[Cite as *Johnson v. Ohio Patrolman's Benevolent Assn.*, 2003-Ohio-4597.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

WILLIAM R. JOHNSON,	:	**O P I N I O N**
Petitioner-Appellant,	:	**CASE NO. 2002-A-0017**
- vs -	:	
OHIO PATROLMAN'S BENEVOLENT ASSOCIATION,	:	
Respondent-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2001 CV 383.

Judgment: Affirmed.

Thomas L. Sartini, Ashtabula County Prosecutor and *John N. Zomoida, Jr.,* Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH, 44047 (For Petitioner-Appellant).

Colleen M. Bonk, The Halle Building, 1228 Euclid Avenue, Cleveland, OH, 44115 (For Respondent-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} This is an accelerated appeal of the judgment of the Ashtabula County Common Pleas Court, which granted summary judgment in favor of respondent-appellee, Ohio Patrolmen's Benevolent Association[1] ("OPBA"). We affirm.

{¶2} In February, 2000, petitioner-appellant, William Johnson, the Sheriff of Ashtabula County, issued interoffice memos to some employees concerning abuse of sick time leave. These memos detailed the amount of sick time used by the employees and deemed to be excessive by Sheriff Johnson. The memo also explained the reason for the need to curb excessive sick time and required these employees to present a "doctor's excuse" for any use of sick time.

{¶3} On March 2, 2000, OPBA instituted a class action grievance against Sheriff Johnson on behalf of its employee-members. The grievance asserted that Sheriff Johnson's actions violated the collective bargaining agreement ("CBA") between OPBA and Sheriff Johnson because Sheriff Johnson's actions constituted disciplinary action without just cause. The grievance was submitted to arbitration under the CBA.

{¶4} The arbitrator determined that the memos constituted discipline without a just cause finding and with disregard for the grievance process. He ordered Sheriff Johnson to rescind the memos and notify the recipients that the memos were rescinded.

{¶5} OPBA moved the trial court for an order confirming the arbitration award and Sheriff Johnson sought to have the award vacated. Both parties moved for

1. The trial court's judgment entry incorrectly lists respondent's name as Ohio Patrolman's Benevolent Association.

summary judgment. The trial court granted summary judgment in favor of OPBA and affirmed the arbitrator's decision. Sheriff Johnson appeals asserting that:

{¶6} "The trial court erred in granting appellee's motion for summary judgment and in denying appellant's motion for summary judgment."

{¶7} In his assignment of error Sheriff Johnson argues that the arbitrator's award does not draw its essence from the express language of the CBA, and therefore, should be vacated.

{¶8} R.C. 2711.10 provides in relevant part:

{¶9} "In any of the following cases, the court of common pleas shall make an order vacating the award upon the application of any party to the arbitration if:

{¶10} "* * *

{¶11} "* * *

{¶12} "* * *

{¶13} "(D) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made."

{¶14} Our ability to review an arbitrator's decision is limited. *Bd. of Educ. of the Findlay City School Dist. v. Findlay Educ. Assn.* (1990), 49 Ohio St.3d 129 at paragraph one of the syllabus, superseded by statute on other grounds, (1991), 61 Ohio St.3d 658. We presume the arbitrator's award is valid and are left to determine only whether there are valid claims of fraud, corruption, misconduct, or an imperfect award, and whether the arbitrator exceeded his authority. *Goodyear Tire & Rubber Co.*

v. Local Union No. 200, United Rubber, Cork, Linoleum and Plastic Worker's of America (1975), 42 Ohio St.2d 516 at paragraph one of the syllabus. The arbitrator is the final judge of both law and facts. *Goodyear*, supra at 522. We may not substitute our judgment for that of the arbitrator. *Stehli v. Custom Homes, Inc.* (2001), 144 Ohio App.3d 679, 681.

