District's request to vacate the arbitration award. Thereafter, the District filed a timely notice of appeal.

¶ 19 II. ANALYSIS

¶ 20 On appeal, the District argues that the arbitrator's award should be vacated. We review the decision of the arbitrator, not the circuit court's review of the arbitrator's decision. See, *e.g.*, *Firefighters v. City of Chicago*, 323 Ill. App. 3d 168, 169 (2001). The judicial review of an arbitrator's award is extremely limited and the award must be construed, if possible, as valid. *American Federation of State, County & Municipal Employees, AFL-CIO v. State of Illinois*, 124 Ill. 2d 246, 254 (1988) (*AFSCME I*). This standard gives effect to the legislature's intent in enacting the Illinois Uniform Arbitration Act (Act) (710 ILCS 5/1 *et seq*. (West 2014)), which is to provide finality for labor disputes that are submitted to arbitration. See 710 ILCS 5/12 (West 1994) (a 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*). "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." *Id.* 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." *Id.* at 304-05.

¶ 21 The District argues the arbitrator's decision should be vacated because it violates public policy. Alternatively, the District argues that it should be vacated because the arbitrator exceeded his authority and because he usurped the District's management rights. For the reasons that follow, we disagree.

¶ 22 A. Award Does Not Violate Public Policy

¶ 23 The District first argues that the arbitrator's award violates public policy. Courts have crafted an exception whereby an arbitration award that violates public policy is not enforceable. *City of Highland Park v. Teamster Local Union No. 714*, 357 Ill. App. 3d 453, 460 (2005). Under the exception, the public policy must be 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 consideration of supposed public interests. *AFSCME II*, 173 Ill. 2d at 307. An application of the public policy exception is a two-step process. *AFSCME II*, 173 Ill. 2d at 307-08. First, the appellant must identify a well-defined and dominant public policy. *Id.* Second, the court must determine whether the arbitrator's award violated that public policy. *Id.*

¶ 24 The District argues that Pompa's act of disseminating answers to a continuing education exam, and the arbitrator's award reinstating him to his position, violated public policy because the behavior was unethical and put the public at risk. The District notes, and we agree, that there is an established public policy in Illinois favoring safe and effective fire prevention services. See *Chicago Fire Fighters Union Local No. 2 v. City of Chicago*, 323 Ill. App. 3d 168, 176 (2001). Further, at oral argument the parties agreed that there was a public policy against firefighters and paramedics cheating on continuing education exams. We need not decide whether there is in fact a well defined public policy against cheating on continuing education exams because, even if there were, we would not find that the arbitrator's award violated these public policies.

¶ 25 The District's argument that the arbitrator's award violated public policy is founded on the principle that it was unethical for Pompa to disseminate the test answers because the purpose was to allow the recipients to bypass continuing education training and cheat on the test. However, this is an issue of fact to which the arbitrator's characterization is entitled to deference. *Griggsville-Perry Community Unit School District No. 4 v. Illinois Educational Labor Relations Board*, 2013 IL 113721, ¶ 18 (by agreeing to arbitration, the parties have agreed to accept the

arbitrator's view of the facts). The arbitrator found that the District failed to prove that Pompa had sent the email for an improper purpose. The arbitrator noted that there were other reasonable explanations for why the email was sent and that, during Pompa's 15 years of employment, there was no evidence that Pompa had been dishonest. It is well established that a court will not disturb an arbitrator's ruling simply because its interpretation differs from that of the arbitrator. *Herricane Graphics, Inc. v. Blinderman Construction Co., Inc.*, 354 Ill. App. 3d 151, 155 (2004). 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. *City of Northlake v. Illinois Fraternal Order of Police Labor Council, Lodge 18*, 333 Ill. App. 3d 329, 335 (2002). After considering the transcript of the hearing before the Board, the arbitrator determined that the evidence did not establish that Pompa sent the email for the purpose of cheating. We may not reweigh the evidence that was before the arbitrator. *Griggsville-Perry Community Unit School District No. 4*, 2013 IL 113721, ¶ 18 (a court may not reweigh the merits of a grievance). In the absence of a finding that Pompa sent the email for the purpose of cheating or for any other unethical reason, we must reject the District's contention that the arbitration award violated public policy.

