

Rubicon" and hold that the Local Agency Law is the proper form of redress for such a grievance.

We are satisfied that there is no appealable local agency action. Since we lack jurisdiction over this controversy, we need not consider the respondent's other preliminary objections.

#### ORDER OF COURT

NOW, this 27th day of March, 1986, the Local Agency Appeal of Sheldon L. Pefley is dismissed for lack of jurisdiction.

Exceptions are granted the appellant.

SHADLE ELECTRICAL ASSOCIATES ET AL. V. GREENCASTLE ANTRIM SCHOOL DISTRICT, C.P. Franklin County Branch, A.D. 1983-80

#### *Contract - Arbitration - Waiver of Arbitration*

1. Waiver of an arbitration clause is not lightly inferred.
2. The answering of a complaint and filing of a counterclaim does not amount to a waiver of arbitration.

*Jordan D. Cunningham, Esquire, Counsel for Plaintiffs*  
*Fredric G. Antoun, Jr., Esquire, Counsel for Defendant*

#### OPINION AND ORDER

WALKER, J., July 31, 1986:

The plaintiff, Shadle Electrical Associates, brought suit against the defendant, Greencastle-Antrim School District, for alleged breaches of their construction contract. After the plaintiff filed a complaint, the following pleadings ensued: The defendant's answer and new matter, the defendant's amended answer and counterclaim, the plaintiff's answer and new matter to the defendant's counterclaim, and the defendant's answer and counterclaim to the plaintiff's new matter. In its last counterclaim, the defendant raised its right to arbitration, under the terms of the contract.



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## EDITORIAL

This is Independence Day weekend, and, in light of the significance of the events of that day, in 1776, to our nation and the entire earth, of course any celebration should be directed to the remembrance of that day, as well as of other events of that time of Revolution, in the very basic ideas of government. Perhaps mention of the 200th anniversary year of the great Constitution that came to us, through that Revolution and other developments that ensued in the years immediately afterwards, ought also be made, here.

These historical facts of fundamental impact and importance, in our present day lives pale, by their magnitude, the lesser event of which mention will briefly be made, hereinafter. Yet, in a sense, this lesser event is a product of those earlier times. Possibly, its very existence can be thought of as an every day celebration, or at least symbol of success of those earlier ventures of greater magnitude. Hopefully, anyway, this is so.

What your editor has to find time and space, also, to say, though, is simply this. It is the Tenth Anniversary of our publication. Our first issue of advance sheets was published on July 1, 1977. We wish to thank everyone who has sponsored and assisted us, in this effort, over these past ten years.

MANAGING EDITOR

The defendant subsequently filed a motion for summary judgment based on lack of jurisdiction, due to the binding arbitration clause.

The plaintiff argues that the defendant waived its right to arbitration because the defendant did not raise it in its pleadings, citing *Teodori v. Penn Hills School Dist. Auth.*, 413 Pa. 127, 196 A.2d 306 (1964). The plaintiff also contends that the defendant has taken an inconsistent stance by filing a counterclaim and submitting to the court's jurisdiction, then invoking the arbitration clause.

Contrary to the plaintiff's first proposition, the defendant has raised arbitration in its pleadings, i.e., the defendant's second counterclaim. The only issue is whether the defendant waived its right to arbitration because of the time and manner in which it was raised.

Considering the strong public policy favoring dispute resolution through arbitration, waiver is not lightly inferred. The mere answering of a complaint and filing of a counterclaim does not amount to waiver of arbitration. *Ging v. Parker-Hunter Inc.*, 544 F. Supp. 49 (D.C. Pa 1982). Also, though the plaintiff claims that the defendant's actions are inconsistent, the plaintiff has failed to allege or demonstrate how he is prejudiced by submitting his claim for arbitration. It is not the inconsistency of a party's action but the presence or absence of prejudice which is determinative of whether there has been a waiver of arbitration. *Gavlik Const. Co. v. H.F. Campbell Co.*, 526 F.2d 777 (C.A. Pa. 1975). *Gavlik* also stands for the proposition that where there may be doubts involving the application of an arbitration provision, they are to be resolved in favor of arbitration.

For the above reasons, the defendant's motion for summary judgment for lack of jurisdiction is granted.

## ORDER OF COURT

July 31, 1986, the defendant's motion for summary judgment for lack of jurisdiction is granted. This matter should be resolved by arbitration pursuant to the arbitration clause in the contract.