IN THE COMMONWEALTH COURT OF PENNSYLVANIA

The Pennsylvania State University, Appellant	:	
v.	:	No. 904 C.D. 2025
	:	Submitted: September 14, 2026
Teamsters Local Union No. 8	:	

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE STELLA M. TSAI, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WALLACE FILED: November 16, 2026

The Pennsylvania State University (Employer) appeals from the June 13, 2025 order of the Court of Common Pleas of Centre County (Common Pleas) that denied Employer's "Petition to Set Aside Arbitration Award (Award)" (Petition) issued by Arbitrator Jared N. Kasher (the Arbitrator). At issue is Employer's dispute with Teamsters Local Union No. 8 (Union) over whether Employer violated the collective bargaining agreement (CBA) by terminating Justin Donnelly (Grievant) from employment, following Employer's issuance of three active warning letters to Grievant, all relating to his failure to record work hours. On appeal, Employer argues Common Pleas erred in refusing to vacate the Award because the Arbitrator exceeded his authority under the CBA, and the Award is not rationally derived from the CBA. After review, we affirm.

BACKGROUND

The facts, as found by the Arbitrator, are as follows and are not in dispute.[1] Employer and Union are parties to a CBA, which governs the wages, hours and working conditions of Employer's regular technical service employees. Reproduced Record (R.R.) at 2a. On August 30, 2023, Employer issued Grievant, a Union member who worked for Employer as a videographer, a third active warning letter for failing to record his work hours. *Id.* at 3a, 6a. Grievant received the first two warning letters in July 2023 and August 2023 based upon his failure to record his work hours. *Id.* at 4a. Pursuant to the CBA, which provides that "[a]n employee with three (3) active warning letters will be discharged[,]" Employer terminated Grievant's employment on August 30, 2023, in tandem with the issuance of the third warning letter. *Id.* at 4a, 6a; *see also* CBA § 6.2(c)[2].

Thereafter, the Union filed a grievance alleging Employer did not have just cause to issue a third active warning letter to Grievant. R.R. at 2a. When the parties could not resolve the matter through the grievance procedure, they proceeded to arbitration. *Id.*

In his Award, the Arbitrator concluded that although Employer had just cause to issue the third active warning letter, Employer did not have just cause to terminate Grievant's employment. *Id.* at 12a ("Accordingly, this Arbitrator finds that while

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[1] An "arbitrator is authorized to make findings of fact to inform his interpretation of the CBA." *Millcreek Twp. Sch. Dist. v. Millcreek Twp. Educ. Support Pers. Ass'n*, 210 A.3d 993, 1006 (Pa. 2019). "An arbitrator's findings of fact are not reviewable on appeal, and as long as he has arguably construed or applied the collective bargaining agreement, an appellate court may not second-guess his findings of fact or interpretation." *Coatesville Area Sch. Dist. v. Coatesville Area Tchrs.' Ass'n/Pa. State Educ. Ass'n*, 978 A.2d 413, 415 n.2 (Pa. Cmwlth. 2009).

[2] Pertinently, this subsection also provides "[a] warning letter is active for a twelve (12) month period following the date of issue."

[Employer] had cause to issue the third active warning letter, imposing the industrial death penalty for this oversight was overly harsh and not consistent with the tenets of just cause."). To reach this conclusion, the Arbitrator relied upon, among other things, the Union's following arguments:

> The Union highlights that under past practice, employees who simply neglected to submit hours were never disciplined. [The Union President's] unrebutted testimony indicates such lapses were routinely corrected administratively.
>
> The Union also cites . . . [a prior 2024 discharge grievance between the parties] as support that a third warning letter does not equate to automatic discharge. In that matter, [the arbitrator] found that the third warning issued to the grievant was valid based on proven misconduct. However, the [E]mployer's decision to proceed directly to discharge fell short of just cause because the [E]mployer had not complied with the CBA's requirement to obtain prior approvals before termination. Although the defect in the [prior] grievance was procedural, the decision also emphasizes a broader principle: *An employer must show that both substantive and procedural elements of just cause are satisfied before imposing discharge on the basis of a third warning letter*. Thus, following [the arbitrator's] rationale, just cause requires assessing whether immediate discharge is warranted under all circumstances. In other words, a final warning alone should not be treated as an automatic trigger for termination; [Employer] must still show that the nature of the misconduct or repeated violation is serious enough to merit discharge, rather than simply relying on a "three strikes" rule.

