

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Philadelphia :
 :
 v. :
 :
 Local 159, AFSCME DC 33, : No. 702 C.D. 2009
 Appellant : Argued: October 12, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge
 HONORABLE JIM FLAHERTY¹, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY JUDGE McGINLEY

FILED: January 5, 2011

AFSCME, Local 159 (Local 159) appeals from an order of the Court of Common Pleas of Philadelphia County (common pleas court) that granted the City of Philadelphia’s (City) Petition to Vacate Arbitrator Stanley L. Aiges’ (Arbitrator Aiges) award.

On December 8, 2008, Local 159 filed a Motion to Quash Petition to Vacate and alleged:

1. On November 6, 2008, the City submitted a Petition to Vacate the Arbitration Award of Arbitrator Stanley L. Aiges
2. According to the City, the petition was filed under Section 7314 of the Uniform Arbitration Act, 42 Pa. C.S.A. § 7314^[2]

¹ This case was decided before Senior Judge Flaherty’s retirement on December 31, 2010.

² Local 159 is an “unincorporated labor organization which . . . represents employees of the Philadelphia Prison System (“PPS”) including Correctional Officers.” Petition to Vacate **(Footnote continued on next page...)**

3. The City bypassed the Civil Commencement Unit and filed their petition directly in motions court with a petition/motion cover sheet.
4. As a result of the improper filing, the Prothonotary issued no court term and number and did not enter the petition on the Court's docket.
5. On November 18, 2008, the City correctly filed its petition to vacate, receiving a court term and a number . . .
 ..

7. Arbitrator Aiges issued his award on October 6, 2008.
8. Section 7317 requires that 'notice of an initial application for an order of court shall be served in the manner provided or proscribed by law for service of a writ of summons in a civil action.' 42 Pa. C.S.A § 7317.
9. A writ of summons must be served in accordance with Pennsylvania's Rules for service of original process

11. Rule 402(a) requires original process to be served by personally delivering a copy to the defendant. Pa. RCP 402(a).

(continued...)

Arbitration Award, November 8, 2008, Paragraph 2 at 2; Reproduced Record (R.R.) at 6a. Local 159 and the City were parties to a Collective Bargaining Agreement (CBA) "which governs the terms and conditions of employment for Correctional Officers of the PPS." Petition to Vacate, paragraph 3 at 2; R.R. at 6a. The CBA had a grievance and arbitration procedure that culminates with binding arbitration. On March 29, 2007, Local 159 filed a grievance when the City "[i]n accordance with the Rule of Two, Correctional Officer Sergeant Maurice Byrd (Byrd) was compared first with an individual ranked above him and then subsequently with a candidate ranked below him . . . [t]he two individuals ranked against Byrd were selected and Byrd was not." Petition to Vacate, Paragraph 10 at 4-5; R.R. at 8a-9a. "In his October 6, 2008 arbitration award, the arbitrator ruled that consideration of Byrd's sick leave represented 'a belated form of discipline' against Byrd and . . . the City had improperly considered Byrd's attendance history in its selection process." Petition to Vacate, Paragraph 17 at 7; R.R. at 11a. Arbitrator Aiges directed the City "to promote Byrd and award him back pay retroactively from the date of his rejection." Petition to Vacate, Paragraph 21 at 8; R.R. at 12a.

12. The Respondent (defendant) in this action is . . . Local 159.

....

14. Rule 423 requires that service . . . shall be made upon any officer or registered agent of the association . . . of any regular place of business of the association. Pa. R.C.P 423.

....

18. The City did not serve a copy of its petition on any officer or registered agent, an agent authorized in writing to receive service nor on any person for the time being in charge of Local 159's regular place of business as required by rule 423 (emphasis added).

....

21. The City filed no return of service as required by Rule 405.

22. Attached to the petition is a certificate of service indicating that a copy of the petition was sent by first class mail to Claiborne S. Newlin (emphasis added).

23. The plain language of Pa. R.C.P. 402(a)(1) requires that the defendant, not the defendant's attorney, be handed a copy of the original process (emphasis added).

....

26. Where a lawyer has been served with process but does not have the authority to accept the same on behalf of his client, the court lacks jurisdiction to act against the person of the client

27. Local 159 did not authorize Claiborne S. Newlin, Esq. or anyone else to receive service in this matter (emphasis added).

....

32. Section 7314(b) of the Uniform Arbitration Act requires that an application to vacate an award "shall be made within thirty days after delivery of the award to the applicant" 2 Pa. C.S.A. § 7414(d).

....

34. The last day to serve the petition to vacate was December 8, 2008. (emphasis added).

....

