STATE OF MICHIGAN

COURT OF APPEALS

WAYNE-WESTLAND ASSOCIATION OF PARAPROFESSIONALS,

Plaintiff–Appellant,

v

WAYNE-WESTLAND COMMUNITY OF SCHOOLS BOARD OF EDUCATION,

Defendant–Appellee.

UNPUBLISHED
December 20, 1996

No. 182740

Wayne Circuit Court
LC No. 94-425577-CZ

Before: Reilly, P.J. and White and P.D. Schaefer,* JJ.

PER CURIAM.

Plaintiff appeals the circuit court's order granting defendant's motion for summary disposition of plaintiff's petition to vacate a labor arbitration award that concluded that plaintiff's grievance was not timely filed. We affirm.

Plaintiff argues that the arbitration award should be vacated because the arbitrator disregarded the terms of his employment and the scope of his authority in two ways: by evidencing bias and prejudice against plaintiff; and by finding that the grievance was not arbitrable because it was not timely filed, although the collective bargaining agreement provisions allowed the parties to waive the time requirements. Plaintiff asserts that the arbitrator impermissibly based his award on plaintiff's failure to call an adverse witness when plaintiff had no duty to call the witness, and on plaintiff's failure to obtain a written waiver of the time requirements where the contract imposes no such duty. Plaintiff also asserts that the circuit court erred in granting summary disposition and refusing to permit discovery of the arbitrator where plaintiff established ex-parte contact between the arbitrator and defense counsel.

---

* Circuit judge, sitting on the Court of Appeals by assignment.

Judicial review of an arbitrator's decision is limited. *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989). A court may not review an

arbitrator's factual findings or decision on the merits. Rather, a court may only decide whether the arbitrator's award draws its essence from the contract. If the arbitrator in granting the award did not disregard the terms of his employment and scope of his authority as expressly circumscribed in the arbitration agreement, judicial review effectively ceases. *Id.*

Plaintiff argues that the arbitrator disregarded the terms of his employment and exceeded the scope of his authority by evidencing bias or prejudice toward plaintiff in three ways. First, the arbitrator had direct contact with defendant regarding defendant's request for an extension to submit a post-hearing brief due to a computer malfunction. Next, bias existed as the arbitrator and defense counsel had been involved previously in the arbitration of other matters. And finally, bias or prejudice against plaintiff could be inferred from the arbitrator's holding, which ignored the provisions of the collective bargaining agreement that provided that the parties could waive the time requirements and did not require that the waiver be in writing.

Plaintiff erroneously relies on MCR 3.602 as providing a basis upon which relief can be granted. MCR 3.602 governs statutory arbitration, and cases involving collective bargaining agreements are expressly excluded from statutory arbitration. MCL. 600.5001(3); MSA 27A.5001(3), *Jontig v Bay Metro Transportation Authority*, 178 Mich App 499, 503; 444 NW2d 178 (1989). Further, we conclude that the contact regarding the post-hearing brief and the fact of prior arbitrations do not establish bias.

Plaintiff's argument that the decision of the arbitrator is so unreasonable that it constitutes bias is essentially an attack on the arbitrator's decision itself, and neither this Court nor the circuit court may reverse an arbitrator's decision based on the underlying merits of the grievance. *Roseville Community School District v Roseville Federation of Teachers*, 137 Mich App 118, 126; 357 NW2d 829 (1984).

Plaintiff further argues that the arbitrator disregarded the terms of his employment and the scope of his authority by finding the grievance not arbitrable because it was not timely filed, when the collective bargaining agreement allowed the parties to waive the time requirements, and did not require that the waiver be in writing. Plaintiff alleges that the arbitrator wrongfully predicated his decision on plaintiff's failure to produce an adverse witness to testify as to the mutual agreement of the parties to waive the time limits of the agreement. We conclude that the arbitrator did not base the award on the lack of a writing or on plaintiff's failure to call the witness, but, rather, concluded that plaintiff did not establish a mutual agreement to extend the time limit.

Further, the timeliness of the grievance was a question properly left to the arbitrator. *Roseville, supra* at 124. Therefore, plaintiff's assertion that the arbitrator's decision is incorrect fails to state a cause of action for judicial review, and summary disposition for defendants was warranted.

Lastly, we conclude that contrary to plaintiff's assertions, the circuit court demonstrated an adequate understanding of the issues before it. We also conclude that the court did not err in concluding that there was insufficient reason to compel discovery.

Regarding defendant's request that it be awarded costs and reasonable attorney fees in having to defend a frivolous appeal, MCR 7.216(C)(1)(b) states that :

> The Court of Appeals may, on its own initiative or the motion of any party, assess actual and punitive damages or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because (b) a pleading, motion, argument, brief, document, or record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the court.

While we do not conclude that plaintiff's appeal is frivolous or vexatious in general, we cannot ignore that plaintiff's appellate brief purports to quote directly from the arbitrator's opinion, by indenting in block form and placing quotation marks around an alleged finding and introducing the quote with "In [the arbitrator's] opinion he tells us:" when in fact there is no such statement in the arbitration award. We therefore assess $100.00 against plaintiff in favor of defendant.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Helene N. White
/s/ Philip D. Schaefer