2018 IL App (2d) 170192-U
No. 2-17-0192
Order filed July 5, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CITY OF CRYSTAL LAKE, Plaintiff-Appellant and Cross-Appellee, v. METROPOLITAN ALLIANCE OF POLICE, CHAPTER 177, Defendant-Appellee and Cross-Appellant.	)))))))))))	Appeal from the Circuit Court of McHenry County. No. 16-MR-417 Honorable Thomas A. Meyer, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Hudson and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The arbitrator's award reinstating grievant did not violate Illinois public policy. The arbitrator also did not exceed his authority in reducing grievant's penalty from termination to suspension with a last chance order. Finally, the circuit court did not abuse its discretion in denying the Union's motion for sanctions. Therefore, we affirmed.

¶ 2 This appeal arises from the circuit court's denial of the City of Crystal Lake's (City) motion to vacate the arbitration award reinstating police officer Adam Munaretto. The

Metropolitan Alliance of Police, Chapter 177 (Union) also cross-appeals the circuit court's denial of its motion for sanctions related to the City's motion to vacate. We affirm.

¶ 3 I. Background

¶ 4 Munaretto was hired by the City as a patrol officer in 2001, and he served various assignments until his termination on August 11, 2014. His termination related to his response to a traffic accident on May 3, 2014, where the City concluded that he failed to reasonably investigate a motorist involved in a rear-end collision for driving under the influence (DUI), and he allowed the motorist to leave the scene while impaired. On August 13, 2014, Munaretto filed a grievance pursuant to the parties' collective-bargaining agreement (CBA), and the matter was submitted to an arbitrator to hear the dispute between the City and the Union.

¶ 5 A. Arbitration Award and Opinion

¶ 6 Arbitration hearings took place before Arbitrator Steven Bierig on March 9 and September 11, 2015. We summarize the arbitrator's award and opinion as follows, beginning with his recitation of the facts.

¶ 7 On May 3, 2014, shortly after midnight, Kimberly Ackert was stopped at a red light in her vehicle at the intersection of Route 21 and Route 176. While stopped, James Zabinski rear-ended her vehicle. He got out of his car and asked her if she was ok, and he also said they should move their vehicles to the nearby gas station to exchange information. She remained in her vehicle and rolled down her window only slightly. Ackert observed that Zabinski was angry and upset about the accident, which made her uncomfortable, and she continued to remain in her car.

¶ 8 Ackert called 911, despite Zabinski's protests not to. She never smelled alcohol on Zabinski, although she testified she was not close enough to have smelled if alcohol were

present. She did not observe him stumble. She thought that maybe Zabinski did not want to call the police because he lacked insurance.

¶ 9 Around 12:35 a.m., Munaretto was dispatched to the accident site. He arrived about 10 minutes later, and he observed Zabinski outside of his car, which was parked within a single parking space at a gas station parking lot. Ackert described Munaretto as kind and reassuring. She saw him speak with Zabinski.

¶ 10 Munaretto testified that Zabinski did not have any trouble locating his driver's license to hand it over. He did not recall whether Zabinski stumbled or whether his eyes were watery or bloodshot, and he did not slur his words. He did not smell alcohol on Zabinski's breath, although he did describe a "dirty smell" when Zabinski was by his squad car. He did not notice any alcohol container in his car, and he stated that he had no legal right to search his vehicle.

¶ 11 Munaretto continued that it was not suspicious that a driver did not not want to call the police. He also described the intersection as confusing, noting the construction barricades and lane reconfigurations. His interaction with Zabinski did not indicate impairment, and when Zabinski left the scene, he maneuvered his vehicle around gas pumps and construction barricades without incident. Munaretto admitted that he did not recollect asking Zabinski where he was coming from or whether he had been drinking. He ultimately issued Zabinski traffic citations for failure to reduce speed and operating an uninsured motor vehicle.

¶ 12 Zabinski drove away from the gas station around 1:21 a.m., heading south on Route 31. Officer Domagala was on duty in his squad car traveling north on Route 31 when he observed Zabinski's car traveling with only one working headlight. Domagala turned around and followed the car. He observed the car cross the white dotted lane line by two feet, veer back into its lane, and then cross over the line again, driving on the white line for about 50 feet. Domagala initiated

a traffic stop and activated the in-car video and audio recording system. Zabinski's car struck the curb on the right hand side of Route 31. They were about four miles from where Zabinski had been involved in the accident with Ackert.

