



Defendant has moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). Such a motion tests the legal sufficiency of a claim while accepting the veracity of the claimant's factual allegations. See Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990); Pennsylvania ex rel. Zimmerman v. PepsiCo., Inc., 836 F.2d 173, 179 (3d Cir. 1988); Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987); Winterberg v. CNA Ins. Co., 868 F. Supp. 713, 718 (E.D. Pa. 1994), aff'd, 72 F.3d 318 (3d Cir. 1995).

Challenges under the LMRA to arbitral decisions of this type are generally adjudicated on cross-motions for summary judgment. In deciding a motion to dismiss, however, a court may consider any document appended to and referenced in the complaint on which plaintiff's claim is based as well as matters of public record. See Churchill v. Star Enter., 183 F.3d 184, 190 n.5 (3d Cir. 1999); Beverly Enter., Inc. v. Trump, 182 F.3d 183, 190 n.3 (3d Cir. 1999), cert. denied, 120 S. Ct. 795 (2000); In re Burlington Coat Factory Securities Litigation, 114 F.3d 1426 (3d Cir. 1997); In re Westinghouse Securities Litigation, 90 F.3d 696, 707 (3d Cir. 1996). Plaintiff has referenced in and appended to its complaint the pertinent contractual and other documents as well as the opinion and award of the arbitrator.

Plaintiff does not claim that any pertinent portion of the record before the arbitrator helpful to its case has yet to be presented to the court, and has not presented an issue such as fraud or bias which could warrant an examination of matters beyond the record before the arbitrator. Rather, plaintiff suggests that dismissal would not be appropriate because the parties "still disagree about their intent at the bargaining table" and thus "should be permitted to conduct discovery." Such an expression is entirely inconsistent with the extremely narrow scope of judicial review of an arbitral decision.

The parties to an arbitration of a collective bargaining contract dispute will frequently adhere to their respective positions and continue to disagree after an arbitral decision is rendered. This cannot be a basis for discovery to seek additional evidence never presented to the arbitrator and to make a new record on which a court would then assess the arbitrator's decision. If it were, the well-established principles regarding the narrow role of the courts in reviewing a labor arbitration award would be rendered meaningless. See Teamsters Local Union 745 v. Braswell Motor Freight Lines, Inc., 428 F.2d 1371, 1373 (5th Cir. 1970) (noting that "a court may not weigh the merits of the questions which are before the arbitrator" and "[t]hus the only fact issues which are relevant" in § 301 action to enforce arbitration award are existence of

contract with binding arbitration provision, arbitrability of present dispute and existence of arbitral award), cert. denied, 401 U.S. 937 (1971).

The court will proceed to decide whether one could find from the complaint and matters appended thereto that the arbitrator's decision failed to draw its essence from the contract, reflected a manifest disregard for the contract or has no support in the record before the arbitrator. See Exxon Shipping Co. v. Exxon Seamen's Union, 73 F.3d 1287, 1291 (3d Cir. 1996).

The pertinent facts are as follow.

Teamsters Local 429 ("the Union") and Associated Wholesalers, Inc. ("the Company") have been parties to a series of collective bargaining agreements spanning many years. The most recent is effective from February 1, 2000 through January 31, 2003. The agreement provides that if a dispute arises concerning the interpretation or application of the agreement which cannot be settled through the grievance procedure, the parties shall submit the matter to the American Arbitration Association or a mutually agreeable arbitrator for a final and binding resolution.

The parties' dispute involved the application of Article 22 which governed the Company's contributions to the Central Pennsylvania Teamsters Health and Welfare Fund ("the

Fund"), a jointly administered multi-employer health and welfare fund set up to provide benefits to bargaining unit employees. Section 22 of the 1997-2000 agreement contained a component rate schedule and specified per capita dollar amounts the employer would contribute on behalf of each eligible employee for benefit coverage commencing February 15, 1997. The Company agreed to pay the rates specified by the National Master Freight Agreement ("Plan 13 Rates"). The amounts varied depending upon the employee's marital and family status.

The agreement also provided for an annual healthcare re-opener to discuss the employer's option to change from component rates to a composite rate, that is a single per capita rate for each employee. Changes in component rates, which became effective February 1 each year of the agreement, were applied retroactively to the January bill which was then repriced.

Section 22 provided that if the annual increase in the Plan 13 component rates were less than 7%, the difference between the actual increase and 7% would be "carried forward to the next contract year." As the Plan 13 Rates were determined in April of the year preceding their effective date, the parties were aware then of the amount which would carry into the following year. Letters of agreement were prepared by the Union and signed by both parties in 1998 and 1999 which memorialized the company's decision to continue under the component rate schedule and

stating the total percentage accumulated to date which would carry into the following year. The letter of April 15, 1999 provided:

Due to the fact that there was no increase in the Component Rate Structure, the negotiated maximum 7% increase is to be carried over into the February 2000 Employer Health and Welfare contribution for a grand total of 19.8% which may be applied towards the February 1, 2000 Employer Health and Welfare contribution.

The language of Article 22 of the 2000 - 2003 agreement is virtually identical to its predecessor except for dates, rates and section indicators. The agreement requires the employer to contribute at the Plan 13 component rates effective February 1, 2000 and contains a 7% carry-over provision for each year of the agreement.

Sometime in the late spring of 2000, the Union prepared a letter agreement concerning the carry-forward percentage which it sent to Scott Heffelfinger, the Company's human resources manager. In August of 2000, the Company informed the Union that it did not intend to sign the letter as it believed there was no carry-forward from the previous agreement to the new agreement. On September 6, 2000, the Union filed a grievance with the American Arbitration Association, complaining that the Company violated the collective bargaining agreement by refusing to sign the letter agreement.

On March 14, 2001, the matter was heard before arbitrator John M. Skonier, Esq. The parties were afforded an opportunity to present testimony, to cross-examine witness and to introduce documentary evidence in support of their positions. Mr. Skonier accepted post-hearing briefs from the parties before rendering an opinion and award.

The Union took the position that language in the 1997 - 2000 contract suggested a carry-forward into the new 2000 - 2003 contract period. The Union cited Article 22 which provides in pertinent part:

Effective February 1, 1999 . . . In the event that the yearly increase is less than seven percent (7%), the difference between the actual increase and seven percent (7%) will be carried forward to the next contract year.

The next contract year was 2000. The Union also submitted the letter agreement of April 15, 1999. Based on these documents, the Union argued that the carry-forward was to accumulate from contract to contract. The Company argued that the language of the current agreement clearly has no provision which mandates any carry-forward from the previous agreement.

The arbitrator accepted evidence of the bargaining history between the parties. With respect to the negotiation of the 1997 agreement, the Union presented the testimony of Union Steward Tom Zombro and the Company presented the testimony of CEO Chris Michael. Mr. Zombro testified that the Union took the

position in 1997 that the accumulated carry-forward from the previous 1992-1997 agreement should be used to make additional contributions on the employees' behalf, while the Company took the contrary position. The Union ultimately dropped its position and agreed to reduce the yearly percentage cap on the Company's contribution rate from 10% to 7%. It was Mr. Zombro's understanding that in exchange the carry-forward would accumulate not only from year to year but from contract to contract. Mr. Michael testified that the Company never agreed that any carry-forward would accumulate from contract to contract. Mr. Michael testified that he signed the April 1999 letter as a matter of "routine" and did not believe it obligated the Company to provide any benefit under a new contract yet to be negotiated.

With respect to the 2000 agreement, each party presented the testimony of three witnesses. All six witnesses testified that the carry-forward was never discussed during the negotiations. The Union initially proposed that the Company pay the full Plan 13 rates for each year of the new agreement. The Company rejected the proposal and made a counter-proposal to give members of the bargaining unit the opportunity to choose among various health care plans, including Plan 13. After two days of negotiations the parties ultimately settled on language virtually identical to that used in the 1997 agreement.

The arbitrator determined that the collective bargaining agreement "does not provide for a carry forward from the previous contract" and "[t]he parties did not negotiate language that specified that the carry forward from the 1997 collective bargaining agreement was brought into the current collective bargaining agreement." He determined that "both parties recognized that such language [regarding a carry-forward] is subject to the result of the new negotiations" and negotiated "language [that] did not recognize any carry forward at the beginning of the contract."

