

STATE OF MICHIGAN
COURT OF APPEALS

AFSCME COUNCIL 25 LOCAL 1690,

Plaintiff-Appellant,

v

WAYNE COUNTY AIRPORT AUTHORITY,

Defendant-Appellee.

UNPUBLISHED

June 29, 2023

No. 360818

Wayne Circuit Court

LC No. 21-010642-CL

Before: RIORDAN, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted¹ the order granting defendant’s motion to dismiss in lieu of answer under MCR 2.116(C)(7) (claim barred by collateral estoppel) and MCR 2.116(C)(10) (no genuine issue of material fact) and denying plaintiff’s cross-motion for summary disposition in this arbitration action. We affirm.

I. BACKGROUND

The initial appeal in this case arose from a May 2019 arbitration decision in favor of defendant. Context and background for this dispute is summarized in this Court’s opinion in *AFSCME Council 25 Local 1690 v Wayne Co Airport Auth*, unpublished per curiam opinion of the Court of Appeals, issued March 11, 2021 (Docket No. 352500):

Plaintiff is a union that represents certain employees of defendant. One class of employees that plaintiff represents are those classified as Department Manager IV (DMIV) employees. A collective bargaining agreement (CBA) governs the relationship between plaintiff and defendant. Whenever a dispute arises over the interpretation, application, or enforcement of the CBA and the

¹ *AFSCME Council 25 Local 1690 v Wayne Co Airport Auth*, unpublished order of the Court of Appeals, entered July 21, 2022 (Docket No. 360818).

parties cannot resolve the dispute on their own, the CBA requires that the dispute be submitted to an arbitrator to resolve.

In this case, two provisions of the CBA are at issue. One provision addresses the general authority of the arbitrator. Specifically, Article 10.04, Step 4(E) states:

The arbitrator shall have no authority to amend, alter or modify this Agreement. Further, the arbitrator shall limit the decision strictly to the interpretation, application, or enforcement of this Agreement and shall be without authority to make any decision contrary to, or inconsistent with, or modifying or varying, in any way, the terms of this Agreement; or granting any wage increases or decreases.

The other provision states that a wage increase must be provided under certain conditions. Article 34.07 states:

Should a newly-hired employee be placed in the pay grade at a higher rate than other bargaining unit members in the same classification, the pay rate of those bargaining unit member(s) will be increased to that of the newly-hired employee.

The dispute over these provisions arose after defendant hired Samuel Kaufman as a DMIV-Technology Services System Engineer. Defendant hired Kaufman at a salary of \$85,000 per year—a pay rate higher than that of any other DMIV employee.

* * *

Shortly after defendant hired Kaufman, plaintiff filed a grievance, alleging that Article 34.07 required defendant to raise the pay rates of the other DMIV employees so that they all received \$85,000 per year.

* * *

Plaintiff demanded that defendant raise the annual wage of all DMIV employees to \$85,000 and provide back pay for the eight weeks that Kaufman was paid at a higher rate. The arbitrator denied plaintiff's request and granted an award in favor of defendant. Although plaintiff's and defendant's arguments concerned only the interpretation of Article 34.07, the arbitrator considered only Article 10.04, Step 4(E) of the CBA, which, he reasoned, prohibited him from granting a wage increase as a remedy:

Here the nature of the grievance filed is requesting an increase in wages for certain employees in the bargaining unit. Article 10.04, Step 4(E) clearly and unmistakably shows us that a grievance remedy that grants any wage increase is a remedy

inconsistent with the article. The Arbitrator must consider and apply Art. 10.04, Step 4(E) as governing his authority to decide this case.

Since there is no other request for remedy other than the increase in wages for certain bargaining unit members, there is nothing within my jurisdiction to operate on. This case must be closed with that result, and without an award.

Notably, the arbitrator did not discuss whether Article 10.04, Step 4(E)'s prohibition of granting wage increases could be reconciled with Article 34.07's mandate of providing pay rate increases.

After the arbitrator's award in favor of defendant, plaintiff filed a complaint with the trial court seeking to vacate the arbitration award and remand to another arbitrator. Plaintiff argued the arbitration award was invalid because the arbitrator acted outside the scope of his authority. Plaintiff asserted that the arbitrator's application of Article 10.04, Step 4(E) essentially nullified Article 34.07. And because the CBA prohibits an arbitrator from "amend[ing], alter[ing] or modifying" the terms the CBA, plaintiff reasoned that the arbitrator exceeded his contractual power.

In lieu of filing an answer, defendant filed a motion for summary disposition under MCR 2.116(C)(10). Defendant argued that because the arbitrator applied a valid provision of the CBA in deciding to dismiss the grievance, the arbitrator acted within the scope of his authority. Further, because the arbitrator acted within the scope of his contractual authority, the trial court could not vacate the award. Plaintiff then filed a cross-motion for summary disposition under MCR 2.116(C)(10) for the same reasons detailed in its complaint.

* * *

Finding that the arbitrator had a rational basis for his decision, the trial court granted defendant's motion. Plaintiff appeals that decision, arguing that the trial court erred by finding that the arbitrator did not exceed his authority. [*AFSCME Council 25 Local 1690*, unpub op at 1-3.]

On appeal, this Court held that because the arbitrator completely disregarded Article 34.07, he exceeded the scope of his authority. *Id.* at 4-5. Further, because the arbitrator only considered Article 10.04, Step 4(E), and not Article 34.07, in his decision, "the arbitrator failed to tether his award to his interpretation and application of the CBA." *Id.* at 5. Based on this failure, this Court reversed the trial court's order granting summary disposition in favor of defendant, and remanded the case "for further arbitration." *Id.*

After this Court's remand, the arbitrator sent a letter to the parties, stating that because the parties did not challenge the facts found in his original decision or allege that there had been a sufficient change in circumstances to warrant finding additional facts, there was no need for a hearing or further fact-finding. The arbitrator invited the parties to inform him of any disagreements, and concluded with a request for briefs from the parties. The next day, the

arbitrator sent a second letter to the parties, stating that he would not accept any additional evidence because the parties did not challenge the adequacy of the record, there was a fair hearing, briefing of the issues, and a reasoned award, and this Court remanded for a specific reason. The arbitrator issued his supplemental arbitration opinion and award, concluding, based on the parties' arguments and the record, that although defendant violated Article 34.07, because the language of Article 10.04, Step 4(E) placed a specific limitation on the arbitrator's authority to grant wage increases, this language trumped that of Article 34.07. As such, the arbitrator could not grant the wage increase remedy under Article 34.07, and denied plaintiff's grievance.

Plaintiff filed its complaint to set aside the supplemental arbitration decision, claiming that the arbitrator denied plaintiff the opportunity to submit relevant and material evidence, and exceeded the scope of his authority by nullifying Article 34.07 of the CBA. Plaintiff argued that because the parties did not base their initial arguments on Article 10.04, Step 4(E), there was no evidence on the record related to Article 10.04, Step 4(E) and, thus, the record was incomplete. But, plaintiff argued, the arbitrator denied plaintiff the opportunity to submit additional evidence related to Article 10.04, Step 4(E). Because this Court expressly remanded this case for "further arbitration," plaintiff averred that the arbitrator erred in denying it the opportunity to submit additional evidence, and exceeded the scope of his authority by reading Article 10.04, Step 4(E) to nullify Article 34.07.

In lieu of answering plaintiff's complaint, defendant moved to dismiss under MCR 2.116(C)(7) and (C)(10). According to defendant, this Court remanded the case solely for the arbitrator to address and interpret Article 34.07. Defendant claimed that the parties had an opportunity to submit to further fact-finding or additional hearings before the arbitrator issued his supplemental opinion, but agreed it was not necessary. Because no new facts or issues were submitted to the arbitrator, defendant asserted that plaintiff could not claim the arbitrator made his decision in error. As such, based on the parties' supplemental briefs, the arbitrator validly exercised his authority to determine that Article 10.04, Step 4(E) trumped Article 34.07, and precluded him from granting a wage increase under Article 34.07. Because the arbitrator acted within the scope of his authority when issuing his final judgment, defendant requested that the trial court dismiss plaintiff's claims.

Plaintiff filed a cross-motion for summary disposition, arguing that it should have been permitted to present the affidavit of AFSCME advocate, Richard Johnson, which provided insight on the history of the CBA and how to construe Articles 10.04, Step 4(E) and 34.07 together. Because this relevant, material evidence would have aided the arbitrator in his interpretation of the CBA, plaintiff claimed that the arbitrator erred in denying plaintiff the opportunity to present it. Plaintiff also argued that although the arbitrator found defendant violated the terms of Article 34.07, the arbitrator's refusal to grant plaintiff's duly owed remedy effectively modified the terms of the CBA by nullifying Article 34.07. Because this interpretation effectively modified the CBA, he impermissibly acted outside the scope of his authority. Plaintiff requested that the trial court remand to a different arbitrator, or, in the alternative, remand to the same arbitrator with instructions to give full effect to Article 34.07.

The trial court held a hearing on defendant's motion to dismiss and plaintiff's cross-motion for summary disposition. The trial court found that because the plain language of Article 34.07 clearly articulated its purpose, it made no difference that plaintiff was not allowed to introduce

evidence regarding the purpose of Article 34.07. Further, the trial court claimed that the arbitrator, rather than finding Articles 34.07 and 10.04, Step 4(E) were inconsistent, held that Article 34.07 did not apply to the case at all. And because the trial court did not have the authority to overrule the arbitrator's interpretation of the CBA, it affirmed the arbitration award, granted defendant's motion to dismiss, denied plaintiff's cross-motion for summary disposition, and dismissed the case with prejudice. This appeal followed.

II. STANDARDS OF REVIEW

We review de novo a trial court's ruling on a motion for summary disposition. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). Although the trial court did not specify under which subrule of MCR 2.116(C) it granted the motion for summary disposition, review is appropriate under MCR 2.116(C)(10) because the parties relied on evidence outside the pleadings. See *Spiek v Dep't of Transp*, 456 Mich 331, 338; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) should be granted only if the submitted evidence fails to establish a genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Allison v AEW Capital Mgmt, LLP*, 481 Mich 419, 424-425; 751 NW2d 8 (2008).

Whether an appellate court's ruling on remand was followed is a question of law that we review de novo. See *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 127; 737 NW2d 782 (2007). We also review de novo "a trial court's decision to enforce, vacate, or modify an arbitration award." *City of Ann Arbor v AFSCME Local 369*, 284 Mich App 126, 144; 771 NW2d 843 (2009). "Judicial review of an arbitrator's decision is narrowly circumscribed." *Id.* "A court may not review an arbitrator's factual findings or decision on the merits" or "engage in contract interpretation." *Id.* A reviewing court also may not substitute its judgment for that of the arbitrator. *Id.* "[A] court may only decide whether the arbitrator's award 'draws its essence' from the contract. If the arbitrator in granting the award did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases." *Sheriff of Lenawee Co v Police Officers Labor Council*, 239 Mich App 111, 118; 607 NW2d 742 (1999) (citations omitted). A court may also review an arbitrator's award for an error of law that clearly appears on the face of the award or in the reasons stated by the arbitrator for the decision. *Detroit Auto Inter-Ins Exch v Gavin*, 416 Mich 407, 441-443; 331 NW2d 418 (1982). The error must be "so material or so substantial as to have governed the award, and but for which the award would have been substantially otherwise." *Id.* at 443. "[A]rbitrators can fairly be said to exceed their power whenever they act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law." *Id.* at 434.

