STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Champaign Educational Services Personnel, IEA-NEA,	)	
Charging Party	)	
and	)	Case No. 2023–CA–0035–C
Champaign Community Unit School Dist. 4,	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On March 2, 2023, Champaign Educational Services Personnel, IEA-NEA (Union) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board) in the above-captioned matter alleging that Champaign Community Unit School District 4 (District) 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. The Union filed exceptions to the EDRDO. For the reasons discussed below, we affirm 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 except as necessary to assist the reader.

III. Discussion

Section 14(a)(3) of the Act prohibits educational employers, their agents, or representatives 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." In order for a complaint to issue alleging a 14(a)(3) violation, the charging party must at least be able to

make some showing that the employee engaged in union activity, the respondent was aware of that activity, and the respondent took adverse action against the employee for engaging in that activity based, in whole or in part, on anti-union animus, or that union activity was a substantial or motivating factor. *Speed Dist. 802 v. Warning*, 242 Ill. 2d 92, 950 N.E.2d 1069 (2011); *City of Burbank v. Illinois State Labor Relations Board*, 128 Ill. 2d 335, 345–346, 538 N.E.2d 1146, 1149–1150 (1989); *Bloom Township High School v. IELRB*, 312 Ill. App. 3d 943, 957, 728 N.E.2d 612, 624 (1st Dist. 2000).

In this case, Whitney Tatman (Tatman) engaged in union or protected activity when, at her request, the Union accompanied her to meetings with the District to discuss the details surrounding her driving while intoxicated (DUI) convictions. The District was necessarily aware of that activity. The District took adverse action against Tatman when it terminated her coaching positions. The Executive Director found that the Union failed to provide evidence that the termination of Tatman's coaching positions was motivated by her invoking the Union's assistance. In its exceptions, the Union claims that this is incorrect. According to the Union, the District's unlawful motive was apparent because Tatman's coverage under the Collective Bargaining Agreement (CBA) is paramount to the District's position. The Union asserts that if Tatman did not have the Union won processes set forth in the CBA, then they would not have been included in the Last Chance Agreement, and that its focus when it met with the District regarding Tatman was to preserve those processes. The Union claims that the District Superintendent concluded the final meeting by exclaiming his frustration and that all roads lead back to Tatman's involvement with the Union. Even if true, none of these statements shed light on the Union's argument that the adverse action the District took against Tatman was motivated by her protected union activity. There is no evidence of a causal connection between that action and her protected union activity. Tatman was disciplined because of her DUIs, not because of the Union's involvement on her behalf. Therefore, the Union has failed to raise an issue of law or fact sufficient to warrant a hearing on its allegation that the District violated Section 14(a)(3) of the Act.

In its exceptions, the Union notes that the National Labor Relations Board (NLRB) has found last chance agreements that waive statutory rights to be an independent violation of

Section 8(a)(1) of the National Labor Relations Act (NLRA), 29 U.S.C.A. Section 151 *et. seq.*, the model for Section 14(a)(1) of the IELRA. "It is generally accepted that last chance agreements may serve useful purposes for employers, unions, and employees to promote the settlement of disputes. The [NLRB] has a long standing policy of encouraging the resolution of disputes without resort to the [NLRB]'s procedures. The validity of last chance agreements depends, among other considerations, on the scope of the agreement. Generally speaking an employer may not condition continued or reemployment on an employee's waiver of Section 7 rights." *Transit Mgmt. of Se. Louisiana, Inc.*, 1995 WL 1918123 (N.L.R.B. Div. of Judges Oct. 6, 1995). Section 7 of the NLRA, like Section 3(a) of the IELRA, confers on employees the right to organize, to participate in labor organizations, to bargain collectively, and to engage in other concerted activities. In *McKesson Drug Co.*, 337 NLRB 935, 938 (2002), the NLRB found that the employer independently violated Section 8(a)(1) by conditioning an employee's return to work from suspension on the signing of a last chance agreement. The last chance agreement in that case that would have resulted in the waiver of the employee's rights, both present and future, to invoke the NLRB's processes for alleged unfair labor practices. The NLRB stated that an employer's conditioning of an employee's reinstatement on such a broad waiver of Section 7 rights violates Section 8(a)(1). There is no evidence that the Last Chance Agreement required Tatman to waive any statutory rights. It was limited in scope to the waiver of the appeals, grievance, or arbitration processes outlined in the CBA should she be terminated for violating the District's Drug and Alcohol-Free Workplace Policy or for receiving another DUI citation. The only right Tatman waived by signing the Last Chance Agreement was the right to grieve a future discharge in the reason for the discharge was receiving another DUI or violating the Drug and Alcohol Free Workplace Policy, But if she is discharged for any other reason, she can file a grievance. If she is discharged for receiving another DUI or for violating the Drug and Alcohol Free Workplace Policy, she can still file a statutory claim, such as an unfair labor practice charge, she just cannot file a grievance. Accordingly, the Union has failed to raise an issue of law or fact sufficient to warrant a hearing on its allegation that the Last Chance Agreement violated Section 14(a)(1) of the IELRA.

