STATE OF MINNESOTA

IN SUPREME COURT

A21-1079

Court of Appeals

Moore, III, J.
Dissenting, Anderson, J., Gildea, C.J.
Took No Part, Chutich, J.

Hennepin Healthcare System, Inc.,

Respondent,

vs.

Filed: May 17, 2023
Office of Appellate Courts

AFSCME Minnesota Council 5, Union,

Appellant.

Mary F. Moriarty, Hennepin County Attorney, Martin D. Munic, Senior Assistant County Attorney, Katlyn J. Lynch, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

Josie Hegarty, AFSCME Council 5, South Saint Paul, Minnesota, for appellant.

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S Y L L A B U S

An arbitrator does not exceed their powers, within the meaning of Minn. Stat. § 572B.23(a)(4) (2022) of the Minnesota Uniform Arbitration Act, where the arbitrator's decision draws its essence from the underlying collective bargaining agreement.

Reversed and remanded.

O P I N I O N

MOORE, III, Justice.

This case concerns the scope of judicial review of arbitration awards. Respondent Hennepin Healthcare System, Inc. (Hennepin Healthcare) and appellant AFSCME Minnesota Council 5 (AFSCME) arbitrated a dispute regarding Hennepin Healthcare's use of temporary staffing agency workers. AFSCME, which represents two bargaining units of Hennepin Healthcare employees, asserted that Hennepin Healthcare had violated its collective bargaining agreements by using the staffing agency workers for more than 6 months. After interpreting applicable provisions in the agreements, the arbitrator issued an award in favor of AFSCME. Hennepin Healthcare filed a motion in district court to vacate the arbitration award, arguing that the arbitrator had exceeded his powers. The district court denied the motion and confirmed the award. Hennepin Healthcare appealed, and the court of appeals reversed, concluding that the arbitration award must be vacated because it did not draw its essence from the collective bargaining agreement. Because we conclude that the court of appeals erroneously substituted its own judgment for that of the arbitrator when it determined that the award did not draw its essence from the agreement, we reverse the decision of the court of appeals and remand the case to the court of appeals for consideration of Hennepin Healthcare's other challenges to the arbitration award.

FACTS

Hennepin Healthcare operates a hospital and a network of clinics in Hennepin County. Among its employees are more than 1,300 clerical and general healthcare employees who are represented by AFSCME. Separate collective bargaining agreements

cover the clerical unit and the health general services unit. However, because the disputed provisions that are at issue in the underlying grievance and in the arbitrator's award are identical between the two collective bargaining agreements, we will refer to the two agreements collectively.

A dispute arose between Hennepin Healthcare and AFSCME out of Hennepin Healthcare's use of nonunion subcontracted workers. In 2015, Hennepin Healthcare entered into a number of 3-year service contracts with staffing agencies. Some of the workers whom these staffing agencies provide to Hennepin Healthcare perform the same work as that performed by the clerical and general healthcare employees who are represented by AFSCME. The staffing agency workers are not members of AFSMCE, nor are they considered employees of Hennepin Healthcare. In 2018, Hennepin Healthcare renewed its service contracts with the staffing agencies for another 3-year term.

A few months before the renewal of the service contracts, AFSCME filed a grievance, arguing that Hennepin Healthcare's use of nonunion subcontracted workers for more than 6 months violated their collective bargaining agreement. Hennepin Healthcare denied the grievance, asserting that the collective bargaining agreement did not place any durational limit on its right to use subcontracted workers.

In 2020, the parties arbitrated the dispute, and the arbitrator granted AFSCME's grievance. The arbitrator's award focused on two provisions of the collective bargaining agreement. The first provision, Article 3, defines a "temporary employee" as "[a]n individual designated by the EMPLOYER as temporary and whose employment is not to exceed six (6) months duration in temporary status in a calendar year." The second

provision, Article 42, addresses Hennepin Healthcare's right to contract for services. It states, "Nothing in this AGREEMENT shall prohibit or restrict the right of the EMPLOYER from contracting with vendors or others for materials or services." The arbitrator concluded that a temporary staffing agency worker, performing bargaining unit-covered work, is subject to Article 3 of the collective bargaining agreement and is thus limited to employment of no more than 6 months in a calendar year.

The arbitrator reached this conclusion after finding a conflict between these two provisions of the collective bargaining agreement. Attempting to reconcile this conflict, his award stated:

> It must be assumed that all provisions of the [collective bargaining agreement] have meaning. Article 42 assures the Employer authority to manage its enterprise so as to accommodate unforeseen conditions, changes in technology and business practices. Article 3[] provides the Union with assurance that its representational rights and the terms and conditions for bargaining unit workers will not be [undermined] by long term temporary employees[.]

The arbitrator determined that a temporary staffing agency worker, performing bargaining unit-covered work, is subject to Article 3. Accordingly, the arbitrator concluded, an agency worker is limited to employment of no more than 6 months in a calendar year—notwithstanding Hennepin Healthcare's right to subcontract for services detailed in Article 42 and the parties' stipulation that the temporary staffing agency workers were not Hennepin Healthcare employees, were not included within the AFSCME bargaining unit, and were not subject to the collective bargaining agreement's terms and conditions of

employment.[1] Based on this interpretation of the agreement, the arbitrator concluded that Hennepin Healthcare had violated the collective bargaining agreement by using staffing agency workers for more than 6 months.

Hennepin Healthcare subsequently filed an action in Hennepin County District Court to vacate the arbitration award, arguing that the arbitrator exceeded his powers. *See* Minn. Stat. § 572B.23(a)(4) (2022) (stating that the court shall vacate an arbitration award if "an arbitrator exceeded the arbitrator's powers"). Specifically, Hennepin Healthcare asserted that the arbitrator's award encroached on Hennepin Healthcare's inherent managerial rights, *see* Minn. Stat. § 179A.07, subd. 1 (2022), and that the award did not draw its essence from the parties' collective bargaining agreement. The district court denied Hennepin Healthcare's motion and confirmed the arbitration award.

In a precedential opinion, the court of appeals reversed the district court. *Hennepin Healthcare Sys., Inc. v. AFSCME Minn. Council 5, Union*, 974 N.W.2d 590, 591 (Minn. App. 2022). After acknowledging the limited review courts give to arbitration awards, the court of appeals concluded that the arbitrator's award did not "draw its essence" from the parties' agreement because it was "not rationally based on the collective bargaining agreement's language." *Id.* at 592–93.

