

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Marlo Barnett,)	
)	
Charging Party)	
)	
and)	Case No. 2021-CA-0002-C
)	
Chicago Board of Education,)	
)	
Respondent)	

OPINION AND ORDER

I. Statement of the Case

On July 10, 2020, Marlo Barnett (Barnett) 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. Barnett filed exceptions to the EDRDO. CBE filed a response to the exceptions. For the reasons discussed below, we affirm the EDRDO.

II. Factual Background

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

III. Discussion

Barnett did not specify what subsection of Section 14(a) CBE violated, so the Executive Director analyzed her 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, Case No. 1996-CA-0028-C (IELRB Opinion and Order, July 1, 1997).

In her exceptions, Barnett notes that the EDRDO acknowledged that she engaged in union or concerted activity and that CBE was necessarily aware of that activity. She claims that because the EDRDO indicated she believed that CBE took adverse action against her in retaliation for her union or concerted activity, she made the necessary showing and a complaint should issue. However, Barnett provided no evidence whatsoever that the complained-of acts were 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). Consequently, she cannot make any showing as to the causation element, and thus, her charge failed to raise an issue of law or fact sufficient to warrant a hearing.

Regarding the causation element, as the Illinois Supreme Court noted in *City of Burbank*, 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. 528 N.E.2d 737. The evidence in this matter, however, does not reveal a causal connection between Barnett's protected activity and the adverse action. There is no evidence in the record in this case of hostility by CBE toward unionization in general, or toward Chicago Teachers Union in particular, nor inconsistencies between CBE's proffered reasons for discharging Barnett and its other actions. Likewise, there is no allegation or evidence of shifting explanations by CBE for its conduct in connection with Barnett. Concerning the disparate treatment factor, the relevant inquiry is whether CBE treated employees similarly situated to Barnett, in a manner better than she was treated, and herein, there is no evidence in support thereof. Even if the proceedings culminating in Barnett's discharge were close in time to the processing of a grievance that the Union filed on her behalf, timing alone is not enough to support a prima facie case. *Hardin County Education Association v. IELRB*, 174 Ill. App. 3d 168, 528 N.E.2d 737 (4th Dist. 1988). Because Barnett failed to establish the necessary causal connection between her protected activity and the adverse action necessary for a complaint to issue, her claim failed to raise an issue of law or fact sufficient to warrant a hearing.

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's Recommended Decision and Order 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: **July 15, 2021**

Issued: **July 16, 2021**

/s/ Lara D. Shayne

Lara D. Shayne, Chairman

/s/ Steve Grossman

Steve Grossman, Member

/s/ Chad D. Hays

Chad D. Hays, Member

/s/ Michelle Ishmael

Michelle Ishmael, Member

/s/ Gilbert F. O'Brien

Gilbert F. O'Brien, Member

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**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

Marlo Barnett,

Charging Party

and

Chicago Board of Education,

Respondent

Case No. 2021-CA-0002-C

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On July 10, 2020, Charging Party Marlo Barnett (Barnett) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board, alleging that the Respondent, Chicago Board of Education, violated Section 14(a) of the Illinois Educational Labor Relations Act School District 228 (District or Employer) violated Section 14(a)¹ 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 until her termination on June 26, 2020, Barnett was an educational employee within the meaning of Section 2(b) of the Act, initially in the job title or classification of temporarily assigned teacher, until becoming a probationary assigned teacher on January 2, 2019. The 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. Chicago Teachers Union (CTU) is a labor organization within the meaning of Section 2(c) of the Act and the exclusive representative of a bargaining unit comprised of certain of CBE's employees, including those in the job titles or classifications of temporarily assigned teacher and probationary assigned teacher. At all times material until her termination, Barnett was a member of CTU's bargaining unit. CBE and CTU are parties to a collective bargaining unit (CBA) for the unit to which Barnett belongs, and the CBA contains a grievance procedure culminating in arbitration.

B. Facts Relevant to the Unfair Labor Practice Charge

Barnett was first employed by CBE in 2006 at Francis Scott Key School but was non-renewed in 2009. She filed a grievance over her non-renewal, and the grievance went to arbitration, but the arbitrator denied her grievance. She was rehired in 2014, at Oglesby Elementary School, and was non-renewed in 2015. She was subsequently hired at Beethoven School in 2015, and voluntarily resigned that position on March 16, 2016. She was hired again on September 12, 2017, as a day-to-day substitute teacher, but became a full-time teacher at Carver Elementary School (Carver) the following day.

¹ For the purposes of analyzing Charging Party's claim, it will be treated as an allegation that CBE violated Sections 14(a)(1) and 14(a)(3) of the Act.

On or about June 3, 2018, Barnett submitted a preference teaching program form, indicating that she would prefer to have a technology coordinator position. She did not list a second or third preference, despite the form containing three lines for teachers to rank their preferred positions. Subsequently, Barnett accepted an assignment as a homeroom and classroom teacher for the 2018-19 school year. Between September and December 2018, Barnett states that she received feedback from, among others, her principal, Martell Hines, and assistant principal, Dr. Wanda Withers, about having lesson plans prepared for substitute teachers, about what Barnett can and should be doing with respect to supporting other teachers, and about entering grades in CBE's computer system. On or about January 2, 2019, Barnett was moved from her role as a temporarily assigned teacher (TAT) into a role as a probationary assigned teacher (PAT), following the resignation of another PAT at Carver.

On or about February 22, 2019, a CTU field representative emailed Principal Hines to request a meeting over staffing and program decisions involving Barnett. The meeting was originally scheduled for February 27, but the meeting was postponed because Barnett was ill, and it is unclear whether it was rescheduled. On that date, Barnett requested that a grievance be filed on her behalf, but no grievance was immediately filed by the union. Withers emailed her on March 1 to point out that Barnett still had not entered grades into the system and that the percentages assigned to each task in her course equaled more than 100% of the overall grade. Barnett emailed the CTU representative again on March 11, alleging that Assistant Principal Withers was harassing her by conducting informal evaluations of her teaching and by emailing her earlier that day about the submission of emergency lesson plans. Barnett again alleged that she was being harassed on March 21, after Principal Hines saw her with her phone out and on her desk. She claims that she told Hines that she only had her phone out to call parents, and Hines suggested that she use her computer to send emails instead.

On March 26, 2019, a grievance was indeed filed. In that grievance, she alleges that the District violated the contract when it failed to honor her request to be given a technology coordinator position, by having her put grades into the computer system without a professional development plan, by failing to provide her with the resources necessary to perform her role as a "change champion," and by failing to maintain safe and healthful working conditions. After the grievance was filed, Barnett and a union representative met with Hines. During that meeting, Hines said that Barnett was in the same position as she was the previous year, which Barnett disputed because she was now being asked to enter grades into the system. When Barnett said that she did not enter grades last year, she alleges that Hines snapped at her, "you don't think you have to do any work, you're just collecting a check."

Hines denied the grievance in a letter dated April 15, 2019. In his response, he notes that the technology coordinator position does not exist at Carver, that she never requested a professional development plan for inputting grades, that she has access to Gradebook and that her position as a "change champion" was voluntary and self-appointed, that she was not given that assignment by Carver, and that the school has made every effort to ensure that the health conditions are safe and healthful, and that

misconduct at the school has decreased. CTU apparently appealed the decision to deny the grievance, but the outcome of CTU's appeal is unclear.

On May 23, Hines memorialized a conversation he had earlier that day with Barnett about an occurrence earlier that day. Barnett apparently left her classroom to approach Hines, so that she could ask him a question about the day's scheduling. Hines asked Barnett who was watching her class, and Barnett responded that nobody was. Hines reminded Barnett that somebody should always be supervising her class, and that further actions like that would merit discipline under CPS policy.

For the 2019-2020 school year, Barnett requested that she be assigned to the positions of, in order of preference, technology coordinator, director of student engagement, or director of curriculum development, all positions that did not exist at Carver. Instead, Barnett was assigned to a social studies classroom. Barnett alleged that this was in retaliation for her having filed a grievance. The District states that Barnett was placed in this role following a review of endorsements held by the teachers on the school's roster because she had an endorsement in social studies. The District connected Barnett with an Instructional Support Leader, recommended that she register for training and professional development programs, and provided Barnett with access to new materials and sample curriculum. Despite these resources, Barnett continued to fail to put grades into the computer system. On or about October 14, she received a First Warning for failure to enter grades into the system.

Because Barnett became a PAT in January 2019, she was required to have periodical performance evaluations. In December 2019, Dr. Withers contacted Barnett to schedule her formal evaluation. Nevertheless, Barnett objected to the evaluation because she did not feel that it would be fair. Barnett refused to participate in either the pre- or post-observation meetings, which led to particularly low evaluation scores in the areas that would have been discussed in those meetings. On February 17, 2020, Hines emailed Barnett about her refusal to participate in her evaluation, arguing that it only prevents her evaluator from having any insight into her planning and preparation for the observed lesson. Barnett replied that her refusal was due to her pending grievance, and because of the school's alleged failure to provide a safe and secure working environment free from harassment.

On at least two occasions, Barnett spoke at the monthly Board of Education meetings. On December 11, 2019, Barnett complained that behavior at Carver was so "out of control" that a dozen security officers had to be deployed at the school for the entire school year and that she logged over 400 "entries of behavior" at the school. She argued that the environment at Carver was stressful and abusive, and that "something needs to be done." She appeared again on March 25, 2020. At that meeting, she noted that she had recently been informed that she is suspended without pay pending termination because she did not submit grades and she did not properly report student-on-student harassment correctly. She claimed that, on March 4, she had an incident with Hines where he "yelled and screamed" at her in front of her class. She went on to state that she called the police and had to go to the hospital. Since that day, she stated that she suffers from severe headaches because of the "harassment" she received over the last

two years, and that the more she talks about the culture at Carver², the more she is reprimanded. In neither case does she mention union or any other kind of concerted activity and makes no reference to her grievance.

