SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4620-14T3

PATERSON EDUCATION ASSOCIATION,

Plaintiff-Appellant,

v.

STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF PATERSON,

Defendant-Respondent.

Argued November 10, 2016 – Decided January 11, 2017

Before Judges Alvarez, Higbee and Manahan.[1]

On appeal from Superior Court of New Jersey, Chancery Division, Passaic County, Docket No. C-19-15.

Sanford R. Oxfeld argued the cause for appellant (Oxfeld Cohen, P.C., attorneys; Mr. Oxfeld, of counsel and on the brief; William P. Hannan, on the brief).

Robert E. Murray argued the cause for respondent.

PER CURIAM

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[1] Hon. Carol E. Higbee participated in the panel that decided this appeal. The opinion was approved for filing prior to Judge Higbee's death on January 3, 2017.

Plaintiff Paterson Education Association (the Association) appeals from a Chancery Division order confirming an arbitration award in favor of the State-Operated School District of the City of Paterson (the District). After consideration of the record in light of the applicable law and the procedural history, we affirm.

The Association and the District entered into Memoranda of Agreement (MOAs) on May 23, 2014, which were subsequently ratified.[2] The first MOA covered the period July 1, 2010 through June 30, 2014, and contained a sixteen-step traditional salary guide by which teachers would be compensated according to degree level, i.e. Bachelor of Arts (BA), BA+30, Master of Arts (MA), MA+30, Doctor of Philosophy (PhD). The second MOA covered the period July 1, 2014 through June 30, 2017, and gave teachers the option of being compensated under an eighteen-step single salary guide for all degree levels. Commencing with the annual summative evaluations for the 2013-14 school year, teachers opting for the single salary guide would advance pursuant to their rating. Under the single salary guide: a teacher receiving a highly effective

[2] In its brief, the District describes at length the development of the negotiations preceding the ratification of the MOAs as well as the negotiation participants. Pursuant to our consideration of the record in conjunction with our standard of review, we find the details of the negotiations were not necessary to our determination.

rating would advance two steps; a teacher receiving an effective rating would advance one step; a teacher receiving a partially effective or ineffective rating would remain at the same step.

Subsequent to ratification, a dispute arose regarding the placement of teachers on BA-step sixteen of the traditional salary guide who opted to move to the single salary guide after receiving an "effective" rating for school year 2013-14. Given their rating, they were entitled to a one-step advancement. However, their transition to step seventeen of the single salary guide would have resulted in a lower salary ($80,006) than they received on BA-step sixteen on the traditional guide ($91,122).

To remedy the dilemma posed by the transfer between the salary guides, the Association argued that the affected teachers should advance two steps and be placed on step eighteen of the single salary guide ($92,561). This, according to the Association, would be consistent with the teachers' effective ratings, and provide them with an increase in their salary. The District disagreed and placed the affected tenured teachers on step seventeen of the single salary guide with their salaries frozen at $91,122 to avoid a salary reduction.[3] The Association filed a timely grievance

[3] A tenured teacher's compensation may not be reduced absent inefficiency, incapacity, unbecoming conduct, or other just cause, and only after a hearing. See N.J.S.A. 18A:6-10, :28-5.

challenging the District's position. The parties were unable to reach a resolution during the initial stages of the grievance procedure and the Association demanded arbitration.

The arbitration hearing was held in September 2014. Thereafter, both parties exchanged and filed post-hearing letter briefs. In October 2014, the District filed a supplemental brief with attachments. Upon receipt of these submissions, the arbitrator declared the record closed.

The arbitrator issued an opinion and award dated December 19, 2014, denying the Association's grievance. In denying the grievance, the arbitrator found:

> The Association's claim, on behalf of BA step [sixteen] teachers who were rated effective and opted for compensation under the single salary guide, is for these teachers to advance two (2) steps, from step [sixteen] on the traditional guide, to step [eighteen] on the single salary guide. This claim is rejected because there is no evidence or assertion these teachers received a highly effective rating. Without such a rating, I find they cannot meet the condition needed for a two (2) step advance to occur. Instead, under the express terms of the [a]greement, I conclude these teachers, having a rating of effective, are entitled only to a one (1) step advance.
>
> I also reject, as without evidentiary support, the Association's assertion both parties agreed to place BA step [sixteen] teachers on step [eighteen] of the single salary guide in costing out 2014-2017.

