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 AND APPENDIX OF STATE RESPONDENT-PETITIONER

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NATURE OF THE ACTION

University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO (Union) and Western Illinois University (University) entered into a collective bargaining agreement (CBA) that covered two bargaining units of University employees that are represented by the Union. The CBA included a grievance resolution procedure that provided for binding arbitration, as required by the Illinois Educational Labor Relations Act (Act), *see* 115 ILCS 5/10(c) (2018).

The University decided to lay off multiple bargaining unit employees, and the Union filed grievances on behalf of some of them that proceeded to arbitration. In July 2017, the arbitrator issued an award in which he decided that the University violated the CBA as to some of those employees, ordered various remedies, and retained jurisdiction for at least 90 days to resolve any issues regarding the implementation of the award. Approximately two months later, the Union asked the arbitrator to exercise his retained jurisdiction, alleging that the University had failed to comply with the award's terms. The arbitrator conducted a hearing over the University's objections that it had complied with the award and that the arbitrator lacked authority to review its compliance. In March 2018, the arbitrator issued a supplemental award, finding that the University failed to implement the terms of the July 2017 award, and did not comply with the CBA, as to two employees and ordering relief.

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The Union filed unfair labor practice charges with the Illinois Educational Labor Relations Board (Board), alleging that the University violated sections 14(a)(8) and 14(a)(1) of the Act by refusing to comply with July 2017 and March 2018 awards. The Board ultimately determined that the University violated the Act by failing to comply with both arbitration awards. The University petitioned to the Illinois Appellate Court for direct administrative review of that decision. The appellate court vacated the Board's decision and remanded for further proceedings, holding that the arbitrator lacked statutory or contractual authority to issue the March 2018 award. This Court granted the Union and the Board leave to appeal.

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ISSUE PRESENTED FOR REVIEW

Whether the Board's determination that the University violated the Act by failing to comply with the July 2017 and March 2018 awards was not clearly erroneous, where the Act does not deprive arbitrators of the widely accepted authority to retain jurisdiction over the implementation of an award and the arbitrator's decisions drew their essence from the CBA.

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JURISDICTION

The appellate court entered its judgment on April 10, 2020. A1-7.[1] On June 15, 2020, the Union filed a timely petition for leave to appeal under Illinois Supreme Court Rule 315. A35-59; *see* M.R. 30370 (extending deadline for petition for leave to appeal from 35 to 70 days due to public health concerns regarding Covid-19). On June 23, 2020, this Court granted the Board's timely motion for an extension of time to file a petition for leave to appeal until July 24, 2020. A60. On July 30, 2020, this Court granted the Board's timely motion for an extension of time to file a petition for leave to appeal until August 7, 2020. A61. On August 7, 2020, the Board filed a timely petition for leave to appeal, docketed as case No. 126090. A62-68. On August 18, 2020, this Court granted the Board's motions for leave to adopt and join the Union's petition for leave to appeal and to close case No. 126090. A69. This Court allowed the joint petition for leave to appeal on September 30, 2020. A70.

[1] The common law record is cited as "C__," the exhibits are cited as "E__," the report of proceedings is cited as "R__," the appendix to this brief is cited as "A__," and the University's opening brief in the appellate court is cited as "PT Br. __."

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STATEMENT OF FACTS

The Collective Bargaining Agreement

The Union is the exclusive representative of two bargaining units of University employees. E96. Unit A consists of tenured and tenure-track faculty, as well as librarians and counselors, and Unit B consists of non-tenured associate faculty and academic support professionals. E95. The Union and the University executed a CBA that covered both units and, relevant here, set procedures for reducing Unit A staff and for processing all employee grievances. E99-107 (grievances), E160-62 (staff reduction).

Regarding staff reductions, the CBA authorized the University to lay off Unit A employees in response to "demonstrable enrollment reduction," among other reasons. E160. Layoffs were to begin with temporary full- and part-time faculty, followed by associate faculty, then full-time employees on probationary appointment (those without tenure), and, finally, tenured faculty. *Id.* When deciding which employees to let go, the University was required to consider five factors: 1) length of full-time service at the University; 2) length of full-time service in their department; 3) educational qualifications; 4) professional training; and 5) professional experiences. *Id.*

After deciding which employees to lay off, the University was required to "make a reasonable effort to locate other equivalent employment within the University" for those employees before the layoff's effective date and to notify them of the results. E161. The University's search, the CBA directed, "shall

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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." *Id.*

The CBA also provided a three-step process for addressing employee grievances. E99-107. At step three, the dispute would be submitted to an arbitrator of the parties' choosing, who was authorized to conduct hearings and issue final and binding decisions. E104-06; *see* 115 ILCS 5/10(c) (2018) (requiring CBA to contain grievance procedure that provides "for binding arbitration of disputes concerning the administration or interpretation of the agreement"). The arbitrator, however, was not authorized to alter the CBA's terms and could address only "the application and/or interpretation of [the CBA] and the precise issue(s) submitted for arbitration." E105.

Faculty Layoffs and Grievances

In December 2015, the University's president announced that there would be layoffs in response to declining enrollment. C863. The University's board of trustees approved the layoffs in January 2016. *Id.* Ten of the laid-off employees filed grievances regarding the University's decision, including Dr. Daniel Ogbaharya and Dr. Holly Stovall, who were members of Unit A. *Id.*

Ogbaharya was an assistant professor in a tenure-track position in the Political Science Department, E846, and Stovall was an assistant professor in the Women's Studies Department, E858. Stovall was not laid off until the end of Spring Semester 2017 because she was in her last year before her tenured

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year when the layoffs were announced (she was awarded tenure in June 2016), and therefore entitled to one-year notice under the CBA. E858-59. Ogbaharya and Stovall both alleged that the University violated the CBA's staff reduction provisions when making its layoff decisions. E288-90 (Ogbaharya), E304-06 (Stovall).

The July 2017 Arbitration Award

The grievances proceeded to step three arbitration on the agreed issues of "[w]hether the University violated the [CBA] when it laid off" Ogbaharya and Stovall and, if so, "what shall the remedy be." E253; *see* E676 (defining issues at hearing as whether University complied with CBA and, "if not, what is the appropriate remedy"). During the hearing, the Union's counsel orally requested that the arbitrator "retain jurisdiction to resolve any disputes with respect to implementation of the remedy" if he sustained all or some of the grievances. E682. The University did not object to that request, either during the hearing or in its post-hearing brief. C868; *see* E675-769 (hearing), E798-835 (post-hearing brief).

The arbitrator issued an award in July 2017, concluding that the University violated the CBA when it decided to lay off Ogbaharya because it ignored his length of service at the University, and relied solely on his length of service in his department, in violation of the requirement that it consider all five factors set forth in the CBA. E847-48. The arbitrator directed the University to reevaluate its decision pursuant to all five factors before the

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start of the next academic year and awarded back pay. E848. The arbitrator declined to decide whether the University made reasonable efforts to locate equivalent employment but emphasized that it must comply with that requirement if it decided to lay off Ogbaharya after it had considered the appropriate factors. *Id.*

The arbitrator also concluded that the University violated the CBA by failing to make reasonable efforts to find Stovall equivalent employment after it decided to lay her off, noting her experience in teaching both Women's Studies and Spanish courses. E858-61. As relief, the arbitrator ordered the University to determine if Stovall could be placed in an opening in another department before the start of the next academic year and advise her of the results of its search, consistent with the corresponding provision in the CBA. E861-63. The arbitrator also stated that he would retain jurisdiction for at least 90 days "to resolve any issues regarding the implementation of this Award." E863.

The March 2018 Supplemental Award

In September 2017, the Union sent an e-mail to the arbitrator, asking him to exercise his retained jurisdiction over the implementation of the award and alleging that the University had failed to comply with its terms. E864-66. It asserted that the University had not reinstated Ogbaharya, explained why he should be laid off, or provided any back pay. E864. The Union also stated that it identified three courses that Stovall was qualified to teach, but were

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assigned to other faculty, and that the University failed to notify Stovall of any efforts that were taken to find equivalent employment. E864-65. The Union requested an order requiring the University to reinstate Ogbaharya and satisfy his back-pay award and to reinstate Stovall and/or pay her for the current semester and reinstate her for the next one. *Id.* In response, the University presented the arbitrator with letters it had sent to Ogbaharya and Stovall about the award which, it believed, established its compliance. E883, E892-94. The Union replied that the University did not send those letters until after it had contacted the arbitrator, weeks after the new academic year had begun, and contended that the University had not made a good-faith effort to comply with the award. E911-13.

