2016 IL App (1st) 150140-U

FIFTH DIVISION
July 15, 2016

No. 1-15-0140

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROBERT GREEN, Petitioner-Appellant, v. THE ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD; VICTOR BLACKWELL, IELRB Executive Director; LYNNE O. SERED, IELRB Chairman; RONALD F. ETTINGER, IELRB Member; GILBERT F. O'BRIEN, IELRB Member; MICHAEL H. PRUETER, IELRB Member; and EAST AURORA SCHOOL DISTRICT NO. 131 BOARD OF EDUCATION, Respondent-Appellees.	)	Petition for Review of an Order of the Illinois Educational Labor Relations Board No. 2014-CA-0010-C

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming decision of Illinois Educational Labor Relations Board dismissing unfair labor practice charge filed by terminated teacher against school district.

¶ 2 Robert Green (Green) brings this action for direct administrative review of a decision rendered by the Illinois Educational Labor Relations Board (the IELRB), dismissing an unfair

labor practice charge filed by Green against his former employer, East Aurora School District No. 131 (the District). For the following reasons, we affirm the judgment of the IELRB.

¶ 3 BACKGROUND

¶ 4 Green was employed by the District as a physical education teacher starting in 1980. After a physical altercation with a seventh grade student on January 30, 2013 – described in further detail below – the District terminated his employment. The Board of Education for the District (the Board) had previously issued "notices to remedy" in 2000, 2006 and 2007 describing specific deficiencies in Green's professional conduct – *e.g.*, "On October 25, 2006, you lost your temper with a student, yelled at him, grabbed his arm and/or shirt, and pushed him" – and directing Green to correct the deficiencies. Among other things, Green had been directed to cease "[u]se of inappropriate physical contact and excessive physical force in disciplining a student during physical education class" (in the 2000 notice) and to limit his physical contact with students to "necessary, appropriate, non-aggressive contact" (in the 2006 notice). The 2007 notice related to Green's use of "the District's computer equipment and Internet connection."

¶ 5 In August 2013, Green filed an unfair labor practice charge against the District with the IELRB. Green also filed a charge against "AFT/IFT Local 604" (the Union); our review is limited to the charge against the District.[1]

¶ 6 Unfair Labor Practice Charge and Green's Evidence

¶ 7 In his charge, Green asserted that the District engaged in unfair labor practices within the meaning of subsections 14(a)(1), 14(a)(3) and 14(a)(4) of the Illinois Educational Labor Relations Act (Act) (115 ILCS 5/1 *et seq.* (West 2012)). Section 14 of the Act prohibits "[e]ducational employers, their agents or representatives" from: "[i]nterfering, restraining, or

[1] Although we refer to the Board in the case caption, the remainder of this order – unless otherwise noted – refers to the "District" for purposes of clarity.

coercing employees in the exercise of the rights guaranteed" under the Act (section 14(a)(1)); "[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)(3)); and "[d]ischarging or otherwise discriminating against an employee because he or she had signed or filed an affidavit, authorization card, petition or complaint or given any information or testimony under this Act" (section 14(a)(4)). Green alleged, in part:

> "On 2-27-13 and 3-18-13[2] I filed union activity grievance to explain that I only used reasonable force in accordance to 9. sec 9.10 [*sic*], Board Policy 520.25 and 24-24 of the 'Tenure Act' titled Maintenance of Student Discipline and the Use of Reasonable Force. I have filed, complained, and signed affadavits [*sic*] with the IELRB in the past and are being retailliated [*sic*] against[.] The Board also violated 7.2B of the grievance procedure by discriminating, subjecting me to discipline and reprisals by illegally terminating me again. The Board violated 11.1D of the CBA. They ignored sec. 24-24 of the Tenure, Employment, Teacher Duties sec. 24-1-24-26 Article 24 'Tenure Act.' "[3] (Emphasis in original.)