> I find without merit the Association's contention placement of these teachers at step [seventeen] of the single salary guide with a freeze of their salary at their former BA step [sixteen] levels for 2014-2015, is tantamount to a withholding of increment. The record fails to establish a positive increment was adopted in the MOAs for BA step [sixteen] teachers moving to step [seventeen] of the single salary guide. Simply put, without a positive increment in the MOAs for this step movement, none could be withheld. I do find the freeze avoided a reduction in salary which the Association has asserted would be illegal, by New Jersey statute, had it occurred.
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> The Association's argument these teachers had a right to advance to the next logical step past step [seventeen], in order to avoid a de facto loss of increment, is rejected. As noted above, I find there was no loss of increment because no positive increment was incorporated into the guides for teachers moving from BA step [sixteen] to step [seventeen] on the single salary guide. As well, the language of the MOAs provides no right to advance to what might be considered the next logical step. Instead, the parties adopted a concrete methodology providing a one (1) step advance for teachers rated effective and a two (2) step advance for teachers rated highly effective. As [a]rbitrator, I may not alter the parties' [a]greement under the guise of interpretation. I am bound to apply the contract as I find it. Stated otherwise, I may not add a "next logical step" provision not adopted by the parties, especially where to do so would effectively nullify their express contractual mandate teachers with an effective rating be advanced only one (1) step on the single salary guide.

Thus, the arbitrator concluded that a violation of the agreement had not been established:

> In all, I conclude the District did not violate the [a]greement when it moved the BA step [sixteen] teachers who opted for compensation under the single salary guide and froze their salaries at current levels. The advance of these teachers to step [seventeen] on the single salary guide was a one (1) step advance authorized by the MOAs for teachers rated effective. The freezing of their salaries at current levels for 2014-2015, avoided a reduction in the compensation of these teachers in order to comport with applicable law. These teachers were not entitled to a two (2) step advance to step [eighteen] on the single salary guide, because they lacked the highly effective rating required by the [a]greement as a condition of receiving a two (2) step advance on the single salary guide.

On March 10, 2015, the Association filed a verified complaint and order to show cause seeking to vacate the arbitration award in the Chancery Division. The court executed the order to show cause and oral argument was held on May 8, 2015. At the conclusion of oral argument, the court denied the Association's request to vacate the award. The court held the arbitrator's decision "in this circumstance" was reasonably debatable. This appeal followed.

In reviewing the award confirmation, we owe no special deference to the trial court's interpretation of the law and the legal consequences that flow from the established facts. Town of Kearny v. Brandt, 214 N.J. 76, 92 (2013) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). Thus,

we review the trial court's decision on a motion to vacate an arbitration award de novo. Bound Brook Bd. of Educ. v. Ciripompa, 442 N.J. Super. 515, 520 (App. Div. 2015) (citing Minkowitz v. Israeli, 433 N.J. Super. 111, 136 (App. Div. 2013)), certif. granted in part, 224 N.J. 280 (2016).

On the other hand, the scope of judicial review from the arbitration award itself is very narrow. Fawzy v. Fawzy, 199 N.J. 456, 470 (2009). "The public policy of this State favors arbitration as a means of settling disputes that otherwise would be litigated in a court." Badiali v. N.J. Mfrs. Ins. Group, 220 N.J. 544, 556 (2015) (citing Cty. Coll. of Morris Staff v. Cty. Coll. of Morris Staff Ass'n, 100 N.J. 383, 390 (1985)). "[T]o ensure finality, as well as to secure arbitration's speedy and inexpensive nature, there exists a strong preference for judicial confirmation of arbitration awards." Borough of E. Rutherford v. E. Rutherford PBA Local 275, 213 N.J. 190, 201 (2013) (citation omitted).

Moreover, "[c]ourts have engaged in an extremely deferential review when a party to a collective bargaining agreement has sought to vacate an arbitrator's award." Policemen's Benevolent Ass'n, Local No. 11 v. City of Trenton, 205 N.J. 422, 428 (2011). Thus, "the party opposing confirmation ha[s] the burden of establishing that the award should be vacated pursuant to N.J.S.A. 2A:24-8."

Twp. of Wyckoff v. PBA Local 261, 409 N.J. Super. 344, 354 (2009) (quoting Jersey City Educ. Ass'n v. Bd. of Educ. of City of Jersey City, 218 N.J. Super. 177, 187 (App. Div.), certif. denied, 109 N.J. 506 (1987)).