¶ 13 Domagala detected a strong odor of alcohol coming from Zabinski. He was standing about two feet from the car when he detected the odor. He also noticed that his speech was slurred and that his eyes were bloodshot and glassy. Zabinski told him that he had been in an accident three hours earlier, but the time on the citation issued by Munaretto did not match up. Domagala stated that within 15 seconds of approaching Zabinski's vehicle, he suspected that he was under the influence of alcohol. He sent a message to Munaretto asking if he had investigated an accident involving Zabinski, but he did not see a response. However, the record showed that Munaretto did respond yes and asked if Domagala had stopped him.

¶ 14 Domagala called for backup in order to conduct a field sobriety test, and following the test, the officers placed Zabinski under arrest. They took Zabinski back to the police station, where they administered a blood alcohol breathalyzer test. Zabinski's blood alcohol level was .205, more than twice the legal limit in Illinois, and he was charged with DUI.

¶ 15 Following the events leading to Zabinski's arrest on May 3, Commander Kotlowski opened an investigation into Munaretto's interaction with Zabinski. Based upon the squad car video and documents related to the traffic stop, Police Chief Black directed Kotlowski to conduct a formal internal investigation. Munaretto was placed on temporary paid administrative leave on May 16, pending the outcome of the investigation.

¶ 16 Kotlowski testified that, based on his investigation, Munaretto made an outgoing call to another police officer within a minute of being dispatched to the scene of the accident.[1] The call

[1] It was later revealed that Munaretto was in a personal relationship with the other officer.

lasted about 27 minutes, and his interview with Ackert supported the video evidence that Munaretto was on his phone at the scene. Kotlowski's review of the gas station's security surveillance video showed that Zabinski walked with a "slight stagger in his gait," and he entered and exited his car several times before Munaretto arrived on the scene. Kotlowski continued that Munaretto arrived on the scene in the surveillance around 12:40 a.m. Zabinski walked over to the squad car several times, once leaning into the passenger side window, then backing away from it about three feet, while appearing to be holding a conversation.

¶ 17 Prior to Munaretto's pre-disciplinary meeting, Black reviewed Kotlowski's report and gave Munaretto a copy of the report as well as the videos Kotlowski reviewed. Black testified that Munaretto denied wrongdoing and negligence and took no responsibility for releasing Zabinski on May 3. Black's review included consideration of Munaretto's overall training, performance record, and disciplinary history. Munaretto had served a total of 41 days suspension from 2002 to 2013, the worst record in the police department. None of his suspensions, however, stemmed from DUI related issues.

¶ 18 Black testified that he had been a police officer for over 28 years and had been in Munaretto's position of responding to a traffic accident after midnight. His first consideration in such a situation was to determine whether the driver was impaired. The fact that Zabinski had hit the car in front of him when there were no other cars on the road should have been a "red flag" and should have led to some investigation of impairment, regardless of whether Munaretto smelled alcohol. However, he took no steps to test for impairment, and Zabinski drove away intoxicated, placing others' lives in jeopardy. Black said he could not trust that Muanretto would keep citizens safe based on his decisions surrounding Zabinski. Black ultimately terminated Munaretto.

¶ 19 The arbitrator also heard testimony from two witnesses who testified as experts. Dr. Albert Larsen was the head of the Forensic Science Section in the Department of Biopharmaceutical Sciences at the University of Illinois at Chicago. The City had contacted him to perform a blood alcohol concentration (BAC) extrapolation for Zabinski on May 3. Based on the facts of the case, he extrapolated Zabinski's BAC to be in the range of .229 to .254 at the time of the accident. He did not comment on whether Zabinski exhibited behavior consistent with that level of BAC because he was not present at the scene and had not seen video from that night. He stated that some people can appear fairly normal at a BAC of .22 to .25, while others will exhibit slurred speech, a staggered gait, or even pass out.

¶ 20 Larsen continued that Zabinski's claim that he had consumed four 16-ounce beers could not have resulted in a BAC over .2 if he was not intoxicated at the time of the accident, even if he consumed the four beers between the time of the accident and his subsequent traffic stop by Domagala. Any alcohol he consumed would take 15 to 30 minutes to enter his system, even on an empty stomach, and only 8 minutes elapsed between his departure from the accident scene and Domagala's traffic stop.

¶ 21 The second expert was Thomas Turek for the Union. He was a retired shift commander with the Elmhurst police department and had spent nine years as a training coordinator for the Schaumburg police department. He testified that he had not trained officers to perform standardized field sobriety testing during every accident or traffic stop. Standard DUI investigation involved three phases: observing the vehicle in motion, personal contact with the driver, and conducting a field sobriety test. When an officer was unable to observe the driver operating the vehicle, Turek agreed that this diminished the officer's opportunities to detect clues that would lead to a field sobriety test.

