

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1878

September Term, 2010

ANNE ARUNDEL COUNTY, MD.

v.

TEAMSTERS LOCAL UNION
NO. 355, ET AL.

Eyler, James R.,
Wright,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: December 27, 2011

Appellee, Truck Drivers, Helpers, Taxicab Drivers, Garage Employees, and Airport Employees Local Union No. 355 affiliated with International Brotherhood of Teamsters (the "Union"), as the exclusive bargaining representative of the Anne Arundel County Deputy Sheriffs, entered into a memorandum of agreement ("Agreement") with appellant, Anne Arundel County, Maryland, dated July 1, 2007 to June 30, 2010. On July 31, 2009, the Union filed a grievance alleging that appellant violated Article 9, Sections 9.9 & 9.10 of the Agreement. By letter dated August 12, 2009, appellant informed the Union that "the issues raised do not constitute a valid grievance." On August 20, 2009, Teamsters informed appellant of its intent to proceed to arbitration in relation to the grievance filed. On November 13, 2009, appellant declined to undertake arbitration and reiterated that the issues are not subject to the grievance process.

On January 26, 2010, the Union filed a complaint to compel arbitration in the Circuit Court for Anne Arundel County. On February 26, 2010, appellant filed a motion to dismiss, and on March 26, 2010, the Union filed a response in opposition as well as a motion for summary judgment. On April 13, 2010, appellant filed its own motion for summary judgment.

The court held a motions hearing on September 20, 2010, after which it denied appellant's motions and granted that of the Union. On September 22, 2010, the court entered an order compelling arbitration. This appeal followed. On December 29, 2010, the circuit court granted appellant's request to stay enforcement of its order.

On appeal, appellant asks us to determine whether the circuit court erred in compelling arbitration. For the reasons that follow, we affirm the court's judgment.

Facts

The Agreement defines "grievance" as "a difference or dispute between an employee and the County regarding the meaning, interpretation or application of the express terms of this Agreement, or a violation of the County Charter, County Code or other applicable law regarding employment." The Agreement provides a three-step process for the filing of a grievance. First, the grievance shall be filed in writing with the Sheriff, and the Sheriff shall issue a decision. Second, if not resolved at Step I, a written grievance appeal shall be filed with the County's Personnel Officer, and a written answer shall be issued. Third, if not resolved at Step II, a written grievance appeal shall be filed with the County's Personnel Board, who shall hold a hearing and issue a decision. Employees, however, may elect to proceed to binding arbitration in lieu of a Step III appeal.

On July 31, 2009, the Union filed a grievance citing appellant's "denial of COLA's^[1] and merit increases as negotiated in the memorandum of agreement to be effective the first full pay period on or after July 1, 2009 and any merit increases due on or after July 1, 2009." Specifically, the Union alleged that appellant violated Article 9, Sections 9.9 and 9.10, of the Agreement. Those sections state, in pertinent part:

¹ Cost of Living Adjustment

Section 9.9 – Wages

* * *

- (e) Effective the first full pay period on or after July 1, 2009, employees shall receive a three percent (3%) increase in pay, not to exceed the maximum pay rate for the grade on Pay Schedule C. Pay Schedule C represents an increase to the minimum pay rate of three percent (3%) and an increase to the maximum pay rate of three percent (3%) plus an additional four percent (4%). Pay Schedule C is effective the first full pay period on or after July 1, 2009.

- (f) In each year of this Agreement, on the pay period closest to the employee's anniversary date as described in Section 9.10 of this Agreement an employee shall receive a four percent (4%) increase in pay not to exceed the maximum pay for the grade for an overall satisfactory rating on his or her Performance Planning and Appraisal Report.

It is understood that performance based pay advancements, as described in this section, shall have the same contractual legal status as the across the board increases agreed to by the parties in this Agreement. The payment of the performance based pay advancements in this Section shall not be circumvented by any action taken by the County Executive, including by budget or other legislative submittal.

* * *

Section 9.10 – Pay Advancements

- (a) An employee who achieves a satisfactory performance review shall receive pay advancements in accordance with Appendix I, Section 9.9 of this Agreement and § 6-1-207 of the County Code. . . . In each year of this Agreement, an employee who receives an overall satisfactory rating on his or her Performance Planning and Appraisal Report shall receive an increase in pay of four percent (4%) not to exceed the maximum pay rate for the grade, on the pay period closest to the employee's anniversary date.

Signatories to the Agreement included the Union's President, Chief Shop Steward, Shop Steward, and Business Agent. On behalf of appellant, the signatories included the County

Executive, Personnel Officer, Chief Spokesperson, County Attorney, and the Senior Assistant County Attorney.

On May 4, 2009, the Chairman of the County Council, “by request of the County Executive,” introduced Bill No. 34-09, which eliminated pay advancements for Deputy Sheriffs and provided that the 2008-09 pay schedules remain for the 2009-10 fiscal year. After introduction, the bill was amended in form. On July 6, 2009, the County Council passed the measure as an “emergency ordinance” which immediately went into effect.

