STATE OF MICHIGAN

COURT OF APPEALS

STATE EMPLOYEES ASSOCIATION,

Plaintiff-Appellee,

v

DEPARTMENT OF MANAGEMENT & BUDGET and CIVIL SERVICE COMMISSION,

Defendant-Appellants.

UNPUBLISHED
February 1, 2002

No. 222436
Ingham Circuit Court
LC No. 98-089357-AA

Before: Gage, P.J., and Hoekstra and Meter, JJ.

PER CURIAM.

Respondents, the Department of Management & Budget (DMB) and the Civil Service Commission (CSC), appeal by leave granted from the circuit court's judgment for petitioner, the State Employees Association (SEA). The circuit court reversed the Department of Civil Service hearing examiner's decision and held that respondents had committed an unfair labor practice. The circuit court remanded the matter to the CSC to fashion a remedy. We reverse the circuit court and reinstate the agency's decision.

This case arises from the 1995 negotiations between DMB, by its negotiating division, the Office of the State Employer (OSE), and the SEA for a collective bargaining agreement that would govern their relationship between 1996 and 1998. Beginning in the summer and continuing into the fall of 1995, the parties engaged in extensive negotiations. The events at issue occurred during a lengthy bargaining session that took place during the evening of October 20 and into the early morning hours of October 21, 1995. At the heart of the dispute is what the parties agreed to, if anything, with regard to article 39, concerning paid annual leave. Throughout the negotiations, the SEA sought to modify section F of article 39 to provide for an annual leave payoff provision. The OSE refused to agree to the proposed change and consistently offered to continue section F benefits as provided in the prior agreement.

At the October 20-21 bargaining session, the parties exchanged various proposals over the course of the evening. Each of the parties' proposals maintained their respective position that they held going into that bargaining session regarding section F of Article 39. As they had throughout the negotiations, neither side showed any inclination to yield or compromise on this provision. Sometime after midnight, an SEA representative verbally presented yet another comprehensive proposal. After obtaining clarification on some of the provisions in this latest proposal, OSE representatives accepted it. Before the acceptance, there was no discussion or

clarification of any kind between the parties regarding section F of Article 39. Further, the parties agreed that evening to refer two other points of disagreement for Civil Service impasse proceedings. The parties agreed that OSE representatives would prepare a draft of the agreement. The parties also arranged to meet to review and approve the tentative agreement a few days later on October 24, 1995.

At the October 24 meeting, the SEA representatives discovered that their proposed modification of section F, Article 39, which they maintained was part of the proposal to which the OSE agreed on October 21, was not included in the draft. The OSE representatives responded that they understood that the verbal proposal agreed to on October 21 deleted the SEA's previously proposed modification of the annual leave policy. Discussions that day failed to resolve the disagreement. The SEA opted to sign the tentative agreement that the OSE drafted rather than refer this issue for Civil Service impasse proceedings because it believed that this issue was resolved. The SEA stated that by signing the OSE's version of the agreement it was not waiving its right to pursue an unfair labor practice complaint.

On April 5, 1996, the SEA filed an unfair labor practice charge with the CSC alleging that the OSE unlawfully refused to bargain in violation of Civil Service Rules 6-10.1 and 6-10.4. The matter proceeded to hearing on only the latter alleged violation. The SEA claimed that the OSE's bad faith was shown by its unilateral modification of the agreement after accepting SEA's oral proposal that included the annual leave payout provision. After receiving stipulated facts, hearing the testimony of various witnesses regarding the events of October 20 and 21, 1995, and receiving briefs from both parties, a hearing examiner issued a decision finding that the OSE did not commit an unfair labor practice. The hearing examiner concluded that the parties failed to agree on the annual leave payoff provision of section F, Article 39 at the October 20 and 21, 1995 bargaining session. Although the hearing examiner's decision concluded that the SEA's representative in fact did state in his verbal presentation of their proposal the SEA's version of section F that would modify the annual leave policy, she also concluded that OSE's representatives were not untruthful when they testified that the verbal presentation did not include the modification. From these facts, the hearing examiner observed that the SEA representatives either did not hear, or failed to grasp, that the SEA proposal contained the modification. The hearing examiner stated:

> In the present case, the totality of the circumstances did not show bad faith bargaining by OSE. The parties went back and forth several times on a number of disputed issues, and there was no indication that either party was not serious or sincere about reaching agreement. There was also insufficient evidence that either party intended to deceive the other. The weight of the evidence showed a misunderstanding and a failure to agree on the essential terms of Art 39, Sec F. []SEA did not prove by a preponderance of the evidence that OSE committed an unfair labor practice/unlawful refusal to bargain.

The SEA sought leave to appeal the hearing examiner's decision before the Employment Relations Board (ERB). The ERB issued a decision denying the SEA's application. The CSC approved the ERB's decision, thereby making the ERB's decision the final decision. Thereafter, the SEA appealed to the circuit court. MCR 7.104(C); MCL 24.301-24.306.

After receiving briefs from the parties and hearing arguments, the circuit court reversed the hearing examiner's decision. The circuit court's opinion set forth the pertinent facts and stated in detail the scope of review. It then addressed the hearing examiner's decision and concluded that "[the hearing examiner's] conclusions conflict with her findings of fact and warrants that her decision be reversed." In supporting this conclusion, the circuit court stated

> that the evidence reflects that a tentative agreement was reached between the parties on October 21, 1995, when the []SEA handed the OSE its proposal for Art 39 and the OSE *made no response or objection* to the Section F modifications. Even so, the OSE failed to include the Section F modifications in the October 24, 1995, draft version of the contract. [Citation omitted; emphasis in original.][1]

Specifically, the circuit court cited the following as contrary to a finding that no agreement occurred:

> 1) the parties left the October 20-21 negotiating session believing they had reached agreement on all but two issues (*not including the Art 39 issue*) which would go to the impasse panel.
>
> 2) [SEA representative] Mr. Denniston *specifically said* that his final proposal for the []SEA **included** the proposed change to Section F of Article 39;
>
> 3) it was *not likely* to believe that Mr. Denniston would forget to mention this change;
>
> 4) it was not reasonable for OSE negotiators to assume that Section F had *disappeared* from the []SEA proposal even if it was not specifically mentioned by Mr. Denniston; and
>
> 5) the October 12, 1995, proposal by the []SEA was the *only written proposal* made by it on that date and *clearly encompassed* the disputed Section F proposal by it. [Emphasis in the original.]

The circuit court concluded:

> Thus, it was unreasonable for [the hearing examiner] to hold that a meeting of the minds never occurred relative to the Art 39 provisions. Accordingly, when the OSE remained silent to the Art 39 terms on October 21, 1995, a tacit meeting of the minds occurred regarding this section; and by failing to include the Section F modifications in the October 24, 1995 draft version of the contract, the OSE committed an unfair labor practice. [Citation omitted.][5]

[1] We note that although the circuit court's opinion states that the SEA "handed" its proposal to the OSE, it is clear from the record that the proposal was verbal and that it was the OSE that reduced the verbal proposal to writing and presented it to the SEA days later.

> [5] In rendering this ruling, the [c]ourt notes that the issue of whether or not the OSE witnesses were being truthful or not in testifying that the proposal did not include the []SEA's Section F language is not the crux of this unfair labor practices grievance.

The circuit court sustained SEA's charge and remanded the matter to the CSC for a determination of the relief available and to allow it to address the issue whether SEA waived its right to object by signing the agreement. This Court granted respondents' application for leave to appeal the opinion and order of the circuit court.

Our review of a circuit court's review of an administrative agency opinion is limited. In *Boyd v Civil Service Comm*, 220 Mich App 226, 234-235; 559 NW2d 342 (1996), this Court stated the standard review:

> [W]hen reviewing a lower court's review of agency action this Court must determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings. This latter standard is indistinguishable from the clearly erroneous standard of review that has been widely adopted in Michigan jurisprudence. As defined in numerous other contexts, a finding is clearly erroneous when, on review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made.

On appeal, respondents claim that the circuit court failed to properly apply the standard of review applicable to a circuit court's review of an administrative agency's decision. Specifically, respondents maintain that although the circuit court acknowledged the limited standard of review, it never applied it to the facts of the case; rather, the circuit court embarked upon a de novo review of the agency's decision.

In *Boyd, supra* at 232, this Court discussed a circuit court's role when reviewing an administrative agency's decision:

> Judicial review of decisions of the Civil Service Commission is established by the Revised Judicature Act. MCL 600.631; MSA 27A.631. The scope of that review is established in Const 1963, art 6, § 28, which requires the court conducting a "direct review" to determine whether the administrative action was authorized by law and whether the decision of the hearing officer was supported by "competent, material and substantial evidence on the whole record." *Viculin v Dep't of Civil Service*, 386 Mich 375; 192 NW2d 449 (1971). [Footnote omitted.]

