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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2234**

City of Baxter, Minnesota,
Respondent,

vs.

American Federation of State, County and Municipal Employees, AFL-CIO, Council
No. 65,
Appellant.

**Filed December 16, 2008
Affirmed in part and reversed in part
Peterson, Judge**

Crow Wing County District Court
File No. 18-C3-07-001140

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Considered and decided by Worke, Presiding Judge; Klaphake, Judge; and
Peterson, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a judgment vacating an arbitration award, appellant union argues that the district court erred when it ruled that the arbitrator exceeded her authority by (1) ruling that respondent city violated a clause in a collective-bargaining agreement that prohibits respondent from contracting out bargaining-unit work; and (2) fashioning a remedy for the violation. We affirm in part and reverse in part.

FACTS

Calvin Reponen was employed by respondent City of Baxter (the city) as a full-time recreation-program supervisor. In that position, Reponen was a member of a bargaining unit represented by appellant American Federation of State, County, and Municipal Employees Council No. 65 (the union), and the terms and conditions of his employment were covered by a collective-bargaining agreement (the CBA).

In 2006, the city and Independent School District No. 181 (the school district) entered into a joint-powers agreement. Under the agreement, the city and the school district integrated their recreation programs. The school district took over administration of the recreation programs, and the city continued to maintain the recreational fields and generate sponsorships from donors. Because it no longer administered a recreation program, the city eliminated the position of recreation-program supervisor.

The city notified Reponen that his position had been eliminated. Reponen requested to be “bumped” into a park-maintenance position, which paid about one-half the wages that he earned as a recreation-program supervisor. The union filed a grievance

on Reponen's behalf, claiming that the city's decision to enter into the joint-powers agreement resulted in "contracting out" his position and violated the CBA, art. V, § 2, which states, "Nothing in this Agreement shall restrict the right of the Employer to contract out bargaining unit work or to utilize volunteers or supervisors to perform bargaining unit work, provided that such contracting out will not result in reduction of work for current bargaining unit employees."

The grievance could not be resolved through negotiations and went to binding arbitration. The arbitrator found that the city violated the CBA. As a remedy, the arbitrator issued a cease-and-desist order that prohibited the city from contracting-out work in the future and ordered that Reponen continue to be paid the wage he was paid in his previous position.

Upon the city's motion, the district court vacated the arbitrator's award based on the reasoning that when the city entered into the joint-powers agreement, it was exercising its inherent managerial authority, and the CBA does not, in clear and unmistakable language, waive the city's right to decide matters of inherent managerial policy. The district court also determined that the cease-and-desist order and the order that Reponen continue to be paid his previous wage exceeded the arbitrator's authority because they were beyond the essence of the CBA. This appeal followed. The League of Minnesota Cities has filed a brief as *amicus curiae* informing the court about the importance of joint-powers agreements in local-government administration and the safeguards that prevent employers from abusing the agreements.

DECISION

The Uniform Arbitration Act, contained in Minn. Stat. ch. 572, governs “[t]he authority and procedure for judicial interference with the arbitration process under a public sector . . . collective bargaining agreement.” *Arrowhead Pub. Serv. Union v. City of Duluth*, 336 N.W.2d 68, 70 (Minn. 1983). The act allows a reviewing court to vacate an arbitration award if “[t]he arbitrators exceeded their powers.” Minn. Stat. § 572.19, subd. 1(3) (2006). “Unless there is a clear showing that arbitrators were unfaithful to their obligations, courts assume they did not exceed their powers.” *EEC Prop. Co. v. Kaplan*, 578 N.W.2d 381, 383 (Minn. App. 1998), *review denied* (Minn. Aug. 31, 1998).

I.

The district court’s decision addresses the arbitrability of the parties’ dispute and the merits of the arbitrator’s decision.

1. *Arbitrability*

When arbitrability is raised in a proceeding to vacate an arbitration award on a claim that the arbitrator exceeded her authority, arbitrability is to be determined by ascertaining the intention of the parties from the language of the arbitration agreement. *State v. Berthiaume*, 259 N.W.2d 904, 909 (Minn. 1977). The proceeding is *de novo*, and the objecting party has the burden of proving the invalidity of the award. *Id.* On appeal, our review of the determination of arbitrability is *de novo*. *Indep. Sch. Dist. No. 88 v. Sch. Serv. Emp. Union Local 284*, 503 N.W.2d 104, 106 (Minn. 1993). This court is “not bound by the [district] court’s conclusions, and may independently determine the issues pursuant to applicable statutory and case law.” *MedCenters Health Care, Inc. v. Park*

Nicollet Med. Ctr., 430 N.W.2d 668, 672 (Minn. App. 1988), *review denied* (Minn. App. 26, 1989).

