[Cite as *Ohio Council 8, Am. Fedn. of State, Cty., & Mun. Emps., AFL-CIO v. Cuyahoga Metro. Hous. Auth.*, 2015-Ohio-3889.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102646

OHIO COUNCIL 8, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, ET AL.

PLAINTIFFS-APPELLANTS

vs.

CUYAHOGA METROPOLITAN HOUSING AUTHORITY

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-12-789146

BEFORE: E.A. Gallagher, P.J., S. Gallagher, J., and Blackmon, J.
RELEASED AND JOURNALIZED: September 24, 2015

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EILEEN A. GALLAGHER, P.J.:

{¶1} Plaintiffs-appellants, Ohio Council 8, American Federation of State, County and Municipal Employees ("AFSCME"), AFL-CIO and Local 1355, AFSCME, AFL-CIO (collectively, the "union"), appeal from a decision of the Cuyahoga County Court of Common Pleas denying the union's motion to vacate an arbitration award in favor of defendant-appellee Cuyahoga Metropolitan Housing Authority ("CMHA") and granting CMHA's motion to confirm the arbitration award. The union contends that the arbitrator exceeded the powers delegated to him under the collective bargaining agreement between the union and CMHA (the "CBA") in determining that the grievance at issue was not procedurally arbitrable because the union failed to timely notify the Federal Mediation and Conciliation Service ("FMCS") of its intent to arbitrate the grievance as required under the CBA. The union contends that the arbitrator imposed a time limit that was not agreed to by the parties and that the trial court, therefore, erred in refusing to vacate the arbitration award under R.C. 2711.10(D). For the reasons that follow, we affirm the trial court's judgment.

Factual Background and Procedural History

{¶2} In September 2009, Billie Jean Sanders was terminated from her position as a recertification specialist with CMHA due to repeated performance deficiencies. On October 7, 2009, the union filed a grievance protesting Sanders' discharge. The CBA between the union and CMHA requires that disputes concerning the application or interpretation of the CBA, including disputes involving disciplinary action, be resolved through the CBA's grievance procedure. Article 12 of the CBA, Grievance Procedure, provides, in relevant part:

> Section 12.1 A grievance is any dispute concerning the interpretation, application, or alleged violation of any provision of this Agreement between CMHA and the Union, including disputes over whether or not an employee has been discharged or disciplined for just cause.
>
> * * *
>
> Section 12.3 A grievance relating to discharge, suspension, lay-off, recall, or bumping rights may be may be filed at Step III of the Grievance Procedure.
>
> * * *
>
> Section 12.5 * * * *Step III:* * * * [T]he Human Resources Department shall meet with the Local Union President, the employee and a representative of AFSCME Ohio Council 8 at a date and time agreeable to the parties. Within thirty (30) calendar days from the date of the meeting, a written response to the grievance will be sent to the Union, Union President and the Grievant. * * *
>
> *Step IV:* If the grievance is not satisfactorily settled at Step III, the Union may, within forty-five (45) calendar days after receipt of the Step III answer, submit the issue to arbitration. The Union

> shall notify CMHA, in writing, of its intent to appeal the grievance and within that time the Union must, at the same time, notify the Federal Mediation and Conciliation Service (FMCS), in writing, of its intent to arbitrate the grievance. Upon written notice of the Union's intent to arbitrate, FMCS shall submit a panel of fifteen (15) arbitrators to each party and the arbitrator shall be chosen in accordance with FMCS's applicable rules. * * *

{¶3} Section 12.4 of the CBA further provides:

> If the Union fails to comply with the time limits set forth herein, the grievance shall be resolved in accordance with the last answer of CMHA and no further action will be permitted under this process. The time limits set forth in the Grievance Procedure shall, unless extended by agreement of CMHA and the Union, be binding, and any grievance not timely presented shall not be considered under this Agreement.

{¶4} In accordance with the CBA's grievance procedure, the parties held a "Step III" meeting to discuss the grievance. The matter was not resolved at the meeting and, on October 19, 2009, CMHA issued a response denying the grievance ("CMHA's Step III answer").

{¶5} On January 5, 2010, the union notified CMHA of its intent to arbitrate the grievance. The parties thereafter purportedly engaged in settlement discussions in an attempt to resolve the grievance but were unsuccessful. In December 2010, the union notified FMCS of its intent to arbitrate the grievance and requested the submission of a panel of arbitrators.

An arbitrator was appointed in June 2011, and the matter proceeded to arbitration in December 2011. Prior to the arbitration hearing, CMHA submitted a letter to the arbitrator objecting to the timeliness of the grievance and arguing that the union had waived its right to arbitrate the grievance based on its delay. At the arbitration hearing, CMHA continued to argue that the grievance should be disallowed on laches grounds because the union had unreasonably delayed its request to FMCS for a panel of arbitrators. The union responded that the delay should not prevent arbitration of the case on the merits because CMHA had not shown it was prejudiced by the delay, the parties had a "past practice" of trying to resolve grievances prior to proceeding to arbitration and CMHA had raised similar timeliness issues in prior arbitration cases that were rejected and resolved on their merits by the arbitrators.

{¶6} Following the arbitration hearing and supplemental briefing on the timeliness issue, the arbitrator issued his decision, denying the grievance on procedural arbitrability grounds. The arbitrator determined that because the union failed to give written notice to FMCS of its intent to arbitrate the grievance within 45 days of its receipt of CMHA's Step III answer, it did not comply with the contractual requirements for submitting a grievance to arbitration under the CBA and, therefore, waived its right to have the grievance decided on its merits. The arbitrator rejected the union's claim that

the parties' "past practice" of delaying arbitration while attempting to resolve grievances precluded CMHA from raising a timeliness issue and found that the prior arbitration decisions in which such a conclusion had been reached were factually distinguishable.

{¶7} On August 13, 2012, the union filed an application and motion to vacate the arbitration award pursuant to R.C. 2711.10(D) in the Cuyahoga County Court of Common Pleas alleging that the arbitrator had exceeded and imperfectly executed his authority and that the arbitration award "depart[ed] from the essence of the parties' CBA." On September 12, 2012, CMHA filed a combined motion to dismiss the union's application and motion to vacate and to confirm the arbitration award.

{¶8} On January 26, 2015, the trial court issued its decision denying the union's motion to vacate the arbitration award and granting CMHA's motion to confirm the arbitration award finding no evidence that the arbitrator had exceeded his authority under the CBA or that the arbitration award was otherwise unlawful, arbitrary or capricious.

{¶9} The union appealed the trial court's decision, raising the following assignment of error for review:

> The common pleas court abused its discretion and committed reversible error when it failed to vacate the arbitration award because the arbitrator exceeded his authority under R.C. 2711.10(D) and violated the collective bargaining agreement.

{¶10} Voluntary termination of legal disputes by binding arbitration is favored under the law. *Cleveland v. Internatl. Bhd. of Elec. Workers Local 38*, 8th Dist. Cuyahoga No. 92982, 2009-Ohio-6223, ¶ 16, citing *Kelm v. Kelm*, 68 Ohio St.3d 26, 27, 623 N.E.2d 39 (1993). Arbitration "provides the parties with a relatively speedy and inexpensive method of conflict resolution and has the additional advantage of unburdening crowded court dockets." *Mahoning Cty. Bd. of Mental Retardation & Dev. Disabilities v. Mahoning Cty. TMR Edn. Assn.*, 22 Ohio St.3d 80, 84, 488 N.E.2d 872 (1986). "The whole purpose of arbitration would be undermined if courts had broad authority to vacate an arbitrator's award." *Id.* at 83-84.

