STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Terra Sinkevicius,	)	
	)	
Complainant	)	
	)	Case Nos. 2019–CA–0031–C
and	)	2019–CA–0071–C
	)	
Chicago Board of Education,	)	
	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On January 17, 2019, Terra Sinkevicius (Complainant) filed a charge with the Illinois Educational Labor Relations Board (IELRB or Board), Case No. 2019-CA-0031-C. On May 31, 2019, Chicago Teachers Union, IFT-AFT, AFL-CIO (Union) filed a charge with the Board on Complainant's behalf, Case No. 2019–CA–0071–C.[1] Both charges asserted that Chicago Board of Education (CBE or Respondent) committed unfair labor practices in violation of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1 *et. seq*. The charges were consolidated, and the Board's Executive Director issued a Complaint and Notice of Hearing alleging that Respondent violated Section 14(a)(3) and, derivatively, (1) of the IELRA.

The parties appeared for a hearing before an Administrative Law Judge (ALJ). During the hearing, the parties had the opportunity to call, examine and cross-examine witnesses, introduce documentary

[1] After Respondent filed exceptions to the ALJRDO, the Union withdrew as a named party in these matters as well as all allegations on its behalf as an institution. It further indicated that Sinkevicius would be the sole named Complainant, leaving all allegations personal to her and that her personal attorney would substitute as her counsel of record. Complainant's personal attorney was then allowed an extension of time to file her response to Respondent's exceptions.

evidence, and present arguments. The parties filed post-hearing briefs. The ALJ issued a Recommended Decision and Order (ALJRDO) finding that Respondent violated Section 14(a)(3) of the Act when it cancelled the Mandarin program at Wadsworth S.T.E.M. Elementary School (Wadsworth) and reassigned Complainant to teach Pre-K special education. Respondent filed exceptions to the ALJRDO. Complainant filed a response to the exceptions. For the reasons discussed below, we affirm the ALJ's finding that Respondent violated the Act but modify the reasoning for finding the violation as well as the ALJ's recommended remedy.

II. Factual Background

We adopt the ALJ's findings of fact as set forth in the underlying ALJRDO. Because the ALJRDO comprehensively sets forth the factual background for the case, we will not repeat the facts herein except where necessary to assist the reader.

III. Discussion

Respondent's first exception is that the ALJ erred when she found it committed misconduct that was never alleged in the Complaint. In particular, that cancelling Wadsworth's Mandarin program and reassigning Complainant from teaching Mandarin to teaching Pre-K special education violated Section 14(a)(3) and (1) of the Act.

The Complaint alleged the following adverse actions taken by Respondent violated Section 14(a)(3): issuing Complainant a "No Action" warning on or about December 3, 2018, issuing Complainant two Step 2 warnings on or about December 19, 2018, issuing Complainant a Step 3 Final Warning[2] on or about January 25, 2019, and issuing Complainant a pre-discipline meeting notice on or about April 9, 2019. The unfair labor practice charges were filed in January and May of 2019. Complainant learned

[2] The terms step 3 final warning, step 3 warning, final warning, and level 3 warning are used interchangeably throughout the record.

that the Mandarin program was cancelled, and she had been reassigned in or around September 2019. The Complaint issued the following month. The hearing took place on January 14 and 15, 2020. Even if Complainant was not able to raise the reassignment during the investigation of the charges due to the short time frame between the reassignment and the Complaint's issuance, she had the opportunity to move to amend the Complaint after it issued to include that allegation. Prior to the hearing, Complainant could have filed a motion to amend the Complaint with the Board's Executive Director. 80 Ill. Adm. Code 1105.100(g). During the hearing, Complainant could have moved to amend the Complaint to include the allegation. 80 Ill. Adm. Code 1105.120(e). Yet Complainant did not move to amend the Complaint before the Executive Director or the ALJ. Neither the Executive Director nor the ALJ amended the Complaint to include the allegation that Respondent violated the Act when it cancelled Wadsworth's Mandarin program and reassigned Complainant.

For an Administrative Law Judge to consider allegations that were not raised in the complaint, those allegations must have been sufficiently related to the original complaint that the respondent would have notice that they could be raised. *McLean County Unit Dist. 5, a/k/a Board of Education of McLean County Unit Dist. 5*, 29 PERI 174, Case No. 2012-CA-0043-S (IELRB Opinion and Order, April 18, 2013). What is more, the respondent must have had the opportunity to present a defense. *Community Unit School District No. 4*, 3 PERI 1043, Case No. 84-CA-0015-S (IELRB Opinion and Order, April 7, 1987). Private and public sector labor cases have held that even an unpleaded issue will support an unfair labor practice finding where the issue has been fully and fairly litigated, the respondent has had notice of the conduct at issue and a fair opportunity to present a defense. *McLean*, 29 PERI 174; *Community Unit School District No. 4*, 3 PERI 1043; *Marlene Industries Corp. v. NLRB*, 712 F.2d 1011 (6th Cir. 1983); *Admiral Merchants Motor Freight Inc.*, 265 NLRB 134 (NLRB 1982).

Here, Respondent did not have sufficient notice of the allegation that it violated the Act when it closed Wadsworth's Mandarin program and reassigned Complainant to teach Pre-K special education. As a result, it did not have the opportunity to present a defense with regard to that allegation.

Complainant did not raise the allegation during the opening statement at the hearing, wherein their arguments and allegations against Respondent were summarized. The only mention was Complainant's own testimony that she believed the reassignment was done "[o]ut of retaliation because I had spoke up about things and I was trying to make the changes properly and that wasn't allowed, that wasn't something the principal wanted." Tr. 157 – 158. Respondent does not even mention the closure of the Mandarin program and/or Complainant's reassignment in its post-hearing brief, much less assert any defense to any allegation that such conduct violated the Act. This demonstrates that Respondent did not have the opportunity to present its defense and respond to that allegation. Thus, the ALJ erred by finding Respondent violated Section 14(a)(3) and (1) of the Act by cancelling Wadsworth's Mandarin program and reassigning Complainant from teaching Mandarin to teaching Pre-K special education.

