STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Chicago Teachers Union, Local 1, IFT–AFT, AFL–CIO,	)	
Complainant	)	
and	)	Case No. 2022–CA–0028–C
Chicago Board of Education,	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On November 4, 2021,[1] Chicago Teachers Union, Local 1, IFT–AFT, AFL–CIO (Union or CTU) filed a charge with the Illinois Educational Labor Relations Board (IELRB or Board) 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 Complaint and Notice of Hearing (Complaint) alleging that CBE violated Section 14(a)(1) of the Act by refusing to arbitrate grievances filed by the Union on behalf of three employees who were terminated by CBE. The parties appeared for hearing before Administrative Law Judge Nick Gutierrez (ALJ) on January 12, 2023. The ALJ issued a Recommended Decision and Order (ALJRDO) on July 2, 2024, finding that CBE did not violate the Act when it refused to arbitrate the grievances and recommending that the Complaint be dismissed in its entirety. Both parties requested and were granted extensions of time to file their submissions with the Board. The

[1] The Administrative Law Judge's Recommended Decision and Order listed the charge filing date as October 20, 2021. The charge itself is marked as filed November 4 and received by the IELRB that same day.

Union's exceptions to the ALJRDO, filed July 31, 2024, and CBE's response, filed August 28, 2024, were timely filed in accordance with the extension each was granted.

II. Factual Background

We adopt the ALJ's finding of facts as set forth in the underlying ALJRDO, with the corrections noted herein. Because the ALJRDO comprehensively set forth the factual background for the case, we will not repeat the facts except as necessary to assist the reader.

III. Discussion

Section 14(a)(1) of the Act prohibits educational employers and their agents or representatives from "[i]nterfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act." An employer's refusal to arbitrate a grievance violates Section 14(a)(1) of the Act. *Board of Educ. of City of Chicago v. IELRB*, 2015 IL 118043, 69 N.E.2d 809; *Cobden Unit School District No. 17 v. IELRB*, 2012 IL App (1st) 101716, 966 N.E.2d 503; *Board of Trustees, Prairie State College v. IELRB*, 173 Ill. App. 3d 395, 527 N.E.2d 538 (4th Dist. 1988). The courts have acknowledged that there is a presumption favoring arbitrability of labor disputes. *Woods v. City of Berwyn*, 2014 IL App (1st) 133450; *Champaign Police Benevolent & Protective Ass'n Unit No. 7 v. City of Champaign*, 210 Ill. App. 3d 797, 802, 569 N.E.2d 275 (4th Dist. 1991); *Board of Governors of State Colleges and Universities v. IELRB*, 170 Ill. App. 3d 463, 524 N.E.2d 758 (4th Dist. 1988). There are two valid defenses to an unfair labor practice charge based on an educational employer's refusal to process or arbitrate a grievance: (1) there is no contractual agreement to arbitrate the dispute; or (2) the grievance is not arbitrable under Section 10(b) of the Act due to a conflict with Illinois law. *Board of Educ. of City of Chicago*, 2015 IL 118043, ¶ 20; *Cobden Unit School District*, 2012 IL App (1st) 101716; *Niles Township High School District 219 v. IELRB*, 379 Ill. App. 3d 22, 883 N.E.2d 29 (1st Dist. 2007); *Chicago Teachers Union v. IELRB*, 344 Ill. App. 3d 624, 800 N.E.2d 475 (1st Dist. 2003). In this case, it is undisputed that CBE refused to arbitrate grievances the Union filed on behalf of Steven Webb (Webb), Terrence James (James) and Arturo Medina (Medina) (collectively referred to as Grievants).

The Grievants were employed by CBE in positions contained within the category of paraprofessional and school–related personnel (PSRP).[2] All three gentlemen were employed in positions that were part of the bargaining unit represented by CTU[3] when CBE terminated their employment and designated them as "do not hire" (DNH). As a result, the Union filed the grievances at issue in this case. CBE denied all three grievances based on its assertion that discharges of probationary PSRPs were not grievable. CBE initially agreed to arbitrate the grievances, but subsequently refused. The ALJ agreed with CBE's asserted defense that its refusal to arbitrate the grievances did not violate the Act because there is no contractual agreement to arbitrate grievances over the termination of probationary PSRPs.

In its exceptions to the ALJRDO, the Union claims that it made clear during the hearing and in its post–hearing brief that it did not seek reinstatement or to have the DNH designations removed as remedies and acknowledged that termination and DNH designations are not grievable. The Union asserts that the sole remedy it sought was a due process meeting prior to terminating the Grievants, where they are notified of the allegations against them and provided an opportunity to respond. The grievances themselves suggest otherwise. Medina's grievance requests reinstatement. The Union's demand to arbitrate Medina's grievance seeks reinstatement and removal of the DNH designation. James' grievance seeks reinstatement. The Union's demand to arbitrate James' grievance does not specify the remedy sought. Webb's grievance and demand to arbitrate seek reinstatement.

[2] The ALJRDO says that PSRP stands for "probationary peer professional support personnel". Page 17 of the hearing transcript and page 43 of the parties' collective bargaining agreement indicate that it stands for "paraprofessional and school–related personnel".

[3] Page 3 of the ALJRDO states that Jennifer Reger, CBE Executive Director of the Office of Administrative Hearings, testified that on April 14, 2019, Medina moved from one position that was outside of CTU's bargaining unit to another position outside of CTU's bargaining unit. This is a typo. Per pages 47–48 of the hearing transcript, Regner testified that on that date, Medina moved from a position that was outside CTU's bargaining unit to a position that was part of CTU's bargaining unit.

The Union and CBE are parties to a collective bargaining agreement (Agreement) which provides for a grievance procedure culminating in binding arbitration. Article 9–6 of the Agreement provides that "PSRPs shall continue to be subject to the Rules of [CBE], applicable [CBE] guidelines, [CBE] policies and procedures and this Agreement". Per Section 4–3(e) of CBE's rules, PSRPs are employed at-will, unless CBE has entered into a specific agreement, such as a collective bargaining agreement, and CBE's chief executive officer has the authority to terminate probationary at-will employees. Article 29–5 of the Agreement, Review of Discipline and Dismissal for PSRPs, states that non-probationary PSRP Warnings in Lieu of Suspension may be submitted to mediation and non-probationary PSRP dismissals submitted to grievance arbitration or mediation at the Union's request.

To the ALJ, the Agreement's incorporation of CBE's rules, combined with the specific mention in Article 29–5 of non-probationary PSRPs and silence as to probationary PSRPs meant that discipline for probationary PSRPs was outside the scope of the Agreement's grievance and arbitration provisions. Thus, probationary employees, such as the Grievants in this case, had no right to the grievance and arbitration procedure.

During the hearing, the parties jointly stipulated that CBE has the exclusive authority under state law to make hiring and firing decisions for probationary employees.[4] The Union argues in its exceptions that the ALJ mischaracterized the subject matter in this case as a dispute over the termination and recission of a DNH designation for probationary employees. The Complaint alleges that CBE violated Section 14(a)(1) of the Act by refusing to arbitrate three grievances. All

[4] The stipulation did not specify what law grants CBE that exclusive authority. In *Board of Educ. of City of Chicago*, 2015 IL 118043, the Court found that the arbitration of grievances challenging the DNH designations in certain non-renewed probationary appointed teachers' files would conflict with certain sections of the Illinois School Code pertaining to teachers, rendering the union's grievance over those designations inarbitrable. In *Rockford Sch. Dist. 205 v. IELRB*, 165 Ill. 2d 80, 649 N.E.2d 369 (1995), the Court held that an arbitrator may not issue an award ordering a school district to revoke a tenured teacher's notice to remedy because the Illinois School Code grants the school board, not the arbitrator, the power to dismiss a tenured teacher. However, the employees in those cases were teachers and the relevant provisions of the School Code applied specifically to teachers, not educational support personnel.

three grievances requested reinstatement. The Union's demand to arbitrate Medina's grievance included removal of his DNH designation. The Union claims in its exceptions that it did not seek reinstatement, but only a due process meeting prior to termination where the Grievants are notified of the allegations against them and provided an opportunity to respond. It is not clear when the Union changed course remedy-wise. Nothing in the record indicates that the grievances were amended. The conduct in the Complaint that is alleged to violate the Act, CBE's refusal to arbitrate the grievances on June 4 and October 12, 2021, were for grievances seeking reinstatement. It is true that the Union indicated in its joint stipulation of facts and in its opening statement during the hearing that it did not seek reinstatement/removal of the DNH designation, and only sought the due process meeting prior. From the Union's perspective, the only issue remaining in the grievances was whether CBE followed the Agreement and its own policies and procedures prior to terminating and designating the Grievants as DNH. But the Complaint alleges CBE violated the Act by its refusal to arbitrate on June 4 and October 12, 2021, and the record evidence indicates what it was refusing at the time, thus the misconduct being the refusal, included matters that the Union admits are inarbitrable.

