STATE OF MICHIGAN

COURT OF APPEALS

POLICE OFFICERS LABOR COUNCIL, Plaintiff/Counterdefendant-Appellant,	UNPUBLISHED July 18, 2006
v	No. 258843 Kent Circuit Court
CITY OF WYOMING, Defendant/Counterplaintiff-Appellee.	LC No. 03-011121-CZ

Before: Meter, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this labor dispute, plaintiff appeals as of right from the trial court's order vacating an arbitration award that ordered the reinstatement of a Wyoming police officer. We affirm.

Defendant terminated the police officer's employment after discovering that the officer had been spending time, including an overnight stay, with a sixteen-year-old boy.[1] As provided for under the parties' collective bargaining agreement, plaintiff brought the matter to arbitration after a grievance filed by the officer failed to result in a satisfactory settlement. Following several days of testimony, the arbitrator found that there were "real questions regarding how the [officer] should have interacted with [the boy] when it became apparent that [he] was becoming infatuated and sexually attracted to the [officer]." The arbitrator concluded, however, that while the officer "exercised poor judgment" and "could have acted in a more responsible and reasonable fashion," his actions did not violate any law or police rule or regulation regarding appropriate conduct by a law-enforcement officer. Thus, the arbitrator ordered that the officer be reinstated with full back-pay and benefits. When defendant refused to reinstate the officer, plaintiff initiated this action to enforce the arbitration award. In response, defendant instituted a counterclaim to vacate the award. The trial court granted summary disposition to defendant on the basis that the arbitrator exceeded his authority under the parties' collective bargaining

[1] The boy was fifteen years old at the time he and the officer first came into contact with one another.

agreement by disregarding the plain language of applicable rules and regulations regarding ethical and appropriate officer conduct.

On appeal, defendant contends, in part, that the trial court's order should be affirmed because the arbitration award violated public policy.[2] We agree.

In general, although we review a trial court's decision to vacate an arbitration award de novo, *Tokar v Albery*, 258 Mich App 350, 352; 671 NW2d 139 (2003), our review, like that of the trial court, is narrowly circumscribed. See *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 150; 393 NW2d 811 (1986). As stated in *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989):

> A court may not review an arbitrator's factual findings or decision on the merits. Rather, a court may only decide whether the arbitrator's award draws its essence from the contract. If the arbitrator in granting the award did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases. [Internal citation and quotation marks omitted.]

Nevertheless, as noted in *Gogebic Medical Care Facility v AFSCME Local 992, AFL-CIO*, 209 Mich App 693, 697; 531 NW2d 728 (1995), "[a]s an exception to the general rule of judicial deference [in arbitration cases], we have recognized that a court may refuse to enforce an arbitrator's decision when it is contrary to public policy." This exception should be applied only if the award "would violate some explicit public policy that is well defined and dominant, and is to be ascertained by reference to the laws and legal precedent and not from general considerations of supposed public interest." *Id.* (internal citations and quotation marks omitted). Here, the pertinent legal citations that inform our opinion are MCL 750.145a (which prohibits a person from encouraging a child to engage in acts of delinquency) and 1999 AC, R 28.4102(e) (dealing with the moral character of police officers).

The arbitrator in this case stated, in part: "Given the state of the record and even if the evidence is accepted in the best light for the [officer], there is little doubt that he exercised poor judgment. He could have acted in a more responsible and reasonable fashion." The arbitrator also indicated that the officer's explanation for why "1, 4 butanediol," a solvent that can

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[2] We note that an appellee need not file a cross-appeal to urge an alternative ground for affirmance of a trial court's order. *Middlebrooks v Wayne Co*, 446 Mich 151, 166 n 41; 521 NW2d 774 (1994). We further note that the "public policy" issue, while raised below, was not addressed by the trial court. Nevertheless, this Court may address an issue not decided by the trial court if the issue is one of law and the parties have presented all facts necessary for its resolution. *Fluor Enterprises, Inc v Dep't of Treasury*, 265 Mich App 711, 723-724; 697 NW2d 539 (2005). Whether an arbitration award violates public policy is a question of law, see, e.g., *Royal Property Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 721; 706 NW2d 426 (2005), and all facts necessary for its resolution have been presented. Therefore, we will address the issue.

potentially be used as a "date-rape" drug, was found at his residence was "extremely suspicious." The arbitrator also stated:

> Everyone should understand that I can conclude the law has been violated even though a court of competent jurisdiction has not done so. However, the record in this case makes it impossible for me to do so. First, the [officer] testified that he assumed that [the boy] was 18 or older when he began conversing with him on the internet. He outlined the basis for his assumptions, including the fact that [the boy] wanted to accompany him to a bar. Given the evidence, I am persuaded that the [officer] legitimately thought that [the boy] was 18 or older. As it turned out, when they initially met [the boy] was only 15. However, the [officer] didn't know this and the evidence persuasively establishes that late during the meeting [the boy] explained that he was 16. The [officer] related that at that point he took [the boy] home, albeit dropping him off a short distance from his residence. I am not convinced that the circumstances required that the [officer] should have known that [the boy] was 15 or 16 or that the [officer] had the duty to determine [the boy's] exact age.

It is clear from his findings that the arbitrator had certain misgivings about the officer's conduct in this case.[3] It is also clear that the arbitrator focused, in part, on the alleged fact that the officer did not know the boy's true age when the contact between the officer and the boy began. However, that the officer may not have known that the boy was fifteen years old at the time of the initial contact is irrelevant, in our opinion. Indeed, MCL 750.145a, a statute not cited by the arbitrator, states:

> A person who accosts, entices, or solicits a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of sexual intercourse or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age to engage in any of those acts is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $4,000.00, or both.

The circumstances of this case, whereby the officer contacted a fifteen-year-old boy and discussed attending a bar, indicate, at a minimum, that the officer encouraged a child to engage in acts of delinquency.

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[3] We emphasize that we are not disputing the arbitrator's factual findings in this case because doing so would go beyond a permissible level of review.

The Michigan Commission on Law Enforcement Standards (MCOLES) has mandated that law enforcement officers possess good moral character and that violations of the law are evidence that this character is lacking. See 1999 AC, R 28.4102(e). The officer violated this rule. Indeed, not only was a violation of MCL 750.145a established, but the officer also displayed inadequate moral character in the general manner in which he dealt with the boy in this case. The officer's relationship with the boy did not end after their first liaison. The pair continued to chat over the Internet and had at least one further personal encounter, including the officer's hosting of the boy in his home during a weekend. As admitted by the arbitrator,

> [t]here are real questions regarding how the [officer] should have interacted with [the boy] when it became apparent that [the boy] was becoming infatuated and sexually attracted to the [officer]. It may very well have been more appropriate for the grievant to suggest professional help or at least convey his concerns to the parents.

The fact is that police officers are held to higher standards than many other individuals in our society. See, e.g., 1999 AC, R 28.4102(e). The officer in this case did not adhere to these standards, and prohibiting the discharge of the officer – as the arbitrator did – violates public policy. See *Gogebic*, *supra* at 697. It is of no import that the officer has not been convicted of a crime or that the MCOLES has not instituted proceedings against the officer. Indeed, we note that plaintiff cites no authority establishing that this Court's decision is dependent on a criminal conviction or an MCOLES finding. We conclude that the trial court's decision to vacate the arbitration award should be affirmed.

Given our disposition, we need not address the additional issues raised by plaintiff on appeal.

Affirmed.

/s/ Patrick M. Meter
/s/ Jane E. Markey