In reaching its decision, the court of appeals noted that the collective bargaining agreement's arbitration provision provided that " '[t]he arbitrator shall not have the right

[1] The arbitrator determined that Hennepin Healthcare could use a subcontracted worker for more than 6 months in a calendar year but that this arrangement would require mutual agreement between Hennepin Healthcare and AFSCME.

to amend, modify, nullify, ignore, add to, or subtract from the provisions' " of the agreement. *Id.* at 593. The court reasoned that the arbitrator exceeded the power he was given under the collective bargaining agreement because the arbitrator's decision "would essentially amend the collective bargaining agreement by adding to one of its provisions a restriction that, by its express terms, applies only to a different provision." *Id.* at 593. Specifically, the court of appeals disagreed with the arbitrator's conclusion that there was a conflict between Articles 3 and 42 and determined that the arbitrator had overlooked the express terms of the collective bargaining agreement to place a temporal restriction on Hennepin Healthcare's right to subcontract for services. *Id.* Because the court of appeals concluded that the award should be vacated on this basis, it did not address the other arguments that Hennepin Healthcare raised on appeal. *Id.* at 593–94.

We granted AFSCME's petition for review.

ANALYSIS

I.

We review the court of appeals' conclusion that the arbitrator exceeded his powers de novo. *See County of Hennepin v. Law Enf't Lab. Servs., Inc., Loc. No. 19*, 527 N.W.2d 821, 824 (Minn. 1995) ("A reviewing court must independently determine the scope of the arbitrator's authority de novo.").

The Minnesota Uniform Arbitration Act provides limited grounds upon which a court may vacate an arbitration award. *See* Minn. Stat. § 572B.23 (2022). A district court is authorized to vacate an arbitration award if the "arbitrator exceeded the arbitrator's powers." Minn. Stat. § 572B.23(a)(4). An arbitration award "will be set aside by the courts

only when the objecting party meets its burden of proof that the arbitrators have *clearly exceeded* the powers granted to them in the arbitration agreement." *Children's Hosp., Inc. v. Minn. Nurses Ass'n*, 265 N.W.2d 649, 652 (Minn. 1978) (emphasis added).

When assessing a party's challenge to an arbitrator's authority, we exercise every reasonable presumption in favor of an arbitration award's finality and validity. *Seagate Tech., LLC v. W. Digital Corp.*, 854 N.W.2d 750, 761 (Minn. 2014). We will not interfere with an arbitration award merely because we disagree with the arbitrator's decision on the merits. *Id.* Instead, "[a]s to the merits of a dispute . . . the arbitrator is to be the final judge of both law and fact." *Metro. Airports Comm'n v. Metro. Airports Police Fed'n*, 443 N.W.2d 519, 524 (Minn. 1989); *see also Cournoyer v. Am. Television & Radio Co.*, 83 N.W.2d 409, 411 (Minn. 1957) (noting the "general rule that an arbitrator, in the absence of any agreement limiting his authority, is the final judge of both law and fact"). The arbitrator's authority includes "the interpretation of the terms of any contract." *City of Bloomington v. Loc. 2828, AFSCME*, 290 N.W.2d 598, 602 (Minn. 1980) (citation omitted) (internal quotation marks omitted). As we have previously recognized, "the concept of judicial deference to arbitral authority must encompass the recognition that the arbitrator is the 'reader' of the contract." *Ramsey County v. AFSCME, Council 91, Loc. 8*, 309 N.W.2d 785, 793 (Minn. 1981). In light of this deference, the scope of our review is "very limited." *State Auditor v. Minn. Ass'n of Pro. Emps.*, 504 N.W.2d 751, 755 (Minn. 1993).

We employ the "essence test" to review a party's challenge to the reasoning of an arbitration award. *Ramsey County*, 309 N.W.2d at 790 (citing *United Steelworkers v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597 (1960)). Under this test, which we have

adopted from the Supreme Court, "an award cannot be vacated if it draws its 'essence' from the contract." *Metro. Airports Comm'n*, 443 N.W.2d at 524. The Supreme Court's test is grounded in the principle that the "limited role" of the courts in reviewing arbitration decisions does not include "reconsider[ing] the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract." *United Paperworkers Intern. Union, AFL-CIO vs. Misco, Inc.*, 484 U.S. 29, 36 (1987). But the essence test places limits on the power of the arbitrator by ensuring the award is not the arbitrator's "own brand of industrial justice," *Enter. Wheel*, 363 U.S. at 597, and does not "evince[] a manifest disregard" of the collective bargaining agreement, *Ramsey County*, 309 N.W.2d at 792.

An arbitration award draws its essence from a collective bargaining agreement so long as the award "is rationally derived from the collective bargaining agreement viewed in light of its language, its context and other indicia of the parties' intent, including past practice." *Id.* at 793. "When construing a collective bargaining agreement[,] an arbitrator may look to sources other than those which a court would consider, such as the parties' relationship, practices of the industry, history of the agreement and other factors." *Metro. Airports Comm'n*, 443 N.W.2d at 524. By construing a collective bargaining agreement in this manner, "the arbitrator can determine the 'essence' of the agreement." *Id.*

Hennepin Healthcare's challenge to the arbitrator's award is subject to the essence test because it concerns the arbitrator's interpretation of the collective bargaining agreement. Thus, the narrow issue before us can be stated simply: Did the arbitrator's

award "draw its essence" from the parties' collective bargaining agreement? *See Ramsey County*, 309 N.W.2d at 790.

A.

The arbitrator's award in this case was based on his interpretation of two provisions of the parties' collective bargaining agreement: Article 3, which defines who is a "temporary employee," and Article 42, which governs Hennepin Healthcare's right to subcontract for services. Article 3 states that a "temporary employee" is "[a]n individual designated by the EMPLOYER as temporary" and states that their "employment is not to exceed six (6) months duration in temporary status in a calendar year." Article 42 provides, in relevant part, that "[n]othing in this AGREEMENT shall prohibit or restrict the right of the EMPLOYER from contracting with vendors or others for materials or services."

In his discussion, the arbitrator recognized Hennepin Healthcare's position that Article 42 imposed no temporal limit on its ability to use agency workers. But the arbitrator also recognized that agency workers "perform the same work under the same conditions" as employees represented by AFSCME. And while acknowledging that the flexibility these workers provide to Hennepin Healthcare may be a benefit, he also reasoned, after reviewing the collective bargaining agreement, that "there are considerations in retaining agency workers for more than six (6) months that may negatively affect bargaining unit workers."

The potential of these negative effects led the arbitrator to find a conflict between Articles 3 and 42. In his award, he stated, "It must be assumed that all provisions of the [collective bargaining agreement] have meaning." According to the arbitrator, Article 42

"assures the Employer authority to manage its enterprise so as to accommodate unforeseen conditions, changes in technology and business practices," whereas Article 3 "provides the Union with assurance that its representational rights and the terms and conditions for bargaining unit workers will not be [undermined] by long term temporary employees." Based on this interpretation of the applicable provisions, the arbitrator concluded that "[a] temporary worker, performing bargaining unit covered work, is subject to Article 3" and thus is limited to 6 months' employment in a calendar year.

On three previous occasions, we have applied the essence test to arbitration awards based upon an arbitrator's interpretation of a collective bargaining agreement. *See Ramsey County*, 309 N.W.2d at 789–93; *Metro. Airports Comm'n*, 443 N.W.2d at 523–25; *State Auditor*, 504 N.W.2d at 755–58. In all three cases, we upheld the arbitrator's award. *Ramsey County*, 309 N.W.2d at 793; *Metro. Airports Comm'n*, 443 N.W.2d at 524; *State Auditor*, 504 N.W.2d at 758. Each case supports our conclusion that the arbitrator's award at issue here does not run afoul of the essence test.

In *Ramsey County*, we upheld an award that arguably conflicted with the express terms of the underlying collective bargaining agreement. 309 N.W.2d at 789, 792–93. Despite that apparent contradiction, we held that the award drew its essence from the collective bargaining agreement because the arbitrator based his award upon the parties' past practices, which conflicted with the terms of the agreement. *Id.* at 793. We concluded that the arbitrator could consider past practices as evidence of the parties' "mutually intended standard of behavior in resolving the dispute" and could permissibly give more weight to those past practices than the written words of the agreement. *Id.* Accordingly,

although the arbitration award seemed at odds with the plain language of the collective bargaining agreement, it satisfied the essence test. *Id.*

In this case, Hennepin Healthcare argues that the arbitrator's award is inconsistent with the express terms of the collective bargaining agreement. Specifically, Hennepin Healthcare contends that the award nullifies its unrestricted right to contract for services in Article 42. But even if we agree with Hennepin Healthcare that the award conflicts with the express terms of the collective bargaining agreement, *Ramsey County* demonstrates that this apparent contradiction alone is not fatal in the application of the essence test.

In *Metropolitan Airports Commission*, the arbitrator was called upon to interpret a collective bargaining agreement between the Metropolitan Airport Commission and the Metropolitan Airport police union to determine whether a particular type of work—dispatcher functions—was covered by the agreement such that only union members could perform the work. 443 N.W.2d at 524. In making the determination, the arbitrator considered an array of factors that a court would not ordinarily consider. *Id.* The arbitrator decided that the union members did not have a vested right to the dispatcher functions for the following reasons:

> unit members spent a comparatively small amount of time performing relief or substitute dispatch functions; the work was not law enforcement work "per se"; the unit members only performed a few of the duties of a dispatcher; and *the original intent of the agreement* was to protect unit members from contracting out police work.

Id. (emphasis added). Without engaging in our own interpretation of the relevant provisions, we concluded that the arbitrator's "decision [drew] its 'essence' from the agreement." *Id.*

Like the arbitrator in *Metropolitan Airports Commission*, the arbitrator here interpreted the collective bargaining agreement in light of the protections the agreement was intended to provide union-member employees of Hennepin Healthcare. By affirming the award in *Metropolitan Airports Commission*, we signaled that an arbitrator can ascertain the "essence" of an agreement using this factor. Thus, the arbitrator here engaged in a permissible interpretation of the collective bargaining agreement—even if we would not interpret the agreement in this manner.

Finally, in *State Auditor*, we concluded that an arbitration award satisfied the essence test when the arbitrator was called upon to interpret and apply a term in the collective bargaining agreement that was undefined by the parties.[2] 504 N.W.2d at 755. After noting that our scope of review was "very limited," we determined that "there is nothing in the record to suggest that the arbitrator made this award in manifest disregard of the contract, the principles of contract construction, or in breach of the law of the shop." *Id.* (citing *Ramsey County*, 309 N.W2d at 792). We concluded that because the arbitrator had adopted a reasonable definition of the disputed and undefined term, his award drew its essence from the agreement. *Id.* at 755–56.

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[2] The undefined term at issue in *State Auditor* was "just cause." 504 N.W.2d at 755. A local government auditor had been discharged by the state auditor for "falsifying expense reports and for being untruthful during an investigation into that misconduct." *Id.* at 752. The employee's union challenged his discharge. *Id.* at 753. The applicable collective bargaining agreement required that the employer have "just cause" to discipline or discharge an employee. *Id.* at 755. However, the term "just cause" was undefined. *Id.* The arbitrator agreed that there was no just cause to *discharge* the employee. *Id.* at 753–54. Specifically, the arbitrator concluded that " 'though there was clearly just cause to discipline the grievant, there was not just cause to discharge him, because his continued employment would cause no significant adverse effect to the Employer.' " *Id.* at 754.

Our decision in *State Auditor* highlights the *limited* review that the essence test provides. The essence test is not a means for parties to call upon courts to carefully review the merits of an arbitrator's interpretation. Rather, courts employ the essence test to ensure that the arbitrator did in fact rationally base their award on the parties' agreement—a standard that does not set a particularly high bar. And this standard exists for good reason. If courts had the final say on the merits of arbitration awards, the benefits of arbitration would be seriously undermined. *Enter. Wheel*, 363 U.S. at 596 ("The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards."); *see also Seagate Tech.*, 854 N.W.2d at 765 (noting that "[s]ome believe that arbitration has benefits, potentially including faster resolution and less expense than the judicial system as well as a high degree of confidentiality").

We conclude that the arbitrator's award was grounded in his interpretation of the language of the collective bargaining agreement and of the parties' underlying intent behind the provisions at issue. In other words, because the arbitrator interpreted the collective bargaining agreement and the parties' mutual intent—rather than simply relying on his own conception of a "just result," *see Ramsey County*, 309 N.W.2d at 793—his award is rationally derived from the agreement and thus satisfies the essence test.

The principal problem that Hennepin Healthcare, the court of appeals, and the dissent all point to with respect to the arbitrator's award is his interpretation of the collective bargaining agreement. The court of appeals, in concluding that the award did not draw its essence from the collective bargaining agreement, independently reviewed the language of the agreement to determine that "[t]here is therefore no literal, substantive

conflict between articles 3 and 42." *Hennepin Healthcare Sys.*, 974 N.W.2d at 593. Hennepin Healthcare urges us to conclude that these provisions do not need to be reconciled, and thus the arbitrator erred in fashioning an award that did so. Similarly, the dissent argues that the arbitrator's interpretation was so clearly wrong that it was no interpretation at all but was instead a rewriting of the terms of the agreement.

