

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

North Shore Education Association,)	
IEA-NEA,)	
Charging Party)	
)	
and)	Case No. 2022-CA-0003-C
)	
North Shore School District 112,)	
)	
Respondent)	

OPINION AND ORDER

I. Statement of the Case

On July 14, 2021, North Shore Education Association, IEA-NEA (Union or Charging Party) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board or IELRB) alleging that North Shore School District 112 (Respondent or District or Employer) violated Section 14(a)(1) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1, *et seq.* On May 31, 2022, the IELRB’s Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge in its entirety. The Charging Party filed exceptions to the EDRDO, and the District filed a response to the exceptions. For the reasons discussed below, we affirm the dismissal of the charge.

II. Factual Background

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

III. Discussion

Employers are prohibited by Section 14(a)(1) of the Act from “interfering, restraining, or coercing employees in the exercise of the rights guaranteed under” the Act.

Improper motive must be shown in Section 14(a)(1) cases involving adverse employment action because of protected concerted activity. *Neponset Community Unit School Dist. No. 307*, 13 PERI 1089, Case No. 96-CA-0028-C (IELRB Opinion and Order, July 1, 1997). For a complaint to issue in those cases, the charging party must at least be able to make some showing of protected

concerted activity, that the respondent knew of that activity and that it took adverse employment action as a result of that activity. *Neponset*, 13 PERI 1089. The Executive Director dismissed the instant charge because the Union failed to make the requisite showing of protected concerted activity. The Union argues in its exceptions that the discussions in the text threads was protected concerted activity because 1) they involved teachers acting together by discussing their workplace concerns surrounding the District's assigning Neilan to handle Kramer's workload; and 2) because they referenced an impending disciplinary matter between Kramer and the administration surrounding the parent complaint in light of Kramer's former Union leadership role and battle with the District over her own return to in-person learning.

The Union contends in its exceptions that Kramer's activity was concerted because it was relevant to workplace concerns. It cites Aguirre's text to Kramer that she reported her concerns about Neilan to the District's substitute coordinator. This does not amount to concerted activity on Kramer's part because it was Aguirre, not Kramer, who reported her own concerns about Neilan. In light of the Union's argument, it is worth noting that Aguirre was not disciplined. The Union also notes Kramer's references in one of the text threads to communications with "Nickie", the school's principal, as evidence of Kramer's concerted protected activity. Kramer indicates that she "pointed that out to Nickie". It is unclear what Kramer is talking about and, without more, does not support the Union's theory that it amounts to requisite evidence of concerted activity necessary for a complaint to issue. The Union complains that the text threads allude to additional conversation between the employees that the Board agent did nothing to investigate. However, the Board's Rules and Regulations provide that a charging party must submit all evidence relevant to or in support of the charge to the Executive Director. 80 Ill. Admin. Code 1120.30(b)(1). It was up to the Union to submit evidence of additional conversations to support its theory of its case, not the Board agent.

Not every concern, gripe or complaint about wages, hours and terms and conditions of employment is considered concerted. *Schaumburg School District v. IELRB*, 247 Ill. App. 3d 439, 616 N.E.2d 1281 (1st Dist. 1993). The employee must either invoke a right granted by a collective bargaining agreement or they must act with or on the authority of other employees and not solely by and on behalf of themselves in order to have engaged in concerted protected activity. *Id.* Concerted activities, to be protected must be a means to an end, not an end in

themselves. *Id.* (citing *NLRB v. Marsden*, 701 F.2d 238, 242 (2d Cir.1983); *Pelton Casteel, Inc. v. NLRB*, 627 F.2d 23, 28 (7th Cir. 1980)). In *Schaumburg*, the court held that a teacher who had a dispute with her principal during an evaluation conference had not engaged in concerted protected activity because she was pursuing her own interests in dealing with the principal regarding her evaluation, thus she was clearly not acting with or on the authority of other teachers. 247 Ill. App. 3d at 458-59, 616 N.E.2d at 1293-94. Here, Kramer's references to her own potential discipline alone do not amount to evidence of concerted activity necessary for a complaint to issue. Nothing in Kramer's text threads, the activity the Union cites as concerted and protected, relates to her former role as a union leader. What is more, the Union failed to state in its charge or accompanying position statement that Kramer was a union leader. It attempts to raise the argument anew in its exceptions that Kramer's being singled out for discipline as a union leader was "suspect". The IELRB will not consider facts raised for the first time in front of the Board. *Chicago School Reform Board of Trustees*, 16 PERI 1043, Case No. 99-CA-0003-C (IELRB Opinion and Order, April 13, 2000); *Chicago Teachers Union (Day)*, 10 PERI 1008, Case No. 93-CB-0028-C (IELRB Opinion and Order, November 10, 1993). Issues raised for the first time in exceptions found to be prejudicial to the opposing party should not be considered. *Chicago Board of Education*, 6 PERI 1082, Case Nos. 90-CA-0030-C, 90-CB-0008-C (IELRB Opinion and Order, May 22, 1990); *Chicago Board of Education*, 6 PERI 1052, Case Nos. 90-CA-0012-C, 90-CA-0013-C (IELRB Opinion and Order, March 14, 1990). Even if the Union had indicated during the investigation that Kramer was a union leader, its exceptions do not draw a sort of correlation between that role and the discipline taken against her at issue in this case. The same is true regarding her battle with the District when it insisted that she return to work in person when she had been advised that this would be unsafe due to her husband's health. Instead, these were gripes or concerns of a personal nature to Kramer and not concerted activity that contemplated group action.

