UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1498

September Term, 2013

BALTIMORE COUNTY, MARYLAND

v.

BALTIMORE COUNTY DEPUTY SHERIFFS, FRATERNAL ORDER OF POLICE, LODGE 25

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*Zarnoch,
Berger,
Reed,

JJ.

Opinion by Reed, J.

Filed: February 18, 2016

*Zarnoch, Robert A., J., participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

This case arises out of an arbitration award issued on April 8, 2013, in a wage dispute between appellant, Baltimore County (the "County"), and appellee, the Baltimore County Deputy Sheriffs, Fraternal Order of Police Lodge No. 25 ("FOP 25"). The County filed a Complaint in the Circuit Court for Baltimore County seeking to vacate the arbitration award. Pursuant to Maryland Rule 2-322(b) (West 2015), FOP 25 filed a motion to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. The circuit court granted the motion to dismiss, and the County noted its appeal. The County presents two questions to this Court, which we have rephrased and consolidated into one question as follows:[1]

> Whether the circuit court erred when it granted the motion to dismiss the complaint to vacate the arbitral award.

Because we hold the allegations in the County's complaint were insufficient to state a claim upon which relief could be granted, we affirm the circuit court's grant of the motion to dismiss.

[1] Appellant presented us with the following questions:

I. Did the Circuit Court err, as a matter of law, when it granted FOP Lodge 25's Motion to Dismiss Baltimore County's Complaint to Vacate Arbitration Award?

II. If the Circuit Court erred, what is the appropriate remedy?

We have consolidated these two questions into one primarily because the County never addresses the second question throughout its brief, but also because the first question goes more to the heart of this dispute.

FACTUAL AND PROCEDURAL BACKGROUND

The County and FOP 25 were both signatories to a Memorandum of Understanding ("MOU"). The MOU governed all aspects of the management–employee relationship between the two parties, including what is critical to this dispute: the grievance procedure. That document was effective for a two-year period, and was set to commence on July 1, 2010.

On February 22, 2012, a deputy sheriff with the Baltimore County Sheriff's Department filed a grievance with the County regarding stand-by and call-back pay. The grievant claimed he was not receiving stand-by pay per § 8.3 of the MOU for those non-working hours during which he was placed on-call for "weekend fugitive" duty.[2] He requested that all deputies who were placed on-call—regardless of whether they were called in for weekend duty or not—receive stand-by pay. On March 6, 2012, FOP 25 added all sworn personnel to the individual deputy's grievance, thereby converting the grievance to a class grievance per § 4.1(c) of the MOU.

The grievance proceeded through the procedure outlined in § 4 of the MOU, and was denied by both the Chief Deputy Sheriff and the Sheriff. The grievance then proceeded to the Office of Administrative Hearings, where an Administrative Law Judge ("ALJ") conducted a hearing on May 14, 2012. The ALJ denied the grievance on June 5, 2012.

[2] "Weekend fugitive" duty was primarily the duty of a Sergeant Weiss within the Sheriff's Department. A January 10, 2012, memorandum indicated that Sgt. Weiss was no longer available for that assignment every weekend. A proposed list of deputies was circulated internally, including the name of the grievant.

At this point in the grievance procedure, with the grievance unresolved, it was eligible for final resolution under § 5 of the MOU. According to § 5.2(a) of the MOU, "[a]ny grievance as defined in Section 4.1(c)" could be appealed to the Personnel and Salary Advisory Board ("PSAB"). As noted, Section 4.1(c) of the MOU briefly defines and sets forth the procedure for submitting class grievances. Pursuant to the procedure in § 5.2(a), FOP 25 noted an appeal to PSAB for resolution of its class grievance on June 15, 2012—within the ten-day appeal period noted in that section.

The Secretary to the PSAB responded to FOP 25 that the appeal was improper because the Board only considered those appeals related to "matters involving suspensions, dismissal, disciplinary action, promotion or demotion of the employee or any complaint about an examination or examination rating." The MOU, in fact, lists those matters as appropriate subject matter for grievances under § 4.1**(a)**(c) and not § 4.1(c) (emphasis added). Accordingly, § 4.1(a)(c) matters may properly be submitted to arbitration, **whereas § 4.1(c) matters are properly submitted to PSAB for final resolution.**

Nevertheless, FOP 25 submitted its class grievance to arbitration on June 29, 2012. Despite the erroneous interpretation of the MOU, the County argued the grievance was not timely submitted and filed a motion to dismiss before arbitration. The grievance proceeded to arbitration on February 8, 2013, where the arbitrator considered both the procedural and substantive issues raised by the County.

On April 8, 2013, the arbitrator issued his decision. He determined that the late filing of the appeal was not a fatal procedural flaw because it was based on a reading of the poorly constructed language of the MOU. The arbitrator also sustained the grievance on

substantive grounds, explaining that the County contravened the MOU and federal labor relations law by unilaterally creating a new category of work status for which the deputies were not receiving pay.

The County filed its complaint to vacate the arbitration award on May 10, 2013, in the Circuit Court for Baltimore County. On June 4, 2013, FOP 25 filed a motion pursuant to Maryland Rule 2-322(b) to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. The circuit court granted the motion after a hearing on August 30, 2013, and issued an order memorializing its oral order the same day. That order, however, did not state the grounds upon which the motion was granted.

On September 27, 2013, the County timely noted its appeal.

DISCUSSION

A. Parties' Contentions

The County's sole contention in this appeal is that the circuit court should not have granted FOP 25's motion. It challenges the grant of the motion on three grounds.

First, the County argues the complaint met the pleading requirements of Maryland Rule 2-303(b) and properly stated claims to relief. Second, it contends the circuit court had subject matter jurisdiction over the complaint. Where a contract permits arbitration but does not state that the Maryland Uniform Arbitration Act ("MUAA") applies, the County explains, the circuit court may review the arbitral award according to a limited set of common law standards. Pursuant to this principle, the County avers the MOU was subject to common-law review because it was not governed by the MUAA. Last, the County argues

the arbitrator lacked jurisdiction to issue an award because he heard an untimely filed grievance and also ignored the plain language of the MOU when he issued the award.

FOP 25 disagrees with the County and explains that the grant of the motion was proper. It argues that the complaint pleaded "threadbare" claims, which were insufficient to survive a Rule 2-322(b)(2) attack. Moreover, FOP 25 contends the County had a full opportunity to address its allegations in its brief opposing the motion to dismiss, but failed to do so. It also explains the appeal to arbitration was timely and based on a proper reading of the MOU's terms. Finally, FOP 25 argues that, despite asserting that the arbitrator's jurisdiction is reviewed *de novo*, the County never explained why such a review is necessary for the instant matter.

B. Standards of Review

Maryland Rule 2-322(b) permits a defendant to file a motion to dismiss before answering the complaint. Rule 2-322(b)(1) allows a defendant to attack the complaint for a lack of subject matter jurisdiction, and 2-322(b)(2) permits attack for failure to state a claim upon which relief can be granted.

Employers and employees may agree to arbitrate their disputes, but the arbitration will not be governed by the Maryland Uniform Arbitration Act ("MUAA") unless the parties explicitly state in their agreement that the Act is applicable. Maryland Code, Courts & Judicial Proceedings Article ("CJP") § 3-206(b); *see also Bd. of Educ. of Prince George's Cnty. v. Prince George's Cnty. Educators' Ass'n, Inc.*, 309 Md. 85, 96 (1987). Where the MUAA is inapplicable to the parties' dispute, Maryland courts can and shall review the award using common law standards. *Id.* at 105.

A court may vacate an arbitral award for clear-cut issues such as fraud, misconduct, bias, prejudice, corruption, or lack of good faith on the part of the arbitrator, as well as "mistake so gross as to evidence misconduct or fraud on [the arbitrator's] part." *Id.* at 100. The court may also consider whether the award accurately reflects matters within the scope of issues submitted; the procedural fairness of the proceedings; and the calculation of the award. A court may also vacate an award for a "palpable mistake of law or fact [that is] apparent on the face of the award or for a mistake so gross as to work manifest injustice," *id.* (internal quotations marks omitted), although this area of review is less well-defined.

Accordingly, we consider a circuit court's subject matter jurisdiction to review an arbitration award based on the contents of the award or the process surrounding grant.

Where a circuit court has granted a motion to dismiss for failure to state a claim upon which relief may be granted, an appellate court shall review the circuit court's decision for legal correctness. *Bacon v. Arey*, 203 Md. App. 606, 651 (2012) (quoting *McHale v. DCW Dutchship Island, LLC*, 415 Md. 145, 155–56 (2010)). In so doing,

> a court must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may be reasonably drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, *i.e.*, the allegations do not state a cause of action for which relief may be granted.