But it is not the role of this court (or any court) to re-examine the merits of the case and vacate the award merely because we believe that our interpretation of the collective bargaining agreement is better than the arbitrator's interpretation. We reiterate the maxim from the Supreme Court that in reviewing an arbitration award, "[t]he courts . . . have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim." *United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564, 568 (1960) (footnote omitted).

We have previously emphasized that in the context of an arbitration award, the arbitrator "is the final judge of both law and fact, including the interpretation of the terms of any contract." *Cournoyer*, 83 N.W.2d at 411 (footnotes omitted). It is not the role of courts to interfere with that interpretation because "[i]t was the arbitrator's construction of the parties' agreement which was bargained for; not the interpretation of this court." *Ramsey County*, 309 N.W.2d at 793. Ultimately, whether we agree with the arbitrator's decision or not is irrelevant because "courts will not overturn an award merely because they may disagree with the arbitrators' decision on the merits." *Id.* at 790 (citation omitted) (internal quotation marks omitted). However, the arbitration award must "in some rational

manner be derived from the agreement." *Id.* at 792 (citation omitted) (internal quotation marks omitted). In this case, the arbitrator drew upon permissible sources of evidence to interpret the collective bargaining agreement, and his award is rationally derived from that interpretation. Thus, the arbitrator's award satisfies the essence test. It was therefore error for the court of appeals to "re-examin[e] . . . the merits of the case." *Id.* at 790.

B.

Hennepin Healthcare nevertheless argues that the arbitrator exceeded his power because his award was precluded by language in the collective bargaining agreement. Specifically, Hennepin Healthcare points to Article 7, a provision that states, "The arbitrator shall not have the right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this AGREEMENT." In its decision overturning the arbitration award, the court of appeals concluded that the arbitrator violated Article 7 because his award "would essentially amend the collective bargaining agreement." *Hennepin Healthcare Sys.*, 974 N.W.2d at 593. The court of appeals reasoned that "the arbitrator nullified the hospital's bargained-for right to subcontract for services without the temporal restriction that exists only in the union's bargained-for limit on temporary employment." *Id.* Hennepin Healthcare urges us to reach the same conclusion.

We reject Hennepin Healthcare's argument and the court of appeals' reasoning in light of our precedent. In *Ramsey County*, the underlying collective bargaining agreement contained a provision similar to Article 7 that broadly prohibited the arbitrator from adding to or modifying the agreement. 309 N.W.2d at 793. In reversing the district court's decision to vacate the award, we stated:

> In light of our decision [that the award met the essence test], it is apparent that the broad "no additions or modifications" clause contained in the written agreement does not prevent enforcement of the award. The arbitrator in the case at bar did not change the contractual language solely on the basis of his own personal, extracontractual judgment. Rather he looked to the mutual intent of the parties as evidenced by their bargaining history and past practice. Therefore, the instant award, although based upon the arbitrator's subjective analysis, is supported by the actual intent of the parties rather than on what the arbitrator personally conceived as a just result.

Id. In other words, so long as an arbitration award satisfies the essence test, a broad "no additions or modifications clause" in the underlying agreement will not bar enforcement of the award. This standard is appropriate in light of the "extremely narrow" review courts give arbitration awards, which includes exercising "every reasonable presumption" in favor of the finality of awards. *State Auditor*, 504 N.W.2d at 754–55.

The court of appeals' application of the essence test in this case, if repeated, would place the finality of arbitration awards at serious risk. The court of appeals concluded that the arbitrator exceeded his power when he misinterpreted the collective bargaining agreement in a way that "essentially amend[ed]" the agreement, violating the broad "no amendments" provision of the agreement. *Hennepin Healthcare Sys.*, 974 N.W.2d at 593. This view of the essence test opens a door to more searching judicial review of arbitration awards any time the underlying agreement contains a no modifications clause. Any arguable error in contract interpretation could be construed as an amendment to a written agreement. Therefore, under the court of appeals' reasoning, it would seem the only way to confirm that an arbitrator's interpretation did *not* amend the agreement is for a court to agree with that interpretation.

But this approach would be inconsistent with our precedent because, as previously stated, the parties bargained for the arbitrator's interpretation of their agreement, not the interpretation of a court. *See Ramsey County*, 309 N.W.2d at 793. Thus, we re-emphasize today what we previously said in *Ramsey County*: an award that satisfies the essence test will not be set aside on the basis of a broad "no additions or modifications" clause.[3] Because we conclude that the arbitrator's award drew its essence from the parties' collective bargaining agreement, Hennepin Healthcare cannot rely on Article 7 to demonstrate that the arbitrator clearly exceeded his powers by "essentially amending" the agreement.

The dissent argues that we should limit *Ramsey County* to the "narrow proposition that an arbitrator's award may draw its essence from a collective bargaining agreement when the arbitrator relied on evidence of the parties' past practices among other considerations when interpreting the agreement." In particular, the dissent argues that we should conclude that an arbitrator exceeds their authority when they "disregard clear and

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[3] Nevertheless, Hennepin Healthcare contends that the arbitrator's interpretation here was "so far afield" of any rational interpretation of the collective bargaining agreement that we should conclude that the arbitrator exceeded his powers as defined by Article 7. Yet Hennepin Healthcare provides no standard for us, or any other reviewing court, to apply to reach this conclusion. Hennepin Healthcare merely asserts that we will know it when we see it, citing to Justice Stewart's famous description of illegal pornography from his concurring opinion in *Jacobellis v. Ohio,* 378 U.S. 184, 197 (1964) (Stewart, J., concurring). This proposed analysis is not a legal standard that can be applied with any consistency in other cases. It is merely an invitation for courts to overturn awards when they disagree with the arbitrator on the merits. However, even if we were to adopt a version of Justice Stewart's dictum for reviewing arbitration awards, for the reasons stated in the main text, we do not "see it" in this case.

unambiguous language in the contract." But the dissent's proposed rule would be inconsistent with our case law applying the essence test.

