IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WASHOE COUNTY SCHOOL POLICE OFFICERS ASSOCIATION,
Appellant,
vs.
WASHOE COUNTY SCHOOL DISTRICT, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,
Respondent.

No. 89200-COA

FILED

SEP 30 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

The Washoe County School Police Officers Association appeals from a district court order granting a motion to vacate an arbitration award and denying an application to confirm the same. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

The Association and Washoe County School District entered into a collective bargaining agreement in July 2021. Officer Brandon Davis is a member of the Association and works for WCSD as a school police officer. In October 2021, Officer Davis suffered serious injuries to his head, shoulders, elbows, and knees while breaking up a fight between two students at Reed High School in Reno. Shortly after this incident, Officer Davis filed a workers' compensation claim for his injuries, for which he received payment.

While Officer Davis was receiving workers' compensation payments, the Association filed three grievances on his behalf in July, September, and December 2022, alleging various violations of the CBA. The July grievance alleged WCSD violated Article 13.10.1 of the CBA by failing

to reimburse Officer Davis for 10 hours of sick leave time expended over two days that month. Specifically, the Association alleged that Officer Davis's supervisor advised him to stay home on July 5 and 6, 2022, after receiving a light duty order from his physician and that WCSD improperly deducted these days from his sick leave.

The September grievance alleged WCSD violated Articles 2.2, 7.8.1, 9.3, and 13.8.1 of the CBA. In particular, this grievance claimed WCSD retaliated against Officer Davis for participating in the grievance process and discriminated against him due to his disability. The grievance also alleged WCSD required Officer Davis to use sick time to cover assigned duty time and refused to reimburse Officer Davis for mileage while requiring the use of his personal vehicle.

The December grievance alleged WCSD violated Articles 2.2, 7.8.1, and 13.10.1 of the CBA by taking additional reprisals against Officer Davis for the Association filing the above grievances. The Association claimed that some of Officer Davis's light duty assignments were too far from his house to be valid light duty locations and that WCSD had required him to work longer days than his light duty restrictions permitted. Further, the Association argued that he should be reassigned to a light "duty location that is substantially similar in duty and location to his pre-light duty assignment."

After the Association exhausted the first three levels of the grievance procedures provided for under the CBA, the parties agreed to consolidate the three grievances for the final level, binding arbitration. Before the arbitration hearing commenced, WCSD objected to the arbitrability of the grievances on grounds that the Nevada Industrial Insurance Act (NIIA) was the exclusive remedy for Officer Davis's claims

under NRS 616A.020, and therefore the arbitrator lacked jurisdiction over the grievances. The arbitrator allowed both sides to present their cases before determining arbitrability.

Following a three-day hearing, the arbitrator issued a 31-page award in August 2023. On the issue of arbitrability, the arbitrator acknowledged WCSD's position that the grievances were barred by the NIIA and could only be decided in the workers' compensation system, but stated that he was "not reviewing and not making any decisions under the Nevada state laws. He is only considering the various sections in the collective bargaining agreement and whether there has been any violation. Thus, clearly the matter is arbitrable and he will review and make decisions on the four remaining issues."

Addressing the sick leave issue, the arbitrator determined that Article 13.10.1, rather than state law, governed Officer Davis's contractual entitlement to temporary total disability benefits.[1] Based on the testimony and evidence presented, the arbitrator concluded that Officer Davis qualified for temporary total disability benefits under the CBA and that he was entitled to reimbursement for the benefits wrongfully denied by WCSD.

As for the mileage reimbursement issue under Article 13.8.1, the arbitrator determined that Officer Davis's travel to his medical appointments to certify and update his disability status and work restrictions constituted official district business within the meaning of the CBA, entitling him to reimbursement.

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[1]Article 13.10.1 provides that an employee who "is absent due to a temporary total service connected disability" is entitled to certain benefits, including not having sick leave deducted from the employee's accrued leave time, and supplemental income in the event the employee qualifies for workers' compensation benefits.

Finally, the arbitrator found that Officer Davis was not discriminated against by WCSD because of his affiliation with the Association or his grievances, and thus WCSD did not violate Articles 2.2, 5.1, and 7.8.1 of the CBA. Regarding the Association's allegation that Officer Davis's continuous rotation of assignments was retaliatory, the arbitrator found that these assignments were primarily decided by human resources and the State's third-party workers' compensation administrator, not the police department. The arbitrator also determined that this claim was best pursued through the workers' compensation system instead of the CBA grievance process.

In October 2023, the Association filed an application to confirm the arbitrator's award in district court. WCSD filed a competing motion to vacate the arbitrator's award. Therein, WCSD argued the award must be vacated under NRS 38.241 for several reasons: (1) the arbitrator exceeded his powers in refusing to recognize that the NIIA was the exclusive remedy available for Officer Davis's workplace injury, (2) the arbitrator refused to address arbitrability in light of the NIIA's exclusive remedy language, (3) the arbitrator failed to consider material evidence establishing that the dispute arose out of Officer Davis's workers' compensation claim, and (4) the award directly contradicted the express language of the CBA. WCSD also argued that the award must be vacated pursuant to common law, because it was arbitrary, capricious, and unsupported by the CBA, and because the arbitrator manifestly disregarded the law.

The district court conducted a hearing and entered a written order granting WCSD's motion to vacate the arbitrator's award and denying the Association's application to confirm the award. The court found that vacatur was necessary because the award "ignore[d] controlling law set

forth in the NIIA which rendered the grievances to be not arbitrable." It concluded that the exclusive remedy for Officer Davis's claims was the workers' compensation system and that the arbitrator manifestly disregarded the law and exceeded his powers in not contemplating the exclusivity of the NIIA. The court's ruling was "narrow" and based on the arbitrator's statement that he was not making any decisions under Nevada law and was only considering the various sections of the CBA. The district court also concluded that the arbitrator "did not have subject matter jurisdiction over the issues based on the [CBA]." In light of these findings, the court vacated the award, and this appeal followed.

On appeal, the parties principally dispute whether the Association's claims were arbitrable. "This court reviews a district court's decision to vacate or confirm an arbitration award de novo." *Washoe Cnty. Sch. Dist. v. White*, 133 Nev. 301, 303, 396 P.3d 834, 838 (2017). A party challenging an arbitrator's decision regarding arbitrability must demonstrate, "by clear and convincing evidence, the statutory or common-law ground relied upon for challenging the award." *Id.* (quoting *Health Plan of Nev., Inc. v. Rainbow Med., LLC*, 120 Nev. 689, 695, 100 P.3d 172, 176 (2004)); *see First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 942-45 (1995) (stating "the court's standard for reviewing the arbitrator's decision about [arbitrability] should not differ from the standard courts apply when they review any other matter that parties have agreed to arbitrate"); *PowerAgent Inc. v. Elec. Data Sys. Corp.*, 358 F.3d 1187, 1191 (9th Cir. 2004) ("Where parties *do* agree to arbitrate the issue of arbitrability, courts give the arbitrators' conclusion regarding arbitrability the same respect

otherwise accorded arbitrators' decisions.").[2] "Those grounds do not include that the arbitrator committed an error—or even a serious error. Rather, the grounds are quite narrow and present a high hurdle for petitioners to clear." *News+Media Cap. Grp. LLC v. Las Vegas Sun, Inc.*, 137 Nev. 447, 452, 495 P.3d 108, 115 (2021) (cleaned up).

Here, the Association contends the district court erred in vacating the award because, contrary to the district court's findings, the arbitrator did not manifestly disregard the NIIA, exceed his powers, or lack subject matter jurisdiction. We agree and therefore reverse.

The district court erred when it found that the arbitrator manifestly disregarded the NIIA in determining arbitrability

The Association argues that the district court erred when it determined that the arbitrator manifestly disregarded the NIIA when it deemed the grievances arbitrable. The Association submits that, by setting aside the award, the district court exceeded the scope of its narrow review of whether the arbitrator knew or recognized the law and manifestly disregarded it. WCSD responds that the NIIA clearly applied to this dispute, and the arbitrator manifestly disregarded it by considering sections of the CBA and failing to justify this deviation with controlling legal authority. We agree with the Association.

A court may vacate an arbitration award if the arbitrator manifestly disregards the law. *Clark Cnty. Educ. Ass'n v. Clark Cnty. Sch. Dist.*, 122 Nev. 337, 341, 131 P.3d 5, 8 (2006). "Manifest disregard of the law goes beyond whether the law was correctly interpreted, it encompasses a conscious disregard of applicable law." *Health Plan of Nev.*, 120 Nev. at

[2]The parties do not dispute that Article 7.9.7 of the CBA gave the arbitrator authority to determine whether a specific grievance is arbitrable.

699, 100 P.3d at 179. A manifest disregard thus "requires something approaching intentional misconduct: the arbitrator must not only reach a legally incorrect result, but must also do so deliberately." *News+Media*, 137 Nev. at 457, 495 P.3d at 118.

As an initial matter, we note that whether the NIIA preempts or otherwise precludes the Association from obtaining relief for violations of the CBA speaks to the merits of the Association's grievances, not to whether the grievances were arbitrable. Nonetheless, even if the NIIA implicated the arbitrability of the Association's claims, WCSD fails to demonstrate the arbitrator manifestly disregarded the NIIA when he determined the contract claims were arbitrable.

Although the NIIA states that "[t]he rights and remedies provided [therein] for an employee on account of an injury by accident sustained arising out of and in the course of the employment shall be exclusive," NRS 616A.020(1), the NIIA does not state that claims regarding work-related injuries may not be subject to arbitration. Indeed, the NIIA explicitly recognizes the validity of arbitration clauses as they relate to disputes between employees and employers. *See* NRS 616A.466(1)(a) (stating that collective bargaining agreements may establish "[a] process for alternative dispute resolution, including, without limitation, mediation and arbitration, . . . which supplements or replaces all or part of the dispute resolution processes contained in chapters 616A to 617, inclusive, of NRS"). Apart from those benefits already conferred by the NIIA, the NIIA does not expressly preclude collective bargaining over additional disability compensation. *See* NRS 616A.466(2)(b) (stating that "[n]othing in this section . . . [p]rohibits an employer and a labor organization from negotiating any aspect of . . . the delivery of compensation for disability to

employees of the employer or group of employers who are eligible for group health benefits and disability benefits through their employer other than those provided in chapters 616A to 617, inclusive, of NRS").

Although WCSD argues that contracts for benefits beyond those provided by the NIIA are void under "NRS 616B.609 [which] precludes [a CBA] from modifying, changing or waiving liability under the NIIA," this language is found in a section of the NIIA dealing with an *employer's* liability to provide workers' compensation insurance coverage and does not directly support the conclusion suggested by WCSD. WCSD's reliance on language in NRS 616A.020(6) to argue that employees who receive workers' compensation benefits are barred from seeking additional benefits under a collective bargaining agreement is equally misplaced. That section merely bars an employee who has received benefits under the NIIA "from commencing any action or proceeding for the enforcement or collection of any benefits or award *under the laws of any other state or jurisdiction.*" NRS 616A.020(6) (emphasis added). The contractual benefits at issue in this case were conferred by the parties' CBA, and WCSD does not contend Officer Davis sought to enforce or collect benefits under the laws of another state or jurisdiction.

Further, while WCSD cites numerous decisions addressing the impact of the NIIA's exclusive remedy language on common law *tort claims*, WCSD has not presented any controlling caselaw indicating that the NIIA's exclusive remedy provision would bar arbitration of a breach of contract claim premised on a workplace injury. Moreover, it is not clear that the "exclusive remedy" language in the NIIA, NRS 616A.020, in fact, precluded the arbitration of the Association's claims here—a necessary predicate to

find that the arbitrator manifestly disregarded the law in deeming these grievances arbitrable.

As previously discussed, an arbitrator's decision regarding arbitrability is entitled to deference and should be set aside "only in certain narrow circumstances." *First Options*, 514 U.S. at 943. Thus, for a district court to vacate an award based on the arbitrator's manifest disregard of the law, the arbitrator must have considered the applicable law before *deliberately* disregarding it. *See News+Media*, 137 Nev. at 457, 495 P.3d at 118; *see also Clark Cnty. Educ. Ass'n*, 122 Nev. at 342, 131 P.3d at 8. A district court's disagreement with the arbitrator's interpretation of the law is insufficient for vacatur; even if the arbitrator incorrectly interpreted and applied the law, the award must stand so long as the arbitrator did not intentionally reject directly applicable law. *See News+Media*, 137 Nev. at 457, 495 P.3d at 118.