At the same time, the Union mentioned during its opening statement at the hearing before the ALJ that there is a dispute as to whether two of the Grievants were probationary at the time of their discharge but did not identify which two. (R. 14) Despite this, there is nothing in the record that the Union contested the probationary status of any of the Grievants as they moved through the grievance process. None of the grievances challenged the Grievants' probationary status. CBE Executive Director of the Office of Administrative Hearings Jennifer Reger testified that if the Union were to file a grievance challenging probationary status of an employee, she would have processed it because such matters are grievable. The record evidence shows that the grievances challenged the Grievants' discharges, not their probationary status.

The parties do not dispute that grievances challenging the discharge and DNH designation of probationary PSRPs are not grievable. Thus, by the parties' own accord, there is no contractual

agreement to arbitrate the dispute. As result, we find that CBE did not violate the Act by refusing to arbitrate the grievances at issue in this matter.

The Union's exceptions also challenge the ALJ's determination that the Agreement does not cover probationary PSRPs. The Union points to Articles 9 and 10 and Appendixes A and I of the Agreement, which set the terms and conditions of employment for PSRPs. The cited portions of the Agreement reference PSRPs and do not specify they relate only to probationary or non-probationary PSRPs, except to say that the probationary period for PSRP bargaining unit employees is one year. The ALJ's determination that the Agreement does not apply to probationary PSRPs is overly broad, unnecessary, and contrary to the evidence in the record. It is undisputed that probationary PSRPs are members of the bargaining unit represented by the Union, as CBE admitted to this in its Answer to the Complaint. The Agreement applies to CBE employees in titles or positions that are part of the bargaining unit represented by the Union. Consequently, we overturn the ALJ's finding that the Agreement in this case does not apply to probationary PSRPs.

IV. Order

For the reasons discussed above, we find that CBE did not violate Section 14(a)(1) of the Act. Therefore, IT IS HEREBY ORDERED that (1) the ALJ's dismissal of the Complaint is affirmed; and (2) the ALJ's finding that the Agreement does not apply to probationary PSRPs is overturned.

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: **November 19, 2024**
Issued: **November 19, 2024**

/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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STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Chicago Teachers Union, IFT Local 1,	)	
	)	
	)	
Charging Party	)	
	)	
And	)	Case Nos. 2022-CA-0028-C
	)	
Chicago Board of Education,	)	
	)	
	)	
Respondent	)	

Administrative Law Judge's Recommended Decision and Order

On October 20, 2021, Charging Party Chicago Teachers Union, IFT Local 1 (Union), filed an unfair labor practice charge with the Illinois Educational Labor Relations Board pursuant to Section 14 of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1, *et seq*., against the Respondent, Chicago Board of Education (CBE). The charge alleged violations of Section 14(a)(1) of the Act arising out of CBE's refusal to arbitrate grievances filed on behalf of three probationary employees who were terminated by CBE during their probationary period. On May 16, 2022, the Executive Director issued a Complaint and Notice of hearing on this charge. The parties appeared before the undersigned Administrative Law Judge for the IELRB on January 12, 2023. At the hearing, both sides had the opportunity to call, examine, and cross-examine witnesses, introduce documentary evidence, and present argument. Both parties filed post-hearing briefs on September 21, 2023.

I. Findings of Fact

During the hearing, the Union rested its case based on the documents and stipulations already on the record. (R. 23). Jennifer Reger and Joseph Moriarty testified for CBE. (R. 3, 24, 64, 100).

CBE is an educational employer within the meaning of Section 2(a) of the Act. The 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 CBE's employees. At all times material, CBE and the Union have been parties to a collective bargaining agreement for the unit represented by the Union.

A. Stipulations

Prior to the hearing, the parties agreed to stipulate several material facts. First, CBE initially agreed to arbitrate the disputes. (R. 8). During subsequent settlement negotiations, CBE discussed procedural and substantive issues involving the arbitrability of these grievances, because of the probationary status of the employees. (R. 8). Second, CBE's position is that it refused to arbitrate the grievances because they sought to challenge the termination of an employee employed in a job title generally contained within the category of probationary peer professional support personnel (PSRP). (R. 8). Third, the Union claims that the only remaining issue is whether CBE followed its own policies and procedures prior to terminating and designating the employees as "do not hire" (DNH). (R. 9). Fourth, CBE has the exclusive authority to make hiring and firing decisions for probationary employees, and the Union does not seek to have a probationary employee reinstated, or to have a probationary employee's DNH status altered. (R. 9). Finally, CBE has the sole exclusive authority to determine the eligibility requirements for hire and rehire, and that the grievances at issue in this matter do not seek to compel CBE to change any such requirement. (R. 9).

B. Testimony of Jennifer Reger

Jennifer Reger was employed by Chicago Public Schools in the job title or capacity of Executive Director in the Office of Administrative Hearings (OAH). (R. 25). Before April of 2022, the Office of Administrative Hearings was known as the Office of Employee Engagement. (R. 25). Reger has held several positions during her time employed by CBE, including as a grievance hearing officer, Assistant Director, and Director of OAH. (R. 26-30).

Reger testified regarding a document entitled Employee Discipline and Due Process for Union Employees (Except CTU). (R. 31-32, CBE Ex. 11). Reger testified that, pursuant to past practice, this is the policy used to process not just non-union employees, but probationary employees whose positions fall within the bargaining unit. (R. 32-33).

Reger testified that Steven Webb was employed by CBE. (R. 38). The record is unclear on precisely when Webb first became employed by CBE, because the data entered into CBE's PeopleSoft management system has a default date entered where Webb's first date of employment would typically be listed. (R. 39, Joint Ex. 5 at 17). However, Reger testified that Webb was first employed no later than 2007, when he worked in the job title or capacity of School Assistant. (R. 39). On May 22, 2011, Webb was promoted to a Teacher Assistant II position. (R. 40, Joint Ex. 5 at 10). He subsequently transferred to a Transition Specialist role

at some unspecified date between May 22, 2011, and February 6, 2016, when he was laid off from that role. (R. 40), Joint Ex. 5 at 3). On October 15, 2018, Webb was rehired as a School Community Representative. (R. 40, Joint Ex. 5 at 2). Pursuant to CBE policy, if a laid off employee is out of employment for over a year, as was the case with Webb, the employee is considered to have had a break in service and loses any previously held tenure or seniority. (R. 42-43). On May 17, 2019, Webb was terminated and given a DNH designation. (R. 43). Reger testified that, at the time of his termination, he would have been considered a probationary employee. (R. 43-45). Webb's termination letter, dated May 16, 2019, carbon copied Lois Jones, who was a Union field representative. (R. 51, Joint Ex. 11 at 3).

The Union filed a grievance on Webb's behalf on July 29, 2019. The grievance stated that Webb did not have the opportunity to review the charges against him or to respond to any of the charges, and that he was terminated even though the principal of his school determined that the charges against him were unfounded. (R. 101, Joint Ex. 10 at 7). Reger replied to the grievance on July 30, 2019, informing the Union that the grievance was denied because it concerned non-grievable discipline, specifically the termination of a probationary employee. On August 21, 2019, the Union demanded arbitration. (Joint Ex. 10 at 4). Reger testified that nobody from the Union contested Webb's probationary status in response to this email. (R. 102).

Terrence James was hired on April 13, 2018, as a part-time hourly employee. (R. 46, Joint Ex. 6 at 4). He was promoted to a full-time role as a Teacher Assistant on January 7, 2019. (R. 46, Joint Ex. 6 at 2). On May 15, 2019, he was terminated and given a DNH designation. (R. 46-47, Joint Ex. 6 at 1). Reger testified that he was considered a probationary employee because he had less than twelve months of continuous full-time employment with CBE. (R. 47). James's termination letter, dated May 14, 2019, was carbon copied to Adriana Cervantes, who was a Union field representative. (R. 51, Joint Ex. 11 at 2).

