FOURTH DIVISION
March 2, 2017

Nos. 1-15-0531 & 1-15-3485

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BRIAN J. McKENNA, Petitioner-Appellant, v. ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD, LYNNE O. SERED, Chairperson, RONALD F. ETTINGER, GILBERT F. O'BRIEN, MICHAEL H. PRUETER, Board Members; and UNIVERSITY PROFESSIONALS OF ILLINOIS LOCAL 4100, IFT-AFT, AFL-CIO, Respondents-Appellees,	)	Petition for Review from a Decision and Order of the Illinois Educational Labor Relations Board. Nos. 2014-CB-0015-C 2015-CB-0015-C

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Dismissal of unfair labor practice charges against union affirmed. Petitioner failed to show that union's actions during collective bargaining constituted intentional misconduct or that union violated any rules or regulations concerning representation elections.

¶ 2 Petitioner Brian J. McKenna, a tenured professor at Governors State University (GSU), filed two unfair labor practice charges with respondent the Illinois Educational Labor Relations Board (IELRB), alleging that respondent University Professional of Illinois Local 4100, IFT-AFT, AFL-CIO (UPI): 1) violated its duty of fair representation in violation of section 14(b)(1)

of the Illinois Educational Labor Relations Act (the Act) (115 ILCS 5/14(b)(1) (West 2014)); and 2) violated Board rules concerning the conduct of representation elections under section 14(b)(4) of the Act (115 ILCS 5/14(b)(4) (West 2014)). In two separate orders, the IELRB dismissed petitioner's charges, finding that UPI had not violated its duty of fair representation or any Board rules.

¶ 3 In this consolidated appeal from the two orders, petitioner raises three issues: (1) whether UPI violated its duty of fair representation when it simultaneously represented two separate bargaining units during collective bargaining and made concessions from one unit in order to benefit the other unit; (2) whether UPI violated its duty of fair representation and the IELRB's regulations by failing to amend its certification as the employees' representative after it began negotiating with GSU alone rather than the Board of Governors of State Colleges and Universities; and (3) whether UPI's contract-ratification procedures were improper.

¶ 4 For the reasons stated below, we conclude that petitioner has failed to show that UPI's conduct constituted "intentional misconduct," a necessary showing for a claimed violation of the duty of fair representation. And we reject petitioner's claims that UPI violated the IELRB's rules because he has forfeited those claims. We affirm the IELRB's dismissal of petitioner's charges.

¶ 5 I. BACKGROUND

¶ 6 On November 3, 1976, a certification of representation was filed by "AFT Faculty Federation – BOG," stating that it was elected as the exclusive representative for faculty members at GSU, except for part-time or temporary faculty members. This group of employees was known as Unit A.

¶ 7 On April 3, 1985, UPI filed a certification of representation saying that it had been recognized as the representative of the remaining faculty, consisting in part of part-time and non-tenured faculty. This group was known as Unit B.

¶ 8 At the time that these two bargaining units were established, GSU was part of a group of five universities, along with Chicago State University, Eastern Illinois University, Northeastern Illinois University, and Western Illinois University, run by the Illinois Board of Governors of State Colleges and Universities. In 1996, the General Assembly established independent boards of trustees for these five universities rather than having them remain under the control of the Board of Governors. See Pub. Act 89-4 (eff. Jan. 1, 1996).

¶ 9 Petitioner was hired as an associate professor at GSU in 2010. As a tenure-track employee, he was a member of Unit A.

¶ 10 This case involves the negotiations for a new collective bargaining agreement for the years 2013 through 2016. From March 2013 until November 2013, petitioner served as the lead negotiator for UPI's contract negotiation team at GSU. From November 2013 through March 2014, continued to serve as a member of the negotiation team, when he was removed from the team. Petitioner filed two separate charges with the IELRB, which are both under consideration in this consolidated appeal.

¶ 11 A. Charges Alleging Violation of Section 14(b)(1)

¶ 12 On April 4, 2014, petitioner filed his first charge with the IELRB, alleging that UPI had violated its duty of fair representation under section 14(b)(1) of the Act during the 2013-16 contract negotiations. He said that, during the negotiations, he "became concerned about the composition of the current bargaining unit." He noted that he was one of only two Unit A employees on the contract negotiation team. The other members were three Unit B employees

and "an attorney employed by a labor organization affiliated with UPI." He noted that the Unit A employees and Unit B employees "engage[d] in multi-unit bargaining despite the fact that these two groups represent[ed] distinct bargaining units and the Unit A certification decision [from 1976] specifically excluded the Unit B employees from being included in the Unit A bargaining unit." He also argued that UPI had not been "authorized by the members of the separate bargaining units to engage in multi-unit bargaining."

¶ 13 Petitioner argued that the multi-unit bargaining process had led to the interests of Unit A employees "to be subordinated to the interests of Unit B employees." According to petitioner, this violated UPI's duty of loyalty toward Unit A employees. Petitioner concluded:

> "It appears to me that the original bargaining unit certified on November 1976 has been voluntarily dissolved by UPI when they moved to individual university-level contract negotiations. It further appears to me that the current bargaining practice of multi-unit negotiations directly violated the original terms of the certification decision by including individuals who were deliberately excluded from the bargaining unit."

¶ 14 As evidence supporting his charge, petitioner attached a series of emails exchanged among the members of the negotiating team. These emails showed that the members of the team were divided about a classification of employees they labeled as "clinical faculty" and requesting a nine-month contract for Unit A employees. (The record is unclear regarding what effect, if any, either of these issues would have on either Unit A or Unit B employees.)

¶ 15 Petitioner proposed that the negotiation team "ask *** if the [GSU] Administration would be interested in renewing a discussion of clinical faculty status **and** a 9-month contract for Unit A teaching faculty." (Emphasis in original.) In response, another member of the team wrote,

"How about [U]nit [B] people also getting a 9 month contract? Because that, after all, would also fall in line with standard practices. Aren't we here to try and benefit everyone?"

¶ 16 Sarah Tarlow, the UPI attorney assigned to the GSU negotiations, responded to petitioner's proposal by saying that, if they "renew[ed] the conversation about clinical faculty," the team would have do so "without tying it to anything." She said, "If you are only interested in pursuing clinical faculty based on a simultaneous discussion of a 9 mo[nth] contract, then we're not going to move forward on this." She asked petitioner to clarify whether he believed, as a representative of his fellow union members, "independent of whatever personal gain may be achieved, *** this is what the membership as a whole wants."

¶ 17 Tarlow's email also included the following comment, which petitioner highlighted in his charge of unfair labor practices by UPI:

> "If we do pursue a 9 mo [*sic*] contract for Unit A faculty, we need to pursue something similar for the Unit B lecturers. *** DO NOT be fooled by the administration's tactics. It has been masterful in introducing proposals that will only lead to a further divided membership. That is not good for you individually or as a union. Please remember that going forward as you make suggestions. Negotiations are *** about trying to get something for everyone. And given that the Unit As [*sic*] have the protection of tenure and typically higher salaries, they then should [*sic*] the burden of helping out other groups that don't have similar protections. We ARE NOT going to be a union that perpetuates inequalities. Unfortunately the administration does too good a job of that as is. We do not need to help them out."

Tarlow concluded, "I am not optimisitic that we can pursue a 9 month contract for either Unit A or Unit B. *** [B]etween money, credit hours, and many other things still in the mix, we may have to put this on a list of priorities for the next set of negotiations."

¶ 18 In response to Tarlow's email, petitioner emailed the team a proposal that they offer GSU a reexamination of its proposal "to introduce a new status known as 'clinical faculty' " in exchange for "a 9-month contract for Unit A teaching faculty." He explained why he thought that this would be beneficial to Unit A employees and GSU, and noted that nine-month contracts are "the standard practice in academia for tenured and tenure-track faculty while a longer contract period is the standard for the faculty that are not tenured or tenure-track." He asked the other members of the team to vote on his proposal. Four members of the team voted against petitioner's proposal, two for it.

¶ 19 The IELRB's Executive Director (Director) issued a Recommended Decision and Order dismissing petitioner's charge. The Director stated that the "bargaining unit at [GSU] is composed of two groups, an 'A' group and a 'B' group." The Director found that there was "no evidence" that UPI "intentionally took any action either designed to retaliate against [petitioner] or due to his status." Rather, the Director found nothing showing that UPI's "refusal to pursue a 9-month contract for the [Unit A employees], or to employ [petitioner's] strategy to obtain it, was based on something other than a good faith assessment of the merits of those ideas." The Director added, "Displeasing or dissatisfying a bargaining unit member, or disagreeing as to the method or strategy to employ in negotiating ***, is not unlawful under the Act." The Director found that UPI's actions were within its discretion as the representative of the bargaining unit.

¶ 20 Petitioner filed timely exceptions to the Director's Recommended Decision and Order, listing the following issues:

> "(1) Did UPI violate § 1110.180(b) of the Illinois Administrative Code when it merged bargaining units A and B without voter approval by the members of the bargaining units and in direct contravention of the exclusion provisions in the 1976 Unit A certification?
>
> (2) Did UPI violate § 1110.170 of the Illinois Administrative Code when it failed to amend its certification following the change from multi-university bargaining to single university bargaining?"

¶ 21 UPI filed a response to petitioner's exceptions, which noted that Units A and B were separate bargaining units. Petitioner then filed a reply to UPI's response, raising the following issue for the first time:

> "If there are two [bargaining] units, then each of the two units at GSU would have the same rights as any other bargaining unit under the *** Act including the right to a separate ratification vote. On June 16, 2014, UPI denied my request for a separate ratification vote for the members of Unit A. The decision to deny a separate ratification vote for the members of Unit A was an unfair labor practice ***."

The IELRB struck petitioner's reply, as its rules did not provide "for a reply to a response to exceptions," and it was "not the IELRB's practice to allow parties to file briefs in addition to those for which the Rules provide."

¶ 22 The IELRB affirmed the Director's Recommended Decision and Order. The IELRB found that Units A and B were two separate bargaining units. The IELRB noted that a union violates its duty of fair representation under section 14(b)(1) only if the "union has engaged in intentional misconduct." And, the IELRB found, petitioner did not meet this standard because,

"[a]t most, there is evidence of disagreement within [UPI's] bargaining team about the direction bargaining should take."

¶ 23 The IELRB also found that UPI did not violate its duty of fair dealing by conceding certain benefits for Unit A in order to achieve benefits for Unit B employees. The IELRB noted that "a union is not required to promote an individual's interest when there are differing interests concern[ing] single bargaining units," and, because the Act authorizes multi-unit bargaining, "a union logically must have the same discretion to balance the differing interests of the differing units when it is engaging in multi-unit bargaining as a union does to balance the differing interests within a single unit when it is bargaining on behalf of that unit alone."

¶ 24 Finally, the IELRB rejected petitioner's claim regarding UPI's failure to file an amendment of certification petition. The IELRB stated that the filing of the petition "was a matter within [UPI's] discretion and does not relate to [UPI's] representation of [petitioner] under the collective bargaining agreement, which is all that is at issue in a duty of fair representation case."

¶ 25 Petitioner filed a petition for administrative review to this court, giving rise to appeal number 1-15-0531.

¶ 26 B. Charges Alleging Violation of Section 14(b)(4)

¶ 27 Petitioner filed his second unfair labor practice charge on December 16, 2014, alleging that UPI violated section 14(b)(4) of the Act, which prohibits a union from violating the IELRB's rules regulating the conduct of representation elections. 115 ILCS 5/14(b)(4) (West 2014).

¶ 28 Petitioner claimed that, on June 16, 2014, UPI counted the ballots for the vote on the new collective bargaining agreement. Petitioner said that UPI counted the ballots from Unit A and

Unit B together, which resulted in a vote of 81 members approving the contract and 58 members disapproving of the contract.

¶ 29 Petitioner argued that, when UPI counted the contract ratification votes of Unit A and Unit B employees together, it conducted a "de facto merger" of the two bargaining units without following the IELRB's regulations governing the merger of bargaining units. Petitioner requested that the IELRB order a new election on whether UPI should be the exclusive representative for Unit A faculty.

¶ 30 Petitioner also claimed that UPI's failure to amend its certification violated section 14(b)(4) because "such a structural change could lead [to] a representation election as a possible remedy."

