COURT OF APPEALS
DECISION
DATED AND FILED

August 25, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP1584 **Cir. Ct. No. 2003CV198**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 95,

PLAINTIFF-RESPONDENT,

V.

PORTAGE COUNTY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Portage County: THOMAS T. FLUGAUR, Judge. *Reversed.*

Before Lundsten, P.J., Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Portage County appeals an order vacating an arbitration award on a grievance filed by the Office and Professional Employees International Union, Local 95. We reverse.

¶2 The standard for our review of the arbitrator's decision is the same as the circuit court's, and we review the arbitrator's decision without deference to the decision of the circuit court. ***City of Madison v. Local 311, Int'l Ass'n of Firefighters***, 133 Wis. 2d 186, 190, 394 N.W.2d 766 (Ct. App. 1986). The scope of this court's review is limited. *See* ***City of Oshkosh v. Oshkosh Pub. Library Clerical & Maint. Employees Union Local 796-A***, 99 Wis. 2d 95, 103, 299 N.W.2d 210 (1980). We presume the arbitrator's decision is valid, and we disturb that decision only where its invalidity is shown by clear and convincing evidence. ***Id.*** at 102-03. Essentially, the court's role is supervisory in nature—to insure that the parties receive what they bargained for when they agreed to resolve certain disputes through final and binding arbitration. ***Id.*** at 103. Courts may not overturn an arbitrator's decision for "mere errors of law or fact, but only when 'perverse misconstruction or positive misconduct [is] plainly established, or if there is a manifest disregard of the law, or if the award itself is illegal or violates strong public policy.'" ***City of Madison v. Madison Prof'l Police Officers Ass'n***, 144 Wis. 2d 576, 586, 425 N.W.2d 8 (1988) (alteration in original; citation omitted).

¶3 Because the parties are familiar with the details of the dispute, we briefly state the facts. After being notified that her position was being terminated, Cheryl Helms sought to "bump" into the position of sanitarian. The County denied her request on the ground that Helms was not qualified for the position. The union filed a grievance challenging that decision. During the grievance process, Helms provided new information about qualifications she acquired after the employer had decided she was not qualified. The arbitrator determined that, because Helms first informed the County about these new qualifications during the grievance process and after her termination had become effective, Helms was now

in the position of a former employee seeking recall, rather than a current employee requesting to bump. The arbitrator concluded that the County had not violated the collective bargaining agreement by denying Helms' original request to bump. The circuit court concluded that the arbitrator's analysis improperly modified the agreement, and vacated the arbitrator's decision.

¶4 On appeal, the union argues that the effect of the arbitrator's award was to improperly modify the collective bargaining agreement by ignoring or misreading the provision in the agreement that allows the grievant to "add new facts or information into the file" after the grievance has passed beyond a certain stage. The union argues that, when Helms informed the County during the grievance process that she had acquired new qualifications, the County was obligated to consider that new information and, if it deemed the qualifications sufficient, change its decision on her request to bump.

¶5 Stated differently, the union's argument is that the "new information" provision covers not just new information about the facts as they existed at the time of the event under grievance, but also information regarding changed circumstances *after* the event under grievance. The union thus sees the grievance process not as simply a review of a prior decision on bumping, but also as an opportunity to compel the employer to make a new decision about bumping based on facts that did not exist at the time of the prior decision.

¶6 The County, on the other hand, regards the grievance process as one focused on its original bumping decision, and limited to the facts as they existed at the time of that decision. Therefore, any "new information" to be submitted under the provision in the agreement would have to pertain to the facts at that time. In the County's view, the qualifications that Helms acquired after the County's

original decision are of no significance unless Helms made a new request to bump, and did so before her termination became effective.

¶7 The "new information" provision in the bargaining agreement is not written in a manner that provides a dispositive answer to the question presented. The provision does not expressly limit the scope of the new information, but it also does not state that new information showing changes in circumstances after the filing of the grievance or after a grieved decision must be considered in the substantive evaluation of the grievance. The union points to no other provision in the contract that allows the grievance process to become a device for updating a request to bump with newly obtained qualifications, or for extending the time to exercise the right to bump.

¶8 Both parties' views of this provision are at least reasonable and, therefore, the provision is ambiguous. An arbitrator's construction of ambiguous terms in a collective bargaining agreement is within the arbitrator's authority and is not a perverse misconstruction when it has a foundation in reason. ***Madison Teachers, Inc. v. Madison Metro. Sch. Dist.***, 2004 WI App 54, ¶15, 271 Wis. 2d 697, 678 N.W.2d 311. Here, the arbitrator adopted a reasonable construction of the phrase "new information," construing it as limited to "new information" relevant to whether the County's decision was proper when made. We therefore affirm the arbitration award and reverse the circuit court order vacating that award.

By the Court.—Order reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2003-04).