STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Harlem Consolidated School Dist. 122,	)	
	)	
Respondent	)	
	)	
and	)	Case No. 2022–CA–0060–C
	)	
Harlem Federation of Teachers, Local 540, IFT-AFT, AFL-CIO,	)	
	)	
Complainant	)	

OPINION AND ORDER

I. Statement of the Case

On April 8, 2022, Harlem Federation of Teachers, Local 540, IFT-AFT, AFL-CIO (Union) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board or Respondent) against Harlem Consolidated School District 122 (District or Employer) alleging the District violated Section 14(a)(5) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1 *et seq.*, by refusing to collect and remit union dues. Following an investigation, the Board's Executive Director issued a Complaint and Notice of Hearing (Complaint) on October 14, 2022. The parties appeared for a hearing before an Administrative Law Judge (ALJ) on February 8, 2023. On October 25, 2023, the ALJ issued a Recommended Decision and Order (ALJRDO) finding that the District's failure to withhold and remit dues from employee paychecks on August 14, 2020 and August 13, 2021 was in contravention of Section 11.1(a) and (b) of the IELRA. The ALJ further found that, pursuant to Section 11.1(f) of the IELRA, the District's violation of Section 11.1(a) and (b) is a violation of its duty to bargain in good faith in violation of Section 14(a)(5) of the Act. The ALJ ordered the District to reimburse the Union for the amount it failed to withhold and remit in dues. This case is before us because the District filed exceptions to the ALJRDO.

II. Factual Background

We adopt the ALJ's finding of facts 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 to note the following facts based on undisputed testimony that we found helpful in analyzing this case:

Bargaining unit members are paid their salaries over twenty-six pay periods per year. Tr. 13, 18.[1] Union dues deductions for each school year are deducted from Union members' paychecks beginning in October. Tr. 18. Dues are deducted from twenty of the members' twenty-six paychecks. Tr. 15. Deductions are made from paychecks for the first and second pay periods of each month, but not the third pay period. Tr. 19. The dues deductions for the school year continued after the school year ended and into the summer until all twenty deductions were made. Tr. 19. The District began to deduct dues from twenty paychecks in the 2019-2020 school year. Tr. 18. Prior to that the District deducted dues from fifteen paychecks. Tr. 17. The change was made at the request of the Union. Tr. 18.

III. Discussion

In 2019, the IELRA was amended by Public Act 101-0620 to include Section 11.1 Dues collection, which provides in relevant part:

> (a) Employers shall make payroll deductions of employee organization dues, initiation fees, assessments, and other payments for an employee organization that is the exclusive representative. Such deductions shall be made in accordance with the terms of an employee's written authorization and shall be paid to the exclusive representative. ...
>
> (b) Upon receiving written notice of the authorization, the educational employer must commence dues deductions as soon as practicable, but in no case later than 30 days after receiving notice from the employee organization. Employee deductions shall be transmitted to the employee organization no later than 10 days after they are deducted unless a shorter period is mutually agreed to.
>
> ....
>
> (f) The failure of an educational employer to comply with the provisions of this Section shall be a violation of the duty to bargain and an unfair labor practice. Relief for the violation shall be reimbursement by the educational employer of dues that should have

[1] References to the transcript of proceedings will be "Tr. ____".

> been deducted or paid based on a valid authorization given by the educational employee or employees. ....

Section 14(a)(5) of the Act imposes upon educational employers the duty to bargain in good faith with a labor organization that is the exclusive bargaining representative of its employees. As a result of Public Act 101-0620, the requirements in Section 11.1(a) and (b) that educational employers deduct labor organization dues as authorized by their employees and remit them to the labor organization are enforceable under Section 14(a)(5) of the IELRA. This is because Section 11.1(f) makes the deduction and remission of dues part of the employer's duty to bargain in good faith, a violation of which is an unfair labor practice within the meaning of Section 14(a)(5).

The District's first exception is that Board does not have jurisdiction over the charge because the alleged misconduct occurred more than six months before the charge was filed. That is, the charge should have been dismissed as untimely because the District failed to deduct and remit the dues in August 2020 and August 2021, but the Union did not file the charge until April 8, 2022.

