

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

In the Matter of:)	
)	
Agnes Tropp, an individual,)	
)	
Charging Party,)	
)	
and)	Case No. 2006-CA-0008-C
)	
Illinois State Board of Education,)	
)	
Respondent.)	

OPINION AND ORDER

On April 3, 2006, the Executive Director issued a Recommended Decisions and Order in the above captioned case. The Executive Director determined that the Charging Party, Agnes Tropp, had not established a prima facie case that the Illinois State Board of Education (“ISBE”) disciplined her and terminated her employment in retaliation for her union activity. Accordingly, he dismissed Tropp’s charges.

Tropp filed exceptions to the Executive Director’s Recommended Decisions and Order. ISBE did not file a response to Tropp’s exceptions.

We have considered the Executive Director’s Recommended Decision and Order and Tropp’s exceptions. 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.

I.

Tropp was employed by ISBE as a Special Education Consultant. She filed numerous grievances through the Illinois Federation of State Office Educators, Local 3236, IFT-AFT (“IFSOE”) while she was employed by ISBE. The investigative record reflects that some of her grievances were filed on January 1, January 15, January 22, and December 23, 2004,¹ in March 2004, and on April 14, 2005. On July 14, 2005, a hearing on eight of Tropp’s grievances was conducted. On July 15, 2005, a hearing on two of Tropp’s grievances was conducted.

On January 6, 2004, Tropp was given a verbal counseling for not completing written reports in an accurate and timely manner. On February 27, 2004, Tropp was given a written reprimand for failing to produce quality work based on an accurate analysis of information in a timely manner. On March 19, 2004, Tropp was suspended without pay for one week for failing to produce quality work based on an accurate analysis of information in a timely

¹ The December 23, 2004 grievance was an amended version of a grievance filed on December 21, 2004.

manner. On December 21, 2004, Tropp was suspended without pay for two weeks for failing to produce quality written work based on an accurate analysis of information in a timely fashion. Tropp was also suspended for an additional week for failing to cooperate in finding materials that were missing following her departure from the agency on sick leave.

On March 25, 2005, Tropp was suspended without pay for 30 days and given a final warning for continuing to fail to produce quality written work based on an accurate analysis of information in a timely manner. On June 3, 2005, Tropp was suspended without pay for two weeks for refusing to cooperate in turning in her laptop computer so that files could be transferred to a new laptop and for being insubordinate in a verbal exchange with Chief Education Officer Chris Koch and Division Administrator of Special Education Services Patricia Folland. On August 8, 2005, ISBE terminated Tropp's employment, stating as grounds that Tropp had continued to fail to produce quality written work based on accurate analysis of information in a timely manner and that she had not completed a single assignment for two or more years.

Tropp asserts that certain other Consultants who submitted late and/or substandard reports were not subjected to a predisciplinary meeting, suspended, subjected to a hostile environment or terminated, and did not have their salaries frozen. Tropp asserts that these other Consultants had not filed grievances or engaged in other union activity. ISBE provided an affidavit stating that, while other Special Education Consultants did turn in work products that were late and/or required revisions, no other Special Education Consultant failed to complete a single assignment in the two years that Folland had been Division Administrator. The affidavit further stated that two other Special Education Consultants were terminated in February 2005 for inability to produce quality work in a timely manner, and that these two Consultants did not participate in union activities.

Tropp asserts that, at the direction of her supervisor, Chris Koch, IFSOE President Paula Staderker held Tropp's grievances and did not file them in a timely manner. Tropp has provided no evidence of this beyond her assertion not contained in a signed affidavit. ISBE submitted an affidavit stating that Koch never instructed Staderker to do this.

Tropp asserts that the Board Agent investigating her cases did not correctly "pull the charges" from the voluminous documents she provided. Tropp asserts that the Board Agent did not provide her with ISBE's response or a copy of the Illinois Educational Labor Act ("Act"). According to Tropp, the Board Agent did not use the subpoena power under the Act to investigate her case.

II.

As noted above, Tropp contends that the Board Agent's investigation was inadequate. Tropp argues that she established a prima facie case. She contends that the alleged fact that ISBE did not conduct timely hearings as required by the collective bargaining agreement is sufficient to establish a prima facie case, and is a gross violation of due process of law under the Fourteenth Amendment to the United States Constitution. She argues that there was a conspiracy or collusion between ISBE and ISFOE.

