

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

American Federation of State, County and)
Municipal Employees, Council 31,)
)
Charging Party)
)
and)
)
State of Illinois, Department of Central)
Management Services (Human Services),)
)
Respondent)

Case No. S-CA-17-115

ORDER

On November 21, 2019, Administrative Law Judge Michelle N. Owen, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge’s Recommendation during the time allotted, and at its June 18, 2020 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

THEREFORE, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 18th day of June 2020.

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

/s/ Helen J. Kim
Helen J. Kim
General Counsel

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ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On March 31, 2017, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) filed a charge with the Illinois Labor Relations Board’s State Panel (Board) alleging that the State of Illinois, Department of Central Management Services (Human Services) (Employer) 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, when the Employer ordered employees to remove badges and threatened that employees who refused to the remove the badges would be disciplined. The charge was investigated in accordance with Section 11 of the Act. On July 27, 2017, the Board’s Executive Director issued a Complaint for Hearing.

A hearing was conducted on October 10, 2018, in Chicago, Illinois, at which time the Union presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, and to argue orally. The parties filed timely post-hearing briefs.¹

On March 8, 2019, the parties filed a joint motion to stay the proceeding for 90 days. The motion was granted. On July 11, 2019, the parties jointly requested that the stay be extended for

¹ On December 3, 2018, the Union filed a motion to strike the attachment to the Employer’s post-hearing brief, or in the alternative, for leave to file a reply brief. The Employer did not file a response to the Union’s motion. Accordingly, I grant the Union’s motion to strike the attachment to the Employer’s post-hearing brief, and I will not consider the attachment or the portions of the brief which reference the attachment.

an additional 45 days. The request was granted. On August 28, 2019, the parties jointly requested that the stay be lifted and that I proceed with issuing a recommended decision and order.

After full consideration of the parties' stipulations, evidence, arguments, briefs, and motions, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate, and I find that:

1. The Employer is a public employer within the meaning of Section 3(o) of the Act.
2. The Employer is subject to the jurisdiction of the Board's State Panel pursuant to Section 5(a) of the Act.
3. The Union is a labor organization within the meaning of Section 3(i) of the Act.

II. ISSUE AND CONTENTIONS

The issue is whether the Employer violated Section 10(a)(1) of the Act when it ordered employees at the Employer's Department of Human Services' (DHS) Rolling Meadows office to remove badges, which bore the AFSCME logo and read: "Concerned about Human Services? Call My Boss 847-957-7838" and "Asking me to remove this union badge is an unfair labor practice." The phone number listed on the badge was a publicly available phone number for the office of then-Governor Bruce Rauner.

The Union argues that the Employer violated the Act because the employees were engaged in protected concerted activity when wearing the badges. The Union asserts that the Employer and the Union had been engaged in a labor dispute since January 2016, when the State declared an impasse in bargaining and walked away from the bargaining table. The Union contends that the wearing of the badge coincided with the Union taking a strike authorization vote among its bargaining unit members state-wide, and that the badge was worn in support of the Union's contract campaign urging the Governor to return to the bargaining table. The Union also contends that the badge was worn to protest under-staffing at the Rolling Meadows office, which resulted in customers who were upset with delays taking their frustrations out on the front-line staff. Additionally, the Union asserts that the Employer did not present any evidence that it had any employee appearance policy or policy restricting the wearing by employees of union or other non-work related badges or other paraphernalia. The Union contends that employees in the past had

worn union buttons and t-shirts and displayed union posters at work, and that such prior buttons and posters had included ones with messages in support of union contract campaigns and employee working conditions. The Union also asserts that employees in the past had also worn non-work related paraphernalia at work and displayed non-work related materials in their workspaces. Moreover, the Union contends that any alleged concerns by the Employer related to customer confusion due to the wearing of the badges are without merit. The Union asserts that there was no evidence presented that any customers were in fact confused or that any concern was expressed by customers when the badges were worn. The Union also contends that the record is devoid of evidence that the wearing of the badges in any way interfered with the work of the Rolling Meadows office. Finally, the Union asserts that the burden is on the Employer to prove the existence of special circumstances justifying a restriction on the wearing of the badges, and the Employer failed to do so.

The Employer contends that it did not violate the Act because the badges worn by the employees were confusing to customers of the Employer and political in nature. The Employer contends that the badges caused confusion because of a recent office move. The Employer asserts that it was concerned that customers would think that they should call the phone number listed on the badge if they had concerns about their DHS services or applications. The Employer contends that the badges gave customers the “wrong information” which added to the stress and confusion of the office move. The Employer also asserts that the badges interfered with the purpose and goals of the office, and thus, it was appropriate for the Employer to require their removal. The Employer asserts that it has an obligation to ensure its offices are run smoothly and efficiently. Additionally, the Employer contends that DHS regularly allows employees to wear union clothing and buttons and to hang union posters in their workspaces, which demonstrates a “clear understanding” on the part of DHS of their obligation to not interfere with employees’ rights under the Act. Finally, the Employer asserts that the badges were political in nature because they urged members of the public to call then-Governor Rauner’s office.

III. FINDINGS OF FACT

Overview

DHS maintains regional offices throughout the state that provide assistance to residents of Illinois in obtaining Supplemental Nutrition Assistance Program benefits, cash assistance, and medical assistance.² These offices are accessible to the public.

Prior to November 2016, DHS' north suburban regional office was located in Skokie. The Skokie regional office was the largest office in the state. In November 2016, the north suburban regional office was split into two offices: Skokie and Rolling Meadows. Approximately 60% of the staff remained in the Skokie office, and 40% of the staff, primarily those employees with the lowest seniority, moved to the newly created office location in Rolling Meadows. Approximately 50% of the customers remained assigned to the Skokie office, and 50% of the customers were reassigned to the Rolling Meadows office. In the fall of 2016 through January 2017, approximately 50-60 bargaining unit employees worked in the Rolling Meadows office.

Prior to the split, the Employer had notified customers by e-mail if they were being reassigned to the Rolling Meadows office. The Employer had also posted flyers at the Skokie office notifying customers of the reassignment and posted this information on its website. The e-mails, flyers, and website included the address and phone number of the Rolling Meadows office.

Ramon Marrero is the local office administrator for the Rolling Meadows office. He has worked in that role since the office was opened in November 2016. As a local office administrator, Marrero oversees the functions of the local office and ensures that DHS policies are implemented. Marilyn Rivera is the assistant manager at the Rolling Meadows office.

Dan Tozzi has been employed as a labor relations administrator by DHS for approximately seven years. In this role, he serves as a labor liaison to various DHS offices including the Skokie and Rolling Meadows offices. He also represents DHS in third-step grievances, contract negotiations, and labor-management meetings.

Maria Perez has been employed as a human service case manager by DHS for 18 years. She has worked at the Rolling Meadows office since it opened in November 2016. Prior to working at the Rolling Meadows office, Perez was assigned to the Skokie office. In January 2017, Perez was the lead steward for the Union.

² Elijah Edwards, Supriya Khan, Alejandra Meza, Maria Perez, and Brian Poncin testified on behalf of the Union. Ramon Marrero and Dan Tozzi testified on behalf of the Employer.

Brian Poncin has been employed as a human services caseworker by DHS for approximately three and one-half years. He has worked at DHS' south suburban office located in Blue Island since January 2018. Prior to that, he worked at the Rolling Meadows office from October 2016 through January 2018. Poncin was a Union steward and executive board member while working at Rolling Meadows.

Supriya Khan has been employed as a human services caseworker by DHS since March 2013. She has worked at the Rolling Meadows office since October 2016. Prior to that, she was assigned to the Skokie office. In January 2017, Khan was a Union steward.

Alejandra Meza has been employed as a human services caseworker by DHS for approximately four and one-half years. She worked in the Rolling Meadows office until moving to the Skokie office approximately three weeks ago.

Elijah Edwards has been employed as a staff development specialist for DHS for ten years. He works at DHS' lower north office. He is the current president of AFSCME, Local 2858, which represents employees at the Skokie and Rolling Meadows offices, as well as employees at the lower north and Uptown offices. Edwards is also a delegate of the Union's state bargaining committee. In January 2017, Edwards was the vice-president of AFSCME, Local 2858.

Impact Bargaining

Prior to the split of the north suburban regional office, from approximately the summer of 2016 until November 2016, the Union had engaged in impact bargaining with the Employer regarding the split of the north suburban regional office. Case Manager Perez, Local Union Vice-President Edwards, and Caseworker Khan, among other employees, were on the Union's bargaining committee for impact bargaining. Marrero, Tozzi, and Rivera were on the Employer's bargaining team.

During impact bargaining, the Union raised concerns regarding staffing at the Rolling Meadows office, specifically the need for additional Spanish-speaking staff. Case Manager Perez testified that there were vacancies for Spanish-speaking positions at that time.

Labor-Management Meetings

From approximately the fall of 2016 through January 2017, the Union and the Employer had regular labor-management meetings. Those meetings were held approximately every six weeks. Case Manager Perez generally chaired the labor-management meetings on behalf of the Union. Most of the approximately six Union stewards, including Khan and Poncin, also attended

the labor-management meetings. Marrero and Rivera attended the meetings on behalf of the Employer. During the labor-management meetings that occurred between the fall of 2016 through January 2017, the Union also raised the issue of being short-staffed at the Rolling Meadows office. When that issue was raised by the Union, Rivera responded stating that although positions were being posted for the Rolling Meadows office, when those positions were filled, the new employees would be assigned to the Skokie office.

Negotiations For A Successor Agreement

In December 2015, the Employer and the Union began negotiations for a successor collective bargaining agreement.³ On January 8, 2016, the Employer declared an impasse and submitted its last, best, and final offer.⁴ Thereafter, the Union filed an unfair labor practice charge with the Board regarding the Employer's declaration of impasse.⁵ The charge was investigated and a complaint for hearing was issued.⁶ The case proceeded to hearing before an administrative law judge of the Board.⁷ On September 2, 2016, the administrative law judge issued a recommended decision and order recommending partial implementation by the Employer of its last, best, and final offer on certain issues and sending the parties back to the bargaining table on other issues.⁸ On December 12, 2016, the Board reversed the administrative law judge's finding that the parties were not at an overall impasse, and permitted the Employer to implement its last, best, and final offer.⁹ On October 23, 2018, the Appellate Court of Illinois, Fourth District vacated the Board's order and remanded the proceedings.¹⁰ On May 31, 2019, the Employer and the Union reached a tentative agreement for a successor agreement.¹¹

Strike Authorization Vote

In January 2017, the Union's bargaining committee called for a strike authorization vote. The strike authorization vote occurred at various locations throughout the state from January through April 2017.

³ Dept. of Central Mgmt. Servs. v. Ill. Labor Relations Bd., 2018 IL App (4th) 160827 ¶ 1.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id. at ¶ 69-70.

¹¹ Press Release, Office of the Governor, May 31, 2019, <https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=20148>

Wearing of Badges in January 2017

Sometime prior to January 24, 2017, Perez, Poncin, Khan, and the other Union stewards began distributing badges to employees. The badges read: “Concerned about Human Services? Call My Boss 847-957-7838.” The bottom left of the badge read: “Asking me to remove this union badge is an unfair labor practice.” The bottom right of the badge bore the AFSCME logo and read: “AFSCME Local 2858.” The badges were covered in clear plastic, and the employees affixed the badges to their clothing. The phone number listed on the badge was a publicly available phone number for the office of then-Governor Rauner.

Then-Local Union Vice-President Edwards was involved in assisting the Union stewards at the Rolling Meadows office in the plan to wear the badge. Edwards and the Local 2858 executive board members designed and developed the slogan for the badge.

On January 24, 2017, approximately 10-20 employees at the Rolling Meadows office, including Perez, Poncin, Khan, and Meza, began wearing the badges during the workday. Meza also had the badge posted in her cubicle.

Then-Local Union Vice-President Edwards testified that the employees wore the badge “to support and inform our membership in regards to their right to publicly display – their wish to have the public know about the incident in which the governor walked away from the table and that we also had called for a strike-authorization vote.” Edwards testified that the badge was also worn due to understaffing at the Rolling Meadows office. He noted that customers were having to wait in long lines, were not being served in a timely manner, and were getting upset with the front-line employees.

Perez testified that the employees wore the badges because “[clients] were very upset about the short staff, their benefits were being cut for no reason.” Perez further testified that the employees wore the badges “because of what was going on with the negotiations, but we wanted to resonate with the clients and let them know they could call somebody if they were concerned.” In regard to negotiations, Perez testified that “[w]e wanted Rauner to go back to the negotiating table. He had called impasse.” Perez testified that the short staffing affected her and the other employees’ working conditions because clients were waiting for hours to see a caseworker and waiting long periods of time for their benefits to get approved. She testified that the clients were “quite upset” with the employees. Poncin testified that the badges were worn to “help support our cause of the governor walking away from the table, and then also the human services’ cuts with

the customers continually being upset by long waits, understaffed, and we were bearing the brunt of the customers' frustration." Poncin testified that the clients would express their frustration to the front-line workers. Khan testified that the badge was worn "for our own cause of getting a contract. You know they did walk away." Khan further testified that the badge was worn "because our systems that we were having problems with. We had a lot of clients coming in. They were having issues with their food stamps, their medical was being cut. So there were several reasons in addition to just our cause of trying to get a contract." Khan also testified that clients were frustrated and angry that they were not receiving food stamps, and that the employees "were trying to deescalate." Khan additionally testified that the employees "were trying to fix it, to the best of our abilities, and we were short staffed. We were overworked." Meza testified that she wore the badge "to support the Union."

The badge was also worn by employees in the lower north, Uptown, and Skokie regional offices. Approximately 25 employees in the lower north office, including public aid eligibility assistants, caseworkers, and case managers, wore the badge. Public aid eligibility assistants are the first employees that members of the public see when entering the office. The employees at the lower north office wore the badges for one day and approximately one week after employees in the Rolling Meadows office wore the badges. Edwards testified that as part of the campaign, employees staggered the wearing of the badge. Edwards testified that the local office administrator for the lower north office observed employees wearing the badge, and no employees were told to remove the badge.

On January 25, 2017, Local Office Administrator Marrero called Case Manager Perez into Marrero's office. Marrero told Perez that Marrero had received an e-mail from Labor Relations Administrator Tozzi, in which Tozzi told Marrero to direct the employees in the Rolling Meadows office to remove the badges. Perez then told Marrero that the wearing of the badge was part of a concerted, union activity and asking her to remove the badge would be an unfair labor practice. Marrero then responded, "I knew you would say that, but I need you to take them off."

After the conversation with Marrero, Perez was called into assistant manager Rivera's office. Most of the other Union stewards were also present during this meeting. Rivera told the employees that the badges had to be removed and failure to do so could lead to discipline. Rivera then read aloud an e-mail from Tozzi, in which he stated that the employees were required to

remove the badges and failure to do so could lead to discipline. Rivera also told Meza to remove the badge that was posted in her cubicle.

That same day, Rivera sent an email to all Rolling Meadows staff, including Perez, Poncin, Khan, and Meza, which stated: “Effective immediately remove the green union badge and flyers regarding ‘Concerned about Human Services? Call My Boss 847-957-7838.’ Please put them away. If you have any questions or concerns please see the administration. Thank you for your cooperation and understanding.” Marrero was also copied on the email. After receiving the email, the employees stopped wearing the badge.

The Union then filed a grievance over the Employer requiring employees to remove the badge. Tozzi denied the grievance. At the time of hearing, the grievance had been advanced to step four and was on hold.

Marrero & Tozzi

Marrero testified that he was confused by the badge because the phone number listed on the badge was not his phone number, and he was the person in charge of the Rolling Meadows office. Marrero testified that after seeing the employees wearing the badge, Marrero dialed the phone number listed on the badge, and learned that the phone number was for then-Governor Rauner’s office.

Marrero testified that he believed the badges would cause confusion because of the recent split of the north suburban regional office in November 2016. Marrero testified that the split of the north suburban regional office into two offices was a major undertaking because some customers who had been assigned to Skokie for many years, now had to report to a new location with new phone and fax numbers. Marrero stated that they were still dealing with the “aftereffects” of the split in December 2016 and January 2017.