The parties' arbitration agreement, which appears in the CBA, art. XIII, § 7, states, "The arbitrator shall have jurisdiction over disputes or disagreements relating to grievances properly before the arbitrator pursuant to the terms of this procedure." Under the CBA, art. XIII, § 1, "[a] grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this Agreement." The city and the union disagree about the interpretation and application of the CBA, art. V, § 2, with respect to the city's decision to enter into the joint-powers agreement and eliminate Reponen's position. This disagreement is within the plain meaning of the CBA's definition of "grievance." Consequently, under the parties' arbitration agreement, the arbitrator had jurisdiction over the disagreement.

But the city argues that its decision to enter into the joint-powers agreement involved an inherent managerial right, and the arbitrator did not have authority to decide matters involving the city's inherent managerial rights. The Public Employment Labor Relations Act states:

A public employer is not required to meet and negotiate on matters of inherent managerial policy. Matters of inherent managerial policy include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, selection of personnel, and direction and the number of personnel.

Minn. Stat. § 179A.07, subd. 1 (2006). Also, the CBA, art. V, § 1, expressly recognizes that the city is not required to meet and negotiate on matters of inherent managerial

policy. But although a city is not required to negotiate matters of inherent managerial policy, it may do so voluntarily. *Arrowhead Pub. Serv. Union*, 336 N.W.2d at 71.

Citing *Arrowhead*, the district court determined that the arbitration award must be vacated because when the city entered into the joint-powers agreement and eliminated Reponen's position, the city was deciding a matter of inherent managerial policy, and the CBA does not contain a clear and unmistakable waiver of the city's inherent managerial right to modify its organizational structure. We conclude that the district court's reliance on *Arrowhead* is misplaced.

In *Arrowhead*, three city employees were laid off because of budget reductions. 336 N.W.2d at 69-70. The collective-bargaining agreement provision that prescribed lay-off procedures in *Arrowhead* (Article XXX) began with the statement, "When it becomes necessary, through lack of work or funds, [or] for other causes for which an employee is not at fault, to reduce the number of employees within a department, the following procedures shall apply[.]" *Id.* at 70-71 & n.2. The employees' union grieved the lay-offs, contending that the lay-offs were not necessary and, therefore, they were improper under the collective-bargaining agreement and the city violated the contractual provisions applicable to lay-offs. *Id.* at 69-70. The arbitrators determined that the collective-bargaining agreement required a showing of financial necessity for the termination of an employee, and therefore, because the city had not proved such necessity, the arbitrators sustained the grievances. *Id.* The district court vacated the arbitration awards on the ground that the arbitrators exceeded their powers in arbitrating the issue of financial necessity. *Id.*

The union appealed, and the supreme court explained that although a city is not required to negotiate matters of inherent managerial policy, it may do so voluntarily. *Id.* at 71. The supreme court further explained:

When, however, a public employer negotiates matters of inherent managerial policy which it has no obligation to negotiate and thereby relinquishes the right to determine policy with respect to its budget, its organizational structure, and the number of personnel it should employ, the public employer . . . must do so in clear and unmistak[.]able language.

Id. at 71-72.

The supreme court determined:

In the context in which it appears, . . . the term “necessary” does not reasonably import any relinquishment of the City’s retained inherent managerial authority or discretion. Article XXX prescribes the procedures to be followed in laying off classified employees *when* such action becomes necessary to carry out the policy formulated by the City in the exercise of its inherent managerial function, whether that policy concerns the allocation of the funds available to the City or some other cause for reduction of the number of its personnel, such as lack of work or revision of the City’s organizational structure.

Id. at 72. The supreme court concluded that the arbitrators exceeded their powers in determining that financial necessity was an arbitrable issue. *Id.*

Unlike the term “necessary” in the collective-bargaining agreement in *Arrowhead*, the language in the CBA, art. V, § 2, reasonably imports a relinquishment of the city’s inherent managerial authority to contract out bargaining-unit work. The CBA, art. V, § 2, affirms the city’s right to contract out work, but it also limits this right to circumstances where the “contracting out will not result in reduction of work for current bargaining unit

employees.” The clear and unmistakable language of this limitation demonstrates that the city negotiated with respect to its inherent managerial right to determine what programs the city would provide and the organizational structure of the city. By negotiating with respect to contracting out work, the city relinquished its inherent managerial right to determine its policy with respect to contracting out.

After the city voluntarily chose to negotiate a matter of inherent managerial policy and the parties adopted the CBA, a dispute arose about the interpretation and application of the contracting-out provision in the CBA. The union contended that by entering into the joint-powers agreement, the city contracted out work, and the city contended that the joint-powers agreement did not contract out work. The arbitrator determined that the joint-powers agreement did contract out work, and the district court determined that it did not.

But in reaching its conclusion, the district court did not simply examine the language of the CBA to determine whether it clearly and unmistakably demonstrated that the city had negotiated regarding a matter of inherent managerial policy, thereby, relinquishing its inherent managerial right with respect to that matter. Instead, the district court interpreted the language in the CBA, art. V, § 2, determined that the language did not apply to the joint-powers agreement, and, based on its interpretation of the CBA, art. V, § 2, vacated the arbitration award. The district court erred when it interpreted the CBA, art. V, § 2, in order to determine whether the parties clearly and unmistakably expressed their agreement regarding contracting out, rather than examining the language

of the CBA only to determine whether it clearly and unmistakably demonstrated that the city negotiated its inherent managerial right to contract out work.

