IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mid Valley School District, Appellant	:
v.	:
Mid Valley Education Association	: No. 168 C.D. 2007 : Submitted: July 20, 2007

BEFORE: HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge*
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE COLINS FILED: February 26, 2008

Mid Valley School District (Mid Valley) appeals from the December 21, 2006 order of the Court of Common Pleas of Lackawanna County (Trial Court), denying Mid Valley's petition to vacate an arbitration award that upheld a grievance filed by Mid Valley Education Association (Association) and ordered Mid Valley to restore Ronald Bukowski, a discharged teacher, to his former teaching position with full back-pay and benefits less any earnings he may have received between the date of his discharge and the date on which he is returned to work.

Bukowski was employed in October of 1996 and was terminated by Mid Valley from his teaching position at the conclusion of the 1998-99 school year. Mid Valley acknowledges that Bukowski's discharge was not the result of his teaching ability but rather what Mid Valley refers to as Bukowski's willful,

*The decision in this case was reached after the date that Judge Colins assumed the status of senior judge.

negligent, and persistent violation of policies and procedures pursuant to Article XI of the Public School Code of 1949,[1] 24 P.S. §11-1122.

Factually, on July 1, 1999, Mid Valley issued a "Statement of Charges and Notice of Hearing." On July 13, 1999, the Association notified Mid Valley that Bukowski waived his right to a Board hearing and that any discipline imposed by Mid Valley would be contested via the contract grievance procedure. Accordingly, the Arbitrator found that, as early as July 13, 1999, the Association had given notice to Mid Valley that Bukowski's discharge would be arbitrated. Specifically, the Arbitrator determined that, although Bukowski's grievance could not be filed before his actual discharge, it was understood that the matter would proceed to arbitration.

Procedurally, we note that, prior to the six-day hearing before the Arbitrator, Mid Valley contended that Bukowski was precluded from asserting a claim through the grievance procedure because of his failure to comply with the terms of the collective bargaining agreement (CBA). The specific nature of said failure was, according to Mid Valley, Bukowski's filing of his grievance in excess of twenty calendar days of the date of occurrence or awareness of the occurrence. Mid Valley averred that since Bukowski was dismissed on August 18, 1999, and the grievance was not filed until September 27, 1999, the matter was not arbitrable

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[1] Section 1122(a) of the Public School Code of 1949 (Code), Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. §11-1122(a), regarding causes for the termination of a contract, provides, in pertinent part:

> The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employe shall be immorality; incompetency; unsatisfactory teaching performance; . . . persistent negligence in the performance of duties; willful neglect of duties; ….

because the twenty-day period had elapsed. The Arbitrator rejected Mid Valley's timeliness argument and decided that the merits of the matter would be heard.

The Arbitrator decided that he had jurisdiction and ultimately sustained Bukowski's grievance on the merits. In reaching his determination, the Arbitrator found that Mid Valley failed to meet the just cause standard in discharging Bukowski, considering that Mid Valley's investigation into Bukowski's alleged willful, negligent, and persistent violation of policies and procedures was insufficient to establish just cause for discharge. Additionally, the Arbitrator held that the formal unsatisfactory employee ratings of Bukowski for the school year 1997-98 and 1998-99 were executed by Mid Valley in direct contravention of the written policy of the Pennsylvania Department of Education. As part of his decision, therefore, the Arbitrator directed that Bukowski be reinstated to his former position with full back pay and benefits less any earnings he may have received between the date of his discharge and the date on which he returned to work.

Mid Valley filed a petition to vacate the arbitration award, which petition on December 21, 2006, the Trial Court denied. This appeal followed. On appeal, Mid Valley argues that the Trial Court erred in affirming the arbitration award that reinstated a discharged temporary professional employee because said arbitration award was not rationally derived from the CBA. Mid Valley further contends that the Trial Court erred in affirming this arbitration award since the subject matter of the grievance was not substantially arbitrable.

Upon review of the record, we concur with the Trial Court's affirmance of the Arbitrator's decision. In *State System of Higher Education*

(Cheyney University) v. State College University Professional Association, 560 Pa. 135,150, 743 A.2d 405, 413 (1999), the Supreme Court stated:

> [A] reviewing court will conduct a two-prong analysis. First, the court shall determine if the issue as properly defined is within the terms of the collective bargaining agreement. Second, if the issue is embraced by the agreement, and thus, appropriately before the arbitrator, the arbitrator's award will be upheld if the arbitrator's interpretation can rationally be derived from the collective bargaining agreement. That is to say, a court will only vacate an arbitrator's award where the award indisputably and genuinely is without foundation in, or fails to logically flow from, the collective bargaining agreement.

In the present matter, we concur with the Trial Court that the Arbitrator's decision satisfies both prongs. First, as the Trial Court notes, Article XXXI, p. 21 of the CBA provides that the Public School Code is specifically applicable to the CBA between Mid Valley and the Association and states:

> The Association and the Board agree that this Agreement shall be interpreted and construed in a manner neither in violation of nor in conflict with any provision of any statute or statutes enacted by the General Assembly of the Commonwealth of Pennsylvania.

