STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Douglas Tucker, Charging Party and Patoka Community Unit School District #100, Respondent	)	Case Nos. 2023-CA-0047-C 2024-CA-0001-C

OPINION AND ORDER

I. Statement of the Case

On May 2, 2023, Douglas Tucker (Tucker or Charging Party) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board or IELRB), Case No. 2023-CA-0047-C, alleging that Patoka Community Unit School District 100 (District or Respondent) violated Section 14(a)(1) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, *et seq*. (Act or IELRA) when it breached his Weingarten rights by using information obtained during an allegedly non-disciplinary meeting to reduce his work hours.[1] On July 10, Tucker filed another unfair labor practice charge, Case No. 2024-CA-0001-C. His second charge alleged the District violated Section 14(a)(4) of the IELRA by denying his grievance because of his previously filed charge. Following an investigation, the Board's Executive Director issued a Recommended Decision and Order (EDRDO) in each case dismissing the charge. Tucker filed exceptions to the EDRDOs and the District filed a response.

II. Factual Background

We adopt the facts as set forth in the underlying EDRDOs. Because the EDRDOs comprehensively set forth the factual background of the cases, we will not repeat the facts herein except as necessary to assist the reader.

[1] All dates referenced herein occur in 2023 unless otherwise indicated.

III. Discussion

Tucker's first exception is that the investigation of the charges was incomplete and inadequate. He claims that the investigator's approach was cursory and limited to document review. Instead, says Tucker, the investigator should have utilized active fact finding, engaged with Tucker or other witnesses, and gathered evidence such as minutes and audio recordings from the District's open and executive session board of education meetings and Tucker's grievance hearing. The IELRB's Rules and Regulations place responsibility on the charging party, Tucker in this case, to submit to the Executive Director "all evidence relevant to or in support of the charge." 80 Ill. Admin. Code 1120.30(b)(1). As a quasi-adjudicatory body, the IELRB is required to consider only evidence in the record and cannot consider evidence not presented to the Executive Director. *Chicago Teachers Union (Johnson)*, 22 PERI 141, Case No. 2005-CB-0034-C (IELRB Opinion and Order, January 10, 2006); *Lincoln-Way Area Special Education Joint Agreement District 843*, 21 PERI 163, Case Nos. 2004-CA-0060-C, 2004-CB-0024-C (IELRB Opinion and Order, September 13, 2005); *Chicago School Reform Board of Trustees*, 16 PERI 1043, Case No. 99-CA-0003-C (IELRB Opinion and Order, April 17, 2000). If Tucker wanted evidence to be considered during the investigation, it was his obligation to come forward with such evidence. The Executive Director did not err in failing to consider evidence that Tucker did not provide.

Tucker's second exception is that the IELRB interfered with his right to an attorney. Tucker sent an email to the IELRB's general email address on May 26. Therein he inquired whether the IELRB appoints and pays for attorneys to represent individuals and conveyed his belief that he needed an attorney in his case and could not afford one. He reports that he did not receive a response to his email. Tucker argues that the failure to respond to his email inquiry regarding the appointment of counsel compromised his fundamental right to representation and did not allow him to make informed decisions regarding representation.

While Tucker should have received a reply to his email, the failure of Board staff to answer an email under these circumstances is not reversable error. Furthermore, the

answer would have provided him with little more than cold comfort. The IELRB's Rules provide that a party may be represented by an attorney. 80 Ill. Adm. Code 1100.60. But the IELRB does not appoint attorneys to represent parties appearing before the agency, nor does the IELRB recommend attorneys or representatives to parties who seek to be represented at a hearing. *Chicago Board of Education*, 27 PERI 32, Case Nos. 2009-CA-0032-C & 2009-CA-0047-C (IELRB Opinion and Order, April 13, 2010).[2] What is more, Tucker's assertion that he was disadvantaged and obstructed because he did not know whether he would have legal representation does not relieve him of the burden placed on every charging party in every unfair labor practice charge of establishing that there was a question of law or fact upon which to issue a complaint for hearing. *Id.*; *Triton College*, 10 PERI 1057, Case No. 93-CA-0058-C (IELRB Opinion and Order, March 10, 1994).

Tucker's third exception is that the EDRDOs were based on misconstrued evidence. Tucker notes that the Executive Director disregarded the timing between his disciplinary actions and subsequent adverse employment actions, as well as the timing between the filing of his unfair labor practice charge in 2023-CA-0047-C and the District's ignoring his evidence in his grievance hearing. Both of which, says Tucker, amount to a prima facie case of retaliatory conduct. Even where the timing of the adverse action supports a finding of a causal connection, timing alone is not enough for a complaint to issue. *Hardin County Education Association v. IELRB*, 174 Ill.App.3d 168, 185, 528 N.E.2d 737, 747 (4th Dist. 1988). Absent some showing Tucker's seeking this Board's assistance caused the District to take adverse action against him, his claim fails to raise an issue of fact or law sufficient to warrant a hearing.

[2] *But see* Illinois Public Labor Relations Act, 5 ILCS 315/5(k) (requiring the Illinois Labor Relations Board to promulgate rules and regulations providing for the appointment of counsel in unfair labor practice proceedings); Illinois Labor Relations Board's Rules and Regulations, Appointment of Counsel, 80 Ill. Adm. Code 1220.30; *Charles Jones*, 33 PERI ¶ 59 (SP ILRB 2016) ("Charging party has no entitlement to appointment of counsel. Rather, this matter is within the discretion of the [Illinois Labor Relations] Board or its designated agent.").

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's Recommended Decision and Orders are 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: **August 14, 2024**
Issued: **August 14, 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

Douglas Tucker,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2023-CA-0047-C
	)	
Patoka Community Unit School District #100,	)	
	)	
Respondent.	)	

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On May 2, 2023, Charging Party Douglas Tucker filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board), alleging that Respondent, Patoka Community Unit School District #100, 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

At all times material, Douglas Tucker (Tucker) was an educational employee within the meaning of Section 2(b) of the Act, employed by Patoka Community Unit School District #100 (District) in the job title or capacity of Music Teacher. The Patoka Community Education Association (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 the District's employees, including those in the job title or classification of Music Teacher. At all times material, the District and the Union were parties to a collective bargaining agreement for the unit to which Tucker belonged.

B. Facts Relevant to the Unfair Labor Practice Charge

On May 24, 2022, Patoka School Principal Justin Venhaus contacted Tucker to arrange a meeting to discuss Tucker's schedule for the 2022-23 school year. Venhaus informed Tucker that his hours were not going to be cut, the meeting was not disciplinary in nature, and that there is no disciplinary intent to the meeting. Nevertheless, Venhaus included union representation on the email, and informed Tucker that if he wanted to have union representation at the meeting, that Venhaus would not have an issue with that. Venhaus later became the District Superintendent for the 2022-23 school year, and Phil Marsh took over as Principal.

On September 1, 2022, Venhaus contacted Tucker to request a time to meet and discuss band enrollment and participation. Whether the meeting occurred is unclear, but Venhaus again contacted Tucker on September 27 looking to arrange another meeting. The meeting occurred on October 5. Venhaus sent a summary of the meeting to Tucker, addressing issues having to do with interest in the District's band program.

Venhaus again requested a meeting with Tucker on November 1, 2022, for an update about the band. Tucker stated that, if disciplinary action could result from the meeting, that he would like to have union representation. On November 4, Venhaus stated that, while there was a potential disciplinary situation

that he would need to discuss with Tucker at a later date, that would not be the subject of this meeting. Tucker and Venhaus met on November 9. There is no evidence that disciplinary action issued as a result of the November 9 meeting. The following day, Tucker informed Venhaus that there was an issue with unreturned permission slips for band testing, and that only 8 students out of the 24 that originally declared interest in joining the band had submitted the required permission slip.

