Bridgeport Firefighters Local 834, Int'l Ass'n of Firefighters v. City of Bridgeport

Superior Court of Connecticut, Judicial District of Fairfield At Bridgeport

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BRIDGEPORT FIREFIGHTERS LOCAL 834, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS v. CITY OF BRIDGEPORT

Judges: [*1] WELCH, J.

Opinion by: WELCH

Opinion

MEMORANDUM OF DECISION RE: PLAINTIFF'S APPLICATION TO VACATE ARBITRATION AWARD #100.31

On October 30, 2019, the plaintiff, the Bridgeport Firefighters Local 834, International Association of Firefighters, filed an application seeking to vacate an arbitration award rendered in favor of the defendant, city of Bridgeport.[1]

I

FACTUAL AND PROCEDURAL HISTORY

The plaintiff is an "employee organization" as defined by General Statutes § 7-467 (6). The defendant is a "municipal employer" as defined by General Statutes § 7-467 (1). The plaintiff and the defendant are parties to a collective bargaining agreement (CBA) covering the period of July 1, 2014, through June 30, 2018. The CBA provides for the arbitration of grievances and contested disciplinary actions to be submitted to the Connecticut State Board of Mediation and Arbitration (SBMA).

David Greene was a firefighter employed by the defendant and a member of the plaintiff The city terminated Greene's employment on August 18, 2017. Through the plaintiff, Greene filed a grievance challenging the defendant's decision to terminate his employment. The grievance was denied. Thereafter, the matter was filed with the SBMA on November 8, 2017 (SBMA Case #: 2018-A-0109). A panel of the SMBA consisting [*2] of Mark E. Sullivan, panel chair and alternate public member, Marc Mandell, Esq., alternate management member, and Betty Kuehnel, permanent labor member, conducted the arbitration hearings on

[1] Section § 52-418 provides: "(a) Upon the application of any party to an arbitration, the superior court for the judicial district in which one of the parties resides or, in a controversy concerning land, for the judicial district in which the land is situated or, when the court is not in session, any judge thereof, shall make an order vacating the award if it finds any of the following defects: (1) If the award has been procured by corruption, fraud or undue means; (2) if there has been evident partiality or corruption on the part of any arbitrator; (3) if the arbitrators have been guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy or of any other action by which the rights of any party have been prejudiced; or (4) if the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the award is required to be rendered has not expired, the court or judge may direct a rehearing by the arbitrators. Notwithstanding the time within which the award is required to be rendered, if an award issued pursuant to a grievance taken under a collective bargaining agreement is vacated the court or judge shall direct a rehearing unless either party affirmatively pleads and the court or judge determines that there is no issue in dispute.

(c) Any party filing an application pursuant to subsection (a) of this section concerning an arbitration award issued by the State Board of Mediation and Arbitration shall notify said board and the Attorney General, in writing, of such filing within five days of the date of filing."

October 15, 2018, October 26, 2018, November 19, 2018, and May 8, 2019. By agreement of the parties, the evidence presented included approximately 351 pages and sixty-two exhibits from "the first arbitration panel" concerning the grievant (SBMA Case #:2013-A-0532). The panel heard testimony from twelve witnesses. The evidence presented also included approximately forty-four additional exhibits which were introduced at the arbitration hearing.

On October 1, 2019, the panel issued the award as follows:

"Was David Greene's employment terminated for just cause? If it was not what shall the remedy be?

"The Grievant was a long-time firefighter with the Bridgeport Fire Department when he was recorded acting in a manner that the City described as strange, unusual and bizarre. The Grievant was sent home early from his shift and, following an extensive investigation, terminated by the City.

"The evidence presented by the City reveals that this is the second time the Grievant has been terminated for unexplained, [*3] bizarre and unusual behavior during a shift. The decision of the first arbitration panel offered the Grievant an opportunity to make better choices, end the behavior and prevent a second occurrence of such behavior.

"The undisputed evidence in the raw, unedited video taken May 8, 2017, revealed the Grievant acting in a strange, unusual, agitated and bizarre manner.

