

Ms. Hamilton and informed her she must report to the Susquehanna Health System for drug and alcohol screening in conjunction with her injury. Ms. Hamilton advised she would pay the hospital bills and cancel her worker's compensation claim.

On January 18, 19, 20, and 21 and 24, 2005, Ms. Hamilton was directed to report to the hospital for a drug and alcohol screening. She did not report.

On January 25 and 26, 2005, Ms. Hamilton called in sick and did not report to work at the Schick Elementary School. On January 26, 2005, at approximately 8:00 p.m. Ms. Hamilton reported to the hospital for the drug and alcohol screening.

On January 31, 2005, the Susquehanna Health System reported to the school district that Ms. Hamilton's drug and alcohol was positive for the use of marijuana. On January 31, 2005, Ms. Hamilton was suspended without pay from her custodial duties at the Schick Elementary School. Ms. Hamilton was advised of her right to have a hearing before the school board.

On February 15, 2005 a hearing was convened before the Board of School Directors of the Loyalsock Township School District to consider Ms. Hamilton further employment with the district. The School Board Directors voted unanimously in public session on February 15, 2005 to dismiss Ms. Hamilton from employment with school district. By letter dated February 16, 2005, the Board Secretary notified Ms. Hamilton that her employment with school district was terminated.

Ms. Hamilton admitted to the School District Business Manager that she had used marijuana while off duty and off school property after her injury on January 14, 2005. Thus, Ms. Hamilton did not deny the use of marijuana nor that the same was in her system while working in the elementary school, but she maintained that she did not physically ingest marijuana on school property during hours of employment.

Pursuant to the authority of the school code, the Board of School Directors, adopted

board policy 551 relating to drug and substance abuse in 1989, which was subsequently revised in May 1995.

On August 19, 1995, Ms. Hamilton signed an acknowledgement of the “Drug Free Workplace Policy Requirement” of the Loyalsock Township School District.

On February 23, 2006, the Bargaining Unit on behalf of Ms. Hamilton filed a grievance indicating that Ms. Hamilton’s discharge was without just cause and without due process. Pursuant to the Collective Bargaining Agreement between the parties, an arbitrator was appointed to hear the grievance. The hearing was held on September 20, 2005. On November 18, 2005, the arbitrator found that Ms. Hamilton’s conduct was serious but ruled that she should be reinstated to her custodial position at Schick Elementary School and that the period between her dismissal date, February 15, 2005, and the date of the award, November 18, 2005, should be considered a suspension without pay. Thus, the arbitrator’s ruling reinstated Ms. Hamilton to her position in the Schick Elementary School as of November 18, 2005.

On or about December 15, 2005, the Loyalsock Township School District filed a Petition for Review of Grievance Arbitration Award before the Court of Common Pleas of Lycoming County. The Court of Common Pleas jurisdiction has over the Petition for Review of Awards of Arbitrators pursuant to 42 PA.C.S §933 (b).

The issue presented by the appeal is whether the arbitrator exceeded his authority in changing the school district’s termination of their employee to a temporary suspension.

DISCUSSION

An arbitrator’s award must draw its essence from the collective bargaining agreement. In reviewing an appeal of an arbitrator’s decision, a reviewing court should conduct a two-prong analysis. First, the court must determine if the issue presented is within the terms of the

collective bargaining agreement. Second, if the issue is embraced by the agreement, the arbitrator's award should be upheld if the arbitrator's interpretation can rationally be derived from the collective bargaining agreement. State System of Higher Education v. State College, 560 Pa. 135, 743 A.2d 405, 413 (1999) ("a court will only vacate an arbitrator's award where the award indisputably and genuinely is without foundation in, or fails to logically flow from the collective bargaining agreement."). The court also notes appellate decisions instruct reviewing courts to give deference to the arbitrator's award. Id.

In this case, the litigants acknowledge that the issue before the court is the second prong of the essence test that being whether the award by the arbitrator can rationally be derived from the collective bargaining agreement. See Appellant's Brief at p. 5.

However, it is important to note that our appellate courts have modified the essence test where a governmental employer, such as a school district, is involved. Where a governmental employer is involved, a collective bargaining agreement may not be interpreted to allow the public employer to relinquish powers that are essential to the proper discharge of their core functions. See City of Easton v. American Federation of Municipal Employees, 562 Pa. 438, 756 A.2d 1107 (2000); Greene County v. United Mine Workers, 578 Pa. 345, 852 A.2d 299 (2004).

