

**STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD**

In the Matter of:	)		
	)		
Peoria School District 150,	)		
	)		
Respondent,	)		
	)		
And	)	Case Nos.	2006-CA-0002-S
	)		2006-CA-0028-S
Peoria Federation of Support Staff/Cafeteria/ Clerical/Paraprofessional Local 6099, IFT/AFT,	)		2006-CA-0029-S
	)		2006-CA-0030-S
	)		
Complainant.	)		

**OPINION AND ORDER**

On December 21, 2006, Administrative Law Judge (“ALJ”) Susan Willenborg issued a Recommended Decision and Order in this matter. The ALJ determined that Peoria School District 150 (“District 150”) violated Sections 14(a)(5) and 14(a)(1) of the Illinois Educational Labor Relations Act (“Act”) by refusing to process, or delaying in processing, a March 9, 2005 grievance alleging a unilateral reduction in the cafeteria employees’ hours. The ALJ also found that District 150 violated Section 14(a)(5) and, derivatively, 14(a)(1) of the Act by the manner in which it increased insurance premiums, which is a mandatory subject of bargaining, in September 2005. The ALJ further concluded that District 150 violated Sections 14(a)(3) and 14(a)(1) of the Act by refusing to process the March 9, 2005 grievance and by unilaterally setting insurance rates without submitting the matter to the Insurance Committee, with respect to the cafeteria employees. Also, District 150 violated Section 14(a)(1) of the Act by unilaterally setting the insurance rates without submitting the matter to the Insurance Committee, with respect to the clerical and paraprofessional employees. However, District 150 did not violate Section 14(a)(3) or Section 14(a)(1) of the Act by refusing to arbitrate the insurance premium grievance, the ALJ found. District 150 filed exceptions to the ALJ’s Recommended Decision and Order and the Peoria Federation of Support Staff/Cafeteria/Clerical/Paraprofessional, Local 6099, IFT/AFT, AFL-CIO (“Union”) filed a response to District 150’s exceptions. For the reasons discussed below, we affirm the Administrative Law Judge’s Recommended Decision and Order.

## I.

It should initially be noted that the IELRB will not consider new facts raised for the first time in front of the Board. *Chicago Teachers Union (Day)*, 10 PERI 1008 (IELRB Opinion and Order, 11/10/93).

Since at least 1999, an Insurance Committee (“Committee”) composed of representatives from each of the eight bargaining units District 150 and District 150 administrative employees met to discuss insurance issues. In September of each year, the Committee discussed the setting of premiums and recommended what it considered appropriate premium rates to District 150’s School Board. The School Board made final decisions on whether to adopt Committee recommendations, and it had always accepted and adopted the Committee’s recommendations regarding premium rates.

In 1999, District 150 was presented with the necessity of raising premiums. The Committee discussed the premiums, and by consensus, determined that a portion of District 150’s surplus insurance fund should be used to limit the amount of the increase. The Committee presented its consensus recommendation on the appropriate premium rate to District 150, and District 150 adopted the recommendation.

In June 2004, District 150 and Local 6099 began bargaining for successor collective bargaining agreements for each of the three support staff units.

In August 2004, District 150 and representatives of all the bargaining units met jointly to discuss insurance matters. District 150 and the cafeteria bargaining unit did not meet to bargain again until January 2005. In October 2004, the clerical bargaining unit went on strike for two days, setting up picket lines at the administration building and at four of District 150’s high schools. The employees walking the picket line were visible to the administrators, and some of the employees waved to District 150 employees entering and leaving the administration building. On October 31, 2004, the bargaining unit reached a tentative agreement. On July 23, 2005, the District ratified the agreement.

On March 1, 2005, District 150 became aware of a budget deficit and undertook steps to identify ways to enhance revenue or reduce its expenses. On March 9, 2005, the cafeteria employees’ unit filed a grievance alleging that, on approximately February 25, 2005, District 150 unilaterally reduced the hours, and thereby the wages, of some cafeteria employees, after one of the employees asked for health insurance coverage. Due to the large number of affected employees, Local 6099 made a district-wide class grievance.

District 150 did not respond to the grievance, and by letter dated April 18, 2005 to Assistant Human Resources Director Charles Davis, Field Service Representative Uphoff requested that the grievance be moved to arbitration. On May 20, 2005, Davis signed and returned the request to Uphoff. By email dated June 3, 2005 to Davis, Uphoff asked that District 150 participate in choosing an arbitrator. In late July or early August 2005, the parties chose an arbitrator and, in October 2005, an arbitration hearing was held on the grievance. Uphoff and members of the bargaining unit testified in the arbitration hearing.

According to Uphoff, prior to the strike and the filing of grievances over the insurance premium increase, Local 6099 did not have any trouble processing grievances. However, Uphoff testified that, following these occurrences, District 150 has moved slowly, if at all, on grievances.

District 150 and the clerical unit entered into a memorandum of understanding, adopted June 20, 2005, providing that District 150's intent was to negotiate new terms and conditions regarding health insurance with all eight bargaining units and that District 150 would request a joint meeting with all eight bargaining units. There was testimony that bargaining unit representatives and District 150 understood this language to mean that District 150 would discuss these matters with the Insurance Committee, as had been past practice. No meetings with regard to insurance matters were ever held during the summer of 2005.

District 150 presented proposed monthly premium rates quoted from District 150's third party administrator to District 150's Finance Committee on September 1, 2005. An Insurance Committee meeting was held on September 6, 2005. District 150 informed the Committee members of the insurance premium rate increase. The Union representatives inquired as to why the premium increases were not being set at a 12 to 18% increase, as they had been historically. District 150 explained that type of increase would not be sufficient given the numbers provided by the underwriters. The employee representatives in the Committee were upset about the level of the increases and more upset because the issue of the premium rates had never been presented to the Committee for its review and recommendations as had been done in the past.

The School Board met later on September 6, 2005 and adopted the premium increase that was recommended. A Union representative attended the School Board meeting and encouraged the School Board to return the premium setting function to the Insurance Committee.

On September 9, 2005, the Union filed separate grievances on behalf of the clerical and cafeteria bargaining units alleging that District 150 violated the parties' collective bargaining agreements when it set insurance premium rates without the involvement of the Insurance Committee. On September 13, 2005, the Union filed a grievance on behalf of the paraprofessional bargaining unit alleging that District 150 violated the parties' collective bargaining agreement when it set insurance premium rates without the involvement of the Insurance Committee. On September 22, 2005, District 150 denied each of the grievances. In each response, District 150 noted that the parties' respective collective bargaining agreement provides that "[i]ncreases in insurance premiums for subsequent years will be based on underwriting experience." On September 22, 2005, each of the grievances was moved to step 2, and each was denied on October 18, 2005.

On October 18, 2005, District 150 asked that the grievances be held in abeyance pending a decision by the Illinois Educational Labor Relations Board ("IELRB") on a similar grievance filed by a different bargaining unit. On October 20, 2005, the Union said that it would not hold the premium increase grievances in abeyance and asked that each of the grievances be moved to binding arbitration. The arbitration requests were resubmitted on November 7, 2005. The Union continued to request that the signed arbitration forms be presented so that an arbitrator could be chosen. District 150 never supplied a signed arbitration form to the Union.

The Committee has not met since September 6, 2005. District 150 stated that there has not been any pending insurance matter that would require convening the Committee.

In March 2006, District 150 was added to the Illinois State Board of Education's "watch list." District 150 has not met with the bargaining units as a group to address insurance costs, but had been bargaining with each unit on the matter as their agreements come up for negotiation.

## II.

District 150 takes exception to the ALJ's finding that it violated Sections 14(a)(5) and 14(a)(1) by refusing to process, or delaying the processing of, a grievance concerning the unilateral reduction in the cafeteria employees' hours and setting the insurance premiums for the self-funded health plan. District 150 relies on *Neponset Community Unit School Dist. 307*, 13 PERI 1089, Case No. 1996-CA-0028-C (IELRB, July 1, 1997) for the proposition that unlawful motivation is required to find a violation of Section 14(a)(5)

of the Act. However, *Neponset* involved a stand alone Section 14(a)(1) violation. There does not need to be a finding of unlawful motivation to establish a Section 14(a)(5) violation through a unilateral change. *NLRB v. Katz*, 369 U.S. 736 (1962) (an unfair labor practice violation was found after the employer made unilateral changes despite the absence of bad faith); The Developing Labor Law, 832-33 (5<sup>th</sup> ed.2006).

District 150 also contends that the three pronged analysis in *Neponset* should apply to the 14(a)(1) violation for refusing to arbitrate a grievance. However, in *Neponset*, the IELRB stated that the three-pronged analysis applied to alleged Section 14(a)(1) violations consisting of retaliation for protected activity and not to other Section 14(a)(1) violations. The Appellate Court in *Prairie State College v. IELRB*, 173 Ill. App. 3d 395 (4th Dist. 1988) held that refusal to arbitrate grievances is a per se technical violation of 14(a)(1). As such, the three pronged *Neponset* analysis does not apply to District 150's refusal to arbitrate grievances.

District 150 also takes exception with the ALJ's reasoning that previous unfair labor practice violations can be used to establish anti-union animus and unlawful motivation. However, the National Labor Relations Board has found that an employer's commission of other unfair labor practices establishes animus and that an employer who has violated rights under the Act in other respects demonstrates an inclination to such conduct. *Cardinal Home Products, Inc.*, 338 NLRB 1004 (2003); *J.R.L. Food Corp. d/b/a/ Key Food*, 336 NLRB 111 (2001). Prior violations of unfair labor practice charges can be used to show anti-union animus and unlawful motivation.<sup>1</sup>

District 150 objects to the order by the ALJ to bargain over the role of the Insurance Committee. District 150 contends that it has refused and will refuse to bargain with the Insurance Committee and a Board order forcing it to do so would amount to illegal conduct. However, District 150 confuses the order. The order is not to bargain with the Insurance Committee over insurance rates; rather, the order is to bargain with the Union over the role the Insurance Committee will play in recommending insurance rates.

District 150 takes further exception to the remedies ordered by the ALJ. Specifically, District 150 objects to the ALJ's order to rescind the health insurance premium increase. The Board, through Section

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<sup>1</sup> District 150 further objects to the framework used by the Board in determining retaliation and discrimination. District 150 suggests using the *McDonnell-Douglas* framework employed in Title VII employment discrimination cases. However, a different framework applies to retaliation and discrimination cases in the unfair labor practice context. See *Bloom Township High School District 206 v. IELRB*, 312 Ill. App. 3d 943, 728 N.E.2d 612 (1st Dist. 2000); *Georgetown-Ridge Farm Community Unit School District No. 4 v. IELRB*, 239 Ill. App. 3d 428, 606 N.E.3d 667 (4th Dist. 1992).

15 of the Act, has the authority to “take additional affirmative action,” including ordering a make-whole remedy, where the Board finds an unfair labor practice has been committed. 115 ILCS 5/15. See *Phelps Dodge Corp. v. NLRB*, 313 U.S 177 (1941). The purpose of the IELRB in ordering a remedy in an unfair labor practice case is to fashion a make-whole remedy that places the parties in the same position they would have been in had the unfair labor practice not been committed. *Paxton-Buckley-Loda Education Association, IEA-NEA v. IELRB*, 304 Ill. App. 3d 343, 710 N.E.2d 358 (4th Dist. 1999). The IELRB has “substantial flexibility and wide discretion” in determining what actions should be taken to make whole the victims of unfair labor practices. *Paxton-Buckley-Loda*, quoting *County of Cook*, 12 PERI 3008 (ILLRB 1996). An order to rescind the insurance premiums merely constitutes a make-whole remedy. By rescinding the insurance premiums the parties are being placed into the position they would have been in but for the unfair labor practice.

### **III.**

For the above reasons, **IT IS HEREBY ORDERED** that the IELRB affirms the Administrative Law Judge’s Recommended Decision and Order and adopts the Administrative Law Judge’s Recommended Order. The attached notice shall be substituted for the notice attached to the Administrative Law Judge’s Recommended Decision and Order.

### **IV. 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 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 5/16(a).

**Decided:** September 11, 2007

**Issued:** September 20, 2007  
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  
Michael H. Prueter, Member

/s/ Jimmie E. Robinson  
Jimmie E. Robinson, Member

Illinois Educational Labor Relations Board  
160 North LaSalle Street, N400  
Chicago, Illinois 60601  
Telephone: (312) 793-3170

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Peoria School District 150  
Case Nos. 2006-CA-0002-S, 2006-  
CA-0028-S, 2006-CA-0029-S,  
2006-CA-0030-S

Pursuant to an Opinion and Order of the Illinois Educational Labor Relations Board and in order to effectuate the policies of the Illinois Educational Labor Relations Act (“Act”), we hereby notify our employees that:

This Notice is posted pursuant to an Opinion and Order of the Illinois Educational Labor Relations Board issued after a hearing in which both sides had the opportunity to present evidence. The Illinois Educational Labor Relations Board found that we have violated the Act and has ordered us to inform our employees of their rights.

Among other things, the Act makes it lawful for educational employees to organize, form, join or assist employee organizations or engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection.

We assure our employees that:

**WE WILL NOT** interfere with, restrain or coerce employees in the exercise of rights guaranteed under the Act.

**WE WILL** arbitrate the September 2005 grievances filed by Peoria Federation of Support Staff/Cafeteria/Clerical/Paraprofessional, Local 6099, IFT/AFT concerning insurance premiums.

**WE WILL NOT** unilaterally implement changes in insurance premium rates without the participation of the District Insurance Committee.

**WE WILL NOT** retaliate against employees for union and/or protected concerted activity by unilaterally setting insurance rates without the participation of the District Insurance Committee.

**WE WILL**, upon request, bargain with Peoria Federation of Support Staff/Cafeteria/Clerical/Paraprofessional, Local 6099, IFT/AFT concerning insurance rates and the participation of the District Insurance Committee.

**WE WILL** rescind the health insurance premium increases approved in September 2005 for the employees represented by Peoria Federation of Support Staff/Cafeteria/Clerical/Paraprofessional, Local 6099, IFT/AFT.

**WE WILL** make whole, with interest at a rate of 7% per annum, any employees represented by Peoria Federation of Support Staff/Cafeteria/Clerical/Paraprofessional, Local 6099, IFT/AFT who have been affected by our September 2005 decision to increase health insurance premium rates.

PEORIA SCHOOL DISTRICT 150

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
(Representative) (Title)

NOTICES TO BE POSTED MUST BE OBTAINED FROM  
THE EXECUTIVE DIRECTOR OF THE IELRB

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