2022 IL App (3d) 210567-U

Order filed November 29, 2022

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2022

CITY OF PEORIA, Plaintiff-Appellant, v. PEORIA POLICE BENEVOLENT ASSOCIATION, FEDERAL MEDIATION & CONCILIATION SERVICE, THOMAS F. GIBBONS, in his capacity as Arbitrator, and JEREMY LAYMAN, Defendants (Peoria Police Benevolent Association and Jeremy Layman, Defendants-Appellees).	)	Appeal from the Circuit Court of the 10th Judicial Circuit Peoria County, Illinois Appeal No. 3-21-0567 Circuit No. 20-MR-86 Honorable David A. Brown, Judge, Presiding

JUSTICE HETTEL delivered the judgment of the court.
Presiding Justice O'Brien and Justice Hauptman concurred in the judgment.

ORDER

¶ 1 *Held*: Arbitrator did not exceed his authority or violate public policy by ordering reinstatement of police officer who made inappropriate comments and posted a photo of himself wearing a t-shirt with the phrase "Baby Daddy Removal Team" on social media where arbitrator found officer's conduct was racially insensitive but not overtly racist.

¶ 2 In 2000, defendant Jeffrey Layman was hired as a City of Peoria police officer and became a member of defendant Peoria Police Benefit Association (Association). In 2018, the City terminated Layman's employment. Layman and the Association filed a grievance, which was ultimately heard by an arbitrator. The arbitrator found the City had just cause to discipline Layman but not to terminate him and, therefore, ordered Layman to be reinstated. The City filed a complaint, seeking to vacate the arbitrator's decision. Following a hearing, the trial court confirmed the arbitrator's award. The City appeals, arguing (1) the arbitrator exceeded his authority by reinstating Layman, and (2) the arbitrator's award violates public policy. We affirm.

¶ 3 BACKGROUND

¶ 4 In October 2000, plaintiff City of Peoria hired defendant Layman as a police officer, and Layman became a member of defendant Association, the collective bargaining unit for City of Peoria police officers. The City and the Association entered into a collective bargaining agreement (CBA), which states that "the City retains its inherent management functions and exclusive right to operate and manage its affairs in each and every respect." The CBA further provides that the City has "sole discretion" to "promote, discipline or discharge employees in accordance with applicable laws." With respect to discipline, the CBA provides:

> "All disciplinary action against employees covered by this Agreement shall be carried out in accordance with department rules, regulations, orders, policies, procedures, city ordinances and state laws governing the discipline of law enforcement officers.
>
> The City agrees with the tenets of progressive and corrective discipline where appropriate. However, when the severity of an infraction is great, dismissal outside the progression shall be considered an appropriate remedy. It should also

> be recognized that when using the principal of progressive discipline, all aspects of performance are taken into consideration. Individual infractions standing alone may not warrant action beyond the first, but when viewed cumulatively with warnings and other discipline actions, more extreme action may be appropriate. No non-probationary employee shall be disciplined without just cause."

¶ 5 In 2017, the City of Peoria Chief of Police issued General Order 100.05, which applies to all officers. General Order 100.05 requires officers to: (1) "be familiar with and understand all city personnel rules, department orders, the collective bargaining agreement, and all established procedures of the department pertaining to their assignments"; (2) not violate "any law, department policy, regulation, rule or procedure"; (3) "promptly report information of any crime, in accordance with department orders and procedures"; (4) not engage "in any conduct or activity on or off-duty that reflects discredit upon the department or its officers, or tends to bring this department in disrepute, or impairs its efficient and effective operations or efficiency of the department or the individual"; (5) "conduct themselves toward the public in a civil and professional manner that denotes professional service orientation that will foster public respect and cooperation"; and (6) not "release or divulge investigative information, or release any other information concerning the activities of the department while holding himself as representative of the department in such matters, except in conformance with department order, and in the performance of assigned duties."

¶ 6 On January 10, 2018, Assistant Police Chief Loren Marion III received a complaint from a local pastor about (1) social media posts made by Layman, and (2) a photo on social media of Layman wearing a t-shirt with the word "POLICE" on it, under which were the letters "BDRT" and then the phrase "Baby Daddy Removal Team." The pastor found the posts "derogatory and

concerning to him" and explained that individuals in the African-American community were upset by them.

