2012 IL App (1st) 102977-U

FOURTH DIVISION
June 28, 2012

Nos. 1-10-2977 & 1-10-3000 (consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 31; CHARLOTTE CROCKETT; HERBERT BASHIR; DOROTHY POLK; and BARBARA FURDGE,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	10 CH 8407
JAMES SLEDGE, Director of the Illinois Department of Central Management Services; and ILLINOIS DEPARTMENT OF CENTRAL MANAGEMENT SERVICES,	)	The Honorable Carolyn G. Quinn, Judge Presiding.
Defendants-Appellants.	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

ORDER

HELD: In this action by plaintiff labor union and individual retired State employee plaintiffs against defendants for breach of a collective bargaining agreement in increasing the dental premiums for the retired State employees without first bargaining with the union as required, the arbitrator held that he the matter was not arbitrable because he

determined he was without jurisdiction to hear the matter since retirees are not employees and therefore are not parties to the collective bargaining agreement. (1) The circuit court properly granted dismissal of plaintiffs' claim to vacate the arbitration award because the arbitrator acted within his authority in determining arbitrability, as the collective bargaining agreement specifically granted the arbitrator the authority to determine arbitrability. (2) The circuit court did not abuse its discretion in granting the stay of plaintiffs' breach of contract and constitutional claims due to the pending charge before the Illinois Labor Relations Board, on grounds of judicial economy.

¶1 BACKGROUND

¶2 Plaintiff American Federation of State, County and Municipal Employees, Council 31 (AFSCME), a labor union, and plaintiffs Charlotte Crockett, Herbert Bashir, Dorothy Polk, and Barbara Furdge, who are retired individual state employees and participants in the State Employees Retirement System, brought the underlying suit against defendant Illinois Department of Central Management Services (CMS) and James Sledge, the director of CMS, based on breach of a collective bargaining agreement. Plaintiff Charlotte Crockett worked for the State of Illinois from 1980 to 2004 as a Collections Officer for the Illinois Department of Revenue. Plaintiff Herbert Bashir worked for the State for approximately 22 years and retired in July 2002 from his position as a child welfare administrator with the Department of Children and Family Services. Plaintiff Dorothy Polk retired in 2002 after 15 years of employment with the State as a child welfare specialist. Plaintiff Barbara Furdge retired in 2006 after working for the State as a mental health technician for approximately 15 years. Plaintiff AFSCME and defendant CMS are parties to a collective bargaining agreement in effect from September 5, 2008, to June 20, 2012. AFSCME is the exclusive bargaining representative for State employees in the classifications set forth in the collective bargaining agreement. The agreement provides for insurance benefits, including a dental plan, to employees and retirees and requires that any changes in the benefits be

negotiated.

¶3 CMS and Sledge are responsible for administering the provisions of the State Employees Group Insurance Act of 1971 (5 ILCS 375/1 *et seq*. (West 2010)). The insurance provided under the Act is intended to protect active and retired employees and their dependents and survivors against the costs of medical care including hospital and other medical expenses. 5 ILCS 375/6 (West 2010). The Act authorizes the provision of dental insurance to active and retired employees and their dependents and survivors.

¶4 Until 2009, the State paid the entire premium for the program of dental insurance for all retirees in the insurance program. In August 2009, CMS announced that it would impose a dental insurance contribution premium on retired employees equal to the premium contributions for current employees. CMS imposed these new premiums on retired employees effective October 1, 2009. In response, AFSCME filed a grievance against CMS, arguing the imposition of premiums on retirees was in violation of the collective bargaining agreement. CMS denied the grievance and AFSCME appealed to arbitration. On November 4, 2009, an arbitration hearing was held at the AFSCME offices at 205 N. Michigan Avenue in Chicago, Illinois. Arbitrator Thomas Gibbons heard the grievance but never reached the merits. Instead, the arbitrator found that the matter was not arbitrable and that he had no jurisdiction to resolve the dispute because AFSCME could not enforce the rights of retirees through the grievance procedure. The arbitrator determined that he lacked jurisdiction pursuant to section 8 of the Illinois Public Relations Act (5 ILCS 315/8 (West 2010)). Specifically, the arbitrator found that:

"retirees are not party to the Collective Bargaining Agreement even though they are

> beneficiaries of negotiated benefits in the contract. The grievance arbitration process is foreclosed to them and instead retirees and their survivors must consider other appropriate venues if they wish to challenge the Employer's actions in regard to their negotiated benefits contained in the Collective Bargaining Agreement."

Since the issuance of this arbitration award, CMS has continued to require retired State employees to pay a portion of their dental insurance premium.

¶5 Plaintiffs filed this action in circuit court in the Chancery Division on February 26, 2010. In count I of their complaint, AFSCME sought to vacate the arbitrator's finding that he lacked jurisdiction to decide the grievance and seeking a declaratory judgment of arbitrability and remand for the selection of a new arbitrator. Count II, brought in the alternative, seeks a determination by the circuit court on the merits of the grievance under section 16 of the Illinois Public Labor Relations Act (5 ILCS 315/16 (West 2010)) (providing for actions in circuit court after exhaustion of remedies through arbitration under collective bargaining agreements or under the Act)). The individual retired plaintiffs brought a constitutional claim in count III as a class action on behalf of more than 75,000 retired State employees, seeking a determination by the circuit court that the imposition of the dental insurance premium is a violation of Article XIII, Section 5 of the Illinois Constitution (Ill. Const. 1970, art. XIII, § 5). In count III, plaintiffs seek damages for breach of contract and injunctive relief.

