STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Bessie Mangrum,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2005-CA-0051-C
	)	
Chicago Board of Education,	)	
	)	
Respondent.	)	
_____	)	
	)	
Bessie Mangrum,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. 2005-CB-0014-C
	)	
Chicago Teachers Union,	)	
	)	
Respondent.	)	

OPINION AND ORDER

On January 26, 2005, the Executive Director issued a Recommended Decision and Order concerning the above-referenced charges filed by Bessie Mangrum. The charges alleged that the Chicago Board of Education ("CBE") denied Mangrum a pay increase and that the Chicago Teachers Union ("Union") did not properly represent her during a grievance hearing. [1] The Executive Director found that the CBE's adverse action against Mangrum occurred before her union activity, and that Mangrum had not provided any evidence that the CBE's action was motivated by anti-union animus or protected concerted activity. The Executive Director also found that the Union had not engaged in intentional misconduct. Accordingly, he dismissed the charges.

Mangrum filed exceptions to the Executive Director's dismissal of her charges. The CBE and the Union did not file a response to her exceptions.

[1] Mangrum did not specify which subsection of Section 14(a) of the Act she was alleging that the CBE had violated or which subsection of Section 14(b) of the Act she was alleging that the Union had violated. Like the Executive Director, we treat her charges as alleging violations of Sections 14(a)(3) and 14(b)(1) of the Act. In addition, we treat her charge against the CBE as alleging a violation of Section 14(a)(1) of the Act. No other subsections of Section 14(a) or 14(b) are applicable.

We have considered the Executive Director's Recommended Decision and Order, Mangrum's exceptions, the investigative record and applicable precedents. For the reasons in this Opinion and Order, we affirm the Executive Director's Recommended Decision and Order.

I.

Mangrum was employed by the CBE as a substitute teacher at O'Keeffe Elementary School. At the beginning of the 2002-2003 school year, Mangrum worked as a day-to-day provisional substitute teacher. In February 2003, Mangrum began working as a full-time provisional teacher. Mangrum never received the pay increase that should have accompanied the new position.

Mangrum asserts that, in June 2003, O'Keeffe Principal Carolyn Townes told her that she deserved a pay increase and that she would take care of the matter. However, when Mangrum began the 2003-2004 school year, she was still being paid at the rate for a day-to-day provisional substitute, although she was working as a full-time provisional teacher. In a letter to Townes dated October 31, 2003, Mangrum asked Townes about the status of her pay increase. On November 2, 2003, Townes responded that a letter would go in the mail that day. In December 2003, Mangrum again asked Townes about the status of her pay increase. In response, Townes provided Mangrum with a copy of the letter she has sent to the CBE's Bureau of Human Resources and Substitute Services ("Sub Center"), and encouraged Mangrum to call the Sub Center. According to Mangrum, the Sub Center Supervisor, Angela Simpson, denied Townes' request that Mangrum receive a pay increase.

On December 11, 2003, Mangrum sent a letter to Cheryl Nevins, the CBE's Director of Labor Relations, asking about a pay increase. In a letter dated January 6, 2004, Nevins responded that Mangrum was being paid properly in accordance with her designation as a provisionally certified day-to-day substitute. Nevins stated that the only way Mangrum could receive a pay increase would be for her principal to ask the Department of Human Resources to staff her in a higher paying teacher classification.

On April 1, 2004, Mangrum wrote a letter to the Union stating that she wished to file a grievance because she still had not received the pay increase. On May 6, 2004, in response to the request of Union representative Sara Echevarria, Mangrum sent the Union documentation in support of her grievance. On May 13, 2004, the Union filed a grievance on Mangrum's behalf concerning the CBE's refusal to grant her the pay increase. On June 18, 2004, the CBE's Director of Labor Relations found that Mangrum had been

paid in accordance with her designation as a provisional substitute teacher and denied the grievance. The Union filed a grievance appeal on June 21, 2004.

A grievance hearing was held on September 28, 2004. When Mangrum arrived at the grievance hearing, she learned that Jon Hawkins had replaced Echevarria as her Union representative. According to Mangrum, Hawkins did not have any of the evidence that she had previously submitted to Echevarria. Mangrum asked Hawkins what had happened to her evidence. Mangrum asserts that Hawkins told her that they should say that her evidence was misplaced because the Union could not find her evidence after Echevarria left the Union. On October 5, 2004, the CBE denied Mangrum's grievance.

II.

Mangrum challenges the Executive Director's Recommended Decision and Order. She argues that it does not impose any liability on the CBE and the Union concerning her claim. She contends that the Union "botched" her grievance hearing and that the CBE has taken an improper position. She argues that the collective bargaining agreement has been violated, and that she has been "grossly taken advantage of."

III.

In processing unfair labor practice charges, the Board "must decide whether its investigation establishes a prima facie issue of law or fact sufficient to warrant a hearing of the charge," *Lake Zurich School District No. 95*, 1 PERI 1031, Case No. 84-CA-0003 (IELRB, November 30, 1984). In order for a complaint to be issued, "the investigation must disclose adequate credible statements, facts or documents which, if substantiated and not rebutted in a hearing, would constitute sufficient evidence to support a finding of a violation of the Act," *Village of Skokie v. ISLRB*, 306 Ill.App.3d 489, 714 N.E.2d 87, 90 (1st Dist. 1999), *quoting Lake Zurich*; *see* 80 Ill. Adm. Code 1105.100(b). In addition, the evidence must support a facially plausible legal theory or argument, reasonably based on the Act. *Chicago School Reform Board of Trustees*, 16 PERI 1043, Case No. 99-CA-0003-C (IELRB, April 17, 2000).

Charge Against the CBE

Section 14(a)(1) of the Act prohibits educational employers and their agents or representatives from "interfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act." The rights guaranteed under the Act, as set forth in Section 3, are "organiz[ing], form[ing], join[ing], or assist[ing] in employee organizations or engag[ing] in lawful concerted activities for the purpose of

collective bargaining or other mutual aid and protection or bargain[ing] collectively through representatives of their own free choice and…refrain[ing] from any or all such activities." Thus, in order for there to be a violation of Section 14(a)(1), there must be a link to activities such as those described in Section 3. In Section 14(a)(1) cases involving alleged employer retaliation for protected activity, a prima facie case is established by showing that the employee engaged in protected concerted activity, that the employer knew of the protected concerted activity, and that the adverse employment action was motivated by the protected concerted activity. *Neponset Community Unit School District No. 307*, 13 PERI 1089, Case No. 96-CA-0028-C (IELRB, July 1, 1997).

Mangrum's requests for a pay increase may have constituted protected concerted activity, because she may have been asserting a right under the collective bargaining agreement to a higher rate of pay. Under *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822 (1984) and *Board of Education of Schaumburg Community Consolidated School District 54 v. IELRB*, 247 Ill.App.3d 439, 616 N.E.2d 1281 (1st Dist. 1993), asserting a right under a collective bargaining agreement is concerted activity. The CBE must have known of Mangrum's protected concerted activity, because it responded to her requests.

However, there is insufficient evidence that the CBE took adverse action against Mangrum for engaging in protected concerted activity. The only adverse action reflected in this case is the CBE's denial of a pay increase. There is insufficient evidence that the CBE was improperly motivated in taking that action. Improper motivation may be inferred from a variety of factors, such as an employer's expressions of hostility toward protected activity, together with knowledge of the employee's protected activity; timing; disparate treatment or a pattern of conduct that targets employees who engage in protected activity; inconsistencies between the reason the employer gives for its action and other actions of 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); *Neponset*. The only such factor that may be present here is timing. Timing alone is not sufficient to establish a prima facie case. *See Hardin County Education Association v. IELRB*, 174 Ill.App.3d 168, 528 N.E.2d 737 (4th Dist. 1988); *Lake Zurich School District No. 95*, 1 PERI 1031, Case No. 84-CA-0003 (IELRB, November 30, 1984). Accordingly, Mangrum has not established a prima facie case of a Section 14(a)(1) violation.

