DOÑA ANA COUNTY V. THE COMMUNICATION WORKERS OF AMERICA, LOCAL 7911

DOÑA ANA COUNTY,
Petitioner-Appellant,
v.
THE COMMUNICATION WORKERS OF AMERICA, LOCAL 7911,
Respondent-Appellee.

No. A-1-CA-36,288

COURT OF APPEALS OF NEW MEXICO

August 8, 2017

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Manuel L. Arrieta, District Judge

COUNSEL

Holcomb Law Office, Dina E. Holcomb, Albuquerque, NM, for Appellant

Youtz & Valdez, P.C., Shane Youtz, Stephen Curtice, James A. Montalbano, Albuquerque, NM, for Appellee

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: J. MILES HANISEE, Judge, STEPHEN G. FRENCH, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} The County has appealed from the confirmation of an arbitration award. We previously issued a notice of proposed summary disposition, proposing to affirm. The County has filed a memorandum in opposition, and the Union has filed a memorandum in support. After due consideration, we adhere to our initial assessment. We therefore affirm.

{2} The County has raised three issues, variously challenging the arbitrator's decision on grounds that it is unsupported, contrary to law, and/or in excess of the arbitrator's powers. [DS 5-6; MIO 4-15]

{3} In the calendar notice we observed that it is not entirely clear whether the appeal should be said to entail review of compulsory or voluntary arbitration proceedings. [CN 2-3] However, we observed that given the district court's explicit adoption of the heightened standard advocated by the County, [RP 757] it did not appear to be strictly necessary to conclusively resolve that question. [CN 3]

{4} In its memorandum in opposition the County contends that the district court "strayed from the standard" [MIO 5] that it purported to apply, by proceeding on the misapprehension that the parties were bound by the arbitrator's legal and factual findings and by relying on authorities in which a different standard of review was applied. [MIO 5-6] We are unpersuaded.

{5} The district court's decision reflects that it was well aware of the different standards of review, and it clearly applied the heightened standard set forth in *Board of Education of Carlsbad Municipal Schools. v. Harrell,* 1994-NMSC-096, ¶¶ 25, 51, 118 N.M. 470, 882 P.2d 511 (providing that compulsory arbitration must comport with due process, which entails "a decision based on the record with a statement of reasons for the decision[,]" and holding that "the scope of review constitutionally required for compulsory arbitration . . . requires a determination whether the . . . decision is arbitrary, unlawful, unreasonable, capricious, or not based on substantial evidence" (internal quotation marks and citations omitted)). [RP 756-57] The district court's analysis does not reflect any presupposition that the parties were bound by the legal or factual findings, and its discussion of the various published authorities, including *State v. American Federation of State, County, & Municipal Employees, Council 18*, 2012-NMCA-114, 291 P.3d 600, recognized the distinguishing and limiting features of each case. [RP 758-60] We therefore reject the County's suggestion that the district court failed to apply the standard that it explicitly adopted.

{6} Turning to the merits, the County continues to argue that the arbitrator's decision was unsupported. [MIO 6-7] We do not understand the County to contend that the arbitrator's lengthy and comprehensive decision was not based on the record or lacked a statement of reasons, but rather, that it was unsupported by substantial evidence when the whole record is taken into consideration. [MIO 6-7] However, as we previously observed, [CN 3] the record before us reflects that the arbitrator did in fact consider the evidence with care. [RP 3-86] Although the County contends that the arbitrator "ignored" some of the conflicting evidence that was presented, [MIO 6-7] the more reasonable

inference is that the arbitrator deemed that evidence less compelling. *See generally Tom Growney Equip. Co. v. Jouett*, 2005-NMSC-015, ¶ 13, 137 N.M. 497, 113 P.3d 320 ("Where the testimony is conflicting, the issue on appeal is not whether there is evidence to support a contrary result, but rather whether the evidence supports the findings of the trier of fact."(internal quotation marks and citation omitted)).

{7} The County also renews its argument that the arbitrator and the district court failed to recognize that the award is contrary to law, insofar as it will require re-appropriation of funds. [MIO 7-15] However, as we previously observed [CN 4] and as the County acknowledges, [MIO 13] the underlying evidence on this point was conflicting. We perceive no basis for disturbing the resolution of that conflict on appeal. *See id.*

{8} The County takes issue with the arbitrator's election to take into consideration funding associated with both a gross receipts tax resolution and a subsequent supplemental resolution. [MIO 10, 13-15] We understand the County to argue that the gross receipts tax monies, a stated portion of which was explicitly earmarked for "salaries and equipment," [RP 765] should not be regarded as a specific appropriation. [MIO 14] However, in light of the clear reference to "salaries," we perceive no basis for reversal. We also understand the County to continue to challenge the projected revenue associated with gross receipts tax resolution. [MIO 14] Again, we cannot re-weigh the conflicting evidence on this point. *See id*. Ultimately, insofar as evidence was presented that sufficient funds had in fact been appropriated to accommodate the Union's last best offer, the award is not contrary to law. *See, e.g.*, *AFSCME, Council 18*, 2012-NMCA-114, ¶¶ 20-32 (rejecting a series of arguments that an arbitrator had exceeded his authority by selecting a last, best offer which would allegedly require further appropriation or re-appropriation of funds, where the arbitrator in fact determined that sufficient funds had been appropriated to meet the relevant obligations).

{9} The County further argues that the inclusion of permissive subjects of bargaining and one or more allegedly illegal subjects should have rendered the Union's last best offer invalid, such that the arbitrator was precluded from making an award on that basis. [MIO 15] However, the County fails to explain why the savings clause should be regarded as inadequate to rectify the alleged illegalities. [CN 4; MIO 15] We therefore remain unpersuaded that the award is contrary to law.

{10} In light of the foregoing, we deem it unnecessary to address the County's third issue, advanced pursuant to the alternative standard of review. [MIO 15]

{11} Accordingly, for the reasons stated in our notice of proposed summary disposition and above, we affirm.

{12} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

J. MILES HANISEE, Judge

STEPHEN G. FRENCH, Judge