

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES STUART MOTT COMMUNITY
COLLEGE PROFESSIONAL TECHNICAL AND
OFFICE UNIT/MEA,

UNPUBLISHED
September 19, 1997

Plaintiff- Appellee,

v

No. 197909
Genesee Circuit Court
LC No. 96-043160-CL

BOARD OF TRUSTEES OF THE CHARLES
STUART MOTT COMMUNITY COLLEGE
DISTRICT,

Defendant- Appellant.

Before: Sawyer, P.J., and Hood and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting plaintiff's motion for summary disposition and vacating the arbitration award. We reverse and remand for entry of an order affirming the arbitration award.

Plaintiff was a labor organization that represented all full-time and regularly scheduled part-time employees of defendant during collective bargaining. Myra White was a member and a part-time staff assistant with defendant. In the fall of 1994, defendant advised White that her position was being eliminated and that she would be laid off effective November 4, 1994. The layoffs were governed by a collective bargaining agreement between defendant and plaintiff that set forth the terms and conditions of employment for full- and part-time bargaining unit employees represented by plaintiff. Article 8 of the contract contained the contract grievance procedure and prescribes final binding arbitration as the method to which the parties agreed to resolve contract disputes.

As a member of plaintiff, White was a party to the contract. The contract provided for the following hierarchy of bumping rights:

A. Employees receiving notice of layoff may request a transfer to another position providing he/she has both more unit seniority and college seniority than the

person presently holding the position. Employees exercising transfer and/or bumping rights in accordance with this section must meet the minimum posted requirements for the job. Employees shall exercise transfer and/or bumping rights in the following order:

1. Vacancies at the same grade level.
2. Bump the lowest senior and college service employee at the same grade level who has both lesser bargaining unit seniority and college service.
3. Vacancies at the next lower grade level.

College seniority began on the date the employee was hired by defendant. Bargaining unit seniority for full-time employees was measured by how long an individual had been with plaintiff. Bargaining unit seniority for part-time employees was calculated using a formula. In addition, the contract provided the following:

Seniority of Part-Time Employees. Seniority of part-time employees is based on the number of hours worked. A separate seniority list for part-time unit members shall be maintained by the Office of Human Resources; Human Resources shall provide the [union] a copy of the seniority list at the end of each academic semester.

At the time of her layoff, there were no vacancies at White's grade level. Seven employees had less college and bargaining unit seniority than White. However, five of those employees held positions that did not match White's job skills. One of the employees who held a position that did match White's job skills, was a full-time employee. Defendant initially accepted White's bump of this full-time employee. However, after further consideration and review of the collective bargaining agreement, defendant decided to rescind the bump authorization.

White filed a grievance alleging violation of her rights under the collective bargaining agreement. The grievance was initially brought as an Unfair Labor Practice charge before the Michigan Employment Relations Commission. MERC dismissed plaintiff's charge that defendant committed an unfair labor practice in deciding to eliminate White. The grievance was then brought to arbitration which was denied. In the award, the arbitrator noted that:

The existence of a separate seniority list for part-time employees could mean, as suggested by the employer, that part-time employees can bump only other part-time employees on the list. Alternatively, as suggested by the Union, the existence of a separate seniority list could refer only to the computation of hours for part-time employees to determine the relative seniority.

Because the contract language is ambiguous, it is necessary and appropriate to consider the bargaining history to determine its meaning.

The arbitrator looked at the testimony presented during the arbitration hearing and held that it explained the ambiguity in the contract. The arbitrator held that a part-time employee is not allowed to

improve his or her position through upward bumping since this was specifically not permitted by the collective bargaining agreement. The arbitrator also stated that part-time jobs were not the same as full-time jobs under the contract because full-time employees have greater benefits. Therefore, a bump from a part-time job to a full-time job would be an upward bump and would not be permitted absent a clear indication from the parties. Such indication was not found by the arbitrator.

On January 26, 1996, plaintiff filed a complaint to vacate the arbitration award, alleging that the arbitrator exceeded his jurisdictional authority in deciding the grievance. The parties filed cross-motions for summary disposition. The trial court granted plaintiff's motion for summary disposition. The trial court held that the arbitrator went beyond his jurisdiction by creating a section of the contract that was not negotiated by the parties, thus adding to the contract. Consequently, the trial court vacated the arbitration opinion and award. On appeal, defendant argues that the arbitrator did not disregard the terms of his employment and the scope of his authority as expressly limited in the arbitration agreement. We agree.

The judicial policy favoring labor arbitration warrants a strong presumption in favor of upholding arbitral awards. *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 152; 393 NW2d 811 (1986). An arbitrator is limited to interpretation and application of the contract. *Id.* However, he may look for guidance from many sources as long as the award draws its essence from the contract. *Id.* Unless expressly agreed, an arbitrator has "great latitude in the sources he may rely upon in resolving disputes concerning the appropriate interpretation of specific contractual provisions" *Id.* at 160.

In the present case, the arbitrator's authority is found in art 8, § 9, level IV, ¶ 2, of the contract that states:

The arbitrator shall have no power to alter, add to, or subtract from the terms of this agreement. The arbitrator shall render his/her decision in writing and shall set forth his/her findings and conclusions on the issues submitted. Both parties agree to bound [sic] by the award of the arbitrator and agree that judgement [sic] thereon may be entered in any court of competent jurisdiction.

Thus, the arbitrator in this case was allowed to consider all aspects of the contract when making his award. The only restriction on the arbitrator was that he could not alter, add to, or subtract from the terms of the contract. The arbitrator was not restricted by art 8, § 9, level IV, ¶ 2, from looking at any source to guide him in interpreting the contract. Thus, when he determined that ambiguity existed in the contract, he had great latitude in the sources he could rely on to resolve the ambiguity. He looked to the bargaining history to determine the meaning of the ambiguous language. He considered testimony from the individuals involved in the negotiations. He also looked to another arbitrator's published award as well as to one of his own unpublished awards for guidance. None of these sources were excluded from him by art 8, § 9, level IV, ¶ 2, and we believe they fall within the great latitude allowed arbitrators. *Port Huron Area School Dist, supra* at 152.

Defendant also argues on appeal that the trial court exceeded its authority by improperly considering the merits of the arbitrator's decision in granting plaintiff's motion for summary disposition. We agree. During judicial review of an arbitration award, courts refrain from reviewing the merits of the award. An arbitrator's factual findings or decision on the merits may not be reviewed by a court. *Port Huron Area School Dist, supra* at 150. The court may not judge the arbitrator's conclusions on the merits of the case or findings of fact. *Berrien Co Probate Judges v Michigan American Federation of State, Co and Municipal Employees Council 25, AFL-CIO*, 217 Mich App 205, 208; 550 NW2d 859 (1996).

We find that the trial court went beyond proper judicial review and analyzed the facts of the case to come to a conclusion regarding the merits of the case. It analyzed the relevant sections of the contract, judged the credibility of the testimony presented during the arbitration and came to conclusions regarding factual issues in the case. It then ruled that the arbitrator erroneously concluded that ambiguity existed in the contract. Since no ambiguity was found, the trial court ruled that the arbitrator added to the contract which was clearly outside the authority given to him in the contract. However, we conclude that the trial court improperly vacated the arbitrator's award because the arbitrator's finding of ambiguity in the contract was neither based on any provisions of the contract expressly withheld from his jurisdiction, nor in disregard of any provision in the contract.

Reversed and remanded for entry of an order affirming the arbitration award. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Harold Hood

/s/ Joel P. Hoekstra