

NOTICE
Decision filed 08/05/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 120320-U
NO. 5-12-0320
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

POLICEMEN'S BENEVOLENT LABOR COMMITTEE,)	Appeal from the
)	Circuit Court of
)	Madison County
Plaintiff-Appellee,)	
)	
v.)	No. 11-MR-256
)	
MADISON COUNTY BOARD,)	
ROBERT J. HERTZ, Madison County Sheriff, and)	
MADISON COUNTY SHERIFF'S MERIT)	
COMMISSION, an Administrative Agency,)	Honorable
)	Barbara L. Crowder,
Defendants-Appellants.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in granting summary judgment in favor of plaintiff and compelling the parties to arbitration.
- ¶ 2 Defendants, Madison County Board (Board), Robert J. Hertz, Madison County sheriff (Sheriff), and Madison County Sheriff's Merit Commission (Commission), an administrative agency, appeal from an order of the circuit court of Madison County entering summary judgment in favor of plaintiff, Policemen's Benevolent Labor Committee, a union representing Denise R. Nunn (Nunn), a jail technician, and granting plaintiff's motion to compel arbitration in the underlying dispute between Nunn and her employer, the Sheriff. On appeal, defendants contend the trial court misapplied the plain language of a collective bargaining agreement and erred in

granting summary judgment in favor of plaintiff and ordering the parties to proceed with arbitration. We affirm.

¶ 3

FACTS

¶ 4

On Friday, July 29, 2011, Nunn failed to report for work at the Madison County jail at 6 a.m. as scheduled. At 7 a.m., Sgt. Pyatt, an employee of the Sheriff's department, called Nunn to find out why she was not at work as scheduled. Nunn was mistakenly under the belief she had the day off; however, it is undisputed that Nunn's actual day off was scheduled for the following day, July 30, 2011.

¶ 5

Nunn told Pyatt she was intoxicated and requested a sick day. That request was denied. The sheriff's department claims Nunn said she would drive to work if she was told to do so, but Sgt. Pyatt told her he would not order her to drive to work since she had informed him that she was intoxicated. According to the Sheriff, Nunn then said she would need a few hours, but she would be there. Nunn later called Sgt. Pyatt and told him she would not be in that day. Nunn recalls telling Sgt. Pyatt she would be in as soon as she could get ready; however, she later called back and explained she was in no condition to work because she was still under the influence of alcohol. As a result of Nunn's absence, the jail technician who worked the shift prior to the one Nunn was scheduled to work was required to work overtime and another technician was required to report to work early in order to relieve the technician who worked overtime.

¶ 6

On August 1, 2011, the Sheriff filed charges with the Commission, seeking to discharge and remove Nunn from her job as a jail technician. In addition to missing work on July 29, 2011, the charges alleged that "[o]n November 25, 2009, Jail Technician Nunn received a six month suspension from the Merit Commission for misconduct."

¶ 7 On August 4, 2011, plaintiff filed a grievance on behalf of Nunn, seeking to arbitrate the issue of whether Nunn should have been allowed to take sick leave pursuant to article 16 of the collective bargaining agreement between plaintiff, the Board, and the Sheriff. The parties have negotiated a collective bargaining agreement governing the terms and conditions of employment for employees serving as jail technicians. Article 16.1 provides in pertinent part: "Any employee contracting or incurring any non-service connected sickness or disability, which renders such employee unable to perform the duties of his/her employment or any employee attending a doctor's appointment, shall receive sick leave with pay." The grievance claims Nunn was correct to inform her employer of her condition, not drive to work under the influence of alcohol, and decline to perform work in the jail while under the influence.

¶ 8 The grievance further states:

"Instead of crediting [Nunn] with the proper use of judgment during the morning of 7/29, the [Sheriff] has perceived that proper use of judgment as 'aggravating' factors in its decision to seek her termination from employment. [Nunn] was instead entitled to use sick leave due to her temporary inability to perform the duties of her position."

Plaintiff sought the following remedy: "Grant [Nunn] sick leave use for 7 hours on 7/29/11 (accounting for her initial tardiness) and return her back to work as her tardiness or missing work was not cause for discharge, as the Sheriff has considerable discipline at his disposal short of discharge under the Merit System Law." The Sheriff denied the grievance on the basis that the matters stemming from the August 1, 2011, charges were within the province of the Commission because they dealt with termination and are not grievable under the collective bargaining agreement.

