STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Agnes Tropp, an individual,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2006-CB-0005-C
	)	
Illinois Federation of State Office Educators, Local 3236, IFT/AFT,	)	
	)	
Respondent.	)	

OPINION AND ORDER

On April 3, 2006, the Executive Director issued a Recommended Decision and Order in the above captioned case. The Executive Director determined that the Charging Party, Agnes Tropp, had not established a prima facie case that the Illinois Federation of State Office Educators, Local 3236, IFT-AFT ("IFSOE") violated Section 14(b)(1) of the Illinois Educational Labor Relations Act ("Act"). Accordingly, he dismissed Tropp's charge.

Tropp filed exceptions to the Executive Director's Recommended Decision and Order. IFSOE did not file a response to Tropp's exceptions.

We have considered the Executive Director's Recommended Decision and Order and Tropp's exceptions. We have also considered the investigative record and applicable precedents. For the reasons in this Opinion and Order, we affirm the Executive Director's Recommended Decision and Order.

I.

Tropp was employed by the Illinois State Board of Education ("ISBE") as a Special Education Consultant. On August 8, 2005, ISBE terminated Tropp's employment, stating as grounds that Tropp had continued to fail to produce quality written work based on accurate analysis of information in a timely manner and that she had not completed a single assignment for two or more years. Tropp filed numerous grievances through IFSOE while she was employed by ISBE.

Tropp asserts that IFSOE President Paula Stadeker, at the direction of her supervisor, Chief Education Officer Chris Koch, held Tropp's grievances and did not file them in a timely manner. Tropp has provided no evidence of this beyond her assertion not contained in an affidavit, and IFSOE denies Tropp's assertion. Tropp also

asserts that there was collusion between ISFOE and ISBE resulting in ISBE delaying in processing her grievances. ISFOE asserts that all grievances that were pending in September 2004 were placed on hold due to a mutual agreement between ISFOE and ISBE.

As noted above, Tropp asserts that IFSOE did not file or act on grievances in a timely manner. Tropp asserts that there were several grievances that IFSOE chose not to file, and that each of her grievances was not taken to arbitration. According to Tropp, IFSOE refused to provide her with copies of her grievances, the minutes and the responses from management despite her making numerous requests. Tropp also asserts that IFSOE failed to notify her of her grievance hearings on several occasions, including the grievance hearing on her termination. According to Tropp, her attorney was not allowed to be present at a hearing on July 28, 2005, and IFSOE disallowed two of her witnesses for a hearing.

According to IFSOE, it withdrew four of Tropp's grievances when management raised the issue of timeliness or the belief that the issue stated in the grievance had already been grieved in a previous grievance, and IFSOE agreed with management. According to IFSOE, two grievances were terminated when IFSOE failed to appeal the grievance to the next step in a timely manner. IFSOE states that it believes that the issues underlying these grievances will be addressed in the arbitration hearing concerning Tropp's termination, and that, if ISFOE prevails, the remedy will be the same as if those grievances had proceeded through the process. IFSOE asserts that, for one grievance, it appealed to arbitration, and an arbitrator was selected and notified. IFSOE asserts that, after several attempts to schedule the arbitration hearing without Tropp's cooperation, it received from Tropp information as to her availability, and that IFSOE was proceeding with the arbitration. According to IFSOE, seven grievances have completed the grievance process, and IFSOE has put forward the demand to arbitrate to management and is working to complete the process of sending for an arbitrator list from which to select.

According to IFSOE, it may have failed to notify Tropp of some grievance hearings. IFSOE asserts that, in all cases, it has gone to the hearings and represented Tropp, and that it provided Tropp with the notes from those hearings. IFSOE also asserts that it in no way has intentionally allowed Tropp's grievances to not proceed through the process or made decisions regarding their disposition unless fully convinced that it was in Tropp's best interest or clearly not a winnable issue in arbitration. Documents provided during the investigation reflect that IFSOE represented Tropp on grievances, although in some cases it withdrew the grievance. IFSOE does not specifically

deny Tropp's assertion that there were some grievances that it chose not to file. IFSOE asserts that the majority of the information Tropp is claiming was not sent to her was sent to her by either IFSOE or ISBE.

Tropp asserts that the Board Agent investigating her cases did not correctly "pull the charges" from the voluminous documents she provided, ignored evidence and deliberately omitted materials from the evidence. Tropp asserts that the Board Agent did not provide her with IFSOE's response or a copy of the Act. However, IFSOE stated "Cc: Ms. Agnes Tropp" on the position statement it submitted to the Board Agent. According to Tropp, the Board Agent did not use the subpoena power under the Act to investigate her case.

II.

Tropp contends that the investigation was inadequate. She argues that IFSOE has failed to protect her rights and has not properly executed the contract. She argues that IFSOE acted fraudulently, deceitfully and with malicious intent. Tropp asserts that IFSOE President Stadeker's actions demonstrated deliberate and severely hostile and irrational treatment. She argues that Koch is Stadeker's supervisor and placed her into her position. She also asserts that IFSOE has continuously retaliated against her. She contends that IFSOE deprived her of due process in violation of the Fourteenth Amendment to the United States Constitution.[1]

III.

We first address Tropp's contention that the investigation was inadequate. We find it appropriate to supplement the facts stated in the Executive Director's Recommended Decision and Order. Otherwise, we reject Tropp's contention.

The fact that the Board Agent did not use a subpoena power does not demonstrate that the investigation was inadequate. The National Labor Relations Board has stated that "the Regional Director has extremely broad authority to determine the extent of the investigation into any unfair labor practice charge," *Opryland Hotel*, 323 NLRB 723, 727 (1997). In *Lincoln-Way Area Special Education Joint Agreement District 843*, 21 PERI 163, Case Nos. 2004-CA-0060-C, 2004-CB-0024-C (IELRB, September 13, 2005) (appeal pending), the Illinois Educational Labor Relations Board ("IELRB") determined that the Executive Director of the IELRB has similarly broad authority. As the IELRB noted in *Community Consolidated School District No. 59*, 1 PERI 1158 at VII-320, Case Nos. 85-CA-0007-C, 85-CB-0006-C (IELRB, August 14, 1985), the IELRB's Rule governing the investigation of unfair labor practices (Section 1120.30 of the IELRB's Rules, 80 Ill. Adm. Code 1120.30) does not place any

[1] Tropp asserts that she has proved a prima facie case that IFSOE violated Section 2(c) of the Act. Section 2(c), however, does not set forth an unfair labor practice.

minimum requirements on the scope of the investigation. The Executive Director, or his/her agents, is required only to conduct sufficient investigation to determine whether the charge states an issue of law or fact requiring the issuance of a Complaint.

The fact that the Executive Director's Recommended Decision and Order does not recite all of the details that are contained in the voluminous documents that Tropp submitted does not demonstrate that the Board Agent failed to correctly "pull the charges" from those documents, ignored evidence or deliberately omitted materials from the evidence. The Board Agent properly distilled what was relevant from those documents, with the exception of certain facts that we find it appropriate to add to the facts stated in the Recommended Decision and Order.

Tropp also asserts that the Board Agent did not provide her with IFSOE's response or a copy of the Act. However, IFSOE stated "Cc: Ms. Agnes Tropp" on the position statement it submitted to the Board Agent. Moreover, because a reply from Tropp to IFSOE's response was not sought, she was not prejudiced by any failure to provide her with a copy of that response. The investigative record does not reflect that Tropp requested a copy of the Act.

IV.

We now address the merits of this case. We conclude that Tropp has not established a prima facie case that IFSOE violated Section 14(b)(1) of the Act.

Section 14(b)(1) of the Act prohibits unions, their agents or representatives, and educational employees from

> 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.

Under the language of Section 14(b)(1), a union does not violate its duty of fair representation unless it engages in intentional misconduct. In order to establish that a union has engaged in intentional misconduct, a charging party must present "substantial evidence of fraud, deceitful action, or dishonest conduct" or "deliberate and severely hostile and irrational treatment," *Paxton-Buckley-Loda Education Association v. IELRB*, 304 Ill.App.3d 343, 349, 710 N.E.2d 538, 544 (4th Dist. 1999), *quoting Hoffman v. Lonza*, 658 F.2d 519 (7th Cir. 1981), *citing Amalgamated Ass'n of Street Electric Ry. & Motor Coach Employees of America v. Lockridge*, 403 U.S. 274 (1971). Thus, intentional misconduct is more than mere negligence. *Chicago Teachers Union (Oden)*, 10 PERI 1135, Case No. 94-CB-0015-C (IELRB, November 18, 1994). Even if a union is grossly negligent and incompetent, that is not

sufficient to show intentional misconduct. *United Mine Workers of America (Dearing)*, 16 PERI 1033, Case Nos. 99-CB-0003-S et al. (IELRB, March 8, 2000); *NEA, IEA, North Riverside Education Ass'n (Callahan)*, 10 PERI 1062, Case No. 94-CB-0005-C (IELRB, March 29, 1994); *NEA, IEA, Rock Island Education Ass'n (Adams)*, 10 PERI 1045, Case No. 93-CB-0025-C (IELRB, February 28, 1994).

