

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

PHILIP WEISS, et al., Plaintiffs v. CHICAGO TEACHERS UNION, LOCAL 1, IFT-AFT, AFL-CIO, Defendant.	No. 2024 CH 09334 Judge David B. Atkins Calendar 16
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**Plaintiffs' Response in Opposition to Defendant's
Motion for Summary Judgment on the Merits**

INTRODUCTION

Defendant Chicago Teachers Union Local 1, IFT-AFT, AFL-CIO's ("CTU") latest motion for summary judgment asks this Court to accept three extraordinary propositions: that the phrase "audited report" in CTU's own Bylaws means something less than an audit, that CTU's President's litigation-era reinterpretation of that term is entitled to judicial deference, and that posting a password-protected summary on a member portal satisfies a "publication" requirement. Each proposition fails.

First, the plain language of Article VI, Section 1(d) of CTU's Bylaws—read against the backdrop of Illinois law's settled definition of "audit"—requires a full, independent financial audit, not a summary profit-and-loss statement. Second, CTU has not established the evidentiary predicate Illinois courts require before affording a union president's contractual interpretation any

deference under *Diamond v. United Food & Commercial Workers Union, Local 881*, 329 Ill. App. 3d 519, 526 (2d Dist. 2002). Third, even if CTU had cleared that threshold, its interpretation is objectively unreasonable: it comes after CTU had already furnished full audits to try to argue a mootness, and it conflicts with the reasonable expectations of CTU’s membership. Summary judgment must be denied.

ARGUMENT

I. The plain language of Article VI, Section 1(d) requires a full, independent audit report.

Illinois courts interpret contract language according to its plain and ordinary meaning. Where the language is clear and unambiguous, the court must give it effect as written without resorting to extrinsic aids. *See Gallagher v. Lenart*, 226 Ill. 2d 208, 233 (2007). The term “audited report” is not ambiguous.

Illinois courts have defined “audit” to mean a formal examination of an organization’s financial records, conducted by an independent auditor, resulting in a written report expressing the auditor’s opinion on whether the financial statements fairly present the organization’s financial position. *Rockford Police Benevolent & Protective Ass’n v. Morrissey*, 398 Ill. App. 3d 145, 151 (2d Dist. 2010).

Federal law likewise defines an “audit report” as a record prepared after an audit in which a public accounting firm either “sets forth the opinion of that firm regarding a financial statement” or “asserts that no such opinion

can be expressed.” 15 U.S.C. § 7220(2). Black’s Law Dictionary similarly defines “audit report” as “an outside auditor’s written statement . . . expressing the auditor’s opinion of the accuracy of the company’s financial condition as set forth in the financial statement.” *Audit Report*, Black’s Law Dictionary (12th ed. 2024). The Cambridge English Dictionary defines “auditor’s report” as “a formal document that states an auditor’s judgment of a company’s accounts.” *Auditor’s Report*, Cambridge English Dictionary, <https://dictionary.cambridge.org/dictionary/english/auditor-s-report> (last visited May 31, 2026).

A summary profit-and-loss statement—the document CTU now claims satisfies its obligation—is categorically different. It reflects selected financial data prepared by management, not an independent examination and opinion by an outside auditor. It is not an “audited report” by any accepted definition. Because the term “audited report” has a clear and recognized meaning in legal, accounting, and plain English contexts, no ambiguity exists and no deference is warranted. CTU offers no coherent rationale for distinguishing “audited report” from “audit.” It argues that the Bylaws draw a distinction between the “audited report” that must be published and the “reliable and adequate audit” that must be made available for inspection. CTU Mem. at 8–9. But CTU offers no principled reason why “audited report” should mean something categorically different from “audit,” especially when the former term incorporates the latter as its root. Both provisions use variants of the

same term: “audit” and “audited report.” The natural reading is that both provisions concern the same underlying audit.

CTU’s interpretation would produce the anomalous result that the annual “audited report”—which is made available to all members—contains less information than the monthly financial reports that the Financial Secretary already provides to the House of Delegates. This cannot be what the Bylaws intended. CTU’s interpretation would also mean that the most detailed financial information—the full audit—is available only to the small subset of members who know to ask for it and who can physically visit CTU’s offices during business hours. Meanwhile, the published report available to all members would be a stripped-down summary lacking independent verification. This allocation makes no sense from a transparency or accountability perspective. If anything, the Bylaws’ structure suggests the opposite: the published report should be the most comprehensive, because publication ensures the widest dissemination.

CTU asks this Court to accept that “audited report” means something other than what those words plainly convey, that a management-prepared profit-and-loss summary constitutes an “audited report,” and that the union’s obligation to publish comprehensive financial information annually can be satisfied by providing less detail than it already provides monthly. This interpretation defies the plain language of the Bylaws and produces results so absurd that no reasonable union member adopting these Bylaws could

have intended them. What CTU characterizes as reasonable interpretation is a bold-faced attempt to rewrite a clear contractual obligation to avoid compliance. Illinois courts do not permit parties to escape unambiguous contractual language through post hoc linguistic creativity.

II. CTU has not established the predicate for *Diamond* deference.

CTU invokes *Diamond* for the proposition that a union president's interpretation of an ambiguous bylaw provision is entitled to judicial deference. But *Diamond* does not rescue CTU here for two reasons: (1) Article VI, Section 1(d) is not ambiguous; and (2) even if it were, CTU has not built the evidentiary record *Diamond* requires.

Diamond did not hold that union presidents may authoritatively define unambiguous contract language simply by invoking their interpretive authority. Deference is a last resort—applicable only when the court cannot resolve the ambiguity from the text itself. Where, as here, the plain meaning of the contractual language is clear, no deference is warranted. To hold otherwise would allow union leadership to rewrite unambiguous obligations through bare assertion, effectively nullifying members' contractual rights. *See Diamond*, 329 Ill. App. 3d at 524–25 (any interpretative power a union's leadership might have cannot be read to allow it “to do whatever it pleases under the guise of interpretation.”)

Even when a bylaw provision contains genuine ambiguity, *Diamond* makes clear that deference is owed only to interpretations supported by a discernable “method of interpretation.” *Id.* at 527. The *Diamond* court did not

defer simply because the union president claimed interpretive authority. Rather, the court evaluated the substantive bases offered for the interpretation and concluded the president’s “method of interpretation [was] neither arbitrary nor unreasonable.” *Id.* at 527-28.

Even if CTU could establish ambiguity, its interpretation fails under traditional canons of contract construction that Illinois courts apply to union bylaws. *Diamond*, 329 Ill. App. 3d at 524 (recognizing that union bylaws are contracts subject to principles of contract interpretation) (internal citations omitted). CTU’s reading “violates the rule that requires that a contract be construed such that none of its terms are regarded as mere surplusage.” *Premier Title Co. v. Donahue*, 328 Ill. App. 3d 161, 166–67 (2002) (internal citations omitted). CTU’s Bylaws already require monthly financial reports to the membership. If the annual “audited report” merely required a summary profit and loss statement—the same type of financial information already provided monthly—the annual requirement would be entirely superfluous. The only way to give independent meaning to the annual “audited report” requirement is to interpret it as requiring something more than the monthly summaries: namely, an independent auditor’s examination and opinion.

CTU’s interpretation also ignores the principle that contract terms should be construed in accordance with their “plain, ordinary and popular meaning.” *See Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011) (internal citation omitted). When a contract uses a term with a recognized technical or

professional meaning, courts presume the parties intended that meaning unless the contract demonstrates otherwise. Here, “audit” and “audited report” are terms of art in the accounting profession with well-established meanings. CTU has pointed to nothing in the Bylaws suggesting the members intended to adopt a non-standard definition.

CTU’s position conflicts with the principle that ambiguities in a contract—should the Court determine that the relevant language here is ambiguous—are construed against the drafter. *Morningside N. Apts. I, LLC v. 1000 N. LaSalle, LLC*, 2017 IL App (1st) 162274, P17. Here, CTU drafted the Bylaws. If CTU had intended “audited report” to mean something less than a full independent audit—to permit a management-prepared summaries—it could have said so. The choice of the specific term “audited report” rather than “financial summary” or “annual statement” is strong evidence that a formal audit was intended.

CTU also failed to establish the evidentiary foundation *Diamond* requires. In *Diamond*, the union president’s interpretation rested on a substantial evidentiary foundation that the court could evaluate for reasonableness. The union president in *Diamond* relied on Robert's Rules of Order, federal labor law governing dues increases, the practices of the international union in interpreting materially similar constitutional language, and established voting procedures within the local. *Diamond*, 329 Ill. App. 3d at 523, 529. The

court examined each of these authorities before concluding that the interpretation was reasonable. *Id.*

But here, CTU has done nothing comparable. CTU's President's declaration offers nothing more than a bare conclusion—that “audited report” means a summary—without citing any accounting authority, practice, industry standard, or historical basis for the interpretation. The President does not explain what interpretive methodology she employed, what sources she consulted, or what principles guided her conclusion. The declaration simply states that she “decided” the summary reports satisfy the Bylaw requirement. Gates Decl. ¶ 3. This deficiency is fatal to CTU's claim of deference. Without an articulated interpretive methodology, this Court has no basis on which to evaluate whether the interpretation is reasonable or arbitrary. CTU asks this Court to defer not to a reasoned interpretation grounded in authoritative sources, but to an unexplained preference. That is precisely what *Diamond* forbids.

Even where *Diamond* deference is theoretically available, Illinois courts do not defer to a union president's interpretation that is unreasonable, made in bad faith, or contrary to the reasonable expectations of the union's membership. *Diamond*, 329 Ill. App. 3d at 525–27 (noting that courts will intervene where interpretations are arbitrary, unreasonable, or violate the duty of good faith implicit in the bylaws as a contract). CTU's interpretation fails each of these tests.

An interpretation is unreasonable where the decisionmaker exercises discretion with an improper motive or in a manner inconsistent with the reasonable expectations of the parties. *Interim Health Care of Northern Ill., Inc. v. Interim Health Care, Inc.*, 225 F.3d 876, 884 (7th Cir. 2000) (applying Illinois law). The timing and circumstances of CTU’s reinterpretation raise serious questions regarding both its motive and reasonableness.

For years before this litigation, CTU furnished full, independent audits in compliance with Article VI, Section 1(d). The most recent audit published before the discontinuation was a comprehensive 19-page Independent Auditor's Report prepared by Certified Public Accountants Bansley & Kiner LLP, published in the December 2020 edition of the Chicago Union Teacher. That report followed generally accepted accounting principles (GAAP) and included detailed financial statements, explanatory notes, and disclosures about CTU’s financial assets and obligations. Weiss Mot. to Dismiss Decl. ¶¶ 5–6.

This course of performance—publishing thorough audited reports to CTU members for years on end—is the strongest evidence of what the parties understood Article VI, Section 1(d) to mean. “The parties to an agreement are in the best position to know what they meant, and their action under the contract is often the strongest evidence of their intended meaning.”) *Chicago & N.W. R. Co. v. Peoria & P.U.R. Co.*, 46 Ill. App. 3d 95, 101 (3d Dist. 1977). CTU cannot now reinterpret its own longstanding practice out of existence.

CTU's current position—that “audited report” means something less than a full independent audit emerged only after CTU had already produced full audit reports in an effort to defeat Plaintiffs' claims on mootness grounds. CTU first argued that the case was moot because it had posted summary “Audit Reports” for fiscal years 2020–2022. When that argument failed, CTU supplemented the record with full annual audits for fiscal years 2019–2024, again arguing mootness. Only after this Court rejected that second mootness argument did CTU pivot to its current position: that it was never obligated to produce the full audits in the first place, and that the summaries suffice.

This litigation-driven evolution of CTU's position is the paradigm case of improper motive. An interpretation adopted in the heat of litigation, designed to minimize obligations and shield the union from contractual liability rather than reflect an objective reading of the text, is precisely the type of self-serving reinterpretation this Court should reject. *See Dayan v. McDonald's Corp.*, 125 Ill. App. 3d 972, 990 (1984) (finding a violation of the implied covenant of good faith due to improper motive).

President Gates's declaration stating CTU “has been catching up on finishing audits after 2019” and that audits for 2021–2022 were not “ready” until “around early December 2024” is revealing. Gates Decl. ¶ 3. If CTU genuinely believed summary reports satisfied its obligations, it would not see any need to be “catching up” on full audits. CTU evidently understood its obligation to require full audits, completed those audits (albeit belatedly), but

then—faced with the prospect of liability for years of non-compliance—adopted a post-hoc reinterpretation to avoid accountability. This sequence of events shows that the current interpretation was adopted for an improper purpose: not to faithfully interpret the Bylaws, but to manufacture a litigation defense.

Union members who voted for and operated under Bylaws requiring an annual “audited report” reasonably understood that term to mean what accounting professionals, legal authorities, and Illinois courts have consistently understood it to mean: a formal, independent audit culminating in an auditor’s opinion. *Transp. Workers Union of Am., Local Union 561 v. Transp. Workers Union of Am., Int’l*, 732 F.3d 832, 835-36 (7th Cir. 2013) (the “stark and unambiguous” language of a bylaw provision defeats a contrary interpretation regardless of officer discretion).

An interpretation that retroactively redefines “audited report” to mean a management-prepared summary—without any amendment to the Bylaws and without the membership’s knowledge or consent—defeats those reasonable expectations. Members have a right to expect that the words in their governing document would retain their ordinary and established meaning unless the membership voted to change them through the Bylaws’ amendment process. CTU’s unilateral reinterpretation circumvents that democratic process and substitutes executive fiat for membership consent.

CTU's multi-year practice of publishing full independent audits reinforced members' reasonable understanding of what Article VI, Section 1(d) required. When CTU consistently published comprehensive audit reports year after year, members reasonably relied on that practice as evidence of CTU's interpretation of its own obligations. *See Gomez v. Bovis Lend Lease, Inc.*, 2013 IL App (1st) 130568, ¶¶ 27–30 (using course of performance as extrinsic evidence to interpret contract provision).

Having established that practice and those expectations, CTU cannot now claim that the practice was always discretionary and that a lesser disclosure would have sufficed all along. Such a claim not only contradicts CTU's prior conduct but also undermines CTU members' ability to rely on the Union's representations about its obligations. If CTU can unilaterally redefine "audited report" despite years of contrary practice, members have no basis to trust that any provision in the Bylaws means what CTU's historical practice suggests it means.

CTU also suggests that its interpretation deserves judicial deference because it is "reasonable" for the publicly available audited report to contain "less detailed, private information" than the full audit available only to members. CTU Mem. at 9. But this argument fails for several reasons.

Article VI, Section 1(d) does not require publication to the general public; it requires publication "printed in the Union's publication." Historically, that publication was the Chicago Union Teacher, a magazine distributed to

members, not to the public. More recently, CTU has posted documents on its password-protected member portal, again accessible only to members. In either case, “publication” means dissemination to CTU’s members, not to the public. There is no privacy rationale for providing less information in a members-only publication than in a members-only inspection process. But even if privacy were a concern, CTU has not explained what “detailed, private information” appears in the full audit but not in the summary. It has not identified any confidential data that would be compromised by publishing the full audit to members. CTU’s privacy argument is also undermined by its own conduct. For years, CTU published full audits without raising privacy concerns. If privacy were genuinely an issue, CTU would have raised it during those years and structured its audits differently. The belated invocation of privacy concerns suggests pretext rather than principle.

III. CTU’s claimed “publication” does not comply with the Bylaws.

Separately and independently, summary judgment must be denied because a genuine issue of material fact exists regarding whether CTU’s password-protected member portal constitutes “publication” within the meaning of Article VI, Section 1(d). This issue is distinct from the question of what must be published. It concerns whether CTU’s chosen method of dissemination satisfies the publication requirement at all.

As previously mentioned, CTU for years published its annual audited report by printing it in the Chicago Union Teacher, a magazine distributed in hard copy to all members. This practice gave concrete meaning to the term

“publication” in Article VI, Section 1(d): broad dissemination to the membership through a medium that ensured all members would receive the information without taking any affirmative steps to obtain it. CTU now claims that posting documents on this portal constitutes “publication” equivalent to the historical practice. But the two methods of dissemination are not equivalent, and CTU’s unilateral substitution of one for the other raises genuine issues of material fact that preclude summary judgment.

CTU’s position reduces to a claim that it may unilaterally redefine the meaning of “publication” to suit its administrative convenience, transforming an obligation of proactive dissemination into a passive duty to make information available to those members sufficiently motivated and technologically equipped to seek it out. This is not contract interpretation—it is contract rewriting. The Bylaws imposed a publication requirement precisely to ensure that critical financial information would reach all members as a matter of course, not merely those who knew where to look, had internet access, remembered their passwords, and possessed the technological literacy to navigate an online portal. Whether CTU’s substitution of a password-protected website for magazine publication satisfies this obligation cannot be determined on the current record. The Court would need evidence regarding member access to technology, the adequacy of notice about the change in method, the reliability and permanence of the online system, member consent to the substitution, and

whether CTU acted in good faith or merely sought to reduce transparency while maintaining the appearance of compliance. Each of these questions presents a genuine dispute of material fact requiring discovery. CTU cannot obtain summary judgment by simply declaring that its new method of restricted online access is the functional equivalent of the broad-based magazine publication it promised and practiced for years. The Bylaws do not permit CTU to define down its obligations unilaterally, and neither should this Court.

CONCLUSION

CTU's latest motion for summary judgment should be denied. The plain language of Article VI, Section 1(d) unambiguously requires a full, independent audited report. CTU has not established the evidentiary predicate for *Diamond* deference, and even if it had, its litigation-driven reinterpretation is objectively unreasonable. Genuine issues of material fact exist regarding both the meaning of "audited report" and whether CTU's chosen method of "publication" satisfies its contractual obligations. This Court should deny CTU's latest motion for summary judgment in its entirety.

Dated: June 4, 2026.

Respectfully submitted,

/s/ Ángel J. Valencia
Ángel J. Valencia (DC Bar #1442471)*
Jeffrey M. Schwab (#6290710)
James McQuaid (#5135884)
Liberty Justice Center
1629 K Street, N.W.
Suite 300
Washington, D.C. 20006
(512) 481-4400
avalencia@ljc.org
jschwab@ljc.org
jmcquaid@ljc.org
Attorneys for Plaintiffs

*Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

I, James McQuaid, counsel for Plaintiffs, hereby certify that on June 4, 2026, I served the foregoing on counsel for all parties by filing it electronically via the Odyssey eFile IL service.

/s/ James McQuaid