

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF STERLING HEIGHTS,

Plaintiff/Counter Defendant-
Appellee,

v

MICHIGAN ASSOCIATION OF POLICE,

Defendant/Counter Plaintiff-
Appellant.

UNPUBLISHED

April 19, 2002

No. 227601

Macomb Circuit Court

LC No. 99-003061-CK

Before: K.F. Kelly, P.J., and Doctoroff and Cavanagh, JJ.

PER CURIAM.

Defendant appeals by right from a circuit court order granting plaintiff's motion for summary disposition and vacating an arbitration award. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Judicial review of a labor arbitrator's decision is narrowly circumscribed. *Gogebic Medical Care Facility v AFSCME Local 992, AFL-CIO*, 209 Mich App 693, 696; 531 NW2d 728 (1995). In *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1; 438 NW2d 875 (1989), this Court explained:

The necessary inquiry for this Court's determination is whether the award was beyond the contractual authority of the arbitrator. Labor arbitration is a product of contract and an arbitrator's authority to resolve a dispute arising out of the appropriate interpretation of a collective bargaining agreement is derived exclusively from the contractual agreement of the parties. It is well settled that judicial review of an arbitrator's decision is limited. A court may not review an arbitrator's factual findings or decision on the merits. Rather, a court may only decide whether the arbitrator's award "draws its essence" from the contract. If the arbitrator in granting the award did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases. [*Id.* at 4 (citations omitted).]

"In other words, an arbitrator may not act on his own sense of personal justice, but is confined to interpretation and application of the agreement." *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 119; 607 NW2d 742 (1999).

The arbitrator's power, as expressed in Article IX, § 9.9, was as follows:

It shall be the function of the arbitrator, and he shall be empowered, except as his powers are limited below, after due investigation, to make a decision in cases of alleged violation of the specific terms and provisions of this Agreement.

A. Shall have no authority to require the City to purchase buildings, equipment or material.

B. Shall have no power to add to, subtract from, alter or modify any of the terms of this Agreement.

C. Shall have no power to establish wage scales.

D. Shall have no power to substitute his discretion for the City's discretion in cases where the City is given discretion by this Agreement.

E. Shall have no power to decide any question which, under this Agreement is within the responsibility of Management to decide. . . .

The issue here was whether the city had just cause to fire a police department secretary whose employment was governed by a collective bargaining agreement. The stated cause was the employee's violation of the city charter's residency requirement. Thus, it was within the arbitrator's authority to determine if the residency requirement applied to the employee and, if so, whether she violated it, and, if so, whether it provided just cause for termination. He found that the residency requirement did apply as a work rule adopted pursuant to Article XVI, § 16(M) of the collective bargaining agreement and that the employee violated the rule, but that her violation of that rule did not provide just cause for termination. Such a finding is within the arbitrator's authority unless the collective bargaining agreement clearly and unambiguously provides otherwise. *Lincoln Park, supra* at 5. Here, the collective bargaining agreement gave plaintiff the right to discipline and discharge employees for just cause but did not expressly provide that an employee was subject to discharge for a violation of the residency requirement or a violation of a work rule adopted pursuant to Article XVI, § 16(M) of the collective bargaining agreement, as was the case in *Lenawee Co Sheriff, supra*. Therefore, the arbitrator's ruling was within the scope of his authority and the trial court erred in vacating it for an error of law.

Plaintiff contends that the trial court's ruling should be affirmed because the arbitrator's decision was contrary to public policy. We find no basis for concluding that the arbitrator's award, as opposed to his findings of fact or conclusions of law, was contrary to an explicit and well-defined public policy. *Gogebic Medical Care Facility, supra* at 697; *Fraternal Order of Police, Ionia Co Lodge No 157 v Bensinger*, 122 Mich App 437, 448; 333 NW2d 73 (1983).

Reversed.

/s/ Kirsten Frank Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh