

ARBITRATORS HAVE THE AUTHORITY TO DEFINE
INSUBORDINATION AND JUST CAUSE

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What is insubordination? Perhaps more importantly, who gets to decide what constitutes insubordination. If an employee covered by a collective bargaining agreement is terminated for insubordination, the Cuyahoga County Court of Appeals has ruled that a neutral arbitrator, in deciding whether there was just cause for the termination, has the authority to not only define what constitutes insubordination but also whether the employee's conduct was in fact insubordinate.

In *City of Cleveland v. Municipal Foremen and Laborers' Union Local 1099*, 2017-Ohio-4188, the Court dealt with a case in which an employee refused to leave the employer's premises after being ordered to do so. She was not, however, told that she would be discharged if she refused to follow the order. The employee was later discharged for insubordination.

When the case was submitted to an arbitrator for ruling as to whether there was just cause for the discharge, the arbitrator first defined what it meant to be insubordinate. He noted that to prove an employee was insubordinate:

the employer must demonstrate 1) the employee's refusal to obey was knowing, willful, and deliberate; 2) the order was explicit and clearly given so that the employee understood its meaning and its intent as a command; 3) the order was reasonable and work related; 4) the order was given by someone in authority; 5) the employee was made aware of the consequences of failing to perform the work or follow the directive; and 6) if practical, the employee was given time to correct the allegedly insubordinate behavior.

Because the employee was not made aware of the consequences for failing to follow the order, the arbitrator ruled that there was no insubordination and, therefore, no just cause for the termination. The employee was ordered to be reinstated.

The City filed an action to vacate the arbitrator's award, ruling that he exceeded his powers under the collective bargaining agreement by adding a requirement that, before an employee may be disciplined for insubordination, the employee must be advised that failure to comply with management's order may result in discipline. The Court denied the action to vacate the award, stating the following:

the arbitrator's finding in this case that the elements of insubordination include a requirement that the employee be warned that the consequences of his or her refusal to comply was consistent with well-established arbitral precedent, and is

not a basis for vacating the award.

This Case stands for the proposition that when parties to a collective bargaining agreement submit an issue of whether there was just cause for discipline to an arbitrator, it is within the arbitrator's authority and power to define just cause, along with terms such as insubordination. A party, or even a reviewing court, might disagree with the arbitrator's interpretation and definition. But the arbitrator's award still stands. While a party might feel the arbitrator was wrong, the award cannot be vacated since the parties agreed to be bound by the arbitrator's decision, right or wrong.