36. Consequently, the City's petition to vacate the Aiges award is time-barred and should be denied.

37. Section 7314(d) of the Uniform Arbitration Act requires the court to confirm an arbitration award if an application to vacate the award is denied and no application to modify or correct the award is pending . . .

38. There is no pending application to modify or correct the Aiges award.

39. Consequently, the Court should confirm the Aiges award.

Petition To Quash Petition To Vacate, December 8, 2008, Paragraphs 2-5, 7-9, 11-12, 14, 18, 21-23, 26-27, 32, 34, and 36-39 at 1-4; R.R. at 95a-98a.

On December 24, 2008, the City responded and asserted:

1. Contrary to the allegations set forth by Respondent, service of the Petition to Vacate was properly served upon the opposing party, as counsel for local 159, . . . acts as their agent in labor matters. Counsel cannot in good faith argue that Respondent, Local 159 did not have timely notice of this action. (emphasis added).

2. The cases cited by opposing counsel all address service of complaints in civil cases. This matter is an appeal of an Arbitration Award pursuant to 42 Pa. C.S.A. § 7314. Pursuant to the Pennsylvania Rule of Civil Procedure, the mechanism to appeal an arbitration award is a Petition to Vacate the Award. Petitions are defined under the Pennsylvania Rule of Civil Procedure 206.1 and Philadelphia Local Rule 206.1(a)(1)(vii)

3. Petitions, as defined under Rule 206.19(a)(1-2), are subject to service pursuant to Rule 440

4. Rule 440(a)(1)(i) permit [sic] the service of Petitions “by handing or mailing a copy to or leaving a copy for each party at the address of the party’s attorney of record”

5. Respondent [Local 159] also asserts that the Petition to Vacate was not timely filed, as it was not docketed until November 18, 2008.

6. However . . . a control number and Court administrative date stamp of November 6, 2008 is [are] present on the City’s petition cover sheet. The date stamp is evidence of the timely filing of the Petition.

7. . . . As a result of the administrative error, Respondent [Local 159] benefited as a new response date of December 6, 2008 was issued instead of November 26, 2008 This provided Respondent [Local 159] with an additional week in which to reply to the City’s Petition. Notably, Respondent [Local 159] [sic] not contested any of the Petitioner’s [City’s] arguments in support of its request to vacate the arbitration award. (emphasis added).

Response to Motion to Quash Petition to Vacate Arbitration Award, December 24, 2008, Paragraphs 1-7 at 1-3; R.R. at 123a-125a.

In the present matter, the common pleas court failed to rule on Local 159’s Motion to Quash but instead reviewed Arbitrator Aiges award:

The CBA states that certain areas of “inherent managerial policy” are exclusively reserved to the City. Personnel selection is specifically listed as an example of such an area. Accordingly, the City can use any method to compare and evaluate employees for a promotional decision, so long as it does not violate anti-discrimination laws. The City’s consideration of Byrd’s performance history, including attendance and other disciplinary actions, is within its managerial discretion under the CBA Here, the arbitrator reached outside the

bounds of the CBA and therefore, the decision was vacated.

Opinion of the Common Pleas Court, February 16, 2010, at 2.

On April 6, 2009, Local 159 petitioned for reconsideration of the common pleas court's order to vacate Arbitrator Aiges award and again asserted the City failed to personally serve Local 159. Specifically, Local 159 stated that the City's failure to properly serve the petition upon the "defendant, not the defendant's attorney" within the statutory period precluded the common pleas court from vacating Arbitrator Aiges award. Motion for Reconsideration, April 6, 2009, at 2; R.R. at 143a. On April 8, 2009, the common pleas court denied reconsideration without addressing the Local 159's argument in support of its Motion to Quash.

At the direction of the common pleas court Local 159 filed a statement of errors complained of on appeal pursuant to Pa. R.A.P. 1925(b):³

1. The Court erred by deciding the City's Petition to vacate the Aiges Award under the Pennsylvania Uniform Arbitration Act . . . when the City did not serve the petition in accordance with Section 7317 of the [Arbitration] Act
2. The Court erred by deciding a first application to the Court under the Uniform Arbitration Act, which was not served personally on the Respondent [Local 159] in the manner required by Pa. R.C.P. 402 and 423.

³ Pa. R.A.P. 1925(b) provides that "[i]f the judge entering the order giving rise to the notice of appeal ("judge") desires clarification of the errors complained of on appeal, the judge may enter an order directing the appellant to file . . . and serve on the judge a concise statement of errors complained of on appeal."

3. The Court erred by not holding that service of the City's petition on Local 159's attorney for the arbitration was defective service.

