STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Louise DeBerry	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2024-CA-0058-C
	)	
Chicago Board of Education	)	
	)	
Respondent.	)	

OPINION AND ORDER

I. Statement of the Case

On April 24, 2024, Louise DeBerry (DeBerry) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board) in the above captioned matter alleging that the Chicago Board of Education (CBOE) committed unfair labor practices within the meaning of Section 14(a) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1, et seq. (Act or IELRA). Following an investigation, the Board's Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge because the allegations were precluded under the doctrine of res judicata. DeBerry filed timely objections to the EDRDO. CBOE filed a timely response to DeBerry's 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.[1]

III. Discussion

DeBerry's exceptions to the ERDO are as follows. CBOE violated Article 40-1 of the Chicago Teachers Union contract on August 23, 2017, when it failed to honor her request for a position teaching fifth grade students. CBOE violated Article 27-3 of the Chicago Teachers Union contract on July 16, 2018, when it ignored a student's individualized education plan which, "foster[ed] an unsafe and unhealthy working environment." The Board failed to provide DeBerry with a fair opportunity to present her claims against CBOE. CBOE fabricated information during its internal

[1] On page 1 of the EDRDO, the Executive Director incorrectly named the labor organization in this case as "Chicago Teachers Union, Local No. 2, IFT-AFT, AFL-CIO" instead of Chicago Teachers Union, Local No. 1, IFT-AFT, AFL-CIO (Union).

investigation and provided such fabricated evidence to the Board and appellate courts. CBOE misrepresented a material fact that principal Rashid Shabazz (Shabazz) actively participated in the investigation against DeBerry despite assertions that Shabazz merely reported the incident to the Department of Children and Family Services and to CBOE administrators. DeBerry's previous unfair labor practice charge alleged that Shabazz had coached students to fabricate stories during the May 2018 investigation. Shabazz participated in the investigation against DeBerry after May 18, 2018. CBOE investigator Cheryl Smith fraudulently included DeBerry's signature on documents dated May 31, 2018. CBOE, by and through Shabazz, constrained DeBerry's rights under Section 14(a)(1) of the Act by intimidating teachers who complained of disruptive students. Shabazz made statements during a meeting in October 2017 with teachers that he could terminate teachers who complained of student behavior and then used the May 17, 2018, incident to retaliate against DeBerry for her concerted activity. CBOE did not pursue disciplinary charges against DeBerry for activities in 2016 until the 2018 incident. Finally, DeBerry argues res judicata is not applicable to her charge, because she never received a fair hearing in front of an impartial administrative law judge.

The issue before us is whether DeBerry already had a chance to litigate the issues she raises in her exceptions. That answer is yes, and as the EDRDO correctly noted, the doctrine of res judicata applies.

Under the doctrine of red judicata, "a final judgment on the merits rendered by a court of competent jurisdiction acts as a bar to subsequent suit between the parties involving the same cause of action." *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302 (1998). For res judicata to apply, there must be (1) a final judgment on the merits, (2) an identity of cause of action, and (3) an identity of parties or their privies. *Id.* A new claim is part of the same cause of action identity if, "the assertion of theories or kinds of relief still constitute a single cause of action if a single group of operative facts give rise to the assertion of relief." *Village of Bartonville v. Lopez*, 2017 IL 120643 ¶ 50. Essentially, if there has been a final judgment in a case involving effectively the same set of facts against the same parties then res judicata bars the claim. Moreover, the doctrine extends to facts that could have been raised in an earlier proceeding. *Saxon Mortgage Inc. v. United Financial Mortgage Corp.*, 312 Ill App 3d 1098 (1st Dist. 2000); *City Colleges of Chicago*, 17 PERI 1088, Case No. 2001-CA-0012-C (IELRB Opinion and Order, September 25, 2001).

DeBerry previously brought a charge against CBOE in 2019 alleging that CBOE, by and through Shabazz, falsified investigatory information regarding an alleged incident of her hitting a student on May 18, 2018. *Chicago Bd. of Educ.*, 38 PERI 82, 2020-CA-0017C (IELRB Opinion and Order, September 17, 2020). DeBerry alleged that this was retaliation for taking part in the Professional Problems Committee where she, alongside other teachers, complained of student behavior. *Id.* DeBerry alleged that a causal connection existed, because Shabazz held a captive audience meeting in October 2017 where he made anti-union comments. *Id.* The Board dismissed DeBerry's charge finding that while she did engage in protected concerted activity, there was no causal connection between that activity and CBOE's investigation and subsequent decision making.

Id. DeBerry appealed and the First District Appellate Court of Illinois affirmed the Board's dismissal. *DeBerry v. Illinois. Educ. Labor Relations Bd.*, 2021 IL App (1st) 201127-U. DeBerry petitioned the Supreme Court of Illinois for review and the Supreme Court denied her petition. *DeBerry v. Illinois Educ. Labor Relations Bd.*, 456 Ill.Dec. 49, 193 N.E.3d 17 (Table) (May 25, 2022).

All DeBerry's exceptions point to one argument, that the Board incorrectly dismissed her 2019 charge as they relate to both the May 17, 2018, incident of student abuse and the October 2017 meeting where Shabazz made anti-union comments. In her previous case, DeBerry had the opportunity before this Board and an Illinois Appellate Court to present evidence CBOE violated the Act or that the decision making in that charge was tainted by fraud. As noted by the Illinois Appellate Court, DeBerry could not show a causal link between her protected activity involving her membership in the Professional Problems Committee, Shabazz's comments in October 2017, and CBOE's investigation into the May 17, 2018 incident. *DeBerry*, 2021 IL App (1st) at ¶41. Moreover, the Appellate Court had already agreed with the Board that there was no evidence of Shabazz improperly or fraudulently colluding with students to taint the investigation against DeBerry. *Id.* at ¶42-44. DeBerry's exceptions were therefore already litigated and received a final judgment involving the same parties within the same "identity of cause of action." *River Park, Inc.*, 184 Ill. 2d at 302.

Moreover, DeBerry argues in her exceptions that even if the doctrine of res judicata would normally apply, she is owed exception because she alleges she was denied a fair opportunity to present her claims. She cites to her coworker, Terra Sinkevicius, being provided with a hearing and not herself. *Chicago Bd. of Educ.*, 40 PERI ¶ 16, 2019-CA-0031-C & 2019-CA-0071-C (IELRB Opinion and Order, May 19, 2023). In both that case and DeBerry's 2019 charge, Shabazz's behavior at the October 2017 staff meeting could not be considered an independent violation of the Act due to the complained of conduct happening more than six-months before the filing of the charge even if it could be used as evidence of unlawful motive. However, unlike Sinkevicius, DeBerry failed to present evidence of a causal connection between the adverse action and the union activity.

Ultimately, DeBerry alleges that the Board, "did not investigate Ms. DeBerry's charge as it alleged in its dismissal decision and thus, she was not provided with a fair and complete review of her allegations." Per Board Rules, "the charging party shall submit to the Executive Director all evidence relevant to or in support of the charge." 80 Ill. Admin. Code § 1120.30(b)(1). In Case No. 2020-CA-0017-C, DeBerry failed to present evidence showing a causal connection between her union activity and the adverse action she suffered. The instant charge is an attempt at a do-over after she had an opportunity to present these allegations and any supporting evidence to the Executive Director (through a Board agent), the Board, and an Illinois Appellate Court. In fact, as CBOE correctly noted in its response, the arguments that are being brought before the Board in these exceptions are copied from her appeal filings. This is exactly the type of case wherefore the doctrine of res judicata exists. DeBerry had a fair opportunity to voice her concerns during the 2019 charge. Therefore, her claim against CBOE is precluded.

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 21, 2025**
Issued: **May 22, 2025**

/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 April 24, 2024, Louise DeBerry, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Chicago Board of Education, 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

A. Jurisdictional Facts

Chicago Board of Education (CBE or Respondent) is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. Until her termination on or about October 25, 2023, Louise DeBerry (DeBerry) was an educational employee within the meaning of Section 2(b) of the Act employed by Respondent in the title or classification of Teacher. Chicago Teachers Union, Local No. 2, IFT-AFT, AFL-CIO (Union), is 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 compromised of certain of Respondent's employees, including those in the title or classification of Teacher. At all times material, DeBerry was a member of the Union's bargaining unit. At all times material, CBE and the Union are parties to a collective bargaining agreement (CBA) which provides for a grievance procedure culminating in arbitration, for the bargaining unit to which DeBerry belonged.

B. Procedural History

On January 3, 2020, an Executive Director's Recommended Decision and Order (EDRDO) issued in Case No. 2020-CA-0017-C [38 PERI ¶ 82].[1] DeBerry's current charge against CBE, like her previous one, stem from an incident that occurred in her classroom on May 7, 2019 where she "accidently struck a student while struggling to control another student who was flinging his body about and repeatedly striking DeBerry". Id, at p. 2 of EDRDO. The initial charge was filed on September 6, 2019 against CBE when DeBerry got notice on or about August 14, 2019 that CBE was "seeking to terminate her employment alleging she had abused students in her care." Following CBE's investigation of the incident and after a hearing, CBE suspended DeBerry without pay on September 9, 2019.

The Recommended Decision and Order of January 3, 2020, dismissed DeBerry's charge in its entirety upon finding no causal connection between charging party's protected activity and the claimed adverse action. DeBerry filed exceptions with the Board; the Board affirmed the Executive Director's dismissal of the charge on September 17, 2020. DeBerry appealed the Board's decision to the Illinois Appellate Court. The Court affirmed the Board's dismissal of her charge. DeBerry v. Illinois Educ. Lab. Rels. Bd., 2021 IL App (1st) 201127-U, ¶ 47.

C. Facts relevant to the unfair labor practice charge

Now, DeBerry files the instant charge, essentially making the same allegations against CBE as before, following her termination of employment on October 25, 2023. The only apparent difference since the previous decision, is that her employment status changed from "Suspended without pay" on September 9, 2019, to "terminated" on October 25, 2023.

III. THE PARTIES' POSITIONS

DeBerry contends that she was wrongfully terminated in retaliation for union activities. CBE argues that: (1) the charge is untimely; (2) the charge should be dismissed under the doctrine of res judicata; and (3) the charge fails to establish a prima facie issue of law or fact sufficient to warrant a hearing.

[1] The facts pursuant to DeBerry's charge in the instant case, compared to the previously adjudicated case are fundamentally the same, beginning with alleged retaliation concerning the filing of grievances in 2017 and 2018 and culminating in her termination.

IV. DISCUSSION AND ANALYSIS

DeBerry was terminated on October 25, 2023. She filed the instant charge on April 24, 2024. The alleged adverse action, her termination, occurred within six months of DeBerry filing this charge, therefore, her charge is timely. However, DeBerry merely recites all of her previous allegations, all of which were dismissed as cited above. Her only new allegation involves her claim that CBE violated the Illinois School Code, 105 ILCS 5/34-85) (from Ch. 122, par. 34-85). That provision regards: Removal of Teaching Faculty outside of a Probationary Period, and states that: (a) No teacher employed by the Board of Education shall (after serving the probationary period specified in Section 34-84) be removed except for cause. However, the IELRB has no jurisdiction to adjudicate such matters under the Illinois School Code. Consequently, this portion of her claim is not within the purview of the Board to decide.

As for the remainder of DeBerry's charge, the doctrine of res judicata applies. Res judicata, now referred to as claim preclusion, applies to questions that were litigated in earlier proceeding, and extends to those questions which could have been raised or determined in the earlier proceeding. City Colleges of Chicago, 17 PERI 1088, Case No. 2001-CA-0012-C (IELRB Opinion and Order, September 25, 2001). Claim preclusion also prohibits a party from subsequently splitting a single cause of action in an earlier proceeding into more than one proceeding. *Id.*

Here, DeBerry is attempting to refile a Section 14(a)(1) claim that has since been decided by the Executive Director in a Recommended Decision Order; affirmed by the Board and the Illinois Appellate Court. DeBerry's current claim concerns whether she suffered adverse action for any protected activity during her time at Wadsworth. Neponset Community Unit School District No. 307, 13 PERI 1089, Case No. 96-CA-0028-C (IELRB Opinion and Order, July 1, 1997). Case No. 2020-CA-0017-C previously addressed the same allegations, facts, and questions. Claim preclusion is therefore applicable here because the questions raised and litigated in the earlier IELRB proceeding were whether DeBerry engaged in protected activity, whether CBE knew of that activity, and whether CBE took adverse action against her because of her involvement in such activity. City Colleges of Chicago, 17 PERI 1088, Case No. 2001-CA-0012-C (IELRB Opinion and Order, September 25, 2001); Neponset Community Unit School District No.

307,13 PERI 1089, Case No. 96-CA-0028-C (IELRB Opinion and Order, July 1, 1997). While the Board determined, and the First District Appellate Court affirmed, that DeBerry did engage in protected activity, and that CBE knew of such activity, the Board found no evidence to reveal a causal connection between DeBerry's protected activity and the adverse action in the charge previously filed with the IELRB on September 6, 2019, Case No. 2020-CA-0017-C. Neponset Community Unit School District No. 307, 13 PERI 1089, Case No. 96-CA-0028-C (IELRB Opinion and Order, July 1, 1997). Consequently, DeBerry is barred by claim preclusion from re-litigating this matter before the Board in the instant charge, as these questions were litigated in an earlier proceeding. City Colleges of Chicago, 17 PERI 1088, Case No. 2001-CA-0012-C (IELRB Opinion and Order, September 25, 2001).

V. ORDER

Accordingly, the instant charge is hereby dismissed in its entirety.

VI. EXCEPTIONS

In accordance with Section 1120.30(c) of the Board's Rules and Regulations (Rules), Ill Admin. Code tit. 80, §§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, the 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 with 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.

Dated: January 31, 2025
Issued: Chicago, Illinois

Victor E. Blackwell, Executive Director

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