Here, the district court disagreed with the arbitrator's determination that the Association's claims were arbitrable because they alleged violations of the CBA. The district court concluded that the NIIA was the sole remedy for the Association's grievances, and that the arbitrator's decision on arbitrability manifestly disregarded the NIIA. But the district court's conclusions were improper under the deferential standard of review. The record reflects that the arbitrator considered the NIIA along with the CBA and determined that the CBA governed the grievances. Nothing in the award indicates that the arbitrator acknowledged the exclusive applicability of the NIIA and simply declined to proceed thereunder. *See id.* at 458, 495 P.3d at 119 (rejecting a party's argument that an arbitrator manifestly disregarded the law where the party's claim was "reducible to assertions that the arbitrator incorrectly

applied the law" and did "not allege the requisite subjective intent"). And as noted above, it is unclear whether the NIIA's exclusive remedy provision would bar arbitration of a breach of contract claim premised on a workplace injury. Thus, we conclude that the arbitrator did not manifestly disregard the law and that the district court erred in determining otherwise.

The district court erred when it concluded that the arbitrator exceeded his powers and lacked jurisdiction to hear the grievances

The Association argues that the district court erred in determining that the arbitrator exceeded his powers and lacked subject matter jurisdiction over the grievances. The Association argues that because the award was based on the CBA's language authorizing the arbitrator to hear the dispute, the arbitrator did not exceed his powers, nor did he lack subject matter jurisdiction over the grievances.

In contrast, WCSD contends the arbitrator exceeded his powers and lacked subject matter jurisdiction over the grievances because the NIIA provided the exclusive remedy for Officer Davis's workplace injury and precluded the arbitrator from rendering any decision in the dispute. Alternatively, WCSD offers that the CBA precluded the arbitrator from exercising his powers.

Under NRS 38.241(1)(d), a district court shall vacate an arbitrator's award if the "arbitrator exceeded his or her powers." "Arbitrators exceed their powers when they address issues or make awards outside the scope of the governing contract." *Health Plan of Nev.*, 120 Nev. at 697, 100 P.3d at 178. "[A]llegations that an arbitrator misinterpreted the agreement or made factual or legal errors do not support" vacatur under this statutory ground. *Id.* Even if the arbitrator's interpretation of an agreement is erroneous, the arbitrator does not exceed their powers so long

as their interpretation "is rationally grounded in the agreement." *Id.* at 698, 100 P.3d at 178.

In considering whether the arbitrator exceeded his powers in his arbitrability determination, the issue is not whether the arbitrator correctly interpreted the CBA, but rather, whether the arbitrator was "arguably construing or applying the contract." *News+Media*, 137 Nev. at 453, 495 P.3d at 115 (quoting *Health Plan of Nev.*, 120 Nev. at 698, 100 P.3d at 178). Thus, this court's "abbreviated review [is] limited to determining whether the award, on its face, (1) directly contradicts the express language of the contract, or (2) appears fanciful or otherwise not 'colorable.'" *Id.* at 453-54, 495 P.3d at 116 (quoting *White*, 133 Nev. at 305, 396 P.3d at 839).

At the outset, we note that the district court and the parties erroneously invoked the concept of "subject matter jurisdiction" when addressing the arbitrator's powers to hear the Association's grievances. Subject matter jurisdiction concerns a "court's authority to render a judgment in a particular category of case," *Landreth v. Malik*, 127 Nev. 175, 183, 251 P.3d 163, 168 (2011) (quoting *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 253 (Mo. 2009)), and is usually derived from the Nevada Constitution or statute, *see, e.g.*, Nev. Const. art. 6, § 6(1) (prescribing the jurisdiction of the district courts).

