FIRST DIVISION
February 29, 2016

No. 1-15-2050
2016 IL App (1st) 152050-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHICAGO TRANSIT AUTHORITY, Plaintiff-Appellant, v. AMALGAMATED TRANSIT UNION, LOCAL 241, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Cook County. No. 13 CH 21062 Honorable Leroy Martin, Jr., Judge Presiding

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Liu and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* Arbitrator's award drew its essence from the parties' collective bargaining agreement; award did not violate a well-defined and dominant public policy; trial court did not abuse its discretion when it denied a motion to reopen proofs and a motion to reconsider based on newly discovered evidence; affirmed.

¶ 2 Plaintiff, the Chicago Transit Authority (CTA), appeals from an order granting summary judgment to defendant, Amalgamated Transit Union, Local 241 (Union), after the CTA sought to vacate an arbitration award that was entered in the Union's favor. The CTA also appeals from orders that denied its motion to reopen proofs and motion to reconsider based on newly

discovered evidence. On appeal, the CTA contends that: (1) the arbitrator exceeded his authority; (2) the arbitration award violates public policy; (3) the court abused its discretion by refusing to reopen proofs; and (4) the court abused its discretion by refusing to reconsider its decision. For the following reasons, we affirm.

¶ 3 This dispute stems from efforts to repair problems with about 1,000 buses that the CTA bought from a manufacturer. Shortly after the buses were delivered, the buses' front shock absorbers began to fail. Initially, Union members performed the repairs, but the CTA eventually determined the problems were a fleet design defect. The CTA contacted the manufacturer, who devised a retrofit and contracted with an outside entity to perform the work required for the retrofit. A Union member observed the outside entity working on the buses on CTA property and filed a grievance in January 2009, alleging that Union members should have been performing this work. The CTA maintained that, according to the warranty provisions in the contract with the manufacturer, the manufacturer had the obligation to repair and replace any components covered by the warranty. The matter proceeded to arbitration.

¶ 4 In relevant part, the parties' collective bargaining agreement (CBA) included a section about subcontracting, which provided:

> "2.7 SUBCONTRACTING The Authority shall not subcontract or assign to others work which is normally and regularly performed by employees within the collective bargaining unit of Local 241 or of Local 308, except in cases of emergency when the work or service required cannot be performed by the available complement of unit members. The Authority reserves the right to continue its present practice of contracting out certain work of the nature and type contracted out in the past."

¶ 5 The CBA also provided that:

> "The authority of the arbitrators shall be limited to the construction and application of the specific terms of this Agreement or to the matters referred to them for arbitration. They shall have no authority or jurisdiction directly or indirectly to add to, subtract from[,] or amend any of the specific terms of this Agreement or to impose liability not specifically expressed herein."

¶ 6 Also relevant to the dispute were several warranty provisions in the CTA's contract with the bus manufacturer. The contract stated that the manufacturer "warrants and guarantees to the original Chicago Transit Authority each complete bus, and specific subsystems and components ***." The contract also stated that the warranties would not apply "to the failure of any part or component of the bus that directly results from misuse, negligence, accident, or repairs not conducted in accordance with the Contractor provided maintenance manuals and with workmanship performed by adequately trained personnel in accordance with recognized standards of the industry." The contract further provided that:

> "The Contractor is responsible for all warranty-covered repair work. To the extent practicable, the Chicago Transit Authority will allow the Contractor or its designated representative to perform such work. At its discretion, the Chicago Transit Authority may perform such work if it determines it needs to do so based on transit service or other requirements. Such work will be reimbursed by the Contractor."

¶ 7 At the arbitration hearing held on July 23, 2012, the arbitrator defined the issue presented as whether the CTA "[violated] Section 2.7 of the parties' collective bargaining agreement when

an outside contractor performed certain work relating to the front shock absorbers on 100 series buses at the Kedzie garage on January 21, 2009?"

