

[Cite as *Jefferson Cty. Sheriff v. Fraternal Order of Police*, 2009-Ohio-6758.]  
STATE OF OHIO, JEFFERSON COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

IN THE MATTER OF:	)	
	)	
JEFFERSON COUNTY SHERIFF,	)	
	)	
PLAINTIFF-APPELLEE,	)	CASE NO. 09-JE-2
	)	
VS.	)	OPINION
	)	
FRATERNAL ORDER OF POLICE,	)	
OHIO LABOR COUNCIL, INC.,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Court of Common Pleas of Jefferson County, Ohio Case No. 07CV607
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JUDGMENT:	Reversed Arbitrator's Award Reinstated
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APPEARANCES:	
For Plaintiff-Appellee	Attorney Eugene P. Nevada 6500 Emerald Parkway, Suite 100 Dublin, Ohio 43016-6234

For Defendant-Appellant	Attorney Michael W. Piotrowski 2721 Manchester Road Akron, Ohio 44319-1020
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JUDGES:

Hon. Gene Donofrio  
Hon. Joseph J. Vukovich  
Hon. Mary DeGenaro

Dated: December 17, 2009

[Cite as *Jefferson Cty. Sheriff v. Fraternal Order of Police*, 2009-Ohio-6758.]  
DONOFRIO, J.

{¶1} Defendant-appellant, the Fraternal Order of Police, Ohio Labor Council, Inc., appeals from a Jefferson County Common Pleas Court judgment overruling an arbitrator's decision that ordered the reinstatement of corrections officer Todd Scott.

{¶2} Scott was employed by plaintiff-appellee, the Jefferson County Sheriff, as a corrections officer in the county jail. The employment relationship was governed by a collective bargaining agreement (CBA) between the Sheriff and the Fraternal Order of Police (FOP).

{¶3} Scott was employed by the Sheriff as a Sheriff's deputy. In 1997, Scott was arrested on domestic violence charges against his wife. Those charges were dropped. However, the Sheriff suspended Scott for three days due to the incident. In 1999, Scott was convicted of menacing against his girlfriend and could no longer carry a firearm. Carrying a firearm is one of the job requirements of a Sheriff's deputy. Consequently, Scott resigned as a Sheriff's deputy. The Sheriff then rehired him as a corrections officer at the county jail since this position did not require that he carry a firearm. In November 2001, the Steubenville Municipal Court sealed the record on Scott's menacing conviction.

{¶4} The Sheriff terminated Scott's employment on September 15, 2005.

{¶5} The termination stemmed from two separate incidents occurring when Scott was off duty. The first incident involved a domestic violence charge against Scott for hitting his 16-year-old son with a coat hanger. After his arrest, the Sheriff placed Scott on paid administrative leave pending the outcome of the criminal charge. As a result of this charge, Scott pleaded no contest to disorderly conduct and was ordered by the court to attend anger management classes. The second incident involved Scott's arrest for hitting and choking his 13-year-old daughter.

{¶6} The Sheriff hand-delivered Scott his notice of termination on September 23, 2005. Pursuant to the CBA, Scott had five working days to file a grievance of his termination. The grievance was to be delivered to either the Sheriff or "his designee." According to Scott, he delivered a copy of his grievance to a secretary in the Sheriff's office in a timely fashion. The Sheriff contended that he did not receive Scott's grievance until May 2006.

{¶7} The grievance was set for arbitration pursuant to the CBA. The arbitration was bifurcated into two hearings. The first hearing was to determine if the grievance was timely filed and if the request for arbitration was timely made. The arbitrator ruled that both were timely. Therefore, a second hearing was held on the merits of the grievance.

{¶8} The arbitrator issued an award sustaining the grievance in part and denying it in part. The arbitrator determined that Scott was to be reinstated as a corrections officer. However, he also determined that Scott was not entitled to back pay. He determined that Scott was subject to discipline but commuted the termination to a two-year suspension, which he deemed that Scott had already served.

