

**STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD**

In the Matter of:	)	
	)	
Diane L. Timko,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2007-CB-0009-C
	)	
Christine Lyman and Yoka Ward,	)	
	)	
Respondents.	)	
_____	)	
	)	
Diane L. Timko,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2007-CB-0011-C
	)	
John Schutz,	)	
	)	
Respondent.	)	

**OPINION AND ORDER**

On November 29, 2006, the Executive Director of the Illinois Educational Labor Relations Board (“IELRB”) issued a Recommended Decision and Order in this matter. The Executive Director determined that the Charging Party, Diane L. Timko, had not established a prima facie case that the Respondents had violated Section 14(b)(1) of the Illinois Educational Labor Relations Act (“Act”). Therefore, he dismissed Timko’s charges.

Timko filed timely exceptions to the Executive Director’s Recommended Decision and Order. The Association filed a response to Timko’s exceptions.

We have considered the Executive Director’s Recommended Decision and Order, Timko’s exceptions, and the Respondents’ response. 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.

Respondent Christine Lyman is an Illinois Education Association (“IEA”) UniServ Director. Respondent Yoka Ward is the President of the Homewood Education Association, IEA-NEA (“HEA”). Respondent John Schutz is the HEA Secretary.

Timko was employed for 16 years by the Homewood School District No. 153 (“District”), and, during the four school years from 2002 to 2006, she was a 5<sup>th</sup> grade special education teacher in the District. On June 4, 2006, she was advised that she was being transferred to the position of District Resource Itinerant, effective the following school year, 2006-2007. Timko asserts that this position was created without any notice to, or input from, the union, and that this position neither was posted nor had a job description as required by the parties’ Collective Bargaining Agreement (“CBA”).

On June 13, 2006, Timko received a letter from the District Superintendent, Dr. Dale Mitchell, confirming the transfer. Timko sent an email to the Superintendent and others on June 18, 2006, in which Timko inquired as to her seniority and/or bumping privileges should this position suddenly become unnecessary. On June 24 and 26, 2006, Timko emailed Lyman regarding Timko’s concerns about this transfer. These email communications continued through the summer and September.

On September 1, 2006, Timko sent Lyman a lengthy email regarding improper tactics employed by the District’s administrators toward her and the failure of the IEA and HEA to be responsive in filing grievances on Timko’s behalf. Lyman responded with a very comprehensive email regarding her and IEA’s and HEA’s position in this matter, and made an effort to schedule a time when she and Timko could meet to talk this out.

On September 19, 2006, Lyman and Ward met with Superintendent Mitchell on Timko’s behalf; and, on the following day, Ward emailed Timko that this meeting had taken place. On September 23, 2006, Timko emailed Ward asking what happened in the meeting with the District, but Ward emailed Timko in reply that this should be communicated in person.

Lyman, Ward, Schutz and others met with Timko on September 29, 2006. At that meeting, Lyman informed Timko of the results of the meeting with the Superintendent. Among other things,

Lyman stated that the District would reconsider Timko's position the next spring. Lyman also stated that no one had a job description and that the District was working on it. According to Timko, at that meeting Lyman told her that she would be much happier if she chose to be happy, and also said, "Believe it or not, Diane, you're not the center of my universe...." Timko quotes Ward as screaming, "God, listening to you makes me sick! Anybody else would be happy to have a new job where they don't have to do anything. I wish I had such a job, where I can sit around all day!" It was also at this meeting that, according to Timko, Schutz said that having a job description can cause problems and that Timko should be cautious about demanding a job description. Timko asserts that, when the subject of grievances came up, she was told that, if they wanted to file a grievance, they were almost at the time limit.

Timko also asserts that Lyman suggested that Timko let the certificate lapse that made Timko uniquely qualified for the Resource Itinerant position. Timko asserts that Lyman and Ward were in collusion with the District's administration to subvert many of the terms of the CBA, and that Lyman and Ward were chronically unresponsive and refused to file a valid grievance on Timko's behalf. Additionally, Timko wanted a written explanation from them as to why she was not considered the most qualified for two open special education positions:

## **II.**

Timko argues that the Respondents have violated their responsibility by refusing to represent her and to file grievances. Timko also asserts that, by using the phrase "intentional misconduct," the Executive Director has given a personal opinion rather than a lawful ruling. Timko contends that her charge of defamation of character was not addressed.

