STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN STATE EMPLOYEES ASSOCIATION,

Plaintiff-Appellee,

v

DEPARTMENT OF NATURAL RESOURCES,

Defendant-Appellant.

UNPUBLISHED
January 21, 1997

No. 187887
Ingham Circuit Court
LC No. 95-79525 CL

Before: Markman, P.J., and O'Connell and D. J. Kelly,* JJ.

PER CURIAM.

Plaintiff union petitioned the circuit court on behalf of a union member to vacate an arbitration award denying its grievance against defendant employer. The court granted summary disposition in favor of plaintiff. Defendant employer now appeals by leave granted. We reverse the order of the circuit court.

John Crane is a conservation officer employed by defendant. He is also a member of plaintiff union. In August 1993, Crane requested of defendant two days of annual leave, scheduled for the first two days of firearm deer hunting season in November 1993. Crane explained that this hunting season would be the first in which his son would be old enough to participate, and that he intended the two of them to hunt together. This request was initially approved, but the approval was later rescinded.

Plaintiff filed a grievance on Crane's behalf, contending that the collective bargaining agreement did not allow defendant to rescind its approval of an annual leave request. The arbitrator concluded that because the agreement limited defendant employer's plenary management rights "only by the express terms of [the] Agreement," where there was no contractual provision precluding defendant from rescinding its approval of an annual leave request, defendant had the authority to withdraw its approval. The arbitrator also found that nothing suggested that defendant's exercise of this right under the facts of the present case was arbitrary and capricious. The grievance was, therefore, denied.

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

Plaintiff filed a petition in the circuit court, seeking to have the arbitration award vacated on the ground that the arbitrator had exceeded its authority. Defendant argued, first, that the limitations period for seeking judicial review of the award had passed, and, second, that because the arbitrator's task was contract interpretation, the arbitrator did not exceed its authority in interpreting the contract. The circuit court declined to reach defendant's statute of limitations defense, and concluded that the arbitrator had exceeded its authority. Accordingly, the court vacated the arbitration award. Defendant filed an application for leave to appeal to this Court, which application was granted by order dated November 14, 1995.

On appeal, defendant presents the same arguments it presented before the circuit court. To address defendant's second argument first, we agree that, contrary to the ruling of the circuit court, the arbitrator did not exceed its authority and that its award should not have been vacated.

Appellate review of an arbitration award is very limited. *Gogebic Medical Care Facility v AFSCME Local 992, AFL-CIO*, 209 Mich App 693, 696-697; 531 NW2d 728 (1995). This Court will not flyspeck the contractual interpretation of an arbitrator, but will determine only "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 the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases." *Id*., quoting *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989).

In the present case, the question whether the arbitrator exceeded its authority turns, obviously enough, on the authority delegated by the parties to the arbitrator. The collective bargaining agreement states as follows:

> The Arbitrator shall only have the authority to adjust grievances in accordance with this Agreement. The Arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this Agreement and shall not make any award which in effect would grant MSEA or the Employer any rights or privileges which were not obtained in the negotiation process.

This rather broadly worded provision provides, in essence, that the arbitrator is bound to enforce the collective bargaining agreement as written and may not expand the rights of either party beyond what is set forth in the agreement.

While the collective bargaining agreement has provisions addressing the procedure for approving and denying requests for annual leave, it does not expressly address whether defendant employer may rescind its approval of such a request. Rather, the agreement contains something of a residual clause that recognizes that all authority pertaining to operations and management rests with defendant employer unless the agreement provides otherwise. More specifically, the agreement states that

> It is understood and agreed by the parties that the Employer possesses the sole power, duty and right to operate and manage its Departments . . . . The powers, authority, and discretion necessary for the employer to exercise its rights and carry out its responsibilities shall be limited only by the express terms of this Agreement. Any term or condition of employment other than wages, benefits, and other terms and conditions of employment specifically established or modified by this Agreement shall remain solely within the discretion of the Employer to determine, modify, establish or eliminate. [Emphasis supplied.]

Thus, where the agreement does not, in a specific context, expressly divest managerial authority from defendant employer, this authority remains with defendant. It bears mention that the breadth of this residual clause strongly suggests that all "rights and privileges" not withheld from defendant employer are deemed to have been "obtained in the negotiation process."

Turning, then, to the issue on appeal, we cannot say that the arbitrator exceeded its authority. The arbitrator was specifically authorized to interpret the collective bargaining agreement in accordance with its terms. Further, the residual authority granted defendant in the agreement, when coupled with the fact that rescission of approval of annual leave is nowhere specifically addressed, indicates that the award of the arbitrator certainly "draws its essence" from the collective bargaining agreement in that it pertains to matters addressed in general terms by the agreement. *Gogebic Medical Care Facility, supra*. Therefore, we reverse the order of the circuit court vacating the arbitration award.

Plaintiff advocates a more extensive review of the collective bargaining agreement, arguing that various other provisions imply a limitation on defendant's authority to approve and then rescind its approval of requests for annual leave. However, our review is not de novo. This Court may not indulge itself in a detailed exploration of the nuances of contract law in general and this contract in particular, for to do so would undermine the very purpose of arbitration agreements. See *DAIIE v Reck*, 90 Mich App 286, 289; 282 NW2d 292 (1979). The instant arbitrator was authorized to interpret the collective bargaining agreement and did not violate any of its express terms. Given the limited review appropriate in this context, *Gogebic Medical Care Facility, supra*, this is sufficient to withstand plaintiff's challenge of the award.

In light of our resolution of this issue, we find it unnecessary to address defendant's remaining contention that plaintiff's action was time-barred.

Finally, we would note there is some question as to whether the issue on appeal is moot. As iterated in *People v Briseno*, 211 Mich App 11, 17; 535 NW2d 559 (1995), "[w]here a subsequent event renders it impossible for this Court to fashion a remedy, the issue becomes moot." Here, plaintiff brought this action on behalf of Crane because defendant refused to allow Crane, a conservation officer, annual leave during the first days of firearm dear hunting season in 1993. It is obvious that this Court cannot somehow allow Crane to spend the first days of deer season in 1993 hunting with his son. Further, because the present case concerns a private contract, it does not fall within the exception which

allows consideration of a moot issue where that issue is of public significance. See *In re Ford*, 187 Mich App 452, 454; 468 NW2d 260 (1991). However, regardless of the mootness of the issue, defendant clearly prevails on the merits.

Reversed.

/s/ Stephen J. Markman
/s/ Peter D. O'Connell
/s/ Daniel J. Kelly