IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CUNA MUTUAL INSURANCE SOCIETY,

OPINION AND ORDER

Plaintiff,

04-C-138-C

v.

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 39,

Defendant.

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This is an action to vacate and set aside a part of an arbitration award pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. Plaintiff CUNA Mutual Insurance Society is suing to set aside an arbitration proceeding in which the arbitrator determined that plaintiff had violated its collective bargaining agreement with defendant Office and Professional Employees International Union, Local 39 when it arranged for housekeeping and janitorial work to be done by independent contractors instead of plaintiff's own employees. Plaintiff seeks an order vacating the arbitrator's award to the extent it concerns (1) any ruling about the issue of outsourcing and any alleged violation of

the collective bargaining agreement other than the layoff procedure in Article XX of the agreement and (2) the issue of damages as it relates to outsourcing or other alleged make-whole relief. Defendant has counterclaimed under 29 U.S.C. § 185 and Fed. R. Civ. P. 11, seeking sanctions against plaintiff for what defendant contends is a frivolous challenge to the arbitration award. Jurisdiction is present. 29 U.S.C. § 185.

At a pretrial conference, the parties agreed to resolve this case on pretrial motions. Presently before the court are the parties' cross motions for summary judgment, plaintiff's motion to strike and defendant's motion for Rule 11 sanctions. For the reasons explained more fully below, I will deny plaintiff's motion for summary judgment and grant defendant's motion for summary judgment. In brief, although plaintiff's position is that the propriety of its decision to outsource was not arbitrable, its arguments in support of that position merely reflect a disagreement with the arbitrator's characterization of the issues presented to him. Plaintiff is not arguing that its dispute with defendant was not arbitrable; it is arguing that the arbitrator exceeded the scope of his authority under the collective bargaining agreement. In either case, plaintiff's arguments are not persuasive; the dispute over plaintiff's decision to outsource (and the resultant layoffs) was subject to arbitration and the arbitrator did not exceed the scope of his authority. Because I conclude that plaintiff's challenge to the arbitrator's decision is frivolous, defendant's motion for sanctions will be granted; plaintiff will be ordered to pay defendant's reasonable attorney fees.

In its motion to strike, plaintiff argues that defendant's brief in support of its motion for summary judgment includes facts not set out in defendant's proposed findings of fact. Plaintiff asks the court to strike defendant's proposed findings of fact or order defendant to re-state its proposed findings of fact. Defendant proposed only six facts in support of its motion. Four of these proposed findings were not supported by citations to admissible evidence and therefore have been disregarded under this court's summary judgment procedures. No facts raised in defendant's brief and not proposed as facts in the proposed findings of fact have been considered. Therefore, plaintiff's motion to strike will be denied as unnecessary. The two proposed findings that are supported by evidence will be combined with plaintiff's proposed findings of fact.

From the parties's proposed findings of fact and the record, I find the following to be material and undisputed.

## UNDISPUTED FACTS

### A. Parties

Plaintiff CUNA Mutual Insurance Society underwrites, markets and administers insurance and financial products to credit unions and their members. Plaintiff is incorporated under Wisconsin law and has its principal place of business in Madison, Wisconsin. Defendant Office and Professional Employees International Union, Local 39 is

an unincorporated labor organization that represents approximately 1,430 persons employed by plaintiff in Madison, Wisconsin.

B. The Grievance Procedure

Plaintiff and defendant were parties to a collective bargaining agreement under which the dispute in this case arose. The agreement became effective April 1, 2001 and expired on March 31, 2004. Article XIX of the agreement laid out a multi-step procedure for grievance resolution. A grievance was defined as "a dispute arising between the parties hereto relating to matters of wages, hours and working conditions, involving interpretation or application of any provision of this Agreement." According to the procedure, grievances had to be put in writing and had to set forth the nature of the dispute, the suggested relief sought and the specific article and section of the agreement alleged to be violated. The procedure required several attempts at informal resolution and, if these attempts were unsuccessful, allowed either party to

> appeal the grievance to arbitration by giving written notice of the desire to arbitrate to the other party within twenty (20) working days after the date of the Employer's final answer in the above step. The suggested relief and the article and section cited shall be considered a formal framing of the issue or remedy if the issue is arbitrated.

