2012 IL App (2d) 120009-U
No. 2-12-0009
Order filed August 17, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

POLICEMEN'S BENEVOLENT LABOR COMMITTEE, Plaintiff-Appellant, v. THE COUNTY OF KANE, PATRICK P. PEREZ, and KAREN S. McCONNAUGHAY, Defendants-Appellees.	))))))))))	Appeal from the Circuit Court of Kane County. No. 09-CH-5217 Honorable Thomas E. Mueller, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

ORDER

Held: The trial court properly dismissed plaintiff's complaint to compel arbitration of a grievance, as the termination of the employee, after the filing of the grievance, mooted the grievance.

¶ 1 Plaintiff, the Policemen's Benevolent Labor Committee, appeals a judgment dismissing its complaint (see 735 ILCS 5/2-619(a)(9) (West 2010)) against defendants, the County of Kane (County); Patrick P. Perez, the sheriff of the County; and Karen S. McConnaughay, the County's

chairperson. Plaintiff sought to compel the arbitration of a grievance filed on behalf of a sheriff's deputy, Steven Yahnke. We affirm.

¶ 2 Plaintiff's complaint alleged as follows. Plaintiff is the exclusive bargaining representative for all peace officers and other employees of the sheriff's department, including Yahnke. Defendants employ these people. The parties are subject to a collective bargaining agreement (CBA). On or about October 14, 2008, Perez filed charges against Yahnke, requesting that the sheriff's merit commission discharge him for violating internal rules. On October 15, 2008, plaintiff filed a grievance on Yahnke's behalf against discipline that Perez had imposed on Yahnke. The merit commission scheduled a hearing on the grievance for October 27, 2008, but no hearing was held. On October 22, 2008, plaintiff informed the merit commission that Yahnke was exercising his right under the CBA to independent arbitration. On October 28, 2008, Perez acknowledged in writing that the grievance had been filed and that plaintiff intended to go to independent arbitration. Plaintiff then contacted the Federal Mediation and Conciliation Service to set up a hearing. Perez responded that the grievance had been resolved and that he did not agree to arbitrate it. Because defendants had refused to arbitrate Yahnke's grievance, even though the CBA required them to do so, plaintiff requested that the court compel arbitration.

¶ 3 Plaintiff's complaint attached a copy of the CBA. Article 10, section 2, of the CBA provides a four-step process for addressing and resolving grievances. Step 1 provides, in part, "The Employee and/or the Union shall raise the grievance in writing on the approved form to the employee's supervisor who is outside the bargaining unit." In appropriate circumstances, the grievance will be referred to the sheriff. If the grievance is not resolved at Step 1, the matter proceeds to Step 2: the written grievance is submitted to the bureau commander. If that does not resolve the grievance, the

matter proceeds to Step 3: plaintiff presents the grievance to the sheriff. Finally, if the grievance is still unsettled, plaintiff proceeds to Step 4, arbitration.

¶ 4 Article 11, section 8, of the CBA provides, "The discipline of Merit Commission employees shall have as an alternative to review by the Merit Commission *** review by the provisions of Step Three of the Grievance Procedure. Within the time provided for in Step Four of the Grievance Procedure for appealing the decisions of the Sheriff, the Union may file a request for arbitration under the provisions of Step Four of the Grievance Procedure."

¶ 5 The complaint also attached a copy of the grievance that plaintiff filed on behalf of Yahnke. The grievance, dated October 15, 2008, stated as follows. Yahnke had been the subject of a lengthy internal investigation into his outside employment. He had "grieved the central issues" in the investigation, and "his legal right to maintain his secondary employment" had been "pending grievance arbitraion [*sic*]" for more than six months. Perez had forced a continuation of the arbitration hearing, then placed Yahnke on administrative leave pending the outcome of the investigation. On October 9, 2008, a sergeant, speaking on behalf of Perez, notified Yahnke that Perez was sending the case to the merit commission and was "requesting termination." The sergeant told Yahnke that "he was no longer being paid and was essentially terminated." The grievance asserted that Perez had illegally ordered Yahnke to stop his secondary employment; that Perez had illegally placed Yahnke on "an illegal unpaid status" before he received a hearing before the merit commission "over his issue of terminiation [*sic*]"; and that he had been disciplined without just cause and in retaliation for his political views. The grievance requested the stay of any discipline "until the outcome of the grievance arbitration addressing the central issue of the *** investigation."

¶ 6 The complaint attached a copy of a letter dated October 22, 2008, from plaintiff's attorney, Timothy O'Neil, to the merit commission, explaining that Yahnke was exercising his right under Article 11, section 8, of the CBA to a "step 3 grievance." O'Neil's letter stated that McConnaughay's response was due by the end of the day and that, if she denied the grievance, Yahnke wished to proceed to Step 4 by going to independent arbitration. Also attached to the complaint was a letter dated October 23, 2008, from an assistant State's Attorney representing the County to O'Neil. She explained that her office had received a copy of the grievance but that the grievance should have been filed with the sheriff, not with the County board.

¶ 7 The next attachment to the complaint was a copy of a letter dated October 28, 2008, from Perez to Steven Wennmacher, the chairman of the merit commission. The first paragraph read:

> "Patrol Sergeant Steve Yahnke #628 has waived his right to a Merit Commission hearing and filed notice of his intent to go to independent arbitration. *** I am terminating his employment with the Kane County Sheriff's Department effective immediately. I respectfully request to withdraw the complaint previously filed with the Commission."

The letter then summarized the charges against Yahnke.

