2013 IL App (5th) 120225-U

NO. 5-12-0225

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS' UNION OF AMERICA, LOCAL NO. 100,	)	Appeal from the Circuit Court of St. Clair County.
Plaintiff-Appellant,	)	
v.	)	No. 11-CH-877
THE VILLAGE OF DUPO, Illinois,	)	Honorable Richard A. Aguirre, Judge, presiding.
Defendant-Appellee.	)	

JUSTICE WEXSTTEN delivered the judgment of the court.
Presiding Justice Spomer and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court erred in affirming the arbitration decision denying union's grievance on behalf of village employee who was terminated after moving from village limits.

¶ 2 This action was brought to reinstate Jason Garrett's employment as a laborer, which was terminated by the defendant, the Village of Dupo, Illinois (the Village), because he moved his residence outside the Village limits. His grievance went before an arbitrator pursuant to a collective-bargaining agreement (CBA) executed by the Village and the plaintiff, International HOD Carriers Building and Common Laborers' Union of America, Local No. 100 (the Union), a labor organization that serves as the exclusive bargaining representative of the Village laborers, including Garrett.

¶ 3 The arbitrator determined that Garrett's discharge was justified, and the circuit court

of St. Clair County confirmed the arbitrator's decision. On appeal, the Union argues that the circuit court erred in confirming the arbitration decision because, *inter alia*, the arbitrator's decision failed to draw its essence from the CBA and the arbitrator committed a gross error of law. We reverse and remand.

¶ 4 BACKGROUND

¶ 5 In June 2003, Garrett was interviewed and hired by the Village as a part-time police officer, and from September 2003 until August 2005, he was employed as a full-time police officer with the Village. In August 2005, Garrett requested a transfer from the Village's police department to employment as a laborer in the department of public works. The Village granted his request without requiring a formal interview.

¶ 6 On July 15, 2010, Garrett moved outside the Village limits to the Village of Freeburg, seeking educational resources for his special-needs son. On August 16, 2010, the Village sent a notice to Garrett stating that he had "vacated the office of utility employee by moving outside the limits of the Village" in violation of section 1-2-36 of the Village Code (Dupo Village Code § 1-2-36(A) (eff. July 7, 1980)) and setting a hearing for August 23, 2010, "to determine just cause for [his] termination and/or vacation of office."

¶ 7 During his employment and at the time of his discharge, Garrett was a Union member, and the Village and the Union were parties to a CBA that governed the terms and conditions of Garrett's employment. The effective CBA executed by the Union and the Village in April 2008 contained no clause expressing a residency requirement for Village laborers in the public works department. Section 10 of the CBA, however, provided that the Union "agree[d] that its officers and members will live up to Village rules and regulations in the interest of safety, economy[,] and continuity of service to the public."

¶ 8 The Union had represented the Village laborers since the early 1960s. In 1980, the Village adopted the ordinance that provided that "[e]very appointed officer and employee

of the Village as a qualification for office shall be a resident of the Village" within six months following the date of hire. Dupo Village Code § 1-2-36(A). After the Village adopted the ordinance, the Union and the Village continued to negotiate agreements.

¶ 9 In addition to representing the laborers, the Union represented the Village's full-time police officers from January 2003 to January 2006. The record reveals that the Village bargained with the Union regarding residency requirements for full-time police officers and included into the officers' CBA a residency provision which requires that the officers reside in the Village within 18 months of the date of hire or be subject to discharge. The record reveals, however, the Village did not bargain with the Union over residency requirements for Village laborers in the public works department.

¶ 10 On August 23, 2010, at the Village hearing to determine cause for Garrett's termination, Garrett acknowledged that he no longer lived in the Village but had moved to the Village of Freeburg. Garrett, in addition to Les Greene, the Union's business manager, testified that the termination proceeding itself was the first time they were notified of the residency requirement. Village Mayor Ron Dell acknowledged that there was no residency requirement in the CBA. At the conclusion of the hearing, the Village concluded that Garrett had violated its residency requirement and thereby terminated his employment as a utility employee. On August 26, 2010, pursuant to the parties' CBA, the Union filed a grievance on Garrett's behalf, alleging that the Village terminated his employment without just cause.

¶ 11 Arbitrator James P. O'Grady presided over the April 7, 2011, arbitration hearing. At the arbitration hearing, Mayor Dell acknowledged that the bargaining unit predated the Village residency ordinance. Mayor Dell also acknowledged that during negotiations with the Union, there was no reference to residency being a requirement for Village employment. Mayor Dell testified, however, that the residency requirement was "pretty much common

knowledge." Mayor Dell testified that when interviewing potential employees who lived outside the village, he would ask whether the candidate had "a problem with moving *** within village limits." Mayor Dell testified that each one of the Village employees, except Garrett, lived within the Village.

¶ 12 Mayor Dell acknowledged that other than enacting the ordinance, the Village gave no written notice to the Union regarding the residency requirement. Mayor Dell testified that he was unaware whether the Village gave the Union any opportunity to negotiate the residency requirement. Mayor Dell testified that the Union did not request to bargain the residency issue.

¶ 13 Mayor Dell acknowledged that the Village entered into an agreement with police officers wherein the officers must establish a residence within the Village within 18 months of being hired. Mayor Dell also acknowledged that this CBA superseded the Village's ordinance, which provided a six-month period to establish residence.

¶ 14 Richard Bright, a Village board trustee, testified that the interview form used when questioning applicants for Village employment includes the question, "Do you live within the Village of Dupo city limits or [would you] be willing to relocate?" Bright testified that when interviewing Garrett for the police officer position, Garrett was asked whether he would be willing to relocate and that Garrett did thereafter relocate to the Village.

¶ 15 Bright testified that Garrett was not reinterviewed when he was transferred from the police officer position to the laborers position and that he did not inform Garrett that he had to reside in the Village to be a laborer. Bright testified that Garrett was the only member of the Village laborers that was a current full-time employee who did not live in the Village. Bright testified that at the August 23, 2010, hearing, there had been no request to change the residency requirement in the ordinance.

¶ 16 The Union presented the testimony of Les Greene, who had acted as the Union's

business manager since 1999. Greene testified that he was first notified of the residency ordinance upon Garrett's termination. Greene testified that the parties' CBA did not express residency restrictions. Greene testified that the Village raised a residency requirement in the police contract but did not raise the issue regarding any of the other bargaining agreements, including the one involving Garrett and other laborers. Greene testified that he had not made a demand to arbitrate or negotiate residence with the Village.

¶ 17 Garrett testified that when he was interviewed for the part-time police officer position in 2003, no one in the interview informed him that there was a residency requirement. Garrett testified that when he transferred to public works/laborers in August 2005, there was no indication upon transfer that there was a residency requirement. Garrett testified that before moving to Freeburg, he reviewed the CBA and checked with the shop steward and the Union representative to confirm that there was no residency requirement. Garrett testified that he was first informed by the Village of the residency requirement in the August 2010 pretermination letter.

¶ 18 On May 27, 2011, the arbitrator denied the grievance and ruled in the Village's favor, finding that the Village had just cause to terminate Garrett. The arbitrator found that the CBA between the Village and the Union required that the laborers live within Village limits. Because Garrett had conceded that he had moved outside the Village limits, the arbitrator found that he had defied the residency requirement and abandoned his employment and that his termination was therefore justified.

¶ 19 The arbitrator held that Garrett was provided notice of the residency ordinance during the interview wherein he was asked whether he would be willing to move into the Village for the position. The arbitrator further held that because every member of the Union, other than Garrett, lived in the Village, the employees were aware that the Village had a residency requirement and had thereby agreed voluntarily to live in the Village pursuant to the

ordinance. The arbitrator found that "the residency requirement ha[d] never, at any point in time, been requested to be negotiated, and it ha[d] been accepted by both the Village and the Union." The Arbitrator further held that the residency requirement was not a mandatory subject of bargaining for employees other than police officers and could therefore be unilaterally implemented.

