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.	)	Appeal from the Appellate Court of Illinois, Fourth District Case 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

AMICUS CURIAE BRIEF OF THE ILLINOIS EDUCATION ASSOCIATION IN SUPPORT OF RESPONDENTS-PETITIONERS UNIVERSITY PROFESSIONALS OF ILLINOIS, LOCAL 4100, IFT-AFT, AFL-CIO and ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

SCHUCHAT, COOK & WERNER
Loretta K. Haggard (ARDC# 6239448)
555 Washington Avenue, Suite 520
St. Louis, Missouri 63101
Telephone: (314) 621-2626
Facsimile: (314) 621-2378
Email: lkh@scwattorney.com

Counsel for Amicus Illinois Education Association

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Carolyn Taft Grosboll
SUPREME COURT CLERK

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POINTS AND AUTHORITIES

INTEREST OF AMICUS

The Illinois Education Association ("IEA") is a state-wide organization representing approximately 124,821 teachers, higher education faculty, paraprofessionals, and others in school districts and higher education institutions throughout the State of Illinois. Most of the education employees represented by IEA are covered by collective bargaining agreements which by law provide for binding arbitration of disputes over their interpretation and application. 115 ILCS 5/10(c). The efficacy of arbitration is of great interest to IEA and the education employees it represents. IEA believes that the Illinois Educational Labor Relations Board ("IELRB") correctly construed the scope of an arbitrator's remedial authority. This Court should affirm the IELRB's decision and reverse the Court of Appeals' decision to the contrary, in order to protect the public policy favoring arbitration of disputes over the meaning and application of collective bargaining agreements in the educational workplace.

ISSUES PRESENTED FOR REVIEW

I. The Board correctly determined that the arbitrator lawfully retained authority to resolve all disputes as to remedies ordered by the arbitrator.

II. Limiting an arbitrator's remedial authority would undercut Illinois' public policy favoring labor arbitration of workplace disputes.

ARGUMENT

Standard of Review

This Court reviews the decision of the IELRB rather than the decision of the Court of Appeals. *Griggsville-Perry Cmty. Unit Sch. Dist. No. 4 v. IELRB,* 2013 IL 113721, ¶39 (Justice Karmeier, concurring), *citing Provena Covenant Medical Ctr. v. Dep't of Rev.*, 236 Ill.2d 368, 386 (2010). Questions of law are reviewed *de novo*, and mixed questions of law and fact are reviewed for clear error. *Speed Dist. 802 v. Warning,* 242 Ill.2d 92, 111-112 (2011).

I. The Board correctly determined that the arbitrator lawfully retained authority to resolve all disputes as to remedies ordered by the arbitrator.

An educational employer that refuses to comply with a binding arbitration award is guilty of an unfair labor practice under Section 14(a)(8) of the Illinois Educational Labor Relations Act (IELRA). 115 ILCS 5/10(c), 5/14(a)(8). The Board below evaluated: 1) whether the original and supplemental arbitration awards were binding, 2) the content of those awards, and 3) whether Petitioner-Respondent Western Illinois University ("Employer") complied with the awards. C875, *citing Central Comm. Unit Sch. Dist. No. 4 v. IELRB,* 388 Ill.App.3d 1060 (Ill. App. 4th Dist. 2009), and *Board of Educ. of Danville Comm. Consol. Sch. Dist. No. 118 v. IELRB*, 175 Ill.App. 3d 347 (Ill. App. 4th Dist. 1988). The Employer challenged the arbitrator's legal authority to hold a supplemental hearing and issue the supplemental award; and claimed that it was for the Board rather than the arbitrator to determine, after presentation of evidence, whether the Employer complied with the original arbitration award. C875-876.

Noting that "'review of an arbitration award is extremely limited,'" (*citing Griggsville-Perry*, 124 Ill.2d at 254), the Board held as a matter of law that the arbitrator *did* have broad remedial authority to issue a binding supplemental award; and it deferred to the arbitrator's finding that the Employer had violated the original arbitration award. C860, 876, 880-881. Accordingly, the Board found that the Employer violated Section 14(a)(8) and, derivatively, Section 14(a)(1) of the IELRA. C881.

The Board correctly determined that the arbitrator's supplemental award did not infringe on the Board's exclusive primary jurisdiction to rule on unfair labor practice complaints. C880. Although the Illinois courts have not previously ruled on the scope of an arbitrator's remedial authority under the IELRA, the Board noted that they have upheld an arbitrator's retention of jurisdiction over disputes over the remedy in a commercial arbitration. C878, *citing Hollister, Inc. v. Abbott Labs.,* 170 Ill.App.3d 1051 (Ill. App. 1st Dist. 1988). The Board also looked to ample labor arbitration precedent under federal law and Pennsylvania law (on whose labor relations statute the IELRA was modeled). C876-877, *citing Central City Educ. Assoc. v. IELRB*, 149 Ill.2d 496 (1992), and *Decatur Board of Educ. v. IELRB,* 180 Ill.App.3d 770 (Ill. App. 4th Dist. 1989).

The appellate court in *Greater Latrobe Area Sch. Dist. v. Penn. State Educ. Assn.*, 615 A.2d 999 (Penn. Commw. Ct. 1991), upheld a supplemental arbitration award determining that the employer had violated the original award by subsequently denying the grievant's applications for transfer, thereby triggering review under the arbitrator's express retention of jurisdiction over the remedy. "Unless a collective bargaining agreement specifically states otherwise," the court held, "the arbitrator has jurisdiction to make final determinations on procedural issues." *Id.* at 1004. Not only did the parties'

labor agreement permit a supplemental hearing on implementation of the remedy, it served the policy of the state's labor relations act "to provide inexpensive, expeditious contractual remedies" through arbitration. *Id.* It would subvert that policy to require the grievant to start over with a new grievance and proceed to eventual arbitration over essentially the same issue. *Id.* at 1004-1005 & n.6. Another Pennsylvania appellate court reached a similar result in *West Pottsgrove Township v. West Pottsgrove Police Officers' Ass'n*, 791 A.2d 452 (Penn. Commw. Ct. 2002) (affirming arbitrator's retention of jurisdiction in an interest arbitration, to ensure employer complied with order to conduct an actuarial study of pension plan). The court explained, "the arbitrator's retention of jurisdiction serves to avoid that which we cautioned against in *Greater Latrobe*, i.e., delay in final resolution, unnecessary time and expense and relitigation." *Id.* at 457.

In addition to the foregoing Pennsylvania cases, the IELRB relied on a line of federal cases upholding labor arbitrators' retention of jurisdiction over remedial issues. C876-877, *citing Kroger Co. v. United Food & Comm'l Workers Union Local 876*, 284 Fed. Appx. 233, 236 (6th Cir. 2008) (upholding arbitrator's retention of jurisdiction "in the event of any dispute, or if clarification is required, in implementing the remedial aspects of this Award"); *SBC Advanced Solutions, Inc. v. Comm. Workers of Amer., Dist. 6,* 44 F.Supp.3d 914, 924 (E.D. Mo. 2014) (enforcing arbitration award in which arbitrator retained jurisdiction for the "specific purpose of resolving any disputes that may arise between the parties about the application or interpretation of this awarded [make-whole] remedy"); *Case-Hoyt Corp. v. Graphic Comm. Int'l Union Local 503*, 5 F.Supp.2d 154, 156 (W.D.N.Y. 1998) (where arbitrator retained jurisdiction to resolve disputes over the remedy, it was for arbitrator rather than court to take evidence on

compliance). To similar effect, *see CUNA Mut. Ins. Soc'y v. Office and Prof'l Employees Int'l Union, Local 39*, 2004 U.S. Dist. LEXIS 24120 (W.D. Wis. 2004), *aff'd,* 443 F.3d 556, 565 (7th Cir. 2006); *Courier-Citizen Co. v. Boston Electrographers Union No. 11*, 1982 U.S. Dist. LEXIS 10491 (D. Mass. 1982), *aff'd in relev. part,* 702 F.2d 273, 278-280 (1st Cir. 1983); *Robert E. Derecktor of Rhode Island, Inc. v. United Steelworkers, Local 9057*, 1990 U.S. Dist. LEXIS 7116, at 8-9 (D. R.I. 1990); *George Day Constr. Co. v. United Bhd. of Carpenters and Joiners, Local 354*, 1982 U.S. Dist. LEXIS 9993, at 13 (N.D. Cal. 1982), *aff'd,* 722 F.2d 1471 (9th Cir. 1984); *SEIU, Local 1107 v. Sunrise Hosp. and Med. Ctr.,* 2013 U.S. Dist. LEXIS 134810 (D. Nev.).