¶ 7 The social media posts referenced in the pastor's complaint were made by Layman on his home computer during non-working hours to a Facebook page belonging to a private citizen, Molly Crusen Bishop. Layman engaged in a discussion with Christa Foster, a friend of Bishop's, who Layman did not personally know. The Facebook posts were made in response to a local newspaper article reporting supermarkets were closing on the south end of Peoria. In their Facebook posts, Layman and Foster had the following exchange:

> Layman: "I've taken the reports. It's the thefts. The store just happens to be more accessible to the thieves location. One on Wisconsin has a habitual theft that will steal every bit of baby formula when they get it in stock. Goes in every week and steals up to 3 cart loads and leaves. Usually before loss prevention officers are working."
>
> Foster: "Ok, so instead of investing and providing more opportunity, your answer is to abandon? Because this has worked out so well for the south end right?"
>
> Layman: "You have no clue how business's work? If the people will not work and steal, there is no profit and no reason to invest. The people who live in the south end have created this. They own it. Business's are there to make money. If they have more stolen from them, they will not stay. You want business's to stay on the south end. Quit creating a society of entitled thieves."
>
> Foster: "The blame is on the oppression, not the oppressed."
>
> Layman: "It's not a race issue. It's a crime issue. Unless you are an advocate for criminals."

Foster: “But these are predominately low income high minority areas. I don’t advocate for criminals in any way, however this will surely bring more crime, not less.”

Foster: “I respect that your service in our community, I just think we see things differently when it comes to this.”

Layman: “Because I deal with it and keep it out of your face. If I disappear, you will have to deal with it. And I hope you’re armed if that day ever happens.”

Foster: “This is one of the reasons we are rated 2nd in the nation as worst place for African Americans to live. Instead of investing and providing opportunity, we abandon low income areas. This will make things worse, not better. It’s really a slap in the face to those in the community.”

Layman: “Those in those communities need to stop killing each other, stop stealing from everyone who are trying to help them and stop using and selling drugs. They have no family base thanks to Planned Parenthood, no guidance since they have no fathers and no path since schools since they accepted Common Core and discontinued all shop classes that teach skilled labor. We are in this place because idiots voted for it. If you kept voting for Democrats and expected something different, you are the problem."

¶ 8 The above exchange was copied and posted on the public Black Justice Project Facebook page by Chama St. Louis, its moderator, along with the following statement: “If we don’t speak up, if we don’t speak out, if we do not set the standards, THESE type of officers will continue to patrol our neighborhood..." Black Justice Project is a Peoria advocacy group dedicated to racial and social justice.

¶ 9 On January 12, 2018, Peoria Chief of Police Jerry Mitchell placed Layman on administrative leave while Lieutenant Shawn Wetzel conducted an internal investigation. Through his investigation, Wetzel found a Facebook comment made by Layman on July 14, 2013, related to the death of Treyvon Martin in which Layman stated: "Treyvon made his own choice to be a thug and got himself killed. We all have choices. We can be good guys or bad guys. Treyvon chose to be a bad guy. Zimmerman is not."

¶ 10 According to Wetzel, there was no social media policy in effect for Peoria police officers when Layman made his comments. Although a policy had been drafted and distributed to police officers in 2015, it was still labeled as a "DRAFT" in the City of Peoria employee handbook.

¶ 11 As a result of his investigation, Wetzel determined that Layman violated General Order 100.05. when he (1) "failed to utilize appropriate department procedures (Public Information officer) to request authority to disseminate information which is NOT a matter of public concern"; (2) engaged in conduct unbecoming an officer through his Facebook comments and his wearing of the "offensive" "BDRT" t-shirt; (3) failed to conduct himself in a civil and professional manner when he "accused south end citizens [of] being responsible for business to fail or close down [due] to the thefts and [calling them] 'entitled thieves' that were 'fatherless', using drugs, and committing crimes such as thefts and murder"; and (4) "publicly represented himself as a police officer and disclosed investigative information gained through his position and assignment as a Peoria Police Officer."

¶ 12 Based on Wetzel's findings, Peoria Police Chief Loren Marion terminated Layman's employment on February 20, 2018. The next day, the Association filed a grievance arguing that the City violated the collective bargaining agreement and did not have just cause to terminate

Layman. The grievance passed through the grievance process and was denied by the City at each stage. The Association sought arbitration.

¶ 13 Arbitration proceedings were held on June 4, 2019. The parties agreed the issues to be decided were as follows: "Was there just cause to terminate Officer Jeremy Layman? If not, what shall the remedy be?"

¶ 14 Lieutenant Wetzel testified regarding his internal investigation of Layman. He testified that in his experience, "baby daddy removal team" refers to "African-American males who are not raising their children." He has heard that phrase hundreds of times as a police officer. He admitted the term "baby daddy" can be used for a man who is not African-American. Wetzel testified that the south end of Peoria has a large population of black residents, so when Layman referred to "them" or "that community" or the "south end" in his Facebook comments, Wetzel inferred that Layman meant African-Americans.

