SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2073-20

POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL NUMBER 191 and THE SUPERIOR OFFICERS ASSOCIATION OF THE POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL NUMBER 191,

Plaintiffs-Appellants,

v.

TOWNSHIP OF EAST WINDSOR,

Defendant-Respondent.

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Argued March 15, 2022 – Decided April 8, 2022

Before Judges Fisher, DeAlmeida, and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-0119-21.

Donald C. Barbati argued the cause for appellants (Crivelli & Barbati, LLC, attorneys; Donald C. Barbati, on the briefs).

Mark S. Ruderman argued the cause for respondent (Ruderman & Roth, LLC, attorneys; Mark S. Ruderman, of counsel; Littie E. Rau, of counsel and on the brief).

PER CURIAM

The Policemen's Benevolent Association Local 191 (PBA) and the PBA Superior Officers Association (SOA) (collectively, the Union) appeal an order denying their motion to vacate an arbitration award. The Union alleged the Township of East Windsor (Township) violated the parties' 2017-2020 collective negotiated agreement (CNA). The Union contended the Township improperly deducted Tier IV premium payments for health care benefits from the Union members' paychecks pursuant to Chapter 78, otherwise known as the State Health Benefits Plan.[1] An arbitrator found the Township did not violate the CNA. On the Union's motion to vacate the arbitration award, the Law Division found for the Township. We affirm.

I.

We briefly review the statutes governing public employees' contributions to the cost of their health care benefits. On June 28, 2011, the Legislature

[1] The State Health Benefits Plan (SHBP) is codified at N.J.S.A. 52:14-17.25 to -17.46(a). One of the most significant changes to the SHBP, and relevant to this appeal, is Chapter 78. See N.J.S.A. 40A-10:21.1 and N.J.S.A. 52:14-17.28(c).

enacted Chapter 78, requiring public employees to contribute defined percentages to their health care benefit premiums based on their annual income. N.J.S.A. 52:14-17.28(c). Chapter 78 contains two sections relevant here, N.J.S.A. 40A:10-21.1 and N.J.S.A. 40A:10-21.2. Under N.J.S.A. 40A:10-21.1, the premium payable by public employees for health care benefits was phased in over a four-year period, beginning June 28, 2011. N.J.S.A. 40A:10-21.1 states that the minimum "amount payable by any employee . . . shall not under any circumstance be less than the 1.5 percent of base salary . . . ." Under this statute, Union members paid "one-fourth of the . . . contribution" during the first year (Tier I), "one-half" in the second year (Tier II), "three-fourths" during the third year (Tier III), and the full premium rate during the fourth year (Tier IV). Ibid. Chapter 78 also included "sunset" language for this section, providing that N.J.S.A. 40A:10-21.1 "shall expire four years after the effective date."

N.J.S.A. 40A:10-21.2, which governs CNAs executed after Tier IV rates are reached, requires parties to a CNA to negotiate "for health care benefits as if the full premium share was included in the prior contract." It states that public employees are bound by N.J.S.A. 52:14-17.28(c)[2] and N.J.S.A. 40A:10-21.1,

[2] N.J.S.A. 52:14-17.28(c) phased in the four-tier scale of employee contributions to health care benefits.

"notwithstanding the expiration of those sections, until the full amount of the contribution . . . ha[s] been implemented . . . ." N.J.S.A. 40A:10-21.2.

Against this background, we summarize the facts, which are set forth more fully in the arbitrator's award. The parties entered into three CNAs during the time period relevant here. The first CNA (CNA I) governed the period from 2010 through 2012, and it contained no Chapter 78 language. In the second CNA, covering 2013 through 2016 (CNA II), Union members contributed to their health care benefits in accordance with Chapter 78, with payroll deductions conforming to the statutory tier schedule. Members began paying Tier IV rates on January 1, 2016.

Article X, Section (B)(3) of CNA II addressed employee health benefits. It read:

> Employees shall contribute 1.5% of base salary toward premium, commencing May 21, 2010. New employees hired after January 1, 2010 shall pay an additional 0.5% of base salary towards premium for a total of 2.0% of base salary towards premium. All employees shall pay 1.5% of annual retirement pension towards healthcare premium upon retirement. Payments shall be made by January 31 of each and every year thereafter based on the employee's annual pension for that current year.

Identical language had been included by the parties in CNA I, prior to the enactment of Chapter 78.

After CNA II expired, the parties began negotiations for a new CNA. The Union sought to renegotiate health care benefit contributions for its members as part of a new CNA, and it proposed that the Article X, Section (B)(3) language, which pre-dated passage of Chapter 78, remain in the new agreement. This language called for members to contribute to payment of their healthcare premiums at the rate members were paying prior to the adoption of Chapter 78, i.e., 1.5% of annual salary. The Township countered by proposing that the language in Article X, Section (B)(3) be changed to reflect the existence and operation of Chapter 78. Each of the parties' proposals was rejected by the other, and the matter was never broached again prior to them signing the new CNA. The parties eventually executed the 2017-2020 CNA (CNA III) without reaching an agreement on how much members would contribute to payment of their health care insurance premiums. Article X, Section (B)(3) remained in CNA III.

When members learned the Township was deducting Tier IV premiums from their paychecks during the new CNA term, they immediately objected. The Union argued that Article X, Section (B)(3) in CNA III applied, and members were obligated to only contribute 1.5% of their salaries to healthcare premiums. The Township interpreted the same provision as a nullity, with Chapter 78 requiring members to continue paying Tier IV rates, as in CNA II. The Union

filed a grievance with the Public Employment Relations Commission (PERC) to arbitrate the issue of which interpretation of the contract controlled, and PERC conducted a hearing.

Tom Meyer, a union negotiator for CNA III, testified that the Union sought on behalf of its members to decrease health care premiums from the Tier IV rate they were paying under CNA II to 1.5 percent of salary. He testified that the Township proposed to change the contract to "clear up some old language issues that contradict[ed] with state law" and continue the members' contributions at the Tier IV rate. On behalf of the Union, Meyer rejected the Township proposal and stuck to the position that the language in Chapter 78 "is ambiguous in regard to retirement benefits" and "thus the contract language must prevail."

James Brady, a retired police officer, was the Township's manager during the CNA III negotiations. He testified that the Township rejected the Union's proposal to reduce health care benefit premiums to 1.5%. He "polite[ly]" told the Union that "he did not foresee movement on this topic," because he wanted to "shut discussion down over any intent to move off Chapter 78." The Township's final position during negotiations was that, absent any agreed upon

revision to the health care benefit contribution provision in CNA III, Tier IV rates would remain in effect.

The arbitrator issued a written opinion. He concluded that the issue was whether the Township violated CNA III by deducting Tier IV contribution rates from the Union members' salaries in order to contribute to the premiums for health care benefits. The arbitrator found that evidence showed "the parties conditionally agreed to leave otherwise preempted language from [CNA II in CNA III]." The arbitrator found that this conditional agreement was based on "representations from the [Union] that it needed to do so in order to protect retirees against the impact of a judicial decision and potential legislative changes as well." He also found the Union abandoned its proposal to reduce the health care benefit contributions and, consequently, failed to achieve a reduction in healthcare premiums for its members through negotiations. As a result, the arbitrator found "the Tier [IV] status quo remained unchanged and must be deemed to coexist with the conditional language of Article X.B.3. of [CNA III]." Applying N.J.S.A. 40A:10-21.1, the arbitrator held:

> Tier [IV] must be deemed included in the 2013-2016 agreements and regarded as the status quo for the purpose of negotiating the 2017-2020 agreements . . . . [T]he only logical conclusion that can be reached is that Tier [IV] continued under the status quo doctrine, as if it continued on in the 2017-2020 agreements.

