STATE OF MICHIGAN

COURT OF APPEALS

NORTHVILLE EDUCATION ASSOCIATION, MEA/NEA, and PAULA MINNI, Plaintiffs-Appellees, v NORTHVILLE PUBLIC SCHOOLS and NORTHVILLE BOARD OF EDUCATION, Defendants-Appellants.	UNPUBLISHED August 20, 2009 No. 287076 Wayne Circuit Court LC No. 08-104754-CL

Before: Cavanagh, P.J., and Markey and Davis, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order vacating an arbitration award and remanding the matter to the arbitrator. We affirm.

Plaintiff Paula Minni is a tenured teacher at defendant Northville Public Schools (Northville), and she is represented by plaintiff Northville Education Association, the teachers' union and collective bargaining agent. Pursuant to the parties' collective bargaining agreement, Northville employs two methods for evaluating its teachers: a standard "check list" approach and, optionally for tenured teachers with no outstanding concerns, a more desirable and flexible "goal based" approach. Minni had previously qualified for, and elected, goal based evaluations.

In 2002 she received notice that she was again eligible for goal-based evaluation, and she submitted to the school principal the necessary paperwork to request such an evaluation. Her next evaluation was scheduled for the 2005-2006 school year. She went on maternity leave in the spring of 2005, and she remained on maternity leave until the end of the 2004-2005 school year. She was not notified during that time of her eligibility for a goal-based evaluation. As a consequence, she did not fill out the paperwork necessary for teachers to opt into a goal-based evaluation. Minni returned from maternity leave, and she was given the standard check list evaluation in the 2005-2006 school year.

She received a copy of that evaluation on May 11, 2006. That evaluation listed several areas as "below district standards," and so an individualized development plan (IDP) was established for the following school year. In November of 2006, Minni met with her school principal and lodged a formal objection to the use of the check list evaluation for the 2005-2006 school year. Minni's position was (and is) that the school failed to provide her with required

advance notice that she had been eligible to elect a goal based evaluation. She commenced a grievance on January 7, 2007.

The arbitrator concluded that under the circumstances, the school had not been obligated to provide Minni with notification because she "was not in active employment when other eligible teachers were notified of their eligibility to participate in the goal-setting model of evaluation" and Minni's previous experience with that kind of evaluation meant she "was not ignorant of the process." Furthermore, the arbitrator disagreed with the school's contention that the matter was not arbitrable because it had not been timely raised; however, the arbitrator noted that the school had relied on Minni's participation in the check list evaluation and, because Minni waited fifteen months before making a claim regarding the matter, she was "now estopped from making a very late claim." The arbitrator therefore denied the grievance.

The trial court found that the arbitrator had added a term to the contract and therefore exceeded his authority, and furthermore estoppel was inapplicable because the terms of the contract did not permit such equitable considerations. The trial court vacated the award and ordered a new arbitration proceeding to "apply the principles of contract law."

A trial court's decision whether to vacate an arbitration award is reviewed de novo. *City of Ann Arbor v AFSCME Local 369*, ___ Mich App ___, ___; ___ NW2d ___ (May 28, 2009), slip op at 11. The courts generally may not even inquire into whether the arbitrator made any sort of mistake, as long as the arbitrator did not stray from the confines of whatever authority he or she was granted by the parties' contract. *Id*. The courts' review of an arbitrator's decision is narrowly limited to determining "whether the award was beyond the contractual authority of the arbitrator," *id*., or whether the arbitrator contravened controlling legal principles and correction of the legal error would lead to a substantially different award. *Saveski v Tiseo Architects, Inc*, 261 Mich App 553, 554-555; 682 NW2d 542 (2004).

The specific provision of the parties' collective bargaining agreement that plaintiffs contend was violated provides:

> By the end of the year preceding the evaluation, the administrator will notify the teacher, in writing, of his/her eligibility to participate in the goal-setting model. Teachers who are denied the opportunity to participate in the goal-setting model will be provided the reason(s) in a conference with the administrator.

Furthermore, "[t]he arbitrator will be without power or authority to add to, subtract from, disregard, alter or modify any of the terms of this Agreement, nor will he/she make any decisions which require the commission of an act prohibited by law."

It is undisputed that, by the end of the year preceding the evaluation at issue, Minni was not provided with any notification, written or otherwise, of her eligibility to participate in goal based evaluation. Minni was still considered a teacher employed by defendants at that time. The plain language of the contract simply does not provide for any exceptions or exemptions. Therefore, the arbitrator "added to" the terms of the contract by permitting an exception to the notification requirement for teachers who are not "active" at the time. The arbitrator exceeded his contractual authority by "creat[ing] an exception that does not exist in the collective

bargaining agreement." See *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 120; 607 NW2d 742 (1999). The trial court correctly so found.

Our Supreme Court has explained that "duress, waiver, estoppel, fraud, or unconscionability" are "[e]xamples of traditional defenses" to provisions of an unambiguous contract. *Rory v Continental Ins Co*, 473 Mich 457, 470 n 23; 703 NW2d 23 (2005). There is no inherent reason why the arbitrator could not have appropriately found that Minni "estopped from making a very late claim." However, equitable estoppel precludes a party from asserting or denying a *fact*, if that party (1) induced the opposing party to rely on the existence or nonexistence of some fact and (2) that opposing party would now be prejudiced if the first party was permitted to assert a contrary factual situation. See *Van v Zahorik*, 460 Mich 320, 335; 597 NW2d 15 (1999). The arbitrator's award does not suggest that Minni's delay caused defendants to suffer any prejudice. More importantly, the arbitrator's award would preclude Minni's entire claim, which is really an application of laches. The doctrine of laches, where appropriate, precludes a party from obtaining particular relief. *Twp of Yankee Springs v Fox*, 264 Mich App 604, 611-612; 692 NW2d 728 (2004).

Under either doctrine, however, mere unexcused delay in asserting a right is insufficient unless that delay can be proven to have caused prejudice to the party against whom the right is asserted. *Van*, supra at 335; *Twp of Yankee Springs*, *supra* at 611-612. The trial court correctly found that such equitable defenses to the provisions of the collective bargaining agreement are theoretically available to defendants. However, the arbitrator contravened controlling legal principles by applying what appears to be the wrong doctrine and, either way, without any findings regarding a required element. See *Saveski*, *supra* at 554-555. We agree with the trial court's resolution: the arbitration award must be vacated, and the matter remanded to the arbitrator for reconsideration in light of the proper law.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Alton T. Davis