The arbitrator reviewed the materials presented by the Union and the University and decided that a hearing was necessary to resolve factual disputes regarding the University's conduct following the entry of the July 2017 award. E931, E1073. The University objected, arguing that it had complied with the award, or, alternately, the arbitrator lacked authority to determine its compliance under the CBA because the Board had exclusive jurisdiction to resolve any issues regarding its compliance under the Act. E1079. The arbitrator responded that he had authority to resolve the parties' dispute about the University's implementation of the award under the CBA, noting that they had agreed to arbitrate the issue of the remedy, and scheduled a hearing for January 2018. E1086.

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Stovall, the University's interim and associate provosts, and a Union grievance officer testified at the hearing. E1188. The University stated that it believed the arbitrator lacked the authority to conduct the hearing, E1189, and directed five employees for whom the arbitrator had issued subpoenas not to appear at the hearing, E1197-98.[2]

In March 2018, the arbitrator issued a supplemental award, concluding that the University violated the July 2017 award as to Ogbaharya and Stovall. E1245-60. Regarding Ogbaharya, the arbitrator found that the University did not make a good-faith effort to reevaluate its layoff decision because it did not credit him for his entire length of service in his department, and thus failed to consider all the factors listed in the CBA. E1248-51. The arbitrator also found that the University did not make a good-faith effort to find Stovall equivalent employment because it did not offer her three available courses that she was qualified to teach and would have represented a full course load. E1257-59. The arbitrator ordered make-whole remedies for both Ogbaharya and Stovall, in addition to directing the University to reinstate Ogbaharya and offer Stovall available courses in upcoming semesters. E1260. In conclusion, the arbitrator stated that the supplemental award implemented the terms of the July 2017 award and that he would continue to retain jurisdiction to resolve disputes regarding the implementation of the supplemental award. E1259-60.

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[2] The University filed a motion to quash the subpoenas in the Ninth Judicial Circuit, McDonough County. E1108-21. The court dismissed the matter a few days before the hearing for lack of jurisdiction. E1131.

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The Board Proceedings

Shortly before the January 2018 hearing that resulted in the March 2018 award, the Union filed an unfair labor practice charge with the Board alleging that the University violated sections 14(a)(8) and 14(a)(1) of the Act by refusing to comply with the July 2017 award. C4. The Union explained that, while it believed the arbitrator was authorized to conduct the upcoming hearing and resolve issues regarding the implementation of the award, it was filing the charge to preserve its right to seek the Board's enforcement of the award because the University was contesting the arbitrator's authority. *Id.* The Union amended its charge after the arbitrator issued the supplemental award to allege that the University violated the Act by refusing to comply with both the July 2017 and March 2018 awards. C12.

The Board investigated the charge, and its acting Executive Director issued a complaint and notice of hearing alleging that the University violated the Act by failing to comply with both arbitration awards. C752-54.[3] In its answer, the University denied that it refused to comply with the July 2017 award, admitted that it refused to comply with the March 2018 award, and argued that the arbitrator lacked authority to conduct the second hearing or

[3] While the investigation was underway, the Union asked the arbitrator to issue a second supplemental award finding that the University violated the July 2017 award by failing to offer Stovall available classes during the Spring 2018 semester. E1261-62. The arbitrator decided to hold the matter until the Board resolved the pending charge because the University was going to refuse to comply with any further awards until then. E1279.

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issue a supplemental award. C760-64. The University maintained that the arbitrator exceeded his authority under the CBA because its compliance with the July 2017 award was not submitted for arbitration and that the Act vested the Board with the exclusive authority to determine an employer's compliance with an arbitration award. C763-64.

A Board administrative law judge (ALJ) conducted a hearing on the complaint. R1-92. At the hearing, the Union submitted the record of the arbitration proceedings into evidence and argued that both awards were valid because they drew their essence from the CBA. R27-28, R36. The University called three witnesses, one of whom had failed to appear at the January 2018 hearing, *see* R70-71, to testify in support of its position that it complied with the July 2017 award, R38-79. The Union objected to the witness' testimony, arguing that it was irrelevant because the Board's review was limited to the record before the arbitrator. R36-37, R63-64. The University responded that the testimony was proper because, if the arbitrator lacked the authority to issue the March 2018 award, then the Board could conduct a *de novo* review of its compliance with the July 2017 award. R37. The ALJ noted the objection for the record, R36-37, and, after those witnesses testified, the Union called three witnesses in rebuttal, R80-91.

The Union argued in its post-hearing brief that the arbitrator had the authority to exercise jurisdiction over the implementation of the July 2017 award under the Act and consistent with generally accepted practices. C801-

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09. It contended that the University was improperly trying to relitigate issues that were resolved by the arbitrator, stating that the evidence presented at the ALJ hearing was irrelevant because the Board's review was limited to deciding if the awards were based on interpretations of the CBA. C798-801, C809-10. The Union concluded that the University violated the Act when it refused to comply with the arbitrator's awards because those decisions were grounded in the evidence that was presented to the arbitrator and drew their essence from the CBA. C810-13.

The University argued that it did not violate the Act when it refused to comply with the March 2018 award because the arbitrator lacked statutory or contractual authority to issue that decision. C827-33. The University asserted that the Board had exclusive jurisdiction to review an employer's compliance with an arbitration award under the Act and that its compliance with the July 2017 award was not among the issues that were submitted to the arbitrator. *Id.* It maintained that the Board should assess its compliance with the July 2017 award *de novo*, C826-27, and, citing evidence presented during the ALJ hearing, argued that it complied with that award, C833-54.

The ALJ removed the matter to the Board for a decision. C856; *see* 80 Ill. Admin. Code § 1120.40(f) (ALJ may "order the case removed to the Board on his or her own motion"). She explained that there were no determinative issues of fact that required a recommended decision. C856.

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The Board concluded that the University violated section 14(a)(8) and, derivatively, section 14(a)(1) of the Act by failing to comply with the July 2017 and March 2018 awards. C881. As to the March 2018 award, the Board noted that the University admitted that it had refused to comply with that decision, leaving the award's validity as the only contested issue. C875-76. The Board determined that the award was binding because the arbitrator did not infringe on the Board's statutory authority or exceed his contractual powers under the CBA. C876-80.

To begin, the Board found that an arbitrator's authority to retain jurisdiction over the implementation of an award "has been widely upheld." C876. The Board explained that courts have recognized that authority under the Pennsylvania statute on which the Act was modeled, federal labor law, and the Illinois Uniform Arbitration Act, and that a leading treatise reflected that arbitrators frequently retain jurisdiction over implementation disputes. C876-79. The Board therefore concluded that the Act did not deprive arbitrators of that well-established authority when it assigned the responsibility to enforce an arbitration award to the Board instead of the courts. C878-79.

The Board also determined that the arbitrator acted within the scope of his contractual authority when he issued the March 2018 award because the parties agreed to arbitrate the implementation of the July 2017 award when they asked the arbitrator to decide the remedy. C879-80. The Board stated that when, as here, the CBA provides that contractual grievances are subject

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to arbitration, the arbitrator is presumed to have the authority to fully resolve the parties' dispute absent an express reservation otherwise. *Id.* It therefore concluded that the arbitrator had the authority to retain jurisdiction over the implementation of the July 2017 award, noting that the CBA incorporated the rules of the American Arbitration Association (AAA), which allows arbitrators to rule on their own jurisdiction, and that the University did not object to the Union's request for the arbitrator to exercise that authority until after he had issued the July 2017 award. C880.

In addition, the Board determined that the University violated sections 14(a)(8) and 14(a)(1) of the Act by failing to implement the terms of the July 2017 award. C881. The Board began by stating that it would not consider the evidence presented at the ALJ hearing because its review of the March 2018 award was limited to the record that was before the arbitrator. C860-61. It then concluded that the University violated the Act because the arbitrator's findings of fact supported his conclusion that the University failed to comply with the July 2017 award. C881. The Board ordered the University to cease and desist from refusing to comply with the July 2017 and March 2018 awards and to immediately comply with both. C881-82.

The Appellate Court Decision

The University filed a petition for review in the Illinois Appellate Court, which vacated the Board's decision and remanded for further proceedings. *W. Ill. Univ. v. Ill. Educ. Labor Relations Bd.*, 2020 IL App (4th) 190143, ¶¶ 24,

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49. The court held that the University did not violate the Act when it refused to comply with the March 2018 award because the arbitrator lacked the statutory or contractual authority to issue that award. *Id.*, ¶ 45. It then concluded that the Board erred by deferring to the March 2018 award when it decided that the University failed to comply with the July 2017 award and directed the Board to determine the University's compliance with that award in the first instance, considering all relevant evidence regardless of whether it was presented to the arbitrator. *Id.*, ¶ 46.

Addressing the arbitrator's statutory authority, the court decided that the case law and treatise the Board relied on to conclude that an arbitrator's authority to retain jurisdiction over the implementation of an award has been widely upheld was unpersuasive and distinguishable. *Id.*, ¶ 33. To that end, the court stated that section 14(a)(8) of the Act does not "remotely resembl[e]" the Pennsylvania statute, federal labor law, or the Illinois Uniform Arbitration Act because those statutes provide for judicial review of an arbitration award, while the Act instead vests that responsibility with the Board. *Id.* The court explained that an arbitrator may retain jurisdiction to correct errors or clarify ambiguities in an award but concluded that the arbitrator usurped the Board's statutory authority here because the content of the July 2017 award was clear, leaving the University's compliance as the only disputed issue. *Id.*, ¶¶ 34-35.

The court also decided that the arbitrator lacked contractual authority to issue the March 2018 award because the CBA provides that the scope of the

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arbitrator's review is limited to the "precise" issue submitted to arbitration, and compliance with the ensuing award was not among the issues that were submitted to the arbitrator. *Id.*, ¶¶ 38-42. And while the court acknowledged that the AAA rules allow arbitrators to rule on their own jurisdiction and that the CBA does not expressly prevent the arbitrator from determining whether a party implemented an award, it concluded that those considerations were not determinative. *Id.*, ¶¶ 38, 43. The court reasoned that the CBA preserved the University's statutory rights and that "[t]he Act guarantees the University the right to have arbitration disputes resolved by the IELRB." *Id.*, ¶¶ 38, 43.

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ARGUMENT

I. This Court should review the Board's final decision for clear error and give substantial weight to its interpretation of the Act.

On administrative review, this Court reviews the decision of the Board, rather than that of the appellate court. *Bd. of Educ. of City of Chi. v. Ill. Educ. Labor Relations Bd.*, 2015 IL 118043, ¶ 14. The applicable standard of review of a Board decision depends on whether the question presented is one of fact, one of law, or a mixed question of fact and law. *Id.* A mixed question of fact and law asks the Board to decide the legal effect of a given set of facts, and its resolution of such a question is reviewed for clear error. *Id.*, ¶ 16. Here, the Board decided a mixed question of fact and law when it concluded that the University violated the Act because, as the ALJ explained, *see* C856, there were no determinative issues of fact, and the Board thus ascertained the legal effect of a given set of facts, *see Bd. of Educ. of City of Chi.*, 2015 IL 118043, ¶ 18. The Board's final decision in this case should therefore be reviewed for clear error and reversed only if this Court "is left with the definite and firm conviction that a mistake has been committed." *Id.*, ¶ 16.

This Court reviews the Board's resolution of subsidiary questions of law *de novo*. *Id.*, ¶ 15; *see also Griggsville-Perry Cmty. Unit Sch. Dist. No. 4 v. Ill. Educ. Labor Relations Bd.*, 2013 IL 113721, ¶ 20 (whether arbitrator exceeded scope of his authority is question of law). While this Court is not bound by an agency's interpretation of a statute, the Board's reading of the Act "remains

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relevant where there is reasonable debate about [its] meaning." *Bd. of Educ. of City of Chi.*, 2015 IL 118043, ¶ 15. In fact, this Court gives "substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with administering and enforcing [it]." *Citibank, N.A. v. Ill. Dep't of Revenue*, 2017 IL 121634, ¶ 39.

Thus, this Court should review the Board's ultimate determination of an unfair labor practice for clear error and accord substantial weight to its resolution of subsidiary questions of statutory interpretation.

II. The Board's determination that the University violated the Act by failing to comply with the July 2017 and March 2018 awards was not clearly erroneous.

A. The Act requires every CBA to establish binding arbitration for contractual disputes and provides that an employer commits an unfair labor practice whenever it refuses to comply with a valid arbitration award.

The Act regulates labor relations between public-sector educational employers and employees through a system of collective bargaining. 115 ILCS 5/1 (2018). Under that system, the employer and the exclusive representative of a bargaining unit of its employees share duties to bargain in good faith over wages, hours, and other terms and conditions of employment, and "to execute a written contract incorporating any agreement [they] reach[]." 115 ILCS 5/10(a) (2018). That contract (the CBA) "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," as well as "appropriate language prohibiting strikes for the

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duration of the agreement." 115 ILCS 5/10(c) (2018); *see also Bd. of Educ. of Warren Twp. High Sch. Dist. 121 v. Warren Twp. High Sch. Fed'n of Tchrs.*, 128 Ill. 2d 155, 166 (1989) (noting Act revolutionized Illinois educational labor law by requiring binding arbitration while limiting right to strike).

The unfair labor practice proceeding is the mechanism by which the statutory duties of employers and employee representatives are enforced. *See* 115 ILCS 5/14 (2018). Relevant here, section 14(a)(8) of the Act provides that an employer commits an unfair labor practice by "[r]efusing to comply with the provisions of a binding arbitration award," 115 ILCS 5/14(a)(8) (2018), and section 14(a)(1) prohibits an employer from "[i]nterfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act," 115 ILCS 5/14(a)(1) (2018). When an employer refuses to comply with a valid and binding arbitration award, the section 14(a)(1) violation is derivative of the violation of section 14(a)(8). *See Bd. of Educ. of Rockford Sch. Dist. No. 205 v. Ill. Educ. Labor Relations Bd.*, 165 Ill. 2d 80, 85-86 (1995).

The Act does not provide for automatic review of an arbitration award. *Bd. of Educ. of Cmty. Sch. Dist. No. 1, Coles Cnty. v. Compton*, 123 Ill. 2d 216, 226 (1988). Instead, courts have recognized that the appropriate method for challenging the validity of an arbitrator's decision is to refuse to comply with the award and then litigate the dispute in an unfair labor practice proceeding before the Board. *See Griggsville-Perry*, 2013 IL 113721, ¶ 13.

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The Board's analysis of whether an employer violated section 14(a)(8) by refusing to comply with an arbitration award consists of three components: "(1) whether the arbitration award is binding, (2) the content of the award, and (3) whether the employer has complied with the award." *Cent. Cmty. Unit Sch. Dist. No. 4 v. Ill. Educ. Labor Relations Bd.*, 388 Ill. App. 3d 1060, 1066 (4th Dist. 2009). Review of an arbitration award is extremely limited, as the award must be construed as valid whenever possible. *Id.* at 1068. This Court has explained that the correctness of the arbitrator's decision is not subject to review and that the sole question is "whether the arbitrator's decision drew its essence from the [CBA]." *Griggsville-Perry*, 2013 IL 113721, ¶ 23.

Here, the University admitted that it refused to comply with the March 2018 award, leaving the award's validity as the only contested issue. *See* C875-76. And while the University maintained that it complied with the July 2017 award, *see* C833-54, the arbitrator resolved the parties' dispute regarding the implementation of that award in the March 2018 decision, *see* E1259-60. As a result, the validity of the March 2018 award was the determinative issue as to both unfair labor practice claims. *See* C880-81 (concluding University violated Act by refusing to comply with March 2018 award and by failing to implement July 2017 award, pursuant to arbitrator's findings).

To determine if an award is valid, the Board considers "whether the award was rendered in accordance with the applicable grievance procedure, whether the procedures were fair and impartial, whether the award conflicts

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with other statutes, whether the award is patently repugnant to the purposes and policies of the Act, and any other basic challenge to the legitimacy of the award." *Cent. Cmty.*, 388 Ill. App. 3d at 1066-67. The University argued that the March 2018 award was invalid because the arbitrator lacked the statutory or contractual authority to determine its compliance with the July 2017 award and that the Board was required decide that issue in the first instance. C827-33. The Board, however, correctly determined that the Act does not deprive arbitrators of the authority to retain jurisdiction to resolve disputes regarding the implementation of an award, the arbitrator had contractual authority to issue the March 2018 award under the CBA, and the arbitrator's conclusion that the University failed to comply with the July 2017 award was supported by his findings of fact. Consequently, the Board did not clearly err when it decided that the University violated the Act by refusing to comply with both awards.

B. The arbitrator acted within his statutory authority in retaining jurisdiction to resolve disputes regarding the implementation of the July 2017 award.

The Board correctly concluded that the Act does not deprive arbitrators of the authority to retain jurisdiction over the implementation of an award. As the Board explained, an arbitrator's authority to retain jurisdiction to resolve disputes regarding an award's implementation "has been widely upheld," and nothing in section 14(a)(8) suggests that the legislature intended to alter the

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scope of an arbitrator's authority when it assigned responsibility for enforcing an award to the Board instead of the courts. *See* C876-79.

This Court's primary goal when interpreting a statute "is to ascertain and give effect to the legislature's intent." *Moon v. Rhode*, 2016 IL 119572, ¶ 22. The best indicator of legislative intent is the statutory language, "which must be given its plain and ordinary meaning." *Dynak v. Bd. of Educ. of Wood Dale Sch. Dist. 7*, 2020 IL 125062, ¶ 16. When interpreting a statute, "[w]ords and phrases should not be construed in isolation but must be interpreted in light of other relevant provisions," keeping in mind the entire statute "and the apparent intent of the legislature in enacting it." *Rushton v. Dep't of Corr.*, 2019 IL 124552, ¶ 14.

When a statute is ambiguous, this Court gives "substantial weight and deference" to the interpretation of the agency charged with administering and enforcing it. *Citibank*, 2017 IL 121634, ¶ 39. This Court also considers case law interpreting the Pennsylvania statute on which the Act was modeled. *Bd. of Educ. of Rockford*, 165 Ill. 2d at 88; *see Central City Educ. Ass'n, IEA/NEA v. Ill. Educ. Labor Relations Bd.*, 149 Ill. 2d 496, 513 (1992) ("the [Illinois General Assembly] 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"). In addition, the General Assembly "is presumed to act with full knowledge of all existing and prior statutory and case law" when it enacts a statute. *People v. Johnson*, 2019 IL 123318, ¶ 42.

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The Act requires that every CBA must contain a grievance resolution procedure that provides for binding arbitration of contractual disputes, but it does not define the scope of an arbitrator's authority. *See* 115 ILCS 5/10(c) (2018). Given the absence of any statutory language addressing whether an arbitrator has authority to retain jurisdiction over the implementation of an award, the Board correctly turned to general principles of arbitration law to ascertain the legislature's intent. *See* C876-79; *Dynak*, 2020 IL 125062, ¶ 16 (noting courts may look to various tools of statutory construction to interpret an ambiguous statute). As the Board explained, the clear consensus across multiple contexts is that arbitrators have the authority to retain jurisdiction over the implementation of an award absent a corresponding limitation in the CBA. *See* C876-78.

First, under the Pennsylvania statute on which the Act was modeled, arbitrators may retain jurisdiction over a matter to ensure that an award has been followed when the applicable CBA does not expressly preclude the arbitrator from doing so. *W. Pottsgrove Twp. v. W. Pottsgrove Police Officers' Ass'n*, 791 A.2d 452, 456-57 (Pa. Commw. Ct. 2002); *Greater Latrobe Area Sch. Dist. v. Pa. State Educ. Ass'n*, 615 A.2d 999, 1004-05 (Pa. Commw. Ct. 1992). Pennsylvania courts have explained that nothing in that State's statute prevents arbitrators from exercising that authority, while noting that the practice fulfills the statutory policy "to provide inexpensive, expeditious contractual remedies." *Greater Latrobe*, 615 A.2d at 1004; *see also W.*

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Pottsgrove, 791 A.2d at 457 (retention of jurisdiction avoids "delay in final resolution, unnecessary time and expense and relitigation").

Second, courts have also routinely upheld an arbitrator's authority to retain jurisdiction over implementation issues under federal law. *See, e.g.*, *Air Line Pilots Ass'n Int'l v. Aviation Assocs. Inc.*, 955 F.2d 90, 93 (1st Cir. 1992); *Hughes Aircraft Co. v. Elec. & Space Technicians, Local 1553*, 822 F.2d 823, 827 (9th Cir. 1987); *Kroger Co. v. United Food & Com. Workers Union Local 876*, 284 F. App'x 233, 241 (6th Cir. 2008); *SBC Advanced Sols., Inc. v. Commc'ns Workers of Am., Dist. 6*, 44 F. Supp. 3d 914, 925 (E.D. Mo. 2014); *Eatoni Ergonomics, Inc. v. Research in Motion Corp.*, 633 F. Supp. 2d 109, 117 (S.D.N.Y. 2009); *Fred Meyer, Inc. v. Teamsters Local 206*, 463 F. Supp. 2d 1186, 1192 (D. Or. 2006); *Case-Hoyt Corp. v. Graphic Commc'ns Int'l Union Local 503*, 5 F. Supp. 2d 154, 156 (W.D.N.Y. 1998). The Seventh Circuit, in fact, has concluded that an arbitrator's ability to retain jurisdiction to resolve implementation disputes was so well-settled that it upheld a sanctions award against an employer that challenged an arbitrator's decision on that basis. *CUNA Mut. Ins. Soc'y v. Off. & Prof'l Emps. Int'l Union, Local 39*, 443 F.3d 556, 564-65 (7th Cir. 2006). The court stated that the employer should have known that its position was "groundless" because there was an "abundance of case law in both this circuit and other circuits that recognize the propriety of an arbitrator retaining jurisdiction over the remedy portion of an award." *Id.* at 565.

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Third, consistent with the Pennsylvania statute and federal law, an arbitrator may retain jurisdiction under the Illinois Uniform Arbitration Act. *See* 710 ILCS 5/1, *et seq.* (2018). On that point, the appellate court has held that an arbitrator's powers do not terminate upon the issuance of an award when the arbitrator expressly retains jurisdiction over the implementation of the award and the applicable CBA does not limit the arbitrator's authority to do so. *Hollister Inc. v. Abbott Labs.*, 170 Ill. App. 3d 1051, 1057-60 (1st Dist. 1988).

Fourth, a leading arbitration treatise confirms that arbitrators routinely retain jurisdiction to resolve remedial issues that arise after an award has been issued. *See* Elkouri & Elkouri, *How Arbitration Works* (8th ed.), 2016 A.B.A. Section of Labor & Emp't Law, § 7.5.E.ii at 7-49–7-54. That practice allows arbitrators to navigate the "inherent tension in fashioning a remedial order that provides needed specificity to the parties regarding what must be done, while at the same time providing needed elasticity to resolve any unaddressed, remedial questions." *Id.* at 7-52. The Code of Professional Responsibility for Arbitrators of Labor-Management Disputes in fact provides that "arbitrator[s] may retain remedial jurisdiction in the award to resolve any questions that may arise over application or interpretation of a remedy." Code of Prof'l Resp. for Arbs. of Lab.-Mgmt. Disps. of the Nat'l Acad. of Arbs., Am. Arb. Ass'n, Fed. Mediation & Conciliation Serv., 22 (2007), https://bit.ly/3p2BKN5.