III. REINTERPRETATION OF ARBITRATION DECISION

Plaintiff argues that the trial court erred because it substituted its own judgment for that of the arbitrator. We disagree.

A reviewing court necessarily substitutes its own judgment for that of the arbitrator when it vacates or modifies an award that was properly granted under the scope of the arbitrator's authority. See *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 497-498; 475 NW2d 704 (1991). During the motion hearing, the trial court claimed that the arbitrator, rather than finding

Articles 34.07 and 10.04, Step 4(E) were inconsistent, held that Article 34.07 did not apply. However, as plaintiff correctly points out, this is not what the arbitrator held. Rather, the arbitrator found that Article 34.07 *did* apply, but determined that “the language of Article 10.04, Step 4(E) trumps the language of Article 34.07 and dictates that the arbitrator is without the authority to grant wage increases, such as were bargained at Article 34.07.” Plaintiff contends that this misinterpretation of the arbitrator’s holding constitutes “an impermissible substitution” of the trial court’s judgment for that of the arbitrator. However, in granting defendant’s motion to dismiss and denying plaintiff’s cross-motion for summary disposition, the trial court did not vacate or modify the arbitrator’s award. Instead, it affirmed the order. Therefore, although the trial court misrepresented the arbitrator’s findings, because the trial court affirmed the arbitrator’s decision, it did not impermissibly substitute its judgment for that of the arbitrator and plaintiff is not entitled to relief. Further, because this Court reviews the arbitration award *de novo*, *City of Ann Arbor*, 284 Mich App at 144, any alleged error is harmless, because we review the arbitrator’s decision without any deference to the trial court’s rationale or analysis.

IV. SCOPE OF ARBITRATOR AUTHORITY

Plaintiff next argues that the arbitrator exceeded the scope of his authority under the CBA because he impermissibly modified Article 34.07 of the CBA. We disagree.

“Our goal in contract interpretation is to give effect to the intent of the parties, to be determined first and foremost by the plain and unambiguous language of the contract itself.” *Wyandotte Electric Supply Co v Electrical Technology Sys, Inc*, 499 Mich 127, 143-144; 881 NW2d 95 (2016). “Parties consenting to arbitration pursuant to written agreements consent to arbitrate within the framework of the terms and conditions of such agreements.” *Port Huron Area Sch Dist v Port Huron Ed Ass’n*, 426 Mich 143, 151; 393 NW2d (1986). Arbitrators have a duty to abide by the terms and conditions that grant them jurisdiction and authority to resolve a dispute. *Id.* “[A]n arbitrator may not act on his own sense of personal justice, but is confined to interpretation and application of the agreement.” *Sheriff of Lenawee Co*, 239 Mich App at 119. An arbitrator who refuses to abide by the terms of an agreement exceeds “the limits upon which the contractual submission is based, exceeds the consensual authority bestowed upon him by the contract, and the award resulting therefrom is without legal sanction.” *Port Huron Area School Dist*, 426 Mich at 151-152. “Although the judicial policy favoring labor arbitration warrants a strong presumption in favor of enforcing arbitral awards, an award is properly vacated when that award is dependent upon . . . an arbitrator’s disregard and contravention of provisions expressly limiting arbitral authority.” *Id.* at 152.

Article 10 of the CBA generally sets forth the grievance policy and procedures for addressing conflicts between plaintiff and defendant. Article 10.04, Step 4(E) outlines the arbitrator’s authority and duties under the contract, stating:

The arbitrator shall have no authority to amend, alter or modify the Agreement. Further, the arbitrator shall limit the decision strictly to the interpretation, application, or enforcement of this Agreement and shall be without authority to make any decision contrary to, or inconsistent with, or modifying or varying, in any way, the terms of this Agreement; or granting any wage increases or decreases.

