STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Verna Rentsch, Charging Party	)	
and	)	Case No. 2020–CB–0010–C
Rockford Education Ass'n, IEA-NEA, Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On December 27, 2019, Verna Rentsch (Rentsch or Charging Party) filed a charge with the Illinois Educational Labor Relations Board (Board or IELRB) alleging that Rockford Education Association, IEA-NEA (Union or Respondent) committed unfair labor practices within the meaning of Section 14(b) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1 *et seq*. On August 28, 2020, the IELRB's Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge in its entirety. This case is before us because the Charging Party filed exceptions to the EDRDO. For the reasons discussed below, we affirm the EDRDO.

II. Factual Background

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

III. Discussion

The Charging Party received the EDRDO on Friday, August 28, 2020. Exceptions to an EDRDO must be filed no later than 14 days after service of the EDRDO. Section 1120.30(c) of the IELRB's Rules and Regulations (Rules), 80 Ill. Adm. Code 1100-1135. Therefore, Rentsch's exceptions were due no later than September 11, 2020. Per Section 1100.20(a) of the Rules, "[D]ocuments shall be considered filed with the Board on the date they are received by the Board . . . . . Documents, including but not limited to documents filed electronically, must be received by the close of business in order to be

considered to have been filed that day." Rentsch filed her exceptions by email, so they are considered to have been filed on the date the IELRB received them. The IELRB received the exceptions on Saturday, September 12, 2020, and thus they are considered filed the following business day, September 14, 2020. Accordingly, Rentsch filed her exceptions after the date they were due.

The Appellate Court has found that a charging party waived its right to contest a recommended decision and order by failing to file timely exceptions to that recommended decision and order. *Pierce v. IELRB*, 334 Ill. App. 3d 25, 777 N.E.2d 570 (1st Dist. 2002); *Board of Education of the City of Chicago v. IELRB*, 289 Ill. App. 3d 1019, 682 N.E.2d 398 (1st Dist. 1997). In accordance with the Appellate Court, the Board routinely strikes untimely exceptions. *Rochester Community Sch. Dist. No. 3A*, 35 PERI 7, Case No. 2017-CA-0059-C (IELRB Opinion and Order, June 19, 2018); *Proviso Township High Sch. Dist. #209*, 34 PERI 64, Case No. 2017-CA-0065-C (IELRB Opinion and Order, September 15, 2017); *Peoria School District 150*, 23 PERI 46, Case Nos. 2006-CA-0006-S, 2006-CA-0008-S, 2006-CA-0032-S (IELRB Opinion and Order, April 19, 2007). We likewise strike the Charging Party's exceptions as untimely filed.

Even if the Charging Party's exceptions were timely, we would still affirm the Executive Director's dismissal of the charge based on the facts alleged and the applicable law. Although the Charging Party may be unhappy in the representation she received from the Union, a labor organization has a wide range of discretion in representing a bargaining unit and its failure to take all the steps it might have taken to obtain the outcome desired by a bargaining unit member does not violate the Act unless its conduct appears to have been motivated by vindictiveness, discrimination or enmity. *Norman Jones v. IELRB*, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995). Nothing in the charge or the exceptions demonstrates that the Union acted outside of that wide range of discretion in its conduct toward the Charging Party.

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's Recommended Decision and Order 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: **May 20, 2021**
Issued: **May 20, 2021**

/s/ Lara D. Shayne
Lara D. Shayne, Chairman

/s/ Steve Grossman
Steve Grossman, Member

/s/ Chad D. Hays
Chad D. Hays, Member

/s/ Michelle Ishmael
Michelle Ishmael, Member

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

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601
312.793.3170 | 312.793.3369 Fax
elrb.mail@illinois.gov

STATE OF ILLINOIS
ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

Verna Rentsch,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2020-CB-0010-C
	)	
Rockford Education Association, IEA-NEA,	)	
	)	
Respondent	)	
	)	

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On December 27, 2019, Charging Party, Verna Rentsch, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Rockford Education Association, IEA-NEA (Union), violated Section 14(b) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.* 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

At all times material, Rentsch was an educational employee within the meaning of Section 2(b) of the Act, employed by Rockford Public School District 205 (District or Employer), in the title or classification of Tenured Teacher. Respondent 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 District's employees, including those in the title or classification of Tenured Teacher. At all times relevant, Rentsch was a member of the Union's bargaining unit. The District is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. The Employer and Union are parties to a collective bargaining agreement (CBA) which provides for a grievance procedure culminating in arbitration, for the bargaining unit to which Rentsch belongs.

B. Facts relevant to the unfair labor practice charge

The District hired Rentsch as a teacher on or about August 15, 1999. In her performance evaluation of April 22, 2016, she received a rating of "needs improvement." Thereafter, in accordance with the CBA, due to the low rating Rentsch received, the District placed her in its "Peer Assistance and Review" (PAR) program. In December 2016, at the conclusion of Rentsch's participation in the PAR program, she again received a rating of "needs improvement." As a result of Rentsch's poor performance in the PAR program, in accordance with the CBA, the District placed her on a remediation plan on or about February 10, 2017. Rentsch was unable to successfully complete the remediation plan, and as a result, on October 10, 2017, the District terminated her employment.

