No. 126082

IN THE
SUPREME COURT OF ILLINOIS

WESTERN ILLINOIS UNIVERSITY, Petitioner-Respondent, v. ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD, Respondent-Petitioner, and UNIVERSITY PROFESSIONALS OF ILLINOIS, LOCAL 4100, IFT-AFT, AFL-CIO, Respondent-Petitioner.	)	On Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-19-0143 There Heard on Direct Administrative Review of the Opinion and Order of the Illinois Educational Labor Relations Board, No. 2018-CA-0045-C

REPLY BRIEF OF RESPONDENT-PETITIONER UNIVERSITY PROFESSIONALS OF ILLINOIS, LOCAL 4100, IFT-AFT, AFL-CIO

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

ARGUMENT

I. The Board properly applied the same limited scope of review to an arbitrator's determination to retain remedy jurisdiction over an educational arbitration award as that applied by courts in reviewing awards issued under the Illinois Public Labor Relations Act and private sector and Pennsylvania public sector awards.

The University asserts that the Board incorrectly relied on precedent under the Pennsylvania public sector collective bargaining law because Pennsylvania courts have jurisdiction to review arbitrability determinations made by arbitrators in the context of public employee labor disputes in Pennsylvania. WIU Brief at 6. Under the Pennsylvania public sector statute, as under federal labor law, courts have authority to review labor arbitration awards, whereas under the Illinois Educational Labor Relations Act (IELRA), the Board exercises the review function exercised by the courts in the first instance under Pennsylvania and federal labor law. See, eg., *Greater Latrobe Area School District v. Pennsylvania State Education Association,* 615 A.2d 999 (PA Commw. Ct. 1991). While Section 14(a)(8) of the IELRA, 115 ILCS 5/14(a)(8), provides for Board review of arbitration awards, however, the Board both exercises the same review function and applies the same narrow scope of review of arbitration awards as do Pennsylvania courts reviewing Pennsylvania public sector labor arbitration awards, federal courts reviewing private sector labor arbitration awards, and Illinois circuit courts reviewing awards issued with respect to parties subject to the jurisdiction of the Illinois Public Labor Relations Act, 5 ILCS 315/1, et seq. *Griggsville-Perry Community Unit School Dist. No. 4. Illinois Educational Labor Relations Board*, 2013 IL 113721, ¶¶20, 23.

II. The Board properly found that an arbitrator deciding a public sector educational labor dispute has the authority to retain jurisdiction to resolve disputes with respect to remedies ordered by the arbitrator.

The University asserts that the Board's finding that labor arbitrators have the authority to retain jurisdiction to resolve disputes with respect to the remedies they order was incorrect because arbitrators are not bound by stare decisis. WIU Brief at 5. However, the case relied on by the University, *W.R. Grace & Co v. Local Union No. 759, Int'l Union of the United Rubber, Cork, Linoleum & Plastic Workers of America*, 461 U.S. 757 (1983), actually supports the Board's decision in this case. The Supreme Court in *W.R. Grace & Co.*, found that a labor arbitrator had the authority to determine whether he was bound by a prior decision of a different labor arbitrator interpreting the same collective bargaining agreement, and that a federal court could not second guess the arbitrator's decision. The Court found that:

> [T]he scope of the arbitrator's authority is itself a question of contract interpretation that the parties have delegated to the arbitrator. Barrett's conclusions that Sabella acted outside his jurisdiction and that this deprived the Sabella award of precedential force under the contract draw their "essence" from the provisions of the collective bargaining agreement. Regardless of what our view might be of the correctness of Barrett's contractual interpretation, the Company and Union bargained for that interpretation. A federal court may not second-guess it.

461 U.S at 765.

The University also asserts that the provision of the collective bargaining agreement (CBA) that "[neither the Union nor the Board [of Trustees] waives the rights guaranteed them under the Illinois Educational Labor Relations Act" should be interpreted as meaning that the University has the right to have the Board, rather than an arbitrator, determine in the

first instance whether the University has complied with remedies ordered by an arbitrator. WIU Brief at 7-8. The University asserts that while the CBA provides that "[e]xcept as modified by the provisions of this Agreement, arbitration proceedings shall be conducted in accordance with the rules and procedures of the American Arbitration Association" (E105), the parties' reservation of their rights under the IELRA modifies the American Arbitration Association rule that provides that "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement" (A22). WIU Brief at 7-8. However, the interpretation of such contractual provisions was a question for the arbitrator. *W.R. Grace & Co.*, 461 U.S. at 765 ("the scope of the arbitrator's authority is itself a question of contract interpretation"). The Arbitrator's decision in this regard is not to be set aside so long as the Arbitrator's determination is "rooted in an interpretation of the contract." *Griggsville-Perry*, 2013 IL 11372, ¶¶20, 23.

Similarly, the University asserts that the contractual language providing that "[a]rbitration shall be confined solely to the application and/or interpretation of this Agreement and the precise issue(s) submitted for arbitration" (E105) should be interpreted as precluding the Arbitrator from retaining jurisdiction to resolve remedy disputes. WIU Brief at 8-9. However, it was for the Arbitrator, and not the Board, to determine the meaning of such contractual provision in the context of the dispute before him. The Arbitrator's finding that the issue of whether the University complied with the remedies ordered in his initial award was "not a new issue, ... but part of the original issue the parties authorized this

Arbitrator to decide" (E1086) was clearly rooted in an interpretation of the contract. *Griggsville-Perry*, 2013 IL 11372, ¶¶20, 23.

III. The Board properly found that the University violated the IELRA by failing to comply with an arbitration award and a supplemental arbitration award.

The University, relying on *Western Springs School Dist. 101*, 6 PERI ¶ 1091 (IELRB ALJ 1990), 1990 WL 10610831, asserts that the Board incorrectly failed to conduct a de novo fact-finding hearing and to make a de novo determination of whether the University complied with the remedies ordered by the Arbitrator in his initial award. WIU Brief at 9-10. The *Western Springs* decision relied on by the University is not a decision of the Board, but rather is an Administrative Law Judge's recommended decision. Moreover, while the Administrative Law Judge in that case found that an issue of substantive arbitrability should be decided by the Board (1990 WL 10610831), here there is no issue of substantive arbitrability. There is no dispute that the subject matter of the grievances, whether the layoffs of the grievants violated the CBA and the appropriate remedy for any contract violations found by the Arbitrator, were arbitrable. Such issues are not expressly excluded from arbitration under the CBA, and the parties agreed that the Arbitrator was to determine with respect to each grievant whether his or her layoff violated the CBA and, if so, what remedy was appropriate. E253, E676, E836; A43. The Arbitrator's determination to retain jurisdiction to resolve disputes as to the implementation of the remedies he ordered was a procedural determination within the Arbitrator's authority. *Greater Latrobe Area School District v. Pennsylvania State Education,* 615 A.2d 999, 1004-1005 (PA Commw. Ct.

1991); *Courier-Citizen Co. v. Boston Electrographers Union No.11*, 1982 U.S. Dist. LEXIS 10491 at 11-12 (D. MA 1982), *aff'd in relevant part*, 702 F. 2d 273 (1st Cir. 1983).

The Board thus correctly found that "it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept" and correctly found that no de novo fact-finding by the Board was warranted. A.18, citing *Griggsville-Perry*, 2013 IL113721.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the Union's opening brief, the University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO requests that this Court reverse the Opinion and Order of the Appellate Court and affirm the Opinion and Order of the Board.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 5 pages.

/s/ Melissa J. Auerbach
Melissa J. Auerbach

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NOTICE OF FILING

To: See Certificate of Service

PLEASE TAKE NOTICE that on April 5, 2021, I filed the **Reply Brief of Respondent-Petitioner University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO** with the Clerk of the Illinois Supreme Court. True and accurate copies of such documents are herewith served upon you.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 5, 2021, I took steps to cause the electronic filing of the foregoing **Notice of Filing** and **Reply Brief of Respondent-Petitioner University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO** with the Clerk of the Illinois Supreme Court by using the Odyssey EFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system:

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I further certify that I caused to be served on the following, by email, on April 5, 2021:

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Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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4/5/2021 3:49 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

/s/ Melissa J. Auerbach

Melissa J. Auerbach