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).

The District relies on the Appellate Court's decision in *Wapella* to support its assertion that the charge in this case is untimely. In that case, the employer's board of education voted on July 17, 1985 to rescind its policy of granting full credit on the salary schedule for teacher experience in other districts. The union filed an unfair labor practice charge over seven months later, on March 6, 1986, alleging the employer bargained in bad faith in violation of Section 14(a)(5) by its unilateral rescission of that policy. The Court characterized the crux of the matter as whether the point in time from which the six month statutory limit is measured is (1) from the conduct of the employer rescinding its policy, i.e., the announcement of the unilateral change; or (2) the implementation of the now policy in paychecks of September 10, 1985, and the employer's

written refusal on October 21, 1985, to bargain the recission of the policy. The Court stated, "While the proper focus is on the time of the discriminatory act and not the point at which the consequences of the act become most painful, one must also consider the nature of the discriminatory act." *Wapella*, 177 Ill. App. 3d at 168 (internal citations omitted). The Court upheld the dismissal of the charge as untimely, finding that the IELRB reasonably concluded the limitation period began on the date the change was unambiguously announced, rather than the date it was implemented, since the alleged misconduct was the unilateral change in policy and not its application to particular individuals. *Id.*, 177 Ill. App. 3d 153, 531 N.E.2d 1371.

The instant case is factually distinguishable from *Wapella*. Unlike the employer in *Wapella* who voted at its school board meeting to change its policy, the District did not announce that it was not going to deduct or remit the dues to the Union. So unlike *Wapella*, the Board cannot rely on the date a policy change was announced to determine when the six-month time clock begins in this case. Even though the union in *Wapella* knew or should have known of the policy change by the school board's vote, the Court observed that union could be imputed with actual knowledge when its president wrote a letter on July 29, 1985 to the employer's superintendent requesting it reconsider the policy change, when the employer replied the following August 6 informing the union it would not reverse its position, and when the first teacher was hired and signed a contract reflecting the change in policy on August 1. *Wapella*, 177 Ill. App. 3d 153, 531 N.E.2d 1371 Thus, the union in *Wapella* had actual knowledge of the misconduct more than six months before it filed the charge. In this case, the record indicates the Union's earliest knowledge of the dues shortfall as October 21, 2021, when the Union brought it up to the District, less than six months before the charge was filed. The record also indicates the Union did not understand the reason for the missing funds, i.e., because they had not been collected or remitted by the District, until the following month. The Union knew or should have known of the alleged misconduct on October 21, 2021 and it had actual knowledge on November 29, 2021. Unlike *Wapella*, both dates are less than six months prior to the charge filing.

The District's second exception is that the ALJ erred when he relied on Section 11.1(f) of the IELRA, rather than caselaw predating Section 11.1(f) analyzing an employer's duty to bargain in good faith. Section 11.1 is a somewhat recent amendment to the IELRA, thus this unfair labor practice charge arising in its context is a matter of first impression for the Board. In construing a statutory provision not yet judicially interpreted, a court, in this case the Board, is

guided by both the plain meaning of the language of the statute, as well as the legislative intent. *Village of Woodridge v. DuPage Cnty.*, 144 Ill. App. 3d 953, 494 N.E.2d 1262 (2d Dist. 1986), *citing Interlake, Inc. v. Industrial Com.*, 95 Ill. 2d 181, 447 N.E.2d 339 (1983) and *Griffin v. City of North Chicago*, 112 Ill. App. 3d 901, 445 N.E.2d 827 (1983). The plain meaning of the statute indicates that the legislature meant to make an educational employer's failure to collect and remit union dues a violation of that employer's duty to bargain and an unfair labor practice. Whatever previous cases say otherwise are not controlling because they were decided before the statute was amended to specifically make such conduct an unfair labor practice. Section 11.1(f) does not create a stand-alone unfair labor practice. It says an educational employer's failure to collect and remit dues as properly authorized by its employees violates its duty to bargain in good faith and is an unfair labor practice. An educational employer's duty to bargain in good faith is part of Section 14(a)(5) and has been since the IELRA was enacted in 1984, and Illinois school labor law was revolutionized. *See generally Board of Educ. of Cmty. Sch. Dist. No. 1, Coles Cnty. v. Compton*, 123 Ill. 2d 216, 526 N.E.2d 149 (1988) (explaining the effect of the then newly enacted IELRA).

It is worth noting that at least one case decided before Public Act 101-0620 supports the notion that an employer's refusal to remit dues amounts to bad faith bargaining. In *Markham Professional Firefighters Ass'n, IAFF, Local 3209*, 25 PERI ¶117 (ILRB GC 2009) the Illinois Labor Relations Board left undisturbed an administrative law judge's determination that a public employer violated Section 10(a)(4) of the Illinois Public Labor Relations Act (IPLRA), 5 ILCS 315/10(a)(4), when it failed to timely remit dues collected through payroll deduction.[2] In this case, the District failed to collect and remit dues for certain payroll periods to the Union, whereas the employer in *Markham* collected the dues but remitted them to the union in excess of the time period provided in the parties collective bargaining agreement.[3] Despite this

[2] Section 10(a)(4) of the IPLRA is analogous to Section 14(a)(5) of the IELRA, and both are modeled after Section 8(a)(5) of the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151 *et seq*. Per Section 17.1 of the IELRA, all final Illinois Labor Relations Board decisions that have not been reversed by subsequent court rulings shall be considered, but need not be followed, by the IELRB.

[3] Both the ALJRDO and the District's exceptions incorrectly say that the employer in *Markham* failed to remit dues to the union for a continuous nine-month period. While the complaint alleged as much, the ALJ amended the complaint upon the union's motion to allege that the employer failed to timely remit dues collected through payroll deduction.

difference in fact, an examination of *Markham* is still useful in this case. Public Act 101-0620 amended Section 6 of the IPLRA and Section 11.1 of the IELRA to include nearly identical language making an employer's failure to deduct and remit dues a violation of its duty to bargain and an unfair labor practice. Thus, even though *Markham* predated the amendment making the failure to remit union dues a violation of an employer's duty to bargain in good faith under the IPLRA, the employer was nonetheless found to have breached its duty to bargain in good faith by its refusal to timely remit dues to the union. Likewise, the NLRB has held that an employer violates Section 8(a)(5) of the NLRA by ceasing to deduct and remit dues in violation of an existing contract.[4] *Majestic Towers*, 353 NLRB No. 29 (2008); *Hearst Corp*, 343 NLRB 689 (2004); *R.T. Jones*, 303 NLRB 841 (1991).

The District's third, fifth and sixth exceptions take issue with the ALJ's remedy. The District claims that ordering it to pay the Union for the amount of dues from its own pocket is erroneous when the error was due to the District's failure to collect the dues from the employees. The District complains that such a remedy could require it to discharge a private debt of individuals and violate the Illinois Constitution, that it renders an illegal penalty clause encumbering the express public policy against imposing punitive damage liability on local taxpayers, and that would create a windfall for the Union and its members. Section 11.1(f) of the Act states with regard to an employer's violation of Sections 11.1(a) and (b): "Relief for the violation shall be reimbursement by the educational employer of dues that should have been deducted or paid based on a valid authorization given by the educational employee or employees." Again, the plain meaning of the statute controls.

In its fourth exception, the District argues the ALJ erroneously determined that violations of Section 11.1 of the Act constituted a strict liability offense. The ALJ opined that "[i]t is clear from the plain text of Section 11.1 that the legislature intended to make a failure to deduct and remit dues a strict liability offense" but he would nonetheless address the defenses offered by the District in response to the charge.

[4] Decisions of the NLRB interpreting similar statutory provisions are persuasive authority, although they are not binding on the IELRB. *East Richland Education Association v. IELRB*, 173 Ill. App. 3d 878, 528 N.E.2d 751 (4th Dist. 1988).