The crux of Green's allegations appear to be that: (a) he used reasonable force in his interaction

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[2] In his union grievance form dated February 27, 2013, Green claimed he had maintained student discipline using reasonable force with safe, non-harmful restraint techniques. He also asserted that a school board meeting was required for his dismissal or removal, and that the Union was required to represent him "equally and without prejudice." In his union grievance form dated March 18, 2013, Green stated, in part, that his actions did "not violate the 2000 or 2006 Notice to Remedy" and that an agent from the Illinois Department of Children and Family Services (DCFS) had informed Green and the District "that [the] abuse charge is Unfounded [*sic*]."

[3] Section 7.2 of the parties' collective bargaining agreement, captioned "Statement of Basic Principles," provides, in part, "An employee who participates in these grievance procedures shall not be discriminated against and shall not be subjected to discipline or reprisal because of such participation." Section 9.10 of the collective bargaining agreement and Board Policy 520.25 address student discipline. Section 11.1D of the collective bargaining agreement provides that "[t]erminations or dismissal shall be done in accordance with the applicable provisions of the School Code."

with the student on January 30, 2013; and (b) the District improperly terminated his employment – in violation of state law, Board policies, and the parties' collective bargaining agreement (the CBA) – in retaliation for his prior union activity grievances and/or his filings (*e.g.*, affidavits) and other dealings with the IELRB. In a correspondence to the IELRB investigating agent, Green indicated that the February 27, 2013, and March 18, 2013, grievances referenced in his charge were "[b]asically *** denied."

¶ 8 Green provided the IELRB agent with information regarding his earlier termination by the District in 2010. On March 1, 2010, Green had "filed a grievance challenging the 2000 and 2006 Board Warnings," which was "denied and or ignored." According to Green, he was "falsely accused by a [student with a behavioral disorder] of pushing him into a wall" on March 3, 2010, and was "eventually illegally terminated on April 5, 2010[,] for allegedly violating two prior School Board Warnings in 2000 and 2006." As discussed below, he subsequently was reinstated. Green filed an unfair labor charge with the IELRB, which was dismissed; we affirmed the dismissal on December 27, 2013. See *Green v. Illinois Educational Labor Relations Board*, 2013 IL App (1st) 121398-U.

¶ 9 Green also provided the IELRB agent with an investigation report by the Illinois Department of Human Rights (the IDHR), dated October 29, 2012. Green, who is African-American, had alleged that he was the subject of (a) discrimination based on his race and (b) retaliation for filing previous charges of discrimination against the District with the IDHR and the Equal Employment Opportunity Commission (EEOC). The IDHR report concluded that "the evidence appears to support that [the District] discharged [Green] due to his race *** and within such a period of time of [Green's] filed Charges against [the District] as to raise an inference of retaliation motivation." On November 1, 2012, the IDHR issued a "Notice of

Substantial Evidence," stating, in part, that "there is Substantial Evidence that a civil rights violation has been committed."

¶ 10 Green informed the IELRB agent that he was "single[d] out" for discharge because of retaliation and discrimination, *i.e.*, "other employees were allowed to remain in the classroom because they had not engaged in the filing of grievances and or additional complaints against the District as I have." Green also stated, among other things, that he had "consistently and persistently initiated grievances and other complaints, over many years, that the District is making Illegal Paid Athletic Coaching [*sic*] assignments to non-teacher employees and independent contractors not employed by the District." According to Green, public funds "are being misappropriated to non-teacher paid coaches," and his "regular Salary and Teacher Retirement Pension Plan is at stake" due to lost earnings resulting from "illegal coaching assignments."

¶ 11 Green's submissions to the IELRB agent also included (a) a January 2014 decision of the United States Court of Appeals for the Seventh Circuit relating to the Union's refusal to represent Green in his suit against the District for reinstatement after his 2010 termination;[4] (b) an October 2011 determination by the EEOC that "evidence obtained in the [EEOC] investigation established reasonable cause to believe that [the Union] discriminated against [Green] in retaliation for engaging in protected activity by failing to represent him, in violation of Title VII [of the Civil Rights Act of 1964]"; and (c) copies of Green's charges of discrimination against the

[4] Green claimed that the Union "abandoned him because of his race," in violation of the Civil Rights Act of 1964. The federal district court granted summary judgment to the Union prior to the commencement of discovery. The Seventh Circuit reversed and remanded, directing the district court to allow discovery regarding the issues of whether "the union would have processed Green's grievance or represented him under the [Teacher] Tenure Act had he been white *** or had he refrained from complaining about other discriminatory episodes." *Green v. American Federation of Teachers/Illinois Federation of Teachers Local 604*, 740 F.3d 1104, 1107 (7th Cir. 2014).

District and the Union filed in June 2013 with the IDHR.

¶ 12 The District's Evidence

¶ 13 On December 5, 2013, the District filed a position statement regarding Green's charge. The District asserted that Green's charge relates to the termination of employment which, pursuant to the terms of the parties' CBA, "is currently under review by the Illinois State Board of Education pursuant to the procedures set forth in the [CBA] and Section 24-12 of the School Code [105 ILCS 5/24-12]." The District further contended that it had "taken issue" with Green's use of physical force in disciplining students on multiple occasions. Although it acknowledged that Green "has, indeed, filed charges of discrimination and unfair labor practice complaints in 1996, 1999, 2004, 2005, 2006, 2007, 2009 and 2010," the District argued that Green "has not demonstrated *** in his charge how the current termination proceedings are in any way related to any of the previous charges filed." According to the District, "nothing advanced in the charge [showed] that anything undertaken by the [District] was in any way directed at any activities protected by the [Act] or that they were taken in retaliation for any action which [Green] had heretofore taken to exercise his rights conferred by that Act."

¶ 14 The District appended various exhibits to its position statement, including the 2000 and 2006 notices to remedy and related documents. According to the District, on March 3, 2010, Green "was involved in an incident involving physical contact with students which the [Board] determined to be in violation of the prior Notices to Remedy and took measures to terminate his employment." Green appealed his discharge to the Illinois State Board of Education (the ISBE). In August 2011, a hearing officer concluded that although the 2006 notice to remedy was "still in effect and binding," Green's physical contact with two students on March 3, 2010, was "necessary" and "appropriate" and did not violate the 2006 notice. The hearing officer found no

evidence of "pre-text," *i.e.*, "no evidence in the record that Mr. Green was dismissed for any reason other than stated by the [Board] in its Bill of Particulars and Notice of Charges and Dismissal." Green was reinstated with back pay.

¶ 15 The exhibits to the District's position statement included multiple documents relating to the "altercation" involving Green and the seventh grade student on January 30, 2013. A school resource officer, another teacher, and various students provided written statements, and the school principal wrote a narrative regarding the incident and subsequent events. The principal noted, in part, that a letter was read to Green on the day of the incident regarding his placement on administrative leave pending an investigation. The principal also filed a DCFS report that provided, in part, that the student "stated that his neck hurt."

¶ 16 In his written statement, the school resource officer relayed a conversation he had with Green regarding the incident. Green indicated that he had directed several students – including the student in question – to cease improper behavior, *i.e.*, "exiting the gym and going outside." According to the officer, the student refused to comply, and Green placed his hand on the student's shoulder "to move him along away from the door." The student "swung his hand over, striking Green in the arm, moving Green's hand away." The student then pushed Green in the chest with both hands, and Green "immediately took [the student] down." The officer encouraged Green to complete a "referral" notifying the administration of the incident. Green initially "appeared upset and began talking about a previous incident where he did complete a referral and ended up off of work for a year and a half," but subsequently stated he would complete the referral. Green filed a police report relating to the incident.

