

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Daniel Mehrmann,)	
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)	
Complainant)	
)	Case Nos. 2023-CA-0004-C
and)	
)	
Southwestern Illinois College,)	
)	
Respondent)	

OPINION AND ORDER

I. Statement of the Case

On August 12, 2022, Daniel Mehrmann (Mehrmann or Complainant) filed a charge with the Illinois Educational Labor Relations Board (IELRB or Board) alleging that Southwestern Illinois College, Community College District #522 (College or Respondent) committed unfair labor practices within the meaning of Section 14(a) of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1, *et seq.* On November 18, 2022, the IELRB's Executive Director issued a complaint and notice of hearing (Complaint) alleging that the College violated Section 14(a)(1) of the Act. The parties appeared for a hearing on May 24 and 25, 2023 before Administrative Law Judge Dawn Harden (ALJ Harden). ALJ Harden subsequently left the Board's employ, and the matter was transferred to Administrative Law Judge Nick Gutierrez (ALJ Gutierrez) to render a decision. On March 31, 2025, ALJ Gutierrez issued a Recommended Decision and Order (ALJRDO) finding that Mehrmann's grievance was a motivating factor in the College's decision to terminate his employment and, as such, the College violated Section 14(a)(1) of the Act. The College filed timely exceptions to the ALJRDO, Mehrmann filed a timely response to the exceptions as well as his own cross exception, and the College filed a timely response to the cross exception.

II. Factual Background

We adopt the finding of facts as set forth in the underlying ALJRDO. Because the ALJRDO 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

A. Witness Credibility

The College's first exception is that the ALJRDO should be reversed and remanded for a new hearing because the successor ALJ, ALJ Gutierrez, improperly rendered a decision where witness credibility was a determining factor. In support of its exception, it cites *Quincy Country Club v. Illinois Human Rights Commission*, 147 Ill. App. 3d 497, 498 N.E.2d 316 (4th Dist. 1986). In that case, the Court reversed an agency decision and remanded for a new hearing where the ALJ who issued the decision was not the one who conducted the evidentiary hearing. But *Quincy Country Club* is distinguishable from this case. The *Quincy* Court based its analysis on the fact that the Illinois Human Rights Act (IHRA) required that the Human Rights "Commission shall adopt the hearing officer's findings of fact if they are not contrary to the manifest weight of the evidence." 147 Ill. App. 3d at 499 (citing 775 ILCS 5/8A-103(E)(2)). Meaning that the Human Rights Commission provided the same deference to the ALJ's factual determinations as the Court was required to provide in its own review of the Human Rights Commission. Unlike the IHRA, the IELRA does not require the IELRB to defer to the ALJ's findings of fact. Absent statutory authority to the contrary, "it is not necessary that testimony in administrative proceedings be taken before the same officers who have the ultimate decision-making authority. See *Starkey v. Civil Service Commission*, 97 Ill. 2d 91, 100 (1983) (quoting *Homefinders, Inc. v. City of Evanston*, 65 Ill. 2d 115, 128 (1976)). Such proceedings may be conducted by hearing officers who refer the case for final determination to a board which has not heard the evidence in person but considers evidence contained in the report of proceedings and bases its findings on such evidence. *Id.*; see also *Forest Preserve Dist. of Cook County v. Ill. Labor Relations Bd., et al.*, 369 Ill.

App. 3d 733, (1st Dist. 2000); *North Shore Sanitary Dist. v. Ill. State Labor Relations Bd.*, 262 Ill. App. 3d 279 (1st Dist. 1994).

The College also cites *General Service Employees Union, Local 73*, 15 PERI 1053, Case No. 97-CA-0034-C (IELRB 1998). In that case, the IELRB relied on *Quincy Country Club* to reverse an ALJRDO and remand the matter for a new hearing where the administrative law judge who presided in the case was no longer employed by the IELRB. However, as discussed above, *Quincy Country Club* is distinguishable from IELRB cases. For that reason, *General Service Employees* is not applicable here.

Although the Board accords substantial deference to an ALJ's credibility findings and will not overturn them unless they are contrary to the clear preponderance of the relevant evidence, the Board itself is the fact finder under the statute. 115 ILCS 5/15 ("If the Board finds that the party charged has committed an unfair labor practice, it shall make findings of fact and is empowered to issue an order requiring the party charged to stop the unfair practice ..."); *McLean County Unit Sch. Dist. 5*, 30 PERI 207, Case No. 2011 -CA-0005-S (IELRB Opinion and Order, February 20, 2014); see also, *Village of Oak Park*, 28 PERI ¶111 (ILRB-SP 2012); *Cont'l Mobile Tel. Co., Inc. v. Illinois Commerce Comm'n*, 269 Ill. App. 3d 161, 171, 645 N.E.2d 516, 523 (1st Dist. 1994); *Brooks v. Illinois Labor Relations Board, Local Panel*, 2024 IL App (1st) 231106-U. Even if the ALJ who presided over the hearing had made credibility determinations in issuing an RDO, the Board has the authority to review those determinations in deciding the case. Accordingly, we find that the College's first exception has no merit.

B. 14(a)(1)

Section 14(a)(1) of the Act prohibits educational employers and their agents from interfering with, restraining or coercing educational employees in the exercise of their rights under the Act. The rights guaranteed under the Act, as set forth in Section 3, are "organiz[ing], form[ing], join[ing], or assist[ing] in employee organizations or engag[ing] in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or bargain[ing] collectively through representatives of their own free choice and ... refrain[ing] from any or all

such activities.” Thus, in order for there to be a violation of Section 14(a)(1), there must be a link to activities such as those described in Section 3.

In Section 14(a)(1) cases involving alleged employer retaliation for protected activity, a prima facie case is established by showing that the employee engaged in protected concerted activity, that the employer knew of the protected concerted activity, and that the adverse employment action was motivated by the protected concerted activity. *Neponset Community Unit School District No. 307*, 13 PERI 1089, Case No. 96-CA-0028-C (IELRB Opinion and Order, July 1, 1997).

In this case, Mehrmann engaged in protected activity when he filed a grievance on January 24, 2022. The College is admittedly aware of that activity. It took adverse action against Mehrmann when it terminated his employment on August 3, 2022.

The question in this case is whether the evidence demonstrates that the College terminated Mehrmann’s employment to retaliate against him for filing a grievance. The ALJ answered that question affirmatively and the College urges the Board to find otherwise. The existence of such a causal link between adverse action and protected concerted activity is a fact based inquiry and may be inferred from a variety of 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 adverse action; inconsistencies between the proffered reason for the adverse action and other actions of the employer; shifting explanations for the adverse action; and disparate treatment of employees or a pattern of conduct which targets union supporters for adverse employment action. *City of Burbank*, 128 Ill. 2d 335, 538 N.E.2d 1146.

The ALJ found the College’s inconsistencies between its proffered reason for Mehrmann’s termination and its other actions and its shifting explanations for the termination as evidence of a causal connection between Mehrmann’s discharge and his grievance filing. The College did not initially offer an explanation to Mehrmann for his discharge but has since offered two rationales. The first is that its Music Technology program, the department in which he taught, was being eliminated. But at the time of his termination, the College had put forth a teach-out

plan to grad students already in that program which would require those courses continue to be taught so they could meet graduation requirements. Further undercutting this proffered explanation was that the College would need to continue Music Technology courses for its certificate program and need someone, such as Mehrmann, to teach them. As a second rationale for Mehrmann's discharge, the College claims that it discovered during its review process that Mehrmann did not have a master's degree, so the program could not comply with Illinois Community College Board (ICCB) requirements, which meant that students who take his courses may not have been able to transfer their credits. The plausibility of this rationale is weak considering that Mehrmann taught courses at the College, absent a master's degree, for twenty years and this was never a problem for the College until he filed a grievance. Also, the ICCB's master's degree requirement only applied to traditional courses, not career and technical education courses and there is no evidence that the College considered that before terminating Mehrmann.

The ALJ's determination that College Dean Ashley Becker's (Becker) testimony demonstrated her negative impression of Mehrmann was based at least in part on the grievance. She testified that she did not believe their working relationship was productive or positive, which skews toward a negative impression. Yet her testimony that Union leadership apologized for the grievance and distanced itself from it in contrast to Union President Chad Musgrave's testimony that he initially assisted Mehrmann with his grievance before concluding that the Union did not want to advance the grievance does not indicate that her negative impression was based on the grievance. That is not to say that it was not based on the grievance, just that there is no evidence that it was and cannot be a basis for a finding of a violation. However, based on the inconsistencies between the proffered reason for the adverse action and other actions of the employer and the shifting explanations for the adverse action, we affirm the ALJ's finding that Mehrmann established his prima facie case.

Once the complainant establishes a prima facie case, the burden shifts to the respondent to demonstrate, by a preponderance of the evidence, that it had a legitimate business reason for its

actions and that the employee would have received the same treatment absent her protected activity. *City of Burbank v. Illinois State Labor Relations Board*, 128 Ill. 2d 335, 538 N.E.2d 1146 (1989). Merely proffering a legitimate business reason for the adverse employment action does not end the inquiry, as it must be determined whether the proffered reason is bona fide or pretextual. *Id.* If the proffered reasons are merely litigation figments or were not, in fact relied upon, then the respondent's reasons are pretextual and the inquiry ends. *Id.* However, when legitimate reasons for the adverse employment action are advanced and are found to be relied upon at least in part, then the case may be characterized as a "dual motive" case, and the respondent must establish, by a preponderance of the evidence, that the action would have been taken notwithstanding the employee's protected activity. *Id.*

In this regard, the College has shown that it had a legitimate reason for terminating Mehrmann. The College had a contractual right per the collective bargaining agreement to terminate Mehrmann without cause because he lost seniority when did not teach in the Fall 2020 or Spring 2021 semesters and ended the 2021-22 academic year with 21.20 equated hours of instruction. Despite this, the College has not proven that it would not have terminated Mehrmann notwithstanding his grievance filing. The Employer has not shown that the legitimate grounds for its action were its determinative motivation. There is no evidence in the record that its decision was not based, at least in part, on Mehrmann's grievance filing. Accordingly, we find that the College violated Section 14(a)(1) of the Act when it terminated Mehrmann's employment.

C. Cross-Exceptions

Mehrmann filed cross-exceptions arguing that the ALJ should have ordered he be reinstated with the hours he would have earned had the unlawful conduct not occurred, 93.10, instead of the number of hours he had when he was terminated, 21.20. The traditional make whole remedy for employee discharges constituting unfair labor practices is reinstatement with full back pay and no loss of seniority or benefits. *Phelps Dodge v. NLRB*, 313 U.S. 177 (1941). Any remaining dispute as to the precise number of hours owed to Mehrmann as part of the make whole remedy

is a matter for compliance. The purpose of the unfair labor practice hearing was to determine whether the Respondent violated the Act, not to set the exact amount of seniority, benefits, or money due to the Complainant because of the Respondent's unlawful conduct. *See City of Chicago*, 11 PERI ¶3008 (IL LLRB 1995). If the parties are unable to agree on the exact amount of seniority, benefits, or money due, Mehrmann may invoke the Board's compliance procedures to settle the matter. *See City of Chicago*, 11 PERI ¶3008; *see also Chicago Transit Auth.*, 33 PERI ¶61 at n. 11 (IL LRB-LP 2016).

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that the ALJRDO is affirmed. Respondent, Southwestern Illinois College, Community College District #522, its officers, and agents shall:

1. Cease and Desist from:
 - (a) Retaliating against Daniel Mehrmann for filing his January 24, 2022 grievance, or against any other employee for invoking rights arising out of a collective bargaining agreement or acting with or on behalf of their fellow employees for the purposes of collective bargaining or other mutual aid or benefit.
 - (b) In any like manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them in the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
 - (a) Offer to Daniel Mehrmann immediate and full reinstatement to the position he previously held as Adjunct Professor, with 21.20 equated hours of seniority.
 - (b) Make Daniel Mehrmann whole for the loss of any pay or benefits, with interest at a rate of seven percent per annum, resulting from Southwestern Illinois College, Community College District #522's retaliatory discharge.
 - (c) Preserve and, upon request, make available to the IELRB or its agents for examination and copying all records, reports, and other documents necessary to analyze the amount of remedy due under the terms of this Opinion and Order.
 - (d) Post on bulletin boards or other places reserved for notices to employees for 60 consecutive days during which the majority of Respondent's employees are actively engaged in duties they perform for Respondent, signed copies the attached notice. Respondent shall take reasonable steps to ensure that said notice is not altered, defaced, or covered by any other materials.

- (e) Notify the Executive Director, in writing, within 35 days after receipt of this order of the steps taken to comply with it.

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: **July 16, 2025**

Issued: **July 16, 2025**

/s/ Steve Grossman

Steve Grossman, Member

/s/ Chad D. Hays

Chad D. Hays, Member

/s/ Michelle Ishmael

Michelle Ishmael, Member

Chairman Shayne, Dissenting

I agree with the majority's determination that Mehrmann established his prima facie case. However, in this dual motive case I believe that the College has shown by a preponderance of the evidence that Mehrmann would have been terminated notwithstanding his protected activity. For that reason, I would have reversed the ALJRDO and found that the College did not violate the Act.

In addition to Mehrmann's loss of seniority from not teaching in the Fall 2020 or Spring 2021 semesters and ending the 2021-22 academic year with 21.20 equated hours of instruction,

the College has shown it had additional legitimate reasons for terminating Mehrmann. First, Mehrmann did not have the requisite level of education necessary to comply with ICCB requirements. Mehrmann's lack of master's degree meant that students may not have been able to transfer their credits from his courses. Second, the College was eliminating his department. These are legitimate business reasons for the adverse action. Third, Mehrmann's refusal to teach courses in Spring 2021 unless they were moved to Monday and Wednesday. Taken together, the College has shown that Mehrmann would have been terminated notwithstanding his protected activity. For these reasons, I believe that, while Mehrmann has established a prima facie case, the College has demonstrated that it did not violate the Act by terminating his employment. Accordingly, I respectfully dissent.

/s/ Lara D. Shayne

Lara D. Shayne, Chairman

Illinois Educational Labor Relations Board

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**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

Daniel Mehrmann,)	
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Charging Party)	
)	
And)	Case No. 2023-CA-0004-C
)	
Southwestern Illinois College, Community)	
College District #522,)	
)	
Respondent)	

Administrative Law Judge’s Recommended Decision and Order

On August 12, 2022, Charging Party Daniel Mehrmann (Mehrmann) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board pursuant to Section 14 of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1, *et seq.*, against the Respondent, Southwestern Illinois College, Community College District #522 (SWIC or College). The charge alleged violations of Section 14(a)(1) of the Act arising out of the termination of Mehrmann’s employment as adjunct professor at the College. On November 18, 2022, the Executive Director issued a Complaint and Notice of Hearing on this charge. The parties appeared before Administrative Law Judge Dawn Harden on May 24 and 25, 2023. Following ALJ Harden’s departure from the agency, the case was assigned to the undersigned ALJ. At the hearing, both sides had the opportunity to call, examine, and cross-examine witnesses, introduce documentary evidence, and present argument. Both parties filed post-hearing briefs on August 21, 2023.

I. Findings of Fact

During the hearing, Daniel Mehrmann testified on his own behalf in both his case-in-chief and rebuttal. (R. 16, 233). Ashley Becker, Kristen Rupert-Leach, Lana Turley, Chad Musgrave, Gina Segobiano, and Kim Thompson testified for the College. (R. 136, 174, 188, 205, 225, 230).

A. Stipulations

The parties stipulated to several material facts. (Joint Statement of Uncontested Material Fact, hereinafter “Stipulations”). At all times material, the College was an educational employer within the meaning of Section 2(a) of the Act. (Stipulations at ¶ 1). At

all times material, Southwestern Illinois College Adjunct Faculty Union, Local 6270, IFT-AFT, AFL-CIO (Union) was 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 employees of the College in the job title or classification of adjunct faculty. (Stipulations at ¶ 2-3). At all times material, the College and Union have been parties to a collective bargaining agreement for the adjunct faculty unit. (Stipulations at ¶ 4). On or about January 24, 2022, Mehrmann filed a grievance alleging that the College violated certain provisions of the Collective Bargaining Agreement (CBA) with respect to the assignment of courses and seniority rules. (Stipulations at ¶ 5). On or about August 3, 2022, the College terminated Mehrmann's employment. (Stipulations at ¶ 6).

B. Testimony at Hearing

1. Daniel Mehrmann

Mehrmann is a professional audio engineer with six years of experience. (R. 17). He has a degree in musical composition from Southern Illinois University-Edwardsville. (R. 17). In 2003, he began teaching courses as an adjunct professor in the College's Music Technology program. (R. 18-21). The head of the program was Ed Jacobs. (R. 22). Until the COVID-19 pandemic began in 2020, Mehrmann taught all or essentially all Music Technology courses offered by the College. (R. 21). He also served as the Music Technology program coordinator, which meant that he had responsibilities including maintenance of computers and equipment, procuring equipment, student outreach, campus tours, and appearing on behalf of the program at advisory panel meetings. (R. 24). He was a member of the adjunct faculty union. (R. 25-26). In 2019, the College sent Mehrmann to Boston to take a certification course in the popular Pro Tools music creation software. (R. 27). He did not have a Master's degree. (R. 109).

When the COVID-19 pandemic began, the College moved all courses online. (R. 27). Because Mehrmann's Music Technology courses involved learning to use complicated, specialized, and expensive equipment, it was difficult or impossible for Mehrmann to teach his courses online. (R. 27-28). Mehrmann's program release hours were also cut, which meant that he was not able to be paid for time spent on his duties as program coordinator. (R. 28-35, Charging Party Ex. 3, 4, 5, 8, 11). Because Mehrmann's courses could not be taught online, he testified that no students signed up for his courses in the Fall 2020 semester. (R. 29, 40-42, 93, Charging Party Ex. 6, 7, 28). He received a maximum load stipend of \$1,250.00 at the

beginning of the semester, but no other money for teaching because he did not have courses. (R. 32, 79, Charging Party Ex. 28).

Jacobs sent Mehrmann an email on October 5, 2020. (R. 94, Charging Party Ex. 8). In that email, Jacobs asked if Mehrmann would be available to teach in the Spring 2021 semester, whether he would be willing to do so even if he cannot get release hours, and what Mehrmann thought about putting the Music Technology program “on hold” until classes could be held in person again. (Charging Party Ex. 8). He also stated that he talked with Mary Ruettgers, the Dean of the College’s Arts and Sciences Department, and Gina Segobiano, who indicated that the decision to remove his release hours was made “above” them. Mehrmann responded that he would be willing to teach in the Spring if the courses could be moved to Monday and Wednesday and there were students to take the courses, but that he was doubtful that in-person classes made sense because of the pandemic. (R. 94-96, Charging Party Ex. 8).

Jacobs emailed Ruettgers on December 11, 2020, stating that Mehrmann informed Jacobs that Mehrmann would be unable to teach in the Spring 2021 semester if his coordinator position and release hours were not approved. (R. 101, Respondent Ex. 20). Jacobs recommended that Mehrmann’s courses either be cancelled or that the College find somebody else to teach them, but that it would be Jacobs’s preference that the courses be cancelled because of the time required to find somebody to teach the courses and the specific experience required of somebody who would teach the courses. (Respondent Ex. 20). Ruettgers responded that, based on the information provided in Jacobs’s email and student enrollment for the Spring 2021 semester, she made the decision not cancel the courses that Mehrmann might have taught in that semester. (R. 102, Respondent Ex. 20).

On October 28, 2020, Jacobs asked Ruettgers if Mehrmann would lose his seniority if the College is unable to offer his courses in the Spring 2021 semester. Ruettgers responded that it was her understanding that he would, but that he may want to confirm that with Union representatives. (R. 96-97, Charging Party Ex. 9). He also did not teach any courses in the Spring 2021 semester. (R. 32, 79, Union Ex. 28).

Mehrmann sent Jacobs a text message on February 11, 2021, asking about courses for the Fall 2021 semester, and indicating that he would be willing to teach for that semester without release hours, as long as he had enough courses. (R. 102-03, Charging Party Ex. 13, 14). He taught three courses in Fall 2021 and four courses in the Spring 2022 semester. (R.

33). He did not receive a maximum load stipend, and did not receive release hours, for either semester. (R. 33, 48, 98, Charging Party Ex. 12, 14).

Ed Jacobs vacated the department head position at some point around the beginning of the Spring 2022 semester and was replaced by Kristen Ruppert-Leach. (R. 49). On January 24, 2022, Mehrmann filed a grievance over course assignments for the Spring 2022 semester. His grievance alleged that he was not assigned MUS 155, which was a continuation from MUS 154, a course that he taught in the Fall 2021 semester, despite his having requested it on his course preferences sheet. (R. 52-53, 234, Charging Party Ex. 19, 20). Rather, the course was initially assigned to “Staff”, meaning that it had not been assigned to a faculty member yet, and then to another newly hired adjunct professor. (R. 234-35). In support of his grievance, he attached a partial screenshot of his Request for Assignment form that appeared to include MUS 155 as a preferred course, along with MUS 145, 150, 151, 152, 154, 155, 250, 251, and 252. (Charging Party Ex. 19).

In a response dated January 28, 2022, Dr. Ashley Becker, the Dean of Business, Health Sciences, and Homeland Security and Interim Dean of Arts and Humanities, responded that his grievance was denied because he did not include MUS 155 on his preference sheet. (Respondent Ex. 4). She stated that Mehrmann reached out to Ruppert-Leach on January 7 about the MUS 155 course, and that she informed him that MUS 155 was not on his preferences sheet, but offered him MUS 201 instead. (Respondent Ex. 4). She attached a copy of Mehrmann’s Request for Assignment for the Spring 2022 semester that showed Mehrmann’s preferred courses as MUS 145, 150, 151, 152, 250, 251, and 252, notably excluding MUS 155. (Respondent Ex. 4). When asked about this discrepancy, Mehrmann was not able to provide an explanation. (R. 130).

Ruppert-Leach asked Mehrmann on February 8, 2022, to review a document about his Music Technology courses for a five-year review before the Illinois Community College Board. (R. 50). Mehrmann declined to review the document. (R. 51, Charging Party Ex. 15). In his response, he indicated that reviewing the document was beyond the scope of his teaching contract and would therefore be work for which he was not compensated, among other reasons for his refusal. (R. 77, Charging Party Ex. 15). The College apparently completed the program review for the Music Technology program without Mehrmann’s input. (R. 76-77, Charging Party Ex. 25).

Mehrmann was terminated without cause on August 3, 2022. (R. 63, Charging Party Ex. 16). He was notified through a letter from Dr. Ashley Becker, the College’s Dean of

Business, Health Sciences, and Homeland Security. (R. 63-64, Charging Party Ex. 16). Dr. Becker's letter informed Mehrmann that the CBA allowed for him to be terminated without cause because he had less than 100 equated hours of instruction, and that his termination would not be subject to the grievance and arbitration procedure contained within the adjunct faculty CBA. (Charging Party Ex. 16). According to the letter, as of the end of the Spring 2022 semester, Mehrman had accrued 21.20 equated hours of instruction. Mehrmann disagreed with that number, and believed that he should have had at least 348.5 hours, based on a seniority list provided to him at the beginning of August 2021. (R. 64, Charging Party Ex. 23). A document provided to him in August 2021 showed that he had 348.5 hours as of that date. (R. 73-74, Charging Party Ex. 23). However, on or about February 9, 2022, he received an updated version of that list that showed that he had lost his credit hours. (R. 74-75, Charging Party Ex. 24).

Mehrmann sent an email to the College about his termination on August 8. Gina Segobiano, the Chief Academic Officer for the College, replied that his termination was without cause, and because of the lack of enrollment and sustainability of the Music Technology program. (R. 67). The information contained within Segobiano's email reflected previous conversations that Mehrmann had with Becker. (R. 67). Mehrmann stated that he disagreed that the program had issues with sustainability, and that before Jacobs left his post as department head that the two of them had discussed revamping the program, which is why he took the Pro Tools certification course in 2019. (R. 67-68). Mehrmann also testified that enrollment in general at the College's Belleville campus was down 32% since the COVID-19 pandemic began. (R. 80-81, Charging Party Ex. 30). Mehrmann and Segobiano arranged for an August 17 meeting, but Mehrmann did not show up for the meeting and never made an attempt to reschedule. (R. 126-27).

The College offered Music 250, Basic Digital Recording, in the Fall 2022 semester after Mehrmann's employment was terminated. (R. 80, Charging Party Ex. 29). This is a course Mehrmann taught prior to his termination. (R. 80). The College also offered Music 145, which is another course Mehrmann taught, for that semester. (R. 81, Charging Party Ex. 31).

2. Dr. Ashley Becker

Dr. Ashley Becker was employed as the Dean of Business, Health Sciences, and Homeland Security. (R. 136). Prior to that, she was the Chief Academic Officer at Kaskakia College, and the Senior Director over Academic Affairs for the Illinois Community College

Board (ICCB). (R. 136-37). In her role as the Senior Director for the ICCB, Dr. Becker reviewed academics, faculty qualifications, school credit, transfer opportunities, and other factors in relation to the certification process for community colleges in the state of Illinois. (R. 138). Community colleges undergo a periodic review of their programs and certificate programs by the ICCB. (R. 139). The review is intended to ensure that community colleges are providing adequate technical education. (R. 139-40).

Furthermore, all public institutions of higher education are subject to the accreditation requirements set forth by the Higher Learning Commission. (R. 140). The Higher Learning Commission regulates curriculum, the mission and vision of the college or university, and student retention and completion statistics, among other factors. (R. 140). It amounts to a ten-year certification process demonstrating that an institution is in compliance with the federal Department of Education standards for an institution of higher learning. (R. 141).

When Becker arrived at the College, Dr. Mary Ruettgers was Dean of the liberal arts departments, which would have included the Music Technology program that employed Mehrmann. (R. 141-42). She went on leave in late October or early November 2021. (R. 142). Becker took on her responsibilities. (R. 143). At this time, the Music Department, which included the Music Technology program, was already in the process of reviewing its programs for certification. (R. 143). Becker testified that she began reviewing faculty qualifications for the Music Technician program in December, shortly after starting her new position. (R. 143). She noted that the Illinois Community College Board (ICCB) generally requires that community college instructors have Master's Degrees in the discipline for which they will be teaching, or a Master's Degree and 18 graduate hours in the discipline within which they are teaching. (R. 153-54, Respondent Ex. 14). The College also has minimum instructor requirements that reference the ICCB standards, including for teaching courses in the Music Technology program. (R. 155, Respondent Ex. 15). When discussing the minimum instructor requirements for Music Technology courses with Ed Jacobs, Jacobs mentioned that Mehrmann did not have a Master's degree. (R. 157).

Becker noted that the Music Technician program had seen diminishing enrollment. (R. 146, Respondent Ex. 5). She testified that, based on that data, the cost of equipment, the fact that students in the program were not graduating, and that new students were not enrolling in the program, that she felt that the program was no longer viable. (R. 146-47). She then set out to design a "teach-out" plan, or a plan that ensures that students enrolled

in a program could graduate from that program. (R. 156). Becker testified that in order to meet the requirements of the teach-out plan, they would need to hire another adjunct in the Music Technology program. (R. 157). She never informed Mehrmann that he did not have the required qualifications to teach Music Technology courses, in part because she did not have communications with Mehrmann that she deemed “productive” or “positive”. (R. 170).

On July 18, 2022, Becker informed the College that she intended to close the Music Technology program. (R. 159, Respondent Ex. 25). She presented her teach-out plan to the Curriculum Committee, which voted to move it forward to the Board of Trustees. (R. 160). The Board of Trustees voted to eliminate the Music Technology degree at its January 26, 2023 meeting, effective December 30, 2023, and to approve the teach-out program. (R. 160, Respondent Ex. 11). The teach-out program would eliminate the Music Technology degree, but not the certificate program, and many of the courses Mehrmann taught would continue to be taught at the College.

Becker investigated the allegations in Mehrmann’s January 24, 2022 grievance. (R. 148, Respondent Ex. 3). She testified that she did not consider the grievance to have been directed at her. (R. 148). She denied the grievance in a letter dated January 28, 2022, because Mehrmann did not include MUS 155 on his preferences sheet. (Respondent Ex. 4, 5). Mehrmann did not reach out to Becker with any questions or to advance his grievance. (R. 150). The Union President, Chad Musgrave, did speak to Becker on Mehrmann’s behalf. (R. 150-51). Following a discussion between Becker and Musgrave, Becker testified that Musgrave apologized to her for the grievance and clarified that he was not responsible for filing it. (R. 152). The Union declined to advance Mehrmann’s grievance. (R. 152).

On April 18, 2022, Mehrmann sent an email to Ed Jacobs and Kristen Ruppert-Leach, the Chair of the Fine and Performing Arts department, concerning a power failure that caused a piece of equipment to fail. (R. 164, Respondent Ex. 23). Ruppert-Leach responded to Mehrmann on April 25, adding Becker to the email because she would be the one who would need to approve the cost of repairs. She followed up on April 26. (Respondent Ex. 23). Mehrmann responded that the College should contact the manufacturer of the console and that, because his release hours had been cut, he could “no longer afford to spend time and effort working for free [as] tech support for the Music [Technology] program.” (Respondent Ex. 23). Ruppert-Leach responded that she would require his insight because the equipment is specific to his courses, and he would be the subject matter expert. Becker responded that, because the program is not enrolling or graduating enough students, she would be reluctant

to spend money to repair broken equipment. Mehrmann issued a response critical of what he perceived to be a lack of support from the College. (Respondent Ex. 23).