¶ 20 On August 19, 2011, and January 10, 2012, the Union filed with the circuit court a motion to vacate the arbitration decision. On April 17, 2012, the circuit court denied the plaintiff's motion to vacate and confirmed the arbitrator's decision favoring the Village. The circuit court found that the "ordinance *** predates" the current CBA, that "[n]either the Village nor the Union ha[d] ever requested collective bargaining of the other on the subject of the ordinance residency requirement," that the Union was not entitled to notice by the Village of the enactment of its ordinances, that "[n]o full-time member of the Union that is currently working for the Village lives outside of it," and that Garrett's "change of residence from the Village was the precipitating event changing the *status quo*," justifying his termination for cause. On May 10, 2012, the plaintiff filed its timely notice of appeal.

¶ 21 ANALYSIS

¶ 22 The Union argues that Garrett's discharge was wrongful because no residency requirement was mentioned in the CBA, the Village could not unilaterally implement a residency requirement, and the Village failed to notify the Union of the residency requirement. The Union thereby argues that the arbitrator's decision failed to draw its essence from the CBA and amounted to a gross error of law. The Village counters that because the arbitrator acted in good faith, his award is conclusive upon the parties.

¶ 23 "The object of arbitration is to avoid the formalities, delay[,] and expenses of litigation in court." *Town of Cicero v. Illinois Ass'n of Firefighters, IAFF, Local 717*, 338 Ill. App. 3d 364, 371 (2003). "[A]rbitration awards should be construed, wherever possible,

so as to uphold their validity." *Rauh v. Rockford Products Corp.*, 143 Ill. 2d 377, 386 (1991). The authority of the arbitration decision in the case at bar is grounded upon the Illinois Public Labor Relations Act (5 ILCS 315/1 to 27 (West 2010)). Section 8 of the Illinois Public Labor Relations Act provides:

> "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. *** The grievance and arbitration provisions of any collective bargaining agreement shall be subject to the Illinois 'Uniform Arbitration Act'. [710 ILCS 5/1 to 23]" 5 ILCS 315/8 (West 2010).

¶ 24 In this case, section three of the CBA between the Village and the Union provides that "[a]ny difference or dispute arising out of the interpretation or application of any of the provisions contained in this Agreement *** shall be referred to arbitration." This section provides that "an impartial arbitrator *** shall hear the dispute and make a decision which shall be final and binding on all parties." The CBA further provides that "the arbitrator shall not have the authority to add to or subtract from or modify or amend any provision of" the agreement.

¶ 25 The limited circumstances under which we may modify or vacate an arbitration award are set forth in the Uniform Arbitration Act (710 ILCS 5/1 to 23 (West 2010)). Section 12(e) of the Uniform Arbitration Act provides as follows:

> "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).

¶ 26 "[I]n collective bargaining cases the courts have thus applied the standards that existed for vacating an arbitration agreement at common law." *Water Pipe Extension, Bureau of Engineering Laborers' Local 1092 v. City of Chicago*, 318 Ill. App. 3d 628, 636 (2000). "Our supreme court has *** clarified that under the common law standard proper for arbitration under collective bargaining agreements, the court will 'inquire into the merits of the arbitrator's interpretation *** only *** to prevent a manifest disregard of the agreement between the parties.' " *Chicago Transit Authority v. Amalgamated Transit Union Local 308*, 244 Ill. App. 3d 854, 862 (1993) (quoting *Board of Trustees v. College Teachers Union*, 74 Ill. 2d 412, 421 (1979)).

¶ 27 Limited review of an arbitral decision "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, AFL-CIO (AFSCME) v. Department of Central Management Services*, 173 Ill. 2d 299, 304 (1996); 710 ILCS 5/12 (West 2010); see also *Town of Cicero*, 338 Ill. App. 3d at 371 ("limited judicial review fosters the long-accepted and encouraged principle that an arbitration award should be the end, not the beginning, of litigation"). "[A] court is duty bound to enforce a labor-arbitration award if the arbitrator acts within the scope of his or her authority and the award draws its essence from the parties' collective-bargaining agreement." *AFSCME*, 173 Ill. 2d at 304-05.

¶ 28 Where " 'the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept.' " *AFSCME v. State*, 124 Ill. 2d 246, 255 (1988) (quoting *United Paperworkers International Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 37-38 (1987)).

" 'Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.' " *AFSCME*, 124 Ill. 2d at 255 (quoting *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960)).

The arbitrator's decision will be overturned for not drawing its essence from the collective-bargaining agreement where the arbitrator based his or her decision on a body of thought, feeling, policy, or law outside of the agreement. *Amalgamated Transit Union, Local 241 v. Chicago Transit Authority*, 342 Ill. App. 3d 176, 180 (2003). "Whether an arbitrator has exceeded the scope of his authority and has reached a decision that fails to draw its essence from the collective-bargaining agreement is a question of law." *Griggsville-Perry Community Unit School District No. 4 v. Illinois Educational Labor Relations Board*, 2013 IL 113721 ¶ 20.

¶ 29 The record reveals that the Village and the Union had entered into collective-bargaining agreements since the early 1960s, that they had not bargained the residence issue, and that the resulting agreements therefore did not express a residency requirement for Village employees. Indeed, the effective 2008 bargaining agreement between the Village and the Union does not express a residency requirement for the Village laborers. Nevertheless, the arbitrator concluded that Garrett's discharge was justified because he had moved outside the Village limits, in violation of the Village's ordinance (Dupo Village Code § 1-2-36(A)). The arbitrator's decision is based on municipal code, a body of law outside the contract, and fails to draw its essence from the CBA. See *AFSCME*, 173 Ill. 2d at 304-

05; *Amalgamated Transit Union*, *Local 241*, 342 Ill. App. 3d at 180.

¶ 30 Although not argued on appeal by the Village, we recognize that section 10 of the parties' CBA provides that the Union "agree[d] that its officers and members will live up to Village rules and regulations in the interest of safety, economy[,] and continuity of service to the public." The CBA further provides, however, that "the arbitrator shall not have the authority to add to or subtract from or modify or amend any provision of" the agreement. "Moreover, under the provisions of the Illinois Uniform Arbitration Act (710 ILCS 5/1 *et seq.* (West 1998)), as well as the common law, the arbitrator may not change or alter the terms of the collective bargaining agreement, but is authorized only to interpret its existing provisions." *Water Pipe Extension, Bureau of Engineering Laborers' Local 1092*, 318 Ill. App. 3d at 634.

¶ 31 By incorporating the residency requirement into section 10 of the agreement, the arbitrator improperly amended the CBA, altering its provisions to allow the Village to unilaterally implement a mandatory subject of bargaining. See *AFSCME*, 173 Ill. 2d at 304-05. Such a unilateral change is unlawful because it frustrates the statutory objective to establish working conditions through bargaining. See *Vienna School District No. 55 v. Illinois Educational Labor Relations Board*, 162 Ill. App. 3d 503, 507 (1987) (unilateral changes are prohibited until new terms and conditions of employment are arrived at through bilateral negotiation and by mutual agreement).

¶ 32 The Illinois Public Labor Relations Act imposes a duty on the Village, as a public employer, to engage in good-faith collective bargaining with its employees' representative when circumstances mandate bargaining. The Illinois Public Labor Relations Act defines collective bargaining as "the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times *** and to negotiate in good faith with respect to wages, hours, and other

conditions of employment, not excluded by Section 4 of this Act." 5 ILCS 315/7 (West 2010). Section 4 of the Illinois Public Labor Relations Act excludes from the bargaining process matters of inherent managerial policy, including areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques, and the direction of employees. 5 ILCS 315/4 (West 2010). Nevertheless, section 4 qualifies this exception by reiterating that the public employer must "bargain collectively with regard to policy matters directly affecting wages, hours[,] and terms and conditions of employment as well as the impact thereon upon request by employee representatives." 5 ILCS 315/4 (West 2010); *AFSCME v. Illinois State Labor Relations Board*, 274 Ill. App. 3d 327, 331 (1995). "[A] continuing obligation to bargain will exist for items that are not fully set forth in the agreement." *Central City Education Ass'n, IEA/NEA v. Illinois Educational Labor Relations Board*, 149 Ill. 2d 496, 529 (1992).

¶ 33 It is an unfair labor practice for a public employer to interfere with, restrain, or coerce its employees in the exercise of their rights guaranteed by the Illinois Public Labor Relations Act (5 ILCS 315/10(a)(1) (West 2010)) or to refuse to bargain collectively with their exclusive representative (5 ILCS 315/10(a)(4) (West 2010)). An employer's refusal to negotiate over a mandatory subject of bargaining constitutes an unfair labor practice. *Forest Preserve District of Cook County v. Illinois Labor Relations Board*, 369 Ill. App. 3d 733, 754 (2006).

¶ 34 The court determines "whether a matter is a mandatory subject of bargaining by applying the balancing test set forth by the Illinois Supreme [C]ourt in *Central City Education Ass'n* ***, 149 Ill. 2d [at 524] ***, and *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, [205-06] *** (1998)." *County of Cook v. Illinois Labor Relations Board Local Panel*, 347 Ill. App. 3d 538, 545 (2004). "Pursuant to the *Central*

City/Belvidere test, a matter is a mandatory subject of bargaining if it concerns wages, hours, and terms and conditions of employment and: (1) is either not a matter of inherent managerial authority; or (2) is a matter of inherent managerial authority, but the benefits of bargaining outweigh the burdens bargaining imposes on the employer's authority." *County of Cook*, 347 Ill. App. 3d at 545.

¶ 35 In *Town of Cicero*, 338 Ill. App. 3d at 367, the Town of Cicero (Town) imposed a residency ordinance which required that its employees reside in the Town " 'no later than six months after commencing their employment and keep such domicile during the term of the appointment or employment.' " The ordinance further stated that the failure to comply with the residency requirement " 'will be sufficient cause for termination of employment or removal from service.' " *Id.* at 368. On appeal, the court concluded that the ordinance satisfied the first prong of the *Central City/Belvidere* test because it allowed for those not in compliance to be terminated. *Id.* at 371. In so finding, the court stated, "It is therefore quite clear that the Town considers and treats residency as a term and condition of employment." *Id.* The *Town of Cicero* court further held that that the residency requirement did not concern a matter of inherent managerial policy. *Id.* ("the Town is hard-pressed to explain just how a residency requirement concerns a matter of inherent managerial policy"). The court also held that the benefits of bargaining for the union members outweighed any burdens to the town. *Id.* (the union members have a significant interest in their choice of residency, whereas the Town has not explained why bargaining over this issue would be an impermissible burden upon its authority). Accordingly, the court held that each of the three *Central City/Belvidere* prongs weighed in favor of mandatory arbitrability of a residency requirement dispute. *Id*; see also *County of Cook*, 347 Ill. App. 3d at 553 (court adopted reasoning in *Town of Cicero* and held that the residency of peace officers was a mandatory subject of collective bargaining); *City of Calumet City v. Illinois Fraternal Order of Police*

Labor Council, 344 Ill. App. 3d 1000, 1006 (2003) (court adopted reasoning in *Town of Cicero* and held that the residency of peace officers was a mandatory topic of collective bargaining).

¶ 36 We also follow the reasoning in *Town of Cicero* and hold that because the residency requirement here subjected Village laborers to potential discipline, including termination, their terms and conditions of employment were clearly affected. See *Town of Cicero*, 338 Ill. App. 3d at 371; see also *County of Cook*, 347 Ill. App. 3d at 552. Further, the residency ordinance does not involve a matter of inherent managerial authority. See *Town of Cicero*, 338 Ill. App. 3d at 371; see also *County of Cook*, 347 Ill. App. 3d at 552 (public employer could not link the objective of the residency ordinance with any of the enunciated managerial rights stated in section 4 of the Illinois Public Labor Relations Act). We note that the Village fails to assert how the residency requirement is any less a term or condition of employment or any more a managerial decision because the represented employees are laborers, as opposed to police officers or firefighters. Because we have concluded that the residency ordinance does not involve a matter of inherent managerial authority, we need not reach the third prong of the *Central City/Belvidere* test. See *County of Cook*, 347 Ill. App. 3d at 552.

