

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SERVICE EMPLOYEES INTERNATIONAL)
UNION, LOCAL 73, CTW, CLC,)

Plaintiff,)

v.)

CITY OF CHICAGO,)

Defendants.)

Case No. 2017CH09867
CALENDAR/ROOM 02
TIME 00:00
Injunction

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The Service Employees International Union, Local 73, CTW, CLC (“Plaintiff” or “Local 73”), by and through its attorneys, Daniel Zapata and Tyson Roan, complaining for and on behalf of themselves and all employees of the City of Chicago in the Department of Aviation who are members in the title of Aviation Security Officer within the bargaining unit represented by Local 73 complaining of the City of Chicago (“Defendant” or “City”) allege as follows:

1. This Court has jurisdiction over this action pursuant to the Illinois Uniform Arbitration Act, 710 ILCS 5/1, *et seq.*, and Sections 8 and 16 of the Illinois Public Labor Relations Act, 5 ILCS 315/8 and 16.

2. Plaintiff Local 73 is a labor organization which exists for the purpose of dealing with employers, including public employers, concerning wages, hours and other terms and conditions of employment and the settlement of grievances within the meaning of Section 3(i) of the Illinois Public Labor Relations Act, 5 ILCS 315/3(i). Local 73 engages in these activities in the State of Illinois and has its principal office in the City of Chicago.

3. Defendant City of Chicago is a governing body as defined in 65 ILCS 5/1 *et seq.*

4. On or about October 11, 2012, Local 73, through its former President Christine Boardman, and the City, through its Mayor Rahm Emanuel, entered into a collective bargaining

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agreement as authorized by the Illinois Public Labor Relations Act 5 ILCS 315/1 et seq. The collective bargaining agreement provides for the wages, hours and working conditions of certain City of Chicago employees in a bargaining unit represented by Local 73. (A copy of said collective bargaining agreement is attached as Exhibit 1.)

5. The collective bargaining agreement expired on June 30, 2016. On or about October 3, 2016, Local 73 and the City agreed to the terms of a Memorandum of Agreement that extended the terms of the collective bargaining agreement until December 31, 2017. (A copy of said Memorandum of Agreement is attached as Exhibit 2.)

6. As part of the collective bargaining agreement and consistent with the requirements of Section 8, Illinois Public Labor Relations Act 5 ILCS 315/8, the collective bargaining agreement contains a grievance resolution procedure that applies to all employees in the bargaining unit represented by Local 73 and provides for final and binding arbitration of disputes concerning the administration and interpretation of the agreement.

7. Article 7 of the collective bargaining agreement provides in relevant part at Section 7.2(a)(2):

A difference, complaint or dispute (hereinafter called a grievance) between the Employer and the Union or any of the employees of the Employer it represents, arising out of the circumstances or conditions of employment, shall be exclusively settled in the following manner and there shall be no strikes, slowdowns, or work stoppages during the life of this Agreement...
(Exhibit 1, Art. 7 § 7.2(a)(2).)

8. The collective bargaining agreement also provides that any grievance not settled in accordance with the grievance procedure may be referred by Local 73 to binding arbitration. If the Union is not satisfied with the Step 3 answer, it may within thirty (30) days after receipt of the Step 3 answer submit in writing to the City notice that the grievance is to enter into impartial arbitration. (Exhibit 1, Art. 7 § 7.2(a)(2) Step IV.)

9. The Union represents a bargaining unit with the City of Chicago that covers approximately 230 Aviation Security Officers (“ASO”). (Affidavit of Marshall.)

10. The ASOs are assigned to O’Hare International Airport and Midway International Airport, which combined serve 100 million passengers each year. (Exhibit 7.)

