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**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-1494**

City of Duluth,
Appellant,

vs.

Local 101 International Association of Firefighters,
Respondent.

**Filed June 18, 2012**
**Affirmed**
**Chutich, Judge**

St. Louis County District Court
File Nos. 69DU-CV-11-1030; 69DU-CV-10-507

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Considered and decided by Johnson, Chief Judge; Chutich, Judge; and Crippen, Judge.[*]

**U N P U B L I S H E D   O P I N I O N**

**CHUTICH**, Judge

The City of Duluth challenges two orders of the district court, arguing that the district court erred in ordering arbitration and subsequently affirming the arbitration

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

award. Because we conclude that the district court properly granted the motion to compel arbitration and then, in confirming the arbitration award, correctly found that the arbitrator did not exceed his powers, we affirm.

## FACTS

Beginning in 1983, the City of Duluth (Duluth) negotiated a series of collective bargaining agreements with several unions, including Local 101 International Association of Firefighters (the firefighters). The agreements were effective from January 1, 1983, through December 31, 2006. The agreements contained the following language concerning retired employees' hospital-medical coverage:

> Any employee who retires from employment with the City . . . shall receive hospital-medical insurance coverage to the same extent as active employees, subject to the following conditions and exceptions . . . .

Under these agreements, Duluth provided retirees with the same level of healthcare coverage that was in effect the day they retired.

In October 2005, an independent actuarial firm determined that Duluth's total accrued actuarial liability for health benefits was approximately $280 million, over half of which was attributable to retirees' healthcare benefits. Faced with a budget crisis, Duluth formed a special task force to make recommendations on how Duluth could remedy the situation and decrease the city's healthcare costs. One recommendation was to reduce the number of healthcare plans available to current and retired employees. This change would allow Duluth to administer a smaller number of healthcare policies, thereby saving the city much money.

Officers of several unions, including the firefighters, agreed to work with the city to address the healthcare-benefits situation. In negotiations for the 2007–09 agreement, the firefighters made major concessions along these lines by agreeing to reduce the number of healthcare plans available for current and retired firefighters. Under previous agreements, firefighters could choose from five possible healthcare plans; under the new agreement, they had only one option, Plan 3A.

The 2007–09 agreement accordingly modified the language relating to healthcare benefits at retirement as follows:

> Any employee . . . who retires from employment with the City . . . shall receive hospital-medical benefit plan coverage to the *same extent as active employees under Plan 3A*, subject to the following conditions and exceptions . . . .

(emphasis added). In addition, under the 2007–09 agreement, firefighters who began working for Duluth after 2007 no longer receive any healthcare benefits upon retirement, a major concession for the firefighters. During the negotiations, Duluth did not inform the firefighters that it wanted to end the practice of providing retirees the same level of healthcare coverage that was in effect on the day they retired.

After the firefighters and Duluth concluded negotiations for the 2007–09 agreement, Duluth indicated that it no longer intended to freeze retiree benefits upon retirement. As a result, in 2008, a class of retirees who were entitled to receive retiree healthcare benefits under agreements effective from January 1, 1983, through December 31, 2006, sued Duluth. Retirees of the firefighters' union were part of the class, but the firefighters' union was not a party to the litigation. The retirees claimed

that their healthcare benefits were fixed at the level of coverage in place on the date of retirement. The case turned on interpretation of the paragraph of the collective bargaining agreements providing that a retiree "shall receive hospital-medical insurance coverage to the same extent as active employees."

The district court granted summary judgment in favor of Duluth, holding that the language was unambiguous and did not fix retirees' coverage at the level they were receiving at their retirement. *Savela v. City of Duluth*, No. 69-DU-CV-11-1030 (Minn. Dist. Ct. Oct. 13, 2009). Therefore, Duluth was allowed to modify retirees' coverage to match that provided to current employees. The class appealed the district court's decision.

