

[Cite as *Cuyahoga Metro. Hous. Auth. v. Fraternal Order of Police, Ohio Labor Council, Inc.*, 2017-Ohio-190.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104319

CUYAHOGA METROPOLITAN HOUSING AUTHORITY

PLAINTIFF-APPELLANT

vs.

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

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-851633

BEFORE: Celebrezze, J., Jones, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: January 19, 2017

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FRANK D. CELEBREZZE, JR., J.:

{¶1} Appellant, the Cuyahoga County Metropolitan Housing Authority (“CMHA”), appeals from the lower court’s order denying its motion to vacate the award of an arbitrator. The arbitrator’s award overturned the termination of a CMHA detective, Clinton Ovalle, and instead, imposed a 30-day suspension and ordered back pay. CMHA urges this court to vacate the award for several reasons. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶2} On December 3, 2013, Detective Ovalle and two other CMHA detectives were conducting quality of life patrols on CMHA property. The three saw what they perceived to be a drug transaction between a man and a woman. The detectives approached, and as they did, the man, later determined to be Thomas Moore, moved his hand toward his mouth. The woman, Tamblyn Stanley, began to walk away. Detectives ordered them to stop. Detective Ovalle went to stop Stanley as the other two attended to Moore. According to Detective Ovalle, he ordered Stanley to the ground and she willingly laid on the ground with some gentle assistance from him. According to Stanley, Detective Ovalle pushed her to the ground, and she sustained injuries to her knees, hands, and other parts of her body. Stanley was searched and released. Later, Stanley went to the hospital for treatment, and filed a complaint against Detective Ovalle.

{¶3} Moore was also searched. Detectives did not find any drugs, but they did find a key to a CMHA apartment. Moore explained that the key belonged to his girlfriend and that he did not live at the apartment. The three detectives continued to detain Moore and transported him to the apartment with the intent to see if the tenant was there and to search the apartment for drugs. When walking into the apartment complex, detectives smelled the odor of burnt marijuana and encountered an individual in the hallway who appeared to have just smoked marijuana. Detective Ovalle stayed behind to talk to this individual while the other two detectives escorted Moore upstairs where they used the key to enter and search the apartment. Detective Ovalle found a very small amount of marijuana smoldering in what remained of a marijuana cigarette discarded on the floor. He interviewed the male downstairs, confirmed the individual's identity with dispatch, issued him a verbal warning about using drugs on CMHA property, and let him go. Detective Ovalle then went upstairs and rejoined the other two detectives.

{¶4} The search of the apartment that had been taking place while Detective Ovalle was downstairs did not reveal any drugs, and Detective Ovalle advised the other detectives that they should leave because the search was unlawful. Moore was released, and the detectives left. They did not file any paperwork regarding the stop and search of Stanley, the possible drug use in the hall, or the stop and search of Moore and the apartment. They also did not inform any supervisors about the transport of Moore or the search of the apartment prior to or as it was taking place.

{¶5} After Stanley filed her complaint, CMHA began an investigation into her allegations of excessive use of force. The investigation expanded to include the search of the apartment. CMHA investigators interviewed Stanley, Moore, and the three detectives. After the investigation concluded, CMHA determined that Detective Ovalle had committed serious policy and procedure violations and had been dishonest. CMHA terminated Detective Ovalle's employment based on the following:

Rules and Regulations violations: 1) gross neglect of duty; 2) conduct unbecoming an employee; 3) violations of Administrative Order 11; 4) any other reasonable and just cause; 5) conduct themselves in such a manner as to command the respect of the public; 6) violate any law of the United States, the State of Ohio, or neglect to perform any duty required by law; 7) willfully neglect to perform any duties required by directives, written or oral, issued to them by a supervisor of the CMHA; 8) and be disrespectful or discourteous to any member of CMHA, resident, or guest.

Policy and Procedure violations: 1) use of force; 2) ethics violations; 3) search and seizure violations; 4) arrest authority; 5) arrest procedures; 6) field interview procedures; 7) procedures for transporting individuals; 8) and procedures for making reports.

CMHA Personnel Policy and Procedures violations: 1) acts of dishonesty; 2) violations of rules, regulations, and policies; 3) any other act of malfeasance, misfeasance, or nonfeasance; 4) and conduct unbecoming of an employee in public service[.]

{¶6} The Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP") filed a grievance on Detective Ovalle's behalf. The matter proceeded through the grievance process as set forth in the Collective Bargaining Agreement ("CBA") that governed the employment relationship between the parties. This grievance process resulted in final, binding arbitration. Hearings were conducted before an arbitrator on November 6, 2014, January 22, 2015, and February 18, 2015. The arbitrator issued a 27-page opinion

finding that Detective Ovalle breached several procedures regarding documentation, but that he did not engage in the unlawful search or use excessive force against Stanley. The arbitrator found that termination was not warranted in this case. The arbitrator's award modified Detective Ovalle's disciplinary sanction to a 30-day suspension and ordered reinstatement with back pay.

{¶7} CMHA petitioned the common pleas court to vacate the arbitration award. The common pleas court instead confirmed the arbitrator's award. CMHA then filed this appeal assigning two errors for review:

I. The trial court erred by not vacating the report and award of [the] arbitrator pursuant to [R.C. 2711.10(D)], and by instead confirming the award and report.

II. The trial court erred by not vacating the report and award of [the] arbitrator pursuant to [R.C. 2711.10(C)], and by instead confirming the award and report.

II. Law and Analysis

A. Standard of Review

{¶8} Ohio has codified a preference for arbitration to resolve disputes between public employers and their employees. R.C. 4117.10(A); R.C. 2711.01 et seq. Therefore, 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 generally presume an arbitrator's award to be valid and enforceable, and a common pleas court reviewing an arbitrator's decision may not substitute its judgment for

that of the arbitrator. *N. Royalton v. Urich*, 8th Dist. Cuyahoga No. 99276, 2013-Ohio-2206, ¶ 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.1984); *Orwell Natural Gas Co. v. PCC Airfoils, L.L.C.*, 189 Ohio App.3d 90, 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. *Id.* Indeed, “[a]n 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.’” *Cedar Fair* at ¶ 6, quoting *Stolt-Nielsen, S.A. v. AnimalFeeds Internatl. Corp.*, 559 U.S. 662, 671, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010). “Accordingly, courts are limited to determining whether an arbitration award is unlawful, arbitrary, or capricious and whether the award draws its essence from the [collective bargaining agreement].” *S.W. Ohio Regional Transit Auth. v. Amalgamated Transit Union, Local 627*, 91 Ohio St.3d 108, 110, 742 N.E.2d 630 (2001); R.C. 2711.10.

B. R.C. 2711.10(D)

{¶9} 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.” Arbitrators can exceed their powers by going beyond the authority bargained for in the agreement. *Cedar Fair* at ¶ 7.

{¶10} CMHA argues that the arbitrator exceeded its powers by reinstating Detective Ovalle because reinstatement is against public policy, is arbitrary and capricious, and the arbitrator so imperfectly executed its powers that a proper award was not made.

{¶11} First, CMHA argues there is a clear public policy that prohibits Detective Ovalle’s reinstatement. It alleges that Detective Ovalle committed acts of dishonesty during the investigation when interviewed by CMHA investigators. CMHA cites to a clearly recognized public policy against retaining police officers who have engaged in dishonesty in their official capacity, and the arbitrator erred in its decision reinstating Detective Ovalle.

{¶12} When an arbitrator interprets a collective bargaining agreement in a manner inconsistent with a clearly recognized public policy, the arbitration award is unenforceable. *W.R. Grace & Co. v. Local Union 759, Internatl. Union of United Rubber, Cork, Linoleum & Plastic Workers of Am.*, 461 U.S. 757, 766, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983); *S.W. Ohio Regional Transit Auth.*, 91 Ohio St.3d at 112, 742

N.E.2d 630. The public policy at issue “must be well defined and dominant, and is to be ascertained ‘by reference to the laws and legal precedents and not from general considerations of supposed public interests.’” *Id.*, quoting *Muschany v. United States*, 324 U.S. 49, 66, 65 S.Ct. 442, 89 L.Ed. 744 (1945).

{¶13} “Law enforcement officials carry upon their shoulders the cloak of authority of the state. For them to command the respect of the public, it is necessary then for these officers even when off duty to comport themselves in a manner that brings credit, not disrespect, upon their department.” *Jones v. Franklin Cty. Sheriff*, 52 Ohio St.3d 40, 43, 555 N.E.2d 940 (1990). The Fourth District found that a strong, well-recognized public policy existed that precluded the reinstatement of officers who falsified reports. *Ironton v. Rist*, 4th Dist. Lawrence No. 10CA10, 2010-Ohio-5292, ¶ 21. This case is representative of a line of cases demonstrating a strong public policy against the retention of individuals as police officers who engage in acts of dishonesty in their official capacity.

{¶14} CMHA raised issues of dishonesty throughout the arbitration proceedings and the arbitrator addressed these allegations specifically. The arbitrator found that Detective Ovalle did not engage in dishonest conduct. The portion of the arbitration award detailing the arbitrator’s findings that Detective Ovalle did not engage in conduct that would constitute dishonesty is lengthy and thorough. CMHA attempted to show that Detective Ovalle lied during interviews he gave regarding the Stanley and Moore incidents. The arbitrator found that Detective Ovalle was not dishonest, and that his

version of events was more credible than Stanley's. The arbitrator found that Stanley's allegations against Detective Ovalle changed over time. She initially reported that Detective Ovalle swept her legs out from under her, causing her to fall. She later said Detective Ovalle pushed her down to the ground. The arbitrator noted that Detective Ovalle's description of his interaction with Stanley was consistent. The arbitrator found that Detective Ovalle was more credible. Credibility determinations are primarily for the factfinder to make. This court cannot review the merits of the factual determinations made by the arbitrator. *Cleveland Police Patrolmen's Assn. v. Cleveland*, 107 Ohio App.3d 248, 257, 668 N.E.2d 548 (8th Dist.1995). Further, Moore's version of events fit more closely with Detective Ovalle's statements and testimony than Stanley's.

{¶15} Apart from an alleged excessive use of force, the most egregious misconduct alleged was the search of a dwelling without consent and without a warrant. The detectives knew or should have known prior to arriving at the apartment that a search of the apartment was unlawful. However, the arbitrator found that Detective Ovalle did not participate in this search. When the other detectives used the key found on Moore to enter the apartment when no one answered the door, Detective Ovalle was downstairs talking to the person found in the hall who was suspected of smoking marijuana. CMHA determined that Detective Ovalle bore a greater responsibility for the unlawful search because he was the senior detective on the scene. The arbitrator disagreed after hearing the testimony from other detectives who conducted the search, because Detective Ovalle was not present when the key was used to enter the apartment.

{¶16} The decision by the arbitrator does not violate public policy regarding the search. The arbitrator made a factual determination that Detective Ovalle was elsewhere when the decision to search the apartment was made, had no part in that decision, and when Detective Ovalle arrived at the apartment, he told the other detectives to leave because the search was unlawful. While this court may not agree with the arbitrator's decision on these points, the arbitrator's award is supported by evidence and does not indicate that Detective Ovalle knowingly violated state and federal constitutional rights or that he committed acts of dishonesty.

{¶17} The arbitrator also found that Detective Ovalle did not commit other acts of dishonesty as argued by CMHA. Those factual determinations are not subject to review by this court.

{¶18} CMHA also asserts that the arbitrator's award is arbitrary and capricious because the arbitrator discounted certain testimony while finding other testimony credible. CMHA attacks credibility determinations made by the arbitrator. However, that is beyond the scope of review employed by this court. Those types of decisions are left to the discretion of the arbitrator as the trier of fact.

