2026 IL App (1st) 251576-U

No. 1-25-1576

Order filed August 20, 2026

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

REIVIS BARILEAU, Plaintiff-Appellant, v. STATE OF ILLINOIS, DEPARTMENT OF CENTRAL MANAGEMENT SERVICES, DEPARTMENT OF HUMAN RIGHTS, and ILLINOIS LABOR RELATIONS BOARD, STATE PANEL, Defendants-Appellees.	)	Direct Review from the Illinois Labor Relations Board. No. S-CA-25-071

JUSTICE LYLE delivered the judgment of the court.
Presiding Justice Navarro and Justice Ocasio concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the Illinois Labor Relations Board's dismissal of appellant's unfair labor practice charge.

¶ 2 Appellant, Reivis Barileau, seeks direct administrative review from the dismissal of her unfair labor practice charge pursuant to the Illinois Public Labor Relations Act (Act) (5 ILCS 315/1 *et seq.* (West 2024)) against the Department of Central Management Services, the Illinois

Department of Human Rights (Department). The Illinois Labor Relations Board, State Panel (Board) dismissed her charge finding, *inter alia*, that she failed to establish a *prima facie* case for retaliation pursuant to section 10(a) of the Act where she failed to demonstrate that she engaged in protected, concerted activity, and failed to establish a causal connection between her allegedly protected conduct and the adverse employment action she experienced.

¶ 3 On appeal, Ms. Barileau contends that the Board erred in dismissing her charge where she established a *prima facie* case that she engaged in concerted activity by filing a complaint against the Department with the Office of the Executive Inspector General (OEIG) and informing her supervisors and directors of her intention to do so. She further contends that she established a causal connection between her OEIG complaint and other protected activity and the adverse employment actions she suffered where she demonstrated that she was treated differently from similarly situated employees who did not receive similar disciplinary measures for the same conduct. She also asserts that the Board failed to conduct a full and fair investigation of her charge before dismissing it. For the reasons that follow, we affirm the decision of the Board.

¶ 4 I. BACKGROUND

¶ 5 Ms. Barileau is employed as an investigator for the Department. On February 9, 2025, Ms. Barileau filed an unfair labor practice charge against the Department with the Board. The charging form required Ms. Barileau to identify the subsection of section 10(a) of the Act (5 ILCS 315/10(a) (West 2024)) that she believed the Department violated. In the blank space for the subsection, Ms. Barileau wrote "RB." As for the dates of the alleged wrongful action, she wrote January 7, 2025, January 22, 2025, January 28, 2025, and January 30, 2025, as well as "prior years." Ms. Barileau also identified several individuals alleged to be involved, including supervisors, managers, and

directors at the Department. In the box for Ms. Barileau to "[d]escribe what happened," she listed 13 alleged violations:

"1. Retaliation for Protected Activity

2. Punitive Action Plans for External Factors

3. Failure to Account for Extenuating Circumstances

4. Coercive and Vague Language in Action Plans

5. Violation of Telecommuting Rights

6. Coercion Regarding Extension Requests

7. Unilateral Changes to Policy (Extenuating Circumstances Clause)

8. Overreach in Remote Work Policy

9. Overreaching Performance Evaluation Criteria Changes and Unilateral Policy

10. Inconsistent Performance Evaluations

11. Unpaid Overtime and Excessive Work Hours

12. Misrepresentation of 180-Day Case Deadline

13. Lack of Union Steward Response."

¶ 6 Ms. Barileau attached a written document to the charge to provide more information regarding the 13 alleged violations. In the document, she alleged that on January 7 and January 22, 2025, she received two corrective actions plans (CAPs) from her supervisor. According to the Department, CAPs are issued to assist investigators who fall behind on the Department's caseload processing guidelines and to advise investigators of the consequences of continued delays. She asserted that she received these two CAPs within 15 days of each other, "in deviation from the usual 30-day interval between" CAPs. She noted that the CAPs were issued shortly after she filed

a complaint against the Department with the OEIG on September 7, 2024. She believed that the "timing and nature" of the CAPs "strongly suggest retaliation for exercising" her right to report misconduct. After receiving the CAPs in January 2025, Ms. Barileau filed a second complaint with the OEIG.

¶ 7 She also asserted that CAPs in general unfairly penalized Department employees for delays outside of their control and failed to account for extenuating circumstances, such as illness and external delays. She contended that the CAPs contained "vague" and "coercive" language, such as " 'may result in,' " and " 'may be a potential violation.' " She maintained that this language "may intimidate employees and infringe on their rights to freely engage in protected activities without fear of retaliation."

¶ 8 Ms. Barileau also attached to the charge the CAPs she received on January 7 and January, 22, 2025. The January 7 CAP identified three cases that were assigned to Ms. Barileau that had been on her caseload longer than the Department's 180-day case processing deadline. For each case, Ms. Barileau indicated at an action plan meeting that the cases would be submitted by January 15, 2025. The CAP noted that it would "close" on January 15, 2025, and a follow-up review would take place on January 16, 2025. The CAP also provided that: "Five consecutive action plans may be a potential policy violation for the investigator" and that three consecutive CAPS "will result in automatic termination" from the Department's remote work program. The January 22, 2025, CAP listed the same three cases as identified on the January 7 CAP, noting that the cases still had not been submitted. The CAP provided for a follow-up review on February 21, 2025.

¶ 9 The Board assigned an investigator to investigate Ms. Barileau's charge. The investigator contacted Ms. Barileau by email to gather additional information about the charge. The investigator noted that Ms. Barileau listed "RB" as the subsection of section 10(a) of the Act that

she believed had been violated. As this was not a valid subsection of section 10(a), the investigator interpreted the charge as an allegation that the Department violated section 10(a)(1) of the Act. Section 10(a)(1) of the Act provides that it shall be an unfair labor practice for a public employer to "to interfere with, restrain, or coerce public employees in the exercise of the rights guaranteed in this Act." 5 ILCS 315/10(a)(1) (West 2024). The investigator noted that her claims relating to wages, paid time off, and other violations related to the Illinois Labor Laws should be addressed by the Illinois Department of Labor, not the Board. The investigator explained that allegations 3 through 10 and allegation 12 were not under the purview of the Board. These allegations related to how an employer enforces its workplace policies and were within the discretion of the employer. The investigator further asked Ms. Barileau to withdraw allegations 11 and 13 because those allegations also did not fall within the purview of the Board.

¶ 10 The investigator requested that Ms. Barileau provide additional information to support her remaining allegations, including the OEIG complaint that she filed in September 2024, and all communications she had with the Department regarding that complaint. The investigator also asked Ms. Barileau to explain how she believed filing the OEIG complaint was a protected activity under the Act. With regard to allegation 2, the investigator requested that Ms. Barileau explain how the language in her CAPs was different from the language in CAPs issued to other employees.

¶ 11 The investigator also contacted the Department and asked it to provide a response to Ms. Barileau's allegations. Because Ms. Barileau failed to identify a valid subsection of the Act, the investigator requested that the Department address the allegations under subsections (1), (2), and (4) of section 10(a). Section 10(a)(2) provides that it shall be an unfair labor practice for a public employer "to discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in or other support for any labor

organization." 5 ILCS 315/10(a)(2) (West 2024). Section 10(a)(4) provides that it shall be an unfair labor practice for a public employer "to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit, including, but not limited to, the discussing of grievances with the exclusive representative." 5 ILCS 315/10(a)(4) (West 2024).

¶ 12 At the investigator's request, Ms. Barileau submitted a statement explaining her position on the remaining allegations. She represented that she had been a "whistleblower" in the Department and reported numerous instances of unfair treatment and systemic inequalities. She maintained that she was being retaliated against for bringing these issues to light. She asserted that this retaliation resulted in unfair treatment where there were "significant discrepancies in the issuance and enforcement of [CAPs], with some employees receiving preferential treatment while others, including myself, were disproportionately impacted by punitive measures."

¶ 13 Ms. Barileau contended that she raised concerns of unfair labor practices "internally" in May, June, and July of 2024. Shortly after raising these concerns, she was "subjected to retaliation, including the issuance of [CAPs] that were not only inconsistent and progressive in nature but also unfairly timed and worded." She also had her remote work privileges revoked in October 2024. In September 2024, Ms. Barileau filed a complaint with the OEIG in response to issues she observed at the Department "regarding the unfair and inconsistent application of performance expectations and disciplinary action plans." The OEIG informed her that her complaint was returned to the Department to address the issues she raised, but Ms. Barileau believed the Department failed to correct the problems.

¶ 14 She maintained that her filing of the OEIG complaint constituted protected activity under the Act and "any adverse actions taken against [her] in retaliation for this complaint, including the

issuance of [CAPs] violates the Act." She repeated her contentions regarding the two CAPs she received in January 2025, including that other employees with similar backlogs did not receive the same CAPs or received CAPs with less punitive language. She believed that her allegations 3 through 10 and allegation 12 were appropriately before the Board because, although the Department had discretion in applying its own policies, she "blew the whistle" on the inconsistent enforcement of CAPs, performance evaluations, and other Department policies. She further contended that the Department's discretion did not extend to retaliating against employees for engaging in protected activity.

¶ 15 Ms. Barileau attached to her position statement emails between her and her supervisors where they discussed her caseload and the CAPs she had been issued. She also attached the CAPs she received dating back to May 15, 2024. Each of the CAPs addressed cases that were not completed by the Department's 180-day deadline. Ms. Barileau also attached a September 23, 2024, memorandum from the Department informing her that she was ineligible for remote work due to receiving three consecutive CAPs on July 18, 2024, August 20, 2024, and September 23, 2024. The Department approved her request to return to remote work in January 2025.

¶ 16 Finally, Ms. Barileau attached a chart listing 12 investigators, including herself, and five supervisors ("comparator chart"). According to the comparator chart, five of the investigators, including herself, received CAPs for late cases, while seven of the investigators did not receive CAPs for late cases.

¶ 17 The Department responded to Ms. Barileau's position statement and documentary evidence with its own position statement. The Department's primary position was that even if the factual assertions in Ms. Barileau's charge were true, her allegations failed to raise a claim for an unfair labor practice under the Act. With regard to her retaliation claim, the Department first noted that

Ms. Barileau asserted that the Department violated the National Labor Relations Act (NLRA). The Department pointed out, however, that the NLRA applies only to private employers, not State employers like the Department.

¶ 18 The Department further asserted that subsections (1), (2), and (4) of section 10(a) of the Act were inapplicable to her claims of retaliation based on her filing the OEIG complaint. The Department observed that section 10(a)(2) required the employee to engage in union activity, while section 10(a)(4) required the employer to refuse to bargain in good faith with a labor organization. The Department maintained that Ms. Barileau did not allege that she was engaged in union activity or allege that the Department refused to bargain with a labor organization. The Department contended that Ms. Barileau had failed to identify any labor rights that the Department violated by issuing the CAPs or explain how the issuance of CAPs implicated the Act in any way. With regard to allegations 3 through 10 and allegation 12, the Department asserted that Ms. Barileau had failed to raise a claim for unfair labor practice under the Act because none of the actions she identified implicated the Act. The Department concluded that Ms. Barileau's charge identified many Department policies with which she disagreed, but did not adequately allege any unfair labor practices under the Act.

¶ 19 The Board's executive director dismissed Ms. Barileau's charge "[a]fter an investigation conducted in accordance with Section 11 of the Act." The executive director determined that the charge failed to raise an issue of law or fact sufficient to warrant a hearing. The executive director reviewed the factual allegations beginning with the CAP Ms. Barileau received on May 15, 2024. The executive director included in the decision the comparator chart that Ms. Barileau attached to her position statement, discussed the emails between Ms. Barileau and Department supervisors and directors, and detailed her OEIG complaints. The executive director observed that Ms.

Barileau believed there was a retaliatory correlation between her internal departmental complaints, her OEIG complaints, and the CAPs and other punitive measures she received.

¶ 20 The executive director noted that in order to prove that an employer engaged in an unfair labor practice under section 10(a)(1) of the Act, the charging party must demonstrate (1) "he or she engaged in union or other protected concerted activity; (2) the employer was aware of that activity; (3) the employer took adverse action against him or her for engaging in that activity." Similarly, to prove that an employer engaged in an unfair labor practice under section 10(a)(2) of the Act, the charging party must establish:

> "(1) the employee engaged in protected union activity, (2) the employer was aware of the employee's protected activity, (3) the employer took adverse action against the employee, and (4) the employer's action was motivated in whole or in part by the employee's protected conduct or union animus with the intent to discourage or encourage union membership or support."

¶ 21 The executive director found that even if Ms. Barileau's OEIG complaint in September 2024 constituted concerted activity, she failed to provide evidence that the Department knew about her complaint prior to the OEIG referring the complaint to the Department on October 4, 2024. The executive director observed that the Department issued Ms. Barileau CAPs prior to the filing of the OEIG complaint on May 15, 2024, July 18, 2024, August 20, 2024, and September 23, 2024. The executive director determined that Ms. Barileau failed to present evidence of union animus or that the Department issued the CAPs to interfere with, restrain, or coerce her exercise of rights under the Act. The executive director noted that timing, by itself, was insufficient to establish an inference of animus, and Ms. Barileau failed to present sufficient evidence of a nexus between her activity and the Department's actions.

¶ 22 The executive director further determined that Ms. Barileau failed to demonstrate that she was treated disparately from similarly situated employees. The executive director observed that Ms. Barileau's own evidence showed that other employees were also issued CAPs for late cases, and Ms. Barileau did not allege that these other employees were engaged in protected concerted activity. The executive director also found that Ms. Barileau did not have standing to allege a violation of section 10(a)(4) of the Act because only bargaining agents had standing to bring claims under that section.

¶ 23 The executive director concluded that Ms. Barileau failed to identify any activity in which she engaged that was protected by the Act. She also failed to demonstrate a causal connection between her allegedly protected activity and the Department's actions. The executive director therefore dismissed the charge, finding that Ms. Barileau failed to raise an issue of law or fact sufficient to warrant a hearing.

¶ 24 Ms. Barileau appealed the executive director's decision to the Board. In her appeal memorandum, Ms. Barileau asserted that the executive director misconstrued what constitutes protected concerted activity because the Act protects "[w]histle-blower complaints to an oversight body." She contended that the OEIG complaint constituted concerted activity because she was seeking relief for all similarly situated investigators based on the Department's wrongdoing.

¶ 25 She further asserted that the executive director ignored undisputed evidence of employer knowledge where the Department was aware on her intent to file a complaint with the OEIG on May 20, 2024, when she emailed her supervisors and the director of her department stating her intent to file the complaint. She also contended that the comparator chart she compiled showed not only timing, but also disparate treatment where similarly situated investigators did not receive CAPs and did not have their telework privileges revoked. Finally, she contended that the executive

director failed to conduct a full investigation of her claims where many of her allegations received cursory or no analysis in the written decision.

¶ 26 The Board reviewed the executive director's decision, the record, and Ms. Barileau's appeal memorandum, and affirmed the dismissal. The Board found that the threshold issue for Ms. Barileau's section 10(a)(1) claim was whether her filing of the OEIG complaint constituted concerted activity. The Board noted that in order to be considered "concerted activity," the actions must be undertaken with or on the authority of other employees in furtherance of a group concern. If an employee is acting by herself, without contacting other employees, such activity does not satisfy the requirement even if the employee's desire is to help the other employees. The Board determined that Ms. Barileau's assertion that she filed the complaint on behalf of other investigators to address group concerns was insufficient to satisfy the concerted activity requirement where she failed to present evidence, or even allege, that she filed the OEIG complaint with or on the authority of other investigators or that she even agreed with at least one other investigator to file a complaint with the OEIG over the matters included in that complaint.

The Board further found that Ms. Barileau failed to show knowledge on the part of the Department and failed to establish a causal connection between the filing of the OEIG complaint and the alleged adverse actions. The Board determined that even if the May 20, 2024, email satisfied the knowledge requirement as Ms. Barileau contended, Ms. Barileau had failed to demonstrate the required causal connection because her own comparator chart confirmed that other investigators who had late cases also received CAPs. The Board found that Ms. Barileau therefore failed to establish disparate treatment. The Board also rejected Ms. Barileau's contention that the Department's policy of revoking tele-work privileges after an employee received three CAPs constituted a section 10(a)(1) violation because it discouraged employees from challenging CAPs.

The Board noted that even if challenging CAPs was a right protected by section 10(a)(1), the policy was more likely to encourage, rather than discourage, employees to contest CAPs because the employee would desire to retain telework privileges.

¶ 27 The Board found that Ms. Barileau's contention that the executive director failed to conduct a full investigation of her claims was without merit. The Board noted that section 11(a) of the Act provided that the Board has the authority to investigate unfair labor charges and determine if a hearing is warranted, and the Board's rules set forth the investigatory process and delegate authority to the Board's executive director. The Board found that the record showed that the executive director, as an agent for the Board, conducted a thorough investigation of the materials Ms. Barileau submitted in support of her position, and Ms. Barileau failed to present anything other than conclusory allegations that the investigation was inadequate. The Board therefore affirmed the executive director's dismissal of the charge.

¶ 28 Ms. Barileau now appeals. See *Foley v. American Federation of State, County & Municipal Employees, Council 31, Local No. 2258*, 199 Ill. App. 3d 6, 10 (1990) (observing that final orders issued by the Board are appealed directly to the appellate court); see also Ill. S. Ct. R. 335 (eff. July 1, 2017) (describing the procedure for a statutory direct review of orders of an administrative agency by the appellate court.).

¶ 29 II. ANALYSIS

¶ 30 On appeal, Ms. Barileau contends that the Board failed to conduct a "full and fair" investigation of her charge pursuant to section 11 of the Act before dismissing it. She also asserts that the Board erred in narrowly interpreting "concerted activity" in section 10(a)(1) of the Act and disregarded evidence of employer knowledge and causal connection. Ms. Barileau maintains

that the allegations in her charge and the factual record adequately demonstrate unfair labor practices sufficient to warrant a hearing under the Act.

¶ 31 A. Standard of Review

¶ 32 Judicial review of a decision of the Board is governed by the Administrative Review Law. *American Federation of State, County & Municipal Employees, Council 31 v. Illinois State Labor Relations Board*, 216 Ill. 2d 569, 577 (2005) (citing 5 ILCS 315/11(e) (West 2000); 735 ILCS 5/3-101 *et seq.* (West 2000)). The applicable standard of review depends on the question presented. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001).

¶ 33 The Board's factual findings are "held to be *prima facie* true and correct" (735 ILCS 5/3-110 (West 2024)) and will not be disturbed unless the findings are against the manifest weight of the evidence. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). Questions of law are reviewed *de novo*. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). We review mixed questions of law and fact under the clearly erroneous standard. *AFM Messenger Service*, 198 Ill. 2d at 391. "A mixed question of law and fact is one 'involv[ing] an examination of the legal effect of a given set of facts.' " *Id.* (quoting *City of Belvidere*, 181 Ill. 2d at 205). " 'A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.' " *Id.* (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). Where the Board dismisses a charge finding there is insufficient evidence to warrant a hearing, we will reverse the Board's decision only if we find that it abused its discretion. *Michels v. Illinois Labor Relations Board*, 2012 IL App (4th) 110612, ¶ 45. We will find that the Board abused its discretion if its decision is arbitrary and was "reached without employing conscientious judgment or when the decision is clearly against logic." *Id.* ¶ 46.

¶ 34 B. Section 10(a)(1) Retaliation

We will first address Ms. Barileau's contention that the Board abused its discretion in dismissing her allegations pursuant to section 10(a)(1) without a hearing. Ms. Barileau asserts that in dismissing her section 10(a)(1) claims, the Board misconstrued "concerted activity" by treating her OEIG complaint as an individual grievance. She asserts that the OEIG complaint did not raise personal objections but identified "systemic misconduct" that affected all investigators at the Department. She further contends that the Board ignored evidence demonstrating that the Department knew about her intent to file the OEIG complaint in May 2024, rather than in October 2024 when the OEIG referred the complaint to the Department. She maintains that the Board also overlooked evidence of causal connection and disparate treatment where the comparator chart and timeline she submitted demonstrated evidence of retaliatory CAPs and inconsistent enforcement of Department policies.

¶ 35 Section 10(a)(1) of the Act " 'broadly protects public employees in exercising their rights under the Act.' " *Slater v. Illinois Labor Relations Board, Local Panel*, 2019 IL App (1st) 181007, ¶ 16 (quoting *Pace Suburban Bus Division of Regional Transportation Authority v. Illinois Labor Relations Board, State Panel*, 406 Ill. App. 3d 484, 496 (2010)). "In order to state a *prima facie* violation of section 10(a)(1) of the Act, a charging party must show that (1) they were engaged in statutorily protected activity; (2) their employer knew of the nature of such conduct; and (3) their employer acted against them for discriminatory reasons." (Internal quotation marks omitted.) *Id.* (quoting *Village of North Riverside v. Illinois Labor Relations Board, State Panel*, 2017 IL App (1st) 162251, ¶ 44. With regard to the last requirement, the charging party may alternatively show that the employee's exercise of protected conduct was a "motivating or substantial factor leading to the adverse action." *Village of North Riverside*, 2017 IL App (1st) 162251, ¶ 44. Adverse

employment action requires a showing that there was "some qualitative change in, or actual harm to, an employee's terms and conditions of employment." *Slater*, 2019 IL App (1st) 181007, ¶ 18.

¶ 36 Here, the Board dismissed Ms. Barileau's unfair labor practice charge finding that she failed to make a *prima facie* showing that she engaged in statutorily protected "concerted activity" and that she failed to demonstrate a causal connection between her allegedly protected activity and the identified adverse employment actions. The Board determined that whether Ms. Barileau's filing of the OEIG complaint constituted concerted activity was the "threshold issue" in this case. The Board defined concerted activity as actions undertaken "with or on the other authority of other employees in furtherance of a group concern." (Internal quotation marks omitted.) The Board further explained that an employee, acting alone, without contacting other employees, does not satisfy the concerted action requirement even if the employee acts with the desire to help other employees. "The employee must be actually, not impliedly, representing the views of other employees." (Internal quotation marks omitted.)

¶ 37 Ms. Barileau asserts that her OEIG complaint constituted "concerted activity" because it identified systemic misconduct by the Department that she maintains affected the investigator unit as a whole. She contends that the Board erred in adopting an overly restrictive interpretation of "concerted activity" that required the employee to act with or on the authority of other employees.

¶ 38 We recognize that reviewing courts give deference to the administrative agency's interpretation of the statute it was created to enforce. *Illinois Police Council v. Illinois Labor Relations Board*, 387 Ill. App. 3d 641, 660 (2008). In defining "concerted activity," the Board in this case looked to its prior decisions and cited Board decisions dating back to 1993. "The longer an agency has adhered to an interpretation of the statute, the more weight the interpretation deserves." *Illinois Bell Telephone Co. v. Illinois Commerce Commission*, 362 Ill. App. 3d 652, 657

(2005). We note, however, that we are not bound by an agency's interpretation of a statute. *Commonwealth Edison Co. v. Illinois Commerce Commission*, 2016 IL App (1st) 150425, ¶ 19.

As noted, section 10(a)(1) protects an employee's right to exercise rights guaranteed in the Act. 5 ILCS 315/10(a)(1) (West 2024). Pursuant to section 6(a) of the Act, employees of the State have the right to engage in "concerted activities." *Id.* § 6(a). There is limited authority from this court defining "concerted activities" under the Act. This court has, however, defined "concerted activities" in the context of section 14 of the Illinois Educational Labor Relations Act. Our supreme court has held that analysis applicable under the Illinois Educational Labor Relations Act is applicable in cases arising under the Act where there is a "substantial similarity" between the sections in both acts. *City of Belvidere*, 181 Ill. 2d at 206-07. Here, both section 14 of the Illinois Educational Labor Relations Act and section 10 of the Act define "Unfair labor practices," and both sections state that it shall be an unfair labor practice for an educational employer in the Illinois Educational Labor Relations Act or a public employer in the Act to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed under the respective acts. 115 ILCS 5/14(a)(1) (West 2024); 5 ILCS 315/10(a)(1) (West 2024). In addition, section 3(a) of the Illinois Educational Labor Relations Act, like section 6(a) of the Act, recognizes the right of an employee to engage in lawful "concerted activities." 115 ILCS 5/3(a) (West 2024); 5 ILCS 315/6(a) (West 2024).

¶ 39 Consistent with these substantially similar subsections, the test to establish a *prima facie* violation of section 14(a)(1) of the Illinois Educational Labor Relations Act is nearly identical to the test pursuant to section 10(a)(1) of the Act set forth above. To establish a *prima facie* violation of section 14(a)(1), a petitioner must show (1) he was engaged in protected concerted activity, (2) the employer was aware of that activity, and (3) the employer took adverse action against the

employee for engaging in that activity. *Thornton Fractional High School District No. 215 v. Illinois Educational Labor Relations Board*, 404 Ill. App. 3d 757, 766 (2010). Under the Illinois Educational Labor Relations Act, "employees engage in concerted activity where they invoke a right grounded 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." (Internal quotation marks omitted.) *Board of Education of Schaumburg Community Consolidated School District 54 v. Illinois Educational Labor Relations Board*, 247 Ill. App. 3d 439, 456 (1993). This is consistent with how the Board has historically defined "concerted activity" under the Act. See, *e.g.*, *Janda & Bollinger v. County of Cook & Sheriff of Cook County*, No. L-CA-21-033 (ILRB 2023) ("The actions of an individual employee are 'concerted activity' when they are undertaken 'with or on the other authority of' other employees and in furtherance of a group concern.").

