Appealing an Arbitration Decision - A Success Story

January 27, 2012 by Adam Santucci

Recently, the Commonwealth Court of Pennsylvania issued an interesting decision involving the appeal of a grievance arbitration decision filed by a Commonwealth Agency – the Pennsylvania Department of Corrections. The decision, *Department of Corrections v. Pa. State Corrections Officers' Association* (pdf), offers unionized employers a reminder of the difficult hurdle that they face when appealing a grievance arbitration decision. But the decision also demonstrates that such appeals can be successful.

The decision resolved a conflict between the Department and the union that represents the Department's corrections officers regarding how positions, or posts, would be filled at state correctional facilities. The union was seeking to have all (or nearly all) posts be designated as "bid posts." A bid post is one where, upon vacancy, the position would be filled according to a seniority bidding procedure that, in effect, left the choice to the officers. The Department, on the other hand, was trying to limit the number of bid posts so as to retain its right to assign employees to posts at its discretion. Bid posts had been a point of contention between the parties for some time and had been the subject of many prior disputes. In the past, the individual correctional facilities were left to determine through negotiations with the local union which posts would be designated as bid posts at the particular institution. This approach lead to a great deal of inconsistency in the designation of bid posts across the Department.

The parties continued to struggle over the bid post designation, and eventually an arbitrator defined the criteria to be used to designate jobs as "bid post" positions. The arbitrator's definition of bid post was incorporated into the parties' 2008-2011 Collective Bargaining Agreement ("CBA"). The CBA also directed the parties to review all existing posts and mutually determine whether each post satisfied the arbitrator's definition for a bid post. Not surprisingly, the parties could not agree on the application of the definition to the posts. In fact, the parties were unable to reach agreement on a single post designation. To break the logjam, the parties again turned to an arbitrator, who was asked to review every post in every correctional facility to determine whether it was a bid post.

This second arbitrator reviewed every post and, applying the original arbitrator's definition, determined which posts would be bid by seniority. Interestingly, the arbitrator ordered that any post that previously had been designated as a bid post at the local level, whether it met the new definition or not, was also to remain a bid post. As this approach significantly increased the number of bid posts, the Department appealed this portion of the arbitrator's decision to the Commonwealth Court. On appeal, the Department argued that the arbitrator, by grandfathering the bid post designation for certain posts regardless of whether they met the new definition, contradicted the language of the CBA.

Those with experience in grievance arbitration know that attempting to overturn an arbitrator's decision can seem nearly impossible.

In fact, the Commonwealth Court noted in this case that courts owe great deference to arbitrator's decisions. Courts apply what is known as the "essence test" to review arbitration decisions on appeal. Under the essence test, an arbitration decision will be upheld so long as it is rationally derived from the language of the agreement. Only where the decision completely lacks foundation in, or fails to logically flow from, the collective bargaining agreement will it be overturned. In applying the essence test, a court does not consider whether the arbitrator's decision is factually or legally correct. Even where the court disagrees with the arbitrator's interpretation or believes that the award is legally incorrect, the interpretation will be upheld as long as it is rationally derived from the language of the agreement.

Only if the decision is wholly illogical and altogether inconsistent with the language of a collective bargaining agreement will it be subject to reversal on appeal under the essence test. To be sure, this is a rather high hurdle to get over in most cases.

The Commonwealth Court concluded that, in this case, the arbitrator's decision, specifically the grandfathered bid post designations, was illogical. The Court found that not only was this portion of the award contrary to the language of the agreement, it was also contrary to the arbitrator's own conclusion! The arbitrator himself noted that some of the grandfathered bid post designations were inconsistent with the criteria set forth in the CBA, but nonetheless retained the bid post designation.

The Court concluded that the arbitrator acted with complete disregard for the CBA's language when he reasoned that posts that did not meet the new bid post definition should nonetheless be designated as such. This portion of the arbitrator's decision failed the essence test to the extent it was illogical and could not be reconciled with the language of the CBA.

Many labor practitioners have probably received arbitration decisions that have left them scratching their heads. This decision, while again highlighting the difficulty of successfully appealing an arbitration decision, provides a glimmer of hope. If a decision is completely irrational, illogical and contradictory, it can be successfully overturned.