CBE's second exception is that the ALJ incorrectly found that the record evidence supported the nexus between its adverse actions against Complainant and her protected activity. Section 14(a)(3) of the Act prohibits educational employers, their agents, or representatives from "[d]iscriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization." To establish its prima facie case of a 14(a)(3) violation, the complainant must prove by a preponderance of the evidence, that the employee engaged in union activity, the respondent was aware of that activity, and the respondent took adverse action against the employee for engaging in that activity based, in whole or in part, on anti-union animus, or that union activity was a substantial or motivating factor. *Speed Dist. 802 v. Warning*, 242 Ill. 2d 92, 950 N.E.2d 1069 (2011); *City of Burbank v. Illinois State Labor Relations Board*, 128 Ill. 2d 335, 345–346, 538 N.E.2d 1146, 1149–1150 (1989); *Bloom Township High School v. IELRB*, 312 Ill. App. 3d 943, 957, 728 N.E.2d 612, 624 (1st Dist. 2000). Because motive is a question of fact, it can be inferred from either direct or circumstantial evidence. *Burbank*, 128 Ill. 2d 335, 538 N.E.2d 1146. Unlawful motive can be demonstrated by various factors, including expressions of hostility toward unionization, together with knowledge of the employee's union activities; timing of the adverse action in relation to the occurrence

of the union activity; disparate treatment or targeting of union supporters; inconsistencies between the reason offered by the respondent for the adverse action and other actions of the respondent; and shifting explanations for the adverse action. *Id.*

In its exceptions, Respondent does not contest the ALJ's findings that Complainant engaged in protected activity by attending the 2017 Union meeting at Wadsworth, filing grievances, attending and speaking out at the October 18, 2018 PPLC election meeting, and enlisting the Union's assistance on multiple occasions to represent her in disciplinary actions and mediation arbitration. Nor does Respondent contest the ALJ's finding that it was aware of Complainant's protected activity.

The ALJ found that Respondent took adverse action against Complainant. Namely by its closure of Wadsworth's Mandarin program and Complainant's reassignment. As discussed above, we will not consider that adverse action as evidence because it was outside the scope of the Complaint. The Complaint alleges that Respondent violated the Act when it issued Complainant a "No Action" warning on or about December 3, 2018. Although this was characterized by the Union as not disciplinary (Tr. 35), to the extent that it could remain in her file and be used as a basis for future discipline, it would be considered adverse action. The Complaint alleges Respondent violated the Act when it issued Complainant two Step 2 warnings on or about December 19, 2018, and a Step 3 warning on January 25, 2019. These are considered discipline under the collective bargaining agreement between the Union and Respondent and accordingly are considered adverse action.[3] The Complaint alleges that Respondent violated the Act when it issued Complainant a pre-discipline meeting notice on or about April 9, 2019. Ultimately, Complainant ended up with a Step 1 warning and a final warning for the allegations contained in the April 9, 2019, meeting notice. This is likewise considered discipline and is adverse action.

[3] The Union grieved these on Complainant's behalf. As a result, one of the Step 2s was reduced to a Step 1, the other Step 2 was dismissed, and the Step 3 was reduced to a Step 1.

Several of the animus factors support a finding of unlawful motive on Respondent's part. That is, that there was a nexus between Complainant's protected activity and the adverse actions. The ALJ found that Respondent expressed hostility toward unionization by Principal Shabazz's conduct surrounding the October 18, 2018, PPLC meeting. In particular, that Complainant had to advocate for the PPLC inaugural election meeting to take place, Shabazz's leaving the meeting and returning once the voting commenced, his confrontation with Complainant that resulted from her attempt to enforce PPLC compliance, and his behavior escalating to the point that a Union representative deemed it necessary to step in.

As the ALJ determined, Shabazz's conduct at the 2017 staff meeting occurred more than six months before the charges were filed and, therefore, whatever adverse actions occurred at that time cannot be the subject of a complaint as an independent violation of the Act.[4] See 115 ILCS 5/15; *Jones v. IELRB*, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995). However, it can be used to prove unlawful motive. *City Colleges of Chicago*, 11 PERI 1055, Case No. 95-CA-0012-C (IELRB Opinion and Order, May 26, 1995). Shabazz's comments during the 2017 staff meeting that he felt betrayed and stabbed in the back in connection to what staff members had discussed at the recent Union meeting is evidence of antiunion animus. *Corliss Resources, Inc.*, 362 NLRB 195, 195-196 (2015) (supervisor's statement calling employees "a bunch of backstabbers" reasonably understood as characterizing supporters of the union as disloyal and threatening them with retaliation); *Hialeah Hospital*, 343 NLRB 391, 391 (2004) (manager's statements to employees that he felt "betrayed" and "stabbed in the back" implied support of the Union was employee disloyalty and constituted an implicit threat of unspecified reprisals).

[4] In cases alleging a violation of Section 14(a)(1) where there is no adverse action, but involving employer conduct such as threats, the Board evaluates whether the employer's conduct would reasonably have had the effect of coercing, restraining, or interfering with the exercise of protected rights. *Neponset CVSD No. 307*, 13 PERI 1089, Case No. 96-CA-0028-C (IELRB Opinion and Order, July 1, 1997).

The timing of the adverse action supports a causal connection because the onset of the discipline against Complainant coincides with the timing of her protected activity. Although, as Respondent avers in exceptions, timing alone is not enough to establish a prima facie case, the Board would not rely on timing alone here because the other factors discussed above also support a finding of unlawful motive. Accordingly, we find that the Complainant has established a prima facie case that Respondent violated Section 14(a)(3) of the Act.

The burden now shifts to Respondent to demonstrate, by a preponderance of the evidence, that it had legitimate business reasons for disciplining Complainant and that she would have received the same treatment if she had not engaged in union activity. Despite the existence of a prima facie case, the record evidence demonstrates that Respondent had legitimate business reasons for initiating the Step 1 warning for the allegations contained in the April 9, 2019, meeting notice against Complainant and that it would have taken these actions it took with or without her union activity. Complainant received that discipline for failing to timely issue grades. She admitted to this during the hearing and conceded it was worthy of discipline. We find that Respondent's proffered reason for the resulting discipline was not pretextual.

Respondent's proffered reasoning for the remaining discipline, the December 2018 and January 2019 warnings and Step 3 warning for the allegations contained in the April 2019 meeting notice, does not appear as clearly unrelated to Complainant's protected activity. Given the correlation between her union activity and the adverse actions, we find that Respondent relied, in part, on her protected activity in imposing this discipline upon Complainant.

Respondent's third exception is that the ALJ erred in finding that it failed to establish that it would have closed the Mandarin program and assign Complainant to teach Pre-K special education absent Complainant's protected activity. Because we find that the allegation regarding the closure of the Mandarin program and Complainant's reassignment are outside the scope of the Complaint, we need not consider Respondent's third exception. The same is true regarding Respondent's fourth exception,

that the ALJ erred in finding that it did not meet its burden of proof by a preponderance of the evidence regarding its closure of the Mandarin program and Complainant's reassignment.

IV. Order

For the reasons discussed above, we find that Chicago Board of Education violated Section 14(a)(3) and, derivatively, (1) of the IELRA. Therefore, **IT IS HEREBY ORDERED** that Chicago Board of Education, its officers, and agents shall:

1. Cease and desist from:
   (a) Interfering with, restraining or coercing Terra Sinkevicius in the exercise of her rights under the IELRA.
   (b) Retaliating against Sinkevicius for her protected activities.
   (c) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in an employee organization.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
   (a) Expunge from all its files and records any and all references to the No Action warning issued to Sinkevicius on or about December 3, 2018, the Step 2 warning issued to Sinkevicius on or about December 19, 2018 that was reduced to a Step 1, the Step 2 warning issued to Sinkevicius on or about December 19, 2018 that was dismissed, and the Step 3 warning issued to Sinkevicius on or about January 25, 2019 that was reduced to a Step 1. Notify Sinkevicius in writing that this has been done and that the evidence of these unlawful actions will not be used as a basis for future personnel actions against her.
   (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 of 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 calendar days after receipt of this Opinion and 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: **July 19, 2023**
Issued: **July 19, 2023**

/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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EDUCATIONAL LABOR RELATIONS BOARD

Chicago Teachers Union, IFT-AFT, AFL-CIO, (Terra Sinkevicius),	)	
Complainant,	)	
and	)	Case Nos. 2019-CA-0031-C
	)	2019-CA-0071-C
Chicago Board of Education,	)	
Respondent.	)	

Administrative Law Judge's Recommended Decision and Order

I. Procedural Background

On January 17, 2019, Terra Sinkevicius (Sinkevicius) filed a pro-se unfair labor practice charge in Case No. 2019-CA-0031-C against Respondent Chicago Board of Education, alleging that the Respondent committed unfair labor practices within the meaning of Section 14(a) of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1, *et seq.* On May 31, 2019, the Chicago Teachers Union (Complainant or Union) subsequently filed an unfair labor practice charge in Case No. 2019-CA-0071-C on behalf of Sinkevicius alleging that the Respondent committed unfair labor practices within the meaning of Section 14(a) of the Act. On June 13, 2019, Complainant filed a motion for consolidation of the aforementioned unfair labor practice allegations. On August 8, 2019, pursuant to Section 1105.100(a) of the Illinois Educational Labor Relations Board (IELRB or Board) Rules and Regulations, the Executive Director ordered consolidation of the unfair labor practice charges for the purposes of hearing, given the common nucleus of operative facts. On October 24, 2019, following an investigation, the Executive Director, on behalf of the IELRB,

issued a complaint and notice of hearing (Complaint) setting a January 14 and 15, 2020 hearing date, and alleging that the Respondent violated Section 14(a)(1) and (3) of the Act. The parties appeared before the undersigned on January 14 and 15, 2020. Tr. 1, 309.[1] Both parties simultaneously filed post-hearing briefs on May 28, 2020.

II. Issues and Contentions

The Complainant alleges that the Respondent violated the Act when it retaliated against Sinkevicius for engaging in protected activity by issuing discipline against her on multiple occasions, closing the Mandarin program at James Wadsworth S.T.E.M. Elementary School (Wadsworth), and reprogramming Sinkevicius from teaching Mandarin and Social Studies to teaching Special Education Pre-K.

The Respondent contends that the Complaint should be dismissed in its entirety because the Complainant has failed to demonstrate that the Respondent retaliated against Sinkevicius due to any alleged protected activity. Additionally, the Respondent sets forth that the unfair labor practice charge, or portions of it, are untimely, falling outside of the six-month statute of limitations. In the alternative, the Respondent maintains that even if the undersigned determines that the Complainant established a *prima facie* case of retaliation, it had legitimate business reasons for its actions, and Sinkevicius would have been disciplined regardless of any protected activity.

[1] Reference to exhibits in this matter will be as follows: Complainant's exhibits, "C. Ex. ___"; Respondent's exhibits, "R. Ex. ___"; ALJ exhibits, "ALJ Ex. ___". Reference to the transcript of proceeding will be "Tr. ___".

III. Findings of Fact

a. Uncontested Material Facts

Sinkevicius and the Complainant filed the unfair labor practice charge in this proceeding on January 17, 2019, and May 31, 2019, respectively, and copies thereof were served on the Respondent. ALJ Ex. 8. At all times material, the Respondent was an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. ALJ Ex. 8. At all times material, Sinkevicius was an educational employee within the meaning of Section 2(b) of the Act. ALJ Ex. 8. At all times material, the Complainant was a labor organization within the meaning of Section 2(c) of the Act. ALJ Ex. 8. At all times material, the Complainant was the exclusive representative within the meaning of Section 2(d) of the Act of a bargaining unit comprised of certain persons employed by the Respondent, of which Sinkevicius was a member. ALJ Ex. 8. At all times material, the Complainant and the Respondent were parties to a collective bargaining agreement (CBA) for the above-referenced bargaining unit. ALJ Ex. 8.

