



the plaintiff on the first issue, making an examination of the second issue unnecessary, and reverse and remand with directions that the circuit court enter an order compelling arbitration.

## FACTS

On August 14, 2009, the plaintiff filed a complaint in the circuit court of Washington County alleging the following facts. The plaintiff is a labor union representing employees for the purpose of collectively bargaining with employers regarding, among other things, employee grievances, labor disputes, rates of pay, and hours of employment. The defendants are "public employers" as defined by section 3 of the Illinois Public Labor Relations Act. 5 ILCS 315/3 (West 2008). The plaintiff is the "exclusive representative" of the defendants' employees and represents those employees in "collective bargaining" with the defendants, as those terms are defined by the same section. *Id.*

The plaintiff and the defendants are parties to a CBA, effective beginning on August 1, 2007, and terminating on July 31, 2011, which covers the wages, hours, and terms and conditions of employment of all the defendants' employees. Article XXV of the CBA contains the procedure for filing a grievance against the defendants, while article XXVI contains the procedure for removing disputes to arbitration. Article XXV, section 25.1, of the CBA states, in relevant part, as follows:

"In the event any differences shall arise during the term of this Agreement between the employer and any employee or employees hereunder, or between the employer and the Union, then such differences shall be settled in the following manner:

Step 1: An employee or employees (preferably assisted by the steward) shall first present the matter in dispute to the appropriate employer/supervisor involved within 10 working days of the date of the occurrence of the matter which is the

subject of the dispute or within 10 working days when the employee first becomes aware of the occurrence of the matter which is the subject of the dispute."

Article XXVI of the CBA states, in relevant part, as follows:

"If a difference arises between the Union and the employer which involves interpretation and application of the terms of this Agreement, and which cannot be resolved by the parties under the grievance machinery, the matter shall be submitted to arbitration upon the written request of either party \*\*\*."

Count III of the plaintiff's complaint alleges the following relevant facts. Sara Whipple was employed by the Sheriff during the times relevant to the plaintiff's complaint, and she was a member of the bargaining unit represented by the plaintiff. On July 13, 2009, the plaintiff filed a grievance on behalf of Ms. Whipple with the defendants, in accordance with article XXV of the CBA. The grievance was over Ms. Whipple's work schedule and the defendants' failure to pay her overtime as required by article XXI, section 21.2, of the parties' CBA, which states, in relevant part, as follows:

"When an employee is called to work outside of his regular working hours on a regularly scheduled work day, he shall receive not less than two hours time at a rate of time and one-half except that if he works longer than two hours, he shall receive time and one-half for the entire time worked before his regular starting time after which time the regular rate of pay will become effective."

On July 15, 2009, the defendants denied the grievance, stating that it "[d]oes not follow proper grievance procedure," and even though the plaintiff had demanded arbitration both verbally and in writing, they refused to process the grievance to arbitration because it was not filed by Ms. Whipple.

On August 14, 2009, Local 702 filed suit against the County and the Sheriff to compel arbitration. On September 16, 2009, in response to the plaintiff's complaint to compel the

arbitration of the grievance, the defendants filed a motion to dismiss the complaint pursuant to section 2-619(a)(9) of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-619(a)(9) (West 2008)). The motion alleged that the plaintiff did not have the authority to file a grievance without the employee's consent, thereby precluding the matter from being submitted to arbitration.

On February 18, 2010, the circuit court dismissed count III of the plaintiff's complaint, stating, "This employee did not start the grievance process, which is required before arbitration. (CBA, Article XXV, Section 25.1)." On June 3, 2010, the circuit court entered its final order, dismissing the plaintiff's complaint in its entirety. On July 1, 2010, the plaintiff filed a timely first amended notice of appeal.

#### ANALYSIS

An appeal from an order granting a dismissal pursuant to section 2-619 of the Code is subject to *de novo* review. *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993). Moreover, *de novo* review is appropriate when a circuit court grants an order dismissing a complaint to compel arbitration based solely on documentary evidence. *Schmitz v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 405 Ill. App. 3d 240, 244 (2010). In this case, no evidentiary hearing was held, because the circuit court ruled on the defendants' section 2-619 motion to dismiss solely on the pleadings and affidavits filed. Accordingly, we apply a *de novo* standard of review.

Local 702 contends that the circuit court erred in dismissing its complaint to compel its grievance to arbitration because the grievance was not filed by Ms. Whipple, pursuant to article XXV, section 25.1, of the CBA, since the issue of who can demand arbitration under the CBA is a procedural issue for the arbitrator to decide. It is a general rule that procedural grievance disputes, which would include disputes concerning how a grievance is to be filed, are to be decided by an arbitrator, not the court, when a valid arbitration clause is present.