¶6 On March 30, 2010, AFSCME filed a charge against CMS with the Illinois Labor Relations Board, charging that the State imposed the premiums upon retirees and current employees who will retire in the future without bargaining with AFSCME. The charge sought an

order requiring the State to bargain about changes in State insurance premiums for retirees and future retirees before implementing such changes, restoration of the status quo, and monetary relief.

¶7 Defendants filed a motion to dismiss count I of the complaint in circuit court pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)), and moved to stay counts II and III under the doctrine of primary jurisdiction, asserting that the Illinois Labor Relations Board had primary jurisdiction over collective bargaining grievances between public employee unions and the State.

¶8 On September 13, 2010, the circuit court entered a memorandum opinion and order granting CMS' motion to dismiss count I of the complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)). The circuit court also granted CMS' motion to stay counts II and III pending the completion of the proceedings pending before the Illinois Labor Relations Board.

¶9 With respect to count I, the circuit court's finding was as follows:

> "It is clear that the arbitrator's decision in this case was not in excess of his authority or contrary to law ***. The arbitrator found that retirees and survivors are not included in the definition of 'employee' and Plaintiffs do not contend that they fall within the definition of 'employee' set forth in the CBA. The arbitrator's decision that the individual Plaintiffs were not covered under the CBA was based on a reasonable construction of the CBA and cannot be vacated by this Court."

¶10 With respect to counts II and III, the court found:

> "The [Illinois Labor Relations Board] has jurisdiction over collective bargaining matters between employee organizations and the State of Illinois, 5 ILCS 315/5(a-5), and clearly has a specialized expertise in such matters. The Union has filed a Charge Against Employer seeking an order requiring the State to bargain about changes in insurance charges for retirees and future retirees before implementing charges including the dental insurance premiums at issue in this case ***. Any decision made by the [Illinois Labor Relations Board] is likely to impact and/or moot the relief sought by Plaintiffs in Counts II and III. As the [Illinois Labor Relations Board] has specialized expertise that will help resolve the controversy between the parties, staying Counts II and III would be appropriate."

¶11 On October 12, 2010, plaintiffs filed their interlocutory appeal from the court's order of September 13, 2010, staying counts II and III. On October 14, 2010, the circuit court entered an order pursuant to Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)), finding that there is no just reason to delay enforcement or appeal of the September 13, 2010, order dismissing count I. That same day, plaintiffs filed a notice of appeal from the September 13, 2010, order dismissing count I, pursuant to Supreme Court Rule 304(a). We entered an order consolidating the appeals.

¶12 ANALYSIS

¶13 Dismissal of Count I Standard of Review

¶14 Plaintiffs argue the circuit court should have found that the arbitrator's determination that the matter was not arbitrable was contrary to law and in excess of his authority. Plaintiffs argue

that the Illinois Public Relations Act requires that disputes regarding the interpretation of contracts be resolved by an arbitrator unless the parties expressly agree to exclude the subject matter of a dispute from arbitration, and that the collective bargaining agreement contains no waiver of the right to arbitrate the issue of retiree insurance benefits.

¶15 Defendants brought their combined motion to dismiss pursuant to section 2-615 and 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2010)). Our review of a combined motion to dismiss pursuant to both section 2-615 and section 2-619 is as follows:

> "When a trial court rules upon a motion to dismiss a complaint either for failure to state a cause of action (735 ILCS 5/2-615 (West 2008)) or because the claims raised in the complaint are barred by other affirmative matter that avoids the legal effect of or defeats the claim (735 ILCS 5/2-619(a)(9) (West 2008)), it must interpret all of the pleadings and the supporting documents in the light most favorable to the nonmoving party. [Citation.] Such motions to dismiss should be granted only if the plaintiff can prove no set of facts that would support a cause of action. [Citation.] A trial court's grant of a motion to dismiss pursuant to either section 2-615 or section 2-619 of the [Procedure] Code is subject to a *de novo* standard of review on appeal." *Westfield Insurance Co. v. Birkey's Farm Store, Inc.*, 399 Ill. App. 3d 219, 230-31 (2010).

De novo consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). "[M]otions to dismiss under section 2-619 of the Code admit all well-pleaded facts, together with all reasonable inferences which can be drawn from those facts, but do not admit conclusions unsupported by allegations of

specific facts on which such conclusions rest." *Carnock*, 253 Ill. App. 3d at 898 (citing *Munizza v. City of Chicago*, 222 Ill. App. 3d 50, 52 (1991); *Falk v. Martel*, 210 Ill. App. 3d 557, 560 (1991)).

¶16 The arbitrator found that the retired plaintiffs are not "employees" under the collective bargaining agreement and thus determined that he was without jurisdiction, thereby concluding the grievance was not arbitrable. Plaintiffs contend that the circuit court erred in granting defendants' motion to dismiss and that it should have vacated the arbitration award finding a lack of jurisdiction because the arbitrator exceeded his powers. Plaintiffs argue that the language of the collective bargaining agreement contains no express waiver of the right to arbitrate issues related to retiree insurance benefits.

¶17 Under our *de novo* review of AFSCME's appeal of the circuit court's dismissal, we determine the circuit court did not err in granting defendants' combined motion to dismiss. Although we disagree with the arbitrator's determination that the matter was not arbitrable, the arbitration agreement specifically gave the arbitrator the authority to determine arbitrability. Therefore, we have no basis to vacate the arbitrator's decision because he did not exceed his authority.

