

ILLINOIS OFFICIAL REPORTS
Appellate Court

Policemen's Benevolent Labor Committee v. County of Kane, 2012 IL App (2d) 110993

Appellate Court Caption	POLICEMEN'S BENEVOLENT LABOR COMMITTEE, Plaintiff-Appellee, v. THE COUNTY OF KANE, PATRICK B. PEREZ, Sheriff of Kane County, and KAREN S. McCONNAUGHAY, Chairman of the Kane County Board, Defendants-Appellants (The Illinois Labor Relations Board, Intervenor-Appellant).
District & No.	Second District Docket No. 2-11-0993
Filed	July 20, 2012
Held <i>(Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.)</i>	The labor organization selected by defendant county's court security officers as their exclusive collective bargaining representative was not entitled to summary judgment in the organization's action seeking an order for interest arbitration after an impasse arose in negotiating a new collective bargaining agreement, since the officers did not get the right to interest arbitration in exchange for giving up their right to strike in their prior collective bargaining agreement and the officers did not fall within the categories of employees listed in the Illinois Public Labor Relations Act to whom interest arbitration was made available in response to being prohibited from striking; therefore, the appellate court entered summary judgment for defendants pursuant to Supreme Court Rule 366(a)(5).
Decision Under Review	Appeal from the Circuit Court of Kane County, No. 10-CH-2587; the Hon. Thomas E. Mueller, Judge, presiding.

Karen S. McConnaughay, seeking a declaration that plaintiff was eligible to request interest arbitration under section 14(a) of the Illinois Public Labor Relations Act (the Act) (5 ILCS 315/14(a) (West 2010)). The parties filed cross-motions for summary judgment, and the trial court determined that, although the CSOs did not fall within the enumerated categories of employees to whom section 14(a) of the Act made available interest arbitration,² plaintiff had effectively bargained for interest arbitration by agreeing to a no-strike provision in its expired collective bargaining agreement, which remained in effect by agreement of the parties until a successor agreement was reached. Accordingly, the trial court granted summary judgment in favor of plaintiff, and defendants appealed. For the following reasons, we reverse and enter summary judgment in favor of defendants.

¶ 2

BACKGROUND

¶ 3

The following background is taken from plaintiff's complaint for declaratory judgment and from the record. The CSOs' most recent collective bargaining agreement with defendants was effective from December 1, 2005, to November 30, 2008. In January 2009, after that agreement had expired, plaintiff made a demand on defendants to bargain toward a successor agreement. Defendants allegedly refused to do so, and plaintiff filed an unfair labor practice charge against defendants with the Board. The parties resolved the charge by entering into a memorandum of understanding, which provided that the expired collective bargaining agreement would remain in effect until a successor agreement was reached. After negotiations and a formal mediation failed to produce a new agreement, plaintiff sent a request for interest arbitration to the Board. The Board began to process the request, but stopped after defendants sent a letter to the Board opposing any further action. The Executive Director of the Board requested that the parties submit position statements on the issue of whether the CSOs were eligible to request interest arbitration under section 14(a) of the Act.

¶ 4

On May 19, 2010, the Executive Director sent a letter to the parties indicating that he had considered their respective positions, that he had found a "good faith dispute" concerning the applicability of section 14(a) of the Act, and that the Board would not process plaintiff's request for interest arbitration. He explained that the purpose of the decision was "to make the controversy ripe for review" and suggested that plaintiff either "file suit in a court of competent jurisdiction seeking an order for the Board to proceed with the request for arbitration" or file an unfair labor practice charge with the Board alleging that defendants' refusal to proceed to interest arbitration violated section 14(a) of the Act. Plaintiff chose the former option and, on June 4, 2010, filed this declaratory judgment action in the circuit court of Kane County.

¶ 5

The parties conducted no discovery and filed cross-motions for summary judgment supported by affidavits. Defendants maintained that the Act made interest arbitration available only to fire fighters, paramedics, peace officers, security employees, and, under

²The enumerated categories of employees are security employees, peace officers, fire fighters, and paramedics (5 ILCS 315/14(a) (West 2010)), as well as "essential services employees" under the circumstances outlined in section 18(a) of the Act (5 ILCS 315/14(a), 18(a) (West 2010)).

certain circumstances, essential services employees, and that CSOs did not fall within any of these categories. Defendants noted that plaintiff did not contend that the CSOs were either fire fighters or paramedics. Citing section 3(k) of the Act, defendants further noted that CSOs were statutorily excluded from the definition of “peace officer” (5 ILCS 315/3(k) (West 2010) (defining “peace officer,” in part, as excluding “court security officers as defined by Section 3-6012.1 of the Counties Code [(55 ILCS 5/3-6012.1 (West 2010))])). Regarding the next possible category, defendants argued that, given their primary daily responsibilities, the CSOs should not qualify as “security employees,” which the Act defines as employees who are “responsible for the supervision and control of inmates at correctional facilities” (5 ILCS 315/3(p) (West 2010)). Defendants attached the affidavit of Lloyd Fletcher, the director of court security for the Kane County sheriff, who stated that the CSOs were not responsible for transporting, supervising, dressing, or feeding detainees in the courthouse holding cells. Fletcher stated that sheriff’s department corrections officers were responsible for transporting detainees from the county jail to the courthouse holding cells and for supervising the detainees in the cells.

¶ 6 In its motion for summary judgment, plaintiff argued that the CSOs performed the duties of both peace officers and security employees because they made arrests in the courthouse, provided for the secure custody of “individuals remitted by the court” and of “incarcerated individuals appearing in court,” and generally ensured a safe and orderly environment in the courtroom. Plaintiff attached the affidavit of Michael Stuckert, who identified himself as a Kane County court security “[d]eputy.” Stuckert stated, among other things, that CSOs often were required to take custody of or to arrest individuals and then to detain them for several hours before turning them over to sheriff’s deputies for booking and processing. Stuckert also noted in his affidavit that CSOs were required to undergo 40 hours of firearms training with the Illinois Law Enforcement State Training Board, and that they had recently received training on how to deal with an active shooter in the courthouse. Plaintiff attached a letter from the Kane County sheriff to a court security officer informing the officer of disciplinary proceedings arising out of his purported failure to properly search, secure, and supervise a defendant in custody. Plaintiff also attached reports of statistics indicating that the CSOs collectively made an average of 107 arrests per year of individuals with outstanding warrants and that they investigated numerous assaults and other disturbances occurring in the courthouse.

¶ 7 On September 1, 2011, following a hearing, the trial court granted summary judgment in favor of plaintiff. In a written order, the court found that the CSOs did not fall within any of the categories of employees listed in section 14(a) of the Act. In particular, the court reasoned that the CSOs were not “security employees” as defined by the Act, because they did not work in correctional facilities. However, the court found that the CSOs served an “important role *** in providing essential security to the courts,” and, in fact, “assume[d] the role of providing all security and control in the courtrooms.” Citing section 2 of the Act, which provides that “[i]t is the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes” (5 ILCS 315/2 (West 2010)), the court concluded:

“The Court, in recognizing the role played by court security officers on a day-to-day basis, appreciates the inclusion in the Labor Agreement of the ‘No Strike Commitment’ and, accordingly, finds that the officers must be able to avail themselves of another means to resolve any labor disputes with the defendant [*sic*]. It is therefore ordered that this Court directs the Illinois Labor Relations Board to process the request of the [p]laintiff for interest arbitration.”

This timely appeal followed.

¶ 8

ANALYSIS

¶ 9

On appeal, defendants and the Board³ argue that summary judgment in favor of plaintiff was improper because (1) the CSOs did not negotiate for interest arbitration in their collective bargaining agreement; and (2) the CSOs are not eligible to request interest arbitration under section 14(a) of the Act, because they are not security employees, peace officers, fire fighters, or paramedics and because they have not been designated “essential services employees” under the procedures outlined in section 18(a) of the Act.

¶ 10

This case comes to us on appeal from an order resolving the parties’ cross-motions for summary judgment. A motion for summary judgment is properly granted where the pleadings, depositions, admissions, and affidavits on file establish that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2010); *Gaylor v. Village of Ringwood*, 363 Ill. App. 3d 543, 546 (2006). When parties file cross-motions for summary judgment, they agree that the matter presents no genuine issues of material fact and request judgment as a matter of law. *Haake v. Board of Education for Glenbard Township High School District 87*, 399 Ill. App. 3d 121, 131 (2010); *Gaylor*, 363 Ill. App. 3d at 546. However, even when a trial court has entered judgment on cross-motions for summary judgment, a reviewing court may still determine that a genuine issue of material fact exists and thus that summary judgment was improper. *Haake*, 399 Ill. App. 3d at 131; *Gaylor*, 363 Ill. App. 3d at 547. Alternatively, if there is no genuine issue of material fact but judgment should have been granted to the opposing party, this court may enter the appropriate order under Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994). Our review of an order granting summary judgment is *de novo*. *Haake*, 399 Ill. App. 3d at 131.

¶ 11

No-Strike Provision in Collective Bargaining Agreement

¶ 12

We first address defendants’ argument that the CSOs did not negotiate for interest arbitration in their collective bargaining agreement. The trial court reasoned, and plaintiff argues on appeal, that, because the CSOs bargained away their right to strike, they must be afforded an alternate impasse resolution process, namely, interest arbitration. Defendants

³The Board filed a motion to intervene in the appeal and to align itself with defendants, which this court granted. From here on, we will refer to defendants and the Board collectively as “defendants.”

argue that, while the Act does contemplate the *quid pro quo* of giving up the right to strike in exchange for obtaining the right to arbitration, in the case of employees who do not fall within one of section 14(a)'s enumerated categories the exchange is for the right to grievance arbitration only, not for the right to interest arbitration. Defendants further point out that section 8 of the Act mandates that, where a collective bargaining agreement provides public employees with the right to grievance arbitration, the agreement must contain a no-strike provision. Defendants maintain that, were we to adopt the trial court's reasoning that employees who have given up their right to strike must be afforded interest arbitration, we would expand the *quid pro quo* outlined in section 8 of the Act by providing the right to interest arbitration to all employees who bargain for the right to grievance arbitration and not just the specific categories of employees defined in sections 14(a) and 18(a) of the Act.

¶ 13 We agree with defendants' position. Section 8 of the Act, entitled "Grievance Procedure," provides that, unless mutually agreed otherwise, every collective bargaining agreement shall contain a grievance resolution procedure that provides for final and binding arbitration of disputes concerning the interpretation or application of the agreement. 5 ILCS 315/8 (West 2010). Section 8 further provides that "[a]ny agreement containing a final and binding arbitration provision shall also contain a provision prohibiting strikes for the duration of the agreement." 5 ILCS 315/8 (West 2010). Were we to conclude that every unit of public employees that bargained away its right to strike must also be entitled to interest arbitration, we would alter the exchange that is the *quid pro quo* the legislature provided for in section 8 of the Act. We cannot do this, and it was error for the trial court to do so. See *Werderman v. Liberty Ventures, LLC*, 368 Ill. App. 3d 78, 83 (2006) ("We may not add language or a provision to, or add exceptions, limitations, or conditions, or otherwise alter a statute so as to depart from the plain meaning of the language employed in the statute.").

¶ 14 Furthermore, while section 8 of the Act requires units of public employees that receive grievance arbitration to give up their right to strike for the duration of a collective bargaining agreement, nothing in the Act prohibits the employees from striking upon the expiration of the agreement, unless the employees fall within one of section 14(a)'s enumerated categories. In fact, section 17(a)(2) of the Act expressly provides that public employees, other than section 14(a) employees, have the right to strike once a collective bargaining agreement between the employees and the public employer has expired. 5 ILCS 315/17(a)(2) (West 2010). Notably, the employees may exercise this right only if they have not reached a mutual agreement with their employer to submit the disputed issues to interest arbitration. 5 ILCS 315/17(a)(3) (West 2010). Were we to adopt plaintiff's position or the reasoning of the trial court—which essentially was that the legislature intended for public employees who bargain away their right to strike for the duration of a collective bargaining agreement to be automatically entitled to interest arbitration when negotiating a successor agreement—we would render the mutual-agreement provision of section 17(a)(3) superfluous, which would be improper. See *People v. Gutman*, 2011 IL 110338, ¶ 12 ("Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous."). Under the clear and unambiguous language of the Act, public employees, other than those who fall under section 14(a), are not automatically entitled to interest arbitration, but may submit a dispute to interest arbitration upon reaching an agreement with

their employer to do so. 5 ILCS 315/17(a)(3) (West 2010). In other words, compliance with section 8's no-strike requirement does not automatically trigger section 14(a)'s right to interest arbitration. See *State of Illinois Department of Central Management Services v. State of Illinois Labor Relations Board, State Panel*, 373 Ill. App. 3d 242, 256-57 (2007) (treating the right to strike and the right to interest arbitration as "two different statutory rights," and holding that "[t]he fact that nonsection 14 employees have given up their right to strike in exchange for grievance-arbitration procedures does not mean that [section 14 employees covered by the same collective bargaining agreement] have waived their statutory right to interest arbitration").

