STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
John Swenson,	)	
Charging Party,	)	
and	)	Case No. 2005-CB-0003-C
Lake Forest Education Association, IEA-NEA,	)	
Respondent.	)	
John Swenson,	)	
Charging Party,	)	
and	)	Case No. 2005-CA-0008-C
Lake Forest School District No. 67,	)	
Respondent.	)	

OPINION AND ORDER

On July 29, 2005, the Executive Director of the Illinois Educational Labor Relations Board ("IELRB") issued a Recommended Decision and Order in this matter. The Executive Director determined that the Charging Party, John Swenson, had not established an unrebutted prima facie case that the Lake Forest Education Association, IEA-NEA ("Association") had violated Section 14(b)(1) of the Illinois Educational Labor Relations Act ("Act"), and had not established a prima facie case that Lake Forest School District No. 67 ("District") violated the Act. Therefore, he dismissed Swenson's charges against the Association and the District.

Swenson filed exceptions to the Executive Director's Recommended Decision and Order.[1] The Association and the District filed responses to Swenson's exceptions. Swenson filed responses to the Association's and the District's responses.[2]

We have considered the Executive Director's Recommended Decision and Order, Swenson's exceptions, and the Association's and the District's responses. We have also considered the investigative record and applicable precedents. For the reasons in this Opinion and Order, we affirm the Executive Director's Recommended Decision and Order in part and reverse it in part.

I.

In Swenson's exceptions, he raises certain alleged facts that were not presented to the Executive Director. In addition, he submitted tapes of a January 22, 2004 meeting between himself, Co-Principals Kim Nasshan and Kyle Schumacher, and Association President Maureen Burke, which also were not submitted to the Executive Director. The District argues that, because these alleged facts and the tape were not presented to the Executive Director, the IELRB must disregard the tapes and the newly presented facts. We agree with the District's argument. As stated in *City Colleges of Chicago*, 17 PERI

---

[1] The District argues that the document Swenson filed does not constitute exceptions to the Executive Director's Recommended Decision and Order. The District states that the document asks for a review of the materials that Swenson submitted and of what is on the face of the cases, and otherwise consists of a restatement or expansion of allegations that he previously submitted. The District further states that Swenson's document does not specify which of the Executive Director's findings he takes exception to and why such findings in erroneous. In addition, the District states that Swenson filed his document with the Executive Director, rather than with the IELRB. However, we consider Swenson's document to constitute exceptions. The fact that Swenson asks for review and sets forth the facts that he wishes to have considered is sufficient for his document to constitute exceptions. Unlike the Rule governing exceptions to an Administrative Law Judge's Recommended Decision and Order in a contested case, the Rule governing exceptions to an Executive Director's dismissal of a charge does not state that "[e]xceptions shall specify each finding of fact and conclusion of law to which exception is taken." *Compare* 80 Ill. Adm. Code 1105.220(b) *with* 80 Ill. Adm. Code 1120.30(c). It is correct that Swenson's exceptions were addressed to the Executive Director, rather than to the IELRB. However, Swenson also states that "they as well hope the IELRB will review these cases and not dismiss them." This can be interpreted as reflecting an intent that the Executive Director's decision be reviewed by the IELRB. This is the agency's typical procedure, which Swenson may not have understood. In addition, treating Swenson's document as exceptions, rather than as a motion for reconsideration by the Executive Director, will expedite the agency's processing of the cases.

[2] We do not consider Swenson's responses to the Association's and the District's responses. The IELRB's Rules provide for exceptions, briefs supporting those exceptions, and responses to the exceptions. The Rules do not provide for a reply to a response to exceptions. 80 Ill. Adm. Code 1120.30(c). It is also not the IELRB's practice to allow parties to file briefs in addition to those for which the Rules provide. In *East Maine School District 63*, 13 PERI 1041, Case No. 94-CA-0024-C (IELRB, February 27, 1997), the IELRB denied a party's motion to file a reply for these reasons.

