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Mayor and Town Council v. International Association of Fire Fighters

THE MAYOR AND TOWN COUNCIL OF THE BOROUGH OF CHAMBERSBURG, Plaintiff,

v. INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1813, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,

Franklin County Branch
Civil Action - Equity, No. 2002-277, Equitable and Declaratory Relief

Collective bargaining agreements; Contracts; Preliminary injunctions; Trial court's scope of review and jurisdiction to enjoin arbitrator's award

1. Upon the timely expiration of a collective bargaining agreement, the arbitration panel appointed to decide the issues of dispute is vested with jurisdiction to decide work schedules for the upcoming year.

2. Contracts terms that are ambiguous require the court to look to the entire agreement to resolve conflicting terms therein and reach a decision as to the parties' intent.

3. Under Pennsylvania law, a trial court's scope of review of an arbitration panel's decision regarding the fire department employees' work schedule pending the execution of a new collective bargaining agreement is very narrow and limited to the following four issues: a) the jurisdiction of the arbitrators; b) the regularity of the proceedings; c) an excess of the arbitrator's powers; and d) deprivation of constitutional rights.

4. The trial court will not issue a preliminary injunctive order overturning an arbitration panel's decision establishing a work schedule for employees barred from striking under Pennsylvania law, when the court finds that the arbitration panel had jurisdiction to enter the award; the arbitration panel made its decision in regular proceedings; the decision did not exceed the arbitrators' powers; and the arbitrators' decision did not deprive the party seeking the preliminary injunction of constitutional rights.

Appearances:

Thomas J. Finucane, Esq., *Counsel for Plaintiff*

Eric M. Fink, Esq., *Counsel for Defendant*

OPINION

Walker, P.J., March 25, 2002

Background

The Borough of Chambersburg (plaintiff), and the International Association of Fire Fighters, Local 1813 (defendant), entered into a collective bargaining agreement (the agreement) on December 11, 1996. The agreement was in effect from January 1, 1997 until December 31, 2001. By its terms, the agreement would automatically renew on an annual basis unless either party gave notice of termination on or before July 1, 2001. (See, the agreement, Section 28).

Following the defendant's timely notice of intent to terminate the agreement and a subsequent demand for collective bargaining for a successor agreement, the parties entered into bargaining. The fire fighters voted unanimously to reject the Borough's bargaining demands, declared an impasse, and served

a demand for interest arbitration pursuant to Act 111. (43 P.S. §217.4.)

A primary area of discord between the parties is the work schedule for 2002. The agreement states in relevant part:

> Each employee shall work a schedule of: (1) one 24-hour shift on duty followed by two 24-hour shifts off duty, or (2) three 10-hour shifts following [sic] by three 14-hour shifts followed by three days off. Prior to changing any schedule, the Borough shall give ninety (90) days written notice to the Union. It is understood that shifts on the second schedule could be mixed so that all six shifts could be night shifts or all days shifts or alternated. If alternating shifts are used, the employees shall start working three day shifts followed by three night shifts followed by three days off. It is further understood that the work schedule for 1997, 1998, 1999, 2000, and 2001 shall be a 24/48 schedule, and that the work schedule for 2002 shall be a 10/14 work schedule unless the parties agree to an alternative work schedule (as part of an agreement effective January 1, 2002) prior to December 15, 2001.

The agreement, Section 9A (emphasis added).

The plaintiff interpreted the final clause of Section 9A to mean: Since the parties did not approve a successor agreement prior to December 15, 2001, the work schedule for 2002 would be the 10/14 schedule. The defendant, on the other hand, maintained that the clause did not govern the work schedule for 2002 because the agreement was not renewed and, by its terms, it expired on December 31, 2001. The defendant requested that the arbitration panel issue an interim award to maintain the 24/48 work schedule until the panel issued its final award. The panel issued the interim award, with the Borough's panel representative dissenting.

In response, the plaintiff filed a Motion for a Preliminary Injunction, seeking declaratory and injunctive relief. A hearing on a Rule to Show Cause was held before this court and is the impetus for this opinion. For the reasons set forth below, the plaintiff's Motion for a Preliminary Injunction is denied.