After the district court issued its decision in *Savela*, the firefighters immediately asked Duluth to provide assurances that the language of the 2007–09 collective bargaining agreement prohibited Duluth from changing the level of healthcare coverage an employee received after retirement. Duluth responded that it disagreed with the firefighters' interpretation and denied the request for assurances. The firefighters filed a grievance on December 23, 2009, on behalf of three members who were contemplating retirement. After Duluth denied the grievance and refused to arbitrate, the firefighters moved in district court to compel arbitration. The district court found that Duluth's refusal to provide assurances to the firefighters was a grievance that fell within the substantive scope of the parties' agreement to arbitrate and ordered the parties to arbitrate the grievance.

Before the arbitration was conducted, this court affirmed the district court's interpretation of the scope of medical insurance coverage provided to retired Duluth employees under the 1983–2006 collective bargaining agreements. *Savela v. City of Duluth*, No. A09-2093, 2010 WL 3632313 (Minn. App. Sept. 21, 2010). In an unpublished opinion, this court held that the phrase "to the same extent as active employees" was unambiguous and that Duluth "may modify the level of health-insurance coverage provided to retirees to the same extent that it modifies the level of coverage provided to active employees." *Id*. at *3. Because this court found the language to be unambiguous, it "decline[d] to consider the extrinsic evidence of intent and past interpretation." *Id.*

On December 30, 2010, after this court had issued the opinion in *Savela*, the arbitrator issued his decision and award in favor of the firefighters. The arbitrator declined to apply *Savela* because he did not believe it determinative of the dispute concerning the 2007–09 collective bargaining agreement.[1] Based upon the parties' past conduct, the arbitrator found that the 2007–09 agreement required Duluth to provide a retiree with the same level of coverage and benefits that the retiree received on the date of retirement, "without subsequent adverse change or modification." Duluth filed a motion in district court to vacate the arbitration award. By order and memorandum dated

[1] Among other reasons given, the arbitrator noted that Minnesota law promotes, and, in most instances requires, labor agreement disputes to be resolved through arbitration; the parties clearly delegated to an arbitrator the authority to resolve disagreements over interpretation of the agreement; the firefighters' union was not a party in *Savela*; and the unpublished *Savela* decision did not involve the language of the 2007–09 collective bargaining agreement.

June 24, 2011, the district court denied the motion to vacate and confirmed the arbitration award.

About six months later, on November 23, 2011, the supreme court affirmed this court's decision. *Savela v. City of Duluth*, 806 N.W.2d 793 (Minn. 2011). The court found that the plain language of the contracts in place during 1983–2006 was unambiguous and the term "active," as used in the agreements was synonymous with the term "current." *Id.* at 797. Based on the unambiguous language of the agreements, the supreme court concluded that the plaintiff retirees were entitled to the same benefits as *current* city employees. *Id.* at 798.

On June 7, 2010, before the supreme court issued its decision, Duluth appealed the district court's orders compelling arbitration and confirming the arbitration award. We now address the merits of this appeal.

**D E C I S I O N**

**I.**

We review a determination of arbitrability de novo. *Indep. Sch. Dist. No. 88, New Ulm v. Sch. Serv. Emps. Union Local 284*, 503 N.W.2d 104, 106 (Minn. 1993); *Dist. 318 Serv. Emps. Ass'n. v. Ind. Sch. Dist. No. 318*, 649 N.W.2d 896, 898 (Minn. App. 2002), *review denied* (Minn. Nov. 19, 2002). The court must decide whether a valid agreement to arbitrate exists between the parties and whether the specific dispute falls within the substantive scope of that agreement. *Dist. 318 Serv. Emps.*, 649 N.W.2d at 898; Minn. Stat. § 572.09 (2010).

The agreement to arbitrate, like any contract, must be interpreted based on its specific language. *Ind. Sch. Dist. No. 88*, 503 N.W.2d at 106; *see also Michael-Curry Cos. v. Knutson S'holders Liquidating Trust*, 449 N.W.2d 139, 141 (Minn. 1989). The party opposing arbitration has the burden of proving that the dispute is not within the scope of the arbitration agreement. *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 349 (Minn. 2003). Even where the parties' intention is "reasonably debatable as to the scope of the arbitration clause, the issue of arbitrability is to be initially determined by the arbitrators." *Atcas v. Credit Clearing Corp. of Am.*, 292 Minn. 334, 341, 197 N.W.2d 448, 452 (1972).

