

[Cite as *Cleveland State Univ. Fraternal Order of Police, Ohio Labor Council, Inc.*, 2015-Ohio-4772.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 102940

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**CLEVELAND STATE UNIVERSITY**

PLAINTIFF-APPELLANT

vs.

**FRATERNAL ORDER OF POLICE, OHIO  
LABOR COUNCIL, INC.**

DEFENDANT-APPELLEE

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-13-814979

**BEFORE:** Kilbane, J., Celebrezze, A.J., and Keough, J.

**RELEASED AND JOURNALIZED:** November 19, 2015

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MARY EILEEN KILBANE, J.:

{¶1} Plaintiff-appellant, Cleveland State University (“CSU”), appeals from the trial court’s judgment denying its motion to vacate the arbitration award and confirming the award in favor of defendant-appellee, Fraternal Order of Police, Ohio Labor Council, Inc. (“FOP”). For the reasons set forth below, we affirm.

{¶2} In 2011, CSU entered into a lease agreement with CSU Housing, L.L.C. (“Housing”), a private Ohio limited liability company, whereby CSU agreed to lease certain land it owned to Housing, with the intent that Housing would redevelop this land. In connection with the agreement, Housing developed the Langston Apartment complex (“Langston”). The Langston is available for lease to CSU students and faculty and private individuals. As to police services at the Langston, Article II, Section 2.5 of the CSU-Housing lease agreement provides in relevant part:

As Landlord-owned property, the Premises will be subject at all times during the term of this lease to the jurisdiction of Landlord’s campus police force. Landlord’s campus police force will, in general, be the first responders to complaints arising from the Premises. The emergency number (#911) from telephones in the Premises will be connected to the campus police force.

{¶3} CSU and the FOP are parties to a Collective Bargaining Agreement (“CBA”), in which members of the bargaining unit (represented by FOP) are to provide police services to both private citizens and students of CSU through the CSU Police Department.

{¶4} The instant dispute arose when CSU police officers learned that Housing hired off-duty Cleveland police officers employed by Cleveland Watchmen, Inc. (“Cleveland Watchmen”), to provide security at the Langston. The FOP filed a grievance, alleging that CSU violated their CBA by contracting out bargaining unit work to Cleveland Watchmen without first offering the work to FOP members.

{¶5} Specifically, FOP contended that CSU violated Article I, Section 1.A, Article II, and Article III, Section 4 of the CBA. Article I, Section 1.A of the CBA provides for the utilization of FOP members to provide police services within the jurisdiction of CSU. Article II of the CBA contains a recognition clause that describes the bargaining unit as consisting of all persons holding full-time CSU positions in the University Law Enforcement Officer classifications 1, 2, and 3 of the state of Ohio. The members in this bargaining unit provide police services to both private citizens and to the student population of CSU. Article III, Section 4 of the CBA contains a management rights clause, in which CSU agrees not to contract out bargaining unit work except under special circumstances, such as sporting events. These special circumstances are not applicable to the instant case.

{¶6} In its grievance, the FOP sought the following remedy: (1) CSU police officers be given the first opportunity to work security at the Langston, and (2) CSU police officers be made whole for losses incurred. In response, CSU maintained that the Langston was a privately owned facility, and therefore, Housing was not obligated to hire CSU police officers to provide security.

{¶7} The matter proceeded to arbitration in April 2013. The joint issue before the arbitrator was whether CSU violated the CBA by not providing FOP members the first opportunity to work at the Langston, and if so, what is the remedy. The parties submitted the CBA and the CSU-Housing Lease as joint exhibits. The arbitrator sustained the FOP's grievance in part, finding that CSU violated the CBA when it allowed Housing to use off-duty Cleveland police officers as security at the Langston. The Arbitrator found the evidence demonstrated that: (1) under the lease agreement between CSU and Housing, the "landlord owned property" (Langston) is subject "at all times" to the jurisdiction of CSU's campus police force, and (2) providing police services at the Langston is bargaining unit work. Therefore, under the terms of the CBA, FOP members should have been given the first opportunity to work the security patrol at the Langston. As a remedy, the arbitrator ordered CSU to advise Housing that it must first offer law enforcement work at the Langston to members of the FOP bargaining unit. The arbitrator denied the FOP's request for lost wages, finding that it would be unreasonable to award lost wages when the number of hours off-duty Cleveland police officers worked at the Langston was not clearly established.