¶ 8 At the hearing, the Union presented the testimony of several employees. A mechanic, Mark Schergen, testified that it was common for him to perform a repair that was covered under warranty and that he had worked on issues across an entire fleet of buses. Michael McBride, a senior garage instructor who had been a bus mechanic and bus servicer, stated that he had normally and regularly replaced shocks. McBride also testified that bus mechanics were trained in how to revise the computer program on buses. Daniel Hrycyk, a bus mechanic, described two instances where he had performed fleet-wide warranty repairs on buses. Carlos Acevedo, a mechanic who also held a position with the Union, stated that it became common to see outside vendors on CTA property doing mechanical work after 2003, and this became even more common in 2004.

¶ 9 As one of its witnesses, the CTA presented James Gebis, who retired from the CTA in 2008 as a chief equipment engineer. Gebis testified that the issue that prompted the grievance involved "an abnormal type of failure of a shock absorber" and was "not the type of failure that [he had] seen previously on a fleet-type problem." According to Gebis, the practice of a manufacturer's subcontractor coming to the CTA to work on a design defect went back to the late 1970s and "continued on through the years." Gebis also discussed design defects from 1983, 1985, 1990, 1991, 1995, and 2000 in which outside entities performed repairs. In some of those instances, CTA bus repairers could have done at least some of the repairs.

¶ 10 Dennis Milicevic, the director of bus maintenance, testified that while some of the work at issue on the buses could have been done by bus repairers, the remainder was "highly precision work and obviously work that we want the bus manufacturer to take full responsibility for."

Milicevic further stated that the CTA does not hire bus mechanics to address design defects, but rather, to "simply replace defective components on our vehicles."

¶ 11 Following the hearing, the parties filed post-hearing briefs, which we note are not in the record. Ultimately, the arbitrator found that the CTA violated section 2.7 of the CBA when it allowed the work in question to be done by an outside entity. Explaining his result, the arbitrator stated that under section 2.7 of the CBA, the Union was required to prove that the work in question was "normally and regularly" performed by Union members. The arbitrator further stated that if the Union did so, then the CTA would have to prove that an emergency required awarding the work to others or that the award of the work was consistent with the CTA's "past practice of such contracting out." The arbitrator found that the CTA had failed to show that the work in question was different from work done by Union members in the past and accordingly, he had to find that the work in question was "normally and regularly" performed by Union members. The arbitrator further found that the emergency exception in section 2.7 did not apply, as Union members "normally and regularly" performed the work in question and so were qualified and available. As to whether there was a "present practice" of contracting out, the arbitrator stated:

> "Here the Employer relies on the record evidence that it has contracted out fleet wide work in 1983, 1985, 1990, 1991, 1995, 2000[,] [and] 2004. That evidence however is offset by the fact that that course of action has been vigorously challenged by the Union in numerous grievances. Under these circumstances I am hard pressed to conclude, as Section 2.7 demands, that there has been a 'practice' that justified the contracting out herein."

¶ 12 After the award was issued, the CTA requested an executive session. In part, the CTA noted that a document submitted by the Union listed one subcontracting grievance from 2003 and the rest of the listed grievances were from 2007 and later. The CTA contended that "one must conclude that the substantial amount of warranty and design retrofit work done by manufacturers or their representatives in the seventies, eighties, nineties, and into the twentieth century [*sic*] was largely if not altogether accepted by the Union." The CTA further stated that there was no evidence that the Union grieved any "retrofit fleet wide work" in 1983, 1985, 1990, 1991, 1995, 2000, or 2004. According to the CTA, that the Union filed previous grievances involving the same language in the CBA, but based on different facts, was not enough to find in the Union's favor.

¶ 13 On June 14, 2013, the arbitrator issued an order following the executive session. In the order, the arbitrator noted the CTA's assertions that the Union did not rebut the CTA's evidence of subcontracting before 1985 and that the Union grievances starting in 2007 were insufficient to preclude a finding of a "present practice" because the CTA subcontracted the type of work in question before 2007. The arbitrator responded that "in light of the fact that since 2007, a period of on or about five years, the Union has in fact grieved the type of subcontracting at issue herein it certainly constitutes a break in any 'present practice' that may have been extant before that date."

¶ 14 Subsequently, on March 26, 2014, the CTA filed an amended petition to vacate the award.[1] In part, the CTA asserted that the award did not draw its essence from the CBA. The CTA contended that in his interpretation of section 2.7 of the CBA, the arbitrator acknowledged that on numerous occasions since 1983, manufacturers had performed the same type of warranty work that was at issue. The CTA stated that "this was precisely the type of work that [the] CTA

[1] CTA's initial petition to vacate was dismissed without prejudice on January 24, 2014.

reserved 'to continue its present practice of contracting out' " when section 2.7 was added to the contract in 1985. Yet, according to the CTA, the arbitrator wrote out of the contract the language that reserved to the CTA the right to continue its present practice of contracting out warranty work. The CTA also contended that the award should be vacated on public policy grounds because it limited and interfered with the "CTA's nondelegable and statutory right to enter into contracts to purchase buses with warranty provisions requiring a bus manufacturer to perform warranty repairs." In support, the CTA cited sections 13 and 17 of the Metropolitan Transit Authority Act (Act) (70 ILCS 3605/13, 17 (West 2012)).

¶ 15 In response, the Union filed a motion to confirm the award and dismiss the CTA's petition pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)). The Union contended in part that the award drew its essence from the CBA because the arbitrator interpreted the CBA and applied the facts as he found them. The Union further asserted that the CTA had failed to plead an explicit, well-defined, and dominant public policy.

¶ 16 After a hearing, the court denied the Union's motion to dismiss, finding that the CTA had sufficiently pled its complaint.

¶ 17 Subsequently, the parties filed cross motions for summary judgment. In its motion, the CTA asserted in part that the arbitrator exceeded his authority because the award did not draw its essence from the CBA. The CTA contended that there was no language in the CBA that permitted an arbitrator to uphold a grievance based on the number of similar grievances the Union had filed in the past. The CTA stated that the arbitrator wrote a provision into the CBA and wrote out the language that reserved to the CTA its right to continue its present practice of contracting out fleet-wide warranty work. The CTA additionally contended that the court should vacate the award on public policy grounds because it limited and interfered with the CTA's

statutory right to enter into contracts to purchase buses with warranty provisions that required a bus manufacturer to perform repairs, pursuant to section 13 of the Act (70 ILCS 3605/13 (West 2012)). The CTA stated that the award deprived the CTA of the value of its bus warranties, which are customary in the sale and purchase of vehicles and for which the CTA had paid valuable consideration since the 1970s. Attached to the CTA's motion was an affidavit from the CTA's director of bus maintenance, who averred that it was customary for the CTA to purchases buses with warranties that provide for the manufacturer or its representative to perform warranty maintenance and repair.

¶ 18 In its motion for summary judgment, the Union renewed its motion to confirm the award and contended that the CTA was asking the court to substitute its judgment for the arbitrator's because the CTA did not like his interpretation. According to the Union, the award drew its essence from the CBA because it was based on the arbitrator's interpretation of the CBA. As to CTA's public policy argument, the Union stated that section 13 of the Act said nothing about warranties or any other substantive terms of bus purchase agreements. The Union further stated that the Act merely authorized the CTA to buy buses and that section 13 only restricted the form of a purchase agreement, meaning that the CTA could not enter into an oral agreement to buy buses or "scribble one out on a cocktail napkin." The Union also noted that the warranty at issue expressly permitted the Union to do the work. Accordingly, even if the Act gave the CTA a nondelegable right to enter into a bus purchase agreement where the manufacturer is required to perform all warranty repairs, that right was not implicated here.

¶ 19 Additionally, responding to the CTA's motion, the Union stated that "[m]ore than occasional, intermittent use of subcontractors to perform fleet-wide warranty work has occurred only since the mid-2000s, when a torrent of such work led the Union to file many grievances."

The Union continued, however, that this issue was immaterial because it went to the merits of the award.

¶ 20 In response to the Union, the CTA asserted in part that the arbitrator "ignored entire sentences, added new requirements, and improperly shifted the burden to [the] CTA." The CTA additionally stated that the Union did not cite any authority or legislative history to show that section 13 of the Act was passed "only to prevent the contract for the purchases of buses to be written 'out on a cocktail napkin.' " The CTA asserted that its interpretation—that the Act authorized the CTA to buy buses in the normal course, warranties included—was more sensible.