Id. at 11a-12a (emphasis in original).

Ultimately, the Arbitrator determined "[t]he abrupt escalation from administrative correction to discharge for a missed time entry is at odds with prior practice." *Id.* at 12a. Accordingly, the Arbitrator reduced Grievant's discharge to a 30-day unpaid suspension, and reinstated Grievant to his prior position with seniority and made whole from the date of reinstatement, offset by any interim earnings. *Id.*

Thereafter, Employer filed its Petition with Common Pleas, arguing the Arbitrator's Award was not rationally derived from the CBA, and in turn, must be set aside. *Id.* at 14a-25a. Common Pleas denied Employer's Petition and affirmed the Award. *Id.* at 368a-74a. Common Pleas summarized the parties' arguments as follows:

> [Employer] argues that the Arbitrator read into the [CBA] a just cause requirement for discharge that [Employer] argues does not [exist]. Instead, [Employer] argues that the Arbitrator, upon a finding that just cause supported each warning letter, should then be bound by the plain language of the [CBA] that provides that "an employee with three (3) active warning letters will be discharged." *See* CBA, § 6.2(c). Conversely, the Union argues that Section 8.11 of the CBA[3] gives the Arbitrator latitude to – "in a discharge case . . . if he finds that the discharge was not proper" – impose a less severe penalty upon a finding that the penalty originally imposed was too severe.

Id. at 373a (emphasis in original).

In rejecting Employer's argument, Common Pleas opined it must uphold the Arbitrator's Award where it "draws its essence" from the CBA, explaining:

> [T]he Arbitrator found that each of the three warning letters was supported by just cause; accordingly, pursuant to Section 6.2(c) of the CBA, an employee with three warning letters will be discharged; however, pursuant to Section 8.11 of the CBA, the arbitrator has authority to impose a less severe penalty "in a discharge case . . . if he finds that the discharge was not proper." Although this [c]ourt may

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[3] Section 8.11 provides:

> In a discharge case, the arbitrator shall have the authority to sustain the discharge, or if he finds that the discharge was not proper, he shall have the authority to order reinstatement and compensation for time lost in whole or in part, or to find that the penalty imposed upon the employee was too severe and award a less severe penalty.

R.R. at 119a.

> have found differently if it was in the position of the [A]rbitrator, the Award by [the Arbitrator] has a logical foundation in the CBA, which plainly provides that an arbitrator may impose a less severe penalty in a discharge case if the arbitrator finds that discharge was not proper.

Id. at 374a (emphasis in original). Common Pleas concluded "[t]he [c]ourt does not find a logical inconsistency in the Arbitrator's finding that each of the three *disciplines* (warning letters) were supported by just cause, but that the *discharge* resulting therefrom was not proper and should be adjusted pursuant to his powers under Section 8.11." *Id.* (emphasis in original).

Employer now appeals Common Pleas' decision to this Court. On appeal, Employer questions whether "Common Pleas err[ed] in refusing to vacate the Award even though the Arbitrator exceeded his authority under the terms of the . . . [parties' CBA] when he found that [Employer] did not have just cause to discharge [Grievant] despite finding that [Employer] had just cause to issue a third warning letter and there were no procedural deficiencies in the discharge?" Employer's Br. at 3.

In response, the Union argues "[t]he CBA contains no exception to the just cause requirement . . . for discharges resulting from an employee's receipt of three active warning letters, nor have the parties ever agreed upon any such exception." Union's Br. at 2. Additionally, the Union contends Section 8.11, applicable "[i]n a discharge case," authorized the Arbitrator to reduce the discharge to a 30-day suspension, and Section 8.11 "includes no exception to the arbitrator's authority in discharge cases resulting from three warning letters." *Id.* at 2-3. Overall, the Union maintains the Award is rationally derived from the parties' CBA and was properly affirmed by Common Pleas. *Id.* at 4.