Applying these principles, we conclude that the district court properly granted the firefighters' motion to compel arbitration. Here, no party disputes the existence of an arbitration agreement. Rather, Duluth contends that the firefighters' grievance is outside the scope of the agreement because it is not justiciable. Specifically, Duluth claims that the three employees in question cannot demonstrate a redressable injury because they are only contemplating retirement. It therefore asserts that an arbitrator's interpretation of the language before the firefighters retired would be an improper advisory opinion.

Duluth is correct that Minnesota courts will not generally issue advisory opinions. *See State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. App. 2007) ("[T]he judicial function does not comprehend the giving of advisory opinions." (quotation omitted)). The specific language of the parties' agreement, however, does not impose the same justiciability limits on arbitrable grievances as would be applicable to a court.

Under the 2007–09 contract, a "grievance" is defined broadly as "a dispute or disagreement as to the interpretation or application of the terms of this agreement." A dispute is a "conflict or controversy," and a disagreement is a "difference of opinion." *Black's Law Dictionary* 540, 529 (9th ed. 2009). Here, disagreement existed regarding the interpretation of the phrase, "to the same extent as current employees under Plan 3A." The grievance was therefore within the scope of the arbitration clause and the district court did not err in determining that the grievance was arbitrable.[2]

Duluth also challenges the district court's refusal to apply the *Savela* decision and the doctrines of stare decisis, res judicata, and collateral estoppel to preclude arbitration. Minnesota's Uniform Arbitration Act makes clear, however, that conflicts between the parties about the *merits* of an underlying dispute cannot prevent arbitration. Section 572.09(e) of the act provides, "An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides . . . ." Minn. Stat. § 572.09(e).

The Minnesota Supreme Court applied this section to find that, on a motion to compel arbitration, the district court is not allowed to consider the merits of these asserted defenses. *Milwaukee Mut. Ins. Co. v. Currier*, 310 Minn. 81, 87, 245 N.W.2d 248, 251 (Minn. 1976) ("The trial court exceeded its statutory authority under [Minn. Stat. § 572.09(e)] by examining the merits of plaintiff's res judicata defense and

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[2] Even though the three firefighters had not yet retired, disagreement over the type of medical benefits that they would receive in the future is arbitrable "because it affects the interests of employees presently in the unit." Elkouri & Elkouri, *How Arbitration Works*, 209 (Alan Miles Ruben ed., 6th ed. 2003). Many arbitration decisions accordingly determine the issue of what benefits employees will receive when they retire even though they have not yet retired. *See, e.g., Col. Crawford Local Bd. of Ed.*, 115 Lab. Arb. Rep. 1292 (2001) (Murphy, Arb.); *City of Erie*, 106 Lab. Arb. Rep. 457 (1996) (Duff, Arb.).

thereafter enjoining defendant's written demand for arbitration."). The court specifically held that "a res judicata defense does not preclude arbitration proceedings solely because the underlying claim would be barred by res judicata if asserted in an action in court." *Id.* at 88, 245 N.W.2d at 251. Thus, the district court properly did not consider the merit of these arguments on respondent's motion to compel arbitration and correctly ordered that arbitration proceed.

**II.**

Duluth also challenges the district court's confirmation of the arbitration award. It contends that the district court erred in determining that the arbitrator did not exceed his authority and in denying its motion to vacate the arbitration award. "There is a strong policy in Minnesota favoring the finality of arbitration, and the grounds for vacating an arbitrator's award are narrow." *Erickson v. Great Am. Ins. Cos.*, 466 N.W.2d 430, 432 (Minn. App. 1991).