The Union filed a grievance on James's behalf on May 29, 2019. (Joint Ex. 9 at 6). The Union based the grievance on James not being able to review or respond to charges against him, and there not being a disciplinary or dismissal meeting between James and any CBE representative. (R. 104, Joint Ex. 9 at 7). Reger testified that she was not aware of anybody from the Union challenging James's probationary status at the time of his dismissal. (R. 104). On May 29, CBE informed the Union that James's grievance was denied as non-grievable discipline, because James was a probationary employee. (R. 104, Joint Ex. 9 at 9). The Union demanded arbitration on June 4.

Finally, Arturo Medina was hired on September 14, 2018, as a Special Education Classroom Assistant, a job title or classification not within the Union's bargaining unit. (R. 47-48, Joint Ex. 7 at 4). On April 14, 2019, Medina moved from the SECA position to a School Clerk I position, which does fall within CTU's bargaining unit. (R. 48, Joint Ex. 7 at 3). On May 2, 2019, Medina was terminated and given a DNH designation. (R. 48, Joint Ex. 7 at 1). Medina was considered probationary because he had less than twelve months of full-time continuous employment by CBE. (R. 49). Medina's termination letter, dated, May 1, 2019, was carbon copied to Kathy Murray, the Union field representative for the school that Medina was assigned to at the time of his termination. (R. 50, Joint Ex. 11 at 1).

The Union filed Medina's grievance on May 9, 2019. Medina's grievance states that he was terminated without the opportunity to see charges against him or to respond to any such charges. (R. 105-06, Joint Ex. 8 at 16). At no point did the Union challenge Medina's probationary status. As with the two above, Medina's grievance was denied on July 9, 2019 because the grievance concerned non-grievable discipline, namely the termination of a probationary employee. (R. 106, Joint Ex. 8 at 14). The Union demanded arbitration of Medina's grievance on August 1. (Joint Ex. 8 at 8).

Reger described the process for discipline as related to probationary employees who work in job titles contained within the unit represented by the Union. First, a principal usually raises an issue with their school's human resource business partner, who forwards claims of misconduct to OAH. (R. 49). The OAH reviews the evidence supporting the misconduct claim. (R. 49). The termination letters described above are typical for how CBE typically processes probationary terminations, and Reger testified that she did not believe that probationary employees were entitled to more process than provided for in those letters. (R. 51-53). CBE has apparently been processing probationary terminations for employees in job titles represented by the Union in this way since at least 2007. (R. 58-59, CBE Exhibit 13).

C. Testimony of Joseph Moriarty

At all times material, Joseph Moriarty was the General Counsel for CBE, a title he had held since 2018. (R. 64-65). In that capacity, and in his previous capacity as Chief Labor Relations Officer from 2012-2018, he participated in collective bargaining with the Union. (R. 65). He testified that the 2007-2012 CBA granted PSRPs the right to file a grievance and appeal the grievance to arbitration. (R. 67-68). Prior to the 2007-2012 agreement, there was no right to do so. Nevertheless, Moriarty testified that this provision did not apply to

probationary PSRPs. (R. 68). Similarly, the 2012-2015 CBA allowed for non-probationary PSRPs to submit warnings received in lieu of suspension to mediation but did not allow probationary PSRPs the same privilege. (R. 69-70). An email sent from Union counsel on June 23, 2013, confirmed that the Union agreed that grievances involving dismissals or final warnings for probationary PSRPs would not be submitted to arbitration. (R. 75-76, CBE Ex. 3). Moriarty testified further that he was unaware of CTU rescinding its agreement on that point. (R. 76). A CTU bargaining proposal on this matter, dated July 13, would allow for non-probationary PSRPs to submit grievances of final warnings or dismissals. (R. 77, CBE Ex. 4). The proposal is silent on the issue of probationary PSRPs. (R. 77-79).

Similarly, a subsequent Union proposal would have provided for non-probationary PSRPs to grieve their discharge, but does not mention probationary PSRPs. (R. 80-81, CBE Ex. 5). Later proposals follow the same trend, including a final tentative proposal. (R. 86-87, CBE Ex. 7, 9). Moriarty testified that he believed that probationary PSRPs did not have the right to grieve termination, and that the Union has shared that opinion in bargaining. (R. 90). He also testified that the parties can initially agree to arbitrate a dispute, then later refuse to do so at any point prior to arbitration. (R. 90).

II. Issues and Contentions

The Complaint, issued on May 16, 2022, alleged three violations of Section 14(a)(1) of the Act arising out of CBE's refusal to arbitrate grievances arising out of the termination of employment for James, Medina, and Webb. CBE denies that the complained-of conduct violates the Act.

