STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Scott Howard,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2024-CA-0020-C
	)	
Peoria Public Schools, District 150,	)	
	)	
Respondent	)	

OPINION AND ORDER

I. Statement of the Case

On November 3, 2023, Scott Howard (Howard or Charging Party) filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Board or IELRB) alleging that Peoria Public Schools District 150 (Respondent or District) violated Section 14(a)(1) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1, *et seq.* On November 15, 2024, the IELRB's Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the charge in its entirety. The Charging Party filed timely exceptions to the EDRDO, and the District filed a timely 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 except as necessary to assist the reader.

III. Discussion

Employers are prohibited by Section 14(a)(1) of the Act from "interfering, restraining, or coercing employees in the exercise of the rights guaranteed under this Act." 115 ILCS 5/14(a)(1). Improper motive must be shown in Section 14(a)(1) cases involving adverse employment action because of protected concerted activity. *Neponset Community Unit School Dist. No. 307*, 13 PERI 1089, Case No. 96-CA-0028-C (IELRB Opinion and Order, July 1, 1997). For a complaint to issue in those cases, the charging party must at least be able to make some showing of protected concerted activity, that the respondent knew of that activity and that it took adverse employment action as a result of that activity. *Neponset*, 13 PERI 1089.

The Executive Director dismissed the instant charge because the Charging Party failed to make the requisite showing of protected concerted activity. The Charging Party asserts in his exceptions that he engaged in protected activity when he proposed the District recruit individuals from the Peoria Adult Transition Center to address its custodial shortage and when he met with the District's Assistant Director of Human Resources and a Police Benevolent and Protective Association (PBPA) representative to discuss School Resource Office (SRO) pay.

Not every concern, gripe or complaint about wages, hours and terms and conditions of employment is considered concerted. *Schaumburg School District v. IELRB*, 247 Ill. App. 3d 439, 616 N.E.2d 1281 (1st Dist. 1993). The employee must either invoke a right granted by a collective bargaining agreement or they must act with or on the authority of other employees and not solely by and on behalf of themselves in order to have engaged in concerted protected activity. *Id.* Concerted activities, to be protected must be a means to an end, not an end in themselves. *Id.* (citing *NLRB v. Marsden*, 701 F.2d 238, 242 (2d Cir.1983); *Pelton Casteel, Inc. v. NLRB*, 627 F.2d 23, 28 (7th Cir. 1980)). Here, Howard's suggestions as to how the District could or should engage in hiring practices do not amount to evidence of concerted activity necessary for a complaint to issue. That is because they do not contemplate group action or involve his rights under a collective bargaining agreement.

Howard held the positions of SRO and custodian when he worked for the District. SROs are part of the bargaining unit represented by PBPA. Custodians are part of the bargaining unit represented by Local 8 of the Service Employees International Union. The Executive Director found that Howard's meeting with the District's Assistant Director of Human Resources and a PBPA representative over the text of the PBPA contract did not amount to protected activity. It is not clear if Howard was an SRO at that time, but the Executive Director suggests Howard was not pleased with his pay as an SRO. Because the meeting involved the collective bargaining agreement, we overrule that portion of the Executive Director's finding and determine that Howard submitted evidence of the requisite protected concerted activity element. The District would have had knowledge of that activity, as it was a party to that meeting. The District engaged in adverse action against Howard in May 2023 when it issued him verbal and written warnings and demoted him from head custodian to second shift custodian.

Nevertheless, Howard did not submit evidence during the investigation that the adverse actions were committed against him because of, or in retaliation for, the exercise of rights guaranteed under the Act. *City of Burbank v. Illinois State Labor Relations Board*, 128 Ill. 2d 335, 538 N.E.2d 1146 (1989). Consequently, he cannot make a showing as to the causation element, and thus, his charge failed to raise an issue of law or fact sufficient to warrant a hearing.

Regarding the causation element, as the Illinois Supreme Court noted in *City of Burbank*, the existence of such a causal link 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. 538 N.E.2d 1146.

The evidence in this matter, however, does not reveal a causal connection between Howard's protected concerted activity and the adverse action. Aside from Howard's generic bare assertions of increasing hostility from District officials, there is no evidence in the record of hostility toward protected concerted activity. There are no inconsistencies between the District's proffered reasons for its adverse actions against Howard and its other actions. Likewise, there is no allegation or evidence of shifting explanations by the District for its conduct in connection with Howard. Concerning the disparate treatment factor, the relevant inquiry is whether the District treated employees similarly situated to Howard, in a manner better than he was treated. In his exceptions, Howard claims that he was subjected to harsher discipline that other employees, such as another head custodian, who engaged in "more serious" misconduct but was not faced with adverse consequences. In its response, the District asserts that the Board should not consider this portion of Howard's argument because he raises it for the first time in his exceptions. An examination of the investigative record indicates that Howard did not previously

raise this allegation.[1] The Board has repeatedly held that to consider such newly raised issues at this stage would be prejudicial to the opposing party. *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). Therefore, we decline to consider this newly submitted assertion and find there is no evidence in the record of disparate treatment. Finally, the timing of the adverse actions in proximity to the protected concerted activity, about six months, does not support a causal connection. Because Howard failed to establish the causal connection between his protected concerted activity and the adverse action necessary for a complaint to issue, we find that his claim failed to raise an issue of law or fact sufficient to warrant a hearing.

Howard argues in his exceptions that the Board should overturn the EDRDO because he has sufficiently alleged a violation of the collective bargaining agreement. The District contends that the Board should decline to consider whether the abrupt nature of the disciplinary actions against him, in conjunction with his exclusion from the meaningful grievance process, are clear violations of the contractual grievance procedures and demonstrative of the District's bad faith because he raises them for the first time in his exceptions. It is well established that mere contract violations do not constitute unfair labor practices. *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). For that reason, we find no merit in Howard's

[1] In its response, the District also claimed that Howard argued for the first time in his exceptions that he was disciplined and demoted for his attempts to address pay discrepancies as an SRO and to advocate for fair hiring practices as a custodian. However, both are mentioned in the EDRDO.

exception that the District violated the contract, and we need not consider whether the alleged contract violations demonstrate bad faith on the District's part.

IV. Order

For the reasons discussed above, IT IS HEREBY ORDERED that: (1) the portion of the EDRDO finding that Howard did not present evidence of protected concerted activity is overturned; (2) Howard failed to show the requisite causal connection between his protected concerted activity and the adverse actions necessary for a complaint to issue; and (3) the dismissal of the charge in its entirety 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: **February 19, 2025**
Issued: **February 19, 2025**

/s/ Lara D. Shayne
Lara D. Shayne, Chairman

/s/ Chad D. Hays
Chad D. Hays, Member

/s/ Michelle Ishmael
Michelle Ishmael, Member

Member Grossman, dissenting

I respectfully disagree with my colleagues' conclusion that the complaint should not be issued. I agree with my colleagues that considering claims and evidence Howard submitted after the investigatory stage is prejudicial to the District and thus I do not consider such claims and evidence.

In *Lake Zurich School District No 95.*, this Board held that "in order to support the issuance of a complaint and to set the charge for hearing, the investigation must disclose adequate credible statements, facts, or document which, if substantiated, and not rebutted in a hearing, would constitute sufficient evidence to support a finding of a violation of the Act." 1 PERI ¶ 1031 (IELRB Opinion and Order, Nov. 30, 1984). A *prima facie* case for discrimination under Section 14(a)(1) requires Howard show that (1) he engaged in union activity, (2) the employer was aware of that activity, and (3) the employer took adverse action against the employee for engaging in that concerted activity. *Neponset*. A causal link may be shown in a fact-based inquiry and evidence of hostility may be inferred from a variety of factors including, but not limited to, expressed hostility, knowledge of protected activities, proximity in time between the protected activity and disciplinary action, inconsistencies between the proffered reason and other actions by the employer, shifting explanations, and patterns of conduct. *City of Burbank*, 530 N.E.2d 1146. Given the materials provided in the investigation, it is my opinion that the Board should have remanded this matter for issuance of a complaint.

Howard's demotion from Head Custodian to Second-Shift Custodian is clearly an adverse action under the Act and this adverse action is causally connected to his concerted activity. For one, Howard worked for Peoria for fourteen years without an issue. He only faced a demotion after he allegedly failed to properly clean a school cafeteria table; an offense that seems minor. Moreover, the District instituted the demotion without regard to the progressive discipline policy. Two, this demotion came after a series of meetings with district supervisors where Howard discussed collective bargaining concerns while advocating for a new custodian hiring strategy that he considered be fairer and more effective than his supervisors' proposals. In the last of those meetings Howard recommended promoting a part-time custodian to fill a full-time opening. His supervisor instead filled that position with someone from outside the bargaining unit. The District's decision to demote Howard came only days after that meeting.

While temporal proximity alone does not establish an inference of discriminatory conduct, I find issue with a six-day turnover between Howard's complaints regarding the hiring of employees outside of the bargaining unit over current part-time custodians already members of the bargaining unit and the District's breach of the progressive discipline policy by demoting Howard without the proper series of warnings. I also find expressed hostility and union animus

from the allegations in the investigation where Summerville purportedly stated, "someone was going to lose their job" and that the assistant Director of Human Resources was visibly angry after Howard questioned the judgement of his supervisor's hiring preferences where those preferences would have been violative of the collective bargaining agreement and deny the bargaining unit an opportunity for fair and equitable promotion.

As to the question of concerted activity, I find little difference in principle between Howard approaching District supervisors regarding hiring practices, especially regarding Howard's allegations of promotion preferences for current part-time employees, and the teacher discussing preparation periods with the principal in *Neponset*. 13 PERI ¶ 1089 (finding that an individual teacher engaged in concerted activity when she spoke to the principal about a group of employees' concerns). Both dealt with meetings regarding the terms and conditions of employment. I find that a meeting with supervisors regarding the hiring of new custodians is concerted activity for these reasons and in addition to the reasons provided by the Board that Howard engaged in protected concerted activity.

The initial investigation presented enough evidence to show a *prima facie* case of a violation of the Act and I would have remanded the matter to the Executive Director for issuance of a complaint. For the reasons outlined above, I respectfully dissent.

/s/ Steve Grossman
Steve Grossman, Member

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STATE OF ILLINOIS
ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD

Scott Howard, Charging Party and Peoria Public Schools, District 150, Respondent	)	Case No. 2024-CA-0020-C

EXECUTIVE DIRECTOR'S RECOMMENDED DECISION AND ORDER

I. THE UNFAIR LABOR PRACTICE CHARGE

On November 3, 2023, Charging Party, Scott Howard, filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (IELRB or Board) in the above-captioned case, alleging Respondent, Peoria Public Schools, District 150, (District or Employer), 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

At all times material, Howard was an educational employee within the meaning of Section 2(b) of the Act, employed by the District. For much of the relevant time, Howard was also included in a bargaining unit represented by Local 8 of the Service Employees International Union (SEIU), a labor organization within the meaning of Section 2(c) of the Act. The District is an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. At all times material, the Union and District have been parties to a collective bargaining agreement (CBA) setting out terms and conditions of employment for Unit employees. The CBA also contains a grievance procedure culminating in arbitration for the resolution of disputes concerning the application or interpretation of its terms.

B. Facts relevant to the unfair labor practice charge and positions of the parties

The circumstance of this case concerns Respondent's alleged breach of the CBA and retaliation for Howard's asserted protected activity. The charge specifically concerns a series of disciplinary actions taken by the District on or about May 4, 2023. However, the asserted protected activity covers a substantial period prior to the discipline.

According to the Charging Party's narrative, his employment as a custodian had an interruption when he took a position as a School Resource Officer (SRO). The SRO position is in a different bargaining unit and covered under a collective bargaining agreement negotiated by the Respondent and the Police Benevolent and Protective Association (PBPA Contract.). The narrative is not clear on when he began working in the position, but it suggests that his tenure as SRO was brief. Howard maintains that the motivation for taking the position was his belief that his wages would improve. However, he found that this was not the case. Further, he believed that the text of the PBPA contract was inaccurate and/or misleading. In December of 2022, Howard and a PBPA representative met with the Respondent's Assistant Director of Human Resources, Dr. Alexander Ikejaiku. Howard reports that Ikejaiku was very unhappy with the meeting in general, and Howard's role in instigating it. There is no evidence that the PBPA ever filed a grievance on the pay issue or that the parties reached any agreement to Howard's satisfaction. Presumably, these circumstances prompted Howard to return to employment as a custodian.

The narrative provided during the investigation is not entirely clear on the circumstances of Howard's return to work. One document asserts he was working as a custodian when classes resumed after winter break in January 2023. It further asserts that upon his return, he was directed to take on the work of other custodians and generally given a heavier workload than his colleagues. On the other hand, another document asserts that in February 2023, he returned to the position of Head Custodian at Glen Oak Community Center.

Nonetheless, Howard's interactions with Ikejaiku continued, and he also began a series of interactions with a supervisor named Carl Summerville. The narrative indicated that in March 2023, Howard initiated an effort to recruit new custodians from the Peoria Adult Transition Center. He alleges that while some members of the administration were receptive to the concept, Summerville was reluctant. Further, he asserts that Ikejaiku opposed the concept, and had a specific candidate in mind. During a discussion on the matter, Howard opined that Ikejaiku's candidate was not a particularly upstanding citizen, and wondered whether race was a factor in the latter's thinking. The narrative asserts that Ikejaiku became visibly angry at this suggestion.

The Charging Party asserts that he met with Summerville and Union representative Mike Bowen on April 5 and 12, 2023, to discuss Howard's hiring recommendations. During one of the meetings, Summerville allegedly stated to the Director of Buildings and Grounds, Brandon Bell, that 'someone was going to lose his

job.' On April 28, 2023, the three met again. It is not clear whether they discussed the specific topic of the prior meetings, but Howard asserts that he recommended that a current part-time custodian be given a full-time position. Summerville advised Howard that he had offered the position to someone outside the District. Howard objected on the grounds that under the CBA, the part-time employee had 'priority.'

On or about May 1, 2023, Howard allegedly failed to follow the Respondent's instructions or procedures while attending to dirty tables in the school cafeteria. Howard denies that he failed to follow existing procedures, and notes that he was not trained in the procedures used by cafeteria staff. On May 4, 2023, the Respondent issued Howard an oral warning, a written warning, and transferred him to second shift custodian. Shortly thereafter, Summerville sent an email advising employees of Howard's reassignment. Howard and/or the Union filed grievances concerning the discipline, the demotion, and the dissemination of information to other employees. The original charge asserts a violation of the Act by Respondent's failure to abide by the terms of the CBA. However, the accompanying narrative also asserts that the disciplinary actions, the demotion, and the disclosure of information were all retaliation for Howard's protected activities. Respondent filed a position statement concerning the charge.

III. DISCUSSION AND ANALYSIS

The initial filing asserts a violation of the Act by a breach of a collective bargaining agreement. That claim is deficient on its face. See, e.g., *Raquel Avila and Chicago Board of Education,* 22 PERI ¶118, (ELRB ED, 2006), and cases cited therein.

During the course of the investigation, Charging Party expanded the charge to allege retaliation for his protected activity, and the materials supplied during the investigation outline a series of events purporting to show retaliation for his conduct. However, the conduct itself does not rise to the level of concerted activity protected by the Act.

At the outset, Howard had a continuing series of interactions with agents of the Respondent, and Union representatives (both PBPA and SEIU) were present at meetings convened to discuss workplace issues. However, there is no evidence that either union initiated any of these meetings, or that they endorsed or supported Howard's concerns. Rather, the available evidence suggests that union representatives were, at best,

observers during the meetings. I note that there is no evidence that either union grieved any of the issues raised by Howard over the course of the (at least) five meetings held during the last six months of his employment, excepting the discipline that gave rise to this charge. There is also no evidence that Howard's activities were undertaken because of any independent group of employees, such that the conduct would be considered as concerted and protected by the Act even without endorsement of the unions See, e.g., *Marney Jean Doss and Decatur Public School District 61,* 25 PERI ¶30, (ELRB ED 2009).

Taken together, the circumstances show that Howard was energetically pursuing his own personal agenda of workplace justice, and the Respondent afforded him considerable opportunity to make his opinions known. In the meantime, the Respondent apparently facilitated a transfer to the SRO position and, after he expressed his dissatisfaction with that arrangement, a return to the custodian bargaining unit and assignment as a Head Custodian. There is no evidence or assertion that Respondent was under any obligation whatsoever to convene or participate in any of the meetings detailed above. The discipline that gave rise to the charge may be dubious, but the alleged motivation for that action does not implicate Howard's rights under the Act.

IV. ORDER

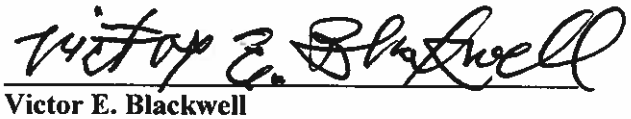
Accordingly, the instant charge is hereby dismissed in its entirety.

V. RIGHT TO 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,

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 15th day of November, 2024.
STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD



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