¶ 15 In this case, the parties' collective bargaining agreement contained the very *quid pro quo* that section 8 contemplates. The agreement defined a "grievance" as "a dispute or disagreement as to the interpretation and application of any provision in this [a]greement." It then outlined a four-step grievance resolution process that culminated in arbitration. The agreement provided that the arbitrator's decision would be "final and binding" and also provided that the "arbitrator shall neither amend, modify, nullify, ignore, add or subtract from the provisions of the [a]greement." As section 8 dictates, the agreement contained a provision prohibiting the CSOs from striking "during the term of this [a]greement." Nothing in the agreement infringed upon the right of the employees to strike upon the expiration of the agreement or provided for submitting disputes over the terms of a successor collective bargaining agreement to interest arbitration.

¶ 16 We are compelled to point out that the trial court erred in its interpretation and application of section 2 of the Act. The section provides, in part, as follows:

"It is the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by this Act. To that end, the provisions for such awards shall be liberally construed." 5 ILCS 315/2 (West 2010).

Relying on this section, the trial court concluded that, because the CSOs had bargained away their right to strike, they must be afforded an alternate impasse resolution procedure, namely, interest arbitration. However, as defendants argue, the CSOs were not prohibited by law from striking. Instead, it was only the terms of the collective bargaining agreement, into which the CSOs freely and voluntarily entered, that prohibited them from striking. By contrast, the public employees who fall within section 14(a)'s enumerated categories are prohibited by law from striking. 5 ILCS 315/14(m) (West 2010). Moreover, the parties' contractual no-strike provision was (and is) effective only for the duration of the agreement, while section 14's prohibition on strikes applies both for the duration of and upon the expiration of a collective bargaining agreement. See 5 ILCS 315/14(m) (West 2010) (placing no time limit or other conditions on the prohibition against striking).

¶ 17 Plaintiff and defendants dispute the significance of the expiration of the collective bargaining agreement in November 2008 and the signing of the memorandum of understanding in January 2009. Defendants consider it significant that the CSOs "had the unequivocal right to strike upon the expiration" of the collective bargaining agreement.

Plaintiff responds by emphasizing that, under the terms of the memorandum of understanding, the collective bargaining agreement, including its no-strike provision, remains in full force and effect until a new collective bargaining agreement is reached; therefore, plaintiff contends, “the trial court placed understandable emphasis on the lack of a remedy.” As our discussion above suggests, however, these contentions are irrelevant to our determination of whether the CSOs are entitled to interest arbitration. The expiration of the collective bargaining agreement and the signing of the memorandum of understanding are relevant to determining only whether the CSOs were prohibited by their own voluntary agreement from striking; at no point before or after the collective bargaining agreement expired, or before or after the memorandum of understanding was executed, were the CSOs prohibited *by law* from striking. Furthermore, the collective bargaining agreement contains a termination provision, which, arguably, is still available to the CSOs, since the memorandum of understanding provided that all terms of the collective bargaining agreement would remain in full force and effect until a successor agreement was reached.

¶ 18 We also agree with defendants that the affidavit of former Kane County Sheriff Kenneth Ramsey is inadmissible parol evidence. Plaintiff argues that Ramsey’s affidavit, which was attached to plaintiff’s response to defendants’ motion for summary judgment, was the “best evidence” the court had that the CSOs gave up their right to strike in exchange for the right to interest arbitration. Ramsey, who signed the collective bargaining agreement at issue in this case while he was still sheriff, stated in his affidavit that it was his “understanding that by agreeing to a no-strike commitment in the [c]ollective [b]argaining [a]greement for the court security officers that they also had the right to take their wages and working conditions to contract arbitration.” Where a contract is a complete integration of the parties’ agreement, the parol evidence rule “generally precludes evidence of understandings, not reflected in writing, reached before or at the time of its execution which would vary or modify its terms.” *J&B Steel Contractors, Inc. v. C. Iber & Sons, Inc.*, 162 Ill. 2d 265, 269 (1994). “[W]here parties formally include an integration clause in their contract, they are explicitly manifesting their intention to protect themselves against misinterpretations which might arise from extrinsic evidence.” *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 464 (1999). Here, the parties’ agreement contained the following integration clause, under the heading “Complete Agreement”:

“The parties acknowledge that during the negotiations which preceded this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining. The understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.”

Given this clause, Ramsey’s understanding is not admissible to alter or add to the terms of the agreement. The parties agreed to a grievance arbitration procedure but explicitly prohibited the arbitrator from amending, modifying, nullifying, adding to, or subtracting from the terms of the agreement. Given that the parties discussed arbitration, they could have included an interest arbitration provision empowering an arbitrator to set the terms of a successor collective bargaining agreement. It would be improper for this court to add a term about which the completely integrated agreement was silent. See *Klemp v. Hergott Group*,

Inc., 267 Ill. App. 3d 574, 581 (1994) (“There is a strong presumption against provisions that easily could have been included in the contract but were not. [Citation.] A court will not add another term about which an agreement is silent.”).

¶ 19 We find no merit in plaintiff’s argument that the CSOs’ collective bargaining agreement must permit interest arbitration because it is identical to the collective bargaining agreement for the Kane County sheriff’s deputies, and because defendants have never disputed that the sheriff’s deputies are entitled to interest arbitration. Plaintiff’s argument ignores the simple fact that the sheriff’s deputies are entitled to interest arbitration because they are section 14(a) employees. As we discuss below, CSOs are not section 14(a) employees.

¶ 20 At oral argument, plaintiff contended that section 14(p) of the Act was the proper section under which to analyze this case. That section provides, “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(p) (West 2010). Plaintiff has forfeited this argument by failing to raise it in its brief. Ill. S. Ct. R. 341(i) (eff. July 1, 2008) (providing that an appellee’s brief must conform with the requirements for an appellant’s brief, including the requirement in Rule 341(h)(7) that a brief contain argument supported by citation to authority and the record); see *A.J. Maggio Co. v. Willis*, 316 Ill. App. 3d 1043, 1048 (2000) (noting that the rule that points not argued are forfeited applies to appellees as well as to appellants). Even if we were to overlook plaintiff’s forfeiture, we fail to see how section 14(p) would alter our conclusion that the CSOs’ collective bargaining agreement did not reflect any agreement with defendants to submit disputes over the terms of a successor collective bargaining agreement to interest arbitration.

¶ 21 Based on the foregoing, we conclude that there is no genuine issue of material fact as to whether the CSOs negotiated for interest arbitration in their collective bargaining agreement. It was error for the trial court to conclude, as a matter of law, that the CSOs must be afforded interest arbitration because they negotiated away their right to strike for the duration of their collective bargaining agreement.

¶ 22 Classification of CSOs

¶ 23 The next issue we address is whether plaintiff was entitled to summary judgment on the basis that CSOs fall within any one of section 14(a)’s enumerated categories. We note that the trial court found that the CSOs did not fall within any of section 14(a)’s categories. On appeal, plaintiff seems to address the issue only tangentially. In any event, to the extent that plaintiff posits that we may still affirm the trial court’s judgment based upon a determination that the CSOs do fall within one of the categories under section 14(a) (*Reserve at Woodstock, LLC v. City of Woodstock*, 2011 IL App (2d) 100676, ¶ 45), we reject its contention.

¶ 24 As discussed above, the Act denies the right to strike to certain categories of public employees. Security employees, peace officers, fire fighters, and paramedics are unconditionally prohibited from striking. 5 ILCS 315/14(m) (West 2010). In addition, “essential services employees” may be enjoined from striking under the circumstances outlined in section 18(a) of the Act. 5 ILCS 315/18(a) (West 2010). In exchange for denying

the right to strike to these categories of public employees, section 14(a) of the Act provides these employees with the right to request interest arbitration. 5 ILCS 315/14(a) (West 2010). To decide whether a unit of public employees falls within any of section 14(a)'s enumerated categories, it is necessary to look both to the language of the Act and to the public employees' actual daily duties. *County of Du Page v. Illinois Labor Relations Board, State Panel*, 395 Ill. App. 3d 49, 72-74 (2009). The proper focus of the inquiry is not the scope of the employees' authority or any incidental duties that the employees may take on during temporary or occasional assignments, but, rather, the employees' actual day-to-day responsibilities. *County of Du Page*, 395 Ill. App. 3d at 74.

¶ 25 We agree with the trial court, as well as with defendants, that the CSOs do not fall within any of the enumerated categories of employees to whom section 14(a) makes available interest arbitration. It was undisputed in the trial court that the CSOs are not fire fighters or paramedics. That leaves peace officers, security employees, and essential services employees as the possible categories.

