

**STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD**

In the Matter of:	)	
	)	
SIUC Faculty Association, IEA-NEA,	)	
	)	
Complainant,	)	
	)	
and	)	Case No. 2004-CA-0011-S
	)	
Board of Trustees of Southern Illinois University at	)	
Carbondale,	)	
	)	
Respondent.	)	

**OPINION AND ORDER**

On November 23, 2005, an Administrative Law Judge (“ALJ”) issued a Recommended Decision and Order in this case. The ALJ determined that the SIUC Faculty Association, IEA-NEA (“Association”) had not established a prima facie case that the Board of Trustees of Southern Illinois University at Carbondale (“University”) violated Sections 14(a)(3) and 14(a)(1) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq. (“Act”) when it non-reappointed John Jeffrey Gibbens. However, she determined that the University violated Sections 14(a)(5) and 14(a)(1) of the Act by failing and refusing to provide the Association certain information.

The Association filed exceptions to the ALJ’s conclusion that the University did not violate Sections 14(a)(3) and 14(a)(1) of the Act, together with a supporting brief, in which the Association referred to its post-hearing brief. The University filed a response to the Association’s exceptions. The University did not file exceptions to the ALJ’s conclusion that it violated Sections 14(a)(5) and 14(a)(1) of the Act.<sup>1</sup>

We have considered the ALJ’s Recommended Decision and Order, the Association’s exceptions and the parties’ briefs. We have also considered the record and applicable precedents. For the reasons in this Opinion and Order, we affirm the ALJ’s Recommended Decision and Order as modified.

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<sup>1</sup> Accordingly, we do not consider the issue of whether the University violated Sections 14(a)(5) and 14(a)(1). See *Peoria School District 150*, 12 PERI 1062, Case No. 95-CA-0022-S (IELRB Opinion and Order, June 26, 1996). The ALJ’s nonprecedential recommendation on this issue is final and binding on the parties. See *Illini Bluffs Community Unit District No. 327*, 14 PERI 1038, Case No. 96-CA-0022-S (IELRB, February 6, 1998).

## I.

We make the following findings of fact based on the ALJ's findings of fact and the hearing record. In order to assist the reader, we set forth the facts to the extent necessary to decide the issues presented.

The University is an educational employer within the meaning of Section 2(a) of the Act. The Association is an employee organization within the meaning of Section 2(c) of the Act. At all times relevant to this case, Gibbens was an educational employee within the meaning of Section 2(b) of the Act.

Gibbens was employed by the University as a tenure-track Assistant Professor in Library Affairs. He began working for the University on January 29, 2001. He was scheduled to submit his dossier for tenure review in fall 2006, so that the University could decide whether to grant him tenure by May 15, 2007. Assistant Professors must be notified at the end of a six-year probationary period whether they will be awarded tenure. (AX 2).<sup>2</sup>

Gibbens joined the Association a few days after he began working for the University. He served on various Association committees and task forces. Gibbens participated in Association leafleting at an October 2002 football game in the presence of University administrators, and also participated in informational picketing on two occasions in fall 2002. (Tr. 62-64). He engaged in various Association activities related to a potential strike that the Association was contemplating during fall 2002 and winter 2003.

Gibbens was the Association's Departmental Representative for the College of Library Affairs from September 2001 until May 31, 2004. He often signed emails to various University administrators with the title "Departmental Representative, SIUC Faculty Association, IEA-NEA." Gibbens also provided support to the effort of the Laborers' Union to organize library technical associates.

Gibbens frequently spoke up in favor of Association positions at meetings with University administrators present and would often wear Association buttons to those meetings. His comments during these meetings would often conflict with management's position on issues. Daren Callahan, the SIUC Morris Library Head of Cataloging, testified that David Carlson, who had become the Dean of Library Affairs in September 2001, would "bristle" at some of Gibbens' comments. However, the ALJ found that

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<sup>2</sup> In this Opinion and Order, we refer to the Association's exhibits as "AX \_\_," the University's exhibits as "RX \_\_," and the hearing transcript as "Tr. \_\_\_\_."

Callahan was not a credible witness.<sup>3</sup> After an open forum, Collections Coordinator Loretta Koch asked Gibbens whether he had any idea how aggressive he sounded during meetings. (Tr. 335).