According to the Union, the text threads were concerted protected activity because they involved bargaining unit members acting together to discuss concerns plaguing teaching during the COVID-19 pandemic. Yet these communications did not contemplate group action, but instead were a mutual venting of a group concern about Neilan and not activity protected by the Act. *Schaumburg*, 247 Ill. App. 3d 439, 456, 616 N.E.2d 1281, 1292) (citing *Pelton Casteel*, 627

F.2d 23, 28 (“The employee’s actions themselves [must] at least contemplate some group activity. ... Public venting of a personal grievance, even a grievance shared by others, is not a concerted activity.”); *Indiana Gear Works v. N.L.R.B.*, 371 F.2d 273, 276 (3d Cir. 1964) (Activity must be for the “purpose of inducing or preparing for group action to correct a grievance or complaint”).

The Union contends in its exceptions that the District also violated Section 14(a)(1) under the objective test because the covert surveillance that took place in this case is enough on its own to have a chilling effect on concerted activity. In Section 14(a)(1) cases involving employer conduct such as threats, interrogation, and surveillance, the IELRB applies an objective test. *Neponset*, 13 PERI 1089. Under this test, it must be evaluated whether the employer’s conduct would reasonably have had the effect of coercing, restraining, or interfering with the exercise of protected rights. *Peoria School District No. 150 v. IELRB*, 318 Ill. App. 3d 144, 741 N.E.2d 690 (4th Dist. 2000); *Hardin County Education Association, IEA-NEA v. IELRB*, 174 Ill. App. 3d 168, 528 N.E.2d 737 (4th Dist. 1988). There is no requirement of proof that the employees were actually coerced or that the employer intended to coerce the employees. *Southern Illinois University*, 5 PERI 1077, Case No. 86-CA-0018-S (IELRB Opinion and Order, April 4, 1989). In this case, the District itself did not actually initiate the view into the communications between Kramer and her fellow bargaining unit employees. It was Neilan who took it upon herself to open and review text messages that clearly were not meant for her. It appears from a review of the investigatory record that she saw them because Kramer did not sign out of the device. Even if Kramer mistakenly believed the District would remove her information from the District iPad before giving it to Neilan, the information was in the device because Kramer signed into it in the first place. The record indicates that the District only viewed the information after Neilan filed a complaint and it needed to view the information to investigate the complaint. Accordingly, we find that the Union did not meet its burden necessary for a complaint and notice of hearing to issue and that the Executive Director correctly dismissed the charge.

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director’s Recommended Decision and Order is affirmed.

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: **October 19, 2022**

Issued: **October 20, 2022**

/s/ Lara D. Shayne

Lara D. Shayne, Chairman

/s/ Steve Grossman

Steve Grossman, Member

/s/ Chad D. Hays

Chad D. Hays, Member

/s/ Michelle Ishmael

Michelle Ishmael, Member

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and)	Case No. 2022-CA-0003-C
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North Shore School District 112,)	
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EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On July 14, 2021, Charging Party, North Shore Education Association, IEA-NEA, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB) in the above-captioned case, alleging that Respondent, North Shore School District 112, violated Section 14(a) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/14, *et seq.* 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

At all times material, North Shore School District 112 (District or Respondent) was an educational employer within the meaning of Section 2(a) of the Act. At all times material, Pam Kramer was an educational employee within the meaning of Section 2(b) of the Act, employed by the District at Red Oak Elementary School (Red Oak) as a certified teacher. At all times material, North Shore Education Association, IEA-NEA (Union) was a labor organization within the meaning of Section 2(c) of the Act. At all times material, the Union was the exclusive representative of a bargaining unit comprised of certain of the Respondent's employees, including certified teachers. As relevant, the Union and District are parties to a collective bargaining agreement (CBA) for the bargaining unit, which provides for a grievance procedure culminating in arbitration.

B. Facts Relevant to the unfair labor practice charge

On or about February 1, 2021, Pam Kramer (Kramer) went on a leave of absence from her teaching duties at Red Oak. Leslie Neilan (Neilan), a substitute teacher, was assigned to cover for Kramer in her absence. Consequently, Neilan was provided with Kramer's work issued electronic device or iPad for Neilan to utilize in the course of her substitute teaching duties.¹

¹ At some point, Kramer used her personal login details on her work issued iPad device. Kramer's personal login remained active on the iPad even after the device was transferred to Neilan. As a result, Kramer's

On or about February 4, 2021, Neilan discovered the following communications via two main text threads, and over the course of an unspecified time period on Kramer's former iPad that Neilan was utilizing to teach:

Thread 1 – Group

Elizabeth Hunt – OMG I just realized I know your sub Leslie Neilan, she's subbed at Wayne Thomas before and I taught her children. Number one she's crazy, Number two she doesn't know how to use technology, number three Wayne Thomas blocked her from being able to sub.

Alyssa Kodroff – Omg is the the one who made a movie

Elizabeth Hunt – Yes

Elizabeth Belkind – That is INSANE!!!! OMG OMG OMG OMG!!!! How did this possibly happen?

Alyssa Kodroff – Desperate

Thread 2 exclusively between Kramer and Illiana Aguirre

Aguirre – Nickie is going to be watching. I'll walk the kids through it.

Kramer – Watching what????

Kramer – All done

Aguirre – She watches my posting for some reason

Aguirre – So itll transfer

Aguirre – It's fine

Aguirre – I have to go clean snow

Kramer – That's strange. Ugh. Especially at this point when you are leaving!

Kramer – And I'm in trouble for a parent contacting Mike about not letting me continue to teach from home!

Aguirre – To what extent

Aguirre – Can they do anything?

Aguirre – Or they just need to get over it

Kramer – Disciplinary meeting with Monica. I don't give a shit as you know

Kramer – Letter in my file? Big fucking deal

Aguirre – Lmao

Aguirre – That's like my investigation

Aguirre – Lmao

Aguirre – Whatever

Kramer – It's funny, every time I've had that kind of meeting, it's because I'm doing something I believe in

Aguirre – Well and you are leaving

Aguirre – It's beyond stupid

Aguirre – She sounded so [illegible]

Aguirre – And then was lost lmao

Aguirre – She couldn't find me on her desktop

Aguirre – When we were on zoom

Kramer – Oh but Nickie said she's SO techie!!!!

Aguirre – I know lmao

Aguirre – I already told Patty

personal communications were accessible from the work issued device because it was linked to her personal login information.

Kramer – And during alo² all she wanted to do was talk. I told her she had to let the kids talk. When I asked a question and she started to answer, I said I'm asking the kids!!!

Kramer – ALO is going to be a disaster. She couldn't do the math

Kramer – I don't know how she will teach fractions to decimals!

Kramer – I was worried about it and I'm pretty good at teaching math!!

Aguirre – Oh no

Aguirre – Fml

Kramer – Fml? Help me out here

Kramer – I'm old

Aguirre - Fuck my life

Aguirre – Lmao

Aguirre – It was painful on Friday

Aguirre – I wrote to Patty and I was so concerned.

Kramer – Oh!!! I get it!

Aguirre – And she wants to meet today too.

Kramer – There's only so much you can do...and you should be getting paid by the hour!!

Aguirre – She doesn't even get what I meant by posting lessons

Aguirre – Bc I was only supposed to post SLA

Aguirre – But this lady can't

Aguirre – Lmao

Kramer – Cause this is going to be a huge time suck.

Aguirre – I am

Aguirre – So I made sure they know that it will be a lot of hours

Aguirre – Lmao

Kramer – And Nickie posted that she had all kinds of e learning training and she hasn't...

Kramer – Good!!!

Aguirre – Lmao

Aguirre – Hahahaha

Kramer – I pointed that out to Nickie but she still sent the same letter with the falsehood in it to your parents

Kramer – So fucked

Kramer – Leslie isn't a bad person, but this is WAY over her head.

Aguirre – Oh yeah in the normal sub days. She was fine to come in and be herself. Lol

Aguirre – But now it's a different game.