¶ 21 Following a hearing, on April 6, 2015, the court entered summary judgment in favor of the Union and against the CTA and confirmed the award. In its ruling, the court stated that "[i]t makes perfect sense to me that *** the manufacturer should be responsible to correct any design defects." The court further stated that nonetheless, the CTA was arguing about the arbitrator's interpretation of the CBA and the court did not believe that the award failed to draw its essence from the CBA. The court also asserted it did not "see this clear public policy the way the CTA posits it" and did not find that the award violated public policy.

¶ 22 Subsequently, on May 5, 2015, the CTA filed a motion to reopen proofs and motion to reconsider. The CTA's motion to reopen proofs focused on a document, purportedly from 2005, that listed the Union's proposed changes to the CBA. One of the proposals was to add a provision that "all warranty work must be performed by bus repairmen." The CTA stated that it "became aware that the document existed with the particular proposal in question" only after it filed its motion for summary judgment. The CTA further stated that the document was not located at CTA headquarters and was instead "with [the] CTA's outside counsel that handles its contract negotiations with [the Union]." According to the CTA, the document would not create

unfair surprise or prejudice to the Union because the Union drafted, reviewed, and was familiar with it. The CTA additionally contended that the document was of utmost importance because it showed that "the Union acknowledged that [the] CTA had a right to have bus manufacturers' subcontractors perform warranty work instead of Union bus mechanics and they were seeking to change that past practice." The CTA further asserted that the document showed that the CBA already included the right for the CTA to have bus manufacturers or their subcontractors perform warranty work.

¶ 23 The CTA also contended that the court should reconsider its summary judgment ruling in light of the list of Union proposals, which was newly discovered evidence. The CTA explained why the list was not available at the original hearing, stating in part that in 2005, the list was exchanged between the parties' representatives when the Union sought to negotiate the proposal with CTA's outside counsel. The CTA stated that its outside counsel retained the document and presented it to the CTA after the summary judgment motion was filed.

¶ 24 Attached to the CTA's motion was a declaration from James P. Daley, who stated he had served as labor counsel to the CTA for more than 30 years and had been the CTA's chief negotiator and spokesman in collective bargaining negotiations with the Union. Daley stated that the Union provided him with the list of proposals in or around March 2005.

¶ 25 In response to the CTA's motions, the Union stated that the CTA could have produced the list of proposals at any time because it had been in the possession of the CTA's own attorney. The Union also asserted that the document was subject to multiple interpretations, including that the Union proposed that warranty work should be performed by Local 241 bus repairmen rather than employees in other bargaining units, or that it should be performed by bus repairmen rather than employees in other classifications, or it could have been submitted as an attempt to resolve

then-pending grievances over subcontracting at the bargaining table rather than through arbitration. Additionally, the Union contended that granting the CTA's motion "would *** open the door to relitigating the parties' contractual dispute on its merits before this [c]ourt."

¶ 26 Following a hearing, the court denied the CTA's motion to reopen proofs and motion to reconsider on June 17, 2015. In part, the court found that the document was not unavailable because if it was in outside counsel's possession, it was in the CTA's possession as well.

¶ 27 On appeal, the CTA first contends that the arbitrator exceeded his authority by both adding and subtracting from the terms of the CBA, and accordingly, the award does not draw its essence from the CBA. The CTA argues that by finding that grievances could nullify a present practice of subcontracting, the arbitrator required that a practice be unopposed, and so ignored the provision in the CBA that arbitrators may not add to any of the specific terms of the CBA. The CTA further asserts that the arbitrator improperly subtracted a term from the CBA because under the standard erected in the award, the Union can bring an end to any subcontracting practice, no matter how well-established, by grieving it. The CTA argues that as a result, the arbitrator wrote out the following sentence in the CBA: "The Authority reserves the right to continue its present practice of contracting out certain work of the nature and type contracted out in the past."