In contrast, "[a]n arbitrator's jurisdiction to resolve a dispute concerning the interpretation of a collective bargaining agreement derives from the parties' advance agreement to submit the disputed matter to arbitration." *City of Reno v. Int'l Ass'n of Firefighters, Loc. 731*, 130 Nev. 1013, 1018, 340 P.3d 589, 593 (2014); *see also* NRS 38.219(1) ("An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is

valid, enforceable and irrevocable . . . ."). In this case, arbitrability is governed by Article 7 of the CBA. Article 7.1.1 sets forth the grievance procedure by which an individual or the Association may seek resolution of a dispute regarding "an alleged violation, misinterpretation, or inequitable application of a specific provision of this Agreement." By its very language, the grievance procedures apply to the terms of the CBA and do not apply to matters outside the CBA's scope. Article 7.7 provides for arbitration as the last step in the grievance process, and neither it nor any other provision in the CBA limits the scope of claims that may be subjected to arbitration beyond alleged violations of the CBA. Furthermore, Article 7.9.7 states, in part, the following:

> In the event there is a question as to whether a specific grievance is arbitrable[,] such a threshold issue shall be considered first . . . . If the arbitrator is unable to make such a determination at that time, then he/she may proceed to hear the grievance even though no decision will be rendered on the grievance if he/she subsequently determines the issue is non-arbitrable.

In light of the CBA's language, WCSD fails to demonstrate the arbitrator exceeded his powers in determining the Association's grievances were arbitrable, or by hearing evidence prior to determining arbitrability. *See City of Reno*, 130 Nev. at 1018, 340 P.3d at 593 (recognizing that "[l]abor arbitration is a product of contract, and, therefore, its legal basis depends entirely upon the particular contracts of particular parties" (alteration in original) (quoting *Port Huron Area Sch. Dist. v. Port Huron Educ. Ass'n*, 393 N.W.2d 811, 814 (Mich. 1986)).

Here, the Association brought Officer Davis's grievances regarding sick leave, mileage reimbursement, and discrimination as alleged violations of the CBA. The subject matter of these grievances was not

reserved solely to management nor contractually excluded from the scope of mandatory bargaining. *Cf. id.* at 1019-20, 340 P.3d at 594 (concluding that a grievance over layoffs for lack of funds was not arbitrable where management retained the sole and exclusive right under the collective bargaining agreement to lay off any employee due to a lack of funds). The CBA's broad language granted the arbitrator the power to hear grievances regarding alleged violations of the CBA, by first outlining the four-level grievance process, and then leaving the final level to the arbitrator. Article 7.1.1 does not limit the types of claims an arbitrator can hear beyond "alleged violation[s], misinterpretation[s], or inequitable application[s] of a specific provision" of the CBA. Thus, the arbitrator did not directly contradict the express language of the CBA in determining the grievances were arbitrable, and his interpretation of the CBA was not fanciful or otherwise not colorable. *See News+Media*, 137 Nev. at 453-54, 495 P.3d at 116. Additionally, while Article 7.9.7 does state that arbitrability is a threshold issue, it also states that if the arbitrator is unable to determine arbitrability at the outset, the arbitrator may—as he did here—conduct the hearing before rendering a decision on arbitrability. We therefore conclude that the arbitrator did not exceed his powers or jurisdiction and the district court's determination to the contrary was erroneous.[3]

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[3]Even though the district court did not reach this issue, WCSD asks this court to affirm the district court's order vacating the arbitration award on the common law ground that it was arbitrary, capricious, and unsupported by the CBA. Based on our de novo review of the record, we conclude that the arbitrator's factual findings regarding the three grievances were supported by substantial evidence, and that his substantive findings on contract interpretation are not subject to reversal under this standard. *See News+Media*, 137 Nev. at 456, 495 P.3d at 117. To the extent WCSD raises additional arguments that are not specifically

Accordingly we,

REVERSE the district court's order granting WCSD's motion to vacate the arbitration award and denying the Association's application to confirm the arbitration award and REMAND to the district court for confirmation of the arbitration award.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Egan K. Walker, District Judge
Jonathan Andrews, Settlement Judge
Dreher Law
McDonald Carano LLP/Reno
Washoe District Court Clerk

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addressed in this order, we have considered the same and conclude that they do not present a basis for this court to affirm.