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

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO,	)	
Plaintiff,	)	
v.	)	Case No. 2023CH00322
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 9,	)	
Defendant.	)	

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO'S PETITION TO VACATE AN ARBITRATION AWARD

Plaintiff, Metropolitan Water Reclamation District of Greater Chicago ("the District"), by Susan T. Morakalis, its General Counsel, in support of its petition to vacate an arbitration award entered in favor of Defendant, International Brotherhood of Electrical Workers, Local 9 ("Local 9"), alleges the following:

PARTIES

1. The District is a unit of local government organized under the Metropolitan Water Reclamation District Act, 70 ILCS 2605/1 *et seq.* The District is also a "public employer" under the Illinois Public Labor Relations Act, 5 ILCS 315/3(o).

2. Local 9 is a labor union or "labor organization" representing Illinois employees, including public sector employees, under the Illinois Public Labor Relations Act, 5 ILCS 315/3(i). Local 9 is the exclusive bargaining representative for the District's electrical operations group, electrical instrumentation and testing group, and motor vehicle dispatcher group.

JURISDICTION AND VENUE

3. The District brings this action pursuant to the Uniform Arbitration Act, 710 ILCS 5/1, *et*

seq., to vacate an arbitrator's award.

4. Under Section 12(b) of the Uniform Arbitration Act, a petitioner has 90 days from the delivery date of the award to move to vacate an award. This petition to vacate is timely because the Arbitrator issued his award on remedy that is the subject of this petition on October 14, 2022.

5. The Court has jurisdiction over this petition pursuant to Sections 12 and 16 of the Uniform Arbitration Act, 710 ILCS 5/12 and 16, and Section 7 of the Illinois Public Labor Relations Act, 5 ILCS 315/7.

6. Venue in this Court is authorized under Section 17 of the Uniform Arbitration Act, 710 ILCS 5/17, because both the District and Local 9 have their principal places of business in Cook County, Illinois and all relevant acts giving rise to this petition occurred in Cook County, Illinois.

THE PARTIES' CBAs AND THE DISPUTED FACILITIES CLOSURE PROVISIONS

7. The District and Local 9 entered into three collective bargaining agreements ("CBAs") covering the period of July 1, 2017, through June 30, 2020. A copy of the CBA for Electrical Operations is attached as Exhibit 1. A copy of the CBA for Electrical Instrumentation and Testing is attached as Exhibit 2. A copy of the CBA for Motor Vehicle Dispatcher Group is attached as Exhibit 3. The District and Local 9 extended the effective dates of these CBAs by agreement to June 30, 2021.

8. During the time period relevant to this dispute, the District employed approximately 85 members of Local 9.

9. The CBAs each contain a provision called "Facility Closures." These provisions each start with the following phrase:

> "When the District allows paid time off as a result of a facility closure or due to an emergency or other reasons, the following will apply:...".
>
> (See pgs. 28-30 of Exhibit 1, pgs. 25-27 of Exhibit 2, and pg. 22 of Exhibit 3)

10. The Facility Closures provisions of the CBAs provide for additional pay (1-1/2 times hourly rate for all hours worked) or additional vacation hours ("compensatory time" or "holiday earned time") to Local 9 members who report to work on-site when the District allows paid time off as a result of a facility closure or due to an emergency or other reasons. (*Id.*)

11. The Facility Closures provisions of the CBAs provide that non-shift employees who are instructed not to report to work shall receive payroll code 0017- Employee Benefit for the workday.

12. The CBAs do not state that the District's use of billing code 0017-Employee Benefit triggers a facility closure or the award of facility closure benefits.

THE ONSET OF THE COVID-19 PANDEMIC AND AWARDING FACILITY CLOSURE BENEFITS FOR THE DISTRICT'S UNIONIZED WORKFORCE WORKING ON-SITE

13. On March 13, 2020, the District's Executive Director decided that the District would begin operating at reduced on-site staffing levels in response to the Covid-19 pandemic.

14. A press release conveying this decision stated that the District's plants will continue to be staffed 24 hours a day, 7 days a week, and those not directly involved with treating wastewater and managing stormwater will be on call and telecommuting.

15. At that time, the District began providing its unionized workforce additional pay or vacation hours when reporting to on-site work.

16. At that time, the District also compensated non-represented, non-shift employees directed to report to on-site work at 1-1/2 times their hourly rate for all hours worked.

17. The decision to allow some employees to work remotely was made in response to the Covid-19 pandemic to avoid employee gatherings in the workplace and to keep employees safe until the District could establish protocols for social distancing and arranging job assignments so that there would be maximum separation for employees.

18. Around the beginning of the Covid-19 pandemic, all District employees who were working

were either working on-site, working remotely, or on-call during normal work hours. The District coded employees who were working remotely or on-call, 0017A-Employee Benefit.

19. Starting on April 20, 2020, non-represented, non-shift employees directed to report to on-site work stopped receiving 1-1/2 times their hourly rate and returned to regular straight-time pay.

20. Around May 2020, the District transitioned more employees to the worksite, but still allowed employees who could perform their job functions remotely to work remotely.

21. On May 11, 2020, the District ceased providing facility closure benefits, a/k/a additional pay or vacation hours to its unionized workforce when reporting to on-site work.

22. Beverly Sanders, the District's Director of Human Resources communicated this decision to all employees in a May 8, 2020 email. The email "*Update on Staffing Plans and Employee Compensation*" stated in part:

> On March 13, the District implemented reduced staffing orders in order to cope with the COVID-19 Pandemic.... With these plans, a significant number of staff transitioned to telework. Over time, more staff have been reporting to District facilities and are conducting other field work in order to maintain our essential operations and services.
>
> As it becomes increasingly more difficult to determine the duration of the COVID-19 event, the District needs to continue to transition more staff to reporting to worksites. This new phase will further modify our reduced staffing plans, ending the facility closure, and moving toward a plan for the controlled reintroduction of staff. This new phase will also end the facility closure compensation for represented and shift employees. Therefore, effective 10:30 pm on Sunday, May 10, 2020, all employees required to report to a District worksite will receive their standard compensation when reporting to work.
>
> Please be aware that this is not a notification for all employees to report back to work. Staffing plans will be communicated to employees and additional employees will be returned to the worksite as needed and in a controlled manner to protect the health and safety of employees and help prevent the spread of the COVID-19 virus. Shift employees are to continue to report to work following their shift schedules. Employees who are teleworking should continue to do so, unless instructed by a supervisor to report to a District worksite. Employees that are teleworking should be coded 17a for their hours worked. Employees not directed to report to work during their scheduled work hours will continue to receive code 17a. (The May 8, 2020 email is attached as Exhibit 4)

The District's Human Resources Department also emailed the representatives of all Unions

representing District employees notifying them of the decision to end facility closure benefits. (See Exhibit 4)

THE GRIEVANCES, SETTLEMENTS WITH ALL OTHER UNIONS EXCEPT LOCAL 9, THE JANUARY 27, 2021 ARBITRATION HEARING ON THE MERITS, AND THE ARBITRATOR'S JUNE 7, 2021 DECISION SUSTAINING LOCAL 9'S GRIEVANCE

23. On May 13, 2020, Local 9 filed grievances on behalf of its members in each of the three bargaining units it represents regarding the District no longer providing facility closure benefits as of May 11, 2020. The reason stated for the grievance was:

> "facility closures 17A in violation including but not limited to the collective bargaining agreement CBA Article 1 Section 1.01, Art V Sect 5.01, Art XXIV Section 24.05, class action file Step II tried to resolve prior." (See Exhibit 5, pg. 1)

24. In addition to the three unions represented by Local 9, three other unions representing District employees filed grievances regarding the District no longer providing facility closure benefits as of May 11, 2020.

25. In October 2020, the District entered into settlement agreements with the three other unions, aside from Local 9, that filed grievances regarding facility closure benefits. The District agreed to provide facility closure benefits up to May 29, 2020.

26. In October 2020, the District also entered into settlement agreements to provide facility closure benefits up to May 29, 2020 with 14 other unions representing District employees.

27. May 29, 2020 is when Governor Pritzker ended the Illinois stay-at-home order.

28. The three unions represented by Local 9 are the only unions the District did not reach an agreement with regarding the granting of facility closure benefits during the COVID-19 pandemic.

29. Local 9's grievance regarding facility closure benefits proceeded to Step III on September 1, 2020, resulting in the District's denial of the grievance. In an October 12, 2020 letter, Beverly Sanders, the District's Director of Human Resources, advised Local 9 why the District denied

grievance:

> "The District has a right to determine when it is open or closed just like any other entity."
>
> "The District disagrees with Local 9 that because some employees are working from home, that a facility is closed."
>
> "The District, as well as entities throughout the entire world, is operating in unprecedented times during the COVID-19 pandemic."
>
> "The District has continuously remained opened as it must in order to provide essential services to the public." (See Exhibit 5, pgs. 6-7)

30. After the District and Local 9 were unable to resolve Local 9's grievance, the matter proceeded to final and binding arbitration before Arbitrator Brian Clauss.