III. Discussion

Section 14(a)(1) of the Act prohibits educational employers from interfering, restraining, or coercing employees in the exercise of rights protected by Section 3 of the Act. 115 ILCS 14(a)(1). Section 3 of the Act provides that educational employees may organize, form, join, or assist in employee organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid or benefit, and may also refrain from any or all of any such activities. The refusal to process a grievance is a violation of Section 14(a)(1) of the Act, because it interferes with an educational employee's right to engage in collective bargaining. Prairie State College v. IELRB, 173 Ill. App. 3d 395, 408 (4th Dist. 1988). Arbitration is generally seen as a "uniquely suitable method" for resolving labor disputes, and there is a presumption in favor of arbitration in cases of doubt. Northeastern University v. IELRB, 170 Ill. App. 3d 463, 471 (4th Dist. 1988). Especially as here, where the

definition of a grievance contained within the CBA is broad, an exclusion from arbitration must be explicitly stated in the contract. Rock Island County Sheriff v. AFSCME Local 2025, 339 Ill. App. 3d 295, 298 (3rd Dist. 2003).

On the other hand, the refusal to process a grievance is an accepted method for challenging the arbitrability of said grievance. Niles Township High School Dist. 219 v. IELRB, 379 Ill. App. 3d 22, 32 (1st Dist. 2007). Arbitrability may be challenged either where there is no contractual agreement to arbitrate the substance of the dispute, or where the dispute is not arbitrable pursuant to Section 10(b) of the Act because the subject matter of the dispute is in violation of Illinois law. Niles Township at 32. In this case, CBE admits that it refused to process the grievances, but that its refusal is legally permissible because there is no contractual agreement to arbitrate grievances over the termination of probationary PSRPs. This case, therefore, turns on whether there is a contractual agreement to arbitrate the substance of the dispute or, in the alternative, whether requiring CBE to arbitrate grievances concerning the termination of probationary PSRPs violates Illinois law because it infringes on its inherent managerial rights.

A. Relevant Contractual Provisions

Article 3-1 of the CBA defines a grievance as a complaint involving a work situation, a complaint that there has been a deviation from, misinterpretation of, or misapplication of a practice or policy, or a complaint that there has been a violation, misinterpretation, or misapplication of any provision of the CBA. Article 3-10 establishes the arbitration process. Arbitrators have no jurisdiction to hear disciplinary matters except as specifically set forth in the CBA.

Terms and conditions of employment for PSRPs are defined in Article 9 of the CBA. That article makes it clear that PSRPs are subject to CBE Rules, guidelines, policies and procedures, as well as the CBA. The probationary period for PSRPs is one year. Employee discipline is governed by Article 29. Employees are to be disciplined only for just cause, pursuant to the principles of progressive and corrective discipline. Article 29-5 governs the discipline and dismissal procedures for non-probationary PSRPs and provides that the dismissal of non-probationary PSRPs may be submitted to grievance arbitration pursuant to Article 3-10, or to mediation pursuant to Article 3-9. Despite this section being applicable to all appointed teachers, temporarily assigned teachers, and PSRPs, there is no reference to probationary PSRPs in Article 29-5 or elsewhere in Article 29.

B. Relevant CBE Rules and Policies

Section 4-3(e) of the CBE rules provides that PSRPs are employed at will, unless there is a specific agreement granting a PSRP a property interest in their job. Section 4.5(b) provides that the at-will status of employees can only be modified by statute, agreement, or Board Rule expressly providing to the contrary. Section 4-7 grants CBE's Chief Executive Officer or his/her designee the authority to dismiss probationary or other at-will employees.

Board Policy 500.A.1 states that newly hired employees in Union positions other than CTU are treated as probationary for the first twelve months of their employment, and, accordingly, may be discharged for any or no cause and with or without notice or an opportunity to be heard. Although Board Policy 500A.1 does not expressly apply to probationary employees in positions contained within the CTU bargaining unit, the evidence demonstrates that the past practice of the parties as it relates to probationary PSRPs is nonetheless governed by this policy.