In *Ramsey County*, we discussed at length the special nature of collective bargaining agreements and the arbitrators empowered to resolve the disagreements that arise under them. A collective bargaining agreement, we acknowledged, "is not an ordinary contract; 'it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate.' " *Ramsey County*, 309 N.W.2d at 791 (quoting *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578 (1960)). And the "source of rules" governing the relationship between a union and an employer "cannot be restricted to the words of the contract but must be considered in light of the common law of the shop which implements and furnishes the context of the agreement." *Id.* (citation omitted) (internal quotation marks omitted). The arbitrator, we recognized, "plays a key role in the continuing interaction between and among the citizens of the industrial community" because, in resolving labor disputes, their "function is to ascertain the parties' intended standard of behavior." *Id.* Then, after considering cases specifically implicating past practice of the parties—the objection at issue in *Ramsey County*—we adopted the essence test, which we defined in terms that specifically included more than just past practice as a legitimate source on which an arbitrator may draw. Instead, we concluded that the arbitrator in that case did not exceed his powers because "the award is rationally derived from the collective bargaining agreement viewed in light of its language, its context, *and other indicia of the parties' intent,* including past practice." *Id.* at 793 (emphasis added).

Thus, *Ramsey County* held that an arbitrator's award can pass the essence test if it is based on extra-textual "indicia of the parties' intent," which in *Ramsey County* meant past practice. And as discussed above, in *Metropolitan Airports Commission*, we confirmed that the arbitrator may look to "the original intent of the agreement" in resolving a dispute thereunder. 443 N.W.2d at 524. Here, the arbitrator based his award in part on the protections that he concluded the agreement was originally intended to provide to union-member employees of Hennepin Healthcare. To hold that the award did not draw its essence from the collective bargaining agreement would contradict our precedent. We therefore reject the dissent's crabbed reading of our prior applications of the essence test to arbitration awards.

As for the dissent's argument that we should conclude that an arbitrator exceeds their authority when they "disregard clear and unambiguous language in the contract," we note that the dissent cites no Minnesota precedent for that proposition. Nor does any such precedent exist. Instead, that question was presented in *Ramsey County*, and we concluded that the arbitrator in that case did *not* exceed his authority. It is true that certain other jurisdictions have concluded that an arbitrator exceeds their authority in such circumstances. But as we recognized in *Ramsey County*, "the cases have not exuded uniformity in translating the essence test into a pronouncement of the appropriate extent or limitation of judicial review of the arbitrator's interpretation." 309 N.W.2d at 790 (citation omitted) (internal quotation marks omitted).

Moreover, recent precedent of the Supreme Court suggests that *Ramsey County* did not overstate the permissiveness of the essence test. As the Court has recognized, when

arguing that an arbitrator has exceeded his powers, " '[i]t is not enough . . . to show that the [arbitrator] committed an error—or even a serious error.' " *Oxford Health Plans, LLC v. Sutter*, 569 U.S. 564, 569 (2013) (quoting *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671 (2010)). Rather, "[b]ecause the parties 'bargained for the arbitrator's construction of their agreement,' an arbitral decision '*even arguably* construing or applying the contract' must stand, regardless of a court's view of its (de)merits." *Id.* (emphasis added) (quoting *E. Associated Coal Corp. v. Mine Workers*, 531 U.S. 57, 62 (2000)). In other words, " 'so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.' " *Id.* at 573 (quoting *Enter. Wheel*, 363 U.S. at 599). "The arbitrator's construction holds, however good, bad, or ugly." *Id.* In this case, the arbitrator's award arguably construed the contract. Therefore, regardless of our view on the merits of that construction, we must conclude that the award does not fail the essence test.

C.

Hennepin Healthcare also argues that the fact stipulations that the parties submitted to the arbitrator preclude the award. Specifically, Hennepin Healthcare points to the parties' stipulation that agency staff are not Hennepin Healthcare employees and are not subject to the terms of the collective bargaining agreement. Hennepin Healthcare contends that the arbitrator impermissibly ignored the factual distinction between agency staff and union employees to which the parties had stipulated and that he made findings expressly contrary to the stipulation.

To support its argument, Hennepin Healthcare points to our statement in *State Auditor* that a reviewing court's role includes " 'determin[ing] whether specific language in the . . . submission precludes' " the arbitration award. 504 N.W.2d at 755 (quoting *City of Bloomington*, 290 N.W.2d at 602). *City of Bloomington*, the 1980 case quoted in *State Auditor*, did not involve the essence test, but the issue in that case also centered upon whether an arbitrator exceeded his power. 290 N.W.2d at 600. After arbitration of the underlying grievance, the arbitrator had issued an award (1) finding that the employer did not have just cause to discharge an employee and (2) granting the employee backpay. *Id.* The district court vacated the award based on its conclusion that the only issue submitted to the arbitrator was whether there was just cause to discharge—and this singular issue did not include fashioning a remedy. *Id.* We reversed, stating that "the power to fashion a remedy is a necessary part of the arbitrator's jurisdiction unless withdrawn from him by specific contractual language between the parties or by *a written submission of issues* which precludes the fashioning of a remedy." *Id.* at 603 (emphasis added).

Thus, determining the limits set on an arbitrator's award by the parties' "submission" is an issue of determining the scope of issues submitted for arbitration—not an issue involving the content of the parties' fact stipulations. Hennepin Healthcare and AFSCME each submitted an issue for the arbitrator to resolve, but the issues submitted addressed substantially the same question: whether Hennepin Healthcare violated the collective bargaining agreement by subcontracting for services for more than 6 months.[4]

[4] Hennepin Healthcare submitted the following issue: "Is the Employer's authority to contract for services under Article 42 of the collective bargaining agreement . . . limited in

The arbitrator directly answered this question by concluding that, under the collective bargaining agreement, Hennepin Healthcare could not use contracted workers for more than 6 months without obtaining the Union's consent. Thus, the specific language of the issue submitted for arbitration does not preclude the award.

In sum, we conclude that Hennepin Healthcare has failed to meet its burden to demonstrate that the arbitrator *clearly exceeded* the powers granted to him in the collective bargaining agreement because the arbitrator's award did not draw its essence from the agreement. *See* Minn. Stat. § 572B.23(a)(4). Because Hennepin Healthcare failed to meet that burden, we cannot conclude that the arbitration award should be vacated. We may not have interpreted the collective bargaining agreement as the arbitrator did here. The dissent certainly would not, and there is room for reasonable disagreement on the merits of that question. However, Hennepin Healthcare's "decision to demand arbitration necessarily limited the availability of the protections and advantages of the judicial system," including anything other than "very limited review of the final award." *Seagate Tech.*, 854 N.W.2d at 765. The result of this dispute today may well have been different if our review were not so limited. But that is what Hennepin Healthcare bargained for when it agreed to arbitrate, and we hold Hennepin Healthcare to that decision.

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duration to six months?" AFSCME submitted the following questions: "Did the employer violate the [collective bargaining agreement] when it filled bargaining unit positions with contractors for longer than six months? If so, what is the remedy?"

II.