Bacon, 203 Md. App. at 651. We will uphold the dismissal if the facts alleged and permissible inferences would, if proven, fail to afford relief to the plaintiff. *Id.*

C. Analysis

The sufficiency of a complaint requires the pleading to be proper both as a matter of pleading and as a matter of jurisdiction. To that end, FOP 25's motion to dismiss attacked the sufficiency of the complaint both as to pleading and jurisdiction. The motion contended the circuit court lacked subject matter jurisdiction and that appellant failed to state a claim upon which relief could be granted. The circuit court, however, simply granted the motion without clarifying the grounds upon which it rested its determination. Because the County assigns error to the grant of the motion as a whole, we review both the subject matter jurisdiction of the circuit court and the sufficiency of the complaint.

i. Subject Matter Jurisdiction

As we explained in our standards of review section, *supra* section B, an arbitration agreement between an employer and employee may be reviewed either under MUAA or common law principles. The circuit court's jurisdiction depends on whether or not the parties explicitly agreed the MUAA is applicable to their dispute. *Bd. of Educ. of Prince George's Cnty.*, 309 Md. at 96.

Article 5, § 5.1 of the MOU sets forth the parties' agreement as to the final and binding arbitration of grievances. Nowhere in each of the four subsections of § 5.1 is the MUAA mentioned. A broader review of the entire MOU reveals no mention whatsoever of the MUAA. Accordingly, common law standards apply to the review of the arbitration award. *Id.* at 105. Maryland common law states that the circuit court shall review the award for grounds such as fraud, misconduct, corruption, procedural fairness, issues outside the scope of arbitration, or for any "palpable mistake of law or fact . . . apparent on the face of

the award" or any "mistake so gross as to work manifest injustice." *Id.* (omission in original). We determine the circuit court had the subject matter jurisdiction to review the MOU according to these standards.

ii. Sufficiency of the Complaint

FOP 25 also moved to dismiss the complaint in the trial court for the County's failure to state a claim upon which relief could be granted. FOP 25 explains that the circuit court's scope of review of an arbitration award was limited to the common law grounds discussed *supra*, and argues the County's complaint could not make out a legally sufficient claim to relief within this narrow scope. We agree.

As discussed above, we review for legal correctness the circuit court's grant of a motion to dismiss for failure to state a claim. Maryland Rule 2-303 requires that the allegations in a pleading

> be simple, concise, and direct. No technical forms of pleadings are required. A pleading shall contain only such statements of fact as may be necessary to show the pleader's entitlement to relief or ground of defense. It shall not include argument, unnecessary recitals of law, evidence, or documents, or any immaterial, impertinent, or scandalous matter.

Id. at § 2-303(b). A plaintiff must plead the facts material to the cause of action with sufficient specificity. *Tavakoli-Nouri v. State*, 139 Md. App. 716, 725 (2001). A court will not accept bald assertions and conclusory statements by the pleader.[3] *Id.*

[3] Although this language is reminiscent of the pleading standard for complaints in federal courts that was developed in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), our Court of Appeals has yet to consider the applicability of the *Twombly-Iqbal* plausibility standard in Maryland state cases. To that end, our decision does not invoke or consider the *Twombly-Iqbal* standard in any way.

Courts in Maryland favor arbitration as a method of dispute resolution and, to that end, will defer to the arbitrator's findings of fact and applications of law. *Bd. of Educ. of Prince George's Cnty.*, 309 Md. at 98. Arbitration's status as a favored method of resolving disputes is a result of its ability to easily and inexpensively resolve disputes. *Id.* (internal citations omitted). Allowing extensive judicial review of arbitration would defeat its purpose as an alternative dispute resolution mechanism. *Id.*

The utility of arbitration resulted in courts developing deferential rules for the review of arbitration awards. A mere error of law or fact will not constitute sufficient grounds for a court to vacate or refuse enforcement of an arbitration award. *Id.* at 99. This, however, does not mean that arbitration awards are untouchable. Rather, it simply means the party challenging the award has a high bar to meet.

To reiterate, an arbitration award will be set aside if the arbitrator's conduct was tainted by fraud, misconduct, bias, prejudice, corruption, or a lack of good faith. *Id.* at 100. Gross mistakes on the part of the arbitrator may demonstrate fraud or misconduct. *Id.* (citing *Chillum-Adelphia Volunteer Fire Dept., Inc. v. Button & Goode, Inc.*, 242 Md. 509, 517 (1966)). A court will also set aside an arbitration award if it is contrary to clear public policy. *Bd. of Educ. of Prince George's Cnty.*, 309 Md. at 100.

