

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 19, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1109

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE ARBITRATION OF A DISPUTE BETWEEN IOWA
COUNTY AND IOWA COUNTY HIGHWAY DEPARTMENT
EMPLOYEES, LOCAL 1266, AFSCME, AFL-CIO:**

IOWA COUNTY,

APPELLANT,

v.

**IOWA COUNTY HIGHWAY DEPARTMENT EMPLOYEES, LOCAL
1266, AFSCME, AFL-CIO,**

RESPONDENT.

APPEAL from an order of the circuit court for Iowa County:
WILLIAM D. DYKE, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 PER CURIAM. Iowa County appeals from the trial court's order confirming an award made by an arbitrator. The sole issue is whether the arbitrator's award violates public policy. We conclude that it does not and affirm.

¶2 The facts are not in dispute. Brian Steffes worked for the Iowa County Highway Department, regularly operating equipment that required him to possess a commercial driver's license (CDL). Steffes inadvertently allowed the license to expire on June 5, 1998. He did not have a CDL for eighty-four days, during which time he operated equipment that required a CDL. By Steffes' account, he first realized that his license was expired on Thursday evening, August 20, 1998. The County learned that he was without a license early the following week and summarily discharged him on Tuesday, August 25, 1998. The day he was discharged, Steffes renewed his CDL at the Division of Motor Vehicles by paying the appropriate fee. There was no other impediment to him renewing the license.

¶3 Steffes grieved the County's decision to terminate him. The County and Steffes' union, Iowa County Highway Department Employees, Local 1266, submitted the dispute for arbitration pursuant to a collective bargaining agreement. The arbitrator concluded that the County's decision to summarily terminate Steffes was not warranted under the agreement. The arbitrator explained that Steffes' conduct, while extremely serious, was not markedly worse than other work performance rule violations that result in progressive discipline under the contract. The arbitrator noted that only two specific rule violations, theft and sexual abuse, lead to automatic termination and decided that Steffes' misconduct did not rise to the level of those offenses. The arbitrator concluded that Steffes should have been placed on layoff status until he renewed his CDL pursuant to paragraph fourteen of the collective bargaining agreement, which provides that "[i]f an employee is

required to have a CDL to perform his or her job and loses that CDL for any reason, then the employee shall be immediately placed on layoff status.”

¶4 It is well established that our review of an arbitrator’s award is highly limited. *Joint Sch. Dist. No. 10 v. Jefferson Educ. Ass’n*, 78 Wis. 2d 94, 117, 253 N.W.2d 536 (1977). “An arbitrator’s award is presumptively valid, and it will be disturbed only when its invalidity is demonstrated by clear and convincing evidence.” *Nicolet High Sch. Dist. v. Nicolet Educ. Ass’n*, 118 Wis. 2d 707, 712, 348 N.W.2d 175 (1984). We will overturn an award only “if there is a perverse misconstruction or if there is positive misconduct plainly established, or if there is a manifest disregard of the law, or if the award itself is illegal or violates strong public policy.” *Joint Sch. Dist. No. 10*, 78 Wis. 2d at 117-18. Our limited review is grounded in a policy of “[fostering] agreements to resolve municipal labor disputes by final and binding arbitration.” *City of Oshkosh v. Oshkosh Pub. Library Clerical & Maint. Employees Union Local 796-A*, 99 Wis. 2d 95, 102, 299 N.W.2d 210 (1980).

¶5 The County argues that the arbitrator’s award violates a “strong public policy against unlicensed operation of commercial motor vehicles” that is intended to keep “dangerous” and “unqualified” drivers off the road.¹ We disagree. The arbitrator acknowledged the seriousness of Steffes’ conduct and the importance of the licensing requirements, but concluded that less harsh discipline was consistent with the collective bargaining agreement. The decision does not allow an unsafe, unqualified employee to resume driving. Steffes was placed on

¹ We review the arbitrator’s decision, not the trial court’s decision. *Cf. La Crosse Prof’l Police Ass’n v. City of La Crosse*, 212 Wis. 2d 90, 98, 568 N.W.2d 20 (Ct. App. 1997).

layoff status, retroactively, pending renewal of his CDL.² We therefore conclude that the award does not violate the public policy promoting safe operation of commercial motor vehicles.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

² Since Steffes has renewed the CDL, he has restoration rights as provided in the contract.

