STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Louise DeBerry,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2020–CA–0017–C
	)	
Chicago Board of Education,	)	
	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On September 6, 2019, Louise DeBerry (DeBerry) 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 5/1, *et seq*. Following an investigation, the Board's Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge. This matter is now before us on DeBerry's 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

The Executive Director analyzed DeBerry's charge as alleging a violation of Section 14(a)(1) of the Act. In order for the Board to issue a complaint for hearing on such an

allegation, a charging party must at least be able to make some showing that she engaged in protected activity, that the respondent knew of that activity, and that the respondent took adverse action against her as a result of her involvement in that activity. *Neponset Community Unit School District No. 307*, 13 PERI 1089 (IELRB, 1997). The charging party must provide evidence of causation, that is, that the complained-of act, the adverse action, was committed against her because of, or in retaliation for, the exercise of rights guaranteed under the Act. *City of Burbank v. Illinois State Labor Relations Board*, 128 Ill. 2d 335, 538 N.E.2d 1146 (1989). The existence of such a causal link is a fact based inquiry and may be inferred from a variety of factors, including: an employer's expressed hostility towards unionization or grievance filing, together with knowledge of the employee's protected activities; proximity in time between the employee's protected activities and the adverse action; inconsistencies between the proffered reason for the adverse action and other actions of the employer; shifting explanations for the adverse action; and disparate treatment of employees or a pattern of conduct which targets union supporters for adverse employment action. *Id.* The Executive Director found that DeBerry engaged in protected activity through her grievance filings and request for Union representation during a meeting with her principal, that CBE was aware of that activity, and that CBE took adverse action against DeBerry when it suspended her without pay. Because DeBerry failed to make any showing of a causal connection between her protected activity and the adverse action, the Executive Director dismissed her charge.

DeBerry argues in her exceptions that some of the facts stated in the EDRDO are incorrect. In particular, that she did not accidentally strike Student 3 with a ruler on May 17, 2018, but instead that she noticed him holding his head after she finished struggling to keep herself from falling, ruler in hand, when Student 1 attempted to pull

her to the ground. DeBerry notes in her exceptions that she filed an incident report the following day. She also claims that the principal never said that she nearly tore Student 4's shirt pulling him by the collar in 2017, and that CBE had no evidence that happened or that Student 4 witnessed what took place on May 17, 2018. Even if taken as true, the factual account in DeBerry's exceptions does not provide evidence of a causal link between her protected activity and the adverse action necessary for a complaint to issue.

DeBerry alleges in her exceptions that she was treated differently than other employees. She says that other teachers the principal reported to DCFS were not removed from school during the investigation, whereas she was removed and sent to the network office. Yet she claims that one of those teachers, Ms. TS, also engaged in protected activity. Thus, DeBerry has not provided evidence that whatever different treatment she may have received during the abuse investigation was due to her protected activity. With regard to DeBerry's contention that the principal either fired or attempted to fire other teachers who engaged in protected activity, to support an inference of discriminatory intent based on disparate treatment, a party must demonstrate with specificity the similarity of other incidents as well as the nature of the alleged differences in treatment. *American Federation of State County and Municipal Employees. Council 31, AFL-CIO v. Illinois State Labor Relations Board*, 175 Ill. App. 3d 191, 529 N.E.2d 773 (1st Dist. 1988). DeBerry offered no evidence to indicate that employees who engaged in protected activity were singularly punished for conduct tolerated in other employees. *Town of Decatur*, 4 PERI ¶2003 (IL SLRB 1997). Nor does she provide information concerning the frequency and level of discipline or adverse actions imposed on employees who engaged in protected activity in comparison to other employees. *North Shore Sanitary District*, 9 PERI ¶2013 (IL SLRB 1993), aff'd, 262

Ill. App. 3d 279, 634 N.E.2d 1243 (2nd Dist. 1994). As a result, DeBerry has not provided evidence of disparate treatment indicia of unlawful motivation.

DeBerry recalls a comment the principal made at a meeting with 4th grade teachers she believed was directed toward her that one of them threw him under the bus and put a knife in his back and that he could have fired them but fought for teachers to keep their jobs. Assuming, arguendo, DeBerry's recollection is correct, the principal's comments could indicate hostility toward protected activity. Where an adverse employment action results from a recommendation or involvement of an employer representative who harbors unlawful motive, the employment action is unlawful, even if the employer's governing body does not harbor unlawful motive. *Chicago Board of Education*, 31 PERI 24, Case No. 2012-CA-0016-C (IELRB Opinion and Order, July 17, 2014); *McLean County Unit District 5, a/k/a Board of Education of McLean County Unit District 5*, 30 PERI 207, Case No. 2011-CA-0005-S (IELRB Opinion and Or-der, February 20, 2014), rev'd on other grounds, 382 Ill. Dec. 120, 12 N.E.3d 120 (4th Dist. 2014); *Staub v. Proctor Hospital*, 562 U.S. 411 (2011); *Grand Rapids Die Casting Corp. v. NLRB*, 831 F.2d 112 (6th Cir. 1987). That is, if the adverse action would not have been before the ultimate decision maker but for the unlawful motive of an employer representative, the decision has been unlawfully tainted by that motive. *City of Harvey*, 18 PERI 2032 (IL SLRB 2002). Nonetheless, if the decision maker relies on his or her own independent assessment in making the decision, the supervisor's improper motivation is not attributed to the decision maker. *Chicago Board of Education*, 31 PERI 24; *Stimpson v. City of Tuscaloosa*, 186 F.3d 1328 (11th Cir. 1999), cert. denied, 529 U.S. 1053 (2000); see *Staub*. Here, it was CBE's investigative unit, not the principal, who found that there was credible evidence to support the allegation that DeBerry engaged in physical abuse against students. This led CBE to file dismissal charges

against DeBerry that resulted in her suspension without pay. DeBerry has presented no evidence that the principal's improper motivation can be imputed to CBE's investigative unit. Aside from DeBerry's bare unsupported assertions that the principal told people he got her fired and that he directed students to fabricate allegations during the abuse investigation, there is no evidence that the principal had any role in the investigation following his initial report to DCFS and CBE's investigative unit, which he was required to make per CBE rules and Illinois Law. 325 ILCS 5/1. Accordingly, DeBerry has failed to establish the necessary causal connection between her protected activity and the adverse action necessary for a complaint to issue.

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's Recommended Decision and Order is affirmed. The unfair labor practice charge is dismissed in its entirety.

V. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board.[1] 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

[1] The Board currently has three members. Pursuant to Section 5(d) of the Act, a vacancy on the Board does not impair the right of the remaining Members to exercise all of the powers of the Board.

forth below. 115 ILCS 5/16(a). The IELRB does not have a rule requiring any motion or request for reconsideration.

Decided: **September 17, 2020**
Issued: **September 17, 2020**

/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

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Charging Party	)	
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and	)	Case No. 2020-CA-0017-C
	)	
Chicago Board of Education,	)	
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Respondent	)	
	)	

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On September 6, 2019, Charging Party, Louise DeBerry, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Chicago Board of Education, violated Section 14(a) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq.* 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

Chicago Board of Education (CBE) is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. At all times material, DeBerry was an educational employee within the meaning of Section 2(b) of the Act, employed by Respondent in the job title or classification of Teacher. Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO (CTU or Union), is a labor organization within the meaning of Section 2(c) of the Act, and the exclusive representative within the meaning of Section 2(d) of the Act, of a bargaining unit comprised of certain of the CBE's employees, including those in the title or classification of Teacher. As relevant, the Union and CBE are parties to a collective bargaining agreement (CBA) which provides for a grievance procedure culminating in arbitration, for the bargaining unit to which DeBerry belongs. At all times material, DeBerry was a member of the CTU's bargaining unit.

B. Facts relevant to the unfair labor practice charge

The CBE employed DeBerry as a fourth-grade teacher at its James Wadsworth Elementary School. While teaching her class at Wadsworth, on May 17, 2018, DeBerry attempted to lead a disruptive student, student-one, out of the classroom. Student-one had assaulted another student, student-two, and attempted to take student-two's iPad. DeBerry intervened, but student-one became more upset and unmanageable. DeBerry sent student-three to obtain assistance from another teacher, Antoine Brown. Meanwhile, as DeBerry led student-one from the classroom into the hallway, he began screaming and shrieking loudly, which caused Brown and student-three to run out of Brown's classroom, into the hallway. Brown and student-three found DeBerry struggling to control student-one, who was flinging his body about and repeatedly striking DeBerry. Brown immediately intervened and attempted to restrain and calm student-one. In the course of the melee, according to DeBerry, she accidently struck student-three in the head with a meter stick, a ruler slightly longer than a yard, causing a large lump to form on his forehead. DeBerry had been holding the meter stick in her hand throughout her attempt to remove student-one from the classroom, as immediately prior to the incident, she asserted she had been using it in the course of drawing Venn diagrams on the chalkboard for her class.

The next day, May 18, 2018, student-three's mother contacted someone in Wadsworth administration, who brought the situation to the attention of the Wadsworth principal, Rashid Shabazz. DeBerry had not filed an incident report, thus, this was the first Shabazz learned of the previous day's events. As required by CBE rules, Shabazz notified the Illinois Department of Children and Family Services (DCFS) of the injury to student-three, which investigated the circumstances of the injury. At or about the same time, he reported the incident to the CBE's investigative unit, which began an inquiry into the incident as well.

At some point thereafter DCFS notified DeBerry and the CBE that it had concluded its investigation and determined the charges against her were unfounded. The CBE's investigative unit, however, did not reach a similar conclusion; instead, it found DeBerry, in the course of drawing back the meter stick to hit student-one, had accidently struck student-three in the head with significant force. The CBE's investigative unit also determined DeBerry failed to report the incident and failed to obtain medical

attention for student-three after she struck him. Additionally, the CBE's investigator, while interviewing student-three, learned of student-four, who was not involved in the May 17 incident, but said that during it, he observed DeBerry hitting student-one with the meter stick. Student-four also told the CBE's investigator, DeBerry regularly hit him with the meter stick and at the beginning of the school year, on one occasion, nearly tore his shirt off when she was pulling him by his collar. The CBE's investigator also interviewed Brown, who said he never saw DeBerry hit any student. On or about May 7, 2019, the investigative unit reported its findings to the CBE.

Based on the report of the investigation, on or about August 14, 2019, the CBE filed charges against DeBerry, seeking to terminate her employment, alleging she had abused students in her care. After a hearing, the CBE suspended DeBerry without pay on September 9, 2019.

DeBerry contends the findings of the CBE's investigative unit are untrue, asserting Shabazz worked with and coached student-one, student-three, and student-four to fabricate the allegations against her; however, DeBerry submitted no evidence to support her assertion in this regard. DeBerry further contends Shabazz took such action in order to retaliate against her due to the numerous reports she made to the CBE's inspector general's office, listing thirteen such reports she filed between September 2014 and February 2018, most of which concerned a teaching assistant named Mr. Kelly, although some, directly or indirectly, implicated Shabazz. There is no evidence as to whether Shabazz was aware of DeBerry's reports to the inspector general's office. DeBerry noted she was unsure as to whether the CBE's inspector general, or anyone else, took any action based on these reports. In addition, DeBerry contends she requested Union representation in a meeting with Shabazz in September 2017 and filed a grievance in or about September or October 2017, regarding Shabazz' refusal to allow her to continue to teach the students she had in fourth grade, after they had been promoted to fifth grade. Also, in or about October 2017, DeBerry asserts Shabazz accused her of bringing the Union "into the [Wadsworth Elementary] building, trying to throw him under the bus, and put a knife in his back." DeBerry noted she brought this statement to the attention of the Union leadership, but it declined to act on it. Lastly, on or about June 19, 2018, the CTU filed a grievance on behalf of DeBerry, asserting Shabazz violated the CBA by failing to provide her with a teaching assistant or paraprofessional on May 17, 2018, to aid her in keeping control

over the classroom, which would have prevented the incident which caused the CBE to seek to terminate her employment.

III. THE PARTIES' POSITIONS

DeBerry contends the findings of the CBE's investigative unit are untrue, asserting Shabazz retaliated against her for engaging in protected activity, by inducing and coaching student-one, student-three, and student-four to fabricate the allegations against her. The CBE denies it treated DeBerry any differently than similarly situated employees and asserts termination of DeBerry's employment was the only appropriate penalty given the results of its investigation. Moreover, the CBE asserts Shabazz' role in the investigation of DeBerry was limited to alerting DCFS and CBE administrators to the allegations brought to him by student-three's mother, and further asserts there is absolutely no evidence Shabazz conspired with student-one, student-three, and student-four to fabricate the allegations against DeBerry.

IV. DISCUSSION AND ANALYSIS

Under Section 3 of the Act, educational employees are guaranteed the right of self-organization, the right to form, join or assist any labor organization, and the right to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment. Section 14(a)(1) of the Act makes it an unfair labor practice for an employer or its agents to interfere with, restrain or coerce educational employees in the exercise of their Section 3 rights.

In order for the Board to issue a complaint for hearing on allegations of a violation of Section 14(a)(1), the charging party, DeBerry in this case, must at least be able to make some showing she engaged in protected activity, Respondent knew of that activity, and Respondent took adverse action against her as a result of her involvement in that activity. Neponset Community Unit School District No. 307, 13 PERI ¶1089, 1997 WL 34820232 (IELRB 1997).

