STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Carmen Rentas,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CA-19-078
	)	
County of Cook, Health & Hospital System,	)	
	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

On January 6, 2020, Executive Director Kimberly F. Stevens dismissed a charge filed by Carmen Rentas (Charging Party or Rentas) on October 2, 2018, which alleged that the County of Cook, Health & Hospital System (Respondent or County), engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), as amended. The Charging Party is an Administrative Assistant IV at Stroger Hospital, which is a title represented by the Retail, Wholesale, and Department Store, Local 200. The Charging Party alleged that the Respondent retaliated against her because of her race and/or national origin.

The Executive Director dismissed the charge on grounds that the Charging Party failed to allege that the Respondent took adverse action against her because she engaged in activities protected under the Act. The Executive Director noted that the Charging Party appeared to instead allege that the Respondent retaliated against her because she made claims of gender, national origin, and age discrimination.

On January 16, 2020, the Charging Party appealed the Executive Director's Dismissal. After reviewing the record, the dismissal, and the appeal, we find the appeal without merit and affirm the dismissal.[1]

The Executive Director correctly determined that the Charging Party did not raise issues for hearing on the allegation that the Respondent retaliated against her for engaging in protected, concerted activity. The Charging Party never expressly advanced such a claim during the investigation process. Rather, the Charging Party alleged that the Respondent's agents retaliated against her for the complaints of race and national origin discrimination she lodged with the Respondent's EEO Office and the EEOC. Even on appeal, the Charging Party describes her protected conduct as a complaint to "EEO Nick in HR" and "complaint[s] to EEOC/IL[D]HR." The Charging Party's characterization of such complaints as "union activity" or "activity protected by the Act," does not change the fact that they are not. As, the Executive Director accurately observed, claims of race and national origin discrimination fall outside the Board's jurisdiction.

Although the Charging Party did file grievances, which are protected under the Act, we find that her failure to identify these grievances as the impetus for the Respondent's retaliatory conduct weighs against further analysis of this issue. Notably, the Charging Party mentions her grievances on appeal but does not expressly state that they are the reason for the Respondent's discipline or harassment of her.

Furthermore, even if the Charging Party had clearly alleged that the Respondent's agents retaliated against her for filing grievances, the evidence presented still fails to raise issues of fact or law for hearing. Most critically, the Charging Party did not present sufficient evidence of a

[1] We modify the Executive Director's findings of fact only to note that the date she references as August 29, 2019 should read August 29, 2018. This modification has no bearing on the Executive Director's analysis.

causal nexus between her grievances and the complained-of conduct. The Charging Party suggests that Operating Room Flow Coordinator Cean Magosky and Nurse Coordinator II Margot Abcarian both disciplined and harassed her. However, neither agent's conduct warrants issuance of a complaint, as discussed below.

To raise issues for hearing on a retaliation claim arising under Section 10(a)(1) of the Act, the charging party must present some evidence on each element of her prima facie case, namely, that (1) she engaged in union and/or protected, concerted activity, (2) the Respondent knew of that activity, (3) the Respondent took adverse action against her; and (4) her protected, concerted activity and/or union activity was a substantial or motivating factor in the adverse employment action. City of Burbank v. Illinois State Labor Relations Bd., 128 Ill. 2d 335, 345 (1989); City of Chicago, 11 PERI 3008 (IL SLRB 1995); City of Chicago Park Dist., 7 PERI ¶ 3021 (IL LLRB 1991); Vill. of Schiller Park, 13 PERI ¶ 2047 (IL SLRB 1997) (citing Gale and Chicago Housing Authority, 1 PERI ¶ 3010 (IL LLRB 1985)).

