STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Samuel Ware,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CA-10-058
	)	
City of Chicago,	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD LOCAL PANEL

On April 18, 2012, Executive Director John F. Brosnan issued an order dismissing the unfair labor practice charge filed by Samuel Ware (Charging Party) in the above-captioned case. The Charging Party alleged that, by a variety of actions, the City of Chicago (Respondent) engaged in unfair labor practices within the meaning of Section 10(a)(1) and (2) of the Illinois Public Labor Relations Act, 5 ILCS 315/10 (2010), as amended (Act).[1] On April 26, 2012, Charging Party filed a timely appeal of the Executive Director's dismissal pursuant to Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code §1200.135. The

[1] Sections 10(a)(1) and (2) provide, in relevant part:

> It shall be an unfair labor practice for an employer or its agents:
>
> (1) to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act or to dominate or interfere with the formation, existence or administration of any labor organization or contribute financial or other support to it; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;
>
> (2) 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....

Respondent filed no response. After reviewing the record and the appeal, we uphold the Executive Director's order dismissing the charge for the reasons he articulated. We briefly respond to arguments raised in the appeal.

As the Executive Director explained, to establish a violation of Section 10(a)(1), a charging party must demonstrate that (1) he engaged in activity protected under the Act, (2) the respondent knew of that activity, and (3) respondent took adverse action against him because of that activity. Gale and Chicago Housing Authority, 1 PERI ¶3010 (IL LLRB 1985). Charging Party, an Administrative Assistant III in Respondent's Office of Emergency Management and Communications (OEMC), claims Respondent took adverse action against him in four ways: (1) by requiring that he report his whereabouts during a particular lunch period in which he attended a presentation by the Mayor's Office of People with Disabilities at City Hall; (2) by prohibiting him from taking certain breaks during the day; (3) by requiring that he apply for leave under the Family and Medical Leave Act in order to be advanced sick leave; and (4) by an attempt to relocate him to a worksite he had not requested. The Executive Director dismissed the charge because there was no evidence Respondent treated Charging Party differently than other employees within OEMC,[2] and its attempt to accommodate Charging Party's professed medical needs, by means of finding a different work environment within OEMC or by means of cooperating with other City departments, seemed reasonable.

In his appeal, Charging Party claims it was inappropriate for the Executive Director to discuss some of the particular aspects of his medical needs such as the fact that he had filed grievances and a worker's compensation claim, but we see no impropriety and note that, even if mentioning these things were in error, the error would have been harmless. It certainly would not warrant reversal of the dismissal and issuance of a complaint for hearing on the underlying charge.

[2] Pursuant to the collective bargaining agreement, some of Respondent's employees employed in other departments are entitled to a different set of break periods.

The remainder of the appeal stresses that, at the time of the Respondent's actions toward Charging Party, Charging Party had been a union steward. In fact, he had received training to be a steward just one month before filing his charge. This, too, fails to provide a reason for reversal. Charging Party's status as a steward does not, in itself, provide him with heightened protections under the Act, and he provides no evidence of having taken actions as a steward to which Respondent might be claimed to be retaliating. If Charging Party's point is that the Executive Director should have evaluated his charge under Section 10(a)(2) (and Section 10(a)(1) only derivatively) rather than directly under Section 10(a)(1), he has shown greater grounds for dismissal. Establishment of a Section 10(a)(2) violation requires proof of a fourth element: respondent's illegal motivation. Pace Suburban Bus Div. of Reg'l Transp. Auth. v. Ill. Labor Relations Bd., 406 Ill. App. 3d 484, 494-95 (1st Dist. 2010). There is no evidence presented that tending to establish that element.

For these reasons and those articulated by the Executive Director, we affirm the dismissal of the charge.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD[3]

Robert M. Gierut, Chairman

Charles E. Anderson, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois, June 12, 2012; written decision issued in Chicago, Illinois on July 26, 2012.

[3] Board Member Edward Sadlowski was present at the Local Panel's June 12, 2012 meeting and voted in favor of this result, but retired from his position with the Board before the written decision issued.

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DISMISSAL

On March 18, 2010, Charging Party, Samuel Ware filed an unfair labor practice charge in the above referenced case, alleging that Respondent, City of Chicago (Employer or OEMC) violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), *as amended.* Following an investigation conducted pursuant to section 11 of the Act, I determined that the charge fails to raise an issue of fact or law sufficient to warrant a hearing and issue this dismissal for the reasons set forth below.

I. INVESTIGATORY FACTS

Respondent is a public employer within the meaning of Section 3(o) of the Act. Ware is a public employee within the meaning of Section 3(n) of the Act, employed by Respondent in the title or job classification of Administrative Assistant III, and is a member of the bargaining unit, serving as a steward, and represented by AFSCME Council 31 (Union or AFSCME), a labor organization within the meaning of Section 3(i) of the Act. The Union and the Employer are parties to a collective bargaining agreement (CBA) that provides a grievance procedure culminating in arbitration.

Charging Party complains that the Employer is not cooperative in his search for reasonable accommodation under ADA. He further complains that the Employer requires him to notify it as to his lunch location, when he takes personal breaks, and that he has been denied FMLA. The Employer submits that Ware has been allowed to take his lunch and breaks as needed in the same manner as other OEMC employees.

On February 3, 2010, Ware submitted a claim for workers compensation based on stress related mental and emotional problems generated from his work; he complained of not having enough breaks to relieve stress. On March 29, 2010, he was notified that his claim was not compensable.

On February 23, 2010, Ware applied for advancement of FMLA to be used by him to manage his chronic illness. The director of OEMC advised Ware to obtain a written order from is personal physician explaining Ware's illness and his need for relief via FMLA. Ware was not denied FMLA.

On March 5, 2010, Ware requested to use his unpaid lunch hour to attend a meeting of the Mayor's Office for People with Disabilities, at City Hall. His supervisor, Tamie Sepulvida, requested that he put his request in writing, and once at the meeting, have its moderator notify or email OEMC to verify his attendance. The only restriction placed on this single request was that Ware observe the one hour limitation for lunch, a time requirement of all OEMC employees.

On March 24, 2010, Ware emailed the OEMC director stating that he could not report to work because of stress caused by a "hostile work environment", and requested a duty disability leave of absence, presumably to manage his affliction. On March 25, 2010, the director denied his request for duty disability, but advised Ware that he was qualified for, and could apply for, a personal leave of absence. The director forwarded the appropriate forms for Ware's completion. On March 29, 2010, the director repeated the offer of a personal leave; Ware completed the application, along with his doctor's

certification, and was granted leave retroactively to March 24, 2010; the leave was to expire on June 24, 2010.

With regard to Ware's allegation that the Employer denied his request for reasonable accommodation under ADA, on January 29, 2010, Ware submitted a Reasonable Accommodation Request. On February 23, 2010, in response to Ware's request, the Employer offered to transfer Ware from OEMC headquarters at 1422 West Madison, to the OEMC traffic control center, at 120 North Racine. In response to the offer, Ware declined the re-assignment, and requested a meeting with the deputy director of OEMC, and insisted that an AFSCME representative be allowed to attend. The Employer agreed to the meeting, scheduled for March 18, 2010. Ware failed to attend the meeting, but did submit an amended reasonable accommodation form requesting availability of all city departments. On April 8, 2010, Ware's reasonable accommodation request was denied by OEMC, explaining that it does not control assignments to other city departments. Ware was referred to the Employer's department of human resources to assist him in his search for the appropriate assignment in other city departments, offering to assist him where possible.

II. DISCUSSION AND ANALYSIS

In order to assert a violation of Section 10(a)(1), Charging Party must allege that he engaged in protected activity, that Respondent knew of that activity, and that Respondent took adverse action against him as a result of his involvement in that activity. Gale and Chicago Housing Authority, 1 PERI ¶3010 (IL LLRB 1985). Charging Party contends that the work environment at OEMC caused him undue stress and that Respondent failed to properly address his emotional needs relative to that problem, thus violating the Act.

Herein, Ware proffered no evidence that his difficulty in adjusting to the demands of his job was in any way retaliatory or otherwise due to protected activity. The restrictions placed on his breaks or

lunch periods were the same as for all other employees of OEMC. There is no evidence that Ware was singled out. In the Employer's response to Ware's medical needs, it seemingly offered reasonable accommodation to a different work environment, either with OEMC, or assistance to other city departments.

Ware is unable to make a showing as to a violation of the Act, and thus, his claim fails.

III. ORDER

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 days of service hereof. Such appeal must be in writing, contain the case caption and number and must be addressed to the Board's General Counsel, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations involved in this case at the same time it is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, the dismissal will be final.

Issued in Chicago, Illinois, this 18th day of April, 2012.

ILLINOIS LABOR RELATIONS BOARD
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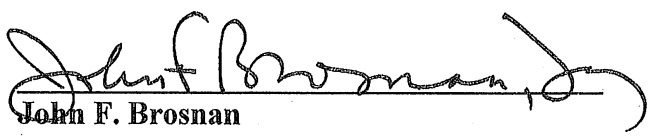

John F. Brosnan
Executive Director