{¶19} CMHA also argues that the arbitrator's award does not constitute a definite award and that the arbitrator's award must be vacated. CMHA asserts that the arbitrator's award fails to address all the policies and procedures Detective Ovalle was accused of violating. As such, CMHA contends that an award was issued that is so imperfect it must be vacated and a new arbitration hearing conducted.

{¶20} In the lengthy opinion issued, the arbitrator categorized each of the alleged violations into four groups. It then addressed each set of allegations that corresponded with each group. First, the arbitrator identified Detective Ovalle's interaction with Stanley and the violations of policy and procedures that accompanied that incident. Next, the arbitrator addressed the extended detention and transport of Moore. Then, the arbitrator identified Detective Ovalle's interaction with the individual found in the stairway of the apartment complex that Detective Ovalle suspected of using marijuana. Finally, the arbitrator identified the search of Moore's girlfriend's apartment as the last incident for which Detective Ovalle was terminated. When the alleged policy and procedure violations are examined, they all stem from these four incidents and the subsequent investigation. The arbitrator also separately addressed the accusations that Detective Ovalle was untruthful in his interviews conducted during the investigation of these four incidents. The arbitration award fully sets forth the arbitrator's findings of fact addressing each incident, and in so doing, addressed each of the alleged violations of policy and procedure identified by CMHA in its letter to Detective Ovalle informing him of its decision to terminate. The award constitutes a valid, final judgment of all the issues submitted to the arbitrator for determination. In its most simple form, the issue presented to the arbitrator for determination was whether CMHA had just cause to terminate Detective Ovalle's employment. The arbitrator determined that there was not just cause to terminate based on the treatment another detective involved in these

incidents received. The arbitrator's award is a determination on all the issues submitted for arbitration with a definitive resolution.

{¶21} CMHA also argues that the award does not draw its essence from the CBA because the arbitrator interjected issues of due process into the proceedings when the CBA does not include such issues.

{¶22} CMHA is correct that the CBA does not include any reference to due process requirements, but public employees are entitled to due process when a governmental entity makes a decision to terminate their employment. *Valan v. Cuyahoga Cty. Sheriff*, 26 Ohio App.3d 166, 499 N.E.2d 377 (8th Dist.1985).

At a minimum, the individual faced with termination of public employment is entitled to some "notice" as to the form of the proposed disciplinary action and nature of the employment infractions and to some "kind of hearing" before termination for the opportunity to respond orally or in writing, and attempt to, at least preliminarily, rebut the "charges."

Riordan v. Civ. Serv. Comm., 8th Dist. Cuyahoga No. 52398, 1987 Ohio App. LEXIS 8578, 5 (Sept. 3, 1987). Therefore, while the CBA does not encompass notions of due process, the CBA cannot limit a public employee's entitlement to due process in a termination decision. Therefore, due process is always a potential issue in a hearing reviewing the termination of a public employee.

{¶23} In a similar case, the Fourth District vacated an arbitrator's award when the arbitrator considered violations of investigation procedures set forth in a collective

bargaining agreement when those procedures were not grieved separately. *Portsmouth v. FOP*, 4th Dist. Scioto No. 05CA3032, 2006-Ohio-4387. In that case, the Fourth District found that the arbitrator exceeded its powers in considering an issue that was not grieved as required by the applicable collective bargaining agreement:

The arbitrator determined that Portsmouth's investigatory interview of Nagel was a material part of the disciplinary process and that evidence obtained during the interview led directly to the police chief's recommendation to terminate Nagel. According to the arbitrator, the evidence did not establish that Nagel had engaged in serious misconduct constituting major offenses for which discharge would be warranted; rather, the evidence reflected that Nagel had committed only minor offenses for which a disciplinary suspension would be appropriate. The arbitrator then found that even if the evidence supported a disciplinary suspension of Nagel, it was tainted by the fact that Nagel was questioned in the absence of a representative during the investigatory interview in violation of his right to procedural due process afforded by Article 10 of the CBA. The arbitrator stated, "it would be inappropriate for the Arbitrator to reduce the discipline to a disciplinary layoff [, and t]he *Arbitrator has no choice but to set aside the discharge and reinstate the Grievant.*" (Emphasis added.) Concluding that Nagel's discharge was accordingly without just cause, the arbitrator

sustained Nagel's grievance and ordered his reinstatement as a police officer.

(Emphasis sic.) *Id.* at ¶ 13. The Fourth District found that the arbitrator exceeded its authority by adding an issue that was waived under the collective bargaining agreement. *Id.* at ¶ 25.

{¶24} The difference between that case and the present one is that the collective bargaining agreement in *Portsmouth* specifically required a violation of the investigatory provisions in the agreement to be grieved separately. *Id.* at ¶ 24. No such provision exists in the present case.

{¶25} The grievance filed by the FOP in the present case includes a violation of Section 7 of the CBA in its entirety, and Section 7.1 specifically sets forth a "just cause" standard for termination. Chapter 7 governs employee discipline and rights, including the right to be informed of the nature of an investigation prior to being questioned. The arbitrator found that CMHA did not properly inform Detective Ovalle about the nature of the investigation and violated his due process rights as a result.

{¶26} Prior to being questioned, Detective Ovalle was informed that he would be questioned regarding Stanley's claim of excessive force. However, he was also questioned about the search of Moore's girlfriend's apartment. The arbitrator was within its prerogative to consider this with the grievance brought by Detective Ovalle. While the arbitrator's notions of due process are substantially broader than those held by Detective Ovalle, it was not contrary to the arbitrator's duties and discretion to include

such a finding in its decision. While this court may disagree with the arbitrator's conclusion on this point, the arbitrator's consideration of due process concerns does not mean that the arbitrator's award did not draw its essence from the CBA.

{¶27} The arbitrator did not so imperfectly execute its powers that a definitive award does not exist. CMHA's first assignment of error is overruled.

C. R.C. 2711.10(C)

{¶28} CHMA argues that the lower court erred in not vacating the arbitration award because the arbitrator committed misconduct when it failed to consider proper evidence raised during the hearing.

{¶29} Where an arbitrator commits a gross procedural error, such as the refusal to permit cross-examination, then R.C. 2711.10(C) provides an avenue for relief from an arbitration award. *Busch v. Wilcox*, 5th Dist. Delaware No. 90-CA-29, 1991 Ohio App. LEXIS 1666, 4-5 (Apr. 11, 1991). Under R.C. 2711.10, "[i]f the arbitrators expressly decline to consider a critical issue within the scope of the submission, a court can properly vacate the award." *Cleveland v. Assn. of Cleveland Fire Fighters, Local 93*, 20 Ohio App.3d 249, 254, 485 N.E.2d 792 (8th Dist.1984). However, "the court cannot vacate an award because the arbitrators reasonably construe the scope of their authority as excluding a severable controversy." *Id.*

{¶30} Here, CMHA claims the arbitrator committed misconduct by excluding a letter it received from a federal official documenting that federal prosecutors would no longer prosecute any case investigated by Detective Ovalle. CMHA terminated

Detective Ovalle before it received the letter. The arbitrator found that it could not constitute just cause for termination or play a role in that decision because it was not a basis for the termination. CMHA argues that it should be considered in evaluating Detective Ovalle's fitness for duty and the arbitrator's decision excluding it is contrary to the arbitrator's duty.

{¶31} While this court may agree that the letter is germane to the issues presented, the arbitrator determined that this and other disciplinary infractions that came to light after CMHA's decision to terminate Detective Ovalle were separate, severable, and should not be considered. That was not misconduct within the meaning of R.C. 2711.10(C). It was not a clear abuse of the arbitrator's powers to determine the issues properly presented.