¶18 Arbitrability

¶19 Here, the collective bargaining agreement's arbitration provisions specifically gave the arbitrator the authority to determine arbitrability, and the parties are bound by their contract. "An agreement to arbitrate is a matter of contract, and the parties are bound to arbitrate only those issues they have agreed to arbitrate by the clear language of the contract." *Reed v. Doctor's*

Assocs., 331 Ill. App. 3d 618, 626 (2002) (citing *Bass v. SMG, Inc.*, 328 Ill. App. 3d 492, 498 (2002); *Salsitz v. Kreiss*, 198 Ill. 2d 1, 13 (2001)). Section 8 of the Illinois Public Labor Relations Act provides 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*." (Emphasis added.) 5 ILCS 315/8 (West 2010).

Here, the parties mutually agreed to give the arbitrator the authority to determine whether a matter would be arbitrable.

¶20 We begin with the presumption that the arbitrability of a dispute is for the courts to decide. Normally, where there is no specific agreement between the parties as to who will determine the threshold issue of arbitrability, an arbitrator's determination of arbitrability is subject to judicial review. See, *e.g.*, *Donaldson, Lufkin & Jenrette Futures, Inc. v. Barr*, 124 Ill. 2d 435, 450-51 (1988) (holding that an arbitrator's determination of arbitrability was subject to judicial review where there was no specific provision granting the arbitrator the authority to arbitrate).

¶21 However, this presumption is rebutted by evidence that the parties clearly and unmistakably agreed to have an arbitrator decide the question of arbitrability. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995); *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 649 (1986); *Salsitz*, 198 Ill. 2d at 15. Where the language of

a contract is plain, it provides the best evidence of the parties' intent and will be enforced as written. *Owens v. McDermott, Will & Emery*, 316 Ill. App. 3d 340, 344 (2000). When deciding whether the parties agreed to arbitrate a certain matter, courts generally apply ordinary state-law principles governing the formation of contracts. *First Options*, 514 U.S. at 945. "The arbitrators' authority is limited by the unambiguous contract language." *First Merit Realty Services v. Amberly Square Apartments, L.P.*, 373 Ill. App. 3d 457, 462 (2007) (citing *Lehman Brothers, Inc. v. Hedrich*, 266 Ill. App. 3d 24, 29 (1994), citing *Rauh v. Rockford Products Corp.*, 143 Ill. 2d 377, 393 (1991)). "[P]arties are free to agree to submit the question of arbitrability itself to the [arbitrator]"). *Bahuriak v. Bill Kay Chrysler Plymouth, Inc.*, 337 Ill. App. 3d 714, 719 (2003). See *Donaldson, Lufkin & Jenrette Futures, Inc. v. Barr*, 124 Ill.2d 435, 448 (1988) (holding that parties are free to state in their contractual arbitration agreement that all questions regarding arbitrability should be decided by court).

¶22 In this case, as defendants CMS and Sledge point out, we have a clear provision within the collective bargaining agreement to submit the question of arbitrability itself to the arbitrator. Article V, Section 2(c) regarding arbitration procedures in the collective bargaining agreement specifically provides: "Questions of arbitrability shall be decided by the arbitrator." This plain language of this provision is clear and leaves no room for interpretation. The provision is broad and unlimited by any additional language. The parties both agreed to this provision in the collective bargaining agreement. AFSCME does not argue any parole evidence that this provision was a mistake.

¶23 Since the parties agreed in the collective bargaining agreement to allow the arbitrator to

determine arbitrability, we must defer to the arbitrator's determination and his decision is not subject to our review. We start with "the presumption that the arbitrator did not exceed his [or her] authority." *Galasso v. KNS Companies. Inc.*, 364 Ill. App. 3d 124, 130 (2006). We must defer to an arbitrator's arbitrability decision when the parties submitted that matter to arbitration, as with any other matter that the parties agreed to arbitrate. *First Options*, 514 U.S. at 943. Under precedent from the United States Supreme Court and our own supreme court, since arbitrability was clearly a matter left to the arbitrator it is not subject to judicial review. See *First Options*, 514 U.S. at 944; *AT&T Technologies*, 475 U.S. at 649 (1986); *Salsitz*, 198 Ill. 2d at 15. AFSCME cannot now seek a judicial determination of arbitrability when it specifically agreed to allow the arbitrator to make that determination.

¶24 Our own state appellate court decisions amply support our conclusion. See *Carey v. Richards Building Supply Co.*, 367 Ill. App. 3d 724, 728-29 (2006) (holding that the agreement between the parties committed to an arbitrator the determination of arbitrability and, under the Illinois Uniform Arbitration Act and case law interpreting it, an arbitrator should have determined the arbitrability of plaintiff's action); *Bahuriak*, 337 Ill. App. 3d at 719 (holding that the circuit court erred in determining the arbitrability of a claim where it was clear that the parties had expressly agreed to arbitrate the issue of arbitrability); *Amgen, Inc. v. Ortho Pharmaceutical Corp.*, 303 Ill. App. 3d 370, 378-79 (1999) (holding that where the parties agreed in a product licensing agreement that an arbitrator would determine all procedural matters, the court appropriately deferred to an arbitrator the jurisdictional question of who should arbitrate the claim).

¶25 We find no support for overturning the arbitrator's determination of arbitrability where there is a clause in the collective bargaining agreement whereby the parties specifically agreed to allow an arbitrator to make this determination, nor does AFSCME offer us any. Indeed, AFSCME does not even address the fact that they agreed to this provision in the collective bargaining agreement giving the arbitrator essentially unlimited power in determining whether matters are arbitrable at all.