¶ 26 The CSOs are statutorily excluded from the definition of "peace officer." Section 3(k) of the Act defines "[p]eace officer" as "any persons who have been or are hereafter appointed to a police force, department, or agency and sworn or commissioned to perform police duties, except that the following persons are not included: *** court security officers as defined by Section 3-6012.1 of the Counties Code [(55 ILCS 5/3-6012.1 (West 2010))]." 5 ILCS 315/3(k) (West 2010). Although both this court and the Board have ruled that Du Page County court security deputies were peace officers for purposes of the Act, the employees in both cases were deputy sheriffs (*Fraternal Order of Police Lodge No. 109 v. Illinois Labor Relations Board*, 189 Ill. App. 3d 914, 915-16, 918 (1989); *Du Page County Sheriff's Chapter #126*, 18 PERI ¶ 2024 (ILRB State Panel 2002)), rather than CSOs. The public employees in this case are not sheriff's deputies but are CSOs (see 55 ILCS 5/3-6012.1 (West 2010) (CSOs "are not regularly appointed deputies under section 3-6008 [of the Counties Code]")), and are therefore expressly excluded from the Act's definition of "peace officer" (5 ILCS 315/3(k) (West 2010)).

¶ 27 We reject plaintiff's argument that the Act's exclusion of CSOs from the definition of "peace officer" is inapplicable to the collective bargaining unit of Kane County CSOs because the Board certified the unit more than two years before the legislature amended the Act to contain the exclusion. Plaintiff argues that the Act does not "discuss preemption of preexisting certified court security units." The legislative history underlying the exclusion belies plaintiff's argument. The legal status of the Kane County CSOs, who were never full sheriff's deputies, was in limbo until the legislature amended the Counties Code to create the position of court security officer. The record contains a letter, which Illinois Attorney General Jim Ryan sent to Kane County State's Attorney David Akemann prior to the amendment, disapproving of the county's proposed court security plan and expressing his opinion that only deputy sheriffs could be employed as courthouse security personnel. Moreover, as defendants point out, the legislature specifically referenced Kane County during the debate over amending the Counties Code to add the court security officer classification. One representative introduced the bill as follows:

"[T]he most substantive part of this Bill addresses a concern that first came up in Kane

County. Whereby they at Kane County Sheriff's Office in the courthouse have been using people to act as security guards at the courthouse, they were not Sheriff's Deputies. The Attorney General of the State of Illinois has issued an opinion saying, you have to be full-time Sheriff's Deputies in order to be working as security officers at the courthouse. This Bill creates another classification that provides for courthouse security officers." 89th Ill. Gen. Assem., House Proceedings, Apr. 17, 1996, at 48 (statements of Representative Cross).

This background makes it clear that the legislature intended for section 3-6012.1 of the Counties Code to apply to the CSOs employed in Kane County. Given that the legislature amended the Act's definition of "peace officer" to exclude CSOs in the same public act that added section 3-6012.1 to the Counties Code (see Pub. Act 89-685 (eff. June 1, 1997) (amending 5 ILCS 315/3(k) (West 1996) and adding 55 ILCS 5/3-6012.1)), there can be no doubt that the exclusion applies to the collective bargaining unit of CSOs in this case.

¶ 28 It is also clear from the record that no genuine issue of material fact exists as to whether the CSOs are "security employees" for purposes of the Act. As the trial court reasoned, the CSOs cannot qualify as "security employees," because they do not work at correctional facilities. The Act defines "[s]ecurity employee" as "[any] employee who is responsible for the supervision and control of inmates at correctional facilities." 5 ILCS 315/3(p) (West 2010). It is undisputed that the CSOs' jurisdiction is limited to the confines of the Kane County courthouses. Although the Act does not define "correctional facilities," section 3-1-2(d) of the Unified Code of Corrections defines "[c]orrectional [i]nstitution or [f]acility" as "any building or part of a building where committed persons are kept in a secured manner" and section 3-1-2(b) defines "[c]ommitment" as "a judicially determined placement in the custody of the Department of Corrections on the basis of delinquency or conviction." 730 ILCS 5/3-1-2(b), (d) (West 2010); see also *International Brotherhood of Teamsters, Local 330*, 18 PERI ¶ 2026 (ILRB State Panel 2002) (determining that youth home counselors working at juvenile detention facilities were not "security employees" for purposes of the Act, because the detention facilities were not correctional facilities as defined by the Unified Code of Corrections). Defendants waiting in courthouse holding cells to appear in court or individuals who have been detained at the courthouse and are waiting in holding cells to be picked up by sheriff's deputies for booking and processing are not persons in "a judicially determined placement in the custody of the Department of Corrections," and their presence in the holding cells does not transform the courthouse into a correctional facility. Based on these considerations, we conclude that the term "correctional facilities" is not ambiguous in the context of this case, and that it does not include the Kane County courthouses.