III. Conclusion

{¶32} The parties submitted a dispute to determine whether there was just cause for termination. No matter this court's view, the arbitrator determined there was not just cause for termination based on lengthy testimony, deposition, and videotaped statements. The arbitrator's award makes clear that the arbitrator considered the testimony and evidence very carefully. The arbitrator applied a clear and convincing evidentiary standard and determined that just cause for termination did not exist. CMHA has presented no sufficient justification to vacate the arbitrator's award. The result is a degradation in the relationship between CMHA and the community it serves, and CMHA and taxpayers must continue to satisfy potential civil judgments against CMHA for the

inappropriate actions of its officers. Those factors were not given any weight by the arbitrator, but based on the limited nature of review, this court cannot find that the arbitrator's award is improper based on any of the grounds set forth in R.C. 2711.10.

{¶33} Judgment 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.

FRANK D. CELEBREZZE, JR., JUDGE

MARY J. BOYLE, J., CONCURS;

LARRY A. JONES, SR., P.J., DISSENTS (WITH SEPARATE DISSENTING OPINION ATTACHED)

LARRY A. JONES, SR., P.J., DISSENTING:

{¶34} Respectfully, I dissent and would reverse the judgment of the trial court. I agree with CMHA that the trial court should have vacated the arbitration award reinstating Detective Ovalle pursuant to R.C. 2711.10. The arbitrator exceeded her powers by reinstating the officer because reinstatement is against public policy, is

arbitrary and capricious, and the arbitrator so imperfectly executed her powers that a proper award was not made.

{¶35} First, as to the matter of public policy, as CMHA argued, there is a clear public policy against retaining police officers who engage in dishonesty in their official capacity. Not only did the evidence show that Detective Ovalle lied about the events at issue, but, by the arbitrator's own admission, violated numerous CMHA policies and procedures.

{¶36} The majority notes that this court cannot review the merits of the factual determinations the arbitrator made, but then opines that witness Moore's version of events fit more closely with those of Detective Ovalle's than Stanley's version of events. I disagree. Although Moore may have testified that Detective Ovalle treated Stanley "gently" once she stood back up, both he and Stanley testified that Detective Ovalle treated her roughly in getting her to the ground. Detective Ovalle himself admitted he put Stanley on the ground.

{¶37} The majority further notes the arbitrator's finding that Detective Ovalle did not commit misconduct during the search of the apartment because he was not involved in the search itself, but I would agree with CMHA's assessment that the officer bore responsibility for the search as the senior detective on the scene. He also admitted that he made the decision to search the apartment for narcotics; as the senior detective on the scene, it is of no consequence that he stayed behind to detain an individual while other officers performed the actual search.

{¶38} Finally, there is the matter of the dishonest statements that Detective Ovalle gave during his interviews. Although the arbitrator attempted to explain away the officer's inconsistent statements by stating that CMHA had not notified the officer of the nature of its interview with him, this alone does not equate to a finding that the officer gave truthful statements. In other words, whether CHMA violated Detective Ovalle's due process rights in failing to inform him of the nature of the interview is separate from whether the officer made untruthful statements during his interviews.

{¶39} The award is further made arbitrary and capricious by the fact that the arbitrator refused to consider the letter from federal prosecutors as rebuttal evidence. I would have found that once Detective Ovalle's supervisor testified that he would not have an issue if Detective Ovalle returned to work, Detective Ovalle opened the door to the letter, which indicated that federal prosecutors would no longer prosecute any case Detective Ovalle investigated. I would find that exclusion of this letter is exactly the type of pertinent and material evidence that R.C. 2711.10(C) refers to.

{¶40} The police force of a municipal corporation is obligated to "preserve the peace, protect persons and property, and obey and enforce * * * all criminal laws of the state and the United States." R.C. 737.11. Honesty is vital to the effective performance of these duties and to ensuring public trust and confidence in the police force. *Ironton v. Rist*, 4th Dist. Lawrence No. 10CA10, 2010-Ohio-5292, ¶ 20. As the majority noted, the result of a lack of honesty is a degradation of public trust. In this case, CMHA made a sound determination that one of its officer's had comported himself

in such a manner that eroded that trust to a degree that merited termination. Its decision to do so should have been upheld.

{¶41} Therefore, I disagree that the arbitrator's award was supported by the evidence and would find that the arbitrator so imperfectly executed her powers that a proper award was not made. I would reverse the trial court's decision and remand the case.