STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Lisa Reitman,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2024-CB-0011-C
	)	
District 65 Educators' Council, IEA-NEA,	)	
	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On February 15, 2024, Lisa Reitman (Reitman or Charging Party) filed a charge with the Illinois Educational Labor Relations Board (Board) in the above-captioned matter alleging that District 65 Educators' Council, IEA-NEA (Educators' Council or Respondent) 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. Reitman filed exceptions to the EDRDO. The Educators' Council did not file a response to Reitman's exceptions.

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 except as necessary to assist the reader.

III. Discussion

The Board agent assigned to investigate the charge served the EDRDO on Reitman, via email to her attorney of record, on July 3, 2024 at 2:12 pm. Exceptions to an EDRDO must be filed no later than 14 days after service of the EDRDO. 80 Ill. Adm. Code 1120.30(c). "[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." 80 Ill. Adm. Code 1100.20(a). The Board's office is open during

normal business hours from 8:30 a.m. to 5:00 p.m. on weekdays that are not legal holidays. 2 Ill. Adm. Code 2675.10 & 2676.500(c). Therefore, to be timely filed, the Board must have received Reitman's exceptions no later than 5:00 p.m. on July 17, 2024. Reitman's attorney filed her exceptions by email with the Board at 11:59 p.m. on July 17, 2024, so they are considered to have been filed the following business day, July 18, 2024. Accordingly, Reitman filed her exceptions after the date on which 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 Reitman's exceptions as untimely filed.

Even if Reitman's exceptions had been timely, nothing in her exceptions warrant the relief she requests. Reitman asks in her exceptions that the EDRDO be modified to hold that she was a member of the Educators' Council at the time she sought its assistance or, in the alternative, modified to reflect that there is a material dispute of fact as to whether she was an Educators' Council member at the time she sought the Union's assistance. She acknowledges that neither of the modifications would impact the EDRDO's result.

In her exceptions, Reitman conflates union membership, educational employee status and bargaining unit membership. In the conclusion section of her exceptions, she specifically requests the Board modify the EDRDO to indicate she is an Educators' Council member. Yet several paragraphs prior she argued that the EDRDO should be reversed where its holdings that she is no longer an educational employee and was no longer in the Union's bargaining unit lead to the conclusion that the Educators' Council

had no duty to assist her with her pension issue. Reitman was employed by Evanston Community Consolidated School District (District). The District is an educational employer within the meaning of the Act. *Evanston Community Consolidated School District 65*, 11 PERI ¶ 1005, No. 95-CA-0030-C (IELRB EDRDO, February 7, 1995). Under Section 2(b) of the Act, any individual employed full or part time by the District would be an educational employee within the meaning of the Act, so long as they are not a supervisor, manager, confidential employee, short term employee or student.[1] A bargaining unit "means any group of employees for which an exclusive representative is selected." 115 ILCS 5/2(m). The bargaining unit relevant to this matter is comprised of certain of District's employees, including those in the title or classification of teacher. The Educators' Council is the exclusive representative of that bargaining unit. Union members in this case would be members of the bargaining unit who chose to join the Educators' Council. All District employees are not necessarily educational employees within the meaning of Section 2(b) of the Act. That is because some District employees may fall under one of the statutory exclusions, such as short-term employee. Not all the District's employees who are educational employees within the meaning of Section 2(b) of the Act are members of the bargaining unit at issue in this case. Either because their title is not part of any bargaining unit or because their title is part of another bargaining unit of the District's employees, such as certain administrative assistant and secretary titles that are part of the bargaining unit represented by District 65 Educational Secretarial and Clerical Association, IEA-NEA. See *Evanston Community Consolidated School District 65*, 39 PERI ¶ 113, No. 2023-UC-0016-C (IELRB EDRDO, March 31, 2023). Finally, not all members of a bargaining unit are necessarily members of the union that has been certified as the exclusive representative of that bargaining unit. *See Janus v. AFSCME 31*, 138 S. Ct. 2448 (2018).

[1] There are additional types of employees specified as included or excluded from the definition of educational employee in Section 2(b) of the Act that are unlikely to apply to the District.

