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STATE OF ILLINOIS

EDUCATIONAL LABOR RELATIONS BOARD

RECEIVED

MAR 19 2014

In the Matter of: :
LAKE FOREST EDUCATION :
ASSOCIATION, IEA-NEA, :
Complainant, :
and :
LAKE FOREST HIGH SCHOOL :
DISTRICT NO. 115, :
Respondent. :

ILLINOIS EDUCATIONAL LABOR
RELATIONS BOARD • CHICAGO

:Case No. 2013-CA-0069-C

The above-entitled matter came on for hearing pursuant to notice, before ELLEN STRIZAK, Administrative Law Judge, at 160 North LaSalle Street, S-501, Chicago, Illinois, on Wednesday, February 19, 2014 at 10:00 o'clock a.m.

1 PRESENT:

2 On Behalf of Complainant:

3 MS. RACHEL E. CLARK, ESQ.
4 MR. MARK STEIN, UNISERV DIRECTOR
5 IEA-NEA
6 230 West Monroe Street
7 Suite 2640
8 Chicago, Illinois 60606
9 (312) 407-0227

10
11 On Behalf of Respondent:

12 MR. MICHAEL HERNANDEZ, ESQ.
13 MR. DOUGLAS A. HASS, ESQ.
14 MS. SUNGHEE W. SOHN, ESQ.
15 Franczek Radelet
16 300 S. Wacker Drive
17 Suite 3400
18 Chicago, Illinois 60606
19 (312) 986-0300

20
21
22
23
24

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RE CROSS
Thomas Gigiano	12	24	31	
Allen Albus	34	51	60	
Todd Burgener	65	72	75	75

E X H I B I T S

EXHIBIT NO.	IDENTIFIED	RECEIVED
ALJ'S		
1 through 12	6	6
COMPLAINANT'S		
1	54	
RESPONDENT'S		
3	48	62
8	49	
9	46	63
Rebuttal 1	27	63

22
23
24

E X H I B I T S (CON'T.)

EXHIBIT NO.	IDENTIFIED	RECEIVED
ASSOCIATION'S		
1	18	24
JOINT'S		
1	17	64
2	14	64
3	42	64
4	16	64
5	64	64
6	64	64

1 ADMIN. LAW JUDGE STRIZAK: We are on the record and
2 this is a formal hearing in the matter of Lake Forest
3 High School District 115 and Lake Forest Education
4 Association, IEA-NEA. Case number 2013-CA-0069-C. Before
5 the Illinois Educational Labor Relations Board. My name
6 is Ellen Strizak. I am the Administrative Law Judge
7 hearing this matter for the board. The hearing is held
8 because the executive director of the board has, in the
9 course of an investigation of Complainant's charges
10 found sufficient questions of law and fact to warrant a
11 hearing as to whether Respondent has violated Sections
12 14A3 and 14A5 of the Illinois Educational Labor
13 Relations Act.

14 This is a contested hearing which will be conducted
15 pursuant to the provisions of section 15 of the Act and
16 the board's rules and regulations. For contested
17 hearings, in particular, evidence rulings in this
18 hearing are governed by Section 1105.190 of the rules. I
19 will now ask the party's representatives to enter their
20 appearances for the record, starting with Complainant.

21 MS. CLARK: Rachel Clark.

22 ADMIN. LAW JUDGE STRIZAK: And Respondent.

23 MR. HERNANDEZ: Yes. Mike Hernandez. Also with me
24 is Doug Hass. We have representing the district at this

1 time, assistant superintendent of finance, operations,
2 Allen Albus. And then we have one of our associates,
3 who's here on a training mission, Your Honor, Sun Sohn.

4 ADMIN. LAW JUDGE STRIZAK: Okay. And prior to
5 opening the hearing, I showed the party's
6 representatives the formal papers for this hearing.
7 These are marked for identification as ALJ Exhibits 1
8 through 12. Exhibit 1, being the index and description
9 of formal documents. I now propose in the absence of
10 objections to enter these exhibits into the record.

11 MR. HERNANDEZ: No objection, Your Honor.

12 MS. CLARK: No objection, thank you.

13 ADMIN. LAW JUDGE STRIZAK: Being no objections, I
14 now enter the formal documents into the record as ALJ
15 Exhibits 1 through 12. At this time I propose the
16 following stipulation. Do the party's stipulate to the
17 statement of uncontested facts numbers one through 18 in
18 the Charging Party, or Complainant's final pre-hearing
19 memorandum that is marked as ALJ Exhibit 1 and numbers
20 one through 20 in Respondent's final pre-hearing
21 memorandum that is marked as ALJ Exhibit 11?

22 (Whereupon ALJ's Exhibit Nos. 1 through 12
23 were marked for identification and received
24 into evidence.)

1 MR. HERNANDEZ: We do, Your Honor.

2 MS. CLARK: Yes.

3 ADMIN. LAW JUDGE STRIZAK: Okay. Do the parties
4 have any additional stipulations to enter into the
5 record at this time?

6 MS. CLARK: No.

7 MR. HERNANDEZ: No, Judge.

8 ADMIN. LAW JUDGE STRIZAK: Okay. Do we want to
9 sequester any witnesses? I don't know if everyone here
10 is a party representative. Do we have any witnesses that
11 we want to --

12 MS. CLARK: Mr. Gigiano is a witness, but he is a
13 party representative.

14 ADMIN. LAW JUDGE STRIZAK: Okay.

15 MR. HERNANDEZ: Our witnesses have been.

16 ADMIN. LAW JUDGE STRIZAK: Okay. Thank you.

17 MR. HERNANDEZ: Sequestered, You Honor. Not,
18 because not all of us are the party representatives.
19 He's also a witness.

20 ADMIN. LAW JUDGE STRIZAK: Okay. So if there's
21 nothing further, we are ready for our brief opening
22 statements if the parties choose to make them, starting
23 with Complainant.

24 MS. CLARK: Thank you. In early 2012, the parties

1 to this matter, Lake Forest Education Association and
2 Lake Forest High School District 115 began the, began
3 bargaining a successor collective bargaining agreement.
4 The existing agreement expired. The parties continued
5 bargaining and the LFEA engaged in a lawful strike from
6 September 12 to September 18, 2012.

7 Three LFEA members crossed the picket line during
8 the strike and were paid for those days they crossed the
9 picket line. The parties continued to engage in
10 negotiations throughout the strike and the contract
11 settlement was reached in the wee hours of September 19,
12 2012. The parties agreed to make up all five strike days
13 and the LFEA returned to work on September 19th.
14 Subsequently the strike breaking employees were paid for
15 the make up days effectively being paid twice for
16 crossing the LFEA picket line.

17 The issue before the ALJ is whether the district
18 provided an unlawful inducement to non-striking
19 employees. When it paid them both for the days in which
20 they crossed the picket line and the make up days agreed
21 to with the LFEA. The close of the record, the LFEA will
22 ask the ALJ for finding that the district violated
23 sections 14A1 and 5 of the Act and for all just in
24 proper relief. Thank you.

1 ADMIN. LAW JUDGE STRIZAK: Respondent, you can make
2 your opening statement here or at the beginning of your
3 case-in-chief.

4 MR. HERNANDEZ: We're fine with the short statement
5 now, Your Honor.

6 ADMIN. LAW JUDGE STRIZAK: Okay.

7 MR. HERNANDEZ: Judge, what this case is about, is
8 about the payment of three individuals who chose not to
9 work during the work stoppage, consistent with the
10 collective bargaining agreement. The provisions of the
11 previous agreement that was, had expired on June 30th
12 and the successor agreement. We agree that the unit
13 engaged a lawful strike and the board did not in any way
14 interfere with that strike.

15 The board sent communications out indicating what
16 the facts were, if there was a strike and that the
17 employees had an absolute right to participate in the
18 strike or alternatively, to work. Three employees, Mr.
19 Spagnoli, Mr. Coad, and Ms. Christofylakis determined
20 not to engage in the work stoppage. Two of those
21 individuals, Mr. Spagnoli and Mr. Coad determined to
22 work for all five days of the work stoppage. Ms.
23 Christofylakis worked two days of the work stoppage.

24 District determined, as was its right, that it was

1 important to open those doors, for at least central
2 services, initially, and then attempted to establish
3 educational programs. Which were eventually reviewed by
4 the Illinois State Board of Education and determined not
5 to qualify for state aid purposes. As a result of
6 working during work stoppage, Article 12 of the
7 agreement was implemented for the payment of a per diem,
8 consistent with the contract for those individuals who
9 worked during the strike.

10 There was an agreement and principal to end the
11 strike. And as a concession, the board agreed to allow
12 all teachers to make up days and all teachers were
13 entitled to work those make up days, and would be paid
14 for those make up days. There were no restrictions about
15 individuals who participated in the strike, not being
16 able to work make up days, or to be paid either for time
17 during the strike or when they worked the make up days.

18 As a result of that, the district did follow the,
19 both agreements by paying those individuals consistently
20 with the per diem paid. And it's not only those
21 individuals, Your Honor. We'll have testimony that there
22 are other individuals who have worked longer school year
23 days and have been paid for those days in a per diem
24 basis. The only distinction, Your Honor, that will be in

1 evidence between other individuals throughout the
2 history of the district that have been paid per diem for
3 the extra days as these individuals, that they
4 determined to work during the work stoppage. That's the
5 only difference, Your Honor.

