STATE OF MINNESOTA
IN COURT OF APPEALS
A10-670

Independent School District No. 656, Faribault, Minnesota,
Respondent,

vs.

International Union of Operating Engineers,
Local Union No. 70,
Appellant.

Filed November 23, 2010
Affirmed
Stoneburner, Judge

Rice County District Court
File No. 66CV093822

Joseph E. Flynn, Jennifer K. Earley, Knutson, Flynn & Deans, P.A, Mendota Heights, Minnesota (for respondent)

M. William O'Brien, Miller O'Brien Cummins, P.L.L.P., Minneapolis, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and Stoneburner, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant union challenges an order of the district court vacating an arbitration award that required respondent school district to "restore the position of Curriculum and Instruction Secretary to the bargaining unit and transfer to that position all duties

previously performed in that position." Appellant argues that the district court erred by ruling that the parties' dispute was not arbitrable and that the union could not pursue a grievance on this issue. Because the school district's action was not subject to negotiation, the dispute was not arbitrable, and we affirm without reaching the issue of the union's standing to pursue a grievance.

FACTS

Respondent Independent School District No. 656, Faribault, Minnesota (the school district) is a political subdivision. Appellant International Union of Operating Engineers, Local Union No. 70 (the union) is the exclusive representative for secretaries and clerks employed by the school district, excluding, among others, confidential employees. The parties agree that the collective-bargaining agreement governing this dispute is the "Agreement Between Independent School District 656 and International Union of Operating Engineers Local 70 2008–2010 for Secretarial and Clerical Employees" (the CBA).

The position of Curriculum and Instruction Secretary has been a union position since the late 1970s or early 1980s. At times relevant to this matter, Kathy Matejcek was employed as the Curriculum and Instruction Secretary, and Marie Hoffman was a confidential employee with the title Administrative Assistant to the Superintendent, a position not covered by the CBA. When Hoffman announced her intention to retire from her position as Administrative Assistant to the Superintendent in May 2008, the school district decided, without negotiating with the union, to consolidate the position of Curriculum and Instruction Secretary and the position of Administrative Assistant to the

Superintendent. The school district's decision to combine the positions was motivated by financial concerns. The school district's operating levy was relatively low in comparison with other districts. Also, changes in technology had reduced the need for clerical assistance leading to the school district's decision to address its financial concerns, in part, by reducing its clerical-staffing budget by $54,000.

Matejcek accepted the newly created position. Therefore, no one was discharged from employment, but the union lost one position from the bargaining unit. Matejcek became one of the most highly paid clerical workers in the school district. It is undisputed that the majority of her duties as Administrative Assistant to the Superintendent are duties she previously performed as Curriculum and Instruction Secretary.

The union filed a grievance on the grounds that the school district violated the CBA by unilaterally removing bargaining-unit work from the bargaining unit. Although a grievance is defined in the CBA as "an allegation by an employee resulting in a dispute or disagreement between the employee and the school district as to the interpretation or application of terms and conditions contained in this agreement," the union's grievance was filed on behalf of the "Entire Bargaining Unit." The school district denied the grievance, which was then appealed through the steps outlined in the CBA's grievance procedures.

While the grievance was proceeding, the school district petitioned the Minnesota Bureau of Mediation Services (BMS) requesting unit clarification, and the BMS issued an order determining that the position of Administrative Assistant to the Superintendent

is "confidential . . . and is excluded from [the bargaining unit]." The union did not oppose classification of the position as confidential.

The union's grievance proceeded to arbitration, where the school district argued, in relevant part, that the arbitrator lacked jurisdiction because (1) the school district's decision to consolidate the positions is a matter of inherent managerial policy not subject to arbitration and (2) the union does not have standing to assert the grievance. The arbitrator disagreed, concluding that the union could pursue the grievance and the school district violated the CBA when it consolidated the clerical positions without negotiating. The arbitrator ordered the school district to "restore the position of Curriculum and Instruction Secretary to the bargaining unit and transfer to that position all duties previously performed in that position."

The school district petitioned the district court to vacate the arbitration award based on the jurisdiction arguments asserted during arbitration. The district court granted the motion, concluding that the arbitrator exceeded his power, under Minn. Stat. § 572.19, subd. 1(3) (2008), because (1) the school district's decision in this case is a matter of inherent managerial authority and therefore was not a proper subject of arbitration and (2) without an "aggrieved person, there can be no 'grievance,' and the union itself cannot present the grievance on behalf of other bargaining unit members." The union now appeals the district court's determinations that the dispute was not arbitrable and that the union could not pursue a grievance in this case.

D E C I S I O N

"The authority and procedure for judicial interference with the arbitration process under a public sector . . . collective bargaining agreement is . . . governed by the Uniform Arbitration Act," which is codified in chapter 572 of the Minnesota Statutes. *Arrowhead Pub. Serv. Union v. City of Duluth*, 336 N.W.2d 68, 70 (Minn. 1983). The Act provides, in relevant part, that "[u]pon application of a party, the court shall vacate an award where . . . [t]he arbitrators exceeded their powers." Minn. Stat. § 572.19, subd. 1(3) (2008). When a party to arbitration brings a motion to vacate an arbitration award pursuant to section 572.19, subdivision 1, on the ground that the arbitrator exceeded his powers, "the court is not bound by the arbitrator's determination of arbitrability." [1] *Arrowhead*, 336 N.W.2d at 70. Rather, "the issue is to be resolved . . . by an independent judicial determination." *Id.* This court reviews de novo the scope of an arbitrator's authority. *In re County of Hennepin v. Law Enforcement Labor Servs., Inc., Local No. 19*, 527 N.W.2d 821, 824 (Minn. 1995).

The party opposing arbitration has the burden of proving that the dispute is not within the scope of the arbitration agreement. *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 349 (Minn. 2003). Any doubts about arbitrability should be resolved in favor of

[1] The United States Supreme Court has twice defined "arbitrability." The Court first characterized "arbitrability" as "whether a collective-bargaining agreement creates a duty for the parties to arbitrate the particular grievance," *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 649, 106 S. Ct. 1415, 1418 (1986), and it later defined the term as meaning "whether [the parties] agreed to arbitrate the merits [of their dispute]," *First Options Of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 942, 115 S. Ct. 1920, 1923 (1995).

arbitration. *Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 795 (Minn. 1995). But the agreement to arbitrate, like any contract, must be interpreted in accordance with the contract terms. *Id.*

"[O]nce arbitrability has been determined, the function of the court is not to reexamine the merits of the case." *Law Enforcement Labor Servs., Inc. v. City of Roseville*, 393 N.W.2d 670, 672 (Minn. App. 1986).

The provision of the CBA relevant to this issue is article IV, section 1, which states,

> Inherent Managerial Rights: The union recognizes that the school district is not required to meet and negotiate on matters of inherent managerial policy, which include, but are not limited to, such areas of discretion of policy as the functions and programs of the employer, its overall budget, utilization of technology, the *organizational structure and selection and direction and number of personnel.*

(Emphasis added.) This clause is virtually identical to the Public Employment Labor Relations Act (PELRA) provision stating that

> [a] public employer is not required to meet and negotiate on matters of inherent managerial policy. Matters of inherent managerial policy include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the *organizational structure, selection of personnel, and direction and the number of personnel.*

Minn. Stat. § 179A.07, subd. 1 (2008) (emphasis added).

PELRA imposes on public employers the "obligation to meet and negotiate in good faith . . . regarding grievance procedures and the terms and conditions of employment." *Id*. subd. 2 (2008). The CBA defines "[t]erms and [c]onditions of

[e]mployment," in relevant part, as "the hours of employment, the compensation therefor[] . . . , and the employer personnel policies affecting the working conditions of the employees." The CBA's definition of "[t]erms and [c]onditions of [e]mployment" is identical, in all pertinent aspects with PELRA's definition. Minn. Stat. § 179.03, subd. 19 (2008). Terms and conditions of employment and matters of inherent managerial policy often overlap and, at times, are "far from distinct." *City of W. St. Paul v. Law Enforcement Labor Servs., Inc.*, 481 N.W.2d 31, 33 (Minn. 1992).

The district court concluded, relying primarily on *Quiring v. Board of Education*, 623 N.W.2d 634, 639 (Minn. App. 2001), *review denied* (Minn. May 29, 2001), that the school district's decision to eliminate the Curriculum and Instruction Secretary position is a matter of inherent managerial authority and therefore not subject to bargaining under the CBA. The union argues that the district court erred, citing *Foley Educ. Ass'n v. Indep. Sch. Dist. No. 51*, 353 N.W.2d 917, 920–21 (Minn. 1984).

In *Foley*, the school district hired non-teachers to supervise study hall previously supervised by teachers. *Id.* at 923. By doing so, "the district avoided reinstating at least two of the teachers who had been placed on unrequested leave of absence. The decision had a direct adverse impact on the employment opportunities for these members of the bargaining unit." *Id.* The supreme court held that, "the assignment of study hall supervisory duties, work traditionally assigned to [union] members, is a subject of mandatory negotiation" and that the school district's unilateral action in assigning such work to non-union persons violated PELRA. *Id*. at 924. The supreme court noted that it had previously "rejected the argument that contracting out was an inherent managerial

decision not subject to collective bargaining, and held that because it resulted in job termination the subject was a term and condition of employment." *Id.* at 923 (citing *General Drivers Union Local 346 v. Indep. Sch. Dist. No. 704*, 283 N.W.2d 524, 527 (Minn. 1979)).

Here, the school district did not contract out union work, hire additional non-union personnel, or prevent employment of any union members. A union position was eliminated, but because Matajcek was offered and accepted the new position, no union member lost a job. There is no evidence in the record that the terms and conditions of employment of any other union member is affected by consolidation of the clerical positions. We conclude that *Foley* is distinguishable and not controlling in this case.

Quiring is more on point. In that case, union-member Ellyn Quiring worked as a full-time elementary-school principal for many years. 623 N.W.2d at 636. William Strom was a part-time secondary-school principal and part-time superintendent for the same school district. *Id*. After the school district experienced a budget shortfall, it eliminated both principal positions. *Id*. at 637. Strom became a full-time superintendent and assumed many of the duties formerly performed by the principals. *Id*. After an administrative hearing, the school board adopted the hearing officer's recommendation to place Quiring on unrequested leave of absence, and Quiring sought certiorari review from this court. *Id*. Quiring argued, in relevant part, that the school board arbitrarily and capriciously contracted out the duties of the principal positions, thereby terminating Quiring's bargaining-unit position without negotiations. *Id.* at 638. This court distinguished Quiring's circumstances from the circumstances in *Foley*, stating, "[t]his

case . . . is not a situation of contracting out, but rather the school board reorganizing the organizational structure, which is a matter of inherent managerial policy, therefore not requiring negotiation." *Id.* at 639.

We conclude that, like *Quiring*, this case involves reorganization of the organizational structure specifically identified in the CBA as an inherent managerial right not requiring negotiation. Therefore, we agree with the district court that the arbitrator exceeded his power in issuing the arbitration award in this case. The district court did not err by vacating the award under Minn. Stat. § 572.19, subd. 1(3).

Because we affirm the district court's vacation of the arbitration award on the ground that the issue was not arbitrable, we do not reach the issue of whether the district court erred by concluding that the union itself could not pursue this grievance under the CBA or any of the alternative grounds argued by the school district but not addressed by the district court.

Affirmed.