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November 12, 2024

**VIA ELECTRONIC MAIL**

Nick Gutierrez  
Illinois Educational Labor Relations Board  
160 N. LaSalle Street  
Suite N-400  
Chicago, Illinois 60601

**Re: Illinois Eastern Community College Education Association,  
Charge No. 2025-CB-0009-C**

Dear Mr. Gutierrez:

Please find below the position statement of the Board of Trustees of Illinois Eastern Community College District 529 (“IECC”) in support of the above-captioned unfair labor practice charge filed against the Illinois Eastern Community College Education Association (“Union”).<sup>1</sup> As will be explained below, the Union has engaged in an extensive pattern of bad faith surface bargaining in violation of Section 14(a)(3) of the Illinois Educational Labor Relations Act (“IELRA” or “Act”). 115 ILCS 5/14(b)(3).

This pattern of bad faith (which includes among other things, multiple delay tactics, regressive bargaining proposals, insistence on permissive subjects, violations of the parties’ ground rules and an illegal refusal to mediate in violation of 115 ILCS 5/12(c-5)) has impeded the

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<sup>1</sup> The statement of facts and position set forth herein is based upon our current understanding and investigation of the facts and circumstances at the time this statement is submitted. By submitting this statement of position, IECC in no way waives its right to present new or additional facts and arguments based upon subsequently acquired information or evidence. Further, this statement of position, while believed to be true and correct in all respects, does not constitute an affidavit and is not intended to be used as evidence of any kind in any IELRB or court proceeding in connection with the above-captioned charge or otherwise.

parties' ability to reach a deal on a successor contract. By extension, the undisputed evidence clearly supports the conclusion that the Association has no interest in reaching a deal with IECC anytime soon.

This behavior is exceedingly troubling. If an employer had engaged in a *fraction* of the conduct that will be described below, labor organizations would be quick to accuse the employer of illegal surface bargaining. The same standard should be applied in this case, where the following list of bad faith actions at least raises a disputed issue of law and/or fact that justifies the issuance of a Complaint for Hearing.

## **STATEMENT OF FACTS**

### **A. General Background**

IECC is an educational employer within the meaning of Section 2(a) of the IELRA. 115 ILCS 5/2(a). IECC operates four community colleges in southeastern Illinois, including Olney Central College, Frontier Community College, Lincoln Trail College and Wabash Valley College.

IECC employs approximately 84 full-time faculty members, who are represented for purposes of collective bargaining by the Union. The Union is a "labor organization" within the meaning of Section 2(c) of the IELRA. 115 ILCS 5/2(c). Angela Williams ("Williams") is the Union's UniServ Director assigned to the IECC faculty bargaining unit. Williams is an agent of the Union.

The Union and IECC have negotiated a series of collective bargaining agreements ("CBA") since the 1990s. The term of their most recent CBA extended from September 1, 2021, through August 31, 2023. *See* Exhibit A.

### **B. Beginning of Successor Contract Negotiations**

IECC and the Union began successor contract negotiations in May 2023. At their first bargaining session on May 30, 2023, the parties agreed to a set of ground rules. *See* Exhibit B. Among other things, those ground rules included the following limitation on introducing new issues:

After the ground rules have been agreed upon, the Association will submit its full package of proposals for collective bargaining. After discussion about such proposals, the Board, at a subsequent session, shall submit its full package of proposals for collective bargaining. Such discussions could occur within either

team or between both teams. Thereafter, unless the parties mutually agree otherwise, no new items shall be submitted for negotiations by either party.

*Id.* at ¶ 3.

Consistent with this approach, the Union submitted its opening set of proposals via email on or about June 8, 2023. *See* Exhibit C. IECC then submitted its opening proposals (and counters to the Union’s proposals) via email on or about July 28, 2023. *See* Exhibit D.

### **C. The Union’s Refusal to Bargain Over Economic Items**

The Union began engaging in illegal surface bargaining in September 2023. At that time, the Union flatly refused IECC’s repeated requests to bargain over economic items (like wages). Instead, the Union insisted on first bargaining over non-economic items. This tactic delayed the Union’s counter-proposals to IECC’s July 2023 economic proposals by over a year.

Also beginning in September 2023, Union representatives falsely claimed that IECC had agreed to this approach. IECC bargaining representatives repeatedly denied such claims in a series of emails. Despite these clarifications, the Union continued to delay the submission of its economic counter-proposals until July 12, 2024.

### **D. The Union’s Failure to Meet for Approximately Four Months**

The Union and IECC met for six bargaining sessions on the following dates in 2023: May 30, June 13, July 11, September 22, September 29, and November 3. After November 3, the Union did not agree to meet for another bargaining session until March 1, 2024.

### **E. The Union Proposed Multiple New and/or Regressive Bargaining Items In Violations of the Parties’ Ground Rules and/or TAs**

(1) March 1, 2024. After approximately 9 months of bargaining, the Union made the following new and/or regressive proposals on March 1, 2024:

- Modification to Section 12.0, Tenure: The Union proposed deleting a sentence from this Section despite having expressed no intent to modify this Section when it first submitted its bargaining proposals in June 2023.
- Modification to Section 12.1, Right to Representation: The Union regressively added extensive just cause discipline language (an issue that was never mentioned in either party’s original proposals).

- Modification to Section 12.2.2, Seniority: The Union regressively proposed deleting a sentence from this Section that it had expressed no intent to modify when the Union first submitted its bargaining proposals in June 2023.
- Addition of New Section 13.0: The Union proposed adding this new Section despite having expressed no intent to address this topic when the Union first submitted its bargaining proposals in June 2023.

(2) July 12, 2024. The Union made further regressive proposals on July 12, 2024, when it finally presented IECC with its counter-proposals to IECC’s July 28, 2023 economic proposals. *See* Exhibit E. The Union’s economic counter-proposals actually cost *more* than the Union’s opening economic proposals in the following areas:

<b>Original May 8, 2023 Proposal (in one case, September 22, 2023 Proposal)</b>	<b>July 12, 2024 Proposal</b>
The Union proposed decreasing the salaries of eight (8) faculty members (Alexander Hamblin (-6.32%), Dennis York (-4.37%), John McCarty (-2.13%), Andrew King (-1.31%), Kimberly Schucker (-1.21%), Doug Robb (-0.76%), Lisa Hoipkemier (-0.69%) and Angelia Williams (-0.42%), while increasing other faculty member salaries	Without explanation, the Union proposed giving these same eight (8) faculty members a salary increase, which would cost approximately \$47,049 more than the Union’s opening proposal
The Union originally proposed giving faculty members with 30+ years of experience a 4% raise	Without explanation, the Union proposed giving faculty members with 30+ years of experience a 6% raise, which would cost approximately \$23,917 more than the Union’s opening proposal
The Union proposed on September 22, 2023, the following Applied Music	Without explanation, the Union proposed the following increased

Stipends: 2023 - \$180; 2024 - \$190; 2025 - \$200	Applied Music Stipends: 2023 - \$185; 2024 - \$195; and 2025 - \$205.
The Union originally proposed overload rates in the following ranges: 2023 (\$630-\$660); 2024 (\$668-\$700) and 2025 (\$708 – \$742)	Without explanation, the Union proposed increased overload rates in the following ranges: 2023 (\$650 - \$700); 2024 (\$725 - \$775); and 2025 (\$800 - \$850).

The Union’s July 12, 2024 regressive bargaining proposal is over \$180,000 more expensive than the Union’s original June 2023 proposal for academic years 2023-24, 2024-25 and 2025-26:

AY Year	May 2023 Offer	July 2024 Offer
2023-24	\$313,650.28 (5.86%)	\$525,930.48 (9.94%)
2024-25	\$288,578.66 (5.09%)	\$255,763.23 (4.40%)
2025-26	\$305,106.93 (5.12%)	\$306,021.86 (5.04%)
<b>TOTAL:</b>	<b>\$907,335.87</b>	<b>\$1,087,714</b>

(3) September 5, 2024. After approximately 14 months of bargaining, the Union submitted the following new proposals on September 5, 2024:

- Modification to Section 5.0, Nondiscrimination: The Union proposed deleting a sentence from this Section despite having expressed no intent to modify this Section when the Union first submitted its bargaining proposals in June 2023.
- Section 14.0, Communications Committee: The Union proposed deleting a sentence from this Section despite having expressed no intent to modify this Section when the Union first submitted its bargaining proposals in June 2023.

(4) October 25, 2024. After approximately 15 months of bargaining, the Union submitted a proposal that effectively reneged on a prior tentative agreement (“TA”). On September 22, 2023, the parties “TA-ed” Section 9.7, Travel Reimbursements. *See* Exhibit F. In that TA, the Union agreed to drop its original proposal of compensating faculty members for travel at a \$42 per hour rate (or the overload hourly rate, whichever is greater). *Compare* Exhibits C with F. The TA includes no additional hourly pay for travel time.

However, the Union proposed on October 25, 2024 (as part of a 45-page single spaced document) to pay faculty members \$30 per hour for travel from one work site to another. *See* Exhibit G (at p.11). In other words, the Union resurrected travel compensation after agreeing to drop it as part of the parties’ September 22, 2023 TA.

Moreover, the Union’s 45-page October 25 proposal has introduced new concepts and issues that the Union never expressed an interest in bargaining back in June 2023. Among other things, the October 25 proposal has introduced extensive language concerning academic freedom as well as “hybrid courses” (which were concepts never mentioned in the Union’s opening proposals from June 2023).

**F. The Union Repeatedly Has Insisted On Permissive Subjects Despite IECC’s Opposition**

The Union has proposed a number of permissive subjects of bargaining during negotiations, including but not limited to the following:

- Section 12.0, Tenure: The Union regressively proposed deleting a sentence from this Section, which would allow faculty members to circumvent the parties’ grievance-arbitration process by pursuing contractual claims in state court. This violates Section 10(c) of the IELRA, *see* 115 ILCS 5/10(c), because IECC has not mutually agreed to allow faculty members to circumvent the grievance-arbitration process in such a manner. Unless the parties mutually agree otherwise, all contractual claims must be subject to the parties’ grievance-arbitration process. *See Chicago Bd. of Educ.*, 6 PERI ¶ 1048 (IL ELRB 1990); *accord Univ. of Ill. at Chicago*, 8 PERI ¶ 1014 (IL ELRB 1991). To date, the Union has refused IECC’s proposal that would ensure tenure claims are subject to the parties’ grievance-arbitration process.
- Section 12.2.2, Reductions in Force: The Union regressively proposed deleting a sentence from this Section, which would allow faculty members to circumvent the

parties' grievance-arbitration process by pursuing contractual reduction in force claims in state court. This violates Section 10(c) of the IELRA, *see* 115 ILCS 5/10(c). because IECC has not mutually agreed to allow faculty members to circumvent the grievance-arbitration process in such a manner. Unless the parties mutually agree otherwise, all contractual claims must be subject to the parties' grievance-arbitration process. *See Chicago Bd. of Educ.*, 6 PERI ¶ 1048 (IL ELRB 1990); *accord Univ. of Ill. at Chicago*, 8 PERI ¶ 1014 (IL ELRB 1991). To date, the Union has refused IECC's proposal that would ensure reduction in force claims are subject to the parties' grievance-arbitration process.

- Section 13.0, Evaluations: The Union proposed an extensive list of substantive annual performance evaluation criteria, which constitute permissive subjects of bargaining. *See Vill. of Orland Park*, 21 PERI ¶ 42 (IL LRB-SP 2005).
- Section 9.13, Hyflex, Hybrid, online DC Courses, Distance Learning Courses: The Union proposed the inclusion of various job descriptions at the end of the parties' successor contract. Insisting on the inclusion of such job descriptions is a permissive subject of bargaining. *Lake Cnty. Sch. Dist.*, 23 FPER ¶ 28,023 (Fla. PERC General Counsel, December 11, 1996) ("job descriptions fall within the category of 'organization and operation'" over which an employer is not required to bargain); *Crawford Cent. Sch. Dist.*, 39 PPER ¶ 36 (Pa. LRB ALJ 2008) (affirming right of district to change job description without bargaining, and collecting cases in support of inherent managerial right of employer to reclassify job, assign work to employees and make other changes related to job descriptions); *City of Marion*, 1981 PERB ¶ 1913 (Iowa PERB 1981) (proposal requiring employer to create job descriptions for all classifications was a permissive subject of bargaining). Moreover, several of the aforementioned job descriptions seek to identify the specific supervisor who will oversee bargaining unit personnel. This is also a non-negotiable management right. *See Kono-TV-Mission Telecasting Corp.*, 163 N.L.R.B. 1005, 1008 (1967) ("the size and composition of an employer's supervisory staff . . . must be regarded as falling within the area of management prerogative").

To date, the Union has refused to withdraw any of these permissive proposals despite IECC's objections to them.

### **G. The Union Illegally Refused to Mediate**

After the Union submitted its regressive economic counter-proposals on July 12, 2024, IECC requested on July 15 and 19 that the Union join IECC in requesting the services of the U.S. Federal Mediation and Conciliation Service (“FMCS”). *See* Exhibit H. Williams refused, *see* Exhibit I, despite the fact that the IELRA mandates mediation if no agreement has been reached within 45 days of the beginning of the academic year. *See* 115 ILCS 5/12(a).

Due to the Union’s refusal, IECC had to spend approximately \$1,312 in attorneys fees to research, draft and file a request for mediation with the IELRB. *See* Exhibit J. Only after this mediation request was filed (and the Union suddenly risked having to pay 100% of the fees charged by an IELRB-appointed mediator) did Williams and the Union finally agree to use the FMCS’s free mediation services.

### **H. The Union Has Refused to Withdraw an Illegal Subject from the CBA**

During a side bar on November 5, 2024, IECC representatives reminded the Union’s UniServ Director that the parties’ collective bargaining agreement still contained a fair share clause, which the U.S. Supreme Court ruled was unconstitutional in *Janus v. AFSCME Council 31*, 583 U.S. 878 (2018). When IECC representatives indicated that they believed the fair share clause needed to be removed due to its unconstitutionality, the UniServ Director disagreed, stating that she believed the Union’s legal counsel had indicated that such unconstitutional provisions do not need to be removed from collective bargaining agreements.

### **I. The Union’s Team and UniServ Director Repeatedly Have Engaged in Delay Tactics**

Throughout the parties negotiations, the Union frequently engaged in a variety of delay tactics, including for example: (a) the UniServ speaking up to 20 minutes at a time without allowing interruptions; (b) the Union meeting for only several hours at a time and/or walking out on negotiations without pre-warning IECC (*e.g.*, on July 11, 2023, Union co-chair Rob Mason texted IECC that his bargaining team had “decided to take off”); and (c) the Union delaying the start of bargaining sessions due to the later arrival of the UniServ Director (*e.g.*, November 3, July 12 and September 5).

Other delay tactics included the Union’s failure to promptly submit counter-proposals to the IECC’s bargaining proposals. As explained above, it took the Union approximately one year before responding to IECC’s opening economic proposals in July 2024. More recently, it has been three months (and counting) since IECC submitted on August 9, 2024, a proposal that would



provide retroactive pay and benefits to bargaining unit faculty for academic year 2023-24. *See* Exhibit K. It has been two months (and counting) since IECC submitted an economic package proposal to the Union on September 5, 2024. Similarly, it has been over a month since IECC submitted responses to the Union’s non-economic proposals on September 27, 2024. The Union has given no indication when (if ever) it will present counter-proposals to IECC’s August 9, September 5 and September 27 proposals.

Yet another delay tactic is Williams’s failure to share IECC’s bargaining proposals from September 27, 2024, with her Union bargaining team members. When IECC attempted to discuss one of its September 27 proposals at the parties’ November 5, 2024, bargaining session, one of the Union bargaining team co-chairs (Nixie Hnetkovsky) apparently had never seen IECC’s proposals despite Williams possessing them for over a month. Williams admitted that IECC’s proposals had gotten “lost in the shuffle.” Williams’ failure to share the proposals with her team prevented the parties from engaging in meaningful negotiations at their November 5, 2024, bargaining session.

#### **J. The Union Has Refused to Respond to an IECC Information Request**

On May 9, 2024, IECC submitted a memo to the Union in connection with a pending grievance involving pay and benefits for a bargaining unit faculty member by the name of Joe Brown. *See* Exhibit L. The request sought information about how Mr. Brown proposed teaching a particular course in compliance with Illinois Community College Board standards if IECC granted the Union its requested remedy. To date, the Union has failed to provide any information to IECC in response to IECC’s information request.

### **DISCUSSION**

Unfair labor practice complaints should be issued when the record evidence demonstrates the existence of disputed issues of fact and law. *See Danville Community Consolidated Sch. Dist. No. 118*, 3 PERI ¶ 1084 (IL ELRB 1987) (reversing the Executive Director’s dismissal of a bad faith bargaining charge and remanding the matter for the issuance of a complaint). As will be explained below, the above-described facts clearly present a disputed issue of fact and/or law to warrant the issuance of a Complaint.

The duty to collectively bargain in good faith requires both parties to engage in negotiations with “an open mind and a sincere desire to reach an agreement.” *Service Employees Int’l Local Union # 316 v. State Educ. Labor Relations Bd.*, 153 Ill. App. 3d 744, 751 (4th Dist. 1987). When a party undertakes a calculated strategy of avoiding reaching an agreement, and does nothing more

than “go through the motions of bargaining,” the Board will find that the party has engaged in illegal “surface bargaining.” *Id.* “Surface bargaining” is assessed “upon a review of all of the circumstances.” *Id.*

Many of the incidents described above constitute independent violations of the Union’s duty to bargain. When considered in combination, they certainly paint a disturbing picture of a Union desperately attempting to avoid reaching an agreement with IECC. In that respect, it is well-established that the Union’s above-described behavior (when considered collectively or in isolation) qualifies as bad faith:

- Failing to meet for three months. *See Bd. of Trustees of Univ. of Ill.*, 22 PERI ¶ 147 (IL ELRB ALJ 2006) (employer’s 3-month delay in bargaining was *per se* bad faith).
- Unreasonably delaying responses to the other parties’ proposals. *See Henry M. Hald High Sch. Ass’n*, 213 N.L.R.B. 463, 475 (1974) (delaying response to union’s wage proposal by over 4 months).
- Exhibiting delay tactics, such as arriving late, interrupting meetings for phone calls, and leaving early despite the other party’s willingness to stay. *See Regency Serv. Carts, Inc.*, 345 N.L.R.B. 671, 672-73 (2005).
- Injecting significant new proposals at an advanced stage of negotiations (as the Union has done here). *See Yearbook House*, 223 N.L.R.B. 1456, 1465 (1976) (introducing 13 news proposals late in negotiations). This is especially true when the new proposals violate the terms of the parties’ ground rules. *See Harowe Servo Controls, Inc.*, 250 N.L.R.B. 958, 960 (1980) (repudiating ground rules about first negotiating noneconomic matters was an indicia of bad faith).
- Advancing illegal proposals (like the fair share clause here). *See Sheet Metal Workers Local Union No. 20*, 306 N.L.R.B. 834, 838-39 (1992) (union violated 8(b)(3) by insisting on an unlawful work preservation clause).
- Refusing to comply with the IELRA’s mediation requirements. *See* 115 ILCS 5/12(c-5) (“If an . . . exclusive bargaining representative refuses to participate in mediation or fact finding when required by this Section, the refusal shall be deemed a refusal to bargain in good faith”).
- Withdrawing from tentative agreements. *See Golden Eagle Spotting Co. v. Brewery Drivers & Helpers, Local Union 133*, 93 F.3d 469, 471 (8th Cir. 1996) (“withdrawal

of previous proposals or tentative agreements . . . is evidence of the [party's] lack of good-faith bargaining where the proposal has been tentatively agreed upon”).

- Repeated insistence on permissive subjects of bargaining. *See Branch Int’l Serv.*, 310 N.L.R.B. 1092, 1103 (1993) (“the Board has held that it is evidence of overall bad-faith bargaining . . . for a [party] to continually insist, during bargaining, on” a permissive subject like changes in the scope of a bargaining unit).
- Submitting regressive proposals without justification. *See Universal Fuel, Inc.*, 358 N.L.R.B. 1504, 1521-22 (2012) (employer’s regressive proposal was “designed to frustrate a collective-bargaining agreement”).
- Failing to respond to information requests. *See Whitesell Corp.*, 357 N.L.R.B. 1119, 1162-1163 (2011).

Even a cursory review of these facts demonstrates that the Union has no interest in reaching an agreement. The labor law principles detailing what constitutes bad faith bargaining are well-established. If IECC’s factual allegations are true, there is no question that the Union has bargained in bad faith. Even if by chance the Union denies the above-described factual allegations, such factual disputes can only be resolved by an Administrative Law Judge via sworn witness testimony. Thus, at the *very* least, a Complaint must be issued.

### **CONCLUSION**

Based on the foregoing facts, arguments, and authority, IECC requests that the Executive Director issue a Complaint and Notice of Hearing in connection with the above-captioned charge. If you have any questions about IECC’s position in this matter, or need additional information, please do not hesitate to contact me.

Respectfully yours,

**BOARD OF TRUSTEES OF ILLINOIS  
EASTERN COMMUNITY COLLEGE  
DIST. NO. 529**

By:           /s/ Kelly A. Coyle            
One Of Its Attorneys

## CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she caused a true and correct copy of the foregoing position statement and accompanying exhibits to be served upon the following individual by electronic mail on this 12th day of November, 2024:

Lucas A. Klein  
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/s/ Kelly A. Coyle

Kelly A. Coyle