STATE OF MICHIGAN

COURT OF APPEALS

BOARD OF EDUCATION OF THE BENTON HABOR AREA SCHOOLS, Plaintiff-Appellee,	UNPUBLISHED July 27, 2004
v	No. 249070 Berrien Circuit Court
BENTON HARBOR EDUCATION ASSOCIATION, MEA/NEA, Defendant-Appellant.	LC No. 2002-003863-CL

Before: Fort Hood, P.J., Donofrio and Borrello, JJ.

PER CURIAM.

Defendant, Benton Harbor Education Association, MEA/NEA, appeals as of right an order granting summary disposition in favor of plaintiff, Board of Education of the Benton Harbor Area Schools and denying its motion for summary disposition. Defendant argues that plaintiff lacked authority to bring the action because plaintiff did not vote in open session to authorize the lawsuit in violation of the Open Meeting Act, MCL 15.261 *et seq*. Defendant also asserts that the trial court erred when it vacated the arbitration award because the award drew its essence from the agreement. Although we find that plaintiff was not in violation of the OMA and was authorized to bring the suit in the trial court, we reverse the trial court's order, and reinstate the award of the arbitrator.

The facts of this case are not in dispute. Carson McMutuary was employed by plaintiff as a teacher in the Benton Harbor Area Schools. The terms and conditions of teacher employment are established by the collective bargaining agreement between plaintiff and defendant.

In November 1999, McMutuary was arrested and charged with felonious assault for striking his minor son. McMutuary pleaded guilty to misdemeanor domestic assault and battery involving a minor child pursuant to MCL 750.81(2). On January 14, 2000, plaintiff's superintendent, Renee' Williams, sent a letter to the Michigan Department of Education (the Department) advising it of McMutuary's conviction. In the letter, Williams requested that the Department "investigate this matter and, according to the school code, initiate proceedings for suspension of Mr. McMutuary's teaching certificate." As of the same date, McMutuary was placed on indefinite administrative leave, with pay, pending the outcome of the Department's inquiry.

In a letter dated May 16, 2000, the Department informed McMutuary that as of the date of the letter, his teaching certificate was "summarily suspended rendering [him] ineligible for continued employment in Michigan K-12 Schools." The letter also informed McMutuary that he had a right to request an administrative hearing to determine if his teaching certificate should be revoked, that he could voluntarily surrender his certificate, or he could do neither and petition for reinstatement of his suspended certificate. McMutuary made a timely request for an administrative hearing.

On May 26, 2000, plaintiff informed McMutuary that "[a]s the result of suspension of [his] teaching certificate, and [his] ineligibility for employment as a teacher in Michigan K-12 schools, [his] administrative leave [was] being changed to a leave of absence without pay effective May 17, 2000." The letter further stated that plaintiff would "continue to evaluate [McMutuary's] employment status with the school district. When a final decision [was] reached regarding [his] employment with Benton Harbor Area Schools, [he would] be notified at that time."

Defendant filed a grievance on June 1, 2000 asserting that plaintiff's placement of McMutuary on leave of absence without pay violated the collective bargaining agreement between plaintiff and defendant. Defendant sought the following relief:

> That Mr. McMutuary be maintained on administrative leave with pay pending the decision(s) rendered by the Michigan Department of Education or be placed in another bargaining unit position which does not require certification. Furthermore, Mr. McMutuary is to be made whole for all lost wages, benefits, conditions and coverages due to the change of his leave status.

Defendant filed a Demand for Arbitration with the American Arbitration Association on July 19, 2000 pursuant to the terms of the collective bargaining agreement seeking the identical relief sought in the grievance. A hearing was held before Arbitrator Mark L. Kahn on February 21, 2002, and Kahn's opinion and award was ultimately issued on June 10, 2002. As of the date of the opinion and award, the Department had not issued a decision concerning McMutuary's administrative hearing regarding the status of his teaching certificate.[1]

In his opinion and award, Arbitrator Kahn found that plaintiff was not required to place McMutuary in a bargaining unit position that did not necessitate a teaching certificate. But also found that plaintiff improperly violated McMutuary's rights under the collective bargaining agreement when it placed him on unpaid administrative leave prior to a decision from the Department on the status of his teaching certificate.

Plaintiff filed its complaint in the circuit court on September 6, 2002 seeking to have the arbitration award partially vacated. After agreeing to dispense with formal discovery, defendant filed motions for summary disposition under MCR 2.116(C)(5) and (C)(10). Plaintiff filed a

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[1] The Department issued an Order while this case was pending before the circuit court dated February 21, 2003 stating that McMutuary's teaching certificate was to remain suspended.

motion for summary disposition pursuant to MCR 2.116(C)(10). On May 7, 2003, the trial court entertained oral arguments on the motions and issued a bench opinion. The circuit court granted summary disposition in favor of plaintiff and denied defendant's motions for summary disposition in an order dated May 7, 2003. It is from this order that defendant appeals.