¶ 22 Turek continued that the odor of alcohol often builds up in a car, but in an accident situation, where the officer speaks with the driver in fresh air, there may not be a "build-up" of odor. Turek believed that he had unintentionally returned an intoxicated motorist to the road before, saying that "you don't detect them all." He estimated a successful detection rate of 90 percent. He agreed that a person could be legally intoxicated without displaying detectable symptoms of impairment, but he also agreed that in a situation such as a response to a traffic accident after midnight, an officer should ask the driver questions such as whether he had been drinking and where they were going.

¶ 23 The arbitrator next recounted Munaretto's disciplinary record, which involved 10 suspensions ranging from 1 to 25 days, two written reprimands, and one oral reprimand. The first instance of discipline was from November 14, 2002, and the final one, prior to this dispute, was from January 1, 2014. His discipline resulted from various violations of department rules.

¶ 24 Munaretto's performance evaluations varied. In 2009 and 2010, his performance was evaluated as "overall unsatisfactory." In 2011, he was "overall satisfactory," and he showed improvement, including with DUI and traffic enforcement. His DUI arrests were above average when compared with his peers, and from 2010 through 2013, he had the second highest annual DUI arrests out of seven officers. In 2012 and 2013, his performance was "overall satisfactory."

¶ 25 Following its recitation of the facts, the arbitrator made the following findings and explained his decision as follows in relevant part. As a preliminary matter, he had to address whether Zabinski was intoxicated at the time of his encounter with Munaretto. The arbitrator found the testimony of Dr. Larsen credible and persuasive, and he ultimately found that Zabinski was intoxicated, with an estimated BAC between .229 and .254 at the time of his encounter with Munaretto.

¶ 26 The next issue for the arbitrator was whether Munaretto failed to detect signs of Zabinski's impairment. He found Ackert's testimony credible. She testified that Zabinski was angry, swearing repeatedly, and did not want to call the police. She did not detect alcohol on his breath, but she also admitted she was not close enough to him to do so. She did not know whether Zabinski was intoxicated and said she "hadn't even thought that far." She did not observe him stumble. Dr. Larsen gave no opinion on whether Zabinski exhibited signs of intoxication, explaining that a person with his BAC could appear nearly normal and that he had not been present at the scene or watched the surveillance video.

¶ 27 The arbitrator continued that Munaretto did not have an opportunity to observe Zabinski driving his vehicle prior to arriving on the scene. Kotlowski was unable to identify any instance on the surveillance video where Munaretto affirmatively observed Zabinski stumble. As for smelling alcohol, it was easier to detect the smell in a confined space, but Munaretto did not have that opportunity in this case—Zabinski was outside of his vehicle at the time he arrived, and the video showed they kept at a distance of three or four feet apart. On the other hand, when Domagala stopped Zabinski, he had been in his car for at least eight minutes.

¶ 28 The arbitrator concluded that there was insufficient proof that Munaretto failed to detect any physical signs of Zabinski's impairment or an odor of alcohol. He noted that Black, Kotlowski, and Turek all testified that even trained, experienced officers can miss signs of impairment.

¶ 29 The arbitrator continued, however, that Munaretto's DUI training and 14-years' experience should have, at a minimum, alerted him to the possible involvement of alcohol in a rear-end accident after midnight. Turek testified that there were basic questions an officer should ask in such a situation, and Munaretto did not ask any of them. Munaretto had a duty to

investigate for potential DUI, but he failed to do so. Had Munaretto performed a cursory check of Zabinski's driver's license status, he would have discovered prior arrests and convictions for DUI. Accordingly, the arbitrator concluded that the City had a reasonable basis upon which to take disciplinary action against Munaretto.

¶ 30 The final issue was whether termination was the appropriate penalty. The arbitrator concluded that while the City had a basis to discipline Munaretto for failure to investigate DUI on May 3, termination was an excessive penalty under the totality of the circumstances. First, it was not unreasonable for Munaretto to fail to immediately detect Zabinski's intoxication. Further, Munaretto's "recent record relating to DUI detection and enforcement mitigates any potential discipline." While his performance was "overall unsatisfactory" in 2009 and 2010, he showed improvement in 2011, 2012, and 2013, earning "overall satisfactory" evaluations each year with noted improvement in DUI enforcement. His DUI arrest record was the second highest out of seven officers from 2010 to 2013. In addition, none of his prior discipline related to DUI detection and enforcement. His 14-year tenure with the department, his overall satisfactory performance evaluations in recent years, and his high DUI enforcement rate all militated against termination. Thus, while his performance warranted a significant penalty, termination was excessive.