The arbitrator rejected the Union's claim that the plain language of Article X, Section (B)(3) evidenced the parties' intent to preempt Chapter 78 Tier IV contribution rates. He stated that his "interpretation of [the] contract language should be consistent with the objective which the parties sought to promote," and, therefore, "the parties' objective intent . . . govern[ed]." Applying that principle, the arbitrator found "the parties did not mutually agree to modify the Chapter 78, Tier [IV] status quo formula regarding premium contributions."

He concluded that "the parties signed [CNA III] with the Township understandably believing that its . . . rejection of the [Union]'s proposal to reduce Chapter 78 levels put an end to the subject and that the retention of Article X.B.3. was conditional without an immediate economic impact." The arbitrator denied the Union's grievance, finding "the [Union] failed to demonstrate the Township violated the parties' agreements by continuing to deduct premium contributions for active employees at the Chapter 78, Tier [IV] level in accordance with N.J.S.A. 40A:10-21.2."

The Union filed an order to show cause and verified complaint in the Law Division seeking to vacate the arbitrator's award. The trial court heard argument and denied the motion to vacate, concluding the Union failed to meet its burden necessary to vacate the arbitration award under N.J.S.A. 2A:24-8. The trial

court found the award was not a product of "undue means" under N.J.S.A. 2A:24-8(a). The court found the arbitrator properly concluded the Tier IV rates were the "status quo" after he identified that "there never was . . . mutual assent to move off . . . [T]ier [IV]." The court cited our decision in Ridgefield Park Board of Education v. Ridgefield Park Education Ass'n, 459 N.J. Super. 57 (App. Div. 2019), explaining that Chapter 78 unambiguously addressed the negotiation of collective bargaining agreements after members reached full implementation of the four-tier premium rates, holding that Tier IV would be considered the status quo in subsequent negotiations. Recognizing Chapter 78 contained a sunset provision, the court concluded "Tier [IV] was . . . in effect when the parties began negotiating the collective bargaining agreement[]" and, therefore, "[T]ier [IV] was the status quo . . . ." The trial court held "the parties did not mutually assent to . . . move off [T]ier [IV]" under CNA III, and the Township "never agreed" to reduce the payment rates for union members.

Finally, the court found the Union failed to demonstrate the arbitrator exceeded or imperfectly executed his powers to set aside the award under N.J.S.A. 2A:24-8(d). In reviewing the arbitrator's decision, the judge determined "[the arbitrator's] interpretation of . . . the facts and the intent of the parties . . . clearly meets the reasonably debatable . . . standard." She concluded

the arbitrator "found pretty resoundingly based upon the testimony and the record, including the notes of Meyer, that there was no . . . mutual assent . . . ." The court concluded the arbitrator's interpretation of CNA III was "reasonably debatable," and affirmed the arbitration award.

The Union filed a notice of appeal on April 5, 2020. On appeal, the Union argues the following:

> I. THE TRIAL COURT ACTED ARBITRARILY, CAPRICIOUSLY, AND UNREASONABLY IN DENYING THE APPELLANTS' ORDER TO SHOW CAUSE AND FAILING TO VACATE THE ARBITRATION AWARD. AS SUCH, THE TRIAL COURT'S DECISION MUST BE REVERSED.
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> II. THE ARBITRATOR IGNORED THE CLEAR, UNAMBIGUOUS WORDING OF THE CNAS DELINEATING THE HEALTHCARE CONTRIBUTIONS FOR ACTIVE UNION MEMBERS. AS A RESULT, THE ARBITRATION AWARD WAS NOT REASONABLY DEBATABLE AND THE TRIAL COURT WAS REQUIRED TO VACATE THE SAME AS A MATTER OF LAW.
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> III. THE ARBITRATOR FAILED TO RECOGNIZE THE PARTIES NEGOTIATED HEALTHCARE CONTRIBUTIONS FOR ACTIVE UNION MEMBERS. AS SUCH, THE CNAS PROPERLY REFLECT THE PARTIES' INTENT AND AGREEMENT PERTAINING TO THE SAME. THEREFORE, THE ARBITRATION AWARD MUST BE VACATED.

