STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1243

Itasca County,
Respondent,

vs.

Itasca County Employees' Association,
Appellant.

Filed May 3, 2021
Reversed and remanded
Gaïtas, Judge

Itasca County District Court
File No. 31-CV-20-228

Jennifer C. Moreau, Scott M. Lepak, Barna, Guzy & Steffen Ltd., Minneapolis, Minnesota (for respondent)

Jane C. Poole, Andrew, Bransky & Poole, P.A., Duluth, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Gaïtas, Judge; and Peterson, Judge.*

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Itasca County Employees Association (ICEA) appeals the district court's order vacating an arbitrator's grievance award and remedial award in a labor dispute with

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

respondent-employer Itasca County (the county). Because we conclude that the district court erred in determining that the grievance was rendered moot by the parties' adoption of a successor collective bargaining agreement and in concluding that the arbitrator exceeded the scope of the arbitrator's authority, we reverse and remand.

FACTS

ICEA represents approximately 25 supervisory employees who work for the county. These employees are "essential" under Minnesota law and cannot strike. They must resolve any contract disputes through the process of interest arbitration.[1]

In 2016, ICEA and the county entered into a collective bargaining agreement that would remain in effect through December 31, 2018 (the 2016-2018 CBA). One of the terms of the 2016-2018 CBA provided ICEA members with a choice among several specific health-insurance options. Additionally, the 2016-2018 CBA stated that if "the County Board decides to change insurance carriers, it is understood and agreed that the County shall continue to provide equivalent coverage to the present hospital/medical or dental insurance covering the employees under [the 2016-2018 CBA], if such alternative should become available." In the event of disputes, the 2016-2018 CBA established a grievance procedure, which included the opportunity for appeal to binding arbitration governed by the Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01-.60 (2020).

[1] Interest arbitration is used to negotiate the terms of a contract, whereas grievance arbitration is used to resolve disputes relating to the interpretation or application of terms in a contract. *See Metro. Airports Comm'n v. Metro. Airports Police Fed'n*, 443 N.W.2d 519, 526 (Minn. 1989) (Simonett, J., concurring in part, dissenting in part).

The county's insurance carrier unexpectedly dissolved, effective June 30, 2018. On June 28, 2018, the parties entered into a memorandum of understanding (the MOU) where they agreed that the existing insurance options would be replaced by specific plans with a new carrier.

Because the change in insurance carriers caused a 15% increase in premium costs, the county requested bids from other insurance carriers for 2019. During this process, the county discovered that it could save more than $700,000 in annual premiums by eliminating some plans and offering only high-deductible plans, and by changing its pharmacy network. From October to December 2018, the county approached each of the county's bargaining units with a proposal to make these modifications for the insurance year beginning on January 1, 2019. Bargaining units representing 84% of the county's employees agreed to the proposed changes by early December 2018. But three bargaining units, including ICEA, rejected the county's proposal.

On December 12, 2018, the county emailed ICEA's president advising that the county's board had voted to eliminate two existing insurance plans for all county employees. With the exception of ICEA, the bargaining units that initially rejected the county's proposal ultimately agreed to the changes.

ICEA filed a grievance on December 19, 2018, alleging that the county had violated the 2016-2018 CBA by unilaterally reducing its health-insurance options to the high-deductible plans. The county denied the grievance, and ICEA appealed the grievance to arbitration. Effective January 1, 2019, ICEA employees covered by the eliminated health-insurance plans were required to change their coverage to one of the high-deductible plans.

The parties also reached an impasse in negotiating the successor collective bargaining agreement (the successor CBA)—which would have commenced on January 1, 2019—in large part due to the same dispute about health-care options. While contract negotiations were stalled, the county also changed the life insurance benefit provided to ICEA members.

The Bureau of Mediation Services certified to interest arbitration the issue of health-insurance plans under the successor CBA. Then, a single arbitrator heard both the interest and grievance arbitrations in a consolidated hearing held in August 2019.

On November 3, 2019, the arbitrator issued awards in both matters. In the interest arbitration, the arbitrator awarded the county its proposed health-insurance program, which only included the two high-deductible plans. Based on a stipulation of the parties, the arbitrator declared that the successor CBA would be effective from January 1, 2019, through December 31, 2021. In the grievance matter, the arbitrator sustained ICEA's grievance, concluding that the county violated the 2016-2018 CBA by unilaterally implementing the health-insurance changes and that ICEA members were harmed by the violation. The arbitrator directed the county to pay ICEA "an amount that reflects the premium savings experienced by the County from January 1, 2019 to the date of [the] award."

In January 2020, the county moved to vacate the grievance award. Because the parties could not agree on the amount of the award, they returned to the arbitrator for resolution of that issue. On April 6, 2020, the arbitrator issued a remedial award directing

the county to pay ICEA $129,905.70. That same day, the county filed an amended motion to vacate, challenging both the grievance award and the remedial award.

In August 2020, the district court granted the county's motion and vacated both the grievance and remedial awards. First, the district court determined that the grievance was moot because "there was no period between the last day of the express term of the [2016-2018 CBA] and the point at which the [successor CBA] took effect" and the arbitrator exceeded her authority in considering the moot grievance. Second, the district court concluded that the arbitrator exceeded her authority in addressing the substance of the grievance. Specifically, the district court determined that the arbitrator had exceeded her authority by concluding that the two high-deductible health-insurance plans failed to provide "equivalent coverage" without defining that term, finding that the county denied ICEA the ability to bargain, determining that the remedial period should include the 51 days between the arbitration hearing and the issuance of the grievance award, and issuing a remedial award that failed to draw a remedy from the essence of the 2016-2018 CBA.

ICEA now appeals from the district court's order vacating the awards.

DECISION

"Arbitration is a proceeding favored in the law." *City of Brooklyn Center v. Law Enf't Labor Servs., Inc.*, 635 N.W.2d 236, 241 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001). In the absence of an agreement limiting an arbitrator's authority, the arbitrator "is the final judge of both law and fact, including the interpretation of the terms of any contract." *State Office of State Auditor v. Minn. Ass'n of Prof'l Emps.*, 504 N.W.2d 751, 754 (Minn. 1993) (quotation omitted).

A district court must vacate an arbitration award if the arbitrator has exceeded the arbitrator's powers under the agreement to submit disputes to arbitration. Minn. Stat. § 572B.23(a)(4) (2020); *see State v. Berthiaume*, 259 N.W.2d 904, 910 (Minn. 1977) ("[O]nly when it is established that an arbitrator has clearly exceeded [the arbitrator's] powers under the agreement to submit a dispute to arbitration must a court vacate an award."). But "[e]very reasonable presumption must be exercised in favor of the finality and validity of the arbitration award," and "courts will not overturn an award merely because they may disagree with the arbitrators' decision on the merits." *State Auditor*, 504 N.W.2d at 754-55; *see Ramsey County v. Am. Fed'n of State, Cty., & Mun. Emps., Council 91, Local 8*, 309 N.W.2d 785, 792 (Minn. 1981) ("Neither the correctness of the arbitrator's conclusion nor the propriety of [the arbitrator's] reasoning is relevant to a reviewing court, so long as [the] award complies with the . . . standards to be applied by the reviewing court in exercising its limited function." (quotation omitted)). The scope of judicial review of an arbitration award is accordingly extremely narrow. *State Auditor*, 504 N.W.2d at 755. We review a district court's determination that an arbitrator exceeded the arbitrator's authority de novo. *Klinefelter v. Crum & Forster Ins. Co.*, 675 N.W.2d 330, 333 (Minn. App. 2004).