¶ 31 Accordingly, the arbitrator sustained in part and denied in part the grievance. He determined that the City had a reasonable basis to discipline Munaretto, but he was reducing the penalty from termination to a 60-day suspension. "In addition, based on the seriousness of the offense and [Munaretto's] disciplinary history, [he] shall be subject to a Last Chance Order." Thus, if Munaretto were to engage in behavior substantially similar to that which led to his suspension, he would be subject to immediate termination.

¶ 32 B. Motion to Vacate

¶ 33 On June 30, 2016, the City filed a motion to vacate the arbitration award in the circuit court. The City argued that the award violated "well-defined and dominant public policies" and that the arbitrator exceeded his authority under the CBA. It identified four public policies that the award violated: (1) a policy of promoting the safety and welfare of the public by allowing the police department to determine whether officers were competent to perform their duties; (2) a policy promoting the safety and welfare of the public by allowing a police department to assure its officers are able and willing to detect DUI; (3) a policy requiring strong enforcement of DUI; and (4) a policy of maintaining the public's trust in law enforcement. It also highlighted section 19.4 of the CBA relating to the grievance process, which stated that an arbitrator "shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of" the CBA.

¶ 34 The circuit court heard the motion to vacate on February 7, 2017. The court began the hearing by stating that "you're saying it's a public policy argument *** The issue I have with the argument is, does that mean the same thing as public policy—that there's a public policy requiring that police officers never fail to spot a DUI? Whether *** it was inadvertent or whatever?" The court wanted to know "how does the public policy with respect to DUI apply to" the facts of this case. The City answered that it was not suggesting that any police officer must never fail to spot a DUI. Rather, under the facts of the case—responding to a rear-end accident at a red light after midnight—Munaretto should have had a reasonable basis to inquire about DUI. The court agreed that Munaretto failed in his duties, but it kept "circling back" to whether public policy dictated whether an officer who failed at his duties should be terminated instead of suspended.

¶ 35 The court ultimately rejected the City's public policy argument, finding it "overly broad." It explained that there was clearly a "strong public policy to discourage DUI," but based on the case law and arguments before it, it was unconvinced that the public policy argument applied in this case. The court continued that the public policy must be "designed to address the actions [] in question. And here the actions in question are a failure to recognize DUI. And I think that is distinguishable from the public policy against DUI in general." All officers were expected to enforce the law, but if failure to enforce the law—any law—was the basis for termination, then termination would be an appropriate remedy for failing to charge someone with a crime when others felt a charge was warranted. The court stated that absent an explicitly legal prohibition against reinstatement, there had to be some well-defined and dominant public policy, not merely a value judgment or notion of the public interest. While it found the City's argument "well taken," it did not find that the City provided a clear public policy that would prohibit reinstatement of the officer versus a 60-day suspension. Accordingly, it denied the motion to vacate.

¶ 36 C. Motion of Sanctions

¶ 37 Following the court's denial of the City's motion to vacate, the Union filed a motion for Rule 137 sanctions, attorney fees, and costs on March 9, 2017. The Union argued that sanctions were appropriate against the City because this case was the latest in "a growing litany of cases where employers attempt to avoid arbitrators' decisions and awards on the basis of public policy." It argued that the City failed to cite any applicable public policy, let alone a well-defined and dominant one. In fact, the award did not violate any public policy, and it argued that the City's motion was vexatious and made without basis in law.

¶ 38 The circuit court heard the motion for sanctions on May 31, 2017. The court stated that there was a clear policy against DUI in Illinois, and it seemed that the City's argument was that this policy should be extended to apply to enforcement of DUI. The court could "see where they're going" with the argument, but it "just didn't agree with it." Just because the court "didn't agree with the argument and didn't perhaps fully appreciate it the way they drafted it" was not a sufficient basis for Rule 137 sanctions. If it were, the court "would have to award 137 sanctions on most of the cases" it dealt with. Accordingly, the court entered an order the same day denying the Union's motion for sanctions.

¶ 39 The City timely appealed the denial of the motion to vacate, and the Union timely cross-appealed on the denial of its motion for sanctions.

¶ 40 II. ANALYSIS

¶ 41 On appeal, the City argues that the arbitrator's award should be vacated because (1) the award contravened public policy, and (2) the arbitrator exceeded his authority in issuing the award. On cross-appeal, the Union argues that the circuit court erred in denying its motion for sanctions against the City.[2]

¶ 42 At the outset, we note that we review the arbitration award, not the decision of the trial court (*First Health Group Corp. v. Ruddick*, 393 Ill. App. 3d 40, 55 (2009)), and that judicial review of an arbitration award is extremely limited (*Illinois State Toll Highway Authority v. International Brotherhood of Teamsters, Local 700*, 2015 IL App (2d) 141060, ¶ 30). Under section 12(e) of the Illinois Uniform Arbitration Act (Arbitration Act) (710 ILCS 5/12(e) (West

[2] In addition, several amicus curiae briefs were filed in this case. We have reviewed the amicus briefs in reaching our disposition, but we do not specifically reference them in our analysis.