Minn. Stat. § 572.19 (2010) sets forth the narrow grounds on which a court may vacate an arbitrator's award. One such ground is where the arbitrator "exceeded [his or her] powers." Minn. Stat. § 572.19, subd. 1(3). "The scope of an arbitrator's authority is a matter of contract interpretation to be determined from a reading of the parties' arbitration agreement." *Cnty. of Hennepin v. Law Enforcement Labor Servs., Inc., Local No. 19*, 527 N.W.2d 821, 824 (Minn. 1995). Courts shall not overturn an award "merely because they disagree with the arbitrator's decision on the merits." *State Auditor v. Minn. Ass'n of Prof'l Emps.*, 504 N.W.2d 751, 754–55 (Minn. 1993). This court determines the scope of the arbitrator's authority de novo. *Id.*

Under article 36.4 of the parties' agreement, the arbitrator was "without power to make decisions contrary to or inconsistent with or modifying or varying in any way the application of laws and rules and regulations having the force and effect of law." Duluth argues that the arbitrator exceeded his authority by issuing a decision contrary to law because the arbitrator did not adhere to principles of contract construction or follow *Savela*'s interpretation of the phrase "to the same extent as active employees."

**Contract Construction**

Duluth argues that the arbitrator exceeded his authority by considering extrinsic evidence of the parties' past practice and ignoring the plain meaning of the contract language at issue. In *Ramsey County v. AFSCME Council 91, Local 8*, the supreme court considered the issue of whether an arbitrator exceeded his powers by considering extrinsic evidence when interpreting an admittedly unambiguous agreement. 309 N.W.2d 785, 789 (Minn. 1981).

In *Ramsey*, six union employees accrued vacation time at a faster rate than designated in the collective bargaining agreement. *Id.* at 787. The six employees alleged that an oral agreement existed that limited new employees to the vacation schedule in the agreement, but that the six employees would continue at a prior vacation accrual rate. *Id.* at 788. Even though the collective bargaining agreement was clear and unambiguous, the arbitrator found that the parties' past practice was binding and the six employees would continue to accrue vacation as they had before the agreement. *Id.*

The district court vacated the arbitrator's award, finding that the arbitrator exceeded his powers by failing to follow the unambiguous language of the agreement.

*Id.* at 789. The supreme court reversed and reinstated the arbitrator's award. *Id.* It acknowledged that the role of an arbitrator in interpreting a contract is different than that of a court, and that the "role necessarily entails a consideration of aspects of the parties' relationship which are not typically cognizable in a court of law," such as the parties' past practices. *Id.* at 790.

The *Ramsey* court stated that a reviewing court may not vacate an arbitrator's award so long as the award "draws its essence from the collective bargaining agreement." *Id.* (quoting *United Steel Workers v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S. Ct. 1358, 1361 (1960)). An arbitrator's award draws its essence from the agreement if it "can in some rational manner be derived from the agreement, viewed in the light of its language, its context, and any other indicia of the parties' intention." *Id.* at 792 (quotation omitted). Even though the arbitrator's award in *Ramsey* contradicted the express language of the agreement, the supreme court concluded it met the "essence test" because,

> [i]n addition to the express contractual language, the arbitrator was entitled to consider the past practice of the parties, conversations which took place prior to the negotiation of the collective bargaining agreement and the effect upon employee morale. In his judgment, those considerations outweighed the evidence of the parties' intent as manifested by their written words.

*Id.* at 793 (footnote omitted).

Here, the arbitrator properly considered Duluth's administration of retiree healthcare benefits over the course of the bargaining history, when interpreting the language of the 2007–09 agreement. *See id.* at 791 ("[T]he question before an arbitrator

faced with conflicting contractual language and practice is basically an evidentiary one, focusing on which evidence is most persuasive and therefore controlling, and not on whether the practice should be considered at all." (quotation omitted)). The arbitrator noted that, since 1983, the collective bargaining agreements had contained the phrase "to the same extent as active employees." Duluth had interpreted this language to mean "any employee who retired from its service was entitled to maintain the same health care coverage and level of benefits that s/he enjoyed on the date that s/he retired from active duty."

