

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

In the Matter of:)	
)	
James Gibson,)	
)	
Charging Party,)	
)	
and)	Case No. 2006-CA-0016-S
)	
Cairo Unit School District 1,)	
)	
Respondent.)	

OPINION AND ORDER

On December 29, 2006, the Executive Director issued a Recommended Decision and Order in this case. The Executive Director determined that there was no evidence that Cairo Unit School District 1 (“District”) changed James Gibson’s position to be a non-certified position in retaliation for any protected activity engaged in by Gibson. Therefore, he dismissed Gibson’s allegations that the District had violated Sections 14(a)(1), 14(a)(3), 14(a)(4) and 14(a)(5) of the Act by making Gibson’s position a non-certified position.¹

Gibson filed exceptions to the Executive Director’s Recommended Decision and Order.² The District did not file a response to the exceptions.

We have considered the Executive Director’s Recommended Decision and Order and Gibson’s exceptions. We have also considered the investigative record and applicable precedents. For the reasons in this Opinion and Order, we reverse the Executive Director’s Recommended Decision and Order.

In his exceptions, Gibson argues that the Executive Director should not have dismissed his allegation that the District violated Sections 14(a)(1), 14(a)(3) and 14(a)(4) of the Act by making his position a non-certified one. Gibson contends that he supplied evidence that the District’s action was because he asserted protected concerted activity in a certified position. Gibson argues that the dismissal is inconsistent with the allegation in the Complaint issued in Cairo Unit School District 1, Case No. 2006-CA-0045-S that the District unilaterally changed the job description in an effort to take the position of Crisis Room Teacher out of the bargaining unit. Gibson argues that, on May 20, 2005, he signed an offer of contract for employment with the District as the “Crisis Room Teacher.”

¹ However, the Executive Director issued a Complaint on Gibson’s allegation that the District violated the Act by refusing to allow him to use the District’s payroll deduction system to pay dues to the certified teachers’ union.

² Gibson did not file exceptions to the Executive Director’s dismissal of the Section 14(a)(5) claim.

Gibson asserts that the District has not provided him with a job description. Gibson argues that he was using instructional judgment and evaluation until Whitledge's December 12, 2005 letter. Gibson argues that the District retaliated against him by the following actions: issuing a letter threatening him with termination, coercing him to fill out a non-certified time sheet, giving him a written reprimand, giving him a letter of warning and giving him a "negative" evaluation. He also argues that the District's failure to give him a duty-free lunch is an unfair labor practice. He contends that the District's violations have been continuous in nature.

In processing unfair labor practice charges, the Illinois Educational Labor Relations Board ("IELRB") "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 Opinion and Order, April 17, 2000).

Under this standard, Gibson has established a prima facie issue of law or fact as to whether the District violated Section 14(a)(3), Section 14(a)(4) and, derivatively, Section 14(a)(1) of the Act when it failed to give him a duty-free lunch subsequent to his protected activities, sent him a letter threatening him with termination, directed him to fill out a non-certified time sheet, gave him a written reprimand, gave him a letter of warning, and gave him an evaluation containing negative ratings. There is also an issue of fact as to when the District made Gibson's position a non-certified one. Therefore, Gibson has also established a prima facie issue of law or fact as to whether the District violated Section 14(a)(3), Section 14(a)(4) and, derivatively, Section 14(a)(1) of the Act when it made his position a non-certified one. The Executive Director is directed to issue an Amended Complaint containing those allegations.

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: June 12, 2007

Issued: June 12, 2007

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

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