

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

DEPARTMENT OF PERSONNEL ADMINISTRATION
et al.,

Plaintiffs and Respondents,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 1000,

Defendant and Appellant.

C062506

(Super. Ct. No.
34200800009075CUPTGDS)

Defendant Service Employees International Union, Local 1000 (Local 1000) appeals from an order of the trial court granting the petition of plaintiff Department of Personnel Administration (DPA) to vacate an arbitration award in Local 1000's favor. Pursuant to a memorandum of understanding (MOU) between Local 1000 and the State, Local 1000 had filed a grievance on behalf of employees of the Victim Compensation and Government Claims Board (VCGCB), classified as victim compensation specialists (VCSs), claiming the VCSs were entitled to the higher

classification of staff services analyst (SSA). Approximately six months after the grievance was filed, but before the matter was submitted to arbitration, VCGCB voluntarily reclassified the VCSs to SSAs.

The grievance proceeded through its various steps and was eventually submitted to arbitration on the following issue: "Did [VCSs], who were subsequently reallocated, work out of class in violation of Section 14.2 of the [MOU] between December 2004 and December 2005?" The MOU defines "out of class" work to occur where the employee spends a majority of his or her time performing duties associated with a higher classification.

The arbitrator concluded the issue presented was ambiguous and interpreted it to be whether the VCSs should have been allocated to the SSA level during the relevant period, not whether they were working "out of class" within the meaning of the MOU. The arbitrator further concluded the VCSs were properly entitled to reallocation to the SSA classification and awarded differential back pay for the period of one year prior to the filing of the grievance.

The trial court vacated the arbitration decision, concluding the arbitrator exceeded his jurisdiction both by deciding an issue not before him and by awarding back pay. The court found the issue presented to the arbitrator was whether the VCSs had been working "out of class," as defined in the MOU. Further, because the arbitrator expressly determined the VCSs had not been working out of class and the MOU limits back pay to such situations, the court concluded the grievants were not

entitled to back pay. Finally, the court ruled the award of back pay effectively changed the grievants' reallocation date, contrary to public policy.

We agree with the trial court the arbitrator exceeded his powers by deciding an issue not properly before him. We therefore affirm the order vacating the arbitration award.

FACTS AND PROCEEDINGS

During all times relevant to this dispute, Local 1000 was the authorized bargaining representative for the Professional, Administrative, Financial and Staff Services Bargaining Unit (Unit 1) for the State of California. Local 1000 and the State entered into the MOU, setting forth the terms and conditions of employment for members of Unit 1 for the period from July 1, 2005, through June 30, 2008.

Section 14.2 of the MOU sets forth a grievance procedure for employees claiming to have been working out of their classification or to have been misallocated to the wrong classification. Pursuant to section 14.2(A) (1) of the MOU, an employee is considered to be working "out of class" "when he/she spends a majority (i.e., more than fifty percent [50%]) of his/her time over the course of at least two (2) consecutive work weeks performing duties and responsibilities associated with a higher level existing classification that do not overlap with the classification in which said employee holds an appointment." A classification is considered a "higher level" if "the maximum salary of the highest salary range . . . is any

amount more than the maximum salary of the highest range of the class in which the employee holds an appointment.” (MOU § 14.2(A)(2).)

Section 14.2(D) describes the grievance procedure for both misallocation and working out of class claims. If a grievance cannot be resolved informally with the employee’s supervisor, the employee must file with his or her department a grievance form provided by the State. (MOU § 14.2(D)(2).) If a grievant is not satisfied with the decision of the department, the matter may be appealed to the DPA. (MOU § 14.2(D)(5).) If the matter is not resolved by the DPA, Local 1000 may submit the grievance to arbitration. (MOU § 14.2(D)(7).) The arbitrator’s decision will be binding and not subject to review except as provided in Code of Civil Procedure section 1286.2 et seq. (MOU § 14.2(E).)

In August 2005, VCGCB contracted with Cooperative Personnel Services (CPS) to conduct a study of the VCS job classification to determine a way to obtain a pay increase for the VCSs and to make recommendations as to how to establish a career ladder for the VCS classification.

On December 8, 2005, Local 1000 filed a grievance on behalf of the VCS at VCGCB. The grievance asserted: “[VCSs] meet all of the criteria of re-allocation at the [SSA] level. There are sufficient similarities for the re-allocation such as: education, public contact, testing, knowledge and skills.” It is undisputed herein that the SSA classification is a higher classification than the VCS classification within the meaning of the MOU. The grievance sought one year of retroactive pay at

the higher SSA level, a change of classification from VCS to SSA, and any other possible remedies.