¶ 8 Finally, the complaint attached a copy of a letter dated March 19, 2009, from Perez's attorney to the case administrator for the Federal Mediation and Conciliation Service. The letter stated that Perez stood by his position that the claims in Yahnke's grievance of October 15, 2008, had been resolved "when he was sent his check for the time off work he claimed prior to his termination." Therefore, Perez would not agree to have the grievance arbitrated.

¶ 9 On July 20, 2010, Perez filed a request to admit, centering on several documents. Among them were copies of a letter dated October 28, 2008, from Perez to Yahnke. The letter stated that

Yahnke had violated various rules by defying a 2007 order to cease all outside employment. The letter concluded, "Based on my [statutory] authority ***, and since you have waived your right to a Merit Commission hearing and filed notice of your intent to go to independent arbitration, I am terminating your employment ***, effective immediately." Perez requested that plaintiff admit that copies of the letter had been sent to Yahnke, the merit commission, and plaintiff; that Yahnke's employment had been terminated on October 28, 2008; that the only grievance that plaintiff had filed that was pertinent to this suit was that of October 15, 2008; and that the grievance was not filed "with regard to" the letter of October 28, 2008.

¶ 10 In response, plaintiff admitted that the copies of the October 28, 2008, letter were accurate and that they had been sent to Yahnke, the merit commission, and plaintiff. Plaintiff also admitted that the one grievance of record had not been filed in response to the October 28, 2008, letter.

¶ 11 On September 12, 2011, defendants jointly moved to dismiss the complaint, arguing as follows. Plaintiff had admitted that the only grievance it filed that related to this case was the one of October 15, 2008. Thus, Yahnke had not filed a grievance against his termination, which happened on October 28, 2008. As a result, the one grievance for which he had sought arbitration was moot; as he no longer worked for defendants, he could now work wherever else he chose.

¶ 12 In response, plaintiff argued that, as Perez had acknowledged a year earlier, plaintiff had followed the CBA's procedure and that there was a genuine issue of whether the dispute was arbitrable—a dispute that, under the CBA, was for the arbitrator, not the court, to resolve. In reply, defendants contended that, to trigger the arbitration process under the CBA, plaintiff first needed to file a grievance, which it had done only against the October 15, 2008, disciplinary measures and not

against Yahnke's firing on October 28, 2008. The trial court agreed with defendants, dismissed the complaint, and denied plaintiff's motion to reconsider. Plaintiff timely appealed.

¶ 13 On appeal, plaintiff contends that the trial court erred in holding that it was not entitled to arbitration. Plaintiff relies on section 8 of the Illinois Public Labor Relations Act (5 ILCS 315/8 (West 2010)), under which all grievance disputes must be resolved by arbitration unless the employer and the employees' representative have agreed otherwise. See *American Federation of State, County & Municipal Employees, AFL-CIO v. State of Illinois*, 124 Ill. 2d 246, 254 (1988). Plaintiff observes that this rule includes disputes over the administration or interpretation of the parties' collective bargaining agreement. 5 ILCS 315/8 (West 2010). Plaintiff reasons that, because it followed the procedures of Article 11, section 8, of the CBA, it is entitled to have the grievance arbitrated.

¶ 14 Defendants counter that the only pertinent grievance that plaintiff filed was directed against Perez's restrictions on Yahnke's outside employment, all of which were imposed before October 15, 2008. They argue that, because Yahnke was fired on October 28, 2008, those restrictions have disappeared, so that arbitration would be meaningless. We agree with defendants.

¶ 15 A section 2-619(a)(9) dismissal is proper if an affirmative matter defeats the plaintiff's claim. *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 120 (2008). Our review is *de novo*. *Id* at 115.

¶ 16 Plaintiff's focus on the arbitrability of grievances misses the point of the trial court's decision. By plaintiff's admission, the only grievance of record is the one that it filed on October 15, 2008, against the disciplinary measures that Perez had taken against Yahnke. By plaintiff's further admission—and according to the documents that defendants attached to their request to admit— Perez actually terminated Yahnke on October 28, 2008. Plaintiff concedes that it did not file a grievance in response to Yahnke's firing. Instead, plaintiff appears to assume that the

grievance that it did file somehow related forward to Yahnke's firing. However, even read generously, the grievance does not support such an assertion of clairvoyance. Had plaintiff wished to contest Yahnke's termination, it could have filed a grievance after October 28, 2008. It did not.

¶ 17 Plaintiff may not circumvent the CBA's requirements. Had plaintiff wished to contest Yahnke's firing, it had to " 'at least attempt to exhaust [the] exclusive grievance and arbitration procedure established by the bargaining agreement.' " *Zelenka v. City of Chicago*, 152 Ill. App. 3d 706, 713 (1987) (quoting *Vaca v. Sipes*, 376 U.S. 171, 184 (1967)). As far as Yahnke's firing is concerned, plaintiff not only failed to exhaust the required process —it failed to *initiate* the process.

¶ 18 The issue in this case is not whether a given grievance is arbitrable but whether the complaint to compel arbitration is moot. The complaint is moot, because compelling the arbitration of the sole grievance in the case would serve no purpose and provide plaintiff and Yahnke with no meaningful relief. See *Radazewski v. Cawley*, 159 Ill. 2d 372, 376 (1994). Yahnke no longer works for defendants, so they no longer control his employment by any outside agency. Adjudicating the one grievance of record would not address a meaningful controversy. Notably, plaintiff does not contend otherwise. We also observe that our holding is limited: on this record, plaintiff has failed to raise an issue of whether it is entitled to arbitration. Whether Yahnke's firing may be contested by other means is not before us, and any other possible avenues of relief are not foreclosed by our judgment.

¶ 19 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 20 Affirmed.