

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Michele C. Bowles,)	
)	
Charging Party)	
)	
and)	Case No. 2019-CB-0008-C
)	
Elmhurst Teachers Council, West)	
Suburban Teachers Union, Local 571,)	
IFT-AFT, AFL-CIO,)	
)	
Respondent)	

OPINION AND ORDER

I. Statement of the Case

On December 3, 2018, Michelle C. Bowles (Bowles or Charging Party) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board) in the above-captioned matter alleging that Elmhurst Teachers Council, West Suburban Teachers Union, Local 571, IFT-AFT, AFL-CIO (Union) committed unfair labor practices within the meaning of Section 14(b) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, *et seq.* (Act or IELRA). Following an investigation, the Board's Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge in its entirety. Bowles filed exceptions to the EDRDO and submitted additional evidence that was not available during the investigation. The Board considered Bowles' exceptions and remanded the matter back to the Executive Director for further investigation. After further investigation, the Board's Executive Director issued a Supplementary Recommended Decision and Order on Remand from the Board (Supplementary EDRDO) considering the additional evidence and again dismissing the charge in its entirety. Bowles filed exceptions to the Supplementary EDRDO, and the Union filed a response to her exceptions. For the reasons discussed below, we affirm the Supplementary EDRDO dismissing the unfair labor practice charge.

II. Factual Background

We adopt the facts as set forth in the underlying EDRDO and Supplementary EDRDO. Because the EDRDO and Supplementary EDRDO comprehensively set forth the factual background of the case, we will not repeat the facts herein.

III. Discussion

Bowles' charge alleges that the Union violated its duty of fair representation in violation of Section 14(b)(1) of the Act when it failed to represent her during meetings with Elmhurst Community Unit School District 205 (District)¹ that resulted in a letter of notice in her personnel file. After filing the instant charge, Bowles ran for Union President against incumbent Max Schoenberg (Schoenberg), whom she maintains was significant to the Union's decision not to pursue a grievance on her behalf. The additional evidence Bowles submitted that the Executive Director considered in the Supplementary EDRDO were statements made by Schoenberg on his campaign website and his emails to the Union membership criticizing Bowles for filing the charge, as well as his answers to questions posed by Union members during the campaign criticizing Bowles for her conduct when she previously served as Union Vice-President. Addressing the additional evidence in the Supplementary EDRDO, the Executive Director noted that a union's conduct in the context of a union election is an internal union matter over which the IELRB has no jurisdiction unless there is an impact on or nexus to a charging party's employment conditions. The Executive Director found that because there was no evidence of a nexus between Schoenberg's campaign speech and Bowles' employment conditions, the IELRB has no jurisdiction. The Executive Director indicated that even if the IELRB had jurisdiction over this internal union matter, there is no correlation between Schoenberg's comments and the Union's decision-making process not to take further action on Bowles' behalf.

¹ Bowles is employed by the District as a teacher.

Bowles' exceptions do not address the Executive Director's treatment of the additional evidence in the Supplementary EDRDO. Instead, she contends in her exceptions that the crux of her charge is that the Union refused to meet with her and says that this was not addressed by the Executive Director. She further complains in her exceptions that the Union failed to provide evidence during the investigation that it met and discussed her appeal of the District's decision to reduce her discipline from a formal reprimand to a letter of notice and that there was no email discussion answering her question about the appeal.

Section 14(b)(1) of the IELRA prohibits labor organizations or their agents from "[r]estraining or coercing employees in the exercise of the rights guaranteed under this Act, provided that a labor organization or its agents shall commit an unfair labor practice under this paragraph in duty of fair representation cases only by intentional misconduct in representing employees under this Act." In duty of fair representation cases, a two-part standard is used to determine whether a union has committed intentional misconduct within the meaning of Section 14(b)(1). Under that test, the charging party must first establish that the union's conduct was intentional and directed at her. Second, she must establish that the union's intentional action occurred because of and in retaliation for her past actions, or because of her status (such as race, gender, or national origin), or because of animosity between her and the union's representatives (such as that based on personal conflict or charging party's dissident union support). *Metropolitan Alliance of Police v. Illinois Labor Relations Board, Local Panel*, 345 Ill. App. 3d 579, 803 N.E.2d 119 (1st Dist. 2003).

Bowles maintains in her exceptions that the Union refused her requests to meet with her in violation of its duty of fair representation. In its response to Bowles' exceptions, the Union denies the allegation, and reports that it offered to meet with Bowles. In support of this, the Union points to emails from Schoenberg to Bowles that it submitted as part of the initial investigation of the charge. Therein, Schoenberg invites Bowles to meet with him and other Union officials on a specified date and time at its Westmont office to discuss concerns over her disciplinary action and the state of

the Union. Thus, the record does not support Bowles' contention that the Union refused to meet with her.

Bowles next asserts in her exceptions that the Union's failure to provide evidence that it met and discussed the appeal of the District's decision regarding the letter of notice in her file establishes that it breached its duty of fair representation. The union has a wide range of discretion in representing the bargaining unit. *Jones v. Illinois Educational Labor Relations Board*, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995). The exercise of that discretion is properly based on criteria such as the perceived merit of the complaint, the likelihood of success in any action based thereon, the cost of prosecuting such an action, or the possible benefit to the union membership at a whole. *Id.* Indeed, that is what the Union did when Schoenberg informed Bowles on or about July 31, 2018 by email that after review and discussion with the Union's field service director, the Union determined that proceeding further would not be in the best interests of the membership. There is no requirement that the discretion must be exercised by a group of union officials instead of just one or two union officials. There is nothing in the Act nor have there been any determinations made by this Board that union officials are required to meet and discuss whether to take action on a member's behalf. Accordingly, the absence from the record of evidence that the Union met and discussed Bowles' appeal does not establish a breach of its duty of fair representation.

Bowles raises nothing in her exceptions to upset the Executive Director's finding that her charge was without merit. As a result, we find that the Executive Director correctly dismissed her charge.

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's Supplementary Recommended Decision and Order on Remand from the Board dismissing the charge is affirmed.

V. 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 IELRB maintains an office (Chicago or Springfield). Petitions for review of this Order must be filed within 35 days from the date that the Order issued, which is set forth below. 115 ILCS 5/16(a). The IELRB does not have a rule requiring any motion or request for reconsideration.

Decided: **October 17, 2019**

Issued: **Chicago, Illinois**

/s/ Andrea R. Waintroob
Andrea R. Waintroob, Chairman

/s/ Judy Biggert
Judy Biggert, Member

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

/s/ Lara D. Shayne
Lara D. Shayne, Member