"In the public sector, an arbitrator's award will be confirmed 'so long as the award is reasonably debatable.'" Linden Bd. of Educ. v. Linden Educ. Ass'n ex rel. Mizichko, 202 N.J. 268, 276 (2010) (quoting Middletown Twp. PBA Local 124 v. Twp. of Middletown, 193 N.J. 1, 11 (2007)). Under this standard, we "may not substitute [our] judgment for that of the arbitrator, regardless of the court's view of the correctness of the arbitrator's interpretation." Linden Bd. of Educ., supra, 202 N.J. at 277 (quoting N.J. Transit Bus Operations, Inc. v. Amalgamated Transit Union, 187 N.J. 546, 554 (2006)).

N.J.S.A. 2A:24-8 sets forth the limited statutory grounds on which a court may vacate an arbitration award:

> a. Where the award was procured by corruption, fraud or undue means;
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> b. Where there was either evident partiality or corruption in the arbitrators, or any thereof;
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> c. Where the arbitrators were guilty of misconduct . . . ; [or]
>
> d. Where the arbitrators exceeded or so imperfectly executed their powers that a

> mutual, final and definite award upon the subject matter submitted was not made.
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> [N.J.S.A. 2A:24-8.]

"Additionally, a court may vacate an award if it is contrary to existing law or public policy." Borough of E. Rutherford, supra, 213 N.J. at 202 (quoting Middletown Twp. PBA Local 124, supra, 193 N.J. at 11) (internal quotations omitted); see N.J. Office of Emp. Relations v. Commc'ns. Workers of Am., 154 N.J. 98, 112 (1998) ("When reviewing an arbitrator's interpretation of a public-sector contract, in addition to determining whether the contract interpretation is reasonably debatable, the court must also ascertain whether the award violates law or public policy.").

In this matter, the Association argues the arbitrator erred in denying the grievance because it was not reasonably debatable and because the decision was premised upon a mistake of law and contrary to public policy. In light of the arbitrator's error, the Association argues the court also erred in denying its motion to vacate the arbitration award. We disagree.

The issue of central interest before the arbitrator was whether "effective" rated teachers on BA step sixteen of the traditional salary guide, who opted for the single salary guide, were entitled to be placed on step eighteen (two steps) of that guide. The quandary was the conflict between the merit entitlement

of a one-step placement to step seventeen and the salary reduction associated with that placement. The District recognized the illegality of a reduction in the teachers' compensation were they to receive the salary associated with step seventeen of the single salary guide. As noted, the remedy provided by the District, and grieved by the Association, was to freeze the salaries for one year.

In reaching a decision, "an arbitrator may not disregard the terms of the parties' agreement, nor may he rewrite the contract for the parties." Cty. Coll. of Morris, supra, 100 N.J. at 391 (citations omitted). Moreover, "the arbitrator may not contradict the express language of the contract." Linden Bd. of Educ., supra, 202 N.J. at 276. "Thus, our courts have vacated arbitration awards as not reasonably debatable when arbitrators have, for example, added new terms to an agreement or ignored its clear language." Policemen's Benevolent Ass'n, supra, 205 N.J. at 429 (citations omitted).

Here, in interpreting the MOAs, the arbitrator hewed to the agreements' unambiguous terms, which provided that teachers rated effective would be advanced one step. Consistent with his authority, the arbitrator determined the MOA's plain language did not entitle the affected teachers to a two-step advance. See State, Dep't of Law & Pub. Safety, Div. of State Police v. State

Troopers Fraternal Ass'n of N.J., 91 N.J. 464, 472 (1982) (reversing an award where "the arbitrator disregarded an essential condition agreed upon by the parties").

Clearly, the movement by the teachers to the single salary guide produced a contractual issue. The resolution of the issue was influenced both by what was expressed in the MOAs and what was omitted. As the arbitrator correctly noted, no positive increment had been provided for by the parties when there was movement to the single salary guide. In the absence of a provision in the MOAs for a positive increment, the arbitrator determined that he was bound to apply the "contract as [he] found it" and not "add the next logical step[,]" which would "nullify the express contractual mandate" of the one-step advancement for an effective rating. Stated succinctly, the arbitrator held that the one-step advancement found support in the language of the MOAs while the two-step advancement did not.[4]

[4] Parenthetically, the arbitrator chose not to "fill the gaps" left by the failure to provide for the occurrence which formed the basis for the grievance. However, had he done so, it would have constituted a proper exercise of his arbitral role. As our Supreme Court has held, "[i]t is the arbitrator's role to fill the gaps and it is the arbitrator's construction that is bargained for in the collective bargaining process." Local No. 153, Office & Prof'l Emps. Int'l Union v. Trust Co. of N.J., 105 N.J. 442, 452 (1987) (citing United Steelworkers of Am. v. Enter. Wheel & Car Corp., 363 U.S. 593, 599, 80 S. Ct. 1358, 1362, 4 L. Ed. 2d 1424, 1429 (1960)).

In conducting our review, we are mindful that "the courts have no business overruling [the arbitrator] because their interpretation of the contract is different from his." Borough of E. Rutherford, supra, 213 N.J. at 202 (quoting Weiss v. Carpenter, Bennett & Morrissey, 143 N.J. 420, 443 (1996)). Through adherence to that proscription and in consideration of the record before us, we conclude the arbitrator's decision to deny the Association's grievance was reasonably debatable. Our review, however, does not terminate with that holding.

"[W]hen reviewing an arbitrator's interpretation of a public-sector contract, in addition to determining whether the contract interpretation is reasonably debatable, the court must also ascertain whether the award violates law or public policy." Office of Emp. Relations, supra, 154 N.J. at 112. In accord with that directive, we next turn to the Association's argument that the arbitrator's decision was contrary to law since the salary freeze was a de facto withholding of increment not authorized unless pursuant to express statutory authority. See N.J.S.A. 18A:29-14 ("Any board of education may withhold, for inefficiency or other good cause, the employment increment, or the adjustment increment, or both, of any member in any year by a recorded roll call majority vote of the full membership of the board of education.").

While this argument has its attraction, it fails since no increment due the teachers was "withheld" under the terms of the MOAs. The plain and unmistakable premise of the merit system of advancement was the rating of the teacher and the applicable step placement in the single salary guide. There was no authority under the MOAs to allow for the proposed two-step placement based upon an "effective" merit rating. In the absence of that authority, there was no entitlement to an increment and thus no withholding.

The Association also contends that the arbitrator's decision was contrary to law since it resulted in teachers who were rated "effective" to be paid off the salary guide as a result of freezing their salaries for one year. In support thereof, the Association argues that our Supreme Court's decision in Probst v. Board of Education, 127 N.J. 518 (1992) is "instructive."

In Probst, the Court concluded that there was no statutory mandate that teachers who had been subject to a withholding would be then returned to an adopted salary schedule. Id. at 528. Rather, the determination whether to return the teacher to the schedule was within the local board's discretion. Ibid. It is argued by the Association that Probst is to be interpreted as limiting an off-guide placement only to those situations where there has been a withholding. We are unpersuaded by the argument

principally due to the absence of any articulation by the Court in Probst limiting the off-guide placement solely to the discrete factual scenario with which it was presented. In our view, had the Court intended to impose such a limitation, it would have done so.

We therefore construe the issue whether an off-guide placement is permissible in circumstances other than after a withholding to be unsettled as matter of law. Consequently, we hold that the arbitrator's decision dismissing the grievance despite the affected teachers off-guide placement was not contrary to law.

Nor do we find the decision to place these teachers at an off-guide salary to avoid a salary reduction contrary to public policy. The "public policy exception requires 'heightened judicial scrutiny' when an arbitration award implicates a 'clear mandate of public policy[.]'" N.J. Tpk. Auth. v. Local 196, I.F.P.T.E., 190 N.J. 283, 294 (2007) (quoting Weiss, supra, 143 N.J. at 443)). This standard will only be met in "rare circumstances." Ibid. (emphasis omitted). "[F]or purposes of judicial review of labor arbitration awards, public policy sufficient to vacate an award must be embodied in legislative enactments, administrative regulations, or legal precedents," not "amorphous considerations" of the public's well-being. Id. at

295. Given the strictures of "public policy" considerations in the context of labor arbitration awards, we find no basis here that would implicate, much less satisfy, the exception.

In sum, we hold that the arbitrator adopted a construction of the parties' MOAs which was reasonably debatable and not contrary to law or public policy. Accordingly, unwinding of the award is neither necessary nor appropriate.

Affirmed.