The EDRDO does not say that Reitman is not a member of the Educators' Council. It says that upon her June 6, 2023 retirement, she was no longer an educational employee within the meaning of Section 2(b) of the Act and was no longer in the Educators' Council bargaining unit. Prior to her retirement, Reitman was an educational employee and a member of the Educators' Council bargaining unit. But the conduct at issue, the Educators' Council's failure to assign her an attorney to handle her pension issue, occurred in September and October 2023, months after her retirement. It is true that Reitman worked for the District as a substitute teacher for eight days around the time the alleged misconduct occurred. But the record does not indicate that the title or position of substitute teacher is part of the Educators' Council bargaining unit. What is more, short term employees are excluded from the definition of educational employee in Section 2(b) of the Act. In unfair labor practice charges alleging a breach of the union's duty of fair representation, the threshold inquiry is whether the employee bringing the claim is a member of the union's bargaining unit. That is because the duty of fair representation obligates a union to represent fairly only the interests of all the members of the bargaining unit. *International Board of Electrical Workers v. Foust*, 442 U.S. 42, 47 (1979). The record indicates that Reitman was not a member of the bargaining unit at the time the alleged misconduct occurred. It follows that the EDRDO correctly determined that Educators' Council accordingly did not have a duty to represent her.

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the exceptions are stricken. 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: **October 16, 2024**
Issued: **October 16, 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

Lisa Reitman, Charging Party and District 65 Educators' Council, IEA-NEA, Respondent	)	Case No. 2024-CB-0011-C

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On February 15, 2024, Charging Party, Lisa Reitman, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, District 65 Educators' Council, 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 times material, Reitman was an educational employee within the meaning of Section 2(b) of the Act, employed by Evanston Community Consolidated School District 65 (District or Employer), in the title or classification of Educator. Respondent Union is a labor organization within the meaning of Section 2(c) of the Act, and the exclusive representative within the meaning of Section 2(d) of the Act, of a bargaining unit comprised of certain of the District's employees, including those in the title or classification of Educator. At times relevant, Reitman 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 Reitman belonged.

B. Facts relevant to the unfair labor practice charge

On February 1, 2023, Reitman emailed the District's human resources department to notify it she needed to retire a year earlier than previously planned, due to her husband's grave health issues. Reitman subsequently retired on or about June 6, 2023, at which time, she also left the Union's bargaining unit.

On or about September 30, 2023, Reitman notified Trisha Baker, the local Union president, she had received a reduced pension benefit because she was approximately eight days short of the threshold required to qualify for a full, non-reduced pension from the Teachers Retirement System (TRS). Baker contacted District staff members and met with them on several occasions, in an attempt to resolve Reitman's situation. After these discussions, the District notified Baker it was willing to hire Reitman as a substitute teacher to make up the eight days she needed to qualify for a full, non-reduced TRS pension.

Reitman later worked as a substitute teacher for the eight days she needed to reach full retirement, receiving her final paycheck on November 15, 2023. At or about the time Reitman received her final paycheck, the District notified TRS, Reitman had made up the time needed to qualify for a full, non-reduced TRS pension. Subsequently, Reitman began receiving her full, non-reduced TRS pension.

Prior to contacting Baker, on or about September 26, 2023, Reitman contacted the Illinois Education Association (IEA), with which her local Union is affiliated, to seek assistance with the reduced pension benefit issue. Reitman discussed the matter with Margaret Krulee, an IEA uniserv director, who assists local IEA affiliates in supporting their bargaining units. Krulee later consulted with an IEA attorney about how to assist Reitman with obtaining full pension credit, but did not assign an IEA attorney to personally represent Reitman. In or about early October 2023, Reitman contacted Krulee, requesting to meet with the IEA attorney assigned to her case. Krulee responded by explaining no IEA attorney was assigned to Reitman's pension matter, as there was no legal issue involved. Additionally, Krulee noted the local Union was on course to successfully resolve Reitman's issue, so she could begin drawing a full, non-reduced pension.

III. THE PARTIES' POSITIONS

Reitman contends the Union violated Section 14(b)(1) of the Act given the manner in which it handled her pension issue. The Union denies it violated the Act and further denies it treated Reitman any differently than similarly situated bargaining unit members.

IV. DISCUSSION AND ANALYSIS

Reitman retired on or about June 6, 2023, thus, from that point on, she was no longer an educational employee within the meaning of Section 2(b) of the Act and was no longer in the Union's bargaining unit.

Consequently, as an initial matter, the Union would appear to have no duty to assist Reitman with her pension issue. Even if the Union had such a duty, Reitman's claim lacks merit.

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.]

A two-part standard is used to determine whether a union has committed intentional misconduct within the meaning of Section 14(b)(1). Under this 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 Reitman or due to her status. Moreover, Reitman made no showing she was treated differently from other similarly situated employees or recent retirees, or the Union's decisions in connection with resolving her pension issue were 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. Moreover, the evidence plainly indicates the Union understood Reitman's predicament, worked expeditiously to resolve it, and was ultimately successful in obtaining Reitman her full, non-reduced TRS pension. Likewise, there is no allegation or evidence the Union was at fault or somehow complicit for Reitman initially only qualifying for a reduced pension benefit.

The Union's conduct herein 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 3rd day of July, 2024.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Victor E. Blackwell
Executive Director