¶ 28 We begin by noting that a court's review of an arbitrator's award is extremely limited. *Griggsville-Perry Community Unit School District, No. 4 v. Illinois Educational Labor Relations Board*, 2013 IL 113721, ¶ 18. If possible, a court must construe an award as valid. *American Federation of State, County & Municipal Employees v. Illinois*, 124 Ill. 2d 246, 254 (1988) (*AFSCME I*). Our limited review "reflects the legislature's intent in enacting the Illinois Uniform Arbitration Act—to provide finality for labor disputes submitted to arbitration." *American*

Federation of State, County & Municipal Employees v. Department of Central Management Services, 173 Ill. 2d 299, 304 (1996) (*AFSCME II*). Under section 12(e) of the Illinois Uniform Arbitration Act, the grounds for vacating, modifying, or correcting "any award entered as a result of an arbitration agreement which is a part of or pursuant to a collective bargaining agreement" are those which existed at common law: fraud, corruption, partiality, misconduct, mistake, or failure to submit the question to arbitration. 710 ILCS 5/12(e) (West 2014); *Water Pipe Extension, Bureau of Engineering Laborers' Local 1092 v. City of Chicago*, 318 Ill. App. 3d 628, 635-36 (2000). Under the common law standard, "a court is duty bound to enforce a labor-arbitration award if the arbitrator acts within the scope of his *** authority and the award draws its essence from the parties' collective bargaining agreement." (Internal quotation marks omitted.) *Id*. at 636.

¶ 29 To decide whether an award draws its essence from the collective bargaining agreement, a court determines whether the arbitrator limited himself to interpreting the collective bargaining agreement. *Amalgamated Transit Union, Local 241 v. Chicago Transit Authority*, 342 Ill. App. 3d 176, 180 (2003). A court has "no business weighing the merits of a grievance." (Internal quotation marks omitted.) *Griggsville-Perry Community Unit School District No. 4*, 2013 IL 113721, ¶ 18. Where the parties have contracted to have disputes settled by an arbitrator, instead of by a judge, it is the arbitrator's view of the facts and the meaning of the contract that they have agreed to accept. (Internal quotation marks omitted.) *Id*. An award will be overturned as not drawing its essence from the collective bargaining agreement when the arbitrator based the award on a body of thought, feeling, policy, or law outside of the contract. *Amalgamated Transit Union, Local 241 v*, 342 Ill. App. 3d at 180. However, it is not enough to show that the arbitrator committed an error, or even a serious error. *Griggsville-Perry Community Unit School District*

No. 4, 2013 IL 113721, ¶ 20. Even when the award is based on the arbitrator's misreading of the contract, a court must uphold the award as long as the arbitrator's interpretation is derived from the language of the contract. *Amalgamated Transit Union, Local 241*, 342 Ill. App. 3d at 180. The issue is not whether the arbitrator erred in interpreting the contract, but whether he interpreted the contract. *Water Pipe Extension*, 318 Ill. App. 3d at 640. We review *de novo* whether an arbitrator exceeded his authority. *Id*. at 634.

¶ 30 Rather than add or subtract terms, we find that the arbitrator limited himself to interpreting the CBA and did not exceed his authority. The key provision at issue is the following sentence of section 2.7 of the CBA: "The Authority reserves the right to continue its present practice of contracting out certain work of the nature and type contracted out in the past." CTA essentially challenges the arbitrator's approach to determining whether there was a "present practice" of contracting out. In the award, the arbitrator noted the CTA's evidence that it had contracted out fleet-wide work in certain years, and balanced this against evidence that the Union had "vigorously challenged" that course of action through grievances. Because of those grievances, the arbitrator did not find that there had been a "present practice" that justified the contracting out at issue. Later, in the order following the executive session, the arbitrator stated that because the Union had grieved the type of subcontracting at issue since 2007, there had been a break in any "present practice" that might have previously existed.

¶ 31 Based on the award's language, the arbitrator was interpreting a term of the CBA, which he was entitled to do. The arbitrator had the power to determine what was required for a "present practice"—a term that was not defined in the portions of the CBA in the record. See *Star Tribune Co. v. Minnesota Newspaper Guild Typographical Union*, 450 F.3d 345, 349 (8th Cir. 2006) (because the collective bargaining agreement did not define "present practice," the

arbitrator had to look at extrinsic evidence to inform his interpretation, including an examination of the past practice of the parties to the agreement); *Board of Education of Harrisburg Community Unit School District No. 3 v. Illinois Educational Labor Relations Board*, 227 Ill. App. 3d 208, 213 (1992) (arbitrator had power to determine that "due process" within meaning of collective bargaining agreement required "a more formalized procedure than is required by the fourteenth amendment").