¶ 40 Our supreme court has also instructed that we may consider Federal interpretations of provisions of the NLRA where there is a "close parallel" between sections of the Act and sections of the NLRA. *City of Burbank v. Illinois State Labor Relations Board*, 128 Ill. 2d 335, 345 (1989). Like both the Act and Illinois Educational Labor Relations Act, the NLRA provides that it shall be an unfair labor practice for an employer to "interfere with, restrain, or coerce employees in the exercise of the rights" guaranteed by the NLRA and protects an employee's right to engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. §§ 157, 158(a) (2022). This court has therefore looked to Federal court precedent interpreting the NLRA in defining "concerted activity" under the Illinois Educational Labor Relations Act. *Board of Education of Schaumburg*, 247 Ill. App. 3d at 456. In interpreting "concerted activity" under the NLRA, Federal courts have determined that an individual is engaged in concerted activity when "they invoke a right grounded 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.' " *Id.* (quoting *Meyers Industries*, 268 N.L.R.B. 493, 497 (1984)).

> "Thus the actions of an individual employee who acts on his own to enlist the support of other employees for the purpose of mutual aid or protection are as 'concerted' as group activities to the same end. [citations]. However, public venting of a personal grievance, even a grievance shared by others, is not a concerted activity." *Pelton Casteel, Inc. v. N.L.R.B.*, 627 F. 2d 23, 28 (1980).

It is therefore not sufficient for an employee's complaints to concern working conditions that affect all employees. *Id.* Instead, the actions themselves must "at least contemplate some group activity." *Id.* "[I]t is necessary to demonstrate that the activity was for the purpose of inducing or preparing for group action to correct a grievance or a complaint." *Indiana Gear Works v. N.L.R.B.*, 371 F. 2d 273, 276 (1967).

¶ 41 In this case, Ms. Barileau's general complaints about CAPs and Department policies does not support a conclusion that her OEIG complaint and other reports to Department management were more than "individual gripes." *Pelton Casteel*, 627 F. 2d at 28. As the Board recognized, Ms. Barileau did not provide evidence, or even allege, that she was acting on behalf of other investigators or that she filed the OEIG complaint with or on the authority of other investigators. Even if these grievances are shared by fellow investigators, as Ms. Barileau contends, she fails to even suggest that she consulted with other investigators, enlisted their support, or "contemplate[d] some group activity." The Board's interpretation of "concerted activity" was not overly narrow as Ms. Barileau suggests, but is consistent with the authority cited above and the manner in which the Board has historically interpreted that phrase.

¶ 42 Although we could affirm the Board's dismissal solely on the basis that Ms. Barileau failed to establish that she engaged in "concerted activity," we will briefly address her contention that the Board also erred in finding that she failed to demonstrate that there was a causal connection between her allegedly protected activity and the adverse employment actions. Ms. Barileau asserts the Board ignored evidence of employer knowledge demonstrating that the Department knew of her protected activity before the OEIG referred her complaint to the Department in October 2024. She further asserts that the Board ignored the evidence she presented of disparate treatment, including the comparator chart she submitted.

¶ 43 As discussed, to establish a *prima facie* violation of section 10(a)(1), an employee must show, *inter alia*, that the employee suffered an adverse employment action based on their participation in or exercise of protected conduct. *Village of North Riverside*, 2017 IL App (1st) 162251, ¶ 44. An employer's motivation for an adverse employment action is a question of fact and may be inferred from either direct or circumstantial evidence. *Pace*, 406 Ill. App. 3d at 496-97. Because it is a question of fact, we will set aside the Board's finding of motive only if it is against the manifest weight of the evidence. *City of Burbank*, 128 Ill. 2d at 345.

¶ 44 Our supreme court has identified five factors a court may examine to infer improper employer motivation. Those factors are: (1) an employer's expressed hostility towards unionization, together with knowledge of the employee's union activities; (2) proximity in time between the employees' union activities and their discharge; (3) disparate treatment of employees or a pattern of conduct which targets union supporters for adverse employment action; (4) inconsistencies between the proffered reason for discharge and other actions of the employer; and (5) shifting explanations for the discharge. *Id.* at 346.

¶ 45 We observe that these factors are phrased in terms of antiunion animus, which is a consideration under section 10(a)(2) of the Act (735 ILCS 315/10(a)(2) (West 2024) (stating that it shall be an unfair labor practice for an employer to "discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in or other support for any labor organization."). Although Ms. Barileau does not raise any contention on appeal with regard to the Board's dismissal of her charge pursuant to section 10(a)(2) of the Act, where an employee asserts that adverse action was taken against her for engaging in protected activities under section 10(a)(1), the Board follows the framework applied in Section 10(a)(2) claims to determine whether the employer terminated the employee based on an illegal motive. *Pace*, 406 Ill. App. 3d at 494. As such, these factors can be applied to determine improper motive for an adverse employment action based on an employee's exercise of other protected activities under the Act; in this case, participation in concerted activity. *Id.*

¶ 46 Ms. Barileau's contentions primarily focus on factors (1), (2), and (3) set forth above. Specifically, she contends that the Board ignored evidence showing employer knowledge of her intention to file a complaint with the OEIG prior to October 2024, that the Board ignored evidence of disparate treatment, particularly the comparator chart she prepared and submitted as evidence, and that the timing between her exercise of protected activity and the adverse employment actions taken by the Department strongly suggest that she was retaliated against for her exercise of protected activities. She also contends that the Board's decision "contains no discussion" of her telework revocation, indicating that the Board disregarded this event in rejecting her claims.