Article XIX then set out the process for picking an arbitrator and stated that the "decision of the arbitrator shall be final and binding upon the Employer, the Union and the

Employee(s) presenting the grievance." Finally, the procedure provided that "the arbitrator shall not change, but shall interpret only, the terms of this Agreement."

C. The Support Services Layoffs

Around August 30, 2002, plaintiff issued layoff notices to approximately 22 housekeeping or janitorial employees working in plaintiff's Support Services department. Plaintiff cited as the reason for the layoffs the partial outsourcing of certain housekeeping or janitorial operations to independent contractors. On August 20, 2002, defendant filed a grievance regarding the layoffs. (Apparently, defendant had gotten wind of the layoffs before the actual notices issued). Under the heading "Statement of Grievance," defendant wrote the following:

> The Employer is implementing a layoff resulting in a reduction of the bargaining unit of up to 25 employees without showing such reduction is "necessary" in accordance with Article XX, Section 1.
>
> The Employer violated our Collective Bargaining Agreement when it failed to provide the Chief Steward with a copy of the written notice employees targeted for layoff received of their impending layoff, in accordance with Article XX, Section 2.
>
> This grievance is also subject to any other contract violations determined after the investigation or grievance process begins.

Plt.'s PFOF, dkt. #22, at ¶ 22. The grievance did not mention any article or section of the agreement other than Sections 1 and 2 of Article XX. Defendant appealed the grievance to

arbitration and a hearing was held on October 28, 2003.

D. The Arbitration Hearing and Award

In a written opening statement prepared for the hearing, plaintiff questioned the arbitrator's jurisdiction to "address any outsourcing challenge (or any requested 'return' of outsourced work)" when (1) the agreement required that a written grievance refer to the specific article and section allegedly violated; (2) the grievance in this dispute referred to Sections 1 and 2 of Article XX, which dealt exclusively with layoffs; and (3) Article XX did not prohibit outsourcing and was not concerned with the underlying causes of layoffs. Id. at ¶ 25. In its opening statement, defendant argued that the agreement was silent regarding plaintiff's ability to outsource work. First, defendant cited Article I of the agreement, which conferred management rights on plaintiff. This article stated that

> The management of the Employer and the direction of the working force are vested exclusively in the Employer. Such management and direction shall include rights to hire, recall, transfer, promote, demote, suspend and discharge for just cause, and to release Employees from duty because of lack of work or for any other just cause. The Employer shall have the prerogative to establish rules of employment, assignments of work including temporary assignments, and to change or modify methods, procedures and controls for the performance of work.

App. B, dkt. #11, at Tab 1, p.1. According to defendant, this language did not confer upon plaintiff a right to subcontract work. Defendant then restated its contention that plaintiff had not shown that the layoffs were necessary as required by Article XX, Section 1. Finally,

defendant maintained that

> the grievance does expressly indicate that other contract violations are involved here. And, as I'm sure the Arbitrator is aware, in these circumstances where the contract is silent on a subcontracting clause, many arbitrators will look at other provisions in the contract and imply a no subcontracting clause. Those provisions include the recognition clause, the wages, seniority provisions, Union security provisions. The Union's position is that those provisions contained in this agreement constitute an implied no subcontracting clause which the Company violated by engaging in this subcontract.

App. I, dkt. #18, at Tab 1, pp. 26-27.

On February 26, 2004, the arbitrator issued a written decision. Before reaching the merits of the dispute, the arbitrator wrote that

> [t]he initial matter to resolve is whether, by identifying only Article XX in its grievance, any dispute with respect to subcontracting has thereby been rendered non-arbitrable. At the outset, there are general principles that must be recognized: arbitrators tend to emphasize substance over form in seeking to uncover the real merits of the case and even where, as in this case, the collective bargaining agreement requires specified identification of the provision that covers the grievance, arbitrators will rarely hold that the grievance is not arbitrable because of the union's failure in this regard if the employer has not been misled as to the nature of the dispute.

Plt.'s PFOF, dkt. #22, at ¶¶ 32-33 (internal quotations omitted). Although no provision in the agreement provided a standard for determining whether a particular dispute was arbitrable, the arbitrator determined that the "misled as to the nature of the dispute" standard was implicit in the agreement. Also, the arbitrator noted that Article XX required that any "lesser reduction" of the bargaining unit (that is, a reduction involving fewer than fifty employees) be "necessary." App. I, dkt. #18, at Tab 2, p. 9. To give the word

"necessary" meaning, plaintiff had "to show that there was a legitimate reason which occasioned the layoff." Id. According to the arbitrator, plaintiff's "proffered reason was outsourcing the work performed by the employees to be laid off." The arbitrator concluded that since "the question of whether that outsourcing constituted a legitimate reason . . . is necessarily encompassed by the grievance . . . [t]he question of whether the Company could contractually outsource the disputed work is properly before the Arbitrator." Id. at 9-10.

Having found the issue properly before him, the arbitrator ruled that the outsourcing violated the collective bargaining agreement. First, he stated that the management rights listed in Article I of the agreement did not give plaintiff unchecked authority to lay off employees because Article XX required any layoffs to be "necessary." In addition, the arbitrator stated that plaintiff's Article I authority to *assign* work to employees did not give plaintiff the right to *eliminate* bargaining unit work:

> Article I cannot be read to be an unrestricted grant of the right to transfer work to employees outside the bargaining unit and to express an intent to negate . . . interests and rights of bargaining unit employees under the recognition, seniority, wage and other provisions of the parties' agreement.

Id. at 10-11. Instead of relying on one provision of the agreement, the arbitrator adopted what he termed a "modified" approach to resolving the outsourcing dispute. According to this approach,

> Absent specific contract language relating to contracting out, the general arbitration rules [sic] is that management has the right to contract out work as long as the action

> is performed in good faith, it represents a reasonable business decision, it does not result in subverting the labor agreement, and it does not have the effect of seriously weakening the bargaining unit or important parts of it.

Id. at 11 (internal quotations and citations omitted). The arbitrator concluded that the layoffs undercut the "bargain which was at the heart of the contract" and that plaintiff violated its implied obligation of fair dealing because it proposed the outsourcing solely as a cost saving measure. Plt.'s PFOF, dkt. #22, at ¶ 40. Having found a violation of the agreement, the arbitrator ordered the subcontracted work to be restored to the affected employees and ordered the parties to attempt to determine whether any of the affected employees were "entitled to make whole relief." Id. at ¶ 46. The arbitrator retained jurisdiction for a minimum of sixty days "to resolve any controversy" regarding implementation of the award. Id. at ¶ 47.

## DISCUSSION

### A. Legal Standard

Judicial review of arbitration awards is tightly limited. Baravati v. Josephthal, Lyon & Ross, Inc., 28 F.3d 704, 706 (7th Cir. 1994). A court must uphold an arbitrator's decision as long as it draws its essence from the collective bargaining agreement and is not merely the arbitrator's own brand of industrial justice. United Paper Workers International Union v. Misco, 484 U.S. 29, 36 (1987). This standard does not preclude an arbitrator

from looking to sources other than the agreement for guidance. Anheuser-Busch, Inc. v. Beer, Soft Drink Local Union No. 744, 280 F.3d 1133, 1137 (7th Cir. 2002) (quoting Tootsie Roll Indus., Inc. v. Local Union #1, 832 F.2d 81 (7th Cir. 1987)). Rather, "only when the arbitrator must have based his award on some body of thought, or feeling, or policy, or law that is outside the contract" can the award be said not to draw its essence from the collective bargaining agreement. Arch of Illinois v. District 12, United Mine Workers of America, 85 F.3d 1289, 1292 (7th Cir. 1996).

