2015 IL App (5th) 140525-U

NO. 5-14-0525

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE CITY OF JOHNSTON CITY, Petitioner-Appellant, v. JON D. MOHRING and THE ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL, Respondents-Appellees.	)	Appeal from the Circuit Court of Williamson County. No. 14-MR-58 Honorable Brad K. Bleyer, Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: Where the circuit court correctly determined the rights and duties between the parties, we affirm the circuit court's denial of the appellant's motion for declaratory judgment.

¶ 2 The appellant, the City of Johnston City (the City), appeals the order of the circuit court finding in favor of the appellees, Jon D. Mohring and the Illinois Fraternal Order of Police Labor Council (FOP). For the following reasons, we affirm the circuit court's denial of the City's motion for declaratory judgment.

¶ 3 Though the case comes before us with a complicated procedural history, a majority of the essential facts giving rise to this appeal are not in dispute. Johnston City police officer Jon Mohring was arrested on a complaint of domestic abuse on November 9, 2012. On November 13, 2012, the victim declared that the allegations were false and requested that the criminal charges be dropped; however, the State's Attorney subsequently filed criminal charges against Mohring. The City thereafter suspended Mohring and filed a request for his discharge with its Board of Fire and Police Commissioners (BFPC).

¶ 4 In a grievance dated November 12, 2012, the FOP alleged a violation of article 28 of the parties' collective bargaining agreement (CBA).[1] The grievance noted that the City had indicated that it intended to hold a hearing before the BFPC in regards to terminating

[1]Article 28 of the parties' 2011-2013 CBA, entitled "Discipline and Discharge," reads as follows:

> "Discipline: Discipline in the department shall be progressive and corrective in cases of remediable offenses and shall be designed to improve behavior and not merely punish it, depending upon the circumstances of each offense, and shall be in all cases based on just cause. Employees shall be afforded all of the rights set forth in the Peace Officers' Disciplinary Act, 50 ILCS 725/1, *et seq.*

The employer shall have the authority to discipline employees as set forth in Illinois Compiled Statutes, and shall afford the employees those rights set forth therein and the following:

Discipline in the department shall be limited to oral reprimands, written reprimands, disciplinary suspensions and discharge. If the Employer has reason to reprimand an employee, it shall be done in a manner that will not embarrass the employee before other employees or the public.

Probationary Employees: New Employees, part-time employees become full-time employees, or temporary employees become full-time employees, shall be employed as a full-time employee on a probationary basis for a period of 12 months. During the probationary period, an employee may be discharged for any reason whatsoever without any recourse under this agreement, and, in particular, resort to the grievance procedure or binding arbitration. Probationary employees shall retain all contract rights, including that of grievance and arbitration, in those issues not directly referring to the discipline and/or discharge of a probationary employee. ***

Any hearings of charges, suspensions and discharges will be put before the Johnston City merit commission unless the employee chooses to waive such rights in favor of the grievance procedure. In such case, once the employee receives a copy of the charges filed against him, he will have ten (10) days to give the employer written notice of his decision of which venue to pursue. Once the

Mohring's employment; thus, the grievance requested that Mohring be returned to work in paid status and the charges against him be dropped, stating that "[a]t the very least, the Merit Commission hearing must be cancelled in lieu of grievance arbitration rights listed in the contract."

¶ 5 On November 14, 2012, the City held a preliminary disciplinary hearing on the charges. On December 3, 2012, it issued a letter suspending Mohring without pay and filing an official request for discharge with the BFPC. On December 10, 2012, the BFPC held a hearing, which was attended by Mohring and his FOP attorney, James Daniels; on December 13, 2012, the BFPC decided that Mohring's employment should be terminated. A written order issued on December 20, 2012, unanimously sustained Mohring's discharge.

¶ 6 Meanwhile, on December 14, 2012, Daniels wrote a letter to John Richey, counsel for the City, informing him that he had learned of Mohring's discharge by the BFPC and that he was therefore "unfreezing" the timelines for the grievance previously filed over the City's recommendation to terminate Mohring.[2] Daniels stated that "[b]ecause it is my

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decision is made, it is irrevocable. Under no circumstances shall an employee have both a hearing with the merit commission and utilize the grievance procedure." (Emphasis added.)

[2]The record indicates that the parties agreed to hold the grievance in abeyance in order to see how the criminal case against Mohring would play out.

understanding that the City Counsel will not be willing (or able) to reverse the Merit Commission's decision, I am moving this matter to arbitration."

¶ 7 One year later, in December 2013, all criminal charges against Mohring were dropped. When the City did not reinstate his employment, the FOP filed for a panel of mediators from the Federal Mediation and Conciliation Service (FMCS), requesting a resolution for the issues of Mohring's "Termination/Suspension/Drug Test." Both parties participated in selecting the arbitrator and choosing the date and location of the hearing.

¶ 8 The day before the hearing was scheduled, on May 4, 2014, the City filed a complaint for declaratory judgment in the circuit court of Williamson County, seeking a judicial determination of the rights and obligations of the parties as they related to the BFPC's decision and the FOP's efforts to grieve that decision pursuant to the CBA. The motion alleged that the parties' CBA did not allow for arbitrating Mohring's termination, and that because the BFPC had already ruled on the issue, the arbitrator had no jurisdiction to rule on the matter.

¶ 9 With the complaint for declaratory judgment pending in the circuit court, a grievance arbitration hearing was attended by both parties on March 5, 2014. The City told the arbitrator that it would settle two outstanding grievances concerning Mohring's suspension and drug test, but that it would not put on a case concerning Mohring's termination, as it believed that the arbitrator was without jurisdiction to make that determination.

¶ 10 On behalf of Mohring and the FOP, Daniels called himself as a witness. He began by noting that this was the first time that the City had advanced the jurisdictional

argument that it now stood on at the hearing, and that the City had never before claimed that discipline of an officer was not arbitable. He noted that the CBA makes no distinction that discipline cannot be grieved or that discipline can only be channeled through the Commission, and that the contractual language mirrors that of the Labor Act. Daniels testified that he had previously taken both discipline and discharge of officers to arbitration, noting that "certainly discipline is a dispute, and has been grieved in the past with relative frequency in Johnston City." After Mohring was fired, Daniels had a conversation with Richey. Daniels testified to the following:

> "[Richey stated that] [the City] needed to figure out how to proceed, because [its] policy manual stated that police shall be disciplined through the Fire and Police Commission.
>
> And I stated that I understood that, but our contract said we could grieve all disputes and we are willing to waive the Fire and Police Commission by selecting the grievance arbitration venue. *** I drew up a resolution at the time stating [that].
>
> John Richey said to me the City could not agree to waive completely the Fire and Police Commission venue because that was in its ordinance, that that is how they would handle things. And they didn't want to be subject to a claim afterwards that they did not follow their own rules. *** John Richey [said] if the employee was going to be fired, [he] needed to be fired through the Fire and Police Commission, and that I could grieve it afterwards.

> And I said, that will create duplicative efforts. It will be twice the hearings, twice the expense, and twice the trouble than having just one. But he said the City was not willing to give up its Fire and Police Commission hearing. And I said the Union was not willing to give up the right that we had a right [*sic*] to grieve discipline.
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> And so the compromise we worked out, as I recall, was that they would have a Police Commission hearing. The Police Commission would make its determination, and that I would be free to grieve the result.
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> * * *
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> So I agreed. It was a verbal agreement. We did have a Fire and Police Commission hearing. *** At the end of it, the Fire and Police Commission decided to fire Jon Mohring. And so he was discharged, and so I filed a grievance."

¶ 11 On cross-examination, Daniels agreed that while he did not believe that an extension of a grievance would toll the time period for filing to appeal the administrative decision, he also noted that he "had no idea till today that [he] would not be able to grieve this matter to arbitration." He asserted that he "was acting under certain representations when [he] did not appeal that Fire and Police Commission hearing ruling."

