STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Ball-Chatham Educational Association, IEA-NEA, Complainant and Ball-Chatham Community Unit School Dist. No. 5, Respondent	))))))))))))	 Case No. 2020-CA-0005-C

OPINION AND ORDER

I. Statement of the Case

On July 24, 2019, Ball-Chatham Educational Association, IEA-NEA (Union) filed a charge with the Illinois Educational Labor Relations Board (IELRB or Board) alleging that Ball-Chatham Community Unit School District No. 5 (District) committed unfair labor practices within the meaning of Section 14(a) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5 (2018). Following an investigation, the Board's Executive Director issued a Complaint and Notice of Hearing (Complaint) alleging that the District violated Section 14(a)(1) of the Act by refusing to process a grievance, and that its refusal breached the parties' collective bargaining agreement (CBA) so as to indicate repudiation or renunciation of its terms. The parties waived their right to hearing and agreed to proceed upon a stipulated record. Based on the stipulated record, the Administrative Law Judge (ALJ) issued a Recommended Decision and Order (ALJRDO) finding that the District violated Section 14(a)(1) of the Act when it refused to arbitrate the grievance. The District filed exceptions to the ALJRDO. The Union did not file a response to the exceptions. For the reasons discussed below, we affirm ALJRDO and find that the District violated Section 14(a)(1) of 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

Section 14(a)(1) of the Act prohibits educational employers and their agents or representatives from "[i]nterfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act." An employer's refusal to arbitrate a grievance violates Section 14(a)(1) of the Act. *Board of Educ. of City of Chicago v. IELRB*, 2015 IL 118043, 69 N.E.2d 809; *Cobden Unit School District No. 17 v. IELRB*, 2012 IL App (1st) 101716, 966 N.E.2d 503; *Board of Trustees, Prairie State College v. IELRB*, 173 Ill. App. 3d 395, 527 N.E.2d 538 (4th Dist. 1988). There are two valid defenses to an unfair labor practice charge based on an educational employer's refusal to arbitrate a grievance: (1) there is no contractual agreement to arbitrate the dispute; or (2) the grievance is not arbitrable under Section 10(b) of the Act due to a conflict with an Illinois statute.[1] *Board of Educ. of City of Chicago*, 2015 IL 118043, ¶ 20; *Cobden Unit School District*, 2012 IL App (1st) 101716; *Niles Township High School District 219 v. IELRB*, 379 Ill. App. 3d 22, 883 N.E.2d 29 (1st Dist. 2007); *Chicago Teachers Union v. IELRB*, 344 Ill. App. 3d 624, 800 N.E.2d 475 (1st Dist. 2003). The issue of whether a grievance is arbitrable must be kept separate from an analysis of the merits of the underlying grievance claim. *Rock Island County Sherriff v. AFSCME, AFL-CIO, Local 2025*, 339 Ill. App. 3d 295, 791 N.E.2d 57 (3rd Dist. 2003). The Board does not rule on, nor is it influenced by the merits of the grievance. *Id.* This holds true even if one party's underlying claim is frivolous. *Id.* (citing *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564, 568 (1960)).

[1] Section 10(b) of the Act provides: "The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of Illinois."

A. Procedural arbitrability

In its first exception, the District argues that the ALJ ignored the CBA's language regarding knowledge and misconstrued the parties' stipulated facts to find that the grievance was timely. The IELRB has determined that "matters of procedural arbitrability, such as the timeliness of filing a grievance, are matters for the arbitrator to resolve." *Thornton Community College*, 5 PERI 1003, Case No. 88-CA-0008-C (IELRB Opinion and Order, November 29, 1988), citing *John Wiley & Sons v. Livingston*, 376 U.S. 543 (1963) (procedural concerns bearing upon final disposition of dispute should be left to arbitrator).

As a result, the District's objection to the procedural arbitrability of the grievance, that it was untimely, must be submitted to an arbitrator.

B. Whether the grievance is not arbitrable under Section 10(b) of the Act

In its second exception, the District argues that the ALJ conflated the Union's statutory right to bargain wages for bargaining unit members with the right to bargain or otherwise be involved in determining wages for non-employees who are not in the bargaining unit. Yet this case alleges a refusal to arbitrate in violation of Section 14(a)(1) of the Act, not a refusal to bargain in good faith in violation of Section 14(a)(5) of the Act.

The District asserted throughout this proceeding that the grievance was not arbitrable under Section 10(b) of the Act because the subject matter conflicts with Illinois law. In support of its assertion, it cites *Board of Educ. of City of Chicago*, 2015 IL 118043. Therein, the Supreme Court of Illinois affirmed the Illinois Appellate Court's determination that a union's grievances over an employer's policy that probationary appointed teachers who had been nonrenewed or had been given an unsatisfactory performance rating were ineligible for rehire were inarbitrable because they related to the employer's ability to initiate employment, rather than terms and conditions of employment. *Id.* Even if some provision in the parties' CBA could be read to require arbitration of the grievances in that case, the Court indicated that Section 10(b) of the Act would prohibit its enforcement because implementing it would conflict with the Section 4

of the Act,[2] as well as provisions of the Illinois School Code that are not relevant to this matter.[3] Since arbitration is considered part of the bargaining process, a school district cannot be required to arbitrate a matter that is excluded from the bargaining process. *Id.* Hence the ALJ's discussion of mandatory subjects of bargaining in a case alleging refusal to arbitrate absent any allegation of bad faith bargaining.

This case is distinguishable from *Board of Educ. of City of Chicago* for two reasons. First, the grievance in this case does not attack the District's ability to determine whom to hire or not to hire. Rather, it concerns the pay rate of new bargaining unit members and does not conflict with Section 4 of the Act. Second, wages clearly are a term or condition of employment and a mandatory subject of bargaining. *City of Decatur v. AFSCME*, 122 Ill. 2d 353, 522 N.E.2d 1219 (1988); *Lake Forest SD 115*, 31 PERI 67, Case No. 2013-CA-0069-C (IELRB Opinion and Order, October 16, 2014). Wage rates an employer offers to job applicants are mandatory subjects of bargaining because they concern the wages that newly hired employees will be paid. *Monterey Newspapers, Inc.*, 334 NLRB No. 128 (2001). Thus, the ALJ did not conflate the right to bargain wages for bargaining unit members with the right to bargain wages for non-employees who are not yet in the bargaining unit because the wages at issue are those the non-employees will earn as bargaining unit employees.

The District's third exception is that the ALJ conflated the duty to bargain the impact of the decision regarding initial placement on the salary schedule with a contractual obligation to arbitrate a grievance over such placement. The District complains that the ALJ noted that the Union was seeking information in this case that might be used to demand bargaining over the impact of the District's decision where to place new hires on the salary scale, when the grievance actually sought to place the newly hired employees on the 2017-2018 salary schedule and compensate members who have been inappropriately placed. The District may be right that the

[2] Section 4 of the Act provides in relevant part: "Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees and direction of employees."

[3] Section 34-84 of the Illinois School Code, 105 ILCS 34-84, is applicable only to the Board of Education of the City of Chicago and gives that board the authority to appoint certain teachers. Section 10-22.4, 105 ILCS 5/10-22.4, relates to a school district's authority to terminate employment.

ALJ mischaracterized the remedy sought by the grievance. But that does not establish that the grievance was inarbitrable and thus does not warrant overturning the ALJRDO.

Throughout the proceedings, the District maintains that the grievance was not arbitrable under Section 10(b) of the Act because it conflicts with provisions in the Illinois School Code giving the District the power to "appoint all teachers and fix the amount of their salaries, subject to limitations set forth in this Act." 105 ILCS 5/10-20.7. As well as to "appoint all teachers, determine qualifications of employment and fix the amount of their salaries subject to limitation set forth in this Act." 105 ILCS 5/24-1. In an unpublished opinion affirming this Board's remedy in an unfair labor practice case, the Illinois Appellate Court has found that Section 10-20.7 of the School Code does not conflict with the IELRA: "[T]hat very section makes a school board's power to hire teachers subject to limitations set forth in the School Code. One such limitation is contained in section 10–20 of the School Code, which explicitly provides that the powers granted to a local school board does not release a school board from any duty imposed upon it by [the School Code] or any other law. Obviously, one such duty imposed by the Act is to refrain from engaging in unfair labor practices." *Board of Educ. of Harlem Sch. Dist. 122 v. State Educ. Labor Relations Bd.*, 2017 IL App (1st) 161932-U, ¶ 63 (internal citations and quotations omitted). Accordingly, neither the Illinois School Code nor Section 4 of the Act preclude the arbitration of the grievance in this matter.