On December 1, Venhaus again contacted Tucker, along with the Union's co-presidents, asking to meet. The meeting apparently occurred on December 2. Venhaus provided Tucker and the Union representatives with a summary of the meeting. Venhaus stated that he would be discussing a possible reduction in force for Tucker's position at the following school board meeting. The District did not take the matter up at its December school board meeting but did do so on its January 19, 2023 meeting. At that meeting, Tucker's hours were reduced from 37.5 hours per week to 18.75 hours per week. Tucker received written notice of the decision on January 23, 2023.

III. THE PARTIES' POSITIONS

Tucker claims that the District violated his Weingarten rights in violation of Section 14(a)(1) of the Act when it used information obtained during an allegedly non-disciplinary meeting to reduce his working hours. The District denies that its conduct violates the Act.

IV. DISCUSSION

Tucker alleges that one or more of the meetings he had with Venhaus were disciplinary in nature and that, because he did not have Union representation at those meetings, he was deprived of his right to engage in lawful union or concerted activity. If true, these allegations would constitute a violation of Tucker's Weingarten rights. NLRB v. J. Weingarten, Inc., 420 U.S. 251, 267 (1975). Weingarten stands for the proposition that an employee is entitled to request union representation at an investigatory interview that the employee reasonably believes may result in disciplinary action.

Tucker's argument fails for two reasons. First, there is no evidence that any of the meetings he speaks of were disciplinary in nature. The May 2022 meeting was to discuss Tucker's schedule for the following year. The September, October, and November meetings all dealt with issues surrounding interest in the band program. The December meeting detailed Venhaus's proposal for a reduction of force for Tucker's position, based on information given about enrollment in the band program. Tucker does not argue that he was denied union representation for the disciplinary situation referenced in the November 4 email, from which an unspecified disciplinary consequence did result that Tucker concedes is unrelated to this charge. Although his hours were cut following the December meeting, there was no evidence that the District chose to reduce Tucker's hours as a form of discipline. Tucker's charge alleges that this meeting and the previous meeting on November 9 were in fact disciplinary in nature and resulted in his reduction in hours. However, his charge presumes that the reduction in force was disciplinary without providing any evidence to that effect. In fact, his hours were reduced pursuant to Section 24-12(b) of the School Code, which is a provision that allows a reduction in force to be enacted for reasons other than performance, such as educational and financial planning, and provides a right to recall. While Tucker may believe that his reduction in hours was disciplinary in nature, there is no evidence upon which such a conclusion can be reached.

Second, assuming arguendo that the meetings were disciplinary in nature, there is no evidence that Tucker was denied union representation. Venhaus included union representation on his emails of May

24 and September 1, where he wanted to discuss scheduling matters and band enrollment with Tucker. Tucker requested union representation before the November 9 meeting if possible disciplinary action would result, and Venhaus responded by saying that he only wanted to discuss band enrollment and not any possible disciplinary matter. Venhaus did not deny Tucker the right to union representation at that or any other meeting. Because there is no evidence that Tucker was denied union representation, nor was there any evidence that the meetings that Tucker referenced in his charge were disciplinary in nature or led to disciplinary consequences, there is no evidence that Tucker's Weingarten rights were violated, and therefore no violation of Section 14(a)(1) of the Act.

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, 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 23rd day of May, 2024.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Victor E. Blackwell
Executive Director

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EDUCATIONAL LABOR RELATIONS BOARD

Douglas Tucker,	)	
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Patoka Community Unit School District #100,	)	
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EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On July 10, 2023, Charging Party Douglas Tucker filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board), alleging that Respondent, Patoka Community Unit School District #100, 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

At all times material, Douglas Tucker (Tucker) was an educational employee within the meaning of Section 2(b) of the Act, employed by Patoka Community Unit School District #100 (District) in the job title or capacity of Music Teacher. The Patoka Community Education Association (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 the District's employees, including those in the job title or classification of Music Teacher. At all times material, the District and the Union were parties to a collective bargaining agreement for the unit to which Tucker belonged.