¶ 17 The student involved in the January 30, 2013, incident also provided a written statement. After acknowledging that he did not follow Green's instructions regarding the door, the student

wrote, in part: "Then Mr. Green comes then he comes up to my face and says get away from the door and then I pushed him the [*sic*] he pushed me back then he tackled me then I fell to the ground then I felt something on my face when I fell down." The written statements from other students included, in part, the following: "Mr. Green pushed [the student] by the head and [the student] fell to the floor and they started fist fighting"; "Mr. Green got him from the neck and pushed him down to the floor and [the student] was between his legs on the floor"; "I saw Mr. Green grab him by the hoodie, push him down and get on top of him like he was going to punch him but I didn't see it"; and "Mr. Green pushes him to the floor and hits him." Another teacher who was in the gymnasium at the time of the incident wrote, in part, "I saw the student push Mr. Green. Mr. Green pushed him off of him[.]"

¶ 18 The Board determined that Green's actions violated the 2006 notice to remedy, and on March 4, 2013, it took measures to terminate his employment pursuant to section 24-12 of the School Code. 105 ILCS 5/24-12 (West 2012). In a letter dated March 18, 2013, Green requested a hearing pursuant to section 24-12 of the School Code "before a Hearing Officer selected through the offices of the [ISBE]." The ISBE selected a hearing officer in June 2013; the disposition of such proceedings is beyond the scope of this appeal.[5]

¶ 19 The IELRB Decision

¶ 20 On September 10, 2014, the Executive Director of the IELRB issued his recommended decision and order, dismissing Green's charge against the District in its entirety. After discussing the facts and evidence, the Executive Director concluded that Green had failed to provide evidence that his protected activities under the Act – *e.g.*, his "ten to twelve grievances" pursuant to the CBA and his "unfair labor practice charges against the District in August 2004, August

[5] In his appellate brief, Green indicates that the hearing officer ruled in favor of the District in his "current termination case." The District represents that the matter is "on administrative review."

2005, and September 2010" – caused the District to terminate his employment in 2013. In a separate order issued on the same date, the Executive Director dismissed the charge against the Union.

¶ 21 On October 13, 2014, Green responded to the Executive Director's decisions and filed "exceptions" to the dismissals in both the District and the Union cases. Green contended, in part, that the District violated the CBA and the Act and that his dismissal violated his rights under "Section 5 of the Illinois Constitution and the First Amendment of the United States Constitution." In an opinion and order issued on December 18, 2014, the IELRB found that Green's "exceptions are without merit," and affirmed the Executive Director's recommended decision and order. The IELRB dismissed Green's unfair labor practice charge against the District, finding that the "constitutional issues" raised by Green "are outside of the IELRB's jurisdiction" and that "Green has not raised an issue warranting a hearing as to whether the District violated the Act." In a separate order issued on the same date, the IELRB also dismissed Green's charge against the Union. On January 21, 2015, Green timely filed a petition for review of both orders with this court. In light of the Union's dismissal, the current appellees are (a) the District and (b) the "IELRB Parties," *i.e.*, the IELRB and its executive director, chairman and individual board members.[6]

¶ 22 ANALYSIS

¶ 23 As a preliminary matter, we note that Green's briefs fail to comply with the Illinois Supreme Court Rules. For example, the statement of facts in the appellant's brief contains minimal citations to the record and includes extensive "argument or comment." Ill. S. Ct. R.

[6] Green's petition for review referenced the IELRB's decisions with respect to the Union and the District. On June 30, 2015, Green and the Union jointly filed a motion for voluntary dismissal with this Court; the Union was dismissed with prejudice on July 7, 2015. The Attorney General and the Solicitor General of the State of Illinois represent the IELRB Parties herein.

341(h)(6) (eff. Feb. 6, 2013). The argument section of Green's brief fails to properly cite certain authorities or to set forth Green's contentions in a coherent manner. See Ill. S. Ct. R 341(h)(7) (eff. Feb. 6, 2013). Furthermore, his reply brief is not "confined strictly to replying to arguments presented" in the appellees' briefs. Ill. S. Ct. R. 341(j) (eff. Feb. 6, 2013). Although we recognize that Green filed this appeal *pro se*, "[t]his court is not a depository in which the burden of argument and research may be dumped." *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 80. A *pro se* litigant "is not entitled to more lenient treatment than attorneys." *Id.* ¶ 78. "In Illinois, parties choosing to represent themselves without a lawyer must comply with the same rules and are held to the same standards as licensed attorneys." *Id.* However, despite the deficiencies of his briefs, we choose to address the merits of Green's appeal. See *id.* ¶ 80.

