STATE OF MICHIGAN

COURT OF APPEALS

CITY OF DETROIT,

Plaintiff-Appellee,

v

DETROIT POLICE OFFICERS ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED
May 23, 1997

No. 194755
Wayne Circuit Court
LC No. 95-525418 CK

Before: Holbrook, Jr., P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

In this labor dispute, defendant appeals as of right from an order granting plaintiff's motion to vacate the arbitration award reducing the penalty imposed upon Detroit Police Officer Calvin Brantley by the Detroit Police Department's Trial Board from a discharge to a ninety-day suspension, and denying defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). We affirm.

On April 29, 1992, the victim was sexually assaulted while walking through a parking lot in the City of Detroit. She was able to obtain the assailant's vehicle's license plate number, which matched that of a car owned by the mother of Detroit Police Officer Calvin Brantley. The victim subsequently identified Officer Brantley in a line-up. Officer Brantley was arrested and charged with second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3), and was immediately suspended from the Detroit Police Department without pay.

On May 5, 1992, pursuant to an internal discipline procedure, the police department charged Officer Brantley with conduct unbecoming an officer, alleging that Brantley committed second-degree criminal sexual conduct when off-duty by engaging in sexual contact with the victim while pointing a handgun at her. On February 10, 1993, Brantley was convicted of fourth-degree criminal sexual conduct, MCL 750.520e; MSA 28.788(5), a misdemeanor, following a bench trial in Detroit Recorder's Court. He was sentenced to two years' probation.

The police department subsequently charged Brantley with "conviction in a court of criminal jurisdiction except for minor traffic violations" stemming from the fourth-degree CSC conviction. Pursuant to the Detroit Police Officers' Association's collective bargaining agreement, the charges were heard before the police department's Trial Board, which found Brantley guilty of that charge, along with the conduct unbecoming an officer charge. As a result, the Trial Board dismissed Brantley from the department on January 5, 1994.

The union appealed the dismissal to arbitration. The arbitrator found that Brantley was not guilty of the charge of conduct unbecoming an officer based on the commission of second-degree criminal sexual conduct since the victim did not suffer personal injuries. Because it was undisputed that Brantley was convicted of fourth-degree criminal sexual conduct, the remaining charge was uncontested. However, the arbitrator found that the penalty of dismissal was too severe, and reduced the penalty to a ninety-day suspension.

Plaintiff then filed this case in Wayne Circuit Court to vacate the arbitration award on the ground that the award violated public policy. Both parties moved for summary disposition. The trial court issued an order granting plaintiff's motion to vacate the arbitration award, and denying defendant's motion for summary disposition.

On appeal, defendant argues that the trial court erred by vacating the arbitration award on the ground that it was contrary to public policy. We disagree.

Judicial review of an arbitrator's decision is narrowly defined. *City of Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989). The inquiry on appeal is whether the award was beyond the contractual authority of the arbitrator. *Id.* A court may not review an arbitrator's findings of fact on the merits, but may only decide whether the arbitrator's award "draws its essence" from the contract. *Id.* If the arbitrator, in granting the award, did not disregard the terms of his or her employment and the scope of his or her authority as expressly circumscribed in the contract, judicial review effectively ceases. *Id.*

Despite the limited standard of review of an arbitrator's decision, a court may refuse to enforce an arbitration award if the award is contrary to public policy. *Gogebic Medical Care Facility v AFSCME Local 992*, 209 Mich App 693, 697; 531 NW2d 728 (1995). The public policy exception is limited to situations where the enforcement of the award would violate an explicit, well-defined, and dominant public policy ascertained by reference to the laws and legal precedent, rather than from general considerations of supposed public interest. *Id.* It is the arbitration award, not the arbitrator's findings of fact or conclusions of law, which must be contrary to public policy if a court is to vacate the award based on public policy. *Fraternal Order of Police v Bensinger*, 122 Mich App 437; 333 NW2d 73 (1983).

As noted by the trial court, this state has a public policy of protecting its citizens from criminal sexual assaults, as evidenced by MCL 750.520a, *et seq.*; MSA 28.788, *et seq.*, which impose criminal sanctions for such conduct. Furthermore, the Legislature has provided that individuals employed as

police officers must meet minimum standards of moral fitness established by the law enforcement council. MCL 28.609(1)(a) and (2); MSA 4.405(8)(1)(a) and (2). Under these standards, all law violations are presumed to indicate a lack of good character. See 1978 AC, R 28.4102(e). In addition, 42 USC §1983 allows for the imposition of sanctions against municipalities that pursue policies displaying a deliberate indifference to the constitutional rights of citizens. See *York v Detroit (After Remand)*, 438 Mich 744, 754-757; 475 NW2d 346 (1991). We find that the arbitration award prohibiting the discharge of Officer Brantley based upon his criminal sexual conduct conviction violates the above-stated public policies. Accordingly, we affirm the trial court's order vacating the arbitration award. Because we find that the trial court did not err by vacating the arbitration award on the ground that the award violated public policy, we need not address the remaining issues raised by defendant on appeal.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie
/s/ William B. Murphy