STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Mary Esposito-Usterbowski, *et al.*,[1]	)	
	)	
Charging Parties	)	
	)	
and	)	Case No. 2023–CB–0011–C
	)	
Chicago Teachers Union, Local 1, IFT-AFT, AFL-CIO,	)	
	)	
	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On March 31, 2023, Charging Parties, Mary Esposito-Usterbowski, *et al.*, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board or IELRB) in the above-captioned matter. The charge alleged that Respondent, Chicago Teachers Union, Local 1, IFT-AFT, AFL-CIO (Union), breached its duty of fair representation in violation of Section 14(b)(1) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, *et seq.* (Act or IELRA) when it intentionally misused dues for political activities. Following an investigation, the Board's Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge in its entirety. The Executive Director determined that the conduct alleged in the charge was an internal union matter over which the Board does not have jurisdiction to remedy. Further, he found that the complained of conduct did not restrain or coerce the Charging Parties in the exercise of their rights under Section 3 of the IELRA because it was not in connection with matters subject to collective bargaining. This case is before the Board because

[1] In addition to Esposito-Usterbowski, the Charging Parties are: Froy Jimenez, Phil Weiss, David Arredondo, Amy O. Bonner, Therese M. Boyle, Julianne Burke, Catherine Carpenter, Kathleen Cleary-Powers, Ann Donovan, Sandra Duignan, Maura Escherich, Bernice S. Eshoo, Elizabeth Schneider Fils, Karen Finnin, Shawn Finnin, Maureen Griffin, Brigid Jacobsen, Theresa Lakawitch, Amy Basinski Long, Francis MacDonald, Juliana Morgan, Peggy Murray, Julie O'Brien, Regina M. O'Connor, Laura O'Gara, Lori Phillips, Claire Roberts, Mariana M. Romero, Emily Schumacher, Clare Spencer, Kathryn Town, and Ramona Zavala.

the Charging Parties 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

The Charging Parties argue in their exceptions that the Executive Director's determination that the Board does not have jurisdiction over their allegations was incorrect, that their allegations do not pertain merely to internal union matters, and that the Union's conduct denies them benefits. According to the Charging Parties, the Union made payments to Political Action Committees that were either loans or aggregated, individual dues dollars from its members. When employees apply for Union membership, the Union gives them the option of making voluntary contributions to its Political Action Committee in addition to their membership dues. The Union's member handbook provides that its Political Action Committee relies on extra contributions from members to support progressive candidates, as dues are not used for political purposes. As a general proposition, a union's constitution or by-laws are considered internal union matters. *East St. Louis Federation of Teachers (Washington)*, 4 PERI 1132, Case No. 88-CB-0008-S (IELRB Opinion and Order, September 12, 1988). The same is true regarding the membership handbook in this case. The IELRA does not extend the union's duty of fair representation to internal union affairs. The benefits the Charging Parties identify as being denied by the Union, that their dues were used for political purposes, are part of the Union's membership handbook rather than the IELRA. Section 3(a) of the IELRA guarantees educational employees the right to "organize, form, join, or assist in employee organizations or engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or bargain collectively through representatives of their own free choice and ... such employees shall also have the right to refrain from any or all such activities." Section 3 of the IELRA was not meant to control or regulate the internal relationship of an employee organization and its members and therefore allegations which relate to internal union matters

that do not infringe upon Section 3 rights do not violate the IELRA. *East St. Louis Federation of Teachers*, 4 PERI 1132.

The Charging Parties assert in their exceptions that Section 11.1(g) grants the Board jurisdiction over their allegations.[2] Section 11.1(g) provides that the Board "shall have exclusive jurisdiction over claims under Illinois law that allege an educational employer or employee organization has unlawfully deducted or collected dues from an educational employee in violation of this Act." However, the Charging Parties' claim was not that the Union acted unlawfully when it collected dues from them, it was that it misused the dues in violation of the internal policy set forth in its membership handbook. As discussed above, a violation of a union's internal rules is not within this Board's jurisdiction to remedy. *East St. Louis Federation of Teachers*, 4 PERI 1132. The Union correctly noted in its response to exceptions that Section 11.1(g) does not apply to the dispute at issue here, where the Charging Parties willingly pay dues but are unhappy with how they were used. Instead, 11.1(g) applies to the improper deduction of those dues, which the Charging Parties do not dispute.

According to the Charging Parties, misuse of union dues infringes on their Section 3 rights as dues are connected to wages, a mandatory subject of bargaining, because dues can be deducted from pay and remitted to the Union by their employer. But employees are no longer required to pay union dues since the United States Supreme Court's decision in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018). Additionally, the dues authorization form on its face indicates that dues deduction from payroll is voluntary on the employees' part.

The Charging Parties contend that the Union's duty to represent its members is broader than the EDRDO suggests. In support of this they cite *Norman Jones v. IELRB*, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995). In that case, the court indicated that to establish a breach of the duty of fair representation under the intentional misconduct standard, a charging party

[2] The Union contends in its response to exceptions that the Charging Parties waived their argument regarding Section 11.1(g) of the IELRA because they did not raise it during the investigation. The Charging Parties make their assertion that the Board has jurisdiction over this matter because it concerns dues in response to the Executive Director's dismissal of the charge for that very reason, that the Board does not have jurisdiction over internal union matters. Accordingly, the Charging Parties did not waive this argument and it is appropriate for us to consider.

must show substantial evidence of fraud, deceitful action, or dishonest conduct, or deliberate and severely hostile and irrational treatment. Although not citing or relying specifically on the analysis set forth in *Norman Jones*, the EDRDO does not take a narrower view of the Union's duty of fair representation than the court. What is more, the Charging Parties have not submitted substantial evidence of fraud, deceitful action, or dishonest conduct, or deliberate and severely hostile and irrational treatment in the record regarding their rights under the IELRA.

Finally the Charging Parties ask that, insofar as the EDRDO accurately relied on Board law, the Board reconsider its orders on a labor organization's duty of fair representation in light of Article I, Section 25 of the Illinois Constitution. We decline to address the merits of this argument, as it was raised for the first time in the Charging Parties' exceptions to the EDRDO.[3] The Board has repeatedly held that to consider such newly raised issues at this stage would be prejudicial to the opposing party. *North Shore School District 112*, 39 PERI 60, Case No. 2022-CA-0003-C (IELRB Opinion and Order, October 20, 2022); *Niles Elementary School District No. 71*, 9 PERI 1057, Case No. 92-CA-0075-C (IELRB Opinion and Order, March 12, 1993); *Chicago Board of Education*, 6 PERI 1052, Case Nos. 90-CA-0012-C & 90-CA-0013-C (IELRB Opinion and Order, March 14, 1990). Even assuming, arguendo, we were to address this issue, we would not reconsider our longstanding precedent that whether an employee has a right protected by the constitution is beyond the purview of this Board. *George S. Patton SD 113*, 10 PERI 1118, Case No. 94-CA-0050-C (IELRB Opinion and Order, August 19, 1994).

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

[3] In contrast to fn. 1, where it was appropriate for us to consider the Charging Parties' 11(g) argument because it was made in response to and as a means of appealing the EDRDO.

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: **August 16, 2023**
Issued: **August 17, 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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Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO,	)	
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EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On March 31, 2023, Charging Parties, Mary Esposito-Usterbowski, *et al.*, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO (CTU or Union), violated Section 14(b) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.*[1] 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, Charging Parties were educational employees within the meaning of Section 2(b) of the Act, employed by the Chicago Board of Education (CBE or Employer), in various job titles or classifications.[2] Respondent Union is a labor organization within the meaning of Section 2(c) of the Act,

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[1]Charging Parties, in addition to Esposito-Usterbowski, are a group of thirty-two persons, listed by name as follows: Froy Jimenez; Phil Weiss; David Arredondo; Amy O. Bonner; Therese M. Boyle; Julianne Burke; Catherine Carpenter; Kathleen Cleary-Powers; Ann Donovan; Sandra Duignan; Maura Escherich; Bernice S. Eshoo; Elizabeth Schneider Fils; Karen Finnin; Shawn Finnin; Maureen Griffin; Brigid Jacobsen; Theresa Lakawitch; Amy Basinski Long; Francis MacDonald; Juliana Morgan; Peggy Murray; Julie O'Brien; Regina M. O'Connor; Laura O'Gara; Lori Phillips; Claire Roberts; Mariana M. Romero; Emily Schumacher; Clare Spencer; Kathryn Town; Ramona Zavala.

[2]With at least one exception—one of the Charging Parties indicated she was a retiree and no longer employed by the CBE, and by definition, is not a public employee within the meaning of Section 2(b) of the Act. Western Springs Education Ass'n, IEA-NEA/Barbara Pieper/Western Springs School Dist. 101, 7 PERI ¶1014, 1990 WL 10610727 (IL ELRB 1990)(without status of educational employee, charging party not entitled to the protections of the Act); Chester Kulis/Oakton Community College, 31 PERI ¶105, 2015 WL 9918442 (IL ELRB E.D. 2015); Daniel Galemb/Loyola University of Chicago, 6 PERI ¶1157, 1990 WL 10610895 (IL ELRB E.D. 1990). See also, Allied Chemical and Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co., Chemical Division, 404

and the exclusive representative of a bargaining unit comprised of certain of the CBE's employees, including the Charging Parties. The CBE 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), with a term from July 1, 2019 to June 30, 2024, for the bargaining unit to which Charging Parties belong.

B. Facts relevant to the unfair labor practice charge

On February 9, 2023, the Union's Political Action Committee filed an A-1 with the Chicago Board of Elections, in which it disclosed it received a loan of $275,000 from the Union. On the same day, another Union Political Action Committee affiliated with the Illinois Federation of Teachers filed an A-1 with the Chicago Board of Elections, in which it disclosed it received a loan of $140,000 from the Union. Neither loan was voted on or approved by the Union's house of delegates, however, the Union notified its members of the loans in a February 12, 2023 email, explaining the loans would be repaid with funds from members' voluntary political action committee payments collected between the end of February and the end of June 2023.

Subsequently, the Chicago Board of Elections questioned the Union's two Political Action Committees (PACs) about the loans, contending they violated the caps on political campaign contributions. The PACs' representative responded, explaining the contributions were not actually loans, but rather aggregated, individual dues dollars from union members, which are not subject to the same cap limitations as loans.

When CBE employees apply for membership with the CTU, the Union provides them the option of making voluntary contributions to the Union's Political Action Committee in addition to their membership dues. Additionally, the Union's member handbook provides "[o]ur dues are not used for political purposes—so our [Political Action Committee] relies on extra contributions from our members to support progressive candidates."

U.S. 157, 172 (1971)(retirees not employees within meaning of National Labor Relations Act); Matthews v. Chicago Transit Authority, 2016 IL 117638, ¶46, 51 N.E.3d 753, 767 (retirees not employees within meaning of Illinois Public Labor Relations Act).

III. THE PARTIES' POSITIONS

Herein, Charging Parties contend, regardless of whether classified as loans or individual, aggregated dues, the payments to the PACs constituted a deliberate and intentional reallocation of the Union's resources and dues away from advocating for the interests of its members, and toward political activity. Charging Parties further contend this reallocation is in direct contradiction of the statement in the Union's member handbook which provides member dues will not be used for political purposes. Despite the Union's clear representation that sit will not use dues for political purposes, the Charging Parties' assert their evidence plainly indicates the Union knowingly, intentionally, and without prior notice to its general membership or granting its general membership an opportunity to provide input, diverted membership dues dollars to its PACs for the purpose of making political contributions and influencing elections. Charging Parties contend the Union's conduct in this regard is in violation of its duty of fair representation to its members.

The Union contends an unfair labor practice charge cannot be based on alleged violations of a union's internal rules, thus depriving the Board of jurisdiction. The Union also contends there is no evidence it engaged in intentional misconduct. Additionally, the Union asserts several of the Charging Parties were candidates for office, or supporters of such candidates, on a slate which did not prevail in the internal Union election held in May 2022. The Union further asserts it engaged in democratic policy making, and Charging Parties simply disagree with the Union's policy decisions. The Union seeks sanctions against the Charging Parties, pursuant to Section 15 of the Act.

IV. DISCUSSION AND ANALYSIS

Under Section 3 of the Act, educational employees are guaranteed the right of self-organization, the right to form, join or assist any labor organization or engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection. Likewise, under Section 3, educational employees are guaranteed the right to refrain from any or all such activities. Section 14(b)(1) of the Act, in relevant part, makes it an unfair labor practice for a labor organization or its agents to restrain or coerce educational employees in the exercise of their Section 3 rights.