The parties disagree about the meaning of the terms of their agreement about contracting out work. But the language in the CBA, art. V, § 2, clearly and unmistakably addresses contracting out and demonstrates that the city negotiated about contracting out work. Consequently, the parties' dispute about the interpretation and application of the CBA, art. V, § 2, is arbitrable.

2. *Merits of the Arbitrator's Decision*

“[O]nce arbitrability has been determined, the function of the court is not to re-examine the merits of the case.” *Law Enforcement Servs., Inc. v. City of Roseville*, 393 N.W.2d 670, 672 (Minn. App. 1986). “Whether this court agrees with the arbitrator’s decision is not relevant; courts will not overturn an award merely because they may disagree with the arbitrators’ decision on the merits.” *AFSCME Local 551 v. Minneapolis Cmty. Dev. Agency*, 520 N.W.2d 453, 456 (Minn. App. 1994) (quotation omitted). An arbitrator’s decision on the merits must be upheld if “it draws its essence from the collective bargaining agreement.” *Metro. Airports Comm’n v. Metro. Airports Police Fed’n.*, 443 N.W.2d 519, 524 (Minn. 1989). An arbitrator’s decision “draws its ‘essence’ from the CBA if it is rationally derived from the CBA viewed in light of the CBA’s language, context, and other indicia of the parties’ intent, including past practice.” *City of St. Paul v. AFSCME Local 2508*, 567 N.W.2d 524, 526 (Minn. App. 1997).

The arbitrator’s decision was rationally derived and drew its essence from the CBA. The arbitrator’s determination that the city impermissibly contracted-out labor was

drawn directly from her interpretation of the CBA, art. V, § 2. Although this clause constitutes a limitation on respondent's inherent managerial rights, it was not clear how the language in the clause was intended to apply to the facts of this case. The arbitrator's decision was rationally derived from the language in the CBA, art. V, § 2.

The arbitrator's determination that respondent's actions constituted "contracting out" was also derived from evidence presented to her at the arbitration hearing. *See City of Minneapolis v. Police Officers' Fed. of Minneapolis*, 566 N.W.2d 83, 87 (Minn. App. 1997) ("[W]e are bound by [the arbitrator's] factual determination and interpretation of law.") Based on sworn testimony, the arbitrator concluded that "the facts indicate that the City's service to its citizens continues unabated, and it merely contracted with the School District to provide the administrative services previously provided by [Reponen]. This fits the definition of 'contracting out.'" This conclusion is rational in light of the language of the CBA and the facts of the case. Therefore, the district court erred when it held that the arbitrator exceeded her powers by finding that the city violated the CBA when it eliminated Reponen's job after entering into the joint-powers agreement.

II.

"Where the arbitration agreement contains no provision on remedies, [courts] defer to the arbitrators' discretion, preserving the flexibility which commends arbitration as an effective means of resolving labor disputes." *Children's Hosp., Inc. v. Minn. Nurses Ass'n (In re Appeal of Children's Hosp., Inc.)*, 265 N.W.2d 649, 653 (Minn. 1978). The arbitrator is free "to craft a remedy that does not conflict with the terms of

the agreement,” unless the CBA “limits the available remedies.” *City of Minneapolis*, 566 N.W.2d at 87.

We agree with the district court’s determination that the arbitrator exceeded her authority by issuing a cease-and-desist order that prohibits the city from contracting-out work in the future. “[T]he power to fashion a remedy is a necessary part of the arbitrator’s jurisdiction unless withdrawn from him by specific contractual language between the parties or by a written submission of issues which precludes the fashioning of a remedy.” *City of Bloomington v. AFSCME Local 2828*, 290 N.W.2d 598, 603 (Minn. 1980). Both the language of the CBA and the parties’ submissions of the issues preclude the arbitrator’s issuance of a cease-and-desist order. The CBA specifically states, “The arbitrator shall consider and decide only the specific issue(s) submitted to him in writing by the employee and by the Employer at the arbitration hearing and shall have no authority to make a decision on any other issue not so submitted to him.” Neither party asked the arbitrator to address possible future attempts to contract out work. Therefore, the arbitrator exceeded her authority by fashioning a cease-and-desist order that prohibits future action.

But we disagree with the district court’s determination that the arbitrator exceeded her authority by restoring Reponen’s previous pay level. Citing the CBA, art. XIII, § 7, which states that the arbitrator cannot “amend, modify, nullify, ignore, add to or subtract from” the CBA, the city argues that the arbitrator’s decision is a permanent modification of the pay scale. But the arbitrator’s remedy did not amend the CBA. Instead, the arbitrator used the pay level under the CBA for Reponen’s previous position as a measure

of the amount of damages. Because the city's violation of the contract reduced Reponen's pay, the arbitrator did not abuse her broad discretion to fashion a remedy by awarding Reponen the pay that he lost as a result of the violation.

Affirmed in part and reversed in part.