

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

John Kugler,)	
)	
Charging Party)	
)	
and)	Case No. 2022-CB-0009-C
)	
Chicago Teachers Union, Local 1,)	
IFT-AFT, AFL-CIO,)	
)	
Respondent)	

OPINION AND ORDER

I. Statement of the Case

On May 9, 2022, John Kugler (Charging Party or Kugler) filed a charge with the Illinois Educational Labor Relations Board (Board or IELRB) against Chicago Teachers Union, Local 1, IFT-AFT, AFL-CIO (Respondent or Union). In his charge, Kugler alleged the Union committed unfair labor practices within the meaning of Section 14(b) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1 *et seq.*, when it worked with Chicago Board of Education (CBE) to terminate his employment for filing charges with the Attorney Registration and Disciplinary Commission (ARDC) against two of CBE’s in-house attorneys. Although the termination at issue in this charge concerned his employment by the Union from his position as a Field Representative, Kugler maintained that both CBE and the Union were his employers at all times relevant to this charge. Following an investigation of the charge, the IELRB’s Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge in its entirety. This case is before the Board because Kugler filed exceptions to the EDRDO.

II. Factual Background

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

III. Discussion

Kugler argued in his exceptions that the Executive Director incorrectly determined 1) that he was not an educational employee within the meaning of the Act and 2) that he did not engage in protected concerted activity. The Union filed a response asserting that Kugler's exceptions should be stricken as untimely filed or, in the alternative, the Board should not consider evidence Kugler submitted with his exceptions that he did not submit in support of his charge and should affirm the dismissal of the charge.

A. Timeliness of Exceptions

Kugler received the EDRDO on Monday, August 22, 2022. Exceptions to an EDRDO must be filed no later than 14 days after service of the EDRDO. Section 1120.30(c) of the IELRB's Rules and Regulations (Rules), 80 Ill. Adm. Code 1100-1135. Fourteen days after August 22 was Monday, September 5, 2022, the Labor Day holiday. When the last day of a period computed by Section 1120 of the Rules falls on a legal holiday, the time period is automatically extended to the next day that is not a Saturday, Sunday, or legal holiday. Therefore, Kugler's exceptions were due no later than Tuesday, September 6, 2022. However, he filed them on Wednesday, September 7, 2022, one day after the date they were due.

A charging party waives their right to contest a recommended decision and order when they do not file timely exceptions to that recommended decision and order. *Pierce v. IELRB*, 334 Ill. App. 3d 25, 777 N.E.2d 570 (1st Dist. 2002); *Board of Education of the City of Chicago v. IELRB*, 289 Ill. App. 3d 1019, 682 N.E.2d 398 (1st Dist. 1997). Accordingly, the Board routinely strikes untimely exceptions. *Rochester Community Sch. Dist. No. 3A*, 35 PERI 7, Case No. 2017-CA-0059-C (IELRB Opinion and Order, June 19, 2018); *Proviso Township High Sch. Dist. #209*, 34 PERI 64, Case No. 2017-CA-0065-C (IELRB Opinion and Order, September 15, 2017); *Peoria School District 150*, 23 PERI 46, Case Nos. 2006-CA-0006-S, 2006-CA-0008-S, 2006-CA-0032-S (IELRB Opinion and Order, April 19, 2007). For that reason, we strike the Charging Party's exceptions as untimely filed.

B. Educational Employee Status

Even if Kugler's exceptions were timely filed, nothing in his exceptions warrant overturning the Executive Director's dismissal of the charge. Kugler's charge alleged an unspecified violation

of Section 14(b) of the Act. The Executive Director, citing Section 14(b)(1)'s prohibition of employee organizations from restraining or coercing employees in the exercise of the rights guaranteed them under the act, noted that Kugler lacks the status of educational employee and therefore is not entitled to the protections of the Act. Kugler was not an educational employee within the meaning of Section 2(b) of the Act at any time relevant to this unfair labor charge. During the relevant time he was employed by the Union, not CBE. CBE is an educational employer within the meaning of Section 2(a) of the Act, the Union is not. Therefore, Kugler lacks standing to allege a violation of Section 14(b)(1).¹

C. New Evidence

The Union asserts in its response that Kugler submitted evidence in support of his exceptions that he either did not submit during the investigation of the charge or failed to provide copies of to the Union during the investigation. That evidence consists of his Union membership card, 2021 pension fund statement, CBE application for leave, health insurance cards and documents from previous unfair labor practice charges. Evidence that is not submitted to the Executive Director during the investigation cannot be considered by the Board on appeal. *Lake Forest School District No. 67, 22 PERI 32, Case Nos. 2005-CB-0003-C and 2005-CA-0008-C (IELRB Opinion and Order, February 21, 2006)*. If we had not stricken Kugler's exceptions as untimely we would not consider any newly submitted evidence that he did not submit during the investigation.

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

¹ Kugler's charge does not allege any conduct related to the remaining subsections of 14(b), (2) - (6).

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: **December 14, 2022**

Issued: **December 14, 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

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EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On May 9, 2022, Charging Party, John Kugler, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Chicago Teachers Union, Local 1, IFT-AFT, AFL-CIO (CTU or Union), violated Section 14(b) 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

Kugler was employed by the CTU, in the job title or classification of Field Representative. In that capacity, the CTU assigned Kugler various duties in connection with CTU's representation of its members, employees of the Chicago Board of Education (CBE). The CTU's field representatives are in a bargaining unit represented by the Professional Staff Employees Union, Local 743, International Brotherhood of Teamsters (PSEU).

B. Facts relevant to the unfair labor practice charge

In September 2021, Kugler was the Union's representative at McPherson Elementary School, and in the course of attempting to resolve a dispute between a member and the school principal, came to believe the CBE's attorney, Charles Little, had a conflict of interest which should have precluded him from

participating as the CBE's representative in the matter. Kugler brought his concerns to Little, who explained that the factual basis underlying Kugler's conflict of interest belief was incorrect, and thus, maintained that there was no conflict of interest. Kugler, apparently not satisfied with Little's response, filed a complaint alleging the conflict of interest, on September 24, 2021, against Little, with the Attorney Registration and Disciplinary Commission (ARDC), an agency of the Illinois Supreme Court which regulates the admission and discipline of lawyers in Illinois.

The CTU did not learn Kugler filed the ARDC complaint against Little until ten days later, on October 4, 2021, and then, only when the CBE's deputy general counsel, Libby Massey, emailed a CTU attorney, Thaddeus Goodchild, advising him of its existence. Kugler's immediate supervisor, Zeidre Foster, and Foster's supervisor, Matthew Luskin, upon learning Kugler filed the ARDC complaint against Little, brought disciplinary action against him. Luskin and Foster alleged Kugler, by filing the ARDC complaint without authorization, improperly acted outside the scope of his authorized duties, and further, by failing to disclose the filing of the ARDC complaint in his description of the underlying events to Foster during their interchange about the matter on September 24, 2021, made false statements and/or failed to disclose necessary facts to his supervisors. Luskin and Foster conducted an investigative interview on October 28, 2021, with Kugler, who was accompanied by Kevin Sanders, a PSEU representative. During the interview, Kugler admitted he had not spoken to Foster or any other CTU supervisor before filing the ARDC complaint against Little, and further admitted he had not advised Foster of the ARDC complaint when he spoke with her within a few hours after he had done so, nor did he notify anyone else at CTU about the filing. During the interview, Luskin and Foster specifically asked Kugler whether he had filed any other ARDC complaints against CBE attorneys, and in response, he stated he could not remember filing any others.

The CTU's investigation into Kugler's conduct continued routinely until late November or early December 2021, when it learned from the CBE, another ARDC complaint had been filed against one of its attorneys. On December 3, 2021, Luskin emailed Kugler the following:

[CBE] has verbally expressed frustration with CTU, referencing an additional ARDC complaint filed against a [CBE] attorney by CTU staff. We aren't familiar with this ARDC complaint and do not have access to the filing documents. Were you involved

in filing any additional ARDC complaints against [CBE] attorneys after your complaint against Little? If not, are you aware of any other ARDC complaints filed by CTU staff since that time?

On December 6, 2021, Kugler, by email, simply responded, "Yes." On December 7, 2021, by email, Luskin replied, asking Kugler to provide a fuller account, to which Kugler explained he filed a retaliation charge with the ARDC against Massey for communicating with CTU attorney Goodchild regarding the ARDC complaint he had filed against Little. Kugler noted therein, he learned of the retaliation from documents provided by Luskin at the October 28 investigative interview. In his December 7 email, Luskin also scheduled a second investigative interview with Kugler, for December 10, 2021.

At the December 10 meeting with Luskin and Foster, Kugler, accompanied by Sanders, confirmed he filed the ARDC complaint against Massey on October 24, 2021, and he did so without prior authorization from Foster. Kugler also confirmed he gave no notice to Foster or anyone else at CTU. Kugler asserted he uploaded documents related to the matter to the Union's case management system, known as "Unionware". During the meeting, Kugler contended he filed the complaint against Massey as an individual, not in his capacity as a CTU representative, but Luskin found the assertion implausible, as Kugler had already admitted entering the Massey ARDC complaint into the Unionware system with a CTU case number, and therein linked it to the ARDC complaint against Little, actions which indicated he was acting on behalf of CTU. In the course of the meeting, Luskin ascertained Kugler filed the ARDC complaint against Massey only four days before the October 28 investigative interview, wherein Kugler said he was unable to remember whether he had filed any other such complaints against the CBE's attorneys, leading Luskin to conclude that statement by Kugler was false.

On December 13, 2021, by email, Luskin notified Kugler and Sanders of a disciplinary meeting on December 16, 2021. Luskin's email read as follows:

In connection with your second investigatory interview on December 10, 2021, you acknowledged having filed an ARDC Complaint against [CBE] in-house counsel Libby Massey on October 24, 2021, two days after you received the October 22, 2021 notice of investigation and accompanying documents (including documentation referencing CTU's prohibition on filing such Complaints without your supervisor's authorization), and four days prior to the initial investigative interview on October 28, 2021. You

asserted that you had uploaded the Massey ADRC Complaint to Unionware, although you had been advised at the October 28, 2021 investigative interview that this did not constitute notification to your supervisors. While we have found some materials in Unionware referring to the Massey ARDC Complaint (linked to the prior Complaint against Chuck Little), a further search in Unionware has not led us to the actual Complaint against Ms. Massey. By email on December 12, 2021, you have now provided us with the October 24, 2021 submission to the ARDC, which confirms the timeline of events.

In addition, at the December 10 second interview, your Union representative requested any policy document underlying the directives not to file ARDC Complaints without authorization. We have searched again, and confirmed that at this time we do not have access to such a document. However, the preexisting directive against filing unauthorized Complaints was clearly confirmed in the documents provided to you on October 22, was clearly restated in the October 22 notice of investigation, and was again restated in the October 28 interview. Additionally, a May 24, 2017 PSEU grievance decision ("Grievance P-16-4 Response") specifically addressed the filing of ARDC complaints against Board of Education representatives by Field Representatives, stating that such complaints "would also be seen as an act of a representative of the CTU and have an impact on the entire contract enforcement operation of the CTU." To guard against potentially undermining the representation of our members, the decision stated, "it is not permissible for individual CTU employees to file legal proceedings against the Board's Labor Relations personnel without approval from CTU management." You were familiar with this document in your role as the PSEU Shop Steward and it was again provided to you on October 22.

We are now prepared to proceed with appropriate action based on our investigation. A meeting pursuant to Section XX.A.1.b. of the PSEU collective bargaining agreement will be held remotely via Zoom this Thursday, December 16, 2021 at 1:30 PM. At that time, you are entitled to Union representation. We will distribute a link for the meeting by email prior to that time and you should plan to work remotely that day.

On December 16, 2021, Luskin and Foster met with Kugler and Sanders, and terminated Kugler's employment with the CTU, effective immediately.

Prior to his employment with the CTU, Kugler had been employed by the CBE. However, in 2009 or 2010, the CBE terminated his employment, which caused Kugler to file a number of grievances and a

lawsuit against the CBE. In 2012, Kugler and the CBE resolved their outstanding litigation; their settlement, in pertinent part, provided the CBE would reverse the termination of his employment, and grant him a leave of absence to work for the CTU, but denied Kugler any right to return to employment with the CBE except by applying as a new-hire.

III. THE PARTIES' POSITIONS

Herein, Kugler contends at all times material, in addition to being employed by the CTU, he was employed by the CBE, apparently relying on the CBE's grant of a leave of absence to work for the CTU, contained in his 2012 settlement with the CBE. Kugler further contends the Union violated the Act in that it, in retaliation for his engaging in protected concerted activity, namely filing ARDC complaints against Little and Massey, colluded with his other employer, the CBE, to terminate his employment with the CTU. The CTU denies the complained-of conduct violated the Act and contends Kugler lacks standing to bring the instant charge.

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(b)(1) of the Act, in relevant part, makes it an unfair labor practice for a labor organization or its agents to restrain or coerce educational employees in the exercise of their Section 3 rights. Section 2(b) of the Act, in pertinent part, defines an "educational employee" as any individual...employed full or part time by an educational employer...." Section 2(a) of the Act defines the term "educational employer", however, nowhere included within the definition's ambit are unions of any sort.

Kugler was an employee of the CTU, and not an employee of the CBE. Consequently, he was not an educational employee subject to protection under the Act. In the 2012 settlement, to which Kugler assented, the CBE reversed the termination of his employment and granted him a leave of absence to work for the CTU, but pointedly refused to allow him to return to employment with the CBE at the conclusion of the leave, except by applying as a new-hire. In other words, Kugler's "leave of absence" was that in name only, as he could not readily resume employment with the CBE once his leave concluded, as is typical

in such arrangements; it was nothing more than a diplomatic way to end his employment with the CBE. Regardless, even if Kugler's leave from employment with the CBE was *routine*, it means he was not in fact working for the CBE at the time the CTU terminated his employment, and was only employed by the CTU.¹ Assuming, *arguendo*, as Kugler asserts, the CTU's actions complained of herein restrained and/or coerced him, they do not violate Section 14(b)(1)—lacking the status of educational employee, Kugler is not entitled to the protections of the Act. Western Springs Education Ass'n, IEA-NEA/Barbara Pieper/Western Springs School Dist. 101, 7 PERI ¶1014, 1990 WL 10610727 (IL ELRB 1990); Chester Kulis/Oakton Community College, 31 PERI ¶105, 2015 WL 9918442 (IL ELRB E.D. 2015); Daniel Galemb/Loyola University of Chicago, 6 PERI ¶1157, 1990 WL 10610895 (IL ELRB E.D. 1990).

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, 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, at ELRB.mail@illinois.gov and 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

¹Kugler's claims of collusion between the CTU and CBE likewise have no basis in fact. The asserted "collusion" consisted of the CBE contacting the CTU and informing it that one of its employees had filed ARDC complaints against two of its attorneys, complaints the CBE thought particularly meritless. The fact the CTU agreed with the CBE's judgment as to the merit of Kugler's complaints is not collusion, but proper notice to CTU that such complaints had been received by CBE, of which CTU was not, in fact, otherwise made aware of by Kugler, CTU's own agent and filer.

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 August, 2022.

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

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