STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Cook County College Teachers Union, Local 1600, IFT–AFT, AFL–CIO,	)	
Complainant	)	
and	)	Case Nos. 2024–CA–0060–C 2024–CA–0061–C 2025–UC–0007–C
South Suburban College, District 510,	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On April 26, 2024, Cook County College Teachers Union, Local 1600, IFT-AFT, AFL-CIO (Union) filed two unfair labor practice charges with the Illinois Educational Labor Relations Board (IELRB or Board) against South Suburban College, District 510 (College).[1] The first charge, Case No. 2024-CA-0060-C, alleged that the College violated Section 14(a)(1) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1, *et seq.*, when it refused to process a grievance. The Union amended the charge on May 6 to further allege that the College violated Section 14(a)(5) of the Act when it unilaterally closed the bargaining unit job title or position of Academic and Career Counselor (Counselor), laid off the four bargaining unit members in that title, and unilaterally created the new non-bargaining unit job title of Academic and Career Advisor (Advisor) that assumed the work previously performed by the Counselor.[2] The Union's second charge, Case No. 2024-CA-0061-C, alleged that the College violated Section 14(a)(5) of the Act when it unilaterally voted to discontinue the Counselor position and subsequently posted the Advisor position, a new position with substantially similar

[1] All dates occur in 2024, unless otherwise indicated.

[2] We denied the Union's request for injunctive relief in Case No. 2024-CA-0060-C on June 18, 2024.

job responsibilities to the Counselor. On July 31, the Union filed a unit clarification petition, Case No. 2025-UC-0007-C, seeking to clarify the bargaining unit at issue in its unfair labor practice charges to include the newly created Advisor position.

The Board's Executive Director issued a Complaint and Notice of Hearing for each unfair labor practice charge and consolidated them with the unit clarification petition for hearing before an administrative law judge (ALJ). Following the hearing, the ALJ issued a Recommended Decision and Order (ALJRDO) finding that the College breached its duty to bargain in good faith in violation of Section 14(a)(5) when it laid off the Counselors and, by creating the Advisor position outside of the bargaining unit, unilaterally removed work from the bargaining unit without bargaining to agreement or impasse. The ALJ also found the College violated Section 14(a)(5) by engaging in direct dealing with bargaining unit members and dismissed the portion of the Complaint in 2024-CA-0060 alleging that the College refused to arbitrate the grievance in violation of Section 14(a)(1). Finally, the ALJ granted the unit clarification petition to include the Advisor in the existing unit. The College filed timely exceptions to the portions of the ALJRDO finding that it violated the Act and granting the unit clarification petition.[3] The Union filed a timely response.

II. Factual Background

We adopt the ALJ's finding of facts as set forth in the underlying ALJRDO. Because the ALJRDO comprehensively sets forth the factual background of the case, we will not repeat the facts herein except as necessary to assist the reader.

[3] We do not address the 14(a)(1) refusal to arbitrate allegation because neither party excepted to that portion of the ALJRDO. It is final and binding upon the parties, although without precedential value.

III. Discussion

A. Timeliness

The College excepts to the ALJ's determination that the unfair labor practice charges were timely. Section 15 of the Act provides that "[n]o order shall be issued upon an unfair labor practice occurring more than 6 months before the filing of the charge alleging the unfair labor practice." The six-month period begins to run when the charging party knows or has reason to know that an unfair labor practice has occurred. *Wapella Education Association v. Illinois Educational Labor Relations Board*, 177 Ill. App. 3d 153, 531 N.E.2d 1371 (4th Dist. 1988). Only acts that occur within the six-month time period can serve as the basis for a timely charge. *Jones v. Illinois Educational Labor Relations Board*, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995); *City Colleges of Chicago/Johnson*, 12 PERI 1004, Case No. 95-CA-0047-C (IELRB Opinion and Order, December 8, 1995). Both charges were filed on April 26, 2024. Any unlawful conduct the Union knew or should have known about before October 26, 2023, six months prior to its filing, cannot be the subject of a timely charge.

The College argues that the charges were untimely because the Union knew of the layoffs by October 24, 2023, six months and two days prior to its charge filings, when College President Lynette Stokes (Stokes) issued the Union a Preliminary Notice of Faculty Layoff Recommendation (Notice). However, Stokes issued the Notice at that time because, pursuant to the CBA, she had to do so in the month of October. The ALJ states on page 5 of the ALJRDO that "[t]he College first communicated to the Union that it sought to eliminate the Counselor position on or about October 25, 2023." The ALJ bases this finding on Union President Jamie Welling's (Welling) testimony about conversations and meetings he had with Stokes and College Dean of Student Services/Vice President of Enrollment Services Devon Powell (Powell). When Powell denied the grievance on November 17, 2023, she indicated that the College was willing to engage in bargaining over the creation of the Advisor position. The crux of the charge is the College's refusal to bargain. At this point, five months and nine days prior to the charge filings, the College was not refusing to bargain. The parties agreed to pause the layoffs in January 2024

to pursue bargaining over the Advisor position and continued to bargain until February 2024. It was then that the College's willingness to bargain ceased and at its February 29 special Board of Trustees meeting, just shy of two months prior to the charge filings, it went forward with the layoffs, elimination of the Counselor position and the creation of the Advisor position without reaching agreement or impasse with the Union.

Evidence of the College's initial willingness to engage in lawful bargaining does not excuse its subsequent unlawful refusal to do so. To find that by engaging in bargaining over a matter, a union should have known that the employer would eventually cease to bargain and take unilateral action would serve to discourage collective bargaining and encourage unfounded unfair labor practice charges. Accordingly, the charges were timely filed.

B. Failure to Bargain in Good Faith by Removal of Bargaining Unit Work

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). In *Central City Educ. Ass'n v. IELRB*, 174 Ill. Dec. 808, 599 N.E.2d 892 (1992), the Court set forth a three-part test to determine whether a matter is a mandatory subject of bargaining. The first question is whether the matter is one of wages, hours, and terms or conditions of employment. *Id.* If the answer to that question is no, the inquiry ends, and the employer is under no duty to bargain. *Id.* If the answer to the first question is yes, then the second question is whether the matter is also one of inherent managerial authority. *Id.* If the answer to the second question is no, the analysis stops, and the matter is a mandatory subject of bargaining. *Id.* If the answer is yes, the IELRB should go to the third step and balance the benefits that bargaining will have on the decision-making process with the burdens that bargaining imposes on the employer's authority. *Id.*

The College's unilateral closure of the in-unit Counselor position and creation of the non-unit Advisor position meets the first step of the *Central City* test because removal or transfer of bargaining unit work affects the wages, hours and working conditions of the unit. *Illinois Department of Central Management Services*, 17 PERI ¶2046 (IL LRB – SP 2001). The decision to

transfer work out of a bargaining unit causes that unit to lose actual or potential work, wages and hours associated with the transferred out position. *Id.*; *see also Sesser-Valier Community Unit School District No. 196 v. IELRB*, 250 Ill. App. 3d 878, 620 N.E.2d 418 (4th Dist. 1993) (unilaterally subcontracting bargaining unit work is an unfair labor practice when it is a departure from previously established operating practices, effects a change in conditions of employment, or results in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the unit). The duties of the Advisor include the responsibilities that had previously been the duties of the Counselor. By virtue of the College's creation of the Advisor position, the Counselor ceased to exist.

The College argues that its layoff of the Counselors to create the Advisor position was a matter of inherent managerial authority because the Public Community College Act allows it to effectuate layoffs if it decides to decrease the number of faculty members or to discontinue some particular type of teaching service or program. 110 ILCS 805/3B-5. The ALJ determined that neither was the case. The College replaced the four Counselor positions it eliminated with four Advisor positions, even attempting to hire a fifth. The College claims that its action did reduce the number of faculty members, because the Advisor position, unlike the Counselor position, is not a faculty member within the meaning of the Public Community College Act. 110 ILCS 805/3B-1. Yet the College's action in this case was not driven by its desire to decrease the number of faculty members. As the College's witnesses Stokes and Powell both testified, the move from a nine to a twelve month model was its chief concern. The College was not trying to discontinue any type of teaching service or program by its actions in this case. Instead, by moving from the nine to the twelve month model, the College expanded its services. The College's contention that this is a mischaracterization because the service once performed for nine months out of the year by faculty would now be provided for twelve months by non-faculty is simply splitting hairs. Its goal was to expand the service to twelve months. Furthermore, even assuming, arguendo, that transfer of bargaining unit work is a matter of inherent managerial authority, the burden of bargaining would not have outweighed its benefits. The College at least at some point believed

this because it initially engaged in bargaining with the Union over the matter. Thus, we uphold the ALJ's determination that the transfer of bargaining unit work in this case is a mandatory subject of bargaining.

The College insists that it bargained in good faith, and the ALJ's finding to the contrary was erroneous. Although the College may have engaged in good faith bargaining initially, it ultimately made a unilateral change to a mandatory subject of bargaining when it eliminated the Counselor position and created the Advisor position in February 2024 without bargaining with the Union to agreement or impasse. By this action, the College breached its duty to bargain in good faith in violation of Section 14(a)(5) of the Act.

C. Direct Dealing

The ALJ found that the College engaged in direct dealing in violation of the Act when it participated in bargaining with each of the Counselors pending their layoff with the intent of hiring them to fill the newly created Advisor position. The College asks us to reject this finding on its merits because the record evidence does not show that it engaged in direct dealing. Neither of the Complaints alleged the College engaged in direct dealing. An ALJ may amend the complaint on a motion of a party before the hearing concludes to conform to the evidence presented at hearing. 80 Ill. Admin. Code 1105.120(j). The ALJ in this matter did not amend the Complaints during the hearing to include the direct dealing allegation. Unlike the Illinois Labor Relations Board (ILRB), the IELRB's Rules do not specifically allow an ALJ to amend a complaint on their own motion.[4]

When the Board's Executive Director amends a complaint, "the parties shall receive reasonable notice of the amendment" and, unless waived, a respondent has fifteen days to file an answer to an amended complaint issued by the Executive Director. 80 Ill. Admin. Code

[4] The ILRB's Rules provide that the ALJ, on their "own motion or on the motion of a party, may amend a complaint to conform to the evidence presented in the hearing or to include uncharged allegations at any time prior to the issuance of the Judge's recommended decision and order." 80 Ill. Admin. Code 1220.50(f).

1105.100(g). Even though respondents are not provided a similar response time to file an answer to a complaint amended by an ALJ during a hearing, respondents are given the opportunity to respond verbally at the hearing and in writing in its post-hearing brief.

The record does not indicate the College was given notice that the ALJ would consider the direct dealing issue until he issued the ALJRDO. The Union does not raise its direct dealing allegation until its post-hearing brief. Respondent would not have had the opportunity to respond before the ALJ to the direct dealing allegation because, by design, the parties' post-hearing briefs were due on the same date. *See generally* 80 Ill. Amin. Code 1105.150(f) (rights of parties in unfair labor practice hearings may include submission of post-hearing briefs simultaneously). Thus, the College was denied due process since it did not have notice of this new allegation nor an opportunity to defend against it. *Community Unit School District No.4*, 3 PERI 1043, Case No. 84-CA-0015-S (IELRB Opinion and Order, April 7, 1987) (an unpleaded issue will support an unfair labor practice finding where it has been fully and fairly litigated and the respondent has had notice of the conduct at issue and a fair opportunity to present a defense).

We therefore overturn the ALJ's finding that the College engaged in direct dealing in violation of Section 14(a)(5). There is no need for us to make a finding on the merits of the direct dealing issue.

D. Unit Clarification

The ALJ determined that apart from the change from a nine month calendar to a twelve month calendar, the newly created non-bargaining unit Advisor position is almost identical to the Counselor, a position that was part of the bargaining unit until the College eliminated it. Sara McAley (McAley), who has held both titles, reports that she is still doing the same kinds of job duties as Advisor that she performed as Counselor. The main difference being that as Advisor, she performs transcript evaluations. Though she also did this informally as a Counselor. Her work location and supervisor remained the same in both positions. Although the Advisor is a twelve month position, McAley had the option to work over the summer as a Counselor.

Lauren Johnston (Johnston) was laid off when the College eliminated the Counselor position. She noted that the duties in the Advisor job description were a more accurate description of her former role as Counselor than those described in the Counselor job description.

The College's creation of the Advisor position violated the Act. A similar fact pattern occurred in *Maine Township High School Dist. 207*, where the employer eliminated a bargaining unit position and transferred most of its duties into a newly created non-bargaining unit position. 37 PERI 19, Case Nos. 2018-CA-0077-C & 2018-UC-0026-C (IELRB Opinion and Order, July 27, 2020), *aff'd* 2021 IL App (1st) 200910-U. As in this case, an unfair labor practice charge and a unit clarification petition followed. The Board found the employer's conduct violated the Act but granted the unit clarification petition instead of issuing the standard order in a unilateral change case that the employer rescind the change and restore the status quo while it bargains with the union. *See Northern Illinois University*, 34 PERI 61, Case No. 2016-CA-0084-C (IELRB Opinion and Order, September 14, 2017); *City Colleges of Chicago*, 34 PERI 23, Case Nos. 2016-CA-0030-C & 2016-CA-0048-C (IELRB Opinion and Order, July 20, 2017); *Mundelein Consolidated High School District 130*, 31 PERI 57, Case No. 2012-CA-0088-C (IELRB Opinion and Order, September 18, 2014); *City of Springfield*, 35 PERI ¶15 (ILRB-SP 2018) ("Typically, when an employer commits a unilateral change in violation of the Act, the Board will order the employer to rescind the change and restore the status quo while it bargains the issue with the union.").The Board reasoned that when put into place, an order to restore the status quo could cause the people hired in the newly created position to lose work that had been deemed bargaining unit work. The same would be true in this case. Admittedly, granting the petition and not restoring the status quo leaves one employee, Johnston, without College employment. However, she declined to apply for the Advisor position because she did not want to lose her tenure as faculty and wanted to retain the flexibility in her hours and work location that she had as a Counselor. There is no guarantee that after restoration of the status quo, the agreement reached by the parties would have allowed her to keep those benefits. What is more, the Union, the Complainant in this case, did not except to the ALJ's remedy and recommendation that the

unit be clarified to include the Assistant position. For these reasons, the unit should be clarified to include the Assistant position.

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that:

The portions of the ALJRDO finding the unit clarification petition appropriate and that the College breached its duty to bargain in good faith in violation of Section 14(a)(5) when it laid off the Counselors, created the Advisor position outside of the bargaining unit, and unilaterally removed work from the bargaining unit without bargaining to agreement or impasse are affirmed. The portion of the ALJRDO finding that the College engaged in direct dealing in violation of Section 14(a)(5) is overturned.

The unit clarification petition is granted and remanded to the Executive Director to issue a certification clarifying the unit to include the title or position of Academic and Career Advisor.

Respondent, South Suburban College, District 510, its officers, and agents shall:

1. Cease and Desist from:
   (a) Refusing to bargain collectively in good faith with Cook County College Teachers Union, Local 1600, AFT, AFL-CIO.
   (b) Making unilateral modifications to any term or condition of employment without prior bargaining to agreement or impasse.
   (c) In any like manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them in the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
   (a) Bargain in good faith with Cook County College Teachers Union, Local 1600, AFT, AFL-CIO regarding the addition of the Academic and Career Advisor position to the bargaining unit.
   (b) Bargain in good faith with Cook County College Teachers Union, Local 1600, AFT, AFL-CIO regarding the collective bargaining agreement.
   (c) Make all whole any bargaining unit employees adversely impacted by the elimination of the Academic and Career Counselor position, including interest at the rate of 7% per annum.
   (d) Post on bulletin boards or other places reserved for notices to employees for 60 consecutive days during which the majority of Respondent's employees are actively engaged in duties they perform for Respondent, signed copies the attached notice.

Respondent shall take reasonable steps to ensure that said notice is not altered, defaced, or covered by any other materials.

(e) Notify the Executive Director, in writing, within 35 days after receipt of this 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 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: **July 16, 2025**
Issued: **July 16, 2025**

/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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STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Cook County College Teachers Union, Local 1600, AFT, AFL-CIO,	)	
Charging Party	)	
And	)	Case Nos. 2024-CA-0060-C 2024-CA-0061-C 2025-UC-0007-C
South Suburban College, District 510,	)	
Respondent	)	

Administrative Law Judge's Recommended Decision and Order

On April 26, 2024, Charging Party Cook County College Teachers Union, Local 1600, AFT, AFL-CIO (Union) filed two unfair labor practice charges Illinois Educational Labor Relations Board pursuant to Section 14 of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1, *et seq.*, against the Respondent, South Suburban College, District 510 (College). The first charge, Case No. 2024-CA-0060-C, alleged that the College was refusing to arbitrate a grievance in violation of Section 14(a)(1) of the Act, and unilaterally laid off employees, eliminated a job title, and created a new title outside of the bargaining unit that assumed work previously performed by bargaining unit members without prior bargaining to agreement or impasse in violation of Section 14(a)(5) and, derivatively, (1) of the Act. On June 14, 2024, the Executive Director issued a Complaint and Notice of Hearing on this charge.

The second charge, Case No. 2024-CA-0061-C, alleged that the College unilaterally voted to discontinue the bargaining unit position of Academic and Career Counselor, then put up a job posting two weeks later for a new position called Academic and Career Advisor that had substantially similar job responsibilities to the eliminated Academic and Career Counselor position, in violation of Section 14(a)(5) of the Act. On August 27, 2024, the Executive Director issued a Complaint and Notice of Hearing on this charge.

On July 31, 2024, the Union filed the petition in Case No. 2025-UC-0007-C, seeking to add the Academic and Career Advisor position to the already existing bargaining unit represented by the Union. On September 5, 2024, the Executive Director consolidated the three cases and set them all for hearing before the undersigned Administrative Law Judge.

The hearing occurred on November 6, 2024. At the hearing, both sides had the opportunity to call, examine, and cross-examine witnesses, introduce documentary evidence, and present argument. Both parties filed post-hearing briefs on January 10, 2025.

I. Findings of Fact

During the hearing, Dr. Jamie Welling, Lauren Johnston and Sara McAley testified for the Union. (R. 19, 96, 118, 263). Dr. Devon Powell and Dr. Lynette Stokes testified for the College. (R. 134, 200).

A. Stipulations

Prior to the hearing, the parties agreed to stipulated to several material facts. (Joint Statement of Uncontested Facts, ALJ Ex. 13 at 3, hereinafter "Stipulations"). The College is a public community college district that operates multiple campus locations in Cook County, Illinois. (Stipulations at 1). The College is an educational employer as defined by Section 2(a) of the Act. (Stipulations at 2). The College employs approximately sixty (60) faculty members who are represented by the Union. (Stipulations at 3). The Union is an employee organization as defined by Section 2(c) of the Act and the exclusive representative within the meaning of Section 2(d) of the Act of a bargaining unit comprised of certain employees of the College. (Stipulations at 4-5). The College and the Union were parties to a collective bargaining agreement (CBA) with a term from the first Monday work day following August 1, 2020, through the completion of the Summer 2024 term, which was July 25, 2024. (Stipulations at 6-7, Joint Ex. 1). The bargaining unit described in the CBA included the position of Academic and Career Counselor, which was in the College and Career Success Center. (Stipulations at 8).

During the 2023-24 school year, the College employed Samuel Hinkle, Sarah McAley, Lauren Johnston, and Shunda McGriff in the job title or classification of Academic and Career Counselor. (Stipulations at 9). Article X and Sections 10.9 through 10.11 address the bargained-for procedures for implementing a reduction in teaching staff. (Stipulations at 10, Joint Ex. 1 at 75-78). On or about October 24, 2023, the College's President, Dr. Lynette Stokes, issued to the Union a "Preliminary Notice of Faculty Layoff Recommendation". (Stipulations at 11-12, Joint Ex. 2). The Union filed a grievance over the layoff notice on November 3, 2023. (Stipulations at 13-14, Joint Ex. 3). Dr. Stokes met with Union representatives on November 7, 2023 and presented them with a draft memorandum of agreement which would create a pilot program related to the positions in question.

(Stipulations at 15-16, Joint Ex. 4). The memorandum proposed to create a new position, called Academic Advisor, and reassign the individuals who were then employed in the existing position of Academic and Career Counselor to the new position with a thirty percent salary increase as compensation for moving from a 10-month to a 12-month schedule. (Stipulations at 17).

The College's Vice President, Dr. Devon Powell, issued her Step 2 response letter denying the grievance on November 17, 2023. (Stipulations at 18-19, Joint Ex. 5). The Union filed a Step 3 grievance with Dr. Stokes on November 21, 2023. (Stipulations 20-21, Joint Ex. 6). Dr. Stokes issued her response letter to the Union's grievance on December 18, 2023. (Stipulations 21-22, Joint Ex. 7). Prior to the College Board of Trustees meeting on January 11, 2024, the Union and the College signed the Academic and Career Counselor Layoff Pause Agreement. (Stipulations at 24-26, Joint Ex. 8, 9). Following the pause agreement, the parties met and reached a tentative agreement resolving the job title closure and lay off dispute, subject to the approval of the College's Board of Trustees and the Union's Executive Board. (Stipulations at 27-29, Joint Ex. 10). The Board of Trustees approved the tentative agreement on February 8. 2024. (Stipulations at 30-31, Joint Ex. 11). The Union's Executive Board did not ratify the agreement. (Stipulations at 32). On February 29, 2024, the College's Board of Trustees held a special meeting during which they approved a resolution eliminating the position of Academic and Career Counselor. (Stipulations at 33-36, Joint Ex. 12, 13).

On March 5, 2024, the Uinon filed a Step 4 grievance on the layoff dispute with the Board of Trustees. (Stipulations at 37-38, Joint Ex. 14). The Union was invited to present its grievance to the Board of Trustees at its March 14, 2024 meeting. (Stipulations at 39-40, Joint Ex. 15). The Board of Trustees considered the grievance in closed session. (Stipulations at 41). At the same meeting, the Board of Trustees approved the creation of the position of Academic and Career Advisor and the advertising of four job vacancies for that position. (Stipulations at 42-43, Joint Ex. 16). On March 20, 2024, the Union filed a grievance at Step 2. (Stipulations at 44-45, Joint Ex. 17). Dr. Stokes responded to both grievances on April 9, 2024. (Stipulations at 46-47, Joint Ex. 18). On April 12, the Union provided Dr. Stokes with notice of its intent to arbitrate the layoff determination grievance. (Stipulations at 48-49, Joint Ex. 19). On April 18, 2024, counsel for the College informed the Union that the College would refuse to arbitrate the grievance, arguing that the subject matter of the grievance was not arbitrable and not delegable. (Stipulations at 51-51, Joint Ex. 20).

The Union advanced its second grievance to Step 3 on April 19, 2024. (Stipulations at 52). On April 26, 2024, the Union filed two unfair labor practice charges, assigned Case No. 2024-CA-0060-C and 2024-CA-0061-C. (Stipulations at 54-59, Joint Ex. 22, 23). The Union amended its first charge on May 6, 2024. (Stipulations at 60-61, Joint Ex. 24). On May 13, 2024, Dr. Stokes issued her Step 3 response letter to the second grievance. (Stipulations at 62-63, Joint Ex. 25). On May 17, 2024, the Union advanced its grievance to Step 4. (Stipulations at 64-65, Joint Ex. 26). The Board of Trustees heard the Union's second grievance on June 13, 2024, in closed session. (Stipulations at 66). On July 18, 2024, Dr. Stokes issued the Step 4 response letter on behalf of the Board of Trustees. (Stipulations at 67-68, Joint Ex. 27). On July 31, 2024, the Union filed a unit clarification petition with the Board, assigned Case No. 2025-UC-0007-C, looking to add the newly created position of Academic and Career Advisor to its bargaining unit. (Stipulations at 69-71, Joint Ex. 28).

B. Testimony

1. Dr. Jamie Welling

Dr. Welling is a biology professor at South Suburban College who has also served as the Union President since 2003. (R. 20-21). Prior to his election as President, he served as Grievance Chair for about six years, and was a local delegate to the House of Representatives for four years before that. (R. 21). Around 2020 or 2021, Welling testified that there existed in the bargaining unit a job title called Faculty Counselors that became the Academic and Career Counselor position. (R. 23). Until summer 2024, there were four employees in that position: Sarah McAley, Lauren Johnston, Shunda McGriff, and Sam Hinkle. (R. 23). Welling testified that he was familiar with the duties associated with that job title. (R. 24). The Academic and Career Counselors met with students to help them schedule classes, work on their plan for graduation, transcript evaluations, and work on audits of outside classes or pre-existing classes. (R. 24). The job description was never updated from the previous Faculty Counselor position, but the position remained the same after the title change. (R. 24-25, Union Ex. A). The Faculty Counselor position, and the Academic Career Counselor position after it, was a nine-month position corresponding with the College's academic year. (R. 25). They had the option to work over the summer. (R. 26). An Academic Career Counselor's work week consisted of 35 hours, 25 of which was time spent directly serving students, five was to be spent on other job duties, and the remaining five on individual faculty development. (R. 27).

In February 2024, the Academic Career Counselor position was eliminated, and a new job title was created with the title of Academic and Career Advisor. (R. 27-28). Welling testified that the only differences between the Counselor and Advisor positions were that the Advisor position was 40 hours a week, as opposed to 35, and year-round, as opposed to just the academic year and optional summer, along with some optional duties that became part of the normal job requirements. (R. 28). The Advisor position would be overseen by Dean of Student Services Anisha Jones, just as the Counselor position was before. (R. 28-29). Pursuant to the layoff notice, the Counselor job title was eliminated at a February 28, 2024 special meeting of the College's Board of Trustees, effective at the end of the Spring 2024 semester in mid-May. (R. 29-30).

The College first communicated to the Union that it sought to eliminate the Counselor position on or about October 25, 2023. (R. 30). Welling testified that he primarily spoke with Dr. Stokes, though Dr. Powell also played a role in those conversations. (R. 30). Stokes apparently informed him in these meetings that, in order to change the job title in the way they wanted, they would need to go through the layoff procedure. (R. 31). Following the October 25 meeting, Stokes provided Welling with a Preliminary Notice of Faulty Layoff Recommendations. (R. 32-33, Joint Ex. 2). A week later, Welling and Stokes informally discussed the layoff notice, but Stokes insisted at that meeting that layoffs were the only way to achieve the desired result. (R. 34).

The Union filed a grievance on November 3, 2023, over the layoffs. (R. 35, Joint Ex. 3). The grievance alleges a violation of Section 10.9 of the CBA, which provides that the decision to layoff faculty should not be an arbitrary or capricious decision, and that the parties were involved in negotiations over changing the Counselor position at the time that the College issued the layoff notice. (Joint Ex. 1, 3). Section 10.9 also provides that, in considering the necessity of layoffs, primary consideration shall be given to decreases in enrollment, the financial condition of the College, and the desirability or necessity to discontinue a teaching service or program. (Joint Ex. 1). The grievance was filed at Step 2 with Dr. Powell. (R. 35). The Union filed at Step 2 to resolve the issue as quickly as possible. (R. 36). The College responded on November 17, denying the grievance. (R. 37, Joint Ex. 5). Welling testified that he met with Stokes after filing the grievance and testified that he believed that it was prior to the College denying the grievance. (R. 38).

After denying the grievance, Stokes provided Welling with what the College described as a Memorandum of Agreement to create a pilot program for the new Advisor position. (R.

39, Joint Ex. 4). The Union had no input into the creation of the MOA. (R. 39). It provided that the Counselor position would be closed, and the Advisor position created. (R. 40). The existing Counselors would be moved into the Advisor position. (R. 40). The Advisor position would be a twelve-month position at 40 hours a week with a paid lunch break, would be included in the Union's bargaining unit, and employees in the position would receive a 30 percent pay increase over what they receive as Counselors. (R. 40, Joint Ex. 4). The Union had concerns over moving to a twelve-month work schedule, the 40 hour week, and the 30 percent pay increase. (R. 40-41). The Union advanced the grievance to Step 3 on November 21, 2023. (R. 41, Joint Ex. 6.). The College denied the grievance on December 18. (R. 42, Joint Ex. 7).

On January 11, 2024, the parties entered into a pause agreement to hold the grievance in abeyance and enter into bargaining over the new Advisor position. (R. 42, Joint Ex. 9). The parties met four times in January and February 2024. (R. 44). In those meetings, Welling and Stokes discussed modifying the MOA in ways that the Counselors would find acceptable, and finding positions for those that did not want to transition to the Advisor position. (R. 44). The College agreed to raise the compensation from 30 to 33 percent above what Counselors were paid, and that the new Advisors would work 35 hour weeks as opposed to 40. (R. 45). A tentative agreement was reached on February 8. (R. 45, Joint Ex. 10, 10B). The parties also bargained over job duties, with the help of the Counselors. (R. 46).

The Union's Executive Board declined to ratify the tentative agreement. (R. 46). The Executive Board had concerns over whether Counselors that did not accept the new Advisor role would be able to transition to new departments, and whether the tentative agreement waived contractual rights to the layoff process. (R. 46-47). On cross-examination, Welling was asked about an employee named Makita Young, who stood to be impacted by the restructuring agreement. (R. 83, Respondent Ex. 10). After the Executive Board declined to approve the tentative agreement, Welling reviewed the qualifications of Johnston, who was to be placed in the Philosophy department, and found that she did not have qualifications to teach in that department even though the College told him that she did. (R. 94). The College replied to him that this was a question for the faculty, not for the College. (R. 95).

The Union then proposed grandfathering in two Counselors. (R. 47). The College would only allow for one to be grandfathered in. (R. 48). The Counselors rejected that proposal. (R. 48). They requested that they all be grandfathered in. (R. 48). Welling brought this proposal to Stokes on February 28. (R. 49). Welling testified that Stokes did not respond,

but said that she would talk it over with Powell. Later that day, Stokes informed Welling that the College could not agree to grandfather in all current Counselors. (R. 49). Welling testified that he did not believe the parties were at impasse because the Union remained open to other possibilities. (R. 49). The following day, at a Special Board Meeting, the College's Board of Trustees moved ahead with the layoff notice. (R. 50). Following the layoff notice, the Union advanced its grievance to Step 4 on March 5. (R. 50, Joint Ex. 14).

On March 14, the Union was invited to present its grievance to the Board of Trustees. (R. 51). Before its presentation, Welling and Eric Meyers, the Union's Grievance Chair, were informed that the College did not believe that it had an obligation to hear the grievance because it was advanced to Step 4 after the deadlines provided for in the contract. (R. 51). The Union took that to mean that the Board of Trustees had no interest in taking their grievance seriously, so they left without presenting it. (R. 51-52). The College created the Advisor job title at its next Board of Trustees meeting and approved the posting of job vacancies in April. (R. 52-53). The Advisor position was created outside of the Union's bargaining unit. (R. 53). They posted, and filled, four Advisor positions, including previous Counselors Sarah McAley and Sam Hinkle, along with two new employees. (R. 53). Hinkle received a 55 percent pay increase as an Advisor over what he received as a Counselor. (R. 53). McGriff, one of the Counselors not hired as an Advisor, was allowed to use an emergency retraining provision of the layoff process to earn qualifications for a new position. The other, Johnston, was laid off. (R. 55).

The College replied to the Step 4 grievance on April 9. (R. 57, Joint Ex. 15). Following the College's response, the Union filed for arbitration on April 12. (R. 57, Joint Ex. 19). The College refused to arbitrate. (R. 58, Joint Ex. 20). The College's denial apparently referenced both the grievance over the layoff notice and a second one about giving bargaining unit work to employees outside of the bargaining unit. (R. 58-59).

2. Lauren Johnston

Lauren Johnston testified next for the Union. (R. 96). She was the only Counselor to be laid off during the transition from the Counselor to Advisor position. (R. 97). During her time in the Counselor position, she was supervised by Dr. Anisha Jones. (R. 99). She worked a nine-month year, and worked two days a week during the summer. (R. 100). During the school year, she worked four days a week. She spent 20 hours a week on campus, and three of those had to be office hours. (R. 101). She worked a total of 35 hours a week. (R. 101). She made her own schedule, subject to the approval of the Dean of Student Services. (R. 102).

She described her job duties as meeting with students and helping them create a course plan to complete their degree requirement or assist them in preparing to transfer credits to a university. (R. 102). They also did some personal counseling. (R. 102). They evaluated transcripts for incoming students, which means that they looked at transcripts from other colleges and determined which courses could be transferred in toward their field of study at the College. (R. 102-03). Counselors also helped with financial aid. (R. 103). When the Faculty Counselor position became the Academic and Career Counselor, the College suggested that the Counselors no longer do personal counseling. (R. 103).

After she was laid off, Johnston discussed taking an Advisor position with Dr. Stokes. (R. 104). She decided against accepting the job because it was not in the Union, and she would lose her tenure as faculty. (R. 105). She reviewed the job description for the Faculty Counselor position, which contained substantially the same duties as the Academic and Career Counselor position. (R. 106, Union Ex. A). She testified that the duties in the job description did not list all duties she performed as a Counselor. (R. 106). After that, she reviewed the job description for the Advisor position. (R. 107, Joint Ex. 16). She testified that the duties of the Advisor would have been exactly the same as those she performed as a Counselor. (R. 107). She even testified that the job description for the Advisor position was a more accurate description of her role as Counselor than the job description for the Counselor position was. (R. 108).

On cross-examination, she acknowledged that her Counselor position was a school year position, while the Advisor position was twelve months. (R. 109). The pay would also change accordingly. (R. 109-10). She did not request a sabbatical to retrain because there was no subject for her to do a sabbatical in. (R. 113). The College needed instructors for history and biology, but the history vacancy was filled by an employee with more seniority, and she had no qualifications to teach biology. (R. 113). She also did not request a leave of absence without pay because she did not see how she could benefit from that. (R. 113). She testified that, after 16 years of service, she felt like moving to the Advisor position would have been a demotion, and that she thought she deserved better. (R. 114).

She also testified that she spoke with Stokes about being hired as a fifth Advisor, but that she wanted two remote workdays a week and a substantial pay increase to compensate for loss of tenure and Union representation. (R. 114-16).

3. Sarah McAley

Sarah McAley was employed as an Advisor. (R. 118). She was first hired as a Counselor in 2015. (R. 119). In that position, she advised students and taught an Overview for College Success course. (R. 119-20). She testified that in her job as Advisor, she is still doing the same kinds of job duties that she performed as a Counselor before the title change. (R. 120). She testified that the main difference between the Counselor position and the Advisor position is that, in the Advisor position, she performed transcript evaluations. (R. 122). In the Counselor position, she still did so informally, however. (R. 122). The Advisor position is also a twelve-month position, but as a Counselor, she still had the option to work over the summer. (R. 123). She testified that her duties over the summer were substantially the same as they were during the school year. (R. 123). She works in the same location as an Advisor that she worked in as a Counselor. (R. 125). She also has the same supervisor, Dean Anisha Jones, as she did before. (R. 126). Jones also interviewed her for the role as Advisor. (R. 129).

She received some formal training on transcript evaluation because that is now one of her official duties even though she performed informal transcript evaluations before but otherwise received no new training for the Advisor position. (R. 127-28). She accepted a lower salary than she would have initially received under the tentative agreement that was refused by the Union's Executive Board, and lower than the one she previously requested during negotiations, because job security was a priority for her. (R. 129-30). The salary she negotiated was slightly higher than the posted salary of $65,000 for the position.

She testified on cross-examination that Powell and Jones encouraged her to apply for the position. (R. 131). She also stated that she was aware when she applied that the job, as posted, was not within the Union. (R. 131).

4. Devon Powell

Devon Powell was the Vice President of Enrollment Services for the College at the time the hearing occurred but served as the Dean of Student Services from 2018 to 2023. (R. 134-35). She reviewed the Faculty Counselor job description. (R. 139, Union Ex. A). Her testimony was consistent with previous testimony that the Faculty Counselor was essentially the same position as the Academic and Career Counselors. (R. 141-42). When she came into her current position, there was discussion about the scheduling model for Counselors. (R. 144). The Counselors' supervisor, Dr. Jones, wanted to move to a twelve-month service model for the Counselors so that they were available for the time period from late summer into the fall semester. (R. 144). As others previously testified, Counselors could, but were not required

to, work over the summer. (R. 145). To fill the need, the College used adjunct faculty to serve as temporary counselors in the event that students needed help scheduling courses. (R. 146).

Counselors and other adjunct faculty taught the Overview for College Success course. The course is for students who are entering college for the first time. (R. 146-47). It is intended to teach them about College policies and resources, to help them develop academic plans, and understand their transfer options. (R. 146-47). Students can walk into the College and Career Success center and meet with an Advisor or make an appointment to meet with their assigned Advisor. (R. 147). Previously, each student had a Counselor assigned to them. (R. 147). This factored into the decision to seek to a twelve-month service model for Counselors. (R. 148). Powell testified that this was consistent with what other community colleges in Illinois, and elsewhere, were doing. (R. 148-49).

Powell also had experience transitioning to a twelve-month counseling model from her time working as a College Advisor for City Colleges of Chicago. (R. 149). She testified that experience influenced her decision to move to a twelve-month model at the College. (R. 150).

On September 5, Powell testified that she met with Jamie Welling and Dr. Eric Meyers about moving to a twelve-month calendar for the Counselors. (R. 152-53). They followed up on September 27, after the Union had the opportunity to discuss the proposed changes with the Counselors. (R. 153). Welling sent her an email on October 6 to continue the discussion. (R. 154, Respondent Ex. 5). Powell testified that she spoke with Dr. Stokes and Dr. Jones about Welling's email. (R. 155). A proposal was submitted to the Union that would have hired the Counselors to the new Advisor position. (R. 156-58, Union Ex. B). The proposal also included a fifth, vacant position. (Union Ex. B). Under this proposal, the Advisor position would have remained in the Union's bargaining unit. (R. 159).

Powell received the Union's grievance, filed November 3, 2023, filed after the preliminary layoff notice. (R. 159, Joint Ex. 3). The grievance was initially filed at Step 2. (R. 159). Powell met with Welling and Myers on or about November 7. (R. 160). At that meeting, they discussed the grievance, as well as the idea of creating the Advisor position through a pilot program. (R. 160-61). Powell denied the grievance on November 17, arguing that it should have been filed at Step 1. (Joint Ex. 5). She did not otherwise address the merits of the grievance except to state that the College is willing to engage in bargaining over the creation of the Advisor position. (Joint Ex. 5). The CBA allows for grievances concerning a group of bargaining unit members who have the same dispute to be filed at Step 2. (R. 188).

Powell also testified about the bargaining history for the Advisor position. She submitted the initial job description in October 2023. (R. 164). The Union responded with a proposal for a twelve-month position with 8 weeks of vacation, 35 hour work week, and a 60 percent salary increase. (R. 165, Respondent Ex. 8B). On February 14, the College submitted a revised job description. (R. 165, Respondent Ex. 8C). During the negotiations, the Union also proposed a new Mental Health Faculty Counselor position that could be taken on by one of the Counselors, Shunda McGriff. McGriff also played a role in drafting the document. (R. 166, Respondent Ex. 9B). The College did not move forward with the proposed position. (R. 167).

On January 11, the parties agreed to pause the layoffs to pursue bargaining over the new Advisor position. (R. 167, Joint Ex. 9). The agreement required that the parties engage in good faith negotiations beginning the week of January 15, 2024. (R. 168, Joint Ex. 9). It held the grievance and the layoff notice in abeyance until February 8, 2024. (Joint Ex. 9). If the parties do not reach an agreement by February 8, the pause agreement states that the parties may proceed in accordance with the terms of the CBA and Illinois law, including potential action on the layoff resolution at the February 8 Board of Trustees meeting. (Joint Ex. 9).

In February 2024, Powell testified that she believed the parties were close to agreement. (R. 169). The tentative agreement between the parties is spelled out in a Memorandum of Agreement that restructured the Counselor position, creating a new Advisor position. (Respondent Ex. 7A). The College's Board of Trustees approved the Memorandum of Agreement on February 8. (R. 169). At this point, Powell believed that the issues concerning the restructuring of the Advisor position, the layoffs, and the grievance were resolved, until the Union's Executive Board declined to ratify the agreement. (R. 170). The Union subsequently submitted a counterproposal that involved grandfathering in all current Counselors in the current nine-month model, which was unacceptable to the College. (R. 170-71). Powell testified that the twelve-month model was the most important part of the restructuring. (R. 171). She testified that it seemed to her at this point that neither the Union or the College Administration had any further ability to negotiate. (R. 171).

Powell testified that she believed the parties were at impasse when the Union failed to approve the Memorandum of Agreement, even though the Union submitted other bargaining proposals afterwards. (R. 172). At this point, the College went ahead with layoffs and restructuring at its February 29 special Board of Trustees meeting. (R. 173). The layoff

notification provided that the needs and conditions of the College warrant the elimination of the Counselor position, and that the position will therefore be eliminated as of the following year. (Joint Ex. 13). Powell testified that the layoff resolution followed the procedures set forth in the CBA. (R. 173).

At the following regular Board of Trustees meeting, the College approved the creation of the Advisor position. (R. 174-76, Joint Ex. 16). Powell acknowledged that the Advisor position contained many duties that Counselors already performed. (R. 177). The Advisor position also reviewed transcripts and participated in the academic progress process. (R. 177). The new Advisor position had a twelve-month work schedule at 35 hours of student service per week. (R. 177). Advisors were categorized as Technical Professionals, which meant that they were not entitled to overtime or release time. (R. 179).

Powell testified that the Adjunct Faculty Counselors and Student Success Advisors performed some of the same duties that the Advisors would perform, including transcript review, enrollment, registration, review of degree requirements, and teaching the OCS course.. (R. 178). They also performed those same duties prior to the elimination of the Counselor position. (R. 179).

Following the creation of the new position, Powell testified that she received the second grievance. (R. 180-81, Joint Ex. 17). She did not draft a Step 2 response letter to this grievance. (R. 181.)

On April 11, 2024, the Board of Trustees reviewed and approved applicants for the new Advisor positions. (R. 181, Respondent Ex. 12). Two former Counselors, McAley and Hinkel, applied and were hired as Advisors. (R. 182-83, Respondent Ex. 12B, 12C). McAley was hired at a salary of $72,000. (R. 183, Respondent Ex. 12B). Hinkle was hired at a salary of $67,000. (R. 184, Respondent Ex. 12C). Two new employees were hired at the base salary of $65,000. (R. 184). The other two Counselors did not apply for the new position. Powell testified that, had they applied, they would have been interviewed and likely hired. (R. 185). The new employees were hired in time for the summer of 2024. (R. 185). Powell testified that she noticed improvements in the availability of counseling services to students because Advisors were available during the summer. (R. 185-86). Students were able to meet with assigned Advisors more frequently. (R. 186).

On cross-examination, Powell testified that, after Welling informed her that the Union's Executive Board did not ratify the Memorandum of Agreement, he offered some alternatives that involved grandfathering in the existing Counselors. (R. 189-90). Powell also

testified that she informed the Union that the Memorandum of Agreement was the College's last, best, and final offer. (R. 190). However, Hinkle was hired at a salary almost $10,000 more than what his salary would have been had the Union's Executive Board approved the Memorandum of Agreement. (R. 190-91). Similarly, McAley received a salary of $72,000, less than the $75,698.04 that she would have received under the Memorandum of Agreement. (R. 191). Furthermore, the Memorandum of Agreement stated that the Advisor position would have been in the bargaining unit, while the Advisor position as created by the College was not. (R. 192).

5. Dr. Lynette Stokes

Dr. Stokes was the President of the College. (R. 200). As College President, she meets monthly with the leaders of the Unions at the College, including the Faculty Association. (R. 203). She described her relationship with the Unions as being "very good and healthy", and that she discusses "any and everything" in her monthly meetings with the various Unions. (R. 202-03). She testified that she began discussing with Powell in the summer of 2023 about the position of Counselor and the need to transition to a twelve-month service model. (R. 205). She testified that she issued the preliminary notice of layoffs when she did because, pursuant to the CBA, she had to do so in the month of October. (R. 206, Joint Ex. 2). She informed Welling about the College's plans and informed him that the College was prepared to bargain over its intended changes. (R. 207). Even before this notice issued, Stokes testified that she had already been engaged in discussions with Welling over changes that the College administration felt needed to be made to the Counselor job title. (R. 208). Stokes testified that the Union was not initially receptive to a pause, seeking instead to have the layoff notice revoked entirely. (R. 213). Stokes testified that she declined to withdraw the layoff notice. (R. 214, Respondent Ex. 6B).

In that same email, she attached a proposal for a pilot program that would transition the Counselors to a twelve-month service model. (R. 215, Respondent Ex. 6B). The pilot program would have been a temporary change that would allow the College to receive feedback with the intent to moving toward a permanent model during the process for bargaining over a successor CBA. (R. 216). The new Advisor position would have remained in the unit during the pilot program. (R. 217). Stokes testified that if Counselors did not want to participate in the pilot program, they could transfer to other jobs at the College if there were openings that they were qualified for. (R. 217). She testified that Welling informed

her that he would not look at the pilot program unless the layoff notice was withdrawn. (R. 218). The first grievance followed on November 3. (R. 218).

Following Powell's denial of the grievance at Step 2, the Union advanced it to Step 3 on November 21. (R. 220, Joint Ex. 6). Stokes and Powell met with Welling and Myers on or about December 4. (R. 220-21). They discussed the grievance at that meeting, as well as other options for transitioning to the twelve-month model sought by the administration. (R. 221). Stokes denied the grievance at Step 3 on December 18. (R. 221, Joint Ex. 7). In her denial letter, she proposed a pause on the grievance and the layoff procedures and engage in mediation. (R. 222, Joint Ex. 7). Stokes testified that the Union did not respond. (R. 222).

Stokes and Welling met on January 4. At that meeting, Stokes described Welling as "very, very passionate," and testified that he claimed that he believed the Union would win at arbitration on its grievance. (R. 223). She also testified that Welling stated that they were at impasse. (R. 224). The following week, on January 8, the parties entered into the pause agreement. (R. 224, Respondent Ex. 6). Pursuant to the pause agreement, the College's Board of Trustees did not go through with approving the elimination of the Counselor position as it intended to do at its January meeting. (R. 227-28). Rather, it approved the pause agreement. (R. 228). The parties engaged in bargaining following the pause agreement. (R. 229-233).

A tentative agreement was reached, and ratified by the College but not the Union's Executive Board. (R. 234). Welling and Stokes met on February 15, at which time Welling informed Stokes that the Executive Board had concerns about junior level faculty being laid off because of a "domino effect" from Counselors moving to other departments rather than continue as Advisors. (R. 234-35). On February 20, a Psychology instructor named Naketa Young emailed Stokes and Welling to raise concerns over Counselors being transferred to the Psychology Department because they lacked credentials to teach in that department. (R. 235-36, Respondent Ex. 10E). After receiving Young's email, Stokes testified that the College discovered that Johnston, who initially was going to be transferred to the Psychology Department, did not have the qualifications to teach in that department. (R. 237). Because of this, Stokes testified that the restructuring agreement that was the basis for the tentative agreement reached by the parties would not have been feasible. (R. 237).

At some point between Young's email and the special Board of Trustees meeting on February 29, Welling and Stokes met again. (R. 238). Welling proposed that the remaining two Counselors that did not intend to apply for the Advisor position be grandfathered in under their current terms and conditions of employment. (R. 238). The College declined to

grandfather in existing Counselors, arguing that the move to a twelve-month schedule was necessary. (R. 239). Following that conversation, Welling proposed that all four Counselors be grandfathered in, a proposal that the College again refused. (R. 239). Stokes testified at that point that the parties were at impasse. (R. 240). The College's Board of Trustees carried out the layoffs at the February 29 meeting. (R. 241, Joint Ex. 13).

On March 5, the Union moved its grievance over the layoffs to Step 4, with the Board of Trustees. (R. 243, Joint Ex. 14). The Union was invited to address the Board of Trustees at its March 14 meeting, but Welling and Myers left without addressing the Board in closed session. (R. 245). At this meeting, the Board of Trustees approved the creation of the Advisor position. (R. 246). Two former Counselors, McAley and Hinkle, were hired as Advisors. Dr. Shunda McGriff took an emergency sabbatical to take 18 graduate credit hours in the subject of history in order to qualify to teach History courses at the College. (R. 248-252, Respondent Ex. 11). She received one year of full pay for her sabbatical. (R. 250), McGriff was approved to transfer to the Social and Behavioral Sciences Department while she trained to become credentialed in History. (R. 253, Respondent Ex. 11).

In response to Johnston's testimony that she would have applied for retraining, but McGriff was more senior, Stokes responded that seniority would not have been a consideration. (R. 255). Stokes testified that she met with Johnston to explore her options after McGriff's sabbatical had already been approved. (R. 257). Stokes offered to create another Advisor position for Johnston. (R. 257). Johnston stated that she would consider it, but she needed to work from home two days a week and have a schedule from 7:00 a.m. to 3:00 p.m. (R. 257). Johnston and Stokes were unable to reach an agreement that would have allowed Johnston to remain employed as an Advisor. (R. 258-60).

6. Dr. Jamie Welling (Rebuttal)

On rebuttal, Welling was asked about the initial proposal for the Advisor position, sent to him by Powell's predecessor, Debra King, in March 2023. (R. 263, Union Ex. B). Powell added Sections III and IV of that document after she took on King's position in September or October of 2023. (R. 264).

II. Issues and Contentions

A. 2024-CA-0060-C

In this charge, the Union alleges that the College refused to arbitrate the grievance it filed over the layoff notice in violation of Section 14(a)(1) of the Act. (ALJ Ex. 2). The Complaint issued following investigation of this charge also alleged that the Academic and

Career Counselors were terminated without bargaining to agreement or impasse, and that work was transferred from bargaining unit employees to non-bargaining-unit employees, in violation of Section 14(a)(5) and, derivatively, (1) of the Act. (ALJ Ex. 4). The College denies that the complained of conduct violates the Act.

B. 2024-CA-0061

In this charge, the Union alleges that the College unilaterally eliminated the position of Academic and Career Counselors, created the position of Academic and Career Advisor, and unilaterally removed the Counselors' work from the bargaining unit in violation of Section 14(a)(5) and, derivatively, (1) of the Act. (ALJ Ex. 3). The College denies that the complained-of conduct violates the Act.

C. 2025-UC-0007

This petition seeks to add the position of Academic and Career Advisor to the existing bargaining unit comprised of all full-time faculty members teaching a normal load and all full-time Coordinators, Counselors, and Librarians. (ALJ Ex. 10). The College contends that the proposed unit would be inappropriate, and that the unit clarification process is an inappropriate way to seek to add the Academic and Career Advisor position to the existing bargaining unit. (ALJ Ex. 11).

III. Discussion

A. Timeliness of Unfair Labor Practice Charges Concerning Layoffs

At the outset, the College argues that the unfair labor practice charges at issue here are untimely pursuant to Section 15 of the Act, which provides that no order shall issue based upon any unfair labor practice occurring more than six months prior to the filing with the Board of a charge alleging an unfair labor practice. 115 ILCS 5/15. The six-month limitations period is jurisdictional in nature, and begins when the party aggrieved by the alleged unlawful conduct has, or reasonably should have had, knowledge of the conduct. Jones v. IELRB, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995); Charleston Community Unit School District No. 1 v. IELRB, 203 Ill. App. 3d 619, 561 N.E.2d 331, 7 PERI ¶4001 (4th Dist. 1990); Wapella Education Association v. IELRB, 177 Ill. App. 3d 153, 531 N.E.2d 1371 (4th Dist. 1988). The conduct is said to occur when there is an unambiguous announcement of the conduct, not necessarily when the action is implemented. Harlem School District 122, 15 PERI 1055 (IELRB Opinion and Order, June 4, 1998).

The charges in Case Nos. 2024-CA-0060 and 2024-CA-0061 were filed on April 26, 2024. Accordingly, any conduct that occurred before October 26, 2023 cannot be the basis for

an unfair labor practice charge. The College contends that the relevant date in this matter is October 24, 2023, when it first issued the preliminary notice of layoffs to the Union. However, several factors point to this initial notice not being an unambiguous announcement of an intention to layoff the Counselors. First, the College's own notice describes it as a preliminary announcement. Second, the parties entered into a pause agreement held the layoff notice in abeyance pending negotiations. During these negotiations, the parties reached a tentative agreement that would have made the layoffs unnecessary. It was only after the Union's Executive Board refused to ratify the tentative agreement that the College went forward with the layoffs. Finally, there was no unambiguous action taken by the College to effectuate the layoffs until the layoffs occurred at the special Board of Trustees meeting on February 29. Because the unambiguous announcement of layoffs did not occur until that date, the aspects of the unfair labor practice charge concerning layoffs of the Counselors is timely filed.

B. Arbitration of Grievances

Section 14(a)(1) prohibits educational employers from "[i]nterfering, restraining or coercing employees in the exercise of rights guaranteed under this Act." Refusal to process grievances, including but not limited to a refusal to submit a grievance to arbitration, is a violation of Section 14(a)(1). However, the refusal to submit a grievance to arbitration is a valid and accepted method of challenging the arbitrability of a grievance. Chicago Board of Education v. IELRB, 2015 IL 118043 at ¶ 19. An employer may refuse to arbitrate a grievance if there is no contractual agreement to arbitrate the underlying dispute, or if the subject matter of the dispute conflicts with Illinois law. 2015 IL 118043 at ¶ 19. Here, the College argues that, as a matter of law, the Board of Trustees decision to layoff employees cannot be challenged pursuant to the Public Community College Act, and because there is no contractual agreement to arbitrate the grievance because the Union's filing for Step 4 was untimely under the contract.

The Union and the College are parties to a collective bargaining agreement that contains a grievance procedure culminating in arbitration. Section 7 of the CBA spells out its grievance procedure. In relevant part, if a grievance is not resolved at Step 3 and the grievant wishes to appeal, it must do so within ten days following the issuance of the Step 3 response. The Board of Trustees may, but is not required to, hear the grievant. If the grievance process does not resolve the issue, either party may serve notice of intention to arbitrate within ten days of receipt of a Step 3 or Step 4 response, or within two weeks after the fall or spring semester if the Step 3 or 4 response is issued outside of the fall or spring semesters. Section

7.9 of the CBA provides that a failure to file an appeal to the next step of the process within the time frames provided for in the contract constitute an acceptance of the decision rendered at that step.

The CBA contains a layoff procedure beginning in Section 10.9. That section provides that the Board of Trustees retains sole discretion to effectuate layoffs, but that in determining whether layoffs are necessary, the Board of Trustees should primarily consider decreases in enrollment, the financial condition of the College, and the desirability or necessity of discontinuing a type of teaching service or program. Section 10.10 provides that the Union and the Board of Trustees agree that all reasonably efforts to avoid layoffs should be evaluated prior to effectuating layoffs and provides for a process for the effectuation of layoffs beginning with preliminary notice to occur in October.

Here, the pause agreement held the grievance in abeyance until February 8, 2024, but provided that the parties had the right to extend the pause. However, the Union did not move the grievance to Step 4 until March 5, 2024. The Union argues that it did not do so because it was not clear that the College was not honoring the pause agreement any further until the Board of Trustees went forward with the layoffs at the February 29 special meeting. It argues further that, because the parties had reached a Memorandum of Agreement on the position, that there was no need to advance the grievance to Step 4 at that time because, if the Memorandum of Agreement had been ratified, the grievance would have been withdrawn pursuant to the agreement. Only after the Union's Executive Board failed to ratify the agreement and the College moved forward with the layoffs was it clear to the Union that the College was not honoring the pause agreement any further. The Union argues that its argument is supported by the College continuing negotiations after the Executive Board declined to ratify the agreement.

The Union's argument fails here because there was no agreement to keep the grievance in abeyance beyond February 8. The terms of the CBA are clear. The Union had to file its request to advance the grievance within ten school days of the College's Step 3 response, which issued on December 18. Within that time frame, the parties reached the pause agreement, holding the grievance in abeyance until February 8. However, between February 8 and March 5, sixteen school days passed. Absent an agreement to continue to hold the grievance in abeyance until its conclusion, there is no contractual right to move the grievance to the next step because the timeframe for moving the grievance to the next step had elapsed. Accordingly, the College's refusal to take the grievance to arbitration did not

violate Section 14(a)(1) of the Act because there was no contractual agreement to arbitrate the grievance.

C. Removal of Work From the Bargaining Unit

Section 14(a)(5) of the Act provides that an educational employer may not refuse to bargain collectively in good faith with an exclusive representative of a bargaining unit comprised of educational employees. 115 ILCS 5/14(a)(5). An employer breaches its duty to bargain in good faith when it unilaterally changes the status quo as it relates to a mandatory subject of bargaining without first bargaining to agreement or impasse. Vienna School Dist. No. 55 v. IELRB, 162 Ill. App. 3d 503 (4th Dist. 1987). A mandatory subject of bargaining is one that concerns wages, hours, and the terms and conditions of employment.

When work is removed from the bargaining unit, the removal is a mandatory subject of bargaining when it results in the departure from established operating practices, changes to the conditions of employment, or a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the bargaining unit. Sesser-Vallier Community Unit School District NO. 196 v. IELRB, 250 Ill. App. 3d 878 (4th Dist. 1993). Here, the transfer of bargaining unit work outside of the bargaining unit significantly impaired job tenure, employment security, and reasonably anticipated work opportunities for those in the bargaining unit, and I therefore find that the transfer of work violated Section 14(a)(5) of the Act.

The evidence is clear that the Advisor position is substantially like the Counselor position that preceded it. The positions were located within the same department, had the same supervision, the same job responsibilities with some previously optional duties added in, and worked substantially similar hours. When comparing the Advisor to the Counselor position, the only significant difference is that Advisors are required to work year-round, while Counselors worked nine months with the option to work over the summer. Crucially, when the College created the Advisor position, it did so with the intention of carrying over all existing Counselors. When they hired for the position, they hired two of the previous Counselors and were willing to create a fifth Advisor position to hire a third.

It is true, as the College argues, that other faculty members not within the bargaining unit were able to perform limited versions of some of these duties when Counselors or Advisors were unavailable. But if those faculty members could perform the duties performed by the Counselors, the College would never have needed to create the Advisor position to begin with. Instead, the College laid off the previous counselors, rehired some but not all of

them, removed reasonably anticipated work opportunities from the bargaining unit, and recreated the job, largely unchanged, outside of the unit. For these reasons, I find that the creation of the Advisor position outside of the bargaining unit was a mandatory subject of bargaining.

D. Good Faith Bargaining

I find further that the College's implementation of layoffs, followed by its creation of the Advisor position outside of the bargaining unit, breached its duty to bargain in good faith in violation of Section 14(a)(5) of the Act. The duty to bargain in good faith is one that exists until the parties reach agreement or impasse. This is especially true where an existing CBA already demonstrates that the parties had reached agreement on a specific issue. Rock Falls Elementary School District No. 13, 2 PERI 1150 (IELRB Opinion and Order, November 12, 1986) ("the legislature did not intend that a continuing bargaining obligation exist over those matters upon which the parties had already reached agreement"). Here, the Counselor position existed. It was a part of the Union's bargaining unit. It had agreed-upon wages, hours, and terms and conditions of employment. The College clearly has the right to make decisions on matters of inherent managerial policy. What it cannot do, however, is use that authority to oblige the Union to accept modifications to an agreement, freely reached by the parties, that is currently in effect.

The College approached the Union in July 2023 to change the terms and conditions of employment for the Counselors to a twelve-month model. The parties engaged in bargaining, and even at one point reached a tentative agreement. When the Union's Executive Board declined to ratify the agreement, the College engaged in a pretextual layoff, in contravention of its obligations under the CBA and the Public Community College Act and imposed its preferred terms and conditions upon its employees.

The Public Community College Act provides that Community Colleges are allowed to effectuate layoffs if the College's Board of Trustees decides to decrease the number of faculty members employed or to discontinue some particular type of teaching service or program. 110 ILCS 805/3B-5 (1990). Neither is the case here. The College eliminated four Counselor positions and replaced them with four Advisor positions, even attempting to hire a fifth. The College also was not trying to discontinue any type of teaching service or program. Rather, it was attempting to expand an existing service, previously only available during the school year, into a year-round service. The CBA agreed upon by the parties also provides that primary consideration when effectuating layoffs would be given to a decrease in enrollment,

the financial condition of the College, and the desirability or necessity to discontinue some particular type of teaching service or program. The College provided no evidence of a decrease in enrollment or that its financial situation necessitated layoffs especially where the layoffs did not result in the elimination of existing faculty positions or a service provided by the College. The College therefore cannot rely on the CBA or the Public Community College Act to justify its layoffs. I find therefore that the College did not have an inherent managerial right to lay off the Counselors so that it could create the Advisor position.

Even if the College did have an inherent managerial right to lay off the Counselors, the duty to bargain would still exist. Under the test established by the Illinois Supreme Court in Central City Education Association v. IELRB, 149 Ill. 2d 496 (1992), we must consider whether the matter at issue concerns wages, hours, and the terms and conditions of employment. Central City at 509. If so, we must then consider whether the matter is one of inherent managerial policy. *Id.* at 510. If the matter involves both the terms and conditions of employment and inherent managerial policy, a balancing test applies that compares the benefits of bargaining with the burdens that bargaining places on the employer's authority. *Id.* at 523. As discussed above, the layoffs clearly concern the terms and conditions of employment and we assume for the purposes of this section that they involve inherent managerial rights. I would find that the benefits of bargaining outweigh the burdens on the College's inherent managerial rights because the terms and conditions of employment for the Counselors had already been bargained to agreement. Bargaining for the creation of the Advisor position would therefore create no further burden on the College's inherent managerial right.

Here, the College contends that its implementation of layoffs and the creation of the new Advisor position was justified because the parties were at impasse. Even if there was not already an existing CBA on the topics the College sought to address in these negotiations, the evidence demonstrates that the parties were not at impasse. Following the Union's Executive Board refusing to ratify the tentative agreement, the Union made two proposals that involved grandfathering in existing Counselors. The College rejected those proposals, made no counter-proposals to address the issues that caused the Union's Executive Board to reject the memorandum of agreement, and, contrary to Powell's testimony on cross-examination, never presented the Union with a last, best, and final offer. Instead, the College simply went ahead with eliminating the Counselor position, replacing it with the Advisor position the following month. The College then engaged in discussions with the individuals

employed in the former Counselor job title, offering them terms and conditions of employment that go beyond what the College ever offered the Union during bargaining, including higher wages offered to the former Counselors that the College sought to hire as Advisors and sabbaticals for former Counselors who sought to retrain for other positions. The terms agreed to by Hickle and McAley, the terms offered to Johnston, its willingness to add a fifth Advisor position to hire Johnston, and the sabbatical granted to McGriff all demonstrate that, far from being out of options, the College could not have believed that further bargaining with the Union was futile.

For the above reasons, I find that the College breached its duty to bargain in good faith when it engaged in pretextual layoffs of the Counselors and, by creating the Advisor position outside of the bargaining unit, unilaterally removed work from the bargaining unit, without bargaining to agreement or impasse. In so doing, its conduct violated Section 14(a)(5) and, derivatively, (1) of the Act.

I also find that the College violated Section 14(a)(5) by engaging in direct dealing with members of the bargaining unit. Direct dealing occurs when an employer bargains with employees who are members of a bargaining unit for which there is an exclusive representative. Sesser-Valier Community School Dist. No. 196 v. IELRB, 250 Ill. App. 3d 878, 883 (4th Dist. 1993), *citing* Medo Photo Supply Corp. v. NLRB, 321 U.S. 678, 684 (1944). Direct dealing with employees violates the essential principles of collective bargaining because it undermines the Union's statutory status as exclusive bargaining representative. Sesser-Valier at 883. In this case, following the elimination of the Counselor position, the College engaged in bargaining with each of the laid-off Counselors with the intention of hiring them to the newly created Advisor position. However, as the College engaged the employees in negotiations, they were employed in bargaining unit positions because the layoffs did not take effect until the end of the 2023-24 school year.

E. Unit Clarification Petition 2025-UC-0007

On July 31, 2024, the Union filed a unit clarification petition to include the Advisors in the bargaining unit. A unit clarification petition may be used to determine the bargaining unit status of a newly created position where that position entails job functions similar to those of classifications covered by the existing unit. Thornton Township High School Dist. 205, 2 PERI 1103 (IELRB Opinion and Order, August 20, 1986); Support Staff of Elgin Community College Association, IEA-NEA and Elgin Community College, 33 PERI 122 (IELRB Opinion and Order, May 18, 2017). There is no dispute that the Advisor position was

created on March 14, 2024, just over three months before the Union filed this petition. As discussed above, the Advisor position is functionally almost identical to the Counselor position prior to the College's elimination of the Counselor position, with the exception of the College's preferred change to a twelve-month calendar.

In this regard, the IELRB's decision in Maine Teachers' Association, IEA-NEA, and Maine Township High School Dist. 207 is instructive. 37 PERI 19 (IELRB Opinion and Order, July 27, 2020), *aff'd* 2021 IL App (1st) 200910-U. In that case, as in this one, the employer created a new position that assumed essential parts of a previous position that was a part of the bargaining unit. The IELRB held that "where an employer unlawfully creates a position and an unfair labor practice charge and a unit clarification petition are filed, the issue of whether the position created should be excluded from the bargaining unit is moot." Maine Teachers' Association, *citing* City of Burbank v. ISLRB, 168 Ill. App. 3d 885 (1st Dist. 1988).

Following this precedent, I therefore find that the Advisor position assumes essential parts of the Counselor position contained within the existing unit and recommend that the Board grant the Union's petition to include the Advisor position in the bargaining unit.

IV. Recommended Order

For the reasons discussed above, I recommend the following:

The Union's Unit Clarification Petition, Case No. 2025-UC-0007-C, is granted and the position of Academic and Career Advisor is included in the bargaining unit.

Respondent, South Suburban College, District 510, its officers and agents shall:

1. Cease and Desist from:
   (a) Refusing to bargain collectively and in good faith with Cook County College Teachers Union, Local 1600, AFT, AFL-CIO.
   (b) Making unilateral modifications to any term or condition of employment without prior bargaining to agreement or impasse.
   (c) Directly dealing with any member of the bargaining unit.
   (d) In any like manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them in the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
   (a) Bargain in good faith with Cook County College Teachers Union, Local 1600, AFT, AFL-CIO regarding the addition of the Academic and Career Advisor position to the bargaining unit.

(b) Bargain in good faith with Cook County College Teachers Union, Local 1600, AFT, AFL-CIO regarding the collective bargaining agreement.

(c) Make all Union-represented employees adversely impacted by the elimination of the Academic and Career Counselor position whole, with interest.

(d) Post on bulletin boards or other places reserved for notices to employees for 60 consecutive days during which the majority of Respondent's employees are actively engaged in duties they perform for Respondent, signed copies of the attached Notice to Employees. Respondent shall take reasonable steps to ensure that said notice is not altered, defaced, or covered by any other materials.

(e) Notify the Executive Director, in writing, within 35 days after receipt of this order of the steps taken to comply with it.

VI. Right to File Exceptions

Pursuant to Section 1105.220(b) of the Board's Rules and Regulations, 80 Ill. Admin. Code 1105.220, the parties may file written exceptions to this Recommended Decision and Order and briefs in support of those exceptions no later than 21 days after receipt of this decision. Exceptions and briefs must be filed with the Board's General Counsel. If no exceptions have been filed within the 21-day period, the parties will be deemed to have waived their exceptions. Under Section 1100.20 of the Board's Rules, 80 Ill. Admin. Code 1100.20, parties must send a copy of any exceptions they choose to file to the other parties and must provide the Board with a certificate of service. A certificate of service is "a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service." 80 Ill. Admin. Code 1100.20(e). If a party fails to send a copy of its exceptions to the other parties or fails to include a certificate of service, that party's appeal rights with the Board will end.

Dated: March 21, 2025
Issued: Chicago, Illinois

/s Nick Gutierrez

Nick Gutierrez
Administrative Law Judge

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