

STATE OF MICHIGAN
COURT OF APPEALS

SHIAWASSEE COUNTY COMMUNITY
MENTAL HEALTH SERVICES BOARD,

UNPUBLISHED
July 28, 1998

Plaintiff-Counter-Defendant-Appellant,

v

No. 202549
Shiawassee Circuit Court
LC No. 96-006588 CZ

LOCAL 1059, MICHIGAN COUNCIL 25,
AMERICAN FEDERATION OF STATE COUNTY
AND MUNICIPAL EMPLOYEES (AFSCME),
AFL-CIO,

Defendant-Counter-Plaintiff-Appellee.

Before: Jansen, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order confirming and enforcing a labor arbitration award and granting defendant's motion for summary disposition. We affirm.

Plaintiff is a public entity that provides mental health services in Shiawassee County. Defendant is a labor organization that represents plaintiff's bargaining unit employees. Defendant and plaintiff are parties to a collective bargaining agreement ("agreement") that contains a grievance procedure that culminated in final and binding arbitration.

Judy Butcher, an 18-year employee of plaintiff and a member of defendant, did not timely finish an assigned project. At her supervisor's request, she went to his office to discuss her performance. It was undisputed that as she stood at her supervisor's office door, she loudly and angrily stated that he was "driving her crazy," that she could no longer take a "beating," and that "you will hear from my lawyer." Butcher's supervisor and another employee, who occupied the adjoining office, testified that Butcher's outburst included the declaration that "I quit." Butcher denied saying she quit. Rather, after the confrontation, she merely left to go to lunch and call her attorney. Before she departed, however, her supervisor twice requested her resignation in writing. In response to both requests, Butcher told him to "drop dead." Butcher left the building without taking her personal belongings.

On the following day, plaintiff sent a letter to Butcher that stated it was formally accepting Butcher's verbal voluntary resignation. After Butcher received the letter, defendant filed a grievance on her behalf claiming that plaintiff discharged Butcher without just cause or notice and without adherence to the warning procedures contained in the collective bargaining agreement.

The arbitrator ruled that because this case was a discharge claim pursuant to Article 9 of the agreement, it was arbitrable. In addition, the arbitrator found that although Butcher stated that she "quit," plaintiff could not justifiably, reasonably, and immediately reduce her to a former employee and demand that she confirm her new resignation in writing. The arbitrator considered Butcher's length of employment with plaintiff, the inevitable sacrifice of significant and vital employment benefits ensuing from resignation, the employment induced stress she was experiencing, and her personal and financial difficulties of which plaintiff was aware in determining how reasonably plaintiff acted. The arbitrator concluded that plaintiff could only reasonably treat Butcher's actions as an emotional outburst to be dealt with reflectively and objectively. By their own actions, however, plaintiff's management officials appear to have seized an opportunity to rid themselves of an employee because of a momentary confrontation that incurred their displeasure.

Thus, the arbitrator found that Butcher's supervisor's letter "was in substance an immediate termination" of Butcher. The arbitrator then quoted from Article 9 of the agreement, governing notification of discipline or discharge, and found that "the evidence falls far short of showing that [Butcher]'s momentary outburst was within 'instances when the seriousness of the employee's action or failure to act requires immediate suspension or discharge.'" Consequently, the arbitrator awarded Butcher's reinstatement with back pay and other benefits retroactively restored, except for a 30-day period immediately following Butcher's outburst.

Plaintiff filed a complaint seeking to vacate the arbitration award; defendant counter-sued for enforcement of the award. Defendant then filed a motion for summary disposition under MCR 2.116(C)(10), and the trial court agreed to hear it with plaintiff's petition because heard together, they would resolve the case. The trial court ordered that the arbitration award be enforced. On appeal, plaintiff argues that the arbitrator exceeded his authority by imposing on plaintiff additional requirements and limitations not provided for under the bargaining agreement. We disagree.

This Court held in *Michigan State Employees Ass'n v Dep't of Mental Health*, 178 Mich App 581, 583-584; 444 NW2d 207 (1989), quoting *Ferndale Ed Ass'n v Ferndale School Dist No 1*, 67 Mich App 637, 642-643; 242 NW2d 478 (1976), that proper judicial review of an arbitration award is as follows:

"Judicial review is limited to whether the award 'draws its essence' from the contract, whether the award was within the authority conferred upon the arbitrator by the collective bargaining agreement. Once substantive arbitrability is determined (as it was in the court below), judicial review effectively ceases. The fact that an arbitrator's interpretation of a contract is wrong is irrelevant. This position of limited review has been adopted by the Michigan Supreme Court. This Court follows the same policy."

