2015 IL App (1st) 141412-U

No. 1-14-1412

January 20, 2015

SECOND DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JOSEPH S. McGREAL, Plaintiff-Appellant, v. VILLAGE OF ORLAND PARK, ILLINOIS, a body politic and municipal corporation, Defendant-Appellee.	)))))))))))	Appeal from the Circuit Court of Cook County. No. 13 CH 4179 The Honorable Neil H. Cohen, Judge presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

O R D E R

¶ 1 *Held*: When parties to a collective bargaining agreement use procedures established in the agreement to arbitrate a grievance, only the parties to the collective bargaining agreement have standing to petition to vacate the arbitrator's award, unless the individual employee can show that the union breached its duty of fair representation.

¶ 2 The Metropolitan Alliance of Police, Orland Park Police Chapter No. 159 (MAP), filed an unfair labor practice charge against the Village of Orland Park (Village) concerning the Village's treatment of Officer Joseph McGreal. The Illinois Labor Relations Board (Board) dismissed the charge in accord with an arbitrator's recommendation. McGreal then filed in the circuit court a petition to vacate the arbitrator's award. The circuit court dismissed the petition. We find that McGreal lacked standing to petition to vacate the arbitrator's award. Accordingly, we affirm the circuit court's judgment.

¶ 3 BACKGROUND

¶ 4 On December 24, 2009, MAP filed with the Board a charge that the Village disciplined McGreal because of his union activities. The Village terminated McGreal's employment in June 2010, and MAP amended its unfair labor practice charge to contest the firing.

¶ 5 On July 22, 2010, the Board's executive director deferred further proceedings on the charge pending arbitration, in accord with the grievance procedure established in the collective bargaining agreement between MAP and the Village. In the written order, the executive director said, "Within 15 days after the termination of the contractual procedure, Charging Party may request that the Board reopen the case for the purpose of resolving any substantial issues left unresolved by the grievance procedure or proceed with the charge on the basis that the award is contrary to the policies underlying the Act. If Charging Party fails to make such a request within the time specified, the Board may dismiss this charge upon request of Respondent or on its own motion."

¶ 6 The collective bargaining agreement between MAP and the Village provided that if MAP and the Village sought to arbitrate a grievance,

> "The Parties shall attempt to agree upon an arbitrator within five (5) business days after receipt of the notice of referral. In the event the parties are unable to agree upon the arbitrator within the five (5) day period, the parties shall jointly request the Federal Mediation and Conciliation Service to submit a panel of five (5) arbitrators who shall be members of the National Academy of Arbitrators residing in the Midwest region. *** The party requesting arbitration shall strike the first name, [and] the parties shall then strike alternately until only on[e] person remains. The person remaining shall be the arbitrator."

¶ 7 MAP and the Village did not agree on an arbitrator. The Federal Mediation and Conciliation Service submitted a list of seven potential arbitrators to MAP and the Village. The parties took turns striking names from the list until only one name, Dennis Stoia, remained. Stoia began the arbitration hearing on January 26, 2011. The parties met with Stoia on 17 days over the following 14 months.

¶ 8 After a year of arbitration proceedings before Stoia, in January 2012, McGreal objected to Stoia's jurisdiction on grounds that Stoia did not belong to the National Academy of Arbitrators. Stoia addressed the objection at the hearing held on February 9, 2012. Stoia pointed out that he never said to the Federal Mediation and Conciliation Service or the parties that he belonged to the National Academy of Arbitrators. MAP's attorney said, "The Union has asked me to proceed forward with the arbitration." The Village also did not object to Stoia continuing to preside over the arbitration of the grievance.

¶ 9 On July 2, 2012, McGreal initiated a separate proceeding by charging MAP with engaging in unfair labor practices in its handling of the arbitration before Stoia. The separate

proceeding on the charge against MAP concluded on June 28, 2013, when the Board dismissed the complaint. The Board held that McGreal failed to allege that MAP committed the kind of misconduct that could support a finding of a breach of its duties to McGreal. McGreal did not appeal from the dismissal of the charge against MAP.

¶ 10 In the arbitration of the grievance against the Village, on November 14, 2012, Stoia filed his decision denying MAP's request for relief. Neither the Village, nor MAP, nor McGreal filed any timely challenge to the decision. Instead of using the procedures set by the Board's order deferring the charge to arbitration, on February 11, 2013, McGreal filed in the circuit court a petition to vacate Stoia's award.

