

STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD

John Kugler,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2022-CB-0005-C
	)	
Chicago Teachers Union, Local 1,	)	
IFT-AFT, AFL-CIO,	)	
	)	
Respondent	)	

**OPINION AND ORDER**

**I. Statement of the Case**

On February 14, 2022, John Kugler (Charging Party or Kugler) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board or IELRB) against Chicago Teachers Union, Local 1, IFT-AFT, AFL-CIO (Respondent or Union). In his charge, Kugler alleged that the Union breached its duty of fair representation in violation of Section 14(b)(1) of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1 *et seq.*, when it requested bargaining unit members report fellow members who participated in organized resistance to COVID safety measures in schools. Following an investigation, the IELRB's Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge in its entirety. This case is before the Board because Kugler 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 for the case, we will not repeat the facts herein except as necessary to assist the reader.

**III. Discussion**

Kugler was employed by the Union in the position of Field Representative from 2010 until December 2021. He was previously employed by Chicago Board of Education (CBE). After

Kugler filed this charge, it was given a case number and assigned to a Board agent for investigation. During the investigation, Charging Party Kugler and Respondent Union submitted evidence in support of or in opposition to the charge. The charge was dismissed because Kugler lacked standing to allege a violation of Section 14(b)(1) as he was not an educational employee at the time relevant to the charge and therefore not entitled to the protections of Section 14(b)(1). Kugler's exceptions essentially contend that the Board should not have processed his charge if he lacked standing to file it and, by processing the charge, the Board granted him standing.

It is the Board's standard procedure upon receiving an unfair labor practice charge to assign it a case number and investigator. In cases where the investigation of the charge reveals that the charging party lacks standing, an EDRDO will issue dismissing the charge for that reason. *City Colleges of Chicago (Ramos)*, 39 PERI 45, Case No. 2021-CA-0084-C (IELRB Opinion and Order, September 22, 2022) (individual employee does not have standing to allege a violation of Section 14(a)(5) of the Act); *Thornton Community Unit School District No. 4*, 4 PERI 1010, Case Nos. 87-CA-0017-C et al. (IELRB Opinion and Order, December 1, 1987); *City Colleges Contingent Labor Organizing Committee, IEA-NEA*, 37 PERI 24, Case No. 2020-CB-0003-C (IELRB EDRDO, December 19, 2019) (retired faculty member lacked standing to bring a charge that the union violated the Act, because he is not, nor was he at the time the complained-of conduct occurred, an educational employee or employee as defined by the Act); *Loyola University of Chicago*, 6 PERI 1157, Case No. 91-CA-0017-C (IELRB EDRDO, November 9, 1990) (individual lacked standing to bring unfair practice charge where university was not educational employer within the meaning of the Act). If the Board were to instead refuse to process such charges, those charging parties would be left without a method to challenge the determination that they lacked standing. Whereas parties have the right to appeal an EDRDO finding lack of standing and, possibly, obtain a more favorable outcome. See *Carpenters Local 183, Mid-central Illinois District Council (Reese)*, 6 PERI 1026, Case No. 90-CB-0003-S (IELRB Opinion and Order, February 6, 1990) (Board overturned portion of EDRDO determining that charging party did not have standing to file unfair labor practice charge). For that reason, we find that the Executive Director did not err in processing the charge and that processing the charge did not amount to recognition of Kugler's standing to file the charge.

In its response to Kugler's exceptions, the Union argues that the Board should affirm the EDRDO under the principles of res judicata and/or collateral estoppel. This Board recently dismissed Kugler's charge against the Union in Case No. 2022-CB-0009-C. Yet the misconduct alleged in this case is not identical to that in Case No. 2022-CB-0009-C. Cases must be based on the same cause of action for res judicata to apply. *Village of Bartonville v. Lopez*, 2017 IL 120643; *River Park, Inc. v City of Highland Park*, 184 Ill.2d 290, 703 N.E.2d 883 (1998). Cases are based on the same cause of action if a single set of operative facts give rise to the claim for relief. *Bartonville*. The related doctrine of collateral estoppel prevents a controlling issue successfully litigated against a party in one case from being subsequently litigated against the same party in a different case. *County of Cook v. Illinois Local Labor Relations Board*, 214 Ill. App. 3d 979, 985, 574 N.E.2d 754, 758 (1st Dist. 1991). This case and Case No. 2022-CB-0009-C are not based on the same set of operative facts. The operative facts in Case No. 2022-CB-0009-C involved the events that lead to Kugler's discharge from his employment with the Union. The operative facts in this case involve the Union's request that bargaining unit members report other bargaining unit members who participated in organized resistance to COVID safety measures. As a result, res judicata and collateral estoppel do not apply.

Based on the record before us, we find that the Executive Director correctly determined that Kugler lacks the status of educational employee and therefore is not entitled to the protections of the Act. Kugler was not an educational employee within the meaning of Section 2(b) of the Act at any time relevant to this unfair labor charge. He was most recently employed by the Union. The Union is not educational employer within the meaning of Section 2(a) of the Act. Therefore, Kugler lacks standing to allege a violation of Section 14(b)(1).

Finally, the Union argues that the Board should determine that there was no evidence that it engaged in intentional misconduct within the meaning of the Act and should not consider evidence that Kugler submitted in support of his exceptions that he either did not submit during the investigation of the charge or failed to provide copies of to the Union during the investigation. Because Kugler does not have standing to file the charge, we will not address the merits of the charge. Evidence that is not submitted to the Executive Director during the investigation cannot be considered by the Board on appeal. *Lake Forest School District No. 67, 22*

PERI 32, Case Nos. 2005-CB-0003-C and 2005-CA-0008-C (IELRB Opinion and Order, February 21, 2006). Accordingly, we have not considered any newly submitted evidence that Kugler did not submit during the investigation.

#### 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 10, 2023**

Issued: **May 10, 2023**

/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

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**EXECUTIVE DIRECTOR’S RECOMMENDED DECISION AND ORDER**

**I. THE UNFAIR LABOR PRACTICE CHARGE**

On February 14, 2022, Charging Party, Dr. John Kugler (Kugler), filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB) in the above-captioned case, alleging that Respondent, Chicago Teachers Union, Local 1, IFT-AFT, AFL-CIO (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, the Chicago Board of Education or Chicago Public Schools (CBE or CPS) was an educational employer within the meaning of Section 2(a) of the Act. At all times material, the Union was a labor organization within the meaning of Section 2(c) of the Act. At all times material, Kugler was employed by the Union in the capacity of Field Representative. At all times material, the Union was the exclusive representative of a bargaining unit comprised of certain of the CBE’s employees. As relevant, the Union and CBE were parties to a collective bargaining agreement (CBA) for the unit, which provided for a grievance procedure culminating in arbitration.

**B. Facts Relevant to the unfair labor practice charge**

On February 7, 2022, the Union issued the following correspondence titled, “Reporting Anti-Safety Organizing in Schools”, of which Kugler apparently was a recipient:

“While the CPS-CTU Safety Agreement requiring universal masking in schools is still in place and our charter schools also have negotiated agreements containing masking requirements in place, we know that some members of our school communities will seek to resist common sense safety measures as the COVID pandemic continues. While the right-lawsuit that found friendly audience in a

Sangamon County Judge's courtroom, we know that COVID safety measures continue to be critical to the safety of our school communities. We cannot arbitrarily lessen safety measures just when we are coming down from the Omicron surge. Our ability to eventually relax safety protocols depends on our continued vigilance now.

Please use this form to report acute, egregious, or seemingly organized resistance to COVID safety measures in our schools, including organized resistance to mask wearing by students, staff or visitors to our schools, intentional non-compliance with required isolation of COVID positive individuals or quarantine of close contacts, or resistance to regular testing by unvaccinated staff. We want to know where school community members are emboldened by the legal case to resist safety measures so we can help members maintain safety protocols and continue to enforce our Safety Agreement. You may fill this form out more than once if you work in more than one school and need to report acute, egregious or organized resistance to COVID safety measures in more than one school.

Please continue to raise typical safety protocol compliance issues via your School Safety Committee and report unresolved issues within CPS to the District Safety Committee via [ctulocal1.org/report](https://ctulocal1.org/report). You can still find all our COVID safety resources at [ctulocal1.org/safety](https://ctulocal1.org/safety)."

