STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Niles Township Federation of Teachers, Local 1274, IFT/AFT, AFL-CIO,	)	
	)	
Charging Party,	)	Case No. 2006-CA-0036-C
	)	
and	)	
	)	
Board of Education of Niles Township, High School District 219, Cook County, Illinois,	)	
	)	
Respondent.	)	

OPINION AND ORDER

I.

On May 24, 2006, the Executive Director issued a Recommended Decision and Order in this matter. The Executive Director determined that the charging party, the Niles Township Federation of Teachers, Local 1274, IFT/AFT, AFL-CIO ("Federation" or "Local 1274"), had not established a prima facie case showing that the Board of Education of Niles Township High School District 219 ("Employer" or "Niles 219") violated Section 14(a)(1) of the Act. Consequently, the Executive Director dismissed the Federation's charges against Niles 219. Additionally, the Executive Director denied the Employer's Motion for Sanctions against the Federation.

The Federation filed exceptions to the Executive Director's Recommended Decision and Order on May 31, 2006. The Employer did not respond to the Federation's exceptions. We have considered the Executive Director's Recommended Decision and Order, the Federation's exceptions, and supporting record and applicable precedents. For the reasons stated in this Opinion and Order, we affirm the Executive Director's Recommended Decision and Order.

II.

We adopt the findings of fact in the Executive Director's Recommended Decision and Order, and supplement the facts as needed.

On January 25, 2006, the Federation filed the instant unfair labor practice charge with the Illinois Educational Labor Relations Board ("IELRB" or "Board") against Niles 219, alleging that the Employer violated Section 14(a)(1) of the Act. Specifically, the Federation alleged that the Employer improperly used a motion to dismiss arbitration to interfere with the Federation's right to arbitrate grievances under the Act.

The arbitration proceeding in which the motion to dismiss was filed concerned grievances that were filed by the Federation on behalf of three non-tenured teachers. The teachers were notified in April of 2004 that they would not be reemployed for the 2004-2005 school year. On June 30, 2004, the District refused arbitration asserting that the grievances were inarbitrable.

The Federation filed an unfair labor practice charge with the IELRB on July 2, 2004, in Case No. 2005-CA-0002-C, alleging that the District violated Sections 14(a)(5) and 14(a)(1) of the IELRA by refusing to proceed to arbitration. The Board determined that the Employer offered no valid justification for finding the grievances to be inarbitrable and determined that the Employer violated Section 14(a)(1). *Niles Township High School District 219*, 21 PERI 104, Case No. 2005-CA-0002-C (IELRB Opinion and Order, June 16, 2005). The IELRB issued a cease and desist order and directed the employer to arbitrate the grievances upon the union's request. *Id*. It also directed the employer to make the three affected employees whole for any loss of pay or benefits resulting from the unlawful refusal to arbitrate the grievances. *Id*.

On July 19, 2005, the Employer appealed the Board's decision to the Illinois Appellate Court, First District, requesting a stay of the Board's judgment pending a decision in the Appellate Court. On August 4, 2005, the Appellate Court granted a stay of judgment, but ordered the parties to arbitration.

An arbitration hearing was held before arbitrator Harvey A. Nathan ("Nathan") on December 9, 2005. At arbitration, the Employer filed a Motion to Dismiss the proceeding on the basis that the grievances were inarbitrable. As a result, the Federation filed the instant unfair labor practice charge alleging that the Employer improperly filed the motion to interfere with the Federation's right to arbitrate grievances under the Act.

On March 18, 2006, Arbitrator Nathan issued a preliminary arbitration award denying the Employer's motion to dismiss and limiting the damages and issues at arbitration. On March 24, 2006, the Federation filed a motion for the arbitrator to recuse himself. On April 13, 2006, the arbitrator refused the Federation's motion, and on April 26, 2006, the Federation amended the instant unfair labor practice charge. In its amended charge, the Federation alleged that the arbitrator's award limiting issues and damages violated the Act because the Federation was not afforded an opportunity to argue its position. The Federation sought to have the IELRB vacate arbitrator's Preliminary Arbitration Award and direct the Employer to participate in the selection of a new arbitrator.

On May 24, 2006, the Executive Director dismissed the Federation's charge in its entirety, holding that an Employer is not precluded from raising substantive arbitrability again before an arbitrator, and refusing to disrupt arbitration proceedings while the matter was still before the arbitrator. The Federation then filed the instant exceptions to the Executive Director's Recommended Decision and Order.

III.

The Federation argues that the Executive Director incorrectly held that the Employer could make an additional motion to dismiss on the basis of inarbitrability at the arbitration. The Federation argues that the question of arbitrability had already been disposed of by the IELRB and the Illinois Appellate Court. The Federation proclaims that the effect of the Executive Director's decision is to grant the arbitrator the ability to overrule the IELRB and the Illinois Appellate Court on appeal.

Additionally, The Federation contends that the Executive Director incorrectly dismissed the Federation's amended charge requesting that the Executive Director remove the Arbitrator from the proceeding, vacate the Arbitrator's preliminary arbitration award, and direct the parties to select a new arbitrator.

IV.

Section 14(a)(1) of the Act prohibits educational employers from "interfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act." 115 ILCS 5/14(a)(1). We

find that the Executive Director correctly found that the Federation failed to establish a prima facie violation of Section 14(a)(1).

A. The Motion to Dismiss

The Federation asserts that the Executive Director erred when holding that the Employer could make a motion to dismiss at arbitration on the basis of inarbitrability when the question had previously been disposed of by the IELRB. Specifically, the Federation argues that the Executive Director relied incorrectly on one sentence in *Staunton Community Unit School Dist. No. 6 v. IELRB*, 200 Ill.App.3d 370, 376, 558 N.E.2d 751 (4th Dist. 1990) ("*Staunton*")[1], and that the Executive Director's decision is converse to the Illinois Supreme Court decisions in *Community School Dist. No. 1 v. Compton*, 123 Ill.2d 216. 526 N.E.2d 149 (Ill. June 20, 1988) ("*Compton*") and *Warren Tp. High School Dist. 121 v. Warren Tp. High School Fed'n of Teachers, Local 504, IFT/AFL-CIO*, 128 Ill.2d 155, 538 N.E.2d 524 (Ill. Mar. 29, 1989) ("*Warren*"). The Federation proclaims that the effect of the Executive Director's decision is to grant the arbitrator the ability to overrule the IELRB and the Appellate Court on appeal.

In *Staunton*, the Appellate Court determined that "initial questions of arbitrability, when raised by the parties in proceedings under the Act, should be resolved by the Board." *Staunton*, 200 Ill.App.3d at 376. The Appellate court additionally stated "If the Board makes an initial determination that the grievance is arbitrable, then it goes to the arbitrator, where the parties may again raise arbitrability as well as the merits of the grievance." *Id*. The Executive Director's Recommended Decision and Order was consistent with the Appellate Court holding.

The Executive Director was correct in finding that there is "neither Board rule or precedent nor Illinois Appellate Court precedent precluding the District from challenging substantive arbitrability again before the arbitrator." The holdings in *Compton* and *Warren* are not converse to the Executive Director's holding. Both cases hold that the Illinois legislature vested primary jurisdiction in the Board to determine initial questions of arbitrability, when raised by the parties in proceedings under the Act. See *Compton*,

[1] The Executive Director relied on the sentence in *Staunton* stating, "If the Board makes an initial determination that the grievance is arbitrable, then it goes to the arbitrator, where the parties may again raise arbitrability as well as the merits of the grievance." *Staunton*, 200 Ill.App.3d at 376.

526 N.E.2d at 152. (Where the Illinois Supreme Court finds that the legislature intended to divest the Circuit Court of primary jurisdiction to enforce arbitration awards arising under the Act). See *Warren*, 538 N.E.2d at 528. (Where the Illinois Supreme Court finds that "the legislature intended to vest *exclusive* primary jurisdiction over arbitration disputes" with the Board). Neither case precludes a party from raising substantive arbitrability again at arbitration. Consequently, the Executive Director did not err in determining that the Employer was not precluded from raising a question of arbitrability again at arbitration.

B. The Federation's Amended Charge

The Federation contends that the Executive Director improperly dismissed its amended charge requesting recusal of the arbitrator, that the IELRB vacate the arbitrator's pre-arbitration order, and that the IELRB direct the parties to select a new arbitrator. Specifically, Local 1274 states that the Executive Director instructed the Federation that the request would be more appropriate at the close of arbitration. However, the Executive Director's decision does not state this. The decision points out that the IELRB "will not encourage the filing of an unfair labor practice charge any time a party is not satisfied with an arbitrator's decision." We agree with the Executive Director's determination.

The rights guaranteed under the Act, as set forth in Section 3 are "organiz[ing], form[ing], join[ing], or assist[ing] in employee organizations or engag[ing] in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or bargain[ing] collectively through representatives of their own free choice and ... refrain[ing] from any or all such activities." 115 ILCS 5/3(a). Thus, in order for there to be a violation of Section 14(a)(1), there must be a link to activities such as those described in Section 3. There is no evidence that the District has prevented the exercise of rights guaranteed under Section 3 of the Act. Rather, it appears the Federation disagrees with the arbitrator's Preliminary Arbitration Award. As we have previously held, "the Board has no jurisdiction over the arbitrator and his rulings." *Local 1274, IFT-AFT v. School District 72 (Fairview)*, 15 PERI 1058, Case no. 98-CA-0001-C (IELRB Opinion and Order, July 10, 1998). The arbitrator is not an educational employee or employer within the meaning of Section 2 of the Act. Consequently, the Executive Director

properly dismissed the Federation's unfair labor charge asserting a violation of Section 14(a)(1) of the Act.

V.

For the above reasons, IT IS HEREBY ORDERED that the Executive Director's Recommended Decision and Order is affirmed. The unfair labor practice charges are dismissed in their entirety.

VI. 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 Board maintains an office (Chicago or Springfield). "Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision," 115 ILCS 5/16(a).

Decided: October 10, 2006
Issued: October 11, 2006
Chicago, Illinois

/s/ Lynne O. Sered
Lynne O. Sered, Chairman

/s/ Ronald F. Ettiner
Ronald F. Ettinger, Member

/s/ Bridget L. Lamont
Bridget L. Lamont, Member

/s/ Michael H. Prueter
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