

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Forest Park Teachers' Association, IEA-)	
NEA, Stephen Drent and Paul Cushing,)	
)	
Complainants)	
)	
and)	Case No. 2019-CA-0065-C
)	
Forest Park School District 91,)	
)	
Respondent)	

Forest Park Teachers' Association, IEA-)	
NEA, Marilyn Goldenberg and Della Hosty,)	
)	
Complainants)	
)	
and)	Case No. 2020-CA-0055-C
)	
Forest Park School District 91,)	
)	
Respondent)	

OPINION AND ORDER

I. Statement of the Case

On April 18, 2019, Forest Park Teachers Association, IEA-NEA (Union), Stephen Drent (Drent) and Paul Cushing (Cushing) filed a charge with the Illinois Educational Labor Relations Board (IELRB or Board), Case No. 2019-CA-0065-C. On April 20, 2020, the Union, Marilyn Goldenberg (Goldenberg) and Della Hosty (Hosty) filed a charge with the Board, Case No. 2020-CA-0055-C.¹ Both charges allege that Forest Park School District 91 (Respondent or District) committed unfair labor practices within the meaning of Section 14(a) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1 *et. seq.* Following an investigation, the Board's

¹ Susan Milauskas was also included in the charge and the Complaint in 2020-CA-0055-C but has since withdrawn her claim.

Executive Director issued a Complaint and Notice of Hearing on December 20, 2019 in Case No. 2019-CA-0065-C, on August 7, 2020 in Case No. 2020-CA-0055-C, and an Amended Complaint and Notice of Hearing in Case No. 2020-CA-0055-C on August 31, 2020 correcting technical errors contained in the previously issued Complaint. The Complaints allege that Respondent violated Section 14(a)(5) of the Act when it implemented an unlawful contractual provision in violation of Section 10(b) of the Act by deducting excess contributions owed to Illinois Teachers Retirement System (TRS) from a lump sum payment that it is contractually obligated to pay retirees in violation of the Illinois Pension Code (Pension Code), 40 ILCS 5/1-101 *et seq.* Pursuant to the parties' joint motion, the Executive Director consolidated Case Nos. 2019-CA-0065-C and 2020-CA-0055-C for all purposes before the Board.

In lieu of a hearing, the parties agreed to proceed on a stipulated record. On May 5, 2021, the parties submitted their stipulated record to the Administrative Law Judge (ALJ) assigned to preside over the hearing. In addition, the parties submitted a stipulation to a waiver of hearing, and requested these cases be placed directly on the Board's agenda for decision, as there are no material issues of fact.² After reviewing the stipulated record, the ALJ agreed and ordered these cases removed to the Board for decision. The parties subsequently filed simultaneous briefs to the Board. For the reasons discussed below, we dismiss the Complaints.

II. Issues

The parties stipulated that the issues to be decided are:

- 1) Whether both charges were timely filed and/or Complainants are otherwise barred from obtaining the relief requested;
- 2) Whether (a) the collective bargaining agreement's lump sum payment retirement provision violated Section 16-158(f) of the Pension Code; (b) the District has implemented an unlawful contractual provision in violation of Section 10(b) of the Act;

² References to documents contained in the stipulated record are as follows: the parties' stipulation, "Stip. ¶ ____", joint exhibits, "Jt. Ex. ____", and declarations of witnesses, "____ Decl. ¶ ____".

and (c) the District violated Section 14(a)(5) and, derivatively, Section 14(a)(1), of the Act; and

- 3) If an unfair labor practice is found to have been committed, what is the appropriate remedy.

III. Facts

The facts, based upon the parties' stipulated facts and joint exhibits, are not in dispute before the Board and are as follows:

Respondent is an elementary public school district located in Forest Park, Illinois. Stip. ¶ 2. At all times material, Respondent was an educational employer within the meaning of Section 2(a) of the IELRA and subject to the jurisdiction of the Board. Stip. ¶ 2; Jt. Ex. 42. The Union is a labor organization within the meaning of Section 2(c) of the Act, and is an exclusive representative within the meaning of Section 2(d) of the Act of a bargaining unit consisting of all Respondent's full-time and part-time certified or licensed employees, except administrators and other managerial and supervisory employees, and confidential employees. Stip. ¶ 3; Jt. Ex. 50. The Union and Respondent have been parties to a series of collective bargaining agreements, covering the periods 2006-2009, 2009-2012, 2012-2015, 2015-2019 and 2019-2022. Stip. ¶ 6; Jt. Exs 1-5. Complainants Drent and Cushing were employed by the District as teachers/licensed employees until they retired at the end of the 2017-2018 school year and were educational employees within the meaning of Section 2(b) of the Act. Stip. ¶ 4. Cushing served as one of the Union's Co-Presidents during the 2016-2017 school year, and as its President during the 2017-2018 school year. Stip. ¶ 4. Complainants Goldenberg and Hosty were employed by the District as teachers/licensed employees until they retired at the end of the 2018-2019 school year and were educational employees within the meaning of Section 2(b) of the Act. Stip. ¶ 5. Drent, Cushing, Goldenberg and Hosty retired under the 2015-2019 Collective Bargaining Agreement. Stip. ¶ 7.

The 2015-2019 contractual retirement provision at issue in this case, entitled "Lump Sum Payment," provides:

Teachers who satisfy the eligibility criteria set forth above will be entitled to receive a lump sum stipend based upon years of service in District No. 91. The lump sum stipend available to Teachers who retire under this program will be calculated by multiplying one

percent (1%) of the Teacher's final year's salary by the Teachers' number of years of full-time teaching service in District No. 91, to a maximum stipend of twenty-five percent (25%). Teachers giving notice of intent to retire in their final year of employment will receive that portion of the stipend prior to retirement which will increase the Teacher's creditable earnings by six percent (6%) over his or her prior year's creditable earnings. The remainder of the stipend, if any, will be paid after the Teacher retires and receives his or her final paycheck for regular earnings. Such post-retirement payments shall not be creditable earnings for TRS purposes.

A teacher who will not be eligible for retirement until the second, third or fourth year of this Agreement may give notification of his/her intent to retire prior to the year of eligibility without loss of benefit for the year notice is given. Such Teachers may elect to have their TRS creditable earnings increased by six percent (6%) each year prior to retirement over each year's prior creditable earnings but only for those years subsequent to the giving of notification of his/her intent to retire, with said increased deducted from the lump sum stipend generated by the calculation set forth above.

The remainder of the stipend, if any, will be paid after the teacher retires and receives his or her final paycheck for regular earnings. Such post-retirement payments shall not be creditable earnings for TRS purposes.

It is the intent of the parties that nothing contained in this retirement provision shall result in the Board incurring any additional cost or penalty from TRS. Therefore, any payments required of the Board for a teacher's salary or creditable earnings increases in excess of the TRS limit (currently 6%) will be paid out of the stipend calculated above before payment of the remainder, if any, to the teacher.

(*) The term "final year's salary" as used in this section shall refer to the Teacher's total salary exclusive of any additional compensation the Teacher may receive for extra duties, for any additional work, or for fringe benefits.

Stip. ¶ 8; Jt. Ex. 4 (Lump Sum Payment retirement provision).

Prior to the 2017-2018 school year, the District implemented the Lump Sum Payment retirement provision without complaint (formally, informally, through a grievance, through an unfair labor practice charge, or in any other fashion) from the Union and/or any of its members. Stip. ¶ 9; Brophy Decl. ¶ 4. Prior to the 2017-2018 school year, seven teachers who retired from the District had their post-retirement stipends reduced without issue to pay for TRS excess contributions in accordance with the Lump Sum Payment retirement provision. Brophy Decl. ¶ 7.

During the 2015-2016 school year, Cushing and Drent notified the District of their intent to retire effective as of the end of the 2017-2018 school year, pursuant to the Lump Sum Payment retirement provision. Stip. ¶ 12. The District provided Cushing with projected retirement information via email on August 27, 2015. Stip. ¶ 13; Jt. Ex. 7. In a December 11, 2015 email, the

District provided Drent with estimated retirement information as well. Stip. ¶ 14; Jt. Ex. 8. On July 22, 2015, District Assistant Superintendent for Operations/Chief School Business Official Ed Brophy (Brophy), provided Goldenberg with projected retirement information via email. Stip. ¶ 15; Jt. Ex. 9. On August 24, 2015, shortly after the 2015–2019 collective bargaining agreement took effect, Goldenberg provided a written notice to the District, stating she would be retiring at the end of the 2018–19 school year, pursuant to the Lump Sum Payment retirement provision. Stip. ¶ 16. On April 25, 2016, Brophy met with Hosty to discuss her possible retirement from the District. Stip. ¶ 17; Jt. Ex. 10. She later informed Brophy that she did not want to submit her notice of retirement at that time. Stip. ¶ 17. Subsequently, Brophy provided Hosty with projected retirement information. Stip. ¶ 17; Jt. Ex. 11. On November 22, 2016, Hosty provided her notice of intent to retire effective as of the end of the 2018–2019 school year. Stip. ¶ 18; Jt. Ex. 12.

In or around July 2017, an issue arose with respect to the Lump Sum Payment retirement provision regarding Hosty. Stip. ¶ 19. Subsequently, the District and the Union engaged in discussions to clarify the Lump Sum Payment language. Stip. ¶ 19; Jt. Ex. 13. Before it would agree to any memorandum of understanding, the Union said that it wanted to see a breakdown of Hosty’s and other soon-to-be retiring teachers’ yearly earnings and future lump sum stipend amounts. Stip. ¶ 20. On September 12, 2017, the District’s attorney sent the requested information to Larry Petchenik (Petchenik), who then served as a UniServ Director for the Illinois Education Association. Stip. ¶ 19 & 20; Jt. Ex. 14. Upon receiving the information, the Union contemplated filing a grievance regarding the payment of TRS excess contributions. Stip. ¶ 21; Jt. Ex. 15. The District said that it was open to suspending the initial grievance filing timelines. Stip. ¶ 21; Jt. Ex. 16.

On October 19, 2017, TRS employer services project manager Lisa Locki (Locki) sent a letter to District Superintendent Louis Cavallo (Cavallo). Stip. ¶ 22; Jt. Ex. 18. Therein, Locki indicated that TRS conducted an audit during the 2016–2017 school year and noted a provision of the 2015–2019 collective bargaining agreement did not comply with the Pension Code. Jt. Ex. 18. She added that TRS received a copy of the calculation of Hosty’s retirement incentive and salaries which are being reduced by the estimated employer cost for salary increases in excess of 6%. Jt. Ex. 18. She cited Section 16–158(f) of the Pension Code and stated that “[t]he CBA allows a retiring teacher’s

retirement incentive payment to be reduced by the amount of the employer's cost for excess salary increases. Collecting employer contributions from a member is unlawful." Stip. ¶ 22; Jt. Ex. 18. Despite Locki's letter, on November 14, 2017, the District's attorney emailed Petchenik, stating that "it is the District's position that it will enforce the contract language as written. That is, the District will continue paying any TRS costs associated with an employee's salary exceeding 6% from the stipend pot calculation." Stip. ¶ 23; Jt. Ex. 19.

On December 1, 2017, the Union filed a grievance. Stip. ¶ 24; Jt. Ex. 20. Therein, the Union referenced Locki's October 19, 2017 letter and indicated that based on the letter, the District could not enforce the Lump Sum Payment retirement provision. Jt. Ex. 20. On December 28, 2017, Cavallo denied the grievance at step 2 of the grievance procedure. Stip. ¶ 25; Jt. Exs. 4 and 21. On February 8, 2018, a step 3 grievance hearing was held between the District's Board of Education, and Petchenik and Cushing, regarding the grievance. Stip. ¶ 26; Jt. Exs. 4 and 22. On February 12, 2018, Cavallo notified the Union that following the above mentioned hearing, the District's Board of Education had voted unanimously to adopt Cavallo's written response and deny the Union's grievance. Stip. ¶ 27; Jt. Ex. 23. The Union filed its demand for arbitration with the American Arbitration Association on February 23, 2018. Stip. ¶ 28; Jt. Ex. 24. The Union voluntarily withdrew its demand for arbitration on June 8, 2018. Stip. ¶ 29; Jt. Ex. 25.

In the second half of calendar year 2018, TRS determined that excess contributions were due from the District based on Cushing and Drent's creditable earnings. Stip. ¶ 30. TRS notified the District via invoice and by sending individual letters to the District regarding the calculations used to determine the excess employer costs due. Stip. ¶ 30. By letter dated August 14, 2018, TRS notified the District that it owed TRS \$7,987.29 as an excess cost contribution with respect to Drent. Stip. ¶ 31; Jt. Ex. 26. A document setting forth TRS' "Excess Salary Increase Cost Calculation" was attached to the August 14 letter. Stip. ¶ 31; Jt. Ex. 26. The August 14 letter was the first time TRS notified the District of its calculation of the excess contributions payable by the District with respect to Drent. Stip. ¶ 31. In a letter dated October 23, 2018, TRS notified the District that upon review of the excess salary increase cost calculation with respect to Drent, it had determined that Drent's excess salary increase cost amount was \$9,541.64, and not \$7,987.29 as had been originally

calculated. Jt. Ex. 27. In the same letter, TRS provided an explanation of the basis for the recalculation. TRS' letters of August 14, 2018 and October 23, 2018 were the only times that TRS notified the District of its calculation of the excess contributions payable by the District with respect to Drent. Stip. ¶ 32. By letter dated December 4, 2018, TRS notified the District that it owed TRS \$4,246.55 as an excess cost contribution with respect to Cushing. Jt. Ex. 28. A document setting forth TRS' "Excess Salary Increase Cost Calculation" was attached to the letter. Stip. ¶ 33; Jt. Ex. 28. The December 4, 2018 letter was the first time TRS notified the District of its calculation of the excess contributions payable by the District with respect to Cushing. Stip. ¶ 33. In the second half of calendar year 2019, TRS determined that excess contributions were due from the District based on Goldenberg and Hosty's creditable earnings. Stip. ¶ 34. TRS notified the District by invoice and by sending the District individual letters regarding the calculations used to determine the excess employer costs due. Stip. ¶ 34. TRS notified the District that it owed TRS \$2,921.48 with respect to Hosty in a letter dated July 2, 2019. Stip. ¶ 35; Jt. Ex. 29. A document setting forth TRS' "Excess Salary Increase Cost Calculation" was attached to the letter. Stip. ¶ 35; Jt. Ex. 29. The July 2, 2019 letter was the first time TRS notified the District of its calculation of the excess contributions payable by the District with respect to Hosty. Stip. ¶ 35. TRS notified the District for the first time that it owed TRS \$8,537.30 with respect to Goldenberg in a letter dated July 5, 2019. Stip. ¶ 36; Jt. Ex. 30. A document setting forth TRS' "Excess Salary Increase Cost Calculation" was attached to the letter. Stip. ¶ 36; Jt. Ex. 30. The District received another bill, dated January 25, 2020, from TRS with respect to Goldenberg and Hosty's excess cost contributions. Stip. ¶ 37; Jt. Ex. 31. According to TRS, the District owed an additional \$48.81 for Goldenberg and \$16.70 for Hosty. Stip. ¶ 37; Jt. Ex. 31.

Over the District's winter break in the 2018-19 school year, it sent both Cushing and Drent separate post-retirement checks, without any documentation explaining the amounts paid, other than payroll deductions required by federal and state law; there was no information regarding any deduction due to excess TRS contributions. Stip. ¶ 38; Jt. Exs. 32 & 33. The check to Cushing was in the gross amount of \$13,222.00, and the net amount of \$8,060.35. Stip. ¶ 38; Jt. Ex. 32. The check to Drent was in the gross amount of \$8,735.00, and the net amount of \$8,066.77. Stip. ¶ 38; Jt. Ex.

33. In January 2019, Cushing and Drent informed the Union about the checks they received and the absence of explanations, but neither gentleman contacted the District. Stip. ¶ 39.

In January 2019, Petchenik sent an information request to the District seeking information on how the sums paid to Cushing and Drent in retirement were determined. Jt. Ex. 34. On January 24, 2019, the District informed the Union, through Petchenik, that TRS had assessed an excess contribution for each employee and that the District had deducted those funds from the post-retirement payments made to Cushing and Drent before issuing checks to them. Stip. ¶ 41. The District had in fact deducted \$4,246 from Cushing's post-retirement check, and \$7,987 from Drent's post-retirement check, based on the excess contributions that TRS had assessed on the District with respect to Cushing and Drent. Stip. ¶ 41. That is, the District did not deduct the higher, revised amount for Drent; rather, it only deducted the \$7,987, as originally calculated by TRS. Stip. ¶ 41.

On January 25, 2019, the Union filed a grievance alleging:

On or about December 24, 2018 retired Forest Park Teachers' Union members (FPTA), Paul Cushing and Stephen Drent, received a "lump sum payment" of the funds remaining in their "lump sum stipends," after deducting for the "Cost of Retirement Incentive-To 6%, Cost of Employee Earnings-Beyond 6% and Cost of TRS Excess Salary." The deduction for the "Cost of TRS Excess Salary" is a violation of the Illinois Pension Code and the Teacher Retirement System Rules and Regulations and should not have been deducted from their "lump sum stipends."

Stip. ¶ 42; Jt. Ex. 35.

On January 28, 2019, the District and Union began successor collective bargaining agreement negotiations which resulted in the 2019-2022 collective bargaining agreement. Stip. ¶ 43. Cavallo denied the grievance on February 14, 2019. Stip. ¶ 44; Jt. Ex. 36. On March 7, 2019, the Union voluntarily withdrew the grievance. Stip. ¶ 45; Jt. Ex. 37.

Goldenberg received a letter dated January 27, 2020 from the District stating that a retirement stipend check in the gross amount of \$944.00 would be issued to her, payable with the payroll dated January 30, 2020. Stip. ¶ 46. Shortly thereafter, she received a post-retirement check in the gross amount of \$944.00, and the net amount of \$838.76 (after deduction of payroll taxes). Stip. ¶ 46. There was no explanation of the amount paid, other than payroll deductions required by federal and state law; there was no information regarding any deduction due to excess TRS contributions. Stip. ¶ 46. Hosty did not receive a post-retirement check because there was no money left in her

lump sum stipend after increasing her TRS creditable earnings and accounting for her associated excess cost contribution, pursuant to the collective bargaining agreement's Lump Sum Payment retirement provision. Stip. ¶ 47.

On February 4, 2020, Mario Castillo (Castillo), who succeeded Petchenik as UniServ Director, sent the District a request for information. Therein, he asked for information showing how the District calculated the net amount of the lump sum retirement stipends for each employee who retired at the end of the 2018-2019 school year, including how "the balance of the stipend that was paid was calculated for each employee, and each of the amounts, if any, that were subtracted from the gross amount, with the reasons for each," and, if "the District determined that there was no balance to be paid to any of such employees," Castillo requested that the District "provide the reasons, and, for each deduction from the gross amount, the amount of each deduction with the reasons for each." Stip. ¶ 48; Jt. Ex. 38. On February 20, 2020, Brophy provided the requested information which showed that the District had deducted the following sums from post-retirement lump sum payments for the following individual Complainants in Case No. 2020-CA-0055-C: Goldenberg: \$8,586.00, and Hosty: \$2,938.00. Stip. ¶ 50; Jt. Ex. 38.

IV. Positions of the Parties

Complainants allege that since the Pension Code prohibits school districts from shifting the cost of excess contributions to employees, Respondent's implementation of the Lump Sum Payment retirement provision in the 2015-2019 collective bargaining agreement with respect to Drent, Cushing, Goldenberg and Hosty violated Section 16-158(f) of the Pension Code, and thereby violated Sections 10(b), 14(a)(5) and, derivatively 14(a)(l), of the IELRA. Complainants contend that Respondent's assertion that the charges are untimely is without merit and its estoppel and unclean hands defenses are likewise without merit.

Respondent argues that the charges should be dismissed as untimely and that Complainants are otherwise barred from obtaining relief by waiver, equitable estoppel, and their own unclean hands. If the charges are found to be untimely or not otherwise barred, Respondent contends that neither the Pension Code nor TRS regulations prohibit the TRS cost shifting language. According to

Respondent, removing only the TRS cost-shifting language would be tantamount to the Board rewriting the expired collective bargaining agreement in Complainants' favor.

V. Discussion

Section 14(a)(5) of the Act prohibits educational employers from “[r]efusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit. . . .” Section 10(b) of the Act provides that the parties shall not effect or implement any provision in a collective bargaining agreement if the implementation of that provision would be inconsistent with or in conflict with any Illinois statute. The Complaints allege that Respondent implemented a provision in the collective bargaining agreement, the Lump Sum Payment retirement provision, that conflicted with the Pension Code.³ Because the implementation of a collective bargaining agreement is an outgrowth of the collective bargaining process, implementing a collective bargaining agreement in a way that violates Section 10(b) of the Act is not good faith bargaining, since it is contrary to the statutory duty to abide by the statutes of Illinois. *East Maine School Dist. 63*, 13 PERI 1041, Case No. 94-CA-0024-C (IELRB Opinion and Order, February 27, 1997). By implementing a collective bargaining agreement in a manner that violates Section 10(b), a party violates its duty to bargain in good faith and, thus, Section 14(a)(5). *Id.*

The threshold issue is whether the charges were timely filed. Respondent asserts that they are untimely, and Complainant contends the opposite. During the investigation of 2019-CA-0065-C, the Executive Director denied Respondent’s Motion to Dismiss the charge as untimely. The Executive Director’s Order did not explain his reasons for the denial, but simply denied the Motion and instructed Respondent to file a position statement in response to the charge. Like intermediate rulings of an Administrative Law Judge, intermediate rulings of the Board’s Executive Director are

³ Particularly Section 16-158(f) of the Pension Code, which states:

If the amount of a teacher’s salary for any school year used to determine final average salary exceeds the member’s annual full-time salary rate with the same employer for the previous school year by more than 6%, the teacher’s employer shall pay to the System, in addition to all other payments required under this Section and in accordance with guidelines established by the System, the present value of the increase in benefits resulting from the portion of the increase in salary that is in excess of 6%.

not subject to interlocutory appeal, but parties may raise objections to the order in their briefs to the Board. See 80 Ill. Adm. Code 1120.40(d); see also *Board of Trustees of the University of Illinois at Urbana-Champaign*, 15 PERI 1049, Case No. 96-RC-0013-C (IELRB Opinion and Order, April 19, 1995) (Board did not rely on Executive Director's denial of employer's motion to dismiss representation petition. In denying the motion to dismiss, Executive Director did not resolve any factual or legal issues, but simply determined that a hearing must be held to resolve those issues). This is precisely what Respondent does by raising the timeliness issue at this juncture.

Section 15 of the Act provides that “[n]o order shall be issued upon an unfair labor practice occurring more than 6 months before the filing of the charge alleging the unfair labor practice.” Only acts that occur within the six month period can serve as the basis for a timely charge. *Jones v. Illinois Educational Labor Relations Board*, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995). The six month period begins to run when the charging party knows or has reason to know that an unfair labor practice has occurred. *Wapella Education Association v. Illinois Educational Labor Relations Board*, 177 Ill. App. 3d 153, 531 N.E.2d 1371 (4th Dist. 1988).

Here, the Lump Sum Payment retirement provision in the 2015-2019 collective bargaining agreement is alleged to violate the Pension Code. Per that provision, eligible retiring teachers are entitled to a lump sum stipend based on years of service with Respondent, but any payments required of Respondent for a teacher's salary or creditable earnings increases in excess of the TRS limit (6%) would be paid out of the lump sum stipend. Yet under the Pension Code, collecting employer contributions from a member is not permitted. The misconduct alleged in these cases is that by implementing the Lump Sum Payment retirement provision, Respondent violated Section 10(b) of the Act, and, thus, Section 14(a)(5). To determine if the charges were timely, we must decide when Complainants knew or should have known the implementation occurred.

One of the few viable defenses available to an employer alleged to have violated Section 14(a)(8) of the Act by refusing to comply with an arbitration award is that the award is not binding because it conflicts with the Act or any other statute enacted by the General Assembly of Illinois. *Board of Education of Rockford Sch. Dist. No. 205 v. IELRB*, 165 Ill. 2d 80, 649 N.E. 2d 369 (1995); *Central Cmty. Unit Sch. Dist. No. 4 v. IELRB*, 188 Ill. App. 3d 1060, 1066-67, 904 N.E.2d 640, 645 (4th

Dist. 2009). In *Rockford*, the Court said that 10(b) of the Act precluded the application of a just cause contractual provision to overturn a Notice to Remedy because such a provision would conflict with the Illinois School Code. The Court found that the arbitration award was not binding because it applied an unlawful contractual provision. As a result, the school district's refusal to implement the unlawful contractual provision did not violate the Act. Conversely, it is by the implementation of the contractual provision at issue in this case that Respondent is alleged to have violated the Act. Thus, it is by the implementation of the contractual provision that the alleged misconduct occurred, not the existence of the provision. The parties stipulated that prior to the 2017-2018 school year, the District *implemented* the Lump Sum Payment retirement provision without complaint from the Union. Stip. ¶ 9 (emphasis added). Furthermore, prior to the 2017-2018 school year, seven teachers who retired from the District had their post-retirement stipends reduced without issue to pay for TRS excess contributions in accordance with the lump sum provision. Estimating that the 2017-2018 school year began on or around September 1, 2017, prior to the 2017-2018 school year is roughly between nineteen and thirty-one months before the charges in these matters were filed. The Union knew that Respondent was and would continue paying TRS costs associated with employees' salary from the stipend pot calculation, that is, implement the lump sum provision, in November 2017 because its attorney informed the Union's representative as such in an email at that time. The Union filed a grievance on December 1, 2017 over the implementation of the Lump Sum Payment retirement provision. The charges in these matters are both clearly untimely.