The Fourth District disagreed with the Board, holding: "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." A10-11. It is true that the IELRA "divest[s] the circuit courts of primary jurisdiction over educational labor arbitration awards." A9, *citing Board of Educ. of Comm. Sch. Dist. No. 1 v. Compton*, 123 Ill.2d 216, 221 (1988). The Board's primary jurisdiction over arbitration awards, the appellate court argued, distinguishes the IELRA fundamentally from the Pennsylvania and federal cases upholding labor arbitrators' retention of jurisdiction over the remedy. A10. ***The Fourth District never explains <u>why</u> this distinction matters.*** What matters is not the venue in which arbitration decisions are enforced or vacated, but whether the arbitrator has rendered a final and binding award to which the court or the board applies highly deferential review. Where an arbitrator has retained jurisdiction over implementation of the remedy, the arbitration award is not final, binding, and ready for review by the Board

until the arbitrator has fully exercised that authority.

II. Limiting an arbitrator's remedial authority would undercut Illinois' public policy favoring labor arbitration of workplace disputes.

The Fourth District's decision is inconsistent with state policy favoring resolution of workplace disputes by arbitration.

The Federal policy favoring arbitration was clearly enunciated in the three cases that are known as the *Steelworkers Trilogy: United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp*., 363 U.S. 593 (1960). The Court in *Enterprise Wheel* stated that:

> [f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.

363 U.S. at 596. *See also, e.g., Hines v. Anchor Motor Freight Systems, Inc.,* 424 U.S. 554, 562 (1976); *John Wiley & Sons, Inc. v. Livingston,* 376 U.S. 543, 549 (1964) ("This Court has in the past recognized the central role of arbitration in effectuating national labor policy."). The Court has characterized the judicial review of an arbitrator's award as one of the "narrowest known to the law." *Union Pacific R.R. Co. v. Sheehan*, 439 U.S. 89, 91 (1978). This Court has adopted and applied this policy to public sector arbitration. *See, e.g., Am. Fed'n of State, Cty. & Mun. Emps. v. State,* 124 Ill. 2d 246, 254 (1988) ("it should be noted that a court's review of an arbitrator's award is extremely limited").

This policy has particular applicability to the IELRA which mandates that

covered collective bargaining agreements contain a dispute resolution procedure. Professor Martin Malin observed that the "policy favoring arbitration of grievances and disfavoring strikes which undermine the exclusivity of the grievance procedure is even stronger under the IELRA. The statute mandates the *quid pro quo* exchange of a no strike clause for a grievance and arbitration procedure." ARTICLE: IMPLEMENTING THE ILLINOIS EDUCATIONAL LABOR RELATIONS ACT, 61 Chi.-Kent L. Rev. 101, 140. This Court expressed the same view in *Compton*:

> [f]inding that unresolved educational labor disputes were 'injurious to the public,' the legislature determined that 'adequate means must be established for minimizing them and providing for their resolution.' (Ill. Rev. Stat. 1985, ch. 48, par. 1701.).

123 Ill. 2d at 219-20.

The Court of Appeals decision is a departure from this well-established policy favoring arbitration. The Fourth District rejects the Board's limited scope of review and second guesses the arbitrator's remedial authority. If affirmed, it would lead to protracted litigation of arbitral remedies and uncut the goal of expeditious resolution of educational workplace disputes.

CONCLUSION

For the foregoing reasons, Amicus Illinois Education Association joins with IFT and the IELRB in requesting that this Court reverse the Opinion and Order of the Appellate Court and affirm the Opinion and Order of the Board.

Respectfully submitted,

/s/ Loretta K. Haggard
Loretta K. Haggard ARDC #6239448
Schuchat Cook & Werner
555 Washington Avenue, Suite 520
St. Louis, MO 63101
Telephone: (314) 621-2626
Facsimile: (314) 621-2378
Email: lkh@scwattorney.com

Counsel for Amicus Illinois Education Association

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 2,604 words.

/s/ *Loretta K. Haggard*
Loretta K. Haggard