IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Bald Eagle Area School District, Appellant	:	
v.	:	No. 108 C.D. 2011
	:	Argued: September 16, 2011
Bald Eagle Area Education Association	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE P. KEVIN BROBSON, Judge (P.)

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON **FILED:** October 11, 2011

Bald Eagle Area School District (School District) appeals from an order of the Court of Common Pleas of Centre County (trial court), dated December 23, 2010, which denied the School District's petition to vacate an arbitration award. The issue in this matter concerns an arbitrator's interpretation of a lifetime disability clause contained in a collective bargaining agreement (CBA) entered into between the School District and Bald Eagle Area Education Association (Association). For the reasons that follow, we affirm.

We begin with a brief history of the relevant CBA language. Going back as far as the parties' 1985-88 CBA, Article XII(C), entitled "Lifetime Disability," provided:

> The Board shall provide a lifetime disability insurance program for all professional employees to provide benefits in the amount of Six hundred ($600) Dollars per month for 1983-84 and Eight hundred ($800) Dollars per month effective 1984-85, during the first year of disability, and Eight hundred ($800) Dollars per month

> for the second year and each year thereafter, coverage to begin with the 31st day of disability; *the plan to be integrated with Workmen's Compensation, Social Security benefits and all other disability payments under the Pennsylvania Public School Employees Retirement Program [(PSERS)]*, after eleven (11) months, all benefits subject to the underwriting requirements of the insurance company. Coverage shall not exceed sixty percent (60%) of the employee's salary.

(Reproduced Record (R.R.) at 17a (emphasis added).) The next CBA, effective 1988-92, contained identical language. (*Id*. at 20a.)

During the bargaining of a successor agreement in 1992, the parties were unable to reach an agreement, and the matter was submitted to fact finding. The School District proposed that the coordination of benefits language in Article XII(C) should include sick leave pay, and the Association proposed to change the cap of $800 to an amount equal to sixty percent of an employee's salary. Neither party sought to eliminate the coordination of benefits language. (*Id*. at 24a.) The fact finder recommended that the then-current CBA language should not be changed. (*Id*.) In the end, the fact finding report was rejected, and the parties continued to negotiate.

Eventually, the parties reached a tentative agreement on the negotiated issues. On December 2, 1993, a representative for the Association faxed the agreed-upon changes for the 1992-1997 CBA to the School District, stating: "The following are the changes which will have to be incorporated into the contract." (*Id*. at 25a.) With regard to Article XII(C), the fax provided:

> The Board shall provide a lifetime disability insurance program for all professional employees to provide benefits as follows for each month of the disability, coverage to begin on the expiration of all accumulated sick leave or on the 31st day of disability, which is later:

1992-93	$800 per month
1993-94	$1200 per month
1994-95	$1300 per month
1995-96	$1400 per month
1996-97	$1500 per month

Coverage shall not exceed 60% of salary.

(*Id*. at 28a.) The above language from the Association's representative's fax was adopted in full by the School District in drafting the 1992-97 CBA, which was approved and ratified by the parties. (*Id*. at 44a.)

Thereafter, the language contained in Article XII(C) of the 1992-97 CBA was carried forward, with minor changes, in three successive agreements: the 1997-2000, 2000-03, and 2003-10 CBAs. For the 1997-2000 CBA, the clause of Article XII(C) indicating when lifetime disability coverage was to begin was reviewed by the parties and altered to read "coverage to begin upon the expiration of all accumulated sick leave *including days used from the Sick Leave Bank*." (*Id*. at 46a (emphasis added).) Accordingly, as of the parties' 2003-10 CBA, Article XII(C) provided, in pertinent part:

> The Board shall provide a lifetime disability insurance program for all professional employees to provide benefits as follows for each month of the disability, coverage to begin upon the expiration of all accumulated sick leave including days used from the Sick Leave Bank or on the 31st day of disability, whichever is later:
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> 2003-2010 $1500 per month
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> Coverage shall not exceed sixty percent (60%) of the employee's salary.

(*Id*. at 55a.)

Clyde Long (Long) was employed as a science teacher by the School District for various periods from 1969 until his retirement on February 5, 2007.[1] Upon retiring, Long applied for and was granted long-term disability benefits from the United States Social Security Administration, PSERS, and the School District's disability benefits carrier, Madison National Life (Madison). Long was approved for payments in the amount of $1,562 per month from Social Security, $1,470.92 per month from PSERS, and $375 per month from Madison. (*Id*. at 9a-10a.) On November 2, 2009, the Association filed a grievance with the School District, asserting that Long was also entitled to lifetime disability benefits from the School District in the amount of $1,500 per month, less the $375 he received per month from Madison, based on Article XII(C) of the 2003-10 CBA. The School District denied the grievance, and the matter proceeded to mandatory arbitration before an arbitrator, who held a hearing on July 1, 2010.

Before the arbitrator, the School District did not dispute the Association's interpretation of Article XII(C) of the 2003-10 CBA, but instead, argued that the language contained in Article XII(C) of the 2003-10 CBA did not reflect the parties' actual agreement because of mutual mistake. Specifically, the School District asserted that the language calling for the integration of lifetime

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[1] As provided in the arbitrator's award:

> Grievant Clyde Long taught Science at the Bald Eagle Area School District Senior High School from the 1969/70 school year through the 1972/73 school year. He again taught High School Science for the 1997/98 school year through February 5, 2007, which was the effective date of his retirement. Mr. Long requested and was granted sabbatical leaves for the restoration of health for the second semester of the 2005/06 school year and for the first semester of the 2006/07 school year.

(Arbitrator's Award, Sept. 9, 2010, at 2 (citations omitted).)

disability insurance program benefits with other disability benefits was omitted from Article XII(C) of the 1992-97 CBA through scrivener's error, and that the error was carried forward into the 2003-10 CBA. The School District maintained that the scrivener's error occurred when the agreed-upon changes contained in the Association's representative's December 2, 1993 fax were adopted wholesale instead of being incorporated into the then-current CBA language. The School District also contended that, notwithstanding the mutual mistake, it has been the parties' custom and practice over time to integrate lifetime disability insurance program benefits with other disability benefits.[2, 3]

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[2] As provided in the arbitrator's award:

> Based upon the [School] District's records, it appears that four teachers (before Grievant Long) retired and/or received long term disability benefits during the period from 1992 to 2008 under the then existing labor agreements. First, the [School] District observes that Mary Williams retired in the mid to late 1990s. The [School] District notes that as her monthly pension benefit was greater than her gross monthly benefit, rather than pay her the contractual "lifetime benefit", [sic] her benefits were coordinated and she instead received the minimum benefit of $300. Second, the [School] District states that Mary Houck retired on or about November 19, 1998. In or about late 1999 or early 2000, she was awarded Social Security Disability Benefits and PSERS benefits retroactive to November 1998. Her benefits were coordinated and she had to repay $16,800 which she had previously received. Third, the [School] District cites Diane Richards, who went on long term disability from February 18, 2005 through May 16, 2005. Her disability benefits were offset by other income to include sick pay and Workers' Compensation. Finally, the [School] District states that William Heckathorne became disabled on February 4, 2007, used accumulated sick leave through April 22, 2008, and became eligible for benefits on April 23, 2008. Mr. Heckathorne's benefits were offset by other sources of income.

(Arbitrator's Award, Sept. 9, 2010, at 11.)

The Association argued that the clear and unambiguous language contained in Article XII(C) of the 2003-10 CBA required the School District to provide a lifetime disability program in the amount of $1,500.00 per month, not to exceed sixty percent of the employee's salary. In so arguing, the Association pointed out that Article XII(C) of the 2003-10 CBA makes no reference to setoffs, exclusions, or exceptions. In addition, the Association denied that a mutual mistake had occurred. The Association also denied that the parties had a past practice of integrating lifetime disability insurance benefits with other disability benefits.[4]

By award dated September 9, 2010, the arbitrator sustained the Association's grievance, directing the School District "to provide lifetime

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[3] The School District also argued that the Association's grievance on behalf of Long was not procedurally arbitrable because it was not timely filed. The arbitrator, however, found the Association's grievance to be timely filed. The School District does not challenge this portion of the arbitrator's award in the present matter.

[4] As provided in the arbitrator's award:

> In his letter of August 16, [2010] accompanying the Association's post-hearing brief, [the Association's attorney] related: "I received a letter from [the School District's attorney] on July 26, 2010, reciting instances of past practice. We have reviewed the Association's records—not only the local records but also the files in State College—and find no evidence that any of those situations were ever brought to the attention of the Association with regard to claims for lifetime disability insurance. We do have an indication that a couple of people inquired about health insurance issues but not disability insurance issues. I would be happy to supply that information in affidavit form if [the School District's attorney] or if you feel it to be necessary. As far as the Association knows, this is the first time this issue has been brought to the attention of the Association, hence the filing of this grievance."

