COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

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Roy S. Shiels, Esquire
Brown, Shiels & Beauregard LLC
502 S. State Street
Dover, DE 19901

Aaron R. Goldstein, Esquire
Deputy Attorney General
Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801

Re: *Council 81, AFL-CIO v. The State of Delaware*
C.A. No. 7677-VCN
Date Submitted: May 9, 2013

Dear Counsel:

Respondent The State of Delaware (the "State"), through its Department of Services for Children, Youth, and their Families (the "Department"), Division of Youth Rehabilitative Services ("DYRS") employed Richard Webb (the "Employee") at a juvenile detention facility in Milford, Delaware. The Employee was injured during an altercation with a resident of the facility. Because of his injuries, he was on an extended absence from work. DYRS concluded that the

Employee did not make a sufficient effort to return to work and terminated him for cause.

Petitioner Council 81, AFL-CIO ("Council 81") is the exclusive bargaining agent for certain DYRS employees, including the Employee. Under the Collective Bargaining Agreement (the "CBA") between the Department and Council 81, the Employee's termination was subject to arbitration administered by the American Arbitration Association. The arbitrator, in upholding the Employee's termination, found just cause for the Employee's dismissal.[1] Council 81 brought this action to challenge the arbitrator's decision. Both parties have moved for summary judgment.

The role of the courts in reviewing an arbitrator's ruling in a labor dispute is a narrow one.[2] "Courts rarely set aside an arbitrator's interpretation and application of a collective bargaining agreement because that is what the employer

[1] App'x to Appellants' Opening Br. Ex. 2 (Arbitration Decision).
[2] *Delaware Transit Corp. v. Amalgamated Transit Union Local 842,* 34 A.3d 1064, 1067 (Del. 2011). Summary judgment is generally an appropriate procedure for reviewing an arbitrator's decision.

and the union have 'bargained for.'"[3] Furthermore, a court "will not disturb a labor arbitration award unless (a) the integrity of the arbitration has been compromised by, for example, fraud, procedural irregularity, or a specific command of law; (b) the award does not claim its essence from the CBA; or (c) the award violates a clearly defined public policy."[4]

Fraud and procedural irregularity are not offered by Council 81 as grounds for overturning the arbitrator's decision. It instead contends that the arbitrator "used an incorrect statutory interpretation" to reach his result.[5] It frames its challenge to the arbitration decision around the argument that it did not "draw its essence" from the CBA.[6] These arguments are amplified by policy considerations generally related to employees who suffer job-related injuries.

The CBA establishes and governs the arbitration process. By Section 7.74, "the arbitrator shall limit decisions strictly to the application and interpretation of the provision of [the CBA]." By Section 10.1, "dismissal shall be for just cause."

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[3] *City of Wilm. v. Am. Fed'n of State, Cty. and Mun. Empls.*, 2003 WL 1530503, at *4 (Del. Ch. Mar. 21, 2003).
[4] *Meades v. Wilm. Hous. Auth.*, 2003 WL 939863, at *4 (Del. Ch. Mar. 6, 2003).
[5] Appellant's Opening Br. 8 ("Opening Br.").
[6] *Id.* at 9-11; *see, e.g., City of Wilm. v. Am. Fed'n. of State, Cty., and Mun. Empls.*, 2005 WL 820704, at *3 (Del. Ch. Apr. 4, 2005).

Although that article is captioned "Disciplinary Action," the arbitrator recognized that just cause for dismissal does not depend upon misconduct or poor performance. Just cause may include "non-disciplinary" termination; for example, excessive, unexcused absences from work.

The Employee was terminated as of March 1, 2010; at that point he had been on worker's compensation for a year. Council 81 invokes a State policy that a job will be held, despite an injury for a year as long as the Employee is receiving worker's compensation. Council 81 accuses the arbitrator of ignoring the State's well-established policy. The arbitrator, however, concluded that the Employee would not have returned to work before the expiration of the one-year period[7] and, thus, this was no impediment to termination because any return to work would have been after the expiration of the one-year anniversary of his injury. That was a factual conclusion made by the arbitrator; it is not a ground for setting aside his determination.

[7] On a number of occasions, the Employee, or so the arbitrator found, had been offered light-duty work, but the Employee avoided (or "walked away" from) those work opportunities.

Council 81 argues that the arbitrator erred by opining that the Employee's termination was mandated by 29 *Del. C.* § 5253. Although the arbitrator referred to that statute, the arbitration decision makes clear that the arbitrator did not depend upon that statute: "The underlying discharge of the [Employee] from employment was not grounded on Section 5253(5)."[8] In addition, the arbitrator observed that "there was no showing that the original discharge was required as a matter of law."[9] The arbitrator instead concluded that the Employee had no genuine intention to return to work.

In sum, although the arbitration decision touches on a wide range of issues, the conclusion that the Employee was terminated for just cause ultimately is a factual conclusion with which a court should not interfere. No statute or public policy has been cited that precludes the Employee's dismissal. More importantly, the arbitrator did not rely upon a statute in determining that just cause existed for dismissal. If the arbitrator's decision depended upon matters outside the record,

[8] Arbitration Decision at 21.
[9] *Id.*

that might have raised questions about the integrity of the process.[10] The Employee's reluctance (or unwillingness) to return to work before the end of March 2010 supports the arbitrator's conclusion, especially in light of the great deference that courts must accord to an arbitrator's findings of fact. Council 81's frustration perhaps stems from the ancillary matters upon which the arbitrator has touched; yet the core of his decision can be divined from a fair reading of the decision: the Employee was not about to return to work, especially before the end of March 2010.

Council 81 also complains about the arbitrator's use of a "projection for return to work."[11] Council 81 may be correct that the State never made a documented claim that would support a "projection," but, at most, Council 81 has demonstrated that the arbitrator may have used a poor choice of words. The conduct of the Employee, coupled with the medical records that were presented, provided a sufficient basis for his conclusion as to the earliest date that the Employee would possibly return to work. Because that date was after the

[10] *See, e.g., Beebe Med. Ctr., Inc. v. Insight Health Servs. Corp.*, 751 A.2d 426, 436 (Del. Ch. 1999).
[11] Opening Br. 12.

expiration of one year from the date of the injury, much of Council 81's argument necessarily fails.

Finally, Council 81 points to other employees whose circumstances are said to have been comparable to the Employee's and who, in contrast to the Employee, were afforded longer tenure at work.[12] The arbitrator concluded that the comparatives were not factually similar. Those conclusions are within the scope of the fact-finding authority granted to the arbitrator by the CBA and, therefore, are entitled to deference.

In sum, there may be uncertainty as to whether the arbitrator reached the correct conclusion. That type of uncertainty, however, does not allow a court to "second guess" the arbitration award. Because Council 81, acting on behalf of the Employee, has not offered a recognized basis for setting aside the contractually bargained for arbitrator's decision, the Court has no basis for reaching a different outcome.

[12] *Id.*

Accordingly, Council 81's Motion for Summary Judgment is denied, and the State's Motion for Summary Judgment is granted. The arbitrator's decision is confirmed.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K