The parties also dispute whether the arbitrator's award improperly infringes upon Hennepin Healthcare's right to make inherent managerial policy decisions. Under the Public Employment Labor Relations Act, a public employer like Hennepin Healthcare "is not required to meet and negotiate on matters of inherent managerial policy." Minn. Stat. § 179A.07, subd. 1 (2022).

In its brief to the court of appeals, Hennepin Healthcare asserted that its decision to subcontract is a matter of inherent managerial policy. Accordingly, Hennepin Healthcare argued, the arbitrator's award, which arguably limited its ability to subcontract for services, improperly infringed upon this inherent managerial policy decision. The court of appeals did not reach this issue because it determined that its "holding that the arbitrator exceeded his power eliminate[d] the need to address" it. *Hennepin Healthcare Sys.*, 974 N.W.2d at 593–94.

Because the court of appeals did not reach this issue, we too do not address the merits of the parties' arguments regarding Hennepin Healthcare's inherent managerial rights.[5] *See King's Cove Marina, LLC v. Lambert Com. Constr. LLC*, 958 N.W.2d 310,

[5] Moreover, we recognize that the issue of inherent managerial policy decisions is not properly before us because we did not grant review of the issue. We granted AFSCME's petition for review of the following issue: "Did the Court of Appeals err in reversing the Trial Court's order which denied Respondent's Motion to Vacate and instead ordered confirmation of the at issue arbitration award?" In its response to AFSCME's petition for review, Hennepin Healthcare did not raise the inherent managerial policy issue except to note that the court of appeals did not reach it. An issue is not properly before this court when a party presents it for the first time in its brief, and we generally do not address issues that were not raised in a party's petition for review. *Curtis v. Curtis*, 887 N.W.2d 249, 251

324 n.8 (Minn. 2021). Instead, we remand the case to the court of appeals, which may consider the merits of the issue.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand the case to the court of appeals.

Reversed and remanded.

CHUTICH, J., took no part in the decision of this case.

n.1 (Minn. 2016). Accordingly, we conclude that the issue of Hennepin Healthcare's inherent managerial rights is not properly before us on this appeal.

D I S S E N T

ANDERSON, Justice (dissenting).

This dispute arises out of two collective bargaining agreements between Hennepin Healthcare System, Inc. (Hennepin Healthcare) and American Federation of State, County, and Municipal Employees, Council 5 (AFSCME). AFSCME filed a grievance that was heard before an arbitrator. The arbitrator ruled in favor of AFSCME, concluding that Hennepin Healthcare violated the agreements because Hennepin Healthcare used subcontracted staff for longer than 6 months. The district court confirmed the arbitration award, but the court of appeals reversed and remanded to the district court to vacate the award.

Because the arbitrator exceeded his authority in deciding in favor of AFSCME, I would affirm the decision of the court of appeals.

We are required to vacate an award when an arbitrator exceeds the authority granted to the arbitrator by the agreement. Minn. Stat. § 572B.23(a)(4) (2022). We determine the "scope of the arbitrator's authority de novo," and this determination "is a matter of contract interpretation to be determined from a reading of the parties' arbitration agreement." *County of Hennepin v. Law Enf't Lab. Servs., Inc., Loc. No. 19*, 527 N.W.2d 821, 824 (Minn. 1995). We will set aside an arbitration award "only when the objecting party establishes that the arbitrators have clearly exceeded the powers granted to them in the arbitration agreement." *Id.* "Every reasonable presumption must be exercised in favor of the finality and validity of the arbitration award, and courts will not overturn an award merely because they disagree with the arbitrator's decision on the merits." *State Auditor*

v. Minn. Ass'n of Pro. Emps., 504 N.W.2d 751, 754–55 (Minn. 1993) (citations omitted). When reviewing an arbitration award, we apply the "essence" test, which allows the arbitrator to consider other indicia of party intent to construe the contract. *See Ramsey County v. AFSCME, Council 91, Loc. 8*, 309 N.W.2d 785, 790 (Minn. 1981).

We begin with the arbitrator's scope of authority, which is dictated by the agreement of the parties. *See Law Enf't Lab. Servs.*, 527 N.W.2d at 824. There are two collective bargaining agreements at issue, but we refer to the agreements collectively because the disputed provisions are identical. Here, the parties' agreement limited the scope of the arbitrator's powers in Article 7, section 4:

> The arbitrator shall not have the right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this AGREEMENT. The arbitrator shall consider and decide only the specific issue(s) submitted, in writing, by the EMPLOYER and the UNION, and shall have no authority to make a decision on any other issue(s) not so submitted.
>
> The arbitrator shall be without power to make decisions contrary to or inconsistent with or modifying or varying in any way the application of laws, rules or regulations having the force and effect of law. The decision shall be based solely upon the arbitrator's interpretation or application of the express terms of this AGREEMENT and on the facts of the grievance presented.

We turn next to the relevant specific limitations on the parties as detailed in the agreement in Articles 3 and 42. Article 3 contains a list of definitions for terms used in the agreement. The relevant term for this dispute is "temporary employee," which is defined as "[a]n individual designated by the EMPLOYER as temporary and whose employment is not to exceed six (6) months duration in temporary status in a calendar year." Article 42 clearly and unequivocally reserves to the employer certain contracting rights as follows:

"Nothing in this AGREEMENT shall prohibit or restrict the right of the EMPLOYER from contracting with vendors or others for materials or services."

These provisions have been in the parties' collective bargaining agreement since at least 2004. In October 2015, as permitted by Article 42, Hennepin Healthcare entered into 3-year service contracts with staffing agencies to provide temporary and contract-to-hire staff. The contracts were renewed in 2018. Although the service contracts with these agencies cover some services performed by AFSCME's two bargaining units, the contracts also cover services outside of the bargaining units, including nursing, medical assistant, physical assistant, pharmacy technician, accountant, and others. These service contracts establish an independent-contractor relationship between Hennepin Healthcare and each staffing agency. Hennepin Healthcare pays the staffing agency, which then selects and directly pays the staff. The contracts require the agencies to select the means, method, and manner of performing the services and to find and retain qualified staff to perform the services.

Crucially, according to the service contracts and as stipulated to by the parties, the subcontracted staff "have no contractual relationship with [Hennepin Healthcare] and *will not be considered employees* of [Hennepin Healthcare]." (Emphasis added.) The contracted staff is not entitled to any compensation or benefits from Hennepin Healthcare because the staff is employed by the staffing agencies, not Hennepin Healthcare. The subcontractors are not covered by the collective bargaining agreement. These facts are not disputed. At the arbitration stage, AFSCME conceded that "nothing in either [agreement] limits [Hennepin Healthcare's] ability to contract with any outside vendor" or its ability to

hire "whomever they choose," and Hennepin Healthcare "has near unlimited discretion" to contract out for services. AFSCME further conceded that "contractors and temporary employees are two different things."

