IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KITSAP COUNTY DEPUTY SHERIFF'S GUILD, Petitioner, and DEPUTY BRIAN LAFRANCE and JANE DOE LAFRANCE, and the marital community composed thereof, Plaintiffs, v. KITSAP COUNTY and KITSAP COUNTY SHERIFF, Respondents.	)	No. 80720-5 En Banc Filed October 29, 2009

Owens, J. -- Kitsap County (County) fired Deputy Brian LaFrance for 29 documented incidents of misconduct, including untruthfulness. An arbitrator heard the case pursuant to a collective bargaining agreement and determined that the charges against LaFrance were accurate but that termination was not the appropriate penalty. The Court of Appeals overturned the arbitrator's decision as contrary to public policy.

The Kitsap County Deputy Sheriff's Guild (Guild) appeals that decision, contending

that the Court of Appeals failed to describe the specific public policy violated by the arbitrator's decision. Further, the Guild argues that the arbitrator's decision qualifies LaFrance for back pay.

In order to vacate an arbitrator's decision as contrary to public policy, the public policy must be explicit, well defined, and dominant. We reverse the Court of Appeals because the arbitrator's decision does not violate an explicit, well defined, and dominant public policy. We affirm the trial court's holding that LaFrance is not entitled to back pay because the arbitrator's decision explicitly denied any such pay.

FACTS

LaFrance worked as a deputy for 14 years, during which he was disciplined several times. Beginning in May 2000, LaFrance began to behave unusually. He had been assigned to a child pornography task force, and he became "obsessive" and "fixated" on this work and on "'protecting the children.'" Clerk's Papers (CP) at 46 (Arbitrator's Decision & Award[1]). Despite repeated warnings and reprimands, LaFrance continued to work outside his regular shift without permission and maintain an unacceptable number of open cases. His obsessive behavior increased throughout 2000, and it became "obvious in hindsight that Deputy LaFrance was disabled and incapable of performing his job." CP at 48. In fall 2000, LaFrance was reassigned to the patrol division and instructed to return all equipment and uncompleted cases. By

[1] CP at 38-84.

this point, LaFrance had developed "paranoia" and "delusions of persecution." CP at 49. LaFrance failed to return the case files and equipment, and in January 2001, he was suspended for two days after an internal investigation. In addition, in January 2001, an equipment audit discovered that LaFrance had failed to secure a pistol issued to him. LaFrance had said that he had turned in the weapon, but it had instead been found in an unlocked desk drawer. In February 2001, following the discovery of additional files in LaFrance's possession after he denied having any other files multiple times, LaFrance was placed on administrative leave pending further investigation.

During the County's investigation, LaFrance appeared "erratic and confused." CP at 58. The County ultimately terminated LaFrance based on the 29 documented incidents summarized above. The Guild filed a grievance and requested arbitration. The collective bargaining agreement between the Guild and the County stated that the arbitrator's decision would be final and binding on the parties. The arbitrator addressed the issue, "Did the County discipline Brian LaFrance without just cause, and if so, what is the appropriate remedy?" CP at 39. The arbitrator held that the County met six of the seven elements of just cause,[2] including showing that LaFrance had been

[2] The arbitrator found that the County had shown that (1) LaFrance was given warning, (2) the rules were reasonable, (3) the County made an effort to establish whether the violations had occurred, (4) the County's investigation was fair, (5) there was substantial evidence that LaFrance was guilty, and (6) the termination was not discriminatory. CP at 75-77.

untruthful, but that the County had failed to show that "the degree of discipline administered was reasonably related to the seriousness of the proven offenses." CP at 77. Specifically, the arbitrator found that LaFrance's mental disability was apparent from his behavior and that the County should have recognized this and referred him for counseling and fitness-for-duty exams. The arbitrator reduced LaFrance's penalty to three separate final written warnings and ordered the following remedy:

> Since [LaFrance] was not fit for duty at the time of his discharge, he should be made whole by retroactively placing him in the position that he would otherwise have been in. Specifically, Deputy LaFrance should be allowed to access any benefits that an officer in good standing could have accessed as of his date of discharge including sick leave, disability benefits, or any other benefit provided to disabled employees covered by this Collective Bargaining Agreement. Since Deputy LaFrance was (and possibly still is) incapacitated he is not entitled to back pay per se, but may keep any Unemployment Insurance benefits for which he is monetarily eligible.
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> [LaFrance] should also be allowed to return to full duty upon passing independent psychological and physical fitness-for-duty exams as normally utilized by the Employer. The retroactivity of the return of [LaFrance] to regular status is not an issue in this case due to the lengthy continuance requested by the Guild and necessitated by Deputy LaFrance's heart attack.[[3]]

CP at 83.

