

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

IN THE COURT OF COMMON PLEAS
CASE NO. 380217

CLEVELAND BOARD OF)
EDUCATION,)
)
Plaintiff,)

vs.)

OPINION & ORDER

TRUCK DRIVERS UNION LOCAL 407,)
AFFILIATED WITH THE INT'L)
BROTHERHOOD OF TEAMSTERS,)
)
Defendant.)

Kathleen Ann Sutula, J.:

This matter comes before the Court on Plaintiff Cleveland Board of Education's ("the Board") July 16, 1999 "Motion to Vacate Arbitrator's Award", Defendant Truck Drivers Union Local 407, affiliated with the International Brotherhood of Teamsters' ("the Union") August 20, 1999 "Response to Plaintiff's Motion to Vacate", the Union's July 15, 1999 "Motion for Summary Judgment", and the Board's August 20, 1999 "Reply Brief".

This suit arises from the "suspension arbitration" of a bus driver and union member, Gaynell Martin. The Board seeks to vacate an arbitration decision that reduced its assessment of a ten day suspension to Ms. Martin [a "Class I" violation] to a written reprimand for failure to adhere to Board-promulgated procedures regarding disruptive students on buses [a "Class II" violation]. The Union has counterclaimed for enforcement of the decision and for attorney fees.

The underlying facts giving rise to the instant suit are as follows. On October 9, 1997, Ms. Martin encountered difficulties with a student riding her bus. Both the Board and the Union

concede that this particular student had been a disciplinary problem in the past for not only Ms. Martin but other bus drivers as well. Indeed, according to the Depot Manager's own analysis, the student in question "has an obvious behavior problem". See Arbitrator's Opinion and Award, attached to the Complaint as Exhibit B. The position of the Union, as set forth in the Arbitrator's Opinion and Award, demonstrates the extent to which this particular student had been a severe disciplinary problem in the past. At one point, the student's behavior became so bad that her mother was permitted to ride the bus in an attempt to correct the student's behavioral problems. However, the student's mother was as disruptive and abusive as her daughter. According to the Union, the mother attacked another student on the bus and was thereafter banned from riding the bus. The Board has not rebutted the foregoing facts.

On October 9, 1997, the aforementioned student was out of control on the bus. The student was moving from seat to seat, climbing under the seats, and throwing paper while the bus was in route. Ms. Martin repeatedly instructed the student to take her assigned seat. When the student refused to do as told, Ms. Martin stopped the bus, put on the brakes and addressed the student. The student began yelling at the driver, threatened to slap her, and also swore at her. Ms. Martin then approached the student, took hold of the strap on the student's book bag, and firmly guided the student to her assigned seat.

As a result of Ms. Martin's actions, the Board imposed a ten-day disciplinary suspension on her.

The hearing notice issued to Ms. Martin on October 24, 1997 alleges "conduct unbecoming of an employee in the public service" and "mistreatment or abuse of students". See Arbitrator's Opinion and Award, p.5. According to the arbitrator, "[a]s presented by the Board,

the charges of 'mistreatment or abuse of students' and 'conduct unbecoming a public school employee' arise from allegations of abuse...[and] thus, the crucial question to be addressed in this case is whether or not the October 9, 1997 response of the grievant to the student on her bus constitutes abuse". *Id.*

The Arbitrator's Award, dated December 17, 1998, specifies that "[t]he grievance is sustained consistent with the following. References to abuse and the disciplinary suspension of the grievant are to be removed from her record and the grievant shall be made whole for lost earnings. The grievant is to incur a written reprimand for her failure to adhere to Rule 22 of Class II offenses".

Ohio Revised Code § 2711.10 provides:

"...the court of common pleas shall make an order vacating the [arbitrator's] award upon the application of any party to the arbitration if:

...
(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..."

The reviewing court's inquiry for purposes of vacating an arbitrator's award pursuant to § 2711.10 is limited to the determination of whether the arbitrator's award draws its essence from the collective bargaining agreement and is not unlawful, arbitrary or capricious. Cleveland Police Patrolmen's Assn. V. Cleveland (1990), 70 Ohio App.3d 157 (citing Findlay City School Dist. Bd. of Edn v. Findlay Edn. Assn. (1990), 49 Ohio St.3d 129). In determining whether the Arbitrator exceeded her powers in reducing Ms. Gaynell's ten day suspension to a written reprimand for failure to adhere to Board-promulgated procedures regarding disruptive students on buses, relevant provisions of the applicable collective bargaining agreement ("Contract") must

be analyzed.

Article VI of the Contract, a lengthy provision entitled "Management Rights", provides in pertinent part that "[e]xcept as specifically limited herein, the Board shall have the...sole and exclusive right to...suspend, discipline, demote, or discharge *for just cause*, or layoff, transfer, assign, schedule, promote or retain employees subject to the provisions of the existing contract...". See Contract at Article VI, Section 6.1(e), page 4. Article XIII of the Contract provides that an employee may be disciplined up to and including termination. *Id.* at Article XIII, Section 13.1, page 13. The Contract also requires that, for purposes of the suspension or discharge of an employee, a hearing must be held with the Union representative and a Board representative prior to taking an employee out of pay status.

Article XII of the Contract creates a multi-step dispute resolution mechanism which culminates in private arbitration. This grievance and arbitration procedure is applicable to "any matter concerning the interpretation, application, or alleged violation of [the] Agreement". See Contract at Article XII, Section 12.1, page 10. The fourth and final step of the grievance process is the submission of the matter to arbitration under the Voluntary Labor Arbitration Rules of the American Arbitration Association. *Id.* at Article XII, Section 12.2, page 12. Section 12.2 of the Contract sets forth the authority of the arbitrator interpreting its provisions as follows:

"The arbitrator shall render a written decision and award resolving the controversy and ordering all appropriate relief. The decision of the Arbitrator shall be final and binding upon the Board, the Union, and the employee effected. The Arbitrator is prohibited from making any decision or award adding to or subtracting from or modifying in any way the provisions of this agreement, or which is contrary to law."

Article XII together with the Cleveland Public Schools Transportation Operation

Employee Handbook [Handbook] govern discipline.

The Handbook's section on discipline, which is incorporated into the terms of the Contract, does not mandate that the maximum punishment be administered in all cases. The handbook leaves room for discretion on Class I offenses, stating that "an employee *may* be subject to discharge." (Emphasis added) Handbook at 5. The handbook then provides a laundry list of offenses under the heading "Class I Offenses" which include:

- "16) Mistreatment or abuse of students. . . .
- 24) Conduct unbecoming an employee in the public service . . ."

At the end of this list, the Handbook states:

"This list is not exclusive. It is only intended to serve as an illustration of the nature of misconduct which the Board feels is *sufficiently serious to warrant discharge.*" (Emphasis added.)

Compare this language describing Class I Offenses to the statement at the end of the list of some thirty-seven enumerated Class II Offenses:

"This list also is not exclusive. It is only intended to serve as an illustration of the nature of misconduct which the Board feels is *sufficiently serious to warrant discipline.*" (Emphasis added.)

In short, Class I Offenses may subject an employee to discharge and are the type of offense that the Board finds serious enough to warrant discharge; Class II Offenses are the type of offense that the Board finds to be serious, but only to levy discipline. In the instant case, well before referral to the arbitrator, the Board did not terminate Gaynell Martin; rather she was disciplined. While a Class I Offense is serious enough to warrant discharge, it remains that the Board did not discharge this employee. The Board disciplined the employee, which is the stated remedy for Class II Offenses.

It should be noted that while the Board claims a “zero tolerance policy,” the Board has not shown that a Class II Offenses resulting in discipline constitutes any less zero tolerance than a Class I Offense.

The Board argues in its Motion to Vacate that “the [Contract] does not specifically limit the Board’s disciplinary authority beyond the just cause requirement.” However the Contract provides that the Board’s disciplinary actions are reviewable by the arbitration process set forth in Article XII. To hold otherwise would make the arbitration provisions of the Contract illusory. As a matter of construction, the arbitration provisions, being more specific, must prevail over the general provision cited by the Board.

The Board cites to Ohio Office of Collective Bargaining v. Ohio Civil Service Employees Assn., (1991) 59 Ohio St.3d 177 for the proposition that once an arbitrator finds that a work rule has been violated, it is not within the arbitrator’s province to make his own subjective determination of whether the employee should be disciplined. In Ohio Office, the arbitrator specifically found that the grievant committed the abuse in question, but chose to reinstate her. However, in Ohio Office, the relevant collective bargaining agreement specifically stated that “the arbitrator does not have authority to modify the termination of an employee committing such abuse.” Id. at 182. In the case at bar, no such language restraining the arbitrator’s powers exists; rather the language provides a broad instruction to the arbitrator to “resolv[e] the controversy and [order] all appropriate relief.” See Contract at Article XII, Section 12.2, page 12. This instruction is limited only by prohibitions against a decision that would alter the provisions of the agreement or be contrary to law. Id.

There has been no suggestion that the award is unlawful, arbitrary or capricious. The Board's Motion to Vacate Arbitrator's Decision is denied and the Union's Motion for Summary Judgment confirming the award of the arbitrator pursuant to R.C. 2711.09 is granted.

IT IS SO ORDERED

Date: January 20, 2000.



KATHLEEN ANN SUTULA, JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing has been forwarded by regular U.S. Mail this 20th day of

January, 2000 to:

Jeffrey C. Miller
1001 Lakeside Avenue, Suite 1700
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Beverly A. Meyer
111 West First Street, Suite 1100
Dayton, Ohio 45402



KATHLEEN ANN SUTULA, JUDGE