¶ 9 On October 20, 2011, plaintiff filed the instant litigation seeking an order requiring defendants to arbitrate the issue raised in the grievance. Plaintiff set forth that article

4 of the collective bargaining agreement contains a grievance procedure which requires final and binding arbitration of any dispute relating to the denial of sick leave as governed by article 16 of the collective bargaining agreement. Section 4.1 of article 4 specifically provides:

"It is mutually desirable and hereby agreed that all grievances shall be handled in accordance with the following steps: For the purpose of this Agreement a grievance shall be defined as any dispute or difference of opinion raised by an employee against the County involving the meaning, interpretation, or application of the provisions of this Agreement, *except for actions involving demotion, suspension and termination, which are appealable under Article 6.*" (Emphasis added.)

¶ 10 Plaintiff maintained that if the arbitrator determined Nunn was entitled to sick leave for seven hours of her shift, "Nunn will have only missed one hour of an assigned shift, and the appropriate level of potential discipline from the Merit Commission must change."

¶ 11 Defendants asserted the grievance was an attempt to evade the method chosen by the parties for review of terminations and refused to recognize it as a grievable matter. Defendants believed the issue raised by the grievance could be presented and argued at the dismissal hearing set by the Commission and refused to arbitrate on the basis that under article 6 of the collective bargaining agreement, any matter dealing with termination is appealable to the Commission. Section 6.2 of article 6 provides that "[e]mployees who are the subject of disciplinary action, except for reprimands, shall have the right to appeal such disciplinary action to the Sheriff's Merit Commission."

¶ 12 On April 5, 2012, plaintiff filed a motion for summary judgment, seeking to compel arbitration. Defendants filed an objection to plaintiff's motion for summary judgment.

Ultimately, the trial court granted plaintiff's motion for summary judgment and ordered arbitration. Defendants now appeal.

¶ 13

ANALYSIS

¶ 14 Defendants contend the trial court misapplied the plain language of the collective bargaining agreement and erred in granting summary judgment in favor of plaintiff and ordering the parties to proceed to arbitration. Defendants insist that the grievance seeks to arbitrate a matter not within the ambit of the arbitration clause (termination) and that this matter must proceed before the Commission pursuant to the charges brought by the Sheriff on August 1, 2011. Plaintiff responds that the subject matter of this dispute (sick time) is within the grievance and arbitration provision of the collective bargaining agreement, and the trial court was correct to compel the parties to arbitration. After careful consideration, we agree with plaintiff.

¶ 15 A trial court's ruling on a motion to compel arbitration is subject to *de novo* review. *LRN Holding, Inc. v. Windlake Capital Advisors, LLC*, 409 Ill. App. 3d 1025, 1027, 949 N.E.2d 264, 266 (2011). The arbitration agreement here in issue is part of a collective bargaining agreement arising under the Illinois Public Labor Relations Act (Act) (5 ILCS 315/1 to 27 (West 2008)). The Act requires that everything recited in a collective bargaining agreement shall be subject to grievance arbitration "unless mutually agreed otherwise." 5 ILCS 315/8 (West 2008). Because all matters are arbitrable unless the parties agree otherwise, the relevant inquiry in cases arising under the Act is whether the parties, through their written agreement, showed an intent to exclude from arbitration the disputed matter. *City of Rockford v. Unit Six of the Policemen's Benevolent & Protective Ass'n of Illinois*, 351 Ill. App. 3d 252, 813 N.E.2d 1083 (2004). Section 8 of the Act discusses the Uniform Arbitration Act (710 ILCS 5/1 to 23 (West 2008)) by reference: "The grievance and arbitration provisions

of any collective bargaining agreement shall be subject to the Illinois 'Uniform Arbitration Act'. " 5 ILCS 315/8 (West 2008).

