

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

The University of Toledo

Court of Appeals No. L-12-1317

Appellant

Trial Court No. CI0201106827

v.

American Association of University
Professors, University of Toledo Chapter

DECISION AND JUDGMENT

Appellee

Decided: June 28, 2013

* * * * *

R. Scot Harvey and William E. Blackie, for appellant.

Marilyn L. Widman, Amy L. Zawacki and Elijah D. Baccus,
for appellee.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, the University of Toledo, appeals the judgment of the Lucas County Court of Common Pleas, denying its motion to vacate an arbitration award, which

was issued in favor of appellee, the American Association of University Professors, University of Toledo Chapter (“AAUP”), and granting AAUP’s motion to confirm the arbitration award. For the following reasons, we affirm.

A. Facts and Procedural Background

{¶ 2} This case stems from a labor dispute between appellant and one of its lecturers, Michael Kistner. Kistner is a member of AAUP, which has a collective bargaining agreement (CBA) with appellant that governs the manner in which appellant assigns lecturers’ workloads during the academic year. As relevant here, the CBA states:

ARTICLE 8.0 – ASSIGNMENT/WORKLOAD

* * *

8.3 ASSIGNMENT

8.3.1 After tenured and tenure-track employees have received their workload assignments, and before making assignments to visitors and part-time faculty, the department chair shall next assign Members’ workload.

* * *

8.3.4 Department Chairs shall notify Members of the courses and the number of course preparation the Member will be assigned eight (8) weeks prior to the beginning of the following term, recognizing that several factors, including enrollment, may cause the assignment to change prior to the beginning of a term. * * *

8.4 WORKLOAD

8.4.1 The overall workload includes both teaching and teaching-related duties described in 8.4.2 and may include non-core duties as described in 8.4.3.

8.4.2 Core duties include teaching, field work and field supervision and teaching related activities * * *. Core duties are expected activities regardless of the number of credit hours assigned. Members must be assigned within the range of 24-30 credit hours and/or credit hour equivalencies per year. The Chair shall make assignments based on such things as class size, number of course preparations, nature of course, number of students being supervised, field work responsibilities, contact hours, number of advisees, extent of mentoring duties, and other duties as identified in section 8.4.3 and insure that workloads are equitably assigned throughout the department. * * *

8.4.3 Non-core duties include but are not limited to department curriculum development, academic advising, and Membership on Departmental, College or University Committees and may include other mutually agreed upon duties related to the college mission or accreditation requirements, which may include professional activity. If the Chair and the member mutually agree upon any non-core duties, those duties shall be included as part of the overall workload. In so doing the chair shall adjust

the workload between 24 and 30 credit hours using comparable credit hour designations as agreed upon between the Chair and the Member. The combination of core duties and non-core duties will not exceed 30 credit hours or the equivalent per year. At no time, however, may the core duties of a Member fall below 24 credit hours or the equivalent per year.

8.4.4 Assignment of workload in excess of the maximum stated above may only be made by mutual agreement between the Member and the dean of the Member's college.

{¶ 3} Pursuant to section 8.3.4, the chair of appellant's foreign language department, Ruth Hottell, met with Kistner in the spring of 2009 to discuss his workload for the upcoming school year. During the meeting, Kistner requested a workload of 24 credit hours in light of his extensive involvement in non-core activities including participation as a member of the faculty senate and a member of the faculty senate's constitutional rules committee. Under that arrangement, Kistner would work the minimum workload allowable by teaching 3 four-credit hour classes per semester.

{¶ 4} Hottell tentatively agreed to Kistner's proposal. However, after receiving complaints from several other faculty members within the department, Hottell subsequently informed Kistner that he would be required to teach an additional four-hour course for a total workload of 28 credit hours. As a result, a grievance was filed with appellant by AAUP on Kistner's behalf. Appellant denied the grievance, and the matter proceeded to an arbitrator as required by the CBA.