1046, Case Nos. 2000-CB-0002-C, 2000-CA-0013-C (IELRB, May 16, 2001), evidence that is available but is not presented to the Executive Director cannot be considered. Therefore, we do not consider these alleged facts or the contents of the tapes. The investigation revealed the following:

Swenson was employed by the District as a non-tenured teacher from August 2002 through June 2004. Swenson was a choral/general music teacher for grades 6 to 8 at Deer Path Middle School. From June 2003 through April 2004, Swenson was a member of the Association's salary committee.

The District asserts that, from the onset of his employment, Swenson had difficulty with the District administration and his peers in accepting constructive criticism concerning his relationships with peers, students and the administration and in appropriate classroom management. According to the District, teachers in the Music Department complained to the administration that Swenson had fractious relationships with them and that they could no longer work with him. The District also asserts that it received complaints from parents.

Swenson asserts that, in December 2002, he tried to get the administration to take action on a student's statement that she was being abused, but the administration did nothing. He also asserts that he and another teacher requested meetings and mediation between two other teachers and the rest of the music staff, but nothing happened. In addition, he asserts that Co-Principal Kyle Schumacher moved funds from a student group's account to pay for a teacher's plane ticket for a non-school-sponsored trip, and that the PTA was notified of this.

Swenson asserts that, on October 16, 2003, District Superintendent Dr. Harry Griffith told him that his wife enjoyed producing shows like those Swenson produced and that she wanted to teach middle school chorus. According to Swenson, he reported this conversation to Association representative Sue Sarmiento.

On January 16, 2004, Assistant Principal Dave Palzet came to speak to Swenson. According to Swenson, Palzet indicated to Swenson that he should follow him to a dark room behind the stage. Swenson refused to go into the room, because it brought up memories of being abused as a child, and he had previously requested that any meetings with him be held in the administration offices. According to

the District, Swenson chose the backstage area for the discussion and other teachers were in the area at the time. Swenson reported this incident to Association representative Sarmiento the next day.

On January 22, 2004, a meeting was held between Swenson, Co-Principals Kim Nasshan and Kyle Schumacher, and Association President Maureen Burke. According to Swenson, Nasshan told him that he should not have mentioned a certain discussion to his students, and that she was writing him up for insubordination. According to Swenson, Burke said nothing during the meeting, other than suggesting that, in the absence of a definition in the contract, the term "insubordination" should be given its dictionary meaning. Swenson asserts that Burke only took notes. According to Swenson, he asked why it was appropriate for Nasshan to take a student that came to the office to get a bandage for a paper cut, wrap gauze around his head, and write "PAPER CUT" across his forehead.[3] Swenson was not written up for insubordination, but, according to Swenson, he received an oral reprimand. According to the District, Swenson was not verbally reprimanded.

At Swenson's request, Assistant Superintendent for Pupil Services and Personnel Dennis Morgan and Nasshan met with him on January 29, 2004 to clarify the January 22 meeting. Burke was also present at the meeting. Swenson asserts that Morgan told him that nothing would be held against him in his evaluations or ever. The District denies that Morgan made that statement.

On February 25, 2004, Swenson filed his notice of candidacy for Association President with the Association's election coordinator. The District asserts that it became aware that Swenson was running for President when he began overtly campaigning, on or about the first week of March 2004.

On February 27, 2004, Co-Principal Schumacher and Swenson met to discuss Schumacher's February 24 observation of Swenson's class. According to Swenson, Schumacher told him that his program was so outstanding that he could not rate it and that he was very impressed with Swenson's classes. Schumacher told Swenson that he had been defensive and resistant during the meetings with the administration in January. Swenson asserts that Schumacher mentioned a December 2002 incident concerning the school holiday concert. Schumacher told Swenson that he was going to recommend to the

[3] Swenson asserts that he has tried repeatedly to report this incident to the administration, but nothing has been done.

