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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IOWA CITY COMMUNITY SCHOOL DISTRICT,

Plaintiff-Appellant,

vs.

IOWA CITY EDUCATION ASSOCIATION,

Defendant-Appellee.

Filed April 26, 1983

2-502
2-68574

Appeal from Johnson District Court - Peter J. Kilberg, Judge.

Plaintiff school district appeals from the district court decision upholding an arbitration award concerning a teacher's grievance. REVERSED AND REMANDED.

John R. Phillips and Kathleen A. Reimer of Rogers, Phillips & Swanger, Des Moines, for plaintiff-appellant.

Charles E. Gribble of Dreher, Wilson, Adams, Jensen, Sayre & Gribble, Des Moines, for defendant-appellee.

Edgar H. Bittle and Elizabeth Gregg Kennedy of Ahlers, Cooney, Dorweiler, Haynie & Smith, Des Moines, for amicus curiae Iowa Association of School Boards.

Heard by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ.

PER CURIAM

Plaintiff-school district appeals from the district court decision upholding an arbitration award concerning a teacher's grievance, asserting that the arbitrator's award was not drawn from the essence of the contract and is violative of public policy and that the arbitrator exceeded his contractual and statutory power and authority. We reverse and remand.

The contract at issue permits plaintiff-school district to withhold scheduled step salary increases for a teacher's unsatisfactory performance. A teacher whose scheduled salary increase was withheld due to his allegedly unsatisfactory performance initiated the contractual grievance procedure which resulted in an arbitration award in his favor. The school district then filed an action in district court seeking to set aside the arbitrator's decision, alleging that his award did not draw its essence from the collective bargaining agreement and exceeded the arbitrator's contractual and statutory authority. The district court upheld the arbitrator's award.

On February 10, 1981, Arbitrator John Sembower issued an opinion and award deciding a grievance filed by Richard Bristol and the Iowa City Education Association (ICEA) against the Iowa City Community School District (the District) under the terms of a collective bargaining agreement negotiated pursuant to the provisions of Iowa Code chapter 20 (1979). The arbitrator sustained the grievance and concluded that the District had violated certain procedures of Article XV, secs. III and X of the contract when it placed two "unintelligible shorthand notes" in Bristol's file; and that the District violated Article XVII, sec. C of the 1979-80 collective bargaining agreement when the superintendent recommended and the board of directors determined that a salary increase be withheld from Bristol for the 1980-81 school year due to Bristol's alleged "unsatisfactory performance."

A petition by the District in Johnson County District Court, requesting that the award be vacated, was denied.

Bristol, a teacher in the District since 1967, had reached the top of the "salary ladder" for the "Master's" lane in the year 1979-80. The arbitrator found that during the previous three years, the principal, Dr. Ferguson, had subjected Bristol's teaching to severe criticism. On March 13, 1980, Bristol received his formal evaluation from Ferguson. In it, Bristol was rated "unsatisfactory" in a number of areas. At the same time, he was put on notice that he would receive no salary increase for the following year, and that prior to March 15, 1981, he would be notified as to whether his continuing contract with the District would be renewed with or without a salary increase, or terminated.

After the District refused to abide by the arbitrator's award, a number of other procedures, which need not detain us, were pursued by both parties in order to resolve this matter. Following a hearing on the merits of the case, the district court found that the parties did not contest the arbitrability of the grievance; that the arbitrator's award drew its essence from the collective bargaining agreement; and that the arbitrator did not exceed his statutory jurisdiction, power, and authority. The court ordered enforcement of the award, with costs assessed against the District.

On appeal, the District argues that the district court misapplied the supreme court's rulings in Sergeant Bluff-Luton Education Association v. Sergeant Bluff-Luton Comm. Sch. Dist., 282 N.W.2d 144 (Iowa 1979) in such a way as to negate the common and statutory law of the State of Iowa as embodied in chapters 20 and 279 of the Code, in that it misinterpreted the concept of "essence of the agreement" as applied to public educational institutions; and that the district court erred in not vacating the arbitrator's award in view of the fact that that award was allegedly based upon the arbitrator's subjective judgment and was inconsistent with the law and public policy of the State of Iowa.

I. "The function of the courts [in labor arbitration cases] is strictly limited

to a determination of the arbitrator's authority and the existence of an arbitrable dispute. Ordinarily courts may not inquire into the merits of the decision itself." Sergeant Bluff-Luton, 282 N.W.2d at 147.

The court went on to define the threshold question in reviewing an arbitrator's award as being a determination as to whether the issue in dispute is one which the parties had agreed to settle by arbitration. Once that was established, "the sole question to be determined by the court on review is whether the arbitrator's award 'drew its essence' from the collective bargaining agreement. It is not the function of the court to determine whether the arbitrator has resolved the grievance correctly." Id. at 148. Once the court has determined that the arbitrator's award "is drawn from the essence of the agreement, our consideration of the relative merits of the controversy must terminate." Id. at 150, emphasis added.

Although not argued by either party as a separate issue, we deem it worthwhile to consider the threshhold issue of whether the dispute involved here is one that the parties agreed to settle by arbitration. The initial area of contention in this case is whether the District violated the collective bargaining agreement when it determined to withhold Bristol's salary increase due to his "unsatisfactory performance." We agree with the District that Bristol's grievance is arbitrable only to the extent of determining whether the District's action in withholding the salary increase followed the procedures set forth in the agreement. The District did not agree in this case to submit to arbitration questions involving the substance of its determinations as to what does or does not constitute "unsatisfactory performance." In other words, the arbitrator is given no authority to decide whether or not it agrees with the District's determination that Bristol's performance has been unsatisfactory; his role is limited to deciding whether the District followed the procedures set forth in the agreement for making that

determination. With this understanding, we conclude that the issue of whether the District violated contractual procedures in deciding to withhold Bristol's salary increase was arbitrable.