11. The traditional work of ASOs, as is described in City’s November 2011 job description, includes patrolling the airport grounds, terminals and facilities to provide a law enforcement presence, deter criminal activity, prevent unauthorized airport access, enforce security rules, and perform related duties as required. (A copy of said November 2011 job description is attached as Exhibit 3.) The essential duties of ASOs include, but are not limited to, the following: issues citations for traffic violations on the airfield and airport roadways, and non-traffic citations for security violations including failure to display identification badges by airport personnel; arrests and detains individuals found violating or suspected of violating city, state and federal laws, restraining individuals using handcuffs or other restraining devices; conducts pat down searches of detained individuals; physically searches properties and vehicles; and responds to incidents and disturbances including family and civil disputes occurring on airport grounds, assessing the situation to identify safety factors, securing the area and requesting needed backup and assistance. Per the November 2011 job description, one of the minimum qualifications to be an ASO is being certified by the State of Illinois as a Law Enforcement Officer. (Exhibit 3.)

12. On information and belief, in or about 1993, the State of Illinois first recognized the Department of Aviation as a law enforcement agency. Since that time, ASO’s have possessed the following law enforcement authorities and duties: on airport property, while in uniform and on duty, ASOs have all the powers possessed by Chicago Police Department officers, including the authority to make arrests when they identify violations of state statutes and city or county

ordinances; ASOs carry ASPs (tactical batons) and handcuffs which they may use to effectuate those arrests; ASOs are dispatched in response to incidents that occur past the Transportation Security Administration security checkpoints, also known as “air side” locations, air side traffic control calls, and 911 calls made from O’Hare Airport. (Exhibit 9.)

13. On information and belief, since 1993, the City has required ASOs to be state certified by the Illinois Local Government Law Enforcement Officers Training Board. Since then, ASOs have been required to complete the Chicago Police Academy Training Course and a 40-hour firearms training course. (Exhibit 9.)

14. Section 2-20-030 of the Municipal Code of Chicago provides a venue for the City to designate ASOs as having police powers. Specifically, Section 2-20-030 states the following:

2-20-030 Police powers of department employees.

Such employees of the department of aviation as the commissioner of aviation may designate shall have full police powers, and for that purpose shall be sworn in as special policemen by the commissioner of police, and furnished with suitable badges of authority. They shall have full power to eject from any public airport owned or operated by the city any person who acts in a disorderly manner, or in a manner calculated to injure the property of the city within such airport.

15. On information and belief, prior to 2006, the City referred to ASOs as Special Police. Since at least 2006, the City has referred to ASOs as Aviation Police Officers and provided ASO’s with badges identifying them as Chicago Aviation Police. (Affidavit of A. Cole.)

16. In or about April 2017, Local 73 learned of the City’s intention to strip ASOs of their status as police, including removing the word “police” from their uniforms and patrol cars, and instead rebranding the ASOs as “security” as opposed to police. (Affidavit of Marshall.)

17. On or about April 26, 2017, Local 73 filed an unfair labor practice charge with the Illinois Labor Relations Board against the City alleging that the City had violated Section 10(a)(1) and (4) of the Illinois Public Labor Relations Act, 5 ILCS 315/10, when the City

announced that it planned to strip ASOs of their authority as special police officers, including removing symbols of ASOs status as special police officers such as making changes to ASO patrol cars and uniforms and rebranding ASOs as “security” instead of “police.” The Union requested in that charge that the Illinois Labor Relations Board petition the circuit court for injunctive relief, pursuant to their authority under 5 ILCS 315/11(h). This matter is still being investigated by the Illinois Labor Relations Board. (Exhibit 10; Affidavit of Marshall.)

18. After Local 73 filed the unfair labor practice charge referenced above, the City and Local 73 engaged in discussions regarding the City’s unilateral actions attempting to change the duties of ASOs and attempting to rebrand ASOs from police to security. (Affidavit of Marshall.)

19. On May 18, 2017, Local 73 received a proposed “Letter of Agreement” from the City outlining the City’s proposed changes to the ASO functions and job duties. This proposed “Letter of Agreement” mimicked the November 2011 ASO job description in format but changed the title and duties of the ASOs in the following respects: ASOs would no longer be recognized as police, special police, or peace officers; the ASO title would be changed to Aviation Public Safety Officers; ASO vehicles, badges, and uniforms would be rebranded with “Aviation Public Safety”; ASOs could no longer issue citations for traffic violations; ASOs could no longer arrest individuals found violating or suspected of violating city, state and federal laws; ASOs authority to conduct searches of properties and vehicles was further limited; and ASOs could only respond to incidents and disturbances when requested by Chicago Police. (Exhibit 4.)

