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Re: *State of Delaware, Delaware Transit Corporation v. Amalgamated Transit Union, Local 842*
C.A. No. 8764-VCN
Date Submitted: June 12, 2014

Dear Counsel:

This is a dispute about less than $2,000. It is also an appeal from the Public Employment Relations Board (the "PERB").[1]

Appellant State of Delaware, Delaware Transit Corporation ("DTC") terminated an employee, Harry Bruckner ("Bruckner"), represented by Appellee Amalgamated Transit Union, Local 842 ("ATU"). ATU grieved the termination and, in accordance with the Agreement between Local 842, Amalgamated Transit Union, AFL-CIO-CLC, Paratransit and Greater Dover Fixed Route and Delaware

[1] Jurisdiction to hear this appeal is conferred by 19 *Del. C.* § 1309(a).

Transit Corporation (the "CBA"),[2] the matter was submitted to arbitration. The arbitrator ordered Bruckner reinstated.[3] The arbitrator also directed that Bruckner "be credited with all benefits including seniority that may have been lost as a result of the termination."[4] In addition to benefits granted in a section with a heading of "BENEFITS," the CBA elsewhere provides for the payment of bonuses for safety and attendance.[5] When DTC did not pay these bonuses to Bruckner, the ATU filed unfair labor practice charges with the PERB. Labor arbitrations are generally enforced by the PERB through the unfair labor practice process.[6] The PERB sustained the charges; it concluded that safety and attendance bonuses were within

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[2] App. to Appellant's Opening Br. ("App'x") at A-1.

[3] The arbitrator's decision can be found at App'x A-56. DTC unsuccessfully challenged the reinstatement award based on its view that the arbitrator was biased against it. *See Del. Transit Corp. v. Amalgamated Transit Union Local 842*, 34 A.3d 1064 (Del. 2011).

[4] App'x at A-66.

[5] CBA, §§ 11.8 & 38.3 (App'x at A-11, A-31). Section 18 of the CBA with the heading of "BENEFITS" appears at App'x A-18.

[6] The Delaware Uniform Arbitration Act, 10 *Del. C.* ch. 57, does not apply to arbitration proceedings brought under collective bargaining agreements. 10 *Del. C.* § 5725. Instead, failure to comply with an award conferred by an arbitrator in accordance with a collective bargaining agreement constitutes an unfair labor practice. Noncompliance is considered a unilateral change to the bargained-for contractual arrangement and, thus, constitutes a breach of the duty to bargain in good faith. *See* 19 *Del. C.* § 1307(a)(5).

the language and scope of the arbitrator's award.[7] If Bruckner had not been terminated, he would have had the opportunity to work (an opportunity that he was improperly denied by DTC) and earn the bonuses. Accordingly, the PERB agreed that the bonuses were benefits that "may have been lost" because of Bruckner's termination.

DTC appealed, and it argues that the PERB substituted its judgment improperly to modify or to interpret an ambiguous, and thus unenforceable, arbitration award.[8] DTC notes that the arbitrator did not expressly address the safety and attendance bonuses,[9] and that whether Bruckner would have earned the bonuses could not be known because the work necessary to achieve them was not performed. If the arbitrator intended to grant such speculative relief, DTC contends, the arbitration award should have clearly said so and not have been left vague and ambiguous. As DTC points out, it contracted for disputes to be resolved

[7] App'x at A-43.
[8] The PERB has authority to secure compliance with arbitration awards that are "clear and unambiguous." *See Int'l Longshoremen's Ass'n v. Diamond State Port Corp.*, ULP 12-11-880, at 5815-16 (Del. PERB Aug. 15, 2013). In the meantime, DTC has paid the bonuses to Bruckner.
[9] The arbitration award did not address whether Bruckner could have, or would have, qualified for the bonuses.

by an arbitrator, not by the PERB. In short, DTC argues that because the arbitration award did not clearly and unambiguously direct payment of the bonuses to Bruckner, the PERB lacked the authority to require such payment.

As a general matter, on review of an administrative agency's decision, the Court's "sole function is to determine whether the Board's decision is supported by substantial evidence and is free from legal error."[10] The critical issue posed by this appeal is a question of law: whether the arbitrator's decision is clear and unambiguous.[11] There is some separation between the parties as to whether the Court should accord any deference to the PERB for questions of law. The Court need not resolve that tension because, regardless of how the governing standard is framed, the outcome would be the same.

The question here is whether bonuses were unambiguously awarded. The Court concludes that they were. Bonuses are a financial benefit granted by the CBA under certain conditions. One condition for the disputed bonuses involved presence on the job. Bruckner could not satisfy that condition because of his

[10] *Angstadt v. Red Clay Consol. Sch. Dist.*, 4 A.3d 382, 387 (Del. 2010).
[11] The issue is not whether the arbitrator could, or should, have awarded the bonuses.

termination, which was found to have been improper. If, instead, he had been allowed to work, he may have earned the bonuses. In other words, the bonuses were "benefits . . . that may have been lost as a result of the termination." Thus, the bonuses fall within the plain language of the arbitration award,[12] and the PERB's decision, whether or not entitled to deference in this context, must be sustained.

It is not necessary for an arbitration award in this context to fill in every detail. For example, the award granted Bruckner his back pay, and DTC eventually complied. The arbitrator did not calculate the number; the parties are

[12] DTC suggests that the arbitrator's use of the term "benefits" is ambiguous. Appellant's Opening Br. at 22. It observes that "benefits" was not a defined term in the arbitration decision, and that Section 18 of the CBA carries the heading of "BENEFITS." Seniority is addressed elsewhere in the CBA (Section 32), and the arbitrator referred to "benefits including seniority." Because seniority is addressed in a different section of the CBA, the Court concludes that a proper reading of "benefits" as used by the arbitrator more broadly encompasses the benefits conferred by the CBA, not just Section 18. The arbitrator did not indicate any special meaning for "benefits," and the Court accepts that he was referring to benefits, as commonly understood. That would include bonuses such as those awarded for Bruckner's benefit.

presumed to know (or to be able to calculate) that number. Similarly, calculation of the safety and attendance bonuses can be readily accomplished.[13]

Therefore, the decision of the PERB is affirmed.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K

[13] If there were uncertainty as to the scope of the arbitrator's intent, a return to the contractually agreed-upon arbitration forum would be appropriate. DTC seems to worry that the precise amount of the bonuses was not prescribed. Yet, the amount of the bonuses is no more in dispute than Bruckner's back pay was. The arbitrator did not calculate back pay, but DTC did not object to that. Regardless, this dispute focuses on whether the bonuses should have been paid, not the amount of the bonuses. The arbitration award captures the bonuses. Perhaps the arbitrator's decision was wrong, but that is not an issue which the Court may resolve.