

STATE OF MICHIGAN  
COURT OF APPEALS

---

KENT COUNTY DEPUTY SHERIFFS'  
ASSOCIATION,

UNPUBLISHED  
June 4, 1999

Plaintiff-Appellant,

v

No. 209620  
Kent Circuit Court  
LC No. 97012379 CL

KENT COUNTY SHERIFF and KENT COUNTY,

Defendants-Appellees.

---

Before: Gage, P.J., and White and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right an order of the circuit court granting defendants' motion and denying plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff and defendants, parties to a collective bargaining agreement (CBA), arbitrated a dispute over the CBA's prescription drug co-pay for retirees. The arbitrator issued an award determining that defendant did not violate the contract when it took the position that the contract provided for a \$3.00 co-pay, and that the CBA provision referencing a \$2.00 co-pay for retirees resulted from a clerical error and oversight. Plaintiff filed an action in circuit court to vacate the arbitration award. The circuit court upheld the arbitration award, finding that the arbitrator did not exceed her authority.

An arbitrator exceeds her contractual authority where she disregards a contract provision expressly limiting arbitral authority. *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 152; 393 NW2d 811 (1986).

Although divided into separate arguments, plaintiff essentially asserts that the arbitrator exceeded her authority when she modified the parties' CBA because the CBA specifically limits an arbitrator's powers to the "application and interpretation" of the CBA "as written" and, states that an arbitrator "shall have no power to amend, alter or modify" the CBA.<sup>1</sup> Plaintiff asserts that the contract was clear and unambiguous, and required no interpretation or explanation.

Plaintiff concedes that the grievance was arbitrable, in the sense that plaintiff claimed that defendant violated the contract by applying the \$3.00 co-pay to retirees, and that contract dispute was subject to arbitration under the contract. Plaintiff argues, however, that the arbitrator exceeded her authority when she altered the written agreement rather than enforcing it according to its express terms. We disagree.

The parties requested that the arbitrator determine whether the employer violated the CBA by applying the \$3.00 co-pay to retirees. Defendants claimed that the failure to change the reference to a \$2.00 co-pay in § 12.8 of the CBA was an oversight, and that the parties never intended that the retiree co-pay be different from the employee co-pay rider described in § 12.6. Plaintiff contended that the CBA language was unambiguous and that the retiree co-pay was \$2.00, as stated in § 12.8. The arbitrator found that defendants' position requiring a \$3.00 prescription co-pay for retirees did not violate the CBA because the \$2.00 co-pay referenced in § 12.8 was the result of a clerical error and oversight. The arbitrator corrected the inconsistent language in § 12.8.

"The question for the court is not whether one interpretation or another is correct, but whether the parties have agreed that an arbitrator shall decide which of the competing interpretations is correct." *Kaleva-Norman-Dickson School Dist No 6 v Kaleva-Norman-Dickson School Teachers' Ass'n*, 393 Mich 583, 595; 227 NW2d 500 (1975). In this case, the arbitrator did not go beyond the specific provision and issue submitted for arbitration, and thus, did not exceed her authority. Further, she did not base her determination solely on the past practice of the parties and write a new contract in accordance with that practice. Rather, she determined that the contract had an internal inconsistency that required interpretation, and that reformation was required to conform the contract to the intent of the parties. Her finding merely determined the issue that the parties submitted for arbitration and she did not exceed her authority in correcting the language of § 12.8 to read, "except the \$3 co-pay drug rider."

Plaintiff argues that the trial court erred in finding that the arbitrator was not bound by the clear and unambiguous words of the parties' collective bargaining agreement, and that the arbitrator did not commit a significant error of law in admitting parol evidence to interpret clear and unambiguous contract terms.

Whether contract language is ambiguous is a question of law. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996) [*"Port Huron II"*]. If the contract language is unclear or susceptible to multiple meanings, interpretation is a question of fact. *Id.* A lower court's function is not to review whether the arbitrator made errors of law or fact in interpreting a contract. *Ferndale Ed Ass'n v School Dist for City of Ferndale*, 67 Mich App 637, 643; 242 NW2d 478 (1976). An award is legitimate so long as it draws its essence from the collective bargaining agreement. *Port Huron*, *supra* at 152. The circuit court did not err in concluding that the drug co-pay terms in the CBA were either ambiguous or susceptible to two meanings, and were therefore subject to interpretation by the arbitrator. The issue submitted to arbitration was essentially whether the co-pay was \$2.00 or \$3.00. The arbitrator interpreted the co-pay language in § 12.8 to refer back to the co-pay provision of § 12.6 and decided that the retiree co-pay was \$3.00. The

arbitrator's decision was supported by her finding that the CBA provision regarding retiree drug co-pay was ambiguous.

Further, we find no error of law in the admission of parol evidence. Generally, an arbitrator does not exceed her authority by accepting parol evidence in interpreting a disputed section of a contract. Kheel, *Arbitration Process*, § 24.04[3][c], 6 Labor Law (1989). In weighing two possible interpretations of the parties' CBA, the arbitrator agreed with defendants' interpretation, and found that the different co-pay amounts signaled an error in the CBA. The arbitrator found that the parties had not bargained for a \$2.00 retiree co-pay as opposed to the general \$3.00 co-pay. "The agreement embodies mutual assent and, during the duration of the contract, either party should be able to rely on the provisions previously *bargained for* during negotiation of the agreement." *Port Huron II*, *supra* at 330; emphasis added. Defendants alleged that the co-pay in § 12.8 had been amended by mutual agreement.

Finally, plaintiff argues that the trial court erred by approving the arbitrator's reformation of the contract. An arbitrator's choice of remedy is generally broad. The test is not whether the reviewing court agrees with the interpretation of the contract, but whether the remedy fashioned is rationally explainable as a logical means of furthering the aims of the contract. *Mich Ass'n of Police v Pontiac*, 177 Mich App 752, 759; 442 NW2d 773 (1989). "When the parties agree to submit a matter to arbitration, they invest the arbitrator with sufficient discretion to resolve their dispute in a manner which is appropriate under the circumstances." *Id.* at 760. An arbitrator's decision must stand as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority. *Id.*

The parties requested that the arbitrator determine whether requiring a \$3.00 drug co-pay for retirees violated the CBA. The arbitrator determined that it did not. It would be illogical for the arbitrator to determine that the \$3.00 co-pay was the correct amount, but to leave the CBA with inconsistent language. *Mellon v Bd of Ed of Fitzgerald Public Schools*, 22 Mich App 218, 221, n 2; 177 NW2d 187 (1970). Reformation of the co-pay amount in § 12.8 of the CBA was within the authority conferred on the arbitrator.

The arbitrator determined that reformation of the contract was appropriate. Judicial review is limited to whether the arbitrator exceeded her contractual jurisdiction and authority. *Michigan State Employees Ass'n v Dep't of Mental Health*, 178 Mich App 581, 583; 444 NW2d 207 (1989). The arbitrator did not exceed her authority in deciding that the prescription drug co-pay for retirees was \$3.00 and reforming the CBA to correct the inconsistency. Thus, the trial court did not err in granting defendants' motion for summary disposition.

Affirmed.

/s/ Hilda R. Gage  
/s/ Helene N. White  
/s/ Jane E. Markey

<sup>1</sup> § 5.6 of the CBA provided in part:

... the arbitrator's powers shall be limited to the application and interpretation of this agreement as written. He shall be at all times wholly governed by the terms of this agreement, and he shall have no power or authority to amend, alter or modify this agreement either directly or indirectly.

§ 15.20 provided:

It is the intent of the parties hereto that the provisions of this agreement, would supersede all prior agreements and understandings, oral or written, express or implied, between such parties, shall govern their entire relationship and shall be the sole source of any and all claims which may be asserted in arbitration hereunder, or otherwise.