STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0300

Minnesota Department of Corrections,
Relator,

vs.

Nathan Knutson,
Respondent,

Bureau of Mediation Services,
Respondent.

Filed July 6, 2021
Appeal to proceed
Segal, Chief Judge

Bureau of Mediation Services
File No. 20PA2533

Keith Ellison, Attorney General, Leah M. Tabbert, Assistant Attorney General, St. Paul, Minnesota (for relator)

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Considered and decided by Segal, Chief Judge; Bjorkman, Judge; and Reyes, Judge.

SYLLABUS

The decision of an arbitrator constitutes a final decision of the Bureau of Mediation Services subject to judicial review under the Minnesota Administrative Procedure Act, Minn. Stat. § 14.63 (2020), if the arbitrator was selected pursuant to the procedures in Minn. Stat. § 43A.33, subd. 3 (2020), in response to an appeal by a state employee who is

not covered by a collective bargaining agreement and is grieving the employee's discharge, suspension without pay, or demotion.

SPECIAL TERM OPINION

SEGAL, Chief Judge

In this certiorari appeal, relator Minnesota Department of Corrections (the DOC) seeks review of an arbitration decision issued in February 2021, reinstating the employment of respondent Nathan Knutson. The arbitration was initiated by an appeal to the Bureau of Mediation Services (the BMS) by Knutson of his employment termination in accordance with the procedures set forth in Minn. Stat. § 43A.33, subd. 3. After the DOC petitioned for review of the arbitration decision, the BMS submitted correspondence to the Clerk of Appellate Courts maintaining that the BMS was not a party to the appeal and seeking removal of the BMS as a named respondent. The BMS noted that the arbitrator who rendered the decision is neither an employee of the BMS nor a BMS hearing officer. This court then issued an order questioning jurisdiction and the DOC and Knutson filed informal memoranda in response.[1] The facts and procedural history relevant to the jurisdictional question are as follows.

The DOC discharged Knutson from his employment as associate warden of operations following an investigation and determination that Knutson had engaged in employment misconduct. The position of associate warden of operations is in the state's classified service and is covered under the state's managerial plan in accordance with

[1] The BMS did not file a response.

Minn. Stat. § 43A.18, subd. 3 (2020). The position is not covered under a collective bargaining agreement.[2] Section 43A.33, subdivision 3 of the Minnesota Statutes provides a grievance procedure for state employees in the classified service not covered by a collective bargaining agreement to grieve their discharge, suspension without pay, or demotion. The procedure is initiated by filing a notice of appeal with the BMS. Minn. Stat. § 43A.33, subd. 3. The commissioner of the BMS must then provide the parties with a list of potential arbitrators to hear the appeal "according to the rules of the [BMS]." *Id.*, subd. 3(d).

The parties in this case selected an arbitrator from the BMS list in accordance with the statutory procedure. Following a hearing, the arbitrator concluded that the DOC's termination of Knutson's employment was not supported by just cause, reduced Knutson's discharge to a one-month suspension, and ordered reinstatement with back pay. The DOC now seeks review by this court of the arbitrator's decision pursuant to a writ of certiorari.

DECISION

The sole issue presented here is whether a decision of an arbitrator appointed pursuant to the procedures set forth in Minn. Stat. § 43A.33 (2020) is a final decision of an agency subject to review by this court on a writ of certiorari under the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-.69 (2020). MAPA provides a right to judicial review by this court, pursuant to a writ of certiorari, of any "final

[2] Persons covered by the managerial plan are excluded from collective bargaining units under Minn. Stat. §§ 179A.01-.60 (2020). Minn. Stat. § 43A.18, subd. 3(c).

decision in a contested case" by an agency.[3] Minn. Stat. § 14.63; *see In re Haymes*, 444 N.W.2d 257, 259 (Minn. 1989); *Lam v. City of St. Paul*, 714 N.W.2d 740, 743 (Minn. App. 2006). Knutson does not dispute that the BMS is an "agency" or that the arbitration is properly characterized as a "contested case" as defined in MAPA. Minn. Stat. § 14.02, subds. 2, 3. Instead, he argues that this court lacks jurisdiction to review the arbitration decision pursuant to a writ of certiorari because the decision was rendered by an independent arbitrator and, as such, is not a final decision of the BMS. Knutson argues that the only proper avenue for review is through an action brought in district court under the Minnesota Uniform Arbitration Act (the UAA), Minn. Stat. §§ 572B.01-.31 (2020), which allows very limited grounds for review of an arbitration decision.[4]

The DOC responds that this court has jurisdiction because, under the plain language of Minn. Stat. § 43A.33, a decision of an arbitrator from a list provided by the BMS under that section constitutes a decision of the BMS for purposes of obtaining judicial review under MAPA. The DOC also argues that review under the UAA is unavailable here because the UAA expressly limits its coverage to arbitration decisions that result from "agreements to arbitrate." Minn. Stat. § 572B.03. The DOC points out that submission of the dispute to arbitration was mandated by statute, not any "agreement[] to arbitrate."

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[3] Minn. Stat. § 606.06 (2020) also provides that "[a] writ of certiorari for review of an administrative decision pursuant to chapter 14 is a matter of right."