{¶ 5} At arbitration, the parties agreed that the arbitrator would resolve the following question: “Did the University of Toledo violate the collective bargaining agreement when [it] failed to consider Michael Kistner’s non-core duties when making his workload assignment for the 2009-10 academic year? If so, what shall the remedy be?” The parties proceeded to a hearing in front of arbitrator John Watson. At the conclusion of the hearing, Watson ordered the parties to submit closing briefs, after which point he would render a decision. Unfortunately, Watson unexpectedly died prior to issuing a decision. Thus, Kathryn VanDagens was selected to replace Watson. On September 13, 2011, following review of the hearing transcript and the closing briefs, VanDagens granted the grievance. In her decision, VanDagens concluded that appellant was required to consider Kistner’s non-core activities when assigning his workload. Because appellant failed to do so, VanDagens concluded that AAUP was entitled to reimbursement for the equivalent of four credit hours.

{¶ 6} Two months later, appellant filed a motion to vacate VanDagens’ award with the Lucas County Court of Common Pleas. AAUP opposed that motion and filed its own motion to confirm the award. On October 5, 2010, the court issued its decision denying appellant’s motion to vacate and granting AAUP’s motion to confirm. Appellant has timely appealed the trial court’s decision.

B. Assignments of Error

{¶ 7} In its appeal, appellant assigns the following errors for our review:

I. The trial court erred as a matter of law to the prejudice of Appellant, the University of Toledo * * *, when it determined Arbitrator VanDagens did not exceed her powers despite her failure to address, let alone apply, the clear and unambiguous management rights clause of the collective bargaining agreement between the University and Appellee, American Association of University Professors * * *, granting the University the absolute right to change a teaching load assigned to a lecturer prior to the beginning of a semester.

II. The trial court erred as a matter of law to the prejudice of Appellant, the University of Toledo * * *, when it determined Arbitrator VanDagens did not exceed her powers despite her failure to address, let alone apply, the clear and unambiguous management rights clause of the collective bargaining agreement between the University and Appellee, American Association of University Professors * * *, reserving the University's sole and exclusive right to assign and schedule lecturer workloads absent an express contractual provision to the contrary, which does not exist.

{¶ 8} Since both of appellant's assignments are interrelated, we will address them together.

II. Analysis

{¶ 9} Appellant's assignments of error essentially challenge the trial court's determination that the arbitrator did not exceed her powers in interpreting the CBA.

{¶ 10} At the outset, we recognize that Ohio law favors and encourages arbitration. *Mahoning Cty. Bd. of Mental Retardation v. Mahoning Cty. TMR Edn. Assn.*, 22 Ohio St.3d 80, 84, 488 N.E.2d 872 (1986). Consequently, arbitration awards are generally presumed valid. *See Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.*, 49 Ohio St.3d 129, 131, 551 N.E.2d 186 (1990). Absent any evidence of material mistake or extensive impropriety, an appellate court cannot extend its review to the substantive merits of the award but is limited to a review of the trial court's order. *Community Mem. Hosp. v. Mattar*, 165 Ohio App.3d 49, 2006-Ohio-25, 844 N.E.2d 894, ¶ 16 (6th Dist.), citing *Lynch v. Halcomb*, 16 Ohio App.3d 223, 224, 475 N.E.2d 181 (12th Dist.1984); *Stanquist v. Horst*, 11th Dist. No. 93-A-1804, 1994 WL 228180 (May 20, 1994); *Hacienda Mexican Restaurant v. Zadd*, 11th Dist. No. 92-L-108, 1993 WL 548066 (Dec. 10, 1993).

{¶ 11} R.C. 2711.10 limits the trial court's review of an arbitration award, and provides that the court may vacate the award only if:

- (A) The award was procured by corruption, fraud, or undue means.
- (B) There was evident partiality or corruption on the part of the arbitrators, or any of them.

