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

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| Isis Collins, | ) | |
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| Charging Party, | ) | |
| | ) | |
| and | ) | Case No. L-CA-18-049 |
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| Chicago Transit Authority, | ) | |
| | ) | |
| Respondent. | ) | |

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

On May 22, 2019, Administrative Law Judge (ALJ) Anna Hamburg-Gal issued her Recommended Decision and Order (RDO), finding Respondent Chicago Transit Authority (CTA) violated Section 10(a)(1) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315/1 *et seq*., (2018), as amended, when it continued to question Charging Party about her on-duty injury after she asked for union representation, threatened her with discipline for requesting union representation, and then harassed her by threatening to call the police in retaliation for requesting union presentation. On June 24, 2019, Respondent filed its exceptions to the RDO. Charging Party Isis Collins did not file a response.

After reviewing the RDO, the Respondent's exceptions, and the record, we reject the ALJ's findings, conclusions, and recommendations that the CTA violated the Act and dismiss the complaint for hearing in its entirety for the reasons discussed below:

***Summary of RDO***

Charging Party is a CTA Bus Operator working out of the CTA's 103rd Street Garage (Garage). On the evening of March 30, 2018, Charging Party while on duty was assaulted by a

passenger and went to the hospital. Upon her release from the hospital, on March 31, 2018,[1] Charging Party reported to the Garage to report the injury to her manager, Tiko Luster, as required of bus operators who suffer an injury on duty. Employees claiming to be injured on duty must undergo an interview and complete an account of the injury and how it occurred to the employee's manager.

The ALJ found that at some point after Charging Party arrived at the Garage, Clerk LaTonya Johnson told Charging Party to report to Luster's Office so that Luster could interview Charging Party about her injury as required. The ALJ then determined there was conflicting witness testimony about what happened when Charging Party arrived at Luster's office and found Charging Party's account more credible.

The ALJ found that Charging Party gave Luster a handwritten incident report about the injury and was told by Luster to wait. Charging Party then asked for a "report to manager" form because Luster was being rude to her. Luster told Charging Party she was not going to get the form and that if she did not sit down he would pull her out of service. Charging Party responded by asking for a union representative and Luster responded that she needed to have the interview. The ALJ found that Luster did not grant Charging Party's request for a union representative to be present at the meeting and Charging Party left Luster's office. Charging Party then asked Clerk Johnson for a union representative and when Johnson refused, Charging Party announced that she would be calling the union herself. The ALJ specifically found that Charging Party announced this in a voice loud enough for Luster to hear and Luster told Charging Party that if she did not return to complete the interview, he would be recommending her for discharge. Charging Party

[1] Charging Party refers to the date as March 30 but she returned to the Garage at approximately 12:20am on March 31.

left messages with representatives from the union and returned to Luster's office to submit to the interview without union representatives in attendance.

The next day, April 1, 2018, Charging Party returned to the Garage to pick up her husband. The ALJ found that Luster and Charging Party provided different accounts of the exchange occurring between them. Crediting Luster's account, the ALJ determined that Luster asked if Charging Party returned to submit paperwork related to her injury on duty and Charging Party responded with "this motherfucker better get the fuck out of my face." The ALJ then found, this time crediting Keith Collins's account of the events, that Luster told Collins that Charging Party was on injury on duty status, therefore should not be on the property. Luster further stated that if she did not leave, he would call the police and have her arrested. Luster then completed a report about the incident.

The ALJ amended the complaint to include allegations regarding Weingarten rights to conform to the evidence presented at hearing and concluded the CTA violated Section 10(a)(1) of the Act in three instances: (1) when Luster continued to question Charging Party after she invoked Weingarten rights; (2) when Luster threatened Charging Party with discipline for invoking her Weingarten rights and attempting to contact union representatives; and (3) when Luster harassed Charging Party by threatening to call the police and have Charging Party arrested, documenting her presence on CTA property after hours; and reporting Charging Party's unauthorized presence to CTA's Control Center. The ALJ found, however, the CTA did not violate Section 10(a)(1) of the Act by falsifying reports related to Charging Party's injury on duty.[2]

[2] Neither party filed exceptions to this finding. As such, this finding shall stand as a non-precedential finding, binding upon the parties.

**CTA's Exceptions**

The CTA filed multiple exceptions to the RDO. The exceptions mainly challenge the ALJ's (1) credibility determinations; (2) amendment of the complaint; (3) determination that Weingarten rights were invoked; (4) evidentiary rulings; and (5) conclusions that the CTA violated the Act.

*Credibility Determinations and Evidentiary Rulings*

The CTA's exceptions regarding the ALJ's credibility determinations and evidentiary rulings lack merit. The Board has long held that credibility determinations are within the province of the Administrative Law Judge who had the opportunity to observe the witnesses' testimony and demeanor. As such, the Board will not overrule an ALJ's credibility determinations unless they are clearly and demonstrably incorrect. Chicago Transit Authority, 16 PERI ¶ 3021 (IL LLRB 2000); City of Chicago (Fire Department), 12 PERI ¶ 3022 (IL LLRB 1996); Chicago Housing Authority (Department of Streets and Sanitation), 6 PERI ¶ 3012 (IL LLRB 1990). A review of the record does not indicate that the ALJ's credibility determinations were clearly and demonstrably incorrect. A review of the hearing transcripts likewise reveals no reversible error with regard to the ALJ's evidentiary rulings.

*Weingarten Rights, Amendment of the Complaint, and Violations of the Act*

The CTA's exceptions regarding the Weingarten rights allegations, the amendment of the complaint to include those allegations, and the ALJ's conclusions that the CTA violated the Act, warrant further consideration. The exceptions highlight areas in which the Board could reach different conclusions from the ALJ's based on how it views the record and draws inferences from the evidence presented.

March 31, 2018 Interview

The ALJ's conclusions regarding Luster's conduct at the March 31, 2018 injury on duty interview were based on her finding that the interview was investigatory in nature and thus, Charging Party's Weingarten rights attached. We, however, reach the opposite conclusion.

The ALJ found the interview was investigatory because Charging Party was required to give her version of how her injury occurred, Luster advised her that making false statements would be considered misconduct, and management would be reviewing the hard drive. The ALJ reasoned that based on this an employee could reasonably anticipate discipline would result from the interview. The ALJ found significant Luster's statement in Charging Party Exhibit 5 that he advised her about making false statements and that "chargebility would be based on the hard drive." But Charging Party's account of the events on March 31, 2018, which the ALJ determined to be more credible, makes no mention of Luster's so-called warning or review of the hard drive. Indeed, Charging Party testified that she walked out of Luster's office because she believed the interview was over once she asked for union representation. (Tr. 51). Charging Party also testified that after she called and left messages with representatives from the union, she encountered Keith Collins, her husband and fellow bus operator, who also worked out of the Garage. (Tr. 52). Charging Party stated that Collins told Charging Party that since she called the union, she should return to Luster's office, not answer any questions, and wait for the union representative. (Tr. 52-53). Charging Party testified "And that's what I did. And when I did that, that whole interview took about three hours, literally for no reason at all." (Tr. 53). There was no mention of being warned about making false statements, no mention of being told that she would be charged based on the hard drive, and notably, no mention of her perception that she would be disciplined based on what she said in this interview about her injury on duty.

Moreover, the cases relied on by the ALJ in which interviews were found to be investigatory in nature all involve instances where the employee was interviewed so that the employer could investigate some perceived misconduct. Here, the evidence indicates that the purpose of the interview in question was not to investigate any perceived misconduct but to gather information for Charging Party's injury on duty claim. The record indicates the interview was part of the process for making such a claim and even Charging Party testified that the purpose of the IOD meeting was not for discipline. (Tr. 58; 119-21; 143-44; CTA Ex. 5).

It appears the ALJ relied on Luster's written report, Charging Party Exhibit 5, to reach the conclusion that the IOD interview turned into an investigatory interview. But even if the interview later morphed into an investigation of some perceived misconduct, Charging Party's testimony indicates she requested union representation *before* the interview turned investigatory. The report does not indicate when Luster made the statements relied on by the ALJ. We infer, based on Charging Party's and Luster's testimony, that those statements or warnings, as ALJ characterized them, were made *after* Charging Party called for union representation and returned to Luster's office where, according to Charging Party's testimony, she did not answer any questions.

Due to the amendment of the complaint to include allegations conforming to evidence that Weingarten rights were invoked and to our finding the March 31, 2018 interview not to be investigatory in nature, we find the complaint was improperly amended the complaint to include allegations regarding Weingarten rights. As such, we reject the ALJ's recommendations that the CTA violated Section 10(a)(1) when Luster continued to question Charging Party after she invoked her Weingarten rights and then threatened discipline for calling for union representation.

April 1, 2018 Incident

Regarding the April 1, 2018 incident, the ALJ determined the CTA retaliated against Charging Party for requesting union assistance during the March 31, 2018 interview when Luster harassed and intimidated Charging Party by threatening to call the police and have Charging Party arrested, documenting her presence on CTA property after hours, and reporting Charging Party's unauthorized presence to the CTA's Control Center. The ALJ found Charging Party established her prima facie case under a Section 10(a)(2)-type burden shifting analysis. She found Charging Party engaged in protected activity and that Luster was aware of that activity. The ALJ next found the harassment constituted an adverse action because Luster's actions towards Charging Party were duplicative and a disproportionate response to her conduct. In addition, the ALJ found the short timeframe, one day, coupled with Luster's threats of discipline, were enough to establish a causal connection. She then determined the CTA's stated business reasons were pretextual in concluding the CTA violated Section 10(a)(1) of the Act.