I. The district court erred in determining that the arbitrator's grievance award was moot.

ICEA first contends that the district court erred in determining that the arbitrator's grievance award was moot and vacating it on that basis. According to ICEA, the grievance

was not moot because the county's violation of the 2016-2018 CBA needed to be addressed and could be remedied.

"Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Dean v. City of Winona*, 868 N.W.2d 1, 4-5 (Minn. 2015) (quotation omitted). But "the mootness doctrine is a flexible discretionary doctrine, not a mechanical rule that is invoked automatically whenever the underlying dispute between the particular parties is settled or otherwise resolved." *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984). An action "should be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible." *Dean*, 868 N.W.2d at 5.

The district court determined that the arbitrator "clearly exceeded her authority by issuing a decision on a moot grievance issue." Observing that the "last day of the express term of the 2016-2018 CBA was December 31, 2019" and that the successor CBA "took effect [on] January 1, 2019, the day after the 2016-2018 CBA expired," the district court reasoned that there was "no period between the last day of the express term of the prior agreement and the point at which the subsequent agreement took effect." The district court's analysis suggests that it determined that the grievance was moot because the arbitrator was unable to grant effective relief, although the district court did not specifically make this finding.

Mootness has generally been treated as an issue of procedural arbitrability for determination by the arbitrator. *See Oil, Chem. & Atomic Workers Int'l Union Local 5–*

391 v. Conoco, Inc., 64 F. App'x 178, 184-85 (10th Cir. 2003); *Local Union No. 370 of Int'l Union of Operating Eng'rs v. Morrison–Knudsen Co.*, 786 F.2d 1356, 1358 (9th Cir. 1986); *W. Automatic Mach. Screw Co. v. Int'l Union, United Auto., Aircraft & Agric. Implement Workers of Am.*, 335 F.2d 103, 106 (6th Cir. 1964); *Galveston Mar. Ass'n v. S. Atl. & Gulf Coast Dist., Int'l Longshoremen's Ass'n, Local 307*, 234 F. Supp. 250, 252 (S.D. Tex. 1964); *see also Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1109-10 (11th Cir. 2204) (noting that matters of "justiciability" are for arbitrator, absent agreement to contrary); *cf. Chicago Typographical Union No. 16 v. Chicago Sun-Times, Inc.*, 860 F.2d 1420, 1424 (7th Cir. 1988) (indicating in dictum that standing—which is a component of subject-matter jurisdiction—is a matter of procedural arbitrability).[2] And here, the arbitrator specifically addressed the mootness issue.

The county argued to the arbitrator that the grievance was moot because, as a result of the interest arbitration and the parties' stipulation, the health-insurance changes technically took effect on January 1, 2019, one day after the express duration of the 2016-2018 CBA ended. But the arbitrator rejected this argument, stating that the county failed to account "for the period between the last day of the express term of the prior agreement and the point at which a subsequent agreement takes effect." The arbitrator explained that "provisions addressing mandatory subjects of bargaining often are understood to remain in effect, even after the expiration of the express duration [of] a collective bargaining

[2] Federal court opinions other than those of the United States Supreme Court are not binding on this court. *Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003). But these federal opinions are persuasive and should be afforded due deference. *Id.*

agreement, until a subsequent bargaining agreement has been ratified." And the arbitrator reasoned that, until a successor CBA was established, the terms of the 2016-2018 CBA regarding health insurance were still in effect.

The county also argued to the arbitrator that the health-insurance dispute need not be resolved through the grievance award because it would already be addressed in the interest-arbitration award. The arbitrator rejected that argument as well, reasoning that the interest arbitration did not render the grievance award moot because "[t]he function of an interest award is to establish the terms of any disputed issue for a subsequent collective bargaining agreement, not to determine whether a prior agreement has been violated or whether damages should flow from any such violation."