Marrero testified that on December 22, 2016, one customer at the Rolling Meadows office expressed concern over the badge. However, in his testimony, Marrero did not explain what the customer’s concern was.

On December 22, 2016, Marrero wrote an e-mail to Labor Relations Administrator Tozzi. Marrero stating, “Administrators were in a three days conference from Monday – Wednesday. We just returned back to work today. I found my staff wearing the attached badge ‘Concerned about Human Services? Call my Boss 847-957-7838 (this number is for the Governor’s office in my area) and they also have a flyer in their cubicles. I could not find an e-mail to alert us about this

movement. Was this approved by labor? Please advise.”¹² Marrero testified that when he asked whether the badge was approved by “labor”, he was referring to the Employer’s labor relations office.

At some point, Tozzi emailed Marrero and Rivera informing them that the badges must be removed. However, this email message was not offered into evidence.

On January 25, 2017, Marrero forwarded his December 22, 2016 e-mail message to Tozzi, to Tozzi. That same day, Tozzi forwarded Marrero’s message to Brandon White, a labor relations liaison for the Employer, stating: “One more thing for DHS.... Staff in the Northern office are still wearing the attached badge. The attached flyer was taken down, but staff are now just setting them on their desk, so customers coming in are able to see them while being interviewed. The administrator called the 847# and said it went to the Governor’s office.” White responded that same day, stating: “You need to inform the supervisors to direct their staff that these flyers and badges need to be put away. If it continues, corrective action needs to be implemented. Let us know if this becomes a bigger issue at these offices so we can note it.”

Tozzi testified that local office administrators from the Skokie and Uptown regional offices had also contacted him regarding the badge. Tozzi testified that after receiving the e-mail from White, Tozzi advised both administrators to direct their staff to remove the badges, and the administrators informed him that they did so. The Uptown office has been in the same location for approximately five years.

Tozzi testified that he had concerns about the badge because of the recent split of the north suburban regional office. Tozzi testified, “this office – it was, I believe, under two months when this office moved. So when any office is moved, especially one of this size, I know there’s – we’re always told there’s confusion with customers, you know, who would go to one office and are now going to another and learning new phone numbers, new addresses, where to call or fax things to.” Tozzi further testified that “while we’re trying to, you know, get that message out to the public, this is a phone number that they’re seeing about, you know, to call if they’re concerned about services, and this number isn’t a number that a customer would call if they had issues with their benefits.” Tozzi also testified, “[w]e viewed it as inappropriate and also something that could cause a lot of confusion with our clients because, you know, our [offices] provide human services

¹² The e-mail message from Marrero to Tozzi was dated December 22, 2016. However, the Union’s witnesses testified that employees did not begin wearing the badge until January 2017.

to clients, and this is the badge that a client would see when they're being interviewed by a DHS employee." Tozzi further testified, "if, you know, a client is concerned about the services or the benefits they're receiving, there's a process where they could talk to the office management. There's a DHS number they can call. There is a client grievance process they can inquire about that." Tozzi testified that the split of the north suburban regional office was not the only concern he had regarding the badge: "I mean, that was part of it, and then the other part was just the message and confusion it would cause when customers are viewing that, and they have questions about the benefits they're receiving." Tozzi testified that he did not have any personal knowledge of customer confusion, besides Marrero telling him one customer had expressed concerns.

Other Badges, Buttons, and Posters

In 2011, the Union had filed a grievance due to Case Manager Perez's involuntary transfer from DHS' Hoffman Estates' office to the Skokie office. The Union had argued that the transfer was in retaliation for Perez's union activity. While the grievance was pending, employees in the Skokie office wore badges in support of Perez's grievance. The badges read "Free Maria."