¶ 26 We note that the District relies on *Chicago Fire Fighters Union Local No. 2 v. City of Chicago*, 323 Ill. App. 3d 168 (2001), and *Department of Central Management Services v. American Federation of State, County and Municipal Employees*, 245 Ill. App. 3d 87 (1993), in arguing that the arbitrator's award violated public policy. In *Chicago Fire Fighters*, the First District Appellate Court found an arbitrator's award violated public policy, stating:

> "[T]he arbitrator's award reinstating the discharged firefighters violates the well-established public policy favoring safe and effective fire prevention services in the critical matter of public safety. [Citation.] The conduct at issue in the present case was recorded on videotape and reveals public safety workers in an on-going state of

> intoxication, some participants setting about to perform their duties by way of responding to an alarm for a fire. Nevertheless, the arbitrator ordered reinstatement and barred all discipline and sanctions without considering the merits of the case. Firefighters have the extraordinary responsibility for carrying out the well-stated public policy of safe and effective fire prevention. Firefighters must be prepared to respond immediately to emergency conditions at all times, and in all weather conditions, whenever the alarm bell in the firehouse sounds." *Chicago Fire Fighters*, 323 Ill. App. 3d at 183.

¶ 27 In *Central Management Services*, the Fourth District Appellate Court reversed an arbitration award reinstating a DCFS child protective investigator who filed a fabricated report related to alleged child abuse. In finding that the award violated public policy, the court stated:

> "Because we find, after an examination of the statutes, as well as the regulations promulgated by DCFS, a public policy favoring truthful documentation of child abuse investigations exists, we next address whether the arbitrator's award violated this public policy. Grievant's conduct in fabricating the report must be considered in context of the duty imposed upon her in her sensitive position of investigating allegations of child abuse. [Citation.] Public policy mandates truthful reporting of child abuse investigations, and the arbitrator found she did in fact falsify the report. Thus, under the circumstances, reinstating the grievant would violate public policy. It is the grievant's specific conduct in the course of her employment which violates public policy. The safety and well-being of children require zealous investigation and honest reporting. Fabricating investigative reports endangers the lives of children suspected of living in an abusive environment. Public policy demands such conduct not be tolerated by employers and that they have power to discharge those engaging in such activity. Public policy cannot countenance reinstatement of this grievant. Her lies must be considered in the

> context of the duty imposed upon her by her position. Her lies defeat the essential purpose of her job—to investigate child abuse and protect children and families." *Central Management Services*, 245 Ill. App. 3d at 98.

¶ 28 These cases are distinguishable from the present case. In *Chicago Fire Fighters* and *Central Management Services*, there was no doubt the alleged conduct occurred. In *Chicago Fire Fighters* the conduct was recorded on videotape and in *Central Management Services* the arbitrator found that the investigator had falsified the report at issue. In the present case, however, while the email was clearly sent, the arbitrator found that the District failed to sustain its burden of proving that it was sent for an improper purpose. Additionally, in the cited cases, the arbitration awards essentially condoned blatant and specific violations of established policies, and the misconduct "went to the heart of the worker's responsibilities" (*AFSCME II*, 173 Ill. 2d at 310). Because there was no finding of any unethical conduct, the facts in the present case do not rise to the level of the gross unfitness or illegality present in *Chicago Fire Fighters* and *Central Management Services*.

¶ 29 B. Arbitrator Did Not Exceed His Authority

¶ 30 The District next argues that the arbitrator's award should be vacated because his decision exceeded his authority and did not draw its essence from the CBA. The District notes that section 7.5 of the CBA states that the "arbitrator shall be without power to make any decision or award with [*sic*] is contrary to or inconsistent with, in any way, applicable state, local or federal laws, or of rules and regulations of state or federal administrative bodies, that have the force and effect of law."

¶ 31 A court must presume that an arbitrator did not exceed his or her authority. *Northlake*, 333 Ill. App. 3d at 335. A court will not disturb an 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 was granted. *Id.*

In fact, a court will not disturb the arbitrator's award even if it determines that the award was against the manifest weight of the evidence. *Id.* In contrast to the deference given to an arbitrator who acts within his or her authority, the issue of whether an arbitrator exceeded his or her authority is reviewed *de novo*. *City of Chicago v. American Federation of State, County & Municipal Employees, Council 341*, 283 Ill. App. 3d 446, 451 (1996).