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Given the widespread acceptance of an arbitrator's ability to retain jurisdiction over an award's implementation, the Board correctly concluded that an arbitrator's authority over such matters "has been widely upheld." C876. Against that backdrop, it then reasonably determined that the legislature did not intend for the Act to deprive arbitrators of that authority. *See* C878-79. The Board recognized that the Act differed from other statutes to the extent that it assigns responsibility for enforcing awards to the Board instead of the courts, but it reasoned that the difference was immaterial here because the Board's role under the Act was analogous to courts' role under the Illinois Uniform Arbitration Act and other statutes. *Id.* In other words, the General Assembly did not diminish the authority of arbitrators who issue awards by changing the identity of the entity that enforces them. Like the Pennsylvania statute, the Act does not prevent arbitrators from retaining jurisdiction over implementation disputes, *see W. Pottsgrove*, 791 A.2d at 457, and thus its language provides no basis for departing from the well-settled principle that arbitrators have that authority.

The University nonetheless argued, and the appellate court agreed, that all authorities on which the Board relied were irrelevant because none of the statutes they reviewed "remotely resembl[ed]" section 14(a)(8) of the Act. *W. Ill. Univ.*, 2020 IL App (4th) 190143, ¶ 33. Specifically, the appellate court decided that these authorities were distinguishable because the statutes they applied provided for judicial review of arbitration awards, while the Act vests

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the Board with that authority. *Id.* But, as the Board explained, that difference between the Act and the other statutes pertains only to the identity of the entity responsible for enforcing an award, rather than the scope of the authority of the arbitrator who issued it. Indeed, this Court's conclusion that the legislature shifted the responsibility for enforcing arbitration awards from the judiciary to the Board supports the determination that the legislature intended for the Board to have the same role under the Act as the courts have under the Illinois Uniform Arbitration Act. *See Compton*, 123 Ill. 2d at 221-26. By transferring enforcement responsibilities from the courts to the Board, the legislature neither added to nor subtracted from an arbitrator's authority. The appellate court's conclusion that arbitrators have less authority under the Act than under comparable statutes therefore finds no support in this Court's decisions and contravenes "the Act's declared goal of minimizing disputes and encouraging arbitration." *Id.* at 226.

In addition, the appellate court's concern that allowing an arbitrator to resolve implementation issues would usurp the Board's statutory authority to enforce arbitration awards is unfounded. *See W. Ill. Univ.*, 2020 IL App (4th) 190413, ¶ 34. To begin, the appellate court overlooked the distinction between the arbitrator's function, which is to interpret the CBA, *see* 115 ILCS 5/10(c) (2018) (requiring binding arbitration of contractual disputes), and the Board's role, which is to enforce the Act, *see* 115 ILCS 5/15 (2018) (authorizing Board to enforce section 14 through unfair labor practice proceedings). In this case,

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the arbitrator and the Board each performed their statutory functions where the arbitrator reviewed the University's compliance with the layoff provisions in the CBA, *see* E862-63 (finding University failed to comply with CBA when laying off Ogbaharya and Stovall), E1245-60 (finding University failed comply with CBA when implementing July 2017 award), and the Board reviewed the University's compliance with the Act, *see* C880-81 (concluding University violated sections 14(a)(8) and 14(a)(1)). In any event, the potential for overlapping responsibilities does not differentiate the Act from those other contexts where the arbitrator's authority to retain jurisdiction over implementation issues "has been widely upheld." C876-79.

Indeed, the appellate court acknowledged that an arbitrator may retain jurisdiction in some circumstances "to correct errors or clarify ambiguities in an award." *W. Ill. Univ.*, 2020 IL App (4th) 190143, ¶ 35. And while the court stated that the parties did not dispute the meaning or content of the July 2017 award, *see id.*, the arbitrator necessarily resolved a disagreement about the requirements of the award, and the CBA, when it issued the March 2018 award. In the July 2017 award, the arbitrator identified violations of the CBA and ordered the University to correct them. *See* E846-48, E858-63. Then, the Union and the University disagreed about the sufficiency of the University's remedial efforts, *see* E864-65, E883, E892-94, E911-13; *see also* C833-53, and the arbitrator resolved that dispute by concluding that the University failed to implement the award because its actions did not satisfy its obligations under

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the CBA, E1248-51, E1257-59. The arbitrator therefore clarified what actions were required to implement the July 2017 award, and comply with the CBA, when he issued the March 2018 award, consistent with an arbitrator's widely accepted authority to retain jurisdiction to resolve such disputes.

C. The arbitrator acted within his contractual authority in retaining jurisdiction to resolve disputes regarding the implementation of the July 2017 award.

The Board correctly concluded that the the March 2018 award was valid because the arbitrator had both contractual and statutory authority to retain jurisdiction. The scope of an arbitrator's contractual authority is governed by the CBA between the parties that submitted the matter to arbitration. *Vill. of Posen v. Ill. Fraternal Ord. of Police Lab. Council*, 2014 IL App (1st) 133329, ¶ 37. Review of an arbitrator's interpretation of a CBA is extremely limited because, by submitting to arbitration, the parties have agreed to accept the arbitrator's understanding of the contract. *Griggsville-Perry*, 2013 IL 113721, ¶ 18. This Court has explained that the proper inquiry when an arbitrator is alleged to have exceeded the scope of his authority is whether he "has reached a decision that fails to draw its essence from the [CBA]," emphasizing that the correctness of the arbitrator's decision is not the subject of review. *Id.*, ¶¶ 20, 23. A decision fails to draw its essence from the CBA only when "there is no 'interpretive route to the award, so a noncontractual basis can be inferred and the award set aside.'" *Id.*, ¶ 20 (quoting *Chi. Typographical Union No. 16 v. Chi. Sun-Times, Inc.*, 935 F.2d 1501, 1506 (7th Cir. 1991)).

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When a dispute is submitted to arbitration, "it is presumed that: (1) the parties intended that all matters in dispute be decided; (2) in the absence of an express reservation, the parties agreed that everything, both as to law and fact, which is necessary to the resolution of the dispute is within the authority of the arbitrator[;] and (3) the arbitrator did not exceed his authority." *Hollister*, 170 Ill. App. 3d at 1060-61. Put another way, "the arbitrator is empowered to make an award that will fully settle the dispute." *Johnson v. Baumgardt*, 216 Ill. App. 3d 550, 559 (2d Dist. 1991).

Here, the arbitrator decided that he had authority to retain jurisdiction over the implementation of the July 2017 award under the AAA rules because the issue was submitted for arbitration under circumstances where the parties agreed to arbitrate the remedy for any violations of the CBA. E1086, E1245-46. The Board correctly upheld that decision, noting the presumption that the parties intended the arbitrator to fully resolve the underlying dispute and the absence of an express limitation in the CBA preventing him from exercising that authority. *See* C879-80. In addition, the Board pointed out that the CBA incorporated the AAA rules, which granted the arbitrator the power to rule on his own jurisdiction, and that the University did not object to the arbitrator's retention of jurisdiction during the initial hearing, when the Union asked the arbitrator to retain jurisdiction, or in the post-hearing briefs. C880; *see* E105 ("arbitration proceedings shall be conducted in accordance with the rules and procedures of the American Arbitration Association"). Given the extremely

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limited review of an arbitrator's interpretation of a CBA, the Board properly determined that the arbitrator did not exceed his contractual authority when he retained jurisdiction to resolve disputes about the implementation of the July 2017 award.

The appellate court, however, concluded that the arbitrator lacked authority to retain jurisdiction because the University's compliance with the award was a new issue that it did not agree to arbitrate. *W. Ill. Univ.*, 2020 IL App (4th) 190413, ¶¶ 38-43. Interpreting the CBA's terms, the appellate court believed that the Board should have narrowly construed the arbitrator's authority and that the absence of an express limitation was immaterial because the University did not waive its statutory rights in the CBA and the Act guarantees "the right to have arbitration disputes resolved by the [Board]." *Id.* But it is apparent from the appellate court's decision that it improperly substituted its interpretation of the CBA for that of the arbitrator.