¶ 15 Chief Loren Marion testified that the term "baby daddy" is not a race-specific term but is used more commonly "in the African-American culture." Marion testified that Layman was terminated for his Facebook posts because they affected Layman's ability to perform as a Peoria police officer, diminished the community's trust in the police department, and brought discredit to the department. Marion testified that African-Americans were concerned about how they would be treated by Layman because some of his comments "had racial overtones." Marion believed Layman violated general orders and that his termination was justified.

¶ 16 Layman testified that his Facebook comments were not directed toward any particular race. He said he used the term "south end" to refer only to "a geographic location." When he referred to "[t]hose in those communities" he "meant anyone that lived in that geographic region." He agreed that Foster referred to African-American communities in her comments but said he "wasn't talking

about just African-Americans" and meant "everybody." In his mind, the south end is not exclusively African-American but is "a wide variety of mixed people" who are generally "lower income." Layman denied that he was referring to African-Americans or Hispanics when he used the term "entitled thieves."

¶ 17 When asked about whether his use of the term "thug" to refer to Trayvon Martin had a racial connotation, Layman replied: "I didn't use the words African-American." He admitted that he knew Trayvon Martin was African-American. When asked the meaning of "baby daddy removal team," Layman stated:

> "It's a saying inside the police circles by the circles. One of the more common calls we go on is a trouble of a male refusing to leave. Very often it's the child's mom calling in saying her baby's father is refusing to leave. So they call the police. We go there and either ask them, can you leave the premises, or you have to make an arrest, they arrest them for trespassing. Hence the term baby daddy removal team."

Layman testified that he received the "BDRT" t-shirt as a "gag gift." The Association asked the arbitrator to take judicial notice of a television comedy series entitled "Baby Daddy" that appeared on ABC Family from 2011 to 2017, and centered around a Caucasian "Baby Daddy."

¶ 18 After hearing the testimony and reviewing the evidence, the arbitrator drafted a written decision. In the beginning of his decision, the arbitrator stated: "The threshold question in this matter *** is whether the City had just cause to discipline [Layman]. If the City had just cause to terminate [Layman] ***, the next question to be considered is whether the City violated [Layman's] First Amendment right of free speech, as a public employee, by terminating him for expressing his views on social media."

¶ 19 The arbitrator determined the City had just cause to discipline Layman for disclosing investigative information to the public outside of proper department channels and, as such, violated General Order 100.05. However, the arbitrator found Layman's Facebook comments did not violate any other rules or regulations. The arbitrator explained that while Layman's Facebook comments during his exchange with Foster were possibly "offensive to many", they did "not directly reference race or explicitly show racial animus." With respect to Layman's Facebook comments regarding Treyvon Martin, the arbitrator found that while Layman's "view of the teenager's character is certainly questionable *** and no doubt extremely offensive to many, [Layman] makes no reference to race or the racial politics of the case in his remarks." The arbitrator also found the photo of Layman wearing the "BDRT" t-shirt was not racist because "the evidence shows the term can apply to so-called baby daddies of any race, and certainly the term is being used more broadly as can be seen with a major network television series that had adopted the term for the show's title."

¶ 20 In a footnote at the end of his decision, the arbitrator found he did not need to address whether Layman's comments were protected by the first amendment because the City lacked just cause to terminate Layman for his social media postings. Finally, the arbitrator (1) ruled that the grievance was sustained in part and denied in part, (2) ordered the City to "impose an appropriate, non-terminable penalty", and (3) reinstated Layman to his previous position.

¶ 21 The City filed a two-count amended complaint in circuit court, seeking to vacate the arbitration award. In count I, the City alleged that the arbitrator exceeded his authority. In count II, the City alleged that the arbitrator's decision is contrary to public policy. Following a hearing, the trial court entered an order stating: "The trial court finds the award was within the scope of the

arbitrator's authority, and that the award does not contravene clearly defined public policy. As such, the court finds the arbitrator's award should be and hereby is confirmed."

¶ 22 ANALYSIS

¶ 23 I.

