ENTRY ORDER

SUPREME COURT DOCKET NO. 2000-370

NOVEMBER TERM, 2001

Orleans Town School District v. James Chapdelaine and Orleans Support Staff Members of the Orleans Education Association	}	APPEALED FROM: Orleans Superior Court DOCKET NO. 57-4-98 Oscv Trial Judge: Stephen B. Martin

In the above-entitled cause, the Clerk will enter:

This is an appeal by plaintiff Orleans Town School District (OTSD) from a superior court order denying its motion for summary judgment and ordering implementation of an arbitration award which reinstates defendant Chapdelaine to his position as custodian at OTSD, and awards him back pay and benefits lost as a result of his discharge. We affirm.

Chapdelaine was employed by OTSD as a custodian and school bus driver from 1980 until he was discharged by the Orleans School Board (Board) in the spring of 1997. According to the letter of dismissal, his termination was a result "of sexual harassment incidents that have taken place recently and in the past." His employment was subject to a collective bargaining agreement entered into by the Board and the Orleans Support Staff Association (Association). Following Chapdelaine's dismissal, the Association filed a grievance alleging that the Board violated the agreement by discharging Chapdelaine without "just and sufficient cause." The parties agreed to proceed directly to arbitration, conducted pursuant to the grievance procedure set out in the agreement, and presented the following issue to the arbitrator: "Did the Board have just cause to terminate the grievant, James Chapdelaine? If not, what shall the remedy be?"

At arbitration, the parties had the opportunity to examine and cross-examine witnesses, and to submit documentary evidence. All witnesses were sworn. The arbitrator found that there was no just cause for Chapdelaine's dismissal. What follows is a description of the alleged misconduct as described in the arbitrator's decision.

Two eighth grade female students during 1996-97 told the mother of one about certain remarks of a sexual nature allegedly made by Chapdelaine at school and while driving the school bus, including a comment to one that he "could see her nipples through her blouse." The mother brought her concerns about the remarks to a guidance counselor at the school who, in turn, informed the school principal of the allegations. The principal brought the allegations to the attention of the superintendent. The superintendent and the principal met with Chapdelaine to discuss the allegations; he denied making any inappropriate or obscene comments to any girls at the school. At this time, the matter went no further.

About a month later, a woman named Stevens who had been an eighth grade student at Orleans Elementary School during the 1981-82 school year, wrote to the superintendent and stated that Chapdelaine had "sexually assaulted her on a daily basis from March 17 to April 21." Stevens testified before the arbitrator that she had learned of the recent allegations noted above through a co-worker and wrote after so many years because she did not want what happened to

her to happen to somebody else. The superintendent wrote to Chapdelaine and arranged a meeting to discuss the incidents of alleged sexual harassment brought by the mother of the current eighth grade student, as well as Stevens's allegations of physical and sexual contact.

A meeting was held, during which Chapdelaine denied all charges. He was then suspended, with pay, pending further investigation. The school also notified the Department of Social and Rehabilitation Services (SRS) about the allegations made by the current eighth grade students. The superintendent next met with several current female students to discuss the allegations, and met with Stevens. He also reviewed Chapdelaine's personnel file, and found a letter written in 1982 by the then superintendent to Chapdelaine that referred to an incident where Chapdelaine had given Stevens, then fourteen years old, a ring. The letter indicated that the Board had discussed the incident and warned that this degree of friendship with a student was inappropriate. Based on these collective events, the superintendent decided to recommend to the Board that Chapdelaine be terminated from his position. The Board notified Chapdelaine of his right to a hearing before the Board. Chapdelaine waived his right to a hearing, and the Board terminated his employment at its meeting on May 13, 1997.

Stevens testified at arbitration that her involvement with Chapdelaine included kissing and fondling at various locations on school grounds, but that no sexual intercourse occurred. She further testified that when she broke off the relationship, Chapdelaine was unhappy but made no effort to pursue any type of relationship with her. In addition to Stevens's testimony, the arbitrator heard from a student who attended Orleans Elementary School at the same time as Stevens, who corroborated Stevens's testimony and offered further information.

