**STATE OF ILLINOIS**
**EDUCATIONAL LABOR RELATIONS BOARD**

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| Jackie Hayes, *et al.*, | ) | |
| | ) | |
| Charging Parties | ) | |
| | ) | |
| and | ) | Case No. 2018-CA-0049-C |
| | ) | |
| Decatur Public School District 61, | ) | |
| | ) | |
| Respondent | ) | |

## OPINION AND ORDER

### I. Statement of the Case

On January 23, 2018, Jackie Hayes (Hayes), Carolyn Jarrett (Jarrett), and Christopher Young (Young) (collectively Charging Parties) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board or IELRB) in the above-captioned matter alleging that Decatur Public School District 61 (District or Respondent) 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 Recommended Decision and Order (EDRDO) dismissing the charge in its entirety. The Charging Parties' attorney received the EDRDO on January 11, 2019. On January 15, 2019, the Charging Parties, through their attorney, requested and were granted by the IELRB's General Counsel an extension of time until February 4, 2019 to file their exceptions. The Charging Parties' attorney sent their exceptions to the IELRB by regular mail on February 4, however the IELRB did not receive them until February 6, 2019. For the reasons discussed below, we strike the Charging Parties' exceptions as untimely and find the EDRDO is binding upon the parties.

### II. Factual Background

We adopt the facts as set forth in the underlying EDRDO. Because the EDRDO comprehensively sets forth the factual background of the case, we will not repeat the facts herein.

## III. Discussion

Per Section 1100.20(a) of the Rules, "[D]ocuments shall be considered filed with the Board on the date they are received by the Board, except that documents sent by certified or registered mail shall be considered to have been filed on the date on which they are postmarked, and documents sent by overnight delivery service shall be considered to have been filed on the date the receipt shows they were given to the overnight delivery service. … Documents, including but not limited to documents filed electronically, must be received by the close of business in order to be considered to have been filed that day."

Because the Charging Parties filed their exceptions by regular mail, they are considered to have been filed on the date that the Board received them, February 6, 2019. The Charging Parties were granted only until February 4 to file their exceptions, rendering their subsequent filing two days later as untimely. The Appellate Court has found that a charging party waived its right to contest a recommended decision and order by failing to file timely exceptions to that recommended decision and order. *Pierce v. IELRB*, 334 Ill. App. 3d 25, 777 N.E.2d 570 (1st Dist. 2002); *Board of Education of the City of Chicago v. IELRB*, 289 Ill. App. 3d 1019, 682 N.E.2d 398 (1st Dist. 1997). In accordance with the Appellate Court, this Board routinely strikes untimely exceptions. *Rochester Community Sch. Dist. No. 3A*, 35 PERI 7, Case No. 2017-CA-0059-C (IELRB Opinion and Order, June 19, 2018); *Proviso Township High Sch. Dist. #209*, 34 PERI 64, Case No. 2017-CA-0065-C (IELRB Opinion and Order, September 15, 2017); *Peoria School District 150*, 23 PERI 46, Case Nos. 2006-CA-0006-S, 2006-CA-0008-S, 2006-CA-0032-S (IELRB Opinion and Order, April 19, 2007); *Peoria School District 150*, 2006 WL 6822968, Case No. 2005-CA-0028-S (IELRB Opinion and Order, October 11, 2006). Similar to this case, the respondent in *Rochester* sent its exceptions to the IELRB by regular mail on the day they were due, and the Board received them several days later. 35 PERI 7. Citing Section 1100.20(a) of the Rules, we found that the exceptions were filed on the date they were received, which was after the date on which they were due. *Id.* For that reason, we struck the respondent's exceptions. *Id.* We likewise strike the Charging Parties' exceptions in this case as untimely filed.

## IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Charging Parties' exceptions are stricken as untimely filed and the Executive Director's Recommended Decision and Order dismissing the charge is binding upon the parties.

## 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 15, 2019**
Issued: Chicago, Illinois

/s/ Andrea R. Waintroob
Andrea R. Waintroob, Chairman

/s/ Judy Biggert
Judy Biggert, Member

/s/ Gilbert F. O'Brien
Gilbert F. O'Brien, Member

/s/ Lynne O. Sered
Lynne O. Sered, Member

/s/ Lara D. Shayne
Lara D. Shayne, Member

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## EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

## I. THE UNFAIR LABOR PRACTICE CHARGE

On January 23, 2018, Charging Parties, Jackie Hayes, *et al.*, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Decatur Public School District 61, violated Section 14(a) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.*[1] After an investigation conducted in accordance with Section 15 of the Act, the Executive Director issues this dismissal for the reasons set forth below.

## II. INVESTIGATORY FACTS

### A. Jurisdictional Facts

Decatur Public School District 61 (District) is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. At all times material, Jackie Hayes, Carolyn Jarrett, and Christopher Young were educational employees within the meaning of Section 2(b) of the Act, employed by Respondent, in the job title or classification of School Security Officer. Service Employees International Union, Local 73 (Union), is a labor organization within the meaning of Section 2(c) of the Act, and the exclusive representative within the meaning of Section 2(d) of the Act, of a bargaining unit comprised of certain of the District's employees, including Hayes, Jarrett, and Young. The Union and District are parties to a collective bargaining agreement (CBA) with a term from June 1, 2015

[1]Charging Parties are a group of three persons, listed by name as follows: Jackie Hayes; Carolyn Jarrett; Christopher Young. Hayes signed and filed the original charge and listed therein the names of several other employees whom he understood wished to join in it. Subsequently, only three of the employees listed in the charge by Hayes, submitted paperwork signing on to it: Jarrett; Young; and Nytalia Cooper-Kersting. Later, the four employees hired an attorney to represent them, and on July 19, 2018, their attorney notified the Board agent in this matter that Cooper-Kersting would no longer be a participant.

to June 30, 2019, which provides for a grievance procedure culminating in arbitration, for the bargaining unit to which Charging Parties belong.

**B. Facts relevant to the unfair labor practice charge**

Hayes, Jarrett, and Young are District security guards. The District employed Hayes in this capacity since January 2014, Jarrett since August 2006, and Young since August 2012. Charging Parties contend they each had a satisfactory working relationship with the District prior to the 2014-2015 school year. Prior to and during the 2014-2015 school year, the District assigned Charging Parties to its Eisenhower High School. At the beginning of the 2014-2015 school year, the District assigned Courtney Settles to one of the four assistant principal positions at Eisenhower. As part of Settles' duties, he was the immediate supervisor of the school's security officers.

Also, near the outset of the 2014-2015 school year, on October 31, 2014, the IELRB certified the Union as the exclusive representative of a bargaining unit comprised of the District's security officers, including Hayes, Jarrett, and Young. Hayes, Jarrett, and Young all assisted with the organizing drive at Eisenhower, with Jarrett in a more prominent role. Hayes and Young later served on the Union's initial bargaining team, and the Union and District concluded negotiations on their first CBA on July 14, 2015. There is no evidence thereafter, they served in any role with the Union or served on later bargaining teams. Charging Parties contend during the organizing drive and subsequent negotiations, and throughout the 2014-2015 school year, Settles became more distant and less friendly towards them than he had been earlier, due apparently in part to the fact the Union requested his removal from the District's bargaining team, to which the District acquiesced. Hayes, Jarrett, and Young each contend the District, primarily through Settles, retaliated against them in various ways.

<u>Hayes</u>

In summer 2015, Hayes contends he, Jarrett, and Young applied for summer security positions at Eisenhower, but were not selected. Charging Parties assert no security officer who assisted the Union or participated in the organization effort was selected for a summer security position that year. The District disputes Charging Parties' recall, asserting they were referring to the summer 2016 interview process, which at the time, they alleged they were not hired due to discrimination on the basis of age, race, and/or gender.

During the 2015-2016 school year, Settles assigned Hayes, and a number of other security officers, the task of issuing tardy passes to students late for school. Hayes believed it was a function to be performed by school secretaries, and objected to performing it, but Settles ignored his complaints. Hayes continued to object to performing the task and eventually sought to file a grievance through the Union regarding the matter. The Union apparently decided the issue was not worth pursuing. The District contends it was Eisenhower's principal, not Settles, who assigned the security officers to the task of issuing tardy passes to students late for school.

On June 28, 2017, Hayes contends the District passed him over for the lead security officer position at Eisenhower. Hayes asserts for the two years prior, he performed the lead security officer's duties, but did not receive the premium pay that went with the position. Hayes further asserts that although he filled the role for the two years prior, the District failed to notify him it was seeking to fill the opening. Instead, Hayes learned from another security officer, the District was accepting applications and applied on the final day to do so. Hayes contends the District failed or refused to grant him an interview. The District contends it posted the lead security officer position in accordance with the CBA, and the Union did not complain or object to its actions with regard thereto. The District further contends it offered Hayes an opportunity to interview for the opening, but he failed to attend his appointment and did not reschedule.

Prior to the 2017-2018 school year, Hayes' hours were 7:00 a.m. to 3:30 p.m. Beginning with 2017-2018 year, the District asserts it had one fewer security officer at Eisenhower than previous years and determined it was more important to have more coverage in the afternoon than in the morning. As a result, Settles changed Hayes hours to 7:30 a.m. to 4:00 p.m. Hayes was displeased with the change in his hours, as it interfered with his obligations outside of work. The District asserts it worked with the Union to accommodate Hayes and transition him to the new schedule. Neither Hayes nor the Union filed a grievance challenging the District's actions with regard to the new schedule.

Shortly prior to the 2017-2018 school year, the District notified Hayes, Young, and the other security officers assigned to Eisenhower that they would have to attend two days of annual training prior to the start of the school year. Previously, Eisenhower security officers, like the remainder of the District's officers, attended the annual training days during the school year, as time permitted. Neither the Union nor

any individual security officer filed a grievance challenging the District's actions with regard to the change in which it scheduled annual training.

Shortly prior to, and again during, the 2017-2018 school year, Hayes injured his leg. Hayes asserted some or all the injury occurred at his workplace or was attributable to his duties, so he filed a worker's compensation claim against the District. The District denied his claim.

In late October or early November 2017, Settles and the lead security officer at Eisenhower changed the assigned duty posts for each officer working at the school. Prior to this change, Hayes was assigned to the security office and was not required to engage in extensive walking. Hayes' new post was in the Eisenhower basement, where he contends he had to engage in extensive walking and climbing of stairs, despite his injury and work restrictions. The District disputes Hayes' contention in this regard, contending the assignment was indeed consistent with his work restrictions. The District asserts at Hayes' new post, he could stand or sit in one location and see the entire area he was responsible for, and in addition, he could use the elevator and therefore, did not have to climb stairs. Hayes' restrictions, which he submitted, indicate he should limit climbing stairs and ladders, limit twisting, alternate sitting and standing, and refrain from physically restraining others. Neither the Union nor any individual security officer filed a grievance challenging the District's actions regarding the change in assigned duty posts.[2]

Jarrett

On March 12, 2015, an Eisenhower student gave Jarrett a cell phone he found in a bathroom, which was apparently misplaced by another student. Jarrett placed the phone in her bag. Later, on the same date, the student who owned the phone reported it missing to Amy Zahm, one of Eisenhower's four assistant principals. Zahm apparently directed Washington, who was security officer, to review the security camera footage to attempt to discover what happened to the missing phone. Later, on March 12, Washington apparently discussed the matter with Jarrett, as he told Zahm, Jarrett told him she had given the phone turned into her, to an Asian student. Later the same day, Laura Anderson, another Eisenhower assistant principal, witnessed Jarrett telling the student who owned the phone, that she had given the phone turned into her to the student to owned it.

[2]The District suspended Hayes for three days beginning on or about December 20, 2017, for submitting inaccurate timesheets and for failing to provide a doctor's letter substantiating the need for certain absences. There is no evidence the Union or Hayes filed a grievance challenging the District's actions regarding this suspension.

On March 13, 2015, the mother of the student who owned the phone, contacted the Decatur Police Department and reported the phone stolen. In the course of the police department's investigation, when interviewed by a detective, Jarrett told him she had given the phone turned into her, to an Asian student.

On or about March 20, 2015, a woman named Sharon Curry approached Bryson Taylor, an Eisenhower security officer, and gave him the phone which had been turned into Jarrett. Curry explained to Taylor, she had found it on a bus. Taylor turned in the phone and reported his conversation with Curry. A Decatur detective later questioned Curry, and she changed her explanation of how she came to possess the phone, stating Jarrett gave it to her and paid her five dollars, to turn in the phone and claim she found it on a bus. Also, the Decatur police department later found Jarrett had arranged for Curry's transportation to Eisenhower High School, to turn in the phone. Subsequently, the Macon County State's Attorney charged Jarrett with theft of the student's cell phone, however, she was acquitted at a bench trial.

After Jarrett's misconduct became clear, Settles placed her on paid administrative leave, and then later, paid suspension. On May 20, 2015, the District had an independent attorney act as a hearing officer and conduct a "just cause" hearing for Jarrett, at which she was represented by her attorney and a Union representative. In a report dated June 1, 2015, the hearing officer found the District had just cause to discipline Jarrett. In a letter dated July 10, 2015, the District's director of human resources notified Jarrett that at the District's board of education meeting on July 14, 2015, it would consider whether to terminate her employment. Ultimately, the board of education opted against termination and returned her to employment.

In August 2015, when Jarrett returned to work, instead of placing her in her former post at Eisenhower, the District assigned her to work at its Phoenix Academy. According to Jarrett, an assignment to Phoenix is among the least desirable postings in the District. Jarrett has worked continuously at Phoenix since 2015. As Jarrett is the only security officer assigned to Phoenix, she contends she is entitled to receive the additional pay and benefits which pursuant to the CBA, go to the lead security officer at a school. Likewise, Jarrett contends the District has ignored her requests that it assign additional security officers to Phoenix. Jarrett further contends that since certification in 2014, the District no longer offers her overtime work at sporting events. Lastly, Jarrett contends in spring 2018, she was "informed by Barbara Morrow, the current principal at [Phoenix], that the administration wanted to get rid of Jarrett[,] and [Jarrett] thought

it may have had something to do with the Union." Morrow denied making the statement Jarrett attributed to her.

Young

Young assisted with the organizing drive at Eisenhower and later served on the Union's initial bargaining team. There is no evidence thereafter, he had any role in the Union or served on later bargaining teams. Young contends during the organizing drive, and subsequent negotiations, and throughout the 2014-2015 school year, Settles became more hostile toward him and manifested his anger by giving Young poor job evaluations and unmerited discipline.

In fact, Young's evaluation scores dropped somewhat dramatically over time. For the evaluation he received on May 11, 2015, which was approximately eight or nine months after the Union organizing campaign began and approximately six and one-half months after the October 31, 2014 certification, and some two months prior to July 14, 2015, the conclusion of negotiations on the security officers' first CBA, the evaluator gave Young a nearly perfect score, 98 out of 100 possible points. A year later, at or near the conclusion of the 2015-2016 school year, in a performance evaluation dated May 17, 2016, the evaluator gave Young 66 out of 100 possible points. The following year, at or near the conclusion of the 2016-2017 school year, in a performance evaluation dated May 22, 2017, the evaluator gave Young 55 out of 100 possible points.

Young also contends the District unfairly disciplined him on several occasions, for a variety of offenses, such as failure to properly record his time, improper or inappropriate statements to students, failure to follow his chain of command, and improper or unauthorized use of sick time. During the relevant time period, the District issued Young the following discipline: 1. April 20, 2016, letter of warning; 2. September 6, 2016, verbal warning; 3. December 12, 2016, letter of reprimand; 4. March 3, 2017, three-day suspension; 5. May 4, 2017, two-day suspension. Young asserts the alleged misconduct giving rise to the above-listed disciplines related to conduct and behaviors he had engaged in before the organizational effort but were never raised or brought to his attention. He contends as soon as he became a participant in the Union's organizing drive, the District began a campaign of harassment by disciplining him for conduct which previously had been acceptable.

Young further asserts in September 2017, the District retaliated against Jarrett, Hayes, and him by granting overtime work to less senior employees. Also, as noted above, prior to the 2017-2018 school year, the District notified Hayes, Young, and the other security officers assigned to Eisenhower that they would have to attend two days of annual training prior to the start of the school year. Previously, Eisenhower security officers, like the remainder of District's officers, attended the annual training days during the school year, as time permitted. Young contends the District's conduct in this regard was to punish him for serving on the Union's first bargaining committee, and to retaliate against Hayes and him for their efforts in organizing for the Union, as the security officers at all other District schools continued, as in the past, to be allowed to attended the annual training days during the school year, as time permitted.

Since the Union's certification, Young has filed two grievances. Young filed his first grievance on September 15, 2016, and it concerned a directive from Sergio Reyna, one of the four assistant principals at Eisenhower. At that time, as part of Reyna's duties, he was the immediate supervisor of the school's security officers. On September 9, 2016, during a meeting with all the security officers, Reyna announced they were not to review footage from the school's security cameras unless they had been directed to do so by a school administrator. In response, Young drafted a document he entitled "Filing a Grievance," which in pertinent part, read as follows:

> [T]his grievance is being filed because the new directive as given by Sergio Reyna is in direct conflict with a security guard's duties as approved by the School Board. This directive disallows for effectiveness in dealing with the many situations that occur in the day-to-day duties of me being a security guard. Moreover, it appears to be punitive and creates a working environment of distrust.

Young filed his grievance with the District's director of human resources, rather than following the process outlined in the CBA. On September 19, 2016, Eisenhower's principal ultimately found Young's grievance lacked merit, concluding the conduct complained-of therein did not violate the CBA. There is no evidence Young or the Union appealed the principal's determination.

Young filed his second grievance (DPS030717-01) through the Union, on March 7, 2017, and it concerned discipline imposed on him by Reyna, for failing to accurately account for his time. It is unclear outcome of this grievance, but it does not appear to have gone beyond the initial steps of the process.

## III. THE PARTIES' POSITIONS

Charging Parties contend the District violated the Act in that it retaliated against them in a variety of ways because they assisted in the Union's organization drive and/or served on the Union's initial bargaining team. The District asserts the charge is untimely filed, denies it violated the Act, and asserts there is no evidence to support a complaint.

## IV. DISCUSSION AND ANALYSIS

### A. The Timeliness Issue

A portion of the instant charge is untimely filed. Pursuant to Section 15 of the Act, no order shall issue based upon any unfair labor practice occurring more than six months prior to the filing with the Board, of the charge alleging the unfair labor practice. The six-month limitations period begins to run when the person aggrieved by the alleged unlawful conduct either has knowledge of it, or reasonably should have known of it. Jones v. IELRB, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995); Charleston Community Unit School District No. 1 v. IELRB, 203 Ill. App. 3d 619, 561 N.E.2d 331, 7 PERI ¶4001 (4th Dist. 1990); Wapella Education Association v. IELRB, 177 Ill. App. 3d 153, 531 N.E.2d 1371 (4th Dist. 1988).

Herein, Hayes, Jarrett, and Young filed their charge on January 23, 2018, and therefore, the date six months prior to their filing was July 23, 2017. Accordingly, alleged unlawful conduct they knew of before July 23, 2017, or reasonably should have known of by that date, cannot be the subject of a timely charge. See, Jones, 272 Ill. App. 3d 612, 650 N.E.2d 1092.

There is no dispute that by no later than May or June 2015, Hayes, Jarrett, and Young knew the District was not going to hire them for the summer security positions at Eisenhower, for which they had applied, and believed those actions were retaliatory. Yet, they did not file the instant charge, contesting the District's actions, until January 23, 2018, approximately 31 months later, and thus, the portion of their charge concerning this allegation is untimely.

Hayes

Likewise, untimely is Hayes' allegation Settles retaliated against him for his protected activity by assigning him, and other security officers, during the 2015-2016 school year, to the task of issuing tardy passes to students late for school. Again, Hayes believed at the time, those actions were retaliatory.

Assuming Settles or the Eisenhower principal, whoever assigned the security officers to the task, did not do so until the middle of the 2015-2016 school year, about February 2016, although it was likely far earlier, Hayes failed to file the charge until approximately 23 months later, making this portion of the charge untimely as well.

Hayes' next allegation, that the District passed him over for the lead security officer position at Eisenhower, is likewise untimely, although far closer than the allegations set out above. He contends the District took that action on June 28, 2017, and believed at the time, it did so in order to retaliate against him for his work on behalf of the Union. Hayes filed the instant charge, contesting that action, on January 23, 2018. As the six-month cut-off was July 23, 2017, regarding this allegation, the charge was filed just under a month late.

Jarrett

Jarrett's allegations regarding the cellphone theft stretch from mid-March to mid-July 2015, and at the time, she attributed the District's actions to retaliation for her protected activity. Again, the six-month cut-off for the charge was July 23, 2017, rendering untimely by approximately two years, these allegations in the charge.

Jarrett also contends her assignment to Phoenix Academy, instead of returning her to Eisenhower, constituted District retaliation for her protected activity. However, the District returned Jarrett to Phoenix in August 2015, where she has worked continuously since that time. As Jarrett plainly knew of her assignment to Phoenix and knew it was in retaliation for her activity on behalf of the Union, nearly two years prior to the filing of the charge, her allegation in this regard is untimely.

The outcome is the same for Jarrett's claims regarding her entitlement to lead security officer pay, the District ignoring her requests it assign additional officers to Phoenix, and the District refusing to assign her overtime work. Since the District assigned Jarrett to Phoenix in August 2015, she has been the lone officer assigned to the school, and since then, the District has refused to pay her lead security officer pay or assign additional officers to Phoenix, due, according to Jarrett, to retaliation for her efforts in assisting with the organizing drive and to a lesser extent, the negotiations which led to the first contract. Jarrett further asserts the District retaliated against her by denying her overtime opportunities since the unit was certified on October 31, 2014, due to her efforts in the organizing drive. Again, however, Jarrett was aware

of her claims regarding premium pay, her request for the assignment of additional officers, and the denial of overtime opportunities, and the perceived reason therefor, by no later than the end of 2015, if not much sooner. Jarrett filed the charge on these allegations at least two years later, well beyond the limitations period, and therefore, it is untimely.

Young

Young contends during the organizing drive, and subsequent negotiations, and throughout the 2014-2015 school year, Settles became more hostile toward him and manifested his anger by giving Young poor job evaluations and unmerited discipline. Indeed, Young's evaluation scores dropped somewhat dramatically over time, but the reason therefor does not appear linked to his activity on behalf of the Union. As noted above, the evaluation he received on May 11, 2015, which was the closest to the organizing drive, certification, and the negotiations for the first CBA, Settles, or whoever evaluated Young, gave him a nearly perfect score. Young's next two evaluations, on May 17, 2016 and May 22, 2017, respectively ten and 22 months after he last engaged in organizing and negotiations on behalf of the Union, were lower, tending to indicate the drop in his scores was unrelated to his protected activity.[3] As noted above, the six month cut-off for the charge was July 23, 2017, rendering untimely Young's allegations as to the evaluations. There is no dispute that by no later than May 2017, Young was in receipt of the complained-of unsatisfactory ratings, and believed they were retaliatory. However, he did not file the instant charge, contesting those actions, until January 23, 2018, eight months after the most recent of the complained-of acts, and thus, his allegations regarding those actions are untimely.

Young also contends the District retaliated against him for engaging in protected activity in that it unfairly disciplined him as follows: 1. April 20, 2016, letter of warning; 2. September 6, 2016, verbal warning; 3. December 12, 2016, letter of reprimand; 4. March 3, 2017, three-day suspension; 5. May 4, 2017, two-day suspension. Young asserts the alleged misconduct giving rise to the above-listed disciplines related to conduct and behaviors he had engaged in before the organizational effort but were never raised or brought to his attention. He contends as soon as he became a participant in the Union's organizing drive,

[3]In other words, during the time period he was openly engaged in activity on behalf of the Union, his evaluation score was nearly perfect, but it dropped after he was no longer involved, and dropped more the further in the past his involvement was. Thus, even if Young's claims regarding the evaluation scores were timely, the evidence indicated they lacked merit.

the District began a campaign of harassment by disciplining him for conduct which previously had been acceptable. Again, however, the six-month cut-off for the charge was July 23, 2017, rendering untimely Young's allegations as to the discipline. Young knew of the complained-of discipline, believed it was retaliatory, yet did not file the instant charge contesting those actions, until January 23, 2018, more than eight months after the most recent of the complained-of acts, and thus, his allegations regarding those actions are untimely.[4]

**B. The Alleged 14(a)(1) Violations**

Charging Parties' remaining allegations are timely filed, but without merit. Under Section 3 of the Act, educational employees are guaranteed the right of self-organization, the right to form, join or assist any labor organization, and the right to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment. Section 14(a)(1) of the Act makes it an unfair labor practice for an employer or its agents to interfere with, restrain or coerce educational employees in the exercise of their Section 3 rights. Proof of illegal motivation is not always necessary in establishing a 14(a)(1) violation. Neponset Community Unit School District No. 307, 13 PERI 1089, 1997 WL 34820232 (IELRB 1997). The Board has long held that cases involving threats or intimidation must be resolved by evaluating whether the conduct at issue, when viewed objectively from the standpoint of an employee, would reasonably have had the effect of coercing, restraining or interfering with the exercise of protected rights. Georgetown-Ridge School District 4 v. IELRB, 239 Ill. App. 3d 428, 465-66, 606 N.E.2d 667, 690 (4th Dist. 1992). In such cases, proof of illegal motivation is not required to show a violation of Section 14(a)(1). Id. Consistent therewith, pursuant to the protected speech provision in Section 14(c) of the Act, an employer's statements do not violate Section 14(a)(1) unless a reasonable employee would view the statements as conveying a promise of benefit or threat of reprisal or force.[5] Id. Correspondingly,

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[4]As Charging Parties noted, it is well settled that untimely allegations may be utilized to shed light on the true character of matters occurring within the limitations period. Charleston Community Unit School District No. 1 v. IELRB, 203 Ill. App. 3d 619, 561 N.E.2d 331, 7 PERI ¶4001 (4th Dist. 1990). The fact such allegations may be used for evidentiary purposes does not permit a complaint for hearing on them, but merely the presentation of the conduct as evidence of anti-union motive during the investigation and hearing. Id. However, in this case, Charging Parties' untimely allegations, even if plead timely, would not have warranted complaint, as there was no evidence of the necessary causal connections between their protected activity and the complained-of conduct by the District. Neponset Community Unit School District No. 307, 13 PERI 1089, 1997 WL 34820232 (IELRB 1997).

[5]Section 14(c) of the Act provides in pertinent part that "the expressing of any views, argument, or opinion or the dissemination thereof...shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

charging party need not make any showing that employees were in fact coerced, restrained, or interfered with, or that respondent had a "bad" motive. Id. The unfair labor practice does not turn on motive, so it is of no consequence that respondent was for example, mistaken, or that it acted upon the advice of legal counsel. Id. As the circumstances of the instant case do not concern or involve allegations of a threat or intimidation, there must be some evidence of improper motive to merit a complaint.

In order for the Board to issue a complaint for hearing on the allegations presented in this case, asserting a violation of Section 14(a)(1), Charging Parties must at least be able to make some showing they engaged in protected activity, Respondent knew of that activity, and Respondent took adverse action against them as a result of their involvement in that activity. Neponset Community Unit School District No. 307, 13 PERI 1089, 1997 WL 34820232 (IELRB 1997).

Hayes

The evidence indicates Hayes engaged in protected activity in that he participated in the organizing drive at Eisenhower and later served on the Union's initial bargaining team, which concluded negotiations on the initial CBA on July 14, 2015. There is no evidence thereafter, Hayes served in any role with the Union or served on later bargaining teams. The District likely knew of Hayes' protected activity, given his role in the organizing campaign and on the negotiating team. The adverse action elements identified by Hayes, are as follows: 1. the change in his hours at the outset of the 2017-2018 school year; 2. the requirement he attend two days of annual training prior to the start of the 2017-2018 school year; 3. the District's failure to grant his worker's compensation claim filed during the 2017-2018 school year; 4. the change in his duty post in October or early November 2017.[6] Hayes' claim fails, however, as the investigatory facts do not indicate that the complained-of conduct occurred because of, or in retaliation for, the exercise of rights protected under the Act.

Regarding the causation element, as the Illinois Supreme Court noted in City of Burbank, the existence of such a causal link is a fact based inquiry and may be inferred from various factors, including: an employer's expressed hostility towards unionization or grievance filing, together with knowledge of the employee's protected activities; proximity in time between the employee's protected activities and the

[6]The District suspended Hayes for three days beginning on or about December 20, 2017, for submitting inaccurate timesheets and for failing to provide a doctor's letter substantiating the need for certain absences. Hayes did not allege this discipline was in retaliation for his protected activity, nor was there evidence to that effect.

disciplinary action; inconsistencies between the proffered reason for discipline and other actions of the employer; shifting explanations for the discipline or discharge of the employee; and disparate treatment of employees or a pattern of conduct which targets union supporters for adverse employment action. City of Burbank v. ISLRB, 128 Ill. 2d 335, 538 N.E.2d 1146, 5 PERI ¶4013 (1989)(citations omitted). The evidence in this matter, however, does not reveal a causal connection between Hayes' protected activity and the adverse action.

There was no evidence herein of hostility by the District toward Hayes with regard to his protected activity. Although Hayes, Jarrett and Young asserted that during the organizing drive and subsequent negotiations, and throughout the 2014-2015 school year, Settles became more distant and less friendly towards them than he had been earlier, his change in demeanor might be attributed to a variety of causes, apart from Charging Parties' union activity. This finding is bolstered by the fact there is no evidence Settles' interactions with Hayes, Jarrett, or Young were less than professional. Certainly, there is no evidence Settles, or any other District agent, disparaged, belittled, or threatened Hayes, Jarrett, or Young with regard to their activities on behalf of the Union. There was no evidence of inconsistencies in the District's explanations or conduct, and no allegation or evidence of disparate treatment in this matter. There was no evidence the District limited to Hayes, the requirement to attend two days of annual training prior to the start of the 2017-2018 school year, or the change in duty posts in late 2017. The fact the District imposed these requirements or changes on all the high school security guards completely undercuts the notion they were aimed at Hayes. Similarly, the District's failure to grant Hayes' worker's compensation claim lacked the necessary causal connection, as there was no evidence that in processing or administering his claim, the District treated Hayes in a manner different than those who had not engaged in protected activity.

It is unclear whether the District, when it changed Hayes' hours at the outset of the 2017-2018 school year, changed the hours of Eisenhower's other security guards, or whether Hayes was the only officer whose shift began at 7:00 a.m. Although Hayes was displeased with his new hours, there was no evidence of inconsistencies in the District's asserted needed for the change or its conduct, nor evidence of hostility in the implementation of the change. In fact, the evidence indicates the District and Union cooperated to ease the transition for Hayes. Moreover, neither Hayes nor the Union filed a grievance over the change in

hours. Ultimately, there is no evidence indicating the District's change to Hayes' hours was causally connected to his protected activity.

Likewise, there was no evidence the District targeted employees who supported the Union or sought its assistance, for adverse employment actions, as might be expected if in fact a causal connection existed. Timing does not support Hayes' claim either, as the District took the complained-of action nearly two years after he last engaged in activity on behalf of the Union. If in fact the District sought to retaliate against Hayes because of his protected activity, it stands to reason it would have done so closer in time to when he actually engaged in such actions. Without some showing Hayes' protected activity caused Respondent to take the complained-of action against him, his claim fails to raise an issue of law or fact sufficient to warrant a hearing.

Jarrett

Like Hayes, the evidence indicates Jarrett engaged in protected activity in that she had a prominent role in the organizing drive at Eisenhower. However, she apparently did not serve on the Union's initial bargaining team, nor is there evidence at anytime thereafter, she served in a role with the Union or served on later bargaining teams. The District likely knew of Jarrett's protected activity, given her prominent role in the organizing campaign. In connection with the charge, Jarrett timely alleged only a single instance of claimed misconduct by the District, contending in spring 2018, she was "informed by Barbara Morrow, the current principal at [Phoenix], that the administration wanted to get rid of Jarrett[,] and [Jarrett] thought it may have had something to do with the Union." Morrow denied making the statement Jarrett attributed to her.

Assuming, *arguendo*, Morrow made the statement, "that the administration wanted to get rid of Jarrett," there is nothing in the statement itself which indicates it had any connection to, or arose out of, her protected activity. Correspondingly, Jarrett did not offer evidence of the context in which Morrow made the statement. Jarrett added or included her thoughts as Morrow made the statement, namely, "it may have had something to do with the Union," but speculation as to the reason Morrow made the statement is not evidence.

Additionally, Jarrett failed to provide evidence of an adverse action, a necessary element to obtain a complaint. Morrow's statement, again, assuming she made it, without more, is not an adverse employment action, and even if it was sufficient to constitute the adverse action element, there is no evidence of a causal

connection, that is, the investigatory facts do not indicate the complained-of conduct, the statement, occurred because of, or in retaliation for, the exercise of rights protected under the Act.

However, proof of illegal motivation is not always necessary in establishing a 14(a)(1) violation. Neponset Community Unit School District No. 307, 13 PERI 1089 (IELRB, 1997). The Board has long held that cases involving a threat or intimidation must be resolved by evaluating whether the conduct at issue, when viewed objectively from the standpoint of an employee, would reasonably have had the effect of coercing, restraining or interfering with the exercise of protected rights. Georgetown-Ridge School District 4 v. IELRB, 239 Ill. App. 3d 428, 465-66, 606 N.E.2d 667, 690 (4th Dist. 1992). Consistent therewith, pursuant to the protected speech provision in Section 14(c) of the Act, an employer's statements do not violate Section 14(a)(1) unless a reasonable employee would view the statements as conveying a promise of benefit or threat of reprisal or force. Id.

In this case, assuming Morrow made the statement, "that the administration wanted to get rid of Jarrett," there is nothing in the statement itself which indicates it had any connection to, or arose out of, Jarrett's protected activity. Additionally, the complained-of statement fragment is in the past tense and factual in nature, lacking any threat of reprisal or force or promise of benefit. Correspondingly, as there is no evidence of an issue with Jarrett's tenure with the District, and without any contextual evidence, it is unclear what Morrow might have meant by it. Based on the foregoing, Jarrett's claim fails to raise an issue of law or fact sufficient to warrant a hearing.

Young

Like Hayes and Jarrett, the evidence indicates Young engaged in protected activity in that he had a role in the organizing drive at Eisenhower and served on the Union's initial bargaining team. There is no evidence Young, at anytime thereafter, served in a role with the Union or served on later bargaining teams. The District likely knew of Young's protected activity, given his roles in the organizing campaign and at the bargaining table. In connection with the charge, Young timely alleged only two instances of claimed misconduct by the District. In the first such instance, Young asserted in September 2017, the District retaliated against Jarrett, Hayes, and him by granting overtime work to less senior employees. Second, Young contended the District retaliated against him in that it required him to attend two days of annual training prior to the start of the 2017-2018 school year.

As with Hayes' claims, and to an extent with Jarrett's, Young's claims fail as the investigatory facts do not indicate that the complained-of conduct occurred because of, or in retaliation for, the exercise of rights protected under the Act. Again, the existence of a causal link is a fact based inquiry and may be inferred from various factors, including: an employer's expressed hostility towards unionization or grievance filing, together with knowledge of the employee's protected activities; proximity in time between the employee's protected activities and the disciplinary action; inconsistencies between the proffered reason for discipline and other actions of the employer; shifting explanations for the discipline or discharge of the employee; and disparate treatment of employees or a pattern of conduct which targets union supporters for adverse employment action. City of Burbank v. ISLRB, 128 Ill. 2d 335, 538 N.E.2d 1146, 5 PERI ¶4013 (1989)(citations omitted). The evidence in this matter, however, does not reveal a causal connection between Young's protected activity and the adverse action.

There was no evidence herein of hostility by the District toward Young with regard to his protected activity. The evidence indicates Settles' interactions with Young were professional, and there is no evidence Settles, or any other District agent, disparaged or threatened Young with regard to his activities on behalf of the Union. There was no evidence of inconsistencies in the District's explanations or conduct, and no allegation or evidence of disparate treatment in this matter. To the contrary, the District imposed the requirement to attend two days of annual training prior to the start of the 2017-2018 school year on all the high school security guards, which completely undercuts the assertion it was aimed at Young. Herein, there was no evidence in any regard, the District treated Young in a manner different than those who had not engaged in protected activity.

Likewise, in September 2017, Young asserted the District retaliated against him by granting overtime work to less senior employees. Other than Young's bare assertion, there is no evidence which ties the adverse action, the loss of overtime work, to his protected activity. Moreover, the parties' CBA governed the distribution of overtime work, and there is no evidence the Union, or Young for that matter, filed a grievance challenging the District's actions in this regard.[7] Young filed two grievances, one in

[7]To the extent Young contends herein the District's distribution of overtime breached the CBA, his claim is without merit. Elementary Teachers' Assn's of West Chicago, IEA-NEA/West Chicago School District 33, 5 PERI ¶1091 (IL ELRB 1989), *aff'd sub nom*, West Chicago School District 33 v. Illinois Educational Labor Relations Board, 218 Ill. App. 3d 304, 578 N.E.2d 232 (1st Dist. 1991)(it is not the Board's function to police collective bargaining agreements, or to otherwise allow parties to use the Board's processes to remedy breaches or to enforce terms).

September 2016 and another in March 2017, but did not allege, nor is there evidence, the District retaliated against him for engaging in that conduct.

**B. The Alleged 14(a)(3) Violation**

Charging Parties' 14(a)(3) claims are flawed in the same manner as their 14(a)(1) claims. To obtain a complaint on their 14(a)(3) allegations, they must at least be able to make some showing they engaged in protected union activity, Respondent knew of that activity, and Respondent took adverse action against them as a result of their involvement in that activity in order to encourage or discourage union membership or support. City of Burbank v. ISLRB, 128 Ill. 2d 335, 538 N.E.2d 1146, 5 PERI ¶4013 (1989); Bloom Twp. High School Dist. 206 v. Illinois Educational Labor Relations Board, 312 Ill. App. 3d 943, 728 N.E.2d 612, 164 LRRM 2284 (1st Dist. 2000); City of Peoria School Dist. No. 150 v. Illinois Educational Labor Relations Board, 318 Ill. App. 3d 144, 741 N.E.2d 690, 166 LRRM 2886 (4th Dist. 2000); Gale and Chicago Housing Authority, 1 PERI ¶3010 (IL LLRB 1985).

Again, as discussed above, although the evidence is clear Charging Parties engaged in protected union activity by assisting with the Union's organizing drive and on the initial bargaining team, the District likely knew of their activity, and the District took adverse action against them in several of the complained-of situations, there is still no evidence whatsoever, for the reasons explained above, the District took the cited adverse action due to Charging Parties' involvement in protected union activity, or of the requisite intent. Instead, as noted above, there was no evidence of hostility by the District toward Charging Parties with regard to their protected activity. There was no evidence of inconsistencies in the District's explanations or conduct, and no allegation or evidence of disparate treatment in this matter. Nor was there evidence the District targeted employees who supported the Union or sought its assistance for adverse employment actions, again, which would be probable if in fact a causal connection existed. Likewise, the timing of Charging Parties' asserted retaliation militates against their claim, as the evidence indicated the District had several earlier opportunities to retaliate if so inclined but did not do so. Without some showing Charging Parties' protected activity caused Respondent to take the complained-of actions against them, their claims fail to raise an issue of law or fact sufficient to warrant a hearing. Their 14(a)(1) claims fail for the same reasons; there is no evidence whatsoever of a causal connection between their protected activity and the adverse employment actions they suffered.

## V. ORDER

Accordingly, the instant charge is hereby dismissed in its entirety.

## VI. RIGHT TO EXCEPTIONS

In accordance with Section 1120.30(c) of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135, parties may file written exceptions to this Recommended Decision and Order together with briefs in support of those exceptions, not later than 14 days after service hereof. Parties may file responses to exceptions and briefs in support of the responses not later than 14 days after service of the exceptions. Exceptions and responses must be filed, if at all, with the Board's General Counsel, 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103. Pursuant to Section 1100.20(e) of the Rules, the exceptions sent to the Board must contain a certificate of service, that is, "**a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service**." If any party fails to send a copy of its exceptions to the other party or parties to the case, or fails to include a certificate of service, that party's appeal will not be considered, and that party's appeal rights with the Board will immediately end. See Sections 1100.20 and 1120.30(c) of the Rules, concerning service of exceptions. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions, and unless the Board decides on its own motion to review this matter, this Recommended Decision and Order will become final and binding on the parties.

**Issued in Chicago, Illinois, this 4th day of January 2019.**

**STATE OF ILLINOIS**
**EDUCATIONAL LABOR RELATIONS BOARD**

**Victor E. Blackwell**
**Executive Director**

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103, Telephone: 312.793.3170
One Natural Resources Way, Springfield, Illinois 62702, Telephone: 217.782.9068