

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

I

Oak Lawn Teachers Council,)	
Local 943, IFT/AFT,)	
)	
Complainant,)	
)	Case No. 2005-CA-0080-C
and)	
)	
Oak Lawn Community High School,)	
District 229,)	
)	
Respondent.)	

OPINION AND ORDER

On June 16, 2005, Oak Lawn Teachers Council of Local 943 IFT-AFT (“Union”) filed this unfair labor practice charge against Oak Lawn Community High School District 229 (“District”) alleging that the District violated Sections 14(a)(5) and, derivatively, 14(a)(1) of the Illinois Educational Labor Relations Act (“Act”) by refusing to provide information requested by the Union. On December 30, 2005, the Executive Director issued a Recommended Decision and Order finding that the Union set forth a prima facie case to establish that the District violated Sections 14(a)5 and, derivatively, 14(a)(1). The Executive Director referred the matter to arbitration. After the Union and the District timely filed exceptions, the Illinois Educational Labor Relations Board (“IELRB” or “Board”) issued an Opinion and Order on May 9, 2006 that reversed the Executive Director’s decision to refer this case to arbitration and remanded the case. On May 3, 2007, the Executive Director issued a Complaint and Notice of Hearing. On July 27, 2007, both parties agreed to a stipulated record and later submitted closing briefs. On August 15, 2007, the Administrative Law Judge issued an Order removing the case to the Board for a decision, as there were no determinative issues of fact that required a hearing or recommended decision.

I.

On July 27, 2007, the parties agreed to a stipulated record and waived their right to present evidence and oral testimony outside of the stipulated record. The stipulated record provides the following:

The District is an educational employer within the meaning of Section 2(a) of the Act. The Union is a labor organization within the meaning of Section 2(c) of the Act and an exclusive representative within the meaning of Section 2(d). The Union represented Gregg Perkins, a third-year probationary teacher at the District during the 2004-2005 school year.

The collective bargaining agreement includes detailed evaluation procedures for tenured and non-tenured teachers. Mr. Perkins received “excellent” ratings on all his evaluations during his first two probationary years. For Mr. Perkins’ third probationary year, 2004-2005, he elected to participate in an alternative evaluation process.

On March 22, 2005, pursuant to the Illinois School Code, the District timely notified Mr. Perkins that it would not re-employ him for the following school year. On April 19, 2005, Ava Harston, a Union representative, telephoned Principal Michael Riordan to request an explanation for the non-renewal. Principal Riordan declined to provide a reason, stating that applicable law did not require the District to do so.

On June 14, 2005, Mr. Perkins filed a grievance alleging that during the 2004-2005 school year the District did not follow the evaluation procedures set forth in the alternative evaluation plan. Specifically, Mr. Perkins alleged that the District administrators did not review his evaluation plan, meet with him, monitor his progress, or observe him. The parties participated in all steps of the grievance process and an arbitration hearing was held on January 17, 2006 before Arbitrator Edwin Benn. At the arbitration hearing, Principal Riordan and the District’s Division Chairperson both testified about their concerns with Mr. Perkins’ performance as band instructor and the efforts they made to communicate those concerns to Mr. Perkins. The testimony included concerns raised by parents of band members and a city festival organizer. On May 27, 2006, the grievance was denied for lack of a remedy.

II.

The District’s closing brief asserts several reasons why the District did not violate Section 14(a)(5) of the Act. First, the District argues that under Section 10-22.4 of the Illinois School Code, a non-final year probationary teacher is only entitled to timely notice of a non-renewal, not reasons for the

non-renewal. Thus, the District claims that the IELRB does not have authority to issue an order conflicting with the Illinois School Code. The District also argues that 14(a)(5) is not applicable to this case, because its duty to disclose information only applies to grievances concerning negotiable provisions of a collective bargaining agreement, which it asserts are not present in this case. Further, the District argues that it bargained in good faith under Section 14(a)(5), because it participated in every step of Mr. Perkins' grievance, which alleged the District improperly evaluated him. It notes that the Union did not file a grievance about the District not providing reasons for the non-renewal. Finally, the District argues that any order requiring it to provide reasons for Mr. Perkins' non-renewal is moot, because the testimony at the arbitration hearing provided the information.

The Union also submitted a closing brief supporting its position. The Union first argues that the District is obligated to provide the reason for non-renewal, because it concerns evaluation procedures, which are a mandatory subject of bargaining and within the terms and conditions of employment covered by the collective bargaining agreement. The Union also argues that it is entitled to timely information necessary to process Mr. Perkins' grievance as his exclusive collective bargaining representative, which is unrelated to the School Code. The Union asserts that it needs the information to evaluate Mr. Perkins' grievance and monitor the administration of the evaluation procedures for all bargaining unit members. Finally, the Union argues that the testimony at the arbitration hearing did not fulfill the District's obligation, because that information was untimely and included conflicting testimony as to what was actually considered in deciding to not renew Mr. Perkins' contract.

III.

The issue before us is whether the District violated Section 14(a)(5), and, derivatively, 14(a)(1), of the Act by refusing to answer the Union's request for the reasons for the non-renewal of a probationary teacher who alleged the District improperly evaluated him. We conclude that the District was required to provide the information and that its refusal to do so violated Section 14(a)(5), and, derivatively, 14(a)(1) of the Act.

Sections 14(a)(1) and (5) of the Act prohibit employers from:

- (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act.
- (5) Refusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative . . .

115 ILCS 5/14(a)(1), (5).

An employer's duty to bargain in good faith includes the duty to provide information to the exclusive representative. *Alton Educ. Ass'n, IEA-NEA v. Alton Cmty. Unit Sch. Dist. 11*; 21 PERI 79, Case No. 2002-CA-0051-S (IELRB, Mar. 23, 2005); *Chicago Sch. Reform Bd. of Tr. v. IELRB*, 315 Ill.App.3d 522, 734 N.E.2d 69 (1st Dist. 2000); *Thornton Cmty. Coll.*, 5 PERI 1003, Case No. 88-CA-0008-C (IELRB, Nov. 29, 1988). The information must be directly relevant to the union's function as exclusive bargaining representative and must appear to be "reasonably necessary" for the performance of this function. *Alton*, 21 PERI 79; *Chicago Sch. Reform Bd. of Tr.*, 734 N.E.2d 69.

The standard for determining whether the requested information is relevant is a liberal one, and it is necessary only to establish "the probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Allied Mech. Serv., Inc.*, 332 NLRB 171 (2001), quoting *NLRB v. Acme Indus. Co.*, 385 U.S. 432 (1967). Whether information is relevant is decided under a "discovery-type" standard, rather than a "trial-type" standard. *Dupo Cmty. Unit Sch. Dist. 196*, 13 PERI 1044, Case No. 96-CA-0021-S (IELRB, Mar. 5, 1997); *Thornton*, 5 PERI 1003. Great latitude is allowed in the scope of discovery. *Crnkovich v. Almeida*, 261 Ill.App.3d 997, 634 N.E.2d 1130 (3rd Dist. 1994). Discovery includes not only what is admissible at trial, but also that which leads to what is admissible. *Dufour v. Mobil Oil Corp.*, 301 Ill.App.3d 156, 703 N.E.2d 448 (1st Dist. 1998); *Crnkovich*, 634 N.E.2d 1130.

In this case, the Union and the District agreed to detailed evaluation procedures for tenured and non-tenured teachers. The Union requested the reasons for Mr. Perkins' non-renewal and the Principal refused to provide them. Because the non-renewal terminated Mr. Perkins' employment and implicated his evaluation procedures, the information requested concerned terms and conditions of employment.

Information concerning terms and conditions of employment is presumptively relevant. *Alton*, 21 PERI 79; *Bohemia, Inc.*, 272 NLRB 1128 (1984); *City of Chicago (Chicago Fire Dep't)*, 12 PERI 3015 (ILLRB 1996).

The reasons for Mr. Perkins' non-renewal are directly relevant to the Union's function as exclusive representative and are reasonably necessary for the performance of this function. The Union's role as exclusive bargaining representative includes the investigation of whether the District failed to follow the evaluation procedures set forth in the collective bargaining agreement. *See Alton*, 21 PERI 79 (union's role includes the investigation of whether member's non-renewal was the result of discrimination prohibited by the collective bargaining agreement). The Union needs the information initially to evaluate Mr. Perkins' grievance regarding his evaluation procedures. *See Chicago Sch. Reform Bd. of Tr. v. IELRB*, 315 Ill. App. 3d 522, 734 N.E.2d 69 (1st Dist. 2000).

The Union also monitors the administration of the evaluation procedures for all bargaining unit members. Mr. Perkins received excellent ratings until he elected to participate in the alternative evaluation process, where he alleged he received no feedback. As such, the reasons for Mr. Perkins' non-renewal implicate the administration of the alternative evaluation procedures for all bargaining unit members. We therefore find that the District, upon request, had a duty to provide the reasons for Mr. Perkins' non-renewal.

The District first argues that under Section 10-22.4 of the Illinois School Code, a non-final year probationary teacher is only entitled to timely notice of non-renewal of a contract, which the District provided, not reasons for the non-renewal. Thus, the District asserts that the IELRB does not have authority to issue an order conflicting with the Illinois School Code.

Section 10-22.4 of the Illinois School Code grants school boards the authority to dismiss a non-final year probationary teacher "whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require it, subject, however, to the provisions of Sections 24-10 to 24-15, inclusive." 105 ILCS 5/10-22.4. The School Code also provides that, "[a]ny full-time teacher who is not completing the last year of the probationary period . . . shall receive written notice before the end of

any school term whether or not he will be re-employed for the following school term.” 105 ILCS 5/24-11.

Section 10(b) of the Act provides, in pertinent part, “[t]he parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of Illinois. The parties to the collective bargaining process may effect or implement a provision in a collective bargaining agreement if the implementation of that provision has the effect of supplementing any provision in any statute or statutes enacted by the General Assembly of Illinois pertaining to wages, hours or other conditions of employment . . .” 115 ILCS 5/10(b).

The District is correct that its only affirmative duty under the School Code is to provide timely notice to non-final year probationary teachers. However, where a probationary teacher’s exclusive collective bargaining representative requests the reasons for a non-renewal to investigate whether the District satisfied the evaluation procedures under the collective bargaining agreement, the District has a parallel duty arising under the Act to bargain in good faith and provide the reasons. The state has an interest in the Union’s effective functioning as exclusive bargaining representative. *See* 115 ILCS 5/1. To that end, the District has a duty to provide information to the Union under the Act, which is independent of the School Code.

The District asserts that the board of education has a non-delegable authority to renew or not renew a probationary teacher’s contract. Before the Act became effective, the non-delegability doctrine governed whether school boards were required to comply with collective bargaining agreements to which they had agreed. *Rockford Sch. Dist. 205*, 16 PERI P1025, Case No. 99-CA-0006-C, (IELRB, Feb. 1, 2000). However, the IELRB determined that the enactment of Section 10(b) of the Act has superseded the non-delegability doctrine. *Id.*, *Peoria Sch. Dist. 150*, 12 PERI 1062, Case No. 95-CA-0022-S (IELRB, June 26, 1996), *Granite City Cmty. Unit Sch. Dist. 9 v. IELRB*, 664 N.E.2d 1060 (Ill. App. 4th Dist. 1996). Under Section 10(b) of the Act, providing information to the Union does not conflict with the School Code or abrogate the District’s authority to not renew a probationary teacher.

The District also argues that the IELRB decided in *Lebanon Community Unit School District 9*, that an employer need not provide information related to a grievance that is not arbitrable. 11 PERI 1032, Case No. 94-CA-0021-S (IELRB, Mar. 30, 1995). However, the requested information related to a grievance about whether the District followed the evaluation procedures, an issue that is arbitrable. *Peoria Fed'n of Teachers, Local 780 IFT-AFT v. Peoria Sch. Dist. 150*, 23 PERI 81, Case No. 2006-CA-0026-S (IELRB, June 12, 2007). In *Proviso Council of West Suburban Teachers Union, Local 571 v. Bd. of Educ.*, the court determined that a grievance concerning the board of education's failure to comply with contractual procedures prior to dismissing a teacher was arbitrable. 160 Ill.App.3d 1020, 513 N.E.2d 996 (1st Dist. 1987). In *Midwest Central Education Association v. IELRB*, 277 Ill.App.3d 440, 660 N.E.2d 151 (1st Dist.1995), cited by the District, the court held only that the arbitrator's remedy of reinstatement was not binding due to a conflict with the School Code. The court did not disturb the Board's conclusion that the employer's conduct before its non-renewal of a teacher was arbitrable under Section 10(b). *Midwest Cent. Cmty. Unit Sch. Dist. 191*, 10 PERI 1087, Case No. 93-CA-0027-S (IELRB, May 19, 1994), *aff'd*, *Midwest Cent. Educ. Ass'n v. IELRB*, 277 Ill.App.3d 440, 660 N.E.2d 151 (1st Dist. 1995). The employer's conduct at issue in *Midwest* was the employer's failure to detail the teacher's deficiencies as part of the evaluation process, to tell him of parental complaints, and to use progressive discipline. *Id.*

The District next argues that it bargained in good faith under Section 14(a)(5), because it participated in every step of the grievance that the Union filed on behalf of Mr. Perkins, which alleged the District improperly evaluated him. Under Section 14(a)(5), the Union also has a right to information related to the grievance. Thus, participation in the grievance procedures does not excuse the District's failure to provide information.

The District notes that the Union did not actually file a grievance related to the District not providing reasons for the non-renewal. However, the Union did file a grievance concerning whether the District followed evaluation procedures to which the information requested related under the broad "discovery-type" standard. *Dupo*, 13 PERI 1044.

Finally, the District argues that any order requiring it to provide reasons for Mr. Perkins' non-renewal is moot, because the testimony at the arbitration hearing provided the information. The District's argument here is not that there is no violation, but that the remedy is moot. Whether the District has fully provided the information sought by the Union shall be addressed in the compliance proceedings. Under our Order, the District shall provide to the Union any information sought that the District has not yet provided.

IV.

The District has violated Section 14(a)(5), and, derivatively, Section 14(a)(1) of the IELRA by refusing to provide information requested by the Union.

Therefore, IT IS HEREBY ORDERED that Oak Lawn Community High School District 229:

1. Cease and desist from:
 - (a) Refusing to bargain collectively in good faith with the Oak Lawn Teachers Council, Local 943, IFT/AFT.
 - (b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of rights guaranteed under the IELRA.
2. Immediately take the following affirmative action to effectuate the policies of the IELRA:
 - (a) Provide to Oak Lawn Teachers Council, Local 943, IFT/AFT, the information it requested on April 19, 2005.
 - (b) Post in District buildings on bulletin boards or other places reserved for notices to employees copies of an appropriate Notice to Employees. Copies of this Notice, a sample of which is attached, shall be provided by the Executive Director. This Notice shall be signed by the District's authorized representative and maintained for 60 calendar days during which the majority of employees are working. The District shall take reasonable steps to ensure that said Notices are not altered, defaced, or covered by any other materials.
 - (c) Notify the Executive Director in writing within 35 calendar days after receipt of this Board's Opinion and Order of the steps taken to comply with it.

V. RIGHT TO APPEAL

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law,

except that, pursuant to Section 16(a) of the IELRA, such review must be taken directly to the appellate court of the judicial district in which the Board maintains an office (Chicago or Springfield). "Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision," 115 ILCS 5/16(a).

Decided: December 11, 2007
Issued: December 14, 2007
Chicago, Illinois

/s/ Lynne O. Sered
Lynne O. Sered, Chairman

/s/ Ronald F. Ettinger
Ronald F. Ettinger, Member

/s/ Bridget L. Lamont
Bridget L. Lamont, Member

/s/ Michael H. Prueter
Michael H. Prueter, Member

/s/ Jimmie E. Robinson
Jimmie E Robinson, Member

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
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Telephone: (312) 793-3170

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Oak Lawn Community High School District 229
Case No. 2005-CA-0080-C

Pursuant to an Opinion and Order of the Illinois Educational Labor Relations Board and in order to effectuate the policies of the Illinois Educational Labor Relations Act (“Act”), we hereby notify our employees that:

This Notice is posted pursuant to an Opinion and Order of the Illinois Educational Labor Relations Board issued after an administrative proceeding in which both sides had the opportunity to present evidence. The Illinois Educational Labor Relations Board found that we have violated the Act and has ordered us to inform our employees of their rights.

Among other things, the Act makes it lawful for educational employees to organize, form, join or assist employee organizations or engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection.

We assure our employee that:

WE WILL NOT refuse to bargain collectively in good faith with the Oak Lawn Teachers Council, Local 943, IFT/AFT.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce employees in the exercise of rights guaranteed under the Act.

WE WILL provide the Oak Lawn Teachers Council, Local 943, IFT/AFT, with the information it requested on April 19, 2005.

OAK LAWN COMMUNITY SCHOOL DISTRICT 229

BY: _____ Dated: _____
(Representative) (Title)

-NOTICES TO BE POSTED MUST BE OBTAINED
FROM THE EXECUTIVE DIRECTOR OF THE IELRB-

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