LaFrance felt that the County was not implementing the arbitration award and filed for breach of contract in superior court. The County filed for summary judgment

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[3] Prior to the arbitration, LaFrance had a heart attack, resulting in a delay in the arbitration. CP at 80.

on the breach of contract claim and additionally filed a petition for writ of certiorari requesting review and vacation of the award. The superior court granted summary judgment to the County on the breach of contract claim but refused to vacate the arbitration award. During this time, LaFrance passed both mental and physical fitness-for-duty exams and was reinstated. The Guild appealed the summary judgment on the breach of contract claim, and the County appealed the denial of the writ of certiorari. The Court of Appeals held that the arbitration decision violated public policy because LaFrance had violated his duties as a deputy sheriff and could not serve in a position of public trust. *Kitsap County Deputy Sheriff's Guild v. Kitsap County*, 140 Wn. App. 516, 525-26, 165 P.3d 1266 (2007). The Guild appealed to this court, contending that the arbitration decision should be upheld because it did not violate an explicit, well defined, and dominant public policy. The Guild also argues that the arbitration award ordered reinstatement of LaFrance, and that he is therefore entitled to back pay. We accepted review. *Kitsap County Deputy Sheriff's Guild v. Kitsap County*, 163 Wn.2d 1038, 187 P.3d 270 (2008).

ISSUES

1. Does an arbitration decision reinstating a deputy sheriff who has been found to be untruthful violate an explicit, well defined, and dominant public policy and must therefore be vacated?

2. Does the arbitration award qualify LaFrance for back pay?

STANDARD OF REVIEW

This case involves a question of law, which we review de novo. *State v. Ford*, 125 Wn.2d 919, 923, 891 P.2d 712 (1995).

ANALYSIS

I. The Public Policy Exception to the Enforcement of Arbitration Awards

A. Whether to Adopt the Public Policy Exception

This court will review an arbitration decision only in very limited circumstances, such as when an arbitrator has exceeded his or her legal authority. *Clark County Pub. Util. Dist. No. 1 v. Int'l Bhd. of Elec. Workers, Local 125*, 150 Wn.2d 237, 245, 76 P.3d 248 (2003). Reviewing an arbitration decision for mistakes of law or fact would call into question the finality of arbitration decisions and undermine alternative dispute resolution. *Id*. at 246. Further, a more extensive review of arbitration decisions would weaken the value of bargained for, binding arbitration and could damage the freedom of contract. *See id*. at 247 (holding that "[w]hen parties voluntarily submit to binding arbitration, they generally believe that they are trading their right to appeal an arbitration award for a relatively speedy and inexpensive resolution to their dispute").

Nonetheless, federal courts and many other state courts have held that—like

any other contract—an arbitration decision arising out of a collective bargaining agreement can be vacated if it violates public policy. *See E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 67, 121 S. Ct. 462, 148 L. Ed. 2d 354 (2000) (holding that public policy did not prohibit an arbitration award reinstating a truck driver who tested positive for marijuana twice). This public policy exception is limited to decisions that violate an "'explicit,'" "'well defined,'" and "'dominant'" public policy, not simply "general considerations of supposed public interests." *Id*. at 62 (quoting *W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber, Cork, Linoleum & Plastic Workers of Am.*, 461 U.S. 757, 766, 103 S. Ct. 2177, 76 L. Ed. 2d 298 (1983)).[4] In evaluating the arbitrator's decision, the federal courts treat the decision as if it were part of the contract. *Id*.

This court has not yet explicitly adopted the public policy exception, but historically, we have turned to federal case law for guidance in labor law cases. *Clark County*, 150 Wn.2d at 246 n.7. In addition, several Court of Appeals cases in Washington have followed or made reference to the public policy exception. *See Kennewick Educ. Ass'n v. Kennewick Sch. Dist. No. 17*, 35 Wn. App. 280, 282, 666

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[4] The dissent is correct that the *Muschany* case in 1945 implied there could be violations of public policy through "violations of obvious ethical or moral standards." *Muschany v. United States*, 324 U.S. 49, 66-67, 65 S. Ct. 442, 89 L. Ed. 744 (1945). The current standard set forth by the United States Supreme Court, however, is that a public policy must be explicit, well defined, and dominant for a court to overturn an arbitration decision. *E. Associated Coal Corp.,* 531 U.S. at 62.