The provisions for appeals from administrative agencies found in the Administrative Procedures Act, MCL 24.201 *et seq.*, govern an appeal from the CSC. MCR 7.104(C). If there is sufficient evidence, the circuit court may not substitute its discretion for that of the agency, even if the court might have reached a different result. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). Further, an agency's findings of fact are afforded deference, *THM, Ltd v Comm'r of Ins*, 176 Mich App 772, 776; 440 NW2d 85 (1989), particularly concerning

witness credibility and conflicts in the evidence, *Arndt v Dep't of Licensing & Regulation*, 147 Mich App 97, 101; 383 NW2d 136 (1985). However,

> [l]egal rulings of administrative agencies are not given the deference accorded factual findings. Legal rulings of an administrative agency are set aside if they are in violation of the constitution or a statute, or affected by a substantial and material error of law. MCL 24.306(1)(a),(f); MSA 3.560(206)(1)(a),(f). *Southfield Police Officers Ass'n v Southfield*, 433 Mich 168; 445 NW2d 98 (1989). [*St Clair Intermediate School Dist v Intermediate Ed Ass'n/Michigan Ed Ass'n*, 458 Mich 540, 562, n 25; 581 NW2d 707 (1998), quoting *Amalgamated Transit Union v Southeaster Michigan Transit Authority*, 437 Mich 441, 450; 473 NW2d 249 (1991).]

After reviewing the circuit court's opinion and the hearing examiner's decision, we are persuaded that the circuit court exceeded its authority and clearly erred in reversing the hearing examiner's decision. Having reviewed the evidence, we are persuaded that the hearing examiner's decision is supported by competent, material and substantial evidence on the whole record, *Boyd, supra*, and that the hearing examiner properly applied the law, *St Clair, supra*. The centerpiece of the hearing examiner's decision was her conclusion that the dispute regarding whether the OSE agreed to an annual leave payoff provision during the bargaining session of October 20 and 21 was the result of a misunderstanding and resulted in a failure of the parties to agree on the essential terms of the contract. To form a valid contract, there must be a meeting of the minds with regard to all material facts. *Kamalnath v Mercy Memorial Hospital Corp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992); *Heritage Broadcasting Co v Wilson Communications, Inc*, 170 Mich App 812, 818; 428 NW2d 784 (1988). Further, the hearing examiner found that there was insufficient evidence that either party intended to deceive the other. For support, the hearing examiner relied on her finding that the OSE representatives were being truthful when they testified that the verbal presentation of the proposal by the SEA spokesperson did not include the modification. The key fact then, which must be grounded in the evidence, is the conclusion that the OSE representatives were being truthful. The record shows that the oral proposal was made late at night when everyone was tired and many provisions were being negotiated. This atmosphere can contribute to a misunderstanding between parties who are negotiating a complex agreement.

The circuit court's footnote, however, noted that whether the OSE witnesses were being truthful is not the crux of the unfair labor practices grievance. Rather, the circuit court concluded, in essence, that because the hearing examiner found that the SEA representative did in fact include the Section F requirement in his verbal proposal, it was part of the contract. Basically, the circuit court held that if the SEA said that Section F was part of the proposal, then it does not matter whether the OSE heard that assertion or understood it to be a part of the proposal when it agreed to the proposal. We disagree with the circuit court's analysis. Unlike the circuit court's assumption, we believe that a meeting of the minds does not necessarily occur simply because a verbal proposal was made and accepted, and consequently, determining the truthfulness of OSE witnesses regarding whether they heard that the SEA proposal contained the Section F provision is critical to resolving this case. We recognize that a verbal proposal, to a greater extent than a written proposal, is subject to being misconstrued and/or misunderstood. If the facts show that an honest misunderstanding existed, then no enforceable tentative agreement

was reached with regard to the disputed section for which there was no meeting of the minds. Under the circumstances here, where the parties were engaged in lengthy negotiations and came to an agreement after a verbal proposal in the late night or early morning hours, the hearing examiner's conclusion that the parties could leave the negotiations with distinctly different understandings of the content of the verbal proposal is not unwarranted. Because the findings of fact support the hearing officer's conclusion that no meeting of the minds occurred and thus that there was no tentative agreement, the circuit court erred in reversing the hearing officer's decision.

Further, we reject petitioner's claim that the state of mind of the OSE representatives was immaterial to whether there was a meeting of the minds. Petitioner maintains that considering the OSE representative's truthfulness regarding their assertion that the oral proposal made by the SEA spokesperson did not include the annual leave payoff provisions of section F constituted an impermissible reliance by the hearing examiner on the subjective state of mind of the witnesses. Relying on *Heritage, supra*, petitioner maintains that an objective standard is applicable that permits only consideration of express words and visible acts. We find the *Heritage* case distinguishable. There, the parties had agreed in writing to the terms for purchasing defendant's television stations. In attempting to interpret the written contract, this Court held that the parties' express words and visible acts, not their subjective states of mind controlled. *Id.* Here, the actual formation of an agreement is at issue, not the interpretation of an existing written agreement. Because the agreement was negotiated verbally, we believe that each party's state of mind constitutes material objective evidence regarding whether the parties had a binding agreement at the end of the negotiations on October 21.

Reversed.

/s/ Hilda R. Gage
/s/ Joel P. Hoekstra
/s/ Patrick M. Meter