(Arbitrator's Award, Sept. 9, 2010, at 11-12.)

disability benefits to . . . Long in the amount of $1500 per month, without setoff, exceptions or exclusions." (Arbitrator's Award, Sept. 9, 2010, at 12.) In reaching this conclusion, the arbitrator found the language of Article XII(C) of the 2003-10 CBA to be clear and unambiguous. In addition, the arbitrator rejected the School District's argument that a mutual mistake had occurred. The arbitrator also rejected the School District's argument that the parties have had a "practice" of integrating lifetime disability insurance program benefits with other disability benefits since ratification of the 1992-97 CBA.

On October 11, 2010, the School District filed a petition to vacate the arbitrator's award with the trial court. By order dated December 23, 2010, the trial court denied the petition to vacate, concluding that the arbitration award derived its essence from the 2003-10 CBA. This appeal followed.

On appeal, the School District argues that the arbitrator's award does not draw its essence from the 2003-10 CBA because the arbitrator relied on language that does not reflect the actual agreement between the parties. Specifically, the School District argues that, when the language contained in Article XII(C) of the 2003-10 CBA is viewed in the context of the parties' bargaining history, it is clear that the parties never agreed that lifetime disability insurance benefits would be paid without integration with other disability benefits. We disagree.

In *State System of Higher Education (Cheyney University) v. State College University Professional Association (PSEA-NEA)*, 560 Pa. 135, 150, 743 A.2d 405, 413 (1999), our Supreme Court set forth a two-prong approach for judicial review of grievance arbitration awards, known as the "essence test":

> First, the court shall determine if the issue as properly defined is within the terms of the collective bargaining

> agreement. Second, if the issue is embraced by the agreement, and thus, appropriately before the arbitrator, the arbitrator's award will be upheld if the arbitrator's interpretation can rationally be derived from the collective bargaining agreement. That is to say, a court will only vacate an arbitrator's award where the award indisputably and genuinely is without foundation in, or fails to logically flow from, the collective bargaining agreement.

Under this standard, therefore, the reviewing court should not delve into the merits of the dispute.

Here, it is undisputed that the first prong of the essence test is satisfied, *i.e.*, that the issue of whether Long is entitled to lifetime disability benefits under Article XII(C) of the 2003-10 CBA is within the terms of the 2003-10 CBA. This Court is left to determine, therefore, under the second prong of the essence test, whether the arbitrator's award can rationally be derived from the 2003-10 CBA. In performing this task, we must view the 2003-10 CBA "in light of its language, its context, and any other indicia of the parties' intention." *Westmoreland Intermediate Unit # 7 v. Westmoreland Intermediate Unit # 7 Classroom Assistance Educ. Support Pers. Ass'n, PSEA/NEA*, 595 Pa. 648, 660, 939 A.2d 855, 862 (2007) (quotations omitted).

As noted above, the arbitrator sustained the Association's grievance by finding that the language contained in Article XII(C) of the 2003-10 CBA was clear and unambiguous. In so finding, the arbitrator noted that Article XII(C) of the 2003-10 CBA included the mandatory language "shall" and was unqualified by "setoff, exceptions or exclusions." (Arbitrator's Award, Sept. 9, 2010, at 8, 12.) Although the arbitrator was of the opinion that it was unnecessary to look beyond the clear and unambiguous language of Article XII(C) of the 2003-10 CBA, the

arbitrator went on to address the School District's arguments concerning mutual mistake and custom and practice.[5]

In rejecting the School District's argument that Article XII(C) of the 2003-10 CBA did not reflect the parties' actual agreement because of mutual mistake, the arbitrator summarized the parties' bargaining history, noted the significant difference between the language contained in 1988-92 CBA and the December 2, 1993 fax from the Association's representative, and concluded:

> If the[] changes [between the 1988-92 CBA and the December 2, 1993 fax] did not represent the tentative agreement of the parties, it is reasonable to find that the School District would have addressed the issue with the Association prior to ratification and execution of the 1992[-]97 agreement. However, the School District caused the [CBA] to be prepared utilizing the Association's rendition of the tentative agreement regarding Article XII(C) as set forth in the December 2, 1993 fax. The parties reviewed the completed agreement, presented it to their respective constituencies, received approval by voting and then executed the finalized document. This appears to be more than just a scrivener's error: from all appearances, Article XII(C) in the 1992[-]97 contract sets forth the agreement of the parties as expressed by [the Association's representative] and ratified by the School District. That same contractual mandate absent a coordination of benefits clause has now been carried forward in three successive