Notably, the second sentence of Article 10.04, Step 4(E) contains a semicolon, offsetting the phrase “or granting any wage increases or decreases.” A semicolon is “defined as the punctuation mark (;) used to indicate a major division in a sentence where a more distinct separation is felt between clauses or items on a list than is indicated by a comma, as between the two clauses of a compound sentence.” *People v Lydic*, 335 Mich App 486, 494 n 5; 967 NW2d 847 (2021) (quotation marks and citations omitted). Applying this principle to Article 10.04, Step 4(E), the phrase “or granting any wage increases or decreases” is distinct and separate from the preceding sentence and clause, and should be treated as such. By separating this phrase from the rest of Article 10.04, Step 4(E), the CBA can be read to limit an arbitrator’s authority to the interpretation, application, or enforcement of the CBA, while restricting or limiting an arbitrator from granting a wage increase or decrease independent from his application or enforcement of the CBA. This interpretation makes sense; otherwise, Article 10.04, Step 4(E) would be internally inconsistent if it expressly grants the arbitrator the authority to enforce the language of the CBA while concurrently restricting his ability to enforce a remedy expressly contained in the CBA.

Applying this interpretation of Article 10.04, Step 4(E) to Article 34.07 under the plain, unambiguous language of Article 34.07, employees are entitled to have their pay raised when a newly-hired employee within the same classification is hired at a higher pay rate. Because these are express terms of the CBA, the arbitrator has a duty under Article 10.04, Step 4(E) to interpret, apply, and enforce the terms of Article 34.07. In fact, the arbitrator found that the employees at issue were entitled to wage increases under Article 34.07.

Plaintiff, however, in claiming that the arbitrator violated Article 10.04 Step 4(E) of the CBA by failing to enforce the remedy under Article 34.07, ignores the fact that Article 10.04, Step 4(E) expressly prohibits the *arbitrator* from granting a wage increase. There are no exceptions to this rule either in Article 10.04, Step 4(E) or Article 34.07. The arbitrator acknowledged this limitation in his authority, concluding: “However, the language of Article 10.04 trumps the language of Article 34.07 and dictates that the arbitrator is without the authority to grant wage increases, such as were bargained at Article 34.07.” This conclusion is a valid exercise of the arbitrator’s authority. Article 10.04, Step 4(E) expressly permits the arbitrator to interpret the terms of the CBA, and prohibits the arbitrator from granting a wage increase. The arbitrator exercised his authority to interpret Articles 10.04, Step 4(E) and 34.07 to find that, although the employees at issue are entitled to wage increases, he cannot grant it. Because the arbitrator’s interpretation is grounded in the plain language of the CBA and within the scope of his authority, the arbitrator’s finding cannot be disturbed. *Sheriff of Lenawee Co*, 239 Mich App at 118.

Further, the arbitrator did not modify or nullify Article 34.07. Rather, he simply interpreted and applied the plain language of the CBA. Article 10.04, Step 4(E) expressly prohibits the arbitrator from granting a wage increase, without any exception. Under this interpretation, it is not that the employees at issue are *never* entitled to a wage increase under Article 34.07, but that the *arbitrator* cannot be the one to enforce or grant the wage increase. Defendant, as the employer, has a duty under Article 34.07 to increase the pay rate of employees when it hires an employee in the same classification at a higher rate. The arbitrator’s interpretation of the CBA does not nullify or eliminate defendant’s duty to remedy disparate pay rates, but rather reconciles his authority under Article 10.04, Step 4(E) with the language of Article 34.07. Thus, although this outcome seems counterintuitive—wherein a party is entitled to a remedy but it cannot be enforced—it may still be upheld. The goal of contract interpretation “is to give effect to the intent of the parties” by

enforcing its plain and unambiguous language. *Wyandotte Electric Supply Co*, 499 Mich at 143-144. The plain and unambiguous language of Article 10.04, Step 4(E) prohibits the arbitrator from granting a wage increase, without exception, and grants him the authority to interpret and apply the terms of the CBA, which he did. Because the arbitrator's award was a valid exercise of his authority and "drew its essence" from the contract, it cannot be disturbed. See *Sheriff of Lenawee Co*, 239 Mich App at 118. If the parties wish to create an exception that would allow a future arbitrator to enforce Article 34.07's remedy, then they may bargain for additional language to be added to that extent. Neither we, nor the arbitrator, can modify the terms of the contract to grant plaintiff relief.