{¶8} Thereafter, CSU filed a motion with the Cuyahoga County Court of Common Pleas, seeking to vacate the arbitrator's award. In response, FOP filed an answer and counterclaim, seeking to confirm the arbitrator's award and requesting lost wages. In March 2014, the trial court denied CSU's motion to vacate the arbitration

award and confirmed the arbitrator's award, but declined to award the FOP lost wages.

In a six-page opinion, the trial court thoughtfully stated:

CSU relies on [R.C. 2711.10(D)], and argues that the arbitration decision should be vacated as [the arbitrator's] decision did not "draw its essence from the agreement between the parties."

\* \* \*

The Ohio Supreme Court has held that "[a]n arbitrator's award departs from the essence of the collective bargaining 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." *Office of Collective Bargaining v. Ohio Civ. Serv. Employees Assn., Local 11* (1991) 59 Ohio St.3d 177, 572 N.E.2d 71.

(Emphasis sic.)

[The arbitrator] certainly analyzed and interpreted the CSU-Housing Lease; still the Arbitration award was rationally derived from the terms of the CBA. CSU agrees that Article 1 and Article 3 of the CBA mandate that bargaining unit members receive first opportunity to perform bargaining work. The language of Article 1 and Article 3 — providing limited exceptions to the bargaining unit's right to first opportunity CSU police work — are contained in the CBA. [The arbitrator] was required to determine whether or not [CSU] violated these sections of the CBA and did not exceed his authority by making such a determination. Further the court finds that [the arbitrator's] reliance on the CSU-Housing Lease was inevitable and necessary to his determination. The Lease was a joint exhibit offered during the arbitration hearing and is intertwined with the CBA as it relates to the use of law enforcement personnel for police services.

This court agrees with [the arbitrator's] award in the FOP's favor. Pursuant to the CBA and the CSU-Housing Lease, respectively: 1) CSU is obligated to offer bargaining unit work first to members; and 2) CSU's police force was to be used at the Langston property, outside of special circumstances not exhibited here. The court finds it persuasive that CSU's police officers had already responded to about 471 calls at the Langston at the time the grievance was filed. Further, it was shown at the arbitration

that CSU students are living [at the] Langston and it is undisputed that the Langston is located on CSU-owned property.

These examples of CSU police officers responding to the Langston property support the Arbitrator's finding that police security work at Langston is bargaining unit work. [The arbitrator's] decision that CSU did not offer such work to bargaining unit members first, in clear violation of the CBA, does not exceed his authority. CSU is able to comply with the Arbitrator's award by simply conforming to the terms of the CBA. As such, [CSU] has not met R.C. 2711.10's standard for vacating an arbitration award. Instead, this Court confirms the Arbitrator's opinion and Award in its entirety in accordance with R.C. 2711.09.

{¶9} CSU now appeals, raising the following two assignments of errors for review, which shall be discussed together.

#### Assignment of Error One

[CSU] did not contract out bargaining unit work because no contract exists between [CSU] and Cleveland Watchmen.

#### Assignment of Error Two

The arbitrator exceeded his authority and his award does not draw its essence from the Collective Bargaining Agreement.

{¶10} Within these assigned errors, CSU argues that the trial court abused its discretion when it confirmed the arbitration award because no contract exists between CSU and Cleveland Watchmen, and the arbitrator interpreted a contract (the lease agreement) extraneous to the CBA in determining whether it violated the CBA.

{¶11} We note that judicial review of an arbitration award is narrow, limited, and restricted as set forth in R.C. 2711.10 and 2711.11. *Miller v. Gunckle*, 96 Ohio St.3d 359, 2002-Ohio-4932, 775 N.E.2d 475, ¶ 10. As relevant here, one of the statutory bases upon which a trial court may vacate an arbitration award is if the arbitrator exceeded his

powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. R.C. 2711.10(D).

{¶12} Appellate review of a trial court’s decision confirming an arbitration award is conducted under an abuse of discretion standard. *Citibank, N.A. v. White*, 8th Dist. Cuyahoga No. 99868, 2014-Ohio-304, ¶ 17. Thus, an appellate court may only reverse upon finding that the trial court acted in an unreasonable, arbitrary, or unconscionable manner in rendering its decision. *Miller v. Mgt. Recruiters Internatl., Inc.*, 180 Ohio App.3d 645, 2009-Ohio-236, 906 N.E.2d 1162, ¶ 10 (8th Dist.).