6 As a result of that, we believe that the actions of
7 the school district board, consistent with Carmine,
8 which although finding, Your Honor, as you know, that
9 there was a violation of the Act, in that case, that was
10 because individuals got bonuses. They were allowed to
11 work shorter hours, they were allowed to come in later,
12 leave early, that's not what happened here, Your Honor.

13 The proposition that the district has a right to
14 open its educational institution and that individuals
15 are entitled to work and be paid for those services was
16 reaffirmed in Round Lake. This case is more like Minonk,
17 Dana, roughly, Your Honor. Where there was no violation
18 found. And we're going to ask that the Court find that
19 there was no interference, no discrimination, and no
20 refusal of bargain and therefore, no violations of the
21 Act.

22 ADMIN. LAW JUDGE STRIZAK: Thank you, Complainant,
23 you may call your first witness.

24 MS. CLARK: I'd like to have Tom Gigiano come to

1 the stand.

2 ADMIN. LAW JUDGE STRIZAK: Please state and spell
3 your first and last name for the Court Reporter.

4 THE WITNESS: Thomas Gigiano. T-h-o-m-a-s, first
5 name, last name, G-i-g-i-a-n-o.

6 ADMIN. LAW JUDGE STRIZAK: You may begin.
7 Whereupon,

8 TOM GIGIANO,
9 called as a witness here, in having been first duly
10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. CLARK:

13 Q Okay. The parties have stipulated that Mr.
14 Gigiano is a teacher at Lake Forest District 115 and
15 that all times material to this matter he was on the
16 LFEA negotiations team. Tom, during the negotiations
17 that resulted in the 2012-2016 collective bargaining
18 agreement, did you participate in every negotiation
19 session?

20 A No.

21 Q How many did you miss?

22 A One.

23 Q And when was that?

24 A June 2012.

1 Q To your knowledge, were any tentative
2 agreements reached during that negotiation session?

3 A No.

4 Q Parties have stipulated that the LFEA engaged
5 in a legal strike from September 12th to 18th,
6 encompassing five school days. And that the parties
7 returned to work on September, or excuse me, the
8 parties, the LFEA returned to work on September 19th.
9 And the parties have also stipulated to the bargaining
10 unit, which includes department chairs.

11 As you heard in district counsel's opening, we've
12 also stipulated that three LFEA members crossed the
13 picket line. Chuck Spagnoli and Dan Coad crossed for
14 five days of the strike and Elizabeth Christofylakis
15 crossed for the last two days of the strike. Tom, were
16 you present on the last day of negotiations before the
17 strike was settled?

18 A Yes.

19 Q And where did those negotiations take place?

20 A District office at west campus.

21 Q And what time did you reach that final
22 agreement and principal?

23 A About 3:30 in the morning.

24 Q On what day?

- 1 A The 19th of September.
- 2 Q Was the entire bargaining team present at the
3 district office for those discussions?
- 4 A Yes.
- 5 Q And the parties eventually reached an
6 agreement that ended the strike with the LFEA?
- 7 A Yes.
- 8 Q Can you turn to Joint Exhibit 2 in your
9 binder, please. Just tell me when you're ready.
- 10 (Whereupon Joint's Exhibit No. 2 was marked
11 for identification.)
- 12 A Okay.
- 13 Q Tom, this is what's been marked as Joint
14 Exhibit 2, and the parties have stipulated that this is
15 the agreement and principal that ended the strike. As
16 the result of the negotiations that you talked about in
17 the, you know, into the early morning of September 19th.
18 Did the parties agree to make up the days that the LFEA
19 was on strike?
- 20 A Yes.
- 21 Q And is that reflected in the document?
- 22 A Yes.
- 23 Q Did you agree how the strike days would be treated?
- 24 A Yes, at a later date.

1 Q At a later, at a later date you agreed how the
2 strike days would be treated? Or you agreed before you
3 reached this agreement?

4 A We agreed on a later date of how, when we
5 would make these days up.

6 Q Okay, about the make up days?

7 A Yes.

8 Q Okay. When you, when you had, when you reached
9 this agreement that's in front of you marked as Joint
10 Exhibit 2, did you agree how to strike days would be
11 treated?

12 A Yes, we did.

13 Q Okay. And what did you agree?

14 A We agreed that no teacher would be paid, or
15 LFEA member would be paid during the strike.

16 Q And is that reflected in the agreement?

17 A Yes, it is.

18 Q And you said, at a later date, the parties
19 discussed how the days would be made up?

20 A That's correct.

21 Q Okay. And how much later was that?

22 A It was next week of, a week after the
23 agreement.

24 Q All right. The parties have stipulated to the

1 school calendar. It was revised to include the make up
2 days, and that's marked as Joint Exhibit 4. Can you flip
3 to that in your binder, Tom? Okay?

4 (Whereupon Joint's Exhibit No. 4 was marked
5 for identification.)

6 A Okay. Yes, I have it.

7 Q Okay. Were you apart of the discussions that
8 led to the revised calendar?

9 A Yes.

10 Q Did anyone else from LFEA participate with
11 you?

12 A Yes, Paul Goldstein.

13 Q And who participated for the district?

14 A The former principal of Jay Hoffman.

15 Q Did the LFEA agree to work any days outside
16 this calendar?

17 A No.

18 Q During the negotiations that resulted in the
19 decision to make up days, did the parties agree to
20 extend the school year?

21 A No.

22 Q The parties have stipulated that Spagnoli,
23 Coad and Christofylakis were actually paid for the make
24 up days incorporated into this revised calendar and they

1 were paid for the strike days. Tom, when did you first
2 begin serving on the bargaining team?

3 A Spring of 2005.

4 Q Okay. Why don't you flip to Joint Exhibit 1.
5 Can you tell us what this is?

6 (Whereupon Joint's Exhibit No. 1 was marked
7 for identification.)

8 A A collective bargaining agreement, the 2011-
9 2012 contract.

10 Q Okay, so was this in effect immediately before
11 the strike?

12 A Yes.

13 Q Can you turn to Article 12, Section E on page
14 28. I'm sorry, it's on page 27, everyone. So, we're
15 looking at that Article 12, Section E?

16 A That's correct.

17 Q What does that language cover?

18 A Per diem payment for extended work beyond the
19 calendar.

20 Q Okay. And is the school year defined in this
21 language?

22 A Yes, it is.

23 Q And how is it defined?

24 A Calendar of school days.

1 Q Okay. Do you know to whom this language has
2 applied in the past, Tom?

3 A Psychologist, well, actually, I mean, social
4 workers, the counselors, nurses, and librarians.

5 Q Okay. And how do you know that?

6 A Before the, was it, I have a document from
7 Allen Albus, the assistant superintendent for finance.
8 He had provided me a document which states all the
9 salaries and per diem payments for employees, for
10 negotiation purposes. And it listed the per diem
11 payments on there.

12 Q Okay. Can you flip to Association Exhibit 1?
13 (Whereupon Association's Exhibit No. 1 was
14 marked for identification.)

15 MS. CLARK: I'm sorry everybody, these pages are
16 not numbered. This is a challenging document to find. I
17 don't know if you guys are aware of that.

18 MR. HERNANDEZ: It is on page five. If that helps.

19 MS. CLARK: I'm sorry, you said it's five?

20 MR. HERNANDEZ: Mr. Gigiano referenced a document
21 that you shared with him. Is that what you're talking
22 about?

23 MS. CLARK: Yes. This is the document, yes. Yes.

24 We're trying to get to a particular page. Did you say --

1 MR. HERNANDEZ: Yes, the, maybe my format's
2 different than yours but I have it on --

3 MS. CLARK: No, they should all be formatted the
4 same, you said it's --

5 MR. HERNANDEZ: Page five.

6 MS. CLARK: Page five. Thanks. I'll give everybody
7 a chance to get there. Sorry.

8 BY MS. CLARK:

9 Q Okay. So Tom, can you identify this for us
10 again? After all the shuffle with this, what the
11 document is.

12 A These are the per diem payments.

13 Q The entire document.

14 A Oh, this entire document is, again, a document
15 provided by Allen Albus, which details the salaries and
16 compensation for all the LFEA employees.

17 Q And this was provided to you by Allen Albus?

18 A Yes.

19 Q And when was it provided to you?

20 A Spring of 2012, this particular.

21 Q Did you ask for it in the course of the
22 bargain?

23 A Yes, I did.

24 Q Had you received a list like this before on

1 bargaining?

2 A Yes.

3 Q Okay. So we're on page five and there's a list
4 of names here. Under, it says, per diems at the top of
5 the page. Do you know all these individuals, Tom?

6 A Yes, I do.

7 Q Okay. Let's go through each of them. What are
8 their job titles?

9 A Okay.

10 Q Ms., I'm sorry, I don't know if it's Mr. or
11 Ms., Berkshire?

12 A Counselor.

13 Q Brandis?

14 A Counselor.

15 Q Miles?

16 A Counselor.

17 Q Noughton?

18 A Counselor.

19 Q Papp?

20 A Counselor.

21 Q Wagemann?

22 A Counselor.

23 Q Bower?

24 A Nurse.

1 Q Brigg?

2 A Librarian.

3 Q Little?

4 A Librarian.

5 Q Harmsen?

6 A Social worker.

7 MR. HERNANDEZ: Judge. It really doesn't
8 appear on page five or not, I just want to make sure
9 on --

10 MS. CLARK: I'm so sorry, okay.

11 MR. HASS: We have it, it's just not as page
12 five. So, it's going to take us a minute.

13 MS. CLARK: No, that's fine.

14 MR. HERNANDEZ: Just make sure we're on the
15 same page.

16 MS. CLARK: You good?

17 MR. HERNANDEZ: Yes.

18 MS. CLARK: Mike, I'm going to give you the
19 copy that we're looking at. I'm so sorry about that.
20 Everybody, let's start, I think we left off at Little.

21 MR. HASS: Do you mind starting again with
22 Berkshire and then go through?

23 MS. CLARK: Sure.

24

1 BY MS. CLARK:

2 Q Let's start again. Berkshire?

3 A Counselor.

4 Q Brandis?

5 A Counselor.

6 Q Miles?

7 A Counselor.

8 Q Noughton?

9 A Counselor.

10 Q Papp?

11 A Counselor.

12 Q Wagemann?

13 A Counselor.

14 Q Bower?

15 A Nurse.

16 Q Brigg?

17 A Librarian.

18 Q Little?

19 A Librarian.

20 Q Harmsen?

21 A Social worker.

22 Q Huffman?

23 A Social worker.

24 Q Maher?

1 A Social worker.

2 Q Maigler?

3 A Social worker.

4 Q Are any of these individuals teachers?

5 A No.

6 Q Do you know of any teacher who's ever been
7 paid a per diem under this section of the contract that
8 we just talked about?

9 A No.

10 Q Are you aware of any teacher who's been paid a
11 per diem for working an extended school year in the
12 past?

13 A No.

14 Q Are LFEA members paid a per diem for working
15 on a Saturday?

16 A No.

17 Q Are they paid a per diem if they come in early
18 and set up their classroom before the school year
19 starts?

20 A No.

21 Q Are they paid a per diem if they work after
22 the school year ends to clean out their room?

23 A No.

24 Q And is the LFEA notified when it's members are

1 paid under this section of the contract?

2 A Yes. I've been notified through this document.

3 MS. CLARK: Okay. We would move Association Exhibit
4 1 into evidence.

5 ADMIN. LAW JUDGE STRIZAK: Okay. Any objections?

6 MR. HERNANDEZ: No, Your Honor.

7 ADMIN. LAW JUDGE STRIZAK: So, admitted.

8 (Whereupon Association's Exhibit No. 1 was
9 received into evidence.)

10 Ms. CLARK: I have no more questions for this
11 witness.

12 ADMIN. LAW JUDGE STRIZAK: Okay. Respondent?

13 MR. HERNANDEZ: Yes.

14 CROSS EXAMINATION

15 BY MR. HERNANDEZ:

16 Q Mr. Gigiano, do you know a Steve Johnson?

17 A I do.

18 Q He's in your unit?

19 A Yes, he is.

20 Q A teacher?

21 A He's a department chair.

22 Q Has he been paid through this section of the
23 contract on per diem?

24 A I, I don't know. I don't know.

1 Q Okay if you don't know. Now, you were asked
2 about exhibit that is an agreement and principal, do you
3 remember that?

4 A Yes.

5 Q Okay. Can you get that out. I believe that's
6 Exhibit 2.

7 A Yes.

8 Q So, this, this is an agreement, although said
9 that the strike ended around 12:01 a.m. Was, you recall
10 it being finalized, and kind of, around 3:30 a.m., is
11 that correct?

12 A Yes.

13 Q And this was after five days of a work
14 stoppage, is that correct, sir?

15 A Yes.

16 Q And by that time, you knew that employees had
17 decided to work during the work stoppage, is that a fair
18 statement to make?

19 A Yes.

20 Q Was there any thing in writing that indicated
21 that those individuals would not be paid for working
22 during the work stoppage?

23 A Yes, in our agreement and principal we said
24 that there would be no pay for the days during the

1 strike.

2 Q Well, does it say anywhere in here that the
3 individuals who worked during the strike would not be
4 paid?

5 A That exact language, no.

6 Q Did you ever ask that the individuals who
7 worked during the work stoppage not be paid?

8 A No.

9 Q Did you ever ask that the individuals who
10 worked during the work stoppage not be paid for working
11 the make up days?

12 A No.

13 Q Do you recall filing this grievance concerning
14 the implementation of the contract shortly after the
15 contract was ratified?

16 A No.

17 Q No grievance was ever filed with respect to
18 how the individuals who worked during the work stoppage
19 would be paid, was there, sir?

20 A I, I don't know.

21 Q Did you file a grievance?

22 A I, I did not personally file a grievance, no.

23 Q And you didn't ask your agents to file the
24 grievance, the LFEA, did you?

1 A I, no.

2 Q Now, do you remember a unfair labor practice
3 charge being filed right before the strike, do you
4 remember that?

5 A There were numerous charges during and before,
6 so I, and again, I know that there, there was unfair
7 labor practice charges filed.

8 Q And you know that there was one filed on
9 behalf of the association, is that correct?

10 A Yes.

11 Q Okay.

12 MR. HERNANDEZ: Judge, may I approach the witness
13 with an exhibit?

14 ADMIN. LAW JUDGE STRIZAK: Sure.

15 MR. HERNANDEZ: I'm going to give you an
16 opportunity to look over it.

17 THE WITNESS: Oh, sure.

18 MR. HERNANDEZ: And I'm going to reflect on showing
19 the witness a binder of exhibits and let you look at
20 Respondent's rebuttal Exhibit 1.

21 (Whereupon Respondent's Rebuttal Exhibit No. 1
22 was marked for identification.)

23 MS. CLARK: These's aren't included in what I have.

24 MR. HERNANDEZ: They are.

1 MS. CLARK: I'm looking under Respondent's rebuttal
2 exhibits, I'm sorry, yes they are.

3 MR. HERNANDEZ: No, no, I got it.

4 MR. HERNANDEZ:

5 Q So, do you see that exhibit, sir?

6 A Yes, I do.

7 Q And you see the second page in the exhibit, it
8 would, a ULC that was filed on behalf of your unit right
9 before the strike, do you recall that?

10 A Yes, I do now.

11 Q Okay. And do you see under charge one, an
12 order requiring the employer to rescind its unilateral
13 change regarding teacher work days. Do you see that sir?

14 A Yes, I do.

15 Q Okay. And let me, do you still have that
16 agreement and principal with you there, sir?

17 A I do.

18 Q And as part of the agreement and principal,
19 all ULP's were withdrawn, isn't that the case, sir?

20 A The ones that were filed prior to the strike
21 and during the strike.

22 Q Yes. Okay. And if you look on page, the next
23 page, sir. Three pages in, you see a request to withdraw
24 in there, and if you look at the second page, it's dated

1 October 15th, do you see that?

2 A I get to --

3 Q The last couple of pages there, entitled
4 withdraw request.

5 A Oh, here, October 15th.

6 Q Do you see that?

7 A 2012.

8 Q All right, and then it has numbers of ULP's at
9 the top that were withdrawn.

10 A Okay.

11 Q Okay. And if you look back, and then if you,
12 and then attached to that is the agreement and
13 principal. Do you see that? The last document?

14 A Okay.

15 Q And so, you understand, you agree that this
16 ULP was withdrawn as part of the agreement there, do you
17 agree, sir?

18 A Which ULP papers?

19 Q This ULP that you were forwarded, sir.

20 MS. CLARK: Objection, the withdrawal notice is
21 actually for ULPs, there's only one charge included
22 here.

23 ADMIN. LAW JUDGE STRIZAK: In the withdrawal?

24 MS. CLARK: Correct.

1 ADMIN. LAW JUDGE STRIZAK: Or in the, in the
2 beginning of it?

3 MS. CLARK: Yes, the withdrawal refers two
4 different case numbers in it and there's only one charge
5 included.

6 ADMIN. LAW JUDGE STRIZAK: Okay.

7 MS. CLARK: It's an incomplete exhibit. He can't
8 testify about something he didn't withdraw and it's not
9 included here for his reference.

10 MR. HERNANDEZ: Well, if there's, I don't think, I
11 don't think there's any, are they contesting the fact
12 that this ULP was withdrawn here?

13 ADMIN. LAW JUDGE STRIZAK: Well, are you asking
14 about, I mean, is your question more relevant to the CA,
15 the 2013 CA-0015C? Then to the CE one?

16 MR. HERNANDEZ: To the CA, to their, to their
17 charge, Your Honor.

18 ADMIN. LAW JUDGE STRIZAK: Okay. So, then I'm going
19 to ask you to tailor your questions specific to that.

20 MR. HERNANDEZ: Yes, yes.

21 ADMIN. LAW JUDGE STRIZAK: And also, if you can
22 just reference the case number on that so that it's
23 clear for the record.