In 2012, employees at DHS' Wicker Park office wore a badge that read: "Ask me about our office moving to Humboldt Park." On the bottom of the badge, it read: "I have the right under the Illinois Labor Relations Act, to wear a Union sticker. Asking me to remove this sticker is a violation of my rights and an Unfair Labor Practice." On the badge, there was also an AFSCME logo. The badge was worn by employees as part of a campaign to keep the Wicker Park office open. The employees wore the badge during work hours as well as during an informational picket. The badge was worn by employees for approximately five days. The employees were never told to remove the badges.

Prior to January 2017, Case Manager Perez had worn buttons at work including a button that read, "Contract Now, AFSCME." Perez has never been told to remove the button. Perez has also worn a badge, which read "100% Union." The badge also included the AFSCME logo. Perez wore this badge while interacting with members of the public in her office. Perez and other employees have also worn AFSCME stickers on their employee identification cards.

Perez testified that employees have also worn badges and buttons with "happy faces" while at work. She further testified that employees have worn pink ribbons in support of breast cancer research and red and yellow ribbons supporting other causes on their clothing while at work.

Perez has had a poster displayed in her office at Rolling Meadows which read: “contract now.” Perez has also had a poster displayed in her office which read: “negotiate, don’t dictate.” Perez has met with members of the public in her office while the posters were displayed. Perez has never been told to remove the posters from her office.

Prior to January 2017, Caseworker Poncin wore buttons at work including a button that read “AFSCME 100% Union” and a button that read “scabs, no scabs” with a line through the word scabs. Poncin met with members of the public while wearing the buttons. Poncin has never been asked to remove these buttons. Poncin has also displayed a poster in his cubicle which read, “Governor Rauner Don’t Dictate, Negotiate. Fair Contract Now.” Poncin has met with members of the public while the poster was displayed in his office. Poncin has never been asked to remove the poster.

Prior to January 2017, Caseworker Khan had worn a button at work that read: “Support the Union.” She has also worn other union buttons to work. In the fall of 2016 through January 2017, Khan also had union posters displayed in her cubicle which read: “Negotiate, Don’t Dictate” and “Support the Union.” Khan has met with members of the public in her cubicle while the posters were displayed. Khan has also kept a noisemaker on her desk that read: “Support AFSCME 31.” Khan testified that around January 2017, Rivera told Khan to remove the posters and noisemaker because they were a “distraction.” Khan then removed them. Khan testified that she currently has only one poster displayed in her cubicle which reads: “Support the Union.”

Prior to January 2017, Caseworker Meza and other employees had worn t-shirts with the AFSCME logo while at work. Meza met with members of the public while wearing the AFSCME t-shirt. Prior to January 2017, Meza also had a corkboard in her cubicle which displayed photographs of family and friends, the Blackhawks logo, and photographs of the Stanley Cup.

Staff Development Specialist Edwards wears a coat with an AFSCME logo to work. He has never been asked to take off the coat.

On or about June 8, 2017, the Union filed a grievance regarding employees being told to remove badges that stated: “Tell Gov. Rauner: ‘DO YOUR JOB’ 847-957-7838 So I Can Do My Job!” The badge contained the AFSCME logo. On the bottom of the badge, it read: “Asking me to remove this badge is an unfair labor practice.” Tozzi denied the grievance. At the time of the hearing, the grievance had been advanced to step four and was on hold.

On June 29, 2017, Marrero sent an email to Tozzi asking what should be done in regard to employees wearing a badge that stated: “MISSING SINCE 2015: ILLINOIS BUDGET INFO CALL; GOV. RAUNER 847-957-7838.” Tozzi then forwarded the email to White on July 5, 2017, asking White whether employees should be told to remove the badges. On July 5, 2017, White replied stating, “[p]ursuant to the direction from the Governor’s office from Mid-2016, the employees need to be directed to remove these political buttons.”

IV. DISCUSSION AND ANALYSIS

The Employer violated Section 10(a)(1) of the Act when it ordered employees to remove the badges and threatened that employees who refused to remove the badges would be disciplined. The Employer thereby interfered with, restrained, or coerced employees in the exercise of their rights under the Act.