¶26 Although we disagree with the arbitrator's contract interpretation of the collective bargaining agreement, the agreement specifically gave the arbitrator the power to determine arbitrability.[1] Here the parties bargained for arbitration, and they bargained for an arbitrator to determine whether a grievance would even be subject to arbitration. The parties are bound by the contract they entered into. See *Hawrelak v. Marine Bank, Springfield,* 316 Ill. App. 3d 175, 181 (2000) ("Once parties bargain to submit their disputes to the arbitration system (a system essentially structured without due process, rules of procedure, rules of evidence, or any appellate

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[1] The collective bargaining agreement defines a grievance as "any difference, complaint or dispute between the Employer and the Union *or* any employee regarding the application, meaning or interpretation of this Agreement or arising out of other circumstances or conditions of employment." (Emphasis added.) Thus, under the clear language of the agreement AFSCME itself could bring a grievance against the State regarding the application, meaning or interpretation of the collective bargaining agreement. Further, defendants agreed in the contract to provide retirees continuing health care benefits and agreed that the premiums would not be increased without bargaining.

procedure), we are disinclined to save them from themselves"). If AFSCME wanted arbitrability itself to be determined by a circuit court and not an arbitrator, it should bargain for that language in future collective bargaining agreements with the State.[2] Under the effective collective bargaining agreement before us, however, the parties clearly agreed to allow the arbitrator to determine arbitrability of grievances and we must defer to the arbitrator. The arbitrator acted within his authority in determining the issue of arbitrability.

¶27 Plaintiffs argue in reply that defendants waived their argument regarding the arbitrability clause granting the arbitrator the power to determine arbitrability by failing to argue it below. However, plaintiffs fail to cite any authority in support of their argument. Ill. S. Ct. Rule 341(h)(7) (eff. July 1, 2008). Therefore, their own argument on this point has been forfeited.

¶28 Also, even if the argument were waived, we would still be bound to examine the arbitration agreement and all provisions concerning the arbitrator's powers, because the agreement is what governs what powers the arbitrator had. We would not be able to make a determination whether the arbitrator exceeded his powers such that we could vacate the award under Section 12(a) of the Uniform Arbitration Act without examining what his powers were under the collective bargaining agreement's provisions governing arbitration. We are not able to ignore this clear provision in the contract.

¶29 However, we determine the argument regarding the arbitrability clause was not waived, as the issue was presented to the arbitrator at the hearing. Moreover, as defendants point out, AFSCME is fully aware of the arbitrability clause which gave the arbitrator the power to

[2] The current collective bargaining agreement expires on June 20, 2012.

determine arbitrability and submitted this very issue to the arbitrator for his determination. AFSCME agreed that one of the issues to be decided by the arbitrator was: "Is the grievance arbitrable?" Thus, not only did AFSCME agree to the arbitrability clause in the collective bargaining agreement, AFSCME expressly stipulated that the arbitrator here was to determine arbitrability.

¶30 **Our Standard of Review of Arbitration Awards is Extremely Limited.**

¶31 " '[J]udicial review of an arbitrator's award is extremely limited, more limited than appellate review of a trial.' " *First Health Group Corp. v. Ruddick*, 393 Ill. App. 3d 40, 48 (2009) (quoting *Anderson v. Golf Mill Road Inc.*, 383 Ill. App. 3d 474, 479 (2008); *Mazogli v. Lake Forest Hospital*, 359 Ill. App. 3d 554, 564 (2005)). Our extremely limited judicial review "reflects the legislature's intent in providing finality for labor disputes submitted to arbitration." *County of DeWitt v. AFSCME, Council 31*, 298 Ill. App. 3d 634, 637 (1998) (citing *American Federation of State, County & Municipal Employees v. Department of Central Management Services*, 173 Ill. 2d 299, 304 (1996)). Our supreme court has instructed that "wherever possible" we must "construe arbitration awards so as to uphold their validity." *Salsitz v. Kreiss*, 198 Ill. 2d 1, 13 (2001).

¶32 The "Illinois Arbitration Act embodies a legislative policy favoring enforcement of agreements to arbitrate future disputes." *Salsitz*, 198 Ill. 2d at 13. Like the legislature, courts of this state also favor arbitration because it is "an effective, expeditious, and cost-efficient method of dispute resolution." *Salsitz*, 198 Ill. 2d at 13. " ' "Limited judicial review fosters the long-accepted and encouraged principle that an arbitration award should be the end, not the

beginning of litigation." ' " *Ruddick*, 393 Ill. App. 3d at 48 (quoting *Mazogli*, 359 Ill. App. 3d at 564, quoting *Perkins Restaurants Operating Co. v. Van Den Bergh Foods, Co.*, 276 Ill. App. 3d 305, 309 (1995). "When parties agree to submit a dispute to arbitration for a binding and nonappealable decision, they bargain for finality." *Mazogli*, 359 Ill. App. 3d at 564.

¶33 "A court has no power to determine the merits of the award simply because it strongly disagrees with the arbitrator's contract interpretation." *Herricane Graphics, Inc*., 354 Ill. App. 3d 151, 156 (2004) (citing *Canteen Corp. v. Former Foods, Inc.*, 238 Ill. App. 3d 167, 179 (1992). "[T]he parties bargained for the arbitrator's interpretation of their final agreement, and a court must not impose its own view." *Herricane Graphics, Inc.*, 354 Ill. App. 3d at 158.