In a strict-liability case, the plaintiff need not prove the defendant's negligence or intent, and the defendant cannot escape liability by proving a lack of negligence or intent. Restatement (Third) of Torts: Phys. & Emot. Harm 4 Scope Note (2010). As the District notes in its exceptions, the courts have found a legislative intent to impose strict liability in several Illinois statutes, such as the Liquor Control Act of 1934 (the Dram Shop Act) (235 ILCS 5/6-21), the Structural Work Act (740 ILCS 150/9), the Coal Mining Act (225 ILCS 705/101 to 3.9), and the Child Labor Law (820 ILCS 205/1 *et seq.*). *Barthel v. Illinois Cent. Gulf R. Co.*, 74 Ill. 2d 213, 384 N.E.2d 323 (1978). The rationale for reading strict liability into these statutes is to protect certain classes of persons against their own inability to protect themselves, such as children and intoxicated persons. *Barthel*, 384 N.E.2d at 327, *citing* Restatement (Second) of Torts §483, comment C (1965). It is also to protect the public from inherently dangerous activities; where the public would not be in a position to realize the risk until the harm had already occurred, as in the regulation of train equipment, scaffolding acts, and pure food cases; and where there are hidden defects, such as building code violations and regulations on automobile brakes. *Bybee v. O'Hagen*, 243 Ill. App. 3d 49, 612 N.E.2d 99 (4th Dist. 1993). In the context of labor, strict liability may come into play with statutes enacted to protect employees because employees are considered unable to exercise constant vigilance to protect themselves from hazardous working conditions such as the Structural Work Act and the Coal Mining Act. *Barthel*, 384 N.E.2d 327, *citing Schultz v. Henry Ericsson Co.*, 264 Ill. 156, 164, 106 N.E. 236 (1914); *Tomasi v. Donk Bros. Coal & Coke Co.*, 257 Ill. 70, 74, 100 N.E. 353 (1912). None of these are applicable to Section 11.1 of the IELRA.

While we may not characterize the General Assembly's intent to make a violation of Section 11.1 a strict liability offense, the General Assembly included nothing to indicate that an educational employer's motive behind its failure to deduct and remit dues to the union is relevant in determining if it failed to comply with Section 11.1. As discussed above, we find that the plain meaning of Section 11.1 indicates that the legislature meant to make an educational employer's failure to collect and remit union dues a violation of that employer's duty to bargain and, as a result, an unfair labor practice within the meaning of Section 14(a)(5) of the Act.

IV. Order

Respondent failure to withhold and remit dues from employee paychecks on August 14, 2020 and August 13, 2021 was in contravention of Section 11.1(a) and (b) of the IELRA. Pursuant to Section 11.1(f) of the IELRA, the District's violation of Section 11.1(a) and (b) is a violation of its duty to bargain in good faith in violation of Section 14(a)(5) of the IELRA. The ALJRDO is affirmed. For the reasons discussed above, IT IS HEREBY ORDERED that Respondent, Harlem Consolidated School District 122, its officers, and its agents shall:

1. Cease and Desist from:
    a. Refusing to bargain collectively and in good faith with Harlem Federation of Teachers, Local 540, IFT-AFT, AFL-CIO.
    b. Failing or refusing to withhold and remit union dues to Harlem Federation of Teachers, Local 540, IFT-AFT, AFL-CIO.
    c. Otherwise interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in the Illinois Educational Labor Relations Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
    a. Reimburse Harlem Federation of Teachers, Local 540, IFT-AFT, AFL-CIO for failure to withhold and remit dues in the amount of $47, 905.97.
    b. Post on bulletin boards or other places reserved for notices to employees for 60 consecutive days during which the majority of Respondent's employees are actively engaged in duties they perform for Respondent, signed copies the attached notice. Respondent shall take reasonable steps to ensure that said notice is not altered, defaced, or covered by any other materials.
    c. Notify the Executive Director in writing within thirty-five (35) calendar days after receipt of this Order of the steps taken to comply with it.

V. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the

Appellate Court of the judicial district in which the IELRB maintains an office (Chicago or Springfield). Petitions for review of this Order must be filed within 35 days from the date that the Order issued, which is set forth below. 115 ILCS 5/16(a). The IELRB does not have a rule requiring any motion or request for reconsideration.

Decided: **May 15, 2024**
Issued: **May 17, 2024**

/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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STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Harlem Federation of Teachers Local 540, IFT-AFT, AFL-CIO,	)	
Complainant	)	
And	)	Case Nos. 2022-CA-0060-C
Harlem Consolidated School District 122,	)	
Respondent	)	

Administrative Law Judge's Recommended Decision and Order

On April 8, 2022, Charging Party Harlem Federation of Teachers Local 540, IFT-AFT, AFL-CIO (Union), filed an unfair labor practice charge with the Illinois Educational Labor Relations Board in the above-captioned case, pursuant to Section 14 of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1, *et seq.,* against the Respondent, Harlem Consolidated School District 122 (District). The charge alleged two violations of Section 14(a)(5) of the Act arising out of the District's failure or refusal to collect and remit union dues. On October 14, 2022, the Executive Director issued a Complaint and Notice of Hearing alleging violations of Section 14(a)(5) of the Act. (ALJ Ex. 2). A hearing in this matter was held on February 8, 2023. At the hearing, both sides had the opportunity to call, examine, and cross-examine witnesses, introduce documentary evidence, and present argument. The District filed a post-hearing brief on or about May 5, 2023. The Union filed a brief statement by email on May 2, 2023.

I. Findings of Fact

During the hearing, Josh Aurand (Aurand) testified for the Respondent. (R. 12). The Union called no witnesses in its case in chief but called Leah Krippner in its rebuttal case. (R. 31).

A. Stipulations

Prior to the hearing, the parties submitted a pre-hearing memorandum containing several stipulations. (ALJ Ex. 5). At all times material, the District was an educational employer within the meaning of Section 2(a) of the Act. The Union was a labor organization within the meaning of Section 2(c) of the Act, and the exclusive representative within the

meaning of Section 2(d) of the Act of a unit comprised of certain of the District's employees. The Union and the District are parties to a collective bargaining agreement (CBA) covering the relevant unit. The District collects dues from Union members and remits those dues to the Union. Every pay period, the District issues a pay stub to all employees, including members of the Union, that includes all deductions and withholdings that were made for that pay period, and Union dues are among those deductions. Beginning in the 2019-20 school year, the District was to deduct Union dues from Union member paychecks in 20 pay periods each year. Prior to that school year, Union dues were deducted from 15 pay periods.

In the 2019-20 school year, the District deducted and remitted union dues for 19 pay periods, rather than the required 20. Upon review, the Union and the District came to the understanding that the District failed to deduct and remit dues from the August 14, 2020 pay period. The total amount of dues that should have been deducted and remitted to the Union is $23,425.30.

Similarly, in the 2020-21 school year, the District failed to deduct and remit dues for the August 13, 2021 pay period. The total amount of Union dues that should have been deducted and remitted is $24,480.67. In total, the District failed to deduct and remit $47,905.97. On or about October 21, 2021, the Union informed the District that a shortfall existed in dues owed to the Union.

B. Aurand's Testimony

Aurand was employed by the District in the job title or classification of Chief School Business Official. (R. 13). Prior to the 2019-20 school year, the District's teachers were paid in 26 pay periods, and support staff had the option of being paid in 22 or 26 pay periods. (R. 13). Starting in the 2019-20 school year, the support staff only had the option to receive their pay in 26 pay periods. (R. 14). Employees receive a paystub every pay period that shows the amount deducted for various items including Union dues. (R. 14-15).

Prior to the 2019-20 school year, dues were taken out of 15 of a Union member's paychecks throughout the year. (R. 18). Starting in 2019-20, in conjunction with the transition to 26 pay periods for all support staff, dues were deducted from 20 paychecks per year. (R. 18). The six paychecks from which union dues were not deducted were the third paychecks issued in a month.

