STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Sharon Gladney, Charging Party, and State of Illinois, Department of Central Management Services (Commerce & Economic Development), Respondent.	)))))))))))	Case No. S-CA-20-018

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On December 5, 2019, Executive Director Kimberly Stevens dismissed a charge filed on August 15, 2019, by Sharon Gladney (Charging Party) alleging Respondent State of Illinois, Department of Central Management Services (Commerce & Economic Development) (Employer) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended, when it temporarily assigned her to the front desk at her work location and gave her a negative performance evaluation after she voiced concerns over the negative effects of her front desk assignment.[1]

On December 20, 2019, Charging Party electronically filed an appeal of the dismissal. The Employer did not file a response.

[1] In relevant part, Section 10(a) of the Act provides as follows:

Sec. 10. Unfair labor practices.

a) 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

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(2) to discriminate in regard to hire or tenure of employment or any term or any term or condition of employment in order to encourage or discourage membership in or other support for any labor organization….

The appeal presents two technical defects: (1) timeliness of the appeal and (2) defect in service. Section 1200.135(a)(1) allows charging parties to appeal the dismissal of their charge within 10 days of service of their dismissal and parties to serve their appeal on all other parties. 80 Ill. Adm. Code §1200.135(a)(1). When a party is represented, service shall be on that party's representative. 80 Ill. Admin. Code § 1200.20(f). Section 1200.20(f) of the Board's rules provides that: "The document shall not be considered properly served unless accompanied by proof of service. Proof of service shall consist of a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service." 80 Ill. Adm. Code §1200.20(f). Here, Charging Party failed to include any proof of service showing that the Charging Party served the appeal on the Respondent's representative. See Teamsters, Local 700 (Kondilis), 33 PERI ¶ 17 (IL LRB-LP 2016) (striking supplemental appeal where it was untimely and also not accompanied by proof of service on respondent); Amalgamated Transit Union, Local 308 (Cruse), 32 PERI ¶ 180 (Board declined to consider appeal where charging party failed to demonstrate she served it in accordance with the Board's rules). Instead, Charging Party, who is not represented by counsel, attached a statement of service which includes a hand-written note indicating Charging Party sent her appeal by email to persons other than the General Counsel, referencing "included pages" for the identity of the purported recipients, but the appeal does not contain any information on where the appeal was sent or to whom it was sent.

In addition to the lack of proof of service on the Respondent or its representatives, the appeal is untimely. The dismissal order was issued and mailed to the parties on December 5, 2019, and the appeal was filed on December 20, 2019. Under the Board's rules, service is presumed

three days after mailing of the dismissal. *See* 80 Ill. Adm. Code 1200.30(c). Thus, the appeal was due on December 18, 2020, making the appeal two days late.[2]

Despite these technical defects, we find in this circumstance, granting a variance of our rules appropriate. The criteria used in considering variances are provided in Section 1200.160 of the Board's Rules and Regulations and are as follows:

> a) the provision from which the variance is granted is not statutorily mandated;
> b) no party will be injured by the granting of the variance; and
> c) the rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

80 Ill. Adm. Code §1200.160.

Applying the above criteria to this case, we find that all three satisfied for both the service and timeliness issues. The certificate of service requirement in Section 1200.20(f) and timeframe for appeal in Section 1200.135 are not statutorily mandated; the Respondent would not be prejudiced by allowing the appeal because, as discussed below, the appeal lacks merit; and strictly adhering to the service or timeliness rules could be construed as unreasonable in this case considering the Charging Party is a *pro se* litigant not well versed in the Board's Rules. Accordingly, we grant a variance from the above stated rules and accept the appeal for consideration on its merits.

After considering the dismissal order, the appeal, and the record, we find Charging Party's appeal to be without merit and affirm the dismissal for the reasons stated by the Executive Director.

The Executive Director dismissed the charge on grounds the available evidence failed to indicate Charging Party engaged in any protected concerted activity. Citing Board and NLRB precedent, the Executive Director determined Charging Party's complaints to management about

[2] Applying the Board's presumption of service and computation rules, service was presumed completed on December 8, 2019, making the appeal due on December 18, 2019. 80 Ill. Adm. Code 1200.30(a).

the negative effects of working the front desk was not concerted activity as Charging Party admittedly raised issues about her work assignment solely on her own behalf and to explain how it affected her rather than raising issues on behalf of fellow employees or the effects on working conditions for other employees.