AFSCME, Local 159's Rule 1925(b) Statement of Matters Complained of on Appeal, Paragraphs 1-3 at 1; R.R. at 165a. Although the common pleas court failed to address these allegations of error pursuant to Pa. R.A.P. 1925, this Court must conclude that Local 159 preserved the issue because it was also raised in the Motion to Quash before this Court on appeal.⁴

I. Whether The Common Pleas Court Lacked Jurisdiction To Vacate Arbitrator Aiges' Award Because The City's Petition To Vacate Was Not properly Served Pursuant To The Uniform Arbitration Act And The Rules Of Civil Procedure?

Initially, Local 159 contends⁵ that the City failed to personally serve the Petition to Vacate on an officer or agent of Local 159 as well as a copy of the petition at Local 159's place of business. Local 159 asserts that Claiborne S. Newlin, Esquire (Attorney Newlin) was not authorized to accept service and that appellate courts have consistently held that a failure to personally serve an initial petition under the Arbitration Act deprives a trial court of jurisdiction to render a decision on a petition. Vogt v. Liberty Mutual Fire Ins. Co., 900 A.2d 912 (Pa. Super. 2006) and Big Beaver Falls Area Education Association, 492 A.2d 87 (Pa. Cmwlth. 1985).

⁴ This Court notes that Local 159 does not challenge on the merits whether the common pleas court properly determined that Arbitrator Aiges went beyond the provisions of the CBA.

⁵ This Court's review of a decision to vacate an arbitration award is whether the common pleas court committed an error of law or abused its discretion. Joseph v. Advest, Inc., 906 A.2d 1205, 1208 (Pa. Super. 2006).

Section 7317 of the “Uniform Arbitration Act” (Arbitration Act)

(Form and service of applications to court), 42 Pa. C.S. § 7317, provides:

Except as otherwise prescribed by general rules, an application to the court under this subchapter shall be by petition and shall be heard in the manner and upon the notice provided or prescribed by law for the making and hearing of petitions in civil matters. Unless the parties otherwise agree, notice of an initial application for an order of court shall be served in the manner provided or prescribed by law for the service of a writ of summons in a civil action. (emphasis added).

Pa. R.C.P. No 402 provides:

(a) Original service may be served

(1) by handing a copy to the defendant; or

(2) by handing a copy

(i) at the residence of the defendant

(ii) at the residence of the defendant to the clerk or manager of the hotel, inn, apartment house, boarding house or other place of lodging at which he resides; or

(iii) at any office or usual place of business of the defendant to his agent or to the person for the time being in charge thereof.

(b) in lieu of service under this rule, the defendant or his authorized agent may accept service of the original process by filing a separate document

Pa. R.C.P. No. 401 provides:

(a) Original process shall be served within the Commonwealth within thirty days after the issuance of the writ or the filing of the complaint.

(b)(1) If service within the Commonwealth is not made within the time prescribed by subdivision (a) of this rule . . . the prothonotary upon praecipe and upon presentation of the original process, shall continue its validity by reissuing the writ or reinstating the complaint, by writing thereon “reissued” in the case of a writ or “reinstated” in the case of a complaint.

Although Section 7317 of the Arbitration Act, 42 Pa. C.S. § 7317 clearly required that service be made pursuant to Pa. R.C.P. No. 402, Section 7317 also provides that personal service of notice is not necessary when the parties to the CBA agree otherwise. Specifically, the City states that the parties agreed to proceed pursuant to the Voluntary Rules of Labor Arbitration of the American Arbitration Association (AAAR); therefore service by regular mail addressed to a party’s representative was appropriate. This Court agrees.

Step VI of the Grievance Procedure of the CBA provides:

If a grievance concerning specific contract language is not resolved within one hundred and sixty-five (165) days of the initiation of Step I (excluding documented extensions) and after having been fully processed through Step IV, the Union may within fifteen (15) days of the Step IV answer or the Step V conclusion, if the step is utilized, refer the grievance to binding arbitration in accordance with the Voluntary Rules of Labor Arbitration of the American Arbitration Association. The parties shall first attempt to select an arbitrator by mutual agreement. (emphasis added).

CBA, Grievance Procedure, Step VI at 15; R.R. at 29a.

Title 36 of the AAAR⁶ provides:

⁶ The introduction of the American Arbitration Association, Voluntary Labor Arbitration Rules (AAAR) provides:

Every year, labor and management enter into thousands of collective bargaining agreements. Virtually all of these agreements provide for arbitration of unresolved grievances. For decades, the American Arbitration Association (AAA) has been a leading administrator of labor-management disputes. (emphasis added).

....

. . . The AAA's Labor Arbitration Rules provide a time-tested method for efficient, fair and economical resolution of labor-management disputes. By referring to them in a collective bargaining agreement, the parties can take advantage of these benefits. (emphasis added).