In this case, we find that Charging Party failed to establish a prima facie case for retaliation. Although the ALJ viewed the above-described harassment as an adverse employment action, we view find otherwise. The ALJ credited Luster's testimony that Charging Party cursed at him in response to his inquiry about why she was at the Garage. We find Luster's threat to call the police and have the Charging Party removed from the property as a proportionate response in view of the way Charging Party responded to Luster's inquiry into why she was at the Garage.

Even assuming the harassment could be considered an adverse employment action, we find that there was no evidence of a causal connection between the alleged harassment and Charging

Party's call for union assistance from the previous day. [3] The ALJ found the one-day time period and threats of discipline indicative of Luster's hostility towards Charging Party's request for union assistance, but we find the record indicates that Luster's threats of discipline on March 31 were in response to Charging Party's insubordination and not her call for union assistance. Luster's actions may have been hostile toward Charging Party, but the record on whole indicates that he was hostile due to personality conflicts with Charging Party rather than her participation in any protected activity. See Chicago Housing Authority (Gale), 1 PERI ¶ 3010 (ILLRB 1985) (finding no evidence of improper motive where complained of conduct stemmed from personal animosity).

For the above reasons, we reject the ALJ's conclusions and recommendations that the CTA violated Section 10(a)(1) of the Act and dismiss the complaint for hearing in its entirety.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert M. Gierut
Robert M. Gierut, 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 held in Chicago, Illinois, on October 8, 2019; written decision approved at Local Panel's public meeting held in Chicago, Illinois, on November 14, 2019, and issued on November 18, 2019.

[3] In footnote 11 of the RDO, the ALJ offered an alternative recommendation should we find the harassment did not constitute an adverse action. Because the alternative recommendation is predicated on a finding of a causal connection between Luster's threat to call the police and report to the Control Center, and the protected activity, we reject the alternative recommendation as well.

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## ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On April 16, 2018, Isis Collins (Charging Party or Mrs. Collins) filed a charge with the Illinois Labor Relations Board's Local Panel (Board) alleging that the Chicago Transit Authority (Respondent or CTA) engaged in unfair labor practices within the meaning of Section 10(a)(1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2014), as amended. The charge was investigated in accordance with Section 11 of the Act. On September 26, 2018, the Board's Executive Director issued a Complaint for Hearing.

A hearing was conducted on March 1, 2019, in Chicago, Illinois, at which time the Charging Party presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally, and to file written briefs. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

## I. PRELIMINARY FINDINGS

The parties stipulate, and I find that:

1. At all times material, Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, Respondent has been subject to the jurisdiction of the Local Panel of the Board pursuant to Section 5(b) of the Act.
3. At all times material, Charging Party has been a public employee within the meaning of Section 3(n) of the Act.

4. At all times material, Respondent has employed Charging Party as a Bus Operator, and, as such, she is a member of a bargaining unit represented by the Amalgamated Transit Union, Local 241 (Union).
5. In March and April 2018, Tiko Luster worked as a Manager of Bus Supervision at CTA.
6. The Charging Party was involved in an altercation on March 30, 2018 on the 103rd Street Route.
7. On March 31, 2018, upon returning to the garage from the hospital, Charging Party claimed that she was injured on duty.
8. On April 1, 2018, Luster saw the Charging Party in the training room of the 103rd Street Garage as described in paragraph 12, asked Charging Party what she was doing waiting in the training room, and asked Charging Party if she was dropping off documents related to her injury on duty.
9. After Tiko Luster asked the Charging Party the questions referenced in paragraph 8, the Charging Party responded that she was not dropping off documents and that she was picking up her husband from work.

## II. ISSUES AND CONTENTIONS

The issue is whether the Respondent violated Section 10(a)(1) of the Act when it allegedly harassed the Charging Party and threatened to retaliate against her for attempting to call a union representative.

The Charging Party contends that the Respondent violated Section 10(a)(1) of the Act when Manager Tiko Luster threatened to pull her out of service with a discharge recommendation after she requested union representation at their meeting. The Charging Party further asserts that the Respondent violated the Act by continuing the meeting without allowing a union representative to be present, as the Charging Party requested. Finally, the Charging Party argues that Manager Luster violated Section 10(a)(1) of the Act when he harassed her the following day, allegedly in retaliation for her earlier request for union representation, by threatening to call the police when she came to pick up her husband, also a bus operator.

The Respondent denies that Manager Luster threatened to pull the Charging party out of service with a discharge recommendation after she requested union representation. The Respondent further contends that it did not violate Section 10(a)(1) of the Act when it allegedly

refused to allow the Charging Party to call her union. The Respondent reasons that the meeting was not investigatory and that the Charging Party could have had no reasonable belief that discipline could result from it. Finally, the Respondent contends that it did not violate Section 10(a)(1) of the Act by harassing the Charging Party. The Respondent reasons that the Charging Party's request for union representation was not protected activity because the Charging Party was not entitled to such representation at the meeting in question. Second, the Respondent contends that it never took any adverse action against the Charging Party because it did not discipline her. Finally, the Respondent asserts that there is no evidence to support a finding that its agents were unlawfully motivated when Luster asked the Charging Party to leave a non-public area while she was on injury-on-duty status.

## III. FINDINGS OF FACT

The Charging Party, Isis Collins, is a bus operator for the CTA and works out of the 103rd Street garage. Her husband, Keith Collins, is likewise a bus operator for the CTA, who works out of the 103rd Street garage. At all times material to this case, Tiko Luster was a bus service manager for the south region who worked at the 103rd Street garage. At all times material, LaTonya Jackson was a clerk at the 103rd Street garage.

1. March 30, 2018 through March 31, 2018

Sometime before 8:00 pm on March 30, 2018, a passenger assaulted Mrs. Collins on a bus. Mrs. Collins went to the hospital and arrived there before 8:00 pm. Mr. Collins visited his wife in the hospital. While Mrs. Collins was in the hospital, Luster attended the scene of the injury and spoke with a police officer about how it occurred. Later that night, a CTA supervisor transported Mrs. Collins back to the 103rd street garage. Mr. Collins followed Mrs. Collins and the supervisor back to the 103rd Street garage.

When an operator claims to have suffered an injury on duty, the operator returns to the garage to submit to a drug test. The applicable collective bargaining agreement (2012-2015) contains a provision addressing drug and alcohol testing that incorporates, by reference, the CTA's Drug and Alcohol Policy and Testing Program for Safety Sensitive and Non-Safety Sensitive Employees, last amended in 2002. The Respondent submitted that agreement into evidence without including the drug testing policy attachment. However, I take notice of an earlier

collective bargaining agreement between the CTA and the Union (2007-2011), maintained in the Board's records, which includes the same drug testing policy, last amended in 2002. Under this policy, when the CTA orders an employee to submit to drug/alcohol testing, the CTA must "make a good faith effort to allow the employee being ordered to submit to the test to have the opportunity to consult with a Union representative before submit[ting] to [the] test." To that end, the CTA must notify the Union that it is ordering one of its bargaining unit employees to submit to testing unless a "situation exists which reasonabl[y] pre[v]ents the [CTA] from notifying the Union." However, "in the event the [CTA] fails to notify the Union because it claims to have been reasonably prevented from doing so, the burden of showing such will be on the Authority."

Apart from the drug test, the operator who claims to have suffered an injury on duty must also undergo an interview and complete paperwork. The general rules mandate that "employees injured on duty must submit a complete and accurate report of the injury and how it occurred to their immediate supervisor as soon as possible." The manager completes paperwork based on the interview including a statement for submission to a third-party administrator for insurance purposes and a separate report for the CTA's own records that describes the circumstances that led to the alleged injury on duty.

The CTA's corrective action guidelines provide that use of intoxicating liquor or controlled substances while on duty is a behavioral violation/gross misconduct. They provide that a "verbal altercation with a customer…may also warrant accelerated discipline depending on any aggravating circumstances." They provide that "making untrue, dishonest or misleading reports" is a behavioral violation that may warrant accelerated discipline. The CTA's general rules confirm that falsifying any "written or verbal statement" is a violation of the rule governing personal conduct.

Luster indicated that some operators request union representation during an interview following an injury on duty, although it is "not very common." Once the interview and the paperwork are completed, the manager places a call to the third-party administrator, who asks a series of questions to determine whether the operator in fact sustained an injury and issues the operator a claim number.

Mrs. Collins arrived back at the garage after midnight, in the early morning of March 31, 2018. Clerk Jackson buzzed her through the steel door that separates the common area from the clerk's office and the manager's office. The clerk's office is opposite the manager's office. There

is a vestibule between the two offices. Luster asked Mrs. Collins whether she was "going injured on duty or going into the sick book." Mrs. Collins replied that she wished to be classified as injured on duty. Clerk Johnson then provided Mrs. Collins with documents to complete related to her injury on duty, and Mrs. Collins completed them. At some point that night, Luster asked Clerk Johnson to send Mrs. Collins to his office so that she could undergo an interview regarding her injury on duty.

Mrs. Collins then proceeded to Luster's office where she and Luster had a dispute. The witnesses offer conflicting testimony about the interaction between Luster and Mrs. Collins. I credit Mrs. Collins's account of the incident, as described in the paragraph below, because she had a forthright demeanor, her account withstood a vigorous cross examination, and she provided a more cohesive, credible, and comprehensive description of the events than any other witness.

Mrs. Collins handed Luster the documents she had completed about her injury on duty, including a handwritten miscellaneous incident report pertaining to the incident. According to Luster, she also provided him medical documentation showing that she had been admitted to the hospital. Luster told her she had to wait a minute. Mrs. Collins then requested a report to manager form because she believed he was being rude to her. She told him she wished to report him for rudeness. Luster replied, "no you're not going to get a report to manager…just sit your butt down because if you do not, I will make a phone call and have you pulled out of service." Mrs. Collins responded by requesting union representation for her interview. Luster did not grant her request and instead directed her to sit for her interview. Mrs. Collins then stepped out of Luster's office and asked Clerk Johnson to call the union for her. Johnson refused. Mrs. Collins responded in a loud voice, audible to Luster,[1] that she would call the union herself. Luster then approached Mrs. Collins and told her that if she did not return to complete her interview, he would pull her out of service with a discharge recommendation. Mrs. Collins left messages for the Union agents and returned to Luster's office. She ultimately submitted to the interview without the presence of a union representative.

Luster's account of his interaction with Mrs. Collins, by contrast, was considerably less credible than Mrs. Collins's, described above. Luster claims that Mrs. Collins was on the phone

[1] Johnson testified to that effect, and her testimony on this matter is particularly reliable because she is a current employee of the CTA, providing testimony unfavorable to the CTA's case. She is therefore testifying adversely to her pecuniary interests. The Ave. Care & Rehab. Ctr., 360 NLRB 152, 152 n. 2.

when she arrived at his office and that she launched into a "tirade" of cursing against him after he told her he could not start the interview until she got off the phone. He further asserts that he responded merely by warning her that cursing was against the rules and that she walked out of his office while still on the phone. However, the preponderance of the evidence demonstrates that Mrs. Collins was not on the phone, as Luster asserted. Clerk Johnson, a witness for the Respondent, testified that she did not see Mrs. Collins on the phone on any of the occasions when Mrs. Collins left Luster's office.[2] In addition, the preponderance of the evidence demonstrates that Mrs. Collins did not in fact curse at Luster. First, Luster never drafted a report to manager or any incident report documenting Mrs. Collins's cursing. While Luster suggested that such conduct did not warrant any action and that in his experience it was best to simply let Mrs. Collins finish, his subsequent conduct demonstrates that he did not simply overlook cursing by an employee, even one he believed to be on off-duty status. The following day, after a separate interaction with Mrs. Collins, he did make a report referencing her "unruly…cussing" during their exchange. In addition, Clerk Johnson did not recount any cursing by Mrs. Collins ***before*** the interview began, though she did hear some of the more heated parts of the conversation between Luster and Mrs. Collins and would have most likely heard such cursing had it occurred.[3] Although Johnson asserted that Mrs. Collins cursed at Luster ***after*** the interview when Luster presented her with the completed interview forms, this claim fails to corroborate Luster's testimony that Mrs. Collins cursed at him before the interview began. Moreover, Johnson's testimony also lacks credibility when viewed in isolation where her own written description of the incident made no reference to any cursing by Mrs. Collins.

Luster's account warrants skepticism for the additional reason that he omitted a key fact when describing his interaction with Mrs. Collins. He did not mention that Mrs. Collins announced that she would call the Union herself, though Clerk Johnson testified that Mrs. Collins made that statement loud enough for him to hear it. This omission warrants the reasonable inference that Luster sought to withhold facts that were unfavorable to the Respondent's case. Notably, this inference is consistent with Luster's initial failure to mention Mrs. Collins's requests for union representation when first describing his interaction with her. He mentioned these requests only

[2] Johnson's testimony conflicts with Johnson's written account of the incident, but that account is hearsay and is not relied upon for the truth of the matter asserted.
[3] She recalled that Mrs. Collins stated "no, that's not going to happen."

after he had described the incident in full and Respondent's counsel circled back to ask him a pointed question about it.

The Respondent contends that I should view Mrs. Collins's allegedly aggressive behavior at hearing as evidence that she acted in conformity with that character trait when interacting with Luster, but such an inference is patently improper. The Illinois Rules of Evidence provide that "evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion" unless an exception to the rule applies, and none apply in this case. IL R EVID Rule 404 (general rule), IL R EVID Rule 607, 608, and 609 (exceptions).

After the interview, Mrs. Collins refused to sign the interview form and the miscellaneous report drafted by Luster. She contended that they did not accurately describe the incident. Mrs. Collins submitted a copy of the miscellaneous report into evidence. Luster identified it and admitted he drafted it "for the miscellaneous component of the IOD." Mrs. Collins thereby provided sufficient foundation for the document's admission. ILCS S. Ct. Rule 236. On redirect examination, Luster claimed that he had never seen the document before, but this testimony is incredible given his earlier unequivocal admission. In making this determination, I also rely on the witness's demeanor.

The miscellaneous report contains employee comments drafted by the manager, manager comments, and "decision details." The manager comments section states that the manager "advised the operator that falsifying any verbal or written statement was a violation of the CTA's general rule 14(j)," that the CTA would review the hard drive on the bus, and that "chargeability would be based on the [video] hard drive review." It also states the following: "The operator is being referred to Concentra Cms for follow up care on Monday, 04/02/18 at 1100hrs and instructed to return back to 103rd garage Transportation Manager's Office. Operator was given and must return a completed Pce/MCE form." In the employee comments section, Luster's report notes that Mrs. Collins offered two different versions of the event. Luster claims that she initially stated that a male passenger spat on her for no reason. He claims that she later asserted that the passenger spat at her as part of a longer exchange about the bus route, which she denied was a fare dispute. The report concludes by setting March 31, 2018 as the date on which Mrs. Collins was to report back to work. The form does not explicitly state when the paperwork is due.

I do not credit Luster's testimony that he told Mrs. Collins to return to the forms by "close of business" on March 31, 2018. Luster's testimony about when the forms were due was incredible on the whole. Although he initially testified that Mrs. Collins was required to return forms by close of business on March 31, 2018, he claimed in his April 1 report that he had "reminded" Mrs. Collins that the forms were due by 11:00 a.m. on April 2, 2018.

Mrs. Collins left the garage at 6:30 a.m. after she had completed all the necessary paperwork, the interview, and the drug/alcohol testing. At around 6:30 a.m., Luster submitted the documentation that Mrs. Collins had completed and the documents he completed to the third-party administrator.

Luster testified that he did not believe he could discipline Mrs. Collins after she had requested IOD status. Mrs. Collins testified that she was not officially out of service until after the manager completed his interview and the CTA processed her claim number through its system.

2. April 1, 2018

The business hours for the general public (i.e., non-CTA employees) at the 103rd street garage are 8 a.m. to 5 p.m..

On April 1, 2018, at around 2:00 a.m., Mrs. Collins arrived at the garage's training room. Mr. Collins had just finished his late shift, and Mrs. Collins came in to tell him that she was there to pick him up. Mrs. Collins observed Luster through the window of the clerk's office speaking with Clerk Johnson.

Luster addressed Mrs. Collins through the window. Luster and Mrs. Collins offered different accounts of their exchange. I credit Luster's testimony that he asked Mrs. Collins whether she was there to turn in paperwork related to her injury on duty. This is consistent with the parties' stipulation that he made such an inquiry.[4] The parties further stipulated that Mrs. Collins responded by stating that she was not dropping off documents and that she was picking up her husband from work. I credit Luster's assertion that Mrs. Collins additionally responded, "this motherfucker better get the fuck out of my face." Luster took action in conformity with his account by drafting a report to manager that documented this precise statement, and the testimony he offered about Mrs. Collins's statement was made with forthright conviction and certainty. By

[4] Mrs. Collins denies that Luster made any such inquiry. However, she has not explained why she should not be held to her stipulation to the contrary.

contrast, Mrs. Collin's claim that she simply ignored Luster was less credible, particularly where she omitted reference to Luster's initial inquiry about the documents, to which she earlier stipulated.

Mr. Collins then arrived in the training room. Luster addressed him through the clerk's window. Luster and Mr. Collins offered differing accounts of their interaction. I credit Mr. Collins's account to the extent that it conflicts with Luster's because Mr. Collins's account is more consistent with the documentary evidence, generated by Luster himself. According to Mr. Collins, Luster turned to him and said, "your wife is in violation…She is on IOD [injury on duty], she shouldn't be here, and if she don't leave the property, I'm going to notify the police and have her arrested." By contrast, Luster suggested that he simply asked Mrs. Collins why his wife was in the garage and told Mr. Collins that she was not allowed to be in the building, due to her IOD status, except to turn in her paperwork. However, Luster's subsequent incident report, narrated to the control center, confirms that he made reference to the police. Indeed, he threatened to contact the CTA's call control center and request police assistance if she did not leave.[5] Luster's failure to admit to a threat that he himself narrated weighs in favor of crediting Mr. Collins's claim that he threatened to call the police and have Mrs. Collins arrested if she did not leave.

