STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Jody Harrington and Gail Ferltault,	)	
	)	
Charging Parties,	)	
	)	
and	)	Case No. 2014-CA-0041-C
	)	
Mid-Valley Special Education Cooperative,	)	
	)	
Respondent.	)	

ORDER

On June 3, 2015, Executive Director Victor E. Blackwell of the Illinois Educational Labor Relations Board ("Board") issued a Recommended Decision and Order in the above-captioned matter dismissing the unfair labor practice charge in its entirety.

No exceptions to this Recommended Decision and Order were filed, and the Board, at its July 16, 2015 public meeting, declined to take up the matter on its own motion. Accordingly,

YOU ARE HEREBY NOTIFIED that, pursuant to Section 1120.30(c) of the Board's Rules and Regulations, the parties have waived exceptions to the Recommended Decision and Order, and that nonprecedential decision is final and binding upon the parties.

Decided: July 16, 2015
Issued: Chicago, Illinois

/s/ Andrea Waintroob
Andrea Waintroob, Chairman

/s/ Judy Biggert
Judy Biggert, Member

/s/ Gilbert O'Brien
Gilbert O'Brien, Member

/s/ Michael H. Prueter
Michael H. Prueter, Member

/s/ Lynne O. Sered
Lynne O. Sered, Member

Illinois Educational Labor Relations Board
160 N. LaSalle Street, Suite N-400
Chicago, Illinois 60601-3103
Telephone: 312/793-3170

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Jody Harrington and Gail Feltault, Charging Parties and Mid-Valley Special Education Cooperative, Respondent	)	Case No. 2014-CA-0041-C

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On December 16, 2013, Charging Parties, Jody Harrington and Gail Feltault, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging that Respondent, Mid-Valley Special Education Cooperative (MVSEC), violated Section 14(a) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.* (2012), *as amended*. 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

Respondent is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. At all times material, Harrington and Feltault were educational employees within the meaning of Section 2(b) of the Act, employed by MVSEC in the job title or classification of Occupational Therapist. Illinois Education Association, IEA-NEA (Union) is a labor organization within the meaning of Section 2(c) of the Act, and the exclusive representative of a bargaining unit comprised of certain of the MVSEC's employees, including those in the title or classification of Occupational Therapist. At all times relevant, Harrington and Feltault were members of the bargaining unit represented by the Union. MVSEC and the Union are parties to a collective bargaining agreement (CBA) which provides for a grievance procedure culminating in arbitration, for the bargaining unit to which Harrington and Feltault belong.

B. Facts relevant to the unfair labor practice charge

In January 2013, MVSEC and the Union began negotiations for the CBA set to expire on June 30, 2013. In February 2013, Charging Parties learned that MVSEC had chosen to solicit proposals for subcontracting bargaining unit work. However, Charging Parties contend that Section 15 of the CBA prohibits MVSEC from subcontracting bargaining unit work. According to the Charging Parties, Respondent told the Union that subcontracting was contingent on the outcome of the CBA negotiations. Charging Parties assert that on May 31, 2013, MVSEC

terminated negotiations when it decided to subcontract 24 of the 28 bargaining unit positions. On or about June 3, 2013, MVSEC notified 24 of the 28 bargaining unit members, including Charging Parties, that their positions would be terminated and they would not be rehired for the following school year.

III. THE PARTIES' POSITIONS

The Charging Parties assert that MVSEC failed to bargain in good faith with the Union, violating Section 14(a)(5) of the Act. Additionally, they contend that MVSEC dominated and interfered with the existence of the Union in violation of Section 14(a)(2) of the Act, and committed various violations of the Illinois School Code (School Code), 105 ILCS 5/1, *et seq.* MVSEC asserts that the charge should be dismissed.

IV. DISCUSSION AND ANALYSIS

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, the Charging Parties filed their charge on December 16, 2013, and therefore, the date six months prior to their filing was June 16, 2013. Accordingly, alleged unlawful conduct they knew of before June 16, or reasonably should have known of by that date, cannot be the subject of a timely charge.

There is no dispute that the Charging Parties were aware of all the above-alleged misconduct on or before June 3. Yet, despite that knowledge, Charging Parties did not file the instant charge until December 16, 2013, over 6 months later. Because Charging Parties filed the instant unfair labor practice charge more than six months after they knew of the alleged unlawful conduct, it is untimely.

Moreover, analyzing Charging Parties' claims with regard to the elements of a violation under Section 14(a)(2) and (5) of the Act, indicates that their charge is without merit. Section 14(a)(2) of the Act prohibits educational employers and their agents or representatives from "[d]ominating or interfering with the formation, existence or administration of any employee organization." Section 14(a)(2) applies to an employer's interference with a union's internal administration and processes, and not to the other types of employer interference prohibited by the Act. South Suburban College, 11 PERI ¶1077, 1995 WL 17944193 (IL ELRB 1995). There is no evidence in this case of any such conduct by MVSEC. Section 14(a)(5) prohibits educational employers from "refusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive

representative." Section 14(a)(5) concerns the rights of the exclusive representative under the Act. An individual does not have standing pursue a 14(a)(5) charge against an employer. Thornton Community College District No. 510, 4 PERI ¶ 1010, 1987 WL 1435331 (IL ELRB 1987). MVSEC's alleged bad faith bargaining concerns the rights of the Union as exclusive representative, rather than the Charging Parties' individual rights. In filing this charge, the Charging Parties acted as individuals, not as representatives or agents of the Union. Therefore, Charging Parties lack standing to raise a Section 14(a)(5) allegation. Finally, the Charging Parties claim that MVSEC committed various School Code violations. However, the IELRB lacks jurisdiction to consider whether MVSEC violated the School Code. As such, the Charging Parties' claims 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. RIGHT TO 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, 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 3rd day of June, 2015.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Victor E. Blackwell

Victor E. Blackwell
Executive Director