A) "When given the opportunity to explain his behavior during the Fact-Finding hearing on May 18, 2017, the Grievant denied exhibiting any strange, unusual, agitated and bizarre manner.

B) "In the Due-Process hearing on July 24, 2017, the Grievant refused to discuss the incident.

C) "During the arbitration hearing the panel heard consistent testimony from three longtime colleagues of the Grievant about this behavior of the Grievant, One Firefighter testified '. . . how is it that Greene is still working and we are left to deal with it?' A second firefighter testified that he responded to the behavior of the Grievant by locking himself in the bedroom. The third testified that he warned his fellow workers to 'be careful tonight' because of Greene's behavior.

D) "The panel also heard from the Grievant. His testimony never included [*4] an explanation or admission that he acted in an abnormal manner. At no time in his due-process, fact-finding, or arbitration hearings has the Grievant shared any explanation of behavior revealed in the videos taken by his Captain during the shift.

"In termination cases, the applicability of just cause becomes critically important. The Panel chose this as its primary lens for evaluating the case.

1. "Was the Grievant warned there would be consequences for his conduct?

The record clearly shows that the Grievant has a history of abnormal behavior. The decision of an earlier arbitration panel was to set aside the termination and substitute it with a 30-day suspension. No clearer warning could have been given that this behavior must stop.

2. "Are the rules reasonably related to the safe operation of the organization?

Indisputably in the dangerous and ever-changing occupation of firefighting it is crucial that every member of the team be physically and mentally ready for the next call. This is crucial to the safety of both the firefighters and the general public they serve. Through testimony and evidence, the Grievant clearly failed that standard.

3. "Was the investigation conducted before any [*5] discipline was administered?

Through testimony and evidence, the City demonstrated that it conducted a systematic, comprehensive investigation before determining that termination was the appropriate discipline.

4. "Was the investigation fair and objective?

The documentation of the actions of the Grievant through the unedited video present a contemporaneous and objective view of his strange, unusual, agitated and bizarre behavior.

5. "Did the investigation reveal substantial proof of misconduct?

The unadorned video supported by credible testimony from three eyewitnesses revealed the Grievant was unable to perform the duties of a Firefighter.

6. "Was the discipline applied evenhandedly?

No claim was made, nor evidence presented, that the discipline was defective in this realm.

7. "Was the discipline reasonable?

The panel does not easily support termination, especially one where the employee has long service and in this case was a highly respected

> firefighter. But, here, the Grievant chose to ignore the 2nd chance opportunity presented by the earlier 30-day unpaid suspension. The evidence and testimony support the City's termination of the Grievant.

"The panel is unanimous in denying the Grievance." [*6] Pl.'s Appl. To Vacate Arbitration Award #100.31, Ex. A.

On October 30, 2019, the plaintiff filed an application to vacate the October 1, 2019, arbitration award. The plaintiff asserts that the arbitration award violates General Statutes § 52-418 (a) (3) in that the panel actions in considering certain evidence prejudiced the rights of the Plaintiff as follows:

> (A) "[T]he Arbitration Award in part results from an inaccurate interpretation and reliance that prior discipline received by the grievant occurred on duty, thereby invalidating the award;
>
> (B) "[T]he Arbitration Award of the arbitration panel rests almost entirely upon video evidence that was improperly obtained in violation of Fire Department orders and Connecticut General Statutes, thereby invalidating the award;
>
> (C) "[T]he Arbitration Award also violates established labor law and fails to draw its essence from the collective bargaining agreement constituting a manifest disregard for the law." Pl.'s Appl. To Vacate Arbitration Award #100.31, 8.

The plaintiff filed the return of record of the arbitration on February 28, 2020. The record consists of approximately 1408 pages which included the approximately 351 pages and sixty-two exhibits from "the first arbitration [*7] panel" concerning the grievant (SBMA Case #:2013-A-0532). The approximately forty-four additional exhibits were introduced at the arbitration hearing. In addition, the record included a transcript of each hearing date.

