

Case No. 15-0494

IN THE SUPREME COURT OF OHIO

GEORGIA B. COX,

Plaintiff-Appellee,

v.

DAYTON PUBLIC SCHOOLS BOARD OF EDUCATION,

Defendant-Appellant.

Appeal from the Second District Court of Appeals,
Montgomery County, Ohio,
Appellate Case No. 26382

REPLY BRIEF OF AMICUS CURIAE OHIO EDUCATION ASSOCIATION

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I. STATEMENT OF FACTS AND INTERESTS OF AMICUS CURIAE

The Ohio Education Association (“OEA”) is a professional association whose affiliated local associations represent more than 121,000 educators, faculty members and support professionals working in Ohio’s schools, colleges, and universities.¹ The OEA has a substantial and significant interest in maintaining the integrity of the procedures set forth by the Ohio General Assembly for the narrow and limited review of arbitration awards arising from labor contracts within the state of Ohio. Both labor and management representatives throughout Ohio have a significant interest in ensuring predictability and, to the extent possible, finality regarding labor arbitration decisions. That important interest extends to ensuring that R.C. 2711.13 is interpreted and applied appropriately and in correcting the decision of the Second District Court of Appeals.

The Appellee, Georgia Cox, was employed by the Dayton Public Schools as a licensed intervention specialist. In that position, she was assigned to teach eight multi-handicapped students. The Board alleged that on October 10, 2012, Ms. Cox physically struck a student. She was placed on administrative leave while the Board conducted an investigation, resulting in the District passing a resolution and issuing Ms. Cox a notice of their intention to consider termination of her employment contract. The Dayton Education Association (“DEA”), the labor organization representing the teachers in the Dayton Public Schools, filed a grievance on behalf of Ms. Cox pursuant to Article 3.07.2 D of the collective bargaining agreement (“Agreement” or

¹ The DEA, the employee organization that represents Ms. Cox and other Dayton Public School employees, is a local association affiliated with the OEA. However, the OEA is not a party to the collective bargaining agreement between the DEA and the Board, nor was it involved in the arbitration of the grievances the DEA filed on Ms. Cox’s behalf. The OEA, in supporting the Board’s merits brief as to the statutory interpretation questions here, does not intend to adopt or support any arguments of the Board relating to the correctness of the arbitration award that might be raised, nor does the OEA take any position on that issue.

“Master Contract”) entered into between DEA and the Board. Ms. Cox also faced criminal charges arising from the matter.

Ms. Cox filed two additional and separate grievances based on the Board allegedly violating her pre-disciplinary rights provided by Article 48.03 of the agreement. The three (3) grievances were consolidated and heard by Arbitrator Richard Bales on September 17-19, 2013. The Arbitrator denied all three (3) of the grievances and held that the Board had established good and just cause for termination in a written award sent via electronic mail to counsel for the Board and counsel for DEA on December 10, 2013.

Acting pro se, Ms. Cox filed a motion to vacate the Arbitrator’s award under R.C. 2711.13 in the Montgomery County Court of Common Pleas on March 10, 2014. The motion did not include a proof of service, but the clerk of courts requested service and issued a summons to the Board by placing Ms. Cox’s motion in the mail on March 10, 2014. Ms. Cox then mailed a copy of the motion to the Board, postmarked March 11, 2014, which counsel for the Board received on March 13, 2014. The Board received its copy from the clerk of courts on March 12, 2014.

The Board responded with a Motion to Dismiss or Strike on April 8, 2014, arguing in part that Ms. Cox had no standing to challenge the arbitrator’s award. The court agreed, referencing the Master Contract’s provisions to conclude that Ms. Cox was not a party to the Agreement and thus lacked standing to challenge the award. Although the trial court concluded it was without jurisdiction to hear the matter on that basis, it concluded further that Ms. Cox had not complied with the service requirements of R.C. 2711.13 which provides: “Notice of a motion to vacate, modify, or correct an [arbitration] award *must be served* upon the adverse party or his attorney

within three months after the award is delivered to the parties in interest, as prescribed by law for service of notice of a motion in an action.” (Emphasis added.)

Ms. Cox appealed to the Second District Court of Appeals, which reversed the decision of the trial court. Cox v. Dayton Public Schools Bd. of Ed., 2d Dist. Montgomery No. 26382, 2015-Ohio-620. That court determined not only that Ms. Cox did have standing to challenge the arbitration award in court but also that she had fulfilled the requirements for timely filing a motion under R.C. 2711.13. Id. at ¶¶ 16, 27. The court held that filing the motion with the clerk of courts on March 10, 2014, exactly three months after the issuance of the arbitration award and even though the parties in interest did not actually receive notice prior to that date, met the requirements for timely service under Civ. R. 5(B)(2). Id. at ¶¶ 17-19.

II. ARGUMENT IN SUPPORT OF PROPOSITION OF LAW NO. VII

PROPOSITION OF LAW NO. VII: Notice of a petition seeking the vacation or modification of an arbitration award pursuant to R.C. Chapter 2711 must be received by the adverse party or its attorney within the statutory three month period contained in R.C. 2711.13.

