STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Will Walker,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2019–CA–0070–C
	)	
Chicago Board of Education,	)	
	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On April 30, 2019, Will Walker (Walker) filed a charge with the Illinois Educational Labor Relations Board (Board or IELRB) alleging that Chicago Board of Education (CBE) committed unfair labor practices within the meaning of Section 14(a) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/14(a) (2018). Following an investigation, the Board's Executive Director issued a Recommended Decision and Order (EDRDO) dismissing a portion of Walker's charge as untimely and the remainder for failure to provide evidence of a link between his union or concerted activity and his termination. Walker filed exceptions to the EDRDO. For the reasons discussed below, we affirm the EDRDO dismissing the unfair labor practice charge.

II. Factual Background

We adopt the facts as set forth in the underlying EDRDO. Because the EDRDO comprehensively sets forth the factual background of the case, we will not repeat the facts herein.

III. Discussion

Walker argues in his exceptions that the Executive Director incorrectly dismissed his charge. Regarding the Executive Director's finding that a portion of the charge was untimely, Walker contends that he did not know that his principal was retaliating against him until after he received a termination letter on April 26, 2019. The Executive Director determined that the conduct that occurred more than six months prior to the charge filing would not be considered as a basis for the charge because it was untimely. That conduct includes Walker's evaluation ratings prior to the 2018-2019 school year, the relocation of his classroom, and reassignment from his programmer duties. Only acts that occur within the six-month time period can serve as the basis for a timely charge. *Jones v. Illinois Educational Labor Relations Board*, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995); *City Colleges of Chicago/Johnson*, 12 PERI 1004, Case No. 95-CA-0047-C (IELRB Opinion and Order, December 8, 1995). Accordingly, we find that the Executive Director correctly determined that the only timely action to be considered in the charge is Walker's termination.

Next, Walker asserts that his principal was aware that he participated in the Office of Inspector General (OIG) investigation. Walker notes that he had to share the OIG's letter requesting he meet with its investigator with school administration in order to receive authorization to attend the December 16, 2016 meeting. Several months later, he noticed his evaluation scores were lowered. Nevertheless, Walker's participation in the OIG investigation is not protected activity within the meaning of the Act because it is not an act done with or on the authority of other employees nor does it invoke a right based on the collective bargaining agreement. *Board of Education of Schaumburg CCSD 54 v. IELRB*, 247 Ill. App. 3d 439, 616 N.E.2d 1281 (1st Dist. 1993). Thus, a

complaint should not issue alleging that Walker was terminated in retaliation for participation in activity outside of the protections of the Act.

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's Recommended Decision and Order dismissing the charge is affirmed.

V. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the Appellate Court of the judicial district in which the IELRB maintains an office (Chicago or Springfield). Petitions for review of this Order must be filed within 35 days from the date that the Order issued, which is set forth below. 115 ILCS 5/16(a). The IELRB does not have a rule requiring any motion or request for reconsideration.

Decided: **January 16, 2020**
Issued: **Chicago, Illinois**

/s/ Andrea R. Waintroob
Andrea R. Waintroob, Chairman

/s/ Judy Biggert
Judy Biggert, Member

/s/ Gilbert F. O'Brien
Gilbert F. O'Brien, Member

/s/ Lynne O. Sered
Lynne O. Sered, Member

/s/ Lara D. Shayne
Lara D. Shayne, Member

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Will Walker, Charging Party and Chicago Board of Education, Respondent	)	Case No. 2019-CA-0070-C

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On April 30, 2019, Charging Party Will Walker (Walker) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above captioned case, alleging that Respondent, Chicago Board of Education (CBE) violated Section 14(a) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.* (2012), *as amended*. After an investigation conducted in accordance with Section 15 of the Act, the Executive Director issues this dismissal for the reasons set forth below.

II. INVESTIGATORY FACTS

A. Jurisdictional Facts

At all times material, Walker was an educational employee within the meaning of Section 2(b) of the Act, employed by CBE. CBE is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. Chicago Teachers Union (CTU or Union) is a labor organization within the meaning of Section 2(c) of the Act, and the exclusive representation comprised of certain of CBE's employees. At all times relevant, Walker was a member of the Union's bargaining unit. CBE and CTU are parties to a collective bargaining agreement (CBA).

B. Facts Relevant to the Unfair Labor Practice Charge

Walker was employed by CBE as a Tenured Teacher at Consuella B. York Alternative High School (York). York is a school established by the Cook County Department of Corrections to serve the educational needs of inmates between the ages of 17 and 21 years of age. During the 2013-14 school year, Walker states that he filed a grievance having to do with an evaluation that did not involve his typical work duties, which was allegedly a violation of the contract and a deviation from past practice. He received an evaluation score of 265, falling in the "developing" category. In 2014-15, Walker alleges that he was removed from his programmer duties and reassigned to a classroom in retaliation for his grievance. The principal of York, Dr. Sharnette Sims (Sims), stated that he was reassigned because he was incapable as a programmer. He received a "proficient" evaluation score of 295 for the 2014-15 school year.

During the 2015-16 school year, Walker took part in an Office of the Inspector General (OIG) investigation into allegations of fraud against Sims. The OIG report was released on June 30, 2017. It found that York's enrollment and attendance data was falsified and recommended that Sims be terminated. CBE then conducted its own investigation. Its findings were published internally on November 2, 2017. CBE stated that it found "clear errors" in the OIG report, rejecting the OIG's conclusions and arguing that the report was biased, in part, because ten of the eleven teachers interviewed by the OIG's office had some

motivation to be critical of Sims. Walker claims that, in retaliation for his participation in the OIG investigation, his classroom was moved into a hallway area that was also used by school personnel to go back and forth from their offices. He was subsequently assigned to a classroom in the maximum-security section. Walker alleges that he was then given inappropriate class sizes to decrease his evaluation.

Walker's evaluation for the 2016-17 school year was comprised of a formal observation on December 3, 2015, an informal observation on March 23, 2016, and a formal evaluation on April 4, 2017. His scores from all three evaluations were substantially similar, with a very slight increase in the final observation in April 2017. Based on the data from those three observations, he received an evaluation score of 241 which falls in the "developing" category. In 2017-18, he received a score of 244 but because he had two consecutive scores under 250 his rating was reduced from "developing" to "unsatisfactory". Walker was then placed on a remediation plan. For the 2018-19 school year, Walker received a score of 208, an unsatisfactory rating. On or about April 26, 2019, CBE informed Walker that he would be removed from his teaching position because he received a rating lower than "proficient" while on a remediation plan.

Walker alleges that he was targeted for termination because of the grievance he filed in the 2013-14 school year, and because he participated in the OIG investigation at York. Although his charge alleges that Sims was responsible for the retaliation, he provides no evidence to demonstrate Sims' involvement in his reduced evaluations, transfers, remediation plan, or dismissal. He also provides no evidence that, even if Sims was involved, that Sims bore anti-union animus or targeted Walker or any other Union member for retaliation because of their union or concerted activity.

III. THE PARTIES' POSITIONS

Herein, Walker alleges that CBE violated Section 14(a)(3) and, derivatively, (1) of the Act when it retaliated against him for his union and concerted activity and for his participation in an OIG investigation. CBE denies that Walker's termination was in retaliation for any union or concerted activity and denies that its conduct violates the Act.

IV. DISCUSSION AND ANALYSIS

Pursuant to Section 15 of the Act, no order shall issue based upon any unfair labor practice occurring more than six months prior to the filing with the Board, of the charge alleging the unfair labor practice. The six-month limitations period begins to run when the person aggrieved by the alleged unlawful conduct either has knowledge of it, or reasonably should have known of it, regardless of whether that person understands the legal significance of the conduct. Jones v. IELRB, 272 Ill. App. 3d 612, 650 N.E.2d 1092 (1st Dist. 1995); Charleston Community Unit School District No. 1 v. IELRB, 203 Ill. App. 3d 619, 561 N.E.2d 331, 7 PERI ¶4001 (4th Dist. 1990); Wapella Education Association v. IELRB, 177 Ill. App. 3d 153, 531 N.E.2d 1371 (4th Dist. 1988). The statutory time period is jurisdictional in nature and cannot be tolled. Charleston Community Unit School District No. 1.

Much of the alleged retaliatory action against Walker occurred well beyond the six-month limitation period. Walker's charge was filed on April 30, 2019. Six months prior to that date is October 30, 2018. Any conduct that occurred prior to October 30, 2018, therefore cannot be the basis for an unfair labor practice charge. The only action taken against Walker that can be considered for the purposes of this charge is his termination, which occurred on April 26, 2019.

Walker's charge alleges that his termination was a violation of Section 14(a)(1) and (3) of the Act. Section 14(a)(3) of the Act prohibits educational employers 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." Where an alleged violation of Section 14(a)(1) of the Act is based on the same conduct as an alleged violation of Section 14(a)(3), the 14(a)(1) charge is treated as a derivative violation. Bloom Township High School Dist. 206 v. IELRB, 312 Ill. App. 3d 943, 957, 728 N.E.2d 612, 623 (1st Dist. 2000). The relevant standard, therefore, is the one used in Section 14(a)(3) charges.