In fact in the Green County v. United Mineworkers' case, the Pennsylvania Supreme Court overturned an arbitrator's decision which had reversed Greene Counties Child and Youth Services (CYS) decision to terminate employment of a caseworker who had significant shortcomings in the record keeping function required for his caseload. The caseworker also made improper use of sick time. The caseworker grieved his termination and the matter was heard by an arbitrator. The collective bargaining contract prohibited termination without just cause. The arbitrator found the caseworker's conduct in failing to maintain his files properly could be

considered serious enough to warrant discharge. However, the arbitrator went on and found both aggravating and mitigating circumstances in regard to the caseworker and changed the termination to a suspension without back pay or benefits and reinstated the caseworker in a “last chance” status in which he was required to ensure that his files complied with Agency policy. The Greene County Court of Common Pleas vacated the arbitrator’s award. The union appealed to the Commonwealth Court, which ultimately reinstated the arbitrator’s award. The Pennsylvania Supreme Court granted allowance of appeal and vacated the arbitrator’s award reinstating termination of the caseworker.

The Pennsylvania Supreme Court in the Greene County v. United Mine Workers, supra, in making its decision announced:

Due to their unique nature and role, public employers must be able to perform the functions they are charged to carry out by our citizenry. Consistent with this status, our court has recognized that public employers cannot be compelled in arbitration to relinquish powers that are essential to the proper discharge of their functions. Thus, while as a general proposition an arbitrator has broad authority to interpret an undefined provision regarding termination for just cause in a collective bargaining agreement, to permit an arbitrator to interpret the agreement as to require reinstatement of an employee who was determined to have engaged in egregious misconduct that strikes at the very core function of the public enterprise would be to deprive the employer of its ability to discharge that essential function.. .

852 A.2d at 208 (citations omitted).

The Pennsylvania Court concluded in the Greene case: “The arbitrator’s award reinstating McKenzie to his position took from CYS the power to discharge its core functions, a power that a public employer does not have the freedom to relinquish.” 852 A.2d at 309.

The collective bargaining agreement in the instant case is similar to the agreement in the Greene County case. Article III Management Prerogatives gives the Loyalsock School district

the “exclusive right to manage its operation including, but not limited to, the right to hire, suspend, or discharge for just cause...”¹

Article VIII, Section 2 (A) of the collective bargaining agreement which speaks to arbitration and an arbitrator’s duties provides: “The arbitrator shall have no authority to add to, subtract from or in any way change the terms of this agreement or decide issues that are not the subject matter of this agreement, or subject to arbitration under Section 903 of Act 195.” The Loyalsock School district clearly maintains the exclusive right to discharge an employee for just cause in the collective bargaining agreement.

Further, the Loyalsock School District Board of Directors adopted a written policy, (No. 551) on drug and substance abuse on April 12, 1989 and revised it on May 10, 1995. The policy recognizes that misuse of drugs is a serious problem with legal, physical and social implication for the whole school community. The policy then expresses concern about the problem that may be caused by drug use by employees. The policy goes on to define a “Drug-Free Work Place.” as follows: “the site for the performance of work done in connection with the performance of their job at which employee are prohibited from engaging in unlawful manufacture, distribution, dispensing, possession or use of a controlled substance.”

In his written decision overturning termination and imposing a suspension, the arbitrator apparently found there was not just cause for the termination of Ms. Hamilton’s employment with the school district acknowledges on page 8 that “prohibiting drug use in the work place clearly is a core function of the district.” However, the arbitrator goes on to find that since the employee’s actual use of the marijuana was off the premises of the school district, the policy had not

¹ The collective bargaining agreement does not define the term just cause. Likewise, the agreement in the Greene County did not define just cause.

been violated.² The arbitrator went on to look at mitigating and aggravating circumstances concerning the employee. He noted the employee is a 28 year employee with an unblemished record. He also alluded to the employee's initial denial of using marijuana and the employee's initial insubordination in having been directed to take the drug tests, at least five times before doing so, and waiting 11 days prior to appearing for the test.

However, ultimately the arbitrator concluded that the school district was: "trying to extend control of an employee's off-duty behavior beyond the language of its written policy. Absent some evidence of performance impact, an employer generally cannot control an employee is off duty behavior." Arbitrator's decision at p. 8.

Despite this finding, the arbitrator suspended the employee without pay for a nine (9) month period from February 16 to the date of his decision, November 18 2005, reinstating her employment with the school district on November 18, 2005. Thus, the arbitrator obviously found the employee's conduct in this case egregious to suspend her without pay for nine months. Therefore, it appears to the court that the arbitrator has substituted his own judgment in place of the school board in an area he acknowledges concerns a core function of the school district. Thus, he has exceeded his authority. See Greene County v. United Mine Workers, supra, 852 A.2d at 308 ("to permit an arbitrator to interpret the agreement as to require reinstatement of an employee who was determined to have engaged in egregious misconduct that strikes at the very core function the public enterprise would be to deprive the employer of its ability to discharge that essential function.")

