**STATE OF ILLINOIS**
**EDUCATIONAL LABOR RELATIONS BOARD**

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| Champaign Educational Support Professionals, IEA-NEA, | ) | |
| Charging Party | ) | |
| and | ) | Case No. 2025–CA–0028–C |
| Champaign Community School Unit District No. 4, | ) | |
| Respondent | ) | |

## OPINION AND ORDER

### I. Statement of the Case

On November 1, 2024, Champaign Educational Support Professionals, IEA-NEA (Charging Party or Union) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) alleging that Champaign Community School Unit District No. 4 (Respondent or District) violated Sections 14(a)(1) and 14(a)(5) 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 Referral to Arbitration Order (EDRAO) dismissing the direct dealing portion of the charge as untimely and referring the remainder of the charge to arbitration. The Union filed timely exceptions to the EDRAO. The District did not file a response.

### II. Factual Background

We adopt the facts as set forth in the underlying EDRAO. Because the EDRAO 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 Union argues in its exceptions that the Executive Director erred in dismissing its direct dealing allegation as untimely. The Executive Director found the direct dealing portion of the charge was untimely because it arose from the subcontracted cable pulling project in July 2023,

more than six months before the charge was filed. 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 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). The Union asserts that its charge properly and timely alleged direct dealing, as the position statement it submitted during the investigation referred to the most recent instance of subcontracting and the related direct dealing, coupled with a prior subcontracting violation. It explains that the related direct dealing referred to the most recent instance of sub-contracting, the August 2024 tree trimming subcontracting. Yet it also contends that it alleged that the District, "at some unclear time in the past" engaged in direct dealing regarding subcontracting and continues to do so until at least around September 2024, the direct dealing "most pertinent" to the charge.

The Executive Director noted that the direct dealing allegation may have arisen from the August 2024 tree removal project, which the Union did not include in this charge. The Union reports in its exceptions that it filed another charge against the District, 2025-CA-0060-C, on March 20, 2025 restating the direct dealing charges, which it contends is timely. There may be additional facts the Union failed to articulate in this charge that would make its direct dealing allegation timely. However, the burden is on the charging party, the Union in this case, to submit to the Executive Director "all evidence relevant to or in support of the charge." 80 Ill. Admin. Code 1120.30(b)(1). If the Union wanted facts or evidence to be considered during the investigation, it was the Union's obligation to come forward with such evidence. The Executive Director did not err in failing to consider what the Union did not provide. On the other hand, the direct dealing allegation could just be untimely. Because this issue is still before the Executive

Director to determine in Case No. 2025-CA-0060-C, we will not consider it unless or until we are faced with exceptions in Case No. 2025-CA-0060-C.

The rest of the Union's exceptions concern the Executive Director's referral of the balance of its charge to arbitration. In cases alleging conduct that may be both a contractual breach and a statutory violation, the Board may refer the matter to arbitration but retain jurisdiction to ensure that any statutory rights at stake are protected. *West Chicago School District No. 33*, 5 PERI 1091, Case Nos. 86-CA-0061-C, 87-CA-0002-C (IELRB Opinion and Order, May 2, 1989). The Union established a prima facie case that the District violated the Act by unilaterally subcontracting bargaining unit work. There are statutory issues as to whether the District is required to bargain over its decision to subcontract, but an interpretation of the collective bargaining agreement is also necessary. The resolution of this case turns on the interpretation or application of language in the parties' collective bargaining agreement, that is, if pursuant to the collective bargaining agreement, the District had the right to engage in the complained-of conduct, there is no violation of the Act. *Chicago Transit Authority*, 14 PERI ¶3002 at p. XI-7 (IL LLRB 1997) ("[i]t is a well-established principle of labor law that, where a subject is fully negotiated and covered by a collective bargaining agreement, no further obligation to bargain arises with respect to the subject during the term of the agreement." citing *City Colleges of Chicago*, 10 PERI 1010, Case No. 94-CA-0020-C (IELRB EDRDO, November 19, 1993); and *Illinois State Board of Education*, 9 PERI 1059, Case No. 92-CA-0026-C (IELRB ALJRDO, March 18, 1993)). As a result, because the charge turns on the interpretation or application of language in the parties' collective bargaining agreement, it is appropriate for referral. *Elementary Teachers' Ass'n of West Chicago, IEA-NEA/West Chicago School District 33*, 5 PERI 1091, Case No. 86-CA-0061-C (IELRB Opinion and Order, May 2, 1989), *aff'd on other grounds, sub nom*, *West Chicago School District 33 v. Illinois Educational Labor Relations Board*, 218 Ill. App. 3d 304, 578 N.E.2d 232 (1st Dist. 1991); *Dubo Manufacturing Corp.*, 142 NLRB 431 (1963).

