[J-67-2001]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

NATALIE DAVIS, CLYDE TAYLOR, BENJAMIN ROBINSON, RICHARD DAVISON, MARY HOOSACK, CHARLES COLDER, FARLEA HOWIE, ELROY SAVAGE, HELEN MYERS, MONICA ANDROSKI, AND KENNETH MILLER	:	No. 4 MAP 2001
	:	Appeal from the Order of Commonwealth Court entered June 26, 2000, at No. 2701 C.D. 1999, affirming in part and reversing in part the Order of the Court of Common Pleas of Delaware County entered February 19, 1999, at No. 93-9535.
	:	754 A.2d 733 (Pa.Cmwlth. 2000)
v.	:	
CHESTER UPLAND SCHOOL DISTRICT, JEFFREY LEGGETTE, KIRKWOOD COTTMAN, ANDREA GOLSON, FRED MOON, DONALD MASSE, CHARLES DAVIS, AND JOSCELYN KEEVE BAGLEY	:	
APPEAL OF: CHESTER UPLAND SCHOOL DISTRICT et al.	:	ARGUED: April 30, 2001

DISSENTING OPINION

MR. JUSTICE SAYLOR **DECIDED: December 19, 2001**

The summary of argument presented in Appellees' brief proceeds as follows:

> Whether a party subject to a collective bargaining agreement is required to utilize the grievance procedure of the collective bargaining agreement to litigate a work related issue depends upon whether the party is seeking to vindicate contractual or statutory rights.

> The mandatory arbitration provisions of Section 903 of the Public Employes Relations Act, ("PERA") apply only to "disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement." The claim in this case does not arise out of the interpretation of the collective bargaining agreement. This declaratory judgment action was brought solely to enforce a statutory right granted to the Appellees by Section 1125.1 of the Public School Code. Furthermore, any provision in a collective bargaining agreement that attempted to deprive an individual of their statutory rights would violate Section 703 of PERA and would be unenforceable.
>
> Finally, the fact that Section 703 of PERA prohibits a collective bargaining agreement that would violate or would be inconsistent with the teachers['] statutory rights[,] and that the teachers retained all of their statutory rights[,] was expressly acknowledged by the District and the union in Article III of the collective bargaining agreement which provides as follows:
>
> "Article III
> Nothing contained herein shall be construed to deny or restrict to any teacher such rights as he/she may have under the Pennsylvania School Laws or other applicable laws and regulations. The rights granted to teachers hereunder shall be deemed to be in addition to those provided elsewhere."

(citations omitted). The majority reverses the Commonwealth Court's order (thereby overturning the judgment of the common pleas court) without squarely addressing this argument and, in particular, the significance of the involvement of employee statutory entitlements. I find this to be of particular concern where other jurisdictions have drawn a clear distinction between arbitrability of disputes regarding contractual and statutory entitlements. See, e.g., Fowler v. Town of Seabrook, 765 A.2d 146, 148 (N.H. 2000)("Where the plaintiff seeks to vindicate a statutory right, the presumption of arbitrability does not pertain," but rather, such presumption is limited to matters entailing the interpretation and application of the collective bargaining agreement). For example, recently the United States Supreme Court required that any union-negotiated waiver of

employees' right to be heard in a judicial forum with respect to statutory claims must, at a minimum, be clear and unmistakable. See Wright v. Universal Maritime Serv. Corp., 525 U.S. 70, 79-80, 119 S. Ct. 391, 396 (1998).[1] Indeed, the Fourth Circuit's holding in Wright which was overturned, to the effect "that the general arbitration provision in the CBA governing [the plaintiff's] employment was sufficiently broad to encompass [his] statutory claim . . ., and that [the arbitration] provision was enforceable," Wright, 525 U.S. at 394, 119 S.Ct. at 75, is virtually identical to the majority's holding in the present case. Accord Fowler, 765 A.2d at 148 ("A general arbitration clause does not meet the 'clear and unmistakable' standard." (citing Wright, 525 U.S. at 80, 119 S. Ct. at 396)).

Chester Upland places substantial reliance on PLRB v. Bald Eagle Area Sch. Dist., 499 Pa. 62, 451 A.2d 671 (1982). While certainly there is broad language in that decision favoring Chester Upland's position, the statutory provision at issue in Bald Eagle was a proscription against employer payments to public employees while on strike, see id. at 64, 451 A.2d at 672, not one establishing individual employee entitlements such as is at issue here. Therefore, I believe that the question presented in this appeal represents one of first impression, and accordingly, the Court should consider the substantial counterarguments. Moreover, other courts have easily distinguished situations involving statutory employer versus employee entitlements, concluding that Wright's rule does not apply where the statutory right at issue belongs to the employer. See, e.g., Interstate Brands Corp. v. Bakery Drivers & Bakery Goods Vending Machines, Local Union No. 550, Int'l Brotherhood of Teamsters, 167 F.3d 764, 767-68 (2d Cir. 1999).

In summary, in light of the relevant arguments, authorities, and policy considerations, I would not reverse the Commonwealth Court's order and overturn the common pleas

[1] By so holding, the Supreme Court averted the need to resolve the broader question of whether a union can waive an employee's entitlement to judicial resolution of statutory claims in a collective bargaining agreement prior to the occurrence of a dispute.

court's judgment on the strength of the general policy favoring arbitration alone. Rather, I would undertake to address Wright's reasoning to determine whether it should be applied in the development of Pennsylvania jurisprudence. Further, it would be advisable, before reversing, to also consider on its terms the broader issue not resolved in Wright. See supra note 1. Alternatively, I would dismiss this appeal as improvidently granted, since Employer's four-page argument fails to address the salient reasoning as developed in Wright or otherwise capture the essential inquiries.

Mr. Justice Nigro and Madame Justice Newman join this dissenting opinion.