

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Abbas Jaffary,)	
)	
Charging Party)	
)	
and)	Case No. 2021-CA-0015-C
)	
College of DuPage,)	
)	
Respondent)	

OPINION AND ORDER

I. Statement of the Case

On August 24, 2020, Abbas Jaffary (Jaffary or Charging Party) filed a charge with the Illinois Educational Labor Relations Board (Board or IELRB) alleging that College of DuPage (College or Respondent) 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. Jaffary filed exceptions to the EDRDO. For the reasons discussed below, we affirm the dismissal of the charge.

II. Discussion

The Executive Director dismissed the charge because there was no evidence that Jaffary engaged in union or concerted activity or that he participated in IELRB processes prior to his termination. Jaffary states in his exceptions that he does not contest the Executive Director’s decision to dismiss his charge based on these facts. While he does not object to the ultimate result of the EDRDO, the dismissal of his charge, he claims

that the EDRDO contained errors of fact and omitted information that he deemed crucial and relevant. He requests to EDRDO be revised to correct these alleged errors.

Jaffary's version of the facts, even if true, do not establish that he engaged in any relevant activity protected by the Act connected to his employment with the Respondent in this matter. The result would be the same, his charge would still be dismissed. With regard to Jaffary's assertion that the EDRDO left out certain facts that he deemed crucial and relevant, they certainly were not relevant to his charge before the IELRB because they do not establish that he engaged in activity protected by the IELRA. Simply put, the alleged errors cited do not affect the outcome of the case. Because the alleged errors are irrelevant to the result, corrective action is not necessary.

In his exceptions, Jaffary indicates that the time frame for filing exceptions to an EDRDO is unfair and asks us to consider revising our policy to accommodate pro se persons, such as himself. Section 1120.30(c) of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135, provides that parties filing exceptions to an EDRDO must do so no later than 14 days after service of the EDRDO. However, Section 1100.30(d) of the Rules allows parties, like Jaffary, to request an extension of time to file documents such as exceptions. The Board has the ability and discretion to grant extensions to that period upon a party's motion per Section 1100.30(d) of the Rules. Because Jaffary did not make a motion or request to extend the period, his exceptions were due and filed within the 14 day period.

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: **September 27, 2021**

Issued: **September 27, 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

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601
312.793.3170 | 312.793.3369 Fax
elrb.mail@illinois.gov

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Case No. 2021-CA-0015-C

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On August 24, 2020, Abbas Jaffary (Jaffary) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB, or Board) in the above-captioned case, alleging that Respondent, College of DuPage (College) 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, Jaffary was an educational employee within the meaning of Section 2(b) of the Act, employed by the College in the job title or classification of part-time adjunct faculty, until July 1, 2020, when the College informed Jaffary that he would not be offered a position for the Fall 2020 semester. The College is an educational employer within the meaning of Section 2(a) of the Act, and subject to the jurisdiction of the Board. The College of DuPage Adjuncts Association, IEA-NEA (CODAA) 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 the District's employees. At no point during Jaffary's employment with the College was he a member of CODAA's bargaining unit.

B. Facts Relevant to the Unfair Labor Practice Charge

Jaffary was employed by the College on August 1, 2016, as part-time adjunct faculty for the 2016-17 school year. He had three credit hours of instruction that year, eight in 2017-18, and 12 in 2018-19. For the 2019-20 school year, Jaffary was offered eight credit hours, but because of his new adjunct teaching position at University of Illinois-Chicago (UIC), he was only able to do one five credit hour course. As of Fall 2018, the CODAA bargaining unit was comprised of currently employed adjunct faculty who had at least six hours of instruction, summers excluded, for each of the past three years.

Jaffary has an extensive resume of prior union involvement. He had previously served as President for the Moraine Valley Adjunct Faculty Organization from 2014-2017. During a semester that he taught at University of Illinois-Chicago, in the 2019-20 school year, he was a member of the UICUF faculty. Jaffary

¹ For the purposes of analyzing Charging Party's claim, it will be treated as an allegation that the College violated Sections 14(a)(1), 14(a)(3), and 14(a)(4) of the Act.

alleges that the College retaliated against him by not offering him a sixth hour of instruction for the Spring semester of the 2019-20 school year because that would have ensured that he was eligible to join the CODAA bargaining unit.

