STATE OF MICHIGAN

COURT OF APPEALS

HARRISON EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION, MEA/NEA,

Plaintiff-Appellee,

v

HARRISON COMMUNITY SCHOOL BOARD OF EDUCATION and HARRISON COMMUNITY SCHOOLS,

Defendants-Appellees.

UNPUBLISHED
May17, 2007

No. 273020
Clare Circuit Court
LC No. 05-900616-CL

Before: Schuette, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order granting in part and denying in part their motion for summary disposition and granting in part plaintiff's motion for summary disposition on plaintiff's complaint to compel arbitration and for breach of a collective bargaining agreement. We reverse in part, affirm in part, and dismiss the complaint.

Plaintiff association and defendant school board were parties to a collective bargaining agreement, or CBA. The effective date of the CBA was July 1, 2003, and, by its terms, the CBA continued "in full force and effect until 11:59 pm, June 30, 2005." The CBA contained a termination and modification clause, which provided:

> If either party desires to modify or to terminate this Agreement it shall have ninety (90) days prior to the termination date given [sic] written notice of modification or termination or withdraw the same [sic] prior to the termination date, this Agreement shall continue in full force and effect from year to year, thereafter subject to notice of termination by either party on ninety (90) days [sic] written notice prior to the current year of termination.

On April 12, 2005, the board notified the association of its "desire to begin negotiations." On May 5, 2005, the association notified the board that it "wish[ed] to negotiate a new contract between our association and the Harrison Board of Education." The association's letter noted that the "the current contract will expire on June 30, 2005" and that it hoped to "reach a quick and amicable agreement." The parties subsequently held negotiation sessions on July 19, 2005; August 18, 2005; September 27, 2005; October 12, 2005; November 2, 2005; November 30,

2005; and February 20, 2006. The parties also used the assistance of a state mediator to negotiate a new collective bargaining agreement for the 2006-2007 school year.

On September 12, 2005, the board notified the association that, as of September 30, 2005, it would no longer (1) arbitrate issues that did not "involve vested accrued rights"; (2) deduct dues for the association; or (3) recognize the "just-cause provisions relating to termination." That same day, the association filed an unfair labor practice complaint with the Michigan Employment Relations Commission (MERC) alleging violations of sections 10(1)(a) and (e) of the Public Employment Relations Act (PERA), MCL 423.201, *et seq*. The association also responded with a letter to the board that assumed that the CBA had expired. The association's letter acknowledged that the board could choose not to honor certain provisions of the CBA upon its expiration, such as deducting dues for the association and arbitrating grievances. However, the letter also asserted that all mandatory subjects of bargaining, which included wages, hours, and terms and conditions of employment, such as just cause termination, remain "status quo."

On October 17, 2005, more than three months after the stated termination date of the CBA and about one month after the board informed the association that it would not honor certain provisions of the CBA, the association notified the board that neither party had provided the required 90-day written notice of termination and asserted that the CBA had automatically renewed. The association maintained that the board remained obligated to deduct dues for the association and to arbitrate grievances under CBA.

On November 28 2005, the association filed a "Second Amended Charge" with the commission, alleging that under the automatic renewal provision the CBA remained in effect until June 30, 2006. According to the association's argument, the board's failure to recognize the automatic renewal clause "repudiated" the CBA, which interfered with the employees' statutory rights under PERA.

The next day, the association filed this lawsuit to compel arbitration of three grievances filed during the term of the CBA. The complaint alleged five counts. In Count I, the association alleged that the CBA had automatically renewed by its own terms and that the board's failure to comply with the CBA constituted a breach of the CBA. In Count II, the association alternatively alleged that the board had voluntarily recognized the arbitration provision until September 30, 2005, thereby requiring arbitration of the grievances. In Counts III, IV, and V, the association alleged that if arbitration of the three grievances was not required under Count I or Count II, then the board's violation of the CBA alleged in the three grievances constituted breaches of contract.

After the association sued the board, the grievances were docketed for arbitration hearings. Although the board maintained that the CBA had expired, the board participated in the formal grievance process under the CBA, reserving all possible defenses in the arbitrations. In the arbitration proceeding, the board moved to dismiss two grievances, arguing that there was no agreement to arbitrate because the CBA had expired and the grievances were not substantively arbitrable.

On May 12, 2006, the board moved for summary disposition of this case under MCR 2.116(C)(4), (7), and (8). The association countered with a motion for summary disposition under MCR 2.116(I)(2) on the issue of the CBA's automatic renewal.

In its written opinion and order, the circuit court concluded that the CBA did not expire on June 30, 2005, because neither party gave written notice 90 days before the "termination date" of June 30, 2005, of its desire to terminate the contract. The court stated that it was unclear whether the board intended the April 12, 2005 letter to constitute notice of termination, but in any event, the letter arrived too late to constitute proper notice. The trial court also found that neither the association's failure to object immediately nor its letter indicating that it wished to negotiate a new CBA operated as a waiver of the association's right to object to the late notice.[1] However, the court found that the association's complaint was not yet ripe for review by the court because the association had failed to exhaust its contractual and administrative remedies.