Following this last exchange, Mr. and Mrs. Collins left the garage. Luster then completed a "report to manager" form about the incident and he also contacted the control center to narrate a report about Mrs. Collins's presence on CTA property after hours. In the report to manager, he asserted that Mrs. Collins was trespassing on CTA property after business hours while on IOD status, that he asked he whether she was there to turn in her paperwork, and that she responded by cursing at him. Luster's narrated report to the control center referenced the fact that he informed Mrs. Collins that he would request police assistance if she did not leave. It also noted that by the time he made his report, Mrs. Collins had left without further incident.

At hearing, Luster justified his issuance of these reports on the grounds that he was simply enforcing the CTA's hours of operation. Luster explained that CTA employees who are off duty and out of uniform must leave the premises by 6 p.m. He noted that the purpose of the rule is to ensure safety and security. However, Mr. Collins testified that he has seen off-duty operators in plain clothes play ping-pong at the 103rd Street garage as late as 10 p.m. at night and that members

[5] CTA Exh. 4 - "Manager Luster asked Mrs. Isis Collins to leave the property or he would contact the Control Center and Request Police Assistance."

of management were aware of this conduct. Mr. Collins testified that he himself has played ping-pong while in plain clothes and off duty, in view of management, and that he was not cited for that conduct.

That same night, Luster completed a form to request video of Mr. Collins's bus run. On the form he asserted that "operator's spouse is on IOD from the Company but is riding the bus with her husband." At hearing, Luster clarified that he merely believed that Mrs. Collins was riding on her husband's bus because on April 1, 2018 they had arrived at the garage at 2:00 a.m. within minutes of each other. The record contains no evidence concerning the circumstances under which managers may request and receive video footage of an operator's bus run.

## IV. DISCUSSION AND ANALYSIS

### 1. Amendment to Complaint

The complaint is amended to add the allegation that the Respondent violated Section 10(a)(1) of the Act when Manager Luster subjected Mrs. Collins to an interview about her injury on duty, without the presence of a union representative, after she invoked her Weingarten rights.

The Act gives administrative law judges broad discretion to amend complaints. Section 11(a) provides, in relevant part: "Any such complaint may be amended by the member or hearing officer conducting the hearing for the Board in his discretion at any time prior to the issuance of an order based thereon." 5 ILCS 315/11(a). The Board's case law is more specific, allowing for the amendment of complaints in two distinct instances: (1) where, after the conclusion of the hearing, the amendment would conform the pleadings to the evidence and would not unfairly prejudice any party; and (2) to add allegations not listed in the underlying charge, so long as the added allegations are closely related to the original allegations in the charge, or grew out of the same subject matter during the pendency of the case. Forest Preserve. Dist. of Cook Cnty. v. ILRB, 369 Ill. App. 3d 733, 746 (1st Dist. 2006); Chicago Park Dist., 15 PERI ¶ 3017 (IL LLRB 1999); City of Chicago (Police Dep't), 14 PERI ¶ 3010 (IL LLRB 1998); Cnty. of Cook and Sheriff of Cook Cnty., 6 PERI ¶ 3019 (IL LLRB 1990); Cnty. of Cook, 5 PERI ¶ 3002 (IL LLRB 1988).

Here, the amendment conforms the complaint to evidence presented at hearing, as discussed below. In addition, it does not prejudice either party because the matter was fully and fairly litigated. Both parties presented evidence concerning the nature of Mrs. Collins's interview with Luster, whether she possessed a reasonable belief that disciplinary action might result, and

whether she made a legitimate request for union representation. In addition, the Respondent presented arguments on brief that Mrs. Collins was not entitled to a union representative during her interview under the three-part Weingarten test, and this is notably the same defense applicable to the amendment. Vill. of Dixmoor, 33 PERI ¶ 49 (IL LRB-SP 2016) (amending complaint to conform to evidence presented where employer presented evidence on new allegation and presented arguments in its brief on that issue); City of Park Ridge, 32 PERI ¶ 151 (IL LRB-SP 2016) (affirming amendment of complaint to conform it to evidence presented at hearing even where the ALJ allegedly did so implicitly).

Accordingly, the complaint is amended to include an allegation that the Respondent violated Section 10(a)(1) of the Act by denying Mrs. Collins her Weingarten rights.

2. Alleged Denial of Weingarten Rights, Section 10(a)(1)

The Respondent violated Section 10(a)(1) of the Act when Manager Luster continued to question Mrs. Collins about the circumstances surrounding her injury on duty after she invoked her Weingarten rights.

Public employees in Illinois have the well-established right to union representation in meetings that might reasonably result in disciplinary action. Cnty. of Stephenson, 21 PERI ¶ 223 (IL LRB-SP 2005); Morris and State of Ill., Dep't of Cent. Mgmt. Serv. (Public Aid), 20 PERI ¶ 81 (IL LRB-SP 2004); City of Highland Park, 15 PERI ¶ 2004 (IL SLRB 1999); Gerald Morgan and State of Ill., Dep't of Cent. Mgmt. Serv. (Corrections), 1 PERI ¶ 2020 (IL SLRB 1985). The right arises only when the following three circumstances are present: (1) the meeting is investigatory; (2) the employee reasonably believes that disciplinary action may result; and (3) the employee makes a legitimate request for union representation. Cnty. of Stephenson, 21 PERI ¶ 223; City of Aurora, 20 PERI ¶ 77 (IL LRB-SP 2004); City of Chicago (Dep't of Buildings), 15 PERI ¶ 3012 (IL LLRB 1999); City of Chicago (Dep't of Police), 5 PERI ¶ 3025 (IL LLRB 1989); State of Ill. (Dep'ts of Cent. Mgmt. Serv. and Empl. Security), 4 PERI ¶ 2005 (IL SLRB 1988); Gerald Morgan and State of Ill., Dep't of Cent. Mgmt. Serv. (Corrections), 1 PERI ¶ 2020.

Once an employee makes a request for representation under these circumstances, the employer can (1) deny the request, discontinue the interview and obtain the information through other means, (2) wait until the union representative arrives before commencing with, or continuing, the interview, or (3) request that the employee waive his right to union representation. Cnty. of

Stephenson, 21 PERI ¶ 223; Morris and State of Ill., Dep't of Cent. Mgmt. Serv. (Public Aid), 20 PERI 81 (IL LRB-SP 2004); City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014 (IL LLRB 1997). However, the Employer violates Section 10(a)(1) of the Act if it simply denies the request and proceeds with the interview. City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014.

There is no dispute in this case that Mrs. Collins repeatedly requested union representation during her meeting with Manager Luster or that Luster denied that request and continued the interview. Accordingly, the sole issues presented are whether the interview was investigatory and whether Mrs. Collins reasonably believed that disciplinary action might result from it.

Here, Manager Luster's interview with Mrs. Collins was investigatory. An interview is investigatory if the employer seeks facts or evidence in support of perceived misconduct or where an employee is summoned in front of management to explain his or her version of a disputed event. Eisenberg/Chicago Transit Auth., 17 PERI ¶ 3018 (IL LRB-LP 2001); State of Ill. Dep'ts of Cent. Mgmt. Serv. and Empl. Security), 4 PERI ¶ 2005; Bentley Univ. & Bentley Univ. Pub. Safety Ass'n, 361 NLRB 1038, 1038 (2014). However, an interview is not investigatory if its sole purpose is to mete out previously-determined discipline or if it qualifies as a "run-of-the-mill shop floor conversation" where an employer gives instructions, training, or needed correction of work techniques. State of Ill. Dep'ts of Cent. Mgmt. Serv. and Empl. Security), 4 PERI ¶ 2005; Morris and State of Ill., Dep't of Cent. Mgmt. Serv. (Public Aid), 20 PERI ¶ 81.

Here, Luster sought to interview Collins in part to obtain facts and evidence about a disputed event, how Mrs. Collins incurred her alleged injury on the bus and her role in the incident in which a passenger allegedly assaulted her. Luster testified that he had already attended the scene of the incident himself and had spoken to the responding officer. He noted that there was a conflict between the information he obtained about the incident from the responding officer and from the control center. He sought to obtain Mrs. Collins's side of the story and noted that he would likewise be reviewing the hard drive on the bus, which could serve to corroborate or refute her description. Luster also ordered Mrs. Collins to submit to a drug and alcohol test as part of his overall inquiry into the incident. City of Highland Park, 15 PERI ¶ 2004 (interview was investigatory where supervisor wished to hear charging party's "side of the story"); Bentley Univ. & Bentley Univ. Pub. Safety Ass'n, 361 NLRB at 1039 (an interview is investigatory for Weingarten purposes where an employee is summoned in front of management to explain his or her version of a disputed event); E.I. Dupont De Nemours & Co., Inc., 362 NLRB

843, 855 (2015) (an interview to determine the cause of an accident or injury is an investigatory interview under Weingarten, even if its purpose is non-disciplinary and serves to prevent its reoccurrence).

Notably, Manager Luster did not use the meeting to dispense previously-determined discipline. Nor did he use the meeting to give Mrs. Collins instructions or training. Accordingly, the interview falls within neither of these exceptions to the Weingarten rule. Cf. City of Aurora, 20 PERI ¶ 77; cf. State of Ill. Dep'ts of Cent. Mgmt. Serv. and Empl. Security), 4 PERI ¶ 2005.

Contrary to the Respondent's contention, Luster's interview of Mrs. Collins does not qualify as a fitness for duty exam that may also arguably fall outside the protections of Weingarten. In U.S. Postal Service the National Labor Relations Board held that employees were not entitled to a Weingarten representative during a fitness for duty medical examination performed by a doctor. The NLRB reasoned that the examination was limited to the establishment of personal medical information concerning the employee, which the employer could not obtain on its own. U.S. Postal Service, 252 NLRB 61, slip op 1, n. 2 (1980). It further relied upon "the absence of evidence that questions of an investigatory nature were in fact asked at these examinations." U.S. Postal Service, 252 NLRB 61, slip op 1. Here, by contrast, a manager performed the investigation, not a medical specialist, and he asked questions of an investigatory nature that extended beyond the establishment of personal medical information concerning the employee. The Respondent's rules mandated that Mrs. Collins provide her supervisor with a complete an accurate report of "how [the injury] occurred." To that end, Mrs. Collins provided a handwritten report to Luster. Luster then requested her comments about the event to flesh out the account she had already provided in writing. Moreover, he reasonably probed her initial account because he later claimed that she offered him inconsistent statements about what occurred and that she also denied that the matter had arisen as a result of a fare dispute. Finally, Luster could have proceeded on his own to investigate the reason behind Mrs. Collins's injury and the nature of her injury. He could have reviewed the hard drive on the bus and relied on his prior discussion with the reporting officer. He also could have relied on the paperwork completed by Mrs. Collins, which included her own incident report, other paperwork she completed for submission to the third-party administrator, and documentation showing she had been admitted to the hospital, which Luster claims to have received.[6]

[6] There is no evidence that Mrs. Collins refused to complete this paperwork.

Moreover, Mrs. Collins had a reasonable belief that discipline might result from this investigatory meeting. The standard for determining whether an employee reasonably expects discipline is an objective one measured in light of all the circumstances of the case. City of Aurora, 20 PERI ¶ 77. The CTA's rules show that the investigation into Mrs. Collins interaction with the customer who assaulted her could subject her to disciplinary action. Under the CTA's disciplinary guidelines, "a verbal or physical altercation with a customer" constitutes a behavioral violation/gross misconduct. In addition, an operator can violate the CTA's general rules by providing false verbal or written statements about an incident. Furthermore, an interview attendant to a drug test raises the reasonable prospect of disciplinary action. An operator's failure to pass a drug test, standing alone, constitutes a behavioral violation/gross misconduct and any misleading statements made during the course of an interview are also subject to disciplinary action. The Respondent's obligation to notify the Union of an impending drug test and to make a good faith effort to allow the employee to consult with the Union on that subject likewise demonstrates that an operator might reasonably believe that an interview regarding the drug-tested incident might result in disciplinary action.[7] Finally, Luster suggested that Mrs. Collins could be disciplined for her conduct on the bus, irrespective of her status as an injured party ("chargeability [will] be based on the hard drive review").

Luster's initial threat of discipline against Mrs. Collins after she expressed an intent to report him for rudeness heightened her objectively reasonable belief that discipline might result from the interview itself. It underscored the fact that Luster had some control over documenting her account and was not positively disposed towards her. Indeed, Luster ultimately claimed that Mrs. Collins had provided him inconsistent statements about what led to the assault, and arguably rendered her vulnerable to discipline under the CTA's prohibition against false descriptions of an incident. When viewed in this context, the nature of Mrs. Collins's answers reasonably affected whether she would be subject to discipline and she was therefore entitled to the protections of a union representative. Indeed, the presence of a union representative could have helped clarify the facts and avoid the conflict identified by Luster in his miscellaneous report. Morris and State of Ill., Dep't of Cent. Mgmt. Serv. (Public Aid), 20 PERI ¶ 81 (charging party's answers affected whether he would be subject to discipline); Gerald Morgan and State of Ill., Dep't of Cent. Mgmt. Serv. (Corrections), 1 PERI ¶ 2020 (purpose of union representative during investigatory interview

[7] There is no indication that this occurred in Mrs. Collins's case.

is to assist employee and clarify the facts); cf. City of Aurora, 20 PERI ¶ 77 (employee had not been informed that false statements could result in discipline and otherwise had no reasonable belief that discipline might result).

The CTA accurately notes that miscellaneous report is not itself a disciplinary document; however, this does not dispel Mrs. Collins's reasonable expectation that discipline might result from the interview that provided its contents. An employer's statement to an interviewee that he will not receive discipline as a result of the information obtained in the interview will dispel an employee's reasonable belief of potential discipline. State of Illinois, Department of Central Management Services, 28 PERI ¶ 157 (L LRB-SP 2012) (citing NLRB case law and remanding case for issuance of a complaint). Conversely an employee may maintain a reasonable expectation of discipline where the employer merely assures him that he is *not the subject of* the investigation. City of Ottawa, 25 PERI ¶ 43 (IL LRB-SP 2009), rev'd in part on other grounds in non-precedential decision, City of Ottawa v. Ill. Labor Relations Bd., No. 3-09-0365, 27 PERI ¶ 39 (Ill. App. Ct., 3d Dist., Jan. 6, 2011). Here, however, there is no evidence that Luster assured Mrs. Collins that discipline would not result from her answers or her conduct on the bus. Nor did not assure her that her conduct was not the subject of his inquiry. To the contrary, he warned Mrs. Collins that any false statement would violate the rules, that the CTA would effectively verify her representations by reviewing the hard drive on the bus, and that the CTA would determine issues of "chargeability" after further review. Accordingly, the non-disciplinary nature of the initial report merely indicates that the CTA declined to initiate discipline on the date of the interview, not that Mrs. Collins lacked a reasonable belief that discipline might result later, based on the CTA's rules and Luster's representations. Consol. Edison Co. of New York, Inc., 323 NLRB 910, 910 (1997) (finding violation despite respondent's claim that supervisors were only engaged in fact finding and had no intention of imposing discipline at the time of the interview).

Finally, there is no merit to the Respondent's suggestion that Mrs. Collins knew she was shielded from discipline due to her request for "injury on duty" status, and that she therefore had no reasonable belief that discipline could result from her answers during the interview. The focus of the interview was Mrs. Collins's conduct while she was ***on-duty***, and there is little doubt that any misconduct she may have engaged in, while incurring an injury on duty, could be subject to disciplinary action. Indeed, there is nothing in the CTA's disciplinary guidelines or general rules

that exempts employees from discipline in such cases. To the contrary, the general rules apply broadly to all employees.

Under these circumstances, Mrs. Collins's Weingarten rights attached and the Respondent was obligated to provide her with the following three options: (1) deny the request, discontinue the interview and obtain the information through other means; (2) wait until the union representative arrives before commencing with, or continuing, the interview; or (3) request that the employee waive his right to union representation. Cnty. of Stephenson, 21 PERI ¶ 223; Morris and State of Ill., Dep't of Cent. Mgmt. Serv. (Public Aid), 20 PERI ¶ 81; City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014.

Here, however, the Respondent violated the Act because Luster did not provide or explain any of these options to Mrs. Collins. Instead, Luster coerced Mrs. Collins into continuing the interview by threatening to recommend that management terminate her employment if she did not complete the interview as he directed.

In sum, the Respondent violated Section 10(a)(1) of the Act by denying Mrs. Collins her Weingarten rights.

3. Alleged Threat

The Respondent violated Section 10(a)(1) of the Act when Manager Luster threatened to pull Mrs. Collins from service with a discharge recommendation if she did not come back and sit for her interview.

A respondent violates Section 10(a)(1) of the Act when it engages in conduct which reasonably tends to interfere with, restrain, or coerce employees in the exercise of rights protected by the Act. City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012); City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995); Clerk of the Circuit Court of Cook Cnty., 7 PERI ¶ 2019 (IL SLRB 1991); Ill., Dep't. of Cent. Mgmt. Servs. (Dept. of Conservation), 2 PERI ¶ 2032 (IL SLRB 1986); City of Chi., 3 PERI ¶ 3011 (IL LLRB 1987). The applicable test in this instance for determining whether a violation occurred is whether the employer's conduct, viewed objectively from the standpoint of a reasonable employee, had a tendency to interfere with, restrain or coerce the

employee in the exercise of a right guaranteed by the Act. Clerk of the Circuit Court, 7 PERI ¶ 2019.[8]

There is no requirement of proof that the employees were actually coerced or that the employer intended to coerce the employees. Vill. of Calumet Park, 23 PERI ¶ 108 (IL LRB-SP 2007). Employer statements to employees which contain threats of reprisal or force or promise of benefit violate Section 10(a)(1). Vill. of Calumet Park, 23 PERI ¶ 108; Vill. of Calumet Park, 22 PERI ¶ 23 (IL SLRB 2005) (addressing implied threat); City of Highland Park, 18 PERI ¶ 2012 (IL SLRB 2002); City of Chi. (Chi. Police Dep't), 3 PERI ¶ 3028 (IL LLRB 1987); City of Freeport, 3 PERI ¶ 2046 (IL SLRB 1987). The Board has held that a threat violates Section 10(a)(1) if a reasonable employee would anticipate adverse consequences if he continued participating in protected concerted activities, regardless of whether any specific employee actually reached that conclusion. Clerk of the Court of Cook County, 7 PERI ¶ 2019. Accordingly, threatening an employee with discipline for exercising her Weingarten rights is a violation of the Act. City of Chicago (Dep't of Buildings), 15 PERI ¶ 3012 (citing Southwestern Bell Tel. Co., 227 NLRB 1223 (1977)).