¶ 12 On May 3, 2014, the arbitrator issued a decision in which he found that he had jurisdiction to rule on the matter. Specifically, the arbitrator found that the grievance was both substantively and procedurally arbitrable. He noted that substantive arbitrability–an assertion that the arbitrator is without jurisdiction over the subject matter of the

grievance–may be raised at any time, and that the arbitrability of the grievance is not waived by the employer because it agreed to arbitrate. However, procedural arbitrability, *i.e.*, whether the agreed procedures have been followed, is generally treated as an affirmative defense, and therefore must be raised by the party asserting it at the first opportunity or it is deemed to have been waived. He noted that procedural arbitrability is for an arbitrator to decide, as such issues involve questions of contract interpretation. The arbitrator noted that:

> "What is clear from reading arbitrators' decisions in this area is this: Arbitrators routinely declare that adherence to time limits contained in a collective bargaining agreement for the filling [*sic*] and processing of grievances is a condition precedent to arbitration and will be enforced, thus generally resulting in dismissal of a grievance for non observance of time lines, and then proceed to imply a waiver when management fails to assert timeliness in the lower stages of the grievance procedure, even when the contract is completely silent on the issue of waiver[.]"

¶ 13 The arbitrator agreed with the FOP that the City should not be permitted to "sand bag" the opposing party by participating in the selection of an arbitrator and a hearing date and then, for the first time at the hearing, argue that the matter is not arbitable. The arbitrator noted that the City had 17 months to assert this defense, and there is no explanation for the delay. Given these facts, the arbitrator noted, "[the City] is really estopped from asserting such an affirmative defense the first day of the hearing. The

Union is not incorrect in asserting that the Employer's argument is an attempt to ambush it at the 11th hour with an unforeseen procedural obstacle."

¶ 14 The arbitrator also concluded that "equally important, and really dispositive in this case," is the fact that the contract is silent regarding what happens when a matter is submitted to the BFPC prior to arbitration. He noted that except in regards to probationary employees, the parties' CBA does not preclude submitting a discharge to arbitration simply because it went before the BFPC first, stating that "[c]lear and simple, the parties' collective bargaining agreement makes no distinction that discipline cannot be grieved *** or that discipline can only be channeled through the Fire and Police Commissioners, as some contracts do." The arbitrator also found support for his conclusion in Daniels' testimony regarding similar cases in the past, noting that no one from the City had ever claimed that the FOP could not grieve discharge; in fact, a few years prior to the matter at hand, Mohring was discharged by the City but put back to work by an arbitrator after Daniels filed a grievance, and another officer's discharge–though it settled a few days prior–was nevertheless successfully scheduled for arbitration between the City and the FOP. Therefore, the arbitrator found no merit to the City's arbitrability argument. On the merits, the arbitrator sustained the grievance, and ordered that Mohring be returned to work.

¶ 15 On May 9, 2014, the City filed in the trial court an emergency motion to stay the arbitration award, arguing that the award was "an impermissible collateral attack on the final decision of the Johnston City Board of Fire and Police Commissioners." A hearing

was held on June 2, 2014; on July 2, 2014, the trial court ruled in favor of the FOP on the complaint for declaratory judgment and the emergency motion to stay.

¶ 16 In its written order, the court noted that a CBA was in effect between the City and FOP at the time of Mohring's termination, and article 28 of the CBA provided that the venue decision may be made by the employee. The court noted that the FOP presented evidence that Mohring expressed the desire to waive the BFPC hearing and submit the issue to arbitration, and that the City agreed to allow arbitration after the BFPC hearing even though such dual procedure is prohibited by the CBA. The court agreed with the arbitrator that the matter was arbitrable and that the arbitrator had jurisdiction to decide the case on the merits. The court found that the CBA "clearly allowed for a grievance procedure on the issue of discharge" and that Mohring "only acquiesced to participate in the merit commission hearing upon the promise to allow a subsequent grievance of an adverse ruling. Whether the threshold issue of arbitrability would initially be made by the court, or by the arbitrator and then reviewed judicially, de novo, seems of no moment in that this court's decision would be the same." The court ruled that (1) the relevant CBA allowed for grievance of Mohring's discipline and discharge; (2) Mohring requested to pursue the grievance procedure as allowed by the CBA; (3) the arbitrator had jurisdiction to decide the case on the merits; and (4) the emergency motion to stay arbitration proceedings was denied.

¶ 17 The City filed a motion to reconsider on July 31, 2014; on August 14, 2014, it filed a motion to supplement the record. On September 19, 2014, both parties appeared by counsel to consider the City's motion, filed that same day, for default judgment against

Mohring for failure to appear or answer in this matter. The record indicates that at this appearance, Daniels requested leave to enter his appearance on behalf of Mohring, which was granted by the court. The court thereafter denied the City's outstanding motions, *i.e.*, for default judgment, to supplement the record, and to reconsider its July 2, 2014, order. The City appeals.

¶ 18 As a preliminary matter, we will address the arguments the parties raise in their briefs regarding the applicable CBA in the instant case, as this determination informs our ruling on the remaining issues on appeal. The City argues that the trial court erred in giving retroactive effect to the 2011-2013 CBA, as it was not signed by the parties until January 28, 2013, and did not exist prior to the BFPC hearings and decision.[3] The City asserts that therefore, the 2007-2011 CBA is the only one which could apply to Mohring's case, and that the CBA did not contain language allowing an employee to choose his venue for the determination of his discharge.[4] The FOP responds that the BFPC's

[3]We note that the City's brief repeatedly refers to the 2011-2013 CBA signing date as August 28, 2013, apparently a conflation with the signing date of the 2013-2016 CBA on August 21, 2013; while the incorrect date affects neither the substance of the City's argument nor our analysis of the matter, the 2011-2013 CBA was in fact signed on January 28, 2013, and we have incorporated the correct date in this order.

[4]The City argues that at the time that the 2007-2011 CBA was signed, it was not yet a home rule unit and therefore did not have the power to enter a contract that would deprive the merit board of its exclusive power to terminate a police officer, which was

decision occurred in 2012, and thus, the 2011-2013 CBA between the City and the Union was in retroactive effect despite its being signed approximately one month after Mohring's discharge.

¶ 19 We do not find that the trial court erred in applying the 2011-2013 CBA to its determination. Illinois courts have long recognized that a contract may have a retrospective operation, and such an application is to be determined from the contract itself. *Janowiak v. Tiesi*, 402 Ill. App. 3d 997, 1003 (2010). Retroactivity contravenes no principle of law and is determined by the intent of the parties as deduced from the instrument itself. *Monahan v. Fidelity Mutual Life Insurance Co.*, 148 Ill. App. 171, 174 (1909).

¶ 20 Here, article 30 of the 2011-2013 CBA expressly provides that the agreement is effective from August 1, 2011, and remains in full force until July 31, 2013. The contract also contains a clause stating that "in the event that contract negotiations are not concluded by the anniversary date, and August 1 of the New Year has passed before an agreement is reached between the parties, any agreement reached after August 1 shall be

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controlled by statute. See Pub. Act 95-356 (eff. Aug. 23, 2007) (removing the statute's distinction between whether bargaining is permissive or mandatory depending on whether the City is a home rule or non-home rule unit of government). While a full copy of the 2007-2011 CBA was not made available to us, the record indicates that it did not contain article 28's final clause (emphasized in our footnote 1) that explicitly provided for an employee's choice of venue.

retroactive to August 1." Thus, we find that, no matter the reason behind the date of the physical signing of the contract, the parties intended the 2011-2013 CBA to retroactively apply. As the 2011-2013 CBA encompasses the period in which the relevant events took place, we find no fault with the trial court's application of that CBA as the relevant agreement in the instant case.