Additionally, if the arbitrator failed to consider all the matters presented, or issued an award outside the scope of those matters presented, a court will vacate that award. *Id.* at 100–01. The award must also have been obtained from a procedurally fair hearing. *Id.* at 101. Although there are the clear-cut grounds for vacating an award, a court may set aside an award if it "involves [a] mistake so gross as to work manifest injustice. *Id.* (internal

citations omitted). Similarly, an award will be set aside for facially apparent mistakes of law or fact. *Id.*

The County's complaint is a sparse pleading of a little more than three pages. Half of the pleading's contents are dedicated to recounting the relevant sections of the MOU and the award. In Paragraph 7 (of 11) the County makes its first allegations regarding the award. In Paragraphs 7 and 8 they attack the arbitrator's jurisdiction. In Paragraphs 9 through 11 they attack the award itself.

Although Rule 2-303 requires only "simple, concise, and direct" allegations with "such statements of fact as may be necessary to show the pleader's entitlement to relief or ground of defense," the County's allegations are the type of "bald assertions and conclusory statements" that courts will not accept. Paragraphs 9 through 11 simply state:

> 9. The Arbitration Award is contrary to the law of Maryland regarding past practices.
>
> 10. The Award involves mistakes so gross as to constitute manifest injustice.
>
> 11. The Arbitrator's Opinion and Award contains mistakes of law and fact which are apparent on the face of the Award.

Each of these allegations are plain assertions completely unsupported by any factual statements. Paragraphs 10 and 11 aver that the award falls within the narrow grounds for setting aside an award, but these allegations fail to provide any manner of factual assertion or *some* reference to law in order to state a claim. In *Baltimore County Fraternal Order of Police Lodge No. 4 v. Baltimore County*, 429 Md. 533, 563–64 (2012), the Court of Appeals clearly explained that a manifest injustice arises when an arbitrator completely

ignores the applicable law. Manifest injustice is not simply an error of law or even the arbitrator's failure to understand and properly apply the law. *See id.* at 564. It is a far more invidious error.

Were we to view the allegations in Paragraphs 10 and 11 in a light most favorable to the County, we would still find no manifest injustice. The arbitrator cited to relevant federal and state case law and also supported his analysis with the same. The arbitrator demonstrates no disregard of the law, or a "manifest" disregard. Similarly, the record does not support the allegation that the arbitrator's opinion and award contains manifest errors of fact and law. The arbitrator clearly and thoroughly discussed each party's position, as well as the relevant portions of the MOU. Moreover, the arbitrator made sure his decision referred to those portions of the MOU and the positions of each party, and supported his analysis with relevant case law. If any errors did exist in his decision, they were not apparent from the face of the award.

The allegation in Paragraph 9 is comparable to the allegations in Paragraphs 10 and 11 in terms of substance. The County alleges that the award did not follow Maryland's law of past practices. Though Maryland cases reveal no articulable doctrine of past practices in the State, the "past practices" concept does arise in our labor cases. *See, e.g.*, *Prince George's Cnty. v. Fraternal Order of Police, Prince George's Cnty., Lodge 89*, 172 Md. App. 295, 312–13 (2007) (explaining that arbitrator, in dispute over bargained-for promotion procedures, was correct to rely on past practices regarding promotion); *Mayor & City Council of Balt. v. Balt. Fire Fighters, Local 734, I.A.F.F.*, 93 Md. App. 604, 612–14 (1992) (noting uncontroverted evidence regarding past practices of using leave before

retirement was basis for holding union had valid grievance). These exemplary cases demonstrate that an employer and an employee may use past practices as evidence of their labor relations. The cases do not, however, demonstrate doctrinal or analytical framework.

The Supreme Court of Pennsylvania has explained in much clearer fashion how parties may use past practices in arbitrations:

> [There are] four situations in which evidence of past practice is used in arbitrations: (1) to clarify ambiguous language; (2) to implement contract language which sets forth only a general rule; (3) to modify or amend apparently unambiguous language which has arguably been waived by the parties; and (4) to create or prove a separate, enforceable condition of employment which cannot be derived from the express language of the agreement.

Allegheny Cnty. v. Allegheny Cnty. Prison Emp. Indep. Union, 381 A.2d 849, 852 (Pa. 1977). The Pennsylvania Court went on to hold that, even where a collective bargaining agreement has a broad integration clause, if there is no mention of past practices in the agreement, those past practices may not be considered incorporated. *Id.* at 854.