¶ 32 Further, it was not unheard of for the arbitrator to make mutual assent part of his analysis. As the Union notes, while unilateral interpretations of contract language "might not bind the other party *** continued failure of one party to object to the other party's interpretation is sometimes held to constitute acceptance of such interpretation so as, in effect, to make it mutual." Frank Elkouri & Edna Elkouri, How Arbitration Works 12-21 (7th ed. 2012). The arbitrator arrived at his result by interpreting the language of the CBA and did not impose "his own personal views of right and wrong." See *Griggsville-Perry Community Unit School District, No. 4*, 2013 IL 113721, ¶ 20. Accordingly, the award drew its essence from the agreement and the arbitrator did not exceed his authority.

¶ 33 To be sure, it is entirely possible to interpret the CBA differently, and we agree with the CTA that the arbitrator's analysis leads to a seemingly bizarre result. Nonetheless, we will not overrule a contractual interpretation merely because it differs from one that we think is more correct. *Water Pipe Extension*, 318 Ill. App. 3d at 637. Other jurisdictions may allow for a more searching review of arbitration awards. See *Wachovia Securities, LLC v. Brand*, 671 F.3d 472, 483 (4th Cir. 2012) (stating requirements for vacating an arbitration award based on "manifest disregard," wherein an arbitrator refuses to heed a legal principle that is clearly defined and not subject to reasonable debate). Here, however, because we cannot say there is "no interpretive

route to the award" ((Internal quotation marks omitted.) *Griggsville-Perry Community Unit School District No. 4*, 2013 IL 113721, ¶ 20), we find that the award drew its essence from the CBA. Ultimately, "the arbitrator's construction holds, however good, bad, or ugly." *Oxford Health Plans LLC v. Sutter*, 133 S. Ct. 2064, 2071 (2013).

¶ 34 Next, the CTA contends that the award should be vacated because it violates public policy. The CTA states that Section 13 of the Act authorizes it to purchase vehicles and other equipment "by agreements *** in the form customarily used in such cases." 70 ILCS 3605/13 (West 2012). According to the CTA, "form" in Section 13 must be understood to refer to the types of provisions, including warranty provisions, typically found in purchase contracts for particular types of equipment. The CTA further asserts that the typical form of agreement for buses requires the manufacturer or its representatives to remove, redesign or repair, and replace defective parts. The CTA also asserts that the fact that these warranties also permit CTA employees to do this work is not unusual and a practical outcome for work that is too minor or finite to justify calling the manufacturer. The CTA contends that the award violates this public policy because requiring the purchaser to remove and replace defective parts risks voiding the warranty.

¶ 35 Courts have created a public policy exception to vacate arbitration awards that otherwise derive their essence from a collective bargaining agreement. *AFSCME II*, 173 Ill. 2d at 306. An award that contravenes "paramount considerations of public policy is not enforceable." *AFSCME I*, 124 Ill. 2d at 260. For a court to vacate an award based on the public policy exception, the contract as interpreted by the arbitrator must violate an explicit public policy. *AFSCME II*, 173 Ill. 2d at 307. The public policy exception is narrow and "is invoked only when a contravention of public policy is clearly shown." *Id*. The public policy at issue must be "well-

defined and dominant" and "ascertainable by reference to the law and legal precedents and not from generalized considerations of supposed public interests." (Internal quotation marks omitted.) *Id.* While there is no precise definition of public policy, it is to be found in the Constitution, in statutes, and when these are silent, in judicial decisions and the constant practice of government officials. *Id.*; *AFSCME I*, 124 Ill. 2d at 260.