31. The District and Local 9 agreed that Arbitrator Clauss would first decide the merits of the grievance, and that he would conduct a separate hearing on the remedy if Local 9 prevailed on the merits and the parties were unable to reach an agreement on the remedy.

32. The arbitration hearing on the merits of the grievance before Arbitrator Clauss occurred on January 27, 2021.

33. At the January 27, 2021 arbitration hearing, Local 9 argued that the District was continuing to violate the CBA by not providing its members facility closure pay while it continued to code employees who were working remotely or on-call under code 0017A-Employee Benefit.

34. At the January 27, 2021 arbitration hearing, the District argued that employees working remotely or on-call were not on "paid time off" and therefore the District did not, and was not continuing to, violate the Facility Closure provision of the CBAs.

35. On June 7, 2021, Arbitrator Clauss issued a decision sustaining Local 9's grievance. Arbitrator Clauss determined that the District violated its CBAs with Local 9 when it ceased awarding facility closure benefits to bargaining members on May 11, 2020. A copy of Arbitrator

Clauss' June 7, 2021 decision is attached as Exhibit 6.

36. Arbitrator Clauss' June 7, 2021 decision states:

> "The issue here is not whether the District can alter its operations. The issue is whether the alterations were a closure under the language of the respective Agreement. The plain language of the Agreements defines when premium payments are required. According to the Agreements, those payments occur when the District allows paid time off as a result of a facility closure due to an emergency, or other reason. The evidence shows that District employees were allowed paid time off after May 11, 2020, due to the pandemic. Here, the Union has established that employees were placed in paid time off due to the pandemic and that practice continued past May 11, 2020." (Exhibit 4, pgs. 17-18)

37. Between May 11, 2020 and June 7, 2021 when Arbitrator Clauss sustained Local 9's grievance, November 25, 2020 and December 24, 2020 were the only times the District granted employees paid time off.

38. The District dismissed employees at 1pm on November 25, 2020 in recognition of Thanksgiving. The District granted facility closure benefits to Union members, including Local 9 members, who worked their entire shift on November 25, 2020 when the District allowed paid time off by dismissing employees at 1pm on that date in recognition of Thanksgiving. All shift employees working their entire shift received their normal compensation in addition to being credited with the number of holiday earned hours equal to the paid time off received by non-shift employees at their assigned work location.

57. The District granted facility closure benefits to Union members, including Local 9 members who worked their entire shift on December 24, 2020, when the District allowed paid time off by dismissing employees at 1pm on that date in recognition of the holidays.

39. The District dismissed employees at 1pm on December 24, 2020 in recognition of the winter holidays. All shift employees working their entire shift received their normal compensation in addition to being credited with the number of holiday earned hours equal to the paid time off received by non-shift employees at their assigned work location.

40. Contrary to Arbitrator Clauss' determination, the District did not have a practice of placing employees in paid time off after May 11, 2020. Aside from November 25, 2020 and December 24, 2020, District employees were not receiving paid time off between May 11, 2020 and June 7, 2021.

APRIL 13, 2022 REMEDY HEARING AND ARBITRATOR CLAUSS' OCTOBER 14, 2022 DECISION ON REMEDY

41. Following Arbitrator Clauss' June 7, 2021 decision on the merits of the grievance, the parties were unable to come to a resolution and the matter proceeded to a hearing on remedy before Arbitrator Clauss on April 13, 2022.

42. After the April 13, 2022 hearing on remedy, in post-hearing briefing, Local 9 argued that the starting point for the remedy should be $4.7 million based on facility closure benefits through January 27, 2021, the date of the arbitration hearing on the merits. Local 9 then concluded that the remedy should be $7.17 million based on facility closure benefits through June 7, 2021, the date that Arbitrator Clauss issued his decision on remedy.

43. After the April 13, 2022 hearing on remedy, in post-hearing briefing, the District argued that Local 9 should receive facility closure benefits up through May 29, 2020, the same date as the other unions received. Alternatively, the District argued that facility closure benefits should cease July 6, 2020, when 100% of trades employees in Maintenance & Operations returned to onsite work.