Duluth did not dispute that healthcare benefits had been administered in this manner. Moreover, the arbitrator found no evidence in the record that the reference to "Plan 3A," which was added to the 2007–09 agreement, was intended to end the practice of freezing benefits at the time of retirement. The arbitrator's decision draws its essence from the agreement because it is derived from the language of the agreement and the parties' past practice. *See id.* at 793. The arbitrator did not exceed his authority in finding the parties' past practice to be more instructive than the plain language of the agreement.

We appreciate that the arbitrator's result is contrary to the supreme court's later decision in *Savela*, where the supreme court found similar language in the parties' other collective bargaining agreements to be unambiguous and therefore did not consider the past practice of the parties. 806 N.W.2d at 797–98. Given the unique procedural posture of this case, however, and the supreme court's precedents constraining and limiting review of arbitration awards, the arbitrator's contrary result is nevertheless proper.

The collective bargaining agreement is "not an ordinary contract," but rather is based on years of interaction between the parties. *Ramsey*, 309 N.W.2d at 791. The arbitrator appropriately interpreted the agreement in light of the parties' relationship. "[T]he fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award." Minn. Stat. § 572.19, subd. 1; *see also Ramsey*, 309 N.W.2d at 790 ("It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns the construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." (quoting *United Steelworkers*, 363 U.S. at 599, 80 S. Ct. at 1362)). Because his decision draws its essence from the agreement, the arbitrator did not exceed his authority by considering the extrinsic evidence of the parties' prior actions when interpreting the unambiguous contract language.

**Stare Decisis, Res Judicata, and Collateral Estoppel**

Duluth argues that the arbitrator's decision was contrary to law because he did not follow the doctrines of stare decisis, res judicata, and collateral estoppel. It contends that this case is governed by this court's ruling in *Savela v. City of Duluth* that the language was unambiguous and did not freeze retirees' medical benefits upon the date that each retired. 2010 WL 3632313, at *3. As discussed below, we conclude that none of these doctrines apply.

*Stare Decisis*

Stare decisis requires courts to "adhere to former decisions in order that there might be stability in the law." *Woodhall v. State*, 738 N.W.2d 357, 363 (Minn. 2007) (quoting *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401, 406 (Minn. 2000)). The doctrine is properly invoked if, in the decision put forward as precedent, "the judicial mind has been applied to and passed upon the precise question." *Fletcher v. Scott*, 201 Minn. 609, 613, 277 N.W. 270, 272 (1938).

We agree with Duluth that the language at the heart of the firefighters' grievance is almost identical to the language interpreted by this court and the supreme court in *Savela*. 806 N.W.2d at 795; 2010 WL 3632313, at *1. This court's opinion in *Savela*, however, was unpublished and therefore not precedential at the time the arbitrator considered the collective bargaining agreement. *See* Minn. R. Civ. App. P. 136.01 ("Unpublished opinions and order opinions are not precedential except as law of the case, res judicata or collateral estoppel . . . ."). Because the supreme court had not yet issued its decision in *Savela* when the arbitrator issued his decision, the arbitrator did not have the benefit of a precedential appellate decision. Thus, the arbitrator did not exceed his authority in declining to apply the doctrine of stare decisis. In addition, even though our review takes place after the supreme court's decision in *Savela*, given the established precedents limiting judicial review of arbitration awards, discussed above, we do not believe it appropriate to apply *Savela* based on the doctrine of stare decisis.

*Res Judicata*

Duluth argues that the arbitrator erred in declining to apply the doctrine of res judicata. In the context of an arbitration, however, an arbitrator is free to determine what weight, if any, to give prior legal proceedings. *Milwaukee Mut. Ins. Co.*, 310 Minn. at 88, 245 N.W.2d at 252 ("[The arbitrator] may give whatever weight to the prior trial proceedings as he determines justified under all the circumstances."). Even if application of res judicata is proper in arbitration proceedings, examination of the merits shows that the doctrine should not be applied here.