2016)), arbitration awards in collective-bargaining cases are not subject to the Arbitration Act but instead to those standards which existed prior to the enactment of the Act. *Village of Posen v. Illinois Fraternal Order of Police Labor Council*, 2014 IL App (1st) 133329, ¶ 36.

¶ 43 Arbitration awards entered pursuant to a collective-bargaining agreement receive even more deference than awards reviewable under the Arbitration Act, and we will not disturb an award under common law review where it could not be disturbed under statutory review. *Chicago Transit Authority v. Amalgamated Transit Union Local 308*, 244 Ill. App. 3d 854, 860, 863 (1993). Under the common law standard, we must enforce the award if the arbitrator acted within the scope of his authority and the award drew its essence from the parties' collective-bargaining agreement. *American Federation of State, County & Municipal Employees, AFL-CIO v. State of Illinois* (*AFSCME I*), 124 Ill. 2d 246, 254 (1988). By contracting to settle disputes by arbitration, the parties have agreed to accept the arbitrator's interpretation of a collective-bargaining agreement, and we must not overrule that construction merely because our interpretation differs from the arbitrator. *American Federation of State, County & Municipal Employees, AFL-CIO v. Department of Central Management Services* (*AFSCME II*), 173 Ill. 2d 299, 305 (1996).

¶ 44 A. The Arbitration Award

¶ 45 1. Public Policy

¶ 46 The City first argues that we should vacate the arbitration award because it contravened Illinois public policy. The City argues that Munaretto's arbitration award implicated at least four well-defined public policies: the policy to prevent intoxicated drivers; the policy favoring investigation and prosecution of criminal offenses; the policy requiring law enforcement agencies to hire and retain qualified persons; and the policy conferring the right to municipalities

to manage the relations between municipal officers and employees in respect to each other, the municipality, and the people.

¶ 47 The City emphasizes that Illinois has a clear public policy against impaired drivers operating motor vehicles, and it argues that the policy is coupled with the clear policy of enforcing the law, including DUI laws. The City emphasizes that Illinois has several laws specifically addressing DUI enforcement, including a special State Police DUI fund (see 625 ILCS 5/11-501.01(g) (West 2016)), and authorization for DUI markers near DUI accident scenes that read "Please Don't Drink and Drive" (605 ILCS 125/20 (West 2016)). The City likens the legislature's concern about DUI to the state's strong interest in protecting children from abuse and neglect in *AFSCME II*, 173 Ill. 2d at 316-17. The City also argues that enforcing the criminal code requires that the police department have authority to hire and retain effective personnel.

¶ 48 The City continues that Munaretto's reinstatement undermined those public policies. First, his performance demonstrated either an unwillingness or inability to conduct a proper DUI investigation, and by extension, proper enforcement of law. Furthermore, his reinstatement "mocks" the policy that law enforcement agencies must hire and maintain qualified personnel, and his reinstatement raises the "very real specter" of similar conduct in the future. The City argues this was not a case where the officer "had a bad day and failed to detect a DUI during a shoddy investigation" but a case where the officer "did not even bother to investigate by asking the most rudimentary questions in plain dereliction of his duty and oath of office." The city contends that the arbitrator should have made a finding that Munaretto could safely and competently return to duty again, but it made no such finding—and, indeed, the facts did not

support such a finding. Rather, the City characterizes the last chance order as an "implicit concession" that Munaretto will reoffend.

¶ 49 The Union responds that the City fails to identify an applicable well-defined and dominant public policy. In particular, it argues that there is no well-defined and dominant policy requiring the termination of police officers who fail to observe apparent signs of a driver's impairment at a single traffic accident. The Union disagrees that laws aimed at punishing DUI in Illinois are sufficient to establish an applicable public policy that implicitly forbids reinstatement. Rather, it argues that Illinois law generally insulates officers from civil liability when they fail to properly investigate a crime or enforce the law and that police officers have wide discretion in the enforcement of the law.

¶ 50 The Union continues that the arbitrator found insufficient proof to determine that Munaretto failed to detect physical signs of impairment or an odor of alcohol coming from Zabinski. The arbitrator considered Munaretto's work history, performance evaluations, and DUI enforcement record. Consideration of the evidence led him to believe that progressive discipline was appropriate in this case, and the Union argues that this shows that the arbitrator believed Munaretto was subject to rehabilitation.

