

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AFSCME COUNCIL 5, LOCAL 3558

and

Case No: 18-CB-149410

ST. LUKE'S HOSPITAL OF DULUTH, INC. d/b/a

ST. LUKE'S HOME CARE

ANSWERING BRIEF OF AFSCME COUNCIL 5, LOCAL 3558

INTRODUCTION

Respondent AFSCME Council 5, Local 3558 (hereinafter "AFSCME") files this Answering Brief in the above caption matter pursuant to the Board's February 5, 2016 Order. AFSCME would like to take this opportunity to address a number of the arguments raised in Charging Party St. Luke's Hospital of Duluth, Inc. d/b/a St. Luke's Home Care (hereinafter "St. Luke's") and the Region's Initial Briefs. In summation, because the interest arbitration clause contained in the parties' collective bargaining agreement does not automatically self-perpetuate indefinitely, it is valid under the Act. Accordingly, AFSCME committed no unfair labor practice by seeking to enforce the agreement.

FACTUAL CORRECTIONS

Prior to analyzing why AFSCME's insistence on enforcing the bargained-for language of the parties' agreement is not an unfair labor practice, AFSCME would like to correct a factual mistake in St. Luke's Initial Brief. In its brief, St. Luke's states that "during the negotiations for a successor collective bargaining agreement, Employer's position was that the [interest arbitration] provision should be removed, and [AFSCME's] position was that the [interest arbitration] provision should be included." (Employer's Initial Brief ("Emp. Br.") at 1.) However, this

statement is incorrect. As noted in both the Joint Stipulation of Facts and the Initial Brief submitted by the Region, St. Luke's submitted proposals during bargaining that included Section 21's interest arbitration clause. (Region's Initial Brief ("Region Br.") at 3; *Joint Motion and Stipulation of Facts* at ¶ 12(b).) AFSCME believes that St. Luke's misrepresented this fact in an effort to make it appear as if AFSCME was unilaterally insisting on the inclusion of an interest arbitration provision, and that St. Luke's has consistently been opposed to its inclusion.

ANALYSIS

The Employer's argument in this dispute can be summarized as follows: St. Luke's agreed to submit *any* unresolved dispute that arose in reaching a successor collective bargaining agreement to interest arbitration. However, after receiving the benefit of reaching a collective bargaining agreement and enjoying the benefits of the stable labor relations that the predecessor agreement provided, St. Luke's does not wish to honor its agreement.

Not only did the Parties agree to submit unresolved issues to interest arbitration; they expressly agreed in Section 21.3 of the predecessor collective bargaining agreement to submit the inclusion of an interest arbitration provision to resolution by an arbitrator should impasse be reached. The Board should not impose itself and invalidate the clear and unmistakable will of the parties at the time that they agreed to enter into a labor relationship. *See Chattanooga Mailers Union, Local No. 92 v. Chattanooga News-Free Press Co.*, 524 F.2d 1305, 1314 (6th Cir. 1975) ("Nothing would be more out of step with our national labor policies than . . . to refuse to enforce a voluntary agreement to arbitrate differences.").

1. Section 21 is not automatically self-perpetuating like other interest arbitration clauses found to be invalid under the Act

Section 21 of the Parties' collective bargaining agreement is not automatically and indefinitely self-perpetuating, and therefore should be found to be valid under the Act. "The

Board has been unwilling to permit self-perpetuating interest arbitration clauses.” *Laidlaw Transit, Inc.*, 323 NLRB 867, 869 (1997) (citing *Mechanical Contractors Assn. of Newburgh*, 202 NLRB 1 (1973)). However, it is clear that the interest arbitration clause at issue is not automatically self-perpetuating, and therefore should be found to be valid.

While it is true, as noted by St. Luke’s and the Region, that under the agreement an arbitration panel must include an interest arbitration clause in the succeeding contract, the arbitration panel also has the express authority to impose an immediate expiration date, or an expiration date that expires prior to the negotiating of the following collective bargaining agreement. Therefore, the interest arbitration provision is not self-perpetuating in the same manner as interest arbitration provisions that have previously been invalidated by the Board.

The Employer notes that there is no Board authority directly on point. (*See* Emp. Br. at 4.) This is likely because the type of interest arbitration clause in the parties’ agreement presents a new and novel set of factual circumstance on first impression before the Board. There is no evidence put forth by either the Employer or the Region that should cause the Board to doubt the competence and ability of an arbitrator to respect the positions of the parties. In other words, no evidence shows that an arbitrator would *per se* disregard the express grant of authority by the parties to impose an expiration date on the interest arbitration provision in the successor agreement, especially in light of a request to do so by St. Luke’s.

2. The Board’s strong public policy of resolving disputes through alternative dispute resolution would be furthered By upholding the parties’ agreement

As noted in AFSCME’s Initial Brief, the Board has a strong policy of promoting the settlement of disputes through arbitration. *See NLRB v. Columbus Printing Pressman & Assistants’ Union No. 252*, 543 F.2d 1161, 1170 (5th Cir. 1976) (“Promotion of [arbitration] procedures for the peaceful settlement of disputes is unquestionably an important purpose of the

Act.”). A decision by the Board not allowing the language agreed to by the Parties to be upheld will draw into question the ability of other parties to submit to interest arbitration at all, due to the fact, as warned by the Region, that interest arbitration “effectively inserts the opinion of an arbitrator for the bargaining by parties.” (Region Br. at 6 (citing *Laidlaw Transit*, 323 NLRB 867, 869 (1997).) If the Board is able to trust arbitrators be fair and balanced with regard to other subjects of bargaining, including subjects affecting the terms and conditions of employment, it should be able to trust them to fairly represent the interests of the parties in the instant dispute.

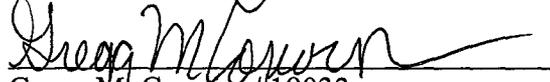
It would be a completely different scenario if the language of the parties’ agreement called for a mandatory interest arbitration clause be included in to perpetuity unless the parties agreed otherwise. Such a clause would be the type that has noted as being “repugnant to national labor policy.” *Sheet Metal Workers’ Int’l. Ass’n, Local 14 v. Aldrich Air Conditioning, Inc.*, 717 F.2d 456, 456–57 (8th Cir. 1983). However, in the instant case, the bargained for and agreed upon language of the parties clearly intended for an arbitrator to supply an interest arbitration provision with, if necessary, an immediate expiration date. The language of Section 21 of the parties’ agreement not only shows the clear intent of the parties to submit to interest arbitration, but the language of Section 21 is not the type of interest arbitration clause that the Board has previous held to be invalid. Accordingly, the Board should not allow the Employer to go back on its word and repudiate the parties’ earlier agreement.

CONCLUSION

Section 21 of the parties’ agreement does not violate the National Labor Relations Act, and accordingly, AFSCME seeking to enforce the provision does not constitute an unfair labor practice under Section 8(b)(3) of the Act.

Dated: March 11, 2016

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