School Board that it not renew Swenson's contract for the next year. According to Swenson, Schumacher also said that he would like to see that change. Schumacher also suggested that Swenson resign. According to Swenson, Schumacher told Swenson that he knew Swenson liked to have an Association representative during every meeting, and Swenson nodded in agreement, but Schumacher did not stop the meeting to allow Swenson to obtain representation. According to Swenson, Schumacher was referring to the January 22, 2004 meeting. According to the District, Schumacher did not discuss the issue of Association representation with Swenson at the February 27, 2004 meeting. The District admits, however, that Swenson refused to meet with anyone from the administration without Association representation.

On March 4, 2004, Burke sent an e-mail to two other teachers attaching a "script" they should use in asking other teachers to vote for Burke's slate.

At its March 9, 2004 meeting, the District's School Board voted to not renew Swenson's contract.

On March 11, 2004, former Association President Sue Tucker sent teachers a notice that, among other things, informed them that, if elected, Swenson would only be President for a month, since the District was not renewing his contract. Swenson asserts that, on March 15, 2004, Tucker placed in teachers' mailboxes copies of the District's notice of vacancies for the 2004-2005 school year, which included Swenson's position. According to Swenson, Tucker removed his election materials from a teachers' lounge in one of the school campuses. According to Swenson, he was told that an individual named Elaine Boiman was also part of this effort against him. In addition, Swenson asserts that, just prior to the election, Burke pointed out to teachers that Swenson's position was vacant for the next year.

On March 16, 2004, Swenson filed a grievance concerning the January 22, 2004 meeting and a grievance regarding the February 27, 2004 meeting.

The election for Association officers took place on March 17, 2004. According to Swenson, on that day a teacher told others that they could not vote for Swenson because he was not being renewed. A ballot box was left unattended at one of the school campuses, and the ballots were mixed with regional election ballots, necessitating a second ballot count. Burke won the election.

Burke scheduled Swenson's presentation to the Association's executive board concerning his request that the Association take his grievance to arbitration for May 20, 2004. Swenson asserts that, during the week of May 10, 2004, Burke told an executive board member that she could not vote on the issue of taking Swenson's grievance to arbitration. Swenson asserts that other executive board members told him that Burke had not processed arbitration requests in this way for other Association members.

During the May 20, 2004 executive board meeting, IEA UniServ Director Mark Stein advised against taking Swenson's grievance to arbitration. According to Swenson, Stein did so before Swenson had had the opportunity to present his case. Swenson asserts that, while Swenson presented his case to the executive board, Stein rolled his eyes, moaned and groaned, continually engaged in side conversations with Burke, and was combative and argumentative toward him. According to Swenson, Burke wanted to take a secret vote on whether to take the grievance to arbitration although that had not been the past practice. However, the executive board voted to take the grievance to arbitration. Swenson asserts that, after the vote, Burke said that executive board member Laura Paull could not vote.

Swenson asserts that, on September 24, 2004, he saw an e-mail from IEA Area Coordinator Peg Williams stating as follows:

> What a joke. I just can't wait to see what he's going to do! Are you sure I can't come to the arbitration? I could like bring popcorn? Do we know whether this arbitrator has a sense of humor? I hope so! Peg[4]

[4] The Association did not address certain of Swenson's allegations, including this allegation, during the investigation on the basis that they were irrelevant, because they concerned matters which arose after the date Swenson filed his charge. The Association's attorney asked the investigator to please advise him if the IELRB wished to consider these allegations and stated that the Association would then file a response. There is no indication in the file that the investigator informed the Association's attorney that the IELRB wished to consider this allegation.

In addition, Swenson stated in one of the documents that he submitted to the Executive Director that many other teachers had told him that Jim Tingey, another District teacher, had not been renewed and that this was because of Tingey's union activity.[5]

II.

The District asserts that Swenson's exceptions were not timely filed. We conclude that Swenson's exceptions were timely filed.

Under Section 1120.30(c) of the IELRB's Rules, exceptions to the Executive Director's dismissal of a charge must be filed "no later than 14 days after service of the notice of dismissal." The certified mail receipt shows that Swenson received the Executive Director's Recommended Decision and Order on August 9, 2005. Swenson sent his exceptions to the IELRB by certified mail, and they are postmarked "August 22, 2005." Under Section 1100.20(a) of the IELRB's Rules, documents filed with the IELRB are considered to be filed "on the date they are postmarked if sent by registered or certified mail." August 22, 2005 was fewer than 14 days after August 9, 2005. Accordingly, Swenson's exceptions were timely filed.

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

[5] Swenson's statement is hearsay; however, in administrative hearings, hearsay that is admitted without objection is to be given its natural probative effect. *Jackson v. Board of Review of Department of Labor*, 105 Ill.2d 501, 475 N.E.2d 879 (1985). Evidence that is given its natural probative effect in administrative hearings should also be given its natural probative effect in investigations. Although Swenson indicated with a "cc" that he had sent a copy of the document containing the statement to the District's attorney, the investigative file does not indicate that the District expressed an objection to the agency considering the statement. Insofar as it indicates that Tingey was a supporter of the Association and was not renewed, we regard the natural probative effect of this statement as sufficient that we may consider it. However, we disregard the inference that the reason that Tingey was not renewed was his union activity. This is a legal conclusion that would properly be drawn by the IELRB, rather than by District employees. The basis for this conclusion was not presented to the IELRB.

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).

Swenson alleges that the Association violated Section 14(b)(1) of the Act. 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.

In particular, Swenson asserts that Burke did not adequately represent him at the January 22, 2004 and January 29, 2004 meetings, that individuals acted improperly during the campaign for Association President, that there were irregularities in the conduct of the election, that Burke and UniServ Director Stein acted improperly with respect to the executive board's vote on whether to take Swenson's grievance to arbitration, and that the e-mail from Area Coordinator Williams showed a lack of commitment to representing Swenson. The Association argues that Swenson's claims do not state a prima facie violation of the Act because they involve internal Association matters, and because he did not establish intentional misconduct. We conclude that Swenson has not established an unrebutted prima facie case with respect to any of the conduct that he alleges.

Swenson has not established an unrebutted prima facie case with respect to Burke's alleged failure to represent him adequately during the January 22, 2004 and January 29, 2004 meetings. Section 14(b)(1) specifically provides that 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).

Assuming that Burke could have better represented Swenson during the January 2004 meetings, this allegedly inadequate representation would constitute at most negligence or a low level of competence. There is no evidence of "fraud, deceitful action, or dishonest conduct," or that Burke acted in a "deliberate and severely hostile and irrational" manner. Thus, Burke's allegedly inadequate representation of Swenson would not be enough to establish a violation of the duty of fair representation.

Swenson has also not established an unrebutted prima facie case with respect to the alleged conduct of individuals during the campaign for Association President and the alleged irregularities in the conduct of the election. These are matters of internal union governance. In *Federation of College Clerical and Technical Personnel (Williams)*, 18 PERI 1011, Case No. 2000-CB-0015-C (IELRB, November 13, 2001), we stated that Section 3 of the Act, which confers rights on educational employees, is inapplicable to internal union governance. We concluded that we did not have jurisdiction over a matter of internal union procedures and governance. Similarly, we conclude here that we do not have jurisdiction over Swenson's allegations concerning the conduct of individuals during the campaign for Association President and irregularities in the conduct of the election.

Swenson has also not established an unrebutted prima facie case as to the alleged conduct of Burke and UniServ Director Stein with respect to the executive board's vote on whether to take Swenson's grievance to arbitration. The Association in fact decided to take Swenson's grievance to arbitration. Therefore, Burke's and Stein's alleged conduct would not establish any deficiencies in the Association's representation of Swenson.

Assuming that we may properly consider the alleged e-mail from Area Coordinator Williams, it does not create a prima facie case. There is no indication that Williams was involved in any of the actions that Swenson raises in his exceptions. Therefore, this alleged e-mail would not show that any of those actions were taken in a "deliberate and severely hostile and irrational" manner.

We conclude that Swenson has not established an unrebutted prima facie case that the Association violated Section 14(b)(1). The charge against the Association is dismissed.

IV.

Swenson alleges that the District violated Section 14(a)(3) and 14(a)(1) of the Act by certain adverse actions against him. 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." Section 14(a)(1) of the Act prohibits educational employers from "interfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act." The adverse actions against himself that Swenson asserts consist of his non-renewal, the administration not taking action on his complaints, the District's actions at the January 22, 2004 meeting, and Assistant Principal Palzet pulling him into a dark room. We determine that Swenson has established an unrebutted prima facie case with respect to his allegations that the District violated Section 14(a)(3) and, derivatively, Section 14(a)(1) of the Act by not renewing his contract and by the alleged oral reprimand at the January 22, 2004 meeting, but not with respect to his other allegations.

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*. In order to establish a prima facie case, a charging party must provide at least some evidence on every

essential element of his/her claim. *Kokinis v. Kotrich*, 81 Ill.2d 151, 407 N.E.2d 43 (1980); *First National Bank of Elgin v. St. Charles National Bank*, 152 Ill.App.3d 923, 504 N.E.2d 1257 (2nd Dist. 1987); *Minooka Community Consolidated School District No. 201*, 9 PERI 1127, Case Nos. 91-CA-0015-C, 92-CA-0023-C (IELRB, August 19, 1993); *Consolidated High School District 230*, 7 PERI 1079, Case No. 90-CA-0058-C (IELRB, June 19, 1991). " 'Some' evidence is defined as more than a scintilla," *Minooka, quoting Southern Illinois University Board of Trustees*, 4 PERI 1053, Case Nos. 86-CA-0004-S, 86-CA-0031-S (IELRB, March 10, 1988); *District 230, quoting Southern Illinois University*; *see First National Bank*.

Swenson engaged in union activity when he served on the Association's salary committee, when he was a candidate for Association President, when he reported incidents to an Association representative, when he indicated that he wanted an Association representative at meetings, and when he filed grievances.[6] There is no evidence that the District was aware that Swenson was reporting incidents to an Association representative or serving on the Association's salary committee. However, the District admits that it became aware that Swenson was running for Association President on or about the first week of March 2004. The District was necessarily aware of the grievances, and Swenson asserts that Schumacher told him that he knew Swenson liked to have an Association representative at every meeting.

There is also evidence that the District's non-renewal of Swenson was motivated by his union activity. In determining whether an employer's actions are motivated by union activity, the IELRB considers factors such as the employer's expressions of hostility toward union activity, together with knowledge of the employee's union activity; timing; disparate treatment or a pattern of adverse action against union supporters; inconsistencies between the reason the employer offers for its action and other actions of the employer; and shifting explanations for the employer's action. *See City of Burbank v. ISLRB*, 128 Ill.2d 335, 538 N.E.2d 1146 (1989); *Bloom Township*.

---

[6] Filing a grievance through a union is union activity. *City Colleges of Chicago (Wright College)*, 11 PERI 1055, Case No. 95-CA-0012-C (IELRB, May 26, 1995).

Here, the timing of Swenson's non-renewal is suspect—the School Board voted to not renew his contract shortly after the District became aware that he was running for President of the Association. The timing of the alleged oral reprimand is also suspect—it allegedly happened during the meeting in which Swenson indicated that he wanted Association representation. In addition, the fact that the District may have non-renewed another union supporter indicates that there may be a pattern of adverse action against union supporters. This constitutes "more than a scintilla" of evidence on the element of anti-union motivation. Thus, Swenson has established an unrebutted prima facie case that his non-renewal and the alleged oral reprimand violated Section 14(a)(3) of the Act.

However, Swenson has not established an unrebutted prima facie case that the District violated Section 14(a)(3) of the Act by the administration not taking action on his complaints or Assistant Principal Palzet pulling him into a dark room. There is insufficient evidence that the District was aware of Swenson's union activity at the time it took those actions. Thus, there is not "more than a scintilla" of evidence on the element of employer knowledge.

Nor has Swenson established an unrebutted prima facie case that any of the District's adverse actions against him constituted an independent violation of Section 14(a)(1) of the Act. 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).

Swenson engaged in protected concerted activity when he and another teacher allegedly requested meetings and mediation between two other teachers and the rest of the music staff. Under *Board of Education of Schaumburg Community Consolidated School District 54 v. IELRB*, 247 Ill.App.3d 439, 456, 616 N.E.2d 1281, 1292 (1st Dist. 1993), *citing Meyers Industries, Inc.*, 268 NLRB 493, 497 (1984), *remanded sub nom. Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), *cert. denied*, 474 U.S. 948, 971, *on remand*, *Meyers Industries, Inc.*, 281 NLRB 882 (1986), *aff'd, Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir.

1987), *cert. denied*, *Meyers Industries, Inc. v. NLRB*, 487 U.S. 1205 (1988), employees engage in concerted activity when they invoke a right based upon a collective bargaining agreement or the activity is engaged in "with or on the authority of other employees, and not solely by and on behalf of the employee himself." Here, Swenson engaged in protected concerted activity when he allegedly acted together with another employee in raising a work-related issue.[7] The District was aware of Swenson's alleged protected concerted activity because that activity consisted of bringing an issue to the administration's attention.

However, there is no evidence that the District's actions against Swenson were motivated by his alleged protected concerted activity. With respect to non-union protected concerted activity, there is no evidence related to any of the *City of Burbank* factors or any similar factors. Therefore, Swenson has not established a prima facie case that any of the District's adverse actions against him constituted an independent violation of Section 14(a)(1) of the Act.

Swenson also alleges that the District retaliated against him because he blew the whistle on Co-Principal Nasshan humiliating a child as well as Assistant Principal Palzet pulling him into a dark back room; because he was only there for the students and would not play political games; because he made the PTA aware that money was being taken from student groups to pay for private plane tickets; and because he reported that Superintendent Griffith made it clear that his wife wanted the middle school chorus position. However, retaliation against an employee on such grounds does not violate Section 14(a)(1) of the Act. Section 14(a)(1) prohibits employer retaliation for exercising "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

---

[7] However, when Swenson made complaints on his own behalf and did not involve other employees or assert rights under the collective bargaining agreement, he did not engage in protected concerted activity. *See Schaumburg*.

Section 3. Such a link does not exist with respect to these allegations. We have no authority to rule on claims that do not arise from the Act. Administrative agencies are creatures of statute, and have only the authority conferred by the statutes that create them. *See County ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill.2d 546, 723 N.E.2d 256 (1999).

Swenson additionally asserts that, during the February 27, 2004 evaluative meeting, Co-Principal Schumacher told Swenson that he knew Swenson liked to have an Association representative during every meeting, but that Schumacher did not stop the meeting to allow Swenson to obtain representation. This assertion does not establish a prima facie violation of Section 14(a)(1). In *Summit Hill School District 161*, 4 PERI 1009, Case No. 86-CA-0090-C (IELRB, December 1, 1987), following *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975), the IELRB concluded that, if an employee requests union representation at an investigatory interview that the employee reasonably fears might result in discipline, the employer violates the Act if it denies the request and continues to conduct the interview. However, the February 27, 2004 evaluative meeting was not an investigatory interview, and Swenson could not have reasonably believed it might result in discipline. Thus, Schumacher's alleged failure to stop the meeting to allow Swenson to obtain Association representation does not constitute a prima facie violation.

We conclude that Swenson has established an unrebutted prima facie case that his non-renewal and the alleged oral reprimand violated Section 14(a)(3) and, derivatively, Section 14(a)(1) of the Act, but has not otherwise established an unrebutted prima facie case. We reverse the Executive Director's ruling dismissing Swenson's charge against the District Recommended Decision and Order in part and affirm it in part.

V.

The Association argues that it should be awarded sanctions against Swenson because he allegedly has made untrue allegations without reasonable cause and engaged in frivolous litigation. The Association states that Swenson's allegations are nearly all unsupported hearsay and that, to its knowledge, Swenson has not filed any supporting affidavits. In particular, the Association objects to the following statement in Swenson's exceptions:

> An executive board member spoke to Mr. Swenson and said she was sure that Maureen Burke was telling Klye [sic] that the district must not renew Swenson because he was running for president. Mr. Swenson admits that there is no proof of this, but does find the fact that an executive board member sought him out to inform him of this; [sic] interesting. It certainly raised a "red flag."

