STATE OF MICHIGAN

COURT OF APPEALS

IRONWOOD AREA SCHOOLS and IRONWOOD AREA SCHOOLS BOARD OF EDUCATION,

Plaintiffs-Appellees,

v

IRONWOOD EDUCATION ASSOCIATION, MEA-NEA,

Defendant-Appellant.

UNPUBLISHED
December 16, 2004

No. 249686
Gogebic Circuit Court
LC No. 03-000060-CL

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Defendant appeals as of right the order denying its motion for summary disposition and granting plaintiffs summary disposition of their complaint, which sought to vacate an interim arbitration opinion and award. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant maintains that the circuit court's ruling exceeded the permissible scope of review of the arbitrator's decision. Because the parties do not dispute the underlying facts, we review de novo the circuit court's summary disposition ruling. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Whether an arbitrator exceeded his contractual authority is an issue for judicial determination, but Michigan courts have long adhered to a very limited standard of review when considering the enforceability of labor arbitration awards. *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 152; 393 NW2d 811 (1986).

> 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. [*Id*. at 150.]

The reviewing court must use caution to limit its review to whether the arbitrator exceeded his contractual authority. *Michigan State Employees Ass'n v Dep't of Mental Health*, 178 Mich App 581, 583; 444 NW2d 207 (1989).

> "The party that ends up holding the short end of an arbitrator's award may try desperately to fit the facts within the narrow doorway to the courts, but the judicial policy is clear. . . . 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. Once substantive arbitrability is determined . . . judicial review effectively ceases. The fact that an arbitrator's interpretation of a contract is wrong is irrelevant. [*Id.* at 583-584, quoting *Ferndale Ed Ass'n v Ferndale School Dist No 1*, 67 Mich App 637, 642-643; 242 NW2d 478 (1976).]

When the arbitrability of an issue is not contested, 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 Sch Dist*, *supra* at 151-152.

Plaintiffs suggest that this dispute does not qualify as arbitrable. Because no indication exists that plaintiffs ever challenged the arbitrability of this dispute before the arbitrator, and his opinion shows to the contrary that the "*parties stipulated* this matter is properly before the arbitrator for final and binding resolution" (emphasis in original), plaintiffs may not contest arbitrability for the first time on appeal. *American Motorists Ins Co v Llanes*, 396 Mich 113, 114; 240 NW2d 203 (1976). Moreover, the arbitrator's "'subject matter' jurisdiction" derives from the parties' agreement, and in this case, the collective bargaining agreement (CBA) plainly establishes that the grievance procedure culminates in arbitration, Art XXI(B), (H) and (K), and the parties acknowledge that Mark Kukowski filed a grievance on the basis of alleged CBA violations. *Port Huron Area Sch Dist*, *supra* at 153.

With respect to whether the arbitrator's interim opinion and award exceeded the scope of his authority, the starting point for this analysis is within the parties' CBA because the labor arbitrator exists as a "creature of the contract." *Id.* Article XXI of the CBA, entitled "Grievance procedure," provides that the arbitrator must render his decision in accordance with the CBA's provisions, and "shall have no power to alter, add to, or subtract from the terms of the Agreement."

A careful review of the arbitrator's interim opinion and award demonstrates that he recognized and adhered to the contractual limitations on his authority because he located, interpreted, and applied throughout his lengthy opinion numerous CBA provisions in resolving the three preliminary questions that plaintiffs wanted answered. The arbitrator repeatedly recognized the limitation on his authority to consider and apply only the CBA's terms, citing CBA article XXII(A), and reviewed approximately ten CBA articles and schedules in reaching his conclusions that (1) despite the board's label of its October 2001, vote regarding Kukowski as a contract nonrenewal, the vote constituted a termination of a coaching assignment for the new school year, which assignment under the CBA automatically commenced with the new school year, in the absence of any action of nonrenewal by the board before the beginning of the school year, referring to Articles I(G), VII(D), X(A), (E), (F) and (H), XXIX, and Schedules B, D; and (2) because Kukowski had begun a new coaching assignment, the CBA explicitly forbade his

termination without just cause, referring to Articles III, IX(A) and XVIII(H)(5). In no conceivable way did the arbitrator exceed the scope of his authority by "refus[ing] to recognize the terms and conditions expressly circumscribing his jurisdiction and authority in resolving a submitted dispute," or craft an award "dependent upon . . . interpretation of provisions expressly withheld from arbitral jurisdiction, or upon [the] arbitrator's disregard and contravention of provisions expressly limiting arbitral authority." *Port Huron Area Sch Dist*, *supra* at 151-152.

Because the arbitrator did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the CBA, and the interim award thus drew its essence from the CBA, judicial review effectively ceases. *Police Officers Ass'n of Michigan v Manistee Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002). We may not further consider the arbitrator's factual findings or the merits of his decision, irrespective of whether he might have incorrectly interpreted the parties' agreement. *Id*. Because the circuit court's summary disposition ruling consists of second-guessing the arbitrator's factual findings and application of what he viewed as the relevant CBA terms, we reverse the circuit court's order that granted plaintiffs summary disposition, vacated the interim opinion and award, and permanently enjoined further arbitration hearings.

Reversed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens