STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
John Green,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. 2004-CA-0040-C
	)	
	)	
Black Hawk College,	)	
	)	
Respondent	)	

OPINION AND ORDER

On December 22, 2003, John Green (Green or Charging Party) filed unfair labor charges against Black Hawk College (Employer or Respondent) alleging that the Employer violated Sections 14(a)(1), 14(a)(3) and 3(a) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et. seq. (2002) (Act or IELRA) by terminating him and preventing him from joining and being represented by the Illinois Federation of Teachers, Local 1836 (IFT or Union).

After investigation, the IELRB's Executive Director issued a Recommended Decision and Order (EDRDO) dismissing the portion of Green's charges alleging that the Employer violated Sections 14(a)(1) and 14(a)(3) by terminating him for his protected activity. The section of the EDRDO entitled "V. Recommended Order" indicated that the unfair labor practice charge was also dismissed to the extent that it alleged that the Employer violated Section 14(a)(1) by preventing Green from joining the Union or from being represented by the Union during 2002-2003. However, the Executive Director issued a Complaint and Notice of Hearing with regard to Green's allegation that the Employer violated Section 14(a)(1) of the Act by preventing him from being represented by the Union during 2002-2003. Green and the Employer filed exceptions to the Executive Director's Recommended Decision and Order. The Employer filed a response to Green's exceptions. For the reasons discussed below, we reverse the portion of the EDRDO dismissing the charge as to the extent that it alleges that the Employer violated Section 14(a)(1) of the Act by preventing Green from being represented by the Union in 2002-2003, strike the Respondent's exceptions and affirm the Executive Director's Recommended Decision and Order dismissing the portion of Green's unfair labor practice charge alleging that the Employer violated Sections 14(a)(1) and 14(a)(3) of the Act by terminating Green in retaliation for protected activity.

I.

The Respondent hired Green as the Manager of Software Systems Support in 1990. In 1999, Green was transferred from the Information Technology Department to the Business and Industries Center to the position of Advanced Technology Consultant. Green reports that part of his duties included instruction. From July 2001 until his termination, Green taught credit and non-credit courses. During his employment with the Respondent, Green was not considered by the Respondent to be part of the bargaining unit represented by the Union.

The Union was certified as the exclusive representative of a bargaining unit consisting of full-time faculty and professional/technical employees employed by the Respondent in 1996. The August 2001- July 2005 collective bargaining agreement between the Union and the Respondent states that the normal full-time faculty workload is 30 equated hours, which is determined by academic year. Green taught 27 hours during the 2001-2002 academic year and 39 hours during the 2002-2003 academic year. Green says that on or around June 15, 2003, he had a discussion with former Union officer Jim Johnson (Johnson) about the number of hours he had been teaching and that these were faculty classes covered by the collective bargaining agreement.

Green met with his supervisor, Brenda Brown (Brown) in May 2003 for his annual evaluation. During that meeting, Green reports that he told Brown that he had taught approximately over 30 hours that academic year and the previous academic year. The Employer claims that Green did not inform Brown during the meeting or at any other time that he wanted to be considered as faculty or that he thought he was teaching a full-time load. Green does not assert that he expressed his desire to be part of the bargaining unit to Brown.

The Employer began to discuss the status of Green's position no later than May 2003. The decision to terminate Green's position was written into the budget on June 6, 2003 and was presented and approved by the Employer's Board of Trustees in mid-June 2003. Green was notified by the Respondent of his release on June 30, 2003, effective that day.

Green reports that he spoke with Union President Joan Eastlund (Eastlund) on or about July 15, 2003, about whether he would have been in the full-time faculty bargaining unit covered by the collective bargaining agreement given the number of hours he had been teaching.

According to the Employer, its agents first learned that Green was asserting he should be part of the bargaining unit in mid-July 2003.

II.

1. Whether Executive Director intended to dismiss the portion of the charges alleging that the Employer violated the Act by preventing Green from being represented by the Union in 2002-2003.

In his exceptions, Green argues that the findings in the Executive Director's Recommended Decision and Order are inconsistent with regard to whether the Employer violated Section 14(a)(1) by preventing him from being represented by the Union during 2002-2003.

Page 8 of the EDRO under V. Recommended Order reads, "The unfair labor practice is also dismissed to the extent that it alleges that the College violated Section 14(a)(1) of the Act by preventing Green from joining the Federation or from being represented by the Federation during 200*2*-200*3*." [emphasis supplied] However, on page 8 in the last paragraph of the Discussion section of the EDRDO, the Executive Director addresses Green's allegations that the Employer violated the Act by preventing him from joining and being represented by the Union and states,

> [T]here is no evidence that the College prevented Green from joining the Federation. Nor is there a plausible legal theory that the College violated the Act by preventing Green from being represented by the Federation during 200*1*-200*2*. …Green has not established an unrebutted prima facie case with respect to these allegations. A Complaint, however, is issuing on the allegation that the College violated Section 14(a)(1) of the Act by preventing Green from being represented by the Federation during 200*2*-200*3*. [emphasis supplied]

The Complaint and Notice of Hearing states that the Employer violated Section 14(a)(1) by preventing Green from being represented by the Union during 2002-2003.

