STATE OF MICHIGAN

COURT OF APPEALS

EASTERN MICHIGAN UNIVERSITY,

Plaintiff-Appellee,

v

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS-EASTERN MICHIGAN UNIVERSITY CHAPTER,

Defendant-Appellant.

UNPUBLISHED
July 18, 2006

No. 257668
Washtenaw Circuit Court
LC No. 03-001303-CL

Before: Fort Hood, P.J., and Cavanagh and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's grant of summary disposition in favor of plaintiff, which vacated a labor arbitration award. We reverse and remand for entry of judgment in favor of defendant.

Defendant claims it was entitled to summary disposition because the arbitrator found no just cause for termination of the relevant professor and his award of reinstatement of defendant after a two-year suspension without pay was within the essence of the arbitration contract. We agree.

The grant of a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Review of an arbitration award is strictly limited. *Service Employees Int'l Union Local 466M v Saginaw*, 263 Mich App 656, 660; 689 NW2d 521 (2004). A court may not review an arbitrator's factual findings or decision on the merits. *Id*. Once a court has determined that an arbitrator has acted within the scope of contractual authority, judicial review effectively ceases. *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 118; 607 NW2d 742 (1999). A court may not review an arbitrator's factual findings or decision on the merits, but may only decide if the award draws its essence from the contract. *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 150; 393 NW2d 811 (1986).

An arbitrator's choice of a remedy is generally acceptable, so long as it is a rational, logical means of furthering the aims of the contract. *Michigan Ass'n of Police v Pontiac*, 177 Mich App 752, 759; 442 NW2d 773 (1989). If not specifically forbidden by the contract, an arbitrator may consider the relative fault of the parties. *Police Officers Ass'n v Manistee Co*, 250

Mich App 339, 344; 645 NW2d 713 (2002). He or she may also consider mitigating circumstances and impose a lesser sanction on an employee than management requested. *Id*. at 346.

In this case, the trial court misinterpreted the arbitrator's findings. Based on the arbitrator's statement "that the Employer correctly determined what occurred, that the policy had been violated and that the conduct fell within the just cause provision of the contract[,]" the trial court concluded that the arbitrator explicitly found there was just cause for the professor's termination. But the arbitrator's statement was not an unambiguous finding that there was just cause for termination. What constitutes "just cause" is not explicitly defined in the relevant collective bargaining agreement and is found in two different contractual provisions: one provision allows suspension for just cause, another allows termination for just cause. As is apparent, some matters constituting "just cause" for the lesser sanction of suspension do not constitute "just cause" for termination. Therefore, a bare finding of "just cause" by the arbitrator, without a further elaboration of which "just cause" was found is ambiguous in light of the contract. But the ambiguous statement did not stand alone.

Later in the arbitrator's award, he explicitly found that "the penalty of discharge was not within the scope of just cause." That amounts to a conclusion by the arbitrator that, while there was just cause to suspend the professor, there was *not* just cause for termination. This is further reinforced by the fact that the arbitrator ordered that the professor be suspended, not terminated.

It was within the arbitrator's contractual authority to find just cause for suspension, but not just cause for termination. The possible punishment of suspension for just cause, like the punishment of termination for just cause, was part of the contract. Therefore, the arbitrator was acting within the scope of his authority under the contract, and his award finding no just cause for termination drew its essence from that contract. Therefore, the trial court erred in vacating the arbitration award.

Defendant also claims there is no public policy against the enforcement of the arbitration award reinstating him to his job after a two-year suspension without pay. We agree.

The public policy exception to the usual deference to arbitration is limited to situations where enforcing the arbitrator's award or accepting the arbitrator's interpretation of the underlying contract would violate an explicit public policy, well-defined by laws and legal precedent. *Police Officers Ass'n*, *supra* at 347. Public policy is determined by what policies have actually "been adopted by the public through our various legal processes, and are reflected in our state and federal constitutions, our statutes, and the common law[,]" rather than the subjective views of any individual judge. *Terrien v Zwit*, 467 Mich 56, 66-67; 648 NW2d 602 (2002). Only an arbitrator's award, not his or her findings of fact or conclusions of law, may be denied enforcement by the courts for being contrary to public policy. *Fraternal Order of Police Lodge #157 v Bensinger*, 122 Mich App 437, 448; 333 NW2d 73 (1983).

While it is clear that there is a strong public policy against sexual harassment, at work and at school, requiring employers to take prompt and remedial action to stop an employee's harassment, plaintiff has cited no legal authority to support its contention that the only acceptable measure for a first-time offender is termination of employment. The only sexual harassment case cited by plaintiff to support its contention that there is a strong public policy against

reinstating defendant to work after a two-year suspension, *Newsday, Inc v Long Island Typographical Union*, 915 F2d 840 (CA 2, 1990), is clearly distinguishable from this case. In *Newsday*, the United States Court of Appeals for the Second Circuit held that an arbitrator violated public policy by ordering the reinstatement of an employee who engaged in sexual harassment. But this employee had engaged in a pattern of bad behavior and was disciplined multiple times on previous occasions for sexually harassing female co-workers. This clearly differs from the present case, which involves a single complaint that was the first sexual harassment complaint against a professor.

We reverse the trial court's grant of summary disposition for plaintiff and remand for entry of an order granting judgment in favor of defendant and reinstating the arbitration award. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto