

STATE OF MICHIGAN
COURT OF APPEALS

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 366,

UNPUBLISHED
May 2, 1997

Plaintiff-Appellant/Cross-Appellee

v

No. 193496
Kent Circuit Court
LC No. 95-525-CL

CITY OF GRAND RAPIDS AND AL CONNERS,

Defendants-Appellees/Cross-Appellants.

Before: Griffin, P.J., and Doctoroff and Markman, JJ.

PER CURIAM.

Plaintiff appeals by right an order granting defendants' motion for summary disposition under MCR 2.116(C)(4) (lack of subject matter jurisdiction). Defendants cross-appeal by right an order denying their motion for summary disposition under MCR 2.116(C)(7) (statute of limitations). We affirm.

Plaintiff, the bargaining unit for firefighters in the Grand Rapids Fire Department, and defendants are parties to a collective bargaining agreement (CBA). The CBA sets out a grievance procedure that culminates in the submission of disputes to an arbitrator. In 1988, plaintiff alleged that defendants violated the CBA by interviewing candidates for promotion rather than promoting the candidate with the highest examination score. Specifically, plaintiff challenged the practice during these interviews of asking candidates hypothetical questions involving a conflict of interest between their respective loyalties to the City and the Union. The parties entered into arbitration to resolve the dispute. The arbitrator stated that the central issue was "whether the process of interviewing candidates, as a part of the promotional process, violated the agreement between the Parties." Although the arbitrator found that plaintiff's concerns were justified, it held that, absent a contractual limitation, defendants had the right to promote and to determine criteria upon which to make a promotion. However, the arbitration award, dated August 24, 1988, also stated:

The City shall refrain from inquiring of candidates how they would resolve potential conflicts of interest between their loyalties to the City and the Union. In all other respects, the grievance is denied.

Approximately six years later, on November 29 and 30, 1994, candidates for the position of battalion chief took a written examination as part of the interview process. Plaintiff filed the present suit alleging that two questions on this written examination violated the 1988 arbitration award. It claimed that the questions again inquired how the candidates would resolve their conflicting loyalties between the city and the union. It further alleged that candidates who were critical of the union's conduct in their answers to the questions at issue were given more favorable evaluations.

Plaintiff and defendants filed motions for summary disposition. With respect to defendants' motion on the basis of subject matter jurisdiction, the court stated, "It is apparent to me we do have a new fact situation that this Court does not have jurisdiction to get involved in." It accordingly granted defendants' motion for summary disposition on this basis.

This Court reviews de novo a trial court's grant or denial of summary disposition. When reviewing a motion for summary disposition under MCR 2.116(C)(4), we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact. [*Walker v Johnson & Johnson Vision Products, Inc.*, 217 Mich App 705, 708; 552 NW2d 679 (1996); citations omitted.]

Judicial review of an arbitrator's decision is limited. *Gogebic Medical Care Facility v AFSCME Local 992, AFL-CIO*, 209 Mich App 693, 697; 531 NW2d 728 (1995). Courts are not to review an arbitrator's factual findings or decision on the merits; generally, courts are only to determine whether an arbitrator's award "draws its essence" from the contract. *Id.* Courts, however, have authority to *enforce* an arbitration award. *Staniszewski v Grand Rapids Packaging Co.*, 125 Mich App 97, 99; 336 NW2d 10 (1983).

In *Armco Employees Independent Federation, Inc v Armco Steel Co, LP*, 65 F 3d 492 (CA 6, 1995) the Sixth Circuit addressed a request for enforcement of an arbitration award. The union charged that the employer's actions in January and March 1993 violated a 1992 arbitration award. The *Armco* court held that an arbitrator, rather than the district court, was the proper entity to decide whether the employer's actions violated the arbitration award. *Id.* at 496. It distinguished the case before it from more typical actions to enforce awards "after an arbitrator had *evaluated* the facts giving rise to a grievance, *identified* a violation in the case, and *ordered* a remedy tailored to the specific circumstances." *Id.* at 497 (emphasis in original.) The Sixth Circuit held, at 497:

In the absence of an arbitrator's award following all three steps outlined above, the district court would be in the position of performing a role assigned to an arbitrator by the collective bargaining agreement.

It stated that a court could “enforce an arbitrator’s clear and specific award,” but could not “adjudicate the merits of a contingent claim created by a past award.” *Id.* at 498.¹ We find this reasoning persuasive and consistent with the limited judicial review accorded arbitration awards in Michigan.

Here, no arbitrator has evaluated the two questions in controversy in the 1994 promotional examination, identified any specific violation of the CBA or ordered any relief. The 1988 arbitration award prohibited defendants from “inquiring of candidates how they would resolve potential conflicts of interest between their loyalties to the City and the Union.” However, this award did not determine whether the challenged questions on the 1994 examination constituted such an inquiry. The circuit court in the instant case could not have enforced the 1988 arbitration award in the context of the 1994 examination without performing the fact-finding role that the parties freely assigned to an arbitrator pursuant to the CBA. The 1994 examination questions pose a new, unresolved dispute; therefore, plaintiff’s requested relief requires more than mere enforcement of an arbitration award; it requires decisionmaking of a kind typically performed by an arbitrator. Accordingly, the circuit court was without subject matter jurisdiction to decide this new dispute and properly granted defendants’ motion for summary disposition on this basis.²

Affirmed.

/s/ Richard Allen Griffin

/s/ Martin M. Doctoroff

/s/ Stephen J. Markman

¹ The *Armco* court further held at 498:

A court is able to distinguish an actual failure to comply with an award, which it is empowered to remedy, from, for example, a response whose adequacy in compliance with an award is ambiguous, and where the arbitrator must first make a decision. While there may be cases where this distinction will be difficult to draw, this case is not one of them.

We agree. We note, for example, that judicial enforcement of an arbitration award may be appropriate where no additional fact-finding is necessary because the only distinction between a “new” violation and one previously arbitrated is that new parties are involved.

² Our resolution of this issue makes it unnecessary for us to resolve defendants’ issue on cross-appeal regarding summary disposition on the basis of the statute of limitations.