Here, the chain of events demonstrates that Manager Luster threatened to pull Mrs. Collins from service with a discharge recommendation because of her request for union representation and her subsequent attempt to secure the Union's presence. When Mrs. Collins requested union representation for the interview, Luster denied her request by directing her to sit for the interview. Mrs. Collins then stepped out of the office and announced in a loud tone, audible to Luster, that she was calling the Union. Luster immediately responded that if she did not return to complete the interview, he would pull her out of service and recommend her termination. Although Luster issued an earlier threat before Mrs. Collins invoked her Weingarten rights, in an attempt to start the interview, Luster's escalation of his threat after Mrs. Collins asked for union representation demonstrates that he issued the subsequent threat because she insisted on her protected rights. Cf. City of Chicago (Dep't of Buildings), 15 PERI ¶ 3012 (threat of discipline for leaving interview was unrelated to employee's request for union representation where supervisor ascertained that employee was leaving the interview because of illness and not because he was denied a union representative).

[8] As discussed below, a different test applies where the charging party alleges that the employer has taken an adverse action against her because of her protected concerted activity. See infra.

Moreover, a reasonable employee would anticipate adverse consequences based on this threat if they continued to engage in the protected activity of insisting on their Weingarten rights. Luster's threat followed on the heels of Mrs. Collins's protected activity and warned that she would suffer an adverse employment action if she did not abandon that activity.

There is no merit to the Respondent's claim that Mrs. Collins knew she was immune from discipline due to claiming an injury on duty, and that she therefore had no basis for anticipating adverse consequences from Luster's threat. As a preliminary matter, there is insufficient evidence that the Respondent maintained a policy of withholding discipline from employees who returned to a garage claiming to have been injured on duty. Nor is there evidence that Mrs. Collins was aware of such a policy. Luster simply noted that he believed he lacked the authority to follow through with discipline, but he could not point to any written policy to that effect, and the Respondent provided none. Luster's self-serving claim, at hearing, that he believed he lacked the authority to discipline Mrs. Collins while she was claiming IOD status, has no bearing on Mrs. Collins's reasonable belief to the contrary where Luster never informed Mrs. Collins of her supposed immunity.

Moreover, there is no basis on which to grant the inference, sought by the Respondent under the missing witness rule, that the CTA cannot in fact discipline employees who request and later receive IOD status. The Respondent's request for such an inference is based on Mrs. Collins's refusal to offer the names of other employees whom the Respondent disciplined while their requests for IOD status were pending. However, no adverse inference is warranted here because the names of those employees were not necessary to prove Mrs. Collins's case, as discussed below.

The missing witness rule is based on the principle that failure of a party to produce evidence favorable to it gives rise to a presumption against that party. Bd. of Educ. City of Peoria School Dist. No. 150 v. Ill. Educ. Labor Rel. Bd., 318 Ill. App. 3d 144, 148 (4th Dist. 2000). The rule applies if the following four conditions are satisfied: (1) the missing witness was under the control of the party to be charged and could have been produced by reasonable diligence, (2) the witness was not equally available to the party requesting that the inference be made, (3) a reasonably prudent person would have produced the witness if the party believed that the testimony would be favorable, and (4) no reasonable excuse for the failure to produce the witness is shown. Simmons v. Univ. of Chicago Hospitals and Clinics, 162 Ill. 2d 1, 6 (1994).

In interpreting the critical third prong of the test, the Board has declined to find it to be met absent some infirmity in the evidence provided by the party against whom the adverse inference is sought. Indeed, where the non-moving party's evidence is sound and sufficient, a reasonably prudent person would have no need to present the allegedly missing evidence. Village of Stickney, 31 PERI ¶ 77 (IL LRB-SP 2014) (citing Gates & Sons Barbeque of Missouri Inc., 361 NLRB No. 46 at 2-3 (2014); see also Paxton-Buckley-Loda, Education Association, 13 PERI ¶ 1114 (IL ELRB 1997) (relying on this principle but also finding that allegedly missing witness was not within charging party's control and that witness was equally available to respondent).

As described below, there is ample evidence that Mrs. Collins had an objectively reasonable belief that discipline might result if she continued engaging in protected activity, and there was no need for her to present additional evidence on this issue. First, Mrs. Collins's descriptions of Luster's threats were credible, and they reasonably fostered her impression that she was vulnerable to disciplinary action, irrespective of her claimed injury. Indeed, once a manager conveys a threat of discipline to an employee, it would be unreasonable for the employee to doubt that authority because it is the manager who is in the best position to know the extent of his power. Second, Mrs. Collins's reasonable belief is also supported by the miscellaneous report, authored by Luster. It illustrates that Mrs. Collins was subject to the CTA's rules throughout the interview process because it notes that Luster warned her that offering a false statement would be a violation. Vill. of Stickney, 31 PERI ¶ 77 (mayor's claim was credible on its face and supported by other evidence; missing witness rule did not apply); Paxton-Buckley-Loda, Education Association, 13 PERI ¶ 1114 (IL ELRB 1997) (where there was ample evidence of agreement between union and employer, IELRB did not draw an adverse inference from charging parties' failure to call attorney to testify in support of agreement's existence).

Contrary to the Respondent's contention, the terms of the collective bargaining agreement, which require "sufficient cause" for a disciplinary action, would not have assuaged a reasonable employee's fear of discipline. CTA's disciplinary guidelines provide that an employee's refusal to follow a direct order is gross misconduct, and Mrs. Collins's initial refusal to abide by Luster's directive to sit for the interview arguably qualifies as such.[9] Indeed, it carries the very penalty that Luster ultimately threatened, a recommendation for discharge.

[9] Contrary to the Respondent's anticipated contention, Mrs. Collins did not lose the protections of the Act by this conduct. Village of Bensenville, 10 PERI ¶ 2009 (IL SLRB 1993) ("Where… the employer contends

There is no merit to the Respondent's claim that Mrs. Collins's alleged misconduct at the outset of the interview demonstrates that she lacked a personal belief that Luster could discipline her. Mrs. Collins's subjective beliefs are irrelevant to the analysis because the standard for determining whether an employee reasonably expects discipline is an objective one. State of Illinois, Department of Central Management Services, 28 PERI ¶ 157; Chicago Transit Auth., 17 PERI ¶ 3018. To the extent that Mrs. Collins's subjective beliefs may be relevant, Mrs. Collins herself clearly believed that Luster could discipline her because she ultimately acquiesced to the interview after Luster threatened to recommend her discharge.

Finally, Luster's failure to follow through with the threat does not render lawful the threat itself. City of Chi. (Chi. Police Dep't), 3 PERI ¶ 3028 (employer's threat that it would change employee's work schedule if he filed a grievance violated the Act even though Respondent did not carry out threatened conduct).

In sum, the Respondent violated Section 10(a)(1) of the Act when Manager Luster threatened Mrs. Collins with discipline for invoking her Weingarten rights and attempting to contact the Union by phone.

4. Alleged Harassment and Adverse Actions

The Respondent retaliated against Mrs. Collins for invoking the Union's assistance, in violation of Section 10(a)(1) of the Act, when Luster threatened to call the police on her, drafted a report to manager claiming she was trespassing on CTA property, and contacted the control center to report the same. However, there is insufficient evidence Luster took adverse action against Mrs. Collins by falsifying reports related to her injury on duty or overstating the basis for his request for video footage of Mr. Collins's bus run, as Mrs. Collins alleges on brief.

Where a charging party alleges that the employer violated Section 10(a)(1) of the Act by taking an alleged adverse employment action against her because of, and in retaliation for, the exercise of protected rights, the analysis tracks the one used in cases arising under Section 10(a)(2) of the Act. Vill. of Oak Park, 18 PERI ¶ 2019 (IL SLRB 2002); Vill. of Schiller Park, 13 PERI ¶ 2047 (IL SLRB 1997). In such cases, the charging party must prove, by a preponderance of the

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that the employee has engaged in unprotected misconduct in the course of otherwise protected activity … an employee does not lose the protection of the Act unless his misconduct is so violent or of such character as to render the employee unfit for further service").

evidence, that the employee engaged in protected activity, the Respondent knew of that activity, and the Respondent took adverse action against the employee as a result of her involvement in that activity. Vill. of Schiller Park, 13 PERI ¶ 2047 (citing Gale and Chicago Housing Authority, 1 PERI ¶ 3010 (IL LLRB 1985)).

Under this framework, as under a Section 10(a)(2) analysis, the employer can avoid a finding that it violated the Act by demonstrating that it would have taken the adverse action for a legitimate business reason, notwithstanding the protected activity. City of Burbank v. Ill. State Labor Rel. Bd., 128 Ill. 2d 335, 345 (1989); Pace Suburban Bus Div. of Reg'l Transp. Auth., 406 Ill. App. 3d 484, 500 (1st Dist. 2010). Merely proffering a legitimate business reason for the adverse employment action does not end the inquiry, as it must be determined whether the proffered reason is bona fide or pretextual. City of Burbank, 128 Ill. 2d at 346. 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. at 346-47. 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 protected activity. Id. at 347.

