STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Federation of College Clerical and Technical Personnel, Local 1708, IFT-AFT, AFL-CIO,	)	
Complainant	)	
and	)	Case No. 2020-CA-0038-C
City Colleges of Chicago, Dist. 508,	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On November 6, 2019, Federation of College Clerical and Technical Personnel, Local 1708, IFT-AFT, AFL-CIO (Union) filed a charge with the Illinois Educational Labor Relations Board (IELRB or Board) alleging that City Colleges of Chicago, District 508 (College) committed unfair labor practices within the meaning of Section 14(a) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1 *et. seq.* Following an investigation, the Board's Executive Director issued a Complaint and Notice of Hearing (Complaint) alleging that the College violated Section 14(a)(5) of the Act by refusing to provide the Union with information it requested that was necessary and relevant to its function as the exclusive representative of a bargaining unit of its employees and 14(a)(6) by refusing to reduce a provision within the collective bargaining agreement (CBA) in writing. The parties appeared for hearing before an Administrative Law Judge (ALJ). The ALJ issued a Recommended Decision and Order (ALJRDO) finding that the College violated both 14(a)(5) and 14(a)(6) of the Act. The College filed exceptions to the ALJRDO, and the Union filed a response to the exceptions. After careful consideration of the College's exceptions and the Union's response, for the reasons discussed below, we affirm the ALJRDO and find that the District violated the Act.

II. Factual Background

We adopt the 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 where necessary to assist the reader.

III. Discussion

A. Section 14(a)(5)

The ALJ found that the College violated Section 14(a)(5) of the Act by failing to provide information to which the Union was entitled, in connection with a reduction in force (RIF) of certain bargaining unit members. The College asserts in its exceptions that the ALJ erred in finding a violation because it provided the Union with all the requested information, certain of the Union's requests were not demonstrated to be relevant under the Act, and the ALJ erroneously relied on the length of the College's delay in providing certain information to find a violation.

An employer violates Section 14(a)(5) of the Act when it refuses to provide the union with information that the union has requested that is directly related to its function as the exclusive bargaining representative and reasonably necessary for the union to perform this function. *Chicago School Reform Board of Trustees v. IELRB*, 315 Ill. App. 3d 522, 734 N.E.2d 69 (1st Dist. 2000). An employer's duty to supply information arises upon the union's good-faith request for the information. *Thornton Community College*, 5 PERI 1003, Case No. 88-CA-0008-C (IELRB Opinion and Order, November 29, 1988).

The College contends that there was no violation of the Act because it provided the Union with all the requested information. The ALJ found that although the College provided the Union with some of the requested information, it failed to provide information as to who was to perform the work of the laid-off employees at each campus and in each department, the specific department each laid off employee worked in, and information from the College's individual campuses regarding the financial reasons underpinning the need for the RIF. The College disputes this, claiming that the testimony of Union president Delores Withers (Withers)

that the College responded to one of the Union's information requests is proof that the College provided the information. Contrary to the College's assertion, the cited portion of Withers' testimony reflects only that the College responded, but not the content or substance of the response. The College ignores the rest of Withers' testimony, such as the part when she reported that the College responded to a lot of the requests, but there was some information they did not respond to. Additionally, Illinois Federation of Teachers field service director Andrew Cantrell testified that the College did not provide all the requested information. Accordingly, the record indicates that the College did not fully comply with the Union's request for information.

Next, the College argues that certain of the Union's requests were not demonstrated to be relevant under the Act. It is true that a union is not entitled to all information held by management, and that the requested information must be relevant to the relationship between the employer and the union in the latter's capacity as the exclusive representative. *Thornton Community College*, 5 PERI 1003; *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979); *NLRB v. Transport of N.J.*, 233 NLRB 694 (1977). In duty to provide information unfair labor practice cases, this Board has adopted the NLRB's liberal definition of relevancy, requiring only that the requested information be directly related to the union's function as bargaining representative and that it appear "reasonably necessary" for the performance of this function. *Thornton Community College*, 5 PERI 1003; *NLRB v. Otis Elevator Co.*, 170 NLRB 395 (1968); *NLRB v. Acme Industry Co.*, 385 U.S. 432 (1967). The reason for this "discovery-type" standard is to facilitate the relationship between the employer and collective bargaining representative, encouraging maximum disclosure in the interest of voluntary resolution of the underlying dispute. *Thornton Community College*, 5 PERI 1003. The information in this case was relevant to the Union for impact bargaining and to serve its overall purpose in representing its members. The College contends that the Union's request for financial information to understand the financial underpinning of the RIF was not relevant because RIFs are not a mandatory subject of

bargaining per Section 4.5 of the Act.[1] This argument is without merit. Even if an educational employer's decision is not a mandatory subject of bargaining, the educational employer may have an obligation to bargain over the impact of its decision on employees' wages, hours and terms and conditions of employment. *City Colleges of Chicago*, 1997 IL ERB LEXIS 61, Case No. 94-CA-0013-C (IELRB Opinion and Order, February 27, 1997); *Jacksonville District No. 117*, 4 PERI 1075, Case Nos. 85-CA-0025-S, 85-CA-0029-S (IELRB Opinion and Order, May 17, 1988). The Union did not demand to bargain over the College's decision to RIF but was seeking information related to the RIF. While Section 4.5 absolved certain employers of their duty to bargain over certain subjects, such as RIFs, it required them to bargain over the impact of a decision concerning those subjects upon request by the exclusive representative. This information would be relevant to the Union not only during impact bargaining, but also for the purposes of determining whether to request to impact bargaining. For these reasons, the ALJ correctly found that the information requested was relevant to the parties' relationship in the Union's capacity as exclusive representative.

According to the College, the ALJ erroneously relied on the length of its delay in providing certain information to find a violation. It took the College between sixteen and twenty-six days to provide the information it supplied to the Union. The ALJ found these response times excessive, given the RIF concerned only sixteen employees and considering the College failed to fully comply with the requests. An employer that has not expressly refused to provide requested information can be found to have committed an unfair labor practice by failing to make a diligent effort to obtain or to provide the information reasonably promptly. *NLRB v. John S. Swift Co.*, 277 F.2d 641 (7th Cir. 1960). The Board considers the totality of the circumstances surrounding the incident when determining whether an employer has unlawfully delayed responding to an information request. *West Penn Power Co. dba Allegheny Power*, 339 NLRB 585 (2003). In this case, the ALJ did not base his determination that the College violated the Act solely on the delay in

[1] Section 4.5 of the Act was repealed while this case was pending (P.A. 101-664, eff. 4-2-21).

providing the portion of the information it provided, but saw the delay, in addition to the refusal to provide all of the information and the relatively minor amount of information given the number of employees at involved, to be a factor in his finding the violation. We find this determination was correct.

B. Section 14(a)(6)

Section 14(a)(6) of the IELRA prohibits employers from "[r]efusing to reduce a collective bargaining agreement to writing and signing such agreement." Any agreement that is the product of collective bargaining must be reduced to writing and signed by the parties. *Alton Community Unit School District 11*, 6 PERI 1047, Case No. 88-CA-0032-C (IELRB Opinion and Order, March 12, 1990). The ALJ found that the College violated Section 14(a)(6) of the Act by refusing to update Appendix D of the proposed final contract to reflect the term of the successor agreement or accurate employee contribution percentages. That is, by reneging on the tentative agreement (TA) with the Union that "no changes" to Appendix D of the CBA meant that the employees' share of the health insurance premium would remain at 15% and key provisions of the health insurance plan would not change.

The College argues in its exceptions that the ALJRDO should be overturned because the ALJ failed to find that "no change" was unclear or ambiguous as to the final understanding of Appendix D between the parties. On page 6 of the ALJRDO, the ALJ notes that during the parties' discussion of Appendix D in November 2018, College chief talent officer Kim Ross (Ross) explained the College's proposal was to keep the employees' share of the premium at 15%. During the parties' more extensive discussion in February 2019 about what the College was proposing when it offered "no changes" to Appendix D, Ross clarified "no changes" to Appendix D meant no increase to the employee contribution and that the key provisions of the plans would not change. With that understanding in mind, the Union ratified the TA. Yet it wasn't until the parties were finalizing the draft of the CBA that the College took a position different from its previously stated position as to what "no changes" meant and refused to update Appendix D accordingly. There is no requirement that the ALJ find that "no change" was unclear or ambiguous as to the parties' understanding of Appendix D. From the conduct of the Union and

of the College, through Ross, the parties at that time came to a meeting of the minds to understand "no changes" to mean no increase to the employee contribution and that the key provisions of the plans would not change.

The College claims in its exceptions that the ALJ erred in ruling that testimony regarding the terms of the TA was not barred by the parol evidence rule. The parol evidence rule "generally precludes evidence of understandings, not reflected in a writing, reached before or at the time of its execution which would vary or modify its terms," *City of Rockford*, 33 PERI ¶ 108 (IL LRB-SP 2017); *J. & B. Steel Contractors, Inc. v. C. Iber & Sons. Inc.*, 162 Ill. 2d 265, 269, 642 N.E.2d 1215, 1217 (1994). Such evidence is not admissible to vary or contradict a fully integrated written agreement. *Eichengreen v. Rollins, Inc.*, 325 Ill. App. 3d 517, 757 N.E.2d 952 (1st Dist. 2001). But where an agreement is ambiguous, a party may introduce parol evidence to assist in interpreting the agreement. *Lewis v. Board of Education*, 181 Ill. App. 3d 689, 537 N.E.2d 435 (5th Dist. 1989). Labor boards are not strictly bound by technical rules of contract law in ascertaining whether parties have reached a meeting of the minds and have considered parties' bargaining conduct in making that determination even where the parties have a complete written agreement. *City of Rockford*, 33 PERI ¶ 108. Thus, we overrule the College's renewed objection from the hearing and decline to strike testimony regarding Appendix D from the record. Even without the testimony about the terms of the TA, "no change" means to stay the same.

The College alleges that the ALJ erred because its final draft of Appendix D was unchanged from the previous agreement between the parties and thus the ALJ should not have ordered the agreed upon terms of Appendix D to be changed in favor of the Union without the Union having negotiated those terms differently than the express terms of the signed TA. As discussed above, the parties came to a meeting of the minds to understand "no changes" to mean no increase to the employee contribution and that the key provisions of the plans would not change. For the employee premium to remain at 15% and be an enforceable term of the contract, the dates in Appendix D would have to be updated to cover the term of the successor agreement, not the dates in the previous agreement. There would be no reason to negotiate a successor contract if the parties were not agreeing to change the dates. There is nothing to indicate the

parties' agreement that the contribution rate would remain at 15% for the life of the contract unless the dates reflect the life of the successor contract, and nothing to prevent the College from increasing employees premium share to more than 15%. Thus, the ALJ's remedial order is correct.

IV. Order

Respondent violated Section 14(a)(5) and, derivatively, (1) of the Act when it refused to provide information to which the Union was entitled, in connection with a reduction in force of certain bargaining unit members in 2019. In addition, Respondent violated Section 14(a)(6) and, derivatively, (1) of the Act when it refused to update Appendix D of the proposed final contract to reflect the terms of the successor agreement or accurate employee contribution percentages. The ALJRDO is affirmed. For the reasons discussed above, IT IS HEREBY ORDERED that:

1. That Respondent, City Colleges of Chicago, District 508, having violated Section 14(a)(6) and (1) of the Act in connection with its unlawful refusal to update Appendix D of the proposed final contract with Complainant, Federation of College Clerical and Technical Personnel, Local 1708, IFT-AFT, AFL-CIO (Union), to reflect the term of the successor agreement, July 1, 2016 to June 30, 2023, or accurate employee contribution percentages, be ordered to cease and desist from refusing to reduce the collective bargaining agreement with the Union to writing and signing such agreement.

2. That Respondent, City Colleges of Chicago, District 508, having violated Section 14(a)(6) and (1) of the Act in connection with its unlawful refusal to update Appendix D of the proposed final contract with Complainant, Federation of College Clerical and Technical Personnel, Local 1708, IFT-AFT, AFL-CIO, to reflect the term of the successor agreement, July 1, 2016 to June 30, 2023, or accurate employee contribution percentages, be ordered to cease and desist from, in any like or related manner, interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them under the Act.

3. That Respondent, City Colleges of Chicago, District 508, having violated Section 14(a)(5) and (1) of the Act in connection with its failure or refusal to grant Complainant, Federation of College Clerical and Technical Personnel, Local 1708, IFT-AFT, AFL-

CIO, access to certain information it had requested, which was both relevant and necessary for the proper performance of its duties as the exclusive representative of a bargaining unit of Respondent's employees, be ordered to cease and desist from refusing to bargain with Federation of College Clerical and Technical Personnel, Local 1708, IFT-AFT, AFL-CIO.

4. That Respondent, City Colleges of Chicago, District 508, having violated Section 14(a)(5) and (1) of the Act in connection with its failure or refusal to grant Complainant, Federation of College Clerical and Technical Personnel, Local 1708, IFT-AFT, AFL-CIO, access to certain information it had requested, which was both relevant and necessary for the proper performance of its duties as the exclusive representative of a bargaining unit of Respondent's employees, be ordered to cease and desist from, in any like or related manner, interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them under the Act.

5. That Respondent, City Colleges of Chicago, District 508, be ordered to immediately take the following steps which would effectuate the policies of the Act:

    A. Update Appendix D of the proposed final contract with Complainant, Federation of College Clerical and Technical Personnel, Local 1708, IFT-AFT, AFL-CIO, to reflect the term of the successor agreement, July 1, 2016 to June 30, 2023.

    B. Update Appendix D of the proposed final contract with Complainant, Federation of College Clerical and Technical Personnel, Local 1708, IFT-AFT, AFL-CIO, to accurately reflect employee contribution percentages and coverages agreed-to as of May 1, 2019.

    C. Provide Complainant, Federation of College Clerical and Technical Personnel, Local 1708, IFT-AFT, AFL-CIO, with the following outstanding information requests:

        (1) information as to who was to perform the work of the laid-off employees at each campus and in each department thereof;

        (2) information as to the specific department each laid-off employee worked in;

        (3) information from the City Colleges' individual campuses regarding the financial reasons underpinning the need for the RIF;

D. Make whole its employees represented by the Union, for all losses they incurred as a result of City Colleges' failure to update Appendix D of the proposed final contract with Complainant, Federation of College Clerical and Technical Personnel, Local 1708, IFT-AFT, AFL-CIO, to reflect the term of the successor agreement, July 1, 2016 to June 30, 2023;

E. Make whole its employees represented by the Union, for all losses they incurred as a result of City Colleges' failure to update Appendix D of the proposed final contract with Complainant, Federation of College Clerical and Technical Personnel, Local 1708, IFT-AFT, AFL-CIO, to accurately reflect employee contribution percentages and coverages agreed-to as of May 1, 2019;

F. Make whole its employees represented by the Union, for all losses they incurred as a result of City Colleges' failure to comply with the Union's information requests in connection with the 2019 RIF;

G. Preserve, and upon request, make available to the Illinois Educational Labor Relations Board or its agents, all payroll and other records required to calculate the amount of back pay or other compensation to which unit employees may be entitled as set forth in this decision;

H. Post, for 60 days during which the majority of employees in the bargaining unit are working, at all places where notices to employees of City Colleges of Chicago, District 508, are regularly posted, signed copies of a notice to be obtained from the Executive Director of the Illinois Educational Labor Relations Board and similar to that attached hereto.

6. That Respondent, City Colleges of Chicago, District 508, be ordered to notify the Board, in writing, within 20 days of the Board's order, of the steps that Respondent has taken to comply herewith.

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: August 19, 2021
Issued: August 25, 2021

/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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