P.2d 928 (1983) (vacating an arbitration decision that awarded punitive damages because it violated public policy); *Local Union No. 77, Int'l Bhd. of Elec. Workers v. Pub. Util. Dist. No. 1*, 40 Wn. App. 61, 66, 696 P.2d 1264 (1985) (noting that "public policy is a ground for refusing to enforce a collective bargaining agreement" (emphasis omitted)). We now join the federal and other state courts in adopting the narrow public policy exception to enforcing arbitration decisions.

B. Whether the Arbitrator's Decision Violates an Explicit, Well Defined, and Dominant Public Policy

The lower court adopted the public policy exception and vacated the arbitration award, holding that reinstating LaFrance would violate RCW 36.28.010—a statute describing the general duties of sheriffs. However, that statute has no provisions directly relating to the charges against LaFrance.[5] In its briefs to this court, the County no longer contends that RCW 36.28.010 represents a public policy against reinstating a police officer who has been found to be dishonest but instead points to state criminal statutes and the *Brady*[6] rule.

i. State Criminal Statutes

The County points to criminal statutes that prohibit anyone from knowingly making false statements to public servants or obstructing law enforcement officers,

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[5] The duties listed in RCW 36.28.010 include arresting persons guilty of public offenses, executing warrants and orders of the courts, preserving the peace, and defending the County against those who endanger public safety.
[6] *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

RCW 9A.76.175 and 9A.76.020, and those that prohibit public officers from knowingly making false statements in an official report or statement or committing misconduct, RCW 42.20.040 and 9A.80.010. However, these statutes do not provide an explicit, well defined, and dominant public policy prohibiting the reinstatement of any officer found to violate these statutes. Examples of explicit, well defined, and dominant public policies in comparable cases in other states include a statute prohibiting individuals who have committed felonies from serving as police officers, *City of Boston v. Boston Police Patrolmen's Ass'n*, 443 Mass. 813, 820, 824 N.E.2d 855 (2005) (vacating an arbitration award that reinstated a police officer who had falsely arrested two people and lied under oath about the arrests, classifying the officer's behavior as "felonious"); and the affirmative duty under federal statute to prevent sexual harassment by law enforcement officers, *City of Brooklyn Center v. Law Enforcement Labor Services, Inc.*, 635 N.W.2d 236, 242-44 (Minn. App. 2001) (vacating an arbitration award that reinstated a police officer who had a long history of stalking and sexual harassment while on duty). Washington has no similar statute prohibiting persons found to be untruthful from serving as officers or placing an affirmative duty on counties to prevent police officers from ever being untruthful.

Courts in other states have upheld similar arbitration decisions reinstating officers when there is no explicit, well defined, and dominant public policy against

reinstatement, even when reinstatement would likely be contrary to general public policy considerations. *See City of Highland Park v. Teamster Local Union No. 714*, 357 Ill. App. 3d 453, 466, 828, N.E.2d 311, 293 Ill. Dec. 341 (2005) (refusing to vacate an arbitration award that reinstated a police officer who had been found guilty of misdemeanor trespass to a vehicle in an off-duty incident, finding that there was no explicit, well defined, and dominant public policy requiring the automatic termination of an officer when he is found guilty of violating a law); *Wash. County Police Officer's Ass'n v. Washington County*, 187 Or. App. 686, 691-92, 69 P.3d 767 (2003) (refusing to vacate an arbitration award that reinstated a police officer who tested positive for marijuana and lied about his drug use, noting that the relevant statute only required termination of a police officer who had been convicted of unlawful use of a controlled substance). Washington statutes prohibit making false statements to a public officer but there is no statute or other explicit, well defined, and dominant expression of public policy that requires the automatic termination of an officer found to have been untruthful.

ii. The Brady *Rule*

The County contends that the *Brady* rule—which requires prosecutors to disclose exculpatory evidence[7]—exemplifies a public policy against reinstatement of police officers found to be untruthful. The County argues that prosecutors would have

