STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Service Employees International Union, Local 73, CTW, CLC,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2006-CA-0025-S
	)	
Southern Illinois University at Edwardsville,	)	
	)	
Respondent.	)	

OPINION AND ORDER

On May 30, 2006, the Executive Director of the Illinois Educational Labor Relations Board ("Board") issued a Recommended Decision and Order in this case. He determined that Southern Illinois University at Edwardsville ("University") did not violate Sections 14(a)(1) and 14(a)(5) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq. ("Act"), by implementing an arbitration award. Therefore, he dismissed the charge.

Service Employees International Union, Local 73, CTW, CLC ("Union") filed exceptions to the Executive Director's Recommended Decision and Order.[1] The University filed a response to the exceptions.

We have considered the Executive Director's Recommended Decision and Order, the Union's exceptions and the University's response. We have also considered the investigative record and applicable precedents. For the reasons in this Opinion and Order, we affirm the Executive Director's Recommended Decision and Order.

I.

The University is an educational employer within the meaning of Section 2(a) of the Act. The Union is an employee organization within the meaning of Section 2(c) of the Act and an exclusive representative within the meaning of Section 2(d) of the Act. The Union is the exclusive representative of a group of employees of the University that includes civil service employees.

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[1] The Union has requested that oral argument be conducted. We deny the Union's request. Section 1120.50(c) of the Board's Rules, 80 Ill. Admin. Code 1120.50(c) provides:

> Oral argument shall be allowed only at the discretion of the Board. The Board shall direct oral argument when it determines that oral argument will assist determination of the issues.

In this case, we determine that oral argument will not sufficiently "assist determination of the issues."

On April 16, 2004, the Union filed a grievance. The grievance asserted that the University violated Article XVIII, Section 2 of the collective bargaining agreement by laying off certain civil service cafeteria bargaining unit employees over the summer while continuing to employ and to hire student workers.

At step two of the grievance, the Union amended its grievance to allege that the University violated Article XVIII, Sections 2 and 4; Article I; and Article V, Section 3 of the collective bargaining agreement. The Union also alleged that the University violated Section 250.70(f)(2) of the Rules of the State Universities Civil Service System, 80 Ill. Adm. Code §250.70(f)(2), as incorporated into the agreement. Article V, Section 3 of the collective bargaining agreement provides:

> Nothing in this Agreement shall be construed to modify, eliminate or detract from the statutory responsibilities and obligations of the University including the following, which this Agreement shall incorporate, but not supercede [sic]…rules and regulations of the State Universities Civil Service System of Illinois as they may be amended from time to time.

Section 250.70(f)(2) of the Rules of the State Universities Civil Service System, 80 Ill. Admin. Code §250.70(f)(2), provides that "a student employee shall not displace a certified Civil Service employee."

The grievance proceeded to arbitration. On April 20, 2005, the arbitrator issued an award. The arbitrator noted in his opinion that the Union did not allege in its grievance a violation of Article XIX. Article XIX, Section 4 of the collective bargaining agreement provides:

> During the Agreement the percentage of work performed by the bargaining unit will not be materially altered by student workers, i.e., student workers will not be engaged beyond current proportions. In the event of forced reduction, the percentage of work percentage of work performed by either group within a work area will remain appreciably the same.

The arbitrator stated:

> The University has dedicated, or budgeted, jobs for students and, likewise, for civil service employees. The two units of employees work side by side performing the same work. Although this is not crystal clear from the record, it appears that the two types of positions are staffed independently. It is not a situation where the Employer decides on a set number of civil service positions for food service and then takes some of those jobs "away" from bargaining unit employees and offers them to students. Rather, this is a situation where two different classes of employees perform the same work. The collective bargaining agreement recognizes this structure. Thus, at the outset, the mere employment of a student to perform work also done by bargaining unit employees cannot be a displacement. There is no concept here that the bargaining unit has "exclusive jurisdiction" over the work in question.
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> There is a limitation contained in Article XIX, Section 4, that the percentage of work performed by one group vis-à-vis the other will not be "materially altered," and if there is a reduction in force the percentages will "remain appreciably the same." Presumably the baseline for the measurement of the percentages was the date the collective bargaining agreement went into effect. Thus a reduction in work should be borne proportionately by the two groups. While the percentages <u>did</u> change substantially during the spring of 2004, this was not grieved. Rather, this grievance, although filed in the spring of 2004, alleges only a violation of collective agreement during the summer of 2004.
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> ….[T]he Union is arguing that in order to reconcile the contract language which permits the employment of students with the language which prohibits displacement by these same students, the

> parties must have intended that students can be hired as long as there is full employment of the civil service employees.
>
> The obvious problem with this argument is that it flies in the face of the language of Article XIX, Section 4, which permits layoffs of bargaining unit employees and the retention of students so long as the percentage of work performed by the two groups remains "appreciably the same." In this case the percentage of civil service employees actually increased from 50% of the work in the spring, 2004, to 76% during the summer.
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> While it might be suggested that the 76% to 24% was still substantially below the ratio in existence when the contract went into effect, that was not the Union's argument. The Union did not argue that the 76% must be viewed against the percentage employed in past summers. The Union's only claim in this case is that students were working during the summer of 2004 when bargaining unit employees were on layoff….
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> The Union's core argument in this case that no bargaining unit employee can be on layoff while students are working is simply not what this collective bargaining agreement provides. There is a percentage limitation but that limitation was not grieved and is not before the arbitrator.

The arbitrator concluded that the University "did not violate the collective bargaining agreement when students worked the summer of 2004 while bargaining unit employees were on layoff."

II.

The Executive Director determined that the award drew its essence from the collective bargaining agreement, and that the Union was attempting to re-litigate the merits of the grievance. The Executive Director stated that, even if the Board disagreed with the arbitrator's interpretation of the agreement or his evidentiary findings, that would not be grounds for vacating the award. The Executive Director determined that a violation of, inconsistency with or conflict with regulations does not violate Section 10(b) of the Act. The Executive Director decided that the Union had failed to clearly articulate any public policy that had been violated by the University's implementation of the award. Accordingly, he dismissed the charge. However, he determined that the unfair labor practice charge was timely.

III.

The Union's position is that the University's implementation of the arbitrator's award violates Sections 14(a)(5) and 14(a)(1) of the Act. The Union argues that the arbitrator's award violates public policy by virtue of the fact that it allows the University to violate the collective bargaining agreement and bargain in bad faith. The Union contends that the arbitrator's refusal to consider the evidence that the University violated Article XIX, Section 4 of the collective bargaining agreement was repugnant to the Act. The Union further contends that the arbitration award violates a well-defined public policy codified in Section 250.70(f)(2) of the Rules of the State Universities Civil Service System of not allowing student employees to displace certified civil service employees.

The University's position is that the unfair labor practice charge should be dismissed. The University asserts that the Union's unfair labor practice charge is an attempt to re-litigate the grievance. The University contends that the arbitrator considered Article XIX, Section 4 of the collective bargaining agreement. The University argues that the Union has failed to offer any factual or legal evidence to support a finding that the arbitrator's award violates public policy. The University argues that the arbitrator determined that the Union's argument concerning Section 250.70(f)(2) of the Rules of the State Universities Civil Service System was not supported by the evidence presented in context of the actual language of the Rule and the relevant portions of the collective bargaining agreement. The University contends that the arbitrator considered all the evidence presented by the parties, weighed the testimony of the witnesses, and ultimately concluded that the University did not violate the collective bargaining agreement. The University asserts that it is abundantly clear that the award drew its essence from the collective bargaining agreement.

IV.

In this case, the Union's position is that the University violated Sections 14(a)(5) and 14(a)(1) of the Act by implementing the arbitration award. Section 14(a)(5) of the Act prohibits educational employers and their agents or representatives from "[r]efusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit." Section 14(a)(1) of the Act prohibits educational employers and their agents or representatives from "[i]nterfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act." We determine that the University's conduct did not violate Section 14(a)(5) and 14(a)(1).

Review of arbitration awards is extremely limited, and awards must be construed, if possible, as valid. *AFSCME v. State*, 124 Ill.2d 246, 529 N.E.2d 534 (1988). The Illinois Supreme Court has stated that "a labor arbitration award must be enforced if the arbitrator acts within the confines of his jurisdiction, and his award draws its essence from the parties' collective-bargaining agreement, even when a reviewing court disagrees with the arbitrator's judgment on the merits," *id.* at 255, 529 N.E.2d at 538. The United States Supreme Court has stated that "as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision," *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987).

Nevertheless, awards that are contrary to an Illinois statute are not binding under Section 10(b) of the Act. Section 10(b) provides that "[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." Relying on that provision, the IELRB has determined that for an employer to implement an arbitration award that violates, is inconsistent with or conflicts with an Illinois statute violates Sections 14(a)(5) and 14(a)(1) of the Act. *Chicago Board of Education*, 20 PERI 63, Case Nos. 2004-CA-0001-C et al. (IELRB, May 11, 2004); *Southern Illinois University Board of Trustees*, 5 PERI 1176, Case No. 88-CA-0045-S (IELRB, October 5, 1989).

However, in this case, there is no claim that the arbitration award violates an Illinois statute. Rather, the Union claims that the award violates the public policy of good faith bargaining in that the arbitrator incorrectly decided that the Union did not grieve a violation of Article XIX, Section 4 of the collective bargaining agreement. The Union also claims that the award violates the public policy set forth in Section 250.70(f)(2) of the Rules of the State Universities Civil Service System that student employees shall not displace certified civil service employees. Therefore, the rationale of *Chicago Board of Education* and *Southern Illinois University* does not apply.

An employer's implementation of an award that violates public policy or an administrative rule does not in itself violate Section 14(a)(1) or 14(a)(5) of the Act. While, in Section 14(a)(8) of the Act, the legislature made an employer's refusal to comply with a binding arbitration award an unfair labor practice, it did not expressly provide that an employer's implementation of an invalid arbitration award was an unfair labor practice. In the case of arbitration awards that violate an Illinois statute, there is language in the Act (Section 10(b)) that creates rights under the Act or defines the statutory duty to bargain, and, thus, the violation of a statute can be tied to the language of Sections 14(a)(1) and 14(a)(5) of the Act. In the case of public policy or administrative rules, Section 10(b) does not apply, and there is no other sufficiently specific language in the Act that does apply.

In addition, the implementation of the award in this case does not in fact violate public policy. The public policy exception to the enforceability of arbitration awards "is a narrow one and is invoked only when a contravention of public policy is clearly shown," *AFSCME v. Department of Central Management Services*, 173 Ill.2d 299, 307, 671 N.E.2d 668, 673 (1996).

The Union's claim that the award violates the public policy of good faith bargaining is not persuasive. Here, the Union's real argument is that the arbitrator made an error in his decision. Under *AFSCME v. State*, *supra* and *Misco*, *supra*, that is not a basis for finding that an award is invalid. The Union has not clearly shown a linkage between the arbitrator's alleged error and the erosion of good faith in the bargaining process. In general, the public policy of good faith bargaining is served by upholding the results of the arbitration process to which the parties have agreed, rather than by overturning

awards whenever a party disagrees with those results. As the Court stated in *AFSCME v. State, supra*, there is a public policy that requires finality in arbitration awards.

The Union's claim that the award violates the public policy set forth in Section 250.70(f)(2) of the Rules of the State Universities Civil Services System is also not persuasive. The Union's claim here is based on its disagreement with the arbitrator's interpretation of the term "displace" as set forth in that Section. The arbitrator had the authority to interpret the term "displace" based on the fact that the Rules of the State Universities Civil Services System were incorporated into the collective bargaining agreement, and his interpretation was not contrary to judicial decisions. Therefore, a contravention of public policy has not been clearly shown.

For the above reasons, we determine that the University did not violate Sections 14(a)(1) and 14(a)(5) of the Act by implementing the arbitration award in this case. The unfair labor practice charge is dismissed.

VII. 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 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 12, 2006
Issued: December 13, 2006
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
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