

[Cite as *Fraternal Order of Police, Ohio Labor Council, Inc. v. Athens*, 2001-Ohio-2621.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

Fraternal Order of Police, :
Ohio Labor Council, Inc., :
 :
Plaintiff-Appellee, :
 : Case No. 01CA18
vs. :
 : DECISION AND JUDGMENT ENTRY
City of Athens, :
 :
Defendant-Appellant. :

APPEARANCES

Garry E. Hunter and Lisa A. Eliason, Athens, Ohio, for
appellant.

Paul L. Cox, Columbus, Ohio, for appellee.

Kline, J.:

The Fraternal Order of Police, Ohio Labor Council, Inc.
("FOP") filed a motion to confirm an arbitration award in the
Athens County Court of Common Pleas, which the court granted.
The City of Athens ("City") appeals, asserting that the trial
court erred in confirming the arbitration award because the
arbitrator did not consider the City's request, made prior to
the City's receipt of the award by U.S. Mail, that the

arbitrator modify the award. Because the arbitrator effected literal receipt of the award upon the parties via facsimile transmission, the arbitrator did not possess the authority to modify it. Moreover, the City did not file a motion to vacate or modify the award pursuant to R.C. 2711.10 *et seq.* Therefore, we find that the trial court did not err in confirming the arbitration award. Accordingly, we affirm the judgment of the trial court.

I.

The underlying dispute in this case arose when the City demoted Randy Gray of the Athens Police Department ("APD") from the rank of Lieutenant to the rank of Patrol Officer upon discovering that Gray falsified purchase orders and wrongfully appropriated monies from City funds for his own use. On Gray's behalf, the FOP filed a grievance with the City in which it protested the reduction of rank. The grievance proceeded to arbitration.

Among the evidence adduced at the evidentiary hearing before the arbitrator, the parties submitted as a joint exhibit their collective bargaining agreement, which reflects that the rank units within the APD are Lieutenant, Patrol Officer, and Communications Officer.

The arbitrator sent his decision and award to the parties via facsimile transmission. On the transmission cover sheet, the arbitrator noted that he would put a hard copy of the decision and award in the mail on the following day.

In the award, the arbitrator concluded that Gray falsified purchase orders and wrongfully appropriated monies for his own use, abusing the fiduciary position bestowed upon him by virtue of his rank as Lieutenant. Based upon the seriousness of his offense, the arbitrator determined that Gray should be demoted. However, the arbitrator noted that Gray performed satisfactorily as an officer with the APD for nearly seventeen years. Based upon Gray's longevity of service to the APD, the arbitrator determined that the City should have demoted Gray to the position of Sergeant instead of to the position of Patrol Officer. The arbitrator awarded Gray back pay from the time that he was demoted to Patrol Officer.

The following day the City, via facsimile transmission, sent the arbitrator a letter requesting that he "conform" the award to reflect the fact that the APD does not have the position of Sergeant. The arbitrator did not respond to the City's request.

Over four months later, the FOP filed its motion with the trial court to confirm the arbitration award. The City argued

that the arbitrator's award was not final because the arbitrator had not responded to its request to modify the award, which the City contended the arbitrator received before the arbitrator completed delivery of the award to the parties. The trial court found that the City's argument lacked merit, and it confirmed the arbitration award.

The City appeals, asserting the following assignment of error:

I. THE TRIAL COURT ERRED IN RULING THAT THE ARBITRATOR'S AWARD WAS FINAL WHEN APPELLANT ASKED THE ARBITRATOR TO MODIFY THE AWARD BEFORE THE ARBITRATOR DELIVERED BY U.S. MAIL A TRUE COPY OF THE AWARD TO THE PARTIES IN INTEREST.

II.

Before an arbitration award is final it must be reduced to writing, it must be signed by a majority of the arbitrators and a "true copy" of the award must be delivered to each of the parties. R.C. 2711.08. The law requires literal receipt of the arbitration award by the parties because it provides them with the rationale and details of the award that are necessary for them to levy an appropriate challenge to the award in the trial court. *Lockhart v. American Res. Ins. Co.* (1981), 2 Ohio App.3d 99, 103. Likewise, mere constructive delivery of an award is insufficient because it may fail to provide the parties with the

information necessary for an appropriate challenge to the award.
Id.

Once the issues submitted to arbitration are decided and an award is made, the arbitrator's powers expire. *Lockhart* at 101, citing *Citizens Bldg. of West Palm Beach, Inc. v. Western Union Tel. Co.* (C.A. 5, 1941), 120 F. 2d 982, 984. Arbitration powers are limited because:

arbitrators are appointees with but a single duty, and *** the performance of that duty terminates their authority. When an arbitral board renders a final award, its powers and duties under the submission are terminated. Its authority is not a continuing one, and, after its final decision is announced, it is powerless to modify or revoke it or to make a new award upon the same issues.

Lockhart at n.10, citing *Citizens Bldg. of West Palm Beach* at 984. Once an arbitration panel reduces its decision to writing and signs it, "the arbitrators' powers [are] extinguished unless there [is] a failure to deliver which preserve[s] their authority and thus allow[s] a revamping of the original." *Lockhart* at 102. Thus, a second award on a single submission is a nullity. *Lockhart* at 101-102, citing *Bayne v. Morris* (1863), 68 U.S. (1 Wall.) 97, 99.

