

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Metropolitan Council/Metro Transit,

Case Type: Civil

Petitioner,

Court File No.: 02-CV-08-4817

Judicial Officer: Judge Steven D. Wheeler

v.

Amalgamated Transit Union,
Local 1005,

**ORDER AND
MEMORANDUM**

Defendant.

This matter came before the Honorable Steven D. Wheeler, Judge of District Court on January 23, 2009 on Petitioner, Metropolitan Council/Metro Transit's motion to vacate the arbitration award mandating that the Council restore payroll work to members of the Defendant's collective bargaining unit. Andrew D. Parker appeared on behalf of the Petitioners. Maurice W. O'Brien and Nicole M. Blissenbach appeared on behalf of Defendant, Amalgamated Transit Union, Local 1005. Based on the files, records and proceedings herein, the Court makes the following:

ORDER

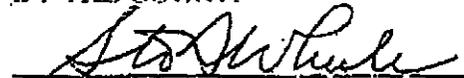
IT IS HEREBY ORDERED that:

1. The Petitioner's Motion to Vacate the Arbitration Award is **GRANTED**.
2. The attached Memorandum is incorporated by reference.

LET THE JUDGMENT BE ENTERED ACCORDINGLY.

April 15, 2009

BY THE COURT:



Steven D. Wheeler

Ramsey County District Court Judge

MEMORANDUM

This matter arises out of a dispute between labor unions claiming the right to represent employees in positions created by the reorganization of the Metropolitan Council's payroll departments.

In 1994 the Minnesota legislature merged the Metropolitan Transit Commission, Metropolitan Waste Control Commission, and the Regional Transit Board to create the Metropolitan Council consisting of four divisions: Community Development, Transportation, Environmental Services, and Regional Administration. The Metropolitan Council is the principal public planning agency for the seven county metro area including the management of the public transit system. Created under the Metropolitan Reorganization Act of 1994 ("MRA") the Metropolitan Council is legislatively mandated to operate with economic efficiencies, to include maximizing cost savings and efficient use of resources. Minn. Stat. § 473.125.

Following the enactment of the MRA several unit clarification orders were issued by the Bureau of Mediation Services ("BMS") to clarify the different roles of collective bargaining units in the newly formed Council. One such order mandated that the transportation duties would be managed by the Amalgamated Transit Union ("ATU") while various clerical duties would be managed by the American Federation of State, County and Municipal Employees ("AFSCME"). See Exhibit U.

From the time of its formation in 1994 until early 2005 the Council operated dual payroll departments. The department based in St. Paul in the Regional Administration division office operated the payroll system for members of the Community Development, Environmental Services, and Regional Administration divisions and was staffed by members of AFSCME. The other department was staffed by members of ATU and operated the payroll system for transportation workers who were members of ATU, and were based in the Minneapolis office.

In early 2005 the Council reorganized in order to fulfill the legislative mandate for economic efficiency. This reorganization involved the implementation of a new computer system that reduced the amount of employee time required to compute payroll for all the Metropolitan Council employees. In the process the two separate payroll departments were merged into one department administered by employees located in the St. Paul office and operating on one unified computer system. All of these employees were to be represented by AFSCME. See Exhibit O @ 147, 151.

Based on job postings for the newly created payroll department positions ATU filed grievances under the Collective Bargaining Agreement on July 21, 2006 (See Exhibit J) and November 15, 2006 (See Exhibit K) alleging that the Council was violating its collective bargaining agreement with the ATU by having payroll processing for the Transportation division employees being performed by payroll personnel not in the ATU.

The Metropolitan Council/Metro Transit filed a petition for bargaining unit clarification pursuant to Minn. Stat. § 179A.04, subd. 2 with BMS on January 3, 2007 (See Exhibit C) the petition was later amended on February 13, 2007 (See Exhibit D). BMS held a proceeding on April 10, 2007 with representatives from the Metropolitan Council, ATU, and AFSCME present to determine which union would have the right to represent the newly created positions in the now unified payroll department. BMS issued a decision on August 16, 2007 determining that AFSCME, based on the proposed duties of the positions, was the Union which should represent the employees in the new positions. See Exhibit 1. The seven positions that were created in the reorganization of the payroll department were given to the seven employees that already managed the payroll for the Metropolitan Council including five members of ATU that had managed the Transportation Divisions payroll and two members that had managed the payroll for the Regional Administration and other departments. The reorganization did not result in any

layoffs, but did cause the five former Transportation Division payroll employees to have to switch to being represented by AFSME. The ATU lost five persons from their membership.

In spite of the BMS decision the ATU continued to pursue arbitration under the terms of the Collective Bargaining Agreement with the Council. The Council raised issues of arbitrability due to lack of jurisdiction and the prior ruling by the BMS. On October 9, 2007 the arbitrator ruled that he had jurisdiction to hear the issues presented. The arbitration was conducted on November 13, 2007 and December 13, 2007. See Exhibits O and P. The arbitrator issued a decision mandating the reinstatement of bargaining unit work in the payroll department to members of ATU on February 22, 2008. See Exhibit T.

STANDARD OF REVIEW OF ARBITRABLE AWARD

When reviewing a decision of an arbitrator in a proceeding to vacate an arbitration award, the proceeding is *de novo*. See *State v. Berthiaume*, 259 N.W.2d 904, 906 (Minn. 1977). While the court's review of an arbitration award is limited, See *Cornmoyer v. American Television & Radio Co.*, 83 N.W.2d 409, 411 (Minn. 1957), the district court conducts an independent review and is not bound by the arbitrator's decision that his actions were within his authority. See *MedCenters Health Care, Inc. v. Park Nicollet Med. Ctr.*, 430 N.W.2d 668, 672 (Minn. App. 1988), review denied (Minn. Apr. 26, 1989). Where it is clearly established that the arbitrator exceeded his authority the court must vacate an award. See *National Indem. Co. v. Farm Bureau Mut. Ins. Co.*, 348 N.W.2d 748, 750 (Minn. 1984).

An arbitration award may be vacated based on one or more of the statutory grounds set forth in Minn. Stat § 572.19, Subd. 1 which states:

Upon application of a party, the court shall vacate an award where:

- (1) The award was procured by corruption, fraud or other undue means;

- (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of the party;
- (3) The arbitrators exceeded their powers;
- (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefore or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 572.12, as to prejudice substantially the rights of a party; or
- (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 572.09 and the party did not participate in the arbitration hearing without raising the objection.

ANALYSIS

The decision by BMS that after the reorganization of the payroll system the employees who were processing the payroll for ATU represented employees in the Transportation Division (i.e., bus drivers, mechanics, etc.) were to be represented by AFSCME was made pursuant to Minn. Stat. § 179A.04 subd. 2. This decision resolved the question raised by the ATU's grievance. The arbitrator's jurisdiction does not include the ability to interpret a collective bargaining agreement contrary to a statutory mandate. As a result the Arbitrator exceeded his jurisdiction by considering an issue that was statutorily required to be resolved by BMS. The Court does not accept the ATM's argument that the issue in the arbitration was different from the issue resolved by BMS. For all practical purposes, when BMS determined the AFSCME union was to represent the payroll workers, given that there was no way to separate out the job of processing the payroll for ATU represented employees, there could be no violation of the collective bargaining agreement by giving the work to AFSCME represented employees. The Petitioner had to comply with the BMS decision which essentially nullified any scope language to the contrary in the ATU contract. As a result, the arbitrator improperly exceeded his powers and his decision is invalid and shall be vacated.

SIDW