In order for Walker to show that he was terminated in violation of Section 14(a)(3), he would need to show that he engaged in protected union or concerted activity, that adverse action was taken against him, and that the adverse action was taken, in whole or in part, because of his protected activity. City of Burbank v. ISLRB, 128 Ill. 2d 335 (1989), Harden County Education Assn. v. IELRB, 174 Ill. App. 3d 168 (4th Dist. 1988). An employee is engaged in protected concerted activity when that employee invokes a right based on a collective bargaining agreement or acts with or on the authority of other employees. Bd. of Ed. Of Schaumburg Community Consolidated School Dist. 54 v. IELRB, 247 Ill. App. 3d 439 (1993).

Under this standard, Walker's participation in the OIG investigation does not constitute union or concerted activity. Protections that may be afforded to a witness or participant in an OIG investigation does not arise out of the collective bargaining agreement. Walker also does not provide evidence that he was selected to be a spokesperson on behalf of his fellow employees for the purposes of that investigation, nor is there evidence that he acted in concert with his fellow employees in participating in the OIG investigation. Even if we assume he was engaged in concerted activity when he participated in the OIG investigation, there is still no evidence that Sims nor anybody affiliated with CBE was aware of his participation until his name and job title appeared in the official OIG report, released on June 30, 2017. This is significant because all of the data giving rise to his 2016-17 teacher evaluation had already been collected by that time, and it is likely that Walker had already received his evaluation on the date that the report was released. No evidence on the record exists to demonstrate that his low evaluation in 2016-17 occurred because of his participation in the OIG report. His evaluation the next year increased slightly, but the overall score became an "unsatisfactory" because it was his second year under 250. His 2016-17 evaluation also was not the first time his performance had been deemed "developing" because he previously received that rating in 2013-14, the year that he filed the grievance, before earning a "proficient" evaluation the following year. The only evidence that may tend to demonstrate retaliation is one based entirely on the timing of actions against Walker, which allegedly began after Walker filed his grievance during the 2013-14 school year. However, the IELRB has previously held that timing alone cannot be the basis for an unfair labor practice charge. *See, e.g.*, Lake Zurich School District No. 95, 1 PERI 1031 (IELRB Opinion and Order, November 30, 1984). There is, therefore, no evidence that his lowered evaluation in 2016-17, or any rating after that up to and including the one conducted pursuant to the performance plan, occurred because of his participation in the OIG report.

Walker was engaged in union or concerted activity when he filed a grievance during the 2013-14 school year. He does not allege any further union activity, except that he reached out to union representatives on a couple of occasions for advice. For the purposes of this argument, I will assume that this is sufficient union activity to trigger the protections of the Act, even though it happened no later than 2014, and that CBE had knowledge of this grievance. However, there is still no evidence of a link between this union or concerted activity and the adverse action taken against him. There is simply no evidence on the record tying Sims to any anti-union motivation, no evidence that Sims targeted Walker for retaliation,

and no evidence that Sims took action against Walker for his union or concerted activity. Because no evidence on the record exists to demonstrate that Sims, nor anybody else at CBE, acted against Walker in retaliation for his union or concerted activity, no issue of law or fact exists sufficient to present grounds upon which to issue a complaint for hearing.

V. ORDER

Accordingly, the instant charge is hereby dismissed in its entirety.

VI. RIGHT TO EXCEPTIONS

In accordance with Section 1120.30(c) of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135, parties may file written exceptions to this Recommended Decision and Order together with briefs in support of those exceptions, not later than 14 days after service hereof. Parties may file responses to exceptions and briefs in support of the responses not later than 14 days after service of the exceptions. Exceptions and responses must be filed, if at all, with the Board's General Counsel, 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103. Pursuant to Section 1100.20(e) of the Rules, the exceptions sent to the Board must contain a certificate of service, that is, **"a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service."** If any party fails to send a copy of its exceptions to the other party or parties to the case, or fails to include a certificate of service, that party's appeal will not be considered, and that party's appeal rights with the Board will immediately end. See Sections 1100.20 and 1120.30(c) of the Rules, concerning service of exceptions. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions, and unless the Board decides on its own motion to review this matter, this Recommended Decision and Order will become final and binding on the parties.

Issued in Chicago, Illinois, this 24th day of July 2019.

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EDUCATIONAL LABOR RELATIONS BOARD

Victor E. Blackwell
Executive Director