NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2836-14T4

MONICA McRAE and AMALGAMATED
TRANSIT UNION, LOCAL 822,

Plaintiffs-Appellants,

v.

NEW JERSEY TRANSIT BUS OPERATIONS,
INC.,

Defendant-Respondent.

Submitted June 28, 2016 – Decided July 8, 2016

Before Judges Fisher and Fasciale.

On appeal from the Superior Court of New Jersey, Chancery Division, Passaic County, Docket No. C-70-14.

Law Offices of Peter W. Till, attorneys for appellants (Peter W. Till, on the brief).

Christopher S. Porrino, Acting Attorney General, attorney for respondent (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Ramiro A. Perez, Deputy Attorney General, on the brief).

PER CURIAM

Monica McRae and Amalgamated Transit Union, Local 822 (the union) appeal an order confirming an arbitration award, which resulted in her termination as a New Jersey Transit employee. They argue the trial judge mistakenly failed to determine, among

other things, that the award was the product of undue means and evident partiality. We disagree and affirm.

Monica McRae was driving a New Jersey Transit bus in the course of her duties when, on July 24, 2012, she drove over a pedestrian in a cross-walk and dragged the pedestrian into the middle of the intersection before stopping, causing severe injuries, including the loss of one leg below the knee.

New Jersey Transit and the union, of which McRae is a member, were parties to a collective negotiations agreement,[1] which acknowledges New Jersey Transit's managerial rights, including the right to "discharge [employees] for proper cause." The agreement also called for the arbitration of unresolved grievances before a tripartite arbitration panel. At an initial hearing in November 2012, the accident was graded as "severe" and "preventable" and having been caused by "gross negligence." Pursuant to a grading system, McRae was assessed sixteen points, generating her termination.

After further proceedings, McRae's grievance remained unresolved and was arbitrated before a panel consisting of a New

[1] This state's former arbitration act, N.J.S.A. 2A:24-1 to -11, was repealed in 2003, and replaced by N.J.S.A. 2A:23B-1 to -32, which does not apply to arbitrations conducted pursuant to a collective bargaining agreement executed before January 1, 2005, as here. N.J.S.A. 2A:23B-3. Accordingly, the trial judge and the parties properly focused on the application of the old arbitration act, as will we.

Jersey Transit arbitrator, a union arbitrator, and a jointly-selected neutral arbitrator. The panel was asked to determine whether there was "proper cause for the discharge" of McRae and, if not, to ascertain a proper remedy. By split decision, the panel concluded there was proper cause for discharge and the two-member majority delivered their decision on April 10, 2014; the third member's dissenting opinion was delivered on June 7, 2014.

An action seeking to confirm, vacate or modify an arbitration award must be filed "within 3 months" of its delivery. See N.J.S.A. 2A:24-7. On August 4, 2014 – more than three months from delivery of the majority's decision but less than three months from the dissent's delivery – McRae filed a complaint in the Chancery Division seeking an order vacating the arbitration award.

The chancery judge initially considered the timeliness of McRae's suit.[2] Although we question whether a two-to-one arbitration decision has been fully delivered within the meaning of N.J.S.A. 2A:24-7, when one member's opinion has yet to be

[2] The union was not initially a party to the action. The judge concluded McRae did not alone have standing to attack the award; that perceived problem, however, was resolved when the union was permitted to intervene. We need not further consider that issue, which also has not been briefed. We additionally note that both McRae and the union are parties to this appeal.

delivered, we need not examine that issue because, like the chancery judge, we agree there is no statutory basis for the relief sought by McRae and the union.

In appealing the judge's ruling on the merits, McRae and the union contend the majority's arbitration decision "openly and notoriously violated all four subsections" of N.J.S.A. 2A:24-8. Specifically, they argue: the award was "procured by . . . undue means," N.J.S.A. 2A:24-8(a); there was "evident partiality," N.J.S.A. 2A:24-8(b); the two-member majority failed or refused to "rely on pertinent and material evidence,"[3] citing N.J.S.A. 2A:24-8(c); and the author of the majority decision "exceeded and/or [sic] so imperfectly executed her powers that [the award] was manifestly unjust," citing N.J.S.A. 2A:24-8(d).[4] We find insufficient merit in McRae and the union's arguments to warrant further discussion in a written opinion, R. 2:11-

[3] On this specific point, we have quoted McRae and the union's words, not the statute's. N.J.S.A. 2A:24-8(c) describes misconduct as the arbitrators' "refus[al] to hear evidence, pertinent and material to the controversy, or of any other misbehaviors prejudicial to the rights of any party."

[4] Again, McRae and the union's argument does not precisely track the language of the statute and suggests a meaning not necessarily the same as the Legislature's clear expression. N.J.S.A. 2A:24-8(d) permits a vacation of an award "[w]here the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made."

3(e)(1)(E), and, as to these issues,[5] we affirm substantially for the reasons set forth in the chancery judge's written decision. We add only the following comments.

Stripped of its purple prose, McRae and the union's arguments on appeal exhibit little more than a disagreement with the findings and conclusions drawn by the two-member majority of the arbitration panel. The language picked from N.J.S.A. 2A:24-8 in support of their arguments does not support judicial intervention into an arbitrated matter. For example, McRae and the union argue the arbitrators' alleged errors demonstrate the majority decision was produced through "undue means." That phrase, however, has a narrower meaning.

The Legislature, for example, has not imbued our courts with the authority to correct an arbitrator's legal error. In Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349, 358 (1994), the Court discarded a standard, which permitted judicial intervention when the arbitrator makes a "clearly mistaken" decision of law that "appear[s] on the face of the award," that had been approved by a majority in Perini Corp. v. Greate Bay Hotel & Casino, Inc., 129 N.J. 479, 494 (1992), in favor of Chief Justice Wilentz's separate Perini opinion, id. at

[5] We again emphasize that we do not reach the timeliness and standing issues discussed in the earlier part of the judge's written decision.

547-49 (concurring opinion), which emphasized that arbitration awards may be vacated only for fraud, corruption, or undue means.

Although not defined in the statute, "undue means" clearly carries the same connotation as its neighbors – "fraud" and "corruption." See Shelton v. Restaurant.com, Inc., 214 N.J. 419, 440 (2013); Germann v. Matriss, 55 N.J. 193, 220 (1970). Consequently, McRae and the union's arguments that the two-member majority misunderstood the difference between simple and gross negligence – and that this error constitutes "undue means" thereby empowering the court to intervene – must be rejected.

As noted earlier, we also find insufficient merit in the other arguments to warrant further discussion in this opinion, since McRae and the union invoke the other provisions of N.J.S.A. 2A:24-8 to make essentially the same argument. For example, they argue the two-member majority was partial because, in the words of McRae and the union, the two-member majority "again and again, interpreted each and every fact and law in favor of [New Jersey Transit], while simultaneously ignoring or refusing to take into account cogent legal arguments and significant factual determinants." It is as if McRae and the union were saying, "the arbitrators that ruled against us must

have been biased because they ruled against us." This is not a recognized ground for setting aside an arbitration award.

In the final analysis, the legislation in question "extends judicial support to the arbitration process subject only to limited review." Barcon Assocs., Inc. v. Tri-County Asphalt Corp., 86 N.J. 179, 187 (1981). Accordingly, arbitration awards are presumed valid, Del Piano v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 372 N.J. Super. 503, 510 (App. Div. 2004), and "the scope of review of an arbitration award is narrow[,]" otherwise "the purpose of the arbitration contract, which is to provide an effective, expedient, and fair resolution of disputes, would be severely undermined," Fawzy v. Fawzy, 199 N.J. 456, 470 (2009).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.