The arbitrator incorporated the parties' stipulations, acknowledging that the subcontractors "have no contractual relationship with [Hennepin Healthcare]" and they "are not [Hennepin Healthcare] employees, they are not included within either bargaining unit represented by AFSCME Local 977, nor are they subject to the terms and conditions of employment set forth in the [collective bargaining agreement]." After acknowledging these distinctions and limitations, the arbitrator imposed a temporal restriction on Hennepin Healthcare's right to subcontract. Relying upon Article 3 of the agreement, he determined that Hennepin Healthcare violated the agreement by continuing a subcontract for more than 6 months. He disregarded the distinction between the subcontractors and employees by labeling them collectively as workers. He then concluded that "[c]ontinuing a temporary *worker* supplied by a staffing agency performing bargaining unit work for over six (6) months in a calendar year is a violation of Article 3, W, of the [collective bargaining agreement]." (Emphasis added.) "Worker" is nowhere to be found in Article 3. Article 3 defines "temporary *employee*," something that the subcontractors are clearly not. (Emphasis added.)

Hennepin Healthcare's right to contract with other vendors for services was governed by Article 42. And Article 42 explicitly states that "[n]othing in this AGREEMENT shall prohibit or restrict the right of the EMPLOYER from contracting with vendors or others for materials or services." Article 42 of the agreement is clear and

unambiguous—nothing means *nothing*. The only condition on Hennepin Healthcare's unrestricted right is clearly stated in section 2 of Article 42:

> In the event the EMPLOYER finds it necessary to subcontract out work now being performed by existing employees that will result in the layoff of employees, the UNION will be notified no less than ninety (90) calendar days in advance of the date the employees will be laid off as a result of the decision to subcontract. During the ninety (90) day period, the EMPLOYER will meet with the UNION and discuss ways and means of minimizing any impact subcontracting may have on employees. In the event that existing employees are laid off as a result of the EMPLOYER engaging in a contract for service, the EMPLOYER agrees to make reasonable effort to relocate such employees in other positions for which they are qualified.

Not only does AFSCME concede the difference between temporary employees and subcontractors, the parties recognized *in writing* that the employer's exercise of this subcontracting right might affect employees. In the event subcontracting resulted in the layoff of employees, the agreement required the parties to meet and confer and also imposed on the employer a "reasonable effort" relocation requirement.[1] Clearly the parties were aware of potential issues regarding subcontracting and documented their agreed-upon negotiations in Article 42.

The arbitrator did not interpret and apply the definition of "temporary employee" to Article 42 but rather added a restriction on Hennepin Healthcare's right to subcontract. The arbitrator proposed a new term and effectively rewrote Articles 3 and 42 to accomplish a desired outcome. The arbitrator identified no past practice or bargaining history supporting the decision to override the express terms of the agreement but instead imposed

[1] The parties stipulated that no Hennepin Healthcare employees covered by the collective bargaining agreements were laid off or displaced because of the subcontracting.

"his own brand of industrial justice." *United Steelworkers v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). Whatever else the arbitrator's exercise in creative writing might be, it clearly is not supported by the "essence of the contract" as required by our jurisprudence. This is rewriting the contract to fit a particular outcome.

The parties specifically agreed, in Article 7, section 4, in clear and unambiguous language, "The arbitrator shall not have the right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this AGREEMENT." The same section further provided that the arbitrator's decision was to be based "*solely* upon the arbitrator's interpretation or application of the *express terms*." (Emphasis added.) By redefining temporary employee to include a new term, "workers," and by rewriting Article 42 to include this new term in order to impose a new temporal restriction on the undisputed right of the employer to contract for services, the arbitrator did not base his decision "solely upon" the "express terms" of the agreement.

The arbitrator claimed to be reconciling a conflict between Articles 3 and 42. But as the court of appeals correctly noted, there is "no literal, substantive conflict between Articles 3 and 42; each Article regards different rights as to different classes of workers, and each stands independent of the other." *Hennepin Healthcare Sys., Inc. v. AFSCME Minn. Council 5, Union*, 974 N.W.2d 590, 593 (Minn. App. 2022). Article 3 is clearly and unambiguously cabined to temporary employees. Article 42 clearly and unambiguously allows for the employer's unrestricted right to contract with vendors for services. These two provisions are distinct and separate. The arbitrator's actions resulted in nullifying a significant provision of the collective bargaining agreement. By

invalidating the employer's unrestricted right to subcontract, the arbitrator exceeded the authority granted to him by the agreement of the parties. The arbitrator's action requires us to vacate the award as "we cannot convey broader powers than the words of the arbitration agreement provide under their ordinary meaning." *Seagate Tech., LLC v. W. Digit. Corp.*, 854 N.W.2d 750, 761 (Minn. 2014); Minn. Stat. § 572B.23(a)(4). An arbitrator "cannot expand his authority beyond what could reasonably be interpreted from the arbitration agreement." *Seagate Tech.*, 854 N.W.2d at 762.

The arbitrator's decision here is even more outrageous given the stipulated facts that the arbitrator acknowledges in his award. The arbitrator concedes that the service contracts with the contracted staff "establish [an] independent-contractor relationship between [Hennepin Healthcare] and each staffing agency." The arbitrator agrees that the agencies paid and controlled the staff. The arbitrator acknowledged "[t]he staff selected by the staffing agencies have no contractual relationship with [Hennepin Healthcare] and will not be considered employees of [Hennepin Healthcare]," and that "[b]ecause the agency staff are not [Hennepin Healthcare] employees, they are not included within either bargaining unit represented by AFSCME Local 977, nor are they subject to the terms and conditions of employment set forth in the [collective bargaining agreement]." (Internal quotation marks omitted.)

One might ask what's left to resolve after considering the language of the agreement and the stipulated facts acknowledged by the arbitrator. Yet somehow, the arbitrator then concluded these individuals are "workers" and governed by an agreement that, by its own terms, excludes them. *Cf. Cournoyer v. Am. Television & Radio Co.*, 83 N.W.2d 409, 412

(Minn. 1957) ("Mistake which justifies the setting aside of an arbitration award refers to a situation where the arbitrators have not correctly applied their own theory, rule, or formula which they intended to apply, so that a mistake was made which brings about a result not in accord with their own reasoning and judgment.").

Put more simply and bluntly, this is a misuse of the arbitration process that we should not countenance.