Discussion

In support of the request for a preliminary injunction and declaratory relief against the effect of the interim award, the plaintiff defined two issues: (1) did the arbitration panel have jurisdiction and the power to grant an interim award modifying Section 9A of the agreement, and (2) what is this court's standard of review (the court believes the plaintiff means the scope of review) of an Act 111 panel award?

The arbitration panel's jurisdiction and power to grant an interim award:

The plaintiff argues that the panel was appointed to resolve issues related to the terms of a new agreement, but not to change the terms of the existing agreement. Furthermore, since the existing agreement had a specific provision defining the 2002 work schedule, it should not be changed without an agreement between the parties. (Borough's Memorandum of Law Re. Preliminary Injunction, p. 4.) However, this argument assumes concurrence between the parties regarding interpretation of Section 9A of the agreement. Such is not the case.

The plaintiff argues that the arbitration panel erred when it issued its interim award maintaining the 24/48 work schedule because Section 9A of the agreement sets forth the 2002 work schedule in plain, unambiguous language. In support of that argument, the plaintiff directs the court's attention to the following:

> [w]hen the language of a contract is unambiguous, we must interpret its meaning solely from the contents within its four corners, consistent with its plainly expressed intent. We may not consider extrinsic evidence unless the terms are ambiguous. A contract is not ambiguous merely because the parties do not agree on its construction. Seven Springs Farm Inc. v. Croker, 748 A.2d 740, 744 (Pa.Super. 2000) (citations omitted). Contractual language is ambiguous "if it is reasonably susceptible of different constructions and capable of being understood in more that one sense." Madison Construction Company v. Harleysville Mutual Insurance Company, 557 Pa. 595, 735 A.2d 100, 106 (1991). This question is not to be resolved in a vacuum. See id. "Rather, contractual terms are ambiguous if they are subject to more than one reasonable interpretation when applied to a particular set of facts." Id.

Borough's Memorandum of Law Re. Preliminary Injunction, p. 9, citing, RESPA of Pennsylvania, Inc. v. Skillman, 768 A.2d 335, 340 (Pa.Super. 2001).

The defendant asserts that the terms are subject to more than one interpretation. In support of that position, the defendant argues that the canons of contract interpretation require that Section 9A be read in the context of the entire agreement. (Brief of IAFF Local 1813 In Opposition to Motion for Preliminary Injunction, p.11, citing, Delaware County v. Delaware County Prison Employees Indep. Union, 552 Pa.184, 713 A.2d 1135 (1998) (other citations omitted)). The Delaware County court stated, "in interpreting a contract, all the provisions thereof should be harmonized, if possible, and interpreted together to give them effect, and that an interpretation will not be given to one part of a contract which will annul another part." Delaware County, at 1140 n.2 (Cappy, J. concurring).

The defendant contends that Section 9A must be read in conjunction with Section 28 which sets forth the duration of the agreement in the following language: "[t]his agreement shall become effective on January 1, 1997 and shall remain in effect until December 31, 2001. It shall automatically be renewed thereafter on an annual basis unless either party gives notice of termination on or before July 1, 2001, or on or before July 1st of any year for which the Agreement has been renewed."

The defendant's position is articulated in the following manner: "it was not inevitably the case that the Agreement expired on December 31, 2001. Had Local 1813 not given notice of termination, the Agreement would have continued in force into 2001. In that case, the failure of the parties to agree to an alternative work schedule prior to December 15, 2001 would have triggered the final clause of Section 9, imposing a 10/14 schedule for 2002. However, Local 1813 did give notice of termination before July 1, 2001. As a result, the Agreement expired, by its terms, on December 31, 2001, rendering the final clause of Section 9 inoperative." (Brief of IAFF Local 1813 In Opposition to Motion for Preliminary Injunction, p.11.)

After much consideration, the court finds that the plaintiff's argument is counterintuitive. It suggests that the parties meant for their agreement to have one provision, the performance of which extended beyond the duration of the entire agreement. If the Borough was attempting to firmly establish the 2002 work schedule in the event that a successor agreement was not in place at the expiration of the present agreement, that could have been effectively accomplished with an ancillary agreement addressing just that contingency.

