IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

CITY OF CINCINNATI,	:	APPEAL NO. C-060290 TRIAL NO. A-0509129
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
QUEEN CITY LODGE NO. 69, FRATERNAL ORDER OF POLICE,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Defendant-appellant Queen City Lodge No. 69, Fraternal Order of Police ("FOP") appeals from the trial court's entry granting declaratory relief to the city of Cincinnati and permanently enjoining it and the American Arbitration Association from setting an arbitration hearing date or otherwise arbitrating the grievance related to the termination of Cincinnati Police Officer Victor Spellen. The FOP raises three assignments of error for our review. It argues that the trial court erred by (1) determining the arbitrability of the grievance, (2) failing to require the parties to arbitrate the case, and (3) ruling that res judicata barred rearbitration of the grievance.

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

In ruling that res judicata barred the FOP from rearbitrating Officer Spellen's grievance, the trial court relied solely on this court's prior decision in *Amalgamated Transit Union, Local 627 v. Southwest Ohio Regional Transit Association*.[2] In that case, the union had appealed the trial court's decision, dismissing its petition to compel the regional transit authority to rearbitrate an employee grievance, on the basis of res judicata. The union argued that trial court had merely vacated the arbitration award, rendering it a nullity, which obligated the parties to start over with a new arbitration of the grievance. We rejected the union's argument. We held that because the trial court had not only vacated the arbitration award reinstating the terminated employee on the basis that the termination had violated public policy, but also specifically reinstated the employee's termination, the trial court had effectively reached the merits of the parties' dispute. Consequently, we concluded that because the issue of the arbitration had arisen during the prior litigation the union was thus, precluded by res judicata from rearbitrating the grievance.

The FOP contends that the trial court's reliance on the SORTA case was misplaced. We agree. In this case, the trial court vacated the arbitrator's award reinstating Spellen solely on a procedural basis—that the arbitrator had exceeded his authority by relying on a document, the Matrix, that was extraneous to the party's agreement and had been placed into evidence by the city.[3] The trial court never reached the public policy issue when vacating the arbitrator's award reinstating Spellen.[4] Likewise, this court affirmed the trial court's decision, holding "that the trial court correctly determined that the arbitrator exceeded his authority by relying

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[2] (July 17, 1996), 1st Dist. No. C-950635.
[3] *Cincinnati v. Queen City Lodge No. 69, Fraternal Order of Police*, 1st Dist. No. C-040454, 2005-Ohio-1560, at ¶31.
[4] Id. at ¶25.

on rules extraneous to the city's collective bargaining agreement * * *."[5] To the extent that the trial court may have relied on discussion in this court's decision in the prior appeal relating to whether there was "just cause" to discipline Spellen, or to the extent that it may have interpreted this court's decision in the prior appeal as implying that public policy would have supported Spellen's termination in our conclusion that we had addressed the merits of the grievance, we feel compelled to clarify that this language was nothing more than obiter dictum.[6]

Ohio courts have held that when an arbitration award is vacated on purely procedural grounds, the parties are left as if they were at the beginning of the process, and they are entitled to begin anew.[7] Because the trial court in this case vacated the arbitration award solely on procedural grounds, there was no final judgment on the merits. Consequently, the trial court erred in determining that res judicata barred the FOP from arbitrating Spellen's grievance.

Because the collective-bargaining agreement specifically required the parties to arbitrate disciplinary grievances, and because the prior arbitration award was vacated in its entirety on procedural grounds, we sustain the FOP's second and third assignments of error. Given our disposition of the FOP's second and third assignments of error, we need not address its argument under the first assignment of error. We, therefore, reverse the judgment of the trial court, and order the parties to proceed to arbitration.

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[5] Id. at ¶31.
[6] Id. at ¶20-24.
[7] *Bordonaro v. Merrill Lynch, Pierce, Fenner Smith*, 163 Ohio App.3d 410, 2005-Ohio-4988, 837 N.E.2d 1270.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and **WINKLER, JJ.**

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on December 26, 2007

per order of the Court _____.
Presiding Judge