¶ 37 Even if we found merit to the argument that the residency requirement satisfied the second prong of the balancing test, we would nevertheless conclude that the benefits of bargaining over the residency requirement outweigh the burdens bargaining would impose. The Union laborers have a significant interest in their choice of residency, whereas the Village has not proffered why bargaining over this issue would be an impermissible burden upon its authority. See *Town of Cicero*, 338 Ill. App. 3d at 371; see also *County of Cook*, 347 Ill. App. 3d at 553 ("the benefits of bargaining over the residency requirement outweigh the burdens bargaining would impose").

¶ 38 The arbitrator and the circuit court found significant the Union's failure to request bargaining over the issue. However, in light of the lack of an express residency requirement in the CBA, the evidence that the Village had bargained to supersede its ordinance's residency requirements in the police officers' agreement, and the lack of evidence that any Village employee had previously been discharged on this basis, we find that any failure of the Union representing the laborers to request bargaining was excused by the lack of notice that the Village would discharge noncomplying laborers. See *Forest Preserve District of Cook County v. Illinois Local Labor Relations Board*, 190 Ill. App. 3d 283, 292 (1989) (failure of union representing officers of forest preserve district to request bargaining with regard to civil service examination given to temporary officers as condition of permanent employment was excused by lack of notice that district would discharge temporary officers who failed to pass examination, and thus, union did not waive its right to bargain by failing to request bargaining); see also *Georgetown-Ridge Farm Community Unit School District No. 4 v. Illinois Educational Labor Relations Board*, 239 Ill. App. 3d 428, 462 (1992) (association had no notice of the specific reduce-in-force decisions made by district prior to those decisions being finalized by the school board's vote at the meeting). We further find in the CBA no clear and unmistakable intent of the Union to waive its rights to bargain over this issue. See *AFSCME*, 274 Ill. App. 3d at 334 ("[a] party to a collective bargaining agreement may waive its rights to bargain under the Act where the contractual language evinces an unequivocal intent to relinquish such rights"). The language sustaining such a waiver must be specific and is never presumed. See *Forest Preserve District of Cook County*, 369 Ill. App. 3d at 754; *AFSCME*, 274 Ill. App. 3d at 334.

¶ 39 Here, the CBA could have expressly provided that laborers must reside within Village limits, but it did not. Instead, subsequent to the parties' initial collective bargaining, the Village adopted an ordinance providing that "[e]very *** employee of the Village as a

qualification for office shall be a resident of the Village[,] *** living, on a full permanent basis, in a home *** located within the corporate limits of the Village." Dupo Village Code § 1-2-36(A). The Village thereby attempted to unilaterally adopt a rule involving a mandatory subject of bargaining. By terminating Garrett on this basis, the Village implemented this unilateral rule on Union members, even though the Union members did not bargain for this rule or agree to its incorporation into the CBA. Such unilateral implementation of a mandatory subject of bargaining can constitute an unfair labor practice. See *County of Cook*, 347 Ill. App. 3d at 553 (public employer violated sections 10(a)(4) and (a)(1) of the Illinois Public Labor Relations Act (5 ILCS 315/10(a)(4), (a)(1) (West 2000)) when it failed to bargain with the labor unions representing peace officers over the enforcement of a residency ordinance, a mandatory subject of bargaining); see also *County of Cook v. Licensed Practical Nurses Ass'n of Illinois*, 284 Ill. App. 3d 145, 154 (1996) (county violated the Illinois Public Labor Relations Act by unilaterally implementing policy subject to mandatory bargaining); *Kysor/Cadillac*, 307 N.L.R.B. 598, 603 (1992) ("[b]y unilaterally implementing a policy and practice of requiring certain unit employees to undergo drug testing as a condition of employment, without prior notice to or affording the [u]nion an opportunity to bargain concerning such practice, and by discharging [two employees] pursuant to such policy and practice, the [c]ompany has engaged, and is engaging in unfair labor practices").

