[Cite as *Miamisburg City School Dist. Bd. of Edn. v. Miamisburg Classroom Teachers Assn. OEA/NEA*, 2010-Ohio-4759.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

MIAMISBURG CITY SCHOOL DISTRICT BOARD OF EDUCATION	:	
Plaintiff-Appellant	:	**C.A. CASE NO. 23808**
vs.	:	**T.C. CASE NO. 09CV07513**
MIAMISBURG CLASSROOM TEACHERS ASSOCIATION OEA/NEA	:	**(Civil Appeal from Common Pleas Court)**
Defendant-Appellee	:	

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O P I N I O N

Rendered on the 1st day of October, 2010.

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GRADY, J.:

{¶ 1} This appeal is from a final judgment of the court of common pleas that confirmed the award of an arbitrator in a labor dispute.

{¶ 2} Randy Bryant was hired by the Miamisburg City School

District Board of Education (the "Board") as Supervisor of Technology and Media Services in 1992. Prior to that, Bryant had nine years of service as a teacher and administrator in two other public school districts. That prior service had earned Bryant a continuing contract as a teacher. R.C. 3119.073(D).

{¶ 3} The Board suspended Bryant's position as Supervisor of Technology and Media Services, effective August 1, 2007. The suspension made Bryant eligible for an open teaching position with the Board, his having attained continuing contract status in another district and served the Board for at least two years. R.C. 3119.11(B). Bryant subsequently accepted a teaching position with the Board beginning in the 2008-2009 school year at an annual salary of $51,279.

{¶ 4} Bryant began his new teaching position on August 20, 2008. When Bryant's position as a supervisor was suspended, Bryant became a member of the bargaining unit for "teachers" represented by Defendant-Appellee Miamisburg Classroom Teacher's Association (the "Association"), pursuant to a Negotiated Agreement between the Board and the Association for the period from July 1, 2007 through June 30, 2010 (the "Agreement").

{¶ 5} The Agreement contains a Salary Schedule for teachers. The Salary Schedule establishes salaries according to the teacher's level of education and years of service, from no prior

service through twenty-eight years of service. The Agreement also provides that "newly employed teachers by the Board" will be awarded years of service credit for each year the teacher was in military service or employed full time by a school district "as a regular teacher," but "not to exceed five years." Bryant's annual salary of $51,379 reflected a years of service credit of five years based on his years of teaching in other districts.

{¶ 6} Bryant filed a grievance in October of 2008. Bryant complained that he is instead entitled to twenty-four years of service credit based on not only his nine years of prior teaching and administrative service but also his fifteen years of service with the Board as supervisor of Technology and Media Services. Twenty-four years of service credit would make Bryant eligible for an annual salary of $75,285 pursuant to the Board's salary schedule.

{¶ 7} The grievance was referred for arbitration pursuant to the Agreement. Regarding the "years of service" credit provision for newly employed teachers, which is set out in Article XIX(A)(2)of the Agreement, the arbitrator found:

{¶ 8} "Article XIX does not apply to the Grievant since the Grievant is not a 'newly employed teacher.' The Grievant was on a continuing contract which bridged his teaching service prior to joining the District and after two years of his time as an

administrator with the District. Therefore, since the contract is essentially silent in this matter except for * * * the Salary Schedule, therefore the Grievant is entitled to the 24 year step in the salary schedule based on his nine years of teaching experience at other districts and his 15 years with the District. As noted above, although the Grievant put the District on notice when he signed his current contract, he did not file his grievance until some time later, therefore, the remedy in this matter will be back pay to the Grievant from the date of the grievance forward." Arbitration Award, p. 15.