On or about May 1, 2020, two fellow adjunct faculty members contacted Anthony Ramos, Assistant Dean for Adjunct Faculty Support, about Jaffary's behavior while meeting with students. The reports included comments allegedly made by Jaffary toward students that were demeaning and condescending in nature. Jaffary does not allege, and there is nothing in the record that demonstrates, that adverse action was taken against Jaffary arising out of this report.

On or about September 5, 2019, the College's Deputy Chief of Police, James Nehls, sent an email to Dean Marianne Hunnicut about a phone conversation that he had with Jaffary the previous day. The phone call was about a parking citation that was issued in April 2017 that Jaffary apparently wished to appeal. The email alleges that Jaffary yelled at the administrative assistant that answered the phone. The administrative assistant then gave him contact information for Nehls. When Nehls and Jaffary were able to converse, Jaffary apparently made disparaging remarks about the police officers that issued the citation, even though Jaffary had already paid the fine, and discussed the appeals process. Nehls claims that Jaffary's behavior became increasingly strange, raising his voice to make and repeat various arguments and statements.

Dean Jennifer Cumpston met with Jaffary on October 3, 2019, to discuss the complaint brought by Nehls. Jaffary denied that he acted unprofessionally or irrationally during that conversation. Jaffary does not allege, nor is there any evidence to demonstrate, that Jaffary was disciplined in any way as a result of the complaint.

In November 2019, Dean Cumpston received an additional complaint from an Assistant Professor that two students dropped a calculus class because an adjunct professor spent too much time on the review material and frequently went "off topic". The professor recommended that the professor not be assigned a calculus course in the future. Jaffary was not named in the complaint, but he apparently was the only adjunct professor teaching that course for the semester referenced in the complaint.

The College did not offer Jaffary any courses to teach for the Spring semester. On July 1, 2020, the College informed Jaffary that he would not be offered a position for the Fall 2020 semester. On or about August 13, 2020, Jaffary filed two claims of discrimination with the College. The first alleges that Nehls filed a false complaint against Jaffary in retaliation for Jaffary having challenged the parking ticket at issue in that conversation. In that complaint, Jaffary denies having made disparaging comments about the College of DuPage Police Department or its officers, and instead suggested that Nehls was "tone policing" to deflect from the substance of Jaffary's arguments.

Jaffary's second complaint alleged that Dean Cumpston willfully compiled "unverified, false, [and] negative information" about Jaffary's conduct and performance, and that her doing so led to Jaffary not receiving teaching assignments for the Spring 2020 and Fall 2020 semesters. The false information Jaffary refers to in this second complaint includes the complaint filed by Nehls, the report sent to Ramos, and the

November 2019 email sent to the Dean regarding the two students that dropped Jaffary's calculus class, among others. In neither of these complaints does he offer evidence that the allegations are false. Rather, he simply asserts repeatedly that the assertions made in the complaints were false and unverified, intended to retaliate and discriminate against him and prevent him from obtaining CODAA union membership.

The College investigated Jaffary's claims, and sent him an email on or about August 24, 2020, with its findings. In that email, the College stated that it found no evidence of discrimination by Dean Cumpston or Deputy Chief Nehls, and that as an Adjunct Faculty member, the College leaves matters of assignment to the President of the College or his designee, based on the needs of the institution, and that there is no guarantee of assignment.

III. THE PARTIES' POSITIONS

Herein, Jaffary alleges that he was retaliated against for having challenged the parking ticket given to him in April 2017, and that he was not assigned courses in the Spring 2020 or Fall 2020 semesters because he then would have become eligible for membership in CODAA. The College denies these allegations, and denies that its conduct violated the Act.

IV. DISCUSSION AND ANALYSIS

Jaffary alleges that the College terminated him using false and unverified information in order to prevent him from obtaining union membership and in retaliation for challenging a parking ticket in his conversation with Nehls in September 2019. In so doing, Jaffary alleges that the College violated Sections 14(a)(3) and (4) 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." Section 14(a)(4) of the Act prohibits educational employers from "[d]ischarging or otherwise discriminating against an employee because he or she has signed or filed an affidavit, authorization card, petition or complaint or given any information or testimony under this Act." Additionally, it would appear that the substance of Jaffary's claims contains an allegation that the College violated Section 14(a)(1), which prohibits educational employers from "interfering, restraining, or coercing employees" in the exercise of the rights guaranteed by the Act.