Section 14(a)(3) of the Act prohibits educational employers from "discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization." A prima facie case of a violation of Section 14(a)(3) is established by showing that the employee was engaged in activity protected by Section 14(a)(3), that the employer was aware of that activity, and that the employer took adverse action against the employee for engaging in that activity. *Board of Education, City of Peoria School District No. 150 v. IELRB*, 318 Ill.App.3d 144, 741 N.E.2d 690 (4th Dist. 2000); *Bloom Township High School District 206 v. IELRB*, 312 Ill.App.3d 943, 728 N.E.2d 612 (1st Dist. 2000). Section 14(a)(3) applies to discrimination based on union activity. *Bloom Township*.

Mangrum engaged in union activity by filing a grievance through the Union. *City Colleges of Chicago (Wright College)*, 11 PERI 1055, Case No. 95-CA-0012-C (IELRB, May 26, 1995). The CBE necessarily was aware that Mangrum had filed a grievance. However, the CBE's adverse action against Mangrum—that is, denying her a pay increase—occurred before Mangrum filed her grievance. Thus, that adverse action cannot have been motivated by Mangrum filing her grievance. Therefore, Mangrum has not established a prima facie case of a Section 14(a)(3) violation.

Mangrum argues that the collective bargaining agreement has been violated. However, a violation of a collective bargaining agreement is not in itself an unfair labor practice. The IELRB dismisses unfair labor practice charges that claim only that the collective bargaining agreement has been violated. *West Chicago School District 33*, 5 PERI 1091, Case Nos. 86-CA-0061-C, 87-CA-0002-C (IELRB, May 2, 1989), *affirmed 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, March 18, 1986).

Mangrum has not established a prima facie case of a violation of Section 14(a)(1) or 14(a)(3) of the Act. Accordingly, we dismiss Mangrum's unfair labor practice charge against the CBE.

Charge Against the Union

Section 14(b)(1) of the Act prohibits unions, their agents or representatives, and educational employees from

> Restraining or coercing employees in the exercise of the rights guaranteed under this Act, provided that a labor organization or its agents shall commit an unfair labor practice under this paragraph in duty of fair representation cases only by intentional misconduct in representing employees under this Act.

Under this language, a union does not violate its duty of fair representation unless it engages in intentional misconduct. In order to establish that a union has engaged in intentional misconduct, a charging party must present "substantial evidence of fraud, deceitful action, or dishonest conduct" or "deliberate and severely hostile and irrational treatment," *Paxton-Buckley-Loda Education Association v. IELRB*, 304 Ill.App.3d 343, 710 N.E.2d 538 (4th Dist. 1999), *quoting Hoffman v. Lonza*, 658 F.2d 519 (7th Cir. 1981), *citing Amalgamated Ass'n of Street Electric Ry. & Motor Coach Employees of America v. Lockridge*, 403 U.S. 274 (1971). Thus, intentional misconduct is more than mere negligence. *Chicago Teachers Union (Oden)*, 10 PERI 1135, Case No. 94-CB-0015-C (IELRB, November 18, 1994). Even if a union is grossly negligent and incompetent, that is not sufficient to show intentional misconduct. *United Mine Workers of America (Dearing)*, 16 PERI 1033, Case Nos. 99-CB-0003-S et al. (IELRB, March 8, 2000); *NEA, IEA, North Riverside Education Ass'n (Callahan)*, 10 PERI 1062, Case No. 94-CB-0005-C (IELRB, March 29, 1994); *NEA, IEA, Rock Island Education Ass'n (Adams)*, 10 PERI 1045, Case No. 93-CB-0025-C (IELRB, February 28, 1994).

Under this standard, Mangrum has not established a prima facie case of a Section 14(b)(1) violation. At most, she has provided evidence that the Union was negligent. That is insufficient to establish intentional misconduct. Therefore, we dismiss Mangrum's unfair labor practice charge against the Union.

IV.

Mangrum has not established a prima facie case of an unfair labor practice by the CBE or by the Union. Accordingly, the Executive Director's Recommended Decision and Order is affirmed. Mangrum's charges are dismissed.

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 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: December 13, 2005
Issued: December 16, 2005
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