The arbitrator also heard from several eighth grade students from the 1997-98 school year who testified as to actions and comments of a sexual nature made by Chapdelaine. Several teachers and school staff members testified as to their impressions of Chapdelaine and the veracity of the accusing students.

Chapdelaine testified as well. He denied making any inappropriate remarks to the eighth grade students and denied having a sexual relationship with Stevens. As part of his findings concerning Chapdelaine's testimony, the arbitrator noted that Chapdelaine had taken a lie detector test and the test indicated that he was truthful when he denied having a sexual relationship with Stevens. The arbitrator noted, however, that he did "not place a great deal of support on the results."

As to the allegations involving Stevens, the arbitrator noted "this case turns purely on a credibility determination." He carefully set forth the reasons he did not find Stevens credible. He concluded that Chapdelaine was telling the truth about the extent of his relationship with Stevens and that it could not be used as a basis to discharge him fifteen years after the fact. Further, he relied on the fact that the Board did no more than send a letter to Chapdelaine in 1982, warning that any inappropriate conduct would not be tolerated: "It is simply incomprehensible that the principal, superintendent, and school committee members would simply turn their collective heads and let Mr. Chapdelaine continue his employment at the elementary school if they had any concerns about Mr. Chapdelaine's ability to control himself around children."

Concerning the recent allegations of sexually suggestive remarks made by Chapdelaine, the arbitrator noted that on November 3, 1997, SRS had determined the report of sexual abuse to be substantiated. The arbitrator did not give the report any weight due primarily to the fact that it came after the employer's decision to discharge the grievant. As to the evidence presented by the eighth grade girls, the arbitrator found that their recollections and interpretations of Chapdelaine's remarks, and his behavior had been profoundly influenced by knowledge of his suspension and the climate of suspicion surrounding Chapdelaine, as well as communications among themselves about what they believed was said by Chapdelaine. In sum, the arbitrator concluded that Chapdelaine was not guilty of the misconduct for which he was fired and there was, therefore, no just cause for his dismissal.

By the time the case came before the trial court, Chapdelaine had appealed the SRS finding that the report of sexual abuse was substantiated. The Commissioner reversed that decision, finding that the evidence, "although certainly of concern regarding [Chapdelaine's] interactions with female students, does not meet the technical definition of substantial risk of sexual abuse under the applicable law."

"Vermont has a strong tradition of upholding arbitration awards whenever possible." Springfield Teachers Ass'n v. Springfield Sch. Dirs., 167 Vt. 180, 183, 705 A.2d 541, 543 (1997) (quoting R. E. Bean Constr. Co. v. Middlebury Assocs., 139 Vt. 200, 204, 428 A.2d 306, 309 (1980)). We have long recognized the importance of arbitration as an alternative to litigation for the efficient resolution of disputes. Id. As we noted in R.E. Bean Constr. Co., if courts were permitted to broadly question the determinations of an arbitrator, then arbitration would become merely "another expensive and time consuming layer to the already complex litigation process." 139 Vt. at 204-05, 428 A.2d at 309. We will not, therefore, "review the arbitrator's decision for errors of fact or law, see Muzzy v. Chevrolet Div., General Motors Corp., 153 Vt. 179, 184, 571 A.2d 609, 612 (1989), but rather we will confine our review to (1) whether there exist statutory grounds for vacating or modifying the arbitration award, and (2) whether the parties were afforded due process." Springfield Teachers Ass'n, 167 Vt. at 184, 705 A.2d at 544.