{¶15} In the instant case, Sheriff Johnson claims only that the arbitrator exceeded his authority when he determined that the memo constituted discipline. An arbitrator exceeds his authority when his award fails to draw its essence from the CBA. *Southwest Ohio Regional Transit Auth. v. Amalgamated Transit Union, Local 627* (1998), 131 Ohio App.3d 751, 760. The Ohio Supreme Court has held:

{¶16} "An arbitration award draws its essence from a collective bargaining agreement when there is a rational nexus between the agreement and the award, and where the award is not arbitrary, capricious or unlawful." *Mahoning Cty. Bd. of Mental Retardation and Developmental Disabilities v. Mahoning Cty. TMR Educ. Assn.* (1986), 22 Ohio St.3d 80 at paragraph one of the syllabus. Conversely, "an arbitration award departs from the essence of a collective bargaining agreement when: (1) the award conflicts with the express terms of the agreement, and/or (2) the award is without rational support or cannot be rationally derived from the terms of the agreement. *Ohio Office of Collective Bargaining v. Ohio Civil Service Employees Assn., Local 11, AFSCME, AFL-CIO* (1991), 59 Ohio St.3d 177 at syllabus. See, also, *Bd. of Educ. of the Findlay City School Dist.,* supra at paragraph two of the syllabus.

{¶17} Finally, we are mindful that:

{¶18} "Were the arbitrator's decision * * * subject to reversal because a reviewing court disagreed with findings of fact or with an interpretation of the contract, arbitration would become only an added proceeding and expense prior to final judicial determination. This would defeat the bargain made by the parties and would defeat as well the strong public policy favoring private settlement of grievance disputes arising from collective bargaining agreements."

{¶19} *Goodyear,* supra at 520.

{¶20} In the instant case the arbitrator interpreted three sections of the CBA. Article 9, Section 1, provided in relevant part, "No employee shall be reduced in pay or position, suspended or removed except for just cause. Further, no form of disciplinary action will be taken against any employee except for just cause." Article 9, Section 6, stated, "Records of disciplinary action shall cease to have force and effect or be considered in future discipline matters under the following time frames:

{¶21} "Oral and written reprimands 6 months * * *."

{¶22} Article 25, Section 9, provided:

{¶23} "Physician Statement: The employee shall be required to furnish a statement from a licensed physician or psychologist notifying the Employer that the employee was unable to perform the employee's duties for absences of three (3) or more consecutive work days due to illness. Whenever the Employer finds abuse of the use of sick leave, he may require proof of illness in the form of a physician statement of disability or other proof satisfactory to the Employer to approve the use of sick leave."

{¶24} Sheriff Johnson argues that Article 25, Section 9, grants him unilateral authority to determine who has abused their sick leave and to require a physician's statement for use of even one day of sick time. Thus, Sheriff Johnson contends that the memos did not constitute disciplinary action and neither Article 9, Section 1, nor Article 9, Section 6, were relevant.

{¶25} The arbitrator's decision stated:

{¶26} "The memo constitutes discipline. In the memo, the Sheriff has made a determination that the sick leave taken was excessive or an abuse of such leave and imposed a requirement of presenting a doctor's note in order to justify a further sick leave. The failure to present such a note would be considered disobedience of an order from a superior. * * *

{¶27} "An oral or written reprimand is considered discipline in labor/management relations. Therefore, a written determination of an abuse of sick leave constituted discipline.

{¶28} "The Sheriff has made a determination that the particular employee receiving the memo had abused the sick leave policy of the Employer and the Contract. Had the memo simply been a warning, no additional consequences would have been imposed. The additional consequence, coupled with the written finding of abuse, is discipline."

{¶29} The arbitrator concluded that this discipline violated the CBA because it eliminated the employee's ability to challenge the finding of abuse of sick leave.

{¶30} Sheriff Johnson would have had the arbitrator consider only Article 25, Section 9, and arguably, had he done so, Sheriff Johnson would have prevailed. However, the arbitrator properly considered the CBA as a whole. In reaching his decision, the arbitrator did not add to, subtract from, or alter the meaning of the terms of the contract. He interpreted the language presented. Therefore, we cannot say that he exceeded his authority because his decision draws its essence from the terms of the contract. *City of Hillsboro v. Fraternal Order of Police, Ohio Labor Council, Inc.* (1990), 52 Ohio St.3d 174, 177. Appellant's assignment of error is without merit and the judgment of the Ashtabula County Common Pleas Court is affirmed.

WILLIAM M. O'NEILL, J., concurs,

DIANE V. GRENDELL, J., dissents with a Dissenting Opinion.

DIANE V. GRENDELL, J., dissents with Dissenting Opinion.

{¶31} While I understand the important function arbitration serves in the resolution of contractual disputes, I must respectfully dissent from the majority's decision to affirm the arbitrator's award in this case.