The charge in 2019-CA-0065-C was filed on April 18, 2019, six months prior to that date is October 18, 2018. The charge in 2020-CA-0055-C was filed on April 20, 2020, six months prior to that date is October 20, 2019. Complainant contends that the six month time period began to run after (a) TRS notified Respondent that it was assessing Respondent excess contributions as to the individual complainants; and (b) each individual Complainant learned that Respondent deducted the excess contributions from their post-retirement payments. That would bring each individual Complainant squarely within the six month period before their respective charges were filed. This argument is without merit given Complainant Union knew of the alleged unlawful conduct well before it applied to the individual Complainants. In the collective bargaining context,

it is well-settled that notice to an individual employee does not constitute adequate notice to his or her exclusive representative. *Chicago Transit Authority*, 14 PERI ¶ 3002 (IL LLRB 1997), citing *Southern California Edison Co.*, 284 NLRB 1205 (1987), *enfd.* 852 F.2d 572 (9th Cir. 1988). In charges alleging a violation of Section 14(a)(5) by a unilateral change, the six month period for filing an unfair labor practice charge begins to run when the employer announces the unilateral change rather than the date of its application to individuals. *Wapella*, 177 Ill.App.3d 153, 531 N.E.2d 1371; *Minooka CHSD 111*, 35 PERI 167, Case No. 2018-CA-0053-C (IELRB Opinion and Order, April 25, 2019); *Cf. Rock Island*, 31 PERI ¶ 32 (IL SLRB ALJRDO 2014) (Where some individual employees learned of and were instructed to follow employer's new work clothing policy outside of the six month time period, charge was timely filed because the union did not become aware of the change until less than six months before the charge was filed). The instant charges do not allege the District violated Section 14(a)(5) by a unilateral change, but that the District violated Section 14(a)(5) by implementing an unlawful provision of the collective bargaining agreement. Yet the period for determining when the six month period begins to run for unilateral change cases is instructive because they both allege a violation of the same subsection of the Act, 14(a)(5). Like unilateral change charges, the charges at issue here involve the collective bargaining process. *Drent, Cushing, Goldenberg and Hosty*, as individual employees, do not have standing to allege a violation of Section 14(a)(5) of the Act because Section 14(a)(5) involves the rights of the exclusive representative under the Act. *Thornton Community Unit School District No. 4*, 4 PERI 1010, Case Nos. 87-CA-0017-C et al. (IELRB Opinion and Order, December 1, 1987). This longstanding principal has been consistently followed by the Board. *Southern Illinois University Carbondale*, 35 PERI 108, Case Nos. 2018-CA-0005-C & 2018-CA-0039-C (IELRB Opinion and Order, December 20, 2018); *Cairo SD #1*, 33 PERI 123, Case No. 2017-CA-0055-C (IELRB Opinion and Order, May 18, 2017); *South Suburban College District #510*, 9 PERI 1084, Case No. 92-CA-0073-C (IELRB Opinion and Order, May 4, 1993). It is immaterial when they had notice of the alleged violation of the Act as it was applied to them individually. The relevant date is that which the Union, as a party to the collective bargaining process upon which this charge is grounded, learned of the misconduct alleged. The Union had notice at the very latest when it filed its grievance over the implementation of the Lump Sum Payment retirement provision on

December 1, 2017, 16.5 months before it filed 2019-CA-0065-C and 28.5 months before it filed 2020-CA-0055-C. The charges in these matters are both clearly untimely.

Because the charges are untimely, there is no need to consider whether Complainants are otherwise barred from relief, determine whether the District violated the Act or the appropriate remedy for such a violation.

VI. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Complaints are dismissed in their entirety because the charges were untimely filed.

VII. 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: **October 21, 2021**

Issued: **October 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

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