¶ 51 While judicial review of an arbitration award is extremely limited, courts have carved out a public policy exception to vacate arbitration awards that are otherwise based upon a collective bargaining agreement. *State v. AFSCME, Council 31, AFL-CIO* (*AFSCME III*), 321 Ill. App. 3d 1038, 1040-41 (2001). This public policy exception to vacate arbitration awards is a narrow exception and "is invoked only when a contravention of public policy is clearly shown." *AFSCME II*, 173 Ill. 2d at 307. The identified public policy must be " 'well-defined and dominant' and ascertainable 'by reference to the laws and legal precedents and not from

generalized consideration of supposed public interests.' " *Id.* (quoting *W.R. Grace & Co. v. Local Union 759, International Union of United Rubber, Cork, Linoleum & Plastic Workers of America*, 461 U.S. 757, 766 (1983)). Public policy may be found in our constitution, statutes, and, when those are silent, judicial decisions. *AFSCME I*, 124 Ill. 2d at 259.

¶ 52 To vacate an arbitration award under the public policy exception, we must undertake a two-step analysis: (1) whether a well-defined and dominant public policy can be identified, and if so, (2) whether the arbitrator's award, as reflected in his interpretation of the agreement, violated the public policy. *Chicago Transit Authority v. Amalgamated Transit Union, Local 241*, 399 Ill. App. 3d 689, 696 (2010). Our supreme court has cautioned that although a "rote recitation of the exception's two-prong test can be easily made, the exception's ultimate application to a case is necessarily fact dependent." *AFSCME II*, 173 Ill. 2d at 311.

¶ 53 As a threshold matter, we agree that the City has identified well-defined and dominant public policies. There is no dispute that Illinois has a public policy against DUI (see, *e.g.*, 625 ILCS 5/11-501 (West 2016)), and that police departments should hire and retain qualified personnel to effectively enforce the laws and maintain public trust (see *Illinois State Police v. Fraternal Order of Police Troopers Lodge No. 41*, 323 Ill. App. 3d 322, 328 (2001) (recognizing Illinois policy promoting effective law enforcement)). Illinois courts have consistently found well-defined and dominant public policies where statutes or rules provide for the welfare and safety of Illinoisans. See, *e.g.*, *AFSCME II*, 173 Ill. 2d at 312-16 (examining statutory scheme to identify a well-defined and dominant public policy against DCFS employment of individuals whose dishonesty could undermine minors' safety and welfare); *Chicago Transit Authority*, 399 Ill. App. 3d at 696-97 (identifying well-defined and dominant public policies favoring both the safe transportation of children and the protection of children from sex offenders); *County of De*

Witt v. American Federation of State County, Municipal Employees, Council 31, 298 Ill. App. 3d 634, 637 (1998) (legislature intended to protect the elderly from abuse and harm).

¶ 54 The arbitration award, however, must violate an identified public policy. *City of Highland Park v. Teamster Local Union No. 714*, 357 Ill. App. 3d 453, 462 (2005) (explaining that even if an employee violated an important public policy, reinstatement of that employee does not necessarily violate public policy). In the absence of a specific rule or provision mandating termination, courts have declined to find that reinstatement violated public policy where some punishment was still imposed and the arbitrator made findings about the employee's otherwise satisfactory work performance. See *AFSCME I*, 124 Ill. 2d at 263 ("There is simply no policy that mandates the discharge of all employees found guilty of mistreatment of a service recipient when the arbitrator expressly finds that the grievants were exemplary mental health employees [and] when punishment has been imposed."); *City of Harvey v. American Federation of State, County & Municipal Employees, Council 31, Local 2404*, 333 Ill. App. 3d 667, (2002) (reinstatement did not violate policy promoting a safe workplace where employee threatened his supervisor but the employee was suspended for 60 days and had a 13-year tenure with only minor disciplinary corrections). On the other hand, courts have found that reinstatement violated well-defined and dominant public policies where they have relied on a comprehensive statutory scheme to delineate the duties of the employee (*AFSCME II*, 173 Ill. 2d at 313-15 (examining DCFS's specific duties within a "comprehensive legislative scheme" to identify the well-defined and dominant public policy implicated)), or the employee directly violated the policy (*County of De Witt*, 298 Ill. App. 3d at 635-38 (reversing reinstatement where nursing home employee struck elderly resident and the parties' agreement provided for immediate discharge for elderly abuse)).