¶ 24 "[J]udicial review of an arbitral award is extremely limited." *American Federation of State, County & Municipal Employees, AFL-CIO v. Department of Central Management Services*,173 Ill. 2d 299, 304 (1996). "This standard reflects the legislature's intent in enacting the Illinois Uniform Arbitration Act -- to provide finality for labor disputes submitted to arbitration." *Id.*; see 710 ILCS 5/12 (West 2020) (denying judicial authority to vacate arbitral awards except in limited circumstances). An arbitral award should be judicially disturbed only in instances of fraud, corruption, partiality, misconduct, mistake, or failure to submit the question to arbitration. *American Federation of State, County & Municipal Employees, AFL-CIO,* 173 Ill. 2d at 304. A court must enforce a labor-arbitration award if the arbitrator acts within the scope of his authority and the award draws its essence from the parties' collective-bargaining agreement. *Id.* at 304-305.

¶ 25 "[A]n award will be vacated if the arbitrator exceeds his authority, and that authority is ordinarily determined by the provisions of the arbitration agreement." *Village of Posen v. Illinois Fraternal Order of Police Labor Council*, 2014 IL App (1st) 133329, ¶ 37. "Whenever possible, arbitration awards should be construed to uphold their validity." *Id*. "On judicial review, there is a presumption the arbitrator did not exceed his authority." *Decatur Police Benevolent and Protective Ass'n Labor Committee v. City of Decatur*, 2012 IL App (4th) 110764, ¶ 21.

¶ 26 Where parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and the meaning of the contract that

the parties have agreed to accept. *Griggsville-Perry Community Unit School District No. 4 v. Illinois Educational Labor Relations Board*, 2013 IL 113721, ¶ 18. Where "just cause" is not defined in the collective bargaining agreement, it is up to the arbitrator to determine if the grievant was terminated for just cause. *American Federation of State, County & Municipal Employees, AFL-CIO v. State*, 124 Ill. 2d 246, 256 (1988); *Village of Posen*, 2014 IL App (1st) 133329, ¶ 43. A court may not reverse an arbitrator's decision simply because it is contrary to the manifest weight of the evidence. *Village of Posen*, 2014 IL App (1st) 133329, ¶ 43. It is not the role of a reviewing court to reweigh the evidence that was before the arbitrator. *Id*.

¶ 27 Here, the City contends that the arbitrator exceeded his authority in the following ways: (1) by mentioning the first amendment in his decision, (2) by "issuing rulings" on Wetzel's internal investigation report, (3) by failing to take into account the trade involved, and (4) by disregarding applicable agreements, rules and regulations, including the City's social media policy. We disagree.

¶ 28 First, while the arbitrator made mention of the first amendment in the beginning and at the end of his order, he explicitly stated that it was unnecessary for him to decide if Layman's Facebook activity was protected by the first amendment because he determined that the City lacked just cause to terminate Layman for his statements. The arbitrator did not exceed his authority by merely mentioning the first amendment in his decision.

¶ 29 Second, the arbitrator did not exceed his authority by "issuing rulings" on Wetzel's internal examination report because it was the arbitrator's responsibility to determine if just cause existed for the City to terminate Layman. See *American Federation of State, County & Municipal Employees, AFL-CIO*, 124 Ill. 2d at 256; *Village of Posen*, 2014 IL App (1st) 133329, ¶ 43. In doing so, it was appropriate for the arbitrator to examine Wetzel's report and findings so that he

could determine if Layman did, in fact, violate the rules Wetzel found Layman violated. The arbitrator was free to accept or reject the conclusions reached by Wetzel. And it is not our role as a reviewing court to reweigh the evidence before the arbitrator. See *Village of Posen*, 2014 IL App (1st) 133329, ¶ 43.

¶ 30 Third, there is no support for the City's contention that the arbitrator did not consider the trade in which Layman was engaged. The arbitrator repeatedly referred to Layman's position as a police officer. Thus, the court properly considered Layman's "trade."

¶ 31 Finally, there is no evidence that the arbitrator disregarded any applicable rules, regulations or provisions of the CBA. At the arbitration hearing, Wetzel testified that the City's social media policy was in "draft" form only and not in effect when Layman made his social media posts. Thus, the arbitrator did not err in refusing to consider whether Layman violated any portion of that policy.

¶ 32 The dispute between the City and Association was properly submitted to an arbitrator pursuant to the collective-bargaining agreement between those parties. The arbitrator's ruling arose from the collective-bargaining agreement. The terms of that agreement provide that an employee can only be terminated for just cause. The arbitrator determined that just cause did not exist to warrant termination in light of the facts and circumstances of this case. The City has failed to show that the arbitrator's ruling was outside of his authority.

¶ 33 II.