Res judicata prevents the relitigation of causes of action already determined in a prior action. *Dorso Trailer Sales, Inc. v. Am. Body & Trailer, Inc.*, 482 N.W.2d 771, 773–74 (Minn. 1992); *Beutz v. A.O. Smith Harvestore Prods., Inc.*, 431 N.W.2d 528, 531 (Minn. 1988). A party must raise "all alternative theories of recovery in the initial action." *Dorso Trailer Sales*, 482 N.W.2d at 774. Res judicata applies when each of these elements is satisfied: "(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; and (4) the estopped party had a full and fair opportunity to litigate the matter." *Rucker v. Schmidt*, 794 N.W.2d 114, 117 (Minn. 2011) (footnote omitted). We review the application of res judicata de novo, *id.*, and all four elements must be met for the doctrine to apply. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004).

Analyzing these elements, we conclude that the first and third prongs appear satisfied. Because a "judgment becomes final when it is entered in the district court and

it remains final, despite a pending appeal, until it is reversed, vacated or otherwise modified," *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P*, 732 N.W.2d 209, 221 (Minn. 2007), the third element is satisfied. While the facts underlying the current claim do vary from the previous claim in certain respects—the disputed contract language contains an additional reference to "Plan 3A," and pertains to a different collective bargaining agreement, which resulted from unique negotiations and concessions between the parties—these factual differences cannot mask the similarity of the contractual claims.[3]

Like the *Savela* retirees, the firefighters are trying to establish that they are entitled to the same healthcare benefits during retirement as they received on the day they retired. The 2007–09 collective bargaining agreement contains identical language to that interpreted in *Savela* ("to the same extent as active employees"), language that the supreme court found could only be reasonably interpreted as guaranteeing "to retirees the same health insurance benefits as current City employees." *Savela*, 806 N.W.2d at 798. The additional language in the 2007–09 language referencing "Plan 3A" does not, on its face, change that result.

Turning next to the privity prong, we recognize that, even though the firefighters' union was not a party in *Savela*, the firefighters may still be bound by that result if privity exists between it and a party in the previous litigation. Privity treats nonparties to an

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[3] Substantial factual differences will bar use of res judicata. *See McMenomy v. Ryden*, 276 Minn. 55, 58, 148 N.W.2d 804, 807 (1967) (noting that the "common test for determining whether a former judgment is a bar to a subsequent action is to inquire whether the same evidence will sustain both actions").

action as parties if the nonparties' interests are sufficiently connected to the action. *Margo–Kraft Distribs., Inc. v. Minneapolis Gas Co.*, 294 Minn. 274, 278, 200 N.W.2d 45, 47 (1972).

"[C]ourts will find privity to exist for [1] those who control an action although not parties to it, [2] those whose interests are represented by a party to the action, and [3] successors in interest to those having derivative claims." *Rucker*, 794 N.W.2d at 118 (quotations omitted). Courts may find privity beyond these three common categories if "a person is otherwise so identified in interest with another that he represents the same legal right." *Id*. (quotations omitted). Whether or not nonparties are privies is determined by a "careful examination of the circumstances of each case." *Id.*

Duluth argues that the firefighters were in privity with the plaintiff retirees because the union had an "active self-interest" in the interpretation of contract language at issue in *Savela*. Based on a careful examination of the circumstances here, we disagree. The firefighters and the plaintiff retirees admittedly shared a common interest in having the language interpreted favorably to the retirees because the firefighters negotiated similar language in the 2007–09 agreement. But this common interest, by itself, is not necessarily enough for res judicata to apply. *See Rucker*, 794 N.W.2d at 119 ("'commonality of interests alone is insufficient to establish privity'" (quoting *State v. Lemmer*, 736 N.W.2d 650, 660–61 (Minn. 2007))).

The proper focus is on whether the legal rights of the party to be estopped were adequately represented by the party to the first litigation. *See Pirrotta v. Indep. Sch. Dist. No. 347*, *Wilmar*, 396 N.W.2d 20, 22 (Minn. 1986) ("[B]ecause the position taken by the

[party,] happened to coincide with [the nonparty's] interests does not mean the party, no matter how well it presented its own case, was adequately representing the nonparty interests . . . ."); *see also Rucker*, 794 N.W.2d at 119 (reasoning that, while the non-party and party had a common objective in the prior proceeding, they did not have "mutuality of legal interest").