The investigation revealed that some of Tropp's grievances were not processed in a timely manner and that IFSOE may have failed to notify Tropp of some grievance hearings. This conduct, however, amounts only to negligence and does not constitute intentional misconduct. Similarly, assuming that IFSOE refused to provide Tropp with copies of her grievances, the minutes and the responses from management, this conduct would amount only to negligence and not constitute intentional misconduct. If IFSOE did not provide the make-whole remedy from a federal mediation case, as Tropp asserts in her exceptions, that conduct would similarly amount only to negligence and not constitute intentional misconduct.

Tropp asserts that there were several grievances that IFSOE chose not to file, and that each of her grievances was not taken to arbitration. However, a union necessarily exercises some discretion in determining how far to pursue employees' complaints. *Jones v. IELRB*, 272 Ill.App.3d 612, 650 N.E.2d 1092 (1st Dist. 1995). "The exercise of that discretion would properly be based on criteria such as the perceived merit of the complaint, the likelihood of success in any action based thereon, the cost of prosecuting such an action, or the possible benefit to the union membership as a whole," 272 Ill.App.3d at 622-623, 650 N.E.2d at 1099. A union is not required to process every grievance or take every grievance to arbitration. *Cook County College Teachers Union, Local 1600, IFT/AFT*, 21 PERI 117, Case Nos. 2004-CB-0019-C, 2004-CA-0041-C (IELRB, July 12, 2005); *University of Illinois at Urbana*, 17 PERI 1054, Case Nos. 2000-CB-0006-S, 2001-CA-0007-S (IELRB, June 19, 2001); *AFSCME Local 3506 (Pierce)*, 16 PERI 1010, Case Nos. 99-CB-0002-C, 99-CB-0003-C (IELRB, December 3, 1999), *appeal dismissed*, No. 1-00-0092 (Ill. App. 1st Dist. Feb. 2, 2001). Here, IFSOE asserts that it has not made decisions concerning the disposition of Tropp's grievances unless fully convinced that it was in Tropp's best interest or clearly not a winnable issue in arbitration. IFSOE's alleged failure to file grievances or take them to arbitration would not constitute intentional misconduct. Moreover, according to IFSOE, it has taken steps to bring eight of Tropp's grievances to arbitration.

Tropp contends that IFSOE did not allow the attorney whom she hired to defend her at the July 2005 hearing. However, under Section 3(b) of the Act, IFSOE was "the exclusive representative of all the employees in

such unit to bargain on wages, hours, terms and conditions of employment." Thus, assuming that IFSOE did not allow Tropp's attorney to defend her at that hearing, it was not a violation of the Act for IFSOE to determine that Tropp would be better represented by IFSOE exclusively.

Tropp also asserts that IFSOE disallowed two of her witnesses for a hearing. This was a matter within IFSOE's discretion as to how best to present Tropp's case, and is not evidence of intentional misconduct.

Tropp further contends that IFSOE President Stadeker's failure to file Tropp's grievances in a timely manner was at the direction of Stadeker's supervisor. She argues that Koch is Stadeker's supervisor and placed her into her position. However, Tropp has provided no evidence that Stadeker was acting at the direction of her supervisor beyond her assertion not contained in an affidavit. Such unsupported assertions are insufficient to establish a prima facie case. *See IFT/AFT Local 504 (Shariff-Johnson)*, 13 PERI 1001, Case No. 96-CB-0004-C (IELRB, October 16, 1996). The alleged fact that Stadeker is supervised by an ISBE administrator and was hired by that administrator does not demonstrate that Stadeker's conduct was improperly motivated.

Tropp also asserts that the delay in ISFOE's processing her grievances was the result of collusion between ISFOE and ISBE. ISFOE states that all grievances that were pending in September 2004 were placed on hold due to a mutual agreement between ISFOE and ISBE. An agreement between a union and management to place grievances on hold, however, does not in itself reflect that the union's conduct is improper. In the absence of evidence of intentional misconduct, such an agreement is within the union's discretion to determine strategy for pursuing grievances.

In addition, Tropp argues that IFSOE violated her constitutional rights. Whether this is correct is not a matter within the IELRB's jurisdiction. *General George S. Patton School District 133*, 10 PERI 1118, Case No. 94-CA-0050-C (IELRB, August 19, 1994). Therefore, we do not consider this issue.

Tropp has not made a prima facie showing of intentional misconduct. Moreover, IFSOE has in fact represented Tropp at grievance hearings. Accordingly, Tropp has not established a prima facie case of a Section 14(b)(1) violation. The Executive Director's Recommended Decision and Order is affirmed, and the charge is dismissed.

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 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: September 12, 2006
Issued: September 21, 2006
Chicago, Illinois

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

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

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

/s/ Michael H. Prueter
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