¶ 29 It is also clear that the CSOs' primary daily responsibilities do not make them "security employees." The undisputed evidence was that correctional officers employed by the Kane County sheriff were responsible for transporting detainees between the county jail and the courthouse and for supervising them while in the courthouse holding cells. While there was evidence that the CSOs "video monitor" the courthouse holding cells and remain with detainees while they appear in court before a judge, this does not elevate the CSOs to the status of "security employees." Similarly, even accepting the statement in Stuckert's affidavit that CSOs often are required to detain individuals for several hours before turning them over

to sheriff's deputies for booking and processing, this is an incidental responsibility arising out of the CSOs' primary responsibility of maintaining order in the courthouse. The materials submitted in support of the cross-motions for summary judgment establish that the primary responsibility of the CSOs is to maintain a safe and orderly environment in the Kane County courthouses, not to be "responsible for the supervision and control of inmates" (5 ILCS 315/3(p) (West 2010)).

¶ 30 Finally, the CSOs are not "essential services employees" entitled to interest arbitration, as none of the procedures outlined in section 18(a) of the Act have been initiated. While the trial court found that the CSOs were essential to security in the courtrooms, the Act defines "essential services employees" as "those public employees performing functions so essential that the interruption or termination of the function will constitute a clear and present danger to the health and safety of the persons in the affected community." 5 ILCS 315/3(e) (West 2010). The trial court made no such finding. Moreover, section 18(a) of the Act requires that, if a strike that might constitute a clear and present danger to the health and safety of the public is about to occur or is in progress, then the public employer may petition the Board to investigate and conduct a hearing. 5 ILCS 315/18(a) (West 2010). If the Board determines that there is such a danger, then the public employer must petition the circuit court for an injunction to stop the strike or set conditions and requirements to avoid the danger. 5 ILCS 315/18(a) (West 2010). If the circuit court allows the strike, it must designate the "essential employees within the affected unit whose services are necessary to avoid or remove any such clear and present danger." 5 ILCS 315/18(a) (West 2010). The court may then order the "essential services employees" to return to work. 5 ILCS 315/18(a) (West 2010). In that event, the court shall require the employer and exclusive representative to participate in "impasse arbitration procedures" as set forth in section 14. 5 ILCS 315/18(a) (West 2010). Section 14(a) similarly provides that it applies to "disputes under Section 18." 5 ILCS 315/14(a) (West 2010). Here, because no strike "is about to occur or is in progress," and because defendants have not initiated proceedings under section 18(a), it would be premature to make a determination of whether the CSOs as a unit, or any of them, are "essential services employees."

¶ 31 Based on the foregoing, we conclude that there is no genuine issue of material fact as to whether the CSOs are section 14(a) employees or section 18(a) "essential services employees" entitled to request interest arbitration under the Act.

¶ 32 Plaintiff's "Invited Error" Argument

¶ 33 Plaintiff's argument that the Board cannot complain about the result reached in the trial court, because it "invited this process," is without merit. Plaintiff's argument ignores that the three named defendants did not invite error and have a right to appeal. Additionally, because the Board was not a party in the trial court, the rule that a party on appeal cannot complain of an error to which it consented in the trial court is inapplicable. See *Forest Preserve District v. First National Bank of Franklin Park*, 2011 IL 110759, ¶ 27 ("A party may not urge a trial court to follow a course of action, and then, on appeal, be heard to argue that doing so constituted reversible error." (Emphasis added.)). Although the Board proposed that

one available course of action was for plaintiff to file an action in a court of competent jurisdiction, once plaintiff did so the Board did not urge the court to take any action one way or another.

¶ 34

CONCLUSION

¶ 35

For the reasons stated, we reverse the judgment of the circuit court of Kane County, and, pursuant to our authority under Illinois Supreme Court Rule 366(a)(5), we enter summary judgment in favor of defendants.

¶ 36

Reversed.