

BALTIMORE COUNTY,
MARYLAND

Plaintiff

v.

BALTIMORE COUNTY FRATERNAL
ORDER OF POLICE, Lodge No. 4

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No.: 03-C-08-8643
*

* * * * *

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendant Baltimore County Fraternal Order of Police (“FOP”), Lodge No. 4’s Motion to Enforce this Court’s Judgment and for an Order to Show Cause, which was filed on April 12, 2013. The Plaintiff, Baltimore County, Maryland, filed its Response to this Motion on April 23, 2013. Subsequently, the Defendant filed a Reply Brief in support of its Motion to Enforce on May 15, 2013. The Parties’ counsel appeared for a hearing on May 17, 2013 to argue the instant Motion. On May 28, 2013, the Plaintiff filed a Supplemental Memorandum to provide the Court with more guidance about the arguments it advanced during the hearing. The Defendant then filed a Supplemental Reply Brief on June 28, 2013. For the reasons stated herein, the Defendant’s Motion is GRANTED.

I. Background

This suit arises out of a grievance that was filed by the Defendant under a series of collective bargaining agreements that the parties refer to as Memoranda of Understanding (“MOUs”). The grievance specifically related to the MOUs that covered police officers who retired between 1992 through 2007. The MOUs contained a provision that the Parties were to submit any dispute concerning the application or interpretation of the terms of the MOUs to a

grievance process. This grievance process ultimately culminated in arbitration, which was to be final and binding on the aggrieved employees, the Plaintiff, and Defendant. Pursuant to the agreements, the grievance proceeded to arbitration, and the arbitrator issued his award on July 15, 2008. The arbitrator found that the Plaintiff violated the MOUs that were entered into between the Parties. Specifically, the Plaintiff violated the MOUSs when in 2007, it decreased the retiree health care subsidy for those officers who retired between February 1, 1992 though June 30, 2007, from the subsidy rate in place at the time of each officer's retirement.

Following the arbitrator's award, the Plaintiff filed a Complaint to Vacate Arbitration Award in this Court on August 14, 2008.¹ The Defendant then filed its Answer on September 22, 2008. Subsequently, the Plaintiff filed a Motion for Summary Judgment on March 13, 2009,² and the Defendant filed a Cross Motion for Summary Judgment on March 31, 2009. In a Memorandum Opinion and Order issued on August 10, 2010, this Court granted the

¹ In its Complaint, the Plaintiff alleged the following arguments: (1) the arbitrator did not have jurisdiction over the grievance, because the MOU expired between the Plaintiff and the Defendant; (2) the arbitrator had no authority to rewrite the healthcare subsidy provisions that had been negotiated by the Health Care Review Committee, the Defendant's bargaining agent; (3) the grievance was moot; (4) there was no arbitration agreement because the MOU expired; (5) the Defendant did not have a contractual right to file a grievance on behalf of retirees; (6) the arbitrator's award usurps the power of the County Executive and County Council to enact a budget that provides for health insurance and health insurance subsidies pursuant to the Health Care Review Committee; (7) there was no vested future right to the specific benefits provided in the expired 2007 MOU; (8) the award is contrary to public policy, as provided in the Baltimore County Charter and Code, that the County Council appropriates funds needed to provide healthcare subsidies to retirees; (9) the award involves mistakes so gross to constitute manifest injustice; and (10) the award contains mistakes of law and fact which are apparent on the face of the award. Compl. ¶¶ 3-12.

² In its Motion for Summary Judgment, the Plaintiff made the following arguments: (1) the arbitrator lacked jurisdiction to arbitrate the grievance and the grievance was not arbitrable, because the FY 2007 MOU had expired; (2) the grievance was moot; (3) the grievance was not timely filed and should have been dismissed; (4) the arbitrator had no authority to rescind and rewrite the language negotiated by the Health Care Review Committee; (5) the FOP's filing does not constitute a grievance; (6) there is no vested future right to the specific benefits prescribed in the expired FY 2007 MOU, and it was manifest error for the arbitrator to conclude otherwise by erroneously relying on cases that interpret the NLRA; (7) the arbitrator's own comments demonstrate the manifestly unjust and grossly mistaken nature of his award; (8) the County clearly intended that health care subsidies would be negotiated annually and could go up and down; and (9) the arbitrator's award usurps the power of the County Executive and County Council to enact a budget which provides for health insurance and health insurance subsidies pursuant to the terms negotiated by the Health Care Review Committee. Baltimore County's Mem. in Supp. of Mot. for Summary J., Mar. 13, 2009.

