

STATE OF OHIO, MAHONING COUNTY

SEVENTH DISTRICT

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JUDGMENT ENTRY

Hon. Mary DeGenaro
Hon. Cheryl L. Waite
Hon. Carol Ann Robb

Dated: May 31, 2017

[Cite as *Youngstown Edn. Assn. v. Youngstown City School Dist. Bd. of Edn.*, 2017-Ohio-4393.]
PER CURIAM.

{¶1} Defendant-Appellant Youngstown City School District Board of Education (the Board) appeals a judgment entry of the Mahoning County Common Pleas Court rejecting a magistrate's decision granting its motion to confirm an arbitration award and denying the motion of Plaintiff-Appellee Youngstown Education Association, OEA/NEA (YEA) to vacate that same award, and returning the matter to the magistrate for further proceedings. The matter now comes before this Court on YEA's motion to dismiss for lack of a final appealable order. We conclude that the judgment entry appealed from does not constitute a final appealable order.

{¶2} YEA is a union representing certain employees of the Board, including employee Donna Richards. In 2012, YEA filed a grievance on behalf of Richards alleging the Board had not provided her with disability income protection insurance. YEA and the Board entered into a settlement agreement, but YEA later filed a grievance alleging that the Board had failed to provide disability income protection insurance for Richards.

{¶3} The matter proceeded to arbitration. The arbitrator concluded the grievance was not arbitrable for lack of jurisdiction because YEA had withdrawn its initial grievance pursuant to the settlement agreement. Therefore, it had waived and released the Board from any further claims raised in the grievance.

{¶4} YEA filed a motion to vacate the arbitrator's award (decision) in the Mahoning County Common Pleas Court. The Board responded with a counterclaim and a motion to confirm the decision. The matter was referred to a magistrate. Finding no error with the arbitrator's decision, the magistrate denied YEA's motion and granted the Board's motion.

{¶5} YEA filed objections to the magistrate's decision and the Board filed a response. On February 16, 2017, the trial court filed a judgment entry rejecting the magistrate's decision and returned the matter to the magistrate for further proceedings. This appeal followed.

{¶6} Civ.R. 53, which governs matters referred to a magistrate, specifically authorizes the action the trial court took in this case:

(b) *Action on magistrate's decision.* Whether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part,

with or without modification. A court may hear a previously-referred matter, take additional evidence, or *return a matter to a magistrate*.

(Emphasis added.) Civ.R. 53(D)(4).

{¶7} R.C. 2505.02 defines a final order for purposes of appeal. An order is a final order when it affects a substantial right in an action that in effect determines the action and prevents a judgment. R.C. 2505.02(B)(1). In this instance, the judgment entry which was appealed was not final.

{¶8} Civ.R. 53(D)(4)(a) clearly provides: “A magistrate’s decision is not effective unless adopted by the court.” Here, the trial court did not adopt the magistrate’s decision but instead explicitly rejected it and sent it back to the magistrate for further proceedings. Although the magistrate issued a decision purportedly ruling on the parties’ motions, the trial court *judge* did not enter judgment on the parties’ respective motions concerning the arbitrator’s decision. Consequently, the trial court’s judgment entry did not affect a substantial right in an action that in effect determined the action and does not fall under any of the other categories of final orders under R.C. 2505.02. Case law is in accord. *Cireddu v. Clough*, 11th Dist. No. 2011-L-121, 2012-Ohio-2242 (trial court judgment entry referring matter back to magistrate to take additional evidence is not a final appealable order).

{¶9} Accordingly, appeal dismissed. Costs taxed against Appellant.

{¶10} Final order. Clerk to serve notice as provided by Civil Rules.

DeGenaro, J., concurs

Waite, J., concurs

Robb, P.J., concurs