A reading of the above referenced sections of the EDRDO and the Complaint, suggests that the last sentence of Section V. of the EDRDO was simply a typo and not indicative of the intended recommended order in this case. For that reason, we reverse the portion of the EDRDO stating that the unfair labor practice charge is dismissed to the extent that it alleges that the Employer violated Section 14(a)(1) of the Act by preventing Green from being represented by the Union during 2002-2003. We also hold that the portion of the unfair labor practice charge alleging that the Employer violated Section 14(a)(1) of the Act by preventing Green from being represented by the Union during 200*1*-200*2* is dismissed.

2. Whether Green has established a prima facie case that the Employer terminated him in retaliation for protected activity in violation of Sections 14(a)(1) and 14(a)(3) of the Act.

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." Under Section 14(a)(3), employers may not

discriminate with regard to hire, tenure or any term or condition of employment in order to discourage or encourage membership in a union.

Where, as here, an alleged violation of Section 14(a)(1) is based on the same conduct as an alleged violation of Section 14(a)(3), the Section 14(a)(1) violation is essentially a derivative violation. Carmi Community Unit School District 5, 6 PERI 1020, Case No. 88-CA-0024-S (IELRB Opinion and Order, January 11, 1990). Where an employer's conduct is alleged to violate both sections, the applicable test is the one used in Section 14(a)(3) cases requiring proof of proper motivation of the employer's part. Bloom Township High School Dist. 206 v. IELRB, 312 Ill. App. 3d 943, 728 N.E.2d 612 (1st Dist. 2000). In order to establish a *prima facie* violation under that test, Green must have established that: 1) he engaged in protected activity, 2) the Employer was aware of that activity, and 3) the Employer took adverse action against him for engaging in that activity. University of Illinois at Urbana (Rochkes), 17 PERI 1054, Case Nos. 00-CB-0006-S, 01-CA-0007-S (IERLB Opinion and Order, June 19, 2001).

In this case, Green engaged in protected activity when he sought Eastlund's assistance on or about July 15, 2003. An employee engages in union activity when he or she seeks union assistance with respect to his or her employment. Georgetown-Ridge Farm Community Unit School Dist. No. 4 v. IELRB, 239 Ill. App. 3d 428, 606 N.E.2d 667 (4th Dist. 1992); Southwestern Illinois College, 20 PERI 61, Case No. 2000-CA-0043-S (IELRB Opinion and Order, May 11, 2004), aff'd No. 1-04-1820 (Ill. App. 1st Dist. June 16, 2005) (unpublished order). The Employer admits that it became aware of Green's desire to be part of the bargaining unit in mid-July 2003. The Employer took adverse action against Green when it released him on June 30, 2003. However, because Green engaged in protected activity after he was released, his release could not have been motivated by this protected activity.

Green has failed to establish a *prima facie* case that the Employer violated the Act when it released him from his employment. Accordingly, we affirm the portion of the EDRDO dismissing the portion of Green's charges alleging that the Employer violated Sections 14(a)(1) and 14(a)(3) by terminating him for his protected activity.

3. Whether the Board should strike the Respondent's Exceptions to the EDRDO.

The Executive Director issued a Complaint and Notice of Hearing in this case pertaining only to the issues of law and fact raised by the Respondent's prevention of Green from being represented by the Union during 2002-2003. The Respondent and the Charging Party filed exceptions to the EDRDO. Section 1120.30(c) of the Rules

concerning exceptions to an EDRDO in unfair labor practice proceedings states that "[t]he charging party may file exceptions to the Executive Director's dismissal of the charge." [emphasis added]. In this case, Black Hawk College is the respondent rather than the charging party.

An Executive Director's issuance of a complaint is not a final order appealable to this Board. University of Illinois at Urbana-Champaign (Otto), 10 PERI 1134, Case Nos. 94-CA-0075-S, 94-CA-0008-S, 94-CA-0010-S (IELRB Opinion and Order, November 18, 1994). Neither the Act nor the Rules allow a respondent an opportunity to file exceptions to a Complaint and Notice of Hearing. The Respondent's recourse is to present its evidence to the Administrative Law Judge at hearing. For that reason, we strike the Respondent's exceptions.

III.

For the reasons discussed above, IT IS HEREBY ORDERED that the Executive Director's Recommended Decision and Order is reversed in part and affirmed in part.

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: September 13, 2005
Issued: September 27, 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

/s/ Michael H. Prueter
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