

STATE OF MICHIGAN
COURT OF APPEALS

OFFICE OF THE STATE EMPLOYER and
DEPARTMENT OF CORRECTIONS,

UNPUBLISHED
September 17, 2002

Plaintiffs/Counter-Defendants-
Appellees,

v

UAW LOCAL 6000,

Defendant/Counter-Plaintiff-
Appellant.

No. 232740
Ingham Circuit Court
LC No. 00-092268-CL

Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Defendant (hereinafter “the Union”) appeals as of right the circuit court’s order granting plaintiffs’ motion for summary disposition and vacating an arbitration award reinstating plaintiff Department of Corrections (“DOC”) employee William Cunningham. We reverse and remand for entry of an order enforcing the award. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs and the Union were parties to a collective bargaining agreement (“CBA”). Article 5(A) gave the DOC the authority to promulgate work rules. Article 8 provided for a grievance procedure, the final step of which was arbitration. Article 8(B)(6) provided the arbitrator would “only have authority to adjust grievances in accordance with [the CBA],” and would not “have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of [the CBA].” Article 9(A) provided that the DOC had the authority to impose discipline, including termination of employment, for just cause. Article 9(D)(2) provided that an employee charged with a criminal offense may be suspended. Favorable resolution of the matter, e.g., dismissal or acquittal, would result in reinstatement; however, the DOC reserved the right to take disciplinary action against an employee for just cause at any time, regardless of the outcome of the criminal proceedings.

Cunningham, a DOC employee since 1971, was charged with possession of marijuana, a misdemeanor. The DOC suspended him without pay. Cunningham was found to have committed the offense of possession of marijuana. He was fined and placed on probation.

Judgment of guilt was deferred pursuant to MCL 333.7411, and subsequently, Cunningham's record was expunged without entry of a conviction. The DOC terminated Cunningham's employment.

Cunningham grieved his suspension and discharge, and the matter proceeded to arbitration. The arbitrator reinstated Cunningham to his employment. The arbitrator found that Cunningham's suspension following his arrest was authorized under Article 9(D)(2), and denied the grievance on that issue. Regarding the discharge, the arbitrator observed that what was involved was an admission of past use of marijuana, and an arrest for possession of marijuana; although there was prosecutorial action and court adjudication, there was no conviction. The arbitrator acknowledged that possession of marijuana at home by an employee violated DOC rules, but asserted that such an act was "at the less serious end of the spectrum of drug-related criminal offenses." The arbitrator rejected the DOC's position that all drug-related misconduct must result in discharge, remarking that an arbitrator "always must consider the appropriateness of the punishment meted out by management." The arbitrator concluded that notwithstanding the fact that Cunningham engaged in serious misconduct, the DOC had not shown just cause for termination of his employment. The arbitrator determined that the treatment of other similarly situated DOC employees and the presence of strong mitigating circumstances, including Cunningham's cooperation and good work record, warranted reinstatement.

Plaintiffs filed a petition in circuit court to vacate that portion of the arbitration award reinstating Cunningham¹. The Union counter sued to enforce the award, and the parties filed competing motions for summary disposition pursuant to MCR 2.116(C)(10). The circuit court granted plaintiffs' motion for summary disposition and vacated the arbitrator's award, finding that the arbitrator exceeded his authority. The court noted the CBA did not allow the arbitrator to change the terms of the agreement, and the DOC's Work Rule 16 provided that any conviction resulting from the use or sale of an illegal substance would result in dismissal. The court did not address plaintiffs' public policy argument.

We review a circuit court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). However, when considering the enforcement of an arbitration award, this Court's review is circumscribed. Labor arbitration is a product of contract. An arbitrator's authority to resolve a dispute arising out of the interpretation of a CBA is derived exclusively from the contract. A court cannot review factual findings or the merits of the decision, and may only decide whether the arbitrator's decision draws its essence from the contract. If the arbitrator did not disregard the scope of his authority as expressed in the contract, judicial review ceases. *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 118-119; 607 NW2d 742 (1999), quoting *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989).

¹ Cunningham was initially offered a new assignment based on the terms of the arbitration decision. He acknowledged and accepted the new assignment, but the offer was withdrawn shortly thereafter and the circuit court appeal filed.

The Union argues the circuit court erred by vacating the arbitration award. We agree, reverse the circuit court's decision, and remand for entry of an order affirming the arbitration award. An arbitrator's imposition of a less severe penalty is without authority and exceeds the terms of the contract at issue *only if* the contract clearly reserved to the employer, without being subject to review, the power to discharge for the infraction found to have been committed. *Police Officers Ass'n of Michigan v Manistee Co*, 250 Mich App 339, 344-346; 645 NW2d 713 (2002). Under MCL 333.7411, once Cunningham complied with the terms of his probation, the misdemeanor charge was dismissed and he was discharged. Because there was no conviction of possession of marijuana, Work Rule 16 is inapplicable, and the circuit court erred in reversing the arbitration award based on that work rule.

Termination of Cunningham's employment for just cause notwithstanding the resolution of the criminal proceedings without conviction was permitted by Article 9(D)(2) of the CBA. However, the CBA provided that imposition of discipline, including discharge, could be for just cause only and could be challenged through the grievance process. That process culminated in arbitration. Although Article 8(B)(6) of the CBA provided that the arbitrator lacked the authority to modify, change, or nullify the agreement, no language in the CBA clearly and unambiguously provided that the arbitrator had no authority to determine the DOC lacked just cause to terminate an employee. *Id.* The arbitrator did not exceed his authority as expressed in the CBA, and his decision drew its essence from the CBA. Under the circumstances, the circuit court lacked the authority to vacate the award. *Lenawee Co Sheriff, supra*.

Reversed and remanded for entry of an order enforcing the arbitrator's award. We do not retain jurisdiction.²

/s/ Helene N. White

/s/ Janet T. Neff

/s/ Kathleen Jansen

² We do not address plaintiff's public policy argument as it was not addressed below. Plaintiff may renew this argument on remand.