At all times material, the Respondent employed Dr. Rashid Shabazz (Shabazz) in the capacity of Principal at Wadsworth. ALJ Ex. 8. At the time of hearing, Shabazz was the principal at Wadsworth, and has been since 2013. Tr. 315. At all times material, Shabazz was an agent of the Respondent, authorized to act on its behalf. ALJ Ex. 8.

b. Additional Material Facts

Zeidre Foster, Sinkevicius, Andrew Petersen, Mia Portis, Pannha Sann and Willie Davis II testified at the hearing on behalf of the Complainant. Shabazz, Leslie

Swain-Store, Cynthia Brawner, Shakia Harrington, and Alfreda Williams testified at the hearing on behalf of the Respondent. The following findings of fact are based on the testimony and documentary evidence in the record that I have determined to be relevant and credible:

Background on Terra Sinkevicius

At the time of the proceeding, Sinkevicius was a certified teacher holding a Professional Educator License in elementary education with endorsements in early childhood education, Mandarin, and art. C. Ex. K. Sinkevicius is certified to teach early childhood education from birth through grade three, birth through 12th grade Mandarin Chinese, birth through third grade special education self-contained and general education, as well as middle school art. C. Ex. Q; Tr. 85. Sinkevicius was hired by Shabazz to teach Mandarin Chinese at Wadsworth for the purposes of becoming a premier STEM (Science Technology Engineering and Mathematics) school and to support the school's STEM initiatives. C. Ex. K. Dr. Shabazz testified that he recruited Sinkevicius because as a STEM school, they were looking to offer foreign language and were aimed at becoming a National Blue Ribbon School, which required the school to have a foreign language program. Tr. 407-408. Shabazz also felt that Mandarin was the language of the global economy. Tr. 407-408.

Sinkevicius has been an educator at Wadsworth since 2015, and at the time of the hearing, was employed in the role of special education teacher at Wadsworth. Tr. 84, 90, 91. Prior to the 2019-2020 school year, Sinkevicius was Wadsworth's Mandarin and Social Science teacher for middle school aged students. C. Ex. K. According to Shabazz, Sinkevicius' was reassigned to an inclusion class with diverse

learning Pre-K students at the beginning of the 2019-2020 school year, in the best interest of the school to fill the position. Tr. 516. Sinkevicius contends at the time of reassignment that she had not taught at the early elementary grade level in more than ten years. C. Ex. K. Initially, Sinkevicius and Shabazz's relationship was cordial, however, it declined and at some point, became contentious. Tr. 200-201, 250, 510. Prior to Sinkevicius' participation in formally advocating on her behalf and on the behalf of others, she had no disciplinary record. Tr. 486. The onset of her disciplinary record began in November of 2018.[2] Tr. 487.

2017 Union Meeting at Wadsworth

Zeidre Foster (Foster), the Union's field representative, held a Union meeting at Wadsworth in or about October of 2017 about various workplace issues, including improper class coverage by paraprofessionals in violation of the CBA. C. Ex. A; Tr. 22-23, 93, 421-422. Within a couple of days following the Union meeting where working condition concerns were raised, a grade-level staff meeting was held at Wadsworth.[3] Tr. 25, 94. During this meeting, Shabazz expressed his displeasure with staff and mentioned that he had been betrayed and stabbed in the back in connection to what he had been made aware by other staff members was discussed during the preceding Union meeting, including workplace issues that he had learned of from certain attendees, instead of the matters being brought directly to him. C.

[2] As far as evaluations are concerned, during the 2015-2016 school year, Sinkevicius' evaluation rating was Excellent at Wadsworth. C. Ex. R.; Tr. 88. During the 2016-2017 school year, Sinkevicius' evaluation rating was excellent. C. Ex. R. During the 2018-2019 school year, Sinkevicius' evaluation rating was proficient. C. Ex. R; Tr. 89.

[3] A grade-level meeting is a principal directed period to discuss curriculum, data results, test scores, and how to improve teaching practices to increase student performance. Tr. 330.

Ex. A; Tr. 25, 95-96, 213-215, 289-290, 325-335, 422. Sinkevicius, believing that Shabazz's remarks concerning the Union meeting were inappropriate, spoke up and informed Shabazz that he couldn't talk about what goes on in Union meetings and that it was the wrong time and place to do so. Tr. 96, 334. Upon finding out about what had occurred during the staff meeting, Foster emailed Shabazz to address his actions on behalf of members who also deemed Shabazz's conduct to be problematic. C. Ex. A; Tr. 27-28.

November 2017 Grievance

On November 8, 2017, a grievance was filed by the Union on behalf of its members, against the Respondent, to address extreme heating and cooling temperatures in the Wadsworth building during the school year, as well as extremely poor air quality in the building, in violation of teachers' and staff right to a safe and healthful working environment. C. Ex. B; ALJ Ex. 8; Tr. 29-31, 99-101, 261, 338. Sinkevicius initiated the process and ensured that the grievance was signed by the vast majority of teachers in the building. Tr. 31, 99-101. The Respondent's response was that the grievance was untimely and even if it had been timely, it was effectively considered resolved.

October 2018 Professional Personnel Leadership Committee (PPLC)

In October of 2018, Sinkevicius contacted the Illinois State Board of Education (ISBE) to advise them of a non-compliance issue with the PPLC (Professional Personnel Leadership Committee). C. Ex. S. The PPLC is a State mandated committee with advisement and recommendation responsibility to administration

regarding curriculum, school improvement and the budget.[4] Tr. 102. PPLC elections are required on an annual basis. Tr. 102, 337. Sinkevicius notified the ISBE that the PPLC election had not yet taken place in compliance with the guidelines due to principal Shabazz's lack of scheduling and follow-up to scheduling the election. C. Ex. S.

Subsequently, on October 18, 2018, an establishing PPLC election meeting was held at Wadsworth. Tr. 99, 102. Once the meeting was properly convened by Shabazz in accordance with his duties as principal, he left the meeting, and for one reason or another Shabazz returned to the PPLC meeting room. Tr. 109, 360. Sinkevicius believing this to be out of compliance with the regulations, voiced to Shabazz that his presence in the room and at the meeting was not appropriate. Tr. 109, 266-267, 291. Additionally, attendees expressed to Sinkevicius that they were intimidated or apprehensive by his presence at the election meeting during voting. Tr. 110, 203-204. There is conflicting testimony that Sinkevicius at some point tried to physically block Shabazz's entry into the room where the election meeting was being held. Tr. 114, 162, 206, 232, 252-253, 359. Ultimately, and following additional advisement from Michael Brunson (Brunson), a Union representative, that he was

[4] The School Reform Law requires the establishment of a PPLC (Professional Personnel Leadership Committee). The purpose of the PPLC is to develop and formally present recommendations to the principal and the LSC (Local School Council) on all matters related to the educational program, including but not limited to, curriculum, school improvement, plan development and implementation, and school budgeting. The PPLC is an organizing and representation body granted rights under the CBA. Jt. Ex. 1, Articles 4-10, 5-10 and 6-7. The PPC (Professional Problems Committee) is a committee of 3-5 members of the CTU created pursuant to the CBA to discuss school operations and issues other than grievances relating to the implementation of the CBA with the principal. C. Ex. S.

not allowed to be present in the room at that time, Shabazz left the room where the election meeting was being held. Tr. 110, 111, 291, 478. Sinkevicius was elected to the PPLC that day and was an active PPLC advocate until her resignation. ALJ Ex. 8; Tr. 116-120, 146-148. At the time of the hearing, the PPLC had been dissolved. Tr. 158.

November 2018 Disciplinary Notices

On November 5, 2018, Shabazz issued a pre-meeting notice to Sinkevicius scheduling a meeting to discuss instances of insubordination, discourteous treatment, and unprofessional behavior, which were alleged to have occurred during the PPLC meeting on October 18, 2018.[5] C. Ex. C; Tr. 33-34. A formal performance improvement plan was issued, however, Sinkevicius ultimately received a no action warning in the matter, and the meeting was considered a professional conversation. C. Ex. C; C. Ex. D; ALJ Ex. 8; Tr. 35, 59, 73-75, 115.

On or about November 27, 2018, Shabazz issued a pre-disciplinary meeting notice alleging misuse of Respondent's technology, policy non-compliance as it relates to electronics, and insubordination for Sinkevicius' actions of sending batch emails to staff throughout the academic day during instructional time. C. Ex. E; ALJ Ex. 8; Tr. 38-40. Shabazz issued a second warning performance improvement plan on December 20, 2018, that Sinkevicius would refrain from doing so in the future. C. Ex. E; ALJ Ex. 8; Tr. 40.

[5] Sinkevicius went on medical leave on October 19, 2018 and returned on November 5, 2018. C. Ex. T; Tr. 112.

Around the same timeframe, Shabazz issued another pre-disciplinary meeting notice alleging that Sinkevicius had engaged in discourteous treatment and unprofessional behavior towards a substitute teacher on November 26, 2018, when she confronted the substitute teacher in the school's main office in front of visitors and office staff about the use of her classroom while she was absent on leave. C. Ex. F; ALJ Ex. 8; Tr. 40, 556-559. Shabazz issued discipline on December 20, 2018, in the form of a second warning performance improvement plan for Sinkevicius to refrain from this conduct within the school's educational community. C. Ex. F; ALJ Ex. 8; Tr. 41-42.

December 2018 Grievance

A grievance dated December 7, 2018, was filed by the Complainant on behalf of Sinkevicius, alleging harassment and retaliation from Shabazz. C. Ex. D; ALJ Ex. 8; Tr. 36-37. Specifically, the grievance alleged that Shabazz's actions in pursuing discipline against her was in response to her organization of and election to the PPLC, as well as her utilization of a medical leave. C. Ex. D. Shabazz responded with a written decision denying the allegations and asserting that the discipline was warranted due to Sinkevicius' misconduct. C. Ex. D; Tr. 37-38. The Union filed an appeal of the denial on February 5, 2019. C. Ex. D.

January 2019 Disciplinary Notice

A pre-disciplinary meeting notice dated January 9, 2019, was issued to Sinkevicius by Shabazz to discuss negligence and incompetence concerning students, and policy non-compliance concerning students after two students were in a physical altercation outside on the playground while under Sinkevicius' supervision, and of

which she failed to report to administration. C. Ex. H; Tr. 45, 170. Shabazz issued a performance improvement plan in the form of a final warning on January 25, 2019, as a result. C. Ex. H; ALJ Ex. 8; Tr. 45, 127.

Sinkevicius' January 2019 EOCO Complaint

On or about January 16, 2019, Sinkevicius filed a second complaint with Respondent's Equal Opportunity Compliance Office (EOCO) alleging harassment and a hostile work environment based on her age, marital status, and engagement in protected activities, such as the PPLC, and use of benefit days including the Family Medical Leave Act (FMLA), bereavement, and personal business days. C. Ex U.

January 2019 Grievance

The Union filed a grievance on behalf of Sinkevicius, Mia Portis, Ronald Sansone, Andrew Petersen, Willie Davis II, and other Wadsworth educators, on or about January 17, 2019, contending that the Respondent failed to provide a safe and healthy working environment for both the bargaining unit members and students at Wadsworth. C. Ex. G. Furthermore, the grievance alleged that the Respondent failed to enforce appropriate discipline, properly document incidents in Verify, and notify members of the outcome of disciplinary referrals, in connection to two separate incidents that transpired on December 4, 2018.[6] C. Ex. G; Tr. 42-43, 153, 215-216, 219, 261-262, 295-296, 340. Shabazz responded via a written decision denying the grievance, asserting his account of what occurred on both dates in question, that a

[6] The first incident involved a student in the building with a toy gun. The second incident involved a disruptive student threating to kill and or cause bodily harm to his peers and staff. C. Ex. G.

safe and healthy working environment is provided for students and staff at Wadsworth, and that he would continue to take measures and precautions to continue in that regard. C. Ex. G; Tr. 44. The Union filed an appeal of the grievance's denial on March 5, 2019. C. Ex. G.

March 2019 Arbitration

On January 29, 2019, the Union submitted various disciplinary matters involving Sinkevicius pursuant to the CBA for mediation arbitration. C. Ex. I. Foster attended the mediation arbitration on behalf of Sinkevicius on or about March 13, 2019. Tr. 46. Arbitrator Marsha Ross-Jackson reduced the level 2 warning issued on December 19, 2018, regarding discourteous treatment and unprofessional behavior to a substitute teacher to a step 1 warning, dismissed the level 2 warning issued on December 20, 2018, regarding misuse of Chicago Public School technology, and reduced the level 3 warning regarding negligence, incompetence and policy non-compliance pertaining to students issued on January 25, 2019, to a level 1 warning. C. Ex. I; ALJ Ex. 8; Tr. 491-493.

Sinkevicius' Attorney General Complaint

On April 4, 2019, Sinkevicius lodged a complaint with the attorney general's office alleging PPLC and Local School Council (LSC) compliance violations. C. Ex. V.

