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2012 IL App (4th) 110639-U

Filed 8/24/12

NO. 4-11-0639

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE BOARD OF TRUSTEES OF THE UNIVERSITY)	Direct Appeal from
OF ILLINOIS,)	Illinois Educational Labor
Petitioner,)	Relation Board
v.)	
THE EDUCATIONAL LABOR RELATIONS BOARD;)	No. 2010CA74C
LYNNE O. SERED, RONALD ETTINGER, MICHAEL)	
H. PRUETER, AND JIMMIE ROBINSON, the Members)	
of Said Board in Their Official Capacity Only; and THE)	
INTERNATIONAL BROTHERHOOD OF)	
TEAMSTERS, LOCAL 726,)	
Respondents.)	

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Illinois Educational Labor Relation Board's decision affirming arbitrator's award ordering the reinstatement of Thomas Morano was not clearly erroneous.

¶ 2 In June 2011, the Illinois Educational Labor Relations Board (Board) issued its opinion and order in this case, finding (1) the arbitrator's award directing the Board of Trustees of the University of Illinois (University) to reinstate Thomas Morano was binding and (2) the University violated sections 14(a)(1) and (a)(8) of the Illinois Educational Labor Relations Act (Act) (115 ILCS 5/14(a)(1), (a)(8) (West 2008)) by refusing to comply with the arbitrator's decision directing reinstatement of Thomas Morano. *International Brotherhood of Teamsters, Local 726 (University of Illinois-Chicago)*, IELRB slip op. 2010-CA-0074-C (June 17, 2011)

(hereinafter *International Brotherhood*). The University appeals, arguing the arbitrator's decision ordering Morano's reinstatement was not binding because it was contrary to public policy. We affirm.

¶ 3

I. BACKGROUND

¶ 4

The International Brotherhood of Teamsters, Local 726 (Union), and the University stipulated to the following facts. The University hired Thomas Morano on March 4, 1996, into a position called "Extra Help Labor" at the facilities management department of its Chicago campus (UIC). In February 1997, Bertell Harris, one of Morano's coworkers, contacted the UIC police and accused Morano and another employee of threatening him with physical harm and calling him racial slurs over the course of many months. While investigating these claims, the UIC police conducted a criminal background check on Morano. This background check revealed Morano was convicted of attempted murder in 1977, which he failed to disclose on his employment application with the University even though the application specifically asked if he had ever been convicted of a crime. In February 1997, Morano resigned in lieu of termination.

¶ 5

In February 1998, Morano applied for a position as an auto mechanic, garage attendant, or driver at UIC. On that application, Morano said he had been convicted of a crime. In response to a directive on the application to describe the crime in full, Morano stated: "In 1975 I was involved in a traffic accident which turned into a fight [and] the other driver was hurt." On June 4, 1999, Morano signed an "updated" employment application with UIC. On that application, he again notified the University he had been convicted of a crime. Morano stated on the application, "I was involved in a traffic altercation in which the other driver was injured." That same day, Morano interviewed for a garage attendant position. On July 12, 1999, the

University rehired Morano in the position of garage attendant at facilities management effective July 12, 1999, at a pay rate of \$13.11 per hour. In February 2001, Morano was promoted to an automotive mechanic helper position at a pay rate of \$22.36 per hour.

¶ 6 On December 16, 2005, Morano was promoted to garage foreman, a security sensitive position within UIC guidelines, at an hourly rate of \$29.78. Morano performed his job duties satisfactorily from 1999 through 2005 with no confirmed incidents of workplace violence or threats of workplace violence.

¶ 7 On January 5, 2006, Morano was arrested after police conducted a search of his home and discovered weapons. He was later indicted on more than 12 felony counts of unlawful possession of weapons and firearms. These charges were based on his status as a convicted felon. He was also indicted for possessing a machine gun that could shoot multiple rounds without manually reloading. This charge was not based on his status as a convicted felon. On June 28, 2006, Morano pleaded guilty to the weapons charges for which he was indicted and was sentenced to 15 months' probation.

¶ 8 On June 9, prior to Morano's plea, the UIC Chancellor's Office received an anonymous letter from an alleged UIC employee. This anonymous employee stated he or she was concerned about Morano losing control and verbally threatening University employees. The author of the letter stated he or she was in fear of both his own and his coworkers' safety. Because of the letter, the University started an investigation, which included another criminal background check of Morano and interviews with individuals at facilities management concerning the allegations Morano threatened coworkers.

¶ 9 The University found insufficient evidence to prove Morano threatened his

coworkers. However, the University found evidence of ongoing hostilities between Morano and his coworkers. The University also found Morano lied on his original and subsequent applications for employment with regard to his criminal conviction history. In addition, the University found Morano was convicted on weapons possession charges in July 2006 and improperly used sick leave while in custody as a result of his arrest. Finally, the University found Morano had been arrested for aggravated assault on May 15, 2006, but the charge was later dropped after the complaining party declined to pursue the claim.

¶ 10 On November 1, 2006, Mark Donovan, the executive director of facilities management and capital programs at UIC, issued a predisciplinary letter to Morano, stating his continued employment raised substantial concerns for the safety of the public and his coworkers. In the letter, Donovan stated:

"In response to a series of circumstances, your personal criminal history was reviewed in context of your application for employment and recent filing of criminal charges against you by the State's Attorney. Your history was reviewed for past violations of University policy as well as concern for the safety and well being of our employees and members of the University community.

It is clear that you failed to respond accurately regarding your criminal history on your original application. Your subsequent [*sic*] application while more accurately reflecting your criminal history is still questionable in that it fails to note a conviction in addition to the conviction you cited in the

application. When further compared to incidents you were involved in [in] the very recent past, continuing your employment will require close scrutiny.

Secondly, our campus police have informed us and verified that on January 6th of this year, a day on which our records show you claimed sick leave, you were actually in police custody. This is clearly a misuse and abuse of sick leave.

In addition, as noted in the first paragraph above[,] that arrest resulted in the filing and conviction on criminal charges.

* * *

In the light of this overall history, I am considering disciplinary action including termination. Before I make my final decision, I want to ensure that I give you full opportunity to tell me anything you feel I should know about these situations. I shall be in my office Thursday, November 2, from 8:30 am to 9:30 am, for that purpose. You are not required to meet with me but you may if you choose."

¶ 11 Morano met with Donovan the next day to discuss the letter and the concerns raised therein. After Donovan listened to Morano's explanations, Donovan and Morano entered into a "last chance agreement" on November 2, 2006.

¶ 12 The parties identified a letter dated November 2, 2006, from Donovan to Morano, signed by both of them, as the last chance agreement. The letter stated:

"I have given this situation careful thought and consideration, and have concluded that in lieu of taking further action, I am prepared to notify you of the seriousness of the situation and to give you the opportunity to enter into a 'last chance' agreement with the University. Such an agreement would emphasize the grave situation of your employment, and would require that you continue to perform your job, avoid any workplace violation that would normally result in discipline of written warning or higher, and would require that you not commit or be convicted of any further crimes. As part of this, you would be required to immediately notify your supervisor of any issues involving the police or any other enforcement agency. We will then assess whether your employment poses a threat to the safety of the UIC community. The last chance agreement would further require that your failure to abide by any of these conditions will result in immediate discharge and waive any right of recourse (grievance, arbitration, etc.) except for the sole purpose of determining whether you, in fact, violated any condition of the agreement, it being understood that any violation will constitute just cause for discharge."

Morano continued to work for the University without incident.

¶ 13 On May 4, 2007, the University placed Morano on paid administrative leave and

informed Morano it intended to initiate discharge proceedings against him. On June 1, 2007, the University instituted formal discharge proceedings against Morano based on his July 2006 weapons possession convictions and for committing an aggravated assault on or about May 16, 2006. UIC Chancellor Sylvia Manning made a decision to suspend and then terminate Morano's employment at the University. The University and Morano agreed to arbitrate Morano's discharge under the University's collective-bargaining agreement with the Union.

¶ 14 At the arbitration hearing, the parties stipulated the following issues were before the arbitrator: (1) Did the University have just cause to terminate Morano; and if not, (2) What is the remedy?

¶ 15 According to Chancellor Manning's testimony, she specifically remembered becoming aware of Morano in April 2007, likely as a result of a Chicago Sun-Times inquiry about his employment. This was around the time of a shooting incident at Virginia Tech. According to Chancellor Manning, after the Virginia Tech shootings, the University reexamined its safety-related policies and procedures.

¶ 16 Chancellor Manning testified she asked for a full briefing on Morano's situation, its history, and an explanation or accounting of the actions the University had taken, particularly as to the November "last chance agreement." After learning more about the situation, Manning did not agree with the "last chance agreement," believing those who offered this agreement to Morano had a lapse of judgment because Morano posed a risk "too great relative to the vulnerabilities in a campus situation and the responsibilities of the University." She based her risk assessment on the weapons possession charges. She testified "although the conviction for which Mr. Morano has served prison time was many years in the past, this was very recent, and

to me this suggested a possibility of continued criminal behavior."

