

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Gregory Ditch,)	
)	
Charging Party)	
)	
and)	Case Nos. 2024-CA-0019-C
)	2024-CA-0024-C
Naperville Community Unit)	
School District 203,)	
)	
Respondent)	

OPINION AND ORDER

I. Statement of the Cases

On November 1 and December 4, 2023, Gregory Ditch (Ditch or Charging Party) filed charges with the Illinois Educational Labor Relations Board (Board) in the above-captioned matters alleging that Naperville Community Unit School District 203 (District or Respondent) committed unfair labor practices within the meaning of Section 14(a) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, *et seq.* (Act or IELRA). Following an investigation, the Board’s Executive Director issued a Recommended Decision and Order (EDRDO) in each case dismissing each charge. Ditch filed the following exceptions to the EDRDOs: 1) Morales, the gentleman whose car Ditch rented in Texas, made false and misleading statements that opened the District’s investigation; 2) The District’s investigation was inadequate, incompetent, and failed to investigate Morales and verify his claims; 3) Baumgartner and Oskroba, Ditch’s supervisors, acted unethically, deceitfully, dishonestly, and misrepresented their roles in the District’s investigation; and 4) Ditch filed a claim as soon as he was aware of Baumgartner’s role in the District’s investigation, October 2023. The District filed a response to the exceptions.

II. Factual Background

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

III. Discussion

The District argues in its response that we should not consider Ditch's exceptions because he failed to include a certificate of service. Section 1100.20(e) of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code 1100-1135, requires documents filed with the Board to be accompanied by a certificate of service. When a charging party files exceptions to an EDRDO, "copies of all exceptions and supporting briefs shall be served upon all other parties and a certificate of service shall be attached." Section 1120.30(c). 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." 1100.20(e). "Failure of a party to serve a document or failure to attach a certificate of service may be grounds to strike the document, if the failure results in prejudice to another party (such as lack of notice or detrimental reliance) or demonstrates disregard of the Board's processes (such as continued noncompliance)." 1100.20(f).

The Board has consistently stricken exceptions where a party has failed to provide a certificate of service or otherwise demonstrate that the exceptions have been served on the other parties. *Int'l Union of Operating Engineers, Local 143-143-B*, 21 PERI 23, Case No. 2004-CB-0013-C (IELRB, February 17, 2005). The Appellate Court approved this practice in *Jones v. IELRB*, 272 Ill.App.3d 612, 650 N.E.2d 1092 (1st Dist. 1995). Ditch's emailed exceptions indicate that they were sent simultaneously to the IELRB and the District's attorney of record. By its response it is clear that the District was given notice of the exceptions, an adequate opportunity to respond, and clearly was not prejudiced by Ditch's lack of formal certificate of service. By sending the exceptions in the same email, addressed to both the IELRB and the District's attorney, Ditch has demonstrated that his exceptions were served on the other party and had all the characteristics listed in Section 1100.20(e). For that reason, we do not strike Ditch's exceptions.

Ditch's first two exceptions attacking Morales' credibility, even if correct, are not relevant to his charges and would not change their outcome because they do not relate in any way to Ditch's union or protected activity within the meaning of the Act.

Ditch's third exception concerns the conduct of his supervisors, Baumgartner and Oskroba, during the District's investigation. Ditch's charge in 2024-CA-0019-C alleges that the District

had Baumgartner, who was conducting the District's investigation, conduct a meeting with him on April 5 after denying his request for union representation. In *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975), the United States Supreme Court held that an employer's denial of an employee's request that a union representative be present during an investigatory interview which the employee reasonably believes might result in disciplinary action constitutes an unfair labor practice in violation of Section 8(a)(1) of the National Labor Relations Act. The IELRB extended Weingarten rights to educational employees in *Summit Hill School District 161*, 4 PERI 1009, Case No. 86-CA-0090-C (IELRB Opinion and Order, December 1, 1987).

Even assuming, arguendo, that the April 5 meeting was investigatory in nature and Ditch's request for union representation was denied, the meeting occurred more than six months before he filed his charge in 2024-CA-0019-C. 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); *City Colleges of Chicago/Johnson*, 12 PERI 1004, Case No. 95-CA-0047-C (IELRB Opinion and Order, December 8, 1995).

Ditch filed the instant charge in 2024-C0019-C on November 1, 2023. Any unlawful conduct he knew or should have known about before May 1, 2023, six months prior to its filing, cannot be the subject of a timely charge. The meeting that Ditch claims he was denied his request for union representation occurred on April 5, more than six months before he filed the charge. In his fourth exception, Ditch asserts that he only became aware of Baumgartner's role in the District's investigation in October 2023. However, he admitted during the investigation of this charge that he learned Baumgartner participated in the District's investigation of his alleged misconduct on April 7, more than six months before he filed in 2024-CA-0019-C. Ditch's charge was clearly untimely.

Ditch's charge in 2024-CA-0024-C alleged that it is a conflict of interest for the District to use attorneys from the same law firm to investigate his claims against the District as it used to defend itself in his other unfair labor practice charges. The Executive Director dismissed the charge because it was filed more than six months after his employment with the District ended, and thus he was not an educational employee during the relevant time period. Ditch's exceptions raised nothing to upset that finding.

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's Recommended Decision and Orders are 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: **July 17, 2024**

Issued: **July 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
ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

Gregory Ditch,

Charging Party

and

Naperville Community Unit School Dist. 203,

Respondent

Case No. 2024-CA-0019-C

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On November 1, 2023, Charging Party, Gregory Ditch, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Naperville Community Unit School District 203, 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

Naperville Community Unit School District 203 (District) is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. Until his resignation, Ditch was an educational employee within the meaning of Section 2(b) of the Act, employed by Respondent in the title or classification of Teacher. Naperville Unit Education Association, IEA-NEA (Union), is 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 bargaining unit comprised of certain of Respondent's employees, including those in the title or classification of Teacher. At times material, Ditch was a member of the Union's bargaining unit. The District and Union are parties to a collective bargaining agreement (CBA) which provides for a grievance procedure culminating in arbitration, for the bargaining unit to which Ditch belonged.

B. Facts relevant to the unfair labor practice charge

Since approximately August 2000, the District employed Ditch as an automotive teacher and the faculty sponsor of the Auto Club, at its at Naperville North High School. Ditch's immediate supervisor in his automotive teacher role was Melissa Oskroba, the chair of the Career and Technical Education Department. His immediate supervisor in his role as faculty sponsor of the Auto Club, was Dean of Student Activities Jennifer Baumgartner.

In early 2023, the District approved a request by Ditch, on behalf of the Auto Club, for a school-sponsored field trip to Beeville, Texas, to take part in the "Texas Mile" racing event. At the event, the Auto Club planned to race a truck it had been refurbishing and upgrading throughout the school year. The trip was scheduled for, and occurred during, the District's spring break week, from March 24 to April 2, 2023. The race in which the Auto Club was to participate occurred on or about March 25, 2023, but due to a problem with the truck it planned to race, it was unable to do so with that particular vehicle. Instead, on or about March 24, 2023, Ditch rented a Red Toyota GST Supra, through an application known as "Turo," where private, individual owners rent out their cars to applicants. In this case, Ditch rented the Toyota from Geovanni Morales of San Antonio, Texas. Ditch subsequently entered Morales' car in the Texas Mile event, racing it at high speeds, thereby violating the Turo lease and causing several thousand dollars of damage to the vehicle.

Morales learned what Ditch had done with his car through several social media posts, in which Ditch and District students posed with or near Morales' car, at the Texas Mile event. At first, Morales contacted Ditch, seeking reimbursement for the damage to the car, but Ditch denied Morales' car was the one which was raced. Morales then contacted Stephanie Posey, principal of Naperville North High School. On or about March 28, 2023, Morales sent Posey an email, informing her Ditch had rented his car to enter the Texas Mile racing event, damaged his car, and was refusing to pay for the damages. Therein, Morales also asserted he planned to sue Ditch for the damage to the vehicle. Later the same day, Morales emailed Posey again, notifying her a Chicago television news station was developing a story based on his claims.

In response, Posey, after a short discussion with Morales by telephone, contacted Robert Ross, the District's chief human resources officer, to inform him of the situation. On or about March 29, 2023,

Chicago's Fox-32 News issued a press release regarding the Texas Mile and Morales' allegations, identifying both Ditch and the District, with pictures of several students. In response to the press release, Ross directed Posey to inform both Texas Mile field trip chaperons, Ditch and Henry Gleamza, not to discuss the incident with anyone and the District would conduct investigatory meetings with them on April 3, 2023, at which they would be entitled to union representation. Posey did as Ross instructed. Posey thereafter contacted Baumgartner and Oskroba, asking whether either of them had given Ditch permission to rent a car for the race, but both denied doing so, and were unaware he had rented a car. On April 3, 2023, Ross and Posey held an investigatory meeting with Ditch and Gleamza, who were accompanied by two Union representatives, Ross Berkely and Julie Rush-Jelliff. The meeting concluded without incident.

On or about April 4, 2023, in response to the negative publicity from the Texas Mile trip, the District contemplated cancelling the District-hosted upcoming car show scheduled for May 1, 2023. Posey directed Baumgartner to collect information regarding the secured vendors for the event, so, if necessary, she could contact each vendor and properly issue a notice of cancellation. Baumgartner did not have the information required and requested a meeting with Ditch and Oskroba for April 5, 2023, to obtain it. Later, again on or about April 4, 2023, Posey asked Baumgartner to send her the sponsorship documentation related to the Texas Mile field trip. Again, Baumgartner did not have the needed information necessary, so she emailed Ditch, requesting he bring the necessary documents their meeting the following day.

When Baumgartner requested Ditch attend the meeting on April 5, she asserts he did not ask for union representation. Ditch claims otherwise, contending in response to his request, he was told by Baumgartner, representation was unnecessary as the meeting was not investigative, but rather concerned the upcoming car show. Ditch then contacted Berkely, the local Union president, to check whether he should have representation for the April 5 meeting. Berkely emailed Ditch and assured him representation was unnecessary, as the April 5 meeting was regarding the car show, and not the Texas Mile investigation.

On April 5, 2023, Baumgartner, Oskroba, and Ditch participated in a thirty-minute meeting in Baumgartner's office, primarily related to the upcoming car show. During the meeting, Baumgartner discussed the car show and asked Ditch to send her any information and documentation he had related to any secured vendors. She also asked him to send her any receipts from the Texas Mile field trip so she

could process them for reimbursement. Baumgartner additionally inquired of Ditch what had gone wrong with the Auto Club's race truck, and Ditch explained the issues and why it could not be raced. Shortly thereafter, the meeting ended. Ditch did not request union representation at any point during the meeting, or otherwise request an end to the meeting.

The next day, April 6, 2023, Posey directed Baumgartner to interview students who were on the Texas Mile trip, as she was most familiar with the details of the event. Ditch submitted his resignation from employment with the District on April 11, 2023, effective May 26, 2023, the final day of school for the 2022-2023 year. On May 1, 2023, the District issued Ditch a letter of reprimand, citing as its basis, his dishonest representations regarding the rental of Morales' car and direct, unauthorized communications with students.

III. THE PARTIES' POSITIONS

Herein, Ditch contends Baumgartner and Oskroba summoned him to the April 5, 2023 meeting, and when he requested a Union representative to assist him, they said the meeting had nothing to do with the Texas Mile investigation. However, Ditch further contends he learned on April 6 or 7, 2023, Baumgartner was interviewing the students who had participated in the Texas Mile trip, as part of the ongoing investigation. Ditch asserts the District violated Section 14(a)(1) of the Act, in that it had Baumgartner, one of the investigators looking into the Texas Mile trip, conduct the April 5 meeting, after denying his request for union representation. The District contends the charge is untimely filed and denies it violated the Act, contending Ditch failed to request representation.

IV. DISCUSSION AND ANALYSIS

A. Timeliness of the charge

The instant charge is untimely filed. Pursuant to Section 15 of the Act, no order shall issue based upon any unfair labor practice occurring more than six months prior to the filing with the Board, of the charge alleging the unfair labor practice. The six-month limitations period begins to run when the person aggrieved by the alleged unlawful conduct either has knowledge of it, or reasonably should have known of it. Jones v. IELRB, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995); Charleston Community Unit

School District No. 1 v. IELRB, 203 Ill. App. 3d 619, 561 N.E.2d 331, 7 PERI ¶4001 (4th Dist. 1990);
Wapella Education Association v. IELRB, 177 Ill. App. 3d 153, 531 N.E.2d 1371 (4th Dist. 1988).

Herein, Ditch filed his charge on November 1, 2023, and therefore, the date six months prior to his filing was May 1, 2023. Accordingly, alleged unlawful conduct he knew of before May 1, 2023, or reasonably should have known of by that date, cannot be the subject of a timely charge.

The conduct by the District, about which Ditch now complains, occurred at the absolute latest, prior to April 7, 2023, the date by which he admits he learned Baumgartner was interviewing students who had participated in the Texas Mile trip, as part of the ongoing investigation. This knowledge, along with Ditch's knowledge or belief, namely, Baumgartner and Oskroba summoned him to the April 5, 2023 meeting, denied him Union representation, and were untruthful when they said the meeting had nothing to do with the Texas Mile investigation, is the sum of his claim. Yet, despite his knowledge of the complained-of conduct by at the latest, April 7, 2023, Ditch did not file the instant charge until November 1, 2023, more than six months later. Because Ditch filed his unfair labor practice charge more than six months after he knew of the conduct complained of therein, it is untimely.

B. The Alleged 14(a)(1) Violation

Even if the instant claim was timely filed, the outcome would be unchanged. Ditch contends the District violated Section 14(a)(1) of the Act, in that it had Baumgartner, one of the investigators looking into the Texas Mile trip, conduct the April 5 meeting, after denying his request for union representation. In NLRB v. Weingarten, Inc., 420 U.S. 251 (1975), the United States Supreme Court held an employer's denial of an employee's request that a union representative be present at an investigatory interview which the employee reasonably believes might result in disciplinary action constitutes an unfair labor practice in violation of Section 8(a)(1) of the National Labor Relations Act (NLRA), 29 U.S.C. §§151 *et seq.*¹ The rationale behind the holding is denial of an employee's request for union representation interferes with, restrains and coerces the employee who, in seeking the assistance of his union representative, seeks "mutual

¹Section 8(a)(1) of the NLRA provides it is an unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in the NLRA, 29 U.S.C. §§158(a)(1). Section 8(a)(1) of the NLRA is very similar to Section 14(a)(1) of the Act which provides it shall be an unfair labor practice for an employer or its agent to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed therein.

aid or protection" against a perceived threat to his employment security. The union representative is therefore present to safeguard not only the individual employee's interest, but also the interests of all members of the bargaining unit, by ensuring the employer does not initiate or continue a practice of unjustly imposing punishment. The Board adopted this reasoning in Summit Hill Council, Local No. 604, IFT-AFT, AFL-CIO/Summit Hill School District 161, 4 PERI ¶1009, 1987 WL 1435330 (IL ELRB 1987), wherein the Board held an employee has a right to union representation when the following three circumstances exist: 1. the meeting between the employee and his/her superiors is investigatory;² 2. the employee reasonably believes disciplinary action may result; and 3. the employee requests union representation. See also, Southwest Suburban Federation of Teachers, IFT-AFT, AFL-CIO/Gen. George S. Patton School District 133, 10 PERI ¶1118, 1994 WL 16839705 (IL ELRB 1994).

Under Weingarten, the right of representation arises only when the employee requests representation, and it may be waived. Weingarten, 420 U.S. 251; Summit Hill, 4 PERI ¶1009. It is irrelevant whether the employee actually believed disciplinary action might result, as the standard for determining whether an employee reasonably expects discipline is "objective", measured in light of all the circumstances of the case. Weingarten, 420 U.S. 251; Southwest Suburban, 10 PERI ¶1118; Summit Hill, 4 PERI ¶1009.

Herein, the parties dispute as to whether Ditch requested Union representation prior to the April 5, 2023 meeting with Baumgartner and Oskroba, and thus, the factor favors neither party. The evidence tends to support the District's position the April 5 meeting was not investigatory, as during it, Ditch, Baumgartner, and Oskroba primarily discussed the upcoming car show. Additionally, during the meeting, Baumgartner requested Ditch to send her any information and documentation he had related to any secured car show vendors and to forward any receipts from the Texas Mile field trip so she could process them for reimbursement. Baumgartner also inquired of Ditch what had gone wrong with the Auto Club's race truck, and Ditch readily explained the issues and why it could not be raced. There is no evidence Baumgartner or

²Federal courts have defined a meeting as "investigatory" if it is to elicit information pertaining to the perceived misconduct. ITT Corp. v. NLRB, 719 F.2d 851, 853 (6th Cir. 1983). The NLRB's definition is somewhat more detailed, terming an interview investigatory if it is one where the employer seeks facts or evidence in support of the perceived misconduct. Baton Rouge Water Works, 246 NLRB 955 (1979).

Oskroba questioned Ditch in a manner consistent with a desire to elicit facts or evidence in support of the perceived Texas Mile misconduct. Further support for the non-investigatory nature of the meeting comes from the fact Berkely, the local Union president, was aware of the April 5 meeting, what was to be discussed during it, and most importantly, the meeting was not connected to the Texas Mile investigation. Finally, the remaining factor, whether the employee reasonably believes disciplinary action may result, clearly cuts in favor of the District. Again, it is irrelevant whether Ditch actually believed disciplinary action might result from the April 5 meeting, as the standard for determining whether an employee reasonably expects discipline is "objective", measured in light of all the circumstances of the case. Here, the Union president who was involved in the April 3 investigatory meeting, assured Ditch the April 5 meeting was not about the Texas Mile incident, and moreover, the nature of the conversation among Baumgartner, Oskroba, and Ditch, during the meeting itself, made it plain disciplinary action would not result from it. Ditch's basis for believing disciplinary action might result from the April 5 meeting was not reasonable under the circumstances, as Baumgartner did not begin interviewing students who were on the Texas Mile trip, until after the April 5 meeting. As a result, Ditch's Weingarten rights did not attach at the meeting with Baumgartner and Oskroba on April 5, as the meeting was very likely not investigatory in nature, and because Ditch lacked any reasonable belief disciplinary action might result therefrom. Based on the foregoing, even if timely filed, Ditch's Weingarten allegations fail to raise an issue of law or fact sufficient to warrant a hearing.

V. ORDER

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

VI. EXCEPTIONS

In accordance with Section 1120.30(c) of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135, parties may file written exceptions to this Recommended Decision and Order together with briefs in support of those exceptions, not later than 14 days after service hereof. Parties may file responses to exceptions and briefs in support of the responses not later than 14 days after service of the exceptions. Exceptions and responses must be filed, if at all, 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 Sections 1100.20 and 1120.30(c) of the Rules, concerning service of exceptions. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions, and unless the Board decides on its own motion to review this matter, this Recommended Decision and Order will become final and binding on the parties.

Issued in Chicago, Illinois, this 13th day of March, 2024.

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

**Victor E. Blackwell
Executive Director**

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103, Telephone: 312.793.3170
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**STATE OF ILLINOIS
ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD**

Gregory Ditch,)	
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Charging Party)	
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Naperville Community Unit School Dist. 203,)	
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Respondent)	
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EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On December 4, 2023, Charging Party, Gregory Ditch, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Naperville Community Unit School District 203, 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

Naperville Community Unit School District 203 (District) is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. Until his resignation, Ditch was an educational employee within the meaning of Section 2(b) of the Act, employed by Respondent in the title or classification of Teacher. Naperville Unit Education Association, IEA-NEA (Union), is 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 bargaining unit comprised of certain of Respondent's employees, including those in the title or classification of Teacher. At times material, Ditch was a member of the Union's bargaining unit. The District and Union are parties to a collective bargaining agreement (CBA)

which provides for a grievance procedure culminating in arbitration, for the bargaining unit to which Ditch belonged.

B. Facts relevant to the unfair labor practice charge

Since approximately August 2000, the District employed Ditch as an automotive teacher and the faculty sponsor of the Auto Club, at its at Naperville North High School. Ditch's immediate supervisor in his automotive teacher role was Melissa Oskroba, the chair of the Career and Technical Education Department. His immediate supervisor in his role as faculty sponsor of the Auto Club, was Dean of Student Activities Jennifer Baumgartner.

In early 2023, the District approved a request by Ditch, on behalf of the Auto Club, for a school-sponsored field trip to Beeville, Texas, to take part in the "Texas Mile" racing event. On or about March 24, 2023, Ditch rented a red Toyota GST Supra, through an application known as "Turo," where private, individual owners rent out their cars to applicants. In this case, Ditch rented the Toyota from Geovanni Morales of San Antonio, Texas. Ditch subsequently entered Morales' car in the Texas Mile event, racing it at high speeds, thereby violating the Turo lease and causing several thousand dollars of damage to the vehicle.

Morales learned what Ditch had done with his car through several social media posts, in which Ditch and District students posed with or near Morales' car, at the Texas Mile event. At first, Morales contacted Ditch, seeking reimbursement for the damage to the car, but Ditch denied Morales' car was the one which was raced. Morales then contacted Stephanie Posey, principal of Naperville North High School. On or about March 28, 2023, Morales sent Posey an email, informing her Ditch had rented his car to enter the Texas Mile racing event, damaged his car, and was refusing to pay for the damages. Therein, Morales also asserted he planned to sue Ditch for the damage to the vehicle. Later the same day, Morales emailed Posey again, notifying her a Chicago television news station was developing a story based on his claims.

In response, Posey, after a short discussion with Morales by telephone, contacted Robert Ross, the District's chief human resources officer, to inform him of the situation. On April 3, 2023, Ross and Posey held an investigatory meeting with both Texas Mile field trip chaperons, Ditch and Henry Gleamza, who were accompanied by two Union representatives, Ross Berkely and Julie Rush-Jelliff.

Ditch submitted his resignation from employment with the District on April 11, 2023, effective May 26, 2023, the final day of school for the 2022-2023 year. On May 1, 2023, the District issued Ditch a letter of reprimand, citing as its basis, his dishonest representations regarding the rental of Morales' car and direct, unauthorized communications with students.

On or about October 17, 2023, Ditch filed two complaints with the District, alleging first, the District sent a defamatory email to certain students and parents, regarding missing equipment in the auto shop Ditch had overseen; and second, the District deprived him of his right to union representation during an investigatory meeting. Chala Holland, the District's assistant superintendent of administrative services, received the complaints and on or about October 23, 2023, notified Ditch the District would investigate the issues raised therein, under its uniform grievance procedure. Holland further informed Ditch the District had appointed the law firm of Robbins Schwartz to investigate Ditch's complaints.

Ditch had earlier filed a charge with this agency in Gregory Ditch/Naperville Community Unit School District 203, Case No. 2024-CA-0019-C, and had notified the District he planned to file suit against it. When Ditch learned attorneys from Robbins Schwartz would represent the District in 2024-CA-0019-C and any other suit he filed against the District, he became concerned the firm's investigation of his October 17, 2023 complaints to the District, would allow the firm an unfair advantage by using the information learned from the interviews with him to prepare the District's defense in any unfair labor practice case or other suit he brought. Ditch filed a charge with this agency in Gregory Ditch/Naperville Community Unit School District 203, Case No. 2024-CA-0023-C, contending the obtaining of that type of unfair advantage violated the Act.

III. THE PARTIES' POSITIONS

Herein, Ditch contends the District violated the Act in that it is a conflict of interest for it to use one attorney from the firm of Robbins Schwartz to interview him for hours in the course of investigating his complaints against the District, while another attorney from the same firm defends the District against his unfair labor practice charges and other possible lawsuits. The District denies the complained-of conduct violated the Act.

IV. DISCUSSION AND ANALYSIS

Under Section 3 of the Act, educational employees are guaranteed the right of self-organization, the right to form, join or assist any labor organization, and the right to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment. Section 14(a)(1) of the Act makes it an unfair labor practice for an employer or its agents to interfere with, restrain or coerce educational employees in the exercise of their Section 3 rights. Section 2(b) of the Act, in pertinent part, defines an "educational employee" as any individual...employed full or part time by an educational employer...."

Ditch's resignation from employment with the District was effective May 26, 2023, and he filed the instant charge on December 4, 2023, more than six months after his employment with the District ended. Moreover, the instant charge arose out of events which occurred after his employment with the District concluded. There is no evidence, or even an allegation, the District rehired Ditch after his May 26 resignation, and thus, he was not an employee of the District at the time he filed the instant charge. Assuming, *arguendo*, as Ditch contends, the District's actions complained of herein interfered with, restrained, and/or coerced him, they do not violate Section 14(a)(1)—lacking the status of educational employee, Ditch is not entitled to the protections of the Act. Western Springs Education Ass'n, IEA-NEA/Barbara Pieper/Western Springs School Dist. 101, 7 PERI ¶1014, 1990 WL 10610727 (IL ELRB 1990); Chester Kulis/Oakton Community College, 31 PERI ¶105, 2015 WL 9918442 (IL ELRB E.D. 2015); Daniel Galemb/Loyola University of Chicago, 6 PERI ¶1157, 1990 WL 10610895 (IL ELRB E.D. 1990).

V. ORDER

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

VI. EXCEPTIONS

In accordance with Section 1120.30(c) of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135, parties may file written exceptions to this Recommended Decision and Order together with briefs in support of those exceptions, not later than 14 days after service hereof. Parties may file responses to exceptions and briefs in support of the responses not later than 14 days after service of the exceptions. Exceptions and responses must be filed, if at all, 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 Sections 1100.20 and 1120.30(c) of the Rules, concerning service of exceptions. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions, and unless the Board decides on its own motion to review this matter, this Recommended Decision and Order will become final and binding on the parties.

Issued in Chicago, Illinois, this 13th day of March, 2024.

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

**victor E. Blackwell
Executive Director**

Illinois Educational Labor Relations Board
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