April and August 2019 Disciplinary Notices

Pre-disciplinary meeting notices were issued by Shabazz on April 9, 2019, for a meeting to discuss allegations that Sinkevicius failed to enter grades into the system, along with incidents of discourteous treatment, verbal abuse, physical abuse, and insubordination. C. Ex. J; ALJ Ex. 8; Tr. 47, 50, 130, 378-381. However, Shabazz

did not issue discipline within ten days of the April 23rd meeting, in accordance with the parties' CBA.[7] Jt. Ex. 1 Article 29; Tr. 48, 129-130. Instead, on or about August 29, 2019, during the subsequent school year, he issued new meeting notices to discuss substantially similar allegations from the preceding school year, according to Shabazz, at the direction of Respondent's law department. C. Ex. L; C. Ex. M; Tr. 48, 52. Following that meeting, a performance improvement plan was issued, however, the December 14, 2018, allegation of physical abuse from the April 9th meeting notice that was still under investigation had been removed, and newly raised issues had been included that were not previously addressed or raised either during the arbitration or at any other time.[8] C. Ex. L; C. Ex. M; Tr. 52, 54-55, 63, 494. A first level warning was issued for the failure to timely enter grades on September 9, 2019, which Sinkevicius admitted to and concedes was the only conduct occurring during the 2018-2019 school year worthy of discipline. C. Ex. L; Tr. 53, 131-132, 192, 494. A final warning was also issued on September 9, 2019 for the remaining allegations described as incidents of Sinkevicius disrupting and interfering with a national testing session, inappropriate and unprofessional conduct towards guardians of two students, inappropriate and unprofessional conduct during a meeting with administration, a parent and student, mistreatment towards the school clerk, as well

[7] Sinkevicius went out on FMLA the next day on April 24th. Tr. 63, 130.

[8] On December 14, 2018, an incident report naming Sinkevicius as an offender was filed alleging that Sinkevicius grabbed a student, pushed him aggressively against the wall, placed her forearm against the student's neck and put the student in a headlock. Sinkevicius alleged that the student threatened her and others and kicked her, which prompted her to intervene. Andrew Petersen, another teacher was listed as an Offender and alleged to having boxed the student in along with Norrice Hogan, a teacher assistant, and Sinkevicius, grabbing, pulling and tugging on the student in an attempt to control the situation. R. Ex. 5.

as disruptive and inappropriate behavior immediately following a LSC meeting.[9] C. Ex. N; Tr. 54-55, 452-455, 494, 526, 559-565.

September 2019 Grievance

The Union filed a grievance on behalf of Sinkevicius on September 6, 2019 against Shabazz alleging harassment and retaliation after Sinkevicius was removed from teaching Mandarin, the Mandarin program was canceled, and Sinkevicius was placed in a Pre-K special education position. C. Ex. K; Tr. 49, 155-157, 341. Shabazz responded denying the claim of retaliation and instead offered that he considered Sinkevicius' background, as well as the needs of the students and school as considerations for moving her to an early childhood special education position that she was qualified to teach. C. Ex. K; Tr. 49-50. Sinkevicius was advised that the school had more of a need for her expertise in Pre-K as a special education teacher than teaching Mandarin Chinese, even though she had not done so at Wadsworth. Tr. 157. According to Shabazz, the position had been vacant during the 2018-2019 school year and needed to be filled for compliance purposes, and although the position was posted there had been a lack of candidates who had the qualifications required to fill the position, whereas Sinkevicius possessed the necessary credentials and therefore was prioritized over Mandarin Chinese. C. Ex.

[9] The warning notices issued to Sinkevicius on September 9, 2019, were submitted to Arbitrator Edwin Benn on December 17, 2019. Arbitrator Benn decided to hold the decision in abeyance pending the outcome of the instant unfair labor practice case. C. Ex. L; C. Ex. P. Sinkevicius admits to saying to Shakia Harrington at the LSC meeting that if she [Sinkevicius] was a shameless bootlicking suck up, maybe she would be there all day and night like her [Harrington] in response to being told that she [Sinkevicius] didn't invest the same amount of time at the school that others did, as well as accused Harrington of practicing colorism against her. Tr. 144, 147, 184.

K; Tr. 322-324. According to Shabazz, filling the position was extremely important for Wadsworth, the students, and the educational community.[10] C. Ex. K.

Dr. Shabazz testified that Sinkevicius' conduct was deserving of each disciplinary action for the safety of students and teacher responsibility, and not retaliatory in nature.[11] Tr. 406.

IV. Discussion

a. Respondent's Alleged Violation of Section 14(a)(3) and derivatively (1) of the Act

The Complainant argues that Sinkevicius engaged in a significant amount of protected union activity, that Respondent was aware of said activity, that the Respondent took adverse action against Sinkevicius in close proximity to her

[10] Shabazz set forth that at the end of the 2018-2019 school year, administrative assessed how the school year had progressed, which included reviewing the school's content offered, data analysis, test scores and vacant positions that had to be filled, teaching credentials and backgrounds in administration's decision to close the Mandarin position and reassign Sinkevicius in the open early childhood special education position. C. Ex. K.

[11] I note for the record, the adverse employment activity statuses of other Union members presented at the hearing. Peterson, who was also elected to the PPLC, grievances were filed on his behalf, and was named in the December 14, 2018, physical abuse complaint and accusation of student along with Sinkevicius, never received formal discipline. Tr. 116, 205, 240. Portis, who was elected to the PPLC, and grievances were filed on her behalf, received poor evaluations from administration and was ultimately nonrenewed. Tr. 43, 116, 205, 253, 255-256, 259, 261-262, 266. Ronald Sansone, who was elected to the PPLC, had grievances filed on his behalf, but never received formal discipline. Tr. 116, 205, 341. Pannha Sann did not serve on the PPLC, however did receive a Level 1 warning for two students not attending class. Tr. 277, 279-280. Willie Davis had grievances filed on his behalf, was previously a special education teacher, and also disciplined for negligence along with Sann. Tr. 43, 116, 299-300, 304, 341. Davis did not have primary special education certification (he was certified to teach middle school special education). Tr. 414-415, 521. The decision not to renew him was made prior to reprogramming Sinkevicius. Tr. 414.

protected activities, that Respondent expressed hostility toward protected activities and interfered with protected activities on several occasions, and that Respondent treated Sinkevicius differently than other employees who were not on the PPLC and were not advocating for jointly held concerns. The Complainant argues further that Respondent's discrimination constitutes a continuing violation, and that Respondent's legitimate business reasons for taking adverse action against Sinkevicius are pretextual.

