[Cite as *Leon v. Boardman Twp.*, 2002-Ohio-5371.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

ANDRE LEON,	)	
	)	CASE NO. 01 CA 235
PLAINTIFF-APPELLANT,	)	
	)	
- VS -	)	O P I N I O N
	)	
BOARDMAN TOWNSHIP,	)	
	)	
DEFENDANT-APPELLEE.	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court, Case No. 01CV92.

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellant:
Attorney R. Brian Moriarty
Attorney Patrick D'Angelo
2000 Standard Building
1370 Ontario Street
Cleveland, Ohio 44113

For Defendant-Appellee:
Attorney James Messenger
Attorney Scott Essad
34 Federal Plaza West, Suite 600
Youngstown, Ohio 44503

JUDGES:
Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: September 30, 2002

VUKOVICH, P.J.

{¶1} Plaintiff-appellant Andre Leon (Leon) appeals the decision of the Mahoning County Common Pleas Court denying his motion to vacate an arbitration award. The issue presented in this appeal is whether an individual employee has standing to pursue a motion to vacate a decision resulting from union-employer arbitration when the subject matter of the arbitration was the employee. For the reasons stated below, the trial court's decision is hereby affirmed.

FACTS

{¶2} Leon was hired by defendant-appellee Boardman Township (BT), as a police officer. The job had a residency requirement that the officer must live in Boardman Township. Leon failed to relocate to Boardman Township. On March 22, 2000, Leon was charged with various violations of the Ohio Revised Code, Boardman Township Police Department Civil Service Rules and Regulations, and Boardman Township Police Department Rules and Regulations. On April 18, 2000, a hearing officer concluded that Leon had violated the residency requirements. Leon was discharged without prior notice.

{¶3} As a result of the discharge, Leon requested arbitration pursuant to the collective bargaining agreement, Article 24, Section 8, Employee Discipline. Ohio Patrolman's Benevolent Association (OPBA), the union, was a party to the arbitration. The arbitrator issued an opinion sustaining the grievance, but did not award back pay. At a later date, the arbitrator clarified the order, giving Leon 60 days to move his family to Boardman Township. After the clarification, Leon requested that OPBA represent him in an action to obtain the 11 months of back pay. OPBA denied this request and refused to cover any of his legal expenses in pursuing that matter.

{¶4} Leon filed a motion to vacate the arbitration award. In response, BT filed a motion to dismiss the application to vacate the arbitration award and an application to confirm the arbitration award. The trial court granted the motion to dismiss on July 10, 2001,stating that Leon lacked standing to move to vacate the arbitration award

and, furthermore, the union did not breach its duty of fair representation. At that time, the court did not rule on the motion to confirm. Leon then filed a motion to reconsider, which was denied. In September 2001, Leon filed a motion to stay judgment on the application to confirm. In November 2001, BT withdrew the application to confirm. On December 4, 2001, the trial court overruled Leon's motion to stay judgment on the application to confirm.

{¶5} On December 20, 2001, Leon filed notice of appeal from the July 10, 2001 decision that he had no standing to vacate the arbitration award. BT moved to dismiss the appeal because it was allegedly untimely. However, we ruled that the July 10, 2001 order was not a final appealable order until the trial court disposed of the application to confirm. Therefore, this court denied the motion to dismiss.

ASSIGNMENT OF ERROR

{¶6} "SINCE APPELLANT IS A REAL PARTY IN INTEREST TO THE PREVIOUS ARBITRATION PROCEEDING PURSUANT TO R.C. 2711 ET SEQ, THE TRIAL COURT ERRED IN REFUSING TO HEAR THE MERITS OF APPELLANT'S MOTION TO VACATE."

{¶7} Leon insists that the trial court misinterprets R.C. 2711.10. Leon contends that he has standing to request vacation of the arbitration award. Furthermore, he claims it would be against public policy to deny the employee the right to vacate the arbitration award when it is the employee's interest being litigated. BT argues that an employee is not the real party in interest and, therefore, Leon lacks standing to move to vacate the arbitration award.