As the Court of Appeals for the Seventh Circuit has made clear, it is not the court's job to decide whether an arbitrator erred in interpreting a labor contract, whether the arbitrator clearly erred in interpreting the contract or whether the arbitrator made a gross error in interpreting the contract. Hill v. Norfolk & Western Railway Co., 814 F.2d 1192, 1195 (7th Cir. 1987). Rather, the court's task is limited to deciding whether the arbitrator interpreted the contract. Id. Thus, plaintiff cannot prevail on a contract misinterpretation claim unless it demonstrates that "'there is no possible interpretive route to the [arbitrator's] award, so a noncontractual basis can be inferred.'" Arch of Illinois, 85 F.3d at 1293-94 (quoting Chicago Typographical Union No. 16 v. Chicago Sun-Times, Inc., 935 F.2d 1501, 1506 (7th Cir. 1991)).

B. Arbitrability of the Dispute

Plaintiff's first argument is that the arbitrator's award should be vacated as to any ruling on outsourcing because (1) the grievance procedure stated that the provision or provisions cited in the grievance would formally frame the issue to be arbitrated and (2) plaintiff's grievance cited provisions in the agreement concerning the implementation of the layoffs, not the underlying cause. It maintains that the dispute about the propriety of plaintiff's decision to outsource the housekeeping and janitorial work was not arbitrable under the terms of the collective bargaining agreement. Thus, it argues, the arbitrator exceeded his authority under the agreement by ruling on the underlying cause of the layoffs.

Initially, I note that plaintiff confuses two distinct arguments. On one hand, an arbitration award may be challenged on the ground that the dispute presented to the arbitrator was not subject to arbitration according to the terms of the collective bargaining agreement. A separate and distinct ground for vacating an arbitration award is that the arbitrator exceeded his authority under the collective bargaining agreement. 9 U.S.C. § 10(a)(4). These are independent grounds for challenging an arbitration award. Each requires the court to examine the case under a different legal standard. A court considering a claim that an arbitrator exceeded his authority employs the deferential standard of review noted above, but the question whether a dispute is arbitrable is analyzed de novo. International Association of Machinists and Aerospace Workers, Lodge No. 1777 v. Fansteel, Inc., 900 F.2d 1005, 1010 (7th Cir. 1990). In an apparent attempt to avoid the

deferential standard of review, plaintiff dresses up its arguments about the scope of the arbitrator's authority in arbitrability clothing. To the extent that plaintiff did intend to challenge the arbitrability of the dispute, I will address that argument and then consider whether the arbitrator exceeded his authority under the agreement.

In a series of cases known as the Steelworkers Trilogy, the Supreme Court set out several principles governing arbitration based on collective bargaining agreements. See Steelworkers v. American Manufacturing Co., 363 U.S. 564 (1960); Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960). First, "'arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.'" AT&T Technologies v. Communications Workers, 475 U.S. 643, 648 (1986) (quoting Warrior & Gulf, 363 U.S. at 570-71 (Brennan, J., concurring)). Second, "the question of arbitrability — whether a collective-bargaining agreement creates a duty for the parties to arbitrate the particular grievance — is undeniably an issue for judicial determination. Unless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator." AT&T Technologies, 475 U.S. at 649. Third, "in deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims." Id. Finally, "where the contract contains an arbitration clause, there is a

presumption of arbitrability in the sense that '[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.'" Id. at 650 (quoting Warrior & Gulf, 363 U.S. at 582-83); Litton Financial Printing Division v. NLRB, 501 U.S. 190, 209 (1991).

The Court of Appeals for the Seventh Circuit set forth a two-step analysis for resolving an arbitrability question in International Association of Machinists and Aerospace Workers, Lodge No. 1777 v. Fansteel, Inc., 900 F.2d 1005 (7th Cir. 1990). The first step is "to ascertain whether the present dispute falls within the scope of the arbitration clause." Id. at 1010. To answer that question I must examine the collective bargaining agreement's provisions regarding arbitration. Article XIX, Section 4 of the agreement sets forth the procedure for grievance resolution. It requires several attempts at informal resolution and allows either party to appeal *any* grievance to arbitration if the grievance cannot be settled informally. The party seeking to arbitrate need only give written notice of the desire to arbitrate to the other party within twenty working days after the end of the informal resolution process. The word "grievance" is defined broadly in Article XIX, Section 1 as "a dispute arising between the parties hereto relating to matters of wages, hours and working conditions, involving interpretation or application of *any* provision of this agreement" (emphasis added). These clauses indicate that any grievance, or any dispute regarding the

interpretation or application of any provision of the collective bargaining agreement may be appealed to arbitration. There is no language in the agreement limiting the subject matter of disputes that can be arbitrated. The arbitration clause in Fansteel was similar in that it allowed arbitration "of any differences 'as to the meaning and application of any of the provisions of this Agreement.'" Id.

In its grievance, defendant stated that its dispute with plaintiff concerned whether the layoffs brought about by plaintiff's decision to outsource were "necessary" as required by Article XX, Section 1. Nothing in the collective bargaining agreement excludes from arbitration a dispute over whether proposed layoffs meet the "necessary" requirement of Article XX, Section 1. The only conclusion that can be drawn from the broad definition of "grievance" and lack of restrictive language is that disputes over layoffs can be submitted to arbitration if not resolved informally.

Plaintiff argues that Article XIX, Section 4 imposes a case-by-case substantive limit on the disputes that can be submitted to arbitration because it states that "the article and section cited [in the grievance] shall be considered a formal framing of the issue or remedy if the issue is arbitrated." Plaintiff's characterization of this language is wrong. By its terms, Article XIX, Section 4 applies only to arbitrable disputes; that is, it applies only after the parties have agreed to send a dispute to arbitration (and hence, have agreed that the dispute is *subject* to arbitration). The provision merely allows the parties to define the scope of the

arbitrator's inquiry; it does not exclude entire subject matters from the arbitration process. A possible example of the language needed to sustain plaintiff's arbitrability argument would be, "Disputes concerning the company's decision to layoff employees (or to outsource work) may not be submitted to arbitration." No such language appears in the agreement.

This does not end the arbitrability analysis, however. In Fansteel, the court stated that "even when the arbitration clause facially applies to the present dispute, that does not end our inquiry. If we can say with positive assurance that the parties intended to exclude the involved dispute from arbitration, then no obligation to arbitrate will exist." Id. at 1011. Put another way, "[i]n the absence of any express provision excluding a particular grievance from arbitration, . . . only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail." Warrior & Gulf, 363 U.S. at 584-85. Here, there is no evidence indicating that the parties intended to exclude all disputes regarding layoffs or outsourcing from arbitration. No such intent is evident in the agreement itself. Therefore, I conclude that the dispute over plaintiff's decision to outsource and the resultant layoffs was arbitrable under the terms of the collective bargaining agreement.

### C. Scope of Authority

Plaintiff advances two reasons why the arbitrator exceeded the scope of his authority under the agreement. First, the arbitrator went beyond the scope of the issue submitted to

arbitration because his ruling extended to and rejected the company's rationale for outsourcing the housekeeping and janitorial work. In making such a ruling, the arbitrator improperly considered provisions of the agreement other than those cited by defendant in its grievance. Second, although the terms of the agreement limited the arbitrator to issuing a "final and binding" decision, the arbitrator exceeded this authority by (1) requiring the parties to engage in post-decision consultation regarding the entitlement to make whole relief of any of the affected employees and (2) retaining jurisdiction to resolve any disputes regarding implementation of the award.