Defendant's Cross Motion for Summary Judgment, and denied the Plaintiff's Motion for Summary Judgment.³

As a result of this decision, the Plaintiff filed an appeal with the Court of Special Appeals on August 19, 2010. The Court of Special Appeals then issued an opinion on December 8, 2011. The Court of Special Appeals specifically addressed whether this Court erred in granting the Defendant's Motion for Summary Judgment, and whether this Court erred in denying the Plaintiff's Motion for Summary Judgment.⁴ However, in the first footnote of the opinion, the Court of Special Appeals noted that the Plaintiff presented other questions in its brief for the Court to review.⁵ With respect to these questions, the Court of Special Appeals provided:

For the reasons stated in our opinion, we cannot provide a certain answer to the County's first question. Instead, we hold that the circuit court erred when it upheld the arbitration award and we leave the remaining questions to be resolved in a future arbitration or civil proceeding, if this litigation continues.⁶

Ultimately, the Court of Special Appeals reversed this Court's judgment, and remanded the case to this Court with instructions to enter judgment in favor of the Plaintiff.⁷

³ Mem. Op. & Order, Aug. 10, 2010.

⁴ Ct. of Special Appeals Op., No. 1428, Sept. Term, 2010, p. 1, Dec. 8, 2011.

⁵ Ct. of Special Appeals Op., pp. 1-2 n.1. Specifically, the Plaintiff raised the following issues: (1) whether the arbitrator lacked jurisdiction to arbitrate the grievance and whether the grievance was arbitrable, because the FY 2007 MOU had expired; (2) whether the grievance was moot due to the expiration of the FY 2007 MOU; (3) whether the grievance was timely filed; (4) whether the FOP's late filing constituted a valid grievance, since by definition, "retirees" are not "employees" entitled to bring a class grievance; (5) whether the arbitrator had the authority to rescind and rewrite the language negotiated by the Health Care Review Committee; (6) whether there was a vested right to future health insurance benefits and subsidies prescribed in the expired FY 2007 MOU, and whether it was manifest error for the arbitrator to conclude so by relying on cases that interpret the NLRA; (7) whether the arbitrator's own comments demonstrated the manifestly unjust and grossly mistaken nature of his award; (8) whether the County clearly intended that health care subsidies would be negotiated annually and could go up and down; and (9) whether, contrary to law and public policy, the arbitrator's award usurped the power of the Baltimore County Executive and County Council to enact a budget which provides for health insurance and health insurance subsidies pursuant to the terms negotiated by the Health Care Review Committee, the FOP's bargaining agent. Ct. of Special Appeals Op., pp. 1-2 n.1.

⁶ Ct. of Special Appeals Op., pp. 1-2 n.1.

⁷ Ct. of Special Appeals Op., pp. 13-14. The Court of Special Appeals reasoned that the arbitrator failed to address the argument that all obligations under the agreement had expired, which included both the healthcare obligations and independent obligation to arbitrate. Ct. of Special Appeals Op., p. 13. Instead, the arbitrator

As a result of this decision, the Defendant filed a Petition for Writ of Certiorari with the Court of Appeals on January 24, 2012, which was granted on April 20, 2012.⁸ The Court of Appeals then issued a decision on November 19, 2012, which reversed the Court of Special Appeals' ruling.⁹ The Court of Appeals further remanded the case back to the Court of Special Appeals, with instructions to affirm this Court's judgment issued on August 10, 2010.¹⁰ This ruling then prompted the Plaintiff to file a Motion for Reconsideration with the Court of Appeals on December 10, 2012. An argument that the Plaintiff asserted was that the Court of Appeals should remand the case back to the Court of Special Appeals to consider the nine undecided issues that were raised in footnote one of the Court of Special Appeals' opinion.¹¹ Additionally, the Plaintiff highlighted one specific issue that was undecided, which was whether the arbitrator's award was contrary to public policy.¹² Specifically, the award was contrary to public policy, because it usurps the power of the County Executive and County Council to enact a budget which provides for health insurance and health insurance subsidies pursuant to the terms negotiated by the Health Care Review Committee.¹³

Despite the fact that the Plaintiff's nine arguments were undecided, the Court of Appeals denied the Plaintiff's Motion for Reconsideration on January 18, 2013.¹⁴ On that same date,

only determined that the rights were vested. Ct. of Special Appeals Op., p. 13.

⁸ Pet. for Writ of Certiorari, Jan. 24, 2012; Ct. of Appeals Order, Pet. Docket No. 539, Sept. Term, 2011, Apr. 24, 2012.

⁹ Ct. of Appeals Op., No. 3, Sept. Term, 2012, p. 35, Nov. 19, 2012. The Court of Appeals reached this conclusion by finding that a dispute may be arbitrable after the underlying agreement expired, if the arbitration clause in the agreement was broad, and the rights that are at issue accrued or vested during the duration of the agreement. Ct. of Appeals Op., pp. 34-35. Since the arbitration clause in the MOU was broad, and the retirees' rights had vested at the time of retirement, the Court of Appeals concluded that this Court was legally correct in granting summary judgment in favor of the Defendant. Ct. of Appeals Op., pp. 34-35.

¹⁰ Ct. of Appeals Op., p. 35.

¹¹ Baltimore County's Mot. for Recons., pp. 3-5, Dec. 10, 2012 (hereinafter "Mot. for Recons.>"). The other argument that the Plaintiff raised was that the Defendant was bound by the reduction negotiated by its bargaining agent, the Health Care Review Committee. Mot. for Recons., pp. 1-3.

¹² Mot. for Recons., pp. 4-5.

¹³ Mot. for Recons., pp. 4-5.

¹⁴ Ct. of Appeals Order, No. 3, Sept. Term, 2012, Jan. 18, 2013.

the Court of Appeals issued a Mandate to the Court of Special Appeals, instructing the Court to affirm this Court's judgment issued on August 10, 2010.¹⁵ Subsequently, pursuant to the Court of Appeals' Mandate, the Court of Special Appeals issued an Order on February 26, 2013. In this Order, the Court of Special Appeals vacated its prior judgment, and thereby affirmed this Court's judgment issued on August 10, 2010.¹⁶

This then leads us to the present time, where the Court is considering the Defendant's Motion to Enforce this Court's Judgment and for an Order to Show Cause, which was filed on April 12, 2013.¹⁷ The Plaintiff filed its Response to this Motion on April 23, 2013, with the Defendant filing a Reply Brief on May 15, 2013.¹⁸ A hearing was then held by this Court on May 17, 2013, in which the Parties' respective counsel appeared and argued the instant Motion. After the hearing, the Plaintiff filed a Supplemental Memorandum on May 28, 2013, to provide extra support for the arguments it advanced at the hearing.¹⁹ The Defendant then filed its Supplemental Reply Brief on June 28, 2013.²⁰

II. Discussion

A. The Plaintiff's Arguments are Precluded from Consideration by the Law of the Case Doctrine.

In its Response to the Defendant's Motion to Enforce, the Plaintiff presented seven specific arguments about why the Defendant's Motion should be denied.²¹ At the hearing

¹⁵ Ct. of Appeals Mandate, No. 3, Sept. Term, 2012, Jan. 18, 2013.

¹⁶ Ct. of Special Appeals Order, No. 1428, Sept. Term, 2010, Feb. 26, 2013.

¹⁷ Mot. to Enforce this Ct.'s J. & for an Order to Show Cause, Apr. 12, 2013.

¹⁸ Baltimore County's Resp. to FOP's Mot. to Enforce J. & for an Order to Show Cause, Apr. 23, 2013 (hereinafter "Pl.'s Resp."); Reply Br. in Supp. of Mot. to Enforce this Ct.'s J. & for an Order to Show Cause, May 15, 2013 (hereinafter "Def.'s Reply Br.>").

¹⁹ Baltimore County's Supplemental Mem. in Supp. of Resp. to FOP's Mot. to Enforce J. & for an Order to Show Cause, May 28, 2013.

²⁰ Def.'s Supplemental Reply Br. in Supp. of Mot. to Enforce this Ct.'s J. & for an Order to Show Cause, June 28, 2013.

²¹ These arguments include: (1) the arbitrator's award cannot usurp the power of the County Executive and County Council to enact a budget, which contains the subsidies that were negotiated by the Health Care Review Committee, the Defendant's bargaining agent; (2) any rescission and re-setting of the health care subsidy split

on this instant Motion, the Plaintiff classified these arguments as one argument, which was the arbitration award violated public policy.²² The Plaintiff further articulated that the public policy that was violated was that the County Executive and County Council did not appropriate the funds to pay for the subsidy that the arbitrator ordered.²³ In response, the Defendant asserts, along with other arguments, that the Plaintiff is precluded from raising these arguments by the law of the case doctrine.²⁴

The law of the case doctrine provides that once a decision is established as the controlling legal rule of decision between the same parties in the same case, it continues to be the law of the case.²⁵ This is conditioned on the facts and evidence of the later proceeding being substantially similar to those of the original trial.²⁶ Neither questions that were decided, nor questions that could have been raised and decided on appeal, can be re-litigated.²⁷ As articulated in *Fidelity-Baltimore Nat'l Bank & Trust Co. v. John Hancock Mut. Life Ins. Co.*, 217 Md. 367 (1958),

Once this Court has ruled upon a question properly presented on an appeal, or, if the ruling be contrary to a question that could have been raised and argued in that appeal on the then state of the record, as aforesaid, such a ruling becomes the "law of the case," and is binding on the litigants and courts alike, unless changed or modified after reargument, and neither the questions decided nor

would violate the agreement the Health Care Review Committee had with the Plaintiff; (3) the Court's final Order dated August 10, 2010 did not enter an enforceable judgment against the Plaintiff for a sum certain; (4) the arbitrator had no authority to rescind and rewrite the language negotiated by the Health Care Review Committee; (5) the Defendant never proved and the arbitrator never determined the amount that would make the retirees "whole," or any liquidated sum that could be reduced to a judgment against the Plaintiff; (6) the separation of powers doctrine prohibits the Court from ordering the County Executive and the County Council to appropriate funds, long after the budgets for FY 2008-2013 have been enacted; and (7) enforcement of the award at this stage of the proceedings would violate the Plaintiff's right to have the issues it raised in the Court of Special Appeals adjudicated. Pl.'s Resp., pp. 1-11.

²² Mot. Hr'g Tr., pp. 25-26, May 17, 2013.

²³ Mot. Hr'g Tr., p. 30.

²⁴ Def.'s Reply Br., pp. 3-5.

²⁵ *Roane v. Washington Cnty. Hosp.*, 137 Md. App. 582, 587 (2001) (citing *Kline v. Kline*, 93 Md. App. 696, 700 (1992)).

²⁶ *Maryland-Nat'l Capital Park & Planning Comm'n v. Anderson*, 179 Md. App. 613, 625 (2008).

²⁷ *Id.*; *Kline*, 93 Md. App. at 700.

the ones that could have been raised and decided are available to be raised in a subsequent appeal.²⁸

The purpose of this doctrine is to prevent “piecemeal” litigation, and also, to prevent successive appeals that involve the same questions that were previously decided or could have been decided by the court.²⁹

After review of the record in this case, it appears that the Plaintiff is presenting the same arguments that were either presented in its Complaint, Motion for Summary Judgment, to the Court of Special Appeals in its appeal, or to the Court of Appeals in its Motion for Reconsideration. If the arguments were not previously presented for consideration, it appears that they could have been presented to the appellate courts previously, because the arguments are based on the same facts that existed at the time the Plaintiff filed its appeal.³⁰ Based on these two reasons, the Court finds that the Plaintiff’s arguments are precluded by the law of the case doctrine.³¹

The first argument posed by the Plaintiff in its Response relates to whether the arbitrator’s award usurps the power of the County Executive and County Council. After review, the Court noticed that this specific argument was previously presented in the Plaintiff’s Complaint, and was further referenced in its Motion for Summary Judgment.³² As a result, this argument was subsequently addressed by this Court in its Memorandum Opinion and

²⁸ *Fidelity-Baltimore Nat'l Bank & Trust Co. v. John Hancock Mut. Life Ins. Co.*, 217 Md. 367, 372 (1958).

²⁹ *Maryland-Nat'l Capital Park & Planning Comm'n*, 179 Md. App. at 626 (citing *Fidelity-Baltimore Nat'l Bank & Trust Co.*, 217 Md. at 372); see *Kearney v. Berger*, 416 Md. 628, 641 (2010) (providing that the law of the case doctrine rests on “sound judicial policy,” and ensures that litigants cannot try their cases piecemeal); *Schisler v. State*, 177 Md. App. 731, 747 (2007) (explaining that without pleading additional facts, the appellants cannot add new claims and defendants after the Court of Appeals’ judgment, because this would be contrary to the law of the case doctrine, and would permit “piecemeal” litigation).

³⁰ See *Maryland-Nat'l Capital Park & Planning Comm'n*, 179 Md. App. at 625-27; *Schisler*, 177 Md. App. at 745-46.

³¹ See *Maryland-Nat'l Capital Park & Planning Comm'n*, 179 Md. App. at 625; *Schisler*, 177 Md. App. at 745.

³² Compl. ¶ 8; Baltimore County’s Mem. in Supp. of Mot. for Summary J., p. 33.

Order dated August 10, 2010.³³ This argument was also in the infamous footnote of the Court of Special Appeals' Opinion, and was further raised by the Plaintiff in its Motion for Reconsideration filed at the Court of Appeals.³⁴ Specifically, this was the issue that the Plaintiff highlighted in the body of its Motion.³⁵ Despite this, the Court of Appeals denied the Plaintiff's Motion for Reconsideration, thus declining to remand the case back to the Court of Special Appeals to consider this very issue.³⁶ As such, this ruling has made it clear that this issue should not be considered any further.

Next, the Plaintiff's second argument in its Response relates to how the rescission and re-setting of the health care subsidy would violate the agreement between the Plaintiff and the Health Care Review Committee, who is the Defendant's bargaining agent. Like argument number one, the Court finds that this issue was also previously considered. In its Motion for Reconsideration, the Plaintiff presented the same issue, although not exactly worded the same.³⁷ More specifically, the Plaintiff maintained that changing the agreement that it entered into with the Health Care Review Committee would be in "complete contravention of the most fundamental rule of contract and agency law, namely that the principal (FOP) is bound by agreements made on its behalf by its agent (HCRC)."³⁸ This exact same language was included in the Plaintiff's Response, which further supports this Court's position that the Plaintiff raised this argument in their Motion for Reconsideration.³⁹ As indicated several

³³ Mem. Op. & Order, p. 15.

³⁴ Ct. of Special Appeals Op., pp. 1-2 n.1; Mot. for Recons., pp. 4-5.

³⁵ Mot. for Recons., pp. 4-5.

³⁶ Ct. of Appeals Order, Jan. 18, 2013.

³⁷ See Mot. for Recons., pp. 1-3; Pl.'s Resp., pp. 4-5.

³⁸ Mot. for Recons., pp. 1-3.

³⁹ Pl.'s Resp., p. 5.

times, the Court of Appeals denied the Plaintiff's Motion for Reconsideration, thus concluding that this issue should not be considered further.⁴⁰

In contrast to the past two arguments, the third argument was not previously presented in the Complaint, the Plaintiff's Motion for Summary Judgment, in the footnote of the Court of Special Appeals' Opinion, or in the Motion for Reconsideration. This specific argument relates to whether this Court's final order dated August 10, 2010 entered an enforceable judgment against the Plaintiff for a sum certain. Even though this issue has not been considered previously, it is still precluded by the law of the case doctrine, because this issue could have been presented by the Plaintiff in its previous appeal.⁴¹ More specifically, this argument is based on the same facts that existed prior to the Plaintiff entering its appeal.⁴² Moreover, the facts of this case did not change after the Court of Appeals issued their Mandate on January 18, 2013, and further, the Plaintiff has failed to present new facts to support this argument.⁴³ Thus, for these reasons, this argument is precluded by the law of the case doctrine.⁴⁴

With respect to the fourth argument raised by the Plaintiff in its Response, it was previously raised in the Complaint and its Motion for Summary Judgment. In all of these pleadings, the Plaintiff argues that the arbitrator lacked the authority to rescind and rewrite the

⁴⁰ Ct. of Appeals Order, Jan. 18, 2013; Pl.'s Resp., pp. 4-5.

⁴¹ See *Maryland-Nat'l Capital Park & Planning Comm'n*, 179 Md. App. at 625 ("Both questions that were decided and questions that could have been raised and decided on appeal are precluded from relitigation.").

⁴² See *Schisler*, 177 Md. App. at 745-46.

⁴³ See *Maryland-Nat'l Capital Park & Planning Comm'n*, 179 Md. App. at 627.

⁴⁴ See *id.* (concluding that the commission's request for mandamus relief was barred by the law of the case doctrine, because it failed to allege new facts to support this claim, and the issue regarding remedies was decided in the prior appeal); *Schisler*, 177 Md. App. at 746-47 (determining that the appellants' amended complaint, which alleged new claims and defendants, was barred by the law of the case doctrine, because the amended complaint did not allege new facts, and the Court of Appeals already considered the merits of the case and issued a final judgment).

agreement between the Plaintiff and Health Care Review Committee.⁴⁵ Because this argument was raised in the Plaintiff's Motion for Summary Judgment, this Court addressed it in its Memorandum Opinion issued on August 10, 2010.⁴⁶ This argument was then noted in the first footnote of the Court of Special Appeals' Opinion, and pursuant to the Court of Appeal's Order dated January 18, 2013, it declined to remand this case to back to the Court of Special Appeals to consider this argument.⁴⁷ As such, this issue is to not be considered further.

Next, argument number five is similar to argument number three in both substance and applicability of the law of the case doctrine. Like argument number three, the fact that the arbitrator never determined the specific amount that would make the affected retirees whole, or any liquidated sum that could be reduced to judgment, was an issue that existed at the time the Plaintiff filed its appeal with the Court of Special Appeals.⁴⁸ As mentioned above, the facts in this case have remained the same throughout its procedural history; they are the same as they were when the Complaint and the Plaintiff's Motion for Summary Judgment were filed. Hence, the Plaintiff could have presented this argument previously, but it failed to do so.⁴⁹ Additionally, the facts of this case did not change after the Court of Appeals issued its Mandate, and the Plaintiff has not raised any new facts to support this argument.⁵⁰ Because of these reasons, this argument is precluded by the law of the case doctrine.

⁴⁵ Pl.'s Resp., pp. 6-7; Compl. ¶ 4; Baltimore County's Mem. in Supp. of Mot. for Summary J., pp. 27-28. It is to be noted that all of the pleadings cite to the 2007 MOU, Section 8.3, Step 4, to support this argument. See Pl.'s Resp., p. 6; Compl. ¶ 4; Baltimore County's Mem. in Supp. of Mot. for Summary J., p. 27.

⁴⁶ Mem. Op. & Order, pp. 15-16.

⁴⁷ Ct. of Special Appeals Op., pp. 1-2 n.1; Ct. of Appeals Order, Jan. 18, 2013.

⁴⁸ See *Maryland-Nat'l Capital Park & Planning Comm'n*, 179 Md. App. at 625-27; *Schisler*, 177 Md. App. at 745-46.

⁴⁹ See *Maryland-Nat'l Capital Park & Planning Comm'n*, 179 Md. App. at 625 (explaining that the law of the case doctrine precludes the re-litigation of claims that could have been raised on appeal).

⁵⁰ See *id.* at 627 (concluding that the commission could not add a new claim following the Court of Appeals' decision, unless it alleged new facts); *Schisler*, 177 Md. App. at 746 ("In other words, once an appellate court

Argument number six is somewhat similar, but yet distinct from argument number one.⁵¹

This argument pertains to the separation of powers doctrine and how it prohibits this Court from ordering the County Executive and County Council to appropriate funds after the budgets for FY 2008-2013 have been enacted. Similar to arguments number two and five, the Plaintiff could have raised this argument in its appeal to the Court of Special Appeals, because it arose subsequent to this Court's judgment issued on August 10, 2010. Thus, it is precluded by the law of the case doctrine, because it is based on the same facts that existed at the time the Plaintiff filed its appeal.⁵² This argument is further precluded by the law of the case doctrine, because the facts did not change after the Court of Appeals issued their Mandate, and the Plaintiff did not raise any new facts to support this argument.⁵³ Therefore, this argument will not be considered further.

Finally, the Plaintiff's last argument is essentially the same argument that was posed to the Court of Appeals in its Motion for Reconsideration. In both its Motion for Reconsideration and its Response, the Plaintiff argues that it was denied its right of appeal, because the Court of Special Appeals failed to address the nine issues that were raised in footnote one of its opinion.⁵⁴ However, as noted, the Court of Appeals declined to remand the case back to the Court of Special Appeals to consider the nine outstanding issues.⁵⁵ Thus, the Court is bound by that decision, which means that those nine issues will not be considered further.

has finally decided a case based upon a set of facts, if the facts on remand remain unchanged, the appellate court's holding is the law of the case and it precludes consideration of new claims that may arise from those same facts.").

⁵¹ Argument number one questions the arbitrator's authority, while argument number six questions this Court's authority, to order an award or judgment, despite the County Executive and County Council's right to enact a budget and appropriate funds. Pl.'s Resp., pp. 1, 7.

⁵² See *Maryland-Nat'l Capital Park & Planning Comm'n*, 179 Md. App. at 625.

⁵³ See *id.* at 627; *Schisler*, 177 Md. App. at 746-47.

⁵⁴ Mot. for Recons., pp. 3-5; Pl.'s Resp., pp. 10-11.

⁵⁵ Ct. of Appeals Order, Jan. 18, 2013.

Based on the analysis above, the Court concludes that the law of the case doctrine precludes the arguments raised by the Plaintiff in its Response. As described in this Opinion, these arguments were either addressed previously, or could have been raised by the Plaintiff in their appeal. As such, the Court does not find it necessary to delve into the merits of these arguments. Thus, the Defendant's Motion is granted.

III. Final Ruling

WHEREFORE, it is this 14 day of August, 2013, by the Circuit Court for Baltimore County,

ORDERED that the Defendant's Motion to Enforce this Court's Judgment and for an Order to Show Cause is **GRANTED**; and it is further

ORDERED that within twenty (20) days from the date of this Order, the Plaintiff shall provide each affected retiree with the retiree health subsidy in place at the time of his or her retirement; and it is further

ORDERED that within twenty (20) days from the date of this Order, the Plaintiff shall issue payment in the amount of five hundred and seventy-two thousand eight hundred and eighty-seven dollars and ten cents (\$572,887.10), plus appropriate interest, which is the amount referenced in the chart previously prepared by the Plaintiff and provided to the Defendant in May of 2011, attached as Exhibit 3 to the Defendant's Motion to Enforce. The Plaintiff shall issue payments directly to each affected retiree in the proportions set forth in the chart prepared by the Plaintiff; and it is further

ORDERED that within twenty (20) days from the date of this Order, the Plaintiff shall update the damages chart that it previously submitted to the Defendant in May of 2011, and provide a copy of it to the Defendant. The Plaintiff shall provide the Defendant a chart

containing information sufficient for the Defendant to calculate a sum certain judgment to which it is entitled, including any appropriate pre and post judgment interest.



Judge Michael J. Finifter