IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Scranton, Scranton School District and Single Tax Office, Appellants	:	
v.	:	
IAM Local 2462	:	No. 1835 C.D. 2007 Submitted: February 22, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY SENIOR JUDGE COLINS **FILED: April 15, 2008**

The City of Scranton, the School District of the City of Scranton and the Scranton Single Tax Office (City) appeal an order of the Court of Common Pleas of Lackawana County that quashed Scranton's petition to vacate and/or modify an order of a grievance arbitrator that held that the City did not have just cause to discharge Dawn Lloyd and ordered the City to reinstate her to her employment in the City's Single Tax Office.

The sole issue the City raises in its appeal is whether the trial court abused its discretion in granting the Union's motion to quash the petition to vacate without conducting an evidentiary hearing.[1] In its motion to quash, the Union asserted that Arbitrator James P. Begin issued his award and opinion sustaining the

[1] This Court's standard of review of a trial court's decision to grant or deny a motion to quash is usually limited to considering whether the trial court abused its discretion. However, if the issues an appellant raises regarding the trial court's decision are limited to legal questions, the Court's standard of review is de novo. *Leber v. Stretton*, 928 A.2d 262 (Pa. Super. 2007).

grievance on December 19, 2006. Further, the Union averred, all parties received copies of the award by electronic mail that day. The City does not dispute that the arbitrator's award is dated December 19. (See motion to vacate.)

The City filed its appeal on January 19, 2007. In its motion to quash, the Union asserted that, under Section 5571(b) of the Judicial Code, 42 Pa.C.S. §5571(b), the City exceeded the thirty-day period from the date of the entry of an order within which a party must file an appeal. In response to the motion, the City stated that other sections of the Judicial Code, namely those in Chapter 73 control appeals from arbitration. Also, although the City agreed that the date of the award was December 19, the City disagreed with the legal import of an unsigned and non-notarized copy of the award attached to the electronic mail message. However, the City has included in its reproduced record a copy of the award that is signed and notarized with a cover letter from the Arbitrator dated December 19. Further, the e-mail transmission from the Arbitrator stated: "Please find my Opinion and Award for the above case. A signed and notarized hard copy will be in the mail today, along with my bill."

In its answer to the motion to quash, the City primarily asserted that the sending of an award through electronic mailing could not constitute "receipt of an award triggering the thirty day time period" and that the time period for filing an appeal is calculated using the date of receipt of a signed notarized copy of the award. However, in its legal argument, the City offered no legal authority for the notion that date of receipt (of either an electronic mailing or traditional mail) constitutes the date upon which the appeal period should begin to run. Rather, the City relied upon case law and court rules, both state and local, addressing the method of **service** of legal papers upon litigants. The City did not buttress this

argument with any discussion as to why service rules should apply to a decision of an arbitrator. Further, and significant to our decision, is the fact that the City attached the cover letter accompanying the arbitrator's award to its answer to the motion to quash. The cover letter is dated December 19. In paragraph 6 of the answer the City states that the time period runs from either the receipt of a signed and notarized award or three days from the mailing date of the cover letter. Thus, the City tacitly agrees that the arbitrator did in fact mail the award on December 19.

The trial court noted that the City never asserted that the arbitrator did not mail his award on December 19, but only that the date upon which the appeal period began was not until three days after the mailing date of the cover letter. Accordingly, the trial court deemed the date of entry to be the un-challenged date of the issuance of the award, December 19.

In its appeal to this Court, the City, in addition to challenging the trial court's reliance upon the date of the electronic mail transmission, now appears to contend that a factual issue exists as to the date the arbitrator mailed his award. However, our review is limited to the issue the City has raised, that is, whether the trial court was required to hold an evidentiary hearing regarding the date of transmission by electronic mail and the date of receipt of that transmission or the copy mailed on December 19. The City states in its brief that "there exists a series of contested pleadings that raise factual issues that include the date the arbitrator's award was mailed, when it was received, whether it contained the required signature and notaries, when the time period from which to file an appeal began to run and whether the date of the arbitrator's mailing of the award is the proper date

to be considered as a filing to the record for purposes of initiating the 42 Pa.C.S.A. §5571(b) appeal period."

Although the City has failed to aid its argument by proffering legal authority in support of its position that the date of receipt is pertinent to the question of when the appeal period began to run, we note that the City has asserted, and the record makes clear, that the underlying arbitration arose in the context of a grievance filed pursuant to the parties' collective bargaining agreement. Subchapter A of Chapter 73 of the Judicial Code, 42 Pa.C.S. §§7301-7320, is known as the Uniform Arbitration Act. Section 7302(b) of the Act, 42 Pa.C.S. §7302(b) provides that the "subchapter shall apply to a collective bargaining agreement to arbitrate controversies between employers and employees only where the arbitration pursuant to this subchapter is consistent with any statute regulating labor management relations." If the Act is applicable to this matter, then Section 7314 of the Act, 42 Pa.C.S. §7314, requires parties seeking to have a trial court vacate an arbitrator's award file such an application within thirty days of the **delivery** of a copy of the award to the applicant. Thus, in this case, if this section applied, the City would be correct in arguing that it had thirty days after it received a copy of the award to file the application to vacate. In this case, because the concept of the term delivery implicitly requires the receipt of a document, as well as the transfer to the applicant, some evidence of receipt would appear to be pertinent to the question of when the City received the award.

However, the City's argument is failing in specifics regarding the nature of the arbitration that occurred and also lacks any argument regarding whether and why Section 7314 should apply. In fact, the City nowhere in its brief to this Court even mentions Chapter 73. The only place in any of the pleadings the

City refers to Chapter 73 is in paragraph 1 of its answer to the motion to quash, and in that instance the City merely refers to "Pa.C.S.A. §7301 et seq." While there appears to be no inconsistency with any statute regulating labor and management relations, Section 7302(b), the City has not provided sufficient argument that would enable the Court to accept, rather than conjecture, that we may presume that Section 7314 applies.

We note that the City never pursued in its brief to the trial court the question of whether the arbitrator actually mailed the award on December 19. And, although the Union never specifically averred in its motion to quash that the arbitrator **mailed** the award on December 19, but only that the award "was entered" on that date, the City's acknowledgement of the mailing date by virtue of its reference to the cover letter date of December 19 represents an admission that that is the date the arbitrator mailed the award.

The Union notes that Section 5572 of the Judicial Code, 42 Pa.C.S. §5572 provides as follows: "The date of service of an order of a government unit, **which shall be the date of mailing** if service is by mail, shall be deemed to be the date of entry of the order for the purposes of this subchapter." (Emphasis added.) However, while the arbitrator clearly dated the award and had it notarized on December 19, there is no indication on the face of the award that the arbitrator contemporaneously mailed the award that day. Although the arbitrator in the subject e-mail expressed his intent to mail the award on December 19, the Court may not rely upon the arbitrator's then-present intent to perform an act in the future to prove that the act of mailing actually occurred.

Accordingly, although as noted above, the City may be correct in its reliance upon the provisions of the Arbitration Act, its failure to inform the Court

regarding the pertinent applicable provisions means that the Court is left to consider whether the trial court abused its discretion in its consideration of the question under Section 5572 of the Judicial Code. If Section 5572 of the Judicial Code is applicable, the date the arbitrator mailed his award[2] was the date of the entry of the award. Based upon the City's acknowledgement of December 19 as the date of mailing, we must agree with the Union that the trial court did not abuse its discretion. As the Union notes, an abuse of discretion occurs when a decision is manifestly unreasonable. A reviewing court may regard a decision as manifestly unreasonable when the decision is not supported by competent evidence. *See Barr Street Corporation v. Department of Public Welfare*, 881 A.2d 1278, 1287 (Pa. Cmwlth. 2005), citing *Tri-State Asphalt Corporation v. Department of Transportation*, 875 A.2d 1199 (Pa. Cmwlth. 2005). Because the record averments (and specifically the City's own answer to the motion to quash) are sufficient to establish the date the arbitrator mailed the award, we conclude that the trial court did not abuse its discretion in granting the Union's motion to quash. Based upon the foregoing, the Court will affirm the trial court's order.

JAMES GARDNER COLINS, Senior Judge

[2] Although Section 5572 refers to "orders" rather that arbitration awards, the Judicial Code's definition of the term "order" includes "judgment, decision, decree, sentence, and adjudication." 42 Pa.C.S. §102. We believe that the arbitrator's award falls within the meaning of the term "order." See also *Fairview Township v. Fairview Township Police Association*, 795 A.2d 463 (Pa. Cmwlth. 2002), *petition for allowance of appeal granted*, 572 Pa. 744, 815 A.2d 1043 (2003).

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ORDER

AND NOW, this 15th day of April, 2008, the order of the Court of Common Pleas of Lackawanna County is affirmed.

JAMES GARDNER COLINS, Senior Judge