On July 15, 2021, the plaintiff filed a memorandum of law in support of the application to vacate the arbitration award. On January 28, 2022, and March 4, 2020, the defendant filed a memorandum of law in support of its objection to the application which included a copy of the defendant's post hearing brief filed with the arbitration panel. On April 25, 2023, the plaintiff filed a supplemental memorandum. A hearing on the application to vacate and the objection thereto was held on December 19, 2022, and on July 24, 2023.

II

DISCUSSION

"Arbitration is a creature of contract and the parties themselves, by the terms of their submission, define the powers of the arbitrators." (Internal quotation marks omitted.) *Industrial Risk Insurers v. Hartford Steam Boiler Inspection & Ins. Co.*, 258 Conn. 101, 109, 779 A.2d 737 (2001). "The propriety of arbitration awards often turns on the unique standard of review and legal principles applied to decisions rendered in this forum." *AFSCME, Council 4, Local 2663 v. Dept. of Children & Families*, 317 Conn. 238, 249, 117 A.3d 470 (2015). "Judicial review of arbitral decisions is narrowly confined. . . . When the parties agree to arbitration and establish [*8] the authority of the arbitrator through the terms of their submission, the extent of our judicial review of the award is delineated by the scope of the parties' agreement. . . . Because we favor arbitration as a means of settling private disputes, we undertake judicial review of arbitration awards in a manner designed to minimize interference with an efficient and economical system of alternative dispute resolution." (Internal quotation marks omitted.) *Comprehensive Orthopaedics & Musculoskeletal Care, LLC v. Axtmayer*, 293 Corm. 748, 753-54, 980 A.2d 297 (2009); see also *Harty v. Cantor Fitzgerald & Co.*, 275 Conn. 72, 80, 881 A.2d 139 (2005). "Parties to an arbitration may make a restricted or an unrestricted submission." (Internal quotation marks omitted.) *AFSCME, Council 4, Local 2663 v. Dept. of Children & Families*, supra, 317 Conn. 249. "Where the submission does not otherwise state, the arbitrators are empowered to decide factual and legal questions and an award cannot be vacated on the grounds that . . . the interpretation of the agreement by the arbitrators was erroneous. Courts will not review the evidence nor, where the submission is unrestricted, will they review the arbitrators' decision of the legal questions involved. . . . In other words, [u]nder an unrestricted submission, the arbitrators' decision is considered final and binding; thus the courts will not review the evidence considered by the arbitrators nor will they review [*9] the award for errors of law or fact." (Internal quotation marks omitted.) Id., 250; see also *Board of Education v. Bridgeport Education Assn.*, 173 Conn. 287, 294, 377 A.2d 323 (1977) ("[b]y agreeing to the unlimited submission in this case, the [parties] authorized the arbitrator to exercise his own judgment and discretion and to render an appropriate award"). "A submission is deemed restricted only if the agreement contains express language restricting the breadth of issues, reserving explicit rights, or conditioning the award on court review." (Internal quotation marks omitted.) *AFSCME, Council 4, Local 2663 v. Dept. of*

Children & Families, supra, 317 Conn. 250.; see also *Industrial Risk Insurers v. Hartford Steam Boiler Inspection & Ins. Co.*, supra, 258 Conn. 111-12 (mere fact that parties asked arbitrator to decide particular question does not render submission restricted, in absence of conditions on arbitrator's final resolution of that matter).

In the present case, the plaintiff has conceded that the submission in this case was unrestricted. Thus, the court cannot review the factual or legal merits of the underlying decision. See *AFSCME, Council 4, Local 2663 v. Dept. of Children & Families*, supra, 317 Conn. 250.

