STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1079

Hennepin Healthcare System, Inc.,
Appellant,

vs.

AFSCME Minnesota Council 5, Union,
Respondent.

Filed October 23, 2023
Affirmed
Ross, Judge

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

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

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

NONPRECEDENTIAL OPINION

ROSS, Judge

An arbitrator issued a decision favoring a union of hospital employees, interpreting their collective bargaining agreement to preclude the hospital from using nonunion contract workers for periods longer than six months despite language affording the hospital the authority to do so. The district court confirmed the award. We now address the case on remand from a divided Minnesota Supreme Court opinion reversing this court's decision that the arbitrator exceeded the expressly limited power conferred by the agreement and purported to resolve a nonexistent contract contradiction in a manner that nullifies a bargained-for term. The majority decision directs us to address the hospital's alternative argument that the arbitrator exceeded his authority by invading the hospital's inherent managerial rights. On that limited issue, we affirm the district court's judgment confirming the award.

FACTS

Appellant hospital (Hennepin Healthcare System, Inc.) appealed to this court from a district court judgment confirming an arbitration award that precludes the hospital from using contract workers for periods longer than six months. The arbitrator's decision implicated two provisions of the collective bargaining agreement. Article 3 limits to six months the amount of time that the hospital may employ a "temporary employee." And 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 interpreted the two provisions as conflicting and reconciled them to conclude that

"[c]ontinuing a temporary worker supplied by a staffing agency performing bargaining unit work for over six[] months in a calendar year" violated the agreement.

We reversed the judgment on the ground that the arbitrator had exceeded his authority by issuing an award that did not draw its essence from the parties' agreement. *Hennepin Healthcare Sys., Inc. v. AFSCME Minn. Council 5, Union*, 974 N.W.2d 590, 594 (Minn. App. 2022), *rev'd*, 990 N.W.2d 454 (Minn. 2023). We reasoned that there was no conflict between Article 3, which applies to temporary employees, and Article 42, which governs subcontracting for services, and that the arbitrator lacked authority to "amend, modify, ignore, add to, or subtract from the provisions" of the collective bargaining agreement under Article 7 of the agreement. *Id.* at 593. Reversing on this ground, we did not reach other arguments raised by the hospital in support of vacating the arbitration award. *Id.* at 593.

The union sought further review and the supreme court reversed our decision, holding that the arbitrator's interpretation of the collective bargaining agreement met the essence test because it was "grounded in his interpretation of the language of the collective bargaining agreement and of the parties' underlying intent behind the provisions at issue." *Hennepin Healthcare Sys., Inc. v. AFSCME Minn. Council 5, Union*, 990 N.W.2d 454, 462 (Minn. 2023) (*HHS*). The majority opinion reasoned, "In other words, because the arbitrator interpreted the collective bargaining agreement and the parties' mutual intent—rather than simply relying on his own conception of a just result—his award is rationally derived from the agreement and thus satisfies the essence test." *Id.* (quotation omitted).

Because it determined that the arbitrator did not exceed his authority in interpreting the agreement, the supreme court reversed our decision and remanded the case to this court. *Id.* at 468. It directed us on remand to consider the hospital's secondary argument that the arbitrator's decision "improperly infringes upon Hennepin Healthcare's right to make inherent managerial policy decisions." *Id.* at 467–68.

DECISION

The hospital's alternative argument fails. Under Minnesota's Revised Uniform Arbitration Act (RUAA), Minn. Stat. §§ 572B.01–.31 (2022), an arbitration award may be vacated if the arbitrator exceeded his authority. Minn. Stat. § 572B.23(a)(4); *HHS*, 990 N.W.2d at 459. A court will set an award aside on this ground "only when the objecting party meets its burden of proof that the arbitrators have clearly exceeded the powers granted to them in the arbitration agreement." *HHS*, 990 N.W.2d at 459 (quotation omitted). Reviewing *de novo*, we "exercise every reasonable presumption in favor of an arbitration award's finality and validity." *Id.* And under the Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01–.25 (2022), a public employer must meet and negotiate with a union representing public employees concerning "the terms and conditions of employment." Minn. Stat. § 179A.07, subd. 2(a). But the employer need not negotiate regarding "matters of inherent managerial policy," *id.*, subd. 1, while it may voluntarily do so, *Arrowhead Pub. Serv. Union v. City of Duluth*, 336 N.W.2d 68, 71 (Minn. 1983). These include matters of discretion or policy, like "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.

The hospital argues that the arbitrator's decision should be vacated because it infringes on the hospital's inherent managerial right to subcontract. The union counters, arguing that the arbitrator considered and rejected the hospital's managerial-rights argument in interpreting the collective bargaining agreement. As a threshold matter, the parties also dispute whether this court should even apply the essence test to resolve this issue. Under that test, "an [arbitration] award cannot be vacated if it draws its 'essence' from the [collective bargaining] contract." *HHS*, 990 N.W.2d at 459 (quotation omitted). The hospital suggests that the essence test does not apply here, while the union asserts that we must apply the test and affirm the district court's confirmation of the arbitration award because the supreme court has already determined that the award satisfies the essence test. We agree that the supreme court's opinion in this case indirectly favors the union's position.

The hospital's inherent-managerial-rights argument is at heart an argument about arbitrability. *See Metro. Airports Comm'n v. Metro. Airports Police Fed'n*, 443 N.W.2d 519, 524 (Minn. 1989) ("If an issue is bargainable, it is grievable and therefore arbitrable."). Under the RUAA, an issue of arbitrability stemming from "a grievance arising under a collective bargaining agreement" is for the arbitrator to decide. Minn. Stat. § 572B.06(b). We observe that this provision of the RUAA, which took effect in August 2011, *see* Minn. Stat. § 572B.03, replaces the predecessor Uniform Arbitration Act (UAA), Minn. Stat. §§ 572.08-.41 (2010), which was silent on this issue and left courts to craft a standard for determining arbitrability. *See Atcas v. Credit Clearing Corp. of Am.*, 197 N.W.2d 448, 452 (Minn. 1972) (recognizing "reasonably debatable" standard for

determining whether arbitrability issue should be decided by arbitrator in the first instance under the predecessor UAA), *overruled on other grounds by Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 351 (Minn. 2003). Two decisions on which the hospital heavily relies were decided under the UAA before the RUAA was adopted. *See Arrowhead Pub. Serv. Union*, 336 N.W.2d at 70; *City of Baxter v. Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO*, No. A07-2234, 2008 WL 5215647 (Minn. App. Dec. 16, 2008), *rev. denied* (Minn. Feb. 17, 2009). And arbitrability is determined based on the terms of the arbitration agreement. *State v. Berthiaume*, 259 N.W.2d 904, 909 (Minn. 1977). Because the RUAA assigns the arbitrability decision to the arbitrator in cases stemming from collective bargaining agreements and the arbitrability decision derives from the language of the agreement, we conclude that the essence test governs our review of an arbitrability determination.

The arbitrator here did not expressly determine arbitrability. But he interpreted the collective bargaining agreement as limiting the hospital's ability to subcontract. He implicitly determined that the parties agreed to bargain on the subcontracting issue. And if the subcontracting issue was bargainable, it was grievable and arbitrable. Resolving the hospital's inherent-managerial-rights argument therefore turns on whether the arbitrator's interpretation of the agreement drew its essence from the agreement. The supreme court has already answered that question in the affirmative. Because the arbitrator necessarily determined that the hospital voluntarily bargained on subcontracting, and because the

arbitrator's decision draws its essence from the parties' collective bargaining agreement, we must reject the hospital's inherent-managerial-rights argument.

Affirmed.