DeBerry plainly made a sufficient showing she engaged in protected activity. DeBerry requested Union representation in a meeting with Shabazz in September 2017, and she filed a grievance in or about September or October 2017. Additionally, DeBerry also made numerous reports to the CBE's inspector general's office, thirteen such reports between September 2014 and February 2018. Although it is unclear whether the making of such reports constitutes protected activity within the meaning of the Act, for

purposes of deciding this matter only, I will assume, *arguendo*, it is. Also, DeBerry clearly engaged in protected activity when at her behest, on June 19, 2018, the CTU filed a grievance asserting Shabazz violated the CBA on May 17, 2018.

Likewise, Respondent knew of at least some of the protected activity DeBerry engaged in. Since DeBerry made her request for Union representation in the September 2017 meeting, directly to Shabazz or in his presence, he obviously knew of it. Similarly, DeBerry provided sufficient evidence Shabazz was aware of the grievance she filed in or about September or October 2017, based on his statement in or about October 2017, accusing her of bringing the Union "into the [Wadsworth Elementary] building, trying to throw him under the bus, and put a knife in his back." There is no evidence as to whether Shabazz was aware of DeBerry's reports to the inspector general's office, but he knew of DeBerry's June 19, 2018 grievance, as the Union served him with a copy of it.

DeBerry contends the findings by the CBE's investigative unit, upon which the CBE relied to terminate her employment, were fabricated by student-one, student-three, and student-four, at the direction of Shabazz and with his active involvement, to retaliate against her for engaging in protected activity. However, there is no evidence Shabazz had any involvement in the investigation into DeBerry's conduct, beyond alerting DCFS and CBE administrators to the allegations brought to him by student-three's mother. Likewise, there is no evidence whatsoever indicating Shabazz collaborated, or even met, with student-one, student-three, and/or student-four to fabricate the allegations against DeBerry, or for any other reason. Simply put, DeBerry proffered no evidence to support her belief in this regard. Without some evidence of the conspiracy on which DeBerry's allegations rely, it is impossible for her to make any showing as to the causation element.

Moreover, as the Illinois Supreme Court noted in City of Burbank, the existence of a causal link herein indicating the complained-of act was committed against DeBerry because of, or in retaliation for, the exercise of rights protected under the Act, is a fact based inquiry and may be inferred from various factors, including: an employer's expressed hostility towards unionization or grievance filing, together with knowledge of the employee's protected activities; proximity in time between the employee's protected activities and the adverse action; inconsistencies between the proffered reason for the adverse

action and other actions of the employer; shifting explanations for the discipline or discharge of the employee; and disparate treatment of employees or a pattern of conduct which targets union supporters for adverse employment action. City of Burbank v. ISLRB, 128 Ill. 2d 335, 538 N.E.2d 1146, 5 PERI ¶4013 (1989)(citations omitted).

In keeping with the foregoing, the evidence in this matter does not reveal a causal connection between DeBerry's protected activity and the claimed adverse action. There was some evidence, Shabazz, if not hostile to DeBerry's protected activity, was upset by it, based on his statement in or about October 2017, accusing her of bringing the Union "into the [Wadsworth Elementary] building, trying to throw him under the bus, and put a knife in his back." Timing does not favor DeBerry's claim, however, as there is no evidence Shabazz acted on the fact that he was upset by DeBerry's protected activity. In fact, according to DeBerry herself, Shabazz did not take any adverse action against her between October 2017 and May 18, 2018, when as required by CBE rules, he reported the May 17 incident to DCFS and the CBE's investigative unit. At that point, the evidence indicates Shabazz' involvement with the allegations against DeBerry ended. Likewise, although Shabazz knew of DeBerry's June 19, 2018 grievance because the Union served him with it, there is no evidence at that point in time, he had any involvement with her or the investigation into her conduct. There are no allegations or evidence of shifting explanations by the CBE or Shabazz for their conduct in connection with DeBerry. With regard to the disparate treatment factor, the relevant inquiry herein is whether the CBE or Shabazz treated employees similarly situated to DeBerry, in a manner better than she was treated, and herein, there is no evidence in support of her claim. DeBerry made no showing the CBE or Shabazz would have treated differently, the conduct of employees similarly situated to her. Simply put, there is no evidence the CBE or Shabazz retaliated against DeBerry due to the protected activities she engaged in. Consequently, DeBerry cannot make any showing as to the causation element, and thus, her charge fails to raise an issue of law or fact sufficient to warrant a 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 3rd day of January 2020.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Victor E. Blackwell
Executive Director