24 MR. HERNANDEZ: Sure. Sure.

1 BY MR. HERNANDEZ:

2 Q So, do you have a doubt that the ULP that was
3 found on your behalf was withdrawn at that time, sir?

4 A The one that was filed on September 12th?

5 Q Yes.

6 A Yes.

7 Q You have a doubt that was --

8 A No, I don't have a doubt. I'm sorry, I do not
9 have a doubt.

10 Q Okay. Thank you, sir.

11 MR. HERNANDEZ: No further questions, Your Honor.

12 ADMIN. LAW JUDGE STRIZAK: Any rebut?

13 MS. CLARK: Yes.

14 REDIRECT EXAMINATION

15 BY MS. CLARK:

16 Q Tom, would you take a look at that
17 Respondent's rebuttal Exhibit 1, the charge there.

18 A Okay, Exhibit 1 of, of Mr. Hernandez's
19 document?

20 Q What you were just looking at, yes.

21 A Okay. The ULPs or the Exhibit 1?

22 Q The ULPs.

23 A Okay.

24 Q I'm not sure quite how they're labeled.

1 There's several different --

2 A Oh, okay. Okay, I see it, I see it. Oh, yeah.
3 I see it. I got you, yes.

4 Q So, if you look at that charge, it says, an
5 order, the relief sought and order upon the employer to
6 rescind its unilateral change regarding teacher work
7 days, do you see that Tom?

8 A Yes.

9 Q Okay. Are there teacher work days incorporated
10 into the school calendar?

11 A Yes.

12 Q And prior to the time this ULP was filed did
13 the district change those teacher work days?

14 A Yes.

15 Q Did they do that in conjunction with the LFEA?

16 A No.

17 Q Okay. Is that the subject of this unfair labor
18 practice? That change to those teacher work days prior
19 to the start of the school year?

20 A Yes. Yes.

21 Q Okay. And so, also let's also go back to Joint
22 Exhibit 2, Tom. That's the agreement and principal.

23 A Okay.

24 Q The end of the strike, were you there?

1 A Yes, I was.

2 Q Who drafted this document?

3 A Mike Hernandez.

4 Q Okay. So, where it says, there will be no pay
5 for the days of the strike, Mr. Hernandez drafted that?

6 A That's correct.

7 Q Okay. No more questions.

8 ADMIN. LAW JUDGE STRIZAK: Okay. Do you have
9 something?

10 MR. HERNANDEZ: You know, just double checking,
11 Your Honor, if I may have a second.

12 ADMIN. LAW JUDGE STRIZAK: Yes.

13 MR. HERNANDEZ: No further questions, Your Honor.

14 ADMIN. LAW JUDGE STRIZAK: Okay.

15 THE WITNESS: You guys want your notebooks back?

16 MS. CLARK: No.

17 THE WITNESS: Okay.

18 ADMIN. LAW JUDGE STRIZAK: The witness is excused.
19 Thank you for your testimony.

20 THE WITNESS: Thank you.

21 ADMIN. LAW JUDGE STRIZAK: Complainant?

22 MS. CLARK: We have no more witnesses.

23 ADMIN. LAW JUDGE STRIZAK: Okay. Do you rest your
24 case-in-chief?

1 MS. CLARK: Yes. Yes.

2 ADMIN. LAW JUDGE STRIZAK: Okay. Respondent, you
3 may begin your case-in-chief.

4 MR. HERNANDEZ: Yes, Judge, I think at this point,
5 we're probably going to have one witness, at this point,
6 and it's Mr. Albus.

7 ADMIN. LAW JUDGE STRIZAK: Okay. Have a seat.

8 THE WITNESS: Good Morning.

9 ADMIN. LAW JUDGE STRIZAK: Good Morning. Can you
10 please state and spell your first and last name for the
11 court reporter?

12 THE WITNESS: Allen, A-l-l-e-n, Albus, A-l-b-u-s.

13 ADMIN. LAW JUDGE STRIZAK: Okay. You may begin.
14 Whereupon,

15 ALLEN ALBUS,
16 called as a witness here, in having been first duly
17 sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. HERNANDEZ:

20 Q Mr. Albus, by whom are you employed?

21 A Lake Forest High School District 115.

22 Q What are your duties with the district sir?

23 A My title is deputy superintendent for finance
24 and operations. So, that covers a broad range of non-

1 instructional areas. Examples would be preparation of
2 the budget, financial forecasts, cash flow, investments,
3 health insurance programs, property and casualty
4 insurance programs, negotiations. And then business
5 service operations such as payroll, accounts payable,
6 fees, things like that.

7 Q Have you served on the district's bargaining
8 team in the past?

9 A Yes, I have.

10 Q Okay. And were you on the bargaining team
11 during the summer of 2012?

12 A Yes, I was.

13 Q What was your role?

14 A Collect benchmark data. Comparable districts.
15 Bill templates to assess the financial impact of various
16 proposals from either party on the long term financial
17 health of the district.

18 Q And what were the team's goals for the
19 negotiations, as directed by the board?

20 A To be market competitive, to attract and
21 maintain employees and to live within the revenue stream
22 for the district.

23 Q When you say live within the revenue stream,
24 what were the budgetary goals?

1 A The board has a policy of a goal of a ten
2 percent fund balance to expenditure ratio.

3 Q And is that consistent with any state
4 mandates?

5 A ISBE has a recommendation of a 25 percent, but
6 as I said earlier, one of my jobs as cash flow
7 management, a ten percent threshold is adequate for that
8 purpose.

9 Q When you say ISBE, do you mean the Illinois
10 State Board of Education?

11 A I apologize, yes.

12 Q And did there come a time when, the, during
13 the negotiations when the collective bargaining
14 agreement expired between the Lake Forest Education
15 Association and the district?

16 A Yes, at the end of the fiscal year, on June
17 30th.

18 Q Okay. And did bargaining continue at that
19 time, sir?

20 A Yes.

21 Q And at that time, what was your role?

22 A Same as in the beginning, running models about
23 various proposals and the cost impacts of those.

24 Q Now, was there bargaining during the month of

1 July?

2 A I don't believe so. If there was, there might
3 have been one meeting.

4 Q Was the board available for bargaining?

5 A Yes.

6 Q Was the LFEA?

7 A No.

8 Q Was there a relatively new process with
9 respect to impasse and mediation that was a potentially
10 in effect in that bargaining?

11 A Could you be more specific?

12 Q Sure. What did you understand would happen if
13 you reached impasse on some issues?

14 A I'm not sure if that was the year when the new
15 place, but there were changes in the law as far as
16 notifying the labor board, posting final offers within a
17 certain time frame.

18 Q And did the, the parties have to institute
19 that process?

20 A Yes.

21 Q And, so was a mediator involved?

22 A Yes.

23 Q Then what's the process as you recall? After a
24 mediator gets involved, what happens?

1 MS. CLARK: I'm going to go ahead and object. The
2 parties have already stipulated that the, that the LFEA
3 engaged in a lawful strike, which presumes that it went
4 through these procedures, and it has absolutely nothing
5 to do with the issue at hand, which is whether or not
6 strike breakers were provided an unlawful inducement.
7 So, this is just not relevant to the issues before us
8 today.

9 ADMIN. LAW JUDGE STRIZAK: Okay. What's your
10 response that?

11 MR. HERNANDEZ: Judge, we think some background is
12 relevant. Mr. Gigiano testified about what some language
13 allegedly means, I think some background as to what
14 transpired is important so we can understand, in fact,
15 what the language means, Judge.

16 MS. CLARK: If Mr. --

17 MR. HERNANDEZ: We're about to get to the strike,
18 Judge.

19 MS. CLARK: Mr. Hernandez wants to have the witness
20 testify about what the language means, then let's go
21 ahead and do that. But the impasse procedures are not at
22 issue here. And we've already stipulated that the party,
23 that the LFEA engaged in a lawful strike, which presumes
24 that they went through the prescribed statutory

1 procedures. This testimony is wholly irrelevant.

2 MR. HERNANDEZ: Judge, we should be allowed put on
3 our case, Judge.

4 ADMIN. LAW JUDGE STRIZAK: Okay. So, this is
5 background?

6 MR. HERNANDEZ: Background, Judge.

7 ADMIN. LAW JUDGE STRIZAK: Okay. So long as your
8 objection's overruled, so long as it sticks to the
9 background.

10 MR. HERNANDEZ: Yes.

11 BY MR. HERNANDEZ:

12 Q What did you understand the process to be
13 after the mediator was involved.

14 A After mediation, if, if there's an impasse, we
15 notified the labor relations board. And, to be honest,
16 I'd have to refresh myself. I'd have to read, read the
17 statute on that. But the posting of the offers, I
18 recall.

19 Q Okay. And did there come a time when there was
20 a work stoppage?

21 A Yes.

22 Q And were there communications sent out to
23 staff and the community with respect to the work
24 stoppage?

1 A Yes.

2 Q And what were the purpose of those
3 communications?

4 A There were multiple ones. For example, when,
5 when it became evident that there was going to be a work
6 stoppage, that school would be open as, as a safe haven.
7 Then later, in the strike, that we would have
8 instructional programming. So, those were communicated
9 out to parents.

10 Q How about to staff, was there anything
11 communicated to them about their right to strike or
12 right to work?

13 A Yes. There was.

14 Q And what do you recall about that?

15 A Those communications were issued by, issued
16 by --

17 MS. CLARK: Objection, foundation. There's no
18 evidence that this individual sent out those
19 communications, or when they happened.

20 ADMIN. LAW JUDGE STRIZAK: Okay. I assume that --

21 MR. HERNANDEZ: They're Joint Exhibits, Judge.

22 ADMIN. LAW JUDGE STRIZAK: Oh, okay.

23 MR. HERNANDEZ: Yes, I want to understand why we're
24 being object.

1 ADMIN. LAW JUDGE STRIZAK: Does your objection
2 still stand?

3 MS. CLARK: It's fine.

4 ADMIN. LAW JUDGE STRIZAK: Okay. Resume.

5 BY MR. HERNANDEZ:

6 Q Please continue.

7 A There was, the communications were developed
8 in consultation with legal counsel. They, to the
9 employees said that they had the right to strike, they
10 had the right to work. That during a strike though,
11 there were other parameters that, for example, access to
12 the building was not allowed. Health insurance premiums
13 were, or I should say, would stop, or could stop, I
14 don't remember the exact language, but various relevant,
15 I think, points.

16 Q How did you understand the individuals who
17 determined not to strike to be treated?

18 A That they were working. That, that they chose
19 to work.

20 Q And what type of, strike that. And if they
21 worked, was there determination of how they should be
22 paid?

23 A Well, at that time, no. Because we didn't know
24 the outcome of the strike. So, I don't recall any

1 discussions at that time. It was after the fact.

2 Q And when that time occurred, what, were you
3 involved in that determination on how they should be
4 paid?

5 A Yes.

6 Q And how was, what did you determine?

7 A We looked at the contract, read the contract,
8 consulted with legal counsel, and determined per the
9 contract, that they would in effect be working five
10 extra days through the course of the year, so,
11 consistent with how other people had been treated for
12 working extra days, they received per diem pays for
13 that, and that's stipulated in the contract, how that's
14 calculated.

15 Q Okay.

16 MR. HERNANDEZ: May I approach the witness, Your
17 Honor?

18 ADMIN. LAW JUDGE STRIZAK: Yes.

19 BY MR. HERNANDEZ:

20 Q I'd like to show you what has been marked into
21 evidence, as a joint exhibit. Do you recognize Joint
22 Exhibit 1?

23 A Yes, it's the collective bargaining agreement
24 on July 1, 2011 through July 1, 2012.

1 Q Can we turn to, for that exhibit, can you turn
2 to Article 12, Section E, I believe that's on page 28.

3 A 27, same mistake.

4 Q And you heard Mr. Gigiano testify about that
5 earlier, did you not, sir?

6 A Yes.

7 Q And is that the provision under which you
8 determined to pay individuals who had determined to work
9 during the strike?

10 A Yes.

11 Q And there was a successor agreement, agreed to
12 when the strike was complete, you understand that, sir?

13 A Yes.

14 Q And if you look at Joint Exhibit 3, the
15 successor agreement?

16 (Whereupon Joint's Exhibit No. 3 was marked
17 for identification.)

18 A Yes.

19 Q And does that provision also exist in the
20 successor agreement?

21 A Yes.

22 Q What page is that?

23 A 27.

24 Q Now, there came a time when the strike was

1 ending, do you recall that, sir?

2 A Yes.

3 Q And there was testimony about Joint Exhibit 2,
4 do you see that agreement and principal?

5 A Yes.

6 Q And there were further negotiations to reach
7 this agreement, is that correct, Mr. Albus?

8 A Could you be more specific about further --

9 Q Was this during the bargaining that this
10 agreement was reached?

11 A Yes.

12 Q Okay. And this was while the strike was going
13 on, is that correct?

14 A Correct.

15 Q Okay. Now, during the further negotiations,
16 did the Union ever seek to bargain what individuals who
17 worked during the strike would get paid?

18 A Not to my knowledge.

19 Q Was there ever any discussion at that time
20 with the Union or request by the Union that these
21 individuals who worked during the strike, not get paid?

22 A Not to my knowledge.

23 Q On the issue of make up days, was it ever
24 requested at that time by the Union, that those who

1 crossed the picket line not be able to work make up
2 days?

3 A Not to my knowledge.

4 Q Was there ever any discussion at that time
5 about these individuals not being able to get paid for
6 working the make up days?

7 A Not to my knowledge.

8 Q Was there ever any discussion about trying to
9 break the strike by inducing people to come to work?

10 A No.

11 Q As part of the agreement for the strike, were
12 all the ULPs withdrawn?

13 A Yes.

14 Q Do you recall whether or not a grievance was
15 filed after the agreement was ratified concerning
16 implementation of the new agreement?

17 A No.

18 Q Was any grievance ever filed on the payment of
19 these individuals?

20 A No.

21 Q Now, there was a discussion about per diem and
22 how individuals get paid through per diem, okay. I'd
23 like you to look at Respondent's Exhibit 9. You see
24 that?

1 (Whereupon Respondent's Exhibit No. 9 was
2 marked for identification.)

3 A Yes.

4 Q You recognize that?

5 A Yes.

6 Q What do you recognize that to be?

7 A It is labeled at the top, the certified LFEA
8 staff with extended year days beyond 120, 182
9 contractual days.

10 Q And does this indicate, I'm sorry, strike
11 that. Pursuant to the provision that you identified
12 earlier, Article 12 --

13 A Yes.

14 Q Had the district been paying individuals per
15 diem for working extra days during the year?

16 A Yes.

17 Q And I see a reference here, back to 1995, has
18 that practice been going on since 1995?

19 A I wasn't with the district at that time, so,
20 I, I can only assume that it's accurate.

21 Q Well, when did you start with the district?

22 A In 2006.

23 Q And has that practice been going on since you
24 started with the district?

1 A Yes.

2 Q And were individuals, other than the ones that
3 appear on here, pay per diem, pursuant to that Article?

4 A Yes.

5 MR. HERNANDEZ: Judge, can, I may be done with him,
6 but I just have a procedural question.

7 ADMIN. LAW JUDGE STRIZAK: Okay. Do you want to go
8 off the record?

9 MR. HERNANDEZ: Yes, can we go off the record.

10 (Off the record.)

11 MR. HERNANDEZ: And Judge, so, for example, Judge,
12 one of these is, is their client's document, Exhibit 8.

13 ADMIN. LAW JUDGE STRIZAK: Okay. Well, then, I
14 mean, then we can just, just for the sake of moving on,
15 just if you can --

16 MR. HERNANDEZ: We'll just lay the foundation.

17 ADMIN. LAW JUDGE STRIZAK: Okay.

18 MR. HERNANDEZ: We're happy to do that, lay the
19 foundation. Okay.

20 BY MR. HERNANDEZ:

21 Q Now, you indicated that there came a time when
22 there was a determination for paying the individuals who
23 determined not to work during the strike, a per diem, is
24 that correct?

1 A Pay the individuals who determined not to work
2 during the strike, so the bargaining agreement?

3 Q Yes, the individuals that we referred to as
4 who crossed the picket line.

5 A Who chose to work during --

6 Q I'm sorry, who chose to work during the
7 strike.

8 A To work during the strike, yes.

9 Q The per diem, yeah, is that correct?

10 A Correct.

11 Q All right, can you look at Respondent's
12 Exhibit 3?

13 (Whereupon Respondent's Exhibit No. 3 was
14 marked for identification.)

15 A Okay.

16 Q Do you recognize those three pages there?

17 A I'm sorry, I'm looking at the wrong thing. The
18 Respondent's Exhibit, I apologize. Yes.

19 Q What are those documents, you see before the
20 Court?

21 A They're a spreadsheet that has employee names,
22 where they would be placed on a salary schedule. An
23 annualized salary and then a per diem calculation. So,
24 it's the annualized salary divided by 182.

1 Q And which employees are these for?

2 A Christofylakis, Coad, and Spagnoli.

3 Q And what was the per diem for each of them
4 that was paid based on this document, sir?

5 A Christofylakis, \$415.97 per day. Coad, \$704.63
6 per day. Spagnoli, \$660.58 per day.

7 Q And you see, were they paid the earlier per
8 diem on there or were they paid the, the, you see
9 there's two per diems, there's one before and there's
10 one after, or the time during the strike. Do you recall
11 whether they were paid the earlier per diem?

12 A I believe they would have been paid the, the
13 yellow columns, the 12/13 per diems.

14 Q Okay. Now, did there come a time when you
15 received a request for information with respect to
16 individuals who were staffing the district during the
17 strike?

18 A Yes.

19 Q And I'd like to show you Respondent's Exhibit
20 8, can you look at that please?

21 (Whereupon Respondent's Exhibit No. 8 was
22 marked for identification.)

23 MR. HERNANDEZ: And again, I don't, Judge, if I
24 can, just a point of clarification again, because we got

1 some Respondent Exhibits.

2 ADMIN. LAW JUDGE STRIZAK: Okay.

3 MR. HERNANDEZ: I wasn't sure if counsel was going
4 to try to move in, which I haven't seen yet.

5 ADMIN. LAW JUDGE STRIZAK: Right.

6 MR. HERNANDEZ: There was a corresponding document
7 in response to this. Were you going to be moving that
8 in? No? Okay. All right. Then we're going to, we have no
9 further questions about this Exhibit.