IV. IN THE EVENT THE ARBITRATION AWARD IS VACATED, THE UNIONS' MEMBERS MUST BE REIMBURSED FOR ALL MONIES THAT WERE WRONGFULLY DEDUCTED AND/OR COLLECTED BY THE TOWNSHIP FOR HEALTHCARE CONTRIBUTIONS FROM JANUARY 1, 2017 FORWARD.

II.

We "review [a] trial court's decision on a motion to vacate an arbitration award de novo." Yarborough v. State Operated Sch. Dist. of City of Newark, 455 N.J. Super. 136, 139 (App. Div. 2018) (citing Minkowitz v. Israeli, 433 N.J. Super. 111, 136 (App. Div. 2013)). However, "[j]udicial review of an arbitration award is very limited." Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4, 11 (2017) (quoting Linden Bd. of Educ. v. Linden Educ. Ass'n ex rel. Mizichko, 202 N.J. 268, 276 (2010)). "The public policy of this State favors arbitration as a means of settling disputes that otherwise would be litigated in a court." Badiali v. N.J. Mfrs. Ins. Grp., 220 N.J. 544, 556 (2015) (citing Cnty. Coll. of Morris Staff Ass'n v. Cnty. Coll. of Morris, 100 N.J. 383, 390 (1985)). "[T]o ensure finality, as well as to secure arbitration's speedy and inexpensive nature, there exists a strong preference for judicial confirmation of arbitration awards." Borough of E. Rutherford v. E. Rutherford PBA Loc. 275, 213 N.J. 190, 201

(2013) (alteration in original) (quoting Middletown Twp. PBA Loc. 124 v. Twp. of Middletown, 193 N.J. 1, 10 (2007)).

We apply "an extremely deferential review when a party to a collective bargaining agreement has sought to vacate an arbitrator's award." Policemen's Benevolent Ass'n, Loc. No. 11 v. City of Trenton, 205 N.J. 422, 428 (2011). "In the public sector, an arbitrator's award will be confirmed 'so long as the award is reasonably debatable.'" Linden Bd. of Educ., 202 N.J. at 276 (quoting Middletown Twp. PBA Loc. 124, 193 N.J. at 11). An award is "reasonably debatable" if it is "justifiable" or "fully supportable in the record." Policemen's Benevolent Ass'n, 205 N.J. at 431 (quoting Kearny PBA Loc. # 21 v. Town of Kearny, 81 N.J. 208, 223-24 (1979)). "Under the reasonably debatable standard, a court reviewing [a public-sector] arbitration award may not substitute its own judgment for that of the arbitrator, regardless of the court's view of the correctness of the arbitrator's position." Borough of E. Rutherford, 213 N.J. at 201-02 (alteration in original) (citations and internal quotation marks omitted).

N.J.S.A. 2A:24-8 sets forth the limited statutory grounds on which we may vacate an arbitration award. Pertinent to this appeal, we may vacate an arbitration award "[w]here the award was procured by corruption, fraud or undue means" or "[w]here the arbitrators exceeded or so imperfectly executed their

powers that a mutual, final and definite award upon the subject matter was not made." N.J.S.A. 2A:24-8(a) and (d).

"'[U]ndue means' ordinarily encompasses a situation in which the arbitrator has made an acknowledged mistake of fact or law or a mistake that is apparent on the face of the record . . . ." Borough of E. Rutherford, 213 N.J. at 203 (alteration in original) (quoting Off. of Emp. Rels. v. Commc'ns Workers of Am., AFL-CIO, 154 N.J. 98, 111 (1998)).

