STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Sylvia Ortega,	)	
	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2022–CB–0007–C
	)	
Des Plaines Educational Personnel Association, IEA-NEA,	)	
	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On April 25, 2022, Sylvia Ortega (Ortega or Charging Party) filed a charge with the Illinois Educational Labor Relations Board (Board) in the above-captioned matter alleging that Des Plaines Educational Personnel Association, IEA-NEA (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. Ortega filed exceptions to the EDRDO, the Union filed a response to exceptions and Ortega filed a response to the Union's response. For the reasons discussed below, we affirm the EDRDO.[1]

[1] The IELRB's Rules provide for exceptions, briefs supporting those exceptions, and responses to the exceptions. The Rules do not provide for a reply to a response to exceptions. 80 Ill. Adm. Code 1120.30(c). It is also not the IELRB's practice to allow parties to file briefs in addition to those for which the Rules provide. In *East Maine School District 63*, 13 PERI 1041, Case No. 94-CA-0024-C (IELRB, February 27, 1997), the IELRB denied a party's motion to file a reply for these reasons. For that reason, we have not considered Ortega's response to the Union's response to her exceptions.

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

Ortega's charge alleges that the Union violated its duty of fair representation in violation of Section 14(b)(1) of the IELRA. 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." 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); *University of Illinois at Urbana (Rochkes)*, 17 PERI 1054, Case Nos. 2000-CB-0006-S, 2001-CA-0007-S (IELRB Opinion and Order, June 19, 2001). Thus, intentional misconduct is more than mere negligence or the exercise of poor judgment. *Chicago Teachers Union (Oden)*, 10 PERI 1135, Case No. 94-CB-0015-C (IELRB Opinion and Order, November 18, 1994); *NEA, IEA, North Riverside Education Ass'n (Callahan*), 10 PERI 1062, Case No. 94-CB-0005-C (IELRB Opinion and Order, March 29, 1994); *Rock Island Education Association, IEA-NEA (Adams)*, 10 PERI 1045, Case No. 93-CB-0025-C (IELRB Opinion and Order, February 28, 1994).

The Executive Director dismissed a portion Ortega's charge because it was untimely filed and the remainder of her charge because it was without merit. Ortega asserts in her exceptions that her failure to act in a timely manner in this case was because she had never been in this situation and was unfamiliar with the process. She also attributes this to Union members being afraid of speaking up because they did not want to be harassed or lose their jobs, though the record indicates that Ortega herself was not a Union member at any time relevant to her charge. Section 15 of the Act provides that "[n]o order shall be issued upon an unfair labor practice occurring more than 6 months before

the filing of the charge alleging the unfair labor practice." Only acts that occur within the six-month period can serve as the basis for a timely charge. *Jones v. Illinois Educational Labor Relations Board*, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995). The six-month period begins to run when the charging party knows or has reason to know that an unfair labor practice has occurred, regardless of whether that person understands the legal significance of that conduct. *Jones*, 272 Ill. App. 3d 620, 650 N.E.2d 1098; *Wapella Education Association v. Illinois Educational Labor Relations Board*, 177 Ill. App. 3d 153, 531 N.E.2d 1371 (4th Dist. 1988). Here, Ortega was aware of the portion of the Union's alleged misconduct in its interpretation or misinterpretation of the CBA regarding longevity payments in May 2021, almost a year before she filed her unfair labor practice charge.

The timely portion of the charge involves the Union's interpretation of the CBA as allocating Ortega fifteen vacation days per year rather than twenty. The record evidence does not demonstrate that the Union engaged in intentional misconduct toward Ortega. She made no showing that the Union' s complained-of interpretation of the CBA was based on something other than a good faith evaluation of the text or the best interests of its membership as a whole. The exclusive representative has a wide range of discretion in contract interpretation, 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 the union' s conduct appears to have been motivated by vindictiveness, discrimination, or enmity. *Jones*, 272 Ill. App. 3d 612, 650 N.E.2d 1092. Even if the Union was incorrect, negligence on the part of the Union does not amount to an unfair labor practice because the Union acted based on its good faith assessment of the merits of the claim. *Adams*, 10 PERI 1045. As there is no evidence indicating that the Union was unlawfully motivated, Ortega has failed to present grounds upon which to issue a complaint for hearing.