II. In Sergeant Bluff-Luton, the court concluded that the concept of the essence of a collective bargaining agreement is "extremely broad," and is intended to include not only the written and unwritten agreements themselves, but "also the practices of the parties or the industry in general," and such "vaguely defined concepts of the particular industry . . . [as] fairness, reasonableness and practicality." 282 N.W.2d at 150.

The collective bargaining agreement contains the following provision: "Article XVII—C. Employees shall advance on the salary schedule one (1) step vertically for the 1979-80 school year subject to the right of the district to withhold salary increases for unsatisfactory performance." (emphasis added). A decision was made that a salary increase be withheld from the teacher, Bristol, for the 1980-81 school year due to his "unsatisfactory performance." That decision was made the subject of a grievance filed by Bristol alleging that the Board had violated the collective bargaining agreement by improper salary determination and placement of improper materials in Bristol's personnel file.

The grievance proceeded through proper channels and ultimately came to arbitration. Upon the record made, the arbitrator sustained the grievance and ordered Bristol advanced to the fourteenth step of the salary schedule and paid retroactively for his standing in that position, or as stated by the court: "awarding him that increment in compensation which he would have received under the agreement absent a finding of 'unsatisfactory performance.' "

The arbitrator's award does not find that Bristol's performance was not unsatisfactory. His ruling, in fact, states "there is lacking any basis for reversal or modification of the District's actions with respect to the Grievant on the

grounds that it was arbitrary and unjustified." The Board found Bristol's performance to be unsatisfactory and held him on his present step of the salary schedule. Since the arbitrator found such action not to be "arbitrary or unjustified", his role should have ended there.

The length of tenure, as it applies to a teacher termination matter, has no application to the facts of this matter. Nor is it an ominous sign that Bristol's termination is being considered merely because prior to any action by the Board he was notified that recommendation would be made that his salary remain at the present level and that recommendation of one of several options, including discharge or nonrenewal of his contract, would be made. The special meeting was held, the recommendation to withhold increase was obviously made and the Board concurred. Had such decision been arbitrary and unjustified, the broad concept of "essence of a collective bargaining agreement" and the "fundamental notion of fairness in labor relations" would have dictated the arbitrator's result. The arbitrator himself stated the appropriate standard of his review: ". . . regardless of whatever might be [the arbitrator's] personal inclinations in the matter, he does not have, as an outside adjudicator chosen by the parties, the prerogative simply to substitute his judgment for that of the management." His specific finding of the absence of evidence that the Board's action was arbitrary or unjustified and his consequent failure to adhere to his own standard of review requires a finding that the grievance should have been overruled and the Board's action upheld.

The arbitrator exceeded his authority in upholding the grievance and the district court was in error in upholding the same. The decisions of the trial court and the arbitrator are reversed. The case is remanded with directions to reinstate the Board's determination to withhold the salary increase.

REVERSED AND REMANDED.

All judges concur, except Oxberger, C.J., who dissents.

OXBERGER, C.J., (dissenting).

I respectfully dissent.

The parties clearly agreed that the issues presented to the arbitrator were arbitrable. The district court correctly found that "[t]he District does not contest the arbitrability of the grievance." In its brief on appeal, the District concedes that it "has taken the position that while the grievance is arbitrable, the arbitrator exceeded his authority by ruling for the teacher." The District then goes on to contend that even though the grievance is arbitrable, "and thus the subject matter within the jurisdiction of the arbitrator to decide and [that] an award in favor of the District [is] well within the authority of the arbitrator, it cannot be argued that the award of the arbitrator in favor of the teacher on a matter that all admit was for the arbitrator to decide exceeds the arbitrator's authority." (emphasis added.)

Having conceded that the issue was arbitrable, the District proceeds to argue that the court should uphold its position on the basis of the second prong of the Sergeant Bluff-Luton test. The majority, in what can only be characterized as a quasi-de novo review, takes up the cudgels for the District and refuses to accept the District's own concession that the threshold issue of arbitrability must be resolved in the District's favor. The majority correctly cites Sergeant Bluff-Luton as authority for the court's scope of review. However, it goes well beyond those limits in determining the outcome of the case.

Moreover, the District's argument is simply unsound. If an issue is arbitrable, then by definition the arbitrator is authorized to consider all elements of the issue, and neither party is entitled to a presumption that it has absolute authority to determine any of those issues that are central to the case. If the majority's views were to prevail, the only question the arbitrator could decide would be whether the District had followed prescribed procedures in denying any teacher his contractual salary increment, but he would not be permitted to reach the very core of the issue, since that would be left to the absolute, unfettered discretion of the District.

My reading of the contract between the parties leads me to conclude that the parties never contemplated any such result, and that the District's briefs reveal that the District correctly understood that under its contract with the ICEA all of the issues in this case were arbitrable.

If we confined our review within the limits prescribed by Sergeant Bluff-Luton, we would be compelled to affirm the district court's decision in the matter and uphold the arbitrator's award.