Section 6 of the Act protects employees’ right to engage “in other concerted activities not otherwise prohibited by law for the purposes of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion.” 5 ILCS 315/6. Section 10(a)(1) of the Act provides that an employer commits an unfair labor practice when it interferes with, restrains, or coerces public employees in the exercise of the rights guaranteed in the Act. 5 ILCS 315/10(a)(1). 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); State of Ill., Dep’ts of Cent. Mgmt. Servs. & Conservation, 2 PERI ¶ 2032 (IL SLRB 1986); City of Chicago, 3 PERI ¶ 3011 (IL LLRB 1987).

The test to determine whether an employer’s conduct violates Section 10(a)(1) is objective, not subjective. Clerk of the Circuit Court of Cook Cnty., 7 PERI ¶ 2019. The test asks 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. Id.; Conservation, 2 PERI ¶ 2032. The employer’s motivation is irrelevant. Id.; City of

Lake Forest, 29 PERI ¶ 52; Champaign-Urbana Public Health Dist., 24 PERI ¶ 122 (IL LRB-SP 2008).

With respect to an employee's right to wear union insignia at work, the Board has held that employees have the right to wear union-related pins and insignia in the workplace, but the right must be balanced against the employer's right to manage its operations in an orderly fashion. City of Lake Forest, 29 PERI ¶ 52, citing State of Ill., Dept's of Central Mgmt. Servs. & Corrections, 25 PERI ¶ 12 (IL LRB-SP 2009) (employer violated the Act by prohibiting employees from wearing "No Scabs" pins in the workplace). An employer's rule "which curtails that employee right is presumptively invalid unless special circumstances exist which make the rule necessary to maintain production or discipline, or to ensure safety." Id., citing Kendall Co., 267 NLRB 963, 965 (1983). "Substantial evidence of special circumstances, such as interference with production or safety, is required before an employer may prohibit the wearing of union insignia, and the burden of establishing those circumstances rests on the employer." Corrections, 25 PERI ¶ 12. Special circumstances exist "where an employer enforces a policy that its employees may only wear authorized uniforms in a consistent and nondiscriminatory fashion and where those employees have contact with the public." City of Lake Forest, 29 PERI ¶ 52, citing Burger King Corp. v. NLRB, 725 F.2d 1053 (6th Cir. 1984). Other examples of special circumstances where the NLRB and courts have allowed employers to restrict or limit employees' rights to wear union-related insignia have involved circumstances where the slogans at issue denigrate the employer's product or business, where the slogan is patently offensive and vulgar, where the employees have significant contact with the public, for the purposes of maintaining employee efficiency and discipline, and in order to maintain dress uniformity among employees with regular contact with the public. Corrections, 25 PERI ¶ 12, citing Davison-Paxon Co. v. NLRB, 462 F.2d 364 (5th Cir. 1972), Midstate Tel. Co. v. NLRB, 706 F.2d 401 (2d Cir. 1983), Sw. Bell Tel. Co., 200 NLRB 667 (1972), Fabri-Tek, Inc. v. NLRB, 352 F.2d 577 (7th Cir. 1965), United Parcel Service v. NLRB, 41 F.3d 1068 (6th Cir. 1994), Burger King Corp. v. NLRB, 725 F.2d 1053 (6th Cir. 1984).

Here, the Employer violated the Act by ordering employees to remove the badges and threatening that employees who refused to remove the badges would be disciplined because the employees were engaged in protected concerted activity when they wore the badges. The employees wore the badges in January 2017 to garner support for the Union's contract campaign. In January 2017, the State and the Union were in the midst of a labor dispute over the State's

declaration of an impasse during negotiations for a successor collective bargaining agreement. In January 2017, the Union was also conducting a strike authorization vote throughout the state. Furthermore, the evidence showed that the employees wore the badges due to the understaffing at the Rolling Meadows office. Thus, the wearing of the badges was protected activity under the Act.

Further, a reasonable employee would have objectively viewed the Employer's order to remove the badge or face discipline as tending to interfere with, restrain, or coerce that employee's rights under the Act. The Employer does not dispute, and the evidence demonstrates, that the employees were ordered to remove the badges and told that failure to do so could result in discipline. The Board has held that Employer statements to employees that contain threats of reprisal violate Section 10(a)(1) of the Act. Vill. of Calumet Park, 22 PERI ¶ 23 (IL LRB-SP 2005); City of Highland Park, 18 PERI ¶ 2012 (IL LRB-SP 2002); City of Chicago, 11 PERI ¶ 3008 (IL LRB 1995); City of Chicago (Police Dep't), 3 PERI ¶ 3028 (IL LRB 1995). Furthermore, as a result of the Employer's orders, the employees did, in fact, remove the badges.