{¶9} In making these determinations, the arbitrator found that the Sheriff did not carry his burden of proving just cause for terminating Scott because the Sheriff was in violation of the CBA when he improperly (1) relied on the 1997 and 1999 matters to show a multi-year pattern of domestic violence by Scott, and then (2) used that pattern to support his decision to discharge Scott. But the arbitrator also found that the Sheriff properly considered the seriousness of the misconduct in 2005 relating to Scott's two arrests for domestic violence and Scott's conviction for disorderly conduct. Therefore, the arbitrator concluded that the Sheriff had just cause to discipline Scott concerning his misconduct in 2005.

{¶10} The Sheriff then filed a petition in the trial court to vacate or modify the arbitrator's award. The FOP filed a cross-petition to confirm the award.

{¶11} The trial court ultimately overruled the arbitrator's award. The court first found that it did not have to address the issues surrounding the timeliness of the grievance and request for arbitration based on its ruling on the merits. It next found that the Sheriff's appeal of the arbitration decision was timely filed. The court then moved on to the merits. It found that the arbitrator incorrectly interpreted Section 4 of the CBA dealing with records of past disciplinary action. Contrary to what the arbitrator found, the court found that Section 4 limits its application to the discipline itself and not to the facts and circumstances leading to the discipline. The court

found that the arbitrator should have considered the 1997 and 1999 criminal incidents in assessing Scott's pattern of violence. The court then found that the Sheriff had every right to terminate Scott. It concluded that the decision to terminate was lawful and, therefore, vacated the arbitrator's decision.

**{¶12}** The FOP filed a timely notice of appeal on February 18, 2009.

**{¶13}** The FOP raises three assignments of error, the first of which states:

**{¶14}** "THE COURT OF COMMON PLEAS ERRED WHEN IT FOUND THAT THE SHERIFF'S APPLICATION [TO] VACATE THE MARCH 19, 2007 ARBITRATION AWARD WAS TIMELY EVEN THOUGH IT WAS SERVED MORE THAN THREE MONTHS AFTER THE AWARD WAS ISSUED."

**{¶15}** The arbitrator issued his first award on March 19, 2007. This was the award that found the FOP's grievance and request for arbitration were timely made. The arbitrator issued his second award on September 10, 2007. This was the award that reinstated Scott as a corrections officer. The Sheriff filed his petition to vacate both awards on November 21, 2007.

**{¶16}** The FOP argues here that the Sheriff's motion to vacate the March 19, 2007 arbitration award was not filed within the statutory three-month time limit for filing such a motion. The FOP points out that the Sheriff waited until after the second arbitration award before he filed his motion to vacate the first award.

**{¶17}** R.C. 2711.13 provides the notice and time requirements for filing a motion to vacate an arbitrator's award:

**{¶18}** "After an award in an arbitration proceeding is made, any party to the arbitration may file a motion in the court of common pleas for an order vacating, modifying, or correcting the award as prescribed in sections 2711.10 and 2711.11 of the Revised Code.

**{¶19}** "Notice of a motion to vacate, modify, or correct an 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."

**{¶20}** The FOP relies on *Galion v. AFSCME* (1995), 71 Ohio St.3d 620, 622, where the Ohio Supreme Court held:

**{¶21}** “In our view, the language of R.C. 2711.13 is clear, unmistakable and, above all, mandatory. R.C. 2711.10 specifies when an arbitration award can be vacated, R.C. 2711.11 establishes the circumstances under which the common pleas court may modify or correct an arbitration award, and R.C. 2711.13 states the time frame in which the motion must be made. \* \* \*

**{¶22}** “Thus, in answering the certified issue, we hold that R.C. 2711.13 provides a three-month period within which a party must file a motion to vacate, modify, or correct an arbitration award under R.C. 2711.10 or 2711.11. If an application is filed after this period, the trial court lacks jurisdiction.”