{¶11} As a result, the authority of courts to vacate an arbitration award is "extremely limited." *Cedar Fair, L.P. v. Falfas*, 140 Ohio St.3d 447, 2014-Ohio-3943, 19 N.E.3d 893, ¶ 5. Courts must accord "'substantial deference'" to an arbitrator's decision. *N. Royalton v. Urich*, 8th Dist. Cuyahoga No. 99276, 2013-Ohio-2206, ¶ 14, quoting *Cuyahoga Metro. Hous. Auth. v. SEIU Local 47*, 8th Dist. Cuyahoga No. 88893, 2007-Ohio-4292. Arbitration awards are generally presumed to be valid, and a common pleas court reviewing an arbitrator's decision may not substitute its judgment for that of the arbitrator. *Urich* at ¶ 14, citing *Bowden v. Weickert*, 6th Dist. Sandusky No. S-05-009, 2006-Ohio-471, ¶ 50. An appellate court's review of an arbitration award is similarly limited, confined to an evaluation of the trial court's order confirming,

modifying or vacating the arbitration award. *Miller v. Mgt. Recruiters Internatl., Inc.*, 180 Ohio App.3d 645, 2009-Ohio-236, 906 N.E.2d 1162, ¶ 9 (8th Dist.), citing *Lynch v. Halcomb*, 16 Ohio App.3d 223, 475 N.E.2d 181 (12th Dist.), paragraph two of the syllabus; *Orwell Natural Gas Co. v. PCC Airfoils, L.L.C.*, 189 Ohio App.3d 90, 94-95, 2010-Ohio-3093, 937 N.E.2d 609, ¶ 8 (8th Dist.). Appellate review does not extend to the merits of an arbitration award absent evidence of material mistake or extensive impropriety — which has not been alleged here. *Id.*

{¶12} As this court explained in *Motor Wheel Corp. v. Goodyear Tire & Rubber Co.*, 98 Ohio App.3d 45, 647 N.E.2d 844 (8th Dist.1994):

> The limited scope of judicial review of arbitration decisions comes from the fact that arbitration is a creature of contract. Contracting parties who agree to submit disputes to an arbitrator for final decision have chosen to bypass the normal litigation process. If parties cannot rely on the arbitrator's decision (if a court may overrule that decision because it perceives factual or legal error in the decision), the parties have lost the benefit of their bargain. Arbitration, which is intended to avoid litigation, would instead become merely a system of "junior varsity trial courts" offering the losing party complete and rigorous de novo review. *See Natl. Wrecking Co. v. Internatl. Bhd. of Teamsters, Local 731,* 990 F.2d 957 (7th Cir.1993).

Id. at 52. Parties who agree to resolve their disputes through binding arbitration have bargained for and agreed to accept the arbitrator's findings of fact and interpretation of the agreement, even if the arbitrator's decision is based on factual errors or an incorrect legal analysis:

> "Because the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and the meaning of the contract that they have agreed to accept. Courts thus do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts. To resolve disputes about the application of a collective-bargaining agreement, an arbitrator must find facts and a court may not reject those findings simply because it disagrees with them. The same is true of the arbitrator's interpretation of the contract."

S.W. Ohio Regional Transit Auth. v. Amalgamated Transit Union, Local 627, 91 Ohio St.3d 108, 110, 742 N.E.2d 630 (2001), quoting *United Paperworkers Internatl. Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 37-38, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987); *see also Cedar Fair* at ¶ 6 ("So long as arbitrators act within the scope of the contract, they have great latitude in issuing a decision. An arbitrator's improper determination of the facts or misinterpretation of the contract does not provide a basis for reversal of an award by a reviewing court, because '[i]t is not enough * * * to show that the [arbitrator] committed an error — or even a serious error.'"), quoting *Stolt-Nielsen, S.A. v. AnimalFeeds Internatl. Corp.*, 559 U.S. 662, 671, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010). A reviewing court cannot reject an arbitrator's findings of fact or interpretation of the agreement simply because it disagrees with them. *S.W. Ohio Regional Transit Auth.* at 110. So long as an arbitrator is arguably construing the agreement, the court is obliged to affirm the arbitrator's decision. *Cleveland*

v. Fraternal Order of Police, Lodge No. 8, 76 Ohio App.3d 755, 758, 603 N.E.2d 351 (8th Dist.1991).

{¶13} Notwithstanding these principles, an arbitrator can exceed his or her power by going beyond the authority bargained for in the agreement. *Cedar Fair* at ¶ 7. Under R.C. 2711.10(D), "the court of common pleas shall make an order vacating the award upon the application of any party to the arbitration if * * * [t]he arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made."

{¶14} Where a challenge is made to an arbitration award under R.C. 2711.10(D), the trial court must determine whether the arbitration award "draws its essence from the agreement" and is not unlawful, arbitrary or capricious. *Mahoning Cty. Bd. of Mental Retardation & Dev. Disabilities*, 22 Ohio St.3d 80, 84, 488 N.E.2d 872, at paragraph one of the syllabus; *Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.*, 49 Ohio St.3d 129, 132-133, 551 N.E.2d 186 (1990) ("[A] a reviewing court's inquiry * * * [pursuant to R.C. 2711.10(D)], is limited. Once it is determined that the arbitrator's award draws its essence from the collective bargaining agreement and is not unlawful, arbitrary or capricious, a reviewing court's inquiry for purposes of vacating an arbitrator's award pursuant to R.C. 2711.10(D) is at an end."). An arbitrator's authority is confined to interpreting and applying a collective

bargaining agreement. The arbitrator "'does not sit to dispense his own brand of industrial justice.'" *Ohio Office of Collective Bargaining v. Ohio Civ. Serv. Emps. Assn., Local 11, AFSCME, AFL-CIO*, 59 Ohio St.3d 177, 180, 572 N.E.2d 71 (1991), quoting *United Steelworkers of Am. v. Ent. Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960) ("[A]n arbitrator is confined to interpretation and application of the collective bargaining agreement * * *. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.").

{¶15} An arbitration award "draws its essence" from an agreement where there is a "rational nexus" between the agreement and the award. *Cleveland v. Cleveland Assn. of Rescue Emps.*, 8th Dist. Cuyahoga No. 96325, 2011-Ohio-4263, ¶ 9, citing *Assn. of Cleveland Fire Fighters, Local 93 of the Internatl. Assn. of Fire Fighters v. Cleveland*, 99 Ohio St.3d 476, 2003-Ohio-4278, 793 N.E.2d 484, ¶ 13. An arbitration award "'departs from the essence'" of an agreement when: "'(1) the award conflicts with the express terms of the agreement, and/or (2) the award is without rational support or cannot be rationally derived from the terms of the agreement.'" *Cedar Fair* at ¶ 7, quoting *Ohio Office of Collective Bargaining*, 59 Ohio St.3d 177, 572 N.E.2d 71, at syllabus.

{¶16} Section 12.6 of the CBA sets forth the scope of the arbitrator's authority agreed to by the parties as follows:

> In the event a grievance is submitted to arbitration, *the Arbitrator shall have jurisdiction only over disputes as to the interpretation and/or application of and/or the compliance with provisions of this Contract*, including all disciplinary actions. In reaching his/her decision, *the Arbitrator shall have no authority to add to or subtract from or modify, in any way, any of the provisions of the Contract*. The Arbitrator shall issue a decision within thirty (30) calendar days after submission of the case to him.

(Emphasis added.)

{¶17} The provision at issue states, in relevant part:

> *Step IV*. If the grievance is not satisfactorily settled at Step III, the Union may, within forty-five (45) calendar days after receipt of the Step III answer, submit the issue to arbitration. The Union shall notify CMHA, in writing, of its intent to appeal the grievance and within that time the Union must, at the same time, notify the Federal Mediation and Conciliation Service (FMCS), in writing, of its intent to arbitrate the grievance. Upon written notice of the Union's intent to arbitrate, FMCS shall submit a panel of fifteen

(15) arbitrators to each party and the arbitrator shall be chosen in accordance with FMCS's applicable rules. * * *

{¶18} The arbitrator interpreted the second sentence of Step IV as requiring the union to provide written notice to both CMHA and FMCS of its intent to arbitrate the grievance within 45 days following its receipt of CMHA's answer to the union's grievance under Step III of the grievance procedure. Given that CMHA issued its Step III answer on November 19, 2009 and the union waited until December 2010 to notify FMCS of its intent to arbitrate the dispute, the arbitrator determined that the union had "waived its right to have this case decided on its merits" because it "failed to comply with the contractual requirements for processing the grievance to arbitration."