"Despite the wide berth given to arbitrators and their powers of dispute resolution, courts recognize three grounds for vacating arbitration awards. . . . The first ground for vacating an award is when the arbitrator has ruled on the constitutionality of a statute. . . . The second acknowledged ground is when the award violates [*10] clear public policy. . . . Those grounds for vacatur are denominated as common-law grounds and are deemed to be independent sources of the power of judicial review. . . . The third recognized ground for vacating an arbitration award is that the award contravenes one or more of the statutory proscriptions of . . . § 52-418." (Internal quotation marks omitted.) *International Brotherhood of Police Officers, Local 361 v. New Milford*, 81 Conn. App. 726, 729-30, 841 A.2d 706 (2004).

A.

The plaintiff's application only claims a violation of General Statutes § 52-418 (3) which provides, in relevant part: "Upon the application of any party to an arbitration, the superior court . . . shall make an order vacating the award if it finds any of the following defects . . . (3) if the arbitrators have been guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy or of any other action by which the rights of any party have been prejudiced. . . ."

The plaintiff's first claim is that the arbitration award in part results from an inaccurate interpretation that the grievant's termination in 2012 was for conduct that occurred on duty. The plaintiff asserts that there is nothing in the record to support the conclusion that Greene was terminated for on duty conduct. [*11] The plaintiff submits that "each of the instances of alleged bizarre behavior relied upon by [the defendant] involved incidents that occurred off duty." Pl. Mem. Law, 16. In response, the defendant directs the court to numerous citations in the record that substantiate that the prior termination of employment was for, in part, "unusual behavior during a shift." Def. Mem. Law, 5.

The plaintiff's claim is not supported by the substantial record of the 2013 arbitration which was introduced as an exhibit in this arbitration. As referenced by the defendant in its objection, the record contains numerous instances of the grievant's behavior. "An award will not be vacated on the ground that the construction placed on the facts . . . was erroneous." *Cashman v. Sullivan & Donegan, P.C.*, 23 Conn. App. 24, 27 578 A. 2d. 167, cert. denied, 216 Conn. 821, 581 A.2d 1054 (1990).

The second claim of the plaintiff is that the arbitration award rests almost entirely upon video evidence that was improperly obtained in violation of fire department orders and Connecticut General Statutes. The plaintiff contends it was improper for the panel to rely on video recordings that were obtained under circumstances that violated Fire Department Orders. The plaintiff offers that these points were made to the panel during [*12] the arbitration hearing. Notwithstanding the plaintiff's contentions, the panel admitted the recordings. The plaintiff argues that in reviewing the award, it is obvious the improperly obtained video/audio recordings were critical to the panel's decision to uphold the termination. In response, the defendant directs the court to Captain Gardiner and Chief Thode's testimony during the hearing which provide that the video was properly and legitimately collected as part of the defendant's investigation and documentation of Greene's behavior. The defendant asserts that there was no violation of the Bridgeport Fire Department's recording orders for that reason.

The court notes the following testimony from the Chief of the Bridgeport Fire Department Richard Thode:

"Q Chief, the pointed question here is, do you see any violation whatsoever of this policy in Captain Gardiner's use of his telephone to videotape the conduct of David Greene in public areas of Engine 15 on May 8 and 9, 2017?

"A No, I do not.

"Q Was this policy, in your estimation, ever intended to prevent such action by a supervising officer to investigate and document the misconduct of an employee?

"A No." Pl.'s Ex. # 121.00, Return [*13] of Record —

Transcript C, 138.

The court notes that "[a]rbitrators are accorded substantial discretion in determining the admissibility of evidence, particularly in the case of an unrestricted submission, which relieve[s] the arbitrators of the obligation to follow strict rules of law and evidence in reaching their decision. . . . Indeed, it is within the broad discretion of arbitrators to decide whether additional evidence is required or would merely prolong the proceedings unnecessarily. . . . This relaxation of strict evidentiary rules is both necessary and desirable because arbitration is an informal proceeding designed, in part, to avoid the complexities of litigation. Moreover, arbitrators generally are laypersons who bring to these proceedings their technical expertise and professional skills, but who are not expected to have extensive knowledge of substantive law or the subtleties of evidentiary rules." (Internal quotation marks omitted.) *Bridgeport v. Kasper Group, Inc.*, 278 Conn. 466, 474-75, 899 A.2d 523 (2006).