Our standard of review compels us to view Paragraph 9 in the light most favorable to the County. In doing so, we determine that the allegation contained therein falls short because it did not demonstrate to the circuit court *how* the arbitrator failed to consider past practices. As explained, though Maryland's law on past practices is not as articulated as the law in Pennsylvania, for example, our cases *do* show some use for past practices in labor arbitration. Yet, without pleading any factual matter, the County cannot clarify how the arbitrator's error was "apparent on the face of the award." *See Bd. of Educ. of Prince George's Cnty.*, 309 Md. at 101 (internal citations omitted).

Similarly ineffective allegations are made in Paragraphs 7 and 8, which state as follows:

> 7. The Arbitrator exceeded his power, in that he went beyond the interpretation and/or application of the express provision or provisions of the MOU when he denied the County's motion to dismiss the grievance for timeliness. Contrary to the plain contractual language, the Arbitrator's Award rewrote Article 4 of the MOU, which had been negotiated by FOP Lodge No. 25 and Baltimore County.
>
> 8. In addition, the Arbitrator exceeded his power in that he went beyond the interpretation and/or application of the express provision or provisions of the MOU when he disregarded the clear language of Section 8.3(b) vesting authority in the Sheriff to establish a standard callback and standby policy.

(internal citations omitted). Although more substantive than Paragraphs 9 through 11, these allegations again plead insufficient factual matter to demonstrate how the arbitrator exceeded his jurisdiction when "he went beyond the interpretation and/or application of the express provision or provisions of the MOU." The County merely asserts—without explaining—that the arbitrator exceeded his jurisdiction, first, when he violated the MOU's grievance procedure by permitting FOP 25 to late-file a grievance, and, second, when he disregarded the "clear language" of the MOU on the Sheriff's authority to establish a standard call-back and standby policy. Neither of these allegations pleads any additional factual matter to demonstrate with specificity how the arbitrator's actions fell within the common law grounds for overturning an arbitral award.

Paragraph 8 would fail to state a claim even with sufficient factual pleading. In resolving the issue of on-call pay, the arbitrator made certain to refer to and discuss the

actual language of the MOU—specifically § 8.3(b), the provision that sets forth the parties' agreements as to call-back and standby pay. Were we to view the allegations in a light most favorable to the County, when we consider that nearly five pages of the arbitrator's opinion were devoted to a discussion of § 8.3(b) and the consequences of the February 29, 2012, Sheriff's memorandum, we cannot say the arbitrator ignored the language of that section. Accordingly, this allegation is legally insufficient. Our standard compels us to affirm the circuit court's dismissal of this allegation because "dismissal is proper only if the facts and allegations, so viewed, would nevertheless fail to afford plaintiff relief *if proven*." *Magnetti v. Univ. of Md.*, 171 Md. App. 279, 284 (2006) (emphasis added). Even with additional factual matter, the County could not prove this allegation because the arbitrator's opinion plainly demonstrates his consideration of § 8.3(b). Paragraph 8 by itself does not state a claim to relief under any of the common law grounds.

Paragraph 7's allegations also fail, for other reasons. The arbitrator did not act beyond the scope of his jurisdiction in permitting the grievance to proceed. Rather, the arbitrator derived his authority from the MOU, as he should have.

In *Berklee College of Music v. Berklee Chapter of Massachusetts Federation of Teachers, Local 4412, AFT, AFL-CIO*, 858 F.2d 31 (1988), the United States Court of Appeals for the First Circuit considered the authority of an arbitrator to permit late-filed grievances to proceed. Judge (now Justice) Breyer, writing for the *Berklee* court, noted that courts will defer to an arbitrator's decision, even in the face of likely error, as long as "the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority[.]" *Id.* at 32 (citing *United Paperworkers Int'l Union v. Misco, Inc.*, 484

U.S. 29, 38 (1987)). The First Circuit then explained how the Supreme Court had reiterated that courts are to construe rules of procedure liberally so as to prevent "mere technicalities" from precluding the arbitrator's consideration of the merits of a given case. *Id.* at 33 (citing *Torres v. Oakland Scavenger Company*, 487 U.S. 312, 316 (1988)). Liberal construction of procedural requirements permits an arbitrator to consider the merits of a grievance even if, for example, the grievance was late-filed because of an employer's deception. *See Berklee*, 858 F. 2d at 33. Although we detect no deception here, as drafted, the MOU's definition of grievances in § 4.1 is not a model of clarity. FOP 25's reliance on §§ 4.1 and 5, resulting in the late filing with the arbitrator, is a reasonable consequence of this faulty draftsmanship.