The aforementioned correspondence included a fillable form with the following inquires and contained fields for response:

1. Your name.
2. School name.
3. Your role.
4. Against what policy is your school experiencing significant or increased resistance?
5. From where is the resistance to these safety policies primarily originating?
6. Please further describe the resistance to the safety policies. What policies are being resisted and how? Why do you believe this is acute and serious? What actions have those resisting taken so far?
7. What actions are you and your colleagues willing to take to support enforcement or our existing safety agreement and policies?
8. What kind of help do you think you and your members need?
9. What else do we need to know? What else do you want to tell us?

Kugler filed the instant unfair labor practice charge on February 14, 2022. This is the gravamen of Kugler's charge, in that he alleges the Union's dissemination of the February 7<sup>th</sup>

communication is in breach of its duty of fair representation of all its members in violation of Section 14(b)(1) of the Act.

### **III. THE PARTIES' POSITIONS**

Specifically, the Charging Party argues that the Union's request to collect what it referred to as "intentional non-compliance" information is an arbitrary and capricious attack on its own members, since the relevant judicial Order did not apply to the Chicago Public Schools or its bargaining members. Kugler argues further infringement of his and member rights in that the Union's conduct creates a chilling effect on both free speech and free association of bargaining unit members, and presents a conflict of interest with the representation of his and member concerns. Kugler moreover sets forth that the Union's actions are reckless, coercive, intimidating and threatening to its own bargaining unit members, and said actions are intentional misconduct in representing all bargaining unit employees by trying to identify, classify, label and punish its own bargaining unit members who don't agree with the Union's position on mask mandates or with the Sangamon County Judge's ruling striking down state-wide mask mandates.

The Union contends that Kugler is not an employee with standing to bring the charge at bar, there is no evidence that the Union has breached its duty of fair representation, and lastly, there is no evidence that the Union has restrained any educational employees under Section 14(b)(1) of the Act. Therefore, Respondent requests that the charge be dismissed in its entirety.

### **IV. DISCUSSION AND ANALYSIS**

Section 14(b)(1) of the Act provides that employee organizations, and their agents or representatives are prohibited from restraining or coercing employees in the exercise of the rights guaranteed under the Act, provided that a labor organization or its agents shall commit an unfair labor practice under this part in duty of fair representation cases only by intentional misconduct in representing employees under the Act. 115 ILCS 5/14. Section 2(b) of the Act defines an educational employee or employee as any individual, excluding supervisors, managerial, confidential, short-term employees, student, and part-time academic employees of community colleges employed full or part-time by an educational employer, but shall not include elected officials and appointees of the Governor with the advice and consent of the Senate, firefighters as defined by subsection (g-1) of Section 3 of the Illinois Public Labor Relations Act, and peace officers employed by a State university.

In order to establish that the Union committed intentional misconduct, a charging party must identify a right or rights that were restrained by the Union, then show that the Union's alleged misconduct was aimed at the charging party and occurred because of the charging party's status (race, gender, national origin, etc.) or because of animosity between the charging party and the

Union (such as that based on past support for dissident Unions or personal conflict). *Metropolitan Alliance of Police v. Illinois State Labor Relations Board*, 345 Ill.App.3d 579, 589 (1st Dist. 2003). Intentional misconduct consists of actions that are conducted in a deliberate and severely hostile manner, or fraud, deceitful action or conduct. *Norman Jones v. IELRB*, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995).

As an initial concern, while the Charging Party asserts to have been adversely affected and his rights infringed upon by the Union's actions, the record reveals that Kugler was employed by the *Union* and was not in fact an educational employee at the time the charge was filed or more significantly, the alleged unfair labor practice was committed. Accordingly, Kugler was not a covered party here under and entitled to the protections of the Act, and thus lacks standing to bring the instant cause of action before the IELRB.

#### **V. ORDER**

For these reasons, the Charging Party's unfair labor practice claim that the Union committed a violation of Section 14(b)(1) 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), Ill. Admin. Code tit. 80 §§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, parties are highly encouraged to direct said exceptions and responses, if at all, to the general email account at [ELRB.mail@illinois.gov](mailto: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 16<sup>th</sup> day of December 2022.**

**STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD**

**VICTOR C. BLACKWELL  
Executive Director**

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