Kramer – Exactly. She's no teacher. She doesn't have the natural instinct or training

Kramer – Good luck today!

Aguirre – Thank you

Aguirre – Hope you're relaxing.

Kramer – I'm loving it! I just miss the kids!!

Aguirre – I want to be home with my pups.

Aguirre – I think this is so dumb.

Aguirre – They do not need me here. Lol

Kramer – I know. It's stupid and dangerous.

Kramer – How were my kids?

Aguirre – Adorable

Kramer – They are!!!!

Kramer – Let's talk when you have time...

Kramer – Do you have a minute?

Aguirre – In a meeting with LN

Kramer – Ahhh! Fun times! Keep track of these hours!!! Do you need anything from me?

Aguirre – Any chance you have your parents emails somewhere ?

Aguirre – I am out tomorrow morning and need to send them a message.

Aguirre – No hurry

Aguirre – Have a great morning

Kramer – I will send that in a minute! Just woke up!

Kramer – Done

Kramer – Say hi to my kids for me!

Kramer – How did today go? Is Leslie getting the hang of it?

Aguirre – Ugh

Aguirre – She wrote me three giant emails

Aguirre – Three!!!

Aguirre – I haven't even bothered after reading the first one

Aguirre – She doesn't remember things

Kramer – Complaining?

Kramer – Oh...

Aguirre – She asked something stupid

Kramer – So incompetent

Aguirre – Lol

Aguirre – I mean she just started and I should be more patient

Aguirre – And that's why I haven't responded lmao

Kramer – Yeah but she's an experienced sub and sooooo techy.

Aguirre – For some reason I don't have any of your classes in Otus again.

Aguirre – Someone erased them

Aguirre – I wrote to tech

Kramer – Is Leslie messing it up? Do you need me to add you?

Kramer – I'm adding you now! I did add you the other day!!

Kramer – Is she assigning afternoon work?

Kramer – Look at the top one and the due date...

Kramer – I didn't assign that last week!

Kramer – It looks like you posted the math homework...

Aguirre – I did but I am out tomorrow

Aguirre – And I can't post anything now

Aguirre – Anyway I emailed the kids

Kramer – Will they just see Leslie

Aguirre – Yes

Aguirre – Morning Pam. Sorry to bother you. Can you add me to your social studies class in Otus at some point today?

Kramer – Sure although I've never used it with the kids. The only work I payed separately is science. Otherwise, all their work is in the general class. If you are going to post each assignment separately, show them so they know. Also, I've always let them be in a breakout room after class where they hang out, talk, and play games. I know they'd love it if you'd do that...

Aguirre – Ok

Aguirre – Sounds good

Kramer – Yay!!
Aguirre – But add the social studies please
Kramer – I will

After viewing the nature of the communication exchanges, Neilan filed a formal complaint with the District.

The District initiated and conducted an investigation, pursuant to Neilan's complaint, into whether the communications in question were in violation of any of the District's policies. The District's investigation determined that despite the text threads which included disparaging commentary about Neilan, with some level of involvement from Aguirre, Belkind, Hunt, and Kodroff, these employees did not however violate the District's policies and no disciplinary action was issued to them, respectively. Monica Schroeder (Schroeder), the Deputy Superintendent, noted, among other things, that the above-referenced individuals expected the conversation to remain within the confines of the persons on the thread, and therefore did not intend for Neilan to see them, especially considering the finding that the texting occurred outside of work hours and on personal devices. Schroeder also mentioned the impact of the negative communications, as well as addressed each participant's effort, or lack thereof to take accountability and rectify the harm directly with Neilan, since it adversely affected her.

As it relates to Kramer, Schroeder issued her a written warning for a violation of the District's Access to Electronic Networks policy.³ The investigation found that Kramer did not intend to have the messages appear on the District's device and did not intend to affect Neilan in the manner that the messages did. Schroeder also shared her observations in the written reprimand in terms of the negative ramifications of the messages, and Kramer's failure to take responsibility for the incident, or rectify the situation directly with Neilan.

The instant charge was filed on July 14, 2021, alleging that the Respondent's conduct violated the Act.

III. THE PARTIES' POSITIONS

The Charging Party argues that the District violated Section 14(a)(1) of the Act when it investigated certain of its members and imposed or threatened adverse employment action for engaging in protected concerted activity, by expressing their views about colleagues and the workplace while off-duty and in private conversations.

On the contrary, the Respondent argues that Kramer did not engage in protected concerted activity, and that it was not motivated to retaliate against Kramer for engaging in conduct alleged to constitute protected concerted activity. In the alternative, the Respondent

³ Kramer's policy violation stemmed from her use of a District device for personal purposes.

argues that even if the Union established a *prima facie* case of a Section 14(a)(1) violation, it had a legitimate reason to discipline Kramer.

IV. DISCUSSION AND ANALYSIS

Section 14(a)(1) of the Act prohibits educational employers and their agent or representatives from interfering, restraining or coercing employees in the exercise of the rights guaranteed under the Act. A *prima facie* case of a violation of Section 14(a)(1) of the Act has been demonstrated if the employee's activity was protected and concerted, if the employer knew of the protected concerted activity, and if the adverse employment action was motivated by the employee's protected concerted activity. *Neponset Community Unit School District No. 307*, 13 PERI 1089, Case No. 96-CA-0028-C (IELRB Opinion and Order, July 1, 1997), 1997 IL ERB LEXIS 35. However, not every concern, gripe or complaint about wages, hours, terms and conditions of employment is viewed as concerted. *Bd. Of Educ. of Schaumburg Community Consol. School Dist. 54 v. IELRB*, 247 Ill. App. 3d 439, 456, 616 N.E.2d 1281, 1292 (1st Dist. 1993). To be properly viewed as a concerted activity, the employee must either invoke a right granted by a collective bargaining agreement or the employee must act with or on the authority of other employees, and not solely by and on behalf of the employee himself. *Schaumburg*, 247 Ill. App. 3d at 455.

Here, the Charging Party has not demonstrated a *prima facie* case. Although the Union contends that the messages in question concerned workplace issues and issues of group concern, such cannot be considered a non-union activity subject to protection under Section 14(a)(1), as the expressed concerns do not appear to have been concerted activity. Here, Kramer, nor any of the other individuals involved, acted upon a right grounded in a collective bargaining agreement, or acted with or on the authority of other employees. There is no evidence that the discussions were intended to ignite any group action or that anyone was acting on behalf of anyone else. In fact, the evidence is to the contrary that the participants intended for the subject matter to remain within the boundaries of the known recipients, and no further. The record does not reveal any evidence that the issues discussed in the relevant threads contemplated or promoted group action. Activities must be concerted in nature in order to be protected by Section 14(a)(1). Because the discussions at issue were not considered protected, the Union has failed to meet the first prong of a *prima facie* case for a violation of Section 14(a)(1).

Conduct which has a reasonable tendency to interfere, restrain or coerce an employee in the exercise of his or her rights under the Act further violates Section 14(a)(1) of the Act. *Hardin County Education Association v. IELRB*, 174 Ill.App.3d 168, 528 N.E.2d 737 (4th Dist. 1988); *Southern Illinois University at Edwardsville*, 5 PERI 1077, Case No. 86-CA-0018-S (IELRB Opinion and Order, 1989). Section 3(a) of the Act provides that it shall be lawful for educational

employees to organize, form, join, or assist in employee organizations or engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection, or bargain collectively through representatives of their own free choice and, except as provided in Section 11 of the Act, such employees also have the right to refrain from any or all other such activities. 115 ILCS 5/3. Specific evidence of interference with employee rights is not required. Rather, an objective test of whether the employer's actions would tend to coerce a reasonable employee is the standard. In evaluating whether the employer interfered, restrained or coerced, and whether the employer engaged in conduct which had a reasonable tendency to interfere, the reasonable construction given to the employer's comments by the listener is critical. *Hardin County Education Association v. IELRB*, 174 Ill.App.3d 168, 528 N.E.2d 737 (4th Dist. 1988); *Southern Illinois University at Edwardsville*, 5 PERI 1077, Case No. 86-CA-0018-S (IELRB Opinion and Order, 1989).

As explained above, the activities of Kramer, Kodroff, Aguirre, Hunt and Belkind were not protected under the Act. The facts do not lead to an inference that an educational employee would believe that the District here had a reasonable tendency to interfere, restrain or coerce the exercise of employee rights under the Act by the resulting investigation into the employees' relevant activity, findings, or action taken in light of the District's findings. The evidence supports a conclusion that the District intended to discourage unconstructive communication that would denigrate a colleague's reputation, not obstruct future conversations between co-workers about their working conditions and environment.

V. ORDER

For these reasons, the instant unfair labor practice charge is dismissed in its entirety.

VI. RIGHT TO EXCEPTIONS

In accordance with Section 1120.30(c) of the Board's Rules and Regulations (Rules), Ill. Admin. Code tit. 80 §§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. 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. 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 31st day of May 2022.

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

**VICTOR E. BLACKWELL
Executive Director**

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