¶34 Because the parties did not bargain for the judgment of the courts, a reviewing court cannot set aside an arbitration award because of errors in judgment or mistakes of law or fact. *Tim Huey Corp. v. Global Boiler & Mechanical, Inc.*, 272 Ill. App. 3d 100, 106 (1995) (citing *Garver v. Ferguson*, 76 Ill. 2d 1, 8 (1979)), *appeal denied*, 163 Ill. 2d 590 (1995). See also *Herricane Graphics, Inc. v. Blinderman Construction Co.*, 354 Ill. App. 3d 151, 156 (2004) (citing *Roubik v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 181 Ill. 2d 373, 381 (1998)). "Arbitration awards should be construed, wherever possible, so as to uphold their validity. *Tim Huey Corp.*, 272 Ill. App. 3d at 106 (citing *Rauh v. Rockford Products Corp.*, 143 Ill. 2d 377, 386 (1991)); *Merritt v. Merritt*, 11 Ill. 565, 567-68 (1850)). "Such deference is accorded because the parties have chosen in their contract how their dispute is to be decided, and judicial modification of an arbitrator's decision deprives the parties of that choice." *Tim Huey Corp.*, 272 Ill. App. 3d at 106.

¶35 "Gross errors in judgment or gross mistakes of law or fact are not grounds for vacating an award unless the errors are apparent upon the face of an award." *Herricane Graphics, Inc.*, 354 Ill. App. 3d 151, 156 (2004). Review under the manifest disregard of the law standard requires that the arbitrator "deliberately disregarded what [he] knew to be the law." *Anderson v. Golf Mill Ford, Inc.*, 383 Ill. App. 3d 474, 479 (2008).

¶36 The fact that we are presented with a public labor collective bargaining agreement does not change our extremely limited standard of review. The Illinois Public Labor Relations Act, together with the Illinois Educational Labor Relations Act (115 ILCS 5/1 *et seq*. (West 2010)), constitutes an "attempt to-provide 'a comprehensive regulatory scheme for public sector [collective] bargaining in Illinois.'" *Board of Education of Community School District No. 1, Coles County v. Compton*, 123 Ill. 2d 216, 221 (1988), quoting *Chicago Board of Education v. Chicago Teachers Union*, 142 Ill. App. 3d 527, 530 (1986). Under section 8 of the Illinois Public Relations Act, public labor collective bargaining agreements are subject to the same Uniform Arbitration Act that governs all other arbitration agreements. See 5 ILCS 315/8 (West 2010).

¶37 The only difference with public labor collective bargaining agreements is that the Illinios Public Labor Relations Act requires that in exchange for the grievance resolution procedure the employees must not strike during the duration of the agreement:

> "Any agreement containing a final and binding arbitration provision shall also contain a provision prohibiting strikes for the duration of the agreement." 5 ILCS 315/8 (West 2010).

Otherwise, the statute mandates "[t]he grievance and arbitration provisions of any collective bargaining agreement shall be subject to the Illinois 'Uniform Arbitration Act.' " 5 ILCS 315/8 (West 2010).

¶38 We note that subsection 12(e) of the Uniform Arbitration Act provides the following:

> "Nothing in this Section or any other Section of this Act shall apply to the vacating, modifying, or correcting of any award entered as a result of an arbitration agreement which is a part of or pursuant to a collective bargaining agreement; and the grounds for vacating, modifying, or correcting such an award shall be those which existed prior to the enactment of this Act." 710 ILCS 5/12(e) (West 2010).

¶39 However, section 8 of the Illinois Public Labor Relations Act supercedes the first clause of subsection 12(e) of the Uniform arbitration Act and requires application of the Uniform Arbitration Act's procedures in the context of arbitrations under all collective bargaining agreements involving noneducational public employees. *Illinois Department of Central Management Services v. American Federation of State, County and Municipal Employees (AFSCME)*, 298 Ill. App. 3d 640, 647 (1998).

¶40 Here, the collective bargaining agreement involves noneducational state employees and retirees. Thus, the collective bargaining agreement in this case is subject to the same Uniform Arbitration Act that is applicable to all arbitration agreements and must be reviewed accordingly. As with any other arbitration agreement, "[a] labor arbitration award must be enforced if the arbitrator acts within the scope of his authority and his award draws its essence from the parties' collective bargaining agreement." *American Federation of State, County and Municipal*

Employees, AFL-CIO v. State, 124 Ill. 2d 246, 254 (1988) (citing *Board of Trustees of Community College District No. 508 v. Cook County College Teachers Union*, 74 Ill. 2d 412, 421 (1979)).

¶41 The limited circumstances under which a court can vacate an arbitration decision or "award" are set forth in section 12(a) of the Uniform Arbitration Act (710 ILCS 5/1 *et seq*. (West 2010)):

> "§12. Vacating an award.
>
> (a) Upon application of a party, the court shall vacate an award where:
>
> (1) the award was procured by corruption, fraud or other undue means;
>
> (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any one of the arbitrators or misconduct prejudicing the rights of any party;
>
> (3) the arbitrators exceeded their powers;
>
> (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 5 [710 ILCS 5/5], as to prejudice substantially the rights of a party; or
>
> (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under Section 2 [710 ILCS 5/2] and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by the circuit court is

not ground for vacating or refusing to confirm the award." 710 ILCS 5/12(a)(West 2010).

¶42 In this case there is no showing that the award was procured by corruption, fraud or other undue means, or that there was evident partiality by the arbitrator, or that the arbitrator refused to postpone the hearing or hear material evidence, or that there was in fact no arbitration agreement. Thus, the only possible applicable basis to vacate the award is if the arbitrator exceeded his powers, under section 12(a)(3). However, there is no indication that the arbitrator exceeded his authority. Our extremely limited standard of review of arbitration awards does not allow us to overturn the arbitration decision in this case.

¶43 The Individual Retired Plaintiffs Do Not Have Standing to Appeal the Arbitration Award.