[5] In *United School District v. United Education Association*, 782 A.2d 40, 44-46 (Pa. Cmwlth. 2001), this Court held that an arbitrator commits a legal error by not considering the negotiating history and custom and practice of the parties in interpreting a CBA. We went on to hold, however, that such a legal error, in itself, will not serve as the basis for vacating an arbitrator's award where a party has not been deprived of a fair and complete opportunity to present its case. *United*, 782 A.2d at 47-48. Here, the arbitrator did not prevent the School District from presenting its evidence regarding mutual mistake and custom and practice, and, as noted above, even though the arbitrator determined that it was unnecessary to look beyond the clear and unambiguous language of Article XII(C) of the 2003-2010 CBA, the arbitrator went on to address the School District's arguments.

> agreements negotiated between the parties since the 1992[-]97 agreement. . . .
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> For the 1997[-]2000 agreement, Article XII(C) was reviewed resulting in the addition of a clause indicating that disability coverage would begin upon expiration of accumulated sick leave including days used from the sick leave bank. As such, Article XII(C) as it has existed through the 2003[-]10 contract is not just a section of the contract that was retyped year after year, but was subject to review and modification by the parties.
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> In the course of negotiating and agreeing to the 1997[-]2000, 2000[-]03 and 2003[-]10 successor agreements, I respectfully state that the School District was charged with knowledge of the contents of the lifetime disability provision. If there was a purported mutual mistake by the continued absence of a coordination of benefits clause, I would expect that the School District with due diligence would have raised the issue in bargaining for one of these three successor contracts. It did not. . . .

(Arbitrator's Award, Sept. 9, 2010, at 10-11 (underlining in original).)

In rejecting the School District's argument that, notwithstanding the mutual mistake, the parties have had a custom and practice over time of integrating lifetime disability insurance program benefits with other disability benefits, the arbitrator reviewed the School District's records (*see supra* n.2), recounted the Association's response (*see supra* n.4), and concluded:

> There has been no evidence presented to show that the Association now or ever has had any knowledge of action by the School District commencing with the 1992[-]97 contract of integrating social security and other disability benefits with the Article XII(C) lifetime disability benefit. As noted in Article I, Section A [of the CBA], the Association is recognized by the School District as the exclusive bargaining representative of the School District's professional employees. The parties to the [CBA] are the Association on behalf of these bargaining unit employees and the School District. It is

> the sole right and responsibility of the Association to police and administer the [CBA]. This does not seem to have happened as the Association had no notice or involvement in the School District's dealings allegedly pursuant to Article XII(C) with the four previously named retired/disabled professional employees.
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> I respectfully state that there is no "practice" that would justify the School District's asking employees to waive Article XII(C) and to coordinate benefits. . . . [P]resuming that the clear and unambiguous language could be altered by practice, the practice would have to be between the School District and the Association, and not between the School District and its employees. Otherwise stated, it would have to be shown by the School District that over the course of time, it and the Association reached a tacit understanding that the School District would coordinate benefits pursuant to Article XII(C). Based on the representation of [the Association's attorney], there has never been such an understanding between the Association and the School District.

(Arbitrator's Award, Sept. 9, 2010, at 12.)

Based on the above, we conclude that the arbitrator's award satisfies the second prong of the essence test, and thus, must be upheld. It was not irrational for the arbitrator to conclude that Long was entitled to lifetime disability benefits in the amount of $1,500 per month under Article XII(C) of the 2003-10 CBA. Simply because the School District disagrees with the arbitrator's interpretation does not mean that the arbitrator's award cannot rationally be derived from the 2003-10 CBA. "[T]he essence test does not allow a court to weigh one rational interpretation versus another." *Marion Ctr. Area Sch. Dist. v. Marion Ctr. Area Educ. Ass'n*, 982 A.2d 1041, 1046 (Pa. Cmwlth. 2009).

Accordingly, we affirm.

P. KEVIN BROBSON, Judge

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v.	:	No. 108 C.D. 2011
Bald Eagle Area Education Association	:	

O R D E R

AND NOW, this 11th day of October, 2011, the order of the Court of Common Pleas of Centre County (trial court), dated December 23, 2010, is hereby AFFIRMED.

P. KEVIN BROBSON, Judge