

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

)	
CHARLES E. COUGHLIN, JR. and)	
STAVROULA BOURIS,)	
)	
Plaintiffs,)	
)	Civil Action No. 10-CV-10203 MLW
v.)	
)	
TOWN OF ARLINGTON, ARLINGTON)	
SCHOOL COMMITTEE, NATHAN)	
LEVENSON (individually and in his capacity)	
as Superintendent of Schools), TRACY BUCK)	
(individually and in her capacity as an)	
employee of the Town of Arlington), and)	
JEFFREY THIELMAN (individually and in)	
his capacity as a member of the Arlington)	
School Committee),)	
)	
Defendants.)	

**DEFENDANTS’ MOTION TO STAY CASE PENDING RESOLUTION
OF ONGOING ARBITRATIONS**

This case stems from the termination of the employment of teacher Charles Coughlin (“Coughlin”) and principal Stavroula Bouris (“Bouris”). Both Coughlin and Bouris are currently arbitrating their terminations pursuant to Massachusetts General Laws Ch. 71, §§ 41 and 42. The defendants now move to stay this lawsuit until those arbitrations have been completed. Staying this lawsuit will serve the interests of judicial economy and avoid the real possibility of inconsistent findings and rulings. As further grounds for this motion the defendants state as follows:

RELEVANT BACKGROUND

Bouris was the principal of Ottoson Middle School in the Arlington Public School System. Coughlin worked in the school as a technology teacher. In 2007, while acting on an anonymous complaint, the defendants discovered e-mails on the Arlington School System computers, which were inappropriate in tone and content and strongly suggested an ongoing romantic and sexual relationship between Coughlin and Bouris. The e-mails also evidenced that Bouris and Coughlin had tampered with school e-mails authored by school superintendent Nathan Levenson.¹ After an investigation, Coughlin and Bouris were both terminated.

As a teacher with professional status, Coughlin's employment was subject to the provisions of a collective bargaining agreement and G.L. c. 71, §§ 41 and 42. As principal of the Ottoson Middle School, Bouris was also subject to the provisions of G.L. c. 71, §§ 41 and 42. Per Section 41, a "principal . . . who has served in that position in the public schools of the district for three consecutive years shall not be dismissed or demoted except for good cause." Per Section 42, "[a] teacher with professional teacher status, pursuant to § 41, shall not be dismissed except for inefficiency, incompetency, incapacity, conduct unbecoming a teacher, insubordination or failure on the part of the teacher to satisfy teacher performance standards developed pursuant to § 38 of this chapter or other just cause."

Pursuant to G.L. c. 71, §§ 41 and 42, Coughlin and Bouris were entitled to contest their terminations by entering into binding arbitration under the rules established by the American Arbitration Association. Section 41 provides that a "principal . . . may seek review of a dismissal or demotion decision by filing a petition with the commissioner for arbitration. Except

¹ Coughlin and Bouris deny any inappropriate relationship and deny that they had any malicious intent when they altered an e-mail from the school system's superintendent.

as provided herein, the procedures for arbitration, and the time allowed for the arbitrator to issue a decision, shall be the same as that in section forty-two.” Section 42 states in relevant part:

Upon a finding that the dismissal was improper under the standards set forth in this section, the arbitrator may award back pay, benefits, reinstatement, and any other appropriate non-financial relief or any combination thereof. Under no circumstances shall the arbitrator award punitive, consequential, or nominal damages, or compensatory damages other than back pay, benefits or reinstatement. In the event the teacher is reinstated, the period between the dismissal and reinstatement shall be considered to be time served for purposes of employment. The arbitral decision shall be subject to judicial review as provided in chapter 150C. **With the exception of other remedies provided by statute, the remedies provided hereunder shall be the exclusive remedies available to teachers for wrongful termination.”**

(Emphasis added.) Pursuant to Sections 41 and 42, Coughlin and Bouris both pursued arbitration against the Town of Arlington, a defendant in this action.

The Coughlin arbitration lasted 27 sessions. Levenson and Buck, defendants in this action, were key witnesses during the arbitration.² After hearing the evidence, the arbitrator entered a finding for Coughlin on the grounds that the school system should not have considered information gleaned from an investigation prompted by an anonymous complaint because Arlington’s stated policy is that it will not act based upon anonymous complaints. On March 4, 2010, the Superior Court for Middlesex County (Fremont-Smith, J.) overturned the arbitrator’s decision and remanded the matter to a new arbitrator. The Court ruled that the arbitrator exceeded his authority by failing to determine whether Coughlin’s alleged misconduct warranted termination. A copy of the decision is attached hereto as Exhibit A. All of the witnesses called during the 27 sessions before the original arbitrator, including Levenson, will need to be recalled to testify before a new arbitrator.

² Levenson testified on a total of 8 days in the Coughlin arbitration.

The Bouris arbitration is ongoing. Levenson has already testified on six of the ten hearing days, and Buck (and possibly Jeffrey Thielman) are also expected to be called as witnesses.

ARGUMENT

“A court, in its sound discretion, may stay any case pending before it as an exercise of its inherent power to control its own docket.” Cannavo v. Enterprise Messaging Servs., Inc., 982 F. Supp. 54, 59 (D. Mass. 1997). This Court has “broad discretion” in determining whether a stay should be granted. See Chedester v. Town of Whatley, 279 F. Supp. 2d 53, 57 (D. Mass. 2003). Stays of federal lawsuits have been granted in situations where an arbitration is pending. See 9 U.S.C. § 3 (concerning stay of federal lawsuit where arbitration right pursuant to a written agreement); Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 21-25, 103 S.Ct. 927 (1983) (“In some cases...it may be advisable to stay litigation among the non-arbitrating parties pending the outcome of the arbitration.”); Sevinor v. Merrill, Lynch, Pierce, Fenner & Smith, Inc., 807 F.2d 16, 20 (1st Cir. 1986).

The First Circuit has emphasized that both “efficiency and judicial economy” are served by staying a federal lawsuit pending resolution of a related arbitration because of the potential preclusive effect of the arbitrator’s findings. Sevinor, 807 F.2d at 20; LaRosa v. United Parcel Service, 23 F. Supp. 2d 136, 150 (D. Mass. 1998) (“the prior submission of a claim to arbitration may result in issue preclusion in a judicial proceeding if arbitration affords the opportunity for presentation of evidence and argument substantially similar in form and scope to judicial proceedings”) (citing Miles v. Aetna Casualty & Surety Co., 412 Mass. 424, 427 (1992)). Because the arbitrator in the Coughlin and Bouris arbitrations could reach findings that have a preclusive effect on the issues in this litigation, the Court should stay this action. See Qestec, Inc. v. Krummenacker, 164 F. Supp. 2d 172, 179 (D. Mass. 2001) (staying case pending

completion of arbitration because arbitration rulings might have “preclusive effect” on case); Bowlby v. Carter Mfg. Corp., 138 F. Supp. 2d 182, 188 (D. Mass. 2001) (staying case pending completion of arbitration to promote judicial economy and because of potential preclusive effect of arbitrator’s award).

Even where there is no issue preclusion, the First Circuit has stayed federal litigation pending arbitration where the arbitrator’s award may, at a minimum, have an “evidentiary or issue-narrowing effect.” Sevinor, 807 F.2d at 20. Here, issues critical to the claims in this case, including the propriety of the school’s actions in terminating Bouris and Coughlin as well as the propriety of Bouris and Coughlin’s conduct are similarly at issue in the related arbitrations. The arbitrators’ findings and awards will directly impact this case, even if they do not have a preclusive effect. For example, if Coughlin and Bouris prevail and are awarded back pay and re-hired by the school system, much of their economic damage claims in this action will disappear. On the other hand, if the arbitrators determine that Bouris and Coughlin were properly terminated for their misconduct, that will impact the claims and defenses asserted in this case. The manner in which the arbitrations are conducted and decided will offer the parties and the Court valuable insight into whatever claims remain at the end of the arbitrations. Staying the federal lawsuit until the arbitration phase has been completed will avoid confusion and the potential for inconsistent outcomes. A stay will also promote efficiency as well as judicial economy as the parties will be able to avoid the litigation of issues that the arbitrations may render moot.

Although it does not strictly apply in this case, in assessing the strong policy considerations favoring a stay, this Court should also consider the United States Arbitration Act (also known as the Federal Arbitration Act) (“FAA”), 9 U.S.C. §1, *et seq.* The FAA embodies a

“national policy favoring arbitration of claims that parties contract to settle in that manner.” Preston v. Ferrer, 552 U.S. 346, 128 S.Ct. 978, 983 (2008) (citation and quotation marks omitted). Congress enacted the FAA in 1925 to reverse longstanding judicial hostility to arbitration agreements and to “place such agreements upon the same footing as other contracts.” Allied-Bruce Terminix Cos., Inc. v. Dobson, 513 U.S. 265, 271, 115 S.Ct. 834 (1995) (citation and internal quotation omitted). Pursuant to the FAA, where a valid written arbitration agreement exists the District Court must enforce that agreement by staying existing litigation pending arbitration by the parties. See 9 U.S.C. § 3.

For the policy reasons advanced by the FAA, the Court should stay this litigation. That the arbitration rights in this case stem from a statute rather than a written contract constitutes a distinction without a difference and should not alter this Court’s analysis. In fact, from a policy perspective, a stay in favor of arbitration would seem to be more favored where, as here, a state legislature has deemed arbitration to be so valuable and in the public interest that it created a statutory arbitration provision. It would make little sense to require that a matter be stayed in cases involving a contractual right to arbitrate but not permit a stay where, as here, the state legislature has mandated arbitration by statute.

CONCLUSION

There are strong public policy considerations which should compel this Court to exercise its broad discretion and stay this matter pending resolution of the plaintiffs’ ongoing arbitrations. Judicial economy and efficiency would be served by such action. Moreover, by staying this matter the Court would avoid the potential for confusion and inconsistent rulings. Finally, the parties will be in a better position to assess and advance their claims and defenses once the arbitrations have concluded.

Respectfully submitted,

The Arlington School Committee

By its attorneys,

/s/ Timothy O. Egan
Timothy O. Egan, BBO # 637992
PEABODY & ARNOLD LLP
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210-2261
(617) 951-2100
tegan@peabodyarnold.com

The Town of Arlington

By its attorney,

/s/ Juliana Rice
Juliana Rice, BBO # 564918
Town Counsel
Town of Arlington
50 Pleasant St.
Arlington, MA 02476
(781) 316-3150
jrice@town.arlington.ma.us

Nathan Levenson

By his attorneys,

/s/ Barry Klickstein
Barry Klickstein, BBO # 275160
Day Pitney, LLP
One International Place
Boston, MA 02110
(617) 345-4882
bklickstein@daypitney.com

Tracy Buck

Pro Se

/s/ Tracy Buck

Jeffrey Thielman

Pro Se 7

/s/ Jeffrey Thielman

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on this 18th day of March, 2010.

/s/ Timothy O. Egan

RULE 7.1 CERTIFICATION

The undersigned counsel, Timothy O. Egan, hereby certifies that he conferred with the plaintiff by conferring with opposing counsel on March 18, 2010, and that the parties were unable to resolve or narrow the issues raised in this Motion For Stay.

/s/ Timothy O. Egan