SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3222-15T4

MIDDLETOWN TOWNSHIP,

Plaintiff-Appellant,

v.

MIDDLETOWN TOWNSHIP POLICE SUPERIOR OFFICERS ASSOCIATION,

Defendant-Respondent.

Submitted March 13, 2017 – Decided May 5, 2017

Before Judges Sabatino and Currier.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-3841-15.

O'Toole Fernandez Weiner & Van Lieu, LLC, attorneys for appellant (Kenneth B. Goodman, on the briefs).

Zazzali, Fagella, Nowak, Kleinbaum & Friedman, P.C., attorneys for respondent (Paul L. Kleinbaum, of counsel and on the brief; Kaitlyn E. Dunphy, on the brief).

PER CURIAM

Plaintiff Middletown Township appeals from the court's decision confirming the arbitration award rendered in this grievance dispute between the parties. We affirm.

In January 2012, the union that represented patrol officers in the Township negotiated an agreement with plaintiff in which the officers would use a modified "Pitman schedule"[1] and work ten and one-half hour workdays. As a result, plaintiff also implemented a schedule requiring superior officers in the patrol division to work the same schedule necessitated by their supervision of the patrol officers. The superior officers were represented by defendant, Middletown Township Police Superior Officers Association (SOA), which had a collective negotiations agreement (CNA) with the Township.

Plaintiff asserted it was entitled to implement the change to the schedule under Article X(E) of the CNA, providing that "[m]anagement has the right to change shifts or the hours worked but must negotiate any impact of its changes in reference to changes, wages, overtime and other compensation with the [SOA]."

[1] The term, "Pitman schedule" is used in law enforcement to signify a work schedule consisting of a twenty-eight day cycle, under which officers work twelve hour shifts — two days on, two days off, three days on, two days off, two days on, three days off — and alternate between thirty-six and forty-eight hours per week.

Defendant filed a grievance, asserting that it had not agreed to work a modified Pitman schedule, and therefore, its members were entitled to overtime for any hours worked beyond eight hours a day. The SOA relied on the "Overtime" provision in Article XI of the CNA that provides in relevant part:

> A. The employer agrees that overtime consisting of time and one-half (1-1/2) shall be paid to all uniformed officers. Lieutenants not regularly assigned to rotating shifts in the Patrol and Traffic Divisions and Detectives covered by this agreement shall be paid time and one-half (1-1/2) for hours worked in excess of the normal work day of eight (8) hours and for any work week in a seven (7) day period of more than forty (40) hours.

In addition, Article X(B) states that "[e]ach tour of duty shall be for eight (8) hours of work."

In April 2012, the parties entered into an agreement to implement the modified schedule but agreed that SOA could pursue its grievance.

In a Memorandum of Understanding (MOU) signed in June 2012, the SOA agreed that its members would be placed on a modified Pitman schedule beginning July 1. The MOU recognized a grievance period between January 1, 2012 and March 29, 2012. It then stated: "[t]he SOA will not seek any additional remuneration in connection with their grievance after March 1, 2012 for the remainder of the Schedule trial period ending on or about July 1, 2013." (emphasis

added). This provision conflicts with the previous sentence of the MOU, which established the grievance period ending on March 29, 2012, instead of March 1, 2012.

The SOA submitted its grievance to Public Employment Relations Commission (PERC) arbitration, and on July 17, 2015, the arbitrator issued a comprehensive written opinion and award, ordering the Township to "pay overtime . . . to patrol sergeants and lieutenants, excluding detectives, for every day they worked beyond their normal 8-hour tour from January 1, 2012 through and including March 27, 2012."

In resolving the discrepancy regarding the grievance period, the arbitrator noted there was no dispute that the imposed modified schedule had ended on March 27, 2012. She relied on certifications submitted by the SOA and uncontested by plaintiff, that advised that the Township's attorney had drafted the MOU and had mistakenly inserted the date of March 1. She concluded that the March 1 date was an error that neither party had failed to notice or correct before signing the agreement. She, therefore, established the grievance period as running until March 27, 2012.

In October 2015, the Township presented an order to show cause and verified complaint, seeking to vacate the arbitration award. Defendant filed an answer and counterclaim and moved to confirm the award. After hearing oral argument on February 24,

2016, Judge Jamie S. Perri denied plaintiff's application to vacate the arbitration award and granted defendant's motion to confirm the award.

In a thorough oral decision, Judge Perri reviewed the pertinent portions of the CNA as well as the applicable principles of law. She noted that a court must affirm a public sector arbitration award so long as the award is "reasonably debatable."

In addressing plaintiff's argument that under the CNA the officers were required to work more than forty hours in a week in order to be eligible for overtime pay, the judge found that the arbitrator's interpretation that the pertinent portions of the CNA did not establish a general prerequisite of a minimum forty-hour workweek for overtime pay was "reasonable, and should be confirmed." She stated: "The arbitrator's holding that overtime pay is triggered once an officer exceeded an eight hour tour as defined by Article X paragraph (b) is sufficient to meet the reasonably debatable standard of review and should be upheld." The judge also rejected plaintiff's argument that the award violated public policy.

In considering plaintiff's argument that the grievance period should have ended March 1 as per the literal wording of the signed MOU, the judge agreed with the arbitrator that there was nothing in the record to suggest "the date of March 1 was in any way

consistent with the intention of the parties. The interpretation and decision is sufficient to meet the reasonably debatable standard for upholding the arbitrator's award."