III.

We first address Tropp's contention that the investigation was inadequate. We find it appropriate to supplement the facts stated in the Executive Director's Recommended Decision and Order. Otherwise, we reject Tropp's contention.

The fact that the Board Agent did not use a subpoena power does not demonstrate that the investigation was inadequate. The National Labor Relations Board has stated that "the Regional Director has extremely broad authority to determine the extent of the investigation into any unfair labor practice charge," *Opryland Hotel*, 323 NLRB 723, 727 (1997). In *Lincoln-Way Area Special Education Joint Agreement District 843*, 21 PERI 163, Case Nos. 2004-CA-0060-C, 2004-CB-0024-C (IELRB, September 13, 2005) (appeal pending), the Illinois Educational Labor Relations Board ("IELRB") determined that the Executive Director of the IELRB has similarly broad authority. As the IELRB noted in *Community Consolidated School District No. 59*, 1 PERI 1158 at VII-320, Case Nos. 85-CA-0007-C, 85-CB-0006-C (IELRB, August 14, 1985), the IELRB's Rule governing the investigation of unfair labor practices (Section 1120.30 of the IELRB's Rules, 80 Ill. Adm. Code 1120.30) does not place any minimum requirements on the scope of the investigation. The Executive Director, or his/her agents, is required only to conduct sufficient investigation to determine whether the charge states an issue of law or fact requiring the issuance of a Complaint.

The fact that the Executive Director's Recommended Decision and Order does not recite all of the details that are contained in the voluminous documents that Tropp submitted does not demonstrate that the Board Agent failed to correctly "pull the charges" from those documents. The Board Agent properly distilled what was relevant from those documents, with the exception of certain facts that we find it appropriate to add to the facts stated in the Recommended Decision and Order.

Tropp also asserts that the Board Agent did not provide her with ISBE's response or a copy of the Act. However, because a reply from Tropp to ISBE's response was not sought, she was not prejudiced by the failure to provide her with a copy of that response. The investigative record does not reflect that Tropp requested a copy of the Act.

IV.

We next address whether Tropp has established a prima facie case of an unfair labor practice. 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).

We decide that Tropp has not established a prima facie case that ISBE violated Section 14(a)(3) and, derivatively, Section 14(a)(1) of the Act by disciplining her² and terminating her employment. Section 14(a)(3) of the Act 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) of the Act 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." A prima facie case of a Section 14(a)(3) violation is established by showing that the employee 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) concerns discrimination based on union activity. *Bloom Township*.

² Some of the discipline imposed on Tropp occurred more than six months before she filed her charge. Therefore, this discipline is not within the IELRB's jurisdiction. *Jones v. IELRB*, 272 Ill.App.3d 612, 650 N.E.2d 1092 (1st Dist. 1995); *Charleston Community Unit School District No. 1 v. IELRB*, 203 Ill.App.3d 619, 561 N.E.2d 331 (4th Dist. 1990).

Here, Tropp engaged in union activity when she filed grievances through IFSOE. *See City Colleges of Chicago (Wright College)*, 11 PERI 1055, Case No. 95-CA-0012-C (IELRB Opinion and Order, May 26, 1995). ISBE was aware of that activity because it was a party to the grievances. However, there is not a sufficient showing that ISBE took its actions against Tropp due to her union activity.

Anti-union motivation may be inferred from various factors, including an employer's expressions of hostility toward union activity, together with knowledge of the employee's union activity; proximity in time between the employee's union activity and the employer's action; disparate treatment of employees or a pattern of conduct targeting employees who engage in union activity for adverse employment action; inconsistencies between the reason the employer offers 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). Considered in light of the dates Tropp filed grievances, the timing of ISBE's actions against her does not appear to be suspicious. However, ISBE terminated her employment not long after hearings took place on 10 of her grievances. Considered in this light, the timing of her termination is suspicious. However, timing alone is not sufficient to create a prima facie case. *Bloom Township; Hardin County Education Association v. IELRB*, 174 Ill.App.3d 168, 528 N.E.2d 737 (4th Dist. 1988).