(C) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(D) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

{¶ 12} In its motion to vacate, as well as in its appellate brief, appellant argues that VanDagens exceeded her powers under R.C. 2711.10(D). To determine whether an arbitrator has exceeded her powers, a trial court must determine whether the arbitrator's award draws its essence from the collective bargaining agreement. *See Ohio Office of Collective Bargaining v. Ohio Civ. Serv. Emps. Assn., Local 11, AFSCME, AFL-CIO*, 59 Ohio St.3d 177, 572 N.E.2d 71 (1991). "An arbitrator's award draws its essence from a collective bargaining agreement when there is a rational nexus between the agreement and the award, and where the award is not arbitrary, capricious, or unlawful." *Findlay City School Dist.* at 132, citing *Mahoning* at paragraph one of the syllabus. Once this has been established, a reviewing court can vacate the award pursuant to R.C. 2711.10(D) only if the award does not rationally flow from the terms of the agreement. *Mahoning* at 84.

{¶ 13} In its judgment entry, the trial court examined VanDagens' award and concluded that it was based on a reasonable interpretation of the CBA. In its analysis, the

court examined the following language from VanDagens' decision, in which she interpreted the CBA as requiring appellant to consider Kistner's non-core duties prior to assigning his workload:

[T]he list in §8.4.3 is expressly non-exclusive, stating that non-core duties are not limited to those listed. The language goes on, "if the Chair and Member mutually agree upon any non-core duties, those duties shall be included as part of the overall workload."

The University argues that this sentence allowed Hottell to disregard any non-core duties that she did not agree to consider as part of [Kistner's] workload. However, this reading strains the plain meaning of the language chosen. The inclusion of "those duties" must refer to those mutually referred to, which must refer back to the phrase in the previous sentence, "and may include other mutually agreed upon duties related to the College mission or accreditation requirements." Together these sentences reveal that the parties must have intended that a member who undertook additional duties beyond those listed in §8.4.3 would be given credit for those duties only if the chair and the member mutually agreed upon those duties. The University's proposed interpretation of this language takes it completely out of the context in which it appears. When the agreement is read as a whole, it is clear that the parties agreed that both the listed duties and any additionally mutually-agreed to duties must be part of the workload.

{¶ 14} In its examination of VanDagens' interpretation of the CBA, the trial court noted that the interpretation "does not conflict with the express terms of the agreement, and is rationally derived from the terms of the agreement."

{¶ 15} On appeal, appellant argues that VanDagens' interpretation was unreasonable insofar as she failed to address certain provisions within the CBA that allegedly vest appellant with the "sole and exclusive right to assign and schedule lecturer workloads" and the "absolute right to change an assigned teaching load prior to the beginning of the semester." However, the "certain provisions" appellant refers to are the same provisions that were examined by VanDagens in her decision, namely those provisions contained in Article 8 of the CBA.

{¶ 16} In supporting its position, appellant specifically cites section 8.3.4. While that provision clearly contemplates that adjustments to lecturers' workloads may be necessary due to fluctuations in enrollment numbers, it is silent as to whether appellant must consider Kistner's non-core duties when assigning his workload. The AAUP does not challenge appellant's assertion that the CBA entitles it to make appropriate adjustments. Indeed, the issue to be decided at arbitration was not whether appellant could adjust Kistner's workload but, rather, whether it could do so without taking his non-core duties into consideration. VanDagens determined that the contract, when read as a whole, required such consideration. Therefore, since appellant failed to take Kistner's non-core duties into consideration when adjusting his workload, VanDagens ruled in favor of AAUP.

{¶ 17} Having reviewed the relevant provisions within the CBA, we agree with the trial court that the arbitrator’s decision was based upon a reasonable interpretation of the CBA. Thus, we cannot say that the trial court erred in its denial of appellant’s motion to vacate the arbitration award.

{¶ 18} Accordingly, appellant’s assignments of error are not well-taken.

III. Conclusion

{¶ 19} Based on the foregoing, the judgment of the Lucas County Court of Common Pleas is affirmed. Costs are hereby assessed to appellant in accordance with App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.