¶ 47 First, we find a plain reading of the Board's written decision belies Ms. Barileau's contentions that the Board "ignored" the evidence she identifies. On page six of the Board's decision and order, the Board first observed that the executive director found that the Department

did not have knowledge of Ms. Barileau's OEIG complaint until it was referred to the Department in October 2024. The Board noted that Ms. Barileau challenged this finding, contending that she informed the Department she would be filing a complaint with the OEIG by email on May 20, 2024. The Board determined that even "[a]ssuming" this email satisfied the knowledge element of the *prima facie* case, her arguments nonetheless failed to demonstrate a causal connection between the filing of the complaint or the notice to the Department of her intention to do so and the issuance of CAPs. The Board then referred to Ms. Barileau's comparator chart and observed that other investigators who had late cases also received CAPs. The Board determined that, therefore, Ms. Barileau had failed to establish disparate treatment—*even if* the Board accepted her May 20, 2024, email as the date of employer knowledge. Similarly, on page eight of its decision, the Board discussed Ms. Barileau's loss of ability to work remotely and her contention that this policy violated the Act. Therefore, the record shows that the Board considered, but ultimately rejected, the evidence Ms. Barileau contends that the Board ignored.

¶ 48 We further find that the Board's determination that Ms. Barileau failed to establish a *prima facie* case that the Department acted with improper motive was not against the manifest weight of the evidence. As noted above, Ms. Barileau received CAPs for late cases. She does not assert that the CAPs were unwarranted, only that other investigators with late cases did not receive CAPs. However, as the executive director and the Board recognized, other investigators with late cases *did* receive CAPs. Ms. Barileau asserts that her CAPs contained more punitive language, but she failed to present evidence of the language used in other investigators' CAPs. Although the comparator chart does appear to show that some investigators did not receive CAPs for late cases, this does not, without more, establish improper motive. She also points out that she had her telework privileges revoked in October 2024 and contends that similarly situated investigators did

not have that privilege revoked. However, as the Board recognized, it was Department policy for an investigator to have their telework privileges revoked after they received three consecutive CAPs. Ms. Barileau does not dispute that she received three consecutive CAPs, and she failed to present any evidence showing whether other investigators received three consecutive CAPs as she had and whether those investigators did or did not have their telework privileges revoked. See *American Federation of State, County, & Municipal Employees, Council 31, AFL-CIO v. Illinois State Labor Relations Board*, 175 Ill. App. 3d 191, 200 (1988) ("Accordingly, we do not find the bare indication that some employees were disciplined under some circumstances and others were not (under different circumstances) rises to a presumption of disparate treatment due to union animus."). In addition, the Department granted Ms. Barileau's request to return to remote work in January 2025, presumably after she had completed the late cases identified in her CAPs. We therefore find that the Board's determination that Ms. Barileau failed to establish a *prima facie* case of improper employer motive was not against the manifest weight of the evidence.

¶ 49 C. Section 10(a)(4) Unilateral Change

¶ 50 Ms. Barileau acknowledges that the executive director correctly found that she lacked standing to allege a violation of section 10(a)(4) as an individual employee. She contends, however, that "to the extent the same actions, policy changes affecting telework and discipline, also operated to interfere with or retaliate against protected activity, they should have been investigated as part of the broader § 10(a)(1) pattern of retaliation and chilling effect."

¶ 51 As noted, under section 10(a)(4) of the Act, it is an unfair labor practice for a public employer or its agents "to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit." 5 ILCS 315/10(a)(4) (West 2024). "If the public employer fails to bargain, it violates not only its duty

under section 10(a)(4) but, derivatively, it also violates its duty under section 10(a)(1) of the Act." *Amalgamated Transit Union v. Illinois Labor Relations Bd.*, 2017 IL App (1st) 160999, ¶ 35 (citing *Wheaton Firefighters Union, Local 3706 v. Illinois Labor Relations Board, State Panel*, 2016 IL App (2d) 160105, ¶ 15.). "A public employer also violates its obligation to bargain in good faith, and therefore sections 10(a)(1) and (4) of the Act, when it makes a unilateral change in a mandatory subject of bargaining without granting notice and an opportunity to bargain with its employees' exclusive bargaining representative." *Id.*

¶ 52 Here, Ms. Barileau does not assert that the Department made any unilateral change to the collective bargaining agreement. She instead repeats the allegations she made before the Board that the Department's policy of revoking telework privileges after an investigator receives three CAPs discourages employees from contesting CAPs. As the Board recognized, and as Ms. Barileau fails to rebut on appeal, contesting CAPs is not an activity protected by the Act. In addition, as the Board stated, even assuming contesting CAPs were a protected activity, the Department's policy would encourage, rather than discourage, employees from contesting CAPs because employees would want to retain their telework privileges. Accordingly, we find that the Board did not abuse its discretion in dismissing Ms. Barileau's charge against the Department without a hearing where she failed to establish a *prima facie* case of violations of section 10(a)(1), (2), or (4) of the Act.