Rather than deferring to the arbitrator on the question of mootness as a matter of procedural arbitrability, the district court substituted its own judgment on the mootness issue and vacated the arbitration award on that basis. Because the arbitrator is the final judge of the facts and the law, *see State Auditor*, 504 N.W.2d at 754, this was error.[3]

II. The district court erred in determining that the arbitrator's grievance and remedial awards exceeded the scope of the arbitrator's authority.

Next, ICEA argues that the district court erred in concluding that the arbitrator's decision on the merits exceeded the scope of the arbitrator's authority. In vacating the

[3] Before this court, ICEA did not challenge the district court's authority to reconsider the arbitrator's decision on the mootness issue and instead focused on the merits of the district court's decision. Even if we were to consider the merits of the issue, the county's position that the grievance was moot would be unavailing.

arbitrator's grievance award and damages, the district court listed several instances where the arbitrator exceeded her authority. We consider each in turn.

Arbitrator's Interpretation of "Equivalent Coverage"

The district court determined that the arbitrator exceeded her authority by concluding that the county's high-deductible insurance options failed to provide "equivalent coverage" under the 2016-2018 CBA without defining "equivalent coverage." According to the district court, the arbitrator then erroneously concluded that the remaining high-deductible plans did not provide "equivalent coverage" because they created a cost-structure change. The district court reasoned that "[i]t is undisputed that there was no change to the physician network under the new insurance plans, and that the employee premiums are lower under the new plans than they were under the old plans."

In interpreting an ambiguous term in an agreement, "an arbitrator may look to many sources, and his or her award will be upheld as long as it 'draws its essence' from the agreement." *State Auditor*, 504 N.W.2d at 755 (quoting *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S. Ct. 1358, 1361 (1960)). Where the parties failed to specifically define a term in their agreement, "the parties left this decision to an arbitrator." *Id.* A court's role in reviewing the arbitrator's decision is "'solely to determine whether specific language in the agreement or submission precludes [the arbitrator's decision].'" *Id.* (quoting *City of Bloomington v. Local 2828, AFSCME*, 290 N.W.2d 598, 602 (Minn. 1980)).

The 2016-2018 CBA did not define the term "equivalent coverage." The arbitrator determined that the county's changes to the available insurance options resulted in

"substantially more (and more unpredictable)" out-of-pocket costs for ICEA members who were enrolled in an eliminated plan. Given this finding, the arbitrator concluded that the coverage was not equivalent. Nothing in the 2016-2018 CBA precluded the arbitrator from reaching this conclusion. The district court went beyond the bounds of its authority in substituting its own definition of "equivalent coverage." *See State Auditor*, 504 N.W.2d at 754. Because an arbitrator is the "final judge of both law and fact, including the interpretation of the terms of any contract," *see id.*, the district court erred in determining that the arbitrator exceeded her authority in interpreting the term "equivalent coverage."

Arbitrator's Finding Regarding ICEA's Ability to Bargain

Next, the district court determined that the arbitrator exceeded her authority by concluding that ICEA was entitled to a remedy because the county denied ICEA the ability to bargain. Disagreeing with the arbitrator, the district court stated that "[i]t is undisputed that the parties engaged in negotiations in 2018 for a successor agreement, in which they discussed health insurance" and that it was "ICEA that refused to participate in bargaining after it filed the grievance, despite the County's willingness to do so."

ICEA contends that the arbitrator had authority to consider this question. And, according to ICEA, the arbitrator correctly concluded that the county denied ICEA's ability to bargain by unilaterally making changes to the agreed-upon health-insurance plans.

We agree with ICEA. Again, the arbitrator was the final judge of fact. *See State Auditor*, 504 N.W.2d. The district court could not substitute its own factual findings for the arbitrator's findings or overturn the arbitrator's awards "merely because [the district court] disagree[d] with the arbitrator's decision on the merits." *See id.* at 754-55. Thus,

the district court erred by determining that the arbitrator's finding exceeded the arbitrator's authority.

