

Nos. 4-14-0557, 4-14-0635 (cons.).

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS,

Petitioner,

v.

ILLINOIS EDUCATIONAL LABOR
RELATIONS BOARD and UNI FACULTY
ORGANIZATION, IEA-NEA,

Respondents.

) Petition for Review of an Order of the
) Illinois Educational Labor Relations
) Board.

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) Case No. 2013-RC-0008-S
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BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS,

Petitioner,

v.

ILLINOIS EDUCATIONAL LABOR
RELATIONS BOARD and CAMPUS
FACULTY ASSOCIATION (CFA), AFT-IFT,
AAUP,

Respondents.

) Petition for Review of an Order of the
) Illinois Educational Labor Relations
) Board.

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) Case No. 2014-RC-0012-S
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NOTICE OF FILING BY MAIL

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Please take notice that on September 8, 2014, the Illinois Educational Labor Relations Board has filed one original and four copies of the attached to Response to Motion for Stay by depositing it in the United States mail at 100 West Randolph Street, Chicago, Illinois, before 5:00 p.m. with proper postage prepaid addressed to the Clerk of the Illinois Appellate Court, Fourth District, 201 West Monroe St., P.O. Box 19206, Springfield, Illinois 62794-9206.

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FACULTY ASSOCIATION (CFA), AFT-IFT,	)	
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RESPONSE OF ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD
TO MOTION FOR STAY

Respondent, Illinois Educational Labor Relations Board (IELRB), by its attorney, Lisa Madigan, Attorney General of Illinois, responds as follows to the Motion for Stay filed by the Petitioner, Board of Trustees of the University of Illinois (University).

Background

1. The central issue in these consolidated cases is whether a collective bargaining unit consisting of full-time and regularly employed part-time teachers at the University of Illinois Laboratory High School (Uni High) in Champaign is an appropriate bargaining unit under the Illinois Educational Labor Relations Act (Act). *See* 115 ILCS 5/7 (2012). The IELRB ruled that it was, and it therefore certified the Uni High Faculty Association as the exclusive collective bargaining representative of the 34 Uni High teachers, consistent with the wishes of a majority of them. (Motion for Stay, Exhibit B). The University's position is that these high-school teachers should be compelled instead to join a bargaining unit consisting of about 470 nontenure-track faculty members who teach at the University if they wish to have a collective bargaining representative.

2. This Court has consolidated the appeals from the separate IELRB orders certifying the two bargaining units, and the University now asks this Court to stay those orders. The IELRB denied a motion for stay of the order certifying the Uni High Faculty Association as the exclusive collective bargaining representative of the 34 Uni High teachers. (Motion for Stay, Exhibit E). The University never sought a stay from of the order certifying the Campus Faculty Association as the exclusive collective bargaining representative of the nontenure-track faculty members who teach at the University. For the reasons stated below, this Court should deny the stay sought by the University.

Argument

3. Under section 3-111(a)(1) of the Administrative Review Law, the court has the power in an action for administrative review, upon good cause shown, "to stay the decision of the

administrative agency in whole or in part pending the final disposition of the case.” 735 ILCS 5/3-111(a)(1) (2012). The party requesting the stay demonstrates good cause by showing: “(1) that an immediate stay is necessary to preserve the status quo without endangering the public, (ii) that it is not contrary to public policy, and (iii) that there exists a reasonable likelihood of success on the merits.” *Metz v. Dep’t of Prof’l Reg.*, 332 Ill. App. 3d 1033, 1036 (1st Dist. 2002).

4. In denying the motion for stay in the Uni High case, the IELRB determined that the section 3-111 factors had not been met. (Motion for Stay, Exhibit E). The IELRB stated that granting a stay would be contrary to the public policy expressed in section 1 of the Act of promoting “orderly and constructive relationships between all educational employees and their employers” by “granting educational employees the right to organize and choose freely their representatives; . . . requiring educational employers to negotiate and bargain with” those representatives and establishing procedures to protect the rights of all concerned including the public. 115 ILCS 5/1 (2012). (Motion for Stay, Exhibit E). Here, the Uni High teachers freely chose to organize into the bargaining unit that the IELRB certified and chose the Uni High Faculty Association as their representative. Thus, granting a stay of that certification would contravene the public policy set forth in section 1 of the Act.

5. The IELRB also determined that it is unlikely that the University’s appeal will be successful. (Motion for Stay, Exhibit E). In its certification order regarding Uni High, the IELRB quoted an appellate court decision stating that “[t]he desires of the employees are an important consideration because the goal in determining the appropriateness of a bargaining unit is to ensure employees the fullest freedom in exercising rights guaranteed by the Act for the

purpose of collective bargaining.” *Black Hawk Prof’l Tech. Unit v. Ill. Educ. Labor Relations Bd.*, 275 Ill. App. 3d 189, 198-99 (1st Dist. 1995); *see also* 115 ILCS 5/7(a) (2012); (Motion for Stay Exhibit B, p. 9). Here, a majority of Uni High teachers wanted the bargaining unit that the IELRB certified. (Motion for Stay, Exhibit B, p. 2; Exhibit C, p. 1).

6. Furthermore, under section 7(a) of the Act, a proposed bargaining unit need only be an appropriate unit to be certified; it does not have to be the most appropriate unit. *Black Hawk Prof’l Tech. Unit*, 295 Ill. App. 3d at 199; *Sandburg Faculty Ass’n v. Ill. Educ. Labor Relations Bd.*, 248 Ill. App. 3d 1028, 1036 (1st Dist. 1993). The IELRB’s decision in the Uni High case discussed several factors indicating that the proposed bargaining unit was appropriate, including the desires of the petitioned-for high school teachers and the substantial community of interest among them. (Motion for Stay, Exhibit B, pp. 8-10). As the IELRB pointed out, the Uni High teachers share similar skills and functions and their primary duty is to teach high school students. (*Id.*, pp. 8-9). They work in the same building and interact with one another on school committees and in other settings. (*Id.*, p. 9). They supervise students during a study period called “Uni period” and perform hallway monitoring duty. (*Id.*). They have frequent contact with students and their parents outside the classroom. (*Id.*). They generally work the same hours and have common benefits, and the same grid is used to determine their salaries. (*Id.*). The same dispute resolution and complaint processes are available to them. (*Id.*). The Uni High teachers are interchangeable for one another in the sense that they sometimes substitute for other teachers who are absent. (*Id.*).

7. The Uni High teachers do not share these commonalities with the non-tenured University faculty whose bargaining unit the University would compel them to join, against the

will of a majority, in order to participate in collective bargaining. The University faculty generally do not teach high school students and they work at the University, not Uni High. (*Id.*, p. 10). They do not interact with the Uni High teachers on committees and they are subject to a different evaluation plan than the Uni High teachers. (*Id.*). They also work different hours than Uni High teachers and have a different school calendar year. (*Id.*).

8. It is true that a nontenure-track faculty unit consisting of the Uni High teachers and nontenure-track University faculty is a presumptively appropriate bargaining unit under IELRB regulations that create presumptive bargaining units for the University of Illinois. *See* 80 Ill. Admin. Code § 1135.20(a). But, the regulation allows a different bargaining unit to be established if the petitioner shows by clear and convincing evidence that such a unit is appropriate under section 7 of the Act, that special circumstances and compelling justifications make it appropriate for the IELRB to approve the different unit, and establishing the unit will not cause undue fragmentation due to a proliferation of bargaining units. *Id.* Here, the IELRB determined that the Uni High Faculty Association presented clear and convincing evidence that the high school teachers it wished to represent should belong to a separate bargaining unit in light of the differences set forth above. That determination will be reversed upon administrative review only if the IELRB's decision was clearly erroneous. *Bd. of Trs. of Univ. of Ill. v. Ill. Educ. Labor Relations Bd.*, 224 Ill. 2d 88, 97 (2007).

9. It is highly unlikely that this Court will conclude that the IELRB's decision that high school teachers who do not wish to be in the nontenure-track faculty unit may belong to a separate unit is clearly erroneous. In arguing the contrary, the University states that the IELRB's decision in the Uni High case mistakenly states that there had not been a petition to include the

Uni High teachers in any other bargaining unit when, in fact, the Campus Faculty Association had proposed a bargaining unit including the Uni High teachers in the nontenure-track faculty unit. (Motion for Stay, p. 9). But this mistake does not affect the analysis about whether the bargaining unit the Uni High teachers sought to establish is an appropriate unit under the Act. And it is noteworthy that the Campus Faculty Association did not seek administrative review of the IELRB's certification of a bargaining unit consisting on the nontenure-track University faculty, but excluding the Uni High teachers. The University has failed to show that it is likely to succeed in this direct administrative review action.

10. Finally, the University never asked the IELRB to stay its order certifying the bargaining unit consisting of the nontenure-track University faculty, although it now asks this Court to stay the order. When a party to a direct administrative review action in the appellate court seeks a stay of the administrative decision, it first must ask the agency for a stay or show that it was impracticable to seek the stay from the agency. Ill. S. Ct. R. 335(g) (eff. Feb. 1, 1994). The University has made no showing that it would have been impracticable to seek a stay of the Campus Faculty Association certification order from the IELRB, so its request for a stay of that order from this Court in the first instance should be denied.

For the above reasons, the IELRB asks that this Court deny the University's Motion for

Stay.

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STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

PROOF OF SERVICE

The undersigned, being first duly sworn, upon oath deposes and states that a copy of the foregoing Response to Motion for Stay was served upon the below-named parties on the date listed below, by depositing the copy in the United States mail at 100 W. Randolph Street, Chicago, Illinois, in an envelope bearing sufficient postage, addressed to:

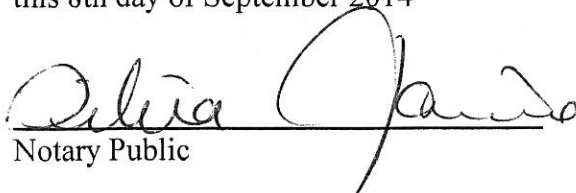
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Subscribed and sworn to before me
this 8th day of September 2014



Notary Public