As discussed above, Mrs. Collins engaged in protected concerted activity when she requested the presence of a union representative at her interview with Luster and subsequently sought the Union's assistance by phone. Illinois Dep't of Cent. Mgmt. Servs., 16 PERI ¶ 2023 (IL SLRB 2000) (assertion of Weingarten rights is protected concerted activity); Cnty. of DuPage and DuPage Cnty. Sheriff, 30 PERI ¶ 115 (IL LRB-SP 2013) (invoking the assistance of the Union is protected activity).

Next, Luster was aware of Mrs. Collins's protected activity because Mrs. Collins informed him that she wished to have a union representative present at the interview. She also announced in a loud voice, audible to Luster, that she was going to call the Union.

Furthermore, Luster harassed and intimidated Mrs. Collins the next day when he threatened to call the police and have her arrested if she did not leave, drafted a report to manager claiming she was trespassing, and called the control center to report the same. An action does not need to have an adverse tangible result or adverse financial consequence to constitute an adverse employment action. City of Chicago v. Ill. Local Labor Rel. Bd., 182 Ill. App. 3d 588, 594-96

(1st Dist. 1988). However, the employee's working conditions must be deemed affected in a tangible, adverse manner. Ill. Dep't of Cent Mgmt. Servs. (Dep't of Emp't Sec.), 11 PERI ¶2022 n. 3 (IL SLRB 1995). Harassment, intimidation, and subjecting an employee's work performance to the strictest scrutiny also qualify as adverse employment actions under a 10(a)(2)-type analysis, applied here. City of Chicago, 182 Ill. App. 3d at 595 (reexamination of employees' work, requiring employee to provide written reasons for absence during union election, requiring employee to write evaluation of course she had taken on her own time and at her own expense were adverse actions).

Here, Luster's actions towards Mrs. Collins demonstrate harassment because they were disproportionate to her alleged infraction—her presence on CTA property after business hours while off-duty. First, Luster threatened to call the control center and request police assistance if Mrs. Collins did not leave, even though the Respondent routinely permits the presence of off-duty employees on CTA property after hours. Indeed, Mr. Collins credibly testified that off-duty operators in plainclothes commonly engage in recreational activities on CTA property after 6 p.m., that managers are aware of it, and that he himself had engaged in such activity, in view of management, without consequence. The Respondent contends that Mr. Collins did not identify anyone engaging in such activity while on IOD status, but there is insufficient evidence that the Respondent drew a distinction between those who are "off duty" and those who are "inactive" when determining whether they were permitted on the property after hours. Indeed, Luster's initial description of the purported rule identified only three classes of individual – members of the general public who were "non-CTA," uniformed CTA operators, and off-duty employees. The existence of a third class of individuals, "inactive" employee, was suggested by Respondent's counsel by way of a leading question and is therefore not reliable evidence that the Respondent applied rules to them that were otherwise inapplicable to off-duty employees who did not hold IOD status.[10] Village of Plainfield, 29 PERI ¶ 123 (IL LRB-SP 2013) (considering leading nature

[10] Q [Respondent's counsel]: What are the business hours at 103rd Street garage.
A [Luster]: Normally, for the general public it's from like 8:00 to 5:00.
Q: When you say "for the general public," what do you mean exactly?
A: Anyone who is non CTA. The operators, we do have it that they can come in up until -- anyone out of uniform is supposed to stop being allowed into the buildings at 6:00.
…
Q: So anyone that is not currently an active CTA employee should not be in the building after 6:00 o'clock.
A: You're correct.

of questions in assessing credibility); County of Tazewell and Sheriff of Tazewell County, 19 PERI ¶ 39 (IL LRB-SP 2003) (answer provided in response to leading question was not persuasive); County of Cook, Office of the Medical Examiner, 6 PERI ¶ 3011 n. 2 (IL LLRB 1990) (ALJ did not err in allowing leading questions where he properly declined to give the answers weight).

In addition, Luster made two separate reports about Mrs. Collins's presence on CTA property, a written report to manager and a dictated report to the control center. The duplicative nature of these reports appears intended to create a paper trail for future reference, because Mrs. Collins had already left the property "without further incident" at the time he made them.

There may be some reasonable argument that these reports referencing warnings to Mrs. Collins are not disciplinary, absent evidence that the Respondent placed them in Mrs. Collins's personnel file. However, the Respondent's preservation of these warning reports, coupled with the threat of police presence and arrest is likely sufficient to rise to harassment.[11] Compare City of Chicago (Dep't of Bldg.), 15 PERI ¶ 3012 (a written reprimand did not impact an employee's terms and conditions of employment because the reprimand was never placed in the employee's personnel file), Chicago Transit Authority, 19 PERI ¶ 34 (IL LRB-LP 2003) (informal oral warning that did not constitute discipline under the respondent's disciplinary policy was nevertheless adverse where supervisor made notation of it on personnel jacket for future reference) and State of Illinois, Department of Central Management Services, 26 PERI ¶ 131 (IL LRB-SP 2010) (addressing supervisory authority; finding sufficient evidence that oral reprimands were documented to show that they constituted discipline even where documentation was not kept in personnel files).

[11] In the alternative, if the Board determines that the actions discussed above are not in fact adverse employment actions, I recommend that the Board find that they nevertheless violate the Act on the grounds that they have a reasonable tendency to interfere with, restrain, and coerce employees in the exercise of their protected rights. As discussed more fully below, there is a causal nexus between Mrs. Collins's protected activity and Luster's actions of threatening to call the police to have her arrested and initiating two separate reports about Mrs. Collins's presence on CTA property. In addition, Luster's conduct has a reasonable tendency to chill employees' exercise of their protected rights because they are official reports regarding alleged misconduct that are also linked to a threat of police presence. Bristol Indus. Corp., 366 NLRB No. 101 (2018) (employer acted unlawfully when it summoned the police during pretextual discharge of employees); cf. City of Chicago, 31 PERI ¶ 129 (majority of the Board declined to consider whether pre-disciplinary notice had a reasonable tendency to chill employees in the exercise of their protected rights where complaint did not include an independent Section 10(a)(1) allegation; Chairman Gierut dissented).

Moreover, Mrs. Collins has satisfied her prima facie burden to show that Luster made his threat and these reports because of her protected activity. First, there is close proximity between the complained-of actions and Mrs. Collins's request for Union representation because Luster took the complained-of actions within 24 hours of Mrs. Collins's protected activity. 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).

Second, Luster's threat to discipline Mrs. Collins because of her request for a union representative and attempt to contact the union, issued a day before, demonstrates that he harbored animus toward that protected activity. City of Highland Park, 15 PERI ¶ 2004 (supervisor's hostile statements related to employees' request for union representation demonstrated animus towards that request); cf. Illinois Dep't of Cent. Mgmt. Servs., 16 PERI ¶ 2023 (Weingarten violation standing alone, absent any threat or hostile statements, is not sufficient to establish discrimination based on protected activities).

Third, the Respondent's stated reasons for Luster's report to manager, his threat to call the police, and his call to the control center are pretextual. The Respondent contends that Luster was simply enforcing the CTA's rule that "inactive"/off-duty employees are not allowed on CTA property after 6 p.m.. However, the preponderance of the evidence demonstrates that the rule does not exist in written form and, to the extent that it exists at all, it is not enforced in practice. No such rule appears in the Respondent's general rule book, and the Respondent offered no documentary evidence of such a rule. Furthermore, Mr. Collins credibly testified that, in practice, off-duty employees were permitted to be on CTA property after hours. Sarah D. Culbertson Memorial Hospital, 25 PERI ¶ 11 (IL LRB-SP 2009) (absence of explicit rule on subject of discipline and employer's lack of consistency in enforcing any rule on the subject rendered employer's stated reason for the discipline pretextual); see also Riverfront Rest. & Dinner Theatre, 235 NLRB 319, 321 (1978) (employer's stated reason for discipline was pretextual where there was no written rule prohibiting the practice and supervisors observed and tolerated the practice for which employee was disciplined).

Luster's reliance on the CTAs business hours to claim that Mrs. Collins was trespassing is additionally specious because he never gave her advance warning that she was barred from CTA property after hours, unless she was there to return her forms. Luster did not testify to that effect and the miscellaneous report does not include such a directive. Luster's claim that he told Mrs.

Collins to return the forms by close of business on March 31, 2018 does not equate to such a warning. Even if it could be construed as such, there is reason to doubt Luster's claim that the forms were due by "close of business" because he offered inconsistent assertions about when the forms were due. He testified that he told Mrs. Collins after the interview that the forms were due on March 31, 2018. Yet he claimed in his written report (dated April 1) that he had just then "reminded" Mrs. Collins that the forms were due on April 2, 2018, indicating that he had repeated an earlier directive to that effect.

