STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Joseph McGreal,	)	
	)	
Charging Party,	)	
	)	
and	)	Case No. L-CA-21-037
	)	
City of Chicago (Department of Business Affairs and Consumer Protection),	)	
	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

On April 14, 2022, Executive Director Kimberly Stevens dismissed a charge filed on March 22, 2021, by Charging Party Joseph McGreal, alleging Respondent City of Chicago ("City") engaged in unfair labor practices within the meaning of Sections 10(a)(1) and 10(a)(2) of the Illinois Public Labor Relations Act ("the Act"), 5 ILCS 315/1 *et seq*. Charging Party claims Respondent violated the Act when it discharged him to avoid allowing Charging Party to take his approved FMLA leave[1] and for participating in protected concerted activity. Charging Party also contends that Respondent's actions deterred other bargaining unit members for engaging in union and other protected concerted activity.

The Executive Director dismissed the charge on grounds the charge failed to raise issues of fact or law for hearing. She observed that there was evidence that Charging Party engaged in protected concerted activity, Respondent had knowledge of that activity, and Charging Party suffered an adverse employment action, but found that Charging Party failed to provide any

[1] The Executive Director noted that to the extent Charging Party is claiming he was discharged because of his FMLA benefits, the Board lacks jurisdiction over the enforcement of laws other than the Act.

evidence that his participation in protected activity was the substantial or motivating factor in Respondent's decision to discharge him. The Executive Director found that Respondent's decision to fire Charging Party's was based its review of Respondent's Office of the Inspector General's (OIG) findings and recommendations and Charging Party's rebuttal. She also observed that Charging Party failed to provide evidence of Respondent's animus towards Charging Party's protected activity other than the timing of Respondent's actions. The Executive Director likewise found that Charging Party failed to provide evidence that Respondent's actions deterred other unit members from filing grievances and noted that Charging Party continues to engage in protected concerted activity and has not encountered any disparate treatment.

Charging Party timely filed an appeal of the Executive Director's dismissal. In his appeal, Charging Party points to the December 11, 2020 Determination Letter and the May 21, 2021 Board of Review Decision from the Illinois Department of Employment Security (IDES) regarding his unemployment insurance claim and an email to his supervisors regarding the alleged misconduct leading to the OIG investigation. Charging Party contends these documents provide evidence of Respondent's pattern of disparate treatment, hostile treatment towards Charging Party, shifting explanations for his discharge, and anti-union animus. Charging Party also claims he was not able to provide evidence of disparate treatment during the investigation because his attempts to obtain the from Respondent were unanswered but now points to Davide Malderner, another employee who participated in protected union activity, who received more severe discipline as evidence of a pattern of disparage treatment.

Respondent timely responded, contending that the IDES documents Charging Party relies on cannot, by law, be used as evidence in the Board's proceedings. Respondent asserts Section 1900 of the Illinois Unemployment Insurance Act ("IUIA") specifically prohibits information

obtained during the administration of the IUIA and findings, determinations, rulings, or orders issued pursuant to the IUIA to be used as evidence in any proceeding or actions other than those arising out of the IUIA. 820 ILCS 405/1900.

Although we find merit to Respondent's contentions regarding the IUIA's prohibition on the use of the information and IDES decision submitted by Charging Party as evidence of Respondent's unlawful motive in our proceedings, Charging Party's allegations regarding Respondent's pattern of disparate treatment and treatment of Malderner warrant further investigation. As Respondent correctly notes, those allegations and evidence were not made during the investigation of the charge, but Charging Party contends that he was not able to provide information indicating a pattern of disparate treatment. Charging Party claims he attempted to obtain such information from Respondent but claims his requests were denied or ignored. In City of Chicago (Conroy), we remanded for further investigation into a retaliation allegation, specifically directing further investigation into the claim that the employer treated the charging party in that case differently than other, similarly situated employees who did not engage in protected activity. Although it noted the charging party himself did not provide sufficient evidence of disparate treatment when it was requested, we reasoned the pro se charging party's omission could be explained by his failure to understand the type of evidence that could satisfy his burden to submit some evidence to support his claims. We distinguished previous cases in which we dismissed cases for failure to provide evidence requested by the investigator, noting that the charging party did not have immediate access to records held by the employer. We stated "[w]e now emphasize that the [c]harging [p]arty need not supply documentary evidence drawn from the [employer]'s records to satisfy his burden during investigation and may instead rely on employee affidavits."

Here, we find the circumstances to be similar to those in City of Chicago (Conroy), 34 PERI ¶ 73 (IL LRB-LP 2017), and remand the matter for further investigation into Charging Party's claim of disparate treatment. Charging Party, who is proceeding pro se, claims he was unable to obtain information regarding disparate treatment in the possession of the Respondent and the Executive Director determined there was no evidence of such disparate treatment in dismissing the charge. Further investigation would allow Charging Party an opportunity to submit affidavits from other employees indicating the employer's disparate treatment and allow Respondent to respond to such claims. Moreover, Charging Party's claims of disparate treatment can be investigated without reliance on any of the IUIA documents included with the appeal.

For the above reasons, we reverse the dismissal order and remand to the Executive Director for further investigation as discussed above.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Lynne O. Sered
Lynne O. Sered, Chairman

/s/ Charles E. Anderson
Charles E. Anderson, Member

/s/ Angela C. Thomas
Angela C. Thomas, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois, on June 9, 2022; written decision approved at the Local Panel's public meeting in Chicago, Illinois, on July 14, 2022, and issued on July 14, 2022.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Joseph McGreal, Charging Party and City of Chicago, Department of Business Affairs and Consumer Protection, Respondent	Case No. L-CA-21-037

DISMISSAL

On March 22, 2021, Joseph McGreal (Charging Party) filed an unfair labor practice charge (charge) in Case No. L-CA-21-037 with the Local Panel of the Illinois Labor Relations Board (Board), alleging that the City of Chicago, Department of Business Affairs and Consumer Protection, (Respondent) engaged in unfair labor practices within the meaning of the Illinois Labor Relations Act, 5 ILCS 315 (2014). After an investigation conducted in accordance with Section 11 of the Act, I determined that this charge fails to raise an issue of law or fact sufficient to warrant a hearing. I hereby dismiss this charge for the following reasons.

I. INVESTIGATION

Respondent is a public employer within the meaning of Section 3(o) of the Act. Respondent employs Charging Party in the job classification or job title of Business Compliance Investigator. Respondent also employs a group of full-time employees that are members of a bargaining unit (Unit) represented by a labor organization (Union). Respondent and the Union are parties to a collective bargaining agreement (CBA) for the Unit that includes a grievance procedure culminating in final and binding arbitration. Charging Party alleges that Respondent violated Sections 10(a)(1) and (2) of the Act

when it terminated his employment due to his decision to utilize his Family Medical Leave Act (FMLA) benefit[1] and his engagement in protected concerted activity. Charging Party believes that Respondent utilized a year-old Office of the Inspector General (OIG) investigation to conceal its real motive for terminating him. Moreover, Charging Party argues that his termination was unfair since it occurred without warning or progressive discipline. Lastly, Charging Party claims that Respondent's actions deterred other Unit members from engaging in union or protected concerted activity.

On or around August 25, 2019, a Lieutenant with the Chicago Police Department (CPD) contacted Respondent's Commissioner Rosa Escareno (Escareno) and alleged that Charging Party violated workplace policy, including, but not limited to, by informing bar owners of impromptu inspections. On August 28, 2019, Escareno reported the allegation to the OIG. Sometime thereafter, the OIG commenced an investigation into the allegations in Case No. 19-0836.

On December 19, 2019, Respondent's Supervisors Joseph Sneed (Sneed) and Susie Reynolds (Reynolds) reassigned Charging Party to limited duty.[2]

On May 8, 2020, the OIG interviewed Charging Party regarding Case No. 19-0836. On June 7, 2020, Charging Party received his annual performance evaluation. Charging Party received a highly proficient evaluation. Charging Party contends that this score, which he received during the pendency of the OIG's investigation, sustains his allegation that Respondent's decision to terminate him was not due to his performance or the OIG's recommendation.

[1] Charging Party was approved for FMLA on November 18, 2020. To the extent that Charging Party claims that he was terminated due to his FMLA approval, the Board lacks jurisdiction over laws or regulations other than the Act. Complaints regarding denial of FMLA benefits, or retaliation due to FMLA, should be addressed through the Illinois Department of Labor (IDOL).

[2] Charging Party, via electronic communication with the Union, indicated that Respondent altered his workplace assignment. Respondent noted that, in or around January or February 2020, it assigned business compliance education work to Charging Party. Under this assignment, Charging Party was unable to write citations or respond to complaints.

On June 23, 2020, Charging Party notified the Union's Vice President Troy Roberts (Roberts) of Respondent's alleged failure to adhere to CBA language related to seniority and overtime. On July 16, 2020, Charging Party once again notified the Union of Respondent's alleged CBA violation. On July 30, 2020, Charging Party filed an individual grievance against Respondent alleging that it violated several CBA sections related to overtime scheduling and pay. Charging Party sought to be made whole for overtime hours to which he alleges he was entitled.

On August 11, 2020, the Union filed a class action grievance, Grievance No. 01-20-70-0041, which alleged that Respondent violated a portion of the CBA related to overtime and seniority. [3] On September 3, 2020, the OIG's Inspector General Joseph Ferguson (Ferguson) issued his findings and recommended that Charging Party be discharged and placed on the ineligible rehire list.

On November 12, 2020, Respondent held a pre-disciplinary meeting with Charging Party, explained the outcome of the OIG's investigation, and informed him of his ability to challenge the OIG's reports. On November 17, 2020, via letter to Respondent, Charging Party contested the OIG's investigation and recommendation. [4]

On November 19, 2020, Respondent discharged Charging Party. Sometime thereafter, the Union submitted a written request to arbitrate Charging Party's discharge.[5] On March 26, 2021, the Union and Respondent reached a settlement regarding Charging Party's discharge.

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[3] The Union's grievance alleged the same violation that Charging Party raised in his individual grievance. The Union's class action grievance explicitly listed Charging Party's name. As of January 10, 2021, Grievance No. 01-20-07-0041 is pending arbitration.

[4] Charging Party was placed on leave pending the outcome of Respondent's review of his rebuttal and the OIG's recommendation.

[5] On November 24, 2020, an arbitrator was selected to hear Charging Party's discharge appeal. On January 26, 2021, Respondent cancelled the hearing date and notified the arbitrator that the parties would resolve the matter.

On April 1, 2021, via letter, the Union informed Charging Party of a settlement agreement which, in addition to other terms, would reinstate him to his title but reassign him to a different department. On April 13, 2021, Charing Party signed a last chance agreement. On April 20, 2021, Charging Party returned to work.

II. DISCUSSION AND ANALYSIS

Section 10(a)(l) of the Act provides that it shall be an unfair labor practice for an employer or its agents, to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act. To determine whether the Employer's actions in this case violate the Act, the analysis tracks that used in cases arising under Section 10(a)(2), concerning the exercise of the right to engage in union activity. Kirk and Chicago Housing Authority. 6 PERI ¶ 3013 (IL LLRB 1990). This means that the Charging Party must prove that (1) he engaged in union or other protected concerted activity; (2) the employer was aware of that activity; and (3) the employer took adverse action against him for engaging in that activity in order to encourage or discourage union membership or support. New Lenox Fire Protection District, 24 PERI ¶ 78 (IL LRB-SP 2008) (citing City of Burbank v. Illinois State Labor Relations Board, 128 Ill. 2d 335 (1989)). There must be a causal connection between the employer's adverse employment action and the protected concerted activity. See Chicago Park District, 9 PERI ¶ 3016 (IL LLRB 1993).

A charging party satisfies the third element when he or she establishes a causal connection between his or her protected concerted activity and the employer' s adverse action, such that the activity was a substantial or motivating factor in the employer' s adverse action against him or her. Pace Suburban Bus Div., 406 Ill. App. 3d at 495; Chicago Park District, 9 PERI ¶ 3016 (IL LLRB 1993). A casual connection may be inferred if a discriminatory motivation exists. Discriminatory motivation may be established through direct evidence or based on circumstantial factors, including expressions of hostility towards

protected activity together with knowledge of the employee's union activity; proximity in time between the employee's union activity and the employer's action; disparate treatment or a pattern of conduct which targets union supporters for adverse employment action; or shifting or inconsistent explanations regarding the adverse employment action. City of Burbank, 128 Ill. 2d at 345-346; County of Menard v. Ill. State Labor Relations Bd., 202 Ill. App.3d 878, 890-891 (4th Dist. 1990).

It is undisputed that Charging Party engaged in union activity, that Respondent was aware of his engagement, and that he encountered an adverse employment action. However, Charging Party failed to provide any evidence that his actions were a substantial or motivating factor in Respondent's decision to terminate him. Where a public employer is charged with illegally discharging a public employee who engaged in union or otherwise protected concerted activity, a charging party must show that the adverse employment action was "based in whole or in part on antiunion animus, or that the employee's protected conduct was a substantial or motivating factor in the adverse action." City of Burbank, 128 Ill. 2d at 345. In this case, the available evidence establishes that, following a review of the both the OIG's findings and Charging Party's rebuttal, Respondent pursued the OIG's recommendation to terminate Charging Party's employment. Moreover, Charging Party failed to allege or provide evidence suggesting that Respondent shifted in its explanation of its why it terminated him, expressed hostility, or engaged in a pattern of disparate treatment towards union or protected activity. Indeed, Charing Party did not allege or provide evidence suggesting that Respondent also retaliated against other Unit members who were party to the class action grievance.

The only evidence that Charging Party cites in support of his claim of retaliation is the "suspicious" timing of Respondent's actions. However, the Board has determined that timing alone is not sufficient to establish a charging party's prima facie case. Id. (citing County of Cook, 21 PERI ¶ 53 (IL LLRB 2005); Culbertson Memorial Hospital, 21 PERI ¶ 6 (IL SLRB 2005); Village of Franklin Park, 17 PERI ¶ 2033

(IL SLRB 2001); and Metropolitan Sanitary District of Greater Chicago, 2 PERI ¶ 3012 (IL LLRB 1986)). Moreover, the timing of Respondent' s actions directly relates to the OIG's recommendation. While Charging Party initially alleged that the OIG's investigation was a year old, the Board's investigation revealed that the OIG investigation concluded in close proximity to Charging Party's termination.

Moreover, Charging Party alleged that other Unit members were not filing grievances, but failed to sustain this claim through the evidence he submitted. In addition, based on the evidence submitted, it appears that Charging Party continues to engage in either union or protected concerted activity and has not encountered any disparate treatment. [6] [7]

Third, Charging Party alleges that Respondent violated the CBA when it terminated him without warning or progressive discipline. It is not the Board's function, in an unfair labor practice context, "to assume to role of policing collective bargaining agreements, or to allow parties to use the Board's processes to remedy alleged contractual breaches or to obtain specific enforcement of contract terms. Creve Coeur, 3 PERI ¶ 2063 (IL LRB-SP 1987). As such, this issue should be addressed through the established grievance-arbitration process.

Because Charging Party failed to provide evidence of anti-union animus other than the timing of the Respondent' s actions, he is unable to establish that the Respondent' s actions violated the Act. Moreover, Charging Party's other allegations are not within the Board's jurisdiction to address. As such, this charge fails to raise an issue for hearing and is dismissed.

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[6] Charging Party stated that he was denied overtime opportunities but indicated that this was due to Respondent's improper interpretation of his settlement agreement. At most, this matter is an issue of interpretation since this matter would require an interpretation of policy and past practice to determine if a violation occurred. The Board has long held that it does not police collective bargaining agreements or allow parties to use the Board's processes to remedy alleged contractual breaches. Village of Creve Coeur, 3 PERI 2063, supplemental decision, 4 PERI 2002 (IL SLRB 1987). Such matters are best handled through the grievance-arbitration procedure or the courts.

[7] Charging Party stated that he was denied paid paternal leave on November 16, 2021. The matter was grieved, and Respondent denied it, alleging that Charging Party was ineligible because he failed to meet certain requirements. Allegations regarding denial of FMLA benefits should be addressed through the Illinois Department of Labor (IDOL) or addressed through the grievance-arbitration procedure to the extent that it relates to contractual interpretation.

III. ORDER

Accordingly, this charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service hereof. Such appeal must be in writing, contain the case caption and numbers and must be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103 or filed electronically at ILRB.Filing@Illinois.gov in accordance with Section 1200.5 of the Board's Rules and Regulations, 80 Ill. Admin. Code §§1200-1300. 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. Please note that the Board's Rules and Regulations do not allow electronic service of the other persons or organizations involved in this case. 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, this dismissal will be final.

Issued at Springfield, Illinois, this 14th day of April, 2022.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Kimberly F. Stevens
Executive Director