{¶ 9} **The Board commenced an action to vacate the award in the court of common pleas, pursuant to R.C. 2711.10(D). The Association moved to confirm the award, pursuant to R.C. 2711.09. The common pleas court denied the motion to vacate and instead confirmed the arbitrator's award. The court found that because the Agreement does not define "newly employed teachers" the parties left that term for the arbitrator to define in relation to the grievance that was filed, and "[t]he Arbitrator's decision that Article XIX does not apply to the Grievant since the Grievant is not a 'newly employed teacher' represents a reasonable interpretation of the contract language. Still further the (Board) admitted and acknowledged in its Memoranda that Bryant automatically and by operation of law became a 'teacher' when**

his administrative contract was suspended. Under the plain language of the (Agreement), Bryant was not a newly employed teacher simply because he had not previously taught in the Miamisburg City School District."

{¶ 10} **The Board filed a notice of appeal from the judgment confirming the arbitrator's award.**

ASSIGNMENTS OF ERROR

{¶ 11} **"1. THE TRIAL COURT ERRED BY NOT VACATING AND INSTEAD ENFORCING AN ARBITRATION AWARD WHERE THE ARBITRATOR EXCEEDED HIS AUTHORITY BY ADDING TO OR AMENDING THE COLLECTIVE BARGAINING AGREEMENT WHEN THE ARBITRATOR DETERMINED THE AGREEMENT WAS SILENT ON THE ISSUE IN DISPUTE."**

{¶ 12} **"2. THE TRIAL COURT ERRED BY NOT VACATING AND INSTEAD ENFORCING AN ARBITRATION AWARD WHERE THE ARBITRATOR'S AWARD WAS CONTRARY TO THE TERMS OF THE COLLECTIVE BARGAINING AGREEMENT AND STATE LAW."**

{¶ 13} **"3. THE TRIAL COURT ERRED BY NOT VACATING AND INSTEAD ENFORCING AN ARBITRATION AWARD WHERE THE ARBITRATOR EXCEEDED HIS AUTHORITY BY FAILING TO APPLY RELEVANT OHIO LAW TO INTERPRET THE COLLECTIVE BARGAINING AGREEMENT."**

{¶ 14} **Arbitration awards arising from collective bargaining agreements are given a strong presumption of correctness, because the parties have agreed to make the arbitrator the final judge**

of both the facts and the law. *Goodyear Rubber Co. v. Local Union No. 200* (1975), 42 Ohio St.2d 516. Therefore, an award will not be set aside except for a clear showing of fraud, misconduct, or some other irregularity rendering the award unjust, inequitable, or unconscionable. *Id.* Courts have vacated an arbitrator's award where the central fact underlying the arbitrator's decision is clearly erroneous. *The Goodyear Tire & Rubber Co. v. Local Union No. 200, United Rubber, Cork, Linoleum and Plastic Workers of America* (1975), 42 Ohio St.2d 516.

{¶ 15} R.C. 2711.19(D), upon which the Board relies, requires the common pleas court to vacate an arbitrator's award when "[t]he arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award on the subject matter submitted was not made."

{¶ 16} "[G]iven the presumed validity of an arbitrator's award, a reviewing court's inquiry into whether the arbitrator exceeded his authority, within the meaning of R.C. 2711.10(D) is limited. Once it determines that the arbitrator's award draws its essence from the collective bargaining agreement and is not unlawful, arbitrary or capricious, a reviewing court's inquiry for purposes of vacating an arbitrator's award pursuant to R.C. 2711.10(D) is at an end." *Findlay Board of Education v. Findlay Education Association* (1990), 49 Ohio St.3d 129, 132-133.

{¶ 17} "An arbitrator's award departs from the essence of a collective bargaining agreement when: (1) the award conflicts with the express terms of the agreement, and/or (2) the award is without rational support or cannot be rationally derived from the terms of the agreement." ***Ohio Office of Collective Bargaining v. Ohio Civil Service Employees Association, Local 11, AFSCME, AFL-CIO*** **(1991), 59 Ohio St.3d 177, syllabus.**

{¶ 18} R.C. 4711.10(A) provides that where an agreement between a public employer and an exclusive representative governing wages, hours, and terms and conditions of public employment "makes no specification about a matter, the public employer and public employees are subject to all applicable state or local laws or ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees."

{¶ 19} R.C. 3319.09(A) defines "teacher" to include "supervisors." The Agreement, at Article I(B), instead excepts "supervisors" from the "teachers" to which the Agreement applies.

{¶ 20} R.C. 3117.13 establishes a schedule of minimum salaries for teachers, provides for a credit "of not more than ten years" for "all years of teaching service" in the same or another school district, and requires that "[e]ach teacher shall be fully credited . . . with years of service properly credited pursuant to this section or section 3317.14 of the Revised Code." Division

(A) of R.C. 3317.13 limits years of service to "teaching service."

{¶ 21} R.C. 3317.14 authorizes a board to instead "establish its own service requirements and (to) grant service credit for such activities as teaching in public or nonpublic schools in this state or in another state . . . and for service in the military or in an appropriate state or federal agency . . . provided full credit for a minimum of five years of actual teaching and military experience as defined in division (A) of section 3317.13 of the Revised Code is given to each teacher." (Emphasis supplied.) The allowed credit applies to up to five years of actual teaching or military service. *Raubaus v. Buckeye Local School District Board of Education* (1983), 6 Ohio St.3d 320; *Maple Heights Teachers Association v. Maple Heights Board of Education* (1983), 6 Ohio St.3d 314.

{¶ 22} Article XIX(A)(2) of the Agreement states:

{¶ 23} "Newly employed teachers by the Board shall be granted 'years of service' credit for placement on the salary schedule based upon their experience as follows:

{¶ 24} "a. One (1) year's service credit, not to exceed five (5) years, for each twelve months of active military service by the teacher since he/she first obtained a teaching certificate/license from the Ohio Department of Education.

{¶ 25} "b. One year's service credit for each school year

in which the teacher was employed full-time by a public school district or non-public district chartered by the State of Ohio. Full time is defined as actually working at least 120 days during the contracted year as a regular teacher for the full time teacher work day.

{¶ 26} "c. Beginning September 1, 2005, all newly hired teachers by the Board or teacher re-employed by the Board (after an absence of 3 or more years) will be granted their total prior service credit as a total of (a) and (b) above but not to exceed five (5) years for initial salary placement purposes. Placement on the salary schedule with service credits of more than five (5) years as a total of (a) and (b) above will be subject to administrative discretion and workforce demands, but not to exceed ten (10) years total service credit for salary placement purposes.

{¶ 27} "d. The provisions of sub-section (A).(2) on Regular Teachers salaries completely supercedes and replaces Section 3317 and 3317.14 of the Ohio Revised Code."

{¶ 28} Bryant had earned a continuing contract as a teacher pursuant to R.C. 3319.08(D) during his previous service with another district. That status entitled him to the open teaching position he accepted when his position as a supervisor was terminated. Though the Agreement creates an exception for "supervisors" in its definition of teachers, the arbitrator

reasoned that Bryant is entitled to service credit for the fifteen years he served as a supervisor because, due to his continuing contract status as a teacher, Bryant is not a newly employed teacher subject to Article XIX(A)(2) and the five year limit it imposes on credits for prior service.

{¶ 29} R.C. 4117.10(A) authorizes the parties to a public employees collective bargaining agreement to include in the agreement a specification that specifically excludes rights to prior service credits for purposes of vacation leave conferred by a section of the Revised Code. *State ex rel. Clark v. Greater Cleveland Regional Transit Authority* (1990), 48 Ohio St.3d 19. R.C. 3317.14 confers a right to prior service credits for purposes of salaries of teachers, and also imposes a limit on the authority of a school district that adopts a teachers salary schedule of its own pursuant to that section from granting service credits for prior employments other than those the section identifies. Having relied on R.C. 3317.14 for authority to adopt its own salary schedules, the Board could not, pursuant to R.C. 4117.10(A), also exclude itself from the application of the limitation on its exercise of that authority that R.C. 3117.14 imposes. R.C. 4117.10(A) permits a board to limit rights that otherwise exist, not to create rights that the law prohibits.