As an initial matter, the contractual argument that the University presented in the appellate court could not provide an independent basis for vacating the Board's decision. It is undisputed that the CBA incorporates the AAA rules, which permit an arbitrator to rule on his own jurisdiction. *See* E105; C880; PT Br. 25-26; *W. Ill. Univ.*, 2020 IL App (4th) 190413, ¶ 38. The University nonetheless argued, and the appellate court agreed, that the CBA did not authorize the arbitrator to rule on his own jurisdiction because another provision stated that the parties did not waive their rights under the Act, and

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it possessed the statutory right to have the Board determine its compliance with the July 2017 award. PT Br. 26; *see W. Ill. Univ.*, 2020 IL App (4th) 190413, ¶ 43. The University's contractual argument thus entirely rested on the premise that the arbitrator lacked statutory authority to retain jurisdiction because it identified no other reason for disregarding the CBA's express incorporation of the AAA rules. In other words, if the arbitrator had statutory authority to retain jurisdiction, then he necessarily had contractual authority to decide his own jurisdiction under the AAA rules.

Regardless, the appellate court failed to heed this Court's admonition that the sole question on review of the arbitrator's decision was whether the March 2018 award drew its essence from the CBA because the correctness of his interpretation of that document "was not a matter for the appellate court's consideration." *Griggsville-Perry*, 2013 IL 113721, ¶ 23. The appellate court instead conducted an independent analysis of the CBA, untethered from the presumptions regarding the scope of an arbitrator's contractual authority and without deciding if there was an "interpretive route" to the arbitrator's award, *see id.*, ¶ 20, and concluded that the arbitrator's interpretation of the CBA was incorrect, *see W. Ill. Univ.*, 2020 IL App (4th) 190143, ¶¶ 38-43.

The Board, by contrast, recognized that the arbitrator's decision was grounded in the CBA because the parties agreed to arbitrate the remedy for any contractual violations, and they were presumed to have intended for the arbitrator to decide all issues necessary to fully resolve the dispute absent an

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express reservation to the contrary. *See* C879-80 (citing *Hollister*, 170 Ill. App. 3d at 1060-61). The arbitrator, moreover, was permitted to rule on his own jurisdiction under the AAA rules that were expressly incorporated into the CBA. *See* C880. And while the CBA limits an arbitrator to interpreting its terms and deciding "the precise issue(s) submitted for arbitration," *see* E105, the appellate court's belief that the arbitrator and the Board should have construed the arbitrator's powers more narrowly, *see W. Ill. Univ.*, 2020 IL App (4th) 190143, ¶¶ 39-41, even if correct, fails to clear the "high hurdle" of establishing that the March 2018 award did not draw its essence from the CBA, *see Griggsville-Perry*, 2013 IL 113721, ¶ 18 ("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.'") (quoting *Am. Fed'n of State, Cnty. & Mun. Emps. v. State*, 124 Ill. 2d 246, 255 (1988)). The Board therefore correctly concluded that the arbitrator did not exceed his contractual authority under the CBA when he issued the March 2018 award.

D. The Board did not clearly err when it determined that the University violated the Act, and it appropriately refused to consider evidence that was not before the arbitrator when making that decision.

The Board did not clearly err when it concluded that the University violated the Act by refusing to comply with March 2018 award because the University admitted that it refused to comply with that award. *See* C875-76. That admission left the award's validity as the only disputed matter and, as

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explained, it was valid because the arbitrator had statutory and contractual authority to issue it. *See supra* pp. 22-34.

The Board also did not clearly err when it concluded that the University violated the Act by failing to comply with the July 2017 award. When deciding that issue, the Board properly refused to consider evidence that was not before the arbitrator and limited its review to whether the arbitrator's resolution of that issue in the March 2018 award was grounded in the CBA. *See* C860-61, C881; *Griggsville-Perry*, 2013 IL 113721, ¶ 18 (parties to arbitration agree to accept arbitrator's factual findings and contractual interpretations); *see also McCabe Hamilton & Renny Co., Ltd. v. Int'l Longshore & Warehouse Union, Local 142*, 624 F. Supp. 2d 1236, 1252 (D. Haw. 2008) (reviewing body may not consider evidence not submitted to arbitrator). Indeed, the appellate court did not disagree with those general principles, and it remanded with directions for the Board to consider the evidence presented at the ALJ hearing only because it determined that the March 2018 award was invalid. *See W. Ill. Univ.*, 2020 IL App (4th) 190143, ¶¶ 46-47. Accordingly, the Board's decision should have been upheld in its entirety.

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CONCLUSION

For these reasons, State Respondent-Petitioner Illinois Educational Labor Relations Board requests that this Court reverse the appellate court's judgment, thereby affirming the Board's final administrative decision.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this brief excluding the pages containing 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 36 pages.

/s/ Frank H. Bieszczat
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APPENDIX

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2020 IL App (4th) 190143

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Appellate Court of Illinois, Fourth District.

WESTERN ILLINOIS UNIVERSITY, Petitioner,
v.
The ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD and University Professionals of Illinois, Local 4100, Respondents.

NO. 4-19-0143
|
FILED April 10, 2020

Synopsis

Background: Following hearing by administrative law judge, the Illinois Education Labor Relations Board issued opinion finding that state university violated Illinois Educational Labor Relations Act when it failed to comply with arbitration awards finding that university violated terms of collecting bargaining agreement (CBA) and ordering remedies regarding tenured faculty members laid off by university. University petitioned for administrative review.

Holdings: The Appellate Court, Steigmann, J., held that:

arbitrator lacked jurisdiction under Illinois Educational Labor Relations Act to determine whether state university complied with arbitration award;

arbitrator lacked contractual authority under collective bargaining agreement (CBA) to determine whether state university complied with arbitration award;

arbitrator lacked authority to issue supplemental arbitration award.

Vacated and remanded.

Review of Order of the Illinois Educational Labor Relations Board, No. 2018-CA-0045-C

Attorneys and Law Firms

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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.

OPINION

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court, with opinion.

***1** ¶ 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.

***2** ¶ 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

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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*

***3** ¶ 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.

***4** ¶ 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

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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, 351 Ill.Dec. 241, 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, 351 Ill.Dec. 241, 950 N.E.2d 1069.

> " '[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, 351 Ill.Dec. 241, 950 N.E.2d 1069 (quoting *Board of Trustees of the University of Illinois v. Illinois Labor Relations Board*, 224 Ill. 2d 88, 97-98, 308 Ill.Dec. 741, 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, 122 Ill.Dec. 9, 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, 96 Ill.Dec. 799, 491 N.E.2d 1259, 1262 (1986).

***5** ¶ 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)

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("[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*, 150 Pa.Cmwlth. 441, 615 A.2d 999, 1004 (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, 122 Ill.Dec. 9, 526 N.E.2d 149), and the IELRB has exclusive primary jurisdiction to review binding arbitration awards (see *Chicago Board of Education*, 142 Ill. App. 3d at 531-32, 96 Ill.Dec. 799, 491 N.E.2d 1259). Accordingly, we conclude that the IELRB's reliance on Pennsylvania case law is unpersuasive here. See *Compton*, 123 Ill. 2d at 223-24, 122 Ill.Dec. 9, 526 N.E.2d 149 ("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, 96 Ill.Dec. 799, 491 N.E.2d 1259. 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

***6** ¶ 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, 120 Ill.Dec. 853, 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, 120 Ill.Dec. 853, 524 N.E.2d 1035. 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, 120 Ill.Dec. 853, 524 N.E.2d 1035.

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" '[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, 124 Ill.Dec. 553, 529 N.E.2d 534, 538 (1988) (quoting *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (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.

***7** ¶ 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, 96 Ill.Dec. 799, 491 N.E.2d 1259. 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

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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, 120 Ill.Dec. 853, 524 N.E.2d 1035. 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, 368 Ill.Dec. 494, 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.

Justices Knecht and Cavanagh concurred in the judgment and opinion.

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--- N.E.3d ----, 2020 IL App (4th) 190143, 2020 WL 1816048

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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. __."

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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

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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).

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> 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

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....

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?

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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).

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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

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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

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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).

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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

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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.

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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

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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

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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

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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

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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

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

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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).

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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);

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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.

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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

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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,

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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.

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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.

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(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.

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/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

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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

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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:

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General Counsel

SUBMITTED - 12245246 - Frank Bieszczat - 2/17/2021 2:45 PM

No.