¶ 11 On April 15, 2013, the Village filed a motion to dismiss McGreal's petition to vacate the arbitrator's award. The circuit court dismissed McGreal's petition without prejudice for failure to plead facts to show that he had standing under the Public Labor Relations Act (PLRA) (5 ILCS 315/16 (West 2012)) and the Uniform Arbitration Act (UAA) (710 ILCS 5/12 (West 2012)) to challenge the award. Under the PLRA and the UAA, when parties to a collective bargaining agreement use procedures established in the agreement to arbitrate a grievance, only the parties to the collective bargaining agreement will generally have standing to petition to vacate the arbitrator's award. *Stahulak v. City of Chicago*, 184 Ill. 2d 176, 180 (1998). The *Stahulak* court held that "individual employees represented by a union should only be allowed to seek judicial review of an arbitration award if they can show that their union breached its duty of fair representation." *Stahulak*, 184 Ill. 2d at 184.

¶ 12 McGreal sought leave to file an amended petition to vacate the arbitrator's award. In the amendment, McGreal sought to show that he had standing under *Stahulak* because MAP

breached its duties of fair representation. He repeated the allegations from the charge he filed against MAP on July 2, 2012.

¶ 13 On April 16, 2014, the circuit court entered an order denying McGreal's motion for leave to file an amended petition to vacate the arbitrator's award. The circuit court found that the Board's dismissal of the charges against MAP became final when McGreal failed to appeal from the dismissal of the charges. The circuit court said:

> "The time for McGreal to appeal the [Board's] June 28, 2013 decision has passed and that decision is now binding on McGreal. [Citations.] Plaintiff cannot escape the binding decision of the [Board] by filing an amended petition in this case.
>
> Plaintiff was not a party to the collective bargaining agreement and cannot allege a breach of the duty of fair representation. Therefore, Plaintiff has no standing to challenge the arbitration decision."

¶ 14 The circuit court dismissed the case. McGreal now appeals.

¶ 15 ANALYSIS

¶ 16 We review *de novo* an order dismissing a petition for lack of standing. *Glisson v. City of Marion*, 188 Ill. 2d 211, 220-21 (1999). In this appeal, McGreal largely relies on the argument that Stoia lacked jurisdiction to arbitrate the grievance. On the issue of standing, he argues only that the Village waited too long to file its motion to dismiss for lack of standing. He claims that the Village's motion does not comply with Supreme Court Rule 181 (Ill. Sup. Ct. R. 181 (eff. Jan. 4, 2013)). Rule 181 governs the time and method for filing

appearances, and sets no limit on the time for raising the issue of standing. Ill. Sup. Ct. R. 181 (eff. Jan. 4, 2013).

¶ 17 We find that section 2-619(a) of the Code of Civil Procedure establishes the time frame for motions on the pleadings. 735 ILCS 5/2-619(a) (West 2012); see *In re Custody of K.P.L.*, 304 Ill. App. 3d 481, 486-87 (1999). Section 2-619 provides:

> "Defendant may, within the time for pleading, file a motion for dismissal of the action *** upon any of the following grounds. ***
>
> (2) That the plaintiff does not have legal capacity to sue." 735 ILCS 5/2-619(a) (West 2012).

¶ 18 The statute requires the defendant to raise the issue of standing promptly, "at the outset of litigation" to "obviate the need for parties and courts to become mired in causes that could be quickly dispatched." *In re Custody of McCarthy*, 157 Ill. App. 3d 377, 381 (1987).

¶ 19 The Village had not filed an answer when it filed its motion to dismiss for lack of standing. Because the case remained at the pleading stage, the Village filed its motion "within the time for pleading," and therefore within the statutory time period for motions to dismiss for lack of standing. See *McCarthy*, 157 Ill. App. 3d at 380-81; *Illinois Housing Development Authority v. Sjostrom & Sons*, 105 Ill. App. 3d 247, 253 (1982).

¶ 20 The Village filed a timely motion to dismiss for lack of standing. Under *Stahulak*, for McGreal to have standing to petition to vacate the arbitrator's award, he needed to show that MAP breached its duty to represent him. *Stahulak*, 184 Ill. 2d at 184. But the final dismissal of his charge against MAP collaterally estopped McGreal from relitigating the issue of whether MAP breached its duty of fair representation. *Casanova v. City of Chicago*, 342 Ill.

App. 3d 80, 89-90 (2003). Accordingly, we hold that McGreal lacked standing to petition to vacate the arbitrator's award. We affirm the dismissal of McGreal's petition.

¶ 21 Affirmed.