10 BY MR. HERNANDEZ:

11 Q On Exhibit 9, the Charging Party's Exhibit 9,
12 do you see that?

13 MS. CLARK: Charging Party doesn't have an
14 Exhibit 9.

15 MR. HERNANDEZ: I'm sorry. I apologize.
16 Respondent's Exhibit 9.

17 ADMIN. LAW JUDGE STRIZAK: Okay.

18 BY MR. HERNANDEZ:

19 Q Mr. Johnson, who is Mr. Johnson?

20 A Steve Johnson works in the special ed
21 department.

22 Q Okay, and what does he do?

23 A He's the department chair and I believe he
24 teaches one or maybe two periods.

1 Q Thank you.

2 MR. HERNANDEZ: Judge, if I may have one minute
3 with my colleague, and then I think we might be done
4 here.

5 ADMIN. LAW JUDGE STRIZAK: Okay. Any objection
6 Complainant?

7 MS. CLARK: Off the record, or --

8 ADMIN. LAW JUDGE STRIZAK: No, oh no, not off the
9 record.

10 MS. CLARK: Okay.

11 MR. HERNANDEZ: No further questions, Your Honor.

12 ADMIN. LAW JUDGE STRIZAK: Okay. Complainant?

13 CROSS EXAMINATION

14 BY MS. CLARK:

15 Q Mr. Albus, can you turn to, I believe it's
16 Respondent's 4, no 3. Is it your testimony, are you
17 there?

18 A Yes.

19 Q There's a blue column and a yellow column and
20 it's, you testified earlier that the, these three
21 employees who are reflected are the unredacted employees
22 who are reflected here, were paid a per diem consistent
23 with the yellow column, is that correct?

24 A I believe so, yes.

1 Q Okay. Are you responsible for, you said you,
2 when you testified earlier, you were responsible for
3 payroll procedures, correct?

4 A Correct.

5 Q So you would, you would know or you would
6 authorize those payments?

7 A Yes.

8 Q Okay. And you authorized them consistent with
9 the column, the yellow columns?

10 A Yes.

11 Q Okay. All right. So you also testified that at
12 some point, there was a determination to pay these three
13 employees to crossed the picket line. When was that
14 determination made?

15 A To the best of my recollection it was after
16 they worked the days, or just prior to then.

17 Q Which days are you referring to?

18 A The start of the make up days.

19 Q Okay. So, the start of the make up days. When
20 was that? When was the first make up day?

21 A I believe in November.

22 Q Okay, so you didn't make a decision to pay
23 them for the strike days and the make up days until
24 November?

1 A Correct.

2 Q Okay. Did you communicate that to the LFEA?

3 A No.

4 Q You didn't communicate that to the LFEA?

5 A Not to my knowledge.

6 Q Okay. So you also didn't communicate that you
7 were paying them, paying these three individuals under
8 Article 12, Section E of the contract?

9 A No, but we don't communicate that when we pay
10 other people under that section either.

11 Q Okay. Okay, so go ahead and flip to
12 Respondent's 9. Who prepared this document?

13 A Either our controller or our payroll person.

14 Q So, you don't know who prepared it?

15 A I do not, because I was out on illness for
16 several months.

17 Q Okay. All right. Also, I want you to go to the
18 bottom of that and look at Steve Johnson. Was he paid
19 extra days during the 2012/2013 school year, in which
20 the LFEA engaged in strike?

21 A From this document, I would say no.

22 Q Okay. All right. Flip to, I believe it's in,
23 it will be the other binder probably. It's the long
24 document. It's Respondent's, I'm sorry, Charging Party's

1 Exhibit 1, and it's page five. You can tell me when
2 you're ready.

3 (Whereupon Complainant's Exhibit No. 1 was
4 marked for identification.)

5 A I'm ready.

6 Q Okay. Did you prepare this document?

7 A Yes.

8 Q Okay, and this is the document you provided to
9 Tom Gigiano in the bargaining process?

10 A Correct.

11 Q That includes the people who had been paid per
12 diem?

13 A People at that time, yes.

14 Q Okay, so were there anybody, was there anybody
15 else who was paid a per diem, except for the people on
16 this list?

17 A At the time that this was prepared, this would
18 have been the people that were being paid a per diem
19 from year to year, but may vary. But this was the
20 template I had prepared for negotiations and this is
21 what I would have used.

22 Q So, what I'm asking you, is this a complete
23 list of people who had been paid a per diem?

24 A At the time it was constructed, yes.

1 Q Okay. And you did provide this to Mr. Gigiano,
2 right?

3 A Yes, I did.

4 Q And Mr. Johnson is a member of the LFEA?

5 A Yes.

6 Q So, you notified him that these were the
7 people that were paid a per diem?

8 A This was part of the template that I was using
9 for negotiations and I offered to share it with Tom. So
10 this is when I testified earlier that part of my job is
11 to assess the financial impact of proposals, this is the
12 template that was created. So, this was not shared with
13 him for that specific purpose. This was much more
14 encompassing than what we discussed.

15 Q For what specific purpose? I don't know what
16 specific purpose you're referring to.

17 A You said, when you notified him that these
18 were the people, no, I did not point out that these are
19 the people getting per diems.

20 Q But this per diem list is included in the, he
21 asked for all the financial, all the people who were
22 being paid salary and per diem, correct?

23 A And at that time, that would have been
24 complete.

1 Q And you provided this to him as a complete
2 list of people who were being paid per diem, at that
3 time?

4 A Correct, at that time, yes.

5 Q Okay. Why don't you flip to Joint Exhibit 1,
6 it's the collective bargaining agreement. And it's page
7 27, we'll get right, third times the charm. We're
8 looking at Article 12, Section E, again. And the first
9 sentence, what does the first sentence under that
10 section say?

11 A All work agreed upon by staff members, which
12 is approved by the department chair, instructional
13 director, principal and superintendent, done beyond the
14 school work year, shall be compensated at the following
15 rates.

16 Q Okay. And does it say calendar of days after
17 school year?

18 A Calendar of school days.

19 Q Okay. So, it says there's an approval
20 procedure, right?

21 A Yes.

22 Q Okay. Did the strike, the Coad, Mr. Spagnoli
23 and Mr. Coad and Ms. Christofylakis, did they go through
24 an approval procedure?

1 A I believe so.

2 Q And who was that approval procedure through?

3 A The principal and superintendent.

4 Q Okay, so they skipped the department chair?

5 A I don't know if they did or did not.

6 Q Okay. So, flip back to Respondent's Exhibit 9.

7 A Okay.

8 Q And if you take a look at that, under the
9 2012/2013 school year, it says extra days. Is Chuck
10 Spagnoli on this list?

11 A No.

12 Q Is Dan Coad on this list?

13 A No.

14 Q Is Elizabeth Christofylakis on this list?

15 A No.

16 Q Okay. Are you aware of whether, that the LFEA
17 made an information request about the pay that these
18 strike breakers received?

19 A I'm, there was a request, yes.

20 Q Okay. And did you, did you provide information
21 in conjunction with that request?

22 A I believe so.

23 Q Okay. At the time you provided that
24 information, did you inform the Uniserv director

1 assigned to LFEA, Mark Stein, that you had not made a
2 decision about what to do with the pay for these strike
3 breaking employees?

4 MR. HERNANDEZ: Can we get a date, Judge?

5 MS. CLARK: Sure.

6 BY MS. CLARK:

7 Q The LFEA, did they make any information
8 requests, do you recall when that was?

9 A No, but I believe it's one of the exhibits in
10 here. I don't recall off the top of my head.

11 Q Was it after the employees finished their
12 strike?

13 A Yes.

14 Q Was it before the make up days were made?

15 A I don't know.

16 Q Okay. So, the strike ended September 19,
17 right?

18 A Yes.

19 Q And you said the first make up day was in
20 early November?

21 A Yes.

22 Q Okay. Just a minute Mr. Albus. So, you
23 testified earlier that you hadn't made a determination
24 about whether to, how to treat the strike breaker's pay

1 before the first make up day? Is that correct?

2 MR. HERNANDEZ: I object. That's a misstatement on
3 his testimony.

4 ADMIN. LAW JUDGE STRIZAK: Okay. Well he's got to
5 answer yes or no. You can answer.

6 THE WITNESS: I'm sorry would you repeat that?

7 BY MS. CLARK:

8 Q I said that you testified earlier that you
9 hadn't made a decision about how to handle strike
10 breaker pay before the first make up day, is that
11 correct?

12 A I believe I testified, either at that time or
13 slightly before when we realized they were working and
14 would be working extra days. Then we had conversations
15 about how would that be treated.

16 Q And who is the we that are participating in
17 the conversations?

18 A Our business office staff initially.

19 Q Okay.

20 A And then ultimately with our legal counsel.

21 Q Okay.

22 MS. CLARK: I have no more questions. Thank you.

23 ADMIN. LAW JUDGE STRIZAK: Okay.

24 MR. HERNANDEZ: Just a couple of redirect

1 questions.

2 ADMIN. LAW JUDGE STRIZAK: Okay.

3 REDIRECT EXAMINATION

4 BY MR. HERNANDEZ:

5 Q So, Mr. Albus, at the time of the strike, when
6 the three individuals, Mr. Coad, Mr. Spagnoli and Ms.
7 Christofylakis determined to come to work, did you know
8 whether or not they had to be paid for coming to work?

