

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

Derek Webb,)	
)	
Charging Party,)	
)	
and)	Case No. L-CA-19-110
)	
American Federation of State, County, and)	
Municipal Employees, Council 31,)	
)	
Respondent.)	

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

On July 30, 2019, Executive Director Kimberly Stevens dismissed a charge filed by Charging Party Derek Webb on March 20, 2019. The charge alleged Respondent City of Chicago (Department of Police) (City) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2016), as amended, by investigating him for providing his union with confidential information related to grievances and denying his requests for information under the Freedom of Information Act (FOIA) in retaliation for previously serving in union leadership roles. The Executive Director dismissed portions of the charge on timeliness grounds and the remainder of the allegations on grounds the available evidence failed to support a retaliation claim under either Section 10(a)(1) or Section 10(a)(2) of the Act. Charging Party timely appealed¹ the Executive Director’s dismissal, and the City timely responded.

¹ The appeal erroneously lists the case number as L-CB-19-110.

In his appeal, Charging Party disputes the Executive Director's timeliness and substantive grounds for dismissal. He claims the instant charge is timely because the Executive Director failed to consider that on February 1, 2019, the City began a new investigation into Charging Party's release of confidential information, making the allegations fall within the six-month limitation period. Charging Party also challenges the Executive Director's findings and conclusions regarding the lack of a causal link, claiming the information submitted during the investigation clearly demonstrates the City's hostility toward Charging Party's union leadership role and past union activities. In response, the City contends Charging Party fails to provide detailed reasons to support his appeal and merely restates the allegations in the charge.

After reviewing the record, the dismissal, the appeal and the Union's response, we affirm the Executive Director's dismissal for the Charging Party's appeal lacks merit.² As the City correctly observes, the appeal merely rehashes Charging Party's allegations and restates evidence offered during the investigation rather than providing a viable basis to overturn the dismissal. Charging Party provides no new information or points to no error in the Executive Director's analysis regarding his claims that the City unlawfully retaliated against him by denying his FOIA request. Moreover, Charging Party's challenge to the Executive Director's findings regarding timeliness are without merit. Charging Party claims the February 1, 2019 investigation brought his allegations within the six-month limitation period, thus supporting a new unfair labor practice charge. But a review of the record reveals the allegations the City retaliated against Charging

² The City also notes the appeal lacks a statement of service required by Section 1200.20(f) of the Board's rules. Although the appeal contains no such statement of service, we grant a variance: 1) the requirements regarding proper service are not statutorily mandated; 2) no party would be injured by the granting of the variance because the City admittedly received the appeal and timely responded to it; and 3) strictly adhering to the service rules in this case could be construed as unreasonable considering the Charging Party's *pro se* status and the fact that the purpose of the rule—to ensure a responding party has adequate notice of and opportunity to respond to the appeal—was indeed satisfied.

Party by investigating him for releasing confidential information was addressed in the complaint for hearing issued by the Executive Director in Case No. L-CA-18-022.

Accordingly, we find Charging Party's appeal to lack merit and affirm the dismissal subject to modification regarding the elements of a retaliation claim under Section 10(a)(1) of the Act as described in the dismissal order. This modification has no bearing on the grounds for the dismissal as the appropriate analysis was applied, but the appropriate analysis should be clarified to avoid confusion. Although the analysis of Section 10(a)(1) retaliation claims closely tracks the analysis under Section 10(a)(2), the retaliation analysis under Section 10(a)(1) does not require charging parties to establish that the employer took action against the charging party to encourage or discourage union membership or support as stated in the dismissal order. See Pace Suburban Bus, 406 Ill. App. 3d at 494-95 (1st Dist. 2010). Rather, charging parties need only demonstrate the employer took adverse action against them because of their participation in protected concerted activity. See id.

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 November 14, 2019, written decision approved at the Local Panel's public meeting in Chicago, Illinois on December 10, 2019, and issued on December 11, 2019.

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

Derek Webb,

Charging Party

and

City of Chicago (Department of Police),

Respondent

Case No. L-CA-19-110

DISMISSAL

On March 20, 2019, Derek Webb (Charging Party) filed a charge in Case No. L-CA-19-110 with the Local Panel of the Illinois Labor Relations Board (Board), in which he alleged that the Respondent, City of Chicago (Department of Police) (Respondent) engaged in unfair labor practices within the meaning of the Illinois Labor Relations Act, 5 ILCS 315 (2014), *as amended*. After an investigation conducted in accordance with Section 11 of the Act, I determined that the charge fails to raise an issue of law or fact sufficient to warrant a hearing. I hereby dismiss this charge for the following reasons.

I. INVESTIGATION

Respondent is a public employer within the meaning of Section 3(o) of the Act. Respondent employs Charging Party in the job title or classification of Warrant and Extradition Aid (WEA). As such, Charging Party is a member of a bargaining unit (Unit) represented by the American Federation of State, County, and Municipal Employees (AFSCME), Council 31 (Union). Respondent and the Union are parties to a collective bargaining agreement (CBA) for the Unit that includes a grievance procedure culminating in final and binding arbitration. Charging

Party alleges that Respondent violated Sections 10(a)(1) and (2) of the Act when it investigated him for providing the Union with confidential documents for grievances and denied his Freedom of Information Act (FOIA) request in retaliation for previously serving as Union Vice President and President.

Charging Party served as AFSCME Local 654 Vice President from January 2009 through January 2011 and as AFSCME Local 654 President from January 2012 through November 2017.

On May 7, 2017, Charging Party filed a grievance asserting that Criminal History Analysts (CHA) were performing the duties of WEAs when assigned to the warrant desk. On June 1, 2017, the Union's attorney emailed documents provided by Charging Party to Respondent that it intended to use for the upcoming arbitration hearing regarding CHAs performing WEA duties on the warrant desk. On June 2, 2017, Respondent indicated that it had not authorized Charging Party to use these confidential documents and was considering disciplining Charging Party for providing the Union with copies of Respondent's confidential records. Sometime after the June 2, 2017, arbitration hearing, Charging Party again provided the Union with documents, similar to those used in the CHA grievance, in support of a different grievance scheduled for arbitration. Then, sometime between June and September 2017, Respondent began investigating Charging Party with the intention of disciplining him for providing the Union allegedly confidential documents to use in support of grievances. These events are detailed in the complaint for hearing in Case No. L-CA-18-022.

On February 23, 2019, Respondent sent Charging Party a Notification of Charges/Allegations regarding Respondent's above-described allegations that Charging Party released confidential documents to the Union for grievances. This notice informed Charging Party he was scheduled for examination/interrogation on March 7, 2019.

On January 28, 2019, Charging Party made a FOIA request for the January 2019 Extradition Calendar for Unit 166. On January 29, 2019, Respondent sent Charging Party a letter stating that it could not locate a record known as the Extradition Calendar for Unit 166 and provided him with the 2019 Chicago Police Operations Calendar. Respondent advised that Charging Party submit a more detailed request if the documents Respondent had provided were not responsive to his request. Charging Party submitted another request for the 2018 Extradition Calendar for Unit 166 for the months of January through December of 2018. On February 22, 2019, Respondent denied the request stating that these calendars were exempt from FOIA because they were pre-decisional or draft materials.

II. DISCUSSION AND ANALYSIS

The available evidence indicates that a portion of this charge is untimely filed. Section 11(a) of the Act provides that “no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board and the service of a copy thereof upon the person against whom the charge is made.” Charging Party was aware that Respondent was investigating him for disciplinary purposes for providing confidential materials to the Union to support grievances sometime in June through September of 2017. This charge was filed on March 20, 2019, over a year after the alleged incident. Therefore, this portion of the charge is untimely filed and must be dismissed. See State of Illinois. Dept. of Central Management Services (Eugene Brown), 19 PERI ¶105 (ILRB-SP 2003). Furthermore, this matter is already pending before the Board in Case No. L-CA-18-022.

Charging Party has also not established a violation of the Act, specifically Section 10(a)(1). Section 10(a)(1) of the Act provides that it shall be an unfair labor practice for an employer or its agents, to interfere with, restrain or coerce public employees in the exercise of the rights

guaranteed in this Act. To determine whether the Employer's actions in this case violate the Act, the analysis tracks that used in cases arising under Section 10(a)(2), concerning the exercise of the right to engage in union activity. Kirk and Chicago Housing Authority, 6 PERI ¶ 3013 (IL LLRB 1990). This means that the Charging Party must prove that (1) he 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 for engaging in that activity in order to encourage or discourage union membership or support. New Lenox Fire Protection District, 24 PERI ¶ 78 (IL LRB-SP 2008) (citing City of Burbank v. Illinois State Labor Relations Board, 128 Ill. 2d 335 (1989)). There must be a causal connection between the employer's adverse employment action and the protected concerted activity. See Chicago Park District, 9 PERI ¶ 3016 (IL LLRB 1993).

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, at 345-346; County of Menard v. Ill. State Labor Relations Bd., 202 Ill. App.3d 878, 890-891 (4th Dist. 1990).

Charging Party fails to provide any evidence to support his allegation that Respondent denied his FOIA request because he previously served in Union leadership roles. Further, this Board does not have jurisdiction over claims that an employer wrongly denied a FOIA request. Appeals to FOIA request denials are under the jurisdiction of and may be made to the Illinois Attorney General.

Because Charging Party's allegations are either untimely, addressed by other pending cases

before the Board, not under the Board's jurisdiction, and/or Charging Party has failed to demonstrate that Respondent's actions were retaliatory in nature, this charge fails to raise an issue for hearing.

III. ORDER

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

Issued at Springfield, Illinois, this 30th day of July, 2019.

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



**Kimberly F. Stevens
Executive Director**