¶44 Additionally, we note that only AFSCME has standing to seek to vacate the arbitration award. We clarify that under the plain language of section 16 of the Illinois Labor Relations Act, the individual retired plaintiffs do not have standing to appeal the arbitration award because only the parties to a collective-bargaining agreement may attack an arbitration award in circuit court. An individual who is not a party to a collective bargaining agreement lacks standing to bring suit to challenge an arbitration award made thereunder. *Stahulak v. City of Chicago*, 184 Ill. 2d 176, 180 (1998), *cert. denied*, 526 U.S. 1051 (1999). Standing is not merely a procedural technicality but, rather, is a component of justiciability which vests a court with subject matter jurisdiction over a case under our constitution. *In re Estate of Henry*, 396 Ill. App. 3d 88, 93 (2009). Under either federal or Illinois law, the right to compel arbitration stems from an underlying contract

and generally may not be invoked by a non-signatory to the contract. *Caligiuri v. First Colony Life Ins. Co.*, 318 Ill. App. 3d 793, 800 (2000) (citing *Britton v. Co-op Banking Group*, 4 F.3d 742, 744 (9th Cir. 1993); *Board of Education of Meridian Community Unit School Dist. 101 v. Meridian Education Association*, 112 Ill. App. 3d 558, 562 (1983)).

¶45 An individual union member is entitled to judicial review of grievance procedures or arbitration only if the individual proves that the union's conduct in processing the grievance was arbitrary, discriminatory, or in bad faith. *Stahulak*, 184 Ill. 2d at 181 (citing *Parks v. City of Evanston*, 139 Ill. App. 3d 649, 652 (1985); *Cosentino v. Price*, 136 Ill. App. 3d 490, 495 (1985)). See *Stahulak v. City of Chicago*, 184 Ill. 2d 176, 181-82 (1998) (overruling *Svoboda v. Department of Mental Health & Developmental Disabilities*, 162 Ill. App. 3d 366 (1987), which held that individual employees had standing to bring suit to vacate an arbitrator's award and were not required to allege and prove that the union did not adequately represent them). See also *Casanova v. City of Chicago*, 342 Ill. App. 3d 80, 88-89 (2003) (holding that a terminated firefighter could not directly challenge the arbitration award upholding his termination for failure to comply with a last chance agreement because the firefighter was not a party to the collective bargaining agreement of which it was a part); *International Brotherhood of Electrical Workers, Local 193 v. City of Springfield*, 2011 IL App (4th) 100905, ¶ 23 (holding that the union was not entitled to arbitrate a grievance over a former union member's failure to receive a salary increase in an oral promise in exchange for the former union member moving to a nonunion position because the former union member was no longer a member of the collective bargaining unit).

¶46 Here, there is no allegation by the individual retiree plaintiffs that AFSCME's conduct in

processing the grievance was arbitrary, discriminatory, or in bad faith. Thus, the individual retiree plaintiffs do not have standing to appeal to seek to vacate the arbitration decision or "award." Further, as we explained above, the collective bargaining agreement gave the arbitrator the sole authority in determining whether he would hear any grievance on their behalf, and due to the arbitrability provision in the contract specifically granting him that authority, we are unable to overturn his decision.

¶47 **Stay of Count II**

¶48 Plaintiffs also argue that the circuit court abused its discretion in granting a stay of counts II and III of the complaint pending resolution of AFSCME's pending charge before the Illinois Labor Relations Board. Section 2(d) of the Uniform Arbitration Act provides the following concerning stays in litigation involving issues subject to arbitration:

> "(d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this Section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay." 710 ILCS 5/2 (West 2010).

¶49 We determine that a stay of count II was not an abuse of discretion since a determination by the Illinois Labor Relations Board in AFSCME's favor there may moot issues in this case or subject them to collateral estoppel, and therefore a stay is proper in the interest of judicial economy.

¶50 First, as discussed above, we are bound by the arbitrator's determination that the

grievance here is not subject to arbitration. The retired plaintiffs' claims are thus not required to be stayed pursuant to section 2(d) of the Uniform Arbitration Act because their claims are not subject to arbitration. 710 ILCS 5/2 (West 2010).

¶51 However, plaintiff AFSCME *is* subject to arbitration and must exhaust its administrative remedies prior to maintaining suit in the circuit court. Thus, a stay of AFSCME's claims pending resolution of its charge before the Illinois Labor Relations Board is required under section 2 of the Uniform Arbitration Act. 710 ILCS 5/2 (West 2010).

¶52 Plaintiffs argue that the circuit court erred in staying counts II and III because the circuit court, and not the Illinois Labor Relations Board, has primary jurisdiction over their contractual and constitutional claims. Defendants maintain that a stay is appropriate because the Illinois Labor Relations Board has primary jurisdiction. We clarify that "[u]nder the Uniform Arbitration Act, all proceedings to compel arbitration, to stay arbitration, to seek the vacation of an arbitration award, or to enforce an award are through the circuit court." *AFSCME, Council 31 v. Schwartz*, 343 Ill. App. 3d 553, 566-67 (2003) (citing *Department of Central Management Services v. American Federation of State, County & Municipal Employees*, 222 Ill. App. 3d 678, 682 (1991)).

¶53 The doctrine of primary jurisdiction is sometimes confused with exclusive jurisdiction. The Illinois State Labor Relations Board has exclusive jurisdiction of claims for breach of the duty of fair representation by a public employees union as an “unfair labor practice” under the Illinois Public Labor Relations Act. *Foley v. American Federation of State, County, and Municipal Employees, Council 31, Local No. 2258*, 199 Ill. App. 3d 6, 10 (1990). See also

Cessna v. City of Danville, 296 Ill. App. 3d 156, 163 (1998)) (holding that even though the plaintiff adequately alleged that she had exhausted remedies for her claim of breach of contract against a city under the collective bargaining agreement, she was not entitled to pursue her claim in circuit court because the Illinois State Labor Relations Board had exclusive jurisdiction of claims for breach of the duty of fair representation). Further, the Illinois State Labor Relations Board does not have exclusive jurisdiction over arbitration awards; the circuit court has jurisdiction over public policy challenges to such awards. *Illinois Department of Central Management Services v. AFSCME*, 222 Ill. App. 3d 678, 684 (1991).