Defendant argues on appeal that the trial court erred when it determined plaintiff had the legal authority to bring this action, and for this reason asserts that it was entitled to summary disposition pursuant to MCR 2.116(C)(5). Specifically, defendant claims that plaintiff did not vote in open session to authorize the lawsuit contrary to MCL 380.1201(1). Plaintiff responds that the act of filing the action to vacate the arbitration award was only a step in an administrative process of resolving a labor dispute and was not so dramatic an action that would require prior board approval at an open meeting.

In reviewing a trial court's ruling on a motion for summary disposition pursuant to MCR 2.116(C)(5), this Court reviews the entire record to determine whether the moving party was entitled to judgment as a matter of law. *Franklin Historic Dist Study Comm v Village of Franklin*, 241 Mich App 184, 187; 614 NW2d 703 (2000). Statutory interpretation is a question of law that is also reviewed de novo. *Cruz v State Farm Mut Automobile Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002).

MCL 380.11a(5) sets out the general power of school districts, and states as follows:

> A general powers school district is a body corporate and shall be governed by a school board. An act of a school board is not valid unless approved, at a meeting of the school board, by a majority vote of the members lawfully serving on the board.

Further, MCL 380.1201(1) states:

> The business that the board of a school district is authorized to perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. An act of the board is not valid unless the act is authorized at a meeting by a majority vote of the members elected or appointed to and serving on the board and a proper record is made of the vote.

The OMA provides in MCL 15.263(2) that: "All decisions of a public body shall be made at a meeting open to the public." Pursuant to MCL 15.262(d), "decision" is defined as "a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy." MCL 15.263(3) provides: "All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public . . . ." Additionally, MCL 15.270(5) provides that an action taken by a public body that is not in conformity with the OMA can subsequently be reenacted or ratified by the public body bringing the act or decision in question in conformity with the OMA. Specifically, MCL 15.270(5) provides as follows:

> In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

The record reveals that plaintiff publicly voted on its decision to bring the appeal of the arbitrator's award at a special meeting of the board on March 4, 2003. Since the record establishes the formal resolution, by operation of MCL 15.270(5), plaintiff's ratification/reenactment of its decision to appeal the arbitration award brings the action into conformity with the OMA. Although we do not agree with the trial court's finding that a formal vote was not required before instituting this action, this Court will not reverse when the trial court reaches the correct result, albeit for a wrong reason. *Ellsworth v Hotel Corp*, 236 Mich App 185, 190; 600 NW2d 129 (1999).

Defendant also argues on appeal that the trial court erred when it vacated the arbitration award because the arbitration award drew its essence from the agreement. "It is well-settled that arbitration is a favored means of resolving labor disputes and that courts refrain from reviewing the merits of an arbitration award when considering its enforcement. To that extent, judicial review of an arbitrator's decision is very limited; a court may not review an arbitrator's factual findings or decision on the merits." *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 150; 393 NW2d 811 (1986).

Review of an arbitration award is "narrowly circumscribed" and limited to determining whether the arbitration award exceeded the arbitrator's contractual authority. *Sheriff of Lenawee Co v Police Officers Labor Council*, 239 Mich App 111, 117-118; 607 NW2d 742 (1999); *Michigan State Employees Ass'n v Dep't of Mental Health*, 178 Mich App 581, 583; 444 NW2d 207 (1989). The only issue is whether the arbitrator, in granting the award, disregarded the terms of his employment and the scope of his authority as expressly circumscribed in the arbitration contract. *Port Huron Area School Dist, supra* at 151-152; *Police Officers Ass'n of Michigan v Manistee Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002). "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." *Michigan State Employees Ass'n, supra* at 583-584, quoting *Ferndale Ed Ass'n v Ferndale School Dist No 1*, 67 Mich App 637, 642-643; 242 NW2d 478 (1976).

In reviewing an arbitration award, judicial review ends if the arbitrator acted within the scope of his authority set forth in the parties' contract. *Sheriff of Lenawee Co, supra* at 118. The arbitrator is allowed to interpret and apply the agreement. *Id*. at 119. It is irrelevant whether the arbitrator's interpretation is wrong. *Michigan State Employees Ass'n, supra*, at 583-584. Moreover, reviewing courts must be careful to avoid reviewing the merits of the underlying claim. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 497; 475 NW2d 704 (1991). Absent express language to the contrary, an arbitration award will be presumed to be within the scope of the arbitrator's authority. *Id*.

After reviewing the arbitrator's opinion and award, we find that the arbitrator recognized and adhered to the contractual limitations on his authority. In conducting his analysis, the arbitrator carefully considered the agreement language, pointed out two sections he directly relied on in coming to his conclusion, and did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract. Thus, our review effectively ceases. See *Police Officers Ass'n of Michigan, supra*. This Court will not further consider the merits of the arbitrator's decision, irrespective whether the arbitrator incorrectly interpreted the parties' agreement. *Port Huron Area School Dist, supra*; *Police Officers Ass'n of Michigan, supra*; *Michigan State Employees Ass'n, supra* at 584.

We reverse the trial court's order and reinstate the award of the arbitrator. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Pat M. Donofrio
/s/ Stephen L. Borrello