¶ 55 Here, we cannot say that the arbitration award violated any of the City's identified policies. We must abide by the arbitrator's factual findings (see *County of De Witt*, 298 Ill. App. 3d at 637 ("A court may not reverse an arbitrator's decision simply because it is contrary to the manifest weight of the evidence.")), and he specifically found insufficient proof that Munaretto failed to detect physical signs of Zabinski's impairment or an odor of alcohol. He noted that several witnesses testified that even trained, experienced officers can miss signs of impairment. He considered Munaretto's 14-year tenure; his DUI enforcement rate, which he found to be higher than most other officers; his performance evaluations, which were overall satisfactory in recent years; and his prior discipline, which was unrelated to DUI detection and enforcement.

¶ 56 We note that such arbitral findings have supported reinstatement even where the identified public policy was directly violated. In *AFSCME III*, the court reviewed whether an arbitration award reinstating an Illinois Department of Corrections officer who initiated the use of force against an inmate violated public policy. *AFSCME III*, 321 Ill. App. 3d at 1039-40. *Id.* at 1040. On appeal from the circuit court's denial of a motion to vacate the arbitration award, the appellate court addressed whether the officer's reinstatement violated public policy, first stating that it was undisputed that Illinois had a public policy against battering prisoners. *Id.* at 1041. The parties had contractually agreed to a system of progressive and corrective discipline, and both suspension and discharge were available penalties for the arbitrator to consider. *Id.* at 1042. There was no contractual provision requiring automatic termination for hitting a prisoner. *Id.* The court noted that the arbitrator took into account the officer's 16 years of service, his good performance evaluations, his lack of prior personnel problems, and that the fight was not premeditated. *Id.* "Implicit in the decision" was the arbitrator's consideration of the public policy against battering prisoners and a determination that the officer was amenable to

rehabilitation—there was no requirement that the arbitrator had to expressly state that he was amenable to discipline. *Id.* Here, the arbitrator made similar findings about Munaretto's tenure with the City, which imply that he believed Munaretto could rehabilitate. Moreover, there was no allegation that Munaretto directly violated public policy by driving under the influence.

¶ 57 In addition, the arbitrator did not simply reinstate Munaretto. He faulted him for failing to properly investigate Zabinski, and he found that the City had a reasonable basis for discipline. The award sustained the grievance in part, imposing a maximum 60-day suspension and, based on the seriousness of the offense, a last chance order. See *AFSCME I*, 124 Ill. 2d at 263-65 (affirming the arbitration award reinstating grievants, and explaining that the award did not approve of the grievants' conduct; it punished them with four months suspension without back pay or benefits). The City has not identified any statutes, rules, or other authority governing the specific consequences for an officer who fails to conduct a DUI investigation, much less mandating an officer's termination instead of suspension. *Cf. County of De Witt*, 298 Ill. App. 3d at 635, 638 (the parties' collective-bargaining agreement provided that nursing home employees were subject to immediate discharge for residential abuse, and the arbitrator's reinstatement would have created a "one free hit" rule). Rather, the CBA clearly provided for discretionary, progressive discipline. See *infra* ¶¶ 63-64 (discussing section 21.1 of the CBA).

¶ 58 Our decision rests on respect for the parties' right to collectively bargain and their agreement to submit disciplinary matters to an arbitrator. See *AFSCME I*, 124 Ill. 2d at 262 (recognizing the public policy promoting constructive relationships between public employers and public employees and the public policy requiring finality in arbitration awards). We recognize the City's desire to provide safe and effective law enforcement, but we agree with the circuit court's conclusion that the City's public policy argument is overly broad in this case. In

short, we decline under these facts to equate Munaretto's failure to conduct a proper DUI investigation with contravention of the broad public policies against DUI and favoring effective law enforcement, for purposes of the narrow public policy exception to arbitration awards.

¶ 59 2. The Arbitrator's Authority

¶ 60 Before addressing the merits of the City's argument that the arbitrator exceeded his authority, the Union argues that the City has forfeited its argument by failing to raise the argument in the circuit court. We note that while the City did not significantly develop this argument in the circuit court, it did raise the issue in its motion to vacate the arbitration award, arguing that the arbitrator's award "exceeds his authority under the parties' collective bargaining agreement and ignores the Management Rights language in the agreement." The City also argued that the arbitrator's award reinstating Munaretto was wholly inconsistent with the police department's right to determine whether police officers were competent to perform their duties. Therefore, the City's argument is not forfeited.

¶ 61 The City argues that the arbitrator exceeded his authority when he imposed a modified discipline that was outside the scope of the parties' CBA. Citing section 19.4 of the CBA, the City argues that the arbitrator had no right to ignore or add to the provisions of the CBA, but did just that by imposing a 60-day suspension *plus* a last chance order. It argues that a last chance order is not a listed penalty in the CBA but instead is a new level of discipline between section 21.1(c)'s 60-day suspension penalty and section 21.1(d)'s termination penalty.