¶ 32 In the present case, the parties agreed that the issue to be decided by the arbitrator was whether there was just cause to terminate Pompa and, if not, to determine 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. Accordingly, the arbitrator's determination that there was no just cause to terminate Pompa clearly fell within the scope of his authority as agreed by the parties. After finding that there was no just cause to discharge Pompa, the arbitrator then had the explicit authority to determine an appropriate remedy. The arbitrator determined that the appropriate remedy was suspension. Accordingly, the arbitrator did not exceed his authority in rendering his decision.

¶ 33 The District next argues that the arbitrator exceeded his authority because he applied a beyond a reasonable doubt standard of proof. In arbitration proceedings the burden of proof required to support the termination of an employee is unsettled and, thus, the arbitrator generally determines the required quantum of proof. *Village of Posen v. Illinois Fraternal Order of Police Labor Council*, 2014 IL App (1st) 133329, ¶ 40. Generally, the preponderance of the evidence standard is applied to ordinary discipline and discharge cases. *Id.* However, many arbitrators will apply a higher burden of proof, such as a clear and convincing evidence standard, in cases involving criminal conduct or stigmatizing behavior. *Id.* When a collective bargaining agreement is silent as to the requisite burden of proof, the parties, by agreeing to arbitration, have

also agreed to accept the arbitrator's view of the contract and the required quantum of proof. *Id.* The arbitrator noted that the District's premise was that Pompa sent the email for the purpose of cheating. The arbitrator further noted that "there [was] no substantiation of that premise," "might be" was "just not enough," and that the arbitrator could not say that the District was correct. The District focuses on the latter comment in arguing that the arbitrator applied a beyond a reasonable doubt standard of proof. However, the arbitrator's other statements suggest that he arguably applied a lesser quantum of proof, such as the clear and convincing evidence standard. The arbitrator noted that in cases involving dishonesty, there is a higher burden of proof. Regardless, however, the arbitrator was allowed to determine the required burden of proof (*id.*) and the record does not clearly establish that the arbitrator used an improper burden of proof in his analysis.

¶ 34 The District also argues that the arbitrator exceeded his authority in finding a due process violation. The District notes that the arbitrator found that the "failure to give [Pompa] any opportunity to explain his action prior to discharge deprived him of his due process." The District argues that there was no due process violation as it was not required by the CBA or any other rule or statute to interrogate Pompa before his employment was terminated. Further, Pompa had the opportunity to testify at the hearing before the Board but chose not to do so. This contention is also without merit.

¶ 35 An arbitrator's decision will not be set aside due to mistakes of law or fact or errors in the arbitrator's judgment. *Garver v. Ferguson*, 76 Ill. 2d 1, 7 (1979). 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 arbitrator's decision. *Id.* at 10-11. Further, "[t]o vacate an award based on a gross error of law, a reviewing court must be able to conclude, from the award's face,

that the arbitrator was so mistaken as to the law that, if apprised of the mistake, he would have ruled differently." *Herricane Graphics*, 354 Ill. App. 3d at 156.

¶ 36 At oral argument, the Union argued that the arbitrator was referring to "industrial due process" as established in the arbitration decision of *Enterprise Wire Co. v. Enterprise Independent Union*, 46 Lab. Arb. Rep. (BNA) 359 (Mar. 28, 1966).[1] In that case, Arbitrator Carroll R. Daugherty issued an arbitration decision establishing a seven-prong approach to be used in determining whether there was just cause for a bargaining unit employee's termination. In making his determination in this case, the arbitrator noted that prongs three through five of the seven-part *Enterprise Wire* test involved a determination as to whether the employer made an effort to determine whether the employee violated a rule, was the investigation fair and objective, and was there substantial proof the employee was guilty. The arbitrator noted that the failure to meet one of the tests was not necessarily grounds to overturn a termination, but that "the basic premise of the tests that the accused be given due process nevertheless remains strong." Thus, the Union is arguably correct that the arbitrator was referring to some type of industrial due process and noting that the District had failed to meet tests three, four, and five of the seven-part *Enterprise Wire* test.