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 24, 2024**
Issued: **April 24, 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

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

STATE OF ILLINOIS
ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

Champaign Educational Services Personnel, IEA-NEA,	)	
Charging Party	)	
and	)	Case No. 2023-CA-0035-C
Champaign Community Unit School District 4,	)	
Respondent	)	

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On March 2, 2023, Charging Party, Champaign Educational Services Personnel, IEA-NEA, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Champaign Community Unit School District 4, 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

Champaign Community Unit School District 4 (District), is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. Champaign Educational Services Personnel, IEA-NEA (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 persons employed by the District, including those in the job title or classification of Teacher Aide. At all times material, Whitney Tatman was an educational employee within the meaning of Section 2(b) of the Act, and a member of the bargaining unit referenced above. The District and the Union are parties to a collective bargaining agreement (CBA) for the unit referenced above, with a term from July 1, 2022 to June 30, 2026.

B. Facts relevant to the unfair labor practice charge

In or about August 2018, the District hired Whitney Tatman as a teacher aide. Additionally, Tatman served as a middle school assistant softball coach and a varsity assistant softball coach. In or about November 2022, the District received from the Illinois State Police, notification Tatman had been convicted of driving while intoxicated (DUI). Ken Kleber, the District's superintendent of human resources, subsequently met with Tatman, who was accompanied by a Union representative, to discuss the details surrounding her conviction. During the discussion, Kleber learned Tatman had actually been convicted in two separate DUI incidents. The first occurred in March 2022, when Tatman's car hit another vehicle, on her way home from a bar, and she left the scene of the accident. The second incident occurred in July 2022, when Tatman, on her way home from a bar, hit a deer with her car, which caused her vehicle to roll-over several times. In both incidents, Tatman's blood-alcohol content was above the legal limit.

Thereafter, Kleber notified Tatman and Jamie Sussen, the local Union president, the District was willing to offer Tatman a "last chance agreement", rather than taking any type of disciplinary action against her or removing her from her softball coaching positions. Under the last chance agreement, which Tatman and the Union would have to endorse, if she had another DUI conviction or otherwise violated the District's workplace drug and alcohol policies, the District could immediately terminate her employment, and any such termination could not be appealed through the CBA's grievance/arbitration process. Initially, Tatman and Sussen were favorably disposed toward the last chance agreement idea, but ultimately, the Union and District were unable to agree to the exact provisions to be included in the document. Nonetheless, Tatman eventually signed the last chance agreement and provided it to the District prior to its March 2 deadline. However, the Union refused to agree to the broad waiver of contractual rights included therein, and as the last chance agreement was not signed by the Union, it was invalid. The District thereafter removed Tatman from her softball coaching positions, but did not take further disciplinary action against her because of the DUI convictions.

III. THE PARTIES' POSITIONS

Herein, the Union alleges that the District violated Section 14(a)(1) and (3) of the Act in that it discriminated and retaliated against Tatman by threatening to terminate her from her coaching positions and teacher aide position, if she did not sign a last chance agreement, waiving her contractual rights in perpetuity, for off-duty conduct not related to her employment. The District denies it violated the Act, contending Tatman faced the loss of her coaching positions and termination of her employment due to her two DUIs, and in lieu of these consequences, it offered her the option of a last chance agreement. Moreover, the District notes Tatman and the local Union president, at the outset, were agreeable to the last chance agreement. Lastly, the District contends it desired to resolve Tatman's situation prior to the start of the softball season on or about March 2, 2023, and when the Union declined to sign-off on Tatman's agreement, it moved forward with discipline appropriate to her misconduct.

IV. DISCUSSION AND ANALYSIS

A. The alleged 14(a)(1) violation

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(a)(1) of the Act makes it an unfair labor practice for an employer or its agents to interfere with, restrain or coerce educational employees in the exercise of their Section 3 rights.

