

STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD

Jacqueline Johnson,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2023-CA-0018-C
	)	
Chicago Board of Education,	)	
	)	
Respondent	)	

**OPINION AND ORDER**

**I. Statement of the Case**

On November 1, 2022, Jacqueline Johnson (Johnson or Charging Party) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board) in the above-captioned matter 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, 115 ILCS 5/1, *et seq.* (Act or IELRA). Following an investigation, the Board’s Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge in its entirety. This case is before the Board because Johnson 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 of the case, we will not repeat the facts herein except as necessary to assist the reader.

**III. Discussion**

Employers are prohibited by Section 14(a)(1) of the Act from “interfering, restraining, or coercing employees in the exercise of the rights guaranteed under” the Act. Improper motive must be shown in Section 14(a)(1) cases involving adverse employment action because of protected concerted activity. *Neponset Community Unit School Dist. No. 307*, 13 PERI 1089, Case

No. 96-CA-0028-C (IELRB Opinion and Order, July 1, 1997). For a complaint to issue in those cases, the charging party must at least be able to make some showing of protected concerted activity, that the respondent knew of that activity and that it took adverse employment action as a result of that activity. Neponset, 13 PERI 1089. The Executive Director dismissed the instant charge because Johnson failed to make the requisite showing of protected concerted activity.

In her exceptions, Johnson claims that the EDRDO incorrectly states that Chicago Teachers Union (Union) only filed one grievance on her behalf, which it subsequently withdrew. Johnson admits that the Union did not pursue her grievance against a former co-worker, but asserts that the Union filed grievances regarding her termination on December 7, 2022 and March 30, 2023, both of which are awaiting arbitration. Even if the EDRDO was incorrect on this point, the Board should not reverse the dismissal. There is nothing in the record indicating that Johnson participated in any protected activity prior to the adverse actions she alleges were taken against her. She participated in protected activity when the Union filed the grievances over her termination. However, that was after the adverse action occurred. Thus, the complained of adverse action cannot be in retaliation for that protected activity.

The remainder of Johnson's exceptions challenge the validity of CBE's reasons for her discharge. Even assuming, arguendo, Johnson is correct, her charge lacks merit because there is no evidence of a causal connection between her discharge and her engagement in protected activity.

#### **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: **March 20, 2024**

Issued: **March 21, 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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**EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER**

**I. THE UNFAIR LABOR PRACTICE CHARGE**

On November 1, 2022, Charging Party Jacqueline Johnson filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) alleging that Respondent, Chicago Board of Education, violated Section 14(a) of the Illinois Educational Labor Relations 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**

Jacqueline Johnson was employed as an educational employee within the meaning of Section 2(b) of the Act, by the Chicago Board of Education (CBE) in the job title or classification of Special Education Teacher. CBE is an educational employer within the meaning of Section 2(a) of the Act. The Chicago Teachers Union (Union) is a labor organization within the meaning of Section 2(c) of the Act, and the exclusive representative of a bargaining unit comprised of certain of CBE's employees, including those in the job title or classification of Special Education Teacher. At all times material, CBE and the Union were parties to a collective bargaining agreement for the unit described above.

**B. Facts Relevant to the Unfair Labor Practice Charge**

Johnson alleges that CBE retaliated against her by failing or refusing to grant her short-term disability leave. On December 8, 2021, Johnson received notice that she was suspended with pay from her duties as a Special Education Teacher, pending an investigation into Johnson's conduct. A hearing was held on September 8, 2022, during which several witnesses testified that on October 26 and November 18, 2021, Johnson rinsed a milk carton, a banana, an orange, and a package of plastic silverware before handing those items to students. On October 26, a student dropped a milk carton. Johnson attempted to get the lunchroom supervisor, Diane James, to

replace the item, but James said that it was not damaged. Johnson then sprayed the milk carton with hand sanitizer and handed it back to the student. After James saw that, she replaced the milk carton and instructed Johnson to not do that again. James reported Johnson's actions to Assistant Principal Jacqueline Davis two days later. After witnessing similar behavior on November 18, James again reported it to Davis. Johnson was removed from teaching duties on December 8.