The standard for issuance of an unfair labor practice complaint pursuant to Section 14 of the Act is whether the IELRB's investigation of an unfair labor practice charge establishes "a prima facie issue of law or fact sufficient to warrant a hearing of the charge." Lake Zurich School District No. 95, 1 PERI 1031 (IELRB Opinion and Order, November 30, 1984). A prima facie issue of law or fact is demonstrated by "adequate credible statements, facts, or documents which, if substantiated and not rebutted in a hearing could constitute sufficient evidence to support a finding of a violation of the Act." Lake Zurich School District No. 95. In making this determination, the Executive Director must assess the evidence presented by both the Charging Party and the Respondent and make the determination of whether a Charging Party has presented a prima facie case based on that evidence. Brown County Community Unit School District No. 1, 2 PERI 1096 (IELRB Opinion and Order, July 31, 1986).

In order for Jaffary to show that he was terminated for retaliatory purposes, he must be able to show that he was engaged in protected union or concerted activity, that the College had knowledge of that activity, and that actions were taken, in whole or in part, by the College against Jaffary because of his 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 protected union or 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).

In this case, there is no evidence that Jaffary was engaged in union or concerted activity. Jaffary was not a member of an employee organization that was party to a collective bargaining agreement with the College. Jaffary therefore could not have invoked a right based on a collective bargaining agreement. There is also no evidence that Jaffary acted with or on the authority of his fellow employees. His complaints to the College were about his conversation with Deputy Chief Nehls, which he believes triggered the retaliatory actions by the College, and the College's use of information that Jaffary believed was false or unverified in making the decision to not offer Jaffary any further courses. While Jaffary may believe that the College acted to prevent him from obtaining CODAA membership, there is no evidence that it in fact did so. Furthermore, while the possibility of union membership might involve the possibility of union or concerted action at some point in time, it does not in itself constitute union or concerted activity. His complaints do not rise to the level of union or concerted activity because the complaints raised are out of personal "pique" rather than any consideration of concerted group activity. See Schaumburg, 247 Ill. App. 3d at 458-59 (statements made by an employee describing personal workplace concerns, that neither contemplate nor promote group action, are not concerted activity). Accordingly, although there is no evidence that this is the case, even if Jaffary is correct that the College moved to terminate him because of his conversation with Nehls, it would not constitute a violation of Section 14(a)(3) because Jaffary's complaints over an April 2017 parking ticket did not contemplate or promote group action.

Furthermore, even if we assume that Jaffary's desire to join CODAA constitutes union or concerted activity, and that the College was aware of his desire to join CODAA, there is no evidence that the College used that potential eligibility to deny him further employment with the College. The evidence submitted, and Jaffary's own arguments, appear to be that Jaffary was not offered courses for the Spring 2020 semester because of the complaint filed by Deputy Chief Nehls, and the complaints submitted to Assistant Dean Ramos and Dean Cumpston. Although it is true that Jaffary ended the Fall 2020 semester with five credit hours, and that he would have been contractually permitted to join the CODAA bargaining unit if he had been assigned one more credit hour in the Spring, it should be noted that the College in fact assigned eight credit hours to Jaffary in the Fall 2020 semester, but that he declined to teach one course because it conflicted with another course that he was to teach at a different institution. Because of that course, he fell short of the six credit hours required for CODAA eligibility. Jaffary cannot therefore argue that the College

acted in a concerted fashion to deny him credit hours, when the College in fact offered him the needed hours.

Finally, Jaffary cannot demonstrate a violation of Section 14(a)(4) of the Act because there is no evidence that, prior to his termination, he ever utilized or participated in IELRB processes. The purpose of Section 14(a)(4) is to "ensure that the processes utilized by the IELRB... are not impeded by improper employer interference and to ensure that employees who assist the IELRB in this regard are similarly protected from employer retaliation or discrimination." Prairie State College, 3 PERI 1116 (IELRB Opinion and Order, October 29, 1987). While Jaffary submits some evidence that he was a member of other unions, he provides no evidence that he ever, prior to this charge, utilized or participated in an IELRB process, or that the College had any reason to be aware of any such participation.

Because Jaffary has not demonstrated that he was interfered with, restrained, or coerced in the exercise of union or concerted activity, or retaliated against for any union or concerted activity, and has not demonstrated that he was retaliated against for utilizing or participating in any previous IELRB process, he cannot demonstrate a violation of Sections 14(a)(1), 14(a)(3) or 14(a)(4) of the Act. There is, therefore, 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.