

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF EAST LANSING,

UNPUBLISHED
June 3, 2003

Plaintiff/Counter-Defendant-
Appellant,

v

No. 234385
Ingham Circuit Court
LC No. 01-092974-CZ

LOCAL 1609 INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS,

Defendant/Counter-Plaintiff-
Appellee.

Before: Markey, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from an order granting summary disposition under MCR 2.116(C)(10) to defendant, dismissing plaintiff's complaint, and enforcing an arbitration award. We affirm.

At all times relevant to this action, plaintiff and plaintiff's employee, Michael Haid, were parties to a collective bargaining agreement (CBA). After Michael Haid made an unsuccessful oral grievance, defendant filed a written grievance on behalf of Michel Haid and his wife, Shawna Haid. This appeal stems from that grievance; plaintiff commenced this action seeking to vacate an arbitration award favorable to defendant. The parties agree that the terms of the CBA applied to defendant's grievance.

We review the grant or denial of a motion for summary disposition de novo. *Groncki v The Detroit Edison Company*, 453 Mich 644, 649; 557 NW2d 289 (1999). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint, and we must consider the affidavits, pleadings, depositions, admissions and other evidence in the light most favorable to the nonmoving party. MCR 2.116(G)(5). We review the entire lower court record, and if the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Plaintiff first contends that the court erred in failing to find that the arbitrator exceeded his jurisdiction and authority by allegedly allowing an untimely grievance to be filed and modifying the terms of the CBA. We disagree.

MCL 423.9d governs the arbitration of labor disputes. Any circuit court having jurisdiction may enforce an arbitration award. MCL 423.9d(2)(b). Judicial review of an arbitration award is limited, and a court may not review the arbitrator's factual findings or a decision on the merits. *Port Huron Area School Dist v Port Huron Ed Assn*, 426 Mich 143, 150; 393 NW2d 811 (1986). However, if an arbitrator exceeds his authority to interpret and apply the terms of a CBA, a court may refuse to enforce an arbitration award. *Lenawee County Sheriff v Police Officers Labor Council*, 239 Mich App 111, 119; 607 NW2d 742 (1999).

In this case, the CBA provides for a five-step arbitration process. First, an employee may discuss any "claim arising out of the terms and provisions" of the CBA with "the appropriate supervisor." If that supervisor is unable to resolve the grievance, the employee, through defendant, must "reduce the grievance to writing." "The claim must be filed with the Fire Chief within five . . . days after the event or act giving rise to the grievance"

The second step requires the fire chief to respond in writing to the grievance within five days of its receipt. Third, if the fire chief is unable to satisfactorily resolve the grievance, the defendant may appeal – on behalf of the employee – to the city manager within five calendar days of the fire chief's reply. Fourth, if the city manager is unable to satisfactorily resolve the grievance, either party may notify the other of an intent to seek arbitration. The fifth and final step is arbitration.

After the March 30, 1999, denial of payment for Shawna Haid's incurred medical charges, Michael Haid presented an oral grievance to the fire chief's office. Eventually, the complaint reached the deputy city manager's office, which sent a May 19, 1999, written reply to defendant. That reply indicated that Shawna Haid was required to enroll in her employer's plan before her husband could enroll her in plaintiff's health plan. Defendant filed a written grievance on May 24, 1999.

Despite plaintiff's argument to the contrary, the arbitrator found that defendant's May 24, 1999, written grievance was not untimely. The arbitrator stated:

The last sentence of Step 1, which follows the immediately foregoing provision for reducing the grievance to written form, provides that "[t]he claim must be filed with the Fire Chief within five (5) days after the event or act giving rise to the grievance." I construe this specific requirement as pertaining only to the initial submission of the grievance to the supervisor, and not as a time limit for reducing the grievance to written form.

