

[Cite as *Ohio Council 8 v. Cleveland*, 2016-Ohio-1128.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 103354**

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**OHIO COUNCIL 8, AFSCME, AFL-CIO  
& LOCAL 100, ET AL.**

PLAINTIFFS-APPELLANTS

vs.

**CITY OF CLEVELAND**

DEFENDANT-APPELLEE

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**JUDGMENT:**  
REVERSED AND REMANDED

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-15-841121

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

**RELEASED AND JOURNALIZED:** March 17, 2016

**ATTORNEYS FOR APPELLANTS**

R. Sean Grayson  
Michelle R. Evans  
AFSCME, AFL-CIO  
Ohio Council 8  
6800 North High Street  
Worthington, Ohio 43085-2512

**ATTORNEY FOR APPELLEE**

Drew A. Carson  
1717 East 9th Street, #601  
Cleveland, Ohio 44114

FRANK D. CELEBREZZE, JR., J.:

{¶1} Appellants, Ohio Council 8, American Federation of State, County, and Municipal Employees, AFL-CIO and Local 100, American Federation of State, County, and Municipal Employees, AFL-CIO (the “Union”), seeks reversal of the dismissal of its application to confirm an arbitration award. The trial court dismissed the application after finding that it lacked subject-matter jurisdiction. After a thorough review of the record and law, this court reverses and remands.

### **I. Factual and Procedural History**

{¶2} This court has before it an abbreviated record from which the following facts can be gleaned. Mitchell Ferris was employed by appellee, the city of Cleveland (the “City”). The City terminated his employment. Ferris was a member of the Union, and his employment was covered by a collective bargaining agreement (“CBA”) negotiated between the Union and the City.

{¶3} Ferris and the Union brought a grievance as a result of his termination. Under the terms of the CBA, the dispute wound through the grievance process and would ultimately be decided by binding arbitration. The parties selected an arbitrator, and an arbitration hearing date was set. Prior to the hearing, the City, the Union, and Ferris came to an agreement to resolve the grievance. The agreement was memorialized in the decision of the arbitrator issued July 25, 2014. The arbitrator set forth the basic facts of how the settlement was reached and the resolution agreed to by the parties. The arbitrator’s decision stated that Ferris would be hired back by the City to his current position of senior clerk, and be awarded a year of back pay and pension benefits. However, Ferris would not return to his position in the Division of Fiscal Control or any position in the Department of Public Utilities. No specific position of

employment was stated in the decision. When Ferris returned to work, he would also be placed on the third step of the attendance disciplinary policy that was set forth in the CBA. Further, Ferris's Family Medical Leave Act request would be granted for his serious health condition.

{¶4} The Union filed a motion with the lower court for confirmation of the arbitrator's award on February 26, 2015. In response, the City filed a motion to dismiss arguing that the document issued by the arbitrator was not an arbitration award, but was actually a settlement agreement between the parties. As such, this agreement could not be confirmed by the court, and was subject to the terms of the CBA's dispute resolution process.

{¶5} On July 15, 2015, the court issued an order dismissing the Union's motion finding that the court lacked subject-matter jurisdiction. The court characterized the document issued by the arbitrator as a settlement agreement, not an arbitration decision, and determined that the court did not have jurisdiction over the disputed settlement agreement. The Union appealed the dismissal to this court raising one error for review:

The Cuyahoga County Court of Common Pleas committed reversible error by dismissing for lack of subject matter jurisdiction a timely motion made pursuant to R.C. 2711.09 to confirm an arbitration award when no timely motion for vacation or modification of the arbitration award was made.

## **II. Law and Analysis**

### **A. Standard of Review**

{¶6} The trial court determined that it did not have subject-matter jurisdiction because the settlement agreement did not constitute a valid arbitration decision.

{¶7} A common pleas court has jurisdiction to confirm an arbitration award pursuant to R.C. 2711.09:

At any time within one year after an award in an arbitration proceeding is made, any party to the arbitration may apply to the court of common pleas for an order confirming the award. Thereupon the court shall grant such an order and enter judgment thereon, unless the award is vacated, modified, or corrected as prescribed in sections 2711.10 and 2711.11 of the Revised Code. Notice in writing of the application shall be served upon the adverse party or his attorney five days before the hearing thereof.

#### {¶8} Subject-matter jurisdiction

is the power of a court to entertain and adjudicate a particular class of cases.

*Morrison v. Steiner*, 32 Ohio St.2d 86, 87, 290 N.E.2d 841 (1972). A court's subject-matter jurisdiction is determined without regard to the rights of the individual parties involved in a particular case. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, 1998-Ohio-275, 701 N.E.2d 1002 (1998); *Handy v. Ins. Co.*, 37 Ohio St. 366, 370 (1881). A court's jurisdiction over a particular case refers to the court's authority to proceed or rule on a case that is within the court's subject-matter jurisdiction. *Pratts [v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992,] at ¶ 12. This latter jurisdictional category involves consideration of the rights of the parties. If a court possesses subject-matter jurisdiction, any error in the invocation or exercise of jurisdiction over a particular case causes a judgment to be voidable rather than void. *Id.* at ¶ 12.

*Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 19.

{¶9} Common pleas courts possess subject-matter jurisdiction to adjudicate motions to confirm arbitration awards. R.C. 2711.09. Situations exist where a court may lack jurisdiction over a particular case to entertain a motion to confirm an arbitration award, including where the motion is untimely. *See Cox v. Dayton Pub. Schools Bd. of Edn.*, 2d Dist. Montgomery No.

26382, 2015-Ohio-620, ¶ 17. However, that does not impact a court's subject-matter jurisdiction and dismissal would be appropriate under Civ.R. 12(B)(6) rather than Civ.R. 12(B)(1). *Id.* at ¶ 11.

{¶10} The City filed a Civ.R. 12(B)(1) motion to dismiss for lack of subject-matter jurisdiction. When a party files a Civ.R. 12(B)(1) motion to dismiss, the trial court must decide “whether the complaint contains allegations of a cause of action that the trial court has authority to decide.” *Bank of Am. v. Macho*, 8th Dist. Cuyahoga No. 96124, 2011-Ohio-5495, ¶ 7. Unlike a motion to dismiss premised on Civ.R. 12(B)(6), the trial court is not confined to the allegations of the complaint, but may consider any “material pertinent to such inquiry.” *Id.*, quoting *Southgate Dev. Corp. v. Columbia Gas Transm. Corp.*, 48 Ohio St.2d 211, 358 N.E.2d 526 (1976).

{¶11} This court reviews the trial court's decision de novo. *Revocable Living Trust of Mandel v. Lake Erie Util. Co.*, 8th Dist. Cuyahoga No. 97859, 2012-Ohio-5718, ¶ 17, citing *Mellion v. Akron City School Dist. Bd. of Edn.*, 9th Dist. Summit No. 23227, 2007-Ohio-242, ¶ 6, citing *Crestmont Cleveland Partnership v. Ohio Dept. of Health*, 139 Ohio App.3d 928, 936, 746 N.E.2d 222 (10th Dist.2000). That means this court engages in an independent review without deference to the trial court's decision. *Id.*

### **B. Subject-Matter Jurisdiction and Validity of the Arbitration Award**

{¶12} Under paragraph 180 of the CBA, “all decisions of arbitrators consistent with Paragraph One Hundred Seventy-Seven (177), and all pre-arbitration grievance settlements reached by the Union and the City shall be final, conclusive and binding upon the City, the Union and the employees.” Paragraph 177 provides,

[t]he parties may, by mutual agreement, choose to have a grievance involving suspension or discharge arbitrated on an expedited basis. The expedited arbitration will be conducted pursuant to the rules of the American Arbitration Association, and the fees and expenses of such proceeding including those of the Arbitrator, shall be borne equally by the City and the Union.

{¶13} Both settlements reached prior to arbitration and arbitration decisions are binding on the parties. The difference is that settlement agreements reached prior to arbitration, such as in the third step of the grievance process under mediation, cannot be confirmed by a common pleas court under R.C. 2711.09 because no arbitration award would exist.

{¶14} Paragraphs 176 through 181 of the CBA set forth the arbitration procedure. After notice of arbitration is provided by a party to the CBA, it calls for the parties to meet and agree on an arbitrator, or if no arbitrator can be agreed on, to notify the American Arbitration Association (“AAA”) or the Federal Mediation and Conciliation Services (“FMCS”) for the appointment of an arbitrator.

{¶15} Here, a settlement was reached during the fourth step in the grievance process — arbitration. The parties had selected an arbitrator and a hearing date was set. During the pre-hearing phase of the arbitration and just before the hearing was to begin, the parties reached an agreement. Rather than going forward with the hearing, the parties apparently waived the hearing and asked the arbitrator to issue an award incorporating the terms of the settlement.

{¶16} While it is unclear from the record whether the arbitration in the present case was governed by AAA or FMCS rules for labor arbitration as the CBA is inconsistent in places, Rule 32 of the AAA, Labor Arbitration Rules indicates parties may waive an oral hearing. AAA Labor Arbitration R. 32 (July 1, 2013). Further, Rule 38 specifically provides for settlement during the course of arbitration: “If the parties settle their dispute during the course of the

arbitration and if the parties so request, the arbitrator may set forth the terms of the settlement in a ‘consent award.’” AAA Labor Arbitration R. 38. The AAA rules for labor arbitration specifically contemplate the exact situation that occurred here: The parties entered into a settlement, waived a hearing, and had the arbitrator issue an award incorporating the settlement.

{¶17} The July 25, 2014 arbitration decision indicates that the settlement was reached on the scheduled date for the arbitration hearing. The decision states:

On July 17, 2014 an arbitration hearing was scheduled to take place at Burke Lakefront Airport, Cleveland, Ohio between the [City] and [the Union]. The hearing involved a dispute between the parties over the termination of Mitchell Ferris, the Grievant.

Before the hearing was to begin, Assistant Director of Law \* \* \* and the Union’s Regional Director \* \* \* engaged in a discussion in an effort to resolve and settle the dispute. Their discussion concluded with an agreement to settle the dispute which was agreed to by the Grievant, Mitchell Ferris. Pursuant to the request of the parties, the settlement agreement has been incorporated into the Award by the Arbitrator.

{¶18} This award was issued in compliance with the CBA and in accordance with AAA rules for labor arbitration. This court starts from the proposition that “[t]he arbitrator’s award is presumed valid.” *Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.*, 49 Ohio St.3d 129, 551 N.E.2d 186 (1990). On the record before this court, there is no basis to conclude that the lower court is without subject-matter jurisdiction to entertain a motion to confirm the facially valid arbitration award.

{¶19} The CBA does not require some other step in the grievance process as was the case in the authority cited by the lower court. The grievance process came to its conclusion with the



issuance of a binding arbitration award. Thereafter, all that was left was for the parties to file a motion to modify, vacate, or confirm the award.

{¶20} The trial court cited two cases in support of its findings: *Bryant v. Witkosky*, 11th Dist. Portage No. 2001-P-0047, 2002-Ohio-1477; and *State ex rel. Wilkinson v. Reed*, 99 Ohio St.3d 106, 2003-Ohio-2506, 789 N.E.2d 203. Both cases deal with a failure of the parties to satisfy the requirements contained within the respective collective bargaining agreements for dispute resolution. In both cases, no arbitration process was initiated.

{¶21} *Bryant* involved a dispute between an employee and her employer that was settled during the grievance process. *Bryant* at ¶ 3. The employee filed a breach of contract action after she claimed her employer breached the settlement agreement. *Id.* at ¶ 4. The settlement in *Bryant* included language that any dispute about the settlement was governed by the collective bargaining agreement. *Id.* at ¶ 15. That case did not involve an arbitration decision and did not involve a motion to confirm an arbitration award.

{¶22} Similarly, *Wilkinson* involved a complaint for a temporary injunction where the State Employment Relations Board had jurisdiction and grievance procedures under the collective bargaining agreement had not been exhausted. *Wilkinson* at ¶ 4. The court reiterated that “if a collective bargaining agreement between a public employer and an exclusive employee representative ‘provides for a final and binding arbitration of grievances, public employers, employees, and employee organizations are subject solely to that grievance procedure \* \* \*.’” (Emphasis omitted.) *Id.* at ¶ 20, quoting R.C. 4117.10(A).

{¶23} Again, these cases did not involve a motion to confirm an arbitration award where all required steps in the grievance process were completed upon the issuance of the arbitrator’s

award. The lower court had exclusive subject-matter jurisdiction to confirm the arbitration award pursuant to R.C. 2711.09.

{¶24} This case is governed by Chapter 2711 of the Revised Code. There is no disagreement that the parties' dispute is covered by an agreement to arbitrate. There is further no dispute that the parties fulfilled their obligations under the CBA and properly initiated arbitration. An arbitrator was chosen and a hearing date was set. The arbitration *hearing* did not go forward by agreement of the parties, but the arbitration did result in an award issued by the arbitrator, again, by agreement of the parties. Under these circumstances, the award issued by the arbitrator is facially valid and capable of confirmation, vacation, or modification under R.C. Chapter 2711. The City's argument that the award is facially invalid because it references and incorporates a settlement reached by the parties is unavailing.

{¶25} The City further argues that Cleveland Codified Ordinances ("C.C.O.") 125.03, which vests exclusive jurisdiction in the City law director to settle claims where the City is a debtor, means the settlement is invalid because of a lack of authority of the assistant law director to settle a dispute where the City is required to pay money. Arguments about the validity of the agreement reached do not deprive the court of subject-matter jurisdiction to entertain the motion to confirm the award. This is an argument as to whether the award should be vacated, not to the subject-matter jurisdiction of the lower court. As the Ohio Supreme Court indicated in *Kutchra*, "an inquiry into a party's ability to invoke a court's jurisdiction speaks to jurisdiction over a particular case, not subject-matter jurisdiction." *Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, at ¶ 22.

{¶26} The City also argues that the award is imperfect because it leaves significant questions as to Ferris's employment with the City. Again, any argued error in the award was

proper fodder for a motion to vacate or modify. This does not impact the court's subject-matter jurisdiction over a motion to confirm an arbitration award.

### **III. Conclusion**

{¶27} The arbitrator issued an award that was agreed to by the parties that ultimately resolved the pending arbitration and the grievance process as set forth in the CBA. Whether the assistant law director that represented the City during these arbitration proceedings had authority to engage in such actions is a question that can be raised in a motion to vacate, but does not deprive the court of subject-matter jurisdiction to hear matters relating to the arbitration award. Therefore, the trial court erred when it dismissed the Union's motion to confirm the arbitration award after finding it lacked subject-matter jurisdiction. This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellants recover of said appellee 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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FRANK D. CELEBREZZE, JR., JUDGE

KATHLEEN ANN KEOUGH, P.J., and  
MARY EILEEN KILBANE, J., CONCUR  
KEY WORDS: