STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Joan Olach, an individual,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2007-CB-0013-C
	)	
Oak Grove Education Association, IEA-NEA,	)	
	)	
Respondent.	)	
_____	)	
	)	
Lynda Brach, an individual,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2007-CB-0014-C
	)	
Oak Grove Education Association, IEA-NEA,	)	
	)	
Respondent.	)	

OPINION AND ORDER

I.

A. Case Number 2007-CB-0013-C

On November 6, 2006, Joan Olach ("Olach") filed an unfair labor practice charge in Case Number 2007-CB-0013-C against the Oak Grove Education Association, IEA-NEA ("Association"). Specifically, Olach alleged that the Association violated Sections 14(b)(1), (3), and 14(c) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, et seq. ("Act" or "IELRA"), when it bargained with Olach's Employer, Oak Grove School District Number 68 ("District" or "Employer"), to add an addendum to the policy in the collective bargaining agreement ("CBA") relating to the maximum payable amount to retirees for retirement benefits for the CBA covering the 2003-2007 academic years. Olach sought to have the addendum dissolved and for the Association and the Employer to administer the CBA in compliance with the original language in the CBA.

B. Case Number 2007-CB-0014-C

On November 6, 2006, Lynda Brach ("Brach") filed an unfair labor practice charge in Case Number 2007-CB-0014-C against the Association. Specifically, Brach alleged that the Association violated Sections 14(b)(1), (3), and 14(c) of the Act, when it bargained with Brach's Employer, the District, to add an addendum to the policy in the

CBA relating to the maximum payable amount to retirees for retirement benefits for the CBA covering the 2003-2007 academic years. Brach sought to have the addendum dissolved and for the Association and the Employer to administer the CBA in compliance with the original language in the CBA.

C. Executive Director's Recommended Decision and Order

Olach and Brach submitted identical documentation and evidence in support of their respective charges against the Association. On January 30, 2007, the Executive Director issued an Executive Director's Recommended Decision and Order ("EDRDO") recommending dismissal of Olach's unfair labor practice charge. On the same date, the Executive Director issued an EDRDO recommending dismissal of Brach's unfair labor practice charge. The Executive Director determined that both Olach and Brach's unfair labor practice charges were untimely because each charging party filed their respective charges more than six months after they became aware of the alleged unfair labor practices. The Executive Director also determined that even if the charges had not been untimely, the Association's actions did not constitute intentional misconduct within the meaning of Section 14(b)(1) the Act.

On February 13, 2007, Brach and Olach filed joint exceptions to the Executive Director's Recommended Decision and Order in Case Numbers 2007-CB-0013-C and 2007-CB-0014-C ("CB cases").[1] In the joint filings, Olach and Brach stated that "[s]ince our filings and the Executive Director's Recommended Decision and Order are virtually the same, we have combined our [a]ppeals within this document." The Association did not object to the consolidation of the cases. Accordingly, Case Number 2007-CB-0013-C and 2007-CB-0014-C are consolidated for all other proceedings before the IELRB.

II.

We adopt the findings of fact of the Executive Director in both cases, and we will supplement the facts as needed.

A. <u>Joan Olach</u>

Olach was a third-grade elementary school teacher in the District for thirty-five years, and a member of the Association. By letter dated November 13, 2003, Olach notified the District that she planned to retire at the end of

[1] On November 6, 2006, Olach and Brach also filed unfair labor practice charges against the Employer in Case Numbers 2007-CA-0033-C and 2007-CA-0034-C ("CA Cases"). The Executive Director recommended dismissal of the CA Cases on December 29, 2006. On January 17, 2007, Olach and Brach ("Charging Parties") filed joint exceptions to the Executive Director's Recommended Decision and Orders issued in case numbers 2007-CA-0033-C, 2007-CA-0034-C, 2007-CB-0013-C, and 2007-CB-0014-C. However, the Executive Director did not issue a Recommended Decision and Order in Case Numbers 2007-CB-0013-C and 2007-CB-0014-C ("CB Cases") until January 30, 2007. The Charging Parties filed additional exceptions in the CB Cases on February 13, 2007. Consequently, exceptions filed by the Charging Parties on January 17, 2007, will not be considered in the CB Cases.

the 2004-2005 school year. In her letter, Olach requested assistance from the District in taking advantage of the retirement benefits defined in Article XII, Section 12.4 of the CBA for the 2003-2007 years. Specifically, Olach asked the District to pay her "TRS buy-back" costs in the amount of $9,717.36. She also requested that the District pass a resolution making these buy-back costs non-taxable, and that the District pay these costs to her in or before May 2004. Lastly, Olach requested that the District pay her premium for the "TRS Health Insurance Plan" in accordance with the CBA.

B. Lynda Brach

Brach was a Physical Education Teacher, Language Arts Teacher, and Coach at Oak Grove School for thirty-three years. Brach is a member of the Association. By letter dated January 31, 2005, Brach notified the District that she planned to retire at the end of the 2005-2006 school year. In her letter, Brach requested assistance from the District in obtaining the benefits available to her in retirement. Specifically, she requested retirement benefits in accordance with Article XII, Section 12.4 of the 2003-2007 collective bargaining agreement. Brach requested TRS buy-back costs in the amount of $12,960.94 and she requested that the amount be paid in May of 2005 so that the amount could be included in her retirement income. She additionally requested that the District draft a resolution preventing these costs from being taxable to her and she requested payment for her accrued sick leave. Lastly, Brach notified the District that she planned to participate in the "TRS Health Insurance Plan" during her retirement years, and she requested that the premium be paid in accordance with the 2003-2007 CBA.

C. Retirement and the 2003-2007 Collective Bargaining Agreement

The District and the Association are parties to a CBA which is effective from August 25, 2003, until the first day of school in the 2007-2008 school year. The Association represents all regularly employed certificated personal under Article 21 of the Illinois School Code.

Article XII, Section 12.4 of the CBA delineates the District's Retirement Incentive Program. According to the CBA, a certified staff member, who has been employed by the District for at least thirteen continuous years may participate in the Thirteen Year Service Retirement Program ("TRS"). The CBA between the District and the Association for the 2003-2007 years states that "The Board shall pay the single premium per year for any member who elects to participate in the TRS Health Insurance Plan." To be eligible for certain benefits under the TRS plan, a retiree must notify the District of his or her intent to retire in writing prior to the commencement of the last year of employment.

On January 24, 2005, the District and the Association agreed to a Memorandum of Understanding regarding the TRS program and the TRS Health Insurance Plan. Specifically, the Memorandum of understanding stated:

> The Board and the Union hereby clarify the terms set forth in Article XII, § 12.4(a)(2) of the 2003-2007 Collective Bargaining Agreement by replacing § 12.4(a)(2)....with [the following language] 'For any member who elects to participate in the TRS Health Insurance Plan, the Board shall pay the single premium each year up to a lifetime total benefit of $12,000.

Between January 24 and March 15, 2005, Association representatives informed the Association membership via email about the circumstances which led to the drafting of the Memorandum of Understanding. In an email dated February 3, 2005, a member of the Association's negotiating team told unit members that the document was entered into to "clarify" Article XII, Section 12.4(a)(2) based on the parties' understanding during bargaining. In the email, the author apologized for the "misunderstanding", and stated that the former contract language was not intended to "bankrupt" the District. In an email dated February 24, 2005, the Association president offered representation to anyone who planned to retire under the 2003-2007 CBA. On March 2, 2005, the Association president sent another emailing apologizing to the membership for using the phrase 'bankrupt the District'. Meetings were held for Association members on February 18 and March 8, 2005, to discuss the proposed change to the CBA and answer the membership's questions. On March 15, 2005, the Association members voted to ratify the Memorandum of Understanding by a vote of 69-14.

Olach was notified on March 16, 2005, and Brach was notified on April 5, 2005, that the modification to the CBA entitled each to a "single premium each year up to a lifetime total benefit of $12,000" if the Charging Parties opted to participate in the TRS Health Insurance Plan. Both Olach and Brach attempted to reach an agreement with the District that would enable them to receive health insurance benefits based on the language of the CBA prior to Memorandum of Understanding amendment. On August 25, 2006, the Charging Parties were denied benefits as requested under the 2003-2007 CBA in their individual retirement letters to the District.

III.

The Charging Parties argue that their exceptions to the Executive Director's Recommended Decision and Order in the CB Cases were timely. In their exceptions to the Executive Director's Decisions, Olach and Brach argue that the District and the Association acted together to change a legal and binding collective bargaining agreement, and that based on the IELRB website and certain Illinois State Laws a hearing should be held to resolve their dispute. Specifically, the Charging Parties ask the Board to consider the following facts:

1. That the IELRB website points out that charges may be filed by individuals and that a charge may involve a violation of a collective bargaining agreement.

2. The IELRA makes it the responsibility of the Board to resolve contractual disputes in educational collective bargaining agreements.

3. The Charging Parties assert that the language of the 2003-2007 CBA prevented changes to the agreement after its execution; therefore the 2005 Memorandum of Understanding is invalid.

Further, the Charging Parties assert that the meetings between the District and Association to discuss contractual benefits, following the receipt of Olach's retirement letter, constitutes deliberate and intentional misconduct because the Association and the District held "secret meetings" to discriminate against teachers who have been with the school for over thirty years.

The Association asserts that the Executive Director properly dismissed the charges filed against the Association by the Charging Parties. Further the Association contends that the Charging Parties exceptions mirror a recitation of the Charging Parties' original charges.

IV.

A. Timeliness

The Executive Director correctly dismissed the unfair labor practice charges on grounds of timeliness. Section 15 of the Act provides that an order shall not issue upon an unfair labor practice "occurring more than six months before the filing of the charge alleging the unfair labor practice." 115 ILCS 5/15. Additionally, Section 1120.20(d) of the Board's Rules and Regulations provides that an unfair labor practice may be filed "no later than six months after the alleged unfair labor practice occurred." 80 Ill.Adm. Code § 1120.20(d). The six-month period runs from the date that the charging party becomes aware, or should be aware, of the actions forming the basis for the unfair labor practice charge. *Wapella Educ. Ass'n v. IELRB*, 177 Ill.App.3d 153. 531 N.E.2d 1371 (4th Dist. 1998). The IELRB lacks jurisdiction to proceed in an unfair labor practice charge which falls outside the scope of these restrictions. *Charleston Cmty. Unit Sch. Dist. No. 1 v. IELRB*, 203 Ill.App.3d 619, 561 N.E.2d 331 (4th Dist. 1990).

In the instant case, the Charging Parties contend that the District and the Association's mutual agreement to modify the 2003-2007 CBA serve as the basis of their charges against the Association and the Employer. Olach and Brach were formally notified on March 16 and April 5, 2005, respectively, of the District's intent to apply the language of the 2005 Memorandum of Understanding to their retirement benefits. Additionally, the charging parties became aware of the negotiations between the Association and the District to modify the CBA via email

communications with the Association membership as early as January 24, 2005. The Charging Parties did not file unfair labor practice charges against the Association until November 6, 2006. Consequently, the Charging Parties were aware of the actions forming the basis for their unfair labor practice charges at least eighteen to nineteen months prior to the date upon which they filed unfair labor practice charges with the IELRB. Accordingly, the Executive Director properly dismissed the claims of the Charging Parties against the Association on timeliness grounds.

B. The Charging Parties' Request for a Hearing.

The Executive Director properly determined that there was not an issue of law or fact which would warrant a hearing in these cases. The Charging Parties assert in their exceptions that the Board must hold a hearing to determine the "true facts" presented by the unfair labor practice charges. In *Village of Skokie v. ISLRB,* 306 Ill.App.3d 489, 714 N.E.2d 87 (1st Dist. 1999) ("*Village of Skokie'*), the Illinois Appellate Court determined that a hearing is appropriate where the charging party has presented adequate evidence which, if substantiated and not rebutted in a hearing, could constitute a prima facie violation of the Act. *See also* 80 Ill. Adm. Code 1105.100(b);*Brown County Community Unit School District No. 1*, 2 PERI 1096, Case No. 85-CA-0057-S (IELRB Opinion and Order, July 31, 1986).

Here, the untimeliness of the charges filed by Olach and Brach pre-empts the issue of whether the Charging Parties' have proved a prima facie violation of the act. However, even if the the Charging Parties' claims were timely, a hearing would still not be warranted because the Charging Parties did not present adequate evidence which could constitute a prima facie violation of the Act.

The Charging Parties except to the Executive Director's findings under Section 14(b)(1) of the Act. The Charging Parties argue in their exceptions that the Association and District's "secret meetings' constitute intentional misconduct within the meaning of Section 14(b)(1) of the Act. Thus, it appears the Charging Parties are objecting to the dismissal of the claims under Section 14(b)(1) only.

Section 14(b)(1) of the Act prohibits "employee organizations, their agents or representatives, or educational employees from restraining or coercing employees in the exercise of the rights guaranteed under [the] 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." 115 ILCS 5/14(b)(1)." Section 14(b)(1) encompasses an exclusive representative's duty of fair representation. *NEA, IEA,*

Rock Island Education Ass'n (Adams), 10 PERI 1045, Case No. 93-CB-0025-C (IELRB Opinion and Order, February 28, 1994); Township High School District 214, 3 PERI 1121, Case Nos. 87-CA-0003-C, 87-CB-0002-C (IELRB Opinion and Order, November 10, 1987). However, Section 14(b)(1) provides that an employee organization does not violate its duty of fair representation unless it engages in "intentional misconduct." Intentional misconduct consists of deliberate and severely hostile and irrational treatment, or fraud, deceitful action or dishonest conduct. *Paxton-Buckley-Loda Education Association v IELRB*, 304 Ill.App.3d 343, 349, 710 N.E.2d 538, 544 (4th Dist. 1999). *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).

Here, the Association participated in no fraud, deceit, deliberately and severely hostile and irrational conduct, or dishonest conduct. On the contrary, the Association openly communicated with its membership about the 2005 Memorandum of Understanding, and put the adoption of the Memorandum to a membership vote. Thus, we reject the Charging Parties' claim that the "secret meetings" of the Association and the District constitute intentional misconduct.

V.

For the above reasons, IT IS HEARBY ORDERED that the Executive Director's Recommended Decision and Orders in Case Numbers 2007-CB-0013-C and 2007-CB-0014-C are 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: July 12, 2007
Issued: July 14, 2007
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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