The Union argues that referral is inappropriate here because an arbitrator will not be able to resolve all the issues presented by the case. The standard, however, is not whether it is possible

that the arbitrator might not adequately resolve the statutory issues, but whether an educational employer's conduct raises contractual as well as statutory issues. *East Maine School District 63*, 10 PERI 1106, Case No. 94-CA-0024-C (IELRB Opinion and Order, July 13, 1994). What is more, the Board retains jurisdiction over matters referred to arbitration to ensure that any statutory rights at stake will not be sacrificed. *Lake Park CHSD 108*, 7 PERI 1116, Case No. 91-CA-0022-C (IELRB Opinion and Order, October 31, 1991).

The parties here are one step ahead of most referrals to arbitration because they already undertook the process of selecting an arbitrator. Unfortunately, that arbitrator subsequently announced he will cease hearing any cases that have not already been scheduled, including the dispute at issue in this matter. The Union forecasts delays caused by the task of selecting a new arbitrator. If the parties need assistance obtaining a list of potential arbitrators, the IELRB maintains an Illinois Educational Labor Mediation Roster. 115 ILCS 5/6. Educational employers and labor organizations may use the services of qualified impartial individuals on the Roster, who are not employees of the IELRB, for purposes of arbitration of grievances and mediation or arbitration of contract disputes. *Id.* The entire Roster is currently posted on the IELRB's website. The parties may contact IELRB staff to provide them with a panel selected from the Roster. The Union is uncertain that the parties will be able to find a different arbitrator with a flexible schedule. It is unclear why the IELRB, an administrative agency, would have more flexibility in scheduling a hearing than an arbitrator. Particularly when the purpose of referral to arbitration is to enable the parties to resolve their underlying dispute without employing the Board's more formal procedures. *Lake Park CHSD 108*, 7 PERI 1116.

## IV. Order

We reserve our ruling as to whether the Union's direct dealing allegation is untimely unless or until we are faced with exceptions in Case No. 2025-CA-0060-C. For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's referral of the remainder of the charge to arbitration is affirmed.

## V. Right to Appeal

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

Decided: **June 16, 2025**
Issued: **June 16, 2025**

/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

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| Champaign Community School Unit District. No. 4, Respondent, | ) | |
| And | ) | Case No. 2025-CA-0028-C |
| Champaign Educational Support Professionals, IEA-NEA, Charging Party. | ) | |

## EXECUTIVE DIRECTOR'S REFERRAL TO ARBITRATION ORDER

### I. THE UNFAIR LABOR PRACTICE CHARGE

On November 1, 2024, the Charging Party, Champaign Educational Support Professionals, IEA-NEA (Union), filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board or IELRB) against Champaign Community School Unit District No. 4 (District) alleging that the District violated Sections 14(a)(1) and 14(a)(5) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, *et seq*. (Act).

### II. FACTS

The District is an educational employer within the meaning of Section 2(a) of the Act. The Union is an employee organization within the meaning of Section 2(c) of the Act and an exclusive representative within the meaning of Section 2(d) of the Act. The District employs Kurt Harshbarger (Harshbarger) as its Director of Grounds Maintenance.

In 2022, the District submitted a bid to participate in an E-Rate program administered by the Federal Communications Commission (FCC). The program involved running telecommunication cables in the District's facilities. The bid was approved in July 2022, but, due to supply chain issues, the implementation of the project was delayed until late May and early June 2023. The District subcontracted out the cable project. The Union filed a grievance on July 24, 2023 after learning of the subcontracting on July 13. That grievance proceeded through to Step Three of the process, which the District denied. Following the Step Three denial, the Union demanded final and binding arbitration, to which the District agreed.