Appellant urges our adoption of the standard of review set out by the California Supreme Court in Cotran v. Rollins Hudig Hall Int'l, Inc., 948 P.2d 412 (Cal. 1998), which affords great deference to the employer's own just cause determination. The employer school district in the case at bar, however, did not conduct a hearing, nor did they meet face to face with Chapdelaine and the witnesses who spoke against him. Instead the school district relied entirely on the investigation and recommendation of its superintendent when it decided to terminate Mr. Chapdelaine. In contrast, the arbitrator conducted a full and fair hearing, and he had the opportunity, first hand, to evaluate the credibility of the witnesses. In concluding that Chapdelaine was not guilty of the accused misconduct, the arbitrator was thorough in his review of the evidence and gave careful thought to his analysis. We fail to see the value afforded the decision making process by deference to a remote decision maker, operating without the benefit of first hand knowledge, over the arbitrator's determination in this case. We are, therefore, unpersuaded that we should overturn the controlling standard of review set forth in Springfield Teachers Association.

This case is governed by the Vermont Arbitration Act, 12 V.S.A. 5651-5681. Under the Act, a court shall confirm an arbitration award unless grounds, limited by statute, are established to vacate or modify it. See 12 V.S.A. 5676; see also Matzen Constr. Co. v. Leander Anderson Corp., 152 Vt. 174, 177, 565 A.2d 1320, 1322 (1989). The statutory grounds for vacating arbitration awards are: (1) the award was procured by corruption or fraud; (2) the arbitrator was not impartial; (3) the arbitrator exceeded his powers; (4) the arbitrator conducted the hearing procedurally in a way which substantially prejudiced the rights of a party; or (5) a court has found there was no agreement to arbitrate and the party raised the objection below. 12 V.S.A. 5677(a). The only permissible grounds raised by appellant upon which this Court may invoke its authority to vacate the arbitrator's award is that the arbitrator exceeded his authority.

Appellant argues that the arbitrator exceeded his authority by not limiting his review to the issue presented, engaging in an impermissible de novo review of the Board's decision to terminate Mr. Chapdelaine, and substituting his judgement for that of the school district. Further, appellant claims that admission of the report of the polygraph results was prejudicial and improper, and that the initial substantiation by SRS should have been binding on the arbitrator in order to establish just cause. Finally, appellant argues that the arbitrator's award offends well defined public policy against sexual harassment in schools.

An arbitrator is vested with the authority granted by the contractual agreement between the Board and the members of the Orleans school support staff. Here the parties bargained for a grievance and arbitration procedure which provides that if a grievance is not resolved at the earlier stages, the grievance is to be submitted to an arbitrator, and that decision "shall be final and binding upon the parties." The contractual agreement provides that the arbitrator's authority shall be limited to interpreting and applying the provisions of the agreement and that the arbitrator "shall have no power to add to, subtract from, alter or modify any of the said provisions." The agreement further provides that no employee shall be "discharged without just and sufficient cause." The issue before the arbitrator was whether grievant was terminated for just cause - an issue to which the parties stipulated. Here, the arbitrator's decision falls squarely within the terms of the agreement. Its reasoning exhibits exactly the kind of reasoning the parties bargained for when they included binding arbitration as the final step of the grievance procedure.

Appellant also argues the arbitrator exceeded his authority when he admitted the report of the polygraph results. While we have previously questioned the veracity of lie detector results, and declined to admit the results of polygraph examinations in criminal trials, in the context of an arbitration hearing, "great flexibility" is afforded arbitrators to determine admissibility of evidence. Matzen Constr. Co., 152 Vt. at 178, 565 A.2d at 1323 (citation omitted). Here, the

arbitrator found the grievant to be credible for reasons other than the results of the lie detector test. He did find the fact that grievant voluntarily submitted to a polygraph to bolster his credibility, but, acknowledging the controversy surrounding polygraphs, he limited his use of it in reaching his decision. This did not exceed the arbitrator's authority.

Appellant's contention that SRS's initial substantiation of sexual abuse should have been binding on the arbitrator in order to establish just cause is also without merit. The parties bargained for arbitration. Their agreement did not include authority for any state agency to define or determine whether there was just cause for termination. Further, grievant's appeal to SRS was pending when this matter was before the arbitrator and the initial substantiation should not have been considered by the arbitrator at all. Moreover, at the time the Board terminated Chapdelaine SRS had made no finding of substantiation so it could not have provided support for the Board's decision. As noted, the SRS determination was reversed on appeal.