¶ 17 When asked whether any other factors beside the recent convictions made her think Morano's continued employment posed too great a risk to the University, Chancellor Manning answered:

"I'm trying to remember. It was primarily the convictions. That is to say there was this other allegation, but I tried very hard in fact not to put weight on charges that had been dropped because I assumed that once a charge was dropped, it didn't exist anymore. So, no, it was essentially the fact that someone with a criminal record of that recent, and I do want to emphasize the recent, as in the second event, the weapons possession charge, that seemed to me not justifiable. And the fact is that a University is an environment with a lot of people interacting in a whole variety of ways passing by each other, dealing with each other, and it's often a somewhat volatile environment for whatever reason, and there is—there's a different level of care that is expected from universities, particularly with regard to students, than there is, I believe, for example, what is expected of employers with regard to their employees."

Manning testified she saw herself as overruling the last chance agreement.

¶ 18 On cross-examination, Chancellor Manning testified she did not personally participate in any of the investigations into Morano's alleged conduct. As to the "last chance

agreement," Manning testified Morano's supervisors indicated to her the "last chance agreement" was the correct course of action in their judgment. She testified she was under the impression Morano's supervisors fully investigated Morano's alleged background and considered his work ethic in reaching their decision. No one raised any issues regarding Morano's job performance.

¶ 19 Manning testified she was concerned because Morano was convicted on a weapons possession charge. She testified she did not investigate the circumstances of Morano's weapons possession conviction. According to Manning:

"[W]eapons create a potential for doing harm to others that other sorts of unlawful possessions or unlawful acts do not, and therefore, since my concern was the safety of others, in particular of our students but our employees as well, that made a difference; whereas a conviction of something for what they call sometimes victimless crimes would be different."

Manning specifically testified she was not so much concerned with Morano's conduct which led to his conviction but instead was concerned with the conviction itself.

¶ 20 Morano testified the police came to his house on January 5, 2006, with a warrant to search for guns based on information the police obtained from a confidential source. He testified the guns were in two locked safes in the basement of his home. Morano pleaded guilty to unlawful possession of a weapon. Morano testified the machine gun was a "stage gun," a phony gun made to look real. It was used as part of a Halloween costume. (The order of probation reflects only a conviction for unlawful possession of a weapon by a felon under section 24-1.1(a) of the Criminal Code of 1961 (Criminal Code) (720 ILCS 5/24-1.1(a) (West 2004)) and

does not reflect a conviction based on his possession of a machine gun under section 24-1(a)(7) of the Criminal Code (720 ILCS 5/24-1(a)(7) (West 2004)).)

¶ 21 Morano stated he communicated the fact he entered a guilty plea to everyone "from [his] immediate supervisor all the way to the top." No disciplinary action was taken against him by the University when he entered his guilty plea. Morano testified he successfully completed his 15-month probation term.

¶ 22 Morano testified he met with Donovan with regard to the "last chance agreement." Morano testified Donovan told him, "basically, it's your last chance, you get in trouble, come and report to me directly, whatever trouble you got, you got a parking ticket, call me, I want to know everything that happens, and if you don't, I'm going to have to fire you." Morano believed by signing the last chance agreement he would not have the right to arbitrate his termination if that occurred.

¶ 23 In December 2008, an arbitrator ruled in Morano's favor. According to the arbitrator's order:

"The Grievant's record shows two felony convictions. The first felony conviction is immaterial to this matter since the Grievant was rehired subsequent to that conviction. The second conviction, the one on the gun possession charges by a convicted felon, is somewhat more contemporaneous with the Grievant's discharge but prior to it. The Grievant was arrested for felony weapons possession on January 5, 2006. He was indicted on February 8, 2006[,] and pled guilty on June 28, 2006. The

Grievant did keep certain members of University management aware of his situation. *The Grievant entered into an open ended Last Chance Agreement on November 2, 2006[,] subsequent to his guilty plea by some four months. In fact, all proven improper activity by the Grievant was prior to the LCA and with full knowledge of senior U of I Chicago management.* It is certainly poor judgment on the part of the Grievant to keep any kind of weapons in his possession, and this is of concern because of his status as a convicted felon. There is no question in this Arbitrator's mind that there is a nexus between the off-duty conduct of this Grievant and the reputation of the University. It is clear to this Arbitrator that faculty, staff, students, parents and general public would have a concerned view of this University resulting from the employment and continued employment of this Grievant. This is particularly true since there was an inquiry from a large newspaper in Chicago regarding the employment of this Grievant. Therefore, nexus exists.

However, based on the record of this case[,] *management[,] and higher level management at that[,] determined to enter into a Last Chance Agreement with this Grievant as a result of his most recent conviction.* In this Arbitrator's opinion this was not a well considered decision on the part of those

University managers, however, that is immaterial. *There is nothing in the LCA that allows the University to opt out of it at its discretion. The University freely entered into the LCA with this Grievant and is bound by the decision of its agent.*

In addition to the above there was an anonymous letter by 'concerned University employees.' This letter certainly raises some concerns but in no way shows that there was any proof provided as to its content. In addition the charges against the Grievant for assault in 2006 were not in any way proven and neither of these items, while raising some concerns, can be considered by the Arbitrator in this case.