The Respondents argue that, even if assumed as true, the facts alleged by Timko show that she was properly represented and the purported facts fail to establish that the Respondents' actions were the result of fraud, deceit or dishonesty. The Respondents contend that the Executive Director properly found that Timko had not presented evidence that the Respondents engaged in intentional misconduct. The Respondents maintain that the IELRB has no statutory authority to address a charge of defamation of character.

### III.

In processing unfair labor practice charges, the Board “must decide whether its investigation establishes a prima facie issue of law or fact sufficient to warrant a hearing of the charge,” *Lake Zurich School District No. 95*, 1 PERI 1031, Case No. 84-CA-0003 (IELRB, November 30, 1984). In order for a complaint to be issued, “the investigation must disclose adequate credible statements, facts or documents which, if substantiated and not rebutted in a hearing, would constitute sufficient evidence to support a finding of a violation of the Act,” *Village of Skokie v. ISLRB*, 306 Ill.App.3d 489, 714 N.E.2d 87, 90 (1<sup>st</sup> Dist. 1999), *quoting Lake Zurich*; *see* 80 Ill. Adm. Code 1105.100(b). In addition, the evidence must support a facially plausible legal theory or argument, reasonably based on the Act. *Chicago School Reform Board of Trustees*, 16 PERI 1043, Case No. 99-CA-0003-C (IELRB, April 17, 2000).

Timko alleges that the Respondents violated Section 14(b)(1) of the Act. In Case No. 2007-CB-0009-C, her allegations concern the conduct of Lyman and Ward. In Case No. 2007-CB-0011-C, her allegations concern the conduct of Schutz.

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.

We conclude that Timko has not established an un rebutted prima facie case that the Respondents violated Section 14(b)(1) as she alleges.

Contrary to Timko’s assertion that the Executive Director was giving a personal opinion, Section 14(b)(1) specifically provides that 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, 710 N.E.2d 538 (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).

Here, the Respondents met with the District Superintendent on Timko's behalf. There is no evidence of "fraud, deceitful action, or dishonest conduct," or that Lyman, Ward, or Schutz acted in a "deliberate and severely hostile and irrational" manner. Although the remarks quoted by Timko are disparaging, even hostile, Timko does not show that these unfortunate comments ever rose to the level of being fraud, deceitful action, dishonest conduct or deliberate and severely hostile and irrational behavior toward her. *Paxton-Buckley-Loda Education Association v. IELRB*, 304 Ill.App.3d 343, 710 N.E.2d 538 (4<sup>th</sup> Dist. 1999) The Appellate Court and the IELRB have supported the union's right to exercise discretion as to which matters are to be grieved or pursued, provided that there has been a good faith investigation *Jones v. IELRB*, 272 Ill.App.3d 612, 209 Ill.Dec. 119, 650 N.E.2d 1092 (1<sup>st</sup> Dist. 1995); *Geneseo School District 228*, 18 PERI 1087, Case Nos. 2001-CB-0004-C, 2001-CA-0050-C (IELRB, April 12, 2002); *Champaign Educational Services Personnel*, 10 PERI 1055, Case No. 93-CB-0008-S (IELRB, March 10, 1994).

Timko has provided no support for her assertion that Lyman and Ward were in collusion with the District's administration. Unsupported assertions do not demonstrate intentional misconduct. *IFT/AFT Local 504 (Sharif-Johnson)*, 13 PERI 1001, Case No. 96-CB-0004-C (IELRB, October 16, 1996).

Timko also argues that her charge of defamation of character was not addressed. The Respondents correctly contend that the IELRB has no statutory authority to address a charge of defamation of character. If Timko is referring to the statements made by union officials at the September

29, 2006 meeting, we have addressed those statements in the context of the duty of fair representation, which is where our statutory authority lies.

We conclude that Timko has not established an un rebutted prima facie case that the Respondents violated Section 14(b)(1). The charge against the Association is dismissed. The Executive Director's Recommended Decision and Order is affirmed.

**IV. 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: May 8, 2006

Issued:

Chicago, Illinois

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Lynne O. Sered, Chairman

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Ronald F. Ettinger, Member

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Bridget L. Lamont, Member

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Michael H. Prueter, Member

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Jimmie E. Robinson, Member

Illinois Educational Labor Relations Board  
160 North LaSalle Street, Suite N-400  
Chicago, Illinois 60601  
Telephone: (312) 793-3170