IN THE SUPREME COURT OF ILLINOIS

University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO, Respondent-Petitioner, v. Western Illinois University, Petitioner-Respondent, and Illinois Educational Labor Relations Board, Respondent.	Petition for Leave To Appeal from the Illinois Appellate Court, Fourth District Case No. 4-19-0143 There Heard on Petition for Review of an Opinion and Order of the Illinois Educational Labor Relations Board Case No. 2018-CA-0045-C

PETITION FOR LEAVE TO APPEAL

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6/15/2020 10:52 AM
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SUPREME COURT CLERK

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POINTS AND AUTHORITIES

ARGUMENT

Standard of Review

SUBMITTED - 9427825 - Frank Bieszczat - 6/15/2020 10:52 AM / 12785256 - Donald Baer - 2/17/2021 2:45 PM (overprinted; Laner Muchin, Auerbach & Yokich)

SUBMITTED - 9428256 - David Bienz, Barnhart, 2/17/2021 2:45 PM Frankovich & Yokich - 6/15/2020 10:52 AM

SUBMITTED - 12285256 - David Bienz - 2/17/2021 2:45 PM Frank Bienz, Bennett, Tueller, Johnson & Deere - 6/15/2020 10:52 AM

PRAYER FOR LEAVE TO APPEAL

This case involves an issue of first impression in Illinois public sector labor law, whether an arbitrator in issuing an award has authority to retain jurisdiction in order to resolve disputes with respect to implementation of remedies ordered by the arbitrator. There are no prior reported cases arising under either the Illinois Educational Labor Relations Act (IELRA) or its companion statute the Illinois Public Labor Relations Act (IPLRA) on this issue. However, the Illinois pubic sector collective bargaining statutes are patterned after both the Pennsylvania public sector bargaining law and the National Labor Relations Act, and both the Pennsylvania courts and the federal courts have widely upheld the authority of labor arbitrators to retain jurisdiction over remedy implementation disputes with respect to awards they issue. Indeed, the Seventh Circuit U.S. Court of Appeals affirmed an award of sanctions against an employer based in part on the employer's challenging an arbitrator's authority to retain remedy jurisdiction. In doing so, the Seventh Circuit found that "there 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" and that "'[t]he case law on this issue is clear, and [employer'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 556, 565 (7th Cir. 2006).

Here, the Illinois Educational Labor Relations Board (Board), relying on federal and Pennsylvania court precedent, held that an arbitrator in an award issued in connection with layoff grievances had the authority to retain jurisdiction to resolve disputes over the remedies he ordered and to issue a supplemental award resolving such disputes, and that the supplemental award drew its essence from the collective bargaining agreement. The

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Appellate Court, reversing the Board, found that the federal and Pennsylvania authority are distinguishable from this case because under federal and Pennsylvania law courts determine whether an arbitration award is binding and enforceable whereas the IELRA divests the circuit courts of primary jurisdiction over educational arbitration awards and the Board has exclusive primary jurisdiction to review arbitration awards.

The Appellate Court's decision is contrary to this Court's decision in *Griggsville-Perry Community Unit School Dist. No. 4 v. Illinois Educational Labor Relations Board*, 2013 IL 113721. In *Griggsville-Perry*, this Court found that the same extremely limited scope of review of arbitration awards issued with respect to parties subject to the IPLRA and in the private sector applies to educational public sector awards. 2013 IL 113721, ¶18, 20. The Appellate Court ignored the fact that the Board carries out the same function and exercises the same narrow review with respect to educational arbitration awards as do Illinois courts in reviewing awards issued with respect to non educational public sector arbitrations.

The Appellate Court's decision, if not reversed by this Court, will result in a substantial increase in litigation and associated delay and litigation costs as parties will have to file charges with and litigate before the Board in the first instance issues relating to remedy disputes arising under arbitration awards. The Appellate Court's decision will 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 University Professionals of Illinois, Local 4100, IFT-AFT, AFL CIO therefore prays for leave to appeal from the Appellate Court's decision.

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JUDGMENT OF THE APPELLATE COURT

The Appellate Court issued its decision on April 10, 2020. A1. No petition for rehearing was filed.

POINTS RELIED UPON IN SEEKING REVIEW

1. The Appellate Court erred in finding that the Board has broader authority to review educational arbitration awards than do the courts in reviewing awards issued under the IPLRA and private sector and Pennsylvania public sector awards.

2. 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 orders.

STATEMENT OF FACTS

The Union is the exclusive representative of a unit of two bargaining units, one that includes tenured and tenure track faculty and one that includes associate faculty, 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. 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. At the start of the arbitration hearing, the Union

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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 .

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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's Award to such request. E675-E769; E798-E835.

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....
> (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

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> 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.

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

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 where they work, 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.

The Arbitrator denied the portion of Stovall's grievance alleging that she was

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improperly laid off, but found 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.

The Arbitrator in his award stated that he would "retain jurisdiction for no less than 90 days to resolve any issues regarding the implementation of the Award." A70. The Union raised remedy disputes before the Arbitrator with respect to four grievants, including Ogbaharya and Stovall. E864-E879. The University objected, and the Arbitrator found:

> 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.

The Arbitrator held a supplemental hearing, and, on March 5, 2018, issued a

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supplemental award. A71. He found that the University had failed to implement the remedies ordered with respect to Ogbaharya and Stovall. As to Ogbaharya, based in part on witness credibility findings, he found that: "From all the facts, the Arbitrator finds the University did not make a good faith effort to redo the layoff decision" (A77), and 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.

The Arbitrator found as to Stovall: "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 review it undertook ... was far more limited than what was required by Section 24.4." A80. The Arbitrator found 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.

The University refused 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 "Refusing 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.

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R36-R37; R55-R56; R69-R70. The University called two University officials, both of whom had testified at the supplemental arbitration hearing, and a third official, 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*, 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

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> 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,

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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

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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.

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." 2020 IL App (4th) 190143, ¶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)])." 2020 IL App (4th) 190143, ¶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." 2020 IL App (4th) 190143, ¶34. The Appellate Court found that the doctrine of functus officio precluded the arbitrator from retaining jurisdiction after issuing an award. 2020 IL App (4th) 190143, ¶37. The Appellate Court also

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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. 2020 IL App (4th) 190143, ¶¶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." 2020 IL App (4th) 190143, ¶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. 2020 IL App (4th) 190143, ¶47.

ARGUMENT

Standard of Review

The Court's review of the Board's order with respect to questions of law is de novo. Mixed questions of law and fact are reviewed under the clearly erroneous standard. Questions of fact will be set aside only if against the manifest weight of the evidence. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill.2d 380, 390, 392, 395 (2002). "Whether 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*

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Relations Board, 2013 IL 113721, ¶20.

I. The Appellate Court erred in finding that the Board has broader authority to review educational arbitration awards than do the courts in reviewing awards issued under the IPLRA and private sector and Pennsylvania public sector awards.

The Appellate Court erred as a matter of law in finding that this Court's decision in *Board of Education of Community School District No. 1 v. Compton*, 123 Ill. 2d 216 (1988) requires a finding that the Board's authority to review labor arbitration awards is broader than that of the federal and Pennsylvania courts. In *Compton*, this Court found that the IELRA, 115 ILCS 5/1, et seq. , enacted in the same legislative session as the IPLRA, 5 ILCS 315/1, et seq., divests the circuit courts of jurisdiction to vacate or enforce arbitration awards involving public educational employers and gives the Board exclusive jurisdiction over public sector educational labor arbitration 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 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

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jurisdiction ignores this Court's decision in *Griggsville-Perry Community Unit School Dist.No. 4 v. Illinois Educational Labor Relations Board*, 2013 IL 113721.

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 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 (internal citation omitted). 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

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United Paperworkers International Union v. Misco, Inc., 484 U.S. 29, 38 (1987). See also *AFSCME v. State of Illinois*, 124 Ill. 2d at 254-5, 258.

II. 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, 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). Such requirement distinguishes arbitrations under Illinois public sector agreements from those under commercial contracts and private sector collective bargaining agreements, where arbitration is not statutorily mandated but rather is solely a matter of contract. See *AT&T Technologies, Inc. v. Communication Workers of America*, 475 U.S 643, 648 (1986).

The Act, which "revolutionized Illinois school labor law," *Compton*, 123 Ill. 2d at

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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 Act that a CBA "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.

