

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UNITED TECHNICAL EMPLOYEES  
ASSOCIATION,

UNPUBLISHED  
October 27, 2000

Plaintiff-Appellee,

v

No. 213782  
Ingham Circuit Court  
LC No. 97-087127-CL

GOVERNOR OF THE STATE OF MICHIGAN,  
OFFICE OF STATE EMPLOYER, MICHIGAN  
DEPARTMENT OF COMMUNITY HEALTH,  
MICHIGAN DEPARTMENT OF CONSUMER &  
INDUSTRY SERVICES, MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY, MICHIGAN BIOLOGIC PRODUCTS  
INSTITUTE, MICHIGAN COMMUNITY PUBLIC  
HEALTH AGENCY, and MICHIGAN  
DEPARTMENT OF NATURAL RESOURCES,

Defendants-Appellants.

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Before: Talbot, P.J., and Gribbs and Meter, JJ.

PER CURIAM.

Defendants appeal by right from the trial court's order granting summary disposition to plaintiff under MCR 2.116(C)(9) and (10), denying summary disposition to defendants, vacating an arbitration award, and remanding plaintiff's grievances to a different arbitrator for a decision on the merits. We reverse the trial court's order and reinstate the arbitration award.

This case arises out of consolidated grievances filed by plaintiff, a collective bargaining unit, alleging violations of conditions of employment contained in the collective bargaining agreement ("CBA") between the parties. The grievances resulted from the governor's issuance of a number of executive orders, the purpose of which was to reorganize the structure of the executive branch of government, thereby transferring employees between various restructured departments. The transfers

resulted in unilateral changes to seniority rights, overtime protections, layoff and recall rights, and other conditions contained in the CBA.

By stipulation, the parties submitted the following issue to an arbitrator:

Did the State of Michigan violate various provisions of the collective bargaining agreement between [plaintiff] and the State of Michigan when it unilaterally assigned employees covered by . . . [plaintiff's] collective bargaining agreement to different departmental employers as a result of [the] Governor's Executive Order[s]?

The arbitrator concluded that a CBA cannot abrogate the governor's constitutional authority to make reassignments pursuant to executive orders. He ruled that because the governor's reorganization was lawful and was not arbitrary, the CBA had not been violated and plaintiff's grievances therefore were without merit, notwithstanding the changes in employment conditions that resulted from the reorganization.

Subsequently, plaintiff filed a complaint to vacate the arbitration award and then sought summary disposition under MCR 2.116(C)(9) and (10), arguing that (1) the arbitrator exceeded his authority because the CBA expressly indicated that the arbitrator could not nullify or ignore a provision of the agreement, (2) the governor's constitutional authority to reorganize the executive branch had been diluted by his ratification of the CBA, and (3) the governor could not exercise his constitutional authority so as to impair a valid, existing contract such as the CBA.

In response, defendants moved for summary disposition under MCR 2.116(C)(10), arguing that (1) the trial court's review was limited to whether the arbitrator acted within the scope of his authority as expressed in the CBA; and (2) the arbitrator did act within the scope of his authority by determining if the governor's actions were constitutional, since the CBA was subject to the constitution.

The trial court ruled that although the governor has the authority to reorganize the executive branch, that authority may not be exercised such that it abrogates collectively bargained contractual rights in violation of the constitutional prohibition against impairment of the obligations of contracts, Const 1963, art 1, § 10. The court then declared the arbitrator's conclusion that the CBA had not been violated to be an error on the face of the award requiring that it be vacated. Implicit in the trial court's ruling was a finding that the executive reorganization had indeed violated the contract clause. The court granted plaintiff's motion for summary disposition, denied defendants' motion for summary disposition, vacated the arbitration award, and remanded plaintiff's grievances to a different arbitrator for a decision on the merits.

Defendants first argue that the trial court employed an incorrect standard of review in assessing the arbitrator's decision. Defendants contend that the trial court erroneously used the standard of review for statutory arbitration, when this case involved common law arbitration. Whether the court employed a proper standard of review is a question of law. This Court reviews questions of law de novo. *In re Rupert*, 205 Mich App 474, 479; 517 NW2d 794 (1994).

While defendants are correct that this case involved common-law arbitration because the arbitration took place pursuant to a CBA, see MCL 423.9d; MSA 17.454(10.3), we disagree that the trial court employed an incorrect standard of review in assessing the arbitrator's decision. Defendants contend that the trial court incorrectly relied on the statutory arbitration case of *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 175-176; 550 NW2d 608 (1996), in which this Court held that

[w]here it clearly appears on the face of the award or in the reasons for the decision, being substantially a part of the award, that the arbitrators through an error of law have been led to a wrong conclusion and that, but for such error, a substantially different award must have been made, the award and decision will be set aside.

Defendants believe that because *Dohanyos* involved statutory arbitration, the standard of review it employed was inapplicable to the instant case. However, *Dohanyos* cited *Detroit Automobile Inter-Ins Exchange v Gavin*, 416 Mich 407, 443; 331 NW2d 418 (1982), as authority for the stated standard of review, and *Detroit Automobile*, in turn, cited and adopted the standard of review for common law arbitration as set forth in *Howe v Patrons' Mutual Fire Ins Co*, 216 Mich 560, 570; 185 NW 864 (1921). See *Dohanyos*, *supra* at 176, and *Detroit Automobile*, *supra* at 443. Accordingly, because the standard of review set forth in *Dohanyos* ultimately derived from the common law arbitration case of *Howe*, the trial court did not err in applying the *Dohanyos* standard to the instant, common law arbitration case.<sup>1</sup>

Next, defendants argue that the trial court erred in granting plaintiff's motion for summary disposition. Defendants contend that the arbitrator did not exceed his authority and that the arbitration award was correct because the executive reorganization did not violate the constitutional prohibition against the impairment of contracts. This Court reviews a trial court's grant of summary disposition *de novo*. *Altairi v Alhaj*, 235 Mich App 626, 628; 599 NW2d 537 (1999).

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<sup>1</sup> We note that in *Port Huron Area School District v Port Huron Education Association*, 426 Mich 143, 150; 393 NW2d 811 (1986), a common law arbitration case, the Court stated that "a court may not review an arbitrator's factual findings or decision on the merits." This statement seems to imply that an error of law on the face of an arbitration award *cannot* justify vacation of the award. However, this statement constituted dicta, since the only issue in *Port Huron* was whether the arbitrator exceeded his authority in granting the award. *Id.* at 151. We further note that in *EE Tripp Excavating Contractor, Inc v Jackson County*, 60 Mich App 221, 230 NW2d 556 (1975), a panel of this Court held that a reviewing court has no authority to invalidate an arbitration award on the basis of unlawfulness. This holding, however, was contrary to Supreme Court authority from *Howe*, *supra* at 570, and is therefore not entitled to deference. Finally, we note that the *Dohanyos* Court stated at one point that "a general principle of arbitration precludes courts from upsetting an award for reasons that concern the merits of the claim." *Dohanyos*, *supra* at 177. This statement, however, contradicted an earlier statement, in the same opinion, that an outcome-determinative error of law could justify the vacation of an arbitration award. *Dohanyos*, *supra* at 176.

As stated earlier, the standard of review with regard to an arbitration award is as follows:

Where it clearly appears on the face of the award or in the reasons for the decision, being substantially a part of the award, that the arbitrators through an error of law have been led to a wrong conclusion and that, but for such error, a substantially different award must have been made, the award and decision will be set aside. [*Dohanyos, supra* at 176; see also *Howe, supra* at 570.]

Before reaching the issue of whether the arbitrator made an error of law in assessing the merits of plaintiff's grievances, however, we must first address whether the arbitrator exceeded his authority in making the award. See generally *Port Huron Area School District v Port Huron Education Association*, 426 Mich 143, 151-152; 393 NW2d 811 (1986). Plaintiff contends that the following provisions from the CBA precluded the arbitrator from ignoring provisions of the CBA on the grounds that they did not mesh with the governor's executive reorganization:

The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this Agreement and shall not make any award which in effect would grant [plaintiff] or the Employer any rights or privileges which were not obtained in the negotiation process.

\* \* \*

To the extent that any provision(s) of this Agreement, or application thereof, is found to be unlawful or in conflict with the provisions of [the] law, by a court of competent jurisdiction, or by the Michigan Civil Service Commission, it shall be modified by negotiations between the parties only to the extent necessary to comply with such laws.

Plaintiff believes that because (1) the CBA explicitly indicated that the arbitrator could not ignore any provisions of the agreement, and (2) neither a court of competent jurisdiction nor the Michigan Civil Service Commission determined that the CBA conflicted with the law, the arbitrator had no authority to declare portions of the agreement unenforceable. We disagree.

We conclude that the arbitrator did not *ignore* or *modify* any provisions of the CBA; instead, he simply exercised his authority to answer the question posed by the parties, i.e., whether the CBA had in fact been violated. The arbitrator concluded that because the governor exercised his power to reorganize the executive branch in a reasonable manner, the CBA could not be deemed violated because of the changes in job conditions resulting from the executive reorganization. The arbitrator did not exceed his authority by merely answering the question posed by the parties.

Nor did the arbitrator commit a clear error of law that affected the outcome of the arbitration. The trial court essentially concluded that the arbitrator erred by failing to find that the executive reorganization violated the contract clause. The trial court overstepped its bounds of review in reaching this conclusion, however, since the potential existence of an unconstitutional contract clause violation

was not at issue before the arbitrator. Indeed, both parties admitted before the arbitrator that the executive reorganization was constitutional and otherwise lawful; they simply asked the arbitrator to determine if the reorganization resulted in a violation of the CBA.<sup>2</sup> Accordingly, the trial court should have limited itself to a determination of whether the arbitrator's finding of no contractual violation was based on a clear, outcome-determinative error of law. See *Dohanyos, supra* at 176, and *Howe, supra* at 570. The trial court did not limit itself in this way, but we, upon this de novo review, must be so limited. Accordingly, we will not address whether the executive reorganization violated the contract clause; we will instead focus solely on whether the arbitrator's finding of no contractual violation resulted from a clear error of law.

The arbitrator determined that because the governor exercised his authority to reorganize the government in a reasonable manner, the CBA could not be deemed violated. He stated the following:

[T]he question is whether the State violated various provisions of the agreement. It must be understood that the parties have agreed that the transfers resulted in changes in the rights of assignment, reassignment, transfers, layoffs and overtime equalization units. However, the realization doesn't necessarily lead to the conclusion that those articles were violated. There may have been changes which were mandated by exercise of the Governor's constitutional rights, but if the changes were not arbitrary and didn't reflect more than what was needed to effectuate the Governor's constitutional authority, then arguably there was no violation of the contract. To state it in another fashion, given the definition of the issue, I cannot in this record conclude that the contract was violated.

We find no clear error of law in this conclusion and therefore are obligated to reverse the trial court's ruling and reinstate the decision of the arbitrator. See *Dohanyos, supra* at 176, and *Howe, supra* at 570.

Reversed.

/s/ Michael J. Talbot  
/s/ Patrick M. Meter

I concur in result only.

/s/Roman S. Gribbs

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<sup>2</sup> As stated in *Michigan Oil Co v Natural Resources Comm*, 71 Mich App 667, 691; 249 NW2d 135 (1976), aff'd 406 Mich 1 (1979), whether a contractual violation has occurred and whether there has been an unconstitutional violation of the contract clause are two separate questions.