

Arbitrator's Power to Alter Discipline Affirmed by Michigan Court, with a Caveat on CBA Clarity

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Can a collective bargaining agreement (CBA) limit the authority of a labor arbitrator to determine the appropriateness of a disciplinary punishment? It can, but only when the CBA clearly says so, reiterated the Michigan Court of Appeals in a recent decision, *Mich Dep't of State Police v Mich St Police Troopers Ass'n*, No. 363241, 2023 WL 9007696 (Dec. 28, 2023, for Publication)

Several male coworkers accused a female Michigan State Police (MSP) trooper of sexual assault after surveillance videos captured the inebriated officer grabbing the genitals of male coworkers at an off-duty event. Following investigation (and misdemeanor criminal conviction), MSP terminated the trooper. After exhausting the internal grievance process, the parties went to arbitration. Although agreeing that the trooper violated the Code of Conduct, the arbitrator concluded that termination was too harsh of a penalty, and thus ordered reinstatement and that the trooper's discipline be reduced to an unpaid suspension. The arbitrator also gave the trooper back pay for a certain period of time.

MSP subsequently filed a lawsuit, claiming the arbitrator exceeded the scope of her powers by requiring reinstatement. Specifically, MSP claimed that the plain language of the CBA limited the arbitrator's authority to determining whether just cause existed for disciplining the grievant, while leaving the *type* (or level) of discipline solely in MSP's discretion. The trial court agreed, finding that the "[t]he determination of discipline is thus a discretionary action assigned to [MSP] by the plain language of the CBA."

The Michigan Court of Appeals reversed the vacatur of the arbitrator's award, citing provisions it believed demonstrated that the arbitrator was correct in interpreting the contract between the employer and the union.

First, the CBA provided that the "arbitrator shall have no authority except to pass upon alleged violations of the expressed written provisions of this Agreement, the unreasonableness or misapplication of a rule or regulation, that a work order was unreasonable and arbitrary or involves discrimination in application, or a claim of suspension, discharge, or demotion without just cause" (emphasis added).

Second, the CBA said that "[i]f the arbitrator reinstates an employee after discharge, the employee shall receive back pay and other benefits lost during the period of discharge, including status and seniority, consistent with the arbitration award." Thus, the Court of Appeals found that although MSP may have the power to suspend or discharge employees at the outset, a labor arbitrator has the power to overturn such decisions if they are made without "just cause." The labor arbitrator's authority to determine "a claim of suspension, discharge, or demotion [was] without just cause," indicates that the arbitrator is not merely limited to determining whether "just cause" existed generally but also to whether the merits of the case warranted modifying the employer's disciplinary punishment. The 3-0 appellate panel concluded that the trial court erred in substituting its judgment for that of the arbitrator when it held that MSP had the sole authority to determine the level of discipline.

The case highlights three critical takeaway points:

- When negotiating arbitration language in the CBA, it is critical to ensure that the powers of the arbitrator are clearly specified.

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- If an arbitrator should only be permitted to determine whether “just cause” existed for the general discipline of an employee, rather than whether “just cause” existed for the specific sanction of employment termination, then that should also be clearly specified in the CBA.
- Finally, if an employee charged with or convicted of a crime should be subject to mandatory termination, or that an arbitrator does not have authority to reduce a grievant’s punishment from discharge to a less severe punishment (like an unpaid suspension), then that also should be made clear in plain English in the CBA.

If you have questions about how collective bargaining agreements affect arbitration of disciplinary actions, please contact your Miller Canfield attorney or one of the authors of this alert.