{¶19} The union does not dispute the relevant facts but contends that the arbitration award does not "draw its essence" from the CBA because the arbitrator first "re-wrote the obligations of the parties," adding "a time limit where none exists" that "conflicts with the existing language" of the CBA, and then found that the union violated that "new term and condition." The union argues that because the CBA expressly contemplates a mediation process that precedes arbitration (assuming both parties agree to mediation) and "does not specify a specific time frame within which the union must request the FMCS arbitrator panel and notify CMHA of that request," the arbitrator was obliged to consider "the context of the sentence" at issue "within the entire grievance

article" of the CBA and exceeded his authority in finding that union was precluded from arbitrating the grievance for failing to timely notify FMCS of its intent to arbitrate. The union's argument is meritless.

{¶20} First, the union's argument is nothing more than a claim that the arbitrator misinterpreted or misapplied section 12.5 of the CBA. The facts related to the timeliness of the union's arbitration demand are undisputed. The arbitrator's determination that the union failed to comply with section 12.5 of the CBA is based on his interpretation of that specific provision of the agreement applied to the undisputed facts. Even if we disagreed with the arbitrator's interpretation of the agreement, it would not be grounds to vacate the arbitration award under R.C. 2711.10(D). *See, e.g., S.W. Ohio Regional Transit Auth.*, 91 Ohio St.3d at 110, 742 N.E.2d 630; *Cedar Fair*, 140 Ohio St.3d 447, 2014-Ohio-3943, 19 N.E.3d 893, at ¶ 6.

{¶21} Second, whether a time limit existed for the union *to request an arbitration panel from FMCS* under the CBA is not at issue here. The arbitrator's decision was based on the union's failure *to timely notify FMCS in writing that it intended to arbitrate its grievance*, not the union's failure to timely request an arbitration panel. The fact that there is "no specific time frame" in the CBA by which the union had to request a panel of arbitrators from FMCS does not mean there was no deadline in the CBA by which the union had to notify FMCS of its intent to arbitrate the grievance.

{¶22} Furthermore, the arbitrator's decision is based on a reasonable interpretation of the CBA. The CBA clearly states: "[T]he Union may, within forty-five (45) calendar days after receipt of the Step III answer, submit the issue to arbitration. The Union shall notify CMHA, in writing, of its intent to appeal the grievance and within that time the Union must, at the same time, notify the [FMCS] of its intent to arbitrate the grievance." The first sentence sets forth the time frame in which an issue must be submitted to arbitration if the union wants to arbitrate it. The second sentence indicates how the issue is to be submitted to arbitration, i.e., the union must notify CMHA and FMCS of its intent to arbitrate the grievance within 45 days of the union's receipt of CMHA's Step III answer. The language of the second sentence is mandatory. Although the union argues that the second sentence of Step IV contains no relevant time limit, based on a plain reading of the provision, the statement that the union "must * * * notify" FMCS "within that time" and "at the same time" clearly refers back to the 45-day time limit in preceding sentence. As the arbitrator explained, "[a]n arbitrator may not simply ignore clear contractual language" when arbitrating a grievance:

> The jurisdiction of the [A]rbitrator is limited by Article 12.6 of the agreement. That section provides that "the Arbitrator shall have no authority to add to or subtract from or modify, in any way, any of the provisions of this Contract." If the Arbitrator were to find an exception to the clear language of [A]rticle 12.5, he would most certainly be exceeding his jurisdiction.

> The Arbitrator recognizes that, whenever possible, a case should be decided on the merits rather than on a procedural matter. Nevertheless, arbitrators must apply the same standards of contract interpretation to procedural issues as they do to other issues of contract interpretation. An arbitrator must presume that the parties had a reason for choosing the particular language used in a collective bargaining agreement. * * *
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> In this case, the language in Article 12.5 compels the Arbitrator to find that the Union waived its right to have this case decided on its merits because it failed to comply with the contractual requirements for submitting a case to arbitration. Therefore, the grievance must be denied.

{¶23} The union's argument that the arbitrator's interpretation of section 12.5 "rendered the mediation and arbitration process nonsensical" is likewise meritless. The CBA expressly provides that "[a]ll grievances *which have been appealed to arbitration* may be referred to mediation by agreement of the parties." (Emphasis added.) Accordingly, even where the parties agree to mediate a dispute, it does not change the time frame or other requirements for appealing a grievance to arbitration unless the parties otherwise expressly agree.[1] Furthermore, there is no evidence in the record that the grievance at issue was ever submitted to mediation.

{¶24} The union next argues that the arbitrator exceeded his powers by (1) failing to recognize that the parties had a "past practice" of delaying

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[1] *See* Section 12.4 of the CBA, discussed *infra* at ¶ 28 ("[t]he time limits set forth in the Grievance Procedure shall, unless extended by agreement of CMHA and the Union, be binding * * *"). There is no evidence that any such agreement existed in this case.

arbitration while trying to resolve grievances, which the union argues precluded CMHA from raising the issue of timeliness, and (2) failing to follow a prior arbitration decision in which the arbitrator allegedly rejected a similar timeliness argument by CMHA "based on the same contractual language and an identical grievance processing fact pattern." Once again, the union's arguments are not persuasive. The record reflects that the arbitrator gave due consideration to the union's arguments and reasonably rejected them.

{¶25} As the arbitrator noted, the prior arbitration decision on which the union relied for its waiver argument involved a situation in which the demand for arbitration was timely filed but there was an unusually long delay between the filing of the demand and the arbitration hearing. In that case, the arbitrator held that because the CBA did not set a deadline for the hearing and the employer did not establish prejudice as a result of the delay, the arbitration could proceed on the merits. That is not the situation here. Here, it was undisputed that the union failed to promptly notify FMCS of its intent to arbitrate the grievance — a requirement for which there is a specific deadline stated in the CBA. Accordingly, the arbitrator did not exceed his powers in refusing to follow the prior arbitration decision.

{¶26} With respect to the union's "past practice" argument, the Ohio Supreme Court has held that for a past practice to be binding on the parties to a collective bargaining agreement, the past practice must be (1) unequivocal,

(2) clearly enunciated and (3) followed for a reasonable period of time as a fixed and established practice accepted by both parties. *Assn. of Cleveland Fire Fighters, Local 93 of the Internatl. Assn. of Firefighters,* 99 Ohio St.3d 476, 2003-Ohio-4278, 793 N.E.2d 484, at syllabus. There is nothing in the record that suggests that the union established the existence of an applicable past practice that satisfied this standard.

{¶27} Finally, the union argues that the arbitrator exceeded his authority by imposing "a penalty not found in the parties' grievance and arbitration procedure." The union contends that when the arbitrator determined that the grievance was not arbitrable due to the union's failure to comply with the time limit set forth in section 12.5, he "add[ed]" a "new term and condition" not found in the parties' agreement.

{¶28} However, section 12.4 of the CBA clearly and unambiguously provides that if the union fails to comply with the time limits set forth in the grievance procedure, the grievance process terminates:

> If the Union fails to comply with the time limits set forth herein, the grievance shall be resolved in accordance with the last answer of CMHA and no further action will be permitted under this process. The time limits set forth in the Grievance Procedure shall, unless extended by agreement of CMHA and the Union, be binding, and any grievance not timely presented shall not be considered under this Agreement.

Accordingly, the arbitrator did not exceed his authority in determining that the grievance was not procedurally arbitrable. Rather, he applied the

"penalty" specified in the CBA for failure to comply with the time limits set forth in the grievance procedure, i.e., that "any grievance not timely presented shall not be considered."

{¶29} Following a thorough review of the record, we find no error in the trial court's determination that the arbitration award drew its essence from the CBA and was not arbitrary, capricious or unlawful. Accordingly, the arbitrator did not exceed his authority under the CBA, and the trial court properly confirmed the arbitration award and denied the union's motion to vacate the arbitration award under R.C. 2711.10(D). The union's assignment of error is overruled.

{¶30} Judgment affirmed.

It is ordered that appellee recover from appellants the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

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EILEEN A. GALLAGHER, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
PATRICIA ANN BLACKMON, J., CONCUR