

STATE OF MICHIGAN
COURT OF APPEALS

HURON INTERMEDIATE SCHOOL DISTRICT
and HURON INTERMEDIATE BOARD OF
EDUCATION,

UNPUBLISHED
June 15, 2006

Plaintiffs-Appellees,

v

HURON INTERMEDIATE EDUCATION
ASSOCIATION,

No. 257580
Huron Circuit Court
LC No. 04-002473-CL

Defendant-Appellant.

Before: Smolenski, P.J., Whitbeck, C.J., and O’Connell, J.

O’CONNELL, J. (*dissenting*).

I respectfully dissent. Plaintiffs and defendant entered into a collective bargaining agreement. Pursuant to the terms of the collective bargaining agreement, a representative of the Michigan Education Association (MEA) filed a grievance.¹ The parties² were not able to resolve

¹ Defendant is the MEA’s local branch. The arbitration caption listed the MEA as the party opposing plaintiffs’ actions. The majority opinion impliedly concludes that the MEA cannot bring a grievance on behalf of one of its members. Even more disturbing is that the majority opinion fails to recognize that the MEA grievance is being filed pursuant to Article XII(D) of the collective bargaining agreement, which reads in part: “No staff person shall be disciplined, reprimanded, reduced in rank or compensation or deprived of any professional advantage, without just cause. Any such discipline, reprimand or reduction in rank, compensation or advantage shall be subject to the professional grievance procedure hereinafter set forth.” On page 17 of his “DECISION AND AWARD,” the arbitrator concluded, “The fact remains that the Grievant, Ms. Coleman, was teaching up until the date of her termination by the School District.”

² The majority opinion essentially concludes that Dolores Coleman was not a member of the bargaining unit, so she could not file a grievance pursuant to the collective bargaining agreement. I note that Coleman is not a party to this proceeding, so the issue of whether she could or could not file a grievance is not at issue in this case. See *Nippa v Botsford General Hospital*, 257 Mich App 387, 401-402; 668 NW2d 628 (2003) (Whitbeck, C.J., *dissenting*.) The arbitrator found that the grievance was filed by the MEA on Coleman’s behalf, not by Coleman alone.

the grievance, and pursuant to Article XII of the contract proceeded to arbitration. The arbitrator determined that Article XII, paragraph D, “expressly states a reduction ‘ . . . in rank or compensation or deprived of any professional advantage shall be subject to the professional grievance procedure.’ Likewise, Article XII, paragraph E, states ‘a comprehensive grievance procedure under which all unresolved disputes may be settled by an impartial third party.’”

The arbitration decision clearly held “that even when an employee may be ineligible to utilize the grievance procedure, the union may be able to press the claim.” In my opinion, pursuant to the terms of the collective bargaining agreement, the MEA was entitled to use the grievance procedure.³

I concur with the arbitrator and would reverse the decision of the trial court.⁴

Dolores Coleman, a teacher at the Huron Area Technical Center, allowed her provisional teaching certificate and vocational authorization to lapse by failing to complete the attendant education requirements. After learning that she would not otherwise be able to continue teaching, Coleman asked plaintiffs to seek a waiver of the certification requirements on her behalf. Plaintiffs refused and dismissed Coleman because she was no longer certified.

Defendant, through the MEA, filed a grievance, which was denied. Defendant then referred the dispute to arbitration under a collective bargaining agreement and, over plaintiffs’ objections, the case was referred to a private arbitrator. The arbitrator issued an award concluding that the dispute was subject to arbitration and ordering plaintiffs to cooperate with the union and Coleman “in applying for a renewal of her provision certificate and vocational authorization certificate.”

Plaintiffs sued to vacate the award, arguing that once Coleman’s certificates expired she no longer belonged to the bargaining unit, which the parties’ collective bargaining agreement defined as “a unit consisting of all certified personnel or other professional personnel as approved by the State Board of Education.”⁵ The circuit court agreed and granted summary disposition to plaintiffs.

³ I also note that the majority’s major premise, *ante* page 3, is incorrect. Pursuant to the terms of the collective bargaining agreement, both the union and a member of the union can institute the arbitration process. The record clearly reflects that the union initiated arbitration proceedings in this case.

⁴ According to the majority, the “incident” that caused Coleman to be fired is *allowing her certification to expire*. However, the majority opinion concedes that at the moment the “incident” occurred, Coleman was a member of the union. Assuming *arguendo* that the majority’s premise is correct (i.e., a fired employee who is no longer a member of the union cannot file a grievance), the majority’s syllogism does not apply to this case because Coleman *was* a member of the union at the time of the “incident.”

