

Dispute arises over whether employee voluntarily quit her job

by Michigan Lawyers Weekly Staff

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In a motion for summary disposition, plaintiff Genesee County Drain Commissioner's Office, Division of Water and Waste Services sought to have an action to vacate binding labor arbitration granted. The case was heard by Genesee County Circuit Court Judge Geoffrey L. Neithercut.

On Nov. 10, 2009, plaintiff sent the employee a letter entitled "Notice of Voluntary Quit" (voluntary quit notice) after the employee was absent for three consecutive days without notifying plaintiff of her continued absence.

In the voluntary quit notice, plaintiff cited its mandatory and non-discretionary attendance policy contained in Article XXV of its Policies and Work Rules (policies), which mandates that "loss of employment will occur if the employee is absent for any three (3) consecutive working days without properly notifying their immediate supervisor."

The employee disagreed that she voluntarily quit, and submitted a grievance through Local 1918 of the American Federation of Federal, State and County Municipal Employees (AFSCME) Council 25. An arbitration hearing was held in October 2010, during which the employee admitted to being absent for three consecutive days without notifying plaintiff.

The arbitrator, in a written decision, determined that the employee's inattention to plaintiff's attendance policy demonstrated "a shocking level of indifference regarding her job status and evidences an intent to quit."

Despite this, the arbitrator elected not to apply the division's voluntary quit policy; instead, a more lenient seniority provision in the parties' collective bargaining agreement (CBA) was applied, and it was ordered that the employee be returned to her previous position.

Plaintiff filed a complaint/appeal and subsequent motion for summary disposition in seeking a determination that the arbitrator exceeded her contractual authority under the CBA by applying the seniority provision in the CBA. That provision, it was contended, addressed only circumstances under which an employee would lose seniority, not employment, and was more lenient than the mandatory and non-discretionary voluntary quit policy.

Defendant disagreed, and asserted that the seniority and voluntary quit provisions were in conflict and that, as a result, the seniority provision in the CBA should prevail. The union also asserted that the seniority provision carried more weight because it was a negotiated term contained in the parties' CBA, while plaintiff's "unilaterally adopted" policies were not binding.

In response, plaintiff asserted that the two provisions are consistent because they address different circumstances (seniority v. employment status). Plaintiff also asserted that its policies were adopted by the union as part of the parties' CBA, because the CBA authorized plaintiff to adopt additional policies and procedures, and the union failed to file a grievance over any of the policies when they were presented to the union.

The court agreed with plaintiff, and found that the arbitrator exceeded her authority under the parties' CBA by selectively applying the more lenient seniority standard to determine that the employee did not voluntarily quit her employment.

The arbitrator's award was vacated, and plaintiff's determination that the employee voluntarily quit her employment was reinstated. No appeal was filed.

Type of action: Action to vacate binding labor arbitration

Name of case: *Genesee County Drain Commissioner's Office, Division of Water and Waste Services v. AFSCME Council 25, AFL-CIO Local 1918*

Court/Case no./Date: Genesee County Circuit Court; 11-95535-CL; Sept. 12, 2011

Tried before: Judge

Name of judge: Geoffrey L. Neithercut

Verdict: Arbitration award vacated

Attorneys for plaintiff: Thomas J. McGraw, Stacy J. Belisle

Attorney for defendant: Kenneth J. Bailey

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