STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Chicago Journeymen Plumbers' Local 130, U.A.,	)	
Charging Party,	)	
and	)	Case No. L-CA-18-072
City of Chicago,	)	
Respondents.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

On April 15, 2019, Executive Director Kimberly Stevens dismissed a charge filed by Charging Party Chicago Journeymen Plumbers' Local 130, U.A., on June 25, 2018, alleging Respondent City of Chicago (City) engaged in unfair labor practices within the meaning of Section 10(a)(1) and 10(a)(2) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2016), as amended. Specifically, the charge alleges the City retaliated against Stanley DeCaluwe, who it recently fired, by improperly directing one of its contractors, NPL Construction, to discharge DeCaluwe. The charge alleges the City took such action because DeCaluwe filed a grievance over his discharge from the City.

The Executive Director dismissed the charge because she found DeCaluwe was not a public employee as defined in Section 3(n) of the Act at the time of Respondent's alleged unlawful conduct. She reasoned that NPL Construction, which was not a public employer as defined by the Act, was the employer that made the final decision to fire DeCaluwe regardless of any influence the City may have had on that decision.

The Union timely appealed the Executive Director's dismissal; Respondent did not file a response. The Union challenges the dismissal by contending issues of fact and law exist regarding NPL Construction's status as a joint employer, contending the City has the authority, and has exercised that authority, over NPL Construction's workforce.

After a review of the dismissal, the record, and appeal, we reverse the dismissal and remand the matter to the Executive Director for further investigation as discussed below.

The investigatory record includes an email exchange between Charging Party's counsel, Gregory Hosé, and the Board agent who processed the charge, suggesting Charging Party had intended to amend the charge to include additional allegations and the Board agent had allowed the amendment. The charge and the additional allegations asserted by Charging Party in this email exchange, raise several issues that were not considered in the investigation or dismissal order. First and foremost, the allegation that the City directed one of its subcontractors to discharge DeCaluwe in retaliation for filing a grievance over his discharge from the City, raises the issue of whether such action threatens, coerces, or restrains other City employees from filing grievances in violation of Section 10(a)(1) of the Act.

Likewise, the additional allegations included in the email exchange raise issues regarding whether the City "blacklisted" DeCaluwe from employment with its contractors in retaliation for exercising his rights under the collective bargaining agreement and whether the City actions constituted bad faith bargaining. Although there is no Board precedent specifically addressing "blacklisting" or concerning the Board's jurisdiction in cases where an employee suffers an adverse action after termination, there are Board cases acknowledging National Labor Relations Board (NLRB) case law holding an employer can violate the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151-169, if it retaliates against a supervisor—*i.e.*, not an employee—for engaging in concerted activity. See Village of Oak Lawn, 28 PERI ¶ 127 (IL LRB-SP 2012).

In addition, there is NLRB case law regarding whether an employer's direction to another employer because of an employee's protected activity violated the NLRA. See, e.g., Reliant Energy Aka Etiwanda LLC, 357 NLRB 2098, 2115 (2011) ("[I]t is well settled that an employer violates the Act when it directs, instructs, or orders another employer with whom it has business dealings to discharge, lay off, transfer or otherwise affect the working conditions of the latter's employees because of the union activities of those employees."). Although there are differences between the IPLRA and the NLRA that may render the analysis in the NLRB cases inapplicable to the public-sector context (e.g., the NLRA's definitions of the terms "employee" and "labor dispute"), Charging Party's allegations, at a minimum, should be investigated to determine if they raise issues for hearing as to whether the City can be held liable for directing NPL Construction to discharge DeCaluwe in this case.

Moreover, the instant charge raises issues concerning whether NPL Construction can be considered a joint employer or whether DeCaluwe's pending grievance conferred public employee status sufficient to provide the Board jurisdiction. Charging Party asserted this much during the investigation, but there is no indication of any investigation into the nature of the relationship between the City and NPL Construction, the terms of their contract, or the contract itself. More information regarding the degree of control the City may have had or retained over the terms and conditions of NPL Construction's employees is needed before any determination into joint employer status can be made. See American Federation of State, County, and Municipal Employees, Council 31, v. State Labor Relations Board, 298 Ill.2d 569 (2005); see also, DuPage County Board, 1 PERI ¶ 2003 (IL SLRB 1985).

In addition to the issue of joint employer status, the allegations raise an issue of whether NPL Construction can be considered an "employer" as defined by the Act. Section 3(o) of the Act defines "public employer" or "employer" to include "any person acting within the scope of his or her authority, express or implied, on behalf of those entities in dealing with its employees." 5 ILCS 315/3(o). Under Section 3(l), "'Person' includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, or the State of Illinois or any political subdivision of the State of governing body, but does not include the General Assembly of the State of Illinois or any individual employed by the [Illinois General Assembly]." 5 ILCS 315/3(l). Here, the circumstances require investigation into whether the relationship between the City and NPL was such that NPL was acting on behalf of the City in discharging DeCaluwe as defined by Section 3(n). See Illinois Nurse's Ass'n v. ISLRB, et al., 6 PERI ¶ 4015 (Ill. App. Ct. 1st Dist. 1990).

Finally, the investigation should inquire about the status of DeCaluwe's discharge grievance.

For the above reasons, we reverse the Executive Director's dismissal of charge and remand the matter for further investigation as described above**.**

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 in Chicago, Illinois on August 13, 2019; written decision approved at the Local Panel's public meeting in Chicago, Illinois on September 10, 2019, and issued on September 12, 2019.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Chicago Journeymen Plumbers' Local 130, U.A., Charging Party and City of Chicago (Department of Water Management), Respondent	Case No. L-CA-18-072

DISMISSAL

On June 25, 2018, the Chicago Journeymen Plumbers' Local 130, U.A. (Charging Party) filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board (Board), in Case No. L-CA-18-072, alleging that the City of Chicago (Department of Water Management) (Respondent) violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), *as amended*. After an investigation conducted in accordance with Section 11 of the Act, I determined that the charge fails to raise an issue of law or fact sufficient to warrant a hearing and hereby issue this dismissal for the following reasons.

I. INVESTIGATORY FACTS

Respondent is a public employer within the meaning of Section 3(o) of the Act. Charging Party is a labor organization within the meaning of Section 3(i) of the Act and the exclusive representative of a bargaining unit (Unit) consisting of certain employees employed by the Respondent, including Stan DeCaluwe (DeCaluwe). Charging Party and Respondent are parties

to a collective bargaining agreement (CBA) for the Unit, which includes a grievance procedure culminating in final and binding arbitration.

In or around January of 2018, Respondent terminated DeCaluwe from employment, effective February 2, 2018. Respondent's Human Resources Board upheld the termination on May 1, 2018. Charging Party pursued the grievance procedure, alleging lack of just cause for DeCaluwe's termination. In the meantime, DeCaluwe gained employment through NPL Construction (NPL), a company with which Respondent has contracts. Charging Party alleges that, upon receiving notice DeCaluwe was hired with NPL, Respondent reached out to NPL and demanded his termination. NPL complied with Respondent's demand. Charging Party asserts that Respondent violated Sections 10(a)(1) and (2) of the Act when it retaliated against DeCaluwe for filing a grievance and ordered his employer to terminate his employment.

II. DISCUSSION AND ANALYSIS

In this case, DeCaluwe was no longer a public employee when the alleged action took place that Charging Party claims was taken in retaliation for filing a grievance. Even if the allegations against Respondent are true, the issue does not fall under the jurisdiction of the Board. Not only does DeCaluwe not meet the definition of "public employee" found in Section 3(n) of the Act, but also NPL Construction does not fall within the meaning of a public employer as defined in Section 3(o) of the Act. NPL ultimately made the decision to terminate DeCaluwe's employment, whether it was influenced by Respondent or not. Furthermore, Charging Party never alleged that DeCaluwe's initial termination by Respondent was due to protected or concerted activity, in which case the Board would maintain jurisdiction. Therefore, this charge fails to raise an issue of fact or law for hearing.

III. ORDER

Accordingly, this charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service hereof. Such appeal must be in writing, contain the case caption and numbers and must be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103 or filed electronically at ILRB.Filing@Illinois.gov in accordance with Section 1200.5 of the Board's Rules and Regulations, 80 Ill. Admin. Code §§1200-1300. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations involved in this case at the same time it is served on the Board. Please note that the Board's Rules and Regulations do not allow electronic service of the other persons or organizations involved in this case. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, this dismissal will be final.

Issued at Springfield, Illinois, this 15th day of April, 2019.

STATE OF ILLINOIS
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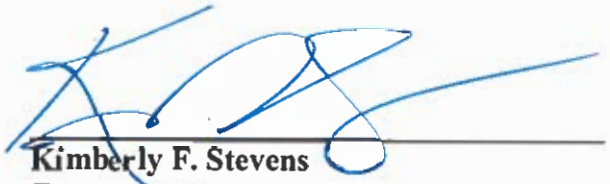
LOCAL PANEL



Kimberly F. Stevens
Executive Director