Therefore, the Trial Court correctly concluded that, considering this Article of the CBA and the basis of Mid Valley's discharge action, Bukowski's grievance falls within the terms of the CBA.

Second, we agree with the Trial Court's determination that the Arbitrator's decision in this matter draws its essence from the CBA, which defines

a grievance as "a dispute involving the application, meaning or interpretation of the CBA." (CBA, Art. VI, p. 5). Further, the Trial Court properly observes that, although the CBA between Mid Valley and the Association did not contain a general just cause provision, it was not unreasonable for the Arbitrator to conclude that the CBA implied a just cause limitation, given the broad definition of grievance, including the term, "dispute," and given the lack of any clear language affording Mid Valley the exclusive right to discharge employees without restriction. In *Office of Attorney General v. Council 13, AFSCME*, 577 Pa. 257, 269-70, 844 A.2d 1217, 1224-25 (2004), the Supreme Court clarified the just cause concept in a way that is applicable to the present matter, as follows:

> Likewise, as a general proposition, the concept of just cause as it is used in labor relations, is not capable of easy and concrete definition. A just cause provision, in its most basic terms, is a negotiated form of limited job security that to a degree restricts the employer's otherwise unfettered right to discharge and discipline employees. Although there is no exact definition, there is a general consensus as to some of the factors that may be considered in determining whether there is just cause for discharge or discipline, and in evaluating the penalty imposed. Arbitrators have considered such factors as, *inter alia*, whether there was any investigation; post-discharge misconduct and pre-discharge misconduct; a grievant's past employment record, length of service, post-discharge rehabilitation; and unequal treatment of other employees for similar misconduct. . . .
>
> Based upon the undefined just cause provision contained in the collective bargaining agreement, the role of the arbitrator to interpret the terms of the collective bargaining agreement, and the general understanding of the concept of just cause, it becomes clear that the parties received the benefit of their bargain, i.e., the arbitrator

> was asked to interpret the "just cause" provision and did so consistent with how that term is generally understood. . . . As noted above, the role of the arbitrator was to interpret the terms of the collective bargaining agreement to resolve disputes. Because the concept of just cause, as generally understood, may be more than a simple determination of whether the employee engaged in the misconduct, it was for the arbitrator to interpret the terms of the collective bargaining agreement and not the courts.
> . . .
> Based upon the above, it was entirely rational for the arbitrator to interpret the undefined just cause provision as permitting consideration of mitigating circumstances. . . .

Applying the foregoing to the present matter, we conclude that the Trial Court did not err in affirming the Arbitrator's rationale implying a just cause provision and applying it and the language of the CBA to the facts of Bukowski's discharge. After a six-day hearing at which both parties presented evidence and witnesses, the Arbitrator chose between two opposing interpretations of the CBA and rendered a decision in favor of the Association and Bukowski, upon concluding that Mid Valley failed to meet its burden of proof to establish just cause for discharging Bukowski. In this matter, the Arbitrator's award unarguably drew its essence from the CBA as a result of the implied just cause provision.

It is well established that a decision of a labor arbitrator should be affirmed so long as it draws its essence from the CBA. *Community College of Beaver County v. Community College of Beaver County (PSEA/NEA)*, 473 Pa. 576, 375 A.2d 1267 (1977). Further, it is inappropriate for a reviewing court "to immerse itself into the fray and to reassess the judgment of the arbitrator." *Danville Area School District v. Danville Area Educ. Ass'n*, 562 Pa. 238, 250, 754 A.2d 1255, 1261 (2000); *Westmoreland Intermediate Unit #7 v. Westmoreland*

Intermediate Unit #7 Classroom Assistants Educational Support Personnel Association, PSEA/NEA, _____ Pa. _____, _____ A.2d ______ (No. 51 WAP 2005, filed December 27, 2007). A court must differentiate between "an irrational award and one that merely chooses between differing interpretations of contract language." *State System of Higher Education*, 560 Pa. at 154, 743 A.2d at 416. The Supreme Court in *State System of Higher Education* went on to underscore the importance of arbitration in labor relations, suggesting that an arbitrator's decision should only be overturned where it is "without basis [or] the product of insanity." *Id.*, 560 Pa. at 149, 743 A.2d at 413. In the present matter, substantial evidence of record supports the Trial Court's conclusion that the Arbitrator's award is rationally derived from the CBA.

Accordingly, based on the foregoing discussion, the Trial Court's order affirming the Arbitrator's determination in this matter is affirmed.

JAMES GARDNER COLINS, Senior Judge

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O R D E R

AND NOW, this 26th day of February 2008, the order of the Court of Common Pleas of Lackawanna County in this matter is AFFIRMED.

JAMES GARDNER COLINS, Senior Judge