STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Joan Olach, an individual,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2007-CA-0033-C
	)	
Oak Grove School District No. 68,	)	
	)	
Respondent.	)	
_____	)	
	)	
Lynda Brach, an individual,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2007-CA-0034-C
	)	
Oak Grove School District No. 68,	)	
	)	
Respondent.	)	

OPINION AND ORDER

I.

A. Case Number 2007-CA-0033-C

On November 6, 2006, Olach filed an unfair labor practice charge with the Illinois Educational Labor Relations Board ("Board" or "IELRB") against the Oak Grove School District Number 68 ("District" or "Employer"). The charge alleged that the Employer violated Sections 14(a)(1), (2), (3) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, et seq. ("Act" or "IELRA"), when it bargained with the Oak Grove Education Association, IEA-NEA ("Association") to addend the policy in the collective bargaining agreement ("CBA") between the Employer and the Association relating to the maximum payable amount to retirees for retirement benefits for the CBA covering the 2003-2007 academic years. Olach sought to have the CBA administered in accordance with the pre-addendum language, for her retirement benefits to be paid out in the manner requested in her letter to the District announcing her retirement, and for all other teachers retiring under the 2003-2007 CBA to be granted similar compliance.

B. Case Number 2007-CA-0034-C

On November 6, 2006, Brach filed an unfair labor practice charge with the IELRB against the District. Brach's charge was identical to the allegations and relief sought by Olach in Case Number 2007-CA-0033-C.

C. Executive Director's Recommended Decision and Order

Olach and Brach submitted identical documentation and evidence in support of their respective charges against the Employer. On December 29, 2007, the Executive Director issued a Recommended Decision and Order ("EDRDO") recommending dismissal of Olach's unfair labor practice charge. On the same date, the Executive Director issued an EDRDO recommending dismissal of Brach's unfair labor practice charge. The Executive Director found that the charges were untimely, because they were filed over 6 months after the charging parties received notice of the amount of retirement benefits they were to receive under the 2003-2007 collective bargaining agreement between the District and the Association. Further, it was determined that the charges lacked merit because the charging parties failed to identify any statutorily protected rights with which the employer interfered.

On January 17, 2007, Olach and Brach ("Charging Parties") filed joint exceptions to the Executive Director's Recommended Decision and Orders issued in Case Numbers 2007-CA-0033-C and 2007-CA-0034-C("CA cases").[1] In the joint filings, Olach and Brach stated that "[s]ince our filings and the Executive Director's Recommended Decision and Order are virtually the same, we have combined our [a]ppeals within this document." The Association did not object to the consolidation of the cases. Accordingly, Case Number 2007-CA-0033-C and 2007-CA-0034-C are consolidated for all other proceedings before the IELRB.

II.

We adopt the findings of fact of the Executive Director in both cases, and we will supplement the facts as needed.

A. <u>Joan Olach</u>

Olach was a third-grade elementary school teacher in the District for thirty-five years, and a member of the Association. By letter dated November 13, 2003, Olach notified the District that she planned to retire at the end of the 2004-2005 school year. In her letter, Olach requested assistance from the District in taking advantage of the

1 On November 6, 2006, Olach and Brach also filed unfair labor practice charges against the Association in Case Numbers 2007-CB-0013-C and 2007-CB-0014-C ("CB Cases"). The Executive Director recommended dismissal of the CA Cases on December 29, 2006. On January 17, 2007, Olach and Brach ("Charging Parties") filed joint exceptions to the Executive Director's Recommended Decision and Orders issued in case numbers 2007-CA-0033-C, 2007-CA-0034-C, 2007-CB-0013-C, and 2007-CB-0014-C. However, the Executive Director did not issue a Recommended Decision and Order in Case Numbers 2007-CB-0013-C and 2007-CB-0014-C ("CB Cases") until January 30, 2007. The Charging Parties filed additional exceptions in the CB Cases on February 13, 2007. Consequently, exceptions filed by the Charging Parties on January 17, 2007, will only be considered in relation to the CA Cases.

retirement benefits defined in Article XII, Section 12.4 of the CBA for the 2003-2007 years. Specifically, Olach asked the District to pay her "TRS buy-back" costs in the amount of $9,717.36. She also requested that the District pass a resolution making these buy-back costs non-taxable, and that the District pay these costs to her in or before May 2004. Lastly, Olach requested that the District pay her premium for the "TRS Health Insurance Plan" in accordance with the CBA.

B. Lynda Brach

Brach was a Physical Education Teacher, Language Arts Teacher, and Coach at Oak Grove School for thirty-three years. Brach is a member of the Association. By letter dated January 31, 2005, Brach notified the District that she planned to retire at the end of the 2005-2006 school year. In her letter, Brach requested assistance from the District in obtaining the benefits available to her in retirement. Specifically, she requested retirement benefits in accordance with Article XII, Section 12.4 of the 2003-2007 collective bargaining agreement. Brach requested TRS buy-back costs in the amount of $12,960.94 and she requested that the amount be paid in May of 2005 so that the amount could be included in her retirement income. She additionally requested that the District draft a resolution preventing these costs from being taxable to her and she requested payment for her accrued sick leave. Lastly, Brach notified the District that she planned to participate in the "TRS Health Insurance Plan" during her retirement years, and she requested that the premium be paid in accordance with the 2003-2007 CBA.

C. Retirement and the 2003-2007 Collective Bargaining Agreement

The District and the Association are parties to a CBA which is effective from August 25, 2003, until the first day of school in the 2007-2008 school year. The Association represents all regularly employed certificated personal under Article 21 of the Illinois School Code.

Article XII, Section 12.4 of the CBA delineates the District's Retirement Incentive Program. According to the CBA, a certified staff member who has been employed by the District for at least thirteen continuous years may participate in the Thirteen Year Service Retirement Program ("TRS"). The CBA between the District and the Association for the 2003-2007 years states that "The Board shall pay the single premium per year for any member who elects to participate in the TRS Health Insurance Plan." To be eligible for certain benefits under the TRS plan, a retiree must notify the District of his or her intent to retire in writing prior to the commencement of the last year of employment.

On January 24, 2005, the District and the Association agreed to a Memorandum of Understanding regarding the TRS program and the TRS Health Insurance Plan. Specifically, the Memorandum of understanding stated:

> The Board and the Union hereby clarify the terms set forth in Article XII, § 12.4(a)(2) of the 2003-2007 Collective Bargaining Agreement by replacing § 12.4(a)(2)....with [the following language] 'For any member who elects to participate in the TRS Health Insurance Plan, the Board shall pay the single premium each year up to a lifetime total benefit of $12,000.

Between January 24 and March 15, 2005, Association representatives informed the Association membership via email about the circumstances which led to the drafting of the Memorandum of Understanding. In an email dated February 3, 2005, a member of the Association's negotiating team told unit members that the document was entered into to "clarify" Article XII, Section 12.4(a)(2) based on the parties' understanding during bargaining. In the email, the author apologized for the "misunderstanding", and stated that the former contract language was not intended to "bankrupt" the District. In an email dated February 24, 2005, the Association president offered representation to anyone who planned to retire under the 2003-2007 CBA. On March 2, 2005, the Association president sent another emailing apologizing to the membership for using the phrase 'bankrupt the District'. Meetings were held for Association members on February 18 and March 8, 2005, to discuss the proposed change to the CBA and answer the membership's questions. On March 15, 2005, the Association members voted to ratify the Memorandum of Understanding by a vote of 69-14.

Olach was notified on March 16, 2005, and Brach was notified on April 5, 2005, that the modification to the CBA entitled each to a "single premium each year up to a lifetime total benefit of $12,000" if the Charging Parties opted to participate in the TRS Health Insurance Plan. Both Olach and Brach attempted to reach an agreement with the District that would enable them to receive health insurance benefits based on the language of the CBA prior to Memorandum of Understanding amendment. On August 25, 2006, the Charging Parties were denied benefits as requested under the 2003-2007 CBA in their individual retirement letters to the District.

III.

The Charging Parties' exceptions filed in case numbers 2007-CA-0013-C and 2007-CA-0014-C ("CA cases") were timely.[2] In their exceptions, the Charging Parties contend that the Employer made several false

2 The EDRDO's in the two CA cases were issued on December 29, 2006. Olach received the EDRDO on January 5, 2007. Brach received the EDRDO in her case on January 6, 2007. Exceptions were jointly filed within fifteen days of receipt of the EDRDO's on January 17, 2007.

statements during the Executive Director's investigation; therefore, the Charging Parties believe that the true circumstances were not considered during the investigation and a hearing must be held to consider the true facts.

The Charging parties also object to the statement in the Employer's position statements, which asserts that the Charging Parties should not be compensated for accrued sick leave. The remaining facts disputed by the Charging Parties involve the determination of whether or not the CBA was a final, binding, and unchangeable agreement upon its inception in 1999. The Charging parties assert that the language of the CBA prevents future renegotiation of the CBA and therefore the 2005 Memorandum of Understanding should be declared invalid by the IELRB.

The Charging Parties contend that August 25, 2006[3], is the effective date by which the unfair labor practice charge should be determined to have occurred. Specifically, the Charging Parties interpret the collective bargaining agreement and IELRB procedures to work consecutively and not concurrently. They assert that once the parties have taken a grievance through all of the steps of the CBA grievance procedure, the grievance may then be taken to the IELRB. Lastly, the Charging Parties reference guidelines from the Equal Employment Opportunity Commission ("EEOC") on Age Discrimination and the Equal Pay Act.

The Employer asserts that the document filed by the Charging Parties should be dismissed because it does not comply with the IELRB Rules. Specifically, the Employer argues that the exceptions state no argument regarding the Executive Director's findings of fact or law, nor do the exceptions put forth an abuse of discretion by the Executive Director and therefore the exceptions should be dismissed. The Employer cites 80 Ill. Adm Code 1120.30 in support of its argument. Further, the Employer asserts that the Exceptions should be dismissed because the Charging Parties were unable to make a prima facia showing of any alleged violation of the Act.

IV.

A. Timeliness

The Executive Director correctly dismissed the unfair labor practice charges on grounds of timeliness. Section 15 of the Act provides that an order shall not issue 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. Additionally, Section 1120.20(d) of the Board's Rules and Regulations provides that an unfair labor practice may be filed "no later than six

3 August 25, 2006, is the date that the Charging Parties were denied benefits as requested under the 2003-2007 CBA after they proceeded through the grievance procedure under the CBA.

months after the alleged unfair labor practice occurred." 80 Ill.Adm. Code § 1120.20(d). The six-month period runs from the date that the charging party becomes aware, or should be aware, of the actions forming the basis for the unfair labor practice charge. *Wapella Educ. Ass'n v. IELRB*, 177 Ill.App.3d 153. 531 N.E.2d 1371 (4th Dist. 1998). The IELRB lacks jurisdiction to proceed in an unfair labor practice charge which falls outside the scope of these restrictions. *Charleston Cmty. Unit Sch. Dist. No. 1 v. IELRB*, 203 Ill.App.3d 619, 561 N.E.2d 331 (4th Dist. 1990).

The Charging Parties argue the six-month IELRB jurisdictional period should run from August 25, 2006, the date the Charging Parties were formally denied requested retirement benefits under the 2005 Memorandum of Understanding. Further, the Charging Parties argue that the IELRB procedure is to be used after an employee as exhausted remedies available to them under a CBA. The procedures of the IERLB are available independently from remedies and procedures provided by a CBA. Nothing in the IELRA or in the 2003-2007 CBA provide that a grievance procedure must be completed before an aggrieved Association member may file an unfair labor practice charge against the Association or the Employer. This assertion is bolstered by *Moore v. State Labor Relations Board*, 206 Ill.App.3d 327, 564 N.E.2d 213 (4th Dist. December 6, 1990) (Where the Appellate Court applied the six-month limitation rule from *Wapella* to the Illinois Public Labor Relations Act, holding that the a contract grievance procedure does not toll the six-month jurisdictional limit).

In the instant case, the Charging Parties contend that the District and the Association's mutual agreement to modify the 2003-2007 CBA serve as the basis of their charges against the Association and the Employer. Olach and Brach were formally notified on March 16 and April 5, 2005, respectively, of the District's intent to apply the language of the 2005 Memorandum of Understanding to their retirement benefits. Additionally, the charging parties became aware of the negotiations between the Association and the District to modify the CBA via email communications the Association had with the Association membership as early as January 24, 2005. The Charging Parties did not file unfair labor practice charges against the District until November 6, 2006. Consequently, the Charging Parties were aware of the actions forming the basis for their unfair labor practice charges at least eighteen to nineteen months prior to the date upon which they filed unfair labor practice charges with the IELRB. Accordingly, the Executive Director properly dismissed the claims of the Charging Parties against the District on timeliness grounds.

B. The Charging Parties' Request for a Hearing.

The Executive Director properly determined that there were no issues of law or fact which would warrant a hearing in these cases. The Charging Parties assert in their exceptions that the Board must hold a hearing to determine the "true facts" presented by the unfair labor practice charges. In *Village of Skokie v. ISLRB,* 306 Ill.App.3d 489, 714 N.E.2d 87 (1st Dist. 1999) ("*Village of Skokie'*), the Illinois Appellate Court determined that a hearing is appropriate where the charging party has presented adequate evidence which, if substantiated and not rebutted in a hearing, would constitute a prima facie violation of the Act. *See also* 80 Ill. Adm. Code 1105.100(b);*Brown County Community Unit School District No. 1*, 2 PERI 1096, Case No. 85-CA-0057-S (IELRB Opinion and Order, July 31, 1986).

Here, the untimeliness of the charges filed by Olach and Brach pre-empts the issue of whether the Charging Parties have proved a prima facie violation of the act. However, even if the Charging Parties' claims were timely, a hearing would still not be warranted because the Charging Parties did not present adequate evidence which could constitute a prima facie violation of the Act.