An arbitration award is deemed to be delivered to the parties on the date the award is rendered.

R. C. 2711.13 provides that the three months statute of limitations begins to run after the award is delivered to the parties in interest, as prescribed by law for service of a motion in an action. Courts have held that to decide when an arbitration decision has been delivered for purposes of R.C. 2711.13, the postmark date governs, not the date the decision was actually received. Citibank S. Dakota, N.A. v. Wood, 169 Ohio App.3d 269, 2006-Ohio-5755, 862 N.E.2d 576, ¶ 26, *citing* Girard v. AFSCME Ohio Concil,8, Local Union 3356, 11th Dist. Trumbull No. 2003-T-0098, 2004-Ohio-7230; MBNA AM. Bank, N.A. v. Everett, 10th Dist. No.

04-AP-819, 2005-Ohio-988 (relying on a certification date on an arbitration award is the date the award was sent by first-class mail); Fraternal Order of Police v. Perry Cty. Commrs., 6th Dist. No. 02-CA-14, 2003-Ohio-4038 (relying on the postmarked date on an envelope to determine the delivery date of an award). Where the award is sent by electronic mail, courts use the arbitrator's transmission date. Mun. Constr. Equip. Operators' Labor Council v. Cleveland, 197 Ohio App.3d 1, 211-Ohio-5834, 965 N.E.2d 1040 (8th Dist.).

In the present matter, the statute of limitations began to run on December 10, 2013 which is the date the Arbitrator signed and electronically transmitted his award to counsel for the parties.

This Court must apply the clear and unambiguous language of R.C. 2711.13 in a manner that does not extend statutory limitations through the Civil Rules.

This Court has already held that the requirements of R.C. 2711.13 are mandatory and jurisdictional; a trial court is without authority to hear a case that does not comply with the clear requirements of that section. City of Galion v. AFSCME Local No. 2243, (1995) 71 Ohio St.3d 620, 622. This Court ruled that “the language of R.C. 2711.13 is clear, unmistakable and, above all, mandatory,” and that the arbitration statutes “authorize limited and narrow judicial review of an arbitration award,” and that the statutes “set forth specific statutory procedures to vacate, modify, correct, or confirm an arbitration award.” In concluding that an action for declaratory judgment is inappropriate under that section, the Court rejected any process to “bypass the stringent requirements that are needed to overturn, modify, or correct an arbitration award.” Id. These words are instructive in this case, which also involves the potential expansion of the General Assembly's judgment in establishing a very specific time frame for challenging an arbitration award.

Unlike a complaint, a motion filed under R.C. 2711.13 does not require that the clerk of courts issue summons and perfect service pursuant to Civ. R. 4. Instead R.C. 2711.13 requires that a party serving notice of a motion to vacate an arbitration award, must comply with the law for service of notice of a motion which is provided for in Civ. R. 5. Specifically Civ. R. 5(B)(4) requires that a served document shall be accompanied by a completed proof of service which shall state the date and manner of service and which shall be signed in accordance with Civ. R. 11. The rule further states: “Documents filed with the court shall not be considered until proof of service is endorsed thereon or separately filed.” No such proof of service was ever filed with the Plaintiff-Appellee’s motion to vacate the arbitration award nor was a proof of service ever separately filed. The lower court’s reliance upon Civ. R. 5(B)(2) to hold the motion was timely filed when the Clerk’s office placed the motion in the mail serves to rewrite the requirements of 2711.13 ignoring the requirement that the party filing the motion comply with specific service requirements. The result of the lower Court’s reliance on Civ. R. 5(B)(2) is to judicially expand upon the legislatively created three month statute of limitations of R.C. 2711.13.

III. CONCLUSION

The terms of R.C. 2711.13 are clear, unmistakable, and mandatory. Parties seeking judicial review of arbitration awards have a limited period of time to do so. If the party challenging the award does not give proper notice to the other parties within the three-month limitations period, the trial court is divested of subject matter jurisdiction and is simply without power to hear the matter. The resolution of grievances through arbitration should not be disturbed without strict compliance with the statutory framework for challenging such awards. The narrow and carefully circumscribed review of arbitration awards extends to the jurisdictional limitations at issue in this case, with which the Appellee failed to comply. Consistent with the

legislature's stated policy favoring the finality of arbitration awards, this Court should reverse the decision below, which is inconsistent with prior rulings from the Eighth and Ninth District Courts of Appeals and unsupported by the specific language of the statute.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This certifies that a true and accurate copy of the foregoing brief of Amicus Curiae Ohio Education Association was sent to Georgia B. Cox, Plaintiff-Appellee, 4191 Mapleleaf Drive, Dayton, OH 45416 by regular U.S. mail, postage prepaid, and to Beverly A. Meyer, Counsel for Defendant-Appellant Dayton Public Schools Board of Education, via electronic mail to bmeyer@bricker.com, this 2nd day of February, 2016.

/s/ Susan D. Jansen