The EDRDO instructed parties to file any exceptions and responses to the Board's general email address and its General Counsel at its Chicago office. The Union argues in its response to exceptions that the Board should strike Ortega's exceptions because

she did not tender her exceptions by mail to the Board's General Counsel. Ortega filed her exceptions by email to the Board's general email address. The Board's office staff forwarded the General Counsel a copy of the exceptions. In practice, this is the usual manner that the General Counsel receives exceptions. The Union is incorrect in its assertion that the EDRDO directed Ortega to mail her exceptions to the General Counsel. The EDRDO only states that exceptions and responses are to be "filed" with the Board's General Counsel at the Board's Chicago office. Filing can be by personal service, overnight delivery service, U.S. mail, electronically, or facsimile. 80 Ill. Adm. Code 1100.20(a). The Union is correct that the record does not indicate Ortega served her exceptions on the General Counsel through any of these methods. However, this is not grounds to strike her exceptions since Ortega clearly served them on the Board at its general email address. The Union also suggests that the Board should strike Ortega's exceptions because she failed to include a certificate of service. However, her email to the IELRB indicated the exceptions were sent to the Union's attorney of record. By its response the Union was given notice of the exceptions, an adequate opportunity to respond, and clearly was not prejudiced by Ortega's lack of formal certificate of service. Accordingly, we decline to strike Ortega's exceptions. Nevertheless, Ortega raises nothing in her exceptions to upset the Executive Director's dismissal of her charge

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: **June 18, 2024**
Issued: **June 18, 2024**

/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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STATE OF ILLINOIS
ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

Sylvia Ortega, Charging Party and Des Plaines Educational Personnel Association, IEA-NEA, Respondent	)	Case No. 2022-CB-0007-C

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On April 25, 2022, Charging Party, Sylvia Ortega, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Des Plaines Educational Personnel 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, Ortega was an educational employee within the meaning of Section 2(b) of the Act, employed by Des Plaines Community Consolidated School District 62 (District or Employer), in the title or classification of Receptionist. 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 Ortega. At all times relevant, Ortega 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), for the unit to which Ortega belongs, however, Ortega is not a member of the Union.

B. Facts relevant to the unfair labor practice charge

On or about June 8, 2020, the local Union president, Becky Mazurek, learned there were possible discrepancies in the longevity payments made to certain of the Union's bargaining unit members. Mazurek investigated the issue and on June 11, 2020, contacted the District's associate superintendent of human resources, Michael Amadei, to notify him she had determined there appeared to be an issue with longevity payments made to certain of the Union's bargaining unit members. Subsequently, Mazurek, Amadei, and other District employees undertook a lengthy review of past longevity payments. Ultimately, the Union and District concluded there were a number of unit employees who had received larger longevity payments than which they were entitled to under the CBA, and others whom had received smaller longevity payments than which they were entitled to under the CBA. In May 2021, the Union and District met on several occasions, with groups of underpaid and overpaid unit members, including Ortega, during which the District noted it was not seeking reimbursement from the overpaid employees. Additionally, again in May 2021, the Union and District met individually with Ortega and each of the other overpaid unit members. On June 25, 2021, the Union and District signed-off on a memorandum of understanding, in which they clarified the longevity language in the CBA.

In the course of examining the longevity payment discrepancies, on or about February 12, 2021, Mazurek and Amadei discovered there were inaccuracies in the manner in which vacation days had been allotted. Ortega and others had been receiving twenty vacation days per year, rather than the fifteen to which they were entitled according to the CBA. On August 18, 2021, the Union and District entered into a memorandum of agreement, listing unit members who had received more vacation days than they were entitled, and correcting the allotment going forward. Again, the District did not seek reimbursement from the employees who received more vacation days than to which they were entitled. It is unclear whether the Union or District formally notified Ortega, and the others similarly situated, their vacation time was being reduced, or if such notice was given, when it occurred.

