IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Municipal Employees Organization of Penn Hills	:	
v.	:	No. 538 C.D. 2011
Municipality of Penn Hills, Appellant	:	Argued: November 14, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: December 22, 2011

The Municipality of Penn Hills (Municipality) appeals the order of the Court of Common Pleas of Allegheny County (trial court) terminating as premature the Municipal Employees Organization of Penn Hills' (Union) statutory appeal of a grievance arbitration award issued by an Arbitrator pursuant to a collective bargaining agreement (CBA) entered into by the Municipality and the Union under the Public Employe Relations Act (PERA),[1] and remanding the matter to the Arbitrator for further proceedings in accordance with the award. We quash the instant appeal.

[1] Act of July 23, 1970, P.L. 563, as amended, 43 P.S. §§ 1101.101 – 1101.2301.

This grievance arbitration arose out of a grievance filed by two code enforcement officers (Employees) employed by the Municipality. The Employees were notified by the Municipality that they had to provide a deed, a property tax assessment, or a utility bill to substantiate residency in the Municipality or their employment would be terminated.[2]

The Union filed a grievance and asserted that the Municipality had violated the parties' CBA because (1) the demanded documents were not the exclusive indications of whether a person "lived" in the community; (2) the Employees were in compliance with the requirement that they "live" in the Municipality; (3) the Municipality waived its right to enforce the residency requirement; (4) the Municipality acted in a discriminatory fashion by enforcing the residential requirement only against Union Employees; and (5) the issuance of the notice letters was arbitrary and capricious. A hearing was held before the Arbitrator.

Employee #1 testified that she had lived in the Municipality for the entire 34 years that she had been employed by it. She currently rents a room on Opal Drive in the Municipality from a longtime family friend. She does not own the property, so she could not comply with the Municipality's request that she provide a deed or property tax statement in her name. Also, she does not pay the utilities so she could not provide a copy of a utility bill in her name. She testified

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[2] Article 19, Section 8 of the CBA stated:

> All employees must live in the Municipality. In the event an employee is hired who lives outside the Municipality, he/she must, within one (1) year, move into the Municipality. Failure to comply with this Section can result in an employee being discharged.

Reproduced Record (RR) at 161a.

that she did provide: (1) her voter registration; (2) driver's license; (3) car registration; and (4) local, federal and state income tax returns, all of which showed her address as Opal Drive. She testified that the Municipality's manager deemed those documents to be inadequate. RR at 177a-179a.

Employee #2 testified that he rents a room at a dwelling located on Claymont Drive in the Municipality. He submitted his voter registration, driver's license, local and federal income tax returns. The Municipality's Manager told him these documents were inadequate and demanded that he provide a deed, property tax assessment or utility bill. Employee #2 was unable to provide those documents because he does not own property in the Municipality and he does not pay a utility bill. RR at 179a-180a.

On August 9, 2010, the Arbitrator issued her award. In the award, she noted, inter alia, that the Municipality's Manager testified that the enforcement of the residency requirement was part of an ongoing process, and that he planned on addressing those situations where the rigid criteria in the notice could not be complied with. As a result, she concluded the Employees should be given more time to comply with the current requirements for non-property owners and to avail themselves of the Manager's ongoing process of developing alternate standards for those who cannot comply with the current rigid criteria. RR at 201a-203a.

Accordingly, the Arbitrator issued an award denying in part, and sustaining in part, the grievance. Specifically, the award: (1) denied the grievance that the Municipality discriminated against the Employees because of their activities with the Union; (2) denied the grievance that the Municipality acted in a discriminatory fashion by enforcing the residential requirement only against Union Employees; (3) denied the grievance that the Municipality violated the "just cause"

provisions of the CBA by sending out the notice to the Employee's to substantiate their residency in the Municipality or their employment would be terminated; and (4) granted the Employees an additional period of 90 days to work toward compliance with the residency requirements applicable to non-property owners in the Municipality. RR at 204a.

The Union then filed its statutory appeal in the trial court. The trial court issued the instant order which stated the following, in pertinent part:

> AND NOW, TO-WIT, THIS 2nd DAY OF March, 2011, it is hereby ordered that the appeal is terminated as premature and the matter is returned to the arbitrator for further proceedings in accordance with her award.

Trial Court Order. The Municipality filed this appeal of the trial court's order.[3,4]

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[3] In the opinion filed in support of its order, the trial court stated the following:

> [The Municipality] has appealed from the Order of Court entered in this matter on March 2, 2011, terminating the statutory appeal as premature and remanding the matter to the arbitrator for further proceedings in accordance with the arbitrator's award. [The Municipality] has filed a statement of issues on appeal, contending that this member of the Court erred when it returned the case to the arbitrator. That Order, however, is an interlocutory order that should not be the subject of an appeal. The Order does not finally terminate this matter; rather, the Order simply remands the matter to the arbitrator for further proceedings in accordance with the terms of her award. The appeal by [the Municipality] appears to be unwarranted. Should either party be aggrieved by further proceedings before the arbitrator, they would of course have the right to appeal at that time. The instant appeal is simply terminated as being premature, and not on its facts, as it appears that further proceedings before the arbitrator are appropriate, given the award entered in this matter.

Trial Court Opinion.

[4] By per curiam order dated April 11, 2011, this Court directed that the parties shall address in their principal briefs on the merits the appealability of the trial court's order under

(Continued....)

