

Illinois Official Reports

Appellate Court

Glass v. Department of Corrections, 2022 IL App (4th) 210740

Appellate Court
Caption

JEAN R. GLASS; JESSE J. FOWLER; TRINA TANGEROSE; VALERIE L. GREGORY; and MIKE WINTERS, Individually as Well as on Behalf of All Other Persons Similarly Situated, Plaintiffs-Appellees, v. THE DEPARTMENT OF CORRECTIONS; THE DEPARTMENT OF HUMAN SERVICES; THE DEPARTMENT OF VETERANS' AFFAIRS; THE DEPARTMENT OF JUVENILE JUSTICE; THE DEPARTMENT OF CENTRAL MANAGEMENT SERVICES; THE DEPARTMENT OF PUBLIC HEALTH; and JAY R. PRITZKER, in His Official Capacity as Governor of the State of Illinois, Defendants-Appellants.

District & No.

Fourth District
No. 4-21-0740

Filed

January 7, 2022

Decision Under
Review

Appeal from the Circuit Court of Adams County, No. 21-MR-235; the Hon. Scott Douglas Larson, Judge, presiding.

Judgment

Vacated.

Counsel on
Appeal

Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and Carson R. Griffis and Evan Siegel, Assistant Attorneys General, of counsel), for appellants.

Bethany D. Hager, of Danville, for appellees.

Panel JUSTICE CAVANAGH delivered the judgment of the court, with opinion.
Justices Turner and Holder White concurred in the judgment and opinion.

OPINION

¶ 1 Some Illinois governmental agencies want their employees who work in congregate-care facilities to be vaccinated or tested for COVID-19. This lawsuit challenges such a policy. The plaintiffs are Jean R. Glass, Jesse J. Fowler, Trina Tangerose, Valerie L. Gregory, and Mike Winters, who are employed by the State of Illinois or by a vendor who provides services for the State of Illinois. The defendants are Governor Pritzker and various agencies of the State of Illinois, namely, the Department of Corrections, the Department of Human Services, the Department of Veterans’ Affairs, the Department of Juvenile Justice, the Department of Central Management Services (CMS), and the Department of Public Health.

¶ 2 The defendants appeal a temporary restraining order that the Adams County circuit court granted at the request of two of the plaintiffs, Fowler and Winters. Illinois Supreme Court Rule 307(a)(1), (d) (eff. Nov. 1, 2017) allows appeals from temporary restraining orders and other injunctions. The temporary restraining order in this case prohibits the defendants from enforcing a workplace policy requiring their employees to undergo vaccination or testing for COVID-19. At the same time the court granted the motion for a temporary restraining order, the court granted a motion by the defendants to transfer this case to the circuit court of Sangamon County.

¶ 3 In our *de novo* review, we conclude that the circuit court lacked subject-matter jurisdiction over this case and that consequently the court was powerless to issue the temporary restraining order. See *McCormick v. Robertson*, 2015 IL 118230, ¶ 18 (holding that “[w]hether a circuit court has subject matter jurisdiction to entertain a claim presents a question of law which we review *de novo*”). Therefore, we vacate the judgment.

¶ 4 I. BACKGROUND

¶ 5 A. The Executive Order

¶ 6 On September 3, 2021, Governor Pritzker issued COVID-19 Executive Order No. 88 (Executive Order 2021-22) (Exec. Order No. 2021-22, 45 Ill. Reg. 11,639 (Sept. 3, 2021)). Section 5 of the executive order was titled “Vaccination Requirements at State-Owned or Operated Congregate Facilities.” *Id.* at 11,648. The term “[s]tate-owned or operated congregate facilities” was defined as “congregate facilities operated by the Illinois Department of Veterans’ Affairs, the Illinois Department of Human Services, the Illinois Department of Corrections, and the Illinois Department of Juvenile Justice.” *Id.* Section 5 required “[a]ll State employees at State-owned or operated congregate facilities” to “have both doses of a two-dose COVID-19 vaccine series or a single-dose COVID-19 vaccine by no later than October 4, 2021.” *Id.* However, this requirement, section 5 added, was “subject to bargaining.” *Id.*; see 5 ILCS 315/7 (West 2020) (providing that the public employer and the exclusive representative have the authority and duty to bargain collectively with respect to “conditions of employment”).

¶ 7 Section 5 carved out two exemptions to the vaccination requirement, a medical exemption and a religious exemption, and provided that the implementation of the executive order, along with its exemptions, was to be worked out in labor negotiations:

“e. Individuals will be exempt from the requirement to be fully vaccinated against COVID-19 if (1) vaccination is medically contraindicated, including any individual who is entitled to an accommodation under the Americans with Disabilities Act [of 1990 (42 U.S.C. § 12101 *et seq.* (2018))] or any other law applicable to a disability-related reasonable accommodation, or (2) vaccination would require the individual to violate or forgo a sincerely held religious belief, practice, or observance. Individuals who demonstrate they meet the requirements for an exemption will be subject to additional testing requirements.

f. The [CMS] Labor Relations team is instructed to negotiate effectuating this Executive Order with the relevant labor unions, and to bargain these provisions as appropriate under the law.” Exec. Order No. 2021-22, 45 Ill. Reg. at 11,649.

Thus, under section 5 of the executive order, CMS and the labor unions were to negotiate how to carry out the terms of the executive order, including its medical and religious exemptions.

¶ 8 B. The Proceedings in the Circuit Court

¶ 9 1. *The Plaintiffs’ Petition for Declaratory and Injunctive Relief*

¶ 10 On November 1, 2021, the plaintiffs filed in the Adams County circuit court a petition for declaratory and injunctive relief. In their petition, the plaintiffs allege substantially as follows.

¶ 11 The plaintiffs are employed, either directly or by agency contract, in congregate-care facilities operated by the defendants. Unless the plaintiffs comply with a directive by the defendants to undergo vaccination or testing for COVID-19—a directive that the plaintiffs find to be objectionable on religious grounds—the plaintiffs face unpaid suspension or the termination of their employment. Other employees of the defendants are in the same dilemma. The plaintiffs seek to represent a class of over 900 other individuals employed directly by the defendants or by agency contract who have moral objections to being vaccinated or tested for COVID-19. “Mass suspension or termination of employees such as Plaintiffs could in and of itself create a crisis of safety and health in the congregate care facilities of this state,” the plaintiffs warn in their petition.

¶ 12 The plaintiffs acknowledge, in their petition, that a religious exemption to the vaccination requirement is—theoretically—available. Even so, employees who are granted such an exemption still must undergo regular testing. The plaintiffs have to undergo testing while they await a decision on their exemption application. They have filled out a form titled “Request of Religious Exemption From COVID-19 Vaccination,” and they have submitted the form to the agencies where they work. The plaintiffs, however, have yet to receive either an approval or a disapproval. The defendants were supposed to grant or deny the exemption request within 10 days after the submission of the form. Instead of honoring its own 10-day deadline, CMS has e-mailed the plaintiffs that “ ‘additional information is needed to process the Religious Exemption Request.’ ” The additional information that CMS requested is a documented history of religious exemptions to vaccinations, a verified affiliation with a religious group the tenets of which oppose vaccinations or medical procedures, and proof that the religious group opposes, specifically, the use of medications developed from fetal cells.

¶ 13 The plaintiffs believe that the COVID-19 vaccines have been developed from research using fetal cells from aborted fetuses. On religious grounds, the plaintiffs object to medications having such origins. Persons in custody in the congregate-care facilities operated by the defendants are allowed to remain unvaccinated for moral or personal reasons. The plaintiffs insist that they, too, have such a right. In the plaintiffs' view, the vaccination requirement is arbitrary and unnecessary, considering that, "[a]ccording to the [Centers for Disease Control and Prevention], the survival rate of all persons who have contracted Covid-19 nation-wide [*sic*], based on reported numbers is 98.40%." Such a distant chance of mortality, the plaintiffs suggest in their petition, does not justify the vaccination and testing mandate.

¶ 14 For that matter, the plaintiffs object to even being tested for COVID-19. They explain in their complaint:

"Requiring only unvaccinated persons to submit to testing for Covid-19 violates the moral consciences of Plaintiffs because, *inter alia*, Plaintiffs hold sincere beliefs that prevent them from submitting to or participating in workplace procedures which arbitrarily discriminate between employees on the basis of health care choices made pursuant to freedom of conscience."

¶ 15 The petition raises three theories against the defendants' vaccination and testing mandate. Count I of the petition seeks a declaratory judgment that the defendants lack legal authority to implement a compulsory vaccination or testing program for COVID-19. Count II seeks a declaratory judgment that the vaccination and testing mandate violate the Health Care Right of Conscience Act (745 ILCS 70/1 *et seq.* (West 2020)). Count III seeks a declaratory judgment that terminating the plaintiffs' employment, or otherwise discriminating against them, because of their refusal to be vaccinated or tested would violate Illinois public policy.

¶ 16 *2. The Plaintiffs' Motion for a Temporary Restraining Order*

¶ 17 On November 3, 2021, the plaintiffs filed a "Verified Motion For Temporary Restraining Order With Notice." In their motion, the plaintiffs described themselves as "healthcare or correctional officers who provide[d] valuable medical care and supervision in congregate care facilities throughout this state on a daily basis." Lately, according to the plaintiffs' motion, the defendants had "made known their intent to lay-off, reassign, or suspend employees who do not submit to vaccination on or before October 26, 2021." (The deadline had been extended.)

¶ 18 To show that they had a reason to worry about imminent disciplinary action, the plaintiffs attached to their motion some e-mails or text messages from Stephanie L. Franklin, the labor relations manager for the Department of Corrections. We note that these messages from Franklin are undated, but we infer that Franklin sent them sometime before October 26, 2021, considering that she wrote:

"As you all are aware, [bargaining unit] VR704, [the Illinois Nurses Association], Trades and Teamsters have reached an agreement mandating their staff to have received at least 1 (one) or a 2 (two) shot vaccine or 1 (one) of a 1 (one) shot vaccine no later than October 26, 2021. It is vital that we, as a Department, utilize a standardized referral form for the employees who refuse vaccination. Attached is the form we are requiring you to utilize in the event that you have staff that are not vaccinated as of the October 26th date. Once you receive notice that an employee is not vaccinated, please follow A.D. 03.01.120, and schedule an Employee Review Hearing giving the employee and Union at least 72 hours notice. *** As previously detailed, the discipline

track for failure to vaccinate is a 10 day suspension, 20 day suspension, then discharge. Attached are the four documents that all non-vaccinated VR-704 need to have and return by 5:00 P.M. on Monday, October 25, 2021. We will treat this similarly to a 3k packet employees receive for layoff.”

¶ 19 Shortly afterward, it appears (the times of transmission, though not the dates, are on the messages), Franklin sent a correction: “I apologize for the incorrect information regarding the discipline track. It is not discharge after the 10 and 20 day, it will be non-paid leave of absence for up to 6 months.”

¶ 20 In their motion for a temporary restraining order, the plaintiffs requested the circuit court to issue the following commands to the defendants: (1) “immediately discontinue forcing vaccination for Covid-19 on the Plaintiffs, or others similarly situated, as a condition of employment”; (2) “discontinue forcing testing for Covid-19 on the Plaintiffs or others similarly situated, as a condition of employment”; and (3) refrain from “terminating, or otherwise disciplining the Plaintiffs or others similarly situated for refusing to be vaccinated or tested for Covid-19.”

¶ 21 *3. The Defendants’ Motion to Dismiss the Petition for Declaratory
and Injunctive Relief and Their Response to the Motion for a
Temporary Restraining Order*

¶ 22 In addition to moving for the dismissal of the plaintiffs’ petition on the grounds of failure to state a cause of action (see 735 ILCS 5/2-615 (West 2020)) and lack of subject-matter jurisdiction (see *id.* § 2-619(a)(1)), the defendants opposed the plaintiffs’ motion for a temporary restraining order. The primary reason for the defendants’ opposition to the motion was that, in the defendants’ view, the circuit court lacked subject-matter jurisdiction over the case. (The defendants argued, alternatively, that the common-law requisites for the issuance of a temporary restraining order were unmet.) The defendants maintained that jurisdiction lay exclusively with the Illinois Labor Relations Board. In support of their jurisdictional argument, the defendants presented some sworn materials, including an affidavit by Amber Spainhour, the assistant deputy director of labor relations at CMS.

¶ 23 From Spainhour’s affidavit, which apparently is uncontroverted, we glean the following facts.

¶ 24 a. Glass and Tangerose, Whose Exclusive Representatives,
in Negotiations on Executive Order 2021-22,
Entered Into Memoranda of Understanding With CMS

¶ 25 Glass is an employee of the Department of Veterans’ Affairs. She works as a nurse in the Illinois Veterans’ Home Quincy. She is a member of the Illinois Nurses Association RC23 bargaining unit.

¶ 26 Tangerose is an employee of the Department of Human Services. She works as a security therapy aide at the Rushville Treatment and Detention Facility. She is a member of the American Federation of State, County and Municipal Employees (AFSCME) RC9 bargaining unit.

¶ 27 On October 4, 2021, CMS and the Illinois Nurses Association signed a memorandum of understanding. On October 26, 2021, CMS and AFSCME, Council 31, signed essentially the

same memorandum of understanding, which (as Spainhour explains in her affidavit) applies to congregate workers employed by the Department of Veterans' Affairs and the Department of Human Services. The terms of these agreements between CMS and the exclusive representatives of Glass and Tangerose are essentially as follows.

¶ 28 There will be (as the union agrees with Governor Pritzker) a vaccination requirement and, alternatively, a testing requirement for employees who are determined to be exempt from the vaccination requirement. In exchange for being vaccinated, employees will receive an extra paid personal day and paid time off for absences resulting from infection by COVID-19, including paid time off if the employee needs to take care of a family member who is sick with COVID-19. The State shall consider, and shall allow as appropriate, medical and religious exemptions to the vaccination requirement. Progressive discipline will be imposed upon employees who refuse to comply with the vaccination policy: a 10-day suspension initially, and then a 20-day suspension, and finally the employee's choice of an unpaid leave of absence or a layoff. Originally, termination of employment was to be the final step of the disciplinary procedure. The parties, however, reached a compromise: instead of being fired for cause, the employee would be allowed to choose between an unpaid leave or a layoff with (under certain circumstances) the potential to resume state employment.

¶ 29 Regarding religious exemptions, the memoranda of understanding provided as follows:

“Affected employees may be exempted from the COVID-19 vaccination policy if they *** maintain sincerely held religious beliefs, practices, or observances that prohibit vaccination. This does not include exemption for personal or philosophical reasons. Employees claiming a *** religious exemption shall be responsible for submitting a completed exemption form and any related documentation to their employing agency. All such documentation shall be subject to the review and approval of CMS and must be submitted at least prior to October 26, 2021.

* * *

*** Employees may continue to work while the exemption is being reviewed by the employing agency and [CMS].

Employees exempted from the vaccination shall undergo regular COVID testing and ensure that appropriate documentation of same is regularly submitted. To the fullest extent practicable, such testing shall be available on work time at the facility. Staff testing documentation will be automatic if completed within a state facility.”

¶ 30 b. Fowler and Winters: Interest Arbitration Over Executive Order 2021-22

¶ 31 Fowler is employed by the Department of Corrections, and Winters by the Department of Juvenile Justice. Both Fowler and Winters are members of the RC-6 bargaining unit.

¶ 32 Although CMS and AFSCME, Council 31, agreed on the vaccination of security personnel in congregated facilities (as stipulated in the memoranda of understanding), they were unable to agree on the vaccination of employees in the RC-6 and CU-500 bargaining units. As to those employees, CMS declared an impasse in the negotiations.

¶ 33 Consequently, on October 22, 2021, pursuant to section 14 of the Illinois Public Labor Relations Act (Act) (5 ILCS 315/14 (West 2020)), AFSCME invoked its right to interest arbitration—a development, by the way, that the plaintiffs' petition of November 1, 2021, does not mention, any more than it mentions the memoranda of understanding. (“Interest

arbitration” is “[a]rbitration that involves settling the terms of a contract being negotiated between the parties; esp[ecially], in labor law, arbitration of a dispute concerning what provisions will be included in a new collective-bargaining agreement.” Black’s Law Dictionary (11th ed. 2019) (sub-definition of “interest arbitration” under the definition of “arbitration”).)

¶ 34 Section 14(l) of the Act provides, “During the pendency of proceedings before the arbitration panel, existing wages, hours, and other conditions of employment shall not be changed by action of either party without the consent of the other ***.” 5 ILCS 315/14(l) (West 2020). Because the interest arbitration is still pending, the vaccination requirement of Executive Order 2021-22 has not been enforced against Fowler, Winters, or any other member of the RC-6 bargaining unit. Unvaccinated employees in the bargaining unit, however, must continue to undergo regular testing for COVID-19.

¶ 35 c. Gregory

¶ 36 The fifth plaintiff, Gregory, is not an employee of the Illinois government. Instead, she is employed as a nurse by Wexford Health Services, Inc. (Wexford), which is a medical services vendor for the Department of Corrections. Gregory is represented by AFSCME, which collectively bargains with Wexford. The memorandum of understanding that AFSCME negotiated with CMS applies to Gregory just as it applies to Glass and Tangerose. (But, again, there is no memorandum of understanding applicable to Fowler and Winters, whose union is engaged in interest arbitration.)

¶ 37 4. *The Circuit Court’s Ruling on the Plaintiffs’ Motion for a Temporary Restraining Order and on the Defendant’s Motion for Dismissal*

¶ 38 a. Glass and Tangerose

¶ 39 In an order filed on December 20, 2021, the circuit court of Adams County found that it had “no jurisdiction to provide relief to plaintiffs Glass and Tangerose regarding the vaccination policy that is a condition of their continued employment that was bargained for by their union representative.” Even so, the court denied the defendants’ motion to dismiss on jurisdictional grounds the actions by Glass and Tangerose. The court reasoned, “The failure to abide by their own timeline and make a decision on the CMS exemption forms leaves the plaintiffs seeking relief from the court to ensure that the state defendants actually follow or implement their exemption process.” Therefore, as to Glass and Tangerose, the court denied the defendants’ motion for dismissal. The court, however, was unconvinced that Glass and Tangerose had “an immediate right in need of protection by a temporary restraining order.”

¶ 40 b. Gregory

¶ 41 The circuit court noted that Gregory had failed to join her employer, Wexford, as a defendant. Because Gregory was not an employee of any of the defendants that she had named in the lawsuit, the court concluded that it lacked authority to grant the relief she requested against them.

¶ 42

c. Fowler and Winters

¶ 43

The circuit court observed that more than 10 days had passed since Fowler and Winters submitted their exemption forms and that they still awaited a decision. CMS was in noncompliance with its own self-imposed schedule for granting or denying these requests for a religious exemption. In January 2022, by the court’s understanding, Fowler and Winters “[would] receive graduated sanctions if they fail[ed] to obtain the vaccination.” (It is unclear to us where the court obtained that information. The court wrote, “EO 2021-22 [*sic*] extends EO 2021-22 (vaccination and testing requirements) through January 2022.”) Therefore, the court decided that for Fowler and Winters a “temporary restraining order in aid of arbitration” was warranted. See *American Federation of State, County & Municipal Employees v. Schwartz*, 343 Ill. App. 3d 553, 560 (2003) (creating an exception to the anti-injunction statute (820 ILCS 5/1 (West 2002)) by granting a “preliminary injunction in aid of arbitration”).

¶ 44

Accordingly, on December 20, 2021, the circuit court ruled as follows:

“A. Defendants’ motion to dismiss is granted as to plaintiff Valerie Gregory and denied as to all other named plaintiffs.

B. Plaintiffs’ motion for temporary restraining order on behalf of Jean Glass and Trine Tangerose is denied.

C. A temporary restraining order is entered in favor of plaintiffs Jesse Fowler and Mike Winters. Defendants, the Illinois Department of Corrections and the Department of Juvenile Justice are enjoined from imposing progressive discipline measures, including suspension, forced leave of absence or layoff as a result of plaintiffs’ refusal to provide proof of vaccination, receive a Covid-19 vaccination or fail to test after obtaining a religious or medical exemption pending further order from this court. The restraining order shall remain in effect pending hearing on Plaintiff’s [*sic*] motion for Preliminary Injunction or further order of court.”

¶ 45

On December 22, 2021, pursuant to Illinois Supreme Court Rule 307(a)(1), (d) (eff. Nov. 1, 2017), the defendants petitioned for review of the temporary restraining order, requesting that we “reverse and vacate the temporary restraining order entered by the circuit court on December 20, 2021.”

¶ 46

II. ANALYSIS

¶ 47

A. The Special Statutory Jurisdiction That Is Necessary for a Circuit Court to Review an Administrative Action

¶ 48

The defendants appeal the temporary restraining order. See *id.* By the defendants’ reasoning, the circuit court had power to issue the temporary restraining order only if the court had subject-matter jurisdiction over the case. The defendants maintain that the court lacked jurisdiction. They challenge the temporary restraining order by challenging the court’s jurisdiction.

¶ 49

The Illinois Constitution says that “[c]ircuit courts shall have such power to review administrative action as provided by law.” Ill. Const. 1970, art. VI, § 9. In their petition for declaratory and injunctive relief, the plaintiffs request the circuit court to review the defendants’ administrative action of requiring state employees in state-owned or -operated congregate facilities to (1) be fully vaccinated against COVID-19 or (2) alternatively, if for medical or religious reasons the employees are exempt from the vaccination requirement, to

undergo additional testing to make sure they are not infected with the virus. The circuit court has subject-matter jurisdiction to review this administrative action only if “law”—that is to say, Illinois statutory law—so “provide[s].” See *id.*; *McCormick*, 2015 IL 118230, ¶ 19 (explaining that, “[w]ith the exception of the circuit court’s power to review administrative action, *which is conferred by statute*, a circuit court’s subject matter jurisdiction is conferred entirely by our state constitution” (emphasis added)); *Collinsville Community Unit School District No. 10 v. Regional Board of School Trustees of St. Clair County*, 218 Ill. 2d 175, 181-82 (2006) (explaining that “[b]ecause review of a final administrative decision may only be obtained as provided by statute, a court is said to exercise ‘special statutory jurisdiction’ when it reviews an administration decision”); *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 336 (2002) (holding that “[o]nly in the area of administrative review is the court’s power to adjudicate controlled by the legislature”).

¶ 50

B. Interest Arbitration on Behalf of Fowler and Winters

¶ 51

Interest arbitration addresses “unresolved disputes concerning wages, hours, terms[,] and conditions of employment.” 5 ILCS 315/14(p) (West 2020). Section 14(k) provides for the judicial review of interest arbitration orders:

“Orders of the arbitration panel shall be reviewable, upon appropriate petition by either the public employer or the exclusive bargaining representative, by the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside, but only for reasons that the arbitration panel was without or exceeded its statutory authority; the order is arbitrary, or capricious; or the order was procured by fraud, collusion or other similar and unlawful means. Such petitions for review must be filed with the appropriate circuit court within 90 days following the issuance of the arbitration order.” *Id.* § 14(k).

Thus, the General Assembly has conferred subject-matter jurisdiction on circuit courts to review an arbitration order issued under section 14—but only to determine if the arbitration order suffers from any of the shortcomings listed in section 14(k). The General Assembly, however, has not conferred subject-matter jurisdiction on circuit courts to review an administrative action that is the subject of interest arbitration. Because Winters and Fowler are not a public employer or an exclusive bargaining representative that seeks judicial review of an interest arbitration order, the circuit court lacks subject-matter jurisdiction over their action.

¶ 52

The defendants argue in favor of the circuit court’s reasoning that the temporary restraining order was necessary to maintain the status quo during interest arbitration. However, the circuit court overlooked section 14 of the Act (*id.* § 14(l)), which requires the parties to maintain the status quo during interest arbitration. Moreover, a claim alleging a party’s failure to maintain the status quo would have to be brought pursuant to the provisions of the Act. See *Village of North Riverside v. Illinois Labor Relations Board, State Panel*, 2017 IL App (1st) 162251, ¶¶ 23, 37 (an employer commits an unfair labor practice when it alters the status quo during interest arbitration). In *Village of North Riverside*, the reviewing court affirmed the judgment of the Illinois Labor Relations Board, which had found the village employer unilaterally changed the terms of employment while interest arbitration was pending. *Id.* ¶¶ 1, 49-50. In *Village of North Riverside*, the appellate court upheld a decision by the Illinois Labor Relations Board that failing to maintain the status quo during interest arbitration was an unfair labor practice. *Id.* ¶¶ 49-50. The Illinois Labor Relations Board has exclusive jurisdiction over

claims of unfair labor practices. *Zander v. Carlson*, 2019 IL App (1st) 181868, ¶ 23.

¶ 53

C. Unfair Labor Practices

¶ 54

The plaintiffs argue that “even if the vaccination or test requirement could be properly considered a ‘term or condition of employment,’ the State’s unilateral change to it, by way of the governor’s executive order, constitutes a *prima facie* unfair labor practice.” This argument only confirms the circuit court’s lack of jurisdiction. Again, “[t]he *** Act vests the [Illinois Labor Relations] Board with exclusive jurisdiction over unfair labor practice charges, including claims that a union has breached its duty of fair representation.” *Id.*

¶ 55

III. CONCLUSION

¶ 56

On the authority of article VI, section 9, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 9), we vacate the circuit court’s judgment on the ground of lack of subject-matter jurisdiction.

¶ 57

Vacated.