V. ADMISSION OF EVIDENCE

Plaintiff argues that the arbitrator violated this Court's remand order in Docket No. 352500 for "further arbitration" because he denied plaintiff the opportunity to produce additional evidence. We disagree.

"It is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court." *Rodriguez v Gen Motors Corp*, 204 Mich App 509, 514; 516 NW2d 105 (1994). Step 4(A) of Article 10.04 of the CBA states: "Grievances shall be heard in accordance with the published rules of the American Arbitration Association." Rule 30 of the American Arbitration Association's (AAA) Employment Arbitration Rules and Mediation Procedures, states, in relevant part:

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. The arbitrator may in his or her discretion direct the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case. [American Arbitration Association, Employment Arbitration Rules and Mediation Procedures, Rule 30 (emphasis added).]

Thus, the CBA vests in the arbitrator the ultimate authority to determine the admission or exclusion of evidence.

Plaintiff contends that the arbitrator violated this Court's remand order because "further arbitration" required him to admit plaintiff's additional, material evidence to resolve the apparent conflict between Articles 34.07 and 10.04, Step 4(E). Plaintiff sought to admit the affidavit of AFSCME advocate, Richard Johnson. In his affidavit, Johnson claimed that because no other arbitrator had read Article 10.04, Step 4(E) to nullify Article 34.07, it would be an error for the arbitrator in this case to do so. This evidence arguably could have aided the arbitrator in resolving the conflict between Articles 34.07 and 10.04, Step 4(E). However, it is clear that the arbitrator expressly denied plaintiff the opportunity to present this evidence.

But plaintiff fails to cite to any binding authority stating that a remand for "further arbitration" necessarily mandates additional fact-finding. Further, the CBA, by adopting Rule 30 of AAA's Employment Arbitration Rules and Mediation Procedures, grants the arbitrator the discretion and authority to admit or exclude plaintiff's evidence. Thus, although Johnson's

affidavit may have been relevant to the arbitrator's interpretation of the CBA, the arbitrator had the discretion to refuse to admit this additional evidence, and his decision did not exceed the scope of his authority under the CBA. See *Sheriff of Lenawee Co*, 239 Mich App at 118. Additionally, this Court in its earlier decision held that the arbitrator exceeded the scope of his authority because in rendering his decision the arbitrator completely disregarded Article 34.07 and relied solely on Article 10.04, Step 4(E). *AFSCME Council 25 Local 1690*, unpub op at 5. In remanding the case for "further arbitration," this Court stated, in relevant part: "Here, because the arbitrator never considered Article 34.07 of the CBA, his award was not final or complete, nor was the award rendered on the merits of the case." *Id.* at 5-6. This Court did not address or challenge the arbitrator's factual findings, the record, or make any specific mandate requiring the arbitrator to consider additional evidence. Rather, this Court remanded the case for "further arbitration" solely for the arbitrator to address the applicability of Article 34.07. *Id.* at 4-5.

In declining to admit plaintiff's evidence, the arbitrator expressly acknowledged that this Court did not require him to consider additional evidence. Therefore, because the arbitrator validly exercised his authority under the CBA, and there is no evidence to support plaintiff's contention that the arbitrator violated this Court's remand order, the trial court's order is affirmed.

VI. CONCLUSION

There were no errors warranting relief. We affirm.

/s/ Michael J. Riordan

/s/ Stephen L. Borrello