⁵ I find nothing in the lower court record that convinces me that Coleman was not a member of the bargaining unit. She remained a member of the union even after she was fired. In my
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Defendant argues that the trial court erred when it overruled the arbitrator's holding that the defendant's grievance was arbitrable. I agree. "This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. In making this determination, the Court reviews the entire record to determine whether defendant was entitled to summary disposition." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). We also review de novo the trial court's interpretation of contractual language. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998). Plaintiffs bear the burden of demonstrating that the valid arbitration agreement did not cover the dispute at issue. *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167, 184; 405 NW2d 88 (1987).

Plaintiffs argued, and the trial court ruled, that because Coleman lacked certification when she was terminated, the contract did not recognize her as a member of the Association's bargaining unit. According to plaintiffs, this lack of membership prevented her from filing a grievance and prevented defendant from pursuing a grievance on her behalf. Plaintiffs cite the first article of the contract, titled "recognition," which states, "The Board hereby recognizes the Association as the exclusive bargaining representative as defined in Section 11 of Act 379 . . . for a unit consisting of all certified personnel or other professional personnel as approved by the State Board of Education." From this language, plaintiffs extracted the argument that Coleman's lack of certification rendered her an at-will employee with no rights under the contract, so she could not resort to the contract's provisions for resolving disputes.⁶

However, this argument ignores the language that states, "No staff person shall be disciplined, reprimanded, reduced in rank or compensation or deprived of any professional advantage, without just cause." This language indicates that the "just cause" standard for termination or other discipline and reduction of rank applies to all members of the staff. Plaintiffs fail to provide any contractual definition of who qualifies as a staff person, so we are left with the plain, ordinary, general meaning of the words used. *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 71 n 1; 467 NW2d 17 (1991).

Plaintiffs do not dispute that Coleman had rejoined the teaching faculty for the school year and had begun teaching her fall classes before the administrative support staff and principal learned, in November, that her certification had lapsed over the summer. The principal did not discipline Coleman, but emphasized that the lack of certification was a serious problem she should immediately address. The administration permitted Coleman to continue teaching, at the same pay and hours, without certification. The administration raised the issue again in March,

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opinion, the union determines its membership, not the school system. The arbitrator resolved Coleman's disputed membership in Coleman's favor, and nothing in the contract or lower court documents suggest that the finding was erroneous.

⁶ On page 17 of his "DECISION AND AWARD," the arbitrator concluded, "The fact remains that the Grievant, Ms. Coleman, was teaching up until the date of her termination by the School District. If she was teaching in the School District, she obviously was a member of the bargaining unit at the time of her termination. The grievance questions the decision to terminate the Grievant. It clearly meets the definition of a grievance. Hence, I do find the grievance arbitrable."

however, when the principal wrote a memo to Coleman in which he explained that if she was not able to present evidence of her certification by a board meeting on April 7, 2003, she would be terminated. However, the principal also promised that the administration would help work with her to regain her certifications and offered to give her time off to do so. The arbitrator determined that the principal probably took this approach because Coleman was undisputedly an “outstanding educator” who had gained tenure, maintained an exemplary record, and received solid evaluations. She had also recently suffered several personal setbacks and distractions, including the care of her mother.⁷ In any event, Coleman obtained, filled out, and signed an application for one of her required certificates, and provided it to the superintendent for his approval on March 31, 2003. Claiming that Coleman’s failure to enroll in required courses demonstrated a lack of due diligence, the superintendent refused to sign the application, and Coleman was terminated as scheduled, effective at the end of the week. Because the administration continued its de facto employment of Coleman as an uncertified teacher at the time of her termination, she qualifies as a “staff person” under the plain meaning of that phrase.

Once it is recognized that the contract extends “just cause” employment status to everyone who is a “staff person” and that Coleman was a “staff person,” the arbitrator’s interpretation of the contract is wholly vindicated. Coleman challenged whether plaintiffs had “just cause” to terminate her, which was clearly a reduction in rank and compensation. The contract states that such adverse action by the administration “shall be subject to the professional grievance procedure” The grievance procedure states, “The staff person shall discuss the grievance with his/her immediate supervisor,” and that if “a grievance still exists, the staff person or Association shall . . . file a formal grievance” Therefore, the contract does not state that only members of the bargaining unit receive the security of “just cause” employment or that they are the only ones who may file a grievance.

The parties may have expressly used the phrase “staff person,” rather than “teacher” or “union member,” for the protection of those teachers who find themselves in Coleman’s predicament. In any case, however, the parties chose the language “staff person,” and plaintiffs fail to demonstrate any technical meaning of the phrase “staff person” that might exclude Coleman in her de facto employment as an uncertified teacher or, for that matter, a de facto member of the bargaining unit.⁸ Applying the undisputed facts to the contract’s unambiguous

⁷ The arbitrator’s decision reflects that Coleman’s mother was hospitalized with medical and psychiatric problems as the deadline for certification renewal approached, and that her mother died in 2002. Nevertheless, Coleman took full responsibility for allowing her certification to lapse.