When a party contends that an arbitrator acted outside the scope of his designated authority, a court's inquiry "is limited to determining whether the arbitrator abided by the contractual limits placed on him to decide the dispute." American Postal Workers Union v. Runyon, 185 F.3d 832, 835 (7th Cir. 1999) (citing First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 943 (1995)). In this case, the arbitrator's authority was limited by (1) Article XIX, Section 4, which states that when a grievance is appealed to arbitration, the "suggested relief and the article and section cited shall be considered a formal framing of the issue or remedy"; (2) Article XIX, Section 5, which provides that the arbitrator's decision "shall be final and binding upon the Employer, the Union and the Employee(s) presenting the grievance " and that "the arbitrator shall not change, but shall interpret only, the terms of this Agreement"; and (3) the grievance itself, in which defendant alleged that plaintiff was

implementing layoffs "without showing such a reduction is 'necessary' in accordance with Article XX, Section 1."

Parties may limit the authority of an arbitrator by defining the issues to be decided. American Postal Workers Union, 185 F.3d at 835. However, in determining whether the arbitrator's decision exceeded the scope of the issues submitted, a court gives "great deference to the arbitrator's understanding of the parameters of the issue presented for arbitration." Id. (internal citations omitted) "The arbitrator's interpretation of the scope of the issue must be upheld so long as it is rationally derived from the parties' submission." Id. (citing Richmond, Fredericksburg & Potomac R.R. Co. v. Transportation Communications Int'l Union, 973 F.2d 276, 280 (4th Cir. 1992)).

Plaintiff contends that the grievance filed by defendant cited provisions concerning only the implementation of the layoffs and therefore it was improper for the arbitrator to rule on the underlying cause of the layoffs. Even assuming this is a correct interpretation of the provisions cited in the grievance, it is undisputed that defendant alleged in the grievance that plaintiff had not shown that the layoffs were "necessary." In order to determine whether the layoffs were necessary, the arbitrator believed that he had to examine plaintiff's reason behind the layoffs. This led him to consider the justification for plaintiff's decision to outsource the housekeeping and janitorial work. Finding no provision in the agreement addressed plaintiff's ability to outsource work, he considered other provisions of the

agreement that might restrict plaintiff's outsourcing authority and looked to sources other than the agreement for guidance. His analytical approach is similar to one endorsed by the Court of Appeals for the Seventh Circuit in Dreis & Krump Manufacturing Co. v. Int'l Assoc. of Machinists, 802 F.2d 247 (7th Cir. 1986). Like the present case, Dreis & Krump involved a dispute over outsourcing and a collective bargaining agreement that was silent regarding the employer's power to outsource. The employer grounded its power to outsource in the collective bargaining agreement's broad management rights provision, but the arbitrator considered other express and implied provisions in his analysis. The court upheld the arbitrator's approach because the arbitrator had interpreted the contract. Id. at 253-54. I reach the same result in this case. The arbitrator's decisions to consider plaintiff's justification for the layoffs and provisions other than those cited in the grievance were "rationally derived" from the grievance.

The arbitrator's retention of jurisdiction to settle disputes regarding implementation of the award is not a sufficient reason to vacate the award. His retaining such jurisdiction does not detract from the finality of his conclusion that plaintiff's decision to outsource violated the collective bargaining agreement. Many courts have recognized an arbitrator's authority to retain jurisdiction to oversee implementation of an arbitration award. Id. at 250 (noting that a "reservation of jurisdiction" is "implicit in any order that grants equitable relief"); Dean Foods Co. v. United Steel Workers of America, 911 F. Supp. 1116, 1127-28

(N.D. Ind. 1995) (citing cases). In retaining jurisdiction, the arbitrator did not violate the agreement's requirement that an arbitrator's decision be "final and binding."

