STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Michael Robert Walters, Charging Party and Moraine Valley Community College, District 524, Respondent	)	Case No. 2023-CA-0036-C

OPINION AND ORDER

I. Statement of the Case

On March 8, 2023, Michael Robert Walters (Walters or Charging Party) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board) in the above-captioned matter alleging that Moraine Valley Community College, District 524 (College) 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 Walters 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

The Executive Director dismissed the charge because during the time relevant to his charge filing, Walters was not an educational employee within the meaning of Section 2(b) of the Act, so the Board does not have jurisdiction over his charge. Walters taught noncredit courses for the College as a part-time academic employee. Section 2(b) specifically excludes part-time academic employees of community colleges who provide less than three credit hours of instruction per academic semester from the definition of educational employee.

In his exceptions, Walters claims that the College failed to raise the jurisdictional issue during the investigation and the Board has jurisdiction here because there is no evidence as to whether he provided more or less than three credit hours of instruction per academic semester. Yet the College did raise the jurisdictional issue in its response to the charge and provided evidence in support of its argument. Nothing in Walters' exceptions indicates that he was an educational employee within the meaning of the Act.

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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STATE OF ILLINOIS
ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

Michael Robert Walters, Charging Party and Moraine Valley Community College, District 524, Respondent	)	Case No. 2023-CA-0036-C

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On March 8, 2023, Charging Party, Michael Robert Walters, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Moraine Valley Community College, District 524, 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

Moraine Valley Community College, District 524 (College) is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. In or about early 2022, it hired Walters as a part-time adjunct professor in its Corporate, Community, and Continuing Education Division, to teach two noncredit real estate courses for Spring Semester 2022. The College subsequently cancelled one of those classes because of a schedule change. The following semester, Summer Semester 2022, the College scheduled Walters to teach three noncredit real estate courses, but all three courses were later cancelled due to insufficient enrollment. The College scheduled Walters to teach four noncredit real estate courses during Fall Semester 2022, but in mid-July 2022, it cancelled those courses. All courses Walters taught for the College were noncredit courses. Walters' title is not in a bargaining unit.

At or about the time of the mid-July 2022 cancellation, Walters made repeated calls to the College, seeking to meet with various administrators, and apparently attempted to make some in-person visits for

the same purpose. Walters again made repeated calls to the College in or about mid-September 2022. The College found his conduct in this regard overly aggressive and persistent, so much so, it alerted its campus police.

III. THE PARTIES' POSITIONS

Herein, Walters asserts the College violated the Act in that it terminated his employment without explanation and banned him from its campus on September 15, 2022. The College denies it terminated Walters' employment, denies it violated the Act, and contends the IELRB lacks jurisdiction in this matter, as Walters is not an educational employee as defined by the Act.

IV. DISCUSSION AND ANALYSIS

A. The jurisdictional issue

Section 2(b) of the Act defines an educational employee as follows:

> (b) "Educational employee" or "employee" means any individual, **excluding** supervisors, managerial, confidential, short-term employees, student, and **part-time academic employees of community colleges**.... For the purposes of this Act, **part-time academic employees of community colleges shall be defined as those employees who provide less than 3 credit hours of instruction per academic semester**. [Emphasis added.]

There is apparently no dispute Walters was a part-time adjunct professor, and the courses he taught for the College were noncredit courses. Applying the educational employee definition in 2(b) to the facts—the College, a community college, employed Walters part-time as an academic employee, but he provided less than three credit hours of instruction per academic semester—establishes Walters is not an employee within the meaning of the Act, and the Board lacks jurisdiction over his charge.

B. The alleged 14(a)(1) violation[1]

Assuming, *arguendo*, the Board had jurisdiction over Walters' charge, his charge lacks merit. Under Section 3 of the Act, educational employees have the right to engage in protected concerted activities with or without a union. To come within the protections of the Act, such activities must be engaged in "with or on the authority of other employees, and not solely by and on behalf of the employee himself." Bd. of Educ. Schaumburg Comm. Cons. School Dist. 54 v. Illinois Educational Lab. Rel. Bd., 247 Ill. App. 3d 439, 455, 616 N.E.2d 1281, 1292, 145 LRRM 2335 (1st Dist. 1993), *quoting* Meyers Industries, Inc.,

[1]In Walters' submission in support of his charge, he asserted the College violated Section 10(a) of the Illinois Public Labor Relations Act (IPLRA), 5 ILCS 315/1, *et seq.*, as follows: 10(a)(1) interfering with public employees in the exercise of the rights guaranteed in the Act; 10(a)(3) discharging a public employee because he has provided information under this Act; and 10(a)(4) refusing to bargain collectively in good faith and to discuss grievances with a labor organization. These subsections of the IPLRA correspond respectively to 14(a)(1), (4), and (5) of the Act.

268 N.L.R.B. 493, 497 (1984). As a result, generally, these are usually group activities, *i.e.* two or more employees acting together, attempting to improve working conditions, such as wages and benefits—for example: two or more employees addressing their employer about improving their working conditions and pay; one employee speaking to his/her employer on behalf of him/herself and one or more co-workers about improving workplace conditions; or two or more employees discussing pay or other work-related issues with each other. Schaumburg, 247 Ill. App. 3d 439, 455-57, 616 N.E.2d 1281, 1292-93.

An educational employer violates Section 14(a)(1) of the Act when it retaliates against an employee for engaging in protected concerted activity. In order for the Board to issue a complaint for hearing on allegations of a violation of Section 14(a)(1), the charging party, Walters in this case, must at least be able to make some showing he engaged in protected concerted activity, Respondent knew of that activity, and Respondent took adverse action against him as a result of his involvement in that activity. Neponset Community Unit School District No. 307, 13 PERI ¶1089, 1997 WL 34820232 (IELRB 1997). Walters made no showing on any of the three elements.

There is no evidence Walters engaged in protected concerted activity. On several occasions, Walters allegedly made repeated calls to the College, seeking to meet with various administrators, and apparently attempted to make some in-person visits for the same purpose. The evidence indicates Walters took these actions alone and on behalf of himself, and neither contemplated nor promoted group action. Schaumburg, 247 Ill. App. 3d 439, 458, 616 N.E.2d 1281, 1294 (charging party's complaints and behavior regarding her disappointment in the rating she received on her annual evaluation was nothing more than a personal gripe, not protected concerted activity, where group action not contemplated or promoted). Therefore, his activity in this case was not concerted within the meaning of the Act, and thus, lacked its protection.

As Walters cannot make any showing he engaged in protected concerted activity, it is impossible for him to make any showing either that Respondent knew of that activity, or that Respondent took adverse action against him as a result of his involvement in that activity. Thus, Walters' claim in this regard fails to raise an issue of law or fact sufficient to warrant a hearing.

C. The alleged 14(a)(4) violation

Walters' 14(a)(4) claim fails for the lack of a causal connection. To obtain a complaint for hearing on a 14(a)(4) claim, Walters must make some showing he had involvement in proceedings before this

Board, Respondent knew of that activity, and Respondent took adverse action against him because of his involvement in that activity. Prairie State College Federation of Teachers, Local 3816, IFT-AFT/Prairie State College, 3 PERI ¶1116, 1987 WL 1435216 (IL ELRB 1987); Green and Warns and City of Chicago, 3 PERI ¶3011 (IL ELRB 1987). There is no dispute Walters filed an unfair labor practice charge against the College on March 8, 2023. Nor is there any dispute the College knew of Walters' activity in this regard, as it was served with the charge he filed, and had to respond to it. The adverse action element is satisfied by the College's alleged termination of Walters' employment without explanation and banning him from its campus on September 15, 2022. The only remaining question is whether the adverse employment action Respondent took against Walters was in response to his involvement in proceedings before the Board. That question is answered in the negative, as there is no evidence of a causal link between Walters' protected activity, filing charges and participating in the investigation thereof before this agency, and Respondent's termination of his employment and banning him from its campus, as Walters' protected activity occurred later in time than his claimed adverse action, therefore, it could not have been the cause of the adverse action. Thus, Walters' claim in this regard fails to raise an issue of law or fact sufficient to warrant a hearing.

D. The alleged 14(a)(5) violation

An individual employee may not bring an action regarding the breach of the duty to bargain in good faith, and thus, Walters does not have standing to file a charge under 14(a)(5). Priestly/Teamsters, Local 726, 13 PERI ¶1112, fn. 1, 1997 WL 34820253, fn. 1 (IL ELRB 1997); Basil C. Halkides, *et al.*/Thornton Community College Dist. 510, 4 PERI ¶1010, 1987 WL 1435331 (IL ELRB 1987); Teachers Action Caucus, *et al.*/Chicago Board of Education, 2 PERI ¶1040, 1986 WL 1234515 (IL ELRB 1986) (individuals lack standing to file bargaining charges). Section 14(a)(5) provides that "[e]ducational employers...are prohibited from [r]efusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit." This subsection concerns the bilateral or mutual obligations of employers and labor organizations to bargain in good faith. These duties extend only to the particular employer and exclusive representative, and therefore, correspondingly, an action concerning such obligations may only be brought by the particular employer and exclusive representative, not by an individual employee. Priestly, 13 PERI ¶1112, fn. 1, 1997 WL 34820253, fn. 1; Teachers Action Caucus, 2 PERI ¶1040, 1986 WL 1234515. Thus, even if Walters had presented facts relating to a violation of Section 14(a)(5), he lacks standing to pursue such a claim.

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 11th day of October 2023.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Victor E. Blackwell
Executive Director