{¶13} It is with the above standards in mind that we review CSU’s arguments. Essentially, CSU argues that the trial court abused its discretion by confirming the arbitrator’s award because the arbitrator “imperfectly executed” his powers when he relied on language in the CSU-Housing Lease in finding a CBA violation, and the arbitrator’s award departs from the essence of the CBA. CSU maintains that Housing is a private entity, which contracted with Cleveland Watchmen, and is not a party to the CBA. Therefore, Housing is not bound by the terms of the CBA. As a result, CSU argues it is unreasonable to require Housing to be subject to the CBA by requiring it to offer FOP the private security work at the Langston.

{¶14} We recognize that when the parties have agreed in a collective bargaining agreement to settle their disputes by using a mutually acceptable arbitrator rather than a judge, they have bargained for and agreed to accept the arbitrator’s findings of fact and interpretation of the contract. *S.W. Ohio Regional Transit Auth. v. Amalgamated Transit*



*Union, Local 627*, 91 Ohio St.3d 108, 110, 2001-Ohio-294, 742 N.E.2d 630. A reviewing court cannot reject an arbitrator's findings of fact or interpretation of the contract simply because it disagrees with them. *Id.*

{¶15} To determine whether an arbitrator has exceeded his or her powers under R.C. 2711.10(D), the trial court must determine whether the award “draws its essence from the agreement” and is not unlawful, arbitrary, or capricious. *Mahoning Cty. Bd. of Mental Retardation & Dev. Disabilities v. Mahoning Cty. TMR Edn. Assoc.*, 22 Ohio St.3d 80, 488 N.E.2d 872 (1986), 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 court's inquiry under 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. *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.).

{¶16} 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. 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.” *Ohio Office of Collective Bargaining v. Ohio Civ. Serv. Emps. Assn., Local 11, AFSCME, AFL-CIO*, 59 Ohio St.3d 177, 572 N.E.2d 71 (1991), syllabus. The arbitrator must apply the contract agreed to by the parties, not “create[], in effect, a contract of his own.” *Ohio Office of Collective Bargaining* at 183.

{¶17} In the instant case, the arbitrator’s award must be viewed in light of the specific grievance presented to the arbitrator — the stipulated issue of whether CSU violated the CBA by not providing FOP members the first opportunity to work at the Langston. Our review of the record demonstrates that, contrary to CSU’s position, the arbitrator’s award did, in fact, draw its essence from the CBA between CSU and FOP.

{¶18} The arbitrator was required to determine whether CSU violated Article I and Article III of the CBA, and he did not exceed his authority by making such a determination. The arbitrator specifically interpreted Article I, Section 1.A and Article III, Section 4 of the CBA. Article I, Section 1.A of the CBA provides for the utilization of FOP members to provide police services within CSU’s jurisdiction through the CSU

Police Department. Article III, Section 4 of the CBA contains a management rights clause, in which CSU agrees not to contract out bargaining unit work except under special circumstances, which are not applicable to the instant case. The arbitrator also analyzed the CSU-Housing Lease, which was a joint exhibit at the hearing. Article II, Section 2.5 of the lease agreement provides in pertinent part:

As Landlord-owned property, the Premises will be subject at all times during the term of this lease to the jurisdiction of Landlord's campus police force. Landlord's campus police force will, in general, be the first responders to complaints arising from the Premises.

{¶19} The trial court found, and we agree, that while the arbitrator analyzed the CSU-Housing Lease, the arbitration award was rationally derived from the terms of the CBA. CSU agreed to offer the lease agreement as a joint exhibit during the arbitration hearing, acknowledging its value to the arbitrator's determination. As a result, the arbitrator's reliance on the CSU-Housing Lease was inevitable and necessary to his determination.

{¶20} The lease agreement is intertwined with the CBA as it relates to the use of law enforcement personnel for police services. Specifically, it provides that the premises (Langston) is subject, at all times during the lease term, to the jurisdiction of the CSU Police Department. Under this provision, CSU has the right to require Housing to employ CSU police officers for security at the Langston.

{¶21} Under the CBA and by virtue of the CSU-Housing Lease, CSU is obligated to offer police services work first to FOP members and CSU's police department is to be used at the Langston property, which houses CSU students and is located on CSU-owned

property. Based on the foregoing, it is apparent that the arbitrator did not exceed his authority in reaching his decision, but merely interpreted the terms contained within the agreement in the context of the grievance presented.

{¶22} In light of the existence of a rational nexus between the CBA and the underlying award, we find that the trial court did not err by confirming the arbitration award.

{¶23} Therefore, the first and second assignments of error are overruled.

{¶24} Judgment is affirmed.

It is ordered that appellee 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 common pleas 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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MARY EILEEN KILBANE, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and  
KATHLEEN ANN KEOUGH, J., CONCUR