C. Bargaining History and Past Practice

In the 2007-2012 CBA, PSRPs obtained the right to arbitrate grievances over dismissals. During the hearing, Moriarty testified that this did not apply to probationary PSRPs. (R. 67-68). The 2012-2015 CBA stated that non-probationary PSRPs may grieve discipline or dismissals to arbitration or mediation. During bargaining for the 2012-15 CBA, CBE argued that its position was that probationary PSRPs would not be able to arbitrate grievances over dismissals. Similarly, the Union's counter-proposals in bargaining over the 2012-15 CBA all concerned non-probationary PSRPs. (CBE Ex. 4, 6, 7). Furthermore, following the ratification of the 2012-15 CBA, the Union confirmed that it did not intend to advance probationary PSRP dismissals to arbitration. (CBE Ex. 3). At hearing, CBE provided evidence that, since 2007, probationary PSRPs had been terminated pursuant to the processes and procedures used to terminate the employees at issue in this matter without objection from the Union. (CBE Ex. 13).

D. Analysis

The Union argues that there is a contractual agreement to arbitrate the grievances based in large part on the expansive language of the parties' grievance clause in the collective bargaining agreement, which provides that a grievance may arise out of a work situation, a complaint that there has been a deviation from, misinterpretation of, or misapplication of a practice or policy, or a complaint that there has been a violation, misinterpretation, or misapplication of any provision of the CBA.

Here, the Union concedes that the arbitration process could not compel CBE to reinstate an employee who was properly categorized as probationary. Here, Article 9-6 of the contract incorporates CBE Rules as it relates to PSRPs, including Section 4-3(e) and 4-7 of the Rules which provide that PSRPs are at-will employees, and that CBE's Chief Executive Officer has the authority to terminate probationary or at-will employees unless some other agreement, such as a CBA, provides to the contrary. The contract further explicitly states that the discipline and dismissal of non-probationary PSRPs is governed by Article 29-5. The incorporation of CBE Board Rules, coupled with the explicit exception only for non-probationary PSRPs, makes it clear that discipline for probationary PSRPs is outside the scope of the contract's grievance and arbitration provisions. Accordingly, if the employees were probationary at the time of their dismissal, there is no right to go to arbitration over their dismissals. In the grievances, the Union relies on Board Rule 4-7.4, but that rule only applies to educational support personnel covered by a collective bargaining agreement, whereas the CBA at issue here explicitly does not cover probationary PSRPs.

The record is similarly clear that the three employees were all probationary at the time of their dismissals. Medina was hired on April 22, 2019. His employment was terminated on May 1, 2019. James was promoted to a PSRP position on January 7. He was terminated from that position on May 15, 2019. Webb was recalled from layoff on October 15, 2018, at which point he became a probationary employee pursuant to CBE policy and was terminated on May 16, 2019. In all three cases, CBE informed the Union that the grievances were denied because the employees were probationary. The Union did not challenge the probationary status of the employees either in the grievances or in any of its requests for mediation or arbitration.

Because probationary PSRPs are excluded from coverage in the CBA, there can be no contractual right to arbitrate their grievances. Accordingly, the complaint in this charge must be dismissed.

IV. Conclusions of Law

Based on the foregoing, I find that CBE did not violate Section 14(a)(1) of the Act by refusing to arbitrate the grievances.

V. Recommended Order

For the reasons discussed above, I recommend that the Complaint be dismissed in its entirety.

VI. Right to File Exceptions

Pursuant to Section 1120.50(a)(1) of the Board's Rules and Regulations, Ill. Admin. Code, tit. 80, § 1120.50(a)(1) (1984), the parties may file written exceptions to this Recommended Decision and Order and briefs in support of those exceptions no later than 21 days after receipt of this decision. Exceptions and briefs must be filed with the Board's General Counsel. At this time, parties are highly encouraged to direct said exceptions and responses, if at all, to the general email account at ELRB.mail@illinois.gov. If no exceptions have been filed within the 21-day period, the parties will be deemed to have waived their exceptions. Under Section 1100.20 of the Board's Rules, Ill. Admin. Code, tit. 80, § 1100.20 (1984), parties must send a copy of any exceptions they choose to file to the other parties and must provide the Board with a certificate of service. A certificate of service is "a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service." Ill. Admin. Code, tit. 80 § 1100.20(e) (1984). If a party fails to send a copy of its exceptions to the other parties or fails to include a certificate of service, that party's appeal rights with the Board will end.

Dated: July 2, 2024
Issued: Chicago, Illinois

[redacted]
Nick Gutierrez
Administrative Law Judge

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