{¶8} R.C. 2711.10(D) provides grounds upon which a party may move to vacate an arbitration award. R.C. 2711.10(D) states:

{¶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} "(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." R.C. 2711.10(D) (emphasis added).

{¶12} Therefore, only parties to the arbitration have standing to move for vacation of an arbitration award. R.C. 2711.10. The pertinent issue in this case is whether under R.C. 2711.10, Leon is a "party to the arbitration." However, we do not have the benefit of a statutory definition as R.C. 2711.10 does not define "party."

{¶13} Moreover, we note that the determination of whether an employee is a party to a union-employer arbitration proceeding under R.C. 2711.10 is an issue of first impression in the Seventh District Court of Appeals. We also note that our sister appellate districts have not all reached the same conclusion in deciding this issue. The Tenth District Court of Appeals has held that an individual employee is a party to the arbitration proceeding. *Barksdale v. Ohio Dept. of Adm. Serv.* (1992), 78 Ohio App.3d 325. The Tenth Appellate District's conclusion is based upon the reasoning that although an employee is not technically a party, the employee is often the real party in interest with respect to the results of the proceeding. Id; *OCSEA/AFSCME v. State Dept. of Rehab. & Corr.* (June 29, 1993), 10th Dist. No. 93AP-179.

{¶14} However, at least four other appellate districts have held that an individual employee does not have standing to move to vacate an arbitration award. See, e.g. *Morrison v. Summit Cty. Sheriff's Dept.* (June 20, 2001), 9th Dist. No. 20313; *Stafford v. Greater Cleveland Regional Transit. Auth.* (Dec. 23, 1993), 8th Dist. Nos. 63663, 65530; *Art v. Newcomerstown Bd. of Edn.* (Jan. 11, 1993), 5th Dist. No.

92AP050038; *Wilson v. Toledo Bd. of Edn.* (Oct. 17, 1986), 6th Dist. No. L-85-425. These districts reason that while the employee has an interest in the arbitration proceeding, it is the employee that asked for the union's help and in doing so the employee called upon the collective power of his or her fellow members and ceased to stand alone. *Stafford,* supra, citing *Hines v. Anchor Motor Freight, Inc.* (1976), 424 U.S. 554, 564. According to these districts, the subordination of the complainant's individual interest is justified in order to benefit the collective good of a greater body. *Johnson v. Metro Health Med. Ctr.* (Dec. 20, 2001), 8th Dist. No. 79403 (factually similar to the case at hand, in that Johnson was wrongfully terminated but was not awarded backpay).

{¶15} Among the courts that have found it is the union and not the employee who is the "party" in arbitration proceedings, the language of the collective bargaining agreement is the top consideration. *Wilson,* 6th Dist. No. L-85-425; *Stafford,* 8th Dist. Nos. 63660, 65530 (looking also at the arbitration committee's report to see whether the employee is listed as a party); *Morrison,* 9th Dist. No. 20313. The language of the collective bargaining agreement determines who controls the grievance process and, therefore, who is a party to the proceedings. *Morrison,* supra; *Geneva Patrolman's Assn. v. Geneva* (1984), 16 Ohio App.3d 320 (The court decided that the union was not a party to an employee-employer arbitration since the collective bargaining agreement required the grievant to initiate the proceeding, and the employee was listed as the grievant. The language of *Geneva's* collective bargaining agreement is similar to the language in the Grievance and Arbitration section in the collective bargaining agreement at hand, but is distinguishable from the Employee Discipline section, which are discussed infra at length.)

