STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Forest Park Education Ass'n, IEA-NEA,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2023-CA-0061-C
	)	
Forest Park School District 91,	)	
	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On June 29, 2023, Forest Park Education Association, IEA-NEA (Charging Party or Union) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) alleging that Forest Park School District 91 (Respondent or District) violated Section 14(a)(5) and (1) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1, *et seq*. Following an investigation, the Board's Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge.[1] The Union filed timely exceptions to the EDRDO, and the District filed a timely response to the exceptions.

II. Discussion

The charge alleges that the District refused to bargain in good faith in violation of Section 14(a)(5) of the Act by making unilateral changes when it required bargaining unit member Anissa Aguilar-McCardle (Aguilar-McCardle) to pay the District back $3,000 and fill out the Request of Reversal of Non-Insured Medical Reimbursement Exception form.[2] The Union further asserts in the charge that the District refused to bargain when it brought the unilateral changes to the District's attention. It claims that the District acted in a way to interfere, restrain, or coerce employees in the exercise of their rights under Section 14(a)(1) by its attorney's threat to seek sanctions if the Union continued to pursue the matter.

The Executive Director noted that there was no dispute over Aguilar-McCardle's reliance upon the Health Insurance Portability and Accountability Act (HIPAA) qualifying life event

[1] The EDRDO erroneously listed the case number as 2024-CA-0061-C.

[2] Page 3 of the EDRDO states that Aguilar-McCardle applied for and received reimbursements for non-insured medical expenses in November 2002. This is likely a typo and we surmise this happened in 2022.

entitling a person to enroll in a group health insurance plan outside of open enrollment period. The interplay between HIPAA and the section of the CBA concerning group insurance coverage were at best a matter of contract interpretation more properly the subject of a grievance than a ULP, said the Executive Director. However, the EDRDO failed to address the District's refusal to bargain upon the Union's request and the District's alleged threat of sanctions against the Union.

In cases alleging conduct that may be both a contractual breach and a statutory violation, the Board may defer the matter to arbitration but retain jurisdiction to ensure that any statutory rights at stake are protected. *West Chicago School District No. 33*, 5 PERI 1091, Case Nos. 86-CA-0061-C, 87-CA-0002-C (IELRB Opinion and Order, May 2, 1989). The EDRDO found that deferral was not appropriate in this matter because the facts did not allege a violation of the Act over which the Board could retain jurisdiction. Yet taking into consideration the District's refusals to bargain and threat of sanctions, which the EDRDO did not, the Union's version of the facts could allege a violation of the Act.

The resolution of the instant charge thus turns on the interpretation or application of language in the parties' CBA, that is, if pursuant to the CBA, the District had the right to engage in the complained-of conduct, the alleged violation is precluded. *Chicago State University*, 14 PERI ¶3002 at p. XI-7 (IL LLRB 1997)("[i]t is a well-established principle of labor law that, where a subject is fully negotiated and covered by a collective bargaining agreement, no further obligation to bargain arises with respect to the subject during the term of the agreement." citing *City Colleges of Chicago*, 10 PERI ¶1010 (IL ELRB 1993); and *Illinois State Board of Education*, 9 PERI ¶1059 (IL ELRB 1993)). As a result, because the charge turns on the interpretation or application of language in the parties' CBA, it is appropriate for deferral. *Elementary Teachers' Ass'n of West Chicago, IEA-NEA/West Chicago School District 33*, 5 PERI ¶1091 (IL ELRB 1989), *aff'd on other grounds, sub nom*, *West Chicago School District 33 v. Illinois Educational Labor Relations Board*, 218 Ill. App. 3d 304, 578 N.E.2d 232 (1st Dist. 1991); *Dubo Manufacturing Corp.*, 142 NLRB 431 (1963).

III. Order

For the reasons discussed above, IT IS HEREBY ORDERED that:

A. The EDRDO dismissing the charge is overturned.

B. The charge is deferred to the parties' grievance/arbitration procedure until they have completed that process regarding the underlying dispute. Within 15 days after the termination of the contractual grievance procedure, the Union may request that the Board reopen the case for the purpose of resolving any substantive issues left unresolved by the grievance procedure, or to proceed with the charge on the basis that the award is contrary to the policies underlying the Act. If the Union fails to make such a request within the time specified, the Board may dismiss this charge upon request of the District or on its own motion.

C. The parties shall provide the Board's General Counsel with a report regarding the status of the grievance proceeding at issue, by no later than six months from the date of this Opinion and Order. If the parties fail to file the report, the Board may dismiss this charge on its own motion.

IV. 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: **March 19, 2025**
Issued: **March 19, 2025**

/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

Forest Park Education Association, IEA-NEA Charging Party and Forest Park School District 91, Respondent	)	Case No. 2024-CA-0061-C

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On June 29, 2023, Charging Party, Forest Park Education Association, IEA-NEA, (Union) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Forest Park School District 91, (District or Employer), violated Section 14(a) 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

The Union is a labor organization within the meaning of Section 2(c) of the Act, and represents a bargaining unit composed of certain employees of the District. The District is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. At all times material, the Union and District have been parties to a collective bargaining agreement (CBA) setting out terms and conditions of employment for Unit employees. The CBA also contains a grievance procedure culminating in arbitration for the resolution of disputes concerning the application or interpretation of its terms.

B. Facts relevant to the unfair labor practice charge and positions of the parties

The circumstance of this case concerns a single bargaining unit employee, Anissa Aguilar-McArdle. The event that triggered this dispute was that Aguilar-McCardle transitioned from coverage under her spouse's group health insurance to coverage under the plan offered by the Employer. The transition was complicated by a number of factors, including the difference in the coverage year for the two insurance programs. Aguilar-McCardle's prior policy year commenced on January 1 and ended on December 31. The Respondent's policy year commenced on July 1 and ended on June 30.

By all accounts, Aguilar-McCardle notified the Respondent in January 2023 that she had experienced a 'change in life event' that required her to obtain coverage under the Respondent's group insurance plan. This term was understood by all parties as a reference to a 'qualifying life event' within the meaning of the Health Insurance Portability and Accountability Act[1] (HIPAA). Under HIPAA, a qualifying life event entitles a person to enroll in a group insurance plan outside the designated open enrollment period. There appears to be no controversy over Aguilar McCardle's reliance on the HIPAA eligibility criteria.

Article XII, Section B of the CBA concerns group insurance coverage for unit employees. In relevant part, it provides:

> Each Teacher who does not elect Board-sponsored medical insurance coverage will, upon request, be reimbursed for non-insured medical expenses eligible for tax deductions under the United States Internal Revenue Code (1989 and as amended) and Treasury Regulations governing the same, **provided, however, that the amount of such reimbursement shall be $3,000 per year for the duration of this Agreement.** Non-insured medical expenses shall include expenses incurred for prescription drugs, eyeglasses, dental care, ambulance service and other eligible expenses as defined by the United States Internal Revenue Service. Such reimbursement will be made in accordance with the practices of the District Business Office and use of the appropriate form. If a teacher elects to decline the district medical or dental insurance, a waiver must be completed and on file at the district office.
>
> **Each Teacher shall be required to notify the Business Office of any changes desired in insurance coverage during the annual open enrollment period (May 15 to June 15),** or within five (5) working days after employment, if hired during the school year. **Once the Teacher elects insurance, said option shall continue without change for the duration of the school year; any changes**

[1] The original version of this statute took effect in 1996.

> **elected by the Teacher after the open enrollment period or the above five-day period shall be effective only for the next school year, unless otherwise approved by the Superintendent.** The option selected shall continue from school year to school year **until the Teacher files a change in election** with the Business Office. (emphasis added)

There is no reference to qualifying life events, special enrollment periods or HIPAA in the text. However, there is a specific reference to a reimbursement program for non-insured medical expenses available to employees who do not elect to enroll in the plan offered by the District. This reimbursement program is funded by the District. As such, the CBA has specific language on the interplay between access to reimbursement and the election of group insurance benefits offered by the District.

There is no dispute that in November 2002, Aguilar-McCardle applied for and received $3000 in reimbursements for non-insured medical expenses. There is also no dispute that the District informed Aguilar-McCardle that it expected reimbursement of that sum as a condition of enrolling her in the District's plan. Finally, there is no dispute that the District created a form entitled 'Request of Reversal of non-Insured Reimbursement Exception.' One of the items on this form was consent to return reimbursements. The District insisted that Aguilar-McCardle complete the form and sign it as part of her request for coverage. Ultimately, Aguilar-McCardle returned the funds to the District and obtained coverage under its plan. Finally, there is no dispute that the District has consistently declined to engage in midterm bargaining over these matters.

The Union asserts that the requirement for repayment of reimbursement funds is an unlawful unilateral change. It also claims that development of the Request of Reversal form as part of the application for insurance coverage is a separate unlawful unilateral change. The Union relies heavily upon the policies and procedures included in HIPAA, essentially arguing that the text of the CBA cannot be enforced while staying in compliance with the Federal statute. The District asserts that all the terms and conditions of employment relevant to the charge are contained in the text of the CBA.

III. DISCUSSION AND ANALYSIS

The essence of the Union's contentions is that the circumstances presented by Aguilar-McCardle's situation were unique and unforeseen in the parties' experience, such that it creates a duty to bargain during the term of the CBA. This midterm bargaining obligation not only applies to situations not contemplated by the parties during negotiations, but also changes to the terms of the agreement prior to its termination or expiration. See, e.g., *Lake Park Community High School District 108,* 7 PERI ¶ 1085, (ELRB ALJ, 1991).

It is likely that Aguilar-McCardle's request for enrollment in the insurance program outside the open enrollment period was the first of its kind for the parties. However, the HIPAA statute and the framework created therein had been in place for well over a decade prior to negotiations for the current CBA. As such, the question of whether the Agreement's terms are consistent with HIPAA would be a question that either party could have raised in the interim. The CBA is the product of the parties' joint efforts in negotiations; the responsibility to keep the document in step with the broader environment surely falls equally on each of the signatories. At the very best, the Union's concerns are a matter of interpretation of the current agreement's text, and thus more properly the subject of a grievance.

The Union's second claim concerns the development of the Request of Reversal form is clearly subsumed within the broader issue discussed above. It is designed to be a precondition to the application for coverage, and thus implicates a restriction of access to coverage under HIPAA. Further, the Union's only articulated objection to the form itself is the agreement to repay reimbursement. Reconciliation of the contents of the form with the protections of HIPAA appears to be the only substantive topic of discussion on that front.

In this instance, the Union has not asserted any specific rights protected under the Act. There is no evidence that the District was obligated to mid-term bargain with respect to the Request of Reversal form nor is there sufficient evidence to establish a prima facie violation of Section 15 of the Act under the circumstances of this case.

IV. ORDER

Accordingly, the instant charge is hereby dismissed in its entirety.

V. 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, 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 26th day of November, 2024.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

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