On February 20, 2020, an investigatory conference took place regarding accusations that Barnett refused to participate in her evaluation and failed to adequately report student behavior that she has a legal obligation to report. At the conference, Barnett stated that she logged the inappropriate student interactions in Student Logger. She stated that because she logged the interactions in Student Logger, she assumed the administrators were aware of the behavior. She never reported the incidents to Carver administration, and there does not appear to be any record that she alerted CBE's Office of Student Protections or any other relevant authority. In her position statement, Barnett argues that she appropriately reported these incidents, citing Chicago Public Schools Policy Manual Section 511.1. However, the protocol she cites deals with the reporting of child abuse and neglect, which is not the kind of behavior CBE alleges that Barnett failed to report. At the end of the conference, CBE's Executive Director of the Office of Employee Engagement, Mary Ernesti, found that Barnett violated CPS policies by engaging in insubordination when she refused to take part in her evaluation, and by failing to follow proper protocols for reporting student misconduct. Ernesti further recommended that Barnett be terminated, and a "Do Not Hire" designation be placed on her file. CBE did not terminate employees in April or May 2020 because of the COVID-19 pandemic, so her recommended termination did not reach the Board of Education until its June 2020 meeting. At that meeting, on June 26, 2020, Barnett's employment was terminated.

III. THE PARTIES' POSITIONS

Barnett alleges that she was harassed, discriminated against, and subsequently terminated because of her union or concerted activity. CBE denies that the complained-of conduct was retaliatory in nature, and therefore that its conduct does not violate the Act.

IV. DISCUSSION AND ANALYSIS

Barnett alleges that she was discriminated against for having filed grievances, and for complaining about the culture and climate of Carver in the months leading up to her termination. If proven, her claims would constitute a violation of Section 14(a)(3) and, derivatively, (1) of the Act. Section 14(a)(3) of the Act states that educational employers may not "[discriminate] 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)(1) prohibits educational employers from "interfering, restraining, or coercing employees" in the exercise of the rights guaranteed by the Act.

For Barnett to demonstrate that she was retaliated against and subsequently terminated for retaliatory purposes in violation of Section 14(a)(3), she must demonstrate that she was involved in union and concerted activity, that CBE was aware of that activity, and that adverse action was taken against her,

² The transcript incorrectly refers to the school as "Harvard", when it should state "Carver" instead.

in whole or in part, because of her union or concerted 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 concerted activity when they invoke 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).

Here, Barnett's only involvement in union or concerted activity is the grievance that she filed on March 26, 2019. For the purposes of this section, we will assume that CBE was aware of her activity. Further, there is no doubt that her termination constitutes an adverse action taken against her. However, her charge fails because there is no link between her union or concerted activity and the adverse action taken against her. Barnett cites three primary pieces of evidence to prove retaliation, and none of them stand up to scrutiny.

First, she alleges that her assignment to a Social Studies classroom for the 2019-20 school year was an attempt to "set her up to fail." The evidence she has submitted certainly demonstrates that she had that belief, but there is no evidence that Carver administrators had that intent when she was so assigned. Barnett holds a Social Studies endorsement. It was not unreasonable for Carver to rely on that endorsement when determining classroom placement. While Barnett claims that she was not given the resources and access to fulfill her job duties, she provides no evidence that this was the case, and no evidence that she described her circumstances to the administration at any point.

Second, she alleges that the discipline issued in October 2019 demonstrates retaliatory intent. However, the conduct for which she was disciplined, namely, her failure to enter grades into the computer system, was something about which Barnett had been warned about on multiple occasions both before and after her grievance was filed. Furthermore, she was given the lowest possible discipline, a First Warning, which does not appear to have altered the terms and conditions of her employment in any way. One might assume that, had Carver administrators intended to retaliate against her, she would have received a higher level of discipline, and would almost certainly have faced more frequent formal discipline.

Finally, she alleges that the charges brought against her that led to her termination was further proof of retaliation. However, the decision to terminate her employment was not made by administrators at Carver, but by the Office of Employee Engagement after claims of insubordination and failure to report student misconduct were substantiated. There is no evidence that her union or concerted activity played any role in OEE's recommendation that she be terminated, nor is there any evidence that her having previously filed a grievance played any role in CBE's decision to accept that recommendation.

Because there is no evidence to demonstrate that Barnett was terminated because of her union or concerted activity, there is no issue of law or fact upon which a complaint for hearing may issue.

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 22nd day of April, 2021.

STATE OF ILLINOIS

Executive Director

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