D. Sanctions

Defendant has moved to impose sanctions upon plaintiff for filing a frivolous challenge to the arbitration award under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, and Rule 11 of the Federal Rules of Civil Procedure. Although Section 301 does not provide specifically for sanctions, the prevailing party in an action under the act is entitled to attorney fees if its "opponent's suit has no merit or is frivolous, that is, if it is brought in bad faith to harass rather than to win." National Wrecking Co. v. Int'l Brotherhood of Teamsters, Local 731, 990 F.2d 957, 963 n.4 (7th Cir. 1993) (citing cases). Fed. R. Civ. P. 11 allows a court to award sanctions against a party or its attorneys for arguments not warranted by existing law or a good faith extension, modification or reversal of existing law. Unlike an award of attorney fees under § 185, Rule 11 does not require a finding of bad faith. Id. Instead, the test under Rule 11 is objective, requiring a finding that the party should have known its position was groundless. Dreis & Krump, 802 F.2d at 255. As a prerequisite to formally seeking sanctions, Rule 11(c)(1)(A) requires a party to present the motion it intends to file to opposing counsel so that the challenged matter may be resolved without the court's intervention. In its motion, counsel for defendant states that

he presented to counsel for plaintiff the motion for sanctions and a request that plaintiff's complaint be withdrawn. Counsel does not specify that he complied with Rule 11's safe harbor provisions, but plaintiff does not object on these grounds so I will assume that he did.

The Seventh Circuit has taken a particularly hard line against frivolous lawsuits. Dreis & Krump, 802 F.2d at 255 (stating that rules designed to discourage groundless litigation are being and will continue to be enforced "to the hilt"). This is especially true when a party challenges an arbitration award. Id. To avoid sanctions for bringing an action to vacate an arbitration award, a party must do more than argue that the arbitrator erred in interpreting the contract. Chicago Typographical Union No. 16 v. Chicago Sun-Times, Inc., 935 F.2d 1501, 1506-07 (7th Cir. 1991) (sanctioning plaintiff for arguing that arbitrator's award was unreasonable, rather than arguing that arbitrator based his award on something other than his understanding of contract); Dreis & Krump, 802 F.2d at 254 (sanctioning plaintiff because it was clear that arbitrator had interpreted contract); Hill v. Norfolk & Western Railway Co., 814 F.2d 1192, 1200 (7th Cir. 1987) (sanctioning plaintiff for arguing that arbitrator misinterpreted contract).

In this case, plaintiff claims to be challenging more than the arbitrator's interpretation of the collective bargaining agreement. Plaintiff pitches its battle under the banner of arbitrability but fights it on the ground that the arbitrator exceeded his authority. Once plaintiff's arguments are untangled, it becomes clear that (1) no serious challenge to the

arbitrability of this dispute could have been made and (2) the arbitrator's decision regarding the scope of the issues presented to him more than passes this court's required deferential review. Although I cannot conclude that plaintiff pressed its case in bad faith, plaintiff should have known its suit was doomed to fail in light of the well-settled law against its position. Thus, I conclude that Rule 11 sanctions are appropriate.

The only remaining issue is the appropriate sanction. The Court of Appeals for the Seventh Circuit has sustained district court awards of attorney fees to parties forced to defend frivolous challenges to arbitration awards. Dreis & Krump, 802 F.2d at 255; Jasper Cabinet v. United Steelworkers of America, 77 F.3d 1025, 1031 (7th Cir. 1996). Ordering plaintiff to pay defendant's reasonable attorney fees is the appropriate sanction in this case. As should be clear from the discussion in the preceding sections, plaintiff should have known that it had no colorable ground for vacating the arbitrator's decision. Therefore, plaintiff is ordered to pay the reasonable attorney fees that defendant incurred as a result of being forced to litigate this matter.

ORDER

1. IT IS ORDERED that plaintiff CUNA Mutual Insurance Society's motion for summary judgment is DENIED.

2. Plaintiff's motion to strike defendant's proposed findings of fact is DENIED as unnecessary.

3. Defendant Office and Professional Employees International Union, Local 39's motion for summary judgment and counterclaim for an award of sanctions are GRANTED.

4. Defendant may have until December 8, 2004, in which to submit a detailed itemization of the attorney fees it occurred in the course of this case.

5. Plaintiff may have until December 22, 2004, in which to file and serve objections to the amounts sought by defendant.

Entered this 29th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge