

STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD

Martin Abraham,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2023-CA-0060-C
	)	
Western Illinois University,	)	
	)	
Respondent	)	

**OPINION AND ORDER**

**I. Statement of the Case**

On June 29, 2023, Martin Abraham (Abraham or Charging Party) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board) in the above-captioned matter alleging that Western Illinois University (WIU or University) committed unfair labor practices within the meaning of Section 14(a)(3) 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. Abraham filed exceptions to the EDRDO and WIU filed a response to the exceptions.

**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)(3) of the Act 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 against WIU, Abraham must be able to make some showing that he engaged in protected union activity, that WIU was aware of that activity, and that WIU took adverse action against him 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).

There is nothing in the record indicating that Abraham participated in any union activity prior to his discharge. Abraham participated in union activity when the Union filed a grievance on his behalf. However, that was after the adverse action of his discharge occurred. Thus, the complained of adverse action cannot be motivated by that activity.

In his exceptions, Abraham argues that the EDRDO incorrectly labeled the alleged adverse action as the discharge. Instead, the adverse action was WIU’s dismissal of his meritorious grievance over his discharge, says Abraham. Its rationale for which, that he failed to submit a request for outside employment form as required by the CBA, was false because there is no such requirement in the CBA. However, it is well established that mere contract violations do not constitute unfair labor practices. *Maywood–Melrose Park–Broadview School District 89*, 35 PERI 161, Case No. 2018-CA-0066-C (IELRB Opinion and Order, April 25, 2019); *Chicago Board of Education*, 34 PERI 150, Case No. 2016-CA-0020-C (IELRB Opinion and Order, March 26, 2018); *Proviso Township High School District 209*, 33 PERI 76, Case No. 2016-CA-0055-C (IELRB Opinion and Order, December 15, 2016); *West Chicago School District 33*, 5 PERI 1091, Case Nos. 86-CA-0061-C, 87-CA-0002-C (IELRB Opinion and Order, May 2, 1989), *aff’d on other grounds*, 218 Ill.App.3d 304, 578 N.E.2d 232 (1st Dist. 1991); *Moraine Valley Community College*, 2 PERI 1050, Case No. 85-CA-0068-C (IELRB Opinion and Order, March 18, 1986).

Abraham alleges in his exceptions that WIU violated Section 14(a)(2) of the Act. Section 14(a)(2) concerns employer domination or interference with the formation, existence or administration of a union. Yet he specified in his charge that WIU violated Section 14(a)(3), not 14(a)(2), and the EDRDO did not address 14(a)(2). The Board has repeatedly held that to consider such newly raised issues at this stage would be prejudicial to the opposing party. *Esposito-Usterbowski, et al.*, 40 PERI 26, Case No. 2023-CB-0011-C (IELRB Opinion and Order, August 17, 2023); *North Shore School District 112*, 39 PERI 60, Case No. 2022-CA-0003-C (IELRB Opinion and Order, October 20, 2022); *Niles Elementary School District No. 71*, 9 PERI 1057,

Case No. 92-CA-0075-C (IELRB Opinion and Order, March 12, 1993); *Chicago Board of Education*, 6 PERI 1052, Case Nos. 90-CA-0012-C & 90-CA-0013-C (IELRB Opinion and Order, March 14, 1990). But Abraham does state in the charge that WIU’s failure to honor the CBA is a clear interference with the administration of the Union in violation of the Act. For this reason, we will address the 14(a)(2) allegation and find that no evidence in the record supports his claim because even if substantiated, a violation of the CBA alone does not amount to an unfair labor practice.

#### 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: **May 15, 2024**

Issued: **May 17, 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 June 29, 2023, Charging Party, Martin Abraham, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Western Illinois University, 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**

Western Illinois University (University) is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. The University hired Martin Abraham into the job title or classification of Provost, on or about July 1, 2019. Prior to his start date in the Provost title, the University appointed him to serve in the title or position of Interim President. On or about January 1, 2021, the University hired Guiyou Huang in the title or position of President, returning Abraham to the Provost position. On or about July 1, 2021, Huang reassigned Abraham to a full-time faculty position. In the new position, Abraham was a member of the bargaining unit represented by University Professionals of Illinois, Local 4100, IFT-AFT, AFL-CIO (Union) and was categorized as a "Unit A" employee under the collective bargaining agreement (CBA) between the Union and the University.<sup>1</sup>

In or about March 2022, Abraham accepted a full-time position as Provost and Vice President for Academic Affairs with the State University of New York (SUNY), in Brockport, New York. Abraham

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<sup>1</sup>"Unit A" is the Union's unit of full-time employees, and "Unit B" is the Union's unit of part-time employees.

commenced the SUNY position in June 2022. Prior to leaving the University, Abraham requested of the Interim Provost, William Clow, if he could be allowed, while at SUNY, to teach one or two courses in an online format for the fall 2022 semester at the University, with the aim of becoming vested in the Illinois State University Retirement System. Clow, according to Abraham, was "amenable" to his request, but was ultimately unable to grant it. In a March 28, 2022, email to Elizabeth Duvall, the University counsel, Abraham requested a two-year agreement to teach an honors seminar online, each semester, for fixed pay. In response, on March 30, 2022, Duvall promised to talk to Clow to find out what he was doing regarding the issue. Abraham replied he would see Duvall in-person the following week to discuss the matter further. It is unclear whether the meeting between Duvall and Abraham occurred.