20. On or about June 15, 2017, Local 73 notified the City that it was rejecting the City’s draft “Letter of Agreement.” Local 73 counter proposed that the City embrace the ASOs as special police officers under Section 2-20-030 of the Municipal Code of Chicago and that the duties of

ASOs remain unchanged. Local 73 also requested that the City provide Local 73 with the following information: 1) any documents assessing the budget, financial, operational, or business plan impacts of any proposed changes with respect to the ASOs; 2) the results of any reviews conducted by the City of Chicago or any entity that it has contracted with for purposes of evaluating the safety, security, and policing needs at Chicago's airports; and 3) any documents, notes, email, or memoranda identifying the duties performed by ASOs maintained by the City of Chicago, and any documents referencing their status as special police, police, and/or peace officers. (Affidavit of Marshall; Exhibit 15.)

21. On or about June 28, 2017, the City notified Local 73 that it believed the parties were at impasse and warned that the City reserved its right to implement actions it deemed as necessary. (Affidavit of Marshall.)

22. On or about June 30, 2017, Local 73 notified the City that it disagreed with the City's assessment that the parties were at impasse and asked for a meeting between the parties to work toward a resolution. (Affidavit of Marshall.)

23. On or about July 11, 2017, the City, through its Chief Labor Relations Negotiator Joseph Martinico, notified Local 73 that it was moving forward with rebranding ASOs and that it would be repainting ASO vehicles to remove the word "police" and rebranding them as "Aviation Security." The City also notified Local 73 that it would be changing ASO uniform patches and badges to remove the word "police." The City also provided Local 73 with a revised Aviation Security Division Directive that changed ASO work duties in relation to handling disturbances and medical emergencies at both O'Hare International Airport and Midway International Airport which changes the work of the ASOs in at least the following respects: ASOs will no longer self-deploy to disturbance incidents reported to the O'Hare Communications Center ("OCC") or

Midway Communications Center (“MCC”); ASOs will no longer respond to on-view disturbance incidents, unless there is “potential for violence” or where an offender of a criminal act may escape, but will instead notify the OCC or MCC to request the Chicago Police Department and will observe, monitor, and take note of the action; and ASOs will only board aircraft when the Chicago Police Department or the Chicago Fire Department request assistance. (Exhibit 5.)

24. On or about July 12, 2017, the City issued a News Release stating, among other things, that the City was introducing a new directive designating Chicago Police Officers as the lead on all disturbance calls at the airports and in aircrafts; rescinding the current directive and stating that Chicago Police Officers, not ASOs, are authorized to respond to disturbance-related incidents on aircrafts. The City further stated that it would update the ASO procedures manual and that changes to the ASO uniform insignia and vehicle markings would be made. (Exhibit 7.)

25. On or about July 14, 2017, Local 73 and the City had a meeting in which the City stated that it would be moving forward with its plans. (Affidavit of Marshall.)

26. Article 6.5 of the collective bargaining agreement between the parties is entitled “Traditional Work” and states the following:

Any work which has been traditionally performed by employees who are represented by the Union shall continue to be performed by said employees, except where non-unit employees have in the past performed unit work, or in emergencies, to train or instruct employees, to do layout demonstration, experimental, or testing duties, to do troubleshooting or where special knowledge is required, provided however, where employees do not report to work because of vacations, or other absences or tardiness, or for personal reasons during the course of the day, or because all of the employees are or will be occupied with assigned duties, or to complete a rush assignment, employees of any other unit represented by another Union shall not perform the work of said employees...
(Exhibit 1, Art. 6 § 6.5.)

27. Article 19 of the collective bargaining agreement between the parties is entitled “Indemnification” and states, in part, the following:

Section 19.1 Safety. The Employer shall continue its efforts to provide for a safe working environment for its employees, as is legally required by federal and state laws.

(Exhibit 1, Art. 19 § 19.1.)