9 A Yes.

10 Q And so, wouldn't you say a determination was
11 made, did you look at the collective bargaining
12 agreement as part of your determination?

13 A Yes.

14 Q And the provision of the collective bargaining
15 agreement, as you testified, was Article 12, Section E,
16 is that correct?

17 A Yes.

18 Q And that's what guided you?

19 A Yes.

20 Q And, in fact, did you pay those individuals
21 consistent with that provision?

22 A Yes.

23 Q Were any of these individuals given comp time
24 for the time they worked during the strike?

1 A No.

2 Q And for the make up days, were these
3 individuals paid for working the make up days?

4 A Yes.

5 Q And did they have to work the make up days, in
6 fact?

7 A Yes.

8 MR. HERNANDEZ: I have no further questions, Your
9 Honor.

10 MS. CLARK: Nothing further.

11 ADMIN. LAW JUDGE STRIZAK: Okay. The witness is
12 excused. Thank you for your testimony.

13 THE WITNESS: Thank you.

14 ADMIN. LAW JUDGE STRIZAK: Do you have any further
15 witnesses?

16 MR. HERNANDEZ: You know, when did you want us to
17 move the exhibits in? Do you want us to move them in
18 now, Judge, or when would you like us to move them in?

19 ADMIN. LAW JUDGE STRIZAK: Yes, now. Now is good.

20 MR. HERNANDEZ: Okay. So, at this point Judge,
21 we're going to move to admit Exhibit 3, I don't know if
22 you have any objections to that one, counsel?

23 MS. CLARK: Yes, there's no foundation for who
24 prepared the document.

1 ADMIN. LAW JUDGE STRIZAK: Okay. Exhibit 3. Okay.
2 Complainant, your objection is noted for the record.
3 You can argue the weight I should give this document
4 in your post hearing brief if you so desire. So,
5 admitted.

6 (Whereupon Respondent's Exhibit No. 3 was
7 received into evidence.)

8 MR. HERNANDEZ: Also, Exhibit 9, Judge, I believe
9 that also qualifies as a business record, because this
10 was made in the course of business. He was the business
11 official, so we feel this should be admitted as well,
12 Judge.

13 ADMIN. LAW JUDGE STRIZAK: Okay.

14 MS. CLARK: There's no testimony about it being
15 a business record, and in fact, he testified that
16 he didn't create it and he doesn't know who
17 did.

18 ADMIN. LAW JUDGE STRIZAK: Okay. Your objection is
19 noted.

20 MR. ALBUS: That's not what I said.

21 ADMIN. LAW JUDGE STRIZAK: Your objection is noted
22 for the record. You can argue with the weight I should
23 give this exhibit in the post hearing brief, if you so
24 desire. So, admitted.

1 (Whereupon Respondent's Exhibit No. 9 was
2 received into evidence.)

3 MR. HERNANDEZ: Judge, we'd like to move also
4 Respondent's rebuttal Exhibit 1. It's a cumulative
5 document of charges filed by the LFEA and the related
6 withdrawals for that charge.

7 MS. CLARK: No objection.

8 ADMIN. LAW JUDGE STRIZAK: Okay. So, admitted. So,
9 I have Respondent's Exhibit 3, 8 and Respondent's
10 Rebuttal Exhibit 1. You didn't introduce, you didn't
11 offer nine? Is that correct?

12 (Whereupon Respondent's Rebuttal Exhibit No. 1
13 was received into evidence.)

14 MS. CLARK: Yes, he did.

15 ADMIN. LAW JUDGE STRIZAK: He did? Did he?

16 MS. CLARK: Yes.

17 MR. HERNANDEZ: Yes, Judge.

18 ADMIN. LAW JUDGE STRIZAK: So, eight and nine?

19 MS. CLARK: No, he didn't offer eight.

20 ADMIN. LAW JUDGE STRIZAK: Oh, I'm sorry. I think I
21 had, okay. So, three, Respondent's Exhibits 3, 9 and

22 Respondent's Rebuttal 1 I have admitted into the record
23 and Joint Exhibits, did the parties want to move them?

24 MS. CLARK: Yes. Joint Exhibits, I believe is 1

1 through 6.

2 (Whereupon Joint's Exhibit Nos. 5 and 6 were
3 marked for identification.)

4 MR. HERNANDEZ: Yes, there's no objection, Judge.

5 ADMIN. LAW JUDGE STRIZAK: So, admitted. And I just
6 have from the association, just one?

7 (Whereupon Joint's Exhibit Nos. 1 through 6
8 were received into evidence.)

9 MS. CLARK: That's correct.

10 ADMIN. LAW JUDGE STRIZAK: Okay.

11 MR. HERNANDEZ: Judge, can we have a short break,
12 just so we can determine whether or not we need to call
13 the other witnesses?

14 ADMIN. LAW JUDGE STRIZAK: Okay. Any objections?

15 MR. HERNANDEZ: Is that okay?

16 MS. CLARK: No objections.

17 ADMIN. LAW JUDGE STRIZAK: Are you talking, you
18 want 15 minutes?

19 MR. HERNANDEZ: Yes, may we have 15 minutes, Judge?

20 ADMIN. LAW JUDGE STRIZAK: Sure. Yes, we are off
21 the record.

22 (Off the record.)

23 ADMIN. LAW JUDGE STRIZAK: Okay, so we're going to
24 take a lunch break and we will resume at 1:00 p.m.

1 MS. CLARK: Okay. Thank you.

2 MR. HERNANDEZ: Thank you, Your Honor.

3 ADMIN. LAW JUDGE STRIZAK: Okay, off the record.

4 (Off the record.)

5 ADMIN. LAW JUDGE STRIZAK: Okay, we're back on the
6 record. And Respondent may call its next witness.

7 MR. HERNANDEZ: Yes, Judge, we're going to call

8 Todd Burgener, B-u-r-g-e-n-e-r, to the stand. Mr.

9 Burgener will you take the stand please?

10 THE WITNESS: This being the stand, I presume?

11 ADMIN. LAW JUDGE STRIZAK: Okay, you may begin.

12 MR. HERNANDEZ: Thank you, Your Honor.

13 Whereupon,

14 TODD BURGNER,

15 called as a witness here, in having been first duly

16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HERNANDEZ:

19 Q Mr. Burgener, for whom are you employed?

20 A Northwestern Memorial Healthcare.

21 Q Are you on the board of education for Lake

22 Forest High School District 115?

23 A Yes.

24 Q How long have you been on that board, sir?

1 A A little over six years.

2 Q And do you have an officer position at this
3 time?

4 A I'm currently the president, yes.

5 Q What do you do as the president, just short.

6 A Chair board meetings, facilitate the
7 conversation and decision making, interface with the
8 administration, voice of the board.

9 Q I'd like to direct your attention to the
10 matter before this Court. And did you ever serve on the
11 district's bargaining team, sir?

12 A Yes.

13 Q In the summer of 2012, were you a member of
14 that bargaining team?

15 A Yes.

16 Q What was your role as a member of that
17 bargaining team?

18 A Just to participate in the goal setting,
19 parameter setting, oversight of the negotiations.

20 Q Were you the president at that time?

21 A I was not.

22 Q Was there, did there come a time when you
23 learned that there might be a strike as, during the
24 negotiations?

1 A Yes.

2 Q And did, in fact, a work stoppage occur at
3 Lake Forest High School District 115?

4 A It did, yes.

5 Q Had a strike ever occurred at the district?

6 A No.

7 Q And did you continue to be part of the
8 bargaining team during the strike?

9 A Yes, I did.

10 Q And what was your role at that time? Did it,
11 was it the same?

12 A It was the same.

13 Q Did you have to do any preparation for the
14 possibility of the strike at some time during
15 negotiations?

16 A Yes.

17 Q What do you recall that involved?

18 A I think as, as the time drew nearer, it was,
19 and it became apparent that it was a real possibility,
20 that we needed to understand what we could and could not
21 do, be able to communicate with the parents and students
22 and the rest of the community.

23 Q What were your options with respect to the
24 school, do you recall?

1 A As far as what?

2 Q On whether they'd be open or closed?

3 A We were, we were fairly determined to keep the
4 building open, at the very least for safe haven
5 purposes, and ideally to try to provide some educational
6 programming.

7 Q And did the bargaining team continue to
8 bargain during the strike, sir?

9 A During the strike, yes.

10 Q And did you in fact keep the schools open in
11 some fashion during the strike?

12 A Yes, we did.

13 Q Okay, and what do you recall about that?

14 A We had a couple of days, the initial couple of
15 days, maybe one day it was closed and then a couple of
16 days where it was open and available for students to
17 come without programming. And then by the, by the last
18 few days, it was programming was devised and provided.
19 So there were attendance days for the last three days I
20 believe of the strike.

21 Q And do you, what were the teacher's rights
22 with respect to the strike? Do you recall?

23 MS. CLARK: Objection, calls for, never mind.

24 Withdrawn.

1 THE WITNESS: The teacher's rights, our
2 understanding, and my understanding was that they, and
3 what was communicated to them was that they recognize
4 their right to strike, but also that, that their right
5 not to strike and to come into work and work their
6 normal hours.