On or about July 22, 2022, by email, the University notified Abraham his insurance through it would expire at the end of the month, and included other documents which outlined his rights upon separation from University employment. Abraham, apparently surprised, responded by noting he had not resigned his position as a professor at the University and requested it to amend its records to reflect this.

Throughout August 2022, there was apparently some confusion among certain University employees as to Abraham's employment status. However, on or about September 1, 2022, after unsuccessfully attempting to access the University's online system, Abraham contacted the University's human resources department regarding the issue. An employee in the human resources department responded, explaining Abraham was no longer employed by the University as he was currently employed full-time by SUNY.

On January 6, 2023, Abraham filed a grievance at the first step of the process outlined in the collective bargaining agreement between the Union and the University. Therein, Abraham claimed the University violated the termination clause (article 22) of the CBA, as it terminated his employment at the University without his consent. On or about on February 6, 2023, the University's provost and academic vice-president, Manoochehr Zoghi, heard evidence and argument on the grievance, and on March 3, 2023, he denied the grievance in writing. In his denial, Zoghi determined it was impossible to perform the duties of a full-time, tenured professor at the University, while also serving as the full-time provost and vice-president of academic affairs at SUNY. Zoghi further determined although Abraham had not formally resigned his position at University, he abandoned it by accepting the SUNY position. Zoghi also noted

Abraham's failure to submit a "request for outside employment form" to the University. Zoghi concluded the University was not obligated to provide him with the opportunity to teach remotely as a part-time instructor, and the grievance lacked merit.

Abraham found the denial unjust, as he believed his conversations with Duvall and Clow in March 2022, constituted notice of his intent to accept outside employment and the approval thereof, and the failure of the University to properly adjudicate his grievance, constituted a breach of the CBA. Shortly after Abraham received Zoghi's March 3, 2023, determination, he requested the Union move his grievance to the second step of the process. The Union declined to do so, however, citing Abraham's failure to submit a "request for outside employment form" to the University as fatal to his claim. On June 29, 2023, Abraham filed the instant charge.

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

Herein, Abraham asserts the University violated Section 14(a)(3) of the Act in that it disregarded clear evidence of the CBA's breach in its step-one decision, with the goal of deterring the Union from moving the grievance to the second step of the grievance process, thereby interfering with the administration of an employee organization. Abraham further asserts the CBA does not allow for the University to simply assume a covered employee is resigning and then ignore the termination procedure set out in the CBA. The University denies it violated the Act.

### **IV. DISCUSSION AND ANALYSIS**

To obtain a complaint on a 14(a)(3) allegation, Abraham must at least be able to make some showing he engaged in protected union activity, Respondent knew of that activity, and Respondent took adverse action against him as a result of his 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 (1<sup>st</sup> 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 (4<sup>th</sup> Dist. 2000).

There is no evidence Abraham engaged in protected union activity, or for that matter, protected concerted activity, of any sort, until he filed the January 6, 2023, grievance. The University knew of Abraham's protected activity in this regard, as it had to respond to the grievance, and the University took

adverse action against him in that it terminated his employment. The only remaining question is whether the adverse employment action the University took against Abraham was in response to his filing of the grievance. Plainly, the question is answered in the negative, as Abraham's protected activity, the filing and pursuit of his grievance, occurred later in time than the claimed adverse action, the termination of his employment by the University, which occurred at the absolute latest, on or about September 1, 2022, some four months earlier, therefore, his protected activity could not have been the cause of that adverse action. Without some showing of a causal relationship between his protected activity and the adverse employment action he suffered, his 14(a)(3) claim fails.

Abraham also asserts the University violated the Act in that it breached the CBA in its step-one decision on his grievance and further, in its disregard of the termination procedures set out in the CBA. However, a charge in which the complainant solely alleges a breach of a collective bargaining agreement will be dismissed. Elementary Teachers' Ass'n of West Chicago, IEA-NEA/West Chicago School District 33, 5 PERI ¶1091, 1989 WL 1700730 (IL ELRB 1989), *aff'd sub nom*, West Chicago School District 33 v. Illinois Educational Labor Relations Board, 218 Ill. App. 3d 304, 578 N.E.2d 232 (1<sup>st</sup> Dist. 1991)(it is not the Board's function to police collective bargaining agreements, or to otherwise allow parties to use the Board's processes to remedy breaches or to enforce terms). As directed by West Chicago, therefore, the avenue to compel compliance with the CBA is not the IELRB, but rather, the grievance arbitration process. Based on the foregoing, Abraham's allegations the University breached the CBA fail 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 6th day of October 2023.**

**STATE OF ILLINOIS  
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**Victor E. Blackwell  
Executive Director**