A trial court's power to vacate or modify a final, binding arbitration award is limited. Once an arbitration award is finalized, a trial court has "no jurisdiction except to confirm, vacate, modify, or enforce the award, and only on the terms

provided by statute, i.e., R.C. 2711.09 and R.C. 2711.12 (confirm and enter judgment); R.C. 2711.11 (modify); R.C. 2711.10 and 2711.13 (vacate); or R.C. 2711.14 (enforce the award)."

Lockhart at 101. By agreeing to submit their dispute to binding arbitration, the parties "agree to accept the result regardless of its legal or factual accuracy." *Cleveland v. Fraternal Order of Police, Lodge No. 8* (1991), 76 Ohio App.3d 755, 758. As a matter of policy, the courts favor and encourage arbitration, and therefore will make every reasonable indulgence to avoid disturbing an arbitration award. *Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.* (1990), 49 Ohio St.3d 129, 131. Thus, the trial court should grant a request to confirm an arbitration award as long as no party has filed a timely request to vacate or modify the award. R.C. 2711.09.

Review of an arbitration award on appeal is confined to the order issued by the trial court confirming, modifying, vacating or enforcing the award. *Sparks v. Barnett* (1992), 78 Ohio App.3d 448, 450; *Lockhart* at 101. We may not disturb a trial court's affirmation of an arbitration award absent evidence of a material mistake or extensive impropriety in the arbitration. *Sparks* at 450.

In this case, the City asserts that the trial court erred in confirming the arbitration award because it did so before the

award was final. Specifically, the City asserts that the award still is not final because the City asked the arbitrator to modify the award before the City received a true copy of the award by U.S. Mail. The City admits that it received a copy of the award by facsimile transmission, but contends that such a transmission does not constitute a "true copy."

In *Lockhart*, the court examined whether a written, signed arbitration award was final when, before a copy of the award was delivered to the parties, the defendant learned of the award through a telephone conversation with one of the arbitrators. The defendant then informed the plaintiff of the award, and the plaintiff unilaterally contacted the arbitration panel and requested reconsideration. The arbitration panel modified the award to the plaintiff's benefit. The trial court partially confirmed the second arbitration award in a summary judgment proceeding.

On appeal, the *Lockhart* court determined that when the arbitration award was reduced to writing, signed, and the parties were informed of the decision, the arbitrators' powers were extinguished even though a written award was not physically delivered to each party. *Lockhart* at 102-103. However, the court determined that the failure of delivery and subsequent action by the panel so flawed the first award that the

arbitration process had to be redone *de novo*. *Id.* Finally, the court determined that the panel's subsequent action on the issue originally submitted to arbitration was a nullity. *Id.*

In this case, as in *Lockhart*, one of the parties unilaterally contacted the arbitrator seeking modification of an award that was already reduced to writing and signed. However, unlike the arbitration panel in *Lockhart*, the arbitrator in this case did not exceed the scope of his authority by attempting to revisit the award. Additionally, unlike the *Lockhart* arbitrator's mere constructive delivery of the award via a telephone conversation with one of the parties, the arbitrator in this case completed literal delivery of the award upon both of the parties. The delivery via facsimile transmission achieved the purpose of providing the parties with the rationale and details of the award. Therefore, the arbitrator provided the City with the information necessary for it to levy an appropriate challenge to the award in the trial court.¹

We find that the arbitrator issued a final written decision in this case and delivered the award to the parties in this

¹ We note that the City could have challenged the arbitrator's award in the trial court by filing a timely motion to vacate or modify the award. A trial court can vacate an arbitrator's award if the award cannot be rationally derived from the terms of the agreement. R.C. 2711.10. A court may modify or correct an arbitration award when it contains "an evident material mistake in the description of any person, thing, or property referred to in the award [or] * * * [t]he arbitrators have awarded upon a matter not submitted to them * * *." R.C. 2711.11.

case. The arbitrator's powers then expired. Thus, he could not act upon any request received by the City, regardless of the City's method of delivery. The FOP filed a timely motion to confirm the arbitration award. Absent any motion filed in the trial court in which the City sought to vacate or modify the award, the trial court was obligated to confirm the award despite the logistical conundrum presented by the fact that the collective bargaining agreement between the City and the FOP does not provide for the rank of Sergeant. Therefore, the trial court did not err in confirming the award.

Accordingly, we overrule the City's sole assignment of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

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JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that Appellees recover of Appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 for the Rules of Appellate Procedure. Exceptions.

Harsha, J. & Evans, J.: Concur in Judgment and Opinion with Opinion.

For the Court

BY: _____
Roger L. Kline, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

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Harsha, J., concurring:

The appellant complains that the arbitrator's award was not final because the arbitrator served the initial copy by "fax." Yet, the appellant apparently used the "fax" to ask the arbitrator to change the award to reflect the absence of the rank of sergeant. Absent some statutory provision, agreement of the parties or other enforceable rule, how can a fax be an effective means of communication in one instance and not the other?

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Evans, J., Concurring:

It seems obvious that the Defendant-Appellant City of Athens was most likely on the right track when it challenged the arbitrator's award. The basis for this challenge may even have merit. However, the filing of a motion to modify must be timely made in the proper forum, here, the Athens County Court of Common Pleas, not with the then powerless arbitrator.

Since the City's challenge was not timely or properly filed with the trial court, we are prohibited from considering it, just as the trial court was. Affirmation of the trial court judgment is, therefore, the appropriate action in this case.