DISCUSSION

It is well settled that our role in reviewing an arbitrator's interpretation of the terms of a collective bargaining agreement is one of deference. *State Sys. of Higher*

Educ. (Cheyney Univ.) v. State Coll. Univ. Pro. Ass'n (PSEA-NEA), 743 A.2d 405, 413 (Pa. 1999). Our standard of review of labor arbitration awards under the Public Employe Relations Act (PERA)[4] is the "essence test." *Cent. Dauphin Sch. Dist. v. Cent. Dauphin Educ. Ass'n*, 767 A.2d 16, 18-19 (Pa. Cmwlth. 2001). In *Cheyney University*, the Pennsylvania Supreme Court explained:

> Pursuant to the essence test as stated today, a reviewing court will conduct a two-prong analysis. First, the court shall determine if the issue as properly defined is within the terms of the collective bargaining agreement. Second, if the issue is embraced by the agreement, and thus, appropriately before the arbitrator, the arbitrator's award will be upheld if the arbitrator's interpretation can rationally be derived from the collective bargaining agreement. That is to say, a court will only vacate an arbitrator's award where the award indisputably and genuinely is without foundation in, or fails to logically flow from, the collective bargaining agreement.

743 A.2d at 413. It is not for this Court to apply its own interpretation of a collective bargaining agreement because a reviewing court's differing interpretation is "insufficient justification for vacating an award." *Id.* at 411. Moreover, in these cases, we do not inquire into whether an arbitrator's decision is reasonable or even manifestly unreasonable. *Id.* at 412-13. Instead, the question we address is whether the award may in any way be rationally derived from the agreement between the parties. *Id.* at 413.

In interpreting a collective bargaining agreement, it is the arbitrator who must determine the factual question of the parties' intent. *Williamsport Area Sch. Dist. v. Williamsport Educ. Ass'n*, 686 A.2d 885, 887 (Pa. Cmwlth. 1996). "[A] claim that the arbitrator has incorrectly interpreted such intent is not cognizable on appeal . . . [so] long as the arbitrator's conclusion can reasonably be drawn from the

[4] Act of July 23, 1970, P.L. 563, *as amended*, 43 P.S. §§ 1101.101–1101.2301.

evidence[.]" *Id.* (citation omitted). In *Danville Area School District v. Danville Area Education Association, PSEA/NEA*, the Supreme Court explained:

> As to this question, when discerning the intent of the parties, the arbitrator is not confined to the express terms of the collective bargaining agreement. Our court has stated that an arbitrator's award may draw its essence from the collective bargaining agreement if the arbitrator's "interpretation can in any rational way be derived from the agreement, viewed in light of its language, its context, and any other indicia of the parties' intention." [*Cheyney Univ.*], 743 A.2d at 411, *citing, Community College of Beaver County,* 375 A.2d at 1275 (citations omitted).

754 A.2d 1255, 1260 (Pa. 2000).

Additionally, an arbitrator may use evidence of past practice to discover the parties' intent in the following instances:

> (1) to clarify ambiguous language; (2) to implement contract language which sets forth only a general rule; (3) to modify or amend apparently unambiguous language which has arguably been waived by the parties; and (4) to create or prove a separate, enforceable condition of employment which cannot be derived from the express language of the agreement.

Dep't of Corr. v. Pa. State Corr. Officers Ass'n, 38 A.3d 975, 981 (Pa. Cmwlth. 2011) (quoting *Cnty. of Allegheny v. Allegheny Cnty. Prison Emp. Indep. Union*, 381 A.2d 849, 852 (Pa. 1977)).

As correctly observed by Common Pleas, the first prong of the essence test, specifically, whether the issue is "within the terms of the CBA," is undisputed in this matter. R.R. at 370a. Rather, the parties disagree regarding the second prong, namely, whether the Award "can be rationally derived from the CBA." Employer emphasizes the negotiated language of Section 6.2(c) of the CBA, which provides, "[a]n employee with three (3) active warnings will be discharged." Employer's Br.

at 9-10. Employer argues Common Pleas vitiated this language, "in contravention of well established principles of contract interpretation," by "[i]nterpreting [Section] 8.11 as empowering an arbitrator to reverse a discharge decision despite finding just cause to issue a third warning letter[.]" *Id.* at 10. Employer contends "[h]ad the parties intended to require just cause to discharge upon a third active warning letter, they would have done so explicitly." *Id.* at 15.

In response, the Union asserts Employer "offers no new arguments to this Honorable Court that have not already been considered [by the Arbitrator and Common Pleas], and correctly, denied." Union's Br. at 16. The Union emphasizes even a grievant receiving three warning letters is entitled to the grievance procedure outlined in Article 8 of the CBA, which includes Section 8.11. *Id.* at 12 (citing CBA, § 8.1, "*all disputes* concerning the operation or interpretation of [the CBA] shall be settled in accordance with the grievance procedure.") (emphasis added in Br.). The Union specifically counters, "[i]ronically, though, [Employer's] position, if accepted, would indeed render Section 8.11 entirely inapplicable in all matters involving third active warning letter discharges. As such, [Employer's] argument, if accepted, would result in the very outcome it falsely claims has resulted from [the Arbitrator's] Award." *Id.* at 16.

Here, as Common Pleas rightly pointed out in its Opinion, the Award "'draws its essence' from the CBA." R.R. at 374a. Common Pleas reached this conclusion based upon the Arbitrator's finding that Grievant received three warning letters, each supported by just cause, which necessitated discharge under Section 6.2(c); however, Section 8.11 empowered the Arbitrator, in a discharge case, to impose a less severe penalty "if he finds that the discharge was not proper." *Id.* Thus, because

the Arbitrator's decision rationally drew its essence from the CBA, we conclude Common Pleas did not err in this regard. *Cheyney Univ.*, 743 A.2d at 412.

Although Employer now argues this holding nullifies the "three-strikes" language of Section 6.2, we agree with the Union that the adoption of Employer's analysis would likewise invalidate an arbitrator's discretion to impose lesser sanctions in discharge cases under Section 8.11. Additionally, as the Union contends, Employer's "three-strikes" analysis disregards that recipients of three written warnings may still file a grievance under Article 8 of the CBA. As part of the grievance process, nothing within Section 8.11 expressly limits an arbitrator from imposing lesser sanctions in discharges resulting from a third active warning letter. Thus, Employer's argument is without merit.

Finally, Employer criticizes the Arbitrator's consideration of the prior 2024 discharge grievance because in that case, unlike here, Employer had not procedurally complied with the CBA's requirement to obtain administrative approvals prior to termination. Employer's Br. at 13 n.2. Thus, Employer faults the Arbitrator's consideration of past practice evidence based upon a factual distinction, rather than any legal error. However, as previously discussed, the Arbitrator ultimately based his decision on the language of the CBA, particularly the requirements for just cause. Subsequently, the Arbitrator noted "[t]he abrupt escalation from administrative correction to discharge for a missed time entry is at odds with prior practice." R.R. at 36a. Any discussion of past practice simply confirmed his construction of the CBA, and the Arbitrator acknowledged the procedural nuance. Moreover, Employer does not dispute that the law allows an arbitrator to consider past practice evidence to determine the parties' intent. *See Dep't of Corr.*, 38 A.3d at 981. Thus,

Employer's argument that the Arbitrator impermissibly considered the past practice evidence must fail.

CONCLUSION

In conclusion, Common Pleas did not err when it declined to vacate the Arbitrator's Award and affirmed the Arbitrator's decision that the Award is rationally derived from the parties' CBA. Given our deferential standard of review, we affirm Common Pleas' decision affirming the Award.

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STACY WALLACE, Judge

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O R D E R

AND NOW, this 16th day of November 2026, the June 13, 2025 order of the Court of Common Pleas of Centre County is **AFFIRMED**.

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STACY WALLACE, Judge