[7] *Brady*, 373 U.S. at 87.

to disclose LaFrance's record of dishonesty in any criminal proceedings where LaFrance served as a witness. However, even if that were true,[8] it would not be sufficient to vacate the arbitration decision because it does not constitute an explicit, well defined, and dominant public policy prohibiting LaFrance's reinstatement. The cases requiring disclosure of an officer's history of untruthfulness have not commented on whether such an officer could continue to be employed. As a result, there is no explicit (or even implicit) statement regarding the continued employment of an officer found to be untruthful. Further, even if *Brady* case law constituted a public policy against reinstatement of an officer found to be dishonest, it provides no guidance regarding what level of dishonesty would prohibit reinstatement. The *Brady* rule provides neither an explicit nor a well defined public policy against reinstating an officer found to be untruthful. As such, the *Brady* rule does not meet the exacting requirements necessary to void an arbitration award on public policy grounds.

The public policy discussed in the dissent fails to meet the strict standard of "explicit, well defined, and dominant." RCW 41.14.110 does require that deputy sheriffs serve only during good behavior but provides dismissal as one option among many, including suspension, demotion, or deprivation of vacation privileges.

The Court of Appeals erred when it vacated the arbitrator's award without

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[8] The Guild contends that a prosecutor would not have to reveal LaFrance's history under *Brady* because the arbitrator did not find that LaFrance was deliberately untruthful. Pet'r's Suppl. Br. at 15.

explaining the explicit, well defined, and dominant public policy violated by that award. The parties negotiated a collective bargaining agreement and agreed that the arbitrator's decision would be final and binding. The arbitrator conditioned LaFrance's reinstatement on successful passage of the County's own physical and mental fitness-for-duty exams. Even if we were to agree that the arbitrator's decision was not good public policy and thought LaFrance's reinstatement distasteful, the County has failed to cite any explicit, well defined, and dominant public policy that requires vacating this award. We reverse the Court of Appeals and reinstate the award.

II. Interpreting the Arbitration Award

The Guild argues that LaFrance is owed retroactive wages, either from the date of his termination or the date of the arbitration award. The Guild contends that the arbitrator was only charged with determining whether the termination had just cause, and that his jurisdiction did not include the time period after LaFrance's termination. In the alternative, the Guild argues that the language of the award reverses the termination and therefore reinstates LaFrance to inactive duty.

As noted above, this court can review a decision if the arbitrator has exceeded his or her legal authority. *Clark County*, 150 Wn.2d at 245. Here, the jurisdiction of the arbitrator's award was limited to the issue, "Did the County discipline Brian

LaFrance without just cause, and if so, what is the appropriate remedy?" CP at 39. The arbitrator, taking into account LaFrance's mental illness, determined that the County had just cause to issue three separate final written warnings, but not to terminate him. To remedy the situation, the arbitrator ordered that LaFrance be allowed to access benefits (such as sick leave and disability benefits) from the date of termination, but that he was not entitled to back pay. He also required LaFrance to pass fitness-for-duty exams prior to returning to full duty.

The arbitrator's decision to disallow back pay and require LaFrance to pass fitness-for-duty exams prior to returning is part of his determination of the proper remedy and does not exceed his scope of authority. In addition, the award clearly states that LaFrance "is not entitled to back pay per se, but may keep any Unemployment Insurance benefits for which he is monetarily eligible." CP at 83. The Guild's argument that the arbitrator's decision actually requires awarding back pay to LaFrance is contrary to its plain language. LaFrance underwent physical and mental exams in March 2005, and the County reinstated him to full duty upon receipt of the positive results in April 2005. The County has complied with the arbitrator's decision, and we affirm the trial court's finding that LaFrance is not entitled to back pay.

CONCLUSION

The arbitrator's decision does not violate an explicit, well defined, and dominant

public policy; therefore, we reverse the Court of Appeals and reinstate the arbitrator's decision. The County appropriately returned LaFrance to duty on April 11, 2005, upon passage of fitness-for-duty exams, so no retroactive pay is required.

AUTHOR:
Justice Susan Owens

WE CONCUR:

Justice Charles W. Johnson

Justice Barbara A. Madsen

Justice Richard B. Sanders

Justice Debra L. Stephens

Justice Tom Chambers