STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Peoria Federation of Teachers, Local 780, IFT/AFT,	)	
	)	
Complainant,	)	
	)	
and	)	Case No. 2006-CA-0026-S
	)	
Peoria School District 150,	)	
	)	
Respondent.	)	

OPINION AND ORDER

On October 4, 2006, an Administrative Law Judge ("ALJ") of the Illinois Educational Labor Relations Board ("Board") issued a Recommended Decision and Order in this case. The ALJ determined that Peoria School District 150 ("District") had violated Section 14(a)(8) and, derivatively, Section 14(a)(1) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq. ("Act") by refusing to comply with an arbitration award.

The District filed timely exceptions to the ALJ's Recommended Decision and Order. The Peoria Federation of Teachers, Local 780, IFT/AFT ("Federation") filed a response to the District's exceptions.

We have considered the ALJ's Recommended Decision and Order, the District's exceptions and the Federation's response. We have also considered the record and applicable precedents. For the reasons in this Opinion and Order, we affirm the ALJ's Recommended Decision and Order.

I.

Keri Gardner was employed as a teacher at Peoria Woodruff High School, one of the District's schools. On March 17, 2005, the District sent Gardner a letter stating that "you are hereby given notice of an honorable dismissal as a probationary teacher in the Peoria School District effective at the close of the current year."

On March 21, 2005, the Federation and Gardner filed a grievance concerning Gardner's dismissal. The initial grievance alleged a violation of Article 3 of the collective bargaining agreement, Non-Discrimination, for "pink-slipping a 3rd Year Teacher because of her pregnancy." The Federation later amended the grievance to allege that the District "violated past practice by renewing probationary teachers without regard to seniority."

The District denied the grievance at all levels, and the grievance proceeded to arbitration. An arbitration hearing was held on August 10, 2005 before Arbitrator Brian E. Reynolds. The Arbitrator framed the issue as "[d]id

the District violated the collective bargaining agreement by not renewing the Grievant's teaching contract for the 2005-06 school year? If so, what is the appropriate remedy?"

The Arbitrator issued an opinion and award on November 17, 2005. In his opinion, the Arbitrator reached the following conclusions:

1. The District's Evaluation Handbook is considered to be part of the Agreement.
2. The District dismissed the Grievant, Keri Gardner, for performance based reasons and not for economic reasons.
3. The District did not follow the procedures of the Evaluation Handbook when dismissing Gardner for performance based reasons.
4. The District violated the Agreement when it dismissed the Grievant, Keri Gardner, for performance based reasons without following the procedures in the District's Evaluation Handbook.

(Arbitration opinion and award, p. 14).

The Arbitrator issued the following award:

> For the reasons stated in this opinion and Award, and under the authority vested in the arbitrator, I hereby:
> 1. Grant the grievance concerning the non-retention of Keri Gardner;
> 2. Order the District to pay Gardner a monetary sum to reflect the difference between Gardner's salary at her current position and what her salary would have been for the District in 2005-2006, to a maximum of $10,400; and
> 3. Retain jurisdiction over this grievance for 90 days in the event the parties have any issues over implementation of this award.

(Arbitration opinion and award, p. 15).

II.

The ALJ concluded that the arbitration award was binding, and that, therefore, the District violated Section 14(a)(8) and, derivatively, Section 14(a)(1) of the Act by refusing to comply with it. The ALJ stated that she would not disturb the Arbitrator's determination of fact as to the rationale behind Gardner's dismissal and the contractual policies that applied to it. She determined that the Arbitrator's award was not in conflict with Section 24-11 of the School Code, 105 ILCS 5/24-11, and, therefore, did not violate Section 10(b) of the Act. She also determined that the Arbitrator did not exceed his authority by issuing a monetary remedy.

III.

The District argues that it did not dismiss Gardner for performance based reasons. The District contends that, under Section 10(b) of the Act, the District's power cannot be usurped by a collective bargaining agreement, any custom or past practice, or any arbitration decision. The District contends that it had the power under the School Code to dismiss Gardner without having to find her to be a bad teacher, and that its statutory powers

supersede the collective bargaining agreement and the evaluation procedures. The District argues that, under those circumstances, there cannot be a remedy for violating the collective bargaining agreement. The District acknowledges that, if there was a violation, a financial remedy would be appropriate, but states that there is no violation in this case. The District also distinguishes *Board of Education of Community High School District No. 155 v. IELRB*, 247 Ill.App.3d 337, 617 N.E.2d 269 (1st Dist. 1993), where an arbitrator's financial remedy was upheld. The District also states that it would be unfortunate if, as a result of this case, probationary teachers are rated as "unsatisfactory" even when they have skill and ability.

The Federation contends that the Arbitrator's award is valid. The Federation argues that the Arbitrator's construction of the meaning of the provisions of the Evaluation Handbook is final and binding, and should not be overturned by the Board. The Federation also argues that the Arbitrator had the authority to award damages to Gardner. The Federation asserts that such an award does not interfere with the authority of the school board.

IV.

The issue in this case is whether the District violated Section 14(a)(8) and, derivatively, Section 14(a)(1) of the Act by failing to comply with an arbitration award. Section 14(a)(8) of the Act, 115 ILCS 5/14(a)(8), prohibits educational employers and their agents or representatives from "[r]efusing to comply with the provisions of a binding arbitration award." Section 14(a)(1) of the Act, 115 ILCS 5/14(a)(1), 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 conclude that the arbitration award in this case is binding, and that, accordingly, the District violated Section 14(a)(8) and, derivatively, Section 14(a)(1) of the Act by failing to comply with it.

In considering whether an employer has violated Section 14(a)(8), we must determine (1) whether the arbitration award is binding, (2) what is the content of the award, and (3) whether the employer has complied with the award. *Board of Education of Danville Community Consolidated School District No. 118 v. IELRB*, 175 Ill.App.3d 347, 529 N.E.2d 1110 (4th Dist. 1988). In this case, the content of the arbitration award and whether the District has complied with the award are not disputed. The issue before us is whether the award is binding.

Review of arbitration awards is extremely limited, and, if possible, awards must be construed as valid. *AFSCME v. Department of Central Management Services*, 173 Ill.2d 299, 671 N.E.2d 668 (1996); *AFSCME v. State*, 124 Ill.2d 246, 529 N.E.2d 534 (1988). The following standard is used in determining whether arbitration awards are binding:

> In determining whether there is a binding arbitration award, we will consider such factors as whether the award was rendered in accordance with the applicable grievance procedure, whether the procedures were fair and impartial, whether the award conflicts with other statutes, whether the award is patently repugnant to the purposes and policies of the Act, and any other basic challenge to the legitimacy of the award. Otherwise, we shall not redetermine the merits or redetermine the issues presented to the arbitrator.

SEDOL Teachers Union v. IELRB, 282 Ill.App.3d 804, 668 N.E.2d 1117, 1122 (1st Dist. 1996), *quoting Chicago Board of Education*, 2 PERI 1089 at VII-256, Case No. 84-CA-0087-C (IELRB, June 24, 1986) (footnotes omitted), *rev'd in part on other grounds*, 170 Ill.App.3d 490, 524 N.E.2d 711 (4th Dist. 1988).

Here, the District does not assert that the award was not rendered in accordance with the applicable grievance procedure or that the procedures were not fair and impartial. Rather, the District appears to argue that the award conflicts with its authority to dismiss teachers under Sections 10-22.4 and 24-11 of the School Code, 105 ILCS 5/10-22.4, 5/24-11, and, thus, is not binding pursuant to Section 10(b) of the Act.

Section 10(b) of the Act provides, in pertinent part:

> The 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 Illinois Supreme Court decided in *Board of Education of Rockford School District No. 205 v. IELRB*, 165 Ill.2d 80, 649 N.E.2d 369, 372 (1995) that "where a provision in a collective-bargaining agreement is in violation of, or inconsistent with, or in conflict with *any* Illinois statute, section 10(b) prohibits its implementation in an arbitration award." (Emphasis in original).

Section 10-22.4 of the School Code grants school boards the power

> To dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause, to dismiss any teacher who fails to complete a 1-year remediation plan with a "satisfactory" or better rating and to dismiss any teacher whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the school require it, subject, however, to the provisions of Sections 24-10 to 24-15, inclusive.

Section 24-11 of the School Code provides, in pertinent part:

> Any full-time teacher who is not completing the last year of the probationary period…or any teacher employed on a full-time basis not later than January 1 of the school term, shall receive written notice from the employing board at least 45 days before the end of any school term whether or not he will be re-employed for the following school term.

The Arbitrator's award in this case is not "in violation of, inconsistent with, or in conflict with" these provisions. The Arbitrator did not interfere with the District's authority to dismiss probationary teachers. Rather, the Arbitrator determined that the District was required to comply with the procedures in the Evaluation Handbook

when dismissing a teacher for performance based reasons. Nothing in the Arbitrator's award prevents the District from dismissing a teacher if it follows those procedures.

Case law supports this conclusion. In *Proviso Council of West Suburban Teachers Union, Local 571 v. Board of Education*, 160 Ill.App.3d 1020, 513 N.E.2d 996 (1st Dist. 1987), 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. 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 not inarbitrable under Section 10(b). *Midwest Central Community Unit School District 191*, 10 PERI 1087, Case No. 93-CA-0027-S (IELRB, May 19, 1994), *aff'd, Midwest Central Education Association v. IELRB*, 277 Ill.App.3d 440, 660 N.E.2d 151 (1st Dist. 1995). The employer's conduct at issue was the employer's failure to detail the teacher's deficiencies as part of the evaluation process, to tell her of parental complaints, and to use progressive discipline. *Id.*

In this case, the Arbitrator did not order Gardner's reinstatement, but only ordered a monetary remedy. Thus, the remedy awarded by the Arbitrator did not interfere with the District's authority to dismiss probationary teachers. This remedy is similar to the monetary remedy awarded by the arbitrator in *Community High School District No. 155, supra*, where the court upheld the arbitrator's remedy.

The District attempts to distinguish *Community High School District No. 155*. However, the District has not stated any valid ground for finding the award to be non-binding on the basis of the remedy that the arbitrator directed. The issue of what remedy to order is peculiarly a matter for the arbitrator to resolve. *Chicago Board of Education*, 19 PERI 47, Case Nos. 2000-CA-0079-C, 2001-CA-0027-C (IELRB, March 27, 2003). As the United States Supreme Court stated in *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960), "[w]hen an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies." Indeed, the District admits that, if there was a violation, a financial remedy would be appropriate.

The District also argues that it did not dismiss Gardner for performance based reasons. However, the Arbitrator's conclusion that the District dismissed Gardner for performance based reasons was a finding of fact. The

Arbitrator's findings of fact are binding on the parties. *Illinois Nurses Association v. Board of Trustees of University of Illinois*, 318 Ill.App.3d 519, 741 N.E.2d 1014 (1st Dist. 2000); *see United Paperworkers v. Misco*, 484 U.S. 29 (1987); *Hyatte v. Quinn*, 239 Ill.App.3d 893, 607 N.E.2d 321 (2nd Dist. 1993).[1]

We conclude that the arbitration award issued in this case is binding. The District violated Section 14(a)(8) and, derivatively, Section 14(a)(1) of the Act by refusing to comply with it. The ALJ's Recommended Decision and Order is affirmed.

V.

Therefore, **IT IS HEREBY ORDERED** that Peoria School District 150:

1. Cease and desist from:

   (a) Refusing to comply with the November 17, 2005 arbitration award issued in connection with the March 21, 2005 grievance that was filed by the Peoria Federation of Teachers, Local 780, IFT/AFT, on behalf of Keri Gardner and that was subsequently amended.
.
   (b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of rights guaranteed them under the Act.

2. Immediately take the following affirmative action to effectuate the policies of the Act:

   (a) Comply with the November 17, 2005 arbitration award issued in connection with the March 21, 2005 grievance that was filed by the Peoria Federation of Teachers, Local 780, IFT/AFT on behalf of Keri Gardner and that was subsequently amended.

   (b) Make Keri Gardner whole for the District's refusal to comply with the November 17, 2005 arbitration award, including the amount owed to Keri Gardner under the November 17, 2005 arbitration award, with interest at the rate of 7% per annum.

   (c) Preserve and, upon request, make available to the Board or its agents for examination and copying all records, reports and other documents necessary to analyze the amount of the remedy due under the terms of this Opinion and Order.

   (d) Post in District buildings on all 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, posted immediately, and maintained for sixty (60) consecutive calendar days during which the majority of employees are working. The Distict shall take reasonable steps to ensure that said Notices are not altered, defaced, or covered by any other materials.

   (e) Notify the Executive Director in writing within thirty-five (35) calendar days after receipt of this Opinion and Order of the steps taken to comply with it.

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[1] The District also contends that it would be unfortunate if, as a result of this case, probationary teachers are rated "unsatisfactory" even when they have skill and ability. However, the District is free to bargain different terms with the Federation.

VI. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the appellate court of the judicial district in which the IELRB maintains an office (Chicago or Springfield). "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: June 12, 2007
Issued: June 12, 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
Chicago, Illinois 60601-3103
Telephone: (312) 793-3170

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Peoria School District 150
Case No. 2006-CA-0026-S

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 employees that:

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

WE WILL immediately comply with the November 17, 2005 arbitration award issued in connection with a grievance filed by the Peoria Federation of Teachers, Local 780, IFT/AFT on behalf of Keri Gardner.

WE WILL make Keri Gardner whole for our refusal to comply with the November 17, 2005 arbitration award issued in connection with a grievance filed by the Peoria Federation of Teachers, Local 780, IFT/AFT on behalf of Keri Gardner.

PEORIA SCHOOL DISTRICT 150

By:____Dated:________________
(Representative) (Title)

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

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