¶ 21 This brings us to the City's primary argument, namely, that the FOP has no legitimate legal basis for its claim for relief. We note that, in fact, both parties advance an argument that the other party's failure to abide by the statutory guidelines for appeal is fatal to its case. When presented with a question of law involving statutory interpretation, our primary goal is to ascertain and give effect to the intention of the legislature, which we seek from the plain language of the statute. *Ries v. City of Chicago*, 242 Ill. 2d 205, 215-16 (2011). The standard of review is *de novo*. *Id*. at 216.

¶ 22 The City advances the argument that the principle of *res judicata* requires that the BFPC's termination order be given effect, as both parties participated in the BFPC hearing, the BFPC hearing was conducted and completed prior to the arbitration hearing, and the FOP allowed the expiration of the jurisdictional time limit for appeal prescribed by the Administrative Review Law. Therefore, the City asserts, the order became a final decision of the City's Fire and Police Commission established pursuant to 65 ILCS 5/10-

2.1 *et seq.*[5] and as such, "collateral attack on the Merit Board's decision became impossible [on December 20, 2012] for any purposes other than challenging personal or subject matter jurisdiction."

¶ 23 The City correctly notes that section 3-102 of the Administrative Review Law requires that Administrative Review Law apply to every action to review judicially a final decision of any administrative agency; that where it is applicable, forbids any other statutory, equitable, or common-law mode of review previously available; and, that unless review of the administrative decision is sought within the time and manner provided, the parties are barred from obtaining review of the decision. 735 ILCS 5/3-102

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[5]The City points to section 10-2.1-17 of the Illinois Municipal Code as evidence of its authority to discharge officers, which was adopted by Johnston City in 2010 pursuant to the Administrative Review Law. It provides that:

> "[N]o officer *** shall be removed or discharged except for cause, upon written charges, and after an opportunity to be heard in his own defense. The hearing shall be as hereinafter provided, unless the employer and the labor organization representing the person have negotiated an alternative or supplemental form of due process based upon impartial arbitration as a term of a collective bargaining agreement. Such bargaining shall be mandatory unless the parties mutually agree otherwise. Any such alternative agreement shall be permissive." 65 ILCS 5/10-2.1-17 (West 2012).

(West 2012). The City also correctly notes that under the doctrine of *res judicata*, a final judgment rendered by the BFPC on the merits is conclusive as to the rights of the parties, and the judgment is a bar to any subsequent actions involving the same claims or demands by the same parties. See *Housing Authority v. Young Men's Christian Ass'n*, 101 Ill. 2d 246 (1984). We must nevertheless disagree that the doctrine applies, however, as the City's ordinances (and therefore the relevant administrative statutes) are explicitly subordinate to the labor laws that give the parties the power to contractually agree to give an employee his choice of venue for grievances.

¶ 24 In support of its argument, the City cites *Board of Governors of State Colleges & Universities v. Illinois Educational Labor Relations Board*, 170 Ill. App. 3d 463 (1988), wherein the Fourth District Appellate Court held that an employee was barred from pursuing an arbitration award once she had elected to follow the civil service discharge procedures. *Board of Governors*, 170 Ill. App. 3d at 484. The contract at issue was a CBA between the Board and the American Federation of State, County and Municipal Employees, and subject to the Illinois Educational Labor Relations Act. See *Board of Governors*, 170 Ill. App. 3d at 467. The employee, after receiving charges for her discharge, had filed a grievance with her university employer, who told her that her only option was to appeal her discharge through the merit board. *Id*. at 466-67. A merit board hearing was held showing cause for her discharge, and the employee's union representative thereafter filed a complaint that the merit board had committed an unfair labor practice by refusing to process the grievance. *Id*. at 467. The court found that while the employee had been entitled to grieve her discharge under the provisions of her

collective bargaining agreement, the principle of *res judicata* precluded the arbitrator from later determining issues of good cause for discharge; the remedial order requiring the grievance to be processed was vacated because the employee did not seek judicial review of the merit board's decision or seek a stay of its enforcement. *Id*. at 483.

¶ 25 While we note the factual similarities, we nevertheless find Mohring's case distinguishable from the situation in *Board of Governors.* This is because labor contracts, unlike civil service contracts, are established and administered pursuant to the Illinois Public Labor Relations Act (IPLRA) (5 ILCS 315/1 *et seq.* (West 2012)), and the ILPRA statutes explicitly take precedence over any contrary law.[6] The parties' grievance

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[6]Section 15 states that:

"(a) In case of any conflict between the provisions of this Act and any other law *** relating to wages, hours and conditions of employment and employment relations, the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control. ***

(b) Except as provided in subsection (a) above, any collective bargaining contract between a public employer and a labor organization executed pursuant to this Act shall supersede any contrary statutes, charters, ordinances, rules or regulations relating to wages, hours and conditions of employment and employment relations adopted by the public employer or its agents. Any collective bargaining agreement entered into prior to the effective date of this Act shall remain in full force during its duration.

procedure, therefore, is explicitly governed by the IPLRA,[7] which expresses a preference for arbitration as a means of resolving labor disputes. *Illinois Fraternal Order of Police Labor Council v. Town of Cicero,* 301 Ill. App. 3d 323, 331 (1998).

(c) It is the public policy of this State, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution, that the provisions of this Act are the exclusive exercise by the State of powers and functions which might otherwise be exercised by home rule units. Such powers and functions may not be exercised concurrently, either directly or indirectly, by any unit of local government, including any home rule unit, except as otherwise authorized by this Act." 5 ILCS 315/15 (West 2012).

[7]Grievance procedures under the IPLRA are outlined as follows:

"The collective bargaining agreement negotiated between the employer and the exclusive representative shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise. Any agreement containing a final and binding arbitration provision shall also contain a provision prohibiting strikes for the duration of the agreement. The grievance and arbitration provisions of any collective bargaining agreement shall be subject to the Illinois 'Uniform Arbitration Act'." 5 ILCS 315/8 (West 2012).

¶ 26 We do not disagree with the City that final decisions rendered by boards of fire and police commissions are reviewable exclusively under the Administrative Review Law. The catch, however, is that our courts have held that a separate procedural remedy for a discharged employee may properly supplement his rights. *Board of Governors*, 170 Ill. App. 3d at 478. Section 10-2.1-17 of the Illinois Municipal Code clearly allows for supplemental ways of resolving disputes, stating that a hearing shall be provided "*unless* the employer and the labor organization representing the person have negotiated an alternative or supplemental form of due process based upon impartial arbitration as a term of a collective bargaining agreement." (Emphasis added.) 65 ILCS 5/10-2.1-17 (West 2012). This provision is explicitly subordinate to the IPLRA. See 5 ILCS 315/15 (West 2012). Thus, pursuant to statute, Mohring was given the choice of an alternative venue for contesting his discharge if one was available pursuant to his collective bargaining agreement. The relevant CBA plainly provided Mohring the choice to grieve his dispute rather than appeal it to the BFPC. Therefore, again unlike the employee in *Board of Governors* who had requested both a hearing and arbitration, Mohring chose arbitration; the evidence before us reflects that he participated in the merit board hearing only because he was assured that he would thereafter be allowed to proceed in the venue he statutorily and contractually had the right to–and did–choose. We therefore hold that because the BFPC did not have the authority to force Mohring to choose its venue, *res judicata* does not bar the result in the instant case and that the circuit court did not err in finding that the matter was arbitrable.

