

**STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD**

In the Matter of:	)	
	)	
City Colleges of Chicago,	)	
	)	
Respondent	)	
	)	
and	)	Case No. 2000-CA-0038-C
	)	
William Abayang,	)	
	)	
Complainant	)	

**OPINION AND ORDER**

On December 30, 1999, William Abayang (Abayang) filed an unfair labor practice charge against the City Colleges of Chicago (Employer or City Colleges). The charge alleged that City Colleges violated Sections 14(a)(1), 14(a)(2), 14(a)(3), 14(a)(4) and 14(a)(5) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq. (IELRA or Act). The Executive Director issued a Complaint and Notice of Hearing with regard to the portion of the charge alleging that the Employer violated Section 14(a)(3) and (1) of the Act by laying off and refusing to reinstate, rehire or transfer Abayang because he filed grievances. The Executive Director dismissed the remainder of the unfair labor practice charge.

On June 11, 12, and 25, August 14-16, September 19, November 15 and 18, 2002, the parties appeared at a hearing before Administrative Law Judge Katherine Levin (ALJ Levin). Abayang, a non-attorney, represented himself at the hearing. City Colleges was represented by counsel. On June 1, 2004, ALJ Levin issued a Recommended Decision and Order dismissing the Complaint in its entirety for the reason that Abayang failed to establish that City Colleges violated the Act. Abayang filed exceptions to ALJ Levin's Recommended Decision and Order. In his exceptions, Abayang disagrees with ALJ Levin's findings and disputes the credibility of several witnesses' testimony. Abayang's exceptions contain evidence not in the record. The Employer filed a response to the exceptions. For the reasons discussed below, we affirm ALJ Levin's Recommended Decision and Order.

**I. Facts**

Abayang was employed by City Colleges as a full-time training specialist at West Side Technical Institute (WSTI) from August 19, 1996, until he was laid off effective July 22, 1999. Abayang taught

courses at WSTI in the Computer Aided Design and Computer Aided Manufacturing program (CAD/CAM). At all times relevant to this case, Abayang was a member of the Cook County College Teachers Union, Local 1600 (Union).

In fall 1996, 37 students were enrolled in the CAD/CAM program. The CAD/CAM students were divided into morning and afternoon sections. Abayang taught both sections in fall 1996 because the Employer had not found a permanent instructor. The two sections were combined for the spring 1997 semester due to student attrition. Beginning September 8, 1997, the Employer hired a second full-time training specialist, David Yeh (Yeh), to teach an afternoon section. The Employer also hired a part-time instructor, Younker Chyu, to teach evening CAD/CAM classes.

The Union filed a grievance on Abayang's behalf on February 16, 1998, alleging that WSTI Dean Guadalupe Reyes attempted to force Abayang's collaboration in the fraudulent awarding of grades and credits for a course that was never taught. The Union filed two grievances on Abayang's behalf on November 17, 1998. One of the grievances alleged that Abayang had "been forbidden access to his place of work during normal working hours and in a manner which discriminates him from other employees." The other grievance contested the scheduling of Abayang's morning class from 8:00 a.m. to 1:00 p.m., which required Abayang, a diabetic, to teach for five consecutive hours.

During the 1998-1999 school year, WSTI Interim Dean Shirley Knazze (Knazze) held weekly meetings with the training specialists at WSTI. During these meetings, Knazze advised the training specialists that some classes would have to be cancelled if enrollment continued to be low. Knazze set a minimum enrollment of 20 students for any new class, except for machine shop.

On June 4, 1999, Knazze notified Abayang that his morning CAD/CAM classes and Yeh's afternoon classes were cancelled due to low enrollment. Knazze told Abayang that seven students had signed up for his class by that date, and eight for Yeh's class. Summer classes were scheduled to start on June 7. In a memo to Daley College Interim President Warden dated June 7, 1999, Knazze recommended that the Employer close five programs at WSTI, including the CAD/CAM, due to low enrollment. In a separate memo to Warden on the same date, Knazze recommended that the Employer dismiss Abayang and other training specialists who taught the programs. At its July 1, 1999 meeting, City Colleges' Board of

Directors approved the dismissal of Abayang and the other training specialists whose programs were being closed at WSTI.

## II.

Abayang's exceptions contain documents that were not presented during the hearing in this matter. As an adjudicatory body, the Board is limited to consider only the evidence contained in the record. To consider evidence that was not previously presented to the Administrative Law Judge would prejudice the opposing party. Eastern Illinois University (Board of Governors), 11 PERI 1008, Case No. 94-CA-0025-S (IELRB Opinion and Order, December 12, 1994); Fenton Community High School District 100, 5 PERI 1004, Case No. 87-CA-0009-C (IELRB Opinion and Order, November 29, 1988). Accordingly, we decline to consider these portions of Abayang's exceptions.

Abayang also attacks the credibility of the testimony of several witnesses in his exceptions. In the Recommended Decision and Order, ALJ Levin states, "The findings of fact that follow are based on the testimony and documentary evidence in the record that I have determined to be relevant and credible." It is the IELRB's policy not to reject an ALJ's credibility findings unless the clear preponderance of all relevant evidence convinces the IELRB that the findings are incorrect. Board of Regents of Sangamon State University, 6 PERI 1049, Case Nos. 89-CA-0030-S and 89-CA-0035-S (IELRB Opinion and Order, March 12, 1990), *aff'd sub nom. Board of Regents of Regency Universities v. IELRB*, 208 Ill. App. 3d 220, 566 N.E.2d 963 (4<sup>th</sup> Dist. 1991). That is not the case in this matter. As the trier of fact, ALJ Levin listened and observed each witness during the hearing. ALJ Levin witnessed the demeanor and credibility of the witnesses and based her credibility determinations on those observations. Accordingly, we find that ALJ Levin's credibility determinations must stand.

In order to establish a *prima facie* case that an educational employer has violated Section 14(a)(3) and (1) of the Act, the complainant must show that: (1) the employee engaged in union activity; (2) the employer was aware of that activity; and (3) the employer took adverse employment action against the employee that was motivated by the employee's union activity. Georgetown-Ridge Farm Community Unit School Dist. No. 4 v. IELRB, 239 Ill. App. 3d 428, 606 N.E.2d 667 (4<sup>th</sup> Dist. 1992); Hardin County Education Ass'n, IEA-NEA v. IELRB, 174 Ill. App. 3d 168, 528 N.E.2d 737 (4<sup>th</sup> Dist. 1988); Neponset Community Unit School Dist. No. 307, 13 PERI 1089, Case No. 96-CA-0028-C (IELRB Opinion and

Order, July 1, 1997). Once a *prima facie* case has been established, the burden shifts to the employer to demonstrate that it had a legitimate business reason for its actions and that the employee would have received the same treatment in the absence of his or her protected activity. City of Burbank v. ISLRB, 128 Ill. 2d 335, 538 N.E.2d 1146 (1989); Neponset, 13 PERI 1089.

In this case, Abayang engaged in union activity when the Union filed grievances on his behalf. The Employer was aware of this activity because it was a party to the grievances. The Employer took adverse action against Abayang by its decision to lay him off. However, Abayang has failed to establish that the Employer's decision to lay him off was motivated by his protected activity. In his exceptions, Abayang challenges the Employer's business decisions and management practices. However, he fails to except to the ALJ's finding that there was no evidence that the Employer's decisions were in any way related to his union activity.

Unlawful motivation may be inferred through the following factors: expressions of hostility toward unionization, together with knowledge of the employee's union activities; timing; disparate treatment or targeting of union supporters; inconsistencies between the reason offered by the employer for the adverse action and other actions of the employer; and shifting explanations for the adverse action. Burbank, 128 Ill. 2d 335, 538 N.E.2d 1146; See also, Neponset, 13 PERI 1089. In this case, the only factor present is timing. The CAD/CAM program was closed in summer 1999, the first opportunity Abayang had to begin a new class after he filed his two grievances in November 1998. However, timing alone is not enough to establish a *prima facie* case of discriminatory action. Hardin County Education Association, 174 Ill. App. 3d 168, 528 N.E.2d 737. For that reason, we affirm the ALJ's determination that Abayang failed to establish a *prima facie* case that the Employer violated Section 14(a)(3) of the Act and dismiss the Complaint in its entirety.

### **III.**

For the reasons discussed above, IT IS HEREBY ORDERED that the ALJ's Recommended Decision and Order is affirmed. The Complaint is dismissed in its entirety.

### **IV. Right to Appeal**

This is a final order of the IELRB. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to 115 ILCS 5/16(a), such review must be taken directly to the appellate court of the judicial district in which the IELRB maintains an office (Chicago or Springfield). “Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision.” 115 ILCS 5/16(a).

Decided: October 11, 2005  
Issued: October 13, 2005  
Chicago, Illinois

/s/ Lynne O. Sered  
Lynne O. Sered, Chairman

/s/ Ronald Ettinger  
Ronald Ettinger, Member

/s/ Bridget L. Lamont  
Bridget L. Lamont, Member

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