STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Yusuf Abuzir,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2004-CA-0061-C
	)	
Chicago Board of Education,	)	
	)	
Respondent	)	

OPINION AND ORDER

On May 3, 2004, Yusuf Abuzir (Abuzir or Charging Party) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) against the Chicago Board of Education (CBOE or Employer). The charge alleged that the Employer violated Sections 14(a)(1) and (3) of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1 et. seq, by retaliating against Abuzir for engaging in protected activity when it indefinitely suspended his employment without pay. The IELRB's Executive Director issued a Recommended Decision and Order dismissing the unfair labor practice charge on November 30, 2005.

The Charging Party filed timely exceptions to the Executive Director's Recommended Decision and Order. The Employer filed a timely response to the Charging Party's exceptions. On January 9, 2006, the Charging Party filed a Response to the Employer Response to the Employee's Notice of Exceptions and Briefs in Support of those Exceptions.

For the reasons discussed below, we strike the Charging Party's Response to the Employer's Response and affirm the Executive Director's Recommended Decision and Order dismissing the unfair labor practice charge.

I.

Abuzir was employed by CBOE as a tenured teacher at Ralph Bunche Elementary School (Bunche).[1] On November 15, 2002, Bunche principal Annie Greenlee (Greenlee) issued Abuzir a letter directing him to cease using profane language, improve his teaching effectiveness and to cease insubordinate and other inappropriate conduct toward his supervisors. Greenlee wrote Abuzir a second letter dated November 27, 2002, detailing student

[1] According to the Employer, Bunche School was closed in June 2004 and its entire staff was laid off.

complaints that Abuzir had used profane language and racial epithets. The letter notified Abuzir that the investigation of the incident could result in reprimand, suspension, and/or a warning resolution.

The Employer issued Abuzir a Notice of Pre-Disciplinary Hearing dated May 27, 2003, with regard to the profane language and racial epithets he allegedly directed toward students in November 2002. The Notice stated that a pre-disciplinary hearing was set for June 10, 2003. On May 28, 2003, the Employer issued Abuzir a Warning Resolution regarding the charges that he used profane language and racial slurs toward students in November 2002. The Warning Resolution informed Abuzir that he would be subjected to dismissal if he did not immediately correct his conduct and recommended that Abuzir be suspended for five days. Abuzir alleges that he never received a hearing. Instead, claims Abuzir, one of the Employer's investigators told him that his decision was final and that there would be no hearing. The Employer issued Abuzir a Notice of Disciplinary Action dated June 10, 2003 suspending Abuzir for three days without pay for use of profane language and racial epithets. On June 13, 2003, the Chicago Teachers Union (CTU or Union) requested a review of the discipline. Cheryl Nevins (Nevins), the Employer's Director of Labor Relations, sent Abuzir a letter dated July 7, 2003, informing him that she had received his appeal of the disciplinary action and had decided to uphold the suspension. Nevins informed Abuzir that he was to serve the suspension from September 2, 2003 through September 4, 2003.

Abuzir received an "E-3 Notice: Evaluation of Unsatisfactory Services of a Tenured Teacher in the Chicago Public Schools" on or around April 21, 2003. As a result, Abuzir was required to participate in a 90-day remediation plan. On April 24, 2003, Abuzir met with Greenlee and a consulting teacher to formulate the remediation plan. Abuzir reports that Greenlee had already formulated the plan and did not allow him any input. Abuzir refused to sign the plan without first conferring with a Union representative.

On July 22, 2003, the Union filed a grievance on Abuzir's behalf. The grievance alleged that during the remediation meeting on April 24, 2003, Greenlee refused to discuss the issuance of the remediation with Abuzir and did not allow Abuzir to participate in formulating the plan in violation of the parties' collective bargaining agreement. On September 24, 2003, the Union filed a grievance appeal regarding the July 22 grievance. On October 30, 2003, the Employer denied the grievance. The Union demanded arbitration and mediation of the grievance on November 24, 2003.

On October 20, 2003, a pre-disciplinary hearing was held concerning a remark allegedly made by Abuzir regarding a bomb. Abuzir attended the meeting accompanied by his Union representative. The result of the meeting

was that Abuzir was suspended for ten days without pay. A review hearing was held on December 12, 2003 and the suspension was reduced to six days without pay.

On January 29, 2004, Greenlee informed Abuzir that he had failed to successfully complete his remediation plan and that she would recommend that his employment be terminated.

On or about February 24, 2004, Abuzir received a Notice of Pre-Disciplinary Hearing from the Employer for negligent supervision of his students, insubordinate actions in response to directives from Greenlee, and violations of CBOE policies and procedures that resulted in behavior grossly disrupting the classroom and educational process. Abuzir attended the hearing accompanied by his Union representative. As a result of the hearing, Abuzir was suspended for five days without pay. On February 27, 2004, the Union appealed the suspension.

In April 2004, the Employer commenced termination proceedings against Abuzir. In a letter dated April 29, 2004, the Union requested that a hearing be held on the dismissal charges. According to Abuzir, he has been suspended without pay indefinitely since April 6, 2004. The Employer confirms that it has suspended Abuzir's employment pending the outcome of the dismissal proceedings.

II.

A. The Charging Party's Response to the Employer Response to the Employee's Notice of Exceptions and Briefs in Support of those Exceptions.

The IELRB's Rules provide for exceptions, briefs supporting those exceptions, responses to exceptions, cross-exceptions, briefs supporting cross-exceptions and responses to cross exceptions. The Rules do not provide for a reply to a response to exceptions. 80 Ill. Adm. Code 1105.220(b), 1120.50(a). It is not the IELRB's practice to allow parties to file briefs in addition to those for which the Rules provide. Woodland Council, LCFT, Local 504, IFT/AFT, ____ PERI ____, Case No. 2005-CA-0063-C (IELRB Opinion and Order, March 14, 2006); East Main School District 63, 13 PERI 1041, Case No. 94-CA-0024-C (IELRB Opinion and Order, February 27, 1997); see also, Niles Township High School District 219, 21 PERI 104, Case No. 2005-CA-0002-C (IELRB Opinion and Order, June 16, 2005) (appeal pending). The IELRB has denied a party's motion to file a reply to a response for these reasons. Woodland, ___ PERI ___. East Main, 13 PERI 1041. Accordingly, we strike the Charging Party's Response to the Employer Response to the Employee's Notice of Exceptions and Briefs in Support of those Exceptions.

B. Sections 14(a)(1) and (3) of the Act.

1. Timeliness

Section 15 of the Act 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. The six-month period for filing an unfair labor practice charge begins to run when the charging party becomes aware, or should become aware, of the conduct that allegedly constitutes an unfair labor practice. Jones v. IELRB, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995); Wapella Education Association v. IELRB, 177 Ill. App.3d 153, 531 N.E.2d 1371 (4th Dist. 1988). The filing period begins to run even if the charging party does not know the legal significance of the conduct that constitutes an unfair labor practice. Jones. Only acts that occur within the six-month time period can serve as the basis for a timely charge. City Colleges of Chicago (Johnson), 12 PERI 1004, Case No. 95-CA-0047-C (IELRB Opinion and Order, December 8, 1995); South Suburban College, 11 PERI 1077, Case No. 92-CA-0073-C (IELRB Opinion and Order, September 1, 1995). The six-month period is not a statute of limitations; it is jurisdictional and cannot be tolled. Charleston Community Unit School District No. 1 v. IELRB, 203 Ill. App. 3d 619, 561 N.E.2d 331 (4th Dist. 1990). The Board lacks jurisdiction to act on an unfair labor practice charge that has not been timely filed. Id. For that reason, we will not consider the portions of the charge alleging that the Employer violated the Act by any adverse actions occurring prior to November 3, as they are untimely because they occurred outside of the six-month period.

In his exceptions, the Charging Party argues that the Board should likewise not consider incidents cited by the Employer in response to the charge because they occurred more than six months before the charge was filed. This argument is without merit because the six month limit applies to actions that serve as the basis for the unfair labor practice charge, that is, the conduct that allegedly constitutes an unfair labor practice charge. See, Jones; Wapella Education Association v. IELRB, 177 Ill. App.3d 153, 531 N.E.2d 1371 (4th Dist. 1988). Although the IELRB lacks jurisdiction to act on an unfair labor practice charge that has not been timely filed, the Employer is not asserting a violation of the Act. Accordingly, we find that the Executive Director did not err in relying upon incidents cited by the Employer that occurred more than six months prior to the charge filing.

2. 14(a)(1) and (3)

Section 14(a)(1) of the Act prohibits educational employers, their agents or representatives from "interfering, restraining, or coercing employees in the exercise of the rights guaranteed under this Act." Section 14(a)(3) of the Act prohibits educational employers, their agents or representatives from "[d]iscriminating in regard

to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization."

Where, as here, an alleged violation of Section 14(a)(1) is based on the same conduct as an alleged violation of Section 14(a)(3), the Section 14(a)(1) violation is essentially a derivative violation. Carmi Community Unit School District 5, 6 PERI 1020, Case No. 88-CA-0024-S (IELRB Opinion and Order, January 11, 1990). Where an employer's conduct is alleged to violate both sections, the applicable test is the one used in Section 14(a)(3) cases requiring proof of proper motivation on the employer's part. Bloom Township High School Dist. 206 v. IELRB, 312 Ill. App. 3d 943, 728 N.E.2d 612 (1st Dist. 2000). In order to establish a *prima facie* violation under that test, a charging party must prove that: 1) he or she has engaged in union activity, 2) the employer was aware of that activity, and 3) the employer took adverse action against the charging party for engaging in that activity in order to encourage or discourage union membership or support. Board of Education, City of Peoria School District No. 150 v. IELRB, 318 Ill.App.3d 144, 741 N.E.2d 690 (4th Dist. 2000); Bloom Township High School District 206 v. IELRB, 312 Ill.App.3d 943, 728 N.E.2d 612 (1st Dist. 2000) University of Illinois at Urbana (Rochkes), 17 PERI 1054, Case Nos. 00-CB-0006-S, 01-CA-0007-S (IERLB Opinion and Order, June 19, 2001).

In this case, Abuzir engaged in union activity when the Union filed grievances on his behalf. City Colleges of Chicago (Wright College), 11 PERI 1055, Case No. 95-CA-0012-C (IELRB Opinion and Order, May 26, 1995). Additionally, Abuzir engaged in union activity when he sought the Union's assistance in disciplinary matters, when union representatives accompanied him to pre-disciplinary meetings, and when the Union requested review of discipline. Georgetown-Ridge School District 4 v. IELRB, 239 Ill.App.3d 428, 606 N.E.2d 667 (1992) (employee engages in union activity by invoking the assistance of a union). The Employer was necessarily aware of Abuzir's union activity because it was a party to the grievances and the disciplinary matters. The Employer took adverse action against Abuzir when it suspended him in December 2003, February 2004 and April 2004.

In order to establish the third element of a *prima facie* case, there must be evidence that the adverse action was based, in whole or in part, on anti-union animus, or that union activity was a substantial or motivating factor. City of Burbank v. ISLRB, 128 Ill. 2d 335, 538 N.E.2d 1146 (1989). Antiunion animus is demonstrated though the following factors: expressions of hostility toward unionization, together with knowledge of the employee's union activities; timing; disparate treatment or targeting of union supporters; inconsistencies between the reason offered by the employer for the adverse action and other actions of the employer; and shifting explanations for the adverse

action. Id. The only factor present in this case is the timing of the adverse actions in relation to Abuzir's union activities. However, timing alone is not sufficient to establish a *prima facie* case. Rochkes, 17 PERI 1054; Hardin County Education Association v. IELRB, 174 Ill. App. 3d 168, 528 N.E.2d 737 (4th Dist. 1988). Thus, Abuzir has failed to establish a *prima facie* case that the Employer decided to suspend him in relation for his union activity. Accordingly, we affirm the Executive Director's Recommended Decision and Order dismissing Abuzir's unfair labor practice charge.

III.

For the above reasons, **IT IS HEREBY ORDERED** that the Executive Director's Recommended Decision and Order is affirmed. The unfair labor practice charge is dismissed in its entirety.

IV. Right to Appeal

This is a final order of the IELRB. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to 115 ILCS 5/16(a), such review must be taken directly to the appellate court of the judicial district in which the IELRB maintains an office (Chicago or Springfield). "Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision." 115 ILCS 5/16(a).

Decided: April 11, 2006
Issued: April 20, 2006
Chicago, Illinois

/s/ Lynne O. Sered
Lynne O. Sered, Chairman

/s/ Ronald Ettinger
Ronald Ettinger, Member

/s/ Bridget L. Lamont
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