STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of**:**	)	
	)	
Unit Five Teaching Assistants Association, IEA-NEA,	)	
	)	
Petitioner,	)	
	)	
and	)	Case No. 2005-RC-0016-S
	)	
Local Union No. 362, Laborers' International Union of North America, AFL-CIO, CLC,	)	
	)	
Incumbent Exclusive Representative,	)	
	)	
and	)	
	)	
Board of Education, Community Unit School District No. 5 of McLean and Woodford Counties,	)	
	)	
Employer.	)	

OPINION AND ORDER

On March 29, 2005, Unit Five Teaching Assistants Association, IEA-NEA ("Association") filed a representation petition with the Illinois Educational Labor Relations Board ("IELRB"). The Association sought to represent the following bargaining unit of employees of the Board of Education, Community Unit School District No. 5 of McLean and Woodford Counties ("District"):

> All full and part-time maintenance and custodial employees, excluding mechanics, garage personnel, summertime helpers, substitutes, non-regular part-time employees, students, the Director of Buildings and Grounds, the Director of Transportation, and the Head Foreman.

(Jt. Ex. 1).[1] The unit was already represented by Local Union No. 362, Laborers' International Union of North America, AFL-CIO, CLC ("Local 362").

On May 25, 2005, an IELRB Administrative Law Judge ("ALJ") issued a Recommended Decision and Order. The ALJ determined that the representation petition was not barred by a tentative agreement entered into by the District and Local 362, and directed an election. The election was held on June 27, 2005, and the ballots were impounded.

[1] In this Opinion and Order, we cite the joint exhibits as "Jt. Ex. __," the Petitioner's exhibits as "Pet. Ex. __," and the hearing transcript as "Tr. ___."

Local 362 and the District filed exceptions to the ALJ's Recommended Decision and Order, together with briefs supporting their exceptions. The Association filed a response to the exceptions, in which the Association incorporated by reference the post-hearing brief it had submitted to the ALJ.

We have considered the ALJ's Recommended Decision and Order, Local 362's and the District's exceptions, and the parties' briefs. We have also considered the record and applicable precedents. For the reasons in this Opinion and Order, we reverse the ALJ's Recommended Decision and Order.

I.

We adopt the ALJ's findings of fact as modified in this Opinion and Order.[2] In order to assist the reader, we set forth the facts to the extent necessary to decide the issues presented.

The District is an educational employer within the meaning of the Illinois Educational Labor Relations Act ("Act"). Local 362 and the Association are labor organizations within the meaning of the Act. On September 6, 1985, the IELRB Executive Director certified Local 362 as the exclusive representative of the bargaining unit at issue.

Local 362 and the District were parties to a collective bargaining agreement that was effective on July 1, 2000 and expired on June 30, 2004. Between July 13, 2004 and March 18, 2005, Local 362 and the District engaged in negotiations over a new collective bargaining agreement. Local 362's bargaining team consisted of Local 362 Assistant Business Manager/Financial Secretary Tony Penn, Local 362's Field Representative Ross Manuel, and five bargaining unit employees. The bargaining unit employees were authorized to meet and bargain with the District, but they were not authorized to make any agreements if Manuel and Penn were not present. The District's bargaining team consisted of Director of Operations and Human Resources John Pye, Director of Finances Todd Altenberg, and two School Board members.

Local 362 did not submit written proposals during the negotiations. Instead, Local 362 presented its proposals verbally, and, at the next meeting, the proposals were presented in writing for the parties' approval. According to Manuel, the parties marked "ok" next to items once they were agreed to.

[2] The Association argues that the IELRB is required to adopt the ALJ's factual findings. However, the Illinois Appellate Court has stated that it is the IELRB, not the ALJ, that is the ultimate fact finder, and that an agency is not bound to the findings of the hearing officer. *Bloom Township High School District 206 v. IELRB*, 312 Ill.App.3d 943, 728 N.E.2d 612 (1st Dist. 2000), *citing Highland Park Convalescent Center, Inc. v. Illinois Health Facilities Planning Board*, 217 Ill.App.3d 1088, 578 N.E.2d 92 (1991).

Health insurance was a very important issue during negotiations. (Tr. 31). Throughout the negotiations, the parties discussed a change in health insurance from the Central Laborers' Health and Welfare Plan, which was in effect under the 2000-2004 agreement. Under the Health and Welfare Plan, the District contributed $3.90 per hour worked for each bargaining unit employee, regardless of whether that employee was receiving single coverage or family coverage. (Tr. 58, 72).

During the preparation for negotiations, members of the bargaining unit said that they wanted a tiered system under which the amount paid as a premium depended on the status of the employee. (Tr. 73). The tier schedule was not negotiated with the District, because "that's not anything the employer is concerned about." (Tr. 57-58, 75-76). What was negotiated with the District was that there would be private insurance rather than the Health and Welfare Plan, that the District would make a fixed contribution and Local 362 would arrange for insurance, that employees could be subject to a flexible spending plan, and that a stipend would be paid to employees whose insurance cost less than the amount contributed by the District.[3] (Tr. 28, 77-78). All of this was agreed to by March 18, 2005. (Tr. 28-29, 78). The parties agreed that the District's contribution would be fixed at $3.90 per hour. (Tr. 59, 61, 76). Local 362 was to establish the bargaining unit employees' premium levels. (Tr. 59).

Manuel testified that, as of March 18, 2005, the parties had reached agreement on how health insurance would operate, but numbers as to insurance premiums had not been finalized because Local 362 did not know yet what the insurance costs would be. (Tr. 30-31). The District left it to Local 362 to come up with language as to how the District's $3.90 health insurance contribution would be handled in relation to flexible spending accounts and the stipend. As of March 18, 2005, the specific language on these issues that was included in the final draft of the collective bargaining agreement had not yet been prepared. (Tr. 28-29).

The District and Local 362 drafted a Letter of Understanding which provided that they agreed to use a private insurance group. The Letter of Understanding stated provided that Local 362 would indemnify the District and hold it harmless from any liability that might arise as a result of the change in insurance. The Letter of Understanding also stated that "bargaining unit members shall sign a form acknowledging that the District has no responsibility with respect to that employee's health insurance before commencing participation in the plan." The

[3] If the employee's insurance cost more than the amount contributed by the District, the employee would be required to pay a portion of the difference. Local 362 was also devising a method by which some of the difference would be contributed by bargaining unit members. (Tr. 76-77). This was a matter internal to Local 362. (Tr. 77).

parties agreed that Local 362 would obtain the new insurance carrier and establish the bargaining unit employees' benefit levels. The District required the Letter of Understanding in order to allow Local 362 to obtain private insurance. The District is the signatory to the contract with the insurance company.

Penn testified that the District and Local 362 drafted the Letter of Understanding before he returned in February from union leadership training. The Letter of Understanding was signed on April 13, 2005, at the same time that the representatives of the District and Local 362 signed the collective bargaining agreement.

A bargaining session occurred on March 18, 2005. According to Manuel, at that time the parties had reached agreement on all issues, including health insurance. The agreement covered numerous terms and conditions of employment. (Jt. Exs. 2, 3, 6). The parties stipulated that "[o]n March 18, 2005, Local 362 and [the District] reached a tentative agreement on a new collective bargaining agreement, which agreement is to be retroactive to July 1, 2004, and will expire on June 30, 2008."

During the March 18, 2005 meeting, Local 362 and the District scheduled their meetings for ratification of the tentative agreement. The parties also agreed to meet on March 28, 2005, to review the agreements they had reached during negotiations. According to Manuel, this meeting was scheduled to allow the parties to review and clarify the tentatively agreed items, because negotiations had taken place over a long period of time and some items had not been discussed since they had been agreed to.

On March 28, 2005, District representatives Pye and Altenberg met for approximately two hours with bargaining unit employee members of Local 362's bargaining team. Manuel and Penn did not attend the meeting. Manuel testified that the bargaining unit employees were not authorized to agree to any changes during the meeting. However, the bargaining unit employee members were not instructed to that effect.

During the March 28 meeting, one of the employees asked whether the new agreement was to be retroactive. Pye responded that he was not sure, and that he would have to check on what had been agreed to and get back to the committee. (Tr. 112, 114). That is what Pye did. (Tr. 114). Manuel told Marty Pickett, one of the bargaining unit employee members of Local 362's bargaining team, that there was no question that the agreement was retroactive. According to Penn, retroactivity had never been an issue in the negotiations, retroactivity had always been a Local 362 proposal, and the parties never "okayed" language concerning retroactivity. According to Manuel, the issue "was cleared up right away." (Tr. 50). Past collective bargaining agreements between the District and Local 362 had been retroactive. (Tr. 51).

On April 1, 2005, Manuel and the bargaining unit employee members of Local 362's bargaining team met to discuss the health insurance language concerning the insurance stipend and flexible spending accounts, and the other provisions to be presented to the bargaining unit employees the next day. On April 2, 2005, Local 362 held its ratification meeting. This date was chosen because it was the first Saturday after the District's spring break, during which employees might not be available. Because the bargaining unit employees work three shifts during the week, a Saturday meeting would enable the most employees to meet. The bargaining unit employees ratified the tentative agreement.

On April 13, 2005, prior to the School Board meeting at which ratification of the tentative agreement was considered, a District administrative secretary identified only as "Patty" gave Penn a sheet of paper listing the District's inclusions for the final draft of the agreement. These included correcting pagination, adding an acceptance of agreement page and adding the Letter of Understanding concerning health insurance.

In addition, the position of head foreman was deleted from the exclusions in the Union Recognition provision in the agreement and replaced with the supervisor of maintenance and the supervisor of custodians/grounds. (Pet. Ex. 1). According to Penn, the District made this deletion because the position of head foreman no longer exists, and the duties of that position are performed by the supervisor of maintenance and the supervisor of custodians/grounds. The position of head foreman was not discussed at the bargaining table, as it was general knowledge that the position no longer existed. However, the exclusion of the supervisor of maintenance and the supervisor of custodians/grounds was discussed at the bargaining table. (Tr. 90, 92). This change had been made in other portions of the agreement. (Tr. 103-05).

The District also changed the language of Article 10, Section 2 from "Holidays are defined as Holidays listed in Article 9" to "Holidays are defined as all days specified in Article 9." Penn testified that this change was merely a wording clarification.

The District added language to Article 18, Section 5 – Insurance to reflect that the District's insurance contribution was limited to regular working hours, and did not included overtime hours. This rewording was not discussed in negotiations on or before March 18, 2005. According to Penn, "regular hours" means the same thing as "straight time", and the language was simply a clarification.

In addition, the District changed Article 9, Section 3, which provides for sick and bereavement leave, by adding "step-relatives" as those included in the provision. This change was not included on the list the

administrative secretary gave to Penn, but she pointed it out to Penn and union steward and bargaining team member Billy Glasscock. The parties had not discussed this change during negotiations. Penn testified that the District unilaterally made this change so that the agreement would be consistent with District-wide policy.

On April 13, 2005, the School Board ratified the March 18, 2005 agreement and the parties' representatives signed the agreement and the Letter of Understanding. The April 13, 2005 School Board meeting was the next regularly scheduled School Board meeting after March 18, 2005. The School Board did not implement any provisions of the new agreement before the ratification vote.

Illinois Education Association representative Carla Jurgenson testified that she told employees that she did not see any reason that it would be necessary to re-bargain the collective bargaining agreement, although it would maybe be necessary to change the language concerning pensions and who the exclusive representative was. She testified that she did not know about the Letter of Understanding. (Tr. 126). She also testified that she told Pye that the union's intent was not to make the District re-bargain the agreement except for those two areas. (Tr. 127, 130). She testified that she was authorized by the local Association to make these representations. (Tr. 128).

II.

The ALJ concluded that the March 18, 2005 tentative agreement did not bar the Association's representation petition. She stated that, if the April 13, 2005 changes had been the only items at issue, she would have concluded that the District and Local 362 had reached tentative agreement such that the Association's petition was barred. However, she determined that the items of health insurance and retroactivity precluded such a finding. She determined that there were gaps concerning health insurance that rendered it difficult, if not impossible, to conclude that the tentative agreement was sufficiently complete. She also determined that, at the time the Association filed its petition, the District and Local 362 were still in negotiations concerning retroactivity. In addition, she stated that, in the absence of supporting evidence, she could not find that the petition was barred on the basis of the destabilizing effect of possible renegotiation of employee pensions and health insurance.

III.

Local 362 argues that the ALJ's conclusion that the March 18, 2005 agreement was not effective as a contract bar is erroneous. Local 362 contends that it and the District had negotiated a complete agreement concerning health insurance as of March 18, 2005. Local 362 argues that the gaps cited by the ALJ concerned matters that it was to decide unilaterally, not through negotiation with the District. Local 362 also argues that the

ALJ erroneously concluded that the parties were still in negotiations as to retroactivity at the time the Association filed its petition.

The District contends that the Association's petition is untimely and barred because it was filed after the District and Local 362 reached tentative agreement on a new collective bargaining agreement on March 18, 2005. The District argues that the ALJ erroneously failed to honor the parties' stipulation. The District asserts that the ALJ erroneously concluded that the tentative agreement was insufficient. The District contends that the agreement between it and Local 362 concerning health insurance is complete and sufficient to resolve the issue of employee health benefits for the term of the agreement. The District contends that the ALJ erroneously concluded that gaps remained in the agreement concerning health insurance. The District also argues that the ALJ erroneously concluded that, at the time that the Association filed its petition, the parties were still in negotiation as to retroactivity. The District argues that the ALJ's conclusions concerning the destabilizing effect of possible renegotiation are erroneous.

The Association argues that its petition was timely filed. The Association contends that the IELRB should overrule *Dupo Community Unit School District 196*, 4 PERI 1117, Case No. 88-RC-0015-S (IELRB, August 18, 1988). The Association contends that, if the IELRB does not overrule *Dupo*, the IELRB should conclude that the March 18, 2005 tentative agreement does not bar the petition. The Association asserts that Local 362 and the District have the burden to prove by a preponderance of evidence that they had reached full agreement on all substantial terms and conditions of employment prior to March 28, 2005 and that the Association's petition is untimely. The Association argues that Local 362 and the District did not meet that burden.

The Association argues that the District and Local 362 engaged in continued collective bargaining negotiations after March 29, 2005, primarily in the areas of health insurance and retroactivity and also on April 13, 2005. The Association contends that the parties' stipulation is not dispositive. The Association contends that a "meeting of the minds" was not reached on every substantive issue on March 18, 2005. The Association argues that health insurance is a substantial term and condition of employment, and that there is ample evidence that an agreement on health insurance was not reached before March 28, 2005. The Association maintains that retroactivity is a substantial term and condition of employment, and that the ALJ's conclusion that a tentative agreement on retroactivity was not reached before the petition was filed is fully supported by the record. In addition, the Association argues that it is not established that there would be labor instability if the petition is found to be timely,

and that, in this case, the employees' right to freely select a bargaining representative outweighs the concern about labor instability.

IV.

The issue before us in this case is whether the tentative agreement reached by the District and Local 362 on March 18, 2005 bars the Association's March 29, 2005 representation petition. We conclude that that agreement bars the petition.