**{¶23}** Whether the Sheriff’s application to vacate the March 19 jurisdiction award was timely filed is not relevant to the merits of this appeal. If the Sheriff’s motion to vacate the March 19 award was untimely, then we must move on to consider whether the trial court erred in vacating the September 10 award on the merits of the grievance. This is because we would proceed to the issue of whether the arbitrator exceeded his powers. If the Sheriff’s motion to vacate the March 19 award was timely filed, we must still move on to consider whether the trial court erred in vacating the September 10 award on the merits. By reviewing the merits of the arbitrator’s decision, the trial court implicitly found that the arbitrator had jurisdiction to arbitrate the matter. By so finding, the court, again implicitly, affirmed the arbitrator’s March 19 jurisdictional award. If the trial court believed that the arbitrator did not have jurisdiction to arbitrate the matter, it could have simply stopped its analysis at that point and not addressed the merits.

**{¶24}** Furthermore, as will be seen below in the Sheriff’s cross assignment of error, the arbitrator’s determination that Scott and the FOP timely filed the grievance and the arbitration request was reasonable. Thus, no matter how we would resolve the FOP’s first assignment of error, the result of this appeal would not change.

**{¶25}** Therefore, the FOP’s first assignment of error is moot.

**{¶26}** The FOP’s second assignment of error states:

**{¶27}** “THE COURT OF COMMON PLEAS ERRED WHEN IT SUBSTITUTED ITS FINDINGS OF FACT AND INTERPRETATIONS OF THE CONTRACT FOR THOSE OF AN ARBITRATOR SELECTED BY THE PARTIES PURSUANT TO A BINDING COLLECTIVE BARGAINING AGREEMENT.”

**{¶28}** The FOP argues that the trial court incorrectly used a de novo standard of review in reviewing the arbitrator’s award. It asserts that the trial court substituted its judgment for that of the arbitrator. The FOP argues that the trial court’s findings assume that the arbitrator was wrong in how he interpreted the CBA. However, it contends that the arbitrator was construing the terms of the CBA, and, therefore, the trial court should have given deference to the arbitrator’s interpretation. The FOP contends that even though the trial court may have reached a different conclusion than the arbitrator, it was not within its power to vacate the award based on a disagreement on the way the arbitrator applied the CBA’s language.

**{¶29}** A trial court may only vacate an arbitrator’s award under the very limited circumstances described in R.C. 2711.10. Relevant to this case, R.C. 2711.10(D) provides:

**{¶30}** “In any of the following cases, the court of common pleas shall make an order vacating the award upon the application of any party to the arbitration if:

**{¶31}** “\* \* \*

**{¶32}** “(D) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.”

**{¶33}** The trial court may not reverse an arbitrator’s award simply because it disagrees with the arbitrator’s findings of fact or interpretation of a contract. *Goodyear Tire & Rubber Co. v. Local Union No. 200* (1975), 42 Ohio St.2d 516, 520. Our standard, as an appellate court, is the same as that of the trial court. *Barnesville Exempted Village Sch. Dist. Bd. of Edn. v. Barnesville Assn. of Classified Employees* (1997), 123 Ohio App.3d 272, 274.

**{¶34}** Courts do not review claims of factual or legal error by an arbitrator as appellate courts regularly do in reviewing trial court judgments. *Southwest Ohio Reg.*

*Transit Auth. v. Amalgamated Transit Union* (2001), 91 Ohio St.3d 108, 110, quoting *United Paperworkers Internatl. Union v. Misco, Inc.* (1987), 484 U.S. 29, 37-38. If they did, the public policy reasons behind arbitration would be lost. *Id.* at 520. The Ohio Supreme Court noted the policy behind arbitration and the limited review allowed by the courts:

{¶35} “Were the arbitrator’s decision to be subject to reversal because a reviewing court disagreed with findings of fact or with an interpretation of the contract, arbitration would become only an added proceeding and expense prior to final judicial determination. This would defeat the bargain made by the parties and would defeat as well the strong public policy favoring private settlement of grievance disputes arising from collective bargaining agreements.” *Goodyear Tire & Rubber Co.*, 42 Ohio St.2d at 520.

{¶36} “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.” *Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.* (1990), 49 Ohio St.3d 129, at paragraph two of the syllabus, superseded by statute on other grounds as stated in *Cincinnati v. Ohio Council 8, AFSCME* (1991), 61 Ohio St.3d 658. “An arbitrator’s award departs from the essence of a 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.” *Ohio Office of Collective Bargaining v. Ohio Civ. Serv. Emp. Assn., Local 11, AFSCME, AFL-CIO* (1991), 59 Ohio St.3d 177, at the syllabus.