On appeal, the board claims that the circuit court erred by asserting subject matter jurisdiction to determine whether the CBA was automatically renewed. Under the peculiar circumstances of this case, we agree. We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The MERC is vested with exclusive jurisdiction to consider allegations of unfair labor practices and misconduct under PERA. *Kent County Deputy Sheriffs' association v Kent County Sheriff*, 238 Mich App 310, 313; 605 NW2d 363 (1999), aff'd 463 Mich 353 (2000). Generally, before a labor association may sue an employer in circuit court, the labor association must exhaust its administrative remedies for unfair labor practices violating PERA that are properly submitted to the MERC. *Rockwell v Crestwood Sch Dist Bd of Ed*, 393 Mich 616, 630; 227 NW2d 736 (1975). Accordingly, where an unfair labor practice charge has been filed with the MERC and then a civil suit is filed in circuit court seeking similar relief, dismissal of the civil suit is generally required. *Cosgrove v Lansing Bd of Ed*, 164 Mich App 110, 112; 416 NW2d 316 (1987). Likewise, although the right to assert arbitration as a defense does not deprive a circuit court of its subject-matter jurisdiction over a dispute, *DAIIE v Maurizio*, 129 Mich App 166; 341 NW2d 262 (1983), a trial court will ordinarily dismiss a cause of action that the parties have agreed to arbitrate. MCR 2.116(C)(7).

In this case, the association explicitly states in the first paragraph of its complaint that it sued the board "to compel arbitration of grievances filed between June 30, 2005 and September 30, 2005." Although the board argued that the expiration of the CBA exonerated it from arbitrating the association's grievances or in any way adhering to the expired contract, the board did not refuse to arbitrate, as MCR 3.602(B)(3) requires. Instead, the board argued that the association had already initiated the arbitration process and the MERC's labor dispute process, so the lawsuit before the circuit court should be dismissed as litigative harassment. In fact, the board's sudden reversal of its posture in this case led the trial court to issue an inconsistent opinion. It first found that the CBA automatically renewed itself and then found that the association's remaining claims were not ripe for review because they were pending, unresolved, in arbitration and before the MERC. Under the circumstances, the issue of the contract's

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[1] We note that the issue below turned on whether the timeliness of the board's notice was waived, not whether the right to arbitration was ever waived. For a more thorough discussion of circumstances that may constitute waiver of timely notice, see *Capac Bus Drivers Ass'n v Capac Community Schools Bd of Ed*, 140 Mich App 542, 547-549; 364 NW2d 739 (1985).

renewal was squarely within the MERC's exclusive purview as a matter of negotiation fairness, and an analysis of the board's actions under the contract's strictures was a subject appropriate for arbitration, so the association's resort to the circuit court for resolution of the renewal issue improperly divided its cause of action among three different forums. "[A] court should not interpret a contract's language beyond determining whether arbitration applies and should not allow the parties to divide their disputes between the court and an arbitrator." *Fromm v MEEMIC Ins Co*, 264 Mich App 302, 306; 690 NW2d 528 (2004). Therefore, by concluding that the contract had self-renewed, the trial court went well beyond the grounds necessary to support summary disposition. The trial court erred by unnecessarily interposing into the labor dispute its own legal interpretation of the parties' actions and the contract's language.

Our resolution of this case arises, in part, from the absolute inconsistency of the parties' arguments. Although the association claims an absolute right to arbitrate under the renewed CBA, it argues on appeal that the CBA's renewal was irrelevant because arbitration was a mandatory bargaining issue that was not negotiated to an impasse. See *Ottawa Co v Jaklinski*, 423 Mich 1, 13; 377 NW2d 668 (1985) (Williams, C.J.). Contrariwise, the board argues that renewal never happened and arbitration is not required, but the validity of the CBA's arbitration provision was irrelevant because it consented to undergo arbitration, with a reservation of rights. Rather than observe the parties' fundamental indifference and inconsistency about whether the contract was renewed, the trial court settled only that issue, and then ruled that the other pending actions had to be resolved before it would exercise any more authority in the case. This resolution bound the parties to another year with the arguably defunct contract, even though neither the MERC nor the arbitrator had reached, much less erroneously decided, the renewal issue. Once a valid agreement or requirement to arbitrate is found, the interpretation of contractual terms is generally left to the arbitrator. *Fromm*, *supra* at 307. In this case, the board submitted to arbitration of the issues and defended an identical action before the MERC, so the trial court should have dismissed the action under MCR 2.116(C)(6) and (7).

The board's reliance on *Bay City School Dist v Bay City Ed Ass'n*, 425 Mich 426, 436; 390 NW2d 159 (1986) is inapposite, because the issue in that case was whether an *arbitrator* could determine an issue while a claim with the MERC was pending. Our Supreme Court held, "The filing of an unfair labor practice claim with MERC does not preclude an arbitrator from resolving a breach of contract claim arising out of the same controversy." *Id.* In this case, the association took an issue of contract interpretation to circuit court while both an action in the MERC *and* an arbitration proceeding were pending. The trial court's resolution of the renewal issue was not essential to finding an agreement to arbitrate the matters at hand, so the trial court erred by resolving the issue before remitting the matter back to the other forums.

We reverse the portion of the trial court's opinion that found that the contract was automatically renewed. We affirm the trial court's dismissal of the balance of the complaint as unripe.

/s/ Bill Schuette
/s/ Peter D. O'Connell
/s/ Alton T. Davis