STATE OF MICHIGAN

COURT OF APPEALS

TOWNSHIP OF CLAY,

Plaintiff/Counter-Defendant-Appellant,

v

HERMAN MONTVILLE,

Defendant-Appellee,

and

MICHIGAN ASSOCIATION OF POLICE,

Defendant/Counter-Plaintiff-Appellee.

UNPUBLISHED
June 17, 2004

No. 248293
St. Clair Circuit Court
LC No. 02-001275-AA

Before: Smolenski, P.J., and White and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the order denying its claim of appeal to set aside an arbitration award. This case arose when Corporal Montville was demoted after an administrative investigation determined that on two separate occasions he violated certain policies of the Clay Township Police Department (the Department).[1] We affirm.

Review of arbitration awards is narrowly circumscribed. *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 117; 607 NW2d 742 (1999).

> 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

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[1] Specifically, defendant was found to have violed section II of General Order No. 62-1 and section K of step four of the progressive disciplinary process under Disciplinary Special Order No. 99-15.

> 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. *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143; 393 NW2d 811 (1986). 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. [*Id.*] 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.*]; *Ferndale Ed Ass'n v School Dist for City of Ferndale No 1*, 67 Mich App 637; 242 NW2d 478 (1976). [*Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989).]

Here, the arbitrator's authority was governed by an arbitration provision under the terms of the parties' collective bargaining agreement, which limited his decision strictly to the interpretation, application, or enforcement of the specific articles of the agreement. Under this grant of authority, the arbitrator first determined that the Department's progressive disciplinary guidelines were consistent with a just-cause employment relationship. After reviewing the policies and facts, the arbitrator then concluded that there was no question that Corporal Montville violated the Department's express policy codified in order no. 62-1; however, the policy had not been followed strictly by all officers in every given situation. Thus, when the Chief was advised of the first incident, he should have discussed the matter with Corporal Montville or reaffirmed the written policy. According to the arbitrator, demoting Corporal Montville because of the accumulation of the two events was unreasonable considering that the second incident might not have occurred if proper notice had been given after the first incident.

According to plaintiff, the arbitrator's award in this case is similar to the arbitrator's erroneous decision in *Lenawee Co Sheriff*, *supra*, where this Court found that the arbitrator exceeded his authority by sympathizing with the discharged police officer and by finding that strict application of the sheriff department's rules caused an unjust result despite the fact that an express provision of the collective bargaining agreement mandated discharge under the circumstances. See *Monroe Co Sheriff v Fraternal Order of Police, Lodge 113*, 136 Mich App 709, 718-719; 357 NW2d 744 (1984) (arbitrators have no authority to impose a less severe penalty where the agreement clearly reserves to the employer, without being subject to review by an arbitrator, the power to discharge for the infraction). However, we find that *Lenawee, supra,* is distinguishable from the present case because, here, there is no unambiguous language establishing that demotion was mandatory for the violations at issue.

The present case is more closely analogous to *Lincoln Park, supra*, where we found that the arbitrator did not exceed his authority because, although it was undisputed that the officer violated department regulations, the regulations made it clear that the penalty of discharge was *optional*. Thus, this Court found that the arbitrator was free to determine that the officer's dismissal was not justified. *Id*. at 6. Similarly, here, the collective bargaining agreement and the Department's progressive disciplinary guidelines do not mandate any particular discipline; they expressly provide for review of the reasonableness of any disciplinary action, including discharge, by an arbitrator. In absence of language clearly and unambiguously to the contrary,

an arbitrator may determine that, while an employee is guilty of some infraction, the infraction was not just cause for the discipline, and the arbitrator may impose a less severe penalty. *Monroe Co Sheriff*, *supra* at 718.

It cannot be said that the arbitrator exceeded his authority in determining whether there was reasonable just cause for the discipline imposed. The arbitrator believed that it was unreasonable to demote Corporal Montville because of both events when Corporal Montville was working under the presumption that the policy in question was not always strictly enforced and when the second incident could arguably have been prevented if Chief Eder had taken more immediate action to ensure that the order was being enforced. Although there was no question that Corporal Montville was guilty of some infraction, it was within the scope of the arbitrator's authority to determine that the infraction did not amount to just cause for demotion and instead impose some less severe penalty. See *Monroe Co Sheriff*, *supra* at 718. Despite plaintiff's contentions, we do not agree that the arbitrator strayed from interpretation and application of the agreement or that he was dispensing "his own brand of industrial justice." See *Major League Baseball Players Ass'n v Garvey*, 532 US 504, 509; 121 S Ct 1724; 149 L Ed 2d 740 (2001). The arbitrator merely interpreted the relevant disciplinary provisions and drew the essence of his award from the parties' collective bargaining agreement.

Plaintiff also argues that reducing Corporal Montville's punishment to a mere one-day suspension undermined the important public policy concern regarding vigilant enforcement. We disagree. There is a limited public policy exception to the general rule of judicial deference to arbitrator's awards, *Gogebic Medical Care Facility v AFSCME Local 992, AFL-CIO*, 209 Mich App 693, 697; 531 NW2d 728 (1995). But

> a court's refusal to enforce an arbitrator's *interpretation* of [a collective bargaining agreement] is limited to situations where the contract as interpreted would violate "some explicit public policy" that is "well-defined and dominant, and is to be ascertained 'by reference to the laws and legal precedent and not from general considerations of supposed public interest.'" [*Lincoln Park*, *supra* at 6-7; quoting *United Paperworkers International Union, AFL-CIO v Misco, Inc*, 484 US 29, 43; 108 S Ct 364; 98 L Ed 2d 286 (1987), quoting *W R Grace & Co v Local 759, International Union of the United Rubber, Cork, Linoleum & Plastic Workers of America*, 461 US 757, 766; 103 S Ct 2177; 76 L Ed 2d 298 (1983), quoting *Muschany v United States*, 324 US 49, 66; 65 S Ct 442; 89 L Ed 744 (1945) (emphasis in *United Paperworkers, supra*).]

To constitute a violation of public policy, the award must essentially have the effect of mandating illegal activity or causing an employer to act unlawfully. See *Lincoln Park*, *supra* at 7-8 (enforcing arbitrator's award because there was no legal proscription against reinstating the officer under the circumstances); cf *Gogebic*, *supra* at 697-698 (vacating arbitrator's award because it was in direct conflict with a federal regulation); see, generally, *Lansing Community College v Lansing Community Chapter of the Mich Ass'n for Higher Ed*, 161 Mich App 321; 409 NW2d 823 (1987), vacated 429 Mich 895, on remand 171 Mich App 172 (1988).

Here, we find that the arbitrator's decision that Corporal Montville's conduct did not warrant a demotion and that a suspension would instead suffice did not violate the public policy

against drunk driving. Corporal Montville was not himself guilty of engaging in the proscribed illegal activity; rather, his improper conduct was his failure to strictly adhere to the Department's policy. See *Police Officers Ass'n of Michigan v Manistee Co*, 250 Mich App 339, 347; 645 NW2d 713 (2002) (holding that while maintaining safety at a county jail is an important public policy, the sheriff's behavior was not so egregious that reinstatement to his job would undermine that public policy). The arbitrator determined that, under the circumstances, a one-day suspension was the appropriate level of discipline to make the point that such conduct was not condoned. Thus, this Court must give deference to the arbitrator's interpretation of the parties' agreement.

Affirmed.

/s/ Michael R. Smolenski
/s/ Helene N. White
/s/ Kirsten Frank Kelly