On or about March 2, 2022, Ortega contacted Amadei to file a grievance regarding the interpretation of the language concerning longevity pay and the allotment of vacation days. On March 4, 2022, the Union filed the grievance, and on March 16, 2022, the Union and District met regarding it. On

April 1, 2022, the District denied the grievance. Ortega later notified the Union she no longer wished to pursue the grievance.

III. THE PARTIES' POSITIONS

Herein, Ortega contends the Union violated the Act in that it engaged in misconduct by misinterpreting the language in the CBA, regarding longevity payments and the allocation of vacation days. Respondent Union denies its actions in this matter were unlawful, and further denies that it treated Ortega any differently than similarly situated bargaining unit members. In addition, the Union asserts Ortega's charge was not timely filed.

IV. DISCUSSION AND ANALYSIS

A portion of the instant charge is untimely filed. Pursuant to Section 15 of the Act, no order shall issue based upon any unfair labor practice occurring more than six months prior to the filing with the Board, of the charge alleging the unfair labor practice. The six-month limitations period begins to run when the person aggrieved by the alleged unlawful conduct either has knowledge of it, or reasonably should have known of it. Jones v. IELRB, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995); Charleston Community Unit School District No. 1 v. IELRB, 203 Ill. App. 3d 619, 561 N.E.2d 331, 7 PERI ¶4001 (4th Dist. 1990); Wapella Education Association v. IELRB, 177 Ill. App. 3d 153, 531 N.E.2d 1371 (4th Dist. 1988).

Herein, Ortega filed her charge on April 25, 2022, and therefore, the date six months prior to her filing was October 25, 2021. Accordingly, alleged unlawful conduct she knew of before October 25, 2021, or reasonably should have known of by that date, cannot be the subject of a timely charge.

There is no dispute Ortega was aware of the complained-of conduct with regard to the longevity payments sometime in May 2021, when the Union and District met on several occasions with the underpaid and overpaid unit members, including individual meetings with Ortega and the other overpaid unit members. Yet, despite that knowledge, Charging Party did not file the instant charge until April 25, 2022, eleven months after she knew of the manner in which the Union had interpreted the longevity pay language. Because Ortega filed the instant unfair labor practice charge more than six months after she knew of the complained-of conduct with regard to the longevity payments, it is untimely.

As to the remainder of Ortega's charge, it is timely, but without merit. Her allegations take issue with the Union's interpretation of the language in the CBA, allocating her fifteen vacation days per year, rather than twenty.

However, 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.]

Charging Party's claim is a duty of fair representation case, 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 Ortega or due to her status. Moreover, Ortega made no showing she was treated differently from other similarly situated employees, or the Union's assent to the agreements with the District, concerning longevity pay and the allotment of vacation, 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.

The evidence presented indicated the Union, after learning of discrepancies in longevity pay to its unit members, undertook a rigorous investigation and when it determined there in fact were such

discrepancies, it invited the District to join in its review, which ultimately led to an agreement on the issue, whereby the District would not seek reimbursement from employees, like Ortega, who had been overpaid. In the course of the investigation into the longevity pay issue, the Union and District found instances where vacation time was not properly allocated, and reached an agreement to correct the oversights without the District receiving reimbursement from employees, like Ortega, who had been receiving more vacation time than she was entitled to under the CBA. Moreover, despite the Union's agreements with the District resolving the longevity pay and vacation allotment issues, it pursued a grievance on Ortega's behalf, challenging those very agreements.

The conduct herein, complained of by Ortega, 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, at ELRB.mail@illinois.gov and with the Board's General Counsel, 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103. Pursuant to Section 1100.20(e) of the Rules, the exceptions sent to the Board must contain a certificate of service, that is, "**a written statement, signed by the party effecting service, detailing the name of the party**

served and the date and manner of service." If any party fails to send a copy of its exceptions to the other party or parties to the case, or fails to include a certificate of service, that party's appeal will not be considered, and that party's appeal rights with the Board will immediately end. See Sections 1100.20 and 1120.30(c) of the Rules, concerning service of exceptions. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions, and unless the Board decides on its own motion to review this matter, this Recommended Decision and Order will become final and binding on the parties.

Issued in Chicago, Illinois, this 31ST day of January, 2024.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Executive Director

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