STATE OF MICHIGAN

COURT OF APPEALS

BOARD OF EDUCATION OF THE WALLED LAKE CONSOLIDATED SCHOOL DISTRICT, Plaintiff/Counterdefendant-Appellee,	UNPUBLISHED January 30, 2001
v	No. 210787 Oakland Circuit Court LC No. 97-546820-CL
MICHIGAN EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION, WALLED LAKE ESP #1, and MEA/NEA, Defendant/Counterplaintiffs-Appellants.	

Before: Holbrook, Jr., P.J. and Kelly and Collins, JJ.

Kelly, J. (dissenting).

I respectfully dissent. I would reverse the circuit court and reinstate the arbitrator's decision.

The circuit court found that the arbitrator had contractual authority to modify the discharge to a suspension, citing article XV, part A, subsection 5 of the collective bargaining agreement:

> It shall be the function of the arbitrator, and he/she shall be empowered except as his/her powers are limited below, after due investigation to make a decision in cases of alleged violation, misinterpretation or misapplication of any provision of this Agreement or any other rule, order or regulation of the Board relating to wages, hours, terms or conditions of employment.

The circuit court correctly found the arbitrator had the power to interpret article XI of the collective bargaining agreement to call for a suspension. The circuit court found that "the arbitrator was within her contractual authority in amending the bus driver's dismissal." However, the circuit court failed to follow established case law requiring strictly circumscribed review of arbitration awards and substituted its own judgment as to what constituted public policy to reverse the award. CF, *Kaleva-Norman-Dickson School District No 6 v Kaleva-*

Norman-Dickson School Teachers' Ass'n, 393 Mich 583; 227 NW2d 500 (1975). The United States Supreme Court likewise has spoken on the controlling principal in *United Paperworkers Int'l Union v Misco, Inc*, 484 US 29, 37-38; 108 SCt 364; 98 L Ed 2d 286 (1987)(citations omitted):

> Because the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept. . . . So, too, where it is contemplated that the arbitrator will determine remedies for contract violations that he finds, courts have no authority to disagree with his honest judgment in that respect. . . . But as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced that he committed serious error does not suffice to overturn his decision. [Citations omitted].

Here, the majority sanctions a public policy that bars mitigation and prohibits rehabilitation; a public policy so draconian it seems offensive to civilized ideals.

Here the arbitrator concluded:

> Smith is a thirteen-year employee with no discipline on her record. This is her first offense. The Manual expresses the School's active support for rehabilitation. The SA professional's evaluation found no evidence of *abuse*, but rather concluded she *used* marijuana. That finding would seem to permit a reasonably optimistic outcome for her being able to abstain totally.

Reviewing courts should refuse to second guess an arbitrator under cover of public policy. Cf. *City of Saginaw v Saginaw Fire Fighters Ass'n Local 422 IAFF*, 130 Mich App 401; 343 NW2d 571 (1983).

I would reverse.

/s/ Michael J. Kelly