We come then finally to public policy. In the lead case in this matter[, *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29, 44 (1987),] the Supreme Court found that reviewing courts may vacate an arbitrator's decision when it contravenes a basic tenet of public policy, 'well[-]defined and dominant.' There must be a clear nexus shown that by enforcing the arbitrator's award this would conflict with public policy. There is a clear effort in this country to remove violence from the educational sector. This is the result of numerous and serious episodes of violence on both high school and university campuses exemplified by Columbine and Virginia Tech. The Arbitrator

garners his authority from the Uniform Arbitration Act, the CBA and the stipulated issues. Therefore, the Arbitrator finds that, *since the [last chance agreement] was not violated by the [g]rievant just cause did not exist to discharge the [g]rievant and the LCA may not be rescinded under the just cause standard.* The Arbitrator further finds that the public policy standard is not properly before this Arbitrator nor within his authority due particularly to the stipulated issues. Based solely on the just cause standard the grievance shall be upheld and the Grievant made whole. However, due to the Public Policy aspect of this case[,] the employer is not obligated to carry out this award pending outcome of the Public Policy aspect of this case ***." (Emphases added.)

In an order issued in July 2009 clarifying its earlier order, the arbitrator stated, "just cause did not exist for the termination of [Morano] and that, but for the public policy argument raised by the Employer, an appropriate remedy is a make whole remedy, including reinstatement."

¶ 24 The University refused to follow the arbitrator's order and reinstate Morano. On September 25, 2009, the Union filed an unfair labor practice charge with the Board. In January 2011, an administrative law judge (ALJ) for the Board stated the issue before her was whether the University violated section 14(a)(8) and, derivatively, section 14(a)(1) of the Act by refusing to comply with a final and binding arbitration award. The ALJ stated, "While the Campus Security Enhancement Act [of 2008 (110 ILCS 12/1 to 99 (West 2008))] does not indicate that an institution of higher education may not employ an individual with a criminal background, the fact

that institutions of higher education are required to develop a campus violence prevention plan implies that there is a public policy against violence on university campuses." In addition, the ALJ found section 250.110(f)(20) of title 80 of the Illinois Administrative Code (Administrative Code) pertaining to the State Universities Civil Service System (80 Ill. Adm. Code 250.110(f)(20) (2012)) creates a "well-defined and dominant public policy against the employment in public institutions of higher education of individuals who have engaged in immoral or indecent conduct that violates common decency or morality or who have been convicted of an offense involving moral turpitude." The ALJ went on to state "conviction of a felony would constitute conviction of an offense involving moral turpitude and committing a felony would constitute immoral conduct that violates common morality."

¶ 25 The ALJ found Morano's reinstatement would not violate the public policy against violence on university campuses. The ALJ found the 1977 attempted murder conviction was too remote in time to indicate his reinstatement would create a risk of violence at the University campus. Further, the ALJ found his May 2006 arrest for aggravated assault could not be relied on by the University because the charge had been dropped. The ALJ also stated the University investigation found insufficient evidence to support the allegations in the anonymous letter accusing Morano of threatening coworkers. Finally, the ALJ stated:

"While Morano was convicted on June 28, 2006[,] for unlawful possession of weapons and firearms, he kept those weapons at home. It has not been shown that he carried them with him. Accordingly, this conviction does not demonstrate that his reinstatement would create a sufficient risk of violence at the

University to show that his reinstatement would violate the public policy against violence in general."

However, the ALJ found:

“[I]t has been clearly shown that the Arbitrator’s award reinstating Morano would violate the public policy against the employment in public institutions of higher education of individuals who have engaged in immoral or indecent conduct that violates common decency or morality or who have been convicted of an offense involving moral turpitude, which, according to my analysis, included murder and felonies. While Morano’s conviction for attempted murder was remote in time, his felony conviction for the unlawful possession of weapons and firearms was not remote. I have concluded above that conviction of a felony constitutes conviction of an offense involving moral turpitude and that committing a felony constitutes immoral conduct that violates common morality. Moreover, while the fact that Morano kept weapons at his home is not sufficient to show that his reinstatement would violate the public policy against violence on university campuses, the fact that he has access to those weapons implicates the University’s safety concerns. Therefore, the Arbitrator's award reinstating Morano violates the well-defined and dominant public policy against the employment in public

institutions of higher education of individuals who have engaged in immoral or indecent conduct that violates common decency or morality or who have been convicted of an offense involving moral turpitude.”

Since the ALJ found employment of someone with a felony conviction, any felony conviction, would violate public policy, the ALJ found the arbitrator’s award was not binding on the University. The ALJ remanded the matter to the arbitrator for him to “fashion a remedy that does not conflict with public policy.”

¶ 26 The Union filed exceptions to the ALJ’s recommended decision and order, and the University filed cross-exceptions to the same. The Board reversed the ALJ’s recommended decision and order and found the arbitrator’s award was binding and by refusing to comply with the award, the University violated section 14(a)(8) and (a)(1) of the Act. The Board stated:

“There is nothing in the record to lead us to the conclusion that the Grievant’s reinstatement violates public policy. There is nothing in the record to indicate that the Grievant has engaged in any violence toward his coworkers, engaged in violence while performing his duties for the Employer, or engaged in violence while on the Employer’s campus. It is true that the Employer received an anonymous letter in June 2006 claiming that the Grievant made verbal threats to coworkers, that he frequently lost control, and that his coworkers were in fear for their lives. However, the Employer’s investigation into the anonymous allegations provided

no basis to discipline the employee. Thus, reinstating the Grievant does not violate public policy where the arbitrator found the termination to be ‘without just cause’ and no facts establish that reinstatement would violate the well-defined public policy against violence on university campuses.” *International Brotherhood*, slip op. at 7.

In making its ruling, the Board focused on the undisputed fact Morano's conduct was not related to his employment.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 Before we begin our analysis in this case, we note the following. We are not a super personnel agency reviewing the wisdom of the University's decision to rehire Morano after he resigned from the University for failing to disclose his attempted murder conviction. We are also not reviewing the wisdom of Donovan's decision to enter into a last chance agreement with Morano on the University's behalf after finding out Morano had pleaded guilty to unlawful weapons possession charges and used sick leave for a day he was in jail. Finally, we are not reviewing the wisdom of the University allowing administrators to enter into last chance agreements with employees with what appears to be little or no oversight from top level University administrators.

¶ 30 The only issue before this court is whether the Board's decision to affirm the arbitrator's award, finding the University in violation of the Act for refusing to comply with the arbitrator's award and requiring the University to reinstate Morano pursuant to the last chance

agreement entered into by the University with full knowledge of all of Morano's conduct, is clearly erroneous.

¶ 31 This case came directly to this court after the Board's decision pursuant to section 16(a) of the Act (115 ILCS 5/16(a) (West 2010)), which states a party may apply directly to the appellate court of a judicial district in which the Board maintains an office for the right to appeal a final order of the Board. The University has done so in this case, appealing the Board's affirmance of the arbitrator's reinstatement order.

¶ 32 This court has stated:

"Section 14(a)(8) of the Act prohibits educational employers from '[r]efusing to comply with the provisions of a binding arbitration award.' 115 ILCS 5/14(a)(8) (West 2006). 'However, the refusal to abide by such an award is the accepted and only method of attacking the validity of the award.' [Citation.] The proper procedure for determining whether a party has violated section 14(a)(8) of the Act by refusing to comply with a binding arbitration award requires the consideration of three components: (1) whether the arbitration award is binding, (2) the content of the award, and (3) whether the employer has complied with the award." *Central Community Unit School District No. 4, v. Illinois Educational Labor Relations Board*, 388 Ill. App. 3d 1060, 1066, 904 N.E.2d 640, 645 (2009).

The University has refused to reinstate Morano, arguing the decisions of the arbitrator and Board

are against public policy. The issue before this court is whether the arbitrator's reinstatement award is binding on the University.

¶ 33 A court may refuse to enforce an arbitrator's award under a collective-bargaining agreement if the award is contrary to public policy. *Central Community*, 388 Ill. App. 3d at 1067, 904 N.E.2d at 646.

" 'While there is no precise definition of [""]public policy,[""] it is to be found in the Constitution, in statutes and, when these are silent, in judicial decisions.' *American Federation of State, County & Municipal Employees v. State of Illinois*, 124 Ill. 2d 246, 260, 529 N.E.2d 534, 540 (1988) (hereinafter *AFSCME I*). ' " 'The public policy of a State or nation must be determined by its constitution, laws[,], and judicial decisions—not by the varying opinions of laymen, lawyers[,], or judges as to the demands of the interests of the public.' " ' *AFSCME I*, 124 Ill. 2d at 260, 529 N.E.2d at 540, quoting *Zeigler v. Illinois Trust & Savings Bank*, 245 Ill. 180, 193, 91 N.E. 1041, 1046 (1910), quoting *Hartford Fire Insurance Co. v. Chicago, M. & St. P. Ry. Co.*, 70 F. 201, 202 (8th Cir. 1895). 'Moreover, the public policy must be "well-defined and dominant" and ascertainable "by reference to the laws and legal precedents and not from generalized considerations of supposed public interests.' " [Citation.]' *American Federation of State, County & Municipal Employees v.*

Department of Central Management Services, 173 Ill. 2d 299, 307, 671 N.E.2d 668, 673-74 (1996) (hereinafter *AFSCME II*), quoting *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766, 76 L. Ed. 2d 298, 307, 103 S. Ct. 2177, 2183 (1983)." *Central Community*, 388 Ill. App. 3d at 1067, 904 N.E.2d at 646.

To determine if the public policy exception applies, a court must first determine whether a well-defined and dominant public policy can be identified. See *AFSCME II*, 173 Ill. 2d at 307-08, 671 N.E.2d at 674. If a well-defined and dominant public policy can be identified, a court must then determine whether the arbitrator's award, in this case reinstating Morano, violated the public policy. See *AFSCME II*, 173 Ill. 2d at 307-08, 671 N.E.2d at 674.

¶ 34 When this case was before the Board, the Board made legal determinations, ruling well-defined and dominant public policies exist (1) against violence on university campuses and (2) the employment in public institutions of higher education of individuals who (a) have engaged in immoral or indecent conduct that violates common decency or morality or (b) have been convicted of an offense involving moral turpitude. The Union disagrees these two public policies exist. Because the Board's determination regarding the existence of these policies was a legal determination, we give no deference to the Board's conclusion and review *de novo* whether well defined and dominant public policies exist (1) against violence on university campuses and (2) against the employment by universities of individuals who (a) have engaged in immoral or indecent conduct that violates common decency or (b) have been convicted of an offense involving moral turpitude. See *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205, 692 N.E.2d 295, 302 (1998). If we conclude the Board's determination that one or

both of these are in fact well-defined and dominant public policies, we will then be presented with a mixed question of law and fact as to whether the Board erred in finding the arbitrator's decision did not violate one or both of these "public policies." We will only reverse the Board's decision on a mixed question of law and fact if the decision is clearly erroneous. See *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 392, 763 N.E.2d 272, 280 (2001).

¶ 35 The University cited several cases in support of its argument the arbitrator's reinstatement order violates public policy. While the courts in those cases found an arbitrator's reinstatement order violated public policy, those cases are distinguishable from the case *sub judice* because the conduct at issue in those cases was directly tied to the employee's job. For example, in *AFSCME II*, 173 Ill. 2d at 317-18, 671 N.E.2d at 678, our supreme court found an arbitrator's order reinstating a Department of Children and Family Services (DCFS) child welfare specialist violated public policy because the specialist had filed a false "uniform progress report" with regard to three children, whose case she had been assigned.

¶ 36 In *Central Community*, 388 Ill. App. 3d at 1071, 904 N.E.2d 649-50, this court reversed an arbitrator's award ordering the school district to reinstate a custodian and remanded the case for further proceedings because the arbitrator ignored relevant evidence in ordering the custodian's reinstatement. This court stated:

"[The employee's] conduct as a bus driver is part of the evidence showing he has anger-management issues and that he has, on several occasions, directed his temper at school children. His anger-control issues were further displayed in other incidents at the

school when [the employee] was performing his duties as a custodian, although those incidents involving students were verbal in nature. A proper determination of whether the District's termination of [the employee's] employment with the District as a custodian violated the Agreement requires consideration of all of that relevant conduct. [The employee's] conduct in which he displayed his temper toward children while serving in his role as a bus driver is relevant. Terminating [the employee's] employment as a bus driver and reassigning him to a custodian position at the elementary school does not (1) ensure he will have no contact with children or (2) eliminate the possibility he will have another incident involving his temper at or in the presence of children. All relevant evidence must be considered in this case because the safety and protection of school children is at issue. Accordingly, the decision to disregard [the employee's] conduct as a bus driver was arbitrary and capricious and this matter must be remanded for the Arbitrator to consider this evidence in reaching his decision."

Central Community, 388 Ill. App. 3d at 1071, 904 N.E.2d at 649.

¶ 37 In *Chicago Fire Fighters Union Local No. 2 v. City of Chicago*, 323 Ill. App. 3d 168, 751 N.E.2d 1169 (2001), the First District Appellate Court found an arbitrator's award violated public policy, stating:

"[T]he arbitrator's award reinstating the discharged firefighters

violates the well-established public policy favoring safe and effective fire prevention services in the critical matter of public safety. [Citation.] The conduct at issue in the present case was recorded on videotape and reveals public safety workers in an on-going state of intoxication, some participants setting about to perform their duties by way of responding to an alarm for a fire. Nevertheless, the arbitrator ordered reinstatement and barred all discipline and sanctions without considering the merits of the case. Firefighters have the extraordinary responsibility for carrying out the well-stated public policy of safe and effective fire prevention. Firefighters must be prepared to respond immediately to emergency conditions at all times, and in all weather conditions, whenever the alarm bell in the firehouse sounds." *Chicago Fire Fighters*, 323 Ill. App. 3d at 183, 751 N.E.2d at 1181-82.

¶ 38 In *Department of Central Management Services v. American Federation of State, County and Municipal Employees*, 245 Ill. App. 3d 87, 614 N.E.2d 513 (1993), this court reversed an arbitrator's award reinstating a DCFS child protective investigator who filed a fabricated investigative report relating to an alleged child abuse report because the award violated public policy. This court stated:

"Because we find, after an examination of the statutes, as well as the regulations promulgated by DCFS, a public policy favoring truthful documentation of child abuse investigations

exists, we next address whether the arbitrator's award violated this public policy. Grievant's conduct in fabricating the report must be considered in context of the duty imposed upon her in her sensitive position of investigating allegations of child abuse. [Citation.] Public policy mandates truthful reporting of child abuse investigations, and the arbitrator found she did in fact falsify the report. Thus, under the circumstances, reinstating the grievant would violate public policy. It is the grievant's specific conduct in the course of her employment which violates public policy. The safety and well-being of children require zealous investigation and honest reporting. Fabricating investigative reports endangers the lives of children suspected of living in an abusive environment. Public policy demands such conduct not be tolerated by employers and that they have power to discharge those engaging in such activity. Public policy cannot countenance reinstatement of this grievant. Her lies must be considered in the context of the duty imposed upon her by her position. Her lies defeat the essential purpose of her job—to investigate child abuse and protect children and families." *Central Management Services*, 245 Ill. App. 3d at 98, 614 N.E.2d at 519-20.

¶ 39 The last two cases cited by the University as support for its argument Morano's reinstatement violated public policy are *Board of Education of School District U-46 v. Illinois*

Educational Labor Relations Board, 216 Ill. App. 3d 990, 576 N.E.2d 471 (1991), and *County of De Witt v. American Federation of State, County and Municipal Employees, Council 31*, 298 Ill. App. 3d 634, 699 N.E.2d 163 (1998). Once again, while this court found the arbitrator's awards ordering reinstatement of an employee violated public policy in both of these cases, the conduct at issue was tied to the workers' jobs. See *School District U-46*, 216 Ill. App. 3d at 1006, 576 N.E.2d at 481 ("arbitrator's award, reinstating the grievant to her position as a school bus driver, is contrary to the public policy favoring the safe transportation of school children. The grievant has a complete disregard for the safety of the children on her school bus. Her driving tactics are inexcusable. Allowing her to continue driving would only put the lives of those children at stake"); see also *County of De Witt*, 298 Ill. App. 3d at 638, 699 N.E.2d at 166 ("When a nursing home employee lashes out in frustration or anger and strikes a resident, it is small comfort that it happened only once or that the hit did not create a visible injury. Such an incident is degrading and an example of the type of behavior the legislature addressed when it enacted the Nursing Home Care Act and the Elder Abuse and Neglect Act. We believe the public policy of this state does not tolerate *any* incidents of abuse upon the elderly, not matter how infrequent or mild. Therefore, we cannot recognize or enforce an interpretation of a contract that prevents an employer from responding to such behavior." (Emphasis in original)).

¶ 40 These cases do not establish Morano's reinstatement violates any public policy because his misconduct was in no way related to his job at the University. To be clear, we do not find an employee's misconduct has to occur while he is working or at his place of employment for his continued employment to violate public policy. For example, it would clearly be against public policy to require a University to reinstate a University day-care worker who had admitted

or been convicted of sexually or physically abusing a child, regardless of whether the abuse occurred at the University or elsewhere.

¶ 41 We do find a well-defined and dominant public policy against violence on university campuses clearly exists. However, the Board's finding the arbitrator's award reinstating Morano does not violate this policy is not clearly erroneous. The University did not establish Morano ever engaged in violence or threatened to engage in violence while he was at work or on the University's campus in Chicago. For that matter, the University did not establish Morano ever engaged in violence or threatened to engage in violence anywhere else since the events leading to his attempted murder conviction in the 1970s. Finally, the University did not establish Morano ever brought any weapons to the campus that he could have used to commit violent acts.

¶ 42 As the Board stated:

“There is nothing in the record to indicate that the Grievant has engaged in any violence toward his co-workers, engaged in violence while performing his duties for the Employer, or engaged in violence while on the Employer's campus. It is true that the Employer received an anonymous letter in June 2006 claiming that the Grievant made verbal threats to coworkers, that he frequently lost control, and that his co-workers were in fear for their lives. However, the Employer's investigation into the anonymous allegations provided no basis to discipline the employee. Thus, reinstating the Grievant does not violate public policy where the

arbitrator found the termination to be ‘without just cause’ and no facts establish that reinstatement would violate the well-defined public policy against violence on university campuses.”

International Brotherhood, slip op. at 7.

We conclude the Board’s decision finding Morano’s reinstatement did not violate the public policy against violence on university campuses was not clearly erroneous.

¶ 43 We next turn to the University’s argument the arbitrator’s reinstatement order violated a public policy against the employment in public institutions of higher education of individuals who (a) have engaged in immoral or indecent conduct that violates common decency or morality or (b) have been convicted of an offense involving moral turpitude. As stated previously, the Union argues this is not a public policy.

¶ 44 As we have already discussed, we do not determine what is public policy by relying on the varying opinions of laymen, lawyers, or judges as to the "demands of the interests of the public." Instead, public policy is determined by our constitution, laws, and judicial decisions. *AFSCME I*, 124 Ill. 2d at 260, 529 N.E.2d at 540. The public policy must be dominant and well-defined. It must be ascertainable from laws and legal precedent, not from generalized beliefs as to what is in the public's interest. *AFSCME II*, 173 Ill. 2d at 307, 671 N.E.2d at 673.

¶ 45 The University argues this “public policy” is established by section 250.110(f)(20) of title 80 of the Administrative Code pertaining to the State Universities Civil Service System (80 Ill. Adm. Code 250.110(f)(20) (2012)). Section 250.110(f)(20) states:

“Reason for Discharge. Causes *justifying discharge* and any

suspension during the discharge proceedings shall include, but are not limited to: all those listed as cause for suspension if they become recurring offenses; and, in addition, theft; drinking intoxicating liquors on institutional time or property; inability to perform satisfactorily assigned duties as a result of drinking alcoholic beverages; malicious damage to property, tools, or equipment; immoral or indecent conduct that violates common decency or morality; conviction of an offense involving moral turpitude; illegal or excessive use of drugs, narcotics, and/or intoxicants.” (Emphasis added.) 80 Ill. Adm. Code 250.110(f)(20) (2012).

While immoral or indecent conduct that violates common decency or morality or a conviction of an offense involving moral turpitude can justify discharge pursuant to section 250.110(f)(20), discharge is not required.

¶ 46 Because this section of the Administrative Code does not require a university to discharge an employee who commits a crime involving moral turpitude, universities can use their discretion in determining whether termination or some lesser punishment is appropriate depending on the relevant facts. Prior to the Chicago Sun-Times investigation, Morano’s supervisors determined it was not necessary to terminate Morano for his conduct. Mark Donovan, the executive director for facilities management and capital programs at UIC, exercised his discretion by not initiating discharge proceedings against Morano for the conduct at issue in this appeal. Instead, he chose to implement a “last chance agreement” with Morano after

listening to Morano's explanation regarding his conduct.

¶ 47 In addition, the "policy" in question is clearly not well-defined and is overly broad. Opinions will vary among reasonable people as to what constitutes indecent or immoral conduct. The "policy" advocated by the University provides no guidance on what constitutes an offense involving moral turpitude.

¶ 48 As we alluded to earlier, the question in this case is not whether the University would have been justified in firing Morano prior to entering into the "last chance agreement." An arbitrator may very well have upheld Morano's discharge based on his weapons conviction had the University not entered into this agreement. However, Donovan, the executive director for facilities management and capital programs, exercised his discretion and entered into this "last chance agreement" after "careful thought and consideration." As is evident from the November 1, 2006, letter from Donovan to Morano, Donovan was fully aware of all of Morano's criminal conduct at issue in this appeal. Yet, Donovan still believed the "last chance agreement" was the best course of action.

¶ 49 According to Chancellor Manning's testimony on cross-examination, Morano's supervisors indicated to her the "last chance agreement" was the correct course of action in their judgment. Chancellor Manning testified she was under the impression Morano's supervisors fully investigated Morano's alleged background and considered his work ethic in deciding to implement the "last chance agreement." Manning testified no one had any issues with regard to Morano's job performance.

¶ 50 Based on the facts in this case, the Board's finding the arbitrator's order requiring the University to reinstate Morano did not violate any public policy alleged by the University is

not clearly erroneous. The arbitrator's order simply required the University to follow the “last-chance agreement,” which was created by the executive director for facilities management and capital programs for the University with full knowledge of all of Morano's conduct. The individuals who decided to give Morano a second chance by rehiring him after he resigned in lieu of termination and a third chance by implementing the last-chance agreement know or knew Morano as an individual, unlike the members of this court. These individuals apparently believed Morano posed no threat to the University or people at the University. Nothing in the record presented here contradicts their determination.

¶ 51

III. CONCLUSION

¶ 52 For the reasons stated, we affirm the Board’s order finding the employer violated the Act by refusing to comply with a binding arbitration award directing Morano's reinstatement.

¶ 53 Affirmed.