With respect to disparate treatment, Tropp asserts that certain other Consultants who submitted late and/or substandard reports but had not filed grievances or engaged in other union activities were not subjected to the same penalties as she was. However, ISBE provided an affidavit stating that no other Special Education Consultant failed to complete a single assignment in the two years that Folland had been Division Administrator. The affidavit further stated that two other Special Education Consultants were terminated in February 2005 for inability to produce quality work in a timely manner, and that these two Consultants did not participate in union activities.

In *Brown County Community Unit School District No. 1*, 2 PERI 1096 at VII-279—VII-280, Case No. 85-CA-0057-S (IELRB, July 31, 1986), the IELRB stated:

Under *Lake Zurich*, the evidence presented by a charging party is not viewed in the light most favorable to it, and a complaint perfunctorily issued where the evidence presented "if credited would establish...sufficient evidence to support a finding of a violation of the Act." To accept that limited standard would, as the Employer contends, render our investigation nothing more than a screening process where only those charges which, on their face, did not raise an issue of law or fact, or failed to state an unfair labor practice, would be dismissed.

The standard, as we envisioned it and applied it in *Lake Zurich*, requires the Executive Director to make an assessment of all of the evidence presented during an investigation by both the charging party and the respondent to determine whether the charging party has presented

“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.” *Lake Zurich, supra*. As a threshold matter, the charging party must present facts that establish a *prima facie* violation; but the inquiry does not end there. The respondent’s evidence must also be considered....

This does not mean, however, as the Employer contends, that the Executive Director may make credibility resolutions in the sense of crediting one witness’s version of an event over another’s.

Here, if ISBE’s evidence is considered, Tropp’s claim of disparate treatment is rebutted. The affidavit provided by ISBE shows that ISBE did not in fact give preferential treatment to employees who were not active in the union. In evaluating the facts presented by the parties, it is not necessary to make credibility resolutions, because both the facts presented by Tropp and the facts presented by ISBE can be true at the same time.

Tropp argues that there was a conspiracy or collusion between ISBE and ISFOE. In particular, she asserts that ISFOE President Staderker’s supervisor Koch directed Staderker to hold Tropp’s grievances and not file them in a timely manner. However, Tropp has provided no evidence of this beyond her assertion not contained in a signed affidavit. Such unsupported assertions are insufficient to establish a *prima facie* case. *See IFT/AFT Local 504 (Shariff-Johnson)*, 13 PERI 1001, Case No. 96-CB-0004-C (IELRB, October 16, 1996).

Tropp also argues that the fact that ISBE did not conduct timely hearings as required by the collective bargaining agreement is sufficient to establish a *prima facie* case. However, assuming that this fact is correct, it is not evidence of anti-union motivation. Thus, it does not create a *prima facie* case of a Section 14(a)(3) violation.³

In addition, Tropp argues that ISBE violated her constitutional rights. Whether this is correct is not a matter within the IELRB’s jurisdiction. *General George S. Patton School District 133*, 10 PERI 1118, Case No. 94-CA-0050-C (IELRB, August 19, 1994). Therefore, we do not consider this issue.

Tropp has not established a *prima facie* case of an unfair labor practice. Accordingly, we affirm the Executive Director’s Recommended Decision and Order. Tropp’s charge against ISBE is dismissed.

³ If Tropp’s exceptions are read as asserting that the alleged fact that ISBE did not conduct timely hearings as required by the collective bargaining agreement is in itself an unfair labor practice, she is, rather, raising an issue of a contract violation. A violation of a collective bargaining agreement is not in itself an unfair labor practice. *Chicago Board of Education (Mangrum)*, 21 PERI 226, Case Nos. 2005-CA-0051-C, 2005-CB-0014-C (IELRB, December 13, 2005); *Moraine Valley Community College*, 2 PERI 1050, Case No. 85-CA-0068-C (IELRB, March 18, 1986); *see West Chicago School District 33*, 5 PERI 1091, Case Nos. 86-CA-0061-C, 87-CA-0002-C (IELRB, May 2, 1989), *aff’d on other grounds*, 218 Ill.App.3d 304, 578 N.E.2d 232 (1st Dist. 1991).

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: September 12, 2006

Issued: September 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