¶ 36 To vacate an award under the public policy exception, a court undertakes a two-step analysis. *Chicago Transit Authority v. Amalgamated Transit Union, Local 241*, 399 Ill. App. 3d 689, 696 (2010). The first question is whether a well-defined and dominant public policy can be identified. *AFSCME II*, 173 Ill. 2d at 307. If so, then the court must determine whether the arbitration award violated that public policy. *Id.* at 307-08.

¶ 37 Here, the CTA's argument falls short at the first step because the CTA has failed to identify a well-defined and dominant public policy. The CTA relies on two sources for its public policy that the CTA is authorized to enter into agreements where the manufacturer is required to perform certain repairs. The first source is a reading of section 13 of the Act, which states that the CTA "shall have power to purchase equipment such as cars, trolley buses and motor buses, and may execute agreements, leases and equipment trust certificates in the form customarily used in such cases appropriate to effect such purchase *** ." 70 ILCS 3605/13 (West 2012). According to the CTA, "form" includes warranty provisions where the manufacturer is required to perform certain repairs. As another source for its public policy, the CTA refers in its brief to "everyday knowledge that purchasers of vehicles in both the public and private sectors typically

purchase warranties with their vehicles and that those warranties typically provide that the manufacturer or its authorized representatives will perform the bulk of the warranty work."[2]

¶ 38 We agree with the CTA that it makes sense for a manufacturer to perform certain warranty repairs. We understand the CTA's further assertions that it is in both the manufacturer's and purchaser's interest for the manufacturer to have primary responsibility for warranty work. However, whether or not this is good practice, the combination of section 13 of the Act and these additional considerations falls short of a well-defined and dominant public policy. The CTA has not cited any judicial decisions or legislative history that interprets either the word "form" in section 13 or section 13 as a whole. The CTA is asking this court to take a leap—based on its assertions that having its desired warranty is a good idea and is typically done—that "form" includes warranties where the manufacturer is required to make certain repairs. Finding a well-established and dominant public policy in this case would stand in stark contrast to other instances where a court has found a well-defined and dominant public policy. See *AFSCME II*, 173 Ill. 2d at 311-316 (finding well-defined and dominant public policy against Department of Children and Family Services's (DCFS) employment of people whose dishonesty and neglect could seriously undermine the welfare, safety, and protection of minors based on judicial decisions and DCFS's purposes and duties as stated in statutes); *Chicago Transit Authority*, 399 Ill. App. 3d at 696-98 (noting that the well-defined and dominant public policies favoring the safe and secure transportation of the public, including children, and the protection of the public, especially juveniles, from convicted sex offenders was derived from the Illinois Constitution, specific sections of the Act, judicial decisions, and statutes explicitly governing the behavior of sex offenders); *Chicago Fire Fighters Union Local No. 2 v. City of Chicago*, 323 Ill. App. 3d

[2] CTA attempted to submit information about industry standards and historical information about CTA warranties in a supplemental appendix that we declined to accept, and this information is not found elsewhere in the record on appeal.

168, 176-77 (2001) (stating it was "unquestionable" that an established public policy exists favoring safe and effective fire protection services based on the Fire Protection District Act (70 ILCS 705/1 (West 1998)), the Illinois Fire Protection Training Act (50 ILCS 740/1 *et seq.* (West 1998)), and several other statutes relating to fire safety). Unlike the relevant parties in those cases, the CTA has failed to provide sufficient, explicit support for a well-defined and dominant public policy. Instead, the CTA's supposed public policy falls into the category of "generalized considerations of supposed public interests" (*AFSCME II*, 173 Ill. 2d at 307) that cannot form the basis of the public policy exception.

¶ 39 Next, the CTA contends that the circuit court abused its discretion when it refused to reopen proofs. The CTA recalls that in its motion, it sought to submit a 2005 Union proposal to add a provision to the CBA that "all warranty work must be performed by bus repairmen." The CTA argues that it provided a reasonable excuse for failing to submit the additional evidence sooner, in that it never actually possessed a copy of the document, the age of the document is beyond any reasonable retention period, and it did not know the document existed either during the arbitration or during the proceedings to vacate the award. The CTA further contends that the Union would not be surprised or unduly prejudiced by the document. Additionally, the CTA asserts that the document shows that the arbitrator added a provision to the CBA and that the Union obtained the award by improperly or even fraudulently pursuing a grievance it knew was meritless.