SUBMITTED - 12748256 - Frank Biesz, Barnett, Ciomin, Auerbach & Yokich - 6/15/2020 10:52 AM

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 (7^{th} 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, in affirming the District Court's decision, 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).

CUNA Mut. Ins. Soc'y v. Office and Prof'l Employees Int'l Union, Local 39, 443 F. 3d 556, 565 (7^{th} Cir. 2006). See also *Kroger Co. v. UFCW Local 876*, 284 Fed. Appx. 233, 241, 2008 U.S. App. LEXIS 13671 (6^{th} 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

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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."); *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) ("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."); *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*

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SUBMITTED - 9478836 - Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich - 6/15/2020 10:52 AM

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, 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 here 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. 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

SUBMITTED - 12288256 - David Bosz, Bennett, Cohen, Laufenbach & Yokich - 6/15/2020 10:52 AM

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.

The Board thus properly found that both the Arbitrator's initial award and his supplemental award were binding and that the University violated the Act by failing to comply with them. The Appellate Court erred in finding that the Arbitrator lacked the authority under the Act and under the CBA to retain jurisdiction to resolve disputes with respect to remedies he ordered.

CONCLUSION

For the foregoing reasons, the University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO requests that it be granted leave to appeal from the Appellate Court's decision.

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

SUBMITTED - 12285256 - Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich - 6/15/2020 10:52 AM

CERTIFICATE OF COMPLIANCE

I certify that this petition for leave to appeal conforms to the requirements of Rules 341(a) and (b) and 315(c) and (d). The length of this petition for leave to appeal, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the petition under Rules 315(c)(6) and 342(a), is 20 pages.

/s/ Melissa J. Auerbach
Melissa J. Auerbach

SUBMITTED - 12748256 - Frank Bieszczat - 2/17/2021 2:45 PM
SUBMITTED - 9424536 - Donald, Barnett, Dowd, Auerbach & Yokich - 6/15/2020 10:52 AM

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
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SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL
Clerk of the Court

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FIRST DISTRICT OFFICE
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Chicago, IL 60601-3103
(312) 793-1332
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June 23, 2020

Ann Catherine Maskaleris
Office of the Illinois Attorney General
100 W. Randolph Street, 12th Floor
Chicago, IL 60601

In re: Western Illinois University v. Illinois Educational Labor Relations Board
126090

Today the following order was entered in the captioned case:

Motion by Petitioner for an extension of time for filing a Petition for Leave to Appeal to and including July 24, 2020. Allowed.

Order entered by Justice Garman.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

cc: Abby Jean Clark
Appellate Court, Fourth District
Attorney General of Illinois - Civil Division
Melissa Jo Auerbach
Roy G. Davis

SUBMITTED - 12245246 - Frank Bieszczat - 2/17/2021 2:45 PM

SUPREME COURT OF ILLINOIS

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July 30, 2020

Ann Catherine Maskaleris
Office of the Illinois Attorney General
100 W. Randolph Street, 12th Floor
Chicago, IL 60601

In re: Western Illinois University v. Illinois Educational Labor Relations Board
126090

Today the following order was entered in the captioned case:

Motion by Petitioner for an extension of time for filing a Petition for Leave to Appeal to and including August 7, 2020. Allowed.

Order entered by Justice Garman.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

cc: Abby Jean Clark
Appellate Court, Fourth District
Attorney General of Illinois - Civil Division
Melissa Jo Auerbach
Roy G. Davis

SUBMITTED - 12245246 - Frank Bieszczat - 2/17/2021 2:45 PM

No. 126090

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.	)	Petition for Leave to Appeal from an Opinion of 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.

PETITION FOR LEAVE TO APPEAL

KWAME RAOUL
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State of Illinois

JANE ELINOR NOTZ
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amaskaleris@atg.state.il.us

SUBMITTED - 12245246 - Frank Bieszczat - 2/17/2021 2:45 PM

PRAYER FOR LEAVE TO APPEAL

The Illinois Educational Labor Relations Board (Board) petitions this Court under Illinois Supreme Court Rule 315 for leave to appeal from the appellate court's opinion of April 10, 2020, A1-16, which vacated the Board's opinion and order of February 21, 2019, A17-43, and remanded the matter to the Board with directions. This Court's review is necessary for the reasons stated by University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO (Union) in its petition for leave to appeal (Union petition at 1-2) pending before this Court in case No. 126082, seeking review of the same appellate court opinion.

SUBMITTED - 12245246 - Frank Bieszczat - 2/17/2021 2:45 PM

STATEMENT REGARDING JUDGMENT AND REHEARING

On April 10, 2020, the appellate court issued an opinion vacating the Board's opinion and order and remanding the matter with directions. A1-16. Neither the Board nor the Union sought rehearing. The Union filed a petition for leave to appeal from the appellate court's opinion on June 15, 2020, under case No. 126082. This Court granted the Board's motions for extension of time to file this petition for leave to appeal from the same appellate court opinion by August 7, 2020.

POINTS RELIED UPON FOR SEEKING REVIEW

The Board adopts and incorporates as its points relied upon for seeking review those stated by the Union in its petition for leave to appeal (Union petition at 3) pending before this Court in case No. 126082.

SUBMITTED - 12245246 - Frank Bieszczat - 2/17/2021 2:45 PM

STATEMENT OF FACTS

The Board adopts and incorporates as its statement of facts those stated by the Union in its petition for leave to appeal (Union petition at 3-12) pending before this Court in case No. 126082.

SUBMITTED - 12245246 - Frank Bieszczat - 2/17/2021 2:45 PM

ARGUMENT

The Board adopts and incorporates as its argument that stated by the Union in its petition for leave to appeal (Union petition at 12-20) pending before this Court in case No. 126082.

SUBMITTED - 12245246 - Frank Bieszczat - 2/17/2021 2:45 PM

CONCLUSION

Accordingly, the Illinois Educational Labor Relations Board requests that this Court grant leave to appeal in this case and case No. 126082.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

100 West Randolph Street
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(312) 814-3312

Attorneys for Respondent-Petitioner
Illinois Educational Labor Relations
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Secondary e-service:
amaskaleris@atg.state.il.us

Dated: August 7, 2020

SUBMITTED - 12245246 - Frank Bieszczat - 2/17/2021 2:45 PM

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 contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, and the Rule 341(c) certificate of compliance, the certificate of filing and service, and those matters to be appended to the brief under Rule 342(a) is 5 pages.

/s/ Ann C. Maskaleris
ANN C. MASKALERIS
Assistant Attorney General
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amaskaleris@atg.state.il.us

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SUPREME COURT OF ILLINOIS

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CAROLYN TAFT GROSBOLL
Clerk of the Court

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August 18, 2020

Frank Henry Bieszczat
Office of the Illinois Attorney General
100 W. Randolph Street, 12th Floor
Chicago, IL 60601

In re: Western Illinois University v. Illinois Educational Labor Relations Board
126090

Today the following order was entered in the captioned case:

Motion by Petitioner to close the case. Allowed.

Order entered by Justice Garman.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

cc: Abby Jean Clark
Attorney General of Illinois - Civil Division
Melissa Jo Auerbach
Roy G. Davis

SUBMITTED - 12245246 - Frank Bieszczat - 2/17/2021 2:45 PM

SUPREME COURT OF ILLINOIS
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FIRST DISTRICT OFFICE
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Chicago, IL 60601-3103
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TDD: (312) 793-6185

September 30, 2020

In re: Western Illinois University, Appellee, v. The Illinois Education Labor Relations Board et al., Appellants. Appeal, Appellate Court, Fourth District.
126082

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

SUBMITTED - 12245246 - Frank Bieszczat - 2/17/2021 2:45 PM

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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Transaction ID: 4-19-0143
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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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
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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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CERTIFICATE OF FILING AND SERVICE

I certify that on February 17, 2021, I electronically filed the foregoing **Brief and Appendix of State Respondent-Petitioner** with the Clerk of the Supreme Court of Illinois 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:

Abby J. Clark
ajclark@dcamplaw.com

Roy G. Davis
rgdavis@dcamplaw.com

Melissa J. Auerbach
mauerbach@laboradvocates.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/ Frank H. Bieszczat
FRANK H. BIESZCZAT
Assistant Attorney General
100 West Randolph Street,
12th Floor
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