Aurand testified that the Union first brought to the District's attention that union dues were not properly deducted on or about October 21, 2021. (R. 22). He subsequently determined that the District erroneously failed to deduct dues from the August 14, 2020 and

August 13, 2021 pay periods. (R. 22). He testified that the failure to deduct dues was inadvertent, occurring because of a clerical error in the payroll department. (R. 22). He testified that he offered to reimburse the Union for employees still employed by the District by deducting dues on paychecks where dues otherwise would not have been deducted, but that the Union rejected that proposal. (R. 28-29).

C. Krippner's Testimony

Leah Krippner was employed by the District in the job title or classification of librarian, and she was the First Vice President of the Union. (R. 31). She was the person who primarily discussed the issue of the missing dues deductions with Aurand. (R. 31). She testified that they had somewhere between eight and ten discussions on the topic. (R. 32). She also testified that she was only aware that her Union was owed money by the District, and that they were able to pinpoint the source of the shortfall on or about November 29, 2021. (R. 32). Krippner also discussed the District's offer to take an extra deduction from employees who remained with the District, and to reimburse the Union itself for dues not deducted from employees who are no longer employed by the District. (R. 34). The Union rejected this proposal, arguing that the additional deduction would be an unnecessary hit to its lower-paid members. (R. 34).

II. Issues and Contentions

The Union alleges that the District's failure to deduct dues from the August 14, 2020 and August 13, 2021 paychecks is a violation of the duty to bargain in good faith pursuant to Section 11.1(f) of the Act. The District denies that the complained-of conduct violates the Act.

III. Discussion

Public Act 101-0620 was signed into law on December 20, 2019, making several changes to the IELRA. One of those changes was to add Section 11.1 of the Act, clarifying dues deduction procedures following the Supreme Court's decision in Janus v. AFSCME, 585 U.S. ----, 138 S. Ct. 2448 (2018), in which the Supreme Court held that fair share dues deductions for public sector employees violated the First Amendment of the Constitution. Section 11.1(a) and (b) required educational employers to make payroll deductions in accordance with an employee's written authorization, and for deductions to begin as soon as practicable but in no case later than 30 days after receiving notice of authorization. Section 11.1(f) states that the failure of an educational employer to comply with the provisions in Section 11.1(a) and (b) is a violation of the duty to bargain in good faith and an unfair labor practice and specifies that the relief for failure to deduct and remit dues is reimbursement of

the amount owed based on valid employee authorizations. An educational employer's failure to bargain in good faith is a violation of Section 14(a)(5) and, derivatively, (1) of the Act.

It is clear from the plain text of Section 11.1 that the legislature intended to make a failure to deduct and remit dues a strict liability offense, and equally clear that the legislature's intended remedy is that the employer reimburse the union. However, the District offers several defenses, as addressed below.

A. The IELRB's Jurisdiction to Hear The Charge

The District argues that, pursuant to Section 15 of the Act, the charge is untimely and must be dismissed. Section 15 of the Act requires that charges be filed within six months of the time the charging party became aware, or should have become aware, of the actions which allegedly constitute a violation of the Act. 115 ILCS 5/15, Jones v. IELRB, 272 Ill. App. 3d 612, 620 (1st Dist. 1995). The present charge was filed on April 8, 2022. Accordingly, any charge referencing conduct that the Union knew or should have known prior to October 8, 2022, cannot be the source of an unfair labor practice charge.

The District argues that, because Union members did not have dues deducted from paychecks in August 2020 and 2021 and that the CBA requires that pay be withheld from the first and second paychecks in each month, that the Union should have known at that time of the failure to withdraw and remit that the District had failed to do so. However, the District has failed to prove that the Union had, or should have had, any such knowledge. The CBA states that withdrawals were to occur starting in the second paycheck of October, going through the end of summer. (R. 20). Aurand testified at some length about the difficulties of processing summer payroll, both in general and specifically for the 2019-20 school year given the COVID pandemic. (R. 21). This testimony was offered to demonstrate that the District did not intentionally fail to withhold and remit Union dues because of the complexity involved in processing summer payroll. However, Section 11.1 of the Act clearly places the burden of withdrawing and remitting funds on the educational employer. If the District is arguing that its failure to perform this duty was inadvertent, and that it believed it was acting in accordance with Section 11.1 and the parties' CBA, it cannot then shift blame upon the Union for not realizing the District's mistake at the time that it occurred.

Rather, the evidence shows that the Union discovered a dues shortfall on or about October 21, 2021, but neither party was at that time aware of the reason for the shortfall. (R. 22). The Union then discovered the reason for the missing funds on or about November 29, 2021. Either October 21, 2021, or November 29, 2021, are within the six-month timeframe

for filing a charge. Because the District offers no evidence that the Union knew, or reasonably should have known, that the District failed to perform its duty to withhold and remit union dues, I find that the charge was not untimely pursuant to Section 15 of the Act, and that the IELRB therefore has jurisdiction to hear the charge.

B. Bad Faith Bargaining

The District then argues that, because the text of Section 11.1 states that the failure to withhold and remit dues is a violation of the duty to bargain in good faith, that the inadvertent failure to withhold dues cannot be considered an unfair labor practice because it was not done in bad faith. In support of its argument, the District argues that the ILRB has previously held that the failure to withhold and remit dues was not an unfair labor practice absent other evidence of bad faith bargaining. Chicago Park District, 15 PERI 3017 (ILRB Decision and Order, July 7, 1999). In that case, the ILRB considered factors including the size of the bargaining unit in question, the difficulties in processing deductions, and the employers "willingness to work with the Union to eliminate discrepancies." However, this Opinion issued in 1999, prior to the changes made by P.A. 101-0620, and does not address statutory language anything like Section 11.1 of the Act.

Similarly, the District offers Markham Professional Fire Fighters Association to argue that a violation of the duty to bargain in good faith occurs when an employer ceases to withhold and remit dues in violation of an existing contract over an extended period. 25 PERI 117 (ALJ's Recommended Decision and Order, August 26, 2009), *citing* Majestic Towers, 252 NLRB 29 (2008). In that case, the employer was found to have violated its duty to bargain in good faith when it failed to withhold and remit dues for a continuous nine-month period. The District argues that its conduct in inadvertently failing to withhold dues in two pay periods twelve months apart does not, by comparison, rise to the level of bad faith bargaining and violation of the Act. However, again, this argument is rendered invalid by the new Section 11.1 of the Act, which plainly states that the failure to withhold and remit dues is a violation of the duty to bargain in good faith and an unfair labor practice. That the ILRB did not find bad faith bargaining in two cases involving statutory language not at all like the language at issue in this matter is irrelevant. The IELRA that is currently in effect and, in fact, was in effect at the time that the District failed to abide by its legal duty to withhold and remit dues, is an entirely different enactment, and therefore not bound by past decisions under different statutory language.

C. Expenditure of Public Funds for Private Purpose

Finally, the District argues that, even if the failure to withhold and remit union dues is a violation of its duty to bargain in good faith, it cannot reimburse the Union for funds that it failed to withhold and remit because doing so would violate Article VIII, Section 1(a) of the Illinois Constitution, which requires that public funds only be used for public purposes. It argues that Union dues are a private debt that serves a private purpose, and that the District therefore cannot allocate taxpayer money to the Union to resolve that debt. The District further argued if it was required to pay the $47,905.97 that it failed to withhold from Union members and submit to the Union, that the Union's receipt of those funds would grant it an "unconstitutional windfall."

The District cites, but declined to analyze, O'Fallon Development Co. v. City of O'Fallon to support its argument. 43 Ill. App. 348 (5th Dist. 1976). In that case, the Court based its inquiry around the question of whether the use of municipal property "subserves the public interest and benefits a private individual or corporation only incidentally." City of O'Fallon at 355. The Union in this case represents a bargaining unit of educational employees who work for the District. That unit is organized pursuant to the IELRA. In enacting the IELRA, the Illinois General Assembly found that it was in the public interest to promote orderly and constructive relationships between educational employees and their employers. 115 ILCS 5/1. Because the General Assembly recognized that harmonious relationships between educational employees and their employers are necessary, it granted educational employees the right to freely choose their representatives, required educational employers to bargain with those representatives, and established procedures to provide for the protection of rights of both employees, employers, and the public. 115 ILCS 5/1.

Section 11.1 of the Act provides that an employer's failure to withhold and remit dues to an employee organization is a violation of its duty to bargain in good faith. The remedy provided in Section 11.1 requires reimbursement of dues that the employee organization would have received. Far from being an "unconstitutional windfall", this does nothing more than put the Union in the position it would have been had the District not violated its duty. I find that reimbursement, pursuant to Section 11.1 of the Act, fits squarely within the public policy underpinning the IELRA. I see no reason to resolve the issue of whether the exclusive representative of educational employees, chosen pursuant to the provisions of the IELRA, is a "private individual or corporation" under the O'Fallon test. Instead, I find that, even if, *arguendo*, the Union is a "private individual or corporation", its "benefit" here is only to the

extent that it is reimbursed for the District's violation of the Act. Accordingly, it is not a violation of Article VIII, Section 1(a) of the Illinois Constitution.

D. Conclusion

Based on the foregoing, I find that the District's failure to withhold and remit dues from employee paychecks on August 14, 2020 and August 13, 2021 was in contravention of Section 11.1(a) and (b) of the IELRA. I find further that, pursuant to Section 11.1(f) of the Act, the District's violation of Section 11.1(a) and (b) is, *per se*, a violation of the duty to bargain in good faith and, accordingly, a violation of Section 14(a)(5) and, derivatively, (1) of the Act.

IV. Recommended Order

For the reasons discussed above, I recommend the following:

Respondent, Harlem Consolidated School District 122, its officers, and its agents shall:

1. Cease and Desist From:
    a. Refusing to bargain collectively and in good faith with Harlem Federation of Teachers Local 540, IFT-AFT, AFL-CIO.
    b. Failing or refusing to withhold and remit union dues to Harlem Federation of Teachers Local 540, IFT-AFT, AFL-CIO.
    c. Otherwise interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in the Illinois Educational Labor Relations Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
    a. Reimburse Harlem Federation of Teachers Local 540, IFT-AFT, AFL-CIO for failure to withhold and remit dues in the amount of $47,905.97.
    b. Post on bulletin boards or other places reserved for notices to bargaining unit employees copies of the Notice to Employees attached to this Recommended Decision and Order. Copies of this notice shall be provided by the Executive Director of the Illinois Educational Labor Relations Board and shall be signed by Respondent's authorized representative, posted and maintained for sixty (60) calendar days during which a majority of bargaining unit employees are working. Reasonable steps shall be taken by

the Respondent to ensure that the notices are not altered, defaced, or covered by any other materials.

c. Notify the Executive Director in writing within thirty-five (35) calendar days after receipt of this Recommended Decision and Order of the steps taken to comply with it.

V. Right to File Exceptions

Pursuant to Section 1120.50(a)(1) of the Board's Rules and Regulations, Ill. Admin. Code tit. 80 § 1120.50(a)(1) (2017), the parties may file written exceptions to this Recommended Decision and Order no later than 21 days after receipt of this decision. Exceptions and briefs must be filed with the Board's General Counsel. If no exceptions have been filed within the 21-day period, the parties will be deemed to have waived their exceptions. Under Section 1110.20(e) of the Board's Rules, parties must send a copy of any exceptions they choose to file to the other parties and must provide the Board with a certificate of service. A certificate of service is "a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service." Ill. Admin. Code tit. 80 § 1100.20(e). If a party fails to send a copy of its exceptions to the other parties or fails to include a certificate of service, that party's appeal rights with the Board will end.

Dated: October 25, 2023
Issued: Chicago, Illinois

/s/ Nick Gutierrez
Nick Gutierrez
Administrative Law Judge

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