

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Christopher Bean,)	
)	
Charging Party)	
)	
and)	Case No. 2021-CA-0061-C
)	
State Universities Civil Service System,)	
)	
Respondent)	

OPINION AND ORDER

I. Statement of the Case

On February 4, 2021, Christopher Bean (Bean or Charging Party) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board or IELRB) alleging that the State Universities Civil Service System (Respondent) violated the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1 *et seq.* On January 21, 2022, the IELRB’s Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge in its entirety. Bean filed timely exceptions to the EDRDO.¹ For the reasons discussed below, we affirm the dismissal of the charge.

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.

¹ Exceptions to an EDRDO must be filed not later than 14 days after service thereof. 80 Ill. Adm. Code 1120.30(c). In this case, the EDRDO was sent to Bean by first-class mail on January 24, 2022. Whenever a time period begins running upon the service of notice or other document upon a party, and service is effected by first class mail, three days shall be added to the prescribed period. 80 Ill. Adm. Code 1100.30(c). Thus, Bean had until February 10, 2022, to file timely exceptions to the EDRDO. Although the IELRB did not receive Bean’s exceptions until February 14, they are considered filed February 7 because they were sent by certified mail postmarked February 7. Documents sent by certified or registered mail shall be considered to have been filed on the date on which they are postmarked. 80 Ill. Adm. Code 1100.20(a).

III. Discussion

Bean's first exception is that the Respondent did not argue in its Motion to Dismiss it filed in response to the charge that the State Universities Civil Service System was created pursuant to Section 36b of the State Universities Civil Service Act (Civil Service Act), 110 ILCS 70/36b, so its mention should be stricken from the record. Bean is incorrect. The Respondent stated in its Memorandum of Law in Support of its Motion to Dismiss that the State Universities Civil Service System was created by Section 36b of the Civil Service Act.

Bean's next exception is that the Respondent did not argue that the State University Civil Service System was not created pursuant to the Illinois School Code (School Code) 105 ILCS 5/1, that its major function is not connected to the provision of education service and that it is not an educational employer within the meaning of the IELRA, and therefore not subject to the jurisdiction of the IELRB. Yet the Respondent argued precisely that in its Memorandum. Therein, the Respondent set forth the definition of educational employer in Section 2(a) of the Act, which included entities created by the School Code whose major function is to provide educational services, to argue that it is not an educational employer and thus not subject to the IELRB's jurisdiction. Furthermore, the Executive Director could have determined that the Respondent is not an educational employer within the meaning of the Act in this case absent the Respondent's argument because the charge itself demonstrates that Bean was employed by the University, not the Respondent.

Finally, Bean argues in his exceptions that the Respondent violated the Civil Service Act and portions of the Illinois Administrative Code concerning the State Universities Civil Service System. Whether Bean has rights protected by a code or statute other than the Act is beyond the scope of the Board's authority to assess. *General George S. Patton School District 133*, 10 PERI 1118, Case No. 94-CA-0050-C (IELRB Opinion and Order, August 19, 1994). Thus, we cannot consider Bean's claim that the Respondent violated his rights under the Civil Service Act or its rules and regulations because the Board is not authorized to enforce such rights. *East St. Louis Federation of Teachers, Local 1220, IFT-*

AFT, 4 PERI 1132, Case No. 88-CB-0008-S (IELRB Opinion and Order, September 12, 1988).

Bean has raised nothing in his exceptions to warrant overturning the Executive Director's dismissal of his charge. As a result, we affirm the EDRDO.

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: **April 22, 2022**
Issued: **April 22, 2022**

/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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EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On February 4, 2021, Charging Party, Christopher Bean, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, State Universities Civil Service System, 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

University of Illinois, Chicago (University), 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, Bean was an educational employee within the meaning of Section 2(b) of the Act, employed by the University in the job title or classification of Food Service Sanitation Laborer. Service Employees International Union, Local 73 (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 University's employees, including those in the title or classification of Food Service Sanitation Laborer. At all times material, Bean was a member of the Union's bargaining unit.

The State Universities Civil Service System was created pursuant to Section 36b of State Universities Civil Service Act, 110 ILCS 70/36b, *et seq.*, to develop and implement a classified civil service

system so as to establish a sound program of personnel administration for the following: Illinois Community College Board; Southern Illinois University; Chicago State University; Eastern Illinois University; Governors State University; Illinois State University; Northeastern Illinois University; Northern Illinois University; Western Illinois University; the University of Illinois; the State Universities Civil Service System; the State Universities Retirement System; the State Scholarship Commission; and the Board of Higher Education. Accordingly, based on the foregoing, the State Universities Civil Service System was not created pursuant to the Illinois School Code, 105 ILCS 5/1-1, *et seq.* Likewise, based on Section 36b (2) of State Universities Civil Service Act, 110 ILCS 70/36b (2), given the purpose of the State Universities Civil Service System is to develop and implement a classified civil service system so as to establish a sound program of personnel administration for the universities and related agencies listed therein, its major function is not connected to the provision of educational services. As Respondent, State Universities Civil Service System, was not created pursuant to the Illinois School Code, 105 ILCS 5/1-1, *et seq.*, and its major function is not connected to the provision of educational services, it is not an educational employer within the meaning of Section 2(a) of the Act and therefore, is not subject to the jurisdiction of the Board.