B. Facts Relevant to the Unfair Labor Practice Charge

On May 2, 2023, Tucker filed an unfair labor practice charge against the District, which was assigned IELRB Case No. 2023-CA-0047-C. His charge alleged that he was denied Weingarten rights in meetings that he had with District Superintendent Justin Venhaus. Following that charge, on June 9, 2023, Venhaus emailed Tucker to inform him that Venhaus received a request from Tucker for access to his personnel records. Venhaus informed Tucker that he would be allowed to review and copy anything contained within his personnel records, and where the various kinds of personnel records might be found. Tucker responded that he did not necessarily need everything in his personnel record, just any information relevant to determining qualifications for employment, promotion, transfer, compensation, discharge, or other disciplinary action. Venhaus replied by informing Tucker that the District was not intentionally withholding information from him. In so doing, Venhaus referenced Tucker's grievance, his records request, and his pending charge with the IELRB, stating that while the District was doing the best it can to accommodate Tucker's requests, that the requests gave the District a lot to keep in order.

On June 20, 2023, the District's school board held a hearing on a grievance Tucker filed. Following three hours of testimony, the school board decided to deny Tucker's grievance. The instant charge alleges that the District took the action it did on Tucker's grievance because Tucker filed the initial unfair labor practice charge on May 2.

III. THE PARTIES' POSITIONS

Tucker alleges that the District denied his grievance because he previously filed the unfair labor practice charge in IELRB Case No. 2023-CA-0047. The District denies that the complained-of conduct violates the Act.

IV. DISCUSSION

Tucker's charge alleges, in effect, that the District denied his grievance because he previously filed a charge with the IELRB against the District, which would be a violation of Section 14(a)(4) of the Act. That Section prohibits educational employers from "[d]ischarging or otherwise discriminating against an employee because he or she has signed or filed an affidavit, authorization card, petition or complaint or given any information or testimony under this Act." In order to establish a violation of Section 14(a)(4), Tucker must demonstrate that (1) he has utilized or participated in Board processes, (2) that the District was aware of his activity, and (3) that the District took adverse action against Tucker because of his activity. Prairie State College, 3 PERI 1116 (IELRB Opinion and Order, October 29, 1987).

Here, Tucker has filed a previous charge against the District, and Venhaus's comments with regard to Tucker's past IELRB charge makes it similarly clear that the District was aware of his past charge. However, Tucker's charge fails because he does not demonstrate that the District took adverse action against him when it denied his grievance or that, even if it did, there is no evidence that the school board denied his grievance because of his previous IELRB charge. An adverse action is a decision that significantly alters the terms and conditions of employment. Robinson v. Village of Oak Park, 2013 IL App (1st) 121220 at ¶ 41, 990 N.E.2d 251, 262, *citing* Stutler v. Illinois Dept. of Corrections, 263 F. 3d 214, 217 (7th Cir. 2001). Here, Tucker has not provided evidence that the District's denial of his grievance has altered the terms and conditions of employment in any way, only that there was a grievance, and that the grievance was denied.

Even if we assume that the denial of a grievance was an adverse action, Tucker provides no evidence that the school board denied his grievance because, in whole or in part, of his previous unfair labor practice charge. In his charge, Tucker claims that people he talked to about his grievance said that he had a "slam dunk" case, and that he felt that he had "very solid footing" and uses that to draw the inference that because the school board ruled against him, it must have had discriminatory motives for doing so. He provides no evidence to support this assertion. Instead, he points to Venhaus's remark about Tucker's grievance, records request, and IELRB charge pending against the District as evidence of animus. However, this interpretation does not hold up when considering the broader context of Venhaus's remarks. Venhaus stated that the District was doing its best to comply with Tucker's requests, but that the quantity of those requests made it "hard to keep everything straight," and that the District was doing its best to accommodate the requests. Earlier in that email, Venhaus stated that nothing about Tucker's grievance will affect his employment with the District in any way.

Because there is no evidence that the District's actions in denying Tucker's grievance had an adverse effect on the terms or conditions of his employment or that, even if it did, that the school board denied his grievance in retaliation for his previous unfair labor practice charge, there is no issue of law or fact upon which a complaint for hearing may be based.

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, 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.

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