In addition, the *Berklee* court determined that the language in the parties' contract regarding the waiver of time limits applied only to waivers by the parties themselves. *Id.* at 33. It was not intended to apply to the arbitrator's waiver of limits for reasons of fairness or *de minimis* errors. *Id.* at 34. This is applicable to the present case where the parties' agreement contains language in § 4.5 that allows for the extension of time limits only where the parties have mutually agreed in writing to extend. Moreover, § 4.5 contains no language circumscribing the arbitrator's ability to waive time limits.

Although the *Berklee* court determined that liberal construction of procedural requirements and intra-party restrictions on waivers supported the arbitrator's ability to accept late-filed grievances, it also stated that contracts may restrict an arbitrator's ability to make *de minimis* exceptions. *Id.* at 33–34. The court cited, for example, the language in the parties' contracts indicating that grievances would be deemed resolved if the parties

missed filing deadlines. *Id.* at 33. It explained, however, that, although the language did not cover the grievance in that case, it demonstrated the parties knew how to *specify* with strong language the consequences of missing a deadline. *Id.* This tracks the language in § 5.1(a) of the MOU, which states that a grievance had to be appealed no later than 10 days after the Labor Commissioner's answer or else that entity's answer would be deemed the final word on the grievance. Notwithstanding that, there is no language in the MOU barring the arbitrator from accepting the late-filed grievance where FOP 25 properly followed each step in the grievance procedure and timely filed its appeal of the ALJ's decision—albeit to the PSAB, by mistake. FOP 25 made a good faith technical error that arose as a result of an ambiguity in § 4.1.

Ultimately, the *Berklee* court determined that the language of the parties' contract could have limited the arbitrator's authority, but did not do so in clear terms. *Id.* at 34. Accordingly, the agreement's language supported the argument that the arbitrator had authority to make *de minimis* exceptions for late-filed grievances. *Id.* at 34.

Here, though the parties' contract does contain limiting language on the arbitrator's jurisdiction, that language makes clear that the MOU is the source of the arbitrator's authority. This is in line with the *Berklee* court's quotation of *Misco*: "an arbitrator's award settling a dispute with respect to the interpretation or application of a labor agreement *must draw its essence from the contract* and cannot simply reflect the arbitrator's own notions of industrial justice." *Id.* at 32 (citing *Misco*, 484 U.S. at 38). The arbitrator's decision to hear the grievance is not inconsistent with the parties' agreement and his jurisdiction, particularly where FOP 25's error arose from an ambiguity in the agreement's language.

The arbitrator did not make a decision completely outside the language of the MOU, nor does the MOU's language utterly preclude the arbitrator's ability to extend time limits; that provision, in fact, is limited to the parties themselves. Nevertheless, the County did not make any factual allegations that would demonstrate just *how* the arbitrator exceeded his jurisdiction in accepting the filing. The First Circuit demonstrated persuasively the considerations relevant to determining whether the arbitrator's jurisdiction was exceeded, and the County's allegations are well short of making any such relevant showing.

The County had the opportunity to flesh out its allegations when responding to FOP 25's motion to dismiss, but elected to focus on other arguments. It devoted its entire response to arguing that the circuit court had subject matter jurisdiction to review the award (a proposition with which we agree); that FOP 25 is not entitled to attorney's fees; and that the arbitrator lacked the jurisdiction to resolve the grievance because it was not timely filed. With regard to the challenge of the arbitrator's jurisdiction, FOP 25 cited to *Stephen L. Messersmith, Inc. v. Barclay Townhouse Assocs.,* 313 Md. 652 (1988), which explained that challenges to an arbitrator's jurisdiction are reviewed *de novo*. That case, however, is inapposite to the present matter. In *Messersmith*, the arbitration award at issue was challenged on jurisdictional grounds because the respondent claimed there was no agreement to arbitrate. *Id.* at 657. The Court of Appeals held that where a party attacks an arbitration panel's jurisdiction on the grounds that there was no agreement, a court must review *de novo* whether an agreement to arbitrate exists and, if one does, only then may the award be upheld. *Id* at 664. In this case, the County complains that the arbitrator took

actions that were contrary to justice in allowing the grievance to proceed out of time, not that an agreement did not exist.

Overall, the County attempts to fit its complaint within the narrow scope of review for arbitration awards, but fails to demonstrate with any clarity or specificity *why* these grounds are applicable to the award at issue here. We cannot accept the County's complaint as pleaded and hold the complaint was insufficient as a matter of law. We, therefore, affirm the decision of the circuit court to grant the motion to dismiss Baltimore County's complaint to vacate the arbitral award.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.