¶54 However, the Illinois Public Labor Relations Act provides that the State Panel of the Illinois Labor Relations Board has jurisdiction over collective bargaining matters between employee organizations and the State of Illinois. 5 ILCS 315/5(a-5) (West 2010). Section 16 of the Illinois Public Labor Relations Act authorizes suits in circuit court by parties to a collective bargaining agreement, but requires exhaustion of grievance procedures and arbitration before suit may be brought in circuit court. 5 ILCS 315/16 (West 2010). Section 16 of the Illinois Public Labor Relations Act provides:

> "*After the exhaustion of any arbitration mandated by this Act or any procedures mandated by a collective bargaining agreement*, suits for violation of agreements *** between a public employer and a labor organization representing public employees may be brought by the parties to such agreement in the circuit court in the county in which the public employer transacts business or has its principal office." (Emphasis added.) 5 ILCS 315/16 (West 2010).

¶55 AFSCME must exhaust all administrative remedies before it can maintain its claims in the circuit court. Once the grievance procedures mandated by a collective-bargaining agreement are exhausted, suit may then be brought in the circuit court by the parties to the collective-bargaining agreement for its violation. 5 ILCS 315/16 (West 2010).

¶56 Because the issue AFSCME is litigating before the Illinois Public Labor Relations Board is the same issue we find staying both counts II and III was proper in the interest of judicial economy. "The trial court may stay proceedings as part of its inherent authority to control the disposition of cases before it and may consider factors such as the orderly administration of justice and judicial economy." *Kenny v. Kenny Industries, Inc.*, 406 Ill. App. 3d 56, 65 (2010) (citing *Philips Electronics, N.V. v. New Hampshire Insurance Co.*, 295 Ill. App. 3d 895, 901–02 (1998)). We review a trial court's decision to deny a request to stay the proceedings for an abuse of discretion. *Kenny*, 406 Ill. App. 3d at 65 (citing *Philips Electronics*, 295 Ill. App. 3d at 902). An abuse of discretion occurs only where " ' "the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court" ' [Citation.]" *Kenny*, 406 Ill. App. 3d at 65 (quoting *Blum v. Koster*, 235 Ill.2d 21, 36 (2009), quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)). "The party seeking the stay bears the burden of proving adequate justification for it." *Kenny*, 406 Ill. App. 3d at 65 (citing *Kaden v. Pucinski*, 263 Ill. App. 3d 611, 615–16 (1994)).

¶57 "[S]ection 2(d) of the Uniform Arbitration Act provides a court with two options: it may stay the entire proceeding pending arbitration, or, if the issue is severable, the stay may be with respect to that issue only." *First Condominium Development Co. v. Apex Construction &*

Engineering Corp., 126 Ill. App. 3d 843, 847 (1984). "[T]he scope of the stay provided for in section 2 of the Uniform Arbitration Act is defined by the identity and interrelationship of the issue or issues subject to arbitration and those involved in the litigation." *Vukusich v. Comprehensive Accounting Corp.*, 150 Ill. App. 3d 634, 644 (1986). Even if it could be argued that there is no identity of issues where certain issues are arbitrable and other issues in the litigation are not subject to arbitration, "[p]olicies favoring arbitration support a stay of all court proceedings pending arbitration 'where the arbitrable and nonarbitrable issues, although severable, are also interrelated in terms of a complete resolution of the cause between the parties.' " *Casablanca Trax, Inc. v. Trax Records, Inc.*, 383 Ill. App. 3d 183, 189 (2008) (quoting *Kelso–Burnett Co. v. Zeus Development Corp.*, 107 Ill. App. 3d 34, 41 (1982)).

¶58 An order ruling on the request for a stay of the circuit court's proceedings is considered the equivalent of the grant or denial of an injunction and, therefore, appealable under Rule 307(a). *Chicago City Bank & Trust Co. v. Drake International, Inc.*, 211 Ill. App. 3d 850, 854 (1991); *Rogers v. Tyson Foods, Inc.*, 385 Ill. App. 3d 287, 288 (2008), *appeal dismissed*, 233 Ill. 2d 600 (2009). "Rulings on motions to stay or compel arbitration are reviewed like interlocutory appeals, for abuse of discretion." *Northeast Illinois Regional Commuter R.R. Corp. v. Chicago Union*, 358 Ill. App. 3d 985, 993 (2005) (citing *Schroeder Murchie Laya Associates, Ltd. v. 1000 West Lofts, LLC*, 319 Ill. App. 3d 1089, 1093 (2001), and *Salsitz v. Kreiss*, 198 Ill.2d 1, 11 (2001)). A stay in this case of all claims, including the individual retiree plaintiffs' third-party beneficiary breach of contract and constitutional claims, was not an abuse of discretion as it was in the interest of judicial economy.

¶59 An examination of the charge in the proceeding before the Illinois Labor Relations Board reveals that it involves the same issue presented by the litigation in this case. The charge currently pending before the Illinois Labor Relations Board alleges the following:

> "In October 2009, the State imposed premiums upon retired employees for dental insurance. These premiums will also be imposed on current employees who retire in the future. The State imposed these premiums without bargaining with the union that represents these employees and retirees.
>
> In March 2010, Governor Quinn announced that he would seek legislation to impose higher premiums for health insurance on currently retired State employees[3] and upon current employees who retire in the future. Quinn announced that he did not believe that he had to bargain over these changes."

