

STATE OF MICHIGAN
COURT OF APPEALS

AMALGAMATED TRANSIT UNION LOCAL
836 AFL-CIO,

UNPUBLISHED
May 29, 2003

Plaintiff/Counter-Defendant-
Appellee,

v

GRAND RAPIDS AREA TRANSIT
AUTHORITY,

No. 238082
Kent Circuit Court
LC No. 01-006224-CL

Defendant/Counter-Plaintiff-
Appellant.

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

Defendant Grand Rapids Area Transit Authority (the Authority) appeals as of right from an order granting the motion of plaintiff Amalgamated Transit Union Local 836 AFL-CIO (the Union) for summary disposition, holding that an arbitrator's award should be enforced since the arbitrator had authority to make his initial decision and to amend that decision to correct a typographical error. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

The Union, the bargaining agent for the mechanics working for the Authority, filed a grievance when the Authority hired some mechanics at higher than the entry level. When the grievance was denied, the matter proceeded to arbitration. The arbitrator concluded that § 20.16 of the collective bargaining agreement (the Agreement) had been violated and directed that "individuals hired above Classification III [the lowest level] be demoted to the II level." By letter, the arbitrator corrected this typographical error indicating that the individuals were to be demoted to the III level.

In June of 2001, the Union filed a complaint in circuit court to enforce the award. The Authority answered, denying that it had failed to comply with the award since those who had been hired at a higher classification were all at the II level. The Authority also filed a counterclaim seeking to have the award vacated on grounds that the arbitrator had exceeded his authority by modifying the Agreement in violation of § 4.06 of the Agreement. Specifically, the

Authority argued that the arbitrator (1) impermissibly relied on § 20.16 since the Union had not set forth this provision in its grievance; and (2) impermissibly directed that certain employees be demoted to a lower level, and usurped the Authority's right under § 20.12 of the Agreement to "judge qualifications and to determine how many employees are needed in each of its classifications on each of its work shifts."

The parties brought cross motions for summary disposition. At a hearing in October of 2001, the trial court granted the Union's motion, stating only the following:

Well, I can rule here. It's my opinion, and I've read everything and heard the arguments, that the arbitrator was within his authority when he made his decision, and it was certainly within his authority to amend II to III.

II. Standard Of Review

We will reverse an arbitrator's decision as exceeding his authority only for an error that is apparent on the face of the award and "so material or so substantial as to have governed the award, and but for which the award would have been substantially otherwise."¹

III. The Arbitrator's Authority

The Authority argues that the arbitrator exceeded his authority by basing his decision on § 20.16 of the Agreement. Section 4.03 of the Agreement required that the grievance refer to specific provisions alleged to have been violated. The Union did not recite § 20.16 in the grievance. In *Roseville Community School Dist v Roseville Federation of Teacher*,² this Court stated:

[P]rocedural questions surrounding the grievance and arbitration procedures, *including* the timeliness of the grievance, whether it is of a continuing nature and *whether grievance procedures have been followed or excused*, cannot usually be resolved without consideration of the merits of the underlying dispute. It is for that reason, and based upon the policy favoring arbitration, that "procedural" questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator". (Emphasis added.)

Here, the arbitrator's decision involved a procedural matter. The arbitrator noted that although § 4.03 required that the provision be referenced in the Agreement, it did not provide that a failure to reference a provision would preclude reliance on it. Where the arbitrator determined that the argument should be allowed based on the conclusion that it would not amount to surprise or cause prejudice, he was in essence holding that this grievance procedure should be excused. This procedural determination is not subject to judicial review.

¹ *DAIIE v Gavin*, 416 Mich 407, 443; 331 NW2d 418 (1982).

² *Roseville Community School Dist v Roseville Federation of Teachers*, 137 Mich App 118, 124-125; 357 NW2d 829 (1984), quoting *John Wiley & Sons, Inc v Livingston*, 376 US 543, 557, 84 S Ct 900, 11 L Ed 2d 898 (1964).

We note that *Port Huron Area School Dist v Port Huron Ed Ass'n*³ is distinguishable. There, although neither the grievance nor the answer implicated the preamble of the collective bargaining agreement, the arbitrator impermissibly based a decision on it. However, the collective bargaining agreement expressly prohibited grievances concerning the preamble. The decision therefore exceeded the scope of the arbitrator's authority as expressly laid out in the collective bargaining agreement. Here, the Agreement did not expressly preclude the arbitrator from determining that the failure to recite a provision in the grievance did not constitute a waiver of an argument based on that provision.

The Authority argues that the arbitrator exceeded his authority when he directed that it demote employees hired in at the higher classification since § 20.12 provided that it would determine how many of its employees were needed in each classification. We note that "[J]udicial review [of an arbitration award in a labor dispute] is limited to whether the award 'draws its essence' from the contract, whether the award was within the authority conferred upon the arbitrator by the collective bargaining agreement."⁴ An award does not draw its essence from the collective bargaining agreement if it conflicts with express terms of the agreement or imposes additional requirements that are not expressly provided in the agreement.⁵

Here, the award drew its essence from the Agreement. While § 20.12 gave the employer the right to determine qualifications and the number of employees needed in a classification, the arbitrator's award did not interfere with either of these rights. It merely held that to remedy the employer's violation certain employees were to be demoted. This was not premised on qualifications or need, and did not conflict with an express contractual term.

The Authority argues that the arbitrator's letter did not operate as an amendment. The Authority cites no authority to support this position and it may not leave it to this Court to search for authority to sustain or reject it.⁶ The Authority's argument that the arbitrator did not have authority to amend the award is without merit, as the arbitrator could correct a typographical error.⁷

Affirmed.

/s/ William C. Whitbeck
/s/ Helene N. White
/s/ Pat M. Donofrio

³ *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143; 393 NW2d 811(1986).

⁴ *Roseville*, *supra* at 123, quoting *Ferndale Ed Ass'n v School Dist for City of Ferndale #1*, 67 Mich App 637, 642-643; 242 NW2d 478 (1976).

⁵ *Appalachian Regional Healthcare, Inc v United Steel Workers of America*, 245 F3d 601, 604-605 (CA 6, 2001).

⁶ *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996).

⁷ *Teamsters Local 312 v Matlack, Inc*, 118 F3d 985, 992 (CA 3, 1997).