On or about October 24, 2017, Rentsch met with a Union attorney, who advised her claim had little chance of success on the merits, and the only possible avenue for relief was to challenge the District's termination of her employment under the Illinois school code, before the Illinois State Board of Education (ISBE), asserting the District's actions in connection with the remediation plan and the subsequent termination of her employment, were deficient on procedural or statutory grounds. Additionally, the Union cautioned Rentsch its funding of her representation before the ISBE would be limited in scope, and it reviewed those limits with her. Rentsch agreed in writing with the Union's limitation on the representation it was to provide.

On April 20, 2018, the Union's attorneys filed a motion with the ISBE's hearing officer, in which they raised procedural and statutory challenges to the District's remediation plan for Rentsch and the subsequent termination of her employment as a consequence thereof. On August 6, 2018, the ISBE's hearing officer granted the Union's attorneys' motion, and on September 4, 2018, the District appealed the ISBE's hearing officer's ruling to the Winnebago County Circuit Court.

On September 7, 2018, because Rentsch's case was now in court, the Union, through its attorneys, contacted her to additionally limit the scope of its funding of her representation. Excluded from the representation funded by the Union was any remand by the courts to the ISBE's hearing officer, any other hearing officer, or the District's school board. Again, Rentsch agreed in writing with the Union's limitation on the representation it was to provide.

The Winnebago County Circuit Court, on June 27, 2019, reversed the ISBE's hearing officer's ruling and remanded the case for an evidentiary hearing on the District's claims, by an ISBE hearing officer. However, pursuant to the September 7, 2018 limitation of scope of representation, a remand to the ISBE's hearing officer was excluded from the representation the Union agreed to fund. In addition, the Union had doubts about the prospect for success on the merits of Rentsch's claims, and through one of its attorneys, the Union conveyed and explained its position to Rentsch. Concurrently, the Union pursued settlement discussions with the District, but ultimately, that course proved unproductive. In a letter dated July 19, 2019, the Union notified Rentsch it would no longer fund her representation regarding the termination of her employment by the District, noting it did not see a substantial likelihood of success on the merits. On December 27, 2019, Rentsch filed the instant charge.

III. THE PARTIES' POSITIONS

Herein, Rentsch contends the Union violated the Act in that failed to offer her sufficient, proper representation with regard to a flawed evaluation process. More particularly, Rentsch contends that the Union should have done more, and been more aggressive, in representing her before the ISBE, and that it was unconscionable for the Union to drop her claim when it was remanded to the ISBE for hearing.

Respondent Union denies the complained-of conduct violated the Act, and further, denies it treated Rentsch any differently than similarly situated employees. It asserts that it thoroughly evaluated Rentsch's claim, determined the best course of action in pursuing it, and competently followed that course of action. In addition, the Union contends throughout its handling of Rentsch's claim, it kept her informed as to the progress of its actions on her behalf and the limits of its representation and funding. The Union notes Rentsch agreed in writing to the limits of representation and funding offered by the Union.

IV. DISCUSSION AND ANALYSIS

Section 14(b)(1) of the Act provides as follows:

> (b) Employee organizations, their agents or representatives or educational employees are prohibited from:
>
> (l) restraining 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. [Emphasis added.]

Rentsch's claim herein is a duty of fair representation claim, and in such 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, a charging party must establish the union's conduct was intentional and directed at charging party, and secondly, the union's intentional action occurred because of and in retaliation for charging party's past actions, or because of charging party's status (such as his or her race, gender, or national origin), or because of animosity between charging party and the union's representatives (such as that based on personal conflict or charging party's dissident union support). The Board's use of this standard, based on Hoffman v. Lonza, Inc., 658 F.2d 519 (7th Cir. 1981), was affirmed by the Illinois Appellate Court in Paxton-Buckley-Loda Education Association v. IELRB, 304 Ill. App. 3d 343, 710 N.E.2d 538 (4th Dist. 1999), aff'g Paxton-Buckley-Loda Education Association (Nuss), 13 PERI ¶1114 (IELRB 1997). See also, Metropolitan Alliance of Police v. State of Illinois Labor Relations Board, 345 Ill. App. 3d 579, 588-89, 803 N.E.2d 119, 125-26 (1st Dist. 2003).

In this case, there is no evidence Respondent Union intentionally took any action either designed to retaliate against Rentsch or due to her status. Moreover, Rentsch made no showing she was treated differently from other similarly situated employees, or the Union's decision to decline to pursue her concerns in the manner she wished, was based on something other than a good faith assessment of the bargaining unit's priorities, or the best interests of its membership as a whole. Rentsch was plainly displeased by the Union's failure to continue its representation of her interests in the remand before the ISBE and in essence, despite her written acknowledgements of the limits of the Union's assistance, contends it had an obligation to continue to assist her.

The conduct herein, complained-of by Rentsch, is not unlawful under the circumstances of this case. The exclusive representative has a wide range of discretion in representing the bargaining unit, and as the Board has previously held, a union's failure to take all the steps it might have taken to achieve the results desired by a particular employee does not violate the Act, unless as noted above, the union's conduct appears to have been motivated by vindictiveness, discrimination, or enmity. Jones v. Illinois Educational Labor Relations Board, 272 Ill. App. 3d 612, 650 N.E.2d 1092, 11 PERI ¶4010 (1st Dist. 1995). As there

is no evidence indicating that the Union was so motivated, Charging Party failed to present grounds upon which to issue a complaint for 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. At this time, the parties are highly encouraged to direct said exceptions and responses, if any, to the general email account at ELRB.mail@illinois.gov. 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 28TH day of August, 2020.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Executive Director