{¶ 30} The arbitrator's award contains two major flaws.

First, having found that Bryant is not a "newly employed teacher" for purposes of Article XIX(A)(2), the award nevertheless grants Bryant a "years of service" credit of twenty-four years pursuant to that provision, wholly ignoring the five-year limit on such credits that Article XIX(A)(2) also imposes. In that respect the award is without rational support and cannot be rationally derived from the terms of the Agreement. ***Ohio Office of Collective Bargaining v. Ohio Civil Service Employees Association*****.**

{¶ 31} Second, by awarding a "years of service" credit for the years Bryant served as a supervisor, the award applies the terms of the Agreement to a form of employment other than "years of teaching service" to which the credit is limited by R.C. 3317.13 and 3317.14 when a school district adopts its own teachers salary schedule. The award thereby reads into the Agreement a provision to which the parties to it could not have lawfully agreed, creating a result which is unlawful. Article II(G)(6) of the Agreement governing the authority of the arbitrator provides that "[t]he decision of the arbitrator shall be in accordance with law . . ." By reaching an unlawful result, the arbitrator so imperfectly executed the powers granted to him by the parties to the Agreement that the trial court was required to vacate the award pursuant to R.C. 2711.10(D). The trial court erred when, instead, the

court confirmed the award pursuant to R.C. 2711.09.

{¶ 32} The assignments of error are sustained. The judgment of the common pleas court will be reversed, and the case will be remanded to that court pursuant to App.R. 27 to enter a judgment consistent with our opinion.

DONOVAN, P.J., concurs.

FROELICH, J., concurring in judgment:

{¶ 33} The majority holds that the arbitrator's finding that Bryant is not a "newly employed teacher" as that term is used in Article XIX (A)(2) is inconsistent with the arbitrator's use of Article XIX (A)(2)(b) to calculate twenty-four years of service credit, i.e. if he is not a "newly employed teacher," then all of Article XIX (A)(2), including (A)(2)(b), does not apply to him. I agree with this logic, but not its applicability to the arbitrator's decision which relied on the salary schedule for teachers ("the contract is essentially silent in this matter [how to calculate years of service credit for an employee who is on a continuing contract which bridged teaching service. . .] except for. . .the salary schedule. . . ."), not Article XIX (A)(2).

{¶ 34} I do agree with the majority's holding that the arbitrator's decision was flawed by awarding "years of service" for service as a supervisor since it should only apply to "years

of teaching service." The credit is limited to "teaching" service since the Miamisburg School District Board of Education adopted its own salary schedule. R.C. 3317.13 and 3317.14 permit a Board to adopt such a salary schedule (which, as discussed above, is for other than "newly employed teachers"), but require the years of service credit awarded under such a schedule to be for "teaching service" and for actual teaching. The statutes allow that such actual teaching service credit be for "a minimum of five years" and for "not more than ten years."

{¶ 35} Although it had no impact on this opinion, I also wrote separately concerning Appellant's brief. What is the purpose to suggest that the "trial court bought the arbitrator's analysis," that the "union succeeded in confusing the arbitrator," that its argument was "lost on the arbitrator from Illinois" and in referring to the arbitrator as a "Chicagoian?" Why is there a need to discuss the potential financial impact on its client – is the implication this court will ignore the rule of law and decide by the result, and, even then, by the outcome for one party and not the other? This "advocacy" is, at best, inappropriate.

{¶ 36} I would also deny and strike Appellant's Motion for Leave to Bring Additional Authority to the Court's Attention. The purpose of such a motion is to bring recent, relevant authority

to this Court's attention, and not to file basically a third brief based on a case, decided by the same court over two months prior to the submission of Appellant's brief and three months before its reply brief.

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