Here, the Charging Party presented evidence that Magosky knew of the grievance she filed on May 29, 2018, and that he took adverse action against her by issuing her a one-day suspension on May 31, 2018. However, the sole evidence of a causal connection between her grievance and that adverse action is suspicious timing, which is insufficient to raise issues for hearing. See City of Chicago (Dept. of Innovation and Technology), 35 PERI ¶ 155 (IL LRB-LP 2019); Sarah D. Culbertson Memorial Hospital, 21 PERI ¶ 6 (IL LRB-SP 2005); State of Ill. Dep't of Cent. Mgmt. Servs. (Dep't of Corrections), 18 PERI ¶ 2059 (IL LRB-SP 2002). The Charging Party additionally asserts that Magosky acted outside his authority in issuing discipline, but her claim that he lacked authority is undercut by the fact that the Respondent effectuated his disciplinary decision and implemented the suspension he issued.

The Charging Party next asserts that there are suspicious circumstances surrounding Magosky's later decision to issue her a Notice of Investigatory Meeting, but these claims likewise do not warrant a hearing. First, the Notice of Investigatory Meeting is not itself an adverse action sufficient to support her retaliation claim. City of Chicago, 31 PERI 129 (IL LRB-LP 2015) (issuance of notice of pre-disciplinary hearing was not an adverse employment action). Second, the Charging Party did not present evidence to demonstrate that the identified circumstances were suspicious. The Charging Party notes that Magosky's notice did not give a time for when the meeting would take place and that he issued her the notice on his last day of work, right before leaving. However, it is difficult to find these circumstances suspicious absent evidence that Magosky treated the Charging Party differently than he treated other similarly situated employees who did not file a grievance over his conduct. See Vill. of Bensenville, 10 PERI ¶ 2009 (IL SLRB 1993).

Turning to Abcarian's conduct, there is likewise insufficient evidence to support a claim that Abcarian retaliated against the Charging Party for filing grievances. Abcarian issued the Charging Party a notice of a pre-disciplinary hearing, but such a notice does not qualify as an adverse employment action, as discussed above. City of Chicago, 31 PERI 129. The investigatory record indicates that the Charging Party later received two suspensions, but it is not clear which of those (if either) resulted from the pre-disciplinary hearing that Abcarian scheduled. Even if the Employer imposed discipline as a result of the pre-disciplinary hearing, the Charging Party has still failed to present evidence that Abcarian pursued discipline against her because of the grievances she filed. Indeed, there is insufficient evidence that Abcarian knew of any of the Charging Party's grievances when she issued the notice of pre-disciplinary hearing in late August 2018. And there can be no causal nexus if the decisionmaker has no knowledge of the protected

activity at the time she takes the alleged adverse action. Village of Stickney, 31 PERI ¶ 77 (IL LRB-SP 2014). The Charging Party's blanket assertion that the Respondent knew of her protected activity is insufficient to raise issues for hearing where knowledge must be imputed to the particular agent of the employer who is in some manner responsible for the adverse employment action. Macon Cnty. Bd. and Macon Cnty. Hwy. Dep't, 4 PERI ¶ 2018 (IL SLRB 1988). The Charging Party did not do so here with respect to Abcarian.

For these reasons, we affirm the dismissal.

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 March 12, 2020, written decision approved at the Local Panel's public meeting in Chicago, Illinois on June 18, 2020, and issued on June 19, 2020.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Carmen Rentas, Charging Party and County of Cook, Health & Hospital System, Respondent	Case No. L-CA-19-078

DISMISSAL

On October 2, 2018, Carmen Rentas (Charging Party) filed a charge in Case No. L-CA-19-078 with the Local Panel of the Illinois Labor Relations Board (Board), in which she alleged that Respondent, County of Cook, Health & Hospital System (Respondent) engaged in unfair labor practices within the meaning 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. I hereby dismiss this charge for the following reasons.

I. INVESTIGATION

Respondent employs Charging Party in the job title or classification of Administrative Assistant IV at Stroger Hospital. As such, she is a member of a bargaining unit (Unit) represented by Retail, Wholesale, and Department Store, Local 200 (Union). Respondent and the Union are parties to a collective bargaining agreement (CBA) for the Unit that includes a grievance procedure culminating in final and binding arbitration. Charging Party alleges that Respondent violated the Act when Operating Room Flow Coordinator Cean Magosky (Magosky) harassed and disciplined her in retaliation for filing

a complaint with Respondent's Equal Employment Opportunity (EEO) Division of the Human Resources Department.

On January 23, 2018, Magosky issued Charging Party counseling for unprofessional behavior and insubordination. On February 15, 2018, Magosky issued Charging Party a verbal warning because her behavior had not improved. In early May 2018, Charging Party filed a complaint with Respondent's EEO Division of Human Resources alleging that Magosky was harassing her and disciplining her due to her race. On May 29, 2018, Charging Party filed a grievance claiming that Magosky made false accusations about her and was harassing her due to her race. On May 31, 2018, after a disciplinary hearing, Respondent, through Magosky, issued Charging Party a one-day suspension to be served June 1, 2018. On August 14, 2018, Respondent's EEO Division of Human Resources notified Charging Party that it was unable to substantiate her claim that Magosky engaged in unlawful racial discrimination. On August 16, 2018, Magosky provided Charging Party with a Notice of Investigatory Meeting for Violation of CCHHS Personnel Rules for Charging Party's continued unprofessionalism and lack of respect. The hearing was scheduled for August 29, 2019. Magosky resigned effective August 17, 2018. Soon after, Respondent issued Charging Party a three-day suspension.

II. DISCUSSION AND ANALYSIS

Section 10(a)(l) of the Act provides that it shall be an unfair labor practice for an employer or its agents, to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act. In order to prove a Section 10(a)(1) violation, a charging party must demonstrate that (1) he or she engaged in union or other protected concerted activity; (2) the employer was aware of that activity; and (3) the employer took adverse action against him or her for engaging in that activity. Kirk and Chicago Housing Auth., 6 PERI ¶ 3013 (IL LLRB 1990); Green and Warns and City of Chicago, 3 PERI ¶ 3011 (IL LLRB 1987); Gale and Chicago Housing Auth., 1 PER ¶ 3010 (IL LLRB 1985).

A charging party satisfies the third element when he or she establishes a causal connection between his or her protected concerted activity and the employer' s adverse action, such that the activity

was a substantial or motivating factor in the employer' s adverse action against him or her. Pace Suburban Bus Div., 406 Ill. App. 3d at 495; Chicago Park District, 9 PERI ¶ 3016 (IL LLRB 1993). A causal connection may be inferred if a discriminatory motivation exists. Discriminatory motivation may be established through direct evidence or based on circumstantial factors, including expressions of hostility towards protected activity together with knowledge of the employee's union activity; proximity in time between the employee's union activity and the employer's action; disparate treatment or a pattern of conduct which targets union supporters for adverse employment action; or shifting or inconsistent explanations regarding the adverse employment action. City of Burbank, 128 Ill. 2d at 345-346; County of Menard v. Ill. State Labor Relations Bd., 202 Ill. App.3d 878, 890-891 (4th Dist. 1990).

In this case, Charging Party has not alleged that she was engaged in protected activity for which the Respondent took adverse action against her. Indeed, Charging Party appears to allege that Respondent took action against her in retaliation for Charging Party's claim of gender, national origin, and age discrimination, not for her participation in protected activity under the Act.[1] City of Chicago (Dept. of Family and Support Services), 34 PERI ¶ 205 (IL LLRB 2017). Therefore, Charging Party fails to demonstrate that Respondent, through Magosky, harassed and disciplined her in retaliation for her participation in protected concerted activities covered by the Act. As such, this charge fails to raise an issue for hearing.

III. ORDER

Accordingly, this charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service of this dismissal. Such appeal must be in writing,

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

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 6th day of January, 2020.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Kimberly F. Stevens
Executive Director