The Arbitrator's Remedial Award

The district court also concluded that the arbitrator's remedial award was improper. According to the district court, in granting the remedial award, the arbitrator exceeded the scope of her authority in two areas.

First, citing the interest-arbitration statute, Minnesota Statutes section 179A.16, the district court found that the arbitrator had no authority to conclude "that the remedial period should include the 51 days it took [the arbitrator] to issue her decision, which is 21 more days than allowed by statute and/or the CBA." This cited section of the interest-arbitration statute requires an arbitrator to render a decision "within 30 days from the date that all arbitration proceedings have concluded." Minn. Stat. § 179A.16, subd. 7. But the separate grievance-arbitration statute, section 179A.21, only cross-references the jurisdictional limitations of the interest-arbitration statute, and not the time limit for the arbitrator's issuance of the decision. *See* Minn. Stat. §§ 179A.16, subd. 5, .21, subd. 3. It is therefore unclear whether the 30-day timeframe to issue a decision in interest arbitrations also applies to all grievance arbitrations governed by PELRA. The district court also cited the 2016-2018 CBA in support of its determination. The 2016-2018 CBA does require an arbitrator's decision to be "submitted in writing within 30 days following close of the hearing or submission of briefs by the parties, whichever is later, unless the parties agree to an extension." However, the 2016-2018 CBA does not provide that an arbitrator cannot include days outside the 30-day timeframe to issue a decision in a remedial period for an

award. The district court accordingly erred in concluding that the arbitrator exceeded her authority by including the 51 days between the arbitration hearing and the issuance of the grievance award in the remedial period. Neither the interest-arbitration statute nor the 2016-2018 CBA support that conclusion.

Second, the district court determined that the arbitrator exceeded her authority by issuing a remedial award that failed to draw a remedy from the essence of the 2016-2018 CBA. The district court noted that the arbitrator "did not receive expert or actuarial evidence to justify her damages calculation," observed that the type of damages in this case were difficult to quantify, and acknowledged that the remedy awarded in this case—the difference between premium payments before and after the unilateral change in health-care options—was "uncommon." Additionally, the district court highlighted the arbitrator's finding that an ICEA member who switched from one of the eliminated plans to a high-deductible plan was likely to experience a dollar savings over the course of a year due to health-savings account contributions made by the county.

ICEA argues that the arbitrator's determination of the appropriate amount of damages to remedy the county's contract violation was within the scope of her authority. Moreover, ICEA contends, there is precedent for awarding the premium differential paid by a wrongful actor as a remedy for a unilateral reduction in health-insurance benefits. *See W. St. Paul Fed'n of Teachers v. Indep. Sch. Dist. No. 197*, 713 N.W.2d 366, 378 (Minn. App. 2006) (affirming district court's determination that the appropriate measure of damages for PELRA violation was premium differential paid by wrongful actor as a result of a unilateral change in health-insurance coverage).

The county responds that *W. St. Paul Fed'n of Teachers* is factually distinguishable. Additionally, the county argues that the arbitrator erred by "refus[ing] to consider [its] [health-savings account] contributions in determining damages."

But "[n]either the correctness of the arbitrator's conclusion nor the propriety of [the arbitrator's] reasoning is relevant to a reviewing court" in exercising its limited function of determining whether the arbitrator exceeded the arbitrator's authority. *Ramsey County*, 309 N.W.2d at 792. And "[e]very reasonable presumption must be exercised in favor of the finality and validity of the arbitration award." *State Auditor*, 504 N.W.2d at 754. Applying our highly deferential standard of review, we disagree with the district court that the arbitrator exceeded her authority in issuing the remedial award.

In sum, the district court erred in substituting its own judgment and reversing the arbitrator's determination that the grievance was not moot, and in concluding that the arbitrator exceeded the scope of the arbitrator's authority in addressing the grievance and issuing a remedial award. We accordingly reverse the district court's order vacating the arbitrator's awards and remand for entry of an order confirming the awards.

Reversed and remanded.