44. On October 14, 2022, Arbitrator Clauss issued his decision on remedy ordering the District

to pay facility closure benefits to Local 9 members through October 1, 2020. The ruling stated that "The October 2020 date is supported by the evidence produced at the hearing. The evidence indicates that although the recordkeeping was haphazard, the District had ad-hoc work from home policies in place." (A copy of the October 14th decision on remedy is attached as Exhibit 7)

45. The cash value of facility closure benefits to Local 9 from May 11, 2020 through October 1, 2020 as ordered by Arbitrator Clauss is nearly $2.3 million.

GROUNDS FOR VACATING THIS AWARD: THERE IS NO POSSIBLE OR PLAUSIBLE INTERPRETIVE ROUTE TO THE AWARD BECAUSE THE DISTRICT ALLOWING "PAID TIME OFF" TRIGGERS FACILITY CLOSURE BENEFITS AND THE DISTRICT DID NOT ALLOW EMPLOYEES PAID TIME OFF AS OF MAY 11, 2020

46. The District realleges paragraphs one through 45 as if fully set forth here.

47. If all reasonable minds would agree that the arbitrator's construction of the contract was not possible under a fair interpretation of the contract, a court may vacate or refuse to confirm an award.

48. Paid time off is akin to paid vacation.

49. When the District allows paid time off, employees granted paid time off are not required to report to work on-site, not required to work remotely, not required to be on-call, and not required to perform any work.

50. Remote work is not paid time off.

51. Employees that are on-call during their normal work hours are not on paid time off.

52. District employees that are members of Local 9 cannot perform their job duties working remotely.

53. The Facilities Closures provision in the District's Agreements with Local 9 does not require the District to continue awarding facility closure benefits after May 10, 2020 to Local 9 employees

who worked on-site when other employees were not allowed paid time off but were coded 17A for working remotely or being on-call due to the COVID-19 pandemic.

54. The first sentence of the Facility Closures provision states "When the District allows paid time off as a result of a facility closure or due to an emergency or other reasons, the following will apply:..." (See pgs. 28-30 of Exhibit 1, pgs. 25-27 of Exhibit 2, and pg. 22 of Exhibit 3)

55. The District's allowance of paid time off triggers facility closure benefits additional pay (1-1/2 times hourly rate for all hours worked) or additional vacation hours ("compensatory time" or "holiday earned time") to union members required to work when other employees are not required to work but still receiving pay. The facility closures provisions only apply when the District allows paid time off.

56. The District granted facility closure benefits to Union members, including Local 9 members, who worked their entire shift on November 25, 2020 when the District allowed paid time off by dismissing employees at 1pm on that date in recognition of Thanksgiving.

57. The District granted facility closure benefits to Union members, including Local 9 members who worked their entire shift on December 24, 2020, when the District allowed paid time off by dismissing employees at 1pm on that date in recognition of the holidays.

58. Aside from November 25, 2020 and December 24, 2020, during the period of May 11, 2020 through October 1, 2020, District employees did not receive paid time off.

59. Although during the period of May 11, 2020 through October 1, 2020, the District coded employees working remotely or on call as "Code 17A," remote work or being on-call is not paid time off.

60. Below is a list of dates from 2017 to 2019 when the District allowed paid time off to employees using Code 17A:

- November 22, 2017: pre-holiday early leave.
- February 9, 2018: a weather event.
- October 5, 2018: anticipation of a trial verdict which may result in potential civil unrest.
- November 21, 2018: Thanksgiving Eve, to allow employees to leave two hours early.
- December 24, 2018: Christmas Eve, to allow employees to leave two hours early.
- January 30, 2019: a weather closure event.
- November 27, 2019: Thanksgiving Eve, to allow employees to leave two hours early.
- December 24, 2019: Christmas Eve, to allow employees to leave two hours early.

61. The distinction between using Code 17A during the COVID-19 pandemic compared to previous weather/holiday, etc. applications of the "facility closures" provision of the CBAs is that during the pandemic, employees were not on paid benefit time where they were off work and free to do whatever they pleased, like they were able to do so when coded 17A for the day before Thanksgiving or the day before Christmas. At a traditional facility closure event, employees are not required to report to work on-site, not required to work remotely, not required to perform work, are not on-call, and are off with pay.

62. Local 9 failed to provide evidence at arbitration showing that employees were allowed paid time off.

63. The evidence in the arbitration record shows that employees coded 17A from May 11, 2020 to October 1, 2020 were working remotely or on-call.

64. Both Local 9 and the Arbitrator wrongly confused Code 17A coding used for remote or on-call work for paid time off.

65. If all reasonable minds would agree that the Arbitrator's construction of the contract was not possible under a fair interpretation of the contract, then the court would be bound to vacate or refuse to confirm the award.

66. If all reasonable minds would agree that the District allowing paid time off triggers facility closure benefits and the District did not allow employees paid time off as of May 11, 2020, then the Court should vacate or refuse to confirm the award.

ADDITIONAL GROUNDS FOR VACATING THIS AWARD:
THE AWARD EXCEEDS THE AUTHORITY GRANTED TO THE ARBITRATOR UNDER THE CBA

67. The District realleges paragraphs one through 66 as if fully set forth here.

68. Section 12 of the Uniform Arbitration Act provides that upon application of a party, the court shall vacate an award where the arbitrator exceeded their power. 710 ILCS 5/12(a)(3).

69. An arbitrator may not change or alter the terms of a collective bargaining agreement but is authorized only to interpret its existing provisions.

70. An arbitrator exceeds their authority when an award changes or alters the terms of the collective bargaining agreement in violation of the authority provided by the applicable CBA.

71. The CBAs each contain a provision providing stating:

> "The authority of the arbitrator shall be limited to the construction and application of specific terms of this Agreement. He/she shall have no authority or jurisdiction directly or indirectly to add to, subtract from or amend any of the specific terms of this Agreement or to impose liability not explicitly expressed herein."
>
> (See pg. 24 of Exhibit 1, pg. 21 of Exhibit 2, and pg. 18 of Exhibit 3)

72. Arbitrator Clauss' award should be vacated because there is no possible interpretative route to the award based on the CBA, which clearly provides that paid time off triggers facility closure pay.

73. The award did not "draw its essence" from the CBAs the Arbitrator was asked to interpret.

75. The award reflects that it was based on the Arbitrator's personal or policy views rather than on the contract he was asked to enforce. Arbitrator Clauss relied on the District's use of the 0017A timekeeping code to determine if the Facility Closure provision was in effect, ignoring the CBAs' language and the parties' historical practices.

76. In rendering his decision, Arbitrator Clauss considered whether the District was undergoing "altered" or "changed" operations, which are not terms that appear in the CBAs.

77. The Arbitrator's ruling stated that "The issue here is not whether the District can alter its operations. The issue is whether the alterations were a closure under the language of the respective Agreement." Even though the words "altered operations" do not appear anywhere in any of the Collective Bargaining Agreements, the Arbitrator repeatedly (10 times) relies on them as the basis for his ruling.

PUBLIC POLICY GROUNDS FOR VACATING THIS AWARD: TAXPAYER FUNDED GOVERNMENT SALARIES MUST BE EARNED AND AN ERRONEOUS INTERPRETATION OF THE AGREEMENT CANNOT SERVE AS A SALARY WINDFALL OF OVER $2 MILLION FOR LOCAL 9 GOVERNMENT EMPLOYEES

78. The District realleges paragraphs one through 77 as if fully set forth here.

79. Judicial review of an arbitration award is limited, but Illinois courts recognize a public policy exception to vacate arbitration awards.

80. From May 11, 2020 to October 1, 2020, Local 9 employees did not perform any additional duties or tasks beyond their normal work duties, and none more than any other District employees represented by other unions during this time period.

81. The Arbitrator's erroneous decision unjustly awards extra compensation (nearly $2.3 million) to Local 9 members for the period of May 1, 2020 to October 1, 2020, which is in addition to their normal salary and benefits that they received.

82. The Court should vacate this erroneous award on public policy grounds to prevent a salary windfall to government employees that was not earned.

REQUESTED RELIEF

WHEREFORE, the Metropolitan Water Reclamation District of Greater Chicago requests this Court to enter an order vacating both the Arbitrator's June 7, 2021 decision concluding the District violated its CBAs with Local 9 when it ceased awarding facility closure benefits on May 11, 2020 and the Arbitrator's October 14, 2022 decision on remedy ordering the District to pay facility closure benefits to Local 9 members through October 1, 2020.

METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO

By: /s/Susan T. Morakalis
Susan T. Morakalis, General Counsel

Susan T. Morakalis by
James B. Murray/Joseph D. Cook/Emily C. Zapotocny
100 East Erie, 3rd Floor, Chicago, Illinois 60611
(312) 751-6575
Attorney Code 28138