

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Champaign Educational Support	)	
Professionals, IEA-NEA,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2025-CA-0060-C
	)	
Champaign CUSD No. 4,	)	
	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On March 20, 2025, Champaign Educational Support Professionals, IEA-NEA (Charging Party or Union) filed a charge with the Illinois Educational Labor Relations Board (IELRB or Board) alleging that Champaign Community Unit School District No. 4 (Respondent or District) committed unfair labor practices within the meaning of Section 14(a) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1, *et. seq.* Following an investigation, the Board’s Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge. The Union filed timely exceptions to the EDRDO, and the District filed a timely response to the exceptions.

II. Factual Background

We adopt the facts as set forth in the underlying EDRDO. Because the EDRDO comprehensively sets forth the factual background of the case, we will not repeat the facts herein except as necessary to assist the reader.

III. Discussion

The Executive Director dismissed the charge as untimely. 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.” The six-month time 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). Only acts that occur within the six-month time 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); *City Colleges of Chicago*, 12 PERI 1004, Case No. 95-CA-0047-C (IELRB Opinion and Order, December 8, 1995).

In this case, any alleged unlawful conduct that the Union knew of before September 20, 2024,¹ or reasonably should have known by that date, cannot be the subject of a timely charge. The Union contends that the District engaged in direct dealing in violation of Section 14(a)(5) of the Act when its Director of Custodial Services and Grounds, Kurt Harshbarger (Harshbarger), discussed subcontracting tree removal work with bargaining unit members. The work was performed on August 7, so the conversations would have occurred prior to that date. The Union reports that while it discovered the District engaged in subcontracting on August 7 when its president observed a subcontractor removing trees, it did not discover the direct dealing, the subject of this charge, until the September 30 grievance meeting over the subcontracting. According to the Union, it was then that Harshbarger admitted that he sought bids for tree trimming and removal from an outside vendor and then solicited individual bargaining unit members to perform the work outlined in the bid, and that bargaining unit members performed some of the work referenced in the bid. The Union argues that the six-month time period began to run when it learned of the direct dealing from Harshbarger at the September 30 grievance meeting, rather than when Harshbarger discussed the work directly with the bargaining unit members. The District contends in its response to the Union's exceptions that the six-month time period began when Harshbarger spoke with bargaining unit members about tree removal prior to August 7, not when Union officials learned about the conversations on September 30.

¹ All events described herein occur in 2024, unless otherwise indicated.

The Executive Director determined that the Union knew or should have known about the alleged direct dealing, at the latest, by August 7 because its president observed the tree removal on that date. But that only establishes the date the Union knew or should have known about the subcontracted work, not the direct dealing. In charges alleging a violation of Section 14(a)(5) by a unilateral change, the six-month time period for filing an unfair labor practice charge begins to run when the employer announces the unilateral change rather than the date of its application to individuals. *Wapella*, 177 Ill. App. 3d 153, 531 N.E.2d 1371; *Minooka CHSD 111*, 35 PERI 167, Case No. 2018-CA-0053-C (IELRB Opinion and Order, April 29, 2019); *Cf. Rock Island*, 31 PERI ¶32 (IL SLRB ALJRDO 2014) (Where some individual employees learned of and were instructed to follow employer's new work clothing policy outside of the six-month time period, charge was timely because the union did not become aware of the change until less than six months before the charge was filed). The instant charge does not allege the District violated Section 14(a)(5) by a unilateral change, but that it violated 14(a)(5) by engaging in direct dealing. Yet the starting point for determining when the six-month time period begins to run for unilateral change cases is instructive. Unilateral changes and direct dealings allege a violation of the same subsection of the Act, 14(a)(5). Like unilateral change charges, this charge involves the collective bargaining process. In the collective bargaining context, it is well-settled that notice to an individual employee does not constitute adequate notice to their exclusive representative. *Forest Park School District 91*, 38 PERI 49, Case Nos. 2019-CA-0065-C & 2020-CA-0055-C (IELRB Opinion and Order, October 21, 2021); *Chicago Transit Authority*, 14 PERI ¶ 3002 (IL LLRB 1997) (citing *Southern California Edison Co.*, 284 NLRB 1205 (1987)); *Rock Island*, 31 PERI ¶32. The bargaining unit members that Harshbarger spoke with about the tree removal, as individual employees, do not have standing to allege a violation of Section 14(a)(5) of the Act because 14(a)(5) involves the rights of the exclusive representative under the Act. *Thornton Community Unit School District No. 4*, 4 PERI 1010, Case Nos. 87-CA-0017-C (IELRB Opinion and Order, December 1, 1987). It is immaterial in this case when they had notice of the alleged violation of the Act. The relevant date is that which the Union, as a party to the collective

bargaining process upon which this charge is grounded, learned of the misconduct alleged. This is distinguishable from unfair labor charges alleging violations of subsections of Section 14(a) under which individual employees, as well as labor organizations, have standing to allege violations. For example, in a Section 14(a)(3) charge where a union is the charging party, the clock starts running on the six-month time period when the affected employee knows or should have known of the conduct alleged to have violated the Act. Therefore, we overturn the Executive Director's determination that the charge was untimely.

The charge alleges that the District violated Section 14(a)(5) of the Act when it engaged in direct dealing with bargaining unit members. An employer who bargains directly with its employees with respect to mandatory subjects of bargaining rather than bargaining with their exclusive representative breaches its duty to bargain in good faith and violates Section 14(a)(5) of the Act. *Sesser-Valier Community Unit Sch. Dist. No. 196 v. Illinois Educational Labor Relations Board*, 250 Ill. App. 3d 878, 620 N.E.2d 418 (1993). The fundamental inquiry in direct dealing cases is whether the employer chose to deal with the union through the employees rather than with the employees through the union. *Streator High School District No. 40*, 14 PERI 1058, Case No. 97-CA-0049-S (IELRB Opinion and Order, April 9, 1998); *Machinists District Lodge 190 v. NLRB*, 827 F.2d 557 (9th Cir. 1987). In and of itself, an employer's direct communication with individual employees does not constitute bypassing of the union in the establishment of wages, hours and terms and conditions of employment. *Procter & Gamble Mfg. Co.*, 160 NLRB 334 (1996).

The Board has employed the National Labor Relations Board's criteria for determining whether an employer has engaged in unlawful direct dealing: (1) the employer was communicating directly with union-represented employees; (2) the communication was for the purpose of establishing or changing wages, hours and terms and conditions of employment or undercutting the union's role in bargaining; and (3) the communication was made to the exclusion of the union. *Western Illinois University*, 34 PERI 149, Case No. 2016-CA-0005-S (IELRB Opinion and Order, January 22, 2018) (citing *El Paso Electric Co.*, 355 NLRB 544 (2010)).

The Union's account of Harshbarger's conduct, if taken as true, satisfies only two of the criteria. Harshbarger communicated directly with bargaining unit employees. No Union representative was present and nothing in the investigatory record indicates the Union was invited to participate in the conversations. Where the Union fails is the second criteria. There is no indication that Harshbarger's alleged communications with bargaining unit employees established or changed wages, hours or terms and conditions of employment or undercut the union's role in bargaining.

The Union argues that the District engaged in direct dealing in violation of the Act based on Harshbarger's alleged admission that he sought bids for tree trimming and removal from an outside vendor and then solicited individual bargaining unit members to perform the work outlined in the bid, and that bargaining unit members performed some of the work referenced in the bid. But per the Union's grievance and its charge in 2025-CA-0028-C, the tree removal work was bargaining unit work.² Under that theory, the work Harshbarger solicited bargaining unit employees to perform was work they should have been doing in the first place. It is not clear how Harshbarger's discussions with bargaining unit members regarding tree service removal work amounts to direct dealing. Nothing in the charge and supporting evidence, if substantiated, indicates that the District chose to deal with the Union through the employees rather than with the employees through the Union. Accordingly, we find that the Union failed to raise an issue of law or fact sufficient for a complaint to issue on the merits of its charge.

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's determination that the charge was untimely filed is overturned and the unfair labor practice charge is dismissed on its merits.

² The Union's allegations that the subcontracting violated the Act are addressed in its charge against the District in Case No. 2025-CA-0028-C.

V. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the Appellate Court of the judicial district in which the IELRB maintains an office (Chicago or Springfield). Petitions for review of this Order must be filed within 35 days from the date that the Order issued, which is set forth below. 115 ILCS 5/16(a). The IELRB does not have a rule requiring any motion or request for reconsideration.

Decided: **October 22, 2025**

Issued: **October 22, 2025**

/s/ Lara D. Shayne

Lara D. Shayne, Chairman

/s/ Steve Grossman

Steve Grossman, Member

/s/ Chad D. Hays

Chad D. Hays, Member

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/s/ Michelle Ishmael

Michelle Ishmael, Member

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EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On March 20, 2025, Charging Party, Champaign Educational Support Professionals, IEA-NEA, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging that Respondent, Champaign Community Unit School District No. 4, violated Section 14(a) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.* After an investigation conducted in accordance with Section 15 of the Act, the Executive Director issues this dismissal for the reasons set forth below.

II. INVESTIGATORY FACTS

A. Jurisdictional Facts

Champaign Community Unit School District No. 4 (District) is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. Champaign Educational Support Professionals, IEA-NEA (Union) is an employee organization within the meaning of Section 2(c) of the Act and is the exclusive representative within the meaning of Section 2(d) of the Act of a bargaining unit comprised of non-instructional, educational support professional personnel employed by the District.