The Respondent contends that the Complainant failed to establish a *prima facie* case, and that the IELRB lacks jurisdiction to determine whether allegations of adverse actions taken prior to November 1, 2018, constitute unfair labor practices. The Respondent contends further that the Complainant failed to prove that it disciplined Sinkevicius in retaliation for protected activity, failed to prove improper motive or anti-union animus, and if a *prima facie* case was established it would have disciplined Sinkevicius regardless of her protected activity.

Section 14(a)(3) of the Act prohibits educational employers, their agents, or representatives from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization. 115 ILCS 5/14. In order to establish a *prima facie* case of a Section 14(a)(3) a violation, the complainant must prove by a preponderance of the evidence, that the employee engaged in union activity, the respondent was aware of that activity, and the respondent took adverse action against the employee for engaging in that activity based, in whole or in part, on antiunion animus, or that union activity was a substantial or motivating factor. *Speed Dist. 802 v. Warning*,

242 Ill. 2d 92, 950 N.E. 2d 1069 (2011); *City of Burbank v. Illinois State Labor Relations Board*, 128 Ill. 2d 335, 345-346, 538 N.E.2d 1146, 1149-1150 (1989); *Bloom Township High School v. IELRB*, 312 Ill. App. 3d 943, 957, 728 N.E.2d 612, 624 (1st Dist. 2000). To constitute an adverse action, an employer's conduct must change the employee's terms and conditions of employment. *Cairo School District # 1*, 33 PERI 123, Case No. 2017-CA-0005-S (IELRB Opinion and Order, May 18, 2017).

Because motive is a question of fact, it can be inferred from either direct or circumstantial evidence. *City of Burbank*, 128 Ill. 2d at 346, 538 N.E.2d at 1150. Unlawful motive can be demonstrated by various factors, including expressions of hostility toward unionization, together with knowledge of the employee's union activities; timing of the adverse action in relation to the occurrence of the union activity; disparate treatment or targeting of union supporters; inconsistencies between the reason offered by the respondent for the adverse action and other actions of the respondent; and shifting explanations for the adverse action. *Id.*

Once the complainant establishes a *prima facie* case, the burden shifts to the respondent to demonstrate, by a preponderance of the evidence, that it had a legitimate business reason for its actions and that the employee would have received the same treatment absent his union activity. *City of Burbank*, 128 Ill. 2d 335, 538 N.E.2d 1146. Merely proffering a legitimate business reason for the adverse employment action does not end the inquiry, as it must be determined whether the proffered reason is bona fide or pretextual. *Id.* If the proffered reasons are merely litigation figments or were not, in fact relied upon, then the respondent's reasons are

pretextual and the inquiry ends. *Id.* However, when legitimate reasons for the adverse employment action are advanced and are found to be relied upon at least in part, then the case may be characterized as a "dual motive" case, and the respondent must establish, by a preponderance of the evidence, that the action would have been taken notwithstanding the employee's union activity. *Id.*

Here, the Complainant asserts that the Respondent's alleged discrimination on the basis of Sinkevicius' protected activity constituted a continuing violation. As a preliminary matter, I dispose of this assertion and find that the continuing violation doctrine is not applicable in this case for the reasons outlined below.

Generally, a continuing violation exists only where illegality can be established without reliance upon circumstances in existence outside of the six-month statute of limitations. *Village of Wilmette*, 20 PERI 85 (SLRB, May 14, 2004); *Village of Elk Grove Village*, 6 PERI 2048 (SLRB, October 25, 1990). Where the continuing violation theory is applied, each repeated act of prohibited conduct that occurs within the six-month limitations period may constitute a separate violation of the Act, which is actionable despite the fact that an identical action, which may be used to shed light under the circumstances, took place outside the statute of limitations. *Id.*

While the continuing violation doctrine creates a limited exception to the general rule that untimely charges must be dismissed, I find that it does not apply here. The relevant allegations which would shed light that occurred outside of the six-month statute of limitations include Shabazz's questionable response displayed at the 2017 staff meeting about being stabbed in the back when employees did not come to him to discuss workplace matters and instead voiced them during a preceding

Union meeting. The continuing violation doctrine allows a repeated act to be actionable despite the fact that an identical action occurred outside of the statute of limitations. *Id.* In the instant matter, there is no repeated or identical act that occurred within the limitations period similar or equivalent to Shabazz's conduct displayed at the 2017 staff meeting.

That said, any consideration given to the relevant events which occurred in 2017 are disregarded accordingly. Section 15 of the Act provides that no order shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge. *Jones v. IELRB*, 272 Ill. App. 3d 612, 650 N.E. 2d 1092 (1st Dist. 1995). Thus, the instant order shall not give credence to Shabazz's conduct at the 2017 staff meeting, as such is untimely with respect to the unfair labor practice charge filed in this proceeding on January 17, 2019.

Next, I find it worthwhile to note the well documented instances of Sinkevicius' protected activity under the Act. Section 14(a)(3) applies to discrimination on the basis of union activity.[12] *Bloom Township High School District 206 v. IELRB*, 312 Ill. App. 3d 943 (1st Dist. 2000). Sinkevicius engaged in protected union activity under Section 14(a)(3) of the Act when she attended the 2017 Union meeting at Wadsworth,

[12] Section 14(a)(1) of the Act prohibits educational employers, their agents, or representatives from interfering, restraining or coercing employees in the exercise of the rights guaranteed under the Act. 115 ILCS 5/14. For the purposes of this charge, the alleged violations will be treated as a derivative action since the Respondent's discriminatory conduct also was alleged to have interfered with and or restrained Sinkevicius' fundamental rights under the Act. Where an alleged violation of Section 14(a)(1) of the Act is based on the same conduct as an alleged violation of Section 14(a)(3), the 14(a)(1) charge is treated as a derivative violation. *Bloom Township High School Dist. 206 v. IELRB*, 312 Ill. App. 3d 943, 957, 728 N.E.2d 612, 623 (1st Dist. 2000).

led the mission in filing the November 2017 grievance, attended and spoke out during the October 18, 2018 PPLC election meeting, filed the December 2018 grievance, was named on the January 2019 grievance, filed the September 2019 grievance and enlisted the Union's assistance on multiple occasions to represent her against disciplinary actions and in mediation arbitration.

The record also establishes that Shabazz, the Respondent's agent, knew of Sinkevicius' protected union activity. An employer can be found to have knowledge of an employee's protected activity through direct or circumstantial evidence. *Rockford Twp. Hwy, Dep't v. State Labor Rel. Bd.*, 153 Ill. App. 3d 863, 881 (2d Dist. 1987). Knowledge of an employee's protected activity must be specifically imputed to an appropriate agent of the employer who is in some manner responsible for the alleged adverse employment action. *Macon Cnty. Bd. and Macon Cnty. Hwy. Dep't*, 4 PERI P 2018. By evidence of Shabazz's direct responses to the relevant grievances, his physical presence at the PPLC election meeting, and Sinkevicius speaking up directly to Shabazz on behalf of Union members at the grade-level staff meeting following the 2017 Union meeting, he was aware of Sinkevicius' union activity. Needless to express, Shabazz's knowledge is appropriately imputed as the Respondent's agent as he was directly responsible for the adverse employment actions Sinkevicius received.

The heart of this case is whether the evidence substantiates a nexus between Shabazz's adverse actions against Sinkevicius for engaging in protected activity based, in whole or in part, on antiunion animus, or that union activity was a substantial or motivating factor. I find that it does for the rationale presented below.

The depiction of what occurred at the PPLC meeting involving Shabazz indicates at best union animus, and at worst union hostility specifically aimed at Sinkevicius. That is, from Sinkevicius having to advocate for the PPLC inaugural election meeting to actually take place, to Shabazz leaving the initial PPLC meeting then returning once voting commenced, which made several of those in attendance uncomfortable to say the least, to the confrontation that transpired between Shabazz and Sinkevicius as a result of her attempt to enforce PPLC compliance, and a Union representative deeming it necessary to step in to back Sinkevicius up. Less than a month later is when Sinkevicius was first issued disciplinary notices tied to the October 18th PPLC meeting, and each adverse employment action thereafter, while not necessarily directly connected to the protected activity as was the first November 2018 disciplinary action, was circumstantially issued in close proximity to Sinkevicius' protected union activity, and Shabazz's knowledge of that activity. I also find the inconsistencies between the reason offered by the Respondent for the adverse action and other actions of the Respondent factor to be applicable here. By Shabazz's own testimony, Sinkevicius was hired to teach Mandarin Chinese at Wadsworth for the distinguished goal of becoming a premier STEM school and to support the school's STEM initiatives and become a National Blue Ribbon School. Under the circumstances, and with such a high level of stated importance on Shabazz's own account, it appears inconsistent that the foreign language program would subsequently be canceled and Sinkevicius would then be reassigned to other teaching duties by Shabazz, without compelling documented evidence proffered to support this critical and seemingly incongruent decision making under his authority.

These things, taken together with the onset and cessation I might add of Sinkevicius' disciplinary record, and in light of the fact that Shabazz's conduct produced the exact result that Section 14(a)(3) was designed to circumvent – discouragement in protected activity – it is more likely than not that Shabazz's conduct was unlawfully motivated by Sinkevicius' involvement in protected union activity.

I however do not conclude that disparate treatment or targeting of union supporters was a relevant factor here since the record briefly reflects at least one other disciplinary action taken against an individual who engaged in union activity, individuals who engaged in union activity but weren't disciplined, and likewise according to the record individuals who did not engage in union activity but were disciplined. As such, I find no evidentiary ground to infer any apparent pattern of disparate treatment or targeting.

Given the above analysis, I find that the Complainant has established a *prima facie* case, which means that the burden now shifts to the Respondent to demonstrate by a preponderance of the evidence that it would have taken the same action against Sinkevicius even in the absence of her protected activity.

In its post-hearing brief, the Respondent contends that Sinkevicius engaged in conduct worthy of discipline, she would have been disciplined for her egregious misconduct notwithstanding any involvement in protected activity, and she was disciplined in proportion to the severity of her misconduct and on well-founded allegations. Interestingly enough and despite the Respondent's stance, a neutral arbitrator found reason to reduce at least three of Sinkevicius' disciplinary matters.

For clarity, Sinkevicius admitted to disciplinary action being warranted when she failed to enter grades into the system, however, she challenged and or refuted each other instance of adverse employment action taken against her. And while I resolve that the record is strewn with questionable instances and encounters involving Sinkevicius that resulted in discipline being issued, the record is noticeably void of legitimate evidence or proof to support the administrative assessment and concrete reasons relied upon to close the Mandarin program and reprogram Sinkevicius to teach Pre-K special education, as were maintained by Shabazz in his response to Sinkevicius' September 2019 retaliation grievance. Respondent did not offer one iota of documented proof to this end. I approach the instant dual motive case analysis with an understanding that priorities and interests are subject to change, and Sinkevicius does indeed hold the requisite special education teaching certification, yet the absence of proof of such a consequential decision is concerning and moreover fails to satisfy the Respondent's burden of proof. The overall weight of the evidence presented in this case and lack of Respondent's programming change decision evidence leads to an inference that the reasoning offered regarding the decision was not legitimate and consequently unlawful. Therefore, I conclude that the Respondent has not established by a preponderance of the evidence that it would have made the same programming decisions absent Sinkevicius' protected union activity, and thus find Shabazz's conduct as it relates specifically to canceling the Mandarin program and Sinkevicius' reassignment to be in violation of Section 14(a)(3) and derivatively (1) of the Act.

V. Recommended Order

On the basis of the above findings and conclusions, I recommend the following: Respondent, its officers, and agents shall,

1. Cease and desist from:

(a) Interfering with, restraining or coercing Sinkevicius in the exercise of her rights under the IELRA.

(b) Retaliating against Sinkevicius for her protected activities.

(c) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in an employee organization.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Restore the status quo ante; or

(b) Make Sinkevicius whole as the bargaining unit member adversely affected by the Respondent's decision in violation of the Act; and

(c) Post on bulletin boards or other places reserved for notices to employees, for sixty (60) consecutive days during which the majority of Respondent's employees are actively engaged in the duties they perform for Respondent, signed copies of the attached notice. Respondent shall take reasonable steps to ensure that said notice is not altered, defaced, or covered by any other materials; and

(d) Notify the Executive Director, in writing, within 35 days after receipt of this Order of the steps taken to comply with it.

VI. Exceptions

In accordance with Section 1120.50(a) 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 21 days after service hereof. Parties may file responses to exceptions and briefs in support of the responses not later than 21 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 1120.50 of the Rules, concerning service of exceptions. If no exceptions have been filed within the 21-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.