

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Michael Robert Walters,)	
)	
Charging Party)	
)	
and)	Case No. 2023-CA-0037-C
)	
Triton Community College District 504,)	
)	
Respondent)	

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 Triton Community College, District 504 (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 EDRDO noted that it is uncertain whether the Board has jurisdiction in this matter because it is unclear whether Walters met the definition of educational employee within the meaning of Section 2(b) of the Act. For purposes of the EDRDO, the Executive Director addressed the merits of the charge as if the Board had jurisdiction.

In his exceptions, Walters argues 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. His charge was not dismissed for lack of jurisdiction, it was dismissed on the merits because he failed to raise an issue of fact or law sufficient to warrant a hearing on his allegations that the College violated Sections 14(a)(1) or 14(a)(4) of the Act and that as an individual, he lacked standing to pursue an allegation under Section 14(a)(5) of the Act. Yet Walters' exceptions do not object to or even address the Executive Director's dismissal of his charge on the merits. Nothing in Walters' exceptions indicates the Executive Director erred when he dismissed the charge.

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 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, Triton Community College, District 504, 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

Triton Community College, District 504 (College) is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. On or about September 26, 2022, the College hired Walters to serve as a part-time instructor in its School of Continuing Education's Real Estate Academy. The College assigned Walters to teach one course, RES-E13-201—Broker Pre-License Course, which met Mondays and Wednesdays from 6:00 p.m. to 9:00 p.m., beginning in late September and ending on December 7, 2022.¹ The purpose of the course was to prepare the students enrolled to sit for the Illinois

¹Although not raised by the College, it is uncertain whether the Board has jurisdiction in this matter, as it's unclear whether Walters is an educational employee as defined by the Act. 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 employee, but there is no evidence as to whether he provided more or less than three credit hours of instruction during the academic semester in which the College employed him, and thus, some question whether the Board has jurisdiction over his charge. For purposes of this decision, I assume, *arguendo*, the Board has jurisdiction over Walters' charge.

real estate licensing examination upon completion. Seventeen students had enrolled in the course Walters was assigned to teach. Walters' title is not in a bargaining unit.

On or about November 23, 2022, the College notified Walters it was removing him from his teaching position due to his poor instruction, as he failed to adhere to the approved syllabus and failed to remain on pace to finish the required content so students enrolled in the course would be ready to sit for the real estate licensing examination at its conclusion. In addition, the College received numerous complaints from Walters' students, who found his performance unsatisfactory. Nonetheless, the College paid Walters to the end of the semester on December 7, 2022, as if he taught the entire course acceptably.

On or about December 9, 2022, Walters met with Joe Klinger, the College's associate vice-president of human resources, to discuss his removal from teaching duties at the College. During the meeting, Walters became extremely agitated, used profanity, and was aggressive in demeanor. In addition, during the meeting, Walters repeatedly reached into a black bag strapped to his body, which caused Klinger and others in the department concern for their safety, as they were unsure whether Walters had a weapon. At the conclusion of the meeting, Walters refused to leave the premises, and Klinger was forced to contact campus police to have Walters escorted off the premises and issued a no trespassing order.

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 December 9, 2022. The College denies it terminated Walters' employment and denies it violated the Act.

IV. DISCUSSION AND ANALYSIS

A. The alleged 14(a)(1) violation²

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

²In 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.

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., 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. Walters' December 9 meeting with Klinger is unavailing, as the evidence indicates he 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.³ Thus, Walters' claim in this regard fails to raise an issue of law or fact sufficient to warrant a hearing.

B. 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 been involved 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 December 9, 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 the 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.

C. 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

³It is unclear whether Walters considered the November 23, 2022 removal from teaching the adverse action, or the December 9, 2022 removal from campus and no trespassing order. Above, in the body, I assumed the adverse action was the December 9 removal and order, given the way the charge was drafted. However, even if the November 23, 2022 removal from teaching was the adverse action, the assertion is without merit, as the claimed protected activity, Walters' December 9 meeting with Klinger, occurred after the alleged adverse action, and thus, could not be the cause of it.

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**

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