In order for the Board to issue a complaint for hearing on allegations of a violation of Section 14(a)(1), the charging party, the Union in this case, must at least be able to make some showing Tatman engaged in protected activity, Respondent knew of that activity, and Respondent took adverse action against her as a result of her involvement in that activity. Neponset Community Unit School District No. 307, 13 PERI ¶1089, 1997 WL 34820232 (IELRB 1997).

The Union made a sufficient showing Tatman engaged in protected activity, as she apparently requested Union representation for, and was accompanied by a Union representative at, the initial meeting with Kleber, regarding the DUIs, in November 2022. Moreover, Tatman was represented by the Union in all her interactions with the District, in connection with the DUIs. Likewise, the District plainly knew of

the protected activity Tatman engaged in, as its agent, Kleber, observed she was represented by the Union throughout all her interactions with the District, in connection with the DUIs. The adverse action element is satisfied by the District's termination of Tatman's coaching positions. Nonetheless, Tatman's claim fails, as the investigatory facts do not indicate the complained-of act was committed against her because of, or in retaliation for, the exercise of rights protected under the Act. Consequently, she cannot make any showing as to the causation element.

As the Illinois Supreme Court noted in City of Burbank, the existence of a causal link herein indicating the complained-of act was committed against Tatman because of, or in retaliation for, the exercise of rights protected under the Act, is a fact based inquiry and may be inferred from various factors, including: an employer's expressed hostility towards unionization or grievance filing, together with knowledge of the employee's protected activities; proximity in time between the employee's protected activities and the disciplinary action; inconsistencies between the proffered reason for discipline and other actions of the employer; shifting explanations for the discipline or discharge of the employee; and disparate treatment of employees or a pattern of conduct which targets union supporters for adverse employment action. City of Burbank v. ISLRB, 128 Ill. 2d 335, 538 N.E.2d 1146, 5 PERI ¶4013 (1989) (citations omitted). The evidence in this matter, however, does not reveal a causal connection between Tatman's protected activity and the adverse action.

The District asserts it removed Tatman from her coaching positions due to her two DUI convictions, believing her conduct directly affected her ability to be a role model for students. The Union disputes this was the reason for Tatman's removal from the coaching positions, contending instead, the District's action was in retaliation for Tatman engaging in protected activity. However, the Union proffered no evidence to support its contention in this regard. Moreover, the existing evidence does not reveal a causal connection between Tatman's protected activity and the adverse action. There is no evidence of hostility by the District toward unionization in general, or the Union, or its local president, in particular, nor inconsistencies between the District's proffered reasons for terminating Tatman's coaching positions and its other actions. Nor was there evidence the District was upset or dismayed by Tatman's decision to seek representation, but rather acceptance of it as a matter of course. Likewise, there is no allegation or evidence of shifting

explanations by the District for its conduct in connection with Tatman, or evidence the District targeted employees who supported the Union or sought its assistance, for adverse employment actions, as might be expected if in fact a causal connection existed. With regard to the disparate treatment factor, the relevant inquiry is whether the District treated employees similarly situated to Tatman, in a manner better than she was treated, and herein, there is no evidence this occurred. Simply put, there is no evidence whatsoever the District's decision to remove Tatman from her coaching positions was in retaliation for the protected activity she engaged in. Without some showing Tatman's protected activity caused the District to take the complained-of action, her claim fails to raise an issue of law or fact sufficient to warrant a hearing.

The Union also alleges the District violated Section 14(a)(1) of the Act in that it threatened to terminate Tatman from her coaching positions and teacher aide position, if she did not sign a last chance agreement, waiving her contractual rights in perpetuity, for off-duty conduct not related to her employment. The Board and the courts have long held that cases involving a threat must be resolved by evaluating whether the conduct or statement at issue, when viewed objectively from the standpoint of an employee, would reasonably have had the effect of coercing, restraining or interfering with the exercise of protected rights. Hardin County Education Association v. IELRB, 174 Ill. App. 3d 168, 528 N.E.2d 737 (4th Dist. 1988); Georgetown-Ridge Farm Community Unit School District No. 4 v. IELRB, 239 Ill. App. 3d 428, 606 N.E.2d 667 (4th Dist. 1992); Neponset Community Unit School District No. 307, 13 PERI 1089 (IELRB 1997). In such cases, proof of illegal motivation is not required to show a violation of Section 14(a)(1). Id. Consistent therewith, pursuant to the protected speech provision in Section 14(c) of the Act, an employer's statements do not violate Section 14(a)(1) unless a reasonable employee would view the statements as conveying a promise of benefit or threat of reprisal or force.[1] American Federation of State, County and Municipal Employees, Council 31/Champaign-Urbana Public Health District, 24 PERI ¶122 at fn. 3, 2008 WL 8568317 at fn. 3 (IL LRB SP 2008). Correspondingly, charging party need not make any showing that employees were in fact coerced, restrained, or interfered with, or that respondent had a "bad"

