IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF RENO,
Appellant,
vs.
INTERNATIONAL UNION OF OPERATING ENGINEERS, STATIONARY LOCAL 39,
Respondent.

No. 50854

FILED

NOV 24 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order confirming an arbitration award in an employment action. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Kenneth Birchall, a member of respondent International Union of Operating Engineers, Stationary Local 39, was terminated from his position as a quality assurance construction inspector by appellant, the City of Reno. The Union filed a grievance with the City on Birchall's behalf and, pursuant to the Collective Bargaining Agreement (CBA) between the Union and the City, Birchall's grievance was submitted for arbitration. The arbitrator found that Birchall's termination by the City was not for good cause as required by the CBA and reduced the disciplinary action that the city could take against Birchall. The City appealed the arbitrator's decision to the district court and the district court affirmed the arbitrator's reduction of the disciplinary action the City could take against Birchall. This appeal follows.[1]

[1]The parties are familiar with the facts, and we do not recount them here except as necessary to our disposition.

The arbitration award

The City argues that the arbitrator's award should be vacated for two reasons. First, the City argues that the arbitrator's rationale for reducing the disciplinary action the City could take against Birchall was arbitrary. Second, the City argues that the arbitrator exceeded his authority under the CBA by crafting an alternative disciplinary plan for the City to institute against Birchall. Based on the following, we conclude that the City's arguments are without merit and we affirm the order of the district court.

Standard of review

Our review of an arbitration award is limited and is nothing similar to the scope of judicial review of a trial court's decision. Health Plan of Nevada v. Rainbow Med., 120 Nev. 689, 695, 100 P.3d 172, 176 (2004). We are to play only a narrow role when asked to review the decision of an arbitrator. Paperworkers v. Misco, Inc., 484 U.S. 29, 36 (1987). In this narrow role, our function is "limited 'to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract.'" IBEW Local 396 v. Central Tel. Co., 94 Nev. 491, 493, 581 P.2d 865, 867 (1978) (quoting Steelworkers v. American Mfg. Co., 363 U.S. 564, 568 (1960)). Additionally, "[t]he party seeking to attack the validity of an arbitration award has the burden of proving, by clear and convincing evidence, the statutory or common-law ground relied upon for challenging the award." Health Plan of Nevada, 120 Nev. at 695, 100 P.3d at 176.

The arbitrator's action was not arbitrary

First, the City argues that the arbitration award must be vacated because the arbitrator arbitrarily decided that termination of employment was not the appropriate discipline for Birchall. We disagree

because we conclude that the City has failed to show by clear and convincing evidence that the arbitrator's decision was arbitrary or capricious.

Arbitrators are afforded broad discretion in making determinations of issues under an arbitration agreement. Wichinsky v. Mosa, 109 Nev. 84, 89, 847 P.2d 727, 731 (1993). This discretion is not limitless, and an arbitration award will not be enforced if that "award is determined to be arbitrary, capricious, or unsupported by the agreement . . . ." Id. (citing Exber, Inc. v. Sletten Constr. Co., 92 Nev. 721, 731, 558 P.2d 517, 523 (1976)).

Since it is not our function to weigh the merits of the grievance as presented at the arbitration hearing, we give deference to the arbitrator in making his ruling that, on this evidence, termination of employment was not the appropriate remedy. See Paperworkers, 484 U.S. at 36-37. We conclude that the arbitrator's decision was not so contrary to the evidence presented at the arbitration hearing as to warrant vacating that decision. Specifically, after hearing the evidence, the arbitrator decided that Birchall's termination was unwarranted based on the fact that Birchall was not given adequate time to correct the behavior for which he was terminated. We therefore conclude that the City has failed to show by clear and convincing evidence that the arbitrator's modification of the disciplinary action that could be taken by the City against Birchall was arbitrary or capricious, as the arbitrator stated a clear basis for his decision.

The arbitrator did not exceed his authority

Second, the City argues that the arbitration award must be vacated because the arbitrator exceeded his authority under the CBA by modifying the disciplinary action the City could take against Birchall. We

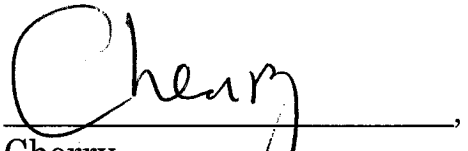
disagree because we conclude that the City has failed to show by clear and convincing evidence that the arbitrator's award was not supported by the plain language of the CBA.

When interpreting a collective bargaining agreement, an arbitrator's award may not be contradictory to the express language of that agreement. Int'l Assoc. Firefighters v. City of Las Vegas, 107 Nev. 906, 910, 823 P.2d 877, 879 (1991). However, if an arbitration award is based on the collective bargaining agreement, courts must enforce the award even if the arbitrator's interpretation is ambiguous or would be different from the court's interpretation. Id.

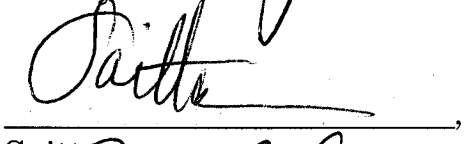
We conclude that the arbitrator's award must stand because the award was not contradictory to the express language of the CBA as the CBA is silent on whether the arbitrator had the authority to modify the discipline imposed on Birchall by his supervisor and department head.

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Cherry



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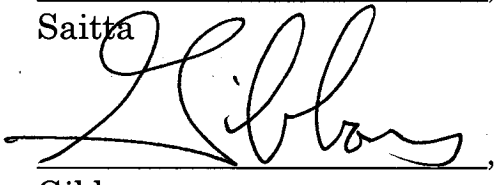

_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Patrick O. King, Settlement Judge
Reno City Attorney
Kristina L. Hillman
Washoe District Court Clerk