IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

WEISS, *et al.*,	)	
	)	
Plaintiffs,	)	**Case No. 2024CH09334**
	)	
v.	)	**Commercial 16**
	)	
CHICAGO TEACHERS UNION, *et al.*,	)	**Judge David B. Atkins**
	)	
Defendants.	)	

DEFENDANT CHICAGO TEACHERS UNION'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT ON THE MERITS

INTRODUCTION

The legal standard to resolve this case is set by *Diamond v. United Food & Commer. Workers Union Local 881,* 329 Ill. App. 3d 519 (2d Dist. 2002), appeal denied, 201 Ill. 2d 564 (2002). *Diamond* holds that, in matters of internal union governance, "judicial intervention is appropriate only in instances of fraud, mistake, collusion, or arbitrariness." *Id.* at 525. *Diamond* directs circuit courts to defer to a union president's interpretation of the union's bylaws. *Id.* at 527. *Diamond* directs that circuit courts do not conduct a "*de novo* review of the activities of the local whenever a member bases a cause of action upon an alleged breach of the bylaws." *Id.* at 525.

Here, the Bylaws of the Chicago Teachers Union ("CTU") direct two particular representatives of CTU to produce two types of annual financial reporting in particular ways: an "audited report" and "a reliable and adequate audit of the finances." The Bylaws direct how each of the two types is to be produced to CTU's membership: by publication to all members and for inspection at the CTU's office, respectively. There is no dispute about those *methods* of producing those financial reports. The Bylaws are clear on that and CTU will continue to produce those reports accordingly.

Plaintiffs dispute, rather, is about the *content* of those two forms of annual financial reporting.

Plaintiffs obviously disagree with CTU's President about what should be contained in each of those two forms of report. But Plaintiffs already agreed that CTU's President is empowered with discretion to interpret terms in the Bylaws, which includes the terms "audited report" and "a reliable and adequate audit of the finances." Under the law as set forth in *Diamond,* this Court must defer to this "great discretion" vested in CTU's president because CTU's members— including Plaintiffs—"have agreed to be bound by these interpretations." *Id.* at 526-27.

Plaintiffs' arguments in their Response in Opposition to Defendant's Motion for Summary Judgment on the Merits ("Response" or "Resp.") fail to overcome the deferential approach that *Diamond* requires this Court to take. Perhaps most significantly, the Response asks this Court to flip *Diamond* on its head. Plaintiffs ask the Court to first interpret the Bylaws on its own, deferring to CTU only as a "last resort" (Resp. at 5). That is backwards. To correctly follow the precedent of *Diamond*, the Court may "substitute our judgment for that of [the union's president] only if his interpretation is arbitrary or unreasonable." *Id.* at 527. The circuit courts do not conduct a "*de novo* review of the activities of the local whenever a member bases a cause of action upon an alleged breach of the bylaws." *Id.* at 525. Plaintiffs have it backwards. Judicial deference to internal union decisions comes first, not as a "last resort."

As noted, there are two forms of annual financial reporting in question. As set forth in the declarations CTU filed in support of summary judgment, CTU's president has exercised her discretion that the "reliable and adequate audit of the finances" is the full audit report, available to members (including Plaintiffs) to inspect at CTU in person. The "audited report" then consists of the summary pages from that audit and is published to CTU's members. The Bylaws use two different names for two forms of annual reporting and it is wholly reasonable to interpret them to mean different things. Plaintiffs argue that "audited report" must mean the full audit report, but fail

to reckon with the fact that there is another term in the Bylaws that can be interpreted that way, i.e., that there shall also be annually "a reliable and adequate audit of the finances of the Union." It is wholly reasonable to interpret these different terms as meaning different things, and to interpret the later as meaning the full audit. Plaintiffs might personally prefer to interpret the Bylaws otherwise, but Plaintiffs have agreed to accept the CTU's President's interpretation. Their agreement to accept CTU's President's interpretation is enforceable by the Court. That is the meaning of *Diamond*.

In the past, CTU published the full audit report to members as a whole. CTU's current president changed that policy, since the Bylaws say that the annual "reliable and adequate audit," i.e., the full audit, is available to be "inspected in the Union office by any member." Plaintiffs' lawyers argue that Plaintiffs had some expectations that CTU would always publish the full audit report, but this fails for two reasons. First, the deference this Court owes to CTU's president's interpretation is not reduced simply because a new CTU president chooses the approach of doing no more than the Bylaws require. Second, Plaintiffs themselves have not submitted counter affidavits asserting what they believed or relied upon. Thus, as a matter of summary judgment procedure, there are no facts in the record that Plaintiffs actually expected anything at all, and the Court is not allowed to speculate about what unsubmitted affidavits might have said.

ARGUMENT

I. Plaintiffs Ask the Court to Invert the Analysis Called for by *Diamond*.

Critical to this case is the authority of *Diamond,* because it is binding precedent in cases like this where union members sue on the union's bylaws. Although *Diamond* arises from the Second District, this Court is bound by it, as a "decision of the appellate court, though not binding on other appellate districts, is binding on the circuit courts throughout the State." *State Farm Fire & Casualty*

Co. v. Yapejian, 152 Ill. 2d 533, 539 (1992).[1]

Diamond holds that a Court must defer to a union's own internal procedures for resolving disagreements. One such procedure can be that the union president has authority to interpret the Bylaws to resolve ambiguity. Where a union's "bylaws vest interpretative authority in the president, the members have agreed to be bound by these interpretations." *Diamond,* 329 Ill. App. 3d at 525. Thus, by deferring to the union's president's interpretation over an asserted contrary interpretation from dissatisfied members, the Court is doing nothing more than enforcing the deal the members agreed to. *Id.* at 526. Plaintiffs here ask this Court to decide the meaning of the CTU's Bylaws on its own. But to do that would be to rewrite Plaintiffs' agreement with CTU, which gives the President that interpretive authority (Ex. 1A at 22[2]). That agreement exists in the Bylaws and in those Bylaws the Plaintiffs agreed that the CTU's President had authority to decide the meaning of the Bylaws. *Id.* This court is not permitted to conduct a "*de novo* review" of that exercise of interpretive authority. *Id.* at 525.

Thus, Plaintiffs' arguments in the Response cannot be accepted, because Plaintiffs are simply asking the Court to disregard the precedent of *Diamond* and replace it with the reverse of what it actually says. Plaintiffs argue that the Court should "resolve the ambiguity from the text itself" (Resp. at 5). But *Diamond* hold that a court should defer to the union president's approach for

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[1] The more recent, unreported decision in *Amalgamated Transit Union v. Barron,* 2021 IL App (1st) 200380-U, also addresses how circuit court should handle a case involving a union's bylaws. But there is no conflict to resolve, since the *Amalgamated Transit Union* opinion expressly endorses and follows the approach set forth in *Diamond*. *Amalgamated Transit Union,* 2021 IL App (1st) 200380-U, ¶¶ 63-64. Moreover, as addressed below, Plaintiffs cite no cases in their favor involving a challenge to union president discretion.

[2] Exhibit references are to the exhibits attached to the May 11, 2026 Defendant Chicago Teachers Union's Memorandum of Law in Support of its Motion for Summary Judgment on its Obligation to Provide Financial Information ("Memo"), as those are the only exhibits before the court in connection with this motion.

dealing with an ambiguity. *Id.* at 527-28. Plaintiffs say "bylaws do not permit to define down its obligations unilaterally" (Resp. at 15), but that is exactly what the Bylaws do, by granting discretion to the CTU's President (setting aside whatever Plaintiffs might mean by "down"), and *Diamond* requires this Court to defer to that.

Plaintiffs also urge the Court to use various standard interpretative approaches, but *Diamond* holds that a union president's discretion is not "necessarily bound by the same rules of contractual construction that bind a court." *Id.* Thus, Plaintiffs' arguments based on precedent on the meaning of "audit"[3] in other settings (Resp. at 2-3)[4], the use of terms of art from the accounting profession (Resp. at 7), or construction against the drafter (Resp. at 7, citing *Morningside N. Apts. I, LLC v. 1000 N. LaSalle, LLC*, 2017 IL App (1st) 162274), are all of no use, because they apply when it is the Court's role to deal with ambiguity. Under *Diamond,* it is the CTU's President's role to deal with ambiguity, and the Court defers to that.

Plaintiffs cite to *Thompson v. Gordon,* 241 Ill. 2d 428 (2011), for the argument that the Court should use a "plain" or "popular" meaning (Resp. at 6), but the idea that there is a "plain" meaning is disproved immediately by Plaintiffs' own profusion of suggestions about where a meaning for the word "audit" might be found (see Resp. at 2-3 & 7).

This Court must follow *Diamond,* which expressly holds that a union president is not "necessarily bound by the same rules of contractual construction that bind a court." *Diamond,* 329 Ill. App. 3d at 527. Plaintiffs' reliance on doctrines a court might apply are inapplicable in this context.

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[3] Notably, Plaintiffs have no authority on the meaning of "audited report" or "reliable and adequate audit of the finances of the Union," which are the specific relevant terms here.

[4] *Rockford Police Benevolent & Protective Ass'n v. Morrissey*, 398 Ill. App. 3d 145 (2d Dist. 2010), is a case about definitions under the Illinois Freedom of Information Act, not union bylaws.

Id.

II. Plaintiffs Provide No Record Evidence to Create an Issue for Trial

As Plaintiffs are the party responding to the CTU's motion for summary judgment, "it was incumbent upon [them] to file counter affidavits showing that [they] had a defense." *Tuohey v. Yellow Cab Co.,* 33 Ill. App. 2d 180, 184 (1st Dist. 1962). Here, Plaintiffs did not file counter affidavits and "the trial court [is] not permitted to surmise or speculate in the absence of counter affidavits." *Id.* It is unclear what Plaintiffs think a trial would even be about. Their Response does not even use the word "trial" once to explain why one might be needed.

"The purpose of summary judgment is not to try facts, but to determine whether a genuine issue of any material facts exists, thus requiring a jury trial." *Harrington v. Chicago Sun-Times,* 150 Ill. App. 3d 797, 801 (1st Dist. 1986), appeal denied 114 Ill. 2d 545 (1987). There is nothing in the Response explaining what Plaintiffs believe needs to be resolved at trial. The facts are undisputed, including because Plaintiffs did not submit counter affidavits. Plaintiffs oppose summary judgment, but offer nothing to explain why they believe this case should be resolved by trial. Again, it is unclear what Plaintiffs think a trial would even be about. Accordingly, there is no reason for this case to continue and summary judgment should be granted. *Id.* at 804.

Several of Plaintiffs' arguments cannot be accepted, given Plaintiffs' decision not to file counter affidavits. On page 8 of the Response, Plaintiffs question the "interpretive methodology" for CTU's president deciding that the full audit would be available only for inspection. But the Declaration of Stacy Davis Gates states that she made this decision because she interpreted the Bylaws to require that the full audit need only be available for inspection, and that the prior decision to publish it more widely was something she decided CTU no longer needed to do, since the Bylaws did not require it. (Ex. 5 ¶ 3.) Plaintiffs failed to provide counter affidavits to contradict this

reasoning. Without counter affidavits, the Court may not "surmise or speculate" about what other reasons might exist. *Tuohey*, 33 Ill. App. 2d at 184. Plaintiffs' lawyers' speculations are not a dispute of fact. *Id.* There is no "triable issue" in the absence of counter affidavits, and this case is properly ended on summary judgment. *Id.* at 185.

On pages 11 and 12, Plaintiffs argue that CTU's membership expected that CTU would continue prior practices, and that they "voted for" this. But there is no evidence in the record for these factual assertions. There is no evidence that any members, including Plaintiffs themselves, harbored any particular expectations. There is no evidence of there having been a vote, what the vote was about, or what the result of any vote might have been. Plaintiffs cannot survive summary judgment where they have failed to provide counter affidavits to support their factual claims. *Tuohey*, 33 Ill. App. 2d at 184.

III. The Correct Application of *Diamond* Requires Summary Judgment to Be Granted.

As set forth above, there is nothing left for trial and summary judgment should be granted. The Appellate Court in *Diamond* was clear that the Court does not sit to rule on differences of opinion about what the Bylaws mean, because as long "as the president interprets the bylaws in a reasonable manner, the contract has not been breached." *Diamond,* 329 Ill. App. 3d at 527. "This principle holds true even where there is enough ambiguity in the bylaws to create a triable issue." *Id.* at 526. Plaintiffs cannot get to trial simply because they would wish, at trial, to state their differences of opinion with CTU's President. Without evidence of an unreasonable approach, there is nothing for the trial to be about. CTU's motion for summary judgment should be granted.

Instructive here is the case of *Amalgamated Transit Union v. Barron,* 2021 IL App (1st) 200380-U, which expressly followed *Diamond* and applied its approach in the setting of a motion for summary judgment. *Id.* ¶¶ 63-64 (citing *Diamond*). In *Barron,* the plaintiff union pursued internal

charges against several former executive board members. *Id.* ¶¶ 6-11. The union conducted a hearing on those charges before a hearing officer, who assessed fines against the defendants. *Id.* ¶¶ 15-17. The Appellate Court held that summary judgment was appropriately granted to union on these fines. In doing so the Appellate Court specifically rejected arguments based on facts that might have led the hearing officer to rule in the defendants' favor. *Id.* ¶ 73. The Appellate Court deemed those facts "extraneous," since those "extraneous claims speak only to the underlying allegations against them, but in this litigation, the underlying allegations are irrelevant because the defendants were found to have engaged in behavior by a tribunal that Illinois courts recognize, and the defendants themselves contractually recognized, was empowered to make such findings." *Id.*

Thus, where union bylaws grant a particular individual authority to resolve disputed issues, a court need not hold a trial merely over the possibility that individual could have decided differently. That is because the undisputed facts were that the union members had agreed to be bound by the hearing officer's judgment. *Id.* Facts that might have led the hearing officer to rule differently are not material facts for the court. *Id.* Likewise here, the existence of an alternative approach, even another possible reasonable one, does not create an issue for trial, because the Bylaws give the CTU's President the right to choose among reasonable approaches. *Id.*

A. Plaintiffs Ignore That the Bylaws Provide for Two Separate Types of Annual Financial Reporting.

As set forth on pages 8-10 of CTU's Memo, CTU's President acted reasonably in interpreting the Bylaws's terms on financial reporting. The Bylaws assign different individuals within CTU the obligation to make financial reporting in certain ways. The Bylaws use different terms for the types of financial reports those individuals are to make. It is wholly reasonable for CTU's President to conclude that the content of the reports should be different, where different terms are used. CTU agrees that the Bylaws require it to provide the full audit to members every

year. Full audits are, and will continue to be, available to "be inspected in the Union office by any member." (Ex. 1A at 23; Ex. 3, ¶ 2.) Meanwhile, summaries from those full audits are, and will continue to be, published as the "audited report" for the membership as a whole. (Ex. 3, ¶ 3; Ex. 5, ¶ 3.)

As was set forth on pages 2 and 3 of CTU's Memo, CTU's Bylaws call for two forms of annual financial reporting:

1. First, there is the "reliable and adequate audit of the finances of the Union" which is procured by the Board of Trustees and "may be inspected in the Union office by any member" (Ex. 1A at 23-24). Plaintiff Weiss himself actually did inspect this on February 25, 2025 (Ex. 3, ¶ 4).

2. Second, "Each year, the Financial Secretary shall furnish an audited report of the Union which shall be printed in the Union's publication." (Ex. 1A at 23.)

Plaintiffs and CTU have no disputes on the *method* of producing these annual financial reports to members, i.e., for "inspection in the Union office" and "in the Union's publication," respectively. CTU will continue to make these annual financial reports available to members in those ways. Plaintiffs' dispute, rather, is about the *content* of those reports, particularly their disagreement with CTU's President about what the "audited report" should contain.

Plaintiffs state in their Response that "CTU offers no principled reason why "audited report" should mean something categorically different from 'audit.'" (Resp. at 3.) But that is simply untrue. CTU's President's principled reason is set forth on pages 8-10 of CTU Memo. The reason is simple. The Bylaws use two different terms for financial reporting and it is reasonable to interpret those different terms as referring to different forms of reporting. The Bylaws further provide that the two forms of reporting shall be produced to the membership in different ways: for inspection at the office and in the CTU's publication, respectively. Moreover, the two forms of reporting are the obligation of different representatives within CTU.

Because the Bylaws describe those two forms of reporting in those substantially different ways, it is entirely reasonable to treat these two forms of reporting as differing in content. Plaintiffs argue that "audited report" must mean audit, and therefore should be the full audit. But this argument has a critical flaw: if the Court were to follow Plaintiffs' proposed interpretation, then that would leave no meaning left for the "reliable and adequate audit of the finances of the Union." Plaintiffs themselves argue that interpretations that render some words "surplusage" are disfavored. *Premier Title Co. v. Donahue,* 328 Ill. App. 3d 161, 166–67 (2002) (cited in Response at 6). That is true enough and it cuts against Plaintiffs. Plaintiffs' theory that "audited report" means "audit" would then render "reliable and adequate audit of the finances of the Union" as mere surplusage. Thus, Plaintiffs' own case law shows the reasonableness of treating these two terms for financial reporting as describing different forms of financial reporting. *Id.*

Plaintiffs argue that the "audited report" must mean a full audit, because otherwise it would be no different than the Financial Secretary's "report on Union finances for the period since the last report" which is made at "each regular meeting of the House [of Delegates]" (Resp. at 6; Ex. 1A at 23.) But that is just not true and the CTU's sworn evidence shows that. In fact, the annual "audited report" contains assets and liabilities information, which is in addition to the profit and loss figures that are presented roughly monthly to the House of Delegates (Ex. 4, ¶¶ 3-4). Thus, Plaintiffs' argument simply lacks factual basis in the record and is contradicted by CTU's witness evidence in the record. Plaintiffs cannot survive summary judgment where they have failed to submit counter affidavits to contradict CTU's witnesses' testimony. *Tuohey*, 33 Ill. App. 2d at 184.

On pages 10 and 11 of the Response, Plaintiffs assert that CTU has "pivoted" to claiming "it was never obligated to produce the full audits in the first place." (Resp. at 10.) That is simply not true and Plaintiffs provide no citation to anything to support that assertion. *Tuohey*, 33 Ill. App. 2d at

184 (summary judgment properly denied where plaintiff fails to support its claim with evidence).

The fact of the matters is that Plaintiffs simply overlook that there are two different forms of annual financial reporting: the audited report and the full audit. CTU has always agreed to produce both, simply in different ways. CTU was clear about this at least as of August 13, 2025, when CTU filed the Supplemental Declaration of Kurt Hilgendorf which stated: "The audited reports consist of the auditor's summary pages from the full audit showing the revenues, expenses, assets and liabilities for each audited year." (Ex. 3, ¶ 3.) Both the audited reports and the full audits are available to members, just in different ways. The full audits are available for inspection, as Plaintiffs know because Plaintiff Weiss in fact conducted an inspection on February 25, 2025. (Ex. 3, ¶ 4.) Plaintiffs argue that CTU "evidently understood its obligation to require [sic, "production of"?] full audits" (Resp. at 10), but that is not in dispute (see Memo at 7-8). The "audited report" comes from the full audit, and is therefore both are made available to members at the same time, in the respective fashions set forth in the Bylaws (Ex. 3, ¶¶ 2-3).

Plaintiffs argue that the full audits should be published because they are "most comprehensive" and that there is "no privacy rationale for providing less information" in what is published to all members (Resp. at 4 & 13). But CTU's Memo expressly addressed this, explaining that more detailed and private information is reasonably kept more private by limiting it to inspection, while less detailed information is sensibly published more broadly (Memo at 9). Plaintiffs may personally feel it should be the other way around. But this was the CTU's President's interpretation (Ex. 5, ¶ 3), and the Court defers to her under the controlling precedent of *Diamond*.[5]

[5] Plaintiffs argue that access to the full audit should not be limited to those who "know to ask for it" (Resp. at 4), but the Bylaws are available online (see: https://www.ctulocal1.org/union/constitution/) and "may be inspected in the Union office" is clear to anyone who reads the Bylaws on that webpage. As for the burden of appearing in person for the inspection, Plaintiff Weiss himself was undipsutedly able to do this on February 25, 2025

Notably, Plaintiffs cannot cite a single case, from any jurisdiction, where a court found that there was a question of fact warranting a trial over whether a union president exercised discretion reasonable. Plaintiffs cite numerous cases from the commercial context, but those are inapplicable here. "Although the constitution and bylaws of a union or other unincorporated association are a contract, they are a special type of contract that historically has been regarded as unique." *Diamond,* 329 Ill. App. 3d at 524. Plaintiffs cannot come up with a single case where union members like them survived summary judgment. The only case they cited even involving union bylaws at all is *Transp. Workers Union of Am., Local Union 561 v. Transp. Workers Union of Am., Int'l*, 732 F.3d 832 (7th Cir. 2013), but there the court held that the union's "actions fall wholly within the scope of the authority granted to it." *Id.* at 836. Plaintiffs have no case law holding that the Court should not grant summary judgment here.

B. The Deference Owed to CTU's President Includes Deferring to Her Deciding to Change from Past Practices.

Plaintiffs note that, in the past, CTU published the full audit in its magazine, the Chicago Union Teacher. Plaintiffs argue that CTU must now do that for all time. (Resp. at 11-13.) That is not the law. The case law is that the "presumptive strong deference owed to a union's interpretation of its own constitutive documents and procedural rules" continues even where there is "a putative change of practice." *Vazquez v. Central States Joint Board,* 2006 U.S. Dist. LEXIS 11355 *32-33; 2006 WL 695563 (N.D. Ill. Mar. 15, 2006). In *Vazquez*, the court noted that even administrative agencies are allowed to change their interpretations of regulations, even though "judicial deference over agency action is typically far less strong" than deference to a union's interpretation of its governing documents. *Id.* Thus, Plaintiffs' arguments that CTU must always do what it has done in the past is

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(Ex. 3 ¶ 4). Plaintiffs provide no counter affidavits to show that this is difficult for anyone else.

contrary to the case law on the discretion unions have to govern their internal affairs. *Vazquez* is a federal case, but the appellate court in Diamond recognized that "there is little difference between Illinois law and federal law regarding the deference to which an unincorporated association like a union is entitled when it interprets its own constitution or bylaws." *Diamond,* 329 Ill. App. 3d at 526.

Plaintiffs cite *Gomez v. Bovis Lend Lease, Inc.,* 2013 IL App (1st) 130568; *Chicago & N. W. R. Co. v. Peoria & P. U. R. Co.,* 46 Ill. App. 3d 95 (3rd Dist. 1977); and *Interim Health Care of N. Ill., Inc. v. Interim Health Care, Inc.*, 225 F.3d 876 (7th Cir. 2000), but each of those involved a commercial contract, not union bylaws. There the courts used evidence of past conduct to interpret ambiguous contract terms whose meaning was disputed between the parties. But the precedent of *Diamond* holds that union constitutions and bylaws are "a special type of contract that historically has been regarded as unique." *Diamond,* 329 Ill. App. 3d at 524. Under *Diamond*, where a provision is "potentially ambiguous," then the court does not seek out ways to interpret it, as might be the case for a commercial contract where the parties are equals. Rather, the court defers to the union's president's interpretation, because the union members have agreed to accept that interpretation and the Court must defer to it. *Id.* at 527.

Plaintiffs also cite *Dayan v. McDonald's Corp.*, 125 Ill. App. 3d 972 (1st Dist. 1984), but Plaintiffs tell the Court the opposite of the truth about what that case held. Plaintiffs' Response summarizes *Dayan* as "finding a violation of the implied covenant of good faith due to improper motive" (Resp. at 10), but that is *not* the ruling. The actual ruling was: "we find no error with respect to the trial court's determination that McDonald's terminated the franchise agreement for good cause and in good faith." *Id.* at 995. Thus, the case supports CTU and not Plaintiffs, if it has any relevance here.

Once again, Plaintiffs' repeated choice to cite cases from the commercial context only

highlights the weakness of their arguments. Plaintiffs cannot cite a single case, from any jurisdiction, where a court overrode a union president's exercise of discretion of how to interpret the union's bylaws.

C. Member Expectations Are Not a Relevant Consideration.

On pages 11 and 12 of the Response, Plaintiffs assert that CTU's President's decision to disclose financial reporting only to the extent required by the Bylaws interfered with member expectations.

This fails first because it is another instance of Plaintiffs' lawyers making factual assertions without evidence to back up the assertions. Plaintiffs themselves do not produce counter affidavits that they had any particular expectations. Plaintiffs' lawyers say that "members who voted for and operated under the Bylaws" had an understanding about what "audited report" meant, but there is no evidence of that understanding among the membership generally, nor among any particular members, nor is there even evidence of a vote. Nor is there any evidence that the majority of CTU's membership disagrees with CTU's President's interpretation. This argument fails, then, if only because Plaintiffs have not done what they must do to survive summary judgment: produce evidence in support of their claims. *Tuohey*, 33 Ill. App. 2d at 184.

As for Plaintiffs' arguments about "democratic process," the Bylaws provide that the CTU's President is elected for a three-year term (Ex. 1A at 3). Plaintiffs have no evidence that CTU's members are displeased with how CTU's President is acting. But if that is the case, then they can vote for a different president when the time comes.

Moreover, as described above, a court's deference to a union president's interpretative authority is not reduced when a union president decides to change that interpretation. *Vazquez,* 2006 U.S. Dist. LEXIS 11355 *32-33. Plaintiffs have no cases holding that CTU must continue in the

same rut for all time. *Vazquez* is the only authority cited by either party on the question and it holds that CTU's President may change her interpretation of the Bylaws over time.

V. Plaintiffs' New Complaint About the Format of Publication Is Improper.

At the end of the Response, Plaintiffs try something completely new. They argue that CTU cannot substitute online publication for a paper magazine. Presumably, Plaintiffs would have the Court order CTU to publish a paper magazine forever. This issue was not raised in Plaintiffs' complaint or otherwise. New claims cannot be raised in response to a motion for summary judgment.

Plaintiffs also say they need discovery on this new claim. Aside from the fact that this new claim cannot be raised at this time, Illinois Supreme Court Rule 191 requires Plaintiffs to support their request for discovery with an affidavit. They did not do that and thus they cannot forestall summary judgment.

A. A New Argument Cannot Be Raised in Response to Summary Judgment.

Plaintiffs freely admit that they are raising a completely new issue in Section III of the Response. They describe the issue as "whether the CTU's password-protected member portal constitutes 'publication' within the meaning of Article VI, Seciton 1(d)" of the Bylaws (Resp. at 13). They admit this is "distinct from the question of what must be published." (Resp. at 13.)

But a plaintiff cannot avoid summary judgment by raising new arguments that were not in the complaint. This was the holding in *Abramson v. Marderosian*, 2018 IL App (1st) 180081, ¶ 55, where a plaintiff responded to the defendant's motion for summary judgment on a legal malpractice claim by "assert[ing] new factual allegations that should have been included in the underlying complaint." The Appellate Court held that, "Clearly, the trial court could not deny summary judgment upon unpleaded theories of legal malpractice that were raised, for the first time, in

opposition to the motion for summary judgment." *Id.* The same is true here. Plaintiffs never before raised a claim about the CTU's use of its member portal. Plaintiffs cannot avoid summary judgment now by raising this new dispute. *Id.*

B. Plaintiffs Have Failed to Properly Request Discovery Under Rule 191.

This new argument should not be considered at all. But moreover, it cannot be used to forestall summary judgment and seek discovery, because Plaintiffs have not complied in any way with the Illinois Supreme Court's straightforward requirement for a party seeking discovery.

Plaintiffs' Response nowhere addresses the appropriate mechanism for raising this issue: Illinois Supreme Court Rule 191(b) ("Rule 191(b)"). Under that Rule, a party seeking discovery can ask the court to continue the motion for summary judgment to allow for discovery, if that request is supported by an affidavit which:

> contains a statement that any of the material facts which ought to appear in the affidavit are known only to persons whose affidavits affiant is unable to procure by reason of hostility or otherwise, naming the persons and showing why their affidavits cannot be procured and what affiant believes they would testify to if sworn, with his reasons for his belief

Rule 191(b).

If Plaintiffs' lawyers believe there is a "genuine dispute of material fact requiring discovery" (Resp. at 15), Plaintiffs themselves must establish that under oath. Arguments from Plaintiffs' lawyers alone do not suffice. *Saladino v. Team Chevrolet*, 242 Ill. App. 3d 735, 743-44 (2nd Dist. 1993) ("It was plaintiffs' duty to present the names and probable testimony of the potential witnesses to the trial court" as directed by Rule 191(b)), appeal denied 152 Ill. 2d 580 (1993). Accordingly, summary judgment cannot be held up for discovery on any issue, but particularly not this newly raised one.

Even if there were an affidavit to support Plaintiffs' lawyers' arguments, that would not be

enough, because those arguments still fail to present "names and probably testimony." *Id.* Rule 191(b) simply does not permit general averments of need for discovery. It requires specifics, which Plaintiffs did not provide. *Id.*

C. CTU's President's Interpretation Is Entitled to Deference Even When it Changes Over Time.

As noted above, the "presumptive strong deference owed to a union's interpretation of its own constitutive documents and procedural rules" continues even where there is "a putative change of practice." *Vazquez,* 2006 U.S. Dist. LEXIS 11355 *32-33. If anything, Plaintiffs' would-be newly added claim highlights the importance of this. If accepted, Plaintiffs' approach would allow any CTU member to file a lawsuit and have the Court hold a trial, any time CTU found a way to use technology to make its operations more efficient. It is hardly CTU's President that is being unreasonable here, in taking advantage of electronic communication. Rather, Plaintiffs' demand for an entire trial on the difference between print and electronic publication is what is unreasonable.

CONCLUSION

CTU's Bylaws clearly state its ongoing obligation to produce annual financial reporting to CTU's membership. There is no dispute on this obligation to report. Nor is there a dispute over the ways in which the reports should be produced. Rather, the dispute is about what the content of the reports should be, with Plaintiffs disagreeing with what the CTU's President has decided for that content. Plaintiffs provide no counter affidavits to contest CTU's affidavits that its President's exercise of the discretion granted to her in the Bylaws was anything but reasonable. The Plaintiffs agreed in the Bylaws to abide by her discretion in interpreting what the Bylaws require and, under *Diamond*, this Court must enforce Plaintiffs' agreement by deferring to the CTU President's discretion.

Summary judgment should be granted now because there is nothing left for trial.

Respectfully submitted,

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June 18, 2026

CERTIFICATE OF SERVICE

I, Josiah A. Groff, an attorney, hereby certify that, on June 18, 2026, I caused to be served DEFENDANT CHICAGO TEACHERS UNION'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT ON THE MERITS to all attorneys of record by using the Odyssey eFileIL service, and to the following by email:

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