

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

SUSAN BENNETT,

Plaintiff-Appellant,

v.

COUNCIL 31 OF THE AMERICAN
FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES,
AFL-CIO, *et al.*

Defendants-Appellees.

No. 20-1621

**JOINT MOTION OF APPELLEES AFSCME COUNCIL 31, AFSCME
LOCAL 672, AND MOLINE COAL VALLEY SCHOOL DISTRICT NO. 40
TO STAY APPEAL PENDING THE DISTRICT COURT’S DISPOSITION
OF A RULE 59(e) MOTION FOR RECONSIDERATION**

Defendants-Appellees American Federation of State, County, and Municipal Employees, Council 31 and AFSCME Local 672 (collectively “Union Appellees”), along with Defendant-Appellee Moline Coal Valley School District No. 40 (“School District”), file this Motion to inform the Court of a jurisdictional defect in this appeal caused by a pending Rule 59(e) motion for reconsideration in the District Court. Until the District Court disposes of that motion, Plaintiff-Appellant Susan Bennett’s notice of appeal is not effective. On this basis, the Movants jointly request that this appeal be stayed until the District Court disposes of the pending Rule 59(e) motion. In further support of their motion, the Movants state as follows:

1. On April 26, 2019, Plaintiff-Appellant filed a complaint in the District Court alleging two claims under 42 U.S.C. § 1983. The complaint named the Movants, as well as certain state officials, as defendants. District Court Dkt. No. 1.

2. On June 27, 2019, the Union Appellees and the School District answered the complaint. District Court Dkt. Nos. 16, 17. The School District also filed a cross-claim against the Union Appellees for indemnification. District Court Dkt. No. 17. The Union Appellees subsequently filed an answer to the School District's cross-claim. District Court Dkt. No. 20.

3. On March 31, 2020, the District Court issued an order granting the Defendants' motions for summary judgment as to both of Plaintiff-Appellant's claims and denying Plaintiff-Appellant's cross-motion for summary judgment as to those claims. That order did not mention the School District's cross-claim for indemnification. District Court Dkt. No. 42.

4. On April 2, 2020, the Court entered judgment that (a) dismissed both of Plaintiff-Appellant's claims and (b) dismissed the School District's cross-claim for indemnification. District Court Dkt. No. 43. Plaintiff-Appellant filed a notice of appeal as to that judgment on April 14, 2020. District Court Dkt. No. 44.

5. On April 28, 2020, pursuant to Federal Rule of Civil Procedure 59(e), the School District filed a Motion for Reconsideration and Clarification of the Court's Dismissal of the District's Cross-Claim. District Court Dkt. Nos. 49 & 50 (attached as Exhibits 1 and 2 to this Motion). The Union Appellees filed an opposition to the

District's Rule 59(e) motion on May 12, 2020. District Court Dkt. No. 51 (attached as Exhibit 3 to this Motion). That motion is fully briefed and remains pending before the District Court.

6. Under Federal Rule of Appellate Procedure 4(a)(4)(A)(iv), a timely-filed motion under Rule 59(e) suspends the time to file an appeal of a final judgment for all parties—until the District Court disposes of the motion. Subsection 4(a)(4)(B)(i) of the Rule goes on to provide that, “[i]f a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.” The Committee Note to the 1993 Amendments to Rule 4 further explains that “[a] notice filed before the filing of one of the specified motions . . . is, in effect, suspended until the motion is disposed of, whereupon, the previously filed notice effectively places jurisdiction in the court of appeals.”

7. That Committee Note addresses the precise situation here, as Plaintiff-Appellant filed her notice of appeal before the School District filed its Rule 59(e) motion for reconsideration. Because the School District's Rule 59(e) motion was filed within 28 days of the District Court's entry of judgment, that motion was timely filed and thereby suspends Plaintiff-Appellant's notice of appeal.

8. As a result, this Court lacks jurisdiction over this appeal until the District Court disposes of the School District's Rule 59(e) motion. *See, e.g., Florian v. Sequa*

Corp., 294 F.3d 828, 829 (7th Cir. 2002). The Movants therefore request that this appeal be stayed until the District Court decides the School District's Rule 59(e) motion.

9. If this Court stays this appeal, the Movants agree to promptly inform this Court of the District Court's disposition of the Rule 59(e) motion, as well as their position at that time as to whether the Court has jurisdiction over Plaintiff-Appellant's appeal.

Respectfully submitted,

/s/ Jacob Karabell
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Date: May 29, 2020

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*Counsel for Appellee Moline Coal
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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Motion complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2). The motion was prepared in 14-point Garamond font, and it contains 731 words.

/s/ Jacob Karabell
Jacob Karabell

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2020, I electronically filed the foregoing Joint Motion of Appellees AFSCME Council 31, AFSCME Local 672, and Moline Coal Valley School District No. 40 To Stay Appeal Pending the District Court's Disposition of a Rule 59(e) Motion for Reconsideration with the Clerk by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Jacob Karabell
Jacob Karabell

EXHIBIT 1

SCHOOL DISTRICT'S RULE 59(e) MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE COURT'S DISMISSAL OF THE DISTRICT'S CROSS-CLAIM

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION

| | | |
|---|---|-----------------|
| SUSAN BENNETT, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 19 CV 04087 |
| |) | |
| AMERICAN FEDERATION OF STATE, |) | |
| COUNTY, AND MUNICIPAL |) | |
| EMPLOYEES, COUNCIL 31, AFL-CIO; |) | |
| AFSCME LOCAL 672; MOLINE-COLE |) | |
| VALLEY SCHOOL DISTRICT NO. 40; |) | |
| ATTORNEY GENERAL KWAME RAOUL, |) | |
| in his official capacity; and ANDREA R. |) | |
| WAINTROOB, chair, JUDY BIGGERT, |) | |
| GILBERT O'BRIEN JR., LYNNE SERED, |) | |
| and LARA SHAYNE, members, of the Illinois |) | |
| Educational Labor Relations Board, in their |) | |
| official capacities, |) | |
| |) | |
| Defendants. |) | |

**THE DISTRICT’S RULE 59(e) MOTION FOR RECONSIDERATION AND
CLARIFICATION OF THE COURT’S DISMISSAL OF THE DISTRICT’S CROSS-
CLAIM**

Defendant, the Board of Education of Moline-Coal Valley School District No. 40 (“Board” or “District”), by and through its counsel, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, hereby moves this Court to reconsider its March 31, 2020, order and April 2, 2020, judgment with respect to the District’s pending cross-claim for indemnification in this matter pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. In support thereof, the District states as follows:

1. On June 27, 2019, the District filed its Answer and Affirmative Defenses to Plaintiff's Complaint and a Cross-Claim against AFSMCE Council 31, AFL-CIO and AFSMCE Local 672. (*See* Doc. 17).
2. The District's cross-claim was based upon the indemnification clause contained within the collective bargaining agreement between the District and the Union Defendants, wherein the Union Defendants explicitly:

“agree to hold harmless and indemnify the School District No. 40, its School Board, employees and agents as to all claims that may arise in litigation resulting from the implementation or attempted implementation of this Article in this and prior Agreements. **Union agrees to pay all costs of such litigation including court costs, attorneys' fees, judgment, penalties and interests.**” (*See* Doc. 17; *see also* Doc. 1-1, p. 20; Doc 1-2, pp. 26-27) (emphasis added).
3. Consistent with this contract language, the District's cross-claim requested (a) that in the event Plaintiff prevailed against the District, this Court enter an order finding that Union Defendants have a contractual duty to indemnify and hold the District harmless against any and all relief awarded to Plaintiff, and (b) that the Court enter an order requiring Union Defendants to “indemnify and reimburse the District for *all costs and attorneys' fees incurred to defend this lawsuit.*” (*See* Doc. 17) (emphasis added).
4. On March 31, 2020, this Court entered an Order on the parties' cross-motions for summary judgment, granting the Defendants' motion and denying the Plaintiff's motion. (*See* Doc. 42). The Court's Order on the cross-motions for summary judgment did not address the District's pending cross-claim on the merits.
5. On April 2, 2020, the Clerk of Court entered the Judgment in a Civil Case, dismissing Plaintiff's action against all Defendants, and stating “Moline-Coal Valley School District No. 40's cross claim against Council 31 and AFSCME Local 672 is dismissed and it receives nothing on its claim.” (*See* Doc. 43).

6. The District presumes that the Court determined that it need not reach the first part of the District's cross-claim because the Court granted Defendants' motions for summary judgment and entered judgment in favor of defendants. The District also presumes that the Court contemplated that the District could renew that portion of its cross-claim in the event Plaintiff were to prevail on an appeal and judgment on a later date. The District respectfully asks for clarification on this point to ensure that the Court's dismissal was indeed without prejudice to the District's rights to renew or re-file the claim at a later date.
7. The District's motion for reconsideration and clarification also concerns the second part of the District's cross-claim for indemnification, namely reimbursement of the District's attorneys' fees and costs incurred to defend this lawsuit.
8. This Court's order on the cross-motions for summary judgment and this Court's final judgment are silent on this issue.
9. Notably, both the Union Defendants and the District contemplated further briefing on this issue after the Court ruled on the parties' cross-motions for summary judgment.
10. As part of the Joint Status Report filed by the Parties on September 19, 2019, wherein the Parties (with the exception of the State Defendants) agreed to the filing of a stipulated record for the purposes of cross-motions for summary judgment, the District and the Union Defendants agreed not to brief the District's pending cross-claim for indemnification until after the resolution of the cross-motions for summary judgment on the merits of Plaintiff's claims. The District and Union Defendants also informed the Court that they intended to engage in good-faith settlement negotiations in an attempt to resolve the cross-claim. (*See* Doc. 25).

11. To date, the Union Defendants have taken the position that they are not required to reimburse the District for the costs and attorneys' fees it incurred to defend this lawsuit and the parties have been unable to resolve this dispute.
12. As of the date of this Motion, the District has incurred approximately \$20,489.00 in attorneys' fees to defend against Plaintiff's claims. The District will incur additional fees and expense to defend against Plaintiff's appeal of the Court's decision.
13. The Union has failed to reimburse the District for its costs and attorneys' fees it has incurred to defend the lawsuit, and, therefore, that portion of the District's cross-claim for indemnification from the Union remains live and ripe for resolution.
14. Consequently, the District respectfully requests, pursuant to Fed. R. Civ. P. 59(e), that this Court reopen and reconsider the District's request for indemnification of defense costs and attorneys' fees to defend Plaintiff's claims and the Union Defendants' contractual obligation to do so.
15. In the alternative, the District seeks clarification from this Court regarding the rationale for dismissal of its cross-claim, as well as clarification that the Court's dismissal was without prejudice to the District's right to renew or refile its claim in an appropriate forum.
16. Rule 59(e) provides that a motion to alter or amend a judgment must be filed no later than 28 days after the entry of judgment. The purpose of a Rule 59(e) motion is to ask the court to reconsider matters "properly encompassed in a decision on the merits." *Chapman v. United States*, 2016 WL 6093516, *1 (S.D. Ill. 2016) (citing *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174 (1989)).

17. A Rule 59(e) motion requires that the movant clearly establish: (1) that the court committed a manifest error of law or fact, or (2) that newly discovered evidence precluded entry of judgment. *Cincinnati Life Ins. Co. v. Beyrer*, 722 F. 3d 939, 954 (7th Cir. 2013).
18. In this case, it is not a question of newly discovered evidence, but rather the District seeks correction of an error of law.
19. By dismissing the District's cross-claim in its entirety without reaching the merits of the District's cross-claim, the Court's judgment overlooked the parties' agreement to brief the District's cross-claim after the Court ruled on the parties' cross-motions for summary judgment.
20. The District's cross-claim is a matter "properly encompassed in a decision on the merits," (*Chapman* at *1), and thus should be reconsidered by this Court.
21. Specifically, the District requests that this Court reconsider its decision and re-open the case to allow the District to pursue its claim that, pursuant to the indemnification clause in the collective bargaining agreement, the Union Defendants are contractually obligated to indemnify the District for all costs associated with this lawsuit, including the attorneys' fees the District incurred to defend plaintiff's claims.
22. In the alternative, the District requests that the Court reconsider and amend its March 31, 2020, Order and the Court's April 2, 2020 to clarify its rationale for dismissal of the District's cross-claim and to clarify that its dismissal of both portions of the District's cross-claim was without prejudice as to the District's ability to renew or refile its claim at a later date in an appropriate forum.

23. The District brings this motion to ensure it has preserved its rights to obtain the benefits of the bargain it negotiated with the Union Defendants to protect taxpayer dollars from being expended on claims involving Union membership and dues issues.
24. In the event Plaintiff were to prevail on appeal, the District must ensure that its right to indemnification against any future judgment in favor of plaintiff is preserved via the cross-claim.
25. In addition, the District must ensure that even if Plaintiff never obtains a judgment against the District after exhausting appeals, the District has preserved its right to pursue reimbursement or indemnification of its defense costs and attorneys' fees from the Union Defendants and that any dismissal of those claims was without prejudice to renew or file those claims at a later date in the appropriate forum.
26. The District's motion is proper under Rule 59(e). *See, e.g., City of Dover v. U.S. Environmental Protection Agency*, 40 F. Supp. 3d 1, 7 (D.D.C. 2013) (in considering plaintiffs' Rule 59(e) motion to alter or amend the judgment, the district court held that its dismissal of cities' action against EPA with prejudice, and failure to explain why dismissal was with prejudice, constituted clear error warranting grant of cities' motion).
27. The District's timely filing of this Rule 59(e) motion tolls the time for filing a notice of any appeal of the dismissal of its cross-claim. *See Fed. R. Civ. P. 59(e); see also Andrews v. E.I. Du Pont De Nemours and Co.*, 447 F. 3d 510, 515 (7th Cir. 2006).
28. The grounds for this motion are more fully set forth in the accompanying brief in support of the District's motion.

WHEREFORE, the District respectfully requests that this Court reconsider its dismissal of the District's cross-claim for indemnification; reopen the case for further proceedings on the

District's cross-claim for indemnification against the Union Defendants; clarify its rationale for dismissal of each portion of the District's cross-claim, including whether each portion of the cross-claim was dismissed without prejudice; and for any and all other relief the Court deems proper and just.

Respectfully submitted,

**THE BOARD OF EDUCATION OF
MOLINE-COAL VALLEY SCHOOL
DISTRICT NO. 40**

By: /s/ C. Frazier Satterly
One of Defendants' Attorneys

Date: April 28, 2020

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CERTIFICATE OF SERVICE

I, C. Frazier Satterly, an attorney, certify that on April 28, 2020, a true and correct copy of the foregoing **Defendant School District's Rule 59(e) Motion for Reconsideration and Clarification of the Court's Dismissal of the District's Cross-Claim** was electronically filed with the Clerk of the U.S. District Court of the Central District of Illinois, Rock Island Division, via its CM/ECF System and was electronically served to the person listed below:

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EXHIBIT 2

SCHOOL DISTRICT'S MEMORANDUM IN SUPPORT OF RULE 59(e) MOTION FOR RECON- SIDERATION AND CLARIFICATION OF THE COURT'S DISMISSAL OF THE DISTRICT'S CROSS-CLAIM

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION

| | | |
|---|---|-----------------|
| SUSAN BENNETT, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 19 CV 04087 |
| |) | |
| AMERICAN FEDERATION OF STATE, |) | |
| COUNTY, AND MUNICIPAL |) | |
| EMPLOYEES, COUNCIL 31, AFL-CIO; |) | |
| AFSCME LOCAL 672; MOLINE-COLE |) | |
| VALLEY SCHOOL DISTRICT NO. 40; |) | |
| ATTORNEY GENERAL KWAME RAOUL, |) | |
| in his official capacity; and ANDREA R. |) | |
| WAINTROOB, chair, JUDY BIGGERT, |) | |
| GILBERT O'BRIEN JR., LYNNE SERED, |) | |
| and LARA SHAYNE, members, of the Illinois |) | |
| Educational Labor Relations Board, in their |) | |
| official capacities, |) | |
| |) | |
| Defendants. |) | |

**THE DISTRICT'S MEMORANDUM OF LAW IN SUPPORT OF ITS RULE 59(e)
MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE COURT'S
DISMISSAL OF THE DISTRICT'S CROSS-CLAIM**

Defendant, the Board of Education of Moline-Coal Valley School District No. 40 ("Board" or "District"), by and through its counsel, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, hereby submits its Memorandum of Law in Support of Its Rule 59(e) Motion for Reconsideration and Clarification on the Court's Dismissal of the District's Cross-Claim as follows:

INTRODUCTION

The District brings this Rule 59(e) motion to amend the Court's final judgment to clarify and ensure that nothing in the Court's judgment and dismissal of the District's cross-claim against the Union Defendants was intended to deprive the District of the benefits of the bargain it negotiated with the Union Defendants to protect taxpayer dollars from being expended to defend claims involving Union membership and dues issues.

This cause of action initially arose out of Plaintiff, Susan Bennett's, attempt to resign her union membership and revoke her dues deduction authorization in November 2018. The Union accepted Plaintiff's resignation from union membership, but instructed the District, as Plaintiff's employer, to continue deducting union dues pursuant to the terms of Plaintiff's membership agreement, unless and until Plaintiff follows the revocation procedures set forth in that agreement. Plaintiff filed a two-count complaint on April 26, 2019, alleging that her First Amendment rights were violated by virtue of the Union's role as the "exclusive representative" to discuss terms and conditions of employment on her behalf, as well as the continued deduction of dues from her paycheck. (*See* Doc. 1).

Notably, the collective bargaining agreement between the District and the Union Defendants at issue here expressly provides that the Union Defendants agree to hold harmless and indemnify the District as to all claims that may arise in litigation resulting from the deduction of dues from Plaintiff's paycheck and the Union's direction to the District to continue deducting those dues. Specifically, the contract language states that the "*Union agrees to pay all costs of such litigation including court costs, attorneys' fees, judgment, penalties and interests.*" (*See* Doc. 17; *see also* Doc. 1-1, p. 20; Doc 1-2, pp. 26-27) (emphasis added).

Thus, in order to preserve its rights under the contract, in addition to filing its Answer and Affirmative Defenses on June 27, 2019, the District also filed a Cross-Claim against the Union Defendants based upon said indemnification clause. (*See* Doc. 17). The District's cross-claim requested (a) that in the event Plaintiff prevailed against the District, this Court enter an order finding that Union Defendants have a contractual duty to indemnify and hold the District harmless against any and all relief awarded to Plaintiff, and (b) that the Court enter an order requiring Union Defendants to "indemnify and reimburse the District for *all costs and attorneys' fees incurred to defend this lawsuit.*" (*See* Doc. 17) (emphasis added).

The Parties' agreed to file cross-motions for summary judgment using a stipulated record of undisputed facts. As part of the Parties' Joint Status Report, the District and the Union Defendants agreed not to brief the District's pending cross-claim for indemnification until after the resolution of the cross-motions for summary judgment on the merits of Plaintiff's claims. The District and Union Defendants also informed the Court that they intended to engage in good-faith settlement negotiations in an attempt to resolve the cross-claim. (*See* Doc. 25).

On March 31, 2020, this Court entered an Order on the cross-motions for summary judgment, granting the Defendants' motions and denying the Plaintiff's motion. (*See* Doc. 42). In the Court's subsequent Judgment issued on April 2, 2020, it dismissed Plaintiff's action against all Defendants, and stated that "Moline-Coal Valley School District No. 40's cross claim against Council 31 and AFSCME Local 672 is dismissed and it receives nothing on its claim." (*See* Doc. 43). The Court's Judgment did not reach the merits of the District's cross-claim nor did the Judgment indicate if the dismissal was with or without prejudice.

To date, the District has incurred approximately \$20,489.00 in attorneys' fees to defend against Plaintiff's claims. The District will continue to incur additional fees and costs to defend

against Plaintiff's appeal of the Court's decision granting judgment for Defendants. Despite the clear indemnification language of the collective bargaining agreement, the Union Defendants have taken the position that they are not required to reimburse the District for the costs and attorneys' fees it incurred to defend this lawsuit and the parties have been unable to resolve this dispute.

Consequently, the District respectfully requests, pursuant to Fed. R. Civ. P. 59(e), that this Court amend its judgment and reopen the case for further proceedings on the District's cross-claim for indemnification of defense costs and attorneys' fees to defend plaintiff's claims and the Union Defendants' contractual obligation to do so, as that claim remains ripe for resolution. The District also respectfully asks the Court to clarify that its dismissal of the portion of the cross-claim that sought indemnification for any judgment plaintiff may obtain against the District upon appeal was without prejudice. Alternatively, the District requests the Court amend its judgment to clarify the rationale for its dismissal of the cross-claim and to clarify that the dismissal of the cross-claim in its entirety was without prejudice to the District's ability to renew and refile its claims at a later date in the appropriate forum.

ARGUMENT

I. Legal Standard

Rule 59(e) provides that a motion to alter or amend a judgment must be filed no later than 28 days after the entry of judgment. The purpose of a Rule 59(e) motion is to ask the court to reconsider matters "properly encompassed in a decision on the merits." *Chapman v. United States*, 2016 WL 6093516, *1 (S.D. Ill. 2016) (citing *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174 (1989)). Rule 59 motions also increase efficiency, allowing district courts a chance to correct their own errors rather than saddling the parties and appellate courts with otherwise

unnecessary appeals. *Andrews v. E.I. Du Pont De Nemours and Co.*, 447 F. 3d 510, 515-16 (7th Cir. 2006) (citing *Charles v. Daley*, 799 F. 2d 343, 347 (7th Cir. 1986)). A Rule 59(e) motion requires that the movant clearly establish: (1) that the court committed a manifest error of law or fact, or (2) that newly discovered evidence precluded entry of judgment. *Cincinnati Life Ins. Co. v. Beyrer*, 722 F. 3d 939, 954 (7th Cir. 2013). The timely filing of a Rule 59 motion tolls the time for the filing of a notice of appeal. *See Andrews*, at 515.

II. The District Seeks Correction of an Error of Law

In the instant case, the District's Rule 59 motion is not based upon a question of newly discovered evidence, but rather a correction of an error of law. As noted, The District's cross-claim is based upon the indemnification clause contained within the collective bargaining agreement between the District and the Union Defendants, wherein the Union Defendants explicitly:

“agree to hold harmless and indemnify the School District No. 40, its School Board, employees and agents as to all claims that may arise in litigation resulting from the implementation or attempted implementation of this Article in this and prior Agreements. *Union agrees to pay all costs of such litigation including court costs, attorneys' fees, judgment, penalties and interests.*” (*See Doc. 17; see also Doc. 1-1, p. 20; Doc 1-2, pp. 26-27*) (emphasis added).

Consistent with this contract language, the District's cross-claim requested (a) that in the event Plaintiff prevailed against the District, this Court enter an order finding that Union Defendants have a contractual duty to indemnify and hold the District harmless against any and all relief awarded to Plaintiff, and (b) that the Court enter an order requiring Union Defendants to “indemnify and reimburse the District for *all costs and attorneys' fees incurred to defend this lawsuit.*” (*See Doc. 17*) (emphasis added).

As noted in the District's corresponding motion, the Court's March 31, 2020, Order on the cross-motions for summary judgment did not address the merits of the District's pending cross-claim. (*See* Doc. 42). In the Court's subsequent Judgment issued on April 2, 2020, it dismissed Plaintiff's action against all Defendants, and stating "Moline-Coal Valley School District No. 40's cross claim against Council 31 and AFSCME Local 672 is dismissed and it receives nothing on its claim." (*See* Doc. 43). Notably, both the Union Defendants and the District contemplated additional briefing on the District's cross-claim when the parties jointly advised the Court that they agreed to brief the cross-claim after the Court ruled on the cross-motions for summary judgment. (*See* Doc. 25.) In the interim, the parties agreed to try to resolve the cross-claim. To date, the parties have been unable to resolve the District's request for indemnification of defense costs and attorneys' fees to defend against Plaintiff's claims.

The District presumes that the Court determined that it need not reach the first part of the District's cross-claim because the Court granted Defendants' motions for summary judgment and entered judgment in favor of defendants and that the District could renew that portion of its cross-claim in the event Plaintiff were to prevail on an appeal and judgment on a later date. The District respectfully asks for clarification on this point. Specifically, the District seeks clarification that the Court's dismissal of the cross-claim was without prejudice as to the District right to renew its claim in an appropriate forum at a later date. For example, in the event Plaintiff were to prevail on appeal, the District must ensure that its right to indemnification against any future judgment in favor of plaintiff is preserved via the cross-claim. This is clearly a proper basis for a motion pursuant to Rule 59(e). *See, e.g., City of Dover v. U.S. Environmental Protection Agency*, 40 F. Supp. 3d 1, 7 (D.D.C. 2013) (in considering plaintiffs' Rule 59(e) motion to alter or amend, the district court held that its dismissal of cities' action against EPA

with prejudice, and failure to explain why dismissal was with prejudice, constituted clear error warranting grant of cities' motion).

In addition, the District must ensure that even if Plaintiff never obtains a judgment against the District after exhausting appeals, the District has preserved its right to pursue reimbursement or indemnification of its defense costs and attorneys' fees from the Union Defendants. By dismissing the District's cross-claim in its entirety without reaching the merits of the District's cross-claim, the Court overlooked the parties' agreement to brief the District's cross-claim after the Court ruled on the parties' cross-motions for summary judgment.

To date, the Union Defendants have taken the position that they are not required to reimburse the District for the costs and attorneys' fees it incurred to defend this lawsuit and the parties have been unable to resolve this dispute. The Union has, as a result, failed to reimburse the District for its costs and attorneys' fees it has incurred to defend the lawsuit, and, therefore, that portion of the District's cross-claim for indemnification from the Union remains live and ripe for resolution.

As such, the District requests that this Court reconsider its decision and re-open the case for further proceedings on the District's claim that, pursuant to the indemnification clause in the collective bargaining agreement, the Union Defendants are contractually obligated to indemnify the District for all costs associated with this lawsuit, including the attorneys' fees the District incurred to defend plaintiff's claims. Alternatively, the District requests that the Court amend its Judgment and clarify the rationale for its decision and that its dismissal of this portion of the District's cross-claim was also without prejudice to the District's ability to refile its claim at a later date and in an appropriate forum

CONCLUSION

The District respectfully requests that this Court reconsider its dismissal of the District's cross-claim for indemnification; reopen the case for further proceedings on the District's cross-claim for indemnification against the Union Defendants; clarify its rationale for dismissal of each portion of the District's cross-claim, including whether each portion of the cross-claim was dismissed without prejudice; and for any and all other relief the Court deems proper and just.

Respectfully submitted,

**THE BOARD OF EDUCATION OF
MOLINE-COAL VALLEY SCHOOL
DISTRICT NO. 40**

By: /s/ C. Frazier Satterly
One of Defendants' Attorneys

Date: April 28, 2020

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CERTIFICATE OF SERVICE

I, C. Frazier Satterly, an attorney, certify that on April 28, 2020, a true and correct copy of the foregoing **Defendant School District's Memorandum in Support of Its Rule 59(e) Motion for Reconsideration and Clarification of the Court's Dismissal of the District's Cross-Claim** was electronically filed with the Clerk of the U.S. District Court of the Central District of Illinois, Rock Island Division, via its CM/ECF System and was electronically served to the person listed below:

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EXHIBIT 3

UNION APPELLEES' BRIEF IN OPPOSITION TO SCHOOL DISTRICT'S RULE 59(e) MOTION FOR RECONSIDERATION

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION

SUSAN BENNETT,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL
EMPLOYEES, COUNCIL 31, AFL-CIO;
AFSCME LOCAL 672; MOLINE-COLE
VALLEY SCHOOL DISTRICT NO. 40;
ATTORNEY GENERAL KWAME
RAOUL, in his official capacity; and
ANDREA R. WAINTROOB, chair, JUDY
BIGGERT, GILBERT O'BRIEN JR.,
LYNNE SERED, and LARA SHAYNE,
members, of the Illinois Educational Labor
Relations Board, in their official capacities,

Defendants.

Case No. 4:19-cv-04087-SLD-JEH

**BRIEF OF UNION DEFENDANTS IN OPPOSITION TO DEFENDANT MOLINE-
COAL VALLEY SCHOOL DISTRICT NO. 40'S RULE 59(e) MOTION FOR
RECONSIDERATION**

After the Court granted summary judgment for Defendants on both of Plaintiff Bennett's claims in this action, the Court properly entered judgment dismissing the cross-claim for indemnification filed by Defendant Moline-Coal Valley School District No. 40 ("the School District") against co-defendants AFSCME Council 31 and AFSCME Local 672 ("Union Defendants"). The Court's summary dismissal of the cross-claim was correct as a matter of law for two reasons. First, contrary to how the School District describes the cross-claim in its reconsideration brief, the cross-claim that the School District actually pleaded sought indemnification from the Union Defendants only "in the event that Plaintiff recovers damages or any other monetary or non-monetary relief against the District." ECF No. 17 at 30, ¶ 7. Once the

Court rejected Plaintiff Bennett's claims on the merits, the contingency on which the cross-claim was predicated no longer could occur; it follows, therefore, that the Court's summary dismissal of the cross-claim was proper.

Second, even if the School District had pleaded a non-contingent cross-claim for indemnification, there would be no basis for the Court to continue to exercise supplemental jurisdiction over such a cross-claim now that the Court has disposed of all claims over which it had original jurisdiction.

ARGUMENT

Under Fed. R. Civ. P. 59(e), the Court can alter or amend its judgment upon a motion for reconsideration only if the movant "clearly establish[es]...(1) that the court committed a manifest error of law or fact, or (2) that newly discovered evidence precluded entry of judgment." *Cincinnati Life Ins. Co. v. Beyrer*, 722 F.3d 939, 955 (7th Cir. 2013) (quoting *Blue v. Hartford Life & Accident Ins. Co.*, 698 F.3d 587, 598 (7th Cir. 2012)). The School District seeks reconsideration only on the former ground. *See* ECF No. 50 at 5. As we now show, the motion should be denied because the Court's dismissal of the cross-claim was correct.¹

I. Because the School District Expressly Pleaded a Cross-Claim That Was Contingent Upon Plaintiff Bennett Prevailing on Her Claims, the Court Properly Dismissed the Cross-Claim After Granting Summary Judgment for Defendants.

That the Court properly entered judgment summarily dismissing the School District's cross-claim, after entering judgment for Defendants on the merits of Plaintiff Bennett's claims, is apparent from the face of the School District's pleading. That pleading describes the relief

¹ The School District also requests that the Court clarify its rationale for dismissing the cross-claim. ECF No. 50 at 4. Insofar as the School District seeks clarification that it may renew its cross-claim in the event that Plaintiff Bennett's appeal is successful, such clarification is unnecessary because, in such a circumstance, the School District could seek relief from the judgment. *See* Fed. R. Civ. P. 60(b)(5) (allowing party to seek relief from judgment if "the judgment . . . is based on an earlier judgment that has been reversed or vacated").

sought twice, each time stating that the relief sought in the cross-claim was contingent upon Plaintiff Bennett prevailing on her claims against the School District. First, Paragraph 7 of the cross-claim asserts that “*in the event that Plaintiff recovers damages or any other monetary or non-monetary relief against the District*, the District has a claim for indemnification against Union Defendants pursuant to the indemnification provisions of the applicable collective bargaining agreements.” ECF No. 17 at 30, ¶ 7 (emphasis added). Second, in its prayer for relief, the School District again characterizes its cross-claim as contingent upon Plaintiff Bennett prevailing on the merits:

[T]he District respectfully requests that, *in the event that Plaintiff prevails on her claim against the District*, this Court enter an order finding that Union Defendants have a contractual duty to indemnify and hold the District harmless against any and all relief, including but not limited to, monetary damages, costs, interest, and attorney fees awarded to Plaintiff for the alleged constitutional violations, and to indemnify and reimburse the District for all costs and attorneys’ fees incurred to defend this lawsuit.

Id. at 30 (emphasis added).

In its motion for reconsideration, the School District attempts to recharacterize its cross-claim as seeking indemnification on two distinct bases, only one of which is contingent on Plaintiff Bennett prevailing on her claims. *See* ECF No. 50 at 5 (“the District’s cross-claim requested (a) that in the event Plaintiff prevailed against the District, this Court enter an order finding that Union Defendants have a contractual duty to indemnify and hold the District harmless against any and all relief awarded to Plaintiff, and (b) that the Court enter an order requiring Union Defendants to ‘indemnify and reimburse the District for all costs and attorneys’ fees incurred to defend this lawsuit’” (emphasis omitted)). But that is not the cross-claim that the School District pleaded, as a plain reading of the cross-claim makes clear. Because the cross-claim that the School District actually pleaded was contingent on Plaintiff Bennett prevailing on

the merits, the Court acted correctly by dismissing the cross-claim after granting summary judgment for Defendants on Plaintiff Bennett's claims.²

II. Even if the School District Had Pleaded a Non-Contingent Cross-Claim, the Court Could Not Exercise Supplemental Jurisdiction Over Such a State-Law Claim Now that the Court Has Disposed of All Federal Claims.

Because the Court has disposed of all claims over which it had original jurisdiction, there would be no basis for the Court to exercise supplemental jurisdiction over the cross-claim even if the School District had pleaded a cross-claim that was not contingent. The School District does not assert in its pleading that the Court has original jurisdiction over its cross-claim—nor could it. There is no federal-question jurisdiction under 28 U.S.C. § 1331 because the cross-claim for indemnification under the collective bargaining agreement is a claim under state law (as the collective bargaining agreement is governed by the Illinois Educational Labor Relations Act, *see* ECF No. 26, ¶¶ 2-5, 8). And there is no diversity jurisdiction under 28 U.S.C. § 1332, as the Union Defendants and the School District are citizens of Illinois. *See id.* ¶¶ 2-3, 5.

Supplemental jurisdiction under 28 U.S.C. § 1367 is thus the only conceivable basis for federal-court jurisdiction over the cross-claim—and it is readily apparent that the Court could not exercise supplemental jurisdiction in these circumstances. The Seventh Circuit has held that where, as here, the Court has disposed of all claims over which it has original jurisdiction, there is a “presumption...that the court will relinquish federal jurisdiction over any supplemental state-law claims.” *Al’s Serv. Ctr. v. BP Prods. N. Am., Inc.*, 599 F.3d 720, 727 (7th Cir. 2010). This presumption, which “should not be lightly abandoned,” can be overcome only if one of three

² As the School District notes, the Union Defendants and the School District agreed not to brief the cross-claim until after the Court ruled on the summary-judgment motions filed by the parties on Plaintiff Bennett's claims. *See* ECF No. 25. Given the contingent nature of the cross-claim, this agreement promoted efficiency by preventing the parties and the Court from expending resources on briefing and adjudicating issues that could (and did) become unnecessary to resolve.

circumstances are present: (1) the statute of limitations prevents re-filing of the claim in state court; (2) “substantial judicial resources have already been committed” to the state-law claim in federal court, such that relinquishing jurisdiction “will cause a substantial duplication of effort;” or (3) “it is absolutely clear how the pendent claims can be decided.” *RWJ Mgmt. Co. v. BP Prods. N. Am., Inc.*, 672 F.3d 476, 479-80 (7th Cir. 2012). *See also Coleman v. City of Peoria*, 925 F.3d 336, 352 (7th Cir. 2019) (observing that, where all federal claims have been dismissed, district courts will relinquish jurisdiction over supplemental state law claims “absent unusual circumstances”).

None of these three circumstances is present here. First, there is no statute of limitations issue with the cross-claim. The Union has not raised a statute-of-limitations defense to the claim, *see* ECF No. 20, and, in any event, the limitations period was tolled pursuant to 28 U.S.C. § 1367(d) while the cross-claim remained pending in this Court. Second, no judicial resources have been committed to resolution of the merits of the cross-claim, so relinquishing jurisdiction would cause little, if any, duplication of effort in state court.

Finally, even assuming that the School District had pleaded a cross-claim that was not contingent upon Plaintiff Bennett prevailing on her claims, *but see supra* Part I, it is not absolutely clear that such a claim for indemnification would be decided in the School District’s favor. If anything, it is absolutely clear that the Court could not even resolve the dispute over whether the indemnification clause entitles the School District to recover attorney’s fees that it incurred in defending against Plaintiff Bennett’s claims. That is because the dispute is plainly subject to the binding grievance-and-arbitration procedure set forth in the collective bargaining agreement between the Union and the School District. *See* 115 ILCS 5/10(c) (collective bargaining agreements pursuant to the Illinois Educational Labor Relations Act “shall provide

for binding arbitration of disputes concerning the administration or interpretation of the agreement”); *see also* ECF No. 26-5 at 17 (grievance-and-arbitration procedure in collective bargaining agreement setting forth how “[a]ny grievance arising between the parties concerning alleged violations or misinterpretation of the Agreement shall be settled”). And even if the School District were to question the arbitrability of this dispute, such a question of arbitrability would be for the Illinois Educational Labor Relations Board (“IELRB”)—not this Court—to decide. *See Bd. of Educ. of Cmty. Sch. Dist. No. 1, Coles Cty. v. Compton*, 526 N.E.2d 149, 152-53 (Ill. 1988) (holding that the IELRB has “exclusive primary jurisdiction over arbitration disputes” between parties to a collective bargaining agreement).

Moreover, even if the parties’ dispute over the indemnification clause were not subject to arbitration, the Court would have to decide how to interpret the indemnification clause in order to decide the cross-claim. The School District asserts that the clause encompasses all of its attorney’s fees incurred in defending against Plaintiff Bennett’s claims. *See* ECF No. 50, at 3, 5. The Union Defendants disagree: Under well-established principles of contract interpretation, the scope of the phrase “attorney fees” in the indemnification clause must be interpreted “by examining the meaning and context of the surrounding words.” *Ill. State Bar Mut. Ins. Co. v. Leighton Legal Grp.*, 103 N.E.3d 1087, 1095 (Ill. App. 2018) (using this principle of *noscitur a sociis* to interpret a contractual term). The words surrounding the phrase “attorney fees”—“court costs,” “judgments,” “penalties,” and “interests”—all pertain to costs generally awarded to a prevailing party in litigation. *See generally* Fed. R. Civ. P. 54(d). These words clarify that the parties intended for the Union to reimburse the School District for any award of attorneys’ fees that a prevailing party might receive on a *successful* claim relating to the School District’s dues deductions—not that the Union would reimburse the School District for its own attorneys’ fees

defending against an *unsuccessful* claim, such as the claims brought by Plaintiff Bennett in this action.

In sum, there are no circumstances present here that could rebut the presumption that the Court must relinquish jurisdiction over the state-law cross-claim, now that the Court has disposed of all claims over which it had original jurisdiction. Thus, even if the School District had pleaded a cross-claim that was not contingent on Plaintiff Bennett prevailing on the merits, the Court would have to dismiss such a cross-claim for lack of supplemental jurisdiction.

CONCLUSION

For the reasons set forth above, the Court should deny the School District's motion for reconsideration under Rule 59(e).

Respectfully submitted,

/s/ April H. Pullium

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CERTIFICATE OF COMPLIANCE

Undersigned counsel for the Union Defendants hereby certifies that the foregoing Memorandum contains 1,947 words and thus complies with the type volume limitation of Local Rule 7.1(B)(4).

/s/ April H. Pullium
April H. Pullium

CERTIFICATE OF SERVICE

I certify that on May 12, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ April H. Pullium
April H. Pullium