Under Section 7(d) of the Act and Sections 1110.70(c) and (d) of the IELRB's Rules, 80 Ill. Adm. Code 1110.70(c) and (d), collective bargaining agreements bar representation petitions for a period of three years, subject to a "window period" during which petitions may be filed. The IELRB has interpreted this bar as applying to tentative agreements that have not yet been ratified and signed by both parties. In *Dupo*, *supra*, a representation petition was filed after the union had ratified and signed a tentative agreement, but before the employer had ratified and signed the agreement. The IELRB stated that it must accommodate the competing interests of the employees, the union, the employer and the public. The IELRB determined that, for a reasonable period of time after a tentative agreement is reached, the employer's interest and the public's interest in stable collective bargaining relationships clearly outweigh the employees' interest in selecting a bargaining representative of their choice and, as in that case, the union's interest in changing the unit configuration. The IELRB concluded in *Dupo* that the tentative agreement barred the petition. The IELRB stated that "[o]nce tentative agreement is reached between authorized representatives of the parties, that agreement bars a subsequent representation petition for that period of time reasonably needed to obtain ratification from both parties," *id*. at IX-492.

The Association urges the IELRB to overrule *Dupo* and adopt a standard under which a collective bargaining agreement must be ratified and signed before it bars a representation petition. After considering this argument, we adhere to the *Dupo* standard.

In considering the Association's argument, we must weigh the interest of the employer, the incumbent union and the public in stable collective bargaining relationships against the interest of the employees in selecting a representative of their choice and the interest of the petitioning union in becoming the exclusive representative. After weighing those interests, we determine that they are properly accommodated by the standard that we stated in *Dupo*. The *Dupo* standard does not prevent representation petitions from being filed, but merely requires them to be filed at a particular time. Under Section 7(d) of the Act and Sections 1110.70(c) and (d) of the IELRB's Rules, there

is a "window period" before the expiration of a collective bargaining agreement when representation petitions may be filed.[4] Therefore, even under the *Dupo* standard, the interest of employees in selecting representatives of their choice is accommodated, while *Dupo* protects the relationship of parties who have just negotiated a collective bargaining agreement from disruption and protects the public from the effects of labor instability for a reasonable period of time to allow the parties to ratify the agreement. The interest of the petitioning union in becoming the exclusive representative does not outweigh the interest of the incumbent union in maintaining the collective bargaining relationship.

Section 1 of the Act states that "[i]t is the public policy of this State and the purpose of the Act to promote orderly and constructive relationships between all educational employees and their employers." This public policy is promoted by the *Dupo* standard. In addition, the *Dupo* standard reflects the unique needs of the public educational sector, where agreements are ratified by educational employers and the union membership. The standard in *Dupo* accommodates these ratifications requirements but only for a "reasonable" amount of time. Finally, the parties whom the IELRB regulates have an interest in the stability of IELRB decisions, so that they can rely on those decisions to govern their actions.

The Association argues that the *Dupo* standard is subject to numerous questions of fact, and that the IELRB should, instead, employ the standard of the National Labor Relations Board ("NLRB"). However, under the NLRB's standard, as discussed below, it is necessary to determine whether the agreement that arguably constitutes a bar contains substantial terms and conditions of employment. Thus, employing the NLRB's standard would not eliminate questions of fact.

A related issue is whether, in order to constitute a bar, a tentative agreement must be in writing. The ALJ determined that, by the terms of the Act, it is not necessary for the parties to have reduced their agreement to writing in order that a contract bar apply, and the Association did not file exceptions or cross-exceptions to that determination. Moreover, Section 10(d) of the Act provides:

> Once an agreement is reached between representatives of the educational employees and the educational employer and is ratified by both parties, the agreement shall be reduced to writing and signed by the parties.

[4] In this case, because the 2000-2004 collective bargaining agreement between Local 362 and the District was effective for over three years and because the successor agreement was not in place when the 2000-2004 agreement expired, the Association had a lengthy period, in addition to the "window period," during which it could have filed its petition.

This necessarily implies that the agreement that is ratified need not yet have been reduced to writing. Thus, a sufficiently specific agreement may exist before it is put into writing. Not requiring a tentative agreement to be in writing is also consistent with the interest in stable collective bargaining relationships noted in *Dupo*.[5]

The Association contends that, if the IELRB does not overrule *Dupo*, the IELRB should conclude that the March 18, 2005 tentative agreement does not bar the Association's representation petition. We conclude that the March 18, 2005 agreement is sufficient to bar the petition.

The District argues that this case is controlled by the parties' stipulation that "[o]n March 18, 2005, Local 362 and [the District] reached a tentative agreement on a new collective bargaining agreement, which agreement is to be retroactive to July 1, 2004, and will expire on June 30, 2008." The Association is bound by this stipulation. Stipulations constitute judicial admissions, and, as such, are binding on the parties making them and may not be controverted. *Keeven v. City of Highland*, 294 Ill.App.3d 345, 689 N.E.2d 658 (5th Dist. 1998). Stipulations "cannot even be met by evidence tending to show that the facts are otherwise," *Shell Oil Co. v Industrial Commission*, 407 Ill. 186, 198, 94 N.E.2d 888, 894 (1950). In *Rockford Township Highway Department v. ISLRB*, 153 Ill.App.3d 863, 506 N.E.2d 390 (2nd Dist. 1987), the Illinois Appellate Court determined that a party was bound to its stipulation as to the existence of a collective bargaining agreement.

However, the stipulation is not in itself sufficient to establish that the Association's representation petition is barred. In order to establish a bar, an agreement must contain substantial terms and conditions of employment. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958); *Village of Glen Carbon*, 15 PERI 2030 (ISLRB 1999); *Chicago Housing Authority*, 14 PERI 3013 (ILLRB, 1998); *Town of Saugerties*, 31 PERB par. 3001 (N.Y. Pub. Emp. Rel. Bd. 1998); *Capistrano Unified School District*, 18 PERC par. 25147 (Cal. Pub. Emp. Rel. Bd. 1994); *Delton-Kellogg Schools*, 2 MPER par. 20067 (Mich. Emp. Rel. Comm. 1989). The NLRB has determined that, in order to constitute a bar, a collective bargaining agreement "must be 'so complete as to substantially stabilize labor relations between the parties,' and should 'chart with adequate precision the course of the bargaining relationship [so that] the parties can look to the actual terms and conditions of the contract for guidance in their day-to-day problems," *Stur-Dee Health Products, Inc.*, 248 NLRB 1100 (1980) (footnotes omitted), *quoting Appalachian Shale*,

[5] The Illinois State Labor Relations Board, the Illinois Local Labor Relations Board and the NLRB have determined that a collective bargaining agreement must be in writing to serve as a bar. *Village of Glen Carbon*, 15 PERI 2030 (ISLRB 1999); *Chicago Housing Authority*, 14 PERI 3013 (ILLRB 1998); *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). However, the Illinois Public Labor Relations Act and the National Labor Relations Act do not contain provisions similar to Section 10(d) of the Illinois Educational Labor Relations Act.

supra, and *Spartan Aircraft Co.*, 98 NLRB 73 (1952). The parties stipulated that the District and Local 362 reached a tentative agreement on March 18, 2005, but did not stipulate that agreement contained substantial terms and conditions of employment, was sufficiently complete as to substantially stabilize labor relations between the District and Local 362, or charted with adequate precision the course of the bargaining relationship.

The ALJ did not consider the changes of which the administrative secretary notified Penn on April 13 to be sufficiently substantial to demonstrate that the tentative agreement was not "so complete as to substantially stabilize labor relations." She stated that, if those changes had been the only items at issue, she would have concluded that the parties had reached tentative agreement such that the Association's petition was barred. The Association did not file exceptions or cross-exceptions to this determination, and it is supported by the record. In *Glen Carbon*, *supra*, the Illinois State Labor Relations Board determined that, where the substantial terms and conditions of employment were resolved, subsequent changes did not affect the status of a contract as a bar. The changes here are no more substantial than those at issue in *Glen Carbon*.

However, the ALJ determined that, as to health insurance and retroactivity, the parties had not reached tentative agreement such that the Association's petition was barred. The Association urges the IELRB to affirm this determination.