On appeal, plaintiff argues that (1) the award is not reasonably debatable and the arbitrator disregarded her authority; (2) the arbitration award should be vacated as it is in violation of public policy; and (3) the award should be vacated because the grievance period should end March 1, not March 27.

In our review of the contentions, we are mindful that in a "public sector arbitration, courts will accept an arbitrator's award so long as the award is 'reasonably debatable.'" N.J. Tpk. Auth. v. Local 196, 190 N.J. 283, 292 (2007). Under the "reasonably debatable" standard, a court reviewing an arbitration award "may not substitute its own judgment for that of the arbitrator, regardless of the court's view of the correctness of the arbitrator's interpretation." N.J. Transit Bus Operations, Inc. v. Amalgamated Transit Union, 187 N.J. 546, 554 (2006) (citing State v. Int'l Fed'n of Prof'l & Tech. Eng'rs, Local 195, 169 N.J. 505, 514 (2001)).

Plaintiff argues that the arbitrator exceeded her authority in her interpretation of the CNA. The Township relies on Article XI to support its argument that SOA members are only entitled to overtime if they work more than a forty-hour workweek. Article

XI(A), states that overtime compensation shall be paid to lieutenants not regularly assigned to shifts in the patrol division "for hours worked in excess of the normal work day of eight hours and for any workweek in a seven (7) day period of more than forty (40) hours." (emphasis added). The arbitrator found this was the only reference to a forty-hour workweek and it only applied to non-patrol non-traffic lieutenants.

She also reviewed Article XI(C) defining overtime as "[a]ny additional time beyond the tour as defined herein" and Article X (B) defining a "tour" as eight hours of work. She noted that the contract "defines overtime as work beyond the tour, a reference to the 8-hour shift, not to the 40-hour standard work week." The arbitrator concluded that "according to the unambiguous meaning of these contractual provisions, when the Township added two and one-half (2 and 1/2) hours to each superior officers' tour, it was obligated to pay the overtime rate for these extra hours."

An arbitrator exceeds her authority where she ignores "the clear and unambiguous language of the agreement." City Ass'n of Sup'rs & Adm'rs v. State Operated Sch. Dist. of City of Newark, 311 N.J. Super. 300, 312 (App. Div. 1998). Here, the arbitrator considered all of the contractual clauses pertinent to the dispute. She analyzed Articles X and XI, she did not disregard certain

terms of the contract as plaintiff suggests; rather, she read the contract as a whole.

We are satisfied that the trial judge properly concluded that the arbitrator's interpretation of the pertinent contractual clauses was reasonably debatable.

Plaintiff also argues that the arbitration award should be vacated because it violates public policy. The Township contends that the implementation of the modified Pitman schedule was necessary to "maintain good order and discipline as well as maximum operational efficiency" in the police department. Plaintiff asserts that its intentions are consistent with the accepted public policy of managerial prerogative, and therefore, it had the authority to implement the modified schedule without first negotiating with the SOA.

A reviewing court "may vacate an award if it is contrary to existing law or public policy." N.J. Tpk. Auth., supra, 190 N.J. at 294. "[F]or purposes of judicial review of labor arbitration awards, public policy sufficient to vacate an award must be embodied in legislative enactments, administrative regulations, or legal precedents," and may not be "based on amorphous considerations of the common weal." Id. at 295. "[I]f the arbitrator's resolution of the public-policy question is not reasonably debatable, and plainly would violate a clear mandate

of public policy, a court must intervene to prevent enforcement of the award." Weiss v. Carpenter, 143 N.J. 420, 443 (1996).

Plaintiff asserts that its managerial prerogative to maintain operational efficiency is a public policy rationale recognized by the courts and legislature, and that the implementation of the modified Pitman schedule was non-negotiable. We discern no violation of public policy. The award does not prevent plaintiff from implementing its desired schedule but rather addresses overtime compensation for hours worked beyond an eight-hour shift. Plaintiff does not identify how public policy is violated by a requirement to pay overtime compensation. The CNA in place between the parties prior to the modified schedule provided for overtime compensation.

Moreover, plaintiff did not present the argument to the arbitrator that it was not required to negotiate a change to the schedule. The arbitrator was charged with determining whether the CNA entitled SOA members to overtime compensation for the time during which the schedule was modified. The arbitrator considered Article X(E) of the CNA which stated: "[m]anagement has the right to change shifts or the hours worked but must negotiate any impact of its changes in reference to changes, wages, overtime and other compensation with the [SOA]." The arbitrator determined that the existing agreement applied since there was no negotiated agreement

regarding overtime payment under the new schedule. We discern no contravention of public policy in the arbitrator's contractual interpretation, which we are satisfied was reasonably debatable.

In addressing the grievance period set by the arbitrator, we find plaintiff's argument meritless that March 1 was the proper cut-off date. The arbitrator reviewed the certifications presented on this issue. The documents advised that March 1 was never a date considered by the parties as the end of the grievance period and that it was a typographical error. Plaintiff did not present any evidence to the contrary. The conclusion that March 29 was the appropriate grievance period cut-off date was logical as the modified schedule remained in place until March 27.

We are satisfied that the arbitrator appropriately considered the contract and the intent of the parties derived from the presented certifications. "[F]undamental canons of contract construction require that [the Court] examine the plain language of the contract and the parties' intent, as evidenced by the contract's purpose and surrounding circumstances." State Troopers Fraternal Ass'n v. State, 149 N.J. 38, 47 (1997).

The trial court's decision that the award rendered was reasonably debatable was supported by sufficient credible evidence in the record.

Affirmed.