

IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
EDGAR COUNTY, ILLINOIS

Edward B. Motley- Sheriff of Edgar County,
Illinois,

Petitioner/Plaintiff

v.

Steven Bierig-Arbitrator and the Illinois
Fraternal Order of Police Labor Council,

Respondents/Defendants

) (1)
) Steven Bierig-Arbitrator
) at
) 1303 Kenton Road
) Deerfield, Illinois 60015

) (2)
) The Illinois Fraternal Order of Police
) Labor Council
) at
) 974 Clock Tower Drive
) Springfield, Illinois 62704

) NO: 12 MR 24
)

FILED

AUG - 1 2012

Karen D. Halloran
Circuit Clerk, 5th Judicial Circuit Edg

COUNT I

PETITION
FOR
ISSUANCE OF A WRIT OF PROHIBITION

Now comes Petitioner Edward B. Motley-Sheriff of Edgar County, Illinois and for his
Petition states:

1. That this Court has jurisdiction as to the content of this Count I based upon the Illinois Supreme Court precedent of Orenic v. The Illinois State Labor Relations Board, 127 Ill.2d 453, 462, 537 N.E.2d 784 (1989).
2. That at the time of the filing of this Petition, Petitioner Edward B. Motley was the Sheriff of Edgar County, Illinois and has been since December 1, 2010.
3. That at all times mentioned herein there was in full force and effect an Illinois Statute entitled "Sheriff's Merit System Law" found in 55 Illinois Compiled Statutes 5/3-8001, et.seq.

4. That at all times mentioned herein, Respondent Steven Bierig was an Arbitrator selected by an agent of the Office of the Edgar County State's Attorney to conduct an Arbitration as to Grievances filed by former Edgar County Sheriff's Office Deputies Roger Hopper and Dee Burgin who were terminated by the Petitioner Sheriff from their employment as Deputies of the Petitioner Sheriff due to not having been appointed Deputies of the Petitioner Sheriff consistent with the terms of the Sheriff Merit System Law found in 55 Illinois Compiled Statutes 5/3-8001, et.seq.; specifically 5/3-8010 (entitled "Certification of Applicants") of 55 Illinois Compiled Statutes.

5. That at all times mentioned herein the Respondent Illinois Fraternal Order of Police Labor Council had a Collective Bargaining Agreement with the County of Edgar/Edgar County Sheriff, Article I (entitled "Recognition") of which stated:

ARTICLE 1-RECOGNITION

"The Employer hereby recognizes the Union as the sole and exclusive collective bargaining representative for the purpose of collective bargaining on any and all matters [sic] relating to wages, hours, and all other terms and conditions of employment of all deputies in the bargaining unit. The bargaining unit shall include:

All full-time Deputies employed by the County of Edgar/Edgar County Sheriff.

Positions excluded from the above described bargaining unit shall include: All other employees of the County of Edgar/Edgar County Sheriff and all managerial, professional, supervisory, and confidential employees as defined in the Illinois Public Labor Relations Act."

Additionally, Article 10 (entitled "Grievance Procedure") of said CBA, Section 1 (entitled "Definition of a Grievance") states:

“A grievance is defined as any unresolved difference, complaint or dispute between the Employer and the Union or any employee regarding the application, meaning or interpretation of this Agreement. This grievance procedure is subject to and shall not conflict with any provisions of the Illinois Public Labor Relations Act.”

Further, Section 7 (entitled “Steps in Procedure”) Step 3 states in pertinent part:

“Questions of arbitrability shall be decided by the arbitrator. The arbitrator shall make a preliminary determination of the question of arbitrability. Once a determination is made that the matter is arbitrable or if such preliminary determination cannot be reasonably made, the arbitrator shall then proceed to determine the merits of the dispute.”

6. That while an Arbitrator’s decision is not subject to reversal due to mistakes of law, it is reversible if the mistake of law is contrary to Public Policy; see American Federation of State County and Municipal Employees, AFL-CIO v. Department of Central Management Services, 173 Ill.2d 299, 671 N.E.2d 668 (1996). The Public Policy of the State of Illinois is the statute entitled Sheriff’s Merit System Law found in 55 Illinois Compiled Statutes 5/3-8001, et.seq.

7. That while Dee Burgin and Roger Hopper filed Grievances pertaining to their termination of employment as Deputies of the Petitioner, such filing was improper in that (a) they were not validly members of the Union legally entitled to use the Grievance Procedure of the aforecited CBA due to not having been lawfully appointed Deputies of the Petitioner Sheriff consistent with the terms of the Sheriff’s Merit System Law, and (b) even if Respondent Arbitrator Bierig were to not accept that just stated, such would be contrary to the Public Policy of the State of Illinois.

8. That what constitutes a Public Policy is that found in the Constitution of the State of Illinois, the Statutes of Illinois and the case precedents of the Courts of Illinois and is not determined by an Arbitrator during or at an Arbitration; see American Federation of State County and Municipal Employees, AFL-CIO v. Department of Central Management Services, 173 Ill.2d 299, 671 N.E.2d 668 (1996). Further, in the Illinois Appellate Court case of Vanko v. Sheahan and the Cook County Sheriff's Merit Board, et.seq., 278 Ill.Aapp3d 302, 303,662 N.E.2d 512(1st Dist. 1996) held:

“...where it is clear that a deputy has not been certified no hearing is required and the sheriff may discharge the plaintiff as he might any probationary or at will employee unprotected by the Act. [The Sheriff's Merit System Act].”

9. That the said Sheriff's Merit System Law constitutes the Public Policy of the State of Illinois as to the merit employment of Deputies of a Sheriff and that based upon the aforecited Vanko precedent of the Illinois Appellate Court Respondent Arbitrator Bierig has no lawful authority to conduct an Arbitration as to the Grievances inappropriately filed with the Union, whereby the Union seeks to have Arbitrator Bierig order the reinstatement of Dee Burgin and Roger Hopper as Deputies of the Petitioner Sheriff.

COUNT II

COMPLAINT **FOR** **DECLARATORY JUDGMENT**

1. That this Court has jurisdiction as to the content of this Count II based upon the terms of the Declaratory Judgment Act found in 735 Illinois Compiled Statutes 5/2-701.

2-9. That the Plaintiff Sheriff re-alleges and adopts by reference that found in Paragraphs 2-9 of Count I.

WHEREFORE, as to Count I, the Petitioner Sheriff requests of this Court:

A. that it issue a Writ Of Prohibition directed to Arbitrator Bierig and the Illinois Fraternal Order of Police Labor Council prohibiting an Arbitration as to the Grievances filed by Dee Burgin and Roger Hopper, and

B. that the Petitioner Sheriff have such other and further relief as may be fair and equitable.

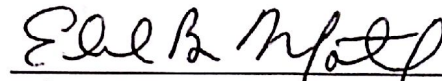
WHEREFORE, as to Count II, the Plaintiff Sheriff requests of this Court that it issue a Declaratory Judgment:

A. declaring that since Dee Burgin and Roger Hopper were not lawfully appointed Deputies of the Plaintiff Sheriff pursuant to the terms of the Sheriff's Merit System Law found in 55 Illinois Compiled Statutes 5/3-8001, specifically 5/3-8010, Defendant Arbitrator Bierig is without lawful authority to conduct an Arbitration pertaining to the termination of employment of Dee Burgin and Roger Hopper as Deputies of the Plaintiff Sheriff, and

B. declaring that since Dee Burgin and Roger Hopper were not lawfully appointed Deputies of the Plaintiff Sheriff consistent with the terms of Section 5/3-8010 of the Sheriff's Merit System Law as found in 55 Illinois Compiled Statutes, the Defendant Illinois Fraternal Order of Police Labor Council has no lawful authority to proceed to Arbitration as to their Grievances filed pursuant to the terms of the Collective Bargaining Agreement between the Illinois Fraternal Order of Police Labor Council and the County of Edgar/Edgar County Sheriff because Burgin and Hopper were not lawfully covered by the terms of the aforementioned Collective Bargaining Agreement between the Illinois Fraternal Order of Police Labor Council and the County of Edgar/Edgar County Sheriff.

C. that the Plaintiff Sheriff have such other and further relief as may be fair and equitable.

Respectfully submitted,



Edward B. Motley-Sheriff of
Edgar County, Illinois-Petitioner/Plaintiff

Edward B. Motley
Edgar County Sheriff's Office
228 North Central
Paris, Illinois 61944
217-465-4166

OFFICE OF THE CLERK
JUDICIAL CIRCUIT CLERK
EDGAR COUNTY, ILLINOIS
IN
RE: EDGAR COUNTY SHERIFF'S PETITION FOR APPOINTMENT

Now comes the Petitioner, Edward B. Motley, Sheriff of Edgar County, Illinois, and for his Petition Motion For Appointment of a Special State's Attorney To Represent The Sheriff in The Case At Hand states:

1. This Court has jurisdiction over this Petition Motion based upon 55 ILCS 40/1-9018 entitled "Appointment of attorney to perform duties".
2. That Petitioner Edward B. Motley is the current Sheriff of Edgar County and has been since 2010, having been elected to said Office in November 2010 and a swearing in on December 2010.
3. That Mark R. Leaf is the current Edgar County State's Attorney.
4. That the Edgar County State's Attorney is the legal officer of the County.