¶ 53 D. The Board's Investigation

¶ 54 Finally, Ms. Barileau contends that the Board failed to conduct a fair and adequate investigation of her charge pursuant to section 11 of the Act. She asserts that Board adopted the executive director's decision and the Department's position "almost verbatim," and disregarded the evidence she presented. She maintains that this demonstrates that the Board failed to perform

an independent investigation into her charge and conducted a one-sided and cursory investigation that ignored material evidence.

¶ 55 Pursuant to section 11(a) of the Act, when it is charged that any person or entity has engaged in an unfair labor practice, "the Board or any agent designated by the Board for such purposes, shall conduct an investigation of the charge." 5 ILCS 315/11(a) (West 2024). Pursuant to the Board's rules, the charging party is required to submit evidence in support of the charge, including documents and affidavits. 80 Ill. Admin. Code 1220.40(a)(1) (2003). At the request of the Board or its agent, "the respondent may submit a complete account of the facts, a statement of its position in respect to the allegations set forth in the charge and all relevant evidence in support of its position. The evidence may include documents and affidavits." 80 Ill. Admin. Code 1220.40(a)(2) (2003).

¶ 56 If "the Board finds that the charge involves a dispositive issue of law or fact the Board shall" set the matter for an administrative hearing. 5 ILCS 315/11(a) (West 2024); see 80 Ill. Admin. Code 1220.40(a)(3), 1220.50 (2003). If, however, "the charge does not state a claim on its face or if the investigation reveals that there is no issue of law or fact sufficient to warrant a hearing, the Executive Director shall dismiss the charge." 80 Ill. Admin. Code 1220.40(a)(4) (2003). The charging party may then appeal the dismissal to the Board. 80 Ill. Admin. Code 1220.40(a)(4) (2003); 80 Ill. Admin. Code 1200.135 (2003). On appeal to the Board, the "Board may adopt all, part or none of the [Executive Director's] order depending on the extent to which it is consistent with the record and applicable law." 80 Ill. Admin. Code 1200.135(a)(3) (2003).

¶ 57 Here, the Board conducted its investigation of Ms. Barileau's charge through its agent, the executive director. In accordance with the Act and the Board's rules, the executive director requested that Ms. Barileau submit a position statement and documentary evidence to support her

allegations. After receiving Ms. Barileau's submissions, the executive director then requested a position statement from the Department. Based on these submissions, the executive director found that there was no issue of law or fact sufficient to warrant a hearing, a finding that the Board affirmed on appeal. Both the executive director's written order and decision and the Board's written order and decision clearly referred to the evidence and allegations Ms. Barileau raised and explained why they failed to establish a *prima facie* claim for an unfair labor practice. Contrary to Ms. Barileau's contentions, therefore, the Board's investigation, conducted through the executive director, sufficiently complied with the Act and the Board's rules.

¶ 58 Ms. Barileau maintains that the Board made no determination regarding: (1) when her OEIG complaint was transmitted "internally" beyond the referral by the OEIG, (2) what substance of the complaint was communicated to management; (3) whether supervisors issuing CAPs were informed; or (4) whether knowledge could reasonably be inferred from "documented management transmission." Ms. Barileau fails to explain, however, how these omissions create an issue of law or fact sufficient to warrant a hearing. As discussed above, Ms. Barileau failed to identify any concerted activity she engaged in, failed to establish a causal connection between her allegedly protected activity and any adverse employment action she experienced, and failed to otherwise establish a *prima facie* case for any violation of the Act. Whether and to what extent her supervisors were aware of her OEIG complaint, where the Board assumed knowledge, is irrelevant. To the extent Ms. Barileau suggests that the Board was required to gather evidence beyond what was submitted by the parties, such additional investigation is not required by the Act or the Board's rules. As explained, it was Ms. Barileau's burden to establish a *prima facie* case for a violation of the Act. *Pace*, 406 Ill. App. 3d at 496.

¶ 59 Finally, Ms. Barileau alleges that the Board's inadequate investigation is evidenced by its use of "boilerplate" language and repeating of the Department's "framing" of the analysis. She identifies phrases used by the Board in its decision such as "timing alone is insufficient" and "individuals lack standing under § 10(a)(4)." She maintains that this same language can be found in both the executive director's decision and the Department's position statement, indicating that the Board merely copied this analysis rather than conducted its own. The identified passages, however, are merely accurate statements of the law and Ms. Barileau fails to explain how the use of this language establishes that the Board failed to conduct an adequate investigation. As the statements are consistent with the record and the applicable law, the Board was free to adopt those portions of the executive director's order. 80 Ill. Admin. Code 1200.135(a)(3) (2003). We therefore find that the Board investigation of Ms. Barileau's charge complied with section 11 of the Act.

¶ 60 III. CONCLUSION

¶ 61 For the reasons stated, we affirm the judgment of the Board.

¶ 62 Board decision affirmed.