¶ 31 The IELRB dismissed petitioner's second charge. With respect to UPI's counting the contract ratification votes together, the IELRB stated that "[t]he mere fact that [UPI] may not have counted the ballots separately does not amount to a merger of the two units, which remained in existence." And, the IELRB noted, "contract ratification issues are internal union matters" in which the IELRB will not interfere. With respect to the certification issue, the IELRB found that UPI had not undergone a name or structural change requiring an amendment to its certification and that petitioner's claim was time-barred.

¶ 32 Petitioner appealed this second dismissal, giving rise to appeal number 1-15-3485, on December 21, 2015.

¶ 33 C. Procedural History on Appeal

¶ 34 Petitioner filed his opening brief in appeal number 1-15-0531 on April 29, 2015, before the IELRB had dismissed his second unfair labor practice charge, and before petitioner had appealed that dismissal.

¶ 35 After petitioner appealed the second dismissal, giving rise to appeal number 1-15-3485, he moved to consolidate his two appeals. We granted that request.

¶ 36 Petitioner also requested that we consider his opening brief in appeal number appeal number 1-15-0531 as his opening brief in appeal number 1-15-3485, even though he had filed it before appeal number 1-15-3485 existed. We granted petitioner's request.

¶ 37 II. ANALYSIS

¶ 38 Before reaching the merits of the issues raised by petitioner, we must first address a dispute among the parties regarding the proper standard of review. Petitioner contends that his arguments present pure questions of law, and we should thus apply *de novo* review. UPI and the IELRB argue that an abuse of discretion standard of review in proper for a decision to dismiss an unfair labor practice charge.

¶ 39 Section 15 of the Act allows union members to file charges of unfair labor practices by their union with the IELRB. 115 ILCS 5/15 (West 2014). "If the [IELRB] after investigation finds that the charge states an issue of law or fact," it must then file a complaint and hold a hearing on the charges. *Id.*

¶ 40 This court has stated that the IELRB has discretion in deciding whether to dismiss an unfair labor practice charge. *Macomb Education Ass'n, IEA-NEA v. Illinois Educational Labor Relations Board*, 265 Ill. App. 3d 194, 201-02 (1994). In *Michels v. Illinois Labor Relations Board*, 2012 IL App (4th) 110612, ¶ 45, we held that an abuse-of-discretion standard should apply to the Illinois Labor Relations Board's decision to dismiss an unfair labor practice charge under section 11(a) of the Illinois Public Labor Relations Act (5 ILCS 315/11(a) (West 2008)) because it involves the exercise of "discretion or judgment." We did so because, when investigating charges, the Illinois Labor Relations Board "is analogous to a grand jury,"

assessing witnesses' credibility, drawing inferences from facts, and deciding whether there is enough evidence to support the charge. *Michels*, 2012 IL App (4th) 110612, ¶ 44.

¶ 41 We find *Michels* to be persuasive. The procedure for initiating a charge of unfair labor practices under the Act is similar to the process under the Illinois Public Labor Relations Act. *Compare* 5 ILCS 315/11(a) (West 2014) *with* 115 ILCS 5/15 (West 2014). The IELRB, like the Illinois Labor Relations Board, must exercise its discretion when deciding whether to file a complaint and hold a hearing based on the charges. Thus, like *Michels*, we conclude that an abuse-of-discretion standard is appropriate in evaluating the IELRB's decision to dismiss petitioner's charges.

¶ 42 We acknowledge that, in this case, the IELRB did not hear live testimony or make credibility determinations, and that there are no factual disputes at issue on appeal. But even so, the IELRB made a judgment regarding whether to pursue petitioner's claims based on its evaluation of the strength of his allegations and the evidence he presented. Such an appraisal involved the use of discretion by the IELRB, even in the absence of live testimony. See *id.* ¶¶ 9, 13-30, 45 (applying abuse-of-discretion standard even though Illinois Labor Relations Board's decision based on documentation alone).

¶ 43 Petitioner cites *Jones v. Illinois Educational Labor Relations Board*, 272 Ill. App. 3d 612 (1995), for the proposition that we should apply *de novo* review. In *Jones*, one of the questions presented was whether the IELRB properly interpreted its regulations when it dismissed the petitioner's charges because he failed to file a certificate of service with them. *Id.* at 623-25. Thus, *Jones* involved an agency's interpretation of rules governing *how* an unfair labor practice charge was filed. It did not involve, as this case does, the agency's assessment of the facts and

law forming the basis of an unfair labor practice claim itself. *Jones*'s discussion of the standard of review did not involve an exercise of the IELRB's discretion in assessing charges.

¶ 44 We do agree with the principle of law articulated in the passage cited by petitioner from *Jones*:

> " 'As a general rule, courts will accord deference to the interpretation placed on a statute by the agency charged with its administration. [citations] An administrative agency's interpretation is not binding, however, and it will be rejected when it is erroneous.' " *Id.* at 623 (quoting *City of Decatur v. AFSCME, Local 268*, 122 Ill. 2d 353, 361 (1988)).

¶ 45 To the extent the IELRB's decision involved an interpretation of the Act or UPI's duties under the Act, we will utilize that standard of review. However, regardless of what standard of review we apply in this case, our outcome would not change. For the reasons stated below, we reject petitioner's claims.

¶ 46 A. Multi-Unit Bargaining

¶ 47 Petitioner first argues that a union commits a *per se* violation of its duty of fair representation any time it represents more than one bargaining unit during collective bargaining, because multi-unit bargaining divides the union's loyalty between two units, to each of whom the union owes undivided loyalty. If petitioner is correct, then as a matter of law, any time a union bargains for more than one bargaining unit at the same time, the union violates its duty of fair representation, regardless of the union's reasons for doing so, and regardless of whether either bargaining unit is harmed as a result.

¶ 48 We believe petitioner is incorrect. First, his position runs counter to section 14(b)(1) of the Act, which provides that a union violates its duty of fair representation only by committing

"intentional misconduct." 115 ILCS 5/14(b)(1) (West 2014). "For a complaining party to establish a breach of the duty of fair representation under the intentional misconduct standard, he must show substantial evidence of fraud, deceitful action, or dishonest conduct [citations], or deliberate and severely hostile and irrational treatment." (Internal quotation marks omitted.) *Paxton-Buckley-Loda Educational Ass'n, IEA-NEA v. Illinois Educational Labor Relations Board*, 304 Ill. App. 3d 343, 349 (1999). These words do not lend themselves to a *per se* rule; this standard necessarily requires a case-by-case analysis of the union's actions. The mere fact that a union chose to represent more than one bargaining unit during negotiations would not automatically meet this standard; a petitioner must show that the decision to do so was the product of fraud, deceit, dishonesty, or deliberate hostility in that particular instance.

¶ 49 Second and just as notably, section 7(a) of the Act lists factors that the IELRB should consider in determining an appropriate bargaining unit and provides that: "This Section *** does not prohibit multi-unit bargaining." 115 ILCS 5/7(a) (West 2014). To put it mildly, it is difficult to square the Act's allowance of multi-unit bargaining with petitioner's claim that multi-unit bargaining is *per se* "intentional misconduct."

¶ 50 Petitioner also argues that the intentional-misconduct standard does not apply when a union takes actions that benefit individuals who are not in the bargaining unit, as opposed to tradeoffs among members of a single bargaining unit. But nothing in the language of section 14(b)(1) suggests that the legislature intended to limit the "intentional misconduct" standard to cases where a union makes tradeoffs within a single bargaining unit. We have just noted that the General Assembly was familiar with the concept of "multi-unit bargaining," and thus had it intended to carve an exception in section 14(b)(1) for some instances of multi-unit bargaining, we presume it would have done so. See, *e.g.*, *Wagner v. City of Chicago*, 166 Ill. 2d 144, 152

(1995) (noting that, "[i]f the legislature had wanted to codify contributory negligence in [a statute], it would have used the phrase," because legislature used phrase or derivation of phrase "contributory negligence" in other statutes); *Owens Corning Fiberglas Corp. v. Industrial Comm'n*, 198 Ill. App. 3d 605, 615 (1990) ("If the legislature had intended the date of last exposure to the hazard of an occupational disease to be the date of the injury, it would have so stated, as it used the phrase 'day of last exposure' in other portions of the statute.").

¶ 51 Petitioner also argues that, even if multi-unit bargaining is not *per se* unlawful, UPI violated its duty of fair representation and engaged in "intentional misconduct" under section 14(b)(1) when it acknowledged that Unit A employees should give up certain demands so that employees in a different bargaining unit (Unit B) could obtain benefits. As we have noted, to prevail on this claim, petitioner must show "substantial evidence of fraud, deceitful action, or dishonest conduct [citations], or deliberate and severely hostile and irrational treatment." (Internal quotation marks omitted.) *Paxton-Buckley-Loda Educational Ass'n*, 304 Ill. App. 3d at 349.

¶ 52 Petitioner provided no evidence of fraud, deceit, or dishonesty, or deliberate hostile and irrational treatment on UPI's part. Instead, the only evidence petitioner provided was an email in which UPI's representative Sarah Tarlow wrote, "And given that the Unit As [*sic*] have the protection of tenure and typically higher salaries, they then should [*sic*] the burden of helping out other groups that don't have similar protections." But Tarlow simply made this statement in the context of a call for unity between the two bargaining units negotiating with GSU. In fact, Tarlow said that "a further divided membership *** is not good for [the UPI members] individually or as a union." And she said that, if they elected to pursue a nine-month contract for Unit A, then they should also seek something similar for Unit B.

¶ 53 This shows that Tarlow was merely *encouraging* tradeoffs between the two bargaining units, in the interest of presenting a unified front against management. None of the evidence submitted by petitioner showed that she even actually *made* tradeoffs; the other members of the bargaining team—not UPI's representatives—declined to champion petitioner's argument for a nine-month contract. Certainly, nothing in Tarlow's emails showed any fraud, deceit, or dishonesty, or deliberately hostile or irrational treatment toward petitioner.

¶ 54 And even if UPI had made certain tradeoffs that benefitted Unit B employees over Unit A employees, that fact alone would not violate its duty of fair representation. The parties, as well as many Illinois decisions in this area, have cited *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953), a case applicable here. In that case, the plaintiff (a class representative) was a union employee at Ford Motor Company who had worked for Ford, then served in the military, then returned to Ford. *Id*. at 333. He sued when his union collectively bargained for seniority preferences not only for post-employment military service like his own (and as a federal law required), but also for *pre*-employment military service. *Id*. at 333-34. Though all relevant employees at Ford were part of the same union, the plaintiff argued that his union did not fairly represent his interests by giving preferential status to co-employees who served in the military before joining Ford. *Id*. at 336-37. The Supreme Court firmly rejected the plaintiff's argument:

> "Any authority to negotiate derives its principal strength from a delegation to the negotiators of a discretion to make such concessions and accept such advantages as, in the light of all relevant considerations, they believe will best serve the interests of the parties represented. A major responsibility of negotiators is to weigh the relative advantages and disadvantages of differing proposals. *** The bargaining representative, whoever it may be, is responsible to, and owes complete loyalty to, the interests of all

> whom it represents. In the instant controversy, [the union] represented, with certain exceptions not material here, all employees at the [company], including both the veterans with, and those without, prior employment by Ford, as well as the employees having no military service. Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." *Id*. at 337-38.

¶ 55 Though petitioner here is quick to note that *Huffman* involved alleged disparities in treatment within the same bargaining unit, as opposed to two different bargaining units here, in a state such as Illinois that permits multi-unit bargaining, that is a distinction without a difference. The rationale is the same: A union acting in good faith must be allowed a fair amount of discretion to make trade-offs that will not necessarily equally affect, or equally please, all members of the bargaining unit.

¶ 56 Here, Tarlow believed that other items should have greater priority than a nine-month contract. She said, "I am not optimistic that we can pursue a 9 month contract for either Unit A or Unit B. *** [B]etween money, credit hours, and many other things still in the mix, we may have to put this on a list of priorities for the next set of negotiations." Tarlow was attempting to balance the various items that UPI sought to pursue during collective bargaining. And the record shows that UPI did secure several benefits for Unit A employees: a synopsis of the 2013-16 collective bargaining period prepared by UPI showed that Unit A employees obtained a lower

credit-hour requirement than Unit B employees, "[c]larified evaluation language in [the] evaluation process" for Unit A employees, and limited "increasing evaluation requirements for tenure track and tenured Unit A faculty."

¶ 57 Nor has petitioner adequately explained to this court how a nine-month contract would benefit the Unit A faculty, except to say that nine-month contracts are standard at other universities. Without knowing the value of a nine-month contract to the Unit A members, we cannot say that Tarlow's belief that pursuing other matters during negotiations—"money, credit hours, and many other things still in the mix"—was unreasonable.

¶ 58 In this regard, we find *McColgan v. United Mine Workers of America*, 124 Ill. App. 3d 825 (1984), to be persuasive. In *McColgan*, a mine worker alleged that his union had "fail[ed] to persuade, negotiate or pressure the company to install pull through curtains," which were "device[s] used to control ventilation in underground mining." *Id.* at 826, 830. The court declined to find that the union had engaged in intentional misconduct during negotiations, stating, "The union[']s] decision to emphasize one unsafe condition over another, or to emphasize wages or hours over safety conditions in their dealings with employers, involves various and subtle assessments which defy enumeration and definition." *Id.* at 831. The court thus declined to impose "a duty to exercise discretion to persuade, negotiate or pressure employers to use particular safety equipment" on the union, as such a duty "would constitute an unwarranted intrusion into the free give-and-take which characterizes the collective bargaining process." *Id.* Just as the court in *McColgan* declined to require the mine workers' union to advocate for a specific piece of safety equipment, we decline to impose on UPI a duty to negotiate for a nine-month contract over other benefits such as wages, hours, or a clarified evaluation procedure.

¶ 59 In sum, we reject petitioner's contention that any multi-unit bargaining is a *per se* violation of the duty of fair representation. To adopt such a rule would ignore section 14(b)(1)'s requirement that violations of the duty of fair representation be the product of intentional misconduct, as well as section 7(a)'s express recognition of multi-unit bargaining. And, in this case, we find no evidence of intentional misconduct on UPI's part during its negotiations with GSU.

¶ 60 B. Amendment of Certification of Representation

¶ 61 Next, petitioner contends that UPI violated its duty of fair representation and IELRB regulations by failing to amend its certification of representation. Petitioner argues that section 1110.170 of the Illinois Administrative Code (80 Ill. Adm. Code 1110.170 (2014)) requires a union to file a petition to amend its certification as the exclusive representative for a bargaining unit whenever it changes its name or structure. Petitioner further argues that UPI changed its structure when it "change[d] from multi-university bargaining to single university bargaining." And, according to petitioner, "[s]ince the certification is the ***sine qua non*** of UPI's bargaining authority, any deviation would be material and violate the applicable duty [of fair representation]." (Emphasis in original.)

¶ 62 When a union is chosen as the exclusive representative for a group of employees, the IELRB issues a certification of representation, showing that the union is the exclusive representative. 115 ILCS 5/8 (West 2014). Section 1110.170 of the IELRB's regulations states that "[a]n exclusive representative shall file a petition with the [IELRB] to amend its certification whenever there is a change in its name or structure." 80 Ill. Adm. Code 1110.170(a) (2014). The union must give notice of the proposed change to the employer, who must then post a notice of

proposed amendment so that any interested parties, including the employer, may file objections to the proposed amendment. 80 Ill. Adm. Code 1110.170(a), (b), (c) (2014).

¶ 63 Petitioner has brought this claim via section 14(b)(1), alleging that the failure to file a petition to amend UPI's certification of representation somehow amounts to a breach of its duty of fair representation. Thus, as we noted above, he must show that UPI engaged in intentional misconduct, *i.e.*, he "must show substantial evidence of fraud, deceitful action, or dishonest conduct [citations], or deliberate and severely hostile and irrational treatment." (Internal quotation marks omitted.) *Paxton-Buckley-Loda Educational Ass'n*, 304 Ill. App. 3d at 349. Petitioner presented absolutely no evidence and made no claim that the failure to file a petition in accord with section 1110.170(a) was for fraudulent, dishonest, or hostile and irrational reasons. Instead, his exceptions to the executive director's recommended decision and his briefs in this court simply argue that UPI violated section 1110.170(a), without any discussion of UPI's intent. Thus, the IELRB did not err in dismissing his claim pursuant to section 14(b)(1).