¶ 27 The City also asserts that even if the FOP is not procedurally prevented from enforcing the arbitration result, "[a]ny claims of an employee having an ability to choose venue, to demand arbitration or any other circumstance does not overcome the express, unambiguous language [in article 28] selected by the trial court that under NO circumstance can there be two hearings." Therefore, the City argues, the subsequent attempt to hold arbitration is prohibited by the plain language of the CBA on which the trial court relied. The FOP responds that the City's contractual argument falls short on two grounds: first, it ignores the fact that the parties agreed to allow both the BFPC and arbitration processes to take place, which acted as a one-time modification of the CBA; further, that even if such an agreement violated the CBA, the plaintiff should be estopped from advancing that argument because the FOP and Mohring relied to their detriment on the City's representations.

¶ 28 We agree with the FOP that parties may modify an existing contract so long as the modifications satisfy the ordinary standards of contract law; that is, there is mutual consent, with an offer, acceptance, and valid consideration given (*Scutt v. LaSalle County Board*, 97 Ill. App. 3d 181, 185 (1981)), and any act or promise which is of benefit to one party or disadvantage to the other is a sufficient consideration (*Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 330 (1977)). Here, Daniels' uncontested testimony at the arbitration hearing reflects that the parties agreed to their mutual detriment to hold two hearings, at twice the time, effort, and cost, in order for both parties to conduct their preferred disciplinary protocols.

¶ 29 We also agree with the FOP that even if this evidence were not sufficient to support the notion that the parties agreed to modify the contract so as to allow both hearings, both the arbitrator and the trial court astutely noted that the FOP only agreed to participate in the hearing upon the promise to allow a subsequent grievance of an adverse ruling, and the FOP's reliance on the City's promise should not permit the City to receive a default ruling in its favor.

¶ 30 Equitable estoppel requires a demonstration that (1) the other person misrepresented or concealed material facts; (2) the other person knew at the time he made the representations that they were untrue; (3) the party claiming estoppel did not know that the presentations were untrue when they were made and when they were acted upon; (4) the other person intended or reasonably expected that the party claiming estoppel would act upon the representation; (5) the party claiming estoppel reasonably relied upon the representation in good faith to his detriment; and (6) the party claiming estoppel would be prejudiced by his reliance on the representations if the other person is permitted to deny the truth thereof. *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 313-14 (2001).

¶ 31 Daniels' uncontested testimony and the relevant timeline reflect that the requirements to invoke equitable estoppel have been met, and the parties' representations to each other were clearly factored into the trial court's decision. We could also find support for the court's decision in the relevant case law generally, because as we have noted, arbitration is the favored procedure when resolving labor disputes. *Town of*

Cicero, 301 Ill. App. 3d at 331. We find that the CBA language precluding both a BFPC and arbitration hearing does not invalidate the parties' arbitration award.

¶ 32 Finally, the City argues that default judgment against Mohring was warranted, as he did not appear or answer within the prescribed time limits and therefore has admitted the allegations of the City's complaint. The City notes that attorney Daniels only requested leave to enter his appearance on behalf of Mohring at the default judgment hearing, and Illinois Supreme Court Rule 13(c)(1) (eff. July 1, 2013) requires that "[a]n attorney shall file his written appearance or other pleading before he addresses the court unless he is presenting a motion for leave to appear by intervention or otherwise."

¶ 33 The record indeed reflects that Daniels never formally made his entry of appearance for Mohring; however, we also must note that it was clear from the parties' filings that Daniels was representing Mohring. The FOP responds in brief that Daniels admitted this mistake and at the hearing, requested that the court accept his entry late. We find no fault with the trial court's acceptance of Daniels' late entry of appearance, as granting a default judgment is a "drastic remedy that should be used only as a last resort." *In re Haley D.*, 2011 IL 110886, ¶ 69. The trial court did not abuse its discretion in this instance.

¶ 34 In sum, we agree with the trial court that the CBA, which controlled the rights and duties between the parties, allowed for grievance of Mohring's discipline and discharge, and that Mohring was expressly allowed to–and did–choose arbitration over the BFPC hearing. As such, we affirm the decision of the circuit court finding that the arbitrator had jurisdiction over the dispute and the arbitrator made a valid decision on the merits.

¶ 35 Affirmed.