IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL,	)	
Petitioner,	)	
v.	)	15 CH 17979
CITY OF CHICAGO HEIGHTS,	)	
Respondent.	)	

MEMORANDUM AND ORDER

Petitioner, the Illinois Fraternal Order of Police Labor Council, has filed a Petition to Vacate Arbitration Award.

I. Background

The following facts are undisputed. Petitioner, the Illinois Fraternal Order of Police Labor Council, ("the Union") is the authorized exclusive bargaining representative for the full-time Telecommunicators and Desk Clerks for the City of Chicago Heights Police Department. The Union entered into a collective bargaining agreement ("CBA") with the City of Chicago Heights ("the City") on behalf of these workers. The CBA expired on April 30, 2013.

Upon expiration of the CBA, the Union and the City engaged in negotiations for a new CBA but were unable to reach an agreement. The Union initiated interest arbitration before the Illinois Labor Relations Board. Ann S. Kenis acted as the arbitrator ("the Arbitrator").

The City objected to the arbitration proceedings on the grounds that the matter was not subject to arbitration under §14 of the Illinois Public Labor Relations Act ("IPLRA"), 5 ILCS 315/14. The Union argued that under Article XIX of the CBA, the parties had agreed resolve any bargaining impasses by interest arbitration under §14.

On October 15, 2016, the Arbitrator issued an Award in favor of the City. She found that the employees did not have a statutory right to mandatory interest arbitration under §14. She further found that Article XIX of the CBA was ambiguous and did not establish the parties' intent to submit to interest arbitration. Finally, the Arbitrator found there was no evidence showing that the inclusion of a no-strike provision in the CBA was a *quid pro quo* for inclusion of a voluntary interest provision.

II. Petition to Vacate Arbitration Award

The Union has filed a Petition to Vacate the Arbitration Award. The Uniform Arbitration Act ("the Arbitration Act") allows a trial court to vacate an arbitration award where:

> (1) the award was procured by corruption, fraud or other undue means;
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> (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any one of the arbitrators or misconduct prejudicing the rights of any party;
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> (3) the arbitrators exceeded their powers;
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> (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 5 [710 ILCS 5/5], as to prejudice substantially the rights of a party; or
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> (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under Section 2 [710 ILCS 5/2] and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by the circuit court is not ground for vacating or refusing to confirm the award.

710 ILCS 5/12. In order to establish entitlement to vacation of an arbitration award, a party must either meet one of the five prongs of 710 ILCS 5/12 or show that the arbitrator made a gross error of law or fact. Sloan Elec. v. Professional Realty & Dev. Corp., 353 Ill. App. 3d 614, 621 (3d Dist. 2004).

A. *The Applicability of §14 of the IPLRA to the Employees*

Initially, there is no dispute between the parties that §14 of the IPLRA does not apply to telecommunication employees. Therefore, the issue before this court is whether the parties voluntarily agreed under the CBA that they would resolve disputes through the interest arbitration mandated by §14.

B. *Whether the Issue Before the Arbitrator Was One of Substantive or Procedural Arbitrability*

The Union contends that the issue of whether the parties had agreed to arbitrate their dispute under §14 of the ILPRA, based on the language of Article XIX of the CBA, was an issue of substantive arbitrability to be reviewed by this court under a *de novo* standard. The City asserts that this issue is one of procedural arbitrability and that the Arbitrators decision is entitled to deference from this court.

Where the parties dispute whether an agreement to arbitrate exists, that issue should be decided by a court, not the arbitrator. City of Naperville v. Illinois FOP, Labor Council, 2013 IL App (2d) 121071, ¶14. "Where there is an arbitration agreement, but it is unclear whether the subject matter of the dispute falls within the scope of the arbitration agreement, the question of substantive arbitrability should initially be decided by the arbitrator." Id. at ¶15. However, the arbitrator's decision is subject to *de novo* review. Id.

Here, the issue before the arbitrator was whether the parties had agreed under Article XIX of the CBA to engage in interest arbitration of their impasse. This is clearly an issue of substantive arbitrability. This is not a situation where procedural questions arising from the dispute were at issue. Ford Motor Credit Co. v. Cornfield, 395 Ill. App. 3d 896, 906 (2d Dist. 2009). Therefore, this court will conduct a *de novo* review of the Arbitrator's decision.

C. Whether the Parties Agreed to Arbitrate the Impasse Under §4 of the IPLRA

Article XIX of the CBA provides as follows:

> The resolution of any bargaining impasse shall be in accordance with the Illinois Public [Labor] Relations Act, 5 ILCS 315/14, as amended.

Section 14 of the IPLRA provides in relevant part as follows:

> (a) In the case of collective bargaining agreements involving units of security employees of a public employer, Peace Officer Units, or units of fire fighters or paramedics, and in the case of disputes under Section 18 [5 ILCS 315/18], unless the parties mutually agree to some other time limit, mediation shall commence 30 days prior to the expiration date of such agreement or at such later time as the mediation services chosen under subsection (b) of Section 12 [5 ILCS 315/12] can be provided to the parties. * * *
>
> (b) Within 10 days after such a request for arbitration has been made, the employer shall choose a delegate and the employees' exclusive representative shall choose a delegate to a panel of arbitration as provided in this Section. The employer and employees shall forthwith advise the other and the Board of their selections.
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> (c) Within 7 days after the request of either party, the parties shall request a panel of impartial arbitrators from which they shall select the neutral chairman according to the procedures provided in this Section. If the parties have agreed to a contract that contains a grievance resolution procedure as provided in Section 8 [5 ILCS 315/8], the chairman shall be selected using their agreed contract procedure unless they mutually agree to another procedure. * * *
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> (d) The chairman shall call a hearing to begin within 15 days and give reasonable notice of the time and place of the hearing. * * *
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> (e) The arbitration panel may administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements and documents as may be

deemed by it material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. * * *

(f) At any time before the rendering of an award, the chairman of the arbitration panel, if he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for a period not to exceed 2 weeks. If the dispute is remanded for further collective bargaining the time provisions of this Act shall be extended for a time period equal to that of the remand. The chairman of the panel of arbitration shall notify the Board of the remand.

(g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. * * *

(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

* * *

(j) Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation as required under subsection (a) of this Section. * * *

(k) Orders of the arbitration panel shall be reviewable, upon appropriate petition by either the public employer or the exclusive bargaining representative, by the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside, but only for reasons that the arbitration panel was without or exceeded its statutory authority; the order is arbitrary, or capricious; or the order was procured by fraud, collusion or other similar and unlawful means. * * *

(l) During the pendency of proceedings before the arbitration panel, existing wages, hours, and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this Act. The proceedings are deemed to be pending before the arbitration panel upon the initiation of arbitration procedures under this Act.

(m) Security officers of public employers, and Peace Officers, Fire Fighters and fire department and fire protection district paramedics, covered by this Section may not withhold services, nor may public employers lock out or prevent such employees from performing services at any time.

(n) All of the terms decided upon by the arbitration panel shall be included in an agreement to be submitted to the public employer's governing body for ratification and adoption by law, ordinance or the equivalent appropriate means. * * *

(o) If the governing body of the employer votes to reject the panel's decision, the parties shall return to the panel within 30 days from the issuance of the reasons for rejection for further proceedings and issuance of a supplemental decision. All reasonable costs of such supplemental proceeding including the exclusive representative's reasonable attorney's fees, as established by the Board, shall be paid by the employer.

(p) Notwithstanding the provisions of this Section the employer and exclusive representative may agree to submit unresolved disputes concerning wages, hours, terms and conditions of employment to an alternative form of impasse resolution.

5 ILCS 315/14.

Article XIX of the CBA expressly provides that the resolution of any bargaining impasse shall be resolved in accordance with §14. The Arbitrator found this provision to be ambiguous. The court disagrees.

Article XIX unambiguously mandates that any bargaining impasse will be resolved in accordance with §14. Section 14 lays out the procedures for conducting interest arbitration. Therefore, the parties agreed to engage in interest arbitration under §14. While subsection (p) of §14 allows parties subject to mandatory interest arbitration to agree to alternative forms of dispute resolution, this subsection does not render Article XIX ambiguous as found by the Arbitrator. This is because the parties expressly agreed that any bargaining impasse would be resolved in accordance with §14. To conclude otherwise would render Article XIX meaningless. A court should not interpret any contractual provision in a way which renders it meaningless. Thompson v. Gordon, 241 Ill. 2d 428, 442 (2011).

Because the CBA mandated that the bargaining impasse be resolved pursuant to §14, the Arbitrator's decision was contrary to law and the Arbitration Award in favor of the City is vacated.

III. Conclusion

The Arbitration Award is reversed and this case remanded to the Board for arbitration of the parties' bargaining impasse.

The status date of September 2, 2016 is stricken.

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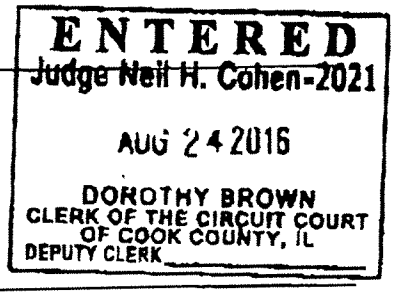

Judge Neil H. Cohen