¶ 34 Courts have crafted a public policy exception to vacate arbitral awards that otherwise derive their essence from a collective-bargaining agreement. *American Federation of State, County & Municipal Employees, AFL-CIO*, 173 Ill. 2d at 306. The historical context of the exception is grounded in the common law. *Id.* at 306-07. As with any contract, a court will not enforce a collective-bargaining agreement that is repugnant to established norms of public policy. *Id.* at 307.

Likewise, we may not ignore the same public policy concerns when they are undermined through the process of arbitration. *Id.*

¶ 35 To vacate an arbitral award on these grounds, the contract, as interpreted by the arbitrator, must violate some explicit public policy. *Id.* This exception is narrow and may be invoked only when a contravention of public policy is clearly shown. *Id.* "Moreover, the public policy must be 'well-defined and dominant' and ascertainable 'by reference to the laws and legal precedents and not from generalized considerations of supposed public interests.'" *Id*. (quoting *W.R.Grace & Co. v. Local Union No. 759*, 461 U.S. 757, 766 (1983)). Courts "look to our 'constitution and * * * statutes, and when cases arise concerning matters upon which they are silent, then in its judicial decisions and the constant practice of the government officials' when determining questions regarding public policy." *Id*. (quoting *Zeigler v. Illinois Trust & Savings Bank*, 245 Ill. 180, 193 (1910)).

¶ 36 "[A]pplication of the public policy exception requires a two-step analysis." *Id*. The threshold question is whether a well-defined and dominant public policy can be identified. *Id.* If so, the court must determine whether the arbitrator's award, as reflected in his interpretation of the agreement, violated the public policy. *Id*. at 307-08.

¶ 37 Courts in this state have found public policies exist with respect to police officers, such as "the public policy against police officers unnecessarily using force against prisoners and being dishonest about that use of force during a subsequent investigation" (*City of Des Plaines v. Metropolitan Alliance of Police, Chapter No. 240*, 2015 IL App (1st) 140957, ¶ 24), and a public policy "that a police officer must be honest and not provide false, misleading, or incomplete statements in connection with his duties" (*City of Country Club Hills v. Charles*, 2020 IL App (1st) 200546, ¶ 25). However, there is no explicit public policy requiring police officers to be

"trustworthy." See *Village of Posen*, 2014 IL App (1st) 133329, ¶ 47; see also *City of Highland Park v. Teamster Local Union No. 714*, 357 Ill. App. 3d 453, 464 (2005) (finding no explicit public policy, such as "maintaining the public's trust in law enforcement," precluded reinstating police officer found guilty of criminal offense).

¶ 38 "[T]here must be some well-defined and dominant policy, not merely a value judgment or notion of the public interest, that implicitly forbids the employee's reinstatement." *City of Highland Park*, 357 Ill. App. 3d at 462. The party seeking vacatur of the arbitration award bears the burden of "identifying a well-defined and dominant public policy." *National Wrecking Co. v. Sarang Corp.*, 366 Ill. App. 3d 610, 622 (2006).

¶ 39 Here, the City has failed to define an explicit and well-defined public policy that prohibits reinstatement of Layman. The City contends that it is against public policy for police departments to employ racist police officers; however, the City fails to cite to any laws, rules or regulations in this State supporting the existence of such a public policy. *Cf. State v. Henderson*, 762 N.W.2d 1, 14-17 (Neb. 2009) (finding public policy of Nebraska prevented reinstatement of officer who was member of Ku Klux Klan based on state statutes and rules prohibiting racism, particularly "Nebraska's racial profiling act"). While it may very well be against public policy for a police department to be required to reinstate an overtly racist police officer, the City bore the burden of proving the existence of such a public policy and it failed to do so. See *National Wrecking Co.*, 366 Ill. App. 3d at 622.

¶ 40 Moreover, even if the City succeeded in establishing that it is against public policy for a police department to be ordered to reinstate a racist police officer, the arbitrator's decision in this case does not violate that policy. There is no question that Layman's Facebook comments were inappropriate and insensitive; however, as the arbitrator found, they were not overtly racist. Thus,

Layman's reinstatement does not violate any such public policy. *Cf. Henderson*, 762 N.W.2d at 14-17 (public policy precluded reinstatement of police officer who knowingly and willingly affiliated with Ku Klux Klan, an organization that "represents discrimination").

¶ 41 In reaching this decision, we do not condone Layman's behavior. Rather, we find his Facebook comments offensive and demeaning. We hold only that, under the circumstances of this case, the City failed to establish that the arbitrator's reinstatement of Layman violates a well-defined public policy.

¶ 42 CONCLUSION

¶ 43 The judgment of the circuit court of Peoria County is affirmed.

¶ 44 Affirmed.