C. Whether there is no contractual agreement to arbitrate the dispute

The District's final exception is that the ALJ failed to examine the terms of the CBA to determine if the grievance fell within its terms. In determining whether a grievance falls within the terms of the CBA, there is a presumption favoring arbitration, and in cases of doubt the matter should be sent to arbitration. *Board of Governors of State Colleges & Universities v. IELRB*, 170 Ill. App. 3d 463, 524 N.E.2d 758 (4th Dist. 1988); *Warrior & Gulf*, 363 U.S. 574. An exclusion from arbitration must be expressly stated in the contract. *Staunton Community Unit Sch. Dist. No. 6 v. IELRB, 200 Ill. App. 3d 370*, 558 N.E.2d 751 (4th Dist. 1990); *Rock Island County Sheriff*, 339 Ill. App. 3d 295, 791 N.E.2d 57. Without an express provision excluding a particular grievance from arbitration, only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where the arbitration clause is broad. *Warrior & Gulf*,

363 U.S. 574. Apart from matters specifically excluded under the contract, "all of the questions on which the parties disagree must therefore come within the scope of the grievance and arbitration provision of the collective agreement." *Id.* This is in line with the general policy that questions about arbitrability be resolved in favor of arbitration.

In this case, the grievance requested the District place bargaining unit members on the 2017-2018 salary schedule commensurate with actual years of experience and/or education. The District argues that there are no substantive provisions in the CBA regarding initial salary placement. However, Article X of the parties CBA, Employee Compensation, provides that employees "shall be paid in accordance with the salary schedules" attached to the CBA and that "each such employee shall move downward one vertical step for each successive year of employment. Employees will also move horizontally if applicable." The grievance involving placement on the salary schedule falls within the terms of the CBA because the CBA provides that employees shall be paid in accordance with the salary schedule and acknowledges the possibility of horizontal movement.

We affirm the ALJRDO and find that the Employer violated Section 14(a)(1) of the Act by its refusal to arbitrate the grievance.

IV. Order

Respondent violated Section 14(a)(1) of the Act in connection with its unlawful refusal to arbitrate the Union's April 23, 2018 grievance. The ALJRDO is affirmed. For the reasons discussed above, IT IS HEREBY ORDERED that Respondent, Ball-Chatham Community Unit School District No. 5, its officers, and agents shall:

1. Cease and Desist from:
   (a) Refusing to submit Ball-Chatham Educational Association, IEA-NEA's grievance filed on April 23, 2018 to arbitration.
   (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them under the Act.
2. Immediately take the following affirmative action necessary to effectuate the policies of the Act:

(a) Submit Ball-Chatham Educational Association, IEA-NEA's grievance of April 23, 2018 to arbitration.
(b) Post on bulletin boards or other places reserved for notices to employees for 60 consecutive days during which the majority of Respondent's employees are actively engaged in duties they perform for Respondent, signed copies the attached notice. Respondent shall take reasonable steps to ensure that said notice is not altered, defaced, or covered by any other materials.
(c) Notify the Executive Director, in writing, within 35 days after receipt of this order of the steps taken to comply with it.

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: **June 17, 2021**
Issued: **June 21, 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

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

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601
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NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE STATE OF ILLINOIS

THIS IS A NOTICE TO EMPLOYEES THAT MUST BE POSTED PURSUANT TO THE ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD'S OPINION AND ORDER IN Ball-Chatham Educational Association, IEA-NEA, Case No. 2020-CA-0005-C.

Pursuant to an Opinion and Order of the Illinois Educational Labor Relations Board and in order to effectuate the policies of the Illinois Educational Labor Relations Act ("Act"), we hereby notify our employees that:

This Notice is posted pursuant to an Opinion and Order of the Illinois Educational Labor Relations Board issued after an administrative proceeding in which both sides had the opportunity to present evidence. The Illinois Educational Labor Relations Board found that we have violated the Act and has ordered us to inform our employees of their rights.

Among other things, the Act makes it lawful for educational employees to organize, form, join or assist employee organizations or engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection.

WE WILL NOT refuse to submit Ball-Chatham Educational Association, IEA-NEA's grievance filed on April 23, 2018 to arbitration

WE WILL NOT in any like manner, interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them under the Act.

WE WILL submit Ball-Chatham Educational Association, IEA-NEA's grievance of April 23, 2018 to arbitration.

Date of Posting: ______________________ By: ____

As agent for **Ball-Chatham Community Unit School District No. 5**

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 160 N. Lasalle, Ste N-400, Chicago, IL 60601 (312) 793-3170.

IL 548-0062 (11/2000)

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Ball-Chatham Educational Association, IEA-NEA, Complainant and Ball-Chatham Community Unit School District No. 5, Respondent	)))))))))))	Case No. 2020-CA-0005-C

Administrative Law Judge's Recommended Decision and Order

On July 24, 2019, Complainant, Ball-Chatham Educational Association, IEA-NEA (Complainant or Association) filed an unfair labor practice charge against Respondent, Ball-Chatham Community Unit School District No. 5 (Respondent or District), alleging that the District violated Section 14(a) of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1, *et seq.* (2014), *as amended*. After investigation, the Executive Director, on behalf of the Illinois Educational Labor Relations Board (IELRB or Board), issued a complaint and notice of hearing for Complainant's charge. On April 7, 2020, the parties submitted a Stipulation of Facts[1], complete with relevant exhibits, and moved that the undersigned Administrative Law Judge accept the Stipulation in lieu of a hearing. The ALJ accepted the record in lieu of hearing and ordered post-hearing briefs to be filed by August 28. The District submitted a post-hearing brief on that date, while the Association chose to stand by the arguments as stated in its position statement, submitted to the IELRB during the investigation of its charge.

I. Findings of Fact

The following findings of fact are based on the parties' stipulations, as well as documentary evidence in the record that I find to be relevant and credible:

[1] Citations to "JSF at ¶ #" refer to paragraphs within the joint Stipulation of Facts submitted by the parties. Citations to "JSF Ex. X," or to "Ex. X" when immediately preceded by citation to "JSF at ¶ #", refer to exhibits attached to and incorporated within the Stipulation of Facts. Any other document cited in this Recommended Decision and Order will be referred to by title, except as otherwise stated.

At all times material, the District was an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. (Answer at ¶ 2). The Association 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 persons employed by the District. (Answer at ¶ 3-4). The Association and the District were parties to a Collective Bargaining Agreement with a term of August 16, 2015-August 25, 2018. (JSF at ¶ 1). In or before August 2017, District Superintendent Dr. Douglas Wood recommended hiring several individuals as teachers at rates of salary negotiated between Wood and the candidates. (JSF at ¶ 2). Many of those teachers agreed to a starting salary that was lower than the candidate would have been paid had they been a bargaining unit member with the same amount of experience and all of that experience was as a teacher in the District. (JSF at ¶ 3).

The individuals were subsequently hired at the negotiated rates. (JSF at ¶ 9). During contract negotiations in 2015-16, the Association raised the issue of initial salary placement for new hires as a bargaining issue. (JSF at ¶ 14). The District declined to bargain on this matter, calling initial salary placement a "management prerogative." (JSF at ¶ 15). The District held an orientation for new hires on August 9-11, 2017, and the Association addressed the new hires at the orientation. (JSF at ¶ 9). On September 29, 2017, the Association was given a list of the names of all bargaining unit members, along with the amount of dues paid by those members. (JSF at ¶ 10, Ex. B). The list included seven employees newly hired to bargaining unit positions at a rate lower than the candidate would have been paid had they been a bargaining unit member employed by the District for the same amount of time. (JSF Ex. B, D). An eighth employee falling under these criteria began working on or about November 13, 2017, and a ninth began on or about January 3, 2018. (JSF at ¶ 22).

On April 23, 2018, the Association filed a grievance, alleging that it was not informed of new hires as required by the CBA and that new hires were inappropriately placed on the salary schedule based on their experience and/or

education. (JSF at ¶ 11). The grievance requested that the District place all members on the salary schedule accordingly and to provide back compensation to all employees affected. (JSF at ¶ 11). It arises out of Article 5, Section G of the parties' Collective Bargaining Agreement (CBA), which states as follows:

> The association President shall be notified via email of all staffing changes within 7 business days, including newly hired teachers, reassignments, resignations, retirements, and long-term subs. The notification shall include salary schedule placement.

(JSF at ¶ 4, Ex. A at 15).

Article 2, Section B of the CBA provides as follows:

> 1. The grievant shall present the grievance in writing to the immediate supervisor and copied to the Superintendent within 15 days of the occurrence of the event giving rise to the grievance or 15 days from the time the grievant should have become aware of the violation, whichever is later.
>
> (. . .)
>
> 4. If the grievance is not resolved through mediation, the Association may submit the grievance to binding arbitration under the Voluntary Labor Arbitration Rules of the American Arbitration Association, which shall act as the administrator of the proceedings. If a demand for arbitration is not filed within 30 days after the mediation meeting, then the grievance shall be deemed withdrawn.

(JSF at ¶ 7-8, Ex. A at 6-7). A grievance is defined in the contract as "any claim by an employee or the Association that there has been an alleged violation, misinterpretation or misapplication of the terms of this Agreement. . . ." (JSF at ¶ 6, Ex. A at 6).

On May 11, 2018, Superintendent Wood met with the Association's grievance chair to discuss the grievance. After that meeting, the grievance chair sent Wood the names of four individuals the Association knew at the time to have been incorrectly placed. (JSF at ¶ 17). The parties subsequently entered into mediation over bargaining about a successor contract. (JSF at ¶ 20). In a mediation session on October 31, 2018, the District provided the Association with a list of the nine

individuals in question, the step on which they were placed, years of experience, and salary differential. (JSF at ¶ 21). All but two of the employees whose placement was at issue in the grievance were on the first dues report sent to the Association in the 2017-18 school year, and the other two were not on the dues report only because they were hired after the report was sent to the Association. (JSF at ¶ 22, Ex. B and D).

An arbitration hearing was set for April 4, 2019. (JSF at ¶ 23). On March 21, counsel for the District informed the arbitrator that an issue of arbitrability has arisen and would need to be resolved before the parties could continue. (JSF at ¶ 23). The District argued that, because the issue of where newly hired teachers could be placed on the salary schedule was not addressed by the collective bargaining agreement, there is no basis for the filing of a grievance, and that the District would therefore not participate in any arbitration proceedings until the question of arbitrability has been resolved. (JSF at ¶ 23, Ex. E–I).

The arbitrator then set a conference call for March 22, but later cancelled that call and requested written statements on the issue of arbitrability. (JSF at ¶ 24, Ex. F). The Association submitted its statement on that same date, arguing that the employer's failure to inform the Union of new hires and of the placement of those new hires on the contractual salary schedule effectively deprived the Association of its statutory right to bargain wages. (JSF Ex. G). The District responded on March 27, arguing that while the Association argues that it is simply requesting to hold an arbitration hearing over the issue of whether the District adhered to the contract when it failed to inform the Association of new hires and the placement of those hires on the salary scale, what the Association really wants is to hold a hearing over the District's determination of the placement of those individuals on the salary scale. (JSF Ex. H). It admitted that the District violated Article V, Section G of the CBA, but argued that the Association had information about the violation beginning in August 2017. (JSF Ex. H). The District argued further that it has no obligation to bargain over the initial pay and placement on salary scale of new employees because there is no provision in the CBA that obliges it to do so. *Id.* Finally, the District argued that the hearing should not go forward because the District intends to use its

refusal to submit a grievance to arbitration as a method to challenge the issue of arbitrability. *Id.* The Association responded to this argument on the same day. (JSF Ex. I). The Association argued in its response that Section 10 of the IELRA states that the employer has a duty to bargain with exclusive representatives over wages. (JSF Ex. I).

On March 28, the arbitrator ordered that the hearing date be adhered to, and subsequently made travel plans to go to Springfield for the hearing. (JSF at ¶ 25, 27, Ex. J, Ex. F at 7-8). On March 29 and again on April 2, the District informed the arbitrator that it would refuse to participate at the hearing and that it was challenging the issue of arbitrability. (JSF at ¶ 28, Ex. F at 7-9). The instant ULP followed on July 24, 2019. (Complaint and Notice of Hearing at ¶ 1).

II. Issues and Contentions

The complaint alleges that the District violated Section 14(a)(1) of the Act when it refused to process the grievance filed by the Union, and that its refusal breached the CBA so as to indicate repudiation or renunciation of its terms. The District denies that the complained-of conduct violates the Act, and that while it does not dispute that its actions violated Article V, Section G of the contract, the Association had knowledge of its violation of the contract in August 2017 when the Association participated in orientation for new hires, that there is no contractual agreement that can be grieved with regard to the wages of new hires to bargaining unit positions, that the matter of initial salary placement is intertwined with the managerial right to hire such that to bargain over initial salary placement would render the employer's right to hire an illusion, and that if the terms of the contract do require that the District bargain the salary placement of new hires with the Union, those terms would violate Section 10(b) of the Act because they would run contrary to the School Code.

III. Discussion and Conclusions of Law

Section 14(a)(1) of the Act prohibits educational employers from "[i]nterfering, restraining or coercing employees in the exercise of rights guaranteed under this Act." When an educational employer refuses to process a grievance in any way, including

but not limited to submission of a grievance to binding arbitration if provided for by the parties' CBA. Chicago Board of Education v. IELRB, 2015 IL 118043 at ¶ 19. Refusal to submit the grievance to arbitration is, however, a valid method to challenge the issue of arbitrability. 2015 IL 118043 at ¶ 19. A school district may refuse to arbitrate a grievance when there is no contractual agreement to arbitrate the substance of the dispute, or when the dispute is not arbitrable pursuant to Section 10(b) of the Act because the subject matter of the dispute conflicts with Illinois law. *Id*.

Here, the District argues that it was justified in refusing to submit the grievance to arbitration both because there is no contractual agreement to process the grievance and because the subject matter of the dispute violates Illinois law and therefore runs afoul of Section 10(b) of the Act.

A. There Is A Contractual Agreement to Process the Grievance

Under the terms of the CBA, a grievance is "any claim by an employee or the Association that there has been an alleged violation, misinterpretation or misapplication of the terms of this Agreement. . . ." (JSF at ¶ 6, Ex. A at 6). A grievance must be presented to the District within 15 days of the date on which the alleged violation occurred, or when the Association discovers or should have discovered the alleged violation, and that any grievance filed outside of that time frame is barred. (JSF at ¶ 7-8, Ex. A at 6-7). In this case, the Association was permitted to speak to new hires on August 9-11, 2017, and received a list of all employees including seven of the nine new hires at issue in this grievance in September 2017. (JSF at ¶ 9-10, Ex. B). The eighth and ninth employees at issue were both hired after September 2017. (JSF at ¶ 22).

The grievance at issue in this charge was filed on April 23, 2018. (JSF at ¶ 11). The District argues that, because the Association met with new hires in August 2017, or, in the alternative, because the Association received a list of employees including all new hires employed as of September 2017, there is no contractual agreement to process the grievance because it is untimely. However, the District's timeliness argument fails because there is no evidence indicating when the Union became aware

of the eighth or ninth employee. At the very least, the Association's grievance as it relates to the eighth or ninth employee may be timely. In this case, the first seven instances where the District failed or refused to provide notice may be used as evidentiary evidence even if the grievance as it relates to those seven employees is itself untimely. *See* Local Lodge No. 1424 v. NLRB, 361 U.S. 411, 417 (1960) (events occurring more than six months before the filing of an unfair labor practice charge may be used as evidence of alleged violations that occur within the limitations period).

Furthermore, because neither the August 2017 meeting nor the September 2017 list of all unit members included any information about the previous experience for those new hires or the step on which they were placed, the Association was not put on notice as to the circumstances of the new hires. The Association argues that this rendered it incapable of performing its role as the exclusive representative of those employees, in that it denied the Association its statutory obligation to bargain over the wages, hours, and terms and conditions of employment for these employees.

The District cites Alton Firefighters Association, 22 PERI 102 (Decision and Order of the Illinois Labor Relations Board State Panel, August 11, 2006) to support the idea that, because it submitted the requested information to the Association on October 31, 2018, an arbitration hearing would be redundant because the violation has been remedied. In Alton Firefighters Association, the Union filed an unfair labor practice charge after two employees were terminated. The employees both challenged their termination via grievance, and the ILRB deferred to arbitration. At arbitration, the employees were reinstated with full back pay, but no interest on that back pay. After the arbitrator's decision, the City moved to defer to the arbitrator's award and dismiss the unfair labor practice charge. In its decision dismissing the charge, the ILRB reasoned that the arbitrator had the opportunity to review the evidence underpinning the decision, and that deferral to the awards where there is no clear reason not to do so serves the purpose of administrative efficiency, which is one of the main drivers of the deferral doctrine.

Whereas in Alton Firefighters Association, the dispute was over whether the arbitrator's award served as an adequate remedy, in this case, the District is attempting to avoid the issue of arbitration altogether. The District reasons that, as in Alton Firefighters Association, the underlying contractual issue has been remedied, and just as the ILRB did not need to hear the unfair labor practice charge because the arbitrator issued a decision on the merits, the District should not need to proceed to arbitration because it deems the underlying issue to have been resolved when it gave the Association the list of employees on October 31. This interpretation stretches Alton Firefighters Association far past its breaking point. The very point on which the ILRB's decision turns in that matter is that an arbitrator rendered a decision on the merits of the grievance. Only upon review of the arbitrator's decision did the ILRB decide that the charge should be dismissed. Alton Firefighters Association is easily distinguishable from the instant matter. In this matter, no such independent factfinder has had the opportunity to consider the facts at issue and what the remedy should be if the District's actions constitute a violation of the contract.

In the unfair labor practice context, the Supreme Court has held that a charge filed over an employer's refusal to hold a representation election was not rendered moot by the employer's subsequent agreement to hold an election before being so ordered by the NLRB. NLRB v. Raytheon Co, 398 U.S. 25, 27-28 (1970). Accordingly, the District cannot here substitute its own judgment that all issues have been substantially remedied for an arbitrator's decision on that very same question.

Finally, the District argues that there can be no contractual agreement to process the grievance because the contract does not address the issue of where newly hired teachers may be placed on the salary scale, and therefore that the Association has no right to grieve the salary placement of these employees. The District cites to Chicago Board of Education, 2015 IL 118043, to support this conclusion. In Chicago Board of Education, the Illinois Supreme Court found that the Chicago Board of Education was not required to arbitrate a grievance that sought to reinstate employees who had received "Do Not Hire" designations, because the designations do

not involve mandatory subjects of bargaining. 2015 IL 118043 at ¶ 31. Rather, the designations implicate only the Board of Education's inherent and nondelegable managerial right to initiate employment. 2015 IL 118043 at ¶ 31. For this reason, there is not and cannot be a contractual agreement to arbitrate a grievance on this issue. *Id.* It does not in any way address the statutory right and obligation of the exclusive representative to bargain over wages, hours, and terms and conditions of employment. By way of contrast, in this case, the Association argues in this case that the whole reason for Article V, Section G of the CBA is that it enables the Association to perform its statutory role as exclusive representative. It does not seek to force the employer to employ any specific individual, nor does it attempt to force the employer to direct its employee in any particular manner. The Association seeks to obtain information that might be used to demand bargaining over the impact of the District's decision on where to place new hires on the salary scale. Chicago Board of Education is therefore inapplicable to the instant case.

In conclusion, the District does not dispute that it violated Article V, Section G of the CBA. It argues instead that the grievance is untimely, its failure to provide the information has been remedied, and there are no contractual provisions regarding the placement of new hires on the salary scale. I find that the grievance is not conclusively untimely because there is no evidence as to when the Association became aware of the eighth and ninth employee whose salary is at issue. Therefore, the decision of whether the grievance was in fact timely filed, whether the District violated the contract, and what the remedy should be for any such violation is a decision best left to an arbitrator. The grievance therefore does raise a question of whether there is a contractual agreement to grieve the substance of this dispute to arbitration.

B. Section 4 and 10(b) of the IELRA

Section 4 of the IELRA gives employers exclusive power over matters of inherent managerial policy, which in relevant part includes but is not limited to the "selection of new employees." Section 10(b) of the IELRA states that parties may not put anything in a collective bargaining agreement that would be in violation of, or in

conflict with, Illinois state law. The Illinois School Code gives school districts the power to "appoint all teachers, determine qualifications of employment and fix the amount of their salaries." 105 ILCS §5/10-21.7.

The District argues that, because the right to hire is an inherent managerial right, that right extends to the initial salary of the newly hired teacher. It goes on to argue that, if the Union is permitted to bargain over the wage paid to a new hire, the employer's right to initiate employment is illusory. Therefore, the District reasons, the Association not only does not have the contractual right to bargain over the placement of a new hire on the salary scale, but even if the contract so provided, that provision would be illegal pursuant to Sections 4 and 10(b) of the Act and the School Code and therefore unenforceable.

The District is, of course, correct that it has the nondelegable right to initiate employment, and that the school code allows it to set wages. Its argument that it has the right to do so without being required to, at the very least, bargain the impact of its wage placement, however, is misguided. Section 10 of the IELRA explicitly requires educational employers to bargain with certified exclusive representatives over wages, hours, and terms and conditions of employment. While it does not appear that the IELRB has ever considered the issue, the NLRB has found that the rates offered to job applicants "vitally" affect current employees of a bargaining unit. Monterey Newspapers, 334 NLRB No. 128 at 1020 (Decision and Order, August 9, 2001). While the IELRB is not bound to follow NLRB precedent, it has historically "take[n] into consideration decisions which it deems persuasive and relevant to the issues before it." Lake Zurich School District No. 95, 1 PERI 1031 at fn. 2 (IELRB Opinion and Order, November 30, 1984).

The District offers a hypothetical in which an experienced teacher from a smaller school district wished to be employed by the District, but that the District would only be willing to hire this person if they could place them at a step lower than that which they would be placed if they had 18 years' experience in the District. In this hypothetical, the District states that the employee would make more working for the District than in the employee's previous employer, even if less than what a

District employee of 18 years would be making. Without conceding the employer's premise, consider an alternative hypothetical in which the new hire was placed at a higher, rather than lower, step than their previous experience would merit if that experience had been with the District. It is difficult to see how an exclusive representative could be barred from demanding bargaining over the impact of that decision, yet that is the conclusion that the District would have us reach.

I do not here hold that the duty to bargain exists, as that is not the question before me. Rather, I hold that the Association has a right to bargain that does not contradict the School Code, and that the District's argument that a theoretical arbitrator's contractual interpretation that would require it to bargain over the wages received by new hires would not make that section of the contract rendered moot by Section 10(b) of the Act. Because the substance of the dispute is not barred by Section 10(b) of the Act, and there is a contractual agreement to arbitrate the grievance, the District's refusal to arbitrate the grievance violated Section 14(a)(1) of the Act.

IV. Conclusions of Law

I find that the District violated Section 14(a)(1) of the Act when it refused to submit the grievance to arbitration.

V. Recommended Order

For the reasons discussed above, I recommend that the Respondent, Ball-Chatham Community Unit School District No. 5, and its officers and agents be ordered to:

1. Cease and Desist from
   a. Refusing to submit the Association's grievance filed on April 23, 2018 to arbitration.
   b. In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed under the Act.
2. Immediately take the following affirmative action to effectuate the policies of the Act:
   a. Submit the Association's grievance of April 23, 2018 to arbitration.

a. Preserve and, upon request, make available to the IELRB or its agents for examination and copying all records, reports, and other documents necessary to analyze the amount of the remedy due under the terms of this decision;
b. Post at all places where notices to employees of Ball-Chatham Community Unit School District No. 5 are regularly posted copies of the attached Notice to Employees. This Notice shall be signed by Ball-Chatham Community Unit School District No. 5's authorized representative and maintained for sixty (60) calendar days during which the majority of employees are working. Ball-Chatham Community Unit School District No. 5 shall take reasonable steps to ensure that said Notices are not altered, defaced, or covered by any other materials; and
c. Notify the Executive Director in writing within thirty-five (35) calendar days after receipt of this Opinion and Order of the steps taken to comply with it.

VI. Right to File Exceptions

Pursuant to Section 1120.50(a)(1) of the Board's Rules and Regulations, Ill. Admin. Code, tit. 80, § 1120.50(a)(1) (1984), the parties may file written exceptions to this Recommended Decision and Order and briefs in support of those exceptions no later than 21 days after receipt of this decision. Exceptions and briefs must be filed with the Board's General Counsel. At this time, parties are highly encouraged to direct said exceptions and responses, if at all, to the general email account at ELRB.mail@illinois.gov. If no exceptions have been filed within the 21-day period, the parties will be deemed to have waived their exceptions. Under Section 1100.20 of the Board's Rules, Ill. Admin. Code, tit. 80, § 1100.20 (1984), parties must send a copy of any exceptions they choose to file to the other parties and must provide the Board with a certificate of service. A certificate of service is "a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service." Ill. Admin. Code, tit. 80 § 1100.20(e) (1984). If a party fails to send

a copy of its exceptions to the other parties or fails to include a certificate of service, that party's appeal rights with the Board will end.

Dated: December 22, 2020
Issued: Chicago, Illinois

Nick Gutierrez
Administrative Law Judge

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