

FILED
03-18-2022
Clerk of Circuit Court
Racine County
2021CV000839

BY THE COURT:

DATE SIGNED: March 18, 2022

Electronically signed by Jon E. Fredrickson
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

RACINE COUNTY

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS LOCAL 321 AFL-CIO,

Petitioner,

v.

Case No. 21CV839

CITY OF RACINE,

WERC Decision # 39425

Respondents.

DECISION AND ORDER

The International Association of Firefighters Local 321 AFL-CIO ("Local 321"), has petitioned for a vacation or modification of Arbitration Award No. 7966 in Case IDs 53.0023 and 53.0025. Oral argument on the petition was held before the Hon. Jon E. Fredrickson on October 4, 2021. Local 321 appeared by Attorney Kevin P. Todt of MacGillis Wieme, LLC. Respondent, the City of Racine (the "City") appeared by Attorney Brian Waterman of Buelow Vetter Buikema Olson & Vliet,

LLC. For the reasons set forth below, the Court enters the following decision and order.

BACKGROUND

The parties entered into a collective bargaining agreement with a fixed term of January 1, 2018 to December 31, 2020 (the "CBA"). After the CBA went into force and effect, both parties agree that the City unilaterally modified the CBA when it eliminated health plan 07A, modified the terms of health plan 06A, and capped Medicare Part B payments. The City summarizes what occurred between the parties as follows:

In 2019, faced with a dire financial crisis, the City of Racine ("City"), through the action of the City's Common Council, made the decision to eliminate one of the health plans it offered to City employees, known as Plan 07A, and to modify the plan design of another, known as Plan 06A. The City also took other actions concerning employee and retiree health benefits, including capping monthly Medicare Part B payments to current and future retirees at \$135.50 per month. Among the City employees affected by these modifications, which took effect on January 1, 2020, were members of the International Firefighters, Local 321, AFL-CIO ("Union" or "Local 321"), which is the exclusive bargaining representative for the City's firefighters. In response to the City's changes to its health plans, the Union grievances under the grievance procedure contained in the parties' 2018-2020 collective bargaining agreement, claiming the City's actions violated the agreement's language under Article XIV, related to health insurance benefits. Among the specific allegations contained in the Union's grievances, was the Union's claim that the City's revision of Plan 06A constituted a unilateral modification to the 10% employee premium contribution for Plan 06A in violation of the collective bargaining agreement. The Union also claimed in its grievances that the City violated the collective bargaining agreement when it capped monthly Medicare Part B

payments at \$135.50 per month. In accordance with the grievance procedure, the grievances were presented to an arbitrator selected by the parties for final binding arbitration. After a hearing on the grievances, and the submission of post-hearing briefs by the parties (during which the Union abandoned two of its four initial claims), the arbitrator issued a decision in favor of the City, determining that the City's modifications to its health benefits did not violate the parties' collective bargaining agreement.¹

DISCUSSION

Arbitration decisions are reviewed according to the following standard:

Great deference is paid to the arbitrator's award as the product of the initial bargain of the parties. Mistakes of judgment, mistakes of either fact or law, are not ground for review of or setting aside an award. Nevertheless, a court must vacate an arbitration award when 'the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.' WIS. STAT. § 788.10(1)(d). An arbitrator exceeds his or her powers when the arbitrator demonstrates either 'perverse misconstruction' or 'positive misconduct,' when the arbitrator manifestly disregards the law, when the award is illegal, or when the award violates a strong public policy.

Green Bay Prof'l Police Ass'n v. City of Green Bay, 2021 WI App 73, ¶¶ 13-14, 399

Wis. 2d 504, 514-15, 966 N.W.2d 107 (internal quotations and citations omitted).

An arbitrator manifestly disregards the law when she makes no attempt to apply or interpret a statutory provision that directly conflicts with his award. *Baldwin-Woodville Area School Dist. v. West Cent. Educ Ass'n-Baldwin Woodville*, 2009 WI 51, ¶ 24, 317 Wis. 2d 691, 702-03, 766 N.W.2d 591. An arbitrator perversely misconstrues a CBA if "there is no contractual language that would allow for the

¹ Dkt. No. 19, pp. 1-2. "Dkt." refers to the docket number entry for the Court's electronic filing system, CCAP.

arbitrator's construction of the contract." *Baldwin-Woodville Area School Dist.*, 2009 WI 51 at ¶ 23, 317 Wis. 2d at 702. "Mistakes of judgment, mistakes of either fact or law, are not ground for review of or setting aside an award." *Green Bay Prof'l Police Ass'n*, 2021 WI App 73 at ¶ 13, 399 Wis. 2d at 514. A court may not substitute its judgment for that of the arbitrator whether the award is correct or incorrect as a matter of fact or law." *Employers Inc. of Wausau v. Certain Underwriters at Lloyd's London*, 202 Wis. 2d 673, 687, 552 N.W.2d 420 (Ct. App. 1996).

In this case, the arbitrator issued a detailed, single-spaced, 22 page opinion. He based his decision on his interpretation of the bargaining rights and duties of the parties pursuant to Wis. Stat. § 111.70(4)(mc)6. He analyzed the terms of the CBA and held that the terms were not vague or ambiguous, and then barred extrinsic evidence. The arbitrator did not manifestly disregard relevant law, nor did he commit misconduct or perversely misconstrue the CBA.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The petition to vacate or modify the arbitration award is DENIED.

*** THIS IS A FINAL ORDER FOR PURPOSES OF APPEAL ***