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ILLINOIS APPELLATE COURT REJECTS CITY OF CHICAGO'S ATTEMPT TO VACATE ARBITRATION AWARD ENFORCING PROJECT LABOR AGREEMENT

On December 30, 2022, the First District Appellate Court for the State of Illinois issued its opinion in *The City of Chicago v. International Brotherhood of Electrical Workers, Local No. 9*, reversing a trial judge's decision that had previously vacated an arbitration award between the City of Chicago ("the City") and IBEW Local No. 9 ("the Union"). The dispute arose over the City's decision to allow non-union workers to enter City property and perform electrical work on City-owned streetlight and traffic poles. The work at issue involved the installation of digital antennae systems and "small cell" devices used to supplement cellular coverage.

In 2010, the City entered into a multi-project labor agreement ("PLA") with the Union and a coalition of other labor organizations. That PLA, which was incorporated into the Union's contract with the City, provided in relevant part: "[The City] shall not contract or subcontract, **nor permit** any other … entity to contract or subcontract" any project work covered by the PLA or within the trade jurisdiction of any signatory labor union, unless that work is performed by signatories to the applicable area-wide collective bargaining agreements. The City used a permitting system through which it allowed telecom companies to access City-owned property and install their small cell devices, in exchange for the payment of annual fees and various other requirements for the benefit of the City. The Union grieved the City's decision to issue small cell permits to non-union companies. After a hearing, the arbitrator concluded that the City had violated the PLA because the work at issue was within the historical trade jurisdiction of the Union, and the City was "permitting" non-union entities to perform that work. The arbitrator ordered the City to comply with the PLA by only issuing these permits to entities that are signatory or willing to become signatory to the applicable collective bargaining agreements.

The City filed a petition to vacate the arbitrator's award, arguing that the arbitration award was unenforceable under the "public policy exception" because it allegedly had the effect of regulating labor relations between private telecom companies and their employees, and was therefore preempted by the National Labor Relations Act ("NLRA"). The trial judge accepted this argument and vacated the arbitrator's award, and the Union appealed. In its December 30th opinion, the Appellate Court rejected this argument and reversed the trial court's decision. The Appellate Court noted that the "public policy exception" is quite narrow, and it can only be used to throw out an arbitrator's award where the contract as interpreted by the arbitrator clearly violates some well-defined and dominant public policy.

In this case, the Court explained that the NLRA preempts actions by state or local governments that seek to regulate labor activities that the NLRA arguably protects or prohibits. However, as established by the U.S. Supreme Court in its 1993 *Boston Harbor* decision, the NLRA does not preempt every conceivable state action that affects labor – where a state or local government owns or manages property, or is the proprietor of a project, it is free to impose labor-related conditions on private parties who wish to perform work on that property or wish to work under that project. Under these circumstances, the public body is acting as a "market participant," not as

a regulator, so it must be free to take the same actions that any other market participant could take, including requiring companies that wish to perform work on that property to become signatory to union contracts or enter into "labor peace" agreements. Here, because the work at issue was performed entirely on City property, and because the City granted access to this property (which sometimes involved ripping up city blocks and upgrading or replacing City light poles) in exchange for annual fees and the reservation of certain wires and cables for the City's own uses, this directly implicated the City's ownership and management interests over its own property. As such, the City was free as a "market participant" to place restrictions on who would be permitted to enter its property and perform this work.

Because there was no clear violation of the NLRA, the Appellate Court concluded that there was no basis to vacate the arbitrator's award under the public policy exception. As the Appellate Court stated, "Arbitration is meant to provide finality." But for many public employers, if they are unhappy with the results at arbitration, they will too often run to court to challenge any unfavorable arbitration award by claiming that the award violates public policy. The Appellate Court's decision in this case is a powerful rebuke against this abuse of the public policy exception, and a reminder that an arbitrator's award should be the end of litigation, not the beginning.

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