¶ 40 Garrett's violation of such a rule cannot justify his discharge in this case. See *AFSCME*, 124 Ill. 2d at 257 (Department of Mental Health's disciplinary rule, requiring employee discharge if employee mistreated a service recipient, did not require arbitrator to discharge employees who indirectly mistreated a recipient, where rule was a unilateral one which was not incorporated into the collective-bargaining agreement). Accordingly, the arbitrator's decision here must be set aside for a gross error of judgment in law apparent on

the face of the decision. See *Garver v. Ferguson*, 76 Ill. 2d 1, 10-11 (1979); *TruServ Corp. v. Ernst & Young, LLP*, 376 Ill. App. 3d 218, 224 (2007) (arbitrator's decision may be set aside for gross errors of judgment in law or gross mistakes of fact apparent on the face of the arbitration decision). We conclude from the face of the award that the arbitrator was so mistaken as to the law that, if apprised of his mistake, he would have ruled differently. See *TruServ Corp.*, 376 Ill. App. 3d at 224-25.

¶ 41 Although not developed below or on appeal by the Village, the arbitrator and the circuit court seemed to conclude that employment termination based on nonresidency was an established practice, thereby constituting the status quo, and therefore, Garrett's termination did not result in a unilateral change of work conditions. See *East Richland Education Ass'n*, *IEA-NEA v. Illinois Educational Labor Relations Board*, 173 Ill. App. 3d 878, 890 (1988) (an unfair labor practice will not lie if the change is consistent with the past practices of the parties). "A term or condition of employment *must* be an established practice to constitute a status quo." (Emphasis in original). *Thornton Fractional High School District No. 215 v. Illinois Educational Labor Relations Board*, 404 Ill. App. 3d 757, 763 (2010). Whether a status quo exists must be made on a "case-by-case" basis and includes an evaluation of past history, past bargaining practice, existing contract terms, and the reasonable expectations of employees. *Id.*

¶ 42 In this case, the Village did not engage in collective bargaining with the Union regarding a residency requirement for Village laborers. Instead, the Village in 1980 attempted to unilaterally implement a mandatory bargaining agreement without prior negotiation. The Village offered no evidence to show that any laborer had been discharged for lack of Village residency since. Considering that the Village bargained and implemented residency requirements in collective-bargaining agreements with the police officers' union, that these requirements superseded those found in the ordinance, and that there was no such

residency requirement bargained for or agreed upon in the ongoing agreements with the laborers' Union, we cannot conclude that the laborers could have reasonably expected to be terminated for failure to comply with a residence requirement not expressly included in their CBA. That the other Village laborers reside within Village limits does not, in itself, establish that termination based on nonresidence constituted the status quo. In terminating Garrett on the basis of nonresidency, the Village unilaterally changed a term and condition of employment. In finding that Garrett's termination was justified on this improper basis, the arbitrator's decision failed to draw its essence from the CBA, and the arbitrator committed a gross error of law on the face of its award.

¶ 43 CONCLUSION

¶ 44 By terminating Garrett based on the residency ordinance, the Village unilaterally changed a term and condition of his employment and deprived the Union of its right to negotiate a subject of mandatory bargaining. The Union did not waive its right to bargain, either contractually or by failing to request bargaining prior to implementing the rule and terminating Garrett. See *East Richland Education Ass'n, IEA-NEA*, 173 Ill. App. 3d at 890. By incorporating the residency requirement of the Village ordinance into section 10 of the CBA, the arbitrator improperly amended the CBA to allow the Village to unilaterally implement a mandatory subject of bargaining. In so doing, the arbitrator acted outside the scope of his authority and failed to limit himself to interpreting the CBA, and his decision fails to draw its essence from the agreement and includes a gross error of law. See *AFSCME*, 173 Ill. 2d at 304-05; *Garver*, 76 Ill. 2d at 10-11. For the foregoing reasons, we reverse the order of the circuit court of St. Clair County, which confirmed the arbitrator's decision finding just cause for Garrett's termination, and we remand the cause for further proceedings to determine Garrett's remedy.

¶ 45 Reversed; cause remanded.