Additionally, to the extent that the Employer is claiming that special circumstances allowed it to prohibit employees from wearing the badges, the Employer has the burden of providing substantial evidence establishing such special circumstances. Corrections, 25 PERI ¶ 12. Here, the Employer has failed to submit evidence establishing that any special circumstances exist. The Employer asserts that its prohibition on the wearing of the badges was lawful because it caused confusion or could cause confusion among the public. However, the Employer's claim of confusion is without merit. The Employer asserted that the badges could cause confusion at the Rolling Meadows office because of the recent split of the north suburban office. However, employees at the Uptown office were also told to remove the badges, and the Uptown office has been at the same location for approximately five years. Additionally, Marrero's testimony regarding the one instance of customer confusion was too vague to be given any weight. Moreover, the Employer does not cite any authority for its proposition that the wearing of union insignia may be prohibited where it causes customer confusion. See Meijer, Inc. v. NLRB, 130 F.3d 1209, 1217 (6th Cir. 1997), citing Republic Aviation, 214 US 793 (potential for public confusion does not serve as a special circumstance justifying the banning of union insignia). In addition, the evidence failed to establish that the wearing of the badges in any way interfered with the work, purpose, or goals of the Rolling Meadows office. The evidence also failed to establish that the wearing of the

badges interfered with the Employer's obligation to ensure that its offices run smoothly and efficiently. Furthermore, the Employer also failed to set forth a policy or rule showing that DHS prohibited the wearing of the badges at issue here. Moreover, the evidence failed to establish that the badges, in this case, were political or partisan in nature.

However, even if the Employer had shown special circumstances permitting the prohibition of the badges, the rule is nonetheless unlawful, because the Employer has applied the rule in a discriminatory manner, prohibiting the wearing of the badges while also permitting the wearing or displaying of other union insignia and non-union related insignia, like badges and buttons with "happy faces", pink, red, and yellow ribbons in support of various causes, and sports team logos. See City of Lake Forest, 29 PERI ¶ 52. Thus, the Employer violated Section 10(a)(1) of the Act by ordering employees to remove the badges and threatening that employees who failed to do so could face discipline.

V. CONCLUSION OF LAW

The Employer violated Section 10(a)(1) of the Act when it ordered employees to remove badges and threatened that employees who refused to remove the badges could be disciplined.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Employer, its officers, and agents, shall:

- 1) Cease and desist from:
 - a. Interfering with, restraining, or coercing its employees in the exercise of their right to display union insignia or messages at work.
 - b. In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights under the Act.
- 2) Take the following affirmative action necessary to effectuate the policies of the Act:
 - a. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Employer will take reasonable efforts to ensure that the notices are not altered, defaced, or covered by any other material.

- b. Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Employer has taken to comply with this order.

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 filings 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 of 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 21st day of November, 2019

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

/s/ Michelle N. Owen

**Michelle N. Owen
Administrative Law Judge**

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-17-115 (American Federation of State, County and Municipal Employees, Council 31 and State of Illinois, Department of Central Management Services (Human Services))

The Illinois Labor Relations Board, State Panel, has found that the State of Illinois, Department of Central Management Services (Human Services) 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 interfering with, restraining or coercing our employees in the exercise of their right to display union insignia or messages at work.

WE WILL cease and desist from, in any life or related manner, interfering with, restraining, or coercing our employees in the exercise of their rights under the Act.

DATE _____

State of Illinois, Department of Central
Management Services (Human Services)

(Employer)

ILLINOIS LABOR RELATIONS BOARD

801 South 7th Street, Suite 1200A
Springfield, Illinois 62703
(217) 785-3155

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

**THIS IS AN OFFICIAL GOVERNMENT NOTICE
AND MUST NOT BE DEFACED.**