¶ 37 Nonetheless, even if the arbitrator was referring to constitutional due process, we would still hold that the arbitrator did not exceed his authority. At the outset, it is important to note that we agree that Pompa was not deprived of due process. He had a hearing and a full opportunity to be heard at the hearing before the Board. See *Petersen v. Chicago Plan Commission of City of Chicago*, 302 Ill. App. 3d 461, 466 (1998). The District was not required to question Pompa

[1]*Enterprise Wire* is a labor arbitration decision not issued by an appellate court in this state and has no precedential value.

prior to taking disciplinary action and Pompa had no obligation to testify on his own behalf before the Board. The arbitrator's reference to "due process" is only a basis to overturn his decision if it was a gross error of law. *Garver*, 76 Ill. 2d at 10-11. We hold that the arbitrator's reference to "due process" was not a gross error of law. The arbitrator noted that the failure to be questioned prior to the filing of the complaint for discharge was not a basis, alone, to overturn the discharge. Thus, the arbitrator did not vacate the Board's decision merely because the District failed to interrogate Pompa. Rather, the sum and substance of the arbitrator's determination was that, in the absence of any explanation from Pompa, the circumstances of the case did not lead to one conclusion—that Pompa sent the email for the purpose of cheating. The arbitrator found that there were also other equally plausible explanations and that the District had failed to sustain its burden of proof. As such, the arbitrator's reference to due process is not a sufficient basis to vacate its award because it was not a gross error of law such that, if apprised of the mistake, the arbitrator would have ruled differently (*Herricane Graphics*, 354 Ill. App. 3d at 156).

¶ 38 The District argues that Pompa's failure to testify at the hearing before the Board left the evidence it presented uncontroverted and that, therefore, the arbitrator's decision exceeded his authority as it was contrary to law. However, it is axiomatic that even uncontroverted evidence must be sufficient to sustain a charge. The arbitrator found that the evidence was not sufficient to show that Pompa sent the email for an improper purpose. The evidence indicated that, at the time the email was sent, there was a basis to believe that paramedics could work together on the continuing education exams. Although there was an assertion by the District at oral argument that Pompa sent the answer key to the continuing education exam, the testimony and the record indicate only that it was an "answer sheet" and that it had Pompa's name on it. It would not be unreasonable for the arbitrator to conclude that Pompa sent his own answer sheet and that he

viewed it as working together on the continuing education exam. What the District is essentially arguing **is** that the arbitrator's determination was against the manifest weight of the evidence. However, as previously noted, that is not a basis to overturn an arbitrator's award. *Northlake*, 333 Ill. App. 3d at 335 (an arbitrator's award should not be disturbed even if it is against the manifest weight of the evidence).

¶ 39 In so ruling, we emphasize that we are not affirming the arbitrator's decision because Pompa was not questioned prior to the disciplinary action taken against him. The failure to question an employee prior to disciplinary action being taken does not automatically preclude any later finding that there was just cause for discharge. The issue here is whether the District sustained its burden of proof. The arbitrator found that the District had not done so. Other than reweighing the evidence, which we are not allowed to do (*Northlake*, 333 Ill. App. 3d at 335), the District has not successfully provided any other legal basis for us to overturn the arbitrator's decision.

¶ 40 C. Arbitrator Did Not Usurp District's Management Rights

¶ 41 Finally, the District argues that the arbitrator's award usurped the District's management rights. The District notes that article III of the CBA outlines the management rights of the District and gives the District the right to, among other things, "discipline, suspend, and discharge employees for just cause." Further, article VII, section 7.5, of the CBA states that the arbitrator "shall not in any way limit or interfere with the powers, duties and responsibilities of the District." The District argues that the arbitrator's decision to reduce Pompa's discipline from discharge to a 30-day suspension violated these portions of the CBA. We disagree. The parties agreed that the issues subject to arbitration were whether there was just cause to discharge Pompa and, if not, what the appropriate discipline was. The arbitrator ruled on only those issues and thus did not interfere improperly with the District's power, duties, and responsibilities.

Moreover, followed literally, the District's argument would mean that nothing could be submitted to arbitration because any result adverse to the District's position would interfere with the District's powers, duties, and responsibilities. Such a result would render parts of the CBA either meaningless 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, ¶ 41.

¶ 42 III. CONCLUSION

¶ 43 For the foregoing reasons, we affirm the decision of the arbitrator and of the circuit court.

¶ 44 Affirmed.