Assuming the facts are as Charging Parties allege, in which they contend that the Union, in direct contradiction of the assertion in its member handbook that it will not use member dues for political

purposes, knowingly, intentionally, and without prior notice to its general membership or granting its general membership an opportunity to provide input, diverted membership dues dollars to its PACs for the purpose of making political contributions and influencing elections. The complained-of conduct does not violate the Act's duty of fair representation, nor any other provision of the Act. The Board has consistently found that to establish a violation of Section 14(b)(1) of the Act, a complainant must identify rights under the Act which have been the subject of restraint or coercion by a labor organization—harm to membership in the union through violations of the its constitution or by-laws, or as in this case, the member handbook, is insufficient—and instead need to show the right to engage in or to refrain from engaging in union or protected concerted activity, has been affected. Washington/East St. Louis Federation of Teachers, Local 1220, IFT-AFT, 4 PERI ¶1132, 1988 WL 1588608 (IL ELRB 1988). Rather than the duty of fair representation, the instant case, at best, concerns internal union matters, which the Board has previously held are not within its jurisdiction to remedy. Id. In short, Charging Parties' charge fails to present grounds upon which to issue a complaint for hearing.

The Union admits it made certain policy decisions which Charging Parties disagreed with, and thus, the issue then is whether the Union's conduct in this regard restrains or coerces Charging Parties in the exercise of their Section 3 rights. Under the facts of this case, the complained-of conduct does not restrain nor coerce Charging Parties in the exercise of their Section 3 rights because it is not in connection with matters subject to collective bargaining. Under the Act, the Union is responsible for equitably carrying out the duties of the exclusive representative of the employees in the bargaining unit, in dealing with the employer on labor-management issues, and the failure or refusal to do so, for example, in retaliation for a bargaining unit employee's decision to campaign or run against the slate of candidates which ultimately prevailed, or in retaliation for a bargaining unit employee's decision to refuse to pay union dues, restrains or coerces such employees in the exercise of their Section 3 rights, and therefore, violates Section 14(b)(1) of the Act. Steele v. Louisville & N.R. Co., 323 U.S. 192, 202-203 (1944) (because collective bargaining does not permit each employee to fashion his/her own agreement with the employer, the exclusive bargaining representative must act in the interests of all employees).

In other words, the outcome herein turns on what benefits or opportunities, if any, the Union denied Charging Parties. Had the Union negotiated or agreed to any provision in the CBA which in any way

worked to particularly disadvantage Charging Parties due to their support for the opposition slate, or had it prevented Charging Parties from receiving all benefits of the CBA due to their status in this regard, then a complaint would be warranted. However, Charging Parties did not provide evidence, nor even allege, that the Union engaged in this type of conduct.

Lastly, in this matter, the Union seeks sanctions against the Charging Parties pursuant to Section 15 of the Act, which provides in relevant part that sanctions may be issued at the Board's discretion if a party: 1) has made allegations or denials without reasonable cause and found to be untrue; or 2) has engaged in frivolous litigation for the purpose of delay or needless increase in the cost of litigation. The test for determining whether a party has made factual assertions which were untrue and made without reasonable cause is an objective one, one of reasonableness under the circumstances. Black Hawk College Teachers Union, Local 1836, IFT-AFT, AFL-CIO/Black Hawk College, District 503, 9 PERI ¶1092, 1993 WL 13698945 (IL ELRB 1993); John Hancock Mutual Life Insurance Co., 272 Ill. App. 3d 1067 (1995); Schinkel v. Board of Fire and Police Commissioners of Village of Algonquin, 262 Ill. App. 3d 310, appeal denied, 157 Ill. 2d 522 (1994); Edwards v. Estate of Harrison, 235 Ill. App. 3d 213 (1992). Whether a party has engaged in frivolous litigation must be determined based on whether its charge, or its defenses to the charge, were made in good faith or represented a "debatable" position. Id.

The Union contends it is entitled to sanctions as Charging Parties filed the charge despite the lack of legal basis for their position, and forced the Union to respond—in short, the essence of frivolous litigation. Moreover, the Union asserts Charging Parties filed their charge on March 31, 2023, and sought injunctive relief, as a publicity stunt two business days before the April 4, 2023, Chicago mayoral run-off election. Yet, the Union provided no evidence Charging Parties intentionally misrepresented the underlying facts or otherwise made false allegations. Likewise, nothing in the record indicates through the course of bringing the instant charge, Charging Parties acted in anything less than good faith. Indeed, the Charging Parties lacked a legal basis for their position, but such is not indicative of bad faith, especially when differentiating between internal union matters and the duty of fair representation, an area in which many practitioners stumble. The Union's assertion that the Charging Parties filed their charge as a publicity stunt is supported by nothing more than conjecture. Without evidence Charging Parties engaged in bad faith or misused the Board's process, the Union's motion for sanctions is hereby denied.

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 14th day of April, 2023.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Victor E. Blackwell
Executive Director