While the grievance was proceeding through the various levels of review, VCGCB offered all its VCS employees reclassification to the SSA level, as recommended by a report produced by CPS.

The matter was later submitted to binding arbitration on the grievants' claim for back pay. The parties stipulated to the following issue for determination: "Did [VCSs], who were subsequently reallocated, work out of class in violation of Section 14.2 of the [MOU] between December 2004 and December 2005?" However, during the course of the arbitration, Local 1000 asserted the issue presented was one of misallocation. The arbitrator ultimately concluded the issue presented was ambiguous and interpreted it to be one of misallocation rather than working out of class. The arbitrator noted the MOU specifies a grievance can claim either working out of class or misallocation, but not both (see MOU § 14.2(C)(3)), and the grievance here clearly sought reallocation. According to the arbitrator, "[o]n its face, the stipulated issue may reasonably be subject to dispute. However, considered in context, the issue presented here clearly is one of reallocation."

On the merits, the arbitrator concluded that, while the VCSs had not been working "out of class" during the relevant period, they had nevertheless been doing the work of SSAs and, therefore, reallocation to that position is appropriate. The

arbitrator awarded back pay for the period from December 2004 to December 2005.

DPA filed a petition to vacate the arbitration award, asserting the arbitrator had exceeded his authority by deciding an issue not before him (reallocation) and awarding back pay, where the MOU permits back pay only in working out of class situations. Local 1000 filed a cross-petition to confirm the arbitration award.

The trial court granted the motion to vacate the arbitration award and denied the cross-motion to confirm the award. The court concluded the arbitrator misinterpreted the issue presented which, on its face, clearly sought determination of whether the VCSs had been working out of class. Because the arbitrator decided a different issue, the arbitrator exceeded his jurisdiction. Further, because the arbitrator expressly found the VCSs had *not* been working out of class, an award of back pay also exceeded the arbitrator's jurisdiction. Finally, the court concluded the effect of the arbitrator's award of back pay from December 2004 to December 2005 was to alter the date of reappointment of VCSs from June 2006, when the VCGCB did so voluntarily, to December 2004. However, according to the court, this is not an authorized remedy under the terms of the MOU.

DISCUSSION

I

Standard of Review

"Title 9 of the Code of Civil Procedure, as enacted and periodically amended by the Legislature, represents a comprehensive statutory scheme regulating private arbitration in this state. ([Code Civ. Proc.,] § 1280 et seq.) Through this detailed statutory scheme, the Legislature has expressed a 'strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution.'

[Citations.] Consequently, courts will "indulge every intendment to give effect to such proceedings." [Citations.]" (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9 (*Moncharsh*)). "The policy of the law in recognizing arbitration agreements and in providing by statute for their enforcement is to encourage persons who wish to avoid delays incident to a civil action to obtain an adjustment of their differences by a tribunal of their own choosing." [Citation.] 'Typically, those who enter into arbitration agreements expect that their dispute will be resolved without necessity for any contact with the courts.' [Citation.]" (*Ibid.*) "This expectation of finality strongly informs the parties' choice of an arbitral forum over a judicial one. The arbitrator's decision should be the end, not the beginning, of the dispute. [Citation.]" (*Id.* at p. 10.)

"The scope of judicial review of arbitration awards is extremely narrow. Courts may not review the merits of the

controversy, the sufficiency of the evidence supporting the award, or the validity of the arbitrator's reasoning.

[Citations.] Indeed, with limited exceptions, 'an arbitrator's decision is not generally reviewable for errors of fact or law, whether or not such error appears on the face of the award and causes substantial injustice to the parties.' [Citation.]"

(*Department of Personnel Administration v. California Correctional Peace Officers Assn.* (2007) 152 Cal.App.4th 1193, 1200.) The reasons for this limited review are twofold.

"First, by voluntarily submitting to arbitration, the parties have agreed to bear [the risk that the arbitrator will make a mistake] in return for a quick, inexpensive, and conclusive resolution to the dispute. [Citation.] . . . [¶] . . . [¶] A second reason why we tolerate the risk of an erroneous decision is because the Legislature has reduced the risk to the parties of such a decision by providing for judicial review in circumstances involving serious problems with the award itself, or with the fairness of the arbitration process." (*Moncharsh, supra*, 3 Cal.4th at pp. 11-12.)