¶60 It is appropriate to allow the matter to proceed first at the Illinois Labor Relations Board, due to their expertise in this area. The Labor Relations Board has the authority to investigate and

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[3] While the issue concerning current employees was never brought up before the arbitrator, we note that AFSCME's pending charge before the Illinois Labor Relations Board *does* also include the issue of future retirees: "These premiums will also be imposed on *current employees who retire in the future*. [Emphasis added.]" However, the issue of current employees who retire in the future is not properly before us in reviewing the dismissal of count I based on the arbitration award because the issue was not raised and preserved before the arbitrator, nor is it before us in reviewing the stay of counts II and III because such current employees did not join as parties to raise any claims or otherwise intervene in the litigation.

resolve questions involving collective bargaining given its experience and understanding of the issues. Requiring the exhaustion of administrative remedies " ' "allows the administrative agency to fully develop and consider the facts of the cause before it; it allows the agency to utilize its expertise; and it allows the aggrieved party to ultimately succeed before the agency, making judicial review unnecessary." ' " *Guerrero v. Gardner*, 397 Ill. App. 3d 793, 795 (2010) (quoting *Arvia v. Madigan*, 209 Ill. 2d 520, 531 (2004), quoting *Castaneda v. Illinois Human Rights Commission*, 132 Ill. 2d 304, 308 (1989)).

¶61 Also, if the Illinois Labor Relations Board rules against AFSCME, AFSCME may appeal that determination on behalf of the retirees, thus giving the retirees another opportunity for review. Further, the scope of review of a decision of an administrative agency is broader than the scope of review of an arbitration decision. Under the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2010)), the scope of judicial review extends to all questions of law and fact presented by the record before the court. 735 ILCS 5/3-110 (West 2010). Even if AFSCME and the retirees obtain an adverse ruling before the Illinois Labor Relations Board, they have an avenue of appeal of that determination, as well as their current claims in circuit court.

¶62 Plaintiffs acknowledge the policies in favor of allowing the administrative agency to proceed first in order to allow the agency to develop the facts and apply its expertise, and that doing so might moot the need for resources in judicial review in the event the plaintiffs are successful. *Canel*, 212 Ill. 2d at 320. Yet plaintiffs merely make the circular argument that these policies do not apply here because constitutional claims are properly determined by the circuit courts and not within the expertise of the Illinois Labor Relations Board.

¶63 **Stay of Count III**

¶64 We recognize that the constitutional claim brought by the individual retiree plaintiffs will not be determined by the Illinois Labor Relations Board, that such constitutional questions are properly matters for the circuit courts and not for the Illinois Labor Relations Board, and that exhaustion of administrative remedies is not required for constitutional claims. See *Mon-Fitz v. Blagojevisch*, 231 Ill. 2d 474, 498 (2008); *Canel v. Topinka*, 212 Ill. 2d 311, 321 (2004); *Casteneda v. Illinois Human Rights Commission*, 132 Ill. 2d 304 (1989); *Administrative Office of the Illinois Courts v. State and Municipal Teamsters*, 167 Ill. 2d 180, 188 (1995). Thus, we underscore that the Illinois Labor Relations Board will not determine the constitutional issues.

¶65 We are affirming the stay of Count III only for purposes of judicial economy. If the Labor Relations Board rules in favor of AFSCME and requires defendants to return to the *status quo* regarding the retirees' dental insurance premiums, it may render the retired plaintiffs' litigation in circuit court in this case moot and may subject issues in this litigation to collateral estoppel. See *Casanova v. City of Chicago*, 342 Ill. App. 3d 80, 90 (2003) (holding that the plaintiff firefighter was collaterally estopped from challenging the efforts of the union that represented him in the arbitration, because the Illinois Labor Relations Board had already found in favor of the union on the firefighter's fair representation claim). A circuit court will hear only justiciable questions, and absent an applicable exception, will not render advisory opinions on abstract questions or issues that are moot. See *Powell v. Dean Foods Co.*, 2012 IL 111,714 at ¶ 36 (holding that "[t]he purpose of the standing doctrine is to ensure that courts are deciding actual, specific controversies and are not deciding abstract questions or moot issues"). Thus,

allowing the Illinois Labor Relations Board the opportunity to provide plaintiffs relief is appropriate. Therefore, we find that, in the interest of judicial economy, the circuit court did not abuse its discretion in staying the instant action pending the outcome of the Labor Relations Board charge.

¶66 CONCLUSION

¶67 The circuit court properly granted dismissal of plaintiffs' claim to vacate the arbitration award because the arbitrator acted within his authority in determining arbitrability. Here the collective bargaining agreement specifically gave the arbitrator the power to determine arbitrability. Therefore, the arbitrator did not exceed his authority and we have no grounds to vacate the arbitration award under section 12(a) of the Uniform Arbitration Act under our severely limited standard of review.

¶68 Second, the circuit court did not abuse its discretion in granting the stay of plaintiffs' breach of contract and constitutional claims in counts II and III. Although the arbitrator determined the retiree plaintiffs' claims are not subject to arbitration, AFSCME is subject to arbitration and must exhaust its administrative remedies, thereby requiring a stay of its claims. Further, the issue in this litigation is the same as AFSCME's charge before the Illinois Labor Relations Board. A ruling in AFSCME's favor on the charge may moot the current litigation or render issues subject to collateral estoppel. Thus, in the interest of judicial economy, the grant of a stay was not an abuse of discretion.

¶69 Affirmed.