

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Abed Alkarim Ibrahim Hweih,)	
)	
Charging Party)	
)	
and)	Case No. 2023-CB-0013-C
)	
District 65 Educators' Council, IEA-NEA,)	
)	
Respondent)	

OPINION AND ORDER

I. Statement of the Case

On April 25, 2023, Abed Alkarim Ibrahim Hweih (Hweih 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 (Union 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 in its entirety. Hweih filed exceptions to 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 of the case, we will not repeat the facts herein except as necessary to assist the reader.

III. Discussion

The central argument throughout the Charging Party's exceptions is that the Union colluded with Evanston-Skokie School District 65 (District) to falsify and manipulate his evaluation scores in order to give him a lower rating score than he deserved on his evaluation that led to a recommendation that he not be rehired for the following school year, met his concerns over the evaluation process with indifference and refused his request to file a grievance.

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).

A union has considerable discretion in handling grievances and absent evidence of improper motivation, a union is not required to take all steps to achieve a desired result. *Rochkes*, 17 PERI 1054. A union is required to conduct a good faith investigation to determine the merits of a claim. *Id.* A union may consider the following factors when determining the merits of a claim: perceived merit of the complaint, likelihood that the union will prevail, the cost of pursuing the grievance, or the possible benefit to membership. *Jones*, 272 Ill. App. 3d 622-23, 650 N.E.2d 1099.

In this case, the record evidence does not demonstrate that the Union engaged in intentional misconduct toward the Charging Party. Instead, it reveals that the Union considered Hweih’s request that it file a grievance alleging discrimination and turned him down based on its opinion that the grievance would not be successful because there was no anti-discrimination provision in the collective bargaining agreement. A union is not required to file grievances which it considers to be without merit. *Vaca v. Sipes*, 386 U.S. 171 (1967). Hweih presented no evidence in support of his claim that the Union colluded with the District to give him an unfavorable evaluation.

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: **July 17, 2024**

Issued: **July 17, 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

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EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On April 25, 2023, Charging Party Abed Alkarim Ibrahim Hweih filed an unfair labor practice charge with the Educational Labor Relations Board (IELRB or Board), alleging that Respondent, District 65 Educators' Council, IEA-NEA¹, violated Section 14(b) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, *et seq.* (2012), *as amended*. 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, Abed Alkarim Ibrahim Hweih (Hweih) was an educational employee within the meaning of Section 2(b) of the Act, employed by Evanston-Skokie School District 65 in the job title or capacity of non-tenured probationary teacher. Evanston-Skokie School District 65 (District) is an educational employer within the meaning of Section 2(a) of the Act. The District 65 Educators' Council (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 those in the job title or classification of non-tenured probationary teacher. At all times material, the District and the Union were parties to a collective bargaining agreement for the unit described above.

B. Facts Relevant to the Unfair Labor Practice Charge

Hweih was first employed by the District for the 2020-21 school year at Bessie Rhodes Elementary School, then taught at Oakton Elementary School for the 2021-22 and 2022-23 school years. Hweih was evaluated for the 2022-23 school year, and on March 8, he received an overall rating of "needs improvement." Based on that finding, Hweih was informed on March 17 that the District would not recommend that he be employed for the 2023-24 school year.

Following the evaluation, Hweih apparently asked the Union about filing a grievance over the timing of his evaluations, which he believed to be inappropriate under the collective bargaining agreement. Article XII of the CBA addresses Educator Evaluations. Section F of that article states that the first evaluation must take place before Winter Break, and the second must take place before the end of the second trimester.

¹ Hweih's charge listed "Illinois Educator Association" (*sic*) as the respondent. The facts of his case clearly demonstrate that the charge alleged violations of the Act against the employee organization to which his bargaining unit belongs, the District 65 Educators' Council, IEA-NEA. For this reason, we will approach the charge as being filed against the District 65 Educators' Council, IEA-NEA and, to the extent necessary, substitute the District 65 Educators' Council as the Respondent for the purposes of this investigation.

For the 2022-23 school year, the parties operated under a Memorandum of Understanding regarding evaluations. The parties apparently reached a tentative agreement in August but did not sign and finalize the MOU until February 2023. Neither the CBA nor the subsequent Memorandum of Understanding specifies that the second evaluation must occur after the Winter Break. Hweih claims that he was formally evaluated on October 28 and December 5, 2022 and that, because of that, his evaluations were improper because they both took place before Winter Break. On April 6, the Union informed him that it disagreed with his interpretation and took the position that a grievance was unlikely to be successful, but that Hweih was free to file a grievance on his own behalf. On some unspecified date between the District's recommendation that he be terminated and the next school board meeting on March 27, 2023, Hweih offered his resignation. The District accepted his resignation.

At some unspecified point prior to the District's acceptance of Hweih's resignation, he was placed on administrative leave because of alleged comments he made to parents and multiple coworkers. The District scheduled an investigatory interview with Hweih over the allegations. The Union offered to represent Hweih at the interview, but he declined Union representation. He did not request that the Union file a grievance over his being placed on administrative leave, and the Union did not do so on its own accord.

On March 29, 2023 following his resignation, Hweih emailed the Union to request that it file a grievance alleging discrimination. The Union declined to file a grievance because there was no anti-discrimination provision in the collective bargaining agreement upon which a grievance could be sustained, but again advised Hweih that he could file a grievance on his own behalf. On April 6, 2023, he sent the Union a screenshot of an email he sent to the District's Chief Human Resource Officer asking about filing a grievance, but there is no evidence that he in fact did so.

III. THE PARTIES' POSITIONS

Herein, Hweih alleges that the Union's conduct violates its duty of fair representation pursuant to Section 14(b)(1) of the Act. The Union denies that the complained-of conduct violates the Act.

IV. DISCUSSION

For a complaint to issue, Hweih must demonstrate that sufficient evidence exists to support a finding that the Act has been violated, presuming that evidence is not rebutted at a hearing. Lake Zurich, 1 PERI 1031 (IELRB Opinion and Order, November 30, 1984). In order to make such a showing, Hweih must provide evidence that the Union violated its duty of fair representation through intentional misconduct, pursuant to Section 14(b)(1) of the Act. 115 ILCS 5/14(b)(1) (2022). To show that the Union committed intentional misconduct, the charging party must identify a right or rights that he has been restrained or coerced from exercising, and demonstrate that the Union acted in a fraudulent, deceitful, or deliberately hostile manner and that the alleged misconduct (1) was aimed at the charging party, and (2) occurred because of the charging party's status (race, gender, national origin, etc.) or because of animosity between the charging party and the union (such as that based on past support for dissident unions or personal conflict). Paxton-Buckley-Loda Education Association v. IELRB, 304 Ill. App. 3d 343 (4th Dist. 1999); Metropolitan Alliance of Police v. ILRB, 345 Ill. App. 3d 579, 589 (1st Dist. 2003).

Here, Hweih alleges that the Union failed to file grievances on his behalf. The duty of fair representation does not require the Union to file every grievance requested by a member. Chicago Teachers Union, 10 PERI 1008 (IELRB Opinion and Order, November 10, 1993), *see, e.g.*, SPEED Education Association, IEA-NEA, 33 PERI 54 (IELRB Opinion and Order, November 7, 2016). A Union has

a wide range of discretion in representation matters and may consider factors including but not limited to the perceived merit of the complaint, the likelihood of success in any action based on the complaint, the cost of prosecuting such an action, and the possible benefit to the membership as a whole. Jones v. IELRB, 272 Ill. App. 3d 612, 622-23 (1st Dist. 1995).

The evidence here demonstrates that the Union considered Hweih's claims as they relate to his evaluation and claims of discrimination. Whatever the Union's reasons were for declining to file grievances on Hweih's behalf, there is no evidence that the Union's decision was made for any impermissible reason, or that its refusal to do so was fraudulent, deceitful, or dishonest, or that the manner in which it made its decision was deliberately hostile or irrational. For these reasons, there is no issue of law or fact upon which a complaint for hearing may issue.

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, 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 28th day of February, 2024.

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

**VICTOR E. BLACKWELL
Executive Director**

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103, Telephone: 312.793.3170
One Natural Resources Way, Springfield, Illinois 62702, Telephone: 217.782.9068