The required adequate representation is not present here because the plaintiffs in *Savela* were "all Duluth retirees who are former bargaining unit members and who retired from January 1, 1983 through December 31, 2006." 806 N.W.2d at 795. By contrast, the firefighters' union represents *current*, not retired, employees. The plaintiff retirees were acting on their own behalf and were not necessarily representing all of the union's or current employees' interests. The interests of current union members, and thus, their union, can substantially differ from those of retirees. Current firefighters may have no interest in protecting generous benefits for retired firefighters if the benefits deplete opportunities for them, especially when some of the current members—those who began working after 2007—will receive no healthcare benefits upon retirement.

We conclude that the relationship between the firefighters and plaintiff retirees is insufficient to establish privity for purposes of res judicata. Under these circumstances, it would be inequitable to prevent the firefighters' union from arbitrating a grievance on behalf of its members. *See Brunsoman v. Seltz*, 414 N.W.2d 547, 550 (Minn. App. 1987) ("The basic requirement is that the estopped party's interests have been sufficiently represented in the first action so that the application of collateral estoppel is not inequitable."), *review denied* (Minn. Jan. 15, 1988).

Because the firefighters were not in privity with the plaintiff retirees, the union did not have a full and fair opportunity to litigate its claim, the last element of res judicata. Accordingly, because two of the four required elements are not met, res judicata did not bar the arbitrator's decision on the merits. *See Hauschildt*, 686 N.W.2d at 840 ("All four prongs must be met for res judicata to apply."). The arbitrator acted within his authority in declining to apply res judicata to bar the arbitration.

*Collateral Estoppel*

Collateral estoppel precludes parties from relitigating specific issues that were actually presented and necessarily determined in prior actions. *In re Special Assessment for Water Main Extension*, 255 N.W.2d 226, 228 (Minn. 1977). It applies when each of the following elements is satisfied: (1) the issue litigated in the present action is identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party, or in privity with a party, in the prior action; and (4) the estopped party had a full and fair opportunity to be heard on the issue. *A & H Vending Co. v. Comm'r of Revenue*, 608 N.W.2d 544, 547 (Minn. 2000). We review the application of collateral estoppel de novo. *Falgren v. State Bd. of Teaching*, 545 N.W.2d 901, 905 (Minn. 1996).

For the reasons stated above, the firefighters' relationship with the plaintiff retirees is insufficient to establish privity for the purposes of collateral estoppel as well. Because one prong of the collateral estoppel analysis is unmet, the doctrine does not apply. *See Heine v. Simon*, 702 N.W.2d 752, 761 (Minn. 2005) ("All four prongs of the [collateral

estoppel] test must be met . . . ."). The arbitrator did not exceed his authority in determining that collateral estoppel was inapplicable.

In sum, the arbitrator acted within his authority in interpreting the collective bargaining agreement and in declining to apply the doctrines of stare decisis, res judicata, and collateral estoppel. The district court thus properly confirmed the arbitration award.

**III.**

The parties have raised other issues that we conclude are meritless. Duluth argues that the arbitrator exceeded his authority by requiring Duluth to provide written assurances to the union's members. We disagree. The arbitrator's remedy was directly related to the issue submitted and within the scope of his authority.

The union argues that Duluth's actions, in notifying union members who retired on or after January 1, 2007, that their healthcare coverage would remain the same "under Plan 3A, without subsequent adverse change or modification," moots this appeal. Duluth's notification is not an event that makes a decision on the merits or an award of effective relief impossible. *See Hous. & Redev. Auth. ex rel. Richfield v. Walser Auto Sales, Inc.*, 641 N.W.2d 885, 888 (Minn. 2002) (stating that an issue on appeal is moot if "an event occurs pending appeal that makes a decision on the merits unnecessary or an award of effective relief impossible").

**Affirmed.**