7 BY MR. HERNANDEZ:

8 Q I'd like to show you what has been admitted in
9 as Joint Exhibit 2. Do you see that document in front of
10 you there?

11 A I do.

12 Q Do you recognize that, which is identified as
13 an agreement and principal?

14 A Yes.

15 Q What do you recognize that to be Mr. Burgener?

16 A I recognize it to be about three o'clock in
17 the morning on the final day of the strike, the, the
18 solution, the resolution to our bargaining agreement
19 that was reached with the LFEA to open the school back
20 up.

21 Q Now, if an individual determined to work
22 during the strike, did you, what did you understand
23 whether or not their entitled to payment at that time?

24 A At which time?

1 MS. CLARK: Objection.

2 MR. HERNANDEZ: At the time of the strike.

3 MS. CLARK: Calls for a legal conclusion.

4 ADMIN. LAW JUDGE STRIZAK: Okay, it, what, if I
5 understand the question, is what he understands at that
6 time, so, your objection's overruled. You can answer the
7 question.

8 THE WITNESS: My understanding was that people who
9 came into work would be paid for the time that they came
10 into work.

11 BY MR. HERNANDEZ:

12 Q Now, this principal of agreement, was this
13 something negotiated with the LFEA?

14 A Yes.

15 Q There's an issue, it refers to, I'm sorry,
16 -- strike that. Was an issue concerning make up days
17 discussed? Do you remember any discussion about make up
18 days?

19 A Yes.

20 Q And were those days made up as a result of the
21 strike?

22 A That's my understanding that they were, the
23 days were made up, yes.

24 Q Okay. Now, is that, was that something that

1 the district proposed or was it a request by the Union?

2 A It was a very adamant request of the Union,
3 that there was a moral obligation to make up the
4 teaching days and make it up to their students who lost
5 out on five days of school experience.

6 Q And if you look at the Joint Exhibit 2, can
7 you look at the strike days and retro pay section, do
8 you see that? The fourth point down.

9 A Yes.

10 Q And so, the, there will be no pay for days of
11 the strike. What did you understand that to mean?

12 MS. CLARK: Objection. The document speaks for
13 itself. I mean, the parties, the parties have an
14 agreement. We've stipulated that this is their
15 agreement, it's in writing and that sentence is very
16 clear.

17 MR. HERNANDEZ: Well, we don't think it is, Judge.
18 And we think their misconstruing it, so we'd like him
19 talk about what, what transpired.

20 ADMIN. LAW JUDGE STRIZAK: Okay. Your objection's
21 overruled. Answer the question.

22 THE WITNESS: My understand was that those who were
23 on strike would not be paid for the days of the strike.

24

1 BY MR. HERNANDEZ:

2 Q Did you understand this to apply to people who
3 worked during the strike?

4 A No.

5 Q Now, during the time that this document was
6 negotiated with the LFEA, were you ever asked not to pay
7 the people who worked during the strike, for the time
8 that they worked during the strike by the Union?

9 A No, no.

10 Q Were you ever asked by the LFEA not to allow
11 the people who worked during the strike to work the make
12 up days that were agreed to?

13 A No, I think on the contrary, it was implied
14 that all teachers who lost classroom time with their
15 students should have the opportunity to make that up to
16 their students, so that would include anyone who was
17 working during the strike, in my mind.

18 MR. HERNANDEZ: No further questions, Your Honor.

19 ADMIN. LAW JUDGE STRIZAK: Okay. Cross,
20 Complainant?

21 CROSS EXAMINATION

22 BY MS. CLARK:

23 Q Mr. Burgener, you said that it was implied
24 that the LFEA, all members were going to work with their

1 teachers so, what's, did you ask them about what their
2 intention was, you, yourself?

3 A No.

4 Q No? So you don't know what they actually
5 meant?

6 A I understood their words, yes. And I, and I, I
7 speak the language, so I was able to interpret their
8 language and find meaning in it.

9 Q So, and you're able to interpret to the point
10 that it's implied, not that anyone actually told you
11 anything about what their purpose was?

12 A The purpose they expressed, the, at that
13 point, it was, I believe, Paul Goldstein had become the
14 spokesperson.

15 Q So, you believed that, that's what it is, but
16 you don't know?

17 MR. HERNANDEZ: Judge, objection, she's
18 interrupting.

19 ADMIN. LAW JUDGE STRIZAK: Okay, so --

20 THE WITNESS: Paul Goldstein was the spokesman for
21 the LFEA at that point.

22 ADMIN. LAW JUDGE STRIZAK: Wait, okay. Go ahead.

23 THE WITNESS: And he came to the, the negotiating
24 team for the board with the rest of his team at the

1 table and expressed a strong desire that the board
2 assist them to achieve their moral obligation to provide
3 all days to the children that had lost five days and
4 could we assist them from that --

5 BY MS. CLARK:

6 Q Okay, so at the end of a five day strike,
7 you're saying that the LFEA came and asked for your
8 assistance?

9 A Yes.

10 Q Okay. What is the, what are the words, no pay,
11 mean to you? Does, I mean, you said that there's, your
12 counsel said that there's a question about --

13 A In what context?

14 Q A question about there's, there's a question
15 of the interpretation of this language, what are the
16 words no pay mean to you, in any context. You just said,
17 you informed us that you speak the language. So, what
18 does no pay mean to you, in any context?

19 MR. HERNANDEZ: Judge, I'm going to object, she's
20 being argumentative.

21 ADMIN. LAW JUDGE STRIZAK: Okay, well he needs to
22 answer the question.

23 THE WITNESS: No pay, standing on its own, with no
24 words on either side of it means no pay. It means there

1 will be no pay.

2 MS. CLARK: Okay. Very good. No more questions.

3 MR. HERNANDEZ: I'm fine with it.

4 REDIRECT EXAMINATION

5 BY MR. HERNANDEZ:

6 Q So, there are words standing on either side of
7 the no pay, is that correct?

8 A Yes.

9 Q And what did you understand the no pay to
10 mean?

11 A That there would be no pay, no pay for the
12 days of the strike. And that because of the words
13 strike, it would apply to those who were on strike, and
14 not to those who were not on strike.

15 MR. HERNANDEZ: Judge, we have no further
16 questions.

17 ADMIN. LAW JUDGE STRIZAK: Okay.

18 RECROSS EXAMINATION

19 BY MS. CLARK:

20 Q Mr. Burgener, do you know the meaning of the
21 word employee?

22 A Yes, I do.

23 Q Do you know the meaning of the word strike?

24 A Yes, I do.

1 Q Do you know the meaning of the phrase on
2 strike?

3 A As opposed to just the word strike? I believe
4 I do.

5 Q Okay. So, you know the difference between the
6 word strike and the phrase on strike? Yes? I can, she
7 can't, he can't hear your head rattle, so you have to
8 say yes or no.

9 A Oh, did my head rattle? I don't believe so.

10 Q When you nod.

11 A Okay. There is, is there a difference between
12 on strike and strike?

13 Q I'm asking if you know the difference?

14 A I'm not sure that I do actually.

15 Q Okay. So, you don't know the difference
16 between the verb on strike and the article a strike, or
17 the noun, a strike.

18 A A strike?

19 Q Yes. A strike and on strike.

20 A A strike.

21 Q You don't know the difference between those?

22 A One being a verb and one being a noun?

23 Q Okay. All right. So, this says, and you did
24 testify that you know the difference between a strike

1 and those who are on strike? Right? You know the meaning
2 of employees?

3 A Yes.

4 Q So, if you wanted this to say, there will be
5 no pay for the employees who were on strike, why doesn't
6 it say that?

7 A I can only say that it's because it was
8 approximately three o'clock in the morning and that we
9 had been at it for a long time and all sides wanted to
10 achieve an agreement and this was intended to achieve
11 that agreement.

12 Q Okay. Okay. Do you know who drafted this
13 document?

14 A I don't recall, no.

15 Q Okay. Thank you.

16 ADMIN. LAW JUDGE STRIZAK: Okay.

17 MR. HERNANDEZ: No further questions.

18 ADMIN. LAW JUDGE STRIZAK: Okay, the witness is
19 excused. Thank you for your testimony. Do you have any
20 further witnesses?

21 MR. HERNANDEZ: We do not, Your Honor.

22 ADMIN. LAW JUDGE STRIZAK: Okay. You rest?

23 MR. HERNANDEZ: We're going to rest our case at
24 this time.

1 ADMIN. LAW JUDGE STRIZAK: Okay. Complainant, do
2 you have any rebuttal?

3 MS. CLARK: No.

4 ADMIN. LAW JUDGE STRIZAK: Okay. Can we just go off
5 the record a couple minutes to talk about it?

6 (Off the record.)

7 ADMIN. LAW JUDGE STRIZAK: We're back on the record
8 and the parties indicated while we were off the record,
9 there was nothing further they wish to present. So,
10 double spaced post hearing briefs will be submitted by
11 the parties, or filed April 25, 2014. Thank you Court
12 Reporter. Thank you parties and witnesses. The hearing
13 in this matter is closed.

14 MS. CLARK: Thank you.

15 MR. HERNANDEZ: Thank you, Your Honor.

16 (Whereupon the above matter was concluded
17 at 1:17 p.m.)
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