¶ 24 Pursuant to section 16 of the Act, judicial review of a final order of the IELRB "shall be taken directly to the Appellate Court of a judicial district in which the Board maintains an office," *e.g.*, the First District. 115 ILCS 5/16 (West 2012). The Administrative Review Law sets forth procedures for direct review of administrative orders by this court. 735 ILCS 5/3-113 (West 2012). The question of whether an unfair labor practice charge should be dismissed without a hearing is committed to the sound discretion of the IELRB, and a dismissal should not be reversed absent an abuse of discretion. *Macomb Education Ass'n, IEA-NEA v. Illinois Educational Labor Relations Board*, 265 Ill. App. 3d 194, 202 (1994) (stating that the "decision of whether to issue the complaint under these circumstances was within the discretion of the Board"); *cf. Michels v. Illinois Labor Relations Board*, 2012 IL App (4th) 110612, ¶ 45 (stating that "if the [Illinois Labor Relations Board] decides there is not enough evidence and dismisses the charge, we ask whether it abused its discretion"); *Murry v. American Federation of State, County & Municipal Employees*, 305 Ill. App. 3d 627, 634 (1999) (noting that "[i]t is within the

sound discretion" of the Illinois Local Labor Relations Board to "dismiss a charge of unfair labor practice").

¶ 25 In the instant case, Green alleged violations of sections 14(a)(1), 14(a)(3), and 14(a)(4) of the Act. 115 ILCS 5/14(a) (West 2012). Section 14(a) of the Act provides, in pertinent part:

> "(a) Educational employers, their agents or representatives are prohibited from:
>
> (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed under this Act.
>
> * * *
>
> (3) 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.
>
> (4) Discharging or otherwise discriminating against an employee because he or she has signed or filed an affidavit, authorization card, petition or complaint or given any information or testimony under this Act." *Id.*

"It has been held that section 14(a)(1) refers to adverse action taken against an employee as a result of any protected concerted activity, while section 14(a)(3) refers specifically to discrimination based on union activity." *SPEED District 802 v. Warning*, 242 Ill. 2d 92, 112 (2011). Based on our review of Green's appellate briefs and the record, we are unable to determine whether he has alleged a "derivative" (*SPEED District 802*, 242 Ill. 2d at 112-13) or independent section 14(a)(1) violation. For example, if an alleged violation of sections 14(a)(1) and 14(a)(3) "stems from the same conduct," the section 14(a)(1) violation "is said to be derivative of the section 14(a)(3) violation" (*id.*; *Bloom Township High School District 206 v. Illinois Educational Labor Relations Board*, 312 Ill. App. 3d 943, 957 (2000)), and the test to be

applied is the one used to determine whether a section 14(a)(3) violation has occurred. *SPEED District 802*, 242 Ill. 2d at 113. We begin our analysis with section 14(a)(3).

¶ 26 "A *prima facie* case of a section 14(a)(3) violation requires proof that the employee was engaged in activity protected by section 14(a)(3); that the District was aware of that activity; and that the employee was discharged for engaging in that protected (union) activity." *SPEED District 802*, 242 Ill. 2d at 113. "Activity protected by section 14(a)(3) refers to union activity." *Bloom Township*, 312 Ill. App. 3d at 958. It is undisputed that Green had participated in union activity; the IELRB Executive Director noted that Green "filed ten to twelve grievances pursuant to the CBA, in approximately the past nine years." Furthermore, the District knew of Green's union activity. The parties disagree regarding the third element of the section 14(a)(3) test: whether Green was discharged for engaging in that protected union activity. "The third part of the test is established if the employee's protected activity was a substantial or motivating factor for the discharge or other adverse action taken against the employee." *SPEED District 802*, 242 Ill. 2d at 113. Anti-union motivation may be inferred from various factors, including: an employer's expressed hostility toward unionization, together with knowledge of the employee's union activities; proximity in time between the employee's union activities and his or her discharge; disparate treatment of employees or a pattern of conduct which targets union supporters for adverse employment action; inconsistencies between the proffered reason for discharge and other actions of the employer; and shifting explanations for the discharge. *Bloom Township*, 312 Ill. App. 3d at 958, citing *City of Burbank v. Illinois State Labor Relations Board*, 128 Ill. 2d 335, 346 (1989).

¶ 27 In his unfair labor practice charge, Green stated, in part, that he had filed "union activity grievance[s]" on February 27, 2013, and March 18, 2013 – potentially suggesting that he viewed

the timing of his grievances as correlated to his termination. Although the filing of his grievances may have coincided with his termination, the timing of the action "standing alone and unsupported by statements, documents, or data to suggest, at least in part, a desire to frustrate union organization or an antiunion animus is not sufficient to establish a prima facie case warranting the issuance of an unfair labor practice complaint." (Internal quotation marks omitted.) *Community Unit School District No. 5 v. Illinois Educational Labor Relations Board*, 2014 IL App (4th) 130294, ¶ 64; *Bloom Township*, 312 Ill. App. 3d at 959 (noting that "proximity in time is insufficient by itself to sustain an unfair labor practice charge"). In the instant case, the timing was not "suspect." As the District observes, Green's grievance filed on February 27, 2013, "was in reaction and in objection to the employment decision the District was about to take." The timing of Green's termination does not suggest that it was linked to any antiunion animus.

¶ 28 In his reply brief, Green contends that there were "inconsistencies between the proffered reason for discharge and other actions of the employer" and "shifting explanations for the discharge." Referring to the hearing officer as the "H.O.," Green argues, in part:

> "[T]he District is now saying to the ISBE sponsored H.O. under oath through Superintendent Jerome Roberts and Board President Annette Johnson at the ISBE sponsored H.O. Hearings is in essence that, in a one day in service, Green had been trained by a Crisis Prevention Intervention person named Clearance [*sic*] Williams, who also testified under oath. He claimed that the training Green received demonstrated the proper techniques to use in order to restrain disruptive students with proper restraint techniques, which is allowed by ISBE Administrative Rules (23 Ill. Admin. Code Section 1.285) but Green was told that

> his building Principal does not allow Teachers to touch the students. Green was never told that by his Principal. This is the proof required for Green to show inconsistencies and shifting explanations for the Green discharge."

As a threshold matter, we question the propriety of raising this argument for the first time in a reply brief. *In re Marriage of Winter*, 2013 IL App (1st) 112836, ¶ 29 (noting that "an appellant's arguments must be made in the appellant's opening brief and cannot be raised for the first time in the appellate court by a reply brief"); Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued are waived and shall not be raised in the reply brief[.]"). Furthermore, the foregoing information apparently was neither provided to the IELRB nor included as part of the record. "On review of an administrative agency decision, this court is limited to considering the record that was before the agency and may not consider new or additional evidence." *Board of Education, City of Peoria School District No. 150 v. Illinois Educational Labor Relations Board*, 318 Ill. App. 3d 144, 147 (2000).[7] Even assuming *arguendo* that Green's representations are accurate and could properly be considered by this court, we would not view the "no force" versus "reasonable force" distinction raised by Green in his reply brief – or the "inappropriate contact" versus "excessive force" distinction referenced in his opening brief – as indicative of "inconsistencies" or "shifting explanations" for his termination. See *Bloom Township*, 312 Ill. App. 3d at 958. The District does not appear to have changed its explanation for his termination: Green's improper physical contact with students.

