STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Naperville Community Unit Sch. Dist. 203,	)	
	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2024-CB-0003-C
	)	
Naperville Unit Education Ass'n, IEA-NEA,	)	
	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On August 25, 2023, Naperville Community Unit School District 203 (District or Employer or Charging Party) filed a charge with the Illinois Educational Labor Relations Board (Board) in the above-captioned matter alleging that Naperville Unit Education Association, IEA-NEA (Union or Respondent) committed unfair labor practices within the meaning of Section 14(b)(3) 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. The District filed exceptions to the EDRDO and the Union filed a response to the exceptions. 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 District asserted in its charge that the Union engaged in bad faith bargaining by filing a grievance to achieve results it was not able to obtain during the collective bargaining process or through the mutually agreed upon contract. Section 14(b)(3) of the Act prohibits labor

organizations from refusing to bargain collectively in good faith with an educational employer. The IELRB has held that an exclusive representative does not violate Section 14(b)(3) by demanding to arbitrate an inarbitrable grievance. *Orland Park School District No. 135*, 29 PERI 96, Case No. 2012-CB-0015-C (IELRB Opinion and Order, November 15, 2012); *Rockford School District #205*, 15 PERI 1080, Case No. 99-CB-0005-C (IELRB Opinion and Order, July 5, 1999); *Alton Community Unit School District No. 11*, 7 PERI 1013, Case No. 89-CB-0007-S (IELRB Opinion and Order, December 18, 1990). After the Board's ruling in *Alton*, the appellate court affirmed the Board's determination that an employee organization's demand to arbitrate an inarbitrable grievance does not amount to a violation of Section 14(b)(3) of the Act. *Community College District No. 502 v. IELRB*, 241 Ill. App. 3d 914, 608 N.E.2d 950 (4th Dist. 1993).

In *Brookfield-LaGrange Park School Dist. No. 95*, 3 PERI 117, Case Nos. 86-CB-0019-C & 86-CA-0112-C (IELRB Opinion and Order, November 2, 1987), the Board found that under certain circumstances a union could violate Section 14(b)(3) of the Act by improperly demanding arbitration. Three years later in *Alton*, 7 PERI 1013, the Board overruled *Brookfield-LaGrange Park* and decided that an exclusive representative's demand to arbitrate an inarbitrable matter could not be regarded as a violation of Section 14(b)(3). In doing so, the Board noted the strong policy favoring arbitration expressed in Section 10(c) of the Act requiring collective bargaining agreements to contain a grievance resolution procedure including binding arbitration. *Alton*. The Board concluded that when Section 14(b)(3) was used in the context of a demand to arbitrate an inarbitrable grievance it created a "potential obstacle to the grievance arbitration process, contrary to the requirements of Section 10(c) and the policy favoring arbitration." *Id.*

The *Alton* Board indicated that its prior decision in *Brookfield-LaGrange Park* had permitted some employers to delay the process of grievance arbitration. The *Alton* Board recognized that in light of the other methods available to the employer to protect itself against a union's abuse of the arbitral process, Section 14(b)(3) was unnecessary as a means to determine arbitrability. First, an employer may preserve its objection to arbitrability before the arbitrator and later refuse to comply with an arbitration award. The employer may then raise inarbitrability as a defense if the union files an unfair labor practice charge under Section 14(a)(8) of the Act. Alternatively, an employer may refuse to arbitrate a grievance. When the union files an unfair labor practice

alleging that the Employer violated Section 14(a)(1) of the Act by refusing to arbitrate, the employer may then raise inarbitrability as a defense. By allowing the arbitrator to address a grievance, it is possible that the dispute may be resolved without the need for further litigation. *Alton*, 7 PERI 1013; *Western Springs School District 101*, 7 PERI 1014, Case No. 90-CA-0039-C (IELRB Opinion and Order, December 18,1990). The same factors favoring exhausting administrative proceedings in advance of judicial review also favor exhausting the arbitral process before action by the IELRB. *Alton*. "Requiring the exhaustion of remedies allows the administrative agency to fully develop and consider the facts of the cause before it; it allows the agency to utilize its expertise and it allows the aggrieved party to ultimately succeed before the agency, making judicial review unnecessary." *Id*. (quoting *Castaneda v. Illinois Human Rights Commission*, 132 Ill. 2d 304, 547 N.E.2d 437, 439 (1989)). Furthermore, the courts have held that the Board may properly require initial resolution of the arbitrability issue by the arbitrator, subject to review by the Board and the appellate court. *Community Unit School District No. 1 v. Compton*, 123 Ill.2d 216, 526 N.E.2d 149 (1988); *Board of Trustees of Prairie State College v. Illinois Educational Labor Relations Board*, 173 Ill. App. 3d 395, 527 N.E.2d 538 (4th Dist. 1988).

The District's first exception is that the EDRDO failed to address its specific allegations that the Union's conduct constituted bad faith in violation of the Act. In particular, that the Union has not interpreted the contract in good faith with regard to limitations on salary schedule increases; that the Union has not administered the contract in good faith because it proactively provided the District with a salary schedule for the 2023-2024 school year when the District, not the Union, historically created and published such salary schedules based on the contract; and by filing an untimely grievance. The District's second exception is essentially the same as its first, that the Executive Director should not have dismissed the charge based solely on the basis of its claim that the Union violated the Act by demanding to arbitrate an inarbitrable grievance. Nothing in the record indicates that the Union's differing interpretation of the contract than the District's amounts to bad faith bargaining. The same is true as to the Union's proactivity in coming up with the salary scale before the District. The District's third allegation, that the Union bargained in bad faith because it filed an inarbitrable grievance, has been addressed and applying the precedent set by the Board in *Alton*, the Union's conduct does not amount to an unfair labor practice.

The District argues in its third exception that the dismissal of its charge strips it of its ability to exercise its rights under the Act to prohibit the Union from engaging in bad faith bargaining, as it is the IELRB, not the arbitrator, that holds the authority to resolve bad faith conduct allegations and offer recourse. This argument was also raised by the employers in *Community College District No. 502*, 241 Ill. App. 3d 914, 608 N.E.2d 950, and *Orland Park*, 29 PERI 96. Nevertheless, the court did not find reason to reverse the IELRB's determination that a union does not violate Section 14(b)(3) of the Act by demanding to arbitrate an inarbitrable grievance. *Community College District No. 502*, 241 Ill. App. 3d 914, 608 N.E.2d 950. Bound by *Community College District No. 502*, the Board found likewise in *Orland Park*. Section 14(b)(3) prohibits exclusive representatives from bargaining in bad faith with employers. Section 14(b)(3) went into effect prior to *Alton* and has remained in effect in all the years since *Alton*. The holding in *Alton* is simply that an exclusive representative does not violate Section 14(b)(3) by demanding to arbitrate an inarbitrable grievance.

Furthermore, a finding that an exclusive representative may violate Section 14(b)(3) by demanding to arbitrate an inarbitrable grievance puts the IELRB in opposition to arbitration. *Board of Trustees of Community College Dist. No. 502*, 8 PERI 1010, Case No. 91-CB-0021-C (IELRB Opinion and Order, December 27, 1991), aff'd, 241 Ill. App. 3d 914, 608 N.E.2d 950. "Such a 14(b)(3) charge by an employer puts the Board's imprimatur on a claim that an issue is inarbitrable, thus casting doubt on the validity of the arbitration process." *Id*. The IELRB's long standing policy, as demonstrated by Section 10(c) and the case law discussed above, strongly favors arbitration. We do not depart from that policy in this case.

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

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

Naperville Community Unit School Dist. 203, Charging Party	)	
and	)	Case No. 2024-CB-0003-C
Naperville Unit Education Ass'n, IEA-NEA, Respondent	)	

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On August 25, 2023, Charging Party, Naperville Community Unit School District 203, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Naperville Unit Education Association, IEA-NEA, 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

Naperville Community Unit School District 203 (District) is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. Naperville Unit Education Association, IEA-NEA (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. The Union and District are parties to a collective bargaining agreement (CBA) for the unit, with a term from the first teacher employment day of the 2021-2022 school year through June 30, 2025.

B. Facts relevant to the unfair labor practice charge

On August 25, 2023, the Union filed a grievance at the first step of the process set out in the CBA, alleging the District violated the agreement in that the payroll of that date failed to reflect the contractually mandated increase based on the 2021 Consumer Price Index. The parties met later on August 25, without

resolving the dispute, and at the conclusion of the meeting, the Union moved the grievance to the second step of the process. On the same date, the District filed the instant charge.

On or about September 5, 2023, the parties conducted the second step meeting, but were unable to resolve the dispute, with the District issuing its denial on September 14, 2023. On or about September 19, 2023, the Union moved the grievance to the third step of the process, and on or about October 12, 2023, the parties had the third step meeting. On or about October 12, 2023, the District again denied the grievance. On or about October 30, 2023, the Union moved the grievance to the arbitral step. The District has not refused to arbitrate the grievance; the parties have agreed to the appointment of an arbitrator, Barry Simon, and cooperated in the scheduling process, tentatively scheduling the matter for hearing on April 29, 2024. Additionally, the District has filed a motion with the arbitrator, urging dismissal of the August 25 grievance due to untimeliness and procedural inarbitrability.

III. THE PARTIES' POSITIONS

The District contends the Union is using the contractual grievance process to nullify the clear language of the CBA, with regard to the teacher salary schedule. The District further contends the Union's bad faith is apparent, given its use of the grievance process to obtain terms it was unable to secure during the parties' 2021 bargaining sessions, and its delay in filing the August 25 grievance so as to maximize the impact of the compensation dispute to pressure the District into rewriting the CBA's salary schedule language.

The Union contends the District's charge is without merit, as it is an inappropriate response to the Union's demand to arbitrate a dispute concerning differing interpretations of the calculation formula set out in the parties' CBA, to establish the teacher salary schedule. The Union asserts the Illinois Department of Revenue releases two different Consumer Price Index calculations annually, and the parties disagree as to which Consumer Price Index number is referenced in their CBA. The Union further asserts the CBA does not exclude the grieved issue from arbitration and the matter is not in violation of, inconsistent with, or in conflict with any statutory provision.

IV. DISCUSSION AND ANALYSIS

In Alton, the Board held that a union does not violate the Act by demanding to arbitrate an inarbitrable grievance. Alton Educ. Ass'n, IEA-NEA/Alton C.U.S.D. No. 11, 7 PERI ¶1013, 1990 WL 10610726 (IL ELRB 1990). The Illinois Appellate Court subsequently approved that holding. Board of Trustees of Community College Dist. No. 502 v. IELRB, 241 Ill. App.3d 914, 608 N.E.2d 950 (4th Dist. 1993). Herein, the District presented nothing to undermine the Board's rationale in Alton, which was approved by the appellate court, that the Act's requirement of grievance arbitration codifies the generally prevailing view that arbitration is the preferred method of resolving labor disputes, and that given the language in Section 10(c) of the Act, one of the Board's primary goals is to foster and facilitate the arbitration process.

Herein, the parties' CBA defines a grievance simply as "any claim by the [Union] or an employee that there has been a violation, misinterpretation, or misapplication of this agreement." The Union claims the District misinterpreted the CBA as to the Consumer Price Index number referenced therein. The District counters the Union filed the grievance at issue in order to nullify the clear language of the teacher salary calculation in the CBA, thereby using the process to obtain terms it was unable to secure during the parties' 2021 bargaining sessions, and further, filed the grievance when it did in order to put unwarranted pressure on the District to cave to its demands. Either the assertions by the Union or District are correct, or perhaps the outcome is somewhere in the middle, regardless, it is the arbitrator's province to resolve disputes such as this, over the language in the CBA. As Charging Party is unable to allege circumstances or reasoning to disregard the Board's decision in Alton, its claim fails to raise an issue of law or fact sufficient to warrant a 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), 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, 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 8th day of January, 2024.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Executive Director