STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1079

Hennepin Healthcare System, Inc.,
Appellant,

vs.

AFSCME Minnesota Council 5, Union,
Respondent.

Filed April 25, 2022
Reversed and remanded
Ross, Judge

Hennepin County District Court
File No. 27-CV-21-1831

Michael O. Freeman, Hennepin County Attorney, Martin D. Munic, Senior Assistant County Attorney, Katlyn J. Lynch, Assistant County Attorney, Minneapolis, Minnesota (for appellant)

Josie Hegarty, Staff Attorney, AFSCME Council 5, South St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Klaphake, Judge.*

SYLLABUS

An arbitration award does not draw its essence from the parties' agreement if the arbitrator exceeds the expressly limited power conferred in the agreement.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

OPINION

ROSS, Judge

A hospital that employs unionized workers subcontracted with a staffing agency to provide other workers who would perform the same work. The union objected based on a collective-bargaining-agreement provision that prohibits the hospital from employing a "temporary employee" longer than six months. An arbitrator sided with the union, and the district court agreed, reasoning that the hospital's right to subcontract is restrained by the six-month restriction. We reverse and remand for the district court to vacate the award because the arbitrator exceeded the expressly limited power conferred in the collective bargaining agreement, which prohibits an arbitrator from nullifying any contract provision and which expressly affords the hospital power to subcontract for work by nonemployees without temporal restriction.

FACTS

The appellant hospital (Hennepin Healthcare System, Inc.) employs clerical and general healthcare workers who are members of the respondent union (AFSCME Minnesota Council 5, Union). Separate collective bargaining agreements cover the clerical and general healthcare employees, but because their terms are substantively identical, we will refer to these agreements singularly. The dispute in this case arose between the union and the hospital over the hospital's use of nonunion workers employed by a staffing agency with which the hospital subcontracted, and its resolution depends on provisions in the parties' collective bargaining agreement.

In October 2018 the hospital renewed multiple three-year service contracts with staffing agencies to provide the hospital with workers. These workers are not members of the union, and the arrangement did not cause any union member to lose his or her job. The union filed a grievance objecting to the hospital's use of the workers, asserting that they were performing the same work as its member employees for too long a period and that the collective bargaining agreement prohibited the arrangement.

The parties arbitrated the dispute. The arbitrator agreed with the union. He purported to harmonize two articles of the collective bargaining agreement he perceived to be in conflict. One of the articles allows the hospital to employ any "temporary employee" no longer than six months, and the other allows the hospital to subcontract for work with no temporal limit. He recognized that the staffing agency workers are not "temporary employee[s]" as that term is defined in the collective bargaining agreement but nonetheless concluded that the hospital must apply to its subcontracts the six-month employment limit that applies to its temporary employees. The district court confirmed the arbitration award, and the hospital appeals.

ISSUE

Did the district court err by confirming the arbitration award?

ANALYSIS

The hospital challenges the district court's judgment confirming the arbitration award and denying its motion to vacate the award. We review de novo the district court's decision confirming an arbitration award. *Seagate Tech., LLC v. W. Digit. Corp.*, 854 N.W.2d 750, 760 (Minn. 2014). The district court must make "every reasonable

presumption" favoring an arbitration award's validity. *Id.* at 761. Even with that weighty presumption, we reverse the district court's decision here because the arbitrator exceeded his power.

An arbitrator is typically the final judge of law and facts in disputes over how a collective bargaining agreement applies. *See Cournoyer v. Am. Television & Radio Co.*, 83 N.W.2d 409, 411 (Minn. 1957). Relying on that power, the arbitrator here read two articles of the collective bargaining agreement—articles 3 and 42—as conflicting and needing to be reconciled. Article 3 allows the hospital to *employ* nonunion members on a temporary basis only. It specifically defines a "temporary employee" as "[a]n individual designated by the EMPLOYER as temporary" and states that this "employment is not to exceed six (6) months duration in temporary status in a calendar year." By contrast, article 42 provides, "Nothing in this AGREEMENT shall prohibit or restrict the right of the EMPLOYER from contracting with vendors or others for materials or services." The arbitrator reasoned that the hospital's power under article 42 to subcontract for workers to perform work with no temporal restriction conflicts with the restriction in article 3, which limits the term of a temporary employee to six months. Based on this conflict, the arbitrator determined that "[c]ontinuing a temporary worker supplied by a staffing agency performing bargaining unit work for over six months in a calendar year" violates the agreement and requires the hospital to so limit its subcontracts.