Additionally, the court does find the defendant's argument persuasive. The court accepts the view that the agreement expired and the parties were at an impasse regarding negotiations for a successor agreement. Consequently, there was no work schedule for 2002 in effect. Since the defendant raised the 2002 work schedule as an issue in dispute in its demand for arbitration (See Petitioner's Exhibit #2, Interim Award, p. 1), the arbitration panel acted within its authority when it addressed the issue. See City of Philadelphia v. FOP, Lodge No. 5, 565 Pa. 290, 298, 768 A.2d 291, 296 (2001).

The court's scope of review:

The Supreme Court of Pennsylvania addressed the issue of a court's scope of review of arbitration awards in Pennsylvania State Police v. Pennsylvania State Troopers' Assoc., 559 Pa. 586, 741 A.2d 1248 (1999). The court stated:

> [i]n creating Act 111, the legislature focused on making the division of rights between management and labor more equitable. Specifically, police and fire personnel were still denied the right to strike, but this disability was offset by the granting of the right to collectively bargain. The legislature also included another provision which was meant to dissipate tensions prior to their building to a point where labor-management relations would break down and the public safety would be jeopardized. Specifically, the legislature dictated a restraint on judicial activity in the arena, and forbad appeals from an arbitration award. §43 P.S. 217.7(a). By ensuring the "swift resolution of disputes, [the legislature] decreased the chance that the workforce would be destabilized by protracted litigation, a state harmful to all parties." Betancourt, 656 A.2d at 89.
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> A year after Act 111 was enacted, we had our first opportunity to interpret §43 P.S. 217.7(a). Washington Arbitration Case, 436 Pa. 168, 259 a.2d 437, 440(1969). We noted that Act 111's prohibition on appeals from an arbitration award was tempered by Supreme Court Rules R. 68½, a rule which was in existence at the time Act 111 was crafted. That rule stated that "[i]f an appeal is prohibited by an Act.the law is well settled that an appeal will lie to the Courts in the nature of a narrow certiorari.." Id. at 441 (citing, Supreme Court Rules R. 68½). We state that not only did application of the narrow certiorari scope of review satisfy the requirements of rule 68½, but it also had the salutary effect of acting as an adequate safeguard for any constitutional rights to an appeal that parties might have. Id. at 440. [FN5]
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> FN5. Although Rule 68½ was rescinded in 1972, this court has made it clear that the narrow

> certiorari scope of review is still applicable to appeals from Act 111 arbitration awards. See, e.g., Township of Moon v. Police Officers of Township of Moon, 508 Pa. 495, 498 A.2d 1305 (1985).
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> 559 Pa. at 591, 741 A.2d at 1251.

There are four areas a reviewing court may consider in its review of an arbitration award under the narrow certiorari scope of review. These areas are: (1) the jurisdiction of the arbitrators; (2) the regularity of the proceedings; (3) an excess of the arbitrator's powers; and (4) deprivation of constitutional rights. Pennsylvania State Police v. Pennsylvania State Troopers' Assoc., 540 Pa. 66, 71, 656 A.2d 83, 85 (1995).

The issue of the arbitration panel's jurisdiction was addressed by the court in the first part of this discussion and it was determined that the panel acted within its jurisdiction. There is no argument regarding the regularity of the proceedings or a deprivation of constitutional rights before this court. Therefore, the only other aspect of the arbitration panel's action that must be examined is whether or not the arbitrators exceeded their authority.

"Essentially, if the acts the arbitrator mandates the employer to perform are legal and relate to the terms and conditions of employment, then the arbitrator did not exceed her authority." City of Philadelphia v. FOP, Lodge No. 5, 565 Pa. 290, 768 A.2d 291, 296 (2001) (citing, Pennsylvania State Police v. Pennsylvania State Troopers' Assoc., 559 Pa. 586, 741 A.2d 1248 (1999)). In the instant case, the panel's action was clearly within its authority in that it related to the terms and conditions of employment and mandated a legal act.

ORDER OF COURT

March 25, 2002, the above captioned matter having come before the court for a hearing on a Motion for a Preliminary Injunction, and the court having considered the facts, arguments and the relevant law, it is hereby ordered that the Motion for a Preliminary Injunction is denied.