{¶32} Aside from claims of fraud, corruption, misconduct or an imperfect award, this court may only reverse an arbitrator's award if the arbitrator exceeded his authority. *Goodyear Tire & Rubber Co. v. Local Union No. 200, United Rubber, Cork, Linoleum*

and Plastic Worker's of America (1975), 42 Ohio St.2d 516, paragraph two of the syllabus. An arbitrator is deemed to have exceeded his authority when his award fails to draw its essence from the collective bargaining agreement. *Southwest Ohio Regional Transit Auth. v. Amalgamated Transit Union, Local 627* (1998), 131 Ohio App.3d 751, 760.

{¶33} In this case, appellant argues that under Article 25, Section 9 of the collective bargaining agreement, appellant was entitled to issue a memo to several employees noting an abuse of sick leave. Appellant predicates this argument on the plain language in that section that provides appellant with the unilateral right to require a physician statement when he, in his discretion, finds abuse of sick leave. Despite the clear language in the agreement, the arbitrator ruled that appellant's memo constituted discipline, which violated the agreement because it eliminated the employee's ability to challenge the finding of abuse of sick leave. The majority concludes that the arbitrator "did not add to, subtract from, or alter the meaning of the terms of the contract", and as a result, the award draws its essence from the agreement. It is on this point that I part ways with the majority in this case.

{¶34} Under Article 25, Section 9 of the collective bargaining agreement, an employee who is absent for three (3) or more consecutive days is required to provide a physician statement to appellant. Additionally, Article 25, Section 9 of the collective bargaining agreement clearly states: "Whenever the Employer [appellant] finds abuse of the use of sick leave, he may require proof of illness in the form of a physician statement of disability or other proof satisfactory to the Employer to approve the use of

such leave." In this case, appellant conducted extensive research into the use of sick leave by his employees and determined that, in some cases, sick leave was being abused. Upon determining that sick leave was being abused, and in conjunction with Article 25, Section 9 of the agreement, appellant required that those employees submit a doctor's note in order to justify further sick leave.

{¶35} There is no language in the agreement that elaborates on how appellant is to go about finding abuses of sick leave. However, the language in the agreement is clear that once appellant has determined that an abuse has taken place, appellant is entitled to request a doctor's note to support the use of sick leave. Since sick leaves of three (3) days or more automatically require a physician statement, appellant's additional power must apply to sick leave of 1 or 2 days or patterns involving 1 or 2 days sick leave.

{¶36} An arbitrator "is confined to the interpretation and application of the collective bargaining agreement, and although he may construe ambiguous contract language, he is without authority to disregard or modify plain and unambiguous provisions." *Ohio Office of Collective Bargaining v. Ohio Civil Service Employees Assoc.* (1991), 59 Ohio St.3d 177, 180, quoting *Detroit Coil Co. v. Internatl. Assn. of Machinists & Aerospace Workers, Lodge No. 82* (C.A. 6 1979), 594 F.2d 575, 579. Also, the United States Supreme Court has cautioned, "an arbitrator is confined to interpretation and application of the collective bargaining agreement; *** When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to

refuse enforcement of the award." *United Steelworkers of America v. Enterprise Wheel & Car Corp.* (1960), 363 U.S. 593, 597.

{¶37} In issuing his decision, the arbitrator stated that appellant's memo deprived appellees of the opportunity to challenge the finding of abuse of sick leave. In reality, for whatever reason, appellees chose to file a grievance on the memo itself, completely failing to challenge appellant's findings. That issue notwithstanding, Article 10 of the collective bargaining agreement clearly gives appellees the right to challenge appellant's findings through the grievance procedure. For the arbitrator to say appellant's memo deprived appellees of their right to challenge appellant's findings under the agreement is completely irrational and illogical.

{¶38} The arbitrator's award in this case openly conflicts with the express terms of Article 25 of the collective bargaining agreement and is not rationally derived from the terms of that agreement. In fact, the arbitrator's decision expressly denies appellant any type of effective remedy with which to counter the abuse of sick leave expressly granted to appellant by Article 25, Section 9 of the collective bargaining agreement. The arbitrator exceeded his authority when he completely ignored the express language contained in Article 25, Section 9 of the collective bargaining agreement. Essentially, the arbitrator unilaterally wrote a portion of Article 25, Section 9 out of the agreement.

{¶39} As a result, I would reverse the decision of the trial court in this matter, vacate the arbitrator's award, and enter judgment for appellant.