

**STATE OF ILLINOIS
IN THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS**

Katherine M. Keefe
Clerk of the Circuit Court
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McHenry County, Illinois
22nd Judicial Circuit

JAMES M. SWEENEY, AND)
INTERNATIONAL UNION OF)
OPERATING ENGINEERS, LOCAL 150,)
AFL-CIO,)

Plaintiffs,)

-vs-)

ALGONQUIN TOWNSHIP ROAD)
DISTRICT,)

Defendant.)

Case No. 17 CH 482

Judge: Daniel L. Jasica

ANDREW GASSER, ALGONQUIN)
TOWNSHIP ROAD COMMISSIONER,)
ALGONQUIN TOWNSHIP ROAD)
DISTRICT,)

Counter-Plaintiffs,)

-vs-)

INTERNATIONAL UNION OF)
OPERATING ENGINEERS,)
LOCAL 150,)

Counter-Defendant.)

REPLY IN SUPPORT OF MOTION TO DISMISS
SECOND AMENDED COUNTERCLAIM

On April 14, 2018, the Algonquin Township Road District and Andrew Gasser (collectively, “Gasser”) filed their Second Amended Counterclaim, in which Gasser argued that the collective bargaining agreement (“CBA”) between the Road District and the International Union of Operating Engineers, Local 150, AFL-CIO (“Local 150”) should be declared null and void. The Second Amended Counterclaim presented five counts, four of which were nearly

identical to those previously dismissed by this Court. The new count alleged that Local 150 participated in a civil conspiracy when it signed the CBA after the former Highway Commissioner allegedly negotiated certain terms of the CBA directly with a member of the bargaining unit.

On April 18, 2018, this Court entered an Order allowing Local 150 twenty days, or until May 8, 2018, to file its motion to dismiss. The Court also allowed Gasser, at the request of his counsel, thirty five days, or until June 12, 2018, to respond. Finally, the Court allowed Local 150 fourteen days, or until June 26, 2018, to reply, and set a hearing for argument for July 10, 2018. The April 18th Order has not been vacated or modified.

On May 8, 2018, Local 150 filed a Motion to Dismiss the Second Amended Counterclaim pursuant to 735 ILCS 5/2-619.1. As of this date, Gasser has not filed a response in opposition to Plaintiffs' Motion to Dismiss, nor has he moved to vacate or modify the Order entered on April 18th.¹ Gasser has therefore waived any arguments in opposition to Local 150's Motion to Dismiss. The unchallenged arguments set forth in Local 150's Motion and Memorandum in Support provide a solid factual and legal basis for this Court to grant Local 150's Motion and dismiss Gasser's claims with prejudice. Accordingly, Gasser's Second Amended Counterclaim must be dismissed with prejudice, and Local 150's Motion to Compel Arbitration must be granted because the CBA entered into by Highway Commissioner Miller and Local 150 is valid.

¹ Gasser has routinely filed documents late, or not at all, throughout this case. For example, Gasser's Response to Local 150's Motion to Dismiss was due on August 8, 2017. Gasser failed to file a response. On October 2, 2017, Gasser was granted leave to file his response on or before October 9, 2017. Gasser ultimately filed his Response one day late on October 10, 2017. On November 16, 2017, after the original Motion to Dismiss was granted, this Court granted Gasser leave to file an amended counterclaim on or before December 7, 2017. Gasser filed his Amended Counterclaim one day late on December 8, 2017. On March 9, 2018, after Local 150's Motion to Dismiss the Amended Counterclaim was granted, this Court granted Gasser leave to file a second amended counterclaim on or before April 11, 2018. Gasser filed his Second Amended Counterclaim three days late on April 14, 2018.

Conclusion

For all the above-stated reasons, the Court should dismiss Gasser's Second Amended Counterclaim with prejudice and grant Local 150's Motion to Compel Arbitration.

Dated: June 26, 2018

Respectfully submitted,

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150, AFL-CIO,

By: /s/ Robert A. Paszta

One of the Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that he caused a copy of the foregoing to be served upon the following via Electronic Mail, Facsimile and U.S. Mail on or before the hour of 5:00 p.m. on June 26, 2018:

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By: /s/ Robert A. Paszta
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