⁸ I note that from September to April, Coleman paid her union dues and educated her students. Following the majority’s syllogism to its extreme, Coleman would be entitled to a return of her union dues, and the students would have to be re-educated by a certified teacher who was a member of the bargaining unit. Unfortunately, this is not possible. Since all the parties adhered to the terms and conditions of the union contract, including paying the union dues and performing teaching duties under the contract, it seems unfair to now say that the union has no rights to file a grievance pursuant to the terms of the contract. Coleman, at the least, is a de facto member of the bargaining unit.

terms, Coleman was a “staff person” who could demand “just cause” for her termination and resort to the grievance process, including arbitration. Therefore, plaintiffs failed to carry their considerable burden of demonstrating nonarbitrability, *McKinstry, supra*,⁹ and the trial court erred by failing to apply the plain, unambiguous contract language and by holding that Coleman’s dispute was not arbitrable.

Once the trial court determined that the contract between the union and the district contained a valid arbitration clause that arguably covered their dispute and did not expressly exclude it from arbitration, the trial court’s job was done. *Fromm v MEEMIC Ins Co*, 264 Mich App 302, 305-306; 690 NW2d 528 (2004). “An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.” *United Steelworkers of America v Warrior & Gulf Navigation Co*, 363 US 574, 582-583; 80 S Ct 1347; 4 L Ed 2d 1409 (1960), cited with approval in *Holloway Constr Co v Oakland Co Bd of Co Bd Commr’s*, 450 Mich 608, 616; 543 NW2d 923 (1996). In this case, the issue regarding the arbitrability of the dispute was properly submitted to the arbitrator as a question of contract interpretation. “Courts may not engage in contract interpretation, which is a question for the arbitrator.” *Konal v Forlini*, 235 Mich App 69, 74; 596 NW2d 630 (1999). The arbitrator found plaintiffs’ “bargaining unit” arguments unavailing and adopted defendant’s contrary interpretation. The trial court erred by failing to limit its review to whether the arbitration clause was “susceptible of an interpretation that covers the asserted dispute.” *United Steelworkers, supra*. Because the arbitration clause deals with “staff members” and not members of a particular “bargaining unit,” the trial court’s analysis and conclusion are erroneous.

Moreover, plaintiffs have done little more than merely assert that the arbitrator’s award exceeded the scope of the arbitrator’s authority and complain that it improperly expanded their contractual obligations. Neither party has presented a copy of the complete contract, so we are left to guess at what qualifies as an expansion of contractual obligations. If the contract does not constrain the arbitrator’s power to find and remedy a violation of the contract, then we generally will not interfere with the award. See *Ehresman v Bultynck & Co*, 203 Mich App 350, 355; 511 NW2d 724 (1994). In this case, the arbitrator found that Coleman’s lapsed certification and authorization did not amount to “just cause” to terminate her. Although we may disagree with

⁹ In *Kaleva-Norman-Dickson School Dist No 6 v KND Teachers’ Ass’n*, 393 Mich 583, 592; 227 NW2d 500 (1975), our Supreme Court quoted *United Steelworkers of America v Warrior & Gulf Navigation Co*, 363 US 574, 582-583, 585; 80 S Ct 1347; 4 L Ed 2d 1409 (1960), for the following instructive standards:

“An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the *arbitration clause* is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.” (Emphasis supplied.) Absent an “*express provision* excluding [a] particular grievance from arbitration” or the “*most forceful evidence* of a purpose to exclude the claim”, (emphasis supplied) the matter should go to arbitration

this finding, the parties chose to use the arbitrator, not the courts, to settle their contractual disputes. The arbitrator then issued an award to remedy the violation by requiring that the administration keep its promise and help Coleman obtain her certification renewals. By the time of the award, Coleman had completed the necessary coursework and only needed the cooperation of plaintiffs to renew her lapsed certification.¹⁰ Although the award reinstated her for the 2004-2005 school year, it did not award her any back pay for the time she missed. Plaintiffs have failed to establish that the arbitrator exceeded its authority in issuing this award.

I would reverse and remand for reinstatement of the arbitrator's decision and award.

/s/ Peter D. O'Connell

¹⁰ I note that plaintiff was replaced by a para-professional working in a teaching capacity that only requires annual authorization. As the lower court record reflects, Coleman, even though her certification had lapsed, was eligible for this annual authorization process. This fact belies plaintiffs' claimed concerns and suggests that their stated reasons for discharging Coleman were less than genuine.