STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

University Professionals of Illinois, Local 4100, IFT-AFT, Charging Party	)	
and	)	Case No. 2020-CA-0041-C
Governors State University, Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On November 27, 2019, University Professionals of Illinois, Local 4100, IFT-AFT (Union) filed a charge with the Illinois Educational Labor Relations Board (IELRB or Board) alleging that Governors State University (University) committed unfair labor practices within the meaning of Section 14(a) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1 *et. seq.*, by unilaterally terminating its tuition waivers policy with several other universities. Following an investigation, the Board's Executive Director issued an Executive Director's Recommended Decision and Order (EDRDO) dismissing the charge in its entirety. Therein, the Executive Director found there was not clear evidence that the policy change altered a practice that could constitute status quo as it relates to fee waivers granted by other universities and that the Union had an opportunity to bargain over the matter and failed or declined to do so. The Union filed exceptions to the EDRDO, and the University filed a response to the Union's exceptions. For the reasons discussed below, we reverse the EDRDO and remand the matter to the Executive Director for issuance of a complaint and notice of hearing.

II. Discussion

The Union argues in its exceptions that the Executive Director incorrectly determined (1) the University's lack of control over tuition waivers at other universities eliminated its obligation to bargain prior to changing a policy granting a benefit of employment and (2) that the Union waived

its right to bargain the issue of tuition waivers at other universities by entering into a collective bargaining agreement that provided for tuition waivers for courses taken at the University. An educational employer violates Section 14(a)(5) of the Act when it unilaterally changes the status quo involving a mandatory subject of bargaining. *Vienna Sch. Dist. No. 55 v. IELRB*, 162 Ill. App. 3d 503, 515 N.E.2d 476 (4th Dist. 1987). The Executive Director noted that labor boards have recognized that fee and tuition waivers are a compensable fringe benefit, and thus mandatory subjects of bargaining.

The Executive Director concluded that there was no misconduct here because there was no evidence that the University played a role in another university's decision to deny tuition waivers for bargaining unit members Paula McMullen or Nicole Dalaly. The Union contends in its exceptions that this interpretation misapprehends what occurred because the University maintained a policy prior to May 2019 providing for tuition waivers for courses taken at other universities, including Northern Illinois University. In its response to the exceptions, the University cites *Lamont's Apparel, Inc.*, 268 NLRB 1332 (1984) to argue that an employer is not obligated to bargain about third-party changes where the employer does not have any influence over the changes. The University asserts that the Union misrelied on *University of Illinois v. IELRB*, 224 Ill. 2d 88, 862 N.E.2d 944 (2007) and *Ford Motor Co. v. NLRB*, 441 U.S. 488 (1979) for the proposition that employers are required to bargain about changes to terms and conditions of employment caused by third parties because in both cases the employer controlled the actions of the third party making the changes. But it is not clear here who controlled the actions of the third party. When universities discontinued the practice of reciprocal tuition waivers, it is unclear why the University continued its policy until 2019. Which makes it unclear what the status quo was when the University implemented its more limited policy in 2019 to cover tuition only for courses taken at the University. It is not clear what role the University played in the discontinuance of tuition waivers. That is, whether it was by mutual agreement of all involved universities or if it was Northern Illinois University's decision alone. These unresolved questions of fact warrant remanding this matter to the Executive Director for issuance of a complaint and notice of hearing.

The Executive Director further determined that the Union missed its opportunity to bargain the issue of tuition waivers at other universities when it entered into a collective bargaining

agreement that provided for tuition waivers for courses taken at the University, essentially waiving its right to bargain the matter. Yet there is an unresolved question of fact or law as to whether the Union's conduct amounted to a waiver because waiver of collective bargaining rights must indicate a clear and unequivocal intent by a party to relinquish its right to bargain the subject matter at issue. *AFSCME v. State Labor Relations Board*, 190 Ill. App. 3d 259, 546 N.E.2d 687, 694 (1st Dist. 1989); *Rock Falls Elementary School District No. 13*, 2 PERI 1150, Case No. 85-CA-0052-C (IELRB Opinion and Order, November 12, 1986). From the investigatory record in this matter, such a determination cannot be made.

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's Recommended Decision and Order is reversed, and we remand the matter to the Executive Director for issuance of a complaint and notice of hearing.

V. Right to Appeal

This is not a final order that may be appealed under the Administrative Review Law. See 5 ILCS 100/10-50(b); 115 ILCS 5/16(a).

Decided: **April 15, 2021**
Issued: **April 16, 2021**

/s/ Lara D. Shayne
Lara D. Shayne, Chairman

/s/ Steve Grossman
Steve Grossman, Member

/s/ Chad D. Hays
Chad D. Hays, Member

/s/ Michelle Ishmael
Michelle Ishmael, Member

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EDUCATIONAL LABOR RELATIONS BOARD

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	)	
Charging Party	)	
	)	
and	)	Case No. 2020-CA-0041-C
	)	
Governors State University,	)	
	)	
Respondent	)	

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On November 27, 2019, Charging Party University Professionals of Illinois, Local 4100, IFT-AFT filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above captioned case, alleging that Respondent, Governors State University violated Section 14(a) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.* (2012), *as amended*. After an investigation conducted in accordance with Section 15 of the Act, the Executive Director issues this dismissal for the reasons set forth below.

II. INVESTIGATORY FACTS

A. Jurisdictional Facts

At all times material, Governors State University ("Governors State" or "the University") was an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. University Professionals of Illinois, Local 4100, IFT-AFT ("Union") is a labor organization within the meaning of Section 2(c) of the Act, and the exclusive representative as defined by Section 2(d) of the Act of a bargaining unit comprised of certain of the University's employees. At all times relevant, Paula McMullen ("McMullen") and Nicole Dalaly ("Dalaly") were educational employees as defined by Section 2(b) of the Act, employed by the University, and members of the bargaining unit represented by the Union. The Union and University are parties to a collective bargaining agreement ("CBA") which provides for a grievance procedure culminating in arbitration for the unit to which McMullen and Dalaly belong.

B. Facts Relevant to the Unfair Labor Practice Charge

Until 1996, the University was one of four universities that were part of the Board of Governors of State Colleges and Universities, along with Northern Illinois University, Chicago State University, and Northeastern Illinois University. When this system was dissolved in 1996, each of those universities became separate entities, which meant that each university negotiated its own CBAs. Governors State's CBA included a provision that allowed members of the unit to enroll at the University for two courses or six credit hours with exemption from the payment of tuition and fees. The University also maintained a policy that which allows all permanent status employees to enroll for two courses or six credit hours at any university that was part of the Board of Governors system, and that the university at which the employees are enrolled would grant fee and tuition waivers to Governors State employees.

The Union and University began negotiations for a successor CBA in October 2018. During these negotiations in May 2019, two bargaining unit members, Paula McMullen and Nicole Dalaly, attempted to enroll at Northern Illinois University and obtain fee and tuition waivers. NIU declined to grant those waivers. The Union filed a grievance with GSU regarding NIU's refusal to grant fee and tuition waivers on June 7, 2019. After meeting with University representatives on July 15, the Union withdrew the grievance and continued with negotiations over the new CBA.

The new CBA includes Article 31.5(a), unchanged from previous CBAs, which states as follows:

> "A full time Employee may enroll for credit at the University for a maximum of two courses, or six credit hours, whichever is greater, in any one academic term with exemption from the payment of tuition and fees."

Article 26.1 of the CBA states that each side had the opportunity to raise any demands and proposals it wished during the negotiations, and that the agreement constitutes the entire agreement between the parties. Article 26.3 of the CBA states that if there is a conflict between an existing University policy or regulation and the text of the CBA, that the CBA supersedes the regulation.

Before May 2019, the University maintained an employee tuition waiver that stated that permanent status employees could enroll for two courses or six credit hours in any former Board of Governors university "with exemption from the payment of tuition and fees," and that civil service employees shall receive tuition and fee waivers "granted by each state university of Illinois to status Civil Service employees of the University." At some point following NIU's denial of fee and tuition waivers for McMullen and Dalaly, the policy was amended to state that any civil service employee may enroll in another state public university, but that fee and tuition waivers will be determined by the institution at which the employees enroll.

There is no evidence that the Union raised the issue of the altered policy or practice demonstrated by NIU's denial of fee and tuition waivers at the bargaining table, nor is there any evidence that the union demanded bargaining on this issue before finalizing the successor CBA, despite knowing of NIU's aforementioned refusal to grant fee and tuition waivers to two bargaining unit members. On or about November 4, 2019, after the successor CBA was finalized, the Union demanded bargaining over the change in University policy.

III. THE PARTIES' POSITIONS

The Union alleges that the University violated Section 14(a)(5) of the Act when it changed its policy regarding fee waivers at other former Board of Governors Universities. The University denies that the complained-of conduct violates the Act.

IV. DISCUSSION AND ANALYSIS

Section 14(a)(5) of the Act provides that an educational employer is prohibited from failing or refusing to bargain in good faith. An educational employer violates Section 14(a)(5) of the Act when it unilaterally changes the status quo as it relates to wages, hours, or terms and conditions of employment without first bargaining to agreement or impasse. Vienna Sch. Dist. No. 55 v. IELRB, 162 Ill. App. 3d 503, 515 (4th Dist. 1987). For a term or condition of employment to be considered status quo, it must be an

established practice, which is subject to an objective test. Vienna Sch.Dist., 162 Ill. App. 3d at 508, *citing* Plasticrafts, Inc. v. NLRB, 586 F. 2d 185 (10th Cir. 1978). In order to determine whether a practice is sufficiently established to be considered status quo, the focus is on whether the status quo would have been apparent to an objectively reasonable employer at the time in question, what the amount of discretion vested in an employer is with respect to an established practice, and what the reasonable expectations of employees are in the continuance of existing terms and conditions of employment. Vienna Sch. Dist. at 508.

The Union's argument in this case fails for two reasons. First, there is no clear evidence that the policy change altered a practice that could constitute a status quo as it relates to fee waivers granted by other former Board of Governors universities to Governors State employees. To be sure, there is a history of fee waivers being granted by the other universities for Governors State employees, and there is a history of reciprocation and cooperation between the universities as it relates to the granting of fee and tuition waivers for employees of those universities. But there is no evidence in this case that Governors State played any role whatsoever in the denial of fee and tuition waivers for McMullen or Dalaly. Put simply, there is no evidence of anything in the policy change that affects members of the bargaining unit in ways that were not already occurring regardless of the stated policy, and no evidence that bargaining unit members had any reasonable expectation in the continuance of the existing terms and conditions of employment where the policy in question was in fact discontinued by an entity not influenced or controlled by Governors State in any way. *See, e.g.,* Lamont's Apparel Inc., 268 NLRB 1332 (1984) (employer who influenced a third-party supplier to reduce commission rates to the employer's employees was required to bargain over the reduction in commissions because the employer exerted control or influence over the decision made by the third-party supplier.)

The Union argues that fee and tuition waivers are a compensable fringe benefit, which would make them mandatory subjects of bargaining under the Act. It cites Board of Trustees of the University of Illinois, 224 Ill. 2d 88 (2007) and Ford Motor Company v. NLRB, 441 U.S. 488 (1979), but the Union's reliance on those cases is misplaced in this matter because both of those cases involve changes made by the employer, not made by an independent third party over which the employer has no control or influence. In Ford Motor Company, the employer raised the prices at the in-house cafeteria and vending machines and refused to bargain over the increases. 441 U.S. at 492. Although the food services were handled by a third-party vendor, the employer retained the right to initiate or alter a subsidy to the supplier and had the right to change suppliers in the future. 441 U.S. at 503. The Supreme Court held that in-house food and vending machine prices were a term or condition of employment, and therefore a mandatory subject of bargaining. *Id.* Similarly, in University of Illinois, the employer refused to negotiate a union-proposed a parking fee schedule and unilaterally raised parking fees for employer-owned parking lots. 224 Ill. 2d at 91-92. The Illinois Supreme Court held that employee parking is a term or condition of employment, and therefore a mandatory subject of bargaining. 224 Ill. 2d at 108.

In this case, fee and tuition waivers that were previously granted to employees of Governors State were denied by Northern Illinois University. The previous regulation stated that fee and tuition waivers shall be granted "by each state university in Illinois". It does not state that Governors State shall pay fees and tuition for its employees, or that Governors State will reimburse employees for fees and tuition paid to another state university. It simply says that waivers will be determined by the university at which the employee enrolls, a decision over which it had no say. This lack of control distinguishes this case from University of Illinois and Ford Motor Co. In University of Illinois, the employer owned and operated the parking lots at issue and played a direct role in implementing the decision to raise parking rates. The employer in Ford Motor Co. was not directly in charge of its third-party vendor that managed its in-house restaurant and vending machine, but clearly had the authority to control or influence its vendor in various ways including the ability to find a new vendor should the need arise. Here, even before the change in policy, Governors State had no way to influence NIU's decision to refuse to grant fee and tuition waivers to Governors State employees. The policy change, therefore, simply reflects this lack of control, and does not modify the terms and conditions of employment.

Second, the Union had the opportunity to bargain over the matter and failed or declined to do so. The Union was made aware in May 2019 that McMullen and Dalaly were denied fee and tuition waivers by NIU. At that time, the Union and University were engaged in discussions over a successor CBA. Between May 2019 and October 2019, there is no evidence that the Union demanded bargaining over the matter, nor any evidence that it was unaware of the change in policy until after the conclusion of negotiations over the successor CBA. Article 31.5(a) of the agreement reached between the parties guaranteed full tuition and fee waivers for bargaining unit members who take courses at Governors State. It makes no mention of any other college or university. This agreement supersedes the general university policy cited by the Union, as expressly stated in Article 26.3 of the CBA.

For the above reasons, no grounds exist upon which to issue a complaint for hearing alleging that the University violated Section 14(a)(5) and, derivatively, (1) of the Act.

V. ORDER

Accordingly, the instant charge is hereby dismissed in its entirety.

VI. RIGHT TO EXCEPTIONS

In accordance with Section 1120.30(c) of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135, parties may file written exceptions to this Recommended Decision and Order together with briefs in support of those exceptions, not later than 14 days after service hereof. Parties may file responses to exceptions and briefs in support of the responses not later than 14 days after service of the exceptions. Exceptions and responses must be filed, if at all, with the Board's General Counsel, 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103. Pursuant to Section 1100.20(e) of the Rules, the exceptions sent to the Board must contain a certificate of service, that is, **"a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service."** If any party fails to send a copy of its exceptions to the other party or

parties to the case, or fails to include a certificate of service, that party's appeal will not be considered, and that party's appeal rights with the Board will immediately end. See Sections 1100.20 and 1120.30(c) of the Rules, concerning service of exceptions. If no exceptions have been filed within the 14 day period, the parties will be deemed to have waived their exceptions, and unless the Board decides on its own motion to review this matter, this Recommended Decision and Order will become final and binding on the parties.

Issued in Chicago, Illinois, this 3rd day of March, 2020.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Victor E. Blackwell
Executive Director