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

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

Melissa J. Auerbach
ARDC #3126792
Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich
8 S. Michigan Ave., 19th Floor
Chicago, IL 60603
312-372-1361
mauerbach@laboradvocates.com

Attorney for Respondent-Petitioner
University Professionals of Illinois,
Local 4100, IFT-AFT, AFL-CIO

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POINTS AND AUTHORITIES

NATURE OF THE ACTION

This is an action for direct administrative review of a decision and order of the Illinois Educational Labor Relations Board (Board). The Board found that Western Illinois University (University) violated the Illinois Educational Labor Relations Act by failing to comply with an arbitration award and a supplemental arbitration award. The Appellate Court reversed the Board's decision and remanded the case to the Board to consider evidence relevant to the University's compliance with the initial award.

ISSUES PRESENTED FOR REVIEW

1. Whether 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.

2. Whether 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.

3. Whether the Board properly found that the University violated the Illinois Educational Labor Relations Act by failing to comply with an arbitration award and a supplemental arbitration award.

STATEMENT OF JURISDICTION

The Appellate Court had jurisdiction over the University's petition for review under Section 16(a) of the Illinois Educational Labor Relations Act (IELRA), 115 ILCS 5/16(a), and Supreme Court Rule 335. The Board's Decision and Order was issued on February 21, 2019, and the University's petition for review was timely filed on March 5, 2019. On

September 30, 2020, this Court granted the Union and the Board leave to appeal.

STATUTES INVOLVED

Section 10(c) of the IELRA, 115 ILCS 10(c), provides:

> The collective bargaining agreement negotiated between representatives of the educational employees and the educational employer shall contain a grievance resolution procedure which shall apply to all employees in the unit and shall provide for binding arbitration of disputes concerning the administration or interpretation of the agreement. The agreement shall also contain appropriate language prohibiting strikes for the duration of the agreement. The costs of such arbitration shall be borne equally by the educational employer and the employee organization.

Section 14(a)(1) and (8) of the IELRA, 115 ILCS 5/14(a)(1) and (8), provide:

> Sec. 14. Unfair labor practices.
> (a) Educational employers, their agents or representatives are prohibited from:
> (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act. ...
> (8) Refusing to comply with the provisions of a binding arbitration award.

STATEMENT OF FACTS

1. Grievances and issues submitted to the Arbitrator

The Union is the exclusive representative of two bargaining units, one that includes tenured and tenure track faculty, Unit A, and one that includes associate faculty, Unit B, employed by the University. E76.[1] The Union filed grievances challenging the layoffs of ten bargaining unit members (grievants). E254-E263; E264-E499. An arbitration hearing on the ten grievances was held on April 24, 2017, before Arbitrator Fredric Dichter. E675-E769.

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[1] Citations to the Common Law Record are cited herein as C_, to the Report of Proceedings as R_, and to the Exhibits as E_. Citations to the Appendix are cited as A_.

The parties agreed that the issues submitted to the Arbitrator were whether the University violated the collective bargaining agreement when it laid off each of the grievants, and, if so, what the remedy should be. E253, E676, E836; A43. At the start of the arbitration hearing, the Union requested "that if the Arbitrator sustains all or some of the grievances, the Arbitrator retain jurisdiction to resolve any disputes with respect to implementation of the remedy." E682. The University did not object either on the record at the arbitration hearing or at any time prior to the issuance of the Arbitrator' award to such request. E675-E769; E798-E835.

2. Collective bargaining agreement provisions

The collective bargaining agreement (CBA) contains the following provisions related to the Arbitrator's authority:

> 6.12. Arbitration Procedure
> b. Authority of the Arbitrator
> (1) The arbitrator shall neither add to, subtract from, modify, or alter the terms or provisions of this Agreement. Arbitration shall be confined solely to the application and/or interpretation of this Agreement and the precise issue(s) submitted for arbitration. ...
> (2) ... If the arbitrator determines that the Agreement has been violated, the arbitrator shall direct the University to take appropriate action. An arbitrator may award back salary where the arbitrator determines that the employee is not receiving the appropriate salary from the University....
> (3) Conduct of Hearing
> ... Except 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 Labor Arbitration Rules of the American Arbitration Association provide that: "The 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." A38.

The CBA includes the following provisions related to layoffs of Unit A faculty:

> 24.2. If the Board decides it is necessary to lay off employees according to this Article, the factors which will be considered are length of full-time service at the University, including approved leaves; length of full-time service in the department, including approved leaves; educational qualifications; professional training; and professional experiences. ...
>
> 24.4. The University shall make a reasonable effort to locate other equivalent employment within the University for a laid-off employee prior to the effective date of her/his layoff. The results of such effort shall be made known to the person affected. The effort to locate other equivalent employment shall include a review of the possibility of an assignment with duties in more than one unit, part-time employment, transfer to another unit or position pursuant to Article 25, or retraining pursuant to Article 27.3.

E160-E161.

3. Evidence at the initial arbitration hearing with respect to Daniel Ogbaharya

The evidence presented to the Arbitrator at the April 24, 2017 hearing showed that grievant Daniel Ogbaharya at the time of his layoff was a Unit A Assistant Professor in the Political Science Department, and that he is qualified to teach all of the courses in that department. E696. At the time he was laid off, there were three Unit A faculty members in the Political Science Department with less seniority than Ogbaharya. E518; E718. None of the three less senior faculty members were laid off. E518; E717-E718. The less senior faculty members did not teach any courses that Ogbaharya was not qualified to teach. E696.

4. Evidence at the initial arbitration hearing with respect to Holly Stovall

The evidence presented to the Arbitrator at the April 24, 2017 hearing showed that Holly Stovall, at the time of her layoff, was a Unit A faculty member in the Women's Studies department. She has a bachelor's degree in Spanish, a master's degree in Women's Studies, a master's degree in Hispanic Languages and Literatures, and a PhD in Spanish language and

literature. She has ten years of teaching experience in Spanish language and literature at all levels, and taught Spanish for the first year she was employed by the University. Stovall was awarded tenure on June 10, 2016. E535-E536; E592-E601; E702; E724-725.

After being notified of her layoff in December 2015, Stovall met with Interim Provost Kathleen Neumann, gave Neumann her CV, and presented her qualifications to teach Spanish language and literature. E703. At no time did the Provost or anyone on behalf of the University tell Stovall that the University had searched for options for her to avoid layoff and what the results of such search were. E704. Stovall also spoke with both Susan Martinelli-Fernandez, Dean of the College of Arts and Sciences, and with Associate Provost Russell Morgan in the spring of 2017 to suggest open courses that she could teach. E705-E706.

5. Initial arbitration award

On July 6, 2017, Arbitrator Dichter issued his award. A43. He found that the University violated the CBA by laying off two grievants, including Ogbaharya. He found that the University violated the CBA by failing to make a reasonable effort to locate other employment for eight other grievants, including Stovall. The Arbitrator ordered remedies for several grievants, including Ogbaharya and Stovall. A69-A70.

A. The Arbitrator's initial award as to Ogbaharya

With respect to Ogbaharya, the Arbitrator found that Section 24.2 of the CBA requires the University to consider five factors in a layoff decision -- length of service at the University, length of service in the department, educational qualifications, professional experience, and professional training -- and that all of the factors should be given equal consideration. A48. The Arbitrator found with respect to Ogbaharya that "there has been no

argument made by the University that his qualifications or training versus those retained was a factor that was utilized to determine whom to layoff"; that the University laid off Ogbaharya while retaining three faculty members in the Political Science Department with less length of service with the University; and that the University violated the CBA in laying off Ogbaharya by not considering all of the factors set forth in Article 24 of the CBA, including length of service at the University. A54-A55. He ordered that Ogbaharya be made whole for lost wages for the 2016-2017 year and that the University re-do the layoff decision considering all of the contractual factors. A69. He also ordered that only if the University after re-doing the layoff decision determined that Ogbaharya would still be laid off, then the University should comply with the requirements of Section 24.4 of the CBA that it look for open positions for Ogbaharya. A55.

B. The Arbitrator's initial award as to Stovall

The Arbitrator sustained Stovall's grievance in part, finding that she was not improperly laid off, but that the University violated the requirement of Section 24.4 of the CBA that the University search for open positions for her prior to the effective date of her layoff. A65-A68, A70. He ordered that: "The University shall prior to the commencement of the 2017-18 year make a reasonable effort to see if Ms. Stovall can be placed in any opening in the Foreign Language Department, Liberal Arts Department or any other Department if she possesses the skills needed to teach the courses being offered and report back to her on the results of that effort," directing the University to "try to find courses that are scheduled to be taught but currently have no teachers to teach them." A70.

6. The Arbitrator's retention of remedy jurisdiction

The Arbitrator in his initial award stated that he would "retain jurisdiction for no less than 90 days to resolve any issues regarding the implementation of the Award." A70.

7. Union's raising of remedy disputes before the Arbitrator

The Union raised remedy disputes before the Arbitrator with respect to four grievants, including Ogbaharya and Stovall. E864-E879. The University responded that it had complied with the initial award and was unwilling to participate in further hearings. E1071-E1072.

The Arbitrator in a November 14, 2017 email found that:

> I have had an opportunity to review all the material that has been sent to me. It is apparent to me after reading the material that there are several disagreements over the factual issues. For example, the University alleges the Department Chairs were contacted for the four Grievants still in dispute and the Union contends they were not contacted (Filipink Affidavit paragraphs 11, 17-21) The Union contends remarks were made regarding Ogbahara to the effect he would not be rehired under any circumstances. The University did not reference those remarks and the Arbitrator does not know if it denies they were said. There is also a dispute as to whether there were courses available for the Grievants. The Union says there were and the University says there were not.
>
> The Arbitrator does not want to resolve these factual questions based on affidavits. It is best to do it in a hearing. The Arbitrator has that authority under both the NAA Code of Ethics and AAA Rules and is directing there be a hearing.

E1073. In a November 17, 2017 email, the Arbitrator found that:

> The issue that was stipulated to by the parties was "Did the University violate the CBA when it laid off" the Grievants. Then If so, what is the remedy? I found there was a violation of 24.1 [sic] in one instance and 24.4 for all four now in issued [sic]. I ordered the University to do what the Sections required. Jurisdiction was retained to resolve any issues over the "implementation of the Award." The University contends it implemented the Award. The Union contends it did not. The issue being raised by the Union is whether there was implementation of the Award. That is an issue that

> cannot be resolved without a hearing. It is, however, not a new issue, which I could not decide, but part of the original issue the parties authorized this Arbitrator to decide. On that basis, the Arbitrator grants the Union's request for a hearing over the implementation of the Award regarding the four Grievants in issue. They are Hijar, Sellen, Stovall and Ogbahara [sic]. This issue on all four is whether the University implemented the directives of the Award.

E1086.

8. Supplemental arbitration hearing

A supplemental arbitration hearing was held on January 16, 2018. Five University officials subpoenaed by the Union to testify at the hearing, at the direction of the University that they not comply with the subpoenas, failed to appear at the hearing. Those who failed to appear included Martinelli-Fernandez and Political Science Department Chair Keith Boeckelman. E108-E1107; E197-E1198.

9. Evidence presented at the supplemental hearing with respect to Ogbaharya

Interim Provost Kathleen Neumann testified at the supplemental hearing as follows regarding the steps taken to implement the award's requirement that the University re-do the decision whether or not to lay off Ogbaharya:

> Q. So following the issuance of the arbitrator's award in July, what steps did you take to comply with the award with respect to the portion directing University to redo the layoff decision with respect to Daniel Ogbaharya?
>
> A. We followed what was outlined in the award and went back to see if there was any positions that could be identified.
>
> Q. Anything else?
>
> A. No.

E1191. Neumann testified that she delegated to Associate Provost Morgan the task of

implementing the award. E1191-E1192.

Morgan, asked what he did to implement the award with respect to re-doing the decision as to whether to lay off Ogbaharya, testified:

> Q. What steps did you take to comply with the arbitrator's July 2017 award to the extent it directed University to redo the layoff decision with respect to Daniel Ogbaharya?
>
> A. At our Deans & Directors Meeting in the summer of '17, I believe it was July 17, around there, I distributed copies of his CV, the CV that he provided to us to each of the academic deans. ... And asked them to consider ... whether or not there were any openings that would fit his credentials.
>
> Q. And did you do anything else with respect to Dr. Ogbaharya?
>
> A. I followed up with the deans, made sure that each of them reported back to me, and the deans and the director.

E1194.

Union Grievance Officer Richard Filipink testified at the supplemental hearing that in conversations with Morgan during the summer of 2017 regarding what the University intended to do to implement the award as to Ogbaharya, Morgan repeatedly omitted any reference to re-doing the layoff decision, and that Filipink repeatedly reminded Morgan that the award required the University to re-do the layoff decision with respect to Ogbaharya and not only to search for open positions for him. E1133-E1134; E1199-E1200. Thus, in an email sent by Morgan to Filipink following a July 11, 2017 meeting, Morgan discussed only the requirement that the University search for open positions with respect to Ogbaharya. Filipink responded in a July 14, 2017 email that "regarding Daniel Ogbaharya, the arbitrator does indicate you need to do more than what you stated insofar as he ruled that the university violated 24.1 [sic] in his case." E1141-E1142. In a July 24, 2017 email, Morgan referred to

the remedy for violations of Section 24.4 (involving searches for open positions), but not to the issue of Ogbaharya's layoff, which involved Section 24.2. In response, Filipink sent an email to Morgan stating: "Also, to follow up on Ogbaharya, you did not really address the University's obligations under his award. Could you let me know what the administration is doing to meet the Arbitrator's requirements in his case?" E1145. Morgan did not respond to such email. E1200.

Filipink testified that in a July 31, 2017 phone call, Morgan told him that the University was working on providing a "justification" for Ogbaharya's layoff, but that the University had no intention of bringing him back. E1134-1135; E1200. Filipink testified that at an August 16, 2017 meeting with Morgan, Morgan stated that the University was still trying to come up with a "justification" for Ogbaharya's layoff. E1136; E1201.

At the supplemental hearing, Morgan, asked whether he informed Filipink on July 31, 2017 that the University was trying to come up with a "justification" for Ogbaharya's layoff, testified:

> Q. And specifically it [Dr. Filipink's affidavit ¶ 11] says, "Dr. Morgan stated that the University was still working on providing a justification for Dr. Ogbaharya's layoff, but they had no intention of bringing him back."
> Did you say that?
>
> A. I may have said something to that effect, similar meaning, that we were working on his letter, not that we were still trying to justify his layoff.

E1211. Asked about the similar statement that Filipink testified Morgan made on August 16, 2017, Morgan testified:

> Q. "The University was still trying to come up with a justification for Dr. Ogbaharya's layoff." Did you say that?

A. Perhaps something to that effect.

E1211.

Filipink testified at the supplemental hearing that he spoke with Political Science Department Chair Boeckelman on August 16, 2017, that he asked Boeckelman whether he had been contacted by the Provost's office or the Dean's office regarding Ogbaharya, and that Boeckelman told him that he had not been so contacted. E1201. Morgan testified that he never spoke with Boeckelman about the relative qualifications of Ogbaharya and the three faculty members with fewer years of service in the department and at the University than Ogbaharya and that he did not think it was necessary to do so. E1215.

10. Evidence presented at the supplemental hearing with respect to Stovall

Morgan testified at the supplemental hearing that he distributed Stovall's CV to the Deans. He testified that he instructed the Deans to let him know whether there were any open positions for which she was qualified. E1191-E1192. Morgan did not explain to the Deans the CBA Section 24.4 requirement that "[t]he effort to locate other equivalent employment shall include a review of the possibility of an assignment with duties in more than one unit, part-time employment, transfer to another unit or position ..., or retraining ...." E1194-E1195. Katrina Daytner, Associate Dean of the College of Education and Human Services, by email responded to Morgan that she "did not pursue finding temporary opportunities." E1067. Jeffrey Hancks, Dean of the School of Distance Learning, International Studies, and Outreach, informed Morgan by email that he did "not see any immediate needs for those four individuals." E1066. Dean John Elfrink responded to Morgan by email that there was "no interest" in the CVs of the grievants. E1064. Daytner and Hancks were among those who,

pursuant to direction of the University, failed to comply with subpoenas directing them to appear at the supplemental arbitration hearing. E1098; E1100; E1197.

In a letter dated September 12, 2017, Neumann informed Stovall that her CV was provided to the academic deans and that the deans "in conjunction with the department chairs, directors in their areas, reviewed your curriculum vita to determine whether there were any open positions for which you would be eligible." E1172. Filipink testified at the supplemental arbitration hearing that on August 16, 2017, he spoke with Alphonso Simpson, Jr., Chair of the Liberal Arts and Sciences Department, and asked whether he had been contacted by the Provost's office or the Dean's office regarding any of the grievants, and that Simpson said that he had not been so contacted. E1136; E1201-E1202. Filipink on September 14, 2017 asked Simpson whether he had been contacted by the Provost's office or the Dean's office about Stovall and Simpson responded that he had not been so contacted. E1135-E1137; E1202; E1181-E1182.

Stovall immediately after the issuance of the initial award sent the University a letter setting forth her qualifications to teach all classes in Womens Studies, Spanish, and Foreign Languages, and her qualifications to teach writing courses. E1152-E1159.

Filipink testified that he requested and received from the University a list of courses in certain departments for the 2017-2018 academic year that were unassigned as of July 6, 2017, the date of the Arbitrator's initial award. Courses on that list were unassigned because they did not have faculty to teach them. E1202; E1138; E1183-E1187. Stovall at the supplemental arbitration hearing testified that she is highly qualified to teach several of the courses listed as open as of July 6, 2017, including Spanish 325, a Spanish conversation

class; English 180, a basic English composition class; and English 100, a remedial introduction to writing class. E1207-E1208. Her testimony was not disputed. Two sections of English 100 were assigned after July 6, 2017, the date of issuance of the Arbitrator's initial award, to Unit B faculty members who were already teaching their usual fall semester load of three courses, resulting in their teaching four courses instead of three for the fall 2017 semester. E1139; E1204. Had the University offered Stovall the opportunity to teach three of the four courses that were unassigned as of July 6, 2017 and for which she is qualified, such courses would have constituted a full course load for her. E1139; E1204.

11. Supplemental arbitration award

On March 5, 2018, the Arbitrator issued a supplemental award. A71. The Arbitrator in the supplemental award found that the University had failed to implement the remedies he had ordered with respect to two of the four grievants, Ogbaharya and Stovall. A86.

A. The Arbitrator's supplemental award as to Ogbaharya

The Arbitrator based his findings in his supplemental award as to Ogbaharya in part on witness credibility findings with respect to Morgan's and Filipink's testimony. The Arbitrator found that:

> From all the facts, the Arbitrator finds the University did not make a good faith effort to redo the layoff decision. Grievant taught in the Department longer than three other faculty members. The University did not give the Grievant credit for that experience. ... When these factors are coupled with the statements by Dr. Morgan described above the Arbitrator finds that the University did not in good faith comply with the Award.

A77. The Arbitrator found that: "The University failed to comply with the Award as to Daniel Ogbaharya. He shall be offered reinstatement and made whole for the 2017-2018

year, until he is offered reinstatement." A86.

B. The Arbitrator's supplemental award as to Stovall

The Arbitrator in his supplemental award as to Stovall found that:

> The University was required to make a "reasonable effort." ... [T]he Arbitrator finds it did not perform the review it was required to do. The Chairs who would be in a perfect position to know what was available were not even contacted. They were the ones that assigned classes. The review it undertook, as noted, was far more limited than what was required by Section 24.4.

A80. The Arbitrator found that: "Dr. Morgan admitted he asked the Deans if there was work for her but did not suggest they consider part-time work or if there were some courses in multiple departments that were open." A83.

The Arbitrator found that in the English Department, there were open basic composition courses that should have been offered to Stovall, and that a Spanish conversation course could have been offered to Stovall. A84.The Arbitrator ordered that: "The University violated the Award as to Holly Stovall. There were open classes for her to teach in the Fall of 2017. Dr. Stovall shall be made whole for that semester. She should have been offered work for the Spring Semester and the 2018-19 year if the same factors are present." A86.

12. Proceedings before the Board

The University failed to comply with the supplemental award, and the Union filed a charge with the Board alleging that the University had failed to comply with both the initial and supplemental awards, in violation of Section 14(a)(8) of the IELRA, which prohibits educational employers from "[r]efusing to comply with the provisions of a binding

arbitration award." 115 ILCS 5/14(a)(8). C12-C13. The record of proceedings before the Arbitrator, including exhibits, hearing transcripts, and briefs, was entered into the record before the Board's Administrative Law Judge (ALJ). E78-E1282. At the hearing before the ALJ, the University, over the Union's objection, was allowed to present evidence and testimony on the merits of the remedy issues before the Arbitrator at the supplemental arbitration hearing. R36-R37; R55-R56; R69-R70. The University called Neumann and Morgan, both of whom had testified at the supplemental arbitration hearing, and Martinelli-Fernandez, who had failed to honor a Union subpoena to appear at the supplemental hearing, as witnesses at the hearing before the ALJ. R38-R75. After the filing of post-hearing briefs, the ALJ issued an Order Removing Matter to Board for Decision, finding that "there are no determinative issues of fact that require an Administrative Law Judge's recommendation." C856-C858.

The Board issued its Opinion and Order on February 21, 2019. A17. The Board found with respect to the evidence offered by the University at the hearing before the ALJ:

> In this Opinion and Order, we follow the arbitrator's findings of fact. "Where ' "the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept," ' " *Griggsville-Perry Community Unit School District No. 4 v. IELRB*, 2013 IL 113721 ...
>
> At the hearing before the Administrative Law Judge, the University submitted evidence which was not presented to the arbitrator. In reviewing an award, evidence which was not before the arbitrator may not be considered. ... Rather, review of an arbitration award must be based on the record which was before the arbitrator.

A18. The Board found: "The University admits it did not comply with the supplemental arbitration award but argues that the supplemental award is not binding. The University does

not claim that the original award is not binding but argues that it complied with that award." A33-A34.

The Board, citing *Griggsville-Perry Community Unit School District No. 4 v. IELRB*, 2013 IL 113721, found that review of an arbitration award is "extremely limited," and that an award "must" be construed as valid if possible. A34. The Board found that:

> Arbitrators' authority to retain jurisdiction over the implementation of an award has been widely upheld. The Illinois Supreme Court has recognized that the General Assembly used the experience in Pennsylvania as a model in creating the Act, and thus, the Pennsylvania courts' interpretation of the Pennsylvania statute is relevant to the interpretation of the Act. *Central City Education Association v. IELRB*, 149 Ill. 2d 496 ... (1992), *citing Decatur Board of Education v. IELRB*, 180 Ill.App. 3d 770 ... (4th Dist. 1989). In *West Pottsgrove Township v. West Pottsgrove Police Officers' Ass'n.* 791 A.2d 452 (Pa.Commw. 2002) and in *Greater Latrobe School District v. Pennsylvania Education Ass'n*, 615 A.2d 999 (Pa. Commw. 1991), the court upheld the arbitrator's retention of jurisdiction. The court found that retention of jurisdiction is a procedural matter for the arbitrator to decide.

A34. The Board found that:

> The federal courts have similarly upheld an arbitrator's retention of jurisdiction in *Kroger Co. v. United Food & Commercial Workers Union Local 876*, 284 Fed.Appx. 233 (6th Cir. 2008); *SBC Advanced Solutions, Inc. v. Communications Workers of America*, District 6, 44 F.Supp.3d 914 (E.D. Mo. 2014); and *Case-Hoyt Corp. v. Graphic Communications International Union Local 503*, 5 F.Supp.2d 154 (W.D.N.Y. 1998). In *Case-Hoyt*, where the arbitrator had retained jurisdiction to resolve any and all issues regarding the remedy, the court determined that it did not have *de novo* authority to resolve the parties' disputes concerning the implementation of the remedy and these disputes must initially be taken up with the arbitrator.

A34-A35.

The Board noted that according to the treatise Elkouri & Elkouri, *How Arbitration Works* (Kenneth May, ed., 8th ed. 2016), at 7-50, "'in virtually all cases of grievance

arbitration where a remedy is called for, labor arbitrators ought to routinely retain jurisdiction of the award solely for the purpose of resolving any disputes among the parties regarding the meaning, application and implementation of the remedy.'" A35. The Board also found that the *Code of Professional Responsibility for Arbitrators of Labor-Management Disputes* was amended in 2007 to provide that an arbitrator may retain jurisdiction to resolve any question over the application or interpretation of a remedy, even if a party objects. A35, citing *How Arbitration Works* at 7-51. The Board also found that: "An Arbitrator's retention of jurisdiction over the implementation of the remedy has also been upheld in Illinois." A36, citing *Hollister Inc. v. Abbott Laboratories*, 170 Ill. App. 3d 1051 (1st Dist. 1988).

With respect to the University's argument that the Arbitrator did not have authority to retain remedy jurisdiction because, under *Board of Education of Community School District No. 1 v. Compton*, 123 Ill. 2d 216 (1988), the Board has exclusive primary jurisdiction to determine whether an employer has complied with an award, the Board found:

> [T]he fact that the IELRB rather than the courts initially determines whether an employer has complied with an arbitration award does not mean that an arbitrator may not retain jurisdiction over the implementation of his or her award. The authority of arbitrators to retain jurisdiction over the implementation of the remedies they have ordered has been upheld in the private sector although the role of the federal courts in reviewing arbitration awards in the private sector under Section 301 of the National Labor Relations Act, 29 U.S.C. §185, is similar to the role of the IELRB in reviewing arbitration awards in the Illinois educational public sector. Similarly, the court in *Hollister* upheld the authority of arbitrators to retain jurisdiction to resolve disputes growing out of the remedy although review of arbitration awards was within the jurisdiction of the courts under the Uniform Arbitration Act, 710 ILCS 5/1 *et seq*.

A36-A37.

The Board found that the supplemental award was also within the Arbitrator's

contractual authority. The Board found that "the arbitrator's supplemental award concerning the implementation of the remedy in the original award did not involve a new issue, but part of one of the issues the parties originally agreed to arbitrate, that is, what should the remedy be." A37. The Board noted that the CBA incorporates the rules of the American Arbitration Association, and found that "the parties agreed that the arbitrator would have the authority to determine whether he had jurisdiction over the implementation of the remedy." A38.

The Board found that "the supplemental award is binding. It did not infringe on the authority of the IELRB or exceed the arbitrator's contractual authority. Because the University admittedly did not comply with the supplemental award, it violated Section 14(a)(8) and, derivatively, Section 14(a)(1) of the Act by that conduct." A38-A39. The Board also found that the University violated the Act by failing to comply with the original award, finding that: "The arbitrator found that the University did not comply with the original award as to Dr. Ogbaharya or Dr. Stovall, and the arbitrator's findings of fact support a conclusion that the University did not comply with the original award as to those two grievants." A39.

The University filed a petition for review of the Board's Order in the Appellate Court.

13. Appellate Court Opinion

The Appellate Court found that "the IELRB cites various case law and secondary authority stating that an arbitrator may retain jurisdiction to resolve disputes arising from an arbitration award." A9, ¶32. The Appellate Court found that such "authority and case law are distinguishable from this case" because "the Act 'divest[s] the circuit courts of primary jurisdiction over educational labor arbitration awards' ([*Board of Education of Community*

School District No. 1 v.]*Compton*, 123 Ill. 2d [216] at 221 [(1988)]), and the IELRB has exclusive primary jurisdiction to review binding arbitration awards (see *Chicago Board of Education* [*v. Chicago Teachers Union*], 142 Ill. App. 3d 527] at 531-32 [1986)])." A10, ¶33. The Appellate Court found that: "To allow an arbitrator to determine whether a party complied with a binding arbitration award under the guise of 'implementation' would usurp the IELRB's exclusive authority to make that determination as the legislature intended." A11, ¶34. The Appellate Court found that the doctrine of functus officio precluded the arbitrator from retaining jurisdiction after issuing an award. A12, ¶37.

The Appellate Court also found that the Board erred as a matter of law in concluding that the arbitrator had the contractual authority to retain remedy jurisdiction and issue a supplemental award. The Appellate Court interpreted the contractual provisions that "[a]rbitration shall be confined solely to the application and/or interpretation of [the CBA] and the precise issues submitted for arbitration" and that the arbitrator "shall have no authority to determine any other issue(s)" as requiring that the arbitrator's powers be construed narrowly and as precluding the arbitrator from retaining remedy jurisdiction. A12-A13, ¶¶38-39.

The Appellate Court found that because the arbitrator "had neither jurisdiction under the Act nor contractual authority under the CBA to determine whether the University complied with the July 2017 arbitration award, he therefore also lacked authority to issue the March 2018 supplemental award." A14, ¶45. The Appellate Court vacated the Board's opinion and remanded the case with instructions to consider evidence relevant to the University's compliance with the initial award. A15, ¶47.

ARGUMENT

Standard of Review

This Court reviews the Board's determination that the University violated the IELRA by failing to comply with the arbitration award and the supplemental award for clear error. *Speed Dist. 802 v. Warning*, 242 Ill. 2d 92, 112 (2011).

The issue of "[w]hether an arbitrator has exceeded the scope of his authority and has reached a decision that fails to draw its essence from the collective-bargaining agreement is a question of law." *Griggsville-Perry* Community *Unit School Dist. No. 4 v. Illinois Educational Labor Relations Board*, 2013 IL 113721, ¶20.

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.

In *Board of Education of Community School District No. 1 v. Compton*, 123 Ill. 2d 216 (1988), this Court found that the IELRA, 115 ILCS 5/1, et seq., enacted in the same legislative session as the Illinois Public Labor Relations Act, 5 ILCS 315/1, et seq. (IPLRA), divests the circuit courts of jurisdiction to vacate or enforce arbitration awards involving public educational employers and gives the Board exclusive jurisdiction over such awards. 123 Ill. 2d at 217. This Court's holding in *Compton* was based on a finding that the IELRA, unlike the IPLRA, does not adopt the Uniform Arbitration Act, 710 ILCS 5/1, et seq., and on the fact that the IELRA, unlike the IPLRA, makes it an unfair labor practice to refuse to comply with an arbitration award. 123 Ill. 2d at 222.

The Appellate Court incorrectly found that this Court's decision in *Compton* requires

a finding that the Board's authority to review labor arbitration awards is broader than that of the federal and Pennsylvania courts. The Appellate Court erred in failing to recognize that the Board in reviewing educational arbitration awards exercises the same review function and applies the same narrow scope of review of arbitration awards as do Illinois circuit courts under the IPLRA, federal courts with respect to private sector labor awards, and Pennsylvania courts in that state's public sector. The Appellate Court's finding that the Board lacks authority under the IELRA to accept an arbitrator's interpretation of a contract as allowing him to retain remedy jurisdiction ignores this Court's decision in *Griggsville-Perry.*

In *Griggsville-Perry*, this Court applied this Court's precedent as to the limited scope of review of arbitration awards developed under the IPLRA to educational awards issued under the IELRA, finding that "a court's review of an arbitrator's award is extremely limited.'" *Griggsville-Perry,* 2013 IL 113721, ¶18, quoting *AFSCME v. State of Illinois*, 124 Ill. 2d 246, 254 (1988). This Court in both *Griggsville-Perry* and in *AFSCME v. State of Illinois* relied on federal court cases construing private sector labor arbitration awards. *Griggsville-Perry,* 2013 IL 113721, ¶¶18-20; *AFSCME v. State of Illinois*, 124 Ill. 2d at 254-255.

This Court in *Griggsville-Perry* found that while an arbitrator is confined to interpreting the collective bargaining agreement, "[e]stablishing that an arbitrator has failed to interpret the collective-bargaining agreement but has, instead, imposed his own personal views of right and wrong on an employment dispute is 'a high hurdle.'" *Griggsville-Perry*, 2013 IL 113721, ¶20. This Court found that: "It is not enough to show that the arbitrator

'committed an error–or even a serious error.' ... It must be shown that there is no 'interpretive route to the award, so a noncontractual basis can be inferred and the award set aside'" and that "[a] reviewing court is to determine only whether an arbitrator's determination is "rooted in an interpretation of the contract" and not whether the court agrees with the "correctness of the arbitrator's interpretation" of the contract. *Griggsville-Perry,* 2013 IL 113721, ¶¶20, 23.

This Court has recognized that the limited scope of review of labor arbitration awards applies with particular force with respect to remedies ordered by an arbitrator. "[W]hen an agreement contemplates that the arbitrator will determine remedies for the contractual violations, courts have no authority to disagree with his honest judgment in that respect." *AFSCME v. Department of Central Management Services*, 173 Ill. 2d 299, 306 (1996), citing *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987). See also *AFSCME v. State of Illinois*, 124 Ill. 2d at 254-55, 258.

Here, the Board correctly applied the limited scope of review enunciated by this Court in *Griggsville-Perry* to the arbitrator's determination to retain jurisdiction to resolve disputes with respect to the remedies he ordered.

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 Appellate Court erred in finding that an arbitrator deciding a public sector educational labor dispute lacks the authority to retain jurisdiction to resolve disputes with respect to remedies he ordered.

It is well established that when the subject matter of a grievance in a labor arbitration

is arbitrable, procedural issues related to the arbitration are for the arbitrator to decide. *Amalgamated Transit Union, Local 900 v. Suburban Bus Div. of the Regional Transportation Authority*, 262 Ill. App. 3d 334, 340 (2nd Dist. 1994); *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557 (1964) (where the subject matter of a dispute is arbitrable, "'procedural' questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator"); *United Paperworkers Int'l Union v. Misco*, 484 U.S. at 40 (arbitrator's rulings on what evidence to consider are rulings on procedural issues that should not be set aside absent gross bad faith or affirmative misconduct on the part of the arbitrator).

Section 10(c) of the IELRA, 115 ILCS 5/10(c), requires that collective bargaining agreements provide for binding arbitration of disputes concerning the administration or interpretation of the agreement. *Board of Educ. of Warren Township High School Dist. 121 v. Warren Township High School Federation of Teachers, Local 504*, 128 Ill. 2d 155, 166 (1989). "Management typically views the grant to an arbitrator of final authority to rule on grievances as a significant concession. ... Nevertheless, the legislature has determined that concession shall be made, that collective-bargaining agreements 'shall provide for binding arbitration of disputes.'" *Board of Trustees of the University of Illinois v. Illinois Educational Labor Relations Board*, 244 Ill. App. 3d 945, 953 (4th Dist. 1993), *appeal denied*, 152 Ill. 2d 554 (1993).

The IELRA's requirement that Illinois public sector educational collective bargaining agreements provide for arbitration of disputes establishes a stronger presumption in favor of arbitration in the Illinois public sector than that that exists in the context of commercial contracts and private sector collective bargaining agreements, where arbitration is not

statutorily mandated but rather is solely a matter of contract. *Compare AT&T Technologies, Inc. v. Communication Workers of America*, 475 U.S 643, 648 (1986) (finding that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which it has not agreed so to submit") with *Illinois FOP Labor Council v. Town of Cicero*, 301 Ill. App. 3d 323, 334 (1st Dist. 1998), *appeal denied*, 182 Ill. 2d 550 (1999) and 183 Ill. 2d 568 (1999) (construing Section 8 of the IPLRA, 5 ILCS 315/8, which, like Section 10(c) of the IELRA requires arbitration of public sector labor disputes, as having "reversed the presumption" that applies to private sector labor disputes whereby parties are only bound to arbitrate issues which they have by clear language agreed to arbitrate).

The IELRA, which "revolutionized Illinois school labor law," *Compton*, 123 Ill. 2d at 219, was patterned after the Pennsylvania public sector collective bargaining law:

> The Act was adopted in 1993, and the legislature had the benefit of the experience and history of similar statutes in other States and in the private sector. Notably, the legislature used the Pennsylvania experience as a model in creating the Act, and the Pennsylvania courts' interpretation of the statute is relevant to any analysis of the Act.

Central Cities Educ. Ass'n. v. Illinois Educational Labor Relations Board, 149 Ill. 2d 496, 599 N.E. 2d 892, 900 (1992). The requirement in Section 10(c) of the IELRA that a collective bargaining agreement "shall provide for binding arbitration of disputes concerning the administration or interpretation of the agreement" is patterned after the Pennsylvania public sector bargaining statute's requirement that: "Arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory." 43 P.S. § 1101.903.

The Pennsylvania courts have found that arbitrators in public sector labor arbitrations

have the authority to retain jurisdiction pending implementation of arbitration awards, finding that such retention of jurisdiction is a determination over a procedural issue within the arbitrator's authority, and that retention of jurisdiction fulfills the collective bargaining law's policy favoring arbitration. In *Greater Latrobe Area School District v. Pennsylvania State Education Association*, 615 A.2d 999 (PA Commw. Ct. 1991), the Court found that:

> Unless a collective bargaining agreement specifically states otherwise, the arbitrator has jurisdiction to make final determinations on procedural issues. All issues of interpretation and procedure are for the arbitrator to resolve. ... Contrary to the District's claim, the Agreement between these parties does not preclude the arbitrator's determination of procedure; therefore, the retention of jurisdiction in this case, a procedural matter, was within the exclusive province of the arbitrator. In fact, the reopening of arbitration under retained jurisdiction, in order to afford remedy under the original award, not only is permissible, but also fulfills the arbitration policy of PERA to provide inexpensive, expeditious contractual remedies.

615 A.2d at 1004-1005. *Accord: West Pottsgrove Township v. West Pottsgrove Police Officers' Ass'n*, 791 A.2d 452, 456 (PA Commw. Ct. 2002).

The retention of jurisdiction over implementation of remedies has also been upheld by numerous federal courts as within the authority of labor arbitrators in the context of private sector labor disputes. In *CUNA Mut. Ins. Soc'y v. Office and Prof'l Employees Int'l Union, Local 39*, 2004 U.S. Dist. LEXIS 24120 (W.D. WI 2004), *affirmed*, 443 F. 3d 556 (7th Cir. 2006), the Court found that:

> 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. ... In retaining jurisdiction, the arbitrator did not violate the agreement's requirement that an arbitrator's decision be "final and binding."

2004 U.S. Dist. LEXIS at 24-5. The Seventh Circuit Court of Appeals, in affirming the District Court's award of sanctions against the employer in that case based in part on the employer's challenging the arbitrator's authority to retain remedy jurisdiction, found that:

> [T]here is an abundance of case law in both this circuit and other circuits that recognizes the propriety of an arbitrator retaining jurisdiction over the remedy portion of an award. *See, e.g., Dreis & Krump Mfg. Co. v. International Ass'n of Machinists & Aerospace Workers, Dist. No. 8*, 802 F.2d 247, 250 (7th Cir. 1986); *Department of the Navy v. Federal Labor Relations Auth.*, 815 F.2d 797, 802 (1st Cir. 1987); *Engis Corp. v. Engis Ltd.*, 800 F. Supp. 627 (N.D. Ill. 1992).
> The case law on this issue is clear, and CUNA's counsel "should have known that [its] position is groundless."

CUNA Mut. Ins. Soc'y v. Office and Prof'l Employees Int'l Union, Local 39, 443 F. 3d at 565.

The Court in *Courier-Citizen Co. v. Boston Electrographers Union No. 11*, 1982 U.S. Dist. LEXIS 10491 (D. MA 1982), *aff'd in relevant part*, 702 F. 2d 273, 278-80 (1st Cir. 1983), found that a labor arbitrator's retention of jurisdiction is a procedural issue within the arbitrator's authority:

> The arbitrator's decision to reconvene the hearing in order to resolve remedial issues not decided by Hogan I was a reasonable decision which is entitled to deference on the part of this court. The retention of jurisdiction and reconvening the hearing were "procedural" rulings which went only to the manner in which the arbitrator resolved the dispute submitted to him by the parties. There is no disagreement as to the "substantive" arbitrability of the dispute, and thus there is no need for this court to make its own determination on that question....The reconvening of the hearing did not threaten the finality or certainty of Hogan I, since it transpired pursuant to the arbitrator's express retention of jurisdiction. There is no support for the Company's contention that the arbitrator was attempting to enforce his own award. ... It is well settled that judicial deference toward arbitration extends to the area of remedies.

1982 U.S. Dist. LEXIS 10491 at 11-13. See also *Kroger Co. v. UFCW Local 876*, 284 Fed.

Appx. 233, 241, 2008 U.S. App. LEXIS 13671 (6th Cir. 2008) ("T]he arbitrator's retention of jurisdiction to clarify his Award or to resolve further disputes, such as over the amount of compensation, also stemmed from an arguable interpretation of the CBA. ... The arbitrator possessed the authority to 'order the payment of back wages and compensation.' ... Thus, retaining involvement in the case to resolve further disputes over this issue and other related issues is reasonable, and is not so unmoored from the CBA that the arbitrator must have been ignoring the CBA. In the face of any doubt that the arbitrator was construing the CBA, this Court must presume that the arbitrator was indeed interpreting the CBA."); *Case-Hoyt Corp. v. Graphic Communications International Union Local 503*, 5 F. Supp. 2d 154, 156 (W.D. NY 1998) ("[I]n light of the strong federal policy favoring resolution of labor disputes through arbitration, ... and in view of the arbitrator's express retention of jurisdiction, it is clear that the remaining disputes should be submitted to the arbitrator for decision."); *Robert E. Derecktor of Rhode Island, Inc. v. United Steelworkers, Local 9057*, 1990 U.S. Dist. LEXIS 7116 at 8-9 (D. RI 1990) (finding that in the area of labor relations "the federal courts have refused to apply the strict common law rule of functus officio" and upholding a labor arbitrator's retention of jurisdiction over the interpretation and implementation of an arbitrator's award); *George Day Contr. Co. v. United Brotherhood of Carpenters & Joiners*, Local 354, 1982 U.S. Dist. LEXIS 9993 at 13 (N.D. CA 1982), *affirmed*, 722 F.2d 1471 (9th Cir. 1984) (upholding a labor arbitrator's retention of jurisdiction to specify the amounts of back pay if the parties were unable to agree on such matters); *SEIU, Local 1107 v. Sunrise Hospital and Medical Center*, 2013 U.S. Dist. LEXIS 134810 (D. NV) (confirming an arbitrator's supplemental award based on the court's finding that "the doctrine of functus

officio is not applicable here, where the arbitrators retained jurisdiction over remedial disputes and the Arbitrators' Supplemental Decisions were within the scope of this jurisdiction").

Here, the Board's finding 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 is in accordance with the public policy of the IELRA in favor of arbitration. A contrary finding would result in a substantial increase in litigation and associated delay and litigation costs as parties would have to file charges with and litigate before the Board in the first instance issues relating to remedy disputes arising under arbitration awards. Such a result is contrary to the IELRA's policy in favor of expeditious resolution of labor disputes. Requiring parties to litigate remedy disputes before the Board would also result in the Board, rather than arbitrators, interpreting collective bargaining agreements, contrary to the IELRA's requirement that contractual disputes be settled by arbitration unless the parties agree otherwise.

The Board thus correctly found that an arbitrator's retention of remedy jurisdiction does not conflict with the Board's statutory authority to determine whether a party violates the IELRA by failing to comply with a binding arbitration award. A36-A37.