As to the third claim, the plaintiff contends that the award of the panel fails to draw essence from the CBA constituting a manifest disregard for the law. Our Supreme Court has adopted the following test for deciding whether the arbitrators [*14] showed a manifest disregard for the law: "The test consists of the following three elements, all of which must be satisfied in order for a court to vacate an arbitration award on the ground that the [arbitrators] manifestly disregarded the law: (1) the error was obvious and capable of being readily and instantly perceived by the average person qualified to serve as an arbitrator; (2) the arbitration panel appreciated the existence of a clearly governing legal principle but decided to ignore it; and (3) the governing law alleged to have been ignored by the arbitration panel is well defined, explicit, and clearly applicable." (Internal quotation marks omitted.) *Industrial Risk Insurers v. Hartford Steam Boiler Inspection & Ins. Co.*, 273 Conn. 86, 95, 868 A.2d 47 (2005).

As to the first prong, the plaintiff submits that the error was the panel's failure to fashion a remedy that was consistent with the terms of the collective bargaining agreement. Article 5 of the CBA provides: "[n]o permanent employee shall be removed, dismissed, discharged, suspended, fined, reduced in rank, or warned, either in writing or orally, except for just cause." Pl. Mem. Law, 22. The plaintiff argues that the errors made by the panel in applying the seven questions[2] of just cause are easily perceived by the average arbitrator when considering [*15] the evidence in this case. Under the second prong, the plaintiff contends that the panel must have appreciated the existence of a clearly governing legal principle but decided to ignore it. The submission required the panel to determine whether the defendant had just cause to terminate the employment of David Greene and to fashion a remedy consistent with the collective bargaining agreement. By inaccurately concluding David Greene's termination in 2012 was for alleged bizarre, on-duty conduct and heavily relying on video/audio recordings taken in direct violation of two Chief's orders, the panel ignored its duty and imposed its own brand of justice. As to the third prong, the legal principle of "just cause" is "well defined, explicit and clearly applicable." The plaintiff submits that the panel violated its oath when it relied on inaccurate and improperly obtained evidence. The panel decision evidences the panel's lack of fidelity to established legal principles constituting a manifest disregard of the law.

In response, the defendant offers that the arbitrators expressly assessed all seven *Enterprise Wire* criteria in its favor. The defendant submits that the panel expressly [*16] observed that plaintiff's abhorrent behavior and lack of fitness was also supported "by credible testimony from three eyewitnesses." The panel's decision is grounded squarely on the convincing testimony and video documentation establishing Greene's bizarre behavior and lack of fitness for duty.

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[2] The most commonly recognized guideline for analyzing whether discipline is supported by just cause was articulated in Enterprise Wire Company and Enterprise Independent Union, 46 LA 359, 362-365 (1966) by arbitrator Carroll Daugherty. The "seven questions of just cause" are, (1) Was the employee warned of the consequences of his conduct? (2) Was the employer's rules or order reasonably related to safe and efficient operations? (3) Did the employer investigate before administering the discipline? (4) Was the investigation conducted fairly and objectively? (5) Did the investigation produce substantial evidence or proof that the employee was guilty as charged? (6) Were the rules, orders and penalties applied evenhandedly and without discrimination? And (7) Was the degree of discipline administered in a particular was reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee and his service with the company? "A 'no' answer to one or more of the questions means that just cause either was not satisfied or at least was seriously weakened in that some arbitrary, capricious, or discriminatory element was present." Koven & Smith, Just Cause: The Seven Tests, p. 27 (2006).

"The term just cause, despite its relative ubiquity in collective bargaining agreements, does not lend itself to a single universal characterization or test. . . . A common understanding of what just cause requires in this context involves not only a determination of whether the employee committed the infraction in question, but whether the proven conduct constitutes sufficient grounds to support the discipline or discharge imposed." (Citation omitted; internal quotation marks omitted.) *Burr Road Operating Co. II, LLC v. New England Health Care Employees Union, District 1199*, 162 Conn. App. 525, 542, 131 A.3d 1238 (2016).