¶ 64 Petitioner also claims that the failure to amend the certification violates section 14(b)(4) of the Act, which provides that a union commits an unfair labor practice when it "[v]iolat[es] any of the rules and regulations promulgated by the Board regulating the conduct of representation elections." 115 ILCS 5/14(b)(4) (West 2014). But in his opening brief, petitioner's entire argument as to this claim is the following sentence: "The failure to amend the certificate of representation * * * [v]iolates § 14(b)(4) because a possible remedy available to members contesting the change in structure would be a representation election." Under Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), an appellant's opening brief must "contain the contentions of the appellant and the reasons therefor." Both the Illinois Supreme Court and this court have held that an argument consisting of a single sentence fails to satisfy Rule 341(h)(7).

See, *e.g.*, *People v. Nieves*, 192 Ill. 2d 487, 503 (2000) (plain error argument forfeited where "plain error argument consist[ed] of a single sentence"); *People v. Bui*, 381 Ill. App. 3d 397, 421 (2008) (argument that defendant did not voluntarily possess narcotics forfeited where "his argument in support of his contention consists of a single sentence").

¶ 65 "This court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented [citation], and it is not a repository into which an appellant may foist the burden of argument and research." (Internal quotation marks omitted.) *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010). Petitioner has forfeited his section 14(b)(4) claim by failing to present us with a cohesive argument.

¶ 66 C. Contract Ratification Vote

¶ 67 Finally, petitioner contends that UPI violated its duty of fair representation and IELRB regulations by failing to hold separate contract ratification votes for the Unit A and Unit B bargaining units.

¶ 68 With respect to petitioner's section 14(b)(1) claim (*i.e.*, that the combined ratification vote violated UPI's duty of fair representation), petitioner did not raise this issue before the IELRB. Petitioner's first charge, dated April 4, 2014, only raised his allegations regarding multi-unit bargaining and the failure to amend the certification of representation. And his second charge, dated December 16, 2014, only alleged that the combined ratification vote violated section 14(b)(4), not section 14(b)(1). Thus, none of IELRB's decisions below addressed whether the combined ratification vote violated UPI's duty of fair representation under section 14(b)(1).[1]

[1] Petitioner attempted to shoehorn this claim into his first charge by filing a reply that said the combined ratification vote violated section 14(b)(1), but the IELRB struck that pleading.

¶ 69 As we noted above, petitioner's failure to raise an issue before the IELRB results in his forfeiting consideration of that issue in this court. *Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO*, 338 Ill. App. 3d at 103; *Bloom Township High School District 206, Cook County*, 312 Ill. App. 3d at 952. In essence, petitioner asks us to find that the IELRB erred in dismissing a charge that it never had cause to consider in the first place. We decline to do so.

¶ 70 With respect to petitioner's claim that the combined ratification vote violated section 14(b)(4), petitioner claims that, by combining the ratification votes, UPI violated IELRB regulations governing the merging of bargaining units. According to petitioner, UPI conducted a *de facto* merger of Units A and B without following the procedure laid out in the IELRB regulations.

¶ 71 In dismissing petitioner's charge, IELRB cited several of its decisions holding that, generally, contract ratification is an internal union matter outside the scope of the IELRB's review. See, *e.g.*, *McHenry County College Faculty Association, IEA-NEA*, 31 PERI ¶ 48 (IELRB 2014); *Carpenters, Local 44*, 5 PERI ¶ 1079 (IELRB 1989). Petitioner has not addressed this finding in his brief. Nor could he have, as he filed his opening brief before IELRB had issued its ruling on his second unfair labor practice charge. And that was petitioner's choice—he asked this court to consider his opening brief in appeal number 1-15-0531 as his opening brief in appeal number 1-15-3485, even though he knew that his opening brief did not discuss the IELRB's analysis.

And petitioner cites no authority for the notion that the IELRB rules allowed him to file such a pleading or that IELRB acted inappropriately in striking his reply.

¶ 72 Given that we must afford deference to the IELRB's interpretation of the Act (*Mattoon Community Unit School District No. 2 v. Illinois Educational Labor Relations Board*, 193 Ill. App. 3d 875, 883 (1990)), we decline to depart from IELRB's interpretation of its authority to address contract ratification under section 14(b)(4). We find that petitioner has forfeited any argument to the contrary. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 73 III. CONCLUSION

¶ 74 For the reasons stated above, we affirm IELRB's orders dismissing petitioner's unfair labor practice charges.

¶ 75 Affirmed.