Section 19.7 Expedited Arbitration. Grievances alleging a violation of this Article may be initiated at Step Four (4) of the grievance procedure. In arbitrations thereunder, unless the parties agree otherwise, hearing shall commence within thirty (30) days of the selection of the arbitrator, the arbitrator shall issue his award in writing within fifteen (15) days following the close of the hearing; the full written decision of the arbitrator may be issued within thirty (30) days of the close of the hearing.

(Exhibit 1, Art. 19 § 19.7.)

28. On or about July 13, 2017, Local 73 filed a Step 4 grievance alleging that the City's actions of July 11, 2017 in regard to changing the ASO work duties and rebranding the ASOs violated the collective bargaining agreement. Local 73 requested that the grievance be processed through expedited arbitration. (Exhibit 6; Affidavit of Marshall.)

29. To date, the City of Chicago has not responded to the Union's grievances.

30. By changing the ASO job duties, the City is in violation of Article 6.5 and Article 19.1 of the collective bargaining agreement.

31. By removing "police" from the ASO vehicles, badges, and uniforms and rebranding the ASOs as Aviation Public Safety Officers, the City is in violation of Article 19.1 of the collective bargaining agreement.

32. Local 73, in its grievance, seeks a determination from an arbitrator as to whether the City's changes to the traditional work/duties of ASOs, rebranding of the ASOs as Aviation Public Safety Officers, and removal of "police" from the ASO vehicles, badges, and uniforms are in violation of the contractual requirements listed in the July 13, 2017 grievance.

33. Arbitration is a lengthy process and it can take a year or longer to schedule an arbitration and receive the award from the arbitrator. Given the City's reluctance to negotiate in good faith

with Local 73, the City may seek to vacate the arbitration award. Such proceedings could further delay implementation of an arbitrator's award for months or even years.

34. On information and belief, the City is removing the traditional work of the ASOs, including the following duties: arresting individuals who were found to be violating city, state, or federal laws; issuing citations for traffic violations on the airfield and airport roadways; and responding to incidents and disturbances including family and civil disputes occurring on airport grounds. (Exhibit 3; Exhibit 4; Affidavit of Cole; Affidavit of Green.)

35. On information and belief, the City's unilateral action to change the traditional work of the ASOs and rebranding the ASOs from "police" to "public safety officers" means that ASOs will no longer be allowed to enforce city and state laws at either O'Hare International Airport or Midway International Airport, which endangers the safety of the ASOs and the traveling public. ASOs will no longer be authorized to run licenses on individuals entering the airports through the vehicle gates, meaning that individuals who have outstanding warrants or may be holding a concealed firearm could enter the airports. ASOs would no longer be authorized to conduct traffic stops or issue traffic citations. Nor would ASOs be authorized to arrest individuals who could pose a threat to themselves and the traveling public. Removing "police" from the ASO uniforms and stars would mean that ASOs would no longer be allowed to pass through TSA checkpoints without getting scanned, which could result in slower response times. Removing "police" from the ASO uniforms and insignia will damage the public perception and reputation of the ASOs. (Affidavit of Cole; Affidavit of Green; Affidavit of Shumaker)

36. On or about July 18, 2017, City of Chicago Alderman Raymond Lopez issued a statement urging the City to abandon its efforts to decertify the ASOs. Alderman Lopez stated that "[d]ecertifying the Aviation Police without the necessary 137 percent increase in CPD officer

staffing to address the security void would create a destabilized airport environment. In this scenario, we would be unable to handle passenger incidents while maintaining airfield integrity and compliance.” (Exhibit 8.)

COUNT I. DECLARATORY RELIEF

37. Plaintiff realleges and incorporates the allegations of the proceeding Paragraphs of this Verified Complaint.

38. Plaintiff has a legal, tangible interest in protecting and preserving the collective bargaining agreement and the grievance and arbitration process contained therein.

39. There exists a dispute between the parties concerning the City’s unilateral actions changing the traditional work of ASOs, rebranding ASOs as Aviation Public Safety Officers, and removing “police” from the ASO vehicles, badges, and uniforms and whether the City’s actions contravene the collective bargaining agreement.

40. Plaintiff seeks declarations and judgments from the Court pursuant to 735 ILCS 5/2-701 that in connection with the pertinent grievance, as amended, the City must refrain from any activities that have the purpose or effect of weakening or undermining the grievance and arbitration procedures of the collective bargaining agreement.

