

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Fraternal Order of Police	:	
Capital City Lodge No. 9,	:	
	:	
Plaintiff-Appellant,	:	No. 12AP-451
	:	(C.P.C. No. 08CVH06-8592)
v.	:	
	:	(REGULAR CALENDAR)
City of Reynoldsburg,	:	
	:	
Defendant-Appellee.	:	
	:	
City of Reynoldsburg,	:	
	:	
Plaintiff-Appellee,	:	No. 12AP-452
	:	(C.P.C. No. 08CVH06-8672)
v.	:	
	:	(REGULAR CALENDAR)
Fraternal Order of Police	:	
Capital City Lodge No. 9,	:	
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on March 21, 2013

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*Hunter, Carnahan, Shoub, Byard & Harshman, and Grant D. Shoub*, for appellant.

*Downes Fishel Hass Kim LLP, Marc A. Fishel and Paul M. Bernhart*, for appellee.

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APPEAL from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} Appellant, the Fraternal Order of Police, Capital City Lodge No. 9 ("FOP"), appeals a judgment of the Franklin County Court of Common Pleas that vacated an

arbitrator's award in favor of the FOP, but did not vacate an arbitrator's award in favor of appellee, the City of Reynoldsburg ("City"). For the following reasons, we affirm.

{¶ 2} Prior to October 31, 2007, Brett Blake was a patrol officer employed by the City. In March 2007, Blake and another patrol officer arranged to trade shifts. As a result of the trade, Blake was scheduled to work from 11:00 p.m. on July 12, 2007 to 7:00 a.m. on July 13, 2007. Blake, however, forgot about the trade.

{¶ 3} On the evening of July 12, 2007, Blake was playing poker at his house with friends, including his father and another patrol officer, Damon Faraone. Around 10:30 p.m., Faraone received a text message from one of the City's dispatchers informing Faraone that Blake was supposed to work that night. Faraone told Blake about the text message. Blake then left the game and prepared to go to work.

{¶ 4} The commute from Blake's home to work normally took 20 to 25 minutes. Blake knew that he would probably be late to work. Nevertheless, he did not call his supervisor to notify him of this probability.

{¶ 5} As Blake drove away from his home, his oldest daughter ran out of the house and flagged him down. She told Blake that his youngest son, Tyler, had hit his head and was injured. Blake immediately called the dispatcher and told her that he was not coming in to work because Tyler had "busted his head open."

{¶ 6} When Blake saw Tyler, he realized that the Tyler's injury was minor—only a bump or scrape. Blake knew that he did not need to stay at home with his son and that he could report to work. Blake, however, resumed playing poker.

{¶ 7} Blake's absence was the fifth time he had missed work due to illness during 2007. Given the number of sick days Blake had used, Blake's superiors decided to demand that Blake provide a doctor's excuse for his absence. Lieutenant Scott McKinley left Blake a telephone message on the morning of July 13 informing him that he needed a doctor's excuse. According to Blake, upon receiving the telephone message, he called his doctor's office, the Serrano Family Practice. The medical assistant with whom Blake spoke directed him to bring Tyler into the office. At the office, Blake told the medical assistant that Tyler's injury was not serious, but he had taken off work and his employer was requesting a doctor's excuse to account for his absence. The medical assistant examined Tyler and determined that he did not need to see a doctor or undergo medical

treatment for his injury. The medical assistant then completed a "Return to Work" form that stated that Tyler was under the care of the Serrano Family Practice from July 12 to 13 and that Blake could return to work on July 13. The form did not include the signature of any nurse or physician; instead, the medical assistant stamped the form with the name and address of the practice. Blake submitted this form to McKinley.

{¶ 8} In the meantime, Chief David Suciu had discovered that Blake had held a card party on the night of July 12. The chief decided to assign Sergeant Larry Finkes to investigate whether Blake had violated the code of conduct for the City's division of police.

{¶ 9} During his investigation, Finkes interviewed the staff of the Serrano Family Practice and Blake. Finkes also obtained considerable information for his investigation by causing subpoenas to be issued to third parties, including the Serrano Family Practice, United Health Care, and Verizon Wireless. In response to the subpoenas, Finkes received records of medical office visits, medical insurance claims, and Blake's cell phone records. A magistrate of the Reynoldsburg Mayor's Court authorized each of the subpoenas pursuant to Section 501.15(a) of the Codified Ordinances of Reynoldsburg, Ohio ("Ordinance 501.15"). That ordinance states, "*After a misdemeanor offense has been committed, and before a criminal complaint has been filed or an arrest has been made, the \* \* \* Mayor's Court Magistrate \* \* \* may cause a subpoena, with a copy of this section attached, to issue returnable before such court, for any person to give information concerning such misdemeanor offense \* \* \*.*" (Emphasis added.) Blake was never the subject of a criminal investigation. Finkes investigated Blake for suspected violation of departmental rules, not the commission of a misdemeanor offense.

{¶ 10} As a result of Finkes' investigation, Suciu determined that Blake's violations of the code of conduct warranted serious discipline. On September 26, 2007, Suciu provided Blake with a written statement of the charges against him. Those charges included failure to contact his supervisor when he knew that he would be late, failure to report for duty without a bona fide excuse to be absent, failure to be truthful, and insubordination when he failed to answer interview questions truthfully.

{¶ 11} The City's safety director then conducted a departmental hearing on the charges. Finkes testified during the hearing. The FOP attorney attempted to cross-examine Finkes regarding the subpoenas he had obtained during his investigation, but the

safety director prohibited that questioning. After the hearing, acting Mayor William L. Hills terminated Blake's employment.

{¶ 12} Blake appealed his discharge to binding arbitration pursuant to the Collective Bargaining Agreement between the City and the FOP ("CBA"). At the hearing before the arbitrator, Blake admitted that he violated the code of conduct when he failed to contact his supervisor after he knew that he would be late to work. Blake also admitted that he violated the code of conduct when he failed to report to work without a bona fide excuse. Blake, however, asserted that he did not lie at any time.

{¶ 13} The arbitrator did not agree with Blake's claim that he was truthful. According to the arbitrator:

The Grievant's submission of a false and misleading doctor's excuse for his absence is the most serious offense. Regardless of the fact that it was obtained from a medical assistant who was not a caregiver, the return to work form was submitted with the intention of supplying the Grievant's employer with misleading facts. Tyler Blake was not a "patient" of the medical practice on July 13 in the sense that he was examined or undergoing treatment for an injury. He was not under the care of any physician from July 12 to July 13. He was not even seen by a treating physician or nurse.

\* \* \*

The Grievant's mindset was to call off work with an excused absence after discovering that he was required to work because of his shift trade. This was evident from the time he called the dispatcher to report that he could not come in due to his son's head injury, before he had even examined his son. He failed to report for work even if he was late after confirming that his son was not seriously injured. He admits that Tyler could remain under the care of his oldest daughter and/or his father who was at his home attending the card game. The Grievant wanted to avoid taking a vacation day or using some of his compensatory time. He had no intention of taking Tyler for medical treatment. His only objective was to obtain a medical excuse after his superior ordered that he obtain one. His only intention was to mislead his employer into believing that he remained off work because of his son's injury that was serious enough to require medical attention, when this was not the case. \* \* \* [T]he Grievant was satisfied to receive [a doctor's excuse] containing false information with only a stamp, without any signature from a doctor or

other medical care provider. He was not charged for any service. The entire exercise was unnecessary and unwarranted, thereby placing the Grievant's trustworthiness as a sworn police officer at issue.

As oftentimes happens, an employee will compound what in the beginning is only a minor infraction or work rule violation. If the Grievant would have merely come to work late and explained his circumstances, his discipline, if any, would have been minor. Instead, as is often the case, the "cover-up" becomes worse than the original offense. Misrepresenting his son's condition by obtaining a false and misleading doctor's excuse in order to obtain an excused absence is much more serious than forgetting that there was a shift trade, reporting for work late after examining Tyler's' [sic] injury, or even failing to show up for work at all and accepting an unexcused absence.

(Footnotes omitted.) Arbitrator's Opinion and Award, at 11-14.

{¶ 14} The arbitrator concluded that Blake demonstrated serious judgment lapses that would warrant discharge absent compelling mitigating factors. After examining Blake's disciplinary record, the arbitrator found no reason to impose a lesser sanction. The arbitrator thus denied Blake's grievance and sustained his discharge.

{¶ 15} The arbitrator went on to address a second issue, which the FOP alone raised during the hearing. According to the FOP, the City had acted inappropriately when it subpoenaed information that it lacked legal authority to subpoena and when it prevented the FOP attorney from inquiring about the subpoena process during the departmental hearing. With regard to the first impropriety, the arbitrator determined that the issue was "whether the evidence of the Grievant's admissions and the testimony offered at the [arbitration] hearing should somehow be ignored or rejected based on the fact that this evidence may never have been presented if the City had not obtained the background information in the first instance through the issuance of illegal subpoenas without the Grievant's or the FOP's knowledge." Arbitrator's Opinion and Award, at 16. The arbitrator concluded that he would not exclude Blake's testimony.

{¶ 16} Next, the arbitrator considered Section 10.3 of the CBA, which provides that, during the departmental hearing, "[t]he member and/or his or her Lodge Attorney or Lodge representative shall have the opportunity to confront and cross-examine his or

her accusers \* \* \*." The arbitrator concluded that Blake and the FOP had the right to know about the subpoenas, the procedures under which they were issued, and the evidence that was produced so that they could marshal a defense against the charges. Because of the City's misuse of its subpoena power and the procedural defects that occurred during the departmental hearing, the arbitrator awarded Blake all lost pay and benefits up to and including March 18, 2008, the date of the award.

{¶ 17} Both the City and the FOP filed applications to modify or vacate the arbitrator's awards before the trial court. The City argued that the trial court should vacate the award that granted Blake lost pay and benefits because the arbitrator exceeded his powers by addressing a matter not before him. The FOP argued that the trial court should vacate the award that sustained Blake's discharge because it violated public policy.

{¶ 18} Approximately four months after the FOP filed its application to modify or vacate, the FOP moved to amend its application. The FOP asked to supplement its application with an additional ground for vacating the arbitration award; namely, that the award was procured by corruption, fraud, or undue means. The FOP supported its motion with discovery responses from a civil action that Blake had initiated against the City in federal court. In those responses, the City had represented that it had been conducting a criminal investigation into whether Blake had committed a misdemeanor when it sought subpoenas under Ordinance 501.15. During the arbitration hearing, multiple City witnesses had testified to the contrary, stating that the City was *not* conducting a criminal investigation of Blake when it sought the subpoenas. The trial court denied the FOP's motion.

{¶ 19} On May 3, 2012, the trial court issued a decision and entry ruling on the parties' applications. The trial court granted the City's application and vacated the award that granted Blake lost pay and benefits. The trial court denied the FOP's application and refused to vacate the award that sustained Blake's discharge.

{¶ 20} The FOP now appeals from the May 3, 2012 judgment, and it assigns the following errors:

[1.] The trial court erred in denying Appellant's motion to modify or vacate the arbitration award.

[2.] The trial court erred in granting Appellee's motion to modify or vacate the arbitration award.

[3.] The trial court erred in denying Appellant's motion to amend its motion to modify or vacate the arbitration award.

{¶ 21} We will address the FOP's second assignment of error first. By that assignment of error, the FOP argues that arbitrator had the necessary authority to award Blake back pay and benefits. We disagree.

{¶ 22} Because Ohio law favors and encourages arbitration, courts only have limited authority to vacate an arbitrator's award. *Assn. of Cleveland Fire Fighters, Local 93 v. Cleveland*, 99 Ohio St.3d 476, 2003-Ohio-4278, ¶ 13. R.C. 2711.10 restricts the grounds on which a court may vacate an arbitration award to fraud, corruption, misconduct, an imperfect award, or that the arbitrator exceeded his or her authority. Here, the City requested the trial court vacate the arbitration award for Blake on the ground that the arbitrator exceeded his authority. *See* R.C. 2711.10(D).

{¶ 23} Once an arbitrator has made an award, it cannot be easily overturned or modified. *Queen City Lodge No. 69, Fraternal Order of Police v. Cincinnati*, 63 Ohio St.3d 403, 407 (1992). "It is only when the arbitrator has overstepped the bounds of his or her authority that a reviewing court will vacate or modify an award." *Id.* The parties' contract determines the parameters of an arbitrator's authority. *State Farm Mut. Ins. Co. v. Blevins*, 49 Ohio St.3d 165 (1990), paragraph one of the syllabus; *Professionals Guild of Ohio v. Franklin Cty. Children Servs.*, 180 Ohio App.3d 91, 2008-Ohio-6682, ¶ 13 (10th Dist.). An arbitrator exceeds his or her authority in rendering an award if the award does not draw its essence from the collective bargaining agreement. *Queen City Lodge No. 69* at 406. An arbitrator's award draws its essence from a collective bargaining agreement when there is a rational nexus between the agreement and the award, and where the award is not arbitrary, capricious, or unlawful. *Mahoning Cty. Bd. of Mental Retardation & Dev. Disabilities v. Mahoning Cty. TMR Edn. Assn.*, 22 Ohio St.3d 80 (1986), paragraph one of the syllabus. An arbitrator's award departs from the essence of the 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 Civil Serv. Emps. Assn., Local 11*, 59 Ohio St.3d 177 (1991), syllabus; *accord Summit Cty. Children Servs. Bd. v. Communication Workers of Am., Local 4546*, 113 Ohio St.3d 291,

2007-Ohio-1949, ¶ 13. An award lacks rational support when the collective bargaining agreement does not give grounds for, make legitimate, or provide justification for the award. *Stow Firefighters, IAFF Local 1662 v. Stow*, 193 Ohio App.3d 148, 2011-Ohio-1559, ¶ 27 (9th Dist.); *Piqua v. Fraternal Order of Police, Ohio Labor Council, Inc.*, 185 Ohio App.3d 496, 2009-Ohio-6591, ¶ 26 (2d Dist.). An award cannot be rationally derived from the collective bargaining agreement's terms when it cannot be deduced or reasoned from those terms. *Id.*

{¶ 24} In the case at bar, the FOP argues that the arbitrator had before him three arbitrable matters: (1) whether the City had just cause to terminate Blake's employment, (2) whether the subpoenas issued during the City's investigation were illegal, and (3) whether the City violated Section 10.3 of the CBA when it limited the cross-examination of Finkes during the departmental hearing. The FOP contends that the arbitrator had the authority to decide the last two matters in Blake's favor and provide Blake a remedy for the City's actions.

{¶ 25} Both parties agree that the matter of whether the City had just cause to discharge Blake was properly before the arbitrator. Under Sections 9.1(J) and 10.2 of the CBA, the City had the authority to remove Blake for just cause. Before terminating Blake's employment, the City followed the CBA-mandated procedures for taking corrective action against a member of the FOP. Blake sought arbitration of the City's decision to discharge him pursuant to Section 10.4, which states, "If suspension, reduction or removal is imposed as a result of the disposition of the Departmental Hearing, a member \* \* \* may appeal such decision directly to binding arbitration under the provisions of Article 6 \* \* \*." Thus, whether the City terminated Blake's employment for just cause was a matter subject to arbitration under the CBA and properly submitted to the arbitrator.

{¶ 26} When the subject matter of a dispute is arbitrable, procedural questions that grow out of the dispute and bear on its final disposition are to be left to the arbitrator. *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557 (1964). These procedural questions include whether evidence is admissible or not. *United Paperworkers Internatl. Union v. Misco, Inc.*, 484 U.S. 29, 39-40 (1987); *Assn. of Flight Attendants v. USAir, Inc.*, 960 F.2d 345, 350 (3d Cir.1992); *Interstate Brands Corp. v. Chauffeurs Local Union No. 135*, 909 F.2d 885, 894 (6th Cir.1990). Therefore, in the course of deciding whether the

City had just cause to discharge Blake, the arbitrator had the power to rule on the admissibility of evidence gathered in response to the improperly issued subpoenas.

{¶ 27} However, whether the arbitrator had the power to grant Blake a remedy for the City's improper use of subpoenas is a different matter. Generally, an arbitrator decides whether or not a violation of a collective bargaining agreement has occurred. After finding a violation, an arbitrator has the power to grant a remedy for that violation.<sup>1</sup> *Queen City Lodge No. 69* at syllabus. The FOP does not allege, and we have not identified, any provision of the CBA that the City violated through its misuse of its subpoena power. Consequently, to the extent that the arbitrator based his award to Blake on the City's misuse of its subpoena powers, the award lacks rational support. The CBA does not give any ground or justification for the award. We thus conclude that the arbitrator exceeded his authority when he premised his award to Blake on the City's collection of evidence through subpoenas that were improperly issued.

{¶ 28} Our analysis does not end here because the arbitrator cited a second reason for his award to Blake: the procedural defects that occurred during the departmental hearing. Unlike the City's misuse of subpoenas, the City's failure to allow the FOP to fully cross-examine Finkes during the departmental hearing arguably violated the CBA's terms.<sup>2</sup> Pursuant to Section 5.1 of the CBA, any alleged violation of the CBA constitutes a grievance. In Section 5.4, the CBA sets forth a three-step procedure that an FOP member with a grievance must follow to seek resolution of the grievance.<sup>3</sup> In step one, a member completes a written grievance form and submits it to his immediate supervisor. If the grievance is not resolved in step one, the member may proceed to step two by presenting the written grievance to the chief of police. If step two is unsuccessful at resolving the

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<sup>1</sup> There is a caveat to this rule of law: if the collective bargaining agreement contains language restricting the arbitrator's power to award a remedy, then the arbitrator is bound by that language. *Queen City Lodge No. 69* at syllabus. Here, no such restrictive language appears in the CBA.

<sup>2</sup> As we stated above, the FOP argues that the City violated Section 10.3, which grants members the right to cross-examine their accusers during the departmental hearing.

<sup>3</sup> Certain grievances need not proceed through the entire grievance procedure. *See, e.g.*, Section 10.1(O) (providing that violations of Section 10.1 are subject to the grievance procedure beginning at step three).

grievance, the member may proceed to step three by presenting the written grievance to the mayor. Only after the member completes step one through three may he or she request that an arbitrator hear the grievance.

{¶ 29} Here, the FOP's allegation that the City violated Section 10.3 qualifies as a grievance under Section 5.1 of the CBA. Therefore, in order to reach arbitration regarding that grievance, Blake had to initiate and pursue his grievance as set forth in Section 5.4 of the CBA. The record, however, lacks any evidence that Blake complied with Section 5.4.

{¶ 30} The CBA delineates the authority of the arbitrator, stating that "the arbitrator shall be without jurisdiction or authority to detract from, alter, add to or otherwise amend in any respect, any of the provisions of this Contract \* \* \*." Section 6.3. This provision is consistent with Ohio law, which precludes an arbitrator from disregarding or modifying plain and unambiguous provisions of a collective bargaining agreement. *Ohio Office of Collective Bargaining* at 180.

{¶ 31} Here, the award to Blake conflicts with the express terms of the CBA. The arbitrator effectively rewrote the CBA when he addressed a grievance that had not proceeded through steps one through three of the grievance procedure. As the CBA requires the exhaustion of that procedure before the initiation of arbitration, the arbitrator exceeded his authority by allowing Blake and the FOP to bypass that procedure. *See Portsmouth v. Fraternal Order of Police, Scioto Lodge 33*, 4th Dist. No. 05CA3032, 2006-Ohio-4387, ¶ 25 (finding that the arbitrator exceeded his authority when he considered a grievance that the union member had not submitted to the pre-arbitration procedures required by the collective bargaining agreement).

{¶ 32} In sum, we conclude that the arbitrator exceeded his powers by granting Blake back pay and benefits. The trial court, therefore, did not err in vacating that award. Accordingly, we overrule the FOP's second assignment of error.

{¶ 33} By the FOP's first assignment of error, it argues that the arbitrator's award that sustained Blake's discharge violates public policy and, thus, must be vacated. We disagree.

{¶ 34} If the arbitrator's interpretation of a collective bargaining agreement violates an explicit public policy, the resulting award is unenforceable. *Southwest Ohio Regional Transit Auth. v. Amalgamated Transit Union, Local 627*, 91 Ohio St.3d 108, 112

(2001). The public policy must be well defined and dominant, and must be ascertained "by reference to the laws and legal precedents and not from general considerations of supposed public interests." *Id.*, quoting *Muschany v. United States*, 324 U.S. 49, 66 (1945). Vacating an arbitration award for public policy reasons is a narrow exception to the "hands off" policy that courts employ in reviewing arbitration awards and "does not otherwise sanction a broad judicial power to set aside arbitration awards as against public policy." *Id.*, quoting *Misco, Inc.*, 484 U.S. 29, 43.

{¶ 35} Here, the FOP argues that the award to the City violates public policy because it is based on evidence collected in contradiction to the Fourth Amendment through a sham legal process. We are not persuaded that the award to the City rests on any evidence obtained through the improper subpoenas. Initially, we note that the City did not rely on any of the subpoenaed evidence to prove their case to the arbitrator. The FOP, not the City, introduced the subpoenas and the documents received in response to the subpoenas into evidence.

{¶ 36} During his testimony before the arbitrator, Blake admitted to two violations of the code of conduct underlying his discharge. The arbitrator found that those violations, alone, did not justify the termination of his employment. However, when considering those two violations in conjunction with the false and misleading doctor's excuse Blake submitted to the City, the arbitrator concluded that discharge was an appropriate sanction. In determining that the doctor's excuse was false and misleading, the arbitrator relied on Blake's version of events and Blake's admissions that he knew his son was neither seriously injured nor under a doctor's care. The arbitrator also considered Blake's disciplinary record, which Blake verified during his arbitration testimony, and determined that he would not mitigate the sanction imposed. After reviewing the totality of the arbitrator's analysis, we conclude that the evidence adduced during Blake's testimony, not the evidence obtained through the subpoenas, led the arbitrator to sustain Blake's discharge.