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

Here, there was 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, as such issues are not expressly

excluded from arbitration under the CBA. Moreover, the parties agreed that the Arbitrator was to determine with respect to each of ten grievants whether his or her layoff violated the CBA and, if so, what remedy was appropriate. E253; E676; E836 E253; A43.

Section 6.12 of the CBA authorizes the Arbitrator if he finds a violation of the CBA to "direct the University to take appropriate action" which may include an award of "back salary." E105. That section also provides that: "Except 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 Labor Arbitration Rules of the American Arbitration Association, adopted in the CBA, provide that: "The 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.

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*, 615 A.2d at 1004-1005; *Courier-Citizen Co*, 1982 U.S. Dist. LEXIS 10491 at 11-12. Similarly, the Arbitrator's determination to hold a supplemental hearing to receive evidence on the issue of whether the University failed to implement the remedies ordered, and his determinations in his supplemental award that the University failed to implement remedies ordered as to Ogbaharya and Stovall, were within his authority under his retained remedy jurisdiction. As the Arbitrator found, in holding the supplemental hearing, he was engaged in deciding the issues submitted to him at the initial arbitration hearing. E1086. The Arbitrator's finding that he had authority under the CBA to hold a supplemental hearing and issue a supplemental

award was based on his interpretation of the CBA and thus draws its essence from the CBA. *See Griggsville-Perry,* 2013 IL 113721, ¶20.

The determination to be made by the Board was whether the Arbitrator based his awards on interpretations of the CBA. The Board correctly found that it should follow the Arbitrator's findings of fact and correctly refused to consider new evidence presented by the University at the hearing before the ALJ. *Griggsville-Perry*, 2013 IL 113721, ¶ 23. The University, before the Board, did not dispute that the initial award was binding, but rather asserted that it had complied with it. C881. The Board correctly found that the Arbitrator's supplemental award as to Ogbaharya and Stovall drew its essence from the CBA. *See Griggsville-Perry,* 2013 IL 113721, ¶20.

The issue presented to the Arbitrator with respect to Ogbaharya's grievance was whether the University violated the CBA when it laid him off, and if so, what the appropriate remedy was. E253; E676; E836; A43. The Arbitrator in his initial award directed the University to re-do its layoff decision, properly considering all five contractual layoff factors, including Ogbaharya's greater length of service at the University than that of three other faculty members in his department. A69. The Arbitrator in his supplemental award, based in part on witness credibility findings, found that the University had failed properly to re-do the layoff decision with respect to Ogbaharya. A77. Such finding was clearly rooted in an interpretation of the CBA and in the Arbitrator's appraisal of the evidence before him. The Arbitrator's finding that the University was required to offer Ogbaharya reinstatement for the 2017-2018 academic year and pay him back pay until his reinstatement (A86) also was clearly rooted in an interpretation of the CBA and was within the Arbitrator's contractual

authority. *See Griggsville-Perry,* 2013 IL 113721, ¶ 23.The Board thus correctly found that the Arbitrator's supplemental award as to Ogbaharya draws its essence from the CBA.

The issue presented to the Arbitrator with respect to Stovall was whether the University violated the CBA when it laid her off, and if so, what the appropriate remedy was. E253; E676; E836; A43. The Arbitrator in his initial award directed the University prior to the commencement of the 2017-2018 year to make a "reasonable effort" to see if Stovall could be placed in open courses in any departments if she possessed the skills needed to teach the courses being offered. A70. He directed that the University "try to find courses that are scheduled to be taught but currently have no teachers to teach them." A68. In his supplemental award, the Arbitrator found that the evidence at the supplemental hearing showed that there were open courses which Stovall was qualified to teach and that the University failed to search for open courses for her as required by his initial award. A84, A86. Such finding was based on the Arbitrator's interpretation of the CBA and on his appraisal of the evidence before him. *See Griggsville-Perry,* 2013 IL 113721, ¶23.The Arbitrator's supplemental award as to Stovall thus draws its essence from the CBA.

The Board thus properly found that both the Arbitrator's initial award and his supplemental award are binding and that the University violated Section 14(a)(8) and (1) of the IELRA by failing to comply with them.

CONCLUSION

For the foregoing reasons, 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,

/s/ Melissa J. Auerbach
Melissa J. Auerbach, ARDC # 3126792
Attorney for Respondent-Petitioner
University Professionals of Illinois,
Local 4100, IFT-AFT, AFL-CIO

Dowd, Bloch, Bennett, Cervone,
Auerbach & Yokich
8 South Michigan, 19th Floor
Chicago, Illinois 60603
312-372-1361
mauerbach@laboradvocates.com

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 32 pages.

/s/ Melissa J. Auerbach
Melissa J. Auerbach

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

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

Melissa J. Auerbach
ARDC #3126792
Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich
8 S. Michigan Ave., 19th Floor
Chicago, IL 60603
312-372-1361
mauerbach@laboradvocates.com

Attorney for Respondent-Petitioner
University Professionals of Illinois
Local 4100, IFT-AFT, AFL-CIO

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Carolyn Taft Grosboll
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2020 IL App (4th) 190143

NO. 4-19-0143

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 10, 2020
Carla Bender
4th District Appellate
Court, IL

WESTERN ILLINOIS UNIVERSITY, Petitioner, v. THE ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD and UNIVERSITY PROFESSIONALS OF ILLINOIS, LOCAL 4100, Respondents.	)	Review of Order of the Illinois Educational Labor Relations Board No. 2018-CA-0045-C

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court, with opinion.
Justices Knecht and Cavanagh concurred in the judgment and opinion.

OPINION

¶ 1 In February 2019, respondent, the Illinois Educational Labor Relations Board (IELRB), found petitioner, Western Illinois University (University), violated section 14(a)(8) and, derivatively, section 14(a)(1) of the Illinois Educational Labor Relations Act (Act) (115 ILCS 5/14(a)(1), (a)(8) (West 2016)), when it failed to comply with a (1) July 2017 arbitration award and (2) March 2018 supplemental arbitration award.

¶ 2 On direct administrative review of the IELRB's order, the University argues that the IELRB erred in determining that it violated sections 14(a)(1) and 14(a)(8) of the Act because (1) whether the University complied with the July 2017 arbitration award was not an arbitrable issue as a matter of law, (2) the arbitrator lacked the contractual authority to determine that the

University failed to comply with the July 2017 arbitration award, and (3) the University was privileged to refuse compliance with the March 2018 supplemental award because it was not binding. We agree, vacate the IELRB's opinion and order, and remand with instructions.

¶ 3 I. BACKGROUND

¶ 4 1. *Layoffs and Arbitration Decision*

¶ 5 The University was founded in 1899 and is a public institution of higher education in Illinois. University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO (Union), is the exclusive collective bargaining representative of a single bargaining unit consisting of two groups of faculty employed by the University. The Act (115 ILCS 5/1 to 21 (West 2016)) applies to and regulates relations between the University and the Union for the bargaining units. A board of trustees governs the University's operations pursuant to section 35-10 of the Western Illinois University Law (110 ILCS 690/35-10 (West 2016)). Jack Thomas is the University's president and chief executive and reports to the board of trustees. Academic Vice President Kathleen Neumann reports to Thomas and oversees all of the colleges, libraries, budgets, and planning.

¶ 6 In the time period relevant to this appeal, the University and the Union were parties to a collective bargaining agreement (CBA). Article 24 of the CBA contained provisions regarding staff reduction procedures for tenured and tenure-track faculty and specifically authorized the University to lay off employees due to, among other reasons, "demonstrable enrollment reduction." Article 24.2 of the CBA outlined five factors the University must consider when determining whom to lay off. If the University chose to lay off faculty, Article 24.4 of the CBA required it to make "a reasonable effort to locate other equivalent employment within the University" for them "prior to the effective date" of their layoff. The University was then required to notify the affected faculty of the result of such efforts. Pursuant to the Act (115 ILCS 5/10(c)

(West 2016)), the CBA contained a three-step grievance procedure, culminating in a final and binding arbitration, for an alleged "violation, misinterpretation, or an improper application of the provisions of" the CBA.

¶ 7 At its peak, the University enrolled nearly 12,000 students. By 2015, enrollment decreased to less than 9000. Consequently, in the fall of 2015, Thomas directed Neumann to investigate whether any faculty should be laid off. Neumann enlisted Associate Provost Russell Morgan, Associate Provost for Undergraduate and Graduate Studies Nancy Parsons, and the deans of each of the four colleges to assist in this task. By November 2015, Neumann and her team identified 42 faculty members for layoff, which they eventually narrowed to 19. In January 2016, the board of trustees approved the layoffs.

¶ 8 The Union filed grievances on behalf of 10 of the 19 faculty members who received layoff notices, including Dr. Daniel Ogbaharya, an assistant professor in a tenure-track position in the political science department, and Dr. Holly Stovall, an assistant professor in the women's studies department. Pursuant to the CBA, the 10 faculty members' grievances proceeded to arbitration. The parties selected arbitrator Fredric Dichter. Article 6.12(b)(1) of the CBA defined the authority of the arbitrator as follows:

> "The arbitrator shall neither add to, subtract from, modify, or alter the terms or provisions of this Agreement. Arbitration shall be confined solely to the application and/or interpretation of this Agreement and the precise issues submitted for arbitration. The arbitrator shall have no authority to determine any other issue(s). The arbitrator shall refrain from issuing any statements of opinion or conclusions not essential to the determination of the issue(s) submitted."

Article 6.12(c) of the CBA further stated, "Except 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." Finally, article 7.3 of the CBA provides that "[n]either the Union nor the Board waives the rights guaranteed them under the [Act]."

¶ 9 In April 2017, Dichter conducted a hearing on the grievances. The parties stipulated that the issues to be decided were whether the University violated the CBA when it laid off the individual grievants (including Drs. Ogbaharya and Stovall) and, if so, what the remedies should be. At the hearing, the Union orally requested that, should Dichter sustain all or some of the grievances, that he "retain jurisdiction to resolve any disputes with respect to implementation of the remedy."

¶ 10 Dichter issued a decision and award on July 6, 2017. In his decision, Dichter resolved as to each grievance whether the University complied with articles 24.2 and 24.4 of the CBA.

¶ 11 With respect to Dr. Ogbaharya, Dichter found that the University violated article 24.2 of the CBA and ordered the University to compensate Dr. Ogbaharya for his lost wages. Dichter further ordered that, prior to the 2017-18 academic year, the University reevaluate its layoff decision, considering all five factors enumerated in article 24.2 of the CBA. If, after complying with article 24.2, the University still decided to lay off Dr. Ogbaharya, it would also be required to comply with article 24.4.

¶ 12 With respect to Dr. Stovall, Dichter found the University violated article 24.4 of the CBA and ordered that the University make reasonable efforts to find employment for Dr. Stovall within the foreign languages, liberal arts, or any other department in which she was qualified to teach.

¶ 13 At the conclusion of his decision and award, Dichter stated that he "shall retain [j]urisdiction for no less than 90 days to resolve any issues regarding the implementation of this [a]ward."

¶ 14 2. *Implementation of the Arbitration Award*

¶ 15 On September 12, 2017, Neumann sent letters to Drs. Stovall and Ogbaharya detailing the University's efforts to identify faculty positions for which they might be eligible. Neumann's letters concluded that, despite the University's efforts, they were unable to find new positions within the University for Drs. Stovall and Ogbaharya and therefore they would be laid off.

¶ 16 The same date, the Union sent an e-mail to Dichter claiming that the University failed to comply with his July 2017 arbitration award. The University responded that it had complied with the award. Following a series of e-mail exchanges, the Union requested that Dichter assert his "retained" jurisdiction and conduct a second hearing to determine whether the University complied with the award. The University responded that Dichter lacked jurisdiction and authority to make such a determination. Dichter concluded that he had jurisdiction to resolve this issue and scheduled a hearing for January 16, 2018.

¶ 17 On January 2, 2018, the Union filed an unfair labor practice charge with the IELRB alleging the University violated section 14(a) of the Act (*id.* § 14(a)) by refusing to comply with Dichter's July 2017 arbitration award.

¶ 18 On January 16, 2018, the parties convened for a hearing conducted by Dichter. At the hearing, the University objected to Dichter's authority and jurisdiction to resolve whether the University complied with his July 2017 award. Dichter noted the objection but proceeded with the hearing, stating, "[W]hat we are here today is on the Union's contention that with regard to [the

grievants], that the University has failed to comply with the requirements of my earlier award." Following the hearing, the parties filed briefs. In the University's brief, it again argued that Dichter lacked authority to determine whether it complied with the July 2017 arbitration award because the issue was within the IELRB's primary and exclusive jurisdiction. On March 5, 2018, Dichter issued a second opinion declaring that the University had not complied with the July 2017 award as it related to Drs. Ogbaharya and Stovall. In his opinion, Dichter issued a "supplemental award" ordering remedies with respect to each grievant.

¶ 19 On March 18, 2018, the Union amended its January 2018 unfair labor practice charge against the University, stating:

> "On March 5, 2018, the Arbitrator issued a supplemental award. The Arbitrator in the supplemental award found that the [University] had failed to implement the remedies ordered with respect to two of the grievants and ordered remedies with respect to such grievants. The [University] has refused to comply with the provisions of the supplemental award."

¶ 20 On July 16, 2018, the acting executive director of the IELRB issued a complaint and notice of hearing alleging that the University violated section 14(a)(8) and, derivatively, section 14(a)(1) of the Act by refusing to comply with the July 2017 arbitration award and the March 2018 supplemental award.

¶ 21 On September 5, 2018, an administrative law judge (ALJ) for the IELRB conducted a hearing on the complaint. At the hearing, the University called Neumann, Morgan, and the dean of the College of Arts and Sciences to testify. The Union objected to their testimony on the issue of relevance, arguing that the IELRB may only consider the proceedings before the arbitrator in resolving the unfair labor practice charge. The ALJ allowed the testimony over the Union's

objection. On November 15, 2018, the ALJ entered a written order finding that there were no determinative issues of fact that required her recommended decision and removed the case to the IELRB for a decision.

¶ 22 On February 21, 2019, the IELRB issued a final opinion and order. In the order, it found that the University violated section 14(a)(8) of the Act and, derivatively, section 14(a)(1), by failing to comply with the July 2017 arbitration award and the March 2018 supplemental award. In making this determination, the IELRB followed the arbitrator's findings of fact, stating that it "may not consider matters beyond the arbitrator's findings." It further found that Dichter had the authority to retain jurisdiction over the implementation of the July 2017 award, stating that there was "no express limitation in the collective bargaining agreement preventing the arbitrator from determining whether the University implemented the original award" and that "the fact that the [IELRB] has exclusive primary jurisdiction over whether an employer has complied with an arbitration award does not mean that the arbitrator could not retain jurisdiction over the implementation of the remedy."

¶ 23 Accordingly, the IELRB ordered the University to (1) cease and desist from refusing to comply with both arbitration awards, (2) immediately comply with both arbitration awards, and (3) notify the IELRB's executive director in writing within 35 days of the steps taken to comply with IELRB's order.

¶ 24 Thereafter, the University petitioned for direct administrative review of the IELRB's final order pursuant to Illinois Supreme Court Rule 335 (eff. July 1, 2017) and section 16(a) of the Act (115 ILCS 5/16(a) (West 2016)).

¶ 25 II. ANALYSIS

¶ 26 On direct administrative review of the IELRB's order, the University argues that the IELRB erred by determining that it violated sections 14(a)(1) and 14(a)(8) of the Act because (1) whether the University complied with the July 2017 arbitration award was not an arbitrable issue as a matter of law, (2) the arbitrator lacked the contractual authority to determine that the University failed to comply with the July 2017 arbitration award, and (3) the University was privileged to refuse compliance with the March 2018 supplemental award because it was not binding. The University therefore requests this court vacate the IELRB's opinion and order and remand with instructions to consider all the evidence relevant to whether the University complied with the July 2017 arbitration award that was presented to the ALJ.

¶ 27 A. Standards of Review

¶ 28 The Illinois Supreme Court has held that "judicial review of an IELRB decision is governed by the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 1994)) and extends to all issues of law and fact presented by the record." *SPEED District 802 v. Warning*, 242 Ill. 2d 92, 111, 950 N.E.2d 1069, 1080 (2011). We review the IELRB's findings as to issues of law *de novo*, while its findings on issues of fact will be deemed *prima facie* true and correct unless they are against the manifest weight of the evidence. *Id.* at 111-12.

> " '[T]he clearly erroneous standard of review is proper when reviewing a decision of the IELRB or the ILRB because the decision represents a mixed question of fact and law. [Citation.] An agency decision will be reversed because it is clearly erroneous only if the reviewing court, based on the entirety of the record, is " 'left with the definite and firm conviction that a mistake has been committed.' " [Citation.] While this standard is highly deferential, it does not relegate judicial review to mere blind deference of an agency's order.' " *Id.* at 112 (quoting *Board*

of Trustees of the University of Illinois v. Illinois Labor Relations Board, 224 Ill. 2d 88, 97-98, 862 N.E.2d 944, 950-51 (2007)).

¶ 29 B. Compliance with July 2017 Award

¶ 30 The University does not argue that Dichter's July 2017 award was not binding. Rather, it argues Dichter lacked jurisdiction as a matter of law to determine whether the University complied with the award.

¶ 31 Section 14(a)(8) of the Act prohibits educational employers from "[r]efusing to comply with the provisions of a binding arbitration award." 115 ILCS 5/14(a)(8) (West 2016). Prior to the passage of the Act, Illinois circuit courts had jurisdiction to enforce or vacate arbitration awards. However, the Illinois Supreme Court held in *Board of Education of Community School District No. 1 v. Compton*, 123 Ill. 2d 216, 221, 526 N.E.2d 149, 152 (1988), that the Act "divest[s] the circuit courts of primary jurisdiction over educational labor arbitration awards." Accordingly, the IELRB, rather than the circuit courts, has exclusive primary jurisdiction to review binding arbitration awards under the Act. See *Chicago Board of Education v. Chicago Teachers Union*, 142 Ill. App. 3d 527, 531-32, 491 N.E.2d 1259, 1262 (1986).

¶ 32 In its opinion and order, and on direct administrative review before this court, the IELRB cites various case law and secondary authority stating that an arbitrator may retain jurisdiction to resolve disputes arising from an arbitration award. See Edna A. Elkouri & Frank Elkouri, How Arbitration Works 7-50 (Kenneth May ed., 8th ed. 2016) ("[I]n virtually all cases of grievance arbitration where a remedy is called for, labor arbitrators ought to routinely retain jurisdiction of the award solely for the purposes of resolving any disputes among the parties regarding the meaning, application and implementation of that remedy." (Internal quotation marks omitted.)); *Kroger Co. v. United Food and Commercial Workers Union Local 876*, 284 F. App'x

233, 241 (6th Cir. 2008) (finding that the arbitrator's retention of jurisdiction to clarify his award stemmed from an arguable interpretation of the collective bargaining agreement); *Case-Hoyt Corp. v. Graphic Communications International Union Local 503*, 5 F. Supp. 2d 154, 156 (W.D.N.Y. 1998) (determining the court did not have *de novo* authority to resolve disputes arising from an arbitration award where the arbitrator retained jurisdiction over such matters); *Greater Latrobe School District v. Pennsylvania State Education Ass'n*, 615 A.2d 999, 1004 (Pa. Commw. Ct. 1992) (holding that the arbitrator's retention of jurisdiction was a procedural matter within the exclusive province of the arbitrator).

¶ 33 First, we agree with the University that the above authority and case law are distinguishable from this case. The University correctly notes that "neither federal labor law nor Illinois commercial law contains any provisions remotely resembling section 14(a)(8) [of the Act]." Moreover, although the Pennsylvania case law cited by the IELRB interprets a statutory provision similar to section 14(a)(8) of the Act, Pennsylvania law also provides for judicial review of arbitration awards by the state trial courts. See *id.* at 1001-02. In contrast, the Act "divest[s] the circuit courts of primary jurisdiction over educational labor arbitration awards" (*Compton*, 123 Ill. 2d at 221), and the IELRB has exclusive primary jurisdiction to review binding arbitration awards (see *Chicago Board of Education*, 142 Ill. App. 3d at 531-32). Accordingly, we conclude that the IELRB's reliance on Pennsylvania case law is unpersuasive here. See *Compton*, 123 Ill. 2d at 223-24 ("Our statute, in contrast [to Pennsylvania's], provides for a specific form of judicial review which the legislature apparently intended would exclude all others.").

¶ 34 The IELRB further contends that its authority to determine whether a party has complied with a binding arbitration award coexists with the arbitrator's authority to oversee the "implementation" of the award. The IELRB simultaneously admits that it was within the exclusive

jurisdiction of the IELRB to determine whether the University complied with the July 2017 arbitration award. See *Chicago Board of Education*, 142 Ill. App. 3d at 531. We fail to see how the issue of whether the University "implemented" the arbitration award in this case is meaningfully distinguishable from whether it "complied" with the award. To allow an arbitrator to determine whether a party complied with a binding arbitration award under the guise of "implementation" would usurp the IELRB's exclusive authority to make that determination as the legislature intended.

¶ 35 We also agree with the University that an arbitrator's retention of jurisdiction to correct errors or clarify ambiguities in an award would not conflict with the IELRB's exclusive authority to determine whether a party complied with the award under section 14(a)(8) of the Act. In this case, neither the University nor the Union disputed the content or the meaning of Dichter's award. Nor did any party request that Dichter clarify or correct the award. Instead, the Union specifically requested that Dichter determine whether the University complied with the July 2017 award and to order a supplemental award if necessary. In fact, at the January 2018 hearing, Dichter explicitly stated that the purpose of the hearing was to resolve "the Union's contention *** that the University has failed to comply with the requirements of my earlier award." These actions went far beyond resolving a dispute "regarding the meaning, application, and implementation of that remedy." (Internal quotation marks omitted.) See Elkouri & Elkouri, *supra*, at 7-50. Accordingly, we conclude the IELRB erred as a matter of law in determining that Dichter was authorized to decide whether the University complied with the July 2017 arbitration award.

¶ 36 C. Dichter's Contractual Authority

¶ 37 "An arbitrator exceeds his powers when he decides matters which were not submitted to him." *Hollister Inc. v. Abbott Laboratories*, 170 Ill. App. 3d 1051, 1060, 524 N.E.2d

1035, 1040 (1988). "[T]he scope of an arbitrator's power is governed by the agreement between the parties submitting the matter to arbitration." *Id.* at 1061. Furthermore, under the doctrine of *functus officio*, "once arbitrators issue an award, their powers end and they have no authority or jurisdiction thereafter to modify, annul, revoke or amend the award; nor can they make a new award on the same issue." *Id.* at 1057.

> " '[A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement.' " *American Federation of State, County & Municipal Employees v. Illinois*, 124 Ill. 2d 246, 255, 529 N.E.2d 534, 538 (1988) (quoting *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960)).

¶ 38 Here, the IELRB further erred as a matter of law when it concluded Dichter had the contractual authority to determine whether the University complied with the July award. We acknowledge the CBA incorporates the rules and procedures of the American Arbitration Association, which authorizes the arbitrator to "rule on his or her own jurisdiction, including any objections with respect to the *** scope of the arbitration agreement." But, as we noted earlier, Article 6.12(b) of the CBA also states that "[a]rbitration shall be confined *solely* to the application and/or interpretation of [the CBA] and the *precise* issues submitted for arbitration" and that the arbitrator "shall have *no authority* to determine *any other issue(s).*" (Emphases added.)

¶ 39 We view the above language as significant when determining whether the scope of the arbitrator's authority should be interpreted broadly or narrowly. After all, article 6.12(b) could

have simply stated that "arbitration shall be confined to the application and/or interpretation of [the CBA] and the issue submitted to arbitration," but the actual sentence says much more. By including the modifiers "solely" and "precise" in that sentence, the CBA makes clear that the scope of the arbitrator's powers must be construed *narrowly*, not broadly. To conclude otherwise would render the addition of those modifiers meaningless. And if the presence of those modifiers were somehow not adequate to get this message across, the very next sentence of article 6.12(b) of the CBA makes the meaning of that article clear by stating the following: "The arbitrator shall have no authority to determine any other issue(s)."

¶ 40 Nonetheless, the IELRB maintains the untenable position that Dichter was authorized to determine whether the University complied with the July 2017 arbitration award because that issue "stemmed from" one of the initial issues submitted to arbitration. This argument is contrary to the plain language of the CBA. As stated above, the drafters of the CBA chose to confine arbitration "*solely*" to the "*precise issues*" submitted and to prohibit the arbitrator from deciding "*any other issue(s).*"

¶ 41 The parties do not dispute that the "precise" issues submitted to arbitration were whether the University complied with the layoff procedures outlined in the CBA and, if so, what the remedy should be. The IELRB's contention that whether the University complied with the July 2017 award is somehow not a new issue is confounding and indefensible. In concluding that Dichter acted within his authority, the IELRB blatantly ignored the provision of the CBA that expressly prohibited him from deciding "*any* other issues." Not only did Dichter decide an issue not submitted to him, the issue he purported to resolve was, as explained above, within the exclusive jurisdiction of the IELRB.

¶ 42 Perhaps the best demonstration of how the question of whether the University complied with the July 2017 award is a new issue, unrelated to the decision the arbitrator made as reflected in that award, is that, by definition, *all* evidence pertaining to the issue of the University's compliance would concern actions taken *after* the July 2017 award was made. That is, the award set forth what steps the University needed to take for compliance; thus, any evidence pertaining to the University's compliance would concern actions taken *after* the award was made. It simply makes no sense to try to claim that the issue of the University's compliance is somehow no different than the issues the arbitrator had to address before making the July 2017 award.

¶ 43 The IELRB is correct that "no express limitation in the [CBA] prevent[ed] the arbitrator from determining whether the University implemented the original award." However, the CBA also stated that "[n]either the Union nor the Board waives the rights guaranteed them under the [Act]." The Act guarantees the University the right to have arbitration disputes resolved by the IELRB. See *Chicago Board of Education*, 142 Ill. App. 3d at 531. Accordingly, the IELRB erred as a matter of law by concluding it was within Dichter's contractual authority to decide whether the University complied with the July 2017 arbitration award.

¶ 44 D. Supplemental Award

¶ 45 Because Dichter had neither jurisdiction under the Act nor contractual authority under the CBA to determine whether the University complied with the July 2017 arbitration award, he therefore also lacked authority to issue the March 2018 supplemental award. See *Hollister*, 170 Ill. App. 3d at 1057. Thus, the IELRB also erred by determining that the March 2018 supplemental award was binding. Without a binding arbitration award, the University cannot have violated section 14(a)(8) of the Act with respect to this award as a matter of law. See 115 ILCS 5/14(a)(8) (West 2016).

¶ 46 In its opinion and order, the IELRB stated that it "may not consider matters beyond the arbitrator's findings." We agree that the IELRB may follow Dichter's findings from the July 2017 arbitration award. See *Griggsville-Perry Community Unit School District No. 4 v. Illinois Educational Labor Relations Board*, 2013 IL 113721, ¶ 18, 984 N.E.2d 440 ("Where the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept." (Internal quotation marks omitted.)). However, in exercising its duty to determine whether the University complied with the July 2017 award, the IELRB must necessarily consider any subsequent evidence (including any evidence presented in the proceedings before the ALJ) that is relevant to the resolution of that question.

¶ 47 Accordingly, we vacate the IELRB's opinion and remand with instructions to consider any evidence relevant to the issue of the University's compliance with the July 2017 award. In reaching this decision, we express no opinion on the issue of whether the University engaged in unfair labor practices under sections 14(a)(1) or 14(a)(8) of the Act (115 ILCS 5/14(a)(1), (a)(8) (West 2016)).

¶ 48 III. CONCLUSION

¶ 49 For the reasons stated, we vacate the decision of the IELRB and remand with directions to consider all the evidence relevant to whether the University complied with the July 2017 binding arbitration award.

¶ 50 Vacated and remanded with directions.

No. 4-19-0143

Cite as:	*Western Illinois University v. Illinois Educational Labor Relations Board*, 2020 IL App (4th) 190143
Decision Under Review:	Petition for review of order of Illinois Educational Labor Relations Board, No. 2018-CA-0045-C.
Attorneys for Appellant:	Roy G. Davis and Abby J. Clark, of Davis & Campbell L.L.C., of Peoria, for petitioner.
Attorneys for Appellees:	Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and Ann C. Maskaleris, Assistant Attorney General, of counsel), for respondent Illinois Educational Labor Relations Board. Melissa J. Auerbach, of Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich, of Chicago, for other respondent.

STATE OF ILLLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO,	)	
Complainant,	)	
and	)	Case No. 2018-CA-0045-C
Western Illinois University,	)	
Respondent.	)	

OPINION AND ORDER

I. STATEMENT OF THE CASE

On January 2, 2018, University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO (Union) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) alleging that Western Illinois University (University) violated Sections 14(a)(8) and (1) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, et seq. (2016), as amended (Act), by refusing to comply with an arbitration award. (ALJ Ex. 1).[1] On March 8, 2018, the Union filed an amended unfair labor practice charge alleging that the University violated Sections 14(a)(8) and (1) of the Act by refusing to comply with a supplemental arbitration award, as well as with the original arbitration award. (ALJ Ex. 2). On July 16, 2018, the Acting Executive Director issued a Complaint and Notice of Hearing alleging that the University violated Sections 14(a)(8) and (1) of the Act by refusing to comply with the original arbitration award and with the supplemental arbitration award. (ALJ Ex. 3).

A hearing was conducted on September 5, 2018. Both parties filed briefs. On November 15, 2018, the Administrative Law Judge ordered that the case be removed to the Board for a

[1] In this Opinion and Order, we will cite the Administrative Law Judge exhibits as "ALJ Ex. __" and the Complainant Union's exhibits as "Comp. Ex. __."

decision. We find that the University violated Sections 14(a)(8) and (1) by refusing to comply with the original award and with the supplemental award.

II. FACTUAL BACKGROUND

In this Opinion and Order, we follow the arbitrator's findings of fact. "Where ' "the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept," ' " *Griggsville-Perry Community Unit School District No. 4 v. IELRB*, 2013 IL 113721, 984 N.E.2d 440, 444 (2013), *quoting AFSCME v. State*, 124 Ill.2d 246, 255, 529 N.E.2d 534, 538 (1988), *quoting United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29, 37-38 (1987).

At the hearing before the Administrative Law Judge, the University submitted evidence which was not presented to the arbitrator. In reviewing an award, evidence which was not before the arbitrator may not be considered. *McCabe Hamilton & Remy Co., Ltd, v. International Longshore and Warehouse Union, Local 142*, 624 F.Supp. 1236 (D. Haw. 2008); *Lemerise v. Commerce Ins. Co.*, 137 A.3d 696 (R.I. 2016); *Seattle Packaging Corp. v. Barnard*, 94 Wash. App. 481, 972 P.2d 577 (1999); *Matter of Hirsch Constr. Corp.*, 181 A.D.2d 52, 585 N.Y.S.2d 418 (1992). Rather, review of an arbitration award must be based on the record which was before the arbitrator. *JCI Communications, Inc. v. International Broth. of Elec. Workers, Local 103*, 324 F.3d 42 (1st Cir. 2003); *Decorative Panels intern., Inc. v. International Ass'n of Machinists and Aerospace Workers Lodge W-260*, 996 F.Supp.2d 559 (E.D. Mich. 2014); *see Chicago Transit Authority v. Amalgamated Transit Union Local 308*, 244 Ill.App.3d 854, 614 N.E.2d 120 (1993) (because worker's compensation settlement agreement not part of record

before arbitrator and worker's compensation not mentioned in arbitrator's award, alleged conflict with worker's compensation law could not vitiate the award).

The Union represents two bargaining units of the University's employees. Unit A consists of faculty in tenure-track positions. Unit B consists of academic support professionals and associate faculty. (Comp. Exs. 1, 52).[2] The agreement in effect when the grievance arose covered the 2010-2015 school years but was extended and was still in effect at the time of the arbitration. (Comp. Ex. 52).

Article 6 of the collective bargaining agreement contains the grievance procedure. Section 6.4 of the agreement provides:

> A grievance is a complaint or allegation by an employee or employees, or by the Union, that there has been a violation, misinterpretation, or improper application of the provisions of this Agreement. All provisions of this Agreement are subject to this grievance procedure except for 29.6.g. of 43.8.h. or as otherwise provided in this Article.

Section 6.12 of the agreement provides:

> ....
>
> b. Authority of the Arbitrator
>
> (1) The arbitrator shall neither add to, subtract from, modify, or alter the terms or provisions of this Agreement. Arbitration shall be confined solely to the application and/or interpretation of this Agreement and the precise issue(s) submitted for arbitration. The arbitrator shall have no authority to determine any other issue(s). The arbitrator shall refrain from issuing any statements of opinion or conclusions not essential to the determination of the issue(s) submitted.
>
> (2) Where an administrator has made an academic judgment—for example, a judgment concerning application of evaluation criteria in decisions on retention, promotion, or tenure, or a judgment

[2] Associate faculty are non-tenure-track faculty who were originally hired as temporary employees and have worked for at least one year if working full-time or after at least two years if working half-time or greater. (Comp. Ex. 52).

> concerning the academic acceptability of a sabbatical proposal—the arbitrator shall not substitute her/his judgment for that of the administrator. The arbitrator shall not review the academic decision except for the purpose of determining whether or not that decision has violated this Agreement. If the arbitrator determines that the Agreement has been violated, the arbitrator shall direct the University to take appropriate action....

c. Conduct of Hearing

> ....Except 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.

.....

(Comp. Ex. 1).

Article 24 of the collective bargaining agreement, Staff Reduction Procedures, Unit A, provides:

> 24.1 An employee may be laid off as a result of demonstrable financial exigency or demonstrable enrollment reduction, or as a result of a modification of curriculum or program instituted through established program review procedures. If financial exigency is asserted as the basis for a layoff, the financial exigency must be demonstrated to be University-wide.
>
> 24.2 If the Board decides it is necessary to lay off employees according to this Article, the factors which will be considered are length of full-time service at the University, including approved leaves; length of full-time service in the department, including approved leaves; educational qualifications; professional training; and professional experiences. The layoff of employees shall be in the order listed below:
>
> a. Temporary full- and part-time faculty
>
> b. Associate Faculty
>
> c. Full-time employees on probationary appointments (without tenure)
>
> d. Tenured employees

....

24.4 The University shall make a reasonable effort to locate other equivalent employment within the University for a laid-off employee prior to the effective date of her/his layoff. The result of such effort shall be made known to the person affected. The effort to locate other equivalent employment shall include a review of the possibility of an assignment with duties in more than one unit, part-time employment, transfer to another unit or position pursuant to Article 25, or retraining pursuant to Article 27.3.

....

(Comp. Exs. 1, 52).

Because of a decline in the student enrollment, the University looked at each department to determine whether there should be layoffs. At the time this review occurred, it was also uncertain what funds the University would receive from the State. On December 7, 2015, University President Dr. Jack Thomas announced that there would be layoffs. The Board of Trustees approved the layoffs at a meeting in January 2016. Each layoff notice stated that the reason for the layoff was "demonstrable enrollment reduction" rather than "financial exigency." (Comp. Ex. 52).

Ten of the employees grieved the decision to lay them off. Those grievants included Dr. Daniel Ogbaharya (Dr. Ogbaharya) and Dr. Holly Stovall (Dr. Stovall). (Comp. Ex. 52). Both Dr. Ogbaharya and Dr. Stovall were members of Unit A. (Comp. Exs. 21, 52).

The grievance proceeded to arbitration. The arbitration hearing was held on April 24 and 25, 2017. (Comp. Exs. 49, 52). The arbitrator issued his award on July 6, 2017. (Comp. Ex. 52). The parties agreed on the following statement of the issues:

1. Whether the University violated the collective bargaining agreement when it laid off Andres Hijar; if not [sic], what shall the remedy be?

2. Whether the University violated the collective bargaining agreement when it laid off Julie Lawless; if not [sic], what shall the remedy be?

3. Whether the University violated the collective bargaining agreement when it laid off Sherry Lindquist; if not [sic], what shall the remedy be?

4. Whether the University violated the collective bargaining agreement when it laid off Daniel Ogbaharya; if not [sic], what shall the remedy be?

5. Whether the University violated the collective bargaining agreement when it laid off Joanne Sellen; if not [sic], what shall the remedy be?

6. Whether the University violated the collective bargaining agreement when it laid off Holly Stovall; if not [sic], what shall the remedy be?

7. Whether the University violated the collective bargaining agreement when it laid off Alyssa Anderson; if not [sic], what shall the remedy be?

8. Whether the University violated the collective bargaining agreement when it laid off Jason Braun; if not [sic], what shall the remedy be?

9. Whether the University violated the collective bargaining agreement when it laid off Wenhong Teel; if not [sic], what shall the remedy be?

10. Whether the University violated the collective bargaining agreement when it laid off Robert Johnson; if not [sic], what shall the remedy be?

(Comp. Ex. 2).

Dr. Ogbaharya was employed as an Assistant Professor in the Political Science Department in a tenure-track position. He began teaching at the University on August 21, 2008. At that time, he was in Unit B. He began working in a tenure-track position on August 21, 2013. He took a year's leave in 2011-2012. (Comp. Ex. 52).

There were 11 full-time faculty in the Political Science Department. Dr. Ogbaharya had the least time in the Department. There were, however, three faculty members who had worked for the University for less time than he had. Dr. Ogbaharya testified that he was qualified to teach the courses currently being taught by two of the three faculty members who had less time at the University. (Comp. Ex. 52).

The arbitrator noted that the University did not argue that it used Dr. Ogbaharya's qualifications or training versus those of the faculty members who were not laid off as a factor in deciding whom to lay off. The arbitrator found that in determining whom to lay off, the University did not consider overall length of service with the University, but only length of service in the Department. The arbitrator agreed with the University that none of the factors is to be given greater weight than any other factor but concluded that this did not mean that the University was free to ignore a factor. (Comp. Ex. 52).

The arbitrator found that the University violated Section 24.1 [sic] of the collective bargaining agreement in laying off Dr. Ogbaharya. The arbitrator ordered the University to reevaluate its decision to lay off Dr. Ogbaharya before the beginning of the 2017-2018 school year. The arbitrator directed the University to consider all the factors listed in Section 24.1 [sic], including length of service with the University, giving no greater or lesser weight to one factor over another. The arbitrator found that Dr. Ogbaharya was entitled to backpay for the 2016-2017 school year less any interim earnings he may have had. The arbitrator noted that the Union had also alleged a violation of Section 24.4 of the collective bargaining agreement. The arbitrator stated that it was not necessary for him to rule on this issue, but if Dr. Ogbaharya was still to be laid off, which should be explained if it occurred, the University must comply with the requirements of Section 24.4 before doing so and report back to Dr. Ogbaharya on the results. (Comp. Ex. 52).

Dr. Stovall began working as an Assistant Professor on January 16, 2007. She was an Instructor in Unit B for a year before that. She worked in the Women's Studies Department at the time of her layoff. She was awarded tenure in June 2016. Because she was in her last year prior to her tenured year at the time the layoffs were announced, she was entitled to a one-year

notice. Therefore, she was not actually laid off until the end of the Spring Semester of 2017. (Comp. Ex. 52).

Dr. Stovall has a Master's Degree in Women's Studies and a Ph.D. in Hispanic Literature. She has in the past taught Spanish, and she used that experience in the Women's Studies Department by teaching a course in Hispanic Women. The only year she taught Spanish at the University was 2005. She taught courses in Spanish Language Literature as well as the basic core courses in the Women's Studies Department. (Comp. Ex. 52).

On June 10, 2016, the Board of Trustees voted to eliminate the Women's Studies Department effective January 2017. The courses that previously had been taught in the Women's Studies Department were to be included in the curriculum of the Liberal Arts Department. The elimination of the Women's Studies Department required a layoff.

Norma Suvak began teaching seven years after Dr. Stovall. While she was listed as working in the Women's Studies Department, she had a dual assignment. She taught German and courses in Women's Studies in the Foreign Languages Department. Suvak was originally designated to be laid off buGm143t was transferred to the Foreign Language Department instead because she had already been teaching German in that Department before the layoffs. The arbitrator found that while Dr. Stovall was more senior than Suvak, she was not qualified to teach the courses Suvak was to teach. He noted that qualifications and training were two of the factors to be evaluated when deciding which faculty member to lay off. The arbitrator accepted the University's decision not to lay off Suvak. (Comp. Ex. 52).

Immediately after Dr. Stovall was notified that she might be laid off, she met with the University's Interim Provost, Dr. Katherine Neumann (Dr. Neumann). Dr. Stovall gave Dr Neumann her curriculum vita and said she was qualified to teach Spanish. She requested to be

transferred to the Foreign Language Department, but that request was denied. She also contacted the Dean in the Spring of 2017 after learning that the Chair of the Women's Studies Department and another faculty member had resigned and asked to be allowed to teach the Women's Studies classes those two faculty members had been teaching. That request was also denied. (Comp. Ex. 52).

The arbitrator questioned what the University had done to comply with the requirements of Section 24.4 of the collective bargaining agreement with respect to Dr. Stovall. The arbitrator found that there was no evidence that the University considered whether there was a place for Dr. Stovall to teach Women's Studies courses if they were ongoing, or that it considered her experience in Spanish. The arbitrator stated that the University said in its letter to Dr. Stovall that it had talked to the Dean about his needs in the Foreign Language Department, but that this was not enough. The arbitrator determined that the University must affirmatively look to see if there was a place for Dr. Stovall. The arbitrator directed the University to make a "reasonable effort" before the beginning of the 2017-2018 school year to see if she could be placed in any opening in the Foreign Language Department, the Liberal Arts Department or any other Department if she possessed the skills to teach the courses and report the results of that effort to her. The arbitrator stated that the awards for violations of Section 24.4 were limited to a requirement that the University try to find courses that were scheduled to be taught but currently had no teachers to teach them. He stated that the University was not required to displace faculty members currently teaching courses in other Departments, even if they were teaching courses which the grievants were qualified to teach and they had less University seniority than the grievants. (Comp. Ex. 52).

The Union requested during the original arbitration hearing that the arbitrator "retain jurisdiction to resolve any disputes with respect to the implementation of the remedy." (Comp. Ex. 49). The University did not address the issue either during the original arbitration hearing or in the brief it filed after that hearing. (Comp. Exs. 49, 51). In his award, the arbitrator stated that he "shall retain Jurisdiction for no less than 90 days to resolve any issues regarding the implementation of this Award." (Comp. Ex. 52).

On September 12, 2017, the Union's attorney, Melissa Auerbach (Auerbach), sent an email invoking the attorney's retained jurisdiction over the remedy. Auerbach stated that the Union believed the University had not complied with the award as to Dr. Ogbaharya, Dr. Stovall and three other grievants. (Comp. Ex. 53). On September 13, 2017, the arbitrator sent an email requesting the University's response. The arbitrator noted that he had retained his jurisdiction for "no less than 90 days," so it continued until all issues concerning the implementation of the award were resolved. (Comp. Ex. 54).

The University's attorney, Roy Davis (Davis), responded to the arbitrator in an email dated September 15, 2017, attaching letters the University had sent to the five grievants. Davis stated that it was the University's position that no further proceedings were warranted. (Comp. Ex. 55). The same day, the arbitrator sent an email requesting the Union's response. (Comp. Ex. 56). In an email to the arbitrator dated September 20, 2017, Auerbach stated that the Union continued to request relief. (Comp. Ex. 57).

On September 22, 2017, the arbitrator sent an email to the parties stating that he did not see any way to resolve the issues without a hearing, especially given the allegations in the Union's reply questioning the efforts the University had made. He stated that there was no way

to resolve factual issues without a hearing. He asked the parties to both let him know their thoughts on this question. (Comp. 58).

On October 31, 2017, Auerbach sent an email to the arbitrator stating that the Union had reviewed the materials the University had produced pursuant to a subpoena duces tecum issued by the arbitrator. (Comp. Exs. 59, 64, 65, 66). Auerbach stated that for the reasons the Union had previously set forth, its position was that the University had failed to fully comply with the remedy in the award. The Union requested a hearing. (Comp. Ex. 66).

On the same date, the arbitrator sent an email offering January 16, 2018 as a hearing date. The arbitrator asked the Union to let him and the University know whether the Union would still be challenging the University's efforts for the same individuals. In an email on the same date, Auerbach responded that the Union was challenging the University's implementation of the remedy for Dr. Ogbaharya, Dr. Stovall and two other grievants. Auerbach also stated that the Union would be available for a hearing on January 16. Davis responded in an email dated November 3, 2017 that the University had provided the arbitrator with conclusive evidence that it had complied with the award and that it was unwilling to participate in any further hearings. (Comp. Ex. 67).

On November 14, 2017, the arbitrator sent the parties an email stating that it was apparent to him that there were several disagreements over the factual issues. The arbitrator stated that he had the authority under the NAA[3] Code of Ethics and AAA[4] Rules to direct a hearing and that he was doing so. He stated that the January 16 date he had previously offered was still available and asked the Union to let him know if that still worked for the Union. He also stated that he could be somewhat flexible if the University would attend and it was merely

[3] The NAA is the National Academy of Arbitrators.
[4] The AAA is the American Arbitration Association.

the date that would not work for the University. He asked the University to let him know its intentions. (Comp. Ex. 68).

Davis responded in an email dated November 17, 2017. Davis stated that it was the University's position that it had complied with the arbitrator's award. Davis also said that it was the University's position that any hearing would exceed the arbitrator's authority under Section 6.12 b. (1) of the collective bargaining agreement and that the IELRB had exclusive jurisdiction to resolve the Union's claim. Davis stated that the University objected to any hearing and did not waive any legal argument that the arbitrator did not have jurisdiction. Auerbach responded in an email on the same date stating that the arbitrator had ordered certain remedies and retained jurisdiction "to resolve any issues regarding the implementation of this Award." Auerbach stated that the Union was asking for a hearing for the arbitrator to resolve issues concerning the implementation of the award. (Comp. Ex. 69).

Later that same date, the arbitrator sent an email to the parties in which he granted the Union's request for a hearing over the implementation of the award. The arbitrator stated that the issue that the parties stipulated to was "Did the University violate the CBA when it laid off" the grievants and "Then if so, what is the remedy?" The arbitrator noted that he had retained jurisdiction to resolve any issues over the "implementation of the award." He stated that the issue the Union was raising was whether the University had implemented the award and that this was an issue that could not be resolved without a hearing. He stated that this was not a new issue, which he could not decide, but part of the original issue the parties authorized him to decide. The arbitrator set a hearing date of January 16, 2018. (Comp. Ex. 70).

The supplemental arbitration hearing took place on January 16. At the hearing, the arbitrator noted the University's position that the arbitrator's authority ended when he issued the

original award. Davis stated that it was the University's position that the issue must be decided by the IELRB. Auerbach responded on behalf of the Union that the issue was within the arbitrator's retained jurisdiction. (Comp. Ex. 83).

The arbitrator issued his supplemental award on March 5, 2018. The arbitrator concluded that the University did not make a good faith effort to redo its decision to lay off Dr. Ogbaharya. The arbitrator noted the testimony of Union grievance officer Dr. Richard Filipink (Dr. Filipink) that when he first spoke to Assistant Provost Dr. Russell Morgan (Dr. Morgan), the person to whom Interim Provost Neumann had delegated the task of complying with the award, Dr. Morgan did not realize that the award ordered him to redo the layoff decision. Dr. Filipink testified that Dr. Morgan told him a week later that the "the University was still looking for a justification for Dr. Ogbaharya's layoff." He also testified that Dr. Morgan told him he had no intention of bringing Dr. Ogbaharya back. Dr. Morgan denied making the last statement but admitted he might have said something like the first one. He testified that he meant that the University had already reviewed the decision and decided not to change the original decision, and what he meant to say was that the University had not yet put together the letter stating the basis for its decision.

The arbitrator stated that given the total time between when Dr. Filipink informed Dr. Morgan that the University had to do the review and when Dr. Morgan said the review was completed was one week, one must question what type of review the University undertook. The arbitrator noted that he had found a violation in the first award because the University had failed to consider Dr. Ogbaharya's total University time and found that it was not reasonable to conclude that the University did anything different this time. The arbitrator found that coupling that with Dr. Morgan's statements, the University did not in good faith comply with the original

award. The arbitrator stated that Dr. Ogbaharya should have been rehired and was entitled to be made whole until the University offered him reinstatement. (Comp. Ex. 86).

As to the remaining grievants, the arbitrator found that the Union must show that the University did not make a reasonable effort to look for openings and that there were open courses that a grievant could teach. Dr. Morgan testified that he distributed copies of the grievants' curricula vitae to the four Deans at a meeting in July 2017. He testified he asked the Deans to find out if there were any open courses the grievants could teach. The Deans were to collaborate with the Chairs of each Department in answering that question. The review was to be completed before the beginning of the Fall Semester on August 22. The University did not send the letters to the grievants until September 11. All the letters were virtually the same. They informed grievants:

> Your curriculum vita was provided to the academic deans....The deans and executive directors, in conjunction with the department chairs/directors, reviewed your curriculum vita to determine whether there were any open positions for which you were eligible. Unfortunately, no open positions were identified.

The Deans did not testify and there was no correspondence in the exhibits to indicate precisely what they did. (Comp. Ex. 86).

Dr. Filipink was in contact with Dr. Morgan throughout the process. Dr. Filipink was told that the Deans and Chairs would do a review. He contacted the Chairs in August and September to ask what they had done. He testified that none of the Chairs indicated that he or she was contacted as part of the review. The arbitrator accepted Dr. Filipink's testimony. He noted that the University had the opportunity to call the Chairs as witnesses to rebut this testimony but chose not to make them available for the hearing. (Comp. Ex. 86).

Dr. Morgan said he asked the Deans to see if there were any open positions. He did not tell them they should look to see if there was any part-time employment or work "in more than

one unit" available as specified in Section 24.4 of the collective bargaining agreement. Dr. Morgan told Dr. Filipink he doubted there would be any positions for the grievants. (Comp. Ex. 86).

The arbitrator concluded that the University did not make a "reasonable effort," as it was required to do. He found that the Chairs, who would be in a perfect position to know what was available because they were the ones who assigned classes, were not even contacted. (Comp. Ex. 86).

In considering whether there were courses the grievants could have taught, the arbitrator reasoned that while the University was not required to displace another employee to provide work for any of the grievants, it could not take steps not usually taken to avoid providing them work. The arbitrator decided that because Dr. Stovall was qualified to teach Spanish in the Foreign Language Department and English in the Liberal Arts and Science Department, he would examine whether there were courses she should have been offered either as a part-time employee or in multiple Departments. The arbitrator found that there was unrefuted testimony that Unit B faculty normally teach three courses in the Fall and four courses in the Spring. The arbitrator found that two Unit B teachers taught four courses in the Fall, and one of the four courses each of them taught would have been an open course under normal circumstances. Dr. Stovall also testified that Spanish 325 was currently being taught by a Unit B faculty member, and that the Higher Learning Guidelines stated that the current teacher was not qualified to teach that course. The arbitrator found that this testimony was also unrefuted, and that the Dean was

not allowed to testify. The arbitrator determined that the courses were in different Departments but fell within the scope of Section 24.4. (Comp. Ex. 86).[5]

The arbitrator concluded that the University did not comply with the requirements of Section 24.4 as to Dr. Stovall. He concluded that the University did not make a reasonable effort "to locate other equivalent employment" for Dr. Stovall and that such equivalent employment existed. Therefore, the University failed to implement the original award. The arbitrator directed that Dr. Stovall be made whole for the Fall 2017 Semester and that she be afforded the opportunity to teach in the Spring Semester and the 2018-2019 school year. The arbitrator again retained jurisdiction to resolve any questions concerning the implementation of the supplemental award. (Comp. Ex. 86).

The University did not offer Dr. Ogbharya reinstatement and did not make him whole for the 2017-2018 school year, until he is offered reinstatement. The University also did not make Dr. Stovall whole for the Fall 2017 Semester. (ALJ Ex. 11).

On March 29, 2018, Auerbach sent an email to the arbitrator on behalf of the Union requesting that he issue a second supplemental award finding that the University should have offered Dr. Stovall work for the Spring 2018 Semester and made her whole for that Semester. Auerbach also requested on behalf of the Union that the arbitrator find that there were unassigned courses for the Fall Semester of 2018 which Dr. Stovall was qualified to teach and that the University should offer those courses to her or in the alternative, make her whole. (Comp. Ex. 87).

In an email dated March 30, 2018, the arbitrator offered the University an opportunity to respond to the Union's request. Davis responded in an email dated April 6, 2018 that the

[5] The arbitrator was not persuaded by the Union's argument concerning courses graduate students were teaching. (Comp. Ex. 86).

University disputed the Union's facts. Davis also stated that the matter was pending before the IELRB, which had exclusive jurisdiction, and that any ruling by the IELRB would render the Union's request moot.[6] Auerbach responded in an email on the same date that the Union's position was that the arbitrator retained jurisdiction in the original award and in the supplemental award to rule on the issues the Union had raised in its March 29 email. On the same date, the arbitrator sent an email to the parties stating that the best course was for him to let the IELRB rule on the unfair labor practice charge and that if the IELRB found that he had jurisdiction, he would rule on the merits. (Comp. Ex. 88).

III. DISCUSSION

Section 14(a)(8) of the Act prohibits educational employers from "[r]efusing to comply with the provisions of a binding arbitration award. *Central Community Unit School District No. 4 v. IELRB*, 388 Ill.App.3d 1060, 904 N.E.2d 640 (4th Dist. 2009); *Board of Education of Danville Community Consolidated School District No. 118 v. IELRB*, 175 Ill.App.3d 347, 529 N.E.2d 1110 (4th Dist. 1988). In this case, the issues are to whether the University violated Section 14(a)(8) with respect to both the supplemental arbitration award and the original arbitration award.

There are three factors to consider in determining whether an employer has violated Section 14(a)(8): (1) whether the arbitration is binding, (2) what is the content of the award, and (3) whether the employer has complied with the award: *Central*; *Danville*. Here, there is no dispute as to the content of either the supplemental or the original arbitration award. The University admits that it did not comply with the supplemental arbitration award but argues that

[6] As noted above, the Union filed an unfair labor practice charge on January 2, 2018 alleging that the University had not complied with the July 16, 2017 arbitration award and filed an amended charge on March 8, 2018 alleging that the University had not complied with the March 8, 2018 supplemental award, as well as the original award. (ALJ Exs. 1, 2).

the supplemental award is not binding. The University does not claim that the original award is not binding but argues that it complied with that award.

"[R]eview of an arbitration award is extremely limited," *Griggsville-Perry*, 2013 IL 113721, 984 N.E.2d at 444, *quoting AFSCME*, 124 Ill.2d at 254, 529 N.E.2d at 537, *citing Board of Education v. Chicago Teachers Union*, 86 Ill.2d 469, 427 N.E.2d 1199 (1981) and *E.I. DuPont de Nemours v. Grasselli Employees Independent Association of East Chicago,, Inc.*, 790 F.2d 611, 614 (7th Cir. 1986). "A court must construe an arbitration award, if possible, as valid," *AFSCME*, 124 Ill.2d at 254, 529 N.E.2d at 537, *citing Board of Education*, 86 Ill.2d at 477, 427 N.E.2d at 1202, and *Garver v. Ferguson*, 76 Ill.2d 1, 10-11, 389 N.E.2d 1181, 1184 (1979). The University argues that the supplemental award is not binding because the arbitrator did not have the authority to determine whether it complied with the original award.

Arbitrators' authority to retain jurisdiction over the implementation of an award has been widely upheld. The Illinois Supreme Court has recognized that the General Assembly used the experience in Pennsylvania as a model in creating the Act, and thus, the Pennsylvania courts' interpretation of the Pennsylvania statute is relevant to the interpretation of the Act. *Central City Education Association v. IELRB*, 149 Ill.2d 496, 599 N.E.2d 892 (1992), *citing Decatur Board of Education v. IELRB*, 180 Ill.App.3d 770, 536 N.E.2d 743 (4th Dist. 1989). In *West Pottsgrove Township v. West Pottsgrove Police Officers' Ass'n*, 791 A.2d 452 (Pa. Commw. 2002) and in *Greater Latrobe School District v. Pennsylvania Education Ass'n*, 615 A.2d 999 (Pa. Commw. 1991), the court upheld the arbitrator's retention of jurisdiction. The court found that retention of jurisdiction by the arbitrator is a procedural matter for the arbitrator to decide.

The federal courts similarly upheld an arbitrator's retention of jurisdiction in *Kroger Co. v. United Food & Commercial Workers Union Local 876*, 284 Fed.Appx. 233 (6th Cir. 2008);

SBC Advanced Solutions, Inc. v. Communication Workers of America, District 6, 44 F.Supp.3d 914 (E.D. Mo. 2014); and *Case-Hoyt Corp. v. Graphic Communications International Union Local 503*, 5 F.Supp.2d 154 (W.D.N.Y. 1998). In *Case-Hoyt*, where the arbitrator had retained jurisdiction to resolve any and all issues regarding the remedy, the court determined that it did not have *de novo* authority to resolve the parties' disputes concerning the implementation of the remedy and these disputes must initially be taken up with the arbitrator.

The court noted in *SBC Advanced Solutions*, *citing* Elkouri & Elkouri, *How Arbitration Works* 145 (Kenneth May ed., 6th ed. Cumm. Supp. 2010), that arbitrators commonly retain jurisdiction to resolve issues related to the implementation of remedies they have ordered, both at the request of the parties and *sua sponte*. A later edition of *How Arbitration Works* similarly notes that arbitrators commonly retain jurisdiction so that their awards are properly carried out and that disagreements about the awards can be resolved. Elkouri & Elkouri, *How Arbitration Works*, 7-50 (Kenneth May, ed., 8th ed. 2016). *How Arbitration Works* quotes an arbitrator as stating that " 'in virtually all cases of grievance arbitration where a remedy is called for, labor arbitrators ought to routinely retain jurisdiction of the award solely for the purpose of resolving any disputes among the parties regarding the meaning, application and implementation of that remedy,' " *How Arbitration Works* at 7-50, *quoting* Dunsford, *The Case for Retention of Remedial Jurisdiction*, 31 GA. L. Rev. 201, 204 (1996). This arbitrator further stated that this retention of jurisdiction would be *sua sponte* and is not dependent on the parties' agreement. *Id.* Part 6, Section E of the *Code of Professional Responsibility for Arbitrators of Labor-Management Disputes* was amended in 2007 to provide that an arbitrator may retain jurisdiction to resolve any question over the application or interpretation of a remedy, even if a party objects. *How Arbitration Works* at 7-51.

An arbitrator's retention of jurisdiction over the implementation of the remedy has also been upheld In Illinois. In *Hollister Inc. v. Abbott Laboratories*, 170 Ill.App.3d 1051, 524 N.E.2d 1035 (1st Dist. 1988), the court found that absent any express limitation, an arbitrator may retain jurisdiction to resolve a dispute growing out of the remedy. Here, as discussed below, there is no express limitation in the collective bargaining agreement preventing the arbitrator from determining whether the University implemented the original award.

The University claims the arbitrator did not have the authority to issue the supplemental award for two reasons: (1) the issue of whether the University complied with the original award is within the exclusive primary jurisdiction of the IELRB, and (2) the issue of whether the University complied with the original award was beyond the arbitrator's authority under the collective bargaining agreement.

In *Board of Education of Community School District No. 1 v. Compton*, 123 Ill.2d 216, 526 N.E.2d 149 (1988), the Illinois Supreme Court found that educational labor arbitration disputes are within the exclusive primary jurisdiction of the IELRB rather than the circuit courts. Thus, the IELRB rather than the circuit courts has exclusive primary jurisdiction over the issue of whether the University complied with the original award. *See also Chicago Board of Education v. Chicago Teachers Union*, 142 Ill.App..3d 527, 491 N.E.2d 1259 (1st Dist. 1986) (court must defer to IELRB upon IELRB's consideration of whether failure to comply with arbitration award unfair labor practice).

However, the fact that the IELRB rather than the courts initially determines whether an employer has complied with an arbitration award does not mean that an arbitrator may not retain jurisdiction over the implementation of his or her award. The authority of arbitrators to retain jurisdiction over the implementation of the remedies they have ordered has been upheld in the

private sector although the role of the federal courts in reviewing arbitration awards in the private sector under Section 301 of the National Labor Relations Act, 29 U.S.C. §185, is similar to the role of the IELRB in reviewing arbitration awards in the Illinois educational public sector. Similarly, the court in *Hollister* upheld the authority of arbitrators to retain jurisdiction to resolve disputes growing out of the remedy although review of arbitration awards was within the jurisdiction of the courts under the Uniform Arbitration Act, 710 ILCS 5/1 *et seq.* Thus, the fact that the IELRB has exclusive primary jurisdiction over whether an employer has complied with an arbitration award does not mean that the arbitrator could not retain jurisdiction over the implementation of the remedy.

The supplemental award was also within the arbitrator's contractual authority. The University's argument that the arbitrator did not have the contractual authority to issue the supplemental award is based on the provision in the collective bargaining agreement that "arbitration shall be confined solely to...the precise issue(s) submitted to arbitration" and that "[t]he arbitrator shall have no authority to determine any other issues." However, the arbitrator's supplemental award concerning the implementation of the remedy in the original award did not involve a new issue, but part of one of the issues the parties originally agreed to arbitrate, that is, what should the remedy be.

In *Hollister*, the court stated that when a dispute arises under an agreement providing that any and all disputes under the agreement shall be submitted to arbitration, the arbitrator is empowered to make an award that will fully settle the dispute. 170 Ill.App.3d at 1060, 524 N.E.2d at 1040-41. In this case, the collective bargaining agreement provides that "[a]ll provisions of this Agreement" are subject to the contractual grievance and arbitration procedure,

with certain exceptions not applicable here.[7] The court also stated in *Hollister* that when the parties agree to submit a dispute to arbitration, it is presumed (1) that the parties intended that all matters in dispute be decided; (2) that in the absence of an express reservation, that the parties agreed that everything, both as to law and fact, which is necessary to resolve the dispute is within the authority of the arbitrator; and (3) the arbitrator did not exceed his or her authority. 170 Ill.App.3d at 1060-61, 524 N.E.2d at 1041. And in this case, as in *SBC Advanced Solutions*, 44 F.Supp.3d at 925, the arbitrator's "retained jurisdiction allow[ed] him to resolve the question of the appropriate remedy, the outcome for which the parties bargained."

In addition, the collective bargaining agreement incorporates the rules of the American Arbitration Association. As of the date of the supplemental arbitration and the supplemental award, Section 3.a. of those rules provided: "The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the exercise, scope, or validity of the arbitration agreement." Thus, the parties agreed that the arbitrator would have the authority to determine whether he had jurisdiction over the implementation of the remedy. And, although the Union requested during the original arbitration hearing that the arbitrator "retain jurisdiction to resolve any disputes with respect to the implementation of the remedy," the University did not object to the arbitrator's retention of jurisdiction either during the original arbitration hearing or in the brief it filed after that hearing.

For these reasons, we find that the supplemental award is binding. It did not infringe on the authority of the IELRB or exceed the arbitrator's contractual authority. Because the

[7] In particular, the provision in the collective bargaining agreement prohibiting an arbitrator from substituting her/his judgment for an academic judgment of an administrator contains an exception for where the arbitrator is determining whether or not that decision violated the agreement.

University admittedly did not comply with the supplemental award, it violated Section 14(a)(8) and, derivatively, Section 14(a)(1) of the Act by that conduct.[8]

The University also violated Section 14(a)(8) and, derivatively, Section 14(a)(1) of the Act by failing to comply with the original award. The University does not claim that the original award is not binding. The arbitrator found that the University did not comply with the original award as to Dr. Ogbaharya or Dr. Stovall, and the arbitrator's findings of fact support a conclusion that the University did not comply with the original award as to those two grievants. As noted above, we may not consider matters beyond the arbitrator's findings.

Accordingly, we conclude that the University violated Sections 14(a)(8) and (1) by failing to comply with both arbitration awards.

IV. ORDER

IT IS HEREBY ORDERED that Western Illinois University:

1. Cease and desist from:
   (a) Refusing to comply with the July 6, 2017 and March 5, 2018 arbitration awards in grievance number 17-50438; and
   (b) In any like or related manner, interfering with, restraining or coercing employees in the exercise of rights guaranteed under the Act.
2. Immediately take the following affirmative action to effectuate the policies of the Act:
   (a) Immediately comply with the July 6, 2017 and March 5, 2018 arbitration awards in grievance number 17-50438;

[8] For the same reasons, the issues raised in the Union's request for a second supplemental award are properly before the arbitrator.

(b) Post at all places where notices to employees are regularly posted copies of the attached Notice to Employees.[9] This Notice shall be signed by the University's authorized representative and maintained for sixty (60) consecutive days during which the majority of employees are working. The University shall take reasonable steps to ensure that said Notices are not altered, defaced, or covered by any other materials; and

(c) Notify the Executive Director in writing within thirty-five (35) calendar days after receipt of this Opinion and Order of the steps taken to comply with it.

V. RIGHT TO APPEAL

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the Appellate Court of the judicial district in which the IELRB maintains an office (Chicago or Springfield). Petitions for review of this Order must be filed within 35 days from the date the Order issued, which is set forth below. 115 ILCS 5/16(a). The IELRB does not have a rule requiring any motion or request for reconsideration.

Decided: February 21, 2019
Issued: February 21, 2019
Chicago, Illinois

/s/ Andrea Waintroob
Andrea Waintroob, Chairman

[9] Pursuant to Section 1120.50(c) of the IELRB's Rules, 80 Ill. Adm. Code 50(c), notice may be posted physically or by other means similarly calculated to provide proper notice.

/s/ Judy Biggert
Judy Biggert, Member

/s/ Gilbert O'Brien
Gilbert O'Brien, Member

/s/ Lynne O. Sered
Lynne O. Sered, Member

/s/ Lara Shayne
Lara Shayne, Member

Illinois Educational Labor Relations Board
160 N. LaSalle Street, Suite N-400
Chicago, Illinois 60601-3103
Telephone: 312/793-3170

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE STATE OF ILLIOIS

After a hearing in which all parties had the opportunity to present their evidence, the Illinois Educational Labor Relations Board found that Respondent, Western Illinois University, violated the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq. (2016), as amended, and ordered us to post this notice. This notice must be posted pursuant to the opinion and order by the Illinois Educational Labor Relations Board in Western Illinois University/University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO, Case No. 2018-CA-0045-C.

We hereby notify our employees that

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of their rights guaranteed under the Act.

WE WILL immediately comply with the July 6, 2017 and March 5, 2018 arbitration awards in grievance number 17-50438.

This notice will remain posted for 60 consecutive days at all places where notices to employees are regularly posted.

Date of Posting:_____
Western Illinois University

By:_____
as agent for Western Illinois University

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
This notice must be posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Chicago or Springfield office listed below.

ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

160 North LaSalle Street Suite N-400 Chicago, Illinois 60601 312.793.3170	One Natural Resources Way Springfield, Illinois 62702 217.782.9068

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO,	)	
Complainant,	)	
and	)	Case No. 2018-CA-0045-C
Western Illinois University,	)	
Respondent.	)	

CERTIFICATE OF SERVICE

On February 21, 2019, I, an attorney, served the Opinion and Order of the Illinois Educational Labor Relations Board in this case by email on the above-named parties at the following addresses:

Roy Davis, for the Respondent
rgdavis@dcamplaw.com

Melissa Auerbach, for the Complainant
mauerbach@laboradvocates.com

Susan J. Willenborg
General Counsel

IN THE MATTER OF THE ARBITRATION

WESTERN ILLINOIS UNIVERSITY

and

FMCS-17-50483
LAYOFFS

UNIVERSITY PROFESSIONALS OF
ILLINOIS, IFT, AFT LOCAL 4100

Appearances:

For the Federation: Melissa J. Auerbach, Esq.
Dowd, Bloch, et. al.

For the University: Roy G. Davis, Esq.
Davis & Campbell, L.L.C.

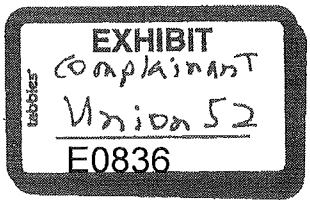
DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Federal Mediation and Conciliation Service. Hearings were held in the above matter on April 24 and 25, 2017 in Macomb, Illinois. The parties were given the full opportunity to present testimony and evidence. At the close of the hearing, the parties elected to file post hearing briefs. The Arbitrator has considered the testimony, exhibits and arguments of the Parties in reaching his decision.

ISSUE

The parties agree on the following issues:

> Did the University violate the Parties Collective Bargaining Agreement when it laid off Andres Hijar, Julie Lawless, Sherry Lindquist, Daniel Ogbaharya, Joann Sellen, Holly Stovall, Alyssa Anderson, Jason Braun, Wenhong Teel or Robert Johnson? If so, what is the appropriate remedy?



BACKGROUND

Western Illinois University, hereinafter referred to as the University has two campuses. One is in Macomb, Illinois and the other is in the Quad Cities. The University was originally established in 1899 by the Illinois Legislature. The University Professionals of Illinois, Local 4100 of the AFT, hereinafter referred to as the Union, represents the Faculty and Support Staff. The Agreement in effect when the grievance arose covered the 2010- 2015 school year, but was extended and is still in effect.

There are two groups covered by the Collective Bargaining Agreement. Unit A consists of faculty who are in tenured track positions. It takes seven years to attain tenure, but those faculty who are in positions that can become tenured are in Unit A. Unit B consists of Academic Support Professionals and Associate Faculty. An Associate Faculty member is an employee who was originally hired as a temporary employee and has worked for at least a year when working full time or after two years if working half-time or greater.

The number of students enrolled in the University has declined over the years. At its peak, it had 11,934 students. Its current enrollment is 8934. The University because of the decline looked at each Department to determine if there should be layoffs. At the time that this review was taking place, it also was uncertain what funds it would receive from the State Legislature. The University's source of funds comes from tuition and State funding. Katherine Neuman is the Acting Provost. She reports to the University President, Jack Thomas. Provost Neuman met with the four vice-presidents to determine what cuts, if any, needed to be made.

President Thomas on December 7, 2015 announced there would be layoffs. The next day he listed the names of 42 employees who could potentially be laid off. Article 24 of the Agreement covers layoffs of Unit A employees and Article 40 addresses layoffs for Unit B employees. Those Articles provide in pertinent part:

> Article 24, Staff Reduction Procedures, Unit A:
>
> 24.1. An employee may be laid off as a result of demonstrable financial exigency or demonstrable enrollment reduction, or as a result of modification of curriculum or program instituted through established program review procedures. If financial exigency is asserted as the basis for a layoff, the financial exigency must be demonstrated to be University-wide.
>
> 24.2. If the Board decides it is necessary to lay off employees according to this Article, the factors which will be considered are length of full-time service at the University, including approved leaves; length of full-time service in the department, including approved leaves; educational qualifications; professional training; and professional experiences. The layoff of employees shall be in the order listed below:
>
> a. Temporary full- and part-time faculty
> b. Associate Faculty
> c. Full-time employees on probationary appointment (without tenure)
> d. Tenured employees
>
> 24.4. The University shall make a reasonable effort to locate other equivalent employment within the University for a laid-off employee prior to the effective date of her/his layoff. The results of such effort shall be made known to the person affected. The effort to locate other equivalent employment shall include a review of the possibility of an assignment with duties in more than one unit, part-time employment, transfer to another unit or position pursuant to Article 25, or retraining pursuant to Article 27.3.
>
> 24.7.a. Prior to the effective date of her/his layoff, an employee given notice of layoff may request a meeting with the Academic Vice President to establish (1) the description of the employee's position at the time her/he was given notice of layoff and (2) the areas of bargaining unit employment for which the employee is qualified on the basis of training or experience.

Article 40, Staff Reduction Procedures, Unit B

40.1. An employee may be laid off as a result of demonstrable financial exigency or demonstrable enrollment reduction, or as a result of modification of curriculum or program instituted through established program review procedures. If financial exigency is asserted as the basis for a layoff, the financial exigency must be demonstrated to be University-wide.

40.2. If the Board decides it is necessary to lay off employees according to this Article, the factors which will be considered are length of full-time service at the University, including approved leaves; length of full-time service in the department/unit, including approved leaves; educational qualifications; professional training; and professional experiences. The layoff of employees shall be in the order listed below:
a. Temporary employees
b. Employees based on seniority for Academic Support Professionals, seniority within the roster for Associate Faculty, and program need

40.3. The University shall make a reasonable effort to locate other equivalent employment within the University for a laid-off employee prior to the effective date of her/his layoff. The results of such effort shall be made known to the person affected. The effort to locate other equivalent employment shall include a review of the possibility of an assignment with duties in more than one unit, part-time employment, transfer to another unit or position pursuant to Article 36, or retraining pursuant to Article 41.

40.6.a. Prior to the effective date of her/his layoff, an employee given notice of layoff may request a meeting with the Academic Vice President to establish (1) the description of the employee's position at the time her/he was given notice of layoff and (2) the areas of bargaining unit employment for which the employee is qualified on the basis of training or experience.

The University at the time the layoffs were originally announced had not yet obtained approval from the Board of Trustees. Only the Board according to the two contract articles can approve layoffs. The University indicated it had told employees when the original announcement was made the decision was subject to Board approval. The Union maintains it was not until it pointed out to the University the requirement under the Agreement for Board approval that approval was sought. The University did suspend the layoffs until the Board of

Trustees could act. The Board approved the layoffs at a meeting in January of 2016. Each layoff notice, stated the reason for the layoff was the result of a "demonstrable enrollment reduction" It was not based on "financial exigency."

The University during the interim reduced the number of employees to be laid off to 19. It removed from the list any teacher who had attained tenure. Three employees who were to be laid off found other positions within the University and were not laid off. Of the remaining 16, 10 of those employees grieved the decision to lay them off. Seven of the ten were laid off in the Spring of 2016. Sherry Lundquist and Holly Duval were in their last year before attaining tenure. They were subsequently granted tenure. They were entitled to one-year notice before being laid off. Consequently, they were not laid off until the end of the spring semester in 2017. Robert Johnson given his length of service was entitled to nine-month notice. His layoff was effective December 1, 2016.

All the Grievants subsequent to their layoff received an e-mail from the University listing all current vacancies at the University. These e-mails were not limited to those laid off. It was a general notice to anyone interested in employment with the University. The Grievants did not first receive these e-mails until after their layoff date.

DISCUSSION

There are as noted ten Grievants. Each one is in a different department, but the factors to be used to determine who to layoff for all of them is the same. Per the Agreement, the five factors are the length of service at the University, length of service in the Department where they work, educational qualifications, professional experience, and professional training. The University correctly

points out that none of the factors is to be given priority over any other factor. Each factor must be given equal consideration when deciding who should be laid off. The Union contends the University failed to consider all the factors listed such as length of service at the University and then considered factors not listed in the Section, such as evaluating a program within a Department rather than looking only departmental-wide as the Section provides. To evaluate that claim, the Arbitrator must discuss each Grievant separately and consider whether the University considered all the factors prior to deciding to lay that Grievant off. However, prior to doing that evaluation, there are two issues raised by the University and one by the Union that must be addressed.

The Union has argued the layoffs are invalid because they were announced prior to the Board acting on them. The original notices were sent in December. That is one month prior to the Board meeting approving layoffs. The Union argues the University never "remedied its initial contract violation." Had the University gone forward with the layoffs originally announced, the Union would be correct. The University did not do that. In fact, it changed the number of layoffs and took off the list all tenured teachers. The initial announcement caused no harm to anyone since the actual layoffs were done in accordance with the Board's Decision. Thus, this technical violation does not defeat the subsequent action of the Board or the University officials. Whether the decision was in accordance with other Sections of the Agreement will be discussed later, but this failure has no impact on the outcome in this matter.

The University has cited Article 6 of the Agreement and argues this Section limits the role of the Arbitrator. That Article provides in relevant part:

b. Authority of the Arbitrator

> (2) Where an administrator has made an academic judgment-for example, a judgment concerning application of evaluation criteria in decisions on retention, promotion, or tenure, or a judgment concerning the academic acceptability of a sabbatical proposal-the arbitrator shall not substitute her/his judgement for that of the administrator. The arbitrator shall not review the academic decision except for the purpose of determining whether or not that decision has violated this Agreement. If the arbitrator determines that the Agreement has been violated, the arbitrator shall direct the University to take appropriate action. An arbitrator may award back salary where the arbitrator determines that the employee is not receiving the appropriate salary from the University, but the arbitrator may not award other monetary damages or penalties. If notice that further employment will not be offered is not given on time, the arbitrator may direct the University to renew the appointment only upon a finding that no other remedy is adequate and that the notice was given so late that (a) the employee was deprived of reasonable opportunity to seek other employment or (b) the employee actually rejected an offer of comparable employment which the employee otherwise would have accepted. An arbitrator's decision awarding employment beyond the sixth year shall not entitle the employee to tenure. In such case, the employee shall serve one additional academic year without further right to notice that the employee will not be offered employment.

The University argues it evaluated the factors and determined whom should be laid off. It contends the Arbitrator should reject the Union contention that the University's "evaluation was flawed." It argues the above Section "prevents the Arbitrator from substituting his judgment for that of the Acting Provost and Academic Vice President."

The Section cited does put limitations on an Arbitrator in certain situations. However, the Section has a caveat. The limitation applies "except for the purpose of determining whether that decision has violated this Agreement." The Union alleges Articles 24 and 40 were violated in that all five factors were not considered and other factors were. This is not a question of second guessing the University, but whether it did what it was required to do when making its decisions. The Arbitrator is free to determine whether the University complied with its

obligations under the relevant Articles to consider and only consider the five listed factors when it made the decision. If he finds it did not, 6(b) does not preclude the Arbitrator from making such a finding and issuing a remedy. This argument is rejected.

The University next argues the Union constantly refers to seniority as a factor while the Agreement only mentions length of service. It says there is a difference and any discussion regarding seniority by the Union should be disregarded. The Arbitrator finds this is a distinction without a difference. If one looks at the definition of seniority it is defined as length of service. It can be length of service for the employer or length of service in a job or by department. There are different types of seniority but the one thing each has in common is the yardstick is always length of service.

There is one final issue to address before discussing the individual Grievants. The Union throughout has alleged a violation of Section 24.4 and its counterpart 40.3. The University points out that pursuant to 24.7(a) and 40.6(a) the Provost or Academic Vice-President prior to a layoff met with any individual who requested a meeting. It contends this is compliance. The Provost did meet, with one exception that will be discussed later, anyone who asked. That complies with 24.7. 24.4 has an independent requirement. The University is to try to find another position for the employee. Each Sections sets forth a separate requirement. Compliance with the requirements of one section is not compliance with the other. The Union is not wrong in that regard. The Arbitrator now turns to the individual Grievants.

Andres Hijar

Mr. Hijar was an Associate Professor in the History Department. It was a tenured track position so he was in Unit A. He was laid off after the Spring semester of 2016. He also had a degree in Law Enforcement, although he did not teach that subject at the University.

The number of students who majored in History in 2010 was 207. In the 2015-16 it was 109. The student credit hours dropped from 3515 to 2433. The faculty to student ratio went from 16.74 to 12.48. There was a clear reduction in students in this Department. There were nine faculty teaching in the Department. Mr. Hijar was the lowest in seniority when he was laid off. Length of Service is only one factor. The individual's qualifications, training and experience are the other factors to be considered. There is no evidence Mr. Hijar had any unique qualifications or experience that would warrant his retention over more senior faculty. The Arbitrator finds no violation in the decision to lay him off.

The Union also alleges the University violated Section 24.4 of the Agreement. It argues the University failed to "make a reasonable effort to locate other equivalent employment within the University... prior to the effective date of the layoff." The Union maintains Mr. Hijar was qualified to work in Law Enforcement and the University failed to make any effort to place him there. Unlike other Departments, Law Enforcement has grown. In 2010 there were 1423 student enrolled. In 2015-16 it had grown to 1586 students. There are five teachers in that Department who are part-time. Provost Neuman stated she did discuss with Mr. Hijar his credentials in Law Enforcement but did not know if he applied.

There is no indication she made any contact herself with Law Enforcement or any other Department before the effective date of the layoff as required by Section 24.4. That is a violation. As a remedy for that failure, the University prior to the start of the 2017-18 School Year shall "make a reasonable effort" to see if Grievant can be placed in that Department if he possesses the skills needed to teach the courses currently being taught by the part-time faculty or to look for other vacant positions where he would be qualified to work and to report back to him with the results.

Julie Lawless

Ms. Lawless is in a tenured track position in the Geography Department. She has a PHD in Geography. Her employment began on August 16, 2012. She taught Geography and Planning courses prior to her layoff. She was laid off after the 2016 Semester. Ms. Lawless testified that her 100 and 200 level classes were always filled.

The number of students enrolled in the program in 2010 was 88. In 2015-16 it went down to 50 students. The student credit hours went from 3923 to 2377. The faculty to student ratio was 23.78 and in 2015 it was 15.85. There has been a demonstrable enrollment reduction that justified a layoff in that Department. There are 11 teachers in the Department and Ms. Lawless has the shortest length of service. There was one part-time faculty at 25% of a full schedule.

The Union has not argued the decision to select Ms. Lawless for layoff was incorrect. The thrust of their argument is Ms. Lawless was qualified to teach courses in other Departments, but the University did not explore those possibilities prior to her layoff. Ms. Lawless testified she reviewed the course catalogue and was qualified to teach at the Rural Institute as Geography was

part of the curriculum there. She did not know how her qualifications compared with those currently teaching there. Ms. Lawless did say she contacted Provost Neuman's office to set up an appointment to meet with her, but was not called back. Provost Neuman at the hearing apologized and said she never received the message. She did meet with any faculty member that requested a meeting so there is no reason to conclude this was intentional. The Provost cannot be faulted for failing to meet with Ms. Lawless. She did not violate 24.7(a) of the Agreement by not meeting.

The only question, once again, is whether the University made sufficient effort to find "equivalent employment" for Ms. Lawless prior to the date of her layoff. The only place mentioned by Ms. Lawless was the Rural Institute and there is no evidence as to what those courses entail and even whether there was any place for her there. While the University did not do what was required, the Arbitrator finds regarding this Grievant there shall be no remedy for that violation. If at any time, there are layoffs again, the University must be more diligent in ensuring it has complied with Section 24.4 of the Agreement, but this Grievant was not harmed by that failure. There is no evidence it would have been fruitful.

Daniel Ogbahara

He was employed as an Assistant Professor in the Political Science Department in a tenured track position. He began in that position on August 21, 2013. He started teaching at the University on August 21, 2008. He was in Unit B at that time. He took a year off in 2011-12.

The number of students enrolled in the Political Science Department in 2010 was 143 and in 2015-16 it was 90. The student credit hours went from 3036 to 2375. The faculty to student ratio was 16.87 and went to 14.39. That was a

substantial decrease in enrollment. There were 11 fulltime faculty. Mr. Ogbahara had the least time in the Department. There were, however, three faculty members who had less time at the University than he did. His start date adjusted for the year he did not work is August 2009. That is three years longer than one of the three retained and one year longer than the other two. Mr. Ogbahayra testified he was qualified to teach the courses currently being taught by two of the three faculty members with less time at the University.

The criteria that must be reviewed by the University is not just time within a Department, but also time with the University. The University did not look at overall length of service only time in the Department. The University has argued that in some cases a faculty member could have started in a non-related position to the employee's current position and that considering the total time would not be fair. The problem with that argument is that the contract requires the University to consider both factors. If it wants to change that requirement it must do so in negotiations. It is not free to disregard a factor that it is contractually required to consider, which is what it did.

In this case, there has been no argument made by the University that his qualifications or training versus those retained was a factor that was utilized to determine whom to layoff. Its decision was based solely on picking the individual with the least time in the Department. The University is correct that none of the factors is to be given greater weight than any other factor, but that does not mean the University is free to ignore a factor and that is what it did. It did not give any weight or consideration to Mr. Ogbahara's total time with the University and that is a violation of the Agreement. The University is directed to consider this factor prior to the start of the next school year. His three years of longer

service than one of the three retained is significant and the failure to consider that harmed Mr. Ogbahara. For that reason, Mr. Ogbahara is entitled to back pay for school year 2016-17 less any interim earnings he may have had. The University must also prior to the start of the 2017-18 year reevaluate its decision to layoff Mr. Ogbahara. In doing so, it must consider all factors listed, including length of service with the University giving no greater or lesser weight to one factor over another. The Union has also alleged violation of Section 24.4. Given the findings here, it is not necessary for the Arbitrator to rule on this issue. However, if Mr. Ogbahara is still to be laid off, which should be explained if that occurs, the University must comply with the requirements of 24.4 before doing so and reporting back to him on the results as required.

Jason Braun

Mr. Braun was an Instructor in the English Department. He was in Unit B. He began with the University on August 15, 2013. He possesses a Master's Degree in English. He taught courses in the 100 and 200 level. He stated his courses were almost always full. He also stated he was qualified to teach reading and entry level courses in the Education Department.

The enrollment in the English Department in 2010 was 233 and in 2015-16 it was 114.[1] That is a substantial decrease. The University laid off four instructors including Mr. Braun in the Spring of 2016. The four laid off had the least time with the University and in the Department. There is no issue concerning the decision to layoff Mr. Braun.

[1] There is no information regarding student credit hours or faculty to student ratio from 2011 to 15.

The Union alleges a violation of 40.3. It maintains the University made no effort to find other employment for him. Again, that is true. The Arbitrator as a remedy as he did for Mr. Hijar directs the University prior to the start of the 2017-18 School Year to "make a reasonable effort" to see if Grievant can be placed in the Education Department or any other Department to which he possesses the skills to teach any courses currently scheduled to be taught, but unfilled in the Department(s). They are then to report back to him with the results of that effort.

Alyssa Anderson

Ms. Anderson was an instructor in the Sociology Department. She had been employed since August 16, 2013. She was laid off in the Spring of 2016. She had taught Introduction to Sociology and a class on the American Family. As an instructor, she was in Unit B.

The enrollment in the Sociology Department in 2010 was 120 and it dropped to 77 in 2015-2016. This represents a 25% reduction in credit hours, which is a demonstrable reduction. There are 17 tenured teachers in the Department. As a Unit B member, she is to be laid off before teachers in Unit A. There are teachers in the Department who began after she did, but they are in Unit A. Thus, her layoff was proper.

Ms. Anderson did not indicate any other areas for which she contends she is qualified to teach. Like several others already discussed, no attempt was made to find other positions for her prior to the layoff. However, given her position as a Unit B member coupled with no information from her as to where else she could have worked, the Arbitrator does not find in this case that the review he has required in other cases is applicable here. There was a violation, but there

is no remedy awarded for this violation, except to once again admonish the University to follow the Agreement should there be other layoffs in the future.

Wenghong Teel

Ms. Teel worked in the Foreign Languages Department teaching Chinese and Japanese. She was hired October 1, 2005 as an Instructor. She was in Unit B. She was laid off in the Spring of 2016.

The enrollment in the Foreign Language Department dropped from 47 to 27 between 2010 and 2015-6. The student credit hours went from 1901 to 1524. The faculty to student ratio was 12.67, but went up to 12.7. The courses in Japanese and Chinese had fewer students than classes in other languages being taught, such as Spanish. However, the number of students enrolled in Chinese and Japanese remained somewhat constant. Ms. Teel testified the lower level courses in Japanese had enrollment of approximately 20 students and 3-6 students attended higher level courses. It was about 15 in the lower and 5 in the higher courses in Chinese.

There was one instructor whose length of service was less than Ms. Teel. He taught Spanish and there was a second faculty member as an adjunct and not in the bargaining unit. Kelley Quinn was the Spanish Teacher and he was originally slated for layoff, but the layoff was subsequently rescinded. The Union contends that individual should have been laid off instead of Teel because of his shorter length of service. The University discontinued teaching courses in Japanese and Chinese after Mr. Teel's layoff. It maintains 110 ILCS 690/35-1 gives the Board of Trustees sole authority to determine what subjects to teach. That Section provides:

> Powers and Duties. The Board shall have power and it shall be its duty:
>
> (3) To prescribe the courses of study to be followed, and textbooks and apparatus used at Western Illinois University.

It further argues the Illinois Educational Labor Relations Act, 115 ILCS 5/1 *et seq.* states:

> The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of the State of Illinois.

It maintains these Statutes give it the sole authority to determine whether to continue teaching Chinese and Japanese. The Arbitrator agrees. There was a decline in overall enrollment in the Foreign Language Department. The University looked at the area where there was the lowest enrollment, albeit the number was constant. It chose as it was entitled to do to discontinue certain courses of study, which caused a layoff. There were two candidates and initially both were going to be laid off. It changed that to one. Mr. Quinn taught Spanish. Ms. Teel did not nor was she qualified to teach that subject. In this case, those other factors listed in the CBA came into play. Ms. Teel did not possess the "educational qualifications" nor did she have the "professional training" to teach the remaining subjects.[2]

The Union argued during the grievance process the University had stated that enrollment in these two subjects was down and that was the reason for the layoff. Since that is not so, it says the Arbitrator should find a violation. The Arbitrator

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[2] The Union in this case argues since there was no decrease in enrollment in these two courses, there should not have been a layoff. Ironically, here it urges the Arbitrator to look to see if there is a decline in a program within a department yet with other Grievants it argues the contract is limited to consideration of enrollment in the entire department and not any program within that department.

disagrees. Regardless of what might have been said, the University chose to eliminate these two subjects. It then laid off the most junior person who did not possess the qualifications needed to teach what remained. Hence, Ms. Teel was laid off. The Arbitrator can find no fault with that decision.

Ms. Teel did meet with the Provost before her layoff and gave to the Provost her resume. The Union argues the University never got back to her to tell her if the Provost looked for other opportunities. This is the same issue that has been discussed with prior Grievants. She should have been contacted. However, the unique skills Ms. Teel possessed were no longer needed at the University. Ms. Teel during her testimony did not list any other areas for which she possessed qualifications. Given that fact, there was no harm to her by the failure of the University to look elsewhere within the University and report back to her. The Arbitrator will issue no remedy for this violation.

Robert Johnson

Mr. Johnson was hired in 1978. He worked in the Geology Department. He was an Academic Support Professional in Unit B. He was curator for the Geology Museum. His duties included setting up displays for whatever program was being discussed. He was hired in 1978. His date of hire put him at the top. He had the greatest length of service of all 70 ASP's. His layoff was effective December of 2016.

The University eliminated the Curator Position within the Geology Department. No faculty were laid off in that Department. Since, he was the only ASP in the Department he was laid off. There was no violation in choosing him for layoff.

There is no evidence once again that the University made a "reasonable effort

to locate other employment" and to then make known the "results of such effort." It notes most of the other ASP's are academic advisors or counselors and that Mr. Johnson does not possess the qualifications for those positions. Union Exhibit 2 does show a majority of ASP positions fall within those categories.

Given Mr. Johnson's length of service, it is most troubling he was the one laid off without the University doing what it was required to do by Section 40.3 of the Agreement. It may be that he was not qualified for any position, but the University owed him the obligation to look elsewhere. Even if such effort would have been to no avail, someone with the length of service he had was entitled to no less. His time with the University makes him unique and places an even heavier burden on the University to comply with its requirements. That is why in this case, the Arbitrator will issue a remedy. Even if he presented no evidence he could do something else, as the most senior ASP the University needed to independently do its own investigation. The Arbitrator directs the University to meet with Mr. Johnson prior to the start of the 2017-18 year and to then review all ASP positions to determine whether Mr. Johnson possesses the skills needed to perform the duties of any available positions and to report back to him with the results.

Joann Sellen

She was hired on August 1, 2011. She initially taught at the Western English as a Second Language (WESL) program and then became Assistant Professor in the Educational Studies Department. She taught a Bilingual Program. Her layoff was to be effective in the Spring of 2016, but she found employment out of state and resigned in February of 2016. When she was designated for layoff, there were two faculty members whose length of service at the University and time in

the Department were less than Ms. Sellen's. One started 17 days later and the other was hired in August of 2015.

The University maintains the Arbitrator has no authority to rule on this matter given Ms. Sellen's resignation. It argues her employment status ended at that point and with it all her rights under the Agreement. The Arbitrator disagrees. Her remedy, if any, might be affected, but not her rights. She was employed at the time she was informed of her layoff. If choosing her for layoff was error, then the violation occurred at that time. Her resignation only came about because of the layoff notice.

The enrollment in Educational Studies Department dropped from 29 to 9 from 2010 to 2015. The student credit hours went from 6354 to 4300. The faculty to student ratio dropped from 17.65 to 12.46. The University decided to eliminate the bi-lingual program that was being taught by Ms. Sellen. She was chosen for layoff because of the elimination of the program. Here, the Union contends the Agreement refers to length of service in a Department not a program within a Department. It says the University must look at everyone in the Department and select for the layoff the most junior person and that is not this Grievant.

The Union is correct that there are no designations in the Agreement for laying off a junior person in a program area. This Arbitrator upheld the layoff of Ms. Teel not because she was junior within her program, but because she was not qualified for other positions within the Department. In that same way, the question is not whether Ms. Sellen is junior in the bilingual program, but whether she is qualified to teach any of the courses taught by the two individuals retained who had less time than Ms. Sellen.

It is unclear from the record whether Grievant could teach the courses taught

by the other two faculty. One of the two taught a program in Personnel. Grievant acknowledged she could not teach that program. It is unclear whether she possessed the qualifications needed for the other slot, but that is not where the issue lies regarding this Grievant.

The main thrust of Ms. Sellen's argument is not that she could teach the courses of the other two, but that there were other positions available in other Departments she could teach and was never given the opportunity to work in any of them. She testified at length about the efforts she made to find another position at the University. She noted she spoke to her Dean about returning to the WESL program. She stated she sent an e-mail asking if a position could be created to cover the work of two teachers that were going on sabbatical. She suggested a position be created where she could fill some of the responsibilities of both those positions. They were in the Education Department. She never heard back from the University about this suggestion. She also said there was and still is an opening in Distance Learning and Outreach which requires qualifications she possesses, but no one from the University contacted her about it.

The Arbitrator finds the University failed to meet its obligations under 24.4 and that in this case, that review might very well have resulted in a position for Ms. Sellen. The fact that she affirmatively suggested what positions they could place her and received no response to those suggestions makes that failure even more glaring. The Arbitrator can issue no remedy for the actual layoff given her resignation. He can and does direct the University to meet with her prior to the start of the 2017-18 year and to make a "reasonable effort to locate other equivalent employment" which shall include, but not limited to, the suggestions made by Ms. Sellen. The Arbitrator recognizes circumstances have changed

regarding the sabbaticals given the passage of a year, but there is no reason her other suggestions could not be addressed. They must be and the University must report back to her on their efforts.

Sherry Lundquist

She was hired August 16, 2012 as an Assistant Professor. She is an Art Historian specializing in Medieval and Renaissance Art. She taught Art History during her time with the University. She taught both basic and honors courses. One of the classes she taught involved non-modern Art. She was the only one qualified to teach that course. She also did programs in other parts of the United States and in Europe on Art History, and has won awards for her work.

Ms. Lundquist attained tenure on June 10, 2016. Since she was one year away from tenure at the time the layoffs were announced she was entitled to one-year notice. She was not laid off until the Spring of 2017.

Art History is a required course for anyone in the Art Department, but there is no major in Art History. There is one other faculty member teaching Art History, although Ms. Lundquist stated she was the only one teaching some of the courses being offered. The number of students who have chosen a program within the Art Department as a major dropped from 199 to 103 from 2011 to 2015. There is no information on which major's students choose.

Charles Wright is the chair of the Art Department. He did not recommend Ms. Lundquist for layoff or recommend any layoff. The University said it was laying her off because she was the junior Art History Teacher. The Union again argues that layoffs are by department not program. The Union offered exhibits showing that Chairman Wright told Ms. Lundquist Art History is not even considered a

program within the Department, but serves the entire Department.[3] There was one teacher in the Department who was junior to her. Ian Shelly was hired in August of 2013. He teaches Ceramics. He is the only ceramics teacher. It is a course offered by the University, but there is no major in ceramics.

The University has argued once again the Union is attempting to dictate to the University what courses are taught. It chose to keep the only ceramics teacher and to layoff one of two art history teachers. It argues it has the right to make that decision. The Arbitrator agrees that it has the right to make that choice. Ms. Lundquist did not possess the skill necessary to teach ceramics and on that basis the University chose to keep the most qualified individual for that course. This is not as the Union argues a question of breaking courses down into different programs, but a matter of choice on what subjects to keep and who is qualified to teach them. A decision within the authority of the University.

The above does not end the matter. The basis for the layoff was a "demonstrable enrollment reduction." The University did show the number of students majoring in art declined. However, the exhibits also show the student credit hours, which has been used by the University to justify its decision regarding other Grievants went from 1994 to 2059. The student to teacher ratio went from 8.31 up to 8.59 over the four years. These numbers would indicate that it is misleading to solely look at one metric, namely the number of students who are majoring in Art, as a basis for proving there was a decline in enrollment. The increase in credit hours and the upward change in student to teacher ratio would indicate that there are students from other disciplines taking courses in

[3] Union Exhibits 18 - 20

the Art Department. How else can one explain the 3% increase in credit hours? There are over 100 majors in the Art Department and Art History is a required course for each one of them. It is a core course. Chairman Wright knew that when he did not designate Ms. Lundquist for layoff. He knew the value of Art History. This is backed up by the testimony of Ms. Lundquist that her classes were always full.

From the above the Arbitrator must conclude the University failed to show there was a demonstrable decrease in enrollment in the Art Department, which was the basis for the decision. Using only one set of figures distorts the actual picture of what is transpiring in that Department. The Arbitrator finds the layoff of Ms. Lundquist violated Article 24.1. Her layoff is set aside. Since she was not laid off until the end of this past semester, there is no monetary award required. She should be put back in her position prior to the start of the fall 2017 semester. Given these findings, it is not necessary to address whether attempts were made to find her other equivalent employment.

Holly Stovall

Ms. Stovall was hired on January 16, 2007 as an Assistant Professor. She was an Instructor in Unit B for a year before that. She worked in the Women's Studies Department at the time of her layoff. She has a Master's Degree in Women's Studies and a PHD in Hispanic Literature. She has in the past taught Spanish and used that experience in the Women's Studies Department by teaching a course in Hispanic Women. The only year she taught Spanish at the University was 2005. She did teach classes in Spanish Language Literature as well as the basic core courses in the Women's Studies Department.

Ms. Stovall was awarded tenure in June of 2016. Since she was in her last

year prior to her tenured year at the time the layoffs were announced, she was entitled to one-year notice. Consequently, she was not laid off until the end of the Spring Semester of 2017.

The enrollment in the Women's Studies Department dropped from 3169 to 2354 between 2010 and 2015. The credit hours decreased from 1547 to 1254, which represented a 24% decrease. The faculty to studio ratio was unchanged. Norma Suvak was also in the Women's Studies Department and began seven years after Ms. Stovall. While she was listed as being in the Women's Studies Department, she also taught German in the Foreign Language Department. Ms. Suvak was originally slated for layoff, but was transferred to the Foreign Language Department as she had already been teaching courses in German in that Department prior to the layoffs occurring. She had a dual assignment, but was listed as working in the Women's Studies Department. She taught German and courses in Women's Studies in the Foreign Languages Department. There was also a temporary employee in the Women's Studies Department who taught a course. He continued teaching a course in Women's Studies for a semester, but has not been rehired.

The University decided to eliminate the Women's Studies Department and that is what precipitated the layoffs. An Academic Program Elimination Review Committee is established in Article 26 of the Agreement to address the elimination of Departments. That Article provides:

> Article 26, Academic Program Elimination Review Committee, Unit A
>
> 26.1. When the University is considering eliminating academic programs that would result in the layoff of an employee, it will constitute an Academic Program Elimination Review (APER) Committee composed of and elected by employees in the bargaining unit. ...

> 26.5. Any recommendation to the Board for program elimination which would result in the layoff of an employee under Article 26.1. shall include the recommendation of the APER Committee.
>
> 26.6. Any Board decision concerning the elimination of an academic program which would result in the layoff of an employee(s) shall be communicated to the employee(s) in the affected unit.

The Committee in January of 2016 met to discuss the elimination of several programs. One of its tasks was to review whether the Women's Studies Department should be continued or eliminated. It recommended it continue, but the Board of Trustees disagreed and on June 10, 2016 voted to eliminate the Department effective January of 2017. The courses that had previously been taught in that Department were to be included in the curriculum of the Liberal Arts Department.

The University chose to eliminate the Women's Studies Department. This necessitated a layoff. Initially two faculty members were to be laid off. Instead of laying off Ms. Suvak, it moved her to a Department where she was already working. It determined the qualifications she possessed could still be utilized. Qualifications and training are two of the factors to be evaluated when faced with laying off a faculty member. While Ms. Stovall was more senior she did not have the qualifications Ms. Suvak possessed to teach the courses Suvak was to teach. The Arbitrator cannot fault the University for that determination.

Ms. Stovall met with the Provost immediately after receiving notification of her impending layoff. She gave her CV to Ms. Neuman and said she was qualified to teach Spanish. She requested she be transferred to the Foreign Language Department and in a letter dated December 15, 2016 that request was denied. She also contacted the Dean in the Spring of 2017 after she learned Ms. Suvak

had resigned from the University as did the Chair of the Women's Studies Department. She asked to be allowed to teach the Women's Studies Classes these two were teaching. That request was again denied.

This grievance once again raises the question as to what the University did to comply with Section 24.4. The Provost met with her as required by 24.7, but what was done to find for her "equivalent employment." They rejected her suggestions, but what affirmative steps did it take? If courses in Women's Studies were on-going was there now a place for her to teach them? Did it consider her experience in Spanish? There is no evidence it did any of those things. While it did say in the letter to her it had talked to the Dean about his needs in the Foreign Language Department, that is not enough. It must affirmatively look to see if there is a place for her and report back to her on the results. As has been stated repeatedly here, the burden is not just on the employee to make suggestions, but on the University to do its own due diligence. As a remedy, the Arbitrator will issue the same directive he has issued for several of the Grievants.

Scope of Remedy

This Agreement as the University has noted does not afford employees an opportunity to bump junior employees in other Departments even if the employee being laid off possesses the skill needed to teach the courses taught by the person with less University Seniority. Thus, the Awards for violations of 24.4 that have been issued here are by necessity limited to a requirement that the University try to find courses that are scheduled to be taught but currently have no teachers to teach them. It is not a requirement to displace persons currently teaching courses in other Departments, even if they are teaching courses which

the Grievants are qualified to teach. If there are enough open courses that anyone of the Grievants can teach, they should be afforded that opportunity. They would be filling a void at the University rather than creating one and then seeking to fill the void which they have created.

AWARD

1. Andres Hijar
a. The University did not violate Section 24.1 when he was laid off.
b. The University violated Section 24.4.
c. The University shall prior to the commencement of the 2017-18 year make a "reasonable effort" to see if Grievant can be placed in the History Department if he possesses the skills to teach the courses currently being taught by five part-time faculty or if there are other open positions in the Law Enforcement Department which he is qualified to teach and report back to him on the results of that effort.

2. Julie Lawless
a. The University did not violate Article 24.1
b. The University violated Section 24.4.
c. The Arbitrator for the reasons discussed above issues no remedy for that violation.

3.Daniel Ogbahara
a. The University violated Section 24.1
b, Mr. Ogbahara shall be made whole for lost wages for School Year 2016-17
c. The University is directed to consider all factors set forth in Section 24.1 in determining whether Mr. Ogbahara should be laid off.

4. Jason Braun
a. The University did not violate Section 40.1 of the Agreement.
b. The University violated Section 40.3.
c. The University prior to the start of the 2017-18 School Year shall "make a reasonable effort" to see if there are open positions in the Education Department or any other Department for which he possesses the skills required to teach the courses currently being taught in that Department(s) and report back to him on the results of that effort.

5. Alyssa Anderson
a. The University did not violate Section 40.1 of the Agreement.
b. The University violated Section 40.3.
c. The Arbitrator for the reasons discussed above issues no remedy for that violation.

6. Wenghong Teel
a. The University did not violated Section 24.1
b. The University violated Section 24.3.
c. The Arbitrator for the reasons discussed above issues no remedy for that violation

7. Robert Johnson
a. The University did not violate Section 40.1 of the Agreement.
b. The University violated Section 40.3.
c. The University shall meet with Mr. Johnson and then prior to the start of the 2017-18 year and affirmatively review all open ASP positions to determine whether Mr. Johnson possesses the skills needed to perform the duties of any of those positions and report back to him on the results of that effort.

8. Joann Sellen
a. Her resignation prior to her layoff date makes any ruling on Section 24.1 moot.
b. The University violated Section 24.4
c. The University is directed to meet with Ms. Sellen prior to the start of the 2017-18 year and to then make a "reasonable effort to locate other equivalent employment" in which there are openings, which shall include, but not limited to, the suggestions made by Ms. Sellen prior and subsequent to her resignation and report back to her on the results of that effort.

9. Sherry Lundqist.
a. The University violated Section 24.1 when it laid off Ms. Lundquist.
b. Ms. Lundquist and her position shall be reinstated prior to the commencement of the 2017-18 year.

10. Holly Stovall
a. The University did not violate Section 24.1 of the Agreement.
b. The University violated Section 24.4 of the Agreement.
c. The University shall prior to the commencement of the 2017-18 year make a reasonable effort" to see if Ms. Stovall can be placed in any opening in the Foreign Language Department, Liberal Arts Department or any other Department if she possesses the skills needed to teach the courses being offered and report back to her on the results of that effort.

11. The Arbitrator shall retain Jurisdiction for no less than 90 days to resolve any issues regarding the implementation of this Award.

Dated: July 6, 2017

Fredric R. Dichter, Arbitrator

IN THE MATTER OF THE ARBITRATION

WESTERN ILLINOIS UNIVERSITY

and

FMCS-17-50438
LAYOFFS

UNIVERSITY PROFESSIONALS OF
ILLINOIS, IFT, AFT LOCAL 4100

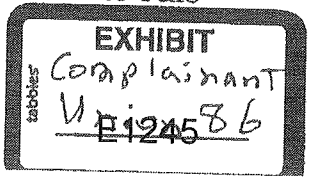
Appearances:

For the Federation: Melissa J. Auerbach, Esq.
Dowd, Bloch, et. al.

For the University: Roy G. Davis, Esq.
Davis & Campbell, L.L.C.

This Arbitrator heard a grievance involving 10 individuals in April of 2017. Following the hearing, the Arbitrator issued his ruling on July 27, 2017. The Arbitrator found the University violated Section 24.4 for all the Grievants and a violation of Section 24.1 regarding one of the Grievants. There was no remedy issued regarding three of the Grievants as they incurred no damages. The Arbitrator as part of his decision stated: "The Arbitrator shall retain Jurisdiction for no less than 90 days to resolve any issues regarding the implementation of this Award."

The Union following the issuance of the Award believed the University failed to comply with the Award regarding four of the Grievants. It filed a Motion requesting the Arbitrator rule on whether there was compliance. The University objected to the request. It maintained the Arbitrator lacked Jurisdiction to rule



on the issues raised by the Union. The Parties briefed the question and the Arbitrator issued a ruling on November 14, 2017 stating: he has the authority "under both the NAA Code of Ethics and the AAA Rules and is directing there be a hearing." He noted in the ruling there were factual issues raised by the parties that could only be resolved at a hearing.