The arbitrator determined that the April 15, 1999 letter "does not serve to bridge the 1997 contract to the current contract on an issue of such magnitude" and "cannot be used to set aside or alter contract language negotiated after its existence." He noted that the letter "was never discussed during the [2000] negotiations nor was it made part of the current collective bargaining agreement."

The arbitrator denied the Union's grievance.

When parties include an arbitration provision in a contract, they have bargained for a procedure in which the arbitrator will interpret the agreement. Eastern Associated Coal Corp. v. United Mine Workers, 531 U.S. 57, 62 (2000). The scope of judicial review of a labor arbitration award pursuant to a collective bargaining agreement is very narrowly circumscribed.

See Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 509 (2001); United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 37 (1987); National Ass'n of Letter Carriers v. U.S.P.S., 272 F.3d 182, 185 (3d Cir. 2001); United Indus. Workers v. Government of the Virgin Islands, 987 F.2d 162, 170 (3d Cir. 1993).

An arbitrator's award should be enforced so long as it draws its essence from the collective bargaining agreement. See United Steelworkers of Am. v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960); United Parcel Serv. v. Int'l Bhd. of Teamsters, 55 F.3d 138, 141 (3d Cir. 1995); Suburban Transit Corp. v. United Transp. Union, 51 F.3d 376, 379-80 (3d Cir. 1995). An award draws its essence from the agreement if "the interpretation can in any rational way be derived from the agreement, viewed in the light of its language, its context, and any other indicia of the parties' intention." Ludwig Honold Mfg. Co. v. Fletcher, 405 F.2d 1123, 1128 (3d Cir. 1969). See also Tanoma Mining Co., Inc. v. Local Union No. 1269, United Mine Workers of Am., 896 F.2d 745, 748 (3d Cir. 1990); Roberts & Schaeffer Co. v. Local 1846, United Mine Workers, 812 F.2d 883, 885 (3d Cir. 1987).

A court may not vacate an arbitral award because it views the merits of the dispute differently. See W.R. Grace & Co. v. Local 759, Int'l Union of the United Rubber, Cork,

Linoleum & Plastic Workers, 461 U.S. 757, 764 (1983). A court may not overrule an arbitrator because it disagrees with his interpretation of the contract. See News America Publications, Inc. v. Newark Typographical Union, Local 103, 918 F.2d 21, 24 (3d Cir. 1990). A court may not overturn an arbitral award because it disagrees with the arbitrator's assessment of the credibility of witnesses or the weight he has given to any testimony. Id.

So long as an "arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, the fact that a court is convinced he committed serious error does not suffice to overturn his decision." Eastern Associated, 531 U.S. at 62 (internal quotations omitted). Where "the award represents a plausible interpretation of the contract, judicial inquiry ceases and the award must be enforced" and this is so "notwithstanding the erroneousness of any factual findings or legal conclusions." McKesson Corp. v. Local 150 IBT, 969 F.2d 831, 833 (9th Cir. 1992).

"[T]here must be absolutely no support at all in the record justifying the arbitrator's determinations for a court to deny enforcement of an award." News America, 918 F.2d at 24. "Only where there is a manifest disregard of the agreement, totally unsupported by principles of contract construction and

the law of the shop, may a reviewing court disturb the award."  
Id.

The arbitrator's decision follows a reasoned opinion, is consistent with the terms of the 2000 agreement and is further supported by testimony which he could reasonably credit. There was no discussion of a carry-forward from the previous contract during the negotiation of the 2000 agreement, and there is no specific reference in that agreement to a carry-forward from the prior contract. The arbitrator's conclusion that the April 15, 1999 letter was not a convincing substitute for the type of express language in the collective bargaining agreement one would expect to see on a matter of such magnitude is not unreasonable.

It is clear from the pleadings and appended documents on which plaintiff's claim is predicated that the record is not devoid of support for the arbitrator's determinations and that his award draws its essence from, and is based upon a plausible construction of, the contract. In such circumstances, a court may not disturb the award and thus plaintiff is clearly not entitled to the relief it seeks.

**ACCORDINGLY**, this                      day of June, 2002, upon consideration of the defendant's Motion to Dismiss (Doc. #3) and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and the above action is **DISMISSED**.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**