The Charging parties allege that the Employer violated Sections 14(a)(1), (2), and (3) of the Act. The Executive Director properly determined that even if the Charging Parties' claims were timely, the Charging Parties have not shown a prima facie violation of the Act. Specifically, the Executive Director determined that Olach and Brach failed to establish a prima facie violation of the Act because their unfair labor practice charges solely alleged a breach of the collective bargaining agreement between the District and the Association. The Executive Director based this determination upon *Moraine Valley Community College*, 2 PERI 1050, Case Nos. 85-CA-0068- C (IELRB Opinion and Order, March 18, 1986), where the Board determined that "Where...the allegations and investigation reveal that [a] party's dispute concerns the administration and interpretation of provisions of the collective bargaining agreement, the appropriate remedy is the parties' grievance and arbitration procedure." We affirm the Executive Director's determination.

1. Section 14(a)(3) and (1) allegations.

The Charging Parties allege that the Employer violated Section 14(a)(3) and (1) of the Act. Section 3(a) of the IELRA grants employees the right to "organize, form, join, or assist in employee organizations or engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection." 115 ILCS 5/3(a). Section 14(a)(3) of the Act prohibits employers from "discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee

organization." 115 ILCS 5/14(a)(3). Section 14(a)(1) of the Act prohibits educational employers from "interfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act." 115 ILCS 5/14(a)(1). "Section 14(a)(3) applies to discrimination based on union activity, while Section 14(a)(1) covers adverse action against an employee because of other protected concerted activity." *Bloom Township High School District 206 v. IELRB*, 213 Ill.App.3d 943, 728 N.E.2d 612 (1st Dist. 2000). Where, as here, an alleged violation of Section 14(a)(l) is based on the same conduct as an alleged violation of Section 14(a)(3) the Section 14(a)(l) violation is essentially a derivative violation. *Id*.

To establish prima facie violation of Section 14(a)(3), a complainant must show by a preponderance of the evidence that he or she (1) engaged in union activity, (2) the educational employer knew of his or her union activity, and (3) the educational employer took an adverse action against employee because he or she participated in union activity or protected concerted activity. *Georgetown-Ridge Farm Community Unit School District No. 4 v. IELRB*, 239 Ill. App. 3d 428, 606 N.E.2d 667, 689, 179 Ill. Dec. 835, 857 (4th Dist. 1992). In the instant case, Olach and Brach have failed to show that the District took an adverse action against either employee because they participated in union activity. On the contrary, the Olach and Brach allege that the application of the District and the Association's Memorandum of Understanding to their retirement benefits constitutes a breach of the contract language. Consequently, the Executive Director correctly determined that Olach and Brach failed to establish a prima facie violation of Sections 14(a)(3) and (1) of the Act.

2. Section 14(a)(2) violations.

Additionally, the Charging Parties allege that the District violated Section 14(a)(2) of the Act. Section 14(a)(2) prohibits an educational employer, their agents or representatives from "dominating or interfering with the formation, existence or administration of any employee organization." 115 ILCS 5/14(a)(2). This Section of the Act applies to interference with the union's internal administration and processes, but not other employer interference prohibited by this Act. *South Suburban College*, 11 PERI 1077, Case No. 92- CA-0073-C (IELRB Opinion and Order, September 1, 1995). Violations of Section 14(a)(2) include recognizing a union whose majority status has not been demonstrated, assisting a union in achieving majority status, and granting preferential treatment for one union over another. *East St. Louis School District No. 189*, 2 PERI 1021, Case No. 84-CA-0051-S (Hearing Officer's Recommended Decision and Order, December 19, 1985), adopted in relevant part, 2 PERI 1095 (IELRB Opinion and Order, July 31, 1986), aff'd sub. nom. *Local 253 Division v. IELRB*, 159 Ill. App. 3d 353, 512 N.E.2d

1008 (4th Dist. 1987). An employer dominates an employee organization if the employer controls the employee organization to such an extent that the employee organization is a creature of the employer and does not act independently. William Rainey Harper College, 13 PERI 1072, Case Nos. 96-RC-0022-C, 97- CA-0001-C (IELRB Opinion and Order, May 20, 1997).

In the instant case, the District and the Employer jointly agreed to clarify the parties' CBA with the 2005 Memorandum of Understanding. Further, the Executive Director's investigation revealed no evidence that the District interfered with the Association's internal administration or that the Association's actions were controlled by the Employer. Accordingly, the Executive Director properly determined that the Charging Parties failed to show a prima facie violation of Section 14(a)(2) of the Act.

V.

For the above reasons, IT IS HEARBY ORDERED that the Executive Director's Recommended Decision and Orders in Case Numbers 2007-CA-0033-C and 2007-CA-0034-C are affirmed. The unfair labor practice charges are dismissed in their entirety.

VI.

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: June 12, 2007
Issued: June 14, 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 N. LaSalle Street, Suite N-400
Chicago, Illinois 60601-3103
Phone (312) 793-3170
Fax (312) 793-3369