On or about April 11, 2001, Gibbens attended a pre-tenure meeting with James Fox, the Interim Dean of Library Affairs, and Thyra Russell, the Associate Dean of Personnel and Technical Services. Gibbens received a letter dated April 17, 2001 summarizing the meeting from Fox and Russell. The letter noted that it was important for Gibbens to meet the University's requirement for research and publication, which was believed to be five or six articles in highly rated peer reviewed journals. Fox and Russell encouraged Gibbens to publish at least one article per year and informed him that he needed to show a progression of continued growth. They also stated that it was important for Gibbens to become involved in service both locally and nationally, and that committee involvement was important. (AX 19).

In or around February 2002, Gibbens received a merit evaluation. In the evaluation, Callahan encouraged Gibbens to try to put together an article for publication.

In spring 2002, Gibbens attended a social occasion at a local restaurant and bar, Library Affairs happy hour, with a friend. Carlson, attended the event with his wife. Carlson approached Gibbens and his friend and introduced Gibbens to his wife as the union mole.

In April 2002, Gibbens attended his second pre-tenure review meeting with Callahan, Russell and Carlson. Gibbens testified that, during the meeting, they discussed various research avenues he could pursue and that Russell was very firm about the need to have a publication in the second year. Russell and Carlson made it clear at this meeting that they were not satisfied with Gibbens' progress toward tenure or his research activity. Gibbens testified that he understood that it was important that he get a publication the second year. In a pre-tenure review letter dated April 29, 2002, Russell and Carlson stated that, due to Gibbens' lack of progress in the last year in writing and submitting articles or similar written work for publication, they had concerns and strong reservations about Gibbens' progress toward tenure. They also stated that it was important for Gibbens to become active on committees at either the national or regional level. (AX 25).

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<sup>3</sup> We adopt the ALJ's credibility findings. "It is the Board's policy not to overrule a Hearing Officer's resolution with respect to credibility unless the clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect," *Board of Regents of Sangamon State University*, 6 PERI 1049, Case Nos. 89-CA-0030-S, 89-CA-0035-S (IELRB, March 12, 1990), *aff'd*, 208 Ill.App.3d 220, 566 N.E.2d 963 (4<sup>th</sup> Dist. 1991).

During the summer of 2002, Collections Coordinator Koch told Gibbens that his continued activity would provoke her into an anti-union stance. (Tr. 75-78). At the time, it was in contention whether it was appropriate for Koch's position to remain in the bargaining unit. (Tr. 75-76).

During the election campaign involving the Laborers' Union, Carlson sent a letter dated August 26, 2002 to civil service employees. The letter stated, in pertinent part:

In this letter, I want to...explain why I am opposed.

...Moreover, the interests of the Union will not always match *your* needs and interests. In negotiations it can be in the interests of unions to bargain away certain rights or gains in return for concessions of interest to the Union. A good example is the "fair share" provision which requires those who do not wish to join the Union to pay money to the Union each month anyway. Economically, "fair share" is clearly in the interest of the Union; the Union may achieve it at your expense and the gain of other rights and benefits.

...Our ability to be flexible, to speak with you individually and directly, to move forward with improvements and changes we may all want and desire, will become constrained, formalized and filtered through this third party.

....

I hope and ask that you would vote against representation by the Laborers' Union.

(AX 38).

In April 2003, Gibbens attended his third pre-tenure review meeting with Callahan, Russell and Carlson. During the meeting, Russell very forthrightly expressed that Gibbens had not published adequately. There was discussion about how Gibbens' expectations had been reduced. Gibbens explained to Callahan, Russell and Carlson that he was not alarmed or panicked by the prospect of having to do his publications in a shortened time frame because he had customarily worked this way in his past academic roles. Nothing was said at that meeting about Gibbens' non-reappointment.

Gibbens received a pre-tenure review letter from Russell and Carlson dated April 25, 2003. The letter stated that, for the second year in a row, Gibbens had not shown any progress in the research area and that the concerns and strong reservations about his progression toward tenure were even greater. Carlson and Russell stated that Gibbens' plan to apply himself and catch up was critically flawed and that a hasty record of recent publications within a few years of review was not acceptable. The letter indicated that Gibbens could not meet the requirement of a consistent record of quality research and scholarship over time after more than two years of no progress or achievement in the area. The letter described Gibbens'

progress in the area of research and scholarly achievement as fundamentally weak and unacceptable. The letter also stated that Gibbens needed to become active on committees at either the national or regional level. The letter characterized Gibbens' progress in the area of service as critically weak and unacceptable. (AX 29).