On August 3, 2022, Becker informed Mehrmann that he was being terminated “without cause”, based on the provision of the CBA that allows for the termination of adjunct faculty who have not provided 100 equated hours of instruction, noting that Mehrmann had accumulated 21.20 equated hours of instruction as of August 1, 2022. (R. 161-62, Respondent Ex. 6).

3. Dr. Kristen Ruppert-Leach

Dr. Kristen Ruppert-Leach was the Dean of Arts and Humanities for the College. (R. 174). Prior to that, she was the Chair of Fine and Performing Arts at the time that the Music Technology program was incorporated into the newly reorganized department. (R. 175). During her time as Chair of Fine and Performing Arts, she was responsible for processing Mehrmann’s course preferences sheet that led to his January 2022 grievance. (R. 176, Respondent Ex. 3). While she was staffing courses for the Spring 2022 semester, she noted that Mehrmann did not include Music 155 on his preferences form. She testified that she reached out to Ed Jacobs to inform him that she would need to hire an adjunct to teach that course. (R. 177). She also testified that Mehrmann didn’t contact her about the course until “very late”, around December. (R. 177). She offered Mehrmann the opportunity to teach the Music 201 course. Mehrmann initially declined, but then later accepted the course. (R. 178).

She also testified about the discovery that Mehrmann did not have a Master’s degree, which she says occurred around May of 2022. (R. 179). She was involved in preparing the teach-out plan for students in the Music Technology program. (R. 180). While discussing faculty requirements with Jacobs, he noted that Mehrmann did not have a Master’s degree. She raised the issue with Becker, who determined that future adjunct faculty in the Music Technology program “absolutely” should have a Master’s. (R. 180). She concluded her testimony by stating that Mehrmann’s lack of a Master’s degree was the reason that his employment was discontinued. (R. 180).

4. Lana Turley

Lana Turley, a field service director for the Illinois Federation of Teachers, worked with the Adjunct Faculty Union at SWIC. (R. 188). She testified about the provisions of the CBA as they relate to breaks in an employee’s service. (R. 191-92). Section 1.1 of the CBA requires that, in order to stay in the bargaining unit, an employee must work at least six

equated hours in the fall or spring semester. (R. 192, Respondent Ex. 2). If an employee does not do so, they lose their status as a bargaining unit member. (R. 192).

She testified that she discussed Mehrmann's January 24, 2022 grievance with the Union President, Chad Musgrave, but did not discuss it with Mehrmann and did not help him prepare the grievance. (R. 193, Respondent Ex. 3). When asked about the merits of the grievance, Turley testified that there was a discrepancy between the preferences sheet submitted to the Union by Mehrmann and the one presented to the Union by the College. (R. 196). Based on the information she was given, it was her opinion that Mehrmann's grievance was without merit. (R. 196).

Turley was later consulted by Mehrmann following his termination. (R. 196). She testified that she discussed with Mehrmann that the contract permitted the College to terminate him without cause because he had a break in seniority. (R. 198). For that reason, her opinion was that there was no contractual basis for challenging his termination. (R. 199). Turley also testified that Mehrmann raised the possibility that his termination was retaliatory in nature, but that she did not believe those claims to be true. (R. 199).

5. Chad Musgrave

Chad Musgrave has been the Union's President since 2015. (R. 206). He is a member of the Union's Executive Committee and serves as its grievance chair. (R. 206). Musgrave testified about Mehrmann's grievance. (R. 209). He stated that his review of the evidence indicated that Mehrmann's request for assignment as submitted to the College did not include the Music 155 course over which the grievance was filed. (R. 209-210). He took his findings to the Union's Executive Board, which found that there was no basis for advancing Mehrmann's grievance. (R. 210, 212). He also testified that, pursuant to Section 1.1 of the CBA, Mehrmann had a break of seniority and that, therefore, his termination was contractually justified. (R. 214). Musgrave testified that he assisted Mehrmann in drafting the January 24 grievance. (R. 221-22).

6. Gina Segobiano

Gina Segobiano served as the Chief Academic Officer for the College beginning in 2019. (R. 225-26). She testified about the program review in 2022 for the Music Technology degree program. (R. 226, Respondent Ex. 5). She received the document by email on June 15, and sent this document along with others to the Illinois Community College Board on or about July 13, 2022. (R. 227-28). Mehrmann sent Segobiano an email on August 8 about his termination. (R. 228, Respondent Ex. 24). In that email exchange, Mehrmann and Segobiano

agreed to meet on August 11. (R. 228). Mehrmann did not appear for that meeting and has not followed up with Segobiano since. (R. 228).

7. Kim Thompson

Kim Thompson was the College's Director of Human Resources as of August 1, 2022, and was employed in the College's Human Resources Department since September 2015. (R. 230-31). She consulted with Becker about Mehrmann's termination, and provided Becker with a standard notice used in situations where an adjunct faculty member is terminated without cause. (R. 231).

8. Union's Case in Rebuttal (Daniel Mehrmann)

On rebuttal, Mehrmann testified that he typically requested that he teach every Music Technology course offered by the College because he was the only one qualified to teach them. (R. 233-34). He reiterated that Music 154 and 155 were intended to be back-to-back courses and that he taught Music 154 in the Fall 2021 semester. (R. 234). It would, therefore, have been a natural progression for him to teach Music 155 in the following semester. (R. 234). When Spring 2022 course assignments came out, Mehrmann noticed that nobody was assigned to Music 155. (R. 234). He testified that he reached out to Ed Jacobs and Kirsten Ruppert-Leach and indicated that he was interested in teaching the course. (R. 235).

II. Issues and Contentions

The Complaint alleges a violation of Section 14(a)(1) of the Act arising out of Mehrmann's termination, claiming that the retaliation occurred, in whole or in part, because of his January 24, 2022 grievance. The College contends that Mehrmann's termination was unrelated to the grievance, and denies that the complained-of conduct violates the Act.

III. Discussion

Section 14(a)(1) of the Act prohibits educational employers from interfering, restraining, or coercing employees in the exercise of rights guaranteed by Section 3 of the Act. 115 ILCS 5/14(a)(1) (2022). Section 3 of the Act provides that educational employees may organize, form, join, or assist in employee organizations or engage in lawful concerted activities for the purpose of collective bargaining or for other mutual aid or benefit, including the right to refrain from any or all such activities. 115 ILCS 5/3 (2019). Concerted activity is defined as an activity that invokes a right arising out of a collective bargaining agreement or that is engaged in with or on behalf of other employees. Schaumburg Community Consolidated School District 54 v. IELRB, 247 Ill. App. 3d 439, 456 (1st Dist. 1993), *citing* NLRB v. Marsden, 701 F.2d 238 (2nd Cir. 1983). Similarly, Section 14(a)(3) of the Act prohibits

educational employers from taking adverse action against an employee in order to encourage or discourage membership in an employee organization. 115 ILCS 5/14(a)(3). However, there is little evidence here that Mehrmann was involved in union activity other than the grievance.

Filing a grievance is protected activity pursuant to Section 3 of the Act because it requires the invocation of a right arising out of a collective bargaining agreement. Chicago Reform Board of Trustees, 16 PERI 1023 (IELRB Opinion and Order, January 28, 2000).

When an employer is alleged to have taken adverse action against an employee because of that employee's protected concerted activity, the charging party must make a *prima facie* showing that they were involved in protected concerted activity, that the employer was aware of the protected activity, and whether the employer took adverse action, in whole or in part, because of that activity. Neponset Community Unit School District 307, 13 PERI 1089 (IELRB Opinion and Order, July 1, 1997). If the employee meets this burden, the employer must then demonstrate that it would have taken the same action even in the absence of any protected activity. Neponset Community Unit School District 307.

A. Protected Concerted Activity

As mentioned above, filing a grievance is protected concerted activity as defined by the Act because it involves the invocation of a right arising out of a collective bargaining agreement. Chicago Reform Board of Trustees. Accordingly, Mehrmann's January 24, 2022 grievance is protected activity as defined by the Act. While there are other instances where Mehrmann spoke out about the terms and conditions of employment, these statements are not protected by Section 3 of the Act because they were not made with or on behalf of fellow employees, invoke a right arising out of a collective bargaining agreement, or contemplate any group action. *See, e.g., Schaumburg Community Consolidated School Dist. 54 v. IELRB*, 247 Ill. App. 3d 439, 459-60 (1st Dist. 1993) (comments made out of personal pique, that do not contemplate group action or were not made on behalf of any employee except for the speaker, are not protected activity as defined by Section 3 of the Act).

B. Employer Awareness

The College was clearly aware of Mehrmann's grievance. Dr. Becker, the interim dean, testified that she reviewed the claims contained within Mehrmann's grievance, and later testified that she discussed the grievance with the Union President, Musgrave.

C. Mehrmann's Termination Occurred Because Of His Protected Activity

Mehrmann's termination is clearly an adverse action. 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, *citing* Stutler v. Illinois Dept. of Corrections, 263 F.3d 214, 217 (7th Cir. 2001). The remaining question is whether Mehrmann's employment was terminated in part because of animus toward his protected activity, or that his concerted activity was a substantial or motivating factor in his termination. An employer's motivation for taking adverse action against an employee is a question that can be resolved using direct or circumstantial evidence. North Greene Community Unit School District No. 3, 16 PERI 1042 (IELRB Opinion and Order, April 17, 2000), *citing* City of Burbank v. ISLRB, 128 Ill. 3d 335 (1989). Hostility to protected concerted activity may be demonstrated in any number of ways, including inconsistencies between the proffered reason for the adverse employment action and other actions of the employer and shifting explanations for the adverse employment action. City of Burbank. Mehrmann argues that, while he was not given a reason for his termination at the time that it occurred, the College has offered two distinct reasons for his termination. The first is that the Music Technology program was being eliminated. However, by the time that Mehrmann was terminated, Becker had already put forth a teach-out plan to graduate students already in the Music Technology degree program, which would require that Music Technology courses be taught to those students so that they could reach graduation requirements. Furthermore, while the College was winding down the Music Technology degree program, they would continue to have Music Technology courses for its certificate program, and those courses would obviously require someone to teach them.

The second rationale advanced by the College is that it discovered during its review process that Mehrmann did not have a Master's Degree. The College argues that Mehrmann's lack of a Master's Degree would mean that the program could not comply with ICCB requirements, meaning that students who take Music Technology courses may not have been able to transfer those credits on to another institution. Becker acknowledged on cross-examination that she never explained this to Mehrmann, explaining that she did not believe that their working relationship was productive. However, Mehrmann had taught these courses for nearly twenty years before his termination, with the exception of the Fall 2020 and Spring 2021 semesters. Mehrmann argues that it never became an issue until after he filed the grievance, and that we should consider the two rationales advanced for his termination as evidence of hostility toward his concerted activity. Mehrmann also argues

that the College misstates the ICCB requirements because it did not consider whether Music Technology courses were career and/or technical education courses, rather than transfer courses. If they were career and technical education courses, ICCB requires that instructors have the appropriate credential in the field, and 2000 hours of experience in the field. The College does not appear to have considered whether Mehrmann's Music Technology courses were career or technical, rather than academic, in nature before terminating him for his lack of a Master's Degree.

Mehrmann has met his burden of demonstrating, through a preponderance of the evidence, that his grievance was a motivating factor for his termination. Mehrmann was given no reason for his termination at the time that it occurred. When he inquired as to the reasons, he was told that the Music Technology program enrollment had dropped and that Becker had plans to eliminate it. However, there were no plans to eliminate the Recording Technology certificate program, and many courses in that program were part of the Music Technology degree program.

At hearing, Ruppert-Leach argued that his lack of a Master's Degree was the reason he was terminated, stating that he did not meet ICCB requirements to serve as a professor. Mehrmann had been teaching these courses since 2006 prior to his termination and was the only person teaching classes in the Music Technology department for both its degree and certificate programs during that time. There is no testimony as to the reasons that the College did not discover Mehrmann's alleged lack of appropriate credentials prior to his having filed a grievance, or why his lack of a Master's Degree did not become an issue until after he filed a grievance.