² The employee testified before the arbitrator that the Friday night following her injury at work she ran into friends and took a few puffs on a marijuana cigarette. She testified she was not a regular user of marijuana. While the arbitrator the school board presented no evidence to refute her contention it is difficult to imagine how the School district could refute such a contention.

While the court understands the arbitrator interpreted the Drug Free Work Place policy as not being violated because the employee did not ingest marijuana on school property and there was no evidence it affected her work performance, the school district's interpretation of its on policy should be given credence unless it is apparent that the school district's conduct is arbitrary, capricious and to the prejudice of public interest. See Giles v. Brookville Area School District, 669 A.2d 1079 (Pa.Cmwth.1995) (Commonwealth Court upheld expulsion of student where a school board interpreted its policy on sales of drugs on school property to include an agreement made on school property for the sale drugs off of school property.)

In the case of Deshields v. Chester Upland School District, 95 Pa.Cmwth.Ct. 414 505 A.2d 1080 (1986), the Commonwealth Court upheld a school district's termination of a school custodian who was arrested off duty on criminal charges for possession and attempted delivery of marijuana. The criminal charges were dismissed and the custodian's arrest record was expunged because the police violated the exclusionary rule. The school board, after an evidentiary hearing, terminated the custodian from employment with the school district finding the custodian was in possession of marijuana. The school district terminated employment under Section 514 of the Public School Code of 1949. The custodian appealed to the Court of Common Pleas, which affirmed the termination. While the conduct in question did not occur on school grounds and there was no evidence that marijuana affected the custodian's job performance, the Court noted the custodian in working in a school with children had ample access to the student body. See also School District of Philadelphia v. Puljer, 92 Pa.Cmwlth. Ct. 329, 500 A.2d 950 (1985), (a school custodian, who was arrested for possession of methamphetamine and methylprylon that was found in his home, was terminated from his employment by the school district in accordance with Section 514 of the Public School Code, the fact that the possession occurred off school grounds and did not

affect job performance was irrelevant.)

In the case at bar, the arbitrator's decision also creates an awkward question about the suspension without pay he ordered for the employee. While the arbitrator seems to interpret the school district's drug-free work place policy not to be violated, because the usage of marijuana did not occur at work, and did not affect the employee's job performance, he still suspended her without pay for a nine month period. Was this for insubordination or her untruthfulness initially when confronted with the test result? If so, this conduct clearly occurred at work. Did the arbitrator simply decide to fashion his own view of the appropriate punishment for the circumstances presented?

It has previously been noted by the Pennsylvania Supreme Court that an important caveat to the concept of judicial deference to decisions in arbitrators is that an arbitrator is confined to interpretation and application of the collective bargaining agreement: "he does not sit to dispense his own brand of industrial justice." Pa. Liquor Control Bd. v. Independent State Stores Union, 520 Pa. 266, 273, 553 A.2d 948, 951 (1989), citing U.S. Steelworkers v. Enterprise, 363 U.S. 593, 597, 80 S.Ct. 1358, 4 L.Ed. 1424 (1960).

In conclusion, the Pennsylvania Supreme Court has emphasized the need for government to have the powers that are essential to the proper discharge of the functions, which are entrusted to the government body. Allegheny County v. Conte General Laboras, 874 A.2d 1250, 1255 Pa.Cmwth. (2005). The authority of an arbitrator to interpret just cause is limited with respect to public employers. Id.; Greene County, supra., 578 Pa. at 362, 852 A.2d, at 308. It is the school district that best understands the importance and need of a drug-free workplace. Likewise, the school district's interpretation of its own policy should be given some deference. The importance of this situation certainly goes to a core function of operation of the school district.

Accordingly, the Court will grant the appeal of the Loyalsock Township School District. The follow order is entered:

ORDER

AND NOW, this _____day of June 2006, after argument and review of briefs submitted by the parties, the Court **GRANTS** the Petition for Review of Grievance Arbitration Award. The Court finds that the arbitrator's award dated November 18, 2005 is beyond the scope of the arbitrator's authority. Therefore, the award of November 18, 2005 is hereby **VACATED**. The court reinstates the decision of the Board of School Directors of the Loyalsock Township School District of February 15, 2005, to dismiss Connie Hamilton from employment with the Loyalsock Township School District.

By The Court,

Kenneth D. Brown, P.J.

cc: E. Eugene Yaw, Esquire
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