In early May 2003, there was a meeting regarding the projected renovation of the library. (Tr. 102, 196). Gibbens questioned the University's plans during that meeting. (Tr. 103-04, 197). Gibbens and Building Planning Librarian James Fox had a caustic exchange. (Tr. 197). Phillip Howze, an SIUC Full Professor and Information Services Librarian in Library Affairs, testified that, as Gibbens began to speak, Associate Dean Russell "began to shake her head from left to right in disgust." The ALJ credited Howze's testimony that Russell shook her head from left to right as Gibbens began speaking, but did not credit the portion of his testimony that she did so in disgust.

On May 19, 2003, Gibbens received a letter notifying him that he was to be non-reappointed and that his employment would terminate on May 31, 2004. The letter stated that this action was being taken as a result of Gibbens' lack of progress in research and service. (AX 30). Many times, faculty members understand, based on the annual feedback, that they are not making adequate progress, and there is a collaborative process that results in the faculty members resigning. (Tr. 324). It is not clear from the record whether that process is initiated by the University or by the affected faculty members. This process did not take place with respect to Gibbens. (Tr. 335). Letters sent to other non-reappointed faculty demonstrate that non-reappointment decisions are made at varying times during the academic year. (RX E).

In his capacity as Departmental Representative, Gibbens met with Carlson, Russell and other University officials regarding the ongoing reorganization of the library in the hours before he received his notice of non-reappointment on May 19, 2003. During the meeting, Gibbens spoke out on a number of issues. (Tr. 59-60, 249-253).

The decision to non-reappoint Gibbens was made very soon after the April 25, 2003 pre-tenure review letter. (Tr. 304-05). The letter notifying Gibbens of his non-reappointment existed in file draft form for several days before the May 19, 2003 meeting regarding the reorganization of the library. (Tr. 306).

The Library Affairs Faculty Operating Paper states: “Each Library Affairs faculty member is expected to contribute to the mission and goals of Library Affairs through performance of assigned teaching (job performance), achievements in research and creative activity, and service (to the library, the University [including Faculty Association], and the library profession).” (AX 3; RX V).

Kevin Rundblad was a tenure-track Library Affairs faculty member. He held the rank of Assistant Professor. (AX 51). His tenure due date was May 15, 2004. In addition, a letter dated April 25, 2003 concerning Rundblad’s progress toward promotion and tenure stated that he was in his fifth year at the University. (AX 49). Therefore, his first year was 1998-99. Rundblad was not a member of the Association.

Rundblad’s April 25, 2001 pre-tenure review letter states:

As we also discussed, it is important that you meet the University’s requirements for research and publication, which we believe to be five or six articles in highly-rated peer reviewed journals....You need to show a progression of continued growth through your research and publication efforts....Approximately half way through your probationary period, you are less than half way toward meeting those requirements, and you will need to concentrate your efforts on them in the time remaining.

The letter noted Rundblad’s involvement in LITA interest groups.<sup>4</sup> (AX 47).

Rundblad’s April 29, 2002 pre-tenure review letter states:

With regard to research, although there is no specific formula for a successful dossier, we believe five or six articles in highly-rated peer reviewed journals (or the equivalent in book chapters) to be a good model to follow. We have serious concerns about your progress in this area. You are over halfway through your probationary period, and have no published work. As we stated in our meeting, it is important that your dossier shows evidence of your potential for continued growth. The best way to demonstrate this is through a record of scholarly work throughout the probationary years.

The letter recognized Rundblad’s continued work with the LITA Human/Machine Interface Interest Group and his past role as Co-Chair. (AX 48).

Rundblad’s April 25, 2003 pre-tenure review letter states:

In our letter to you of April 29, 2002, we noted that you had no published work to represent your research. After receipt of that letter, you responded to clarify that you did in fact have one juried article in a scholarly journal as well as a conference report. You were correct, and we regret this oversight. This year, your vita shows that you have an additional article to be published in a peer-reviewed journal. However, as we indicated in our meeting of April 16, 2003, you are in your fifth year at the University and this publication record is not satisfactory to meet the requirements of promotion and tenure.

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<sup>4</sup> LITA is the Library and Information Technology Association division of the American Library Association.

(AX 49). Thus, at some unascertainable date before April 29, 2002, Rundblad published one juried article in a scholarly journal, as well as a conference report. The April 25, 2003 letter also stated that, since 2001, Rundblad had not had any active participation in professional associations, and that his progress in the area of service was inadequate to meet the requirements of promotion and tenure. (AX 49).

Rundblad submitted his resignation on June 27, 2003. (AX 51). Carlson testified that, if Rundblad had returned to campus, non-reappointment would have been an issue.<sup>5</sup>

Like Gibbens, Phillip Howze was active in the Association. In fall 2002, Howze submitted his dossier for early promotion. He was not awarded promotion. Howze was awarded tenure effective July 1, 2004. At that time, he was recommended for tenure and promotion by Dean Carlson. (RX Z). Between 2001 and the summer of 2003, Gibbens and Howze were the only active union members in Library Affairs who were not tenured. (Tr. 27-28, 190).

Jody Fagan was employed by the University in Library Affairs. She was not an Association member. Fagan submitted her dossier for promotion during the 2002-03 academic year and was awarded promotion.

## **II.**

The ALJ determined that the Association had not established a prima facie case that the University violated Sections 14(a)(3) and 14(a)(1) of the Act. She found that Gibbens engaged in union activity, of which the University was aware. She also found that the University took adverse action against Gibbens when it issued the notice of non-reappointment. However, she determined that the only evidence of anti-union animus was timing, and that timing alone is not sufficient to establish a prima facie case. Accordingly, she recommended that the Complaint be dismissed with respect to the allegation that the University violated Sections 14(a)(3) and 14(a)(1) of the Act.

## **III.**

The Association contends that it proved that the University violated Sections 14(a)(3) and 14(a)(1) of the Act when it non-reappointed Gibbens. The Association argues that it established a prima facie case of discrimination. The Association contends that the ALJ failed to include details of Gibbens' union activity that are necessary to develop a context in which the evidence of anti-union motivation can be

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<sup>5</sup> As the ALJ noted, Daren Callahan cannot be regarded as similarly situated to Gibbens because her second year of employment with the University occurred more than 10 years before Gibbens' second year.

analyzed. The Association asserts that the ALJ's findings of fact concerning statements hostile to union activity were incomplete. The Association argues that it proved expressions of hostility, and that Section 14(c) of the Act does not prohibit the Illinois Educational Labor Relations Board ("IELRB") from considering Dean Carlson's statements in his August 26, 2002 letter as evidence that Carlson was hostile to unions and union activity. The Association asserts that the ALJ's findings of fact concerning Kevin Rundblad were incomplete, and that a full review of the evidence establishes that Rundblad was similarly situated to Gibbens. The Association argues that it showed that Gibbens was treated differently from similarly situated individuals. The Association contends that it established a pattern of targeting union activists. The Association contends that the University's alleged legitimate motivation was not in fact legitimate. The Association argues that, assuming that the University had a legitimate motivation, the University cannot meet its burden of proving that Gibbens would have been non-reappointed in the absence of his union activity. The Association argues as to appropriate remedies.

The University contends that the Association failed to meet its burden of proof in this case. The University argues that the Association failed to prove an illegitimate motive for the University's decision to non-reappoint Gibbens. The University argues that, because the Association failed to fulfill its burden of establishing a prima facie case, the ALJ properly did not consider the issues of pretext and dual motive. The University asserts that the ALJ did not overlook Gibbens' union activity, and that the ALJ correctly evaluated the Association's evidence. The University contends that, taken together, the allegedly hostile comments and actions do not evidence anti-union animus. The University argues that the Association failed to meet its burden of proof to show disparate treatment based on union membership. The University contends that the Association failed to prove that the University targeted union activists. The University also argues that the Association presented insufficient evidence that the University cannot show that it would have non-reappointed Gibbens in the absence of his union activity.

#### **IV.**

The issue in this case is whether the University violated Section 14(a)(3) and, derivatively, Section 14(a)(1) of the Act when it non-reappointed Gibbens. Section 14(a)(3) prohibits educational employers and their agents or representatives from "[d]iscriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization."



Section 14(a)(1) prohibits educational employers and their agents or representatives from “[i]nterfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act.” We conclude that the Association has established a prima facie case of a Section 14(a)(3) and derivative Section 14(a)(1) violation, but that the University did not in fact violate Section 14(a)(3) and, derivatively, Section 14(a)(1) of the Act.