Johnson alleges that, on October 26, after the incident with the milk carton, James attacked her in the hallway with a lunch cart. Similarly, on November 18, Johnson claims that James again hit her with a lunch cart and threatened her. Johnson filed police reports against James following both the October 26 and November 18 incidents but apparently did not mention anything about these assaults or retaliation for reporting these assaults as part of the investigation into her conduct. The investigator assigned to the allegations against Johnson found that it was most likely that Johnson filed the police reports in retaliation for James reporting her conduct to Davis. Johnson claims that these attacks occurred because Davis had attempted to get Johnson to go on medical leave, but she refused to do so. Johnson claimed that, after her refusal, Davis made a threatening comment.

Johnson filed for leave on or about September 12, 2022, while still on suspension pending investigation. For that reason, CPS denied the request on October 5. The following day, on October 6, she was suspended without pay and recommended for dismissal because of the findings of the investigation. On December 7, 2022, the Union filed a grievance on Johnson's behalf over her tenure status. CBE denied the grievance because she had been terminated, and therefore lacked standing to challenge her tenure status through the grievance procedure. The Union subsequently withdrew the grievance. There is no evidence that Johnson filed any other grievances relevant to the present charge, or that any other grievances were filed on her behalf.

### **III. THE PARTIES' POSITIONS**

In her charge, Johnson alleges that CBE retaliated against her for filing police reports by suspending her with pay pending investigation, by denying her short-term leave, and by terminating her employment. CBE denies that the complained-of conduct violates the Act.

### **IV. DISCUSSION**

Johnson's claim states that she was retaliated against for filing police reports against James following the incidents on October 26 and November 18. The IELRA grants educational employees the right to organize, form, join, or assist in union or other lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection. 115 ILCS 5/3 (2019). Section 14(a)(1) of the Act prohibits educational employers from "[i]nterfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act." 115 ILCS 5/14 (2022).

An employee is involved in protected union or other lawful concerted activity when the employee invokes a right arising out of a collective bargaining agreement or acts with or on the authority of other employees. Schaumburg Community Consolidated School Dist. 54 v. IELRB, 247 Ill. App. 3d 439 (1st Dist. 1993).

For Johnson's claim to result in the issuance of a complaint for hearing, Johnson must demonstrate that she was involved in activity protected by the Act, and that CBE took action against her, in whole or in part, because of that activity. City of Burbank v. ISLRB, 128 Ill. 2d 335 (1989), Harden County Education Assn. v. IELRB, 174 Ill. App. 3d 168 (4<sup>th</sup> Dist. 1988). Here, Johnson's claim arises out of complaints raised on her own behalf, not that of a group of fellow employees. Charges such as Johnson's that arise out of personal "pique" rather than any union or group concern are not protected concerted or union activity. Schaumburg at 458-59. While it is true that the Union filed a grievance on her behalf, that grievance was not filed until December 2022, after CBE made a decision on Johnson's termination, and on a subject matter unrelated to her suspension or termination, so that cannot be the basis for a claim of retaliation. There is no evidence that Johnson filed any grievances on her own behalf.

Even if Johnson's police reports were protected concerted activity, there is no evidence that any adverse action was taken against her because of the reports. The evidence on record shows that Johnson was investigated following two separate incidents where she applied hand sanitizer to food items, despite being warned after the first incident. Following the second occurrence, CBE conducted an investigation wherein Johnson apparently never raised the possibility that she was being retaliated against for her police reports. In fact, the investigator assigned to Johnson's case determined that Johnson filed the police reports in retaliation for James raising concerns over Johnson's application of hand sanitizer to food items, not the other way around.

Because Johnson's activity was not union related or otherwise concerted, she cannot demonstrate that an issue of law or fact exists 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), 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, with the Board's General Counsel, 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103. Pursuant to Section 1100.20(e) of the Rules, the exceptions sent to the Board must contain a certificate of service, that is, "**a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service.**" If any party fails to send a copy of its exceptions to the other party or parties to the case, or fails to include a certificate of service, that party's appeal will not be considered, and that party's appeal rights with the Board will immediately end. See Sections 1100.20 and 1120.30(c) of the Rules, concerning service of exceptions. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions, and unless the Board decides on its own motion to review this matter, this Recommended Decision and Order will become final and binding on the parties.

**Issued in Chicago, Illinois, this 7th day of September 2023.**

**STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD**

**Victor E. Blackwell  
Executive Director**

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