The arbitrator's authority to resolve a dispute concerning the interpretation of a collective bargaining agreement is derived exclusively from the contractual agreement of the parties. *Gibraltar School Dist v Gibraltar MESPA-Transportation*, 443 Mich 326, 341; 505 NW2d 214 (1993). Whenever an arbitrator acts beyond the material terms of the contract from which he primarily draws his authority, a reviewing court may find that the arbitrator has exceeded his power. The role of the court is to examine whether the arbitrator has rendered an award that comports with the terms of the parties' contract. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 496; 475 NW2d 704 (1991). An arbitrator is limited to interpretation and application of the collective bargaining agreement. *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 152; 393 NW2d 811 (1986). Thus, the arbitrator may not dispense his own brand of industrial justice. *Id.*

The judicial policy favoring labor arbitration warrants a strong presumption in favor of upholding an arbitral award: "an award will be presumed to be within the scope of the arbitrator's authority absent express language to the contrary." *Port Huron Area School Dist, supra* at 152. An award is properly vacated, however, when that award is dependent upon an arbitrator's interpretation of provisions expressly withheld from arbitral jurisdiction or upon an arbitrator's disregard and contravention of provisions expressly limiting arbitral authority. *Id.* A court cannot review an arbitrator's factual findings or decision on the merits. See *Gordon Sel-Way, Inc, supra* at 496-497. The fact that an arbitrator's interpretation of the party's contract is wrong is irrelevant. *Michigan State Employees Ass'n, supra* at 584. A court can only decide whether the arbitrator's award "draws its essence" from the contract. *Gogebic Medical Care Facility v AFSCME Local 992, AFL-CIO*, 209 Mich App 693, 697; 531 NW2d 728 (1995). If an arbitrator exceeded his authority, then the case must be remanded for further arbitration proceedings. *Michigan State Employees Ass'n, supra* at 585.

In the case at bar, the only restrictions on the arbitrator's authority were that he could not alter, add to, or subtract from the terms of the contract and that the issue had to fall under Articles 8 or 9.¹ Plaintiff argues that when Butcher told her supervisor, "I quit," and began receiving pension checks, she voluntarily quit pursuant to Section 7.8 of the agreement, which provides: "An employee's seniority, by classification, and his or her employment relationship with the employer shall automatically terminate for any of the following reasons: (a) If he or she quits, retires, or receives a pension, including a disability pension." Defendant argues that Butcher was discharged improperly pursuant to Article 9, Section 9.0, which, in relevant part, states:

It is hereby agreed that the employer has the right to discipline, including disciplinary suspension resulting in loss of pay and time off, and to discharge employees covered by this agreement for just cause. . . .

Given the language of the parties' agreement, we find that the arbitrator had the authority to determine whether Butcher's and plaintiff's actions fell under Articles 7 or 9. In other words, the arbitrator's ability to determine whether Butcher quit or was discharged was drawn from the essence of the agreement and did not involve an interpretation of provisions withheld from the arbitrator's jurisdiction. *Port Huron Area School District, supra*. We believe that if the arbitrator found that

Butcher was discharged under Article 9, he had the power to determine whether the discharge was appropriate, and if he found it inappropriate, then he had the power to fashion a remedy. Also, if the arbitrator found that Butcher quit pursuant to Section 7.8, then the arbitrator could affirm that Butcher was not entitled to take advantage of the agreement's progressive discipline or due process provisions because those only apply to employees whom plaintiff has terminated.

The arbitrator stated in his opinion that he believed Butcher made the statement "I quit." In light of the fact that plaintiff knew of Butcher's myriad difficulties, the arbitrator found it unreasonable for plaintiff to believe that Butcher meant what she said. The arbitrator also remarked that plaintiff's desire to have Butcher immediately sign a written document stating that she quit, and Butcher's refusal to do so, was further evidence that plaintiff did not take Butcher seriously. Instead, plaintiff saw Butcher's outburst as a golden opportunity to get rid of her.

We therefore believe that the arbitrator's award draws its essence from the parties' agreement despite the fact that the arbitrator found that Butcher did indeed utter the words, "I quit." *Michigan State Employees Ass'n, supra*. The issue of whether Butcher actually quit or was discharged via the letter her supervisor drafted after the confrontation was properly arbitrable. No one disputes this. The mere fact the arbitrator found that Butcher said the words "I quit" did not require him to blindly and literally accept them or deprive him of continuing his analysis of the situation in its entire context. That is, the agreement allows the arbitrator to consider all relevant facts before determining whether a bargaining unit employee was discharged or quit. Cf. *Port Huron Area School District, supra*. Whether we agree with the arbitrator's conclusion that the circumstances surrounding Butcher's statement should have caused plaintiff to reasonably treat Butcher's actions as an emotional outburst and not as an intent to voluntarily quit is irrelevant. *Michigan State Employees Ass'n, supra* at 584. The arbitrator may consider all relevant facts in making his determination. Thus, in finding that in this particular case plaintiff had to look beyond Butcher's actual, literal words spoken in the heat of the moment and determine her intent, the arbitrator did not add additional requirements to the agreement between the parties as plaintiff argues.

Therefore, we find that the arbitrator's opinion comports with the terms of the parties' agreement and must be affirmed because the arbitrator did not exceed his authority under the agreement.

We affirm.

/s/ Kathleen Jansen
/s/ Jane E. Markey
/s/ Peter D. O'Connell

¹ Section 6.10 of the agreement, in relevant part, states:

The arbitrator shall have no power to amend, add to, alter, ignore, change, or modify any provision of this Agreement or the written rules and regulations of the Employer. . . .

Further, the arbitrator shall not be empowered to consider any question or matter outside of Article 8 or Article 9 of this Agreement. . . .

* * *

The arbitrator's decision shall be final and binding upon the Union, the Employer, and the employees in the bargaining unit covered by this Agreement, provided that the arbitrator's decision has been rendered in conformity with the jurisdiction accorded to him under this Agreement.