"[T]he manifest disregard of the law ground for vacating an arbitration award is narrow and should be reserved for circumstances of an arbitrator's extraordinary lack of fidelity to established legal principles. . . . Under this highly deferential standard . . . [e]very reasonable presumption and intendment will be made in favor of the [arbitration] award and of the arbitrators' acts and proceedings." (Citation [*17] omitted; internal quotation marks omitted.) *Horrocks v. Keepers, Inc.*, 216 Conn. App. 275, 280, 285 A.3d 54 (2022), cert. denied, 346 Conn. 902, 287 A.3d 601 (2023). "[N]o Connecticut court has ever vacated an arbitration award on the ground that the arbitrator manifestly disregarded the law. See *Lemma v. York & Chapel, Corp.*, 204 Conn. App. 471, 498 n. 6, 254 A.3d 1020 (2021)." *Halloran & Sage, LLP v. Fogarty*, Superior Court, judicial district of Hartford at Hartford, CV-22-6162552-S (March 20, 2023, *Sicilian, J.*).

"The question is not whether this court agrees with the arbitrator[s'] reasoning or [their] conclusions, but rather, whether the arbitration award demonstrates 'egregious misperformance of duty . . . .' or 'an infidelity to the obligation imposed upon' the arbitrator[s] or 'patently irrational application of legal principles . . . .' *Garrity v. McCaskey*, 223 Conn. 1, 7-9, 612 A.2d 742 (1992). 'Judicial inquiry under the manifest disregard standard is . . . extremely limited. The governing law alleged to have been ignored by the arbitrator[s] must be well defined, explicit, and clearly applicable. We are not at liberty to set aside an [arbitrators'] award because of an arguable difference regarding the meaning or applicability of laws urged upon it.' Id., 9. Even where the arbitrator[s'] decision entails 'a misapplication of substantive rules of law' it will not be vacated unless it is 'totally irrational . . . .' Id.

"While other, qualified arbitrators could reasonably have reached a different conclusion, [the plaintiff] has not shown that the arbitrator[s'] [*18] reasoning and application of law is totally irrational or that the arbitrator's decision exhibits an egregious misperformance of duty or lack of fidelity to his obligations." *Halloran & Sage, LLP v. Fogarty*, supra, Superior Court, Docket No. CV-22-6162552-S.

B.

Our Supreme Court has made clear that "a challenge to an arbitration award under § 52-418 (a) (3) is limited to whether a party was deprived of a full and fair hearing before the arbitration panel." (Internal quotation marks omitted.) *Kellogg v. Middlesex Mutual Assurance Co.*, 326 Conn. 638, 648, 165 A.3d 1228 (2017). "[A]n arbitration hearing is fair if the arbitrator gives each of the parties to the dispute an adequate opportunity to present its evidence and argument." *McCann v. Dept. of Environmental Protection*, 288 Conn. 203, 215, 952 A.2d 43 (2008).

Based upon a review of the record and applying the foregoing legal principles, the plaintiff was not deprived of a full and fair hearing before the panel. "A party's choice to accept arbitration entails a trade-off. A party can gain a quicker, less structured way of resolving disputes; and it may also gain the benefit of submitting its quarrels to a specialized arbiter . . . . Parties lose something, too: the right to seek redress from the courts for all but the most exceptional errors at arbitration." (Internal quotation marks omitted.) *Bridgeport v. The Kasper Group, Inc.*, supra, 278 Conn. 478-79. Furthermore, "[e]very [*19] reasonable presumption and intendment will be made in favor of the award and of the arbitrator's acts and proceedings." (Internal quotation marks omitted.) *Kellogg v. Middlesex Mutual Assurance Company*, supra, 326 Conn. 646.

III

CONCLUSION

Accordingly, the plaintiff's application to vacate the arbitration award is denied.

/s/ Welch

WELCH, J.