STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1096

Metropolitan Council/Metro Transit,
Respondent,

vs.

Amalgamated Transit Union, Local 1005,
Appellant.

Filed March 2, 2010
Reversed and remanded
Bjorkman, Judge

Ramsey County District Court
File No. 62-CV-08-4817

Andrew D. Parker, Daniel N. Lovejoy, Parker Rosen, L.L.C., Minneapolis, Minnesota (for respondent)

M. William O'Brien, Nicole M. Blissenbach, Miller O'Brien Cummins, P.L.L.P., Minneapolis, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Schellhas, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant Amalgamated Transit Union, Local 1005 (ATU) challenges the district court order vacating an arbitration award. The district court determined that the arbitrator

was not authorized to issue the award because the award conflicts with a prior Bureau of Mediation Services (BMS) decision. Because we conclude that the BMS unit-clarification decision and the arbitration award do not conflict, and that the arbitrator did not exceed his authority, we reverse and remand.

FACTS

Background

Respondent Metropolitan Council/Metro Transit (Met Council) was established in its current form by the Metropolitan Reorganization Act of 1994. Met Council is the principal public-planning agency for the Twin Cities metropolitan area, and has four divisions: Transit Operations (a.k.a. Metro Transit), Environmental Services, Community Development, and Regional Administration.

ATU "represents all drivers, mechanics and clerical employees of the Metropolitan Council, Transit Operations Division." The American Federation of State, County and Municipal Employees (AFSCME) represents many of the remaining, unionized employees, including "[a]ll clerical, technical, professional, and interceptor system employees of the Metropolitan Council, . . . [excluding] transit operations employees."

The relationship between Met Council and ATU is governed by a collective bargaining agreement (CBA). The CBA contains a "work-preservation clause," which states, "[e]xcept as provided herein, no bargaining unit work shall be done by employees who are not members of the ATU." The CBA also contains an arbitration clause: "In the event a dispute or controversy arises under this Agreement which cannot be settled by the

parties within thirty (30) days after [it] first arises, then Metro Transit or the ATU . . . may request in writing that the dispute or controversy be submitted to arbitration."

Reorganization of Payroll Operations

Since 1994, Met Council had maintained two separate payroll departments: transit division payroll was done by employees represented by ATU and located in the transit division facility; payroll for the remaining three divisions was done by regional administration employees, represented by AFSCME and located in the regional administration facility. In 2005, Met Council began reorganizing the payroll department with an eye toward increased efficiency and cost savings. The plan included (1) centralization of the payroll processes into the regional administration division; (2) the implementation of a new computer system; (3) the elimination of all current payroll job classifications; and (4) the creation of two new payroll job classifications: payroll specialist and senior payroll specialist.

On July 21, 2006, ATU filed two grievances in response to the reorganization plan. One grievance requested that Met Council stop "all attempts to remove payroll/office finance positions from the ATU 1005 Bargaining Unit." The other grievance focused on layoff provisions, bumping rights, and seniority of the employees who were potentially losing their positions.

The following month, Met Council and ATU agreed that ATU payroll employees would move to the regional administration building but remain members of the ATU bargaining unit for the present time. The parties agreed to submit the matter of which

union should represent employees in the new payroll positions to BMS, whose decision would be final.

In October 2006, Met Council moved the ATU payroll employees into the regional administration facility and publicized the proposed job descriptions for the new payroll specialist and senior payroll specialist job classifications.

On November 15, 2006, ATU filed two additional grievances. One alleged that the job postings violated the August agreement. The second requested that all ATU bargaining-unit work remain in the ATU bargaining unit: "no bargaining Unit Work shall be done by employees who are not members of the ATU."

BMS Proceedings

In making unit determinations, BMS must consider

> the principles and the coverage of uniform comprehensive position classification and compensation plans of the employees, professions and skilled crafts, and other occupational classifications, relevant administrative and supervisory levels of authority, geographical location, history, extent of organization, the recommendation of the parties, and other relevant factors. The commissioner shall place particular importance upon the history and extent of organization and the desires of the petitioning employee representatives.

Minn. Stat. § 179A.09, subd. 1 (2008).

The issue before BMS was "[w]hat is the appropriate unit placement for the job classifications of Payroll Specialist and Senior Payroll Specialist?" Both AFSCME and ATU were represented at the hearing, and both argued that their respective unions should represent employees in the new job classifications.

BMS issued a unit-clarification order, assigning the new payroll specialist and senior payroll specialist job classifications to the AFSCME bargaining unit. BMS refused to consider ATU's argument that the new classifications violate the CBA, noting that AFSCME is not a party to the CBA. BMS articulated its role vis-à-vis the employer:

> We have long held that it is for the public employer to establish job classifications and decide which classifications perform which duties or functions. When a job classification has been created it is then for the Bureau to determine the bargaining unit assignment of such, based upon the Minn. Stat. § 179A.09, subd. 1 (2006) criteria.

Arbitration of ATU's Grievances

Just two weeks after the BMS decision, ATU and Met Council arbitrated the November 15, 2006 grievances. The arbitrator bifurcated the proceedings, first determining the arbitrability of the grievances and next addressing the merits of the grievances.

Met Council argued that the grievances are not arbitrable because the arbitrator lacks authority to interpret the CBA to require Met Council to assign the work of the two new job classifications to ATU employees, and because the parties agreed in August 2006 to submit the issue to BMS. ATU clarified that its grievances concern the transfer of duties away from ATU employees, which the CBA prohibits, rather than the bargaining unit assignment of the new job classifications.