COUNT II. INJUNCTIVE RELIEF

41. Plaintiff realleges and incorporates the preceding Paragraphs of this Verified Complaint.

42. The underlying grievance is one that the parties are contractually bound to arbitrate. There is a genuine dispute with respect to the arbitral issues and the Plaintiff’s positions are likely to succeed on the merits and are not frivolous.

43. The Employer’s breach of the collective bargaining agreement is of an ongoing nature.

44. Local 73 and its members will suffer irreparable harm from the Employer's breach if the Defendant is not enjoined from unilaterally changing the ASO's work duties/responsibilities, rebranding ASOs as Aviation Public Safety Officers, and removing "police" from the ASO vehicles, badges, and uniforms pending the submission of the grievance to expedited arbitration and the rendering of an arbitration award and Plaintiff has no adequate remedy at law.

45. Allowing the Defendant to proceed with the unilateral changes to the ASOs work duties/responsibilities, rebrand the ASOs as Aviation Public Safety Officers, and remove "police" from the ASO vehicles, badges, and uniforms would make it extremely difficult for an arbitrator to award a remedy after-the-fact because the Defendant is not only making a permanent change to the ASO duties but also compromising the safety of the 230 ASOs and the 100 million passengers that travel through O'Hare International Airport and Midway International Airport each year.

46. The Union's members would suffer irreparable harm that no arbitrator's award can undo. No arbitration award can remedy serious bodily injury or death.

47. On information and belief, the public perception of ASOs will be damaged by rebranding them from "police" to "public safety officers," which may cause the public to no longer obey ASOs and which may take years to reverse.

48. The Union members and the 100 million members of the traveling public at O'Hare International Airport and Midway International Airport would also suffer from a weakened safety net that will lead to potential harm to the health and safety of the ASOs and the traveling public.

49. The Union will suffer substantial reputational harm if no equitable relief is granted, as the Union will appear powerless to address the Employer's contractual violations. During the

months the Union is waiting for the grievance to proceed to arbitration, memories fade, evidence and contact information is lost, and affected members move on with their lives. When the grievance finally reaches arbitration, the damage of a contract violation has already been done and likely accepted by the members. In the meantime, the Union is viewed as powerless to address the Employer's contractual violations.

50. Enjoining the City from implementing the unilateral changes to the ASOs work duties/responsibilities, rebranding the ASOs as Aviation Public Safety Officers, and removing "police" from the ASO vehicles, badges, and uniforms pending receipt of an arbitrator's award in connection with the July 13, 2017 grievance would not cause any undue burden on the City. In contrast, such order would likely result in potential cost savings in relation to the rebranding alone and would protect the City against being subjected to an arbitration award in effect imposing payment for loss of secondary employment.

WHEREFORE, Plaintiff prays:

- A. That the Defendants be specifically required to perform and comply with the provisions of the collective bargaining agreement.
- B. That the Defendants be restrained from in any manner failing or refusing to perform their obligations under the collective bargaining agreement.
- C. That the Defendants be specifically required to proceed to expedited arbitration on the grievance concerning the unilateral changes to the ASOs work duties/responsibilities and the safe work environment concerns involving rebranding the ASOs as Aviation Public Safety Officers and removing "police" from the ASO vehicles, badges, and uniforms.

D. That the Defendants be enjoined from implementing their plan to indefinitely make unilateral changes to the ASOs work duties/responsibilities, rebrand the ASOs as Aviation Public Safety Officers, and remove “police” from the ASO vehicles, badges, and uniforms.

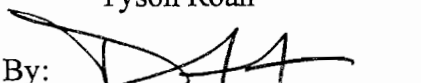
E. That the City be required to provide the Union with relevant information requested sufficiently in advance of the arbitration hearing in order to provide the Union with a full and fair opportunity to proceed with arbitration.

F. That the Plaintiff may have such other and further relief as this Court may deem just and equitable in the premises and that costs be assessed against the Defendants.

Respectfully submitted,

SEIU, Local 73

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Daniel Zapata

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