Upon filing its grievance, the Union received a response from the County’s Personnel Officer stating that “the issues raised do not constitute a valid grievance.” In lieu of Step III of the grievance process, the Union then informed appellant of its intent to proceed to arbitration. Appellant, however, stated that it did not intend to undertake arbitration, and the Union subsequently filed its complaint in circuit court.

After holding a hearing on appellant’s motions to dismiss and for summary judgment, and the Union’s motion for summary judgment, the court announced its decision as follows:

THE COURT: Thank you. Let me thank both counsel for presenting the matter very efficiently. It does seem to me that because this agreement is one in which the county executive’s action was contemplated and called for by the agreement that the county executive would be required to include in the budget sums that would be sufficient for payment of performance-based pay advances and that is something which I think is different from the cases that provisions in collective bargaining agreements in the cases that have been cited by the county.

I do believe that that has made it a provision of the agreement and

“application of the express terms of this agreement which may be grievable,” and because the grievances I think, including a grievance of this nature, are described as ending up in a grievance process with the Personnel Board, I think that puts them within the scope of the county charter Section 521(a)(2) which says that the Personnel Board could hear an action designated by the collective bargaining agreement to [indiscernible] two agreements [sic] procedures and the other provisions of the county Code as to arbitration provide that an arbitrator may exercise powers of the Personnel Board in a grievance under a collective bargaining agreement.

So I do think it is properly subject to agreements such that the Court should deny the county’s Motion to Dismiss for Summary Judgment and should grant the [Union’s] Motion for Summary Judgment to compel arbitration and to provide the other relief that has been requested. That, of course, is **not the same thing as saying that the [Union is] entitled to the relief that [it is] requesting, nor is it providing the specific scope of potential relief that an arbitrator could grant** because, as I think the case law provides, the issues as to the scope of relief would be something that would be subject to the arbitrator’s decision and . . . if there is a decision by the arbitrator that would exceed proper legal scope, we may be back here but, at this point, the Court does think it is grievable.

And, for all those reasons, I will grant the Plaintiff’s Motion for Summary Judgment and deny the dispositive motions on behalf of the county, which I think would resolve the open matters until either an appeal or an arbitrable decision.

Are there other open matters that counsel believe the Court should be considering at this point?

VOICE: If I could just request one clarification. I think I understand the Court’s ruling but is the Court ruling that only the 9.9(f) issue is submitted to arbitration or all of it?

THE COURT: I am of the opinion at this point that it should be all of it although, as I said, the scope of the arbitration is something that could be presented to the arbitrator as well.

(Emphasis added).

Standard of Review

A trial court's order compelling arbitration constitutes a final and appealable judgment. *Walther v. Sovereign Bank*, 386 Md. 412, 422 (2005). On appeal, we review the court's order to determine only whether an agreement to arbitrate existed. *Id.*; see also *Allstate Ins. Co. v. Stinebaugh*, 374 Md. 631, 645 (2003). "The trial court's conclusion as to whether a particular dispute is subject to arbitration is a conclusion of law, which we review *de novo*." *Walther*, 386 Md. at 422 (citing *Wells v. Chevy Chase Bank, F.S.B.*, 363 Md. 232, 250 (2001)).

Discussion

Appellant argues that no agreement to arbitrate existed because the issues raised by the Union are not grievable, and to the extent that a grievable issue was raised with regard to Section 9.9(f) of the Agreement, the Union did not properly raise the issue in its complaint. Alternatively, appellant argues that, even if arbitrable, the arbitrator would not have jurisdiction to resolve the issue or the authority to provide the relief requested, *i.e.* the ability to order the county to fund the raises. Lastly, appellant contends that any arbitration would be futile.

The Union responds by asserting that the grievance is arbitrable because it involves a dispute regarding the express terms of the Agreement. Further, the Union argues that an arbitrator has jurisdiction to remedy the dispute. We agree with the Union.

I. An agreement to arbitrate existed.

“[A]rbitration of labor disputes under collective bargaining agreements is part and parcel of the collective bargaining process itself.” *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578 (1960). “Apart from matters that the parties specifically exclude, all of the questions on which the parties disagree must . . . come within the scope of the grievance and arbitration provisions of the collective agreement.” *Id.* at 581. As we have previously noted, “arbitration is a favored remedy” and any doubts are to be “resolved in favor of coverage.” *Baltimore v. Baltimore Fire Fighters, Local 734, I.A.F.F.*, 93 Md. App. 604, 610-11 (1992) (citations omitted).

To determine whether a dispute is subject to arbitration, courts take into account the following:

First, . . . if an arbitration clause is clear, it is initially for the courts to determine whether the subject matter of a dispute falls within the scope of the arbitration clause. Second, . . . *in determining whether a dispute falls within the scope of an arbitration clause, arbitration should be compelled if the arbitration clause is broad and does not expressly and specifically exclude[] the dispute.* Third, . . . if an arbitration clause is unclear as to whether the subject matter of the dispute falls within the scope of the arbitration agreement, the question of arbitrability ordinarily should be left to the arbitrator.

