STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN ASSOCIATION OF POLICE, Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED March 26, 2009
v	No. 281353 Oakland Circuit Court
CITY OF PONTIAC, Defendant/Counter-Plaintiff-Appellee.	LC No. 2007-082808-CL

Before: Murray, P.J., and Gleicher and M.J. Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), which had the affect of overturning an arbitrator's award. We reverse and remand.

This case involves the termination of the grievant, Kenneth Ayres, a uniformed police officer who was terminated for filing a false report regarding an arrest of a juvenile. An arbitration hearing was held on whether there was just cause under the collective bargaining agreement to terminate the grievant's employment. The arbitrator ruled in a thorough opinion and award that, although the grievant's report was exaggerated and false (although the arbitrator was somewhat ambiguous on this point), the termination was unwarranted "disparate treatment" based on other discipline issued against other officers under similar circumstances. Thus, the arbitrator's award reinstated the grievant. Plaintiff filed an action to enforce, but the circuit court held that the award violated public policy, and therefore vacated the award.

The dispositive issue[1] in this appeal is whether the trial court properly vacated the arbitration award on the basis that the award violated public policy. This Court reviews de novo a trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary

[1] The parties agree that the arbitrator's award drew its essence from the contract and was not based on his own sense of industrial justice. See *Eastern Associated Coal Corp v United Mine Workers of America, Dist 17*, 531 US 57, 62; 121 S Ct 462; 148 L Ed 2d 354 (2000).

disposition is properly granted when, upon examining the affidavits, depositions, pleadings, admissions and other documentary evidence, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Morganroth v Whitall*, 161 Mich App 785, 788; 411 NW2d 859 (1987).

In general, when determining whether an arbitration award should be enforced, this Court examines "whether the award was beyond the contractual authority of the arbitrator." *City of Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989). In conducting its limited review, this Court may not review the merits of the arbitrator's decision or review his factual findings. *Id*. "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*. However, "[a]s an exception to the general rule of judicial deference, we have recognized that a court may refuse to enforce an arbitrator's decision when it is contrary to public policy." *Gogebic Medical Care Facility v AFSCME Local 992, AFL-CIO*, 209 Mich App 693, 697; 531 NW2d 728 (1995). This exception is a limited one and should only be applied when the arbitrator's interpretation of the contract would result in the violation of a well-defined, dominant and explicit public policy. *Id.* In determining whether the public policy is sufficiently explicit and well defined, a court should limit itself to referencing laws and legal precedent, as opposed to taking into consideration general notions of public interest. *Id*. Consequently, this Court must first determine whether the public policy cited by defendant is a well-defined and explicit policy. If it is, we must then determine whether the trial court properly concluded that instituting the arbitrator's award would violate that policy.

In arguing that the arbitrator's award violated public policy, defendant points to several different authorities for the proposition that public policy establishes an officer's "truthfulness is central to the criminal justice system and that an officer who has been untruthful in the performance of duty . . . jeopardizes that system."

Defendant first cites to the Pontiac Police Manual of Conduct, § 4.02, which provides:

> a. Reports submitted by officers shall be truthful and complete.
>
> b. No officer shall knowingly enter or cause to be entered any inaccurate, false or improper information.
>
> c. Officers shall not make false statements or reports.

Furthermore, § 17.04 provides that, "members shall not make formal false accusations of a criminal or traffic charge." Similarly, § 18.02 states, "a member shall be honest, truthful, accurate." However, the manual of conduct is not law or legal precedent. Therefore, pursuant to *Gogebic Medical Care Facility, supra at* 697, the manual cannot be the source of an explicit public policy.

In addition to arguing that the manual of conduct requires that officers be honest, defendant also asserts that retaining the grievant would be problematic because, pursuant to *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963), and MCR 6.201(B)(1)[2], the prosecution would have to disclose the grievant's false report and dishonesty in all future cases in which he was involved. As this Court explained in *People v Lester*, 232 Mich App 262, 281; 591 NW2d 267 (1998), "[a] criminal defendant has a due process right of access to certain information possessed by the prosecution. This due process requirement of disclosure applies to evidence that might lead a jury to entertain a reasonable doubt about a defendant's guilt." (Internal citation omitted.) It is clear that *Brady's* purpose of requiring the prosecution to disclose favorable evidence is not to ensure that police officers are honest. Rather, it is to ensure that defendants receive fair trials and to prevent prosecutors from not disclosing all material evidence. Therefore, *Brady, supra* at 83, and its progeny do establish an explicit public policy, but that policy is unrelated to the grievant and his conduct.[3]

Although the manual of conduct cannot form the basis of a public policy and *Brady's* policy is not violated by reinstatement of the grievant, Michigan public policy does favor the honest reporting by police officers as defendant argues. This policy is dominant and explicit as it is established in MCL 750.411a, which provides that an individual may be charged criminally for intentionally filing a false police report. However, the arbitrator's award does not violate that public policy. *Gogebic* clearly establishes that the public policy exception is only to be utilized when enforcement of the arbitrator's interpretation of an agreement would contravene public policy. *Gogebic Medical Care Facility, supra* at 697. See also *Eastern Associated Coal Corp v United Mine Workers of America, Dist 17*, 531 US 57, 62-63; 121 S Ct 462; 148 L Ed 2d 354 (2000) ("And, of course, the question to be answered is not whether Smith's drug use itself violates public policy, but whether the agreement to reinstate him does so."). The arbitrator's reinstatement of Ayres did not violate any explicit public policy because unlike the statute at issue in *Gogebic*, there is no public policy within MCL 750.411a that mandates termination of an officer who files a dishonest report. *Eastern Associated Coal Corp, supra* at 65 ("Neither the Act nor the regulations forbid an employer to reinstate in a safety-sensitive position an employee who fails a random drug test once or twice.").

The arbitrator determined that Ayres should be punished, but merely disagreed with defendant about the appropriate degree of punishment. The public policy of not falsifying police reports will not be weakened by enforcing the arbitrator's award as there is no evidence that when reinstated the grievant will falsify a report. Furthermore, when accepting the arbitrator's factual findings, which we are bound to do, it is not clear that the grievant intentionally misrepresented his report. While we may not necessarily agree with the arbitrator's legal and

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[2] MCR 6.201(B)(1) provides that a prosecuting attorney, upon request, must provide a defendant with any exculpatory evidence known to the prosecution.

[3] In any event, *Brady* would not be violated by reinstatement of the grievant. Assuming defendant is correct that all future prosecutions involving the grievant's work would require disclosure of his untruthful conduct as found by the arbitrator, there is nothing to suggest that the prosecution would not do so, and thus *Brady's* principles would be fulfilled, not violated.

factual conclusions, the award itself cannot be vacated when it is not violative of an explicit and well-defined public policy:

> We recognize that reasonable people can differ as to whether reinstatement or discharge is the more appropriate remedy here. But both employer and union have agreed to entrust this remedial decision to an arbitrator. We cannot find in the Act, the regulations, or any other law or legal precedent an "explicit," "well defined," "dominant" public policy to which the arbitrator's decision "runs contrary." [*Id*. at 67].

Reversed and remanded with instruction to reinstate the arbitrator's award. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly