IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Mars Area School District | : | |
| | : | |
| v. | : | No. 2336 C.D. 2008 |
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| Mars Area Education Association, PSEA/NEA, | : | Argued: October 15, 2009 |
| Appellant | : | |

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: January 8, 2010

Mars Area Education Association, PSEA/NEA (Association) appeals from the order of the Court of Common Pleas of Butler County (trial court), which granted Mars Area School District's (District) Petition To Vacate Arbitration Award based upon the arbitrator's reliance upon past practices in contravention of the collective bargaining agreement. We affirm.

The Association and the District are parties to a collective bargaining agreement effective July 1, 2006 through June 30, 2011 (CBA). The CBA contains a grievance procedure, culminating in arbitration before a neutral arbitrator selected by the parties.

On June 17, 2007, the District notified all retirees that the District was changing their health care plans according to the current CBA. In response, the Association filed a grievance contesting the change.

Pursuant to the terms of the CBA, the grievance went to arbitration. Based upon the evidence and arguments presented, the arbitrator found that the language of the early retirement incentive program contained in the parties' collective bargaining agreements dating back to 1988 has remained essentially the same. Specifically, the parties have repeatedly agreed that "[n]o subsequent contract negotiations shall alter benefits awarded retirees under this plan." Article XIX, Section B.2 of the CBA, Reproduced Record (R.R.) at 63a. Since 1996, the parties have agreed "The District shall pay the premium for continued coverage under the group health plan then in effect for the District Professional Employees for any employee … who elects to retire under the terms of this Agreement." Article XIX, Section B.5 of the CBA, R.R. at 63a.

The arbitrator found that during contract negotiations for the current agreement, the District proposed to eliminate the language in Section B.2 and provide instead that "retiree benefits shall be the same as those provided to professional employees in the bargaining unit," i.e. subject to future changes. The Association refused. The parties submitted the issue to a factfinder. The factfinder reported "health care coverage for retirees will be the same as health care coverage for Teachers. Although past retirees are grandfathered under the plans they went out under."

The arbitrator further found that the current CBA continues to include the same language contained in prior contracts that "[n]o subsequent contract negotiations shall alter benefits awarded retirees under this plan." Article XIX, Section B.2 of the CBA, R.R. at 63a. The arbitrator determined that a binding

practice has developed concerning the provision of health care benefits to the extent that applicable employees, i.e. early retirees, can reasonably expect to maintain precisely the same health care benefits they received at the time of their retirement.

On August 7, 2008, the arbitrator issued a binding award sustaining the Association's grievance in part. The arbitrator ordered the District to reinstate and maintain the health care benefits in effect at the time of retirement for those who retired under the collective bargaining agreements of 1996-1997 through 2005-2006. In the event it was not possible to obtain the applicable health plans, the arbitrator ordered the District to compensate retirees for the costs incurred which would have been covered under the original plans. The arbitrator denied relief as to those who retired under the 1988-1996 and 1992-1996 agreements because they had already attained eligibility for government-sponsored benefits.

The District filed a petition to vacate the arbitrator's award with the trial court. The trial court determined that the award did not draw its essence from the CBA because the arbitrator relied upon "past practices" in violation of the terms of the agreement. By order dated November 18, 2008, the trial court vacated the arbitration award. This appeal now follows.

The Association contends that trial court erred and exceeded its narrow scope and standard of review in vacating the award based upon the arbitrator's consideration of past practice where the award meets the essence test in all other respects and does not violate any public policy. We disagree.

Our scope of review of arbitration awards is very narrow in that an arbitrator's decision may not be disturbed so long as it draws its essence from the collective bargaining agreement. North East Education Association v. North East School District, 542 A.2d 1053 (Pa. Cmwlth. 1988). The essence test involves a

two-prong analysis. State System of Higher Education (Cheyney University) v. State College University Professional Association (PSEA-NEA), 560 Pa. 135, 743 A.2d 405 (1999). First, the court shall determine if the issue as properly defined is within the terms of the collective bargaining agreement. Id. 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. Id. 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. Id. In order to determine whether an arbitrator's award draws its essence from the terms of the collective bargaining agreement, the award must be examined in light of the language of the collective bargaining agreement, its context, and any other indicia of the parties' intention. McKeesport Area School District v. McKeesport Area Education Association, 424 A.2d 979 (Pa. Cmwlth. 1981).

> Article XIX of the parties' current CBA provides:
>
> B. Rights and Benefits
>
> 2. ***No subsequent contract negotiations shall alter benefits awarded retirees under this plan.***
>
> 5. The District shall pay the premium for continued coverage ***under the group health plan then in effect*** for the District Professional Employees for any employee and his or her spouse who elects to retire under the terms of this Agreement. …
>
> ***In the event the cost to the District exceeds twice the premium cost at the time of retirement***, the retiree will contribute the amount, which exceeds twice the premium cost in order to receive continued coverage.

R.R. at 63a-64a (emphasis added).

With regard to "past practice", Article XXI of the CBA provides:

> This Agreement shall supersede any rules, regulations, or practices of the District which shall be contrary to or inconsistent with its terms, and ***supersedes and cancels all previous agreements, verbal or written or based on alleged past practices***, between the District and the Association, and shall constitute the entire agreement between the parties and concludes collective bargaining for its term.

R.R. at 66a (emphasis added).

Here, the arbitrator considered and agreed with the Association's argument that the parties' past practices from 1988 to 2007 was that all early retirees maintained precisely the same health care benefits they received at the time of their retirement. The arbitrator was "persuaded that a binding past practice has developed concerning the providing of health care benefits to the extent that applicable employees (in this case early retirees) can reasonably expect to receive the actual benefit of the health care provided or to be compensated for it when such benefit is not available." R.R. at 105a. The arbitrator determined that the District "violated the provisions of Section B.2. of Article XIX of the Collective Bargaining Agreement and *related past practice* when it altered the benefits within the health insurance plan awarded to retirees under the Early Retirement Program in effect during the applicable prior Collective Bargaining Agreement as of July 1, 2007 … ." R.R. at 107a (emphasis added). By considering the parties' past practices, the arbitrator violated Article XXI of the CBA, which expressly superseded and canceled all previous agreements, verbal or written or based upon past practices between the parties.

The arbitrator's conclusion that the parties' past practice was that all early retirees maintain precisely the same health care benefits they received at the

time of their retirement fails to give meaning to changes made to Section B.5 of the CBA. While Section B.2 has remained the same over the years, Section B.5 has been repeatedly modified by the parties. The parties' 1988-1992 contract provided that "[t]he District shall pay the premium cost of the basic hospitalization insurance (Blue Cross) and the basic physician service insurance (Blue Shield) … *that existed at the time of retirement* … ." R.R. at 92a. The parties' 1992-1996 contract changed this provision to "[t]he District shall pay the premium for continued coverage *under the group health plan* for any employee … who elects to retire under the terms of this Agreement." R.R. at 92a. The 1996-1997 through 2005-2006 contracts added the term "[t]he District shall pay the premium … under the group health plan *then in effect for the District Professional Employees* for any employee … who elects to retire under the terms of this Agreement", which is the language in effect under the current CBA. R.R. at 93a (emphasis added). To conclude that the early retirees would continue to maintain the same health care benefits available when they retired essentially ignores the changes agreed to by the parties.

The award also fails to give meaning to Article XIV, Section A of the CBA, which provides that "[t]he District shall provide eligible employees and eligible retirees (who retire after June 30, 1997) with the Blue Cross/Blue Shield 'Select Blue' Plan currently in effect for District employees on a voluntary basis … ." R.R. at 49a. If the retirees are entitled to only the health plan in place at the time of their retirement, this language becomes meaningless under the award.

By considering the parties' past practices and disregarding relevant provisions of the CBA, the arbitrator's award does not draw its essence from the

terms of the CBA. We, therefore, conclude that the trial court acted properly in vacating the arbitrator's award.

Accordingly, the order of the trial court is affirmed.

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JAMES R. KELLEY, Senior Judge

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**O R D E R**

AND NOW, this 8th day of January, 2010, the order of the Court of Common Pleas of Butler County, at Docket No. 08-40241, dated November 18, 2008 is AFFIRMED.

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JAMES R. KELLEY, Senior Judge