Code of Civil Procedure section 1286.2, subdivision (a), lists the following grounds for vacating an arbitration award:

"(1) The award was procured by corruption, fraud or other undue means. [¶] (2) There was corruption in any of the arbitrators. [¶] (3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator. [¶] (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy

submitted. [¶] (5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title. [¶] (6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification . . . but failed upon receipt of timely demand to disqualify himself or herself" In addition to the foregoing, "courts may, indeed must, vacate an arbitrator's award when it violates a party's statutory rights or otherwise violates a well-defined public policy." (*Department of Personnel Administration v. California Correctional Peace Officers Assn.*, *supra*, 152 Cal.App.4th at p. 1200.) This latter review power is "rooted in common law and stems from a court's power to refuse enforcement of illegal contracts. (*Paperworkers v. Misco, Inc.* (1987) 484 U.S. 29, 42 [98 L.Ed.2d 286, 108 S.Ct. 364]; *Moncharsh*, *supra*, at pp. 28-29, 31-33.)" (*City of Richmond v. Service Employees Internat. Union, Local 1021* (2010) 189 Cal.App.4th 663, 670.)

II

The Issue Presented for Arbitration

At the beginning of the arbitration, the parties stipulated to the following issue statement: "Did [VCSs], who were

subsequently reallocated, work out of class in violation of Section 14.2 of the [MOU] between December 2004 and December 2005?" However, according to the arbitrator, "the parties quickly fell into disagreement about the interpretation of the issue." Local 1000 argued the issue was one of reallocation to the SSA classification, whereas DPA argued the issue was whether the VCSs had been working out of class. The arbitrator concluded: "On its face, the stipulated issue may reasonably be subject to dispute. However, considered in context, the issue presented here clearly is one of reallocation."

Local 1000 contends the arbitrator correctly concluded the issue submitted for arbitration was ambiguous and, therefore, acted within his powers in resolving the ambiguity by deciding the issue was one of misallocation rather than working out of class. Local 1000 acknowledges the issue statement referred to whether the VCSs had been working "out of class." However, according to Local 1000, this reference to "out of class" work was not limited to the technical meaning of that term, as specified in the MOU, which requires that a majority of the employee's time be spent on work outside the classification. Rather, it concerned whether the VCSs had been performing *any* work outside their classification. Local 1000 argues an employee is misallocated "when he or she is performing work that is not described within their [State Personnel Board] job specification." Thus, according to Local 1000, the issue here was, as the arbitrator concluded, whether the VCSs had been performing work outside their classification, i.e., had been

misallocated, not whether they had been performing a majority of their work outside of their classification.

In deciding what issue was presented by this dispute, the arbitrator relied primarily on the initial grievance, which clearly sought reallocation to the SSA classification. Local 1000 contends the arbitrator's reliance on the language of the grievance was appropriate, because the sole purpose of the arbitration was to resolve the grievance. Local 1000 argues DPA unilaterally attempted to transform the grievance into one based on working out of class. Local 1000 further argues that, "[b]ecause the parties did not reach a meeting of the minds regarding the issue submission, the [a]rbitrator had the authority to interpret the issue based on the evidence and contractual principles."

"When parties contract to resolve their disputes by private arbitration, their agreement ordinarily contemplates that the arbitrator will have the power to decide any question of contract interpretation, historical fact or general law necessary, in the arbitrator's understanding of the case, to reach a decision." (*Gueyffier v. Ann Summers, Ltd.* (2008) 43 Cal.4th 1179, 1184.) "An exception to the general rule assigning broad powers to the arbitrators arises when the parties have, in either the contract or an agreed submission to arbitration, explicitly and unambiguously limited those powers. [Citation.] 'The powers of an arbitrator derive from, and are limited by, the agreement to arbitrate. [Citation.] Awards in excess of those powers may, under [Code of Civil Procedure]

sections 1286.2 and 1286.6, be corrected or vacated by the court.'" (*Gueyffier, supra*, at p. 1185.)

While the parties may have been pursuing a grievance over alleged misallocation of the VCSs, they nevertheless submitted a different issue to the arbitrator for resolution. Like the trial court before us, we find nothing ambiguous in the stipulated issue statement. The grievance and arbitration were pursuant to the MOU. The MOU contains a specific definition of working "out of class." (MOU § 14.2(A)(1).) The MOU also refers to "position allocation or reallocation referenced in Government Code sections 19818.6 and 19818.20." (MOU § 14.2(C)(2).) Government Code section 19818.6 states the allocation of positions in state service "shall derive from and be determined by the ascertainment of the duties and responsibilities of the position and shall be based on the principle that all positions shall be included in the same class if: [¶] (a) The positions are sufficiently similar in respect to duties and responsibilities that the same descriptive title may be used. [¶] (b) Substantially the same requirements as to education, experience, knowledge, and ability are demanded of incumbents. [¶] (c) Substantially the same tests of fitness may be used in choosing qualified appointees. [¶] (d) The same schedule of compensation can be made to apply with equity."

As mentioned repeatedly above, the stipulated issue statement read: "Did [VCSs], who were subsequently reallocated, work out of class in violation of Section 14.2 of the [MOU] between December 2004 and December 2005." Local 1000 finds

ambiguity in this statement by virtue of the reference to "Section 14.2" of the MOU, which section covers both working out of class and misallocation claims. However, when read in context--"work out of class in violation of Section 14.2"--there is no ambiguity. The issue statement refers to that portion of section 14.2 that concerns working out of class, which is a term of art defined in the MOU.

It is not hard to understand why the parties would have presented that issue to the arbitrator. By the time of the arbitration, the matter of misallocation had already been resolved by VCGCB offering to reclassify the VCSs as SSAs. Thus, the only issue remaining was back pay. Section 14.2(C)(4) of the MOU reads: "The only remedy that shall be available (whether claiming out-of-class work or position misallocation) is retroactive pay for out-of-class work. Said pay shall be limited to out-of-class work performed (a) during the one year calendar period before the employee's grievance was filed; and (b) the time between when the grievance was filed and finally decided by an arbitrator." It is a fundamental maxim of contract interpretations that, unless the context shows otherwise, an identical phrase or word used in multiple places in a contract shall be given the same meaning. (*E.M.M.I. Inc. v. Zurich American Ins. Co.* (2004) 32 Cal.4th 465, 475; *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2003) 107 Cal.App.4th 516, 526.) Thus, it is inescapable that the term "out-of-class work" as used in section 14.2(C)(4) should be given the same meaning as defined elsewhere in section 14.2.

"[A]rbitrators, unless expressly restricted by the agreement of the parties, enjoy the authority to fashion relief they consider just and fair under the circumstances existing at the time of arbitration, so long as the remedy may be rationally derived from the contract and the breach." (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 383.) However, "[t]he scope of an arbitrator's authority is not so broad as to include an award of remedies 'expressly forbidden by the arbitration agreement or submission.'" (*Gueyffier v. Ann Summers, Ltd., supra*, 43 Cal.4th at p. 1185.)

Where a grievance claims either misallocation or working out of class, section 14.2(C)(4) of the MOU expressly authorizes an award of back pay only for out-of-class work. Thus, whatever other remedies may be available for misallocation, back pay is not one of them. The parties no doubt recognized this in fashioning the issue to present to the arbitrator.

Local 1000 argues that, while the parties may have initially described the issue as one of working out of class, they quickly disagreed about the issue to be resolved by the arbitrator. Thus, there was no meeting of the minds. But it was not the parties who disagreed about the issue presented, but Local 1000 who attempted to change the issue during the course of the arbitration. DPA consistently took the position the issue was one of working out of class. Despite having agreed to the issue statement and indicated in her opening statement that the evidence will show the grievants were "working out of class," Local 1000's representative at the arbitration later

claimed the issue was instead one of misallocation. Thus, the question here is not whether the parties failed to agree on the issue presented, but whether, after agreeing, Local 1000 could seek to change the issue by disregarding its prior agreement.

In cases such as this, involving private arbitration, "[t]he scope of arbitration is . . . a matter of agreement between the parties' [citation], and "[t]he powers of an arbitrator are limited and circumscribed by the agreement or stipulation of submission." [Citations.]" (*Moncharsh, supra*, 3 Cal.4th at pp. 8-9.) In this case, the parties stipulated to the issue for arbitration. In effect, they reached an agreement on the scope of the arbitrator's powers. Such an agreement must be interpreted so as to give effect to the intention of the parties as it existed at the time they entered into the agreement. (Civ. Code, § 1636.) Furthermore, a contract must be construed as a whole, with the various provisions interpreted so as to give effect to all where possible or practicable. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 473.) In this instance, the stipulation on the issue for arbitration essentially modified or supplemented the MOU. It should therefore be considered in the context of the MOU, which contains a specific definition of working out of class. The parties agreed to arbitrate the issue of whether the VCSs had been working out of class within the meaning of section 14.2(A)(1) of the MOU. The arbitrator based his ruling instead on whether the VCSs had been misallocated. In doing so, the arbitrator exceeded his delegated powers. The

trial court properly vacated the arbitration award on this basis.

Having so concluded, we need not consider the other grounds cited by the trial court for vacating the award. "[W]e review the superior court's ruling, not its rationale." (*Department of Personnel Administration v. California Correctional Peace Officers Assn.*, *supra*, 152 Cal.App.4th at p. 1201.)

DISPOSITION

The order granting DPA's petition to vacate the arbitration award is affirmed.

_____ HULL _____, J.

We concur:

_____ RAYE _____, P. J.

_____ BLEASE _____, J.