Appellant also urges invocation of the "public policy exception" to forego the usual deference afforded arbitration awards, and to vacate the arbitrator's reinstatement award. In addition to the arbitrator's concession that Chapdelaine may have made a "crude retort" to the eighth grade girls, and that his relationship with Stevens was perhaps "too friendly and improper," appellant relies on SRS's, and the Board's substantiation of the allegations for support of its contention that the arbitrator's reinstatement award violates Vermont statutory law against harassment and the sexual harassment policy adopted in the parties' employment contract.

Appellant cites Newsday, Inc. v. Long Island Typographical Union, 915 F.2d 840 (2d Cir. 1990), for the proposition that reversal of an arbitrator's award ordering reinstatement of an employee is appropriate when reinstatement "tends to perpetuate a hostile, intimidating and offensive work environment" and "[a]bove all, the award prevents [employer] from carrying out its legal duty to eliminate sexual harassment in the work place." Id. at 845. Appellant fails to acknowledge a significant factual distinction between Newsday and this case. In Newsday, the arbitrator made findings that the employee had, on three prior occasions, committed acts which constituted harassing, abusive or intimidating behavior under the employer's policy. Here, the arbitrator did not find Chapdelaine guilty of sexual harassment in violation of state law or the contractual agreement. Had the arbitrator found Stevens or the eighth grade girls credible, and their allegations true, then reinstating Chapdelaine might have been a violation of Vermont public policy. Given that the arbitrator reviewed all facts and testimony, weighed witness credibility, and ultimately made a determination that Chapdelaine did not commit acts of sexual harassment, the public policy exception is inapposite to this case. The fact that other entities, such as the Board, may have found the allegations substantiated is irrelevant.

Appellant further argues that because Chapdelaine's actions violated well established public policy, and the school district was under a duty to prevent sexual harassment of its student body, OTSD could not agree to submit this matter to arbitration. For support appellant cites Delta Air Lines, Inc. v. Airline Pilots Ass'n, Int'l, 861 F.2d 665, 674 (11th Cir. 1988), which invoked the public policy exception to judicial deference and reversed an arbitrator's award reinstating an airline pilot who was found to have flown his aircraft while intoxicated. The court of appeals held that insofar as the collective bargaining agreement between the parties would "submit to arbitration the question of whether [Delta] should authorize operation of aircraft by pilots while they are drunk," it violates public policy and cannot be enforced. Id. at 671-672. Here again, appellant fails to acknowledge the operative factual difference which distinguishes Delta from this case. In Delta, it was undisputed that the pilot had flown his aircraft while intoxicated and that doing so violated both public policy and the parties' collective bargaining agreement. In this case, OTSD was not submitting the issue of whether they should employ a janitor engaged in sexually harassing behaviors. Rather, the issue before the arbitrator was whether there existed just cause to terminate Chapdelaine. Submission of this issue to arbitration does not violate public policy.

Again, as noted above, the scope of our review of arbitration awards limits this Court in reviewing the merits of an arbitrator's decision. See United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 596 (1960) ("The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements."). As long as the arbitration award draws its essence from the collective bargaining agreement, and is not merely the arbitrator's "own brand of industrial justice," the award is legitimate. United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 38 (1987). The parties bargained for a full, binding arbitration procedure conferring

on the arbitrator authority to conduct a full and fair hearing, judge the credibility of the witnesses first hand, and hear and make just cause determinations. There is nothing in the agreement beyond this which limits presentation of the case before the arbitrator, or limits the scope of the arbitrator's review of the Board's action. Because appellant has failed to meet any of the statutory grounds for vacating arbitration awards, has failed to show that it was not afforded due process, and has failed to show applicability of the public policy exception, we affirm the arbitrator's decision.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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James L. Morse, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Nancy Corsones, District Judge
Specially Assigned