*Amalgamated Transit Union, Local 900 v. Suburban Bus Division of the Regional Transportation Authority*, 262 Ill. App. 3d 334, 341 (1994); *Village of Carpentersville v. Mayfair Construction Co.*, 100 Ill. App. 3d 128, 133 (1981). However, "the court is to determine 'certain gateway matters, such as whether the parties have a valid arbitration agreement at all or whether a concededly binding arbitration clause applies to a certain type of controversy.'" *Hollingshead v. A.G. Edwards & Sons, Inc.*, 396 Ill. App. 3d 1095, 1100 (2009) (quoting *Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444, 452, 156 L. Ed. 2d 414, 422, 123 S. Ct. 2402, 2407 (2003)). Pursuant to section 8 of the Illinois Public Labor Relations Act, the arbitration clause in article XXVI of the parties' CBA falls under the scope of the Illinois Uniform Arbitration Act (710 ILCS 5/1 *et seq.* (West 2008)). 5 ILCS 315/8 (West 2008). Under the Uniform Arbitration Act, "the parties 'are only bound to arbitrate those issues which by clear language they have agreed to arbitrate.'" *Ozdeger v. Altay*, 64 Ill. App. 3d 1036, 1038 (1978) (quoting *Flood v. Country Mutual Insurance Co.*, 41 Ill. 2d 91, 94 (1968)). The language of an arbitration clause determines the issues that fall within its scope, and an arbitration clause will be given the broadest interpretation its language will allow, since arbitration is favored by the law. *Zimmerman v. Illinois Farmers Insurance Co.*, 317 Ill. App. 3d 360, 366 (2000).

In the case at bar, the validity of the arbitration clause in the parties' CBA is not being challenged, so the only task for this court is to determine whether the dispute between the plaintiff and the defendants falls within the scope of the clause. The grievance procedure in the parties' CBA applies to "differences [that] shall arise \*\*\* between the employer and the Union." The arbitration clause in the parties' CBA states, "If a difference arises between the Union and the employer which involves interpretation and application of the terms of this Agreement, and which cannot be resolved by the parties under the grievance machinery, *the matter shall be submitted to arbitration upon the written request of either party \*\*\*.*"

(Emphasis added.) The plaintiff and the defendants disagree about whether the grievance procedure must be initiated by an employee for arbitration to be allowed. Determining whether an employee must start the grievance procedure for arbitration to be allowed requires the interpretation of the relation between the grievance and the arbitration procedures of the parties' CBA. The disagreement between the plaintiff and the defendants cannot be resolved under the grievance machinery, since the disagreement concerns what the grievance machinery actually requires for arbitration. Therefore, the matter should have been submitted to arbitration by the defendants when the plaintiff demanded arbitration in writing, and the circuit court erred in dismissing the plaintiff's complaint to compel arbitration. *Amalgamated Transit Union, Local 900 v. Suburban Bus Division of the Regional Transportation Authority*, 262 Ill. App. 3d 334 (1994), provides us with guidance in our decision. There, a union's attorney filed a grievance on its behalf by mailing a copy of the grievance to the attorney of the employer. *Id.* at 336. The employer refused to send the grievance to arbitration, since the arbitration clause in the parties' CBA specified that grievances were to be submitted to the superintendent of operations or his representative. *Id.* at 337. The appellate court held that procedural questions, such as whether a union followed the required steps to submit a grievance to arbitration, should be decided by the arbitrator. *Id.* at 341.

In both this case and in *Amalgamated Transit Union, Local 900*, the employer received the grievance but challenged the method by which it was filed. Here, as in *Amalgamated Transit Union, Local 900*, the question to be decided—whether a grievance must be initially filed by an employee—is a procedural one dealing with whether the correct steps were taken to send a grievance to arbitration. Therefore, the question of whether an employee must file the initial grievance for it to be sent to arbitration under the parties' CBA should have been decided by an arbitrator, not the circuit court.

The defendants, however, contend that the language of the CBA establishes that the initial filing of a grievance by an employee is a condition precedent for sending the grievance to arbitration. A condition precedent must be performed by one party to a contract before the other party is obligated to perform in some way. *Amalgamated Transit Union, Local 900*, 262 Ill. App. 3d at 338. Contractual conditions precedent to sending a grievance to arbitration are to be decided by the court, not the arbitrator. *Village of Carpentersville*, 100 Ill. App. 3d at 133.

There is no language in the arbitration clause of the parties' CBA that explicitly makes the filing of a grievance by an employee a condition precedent for sending a grievance to arbitration. The disagreement between the plaintiff and the defendants about whether that condition precedent exists constitutes a difference "between the Union and the employer which involves interpretation and application of the terms of [the parties' CBA]." As a result, the determination of whether the filing of a grievance by an employee is a condition precedent to the arbitration of a grievance should also be decided by an arbitrator, not the circuit court, since the issue falls under the broad language of the arbitration clause in the parties' CBA.

#### CONCLUSION

For the foregoing reasons, the order of the circuit court of Washington County dismissing the plaintiff's complaint to compel arbitration is reversed, and the cause is remanded with directions that the circuit court enter an order compelling arbitration.

Reversed; cause remanded with directions.