STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
University Professionals of Illinois, Local 4100, IFT-AFT,	)	
	)	
Complainant,	)	
	)	
and	)	Case No. 2000-CA-0028-S
	)	
Western Illinois University,	)	
	)	
Respondent.	)	

OPINION AND ORDER

This matter comes before the Illinois Educational Labor Relations Board ("Board," or "IELRB") on exceptions filed by the University Professionals of Illinois, Local 4100, IFT-AFT ("Union") to the Administrative Law Judge's Recommended Decision and Order dated August 13, 2001.

On February 23, 2000, the Union filed an unfair labor charge against Western Illinois University ("University") alleging that the University violated Sections 14(a)(1) and (3) of the Illinois Educational Labor Relations Act ("Act") by retaliating against Fran Hainline for requesting and receiving a job reclassification and upgrade. The Union contends that the University retaliated against Hainline by denying her request for payment of conference expenses, denying her paid leave to attend the conference and reviewing Hainline's time cards after attending the conference.

On October 27, 2000, following an investigation, the Executive Director issued a Complaint and Notice of Hearing. On November 29 and 30, 2000, a hearing was held before the Administrative Law Judge ("ALJ"). The ALJ determined that the University did not violate Sections 14(a)(1) and (3) of the Act. Rather, the ALJ concluded that the evidence showed that the University did not disallow payment of travel expenses and paid leave or require Hainline to submit her time cards to the Dean's office in retaliation for Hainline's successful job audit and/or subsequent reclassification from a Secretary III position to a Secretary IV position. On September 7, 2001, the Union filed timely exceptions, in the form of a brief, to the ALJ's Recommended Decision and Order. On October 1, 2001, the University filed a response to the Union's exceptions.

We have considered the ALJ's Recommended Decision and Order and applicable precedents. We have also considered the Union's exceptions and the University's response to those exceptions. For the reasons in this Opinion and Order, we affirm the ALJ's Recommended Decision and Order.

I.

We adopt the ALJ's statement of the facts as supplemented below. We restate the facts here to the extent necessary to decide the issues presented.

Fran Hainline was employed as a Secretary III for the Department of African-American Studies for the University. Hainline served as the vice president and grievance chair for her Union and routinely helped other Union members request and receive job audits for reclassification. On August 7, 1998, Hainline requested a job audit of her position. She sought reclassification as a Secretary IV, a higher paid secretarial position. Her supervisor, Department Chair Michael Cooke, approved and signed her request for the job audit. Cooke also helped Hainline rewrite her job audit request. While Hainline's direct supervisor, Department Chair Cooke, was aware of her audit request, his supervisor, Dean of the College of Liberal Arts and Sciences Phyllis Farley Rippey ("Dean"), was not aware of Hainline's request for a job audit.

On August 16, 1999, the University's Human Resources department sent a letter to Hainline stating that, after analysis of Hainline's duties, it recommended that Hainline be reclassified to a Secretary IV position. Copies of the letter were also sent to Cooke and the Provost Burt Whittuhn. On August 17, 1999, the Provost contacted the Dean to inquire whether there was any reason why he should not approve Hainline's reclassification to a Secretary IV position. The Dean informed the Provost that this was the first time she heard of the job audit and reclassification. After the Provost's call, the Dean contacted Cooke by email and stated that she was unaware of Hainline's audit request and Cooke's support of that request. Further, the Dean informed Cooke that she did not support Hainline's reclassification upgrade because Hainline's increased job requirements were Cooke's responsibility (i.e. managing the Department budget and supervising staff) and should not have been assigned to Hainline. The Dean also stated that she did not support the upgrade because "Fran [Hainline] is not in the office enough hours of the day or days of the week nor does she work for a sizeable enough department to justify this upgrade." The Dean also suggested that Cooke needed to manage his own budget and rearrange supervision of staff to delete the Secretary IV responsibilities from Hainline's position.

After Cooke received the Dean's email, he contacted Hainline at her home and indicated that he was upset about the job audit process and Hainline's subsequent upgrade. Cooke also told Hainline that he felt that she had misled him about the upgrade and her motivation for it. Lastly, Cooke also indicated to Hainline that the Dean also seemed to be upset about the upgrade and was planning on modifying Hainline's job responsibilities in order to avoid the reclassification. After Cooke's call, Hainline contacted Union President Karen Ault to request help in sustaining her upgrade and to discuss the possibility of filing a grievance against the University to uphold the job upgrade.

On August 23, 1999, Hainline contacted the Dean's secretary, Jan Mix. Hainline and Mix discussed the upgrade and the Dean's response to it. Mix informed Hainline that she thought the Dean was angry with Cooke and not with Hainline. Hainline also complained to Mix about Cooke calling her at home about the job audit. On August 23, 1999, Karen Ault also contacted the Dean's office and spoke with Mix about Hainline's job audit and subsequent upgrade. During the telephone conversation, Ault requested a meeting with the Dean to discuss these matters.[1] Mix relayed Ault's request to the Dean, but the Dean refused to meet with Ault because she felt that Ault should meet with someone in Human Resources. No conversation ever occurred between Ault, the Dean, and/or Hainline regarding the job audit and subsequent upgrade.

Several days after August 23, 1999, Hainline was notified that the Dean approved her job upgrade. The Dean testified that she decided to approve the upgrade because of Cooke's call to Hainline at her home and the fact that Hainline had been performing the additional job responsibilities for approximately one year.

On August 26, 1999, Hainline submitted a request to the Dean for financial assistance (i.e. travel and lodging expenses, registration fees, etc.) to attend a conference where she would be presenting a paper addressing support staff and technology issues. Previously, Hainline had received financial support and release time from the University for attendance at other conferences. The Dean did not respond to Hainline's request at that time. On September 7, 1999, Hainline again contacted the Dean, this time by email, to request financial assistance to attend the conference. That same day, the Dean responded to Hainline's email. The Dean explained that the University only provided financial assistance to faculty members whose job duties included presentations as part of their job or for professional development of support staff. The Dean also stated that the University also provides financial assistance to support staff to attend a conference if it will further any skills required for their position. The Dean determined that Hainline's request did not fulfill any of these requirements and denied her request for financial assistance to attend the conference.

Karen Ault, the Union president, worked as a Secretary III in the Computer Science Department for the College of Business and Technology. She also requested financial assistance to attend the business and technology conference where she and Hainline would be presenting a paper concerning support staff and technology. Dean Beverage of the College of Business and Technology approved her request for financial assistance and paid release time to attend the conference.

[1] Before an employee files a grievance, a meeting occurs between a union representative and an administrator to discuss the matter.

From October 27-29, 1999, Hainline attended the conference with Ault and presented their paper. Before the conference, Cooke approved Hainline's use of release time to attend the conference, which allowed her to receive full pay while attending the conference. Hainline's timecard indicated the days she spent at the business technology conference as "other hours" on her timecard. After Hainline submitted her timecard, the Dean noticed that it reflected that Hainline received three days of leave with pay instead of vacation time. After reviewing the timecard, the Dean contacted Jeri Scott in Human Resources at the University to determine the University's policy for granting or denying leave with pay. On November 3, 1999, Hainline received a letter from the Dean stating that her timecard had been reviewed and corrected to reflect the three days used to attend the conference as vacation time and not leave with pay. The Dean further explained that "[e]mployees who perform duties away from campus at the behest of the institution or for reasons required by the nature of their work use the category 'leave with pay' to denote that they were working for the institution, albeit at a remote site. Employees who spend time away for reasons of their own are considered to be on vacation and are required to take vacation days during their absence." Previously, Hainline had never discussed her use of leave with pay to attend the conference with the Dean. The Dean also wrote to Cooke and criticized him for authorizing Hainline's use of leave with pay for attending the conference. Following several critical letters and emails between the Dean and Cooke, the Dean directed Cooke to deliver Hainline's timecards to her office for review before being submitted to the payroll department.

The Dean and the Dean's secretary Janet Mix testified that the Dean had previously requested and reviewed Hainline's timecards for the months of August-December 1998, due to problems concerning unanswered phone calls to the African American Studies department and student complaints that no one was available during office hours to address their concerns. After October 2000, the Dean's office did not again request and review Hainline's timecards.

II.

The ALJ dismissed the Union's 14(a)(1) and (3) claims against the University. The ALJ determined that the Union could not establish that the University took adverse employment action against Hainline because of her protected concerted activity and/or union activities. Specifically, the ALJ held that the Dean did not deny travel expenses and leave with pay or require that Hainline's time cards to be brought to the Dean's office in retaliation for Hainline's successful job audit and reclassification.

In his decision, the ALJ concluded that Hainline engaged in the following union activity: vice-president of the Union, grievance chair of the Union, and requested a meeting with Ault regarding her job audit and subsequent upgrade. She also engaged in protected concerted activity when she utilized the job audit process. The ALJ also determined that the

University had knowledge of Hainline's protected concerted activity and union activity. However, the ALJ determined that the Union failed to establish that the District's actions were unlawfully motivated under Sections 14(a)(1) or 14(a)(3) of the Act. Instead, the ALJ concluded that the Dean's criticisms of Hainline's job audit and subsequent reclassification were directed toward the Department Chair Cooke and not Hainline. The ALJ also determined that, while the Dean expressed dissatisfaction with the auditing process in unrebutted testimony, her criticisms were directed toward the delay in notifying her of job audit requests and not the process itself. Next, the ALJ determined that the University provided an unrebutted, legitimate business reason for denying Hainline's request for financial assistance to attend the conference and, therefore, there was no disparate treatment between Hainline and Ault. Lastly, the ALJ concluded that the Dean's correction of Hainline timecards to reflect vacation time were not unlawfully motivated, but instead, was consistent with the Dean's previous denial of financial assistance from the University for Hainline to attend the business and technology conference.

III.

The Union filed exceptions to the ALJ's Recommended Decision and Order on September 7, 2001. On appeal, the Union asserts that the ALJ gave insufficient weight and credibility to testimony presented at hearing. Specifically, the Union contends that the Dean's alleged disapproval of job audits and reclassifications show that the Dean harbored union animus, which motivated her actions against Hainline.

In response to the Union's exceptions, the University contends that, under existing case law, the ALJ's determination of credibility of witnesses and weight of evidence should be accorded deference. Moreover, the University asserts that the ALJ's findings of fact are consistent with the evidence presented at hearing. To support its assertions, the University contends that the Union's re-analysis of evidence of alleged union animus distorts the facts presented at hearing.

IV.

Section 14(a)(1) of the Act prohibits employers, their agents or representatives from "interfering, restraining, or coercing employees in the exercise of the rights guaranteed under this Act." 115 ILCS 5/14(a)(1).

Section 14(a)(3) of the Act prohibits educational employers, their agents or their representatives from "[d]iscriminating in regard to hire, or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization. Section 14(a)(3) protects only union activity. *Crete-Monee School District No. 201-U,* 7 PERI 1068, Case No. 89-CA-0009-C (IELRB Opinion and Order, May 24, 1991).

To establish a prima facie violation of Section 14(a)(3) of the Act or 14(a)(1) of the Act involving retaliatory action, the charging party must show by a preponderance of the evidence that:

(1) the employee's activity was protected concerted activity and/or union activity, and

(2) the employer knew of the protected concerted activity and/or union activity, and

(3) the adverse employment action was motivated by the employee's protected concerted and/or union activity."

Neponset Community Unit School Dist. No. 307, 13 PERI 1089, Case No. 96-CA-0028-C (IELRB Opinion and Order, July 1, 1997) at p. IX-275 (case in which the Board adopted the elements for a prima facie violation of Section 14(a)(1) of the Act involving retaliatory action); *Hardin County Community Unit School District No. 1*, 3 PERI 1076, Case No. 85-CA-0032-S (IELRB Opinion and Order, June 17, 1987), *aff'd* 174 Ill. App. 3d 168, 528 N.E. 2d 737 (4th Dist. 1988) (case in which the Board established the elements for a prima face violation of Section 14(a)(3) of the Act).

Unlawful motivation for an adverse employment action can be inferred from a variety of factors including: (1) timing of the employer's action and the employee's protected concerted and/or union activities, (2) an employer's expressed hostility toward the unionization and/or protected concerted activities coupled with the knowledge of the employee's protected activities, (3) disparate treatment or a pattern of conduct which targets those employees supporting union and/or protected concerted activity comparable to non-supporting employees, (4) inconsistent explanations from the employer about the proffered reason for the adverse employment action, (5) and/or inconsistencies between the employer's reason for its actions and other actions taken by the employer. *City of Burbank v. Illinois State Labor Relations Board*, 128 Ill. 2d 335, 538 N.E. 2d 1146, 1150 (Ill. 1989); *Neponset Community Unit School District No. 307, supra* at p. IX-276.

Once a prima facie case has been established under Sections 14(a)(1) or (3), the burden shifts to the employer to demonstrate, by preponderance of the evidence, that the employer had a legitimate business reason for its actions and that the employee would have received the same treatment in the absence of union and/or other protected concerted activity. *City of Burbank, supra*. Nevertheless, merely proffering a legitimate business reason for the adverse employment action does not end the inquiry, as it must be determined whether the proffered reason is bona fide or pretextual. If the proffered reasons are merely litigation figments or were not, in fact, relied upon, then the employer's reasons are pretextual and the inquiry ends. However, when legitimate reasons for the adverse employment action are advanced, and are found to be relied upon at least in part, then the case may be characterized as one with "dual motive," and the employer must establish, by a preponderance of the evidence, that the action would have been taken notwithstanding the employee's union and/or other protected concerted activity. *Id*.

Here, the Union established that Hainline engaged in protected concerted activities when she requested a job audit. The right to request a job audit is set forth in the parties' collective bargaining agreement. Accordingly, even an individual

request for a job audit would constitute protected concerted activity. *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822, 104 S. Ct. 1505 (1984). The Union also established that Hainline was an active Union participant. She was vice-president of the Union as well as grievance chair. She routinely helped other Union members with their grievance and job audit requests. She also enlisted the support of the Union president Karen Ault in pursuing her own audit request. Thus, it is clear that Hainline engaged in protected concerted activity under Section 14(a)(1) of the Act and union activity under Section 14(a)(3) of the Act. It is also clear, and the University does not contend otherwise, that the University had knowledge of Hainline's union and/or other protected concerted activities. However, we conclude that the University did not retaliate against Hainline because she engaged in union and/or other protected concerted activity.[2]

In its exceptions, the Union argues that the ALJ incorrectly credited the University's witnesses. In his Recommended Opinion and Order, the ALJ credited the Dean's and the Dean's secretary's testimony, as it was unrebutted by the Union. The ALJ also determined that the testimony about the Dean's purported negative views about job upgrades was not credible because it was based upon hearsay testimony.

Under *East Maine School District No. 66*, 15 PERI 1070, Case No. 98-RC-0015-C (IELRB Opinion and Order, November 30, 1998), (*quoting from Fox Lake Elementary School District 114*, 11 PERI 1020, Case No. 93-CA-0028-C (IELRB Opinion and Order, January 27, 1995) and *Consolidated High School District 230*, 7 PERI 1079, Case No. 90-CA-0058-C (IELRB Opinion and Order, June 19, 1991), the Board has stated that "it is our established policy not to overrule an ALJ's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convince us that the resolutions are incorrect." Moreover, "[t]he Board accords great weight to Administrative Law Judges' credibility resolutions which are based on the witness' demeanor. *Id. at* IX-271. In this instance, we find no basis on which to overturn the ALJ's credibility resolutions. As the trier of fact, the ALJ listened and observed each of the witnesses during hearing. The ALJ witnessed the demeanor and credibility of each witness, and based his credibility determinations upon those observations. Accordingly, his credibility resolutions stand.