¶ 29 Green contends that "[b]y wrongfully terminating Green repeatedly the effect is to

[7] We note that the District filed a motion with this court to supplement the record with, among other things, "the ISBE hearing officer's determination of Green's appeal of his termination as a tenured teacher." Green opposed the motion, stating that the "[ISBE] proceeding *** is irrelevant in this case because the ISBE is a separate State Agency from the IELRB with separate functions." We denied the motion.

discourage, dissuade and prevent his membership in his Union." However, the record does not support his assertion. Furthermore, as the IELRB Parties observe, "there was no evidence that the District discharged Green as a result of the grievances or other protected union activity." "There is also no evidence," the IELRB Parties correctly note, "that the District treated employees who engaged in protected union activity differently than those who did not when it came to imposing discipline for using excessive force against students, nor was there any evidence that the District targeted union supporters for adverse treatment." Based on our review of the record, Green did not present adequate evidence or argument that the District engaged in discriminatory conduct that "discourage[d] membership in any employee organization" to justify the issuance of a complaint by the IELRB pursuant to section 14(a)(3) of the Act; the IELRB thus did not abuse its discretion. 115 ILCS 5/14(a)(3) (West 2012); 80 Ill. Adm. Code 1120.30(b)(5) (2004) ("If the Executive Director concludes that the investigation has established that there is not an issue of law or fact sufficient to warrant a hearing, the Executive Director shall dismiss the charge.").

¶ 30 Green's unfair labor practice charge also alleged that the District violated section 14(a)(4) of the Act. Section 14(a)(4) provides that an educational employer commits an unfair labor practice by "[d]ischarging or otherwise discriminating against an employee because he or she has signed or filed an affidavit, authorization card, petition or complaint or given any information or testimony under" the Act. 115 ILCS 5/14(a)(4) (West 2012). "To establish a *prima facie* case of a section 14(a)(4) violation, the respondent must prove that he used or participated in the IELRB's processes, the District was aware of those actions, and the District discharged him in part because of that activity." *Board of Education, City of Peoria School District No. 150*, 318 Ill. App. 3d at 150. As noted by the IELRB Executive Director, "Green filed unfair labor

practice charges against the District in August 2004, August 2005, and September 2010." The parties do not dispute that the District was aware of Green's actions. Again, the issue is whether the District discharged Green in March 2013 because of his use of or participation in IELRB processes. Based on our review of the record, we agree with the IELRB Executive Director that "there is no evidence of a causal link between Green's protected activity, filing charges and participating in the investigation thereof before [the IELRB]" and the termination of his employment. We conclude that the IELRB did not abuse its discretion in finding that "Green did not present any evidence supporting his claim that the District took adverse action against him because he used or participated in the IELRB's processes."

¶ 31 Finally, if Green has asserted an independent – and not a derivative – violation under section 14(a)(1) of the Act, we reach the same conclusion. Section 14(a)(1) prohibits educational employers from "[i]nterfering, restraining or coercing employees in the exercise of their rights guaranteed under the Act."[8] 115 ILCS 5/14(a)(1) (West 2012). The IELRB has stated that "in Section 14(a)(1) cases involving alleged employer retaliation for protected activity, the employer's unlawful motivation must be demonstrated." *Neponset Education Ass'n , IEA-NEA*, 13 PERI ¶ 1089 (IELRB 1997), 1997 WL 34820232. "A prima facie case of a violation of Section 14(a)(1) of the Act has been demonstrated if the employee's activity was protected and concerted, if the employer knew of the protected concerted activity, and if the adverse employment action was motivated by the employee's protected concerted activity." *Id.* Whether Green's "exercise of the rights guaranteed under this Act" (115 ILCS 5/14(a)(1) (West 2012))

[8] Section 3 of the Act addresses employee rights. 115 ILCS 5/3 (West 2012). The section provides, in part, that "[i]t shall be lawful for educational employees to organize, form, join, or assist in employee organizations or engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or bargain collectively through representatives of their own free choice[.]" *Id.*

consisted of his union grievances and/or other activities,[9] there appears to be no connection between such activity and his termination. In sum, we conclude that the IELRB did not abuse its discretion in dismissing Green's unfair labor practice charge.

