STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Darcell Ross,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2025–CB–0001–C
	)	
Sauk Village Education Ass'n, IEA-NEA,	)	
	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On July 8, 2024,[1] Darcell Ross (Ross or Charging Party) filed a charge with the Illinois Educational Labor Relations Board (Board) in the above-captioned matter, alleging that Sauk Village Education Association, 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). [2] Following an investigation, the Board's Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge in its entirety. Ross filed exceptions to the EDRDO, and the Union filed a response to Ross' 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.

[1] All dates herein occur in 2024 unless otherwise indicated.

[2] Ross filed another charge against the Union, 2025-CB-0002-C, that was likewise dismissed. She did not file exceptions to the EDRDO in 2025-CB-0002-C.

III. Discussion

1. Timeliness of Exceptions

Exceptions to an EDRDO must be filed no later than 14 days after service of the EDRDO. 80 Ill. Adm. Code 1120.30(c). The Appellate Court has found that a charging party waives 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).

Per the Board's Rules and Regulations, "documents 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).

The Board agent assigned to investigate the charge served the EDRDO on Ross via email on November 13. Her exceptions were due November 27. Ross attached a certificate of service to her exceptions stating that she served them on November 27 before 5:00 p.m., yet her email is time stamped 5:01 p.m. In its response, the Union does not argue that Ross' exceptions are untimely. Given Ross' pro se status, the time given on her certificate of service indicates timeliness and the time stamp on the email is a mere minute late, we find her exceptions were timely filed.

2. Newly Submitted Evidence

Ross attached fourteen exhibits to her exceptions, stating therein that she is submitting additional evidence to support her charge. In its response, the Union contends that many of the events contained in the facts section of Ross' exceptions were not raised during the investigation

of the instant charge, and as such, should not be considered by the Board on appeal. They involve the Union's assistance to Ross during the grievance process, rather than the conduct she alleges violates the Act. That is, the Union's failure to provide her with information it provided other bargaining unit members who were Union members. Likewise, the Union submitted a multitude of exhibits with its response, many of which were not submitted during the investigation of the charge.

Evidence that is not submitted to the Executive Director during the investigation cannot be considered by the Board on appeal. *Chicago Teachers Union*, 39 PERI 117, Case No. 2022-CB-0005-C (IELRB Opinion and Order, May 10, 2023); *Lake Forest School District No. 67*, 22 PERI 32, Case Nos. 2005-CB-0003-C and 2005-CA-0008-C (IELRB Opinion and Order, February 21, 2006). Similarly, consideration of new facts not raised in the proceeding below shall not be reviewed for the first time on review by the Board. *Chicago Teachers Union (Day)*, 10 PERI 1008, Case No. 93-CB-0028-C (IELRB Opinion and Order, November 11, 1993). Consideration of newly presented facts would be prejudicial to the opposing party. *Fenton Community High School District 100*, 5 PERI 1004, Case No. 87-CA-0009-C (IELRB Opinion and Order, November 29, 1988); *Chicago Board of Education*, 6 PERI 1052, Case Nos. 90-CA-0012-C, 90-CA-0013-C (IELRB Opinion and Order March 14, 1990); *North Chicago School District*, 7 PERI 1107, Case Nos. 91-CA-0040-C, 91-CB-0015-C (IELRB Opinion and Order, October 3, 1991); *Board of Governors of State Colleges and Universities*, 9 PERI 1052, Case No. 91-CA-0055-S (IELRB Opinion and Order, February 11, 1993). Accordingly, we have not considered any newly submitted evidence in our consideration of this case that the parties did not submit during the investigation of this charge.

3. 14(b)

Ross argues in her exceptions that the EDRDO failed to properly address the Union's retaliatory actions and overlooked key evidence supporting her charge that she was excluded from receiving critical information regarding contract negotiations and workplace matters after exercising her protected right to opt out of Union membership. She claims this impaired her ability to understand and prepare for changes to her employment terms. According to Ross, the Union is obligated to represent all bargaining unit members fairly and impartially regardless of

union membership status, and that withholding critical information and excluding her from the flow of information directly violated this duty.

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).

Here, Ross asserts that the Union's refusal to include her in email communications only sent to its members breached its duty of fair representation. Yet she submits no evidence that she was disadvantaged or prevented from receiving any benefits in the collective bargaining agreement. Under the circumstances presented here, Ross has no right to be sent Union members-only communications. *Cf. Orchard Park Teachers Association (Griswold)*, 57 PERB ¶4534 (N.Y. Pub. Employee Rel. Bd. ALJ, July 10, 2024) (non-members not entitled to union's members only courtesy notice of potential future benefit).

Regarding Ross' allegation that the Union failed to bargain in good faith in violation of Section 14(b)(3) of the Act, an individual employee lacks standing to bring an action regarding the mutual obligations of employers and labor organizations to bargain in good faith. *State and Municipal Teamsters, Chauffeurs Union, Local 726 (Priestly)*, 13 PERI 1112, Case No. 98-CB-0016-C (IELRB Opinion and Order, August 25, 1997); *NEA, IEA, Elgin Teachers Ass'n et al. (Rifken)*, 7 PERI 1115, Case Nos. 92-CB-0014-C et al. (IELRB Opinion and Order, October 28, 1991). Therefore, Ross does not have standing to pursue such a claim.

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: **February 19, 2025**
Issued: **February 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

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N–400, Chicago, Illinois 60601 Tel. 312.793.3170
One Natural Resources Way, Springfield, Illinois 62702 Tel. 217.782.9068
elrb.mail@illinois.gov

STATE OF ILLINOIS
ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

Darcell Ross,	)	
Charging Party	)	
and	)	Case No. 2025-CB-0001-C
Sauk Village Education Association, IEA-NEA,	)	
Respondent	)	

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On July 8, 2024, Charging Party, Darcell Ross, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Sauk Village Education Association, 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 all times material, Ross was an educational employee within the meaning of Section 2(b) of the Act, employed by Community Consolidated School District 168 (District or Employer), in the title or classification of Teacher. Respondent 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 Ross. At all times relevant, Ross 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 Ross belongs.

B. Facts relevant to the unfair labor practice charge

On or about March 11, 2024, the Illinois State Board of Education (ISBE) approved the District's application for a Teacher Vacancy Grant (TVG). The amount the ISBE awarded the District was $337,315. for one year. By means of the Teacher Vacancy Grant Pilot Program, the ISBE attempts to address staffing

concerns in school districts throughout the State, providing additional funds to districts so they may attract, hire, support, and retain teachers. Districts can use grant funds in many ways, including to increase salaries, repay student loans, and purchase school supplies. Herein, the District, in its application, budgeted the grant funds as follows: $81,000. for $1,000.00 teacher stipends; $109,000. for tiered-longevity compensation for thirty (30) teachers; $15,260. for TRS, Medicare, and FICA benefits related to the payment of the teacher stipends and tiered-longevity compensation; $50,000. for a Teacher Alternative Certification program; and $82,055. to build out a space for professional development and mentorship. On March 11, 2024, after the District learned the ISBE had approved its TVG application, the District's superintendent of schools, Donna S. Leak, notified the local Union president, Margaret Sharkey, the District's application had been approved and shared the details of how the grant was budgeted.

On May 8, 2024, Leak met with the twenty-three bargaining unit members who were on a CBA salary step which was lower than their years of service to the District. During the meeting, Leak notified the twenty-three that as part of the tiered-longevity compensation component of the TVG budget, they would receive salary adjustments ranging from $1,416. to $13,866., depending on each employee's number of years, number of step freezes, total steps, and lane placement. Ross was not invited to Leak's May 8 meeting, as the District found she did not have more years in the District than total steps, as she was in year three of her employment and on CBA salary step 21. However, the District gave Ross, as it did with most of its teachers, a $1,000. teacher stipend from the ISBE grant. Subsequent to Leak's meeting with the twenty-three, on May 8, 2024, Sharkey sent an email to all Union members, notifying them the District had received an ISBE grant and awarded twenty-three teachers salary adjustments thereunder, and explaining the District's criteria for determining the adjustments. Sharkey further noted in her May 8 email, the grant salary adjustments were separate and distinct from contract negotiations, and the local Union's bargaining team would be advocating on behalf of all unit members during ongoing negotiations for the successor CBA.

Ross, at the time, was not a Union member and as a result, did not receive Sharkey's May 8 email. Thus, Ross did not learn the District had received an ISBE grant and awarded twenty-three teachers salary adjustments thereunder, until May 10, 2024. Ross emailed Sharkey about the May 8 email, essentially inquiring why she was not included on the distribution list. Sharkey responded the Union was under no obligation to provide information to non-members about internal matters. Based on the information Ross

was able to gather, she determined the Union and District secretly negotiated the disbursement of TVG funds, during which the Union prioritized the interests of dues paying members and the white racial group, over the remainder of the bargaining unit.

III. THE PARTIES' POSITIONS

Herein, Ross asserts the Union took actions inconsistent with its responsibilities under the Act, in that it negotiated in secret to obtain a greater portion of the ISBE grant for the District's dues paying members and the white racial group, to the detriment of the remainder of the bargaining unit. Respondent Union denies its actions in this matter were unlawful, and further denies it treated Ross any differently than similarly situated bargaining unit members. The Union asserts it thoroughly evaluated the District's proposed distribution of the grant monies and having determined the funds were limited, and the proposal granted relief to unit members bearing the brunt of the financial burden caused by earlier step freezes, ultimately agreed to it.

IV. DISCUSSION AND ANALYSIS

A. The alleged 14(b)(1) violation

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.]

Ross' claim is primarily a duty of fair representation case, and in such cases, a two-part standard is used to determine whether a union has committed intentional misconduct within the meaning of Section 14(b)(1). Under that 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 Ross or due to her status. Moreover, Ross made no showing she was treated differently from other similarly situated employees, or the Union's decision to agree to the proposed distribution of the grant monies was 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.

The evidence presented indicated the Union did not in fact negotiate in secret to obtain a greater portion of the ISBE grant for the District's dues paying members or the white racial group, to the detriment of the remainder of the bargaining unit. Instead, the evidence reflects the District applied for the grant and determined how it should be budgeted. The District apprised the Union of its plans, and the Union ultimately agreed with the District's proposed distribution, finding the funds were limited and going to bargaining unit members who were most in need of an equity adjustment. There is no evidence as to the race or membership status of the twenty-three employees who received the equity adjustments, but the qualifying determinant is race and membership neutral, primarily teachers whose salary step was lower than their years of service to the District, seemingly favored veteran District teachers, as the grant was intended. Ross provided no evidence to the contrary.

The conduct herein, complained-of by Ross, is not unlawful, at least under the circumstances presented. 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 or group of employees, 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, 1995 WL 17944260 (1st Dist. 1995). As there is no evidence indicating the Union was so motivated, Charging Party failed to present grounds upon which to issue a complaint for hearing on this portion of her charge.

In addition to the foregoing, 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. In this matter, Ross contends the Union violated the Act in that it failed or refused

to provide the same benefits and opportunities to her, as it offered to dues-paying members, namely including her on the May 8 email notifying the local Union's membership about the ISBE grant and the distribution meeting. Ross asserts the reason for the Union's conduct in this regard is her refusal to become a dues paying member. To an extent, the Union does not disagree: it admits it does not provide the same benefits and opportunities to non-dues-paying bargaining unit members as it does to bargaining unit members who are also Union members. The issue then is whether the Union's refusal to extend to Ross the same benefits and opportunities it grants Union members restrains or coerces her in the exercise of her Section 3 rights. Under the facts of this case, the Union's refusal in this regard does not restrain or coerce Ross in the exercise of her 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 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 to refrain from supporting the Union, 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 the Union supposedly denied Ross. Had the Union negotiated or agreed to any provision in the CBA which in any way works to particularly disadvantage Ross due to her status as a non-dues-paying bargaining unit member, or had it prevented Ross from receiving all benefits of the CBA due to her status as a non-dues-paying bargaining unit member, then a complaint would be warranted. However, Ross did not provide evidence, or even allege, the Union engaged in this type of conduct.

Instead, Ross argues that she is entitled to be a part of an all-Union-member email group. Under the Act, Ross has no such right. Likewise, Ross has no right to vote on ratification of the collective bargaining agreement. Paul J. Ochs/United Brotherhood of Carpenters and Joiners of America, Local Union 44, 5 PERI ¶1089, 1989 WL 1700728 (IL ELRB E.D. 1989) ("Restrictions on membership eligibility to vote on a collective bargaining agreement is not within the ambit of Section 3 or any other provision of the Act."). Similarly, the Act does not permit Ross a voice in who will represent the Union in negotiations

with the employer or allow her to attend Union meetings or participate in discussions restricted to Union members. Washington/East St. Louis Federation of Teachers, Local 1220, IFT-AFT, 4 PERI ¶1132, 1988 WL 1588608 (IL ELRB 1988). In short, "nonunion employees have no voice in the affairs of the union." NLRB v. Allis-Chalmers, 388 U.S. 175, 191 (1967). See Steelworkers v. Sadlowski, 457 U.S. 102, 117 (1982).

B. The alleged 14(b)(3) violation

Ross next alleges the conduct complained-of herein was a breach of the Union's duty to bargain in good faith, however, she lacks standing to pursue such a claim. Section 14(b)(3) prohibits employee organizations from refusing to bargain collectively in good faith if they have been designated as the exclusive representative of employees in an appropriate unit. The language of Section 14(b)(3) "essentially parallels" the language of Section 14(a)(5) of the Act. Brookfield-LaGrange Park School Dist. 95/Teachers Association of Brookfield-LaGrange Park, IEA-NEA, 3 PERI ¶1117, 1987 WL 1435217 (IELRB 1987).

An individual employee may not bring an action regarding the breach of the duty to bargain in good faith, and thus, Ross does not have standing to file a charge under 14(b)(3). Priestly/Teamsters, Local 726, 13 PERI ¶1112, fn. 1, 1997 WL 34820253, fn. 1, (IL ELRB 1997); Basil C. Halkides, *et al.*/Thornton Community College Dist. 510, 4 PERI ¶1010, 1987 WL 1435331 (IL ELRB 1987); Teachers Action Caucus, *et al.*/Chicago Board of Education, 2 PERI ¶1040, 1986 WL 1234515 (IL ELRB 1986) (individuals lack standing to file bargaining charges). Section 14(b)(3) concerns the bilateral or mutual obligations of employers and labor organizations to bargain in good faith. These duties extend only to the employer and exclusive representative, and therefore, correspondingly, an action concerning such obligations may only be brought by the particular employer and exclusive representative, not by an individual employee. Priestly, 13 PERI ¶1112, fn. 1, 1997 WL 34820253, fn. 1; Teachers Action Caucus, 2 PERI ¶1040, 1986 WL 1234515. Thus, even if Ross presented facts relating to a violation of Section 14(b)(3), she lacks standing to pursue such a claim.

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 13th day of November, 2024.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Victor E. Blackwell

Victor E. Blackwell
Executive Director