UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1289, 1290 & 1291

Consolidated Cases

September Term, 2015

PRINCE GEORGE'S COUNTY, MARYLAND

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, *ET AL.*

Kehoe,
Berger,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: August 8, 2016

Prince George's County (the "County") terminated three employees after an investigation concluded that they sold scrap metal to dealers rather than taking it to the County landfill, then made false statements about their activities to County investigators. Their union, the American Federation of State, County, and Municipal Employees ("AFSCME" or the "Union"), filed grievances on their behalf pursuant to a Collective Bargaining Agreement ("CBA"), and the grievances progressed to arbitration. After hearings, the arbitrator found that the employees had violated County policy, although to a lesser degree than alleged, and that the relevant policy had not been enforced for years. As such, the arbitrator concluded that the County lacked just cause to terminate the employees, so he sustained the grievances and ordered all three reinstated to their positions with full back pay.

The County filed petitions to vacate the arbitration awards in the Circuit Court for Prince George's County and the Union responded with a motion to dismiss, contending that the County's petitions were untimely. The Union also filed petitions to confirm the arbitration award. The circuit court denied the County's petitions to vacate, denied the Union's motion to dismiss, and confirmed the awards. On appeal, the County urges us to vacate the arbitration awards, primarily on the ground that the arbitrator's rationale violated public policy. We don't reach the policy question, though, because the County's petitions to vacate the arbitration award were untimely, and the circuit court should have granted the motion to dismiss.

I. BACKGROUND

In 2013, the County received a citizen complaint alleging that County employees driving County vehicles were selling scrap metal to scrap metal dealers rather than disposing of it at the County's landfill. The County investigated and discovered widespread employee theft and a significant decrease in scrap sold by the County (normally, the County sells scraps from the landfill). As a result of the investigation, a number of employees of the Bulky Collection Section of the Waste Management Division of the County's Department of Environment were disciplined.

Kenneth Parker, Corey Johnson, and Aaron Washington (the "Employees") were among the employees investigated. Each was interviewed and gave statements about the transactions. The department director concluded that each had converted scrap metal and made false statements to the County. All three were terminated, and Union filed grievances on their behalf.

AFSCME's CBA with the County creates a multi-step grievance process, the fourth and final step of which is for the parties to submit the matter to "final and binding" arbitration. The same arbitrator was selected for all three Employees; he held separate hearings for each and issued separate findings. And although the arbitrator's specific findings about each Employee's activity and culpability differed, he reached the same fundamental result for all three: they converted scrap metal on their routes, exchanged that scrap metal for cash from third parties while on County time (albeit in fewer transactions and for lesser proceeds than the County alleged), and made false statements to

investigators. That all said, the arbitrator also found that because the County's anti-scavenging policy had not been enforced for over a decade, the County lacked "just cause" to terminate them:

> The issue before me is whether the Grievant was discharged for just cause, not whether he violated the County personnel laws. "Just cause" is in turn a function of arbitral law which draws upon a myriad of factors in the workplace—the so-called "seven tests of just cause." A fundamental tenet of just cause is that the discipline administered to the grievant should reflect "equal treatment." Put another way, the discipline for a particular offense should be the same as that meted out in prior instances for a substantially similar offense."
>
> The record reveals that the Department has had a Scavenging/Theft of County Property policy in effect since at least 1996. The policy provides, in pertinent part, that "employees who are caught scavenging will be subject to disciplinary action up to and including dismissal." Notwithstanding the existence of this policy, [a] Union representative [] testified, without contradiction or rebuttal, that since 2000, through four Directorships, the policy had not been enforced until the summer of 2013, and the dismissal of the Grievant[s] under [the current department director] . . . .
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> Viewed in the light of a long-standing, extensive past practice of not enforcing the scavenging policy, and permitting widespread scavenging by employees and supervisors alike, all known to upper management, I could never find that the discharge of the Grievant[s] for scavenging was for just cause. On its face, the discharge[s] of the Grievant[s] for scavenging, set against a widespread past practice of not enforcing the scavenging policy, simply fails to measure up to the just cause requirement that there by "equal treatment" for the Grievant[s'] offense[s].

As such, the arbitrator ordered reinstatement of all three Employees with full seniority, benefits, and pay dating back to their termination.

The three decisions were delivered to the parties on January 14, 2015. On February 27, 2015—forty-four days later—the County filed petitions to vacate the arbitration award in the Circuit Court for Prince George's County. The Union opposed the County's petitions to vacate, and filed motions to dismiss the petitions to vacate on the ground that they were untimely and petitions to confirm the awards. The County opposed the motions to dismiss and petitions to confirm, and AFSCME replied to the County's opposition to its motion to dismiss. On July 22, 2015, without holding a hearing, the court entered identical orders denying the County's petitions to vacate, denying AFSCME's motions to dismiss, and stating that AFSCME's petitions to confirm were "granted with the effect that the arbitration decision dated January 13, 2015 is valid." The County filed timely notices of appeal, and we consolidated the three cases.

