STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

American Federation of State, County, and Municipal Employees, Council 31.	)	
Complainant	)	
and	)	Case No. 2021-CA-0056-C
City Colleges of Chicago, District 508,	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On January 28, 2021, AFSCME, Council 31 (Union) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) against City Colleges of Chicago, District 508 (College or Employer). Following an investigation, the Board's Executive Director issued a Complaint and Notice of Hearing (Complaint). The Complaint alleged that the College violated Section 14(a)(8) and, derivatively, Section 14(a)(1) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1 *et seq.*, by refusing to comply with an arbitration award. The parties filed a Joint Motion to Proceed on a Stipulated Record requesting to proceed on a stipulated record in lieu of a hearing, waiving the right to present evidence outside of the stipulated record, and setting a proposed timeline for filing the stipulated record and briefs. The Administrative Law Judge (ALJ) assigned to preside over the matter issued an order granting the parties' motion and cancelled the scheduled hearing. The parties filed the stipulated record and briefs.[1] After reviewing the stipulated record, the ALJ issued an Order Removing the Matter to the Board for Decision. Therein, he found that given the parties'

1 References to documents contained in the stipulated record are as follows: "Jt. Ex. ___".

stipulation of facts, there were no determinative issues of fact requiring an ALJ's recommended decision and order. The ALJ closed the record without a hearing and, on his own motion, ordered this matter removed to the Board for decision.

II. Facts

The facts, based upon the parties' stipulated facts and joint exhibits, are not in dispute before the Board and are as follows:

The College is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. Jt. Ex. 17. In addition to offering college credit classes, the College offers adult education courses through some of its colleges, including Wilbur Wright College (Wright College). Jt. Ex. 1. Although some adult education courses focus on technical or career skills, most adult education courses offered by the College are for students learning English as a second language or students working to obtain a high school equivalency degree. Jt. Ex. 1. The Union is a labor organization within the meaning of Section 2(c) of the Act, and is an exclusive representative within the meaning of Section 2(d) of the Act of a bargaining unit consisting of all persons employed by the College in the job title of Adult Educator (bargaining unit). Jt. Ex. 17. The Union and the College are parties to a collective bargaining agreement (CBA) for the bargaining unit with a term from July 1, 2016 to June 30, 2023. Jt. Ex. 17. The CBA contains a provision providing for binding arbitration of disputes regarding its administration or interpretation. Jt. Ex. 17. Michael Howard Weston (Weston) was employed by the College in the job title of Adult Educator at Wright College from 1995 until it terminated his employment in early May 2019. Jt. Ex. 1. During that time, Weston was an educational employee within the meaning of Section 2(b) of the Act and a member of the bargaining unit. Jt. Ex. 17.

Weston is a former priest in the Catholic Church. Jt. Ex. 1. He resigned from his position as a priest in September 1993. Jt. Ex. 1. In July 2004, Francis Cardinal George, archbishop of Chicago at that time, accepted the Archdiocese of Chicago (Archdiocese) Professional Responsibility Review Board's determination that there was reasonable cause to suspect that Weston engaged in acts of sexual misconduct with a minor while still active in priestly ministry. Jt. Ex. 1. Weston was laicized[2] in October 2009. Jt. Ex. 1.

Leah McClusky (McClusky), Director of the Office for Child Abuse Investigations and Review for the Archdiocese, sent Wright College President David Potash (Potash) a letter dated March 22, 2019. Jt. Ex. 3. Therein, she stated that her office received an anonymous call that Weston was employed by the College and informed Potash that Weston is identified on a list maintained by the Archdiocese of Clergy with a Substantiated Allegation of Sexual Abuse of a Minor (Archdiocese list). Jt. Ex. 3. The Archdiocese also maintains a publicly accessible internet database of documents related to clergy accused of sexual misconduct with minors on which there is a file about Weston. Jt. Ex. 1. College Chief Talent Officer Kimberly Ross (Ross) then sent Weston a letter informing him that he was placed on unpaid administrative leave pending the outcome of an investigation by the College into the notification that he was on the Archdiocese list. Jt. Ex. 1. In an April 3, 2019 letter, Potash informed Weston that the College would hold a pre-disciplinary hearing to determine whether he violated the College's Work Rule 50 (conduct unbecoming to a public employee) based on his inclusion on the Archdiocese list. Jt. Ex. 1. The College held the hearing on April 9, 2019. Jt. Ex. 4. As a result, College Specialist – EEO, Labor & Employment Relations Emily Chu issued a report with her findings on April

2 Laicize means "to remove clerical influence from; restrict to layman; secularize". Webster's New World Dictionary of the American Language (1984).

29, 2019 recommending that Weston's employment be terminated. Jt. Ex. 5. The College accepted the recommendation and terminated Weston's employment. Jt. Ex. 1.

McClusky's letter, however, was not the first the College had heard of the allegations made against Weston. On January 23, 2014, the College notified Weston that it was:

> [A]ware that your name has been identified as a former Archdiocesan priest against whom there were allegations of sexual misconduct with minors. [The Employer] will conduct an investigation to determine whether there is evidence that you engaged in misconduct while an employee of [the Employer].
> Jt. Ex. 11.

Weston was placed on paid administrative leave pending the investigation's outcome. Jt. Ex. 11. The College's office of the Inspector General (OIG) investigated the matter. The OIG stated in its Bi-Annual Report of January 1 – June 30, 2014, that the investigation disclosed:

> [T]hat the adult educator was the same individual who was the subject of allegations of sexual misconduct while serving as a priest from May 9, 1973 until September 9, 1993 for the Archdiocese of Chicago. During the course of the OIG investigation, the OIG interviewed numerous individuals, including a former College president, individuals from the College's Department of Safety and Security, the current and two former human resources administrators at the College, the dean of instruction at the College, the dean of student services at the College, a program chair at the College, a dean at the College, a former assistant dean at the College, various educators at the College, and administrative assistant, and the adult educator.
> Jt. Ex. 11.

The 2014 OIG investigation did not reveal any evidence that Weston engaged in sexual misconduct while employed by the College. Jt. Ex. 11. The OIG also investigated whether the College received any complaints that suggested that Weston engaged in sexual misconduct during his employment by the College and found no records of any complaints that suggested as such. Jt. Ex. 11. Following the OIG's 2014 investigation, the College concluded Weston's administrative leave and he resumed his work at Wright College. Jt. Ex. 11.

On May 10, 2019, the Union filed a grievance challenging Weston's termination (2019-08-46641). Jt. Ex. 10. The grievance alleged Weston was terminated without just cause in violation

of Article IX of the CBA. Jt. Ex. 10. The grievance proceeded through the steps of the CBA's grievance procedure to come before Arbitrator Brian Clauss (Arbitrator). Jt. Ex. 1. Because Weston retired and became an annuitant in January 2020, the Union sought backpay from the time of his discharge until his retirement and did not seek reinstatement. Jt. Ex. 1.

On October 16, 2020, the Arbitrator issued an award wherein he determined that the College violated the CBA by terminating Weston without just cause after previously investigating the same allegation and clearing him to return to work. Jt. Ex. 14. The Arbitrator acknowledged the "legitimate public policy concern with returning [Weston] to the workplace – the same concern that was acceptable to the [College] in 2014. However, that is a non-issue because [Weston] is retired." Jt. Ex. 14. The Arbitrator reduced the issue to whether Weston was entitled to backpay for the period he was suspended without pay until he retired and determined that he was entitled to backpay for that period. Jt. Ex. 14.

That the College previously investigated the same misconduct and returned him to work without discipline weighed heavily in the Arbitrator's decision:

> Here, the Employer cannot show how anything has changed since the OIG investigation was completed. The allegations are similar – that Weston engaged in sexual abuse of minors while working as a priest for the Archdiocese. The Employer knew of the allegations of sexual abuse, investigated Weston, and allowed him to return to work. The facts have not changed. Weston was on the Archdiocese list when the OIG investigation was launched and is still on the Archdiocese list. The public policy has not changed. Sex offenses and sex offenses involving children are despicable crimes and warrant prohibiting someone from teaching.
>
> The Employer was placed on notice of the allegations against Weston. If it was not actionable conduct during the OIG investigation and Weston was cleared, the burden is on the Employer to show that it is somehow a new situation requiring discipline. The Employer cannot prove that anything has changed – the list was there during the first investigation and the list was there in 2019.
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> Jt. Ex. 14.

The College refuses to comply with the Arbitrator's award. The Union subsequently filed the unfair labor charge in this matter.

III. Positions of the Parties

The Union contends that the award is binding. The Union argues that the Illinois Public Community College Act does not grant community college boards nondelegable powers to hire and fire non-tenured instructors in accordance with the common law nondelegation doctrine. Even if that doctrine applied to the Illinois Public Community College Act, the IELRA eliminated the legal basis for the doctrine. Finally, the Union asserts that the College waived the nondelegation doctrine. For these reasons, the Union requests a finding that the College's refusal to comply with the arbitration award violates Section 14(a)(8) of the IELRA.

The College argues that its refusal to comply with the arbitration award did not violate the IELRA. This is because the award conflicts with Illinois law. In particular, the nondelegable right to dismiss nontenured instructors conferred upon it by the Illinois Public Community College Act. The College asserts that it did not waive its nondelegable power to terminate its employees by agreeing to a just cause standard in the CBA or by previously arbitrating termination grievances. Last, the College argues that the arbitration award is nonbinding because it violates public policy.

IV. Discussion

Section 14(a)(8) of the Act prohibits educational employers from "[r]efusing to comply with the provisions of a binding arbitration award." When an employer disagrees with an arbitrator's conclusion, it may challenge the arbitrator's decision by refusing to implement the award and defending its position according to Section 14(a)(8) of the Act. *Western Illinois University v. IELRB*, 2021 IL 126082, ¶ 39; *Griggsville-Perry CUSD No. 4 v. IELRB*, 2013 IL 113721, ¶ 13, 984 N.E.2d 440.

Review of arbitration awards is extremely limited and the IELRB will not redetermine the merits of an arbitration decision properly before the arbitrator. *Griggsville-Perry CUSD No. 4*, 2013

IL 113721, ¶ 18; *AFSCME v. Department of Central Management Services*, 173 Ill. 2d 299, 671 N.E.2d 668 (1996) (*AFSCME II*); *AFSCME v. State of Illinois, Department of Mental Health*, 124 Ill. 2d 246, 529 N.E.2d 534 (1988) (*AFSCME I*); *Chicago School Reform Board of Trustees*, 13 PERI 1110, Case No. 96-CA-0047-C (IELRB Opinion and Order, August 22, 1997). Arbitration awards must, if possible, be construed as valid. *AFSCME I*, 124 Ill. 2d 254, 529 N.E.2d 537. An arbitration award must be enforced if the arbitrator acts within the scope of their authority and the award draws its essence from the collective bargaining agreement, even when the Board or reviewing court disagrees with the arbitrator's judgment on the merits. *Griggsville-Perry CUSD No. 4*, 2013 IL 113721, ¶ 20; *Chicago School Reform Board of Trustees*, 13 PERI 1110. Public policy favors resolving collective bargaining disputes through arbitration and in favor of finality in arbitration awards. *Chicago School Reform Board of Trustees*, 13 PERI 1110; *see also AFSCME II*, 173 Ill. 2d 299, 671 N.E.2d 668; *City of Aurora v. Association of Professional Police Officers*, 2019 IL App (2d) 180375, 124 N.E.3d 558; *Local 786 v. Glenview Material Co.*, 204 Ill. App. 3d 447, 562 N.E.2d 289 (1st Dist. 1990). Nevertheless, when an arbitration award is invalid, it may not be enforced. *Board of Education of Rockford School District No. 205 v. IELRB*, 165 Ill. 2d 80, 649 N.E.2d 369 (1995); *Chicago School Reform Board of Trustees*, 15 PERI 1037, Case No. 98-CA-0021-C (IELRB Opinion and Order, April 23, 1999). Section 10(b) of the Act makes any provision in a collective bargaining agreement null and void if the implementation of that provision would be inconsistent with or in conflict with any Illinois statute. As a result, an arbitration award that conflicts with the Act is unenforceable.

To determine whether an employer has violated Section 14(a)(8) of the Act, the Board examines: (1) whether there is a binding arbitration award; (2) the content of the award; and (3) whether the employer complied with the award. *Central Community Unit School District No. 4 v. IELRB*, 388 Ill. App. 3d 1060, 1066, 904 N.E.2d 640, 645 (1st Dist. 2009); *Board of Education of DuPage High School District No. 88 v. IELRB*, 246 Ill. App. 3d 967, 617 N.E.2d 790 (1st Dist.

1993); *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 College refuses to comply with the arbitration award, contending that it is nonbinding because it conflicts with Illinois law and because it violates public policy. Thus, the issue before the Board is whether the award is binding and not its content or compliance.

First, the College argues that the award is not binding because it has the exclusive nondelegable power to terminate instructors and any review of that power by an arbitrator is inconsistent and conflicts with Illinois law. In particular, Section 3-42 of the Illinois Public Community College Act (IPCCA), 110 ILCS 805/3-42, which gives community colleges the power "[t]o employ such personnel as may be needed, to establish policies governing their employment and dismissal, and to fix the amount of their compensation."

Before the IELRA went into effect, the nondelegation doctrine governed whether school boards were required to comply with collective bargaining agreements to which they had agreed. *Oak Lawn Teachers Council, Local 943, IFT/AFT*, 23 PERI 167, Case No. 2005-CA-0080-C (IELRB Opinion and Order, December 11, 2007). The nondelegation doctrine was based on "the impropriety of subordinating [a school board's] power to the terms of a collective bargaining agreement." *Board of Education of the City of Chicago v. Chicago Teachers Union*, Local 1, 88 Ill. 2d 63, 430 N.E.2d 1111, 1115 (1981). As a result, courts routinely invalidated arbitration awards interpreting collective bargaining agreements that interfered with the nondelegable power exercised by an educational employer pursuant to either Section 3-42 of the IPCCA or a similar provision of the Illinois School Code. *See Illinois Education Ass'n Local Community High School District 218 v. Board of Education of School District 218, Cook County*, 62 Ill. 2d 127, 130-31, 340 N.E.2d 7 (1975); *Board of Trustees v. Cook County College Teachers Union, Local 1600*, 62 Ill. 2d 470 (1976); *Chicago Teachers Union*, Local 1, 88 Ill. 2d 63, 430 N.E.2d 1111. The conflict between

collective bargaining and issues of delegability was the catalyst for the IELRA. *Board of Education of Cmty. Sch. Dist. No. 1 v. Compton*, 157 Ill. App. 3d 439, 510 N.E.2d 508 (4th Dist. 1987) *aff'd* 123 Ill. 2d 216, 219, 526 N.E.2d 149 (1988). The IELRA was enacted in 1984, and Illinois school labor law was revolutionized. *Board of Education of Cmty. Sch. Dist. No. 1 v. Compton*, 123 Ill. 2d 216, 219, 526 N.E.2d 149 (1988). Section 10(c) of the Act requires collective bargaining agreements contain a grievance procedure providing for binding arbitration. Sections 14(a)(1), (5) and (8) of the Act provide means of enforcing employers' duties to bargain, arbitrate and comply with binding arbitration awards. These statutory provisions are inconsistent with the rationale for the nondelegation doctrine, under which the powers of boards of education could not be subordinated to collective bargaining agreements. *Peoria SD 150*, 12 PERI 1062, Case No. 95-CA-0022-S (IELRB Opinion and Order, June 26, 1996). Collective bargaining agreements are now binding and enforceable. Thus, the nondelegation doctrine does not apply to cases arising under the IELRA because it was replaced by Section 10(b) of the Act in determining whether contractual provisions or arbitration awards are valid *Dundee CUSD No. 300*, 5 PERI 1070, Case No. 88-CA-0052-C (IELRB Opinion and Order, April 5, 1989). Section 10(b) of the Act says that a provision of a collective bargaining agreement that violates, conflicts or is inconsistent with any Illinois statute cannot be enforced, but allows for provisions of collective bargaining agreements that supplements an Illinois statute pertaining to wages, hours or other conditions of employment.

The Court abandoned its reliance on the nondelegation doctrine in favor of Section 10(b) of the Act in *Granite City Cmty. Unit Sch. Dist. 9 v. IELRB*, 279 Ill. App. 3d 439, 664 N.E.2d 1060 (4th Dist. 1996). Therein, the Court found that the school district was free, via a collective-bargaining agreement, to delegate any powers it had to an arbitrator, as long as the exercise of those powers by the arbitrator would not be "in violation of, or inconsistent with, or in conflict with" a specific statutory provision or an integral part of any statutory scheme *Id.* (quoting

Section 10(b)). The College notes in its exceptions that the Court confirmed that despite the passage of the IELRA, educational employers maintain certain nondelegable rights, citing *Board of Education of the City of Chicago v. IELRB*, 2015 IL 118043. In that case, the Court found that a union's grievances were inarbitrable because they related to the employer's ability to initiate employment, rather than terms and conditions of employment. *Id.* The Court indicated that even if some provisions of the parties' collective bargaining agreement could be read to require arbitration of those grievances, Section 10(b) of the Act would prohibit its enforcement because implementing it would conflict with the Section 4 of the Act, as well as provisions of the Illinois School Code.[3] This case is distinguishable from *Chicago Board of Education*. Unlike the employer in that case, the College did not refuse to arbitrate the grievance. The issue here is not whether the matter is grievable, it is whether the award is binding. Also, in contrast to the grievance in *Chicago Board of Education*, the arbitration award in this case does not attack the College's ability to determine whom to hire, not to hire, or to dismiss personnel. Instead, the award required the College to comply with the CBA when dismissing personnel. Nothing in the award prevents the College from dismissing personnel if it follows those procedures. What is more, the Arbitrator did not order Weston's reinstatement, but ordered a monetary remedy. This further demonstrates that the award did not interfere with the College's authority to dismiss personnel.

Next, the College argues that the arbitration award is not binding because it violates public policy. An arbitration award that violates public policy cannot be enforced. *AFSCME II*, 173 Ill. 2d 307, 671 N.E.2d 674. The Board's refusal to enforce an arbitration award made pursuant to a collective bargaining agreement because the award is contrary to public policy is based on the

3 Per Section 4 of the Act:

> Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees and direction of employees.

common law doctrine that courts will not lend judicial power to the enforcement of private agreements that are immoral or illegal. *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 42 (1987); *Central Community Unit School District No. 4*, 388 Ill. App. 3d 1067, 904 N.E.2d 646; *Board of Education of School District U-46 v. IELRB*, 216 Ill. App. 3d 990, 998, 576 N.E.2d 471, 476 (4th Dist. 1991). However, the public policy exception is extremely narrow and should "not otherwise sanction a broad judicial power to set aside arbitration awards." *Misco*, 484 U.S. at 43.

For the public policy exception to apply, "the public policy must be well-defined and dominant and ascertainable by reference to the laws and legal precedents and not from generalized considerations of supposed public interest." *AFSCME II*, 173 Ill. 2d at 307, 671 N.E.2d at 674; *Central Community Unit School District No. 4*, 388 Ill. App. 3d at 1067, 904 N.E.2d at 646. The conflict with public policy must be clearly shown. *AFSCME II*, 173 Ill. 2d at 307, 671 N.E.2d at 673; *International Brotherhood of Teamsters, Local 726 (University of Illinois-Chicago)*, Case No. 2010-CA-0074-C (IELRB Opinion and Order, June 7, 2011), *aff'd sub nom. Board of Trustees of the University of Illinois v. Educational Labor Rels. Board*, 2012 IL App (4th) 110639-U, ¶ 2. The application of the public policy exception involves a two-step analysis. *AFSCME II*; *Central Community Unit School District No. 4*. First, the Board must determine whether a well-defined and dominant public policy can be identified. *AFSCME II*; *Central Community Unit School District No. 4*. If so, the Board "must determine whether the arbitrator's award, as reflected in his interpretation of the agreement, violated the public policy." *AFSCME II*, 173 Ill. 2d at 307-08, 671 N.E.2d at 674; *Central Community Unit School District No. 4*, 388 Ill. App. 3d at 1067, 904 N.E.2d at 646.

The College identifies protecting children from sexual predators as the public policy pertinent to this matter. Indeed, the record indicates that Wright College hosts community events that often include children. This public policy is of paramount importance and its

existence is not in dispute. The question before the Board in this matter, however, is whether the arbitrator's award of backpay violates this public policy. There is nothing in the record to lead to the conclusion that the backpay award violates public policy. The Arbitrator recognized "[t]here is a legitimate public policy concern with returning [Weston] to the workplace – the same concern that was acceptable to the [College] in 2014." This was a non-issue to the Arbitrator, and to this Board, because Weston retired. As a consequence, the backpay award does not violate public policy.

We want to make it very clear that we believe the conduct attributed to Weston is severely reprehensible and contrary to public policy. However, it is not the Board's role to overturn the arbitrator when the backpay award does not itself violate public policy. *See City of Highland Park v. Teamster Local Union No. 714*, 357 Ill. App. 3d 453, 462, 828 N.E.2d 311, 318 (2nd Dist. 2005) (reinstating an employee who has violated an important public policy does not necessarily itself violate public policy).

Because the nondelegation doctrine does not apply, there is no need to address the Union's contention that the College waived its nondelegation doctrine argument by agreeing in the CBA to final and binding arbitration of termination grievances and by proceeding to arbitration on termination grievances.

V. Order

For the reasons discussed above, we find that the award issued by the Arbitrator was binding and that by refusing to comply with the award, the College violated Section 14(a)(8) and, derivatively, Section 14(a)(1) of the Act. Therefore, **IT IS HEREBY ORDERED** that City Colleges of Chicago:

1. Cease and desist from:
   A. Refusing to comply with the arbitration award issued by Arbitrator Brian Clauss on October 16, 2020.
   B. In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them under the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
   A. Immediately comply with the provisions of the arbitration award issued by Arbitrator Brian Clauss on October 16, 2020.
   B. Make Weston whole for the loss of any pay or benefits, with interest at a rate of seven percent per annum, resulting from City Colleges of Chicago's refusal to comply with the arbitration award issued by Arbitrator Brian Clauss on October 16, 2020.
   C. Post, for 60 consecutive days during which the majority of Respondent's employees are actively engaged in the duties they perform for Respondent, at all places where notices to employees of Respondent are regularly posted, signed copies of the attached notice.
   D. Notify the Executive Director in writing within 35 calendar days after receipt of this Opinion and Order of the steps taken to comply with it.

VI. 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 that 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: **December 16, 2021**
Issued: **December 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

/s/ Gilbert F. O'Brien
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