Becker's testimony also demonstrated that she had a negative impression of Mehrmann, and that her negative impression of him was based, at least in part, on the grievance. While she did testify that she did not believe the grievance was filed against her, she described conversations with Union leadership where she characterizes Union leadership as apologizing to her for the grievance and distancing itself from it. This description of the Union's position is at odds with Musgrave's testimony, where he describes having assisted Mehrmann in drafting the grievance, and investigating the facts underpinning the grievance before ultimately coming to the conclusion that the Union did not wish to advance the grievance beyond Becker's initial denial.

Becker also testified that she did not reach out to Mehrmann regarding his alleged lack of qualifications to teach Music Technology courses because they did not have a

“productive” or “positive” working relationship. While this impression was influenced by discussions she had with Mehrmann concerning equipment that needed repair, I also find that it was more likely than not influenced by the grievance. Based on Becker’s general impression of Mehrmann, colored by his grievance, coupled with the inconsistent and shifting rationales offered for his dismissal, I find that Mehrmann’s grievance was, at least in part, the reason for his termination.

D. The College Would Not Have Terminated Mehrmann’s Employment If Not For His Protected Activity

I also find that the College would not have terminated Mehrmann’s employment if not for his having filed a grievance. The record appears clear that the CBA permitted the College to terminate Mehrmann without cause. Section 1.1 of the CBA states that the bargaining unit is comprised of adjunct instructors that teach six or more equated hours in the fall or spring semester. Section 1.10(c) states that an adjunct faculty member loses seniority when they fail to maintain eligibility for the bargaining unit as defined by Section 1.1. Section 6.1 allows the College to terminate adjunct faculty members who do not have at least 100 equated hours of instruction without cause.

Mehrmann did not teach in the Fall 2020 and Spring 2021 semesters, and, accordingly, lost seniority. At the end of the 2021-22 Academic Year, Mehrmann had 21.20 equated hours of instruction. The College was therefore within its contractual rights to invoking Section 6.1 of the CBA to terminate Mehrmann without cause. However, the College provides no evidence that it would have terminated Mehrmann even in the absence of any protected activity. As addressed above, while the College intended to eliminate the Music Technology degree program, the Recording Technology certificate program would remain, and consist of courses that Mehrmann has taught for nearly twenty years. And while Mehrmann did not have a Master’s Degree, the length of time he has spent teaching these courses means that it is extremely unlikely that he lacked credentials to do so. Becker claims that she discovered his lack of credentials in May 2022, during a conversation with Jacobs. Jacobs had been the Music Technology department head for a number of years before this conversation, and only made the remark about Mehrmann’s lack of a degree in response to Becker stating, without evidence, that it was a requirement. Rather than the College suddenly realizing after such a long period of employment that Mehrmann was not qualified for his position, the more likely scenario is that Becker seized an opportunity to eliminate an employee who was not to her liking, a conclusion that she arrived at in part because of his

grievance. I therefore find that Mehrmann's termination was a violation of Section 14(a)(1) of the Act.

IV. Conclusions of Law

For these reasons, I find that Mehrmann's grievance was a motivating factor for his dismissal, and that there were no legitimate business reasons to terminate Mehrmann's employment regardless of his having filed a grievance. Accordingly, his termination violated Section 14(a)(1) of the Act.

V. Recommended Order

I recommend that the Respondent, Southwestern Illinois College, Community College District #522, and its officers and agents be ordered to:

1. Cease and Desist from:
 - a. Retaliating against Daniel Mehrmann for filing his January 24, 2022 grievance, or against any other employee for invoking rights arising out of a collective bargaining agreement or acting with or on behalf of their fellow employees for the purposes of collective bargaining or other mutual aid or benefit.
 - b. In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed under the Act.
2. Immediately take the following affirmative action to effectuate the policies of the Act:
 - a. Offer to Daniel Mehrmann immediate and full reinstatement to the position he previously held as Adjunct Professor, with 21.20 equated hours of seniority.
 - b. Make Daniel Mehrmann whole for the loss of any pay or benefits, with interest at a rate of seven percent per annum, resulting from Southwestern Illinois College, Community College District #522's retaliatory discharge.
 - c. Preserve and, upon request, make available to the IELRB or its agents for examination and copying all records, reports, and other documents necessary to analyze the amount of remedy due under the terms of this Opinion and Order.
 - d. Post on bulletin boards or other places reserved for notices to bargaining unit employees copies of the Notice to Employees attached to this

Recommended Decision and Order. Copies of this notice shall be provided by the Executive Director of the Illinois Educational Labor Relations Board and shall be signed by Respondent's authorized representative, posted and maintained for sixty (60) calendar days during which a majority of bargaining unit employees are working. Reasonable steps shall be taken by the College to ensure that the notices are not altered, defaced, or covered by any other materials.

- e. Notify the Executive Director in writing within thirty-five (35) calendar days after receipt of this Recommended Decision and Order of the steps taken to comply with it.

VI. Right to File Exceptions

Pursuant to Section 1120.50(a)(1) of the Board's Rules and Regulations, Ill. Admin. Code tit. 80 §1120.51(a)(1) (2017), the parties may file written exceptions to this Recommended Decision and Order no later than 21 days after receipt of this decision. Exceptions and briefs must be filed with the Board's General Counsel. If no exceptions have been filed within the 21-day period, the parties will be deemed to have waived their exceptions. Under Section 1110.20(e) of the Board's Rules, parties must send a copy of any exceptions they choose to file to the other parties and must provide the Board with a certificate of service. A certificate of service is "a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service." Ill. Admin. Code tit. 80 §1100.20(e). If a party fails to send a copy of its exceptions to the other parties or fails to include a certificate of service, that party's appeal rights with the Board will end.

Dated: March 31, 2025
Issued: Chicago, Illinois

/s/ Nick Gutierrez
Nick Gutierrez
Administrative Law Judge

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