II. DISCUSSION

"[A]rbitration is favored and encouraged in Maryland because it provides an informal, expeditious, and inexpensive alternative to conventional litigation." *Prince George's Cty. Police Civilian Emp.'s' Ass'n v. Prince George's Cty.*, 447 Md. 180, 192 (2016); *Amalgamated Transit Union v. Lovelace*, 441 Md. 560, 576 (2015) (quoting *Shailendra Kumar v. Dhanda*, 426 Md. 185, 208 (2012)). We review arbitration awards narrowly, and "defer to the arbitrator's findings of fact and applications of law." *Downey v. Sharp*, 428 Md. 249, 266 (2012). "Mere errors of law and fact do not ordinarily furnish grounds for a court to vacate" an arbitration award. *Id.* at 268. Indeed,

> [a]rbitrators are judges chosen by the parties to decide the matters submitted to them, finally and without appeal. As a mode of settling disputes, it should receive every encouragement from courts of equity. If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error, either in law or fact. A contrary course would be a substitution of the judgment of the chancellor in place of the judges chosen by the parties, and would make an award commencement, not the end, of litigation.

Balt. Cty. v. Mayor of Balt., 329 Md. 692, 701 (1993) (quoting *Burchell v. Marsh*, 58 U.S. 344, 349 (1854)).

Before even reaching the scope of our review, though, "a petition to vacate [an arbitration] award shall be filed within 30 days after delivery of a copy of the award to the petitioner." Md. Code (1973, 2013 Repl. Vol.), § 3-224(a)(1) of the Courts and Judicial Proceedings Article ("CJP"). This deadline is mandatory, and a trial court must confirm an arbitration award if it is not challenged in time. *Bd. of Educ. of Charles Cty. v. Educ. Ass'n of Charles Cty.*, 286 Md. 358, 364, 366-67 (1979).

The Union argues that the trial court was without authority to consider the County's petitions to vacate the arbitration awards because the County filed them after the thirty-day statutory deadline. And the County doesn't dispute that it filed the petitions forty-four days after the award was delivered to the County. The County argues instead that the statutory deadline is superseded by Article 45 of the CBA, which provides that "[w]ithin forty-five (45) days after receipt of the Arbitrator's award for grievance, the County shall execute the award unless appealed."

It's not. Unfortunately for the County, "[a]ppealability is jurisdictional," *State Highway Admin. v. Kee*, 309 Md. 523, 528 n.2 (1987), and parties cannot confer subject matter jurisdiction on a court by consent. *Walbert v. Walbert*, 310 Md. 657, 661-62 (1987) (motion for review filed beyond the statutory deadline and thus did not confer subject matter jurisdiction upon the court); *see also Hott v. Mazzocco*, 916 F. Supp. 510, 514 n.4 (D. Md. 1996) ("The Maryland courts have stated time and again . . . that this time limit is mandatory and cannot be circumvented."). Nor does the language in the CBA on which the County relies purport to extend the deadline for seeking judicial review. It provides only that the County must execute, *i.e.*, perform or satisfy, any arbitration award within forty-five days *unless* the award has been appealed—which these weren't once the thirty-day window had closed.

Accordingly, the circuit court should have granted the Union's motions to dismiss the County's petitions to vacate, and we vacate the judgments to that limited extent. We take that seemingly pedantic step because the circuit court also granted the Union's petitions to confirm the awards. Normally, in the absence of the County's motions to vacate, the petitions to confirm wouldn't have been necessary (unless, perhaps, the County failed to execute the awards within forty-five days, or the Union needed otherwise to reduce the awards to judgment). But since the County did petition to vacate, petitions for confirmation were appropriate and not due on any particular deadline. *See* CJP § 3-226 (if no motions to the contrary are pending, "the court *shall* confirm the award" (emphasis added)); *id*. § 3-227(b) ("The court shall confirm the award, unless the other party has filed

an application to vacate, modify, or correct the award within the time provided in §§ 3-222 and 3-223 of this subtitle."). Had the court dismissed the County's motion to vacate, the correct next move would have been to enter an order confirming the award, which is what the court did in any event. This allows us to affirm that portion of the circuit court's judgment and obviates any need to remand.

We offer no views on the merits of the County's public policy arguments or whether the arbitration awards should have been vacated or confirmed had they been challenged in a timely manner.

JUDGMENT OF THE CIRCUIT COURT VACATED AS TO DENIAL OF AFSCME'S MOTION TO DISMISS AND AFFIRMED IN ALL OTHER RESPECTS. COSTS TO BE PAID BY APPELLANTS.