{¶ 37} We recognize that the trial court stated that the arbitrator's award "was not based *solely* on evidence that was allegedly unlawfully obtained." (Emphasis sic.) Decision and Entry, at 6. The FOP argues that this statement leads to the conclusion that the arbitrator relied on some unlawfully obtained evidence. We find this argument

unpersuasive because we disagree with the trial court's analysis of the arbitrator's reasoning process. As we stated above, in analyzing whether the evidence proved just cause to discharge Blake, the arbitrator relied on the evidence adduced during Blake's testimony, not the subpoenaed evidence.

{¶ 38} The FOP also points to two excerpts from the arbitrator's opinion to support its argument that the arbitrator relied on evidence obtained through the improper subpoenas. In the first excerpt, the arbitrator stated, "There is no question that the charges against the Grievant were based in substantial part on documentary evidence that was obtained by the City's improper use of its subpoena powers." Arbitrator's Opinion and Award, at 15. In this statement, the arbitrator commented on the evidence underlying the *charges*, not the *award*. The charges, which were set forth in Suciu's pre-termination written statement, were based on the tainted evidence. However, for a court to vacate an arbitrator's award, the *award* must result from a violation of public policy. Here, the award resulted from the arbitrator's determination that the circumstances, as related by Blake himself, warranted Blake's discharge.

{¶ 39} Second, the FOP argues that the arbitrator considered the admissibility of the evidence that the City received via the subpoenas and decided to admit that "important" evidence. The FOP misconstrues the arbitrator's statement. The arbitrator contemplated excluding Blake's "admissions and testimony \* \* \* based on the fact that this evidence may never have been presented if the City had not obtained the background information in the first instance through the issuance of illegal subpoenas \* \* \*." Arbitrator's Opinion and Award, at 16. Thus, the arbitrator did not address the admissibility of evidence obtained through the subpoenas; instead, the arbitrator addressed whether to consider Blake's testimony. After deciding that Blake's testimony was admissible, the trial court relied on that testimony to determine that the City had just cause to terminate Blake's employment.

{¶ 40} In sum, we conclude that the arbitrator's award to the City does not violate public policy. Accordingly, we overrule the FOP's first assignment of error.

{¶ 41} By the FOP's third assignment of error, it argues that the trial court erred in denying its motion to amend its application to modify or vacate the arbitration award. We disagree.

{¶ 42} In its motion, the FOP requested leave to assert another ground for vacating the arbitrator's award; namely, that "[t]he award was procured by corruption, fraud, or undue means." R.C. 2711.10(A). According to the FOP, certain City witnesses committed fraud when they testified that Blake was not under a criminal investigation. However, the FOP failed to explain in its motion, or in its argument on appeal, how the City witnesses' alleged fraud allowed the City to procure an award in its favor. As we explained above, the award to the City, in which the arbitrator sustained Blake's discharge, turned on Blake's testimony before the arbitrator. The allegedly fraudulent testimony was only relevant to the FOP's argument that the City had misused its subpoena powers and, thus, that Blake deserved an award in his favor to remedy that misuse. Therefore, at best, the allegedly fraudulent testimony resulted in *Blake* receiving an inappropriate award.

{¶ 43} Instead of arguing that the City's award was procured by fraud, the FOP argues that the alleged fraud gave rise to another breach of the CBA. The FOP points to Sections 10.1(B) and (F)(1) of the CBA, which requires the City to inform an FOP member that he or she is under criminal investigation before interviewing that person. Assuming that Blake really was under criminal investigation, the City violated those provisions by not giving Blake the mandated notice before interviewing him. Following the FOP's argument to its logical conclusion, we find that Blake had a basis to pursue another grievance under Article 5 of the CBA. The existence of an additional grievance, however, does not mean that the City procured the award sustaining Blake's discharge by fraud. Accordingly, we find no error in the trial court's denial of the FOP's motion to amend, and we overrule the FOP's third assignment of error.

{¶ 44} For the foregoing reasons, we overrule all of the FOP's three assignments of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

CONNOR and DORRIAN, JJ., concur.

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