

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
JEFFERSON COUNTY

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.,

Relator,

v.

JUDGE MICHELLE G. MILLER,

Respondent.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 19 JE 0023**

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Writ of Procedendo

**BEFORE:**

Cheryl L. Waite, Gene Donofrio, David A. D'Apolito, Judges.

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**JUDGMENT:**

Dismissed.

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*Atty. Michael Piotrowski*, Fraternal Order of Police, Ohio Labor Council, Inc., General Counsel, 2721 Manchester Road, Akron, Ohio 44319 and *Atty. Joel D. Glasser*, Fraternal Order of Police, Ohio Labor Council, Inc., General Counsel, 222 East Town Street, Columbus, Ohio 43215, for Relator.

*Atty. Jane M. Hanlin*, Jefferson County Prosecutor, Jefferson County Justice Center, 16001 State Route 7, Steubenville, Ohio 43952, for Respondent.

Dated: September 25, 2020

**PER CURIAM.**

{¶1} Relator, Fraternal Order of Police, Ohio Labor Council, Inc., has filed a complaint for a writ of procedendo seeking to have this Court compel Respondent, Judge Michelle G. Miller, to rule on its cross-application to confirm an arbitrator's decision pursuant to R.C. 2711.09 (Application for order confirming the award) filed on August 7, 2017. Counsel for Respondent filed an answer stating Respondent has issued a decision on Relator's application, rendering its complaint for a writ of procedendo unnecessary and moot.

{¶2} Relator is the exclusive bargaining representative for all Police Officers, Sergeants, Captains, and Communications Officers in the City of Steubenville, Jefferson County, Ohio. A labor dispute developed between the city and Relator resulting in arbitration. Arbitration yielded a decision in favor of Relator and the city employees it represents, including monetary relief for those employees.

{¶3} Approximately two months later, the city filed a petition for an order to vacate and/or modify the arbitration decision in Jefferson County Common Pleas Court (case no. 2017CV00226). On August 7, 2017, Relator filed an answer to the city's petition contemporaneously with a cross-application seeking to confirm the arbitration decision. The city and Relator then each filed replies, respectively.

{¶4} According to counsel for Relator, they communicated with Respondent's office on at least three occasions in an attempt to obtain a date when a decision might be forthcoming. Apparently unsuccessful in that regard, Relator filed the present complaint for a writ of procedendo.

{¶5} “A writ of procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.” *State ex rel. Weiss v. Hoover*, 84 Ohio St.3d 530, 532, 705 N.E.2d 1227 (1999). “To be entitled to a writ of procedendo, a relator must establish (1) a clear legal right to require the respondent to proceed, (2) a clear legal duty on the part of the respondent to proceed, and (3) the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. Williams v. Croce*, 153 Ohio St.3d 348, 2018-Ohio-2703, 106 N.E.3d 55 ¶ 6. “The writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. It does not in any case attempt to control the inferior court as to what that judgment should be.” *State ex rel. Davey v. Owen*, 133 Ohio St. 96, 106, 12 N.E.2d 144 (1937).

{¶6} In this instance, Jefferson County Clerk of Courts’ online docket for the underlying case (case no. 2017CV00226) reflects Respondent issued a decision on Relator’s August 7, 2017 cross-application to confirm the arbitrator’s decision on March 13, 2020. The entry in the online docket also contains a link that displays Respondent’s file-stamped, three-page decision affirming the arbitrator’s decision and ordering the city to immediately effectuate the arbitrator’s award. The city appealed Respondent’s March 13, 2020 decision to this Court in appellate case no. 20JE0009. The city later voluntarily dismissed the appeal.

{¶7} In conclusion, Respondent’s March 13, 2020 decision ruling on Relator’s August 7, 2017 cross-application to confirm the arbitrator’s decision renders this original action in procedendo moot. *State ex rel. Howard v. Skow*, 102 Ohio St.3d 423, 811 N.E.2d 1128, 2004-Ohio-3652, ¶ 9 (explaining that the court reviewing a request for a writ

can consider the trial court's acts after the petition is filed); *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info. Network, Inc. v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163, ¶ 8 (“An event that causes a case to become moot may be proved by extrinsic evidence outside the record.”); *State ex rel. Grove v. Nadel*, 84 Ohio St.3d 252, 253, 703 N.E.2d 304 (1998) (“Neither procedendo nor mandamus will compel the performance of a duty that has already been performed.”); *State ex rel. Howard v. Belmont County Common Pleas Court*, 7th Dist. No. 09BE22, 2009-Ohio-6811, ¶ 7. Consequently, Relator's original action for a writ of procedendo is hereby dismissed as moot.

{¶8} Costs taxed against Relator. Final order. Clerk to serve copies of this decision and judgment entry pursuant to the civil rules.

**JUDGE CHERYL L. WAITE**

**JUDGE GENE DONOFRIO**

**JUDGE DAVID A. D'APOLITO**