The parties can provide for arbitration of future disputes by inserting the following clauses into their contract:

Any dispute, claim, or grievance arising from or relating to the interpretation or application of this agreement shall be submitted to arbitration administered by the American Arbitration Association under its Labor Arbitration Rules. The parties further agree to accept the arbitrator's award as final and binding on them. (emphasis added).

....

Labor Arbitration Rules

1. Agreement of Parties

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever, in a collective bargaining agreement or submission, they have provided for arbitration by the American Arbitration Association (hereinafter the AAA) or under its rules. These rules and any amendment thereof shall apply in the form obtaining when the arbitration is initiated. (emphasis added).

Because the AAAR is an interpretive tool for parties involved in CBAs, this type of document is one where this Court may take judicial notice. Shewack v. Department of Transportation, 993 A.2d 916, 917 n.1 (Pa. Cmwlth. 2010).

Each party to a submission or other agreement that provides for arbitration under these rules shall be deemed to have consented and shall consent that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on an award made thereunder may be served upon the party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held. (emphasis added).

In the present controversy, Attorney Newlin represented Local 159 at the arbitration hearing before Arbitrator Aiges which resulted in a decision favorable to Local 159. On November 6, 2008, the City petitioned to vacate Arbitrator Aiges' October 6, 2008, award⁷ and served "via first class mail" on the same day a copy of the City's Petition to Vacate on Attorney Newlin who was counsel of record at the arbitration hearing. Obviously, the City fully complied with Section 7317 of the Arbitration Act, 42 Pa. C.S. § 7317, based upon Step VI of the CBA.⁸ Here, there was no ambiguity concerning the intent of the parties as evidenced by reference to the AAAR in the CBA. Danville Area School District v. Danville Area Education Association, PSEA/NEA, 562 Pa. 238, 754 A.2d 1255, 1260 (2000).

⁷ Because the petition was improperly filed in motions court, the Prothonotary did not enter the petition on the docket until November 18, 2009.

⁸ This Court notes that Local 159 alleged that it was not properly served with the Petition to Vacate by December 8, 2008, and that Attorney Newlin was not the counsel of record. However, Attorney Newlin filed a Motion to Quash the City's Petition to Vacate on behalf of Local 159 on the same date and also filed the present appeal on behalf of Local 159.

Accordingly, this Court affirms.⁹

BERNARD L. McGINLEY, Judge

⁹ Because Local 159 was properly served with the Motion to Vacate, this Court need not reach the additional allegations of error:

4. The Court erred by not holding that service on an agent of a party without filing the separate document required under Pa. R.C.P. 402(b) is defective service.

....

6. The Court erred by entering judgment on the City's petition where it lacked jurisdiction over Respondent [Local 159].

7. The Court erred by not holding that the City's petition was barred by the statute of limitations, where the City did not request that the prothonotary reinstate the petition within thirty (30) days as required under Pa. R.C.P. 401(b)(1).

Local 159's Statement of Matters Complained of on Appeal, Paragraphs 4 and 6-7 at 2; R.R. at 166a.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Philadelphia	:	
	:	
v.	:	
	:	
Local 159, AFSCME DC 33,	:	No. 702 C.D. 2009
Appellant	:	

ORDER

AND NOW, this 5th day of January, 2011, the order of the Court of Common Pleas of Philadelphia County in the above-captioned matter is affirmed.

BERNARD L. McGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Philadelphia :
 :
 v. :
 :
 Local 159, AFSCME DC 33, : No. 702 C.D. 2009
 Appellant : Argued: October 12, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge
 HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

CONCURRING OPINION
 BY SENIOR JUDGE FRIEDMAN

FILED: January 5, 2011

I agree with the majority that, pursuant to section 7317 of the Uniform Arbitration Act, 42 Pa. C.S. §7317, and the Grievance Procedure set forth in the parties' collective bargaining agreement (CBA), Title 36 of the Voluntary Rules of Labor Arbitration of the American Arbitration Association governs service of process in a court action connected with the arbitration. Therefore, the City of Philadelphia was able to serve Local 159, AFSCME DC 33, or its representative, by mail, with the petition to vacate the arbitration award (Petition) that the City of Philadelphia filed with the Court of Common Pleas of Philadelphia County.

I also accept the majority's conclusion that Claiborne S. Newlin, Esquire, who represented Local 159 before the arbitrator and thereafter, was a proper representative of Local 159 for the purpose of serving the Petition. However, I only accept this conclusion because the record does not contain a complete copy of the CBA, making it impossible for this court to determine whether the CBA identifies or designates a different representative for Local 159.

Accordingly, like the majority, I also would affirm.

ROCHELLE S. FRIEDMAN, Senior Judge