

STATE OF MICHIGAN
COURT OF APPEALS

TEAMSTERS LOCAL NO 580,

Plaintiff-Appellee,

v

CITY OF LANSING,

Defendant-Appellant.

UNPUBLISHED

May 26, 1998

No. 199086

Ingham Circuit Court

LC No. 95-080724-CL

Before: O’Connell, P.J., and White and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right the circuit court’s order granting plaintiff’s motion for summary disposition, and denying defendant’s motion, in this action to compel arbitration under a collective bargaining agreement. We affirm.

Plaintiff and defendant are parties to a collective bargaining agreement (CBA). Plaintiff filed a grievance claiming defendant violated the CBA in filling the vacant position of Wastewater Field Supervisor, Level 33, after defendant filled the position with a non-Teamster. At each step of the grievance process, defendant denied the grievance. Plaintiff informed defendant that it intended to resolve the matter through arbitration and defendant took the position that the dispute was not subject to arbitration under the CBA. Plaintiff filed suit to compel arbitration, and the circuit court ordered arbitration, concluding that the CBA did not expressly exempt the dispute from the arbitration clause and that defendants other defenses lacked merit.

I

The CBA’s Management Rights provisions makes defendant’s rights with respect to the selection of employees for promotion subject to the provisions of Article 6. Article 6, Section 1, entitled “Permanent Transfer” states that “[a]ll qualified Teamsters who sign the job posting shall be given consideration in accordance with Personnel Procedure 27.” Article 6 further provides:

The following conditions shall apply in awarding positions to qualified employees:

A. Positions in Salary Level 27 and Above.

The position will be awarded to the most qualified employee, taking into account his/her qualifications, knowledge, skills, ability, experience, and seniority. The employer will not by-pass Teamster Supervisory or Clerical, Technical and Professional bargaining unit members who bid on positions except to hire a significantly more qualified applicant....

Personnel Procedure 27 provides in relevant part:

4) Prior to issuing referrals to the hiring department, the Personnel Department will work with the hiring department to develop an objective, job related selection process designed to evaluate an employee's potential to satisfactorily perform the duties of the position. The selection process will be submitted to the Personnel Department for review and approval and include the following:

* * *

d) The hiring department must establish the criteria by which the selection process will be evaluated . . . Seniority shall be included as one of the evaluation criteria, with the weight of seniority being clearly defined relative to the other criteria. All disputes over the seniority issue shall be resolved in a special conference with management making the final determination. All unreasonable determinations can be appealed under the grievance procedure.¹

* * *

i) A hiring department by-passing a Teamster candidate to recommend a non-bargaining unit member must provide the Personnel Department with written rationale as to how the recommended applicant is "significantly" more qualified than the Teamster applicant(s). If the Personnel Department disagrees with the decision of the hiring department, a meeting shall be convened with the hiring department and Labor Relations Issues that cannot be resolved shall ultimately be decided by the Hiring Committee. The decision of the Hiring Committee shall not prevent Teamster applicants from exercising their rights under Article 11 Grievance Procedures. [Emphasis added.]

Article 11 provides:

Any grievance . . . which concerns promotions, demotions, reclassification or layoffs shall be presented at Step 3 of the grievance procedure.

Under Article 11, Step 3 of the grievance procedure provides for review by defendant's Labor Relations Administrator. Step 4 provides for a special conference between union representatives and city representatives, and for binding arbitration if the grievance is not resolved at the conference.

The CBA also included a "Memorandum of Understanding Regarding Personnel Procedure 27." The memorandum states:

During the 1990 contract negotiations between the Teamster Supervisory, Clerical, Technical, and Professional bargaining units in the City of Lansing, the City's Personnel selection process was discussed. At that time it was determined that the City would modify the procedure to address several other concerns raised by the bargaining unit.

During the course of this agreement, either party may advise the other party of problems arising out of the implementation of the above mentioned procedure. All disputes unresolved shall be the subject of a special conference with management making the final determination for resolution.

Defendant asserts that the memorandum of understanding expressly excludes unresolved disputes arising under Personnel Procedure 27 from arbitration. We disagree. While the memorandum can be so interpreted, such an interpretation is by no means compelled.

The CBA clearly contemplates the arbitration of unresolved disputes regarding promotion. It is also clear that Personnel Procedure 27 contemplates the exercise of Article 11 grievance and arbitration rights in the event a Teamster applicant is not satisfied with the decision of the Hiring Committee. Admittedly, the intent of the memorandum of understanding is unclear. The language "all disputes unresolved" seems to refer to problems one party has brought to the attention of the other, arising out of the implementation of the procedure. The memorandum does not expressly negate the right to invoke Article 11 rights that is otherwise made express in Personnel Procedure 27. Moreover, Personnel Procedure 27 contemplates, in a single subparagraph, (4)(d), the coexistence of "a special conference with management making the final determination," and the appeal of such a determination under the grievance procedure. Under these circumstances, we cannot agree with defendant that the memorandum of understanding expressly excludes the subject dispute from the broad coverage of the CBA's arbitration clause.

Arbitration of labor disputes is favored, and Michigan courts follow the rule that:

An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the *arbitration clause* is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." (Emphasis supplied.) Absent an "*express provision* excluding [a] particular grievance from arbitration" or the "*most forceful evidence* of a purpose to exclude the claim", (emphasis supplied) the matter should go to arbitration. [*KND School District v KND School Teacher Assn*, 393 Mich 583, 592; 277 NW2d 500 (1975), quoting *United*

Steelworkers of America v Warrior & Gulf Navigation Co, 363 US 574, 582-583;
80 S Ct 1347; 4 L Ed 2d 1409 (1960).]

The memorandum of understanding is ambiguous and does not expressly exempt the subject dispute from arbitration. We therefore affirm.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Richard A. Bandstra

¹ An addendum to the memorandum set forth the procedure for considering seniority as one of the evaluation criteria.