¶ 62 Whether an arbitrator exceeded his authority is a question of law that we review *de novo*. *Water Pipe Extension, Bureau of Engineering Laborers' Local 1092 v. City of Chicago*, 318 Ill. App. 3d 628, 634 (2000). The arbitrator's authority is ordinarily determined by the provisions of the arbitration agreement, and the arbitrator may not change or alter the terms of a collective-

bargaining agreement. *Id.* There is, however, a presumption that an arbitrator did not exceed his authority, and an arbitration award should be construed, whenever possible, to uphold its validity. *City of Northlake v. Illinois Fraternal Order of Police Labor Council, Lodge 18*, 333 Ill. App. 3d 329, 335 (2002).

¶ 63 Here, the arbitrator did not exceed his authority under the CBA. Section 21.1 of the CBA expressly permitted discretion in imposing disciplinary penalties, providing, in relevant part:

> "It is the intention of the Police Department to develop and coach our employees to be successful, effective professionals. However, at times *** it may be most appropriate to encourage behavioral change through disciplinary action. The Police Department *** may take, *among others*, any of the following disciplinary actions against a bargaining unit member who has violated the rules and regulations of the department:
>
> a. oral reprimand;
>
> b. written reprimand;
>
> c. suspension without pay for a period not to exceed sixty (60) days;
>
> d. termination of employment." (Emphasis added.)

¶ 64 The "among others" language in section 21.1 is reasonably interpreted as preceding a non-exclusive list of disciplinary actions, and the arbitrator's award imposing an additional penalty less severe than termination drew its essence from the CBA, in particular, section 21.1's policy of progressive discipline "to encourage behavioral change through disciplinary action." Because the CBA gave the City's police department discretion to fashion disciplinary penalties other than the four listed penalties, we cannot say that the arbitrator ignored or added to the CBA when he imposed a last chance order in addition to a 60-day suspension.

¶ 65 B. The Union's Motion for Sanctions

¶ 66 The Union cross-appeals the circuit court's denial of its motion for Rule 137 sanctions, arguing that the City's public policy argument was not well grounded in law. It contends that the City never identified an applicable well-defined and dominant public policy and that Munaretto's reinstatement did not violate the general public policy against DUI. The Union also argues that the City did not bring its motion to vacate in an effort to change or extend existing law, and it warns of escalating litigation to vacate arbitration awards.

¶ 67 We will not disturb a trial court's decision on a motion for Rule 137 sanctions absent an abuse of discretion. *CitiMortgage, Inc. v. Johnson*, 2013 IL App (2d) 120719, ¶ 19. We afford a trial court considerable deference, and it abuses its discretion only where no reasonable person would take the view it adopted. *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 244 (2000). When reviewing the trial court's decision on sanctions, we primarily consider whether the decision was informed, was based on valid reasoning, and followed logically from the facts. *Whitmer v. Munson*, 335 Ill. App. 3d 501, 514 (2002). In pertinent part, Rule 137 provides that an attorney's signature of every motion "constitutes a certificate *** that to the best of his knowledge, information, and belief formed after reasonably inquiry [the motion] is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose." Ill. S. Ct. R. 137(a) (eff. July 1, 2013).

¶ 68 We hold that the circuit court did not abuse its discretion in denying the Union's motion for sanctions. We have already explained that Illinois recognizes a public policy exception to challenge arbitration awards, and the City identified well-defined and dominant public policies. See *supra* ¶ 53. The circuit court reasonably understood the City's argument as a good-faith

effort to extend the law, and we will not find an abuse of discretion simply because a party made a losing argument. See *Benson v. Stafford*, 407 Ill. App. 3d 902, 929 (2010) (where the trial court determined that the plaintiffs' claims could arguably have been well-grounded and warranted by good-faith argument to extend the law, the reviewing court could not find the denial of sanctions an abuse of discretion). Moreover, the Union's general concerns about escalating litigation over arbitration awards does not support that this particular motion to vacate was unfounded or brought for an improper purpose.

¶ 69 III. CONCLUSION

¶ 70 The arbitrator's award did not violate a well-defined or domination public policy, and the arbitrator did not exceed his authority by reducing Munaretto's discipline to a suspension plus a last chance order. In addition, the circuit court did not abuse its discretion when it denied the Union's motion for Rule 137 sanctions. Therefore, we affirm the judgment of the McHenry County circuit court.

¶ 71 Affirmed.