STATE OF MICHIGAN

COURT OF APPEALS

CITY OF WYOMING, Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED July 20, 2006
v	No. 268052 Kent Circuit Court
WYOMING CITY EMPLOYEES UNION, Defendant/Counter-Plaintiff-Appellee.	LC No. 05-002796-CL

Before: Talbot, P.J., and Owens and Murray, JJ.

PER CURIAM.

Plaintiff, the city of Wyoming, appeals as of right from an order granting summary disposition to defendant, Wyoming City Employees Union, under MCR 2.116(C)(10), and denying summary disposition for plaintiff in this labor arbitration dispute. Because the arbitrator's award was consistent with the scope of his authority and the collective bargaining agreement, we affirm.

The following basic facts are undisputed. A collective bargaining agreement ("CBA") between plaintiff and defendant was in effect from July 1, 2001, through June 30, 2004. In 2004, plaintiff initially laid off 14 full-time employees. The number was ultimately reduced to seven because of retirement packages and consolidation of part-time jobs into full-time positions. Defendant grieved plaintiff's decision to lay off employees because, after the layoffs, part-time employee positions continued. In a written grievance, defendant alleged that plaintiff violated Article XIV, § 2(5)[1] of the CBA by laying off full-time employees while part-time positions remained, and demanded that all part-time employee positions be eliminated.[2]

[1] Article XIV, § 2(5) provides:

> No part-time employee shall be employed while a full-time employee, who is capable of performing the work designated for the part-time employee, has been laid off. Upon determination to hire part-time - regular or part-time

(continued…)

The matter was ultimately submitted to arbitration. Following an arbitration hearing, the arbitrator found that plaintiff violated the CBA provision, sustained the grievance, and issued the following award:

> The August 18, 2004 grievance protesting layoff of full-time employees is sustained. If any full-time bargaining unit employee who is capable of performing work designated for a part-time employee has been laid off while the part-time employee performing such work remains employed, such full-time employee(s) shall be reinstated immediately with credit for uninterrupted service for seniority and all other contractual purposes and shall be paid all wages and contractual benefits he or she would have received from the date his/her improper layoff until reinstatement if the layoff had not occurred.

Plaintiff filed this action in the circuit court to vacate the arbitrator's award. Plaintiff argued that the arbitrator exceeded his authority by concluding that Article XIV, § 2(5) does not only limit plaintiff's continued employment of part-time employees during a layoff of full-time employees, but also restricts its right to lay off full-time employees in general. It further argued that the arbitrator's award exceeded the scope of the written grievance, which did not request reinstatement or back pay for the laid off full-time employees. In a cross-motion for summary disposition, defendant sought dismissal of the action and confirmation of the award. The circuit court granted defendant's motion. Plaintiff now appeals the circuit court's order confirming the arbitration award.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Summary disposition is appropriate under MCR 2.116(C)(10) when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003) (citations omitted).

This Court's review of a labor arbitrator's decision is limited. *Police Officers Ass'n of Michigan v Manistee Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002).

> The necessary inquiry for this Court's determination is whether the award was beyond the contractual authority of the arbitrator. Labor arbitration is a product of contract and an arbitrator's authority to resolve a dispute arising out of the appropriate interpretation of a collective bargaining agreement is derived exclusively from the contractual agreement of the parties. . . . A court may not review an arbitrator's factual findings or decision on the merits. Rather, a court

---

(…continued)

> employee - irregular employees, the Employer shall inform the Union of the hiring, rate of pay, and work assignment for all such employees.

[2] During the hearing, defendant reduced its demand from the elimination of "all part-time positions" to 11 specific positions.

> may only decide whether the arbitrator's award "draws its essence" from the contract. If the arbitrator in granting the award did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases. [*Id.* (citation omitted).]

Further, we do not engage in interpretation of a CBA where, as here, the parties have agreed that an arbitrator shall decide questions of contract interpretation. *Monroe Co Sheriff v Fraternal Order of Police Lodge 113*, 136 Mich App 709, 715; 357 NW2d 748 (1984). "Where a court finds itself weighing the pros and cons of each party's interpretation of substantive provisions of the contract, it is likely that the court has gone astray." *Id*. at 716 (internal quotation marks and citation omitted). "[W]hile the powers of an arbitrator are not unlimited, his awards should be upheld so long as he does not disregard or modify plain and unambiguous provisions of a collective bargaining agreement." *Police Officers Ass'n of Michigan, supra* (citation omitted). "Whether we or the trial judge agree with the arbitrator's interpretation doesn't matter." *Ferndale Ed Ass'n v School Dist for the City of Ferndale*, 67 Mich App 637, 643-644; 242 NW2d 478 (1976).

Having viewed the CBA and the arbitrator's award, we conclude that the arbitrator adhered to the contractual limitations on his authority. The key issue was whether the layoff of full-time employees, while part-time employees continued to do work that the full-time employees were capable of performing, violated the specific provision of the CBA. The arbitrator ruled that the layoff of the full-time employees falling into this category violated Article XIV, § 2(5) of the CBA. Plaintiff asserted that the provision should not be interpreted as a restriction of its right to lay off full-time employees, but as a "bumping provision." In contrast, defendant argued that the provision should be interpreted, inter alia, as a disincentive to plaintiff for laying off full-time employees. In interpreting the provision, the arbitrator considered Article VIII of the CBA, which specifically addresses the subject of bumping, as well as previous versions of Article XIV, § 2(5). In the 1981 contract, the provision provided that "No part-time employee shall be *hired* . . . ." In the 1984 version, the term "*employed*" was substituted for the term "hired." The current version parallels the 1984 version. During the arbitration hearing, Chuck Wilder, who was involved in negotiations for the 1984 contract, stated:

> I know in my mind that the one thing I'm very sure on is no matter how you interpret this contract . . . our intent when this contract was bargained, that there would be no part-time employees working for the City of Wyoming when a full-time employee gets laid off . . . .

In short, the arbitrator was required to adopt one of two competing interpretations of Article XIV, § 2(5), and his interpretation of the provision and decision was within his authority. While this provision could be interpreted in either of two ways, our role is not to weigh the pros and cons of the competing interpretations of this provision, *Monroe Co Sheriff, supra* at 716. Because the arbitrator did not disregard unambiguous provisions and his decision finds its basis in a specific CBA provision, the arbitrator's decision draws its essence from the CBA and must be upheld.

Plaintiff argues, however, that the arbitrator's award prohibits it from laying off full-time employees under any circumstances, and limits its ability to reduce its workforce. Contrary to plaintiff's argument, the arbitrator's award does not prohibit plaintiff from laying off full-time

employees where no full-time work exists. Defendant acknowledges that plaintiff has complete authority to lay off full-time employees, provided the disputed part-time positions have been eliminated before the layoffs, as required by the CBA. As defendant notes, Article II, § 1(1) of the CBA reserves plaintiff's right to "manage its affairs efficiently and economically, including the determination of quantity . . . of services to be rendered." Article II, § (1)(6) reserves plaintiff's right to "determine the number of employees assigned to any particular job, shift or operation." However, Article II, § (1) also provides:

> [A]ll rights which ordinarily vest in and are exercised by the Employer, *except such as are specifically relinquished in this Contract*, and are consistent with the terms of this Contract, are reserved to and vested in the Employer . . . . [Emphasis added.]

Thus, pursuant to the CBA and the arbitrator's award, plaintiff retains its general right to lay off employees, i.e., reduce its workforce. However, Article XIV, § 2(5) specifically confines the exercise of that general right under certain circumstances. As such, the arbitrator did not exceed his authority because his award does not speak to plaintiff's general right to lay off employees, but addresses the circumstance when full-time employees are laid off while part-time employees remain employed in positions that the laid off full-time employees could perform; a situation specifically and separately considered in Article XIV, § 2(5) of the CBA.

Plaintiff also challenges the arbitrator's award to the extent that it provides for reinstatement and back pay for the laid off full-time employees. At the time of the grievance, the layoffs had not yet occurred, and no back pay had been requested. Rather, the grievance was filed in August 2004, the full-time layoffs occurred in January 2005 (after the arbitration hearing and before the issuance of the arbitrator's decision), and the part-time employees were laid off in March 2005. In addition to challenging the award in general, plaintiff also notes that defendant did not request the awarded remedy.

We conclude that the arbitrator acted within his contractual authority in fashioning a remedy in this case. Initially, we note that there is no provision in the CBA that precludes the arbitrator from fashioning an appropriate remedy when one party is found to have violated the CBA, and there is no requirement in the CBA's grievance procedure that a grievance set forth a remedy.

Moreover, as this Court stated in *Michigan Ass'n of Police v City of Pontiac*, 177 Mich App 752, 759; 442 NW2d 773 (1989):

> It is accepted that an arbitrator, if not specifically limited by the terms of the collective bargaining agreement, is free to fashion a remedy which considers the relative faults of the parties. . . . [T]he . . . test [i]s "not whether the reviewing court agrees with the Board's interpretation of the bargaining contract, but whether the remedy fashioned by the Board is rationally explainable as a logical means of furthering the aims of that contract." [Citations omitted.]

Here, we agree with the trial court that,

> [h]ad the City postponed the layoffs until the arbitrator's decision was issued, back pay would have been unnecessary as no wrongful layoffs would have occurred. However, as the layoffs occurred in violation of the CBA, those wrongfully laid-off employees deserved to be made whole for the roughly two months their employment ceased while the part-time employees continued. As the arbitrator found that the layoffs were in violation of Article XIV, § 2(5), he had the power to fashion an appropriate remedy to place the parties in the position they would have been in had the violation not occurred.

The arbitrator's decision is consistent with the CBA, and is not contrary to any limitation in the CBA regarding remedy. Indeed, "[w]here the collective bargaining agreement is silent as to permissible remedies, an arbitrator does not add to the obligations contractually assumed by the parties by fashioning a remedy which is appropriate under the circumstances." *Michigan Ass'n of Police*, *supra* at 760 (citation omitted).

In sum, the arbitrator did not exceed the contractual authority provided in the CBA when he sustained plaintiff's grievance and ordered reinstatement of the wrongfully laid off employees with back pay and benefits. As indicated previously, judicial review must cease once it is determined that an arbitrator did not disregard the terms of his employment and the scope of his authority. *Police Officers Ass'n of Michigan, supra*. The CBA provides: "The decision of the arbitrator shall be final and binding." Accordingly, we affirm the trial court's grant of summary disposition to defendant, and its denial of plaintiff's motion for summary disposition.

Affirmed.

/s/ Michael J. Talbot
/s/ Donald S. Owens
/s/ Christopher M. Murray