IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMUNICATION WORKERS OF AMERICA, AFL-CIO	:	CIVIL ACTION
v.	:	
VERIZON PENNSYLVANIA, INC.	:	No. 04-3853

ORDER-MEMORANDUM

AND NOW, this 18th day of April, 2005, "Defendant Verizon Pennsylvania, Inc.'s Motion to Dismiss Plaintiff's Petition to Modify or Correct Arbitration Award or, Alternatively, to Confirm the Award" is granted, Fed. R. Civ. P. 12(b)(6),[1] and the petition is dismissed.

Plaintiff Communication Workers of America, AFL-CIO, commenced this action by filing a "Complaint/Petition to Modify/Correct an Arbitration Award" requesting modification of a final arbitration award entered on July 22, 2004.[2] In 1995, the parties entered into a collective bargaining agreement. In March 1996, plaintiff filed a grievance challenging "defendant's assignment to contractors of certain outside installation work over which the Union [plaintiff] believed it had contractual jurisdiction." Complaint, ¶ 7. Specifically, the union's position was "that loop work belonged to bargaining unit Services Technicians, in accordance with Article 17.01 of the parties' collective bargaining agreement, rather than to outside contractors employed through Bell Atlantic Communications and Construction Service, Inc." Complaint, ¶8. Arbitration ensued before a single

[1] "A court should not dismiss a complaint under Rule 12(b)(6) for failure to state a claim for relief 'unless it appears beyond a doubt that plaintiff can prove no set of facts in support of his claims which would entitle him to relief.' . . . [The court must] accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." U.S. ex rel. Schmidt v. Zimmer, Inc., 386 F.3d 235, 240 (3d Cir. 2004) (citations omitted).

[2] The final award followed fourteen days of hearings with the entry of four separate awards over a four-year period. Complaint, ¶¶ 9, 11, 17, 19, 20.

arbitrator.[3] On February 23, 2000, the arbitrator entered an award finding that the loop work should have been assigned to the union's contractors, Complaint, ¶10. On July 27, 2000, he awarded the union damages from April 1, 1996 through August 1, 2000 equivalent to straight time, with an offset - the hours worked by union members on inside wiring in the areas where the loop work was performed. His reasoning was that Verizon could have chosen to subcontract inside wiring to non-union workers. Complaint, ¶¶ 12, 13. On March 7, 2003 a third award stated that Verizon could "only offset inside wiring work in areas where [non-union workers] performed work." Complaint, ¶ 17. On July 22, 2004, upon further evidence and an additional hearing, a final award concluded that plaintiff "lost no work as a result of [Verizon's] improper contracting of service order loop installation work and there will, therefore, be no monetary remedy." Complaint, ¶ 21; Exhibit E.

According to plaintiff, the "no damages" finding came as the result of miscalculation, Verizon having presented general evidence of hourly work totals per year - and not by hours of work performed by union members in the same areas and at the same time as non-union workers. Complaint, ¶¶ 22, 24. Moreover, the arbitrator erred when he condoned Verizon's failure to submit offset evidence for the years 1996 and 1997, and assessed no damages attributable to those years by using inferences from evidence relating to 1998 through 2000. Complaint, ¶¶ 25, 26. Defendant responds: the arbitrator specifically found that limiting Verizon's offset in the manner requested by plaintiffs was not probative of the issue. Award, July 22, 2004, at 14-15, Exhibit "E" to complaint. Additionally, defendant notes that in resolving the 1996 and 1997 damages issue, the arbitrator decided, on record evidence, that in 1996 and 1997, fewer non-union workers performed loop work than in 1998 through April 2000. Award, July 22, 2004, at 11. The number of hours of labor by

[3] The parties refer to him as the "Impartial Arbitrator."

union members on inside wiring in the latter period greatly outnumbered the hours by non-union members on inside loop work. The resulting offset reduced the potential award to plaintiff to a negative number. Given the even smaller potential damages figure in 1996 and 1997, taking the number of non-union members performing loop work, the arbitrator decided that, "[t]here is no reason to believe that the results would be any different" in 1996 and 1997. Award, July 22, 2004, at 13.

Judicial review of an arbitration award entered in conformity with a validcollective bargaining agreement is stringently limited. National Ass'n of Letter Carriers v. USPS, 272 F.3d 182, 185 (3d Cir. 2001), quoting Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504 (2001). As is often stated, the court should not "review the arbitrator's decision on the merits despite allegations that the decision rests on factual errors or misinterprets the parties' agreement." Id. The award should be upheld as long as it "draws its essence from the collective bargaining agreement." Id. Only where the arbitrator's interpretation of the collective bargaining agreement is "contrary to public policy," see Eastern Associated Coal Corp. v. United Mine Workers, 531 U.S. 57, 62 (2000); where the arbitrator has ignored the plain language of the collective bargaining agreement, id.; or where the award is entirely unsupported by the record, Exxon Shipping Co. v. Exxon Seaman's Union, 73 F.3d 1287, 1291 (3d Cir. 1996), may the award be vacated. Under this standard, "it should be clear that the test used to probe the validity of a labor arbitrator's decision is a singularly undemanding one." Nat'l Ass'n of Letter Carriers, 272 F.3d at 185, quoting United Transp. Union Local 1589 v. Suburban Transit Corp., 51 F.3d 376, 379 (3d Cir. 1995).

Here, there is no contention that the arbitrator misinterpreted the collective bargaining agreement, or that his interpretation was contrary to public policy, or that the award is not supported

by the record. Instead, plaintiff's objections are focused on the arbitrator's interpretation and view of the evidence, his reasoning, and the ultimate award. Inasmuch as plaintiff has not submitted any facts or argument that would authorize the arbitrator's award to be vacated or amended, defendant's motion to dismiss must be granted.

BY THE COURT:

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Edmund V. Ludwig, J.