{¶37} In this case, Article 6 of the CBA sets out the disputed part of the disciplinary procedure. Pursuant to Section 4:

{¶38} “Records of disciplinary action involving verbal and/or written reprimands shall cease to have force and effect twenty-four (24) months after their effective date, providing there is no intervening disciplinary action taken during that time period. All other records of disciplinary action shall cease to have force and

effect thirty-six (36) months after their effective date, providing that there has been no intervening disciplinary action taken during that time period.”

{¶39} The Sheriff gave his reason for terminating Scott in a letter:

{¶40} “The reason for your termination is your repeat history of arrests for Domestic Violence. In the past 6 years you have been arrested three times for domestic violence.”

{¶41} The Sheriff then recounted the 1997 and 1999 incidents along with the two 2005 incidents. He then continued:

{¶42} “Although you are not being terminated over the Domestic Violence on your first wife [the 1997 incident] \* \* \*, nor are you being terminated for the Domestic Violence in 1999, I use this as a pattern of behavior. Your actions over the past several months are in violation of the Jefferson County Sheriff’s Office Policy and Procedure manual:

{¶43} “> Group II (4) [conduct violating morality or common decency] & (17) [willful disregard for department rules]

{¶44} “> Group III (8) [fighting or attempting injury to other employees, supervisors, or persons]

{¶45} “> Section 8.10 A [the arrest or conviction of any employee for breaking a federal, state or local law outside of work may be grounds for suspension, or dismissal, depending on the nature of the arrest or conviction as it relates to the position held by the employee. Careful consideration will be given to the effect the arrest or conviction has on the reputation and operation of the Agency and any of its programs.] & B [violating any federal, state or local law while at work may be grounds for dismissal depending on the severity of the infraction, the overall status of the employee’s performance and past job conduct.]

{¶46} “> Section 3 (B) [conduct detrimental to the department]

{¶47} “Your repeated pattern of Domestic Violence behavior leaves me no alternative but to take the actions that I have.”

{¶48} The arbitrator found that the Sheriff could not rely on Scott’s 1997 suspension or his 1999 conviction and resulting disciplinary action in order to show a

pattern of domestic violence by Scott. He reasoned that since those two events, Scott did not have another disciplinary event until the 2005 events that played a part in his termination. Thus, the arbitrator found that the Sheriff could only consider Scott's two recent arrests for domestic violence, his conviction for disorderly conduct (resulting from one of the two recent arrests), and his job performance in deciding what disciplinary action to take.

**{¶49}** But the arbitrator also found that Scott's voluntary resignation for failing to meet the requirements of the deputy sheriff position, i.e., he could no longer carry a firearm, and the Sheriff's rehiring of Scott as a corrections officer, were independent parts of Scott's employment record and could be referenced by the Sheriff without violating the CBA.

**{¶50}** In reviewing the arbitrator's decision, the trial court first set out the R.C. 2711.10(D) standard of review. It then concluded that the arbitrator violated R.C. 2711.10(D) in two respects.

**{¶51}** First, the court found that the arbitrator rewrote the contract to prohibit consideration of any act committed by Scott more than three years earlier. It found that Article 6, Section 4 of the CBA, quoted above, "clearly limits it[s] application to the disregard of the discipline itself not of the facts and circumstances leading to the discipline." The court found that the arbitrator's view of Section 4 is not supported by the express terms of that section. The court stated that pursuant to the arbitrator's interpretation, Scott could beat up another person every three years and never be subject to dismissal because each time would be considered a first offense. It also reasoned that under the arbitrator's interpretation, an employee with a single incident would stand on equal footing with an employee like Scott who has had multiple incidents over time. The court further found that the arbitrator erred in determining that conduct leading to a conviction that was later sealed should not be considered. Instead, the court reasoned that while the conviction goes away, the events leading to the conviction do not.

**{¶52}** Second, the court found that the arbitrator usurped the Sheriff's discretion by substituting his judgment for that of the Sheriff in handing out Scott's

punishment. It found that because termination was a lawful option for punishing Scott's misconduct, the Sheriff was within his rights to terminate Scott.

{¶53} Here the trial court improperly substituted its judgment for that of the arbitrator. The conflict in their decisions rests on how Article 6, Section 4 is interpreted. The arbitrator determined that it precludes all consideration by the Sheriff of disciplinary events that are more than three years old. The court determined that it only precludes consideration of the discipline itself and not the underlying events. A court may not reject an arbitrator's interpretation of the contract simply because it disagrees with that interpretation. *Southwest Ohio Reg. Transit Auth.*, 91 Ohio St.3d at 110, quoting *United Paperworkers Internatl. Union*, 484 U.S. at 37-38.

{¶54} Under the terms of Article 6, Section 4, both the arbitrator's interpretation and the trial court's interpretation are reasonable. "When a provision in a collective bargaining agreement is subject to more than one reasonable interpretation and the parties to the contract have agreed to submit their contract interpretation disputes to final and binding arbitration, the arbitrator's interpretation of the contract, and not the interpretation of a reviewing court, governs the rights of the parties thereto. (*Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.* [1990], 49 Ohio St.3d 129, 551 N.E.2d 186, approved, applied and followed.)" *Hillsboro v. Fraternal Order of Police, Ohio Labor Council, Inc.* (1990), 52 Ohio St.3d 174, at the syllabus. Since the arbitrator's interpretation of Article 6, Section 4 of the CBA is reasonable, the trial court should not have substituted its own interpretation of that section.

{¶55} Accordingly, the FOP's second assignment of error has merit.

{¶56} The FOP's third assignment of error states:

{¶57} "THE COURT OF COMMON PLEAS ERRED WHEN IT HELD THAT THE ARBITRATOR WAS NOT PERMITTED TO REDUCE THE DISCIPLINE OF OFFICER SCOTT."

{¶58} Here the FOP argues that the arbitrator was permitted to convert Scott's termination to a two-year suspension, contrary to what the trial court found. It points out that the CBA does not prohibit an arbitrator from modifying discipline.

{¶59} For support, the FOP relies on *Miami Twp. Bd. of Trustees v. FOP, Ohio Labor Council, Inc.* (1998), 81 Ohio St.3d 269. In that case, McCoy was terminated by the Miami Township Police Department. McCoy, through the FOP, filed a grievance regarding his termination, which was heard by an arbitrator. The arbitrator determined that McCoy's termination was without just cause and converted the discharge to a 30-day suspension. The Township trustees filed a complaint in the trial court requesting that the court vacate the arbitrator's award and reinstate McCoy's termination. The trial court declined to do so and upheld the arbitrator's award. On appeal, however, the appellate court reversed and remanded the matter for a new arbitration hearing. The Supreme Court accepted the case for review to determine whether an arbitrator could review the appropriateness of the type of discipline that an employer imposed once the arbitrator found that there was just cause for the employee's discipline.

{¶60} The Court held:

{¶61} "Where an arbitrator's decision draws its essence from the collective bargaining agreement, and in the absence of language in the agreement that would restrict such review, the arbitrator, after determining that there was just cause to discipline an employee, has the authority to review the appropriateness of the type of discipline imposed." *Id.* at the syllabus.

{¶62} After making this determination, the Court went on to review the appropriateness of the arbitrator's decision regarding the type of discipline. The Court stated that the proper inquiry in these type of "just cause" cases is (1) whether cause for the discipline exists and (2) whether the type of discipline was appropriate under the circumstances. *Id.* at 271-72.

{¶63} Based on the Supreme Court's holding in *Miami Twp. Bd. of Trustees*, 81 Ohio St.3d 269, the arbitrator in this case had authority to modify Scott's discipline provided that there were no terms to the contrary in the CBA.

{¶64} The CBA provides that, “No employee shall be reduced in pay or position, suspended, discharged, or removed except for just cause.” Article 6, Section 1. There is no further language that limits review of the decision to terminate an employee. Thus, the arbitrator in this case was free to review the type of discipline handed down by the Sheriff.