[4] While still circumscribed in scope, certiorari review includes review of "whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992) (quotation omitted).

The jurisdictional question presented here requires us to interpret Minn. Stat. § 43A.33. Appellate courts "interpret statutory language to ascertain and effectuate the Legislature's intent." *State v. Bowen*, 921 N.W.2d 763, 765 (Minn. 2019) (quotation omitted); *see also* Minn. Stat. § 645.16 (2020). The initial inquiry is whether the statutory language, on its face, is ambiguous. *Tapia v. Leslie*, 950 N.W.2d 59, 61 (Minn. 2020). If the statutory language is unambiguous, then its plain meaning controls and we do not engage in additional statutory construction. *Id.* "A statute is ambiguous only if it is subject to more than one reasonable interpretation." *State v. Townsend*, 941 N.W.2d 108, 110 (Minn. 2020). In determining whether ambiguity exists, "[a] statute must be construed as a whole and the words and sentences therein are to be understood . . . in the light of their context." *Schmidt ex rel. P.M.S. v. Coons*, 818 N.W.2d 523, 527 (Minn. 2012) (quotation omitted). With this framework in mind, we now turn to an interpretation of the statute.

Section 43A.33 set outs the grievance procedures for state employees to resolve disputes over discipline. Subdivision 3 refers specifically to the procedure for employees, like Knutson, who are in classified positions not covered by collective bargaining agreements. That subdivision requires a notice to be provided to employees who have been discharged, suspended without pay, or demoted, setting out the grievance procedure and advising that they "may elect to appeal the action to the Bureau of Mediation Services." Minn. Stat. § 43A.33, subd. 3(b). If an employee exercises this right, "the commissioner of the [BMS] shall provide both parties with a list of potential arbitrators according to the rules of the [BMS] to hear the appeal." *Id.*, subd. 3(d). The statute also provides that the selected arbitrator must then conduct the hearing "pursuant to the rules of [the BMS]." *Id.*

Construing the statute as a whole, we conclude that Minn. Stat. § 43A.33, subd. 3, unambiguously contemplates that a decision of an arbitrator appointed under that subdivision is a decision of the BMS, for the purposes of obtaining judicial review under section 14.63 of MAPA. In reaching this conclusion, it is significant that subdivision 3 of section 43A.33 provides that the right of appeal by an aggrieved employee is "*to the Bureau of Mediation Services*." Minn. Stat. § 43A.33, subd. 3(b) (emphasis added). In addition, the arbitrator is selected from a list provided *by the commissioner of the BMS* for an arbitration that must be conducted "pursuant to the *rules of the [BMS]*." Minn. Stat. § 43A.33, subd. 3(d) (emphasis added).

The fact that the arbitrators are not employees of the BMS is not dispositive. The purpose of Minn. Stat. § 43A.33, subd. 3, is to provide a procedure for classified employees not covered under a collective bargaining agreement to challenge a discharge, suspension without pay, or demotion. That procedure provides for an appeal to the BMS with the requirement that a hearing be held and a decision made. Minn. Stat. § 43A.33, subd. 3(d). Knutson has cited no caselaw that makes a distinction based on whether the decision-maker was an employee of the agency or an independent agent and we see no basis for doing so here. *Cf. Maye v. Univ. of Minn.*, 615 N.W.2d 383, 386-87 (Minn. App. 2000) (explaining that even though a promotion decision was made by "only one person," it is nevertheless a quasi-judicial decision of the University of Minnesota, subject to review under Minn. Stat. § 606.01 by the court of appeals pursuant to a writ of certiorari).

To conclude otherwise would deprive parties of any opportunity for judicial review of an arbitration decision rendered under the procedures of Minn. Stat. § 43A.33, subd. 3.

Knutson's contention that the arbitration decision is subject to review through an action in district court under the UAA is mistaken. The UAA, by its express terms, applies only to arbitrations held pursuant to an "agreement[] to arbitrate."[5] Minn. Stat. § 572B.03; *see Oliver v. State Farm Fire & Cas. Ins. Co.*, 939 N.W.2d 749, 751-53 (Minn. 2020) (explaining that the UAA "defines the scope of its application by stating that the Act 'governs agreements to arbitrate'" (quoting Minn. Stat. § 572B.03)). The DOC and Knutson are not parties to an "agreement[] to arbitrate." Minn. Stat. § 572B.03. The appointment of the arbitrator was pursuant to a right of appeal granted by statute, not an agreement. Thus, neither party has a right to seek judicial review of the BMS arbitrator's decision by initiating an action in district court under the UAA.

For the above reasons, we conclude that the plain language of Minn. Stat. § 43A.33, subd. 3, compels the conclusion that the decision of the arbitrator constitutes a "final decision in a contested case" under MAPA and is thus subject to judicial review in this court by certiorari. Minn. Stat. §§ 14.63, 606.06. This appeal may proceed and the BMS shall remain as a named respondent.

Appeal to proceed.

[5] This limitation on the scope of coverage of the UAA is echoed in the UAA's definition of an "arbitrator" as an "individual appointed to render an award in a controversy between persons who are *parties to an agreement to arbitrate*." Minn. Stat. § 572B.01(2) (emphasis added).