- ¶ 16 Furthermore, because arbitration is a uniquely suitable procedure for deciding labor disputes, such as the one presented here, the arbitration provisions of collective bargaining agreements are to be given broader interpretation than similar provisions in commercial agreements, and all disputes are presumed arbitrable unless expressly agreed otherwise. *Monmouth Public Schools, District No. 38 v. Pullen*, 141 Ill. App. 3d 60, 63-64, 489 N.E.2d 1100, 1102 (1985); *City of Rockford*, 351 Ill. App. 3d at 257, 813 N.E.2d at 1087. Arbitration is favored over litigation because it is cost effective and efficient. *City of Rockford*, 351 Ill. App. 3d at 256, 813 N.E.2d at 1086.
- ¶ 17 In *Donaldson, Lufkin & Jenrette Futures, Inc. v. Barr*, 124 Ill. 2d 435, 530 N.E.2d 439 (1988), our supreme court determined that it must be absolutely clear that a matter is not within the scope of the arbitration agreement for a stay to issue. In such a proceeding, the sole issue before the trial court is the very narrow determination of whether there is an agreement to arbitrate the dispute in question. *Donaldson*, 124 Ill. 2d at 444, 530 N.E.2d at 445. The answer to that question and the intertwined question of who is to decide arbitrability must be resolved based upon the agreement of the parties. *Donaldson*, 124 Ill. 2d at 444, 530 N.E.2d at 443. In making such a determination, a three-prong approach is to be applied: (1) if it is clear the dispute falls within the scope of the arbitration clause, the trial court must compel arbitration; (2) if it is clear the dispute does not fall within the scope of the arbitration clause, the trial court must deny the motion to compel; and (3) if it is unclear or ambiguous whether the dispute falls within the scope of the arbitration clause, the matter should go to an arbitrator to decide arbitrability. *Donaldson*, 124 Ill. 2d at 444-48, 530

N.E.2d at 443-45. Thus, our supreme court determined that the drafters of the Act intended to incorporate a presumption in favor of arbitration in "unclear" cases. *Donaldson*, 124 Ill. 2d at 447-48, 449, 530 N.E.2d at 444-45.

¶ 18 After reviewing the agreement in the instant case, we find it is unclear as to whether the parties intended to arbitrate this particular dispute. Here, the agreement provides for two alternative paths for resolving disputes. While defendants insist this is a termination matter which is not subject to arbitration, but rather is appealable to the Commission under article 6 of the collective bargaining agreement, the record shows Nunn requested sick time and that request was denied. The parties agree that a dispute over the interpretation of sick leave provisions is subject to arbitration under article 4 of the collective bargaining agreement. The terms of the collective bargaining agreement do not address the instant situation where both a grievance and a disciplinary action are filed almost simultaneously.

¶ 19 In its order, the trial court analyzed the present situation as follows:

"Generally, a dispute over interpretation of the sick leave provisions of the Collective Bargaining Agreement would be subject to arbitration under Article 4 of the [Collective Bargaining Agreement]. The argument that it could not be subject to the grievance procedure arises because Denise Nunn is subject to termination for reasons that include the disputed absence. The terms of the Collective Bargaining Agreement do not prevent a grievance and arbitration of the interpretation of the policies in the [Collective Bargaining Agreement] in circumstances where disciplinary action has been taken. So long as Plaintiff follows the procedures set forth in the Collective Bargaining Agreement, prior to the merit board considering the same issue as part of the discharge process, then she is entitled to have the grievance arbitrated. The law is clear that had plaintiff completed the merit board process prior to filing the

grievance and seeking arbitration, the doctrine of *res judicata* would have barred that request. But the plain language of the Collective Bargaining Agreement does not prevent the filing of a grievance over the sick day policy just because the denial of the sick day led to the absence being unexcused and is one of the bases for the discharge. The court must enforce the agreement as it is written and must assume its Articles are separate and enforceable."

We agree with the trial court's analysis.

¶ 20 It is clear from the record that the Commission had yet to consider the matter, and it is appropriate to initially defer to an arbitrator. As previously set forth, matters such as the instant one are presumed arbitrable unless the parties agree otherwise. The present case creates an ambiguity and falls within the "unclear" category, making arbitration appropriate pursuant to our supreme court's holding in *Donaldson*. The case should proceed to arbitration.

¶ 21 For the foregoing reasons, the judgment of the circuit court of Madison County is hereby affirmed.

¶ 22 Affirmed.