Even assuming that the forms were due on April 2, 2018, as Luster subsequently claimed, Luster's specific assertion that they were due by 11:00 a.m. is additional evidence of pretext. A reasonable reading of the miscellaneous report indicates that the documents were due later. Indeed, 11:00 a.m. is the scheduled time of Mrs. Collins's mandated doctor's appointment, and Luster's written directive that she return to work and provide completed paperwork appears after the notation about her appointment.[12] Thus, Luster's reference to 11:00 a.m. as the due date for paperwork shows that he merely seized upon a date/time set forth in the miscellaneous report that does not in fact represent the deadline for submission of documents.

Thus, the Respondent cannot satisfy its affirmative defense regarding Luster's threat to call the police, his report to manager, and his call to the control center because the Respondent's proffered reason for the adverse actions is pretextual. City of Burbank, 128 Ill. 2d at 346 (inquiry ends if proffered reasons are pretextual).

However, the remaining actions taken by Luster in this case against Mrs. Collins, referenced in Mrs. Collins's brief, do not qualify as adverse employment actions and do not demonstrate that Luster retaliated against Mrs. Collins for engaging in protected activity. First, Luster's threats of discipline and alleged rudeness to Mrs. Collins did not impact her terms and conditions of employment and do not otherwise rise to the level of harassment. City of Chicago, 31 PERI ¶ 129 (IL LRB-LP 2015) (notice of pre-disciplinary meeting was mere threat of discipline and therefore was not an adverse employment action).

Next, there is insufficient reliable evidence that Luster falsified Mrs. Collins's miscellaneous report pertaining to her injury on duty, as Mrs. Collins argued on brief. Mrs. Collins

[12] The operator is being referred to Concentra Cms for follow up care on Monday, 04/02/18 at 1100hrs and instructed to return back to 103rd garage Transportation Manager's Office. Operator was given and must return a completed Pce/MCE form."

introduced the miscellaneous report into evidence and asserted on brief that it did not accurately set forth her account of the injury on duty. However, Mrs. Collins did not testify about how she described her injury on duty to Luster on March 31, 2018. She merely submitted evidence of complaints she appears to have drafted in which she asserts that she did not offer Luster two different versions of the event, as the report claimed she did.[13] This evidence is not reliable to prove the truth of the matter asserted therein because the Respondent could not test the veracity of Mrs. Collins's written claims through cross-examination, as she did not testify about them. Accordingly, Mrs. Collins did not meet her burden to show that Luster's descriptions of her statements in the miscellaneous report are false. County of Rock Island and Sheriff of Rock Island County, 14 PERI ¶ 2029 n. 2 (IL SLRB 1998) (where factual assertions in record of civil service proceeding were untested, ALJ properly refused to examine them in determining whether charging party's actions were contrary to department rules and standards).

There is also insufficient reliable evidence that Luster falsified Mrs. Collins's interview record. Mrs. Collins's claim of falsification is based on layers of inference. She argues that Luster offered false testimony about her injury on duty because his description at hearing conflicts with his description of her comments about it in the miscellaneous report, discussed above. Yet, this claim presupposes that the description Mrs. Collins offered to Luster was true and correct, when there is no evidence to support this finding. It also presupposes that Luster faithfully documented Mrs. Collins's true and correct statement, which is a conclusion to which Mrs. Collins herself strenuously objects, as discussed above. Notably, the interview record does not appear among the exhibits in this case, but even if it did, Mrs. Collins could not prove Luster falsified it where she did not offer testimony to show that it conflicted with what she said in the interview.

Finally, there is insufficient evidence that Luster took adverse action against Mr. Collins by claiming that Mrs. Collins was riding his bus instead of stating that he merely suspected that to be the case. Luster's actions against *Mr*. Collins are relevant to determining whether the Respondent harassed *Mrs.* Collins in violation of the Act. "Indeed, to retaliate against a [wo]man by hurting a member of [her] family is an ancient method of revenge, and is not unknown in the field of labor relations." NLRB v. Advertisers Manufacturing Co., 823 F.2d 1086, 1088 (7th Cir.

[13] I allowed these documents (Charging Party Exh. 3 & 5) into evidence for what it they were worth, but I cautioned the Charging Party that they were hearsay and that the Respondent did not have an opportunity to cross examine her on the truth of the statements they contained where she did not testify about those statements directly. Tr. p. 97.

1987); see also Village of Oak Lawn, 28 PERI ¶ 127 (IL LRB-2012) (noting that NLRB does not limit application of its provisions to adverse actions taken against persons who actually engaged in protected concerted activity). Here, however, Mrs. Collins takes issue with Luster's characterization of the basis for his request for video footage, but does not specify how that characterization has any impact on her terms and conditions of employment or those of her husband. According to Mrs. Collins, Luster stated as a matter of fact that Mrs. Collins was riding on her husband's bus, when he admitted at hearing that he merely had a reasonable suspicion to that effect. However, it is unclear whether Luster's characterization would have affected his authority to obtain the footage. Notably, Mrs. Collins has not alleged that Luster's request for the footage itself subjected her husband's work to heightened scrutiny, and she also did not provide evidence of the Respondent's video review practices to support such a claim.

In sum, the Respondent harassed Mrs. Collins in violation of Section 10(a)(1) of the Act by threating to call the police on Mrs. Collins, writing a report to manager about her presence on CTA property after hours, and dictating another report about that conduct to the control center. However, the Respondent did not violate the Act by falsifying reports related to her injury on duty or by stating in certain terms that Mrs. Collins was riding Mr. Collins's bus when, in fact, he had only a reasonable suspicion to that effect.

## V. CONCLUSIONS OF LAW

1. The Respondent violated Section 10(a)(1) of the Act when Manager Luster continued to question Mrs. Collins about the circumstances surrounding her injury on duty after she invoked her Weingarten rights.
2. The Respondent violated Section 10(a)(1) of the Act when Manager Luster threatened Mrs. Collins with discipline for invoking her Weingarten rights and attempting to contact the union.
3. The Respondent harassed Mrs. Collins in violation of Section 10(a)(1) of the Act by threating to call the police on her to have her arrested, writing a report to manager about her presence on CTA property after hours, and dictating another report about that conduct to the control center.
4. The Respondent did not violate Section 10(a)(1) of the Act by falsifying reports related to Mrs. Collins's injury on duty.

5. The Respondent did not violate Section 10(a)(1) of the Act when Luster stated in certain terms that Mrs. Collins was riding Mr. Collins's bus where, in fact, he had only a reasonable suspicion to that effect.

## VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondent, Chicago Transit Authority, its officers and agents, shall:

1. Cease and desist from:
    a. Requiring any employee to take part in an investigative interview where the employee has reasonable grounds to believe that the matter discussed may result in his or her being the subject of disciplinary action.
    b. Ignoring, denying, or refusing any request by the employee to have union representation during an investigative interview where the employee has reasonable grounds to believe that the matter discussed may result in disciplinary action.
    c. Threatening employees with discipline for seeking to contact the Union and for requesting Union representation for an investigative interview where the employee has reasonable grounds to believe that the matter discussed may result in his or her being the subject of disciplinary action.
    d. Harassing employees in retaliation for their protected activity by threatening to call the police on them to have them arrested, and writing reports to manager and dictating reports to the control center about their conduct.
    e. In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed to them by Section 6 of Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
    a. Expunge from Mrs. Collins's personnel file any reference to her alleged trespassing on CTA property and any reference to the CTA's warning that it would call the police on her.
    b. Post, for 60 consecutive days, at all places where notices to employees of the Chicago Transit Authority are regularly posted, signed copies of the attached notice. Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

## VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within seven days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the Board's General Counsel, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filing must be served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

**Issued at Chicago, Illinois this 22nd day of May, 2019**

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

**/S/** *Anna Hamburg-Gal*

**Anna Hamburg-Gal**
**Administrative Law Judge**

# NOTICE TO EMPLOYEES

## FROM THE
## ILLINOIS LABOR RELATIONS BOARD

### Case No. L-CA-18-049

The Illinois Labor Relations Board, Local Panel, has found that the Chicago Transit Authority has violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that the Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights:

- To engage in self-organization
- To form, join or assist unions
- To bargain collectively through a representative of your own choosing
- To act together with other employees to bargain collectively or for other mutual aid and protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from requiring any employee to take part in an investigative interview where the employee has reasonable grounds to believe that the matter discussed may result in his or her being the subject of disciplinary action.

WE WILL cease and desist from ignoring, denying, or refusing any request by the employee to have union representation during an investigative interview where the employee has reasonable grounds to believe that the matter discussed my result in disciplinary action.

WE WILL cease and desist from threatening employees with discipline for seeking to contact the Union and for requesting Union representation for an investigative interview where the employee has reasonable grounds to believe that the matter discussed may result in his or her being the subject of disciplinary action and for seeking to contact the Union.

WE WILL cease and desist from harassing employees in retaliation for their protected activity by threatening to call the police on them to have them arrested, and writing reports to manager and dictating reports to the control center about their conduct.

We WILL expunge from Mrs. Collins's personnel file any reference to her alleged trespassing on CTA property and also expunge any reference to our warning that we would call the police on her.

WE WILL cease and desist from in any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed to them by Section 6 of Act.

DATE _____ _____

Chicago Transit Authority
(Employer)


## ILLINOIS LABOR RELATIONS BOARD

**One Natural Resources Way, First Floor**
**Springfield, Illinois 62702**
**(217) 785-3155**

**160 North LaSalle Street, Suite S-400**
**Chicago, Illinois 60601-3103**
**(312) 793-6400**