[1]Section 14(c) of the Act provides in pertinent part that "the expressing of any views, argument, or opinion or the dissemination thereof...shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

motive. Elk Grove Village Firefighters Association/Village of Elk Grove Village, 10 PERI ¶2001 (IL SLRB 1993)(wherein the State Labor Relations Board found a violation of Section 10(a)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315/1, the parallel to Section 14(a)(1) of the Act, despite the fact respondent acted in good faith and on the advice of counsel, as the unfair labor practice did not turn on respondent's motive, it was of no consequence that it was mistaken or that it acted upon the advice of legal counsel, citing Florida Steel Corporation, 220 NLRB 1201, 1203 (1975), enf'd, 538 F.2d 324 (4th Cir. 1976)). Thus, the issue here is whether a reasonable employee in Tatman's circumstances would view Kleber's statement that he would terminate Tatman from her coaching positions and teacher aide position, if she did not sign the last chance agreement, as conveying a promise of benefit or threat of reprisal or force.

On the facts as presented herein, no reasonable employee would view Kleber's complained-of statement as conveying a threat of reprisal or force. Kleber's statement that he would terminate Tatman from her coaching positions and teacher aide position, if she did not sign the last chance agreement, was a statement of intent, made in the course of negotiating discipline with the Union, for what the District determined was a serious offense. Indeed, the Union's position in this matter is understandable, given its disagreement with the District over the seriousness of the offense—the District was seeking to have Tatman waive her contractual rights in perpetuity, for off-duty conduct which the Union believed unrelated to her employment, and thus, a substantial overreach. However, that difference in opinion is outside the ambit of the Act, more properly in the realm of the collective bargaining agreement. Plainly, the District found the offense related to her employment, and hence the explanation for the discipline it sought to impose. Kleber's statement is protected under Section 14(c) of the Act and cannot constitute evidence of an unfair labor practice, as in the circumstances it was made, where a Union official was accompanying Tatman, and the discussion among them and Kleber concerned the negotiation of a disciplinary penalty, no reasonable employee would view it as conveying a threat of reprisal or force. Undoubtedly, there are scenarios which could be devised, under which Kleber's complained-of statement would violate 14(a)(1), but those facts are not present in this case.

B. The alleged 14(a)(3) violation

The Union's 14(a)(3) claim is flawed in the same manner as its 14(a)(1) claim. To obtain a complaint on its 14(a)(3) allegation, the Union must at least be able to make some showing Tatman engaged in protected union activity, Respondent knew of that activity, and Respondent took adverse action against her as a result of her involvement in that activity in order to encourage or discourage union membership or support. City of Burbank v. ISLRB, 128 Ill. 2d 335, 538 N.E.2d 1146, 5 PERI ¶4013 (1989); Bloom Twp. High School Dist. 206 v. Illinois Educational Labor Relations Board, 312 Ill. App. 3d 943, 728 N.E.2d 612, 164 LRRM 2284 (1st Dist. 2000); City of Peoria School Dist. No. 150 v. Illinois Educational Labor Relations Board, 318 Ill. App. 3d 144, 741 N.E.2d 690, 166 LRRM 2886 (4th Dist. 2000).

Again, as discussed above, the evidence is clear Tatman engaged in protected activity, which arguably may be considered union activity, the District knew of that activity, and the District took adverse action against her. However, there is no evidence the District took the adverse action, that is, terminated her from her coaching positions, due to her involvement in protected union activity, or of the requisite intent. As noted above, there is no evidence of a causal connection between Tatman's protected activity and the adverse action. Thus, this aspect of Tatman's claim likewise fails to raise an issue of law or fact sufficient to warrant a hearing.

V. ORDER

Accordingly, the instant charge is hereby dismissed in its entirety.

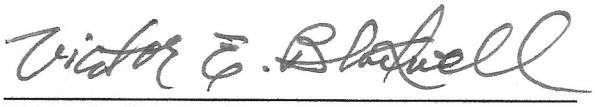
VI. RIGHT TO EXCEPTIONS

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, 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 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 18th day of August, 2023.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD



Victor E. Blackwell
Executive Director