
IN THE SUPREME COURT OF THE STATE OF FLORIDA

BROWARD SHERIFF'S OFFICE

Petitioner,

v.

CASE NO. _____

FEDERATION OF PUBLIC
EMPLOYEES on behalf of
ANNIE RYAN,

Respondents.

ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA
Case No. 4D03-3592

JURISDICTIONAL BRIEF OF PETITIONER

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STATEMENT OF THE CASE AND FACTS

Appellant, the Sheriff of Broward County (hereinafter “BSO”), hired Appellee, Annie Ryan (hereinafter “Ryan”), on January 21, 2001 as an Inmate Property Supervisor. Her job was within the class of jobs in the bargaining unit belonging to the union, Federation of Public Employees. Both parties are governed by a Collective Bargaining Agreement (hereinafter “CBA”) consistent with the requirements of the Public Employees Relations Act. Since Ryan was a new employee/bargaining unit member, she was placed on probation for the standard probationary period, pursuant to Article 18.2 of the CBA.

However, BSO was unable to accurately evaluate Ryan’s performance while on her initial probationary period because she was out on a lengthy leave. As a result, BSO exercised its right under the CBA to extend her probationary period and extended it by three months pursuant to Article 18.2 of the CBA. Article 18.2 of the CBA states that BSO has the right to extend the initial probationary period for all new bargaining unit members/employees for up to six additional months at its discretion. Ultimately, prior to the expiration of her extended probationary period, Ryan was terminated for failure to meet probationary standards pursuant to Article 18.3 of the CBA.

Notably, Article 18.3 states that all new bargaining unit members/employees

on probation are employed at-will, and thus have no right to arbitration on the merits of BSO's decision to terminate them while on probation. Nonetheless, on or about April 30, 2002, Ryan filed a demand for arbitration based on her termination.

On March 17, 2003, a bifurcated arbitration proceeding was held before Arbitrator Stuart A. Goldstein on the sole issue of arbitrability. BSO's position was that the grievance was not arbitrable because Ryan, as a probationary employee, had no right to arbitrate the merits of the decision to terminate her, which was consistent with the plain language of the CBA. Thus, the termination was not arbitrable, and the arbitrator lacked subject matter jurisdiction to hear the merits of the discharge and allow her to proceed to arbitration.

On March 19, 2003, the Arbitrator found that BSO did extend Ryan's probationary period by three full months, pursuant to Article 18.2. However, despite the plain language of the contract that BSO could extend probation up to six months at its discretion, the Arbitrator inexplicably went on to add that BSO could not extend Ryan's probationary period by three months. Notably, Article 3.9 of the CBA states that an arbitrator shall not alter, amend, add to, or eliminate any provision of the CBA. Although the Arbitrator's decision contradicts the express terms of the CBA, he still found the grievance arbitrable and determined that he had subject matter jurisdiction to proceed to an arbitration hearing on the merits of

the dispute.

Thereafter, BSO petitioned the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida to vacate the Arbitrator's Award under Florida Statutes, Section 682.13. After conducting a hearing and reviewing counsel's submissions, the Honorable Judge Jeffrey E. Streitfeld specifically found that the "arbitrator misinterpreted the Collective Bargaining Agreement and misapplied the facts to the terms of the Agreement." Judge Streitfeld held: "The parties to this bifurcated arbitration proceeding first submitted the issue of whether Ms. Ryan's claim was arbitrable. For factually and legally unsupportable reasons, the arbitrator entered an award finding in the affirmative." (emphasis added) Notwithstanding this finding, Judge Streitfeld denied BSO's Petition to Vacate the Arbitrator's Award. BSO appealed the Order to the Fourth District Court of Appeal, who affirmed per curiam without opinion.

SUMMARY OF ARGUMENT

In the instant case, the Supreme Court of Florida has jurisdiction under the authority of Article V, Section 3(b)(3) of the Constitution of the State of Florida, to review any decision of a district court of appeal which expressly affect a class of constitutional or state officers. The sheriff is a constitutional officer, according to Article VIII, Section 1(d) of the Constitution of the State of Florida. Since the sheriff has been designated a public employer for purposes of labor organization in Florida's Public Employees Relations Act, he is required to arbitrate disputes between the employer and employee. The exceedingly limited interpretation of the court's power to vacate an arbitration award denies the sheriff and other constitutional and state officers due process of the law and denies redress to them, when, as here, an arbitrator incorrectly assumes subject matter jurisdiction over the dispute.

ARGUMENT

THE SUPREME COURT HAS JURISDICTION OVER THIS APPEAL AFFECTING CONSTITUTIONAL OFFICERS REQUIRED BY STATUTE TO SUBMIT CERTAIN DISPUTES TO ARBITRATION UNDER A STANDARD OF REVIEW THAT DENIES THEM DUE PROCESS AND DENIES THEM REVIEW ON THE CRITICAL ISSUE OF SUBJECT MATTER JURISDICTION

BSO seeks review of the trial court's order refusing to vacate an arbitrator's award. The trial court held that the award was "factually and legally unsupportable" because the arbitrator indisputably ignored the applicable, unambiguous language of the CBA. Nonetheless, the trial court held that the very limited interpretation of Section 682.13 of the Florida Statutes did not authorize the court to vacate the award, although the award was clearly in error, unsupportable, and contrary to the plain language of the CBA. The District Court of Appeal, Fourth District, affirmed the trial court's order refusing to vacate the award apparently also based on the exceedingly limited standard of review of arbitrator decisions under Florida Statutes, Section 682.13.