B. Facts relevant to the unfair labor practice charge

The University hired Bean on or about June 11, 2012. On December 18, 2018, Bean's supervisor, Lilian Villalon, asked him to wait on taking a patient's tray of food to first allow her to add carrots to it. Bean responded by telling her she was full of shit. The next day, December 19, 2018, another supervisor, Mary Niewinski, directed Bean to be more careful in the manner in which he placed utensils on the patients' trays. Bean had been placing the utensils on the trays upside-down, something Niewinski had discussed with him and corrected on previous occasions. Bean responded by becoming very irate, loudly yelling Niewinski was picking on him. Niewinski ignored Bean's outburst and continued examining the trays, while Bean continued yelling, proclaiming he was not going to change the way in which he worked and Niewinski could take care of the trays herself. Niewinski discovered a dirty plastic knife on a tray and asked Bean for a clean one, which he threw at her, while he continued loudly ranting. Eventually, a co-worker led Bean away from Niewinski and the work area.

The next day, December 20, 2018, the University placed Bean on administrative leave with pay effective immediately, pending an investigation into his workplace conduct on December 18 and 19, 2018. On February 22, 2019, the University scheduled a predisciplinary meeting for March 6, 2019, with regard to Bean's workplace conduct on December 18 and 19, 2018. Bean, along with a Union representative, attended the March 6 predisciplinary meeting. The following day, March 7, 2019, the University issued Bean a 30-day suspension for violating a number of University policies by his December 18 and 19, 2018 workplace conduct, including those prohibiting violence in the workplace, insubordination, profanity in the workplace, insolence towards supervisors and co-workers, and the creation of a hostile and unsafe workplace. Bean served the suspension from March 11 to April 10, 2019.

On or about January 21, 2020, the University notified Bean it planned to terminate his employment. The University cited three main reasons for its action in this regard: Bean's tardiness during the last three months of 2019; Bean's unexcused absences during the last three months of 2019; Bean's failure to complete ethics training for 2019. The University asserted Bean was tardy on the following dates: October 3, 2019—three hours and forty-two minutes late; October 28, 2019—three minutes late; October 31, 2019—one hour and twenty-two minutes late; November 4, 2019—fifty minutes late. Regarding the unexcused absences during the last three months of 2019, the University contended Bean left work without approval, for one hour and thirty-eight minutes on October 22, 2019, and from November 14, 2019 to January 6, 2020. Bean asserted he had been injured at work on November 7, 2019, and his absence from November 14, 2019 to January 6, 2020, was covered by Workers' Compensation, to allow him to recover from the November 7 injury. However, the University had denied his Workers' Compensation claim on November 27, 2019, and Bean did not provide evidence he was in fact on a Workers' Compensation leave. Regarding Bean's failure to complete ethics training for 2019, the University asserted it notified Bean, as it did with all University employees, of his obligation to complete the "2019 Ethics Training for University Faculty and Staff" by no later than October 31, 2019; Bean failed to do so.

By a January 21, 2020 letter, the University served Bean with written charges to terminate his employment. Therein, the University notified Bean it had scheduled a disciplinary conference for him on January 27, 2020, and explained if he wished to challenge the termination of his employment, he could do

so by the following means: 1. the procedure for review specified in the Rules of the State Universities Civil Service System, Ch. VI, Section 250.110(f)(1) through (7); and 2. the grievance procedure contained in the collective bargaining agreement which covered his job classification. Bean opted to challenge the termination of his employment solely through the State Universities Civil Service System.

The State Universities Civil Service System scheduled Bean's discharge hearing for October 23, 2020, in order to review the charges filed against Bean by the University, and to examine Bean's defenses. The hearing was to occur online, through WebEx. Bean failed to appear for the hearing, as he was unable to secure an adequate computer and connection in order to participate. Bean filed an appeal to the State Universities Civil Service System, explaining why he missed the October 23 hearing and requesting another hearing, but his appeal was denied and as a result, the termination of his employment with the University was upheld, effective February 26, 2020.

III. THE PARTIES' POSITIONS

Bean contends the State Universities Civil Service System wrongly and unfairly permitted the University to terminate his employment. The State Universities Civil Service System contends the IELRB lacks jurisdiction over it.

IV. DISCUSSION AND ANALYSIS

As the State Universities Civil Service System was not created pursuant to the Illinois School Code, 105 ILCS 5/1-1, *et seq.*, and its major function is not connected to the provision of educational services, it is not an educational employer within the meaning of Section 2(a) of the Act and therefore, is not subject to the jurisdiction of the Board. Since the Board lacks jurisdiction over the State Universities Civil Service System, Bean's charge must be dismissed.

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), Ill. Admin. Code tit. 80, §§1100-1135 (2020), 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