In order to establish a prima facie case that an educational employer has violated Section 14(a)(3) of the Act, a Complainant must show that 1) the employee engaged in activity protected by Section 14(a)(3), 2) the employer was aware of that activity, and 3) the employer took adverse action against the employee for engaging in that activity. *See Board of Education, City of Peoria School District No. 150 v. IELRB*, 318 Ill.App.3d 144, 741 N.E.2d 690 (4<sup>th</sup> Dist. 2000); *Bloom Township High School District 206 v. IELRB*, 312 Ill.App.3d 943, 728 N.E.2d 612 (1<sup>st</sup> Dist. 2000). Section 14(a)(3) applies to discrimination on the basis of union activity. *Bloom Township*.

Here, the first two parts of the test are clearly met. Gibbens engaged in extensive union activity, and Dean Carlson, who initiated the decision to issue a letter of non-reappointment, was aware of that activity. The issue is whether the Association has met the third part of the test, i.e., whether the University’s action against Gibbens had an anti-union motivation.

Anti-union motivation may be inferred from various factors, including employer expressions of hostility toward union activity, together with knowledge of the employee’s union activity; timing; disparate treatment or a pattern of targeting union supporters for adverse employment action; inconsistencies between the reasons the employer offers for its action and other actions by the employer; and shifting explanations for the employer’s action. *City of Burbank v. ISLRB*, 128 Ill.2d 335, 538 N.E.2d 1146 (1989). Here, Carlson’s reference to Gibbens as the “union mole” reflected hostility toward Gibbens’ union activity. The comment was made at a social gathering to which Gibbens’ union activity was not relevant, and reflected Carlson’s concern about that activity. This comment is sufficient to establish a prima facie case.

The Association argues that various other facts show anti-union motivation. The Association argues that anti-union animus is demonstrated by Collections Coordinator Koch’s statement to Gibbens that his continued activity would provoke her into an anti-union stance and her question to him as to whether he

had any idea how aggressive he sounded. The Association also argues that Carlson would “bristle” at Gibbens. However, the Association did not show that Koch was a member of management, as would be required for her statements to be evidence of the University’s motivation. The testimony that Carlson would “bristle” at Gibbens’ comments was given by Callahan, whom the ALJ found was not a credible witness.

The Association contends that Carlson’s letter during the Laborers’ Union’s election campaign demonstrates anti-union animus. In finding to the contrary, the ALJ relied on the language of Section 14(c) of the Act, which provides that “[t]he expressing of any views, argument, opinion or the dissemination thereof...shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.”

Federal courts have applied Section 8(c) of the National Labor Relations Act, which is similar to Section 14(c) of the Illinois Educational Labor Relations Act, in determining whether employer statements are evidence of anti-union animus. In *NLRB v. Eastern Smelting & Refining Corp.*, 598 F.2d 666, 670 (1<sup>st</sup> Cir. 1979), *overruled on other grounds*, *NLRB v. Wright Line*, 662 F.2d 899 (1<sup>st</sup> Cir. 1981), *cert. denied*, 455 U.S. 989 (1982), the court stated: “Dislike of unions is not uncommon among employers, and not only do principles of free speech permit it to be voiced, but so does Section 8(c) of the Act...Rather, the employer must have exhibited opposition not merely to the union, but to lawful activity by its employees in pursuit of their objectives.” Similarly, the court in *Brown & Root, Inc. v. NLRB*, 333 F.3d 628, 639 (5<sup>th</sup> Cir. 2003) stated that “a lawful statement of a lawful position does not in itself allow inference that one is willing to enforce that position through illegal means.”<sup>6</sup> Under this standard, Carlson’s letter does not demonstrate anti-union motivation.

Here, Carlson’s letter is protected by Section 14(c). Carlson’s letter did not contain threats of reprisal or force or promises of benefits, but expressed lawful views. The letter did not express opposition to employees engaging in protected activity, but merely to the Laborers’ Union becoming the exclusive representative of the library technical associates. This is unlike the cases cited by the Association, where hostility toward protected activity was displayed. Moreover, Carlson’s letter lawfully stated a lawful

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<sup>6</sup> The court in *Brown & Root* acknowledged National Labor Relations Board cases allowing non-coercive statements protected by Section 8(c) to be used as evidence of an unfair labor practice in limited circumstances. These cases, however, are contrary to the federal court case law. Moreover, these cases do not present statements similar to Carlson’s statements.

position. *Cf. Macon-Piatt Regional Office of Education*, 18 PERI 1146, Case No. 2002-RC-0009-S (IELRB, September 11, 2002) (statement that exclusive representation by union would prevent individual negotiations permissible campaign conduct). The fact that Carlson was opposed to the Laborers' Union becoming the exclusive representative of the library technical associates does not in itself permit an inference that he was willing to use unlawful means against union activists.