The arbitrator rejected Met Council's arguments, stating that "[i]t is abundantly clear that the Union is not seeking to establish that the new payroll positions (Payroll Specialist and Senior Payroll Specialist) be ATU positions." Instead, the arbitrator

determined that ATU was seeking to enforce the work-preservation clause of the CBA, a claim that is arbitrable.

The arbitrator sustained the grievances, "order[ing] restoration of all duties related to the processing of Transit employee payroll back to the ATU bargaining unit." The arbitrator concluded that the language of the CBA's work-preservation clause is not ambiguous, and that Met Council contractually agreed to ensure that "no bargaining unit work shall be done by employees who are not members of the ATU." The award contains an extensive discussion of which job duties and functions are included in the ATU "bargaining unit work."

District Court

Met Council moved the district court to vacate the arbitration award, arguing that the arbitrator exceeded his powers by issuing an award that conflicts with the BMS decision. The district court agreed and vacated the arbitration award. Central to this decision is the district court's conclusion that the BMS decision and the arbitration award conflict:

> 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 the ATU represented employees, there could be no violation of the [CBA] by giving the work to AFSCME represented employees.

This appeal follows.

D E C I S I O N

An arbitrator's findings of facts and application of law are final, but this court reviews a determination of arbitrability de novo. *Indep. Sch. Dist. No. 88 v. Sch. Serv. Employees Union Local 284*, 503 N.W.2d 104, 106 (Minn. 1993). Any doubts concerning the scope of arbitrable issues are resolved in favor of arbitration. *Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 795 (Minn. 1995).

Arbitration is favored and an arbitration award will be vacated only upon proof of one of the grounds set forth in Minn. Stat. § 572.19 (2008). *Liberty Mut. Ins. Co. v. Sankey*, 605 N.W.2d 411, 413 (Minn. App. 2000), *review denied* (Minn. Apr. 18, 2000). At issue here is whether the arbitrator exceeded his powers, a question that we review de novo. Minn. Stat. § 572.19, subd. 1(3); *Office of the State Auditor v. Minn. Ass'n of Prof'l Employees*, 493 N.W.2d 591, 593 (Minn. App. 1993), *aff'd*, 504 N.W.2d 751 (Minn. 1993). The burden is on the party challenging the award to prove that the arbitrator exceeded his powers. Absent a clear showing, we assume that the arbitrator did not exceed his authority. *Hilltop Constr., Inc. v. Lou Park Apartments*, 324 N.W.2d 236, 239 (Minn. 1982).

ATU argues that the district court erred in concluding that the arbitration award conflicts with the BMS decision. Met Council asserts that the BMS decision conclusively determined ATU's grievances and that the arbitrator had no authority to issue a conflicting award. We disagree.

The BMS and arbitration proceedings involved common facts and related but substantively different issues. BMS determined which bargaining unit would represent employees working in the new job classifications. The arbitrator determined whether Met Council breached the CBA by transferring transit department payroll duties to non-ATU employees. Both decision-makers understood the scope of their respective roles.

BMS clearly distinguished the issues presented to and decided in the two forums: "it is for the public employer to establish job classifications and decide which classifications perform which duties or functions. When a job classification has been created it is then for the [BMS] to determine the bargaining unit assignment of such." That is precisely what happened here. First, Met Council created the new job classifications (the payroll specialist and senior payroll specialist positions) and assigned duties to each classification. It is these actions that the grievances cover—ATU disputes Met Council's transfer of the transit payroll duties to the new job classifications.[1] Second, BMS determined that AFSCME is the appropriate bargaining unit for the new job classifications pursuant to Minn. Stat. § 179A.09, subd. 1. BMS declined to address issues related to the CBA.

The arbitrator likewise acknowledged the distinction between the issues before him and those decided by BMS. The arbitration award specifically enumerates the job duties that cannot, by virtue of the work-preservation clause, be transferred from the

[1] Met Council repeatedly insists that "it is the right and responsibility of the employer to determine which work is assigned to particular classifications." This issue is not disputed. But an employer's right to assign work may be modified by a CBA.

ATU transit employees to the new job classifications. The award is silent as to the bargaining unit assigned to the new classifications.

The district court erred in not recognizing this critical distinction and by determining that the BMS decision resolved ATU's grievances. The district court also erred in failing to defer to the arbitrator's factual findings and making its own finding that "there was no way to separate out the job of processing the payroll for ATU represented employees." An arbitrator's factual determinations are final. *Indep. Sch. Dist. No. 88*, 503 N.W.2d at 106. Contrary to Met Council's assertion, the arbitration award does not put Met Council in the position of being forced to violate the law. Not only does the arbitrator make specific findings regarding the duties Met Council cannot transfer to the new job classifications, but the arbitrator suggests at least one solution, that the "[p]arties resolve the matter through bargaining."

Met Council's alternative arguments, that the arbitrator exceeded his authority by issuing an award that creates an unfair labor practice and violates public policy, are also unavailing. The first asserts that the award will force Met Council to assign the new job classifications to ATU. The second contends that the arbitration award violates public policy by conflicting with a preexisting legal order and preventing the orderly resolution of labor disputes. Both of these arguments are premised on the theory that the BMS decision and the arbitration award conflict. Because they do not, we do not consider these arguments further.

The arbitrator was authorized to decide ATU's grievances and he did not exceed his authority in issuing the award. Accordingly, we reverse and remand with instruction for entry of an order confirming the arbitration award pursuant to Minn. Stat. § 572.19, subd. 4.

Reversed and remanded.