The appeal offers no feasible basis to overturn the dismissal as it provides only a rehash of the allegations in the charge and, indeed, underscores the Executive Director's determination that Charging Party's activity was not concerted. In her appeal, Charging Party solely focuses on how her front desk assignment negatively affected her and fails to provide any information or evidence that would raise an issue of law or fact for hearing. Moreover, Charging Party fails to identify any error in the Executive Director's findings of fact, analysis, or conclusions. The appeal does include vague references to racial discrimination issues but as the Executive Director observed in a footnote to her dismissal order, the Act protects against discrimination relating to participation in concerted activity, not racial discrimination.

For the reasons set forth above, we grant a variance from our rules regarding the technical defects and accept the appeal. After considering the merits of the appeal, however, we affirm the dismissal for the reasons stated by the Executive Director.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ William E. Lowry
William E. Lowry, Chairman

/s/ John S. Cronin
John S. Cronin, Member

/s/ Kendra Cunningham
Kendra Cunningham, Member

/s/ Jose L. Gudino
Jose L. Gudino, Member

MEMBER WILLIS, CONCURRING IN PART AND DISSENTING IN PART:

Although I concur with the majority's decision to affirm the Executive Director's dismissal of the charge, I respectfully dissent from their decision to grant a variance from the Board's rules governing the timeframe for the appeal and service of documents, and to allow consideration of the merits of the appeal.

In granting the variance, the majority relied on Charging Party's status as a *pro se* litigant, not well versed in our rules with regard to the timely filing of appeals or service requirements, as a basis to grant the variance and accept the appeal. While that may be the case, I disagree with the majority's reasoning. In my opinion, even though the Charging Party is a *pro se* litigant who may not be familiar with the Board's rules, the instructions and time limitations were clearly laid out in Section III of the dismissal order as follows:

> Accordingly, this charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service of this dismissal. 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 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 with in the time specified, this dismissal will be final.

Based on these clearly defined instructions regarding when an appeal of the dismissal is due, how to file an appeal with the Board, and how to properly serve the appeal on the other parties, I voted against granting the variance and acceptance of the appeal.

/s/ J. Thomas Willis
J. Thomas Willis, Member

Decision made at the State Panel's public meeting in Chicago and Springfield, Illinois on June 18, 2020 (via videoconference), written decision approved at the State Panel's public meeting in Chicago and Springfield, Illinois (via videoconference) on July 9, 2020, and issued on July 14, 2020.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Sharon Gladney, Charging Party and State of Illinois, Department of Central Management Systems (Commerce & Economic Opportunity), Respondent	Case No. S-CA-20-018

DISMISSAL

On August 15, 2019, Sharon Gladney (Charging Party) filed a charge in Case No. S-CA-20-018 with the State Panel of the Illinois Labor Relations Board (Board), in which she alleged that the Respondent, State of Illinois, Department of Central Management Systems (Commerce & Economic Opportunity) (Respondent) engaged in unfair labor practices within the meaning of the Illinois Labor Relations Act, 5 ILCS 315 (2014), *as amended.* After an investigation conducted in accordance with Section 11 of the Act, I determined that the 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 Office Coordinator II. As such, Charging Party is a member of a bargaining unit (Unit) represented by the American Federation of State, County, and Municipal Employees (AFSCME), Council 31 (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 Section 10(a)(1) of the Act when it temporarily assigned her to the front desk at her work location and gave her a negative performance evaluation.

In March 2019, the Front Desk Office Assistant position became vacant after a failed internal search to fill the position. In April 2019, Respondent's management mandated that all clerical staff work 1.5-hour shifts covering the front desk. In May 2019, Respondent posted the Front Desk Office Assistant position and made the position available to the public. Charging Party referred a few friends to apply to the position. Sometime around July 2019, after Charging Party's friends contacted her to find out the status of the Front Desk position, Charging Party asked Respondent to provide her an update, but she did not receive a response.

On August 2, 2019, Charging Party received her performance evaluation, and Respondent noted that her productivity was lower. Charging Party explained to Respondent's management that she believed her productivity was lower because she was required to staff the front desk. In addition, at the beginning of August 2019, Charging Party was assigned to print OMEE applications. On August 6, 2019, Charging Party's supervisor emailed her, indicating that some of the applications Charging Party printed were duplicates or were missing pages. Charging Party attempted to explain to her supervisor that her work at the front desk interrupted her projects and the front desk printer wasn't operable. On August 9, 2019, Respondent temporarily assigned Charging Party to the front desk effective August 12, 2019. That same day, Charging Party emailed Union Representative Matthew Lange (Lange), stating that Respondent temporarily assigned her to the front desk in retaliation for Charging Party failing to get coverage for her front desk shift when she had a lunchtime appointment and having limited availability to work the front

desk because she was taking a class. Charging Party indicated that she was not going to take the assignment. On August 9, 2019, Lange replied that, according to the CBA, Respondent had the right to temporarily assign Charging Party to the front desk position and that Respondent's management tried to avoid taking this measure by mandating that clerical employees work rotating front desk shifts but lost patience with the clerical employees complaining about their rotating front desk shifts. Respondent hired a new Front Desk Office Assistant effective October 7, 2019.

When asked what Charging Party believed motivated Respondent to retaliate against her by assigning her to the front desk, Charging Party answered that it was because she spoke up and explained how working the front desk negatively affected her.

On November 22, 2019, Charging Party received another performance evaluation. Charging Party noted that this evaluation was the lowest that she has received while working for Respondent. Charging Party claims that her negative evaluation was another form of retaliation and may also be due to her race.

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. In order to prove a Section 10(a)(1) violation, a charging party must demonstrate that (1) he or she 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 or her for engaging in that activity. Kirk and Chicago Housing Auth., 6 PERI ¶ 3013 (IL LLRB 1990); Green and Warns and City of Chicago, 3 PERI ¶ 3011 (IL LLRB 1987); Gale and Chicago Housing Auth., 1 PER ¶ 3010 (IL LLRB 1985).

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).

In this case, Charging Party failed to establish that she participated in protected concerted activities when she complained that working the front desk negatively affected her performance and productivity. The Board has held that, to obtain the Act's protection, employee activity must be "concerted," which means undertaken jointly by two or more employees, or by one employee on behalf of others. Esco Elevators, 276 NLRB 1245, 120 LRRM 1214 (1985) *enforced,* 794 F.2d 1078, 122 LRRM 3178 (5th Cir. 1986). Concerted activity, to be protected, must also satisfy the requirement in Section 6 that it be undertaken for the purpose of collective bargaining or for "other mutual aid or protection." Joanna Cotton Mills Co. v. NLRB, 176 F.2d 749, 24 LRRM 2416 (4th Cir. 1949). *as cited* County of Cook (Cook County Hospital), 10 PERI ¶ 3029 (ILLRB 1994). Charging Party indicated that she raised issues with her assignment on her own behalf and to explain its negative effects on her. Because Charging Party's complaint did not involve other

employees, nor was it filed on behalf of others for their "mutual aid or protection," she did not thereby engage in protected concerted activity. Therefore, without any evidence that Charging Party engaged in protected concerted activities, this charge fails to raise an issue for hearing.[1]

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 of this dismissal. 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.

[1] Section 10(a)(1) of the Act protects against discrimination resulting from a public employee's engagement in protected concerted activity, but it does not protect against discrimination based on an employee's race, sex, national origin, age, religion, or disability. State of Illinois, Department of Central Management Services (Department of Public Aid), 19 PERI ¶ 105 (IL LRB SP 2003); State of Illinois, Department of Central Management Services and Corrections, 8 PERI ¶ 2047 (IL SLRB 1992); City of Chicago, (Department of Police), 7 PERI ¶ 3035 (IL LLRB 1991). Such claims are more appropriately investigated by the Illinois Department of Human Rights and/or the U.S. Equal Employment Opportunity Commission (EEOC). State of Illinois, Department of Central Management Services (Department of Public Aid), 19 PERI ¶ 105 (IL LRB SP 2003). Thus, to the extent the allegation is couched in the general terms of racial discrimination, the Board has no jurisdiction.

Issued at Springfield, Illinois, this 5th day of December, 2019.

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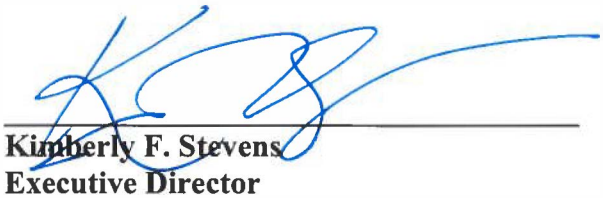

Kimberly F. Stevens
Executive Director