B. Facts Related to the Unfair Labor Practice Charge

The Union and the District are parties to a collective bargaining agreement (CBA) with an effective term from the beginning of the 2022-2023 school year through the end of the 2025-2026 school year. Article VI, Sec. 33 of the CBA addresses subcontracting and instances when subcontracting may be permissible.

In or around the summer of 2024, a neighboring property owner of Robeson Elementary School complained of falling tree limbs. Upon examination, Director of Custodial Services & Grounds Kurt Harshbarger (Harshbarger) determined that removal of the tree was necessary. Harshbarger discussed the removal with Grounds Maintenance workers and believed that removal fell outside their duties. He obtained a quote from a contractor; however, he believed that certain quoted tasks could be performed by the workers. Following consultation with Grounds Maintenance workers, he revised the quote to remove the work that could be done by the District's workers, which they performed. The contractor performed the remaining work including the removal of the tree on August 7. Union President Jim Flaningam (Flaningam) observed the contractors at work.

On August 15, the Union filed a grievance regarding this subcontracting. At a September 30 grievance meeting, Harshbarger described the process leading to the subcontracting and his conversations with the workers prior to and after receiving the quote. He admitted that he discussed the work with the Grounds Maintenance workers before hiring the contractor and commencing removal. The grievance process remains ongoing.

On November 1, the Union filed an unfair labor practice charge, case No. 2025-CA-0028-C, alleging that the District engaged in subcontracting without notice or an opportunity to bargain and direct dealing, specifying that the direct dealing portion arose from subcontracting dated to July 2023. On March 14, the Executive Director issued an order dismissing the portion of the charge relating to subcontracting and direct dealing in 2023 as untimely and referring the portion of the charge alleging subcontracting for the tree removal to arbitration.

III. THE PARTIES' POSITIONS

The Union asserts that the District violated Section 14(a)(5) and (1) of the Act when it engaged in direct dealing with bargaining unit members. The District denies that it violated the Act, and argues that Union untimely filed the instant charge.

IV. DISCUSSION AND ANALYSIS

A. Timeliness of the Charge

Section 15 of the Act provides that “[n]o order shall be issued upon an unfair practice occurring more than 6 months before the filing of the charge alleging the unfair labor practice.” 115 ILCS 5/15. This language imposes a jurisdictional limitation on the Board’s authority. *Charleston Cmty. Unit Sch. Dist. No. 1 v. IELRB*, 203 Ill. App. 3d 619, 623 (4th Dist. 1990). The six-month period begins to run when the person aggrieved by the alleged unlawful conduct either has knowledge of or reasonably should have known of it, regardless of whether that person understands the legal significance of the conduct. *Jones v. IELRB*, 272 Ill. App. 3d 612, 620 (1st Dist. 1995); *see also Bd. of Educ. of Sesser-Valier Cmty. Unit Sch. Dist. No. 196 v. IELRB*, 250 Ill. App. 3d 878, 884 (4th Dist. 1993).

The alleged direct dealing occurred before August 7, the date on which Flaningam observed the tree removal. Harshbarger engaged in at least two conversations with the Ground Maintenance workers regarding their work. Those dates are uncertain. It is certain, however, that the Union knew that an alleged unfair labor practice occurred on August 7. When it discovered this, it reasonably should have known of the direct dealing. It did not need to wait for an explanation of events or an admission to know other unfair labor practices may have occurred on August 7. The Union filed its charge on March 20, more than six months after it should have known of the unfair labor practice. Accordingly, the Board lacks jurisdiction over this charge.

V. RECOMMENDED ORDER

Accordingly, the instant charge is hereby dismissed in its entirety.

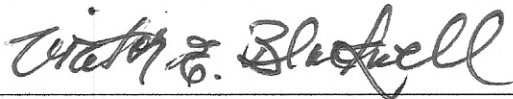
VI. RIGHTS TO EXCEPTIONS

In accordance with Section 1120.30(c) of the Board’s Rules and Regulations (Rule), Ill. Admin. Code, tit. 80, §§ 1100-1135, parties may file written exceptions to this Recommended Order and Decision together with briefs in support of those exceptions, not later than 14 days after service hereof. Parties may file responses to the exceptions and briefs in support of the responses not later than 14 days after service of the exceptions. Exceptions and responses must be filed, if at all, at ELRB.mail@illinois.gov and with the Board’s General Counsel, 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103. 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 Section 110.20 and 1120.30(c) of the Rules, concerning service of exceptions. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions, and unless the Board decides on its own motion to review this matter, this Recommended Decision and Order will become final and binding on the parties.

Dated: June 27, 2025

Issued: Chicago, Illinois

A handwritten signature in black ink, reading "Victor E. Blackwell". The signature is written in a cursive style with a horizontal line underneath it.

Victor E. Blackwell, Executive Director

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