

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

Tammy Powell,)	
)	
Charging Party,)	
)	
and)	Case No. S-CA-20-120
)	
Sangamon County Sheriff's Office,)	
)	
Respondents.)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

On January 21, 2021, Executive Director Kimberly Stevens dismissed a charge filed by Charging Party Tammy Powell on June 18, 2020, alleging Respondent County of Sangamon Sheriff's Office (Employer) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315/1 *et seq.* The charge alleges Respondent took a series of employment actions against Powell, a sergeant at the Sangamon County Jail, upon Powell's reinstatement to employment as a result of her successful grievance arbitration challenging her discharge. Powell contends Respondent took these actions to retaliate against her for prevailing at arbitration.

The Executive Director dismissed the charge on grounds the available evidence failed to indicate Respondent retaliated against Charging Party because she prevailed in her grievance arbitration. She observed that the complained-of actions are the subject of a dispute over the terms of Charging Party's reinstatement set forth in the arbitration award, which the parties have arbitrated and are awaiting a decision. The Executive Director also found dismissal warranted because Respondent provided legitimate reasons for its actions.

The Charging Party timely appealed the Executive Director's dismissal. Respondent did not file a response. After reviewing the record, dismissal, and appeal, we find as follows:

On appeal, Charging Party contends motive is a fact question and that she has provided enough evidence to raise issues for hearing on the Respondent's motive for the alleged retaliatory actions. Charging Party asserts that the evidence she submitted indicates the Respondent took a series of actions directed against Powell immediately upon her return to work after successfully grieving her discharge and points to the Respondent's "aggressive" challenge to Charging Party's grievance over her discharge as further evidence of Respondent's improper motive. Charging Party also claims that the legitimate reasons offered by Respondent for its actions raise questions of credibility which are more appropriately resolved at hearing.

Charging Party's contentions regarding the existence of evidence sufficient to raise issues for hearing on causation have merit but also underscore the role judgment plays in assessing evidence. Although the Executive Director found there was insufficient evidence on causation, reasonable minds can differ, providing room for the Board to use its broad discretion and judgment in investigating charges to find the allegations warrant a hearing. See Michels v. Ill. Labor Relations Bd., 2012 IL App (4th) 110612 ¶45 ("When deciding whether there is enough evidence to justify a hearing, the Board must exercise its discretion or judgment.").

Section 10(a)(1) of the Act provides, in relevant part, 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." 5 ILCS 315/10(a)(1). Section 6 of the Act broadly states that public employees have the right to join unions, to bargain collectively and to "engage in other concerted activities not otherwise prohibited by law for the purposes of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion." 5 ILCS 315/6 (2016).

Motivation of a public employer is relevant to a Section 10(a)(1) analysis where a charging party alleges the employee at issue suffered an adverse employment action. See Pace Suburban Bus Div. v. Ill Labor Rel. Bd., State Panel, 406 Ill. App. 3d 484, 494-95 (1st Dist. 2010). In such cases, the Board applies the analytical framework used for Section 10(a)(2) claims to determine whether a public employer took adverse action against an employee for an unlawful motive. Id. at 495. To establish a prima facie case under the Section 10(a)(1) using the Section 10(a)(2) analytical framework, a charging party must establish that: (1) that an employee engaged in union or protected, concerted activity, (2) the employer was aware of that activity, and (3) the employer took adverse action against the employee in whole or in part because of participation in protected concerted activity. See id.; City of Burbank v. Ill. State Labor Rel. Bd., 128 Ill. 2d 335, 345 (1989). Unlawful motivation can reasonably be inferred from circumstantial evidence, such as an employer's expressed hostility towards unionization, together with knowledge of the employee's activities; proximity in time between participation in protected activity; disparate treatment or targeting of union supporters; inconsistencies between the reasons offered by the employer for the adverse action and other actions of the employer; and shifting explanations for the adverse action. Id. at 345-46.

Once the charging party establishes a prima facie case, the employer can avoid a violation of the Act by demonstrating that it would have taken the adverse action for a legitimate business reason, notwithstanding the employer's union animus. Id. Merely proffering a legitimate business reason for the adverse employment action does not end the inquiry, for it must be determined whether the proffered reason is bona fide or pretextual. Id. If the proffered reasons are merely litigation figments or were not in fact relied upon, then the employer's reasons are pretextual and the inquiry ends. Id. However, when legitimate reasons for the adverse employment action are advanced and are found to be relied upon at least in part, then the case may be characterized as a "dual motive" case, and the

employer must establish, by a preponderance of the evidence, that it would have taken the action notwithstanding the employee's union activity. Id.

Here, we find there is enough evidence to raise issues for hearing on Respondent's motive for its actions. We find it conceivable to conclude from the evidence submitted that the Respondent, faced with the reinstatement of Charging Party whom Respondent contentiously sought to discharge, purposely placed Charging Party in assignments that would frustrate and pose physical difficulties for her in hopes that she would resign. Moreover, the close proximity in time between the Respondent's actions and Powell's successful arbitration award raises issues for hearing. The Respondent began taking the alleged actions as soon as Powell's returned to work, raising suspicions that motive for Respondent's conduct was its resentment of Powell's reinstatement after challenging her discharge. County of DuPage and DuPage County Sheriff, 30 PERI ¶ 115 (timing of adverse action suspicious where it occurred two days after employer obtained knowledge of employees' protected activity).

Although the Executive Director found Respondent had legitimate reasons for its actions and those may ultimately be persuasive on the issue of Respondent's motivation at hearing, as Charging Party points out in its appeal, whether the Respondent's reasons are legitimate and not pretextual involve credibility determinations which are more appropriately resolved at hearing. Accordingly, Charging Party has raised issues for hearing on whether Respondent retaliated against her because she engaged in protected concerted activity in violation of Sections 10(a)(1) of the Act.

For the above reasons, we reverse the dismissal of charge and remand the matter to the Executive Director and direct issuance of a complaint for hearing consistent with this decision and order.

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

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

Decision made at the State Panel's public meeting in Chicago and Springfield, Illinois, via WebEx videoconference on June 10, 2021, written decision approved at the State Panel's public meeting in Chicago and Springfield, Illinois via WebEx videoconference on July 15, 2021, and issued on July 22, 2021.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

Tammy Powell,

Charging Party

and

County of Sangamon Sheriff's Office,

Respondent

Case No. S-CA-20-120

DISMISSAL

On June 18, 2020, Tammy Powell (Charging Party) filed a charge in Case No. S-CA-20-120 with the State Panel of the Illinois Labor Relations Board (Board), in which she alleged that the Respondent, County of Sangamon Sheriff's Office (Respondents) 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 Sergeant at the Sangamon County Jail. As such, Charging Party is a member of a bargaining unit (Unit) represented by the Illinois Fraternal Order of Police Labor Council (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 Respondents violated Section 10(a)(1) of the Act by improperly denying her a light duty assignment, reprimanding her for alleged sick time abuse, prohibiting her from

attending shift briefings, allowing her subordinates to treat her disrespectfully, and bypassing her for an appointment to a Support Services Supervisor position in retaliation for her receiving a favorable arbitration award.

On January 22, 2018, Respondent discharged Charging Party in response to an Internal Affairs investigation into complaints of sexual harassment against Charging Party. The investigation concluded that Charging Party engaged in sexual harassment and that she had been untruthful during her interviews. At the time of Charging Party's discharge, Respondent employed her as a Lieutenant. The Union grieved Charging Party's discharge and pursued it to arbitration. The arbitration hearing took place on September 30, 2019, and the arbitrator issued an award on December 19, 2019. The arbitrator returned Charging Party to work with a demotion of one rank to a non-supervisory position, if possible, with full seniority after the imposition of a "lengthy disciplinary" suspension.

On December 11, 2019, the Union informed Charging Party that she should report to work for the December 23, 2019, second shift. When she returned to work on December 23, 2019, Jail Superintendent Larry Beck (Beck), Jr. assigned her to slot 18 on the work schedule, a slot usually assigned to Correctional Officers, not Sergeants. Because of her pre-existing conditions and injuries, the climbing of stairs and pulling of heavy doors while performing her correctional officer duties caused her pain and swelling.

On December 27, 2019, Charging Party submitted a doctor's note excusing her from work until January 3, 2020. On January 10, 2020, Charging Party submitted a doctor's note allowing her to return to work on January 12, 2020, with light duty restrictions until January 24, 2020. On January 10, 2020, Beck called Charging Party to inform her that, because her doctor's note did not provide for specific limitations and he did not have a position that he was willing to place her in at that time, she could not yet return to work. He further advised Charging Party that, before she could not return to work in any other capacity, she needed to complete field training. Beck also informed Charging Party that she could not use

vacation or compensatory time for her absence unless she had an approved Family Medical Leave Act (FMLA) leave. On January 13, 2020, Charging Party submitted a note from her doctor allowing her return to work on full duty effective January 12, 2020. Charging Party returned to work but experienced pain again. On January 24, 2020, Charging Party submitted a light duty request form and doctor's note stating that she was cleared to return to work on light duty that date with the restriction that she should not climb stairs. On January 24, 2020, Beck informed Charging Party that she was authorized to return to work in the D Control Room on third shift. From January 29, 2020, through February 1, 2020, while Charging Party was on light duty assignment in the control room, she was not allowed to attend shift briefings.

Charging Party argues that she should have allowed to return to work on a light duty assignment on January 10, 2020. After Beck informed her that the restrictions on her doctor's note were not specific enough, Charging Party offered to contact her doctor, but Beck declined, stating that it would not affect her eligibility for light duty. Respondent states that it needed a doctor's note specifying Charging Party's restrictions. Charging Party turned in an updated doctor's note soon after, on January 13, 2020, and she was then given a light duty assignment. Charging Party also contends that Respondent should have placed her on second shift in the control room for her light duty assignment because she previously had a hardship accommodation from 2013 until her discharge in 2019 due to a health condition that disrupted her sleep and prevented her from working on third shift. Respondent states that Charging Party was placed on the third shift due to operational need because, at the time, the third shift had two openings for control room operators, while the second shift only had one. After Powell came off her light duty assignment in March 2020, another employee that requested light duty was also assigned to the third shift control room due to operational need. Further, Charging Party never brought her hardship accommodation to Respondent's attention, nor did she request a different shift. Charging Party also alleges that Respondent retaliated against her by refusing to allow her to attend shift briefings from January 29, 2020, through February 1,

2020. Sergeants, lieutenants, and correctional officers with floor assignments usually attend shift briefings, and Charging Party had also attended them before her discharge. However, Control Room Operators (CRO) do not typically attend shift briefings, and the information from the briefing is disseminated to CROs prior to or during their shifts. Respondent also indicated that it did not want to cause Charging Party additional physical stress by requiring her to attend shift briefings in a different area before heading her to her assignment in the control room. However, Charging Party asserts that another officer who was assigned to light duty assignment in the control room was allowed to attend shift briefings. Respondent indicated that this officer did not have the same restrictions as Charging Party and that he only attended shift briefings a few times to determine where he was needed that day. Respondent further states that, most of the time, this employee reported directly to his assignment for the day.

On February 27, 2020, Respondent issued Charging Party a written reprimand for her unexcused absences on January 21 and 23, 2020. As previously mentioned, Charging Party had requested light duty for these dates, but Respondent denied this request due to the inadequacy of her doctor's note. Charging Party asserts that this discipline is an extension of Respondent's retaliatory behavior in denying her first request for light duty, but Respondent argues that it followed policy when it denied her light duty request and issued her a written reprimand for her unexcused absences.

The remainder of Charging Party's allegations stem from a disagreement between her and Respondent about whether the arbitration award intended her to keep her Sergeant title for compensation purposes only or whether she was supposed to complete Sergeant level duties, minus any supervisory duties. In January 2020, Charging Party asked her shift commander for clarification regarding her duties, and her shift commander responded that the chain of command had informed him that she was to be treated as a Correctional Officer. On January 22, 2020, a Lieutenant filed a memo with administration detailing an incident in which Charging Party told another Sergeant that she was a Sergeant and should be treated

like one. This Lieutenant also reported that Charging Party refused to request vacation days in the vacation book, and he then informed Charging Party that, if she wanted time off, she must put it in the vacation book and that Charging Party's vacation would be approved or denied based on officer staffing. The Lieutenant continued that Charging Party would also be considered a Correctional Officer for overtime purposes. On February 7, 2020, another shift commander told Charging Party she was a Sergeant in pay only. Further, Charging Party had also been told by other Correctional Officers that she had no authority over Correctional Officers and that they did not have to follow her directives. On February 26, 2020, Beck sent Charging Party a letter stating that she did not have any supervisory authority or responsibilities. On February 29, 2020, Charging Party reported that another Correctional Officer spoke disrespectfully to her in front of her subordinates. That same date, another Sergeant, who was the shift supervisor, reported that Charging Party complained to him that he was treating her disrespectfully and then threatened him. Two other of Charging Party's coworkers filed complaints about her attitude and interactions with them in February and March 2020. Charging Party complains that Respondent did not take any action in response to her coworkers' and alleged subordinates' disrespectful treatment of her. In mid-February 2020, Charging Party requested a key to the Sergeant's office, and Respondent denied her request.

On April 9, 2020, Respondent sent out a notice of vacancy for the Support Staff Supervisor position to all Sergeants and Lieutenants but did not send one to Charging Party. On April 11, 2020, Charging Party submitted a request for the position, but Respondent did not consider her for it. Charging Party alleges that Respondent's lack of consideration of her for this appointment was retaliatory because it was usually held by a Sergeant and did not include any supervisory duties, so she was eligible. However, Respondent argues that this position did include the supervision of Correctional Officers, which Charging Party was prohibited from doing, and that the CBA allows it to consider personnel history when making promotions. Respondent indicated that Charging Party was not a viable candidate because of the

supervisory duties and because of her previous disciplinary record, which includes a 45-day suspension and 11-month suspension. Respondent further stated that the employee who was awarded the assignment had a clean disciplinary record.

On January 22, 2020, the Union filed a grievance over Respondent's treatment of Charging Party when it considered her a Correctional Officer in all aspects, except for the salary and title of Sergeant. On March 6, 2020, this grievance was denied by the Sangamon County Board hearing officer, and an arbitration hearing on the matter took place at the end of October 2020.

II. DISCUSSION AND ANALYSIS

Section 10(a)(1) 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). Further, if an employer establishes that it would have taken the same action notwithstanding protected union activity and that the reason for taking said action was a legitimate business reason; its actions do not violate the Act. City of Burbank, 128 Ill. 2d at 345-347.

Charging Party fails to demonstrate that Respondent engaged in retaliatory actions because her past grievance was successful at arbitration. The majority of Respondent's actions of which Charging Party complains stem from the parties' different perspectives regarding whether the arbitration award prohibited Charging Party from performing supervisory duties. The parties have arbitrated this matter and a decision is pending. Moreover, Charging Party has not presented any evidence establishing that Respondent took or failed to take any action with respect to her in retaliation for her protected concerted activity. Further, Respondent provided legitimate business reasons for the remainder of its actions and Charging Party was unable to establish that she was, indeed, treated disparately. The officer that was allegedly allowed to attend shift briefings had different light duty restrictions than Charging Party and was only allowed to attend shift briefings when his assignment had not been determined for the day. As such, he was not similarly situated to Charging Party. For these reasons, this charge fails to raise an issue for hearing.

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.

Issued at Springfield, Illinois, this 21st day of January, 2021.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**



**Kimberly F. Stevens
Executive Director**