Plaintiff takes issue with the analysis set forth in the above excerpt. However, even if the arbitrator erred in this analysis, it is clear that the arbitrator, in making the analysis, was interpreting the provisions of the CBA. See *Ferndale Education Assn v School Dist for the City of Ferndale*, 67 Mich App 637, 643-644; 242 NW2d 478 (1980). Thus, "[w]hether we or the trial judge agree with the arbitrator's interpretation doesn't matter." *Id.*

Moreover, the arbitrator stated that the March 30, 1999, letter sent to the Haid's health insurance administrator was "not the same as a denial of the grievance by the City, particularly in light of the request that Grievant submit further information relative to his claim." Significantly, the arbitrator stated that "[w]ith [the health insurance administrator's] request for an explanation of benefits from the primary carrier, Grievant could have reasonably concluded that the City's final decision on payment of spousal benefits was yet to be made." Essentially, the arbitrator implicitly concluded that the filing of the written grievance was timely because the Haid's did not know for sure if they even had *cause* to grieve until May 19, 1999. This plausible interpretation by the arbitrator drew its essence from the CBA, and therefore the trial court correctly upheld the decision. See, e.g., *id.* at 643-644. See also *Roseville Community School Dist v Roseville Federation of Teachers*, 137 Mich App 118, 124-125; 357 NW2d 829 (1984) (questions of procedure, such as timeliness, are left to the arbitrator's discretion).

Next, plaintiff argues that the court erred in failing to find that the arbitrator exceeded his jurisdiction by waiving the alleged CBA requirement that Shawna Haid enroll in her employer's health plan before seeking coverage through plaintiff's health plan. We disagree.

Under the CBA, spouses of plaintiff's employees are eligible for hospital, medical, and surgical insurance coverage, with the exception that

if an employee's spouse is employed full-time and has medical coverage available to him or her under a plan offered by his or her employer, the spouse must enroll in the medical plan for employee coverage in order for the spouse to be eligible for medical coverage through [plaintiff]. . . . This provision is waived in the event the spouse is required to make a medical premium contribution for the coverage.

The arbitrator found that the flexible benefit plan provided by Shawna Haid's employer required her to make a "medical premium contribution" for health insurance coverage and that she was therefore not required to enroll in her employer's health plan in order to be covered under her husband's policy.

The CBA fails to define "medical premium contribution." "A contract is ambiguous if its provisions may reasonably be understood in different ways." *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001). Because the term "medical premium contribution" can reasonably be understood to either refer to direct employee payment of medical premiums or indirect employee allocation of flexible benefits, the term essentially is ambiguous.

Thus, the CBA's ambiguous use of the term required the arbitrator to interpret its meaning. Where an arbitrator's decision clearly indicates he interpreted the contract provisions agreed to by the parties, our function is merely "to determine whether the arbitrator's conclusions were within the framework of the contract." *Ferndale Ed Assn, supra* at 643. Because the CBA left the term "medical premium contribution" undefined, we are unable to conclude that the arbitrator's conclusion was outside the framework of the CBA or that the arbitrator modified the terms of the CBA.

Finally, plaintiff contends that the court erred in failing to find that the arbitrator's award did not draw its essence from the CBA and that the arbitrator ordered plaintiff to do more than required under the CBA. We disagree.

Plaintiff relies on *Lenawee Co Sheriff, supra* at 119, quoting *United Steelworkers v Enterprise Wheel & Car Corp*, 363 US 593, 597; 80 S Ct 1358; 4 L Ed 2d 1424 (1960), in which we held that

“[A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only as long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.”

In other words, an arbitrator may not act on his own sense of personal justice, but is confined to interpretation and application of the agreement.

In *Lenawee Co Sheriff, supra* at 119, we held that it was “abundantly clear that the arbitrator sympathized with [the grievant] and felt that a strict application of . . . the provisions of the collective bargaining agreement to the facts of [the] case caused an unjust result.” In so doing, the arbitrator “disregarded an express provision of the collective bargaining agreement” *Id.* at 120.

Unlike the plaintiff in *Lenawee Co Sheriff*, the instant plaintiff has failed to demonstrate that the arbitrator blatantly disregarded a material and pivotal term of the CBA in order to reach a desired result. The arbitrator made findings based on his review of the evidence and did not exceed the scope of his authority. Thus, judicial review of the arbitrator's decision “effectively ceases.” *Id.* at 118.¹

Affirmed.

/s/ Jane E. Markey
/s/ Michael R. Smolenski
/s/ Patrick M. Meter

¹ Plaintiff raises an issue in his appellate brief regarding laches. We do not consider this issue because it is both inadequately briefed and not raised in the statement of questions presented. See *Thomas v City of Detroit Retirement System*, 246 Mich App 155, 162; 631 NW2d 349 (2001), and *In re BKD*, 246 Mich App 212, 218; 631 NW2d 353 (2001).