The Union prior to the hearing requested the Arbitrator issue a subpoena requiring the presence of seven individuals. They were the four Deans of the different colleges and the Chairs of certain Department. The University sought to quash the subpoena in the Illinois Courts. The Court rejected the University's request. At the hearing the Union sought to call those individuals to testify as to their efforts to comply with this Arbitrator's Decision. The University declined to have those individuals appear. Consequently, they did not testify as to the actions they took or were or were not requested to take to comply with the Award.

PRIOR AWARD

The Arbitrator in his July Award issued the following remedy for the four Grievants in issue here:

1. Andres Hijar

a. The University did not violate 24.1 when he was laid off.
b. The University violated Section 24.4.
c. The University shall prior to the commencement of the 2017-19 year make a "resonable effort" to see if Grievant can be placed in the History Department if he possesses the skills to teach the course currently being taught by five part-time faculty or if there are any open positions in the Law Enforcement Department which he is qualified to teach and report back to him on the results of that effort.

3. Daniel Ogbaharya
a. The University violated Section 24.1.
b. Mr. Ogbaharya shall be made whole for lost wages for the School Year 2016-17.
c. The University is directed to consider all factors set forth in Section 24.1 in determining whether Mr. Ogbaharya should be laid off.

8. Joann Sellen
a. Her resignation prior to her layoff date makes any ruling on Section 24.1 moot.
b. The University violated Section 24.4.
c. The University is directed to meet with Ms. Sellen prior to the start of the 2017-18 year and to then make a "reasonable effort to locate other equivalent employment" in which there are openings, which shall include, but not limited to, the suggestions made by Ms. Sellen prior and subsequent to her resignation and report back to her on the results of that effort.

10. Holly Stovall
a. The University did not violate Section 24.1 of the Agreement.
b. The University violated Section 24.4 of the Agreement.
c. The University shall prior to the commencement of the 2017-18 year make a reasonable effort" to see if Ms. Stovall can be placed in any opening in the Foreign Language Department, Liberal Arts Department, or any other Department if she possesses the skills needed to teach the courses being offered and report back to her on the results of that effort.

A hearing was held regarding the four individuals on January 16, 2018. The University attended the hearing but retained the right to question the authority of the Arbitrator to issue a ruling regarding the four Grievants. It maintained the Illinois Labor Board had sole authority to rule on the Union motion. The parties filed briefs after the conclusion of the hearing. The Arbitrator has considered the testimony, exhibits and arguments of the Parties in reaching his decision.

DISCUSSION

There are two Sections of Article 24 that are relevant here. They are Section 24.2 and 24.4. The Arbitrator will begin with a discussion of 24.2. That Section only applies to Daniel Ogbaharya.

Section 24.2

> If the Board decides it is necessary to lay off employees according to this Article, the factors which will be considered are length of full-time service at the University, including approved leaves; length of full-time service in the department, including approved leaves; educational qualifications; professional training; and professional experiences.

This Arbitrator in his initial award concluded that the University failed to consider all factors set forth in the Section. Specifically, the University looked only at time in the Department as a tenured track teacher and did not look at overall length of service with the University. Mr. Ogbaharya had less time as a tenured track teacher than anyone else in the Department but had been with the University for three years more than the next junior teacher in the Department. That teacher had one more year in the tenure track than Grievant. There was a second and third teacher who had been with the University one year less than Grievant but had more time in the tenure track. The Arbitrator directed the University to redo its layoff decision and look at all factors, including length of service with the University.

The University maintains it did the review immediately after the Award was issued, and the review did not change its decision. Dr. Morgan testified the

Grievant and the other teachers were relatively equal in qualification, training, and experience. The decision was based solely on time in the tenure track.

The University argues the Arbitrator has very limited authority to overrule its determination. It points to Article 6, Section b which states:

b. Authority of the Arbitrator

> (2) Where an administrator has made an academic judgment-for example, a judgment concerning application of evaluation criteria in decisions on retention, promotion, or tenure, or a judgment concerning the academic acceptability of a sabbatical proposal-the arbitrator shall not substitute her/his judgement for that of the administrator. The arbitrator shall not review the academic decision except for the purpose of determining whether or not that decision has violated this Agreement...

It made this same argument during the initial hearing. This Arbitrator pointed out that the Section authorized the Arbitrator to review a decision if it was determined the "decision violated this Agreement." The Arbitrator found that it did. Similarly, the Arbitrator can now once again review the decision if he finds the University violated the Agreement, i.e. Section 24.2.

Mr. Ogbaharya was initially hired in the Political Science Department in 2008. He did not get on the tenure track until 2013. He was in the Political Science Department the entire time, except for a year he took off. The University has argued that time within the Department means time in a tenured track position. The Union argues the Agreement makes no such reference. It only says fulltime in the Department. The Section does say: "length of fulltime service in the Department." It does not mention tenure. It is the total time he was fulltime in that Department that counts.

As noted, Grievant had three years longer at the University than one of the retained teachers and one year more than two others. The last two of his years prior to getting on the tenure track was as a Unit B teacher. Grievant was teaching the same courses as a Unit B teacher he taught when he became tenured tracked. The University has stated it considered this factor and still decided to layoff Mr. Ogbaharya. If Grievant had been fulltime as a Unit B teacher that time would count for Department Seniority. He would then have more time in the Department and the University. The record does not indicate if he worked fulltime during those two years. It must be assumed, therefore, he did not.

Mr. Filipink, the Union grievance officer, testified at the hearing. He said when he first spoke to Dr. Morgan, the Assistant Provost about this Grievant Dr. Morgan did not realize the Award ordered him to redo the layoff decision. Dr. Newman, the Provost of the University, had delegated to Dr. Morgan the task of complying with the Award. Dr. Morgan was focused solely on whether there were any openings. Filipink had to alert him to that portion of the Order. Filipink testified he spoke to Dr. Morgan a week later and was told "the University was still looking for justification for Dr. Ogbaharya's layoff." He also testified Dr. Morgan told him he had no intention of bringing him back. Dr. Morgan denied making the last statement but admitted he might have said something like the first one. He testified he meant they had already reviewed the decision and decided not to change the original decision and what he meant was they had not yet put the letter together stating why they made their decision. Given the timing, one must question what type of review they undertook. Did they look at

Grievant's qualification vis-à-vis the two teachers who had been teaching for fewer years with the University and complete that review in one week? One week was the total time between Filipink's informing them they had to do the review and the time Dr. Morgan said the review was completed.

From all the facts, the Arbitrator finds the University did not make a good faith effort to redo the layoff decision. Grievant taught in the Department longer than three other faculty members. The University did not give Grievant credit for that experience. One could understand not crediting that time if he was doing or teaching something different from what he taught after becoming tenured tracked, but that is not the case. His total time was in the Department teaching the same basic courses. The University when this Arbitrator found a violation in the first Award did so, because it failed to consider his total University time. It is not reasonable to conclude they did anything different this time. When these factors are coupled with the statements by Dr. Morgan described above the Arbitrator finds the University did not in good faith comply with the Award. This is a violation of Section 24.2. This is a contractual violation which the Arbitrator has authority to remedy. Daniel Ogbaharya should have been rehired and is entitled to be made whole until he is offered reinstatement by the University

Section 24.4 states:

> The University shall make a reasonable effort to locate other equivalent employment within the University for a laid-off employee prior to the effective date of her/his layoff. The results of such effort shall be made known to the person affected. The effort to locate other equivalent employment shall include a review of the possibility of an assignment with duties in more than one unit, part-time employment...

The Arbitrator found in his initial award the University failed to make a reasonable effort to find equivalent employment for any of the Grievants. The Award directed the University to make that effort. In ordering it to comply with this Section's requirement the Arbitrator made certain observations as to what the order required and what it did not require. The Award stated:

> Thus, the Awards for violations of 24.4 that have been issued here are by necessity limited to a requirement that the University try to find courses that are scheduled to be taught but currently have no teachers to teach them. It is not a requirement to displace persons currently teaching courses in other Departments, even if they are teaching courses which the Grievants are qualified to teach. If there are enough open courses that anyone of the Grievants can teach, they should be afforded that opportunity.

There was no bumping under the terms of the Collective Bargaining Agreement. No one should be displaced. Instead, the key was for the University to determine if there were enough "open courses" for any of the Grievants.

The Union contends this was not done. For the Union to prevail on its argument that there has been non-compliance with the Award, the Union must show two things. First, it must show no reasonable effort was made to look for openings. It must then show there were "open courses that anyone of the Grievant's can teach." The Arbitrator will address the efforts made by the University first.

Dr. Morgan testified he made copies of the CV's of the four Grievants involved here and distributed them to the four Deans at a meeting in July of 2017. He testified he asked the Deans to look to see if there were any open courses the Grievant's could teach. The Deans were to collaborate with the Chairs of each

Department in answering that question. The review was to be completed prior to the start of the Fall Semester, which began on August 22. The letters to the four Grievants were not sent until September 11. All the letters were virtually the same. They informed Grievants:

> Your curriculum vita was provided to the academic deans... The deans and executive directors, in conjunction with the department chairs/ directors, reviewed your curriculum vita to determine whether there were any open positions for which you were eligible. Unfortunately, no open positions were identified.

The Deans did not testify and there is no correspondence in the exhibits to indicate what precisely was done by them. Richard Filipink, was in contact with Dr. Morgan throughout the process. Mr. Filipink was told that the Deans and Chairs would do a review. He contacted the Department Chairs in August and September to ask them what they had done. He testified that none of the Chairs, despite what Dr. Morgan told him and what he said in his letters to the Grieavants, indicated they were ever contacted as part of the review. The Arbitrator accepts that testimony. The University had the opportunity to call the Chairs as witnesses to rebut this testimony. It chose not to make them available for the hearing. Given that, the Arbitrator has accepted Mr. Filipink's testimony.

Dr. Morgan said he asked the Deans to see if there were any open positions. He did not tell them they should look to see if there was any part-time employment or work "in more than one unit" as specified in Section 24.4. Dr. Morgan did tell Mr. Filipink that he doubted there would be any positions for the Grievants.

The University was required to make a "reasonable effort." From all the above, the Arbitrator finds it did not perform the review it was required to do. The Chairs who would be in a perfect position to know what was available were not even contacted. They were the ones that assigned classes. The review it undertook, as noted, was far more limited than what was required by Section 24.4. Thus, the first prong that must be proven by the Union has been met. A reasonable review was not done. The Arbitrator will now look at the second prong. Were there courses that could have been taught by the Grievants. This review will not only show if there was work but if there was, it would be further indication that the University did not in good faith look for work for the Grievants.

The parties disagree as to what is meant by an "open course." The University contends there is a delay in assigning teachers to specific courses and these courses are unassigned but not open. There is staff available to teach them, but it has not yet been determined which teacher will teach which course. The Union argues anytime a course is listed without a teacher it is an "open course." For the reasons discussed below, the Arbitrator finds it does not matter which definition is correct as answering that question will not affect the outcome.

The Union offered as an exhibit a list of courses prepared in the summer prior to the start of the semester. It lists the courses that were to be taught during the fall semester. It then lists the teachers assigned to each one. Some classes were cancelled. Some of the classes were being taught by Graduate Students and others by Unit B faculty. The University is correct, as noted, that it is not required to displace another employee to provide work for any of the

Grievants. Thus, none of the individuals teaching courses can lose their position to provide work for the Grievants. However, what if these individuals are assigned additional work beyond their normal workload in lieu of providing work to one of the Grievants? Assigning the work to a Grievant would not endanger the employment status of that other teacher. It would simply put that teacher back in the status quo before the layoff. In the Arbitrator's opinion that is the key factor to consider.

Making a reasonable effort requires good faith on the part of the University. It must honestly look at the schedule and affirmatively see if there is work for any of the Grievants. It cannot do any act that seeks to avoid offering work that would otherwise be available absent that act. While the University is not required to make work for a Grievant, it cannot deprive them of work by taking steps not usually taken to avoid providing them work. Good faith is what 24.4 requires as does any provision in an agreement. Reasonable effort requires good faith. It is a measure of reasonableness. This is the yardstick this Arbitrator will use in determining whether there were open classes the Grievnats could have taught.

Andres Hijar

He was employed in the History Department at the time of his layoff. He was also qualified to teach in the Law Enforcement Program. The University did hire a new teacher in that program since the time of the layoff. The University has maintained Mr. Hijar was not qualified to teach the courses taught by this new faculty member. It also stated there were no open courses for him to teach either in the History Department or in Law Enforcement.

Mr. Hijar did not testify at the hearing. The Union has argued that one of the individuals it was not allowed to call could have testified about the new position in Law Enforcement and the qualifications of Hijar to fill the position. That argument would carry more weight if there some evidence he could have filled that position. There is simply no evidence presented and Mr. Hijar did not argue he was qualified for this new position. The University was not obligated to rebut an argument he was qualified in the absence of any evidence he was so qualified.

There was also no evidence offered to show there were openings for Mr. Hijar in either the History Department or in Law Enforcement classes. The Arbitrator noted for the Union to prevail regarding any of the Grievants it needed to show not only that no reasonable effort was made but also there were openings for Grievant. It failed to show that regarding Mr. Hijar. Consequently, there is no remedy available to him.

Joann Sellen

The Arbitrator directed the University to meet with Dr. Sellen prior to the start of the 2017-18 year and to discuss possible courses she could teach. Dr. Sellen did not testify at the hearing. There was testimony the two teachers who were going to go on sabbatical that was discussed in the initial Decision were still going to take a sabbatical. One was taking it in the fall and one in the spring. What is unclear is who is teaching the courses those teachers would have taught had they not been taking their sabbatical.

As with Mr. Hijar, the burden was on Dr. Sellen to show there were open positions available to her. It is not enough to state she could fill the vacancy

created by the two teachers' absence. She must also show those were open positions for her to fill or that extra work was being given to current teachers over and above their normal workload, thereby, depriving her of filling those open positions. She failed to meet that burden. Like with Mr. Hijar, in the absence of evidence there were courses for her, the failure of the University to produce at the hearing the Dean or Chair in the Department is not sufficient, by itself, to find in Ms. Sellen's favor. There is no remedy available for her.

Holly Stovall

Dr. Stovall did testify. She is a highly qualified individual. She discussed her qualifications and her ability to teach many of the courses being taught at the University. She is qualified in English and in Spanish. The question, however, is not whether she is eminently qualified, which she is, but whether there were open courses available for her to teach. Section 24.4 specifically indicates that in determining whether there was work for her the University must consider openings in more than one unit and possible part-time work. As noted earlier, Dr. Morgan admitted he asked the Deans if there was work for her but did not suggest they consider part-time work or if there were some courses in multiple departments that were open. The Deans were only asked to see if there was fulltime work. The Arbitrator will examine whether there were courses she should have been offered either as a part-time employee or in multiple departments since she is qualified to teach Spanish in the Foreign Language Department and English in the Liberal Arts and Science Department.

There was testimony that normally Unit B faculty teach three courses in the fall and four in the spring. That testimony was unrefuted. Wilson-Jordan and J.O. Fernandez are Unit B teachers. Both taught four courses in the fall. Ms. Stovall could have taught one of the four courses for each one them. They would have been open courses under normal circumstances. Dr. Stovall also testified that Spanish 325 is a Spanish Conversation course. It is currently being taught by a Unit B teacher. Stovall stated the Higher Learning Guidelines state the current teacher is not qualified to teach that course. This testimony was also unrefuted. The Dean was not allowed to testify so it is not known if he would refute that testimony. The English courses and Spanish course are in different departments but fall within the scope of Section 24.4.

There was also testimony offered by the Union that Graduate Students were teaching some of the courses. It argues Grievant could have taught some of those courses, as well. The University did show this was a common practice. The Union argued that graduate students normally only teach one course in a semester, but the evidence offered by the University showed that Graduate Students were commonly required to teach two courses. It is part of their curriculum. Dr. Stovall did say they should not be teaching English 180 which is English Composition and that some were teaching it. It was unclear from the evidence whether that was new or whether graduate students had taught this course in the past. The burden was on her and she failed to meet that burden.

From the above, the Arbitrator finds the University failed to comply with the requirements of Section 24.4 as to Dr. Stovall. It did not make a reasonable effort

"to locate other equivalent employment" for her and that work existed. There were three courses she should have been offered to teach, which is a full load. The original Award said: "if there were enough open course for any of the Grievants to teach they should be afforded the opportunity." She was not afforded the opportunity. The University thereby failed to implement the Award as it was directed to do. Because of this failure Dr. Stovall should be made whole for the fall Semester of 2017. If the circumstances in the Spring Semester and in 2018-2019 as described here are the same as existed in 2017-2018 year she should be afforded the opportunity to teach in that year.

Conclusion

This Arbitrator retained "Jurisdiction for no less than 90 days to resolve any issues regarding the implementation of this Award." The Union alleged the terms of the Award were not implemented for four of the Grievants. It asked the Arbitrator to determine if that was so and to issue a remedy if it was found there was a failure to follow the Award. The Arbitrator has found the Award was not implemented as directed as to two of the Grievants. This Supplemental Award implements the terms of the initial Award and imposes damages for the failure of the University to follow the directives of that initial Award.

AWARD

1. The evidence did not show there were open courses for Andres Hijar to teach. No remedy is Awarded.

2. The evidence did not show there were open courses for Joann Sellen to teach. No remedy is Awarded.

3. The University violated the Award as to Holly Stovall. There were open classes for her to teach in the Fall of 2017. Dr. Stovall shall be made whole for that semester. She should have been offered work for the Spring Semester and the 2018-9 year if the same factors are present.

4. The University failed to comply with the Award as to Daniel Ogbaharya. He shall be offered reinstatement and made whole for the 2017-2018 year, until he is offered reinstatement.

5. The Arbitrator shall continue to retain jurisdiction as to the remaining two Grievants to resolve any questions regarding the implementation of this Supplemental Award.

Dated: March 5, 2018

Fredric R. Dichter, Arbitrator

E-FILED
Transaction ID: 4-19-0143
File Date: 3/5/2019 1:31 PM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

IN THE APPELLATE COURT OF ILLINOIS
FOR THE FOURTH DISTRICT

Western Illinois University, Petitioner, v. Illinois Educational Labor Relations Board, and University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO, Respondents.	)	Petition for Review of the Opinion and Order of the Illinois Educational Labor Relations Board in Case No. 2018-CA-0045-C Docket No.

PETITION FOR REVIEW

Western Illinois University hereby petitions the Court for review of the Opinion and Order of the Illinois Educational Labor Relations Board in Case No. 2018-CA-0045-C a copy of which is appended hereto and which was issued on February 21, 2019.

March 5, 2019

WESTERN ILLINOIS UNIVERSITY

By: s/Abby J. Clark
One of Its Attorneys

Roy G. Davis (ARDC # 0592692)
Abby J. Clark (ARDC #6283044)
DAVIS & CAMPBELL L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
(309) 673-1681
(309) 673-1690 facsimile
rgdavis@dcamplaw.com
ajclark@dcamplaw.com

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Fourth District Appellate Court on March 5, 2019.

I have served the Respondents/counsel of record by sending a copy of the foregoing both by certified United States Mail, postage fully prepaid, and by email on March 5, 2019, to the addresses below:

Illinois Educational Labor Relations Board
Attn: Victor E. Blackwell, Executive Director
160 North LaSalle Street, Suite N400
Chicago, Illinois 60601
ELRB.mail@illinois.gov

Melissa J. Auerbach
Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich
8 S. Michigan Avenue, 19th Floor
Chicago, Illinois 60603
mauerbach@laboradvocates.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

s/Abby J. Clark

Abby J. Clark
DAVIS & CAMPBELL L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
(309) 673-1681
(309) 673-1690 (fax)
ajclark@dcamplaw.com

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

Western Illinois University,	)	
	)	
Petitioner	)	
vs.	)	Appellate Court No. 4-19-0143
	)	IELRB No. 2018-CA-0045-C
State of Illinois Educational Labor Relations Board, and University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO,	)	
	)	
Respondents	)	

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E-FILED
Transaction ID: 4-19-0143
File Date: 4/9/2019 9:34 AM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

Western Illinois University,	)	
	)	
Petitioner	)	
vs.	)	Appellate Court No. 4-19-0143
	)	IELRB No. 2018-CA-0045-C
State of Illinois Educational Labor	)	
Relations Board, and University	)	
Professionals of Illinois, Local 4100,	)	
IFT-AFT, AFL-CIO,	)	
	)	
Respondents	)	

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E-FILED
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File Date: 4/9/2019 9:50 AM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

Western Illinois University,	)	
	)	
Petitioner	)	
vs.	)	Appellate Court No. 4-19-0143
	)	IELRB No. 2018-CA-0045-C
State of Illinois Educational Labor Relations Board, and University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO,	)	
	)	
Respondents	)	

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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

NOTICE OF FILING

To: See Certificate of Service

PLEASE TAKE NOTICE that on November 2, 2020, I filed the **Brief and Appendix 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,

/s/ Melissa J. Auerbach
Melissa J. Auerbach, ARDC No. 3126792
Attorney for Respondent-Petitioner UPI Local 4100

Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich
8 South Michigan Avenue, 19th Floor
Chicago, Illinois 60603
312-372-1361
mauerbach@laboradvocates.com

CERTIFICATE OF SERVICE

I certify that on November 2, 2020, I took steps to cause the electronic filing of the foregoing **Notice of Filing**, **Brief of Respondent-Petitioner University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO**, and **Appendix to 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:

Frank H. Bieszczat, Assistant Attorney General
100 W. Randolph St., 12th Floor
Chicago, IL 60601
CivilAppeals@atg.state.il.us
fbieszczat@atg.state.il.us

Roy G. Davis
Abby J. Clark
Davis & Campbell L.L.C.
401 Main St., Suite 1600
Peoria, IL 61602
rgdavis@dcamplaw.com
ajclark@dcamplaw.com

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.

/s/ Melissa J. Auerbach

Melissa J. Auerbach