

**IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVILTRIAL DIVISION**

SCHOOL DISTRICT OF PHILADELPHIA	:	
<i>Petitioner</i>	:	
	:	CASE NO. 150900740
v.	:	
COMMONWEALTH ASSOCIATION	:	
OF SCHOOL ADMINISTRATORS	:	CONTROL NO: 15091365
<i>Respondent</i>	:	

**OPINION**

CARPENTER, J.

JANUARY 13, 2016

This Opinion is written in support of this Court's January 13, 2016 Order granting the School District of Philadelphia's (the "District") Petition to Vacate the arbitration award reinstating principal Travis-Curtis ("Travis-Curtis") (although demoting her) after she had been discharged by the District for allowing rampant cheating at the Lamberton School related to the federally required PSSA testing during years 2009, 2010, and 2011. Because I find that the arbitrator acted outside of the scope of his authority in applying an elevated standard of "just cause" and in ordering reinstatement after making factual findings that there was "cause" as defined under the School Code, I vacate the award. Further, even if the arbitrator had such authority, his order to reinstate Travis-Curtis was based on an elevated standard of proof for termination not found in the Collective Bargaining Agreement ("CBA") and was not rationally related to the CBA and thus, did not draw its essence from the CBA. Further, I find that the arbitrator 's



decision to reinstate Travis-Curtis offended “a clear and well defined public policy” against a top school administrator creating or condoning an environment that promotes cheating on federally standardized tests for the Commonwealth’s school children.

## **DISCUSSION**

On review of an arbitration award entered pursuant to the Public Employee Relations Act, the court is confined to determining whether the award “draws its essence from the collective bargaining agreement.” *Riverview Sch. Dist. v. Riverview Educ. Ass’n*, PSEA-NEA, 1639 A.2d 974, 977 (Pa. Commw. Ct. 1994). In making this assessment, the reviewing court must find that the arbitrator’s interpretation of the agreement was not manifestly unreasonable and “could rationally be derived from the collective bargaining agreement.” *Id.* Pursuant to 42 Pa. C.S. § 7314(a) (1), upon application of a party, the Court shall vacate an arbitration award where:

- i. the Court would vacate under Pa. C.S.A. § 7341 (relating to common law arbitration);
- ii. evidence of partiality by the arbitrator or corruption or misconduct by arbitrators;
- iii. the arbitrators exceeded their powers;
- iv. the arbitrators refused to postpone the hearing upon good cause being shown or refused to hear evidence material to the controversy or conducted the hearing as to prejudice rights of the party; or
- v. there was no agreement to arbitrate.

42 Pa. C.S. § 7314(a)(1). Moreover, Subsection (a)(2) of this statute provides that “[t]he fact that the relief awarded by the arbitrators was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm the award.” 42 Pa. C.S. § 7314(a)(2).

Here, the District discharged principal Travis-Curtis under the provisions of Article 2.1 of the CBA and Section 1122 of the School Code (“Code”). Pursuant to the CBA, the District retains the **sole** right to discharge “for cause.” “Cause for Termination of Contract” is specifically codified at Section 1122 and is defined in relevant part as “persistent negligence in the performance of duties...willful neglect of duties... persistent and willful violation of or failure to comply with school laws of this Commonwealth...”

The arbitrator made factual findings supportive of the fact that there was “cause for termination of contract” under Section 1122. The arbitrator found “by clear and convincing evidence that there was cheating that occurred at the Lamberton School and that [Travis-Curtis] was *at least negligent* in not being aware of such activity or not taking the appropriate steps to [. . . ensure] that test administration was secure.” Arbitrator’s Decision and Award at 48. The findings further stated that “one can only conclude that [Travis-Curtis] may have been aware or chose not to be aware [of the cheating].” *Id.* Further, the arbitrator determined that [Travis-Curtis was] “*clearly responsible for the atmosphere* [of cheating] of the school [and that] it [was] inconsistent for her not to pay attention to the means while emphasizing the ends and this in and of itself leads to its own consequences.” Arbitrator’s Decision and Award at 50. Moreover, the arbitrator found that “[t]he evidence established that the cheating that did occur at Lamberton had a direct and substantial impact on the ability to assess the performance of students and provide the necessary support and resources in the future. This has a substantially negative impact on the school.” Arbitrator’s Decision and Award at 50-51.

Because the CBA gave the District sole discretion to discharge for “cause”, the arbitrator exceeded the authority vested in him by the statute and the CBA by reinstating Travis-Curtis as an assistant principal, despite having made factual findings that supported cause under the statute. The arbitrator improperly substituted his own judgment of proper discipline for that of the District. The CBA gives the District the *sole* discretion to discharge for cause its administrators, and the term “cause” is defined in the statute. The source of the authority to arbitrate the dismissal for cause is partially based on statute. This informs this court’s determination of how the arbitrator’s powers are to be ascertained and interpreted. In the collective bargaining context, the arbitrator is ordinarily empowered as the sole authority to interpret the underlying contract and the extent of his powers within that contract because the parties have agreed to it in the contract itself. This is consistent with the notion that arbitrators have special expertise in the interpretation of collective bargaining agreements. See *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 37-38 (1987) (stating “it is the arbitrator’s view of the facts and of the meaning of the contract that [the parties] have agreed to accept”). But as the United States Supreme Court noted long ago, “the specialized competence of arbitrators pertains primarily to the law of the shop, not the law of the land.” *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 57 (1974). Where the determinations to be made are primarily issues of public law, the arbitrator possesses no special expertise. *Id.* Hence, the responsibility for interpreting the meaning of a statute and the scope of the arbitrator’s authority thereunder remains with the court. *Id.*

Section 1122 of the Code defines “cause” as it relates to the specific facts of this case. Here, the facts as found by the arbitrator meet the statute’s definition of “cause”

because the arbitrator found “clear and convincing evidence of cheating at Lamberton for which [Travis-Curtis] was liable as the top administrator” for years 2009, 2010 and 2011. Arbitrator’s Decision and Award at 50. Simply because the arbitrator did not use the phrase “persistent negligence in the performance of duties” in his finding, but instead referred to such conduct in the terms set forth above, is not determinative. The arbitrator found facts and described those facts in a manner that clearly establishes “a persistent negligence in the performance of duties.”

Accordingly, having found that Travis-Curtis engaged in persistent neglect that the Code specifically identifies as proper “cause” for termination, the arbitrator then proceeded to ignore the “sole discretion” language of the CBA and applied an additional analysis based on an elevated standard regarding whether Travis-Curtis was *directly* involved in the cheating in an effort to gauge whether the punishment should be modified. Such analysis is *not* contained within the CBA. In doing so, he ignored the plain words of the CBA, and most importantly for this Court’s review, the import of the statute as applied to the circumstances here.

The CBA clearly sets forth that the District retains the sole discretion to terminate “for cause” for misconduct which the Legislature has specifically identified. Because the arbitrator erroneously applied an elevated standard of “just cause” to the misconduct at issue and because he substituted his judgment for that of the District by reducing the suspension without pay to 30 days and reinstate Travis-Curtis (albeit via a demotion) to Assistant Principal, the arbitrator exceeded the scope of his authority. Moreover, such result is not rationally derived from the CBA, given that

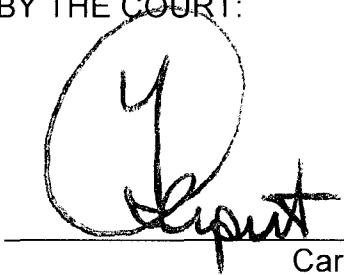
the CBA contains no “elevated standard” of review and reserved the sole discretion to discharge for cause for the District.

This Court recognizes that its role in reviewing an arbitrator’s award is limited, thereby reflecting a strong public policy in favor of arbitration. However, if, on review, the court finds that the award is not rationally derived from the CBA, then the court is required to vacate it. The power and authority of an arbitrator is ordinarily derived entirely from a collective bargaining agreement and the arbitrator violates his obligation to the parties if he substitutes “his own brand of industrial justice’ for what has been agreed to by the parties in that contract. *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). An arbitrator’s “award is legitimate only so long as it draws its essence from the collective bargaining agreement” that he is confined to interpret and apply. *Id.* In performing his responsibilities, the arbitrator exceeds his authority if he ignores the plain language of the contract. *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 38 (1987).

Further, even if this Court had determined that the arbitrator had not exceeded his authority and the award was rationally related to the CBA, the award contravenes the public policy of this Commonwealth. In so holding, this Court is mindful that the public policy exception allows courts to by-pass the normally heavy deference accorded to arbitration awards and potentially could “judicialize” the arbitration process. Accordingly, this Court is very cautious about overruling an arbitration award on the ground that it conflicts with public policy. However, here it strains credulity to argue that public policy does not dictate that one of a public school principal’s main duties is to ensure that federally mandated and standardized educational tests are to be free from cheating and

manipulation by those in charge of administering the tests. Where, as here, there is no disagreement that school administration, if not the principal herself, have been implicated in **changing students' answers on a standardized test** over a three year period such that students' educational performance, and thus the performance of the school itself, is skewed, public policy is offended. Public confidence in public education is eroded when the principal of a public school turns a blind eye to such obvious cheating perpetrated by employees in her direct supervision. To this Court, it is fundamental that plagiarism and cheating are antithetical to learning and education and thus contrary to established policy. To reinstate the head of a school back to a top administrative position under these circumstances sends a message to Philadelphia's children of "do as I say, not as I do" a most dangerous message and one that is the worst example to youth whose ideals the professional is supposed to elevate and foster. Accordingly, the award is vacated.

BY THE COURT:

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Carpenter, J.

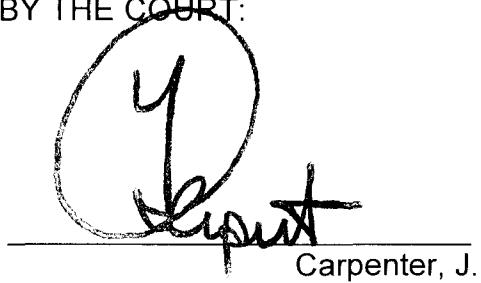
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OF SCHOOL ADMINISTRATORS :  
*Respondent* :

ORDER

**AND NOW**, this 13<sup>th</sup> day of January, 2016, upon consideration of Petitioner School District of Philadelphia's Petition to Vacate, and the response thereto, it is hereby ORDERED and DECREED that the Petition is GRANTED and the arbitration award reinstating Travis-Curtis as Assistant Principal is VACATED.

BY THE COURT:



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Carpenter, J.

The School District Of -ORDRF



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