¶ 32 Green raises various other arguments on appeal. For example, he contends that "[b]y not investigating Board personnel records the IELRB violated 80 Ill. Admin. Code. 1130 and 80 Ill. Admin. Code 1120.30(b)(4)." We initially note that Part 1130 addresses collective bargaining and impasse resolution; the provisions of Part 1130 have no apparent application herein. See, *e.g.*, 80 Ill. Adm. Code 1130.40 (2014) (addressing notices of intent to strike). Furthermore, we disagree with Green's assertion that the IELRB violated Section 1120.30(b)(4). The Executive Director of the IELRB has the "authority to investigate charges and issue complaints." 80 Ill. Adm. Code 1120.30(a) (2004). Pursuant to section 1120.30(b)(4), "[i]f the Executive Director concludes that the investigation has established that there is *an issue of law or fact* sufficient to warrant a hearing, he shall issue a complaint (Section 15 of the Act)." (Emphasis in original.) 80 Ill. Adm. Code 1120.30(b)(4) (2004). In his recommended decision and order, the Executive Director concluded there was no issue of law or fact with respect to Green's allegations and thus dismissed his charge; the IELRB affirmed. See 80 Ill. Adm. Code 1120.30(c) (2004). Section 1120.30(b)(4) did not require the Executive Director to investigate personnel records, as Green suggests. Rather, the "charging party shall submit to the Executive Director all evidence relevant to or in support of the charge." 80 Ill. Adm. Code 1120.30(b)(1) (2004). As the IELRB Parties accurately observe, "[t]he regulation did not require the Executive Director to conduct a fishing

[9] Compare, *e.g.*, *Whitfield*, 16 PERI ¶ 1023 (IELRB 2000), 2000 WL 35898014 (stating that "asserting rights," *i.e.* filing grievances, "based on a collective bargaining agreement is concerted activity protected by Section 14(a)(1) of the Act") and *Chelios-Velleux*, 11 PERI ¶ 1055 (IELRB 1995), 1995 WL 17944172 (treating terminated professor's grievance as union activity "since it was filed through the union" and applying section 14(a)(3) of the Act).

expedition through all of the District's personnel files[.]"

¶ 33 We reject the remainder of Green's contentions on appeal for various reasons. Although his brief lacks clarity, Green appears to raise various challenges that presumably were raised and addressed in the ISBE proceedings, not the IELRB proceedings which we review herein. He also suggests that this court should make determinations which are improper in the context of our review of the dismissal of an unfair labor practice charge, *e.g.*, "Mr. Green prays the Appellate Court will define the meaning" of "maintaining student discipline in the public schools and what authority the teacher has in doing so." Furthermore, the case law cited by Green does not address the Act and/or IELRB matters. See, *e.g.*, *Board of Education of School District No. 131, Kane County v. State Board of Education*, 99 Ill. 2d 111 (1983) (noting that "[t]he sole issue presented in this appeal is whether the defendant's conduct was remediable"); *Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622 of Tazewell County*, 67 Ill. 2d 143 (1977) (finding "a sufficient basis for a finding of irremediability" and affirming teacher termination). In addition, Green advances other contentions that are of questionable relevance. For example, he discusses the termination of the Board's former counsel in 2009, complains about the source of compensation of the hearing officer in his ISBE proceedings, and provides demographic information regarding the socioeconomic and racial composition of East Aurora. Finally, we are perplexed by certain of Green's assertions, *e.g.*, "Inappropriate contact is more akin to touching a pupil in a sexual way."

¶ 34 CONCLUSION

¶ 35 In conclusion, the IELRB did not abuse its discretion in dismissing Green's unfair labor practice charge. We affirm the judgment of the IELRB.

¶ 36 Affirmed.