Stinebaugh, 374 Md. at 643 (emphasis added) (internal citations and quotation marks omitted).

According to the Agreement in this case, a grievance that is not resolved in Steps I and II is arbitrable. The Agreement defines “grievance” as “a difference or dispute

between an employee and the County regarding the meaning, interpretation or application of the express terms of this Agreement, or a violation of the County Charter, County Code or other applicable law regarding employment.” By including disputes as to all “express terms” of the Agreement, the parties created a broad arbitration clause. And, because the clause did not specifically exclude the Union’s claim that appellant violated Article 9, Sections 9.9 and 9.10, the trial court acted properly in compelling arbitration.

Appellant argues that the Union’s claim is not arbitrable because “[The Union] simply allege[d] that the County ‘violated’ the provisions of the [Agreement].” According to appellant, the Union did not allege a dispute regarding the “meaning, interpretation or application” of the Agreement’s terms. This argument has no merit.

As the Union correctly states, a dispute exists as to the parties’ *interpretation* of appellant’s duties under the Agreement. Appellant’s decision to deny pay increases, pursuant to the passing of Bill No. 34-09, reflects its interpretation that doing so did not violate the terms of the Agreement. On the other hand, the Union interprets the Agreement to bar appellant from submitting a bill that would have the effect of denying pay increases. Therefore, the Union’s claims go to the parties’ interpretation of appellant’s duties under the agreement and are grievable, arbitrable matters.² *See, e.g. United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564, 569 (1960) (concluding that a dispute existed as to the meaning, interpretation, and application of the collective

² Accordingly, we reject appellant’s contention that the only grievable matter was the claim “not directly posited” by the Union with regard to Section 9.9(f).

bargaining agreement and, holding that arbitration should have been ordered, where one party claimed that the other violated a specific provision of the contract, and the other party took the position that it had not violated that clause); *Fraternal Order of Police, Inc., Baltimore County Lodge No. 4 v. Baltimore County*, 340 Md. 157, 161-62 (1995) (“an arbitration proceeding was held to determine whether the County had breached the collective bargaining agreement” after it furloughed police officers).

II. An arbitrator has jurisdiction to resolve the issue and the authority to provide the relief requested.

“Maryland law is . . . clear that a court shall not evaluate the merits of a claim that is subject to arbitration.” *Rourke v. Amchem Prods., Inc.*, 153 Md. App. 91, 129 (2003).

“Unless the parties indicate otherwise, issues of law and fact are submitted to the arbitrator for judgment.” *Soc’y. of Am. Foresters v. Renewable Natural Res. Found.*, 114 Md. App. 224, 235-36 (1997) (citations omitted). In fashioning a remedy for the injustice which is found to have occurred, arbitrators have broad discretion. *Baltimore County v. Baltimore*, 329 Md. 692, 708 (1993).

Appellant argues that an arbitrator does not have jurisdiction to hear the case nor “legal authority to afford the relief sought.” While appellant correctly states that the jurisdiction of an arbitrator is no greater than that available to the Personnel Board, it fails to accept or recognize that the Personnel Board can “hear and decide . . . any . . . action designated by law or collective bargaining agreement to be subject to grievance procedures.” Anne Arundel County Charter Art. V, Section 521(a)(2). As we have

determined that this case involves a grievable matter, it is an action that can be heard and decided by either the Personnel Board or an arbitrator.

Moreover, appellant's argument that an arbitrator has no legal authority to afford the relief sought also fails. As this Court has previously noted, "[b]inding arbitration would certainly lose much of its utility if the arbitrator could not issue a remedy for a breach of such an agreement." *Baltimore Teachers Union, Am. Fed'n of Teachers, Local 340, AFL-CIO v. Baltimore*, 108 Md. App. 167, 192 (1996). Although an arbitrator cannot order the County Executive or County Council to exercise their budget and appropriation authority, *Anne Arundel County v. Fraternal Order of Anne Arundel Detention Officers & Personnel*, 313 Md. 98, 111 (1988), an arbitrator can still award damages *if* it finds a breach of contract by a municipality or county. *Baltimore Teachers Union*, 108 Md. App. at 190 (opining that appellee's breach of contract should not be treated differently than any other instance. Municipalities and counties are routinely sued for breach of contract and held answerable for contract damages. Municipal contracts, particularly those made in furtherance of the proprietary functions of a municipality, are controlled by the same rules of construction as are applicable to the contracts of private corporations and individuals.) (Internal citations omitted).

Because the grievance was arbitrable and the arbitrator has jurisdiction to hear the dispute, as well as authority to grant the relief sought,³ the court did not err in compelling

³ Accordingly, we reject appellant's argument, based upon *Baltimore Teachers*
(continued...)

arbitration. For all of the foregoing reasons, we affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY IS AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**

³(...continued)

Union, that arbitration would be futile.