Arbitrators exceed their authority where they ignore "the clear and unambiguous language of the agreement . . . ." City Ass'n of Supervisors & Adm'rs v. State Operated Sch. Dist. of City of Newark, 311 N.J. Super. 300, 312 (App. Div. 1998). It is fundamental that "an arbitrator may not disregard the terms of the parties' agreement, . . . nor may he [or she] rewrite the contract for the parties." Cnty. Coll. of Morris, 100 N.J. at 391 (citation omitted). Furthermore, "the arbitrator may not contradict the express language of the contract . . . ." Linden Bd. of Educ., 202 N.J. at 276.

III.

The Union asserts the arbitrator's award was a product of undue means in that the arbitrator exceeded his statutory powers in disregarding the plain,

unambiguous language in the agreement. Consequently, it argues, the trial court abused its discretion when it affirmed the arbitrator's award. We disagree.

N.J.S.A. 40A:10-21.2 addresses health care contributions after full implementation of Tier IV contribution rates. The statute provides:

> A public employer and employees who are in negotiations for the next collective negotiation agreement to be executed after the employees in that unit have reached full implementation of the premium share set forth in section 39 of P.L.2011, c. 78 (C:52:14-17.28c) shall conduct negotiations concerning contributions for health care benefits as <u>if the full premium share was included in the prior contract</u>. The public employers and public employee shall remain bound by the provisions of sections 39, 42, and 44 of P.L. 2011, c. 78 . . . notwithstanding the expiration of those sections, until the full amount of the contribution required by section 39 has been implemented . . . .
>
> . . . .
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> After full implementation, those contribution levels shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties.
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> [N.J.S.A. 40A:10-21.2 (emphasis added).]

The parties dispute whether union members were required to contribute 1.5 percent of their base salary or the Tier IV rates toward health care benefits under CNA III. The plain language of the statute makes clear that where Tier

IV contributions were part of the parties' prior CNA, the Tier IV rate is the starting point for negotiating the terms of the new CNA. Ibid. Consequently, the status quo, i.e., Tier IV rates, must apply for calculating the health care benefit contributions withheld from union members' paychecks.

"[O]nce achieved, Tier 4 contribution levels are to remain in effect unless and until the parties negotiate lower health insurance premium contribution rates in the next CNA." In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 21 (2020). The CNA at issue in Ridgefield required the employees pay "1.5 [percent] or the minimum set forth by statute, regulation or code." Id. at 9. The employees in that case argued because the Tier IV rates were achieved in the first year of the CNA, they were only obligated to pay the 1.5 percent minimum rate, notwithstanding there were several years remain on the existing CNA. Id. at 9-10. The Ridgefield Board of Education argued that its employees were required to pay Tier IV rates for the remainder of the CNA's term and any reduction could only be negotiated in a subsequent agreement. Id. at 10. In analyzing the statute, the Court wrote, "the Legislature . . . made the achieved Tier 4 contribution level the status quo for purposes of negotiating contributions for the successor contract." Id. at 20. Relying on the legislative history of Chapter 78, the Court found:

> The Legislature clearly viewed the increasing cost of employee health care to be among the State's most serious fiscal challenges, destined to worsen absent significant reform. The Legislature did not enact Chapter 78 to achieve only a transient increase in employees' health insurance premium contributions, followed by an immediate reversion to pre-statute contribution rates as soon as employees had contributed at the Tier 4 level for a year. Instead, it envisioned that Chapter 78 would increase employee health insurance premium contributions over the long term.
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> [Id. at 23.]

Given the clear language of the statute and the Court's holding in Ridgefield, we find, on this record, that full Tier IV rates were the status quo for the parties in CNA III. There was no meeting of the minds on the benefit contribution issue, therefore the Tier IV rates remained in effect for CNA III. The arbitrator's award was reasonably debatable, and neither procured by undue means, nor contrary to law. We find it fully supportable in the record. Policemen's Benevolent Ass'n, 205 N.J. at 431. To the extent we have not addressed the Union's other arguments, we conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.