The Supreme Court of Florida has jurisdiction over this appeal under the authority of Article V, Section 3(b)(3) of the Constitution of the State of Florida, and Florida Rules of Appellate Procedure 9.030(a)(2)(A)(iii) which permits the Court to review any decision of a district court of appeal which expressly affect a

class of constitutional or state officers. (emphasis added). For the reasons outlined below, the appeal implicates the due process rights of constitutional officers, who, as public employers, are statutorily-mandated to utilize arbitration. In the instant matter, the arbitrator clearly exceeded his authority by refusing to apply the plain unambiguous contract language to assume subject matter jurisdiction over the merits of the dispute, when he distinctly lacked such jurisdiction. Under the court's interpretation of Section 682.13, the sheriff and other constitutional officers like him are denied a recourse.

Pursuant to Article VIII, Section 1(d) of the Constitution of the State of Florida, a sheriff is a constitutional officer that is elected by the electors of each county for terms of four years. Therefore, BSO is clearly a constitutional officer for jurisdictional purposes governing this appeal. State v. General Dev. Corp., 469 So. 2d 1381 (Fla. 1985) (state attorney considered constitutional or state officer for jurisdictional purposes); *see also* State v. Woods, 400 So. 2d 456 (Fla. 1981) (circuit court judges constituted constitutional or state officers for jurisdictional purposes); State v. Robinson, 132 So. 2d 156 (Fla. 1961) (all justices of the peace of the state constituted constitutional or state officers for jurisdictional purposes). The class of constitutional or state officers will include all sheriffs throughout the state, but also each state, county, municipality, special district, subdivision or

agency where the Florida Legislature has designated it as a public employer for purposes of labor organization in Florida's Public Employees Relations Act. Fla. Stat. §447.203(2) (2003).

BSO has been designated a public employer for purposes of labor organization. Fla. Stat. §447.203(2) (2003). As a public employer, BSO is required to negotiate a grievance procedure to be used for the settlement of disputes between employer and employee, involving the interpretation or application of a CBA. Fla. Stat. §447.401 (2003) (emphasis added). This grievance procedure must culminate in arbitration. Burt v. Duval County Sch. Bd., 481 So. 2d 55, 58 (Fla. 1st DCA 1985); *see also* Fla. Stat. §447.401 (2003). Thus, BSO does not voluntarily resort to arbitration but is statutorily-obligated.

It is well-established that matters of contract interpretation are reviewed under a *de novo* standard of review. Hirshenson v. Spaccio, 542 So. 2d 670 (Fla. 5th DCA 2001). The CBA serves as the contract between the parties in the labor context. However, contrary to this standard of review available to all citizen in contract interpretation disputes, the trial court interpreted the standard of judicial review for the vacation of arbitrator's awards under Florida Statutes, Section 682.13, as "extremely limited." Schnurmacher Holding, Inc. v. Noriega, 542 So. 2d 1327 (Fla. 1989); Broward County Paraprofessional Ass'n v. McComb, 394

So. 2d 471 (Fla. 4th DCA 1981).

Florida Statutes, Section 682.13(1)(c), provides that a court shall vacate an award when the arbitrators “exceeded their powers.” This provision has been strictly interpreted to apply only where an arbitrator decides an issue not pertinent to the resolution of the dispute submitted to arbitration. Schnurmacher, 542 So. 2d at 1328 (emphasis added). This narrow interpretation adversely affects the due process rights of constitutional and state officers on contract interpretation issues. It denies them a meaningful right to review an arbitrator’s flawed award, where although the arbitrator may not have missed the issue, his award failed to take its essence from the operative document between the parties, the CBA. In the instant matter, the arbitrator ignored the contract language to determine that the dispute before him was arbitrable when, as recognized by the trial court, it was not. In this respect, the arbitrator assumed subject matter jurisdiction over the merits of the dispute when under the unambiguous contract language, the arbitrator lacked such jurisdiction. In being denied meaningful review of that decision, BSO is deprived due process of law.

The courts have the power to vacate an arbitrator’s award when it is repugnant to the action, especially if the arbitrators are found to have "exceeded their powers." Fla. Stat. §682.13(1)(c) (2003). Had the Florida Legislature

intended this provision to apply only in situations where an arbitrator decides a different issue, then it would have provided such a restriction in the statute. A strict interpretation grants an arbitrator unfettered discretion to ignore the operative document, under a standard of review that denies constitutional officers due process of law.

Furthermore, an unreasonably limited interpretation of Florida Statutes, Section 682.13(1)(c), leaves public employers without a remedy when an arbitrator, clearly ignores unambiguous contract language and fails to apply the relevant provisions of the CBA to the issue presented to him. This is a violation of due process because it deprives public employers the right to contract and the right to have meaningful review of these contracts. Non-public employers and all other citizens have the opportunity to have their appeals heard under a *de novo* standard of review. Yet, constitutional and state officers, who are statutorily-mandated to participate in arbitration, are denied the same due process rights with the insistence on the limited interpretation of a court's power to vacate an arbitrator's award.

CONCLUSION

Based on the foregoing, the Supreme Court of Florida has jurisdiction, under Article V, Section 3(b)(3) of the Constitution of the State of Florida, to review the decision of the Fourth District Court of Appeal of the State of Florida because it adversely affects the due process rights of a class of constitutional or state officers and has resulted in the affirmance of an award over which the arbitrator lacked subject matter jurisdiction.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Lewis A. Fishman, Esq., 8211 West Broward Blvd., Suite 420, Plantation, FL 33324, by depositing same in the United States mail, first class postage affixed thereto, this _____ day of June, 2004.

Carmen Rodriguez

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief meets the font requirements of Rule 9.210, Florida Rules of Appellate Procedure.

Carmen Rodriguez