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THE PUBLIC SECTOR

Court confirms arbitration decision affording job protection to at-will employees

by Jeff Sloan and Elina Tilman
Renne Sloan Holtzman Sakai LLP

The California Court of Appeal for the 2nd District recently provided a stark reminder about the perils of binding arbitration. The decision also shows the potential consequences when employers, in their largesse, agree in collective bargaining to give contractual protections to temporary at-will employees.

Dilution of community colleges' rights over personnel actions

As is the case with all community colleges in California, the Santa Monica Community College District employs part-time temporary instructors to supplement its workforce of tenured and tenure-track faculty members. Under Section 87665 of the California Education Code, part-time temporary instructors generally serve "at will" and may be terminated without cause—in contrast to the extraordinarily strong job protections enjoyed by tenured faculty members. Indeed, Section 87665 gives community college districts unreviewable authority to terminate temporary faculty.

The unreviewable authority to terminate part-time personnel was diluted in 2002, however, when the legislature opened the door for negotiations between community colleges and faculty unions over whether and how part-time temporary faculty would earn and retain annual reappointment rights. Education Code Section 87482.9 requires community colleges to negotiate in good faith over faculty union proposals seeking job protection for this category of at-will personnel.

The duty to bargain in good faith does not mean either party is obligated to agree to any proposal made by its counterpart in negotiations. In the case of the Santa Monica Community College District, however, the district agreed to a faculty association proposal that gave temporary faculty who taught at least five consecutive semesters a preferential "associate" reemployment status. Under the negotiated provision, the status of qualifying part-time faculty members could be revoked only upon written notice that they were guilty of misconduct as defined in Education Code Section 87332. The district also agreed that disputes involving this section of the agreement would be resolved through binding arbitration.

College offers no evidence of misconduct

In combination, these two provisions of the collective bargaining agreement (CBA) proved to be the district's undoing. Believing that three part-time faculty members had engaged in misconduct (the exact nature of which the district declined to disclose), the district informed them that at the end of the spring 2011 semester, their associate status would be revoked and they would cease receiving any further teaching assignments.

The faculty union filed grievances and ultimately took each of the three cases to arbitration. Asserting that the three faculty members remained at-will employees, the district argued that it had satisfied its obligation toward them by notifying them of the nonrenewal of their reappointment status as required by the negotiated agreement. The district refused, however, to present evidence demonstrating the nature of the faculty members' misconduct. In all three cases, the arbitrator granted the grievance after finding the district was required to show evidence to support the nonrenewal.

Revocation of rights and termination aren't synonymous

The district filed a petition to set aside the awards. In one case, the court of appeal ruled the district failed to do so within the 100-day limitations period applicable in such cases under state law. More generally, however, the court went on to assess whether the arbitrators exceeded their authority under the CBA.

The court explained that it could put aside an award interpreting a contract only when the interpretation rests on a completely irrational construction. So long as there is any rational basis for the interpretation, no matter how slim, the court won't reevaluate the merits of the case and will defer to the arbitrator's authority. The mere fact that an arbitrator's decision was legally or factually wrong is insufficient, so long as the decision reasonably springs from the parties' agreements.

In this case, the arbitrators concluded that providing written notice of a termination based on misconduct required the district to also submit evidence of actual misconduct. The court found this to be a

rational interpretation because being guilty of misconduct connotes a finding that misconduct actually occurred, rather than mere suspicion.

The court also concluded that the district's statutory right to terminate temporary faculty without cause didn't trump the contractual agreement giving temporary faculty a reappointment right. Specifically, the court found that termination of employment isn't synonymous with revocation of reappointment rights because the legislature enacted separate statutes to govern the dismissal of temporary faculty and the reappointment of temporary faculty.

Finally, the court reasoned that even if the statutes did conflict, the reappointment statute would trump because it was enacted later and was more specific. Accordingly, because the district didn't produce any evidence that the instructors were guilty of misconduct, the arbitrators' awards reinstating their appointments were appropriate. *Santa Monica College Faculty Association v. Santa Monica Community College District* (California Court of Appeal, 2nd Appellate District, 12/30/15).

Bottom line

Courts strictly observe statutory time limits that apply to arbitration award challenges. Those time limits are jurisdictional, and when they aren't met, the court has no authority to set aside the decision.

This case emphasizes the high risk of binding arbitration. The court was obligated to uphold the arbitrators' decisions unless they exceeded the specific authority granted to the arbitrator or were "completely irrational." The district might well have been right in its belief that it wasn't legally obligated to provide proof of misconduct. In a binding arbitration context, however, an employer can be totally right but still lose so long as the arbitrator acts within her authority and has any rational basis—however slim—for her decision. In such a case, the employer has no opportunity for court review of the merits of the case.

In a unionized environment, employers need to hold firm against union efforts to confer job protection to at-will employees—especially when the CBA provides for binding arbitration.

Sloan

Tilman

The authors can be reached at Renne Sloan Holtzman Sakai LLP, jsloan@rshslaw.com and etilman@rshslaw.com. ✤