Section 15 of the Act provides, in pertinent part:

> The Board's order may in its discretion also include an appropriate sanction… if the other party has made allegations or denials without reasonable cause and found to be untrue or has engaged in frivolous litigation for the purpose of delay or needless increase in the cost of litigation.

Thus, whether to award sanctions is a matter within the IELRB's discretion. Exercising that discretion, we decline to award sanctions in this case.

Sanctions against Swenson are not proper on the basis that he has allegedly made untrue allegations without reasonable cause. At this stage, where there has been no hearing, we may not issue a ruling finding that Swenson's allegations against the Association are untrue. This includes Swenson's allegation that an executive board member said to Swenson that she was sure that Maureen Burke was telling Co-Principal Schumacher that the District must not renew Swenson because he was running for Association President. The fact that we do not find this allegation to be sufficiently probative to consider it in issuing this opinion does not mean that we make a finding of fact that it is untrue. Swenson in fact filed an affidavit, and has made various allegations that are not hearsay (such as those concerning Burke's representation of him at the January 22, 2004 meeting and Stein's conduct at the executive board meeting).

We also do not choose to award sanctions against Swenson on the basis that he has engaged in frivolous litigation. The IELRB has previously awarded sanctions in only three cases. In *Triton College Faculty Ass'n et al. (Hayes et al.)*, 10 PERI 1067, Case Nos. 92-FS-0013-C et al. (IELRB, April 1, 1994), sanctions were awarded against a fair share fee objector who attempted to litigate the fair share fees of previous or future years, although he had been notified through the complaint that the case concerned only the fees of the specified year and although the IELRB had previously rejected an attempt by that objector to raise the fair share fees of a year other than that at issue. In *NEA, IEA, Champaign*

Educational Services Personnel (Rhodes), 10 PERI 1055, Case No. 93-CB-0008-S (IELRB, March 10, 1994), a charging party was reprimanded and admonished against making frivolous arguments where, among other things, her counsel seriously misrepresented the law. In *AFT, IFT, Local 1220, East St. Louis Federation of Teachers (Dalan et al.)*, 8 PERI 1078, Case Nos. 91-FS-0006-S et al. (IELRB, July 10, 1992), a fair share fee objector was admonished that he might be subject to further sanctions for repetition of the conduct that included arguing about expenses that the Administrative Law Judge had already determined were non-chargeable and arguing about expenses of unions which did not represent him. Thus, the IELRB has awarded sanctions only rarely and in egregious circumstances. The circumstances here are not so egregious. For the above reasons, in the exercise of our discretion, we do not award the Association sanctions against Swenson.

VI.

Swenson has established an unrebutted prima facie case that the District violated Section 14(a)(3) and, derivatively, Section 14(a)(1) of the Act by non-renewing him and issuing the alleged oral reprimand. Swenson has not established an unrebutted prima facie case that the District committed an independent violation of Section 14(a)(1) of the Act or that the Association violated Section 14(b)(1) of the Act. Swenson's charge against the District is dismissed insofar as it alleges that the District committed an independent violation of Section 14(a)(1), and his charge against the Association is dismissed in its entirety. Case No. 2005-CA-0008-C is remanded to the Executive Director to issue a Complaint on the allegation that Swenson's non-renewal and the alleged oral reprimand violated Section 14(a)(3) and, derivatively, Section 14(a)(1) of the Act. The Executive Director's Recommended Decision and Order is affirmed in part and reversed in part.

VII.

With respect to Swenson's charge against the Association and his allegation that the District committed an independent violation of Section 14(a)(1), 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).

With respect to Swenson's allegation that the District violated Section 14(a)(3) and, derivatively, Section 14(a)(1) of the Act by his non-renewal and the alleged oral reprimand, this is not a final order that may be appealed under the Administrative Review Law. *See* 5 ILCS 100/10-50(b); 115 ILCS 5/16(a).

Decided: February 14, 2006
Issued: February 21, 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