¶ 40 Generally, the decision whether to reopen a case for further proofs is within the trial court's discretion and we will not disturb that decision absent a clear abuse of that discretion. *Hollembaek v. Dominick's Finer Foods, Inc.*, 137 Ill. App. 3d 773, 777-78 (1985). A court abuses its discretion only if it acts arbitrarily, without employing conscientious judgment,

exceeds the bounds of reason and ignores recognized principles of law, or if no reasonable person would take the position adopted by the court. *In re Estate of Benoon*, 2014 IL App (1st) 122224, ¶ 30. In ruling on a motion to reopen proofs, a court considers the following: (1) whether the moving party has provided a reasonable excuse for failing to submit the additional evidence during trial; (2) whether granting the motion would cause surprise or unfair prejudice to the other party; and (3) whether the evidence is of the utmost importance to the movant's case. *Id*. ¶ 55.

¶ 41 We find that the circuit court did not abuse its discretion by denying the CTA's motion to reopen proofs because the CTA failed to provide a reasonable excuse for not submitting the document earlier. "If evidence offered for the first time in a posttrial motion could have been produced at an earlier time, the court may deny its introduction into evidence." (Internal quotation marks omitted.) *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1077 (2007). The document was in the possession of one of the CTA's attorneys, albeit one that served as outside counsel. Further, an additional consideration when deciding whether to reopen proofs is whether there are any cogent reasons to justify denying the request. *Dunahee v. Chenoa Welding & Fabrication, Inc.*, 273 Ill. App. 3d 201, 210 (1995). Such a cogent reason exists here: the legislature's intent to provide finality for labor disputes submitted to arbitration. See *AFSCME II*, 173 Ill. 2d at 304. Admitting the document would open the door to examining the merits of the award, which is not the proper role of a court. As we stated above, a court has "no business weighing the merits of a grievance." (Internal quotation marks omitted.) *Griggsville-Perry Community Unit School District No. 4*, 2013 IL 113721, ¶ 18. Faced with these circumstances—the interest in finality and the CTA's proffered excuse that outside counsel

had the document—it was not an abuse of discretion for the court to deny the motion to reopen proofs.

¶ 42 Lastly, the CTA contends that the circuit court abused its discretion by refusing to reconsider its decision based on newly discovered evidence—the 2005 Union proposal discussed above. The CTA argues that the evidence was unavailable. Additionally, the CTA asserts that the evidence shows that the award does not draw its essence from the CBA because the Union admitted that the CTA had the right to assign warranty work to the manufacturer or its representatives. The CTA also suggests that the document shows that the Union might have procured the award improperly.

¶ 43 The purpose of a motion to reconsider is to inform the court of newly discovered evidence, a change in the law, or errors in the court's earlier application of the law. *Williams v. Dorsey*, 273 Ill. App. 3d 893, 903 (1995). A party seeking reconsideration based on newly discovered evidence must establish due diligence and demonstrate that real justice has been denied. *Patrick Media Group, Inc. v. City of Chicago*, 255 Ill. App. 3d 1, 8 (1993). Evidence is "newly discovered" if it was not available prior to the hearing. *General Motors Acceptance Corp.*, 374 Ill. App. 3d at 1078. We review a court's decision whether to grant a motion to reconsider for an abuse of discretion. *Williams*, 273 Ill. App. 3d at 903.

¶ 44 Here, we find that the court's denial of the motion to reconsider was not an abuse of discretion because the CTA did not establish due diligence. In *Patrick Media Group, Inc.*, the court found that the CTA could not establish due diligence where the CTA inadvertently discovered the new evidence when it met with a former secretary to the CTA board, and the current secretary was apparently unfamiliar with the records maintained by his office. *Patrick Media Group, Inc.*, 255 Ill. App. 3d at 8-9. Similarly, here, the CTA did not establish due

diligence where the document happened to be with outside counsel. Accordingly, it was not an abuse of discretion for the court to deny the motion to reconsider.

¶ 45 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 46 Affirmed.