{¶16} Accordingly, we hold that the language of the collective bargaining agreement determines whether the employee controls the arbitration proceeding. Absent language in the collective bargaining agreement allowing the employee to have control over the arbitration proceedings, an employee has no standing and the union is the exclusive representative. Without language to the contrary, the employee is not a "party" to the arbitration proceedings as contemplated by R.C. 2711.10. According to this holding, we can now determine whether the collective bargaining agreement at hand contains language allowing Leon to control the proceedings.

{¶17} In the case at hand the arbitration proceeding was initiated under Article 24, Section 8, Employee Discipline. This section reads as follows:

{¶18} "An employee who feels that he or she has been disciplined without just cause shall have the option to either appeal the discipline to the Boardman Township Civil Service Commission or to an impartial third party who shall be selected by mutual agreement of the Union and the Township." Collective Bargaining Agreement, Article 24, Section 8, Employee Discipline.

{¶19} The language in the policy at hand is more closely analogous to the language in the collective bargaining agreement in *Wilson.* In *Wilson,* the Sixth District stated that it had reviewed the collective bargaining agreement and acknowledged that *Wilson* had the right to elect arbitration, but the union controlled the process after the election of arbitration. *Wilson,* 6th Dist. No. L-85-425. In the case sub judice, the employee has the right to determine whether to appeal to the Boardman Township Civil Service Commission or to an impartial third party. However, once the employee chooses the impartial third party, the employee loses control over the proceedings. This is evidenced by the language in the Employee Discipline section which reads that the impartial third party is selected by the Union and the Township.

Collective Bargaining Agreement, Article 24, Section 8, Employee Discipline. This language does not include any reference to the employee. Therefore, the employee has no authority to provide input on who the impartial third party will be. It can be concluded that the Union in this situation is acting on behalf of the employee.

{¶20} Additional evidence that the employee has limited control over the arbitration proceeding is the difference between the language used in Article 24, entitled Employee Discipline and that used in Article 21, entitled Grievance and Arbitration Procedure. In Article 21, Grievance and Arbitration Procedure, the employee appears to have some control over the grievance process. The employee has the ability to withdraw the grievance from arbitration proceedings thereby ending arbitration, and the employee appears to have the opportunity to provide input on who will be arbitrator. Article 21, Sections 4-6. Also, in this section, it is a mandatory requirement that the employee attend the proceedings. Article 21, Sections 4-6. Article 24 contains no language similar to Article 21. Therefore, if the collective bargaining agreement was intended to grant the employee control over the arbitration process in the Employee Discipline section, the agreement could have either included the provisions under Article 21 or referenced Article 21 as a guide for the arbitration process under Article 24.

{¶21} Leon additionally argues that his case is distinguishable from the line of cases holding that an employee is not a party to the arbitration proceedings. He insists that the problem was individual to him and was not a situation, such as a wage dispute, that affects a large number of employees or all employees. We find no merit with this argument. The residency requirement applies to all Boardman officers, not just Leon. As such, Leon's argument fails.

{¶22} Accordingly, we hold that Leon was not a party to the arbitration hearing. The language in the collective bargaining agreement concerning employee discipline allowed Leon to determine whether to appeal the Commission's ruling to a third party arbitrator or to the Boardman Township Civil Service Commission; however Leon's control ended there. We conclude with a quote from the Eighth Appellate District:

{¶23} "The United States Supreme Court has said that the collective bargaining system subordinates the interest of the individual employee to the collective interests of all employees in the bargaining unit. *Hines [v. Anchor Motor Freight, Inc.* (1976), 424 U.S. 554,] 564. * * * The success of the collective bargaining process depends upon the exclusivity of the union's right to represent all employees within its bargaining unit. *United Transp. Union, Local 74 v. Consolidated Rail Corp.* (1989), 494 U.S. 1051. The establishment of the union as representative necessarily deprives individual employees of the ability to bargain individually. Id." *Stafford,* supra.

{¶24} For the foregoing reasons, Leon lacked standing to move for vacation of the arbitration award. The trial court's judgment is hereby affirmed.

Donofrio, J., concurs.
Waite, J., concurs.