The Association contends that the fact that Rundblad was not non-reappointed establishes disparate treatment. However, the date when Rundblad published one juried article in a scholarly journal, as well as a conference report, cannot be determined from the record. Therefore, it cannot be determined whether Gibbens and Rundblad were similarly situated with respect to research at the close of their second years of employment by the University. Moreover, the Association has not proven that Gibbens' record of service was comparable to that of Rundblad.

The Association argues that Gibbens was also disparately treated in that the University did not engage in a collaborative process with him that could have resulted in his resigning, rather than being non-reappointed. However, it is not clear from the record whether that process is initiated by the University or the affected faculty members. Therefore, the fact that such a process did not occur with respect to Gibbens does not establish disparate treatment.

The Association contends that there is a pattern of targeting union activists in that the University denied early promotion to Phillip Howze, another Association activist. However, there is insufficient evidence to infer that Howze and Fagan, the non-Association member who was promoted, were similarly situated. Moreover, Howze was soon afterwards awarded tenure. At that time, Dean Carlson recommended promotion and tenure for Howze. Therefore, it cannot be inferred that the University targeted union activists.

The ALJ determined that the timing of Gibbens' non-reappointment was suspicious. However, the timing of his reappointment does in fact not create an inference for or against anti-union motivation. The decision to non-reappoint Gibbens took place before the May 19, 2003 meeting regarding the reorganization of the library, and it cannot be determined whether the decision took place after the early May 2003 meeting regarding the proposed renovation of the library. The Association argues in its post-hearing brief that the University non-reappointed Gibbens at the first opportunity it had to affect his

employment rights, but letters sent to other non-reappointed faculty demonstrate that non-reappointment decisions are made at varying times during the academic year.

Notwithstanding the fact that anti-union animus cannot be inferred from the above facts, a prima facie case has been established based on Dean Carlson's reference to Gibbens as the "union mole." Where a prima facie case has been established, the employer can establish that it did not commit an unfair labor practice by demonstrating that it would have taken the adverse action for a legitimate business reason notwithstanding its anti-union animus. *City of Burbank, supra*. First, it must be determined whether the reasons the employer offers for its action are bona fide or pretextual. *Id.* If the offered reasons were not in fact relied on, they are a pretext, and it can be concluded that the employer violated the Act. *See id.* When, on the other hand, the employer asserts legitimate reasons for its action and is determined to have relied on them in part, then the case is one of "dual motive," and the employer must show by a preponderance of the evidence that it would have taken the adverse action notwithstanding the employee's union activity. *Id.*

The University has shown that it had a legitimate reason for Gibbens' non-reappointment that was bona fide, rather than pretextual. The University's stated reason for the non-reappointment was Gibbens' poor record in research and service. This was a legitimate reason on which the University in fact relied, as is shown by the statement in the Library Affairs Operating Paper that each faculty member is expected to contribute to the mission and goals of Library Affairs through, among other things, achievements in research and creative activity and service to the library profession. In addition, the importance of research and service was expressed to Gibbens in the April 17, 2001 pre-tenure review letter, which was written before Gibbens engaged in visible union activity. The same concerns were also expressed to Rundblad, who was not an Association member.

The University has also demonstrated by a preponderance of the evidence that Gibbens would have been non-reappointed notwithstanding his union activity. There is ample documentation of the importance of research and service to the University. Therefore, we conclude that, while the Association has established a prima facie case, the University has established that it did not violate the Section 14(a)(3) and, derivatively, Section 14(a)(1) of the Act.

**VI.**

The University did not violate Section 14(a)(3) and, derivatively, Section 14(a)(1) of the Act when it non-reappointed Gibbens. The ALJ's Recommended Decision and Order is affirmed as modified. Insofar as it alleges a Section 14(a)(3) and derivative Section 14(a)(1) violation, the Complaint is dismissed.

**VII. 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 Board 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: May 9, 2006  
Issued: May 19, 2006  
Chicago, Illinois

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

/s/ Ronald F. Ettinger  
Ronald F. Ettinger, Member

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

/s/ Michael H. Prueter  
Michael H. Prueter, Member

/s/ Jimmie E. Robinson  
Jimmie E. Robinson, Member

Illinois Educational Labor Relations Board  
160 North LaSalle Street, Suite N-400  
Chicago, Illinois 60601  
Telephone: (312) 793-3170