In this appeal, the Municipality claims: (1) the trial court's order is an appealable order; (2) the trial court erred when it returned the case to the arbitrator as it is inconsistent with the trial court's authority under the functus officio doctrine and the Uniform Arbitration Act, 42 Pa.C.S. §§ 7301 – 7320; and (3) the trial court erred in failing to affirm the Arbitrator's award as it met the "essence test".

The Municipality first claims that the trial court's order is an appealable order. More specifically, the Municipality asserts that the trial court's order is a "final order" under Pa.R.A.P. 341(b)(1). We do not agree.

Pa.R.A.P. 341(a) provides, in pertinent part, that "[a]n appeal may be taken as of right from any final order of … [a] lower court." In turn, Pa.R.A.P. 341(b)(1) provides that "[a] final order is any order that … disposes of all claims and of all parties."

In Central Dauphin School District v. Central Dauphin Education Association, 739 A.2d 1164, 1165 (Pa. Cmwlth. 1999), the union filed a grievance regarding the pay rate under a CBA that the employer was required to pay the union members for work performed after regular school hours. The arbitrator issued an award in which he: (1) determined that the CBA did not contain a provision addressing the issue grieved; (2) determined that the employer's decision to pay the union members at a unilateral compensation schedule for after-hours work did not violate the CBA; (3) determined that there was no past practice between the parties regarding this issue; (4) directed the parties to negotiate to determine an agreeable compensation rate for after-hours work; and (5) directed

Pa.R.A.P. 311(f)(2), 341 or otherwise.

that he would fill in the gap in the CBA by determining the reasonable pay rate for after-hours work if the parties could not reach a negotiated settlement on this issue within a reasonable amount of time. Central Dauphin School District, 739 A.2d at 1166.

The employer filed a petition to modify or correct the arbitration award in the trial court, and the trial court issued an order: (1) denying the petition; (2) ordering the parties to comply with the award directing them to negotiate a rate of pay for after-hours work; and (3) directing that the parties have 60 days to comply or the matter would be resubmitted to the arbitrator to determine the rate of after-hours pay. Id. The employer then appealed the trial court's order to this Court. Id.

On appeal, this Court determined that the trial court's order was interlocutory and not a final order from which an appeal could be taken under Rule 341(b)(1). Id. More specifically, we noted:

> The trial court's order is clearly not final since it directs the parties to negotiate an additional CBA term and contains a conditional remand to the Arbitrator should the parties fail to reach agreement within 60 days. Because the trial court's order did not dispose of all claims and all parties, the order at issue is interlocutory and not appealable.

Id., 739 A.2d at 1167.[5] Accordingly, this Court issued an order quashing the appeal as we were void of jurisdiction to consider the underlying merits of the

[5] Alternatively, this Court determined that the employer could not appeal the interlocutory order as of right under Pa.R.A.P. 311(f) which permits such an appeal of an order remanding to an administrative agency or a hearing officer provided that the remand order does not direct an action requiring the exercise of administrative discretion. See id. However, the Municipality concedes that it cannot appeal the trial court's order in this case under Pa.R.A.P. 311(f). See Brief of Appellant at 12 n. 5.

case. Id. See also Caron v. Reliance Insurance Co., 703 A.2d 63, 66 (Pa. Super. 1997), petition for allowance of appeal denied, 556 Pa. 669, 727 A.2d 126 (1998) ("[A]lthough 42 Pa.C.S. § 7320[6] allows an appeal from a court order vacating an arbitration award that does not direct a rehearing, this Court [has] held that by implication this section means that an appeal cannot be taken where the trial court vacates the arbitration award and does remand the matter to the arbitrators for a rehearing. Thus, the trial court's order … being interlocutory, was not appealable until the arbitrators' award that followed on remand itself became a final order….") (citation and footnote omitted).

Likewise, the trial court's order in this case is not a final appealable order under Pa.R.A.P. 341(b)(1). The trial court's order does not dispose of any issue on the merits; it simply remands the matter for further proceedings before the Arbitrator in light of the language of the award. Based on the award, the Arbitrator still needs to determine whether the Employees complied with the current

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[6] Section 7320 of the Uniform Arbitration Act provides, in pertinent part:

> **(a) General rule.—**An appeal may be taken from:
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> * * *
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> (3) A court order confirming or denying confirmation of an award.
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> (4) A court order modifying or correcting an award.
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> (5) A court order vacating an award without directing a rehearing.
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> * * *
>
> **(b) Procedure.—**The appeal shall be taken in the manner, within the time and to the same extent as an appeal from a final order of court in a civil action.

42 Pa.C.S. § 7320(a)(3)-(5), (b).

residency requirements after the expiration of the additional time that was granted, and to determine whether the Employees complied with the new criteria for non-property owners that were being developed by the Municipality's Manager. See RR at 201a-204a. As a result, the trial court's order remanding the case to the Arbitrator is interlocutory and the instant appeal must be quashed as we are void of jurisdiction to consider the underlying merits of the case. Central Dauphin School District.

Accordingly, the appeal is quashed.[7]

JAMES R. KELLEY, Senior Judge

[7] As we are without jurisdiction to consider the merits of this case, we will not address the other claims raised by the Municipality in this appeal.

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v.	:	No. 538 C.D. 2011
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O R D E R

AND NOW, this 22nd day of December, 2011, the above-captioned appeal is QUASHED.

JAMES R. KELLEY, Senior Judge