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[2] Chairmen Berendt: As set forth in my dissenting opinion in *Neponset*, I would not require a showing of unlawful motive to establish a prima facie showing of a violation of Section 14(a)(1) of the Act. Section 14(a)(1) cases should be decided subject to an objective test. In *Board of Education, City of Peoria School District No. 150 v. IELRB*, 318 Ill. App. 3d 144, 741 N.E. 2d 690, 695 (4th Dist. 2000), *quoting Georgetown-Ridge Farm Community Unit School District No. 4 v. IELRB*, 239 Ill. App. 3d 428, 465-66, 606 N.E. 2d 667, 690 (4th Dist. 1992), the Appellate Court stated that "the test [under Section 14(a)(1) of the Act] is whether the District's conduct 'may reasonably be said to have a tendency to interfere with the free exercise of employee rights under the Act.'" Applying this objective standard, I conclude that the reasonable employee in Hainline's position would not have been restrained in the exercise of her protected concerted rights.

Next, the Union asserts that the Dean's initial reaction to Hainline's job audit and subsequent upgrade shows her expressed hostility towards Hainline's protected concerted activity. To support its contention, the Union highlights the Dean's first e-mail to Cooke. In that e-mail, the Dean stated that she could not support the job upgrade because Hainline was performing duties that the Dean considered Cooke's responsibility as department chair. While the email to Cooke does show that the Dean was not initially supportive of Hainline's job upgrade, this evidence does not support the Union's allegation. Like the ALJ, we conclude that the email from the Dean to Cooke demonstrated the Dean's displeasure with Cooke, rather than Hainline's job audit and subsequent upgrade. The ALJ credited the Dean's testimony that her e-mail was directed toward Cooke because she was displeased that Cooke had assigned duties to Hainline that she felt were Cooke's responsibility. The Dean also credibly testified that she spoke to Cooke the weekend after he called Hainline at her home and instructed him to correct the impression that she was angry at Hainline for her job audit request, when in fact she was frustrated with Cooke. Based upon the evidence presented, we conclude that the Dean did not express hostility toward Hainline because of her union activities and/or because she requested a job audit.

The Union further contends, however, that the comments made by the Dean show her general opposition to job audits and reclassifications. The Union relies upon Hainline's testimony that she heard from Cooke that the Dean generally did not support job audits. The Union urges the IELRB to view these comments as evidence of the Dean's expressed hostility towards Hainline's union and/or protected concerted activity. However, the ALJ determined that Hainline's testimony regarding the Dean's opposition to job audits was hearsay at best and therefore not credible evidence. Further, the Union presented no evidence to substantiate these statements. Instead, the University presented evidence, through the Dean and the Dean's secretary's testimony, that the Dean had encouraged and supported her own secretary's job audit for reclassification. Most importantly, the Dean approved Hainline's request for reclassification to a Secretary IV position.

The Union also contends that, at the hearing, the Dean provided shifting explanations for her denial of Hainline's travel expenses and subsequent review of her timecards. We disagree with the Union's contention. The Dean's explanation for those actions did not change from the time she first informed Hainline about changing her timecard and denying her travel expenses to her explanation at the hearing. At most, the Dean and Human Resources Director Jeri Scott, at hearing, merely elaborated on the reasons that Hainline's timecard was changed.

The Dean credibly testified that she had previously reviewed Hainline's timecards because of her predessor's concerns that the Department of African-American Studies office hours and telephones were not being covered. Due to these concerns, the Dean reviewed Hainline's timecards from August-December 1998. Later, the Dean discovered

Hainline's timecard reflected leave with pay while she attended the business and technology conference. The Dean then wrote to Hainline and explained that the time that Hainline attended the conference would be changed to reflect vacation time instead of leave with pay. In that letter, the Dean explained that leave with pay was reserved for employees who were performing duties away from campus at the behest of the institution or for reasons required by the nature of their work. Further, the Dean explained that Hainline's involvement at the conference did not fit into any of these situations, and therefore was considered vacation time. The University presented evidence that the Dean had checked with the Human Resources Director before changing Hainline's timecard to ensure that she was following the University's policy in granting or denying leaves with pay. Accordingly, the University did not give shifting explanations regarding the Dean's change of Hainline's time card.

Next, the Union contends that there was a disparity of treatment between Ault and Hainline regarding approval of travel expenses and paid leave to attend the business and technology conference. Under the *Burbank* analysis, disparity of treatment relates to disparity of treatment between those employees who support union activity and those who do not. *City of Burbank v. Illinois State Labor Relations Board, supra* at 1150. In its exceptions, the Union contends that Ault, who has a position similar to Hainline, was given paid time off and expenses to attend the conference. However, upon close examination, this does not show a disparity of treatment between union supporters and non-union supporters. Ault was the Union president and Hainline was the Union's vice-president. As Ault and Hainline were both active union supporters, it cannot be said that the University treated union and non-union supporters differently. In addition, the Dean of Business and Technology approved Ault's paid leave and expenses for the business and technology conference, while the Dean of Liberal Arts and Sciences was responsible for supervising Hainline and ultimately denying her paid leave and expenses to attend the same conference. Finally, the University established that it had a legitimate business reason for granting Ault's request and denying Hainline's request. Ault worked as a secretary for the College of Business and Technology. This college sponsored the conference, and the subject of the conference was closely related to Ault's work. On the other hand, Hainline worked as a secretary for the College of African Studies, and her work was not closely related to the subject of the conference. Accordingly, there was no disparity of treatment between Hainline and Ault.

Lastly, the Union contends that the timing of the denial of expenses and review of Hainline's timecards were in close proximity to Hainline's request for a job upgrade, thus, establishing unlawful motive. The Union argues that the Dean's denial of travel expenses occurred within weeks of Hainline's reclassification approval. Although these incidents

occurred relatively close in time, timing alone is not sufficient to establish a prima facie case of discrimination. *Hardin County Education Association v. IELRB*, 174 Ill. App. 3d 168, 528 N.E. 2d 737 (4th Dist. 1998).

V.

We hereby conclude that the Union did not present adequate evidence to demonstrate that the University had an unlawful motivation for denying Hainline travel expenses and paid leave or for reviewing her timecards. Thus, the Union has failed to establish a prima facie case of a violation of Sections 14(a)(1) and (3) of the Act. Instead, evidence showed that the Dean's initial opposition toward Hainline's job audit was directed at her supervisor and not at Hainline's union or other protected concerted activity. Moreover, the Dean ultimately supported and approved Hainline's job upgrade. Evidence also showed that the Dean supported other job audits and upgrades, including her own secretary's request for a job audit. Evidence also showed that the Dean did not provide shifting explanations for denying Hainline's request for financial support to attend a business and technology conference, but instead the Dean elaborated on her reasons at hearing. The evidence also failed to establish a disparity of treatment between Hainline and Ault. Finally, while the Dean's denial of Hainline's request for travel expenses and paid leave occurred within several weeks of Hainline's job upgrade, timing alone is insufficient to establish a prima facie case of discrimination. Accordingly, the ALJ's Recommended Decision and Order is affirmed.

VI.

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of Administrative Review Law, except that, pursuant to Section 16(a) of the IELRA, such review must be taken directly to the appellate court of the judicial district in which the Board maintains an

office (Chicago or Springfield). "Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision." 115 ILCS 5/16(a).

Decided: January 15, 2002
Issued: January 18, 2002
Chicago, Illinois

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Gerald E. Berendt, Chairman

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Mary Ann Louderback, Member

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Michael J. Gavin, Member

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Keith A. Snyder, Member

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Janis Cellini, Member

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