I turn next to our precedent, which does not support the result reached by the court.[2] AFSCME and the court rely on an earlier decision of our court that upheld an arbitration agreement that conflicted with the express language of the agreement. *See Ramsey County*, 309 N.W.2d at 789. Setting aside whether *Ramsey County* was correctly decided, *Ramsey*

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[2] We adopted the federal "essence" test to review arbitration awards. *Ramsey County*, 309 N.W.2d at 790 (relying upon *Enter. Wheel*, 363 U.S. at 597). In doing so, we recognized "the elusive nature" of the test. *Id.* Ultimately, we settled on the interpretation of the test as articulated by the Seventh Circuit:

> An arbitrator's award does draw its essence from the collective bargaining agreement so long as the interpretation can in some rational manner be derived from the agreement, viewed in the light of its language, its context, and any other indicia of the parties' intention; only where there is a manifest disregard of the agreement, totally unsupported by principles of contract construction and the law of the shop, may a reviewing court disturb the award.

Amoco Oil Co. v. Oil, Chemical & Atomic Workers Int'l Union, Loc. 7-1, Inc., 548 F.2d 1288, 1294 (7th Cir. 1977) (citation omitted) (internal quotation marks omitted); *see Ramsey County*, 309 N.W.2d at 792 (applying the essence test). Based on this standard, "an arbitrator may look to sources other than those which a court would consider, such as the parties' relationship, practices of the industry, history of the agreement and other factors" to construe the bargaining agreement. *Metro. Airports Comm'n v. Metro. Airports Police Fed'n*, 443 N.W.2d 519, 524 (Minn. 1989) (citing *Ramsey County*, 309 N.W.2d at 791). None of those sources support the arbitrator's award here.

County involved far different circumstances than are presented here. In *Ramsey County*, the arbitrator relied upon the evidence of past practice in addition to construing the contract to dictate the award. *Id.* at 793. *Ramsey County* does not stand for the proposition that an arbitrator may contradict and ignore clear and unambiguous provisions of a bargaining agreement. As the court in *Ramsey County* acknowledged:

> The sole issue before [the] court on appeal [was]: did the arbitrator exceed his powers within the meaning of Minn. Stat. § 572.19, subd. 1(3) (1980) in issuing an award based upon the past practice of the parties where the practice conflicts with the clear and unambiguous language of the parties' written agreement?

Id. at 789. *Ramsey County* stands for the narrow proposition that an arbitrator's award may draw its essence from a collective bargaining agreement when the arbitrator relied on evidence of the parties' past practices among other considerations when interpreting the agreement. *Id.* at 792–93. The court determined the arbitrator "did not change the contractual language solely on the basis of his own personal, extracontractual judgment." *Id.* at 793. Instead, the arbitrator "looked to the mutual intent of the parties as evidenced by their bargaining history and past practice." *Id.* Here, the arbitrator did not find any other evidence indicating the intent of the parties was that the subcontracting right of Hennepin Healthcare was restricted by the "temporary employee" definition. Thus, *Ramsey County* does not support upholding the arbitrator's decision in this case.[3]

[3] The court also claims that upholding the arbitrator's award is supported by our decisions in *Metropolitan Airports Commission*, 443 N.W.2d 519, and *State Auditor*, 504 N.W.2d 751. I disagree. These decisions did not involve an arbitrator ignoring clear and unambiguous provisions, and so the decisions are irrelevant to this dispute. Unlike the dispute at hand, *Metropolitan Airports Commission* and *State Auditor* involved situations in which the arbitrator considered a variety of factors to give meaning to undefined terms.

Other jurisdictions, using the essence test, have recognized the limits of arbitrators exceeding their authority when arbitrators disregard clear and unambiguous language in the contract. *See, e.g.*, *Sw. Airlines Co. v. Loc. 555, Transport Workers Union of Am. AFL-CIO*, 912 F.3d 838, 840 (5th Cir. 2019) (holding an arbitrator exceeded his authority by disregarding the unambiguous terms of the parties' collective bargaining agreement); *Phillips 66 Co. v. Int'l Union of Operating Engs. Loc. 351*, 494 F. Supp. 3d 395, 403 (N.D. Tex. 2020) (vacating an arbitration award because the arbitrator "added an extra-textual limitation" on the employer); *State ex rel. Greitens v. Am. Tobacco Co.*, 509 S.W.3d 726, 740 (Mo. 2017) (en banc) (concluding an arbitration panel exceeded its powers by issuing an award that contradicted the clear and unambiguous provisions of a settlement agreement); *Nappa Constr. Mgmt., LLC v. Flynn*, 152 A.3d 1128, 1134 (R.I. 2017) (vacating an arbitration award because the arbitrator "interpreted the contract in a manner that fail[ed] to draw its essence from the parties' agreement and manifestly disregard[ed] a provision of the agreement"); *Commonwealth ex rel. Kane v. Philip Morris USA, Inc.*, 114 A.3d 37, 65 (Pa. Commw. Ct. 2015) (concluding an arbitration panel's award "did not draw its essence from the [agreement] because the panel departed from the [agreement]'s clear and unambiguous language").

See Metro. Airports Comm'n, 443 N.W.2d at 524 (reinstating the arbitrator's award that undertook a fact-intensive inquiry to determine whether dispatch work was law enforcement work normally performed by employees in the bargaining unit); *State Auditor*, 504 N.W.2d at 755 (recognizing the subject agreement failed to define what constitutes "just cause," and that just cause was an ambiguous term).

The Ninth Circuit has noted that "[w]e have become an arbitration nation." *Aspic Eng'g & Constr. Co. v. ECC Centcom Constructors LLC*, 913 F.3d 1162, 1169 (9th Cir. 2019). And we have recognized that "[t]he general policy of Minnesota is to encourage arbitration as a speedy, informal, and relatively inexpensive procedure for resolving controversies." *Lickteig v. Alderson, Ondov, Leonard & Sween, P.A.*, 556 N.W.2d 557, 562 (Minn. 1996). But despite the buildup of precedent that repeats the mantra that arbitration awards are entitled to a high standard of review, that precedent does not require us to blindly approve every arbitration award.

The Minnesota Legislature provided a check on the authority of arbitrators by requiring courts to vacate an arbitration award if "an arbitrator exceeded the arbitrator's powers." Minn. Stat. § 572B.23(a)(4). The arbitrator here exceeded the powers granted to him by the negotiated agreement between the parties and vacation of the award necessarily follows.

For the foregoing reasons, I would affirm the decision of the court of appeals vacating the arbitration award.

GILDEA, Chief Justice (dissenting).

I join the dissent of Justice Anderson.