We conclude that the ALJ's determination was incorrect as to health insurance. By March 18, 2005, the District and Local 362 had agreed on all the aspects of health insurance that concerned the District. The parties had agreed that there would be private insurance rather than the Health and Welfare Plan. They had agreed that the District would make a fixed contribution and that Local 362 would arrange for insurance. They had agreed that Local 362 would establish the employees' benefit levels. While the specific language on flexible spending accounts and the stipend had not yet been drafted, agreement had been reached concerning those issues, and the District had left it to Local 362 to draft that language. In *Farrel Rochester Division of USM Corp.*, 256 NLRB 996 (1981), the NLRB determined that a collective bargaining agreement barred a petition even though the parties had left the language of certain provisions to be worked out at a later date. The NLRB stated that it is not required that a collective bargaining agreement completely delineate each of its provisions in order to bar a petition. Analogously, in *Black Hawk Quad-Cities*, 10 PERI 1029, Case No. 93-UC-0005-C (IELRB, January 7, 1994), where the collective bargaining agreement set forth a procedure for resolving the one inconclusive issue, the IELRB concluded that a contract bar existed.

We also determine that the ALJ's determination was incorrect as to retroactivity. The evidence here indicates that retroactivity had always been a Local 362 proposal and was never an issue in negotiations. Thus, it can be inferred that there was agreement between the parties that the new collective bargaining agreement was to be retroactive. This inference is supported by the fact that past collective bargaining agreements between the District and Local 362 had been retroactive, and by the fact that District representative Pye said that he had to check on what had been agreed to, rather than that he would have to find out the District's position on the issue.

Therefore, the ALJ's determination that the parties had not reached tentative agreement on health insurance and retroactivity such that the Association's petition was barred is incorrect. A tentative agreement was reached on March 18, 2005 that contained substantial terms and conditions of employment, that was "so complete as to substantially stabilize labor relations between the parties," and that "chart[ed] with adequate precision the course of the bargaining relationship [so that] the parties can look to the actual terms and conditions of the contract for guidance in their day-to-day problems." In addition, the agreement was ratified and signed within a reasonable period of time after it was agreed upon. The bargaining unit employees ratified the tentative agreement on April 2, 2005, the first Saturday after the District's spring break, during which employees might not have been available. The School Board ratified the tentative agreement at the next regularly scheduled School Board meeting after March 18, 2005. On the same date, representatives of Local 362 and the District signed the agreement. This is sufficient to constitute a contract bar under *Dupo*.

The Association argues that it is not established that there would be labor instability if the petition is found to be timely, and that, in this case, the employees' right to freely select a bargaining representative outweighs the concern about labor instability. The Association relies on the testimony of Illinois Education Association representative Jurgenson concerning the limited scope of re-negotiation that the Association would seek. However, Jurgenson testified that she did not know about the Letter of Understanding. Therefore, her testimony cannot be taken as indicating that there would not need to be re-negotiation concerning health insurance. Health insurance was a very important issue and was discussed throughout the negotiations. In addition, Jurgenson acknowledged that it would be necessary to change the contractual language concerning pensions. Accordingly, a potential for labor instability would remain if the Association's petition were not barred.

We conclude that *Dupo, supra* should not be overruled. We also conclude that the March 18, 2005 tentative agreement between the District and Local 362 created a contract bar requiring the dismissal of the Association's representation petition.

V.

The ALJ's Recommended Decision and Order is reversed. The Association's representation petition is dismissed.

VI. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. *See* Section 7(d) of the Act. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 7(d) of the Act, such review must be taken directly to the appellate court of the judicial district in which the Board 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 5/7(d).

Decided: September 13, 2005
Issued: September 26, 2005
Chicago, Illinois

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

/s/ Ronald F. Ettinger
Ronald F. Ettinger, Member

/s/ Bridget L. Lamont
Bridget L. Lamont, Member

/s/ Michael H. Prueter
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