{¶65} Applying the Ohio Supreme Court’s analysis to this case, the arbitrator had to determine (1) whether there was cause to discipline Scott for his domestic violence arrests and disorderly convict conviction and (2) whether the Sheriff should have discharged Scott for this misconduct. The arbitrator determined that there was cause to discipline Scott but the amount of discipline was too great since the Sheriff relied on the 1997 and 1999 incidents, which the Sheriff should not have considered. The arbitrator determined that a two-year suspension without pay was appropriate. There is no language in the CBA that prohibited the arbitrator from modifying the discipline to a suspension. An arbitrator has broad authority to fashion a remedy even if the remedy is not specifically set out in the collective bargaining agreement. *Queen City Lodge No. 69, FOP, Hamilton Cty., Ohio, Inc. v. Cincinnati* (1992), 63 Ohio St.3d 403, 407.

{¶66} This court may not necessarily agree with the arbitrator’s decision to modify Scott’s termination to a suspension. However, that is not the standard that we must apply. “[A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision.” *United Paperworkers Intern. Union, AFL-CIO v. Misco, Inc.* (1987), 484 U.S. 29, 38. Here, the arbitrator acted within the scope of his authority and did not exceed his power in reducing Scott’s termination to a suspension. Consequently, the trial court should not have vacated the arbitrator’s award even though it disagreed with the arbitrator’s decision.

{¶67} Accordingly, the FOP’s third assignment of error has merit.

{¶68} The Sheriff has also presented two cross-assignments of error,<sup>1</sup> the first of which states:

{¶69} “THE COMMON PLEAS COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FAILED TO HOLD THAT THE ARBITRATOR HAD EXCEEDED HIS AUTHORITY WHEN HE FAILED TO RULE THAT THE GRIEVANCE AND ARBITRATION REQUEST WERE UNTIMELY FILED.”

{¶70} Scott received his notice of termination on September 23, 2005. Pursuant to the CBA, Scott had five working days from that date to file a grievance. The CBA provides that the grievance must be referred to either the Sheriff or “his designee.” Scott has maintained throughout these proceeding that he hand delivered his grievance to the Sheriff’s secretary that same day. However, the Sheriff has maintained that it did not receive notice of the grievance until May 2006, when the FOP filed its demand for arbitration.

{¶71} The arbitrator noted that the burden was on the Sheriff to prove that Scott did not timely file his grievance. He then found that there was “significant doubt” as to the Sheriff’s claim that Scott did not file the grievance on September 23, 2005. He also concluded that significant ambiguity existed in the CBA regarding when an arbitration demand had to be made. Therefore, the arbitrator found that he had jurisdiction to hear the grievance on its merits.

{¶72} The trial court noted the Sheriff’s argument that the grievance and the request for arbitration were not timely filed. However, the trial court stated that due to its ruling on the merits, it did not need to rule on these procedural issues.

{¶73} The Sheriff now makes two arguments concerning timeliness. He first argues that the trial court should have addressed the question as to whether Scott timely filed his grievance. The Sheriff asserts that Scott did not file the grievance with the Sheriff or “his designee” within the five-working-day time limit.

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<sup>1</sup> The Sheriff did not file a cross notice of appeal as he was the winning party in the trial court. However, the winning party in a civil suit may advance assignments of error as an appellee to prevent reversal of the final judgment that was in its favor. *Hostein v. Ohio Valley Vulcanizing*, 7th Dist. No. 06-BE-41, 2007-Ohio-3329, at ¶35.

{¶74} The CBA provides that the employee “may refer the grievance to the Sheriff or his designee within five (5) working days after receiving the Step 2 reply.” Article 8, Section 4.

{¶75} The Sheriff seems to accept that Scott referred the grievance to his secretary within the allotted time, but argues that his secretary was not “his designee” within the meaning of the CBA. At one point, the Sheriff seems to contend that service would have only been proper on himself or his Chief Deputy.

{¶76} The CBA does not define “designee.” However, it does refer to the Chief Deputy in the same Section when describing who to bring a verbal grievance to. Thus, had the CBA intended the Sheriff’s “designee” to mean his Chief Deputy, it would have simply stated “Chief Deputy” as it does earlier in Section 4 instead of “designee.”

{¶77} Because the CBA does not define “designee” it was reasonable for the arbitrator to conclude that “designee” includes the Sheriff’s secretary. Again, the trial court may not reverse an arbitrator’s award simply because it disagrees with the arbitrator’s interpretation of a contract. *Goodyear Tire & Rubber Co.*, 42 Ohio St.2d at 520.

{¶78} Second, the Sheriff argues that the trial court should have addressed whether the FOP timely filed the arbitration request.

{¶79} The CBA provides:

{¶80} “If the grievance is not satisfactorily resolved in Step 2, the FOP/OLC may submit a written demand that the grievance be submitted to arbitration. The demand for arbitration must be submitted to the Sheriff within ten (10) calendar days following the date the grievance was answered in Step 2 of the grievance procedure.” Article 8, Section 4.

{¶81} It further provides:

{¶82} “Any grievance which is not submitted by the employee within the time limits provided herein shall be considered resolved based upon management’s last answer. Any grievance not answered by management within the stipulated time

limits may be advanced by the employee to the next step in the procedure.” Article 8, Section 3.

**{¶83}** The Sheriff argues that the CBA requires him to schedule a meeting with the aggrieved employee within five days and then to answer a grievance within 10 work days following. Therefore, he contends that because the meeting and answer never occurred, the grievance was deemed denied at that time, in this case October 14, 2005, and the FOP should have then requested arbitration within ten days. Instead, the FOP did not file its arbitration request until May 2006.

**{¶84}** The arbitrator found that because “management,” in this case the Sheriff, never answered Scott’s grievance, no “management’s last answer” existed so as to trigger the time for filing an arbitration request. Thus, the arbitrator concluded that an ambiguity exists in the CBA as to whether there must be a management answer by the Sheriff once a grievance is filed in order to trigger the time limits within which the FOP must demand arbitration.

**{¶85}** Once again, this presents a matter of contract interpretation that was within the arbitrator’s power to determine. And as is the case with the other matters of contract interpretation, it was not for the trial court to reverse the arbitrator’s decision if it simply would have reached the opposite decision. The arbitrator’s decision was a reasonable interpretation of the CBA language. Thus, even if the trial court had reviewed the timeliness issues, we would not reach a different result in this case.

**{¶86}** Accordingly, the Sheriff’s first cross assignment of error is without merit.

**{¶87}** The Sheriff’s second cross assignment of error states:

**{¶88}** “THE COMMON PLEAS COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FAILED TO ADDRESS THE RC 2711.10(C) ARGUMENT RAISED BY THE EMPLOYER.”

**{¶89}** Here the Sheriff argues that he attempted to introduce evidence at the arbitration hearing of Scott’s past history of violence but the arbitrator prevented him from doing so. The Sheriff argues that the arbitrator’s exclusion of this evidence was in violation of R.C. 2711.10(C), which provides:

{¶90} “In any of the following cases, the court of common pleas shall make an order vacating the award upon the application of any party to the arbitration if:

{¶91} “\* \* \*

{¶92} “(C) The arbitrators were guilty of misconduct in \* \* \* refusing to hear evidence pertinent and material to the controversy \* \* \*.”

{¶93} As the FOP points out, however, there is nothing in the arbitration record demonstrating that the arbitrator refused to hear any evidence. The arbitrator determined that he would not consider events occurring in 1997 and 1999 that resulted in discipline. However, this is not the same as refusing to hear pertinent evidence. Instead, the arbitrator made a determination as to which evidence was pertinent and material based on his interpretation of the CBA.

{¶94} Accordingly, the Sheriff’s second cross assignment of error is without merit.

{¶95} For the reasons stated above, the trial court’s judgment is hereby reversed and the arbitrator’s award is reinstated.

Vukovich, P.J., concurs.

DeGenaro, J., concurs.