In the summer of 2024, Harshbarger determined that certain trees located on the grounds of Robeson Elementary required removal. He spoke with the Grounds Maintenance workers, who told him that the scope of the work fell outside their expertise and suggested some contractors. After receiving a quote from a contractor, Harshbarger determined that parts of the removal process could be performed by the Grounds Maintenance workers. He obtained a revised quote. The workers ultimately performed these tasks, while the contractor removed the trees.

The Union learned of this action on August 7, 2024, and filed a grievance on August 15. It accused the District of subcontracting in violation of the collective bargaining agreement (CBA). The District denied the grievance at Step Two on October 9, 2024, taking the position that its subcontracting action fell within the CBA's exception for "[p]re-existing conditions of contracting out." During the process, the Union alleged that, on or about September 30, 2024, it learned that Harshbarger had allegedly engaged in direct dealing. The Union escalated the grievance to Step Three, which the District denied on November 25, 2024. The Union and the District agreed to consolidate the grievances and proceed to arbitration. The parties are currently working to schedule an arbitration date.

## III. THE PARTIES' POSITIONS

The Union charges that the District violated Section 14(a)(5) and (a)(1) of the Act by subcontracting the cable work and continuing to subcontract other work, like the tree removal project. In the alternative, should no violation of Section 14(a)(5) be found, it contends that the subcontracting, on its own, violates Section 14(a)(1) of Act. Finally, the Union alleges that the District engaged in direct dealing regarding the subcontracting from July 2023.

The District contends that any charges related to the cable work are untimely and should be dismissed. It argues that the Union failed to provide any evidence supporting its subcontracting and direct dealing. Finally, the District contends that the Union failed to provide sufficient evidence to support the charged violations.

## IV. DISCUSSION

Because this charge requires the interpretation of terms of the collective bargaining agreement, this matter should be deferred to the ongoing arbitration process with the Board retaining jurisdiction over any statutory violations that remain.

### a. The Timeliness of the Union's Allegations

Section 15 of the IELRA provides that "[n]o order shall be issued upon an unfair labor practice occurring more than six months before the filing of the charge alleging the unfair labor practice." 115 ILCS 5/15. Only acts that occur within the six-month period before filing can serve as the basis for a timely charge. *Id*; *Jones v. IELRB*, 272 Ill. App. 3d 612, 618-21 (1st Dist. 1995) (Board lacks jurisdiction to hear matters occurring more than six months before charge filed). Here, the Union learned of the subcontracted cable pulling project on July 13, 2023. It filed the charge on November 1, 2024, more than six months from the date the Union learned of the alleged violation. While the Union charged that the direct dealing allegations arose from the cable project, it provides no evidence to support this contention. Instead, the facts suggest that the direct dealing charge may have arisen from the tree removal project, which the Union did not include in the charge. Absent such clear evidence that the direct dealing in the cable project repeatedly continued from July 2023, a continuing violation analysis would not apply. Accordingly, the Board lacks jurisdiction over the Union's charges alleging a violation of the Act that may have arisen from the July 2023 cable project. This portion of the charge is hereby dismissed.

### b. Referral to Arbitration

Section 14(a)(5) of the Act prohibits educational employers, their agents, and their representatives from refusing to bargain in good faith with an employee representative that is the exclusive representative of employees in an appropriate bargaining unit. Section 14(a)(5) further provides that:

> [i]f an alleged unfair labor practice involves interpretation or application of the terms of a collective bargaining agreement and said agreement contains a grievance and arbitration procedure, the Board may defer the resolution of such dispute to the grievance and arbitration procedure contained in said agreement. 115 ILCS 5/14(a)(5).

Where a case raises statutory and contractual issues arising out of the same factual context in unfair labor practice charges alleging violations of Section 14(a)(5) and derivatively, 14(a)(1) of the Act, the Board's policy is to refer the matter to arbitration but retain jurisdiction to ensure the protection of statutory rights. *Oak Lawn Cmty. High School Dist. 229*, 22 PERI 2 (IELRB, December 30, 2005); *West Chicago School District No. 33*, 5 PERI 1091 (IELRB, May 2, 1989); *aff'd on other grounds*, 218 Ill. App. 3d 304 (1st Dist. 1991); *University of Illinois*, 15 PERI 1053 (IELRB, May 14, 1998) (referral to arbitration appropriate only for charges alleging violation of Section 14(a)(5) and, derivatively, 14(a)(1) of the Act). Deferral to arbitration is appropriate where a union makes a *prima facie* showing that the employer may have violated Section 14(a)(5) but the outcome of the charge depends on the interpretation or application of the parties' collective bargaining agreement. *West Chicago*, 5 PERI 1091.

Here, the evidence establishes a *prima facie* case that the District violated Section 14(a)(5) and, derivatively, 14(a)(1) of the Act by unilaterally subcontracting out a bargaining unit work. The case raises statutory issues as to whether the District is required to bargain over its decision to engage in subcontracting but requires interpretation of the parties' collective bargaining agreement. The final determination is dependent upon whether the District's actions constitute a valid interpretation of the contact. As the contractual issues arise from the same factual context as the statutory issue in this case and the parties are engaged in an ongoing grievance process, the instant case is well-suited for referral to arbitration.

Upon issuance of an arbitration decision and award, when the proceedings have been fair and regular, the Board will adopt the arbitrator's factual findings and interpretations of the collective bargaining agreement. The Board will then determine whether the arbitrator's factual findings and contractual interpretations allow the Board to resolve the statutory issues. *Taylorville Cmty. Unit School Dist. 3*, 11 PERI 1015 (IELRB, January 19, 1995). If the factual findings and interpretations of the contract allow the Board to resolve the statutory issues, the Board will defer to the arbitrator's factual findings and contractual interpretations but resolve the statutory issues *de novo*. If not, the Board will issue a complaint and notice of hearing, so that a record may be established that will enable the Board to resolve the statutory issues. *Id.*

The instant case meets the Board's standard for referral to arbitration. Therefore, the instant case is referred to arbitration with the Board retaining jurisdiction over any remaining statutory violations.

## V. REFERRAL TO ARBITRATION PROCEDURE

The Union must notify me, within seven (7) calendar days of its receipt of this Decision and Order, of its willingness to continue its grievance through the CBA's arbitration process until the grievance has been resolved by the arbitrator or settled by the parties. Failure to meet these requirements will result in the dismissal of the instant unfair labor practice charge. *Oak Lawn Cmty. High School Dist. 229*, 22 PERI 2 (IELRB, December 30, 2005).

The District must notify me, within seven calendar days of its receipt of this Decision and Order, of its willingness to waive any procedural defenses to the grievance, including but not limited to the timeliness of the grievance, that apply to all or any part of the dispute. The District, in the same written communication to me, must also state its willingness to process the Union's grievance through the CBA's arbitration provisions until the grievance has been resolved by an arbitrator or settled by the parties. Failure to follow these requirements will result in the revocation of the referral to arbitration and issuance of a Complaint and Notice of Hearing. *Id.*

The parties are required to inform me in writing as to the status of the arbitration grievance process at least once every sixty (60) days until the matter is resolved. Once the grievance process has exhausted its course, if the matter is not yet settled to the mutual satisfaction and agreement of the parties, I will entertain motions from the parties for appropriate action. Such motions must be filed with the undersigned within five (5) working days after the final arbitration decision is issued.

If, during the grievance process, either party believes that the other party is not acting in an expeditious manner in resolving this matter, the party may file a motion asking the Executive Director to rescind this referral to arbitration and/or take other action consistent with the IELRB referral to arbitration policy, as described above. *Id.*

This Order may be appealed to the Board at any time within fourteen (14) calendar days of service hereof. Any such appeal must be in writing, contain the case caption and number, and be addressed to the

Board's General Counsel, 160 North LaSalle Street, Suite N-40, Chicago, Illinois 60601-3103. In addition, any such appeal must contain detailed reasons in support thereof, and the party filing the appeal must provide a copy of its appeal to all other persons or organizations involved in this case at the same time the appeal is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that a copy of the appeal has been provided to each of them. An appeal filed without such a statement and verification will not be considered. If no appeal is received within the time specified herein, this Order will become final.

Dated: March 14, 2025
Issued: Chicago, Illinois

Victor E. Blackwell

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