But the arbitrator lacked the power to limit the hospital's right to subcontract in this fashion. Under the Uniform Arbitration Act as codified in Minnesota, the district court must vacate an arbitration award if the arbitrator exceeded his power. Minn. Stat.

§ 572B.23(a)(4) (2020); *Seagate Tech., LLC*, 854 N.W.2d at 760–61. An arbitrator exceeds his power if his award does not "draw[] its essence from the parties' agreement." *Wolfer v. Microboards Mfg., LLC*, 654 N.W.2d 360, 366 (Minn. App. 2002), *rev. denied* (Minn. Feb. 26, 2003). An award does not draw its essence from the parties' agreement if it is not rationally based on the contract's language, content, and indicia of intent. *Id.* For the following reasons, we conclude that the arbitrator's award is not rationally based on the collective bargaining agreement's language.

The collective bargaining agreement restrains the scope of the arbitrator's power in article 7, which provides that "[t]he arbitrator shall not have the right to amend, modify, nullify, ignore, add to, or subtract from the provisions" of the collective bargaining agreement. The arbitrator's decision would essentially amend the collective bargaining agreement by adding to one of its provisions a restriction that, by its express terms, applies only to a different provision. More precisely, the arbitrator nullified the hospital's bargained-for right to subcontract for services without the temporal restriction that exists only in the union's bargained-for limit on temporary employment. Article 3 unambiguously defines who is a "temporary employee" of the hospital, and article 42 governs subcontracted workers, who are not employees of the hospital at all. There is therefore no literal, substantive conflict between articles 3 and 42; each article regards different rights as to different classes of workers, and each stands independent of the other. Given this distinction and the union's acknowledgment that the subcontracted workers in this case do not meet the temporary-employee definition, the arbitrator had no power under the collective bargaining agreement to temporally restrain the hospital's subcontracts.

The arbitrator's decision implicitly sought to remedy a circumstance the union might fashion as an injustice, which is the hospital's use of subcontracted workers who allegedly perform duties that union members would otherwise perform. The factual problem with this approach is that the subcontracts have not cost the union members any jobs. The legal problem with this approach is that an arbitrator has no power to overlook a collective bargaining agreement's terms to dispense his "own brand of industrial justice." *Ramsey County v. AFSCME, Council 91, Loc. 8*, 309 N.W.2d 785, 790 (Minn. 1981) (quotation omitted). And any theoretical, justice-impacting conflict the arbitrator discerned is plainly abolished by the emphatic, conflict-resolving interpretive cue included in article 42: "Nothing in this AGREEMENT shall prohibit or restrict the right of the EMPLOYER . . . ." In short, despite the parties having expressly agreed that "[n]othing . . . shall prohibit or restrict" the hospital's right to subcontract for services, the arbitrator issued an award that would directly prohibit or restrict the hospital's right to subcontract for services. The arbitrator lacked the power to so restrain the hospital.

We add that the collective bargaining agreement elsewhere clearly contemplates the hospital's right to subcontract for services lasting longer than six months. It establishes the procedure for unionized-employee layoffs resulting from union work being performed by subcontracted workers—layoffs which would not realistically occur if service subcontracts were limited to six months. The arbitrator's analysis did not address the discord between the award and this implication.

The hospital presents additional arguments challenging the arbitrator's award, but our holding that the arbitrator exceeded his power eliminates the need to address them.

DECISION

The arbitrator issued an award that does not draw its essence from the parties' agreement by exceeding the expressly limited power conferred in the agreement and purporting to resolve a purely theoretical conflict in a manner that nullifies a bargained-for term. The district court erred by confirming the arbitration award, which applied the collective bargaining agreement's six-month, temporary-employee restriction to the hospital's staffing-agency subcontracts. We reverse the district court's judgment confirming the arbitration award, and we remand for the district court to vacate the award.

Reversed and remanded.